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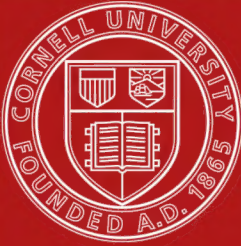
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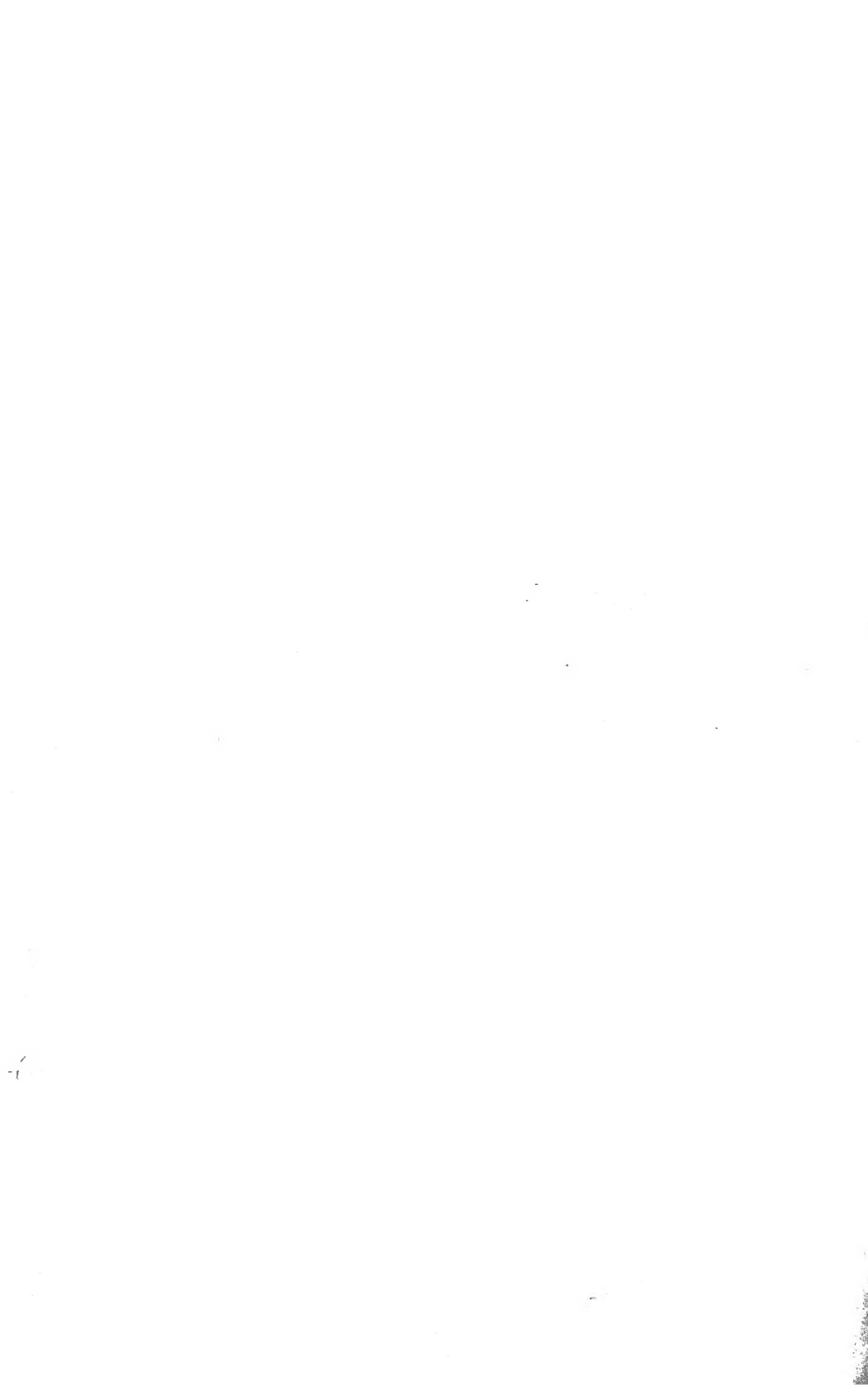
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DIGEST OF CASES, 1901—1910.



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UNDER THE SUPERINTENDENCE AND CONTROL OF THE
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TEN YEARS' DIGEST,
1901 TO 1910,

OF ALL THE CASES REPORTED IN THE
LAW REPORTS AND IN THE WEEKLY NOTES
FROM THE COMMENCEMENT OF 1901,
TO THE END OF 1910.

TOGETHER WITH REFERENCES TO THE MORE IMPORTANT
STATUTES, RULES, AND ORDERS,
AND
PARLIAMENTARY PAPERS
AFFECTING THE PROFESSION PASSED OR ISSUED DURING THE SAME PERIOD.

COMPILED BY
MERYON WHITE-WINTON, M.A.,
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LONDON:

Printed for the Council of Law Reporting,

By BRADBURY, AGNEW, & CO. LIMITED, OF 10, BOUVERIE STREET, E.C.,

And Published

By THE COUNCIL AT 10, OLD SQUARE, LINCOLN'S INN, W.C.

1911.

M 9 16776

BRADBURY, AGNEW, & CO. LD., PRINTERS,
LONDON AND TONBRIDGE.

THE LAW REPORTS.

DIGEST OF CASES, 1901—1910.

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Approved by C. A. DEVONPORT CORPORATION *v. TOZER* [1903] 1 Ch. 759
Followed by Farwell J. ATT.-GEN. *v. WIMBLEDON HOUSE ESTATE CO.* [1904] 2 Ch. 34
- Att.-Gen. v. Ashton Gas Co.* - [1904] 2 Ch. 621
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- Att.-Gen. v. Bournemouth Corporation*, [1902] W. N. 126.
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- Att.-Gen. v. Bradlaugh*, (1885) 14 Q. B. D. 667
Referred to by C. C. A. REX *v. HAUSMANN* - [1909] W. N. 198
- Att.-Gen. v. Carrington (Lord)*, (1843) 6 Beav. 454, 460.
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- Att.-Gen. v. Clerkenwell Vestry*, [1891] 3 Ch. 527, 534.
Applied by C. A. EAST BARNET VALLEY URBAN COUNCIL *v. STALLARD* [1909] 2 Ch. 555
- Att.-Gen. v. Copeland* - [1901] 2 K. B. 101
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- Att.-Gen. v. Davison* (1825) M'Cl. & Y. 160
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- Att.-Gen. v. Eastbourne Corporation*, [1901] 2 K. B. 773.
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- Att.-Gen. v. Edison Telephone Co. of London, Ltd.* (1880) 6 Q. B. D. 244, 260—262.
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- Att.-Gen. v. Glossop* - [1906] 1 K. B. 284
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- Att.-Gen. v. Frimley and Farnborough District Water Co.*, [1908] 1 Ch. 727.
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- Att.-Gen. v. Hanwell Urban Council*, [1900] 2 Ch. 377.
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- Att.-Gen. v. Hubbuck* - (1884) 13 Q. B. D. 275
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- Att.-Gen. v. Jewish Colonization Association*, [1900] 2 Q. B. 556.
Affirmed by C. A. [1901] 1 K. B. 123
- Att.-Gen. v. Johnson* - [1902] 1 K. B. 416
Reversed by C. A. [1903] 1 K. B. 617
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- Att.-Gen. v. Lepine* (1818) 2 Sw. 181
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Referred to by Buckley J. ATT.-GEN. *v. ASHBORNE RECREATION GROUND CO.* [1902] W. N. 208 ; [1903] 1 Ch. 101
Dicta of Vaughan Williams L.J. in, approved by C. A. ATT.-GEN. *v. BIRMINGHAM, TAME, AND REA DISTRICT DRAINAGE BOARD* [1910] 1 Ch. 48
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Reversed by H. L. (E.) *sub nom.* LONDON COUNTY COUNCIL *v. ATT.-GEN.* [1901] A. C. 26
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- Att.-Gen. v. Metropolitan Electric Supply Co.*,
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- Att.-Gen. v. Murray* - [1903] 2 K. B. 64
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- Att.-Gen. v. Myddletons, Ltd.*, [1907] 1 I. R. 471.
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- Att.-Gen. v. North Eastern Ry.*, [1906] 1 Ch. 310
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- Att.-Gen. v. Odell* - [1905] W. N. 81
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- Att.-Gen. v. Penrhyn* - (1900) 83 L. T. 103
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- Att.-Gen. v. Radloff* - (1854) 10 Ex. 84
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- Att.-Gen. v. Theobald* - (1890) 24 Q. B. D. 557
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- Att.-Gen. v. Till* - [1909] 1 K. B. 694
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- Att.-Gen. v. Tomline* - (1880) 14 Ch. D. 58
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- Att.-Gen. v. Wilson* [1900] W. N. 263
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- Ayscough v. Bullar* - (1889) 41 Ch. D. 341
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- Back v. Dick Kerr & Co.* [1905] 2 K. B. 148
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- Bacon, In re* (1893) 62 L. J. (Ch.) 445
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- Badham, In re* - (1893) 10 Morr. 252
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- Badische Anilin und Soda Fabrik v. Hickson*, [1905] 2 Ch. 495.
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- Bagge v. Mawbey* - (1853) 8 Ex. 641
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- Bagley v. Mollard*, (1830) 1 Russ. & My. 581; 32 R. R. 281
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- Bagot Pneumatic Tyre Co. v. Clipper Pneumatic Tyre Co.*, [1900] W. N. 272; [1901] 1 Ch. 196.
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Followed by Neville J. *DANSK REKYLRIFTEL SYNDIKAT AKTIESELSKAB v. SNELL* [1908] 2 Ch. 127
- Bagott v. Orr*, (1801) 2 Bos. & P. 472; 5 R. R. 663.
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- Bahia and San Francisco Ry. Co., In re* (1868) L. R. 3 Q. B. 584.
Referred to by C. A. *SHEFFIELD CORPORATION v. BARCLAY* - [1903] 2 K. B. 580; **H. L. (E.) [1905] A. C. 392**
- Bahin v. Hughes* (1886) 31 Ch. D. 390, 395
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- Baile v. Baile* - (1872) L. R. 13 Eq. 497
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- Bailey v. Bailey* (1884) 13 Q. B. D. 855
Applied by Joyce J. *ROBINS v. ROBINS* [1907] 2 K. B. 13
- Bailey v. Bishop* - (1803) 9 Ves. 6
Referred to by Swinfen Eady J. *In re ROBBINS* [1906] 2 Ch. 648
- Bailey v. Kenworthy* - [1908] 1 K. B. 441, 466
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- Bailey v. Stephens* - (1862) 12 C. B. (N.S.) 91
Principle of, applied by C. A. *LORD CHESTERFIELD v. HARRIS* [1908] 2 Ch. 397
- Bailey v. Thurston & Co.* - [1902] 2 K. B. 397
Affirmed by C. A. [1903] 1 K. B. 137
- Bailey and Leatham's Case*, (1869) L. R. 8 Eq. 94.
Followed by Buckley J. *In re WENBORN & CO.* [1905] 1 Ch. 413
- Baillie & Co., In re* - (1899) 15 T. L. R. 277
Referred to by Buckley J. *In re ROMAIN* [1903] 1 Ch. 702
- Baily v. British Equitable Assurance Co.* [1904] 1 Ch. 374.
Reversed by H. L. (E.) *sub nom. BRITISH EQUITABLE ASSURANCE CO. v. BAILY* [1906] A. C. 35
- Baily & Co. v. Clark, Son & Morland*, [1902] 1 Ch. 649.
Followed by Eve J. *WHITMOORES (EDENBRIDGE), LD. v. STANFORD* [1909] 1 Ch. 427
- Bainbridge v. Smith* - (1889) 41 Ch. D. 462
Referred to by Buckley J. *SUTTON v. ENGLISH AND COLONIAL PRODUCE CO.* [1902] 2 Ch. 502
- Bain v. Assets Co.* - [1904] 6 F. 754, 692
Reversed by H. L. (Sc.) [1905] A. C. 317
- Bain v. Fothergill* - (1874) L. R. 7 H. L. 158
Referred to by Kekewich J. *HOLLIWELL v. SEACOMBE* - [1906] 1 Ch. 426
Principle of, applied by Div. Ct. *MORGAN v. RUSSELL & SONS* [1909] 1 K. B. 357
- Bainbridge v. Smith* (1889) 41 Ch. D. 462, 474
Applied by Swinfen Eady J. *BOSCHOEK PROPRIETARY CO. v. FUEKE* [1906] 1 Ch. 148
- Baines, Re* - (1902) 86 L. T. (N.S.) 691
Disapproved by C. A. *In re PILLING* [1903] 2 K. B. 50
- Baird v. Moule's Patent Earth Closet Co.*, (1876) 17 Ch. D. 139, n.
See ATKINSON v. BRITTON - Neville J. [1909] W. N. 102
- Bake v. French* - [1907] 1 Ch. 428
Reported on other points. *See BAKE v. FRENCH (No. 2)*
Warrington J. [1907] 2 Ch. 215
- Baker, In re* - (1898) 79 L. T. (N.S.) 843
Approved of by C. A. *OWEN v. GIBBONS* [1902] 1 Ch. 636
- Baker v. Ambrose.* - [1896] 2 Q. B. 372
Referred to by C. A. *In re BAGLEY* [1910] W. N. 224
- Baker v. Bolton* - (1808) 1 Camp. 493
Considered and distinguished by C. A. *JACKSON v. WATSON & SONS* [1909] 2 K. B. 193
- Baker v. Snell* - [1908] 2 K. B. 352
Affirmed by C. A. [1908] 2 K. B. 825
- Baker, Lees & Co., In re* [1903] 1 K. B. 189
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- Baldwin v. Roche* - (1842) 5 Ir. Eq. 110
Approved and followed by C. A. *SAXNDERS v. SHAFTO* [1905] 1 Ch. 126
- Balian v. Joly, Victoria & Co.*, (1890) 6 Times L. R. 345.
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BENNETT [1907] 1 K. B. 149
- Ball, In re, Slattery v. Ball* (1888) 40 Ch. D. 11; 59 L. T. 800.
Referred to by Joyce J. BARKWORTH
v. BARKWORTH - [1906] W. N. 171
- Ball v. Ray* - - - (1873) L. R. 8 Ch. 467
Considered by Kekewich J. ATT.-GEN.
v. COLE & SON [1901] 1 Ch. 205
- Ball (John), In the Goods of* [1902] W. N. 226
See Erratum [1902] W. N. 228
- Ball's Trust, In re* - (1879) 11 Ch. D. 270
Not followed on one point by Swinfen
Eady J. *In re SMITH'S SETTLEMENT*
[1903] 1 Ch. 373
- Ballance, In re* (1889) 42 Ch. D. 62, 64
Not adopted by Swinfen Eady J. *In re*
WAND [1907] 1 Ch. 391
- Balmoral Steamship Co. v. Marten*, [1901] 2
K. B. 896.
Affirmed by H. L. (E.) [1902] A. C. 511
- Bamford v. Turnley* - (1860) 3 B. & S. 62
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v. COLE & SON [1901] 1 Ch. 205
- Bandy v. Cartwright* - (1853) 8 Ex. 913
Followed by Div. Ct. BUDD-SCOTT v.
DANIELL [1902] 2 K. B. 351
- Barister v. Thompson* [1908] P. 362
See REX v. DIBDIN - C. A. [1910] P. 57
- Barker v. Hemming* - (1880) 5 Q. B. D. 609
Referred to by Parker J. BAKE v.
FRENCH [1907] 1 Ch. 428
- Bank of Africa, Ltd. v. Cohen*, [1909] W. N. 50
Affirmed by C. A. - [1909] 2 Ch. 129
- Bank of England v. Cutler* - [1907] 1 K. B. 889
Affirmed by C. A. [1908] 2 K. B. 208
- Bank of England v. Vagliano Brothers*, [1891]
A. C. 107.
Distinguished by Warrington J. VIN-
DEN v. HUGHES [1905] 1 K. B. 795
- Bank of Hindustan, China and Japan (Camp-
bell's Case), In re*, (1873) L. R. 9 Ch.
1, 22.
Followed by Eve J. MOSELY v.
KOFFYFONTEIN MINES, LD., [1910]
2 Ch. 382; but this case was reversed
by C. A. - [1910] W. N. 231
- Bank of Syria, In re* [1900] 2 Ch. 272
Affirmed by C. A. - [1901] 1 Ch. 115
- Bannatyne v. Direct Spanish Telegraph Co.*,
(1886) 34 Ch. D. 287.
Referred to by Farwell J. *In re*
CREDIT ASSURANCE AND GUARANTEE
CORPORATION - [1902] 2 Ch. 178;
C. A. [1902] 2 Ch. 601
- Bannatyne v. United Free Church of Scotland*,
(1902) 4 F. 1083.
Reversed by H. L. (Sc.) *sub nom.*
GENERAL ASSEMBLY OF FREE CHURCH
OF SCOTLAND v. OVERTOUN (LORD).
MACALISTER v. YOUNG
[1904] A. C. 515
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Cave J. [1893] W. N. 164; 10 Times
Law Reports, 44.
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Times Law Reports, 276. W. N. 1894,
Feb. 17th, p. 23, Record of Business.
- Barker, In re* - - - [1897] W. N. 154.
Approved by C. A. *In re ATKINSON*
[1904] 2 Ch. 160
- Barker v. Furlong* [1891] 2 Ch. 172
Principle of, applied by Phillimore J.
In re MAGNUS. Ex parte SALAMAN
[1910] W. N. 190
Note.—This decision was affirmed by
C. A. [1910] W. N. 205;
[1910] 2 K. B. 1049
- Barker v. Hemming* (1880) 5 Q. B. D. 609
Followed by C. A. DAVID v. REES
[1904] 2 K. B. 435
- Barker v. Purris* (1886) 56 L. T. (N.S.) 131
Referred to by C. A. CHESSUM & SONS
v. GORDON - [1901] 1 K. B. 694, 699
- Barkworth v. Young* - (1856) 4 Drew. 1
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[1902] 2 Ch. 360
- Barlow v. Gains* (1856) 23 Beav. 244, 246
Statement in, discussed by Eve J.
HEATH v. CHINN [1908] W. N. 120
- Barnard Castle Urban District Council v. Wilson*,
[1901] W. N. 173; 1901 2 Ch. 813
Reversed by C. A. [1902] 2 Ch. 746
- Barnardo v. McHugh* - [1891] A. C. 388
Followed by C. A. HUMPHREYS v.
POLAK - [1901] 2 K. B. 385
- Barnes v. Brown* - [1909] 1 K. B. 38
Overruled by H. L. (E.). BELLERBY
v. HEYWORTH [1910] A. C. 377
- Barnes v. Shore* (1846) 1 Roberts, 382
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[1901] P. 354, 365
- Barnes v. Soach* - - (1879) 4 Q. B. D. 494
Referred to by Kekewich J. MILNER'S
SAFE CO. v. GREAT NORTHERN AND
CITY RAILWAY CO. [1906] W. N. 163;
C. A. [1907] 1 Ch. 208
- Barnes v. Youngs* - [1898] 1 Ch. 414
Dicta of Romer J. in, overruled by C. A.
GREEN v. HOWELL [1910] 1 Ch. 495
- Barnett v. Guildford (Earl)* - (1855) 11 Ex. 19
Approved and applied by C. A. OCEAN
ACCIDENT AND GUARANTEE CORPO-
RATION, LD. v. ILFORD GAS CO.
[1905] 2 K. B. 493
- Barnett v. Howard* - [1900] 2 Q. B. 784
Followed by C. A. BROWN v. DIMBLEBY
[1904] 1 K. B. 28
- Barnett v. Wheeler* (1841) 7 M. & W. 364
Followed by C. A. *In re HIGGETT*
AND BIRD'S CONTRACT
[1903] 1 Ch. 287
- Barnett's Estate, In re* [1889] W. N. 216
Approved by C. A. *In re DEHAYNIN*
[1910] 1 Ch. 223

- Barnhart v. Greenshields*, (1853) 9 Moo. P. C. 18
Followed by C. A. *HUNT v. LUCK*
[1902] 1 Ch. 428
- Barque Quilpue, Ltd. v. Brown*, [1904] 2 K. B. 264.
Referred to by C. A. *JONES, LD. v. GREEN & Co.* [1904] 2 K. B. 275, 283
- Barracrough v. Cooper*, [1905] H. L. (E.). Reported [1908] 2 Ch. 121, n.
Followed by *Eve J. In re LAMBERT*
[1908] 2 Ch. 117
Referred to by C. A. *In re COPE*
[1908] 2 Ch. 1
- Barracrough v. Johnson*, (1838) 8 A. & E. 99; 47 R. R. 506.
Referred to by H. L. (E.). *SIMPSON v. ATT-GEN.* - [1904] A. C. 476, 494
- Barrett v. Markham* - (1872) L. R. 7 C. P. 405
Applied by Div. Ct. *MADDEN v. RHODES* - [1906] 1 K. B. 534
- Barrie v. Caledonian Ry. Co.*, (1902) 40 S. L. R. 50.
Affirmed by H. L. (Sc.) *sub nom. CALEDONIAN RY. CO. v. BARRIE*
[1903] A. C. 126
- Barrie v. Peruvian Corporation*, (1896) 2 Com. Cas. 50.
Discussed by Bigham J. *In re NEWMAN & DALE STEAMSHIP CO. AND BRITISH AND SOUTH AMERICAN STEAMSHIP CO.*
[1903] 1 K. B. 262, 267
- Barrington, In re* - (1886) 33 Ch. D. 523
Not followed by Swinfen Eady J. *In re FULLERTON'S WILL* [1906] 2 Ch. 138
- Barron v. Willis* - - [1900] 2 Ch. 121
Affirmed by H. L. (E.) *sub nom. WILLIS v. BARRON* - [1902] A. C. 271
Approved by C. A. *HOWES v. BISHOP*
[1909] 2 K. B. 390
- Barrow v. Isaacs & Son* - [1891] 1 Q. B. 417
Referred to by Parker J. *MATTHEWS v. SMALLWOOD* [1910] 1 Ch. 777
- Barrow Hematite Steel Co., In re*, (1888) 39 Ch. D. 582.
See BOND v. BARROW HÆMATITE STEEL CO. [1902] 1 Ch. 353
- Barrow Hematite Steel Co., In re*, [1900] 2 Ch. 846.
Affirmed by C. A. [1901] 2 Ch. 746
Explained by C. A. *In re HOARE & Co., LD. AND REDUCED*
[1904] 2 Ch. 208
- Barrow v. Isaacs & Son*, [1891] 1 Q. B. 417, 420
Discussed by *Eve J. LADY HOOD v. AVALON v. MACKINNON*
[1909] 1 Ch. 476
- Barrow v. Myers*, (1888) 4 T. L. R. 441; 52 J. P. 345.
Overruled by C. A. *CROZIER, STEPHENS & Co. v. AUERBACH*
[1908] 2 K. B. 161
- Barrow's Trusts, In re* [1864] 10 L. T. 184
Followed by *Joyce J. In re GRIFFITH'S POLICY* - [1903] 1 Ch. 739
Approved by C. A. *In re COLEY*
[1903] 2 Ch. 102
- Barry's Trusts, In re, Barry v. Smart*, [1906] W. N. 68; [1906] 1 Ch. 768.
Affirmed by C. A. - [1906] 2 Ch. 358
- Bartell v. W. Gray & Co.* [1902] 1 K. B. 225
Followed by C. A. *WEAVINGS v. KIRK & RANDALL* [1904] 1 K. B. 213
Headnote in, corrected by C. A. *HARRISON v. OCEANIC STEAM NAVIGATION CO.* [1907] 2 K. B. 420
- Barwick v. English Joint Stock Bank*, (1867) L. R. 2 Ex. 259.
Principles of, applied by C. A. *GIBLAN v. NATIONAL AMALGAMATED LABOURERS' UNION OF GREAT BRITAIN AND IRELAND* - [1903] 2 K. B. 600
Approved by P. C. *CITIZENS' LIFE ASSURANCE CO. v. BROWN*
[1904] A. C. 423
- Basset v. St. Leven* (1894) 43 W. R. 165
Undistinguishable. *In re GOSSELLIN*
Farwell J. [1906] 1 Ch. 120
- Bassett v. Tong* [1894] 2 Q. B. 332
See SPENCER, WHATLEY & UNDERHILL v. FOSTER & Co. - Div. Ct. [1905] 1 K. B. 434
- Bassil v. Lister* - (1851) 9 Hare, 177
Referred to by Buckley J. *In re GARDINER* - [1901] 1 Ch. 697, 699, 700
- Bate, In re* - (1890) 43 Ch. D. 600
Overruled by Kekewich J. on one point.
In re ROBERTS [1902] 2 Ch. 834
- Bateman v. Hunt* [1904] 2 K. B. 530
Distinguished by *Joyce J. POWELL v. BROWNE* [1907] W. N. 152; on appeal, C. A. [1907] W. N. 228
- Bater v. Bater* [1906] P. 209
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Bucknill J. [1907] P. 333
- Bates, In re* - [1907] 1 Ch. 22
Followed by Swinfen Eady J. *In re WILSON. MOORE v. WILSON*
[1907] 1 Ch. 394
Discussed by Warrington J. *In re NICHOLSON* [1909] 2 Ch. 111
- Bates, In re* - (1887) 4 Morr. 192
Considered by C. A. *In re A DEBTOR*
[1908] 2 K. B. 684
- Bates v. Bates* (1884) W. N. 129
Dissented from by *Farwell J. In re GREENWOOD* [1901] 1 Ch. 887
- Bath v. Bath* - [1901] 1 Ch. 460
Referred to by Swinfen Eady J. *In re WILLIAMS' SETTLED ESTATES*
[1910] 2 Ch. 481
- Bathurst (Borough of) v. Macpherson*, (1879) 4 App. Cas. 256.
Explained by Lord Alverstone C.J. *LAMBERT v. LOWESTOFT CORPORATION* [1901] 1 K. B. 590
- Batten v. Earnley* - (1723) 2 P. Wms. 162
Referred to by Kekewich J. *In re HISCOE* - [1902] W. N. 49, 54

- Batten v. Wedgwood Coal and Iron Co.*, (1884) 28 Ch. D. 317.
Followed by Neville J. *In re* LONDON UNITED BREWERIES, LD.
[1907] 2 Ch. 511
- Battishill v. Reed* - (1856) 18 C. B. 696
Followed by Joyce J. DAMPER v. BASSETT - [1901] 2 Ch. 350
- Bawendale v. Great Western Railway*, (1863) 14 C. B. (N.S.) 1; (1864) 16 C. B. (N.S.) 137.
Distinguished by C. A. STONE & Co. v. MIDLAND RY. CO.
[1904] 1 K. B. 669, 675
- Barter v. Taylor*, (1832) 4 B. & Ad. 72; 38 R. R. 227.
Followed by Joyce J. DAMPER v. BASSETT - [1901] 2 Ch. 350
- Barter's Leather Co. v. Royal Mail Steam Packet Co.* - [1908] 1 K. B. 796
Affirmed by C. A. - [1908] 2 K. B. 626
- Bayley-Worthington and Cohen's Contract, In re*, [1908] 1 Ch. 26.
Affirmed by H. L. (E.) *sub nom.* COHEN v. BAYLEY-WORTHINGTON
[1908] A. C. 97
See In re BAYLEY-WORTHINGTON AND COHEN'S CONTRACT - Parker J.
[1909] 1 Ch. 648
- Baynes & Co. v. Lloyd & Sons*, [1895] 2 Q. B. 610
Dicta in, dissented from by Div. Ct. BUDD-SCOTT v. DANIELL
[1902] 2 K. B. 351
Considered by C. A. JONES v. LAYINGTON
[1903] 1 K. B. 263
Explained by Swinfen Eady J. MARKHAM v. PAGET
[1908] 1 Ch. 697
- Beak's Estate, In re* - (1872) L. R. 13 Eq. 489
Followed by Buckley J. *In re* BEAUMONT
[1902] 1 Ch. 889
- Beal, Ex parte* (1868) L. R. 3 Q. B. 387
Approved of and followed by C. A. HILDESHEIMER v. W. & F. FAULKNER, LD.
[1901] 2 Ch. 552
- Beale v. Beale* - (1874) L. R. 3 P. & M. 779
Approved by Jeune Pres. TOMALIN v. SMART
[1904] P. 114
- Beales' Settlement, In re* [1905] 1 Ch. 256
Followed by Buckley J. *In re* WRIGHT
[1906] 2 Ch. 288
- Bear Island Defence Works and Doyle, In re*, [1903] 1 I. R. 164.
Applied by Swinfen Eady J. *In re* LONDON UNITED TRAMWAYS ACT, 1900
[1906] 1 Ch. 534
Queried by C. A. as to the "death duties" there allowed. *In re* THAMES TUNNEL (ROTHERHITHE AND RATCLIFF) ACT, 1900 [1908] 1 Ch. 493
- Beardman v. Wilson* (1868) L. R. 4 C. P. 57
Followed and applied by Swinfen Eady J. LEWIS v. BAKER [1905] 1 Ch. 40
- Beardsley v. Giddings* - [1904] 1 K. B. 847
Distinguished by Div. Ct. BROOKS v. BAGSHAW [1904] 2 K. B. 798, 801
- Beattie v. Cordner* - [1903] 1 I. R. 1
Affirmed by H. L. (Ir.) *sub nom.* HARRISON v. KIRK - [1904] A. C. 1
- Beattie v. Ebury (Lord)*, (1872) L. R. 7 Ch. 777, 800.
Applied by Kekewich J. HALBOT v. LENS [1901] 1 Ch. 344
- Beaufort (Duke of) v. Ashburnham (Earl of)*, (Jan. 17, 1863) 13 C. B. (N.S.) 598; 32 L. J. (N.S.) C. P. 97.
Considered by C. A. BARTLETT v. HIGGINS [1901] 2 K. B. 230
- Beaumont v. Bowers* - [1900] 2 Q. B. 204
Not followed by C. A. HUDSON v. GRIBBLE [1903] 1 K. B. 517
- Bebb v. Bunny* - (1854) 1 K. & J. 216
Followed by Warrington J. *In re* CRAVEN'S MORTGAGE
[1907] 2 Ch. 448
- Bechuanaland Exploration Co. v. London Trading Bank*, [1898] 2 Q. B. 658.
Followed by Bigham J. EDELSTEIN v. SCHULER & Co. [1902] 2 K. B. 144
- Beckett v. Tower Assets Co.* [1891] 1 Q. B. 638
Undistinguishable. MELLOR (TRUSTEE OF) v. MAAS
C. A. [1903] 1 K. B. 226, 230
- Beckford v. Tobin* - (1749) 1 Ves. Sen. 308
Referred to by C. A. *In re* BOWLBY
[1904] 2 Ch. 685
- Beckham v. Drake* (1849) 2 H. L. C. 579, 627
Referred to by C. A. ROSE v. BUCKETT
[1901] 2 K. B. 449
Principle of, applied by C. A. BAILEY v. THURSTON & Co.
[1903] 1 K. B. 137, 140
Referred to by C. A. FORMBY v. BARKER - [1903] 2 Ch. 539
- Beckhuson and Gibbs v. Hamblett*, [1900] 2 Q. B. 18.
Affirmed by C. A. [1901] 2 K. B. 73
- Beckley v. Scott & Co.* [1902] 2 I. R. 504
Referred to by C. A. TAYLOR v. HAMSTEAD COLLIERY CO.
[1904] 1 K. B. 838, 847
Decision of the majority of the Court in, disapproved by C. A. CRIBB v. KYNOCH (No. 2), LD.
[1908] 2 K. B. 551
- Beckwith, Ex parte* [1898] 1 Ch. 324
Followed by Warrington J. *In re* DOVER COALFIELD EXTENSION, LD.
[1907] 2 Ch. 76; on appeal, C. A.
[1908] 1 Ch. 65
- Becquet v. MacCarthy* (1831) 2 B. & Ad. 951
Commented on by C. A. EMANUEL v. SYMON [1908] 1 K. B. 302
- Bedford (Duke of) v. Ellis* - [1901] A. C. 1
Referred to by H. L. (E.). TAFF VALE RY. CO. v. AMALGAMATED SOCIETY OF RAILWAY SERVANTS
[1901] A. C. 426, 439
- Beech v. Lord St. Vincent*, (1850) 3 De G. & Sm. 678.
Followed by Buckley J. *In re* STEPHENS - [1904] 1 Ch. 322

- Belcher v. Williams* (1890) 45 Ch. D. 510
Referred to by Joyce J. *CARROLL v. HARRISON* [1910] W. N. 104
- Bell v. Gribble* - [1902] 2 K. B. 298
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- Bell v. Holtby* - (1873) L. R. 15 Eq. 178
Followed by H. L. (E.). *COHEN v. BAYLEY-WORTHINGTON* [1908] A. C. 97
- Bell v. National Provincial Bank of England, Ltd.*, [1903] 2 K. B. 249.
Reversed by C. A. [1904] 1 K. B. 149
- Bellairs v. Bellairs* (1874) L. R. 18 Eq. 510
Considered and explained by Warrington J. *In re OLIVER* [1908] 2 Ch. 74
- "*Bellanoeh*," *The* - [1907] P. 170
Affirmed by H. L. (E.) *sub nom. OWNERS OF S.S. "CANNING" v. OWNERS OF S.S. "BELLANOCH."* *THE "BELLANOCH"* [1907] A. C. 269
Discussed by C. A. *THE "CORINTHIAN"* [1909] P. 260
- Bellencontre, In re* - [1891] 2 Q. B. 122
See *Larceny Act, 1901* (1 Edw. 7, c. 10).
- Bellerby v. Heyworth* - [1909] 2 Ch. 23
Affirmed by H. L. (E.). [1910] A. C. 377
- Bellerby v. Rowland and Marwood's Steamship Co.*, [1901] W. N. 111; [1901] 2 Ch. 265.
Reversed by C. A. [1902] 2 Ch. 14
- Belmore (Countess of) v. Kent County Council*, [1901] 1 Ch. 873.
Distinguished by Joyce J. *HARVEY v. TRURO RURAL DISTRICT COUNCIL* [1903] 2 Ch. 638
- Belt v. Lawes* (1884) 12 Q. B. D. 356
Overruled on one point by H. L. (E.). *WATT v. WATT* - [1905] A. C. 115
- Belton v. Busby* - [1899] 2 Q. B. 380
Followed by Div. Ct. *TROMANS v. HODKINSON* [1903] 1 K. B. 30
Followed by C. C. R. *REX v. DEAVILLE* [1903] 1 K. B. 468
- Bender v. Owners of Steamship "Zent"*, [1909] 2 K. B. 41.
Followed by C. A. *GILBERT v. OWNERS OF STEAM TRAWLER "NIZAM"* [1910] 2 K. B. 555, 559
- Bendy, In re* - - [1895] 1 Ch. 109
Not followed by Buckley J. *In re CLUTTERBUCK'S SETTLEMENT* [1905] 1 Ch. 200
- Benford v. Sims* - - [1898] 2 Q. B. 641
Followed by Div. Ct. *DU CROS v. LAMBOURNE* [1907] 1 K. B. 40
- Bengough v. Walker*, (1808) 15 Ves. 507, 512; 10 R. R. 106.
Referred to by C. A. *In re JAUQUES* [1903] 1 Ch. 267
- "*Benlarig*," *The* - (1888) 14 P. D. 3
Principle of, applied by Bucknill J. *THE "AUGUST KORFF"* [1903] P. 166
- Benn v. Benn* - (1885) 29 Ch. D. 839, 845
Referred to by Joyce J. *In re BILHAM* [1901] 2 Ch. 169
- Bennett v. Stone*, [1901] W. N. 225; [1902] 1 Ch. 226.
Affirmed by C. A. - [1903] 1 Ch. 509
Explained by Parker J. *In re BAYLEY-WORTHINGTON AND COHEN'S CONTRACT* - [1909] 1 Ch. 648
- Bennett v. White* [1910] W. N. 97; [1910] 2 K. B. 1.
Reversed by C. A. [1910] 2 K. B. 643
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- Bradshaw v. Widdrington* [1901] W. N. 148
Affirmed by C. A. [1902] 2 Ch. 430
Discussed by C. A. *In re LACEY* [1907] 1 Ch. 330
- Brandt's (Wm.) Sons & Co. v. Dunlop Rubber Co.*, [1904] 1 K. B. 387.
Reversed by H. L. (E.) [1905] A. C. 454
- Brangan v. Gorges* - (1844) 7 Ir. Eq. 221, 225
Followed by Eve J. POMERY v. POMERY [1909] W. N. 158

- Brankelow Steamship Co. v. Canton Insurance Office*, [1899] 2 Q. B. 178.
Affirmed by H. L. (E.) *sub nom.* WILLIAMS & CO. AND THE BRANKELOW STEAMSHIP CO. v. CANTON INSURANCE OFFICE, LD. [1901] A. C. 462
- Brankelow Steamship Co. v. Lamport and Holt*, [1907] 1 K. B. 787.
Approved of by C. A. NELSON & SONS, LD. v. NELSON LINE. (LIVERPOOL), LD. *In re THE SAME* [1907] 2 K. B. 705
- Brass v. Maitland* - (1856) 6 E. & B. 470
Discussed by C. A. BAMFIELD v. GOOLE AND SHEFFIELD TRANSPORT CO. [1910] 2 K. B. 94
- Bray v. Ford* - - - [1896] A. C. 44
Discussed by C. A. HAMILTON v. SEAL [1904] 2 K. B. 262, 263
- Brazier v. Glasspool* - [1901] W. N. 237
Affirmed by C. A. [1902] W. N. 162
- Breckenridge's Case* (1865) 2 H. & M. 642
Applied by C. A. *In re SUSSEX BRICK CO.* - [1904] 1 Ch. 598
- Breech-loading Armory Co., In re*, (1867) L. R. 4 Eq. 453.
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- Brennan v. Limerick Guardians*, (1878) 2 L. R. Ir. 42.
Considered by Div. Ct. TOZELAND v. WEST HAM UNION [1906] 1 K. B. 538
Followed by C. A. TOZELAND v. WEST HAM UNION [1907] 1 K. B. 920
- Brereton v. Tuohy* (1858) 8 Ir. C. L. Rep. 190
Followed by Farwell J. MULLER v. TRAFFORD [1901] 1 Ch. 54
- Brett v. Rogers* - - - [1897] 1 Q. B. 525
Referred to by Swinfen Eady J. *In re WARRINER* [1903] 2 Ch. 367
- Brewer v. Dew* - - (1843) 11 M. & W. 625
Referred to by C. A. ROSE v. BUCKETT [1901] 2 K. B. 449
- Brewer and Hankins's Contract, In re*, (1899) 80 L. T. (N.S.) 127.
Distinguished by C. A. *In re PUCKETT AND SMITH'S CONTRACT* [1902] 2 Ch. 258
- Briant v. Dennell* - (1869) 4 Drew. 550
See CATTERSON v. CLARK
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- Brice v. Edward Lloyd, Ltd.*, [1909] 2 K. B. 804.
Referred to by C. A. BARNES v. NUNNERY COLLIERY CO. [1910] W. N. 248
- Bridges v. Potts* - (1864) 17 C. B. (N.S.) 314
Followed by Div. Ct. SOAMES v. NICHOLSON - [1902] 1 K. B. 157, 159
- Bridgewater Navigation Co., In re*, [1891] 1 Ch. 155; C. A. [1891] 2 Ch. 317.
Considered and distinguished by C. A. *In re CRICHTON'S OIL CO.* [1902] 2 Ch. 86
- Bridgman v. Daw* - (1891) 40 W. R. 253
Referred to by Farwell J. DODSON v. DOWNEY - [1901] 2 Ch. 620
- Bridgman v. Green* - (1755) 2 Ves. Sen. 627
Referred to by P. C. TURNBULL & CO. v. DUVAL - [1902] A. C. 429, 435
- "*Brigella*," *The* - [1893] P. 189
Disapproved of by C. A. MONTGOMERY & CO. v. INDEMNITY MUTUAL MARINE CO. [1902] 1 K. B. 734
- Bright v. Campbell* - (1880) 41 Ch. D. 388
Discussed and distinguished by Warrington J. WRIGLEY v. GILL [1905] 1 Ch. 241; C. A. [1905] W. N. 148
Distinguished by C. A. [1906] 1 Ch. 165
- Bright v. Walker*, (1834) 1 C. M. & R. 211; 40 R. R. 536; Preface, vi.
Referred to by Joyce J. DAMPER v. BASSETT [1901] 2 Ch. 350, 354
- Bright-Smith, In re* (1886) 31 Ch. D. 314
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- Brighton Marine Palace and Pier Co., In re*, [1897] W. N. 12.
Followed by Neville J. *In re SILBERHÜTTE SUPPLY CO.* [1910] W. N. 81
- Brinckman v. Matley* - [1904] 2 Ch. 313
Referred to by Parker J. LORD FITZHARDINGE v. PURCELL [1908] 2 Ch. 139, 163
- Brittons, Ltd. v. Turvey* - [1905] A. C. 230
Discussed by C. A. BRODERICK v. LONDON COUNTY COUNCIL [1908] 2 K. B. 807
Explained by C. A. EKE v. HART-DYKE - [1910] 2 K. B. 677
- Bristol Gas Co. and the Bristol Tramways and Carriage Co., In re*, [1909] 2 K. B. 297
Partly affirmed and partly dissented from by C. A. [1910] 1 K. B. 114
- Bristowe v. Needham* - (1847) 2 Ph. 190
Distinguished by C. A. *In re DUNN* [1904] 1 Ch. 648
- Britain v. Rossiter* (1879) 11 Q. B. D. 123
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- Britannic Merthyr Coal Co. v. David*, [1909] 2 K. B. 146.
Affirmed by H. L. (E.) [1910] A. C. 74
- British and American Trustee and Finance Corporation v. Couper*, [1894] A. C. 399, 414.
Distinguished by Swinfen Eady J. *In re DEVELOPMENT COMPANY OF CENTRAL AND WEST AFRICA* [1902] 1 Ch. 547
Referred to by C. A. BELLERBY v. ROWLAND AND MARWOOD'S STEAMSHIP CO. [1902] 2 Ch. 14

- British and American Trustee and Finance Corporation v. Couper*, [1894] A. C. 399, 414.
Referred to by C. A. *In re CREDIT ASSURANCE AND GUARANTEE CORPORATION, LD.* [1902] 2 Ch. 601
Distinguished by Buckley J. *In re ANGLO-FRENCH EXPLORATION CO.* [1902] 2 Ch. 845
Applied by Eve J. *In re JEWISH COLONIAL TRUST (JUEDISCHE COLONIALBANK), LD.* [1908] 2 Ch. 287
- British Asbestos Co. v. Boyd* [1903] 2 Ch. 439
Applied by Swinfen Eady J. *BOSCHOEK PROPRIETARY CO. v. FUKU* [1906] 1 Ch. 148
- British Motor Car Syndicate, Ltd. v. Taylor & Son*, [1900] 1 Ch. 577.
Affirmed by C. A. [1901] 1 Ch. 122
- British Mutual Investment Co. v. Smart*, (1875) L. R. 10 Ch. 567.
Examined and applied by C. A. *In re ATKINSON* [1908] 2 Ch. 307
- British Power Traction and Lighting Co., In re*, [1906] 1 Ch. 497; [1907] 1 Ch. 528.
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- British South Africa Co. v. De Beers Consolidated Mines, Ltd.* [1910] 1 Ch. 354.
Affirmed by C. A. [1910] 2 Ch. 502
- Brittlebank v. Goodwin* (1868) L. R. 5 Eq. 550
Referred to by Kekewich J. *MACKAY v. GOULD* - [1905] W. N. 159
- Broad, In re* - [1901] 2 Ch. 86
Not followed by Warrington J. *In re BARNETT* - [1908] 1 Ch. 402
- Broad v. Selfe* - (1863) 11 W. R. 1036
Discussed by C. A. *CARRITT v. BRADLEY* [1901] 2 K. B. 550, 558
- Broad's Patent Night Light Co., In re*, [1892] W. N. 5.
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- Broch v. Bradley* (1864) 33 Beav. 670
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- Brockman, In re*, [1909] W. N. 17; [1909] 1 Ch. 354.
Reversed by C. A. [1909] 2 Ch. 170
- Broderick v. London County Council*, [1908] 2 K. B. 807.
Explained by C. A. *EKE v. HART-DYKE* - [1910] 2 K. B. 677
- Bromley v. Brunton* - (1868) L. R. 6 Eq. 275
Referred to by Buckley J. *In re BEAUMONT* [1902] 1 Ch. 884
- Bromley Rural Council v. Croydon Corporation*, [1907] 2 K. B. 39.
Reversed by C. A. [1908] 1 K. B. 353
- Brook v. Brook* - (1839) 1 Beav. 531
Referred to by Farwell J. *In re DICKINSON'S TRUSTS* [1902] W. N. 100
- Brook v. Brook* (1861) 9 H. L. C. 193, 233
Referred to by Swinfen Eady J. *In re BOZZELLI'S SETTLEMENT* [1902] 1 Ch. 751, 753
- Brook v. Emerson* - (1906) 95 L. T. 821
Followed by C. A. *In re GENTRY, A DEBTOR* (No. 31 of 1909) - [1910] 1 K. B. 825
- Brook v. Meltham Urban Council*, [1908] 2 K. B. 780.
Affirmed by H. L. (E.) [1909] A. C. 438
- Brooke v. Brooke* - (1881), 17 Ch. D. 833
Discussed by Swinfen Eady J. *In re DAVIES* - [1909] W. N. 212
- Brooke and Fremlin's Contract, In re*, [1898] 1 Ch. 647.
Followed by Farwell J. *In re WEST AND HARDY'S CONTRACT* [1904] 1 Ch. 145
- Brooking v. Maudslay, Son & Field*, (1888) 38 Ch. D. 636.
Followed by Bucknill J. *THE "MANAR"* [1903] P. 95
- Brooks v. Brooks' Trustees* (1902) 4 F. 1014
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- Brooksbank v. Smith*, (1836) 2 Y. & C. Ex. 58
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- Broome v. Speak* [1902] W. N. 96
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Observations of Collins, M. R., in, discussed and explained by C. A. *NASH v. CALTHORPE* [1905] 2 Ch. 237
Referred to by Warrington J. *SHEPHERD v. BRAY* [1906] 2 Ch. 235
- Broomfield v. Williams* - [1897] 1 Ch. 602
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Followed by Kekewich J. *QUICKE v. CHAPMAN* [1902] W. N. 163; C. A. [1903] 1 Ch. 559
Referred to by Joyce J. *MAPPIN BROTHERS v. LIBERTY & CO.* [1902] W. N. 209; [1903] 1 Ch. 118
- Brotherton Estate, In re. Brotherton v. Brotherton. In re Markham's Settlement* - [1907] W. N. 230
Appeal allowed by C. A. - [1908] W. N. 56
- Brown, In re* (1890) 59 L. J. (Ch.) 530
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(1880) 13 Ch. D. 696.
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- Brown v. Boorman* [1844] 11 Cl. & F. 1
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[1908] 1 K. B. 1002
- Brown v. Brown* (1864) 33 L. J. (P. & M.) 203
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- Brown v. Dunstable Corporation*, [1899] 2 Ch.
378, 388.
Applied by C. A. *EAST BARNET*
VALLEY URBAN COUNCIL v. STALLARD
[1909] 2 Ch. 555
- Brown v. Feeney* - [1906] 1 K. B. 563
Applied by C. A. *MAPWELL v. VIS-*
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- Brown v. Fisher* - (1890) 63 L. T. 465
Applied by Walton J. *WILSON v.*
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- Brown v. Gellatly* (1867) L. R. 2 Ch. 751
Principle of, applied by Kekewich J.
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Discussed by C. A. *In re DAVY*
[1908] 1 Ch. 61
- Brown & Gregory, Ltd., In re*, [1904] 1 Ch. 627;
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Applied by Swinfen Eady J. *In re*
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- Brown v. Houston* [1901] 2 K. B. 855
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- Brown v. Perkins* - (1843) 2 Hare, 540, 541
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- Brown's Trust, In re* - (1855) 1 K. & J. 522
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- Brown & Gregory, Ltd., In re*, [1904] W. N. 55;
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- Browne, In re* [1894] 3 Ch. 412
Discussed and applied by C. A. *In re*
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- Browne v. Hammond*, (1858) Johns. 210, 212, n.
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- Browne v. La Trinidad* - (1887) 37 Ch. D. 1
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- Browne v. Ryan* - [1901] 2 I. R. 653
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- Browne v. Savage* - (1859) 4 Drew. 635
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BANK v. PEARSON - [1901] 1 Ch. 865
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- Browne v. Stoughton* - (1846) 14 Sim. 369
Followed by Warrington J. *In re EARL*
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[1910] W. N. 277
- Browne v. Warner*, (1807) 14 Ves. 156, 409;
9 R. R. 259.
Followed by C. A. *ZIMBLER v. ABRA-*
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- Browne's Policy, In re* [1903] 1 Ch. 188
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PARKER'S POLICIES [1906] 1 Ch. 526
- Brownlie v. Campbell* (1880) 5 App. Cas. 925
Applied by Joyce J. *SEDDON v. NORTH*
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- Bruce v. Ailesbury (Marquess of)*, [1892] A. C.
356, 365.
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- Bruce, In re. Lawford v. Bruce*, [1908] W. N.
99; [1908] 1 Ch. 850.
Reversed by C. A. [1908] 2 Ch. 682
- Bruce, In re* - [1891] 2 Ch. 671
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- Bryan v. Mansion* (1857) 3 Jur. (N.S.) 473
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- Bryant v. Hancock & Co.* - [1898] 1 Q. B. 716
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- Bryant v. Herbert* (1878) 3 C. P. D. 389
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- Bryant and Barningham's Contract, In re*,
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Distinguished by Swinfen Eady J.
In re BAKER AND SELMON'S CONTRACT
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- Bryce, In re* - [1891] 2 Ch. 671
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[1906] 2 Ch. 459
- Bryce v. Ehrmann* - [1904] 42 Sc. L. R. 23
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- Bubb v. Padwick* - (1880) 13 Ch. D. 517
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- Bubb v. Yelverton* - (1870) L. R. 9 Eq. 471
Referred to by C. A. *GOODSON v.*
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- Buccleuch (Duke of), The* - (1891) A. C. 310
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- Buchan (Earl of) v. Lord Advocate*, (1907) S. C. 849.
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- Buckley's Trusts, In re* (1883) 22 Ch. D. 583
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- Bucks County Council and Herts County Council* [1899] 1 Q. B. 515.
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- Buckwell & Berkeley, In re* [1902] W. N. 137
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- Bulkeley v. Stephens* (1863) 3 New Rep. 105
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- Bullock v. Downes* (1860) 9 H. L. C. 1
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- Bullock v. London General Omnibus Co.*, [1907] 1 K. B. 264.
Followed by C. A. *COMPANIA SAN-SINENA DE CARNES CONGELADAS v. HOULDER BROTHERS & Co.* [1910] 2 K. B. 354
- Bulwer Lytton's Will, In re*, (1888) 38 Ch. D. 20.
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- Bunney v. Poyntz* (1833) 4 B. & Ad. 568
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- Burchell v. Clark* - (1876) 2 C. P. D. 88
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- Burdick v. Garrick* (1870) L. R. 5 Ch. 233
Followed by Kekewich J. *NORTH AMERICAN LAND AND TIMBER CO. v. WATKINS* - [1904] 1 Ch. 242
- Burgess v. Booth*, [1908] W. N. 83; [1908] 1 Ch. 880.
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- Burland v. Broxburn Oil Co.*, (1889) 42 Ch. D. 274.
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- Burnham v. Bennett* (1845) 2 Coll. 254
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- Burrowes v. Molloy*, (1845) 2 J. & Lat. 521, 526
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- Burrows v. Lang* - [1901] 2 Ch. 502
Distinguished by Eve J. *WHITMORES (EDENBRIDGE), LD. v. STANFORD* [1909] 1 Ch. 427
- Burrows v. Matabele Gold Reefs and Estates Co.*, [1901] 2 Ch. 23.
Followed by C. A. *DEXTER v. UNITED GOLD COAST MINING PROPERTIES, LD.* [1901] W. N. 152; C. A. [1901] W. N. 157
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- Burt, Boulton & Hayward v. Bull*, [1895] 1 Q. B. 276.
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- Burton, In re* - [1887] W. N. 160
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- Burton v. St. Giles' and St. George's Assessment Committee*, [1900] 1 Q. B. 389.
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- Button, In re, Ex parte Hariside*, [1907] 1 K. B. 397.
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- Bury v. Famatina Development Corporation, Ltd.*, [1909] 1 Ch. 754.
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- Bushell, In the Goods of* - [1887] 13 P. D. 7
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- Bushell v. Hammond* - [1904] 2 K. B. 563
Distinguished by C. A. *SMITH v. PORTSMOUTH JUSTICES* [1906] 2 K. B. 229

- Butler, In re* - - - [1894] 3 Ch. 250
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- Butler (or Black) v. Fife Coal Co.*, (1909) S. C. 152.
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- Butterknowle Colliery Co. v. Bishop Auckland Industrial Co-operative Co.*, [1906] A. C. 305, 313.
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- Butterley Co. v. New Hucknall Colliery Co.*, [1909] 1 Ch. 37.
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- Bwlfa and Merthyr Dare Steam Collieries* (1891) and *Pontypridd Waterworks Co.*, *In re*, [1901] 2 K. B. 798.
Reversed by C. A. [1902] 2 K. B. 135
Decision of C. A. [1902] 2 K. B. 135 reversed by H. L. (E.) [1903] A. C. 426
- Byng's Settled Estates, In re* - [1892] 2 Ch. 219
Referred to by Kekewich J. *In re* COULL'S SETTLED ESTATES [1905] 1 Ch. 712, 722
- C. A. Van Eijck and Zoon v. Somerville*, (1905) 7 F. 739.
Reversed by H. L. (Sc.) [1906] A. C. 489
- Cackett v. Keswick* - [1901] W. N. 159
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- Caddick v. Highton*, (1899) 68 L. J. (Q.B.) 281; 80 L. T. 527; 47 W. R. 668; 15 Times L. R. 182; [1901] 2 Ch. 476, n.
Followed by Kekewich J. *In re* REDMAN - [1901] 2 Ch. 471
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- "*Cadiz*" and the "*Boyne*," *The*, (1876) 3 Asp. M. L. C. 332.
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- Cadman v. Cadman* (1886) 33 Ch. D. 397
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- Caine v. Palace Steam Shipping Co.*, [1907] 1 K. B. 670.
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- Caird v. Sime* - - - (1887) 12 A. C. 326
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- Cairn Line of Steamships, Ltd. v. Trinity House Corporation*, [1907] 1 K. B. 604.
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- Cale v. James* - - - [1897] 1 Q. B. 418
Followed by Pickford J. COBBETT v. WOOD [1908] 1 K. B. 590
- Caledonian Ry. Co. v. Carmichael*, (1870) L. R. 2 H. L. (Sc.) 56.
Distinguished by Buckley J. FLETCHER v. LANCASHIRE AND YORKSHIRE RY. CO. - [1902] 1 Ch. 901
- Caledonian Ry. Co. v. City of Glasgow Corporation and Nisbet*, (1905) 7 F. 1020.
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- Caledonian Ry. Co. v. Davidson*, (1899) 37 Sco. L. R. 150, 406.
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- Caledonian Ry. Co. v. Glasgow (City of) Corporation*, (1906) 8 F. 755; (1908) S. C. 244.
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- Caledonian Ry. Co. v. Greenock and Wemyss Bay Ry. Co.*, (1874) L. R. 2 H. L., (Sc.) 347
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- Calgary and Edmonton Land Co., In re*, [1906] 1 Ch. 141.
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Not followed by Parker J. *In re* GENERAL INDUSTRIAL DEVELOPMENT SYNDICATE, LD. [1907] W. N. 23
- California Fig Syrup Co., In re*, [1909] 2 Ch. 99.
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- Callander v. Smith* - - - (1900) 2 F. 1140
Affirmed by H. L. (Sc.) *sub nom.* SMITH v. CALLANDER - [1901] A. C. 297
- Callicott, In the Goods of* [1899] P. 189
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- Callow v. Young* (1886) 55 L. T. 544
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- Cambrian Mining Co., In re*, (1881) 20 Ch. D. 376
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- "*Camellia*," *The* (1883) 3 P. D. 27
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- Cameron v. Young* - (1907) S. C. 475
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- "*Campania*," *The* - [1901] P. 289
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- Campbell v. Holyard*, (1877) 7 Ch. D. 166, 168
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- Campbell v. Spottiswoode*, (1863) 3 B. & S. 769 ;
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- Campbell's Case* - (1873) L. R. 9 Ch. 1, 22
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- Campsill, In re* (1910) 128 L. T. Jour. 548
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- Cannan v. Abingdon (Earl of)* [1900] 2 Q. B. 66
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- Cannon v. Johnson* (1870) L. R. 11 Eq. 90
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- Cannon v. Villars* - (1878) 8 Ch. D. 415, 420
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- Cape Breton Co., In re*, (1884) 26 Ch. D. 221, and
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- Capital Fire Insurance Association, In re*, (1883)
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- Capital and Counties Bank, Ltd. v. Rhodes*,
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- Cardiff Corporation v. Cardiff Waterworks Co.*,
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- Cardigan v. Curzon Howe*, (1885) 30 Ch. D. 531
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- Cardigan v. Curzon-Howe*, (1889) 41 Ch. D. 375
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- Cargo ex the "Capella"*, (1867) L. R. 1 A. & E.
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- Carling's Case* - (1875) 1 Ch. D. 115
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- Carlisle Rural Council v. Carlisle Corporation*,
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- Carmichael v. Evans* - [1904] W. N. 28 ;
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- Carmichael v. Greenock Harbour Trustees*, (1908)
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- Carne v. Long* - (1860) 2 D. F. & J. 75
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- Carr & Co. v. Bath Gas Light and Coke Co.*, [1900] W. N. 265.
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- Carter v. Carter* - (1869) L. R. 8 Eq. 551
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- Casborne v. Scarfe* - (1737) 1 Atk. 603
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- Catt v. Wood* - - [1908] 2 K. B. 458
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- "*Ceto*," *The* - (1889) 14 App. Cas. 670, 679
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- Challoner v. Robinson* - [1907] W. N. 199
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- Chalmers v. Chalmers*, (1893) 1 R. 504; 68 L. T. (N.S.) 28.
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- Chawner v. Cummings* - (1846) 8 Q. B. 311
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- Cheshire Lines Committee v. Lewis*, (1880) 50 L. J. (Q. B.) 121.
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- Ching v. Surrey County Council*, [1909] 2 K. B. 762.
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- Church Patronage Trust, In re. Laurie v. Att.-Gen.*, [1904] 1 Ch. 41.
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- Combined Weighing and Advertising Co., In re*, (1889) 43 Ch. D. 99.
Followed by Warrington J. *NORTON v. YATES* [1906] 1 K. B. 112
Applied by Walton J. *CAIRNEY v. BACK* [1906] 2 K. B. 746
- Comfort v. Betts* - [1891] 1 Q. B. 737
Followed by C. A. *FITZROY v. CAVE* [1905] 2 K. B. 364

- Commercial Bank of Tasmania v. Jones*, [1893] A. C. 313.
Distinguished by C. A. PERRY v. NATIONAL PROVINCIAL BANK OF ENGLAND [1910] 1 Ch. 464
- Commrs. for Special Purposes of Income Tax v. Pensef*, [1891] A. C. 531, 583, 591.
Referred to by Joyce J. LONDON COUNTY COUNCIL v. SOUTH METROPOLITAN GAS CO. [1903] 2 Ch. 532
Referred to by Warrington J. *In re MANSE* [1905] 1 Ch. 68
Applicable. *REX v. COMMRS. FOR SPECIAL PURPOSES OF INCOME TAX* C. A. [1909] W. N. 57
- Commrs. of Charitable Donations and Bequests v. Cotter*, (1841) 1 D. & War. 498; 58 R. R. 298.
Discussed by Farwell, J. *In re HUXTABLE* [1902] 1 Ch. 214;
C. A. [1902] 2 Ch. 793
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- Commrs. of Sewers v. Gellatly*, (1876) 3 Ch. D. 615.
Referred to by H. L. (E.). TAFF VALE RY. CO. v. AMALGAMATED SOCIETY OF RAILWAY SERVANTS [1901] A. C. 426, 443
- Compton (Lord) v. Oxenden*, (1793) 2 Ves. Jun. 261; 4 Bro. C. C. 397.
Followed by Swinfen Eady J. *In re FRENCH-BREWSTER'S SETTLEMENTS* [1904] 1 Ch. 713
Applicable. *In re HOLE* C. A. [1906] 1 Ch. 673
- Compton-Smith, Re* (1857) 23 Beav. 284
Referred to by Byrne J. YAPP v. WILLIAMS [1901] W. N. 91
- Coney, In re. Coney v. Bennett*, (1885) 29 Ch. D. 993.
Followed by Kekewich J. *In re PEMBERTON* [1907] W. N. 118
- Conolly v. Farrell* (1846) 10 Beav. 142
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- Consett Waterworks Co. v. Ritson*, (1889) 22 Q. B. D. 318, 702; 64 L. J. (Ch.) 293, n.
Considered by C. A. BISHOP AUCKLAND INDUSTRIAL CO-OPERATIVE SOCIETY, LD. v. BUTTERKNOWLE COLLIERY CO., LD. - [1904] 2 Ch. 419
- Consolidated South Rand Mines Deep, Ltd., In re*, [1909] W. N. 35; [1909] 1 Ch. 491.
On appeal, security for costs ordered.
C. A. [1909] W. N. 66
- "Constantine," *The* - (1879) 4 P. D. 156
Referred to by C. A. [1910] 1 Ch. 701
- Constantinidi v. Constantinidi* [1903] P. 246
Reversed by C. A. - [1905] P. 253
Distinguished by Bucknill J. WYKE v. WYKE [1904] P. 149
- Constantinidi v. Constantinidi*, [1904] W. N. 142; [1904] P. 306.
See *CONSTANTINIDI v. CONSTANTINIDI* C. A. [1905] P. 253
- Contract and Agency Corporation, In re*, [1887] W. N. 218.
Inapplicable. *In re ALABAMA PORTLAND CEMENT CO.* Neville J. [1909] W. N. 157
- Conway v. Gray* (1809) 10 East, 536
See DRIEFONTEIN CONSOLIDATED GOLD MINES, LD. v. JANSON C. A. [1901] 2 K. B. 419, 435
- Conway v. Wade* - [1908] 2 K. B. 844, 848
Reversed by H. L. (E.) [1909] A. C. 506
- Cook v. Hathway* - (1869) L. R. 8 Eq. 612
Distinguished by Wright J. *In re UNITED SERVICE ASSOCIATION* [1901] 1 Ch. 97
[1884] W. N. 75
- Cook v. Haynes* [1884] W. N. 75
See *COOPER-DEAN v. BADHAM* Eve J. [1908] W. N. 100
- Cook v. Ipswich Local Board*, (1871) L. R. 6 Q. B. 451.
Referred to by Div. Ct. HAYLES v. SANDOWN URBAN COUNCIL [1903] 1 K. B. 169, 173
- Cook v. North Metropolitan Tramways Co.*, (1887) 18 Q. B. D. 683.
Distinguished by Div. Ct. SMITH v. ASSOCIATED OMNIBUS CO. [1907] 1 K. B. 916
- Cooke v. Crawford* - (1842) 13 Sim. 91
Referred to by Parker J. *In re CRUNDEN AND MEUX'S CONTRACT* [1909] 1 Ch. 690
- Cooke v. Midland Great Western Ry. of Ireland*, [1908] 2 I. R. 242.
Reversed by H. L. (Ir.) [1909] A. C. 229
- Cookson v. Swire* - (1884) 9 App. Cas. 653
Applied by C. A. ANTONIADI v. SMITH [1901] 2 K. B. 589
- Coope v. Cresswell* (1866) L. R. 2 Ch. 112
Referred to by C. A. *In re LACEY* [1907] 1 Ch. 330
Dictum of Lord Chelmsford, L. C., in, explained and adopted by C. A. *In re ATKINSON* [1908] 2 Ch. 307
- Cooper v. Blakiston* - [1907] 2 K. B. 688
Affirmed by H. L. (E.) *sub nom.* BLAKISTON v. COOPER [1909] A. C. 104
- Cooper v. Cooper* - (1874) L. R. 7 H. L. 53
Followed by P. C. BLAKE v. BAYNE [1908] A. C. 371
- Cooper v. Griffin* [1892] 1 Q. B. 740, 750
Referred to by Buckley, J. SUTTON v. ENGLISH AND COLONIAL PRODUCE CO. [1902] 2 Ch. 502
- Cooper v. Hubbock*, (1862) 12 C. B. (N.S.) 456
Referred to by Parker J. HYMAN v. VAN DEN BERGH [1907] 2 Ch. 518;
C. A. [1908] 1 Ch. 167
- Cooper v. Martin* (1867) L. R. 3 Ch. 47, 56
Dicta of Lord Cairns at p. 56 approved of by C. A. *In re MOSES* C. A. [1902] 1 Ch. 100;
H. L. (E.) [1903] A. C. 13

- Cooper v. Whittingham* - (1880) 15 Ch. D. 501
Referred to by BUCKLEY J. ATT.-GEN.
v. ASHBORNE RECREATION GROUND CO.
[1902] W. N. 208; [1903] 1 Ch. 101
- Cooper and Allen to Harlech, In re*, (1876) 4
Ch. D. 802.
Overruled on one point by H. L. (E.)
DUKE OF NORTHUMBERLAND *v.* ATT.-
GEN. - [1905] A. C. 406
- Coote v. Jecks* (1872) L. R. 13 Eq. 567
Applied by Swinfen Eady J. BRITISH
SOUTH AFRICA CO. *v.* DE BEERS CON-
SOLIDATED MINES, LD.
C. A. [1910] 2 Ch. 502
- Cootes v. Gorham* (1839) 1 Moo. & Mal. 395
Referred to by Neville J. CABLE *v.*
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[1907] W. N. 238; [1908] 1 Ch. 259
- Cope, In re* - [1908] 2 Ch. 1
Distinguished by Joyce J. *In re*
METCALFE - [1909] 1 Ch. 424
- Cope v. Crossingham*, [1908] W. N. 184; [1908]
2 Ch. 624.
Affirmed by C. A. [1909] 2 Ch. 148
- Copestake v. Hoper* [1907] 1 Ch. 366
Reversed by C. A. [1908] 2 Ch. 10
- Coplapo Mining Co., In re*, [1899] W. N. 25;
6 Manson, 320.
Followed by Swinfen Eady J. *In re*
EUPHRATES AND TIGRIS STEAM NAVI-
GATION CO. [1904] 1 Ch. 360
- Copin v. Adamson*, (1874) L. R. 9 Ex. 345; 1
Ex. D. 17.
Applied by Channell J. EMANUEL *v.*
SYMON - [1907] 1 K. B. 235
- Corbett v. Pearce* - [1904] 2 K. B. 422
Overruled by C. A. CHISLETT *v.* MAC-
BETH & Co. - [1909] 2 K. B. 811
- Corbett v. South Eastern and Chatham Ry. Co.'s*
Managing Committee, [1905] 2 Ch. 280.
Reversed by C. A. - [1906] 2 Ch. 12
- "*Coriolanus*," *The* - (1890) 15 P. D. 103
Distinguished by Gorell Barnes J.
THE "MINNEAPOLIS" - [1902] P. 30
- Cornbrook Brewery Co. v. Law Debenture Corpo-*
ration, Ltd., [1903] 2 Ch. 527.
Affirmed by C. A. [1904] 1 Ch. 103
Distinguished by Parker J. BRISTOL
UNITED BREWERIES, LD. *v.* ABBOT
[1908] 1 Ch. 279
Distinguished by Swinfen Eady J.
CUNARD STEAMSHIP CO. *v.* HOPWOOD
[1908] 2 Ch. 564
- Cornfoot v. Royal Exchange Assurance Corpora-*
tion, [1903] 2 K. B. 363.
Affirmed by C. A. - [1904] 1 K. B. 40
- Cornwallis-West and Munro's Contract, In re*,
[1903] 2 Ch. 150.
Distinguished by Swinfen Eady J. *In*
re LORD WIMBORNE AND BROWNE'S
CONTRACT [1904] 1 Ch. 537
- Corsellis v. London County Council*, [1907]
W. N. 79; [1907] 1 Ch. 704.
Appeal dismissed on one point and
allowed on another by C. A.
[1907] W. N. 227; [1908] 1 Ch. 13
- Corser v. Cartwright*, (1875) L. R. 7 H. L. 731,
736.
Applied by Swinfen Eady J. *In re*
HENSON - [1908] 2 Ch. 356
- Cory Brothers v. Stewart*, (1886) 2 Times L. R.
508.
The head-note of, considered too wide
by Jeune P. THE "HEATHER BELL"
[1901] P. 143, 146, 150, 152
- Costa Rica Ry. Co. v. Forwood* [1900] 1 Ch. 756
Affirmed by C. A. [1901] 1 Ch. 746
- Costello's Case* - (1860) 2 D. F. & J. 302
Discussed and explained by C. A. *In re*
DISCOVERERS FINANCE CORPORATION,
LD., LINDLAR'S CASE [1910]
1 Ch. 312
- Coster v. Headland* - [1905] 1 K. B. 219
Affirmed by H. L. (E.) [1906] A. C. 286
- Cotton, In re* - (1888) 40 Ch. D. 41
Followed by Buckley J. *In re* WESTON'S
SETTLEMENT - [1906] 2 Ch. 620
- Cotton v. Imperial and Foreign Agency and In-*
vestment Corporation, [1892] 3 Ch. 454
Followed and explained by Buckley J.
DOUGHTY *v.* LOMAGUNDA REEFS, LD.
[1902] 2 Ch. 837
Overruled by C. A. BISGOOD *v.*
HENDERSON'S TRANSVAAL ESTATES,
LD. - [1908] 1 Ch. 748
- Cotton's Trustees and the School Board for London*
In re, (1882), 19 Ch. D. 624.
Referred to by Swinfen Eady J. *In re*
JUMP.
[1902] W. N. 202; [1903] 1 Ch. 129
Discussed and applied by Swinfen
Eady J. *In re* HORNSNAILL
[1909] 1 Ch. 631
- Coulson v. Disborough* - [1894] 2 Q. B. 316
Commented on by C. A. *In re* ENOCH
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TRATION - [1910] 1 K. B. 327
- Coulthard v. Consett Iron Co.*, [1905] 2 K. B. 869.
Followed by C. A. KEELING *v.*
NEW MONCKTON COLLIERIES, LD.
[1910] W. N. 249
- Coulthart v. Clementson* (1879) 5 Q. B. D. 42
Referred to by Swinfen Eady J.
ASCHERSON *v.* TREDEGAR DRY DOCK
AND WHARF CO. [1909] 2 Ch. 401
- Counsell, In the goods of*, (1871) L. R. 2 P. & D. 314
Applicable. *In re* ALLEN'S TRUSTS
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- County of Durham Electrical Power Distribution*
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[1909] W. N. 54; [1909] 1 K. B. 737
Affirmed by C. A. [1909] 2 K. B. 604
- County Theatres and Hotels, Ltd. v. Knowles*,
[1902] W. N. 22; [1902] 1 K. B. 480
Followed by Swinfen Eady J. STEVEN
v. BUNGLE - [1902] W. N. 44
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[1903] 2 Ch. 222
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- Coupe Co. v. Maddick* - [1891] 2 Q. B. 413
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- Courand v. Hanmer* - (1846) 9 Beav. 3
Distinguished by Byrne J. *In re* DUNN
[1904] 1 Ch. 648
- Courtenay v. Courtenay*, (1846) 3 J. & Lat. 519,
533.
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WYND'S SETTLEMENT. [1902] 1 Ch. 692
- Courtenay v. Williams* - (1844) 3 Hare, 551
Referred to by C. A. *In re* LLOYD
[1903] 1 Ch. 385
Distinguished by C. A. *In re* BRUCE
[1908] 2 Ch. 682
- Coverdale v. Charlton* - (1878) 4 Q. B. D. 104
Referred to by C. A. FOLEY'S CHARITY
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[1909] W. N. 250; [1910] 1 K. B. 317
- Cowell v. Taylor* - (1885) 31 Ch. D. 34
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STRAND WOOD CO. [1904] 2 Ch. 1
- Cowen v. Truefitt, Ltd.* [1899] 2 Ch. 309, 311
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BERKELEY - [1902] 1 Ch. 936, 940
- Cowley v. Cowley*, C. A. [1900] P. 305 (reversing
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Affirmed by H. L. (D.) [1901] A. C. 450
- Cowley v. Newmarket Local Board*, [1892] A. C.
345.
Followed by C. A. MAGUIRE *v.* LIVER-
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- Cowper v. Smith* (1838) 4 M. & W. 519
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[1910] 1 Ch. 464
- Cox v. Andrews* - (1883) 12 Q. B. D. 126
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- Cox v. Bishop* - (1857) 8 De G. M. & G. 815
Applicable. BAGOT PNEUMATIC TYRE
CO. *v.* CLIPPER PNEUMATIC TYRE CO.
C. A. [1902] 1 Ch. 146
- Cox v. Bleines* - [1902] 1 K. B. 670
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- Cox v. Cox* - (1869) L. R. 8 Eq. 343
Approved of by Farwell J. *In re* BIRD
[1901] 1 Ch. 916, 919
- Cox v. Harper* - [1909] W. N. 244
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- Cox v. Sutton* - (1856) 25 L. J. (Ch.) 845
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- Coxe v. Harden* - (1803) 4 East, 211
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MENTO [1908] W. N. 237
- Coven v. Rowland* [1894] 1 Ch. 406
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[1902] 1 Ch. 314
- Craig v. Dowding* - [1907] W. N. 206
Reversed by C. A. [1908] W. N. 22
- Craigdallie v. Aikman* (1813) 1 Dow, 1, 16;
2 Bli. 529; 21 R. R. 107.
Principles laid down in, applied by
H. L. (Sc.). GENERAL ASSEMBLY OF
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- "*Craigellachie, The* - [1909] P. 1
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- Craigie v. Marshall* - (1850) 12 D. 523, 560
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- Crawford v. Forshaw* - [1891] 2 Ch. 261
Followed by Farwell J. *In re* SMITH
[1904] 1 Ch. 139
- Crawley v. Crawley*, (1835) 7 Sim. 427; 40 R. R.
170.
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- Crawshay, In re*, [1888] W. N. 246, 251; 60
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[1901] 2 Ch. 534
- Craythorne v. Swinburne*, (1807) 14 Ves. 160;
9 R. R. 264.
Applied by C. A. *In re* DENTON'S
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- Credit Assurance and Guarantee Corporation
Ltd., In re*, [1902] W. N. 104; [1902]
2 Ch. 178.
Reversed by C. A. [1902] 2 Ch. 601
- Cresswell, In re* (1883) 24 Ch. D. 102
Referred to by Parker J. *In re*
PARKER [1910] 1 Ch. 581
- Crew v. Cummings* (1888) 21 Q. B. D. 420
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Eady J. *In re* SPIRAL GLOBE, LD.
[1902] 1 Ch. 396
- Applicable. *In re* ABRAHAM'S & SONS,
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- Cribb v. Kynoch, Ltd.* [1907] 2 K. B. 548
Approved by C. A. YOUNG *v.* HOFF-
MAN MANUFACTURING CO. [1907] 2 K. B. 646
- Crichton's Oil Co., In re*, [1901] W. N. 113;
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Affirmed by C. A. [1902] 2 Ch. 86
Distinguished by Swinfen Eady J.
In re W. J. HALL & CO. [1909] 1 Ch. 521
- Applied by Swinfen Eady J. *In re*
ACCRINGTON CORPORATION STEAM
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- Crickett v. Dolby* - (1795) 3 Ves. 10
Referred to by C. A. *In re* BOWLEY
[1904] 2 Ch. 685
- Crieglstone Coal Co., In re* [1906] W. N. 120
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- Crisp v. Crisp* - (1872) L. R. 2 P. & M. 426
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- Croft v. Lumley* - (1858) 6 H. L. C. 672
Referred to by C. A. HARMAN *v.* AINSLIE [1904] 1 K. B. 698, 706, 710
- Croft v. Rickmansworth Highway Board*, (1888) 39 Ch. D. 272.
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[1901] 2 K. B. 101, 105
- Crook v. Hill*, (1871) L. R. 6 Ch. 311; (1873) L. R. 6 H. L. 265.
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- Crook v. Hill* - (1876) 3 Ch. D. 773
Referred to by C. A. EBBERN *v.* FOWLER - [1909] 1 Ch. 578
- Crook v. Morley* - - [1901] A. C. 316
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- Crookhaven Mining Co., In re*, (1866) L. R. 3 Eq. 69.
Discussed and applied by Warrington J. *In re* EASTERN INVESTMENT CO.
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- Crosfield (Joseph) & Sons, Ltd. v. Manchester Ship Canal Co.*, [1904] 2 Ch. 123.
Affirmed upon one point and reversed upon one point by H. L. (E.) [1905] A. C. 421
- Cross, In re* (1848) 4 De G. & Sm. 364, n.
Followed by Div. Ct. *In re* MYERS [1908] 1 K. B. 941
- Cross v. Cross* - (1845) 8 Beav. 455
Referred to by Joyce J. STEEDEN *v.* WALDEN [1910] 2 Ch. 393
- Crossan v. Caledon Shipbuilding and Engineering Co.*, (1905) 12 Scots L. Times, 702, 855.
Reversed by H. L. (Sc.) [1906] W. N. 104
- Crossfield & Sons v. Tanian* - [1900] 2 Q. B. 629
Distinguished by C. A. SHARMAN *v.* HOLLIDAY & GREENWOOD, LD.
[1904] 1 K. B. 235
- Crowder v. Clowes* (1794) 2 Ves. Jr. 449
Applied by Eve J. *In re* JOSEPH [1908] 1 Ch. 599
Reversed by C. A. [1908] 2 Ch. 507
- Crowe's Mortgage, In re* - (1871) L. R. 13 Eq. 26
Followed by Farwell J. *In re* RICHARD MILLS & Co. (BRIERLY HILL), LD.
[1905] W. N. 36
- Crown Bank, In re. In re O'Malley*, (1890) 44 Ch. D. 649.
Not followed by Cozens-Hardy J. *In re* NEW GOLD COAST EXPLORATION CO.
[1901] 1 Ch. 860
- Crowther, In re* - [1895] 2 Ch. 56
Followed by Eve J. *In re* ELFORD [1910] 1 Ch. 814
- Croydon Corporation v. Croydon Rural Council*, [1908] 2 Ch. 321.
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[1910] 2 Ch. 347
- Crump v. Lambert* (1867) L. R. 3 Eq. 409
Considered and applied by C. A. RUSHMER *v.* POLSUE & ALFIERI, LD.
[1906] 1 Ch. 234; H. L. (E.) [1910] A. C. 121
- Crusader, The* - [1907] P. 15
Affirmed by C. A. [1907] P. 196
- Cullerne v. London and Suburban, &c., Building Society*, (1890) 25 Q. B. D. 485.
Followed by Farwell J. YOUNG *v.* NAVAL, MILITARY, AND CIVIL SERVICE CO-OPERATIVE SOCIETY OF SOUTH AFRICA, LD. [1905] 1 K. B. 687
- Cumming, In re* (1852) 1 D. M. & G. 537
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- Cunard Steamship Co., In re*, [1908] W. N. 160
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[1908] W. N. 182; [1908] 2 Ch. 564
- Cunard Steamship Co. v. Marten*, C. A. [1902] 2 K. B. 624.
Affirmed by C. A. [1903] 2 K. B. 511
- Cundy v. Le Cocq* - (1844) 13 Q. B. D. 207
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- Currey, Re* - (1887) 56 L. T. 80
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- Currey, In re* - (1886) 32 Ch. D. 361
Distinguished by Buckley J. *In re* BANKES [1902] 2 Ch. 333
- Currie, In re*, (1888) 57 L. J. (Ch.) 743; 36 W. R. 752.
Applied by Joyce J. *In re* COXWELL'S TRUSTS [1910] 1 Ch. 63
- Curtice v. London City and Midland Bank*, [1907] W. N. 146.
Reversed by C. A. [1908] 1 K. B. 293
- Curtis v. Old Monkland Conservative Association*, (1904) 6 F. 119.
Reversed by H. L. (Sc.) [1906] A. C. 86
- Cushing v. Dupuy* - (1880) 5 App. Cas. 409
Distinguished by P. C. *In re* WILMATUA'S WILL [1908] A. C. 448
- Cutbill v. Shropshire Railways Co.*, [1891] W. N. 65.
See BEECHEM *v.* LASTINGHAM AND ROSDALE LIGHT RY. CO.
Kekewich J. [1907] W. N. 101
- Cuthbert v. Roberts, Lubbock & Co.*, [1909] W. N. 11.
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- D. v. A. & Co.* - [1900] 1 Ch. 484, 486
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- Dacre's (Lady) Case*, Journals of the House, July 4, 1661, p. 298.
Referred to by H. L. (E.) EARL COWLEY *v.* COUNTESS COWLEY
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- Dudswell v. Jacobs* - - (1887) 34 Ch. D. 278
Referred to by C. A. *BEVAN v. WEBB*
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- Daglish v. Barton* - - (1900) 1 Q. B. 284
Disapproved by C. A. *WYNNE-FINCH v. CHAYTOR* - - [1903] 2 Ch. 475
- Dugnall, In re* - - [1896] 2 Q. B. 407
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[1901] 1 K. B. 309
- Duintrey, In re* - - [1900] 1 Q. B. 546
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[1910] 1 K. B. 562
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- Darling v. Raeburn* [1906] 1 K. B. 572
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[1901] A. C. 450, 460
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- Davies and Kent's Contract, In re*, [1910] W. N. 61
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Distinguished by C. A. *In re* MARTEN [1902] 1 Ch. 314
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- Davis v. Wallis* - [1908] 2 K. B. 134
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- Dawney (Archibald D.) Ltd.* [1900] W. N. 152
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- Dean v. Brown* - - [1909] 2 K. B. 573
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KOFFLER - [1901] 1 Ch. 543
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692.
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72.
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523.
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A. C. 384.
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- Denby v. Evans* - [1909] 2 K. B. 894
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- De Quetterville v. De Quetterville*, [1905] W. N. 85
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898.
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153.
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- Discoverers' Finance Corporation, Ltd., In re, Lindlar's Case,* [1909] W. N. 245; [1910] 1 Ch. 207.
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- Dodson, In re* - - - [1907] 1 Ch. 284
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- Doe v. Bartle* - (1882) 5 B. & Al. 492, 501
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- Doe v. Eyre* - (1851) 17 Q. B. 366
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Applied by Buckley J. *In re* WILMER'S TRUSTS - [1903] 1 Ch. 874
- Doe v. Lewis* - - - (1842) 9 M. & W. 662
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- Doe v. Prigg* - (1828) 8 B. & C. 231
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- Doe v. Walker,* (1826) 5 B. & C. 111; 29 R. R. 184.
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Dictum of Erle J. at p. 634. Applied by C. A. MOORE v. SMEE AND CORNISH [1907] 2 K. B. 8
- Doe, Lessee of Banning v. Griffin,* (1812) 15 East, 293, 294.
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- Doherty v. Allman* (1878) 3 App. Cas. 709
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- Dolan v. Macdermot,* (1868) L. R. 5 Eq. 60; 3 Ch. 676.
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- Dolphin v. Layton* - - (1879) 4 C. P. D. 130
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- Donellan v. Read* - (1832) 3 B. & Ad. 899
Distinguished by Div. Ct. REEVE v. JENNINGS - [1910] 2 K. B. 522
- Donnelly v. William Baird & Co.,* (1908) 45 Sc. L. R. 394.
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- Donovan v. Laing, Wharton & Down Construction Syndicate, Ltd.*, [1893] 1 Q. B. 629.
Distinguished by C. A. WALDOCK *v.* WINFIELD [1901] 2 K. B. 596, 601
- Dorking Union v. St. Saviour's Union*, [1898] 1 Q. B. 594.
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- Dormer v. Ward* - - [1900] P. 130
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- Dougan's Trustee v. Dougan* (1901) 3 F. 553
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- Doughty v. Bowman* - - (1848) 11 Q. B. 444
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- Doughty v. Lomagunda Reefs, Ltd.*, [1902] 2 Ch. 837; [1902] W. N. 143.
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- Douglas v. Douglas and Trevor*, (1898) 78 L. T. 88.
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- Douglas v. Smith* - [1907] 1 K. B. 126
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- Dover Coalfield Extension, Ltd., In re*, [1907] 2 Ch. 76.
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Referred to by Warrington J. *In re* LEWIS - - [1910] W. N. 217
- Dovey v. Cory* - - [1901] A. C. 477
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Followed by P. C. PRÉFONTAINE *v.* GRENIER - [1907] A. C. 101
- Dowden & Pook, Ltd. v. Pook* - [1904] 1 K. B. 45
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- Dowsett, In re* - - [1901] 1 Ch. 398
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- Doyle v. Blake*, (1804) 2 Sch. & Lef. 231; 9 R. R. 76.
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- "*Draupner*," *The* - - [1909] P. 219
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- Drewett v. Edwards* - (1877) 37 L. T. 622
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- Driefontein Consolidated Gold Mines, Ltd. v. Janson*, [1900] 2 Q. B. 339.
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- Drogheda Steam Packet Co., In re*, (1903) 1 I. R. 512.
Followed by Byrne J. *In re* ARTISANS' LAND AND MORTGAGE CORPORATION [1904] 1 Ch. 796
- Dronfield Silkstone Coal Co., In re* (1880) 17 Ch. D. 76.
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- Drucker, In re (No. 1)*, [1902] W. N. 103; [1902] 2 K. B. 55.
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- "*Drumlanrig*," *The* - - [1910] P. 249
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- Du Boulay v. Du Boulay*, (1869) L. R. 2 P. C. 430.
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- Du Cane and Nettlefold's Contract, In re*, [1898] 2 Ch. 96.
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- Dudgeon, In re, Truman v. Pope*, (1896) 74 L. T. 613.
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- Duffield v. Elwes* - (1827) 1 Bl. (N.S.) 497
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- Dugdale v. Lovering* (1875) L. R. 10 C. P. 196.
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- Duncan v. Dundee Shipping Co.*, (1878) 5 R. 742
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- Duncan v. Lawson* - (1889) 41 Ch. D. 394, 396
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- Duncan, Fox & Co. v. North and South Wales*
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- Dunlop Pneumatic Tyre Co. v. Dunlop Motor Co.*
(1906) 8 F. 1146.
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- Dunlop Pneumatic Tyre Co. v. Neal*, [1899] 1 Ch.
807.
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- Dunnage v. White*, (1820) 1 Jac. & W. 583; 21
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- Dunning, In re* - (1885) 54 L. J. (Ch.) 900
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- Dunning v. Grosvenor Daries, Ltd.*, [1900] W. N.
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- Dunsany's Settlement, In re* - [1906] 1 Ch. 578
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- Durant & Co. v. Roberts and Keighley, Maxsted*
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- Dyer v. Dyer*, (1788) 2 Cox, 92, 93; Watk. Copy,
216; 2 R. R. 14.
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- East of England Banking Co.*, (1868) L. R. 4 Ch. 14.
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- Eastman's Settled Estates, In re*, [1898] W. N. 170.
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- Eastwood Brothers, Ltd. v. Honley Urban District Council*, [1900] 1 Ch. 781.
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 585, n.
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- Favard v. Favard* - (1896) L. T. 664
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- Fazakerly v. Ford*, (1831) 4 Sim. 390; 33 R. R. 129.
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- Ferneley's Trusts, In re* - [1902] 1 Ch. 543
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- Finch v. Bannister* - [1908] 1 K. B. 485
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- Finch v. Great Western Ry. Co.*, (1879) 5 Ex. D. 254.
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- Finlay v. Darling* - [1897] 1 Ch. 719
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- Finney v. Grice* - (1878) 10 Ch. D. 13
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- Fisher, Ex parte* - (1872) L. R. 7 Ch. 636, 644
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- Fitzgerald v. Champneys*, (1861) 2 Jo. & H. 31, 54.
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- Fitzwater v. Waterhouse*, (1883) 52 L. J. (Ch.) 83
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- Foster v. Cockerell*, (1835) 9 Bli. (N.S.) 332, 375;
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917.
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Reversed by H. L. (E.) *sub nom.* KIRKWOOD *v.* GADD [1910] A. C. 422
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Eady J. *In re* QUICKE'S TRUSTS
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- General Accident Assurance Corporation, In re*,
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ton J. *In re* OLIVER - [1908] 2 Ch. 74
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- Gentili, In the Goods of*, (1875) Ir. R. 9 Eq. 541
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- George, In re* - (1877) 5 Ch. D. 837
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- George Routledge & Sons, Ltd., In re*, [1904] 2 Ch.
474.
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- Giffard v. Wittington* - (Unreported)
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- Gilchrist, Ex parte* (1886) 17 Q. B. D. 521
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- Gladstone, In re* [1900] 2 Ch. 101, 105
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- Glamorgan Coal Co. v. South Wales Miners'*
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- Glenie v. Bruce Smith* - [1907] 2 K. B. 507
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- Glory Paper Mills Co., In re*, [1894] 3 Ch. 473
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- Gluckstein v. Barnes* - - [1900] A. C. 240
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Reversed by C. A. - [1908] 1 Ch. 552
Decision of C. A. affirmed by H. L. (E.), *sub nom. ATT.-GEN. v. JEFFERYS* [1908] A. C. 411
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- Goldberg, Ex parte* - [1893] 1 Q. B. 417
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- Goodlad v. Burnett* - (1855) 1 K. & J. 341
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- Gosling v. Gosling* - (1859) Johns. 265
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[1907] 1 Ch. 575
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[1908] 1 K. B. 368
- Gough and Aspatria, Silloth and District Joint Water Board, In re* [1903] 1 K. B. 574
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- Governers of the Corporation of the Sons of the Clergy and Skinner, In re*, [1893] 1 Ch. 178.
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[1910] 1 Ch. 239
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- Grace, Ex parte* (1799) 1 B. & P. 376
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Reversed by H. L. (E.) *sub nom.* HIGGINS v. DAWSON - [1902] A. C. 1
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- Gramophone and Typewriter, Ltd. v. Stanley*, [1906] 2 K. B. 856.
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- Grand Junction Canal Co. v. Shugar*, (1871) L. R. 6 Ch. 483.
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- Grange, In re. Chadwick v. Grange*, [1907] 1 Ch. 313.
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- Grant, Ex parte. In re Plumbley*, (1880) 13 Ch. D. 667.
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- Grant v. Coverdale* - (1884) 9 App. Cas. 740
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- Gray, In re* - [1901] 1 Ch. 239
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- Gray v. Carr* - (1871) L. R. 6 Q. B. 522
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- Gray v. Siggers* - (1880) 15 Ch. D. 74
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- Great Central Ry. Co. v. Banbury Union*, [1907] 1 K. B. 717.
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- Great Central Ry. Co. v. Sheffield Union*, [1908] 1 K. B. 750.
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- Great Northern Ry. v. Inland Revenue Commrs.* [1899] 2 Q. B. 652.
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- Great Western Ry. Co. v. Carpalla United China Clay Co.*, [1909] 1 Ch. 218.
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- Great Western Ry. Co. v. London and County Banking Co.*, [1899] 2 Q. B. 172; C. A. [1900] 2 Q. B. 464.
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- Greater London Property Co. v. Foot*, [1899] 1 Q. B. 972.
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- Greenock Steamship Co. v. Maritime Insurance Co.*, [1903] 1 K. B. 367.
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- Greenock (Trustees of Port and Harbour of) v. Greenock Magistrates*, (1904) 41 S. L. R. 658.
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- Greenwood, In re. Goodhart v. Woodhead*, [1902] W. N. 82; [1902] 2 Ch. 198.
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- Grepe v. Loam* - - (1887) 37 Ch. D. 168
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- Greys Brewery Co., In re* (1883) 25 Ch. D. 400
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- Griendtveen v. Hamlyn & Co.*, (1892) 8 Times L. R. 231.
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- Gundry v. Sainsbury*, [1909] W. N. 213; [1910] 1 K. B. 99.
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- Harse v. Pearl Life Assurance Co.*, [1903] 2 K. B. 92.
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- Hendy v. Stephenson* - (1808) 10 East, 55
Not followed by Swinfen Eady J. PALMER v. GUADAGNI [1906] 2 Ch. 494
- Henfrey v. Henfrey* (1843) 4 Moo. P. C. 29
Followed by Gorell Barnes Pres. THORN v. DICKENS [1906] W. N. 54
- Henley, In re* - (1896) 75 L. T. 307
Not followed by Farwell J. *In re* WHITAKER [1904] 1 Ch. 299
- Hennan & Co. v. Duckworth*, (1904) 20 Times L. R. 436.
Followed by C. A. SEYMOUR v. PICKETT [1905] 1 K. B. 715
- Henry, In re* - [1907] 1 Ch. 30
Not followed by Swinfen Eady J. *In re* PERKINS - [1907] 2 Ch. 596
Referred to by Parker J. *In re* POYSER. LANDON v. POYSER - [1910] 2 Ch. 444
See *In re* THOMPSON Joyce J. [1908] W. N. 195

- Henry Leatham & Sons, Ltd. v. Johnstone-White*, [1906] W. N. 227; [1907] 1 Ch. 189.
Reversed by C. A. - [1907] 1 Ch. 322
- Hensley v. White* - [1900] 1 Q. B. 481
Overruled by H. L. (E.) - FENTON v. THORLEY & Co. [1903] A. C. 443
- Henthorn v. Fraser* - [1892] 2 Ch. 27
Applied by Farwell J. BRUNER v. MOORE [1904] 1 Ch. 305
- Herbage Rents, Greenwich, In re*, [1896] 2 Ch. 811.
Referred to by C. A. FOLEY'S CHARITY TRUSTEES v. DUDLEY CORPORATION [1909] W. N. 250; [1910] 1 K. B. 317
- Herbert v. McQuade* - [1901] 2 K. B. 761
Reversed by C. A. [1902] 2 K. B. 631
- Herbert v. Sayer* - (1844) 5 Q. B. 965
Applied by Bigham J. *In re BENNETT* [1907] 1 K. B. 149
- Herbert v. Webster* - (1880) 15 Ch. D. 610
Followed by Swinfen Eady J. *In re FERNELLEY'S TRUSTS* [1902] 1 Ch. 543
Followed by Warrington J. *In re GAME* [1907] 1 Ch. 276
- Herbert Reeves & Co., In re* [1902] 1 Ch. 29
Applicable. HAYDON v. CARTWRIGHT C. A. [1902] W. N. 163
See BOZSON v. ALTRINCHAM URBAN COUNCIL C. A. [1903] 1 K. B. 39
See In re MARCHANT C. A. [1908] 1 K. B. 998
- Herbert Standing & Co., In re* - [1895] W. N. 99
See In re WORLD INDUSTRIAL BANK, LD. Neville J. [1909] W. N. 148
- Herdman v. Wheeler* - [1902] 1 K. B. 361
Discussed and distinguished by C. A. LLOYD'S BANK, LD. v. COOKE [1907] 1 K. B. 794
- Hereford (Bishop of) v. Griffin*, (1848) 16 Sim. 190
Referred to by C. A. AFLALO v. LAWRENCE & BULLEN, LD. [1903] 1 Ch. 318, 337
Decision of C. A. reversed by H. L. (E.) [1904] A. C. 17
- Hereford and South Wales Waggon and Engineering Co., In re*, (1876) 2 Ch. D. 621, 624.
Dictum of C. A. in, dissented from by C. A. *In re ENGLISH AND COLONIAL PRODUCE CO.* [1906] 2 Ch. 435
- Hermann v. Charlesworth* [1905] 1 K. B. 24
Reversed by C. A. [1905] 2 K. B. 123
- Herne Bay Steamboat Co. v. Hutton*, [1903] 2 K. B. 683.
See ELLIOTT v. CRUTCHLEY H. L. (E.) [1906] A. C. 7
KRELL v. HENRY C. A. [1903] 2 K. B. 740, 755, n.
- Hertfordshire County Council v. Great Eastern Ry. Co.*, [1909] 1 K. B. 368.
Affirmed by C. A. - [1909] 2 K. B. 403
- Hetling and Merton's Contract, In re*, [1893] 3 Ch. 269.
Referred to by C. A. BENNETT v. STONE [1903] 1 Ch. 509
- Hewett v. Foster*, (1844) 7 Beav. 348; 61 R. R. 98
Held by Farwell J. not to represent the modern practice. *In re SKINNEE* [1904] 1 Ch. 289
- Hewison v. Ricketts*, (1894) 63 L. J. (Q. B.) 711
Distinguished by Div. Ct. BROOKS v. BEIRNSTEIN - [1909] 1 K. B. 98
- Hewitt v. Kuyte* - (1868) L. R. 6 Eq. 198
Followed by Buckley J. *In re BEAUMONT* - [1902] 1 Ch. 889
- Hart v. Gill* - (1872) L. R. 7 Ch. 699
Inapplicable. GREAT WESTERN RY. CO. v. BLADES Buckley J. [1901] 2 Ch. 624
Commented on by C. A. *In re TODD, BIRLESTON & CO. AND NORTH EASTERN RY. CO.* - [1903] 1 K. B. 603
- Hick v. Rodocanachi* - [1891] 2 Q. B. 626
Affirmed by H. L. (E.) *sub nom. Hick v. Raymond & Reid* - [1893] A. C. 22
See THE "ARNE" Div. Ct. [1904] P. 154, 156
- Hicks v. Powell* - (1869) L. R. 4 Ch. 741
Applied by Swinfen Eady J. BRITISH SOUTH AFRICA CO. v. DE BEERS CONSOLIDATED MINES, LD. C. A. [1910] 2 Ch. 502
- Higgins v. Campbell & Harrison, Ltd. Turvey v. Brintons, Ltd.*, [1904] 1 K. B. 328.
Affirmed by H. L. (E.) *sub nom. BRINTONS, LD. v. TURVEY* [1905] A. C. 230
- Higgins v. Dawson* [1902] A. C. 1
Referred to by Joyce J. *In re GLASSINGTON* - [1906] 2 Ch. 305
- Higgins v. Higgins*, [1909] W. N. 214; [1910] P. 1.
Reversed by C. A., *sub nom. HIGGINS v. KING'S PROCTOR* - [1910] P. 151
Discussed and not followed by Bargrave Deane J. CARTER v. CARTER [1910] P. 4; C. A. [1910] P. 151
Considered by Bigham Pres. HOWE v. HOWE AND HOWE [1910] W. N. 30
- Higgins and Hitchman's Contract, In re*, (1882) 21 Ch. D. 95, 99.
See In re FURNEAUX AND AIRD'S CONTRACT Kekewich J. [1906] W. N. 215
- Higgins & Percival, In re* - (1888) 59 L. T. 213
Followed by Kekewich, J. *In re WALKER AND OAKSHOTT'S CONTRACT* [1901] 2 Ch. 383
- Higgins v. Scott*, (1831) 2 B. & Ad. 413; 36 R. R. 607.
Referred to by C. A. *In re LLOYD* [1903] 1 Ch. 835
- Highbett and Bird's Contract, In re*, [1902] W. N. 69; [1902] 2 Ch. 214.
Affirmed by C. A. [1903] 1 Ch. 287
Explained by C. A. *In re ALLEN AND DRISCOLL'S CONTRACT* [1904] 2 Ch. 226

- Highworth and Swindon Union v. Westbury-on-Severn Union*, (1889) 14 App. Cas. 465.
Followed by C. A. *WEST HAM UNION v. HOLBEACH UNION* [1904] 2 K. B. 121
- Hilbers v. Parkinson*, (1883) 25 Ch. D. 200
Followed and approved by C. A. *In re DUNSANY'S SETTLEMENT* [1906] 1 Ch. 578
See In re PEARSE'S SETTLEMENT
Eve J. [1909] 1 Ch. 304
- Hilder v. Dexter* - - - [1902] A. C. 474
Referred to by *Warrington J. SHORTO v. COLWILL* - - [1909] W. N. 218
- Hildesheimer v. Faulkner (W. & F), Ltd.*, [1900] W. N. 170.
Reversed by C. A. [1901] W. N. 171; [1901] 2 Ch. 552
- Hill, In re. Hill v. Hill*, [1902] W. N. 26; [1902] 1 Ch. 537.
Affirmed by C. A. [1902] 1 Ch. 807
- Hill v. Begg* - - - [1908] W. N. 151
Inapplicable. *DEWHURST v. MATHER C. A.* [1908] 2 K. B. 754
- Hill v. Clifford. Clifford v. Timms. Clifford v. Phillips*, [1907] 2 Ch. 236.
Affirmed by H. L. (E.) *CLIFFORD v. TIMMS* - [1908] A. C. 12
CLIFFORD v. PHILLIPS [1908] A. C. 15
- Hill v. Crook* - (1873) L. R. 6 H. L. 265
Discussed by *Joyce J. In re DU BOCHET* - [1901] 2 Ch. 441
Referred to by C. A. *EBBERN v. FOWLER* - [1909] 1 Ch. 578
- Hill v. Edwards* - - (1885) Cab. & Ell. 481
See GREAVES v. WHITMARSH, WATSON & Co. - Div. Ct. [1906] 2 K. B. 340
- Hill v. Metropolitan Asylums District*, (1879) 42 L. T. 212; approved on appeal, (1882) 47 L. T. 29.
Referred to by *Farwell J. ATT-GEN. v. NOTTINGHAM CORPORATION* [1904] 1 Ch. 673
- Hill v. Pannifer* - [1904] 1 K. B. 811
Overruled by H. L. (E.) *COSTER v. HEADLAND* [1906] A. C. 286
- Hill's (Lord) Trustee v. Rowlands*, [1896] 2 Q. B. 124.
Referred to by C. A. *In re REIS* [1904] 2 K. B. 769
- Hillman, Ex parte* - (1879) 10 Ch. D. 622
Followed by *Wright J. In re PARRY* [1903] W. N. 206; C. A. [1904] 1 K. B. 129
- Hilton v. Eckersley* - (1856) 6 E. & B. 47
See ELLIMAN, SONS & Co. v. CARRINGTON & SON, LD.
Kekewich J. [1901] 2 Ch. 275
- Hilton v. Hilton* - - (1872) L. R. 14 Eq. 468
Corrected by *Buckley J. In re WHITEFORD* - [1903] 1 Ch. 889
- Hinchcliffe, In re* - [1895] 1 Ch. 117
Referred to by *Byrne J. CARTER v. ROBERTS* - [1903] 2 Ch. 312
- Hind v. Hartington*, (1890) 6 Times L. R. 267
Followed by C. A. *In re PAGE* [1910] 1 Ch. 489
- Hindle v. Birtwistle* - [1897] 1 Q. B. 192
See Factory and Workshop Act, 1901 (1 Edw. 7, c. 22), s. 10, sub-s. 1 (c).
- Hinings v. Hinings* - - (1864) 2 H. & M. 32
Practice laid down by, no longer law. *FROGLEY v. PHILLIPS*
Byrne J. [1901] W. N. 243
- Hirst, In re* - - - [1892] W. N. 177
Followed by *Farwell J. In re ROSE* [1904] 2 Ch. 348
NOTE.—The order in *In re Rose* was, on appeal, discharged by consent, the C. A. being of opinion that the proper persons were not parties to the summons. *See* [1904] W. N. 199
- Hirst & Capes, In re* - [1908] 1 K. B. 982
Affirmed with a slight variation by H. L. (E.) *sub nom. HIRST & CAPES v. FOX* [1908] A. C. 416
- Hiscoe, In re* - - [1902] W. N. 49
Corrected [1902] W. N. 54
- Hitchcock v. Stretton* - [1892] 2 Ch. 343
See In re ELLIS & ELLIS
Neville J. [1908] W. N. 215
- Hoare v. Hoare* (1886) 56 L. T. (N.S.) 147
Referred to by *Buckley J. In re DAVIS* [1902] 1 Ch. 876
- Hobbs v. Winchester Corporation*, [1910] 2 K. B. 46.
Reversed by C. A. [1910] 2 K. B. 471
- Hobson v. Gorringe* - [1897] 1 Ch. 182
Approved by H. L. (E.) *REYNOLDS v. ASHEY & SON* [1904] A. C. 466, 471
Distinguished by *Parker J. In re SAMUEL ALLEN & SONS, LD.* [1907] 1 Ch. 575
Followed by Div. Ct. *CROSSLEY BROTHERS, LD. v. LEE* [1908] 1 K. B. 86
- Hobson's Trusts, In re* (1878) 7 Ch. D. 708
Followed by *Byrne J. In re SHEFFIELD CORPORATION AND TRUSTEES OF ST. WILLIAM'S ROMAN CATHOLIC CHAPEL AND SCHOOLS, SHEFFIELD* [1903] 1 Ch. 208, 210
- Hoddinott v. Newton, Chambers & Co.*, [1899] 1 Q. B. 1018.
Reversed by H. L. (E.) [1901] A. C. 49
Referred to by C. A. *DREDGE v. CONWAY, JONES & Co.* - [1901] 2 K. B. 42
- Hodge v. Attorney-General*, (1839) 3 Y. & C. Ex. 342.
Discussed by C. A. *DYSON v. ATTORNEY-GENERAL* - [1910] W. N. 276
- Hodgson v. Sidney* (1866) L. R. 1 Ex. 313
Referred to by C. A. *ROSE v. BUCKETT* [1901] 2 K. B. 449

- Hodgson v. West Stanley Colliery (Owners of)*, (1909) 78 L. J. (K. B.) 1060.
Reversed by H. L. (E.) [1910] A. C. 229
Followed by H. L. (E.) in *McLEAN v. MOSS BAY HEMATITE IRON AND STEEL CO.* - [1910] W. N. 102
Referred to by C. A. *KEELING v. NEW MONCKTON COLLIERIES, LD.* [1910] W. N. 249
- Hodson v. Pare* - - - [1899] 1 Q. B. 455
Referred to by C. A. *LAW v. LEWELLYN* - [1906] 1 K. B. 487
- Hoffe's Estate Act, 1885, In re*, [1900] W. N. 114; 12 L. T. 556.
Followed and applied by Swinfen Eady J. *In re BRIDGWATER'S SETTLEMENT, PARTRIDGE v. WARD* [1910] 2 Ch. 342
- Holder v. Soulby* - (1860) 8 C. B. (N.S.) 254
Commented upon by C. A. *SCARBOROUGH v. COSGROVE* [1905] 2 K. B. 805
- Hole, In re. Davies v. Wits* [1905] 2 Ch. 384
Affirmed by C. A. [1906] 1 Ch. 673
- Holland, In re. Gregg v. Holland*, [1901] W. N. 72; [1901] 2 Ch. 145.
Reversed by C. A. [1902] 2 Ch. 360
- Holland v. Dickson* (1888) 37 Ch. D. 669
Applied by Warrington J. *DAVIES v. GAS LIGHT AND COKE CO.* [1909] 1 Ch. 248
- Holland v. Kensington Vestry*, (1867) L. R. 2 C. P. 565.
Followed by Div. Ct. *DRISCOLL v. BATTERSEA BOROUGH COUNCIL* [1903] 1 K. B. 881
- Holland v. Wood* - (1870) L. R. 11 Eq. 91
See *In re CANNEY'S TRUSTS EVE J.* [1910] W. N. 45
- Holliday v. Overton* - (1852) 15 Beav. 481
Reviewed by Joyce J. *In re TRINGHAM'S TRUSTS* [1904] 2 Ch. 487
- Hollingshead, In re. Hollingshead v. Webster*, (1888) 37 Ch. D. 651.
Followed by Warrington J. *In re CHANT* [1905] 2 Ch. 225
- Hollins v. Fowler*, (1875) L. R. 7 H. L. 757, 795
Discussed and applied by Swinfen Eady J. *MANSELL v. VALLEY PRINTING CO.* [1908] 1 Ch. 567
Affirmed by C. A. [1908] 2 Ch. 444
- Holloway, In re* (1854) 1 Bank. & Ins. Rep. 244
See *In re X. Y.* C. A. [1902] 1 K. B. 98, 102
- Holloway v. Radcliffe* - (1857) 23 Beav. 163
Followed by Swinfen Eady J. *In re RICHARDS, DAVIES v. EDWARDS* [1910] 2 Ch. 74
- Holloway v. York* - - (1877) 25 W. R. 627
Distinguished by Cozens-Hardy J. *PEARCE v. BASTABLE'S TRUSTEE IN BANKRUPTCY* [1901] 2 Ch. 122
- Holman v. Loynes* (1854) 4 D. M. & G. 270
Followed by C. A. *WRIGHT v. CARTER* [1903] 1 Ch. 27
- Holmes v. Godson* (1856) 8 D. M. & G. 152
See *In re DIXON SWINFEN EADY J.* [1903] 2 Ch. 458
Referred to by C. A. *In re HANBURY* [1904] 1 Ch. 415
- Holmes v. Holmes* (1783) 1 Bro. C. C. 555
Rule in, considered by C. A. *In re JACQUES* - [1903] 1 Ch. 267
- Holmes v. Millage* - [1893] 1 Q. B. 551
Followed by C. A. *EDWARDS & CO. v. PICARD* [1909] 2 K. B. 903
- Holmes v. Simmons*, (1868) L. R. 1 P. & M. 523 529.
Applied by Swinfen Eady J. *In re RUTTER* [1907] 2 Ch. 592
- Holt v. Sindrey* - - (1868) L. R. 7 Eq. 170
Discussed by Joyce J. *In re DU BOCHET* - [1901] 2 Ch. 441
- Holthausen, Ex parte* . (1874) L. R. 9 Ch. 722
Applied by Swinfen Eady J. *BRITISH SOUTH AFRICA CO. v. DE BEERS CONSOLIDATED MINES, LD.* C. A. [1910] 2 Ch. 502
- Holwell Iron Co. v. Midland Ry. Co.*, [1909] 1 K. B. 486.
Affirmed by C. A. [1910] 1 K. B. 296
- Home v. Pillans*, (1833) 2 My. & R. 15; 39 R. R. 116.
Considered by Joyce J. *In re SCHNADHORST* - [1901] 2 Ch. 338, 341
- Home v. Pringle* , (1840) 8 Cl. & F. 264
See *CALEDONIAN RY. CO. v. BARRIE H. L. (Sc.)* [1903] A. C. 126
- Home (Earl of) v. Lord Belhaven and Stenton*, (1900) 2 F. 1218.
Reversed by H. L. (Sc.) [1903] A. C. 327
- Home and Colonial Stores, Ltd. v. Colls*, [1902] 1 Ch. 302.
Reversed by H. L. (E.) [1904] A. C. 179
- Honduras Banking Co. v. Compagnie Générale, &c.*
Unreported and noticed in *Annual Practice*, 1904, pp. 100, 193, and in an Article of Feb. 29, 1896, in Vol. 40. *Solicitors' Journal*, pp. 288, 289. See BALFOUR v. WYLIE
Kekewich J. [1904] W. N. 72
- Hong Kong and China Gas Co., In re*, [1898] W. N. 158.
Followed by Swinfen Eady J. *In re EUPHRATES AND TIGRIS STEAM NAVIGATION CO.* [1904] 1 Ch. 360
- Honywood v. Honywood* - [1903] W. N. 72
Affirmed by C. A. [1903] W. N. 186, 190
- Hood v. Phillips* - (1841) 3 Beav. 513, 519
Referred to by C. A. *In re W. TASKER & SONS, LD.* [1905] 2 Ch. 587
- Hood Barrs v. Cathcart* - [1894] 3 Ch. 376
Referred to by C. A. *GORDON v. GORDON* [1904] P. 163, 176
Distinguished by C. A. *DRESEL v. ELLIS* - [1905] 1 K. B. 174

- Hood Barrs v. Cathcart* [1895] 1 Q. B. 873
Referred to by Div. Ct. NUNN & Co. v. TYSON - [1901] 2 K. B. 487, 490
- Hood Barrs v. Heriot* - - [1897] A. C. 177
Referred to by Div. Ct. NUNN & Co. v. TYSON [1901] 2 K. B. 487, 490
Referred to by C. A. GORDON v. GORDON [1904] P. 163, 176
Distinguished by C. A. DRESEL v. ELLIS [1905] 1 K. B. 574
- Hooper v. Bourne* - (1880) 5 App. Cas. 1
Referred to by Eve J. LONDON AND NORTH WESTERN RY. CO. v. HOWLEY PARK COAL AND CANNEL CO. [1910] W. N. 163
- Hope v. Hope* - - (1855) 1 Jur. (N.S.) 770
Referred to by Cozens-Hardy J. *In re* VAN STRAUBENZEE [1901] 2 Ch. 779
- Hope v. Hope* C. A. [1902] W. N. 4
Corrected [1902] W. N. 23
- Hopkins, In re* (1881) 18 Ch. D. 370
Distinguished by C. A. *In re* McMURDO [1902] 2 Ch. 684, 710
- Hopkins v. Abbott*, (1875) L. R. 19 Eq. 222, 227
See *In re* BOOPER - PARKER J. [1908] W. N. 189
- Hopkins v. Great Northern Ry. Co.*, (1877) 2 Q. B. D. 224.
Discussed and followed by C. A. DIBDEN v. SKIRROW - [1908] 1 Ch. 41
- Hopkinson v. Forster* - (1874) L. R. 19 Eq. 74
Referred to by Buckley J. *In re* BEAUMONT - - [1902] 1 Ch. 889
- Hopkinson v. Rolt* - - (1861) 9 H. L. C. 514
Applied by Kekewich J. HUGHES v. BRITANNIA PERMANENT BENEFIT BUILDING SOCIETY [1906] 2 Ch. 607
Discussed by C. A. DEERLEY v. LLOYDS BANK [1910] 1 Ch. 648
- Hopkinson's Patent* - [1897] A. C. 249
Followed by P. C. *In re* HENDERSON'S PATENT [1901] A. C. 616
- "Hopper No. 66," *The*, [1906] P. 34; C. A. [1907] P. 254.
Reversed by H. L. (E.) *sub nom.* SIR JOHN JACKSON, LD. v. OWNERS OF S.S. "BLANCHE," LD. "THE HOPPER No. 66" [1908] A. C. 126
- Horbury Bridge Coal, Iron and Waggon Co., In re*, (1879) 11 Ch. D. 109.
Explained by C. A. ARNOT v. UNITED AFRICAN LANDS, LD. [1901] 1 Ch. 518
- Hornby, Ex parte* - (1819) Buck. 351
Explained and distinguished by C. A. *In re* WEST COAST GOLD FIELDS, LD. [1906] 1 Ch. 1
- Horne's Settled Estate, In re*, (1888) 39 Ch. D. 84
Applied by Swinfen Eady J. *In re* GOODALL'S SETTLEMENT [1909] 1 Ch. 440
- Horner v. Franklin* - [1904] 2 K. B. 877
Affirmed by C. A. [1905] 1 K. B. 479
Followed by C. A. STUCKEY v. HOOKE C. A. [1906] 2 K. B. 20
- Horsey Estates, Ltd. v. Steiger* [1899] 2 Q. B. 79
Approved of by H. L. (E.). FRYER v. EWART - - [1902] A. C. 187
- Horton v. Bosson* - - (1899) 80 L. T. 435
Referred to by Byrne J. PEPPERELL v. HIND - - [1902] 1 Ch. 477, 481
- Horton v. Colwyn Bay and Colwyn Urban Council*, [1907] 1 K. B. 14.
Affirmed by C. A. - [1908] 1 K. B. 327
- Horton v. Horton* - - - Cro. Jac. 75
Referred to by Farwell J. *In re* WILLATTS - - [1905] 1 Ch. 378; C. A. [1905] 2 Ch. 135
- Hoskin's Trusts, In re*, (1877) 5 Ch. D. 229; 6 Ch. D. 281.
Applied by Swinfen Eady J. *In re* PEACOCK'S SETTLEMENT [1902] 1 Ch. 552
- Hotchkys, In re* - - (1886) 32 Ch. D. 408
Referred to by C. A. *In re* WILLIS [1902] 1 Ch. 15, 19
Ratio decidendi of, explained and applied by Farwell J. *In re* BARON KENSINGTON [1902] 1 Ch. 203
Referred to by Byrne J. HONYWOOD v. HONYWOOD - [1902] 1 Ch. 347
Principle of, applied by Kekewich J. *In re* McCLEURE'S TRUSTS [1906] W. N. 200
- Hotham, In re* - - [1901] 2 Ch. 790
Varied by C. A. - [1902] 2 Ch. 575
See *In re* DUKE OF CLEVELAND'S SETTLED ESTATES JOYCE J. [1902] 2 Ch. 350
- Houghton v. Houghton* [1903] P. 150
Followed by Gorell Barnes J. COPSEY v. COPSEY - - [1905] P. 94
- Houghton v. Sutton Heath and Lea Green Collieries Co.*, [1901] 1 K. B. 93
Approved by H. L. (E.). ABRAM COAL CO. v. SOUTHERN - [1903] A. C. 306
- Houlder Line, Ltd. v. Griffin* - [1905] A. C. 220
Discussed and applied by C. A. SMITH v. STANDARD STEAM FISHING CO. [1906] 2 K. B. 275
- Houldsworth v. Yorkshire Woolcombers Association, Ltd.*, [1903] 2 Ch. 284.
Affirmed by H. L. (E.) *sub nom.* ILLINGWORTH v. HOULDSWORTH [1904] A. C. 355
- How v. Earl Winterton* - [1896] 2 Ch. 626
See HOW v. EARL WINTERTON KEKEWICH J. [1904] W. N. 204
- Howard, In re* - (1871) 24 L. T. (N.S.) 860
Referred to by Farwell J. *In re* CARROLL - - [1902] 2 Ch. 175
- Howard, In re* - [1901] 1 Ch. 412
Referred to by C. A. *In re* MASON [1910] 1 Ch. 695
- Howard v. Fanshawe* - [1895] 2 Ch. 581, 592
Followed by Swinfen Eady J. HUMPHREYS v. MORTEN [1905] 1 Ch. 739

- Howard v. Patent Ivory Manufacturing Co.*, (1888) 38 Ch. D. 156.
Distinguished by Kekewich J. *BAGOT PNEUMATIC TYRE Co. v. CLIPPER PNEUMATIC TYRE Co.*
[1901] 1 Ch. 196
This case was affirmed by C. A.
[1902] 1 Ch. 146
- Howard v. Press Printers, Ltd.* [1904] W. N. 182
Reversed by C. A. [1904] W. N. 198
Referred to by Kekewich J. *OBER-RHEINISCHE METALLWERKE G. M. B. H. v. COCKS* [1906] W. N. 127
- Howard v. Sadler* - - - [1893] 1 Q. B. 1
Referred to by Buckley J. *SETTON v. ENGLISH AND COLONIAL PRODUCE Co.*
[1902] 2 Ch. 502
- Howarth, In re* - - - (1873) L. R. 8 Ch. 415
Explained and distinguished by Warrington J. *In re HAMBROUGH'S ESTATE* - [1909] 2 Ch. 620
- Howarth, In re* - - - [1909] 2 Ch. 19
Referred to by C. A. *In re WATKINS' SETTLEMENT* - [1910] W. N. 232
- Howatson v. Webb* - [1907] 1 Ch. 537
Affirmed by C. A. [1908] 1 Ch. 1
- Howcroft v. Laycock*, (1898) 14 Times L. R. 460.
Overruled by C. A. *WALLIS, SON & WELLS v. PRATT & HAYNES*
[1910] 2 K. B. 1003
- Howden v. Yorkshire Miners' Association*, [1903] 1 K. B. 308.
Affirmed by H. L. (E.) *sub nom.* *YORKSHIRE MINERS' ASSOCIATION v. HOWDEN* [1905] A. C. 256
- Howe v. Dartmouth (Earl of)*, (1802) 7 Ves. Jun. 137 a; 6 R. R. 96.
Inapplicable. *In re VAN STRAUBENZEE Cozens-Hardy J.* [1901] 2 Ch. 779
Operation of rule in, excluded by Kekewich J. *In re BATES*
[1907] 1 Ch. 22
See In re MOSES **Swinfen Eady J.**
[1908] 2 Ch. 235
Discussed by Warrington J. *In re NICHOLSON* [1909] 2 Ch. 111
- Howe v. Newington Licensing Justices*, [1907] 2 K. B. 340.
Affirmed by C. A. [1908] 1 K. B. 260
- Howe v. Smith* - (1884) 27 Ch. D. 89
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- Howell, In re* - [1895] 1 Q. B. 844, 847
Followed by Swinfen Eady J. *BISHOP OF ROCHESTER v. LE FANU*
[1906] 2 Ch. 513
- Howell v. Coupland* - (1876) 1 Q. B. D. 258
Followed by C. A. *NICKOL AND KNIGHT v. ASHTON, EDRIDGE & Co.*
[1901] 2 K. B. 126
Referred to by C. A. *In re HALL AND LADY MEUX'S ARBITRATION*
[1905] 1 K. B. 588
- Howes, In re* - - - [1892] 2 Q. B. 628
Discussed by C. A. *In re A JUDGMENT DEBTOR* (530 of 1908)
[1908] 2 K. B. 474
- Hoyles, In re, Row v. Jagg*, [1910] W. N. 153;
[1910] 2 Ch. 333.
Affirmed by C. A. - [1910] W. N. 275
- Hubback, In re* - - - (1885) 29 Ch. D. 934
Referred to by Swinfen Eady J. *In re MARVIN* [1905] 2 Ch. 490
- Hubbuck, In re* - - - [1896] 1 Ch. 754
Applied by Warrington J. *In re LEWIS, DAVIES v. HARRISON* [1907] 2 Ch. 296
- Hubbard, Ex parte*, (1886) 17 Q. B. D. 690, 698
Referred to by C. A. *DEVERGES v. SANDEMAN, CLARKE & Co.*
[1902] 1 Ch. 579, 593, 597
- Huddleston, In the Goods of*, (1890) 63 L. T. 255
Disapproved by Jeune P. *IN THE GOODS OF SCHOTT* [1901] P. 190
- Hudson, In re* - - - (1895) 72 L. T. 892
Referred to by Buckley J. *In re IRWIN*
[1904] 2 Ch. 762
- Hudson v. Hudson and Poole* (1875) 1 P. D. 65
Questioned by Bargrave Deane J. *JACKSON v. JACKSON* [1910] P. 230
- Hudson v. Gribble* - [1902] 2 K. B. 298
On appeal. *See C. A.* [1903] 1 K. B. 517
- Hudson v. Revett*, (1829) 5 Bing. 368; 30 R. R. 649.
Referred to by Swinfen Eady J. *BISHOP OF CREDITON v. BISHOP OF EXETER* [1905] 2 Ch. 455
- Hudson v. Spencer* [1910] 2 Ch. 285
See In re HUDSON, SPENCER v. TURNER
Warrington J. [1910] W. N. 269
- Huggins, In re* - (1882) 51 L. J. (Ch.) 935
Followed by Eve J. *In re ELFORD*
[1910] 1 Ch. 814
- Hughes, Ex parte* - (1871) L. R. 12 Eq. 137
Applied by Wright J. *In re POLLARD*
[1903] W. N. 58; C. A. [1903] 2 K. B. 41
- Hughes v. Clover, Clayton & Co.*, [1909] 2 K. B. 798.
Affirmed by H. L. (E.) *sub nom.* *CLOVER, CLAYTON & Co. v. HUGHES*
[1910] A. C. 242
- Hughes v. Justin* - [1894] 1 Q. B. 667
Distinguished by C. A. *ARMITAGE v. PARSONS* [1908] 2 K. B. 410
- Hughes-Hallett v. Indian Mammoth Gold Mines Co.*, (1882) 22 Ch. D. 561.
Followed by Swinfen Eady J. *ASCHERSON v. TREDEGAR DRY DOCK AND WHARF Co.* [1909] 2 Ch. 401
- Inguenin v. Baseley* (1807) 14 Ves. 273
Discussed by C. A. *HOWES v. BISHOP*
[1909] 2 K. B. 390
- Hulbert v. Cathcart* [1894] 1 Q. B. 244
See In re ODDY - C. A. [1906] 1 Ch. 93

- Hull v. London County Council*, [1901] 1 K. B. 580.
Discussed and disapproved by Div. Ct. LONDON COUNTY COUNCIL *v.* ILLUMINATED ADVERTISEMENTS CO.
[1904] 2 K. B. 886
Followed by Div. Ct. LONDON COUNTY COUNCIL *v.* SCHEWZIK
[1905] 2 K. B. 695
- Hull, Barnsley and West Riding Junction Ry. Co., In re*, (1888) 40 Ch. D. 119, 130.
Applied by Swinfen Eady J. *In re* LISKEARD AND CARADON RY. CO.
[1903] 2 Ch. 681
- Hulme v. Rowbotham*, Neville J. [1907] W. N. 162.
Order discharged, &c.
See [1907] W. N. 189
- Hulthen v. Stewart & Co.* [1902] 2 K. B. 199
Affirmed by H. L. (E.)
[1903] A. C. 389
- Hulthen v. Stewart* [1903] A. C. 389
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- Humble v. Hunter* - (1848) 12 A. & E. 310
Referred to by C. A. FORMBY BROS. *v.* FORMBY
[1910] W. N. 48
- Humble v. Shore*, (1847) 7 Hare, 247; 1 H. & M. 550, n.
Overruled. See *In re* ALLAN
C. A. [1903] 1 Ch. 276
- Humphreys, In re* - [1893] 3 Ch. 1
Referred to by Buckley J. *In re* SCOTT
[1902] 1 Ch. 918, 925
Distinguished by C. A. *In re* BOWLBY
[1904] 2 Ch. 685
- Humphries v. Humphries*, [1910] W. N. 64;
[1910] 1 K. B. 796.
Affirmed by C. A. [1910] 2 K. B. 531
- Humphrys v. Pratt*, (1831) 5 Bligh, (N. S.) 154; 35 R. R. 41.
Considered by H. L. (E.) SHEFFIELD CORPORATION *v.* BARCLAY
[1905] A. C. 392, 399
- Hunloke's Settled Estates, In re*, [1902] 1 Ch. 941.
Distinguished by Parker J. *In re* RODES
[1909] 1 Ch. 815
- Hunt v. Fripp* - - [1898] 1 Ch. 675
Dictum of Byrne J. in, approved of by Bigham J. *In re* BENNETT
[1907] 1 K. B. 149
- Hunt v. Luck* . - [1901] 1 Ch. 45
Affirmed by C. A. [1902] 1 Ch. 428
- Hunt's Settled Estates, In re. Bulteel v. Lawdeshayne*, [1905] 2 Ch. 418.
Affirmed by C. A. - [1906] 2 Ch. 11
- Hunter v. Greensill* (1872) L. R. 8 C. P. 24
Referred to by C. A. SPENCE *v.* COLEMAN - - [1901] 2 K. B. 199
- Hunter v. Rex* . - [1902] 2 K. B. 255
Reversed by C. A. [1903] 1 K. B. 514
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- Huntingdon v. Inland Revenue Commrs.*, [1896] 1 Q. B. 422.
Discussed by Swinfen Eady J. *In re* LOVELL AND COLLARD'S CONTRACT
[1907] 1 Ch. 249
- Huntly (Marchioness of) v. Gaskell*, [1905] W. N. 140.
Order amended by C. A.
[1905] W. N. 153; [1905] 2 Ch. 656
See also *Huntly (Marchioness of) v. Gaskell*, [1905] W. N. 157, as to an order for payment of costs.
- Huntly (Marchioness of) v. Gaskell*, (1902) 4 F. 1014.
Affirmed by H. L. (Sc.) [1906] A. C. 56
- Hurd v. Fletcher* - - (1778) 1 Doug. 43
Applied by Swinfen Eady J. MARKHAM *v.* PAGET [1904] 1 Ch. 697
- Hurley v. Hurley* - [1891] P. 367, 368
Referred to by C. A. KEMP-WELCH *v.* KEMP-WELCH AND CRYMES
[1910] P. 233
- Hurly's Divorce Bill* - - [1908] W. N. 41
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- Hurst, In re* - - (1891) 36 S. J. 41
Referred to by Kekewich J. MURRAY *v.* SITWELL [1902] W. N. 119
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- Husband, In re* . - (1865) 12 L. T. 303
Followed by Farwell J. BLAMEY *v.* BLAMEY [1902] W. N. 138
- Hussey v. Horne-Payne*, (1879) 4 App. Cas. 311, 317.
Dictum of Earl Cairns L.C. in, followed by Byrne J. LEVER *v.* KOFFLER
[1901] 1 Ch. 543
- Hutcheson v. Eaton* - (1884) 13 Q. B. D. 861
Discussed and followed by C. A. *In re* NORTH-WESTERN RUBBER CO. AND HÜTTENBACH & Co. - [1908] 2 K. B. 907
- Hutchison v. Stevenson* - (1902) 4 F. (J. C.) 69
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- Hutton v. Simpson*, (1716) 2 Vern. 722; S. C. Gilb. Eq. Rep. 115, 120, and Prec. Ch. 439, 452.
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- Hutton v. West Cork Ry. Co.*, (1883) 23 Ch. D. 654.
Principle of, applied by Joyce J. STROUD *v.* ROYAL AQUARIUM AND SUMMER AND WINTER GARDEN SOCIETY, LD. [1903] W. N. 146
Principles stated in, discussed and applied by Swinfen Eady J. CYCLISTS' TOURING CLUB *v.* HOPKINSON
[1910] 1 Ch. 179
- Huwtale, In re. Huwtale v. Crawford*, [1902] 1 Ch. 214.
Reversed on one point by C. A.
[1902] 2 Ch. 793
Referred to by Joyce J. *In re* HETLEY
[1902] 2 Ch. 866, 870

- Hyam's Case* - - (1859) 1 D. F. & J. 75
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LD., LINDLAR'S CASE - [1910] 1 Ch. 212
- Hyatt, In re* (1888) 38 Ch. D. 609
Distinguished by Warrington J. *In re*
MOON. HOLMES v. HOLMES
[1907] 2 Ch. 304
- Hyde v. Benbow* - - [1894] W. N. 117
Referred to by Kekewich J. MEMO-
RANDUM AS TO PRACTICE
[1901] W. N. 85
- Hyde v. Hyde* (1888) 13 P. D. 166
Followed by C. A. KISTLER v. TETTMAR
[1905] 1 K. B. 39
Referred to by C. A. *In re* PACK
[1906] 1 Ch. 692
- Hyde v. Warden* - - (1877) 3 Ex. D. 72
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- Hyde Corporation v. Bank of England*, (1882)
21 Ch. D. 176.
Followed by Swinfen Eady J. *In re*
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- Hyman v. Van Den Bergh* [1907] 2 Ch. 516
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- Igoe v. Shann* [1901] 2 K. B. 740
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- Illingworth v. Walmesley* - [1900] 2 Q. B. 142
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- "*Immacolata Concezione*," *The*, (1883) 9 P. D. 37
Followed by Phillimore J. *THE "TER-
GESTE"* - [1903] P. 26
- Imperial and Grand Hotels Co. v. Christchurch
Guardians*, [1905] 1 K. B. 89.
Affirmed by C. A. - [1905] 2 K. B. 239
- Imperial Bank of China, India and Japan, In re*,
(1866) L. R. 1 Ch. 339, 347.
Explained and distinguished by C. A.
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- Imperial Fire Insurance Co. v. Wilson*, (1876)
35 L. T. 271.
Affirmed by H. L. (Sc.). GENERAL
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[1908] A. C. 207
- Imperial Gas Light and Coke Co. v. Broadbent*,
(1859) 7 H. L. C. 600.
Followed by Farwell J. DEAN AND
CHAPTER OF CHESTER v. SMELTING
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- Imperial Hydropathic Hotel Co., Blackpool v.
Hampson*, (1882) 23 Ch. D. 1.
Applied by Swinfen Eady J. BOS-
CHOEK PROPRIETARY Co. v. FULKE
[1906] 1 Ch. 148
- Imperial Mercantile Credit Association v. Cole-
man*, (1871) L. R. 6 Ch. 558 (not over-
ruled on one point by S. C. (1873) L. R.
6 H. L. 189).
See COSTA RICA RY. CO. v. FORWOOD
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- Imperial Wine Co., In re, Sheriff's Case*,
(1872) L. R. 14 Eq. 417.
Examined and distinguished by War-
rington J. MIDLAND COUNTIES DIS-
TRICT BANK, LD. v. ATTWOOD
[1905] 1 Ch. 6
- Imray v. Oakshette* [1897] 2 Q. B. 218
Followed by Parker J., MATTHEWS v.
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- Incandescent Gas Co. v. Brogden*, (1899) 16 Rep.
Pat. Cas. 179.
Referred to by Farwell J. BRITISH
MUTOSCOPE AND BIOGRAPH CO. v.
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- "*Inchmarree*," *The* - [1899] P. 111
Followed by Jeune, Pres. *THE "FRIES-
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- Inderwick, In re* - - (1883) 25 Ch. D. 279
Referred to by Buckley J. *In re* FAN-
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- Inderwick v. Tutchell* - [1901] 2 Ch. 738
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C. A. [1903] A. C. 120
- Ingle v. Vaughan Jenkins* [1900] 2 Ch. 368
Approved by C. A. CAPITAL AND
COUNTIES BANK, LD. v. RHODES
[1903] 1 Ch. 631
- Ingleby and Boak and Norwich Union Insurance
Co., In re*, (1883) L. R. Ir. 326.
Followed by Parker J. *In re* CRENDEN
AND MEUX'S CONTRACT
[1909] 1 Ch. 690
- Ingram v. Barnes* (1857) 7 E. & B. 115, 132
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LAND LACE CO.* [1905] 2 K. B. 448
- Ingram v. Little* (1883) 11 Q. B. D. 251
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- Inland Revenue v. Grant*, (1898) 25 Rettie, 1040;
(1900) 2 Fraser, 49; [1900] A. C. 383.
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- Inland Revenue v. Oliver* - (1909) S. C. 248
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- Inland Revenue Commrs. v. Priestley*, [1900]
2 I. R. 281, 400.
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- Innes v. Short* - (1898) 15 Rep. Pat. Cas.
449, 452.
Distinguished by Swinfen Eady J.
DUNLOP PNEUMATIC TYRE CO. v.
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[1904] 1 Ch. 164; C. A. [1904] 1 Ch. 612
- Innes & Co., In re* [1903] W. N. 26; [1903] 1 Ch.
674.
Reversed by C. A. - [1903] 2 Ch. 254
- Institute of Patent Agents v. Lockwood*, [1894]
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- International Fibre Syndicate, Ltd. v. Dawson*, (1900) 2 F. 636.
Affirmed by H. L. (Sc.) [1901] W. N. 97
- International Financial Society v. City of Moscow Gas Co.*, (1877) 7 Ch. D. 241.
Followed by C. A. *In re COLES AND RAVENSHEAR* [1907] 1 K. B. 1
- Inverarity v. Forfarshire County Council*, (1904) 6 F. 553.
Affirmed by H. L. (Sc.) [1906] A. C. 354
- Inwood v. Twyne* - - - (1762) Amb. 417
Referred to by Farwell J. *In re WELLS* [1903] 1 Ch. 848
- "Ironmaster," *The* - - - (1859) Sw. 441
Followed by Gorell Barnes J. *THE "HARMONIDES"* [1903] P. 1
- Irrigation Co. of France, In re*, (1871) L. R. 6 Ch. 176.
Distinguished by Eve J. THOMAS v. UNITED BUTTER COMPANIES OF FRANCE, LD. [1909] 2 Ch. 484
- Irvine v. Union Bank of Australia*, (1877) 2 App. Cas. 366.
Distinguished and applied by Swinfen Eady J. BOSCHOEK PROPRIETARY CO. v. FULKE [1906] 1 Ch. 148
- Isaacson v. New Grand (Clapham Junction), Ltd.*, [1903] 1 K. B. 539.
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- "Isle of Cyprus," *The* (1890) 15 P. D. 134
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- Isle of Wight Ferry Co. v. Ryde Commissioners*, (1861) 25 J. P. 454.
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- Isle of Wight Ry. Co. v. Tahourdin*, (1883) 25 Ch. D. 320.
Distinguished by C. A. AUTOMATIC SELF-CLEANSING FILTER SYNDICATE CO. v. CUNINGHAME [1906] 2 Ch. 34
- Islington and General Electric Supply, Ltd., In re*, [1892] W. N. 81.
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- Islington Borough Council v. London School Board*, [1902] 2 K. B. 701.
Affirmed by C. A. - [1903] 2 K. B. 354
- Ismay, Imrie & Co. v. Williamson*, [1908] A. C. 437.
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- Ives, In re* - - - (1886) 16 Q. B. 665
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- J. C. v. Society of Contributors to the Widows' Fund of the Faculty of Procurators in Glasgow*, (1904) 7 F. 345.
Reversed by H. L. (Sc.) [1908] A. C. 183
- Jackson v. De Kadich* - [1904] W. N. 168
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- Jack v. Kipping* - (1882) 9 Q. B. D. 113
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- Jackson v. Mawby* (1875) 1 Ch. D. 86
Followed by Gorell Barnes J. AYRES v. AYRES - [1901] W. N. 204
- Jackson v. Normandy Brick Co.*, [1899] 1 Ch. 438
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- Jackson v. Price* - [1910] 1 K. B. 143
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- Jackson v. Wimbledon Urban District Council*, [1904] 2 K. B. 359.
Affirmed by C. A. [1905] 2 K. B. 27
- Jackson, In the Goods of*, [1902] W. N. 213, 214
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- Jackson & Co., In re* - [1899] 1 Ch. 348
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[1901] W. N. 165
- Jackson and Haden's Contract, In re*, [1905] 1 Ch. 603.
Affirmed by C. A. - [1906] 1 Ch. 412
- Jackson's Settled Estate, In re*, [1902] 1 Ch. 258
Approved and adopted by C. A. *In re DAVIES AND KENT'S CONTRACT* [1910] 2 Ch. 35
- Jacobs v. Crédit Lyonnais*, (1884) 12 Q. B. D. 589, 600.
Applied by Swinfen Eady J. BRITISH SOUTH AFRICA CO. v. DE BEERS CONSOLIDATED MINES, LD.
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- Jacobs v. Morris* - - - [1901] 1 Ch. 261
Affirmed by C. A. [1902] 1 Ch. 816
- Jagger v. Jagger* (1883) 25 Ch. D. 729
Discussed and not followed by Neville J. *In re CATTELL* [1907] 1 Ch. 567
- Jamaica Ry. Co. v. Colonial Bank*, [1905] W. N. 58.
Reversed by C. A. - [1905] 1 Ch. 677
Applied by Swinfen Eady J. MORISON v. TELFER [1906] W. N. 31
- Distinguished by Kekewich J. SOUTH-ALL DEVELOPMENT SYNDICATE, LD. v. DUNSDON [1907] W. N. 16
- James, Ex parte* (1874) L. R. 9 Ch. 609
Principle of, applied by C. A. *In re TYLER* - [1907] 1 K. B. 865
Distinguished by C. A. *In re HALL* [1907] 1 K. B. 875
- James v. Dean*, (1805) 11 Ves. 383; (1808) 15 Ves. 236.
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- James Hennessy & Co. v. Keating*, [1908] 1 I. R. 43.
 Affirmed by H. L. (Ir.). [1908] **W. N. 95**
- James Joyce & Co. and S. A. D. Eden's Executors v. North Eastern Ry. Co.*, [1906] 1 K. B. 195.
 Reversed by C. A. [1907] **1 K. B. 402**
 Decision of C. A., [1907] 1 K. B. 402, reversed by H. L. (E.) *sub nom.* EDEN v. NORTH EASTERN RY. CO. [1907] **A. C. 400**
- James Nelson & Sons, Ltd. v. Nelson Line (Liverpool)*, *Ld.* (No. 2), [1907] 1 K. B. 769.
 Affirmed by H. L. (E.) *sub nom.* NELSON LINE (LIVERPOOL). *Ld.* v. JAMES NELSON & SONS, *Ld.* [1908] **A. C. 16**
- Jamieson & Co. v. Jamieson*, (1898) 15 Rep. Pat. Cas. 169, 181.
 Applied by Kekewich J. J. & J. CASH, *Ld.* v. CASH - [1901] **W. N. 46** ;
 C. A. [1902] **W. N. 32**
- Jared v. Clements*, [1902] **W. N. 115** ; [1902] 2 Ch. 399.
 Affirmed by C. A. [1903] **1 Ch. 428**
- Jarrah Timber and Wood Paving Corporation, Ld. v. Samuel*, [1902] 2 Ch. 479.
 Affirmed by C. A. - [1903] **2 Ch. 1**
 Decision of C. A., [1903] 2 Ch. 1, affirmed by H. L. (E.) *sub nom.* SAMUEL v. JARRAH TIMBER AND WOOD PAVING CORPORATION, *Ld.* [1904] **A. C. 323**
- Jarvis (E. W.) & Co., Ld., In re* [1899] 1 Ch. 193.
 Followed by Buckley J. *In re* EBENEZER TIMMINS & SONS, *Ld.* [1902] **1 Ch. 238**
- Jeffcock's Trusts, In re*, (1882) 51 L. J. (Ch.) 507
 Followed by C. A. WILLMOTT v. LONDON ROAD CAR CO. [1910] **2 Ch. 525**
- Jeffery v. Stewart* - (1899) 80 L. T. 17
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 Farwell J. [1903] **W. N. 207** ;
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- Jefferys v. Bousey*, (1854) 4 H. L. C. 815, 867, 979
 Discussed and applied by Swinfen Eady J. MANSELL v. VALLEY PRINTING CO. - [1908] **1 Ch. 567**
 Affirmed by C. A. [1908] **2 Ch. 441**
- Jemmit v. Verril* Cited in (1826) Amb. 585, u.
 Discussed by Farwell J. *In re* BEST [1904] **2 Ch. 354**
- Jenkins v. Coomber* - [1898] 2 Q. B. 168
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- Jones v. Ocean Coal Co.* [1899] 2 Q. B. 124
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- Kimber v. Admans* [1900] 1 Ch. 412
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- Kine v. Jolly* ; [1905] 1 Ch. 480
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- Kingdon & Wilson, In re* [1902] W. N. 65
Reversed by C. A. [1902] 2 Ch. 242
See also In re BUCKWELL & BERKELEY [1902] 2 Ch. 596
See In re BLAIR & GIRLING C. A. [1906] 2 K. B. 131; [1907] A. C. 124
- Kingsbury v. Walter* - [1899] 2 Ch. 314
Affirmed by H. L. (E.) [1901] A. C. 187
- Kingston-upon-Hull Dock Co. v. Browne*, (1831) 2 B. & Ad. 43.
Discussed and distinguished by C. A. ASSHETON SMITH v. OWEN [1906] 1 Ch. 179
- Kinloch v. Secretary of State for India in Council*, (1882) 7 App. Cas. 625.
Referred to by P. C. TE TEIRA TE PAEA v. TE ROERA TAREHA [1902] A. C. 56
- Kinnaird (Lord) v. Field* [1905] W. N. 88
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- Kinson Pottery Co. v. Poole Corporation*, [1899] 2 Q. B. 41.
Followed by C. A. GRAHAM v. WROUGHTON - [1901] 2 K. B. 451
Considered and distinguished by C. A. WILKINSON v. LLANDAFF AND DINAS POWIS RURAL COUNCIL [1903] 2 Ch. 695
- Kirkcaldy and District Ry. Co. v. Caledonian Ry. Co.*, (1900) 37 Sc. L. R. 820.
Affirmed by H. L. (Sc.) *sub nom.* CALEDONIAN RY. CO. v. KIRKCALDY AND DISTRICT RY. CO. [1901] W. N. 102
- Kirkheaton Local Board v. Ainley*, [1892] 2 Q. B. 274.
Reasoning in, approved upon one point by H. L. (E.) BUTTERWORTH v. WEST RIDING OF YORKSHIRE RIVERS BOARD [1909] A. C. 45
- Kirkintilloch Parish Council v. Eastwood Parish Council*, (1902) 5 F. 274.
Approved by H. L. (Sc.) KILMALCOLM PARISH COUNCIL v. GLASGOW PARISH COUNCIL - [1906] A. C. 344
- Kirkwood v. Smith* - [1896] 1 Q. B. 582
Overruled by C. A. KIRKWOOD v. CARROLL - [1903] 1 K. B. 531
- Kitten v. Hewitt* [1904] W. N. 21
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- Klüber and Steinberg's Patent, In re*, Neville J. [1908] W. N. 50.
This case came on again.
[1908] W. N. 57, 89. Reported [1908] 1 Ch. 847
- Knatchbull v. Fowle* - (1876) 1 Ch. 604
Followed by Buckley J. PIGGOTT v. TOOGOOD - [1904] W. N. 130
- Knatchbull's Settled Estate, In re* (1884), 27 Ch. D. 349 [affirmed on appeal (1885), 29 Ch. D. 588].
Dicta in, discussed by Eve J. *In re DUKE OF MANCHESTER'S SETTLEMENT* [1910] 1 Ch. 106
- Knight v. Bowyer*, (1857) 23 Beav. 609; (1858) 2 De G. & J. 421.
Followed by Farwell J. HUNT v. LUCK [1901] 1 Ch. 45
- Knight v. Cubitt & Co.* - [1902] 1 K. B. 31
Distinguished by C. A. BUSH v. HAWES [1902] 1 K. B. 216
- Knight v. Simmonds*, [1896] 1 Ch. 653; 2 Ch. 294.
Applied by Swinfen Eady J. ROWELL v. SATCHELL [1903] 2 Ch. 212
- Knott End Railway Company's Act*, 1898, *In re*, [1901] W. N. 24.
Reversed by C. A. - [1901] 2 Ch. 8
- Knowles v. Scott* - - [1891] 1 Ch. 717
Distinguished by Farwell J. PULSFORD v. DEVENISH - [1903] 2 Ch. 265
- Kodak, Ltd. v. Clark* - - [1902] 2 K. B. 450
Affirmed by C. A. - [1903] 1 K. B. 505
- Korten v. West Sussex County Council*, (1903) 72 L. J. (K.B.) 514.
Followed by Div. Ct. LAIRD v. DOBELL [1906] 1 K. B. 131
- Krasnapolsky Restaurant and Winter Garden Co., In re*, [1892] 3 Ch. 174.
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- Krell v. Henry* - [1903] 2 K. B. 740
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- Kydd v. Liverpool Watch Committee*, [1907] 2 K. B. 591.
Reversed by H. L. (E.) [1908] A. C. 327
- Kydd v. Liverpool Watch Committee*, (1908) 24 Times L. R. 257.
Principle of, applied by Eve J. *In re ATKIN'S TRUSTS* [1909] 1 Ch. 471
- Lacaze v. Crédit Lyonnais* - [1897] 1 Q. B. 148
Distinguished by C. A. EMBIRICOS v. ANGLO-AUSTRIAN BANK [1905] 1 K. B. 677
- Lacey, In re. Ex parte Taylor*, (1884) 13 Q. B. D. 128.
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- Lacey, In re. Howard v. Lightfoot*, [1906] W. N. 213.
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- Lacey & Son, In re* - - (1883) 25 Ch. D. 301
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- La Cité de Montréal v. Les Ecclésiastiques du Séminaire de St. Sulpice de Montréal*, (1888) 14 App. Cas. 660, 662.
Referred to by P. C. DAILY TELEGRAPH NEWSPAPER CO. v. McLAUGHLIN [1904] A. C. 776, 778
- Lacon, In re* [1891] 2 Ch. 482, 497, 498
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- Ladies' Dress Association v. Pulbrook*, [1900] 2 Q. B. 376.
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- Ladyman v. Grave* - (1871) L. R. 6 Ch. 763
Referred to by Joyce J. DAMPER v. BASSET [1901] 2 Ch. 350
Principle of, not to be extended in one direction. HYMAN v. VAN DEN BERGH PARKER J. [1907] 2 Ch. 516; on appeal, C. A. [1908] 1 Ch. 167
- Ladywell Mining Co. v. Brookes*, (1887) 35 Ch. D. 400.
Applied by Wright J. *In re LADY FORREST (MURCHISON) GOLD MINE, LD.* - [1901] 1 Ch. 582
- Lagunas Nitrate Co. v. Lagunas Syndicate*, [1899] 2 Ch. 392.
Referred to by C. A. MERCHANTS' FIRE OFFICE v. ARMSTRONG [1901] W. N. 163
- Laidlaw v. Wilson* - - [1894] 1 Q. B. 74
Followed by Div. Ct. ELLIOT v. PILCHER - [1901] 2 K. B. 817
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- Lake, In re. Ex parte Dyer* [1901] W. N. 26
Reversed by C. A. [1901] W. N. 43; [1901] 1 K. B. 710
- Lake View Extended Gold Mines (Western Australia), Ltd., In re*, [1900] W. N. 44.
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- Lamb, In re* - - (1887) 4 Morr. 25
Referred to by H. L. (E.) CLOUGH v. SAMUEL - [1905] A. C. 442, 446
- Lamb, In re* - - (1889) 23 Q. B. D. 5
Overruled by C. A. *In re KINGDON & WILSON* - - [1902] 2 Ch. 342
- Lamb v. Evans* - [1893] 1 Ch. 218
Followed by H. L. (E.) LAWRENCE & BULLEN, LD. v. AFLALO AND COOK [1903] A. C. 17
- Lamb v. Walker*, (1878) 3 Q. B. D. 389, overruled by Darley Main Colliery Co. v. MITCHELL, (1886) 11 App. Cas. 127.
See TUNNICLIFFE & HAMPSON, LD. v. WEST LEIGH COLLIERY CO. Swinfen Eady J. [1905] 2 Ch. 390

- Lambert, In re* - [1897] 2 Ch. 169
Discussed by Joyce J. *In re* HARGREAVES [1902] W. N. 18;
C. A. [1903] W. N. 24, 28
Followed by Buckley J. *In re* WHITEFORD [1903] 1 Ch. 889
- Lambert, In re* [1908] 2 Ch. 117
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- Lambert v. Northern Ry. of Buenos Ayres Co.*, (1869) 18 W. R. 180.
Distinguished by Wright J. *In re* LONDON AND NORTHERN BANK [1901] 1 Ch. 728
- Lambeth Overseers v. London County Council*, [1897] A. C. 625.
Discussed by C. A. LIVERPOOL CORPORATION *v.* WEST DERBY ASSESSMENT COMMITTEE - [1908] 2 K. B. 647
- Lambourn v. McLellan*, [1903] W. N. 58; [1903] 1 Ch. 806.
Reversed by C. A. [1903] 2 Ch. 268
- Lamplough v. Company of Proprietors of the Kent Waterworks*, [1903] 1 Ch. 575.
Affirmed by H. L. (E.) - [1904] A. C. 27
- Lamson Pneumatic Tube Co. v. Phillips*, [1904] W. N. 56 (Erratum, 122).
Reversed by C. A. [1904] W. N. 134
- Lanarkshire (District Committee of Lower Ward of) v. Rutherglen Magistrates*, (1901) 38 Sc. L. R. 457.
Reversed by H. L. (Sc.) *sub nom.* LOWER WARD OF COUNTY LANARK *v.* RUTHERGLEN MAGISTRATES [1902] W. N. 157
- Lancashire and Cheshire Coal Association v. London and North-Western Ry. Co. and Lancashire and Yorkshire Ry. Co.*, [1906] 1 K. B. 577.
Affirmed by C. A. on different grounds [1907] W. N. 167; [1907] 2 K. B. 902
- Lancashire Brick and Terra Cotta Co. v. Lancashire and Yorkshire Ry. Co.*, [1902] 1 K. B. 381.
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- Lancaster v. Eoe*, (1859) 5 C. B. (N.S.) 715, 723, 725.
Approved and followed by C. A. PHILPOT *v.* BATH [1905] W. N. 114
- Lancaster Rural District Council v. Fisher and Le Fanu*, [1907] 2 K. B. 516.
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- Laurie v. Aglionby* - (1859) 27 Beav. 65
Distinguished by Buckley J. *In re* BANKS [1905] 1 Ch. 547
- Lane v. Goodwin* - (1843) 4 Q. B. 361
Applied by Swinfen Eady J. *In re* RUTTER [1907] 2 Ch. 592
- Lanfranchi v. Mackenzie*, (1867) L. R. 4 Eq. 421
Overruled by C. A. WARREN *v.* BROWN [1902] 1 K. B. 15
- Lang v. Spicer*, (1836) 1 M. & W. 129; 5 L. J. (M.C.) 60; 46 R. R. 290.
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- Langmead's Trusts, In re*, (1855) 20 Beav. 20, affirmed on appeal, 7 De M. & G. 353.
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- Langridge v. Hobbs* [1901] 1 K. B. 497
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- Langston v. Grant*, (1898) 25 Rettie, 1040; (1900) 2 Fraser, 49; [1900] A. C. 383.
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- Larsen v. Sylvester* - - [1908] A. C. 295
Distinguished by Hamilton J. THORMAN *v.* DOWGATE STEAMSHIP CO. [1910] 1 K. B. 410
- Lassence v. Tierney* - (1849) 1 Mac. & G. 551
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- Latham v. Latham* [1889] W. N. 171
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- Lavell v. Richings* - - [1906] 1 K. B. 480
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- Law v. Law* - - [1904] W. N. 152
Not followed by Neville J. MAINWARING *v.* CLARINA (LORD) [1910] W. N. 14
- Law Guarantee and Trust Society, Ltd. v. Mitcham and Cheam Brewery Co.*, [1906] 2 Ch. 98.
Followed by Neville J. NOAKES *v.* NOAKES & CO. [1907] 1 Ch. 64
Explained by Kekewich J. DAWSON *v.* BRAIME'S TADCASTER BREWERIES, LD. [1907] 2 Ch. 359
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- Law Society of the United Kingdom v. Waterlow Brothers and Layton*, (1883) 8 App. Cas. 407.
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Jeune, Pres. [1901] P. 239, 240
- Lawes, In re* - - (1881) 20 Ch. D. 81
Considered by C. A. *In re* JAUQUES [1903] 1 Ch. 267
- Lawford v. Billericay Rural Council*, [1903] 1 K. B. 772.
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- Lawford and Lawrence, In re* [1902] 2 K. B. 445
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- Lawley, In re. Zaiser v. Lawley*, [1902] 2 Ch. 673.
Affirmed by C. A. [1902] 2 Ch. 799
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affirmed by H. L. (E.) *sub nom.*
BEYFUS v. LAWLEY - [1903] A. C. 411
- Lawley, In re. Zaiser v. Perkins*, [1902] W. N. 154.
Affirmed by C. A. *sub nom. In re*
LAWLEY. ZAISER v. LAWLEY
[1902] W. N. 195; [1902] 2 Ch. 799
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- Lawrence v. Fletcher* - (1879) 12 Ch. D. 858
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- Lawrie v. Lees* (1881) 7 App. Cas. 19
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In re HIGGETT AND BIRD'S CONTRACT
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- Laxon & Co., In re* - - [1892] 2 Ch. 555
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- Leach v. Jay* - (1878) 9 Ch. D. 42
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- Leadbitter, In re* (1878) 10 Ch. D. 388
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- Leary v. Lloyd* - (1860) 3 E. & E. 178
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- Leatham v. Craig* - [1899] 2 I. R. 667
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- Lecouturier v. Rey* - C. A. [1908] 2 Ch. 715
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- Le Farrant v. Spencer* - (1748) 1 Ves. Sen. 96
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- Lee v. Dangar* [1892] 2 Q. B. 337
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[1902] 2 K. B. 260
- Lee v. Fagg*, (1873) L. R. 4 A. & E. 135; (1874)
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- Lees Brook Spinning Co., In re*, [1906] 1 Ch. 394
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- Leitrim (Lord) v. Enery*, (1844) 6 Ir. Eq. 357,
369.
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- Lemage v. Goodban*, (1865) L. R. 1 P. & M. 57, 62
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- Leng, In re* - - [1895] 1 Ch. 652
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- Leonis Steamship Co. v. Rank, Ltd.*, [1907] 1
K. B. 344.
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- Levene v. Gardner* - (1909) 25 Times L. R. 711
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- Leveridge, In re* - - - [1901] 2 Ch. 830
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- Levy v. Abercorris Slate and Slab Co.*, (1887) 37
Ch. D. 260, 264.
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[1906] 2 Ch. 216
- Lewin v. End* - - - - [1905] 1 K. B. 669
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[1906] A. C. 299
- Lewis, In re* - - - - [1900] 2 Ch. 176
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- Lewis, In re* - - - - [1904] 2 Ch. 656
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- Lewis v. Baker* - - - [1905] 2 K. B. 576
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Followed by C. A. *In re REIS*
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- Leyton and Walthamstow Cycle Co., In re*, [1901]
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- Lilford (Lord) v. Att.-Gen.*, (1867) L. R. 2 H. L. 63.
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- Lilley, In re* - - - [1892] 1 Q. B. 759
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- Linoleum Manufacturing Co. v. Nairn*, (1878)
7 Ch. D. 834.
Distinguished by C. A. *In re CHESEBROUGH'S TRADE MARK "VASELINE"*
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- Lisheard Union v. Lisheard Waterworks Co.*,
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- Lisle v. Reeve* - - - [1900] W. N. 264
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- Lister v. Lane & Nesham* - [1893] 2 Q. B. 212
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[1902] W. N. 108
- Lister & Co. v. Stubbs* (1890) 45 Ch. D. 1
Followed by C. A. *POWELL & THOMAS v. EVAN JONES & CO.* [1905] 1 K. B. 11
- Little, In re* - - - (1889) 40 Ch. D. 418, 422
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- Little v. MacLellan, Ltd.* - (1900) 2 F. 387
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23.
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- Liverpool and North Wales Steamship Co. v. Mersey Trading Co.*, [1908] 2 Ch. 460.
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- Liverpool Corporation v. Chorley Waterworks Co.*, (1852) 2 D. M. & G. 852, 860.
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- Liverpool Corporation v. Llanfyllin Assessment Committee*, [1899] 2 Q. B. 14.
Distinguished by Div. Ct. *NEW RIVER CO. v. HERTFORD UNION*
[1901] 2 K. B. 620;
C. A. [1902] 2 K. B. 597
- Liverpool Corporation v. Peter Walker & Son, Ltd.*, [1908] 1 K. B. 28.
Reversed by C. A. [1908] 2 K. B. 33
- Liverpool Improvement Act, In re*, (1868) L. R. 5 Eq. 282.
Applied by Swinfen Eady J. *In re LONDON UNITED TRAMWAYS ACT, 1900*
[1906] 1 Ch. 534
- Llandudno Urban Council v. Woods*, [1899] 2 Ch. 705.
See *BRINCKMAN v. MATLEY*
C. A. [1904] 2 Ch. 313, 317
- Llangattock (Lord) v. Watney, Combe, Reid & Co.*, [1909] 2 K. B. 884.
Reversed by C. A. [1910] 1 K. B. 236
Decision of C. A., [1910] 1 K. B. 236,
affirmed by H. L. (E.) - [1910]
A. C. 394

- Llanover (Baroness), In re. Herbert v. Freshfield* (No. 2), [1903] 2 Ch. 330.
Discussed by Swinfen Eady J. *In re BARONESS LLANOVER, HERBERT v. RAM* - [1907] 1 Ch. 635
- Llanover's (Baroness) Will, In re*, [1902] W. N. 149; [1902] 2 Ch. 679.
Affirmed with a variation
C. A. [1903] 2 Ch. 16
- Lloyd, In re* - - - (1841) 3 M. & G. 547
See HUMPHREYS v. POLAK
C. A. [1901] 2 K. B. 385, 389
- Lloyd, In re* - - - [1903] 1 Ch. 385
Explained and distinguished by C. A. *In re HAZELDINE'S TRUSTS*
[1908] 1 Ch. 34
- Lloyd v. Branton*, (1817) 3 Mer. 108; 17 R. R. 33
Followed by C. A. *In re WHITING'S SETTLEMENT* [1905] 1 Ch. 96
- Lloyd v. Guibert*, (1865) L. R. 1 Q. B. 115, 120, 122.
Applied by Swinfen Eady J. *BRITISH SOUTH AFRICA CO. v. DE BEERS CONSOLIDATED MINES, LD* C. A. [1910] 2 Ch. 502
- Lloyd v. Tench* (1751) 2 Ves. Sen. 213, 215
Explained by Swinfen Eady J. *In re GIST* - [1906] 1 Ch. 58
- Lloyd and North London Ry. (City Branch) Act*, (1861), *In re*, [1896] 2 Ch. 397.
Followed by Swinfen Eady J. *In re LONDON UNITED TRAMWAYS ACT, 1900* [1906] 1 Ch. 534
- Lloyd Edwards, In re*, (1891) 61 L. J. (Ch.) 22
Referred to by C. A. *In re MARQUIS OF ANGLESEY* [1901] 2 Ch. 548
- Lloyd's Bank, Ltd. v. Bullock*, [1896] 2 Ch. 192
Distinguished by Parker J. *CAPELL v. WINTER* [1907] 2 Ch. 376
- Lloyd's Bank, Ltd. v. Cooke*, [1907] 1 K. B. 794
Distinguished by C. A. *SMITH v. PROSSER* [1907] 2 K. B. 735
- Lloyd's Banking Co. v. Jones*, (1885) 29 Ch. D. 221
Followed by Parker J. *WALKER v. LINOM* - [1907] 2 Ch. 104
- Local Government Board for Ireland v. Rex*, [1902] 2 I. R. 637.
Reversed by H. L. (Ir.) [1903] A. C. 402
- Lockhart v. Reilly* - (1856) 25 L. J. (Ch.) 697
Applied by Warrington J. *In re LINSLEY* - [1904] 2 Ch. 785
- Lodge v. National Union Investment Co.*, [1907] 1 Ch. 300.
Distinguished by C. A. *CHAPMAN v. MICHAELSON* [1909] 1 Ch. 238
- Loftus v. Roberts* - (1902) 18 Times L. R. 532
Referred to by Buckley J. *BROOME v. SPEAK* - [1902] W. N. 96;
H. L. (E.) *sub nom. SHEPHEARD v. BROOME*, [1904] A. C. 342
- Logan v. Bank of Scotland* (No. 2), [1906] 1 K. B. 141.
Applied by Warrington J. *EDGBERT v. SHORT* [1907] 2 Ch. 205
- Logsdon v. Booth* - - [1900] 1 Q. B. 401
Followed by Div. Ct. *GILBERT v. JONES* [1905] 2 K. B. 691
- Logsdon v. Trotter* - [1900] 1 Q. B. 617
Followed by Div. Ct. *GILBERT v. JONES* [1905] 2 K. B. 691
- Lolley's Case* - - (1812) Russ. & Ry. 237
Considered by C. A. *BATER v. BATER* [1906] P. 209
- Lomas v. Holmden* (1749) 1 Ves. Sen. 290
Referred to by P. C. *AMYOT v. DWARRIS* - [1904] A. C. 268, 271
- "*London*," *The* - - [1904] P. 355
On appeal - C. A. [1905] P. 152
- London and Caledonian Marine Insurance Co., In re*, (1879) 11 Ch. D. 140.
Approved and followed by *Farwell J. PULSFORD v. DEVENISH* [1903] 2 Ch. 625
- London and India Docks Co. v. Thames Steam Tug and Lighterage Co.*, [1908] 1 K. B. 786.
Reversed by H. L. (E.) [1909] A. C. 15
- London and North-Western Ry. Co., In re*, (1872) 26 L. T. 687.
Referred to by Kekewich J. *Ex parte MIDLAND RY. CO.* [1903] W. N. 99
This decision was reversed by C. A. [1903] W. N. 201; [1904] 1 Ch. 61
- London and North-Western Ry. Co. v. Ackroyd*, (1862) 31 L. J. (Ch.) 588.
Referred to by Eve J. *LONDON AND NORTH WESTERN RY. CO. v. HOWLEY PARK COAL AND CANNEL CO.* [1910] W. N. 163
- London and North-Western Ry. Co. v. Evans*, [1893] 1 Ch. 16.
Approved by H. L. (Sc.) *CLIPPENS OIL CO. v. EDINBURGH AND DISTRICT WATER TRUSTEES* [1904] A. C. 64
Referred to by H. L. (Sc.) *MUSSELBURGH REAL ESTATE CO. v. MUSSELBURGH (PROVOST, & C., OF)* [1905] A. C. 491, 500
- London and North-Western Ry. Co. v. Westminster Corporation*, [1902] 1 Ch. 269.
Reversed by C. A. - [1904] 1 Ch. 759
Decision of C. A. [1904] 1 Ch. 759, reversed upon the facts by H. L. (E.) *sub nom. WESTMINSTER CORPORATION v. LONDON AND NORTH WESTERN RY. CO.* [1905] A. C. 426
- London and Northern Bank, In re, Archer's Case*, [1901] W. N. 236.
Affirmed by C. A. - [1901] W. N. 247
- London and Northern Bank, Ltd., In re, Had-dock's Case*, [1902] W. N. 55.
Affirmed by C. A. - [1902] 2 Ch. 73
See *In re WALKER*
Div. Ct. [1909] W. N. 104

- London and South-Western Ry. Co. v. Gomm*, (1882) 20 Ch. D. 526, 583
Referred to by C. A. FORMBY *v.* BARKER [1903] 2 Ch. 539
Referred to by Warrington J. WOODALL *v.* CLIFTON [1904] W. N. 205; C. A. [1905] 2 Ch. 257
Referred to by C. A. *In re* NISBET AND POTTS' CONTRACT [1906] 1 Ch. 386
Approved on one point by H. L. (E.) EDWARDS *v.* EDWARDS [1909] A. C. 275
Explained and distinguished by C. A. SOUTH EASTERN RY. CO. *v.* ASSOCIATED PORTLAND CEMENT MANUFACTURERS (1900), LD. [1910] 1 Ch. 12
- London, Chatham and Dover Ry. Co. v. South Eastern Ry. Co.*, (1888) 40 Ch. D. 100.
Considered by C. A. JOSEPH CROSFIELD & SONS, LD. *v.* MANCHESTER SHIP CANAL CO. - [1904] 2 Ch. 123; H. L. (E.) [1905] A. C. 421
- London, Chatham and Dover Ry. Co. v. South Eastern Ry. Co.*, [1893] A. C. 429
Referred to by P. C. JOHNSON *v.* REX [1904] A. C. 817, 821
Distinguished by C. A. NORWICH CORPORATION *v.* NORWICH ELECTRIC TRAMWAYS CO. [1906] 2 K. B. 119
- London Corporation, Ex parte*, [1878] W. N. 238
See *In re* BRETTINGHAM Farwell J., [1904] W. N. 168
- London Corporation and Tubbs' Contract, In re*, [1894] 2 Ch. 524.
Referred to by C. A. BENNETT *v.* STONE [1903] 1 Ch. 509
- London County Council v. Att.-Gen.*, [1902] A. C. 165.
Applied by C. A. ATT.-GEN. *v.* MERSEY RY. CO. [1907] 1 Ch. 81; but the decision of the C. A. was reversed by H. L. (E.) [1907] A. C. 415
- London County Council v. Illuminated Advertisements Co.*, [1904] 2 K. B. 886.
Referred to by Div. Ct. LONDON COUNTY COUNCIL *v.* SCHEWZIK [1905] 2 K. B. 695, 698, 701
Followed by Div. Ct. LONDON COUNTY COUNCIL *v.* HANCOCK AND JAMES [1907] 2 K. B. 45
- London County Council v. Metropolitan Ry. Co.*, [1909] 1 K. B. 116.
Reversed by C. A. [1909] 2 K. B. 317
- London County Council v. South Metropolitan Gas Co.*, [1903] 2 Ch. 532.
Affirmed by C. A. [1904] 1 Ch. 76
- London County Council v. West Ham Churchwardens*, [1892] 2 Q. B. 173.
Not followed by C. A. REX *v.* WOODHOUSE - [1906] 2 K. B. 501; but the decision of the C. A. was reversed by H. L. (E.) [1907] W. N. 195; [1907] A. C. 420
- London General Omnibus Co. v. Lavell*, [1901] 1 Ch. 135.
Commented on by Farwell J. BOURNE *v.* SWAN & EDGAR, LD. [1903] 1 Ch. 211
- London (Mayor or) and Tubbs' Contract, In re*, [1894] 2 Ch. 524.
Referred to by Buckley J. BENNETT *v.* STONE - [1901] W. N. 225; C. A. [1903] 1 Ch. 509
- London Pressed Hinge Co., In re*, [1905] 1 Ch. 576.
Referred to by Buckley J. *In re* ALFRED MELSON & CO. [1906] 1 Ch. 841
- London Scottish Benefit Society v. Chorley*, (1884) 13 Q. B. D. 872.
Referred to by Div. Ct. H. TOLPUTT & CO., LD. *v.* MOLE [1910] W. N. 252
- London Steam Dyeing Co. v. Digby*, (1888) 36 W. R. 497.
See COOPER-DEAN *v.* BADHAM Eve J. [1908] W. N. 100
- London United Tramways Act, 1900, In re*, [1906] 1 Ch. 534.
Overruled on one point by C. A. *In re* THAMES TUNNEL (ROTHERHITHE AND RATCLIFF) ACT, 1900 [1908] 1 Ch. 493
- Long v. Blackall*, (1797) 7 T. R. 100; 4 R. R. 73
Discussed by C. A. *In re* WILMER'S TRUSTS [1903] 2 Ch. 411
- Long v. Great Northern and City Ry. Co.*, [1902] 1 K. B. 813.
Followed by C. A. *In re* FRERE AND STAVELEY TAYLOR & CO. AND NORTH SHORE MILL CO. [1905] 1 K. B. 366
- Long v. Long and Johnson* (1890) 15 P. D. 218
Doubted by Jeune, Pres. HYMAN *v.* HYMAN - [1904] P. 403
- Longbottom & Sons, In re* [1904] W. N. 78
Affirmed by C. A. [1904] 2 Ch. 152
Followed by C. A. *In re* COHEN & COHEN - [1905] 2 Ch. 137
- "Longford," *The* (1889) 14 P. D. 34
Followed by C. A. THE BURNS [1907] P. 137
- Longhead v. Phelps* - (1770) 2 W. Bl. 704
Principle of, applied by Farwell J. *In re* BOWLES - [1905] 1 Ch. 371
- Longley v. Longley* - (1871) L. R. 13 Eq. 133
Distinguished by Buckley J. KIRBY-SMITH *v.* PARNELL [1903] 1 Ch. 483
- Longton v. Wilsby* - (1897) 76 L. T. 770
Explained and followed by Warrington J. BEVAN *v.* WEBB [1905] 1 Ch. 620
- Loomes v. Stotherd*, (1823) 1 S. & S. 458; 1 L. J. (O.S.) (Ch.) 220; 24 R. R. 209.
Overruled on one point. See *In re* HAYWARD - BYRNE J. [1901] 1 Ch. 221
- Lord v. For* - - - [1892] 1 Q. B. 199
Referred to by Div. Ct. GOODRICH *v.* GREAT GRIMSBY (TOWN CLERK) [1902] 1 K. B. 301, 304, 305

- Lord Advocate v. Miller's Trustees*, (1884) 21 Sco. L. R. 709.
Followed by Farwell J. *In re TURN-BULL* [1905] 1 Ch. 726
- Lord Advocate v. Moray (Countess of)*, (1904) 6 F. 347.
Reversed by H. L. (Sc.) [1905] A. C. 531
- Lord Advocate v. Sawers*, (1897) 35 Sc. L. R. 190 ; 3 Tax Cases, 617.
Not followed on one point by C. A. ATT-GEN v. TILL [1909] 1 K. B. 694
- Lord Advocate v. Stewart (Sprott's Trustees)* (1901) 3 F. 440.
Affirmed by H. L. (Sc.) [1902] A. C. 344
- "*Lord Bangor*," *The* - [1896] P. 28
Distinguished by Gorell Barnes J. *THE "CHALLENGE" AND "DUC D'AUMALE"* [1904] P. 41 ; C. A. [1905] P. 198
- Lord Provost of Glasgow v. Farie*, (1888) 13 App. Cas. 657.
Explained by C. A. *In re TODD, BIRLESTON & CO. AND NORTH EASTERN RY. CO.* [1903] 1 K. B. 603
- Lord's Trustee v. Great Eastern Ry. Co.*, [1908] 2 K. B. 54.
Reversed by H. L. (E.) *sub nom. GREAT WESTERN RY. CO. v. LORD'S TRUSTEE*. [1909] A. C. 109
- Loring v. Thomas* (1861) 1 Dr. & Sm. 497
Discussed by C. A. *In re GORRINGE* [1906] 2 Ch. 341
Followed by Eve J. *In re LAMBERT* [1908] 2 Ch. 117
Discussed by C. A. *In re COPE* [1908] 2 Ch. 1
Followed by Joyce J. *In re METCALFE* [1909] 1 Ch. 424
- Loscombe v. Wintringham* - (1850) 13 Beav. 87
Referred to by Buckley J. *In re DAVIS* [1902] 1 Ch. 876
- Love v. Love* - (1881) 7 L. R. I. 306
Followed by Swinfen Eady J. *In re FRANCIS* - [1905] 2 Ch. 295
- Lovegrove v. Nelson*, (1834) 3 My. & K. 1, 20 ; 41 R. R. 1, 2.
Considered by C. A. *BYRNE v. REID* [1902] 2 Ch. 735
- Lovejoy v. Cole* - [1894] 2 Q. B. 861
Followed by C. A. *SOLOMON v. MULLINER* - [1901] 1 K. B. 76
- Lovell, Ex parte* - [1901] 2 K. B. 16
Distinguished by Kekewich J. *In re COTGRAVE* [1903] 2 Ch. 705
- Loveridge, In re. Drayton v. Loveridge*, [1902] 2 Ch. 859.
See In re LOVERIDGE. Buckley J. [1904] 1 Ch. 518
- Lovett v. Lovett* - [1898] 1 Ch. 82
Followed by Joyce J. *In re MADDY'S ESTATE* [1901] 2 Ch. 920
- Low, In re* - [1900] 1 Q. B. 147
See In re O. C. S. C. A. [1904] 2 K. B. 161
Applied by C. A. *In re A DEBTOR* [1907] W. N. 4
- Low v. Bouverie* - [1891] 3 Ch. 82
Discussed by C. A. *OLIVER v. BANK OF ENGLAND* [1902] 1 Ch. 610 ; *H. L. (E.) sub nom. STARLEY v. BANK OF ENGLAND* [1903] A. C. 114
- Low v. Bouverie* - [1891] 3 Ch. 82, 113
Applied by Swinfen Eady J. *PORTER v. MOORE* - [1904] 2 Ch. 367
- Low v. General Steam Fishing Co.*, [1909] A. C. 523.
Referred to by C. A. *HEWITT v. OWNERS OF SHIP "DUCHESS"* [1910] 1 K. B. 772
- Low v. Guthrie* - (1907) S. C. 1240
Affirmed by H. L. (Sc.) [1909] A. C. 278
- Low (or Jackson) v. General Steam Fishing Co.*, (1909) S. C. 63.
Reversed by H. L. (Sc.) [1909] A. C. 523
- Lowe, Re* - (1890) 7 Mor. 25
Referred to by Div. Ct. *In re GENTRY, A DEBTOR (No. 31 of 1909)* [1909] W. N. 29 ; C. A. [1910] W. N. 79 ; [1910] 1 K. B. 825
- Lowe v. Darling & Son*, [1905] W. N. 111 ; [1905] 2 K. B. 501.
Affirmed by C. A. - [1906] 2 K. B. 772
- Lowe v. Lowrie* (1902) 18 Times L. R. 553
Observed on by Buckley J. *BRADFELD v. CHELTENHAM GUARDIANS* [1906] 2 Ch. 371
- Lowe v. Pearson* - [1899] 1 Q. B. 261
Distinguished by C. A. *WHITEHEAD v. READER* [1901] 2 K. B. 48
- Löwenfeld v. Löwenfeld* - [1903] W. N. 90
Affirmed by C. A. [1903] P. 177
- Lower Ward of County Lanark v. Rutherglen Magistrates*, (1901) 38 Sco. L. R. 457.
Reversed by H. L. (Sc.) [1902] W. N. 157
- Lowery v. Hallard* (1905) 22 Times L. R. 186
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- Lowery v. Walker* - [1910] 1 K. B. 173
Reversed by H. L. (E.) [1910] W. N. 241
- Lowry v. Williams* - (1895) 1 I. R. 274
Referred to by H. L. (I.) *ECONOMIC LIFE ASSURANCE SOCIETY v. USBORNE* [1902] A. C. 147, 151, 153
- Lowther v. Caledonian Ry. Co.*, [1892] 1 Ch. 734
82, 83, 85.
Applied by Swinfen Eady J. *LORD LECONFIELD v. LONDON AND NORTH WESTERN RY. CO.* [1907] 1 Ch. 38
- Lucas v. Brandreth* - (1860) 28 Beav. 274
Reviewed by Joyce J. *In re TRINGHAM'S TRUSTS* [1894] 2 Ch. 487

- Lucas and Chesterfield Gas and Water Board, In re*, [1908] 1 K. B. 571.
On appeal, the award remitted to umpire - **C. A. [1909] 1 K. B. 16**
- Lucena v. Lucena* (1877) 7 Ch. D. 255, 270
Approved and followed by Joyce J. *In re BILHAM* - [1901] 2 Ch. 169
Discussed by Farwell J. *In re FRIEND'S SETTLEMENT* [1906] 1 Ch. 47
- Lumley v. Wagner* - (1852) 1 D. M. & G. 60.
Applied by C. A. *MANCHESTER SHIP CANAL Co. v. MANCHESTER RACE-COURSE Co.* [1901] 2 Ch. 37
- Lund's Case* - - - (1859) 27 Beav. 464
Overruled by C. A. *In re DISCOVERIES FINANCE CORPORATION, LD., LIND-LAR'S CASE* [1910] 1 Ch. 312
- Lundie v. Falkirk (Magistrates of)*, (1890) 18 R. 60.
Affirmed by H. L. (Sc.) *BOYLE (or WALSH) v. WILSON* - [1907] A. C. 45
- Lyme Regis (Mayor, &c., of) v. Henley*, (1834) 2 Cl. & F. 331; 37 R. R. 125.
Referred to by H. L. (E.) *SIMPSON v. ATT-GEN.* [1904] A. C. 476, 491
- Lynch Blosse, In re* - [1899] W. N. 27 (8)
Followed by Kekewich J. *In re WOODS* [1904] 2 Ch. 4
- Lynne's Trusts, In re* (1869) L. R. 8 Eq. 65
Not followed by Joyce J. *In re GRIFFITH'S POLICY* [1903] 1 Ch. 739
Disapproved by C. A. *In re COLEY* [1903] 2 Ch. 102
- Lyon v. Knowles* (1863) 3 B. & S. 556
Followed by Byrne J. *KELLY'S DIRECTORIES, LD. v. GAVIN AND LLOYDS* [1901] 1 Ch. 374; **C. A. [1902] 1 Ch. 631**
- Lyon v. London City and Midland Bank*, [1903] 2 K. B. 135.
Referred to by H. L. (E.) *REYNOLDS v. ASHBY & SON* - [1904] A. C. 466, 472
- Lyon v. Mitchell* - - - [1899] W. N. 27
Approved by C. A. *In re ATKINSON* [1904] 2 Ch. 160
- Lyons & Sons v. Wilkins* - [1899] 1 Ch. 255
See *TAFF VALE RY. Co. v. AMALGAMATED SOCIETY OF RAILWAY SERVANTS*
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- Lysaght v. Edwards* - - (1876) 2 Ch. D. 499
Referred to by Kekewich J. *PLEWS v. SAMUEL* - [1904] 1 Ch. 464
- Lysons v. Andrew Knowles & Sons, Ltd. Stuart v. Niron and Bruce*, [1900] 1 Q. B. 780; [1900] 2 Q. B. 95.
Reversed by H. L. (E.) [1901] A. C. 79
See *Factory and Workshop Act, 1901* (1 Edw. 7, c. 22), s. 104.
- Lysons v. Andrew Knowles & Sons, Ltd.*, [1901] A. C. 79.
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- Lysons v. Knowles & Sons* - [1901] A. C. 79
Referred to by C. A. *GILES v. BELFORD, SMITH & Co.* [1903] 1 K. B. 848
Followed by Ct. of Sess. (Sc.) *FLEMING v. LOCHGELLY IRON AND COAL Co.* [1903] W. N. 165
- M. v. D.* - - - (1885) 10 P. D. 175
Not followed by Bargarve Deane J. *S. v. S.* [1907] P. 224
- Macassey v. Thompson* - (1902) 36 Ir. L. T. 162
Followed by Joyce J. *In re BOLTON ESTATES* [1902] W. N. 214; **C. A. [1903] 2 Ch. 461**
- McCabe v. Bank of Ireland*, (1889) 14 App. Cas. 413.
Distinguished by Wright J. *In re UNITED SERVICE ASSOCIATION* [1901] 1 Ch. 97
- McCabe v. Jopling* [1904] 1 K. B. 222
Followed by C. A. *PLANT v. WRIGHT & Co.* [1905] 1 K. B. 353
- Macbeth v. North and South Wales Bank*, [1906] 2 K. B. 718.
Affirmed by C. A. [1908] 1 K. B. 13
Decision of C. A., [1908] 1 K. B. 13; affirmed by H. L. (E.) *sub nom. NORTH AND SOUTH WALES BANK v. MACBETH. NORTH AND SOUTH WALES BANK, LD. v. IRVINE* [1908] A. C. 137
- Macbeth & Co. v. Chrislett*, C. A. [1909] 2 K. B. 811.
Decision of C. A. affirmed by H. L. (E.) [1910] A. C. 220
- McCheane v. Gyles* - - [1902] 1 Ch. 287
Referred to. *MCCHEANE v. GYLES* (No. 2) [1902] 1 Ch. 911
- McCormick v. Gray* - (1861) 7 H. & N. 25, 39
Followed by Swinfen Eady J. *DUNLOP PNEUMATIC TYRE Co. v. DAVID MOSELEY & SONS, LD.* [1904] 1 Ch. 164; **C. A. [1904] 1 Ch. 612**
Affirmed by C. A. [1904] 1 Ch. 612
- Macculloch v. Anderson (McCulloch's Trustees)*, (1900) 2 F. 749.
Affirmed by H. L. (Sc.) [1904] A. C. 55
- McCreight v. McCreight* (1849) 13 Ir. Eq. 314
Followed by Byrne J. *In re LONG* [1901] W. N. 166
- McDermott v. "Tintoretto" (Owners of the Steamship)*, [1909] 2 K. B. 704.
Reversed by H. L. (E.) [1910] W. N. 274
- McDonald v. Banana (Owners of Steamship)*, [1908] 2 K. B. 926.
Followed by C. A. *MOORE v. MANCHESTER LINERS, LD.* - [1909] 1 K. B. 417; but the decision of the C. A. was reversed by H. L. (E.) [1910] A. C. 220

- McDougall & Bonthron, Ltd. v. London and India Docks Co.* Page, Son & East, *Ld. v. The Same*, [1908] 2 K. B. 175.
Reversed by H. L. (E.) *sub nom.* LONDON AND INDIA DOCKES CO. v. McDUGALL & BONTHTON, LD. LONDON AND INDIA DOCKES CO. v. PAGE, SON & EAST, LD. [1909] A. C. 25
- McDowall v. Great Western Ry. Co.* [1902] 1 K. B. 618.
Reversed by C. A. - [1903] 2 K. B. 331
- Mace v. Philcox* - (1864) 15 C. B. (N.S.) 600
Referred to by Buckley J. BRINCKMAN v. MATLEY [1904] 2 Ch. 313, 317
- Macfadyen, In re. Ex parte VIZIANAGARAM MINING Co.* [1908] W. N. 161.
Reversed by C. A.
[1908] W. N. 198; [1908] 2 K. B. 817
- McGlade v. Royal London Mutual Insurance Society, Ltd.* [1910] W. N. 75
Affirmed by C. A. [1910] W. N. 130; [1910] 2 Ch. 169
Referred to *In re* ROYAL LONDON MUTUAL INSURANCE SOCIETY, LD.
Eve J. [1910] W. N. 226
- McGonnell v. Murray* (1869) Ir. Rep. 3 Eq. 460
Distinguished on one point by Byrne J. *In re* WESTON - [1902] 1 Ch. 680
- MacGowan, In re* - [1891] 1 Ch. 105, 115
Referred to by Buckley J. *In re* ROMAIN - [1903] 1 Ch. 702
- McIlwraith v. Green* (1884) 14 Q. B. D. 766
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- "*Marechal Suchet*," *The* [1896] P. 233
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- Mercantile Investment and General Trust Co. v. River Plate Trust Loan and Agency Co.*, [1892] 2 Ch. 303.
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- "*Mercedes de Larrinaga*," *The* - [1904] P. 215
Referred to by *Gorell Barnes J. THE "SUSSEX"* [1904] P. 236, 248
- Mercer v. Denne*, [1904] W. N. 136; [1904] 2 Ch. 534.
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- Mercer v. Liverpool, St. Helens and South Lancashire Ry. Co.*, [1901] 2 K. B. 753.
Reversed by C. A. [1903] 1 K. B. 652
- Mercer v. Liverpool, St. Helens and South Lancashire Ry. Co.*, [1903] 1 K. B. 652.
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Considered by *C. A. In re HAMILTON YOUNG & Co.* [1905] 2 K. B. 772
- Merchants' Fire Office, In re* [1899] 1 Ch. 432
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Referred to by *P. C. AMYOT v. DWARRIS* [1904] A. C. 268, 271
- Meredyth v. Meredith and Leigh* - [1895] P. 92
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- Merrick's Trusts, In re* (1866) L. R. 1 Eq. 551
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- Merrill v. Morton* - (1881) 17 Ch. D. 382
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- Merrill v. Wilson, Sons & Co.* [1901] 1 K. B. 35
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(1 Edw. 7, c. 22), s. 104.
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- Merry v. Pownall* - [1898] 1 Ch. 306
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[1907] 2 Ch. 15
- Merry v. Ryces* (1757) 1 Eden 1
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- Merryweather v. Niran*, (1799) 8 T. R. 186; 16
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[1901] W. N. 182
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- Merthyr, The* - (1898) 8 Asp. M. L. C. 475
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- Metcalfe, In re* - (1879) 13 Ch. D. 236
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92; 1 Jur. (N.S.) 438.
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- Middleton, In the Goods of* - [1888] 14 P. D. 23
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- Miller's Trustees v. Miller* - - - (1890) 18 R. 301
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- Moss, In re. Kingsbury v. Walter*, [1899] 2 Ch. 314.
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- Mutter v. Eastern and Midlands Ry. Co.*, (1888) 38 Ch. D. 92.
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- Nairn v. University of St. Andrews*, (1908) S. C. 113.
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- National Motor Mail-Coach Co., In re.* *Clinton's Claim*, [1908] W. N. 130.
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- Nisbet and Potts' Contract, In re*, [1905] W. N. 32 ;
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- North Manchester Overseers v. Winstanley*, [1908] 1 K. B. 835.
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- North of England Steamship Co., In re*, [1905] W. N. 66; [1905] 1 Ch. 609.
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- North Staffordshire Colliery Owners' Association v. North Staffordshire Ry. Co., London and North Western Ry. Co., Great Western Ry. Co. and Shropshire Union Rys. and Canal Co.*, [1908] 1 K. B. 771.
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- N. Strong, The* - - - [1892] P. 105
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Distinguished by C. A. *In re* HASLAM & HIER-EVANS [1902] 1 Ch. 765
- O'Brien v. O'Brien* - - [1896] 2 I. R. 459
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- Ockleston v. Fullalove* - (1874) L. R. 9 Ch. 147
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Held to have been overruled by *Hall v. May*, (1857) 3 K. & J. 586, and not followed by Swinfen Eady J. *In re* WADANIS - [1908] 1 Ch. 123
- O'Connell, In re* - - - [1903] 2 Ch. 574
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- Oddly, In re* - - - [1895] 1 Q. B. 392
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- Odessa Waterworks Co., In re* [1897] W. N. 166
(more fully reported in a note at [1901] 2 Ch. 190, n.).
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Dissented from by H. L. (Sc.). UNITED COLLIERIES, LD. v. SIMPSON [1909] A. C. 383
- Ogden v. Ogden* - - - [1907] P. 107
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Decision of C. A. - [1904] 2 K. B. 410
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Considered by C. A. *In re* Rayner [1904] 1 Ch. 176
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- Ohlson's Case* - [1891] 1 Q. B. 485
See REX v. INLAND REVENUE COMMISSIONERS Div. Ct. [1906] W. N. 216
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Referred to by C. A. *In re* MARTEN [1902] 1 Ch. 314
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- Oliver v. Bank of England, Starkey, Leveson and Cooke, Third Parties*, [1901] W. N. 45; [1901] 1 Ch. 652.
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- Oliver v. Hinton* - [1899] 2 Ch. 264
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- Onley v. Gardiner*, (1838) 4 M. & W. 496; 51 R. R. 704.
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- Oppenheimer v. Attenborough & Son*, [1907] 1 K. B. 510.
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- Oppenheimer v. Frazer & Wyatt*, [1907] 2 K. B. 519.
In part reversed by C. A. [1907] 2 K. B. 50
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Affirmed by C. A. [1908] 1 K. B. 221
- Orford (Countess of), In re* [1896] 1 Ch. 257
Explained by C. A. BERRY v. GAUK-ROGER [1903] 2 Ch. 116
- "Orient," *The* (1869) 3 Mar. Law Cases, 322
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- Orlebar, In re* - [1908] 1 Ch. 136
Followed by C. A. *In re* HADLEY [1909] 1 Ch. 20
- Ormskirk Union v. Chorlton Union*, [1902] W. N. 193; [1903] 1 K. B. 19.
Affirmed by C. A. [1903] 2 K. B. 498
- Orsmond, In re* - (1888) 58 L. T. 24
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- Orton v. Smith* (1873) L. R. 3 P. & M. 23
Followed by Walton J. WILSON v. BASSIL - [1903] P. 239
- Osborn v. Gillett* - (1873) L. R. 8 Ex. 88
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- Osborn v. Wood Bros.* - [1897] 1 Q. B. 197
See Factory and Workshop Act, 1901 (1 Edw. 7, c. 22), s. 95.
- Osborne v. Amalgamated Society of Railway Servants*, [1909] 1 Ch. 163.
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Referred to. *In re* AMALGAMATED SOCIETY OF RAILWAY SERVANTS. ADDISON v. PILCHER Swinfen Eady J. [1910] W. N. 210; [1910] 2 Ch. 547
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Principle of, applied by C. A. REID v. BICKERSTAFF - [1909] 2 Ch. 305
- Osborne to Rowlett* - (1880) 13 Ch. D. 774
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- Osmond v. Campbell & Harrison, Ltd.*, [1905] 2 K. B. 852.
Followed by C. A. HALL v. TAMWORTH COLLIERY CO., LD. - [1910] W. N. 268
- O'Shanassy v. Joachim* (1876) 1 App. Cas. 82
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- Ossalinsky (Countess) and Manchester Corporation, In re*, (1883). Not reported.
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- Otter v. Vaux (Lord)*, (1856) 2 K. & J. 657; 6 D. M. & G. 638, 643.
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- Orey, In re* - (1885) 29 Ch. D. 560
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- "*Ovingdean Grange*," *The* - [1901] P. 127
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- Oxford (Bishop of) v. Henly* [1907] P. 88
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- "*P. Caland*," *Owners of the, and Freight v. Glamorgan Steamship Co.*, [1893] A. C. 207, 215.
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- Padwick v. Stanley* - (1852) 9 Hare, 627
Suggested limitation in, not followed by Swinfen Eady J. ASCHERSON v. TREDEGAR DRY DOCK AND WHARF CO. - [1909] 2 Ch. 401
- Page v. Cox* - (1851) 10 Hare, 163
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- Page v. Hayward* (1705) 2 Salk. 570
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- Page v. Vallis* - (1903) 19 Times L. R. 393
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- Paine v. Jones* (1874) L. R. 18 Eq. 320
Followed on one point by Buckley J. *In re* ANDERSON [1905] 2 Ch. 70
- Painter, Ex parte. In re Painter*, [1895] 1 Q. B. 85.
Distinguished by Div. Ct. *In re* BETTS. *Ex parte* OFFICIAL RECEIVER [1901] 2 K. B. 39
- Palace Shipping Co. v. Caine*, [1907] 1 K. B. 670
Affirmed by H. L. (E.) [1907] A. C. 386
- Palmer, In re* - - - [1900] W. N. 9
Followed by Kekewich J. *In re* SHARMAN [1901] 2 Ch. 280
- Palmer, In re* - - - [1893] 3 Ch. 369
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- Adopted by Swinfen Eady J. *In re* WAND [1907] 1 Ch. 391
- Palmer v. Blackburn* - (1822) 1 Bing. 61
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- Palmer v. Bramley* - - [1895] 2 Q. B. 405
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- Palmer v. Hutchinson* - (1881) 6 App. Cas. 619
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Incorrectly reported: see the full report in *In re* BISS C. A. [1903] 2 Ch. 40, at p. 65, n.
- Pankhurst v. Howell* - (1870) L. R. 6 Ch. 136
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- Pardoe, In re. McLaughlin v. Penny*, [1906] 1 Ch. 265.
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- Parfitt, In re* - (1889) 23 Q. B. D. 40
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- Parker, In re* (1885) 15 Q. B. D. 196
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Rule laid down in, followed by Neville J. *In re* WILLIAMS [1907] 1 Ch. 180
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Followed by C. A. *LYLES v. SOUTHEAST-ON-SEA CORPORATION* [1905] 2 K. B. 1
- Parker v. Lord Advocate* (1902) 4 F. 698
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- Parkers, In re* (1887) 19 Q. B. D. 84
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- Parkin v. South Hetton Coal Co.*, [1907] W. N. 81.
Affirmed by C. A. [1908] W. N. 7
- "*Parlement Belge*," *The* - (1880) 5 P. D. 197
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- Parmenter v. Webber*, (1818) 8 Taunt. 593; 20 R. R. 575.
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- Parr's Banking Co. v. Yates*, [1898] 2 Q. B. 460
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Affirmed by C. A. - [1901] 1 K. B. 548
- Partridge v. Partridge* - [1894] 1 Ch. 351
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- Paton v. Lewthwaite (or Paton)*, (1902) Scots Law Times, 281.
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- Patrick (Smith's Trustees) v. Smith*, [1900] 37 Sco. L. R. 557.
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- Pawlett v. Attorney-General*, (1651) Hardres' Rep. 465.
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- Payne v. Cork Co.* - [1900] 1 Ch. 308
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- Peacock v. Niddrie and Benhar Coal Co.*, (1902) 4 Fraser, 443; [1903] W. N. 162.
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- Peake's Settled Estates, In re* [1894] 3 Ch. 520
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- Pearce v. Bullard, King & Co.*, [1908] 1 Ch. 780
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- Pearce v. Watts* - (1875) L. R. 20 Eq. 492
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- Pearce's Trusts, In re*, C. A. [1909] W. N. 116
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- Pearson, In re* - (1876) 3 Ch. D. 807
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- Peart v. Bushell* (1827) 2 Sim. 38
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- Peckham, Dulwich, and Crystal Palace Tramways Bill, In re*, [1909] W. N. 180;
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- Pederson v. Lotinga*, (1857) 28 L. T. (O.S.) 267
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- Pedrotti's Will, Re* (1859) 27 Beav. 583
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- Peploe v. Galliers* - (1820) 4 Moore, 163
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- Perkins v. Ede* (1852) 16 Beav. 268
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- Perkins v. Gingell* (1885) 2 Times L. R. 39
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- "*Prins Hendrik*," *The* [1899] P. 177
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- Printers' and Transferrers' Amalgamated Trades
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184.
Followed by Warrington J. *In re
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- Prior v. Slaithewaite Spinning Co.*, [1898] 1 Q. B.
881.
See *Factory and Workshop Act*, 1901
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- Pritchard v. Merchants' Life Assurance Society*
(1858) 3 C. B. (N.S.) 662.
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- Pritchard v. Roberts* - (1873) L. R. 17 Eq. 222
Referred to by Joyce J. STEEDEN v.
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- Proctor v. Sargent* - (1840) 2 Man. & G. 20, 32
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ATKINSON [1908] 1 Ch. 537
- Proud v. Bates* - (1865) 34 L. J. (Ch.) 406
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- Proud v. Turner* - (1729) 2 P. Wms. 560
Distinguished by Swinfen Eady J. *In
re GIST* - [1906] 1 Ch. 58
- Prout v. Gregory* - (1889) 24 Q. B. D. 281
Referred to by C. A. SPENCE v. COLE-
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- Provincial Motor Cab Co. v. Dunning*, (1909)
25 Times L. R. 646.
Referred to by Div. Ct. DICKESON &
CO. v. MAYES [1910] 1 K. B. 452
- Prowse v. Spurway*, (1877) 46 L. J. (P. D. & A.)
49.
Applied by Swinfen Eady J. *In re
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- Pryor v. Pryor and Shelford*, (1887) 12 P. D. 165
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- Pugh and Sharman's Case*, (1872) L. R. 13 Eq.
566.
Distinguished by Parker J. *In re
NATIONAL BANK OF WALES, LD.*
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[1907] 1 Ch. 582
- Pugh v. Arton* (1869) L. R. 8 Eq. 626
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- Pugh v. Drew* - (1869) 17 W. R. 938
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HAM'S TRUSTS* [1904] 2 Ch. 487
- Pulbrook v. Richmond Consolidated Mining Co.*
(1878) 9 Ch. D. 610.
Referred to by Buckley J. SUTTON v.
ENGLISH AND COLONIAL PRODUCE CO.
[1902] 2 Ch. 502
- Pullman v. Hill & Co.* - [1891] 1 Q. B. 524
Discussed and distinguished by C. A.
EDMONDSON v. BIRCH & CO. AND
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- Punt v. Symons & Co.* - [1903] 2 Ch. 506
Not followed by C. A. BAILY v. BRITISH
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Ch. 374; but this decision of the C. A.
was reversed by H. L. (E.) [1906]
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- Pyman v. Dreyfus* (1889) 24 Q. B. D. 152
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Followed by C. A. SAXBY v. FULTON
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- "*Queen*," *The* (1869) L. R. 2 A. & E. 354
Followed by Gorell Barnes J. THE
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- Queen's Hotel Co., Cardiff, Ltd., In re*, [1900] 1
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Distinguished by C. A. *In re NEW
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[1901] 2 Ch. 357
- Quicke v. Chapman* - [1902] W. N. 163
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- Quilter v. Mussendine* (1726) Gilbert's Eq.
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Referred to by Swinfen Eady J.
RICKARD v. GRAHAM - [1910] 1 Ch. 722
- Quinn v. Leatham* - [1901] A. C. 495
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- Quinn v. Leatham* [1901] A. C. 495
Considered by C. A. *GIBLAN v. NATIONAL AMALGAMATED LABOURERS' UNION OF GREAT BRITAIN AND IRELAND* [1903] 2 K. B. 600
The law as laid down by Lord Macnaghten in, applied by C. A. *NATIONAL PHONOGRAPH CO. v. EDISON-BELL CONSOLIDATED PHONOGRAPH CO.* [1908] 1 Ch. 335
- R. S. A., In re* - [1901] 2 K. B. 32
Principle in, applied by Wright J. *In re AYTOUN* [1901] W. N. 165
- Rabbidge, Ex parte* (1878) 8 Ch. D. 367
Referred to by Cozens-Hardy J. *PEARCE v. BASTABLE'S TRUSTEE IN BANKRUPTCY* - [1901] 2 Ch. 122
See *In re TAYLOR* C. A. [1910] 1 K. B. 562
- Radcliffe, In re* - [1892] 1 Ch. 227
Distinguished by Swinfen Eady J. *In re FRENCH-BREWSTER'S SETTLEMENTS* [1904] 1 Ch. 713
- Radford and Bright, Ltd. (No. 1), In re*, [1900] W. N. 263; [1901] 1 Ch. 272.
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- Raine v. Jobson & Co.* - [1901] A. C. 404
Considered by C. A. *BARRETT v. KEMP BROTHERS* [1904] 1 K. B. 517
- Rainford v. James Keith and Blackman Co.*, [1905] W. N. 8; [1905] 1 Ch. 296.
Reversed by C. A. [1905] 2 Ch. 147
- Ralph v. Carrick* (1879) 11 Ch. D. 873
Referred to by Farwell J. *In re WILLATTS* [1905] 1 Ch. 378
- Ramsay v. Blair* - (1876) 1 App. Cas. 701
Distinguished by Warrington J. *BATTEN POOLL v. KENNEDY* [1907] 1 Ch. 256
- Ramsay v. Margrett* [1894] 2 Q. B. 18
See *REX v. MURRAY* C. C. R. [1906] 2 K. B. 385
Principle of, applied by Phillimore J. *In re MAGNUS. Ex parte SALAMAN* [1910] W. N. 190
Note.—This decision was affirmed by C. A. [1910] W. N. 205; [1910] 2 K. B. 1049
- Ramsay v. Shelmerdine* - (1865) L. R. 1 Eq. 129
Not followed by Neville J. *In re DUNSTER* [1909] 1 Ch. 103
- Ramsden v. Lupton* (1873) L. R. 9 Q. B. 17
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- Randt Gold Mining Co. v. New Balkis Eersteling, Ltd.*, [1903] 1 K. B. 461.
Affirmed by H. L. (E.) *sub nom. NEW BALKIS EERSTELING, LD. v. RANDT GOLD MINING CO.* [1904] A. C. 165
- Ranelagh v. Hayes* (1683) 1 Vernon, 189
Followed by Swinfen Eady J. *ASCHERSON v. TREDEGAR DRY DOCK AND WHARF CO.* - [1909] 2 Ch. 401
- Rangeley v. Midland Ry. Co.*, (1868) L. R. 3 Ch. 306, 311.
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- Rankin v. Weguelin* - (1829) 27 Beav. 309
Referred to by Buckley J. *In re BEAUMONT* [1902] 1 Ch. 889
- Rantzen v. Rothschild* (1865) 14 W. R. 96
Followed by Warrington J. *STANCOMB v. TROWBRIDGE URBAN DISTRICT COUNCIL* - [1910] 2 Ch. 190
- "*Rasche*," *The*, (1873) L. R. 4 A & E. 127, 129.
Referred to by Sir Samuel Evans, Pres. *THE "VALKYRIE"* [1910] W. N. 138
- Ratcliff and Dealtry v. Mendelssohn*, [1901] 2 K. B. 844.
Affirmed by C. A. [1902] 2 K. B. 653
Affirmed by H. L. (E.) *sub nom. MENDELSSOHN v. RATCLIFF* [1904] A. C. 456
Referred to by C. A. *Ex parte MENDELSSOHN* [1903] 1 K. B. 216, 223
- Ratliffe v. Evans* - [1892] 2 Q. B. 524
Referred to by Eve J. *CONCARIS v. DUNCAN & CO.* [1909] W. N. 51
- Rathbone Brothers & Co. v. D. MacIver, Sons & Co.*, (1902) 8 Com. Cas. 1.
Reversed by C. A. [1903] 2 K. B. 378
- Raven v. Waite* (1818) 1 Swans. 553, 559
Followed by Swinfen Eady J. *In re CRANE* [1908] 1 Ch. 379
- Rawe v. Chichester* - (1773) Amb. 715, 719
Considered by C. A. *In re BISS* [1903] 2 Ch. 40
- Rawes v. Rawes*, (1836) 7 Sim. 624; 5 L. J. (N.S.) (Ch.) 114; 40 R. R. 191.
Considered by Buckley J. *In re JENNINGS* [1903] 1 Ch. 906
- Rayner, In re* - [1904] 1 Ch. 177
Followed by Farwell J. *In re GENT AND EASON'S CONTRACT* [1905] 1 Ch. 386
- Raynes Park Golf Club, In re*, [1899] 1 Q. B. 961.
Doubted by C. A. *In re JOHN TWEDDLE & CO.* [1910] 2 K. B. 697
- Reud, Ex parte* - [1897] 1 Q. B. 122
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- Read, In re* - [1894] 3 Ch. 238
Distinguished by Buckley J. *In re ROMAIN* [1903] 1 Ch. 702
- Read v. Brown* (1888) 22 Q. B. 128, 132
Followed by C. A. *BENNETT v. WHITE* [1910] 2 K. B. 167
- Read v. Friendly Society of Operative Stonemasons of England, Ireland and Wales*, [1902] 2 K. B. 88.
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Referred to by C. A. *GLAMORGAN COAL CO. v. SOUTH WALES MINERS' FEDERATION* [1903] 2 K. B. 545; H. L. (E.) [1905] A. C. 239

- Read v. Price* - - [1909] 1 K. B. 577
Affirmed by C. A. - [1909] 2 K. B. 724
- Reade v. Bentley*, (1857) 3 K. & J. 271; 4 K. & J. 656.
See In re JUDE'S MUSICAL COMPOSITIONS **Kekewich J.** [1906] 2 Ch. 595
- Rebbek, In re. Bennett v. Rebbek*, (1894) 63 L. J. (Ch.) 596; 71 L. T. 74.
See In re BARROW-IN-FURNESS CORPORATION AND RAWLINSON'S CONTRACT **Kekewich J.** [1903] 1 Ch. 339, 348
- Rebbek, In re*, [1894] W. N. 68; 42 W. R. 473
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- Reddaway v. Banham* - - [1896] A. C. 199
Distinguished by Parker J. **BRITISH VACUUM CLEANER CO. v. NEW VACUUM CLEANER CO.** [1907] 2 Ch. 312
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- Redgrave v. Lloyd & Sons* - [1895] 1 Q. B. 876
See Factory and Workshop Act, 1901 (1 Edw. 7, c. 22), s. 10, sub-s. 1 (c).
- Redman, In re. Warton v. Redman*, [1901] 2 Ch. 471.
Overruled on one point by C. A. *In re GRIFFIN* - [1902] 1 Ch. 135
- Reed, In the Goods of*, (1874) 29 L. T. (N.S.) 932
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- Reed v. Franks* - (1900) 16 Times L. R. 347
Overruled by C. A. **PETTIT v. LODGE AND HARPER** [1908] 1 K. B. 744
- Reed v. Great Western Ry. Co.*, [1909] A. C. 31
Distinguished by H. L. (Sc.). **LOW (OR JACKSON) v. GENERAL STEAM FISHING CO.** [1909] A. C. 523
- Rees, In re* - (1881) 17 Ch. D. 701
Followed by Buckley J. *In re WHITEFORD* [1903] 1 Ch. 889
- Rees, In re* - (1889) 60 L. T. 260
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- Reese River Silver Mining Co. v. Smith*, (1869) L. R. 4 H. L. 64, 80.
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- Reg. v. Abbott* - - [1897] 2 I. R. 362
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- Reg. v. Abney Park Cemetery Co.*, (1873) L. R. 8 Q. B. 515.
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- Reg. v. Boulton* - - (1849) 1 Den. C. C. 508
Followed by C. C. A. **REX v. CHAPMAN** [1910] W. N. 131
- Reg. v. Bowerman* - - [1891] 1 Q. B. 112
See Larceny Act, 1901 (1 Edw. 7, c. 10).
- Reg. v. Bradlaugh* (1883) 15 Cox, C. C. at p. 222. n.
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- Reg. v. Bridge* - - (1890) 24 Q. B. D. 609
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- Reg. v. Broome* - - (1851) 18 L. T. (O.S.) 19
Dictum of Martin B. in, disapproved of by C. C. A. **REX v. PORTER** [1910] 1 K. B. 369
- Reg. v. Brown* - (1867) L. R. 2 Q. B. 630
Referred to by C. A. **GREAT WESTERN RY. CO. v. TALBOT** [1902] 2 Ch. 759
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- Reg. v. Brown* - - (1899) 24 Q. B. D. 357
Followed by C. C. R. **REX v. PLUMMER** [1902] 2 K. B. 339
- Reg. v. Bullivant* - [1900] 2 Q. B. 163.
Reversed by H. L. (E.) *sub nom.* **BULLIVANT v. ATT.-GEN. FOR VICTORIA** [1901] A. C. 196
- Reg. v. Burton* - - (1854) Dears. 282
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- Reg. v. Cambrian Ry. Co.*, (1871) L. R. 6 Q. B. 422, 430.
A dictum of Blackburn J. in, can no longer be supported. **DIBDEN v. SKIRROW** - C. A. [1908] 1 Ch. 41
- Reg. v. Canterbury (Archbishop of)*, (1848) 11 Q. B. 483.
Discussed by Div. Ct. **REX v. ARCHBISHOP OF CANTERBURY** [1902] 2 K. B. 503
- Reg. v. Carter* - (1884) 12 Q. B. D. 522
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- Reg. v. Christian* (1873) L. R. 2 C. C. 94
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- Reg. v. Clerk* - (1866) L. R. 1 C. C. 54
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- Reg. v. Cockerton* - [1901] 1 K. B. 322
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Followed by C. A. **DYER v. LONDON SCHOOL BOARD** [1902] 2 Ch. 768
- Reg. v. Commissioner of Valuation and Great Southern and Western Ry. Co.*, [1901] 2 I. R. 215.
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- Reg. v. Cooper* (1873) L. R. 2 C. C. 123
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- Reg. v. Cotham* - - - [1898] 2 Q. B. 802
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- Reg. v. Eastern Archipelago Co.*, (1853) 1 E. & B.
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- Reg. v. Elvet* - (1859) 2 E. & E. 266
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- Reg. v. Haslehurst* - (1887) 51 J. P. 645
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- Reg. v. Kilham* - (1870) L. R. 1 C. C. 261
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- Reg. v. Mohr*, (1881) 7 Q. L. R. 183; 2 Cartwright, 257.
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- Reg. v. Russell (Lord John)*, (1839) 7 Dow. 693.
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Followed by Div. Ct. TEWKESBURY UNION *v.* BIRMINGHAM UNION [1904] 2 K. B. 395
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- Reg. v. Sussex County Court Judge*, (1888) 59 L. T. 32.
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- Reg. v. Swindon Local Board*, (1879) 4 Q. B. D. 305.
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- Reg. v. Tatlock* - - (1876) 2 Q. B. D. 157
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- Reg. v. United Kingdom Telegraph Co.*, (1862) 2 B. & S. 647.
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- Reg. v. Warwickshire Justices*, (1856) 6 E. & B. 837.
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- Reg. v. Watts* - - (1837) 7 A. & E. 461
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- Reg. v. West Middlesex Waterworks Co.*, (1859) 1 El. & El. 716.
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- Regent's Canal Co. v. Ware*, (1857) 23 Beav. 575
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- Regent's Canal Ironworks Co., In re*, (1876) 2
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- Rein v. Stein* - [1892] 1 Q. B. 753
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- Reinhardt v. Mentasti*, (1889) 42 Ch. D. 685, 690
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- Reis, In re. Ex parte Clough*, [1904] W. N. 22;
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- Rendall v. Hill's Dry Docks and Engineering Co.*,
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- Revel v. Watkinson* - (1748) 1 Ves. Sen. 93
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- Rex v. Ball* C. C. A. [1910] W. N. 233
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- Rex v. Barr*, (1814) 4 Camp. 16; 15 R. R. 721
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- Rex v. Bell* - (1832) 1 Moo. C. C. 330
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- Rex v. Board of Education*, Div. Ct. [1909]
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- Rex v. Brailsford* - [1905] 2 K. B. 730
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- Rex v. Brown* - (1901) 65 J. P. 136
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- Rex v. Canterbury (Archbishop of)*, [1902] 2
K. B. 503, 572.
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- Rex v. Carson Roberts* [1907] 2 K. B. 878
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- Rex v. Carter* (1774) 1 Cowp. 220
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- Rex v. Commissioners for Special Purposes of*
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- Rex v. Davidson* [1909] W. N. 52
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- Rex v. Kent Justices*, [1904] W. N. 113; [1904]
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[1905] 1 K. B. 378

- Rex v. Kirkpatrick* - (1908) 73 J. P. 29
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- Rex v. Lloyd* - - - [1906] 1 K. B. 22
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- Rex v. Local Government Board. Ex parte South Stoneham Union*, [1908] 2 K. B. 368.
Reversed by H. L. (E.) *sub nom.* LOCAL GOVERNMENT BOARD *v.* SOUTH STONEHAM UNION [1909] **A. C. 57**
- Rex v. London County Justices*, [1894] 1 Q. B. 453.
Followed by C. A. *REX v. WOODHOUSE* [1906] 2 K. B. 501;
but the decision of the C. A. was reversed by the H. L. (E.) *sub nom.* LEEDS CORPORATION *v.* RYDER [1907] **W. N. 195**; [1907] **A. C. 420**
- Rex v. Maidstone Union* - (1879) 5 Q. B. D. 31
Followed by C. A. SOUTHWARK UNION *v.* CITY OF LONDON UNION [1906] 2 K. B. 112
- Rex v. Marylebone County Court Judge and Great Western Ry. Co. Ex parte Phillips & Co.*, [1906] 2 K. B. 426;
C. A. [1907] 2 K. B. 664.
Reversed by H. L. (E.) *sub nom.* GREAT WESTERN RY. CO. *v.* PHILLIPS & CO. [1908] **A. C. 101**
- Rex v. Middlesex Justices, Ex parte Walsall Union*, [1906] 2 K. B. 365.
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- Rex v. Munday* - (1799) 2 Leach, C. C. 850
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- Rex v. New River Co.*, 1 M. & S. 503; 14 R. R. 514.
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- Rex v. Payne* - [1906] 1 K. B. 97
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- Rex v. Rough* - (1779) 2 East, P. C. 607
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- Rex v. Lyndon* - - (1908) 72 J. P. 22
Followed by Div. Ct. *REX v. YORKSHIRE (WEST RIDING) JUSTICES* [1910] 1 K. B. 439
- Rex v. Sainsbury*, (1791) 4 T. R. 451; 2 R. R. 433.
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- Rex v. Salisbury (Bishop)* [1901] 1 K. B. 573
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- Rex v. Shann* - - [1910] 1 K. B. 16
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- Rex v. Simpson* - (Mich. 11 Geo. 1) 1 Str. 609
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- Rex v. Stride* - - - [1908] 1 K. B. 617
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- Rex v. Syres* - - - [1909] 73 J. P. 13
Discussed by C. C. A. *REX v. SHARP-COTE* - - - [1909] **W. N. 218**
- Rex v. Tristram* - - - [1901] 2 K. B. 141
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- Rex v. Vange* - - - (1842) 3 Q. B. 242
Followed by Div. Ct. *NEWPORT UNION v. STEAD* - [1906] 2 K. B. 147
- Rex v. West Riding of Yorkshire County Council*, [1906] 2 K. B. 676.
Reversed by H. L. (E.) *sub nom.* ATT.-GEN. AND BOARD OF EDUCATION *v.* WEST RIDING OF YORKSHIRE COUNTY COUNCIL - [1907] **A. C. 29**
- Rex v. West Riding of Yorkshire Justices*, [1908] 2 K. B. 635.
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- Rex v. Woodcock* - (1789) 1 Leach, 502
Discussed by C. C. A. *REX v. PERRY* [1909] 2 K. B. 697
- Rex v. Woodhouse* [1906] 2 K. B. 501
Reversed by H. L. (E.) *sub nom.* LEEDS CORPORATION *v.* RYDER [1907] **W. N. 195**; [1907] **A. C. 420**
- Rex v. Yorkshire (County Council of the West Riding of)*, [1906] **W. N. 142**
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- Rey v. Leconturier* - [1908] 2 Ch. 715
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- Reynolds v. Ashby & Son*, [1903] 1 K. B. 87;
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Affirmed by H. L. (E.) [1904] **A. C. 466**
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Followed by Div. Ct. *CROSSLEY BROTHERS, LD. v. LEE* [1908] 1 K. B. 86
- Reynoldson v. Blake* (1697) 1 Ld. Raym. 192
Considered by C. A. *LORD ELCHO v. ANDREWS* [1910] 1 Ch. 706
- Reynolds v. Coleman* - (1887) 36 Ch. D. 453
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- Rhodes, In re* - (1884) 8 Beav. 224
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- Rhodes v. Dawson* - (1886) 16 Q. B. D. 548
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- Rhodes v. Soothill Wood Colliery Co.*, [1909] 1 K. B. 191.
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- Rhodes v. Swithenbank* - (1889) 22 Q. B. D. 577
Referred to by Kekewich J. *MURRAY v. SITWELL* - [1902] **W. N. 119**

- Rhondda and Swansea Ry. Co. v. Talbot*, [1897] 2 Ch. 131, 137.
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- Rhondda Urban Council v. Taff Vale Ry. Co.* [1908] 1 K. B. 239.
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- Rhys v. Dare Valley Ry. Co.*, (1874) L. R. 19 Eq. 93.
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- Rica Gold Washing Co., In re*, (1879) 11 Ch. D. 36.
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- Rice v. Noakes & Co.*, [1900] 1 Ch. 213; C. A. [1900] 2 Ch. 445.
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- Rich v. Cockell* - - - (1802) 9 Ves. 369
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- Richards, In re* - - - (1869) L. R. 8 Eq. 119
Distinguished by Swinfen Eady J. *In re CRANE* [1908] 1 Ch. 379
- Richards v. De Winton. Richards v. Evans*, [1901] 2 Ch. 566.
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- Richards v. Kessick*, (1888) 57 L. J. (M.C.) 48
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- Richardsons and Sons, In re*, [1898] 1 Q. B. 261.
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- Richardson, In re* - - - [1900] 2 Ch. 778
Distinguished by Swinfen Eady J. *In re BARONESS LLANOVER* [1907] 1 Ch. 635
- Richardson v. Feary* (1888) 39 Ch. D. 45
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- Richardson v. Stormont, Todd & Co.*, [1900] 1 Q. B. 701.
Followed by C. A. LOMAS v. GRAVES & CO. [1904] 2 K. B. 557
- Richardson's Case* - (1875) L. R. 19 Eq. 588
Distinguished by Parker J. *In re NATIONAL BANK OF WALES, LD. MASSEY AND GIFFIN'S CASE* [1907] 1 Ch. 582
- Richardson's Trusts, In re*, (1886) 17 L. R. Ir. 436, 442.
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- Riche v. Ashbury Railway Carriage and Iron Co.*, (1874) L. R. 9 Ex. 224, 263, 292.
Applied by Swinfen Eady J. BRITISH SOUTH AFRICA CO. v. DE BEERS CONSOLIDATED MINES, LD. C. A. [1910] 2 Ch. 502
- Richmond Hill Steamship Co. v. Trinity House Corporation*, [1896] 2 Q. B. 134.
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- Rickaby v. Rickaby* [1901] P. 134
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- Ricket v. Metropolitan Ry. Co. (Directors, &c., of the)*, (1867) L. R. 2 H. L. 175.
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- Ridley, In re* - - - (1879) 11 Ch. D. 645
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- Ridley, In re* - - - [1904] 2 Ch. 744
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- Ridley v. Sutton*, (Jan. 23, 1863) 1 H. & C. 741; 32 L. J. (N.S.) (Ex.) 122.
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- Ridout v. Fowler* - - - [1904] 1 Ch. 658
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- Rigby v. Connol* - - - (1880) 14 Ch. D. 482
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- Riggs, In re* - - - [1901] 2 K. B. 16
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- Rigg v. Lonsdale (Earl of)*, (1857) 1 H. & N. 923.
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- Ripley v. Paper Bottle Co.*, (1887) 57 L. J. Ch. 327.
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- Ripley v. Paper Bottle Co.*, (1887) 57 L. J. Ch. 327.
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- Ripley v. Waterworth* - - (1802) 7 Ves. 425
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- "*Ripon City*," *The* - - [1897] P. 226
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- Risdon Iron and Locomotive Works v. Furness*, [1905] 1 K. B. 304.
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- Rishton v. Cobb*, (1839) 5 My. & Cr. 145, 152; 48 R. R. 256.
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- "*River Lagan*," *The*, (1888) 6 Asp. M. L. C. 281
Followed by Div. Ct. *THE* "MYSTERY" [1902] P. 115
- River Roden Co. v. Urban District Council of Barking Town*, [1902] W. N. 86.
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- Robbins, In re, Robbins v. Legge*, [1906] 2 Ch. 648
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- Robert Gibson, In re* - - (1845) 7 D. 581
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- Roberts, In re* - - (1886) 33 Ch. D. 265
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- Roberts, In re* - - [1900] 1 Q. B. 122
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- Roberts, In re. Roberts v. Roberts*, [1902] 2 Ch. 834.
Applied by Kekewich J. *In re* KEMPSTER - [1906] 1 Ch. 448
- Roberts, In re, Tarleton v. Bruton*, (1885) 30 Ch. D. 234.
Followed by C. A. *In re* WHITMORE [1902] 2 Ch. 66
- Roberts, In the Goods of* - (1858) 1 Sw. & Tr. 64
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- Roberts v. Walker* (1830) 1 Russ. & My. 752
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- Robertson v. Allan Brothers*, (1908) 77 L. J. (K.B.) 1072.
Referred to by C. A. BARNES v. NUNNERY COLLIERY CO., LD. [1910] W. N. 248
- Robertson v. Harris* - - [1900] 2 Q. B. 117
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- Smith v. Langford* (1840) 2 Beav. 362
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- Smith v. Law Guarantee and Trust Society, Ltd.*,
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- Smith v. Lidiard* - (1857) 3 K. & J. 252
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- Smith's Dock Co. v. Tynemouth Corporation*,
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- South Eastern Ry. Co. v. National Telephone Co.*, [1908] 2 Ch. 50.
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- South Hetton Coal Co., Ltd. v. North Eastern News Association, Ltd.* [1893] 1 Q. B. 853.
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- Southport and West Lancashire Banking Co. v. Thompson*, (1887) 37 Ch. D. 64.
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- Spencer's Settled Estates, In re* - [1903] 1 Ch. 75
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- Spencer's Trade-marks*, (1886) 3 Rep. Pat. Cas. 73
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- Speyer Brothers v. Inland Revenue Commissioners*, [1907] 1 K. B. 246.
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- Stafford's Settlement and Will, In re*, [1904] 2 Ch. 72.
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- Stagg v. Medway (Upper) Navigation Co.*, [1902] W. N. 69.
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- Stagg v. Medway Upper Navigation Co.*, [1903] 1 Ch. 169.
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- Stamford (Earl of), In re* [1896] 1 Ch. 288
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- Stammers v. Elliott* (1868) L. R. 3 Ch. 195
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- Standley's Estate, In re*, (1868) L. R. 5 Eq. 303
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- Staples v. Eastman Photographic Materials Co.*, [1906] 2 Ch. 303.
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- Steamship Balmoral Co. v. Marten*, [1900] 2 Q. B. 748.
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- Steamship Carisbrook Co. v. London and Provincial Marine and General Insurance Co.*
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- Steed v. Preeve* - (1874) L. R. 18 Eq. 192
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- Steads v. Steeds* - (1889) 22 Q. B. D. 537
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- Stephens, In re* - - - (1889) 43 Ch. D. 39
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- Stephenson, In the Goods of*, (1866) L. R. 1 P. & M. 287.
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- Stevens, In re* - - - (1888) W. N. 110, 116
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- Stevens v. Benning*, (1854) 1 K. & J. 168; (1855) 6 D. M. & G. 223.
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- Stevenson's Estate, In re* [1902] I. R. 23
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- Stirling v. Forrester* (1821) 3 Bli. 575, 596
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- Stirling v. Silburn & Pymon*, [1910] 1 K. B. 67
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- Thomas v. Jones* - - (1860) 1 Dr. & Sm. 134
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[1901] 2 Ch. 357
- Thomas v. Lulham* - - [1895] 2 Q. B. 400
See RICKETT *v.* GREEN
Div. Ct. [1910] 1 K. B. 253
- Thomas v. Roberts* - - [1898] 1 Q. B. 657
Followed by C. A. COATES *v.* MOORE
[1903] 2 K. B. 140
- Thomas v. Sorrell* - - (1674) Vaugh. 351
Referred to by C. A. FRANK WARR & CO. *v.* LONDON COUNTY COUNCIL
[1904] 1 K. B. 713, 721
- Thomas v. Sylvester* (1873) L. R. 8 Q. B. 368
Referred to by C. A. FOLEY'S CHARITY TRUSTEES *v.* DUDLEY CORPORATION
[1909] W. N. 250; [1910] 1 K. B. 317

- Thomasset v. Thomasset* - - [1894] P. 295
Distinguished by C. A. *STARK v. STARK AND HITCHINS* - [1910] P. 190
- Thompson, Ex parte* - (1884) 28 Sol. J. 274
See *In re BLUNDELL*
C. A. [1901] 2 Ch. 221, 223, n.
- Thompson, In re* - - (1845) 8 Beav. 237
Observations of Lord Langdale M.R. in, not followed by C. A. *In re HIRST & CAPES* - - [1908] 1 K. B. 982
- Thompson, In re* - - [1908] W. N. 195
Followed by Parker J. *In re POYSER. LANDON v. POYSER* [1910] 2 Ch. 444
- Thompson v. City Glass Bottle Co.,* [1901] 2 K. B. 483.
Reversed by C. A. - [1902] 1 K. B. 233
- Thompson v. Eccles Corporation,* [1904] 2 K. B. 1
Overruled by C. A. *THOMPSON v. ECCLES CORPORATION*
[1905] 1 K. B. 110
- Thompson v. F. & W. Sinclair* [1906] 2 K. B. 275.
Indistinguishable. *HARRISON v. OCEANIC STEAM NAVIGATION CO.*
C. A. [1907] 2 K. B. 420
- Thompson v. Hickman* - [1907] 1 Ch. 550
Referred to by Eve J. *GLYN v. HOWELL* [1909] 1 Ch. 666
- Thompson v. Hudson* - (1870) L. R. 10 Eq. 497
Explained by Warrington J. *WRIGLEY v. GILL* - - [1905] 2 Ch. 241
Discussed by Joyce J. *AINSWORTH v. WILDING* - - [1905] 1 Ch. 435
- Thompson v. Leach,* (1690) 3 Mod. 301; Carth. 435
Referred to by P.C. *DAILY TELEGRAPH NEWSPAPER CO. v. McLAUGHLIN*
[1904] A. C. 776, 780
- Thomson v. Eastwood* - (1877) 2 App. Cas. 236
Dictum of Lord Cairns in, approved by H. L. (Sc.) *DOUGAN v. MACPHERSON*
[1902] A. C. 197
- Thomson v. Shakespear,* (1860) 1 D. F. & J. 399
Distinguished by Byrne J. *In re CLARKE* - - [1901] 2 Ch. 110
- Thomson's Estate, In re* - [1907] 1 I. R. 311
Reversed by H. L. (Ir.) *sub nom. EVELYN VISCOUNTESS DE VESCI v. O'CONNELL* - [1908] A. C. 298
- Thorndar v. Wilson* - (1855) 3 Dr. 245; (1858) 4 Dr. 350.
Referred to by Joyce J. *In re GARRARD* [1907] 1 Ch. 382
- Thorndike v. Hunt* - (1859) 3 De G. & J. 563
Referred to by C. A. *TAYLOR v. LONDON AND COUNTY BANKING CO.*
[1901] 2 Ch. 231
- Thurso New Gas Co., In re,* (1889) 42 Ch. D. 486
Distinguished by Buckley J. *In re WENBORN & CO.* - [1905] 1 Ch. 413
- Thurstan v. Nottingham Permanent Benefit Building Society,* [1901] 1 Ch. 88.
Judgment discharged by C. A.
[1902] 1 Ch. 1
Decision of C. A. affirmed by H. L. (E.) *sub nom. NOTTINGHAM PERMANENT BENEFIT BUILDING SOCIETY v. THURSTAN* - - [1903] A. C. 6
- Tichborne v. Tichborne,* (1869) 38 L. J. (P. & M). 70.
Followed by Gorell Barnes P. *IN THE ESTATE OF CLEAVER*
[1905] P. 319
- Tickle v. Brown* - - (1836) 4 Ad. & E. 369
Discussed by C. A. *GARDNER v. HODGSON'S KINGSTON BREWERY CO.*
[1901] 2 Ch. 198
- Tidswell v. Whitworth,* (1867) L. R. 2 C. P. 326
See *GREAVES v. WHITMARSH, WATSON & CO.* - Div. Ct. [1906] 2 K. B. 340
- Tilling, Ld. v. Blythe* - [1899] 1 Q. B. 557
Discussed and explained by C. A. *JAMAICA RY. CO. v. COLONIAL BANK*
[1905] 1 Ch. 677
- Tillmanns & Co. v. Steamship "Knutsford," Ld.,*
[1908] 1 K. B. 185.
Affirmed by C. A. [1908] 2 K. B. 385
Affirmed by H. L. (E.) *sub nom. STEAMSHIP "KNUTSFORD," LD. v. TILLMANNS & CO.* [1908] A. C. 406
- Timson v. Ramsbottom* - (1837) 2 Keen, 35
Followed by Kekewich J. *In re PHILLIPS' TRUSTS* [1903] 1 Ch. 183
- Tiverton and North Devon Ry. Co. v. Loosemoore,* (1884) 9 App. Cas. 480.
Explained and followed by Warrington J. *GREAT WESTERN RY. CO. v. MIDLAND RY. CO.* [1908] 2 Ch. 455
But on appeal see C. A.; [1908] 2 W. N. 198; [1908] 2 Ch. 644.
- Toal v. North British Ry. Co.* - (1908) S. C. 48
Reversed by H. L. (Sc.)
[1908] A. C. 352
- Tod v. Tod* - - (1827) 2 W. & S. 542
See *CALEDONIAN RY. CO. v. BARRIE*
H. L. (Sc.) [1903] A. C. 126
- Todd v. Bielby* - (1859) 27 Beav. 353
Followed by Farwell J. *In re METCALF*
[1903] 2 Ch. 424
- Todd v. North Eastern Ry. Co.* - [1903] W. N. 9
Affirmed by C. A. [1903] W. N. 30
- Tolhurst v. Associated Portland Cement Manufacturers* (1900), *Ld. Tolhurst v. Associated Portland Cement Manufacturers* (1900) and *Imperial Portland Cement Co.,* [1901] 2 K. B. 811.
Reversed by C. A. - [1902] 2 K. B. 660
Decision of C. A. affirmed by H. L. (E.), except on the question of joining the Imperial Company - [1903] A. C. 414
Distinguished by C. A. *KEMP v. BAERSELMAN* - [1906] 2 K. B. 604
Referred to by C. A. *BENNETT v. WHITE* - [1910] 2 K. B. 643
- Tollemache, In re* - - [1903] 1 Ch. 457
Affirmed by C. A. - [1903] 1 Ch. 955
- Tollemache v. Coventry (Earl of),* (1834) 2 Cl. & F. 611.
Applicable. *In re HILL*
C. A. [1902] 1 Ch. 807
- Toller v. Spiers & Pond, Ld.,* [1903] 1 Ch. 362
Followed by Div. Ct. *BRASS v. LONDON COUNTY COUNCIL* - [1904] 2 K. B. 336

- Tomlins v. Latimer* - - - [1909] W. N. 39
Reversed by C. A. *sub nom. In re*
BARTON. TOMLINS *v.* LATIMER
[1909] 2 K. B. 841
- Toplis v. Grane*, (1839) 5 Bing. N. C. 636, 650.
Referred to by C. A. SHEFFIELD COR-
PORATION *v.* BARCLAY
[1903] 2 K. B. 580 ;
H. L. (E.) [1905] A. C. 392
- "*Torbryan*," *The* - - - [1903] P. 35
Affirmed by C. A. [1903] P. 194
- Torkington v. Magee* - [1902] 2 K. B. 427
Reversed by C. A. - [1903] 1 K. B. 644
- Toronto Corporation v. Toronto Ry. Co.*, [1907]
A. C. 315.
Judgment in, held by P. C. to be per-
fectly clear, and that the Order in
Council thereon was unaffected by
Ontario Act 8 Edw. 7, c. 112, s. 1.
TORONTO CORPORATION *v.* TORONTO
RY. CO. - - - [1910] A. C. 312
- Torrance v. Bolton*, (1872) L. R. 14 Eq. 124 ; 8
Ch. 118.
Distinguished by Warrington J. BLAI-
BERG *v.* KEEVES - [1906] 2 Ch. 175
- Torre v. Broune* - (1855) 5 H. L. C. 555, 577
Referred to by Kekewich J. *In re*
HISCOE - [1902] W. N. 49, 54
- Tottenham Local Board v. Rowell*, (1876) 1 Ex. D.
514.
Distinguished by C. A. BLACKBURN
CORPORATION *v.* SANDERSON
[1902] 1 K. B. 794
- Towers v. African Sug. Co.* - [1904] 1 Ch. 558
Distinguished by C. A. MOSELY *v.*
KOFFYFONTEIN MINES, LD.
[1910] W. N. 231
- Townend v. Townend* - C. A. [1905] W. N. 158
This appeal was by the direction of the
Court placed again in the paper
C. A. [1905] W. N. 178
See also next report.
- Townend v. Townend* - - [1907] P. 239, n.
Discussed by Gorell Barnes P. IN
THE ESTATE OF HARVEY
[1907] P. 239
- Townsend v. Haworth*, (1875) 12 Ch. D. 831, n. ;
48 L. J. (Ch.) 77, n.
Followed by C. A. DUNLOP PNEUMATIC
TYRE CO. *v.* DAVID MOSELY & SONS,
LD. - - - [1904] 1 Ch. 612
- Townsend's Estate, In re* (1866) 34 Ch. D. 357
Followed by Swinfen Eady J. APLIN
v. STONE - [1904] 1 Ch. 543
- Townshend v. Harrowby*, (1858) 4 Jur. (N.S.)
353 ; 27 L. J. (Ch.) 553.
Considered by Parker J. LLOYD *v.*
PRICHARD - [1908] 1 Ch. 265
Followed by Eve J. TREMAYNE *v.*
RASHLEIGH - [1908] 1 Ch. 681
Followed by Swinfen Eady J. VETCH
v. ELDER - [1908] W. N. 137
- Townshend v. Harrowby*, (1858) 27 L. J. (Ch.)
553 ; 4 Jur. (N.S.) 353.
Distinguished by Kekewich J. *In re*
O'CONNELL - [1903] 2 Ch. 574
- Townshend (Lord) v. Harrowby*, (1858) 4 Jur.
(N.S.) 353.
Followed by Kekewich J. *In re* DOW-
DING'S SETTLEMENT TRUSTS
[1904] 1 Ch. 441
- Tozeland v. West Ham Guardians*, [1906] 1 K. B.
538.
Reversed by C. A. [1907] 1 K. B. 920
Distinguished by Bucknill J. CHING
v. SURREY COUNTY COUNCIL
[1909] 1 K. B. 762
- Tracy v. Hereford (Viscountess of)*, (1786) 2
Bro. C. C. 128.
Referred to by Byrne J. HONYWOOD
v. HONYWOOD - [1902] 1 Ch. 347
- Train v. Clapperton* - - (1907) S. C. 517
Affirmed by H. L. (Sc.).
[1908] A. C. 342
- Trappes v. Harter* - (1833) 2 C. & M. 153
Referred to by H. L. (E.). REYNOLDS
v. ASHBY & SON - [1904] A. C. 466, 472
- Trash v. Wood* - - (1839) 4 My. & Cr. 324
Applied by Eve J. *In re* HUDSON
[1908] 1 Ch. 655
- Travis v. Uttley* - - [1894] 1 Q. B. 233
Referred to by Cozens-Hardy J. HED-
LEY *v.* WEBB - [1901] 2 Ch. 126
See HUMPHREY *v.* YOUNG
[1903] 1 K. B. 44
- Treasure, In re. Wild v. Stanham*, [1900] 2 Ch.
648.
Not followed on one point by Buckley J.
In re MOORE - [1901] 1 Ch. 691
Followed by Byrne J. *In re* POWER
[1901] 2 Ch. 659
Referred to by Kekewich J. *In re*
SHARMAN - [1901] 2 Ch. 280, 283
Followed by Kekewich J. *In re* MAD-
DOCK - [1901] 2 Ch. 372
Referred to by Swinfen Eady J. *In re*
FEARNSIDES - [1903] 1 Ch. 250, 257
Dissented from by Neville J. *In re*
ORLEBAR - [1908] 1 Ch. 136
Overruled on one point by C. A. *In re*
HADLEY - - - [1909] 1 Ch. 20
- Tréfond, In the Goods of* - - [1899] P. 247
Commented on and explained by
Jeune P. IN THE GOODS OF VANNINI
[1901] P. 330
- Trego v. Hunt* - - - [1896] A. C. 7
Applied by Farwell J. CURL BROTHERS,
LD. *v.* WEBSTER - [1904] 1 Ch. 685
Referred to by Warrington J. HILL *v.*
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- Tremayne v. Rashleigh* - - [1908] W. N. 31
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[1908] 1 Ch. 681
Followed by Swinfen Eady J. VETCH
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- Trenchard, In re* - - - [1905] 1 Ch. 82
Distinguished by Swinfen Eady J. *In re* SPENCER COOPER - [1908] 1 Ch. 130
- Trent and Humber Ship Building Co., In re*, (1869) L. R. 8 Eq. 94.
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- Tress v. Tress* - - - (1887) 12 P. D. 128
Commented on by Gorell Barnes P. KENNEDY v. KENNEDY - [1907] P. 49
- Trevor v. Whitworth* - (1887) 12 App. Cas. 409
Referred to by C. A. BELLERBY v. ROWLAND AND MARWOOD'S STEAMSHIP CO. - - - [1902] 2 Ch. 14
- Tringham's Trusts, In re. Tringham v. Greenhill*, [1904] 2 Ch. 487.
Followed by Farwell J. *In re* OLIVER'S SETTLEMENT - - [1905] 1 Ch. 191
Referred to by C. A. *In re* THURSBY'S SETTLEMENT TRUSTS - - [1910] 2 Ch. 181
- Trinity College, Cambridge v. Browne*, (1886) 1 Ves. 441.
Referred to by Kekewich J. COPESTAKE v. HOPER - [1907] 1 Ch. 366
- Tromans v. Hodgkinson* - - [1903] 1 K. B. 30
Followed by C. C. R. REX v. DEAVILLE - [1903] 1 K. B. 468
- Trowell v. Shenton* - - (1878) 8 Ch. D. 318
Referred to by Farwell J. *In re* HOLLAND - - [1901] 2 Ch. 145
- Trower v. Butts* - - (1823) 1 S. & S. 181
Distinguished by Kekewich J. *In re* SALAMAN - - [1907] 2 Ch. 46
- Trower v. Knightley* - - (1821) 6 Madd. 134
Discussed and applied by Swinfen Eady J. *In re* HORSNAILL - [1909] 1 Ch. 631
- Truman v. London, Brighton and South Coast Ry. Co.*, (1885) 11 App. Cas. 45.
Referred to by H. L. (E.). WESTMINSTER CORPORATION v. LONDON AND NORTH WESTERN RY. CO. - [1905] A. C. 426, 427
- Truro Corporation v. Rowe* [1901] 2 K. B. 870
Judgment varied by C. A. - [1902] 2 K. B. 709
- Trustees, Executors, and Agency Co. v. Short*, (1888) 13 App. Cas. 793.
Explained by Parker J. SAMUEL JOHNSON & SONS, LD. v. BROCK - [1907] 2 Ch. 533
- Tubbs v. Wynne* - - - [1897] 1 Q. B. 74
Distinguished by C. A. *In re* ALLEN AND DRISCOLL'S CONTRACT - [1904] 2 Ch. 226
- Tuck, In re* - - - [1906] 1 Ch. 692
Referred to by Warrington J. *In re* LAUNDER - - [1908] W. N. 49
- Tuck v. Fyson* - - - (1829) 6 Bing. 321
Referred to by C. A. STACEY v. HILL - [1901] 1 K. B. 660, 666
- Tuck & Sons v. Priestler* (1887) 19 Q. B. D. 629
Approved by P. C. HENRY GRAVES & CO. v. GORRIE - - [1903] A. C. 496
- Tucker v. Wilson*, (1714) 1 P. Wms. 261; 5 Bro. P. C. 193.
Referred to by C. A. DEVERGES v. SANDEMAN, CLARK & CO. - [1902] 1 Ch. 579, 589
- Tuer's Will Trusts, In re* - (1886) 32 Ch. D. 39
See In re BARKER'S TRUSTS
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- Tulk v. Moxhay* - - (1848) 2 Ph. 774
Principle of, not applied by C. A. FORMBY v. BARKER [1903] 2 Ch. 530
Applied by C. A. *In re* NISBET AND POTTS' CONTRACT - [1906] 1 Ch. 386
- Tunbridge v. Matthews* - [1903] W. N. 158
See BAILLEAU v. VICTORIAN SOCIETY OF NOTARIES
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- Tunbridge Wells Corporation v. Baird*, [1896] A. C. 434.
Referred to by C. A. FOLEY'S CHARITY TRUSTEES v. DUDLEY CORPORATION - [1909] W. N. 250; [1910] 1 K. B. 317
- Tunncliffe & Hampson, Ltd. v. West Leigh Colliery Co.*, [1906] 2 Ch. 22.
Reversed by H. L. (E.), *sub nom.* WEST LEIGH COLLIERY CO. v. TUNNICLIFFE & HAMPSON, LD. - [1908] A. C. 27
- Turnbull v. West Riding Athletic Club*, (1894) 70 L. T. 92.
Distinguished by Farwell J. *In re* BODEGA CO. - [1904] 1 Ch. 276
- Turnbull & Co. v. Duval* - [1902] A. C. 429
Followed by C. A. CHAPLIN & CO. v. BRAMMALL - [1908] 1 K. B. 233
- Turner, Ex parte*, (1854) 24 L. J. (Ch.) 71; S. C. *sub nom.* *In re* Boyle, 5 D. M. & G. 540.
Explained by Bigham J. *In re* VAN LAUN. *Ex parte* PATTULLO - [1907] 1 K. B. 155; C. A. [1907] 2 K. B. 23
- Turner, In re* - - - [1897] 1 Ch. 536
Applied by Warrington J. *In re* LINSLEY - - - [1904] 2 Ch. 785
- Turner, In re* (1895) 43 W. R. 153; 13 R. 132
Followed by Swinfen Eady J. WILLIAMS v. MORGAN - [1906] 1 Ch. 804
- Turner, In re. Wood v. Turner*, [1906] W. N. 226.
Affirmed by C. A. [1907] 2 Ch. 126
- Turner, In re. Wood v. Turner*, [1907] 2 Ch. 126.
The order in this action was ultimately entered. *See In re* TURNER. WOOD v. TURNER - C. A. [1907] 2 Ch. 539
- Turner v. Brittain* - - - (1863) 3 N. R. 21
Referred to by Joyce J. ANDERSON v. BERKELEY - - [1902] 1 Ch. 936

- Turner v. Uxton* - (1888) 22 Q. B. D. 150
Referred to by C. A. HERBERT v. MCQUADE [1902] 2 K. B. 631, 648
- Turner v. Evans* (1852) 2 De G. M. & G. 740, 745.
Referred to by Eve J. WOODBRIDGE & SONS v. BELLAMY [1910] W. N. 269
- Turner v. Gosset* - (1865) 34 Beav. 593
Followed by Joyce J. *In re* MAUNDER [1902] 2 Ch. 875; C. A. [1903] 1 Ch. 451
- Turner v. Marriott* (1867) L. R. 3 Eq. 744
See KITTEN v. HEWITT
Kekewich J. [1904] W. N. 21
See In re FURNEAUX AND AIRD'S CONTRACT
Kekewich J. [1906] W. N. 215
- Turner v. Moon* - [1901] 2 Ch. 825
Followed by Buckley J. GREAT WESTERN RY. CO. v. FISHER [1905] 1 Ch. 316
- Turner v. Rookes* - (1839) 10 Ad. & E. 47; 50 R. R. 320.
Principle of, no longer applicable. *In re* WINGFIELD AND BLEW C. A. [1904] 2 Ch. 665
- Turner v. Sawdon & Co.* - [1901] 2 K. B. 653
Referred to by Warrington J. MIDLAND COUNTIES DISTRICT BANK, LD. v. ATTWOOD - [1905] 1 Ch. 357
- Turner v. Stallibrass* - [1898] 1 Q. B. 56
See EDWARDS v. MALLAM C. A. [1908] 1 K. B. 1002
- Turner v. Turner* - (1852) 21 L. J. Ch. 843
Followed by Parker J. *In re* JACOB [1907] 1 Ch. 445
- Turney, In re. Turney v. Turney*, [1899] 2 Ch. 739.
Referred to by Swinfen Eady J. *In re* GOSSLING - [1902] 1 Ch. 945, 949
- Turquand v. Board of Trade*, (1886) 11 App. Cas. 286.
Considered by C. A. *In re* COHEN [1905] 2 K. B. 704
- Turvey v. Brintons, Ltd. Higgins v. Campbell and Harrison, Ltd.*, [1904] 1 K. B. 328.
Affirmed by H. L. (E.) *sub nom.* BRINTONS, LD. v. TURVEY - [1905] W. N. 72
- Tussaud v. Tussaud* (1890) 44 Ch. D. 678
Observed upon by Joyce J. FINE COTTON SPINNERS' AND DOUBLERS' ASSOCIATION, LD., AND JOHN CASH & SONS, LD. v. HARWOOD CASH & CO. [1907] 2 Ch. 184
- Tweedle v. Atkinson* - (1861) 1 B. & S. 393
Referred to by C. A. MCGRUTHER v. PITCHER [1904] 2 Ch. 306, 308
Referred to by Joyce J. NATIONAL PHONOGRAPH CO. v. EDISON-BELL CONSOLIDATED PHONOGRAPH CO. [1907] W. N. 6
- Tweedle (John) & Co., In re* [1910] 2 K. B. 67
Reversed by C. A. [1910] 2 K. B. 697
- Tweedie and Miles, In re* (1844) 27 Ch. D. 315
Discussed and applied by Swinfen Eady J. *In re* HORSNAILL [1909] 1 Ch. 631
- Tweedie's Taxation, In re* - [1908] W. N. 257
See In re TWEEDIE
Eve J. [1909] W. N. 110
- "*Tweedsdale*," *The* - (1889) 14 P. D. 164
Followed by Bargrave Deane J. *THE* "UPTON CASTLE" - [1906] P. 147
Held not applicable by Bucknill J. *THE* "CRAIGELLACHIE" - [1909] P. 1
Followed by Bigham P. *THE* "GLADYS" - [1910] P. 13
The reasoning in, so far as applicable, followed by C. A. "THE GROVE-HURST" - [1910] P. 316
- Twigg's Estate, In re* - [1892] 1 Ch. 579
Discussed by Joyce J. *In re* CUFFE [1908] 2 Ch. 500
- Twycross v. Grant* - (1871) 2 C. P. D. 469, 483
Referred to by Farwell J. BATEY v. KESWICK - [1901] W. N. 167
See WATTS v. BUCKNALL C. A. [1903] 1 Ch. 766
See TAIT v. MACLEAY [1904] 2 Ch. 631
See SHEPHEARD v. BROOME H. L. (E.) [1904] A. C. 342
Referred to by Warrington J. MARSHALL v. MORRISON - [1907] W. N. 29
- Tynemouth Corporation v. Att.-Gen.*, [1899] A. C. 299.
Referred to by Farwell J. ATT.-GEN. v. DE WINTON [1906] 2 Ch. 106
- Tynte, Ex parte* - (1880) 15 Ch. D. 125
Referred to by C. A. *Ex parte* MENDELSSOHN - [1903] 1 K. B. 216, 221
- Tyler, In re* - [1906] W. N. 202
Affirmed by C. A. - [1907] 1 K. B. 865
- Tyler v. Lake* - (1831) 4 Sim. 351
Followed by Neville J. *In re* GIBBON [1909] 1 Ch. 367
- Tyrrell v. Painton* - [1894] P. 151
Applied by Walton J. WILSON v. BASSIL - [1903] P. 239
- Tyrrell v. Painton* - [1895] 1 Q. B. 202
Followed by Kekewich J. IDEAL BEDDING CO. v. HOLLAND [1907] 2 Ch. 157
- Underground Electric Rys. Co. of London, Ltd. v. Inland Revenue Commissioners*, [1905] 1 K. B. 174.
Affirmed by H. L. (E.) [1906] A. C. 21
- "*Unedda*," *Trade Mark, In re* [1901] 1 Ch. 550
Affirmed by C. A. [1902] 1 Ch. 783
- Union Bank of London v. Ingram*, (1880) 16 Ch. D. 53.
Distinguished by C. A. WRIGLEY v. GILL - [1906] 1 Ch. 165

- Union Bank of London v. Kent*, (1888) 39 Ch. D. 238.
Referred to by C. A. TAYLOR *v.* LONDON AND COUNTY BANKING CO.
[1901] 2 Ch. 231
- Union Bank of Manchester v. Beech*, (1865) 3 H. & C. 672.
Followed by C. A. PERRY *v.* NATIONAL PROVINCIAL BANK OF ENGLAND
[1910] 1 Ch. 464
- Union Lighterage Co. v. London Graving Dock Co.*, [1901] W. N. 92; [1901] 2 Ch. 300
Affirmed by C. A. [1902] 2 Ch. 557
- Union Lighterage Co. v. London Graving Dock Co.*, [1902] 2 Ch. 557.
Principle of, applied by Kekewich J. RAY *v.* HAZELDINE - [1904] 2 Ch. 17
- United Collieries, Ltd. v. Simpson (or Hendry)*, (1908) S. C. 1215.
Affirmed by H. L. (Sc.) [1908] A. C. 383
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- United States Shipping Co. v. Empress Assurance Corporation*, [1907] 1 K. B. 259.
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- United Telephone Co. v. Dale*, (1884) 25 Ch. D. 778, 782.
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- Wellborne, In re* - [1900] 1 Ch. 857
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- Wellby v. Still* - [1894] 3 Ch. 641
Followed by C. A. *In re* WEBSTER
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- Wells, In re* - (1889) 43 Ch. D. 281
Referred to by Buckley J. *In re* SCOTT
[1902] 1 Ch. 918, 925
Distinguished by C. A. *In re* BOWLBY
[1904] 2 Ch. 685
- Wells v. Allott* - [1904] 2 K. B. 842
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LAZARUS *v. SMITH* [1908] 2 K. B. 266
- Wells v. Wells* - (1874) L. R. 18 Eq. 504
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- Weniger's Policy, In re* [1910] 2 Ch. 291
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- Wenlock (Baroness) v. River Dee Co.*, (1883) 36
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- Wenman v. Lyon & Co.*, [1891] 1 Q. B. 634;
[1891] 2 Q. B. 192.
Referred to by C. A. *In re* REIS
[1904] 2 K. B. 769, 788;
H. L. (E.) [1905] A. C. 442
- Wenmoth's Estate, In re* - (1887) 37 Ch. D. 266
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- Wentworth v. Wentworth*, [1900] A. C. 163, 171
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sidered and explained by Warrington J.
In re OLIVER - [1908] 2 Ch. 74

- Werderman v. Société Générale d'Electricité*, (1881) 19 Ch. D. 246.
Explained and distinguished by C. A. BAGOT PNEUMATIC TYRE CO. v. CLIPPER PNEUMATIC TYRE CO. [1902] 1 Ch. 146
Followed by Neville J. DANSK REKYLIFFEL SYNDICAT AKTIESELSKAB v. SNELL [1908] 2 Ch. 127
- Werner Motors, Ltd. v. A. W. Gamage, Ltd.*, [1904] 1 Ch. 264.
Affirmed by C. A. [1904] 2 Ch. 580
- Wesselenyi (Baroness) v. Jamieson*, (1907) S. C. 139.
Affirmed by H. L. (Sc.) [1907] A. C. 440
- West v. Lawday* - (1865) 11 H. L. (E.) 375
Considered by Joyce J. *In re BROCKET* [1908] 1 Ch. 185
- West v. Sackville (Lord)* [1903] W. N. 94
Reversed by C. A. [1903] 2 Ch. 378
- West Coast Gold Fields, Ltd., In re. Rowe's Trustee's Claim*, [1905] 1 Ch. 597.
Affirmed by C. A. [1906] 1 Ch. 1
- West Lancashire Rural Council v. Lancashire and Yorkshire Ry.*, [1903] 2 K. B. 394.
Distinguished by Jelf J. *HERTFORDSHIRE COUNTY COUNCIL v. GREAT EASTERN RY. CO.* - [1909] 1 K. B. 368
- West Ham v. London County Council*, [1893] A. C. 562.
Discussed by C. A. YSTRADYFODWG AND PONTYPRIDD MAIN SEWERAGE BOARD v. NEWPORT ASSESSMENT COMMITTEE [1901] 1 K. B. 406
- West Ham Guardians v. St. Matthew, Bethnal Green (Churchwardens of)*, [1896] A. C. 477.
Followed by Farwell J. *SHARPINGTON v. FULHAM GUARDIANS* [1904] 2 Ch. 449
- West Ham Local Board v. Maddams*, (1876) 40 J. P. 470.
Distinguished by C. A. BLACKBURN CORPORATION v. SANDERSON [1902] 1 K. B. 794
- West Ham Union v. Holbeach Union*, [1904] 2 K. B. 121.
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Discussed by Div. Ct. *WOOLWICH UNION v. FULHAM GUARDIANS* [1905] 2 K. B. 203
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- West Ham Union v. London County Council*, [1901] 1 K. B. 720.
Affirmed by C. A. - [1902] 1 K. B. 562
Affirmed by H. L. (E.) [1904] A. C. 40
- West of England Bank v. Canton Insurance Co.*, (1877) 2 Ex. D. 472.
Referred to by C. A. *BOULTON v. HOULDER BROTHERS & Co.* [1904] 1 K. B. 784, 791
- West Riding of Yorkshire Rivers Board v. Scarr End Mill Co.*, (1901) 65 J. P. 776.
Overruled by C. A. *WEST RIDING OF YORKSHIRE RIVERS BOARD v. ROBINSON BROTHERS* [1907] 1 K. B. 431
- Westerman v. Pantlin*, cited in Seton on Decrees, 6th ed. vol. 1, iii. p. 2288.
Followed by Farwell J. *OLDE v. OLDE* [1904] 1 Ch. 35
- Western v. Kensington Assessment Committee*, [1907] 2 K. B. 323.
Affirmed by C. A. - [1908] 1 K. B. 811
- Western Suburban Building Society v. Rucklidge*, [1905] 2 Ch. 472.
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- Westcott v. Westcott* [1908] P. 250
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- Western Counties Ry. Co. v. Windsor and Annapolis Ry. Co.*, (1882) 7 App. Cas. 178.
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- Western of Canada Oil, Lands and Works Co., In re*, (1873) L. R. 17 Eq. 1, 6, 7.
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- Westminster Corporation v. Gordon Hotels, Ltd.*, [1907] 1 K. B. 910.
Affirmed by H. L. (E.). [1908] A. C. 142
Distinguished by H. L. (E.). *KYDD v. LIVERPOOL WATCH COMMITTEE* [1908] A. C. 327
Applied by Div. Ct. *J. LYONS & Co. v. LONDON CORPORATION* [1909] 2 K. B. 588
[Note. — *Westminster Corporation v. Gordon Hotels, Ltd.*, [1906] 2 K. B. 39, was affirmed on another point in the Court of Appeal, [1907] 1 K. B. 910, and in the House of Lords, [1908] A. C. 142.]
- Westminster Corporation v. Johnson. The Same v. Fuller*, [1904] 1 K. B. 19.
Reversed by C. A. [1904] 2 K. B. 737

- Westminster Corporation v. St. George's, Hanover Square (Rector and Churchwardens of)*, [1909] 1 Ch. 592.
Reversed by H. L. (E.) *sub nom.* ST. GEORGE'S, HANOVER SQUARE (RECTOR AND CHURCHWARDENS OF) v. WESTMINSTER CORPORATION - [1910] A. C. 225
- Weston, In re* - - - [1902] 1 Ch. 680
Approved of by Kekewich J. *In re* ANDREWS - - - [1902] 2 Ch. 394
- Weston's Settlement, In re. Neeves v. Weston*, [1906] 2 Ch. 620.
Referred to by Gorell Barnes, Pres. WRIGLEY v. LOWNDES [1908] P. 348
- Wheatley v. Lane*, (1668) 1 W. Saund. 216 a, 219 b.
Principles stated in the notes to, applied by Swinfen Eady J. *In re* MARVIN [1905] 2 Ch. 490
- Wheatley v. Smithers* - [1906] 2 K. B. 321
Reversed by C. A. - [1907] 2 K. B. 684
- Wheaton v. Maple & Co.* [1893] 3 Ch. 48
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- Wheeldon v. Burrows* - (1879) 12 Ch. D. 31
Referred to by C. A. UNION LIGHTER-AGE CO. v. LONDON GRAVING DOCK CO. - - - [1902] 2 Ch. 557
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- Wheeler, In re* - - - [1904] 2 Ch. 66
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Examined and followed by C. A. *In re* ROBY - - [1908] 1 Ch. 71
- Wheeler v. United Telephone Co.*, (1884) 13 Q. B. D. 597.
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- Whelan v. Palmer* - - (1888) 39 Ch. D. 648
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- Whicker v. Hume* (1858) 10 H. L. C. 124
Referred to by H. L. (E.). WINANS v. ATT.-GEN. - [1904] A. C. 287, 294
- Whistler, In re* - - - (1887) 35 Ch. D. 561
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- Whiston's Settlement, In re* [1894] 1 Ch. 661
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- Whitaker, In re. Whitaker v. Palmer*, [1900] 2 Ch. 676.
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- Whitbread & Co. v. White* - [1904] 1 Ch. 911
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- Whitby v. Mitchell* - - (1890) 44 Ch. D. 85
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- White v. Bolckow, Vaughan & Co.*, 25 L. J. N. C. 125.
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- White v. Briggs* - - (1848) 22 Beav. 176, n.
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- White v. Bywater* - (1887) 19 Q. B. D. 582
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- White v. Fulham Vestry* - (1896) 74 L. T. 425
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- White v. Redfern* - (1879) 5 Q. B. D. 15
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- White & Co. v. Credit Reform Association and Credit Index, Ltd.*, [1905] 1 K. B. 653
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- White (J. & M.) v. White (J.) & Sons*, (1905) 42 Sc. L. R. 330.
Reversed by H. L. (Sc.) [1906] A. C. 72
- White's Charities, In re* [1898] 1 Ch. 659
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- Whitechurch (George), Ltd. v. Cavanagh*, [1902] A. C. 117, 145.
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- Whiteford, In re* - - - [1903] 1 Ch. 889
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- Whitehead & Brothers, In re* [1900] 1 Ch. 804
Distinguished by Buckley J. *In re* EBENEZER TIMMINS & SONS, LD. [1902] 1 Ch. 238
- Whitehouse v. Hugh* - - [1906] 1 Ch. 253
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- Whitehouse v. R. & W. Pickett*, (1908) S. C. 218
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- Whiteley v. Burns* - - [1908] 1 K. B. 705
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- Whiteley v. Edwards* - - [1896] 2 Q. B. 48
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- Whiteman v. Sadler* - C. A. [1910] 1 K. B. 868
Reversed by H. L. (E.) - [1910] A. C. 514
- Whiting's Settlement, In re. Whiting v. De Ruten*, [1904] W. N. 118.
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- Whitley v. Challis* - - [1892] 1 Ch. 64
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- Whitmore, In re. Walters v. Harrison*, [1901] W. N. 146.
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- Whitmore v. Turquand* (1861) 3 D. F. & J. 107
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- Wi Parata v. Bishop of Wellington*, 3 N. Z. J. R. (N.S.) S. C. 72.
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- Wild v. Woolwich Borough Council*, [1909] W. N. 138 ; [1909] 2 Ch. 287.
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- Wild's Case* - - - (1599) 6 Rep. 16b
Discussed by Joyce J. *In re JONES* [1910] 1 Ch. 167
- Wilde, In re* - - - [1910] W. N. 105
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- Wilde v. Gibson* - (1848) 1 H. L. C. 605, 632
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- Wilkins, Ex parte* - (1895) 64 L. J. (M.C.) 221
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- Wilkins, In re* - - (1881) 18 Ch. D. 634
Followed by Swinfen Eady J. *In re GOULDER* [1905] 2 Ch. 100
- Wilkinson, Ex parte*, (1849) 3 De G. & Sm. 633
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- Wilkinson v. Lancashire and Yorkshire Ry. Co.*, [1906] 2 K. B. 619.
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- Wilkinson v. Malin* - (1832) 2 Tyrw. 544, 571
Applied by Eve J. *In re WHITELEY* [1910] 1 Ch. 600
- Wilkinson's Trusts, In re*, (1887) 19 L. R. Ir. 531
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- Willatts, In re* - - - [1905] 1 Ch. 378
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- Willé v. St. John*, [1909] W. N. 229 ; [1910] 1 Ch. 84.
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- Willes v. Greenhill*, (1860) 29 Beav. 376, 387 ; and on appeal, (1861) 4 De G. F. & J. 147.
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- Wm. Brandt's Sons & Co. v. Dunlop Rubber Co.*, [1904] 1 K. B. 387.
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- Williams, In re. Ex parte Love*, (1891) 65 L. T. 68.
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- Williams v. Arkle* - (1875) L. R. 7 H. L. 606
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- Williams v. James* - (1867) L. R. 2 C. P. 577
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- Williams v. London Assurance Co.*, (1813) 1 M. & S. 318.
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- Williams v. North's Navigation Collieries* (1889), *Ld.*, [1904] 2 K. B. 44.
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- Williams v. Ocean Coal Co., Ld.*, [1907] 2 K. B. 422.
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- Williams v. Swansea Harbour Trustees*, (1863) 14 C. B. (N.S.) 845.
Discussed by C. A. *BEDS STEAMSHIP CO. v. RIVER WEAR COMMS.* [1907] 1 K. B. 310
- Williams v. Ware* - (1888) 57 L. J. Ch. 497
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- Williams v. Wilcox*, (1838) 8 A. & E. 314, 333
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- Williamson v. North Staffordshire Ry. Co.*, (1886) 32 Ch. D. 339.
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- Willis, In re* - - - [1902] 1 Ch. 15
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- Willmott v. London Road Car Co.*, [1910] W. N.
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- Wilmer's Trusts, In re* Moore v. Wingfield,
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- Wilson, In re* - (1886) 31 Ch. D. 522
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- Wilson, In re* - (1886) 54 L. T. 600
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- Wilson, In re* - (1893) 62 L. J. (Q.B.) 628, 632
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- Wilson, In re* - - [1907] 1 Ch. 394
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- Wilson, In re. Wilson v. Batchelor*, [1907]
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- Wilson v. Bassil* - - [1903] P. 239
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- Wilson v. Church* - (1878) 9 Ch. D. 552
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- Wilson v. Merry* (1868) L. R. 1 H. L. (Sc.) 332
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- Wilson's (Maryon) Settled Estates, In re*, [1901]
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- Wingfield and Blew, In re* - [1904] 2 Ch. 665
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- Winterbottom v. Wright*, (1842) 10 M. & W. 109
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- Wintle, In re* - - (1870) L. R. 9 Eq. 373
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- Wintle, In re* - - [1896] 2 Ch. 711
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- Wise, In re. Jackson v. Parrott*, [1896] 1 Ch. 281.
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- Wolfe v. Matthews* - - - (1882) 21 Ch. D. 194
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- Wollaston v. King* - - - (1869) L. R. 8 Eq. 165
Followed by Farwell J. *In re* OLIVER'S SETTLEMENT [1905] 1 Ch. 191
Followed by Warrington J. *In re* BEALE'S SETTLEMENT [1905] 1 Ch. 256
Referred to by C. A. *In re* NASH [1910] 1 Ch. 1
- Wolmershausen, In re* (1890) 62 L. T. 541
See *In re* EMMETT
Kekewich J. [1906] W. N. 201
- Wolstanton United Urban Council v. Tunstall Urban Council*, [1910] W. N. 144; [1910] 2 Ch. 347.
An order agreed upon.
C. A. [1910] W. N. 232
- Wolstenholme, In re* - - - (1885) 2 Morr. 216
Referred to by H. L. (E.) CLOUGH v. SAMUEL - [1905] A. C. 442, 446
- Wolverhampton and Walsall Ry. Co. v. London and North-Western Ry. Co.*, (1873) L. R. 16 Eq. 433, 439.
Applied by Swinfen Eady J. *In re* CARY-ELWES' CONTRACT [1906] 2 Ch. 143
- Wolverhampton Corporation v. Emmons*, [1901] 1 K. B. 515.
Referred to by Kekewich J. MOLYNEUX v. RICHARD - [1906] 1 Ch. 34
- Wolverhampton New Waterworks Co. v. Hawkesford*, (1859) 28 L. J. (C.P.) 242, 246.
Referred to by Farwell J. STEVENS v. CHOWN - [1901] 1 Ch. 894, 903
- Wolverhampton New Waterworks Co. v. Hawkesford*, (1859) 6 C. B. (N.S.) 336.
Referred to by Buckley J. ATT.-GEN. v. ASHBORNE RECREATION GROUND CO. [1902] W. N. 208; [1903] 1 Ch. 101
- Wood, In re* - - - (1886) 32 Ch. D. 517 (Class 1)
Distinguished by Swinfen Eady J. *In re* KELSEY - [1905] 2 Ch. 465
- Wood, In re* - - - [1894] 3 Ch. 381, 387
Referred to by Eve J. *In re* BEWICK. RYLE v. RYLE - [1910] W. N. 261
- Wood, In re. Wood v. Wood* [1901] 2 Ch. 578
Reversed by C. A. [1902] 2 Ch. 542
Referred to by Kekewich J. *In re* KIDDLE - - - [1905] W. N. 81
- Wood v. Hewett* - - - (1846) 8 Q. B. 913
Referred to by C. A. PHILPOT v. BATH [1905] W. N. 114
- Wood v. Odessa Waterworks Co.*, (1889) 42 Ch. D. 636.
Followed by C. A. SALMON v. QUIN [1909] 1 Ch. 311; H. L. (E.) [1909] A. C. 442
- Wood v. Saunders* - - - (1875) L. R. 10 Ch. 582
Referred to by Kekewich J. MILNER'S SAFE CO. v. GREAT NORTHERN AND CITY RY. CO. - [1906] W. N. 163; C. A. [1907] 1 Ch. 208
- Wood v. Walsh & Sons* - - - [1899] 1 Q. B. 1009
No longer law. DREDGE v. CONWAY, JONES & CO. C. A. [1901] 2 K. B. 42
- Woodall, In re* - - - (1884) 13 Q. B. D. 479, 483
Referred to by C. A. *In re* BAGLEY [1910] W. N. 224
- Woodall v. Clifton* - - - [1904] W. N. 205
Affirmed by C. A. - [1905] 2 Ch. 257
- Wood Green Urban Council v. Joseph*, [1907] 1 K. B. 182.
Affirmed on other ground by H. L. (E.) [1908] A. C. 419
- Woodhead, In re* - - - [1884] W. N. 174
Referred to by Buckley J. *In re* LOVE-RIDGE - - - [1902] 2 Ch. 859, 865
- Woodroff, In re* - - - (1897) 4 Mans. 46
See *In re* BRINDLEY
C. A. [1906] 1 K. B. 377
Dictum of Vaughan Williams J. in, at p. 49, approved of by C. A. *In re* MILLS - - - [1906] 1 K. B. 389
- Woods and Lewis' Contract, In re*, [1898] 1 Ch. 433; [1898] 2 Ch. 211.
Discussed by C. A. BENNETT v. STONE [1903] 1 Ch. 509
- Woodward, In re* - - - (1886) 30 Sol. J. 753
Explained and distinguished by C. A. *In re* BOURNE - [1906] 1 Ch. 697
- Woodridge v. Norris* - - - (1868) L. R. 6 Eq. 410
Followed by Swinfen Eady J. ASCHERSON v. TREDEGAR DRY DOCK AND WHARF CO. [1909] 2 Ch. 401
- Woolfe v. Automatic Picture Gallery, Ltd.*, [1902] W. N. 137.
Affirmed by C. A. [1903] 1 Ch. 18
- Woolfe v. Horne* - - - (1877) 2 Q. B. D. 355
Discussed by Div. Ct. RAINBOW v. HOWKINS - - - [1904] 2 K. B. 322
- Woolwich (Mayor, &c., of), Ex parte*, [1908] W. N. 56.
Considered by C. A. *Ex parte* GREAT WESTERN RY. CO. [1909] W. N. 202
- Woolwich Union v. Fulham Union*, [1906] 2 K. B. 240.
Affirmed by H. L. (E.) *sub nom.* FULHAM PARISH v. WOOLWICH UNION [1907] A. C. 255
- World Industrial Bank, Ltd., In re*, [1909] W. N. 148.
Distinguished by Neville J. *In re* INDUSTRIAL INSURANCE ASSOCIATION, LD. - - - [1910] W. N. 245

- Wormald v. Muzeen* - (1881) 17 Ch. D. 167
Was reversed by C. A.
[1881] W. N. 83; 50 L. J. (Ch.) 776;
45 L. T. (N.S.) 115; 29 W. R. 795
- Worms v. de Valdor*, (1880) 28 W. R. 346; 49 L. J. (Ch.) 261.
Followed by Farwell J. *In re SELOT'S TRUST* - [1902] 1 Ch. 488
- Wortham v. Dacre (Lord)* - (1856) 2 K. & J. 437
Referred to by C. A. LORD MOSTYN *v. FITZSIMMONS* - [1903] 1 K. B. 349, 354
- Worthington v. Curtis* - (1875) 1 Ch. D. 419
Followed by C. A. ATT.-GEN. *v. MURRAY* - [1904] 1 K. B. 165
- Worthington v. Hulton* - (1865) L. R. 1 Q. B. 63
Applied by Neville J. WOLSTANTON *UNITED URBAN DISTRICT COUNCIL v. TUNSTALL URBAN DISTRICT COUNCIL* [1910] 2 Ch. 347
- Wrangham's Trust, In re*, (1860) 1 Dr. & Sm. 358
Referred to by C. A. *In re EDWARDS* [1906] 1 Ch. 570
- Wresham, Mold and Connah's Quay Ry. Co., In re*, [1900] 1 Ch. 261.
Distinguished by Farwell J. *In re LANCASHIRE, DERBYSHIRE, AND EAST COAST RAILWAY ACTS, 1891 TO 1896, AND In re LINCOLN AND EAST COAST RAILWAY ACTS, 1897 TO 1902* [1903] 2 Ch. 711
- Wright v. Callender* - (1852) 2 D. M. & G. 652
Applied by Warrington J. *In re COTTRELL* - [1910] 1 Ch. 402
- Wright v. Horton* - (1887) 12 App. Cas. 371
Applied by Swinfen Eady J. H. E. RANDALL, LD. *v. BRITISH AND AMERICAN SHOE CO.* - [1902] 2 Ch. 354
- Wright v. Ingle* - (1885) 16 Q. B. D. 379
Applied by C. A. HAMSTEAD CORPORATION *v. MIDLAND RY. CO.* [1905] 1 K. B. 538
- Wright (Sir Benjamin), Ex parte*, (1683) 1 Vern. 155.
Considered by C. A. *In re WALKER* [1905] 1 Ch. 160
- Wrightson, In re* - [1904] 2 Ch. 95
Examined by Parker J. WHITE *v. SUMMERS* - [1908] 2 Ch. 256
- Wrigley v. Bayley and Wright and Whittaker & Sons*, [1902] 1 K. B. 780.
Affirmed by H. L. (E.), *sub nom. WRIGLEY v. WHITTAKER & SONS* [1902] A. C. 299
Referred to by C. A. WILLMOTT *v. PATON* - [1902] 1 K. B. 237, 240
Referred to by Ct. of Sess. (Sc.). *DEMPSTER v. HUNTER & SONS* [1903] W. N. 163
- Wrigley v. Gill* - [1905] 1 Ch. 241
Affirmed by C. A. [1906] 1 Ch. 165
Followed by Joyce J. AINSWORTH *v. WILDING* - [1905] 1 Ch. 435
- Wyatt, In the Goods of* - [1898] P. 15
Discussed by Gorell Barnes P. *IN THE ESTATE OF HARVEY* - [1907] P. 239
- Wye Valley Ry. Co. v. Hawes*, (1880) 16 Ch. D. 489.
Commented upon by Joyce J. FURNES, WITHEY & CO. *v. PICKERING* [1908] 2 Ch. 224
- Wyllie v. Harrison*, (1885) 23 S. L. R. 62; 13 R. 92.
See THE "ARNE"
Div. Ct. [1904] P. 154, 157
- Wyman v. Knight* - (1888) 39 Ch. D. 165
See SAVAGE *v. BENTLEY*
Farwell J. [1904] W. N. 89
- Wynne v. Wynne* - (1898) 78 L. T. 796
Distinguished by Jeune P. WALPOLE *v. WALPOLE* - [1901] P. 196
- Wynne-Finch v. Chaytor* - [1903] 2 Ch. 475
Referred to by C. A. FRASER *v. FRASER* - [1905] 1 K. B. 368
- Wyoming Syndicate, In re Estate of*, [1901] 2 Ch. 431.
Distinguished by Swinfen Eady J. BOSCHOEK PROPRIETARY CO. *v. FULKE* [1906] 1 Ch. 148
- Wythes, In re. West v. Wythes*, [1893] 2 Ch. 369.
See *In re WYTHES' SETTLED ESTATES*
Eve J. [1908] 1 Ch. 593
See *In re PADDON* - Warrington J. [1909] W. N. 162
- X., *In re* - [1894] 2 Ch. 415
Discussed by C. A. *In re A.* [1904] 2 Ch. 328, 337
Discussed by C. A. *In re S. S. B.* [1906] 1 Ch. 712
- Yangtze Insurance Association v. Indemnity Mutual Marine Assurance Co.*, [1908] 1 K. B. 910.
Affirmed by C. A. - [1908] 2 K. B. 504
- Yate Collieries and Limeworks Co., In re*, [1883] W. N. 171.
See *In re WORLD INDUSTRIAL BANK, LD.* - Neville J. [1909] W. N. 148
- Yates v. Evans* - (1892) L. J. (Q.B.) 446
Approved by C. A. KIRDWOOD *v. CARROLL* - [1903] 1 K. B. 531
- Yates v. Jack* - (1865) L. R. 1 Ch. 295
Referred to by Farwell J. HIGGINS *v. BETTS* - [1905] 2 Ch. 10
- Yates v. Terry* - [1901] 1 K. B. 102
Reversed by C. A. - [1902] 1 K. B. 527
- Yates v. Yates* - (1860) 28 Beav. 637
Followed by Swinfen Eady J. *In re DAWSON* - [1906] 2 Ch. 211
- "Ydun," *The* - [1899] P. 236
Followed by Channell J. PARKER *v. LONDON COUNTY COUNCIL* [1904] 2 K. B. 501
Followed by C. A. LYLES *v. SOUTHEND-ON-SEA CORPORATION* [1905] 2 K. B. 1

- Yeap Cheah Neo v. Ong Cheng Neo*, (1875) L. R. 6 P. C. 381, 392.
See *In re SINCLAIR Swinfen Eady J.* [1903] W. N. 113
- Yewens v. Noakes* - (1880) 50 L. J. (Q.B.) 132
Considered by C. A. LONDON COUNTY COUNCIL v. SOUTH METROPOLITAN GAS CO. - - - [1904] 1 Ch. 76
- Yielding and Westbrook, In re*, (1886) 31 Ch. D. 344. See *In re FURNEAUX AND AIRD'S CONTRACT* - *Kekewich J.* [1906] W. N. 215
- Yolland, Husson & Birkett, Ltd., In re. Leicester v. Yolland, Husson & Birkett, Ltd.*, [1907] 2 Ch. 471.
Affirmed by C. A. [1908] 1 Ch. 152
Applied by Swinfen Eady J. CUNARD STEAMSHIP CO. v. HOPWOOD [1908] 2 Ch. 564
- Yorkshire Miners' Association v. Howden*, [1903] 1 K. B. 308.
Affirmed (with a variation) by H. L. (E.) [1906] A. C. 256
See COPE v. CROSSINGHAM
C. A. [1909] 2 Ch. 148, 160, 167
- Yorkshire Provident Life Assurance Co. v. Gilbert*, [1895] 2 Q. B. 148.
Discussed and followed by C. A. ARNOLD & BUTLER v. BOTTOMLEY [1908] 2 K. B. 151
- Yorkshire Railway Wagon Co. v. Maclure*, (1882) 21 Ch. D. 309, 314.
Applied by Swinfen Eady J. *In re LISKEARD AND CARADON RY. CO.* [1903] 2 Ch. 681
- Yorkshire (West Riding of) Rivers Board v. Scarr End Mill Co.*, (1901) 65 J. P. 776.
Overruled by C. A. WEST RIDING OF YORKSHIRE RIVERS BOARD v. ROBINSON BROS. - [1907] 1 K. B. 431
- Young v. Ashley Gardens Properties, Ltd.*, [1903] 2 Ch. 112.
Referred to by Eve J. EVANS v. LEVY [1910] 1 Ch. 452
- Young v. Kingston-on-Thames, Surbiton, New Malden, and Coombe Joint Burials Committee*, [1906] 1 K. B. 338.
Affirmed, but on different grounds, by C. A. - [1907] 1 K. B. 416
- Young v. Southwark and Vauxhall Water Co.*, (1893) 69 L. T. 144.
Referred to by Div. Ct. GRAND JUNCTION WATERWORKS CO. v. RODOCANACHI [1904] 2 K. B. 230, 239
- Young v. Thomas* - - [1892] 2 Ch. 134
See DYKES v. THOMSON
Hamilton J. [1909] W. N. 104
- Young v. Turing* (1841) 2 Man. & G. 593
Dictum in, at p. 601, not followed by C. A. ANGEL v. MERCHANTS' MARINE CO. - - - [1903] 1 K. B. 811
- Young and Harston's Contract, In re*, (1885) 31 Ch. D. 168, 174.
Referred to by C. A. BENNETT v. STONE [1903] 1 Ch. 509
Discussed by Parker J. *In re BAYLEY-WORTHINGTON AND COHEN'S CONTRACT* [1909] 1 Ch. 648
- Young, Hamilton & Co., In re. Ex parte Carter*, [1905] W. N. 95; [1905] 2 K. B. 381.
Affirmed by C. A. sub nom. *In re HAMILTON, YOUNG & Co. Ex parte CARTER* - - [1905] 2 K. B. 772
- Young's Trustees v. Young's Trustees*, (1900) 3 F. 274; 38 S. L. R. 209.
Affirmed by H. L. (Sc.) sub nom. BLAIR v. DUNCAN [1902] A. C. 37
- Ystradgofwg and Pontypridd Main Sewerage Board v. Newport Assessment Committee*, [1900] 1 Q. B. 365.
Affirmed by C. A. - [1901] 1 K. B. 406
See YSTRADYFODWG AND PONTYPRIDD MAIN SEWERAGE BOARD v. BENSTED
Walton J. [1906] 1 K. B. 294
- Ystradgofwg and Pontypridd Main Sewerage Board v. Bensted*, [1906] 1 K. B. 294.
Affirmed by C. A. - [1907] 1 K. B. 490
Decision of C. A. - [1907] 1 K. B. 490
Affirmed by H. L. (E.) [1907] A. C. 264
- Ywill & Co. v. Scott Robson* - [1907] 1 K. B. 685
Affirmed by C. A. - [1908] 1 K. B. 270
- Ywill's Trustee v. Thomson* - (1902) 4 F. 815
Affirmed by H. L. (Sc.) MACCULLOCH v. ANDERSON - [1904] A. C. 55
- Yzquierdo y Castaneda v. Clydebank Engineering and Shipbuilding Co.*, (1901) 4 F. 319.
Reversed by H. L. (Sc.) [1902] W. N. 152; [1902] A. C. 524
- Yzquierdo y Castaneda v. Clydebank Engineering and Shipbuilding Co.*, (1901) 5 F. 1016.
Affirmed by H. L. (Sc.) sub nom. CLYDEBANK ENGINEERING AND SHIPBUILDING CO. v. YZQUIERDO Y CASTANEDA [1904] W. N. 192; [1905] A. C. 6
- "Zanzibar," *The* - - - [1892] P. 233
Followed and applied by Gorell Barnes J. *THE "CORDILLERAS"* [1904] P. 90
- "Zeta," *The* - - - [1893] A. C. 468
Referred to by Div. Ct. *THE "NORMANBY"* - - [1904] P. 187, 195
- Zick v. London United Tramways, Ltd.*, [1908] 1 K. B. 611.
Affirmed by C. A. - [1908] 2 K. B. 126

STATUTES ENACTED DURING THE YEARS 1901—1910.

SESSION 1901—1 EDW. 7.

Chap.	TITLE.	Date of Royal Assent.	When Act to come into Operation.
1	<i>Consolidated Fund Act (No. 1), 1901</i>	March 29	Not specified.
2	<i>Army (Annual) Act, 1901</i>	April 29	Not specified.
3	<i>Purchase of Land (Ireland) Act, 1901</i>	July 2	Not specified.
4	<i>Civil List Act, 1901</i>	July 2	As from last demise of the Crown.
5	<i>Demise of the Crown Act, 1901</i>	July 2	As from last demise of the Crown.
6	<i>Consolidated Fund (No. 2) Act, 1901</i>	July 2	Not specified.
7	<i>Finance Act, 1901</i>	July 26	Not specified.
8	<i>Isolation Hospitals Act, 1901</i>	July 26	Not specified.
9	<i>Education (Scotland) Act, 1901</i>	August 9	January 1, 1902.
10	<i>Larceny Act, 1901</i>	August 9	January 1, 1902.
11	<i>Education Act, 1901</i>	August 9	Not specified.
12	<i>Loan Act, 1901</i>	August 17	Not specified.
13	<i>Agricultural Rates Act, 1896, Continuance Act, 1901.</i>	August 17	Not specified.
14	<i>Militia and Yeomanry Act, 1901</i>	August 17	Not specified.
15	<i>Royal Titles Act, 1901</i>	August 17	Not specified.
16	<i>National Gallery (Purchase of Adjacent Land), Act, 1901.</i>	August 17	Not specified.
17	<i>Lunacy (Ireland) Act, 1901</i>	August 17	Not specified.
18	<i>Patents Act, 1901</i>	August 17	January 1, 1902.
19	<i>Public Libraries Act, 1901</i>	August 17	Not specified.
20	<i>Youthful Offenders Act, 1901</i>	August 17	January 1, 1902.
21	<i>Appropriation Act, 1901</i>	August 17	Not specified.
22	<i>Factory and Workshop Act, 1901</i>	August 17	January 1, 1902.
23	<i>Marriages Legalization Act, 1901</i>	August 17	Not specified.
24	<i>Burgh Sewerage, Drainage, and Water Supply (Scotland) Act, 1901.</i>	August 17	May 15, 1902.
25	<i>East India Loan (Great Indian Peninsula Railway Debentures) Act, 1901.</i>	August 17	Not specified.

NOTE.—An Act comes into operation from the commencement of the day on which it receives the Royal Assent unless otherwise specified, except where there are conflicting rights between subject and subject, for the determination of which it is necessary to ascertain the actual priority: *Tomlinson v. Bullock*, (1879) 4 Q. B. D. 230.

Where an Act is expressed to come into operation on a particular day, the same shall be construed as coming into operation immediately on the expiration of the previous day: Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 36 (2).

Chap.	TITLE.	Date of Royal Assent.	When Act to come into Operation.
26	<i>Births and Deaths Registration Act, 1901</i> .	August 17	Not specified.
27	<i>Intoxicating Liquors (Sale to Children) Act, 1901.</i>	August 17	January 1, 1902.
28	<i>Local Government (Ireland) Act, 1901</i> . .	August 17	Not specified.
29	<i>Colonial Acts Confirmation Act, 1901</i> . .	August 17	Not specified.
30	<i>Purchase of Land (Ireland) (No. 2) Act, 1901</i>	August 17	Not specified.
31	<i>Pacific Cable Act, 1901</i>	August 17	Not specified.
32	<i>Isle of Man (Customs) Act, 1901</i>	August 17	Not specified.
33	<i>Expiring Laws Continuance Act, 1901</i> . .	August 17	Not specified.
34	<i>Congested Districts Board (Ireland) Act, 1901</i>	August 17	Not specified.
35	<i>Public Works Loans Act, 1901</i>	August 17	Not specified.
36	<i>Light Railway Commissioners (Salaries) Act, 1901.</i>	August 17	Not specified.
37	<i>Valuation (Ireland) Act, 1901</i>	August 17	Not specified.
38	<i>Fisheries (Ireland) Act, 1901</i>	August 17	Not specified.
39	<i>Naval Works Act, 1901</i>	August 17	Not specified.
40	<i>Military Works Act, 1901</i>	August 17	Not specified.

SESSION 1902—2 EDW. 7.

1	<i>Consolidated Fund (No. 1) Act, 1902</i> . .	March 21 .	Not specified.
2	<i>Army (Annual) Act, 1902</i>	April 28 .	Not specified.
3	<i>Agricultural and Technical Instruction (Ireland) Act, 1902.</i>	June 23 .	Not specified.
4	<i>Loan Act, 1902</i>	June 23 .	Not specified.
5	<i>Royal Naval Reserve Act, 1902</i>	July 22 .	Not specified.
6	<i>Wild Birds Protection Act, 1902</i>	July 22 .	Not specified.
7	<i>Finance Act, 1902</i>	July 22 .	Not specified.
8	<i>Cremation Act, 1902</i>	July 22 .	April 1, 1903.
9	<i>Prison Officers (Pensions) Act, 1902</i> . .	July 22 .	Not specified.
10	<i>Police Reservists Act, 1902</i>	July 22 .	Not specified.
11	<i>Immoral Traffic (Scotland) Act, 1902</i> . .	July 22 .	Not specified.
12	<i>British Museum Act, 1902</i>	July 22 .	Not specified.
13	<i>Labour Bureau (London) Act, 1902</i> . . .	July 22 .	Not specified.
14	<i>University of Wales Act, 1902.</i>	July 22 .	Not specified.
15	<i>Musical (Summary Proceedings) Copyright Act, 1902.</i>	July 22 .	October 1, 1902.
16	<i>Pauper Children (Ireland) Act, 1902</i> . .	July 22 .	Not specified.
17	<i>Midwives Act, 1902</i>	July 31 .	April 1, 1903.
18	<i>Licensing (Ireland) Act, 1902</i>	July 31 .	Not specified.
19	<i>Education Act, 1901 (Renewal) Act, 1902</i>	July 31 .	Not specified.
20	<i>Public Libraries (Ireland) Act, 1902</i> . .	August 8 .	Not specified.
21	<i>Shop Clubs Act, 1902</i>	August 8 .	January 1, 1903.
22	<i>Public Works Loans Act, 1902</i>	August 8 .	Not specified.
23	<i>Isle of Man (Customs) Act, 1902</i>	August 8 .	Not specified.

Chap.	TITLE.	Date of Royal Assent.	When Act to come into Operation.
24	<i>Marine Works (Ireland) Act, 1902 . . .</i>	August 8 . .	Not specified.
25	<i>Lands Valuation (Scotland) Amendment Act, 1902.</i>	August 8 . .	Not specified.
26	<i>Pacific Cable Amendment Act, 1902 . . .</i>	August 8 . .	Not specified.
27	<i>Appropriation Act, 1902</i>	August 8 . .	Not specified.
28	<i>Licensing Act, 1902</i>	August 8 . .	January 1, 1903, except where otherwise expressly mentioned.
29	<i>Freshwater Fish (Scotland) Act, 1902 . . .</i>	August 8 . .	Not specified.
30	<i>Appropriation (No. 2) Act, 1902</i>	November 25 .	Not specified.
31	<i>Supreme Court of Judicature Act, 1902 . . .</i>	November 25 .	Not specified.
32	<i>Expiring Laws Continuance Act, 1902 . . .</i>	December 18 .	Not specified.
33	<i>Agricultural and Technical Instruction (Ireland) (No. 2) Act, 1902.</i>	December 18 .	Not specified.
34	<i>Patents Acts, 1902</i>	December 18 .	Not specified.
35	<i>Electric Lighting (Scotland) Act, 1902 . . .</i>	December 18 .	Not specified.
36	<i>Mail Ships Act, 1902</i>	December 18 .	Not specified.
37	<i>Osborne Estate Act, 1902</i>	December 18 .	Not specified.
38	<i>Local Government (Ireland) Act, 1902 . . .</i>	December 18 .	Not specified.
39	<i>Militia and Yeomanry Act, 1902</i>	December 18 .	Not specified.
40	<i>Uganda Railway Act, 1902</i>	December 18 .	Not specified.
41	<i>Metropolis Water Act, 1902</i>	December 18 .	June 24, 1904. (See Sect. 37.)
42	<i>Education Act, 1902</i>	December 18 .	March 26, 1903, or such other day, not being more than eighteen months later, as the Board of Education may appoint, and different days may be appointed for different purposes and for different provisions of this Act, and for different Councils. Also see sect. 27, subsect. 3.

SESSION 1903—3 EDW. 7.

1	<i>Bank Holiday (Ireland) Act, 1903</i>	March 27 . .	Not specified.
2	<i>Light Locomotives (Ireland) Act, 1903 . . .</i>	March 27 . .	Not specified.
3	<i>Consolidated Fund (No. 1) Act, 1903 . . .</i>	March 27 . .	Not specified.
4	<i>Army (Annual) Act, 1903</i>	April 30 . .	Not specified.
5	<i>Berwickshire County Town Act, 1903 . . .</i>	June 30 . .	Not specified.
6	<i>Naval Forces Act, 1903</i>	June 30 . .	Not specified.
7	<i>Coal Mines Regulation Act (1887) Amendment Act, 1903.</i>	June 30 . .	Not specified.
8	<i>Finance Act, 1903</i>	June 30 . .	Not specified.

Chap.	TITLE.	Date of Royal Assent.	When Act to come into Operation.
9	<i>County Councils (Bills in Parliament) Act, 1903.</i>	July 21 . .	October 1, 1903.
10	<i>Education (Provision of Working Balances) Act, 1903.</i>	July 21 . .	Not specified.
11	<i>Contracts (India Office) Act, 1903 . . .</i>	July 21 . .	Not specified.
12	<i>Post Office (Money Orders) Act, 1903 . .</i>	July 21 . .	Not specified.
13	<i>Elementary Education Amendment Act, 1903 .</i>	July 21 . .	Not specified.
14	<i>Borough Funds Act, 1903</i>	August 11 .	October 1, 1903.
15	<i>Local Government (Transfer of Powers) Act, 1903.</i>	August 11 .	Not specified.
16	<i>Public Offices Site (Dublin) Act, 1903 . .</i>	August 11 .	Not specified.
17	<i>Metropolitan Streets Act, 1903</i>	August 11 .	Not specified.
18	<i>Pistols Act, 1903</i>	August 11 .	Not specified.
19	<i>Poor Law (Dissolution of School Districts and Adjustments) Act, 1903.</i>	August 11 .	Not specified.
20	<i>Patriotic Fund Reorganisation Act, 1903 .</i>	August 11 .	January 1, 1904.
21	<i>Sugar Convention Act, 1903</i>	August 11 .	Not specified.
22	<i>Naval Works Act, 1903</i>	August 11 .	Not specified.
23	<i>Ireland Development Grant Act, 1903 . .</i>	August 11 .	Not specified.
24	<i>Education (London) Act, 1903</i>	August 14 .	May 1, 1904.
25	<i>Licensing (Scotland) Act, 1903</i>	August 14 .	January 1, 1904.
26	<i>Marriages Legalization Act, 1903</i>	August 14 .	Not specified.
27	<i>South African Loan and War Contribution Act, 1903.</i>	August 14 .	Not specified.
28	<i>Public Works Loans Act, 1903</i>	August 14 .	Not specified.
29	<i>Military Works Act, 1903</i>	August 14 .	Not specified.
30	<i>Railways (Electrical Power) Act, 1903 . .</i>	August 14 .	January 1, 1904.
31	<i>Board of Agriculture and Fisheries Act, 1903</i>	August 14 .	October 1, 1903.
32	<i>Appropriation Act, 1903</i>	August 14 .	Not specified.
33	<i>Burgh Police (Scotland) Act, 1903 . . .</i>	August 14 .	May 15, 1904.
34	<i>Town Councils (Scotland) Act, 1903 . .</i>	August 14 .	Not specified.
35	<i>Isle of Man (Customs) Act, 1903</i>	August 14 .	Not specified.
36	<i>Motor Car Act, 1903</i>	August 14 .	January 1, 1904.
37	<i>Irish Land Act, 1903</i>	August 14 .	November 1, 1903.
38	<i>Poor Prisoners Defence Act, 1903</i>	August 14 .	January 1, 1904.
39	<i>Housing of the Working Classes Act, 1903 .</i>	August 14 .	Not specified.
40	<i>Expiring Laws Continuance Act, 1903 . .</i>	August 14 .	Not specified.
41	<i>Public Buildings Expenses Act, 1903 . .</i>	August 14 .	Not specified.
42	<i>County Courts Act, 1903</i>	August 14 .	January 1, 1905.
43	<i>Diseases of Animals Act, 1903</i>	August 14 .	Not specified.
44	<i>General Dealers (Ireland) Act, 1903 . .</i>	August 14 .	January 1, 1904.
45	<i>Employment of Children Act, 1903 . . .</i>	August 14 .	January 1, 1904.
46	<i>Revenue Act, 1903</i>	August 14 .	September 1, 1903.
47	<i>Military Lands Act, 1903</i>	August 14 .	Not specified.

SESSION 1904—4 EDW. 7.

Chap.	TITLE.	Date of Royal Assent.	When Act to come into Operation.
1	<i>Consolidated Fund (No. 1) Act, 1904</i> . . .	March 29 . .	Not specified.
2	<i>Metropolitan Improvements (Funds) Act, 1904</i>	March 29 . .	Not specified.
3	<i>Telegraph Money Act, 1904</i>	March 29 . .	Not specified.
4	<i>Wrld Birds Protection Act, 1904</i>	April 28 . .	From and after passing of Act.
5	<i>Army (Annual) Act, 1904</i>	April 28 . .	Amendments of the Army Act contained in this or any other Act continuing the Army Act shall come into operation in any place as from the day from which the Army Act is by this or such other Act continued in that place (s. 14).
6	<i>Hall-marking of Foreign Plate Act, 1904</i> .	July 22 . .	November 1, 1904.
7	<i>Finance Act, 1904</i>	August 1 . .	Not specified.
8	<i>Savings Banks Act, 1904</i>	August 1 . .	Not specified.
9	<i>Registration of Clubs (Ireland) Act, 1904</i> .	August 15 .	January 1, 1905.
10	<i>Wild Birds Protection (St. Kilda) Act, 1904</i> .	August 15 .	Not specified.
11	<i>University of Liverpool Act, 1904</i>	August 15 .	Not specified.
12	<i>Leeds University Act, 1904</i>	August 15 .	Not specified.
13	<i>London Electric Lighting Areas Act, 1904</i> .	August 15 .	Not specified.
14	<i>Post Office Act, 1904</i>	August 15 .	Not specified.
15	<i>Prevention of Cruelty to Children Act, 1904</i> .	August 15 .	October 1, 1904.
16	<i>Public Health Act, 1904</i>	August 15 .	Not specified.
17	<i>Appropriation Act, 1904</i>	August 15 .	Not specified.
18	<i>Education (Local Authority Default) Act, 1904</i>	August 15 .	Not specified.
19	<i>Railways (Private Sidings) Act, 1904</i> . .	August 15 .	Not specified.
20	<i>Poor Law Authorities (Transfer of Property) Act, 1904.</i>	August 15 .	Not specified.
21	<i>Capital Expenditure (Money) Act, 1904</i> . .	August 15 .	Not specified.
22	<i>Cunard Agreement (Money) Act, 1904</i> . .	August 15 .	Not specified.
23	<i>Licensing Act, 1904</i>	August 15 .	January 1, 1905.
24	<i>Wireless Telegraphy Act, 1904</i>	August 15 .	This Act to continue in force until July 31, 1906, unless Parliament otherwise determines.
25	<i>Isle of Man (Customs) Act, 1904</i>	August 15 .	Not specified.
26	<i>Indian Councils Act, 1904</i>	August 15 .	Not specified.
27	<i>Secretary for Scotland Act, 1904</i>	August 15 .	Not specified.
28	<i>Weights and Measures Act, 1904</i>	August 15 .	January 1, 1905.
29	<i>Expiring Laws Continuance Act, 1904</i> . .	August 15 .	Not specified.
30	<i>Bishoprics of Southwark and Birmingham Act, 1904.</i>	August 15 .	Not specified.
31	<i>Shop Hours Act, 1904</i>	August 15 .	Not specified.
32	<i>Outdoor Relief (Friendly Societies) Act, 1904.</i>	August 15 .	Not specified.

Chap.	TITLE.	Date of Royal Assent.	When Act to come into Operation.
33	<i>Anglo-French Convention Act, 1904 . . .</i>	August 15 . .	Not specified.
34	<i>Irish Lands Act, 1904</i>	August 15 . .	Not specified.
35	<i>Prisons (Scotland) Act, 1904</i>	August 15 . .	Not specified.
36	<i>Public Works Loans Act, 1904</i>	August 15 . .	Not specified.

SESSION 1905—5 EDW. 7.

1	<i>Consolidated Fund (No. 1) Act, 1905 . .</i>	March 30 . .	Not specified.
2	<i>Army (Annual) Act, 1905</i>	April 14 . .	Not specified.
3	<i>Licensing (Ireland) Act, 1905</i>	June 30 . .	Not specified.
4	<i>Finance Act, 1905</i>	June 30 . .	Not specified.
5	<i>Mr. Speaker's Retirement Act, 1905 . .</i>	July 11 . .	Not specified.
6	<i>Consolidated Fund (No. 2) Act, 1905 . .</i>	July 11 . .	Not specified.
7	<i>War Stores (Commission) Act, 1905 . .</i>	July 11 . .	Not specified.
8	<i>Agricultural Act, 1896, &c., Continuance Act, 1905.</i>	August 4 . .	Not specified.
9	<i>Coal Mines (Weighing of Minerals) Act, 1905</i>	August 4 . .	Not specified.
10	<i>Shipowners' Negligence (Remedies) Act, 1895 .</i>	August 4 . .	January 1, 1906.
11	<i>Railway Fires Act, 1905</i>	August 4 . .	January 1, 1908.
12	<i>Churches (Scotland) Act, 1905</i>	August 11 . .	Not specified.
13	<i>Aliens Act, 1905</i>	August 11 . .	January 1, 1906.
14	<i>Medical Act (1886) Amendment Act, 1905 .</i>	August 11 . .	Not specified.
15	<i>Trade Marks Act, 1905</i>	August 11 . .	April 1, 1906.
16	<i>Isle of Man (Customs) Act, 1905</i>	August 11 . .	Not specified.
17	<i>Appropriation Act, 1905</i>	August 11 . .	Not specified.
18	<i>Unemployed Workmen Act, 1905</i>	August 11 . .	Not specified.
19	<i>East India Loans (Railways) Act, 1905 . .</i>	August 11 . .	Not specified.
20	<i>Naval Works Act, 1905</i>	August 11 . .	Not specified.
21	<i>Expiring Laws Continuance Act, 1905 . .</i>	August 11 . .	Not specified.
22	<i>Public Works Loans Act, 1905</i>	August 11 . .	Not specified.
23	<i>Provisional Order (Marriages) Act, 1905 .</i>	August 11 . .	Not specified.

SESSION 1906—6 EDW. 7.

1	<i>Consolidated Fund (No. 1) Act, 1906 . .</i>	March 30 . .	Not specified.
2	<i>Army (Annual) Act, 1906</i>	March 30 . .	Not specified.
3	<i>Seed Potatoes Supply (Ireland) Act, 1906 .</i>	May 29 . .	Not specified.
4	<i>Post Office (Money Orders) Act, 1906 . .</i>	May 29 . .	Not specified.
5	<i>Seamen's and Soldiers' False Characters Act, 1906.</i>	June 22 . .	Not specified.
6	<i>Metropolitan Police (Commission) Act, 1906 .</i>	June 22 . .	Not specified.
7	<i>Police (Superannuation) Act, 1906</i>	June 22 . .	Not specified.
8	<i>Finance Act, 1906</i>	June 22 . .	Not specified.

Chap.	TITLE.	Date of Royal Assent.	When Act to come into Operation.
9	<i>Indian Railways Act Amendment Act, 1906</i>	July 20	Not specified.
10	<i>Education of Defective Children (Scotland) Act, 1906.</i>	July 20	Not specified.
11	<i>Reserve Forces Act, 1906</i>	July 20	Not specified.
12	<i>Municipal Corporations Amendment Act, 1906</i>	July 20	Not specified.
13	<i>Wireless Telegraphy Act, 1906</i>	July 20	Not specified.
14	<i>Alkali, &c., Works Regulation Act, 1906</i>	August 4	January 1, 1907.
15	<i>Extradition Act, 1906</i>	August 4	Not specified.
16	<i>Justices of the Peace Act, 1906</i>	August 4	Not specified.
17	<i>Bills of Exchange (Crossed Cheques) Act, 1906</i>	August 4	Not specified.
18	<i>Isle of Man (Customs) Act, 1906</i>	August 4	Not specified.
19	<i>Deanery of Manchester Act, 1906</i>	August 4	Not specified.
20	<i>Revenue Act, 1906</i>	August 4	October 1, 1906 (save as otherwise expressly provided).
21	<i>Ground Game (Amendment) Act, 1906</i>	August 4	April 1, 1907.
22	<i>Post Office (Literature of the Blind) Act, 1906</i>	August 4	Not specified.
23	<i>Charitable Loan Societies (Ireland) Act, 1906</i>	August 4	Not specified.
24	<i>Solicitors Act, 1906</i>	August 4	Not specified.
25	<i>Open Spaces Act, 1906</i>	August 4	January 1, 1907.
26	<i>Appropriation Act, 1906</i>	August 4	Not specified.
27	<i>Fertilisers and Feeding Stuffs Act, 1906</i>	August 4	January 1, 1907.
28	<i>Crown Lands Act, 1906</i>	August 4	Not specified.
29	<i>Public Works Loans Act, 1906</i>	August 4	Not specified.
30	<i>Colonial Marriages (Deceased Wife's Sister) Act, 1906.</i>	August 4	Not specified.
31	<i>Local Government (Ireland) Act (1898) Amendment Act, 1906.</i>	August 4	Not specified.
32	<i>Dogs Act, 1906</i>	August 4	January 1, 1907.
33	<i>Local Authorities (Treasury Powers) Act, 1906</i>	August 4	Not specified.
34	<i>Prevention of Corruption Act, 1906</i>	August 4	January 1, 1907.
35	<i>Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act, 1906.</i>	August 4	Not specified.
36	<i>Musical Copyright Act, 1906</i>	August 4	Not specified.
37	<i>Labourers (Ireland) Act, 1906</i>	August 4	November 1, 1906.
38	<i>Statute Law Revision (Scotland) Act, 1906</i>	August 4	Not specified.
39	<i>Intoxicating Liquors (Ireland) Act, 1906</i>	November 29	January 1, 1907.
40	<i>Marriage with Foreigners Act</i>	November 29	Not specified.
41	<i>Marine Insurance Act, 1906</i>	December 21	January 1, 1907.
42	<i>Licensing Act, 1906</i>	December 21	Not specified.
43	<i>Street Betting Act, 1906</i>	December 21	Not specified.
44	<i>Burial Act, 1906</i>	December 21	Not specified.
45	<i>Removal of Offensive Matter Act, 1906</i>	December 21	Not specified.
46	<i>Recorders, Stipendiary Magistrates, and Clerks of the Peace Act, 1906.</i>	December 21	Not specified.
47	<i>Trade Disputes Act, 1906</i>	December 21	Not specified.
48	<i>Merchant Shipping Act, 1906</i>	December 21	June 1, 1907.
49	<i>Census of Production Act, 1906</i>	December 21	Not specified.

Chap.	TITLE.	Date of Royal Assent.	When Act to come into Operation.
50	<i>National Galleries of Scotland Act, 1906</i>	December 21	Not specified.
51	<i>Expiring Laws Continuance Act, 1906</i>	December 21	Not specified.
52	<i>Land Tax Commissioners Act, 1906</i>	December 21	Not specified.
53	<i>Notice of Accidents Act, 1906</i>	December 21	January 1, 1907.
54	<i>Town Tenants (Ireland) Act, 1906</i>	December 21	January 1, 1907.
55	<i>Public Trustee Act, 1906</i>	December 21	January 1, 1908.
56	<i>Agricultural Holdings Act, 1906</i>	December 21	January 1, 1909.
57	<i>Education (Provision of Meals) Act, 1906</i>	December 21	Not specified.
58	<i>Workmen's Compensation Act, 1906</i>	December 21	July 1, 1907.

SESSION 1907—7 EDW. 7.

1	<i>Consolidated Fund (No. 1) Act, 1907</i>	March 22	Not specified.
2	<i>Army (Annual) Act, 1907</i>	April 29	Not specified.
3	<i>Irish Tobacco Act, 1907</i>	July 4	Not specified.
4	<i>Destructive Insects and Pests Act, 1907</i>	July 4	Not specified.
5	<i>Injured Animals Act, 1907</i>	July 26	Not specified.
6	<i>Telegraph (Money) Act, 1907</i>	August 2	Not specified.
7	<i>Australian States Constitution Act, 1907</i>	August 2	Not specified.
8	<i>Assay of Imported Watch-Cases (Existing Stocks Exemption) Act, 1907</i>	August 2	Not specified.
9	<i>Territorial and Reserve Forces Act, 1907</i>	August 2	Not specified.
10	<i>Employment of Women Act, 1907</i>	August 9	Not specified.
11	<i>British North America Act, 1907</i>	August 9	July 1, 1907.
12	<i>Matrimonial Causes Act, 1907</i>	August 9	Not specified.
13	<i>Finance Act, 1907</i>	August 9	Not specified.
14	<i>Released Persons (Poor Law Relief) Act, 1907</i>	August 21	Not specified.
15	<i>Salmon and Freshwater Fisheries Act, 1907</i>	August 21	Not specified.
16	<i>Evidence (Colonial Statutes) Act, 1907</i>	August 21	Not specified.
17	<i>Probation of Offenders Act, 1907</i>	August 21	January 1, 1908.
18	<i>Married Women's Property Act, 1907</i>	August 21	January 1, 1908.
19	<i>Prisons (Ireland) Act, 1907</i>	August 21	On the date at which the first rules made under the Act come into force.
20	<i>Appropriation Act, 1907</i>	August 21	Not specified.
21	<i>Butter and Margarine Act, 1907</i>	August 21	January 1, 1908.
22	<i>Petty Sessions Clerk (Ireland) Amendment Act, 1907</i>	August 21	Not specified.
23	<i>Criminal Appeal Act, 1907</i>	August 28	"This Act shall apply to all persons convicted after April 18, 1908, but shall not affect the rights, as respects appeal, of any persons convicted on or before that date." (See sect. 23 (3).)

Chap.	TITLE.	Date of Royal Assent.	When Act to come into Operation.
24	<i>Limited Partnerships Act, 1907</i>	August 28	January 1, 1908.
25	<i>Commissioners for Oaths (Prize Proceedings) Act, 1907</i>	August 28	Not specified.
26	<i>Isle of Man (Customs) Act, 1907</i>	August 28	Not specified.
27	<i>Advertisements Regulation Act, 1907</i> . .	August 28	Not specified.
28	<i>Patents and Designs (Amendment) Act, 1907</i> .	August 28	January 1, 1908.
29	<i>Patents and Designs Act, 1907</i>	August 28	January 1, 1908, save as otherwise expressly provided.
30	<i>Public Health (Scotland) Amendment Act, 1907.</i>	August 28	Not specified.
31	<i>Vaccination Act, 1907</i>	August 28	January 1, 1908.
32	<i>Public Health (Regulation as to Food) Act, 1907.</i>	August 28	Not specified.
33	<i>Qualification of Women (County and Borough Councils) Act, 1907.</i>	August 28	Not specified.
34	<i>Expiring Laws Continuance Act, 1907</i> . .	August 28	Not specified.
35	<i>Council of India Act, 1907</i>	August 28	Not specified.
36	<i>Public Works Loans Act, 1907</i>	August 28	Not specified.
37	<i>Transvaal Loan (Guarantee) Act, 1907</i> . .	August 28	Not specified.
38	<i>Irish Land Act, 1907</i>	August 28	Not specified.
39	<i>Factory and Workshop Act, 1907</i>	August 28	January 1, 1908.
40	<i>Notification of Births Act, 1907</i>	August 28	Not specified.
41	<i>Whale Fisheries (Scotland) Act, 1907</i> . .	August 28	January 1, 1908.
42	<i>Sea Fisheries (Scotland), Application of Penalties Act, 1907.</i>	August 28	April 1, 1908.
43	<i>Education (Administrative Provisions) Act, 1907.</i>	August 28	Sect. 13 comes into operation on January 1, 1908.
44	<i>Supreme Court of Judicature (Ireland) Act, 1907.</i>	August 28	Not specified.
45	<i>Lights on Vehicles Act, 1907</i>	August 28	January 1, 1908.
46	<i>Employers' Liability Insurance Companies Act, 1907.</i>	August 28	This Act shall come into operation on such day as may be specified by an Order in Council.
47	<i>Deceased Wife's Sister's Marriage Act, 1907</i> .	August 28	Not specified.
48	<i>Qualification of Women (County and Town Councils) (Scotland) Act, 1907.</i>	August 28	Not specified.
49	<i>Vaccination (Scotland) Act, 1907</i>	August 28	Not specified.
50	<i>Companies Act, 1907</i>	August 28	The provisions relating to perpetual debentures and the power of a company to re-issue redeemed debentures in certain cases, came into operation on passing of Act, and the other provisions July 1, 1908. (See sect. 52 (3).)

Chap.	TITLE.	Date of Royal Assent.	When Act to come into Operation.
51	<i>Sheriff Court (Scotland) Act, 1907 . . .</i>	August 28 .	January 1, 1908.
52	<i>Merchant Shipping Act, 1907 . . .</i>	August 28 .	Not specified.
53	<i>Public Health Acts Amendment Act, 1907 .</i>	August 28 .	January 1, 1908.
54	<i>Small Holdings and Allotments Act, 1907 .</i>	August 28 .	January 1, 1908.
55	<i>London Cab and Stage Carriage Act, 1907 .</i>	August 28 .	Sect. 2 comes into operation on January 1, 1908.
56	<i>Evicted Tenants (Ireland) Act, 1907 . .</i>	August 28 .	Not specified.

SESSION 1908—8 EDW. 7.

1	<i>Consolidated Fund (No. 1) Act, 1908 . . .</i>	March 27 .	Not specified.
2	<i>Army (Annual) Act, 1908 . . .</i>	April 14 .	Not specified.
3	<i>Prosecution of Offences Act, 1908 . . .</i>	June 18 .	Not specified.
4	<i>Patents and Designs Act, 1908 . . .</i>	August 1 .	Not specified.
5	<i>Police Superannuation Act, 1908 . . .</i>	August 1 .	Not specified.
6	<i>Public Health Act, 1908 . . .</i>	August 1 .	Not specified.
7	<i>Fatal Accidents (Damages) Act, 1908 . .</i>	August 1 .	Not specified.
8	<i>Post Office Savings Bank Act, 1908 . .</i>	August 1 .	Not specified.
9	<i>Isle of Man (Customs) Act, 1908 . . .</i>	August 1 .	Not specified.
10	<i>Tobacco Growing (Scotland) Act, 1908 .</i>	August 1 .	Not specified.
11	<i>Wild Birds Protection Act, 1908 . . .</i>	August 1 .	Not specified.
12	<i>Companies Act, 1908 . . .</i>	August 1 .	Not specified.
13	<i>Polling Districts (County Councils) Act, 1908.</i>	August 1 .	Not specified.
14	<i>Polling Arrangements (Parliamentary) Boroughs Act, 1908.</i>	August 1 .	Not specified.
15	<i>Costs in Criminal Cases Act, 1908 . . .</i>	August 1 .	January 1, 1909.
16	<i>Finance Act, 1908 . . .</i>	August 1 .	Not specified.
17	<i>Cran Measures Act, 1908 . . .</i>	August 1 .	Not specified.
18	<i>Expiring Laws Continuance Act, 1908 . .</i>	August 1 .	Not specified.
19	<i>Seed Potatoes and Seed Oats Supply (Ireland) Act, 1908.</i>	August 1 .	Not specified.
20	<i>University of Durham Act, 1908 . . .</i>	August 1 .	Not specified.
21	<i>Registration of Durham Act, 1908 . . .</i>	August 1 .	Not specified.
22	<i>Evicted Tenants (Ireland) Act, 1908 . .</i>	August 1 .	Not specified.
23	<i>Public Works Loans Act, 1908 . . .</i>	August 1 .	Not specified.
24	<i>Summary Jurisdiction (Ireland) Act, 1908 .</i>	August 1 .	Not specified.
25	<i>Naval Lands (Volunteers) Act, 1908 . .</i>	August 1 .	Not specified.
26	<i>Naval Marriages Act, 1908 . . .</i>	August 1 .	January 1, 1909.
27	<i>Married Women's Property Act, 1908 . .</i>	August 1 .	January 1, 1909.
28	<i>Agricultural Holdings Act, 1908 . . .</i>	August 1 .	January 1, 1909.
29	<i>Grand Jury (Ireland) Act, 1836, Amendment Act, 1908.</i>	August 1 .	Not specified.
30	<i>Appropriation Act, 1908 . . .</i>	August 1 .	Not specified.
31	<i>Whale Fisheries (Ireland) Act, 1908 . .</i>	August 1 .	January 1, 1909.
32	<i>Friendly Societies Act, 1908 . . .</i>	August 1 .	January 1, 1909.

Chap.	TITLE.	Date of Royal Assent.	When Act to come into Operation.
33	<i>Telegraph (Construction) Act, 1908.</i>	August 1 .	Not specified.
34	<i>Bee Pest Prevention (Ireland) Act, 1908.</i>	August 1 .	January 1, 1909.
35	<i>Polling Districts and Registration of Voters (Ireland) Act, 1908.</i>	August 1 .	Not specified.
36	<i>Small Holdings and Allotments Act, 1908</i>	August 1 .	January 1, 1909.
37	<i>Coroners (Ireland) Act, 1908</i>	August 1 .	Not specified.
38	<i>Ireland Universities Act, 1908</i>	August 1 .	To come into operation on such day, not being more than two years after the passing, as the Lord Lieutenant may appoint, and different days may be appointed for different purposes and for different provisions of the Act.
39	<i>Endowed Schools (Masters) Act, 1908</i>	August 1 .	Not specified.
40	<i>Old Age Pensions Act, 1908</i>	August 1 .	January 1, 1909.
41	<i>Assizes and Quarter Sessions Act, 1908</i>	December 21	Not specified.
42	<i>White Phosphorus Matches Prohibition Act, 1908.</i>	December 21	January 1, 1910. As to retail dealers, January 1, 1911.
43	<i>Local Authorities (Admission of the Press to Meetings) Act, 1908.</i>	December 21	Not specified.
44	<i>Commons Act, 1908</i>	December 21	Not specified.
45	<i>Punishment of Incest Act, 1908</i>	December 21	January 1, 1909.
46	<i>Criminal Appeal (Amendment) Act, 1908</i>	December 21	Not specified.
47	<i>Lunacy Act, 1908</i>	December 21	Not specified.
48	<i>Post Office Act, 1908</i>	December 21	May 1, 1909.
49	<i>Statute Law Revision Act, 1908</i>	December 21	Not specified.
50	<i>Crofters Common Grazings Regulation Act, 1908.</i>	December 21	Not specified.
51	<i>Appellate Jurisdiction Act, 1908</i>	December 21	Not specified.
52	<i>Post Office Savings Bank (Public Trustee) Act, 1908.</i>	December 21	Not specified.
53	<i>Law of Distress Amendment Act, 1908</i>	December 21	July 1, 1909.
54	<i>East India Loans Act, 1908</i>	December 21	Not specified.
55	<i>Poisons and Pharmacy Act, 1908</i>	December 21	April 1, 1909.
56	<i>Tuberculosis Prevention (Ireland) Act, 1908</i>	December 21	July 1, 1909.
57	<i>Coal Mines Regulation Act, 1908</i>	December 21	As respects mines in Northumberland and Durham on January 1, 1910, and elsewhere on July 1, 1909.
58	<i>Local Registration of Title (Ireland) Amendment Act, 1908.</i>	December 21	December 3, 1910.
59	<i>Prevention of Crime Act, 1908</i>	December 21	August 1, 1909.
60	<i>Constabulary (Ireland) Act, 1908</i>	December 21	Not specified.
61	<i>Housing of Working Classes (Ireland) Act, 1908.</i>	December 21	"On the passing thereof."
62	<i>Local Government (Scotland) Act, 1908</i>	December 21	Not specified.

Chap.	TITLE.	Date of Royal Assent.	When Act to come into Operation.
63	<i>Education (Scotland) Act, 1908</i>	December 21 .	January 1, 1909.
64	<i>Agricultural Holdings (Scotland) Act, 1908</i> .	December 21 .	January 1, 1909.
65	<i>Summary Jurisdiction (Scotland) Act, 1908</i> .	December 21 .	June 1, 1909.
66	<i>Public Meeting Act, 1908</i>	December 21 .	Not specified.
67	<i>Children Act, 1908</i>	December 21 .	April 1, 1909.
68	<i>Port of London Act, 1908</i>	December 21 .	Not specified.
69	<i>Companies Consolidation Act, 1908</i>	December 21 .	April 1, 1909.

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1	<i>Consolidated Fund (No. 1) Act, 1909</i> . . .	March 15 .	Not specified.
2	<i>Consolidated Fund (No. 2) Act, 1909</i> . . .	March 30 . .	Not specified.
3	<i>Army (Annual) Act, 1909</i>	April 30 . .	Not specified.
4	<i>Indian Councils Act, 1909</i>	May 25 . . .	On such date or dates as the Governor-General in Council, with the approval of the Secretary of State in Council, may appoint.
5	<i>Appropriation Act, 1909</i>	August 16 .	Not specified.
6	<i>Public Works Loans Act, 1909</i>	August 16 .	Not specified.
7	<i>Labour Exchanges Act, 1909</i>	September 20 .	Not specified.
8	<i>Trawling in Prohibited Areas Prevention Act, 1909.</i>	September 20 .	Not specified.
9	<i>South Africa Act, 1909</i>	September 20 .	Not specified.
10	<i>Superannuation Act, 1909</i>	September 20 .	Not specified.
11	<i>Judicature (Rule Committee) Act, 1909</i> . . .	October 20 .	Not specified.
12	<i>Marine Insurance (Gambling Policies) Act, 1909.</i>	October 20 .	Not specified.
13	<i>Local Education Authorities (Medical Treatment) Act, 1909.</i>	October 20 .	Not specified.
14	<i>Assistant Postmaster-General Act, 1909</i> . . .	October 20 .	Not specified.
15	<i>Board of Agriculture and Fisheries Act, 1909</i>	October 20 .	Not specified.
16	<i>Workmen's Compensation (Anglo-French Convention) Act, 1909.</i>	October 20 .	Not specified.
17	<i>Metropolitan Ambulances Act, 1909</i>	October 20 .	Not specified.
18	<i>Naval Establishments in British Possessions Act, 1909.</i>	October 20 .	Not specified.
19	<i>Colonial Naval Defence Act, 1909</i>	October 20 .	Not specified.
20	<i>Telegraph (Arbitration) Act, 1909</i>	October 20 .	Not specified.
21	<i>Irish Handloom Weavers Act, 1909</i>	October 20 .	January 1, 1910.
22	<i>Trade Boards Act, 1909</i>	October 20 .	January 1, 1910.
23	<i>Board of Trade Act, 1909</i>	October 20 .	Not specified.
24	<i>Merchandise Marks (Ireland) Act, 1909</i> . .	November 25 .	Not specified.
25	<i>Fisheries (Ireland) Act, 1909</i>	November 25 .	Not specified.
26	<i>Diseases of Animals Act, 1909</i>	November 25 .	Not specified.

Chap.	TITLE.	Date of Royal Assent.	When Act to come into Operation.
27	<i>Prisons (Scotland) Act, 1909</i>	November 25 .	Not specified.
28	<i>Summary Jurisdiction (Scotland) Act, 1909</i> .	November 25 .	Not specified.
29	<i>Education (Administrative Provisions) Act, 1909.</i>	November 25 .	Not specified.
30	<i>Cinematograph Act, 1909.</i>	November 25 .	January 1, 1910.
31	<i>Weeds and Agricultural Seed (Ireland) Act, 1909.</i>	November 25 .	January 1, 1910.
32	<i>Health Resorts and Watering Places (Ireland) Act, 1909.</i>	November 25 .	Not specified.
33	<i>Wild Animals in Captivity Protection (Scotland) Act, 1909.</i>	November 25 .	Not specified.
34	<i>Electric Lighting Act, 1909</i>	November 25 .	April 1, 1909.
35	<i>Police (Liverpool Inquiry) Act, 1909</i> . .	November 25 .	Not specified.
36	<i>Local Registration of Title (Ireland) Act, 1909</i>	November 25 .	Not specified.
37	<i>Motor Car (International Circulation) Act, 1909.</i>	November 25 .	Not specified.
38	<i>County Council Mortgages Act, 1909</i> . .	November 25 .	Not specified.
39	<i>Oaths Act, 1909</i>	November 25 .	January 1, 1910.
40	<i>Police Act, 1909</i>	November 25 .	Not specified.
41	<i>Naval Discipline Act, 1909</i>	November 25 .	To come into force on such day or days not being later than January 1, 1911, as the Admiralty may appoint, and the Admiralty may appoint different days for different places and stations, and for different provisions of the Act.
42	<i>Irish Land Act, 1909</i>	December 3 .	Not specified.
43	<i>Revenue Act, 1909</i>	December 3 .	Not specified.
44	<i>Housing, Town Planning, &c., Act, 1909</i> . .	December 3 .	Not specified.
45	<i>Isle of Man (Customs) Act, 1909</i>	December 3 .	Not specified.
46	<i>Expiring Laws Continuance Act, 1909</i> . .	December 3 .	Not specified.
47	<i>Development and Road Improvement Funds Act, 1909.</i>	December 3 .	Not specified.
48	<i>Asylums Officers' Superannuation Act, 1909</i> .	December 3 .	April 1, 1910.
49	<i>Assurance Companies Act, 1909</i>	December 3 .	July 1, 1910, except that as respects s. 36 it shall come into operation on the passing of the Act.

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1	<i>Treasury (Temporary Borrowing) Act, 1910</i> .	March 8 . .	Not specified.
2	<i>War Loan (Redemption) Act, 1910</i>	March 8 . .	Not specified.
3	<i>Ancient Monuments Protection Act, 1910</i> . .	March 24 . .	Not specified.
4	<i>Consolidated Fund (No. 1) Act, 1910</i> . . .	March 24 . .	Not specified.

Chap.	TITLE.	Date of Royal Assent.	When Act to come into Operation.
5	<i>East India Loans (Railways and Irrigation) Act, 1910.</i>	March 24 . .	Not specified.
6	<i>Army (Annual) Act, 1910</i>	April 29 . .	Not specified.
7	<i>Development and Road Improvement Funds Act, 1910.</i>	April 29 . .	Not specified.
8	<i>Finance (1909-10) Act, 1910</i>	April 29 . .	Not specified.
9	<i>Consolidated Fund (No. 2) Act, 1910 . .</i>	June 17 . .	Not specified.

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10	<i>Police (Scotland) Act (1890) Amendment Act, 1910.</i>	July 26 . .	January 1, 1911.
11	<i>Census (Ireland) Act, 1910</i>	July 26 . .	Not specified.
12	<i>Supreme Court of Judicature Act, 1910 . .</i>	July 26 . .	Not specified.
13	<i>Police Weekly Rest-Day Act, 1910</i>	July 26 . .	Not specified.
14	<i>Appropriation Act, 1910</i>	July 26 . .	Not specified.
15	<i>Mines Accidents (Rescue and Aid) Act, 1910 .</i>	August 3 . .	Not specified.
16	<i>Duke of York's School (Chapel) Act, 1910 .</i>	August 3 . .	Not specified.
17	<i>County Common Juries Act, 1910</i>	August 3 . .	Not specified.
18	<i>Isle of Man (Customs) Act, 1910</i>	August 3 . .	Not specified.
19	<i>Municipal Corporations Amendment Act, 1910</i>	August 3 . .	Not specified.
20	<i>Diseases of Animals Act, 1910</i>	August 3 . .	October 1, 1910.
21	<i>Public Works Loans Act, 1910</i>	August 3 . .	Not specified.
22	<i>Trusts (Scotland) Act, 1910</i>	August 3 . .	Not specified.
23	<i>Companies (Converted Societies) Act, 1910 .</i>	August 3 . .	Not specified.
24	<i>Licensing (Consolidation) Act, 1910 . . .</i>	August 3 . .	January 1, 1911.
25	<i>Children Act (1908) Amendment Act, 1910 .</i>	August 3 . .	Not specified.
26	<i>Regency Act, 1910</i>	August 3 . .	Not specified.
27	<i>Census (Great Britain) Act, 1910</i>	August 3 . .	April 2, 1911.
28	<i>Civil List Act, 1910</i>	August 3 . .	Act to take effect as from last demise of the Crown.
29	<i>Accession Declaration Act, 1910</i>	August 3 . .	Not specified.
30	<i>Agricultural Holdings (Scotland) Amendment Act, 1910.</i>	August 3 . .	Not specified.
31	<i>Jury Trials Amendment (Scotland) Act, 1910</i>	August 3 . .	Not specified.
32	<i>Registration of Births, Deaths and Marriages (Scotland) Amendment Act, 1910.</i>	August 3 . .	On expiration of three months from passing.
33	<i>Hotels and Restaurants (Dublin) Act, 1910 .</i>	August 3 . .	Not specified.
34	<i>Small Holdings Act, 1910</i>	August 3 . .	Not specified.
35	<i>Finance Act, 1910</i>	November 28	Not specified.
36	<i>Expiring Laws Continuance Act, 1910 . .</i>	November 28	Not specified.
37	<i>Education (Choice of Employment) Act, 1910.</i>	November 28	Not specified.
38	<i>Appropriation (No. 2) Act, 1910</i>	November 28	Not specified.

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1285.

- 13 Edw. 1, c. 1, Westminster II. Statute De
Donis Conditionalibus. ATT-GEN. v.
DUKE OF RICHMOND (No. 2)
Bray J. [1907] 2 K. B. 940

1289—90.

- 18 Edw. 1, c. 1 (*Statute Quia Emptores*). MER-
THENS v. HILL - Cozens-Hardy J.
[1910] 1 Ch. 842

1455.

- Scots Act, 1455, c. 44. WEDDERBURN v.
EARL OF LAUDERDALE
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1529.

- 21 Hen. 8, c. 5 (*Administration of Estates*).
IN THE ESTATE OF FROST
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1530.

- 22 Hen. 8, c. 5 (*Bridges*). CAMPBELL DAVIS
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NEW RIVER CO. - Swinfen Eady J.
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1533.

- 25 Hen. 8, c. 21 (*Notaries*), ss. 3, 4. *In re*
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1534.

- 25 Hen. 8, c. 20 (*Ecclesiastical Law*). REX v.
ARCHBISHOP OF CANTERBURY
Div. Ct. [1902] 2 K. B. 503
25 Hen. 8, c. 21 (*Notaries*). BAILLEAU v.
VICTORIAN SOCIETY OF NOTARIES
(MELBOURNE NOTARIES)
Ct. of Faculties [1904] P. 180

1536.

- 27 Hen. 8, c. 10 (*Statute of Uses*), s. 1. SAVILL
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1540.

- 32 Hen. 8, c. 1 (*Statute of Devises*). *In re*
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C. A. [1903] 2 Ch. 461

- 32 Hen. 8, c. 34 (*Covenants*). MANCHESTER
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- ss. 1, 2. MULLER v. TRAFFORD
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1542-3.

- 34 & 35 Hen. 8, c. 20 (*Fines and Recoveries*), s. 2.
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1547.

- 1 Edw. 6, c. 1, s. 8. REX v. DIBDIN
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1548.

- 2 & 3 Edw. 6, c. 1. ST. PAUL, BOW COMMON
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- 13 Eliz. c. 5 (*Fraudulent Conveyances*). *In re*
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* NOTE.—Statutes in this Table are sometimes referred to in the Courts below, but not on Appeal, or in the Catch-words or Headnotes to a later Report of the Case, as to which reference can be made to the Table of Cases to this Volume at page xv., ante.

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13 Eliz. c. 10 (*Eleemosynary Corporations*), s. 3.
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43 Eliz. c. 4 (*Charities*). In re GOOD
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3 Jac. 1, c. 18 (*New River Company*). HERT-
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1606.

4 Jac. 1, c. 12 (*New River Company*). HERT-
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1623.

21 Jac. 1, c. 16 (*Statute of Limitations*). HAMP-
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In re CHANT

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— c. 14. EMERSON v. MADDISON
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12 Car. 2, c. 24 (*Guardians*), s. 9. In re HELYAR
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12 Car. 2 (*Parish of St. Paul, Covent Garden*).
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13 & 14 Car. 2, c. 12 (*Poor Relief*), ss. 1, 2.
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22 & 23 Car. 2, c. 10 (*Statute of Distributions*)
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22 & 23 Car. 2, c. 13 (*Statute of Distributions*),
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29 Car. 2, c. 3 (*Statute of Frauds*). HUMBER
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2 Will. & M. c. 5 (*Distress*), s. 2. BRITISH
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- 6 Anne (Ir.) c. 2 (*Registry Act*), ss. 3, 5.
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- 8 Anne, c. viii. (*Liverpool Docks*), s. 3. THE
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- 8 Anne, c. 18 (*Landlord and Tenant*) s. 1. COX v.
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- 9 Anne, c. 14 (*Gaming*), s. 1. MOULIS v. OWEN
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- 6 Geo. 1, c. 29 (*Navigation of River Ouse*).
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1724.

- 11 Geo. 1, c. 26 (*Rogue Money*), s. 12. LANARK
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- 9 Geo. 2, c. 36 (*Charitable Uses*), s. 3. *In re*
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1736.

- 9 Geo. 2, c. 36 (*Mortmain*). *In re* HOYLES
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1743.

- 17 Geo. 2, c. 38 (*Poor Relief*), s. 4. LONDON
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- 30 Geo. 2, c. x. (*Private*), No. 34. ATT.-GEN.
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- 31 Geo. 2, c. 32 (*Inclosure Act*). BISHOP AUCK-
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- 17 Geo. 3, c. 53 (*Clergy Residence Repair*), s. 4
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- 32 Geo. 3, c. 56 (*Servants Characters*), ss. 2, 3.
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33 Geo. 3, c. cxxiii. (*Port of Carnarvon*),
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- 38 Geo. 3, c. 5 (*Land Tax*), s. 4. WESTMINSTER
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- 38 Geo. 3, c. 5 (*Land Tax*), s. 25. GOVERNERS
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39 Geo. 3, c. lxxxiv. (*Private*). ATT.-GEN. v.
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- 39 & 40 Geo. 3, c. 94 (*Criminal Lunatics*), s. 2.
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- 41 Geo. 3, c. 90 (*Crown Debts*), s. 6. *In re*
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- 42 Geo. 3, c. 116 (*Land Tax Redemption*), ss.
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- 42 Geo. 3, c. 119 (*Gaming*), s. 2. **HARDWICK v.**
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- 43 Geo. 3, c. 108 (*Gifts for Churches*), s. 1. *In*
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- 48 Geo. 3, c. 55 (*House Tax*), Sched. B. **BROWNE**
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- 49 Geo. 3, c. xxiv. (*Port of Carnarvon*).
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1810.

- 50 Geo. 3, c. 122 (*Union and Grand Junction*
Canal). **ATT.-GEN. v. GRAND JUNC-
 TION CANAL CO.** - **Joyce J.** [1909]
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1811.

- 51 Geo. 3, c. cl. (*Parish of St. Paul, Covent*
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1812.

- 52 Geo. 3, c. 49 (*Rates*), ss. 3, 5. **LONDON COR-
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- 52 Geo. 3, c. 150 (*Medicines Stamp Act*), Sched.
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- s. 2. **KIRBY v. TAYLOR**
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1814.

- 54 Geo. 3, c. 159 (*Harbours*), ss. 14, 28. **BUR-
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1815.

- 55 Geo. 3, c. 137 (*Poor Relief*), s. 5. **MILE END**
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- 55 Geo. 3, c. 184 (*Stamps*), Sched., Part III.,
 r. 2. **ATT.-GEN. v. WADE**
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1817.

- 57 Geo. 3, c. 25 (*House Duty*), s. 1. **NICHOLLS**
v. **MALIM** - **Walton J.**
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- 57 Geo. 3, c. 93 (*Distress—Costs*). **ROBSON v.**
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- s. 1. **HILL v. PANNIFER**
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- s. 1. **COSTER v. HEADLAND**
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- s. 1; Sched. **SCOTT v. DENTON**
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- ss. 2, 4. **REX v. PHILBRICK**
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- 57 Geo. 3, c. xxix. (*Michael Angelo Taylor's*
Act), s. 52. **CORSELLIS v. LONDON**
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- s. 80. **WILD v. WOOLWICH BOROUGH**
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- ss. 80, 82. **THOMPSON v. HAMMER-
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57 Geo. 3, c. xxix. (*Michael Angelo Taylor's Act*),
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— — — ss. 80, 96. *DEWMAN (J. L.) & Co.*
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1818.

58 Geo. 3, c. 69 (*Sturges Bourne's Act*), s. 3.
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1819.

59 Geo. 3, c. cxvi. (*Edinburgh Water*). *CLIPPENS*
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1822.

3 Geo. 4, c. 126 (*Turnpike Roads*). *FINCHLEY*
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3 Geo. 4, c. cvi. (*London Bread Act*), s. 4. *COX*
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— — — s. 16. *REX v. MEAD*
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1823.

4 Geo. 4, c. 60 (*Lotteries*), ss. 41, 67. *HAWKE*
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4 Geo. 4, c. cxviii. *WAGSTAFF v. CITY OF*
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1824.

5 Geo. 4, c. 83 (*Vagrancy*), s. 3. *POPLAR*
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— — — ss. 3, 4, 5. *REX v. JOHNSON*
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5 Geo. 4, c. 87 (*Entail Provisions Act, 1824*
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5 Geo. 4, c. cxiv. (*Local Act*), s. 78. *SIMPSON v.*
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1825.

6 Geo. 4, c. 81 (*Excise Licence*), s. 2. *TINWELL*
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6 Geo. 4, c. 120 (*Judicature Act of Scotland*), s. 40
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6 Geo. 4, c. 125 (*Pilotage*), s. 59. *THE "CAYO*
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7 & 8 Geo. 4, c. 17 (*Distress—Costs*). *HILL v.*
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1828.

9 Geo. 4, c. 14 (*Statute of Frauds Amendment*),
s. 6. *HIRST v. WEST RIDING UNION*
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— — — s. 1. *In re EMMETT* - **Kekewich J.**
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9 Geo. 4, c. 61 (*Alehouses*). *REX v. HOWARD*
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— — — s. 1. *LEEDS CORPORATION v. RYDER*
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— — — s. 3. *REX v. GROOM*
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— — — ss. 4, 14. *WILSON v. CREWE JUSTICES*
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— — — s. 14. *REX v. LONDON COUNTY*
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— — — s. 15. *WHITTUCK v. WITTHY*
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— — — s. 27. *REX v. BATH (RECORDER OF)*.
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— — — s. 29. *REX v. WARWICKSHIRE*
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9 Geo. 4, c. 69 (*Night Poaching*), ss. 1, 9. *REX*
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1829.

10 Geo. 4, c. xlviii. (*Local*), s. 26. *ATT.-GEN. v.*
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10 Geo. 4, c. 50 (*Crown Lands*), s. 73. *LIVER-*
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1830.

11 Geo. 4, c. 4 (*Inclosure*), ss. 37, 66. *In re*
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11 Geo. 4 & 1 Will. 4, c. 40 (*Executors*), s. 1.
In re ROBY - **C. A. [1908] 1 Ch. 71**

11 Geo. 4 & 1 Will. 4, c. 47 (*Debts Recovery*),
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2 Ch. 307

— — — s. 3. *WORTHINGTON & Co. LD. v.*
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11 Geo. 4 & 1 Will. 4, c. 65 (*Infants' Property*),
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11 Geo. 4 & 1 Will. 4, c. 68 (*Carriers*), ss. 1, 2.
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1831.

1 & 2 Will. 4, c. 32 (*Game*), ss. 4, 27. COOK v.
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1 & 2 Will. 4, c. 37 (*Truck Act*), ss. 3, 9. WIL-
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1 & 2 Will. 4, c. liii. (*West India Docks*), s. 83.
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1832.

2 & 3 Will. 4, c. 66 (*Rates*), ss. 2, 3. LON-
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2 & 3 Will. 4, c. 45 (*Representation of the People*),
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2 & 3 Will. 4, c. 71 (*Prescription*), EASTON v.
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3 & 4 Will. 4, c. 15 (*Dramatic Copyright*).
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3 & 4 Will. 4, c. 27 (*Real Property Limitation*)
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— s. 2. WILLIAMS v. THOMAS
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— s. 42. *In re* LLOYD
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3 & 4 Will. 4, c. 30 (*Poor Rate Exemption*).
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3 & 4 Will. 4, c. 42 (*Civil Procedure*), s. 3.
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3 & 4 Will. 4, c. 70 (*Public Notaries*). TUN-
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3 & 4 Will. 4, c. 74 (*Fines and Recoveries*), ss. 1,
15, 38, 40. *In re* HUGHES AND LON-
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- 3 & 4 Will. 4, c. 74 (*Fines and Recoveries*)
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- — s. 15. *LADY CARDIGAN v. CURZON HOWE* - Byrne J. [1901] 2 Ch. 479
- — ss. 15, 18. *ATT.-GEN. v. DUKE OF RICHMOND (No. 2)* - Bray J. [1907] 2 K. B. 940
- — ss. 15, 40, 42. *WHITMORE-SEARLE v. WHITMORE-SEARLE* - Kekewich J. [1907] 2 Ch. 332
- — s. 18. *ROBINSON v. GIFFARD*
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- — ss. 22, 32. *COHEN v. BAYLEY-WORTHINGTON* - H. L. (E.) [1908] A. C. 97
- — ss. 34, 42. *In re WILMER'S TRUSTS. WINGFIELD v. MOORE* - Parker J. [1910] 2 Ch. 111
- — s. 77. *JOHNSON v. CLARK*
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- 3 & 4 Will. 4, c. 104 (*Administration of Estates*).
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- In re ATKINSON*
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- 3 & 4 Will. 4, c. 105 (*Dower*), s. 6. *In re GIBBON*
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- 3 & 4 Will. 4, c. 106 (*Inheritance Act*), s. 3.
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- 3 Will. 4, c. xxxvi. (*London and Birmingham Ry. Co.*), ss. 54, 55, 58. *RUGBY PORTLAND CEMENT CO. v. LONDON AND NORTH WESTERN RY.*
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- 3 Will. 4, c. lxiv. (*Glasgow Faculty of Procurators Widows Fund*). *J. C. v. SOCIETY OF CONTRIBUTORS TO THE WIDOWS' FUND OF THE FACULTY OF PROCURATORS IN GLASGOW*
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- 1834.
- 4 & 5 Will. 4, c. 76 (*Poor Law*), s. 32. *REG. v. LOCAL GOVERNMENT BOARD*
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- — s. 81. *REX v. NORFOLK JUSTICES*
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- — s. 57. *PLYMOUTH GUARDIANS v. GIBBS* - Div. Ct. [1903] 1 K. B. 177
- 4 & 5 Will. 4, c. lxxv. (*Local*). *In re TALBOT*
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- 5 & 6 Will. 4, c. 41 (*Gaming*), s. 1. *MOULIS v. OWEN*
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1835.

- 5 & 6 Will. 4, c. 50 (*Highway*), s. 23. *REYNOLDS v. BARNES* - Parker J. [1909] 2 Ch. 361
- — ss. 23, 84, 85. *LEIGH URBAN COUNCIL v. KING* - Div. Ct. [1901] 1 K. B. 747
- — s. 33. *FERRAND v. BINGLEY URBAN COUNCIL* Div. Ct. [1903] 2 K. B. 445
- — ss. 53, 54. *REX v. BRADFORD*
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- — s. 67. *ATT.-GEN. v. COPELAND*
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- — s. 72. *SMITH v. PERRY*
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- — s. 85. *REX v. SURREY JUSTICES*
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- — ss. 84, 85. *REX v. KENT JUSTICES*; on appeal *sub nom.* *TONBRIDGE URBAN DISTRICT COUNCIL v. TONBRIDGE RURAL DISTRICT COUNCIL* - Div. Ct. [1904] 2 K. B. 349; C. A. [1904] W. N. 208; [1905] 1 K. B. 378
- — s. 89. *WALKER v. YORK CORPORATION*
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- — ss. 94, 95. *REX v. MORSE*
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- 5 & 6 Will. 4, c. 54 (*Marriage*), s. 2. *In re BOZZELLI'S SETTLEMENT*
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- 6 & 7 Will. 4, c. 32 (*Building Societies*). *In re ILFRACOMBE PERMANENT MUTUAL BENEFIT BUILDING SOCIETY*
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- 6 & 7 Will. 4, c. 37 (*Bread*), s. 4. *MATTINSON v. BINLEY* - Div. Ct. [1908] 2 K. B. 534
- BAILEY v. BARSEY*
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- 6 & 7 Will. 4, c. 86 (*Births and Deaths Registration*). *IN THE ESTATE OF GOODRICH*
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- 6 & 7 Will. 4, c. 96 (*Parochial Assessments*), s. 1. *WADDLE v. SUNDERLAND UNION*
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- GREEN v. NEWPORT UNION. STEAD v. NEWPORT UNION*
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- GREAT CENTRAL RY. CO. v. BANBURY UNION. SHEFFIELD UNION v. GREAT CENTRAL RY. CO.*
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- — s. 6. *REX v. TEWKESBURY JUSTICES*
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1837.

- 1 Vict. c. 26 (*Wills*), ss. 1, 9, 10. *In re* BARNETT
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- — — s. 6. *In re* INMAN
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- — — s. 9. *PEPIN v. BRUGÈRE*
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- — — s. 10. *In re* WALKER
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- — — s. 11. *In re* GOODS OF HISCOCK
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- — — s. 15. *APLIN v. STONE*
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- — — s. 20. *TOOMER v. SOBINSKA*
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- — — s. 21. *In re* HAY
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- — — s. 23. *In re* DOWSETT
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- — — ss. 23, 24, 27. *BEDDINGTON v. BAU-
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- — — s. 24. *In re* BARONESS LLANOVER
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- In re* TURNBULL
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- In re* SLATER C. A. [1907] 1 Ch. 665
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- — — s. 25. *MASON v. OGDEN*
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- — — s. 27. *In re* MARTEN
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- In re* SALVIN. *MARSHALL v. WOLSE-
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- 1 Vict. c. 26 (*Wills*), s. 27. *In re* BAKER'S
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- — — s. 33. *In re* PEERLESS
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- In re* SCOTT C. A. [1901] 1 K. B. 228
- In re* ALLEN'S TRUSTS
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- 1 Vict. c. 28 (*Real Property Limitation*). LUD-
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- 1838.
- 1 & 2 Vict. c. 23 (*Parsonages*). LIDBETTER v.
HATCH - Warrington J. [1907]
1 Ch. 404
- 1 & 2 Vict. c. 106 (*Pluralities*), s. 59. RICKARD
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- — — s. 77. *BARRATT v. KEARNS*
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- 1 & 2 Vict. c. 110 (*Judgments*), s. 11. ASHWORTH
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- — — s. 12. *JOHNSON v. PICKERING*
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- — — s. 13. *RIDOUT v. FOWLER*
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- — — s. 14. *SUTTON v. ENGLISH AND
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- IDEAL BEDDING CO. v. HOLLAND*
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- — — ss. 14, 15. *KOLCHMANN v. MEURICE*
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- — — s. 17. *ASHWORTH v. ENGLISH CARD
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- 1 & 2 Vict. c. xxxiv. (*Private*). ATT.-GEN. v.
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- 1839.
- 2 & 3 Vict. c. 11 (*Judgments*), s. 14. MARCHIO-
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- 2 & 3 Vict. c. 47 (*Metropolitan Police*), s. 48.
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- 2 & 3 Vict. c. 71 (*Metropolitan Police Courts*),
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1840.

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- — — ss. 6, 8, 12, 14. PARKER v. TALBOT
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- — — s. 32. WILLIAMS v. BRITON FERRY
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- 32 & 33 Vict. c. 62 (*Debtors' Act*), ss. 11, 13.
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- 33 & 34 Vict. c. 23 (*Forfeiture*), ss. 12, 17, 18.
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- 33 & 34 Vict. c. 61 (*Life Assurance Companies*),
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- s. 42. STAINLAND AND HOLYWELL GREEN INDUSTRIAL CORN AND PROVISION SOCIETY v. STAINLAND WITH OLD LINDLEY URBAN DISTRICT COUNCIL
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- ss. 42, 43. PEGG & JONES, LD. v. DERBY CORPORATION
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- ss. 51, 56, 57. BARNARD CASTLE URBAN COUNCIL v. WILSON
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- ss. 56, 57, 256. ELLIOTT v. RUSSELL
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- ss. 61, 174, sub-s. 2. SOOTHILL UPPER URBAN COUNCIL v. WAKEFIELD RURAL COUNCIL
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- s. 64. KNUCKEY v. REDRUTH RURAL COUNCIL
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- s. 96. WING v. EPSOM URBAN COUNCIL
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- ss. 102, 306. CONSETT URBAN COUNCIL v. CRAWFORD
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- ss. 116, 117. FIRTH v. MCPHAIL
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- ss. 116, 117, 308. HOBBS v. WINCHESTER CORPORATION
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- ss. 124, 131, 132. EVANS v. LIVERPOOL CORPORATION
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- s. 149. FINCHLEY ELECTRIC LIGHT CO. v. FINCHLEY URBAN COUNCIL
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- LODGE HOLES COLLIERY CO. v. WEDNESBURY CORPORATION
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- s. 150. PROPERTY EXCHANGE, LD. v. WANDSWORTH BOARD OF WORKS
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- HORNSEY URBAN COUNCIL v. HEWNELL
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- ss. 150, 257. *In re* ALLEN AND DRISCOLL'S CONTRACT
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- 38 & 39 Vict. c. 55 (*Public Health*), ss. 150, 257.
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- EAST HAM URBAN COUNCIL v. AYLETT
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- ss. 150, 257, 317; Sched. IV., Form G. STOURBRIDGE URBAN COUNCIL v. BUTLER AND GROVE
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- s. 156. MULLIS v. HUBBARD
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- s. 157. SALT v. SCOTT HALL
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- ss. 157, 158. ATT.-GEN. v. WIMBLEDON HOUSE ESTATE CO.
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- ss. 157, 158, 183, 251, 253. ATT.-GEN. v. ASHBORNE RECREATION GROUND CO.
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- s. 158. AIREY v. SMITH
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- s. 164. STOURCLIFFE ESTATES CO. v. BOURNEMOUTH CORPORATION
C. A. [1910] 2 Ch. 12
- ss. 174, 297, 298. BROOKS, JENKINS & CO. v. TORQUAY CORPORATION AND NEWTON ABBOT RURAL COUNCIL
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- s. 175. ATT.-GEN. v. PONTYPRIDD URBAN COUNCIL
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- s. 199; Sched. I., rr. 3, 5. REX v. ROWLANDS. *Ex parte* BEESLEY
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- s. 210. WOLSTANTON UNITED URBAN COUNCIL v. TUNSTALL URBAN COUNCIL
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- ss. 210, 218, 260. SMITH v. SOUTHAMPTON CORPORATION
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- s. 211. ALTON URBAN COUNCIL v. SPICER
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- s. 211, sub-s. 1 (b). SMITH'S DOCK CO. v. TYNEMOUTH CORPORATION
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- WAKEFIELD CORPORATION v. WAKEFIELD AND DISTRICT LIGHT RAILWAY CO.
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- THORNTON URBAN COUNCIL v. BLACKPOOL AND FLEETWOOD TRAMROAD CO.
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- ss. 229, 230. PLUMPTON ST. MARY RURAL COUNCIL v. REYNOLDS
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- s. 233. REX v. LOCKE
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- s. 247. REX v. CARSON ROBERTS
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- 38 & 39 Vict. c. 55 (*Public Health*), s. 256.
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- s. 257. *In re PIZZI*
Neville J. [1907] 1 Ch. 67
- s. 267. WIRRAL RURAL COUNCIL *v.*
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- s. 308. HORTON *v.* COLWYN BAY
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- Sched. III., r. 6. REX *v.* DOVER
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- 38 & 39 Vict. c. 57 (*Real Property Limitation*),
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- 38 & 39 Vict. c. 60 (*Friendly Societies*), s. 15
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- CADDICK *v.* HIGHTON
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- s. 22. COX *v.* HUTCHINSON
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- 38 & 39 Vict. c. 63 (*Sale of Food and Drugs*).
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- ss. 3, 6. GOULDER *v.* ROOK
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- s. 6. DICKINS *v.* RANDERSON
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- PEARKS, GUNSTON & TEE, LD. *v.*
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- PEARKS, GUNSTON & TEE, LD. *v.*
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- SMITHIES *v.* BRIDGE
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- DAWES *v.* WILKINSON
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- ss. 6, 8. PEARKS, GUNSTON & TEE,
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- ss. 9, 14, 21. SUCKLING *v.* PARKER
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- s. 14. LOWERY *v.* HALLARD
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- SMITH *v.* SAVAGE
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- 38 & 39 Vict. c. 63 (*Sale of Food and Drugs*),
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- s. 18; Form in Schedule. FOOT *v.*
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- s. 20. WHITTAKER *v.* POMFRET
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- s. 25. ELLIOT *v.* PILCHER
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- 38 & 39 Vict. c. 63 (*Sale of Food and Drugs*),
s. 25. WATTS *v.* STEVENS
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- EVANS *v.* WEATHERETT
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- ss. 25, 27. MANNERS *v.* TYLER
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- 38 & 39 Vict. c. 77 (*Judicature*), s. 10. *In re*
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- In re* MCMURDO C. A. [1902] 2 Ch. 684
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- In re* AMBLER C. A. [1905] 1 Ch. 697
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- s. 18. *In re* HAILSTONE
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- 38 & 39 Vict. c. 83 (*Local Loans*). *In re*
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- 38 & 39 Vict. c. 86 (*Conspiracy and Protection of*
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- s. 7. SMITH *v.* MOODY
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- 38 & 39 Vict. c. 87 (*Land Transfer*). ATT-
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- In re* WESLEYAN METHODIST CHAPEL
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- ss. 22—28, 29, 32, 49, 93—96. CAPITAL
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- s. 84. GROUND RENT DEVELOPMENT
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- s. 95. WEYMOUTH *v.* DAVIS
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- 38 & 39 Vict. c. 90 (*Employers and Workmen*),
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- s. 10. FITZPATRICK *v.* EVANS & CO.
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- SQUIRE *v.* MIDLAND LACE CO.
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- SMITH *v.* ASSOCIATED OMNIBUS CO.
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- s. 13. CORBETT *v.* PEARCE
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- 38 & 39 Vict. c. 91 (*Trade Marks Registration*),
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- s. 10. CHEESBROUGH'S TRADE-
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- 1876.
- 39 & 40 Vict. c. 22 (*Trade Unions*). TAFF VALE
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- COPE v. CROSSINGHAM
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- s. 16. AMALGAMATED SOCIETY OF
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- 39 & 40 Vict. c. 36 (*Customs Consolidation*).
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- 39 & 40 Vict. c. 59 (*Appellate Jurisdiction*),
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- 39 & 40 Vict. c. 61 (*Divided Parishes and Poor
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- s. 11. LOCAL GOVERNMENT BOARD
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- ss. 34, 35. TEWKESBURY UNION v.
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- WOOLWICH UNION v. FULHAM GUAR-
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- 39 & 40 Vict. c. 75 (*Rivers Pollution Prevention*).
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- ss. 4, 6, 13. WEST RIDING OF YORK-
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- s. 7. EASTWOOD BROTHERS, LD.
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- 39 & 40 Vict. c. 75 (*Rivers Pollution Prevention*),
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- 39 & 40 Vict. c. 79 (*Elementary Education*).
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- ss. 11, 12, 48. REX v. WEST RIDING
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- 1877.
- 40 & 41 Vict. c. 16 (*Settled Estates*). BOYCE v.
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- ss. 10, 13. *In re* CHESHIRE'S
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- s. 16. *In re* TONGE'S SETTLED ESTATE
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- 40 & 41 Vict. c. 21 (*Prisons*), s. 5. GORTON
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- 40 & 41 Vict. c. 26 (*Companies*), s. 3. *In re*
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- In re* ANGLO-FRENCH EXPLORATION
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- In re* WELSBACH INCANDESCENT GAS
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- In re* ARTIZANS' LAND AND MORT-
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- In re* CHELMSFORD LAND CO.
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- ss. 3, 4. *In re* LEES BROOK SPIN-
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- 40 & 41 Vict. c. 34 (*Real Estate Charges—Locke
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- In re* FRASER C. A. [1904] 1 Ch. 726
- In re* BOWERMAN
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- s. 1. *In re* CHANTRELL
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- 40 & 41 Vict. c. 35 (*Metropolitan Open Spaces*).
s. 1. FULHAM VESTRY v. MINTER
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- PADDINGTON CORPORATION v. ATT-
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- 40 & 41 Vict. c. 43 (*Justices Clerks*), s. 5. HUN-
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- s. 6. GEORGE v. THOMAS
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- s. 8. WHITTUCK v. WITHEY
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- 40 & 41 Vict. c. 57 (*Supreme Court of Judica-
ture—Ireland*), s. 86. REG. v. BARTON,
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- 1878.
- 41 & 42 Vict. c. 15 (*Customs and Inland
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- s. 13. GRANT v. LANGSTON
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- SCOTTISH WIDOWS' FUND AND LIFE
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- s. 13, sub-s. 1, 2. UNION BANK OF
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- s. 22, sub-s. 2. JOHNSON v. WILSON
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- 41 & 42 Vict. c. 16 (*Factories and Workshops*),
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- s. 36. HOARE v. RITCHIE & SON
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- s. 93. FULLERS, LD. v. SQUIRE
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- WILMOTT v. PATON
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- s. 93, sub-s. 3. GEORGE v. MACDONALD
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- 41 & 42 Vict. c. 19 (*Matrimonial Causes*), s. 2.
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- 41 & 42 Vict. c. 19 (*Matrimonial Causes*), s. 3.
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- 41 & 42 Vict. c. 26 (*Parliamentary and Muni-
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- s. 5; s. 28, sub-ss. 10, 11. DOUGLAS
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- s. 22; s. 28, sub-ss. 9, 10, 11. CART-
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- s. 23. MAJOR v. SHREWSBURY TOWN
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- s. 24. GOODRICH v. GREAT GRIMSBY
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- s. 28, sub-s. 10. KENT v. FITTALL
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- 41 & 42 Vict. c. 31 (*Bills of Sale*). CLARK v.
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- s. 4. MELLOR (TRUSTEE OF) v. MAAS
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- s. 10, sub-s. 2. COATES v. MOORE
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- 41 & 42 Vict. c. 32 (*Metropolis Management and
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- 41 & 42 Vict. c. 33 (*Dentists*), s. 3. BELLERBY
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- BARNES v. BROWN - Div. Ct.
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- 41 & 42 Vict. c. 33 (*Dentists*), ss. 13, 14, 15.
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- 41 & 42 Vict. c. 39 (*Freshwater Fisheries*), ss. 6, 7. STEAD v. NICHOLAS
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- 41 & 42 Vict. c. 43 (*Bills of Sale*), s. 9. ROSEFIELD v. PROVINCIAL UNION BANK
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- 41 & 42 Vict. c. 49 (*Weights and Measures*), s. 25. LONDON COUNTY COUNCIL v. PAYNE & Co.
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- ANGLO-AMERICAN OIL CO. v. MANNING
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- s. 26. STONE v. TYLER
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- 41 & 42 Vict. c. 51 (*Roads and Bridges—Scotland*). BERNARD & Co. v. HADDINGTON MAGISTRATES
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- 41 & 42 Vict. c. 54 (*Debtors*). *In re* WILKINS
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- 41 & 42 Vict. c. 76 (*Telegraph*), s. 11. BAINBRIDGE v. POSTMASTER-GENERAL
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- 41 & 42 Vict. c. 77 (*Highways and Locomotives*), s. 10. REX v. MORSE
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- ss. 10, 27. LODGE HOLES COLLIERY Co. v. WEDNESBURY CORPORATION
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- s. 23. EGHAM RURAL COUNCIL v. GORDON
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- KENT COUNTY COUNCIL v. FOLKESTONE CORPORATION
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- LANCASTER RURAL COUNCIL v. FISHER AND LE FANU - C. A. [1907] 1 K. B. 516
- REX v. JUDGE JAMES AND MIDLAND RY.
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- CARLISLE RURAL COUNCIL v. CARLISLE CORPORATION - C. A. [1909] 1 K. B. 471
- REIGATE RURAL COUNCIL v. SUTTON DISTRICT WATER CO.
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- GEIRIONYDD RURAL COUNCIL v. GREEN - C. A. [1909] 2 K. B. 845
- 41 & 42 Vict. c. 95 (*Court of Probate*), s. 16. *In re* BOUCHERET
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- 1879.
- 42 & 43 Vict. c. 11 (*Bankers' Books Evidence*), ss. 7, 10. REX v. KINGHORN
Div. Ct. [1908] 2 K. B. 949
- 42 & 43 Vict. c. 19 (*Habitual Drunkards*), s. 3. EATON v. BEST
Div. Ct. [1909] 1 K. B. 632
- 42 & 43 Vict. c. 30 (*Sale of Food and Drugs*), s. 3. MCNAIR v. CAVE
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- s. 6. DAWES v. WILKINSON
Div. Ct. [1907] 1 K. B. 278
- s. 10. WHITAKER v. POMFRET BROTHERS
Div. Ct. [1902] 1 K. B. 661
- 42 & 43 Vict. c. 49 (*Summary Jurisdiction*), ss. 5, 49. *Ex parte* NOVIS
Div. Ct. [1905] 2 K. B. 456
- s. 12. REX v. DICKINSON. *Ex parte* DAVIS
Div. Ct. [1910] 1 K. B. 469
- s. 16. BARNARD v. BARTON
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- ATT.-GEN. v. CLARK
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- s. 17. REX v. GOLDBERG
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- COMMISSIONER OF POLICE v. DONOVAN
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- REX v. BEESBY
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- s. 23. STOKES v. MITCHESON
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- HAGMAIER v. WILLEDEN OVERSEERS
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- s. 33. FOSS v. BEST
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- WESTMINSTER CORPORATION v. GORDON HOTELS, LD.
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- s. 39, sub-s. 1. SMITH v. MOODY
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- s. 40. HORNER v. STEPNEY ASSESSMENT COMMITTEE
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- s. 53. THOMAS v. PRITCHARD
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- 42 & 43 Vict. c. 54 (*Poor Law*). WEST HAM UNION v. LONDON COUNTY COUNCIL
H. L. (E.) [1904] A. C. 40
- 42 & 43 Vict. c. cxviii. (*Metropolis Management—Thames River Prevention of Floods*), s. 23. LONDON COUNTY COUNCIL v. LONDON, BRIGHTON AND SOUTH COAST RY. CO.
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- 1880.
- 43 & 44 Vict. c. 16 (*Merchant Seamen—Payment of Wages and Rating*), ss. 5, 6. REX v. ABRAHAMS
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43 & 44 Vict. c. 19 (*Companies*). *In re* CHACO (PARAGUAY) LAND CO.

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— ss. 3, 4, 5. *In re* PIERCY

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— s. 7. *In re* JOHANNESBURG MINING AND GENERAL SYNDICATE

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43 & 44 Vict. c. 23 (*Elementary Education*), s. 4. STEVENSON v. GOLDSTRAW

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43 & 44 Vict. c. 35 (*Wild Birds Protection*), s. 3. HOLLIS v. YOUNG

Div. Ct. [1909] 1 K. B. 629

— ss. 3, 8. FLOWER v. WATTS

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43 & 44 Vict. c. 39 (*Taxo Management*), s. 59 MANCHESTER CORPORATION v. SUGDEN

C. A. [1903] 2 K. B. 171

43 & 44 Vict. c. 42 (*Employers' Liability*). ISAACSON v. NEW GRAND (CLAPHAM JUNCTION), LD.

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— s. 1, sub-s. 1. THOMPSON v. CITY GLASS BOTTLE CO.

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— s. 1, sub-s. 1; s. 2, sub-s. 1. BIDDLE v. HART

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— s. 8. FITZPATRICK v. EVANS & CO.

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Div. Ct. [1907] 1 K. B. 916

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H. L. (E.) [1910] A. C. 220

43 & 44 Vict. c. 47 (*Ground Game*) s. 6. MAY v. WATERS

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43 & 44 Vict. c. clxx. (*Greenock Harbour*), s. 70. ANDREW CARMICHAEL (JUDICIAL FACTOR) v. GREENOCK HARBOUR TRUSTEES - H. L. (Sc.) [1910] A. C. 274

43 & 44 Vict. c. clxxi. (*Gaslight and Coke and other Gas Companies*), s. 7. LONDON COUNTY COUNCIL v. SOUTH METROPOLITAN GAS CO. - C. A. [1904] 1 Ch. 76

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44 & 45 Vict. c. 21 (*Married Women's Property—Scotland*), ss. 7, 8. MACKENZIE v. ALLARDES - H. L. (Sc.) [1905] A. C. 285

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44 & 45 Vict. c. 34 (*Metropolitan Open Spaces*) s. 1. *In re* BOSWORTH AND GRAVESEND CORPORATION C. A. [1905] 2 K. B. 426

— ss. 4, 5. PADDINGTON CORPORATION v. ATT.-GEN. H. L. (E.) [1906] A. C. 1

— s. 5. FULHAM VESTRY v. MINTER

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44 & 45 Vict. c. 40 (*Universities Elections Amendment—Scotland*), s. 2, sub-ss. 3, 10, 16. NAIRN v. UNIVERSITY OF ST. ANDREWS H. L. (Sc.) [1909] A. C. 147

44 & 45 Vict. c. 41 (*Conveyancing and Law of Property*). *In re* BEACHEY

C. A. [1904] 1 Ch. 67

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C. A. [1904] 1 Ch. 774

— s. 2, sub-s. 9. WAITE v. JENNINGS

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— s. 2, sub-s. xv.; s. 14, sub-s. 6. FRYER v. EWART H. L. (E.) [1902] A. C. 187

— s. 3, sub-s. 4. *In re* HIGHTETT AND BIRD'S CONTRACT

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— s. 5. *In re* EVANS AND BETTELL'S CONTRACT Parker J. [1910] 2 Ch. 483

— BRAZIER v. GLASSPOOL

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— s. 6, sub-s. 2. QUICKE v. CHAPMAN

C. A. [1903] 1 Ch. 659

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Farwell J. [1903] 2 Ch. 165

— s. 7. FARRER v. MOON

Joyce J. [1901] 2 Ch. 825

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— s. 10. TURNER v. WALSH

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— ss. 10, 58. MANCHESTER BREWERY CO. v. COOMBS

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— s. 11. DAVIS v. TOWN PROPERTIES INVESTMENT CORPORATION, LD.

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— s. 14. CHARRINGTON & CO. v. CAMP

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PIGGOTT v. MIDDLESEX COUNTY COUNCIL - Eve J. [1909] 1 Ch. 134

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- 44 & 45 Vict. c. 41 (*Conveyancing and Law of Property*), s. 14. MATTHEWS *v.* SMALLWOOD
Parker J. [1910] 1 Ch. 777
- s. 14, sub-ss. 1, 2, 6. *In re* RIGGS
Wright J. [1901] 2 K. B. 16
- s. 14, sub-s. 8. GRAY *v.* BONSALE
C. A. [1904] 1 K. B. 601
- s. 17. FARMER *v.* PITT
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- In re* SALMON
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- HUGHES *v.* BRITANNIA PERMANENT
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- s. 18. KING *v.* BIRD.
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- s. 18, sub-ss. 1, 11. ROBBINS *v.* WHYTE
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- ss. 19, 20. DEVERGES *v.* SANDEMANN,
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- BARKER *v.* ILLINGWORTH
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- ss. 19, 24, sub-s. 8 (iii). WHITE *v.*
METCALF Kekewich J. [1903] 2 Ch. 567
- s. 21, sub-s. 4. *In re* DOWSON AND
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C. A. [1904] 2 Ch. 219
- ss. 27, 63; Sched. III., Part II.,
Form (A.). *In re* BEACHEY
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- s. 30. W Aidanis
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- In re* CRUNDEN AND MEUX'S CONTRACT
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- sub-s. 1. *In re* ROUTLEDGE'S
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- ss. 31, 71. *In re* BOUCHERETT
Joyce J. [1908] 1 Ch. 180
- s. 39, sub-s. 1. *In re* BLUNDELL
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- s. 42. *In re* HELYAR
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- In re* QUICKE'S TRUSTS
Swinfen Eady J. [1908] 1 Ch. 887
- s. 42, sub-s. 1. *In re* COWLEY
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- s. 43. *In re* LONG
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- In re* ADAMS.
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- s. 43, sub-s. 2. *In re* SCOTT
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- In re* BOWLBY C. A. [1904] 2 Ch. 685
- s. 44. LEWIS *v.* BAKER
Swinfen Eady J. [1905] 1 Ch. 46
- s. 51. *In re* ETHEL AND MITCHELLS
AND BUTLER'S CONTRACT
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- 44 & 45 Vict. c. 41 (*Conveyancing and Law of Property*), s. 52. *In re* CHISHOLM'S
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- In re* ROSE. C. A. [1905] 1 Ch. 94
- ss. 54 (1), 55 (1). CAPELL *v.* WINTER
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- s. 55. RIMMER *v.* WEBSTER
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- s. 58, sub-s. 1. DYSON *v.* FORSTER;
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- s. 65. BLAIBERG *v.* KEEVES
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- s. 70. *In re* WHITHAM
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- In re* HARROWBY AND PAINE'S CON-
TRACT Farwell J. [1902] W. N. 137
- 44 & 45 Vict. c. 44 (*Solicitors' Remuneration*),
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- r. 6. *In re* EVANS
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- clause 6. *In re* SIR ROBERT PEEL'S
SETTLED ESTATES
Warrington J. [1910] 1 Ch. 389
- s. 4; General Order, Sched. I., Part I.
r. 8. *In re* SIMMONS' CONTRACT
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- s. 18, sub-s. 1. ROBBINS *v.* WHYTE
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- Sched. I. *In re* GARNER. *Ex parte*
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- Sched. I., Part I. *In re* WEBSTER
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- Sched. I., Part I., r. 11. *In re* NORRIS
Swinfen Eady J. [1902] 1 Ch. 741
- In re* ROMAIN
Buckley J. [1903] 1 Ch. 702
- 44 & 45 Vict. c. 51 (*Wild Birds Protection*),
s. 1. FLOWER *v.* WATTS - Div. Ct.
[1910] 2 K. B. 327
- s. 2. HOLLIS *v.* YOUNG
Div. Ct. [1909] 1 K. B. 629
- 44 & 45 Vict. c. 58 (*Army*), s. 141. JONES
& Co. *v.* COVENTRY Div. Ct. [1909]
2 K. B. 1029
- 44 & 45 Vict. c. 62 (*Veterinary Surgeons*),
s. 17. ATT.-GEN. *v.* CHURCHILL'S
VETERINARY SANATORIUM, LD.
Neville J. [1910] 2 Ch. 401
- s. 17, sub-s. 1. ROYAL COLLEGE OF
VETERINARY SURGEONS *v.* COLLINSON
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- 44 & 45 Vict. c. 68 (*Judicature*), s. 9. BUTCHART
v. BUTCHART AND HILL
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- 44 & 45 Vict. c. 69 (*Fugitive Offenders*), s. 9.
REX v. GOVERNOR OF BRIXTON PRISON. *Ex parte* PERCIVAL
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- s. 10. **REX v. GOVERNOR OF BRIXTON PRISON.** *Ex parte* SAVARKAR
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- 45 & 46 Vict. c. 15 (*Commonable Rights Compensation*). **SALMON v. EDWARDS**
 Warrington J. [1910] 1 Ch. 552
- 45 & 46 Vict. c. 38 (*Settled Land*). **BOYCE v. EDBROOKE** Farwell J. [1903] 1 Ch. 836
- ss. 1, 2, sub-s. 1, 5; ss. 5, 58, sub-s. 1 (ii.). *In re* MARSHALL'S SETTLEMENT
 Swinfen Eady J. [1905] 2 Ch. 325
- s. 2, sub-s. 1. *In re* CAMPBELL
 C. A. [1902] 1 K. B. 113
- s. 2, sub-ss. 1, 4, 5; s. 50. *In re* LORD WIMBORNE AND BROWN'S CONTRACT
 Swinfen Eady J. [1904] 1 Ch. 537
- s. 2, sub-ss. 1, 8. *In re* SPEARMAN SETTLED ESTATES
 Swinfen Eady J. [1906] 2 Ch. 502
- s. 2, sub-ss. 1, 8; s. 38. *In re* HAMMOND SPENCER'S SETTLED ESTATES
 Byrne J. [1903] 1 Ch. 75
- s. 2, sub-ss. 1, 8; s. 45, sub-s. 1. *In re* COULL'S SETTLED ESTATES
 Kekewich J. [1905] W. N. 73;
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- s. 2, sub-s. 1; s. 56, sub-s. 1, 2. **TALBOT v. SCARISBRICK**
 Warrington J. [1908] 1 Ch. 812
- s. 2, sub-s. 2; s. 20, sub-s. 1; s. 58 sub-s. 1 (v.) (vi.). *In re* HUNTER AND HEWLETT'S CONTRACT
 Swinfen Eady J. [1907] 1 Ch. 46
- s. 2, sub-s. 2; s. 22, sub-s. 5. *In re* BOND
 Kekewich J. [1901] 1 Ch. 15
- ss. 2 (sub-ss. 3, 10), 21, 23, 33. *In re* GURNEY'S MARRIAGE SETTLEMENT, SULLIVAN v. GURNEY
 Neville J. [1907] 2 Ch. 496
- s. 2, sub-s. 5. *In re* BARONESS LLANOVER'S WILL
 C. A. [1903] 2 Ch. 16
- s. 2, sub-s. 5; s. 51, sub-s. 1; s. 58, sub-s. 1 (ii.). *In re* RICHARDSON
 Joyce J. [1904] 2 Ch. 777
- s. 2, sub-s. (1); ss. 38, 58, sub-s. 1, cl. ix.; s. 63. *In re* CHILDS' SETTLEMENT
 Kekewich J. [1907] 2 Ch. 348
- s. 2, sub-s. 2; s. 58, sub-s. 1, cl. vi., ix. *In re* BARONESS LLANOVER
 Swinfen Eady J. [1907] 1 Ch. 635

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- 45 & 46 Vict. c. 38 (*Settled Land*), s. 2, sub-ss. 5, 6; s. 58, sub-s. 1 (ix.). *In re* BENNET
 Kekewich J. [1903] 2 Ch. 136
- s. 2, sub-ss. 5, 7; s. 58, sub-s. 1 (vi).
In re POLLOCK
 Swinfen Eady J. [1906] 1 Ch. 146
- s. 2, sub-s. 8. *In re* JACKSON'S SETTLED ESTATE
 Buckley J. [1902] 1 Ch. 258
- s. 2, sub-s. 8; s. 20, sub-s. 2, cl. (i) and (ii.); s. 50. *In re* DAVIES AND KENT'S CONTRACT
 C. A. [1910] 2 Ch. 35
- s. 2, sub-s. 10 (iv.); s. 6; s. 7, sub-ss. 2, 3. **SITWELL v. EARL OF LONDESBOROUGH**
 Warrington J. [1905] 1 Ch. 460
- ss. 2 (9), 21, 22. *In re* NORTON AND LAS CASAS' CONTRACT
 Neville J. [1909] 2 Ch. 59
- ss. 2, 20, 38, 40, 50. *In re* CORNWALLIS-WEST AND MUNRO'S CONTRACT
 Farwell J. [1903] 2 Ch. 150
- s. 3, sub-ss. (i), (iii.); s. 21, sub-s. (viii).
In re BROTHERTON'S ESTATE
 C. A. [1908] W. N. 56
- ss. 3, 62. *In re* S. S. B.
 C. A. [1906] 1 Ch. 712
- s. 4, sub-s. 1; ss. 53, 54. **HURRELL v. LITTLEJOHN** Joyce J. [1904] 1 Ch. 689
- ss. 6, 7, sub-s. 1 (i, ii.); s. 17, sub-ss. 1, 53. *In re* ALDAM'S SETTLED ESTATES
 C. A. [1902] 2 Ch. 46
- ss. 6, 10. *In re* FORREST
 Parker J. [1910] W. N. 201
- ss. 6, 13, 53. *In re* RODES
 Parker J. [1909] 1 Ch. 815
- ss. 6, 53. **GILBEY v. RUSH**
 Kekewich J. [1906] 1 Ch. 11
- ss. 7, sub-s. 2; s. 54. *In re* HANDMANN AND WILCOX'S CONTRACT
 C. A. [1902] 1 Ch. 599
- ss. 18, 21 (vi.), 59, 60. *In re* BRUCE
 Kekewich J. [1905] 2 Ch. 372
- s. 20, sub-s. 2; s. 50. *In re* DICKIN AND KELSALL'S CONTRACT
 Swinfen Eady J. [1908] 1 Ch. 213
- s. 21, sub-s. 2. *In re* DUKE OF MANCHESTER'S SETTLEMENT
 Eve J. [1910] 1 Ch. 106
- s. 21, sub-s. (ii.); s. 25. *In re* LEGH'S SETTLED ESTATE
 Kekewich J. [1902] 2 Ch. 274
- s. 21, sub-s. (iii.); ss. 25, 26. **STANFORD v. ROBERTS**
 Buckley J. [1901] 1 Ch. 440

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- 45 & 46 Vict. c. 38 (*Settled Land*), s. 21, sub-s. 9 ;
s. 33. *In re* TORRY HILL ESTATE
Parker J. [1909] 1 Ch. 468
- s. 21, sub-s. 10. *In re* MARYON WILSON'S SETTLED ESTATES
Joyce J. [1901] 1 Ch. 934
- In re* LEVESON - GOWER'S SETTLED ESTATE
Swinfen Eady J. [1905] 2 Ch. 95
- ss. 21, 22. *In re* HOTHAM
C. A. [1902] 2 Ch. 575
- s. 21 ; s. 22, sub-s. 5 ; s. 24, sub-s. 3.
In re WALKER
Warrington J. [1908] 2 Ch. 705
- ss. 21, 22, sub-s. 2 ; s. 53. *In re* HUNT'S SETTLED ESTATES
C. A. [1906] 2 Ch. 11
- ss. 21, 22, 50, sub-s. 3 ; s. 53. *In re* SIR ROBERT PEEL'S SETTLED ESTATES
Warrington J. [1910] 1 Ch. 389
- s. 22, sub-s. 2 ; s. 31. *In re* DUKE OF CLEVELAND'S SETTLED ESTATES
Joyce J. [1902] 2 Ch. 350
- s. 22, sub-s. 5. BEDDINGTON v. BAUMANN - H. L. (E.) [1903] A. C. 13
- s. 25. *In re* FREAKE'S SETTLEMENT
Joyce J. [1902] 1 Ch. 97
- In re* CLARKE'S SETTLEMENT
Buckley J. [1902] 2 Ch. 327
- In re* BLAGRAVE'S SETTLED ESTATES
C. A. [1903] 1 Ch. 560
- s. 25, sub-ss. (vi.), (xiii.), (xx.). *In re* EARL OF DUNRAVEN'S SETTLED ESTATES
Kekewich J. [1907] 2 Ch. 417
- s. 25, sub-ss. 10, 11. *In re* EARL OF LISBURN'S SETTLED ESTATES
Kekewich J. [1901] W. N. 91
- s. 25, sub-ss. 10, 20. *In re* CALVERLEY'S SETTLED ESTATES
Farwell J. [1904] 1 Ch. 150
- s. 25, sub-s. (xii.). *In re* LORD LECONFIELD'S SETTLED ESTATES
Kekewich J. [1907] 2 Ch. 340
- s. 25, sub-ss. x., xx. *In re* CALVERLEY'S SETTLED ESTATES
Farwell J. [1904] 1 Ch. 150
- ss. 25, 26, 53. *In re* EARL OF EGMONT'S SETTLED ESTATES
Warrington J. [1908] W. N. 176 ;
[1906] 2 Ch. 151
- s. 26. *In re* PARTINGTON
Buckley J. [1902] 1 Ch. 711
- In re* KECK'S SETTLEMENT
Farwell J. [1904] 2 Ch. 22
- 45 & 46 Vict. c. 39 (*Conveyancing*), s. 3. HUNT v. LUCK
C. A. [1902] 1 Ch. 428
- s. 3, sub-s. 1. MOLYNEUX v. HAWTREY
C. A. [1903] 2 K. B. 487

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- 45 & 46 Vict. c. 39 (*Conveyancing*), s. 3, sub-s. 1 (i.) and (ii.). TAYLOR v. LONDON AND COUNTY BANKING CO.
C. A. [1901] 2 Ch. 231
- s. 3, sub-s. 1 (ii.). *In re* ALMS CORN CHARITY
Stirling J. [1901] 2 Ch. 750
- s. 10. *In re* SHRUBB
Swinfen Eady J. [1910] W. N. 143
- ss. 26, 59, 60. *In re* GREYS COURT ESTATE
Farwell J. [1901] W. N. 60
- ss. 37, sub-ss. 1, 2 ; s. 2, sub-s. 9 ; s. 21, cl. (ii.) ; s. 53. *In re* LORD STRAFORD'S SETTLEMENT AND WILL
Warrington J. [1904] 2 Ch. 72
- s. 40. *In re* BARLOW'S CONTRACT
Swinfen Eady J. [1903] 1 Ch. 382
- s. 50, sub-s. 1 ; s. 51, sub-s. 1. *In re* PRENCHARD
Buckley J. [1902] 1 Ch. 378
- s. 53. MIDDLEMAS v. STEVENS
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- GILBEY v. RUSH
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- s. 56, sub-s. 2. *In re* OSBORNE AND BRIGHT'S, LD.
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- s. 58. *In re* BOLTON ESTATES ACT. 1863
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- s. 60. *In re* HELYAR
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- s. 63. *In re* WORMALD'S SETTLED ESTATE
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- 45 & 46 Vict. c. 40 (*Copyright—Musical Compositions*), ss. 1, 2. SARPY v. HOLLAND
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- 45 & 46 Vict. c. 43 (*Bills of Sale*). ANTONIADI v. SMITH
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- ss. 3, 9. MELLOR (TRUSTEE OF) v. MAAS
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- ss. 4, 6, 9. COATES v. MOORE
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- s. 8. *In re* REIS
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- PETTIT v. LODGE AND HARPER
C. A. [1908] W. N. 45
- ss. 8, 9. SMITH v. WHITEMAN
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- 45 & 46 Vict. c. 43 (*Bills of Sale*), s. 9.
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- s. 9. MOURMAND v. LE CLAIR
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- s. 9, Sched. SAUNDERS v. WHITE
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- s. 17. CLARK v. BALM, HILL & CO.
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- 45 & 46 Vict. c. 50 (*Municipal Corporations*).
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- TENBY CORPORATION v. MASON
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- s. 9, sub-s. 2, (d), (e). ASH v.
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- s. 10, sub-s. 1. ATT.-GEN. v. LONDON
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- s. 12, sub-s. 1 (c). *In re* GLOUCESTER
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- ss. 12, 87. REX v. BEER
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- ss. 18, 21, 25—28, 106, 119, 139—144,
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- ss. 23, 24. ROBINSON v. GREGORY
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- s. 42, sub-s. 1; s. 61, sub-s. 4; s. 87,
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- s. 56, sub-s. 2. HOBBS v. MOREY
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- ss. 108, 109. SCARBOROUGH CORPORA-
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- s. 140; Sched. V., Part II.;
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- ss. 154, 155, 158. LAWSON v. REY-
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- ss. 154—159. HUNTINGDON CORPORA-
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- s. 233; Sched. II., r. 5. TENBY COR-
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- s. 250. TRURO CORPORATION v. ROWE
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- 45 & 46 Vict. c. 56 (*Electric Lighting*). MID-
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- ss. 2, 4, 6, 10, 12, 18, 24, 25, 32. ATT.-
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- s. 10. ATT.-GEN. v. PONTYPRIDD
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- 45 & 46 Vict. c. 56 (*Electric Lighting*), s. 11.
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- ss. 12, 13. CORPORATION OF LONDON
v. COUNTY OF LONDON ELECTRIC
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- ss. 19, 20. METROPOLITAN ELECTRIC
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- ss. 19, 21. HUSEY v. LONDON 'ELEC-
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- 45 & 46 Vict. c. 58 (*Divided Parishes and Poor
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- 45 & 46 Vict. c. 61 (*Bills of Exchange*), s. 7,
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- NORTH AND SOUTH WALES BANK, LD.
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- s. 20. HERDMAN v. WHEELER
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- ss. 24, 72. EMBERICOS v. ANGLO-
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- ss. 48, 49, sub-s. 12; s. 50, sub-s. 1.
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- ss. 48, 49, 50, sub-s. 2 (b). *In re*
FENWICK, STOBART & Co.
Buckley J. [1902] 1 Ch. 507
- ss. 49, 50. THE "ELMVILLE"
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- s. 75, sub-s. 1. CURTICE v. LONDON
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- ss. 81, 82. GREAT WESTERN RY. CO.
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- s. 82. CAPITAL AND COUNTIES BANK
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- s. 83. KIRKWOOD v. CARROLL
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- 45 & 46 Vict. c. 75 (*Married Women's Property*).
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- 45 & 46 Vict. c. 75 (*Married Women's Property*),
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- s. 1, sub-s. 2. *PONTYPOOL GUARDIANS*
v. BUCK Div. Ct. [1906] 2 K. B. 896
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- GOATLEY *v. JONES* (No. 1). GOATLEY
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- s. 1, sub-ss. 3, 4; s. 4. *In re FIELD-*
WICK C. A. [1909] 1 Ch. 1
- s. 1, sub-s. 5. *In re WORSLEY*
C. A. [1901] 1 K. B. 309
- s. 1, sub-s. 5. *In re SIMON*
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- ss. 1, 19. *BOLITHO & Co. v. GIDLEY*
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- s. 5. *In re BACON*
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- s. 11. *In re BROWNE'S POLICY*
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C. A. [1909] 1 K. B. 805
- ss. 12, 16. *REX v. JAMES AND JOHN-*
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- REX v. PAYNE* C. C. R. [1906]
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- ss. 12, 17. *LARNER v. LARNER*
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- s. 19. *BIRMINGHAM EXCELSIOR*
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- 45 & 46 Vict. c. ccxiii. (*Peckham and East*
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- 45 & 46 Vict. c. ccxliii. (*Blackburn Improvement*
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- 45 & 46 Vict. c. ccli. (*Alexandra (Newport*
and South Wales) Docks and Railway
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- 1883.
- 46 & 47 Vict. c. 29 (*Supreme Court of Judicature*
(Funds, &c.)), ss. 1, 2, 3. *In re*
WILLIAMS' SETTLED ESTATES
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- 46 & 47 Vict. c. 37 (*Public Health—Support*
of Sewers), ss. 2, 3, 4, 5. *JARY v.*
BARNSELY CORPORATION
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- 46 & 47 Vict. c. 38 (*Trial of Lunatics*), s. 2,
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- 46 & 47 Vict. c. 51 (*Corrupt and Illegal Practices*
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- 46 & 47 Vict. c. 52 (*Bankruptcy*). *In re COT-*
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- s. 4, sub-s. 1 (a), (h); s. 6, sub-s. 1
(d). *COOKE v. CHARLES A. VOGELER*
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- s. 4, sub-s. 1 (b); ss. 43, 44, 49. *In re*
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- s. 4, sub-s. 1 (d). *In re WORSLEY*
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- s. 4, sub-s. 1 (g). *In re CLEMENTS*
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- In re SMITH* C. A. [1903] 1 K. B. 33
- In re A DEBTOR* C. A. [1903] W. N. 6
- In re H. B.* C. A. [1904] 1 K. B. 94
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- In re A DEBTOR* (484 of 1908)
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- s. 4, sub-s. 1 (g); s. 38. *In re G. E. B.,*
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- s. 4, sub-s. 1 (g); s. 143. *In re*
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- s. 4, sub-s. 1 (h). *CLOUGH v. SAMUEL*
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- ss. 4, 43, 44, 54. *STEIN v. POPE*
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- ss. 4, 49. *In re JUKES*
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- s. 6, sub-s. 1 (d). *Ex parte BRIGHT*
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- 46 & 47 Vict. c. 52 (*Bankruptcy*), s. 6, sub-s. 2 ;
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- s. 7, sub-s. 3 ; s. 38. *In re* A DEBTOR,
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- s. 7, sub-s. 5. *In re* GENTRY
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- s. 9, sub-s. 2 ; ss. 43, 49. PONSFORD,
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- ss. 9—44. *In re* GUEDALLA
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- ss. 9, 45. *In re* POLLARD
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- s. 9, sub-s. 2 ; ss. 43, 49. PONSFORD,
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- s. 10, sub-s. 2. *In re* JAMES EDGECOME
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- s. 12 ; s. 102, sub-s. 5. *In re* JONES
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- ss. 18, 19, 30. *In re* SEWELL
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- s. 20, sub-s. 1. *In re* PONSFORD
C. A. [1904] 2 K. B. 704
- s. 21, sub-ss. 1, 4, 6 ; s. 54, sub-s. 1 ;
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- s. 25. *In re* GORDON
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- ss. 27, 168. *In re* DRUCKER (No. 2)
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- ss. 28 (repealed), 48. *In re* STENO-
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- s. 31. REX v. TURNER
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- s. 32. REX v. BEER
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- s. 35. *In re* ADIE
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- *In re* KEET C. A. [1905] 2 K. B. 666
- s. 35, sub-s. 1. *In re* TAYLOR
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- ss. 35, 104. *In re* AYTOWN
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- ss. 37, 44. GOVERNORS OF ST.
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- 46 & 47 Vict. c. 52 (*Bankruptcy*), ss. 37, 38. *In*
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- s. 37 ; s. 48, sub-s. 1. *In re* BLACK-
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- s. 37, sub-ss. 3, 8 ; s. 44 (iii.). *In re*
BUTTON C. A. [1907] 2 K. B. 180
- *In re* GEDNEY
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- ss. 38, 43, 44. TILLEY v. BOWMAN,
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- ss. 38, 47. LISTER v. HOOSON
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- s. 40, sub-s. 4. *In re* WHITAKER
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- s. 40, sub-ss. 4, 5. *In re* WHITAKER
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- ss. 42, 43. *In re* BUMPUS
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- ss. 43, 44, 54. MONTEFIORE v.
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- ss. 43, 49. DAVIS v. PETRIE
C. A. [1906] 2 K. B. 786
- s. 44. *In re* DRUCKER (No. 1)
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- *In re* WEIBKING
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- BAILEY v. THURSTON & Co.
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- *In re* ROSE C. A. [1905] 1 Ch. 94
- *In re* WILLIAM WATSON & Co.
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- *In re* HAMILTON YOUNG & Co.
C. A. [1905] 2 K. B. 753
- ss. 44, 54. LONDON AND COUNTY
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- OFFICIAL RECEIVER v. COOKE
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- *In re* KENT COUNTY GAS LIGHT AND
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- ss. 44, 54, 168. ROSE v. BUCKETT
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- s. 47. *In re* PARRY
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- s. 47, sub-s. 2. *In re* MAGNUS, *Ex*
parte SALAMAN C. A. [1910]
2 K. B. 1049
- s. 48. *In re* LAKE
C. A. [1901] 1 K. B. 710

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- 46 & 47 Vict. c. 52 (*Bankruptcy*), s. 49. *In re*
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- In re* DUNKLEY & SON
Bigham J. [1905] 2 K. B. 683
- s. 55. *In re* BASTABLE
C. A. [1901] 2 K. B. 518
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- s. 55, sub-ss. 1, 2, 6. *In re* CARTER &
ELLIS
C. A. [1905] 1 K. B. 735
- s. 55, sub-s. 2. STACEY v. HILL
C. A. [1901] 1 K. B. 660
- s. 55, sub-s. 6. *In re* BAKER
C. A. [1901] 2 K. B. 628
- In re* HOLMES
Div. Ct. [1908] 2 K. B. 812
- ss. 55, 125. *In re* MELLISON
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- s. 57. *In re* BRIGHT
Wright J. [1903] 1 K. B. 735
- s. 57, sub-s. 3; s. 166. JENNINGS
v. MATHER C. A. [1902] 1 K. B. 1
- s. 57, sub-s. 6; s. 89, sub-s. 3. *In*
re PILLING. *Ex parte* SALAMAN
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- s. 57, sub-ss. 7, 8.; s. 102, sub-s. 1.
In re MACFADYEN [1908] W. N. 13
- ss. 57, 73. *Ex parte* NICHOLLS
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- s. 58. *In re* MAYNE
Bigham J. [1907] 2 K. B. 899
- s. 73. *In re* LAWRENCE & PORTER
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- s. 73, sub-s. 3. *In re* SMITH. *Ex parte*
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- s. 74, sub-ss. 3, 6; s. 76. *In re* SIMS
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- s. 74, sub-s. 6. BOARD OF TRADE v.
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CORPORATION C. A. [1910] 2 K. B. 649
- s. 80. *In re* SOLOMONS
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- s. 102, sub-s. 1. LEA v. THURSBY
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- s. 103, sub-s. 5. *In re* A DEBTOR
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- s. 104. *In re* SUMMERS
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- s. 105, sub-s. 1. *In re* A DEBTOR
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- 46 & 47 Vict. c. 52 (*Bankruptcy*), ss. 105 (4), 139;
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- s. 105; Sched. II., r. 25. *In re*
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- ss. 106, 108, 112, 125. *In re* GREAVES
Bigham J. [1904] 2 K. B. 493
- s. 117. *In re* DOBSON
Wright J. [1903] W. N. 155
- GALBRAITH v. GRIMSHAW
H. L. (E.) [1910] A. C. 508
- s. 121. *In re* WEIGHELL
C. A. [1909] 1 K. B. 92
- s. 122. BRADFIELD v. CHELTENHAM
GUARDIANS Buckley J. [1906]
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- PEARSON v. WILCOCK C. A. [1906]
2 K. B. 440
- s. 125. *In re* KENWARD
Kekewich J. [1906] W. N. 16
- Sched. II., r. 22. *In re* VAN LAUN
C. A. [1907] 2 K. B. 23
- JOHNSON v. PICKERING
C. A. [1908] 1 K. B. 1
- s. 127. *In re* SPRATLEY
Bigham J. [1909] 1 K. B. 559
- s. 148. *In re* J. G. TOMKINS & Co.
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— s. 13. *PEARCE v. BASTABLE'S TRUSTEE IN BANKRUPTCY*

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— s. 13, sub-s. (ii). *In re* BLAGRAVE'S SETTLED ESTATES

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— s. 27, sub-s. 2. *REX v. PIKE*

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53 & 54 Vict. c. lviii. (*Glasgow Court Houses*). LANARK COUNTY COUNCIL *v.* GLASGOW COURT HOUSES COMMRS.

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54 & 55 Vict. c. 4 (*Technical Instruction*). *REG. v. COCKERTON* **C. A. [1901] 1 K. B. 726**

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54 & 55 Vict. c. 35 (*Bills of Sale*). *In re* HAMILTON YOUNG & Co.

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— s. 14, sub-s. 4; s. 17. *MAYNARD v. CONSOLIDATED KENT COLLIERIES CORPORATION, LD.*

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- 54 & 55 Vict. c. 39 (*Stamps*), s. 12, sub-s. 6 (b); s. 88; First Schedule, "Mortgage," &c. (2). LORD SUFFIELD *v.* INLAND REVENUE COMMRs. Bray J. [1908] 1 K. B. 865
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- ss. 54, 57. *In re* LOVELL AND COLLARDS' CONTRACT Swinfen Eady J. [1907] 1 Ch. 249
- ss. 54, 60, Sched. I. GREAT NORTHERN RY. CO. *v.* INLAND REVENUE COMMRs. C. A. [1901] 1 K. B. 416
- s. 56, sub-s. 2; s. 57. UNDERGROUND ELECTRIC RAILWAYS CO. OF LONDON, LD. H. L. (E.) [1906] A. C. 21
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- 54 & 55 Vict. c. 39 (*Stamps*), s. 113. COUNTY OF DURHAM ELECTRICAL POWER DISTRIBUTION CO. *v.* INLAND REVENUE COMMRs. C. A. [1909] 2 K. B. 604
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- 54 & 55 Vict. c. 54 (*Ranges*), s. 11. BLUNDELL *v.* REX - Ridley J. [1905] 1 K. B. 516
- 54 & 55 Vict. c. 56 (*Elementary Education*). REG. *v.* COCKERTON C. A. [1901] 1 K. B. 726
- 54 & 55 Vict. c. 63 (*Highways and Bridges*), s. 3. HERTFORDSHIRE COUNTY COUNCIL *v.* BARNET RURAL COUNCIL C. A. [1902] 2 K. B. 48
- 54 & 55 Vict. c. 65 (*Lunacy*), s. 3. REX *v.* FULHAM GUARDIANS Div. Ct. [1909] 2 K. B. 504
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- 54 & 55 Vict. c. 69 (*Penal Servitude*), s. 3, sub-s. 3. REX *v.* SMITH; REX *v.* WILSON - C. C. A. [1909] 2 K. B. 756
- 54 & 55 Vict. c. 73 (*Mortmain and Charitable Uses*), ss. 3, 5. *In re* SIDEBOTTOM C. A. [1902] 2 Ch. 389
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- s. 7. *In re* DOUGLAS Kekewich J. [1905] 1 Ch. 279
- ss. 7, 8. *In re* SUTTON Buckley J. [1901] 2 Ch. 640
- 54 & 55 Vict. c. 75 (*Factories and Workshops*), s. 2. TRACEY *v.* PRETTY & SONS Div. Ct. [1901] 1 K. B. 444
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- s. 7, sub-s. 2. HORNER *v.* FRANKLIN C. A. [1905] 1 K. B. 479
- 54 & 55 Vict. c. 76 (*Public Health—London*). FOULGER *v.* ARDING Div. Ct. [1901] 2 K. B. 151
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- ss. 4, 121, 141. *In re* FARNHAM'S TRUSTS - C. A. [1904] 2 Ch. 561

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- 54 & 55 Vict. c. 76 (*Public Health—London*),
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- s. 94, sub-s. 1 (e); s. 116. ARLIDGE
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- 54 & 55 Vict. c. xxvi. (*Metropolitan Commons—
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- 54 & 55 Vict. c. cxxi (*London and North Western
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- 54 & 55 Vict. c. cxxx. (*City of Glasgow*), s. 35.
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- 54 & 55 Vict. c. clxxxviii. (*Bognor Water*),
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- 54 & 55 Vict. c. cxxix. (*Midland Railway
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- 55 & 56 Vict. c. 4 (*Infants*), s. 3. MILTON v.
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- 55 & 56 Vict. c. 6 (*Colonial Probates*). IN THE
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- 55 & 56 Vict. c. 9 (*Gaming*), s. 1. WILLIS v.
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- 55 & 56 Vict. c. 13⁴. (*Conveyancing and Law of
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- 55 & 56 Vict. c. 27 (*Parliamentary Deposits and
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- 55 & 56 Vict. c. 32 (*Clergy Discipline*). LEE v.
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- 55 & 56 Vict. c. 32 (*Clergy Discipline*), s. 2.
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- 55 & 56 Vict. c. 39 (*National Debt—Stockholders' Relief*), s. 4. OLDHAM CORPORATION v. BANK OF ENGLAND C. A. [1904] 2 Ch. 716
- 55 & 56 Vict. c. 43 (*Military Lands*). HORNSEY URBAN COUNCIL v. HENNEL
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- 55 & 56 Vict. c. 55 (*Burgh Police—Scotland*), s. 217. MONTGOMERIE & Co. v. HADDINGTON (PROVOST, & C., OF)
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- 55 & 56 Vict. c. 57 (*Private Street Works*), ss. 5, 7. CAREY v. BEXHILL CORPORATION
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- s. 6. HERNE BAY URBAN COUNCIL v. PAYNE & WOOD
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- 55 & 56 Vict. c. 59 (*Telegraph*), s. 5. SOUTH EASTERN RY. CO. v. NATIONAL TELEPHONE CO. - C. A. [1908] 2 Ch. 514
- 55 & 56 Vict. c. 62 (*Shop Hours*), ss. 4, 9. W. H. SMITH & SON v. KYLE
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- 55 & 56 Vict. c. viii. (*Railway Passengers' Assurance Company*). HODSON v. RAILWAY PASSENGERS' ASSURANCE CO.
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- 55 & 56 Vict. c. cviii. (*Pontypridd Waterworks*) s. 4. ATT.-GEN. v. PONTYPRIDD WATERWORKS CO.
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- 56 & 57 Vict. c. 31 (*Rivers Pollution Prevention*), s. 1. AIRDRIE MAGISTRATES v. LANARK COUNTY COUNCIL. COATBRIDGE MAGISTRATES v. LANARK COUNTY COUNCIL
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- 56 & 57 Vict. c. 37 (*Liverpool Court of Passage*), s. 10. COATES v. MOORE
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- 56 & 57 Vict. c. 39 (*Industrial and Provident Societies*), ss. 10, 34, 58, 60; Sched. II., clauses 7, 9. *In re* UNITED SERVICE SHARE PURCHASE SOCIETY, LD.
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- s. 23, sub-s. 2. *In re* GWAWR-Y-GWEITHYR INDUSTRIAL AND PROVIDENT SOCIETY, LD.
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- ss. 58, 61. *In re* RUDDINGTON LAND
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- 56 & 57 Vict. c. 53 (*Trustee*). PRACTICE NOTE
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- 56 & 57 Vict. c. 53 (*Trustee*), ss. 10, 25. *In re* ROUTLEDGE'S TRUSTS
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- s. 13. *In re* JUDD AND POLAND AND SKELCHER'S CONTRACT
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- s. 16. *In re* HOWGATE AND OSBORN'S CONTRACT
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- s. 25. *In re* CHETWYND'S SETTLEMENT - Farwell J. [1902] 1 Ch. 692
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- s. 25, sub-s. 1; s. 26; s. 35, sub-s. 1. *In re* RUDDINGTON LAND
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- ss. 25, 35. *In re* TAYLOR'S AGREEMENT TRUSTS
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- ss. 26, 35. *In re* RICHARD MILLS & CO. (BRIERLY HILL) LD.
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- s. 26, sub-s. ii. (c); s. 35, sub-s. 1, cl. ii. (c), and s. 36. *In re* GENERAL ACCIDENT ASSURANCE CORPORATION, LD.
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- ss. 26, 35, sub-s. 2. *In re* No. 12, CABLE ROAD, HOYLAKES, CHESHIRE
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- ss. 30, 33. *In re* HAMBROUGH'S ESTATE
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- s. 35, sub-s. 1 (ii.) (a). *In re* DE-HAYNIN
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- 56 & 57 Vict. c. 42 (*Elementary Education (Blind and Deaf Children)*), ss. 2, 9. SOUTHWARK UNION v. LONDON COUNTY COUNCIL [1910] 2 K. B. 559
- 56 & 57 Vict. c. 53 (*Trustee*), s. 35, sub-s. 1 (ii.) (a). *In re* DEHAYNIN (INFANTS)
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- 56 & 57 Vict. c. 56 (*Fertilisers and Feeding Stuffs*), s. 3, sub-s. 1 (b). LAIRD v. DOBELL Div. Ct. [1906] 1 K. B. 131

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- 56 & 57 Vict. c. 61 (*Public Authorities Protection*). SHARPINGTON v. FULHAM GUARDIANS
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- Sched. I., s. 1 (a), sub-s. (i). **O'KEEFE v. LOVATT** - C. A. [1901] W. N. 223
- Sched. I., cl. I. (a) (i). **PRYCE v. PENRIKYBER NAVIGATION COLLIERY CO.**
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- Sched. I., s. I. (a) (i); s. 1 (b). **AYRES v. BUCKERIDGE**
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- Sched. I., s. 1 (a), (ii). **BEVAN v. CRAWSHAY BROTHERS (CYFARTHFA), LD.**
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- Sched. I., s. 1 (a), (ii). **ABRAM COAL CO. v. SOUTHERN**
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- PEACOCK v. NIDDRIE AND BENHAR COAL CO.**
(1902) Ct. of Sess. (Sc.) [1903] W. N. 162
- Sched. I., (a) (i). **MIDLAND RY. CO. v. SHARPE** H. L. (E.) [1904] A. C. 349
- Sched. I., sub-s. 1 (b), (2), (12). **JAMES v. OCEAN COAL CO.**
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- Sched. I. (1) (a) (i). **GREAT NORTHERN RY. CO. v. DAWSON**
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- Sched. I., s. 1 (a) (ii). **OSMOND v. CAMPBELL & HARRISON, LD.**
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- Sched. I. (1), (b). **HATHAWAY v. ARGUS PRINTING CO.**
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- 60 & 61 Vict. c. 37 (*Workmen's Compensation*),
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- GIBBS v. DUNLOP & Co.**
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- Sched. I., Clause 1 (a), (i). **WILLIAMS v. VAUXHALL COLLIERY CO.**
C. A. [1907] 2 K. B. 433
- Sched. I., Clause 1 (a), (i), (ii). **SENIOR v. FOUNTAINS AND BURNLEY, LD.**
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- Sched. I., Clause 1 (b), 2. **WEBSTER v. SHARP & Co.**
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- Sched. I., Clause 2 (a) (ii). **REES v. PENRIKYBER NAVIGATION COLLIERY CO.**
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- Sched. I. (2), (12). **POMPHREY v. SOUTHWARK PRESS**
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- Sched. I. (12). **SHARMAN v. HOLLIDAY & GREENWOOD, LD.**
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- RIGBY & Co. v. COX (No. 2)**
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- Sched. I., par. 12; Sched. II., par. 8 **UPPER FOREST AND WESTERN STEEL AND TINPLATE CO. v. THOMAS**
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- Sched. I., cl. 13. **CASTLE SPINNING CO. v. ATKINSON**
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- Sched. II. (2), (3), (4). **GIBSON v. WORMALD & WALKER, LD.**
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- Sched. II. (4). **RIGBY & Co. v. COX**
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- Sched. II. (8). **BAILEY v. PLANT**
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- 60 & 61 Vict. c. 37 (*Workmen's Compensation*),
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- — — Sched. II., s. 14 (c). **OSBORNE v. BARCLAY, CURLE & CO.**
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- 60 & 61 Vict. c. 38 (*Public Health—Scotland*).
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- — — s. 103. **MONTGOMERIE & CO. v. HADDINGTON (PROVOST, &c., OF)**
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- — — s. 133. **INVERARITY v. FORFARSHIRE COUNTY COUNCIL**
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- 60 & 61 Vict. c. 65 (*Land Transfer*). *In re*
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- — — s. 1. *In re* SHARMAN
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- — — s. 1, sub-s. 1; s. 2, sub-ss. 1, 2, 3; s. 3,
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- — — s. 1, sub-s. 1; s. 2, sub-s. 3. *In re*
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- — — s. 1, sub-ss. 1, 3; s. 2, sub-s. 3. *In re*
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- — — ss. 1, sub-s. 1, 2 sub-s. 3. *In re* JONES
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- — — s. 1, sub-s. 1; s. 24, sub-s. 2. *In re*
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- — — ss. 1, 2, sub-s. 3. *In re* WILLIAMS
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- — — s. 1, sub-s. 4. *In re* SOMERVILLE AND
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- — — ss. 1, 2. *In re* HARROWBY AND
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- — — ss. 1, 2, sub-s. 3. *In re* WILLIAMS
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- — — s. 2, sub-s. 3; s. 3, sub-s. 1. *In re*
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- — — s. 2, sub-s. 2. *In re* WALBECK
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- — — s. 2, sub-s. 3. *In re* BALLS
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- — — s. 3. **KEMP v. INLAND REVENUE COMMISSIONERS.**
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- 60 & 61 Vict. c. 65 (*Land Transfer*), s. 3,
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- — — s. 4, sub-s. 1. *In re* BEVERLY
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- — — s. 7. **ATT.-GEN. v. ODELL**
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- — — s. 16, sub-s. 2. *In re* VOSS AND
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- — — s. 20. **CAPITAL AND COUNTIES BANK, LD. v. RHODES - C. A.** [1903] 1 Ch. 631
- — — Part II. *In re* WESLEYAN METHODIST
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- — — Sched. I. **WILLÉ v. ST. JOHN**
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- 61 & 62 Vict. c. 10 (*Finance*), s. 4, sub-s. 1.
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- — — s. 6. *In re* LOVELL AND COLLARD'S
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- 61 & 62 Vict. c. 21 (*Poor Law—Scotland*), s. 1.
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- 61 & 62 Vict. c. 26 (*Companies*), s. 1. *In re*
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- 61 & 62 Vict. c. 29 (*Locomotives*), s. 5, sub-ss. 1,
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- — — s. 6. **ATT.-GEN. v. SCOTT**
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- — — s. 9, sub-ss. 1, 9, ss. 10, 17. **HODDELL v. PARKER**
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- — — s. 12. **EGHAM RURAL DISTRICT COUNCIL v. GORDON**
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- — — s. 12, sub-s. 1. **LANCASTER RURAL COUNCIL v. FISHER AND LE FANT**
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- — — s. 12, sub-s. 1 (a). **CHESTERFIELD RURAL COUNCIL v. NEWTON**
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- — — s. 12, sub-s. 1 (b), (c). **KENT COUNTY COUNCIL v. FOLKESTONE CORPORATION**
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- — — s. 12, sub-s. 1 (b). **BROMLEY RURAL COUNCIL v. CROYDON CORPORATION**
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- 61 & 62 Vict. c. 29 (*Locomotives*), s. 12, sub-s. 1 *b*).
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61 & 62 Vict. c. 36 (*Criminal Evidence*), s. 1 *e*).
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— s. 1, sub-s. *f* *ii*). REX *v.* PRESTON
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61 & 62 Vict. c. 37 (*Local Government—Ireland*), s. 115, sub-s. 18. LOCAL GOVERNMENT BOARD FOR IRELAND *v.* REX
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61 & 62 Vict. c. 49 (*Vaccination*). MOORE *v.* KEYTE
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— s. 1. LANGRIDGE *v.* HOBBS
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61 & 62 Vict. c. 60 (*Liebrates*), s. 2, sub-s. 1. COMMISSIONER OF POLICE *v.* DONOVAN
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- 62 & 63 Vict. c. 9 (*Finance*), s. 7. *In re* BLAIR & GIRLING C. A. [1906] 2 K. B. 131
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— s. 8. LONDON AND INDIA DOCKS CO. *v.* ATT.-GEN. H. L. (E.) [1909] A. C. 7
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62 & 63 Vict. c. 14 (*London Government*), ss. 4, 23. RECTOR AND CHURCHWARDENS OF ST. GEORGE'S, HANOVER SQUARE *v.* WESTMINSTER CORPORATION
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— s. 5, Sched. II, Part I. COUNCIL OF THE CITY OF WESTMINSTER *v.* LONDON COUNTY COUNCIL
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— s. (6) 5. *Ex parte* GREAT WESTERN RY. CO. C. A. [1909] W. N. 202
— s. 10, sub-s. 2. ISLINGTON BOROUGH COUNCIL *v.* LONDON SCHOOL BOARD
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— s. 14. REX *v.* CARSON ROBERTS
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— s. 30. REX *v.* STEPNEY CORPORATION
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— s. 30, sub-ss. 1, 2, 4. LIVINGSTONE *v.* WESTMINSTER CORPORATION
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62 & 63 Vict. c. 19 (*Electric Lighting Clauses*), s. 1. Schedule, clauses 2, 8. ATT.-GEN. *v.* PONTYPRIDD URBAN COUNCIL
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— Schedule, s. 18. CHEPSTOW ELECTRIC LIGHT AND POWER CO., LD. *v.* CHEPSTOW GAS AND COKE CONSUMERS' CO., LD.
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- 62 & 63 Vict. c. 20 (*Bodies Corporate—Joint Tenancy*). *In re* THOMPSON SETTLEMENTS TRUSTS
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- 62 & 63 Vict. c. 29 (*Baths and Washhouses*), s. 2. ATT.-GEN. v. WALTHAMSTOW URBAN DISTRICT COUNCIL
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- 62 & 63 Vict. c. 33 (*Board of Education*). *In re* BERKHAMSTED GRAMMAR SCHOOL
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- s. 2. *In re* SOCIETY FOR TRAINING TEACHERS OF THE DEAF AND WHITE'S CONTRACT
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- s. 2, sub-s. 2. *In re* BETTON'S CHARITY
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- 62 & 63 Vict. c. 37 (*Poor Law*), s. 1. WANTAGE UNION v. BRISTOL UNION
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- 62 & 63 Vict. c. 51 (*Sale of Food and Drugs*), s. 1. FOOT v. FINDLAY
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- s. 19, sub-s. 1. BEARDSLEY v. GIDDINGS
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- s. 19, sub-s. 2. MCQUEEN v. JACKSON
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- s. 20, sub-ss. 5, 6. MANNERS v. TYLER
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- s. 21. SUCKLING v. PARKER
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- s. 25. REX v. OTTO MONSTED, LD.
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- 62 & 63 Vict. c. clviii. (*West Gloucestershire Water*), ss. 4, 12. ATT.-GEN. v. WEST GLOUCESTERSHIRE WATER CO.
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- 62 & 63 Vict. c. clxxii. (*Mersey Docks—Pilotate, &c.*), ss. 3, 4, 5. THE "MERCEDES DE LARRINGA"
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- 62 & 63 Vict. c. cxcvii. (*Loughborough Corporation*), ss. 62, 65. MORRIS & BASTERT, LD. v. LOUGHBOROUGH CORPORATION
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- 62 & 63 Vict. c. ccliv. (*Manchester Corporation Tramways*). ATT.-GEN. v. MANCHESTER CORPORATION
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- 63 & 64 Vict. c. 12 (*Australian Constitution Act*), ss. 51, 90. COLONIAL SUGAR REFINING CO. v. IRVING
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- 63 & 64 Vict. c. 15 (*Burial*), s. 3. WILLIAMS v. BRITON FERRY BURIAL BOARD
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- s. 3, sub-s. 4 (i). YOUNG v. KINGSTON-ON-THAMES, SURBITON, NEW MALDEN, AND COOMBE JOINT BURIALS COMMITTEE - C. A. [1907] 1 K. B. 416
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- 63 & 64 Vict. c. 22 (*Workmen's Compensation*), SMITHERS v. WALLIS
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- s. 1, sub-s. 3. MEALLY v. M'GOWAN (1902) Ct. of Sess. (Sc.) [1903] W. N. 165
- s. 7, sub-s. 1 (a) (ii). ROGERS v. CARDIFF CORPORATION
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- 63 & 64 Vict. c. 48 (*Companies*), s. 3, sub-s. 2. MOLINEAUX v. LONDON, BIRMINGHAM AND MANCHESTER INSURANCE CO.
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- s. 4, sub-ss. 1, 4; s. 5. ROUSSELL v. BURNHAM - Parker J. [1909] 1 Ch. 127
- s. 4, sub-s. 4. SHERWELL v. COMBINED INCANDESCENT MANTLES SYNDICATE, LD.
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- . *In re* NATIONAL MOTOR MAIL-COACH CO.
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- s. 4, sub-ss. 1, 4; s. 5. ROUSSELL v. BURNHAM - Parker J. [1909] 1 Ch. 127
- ss. 4, 10. *In re* WEST YORKSHIRE DARRACQ AGENCY, LD. - Neville J. [1908] W. N. 236
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- s. 6. *In re* "OTTO" ELECTRICAL MANUFACTURING CO. (1905) LD.
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- s. 7. *In re* X. COMPANY
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- 63 & 64 Vict. c. 48 (*Companies*), s. 8. EVANS v. CHAPMAN - Joyce J. [1902] W. N. 78
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— s. 8, sub-s. 2. DEXTER v. UNITED GOLD COAST MINING PROPERTIES, LD.
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— s. 10, sub-s. 1 (f). BROOKES v. HANSEN
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— s. 13. *In re* STATE OF WYOMING SYNDICATE
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— s. 14. CORNBROOK BREWERY CO. v. LAW DEBENTURE CORPORATION, LD.
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— s. 14, sub-s. 1 (d). ILLINGWORTH v. HOULDSWORTH
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— ss. 14, 15. *In re* BOOTLE COLD STORAGE AND ICE CO.
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- 63 & 64 Vict. c. 48 (*Companies*), ss. 14, 15.
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— ss. 21, 22, 23. NEWTON v. BIRMINGHAM SMALL ARMS CO.
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— s. 24. *In re* TEA CORPORATION, LD.
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— s. 26. *In re* JOHANNESBURG MINING AND GENERAL SYNDICATE
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63 & 64 Vict. c. 50 (*Agricultural Holdings*), s. 1.
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— s. 1, sub-s. 1. CARRINGTON'S, LD. v. SMITH - Channell J. [1906] 1 K. B. 79

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- 63 & 64 Vict. c. 51 (*Money-lenders*), ss. 1, 2, sub-ss. 1 (a), (c), 2. VICTORIAN DAYLESFORD SYNDICATE, LD. v. DOTT
C. A. [1906] W. N. 90
- ss. 1, sub-s. 1, 3. *In re A DEBTOR*
C. A. [1903] 1 K. B. 705
- s. 1, sub-s. 3. *In re ATTREE*
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- ss. 1 (5), 2, 3. *In re ROBINSON*. CLARKSON v. ROBINSON
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- s. 2. LODGE v. NATIONAL UNION INVESTMENT CO.
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- s. 2, sub-s. 1 (a), (b), (c). CHAPMAN v. MICHAELSON C. A. [1909] 1 Ch. 238
- s. 2, sub-ss. 1 (a), (c), 2. BONNARD v. DOTT
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- s. 2, sub-s. 1 (b). JACKSON v. PRICE
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- KIRKWOOD v. GADD
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- s. 2, sub-s. 1 (b). GADD v. PROVINCIAL UNION BANK
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- s. 2, sub-s. (1), (b), (c). STAFFORDSHIRE FINANCIAL CO. v. HUNT
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- ss. 2, 3. STAFFORDSHIRE FINANCIAL CO. v. VALENTINE
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- s. 6, sub-s. (d). LITCHFIELD v. DREYFUS
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- 63 & 64 Vict. c. 53 (*Elementary Education*), s. 6, sub-s. 1. STRONG v. TREISE
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- 63 & 64 Vict. c. xlii. (*Newport Corporation*), s. 51i. ESCOTT v. NEWPORT CORPORATION, LD.
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- 63 & 64 Vict. c. cxxxiii. (*Edinburgh Corporation*), s. 80. ROSSI v. EDINBURGH CORPORATION
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- 63 & 64 Vict. c. cl. (*Glasgow Building Regulations*). CALEDONIAN RY. CO. v. CORPORATION OF CITY OF GLASGOW
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- 63 & 64 Vict. c. cxxxvii. (*London County Tramways—Electrical Power*), s. 6. T. TILLING, LD. v. DICK, KERR & CO.
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- 1901.
- 1 Edw. 7, c. 7 (*Finance*), s. 9. MCNICOL v. PINCH
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- 1 Edw. 7, c. 13 (*Aliens*). ATT-GEN. FOR CANADA v. CAIN. THE SAME v. GILHULA
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- 1 Edw. 7, c. 22 (*Factory and Workshop*), ss. 10, 135, 136, 146. REX v. TAYLOR
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- ss. 10, 135, 146. VERNEY v. MARK FLETCHER & SONS, LD.
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- s. 14, sub-ss. 2, 3, 7; ss. 87, 149. TOLLER v. SPIERS & POND, LD.
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- ss. 14, 149. BRASS v. LONDON COUNTY COUNCIL
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- s. 49, Sched. II, clause 4. SMITH v. SIBRAY, HALL & CO.
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- ss. 68, 71. STEVENSON v. GOLD-STRAW
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- s. 101, sub-ss. 2, 8. STUCKEY v. HOOKE
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- s. 101, sub-s. 8. MORRIS v. BEAL
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- s. 101, sub-ss. 28. GOLDSTEIN v. HOLLINGSWORTH
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- s. 104. STEVENS v. GENERAL STEAM NAVIGATION CO.
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- s. 104. SMITH v. STANDARD STEAM FISHING CO., LD.
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- s. 105, sub-s. 2 (b). DYER v. SWIFT CYCLE CO.
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- s. 149. HOARE v. ROBERT GREEN, LD.
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- 1 Edw. 7, c. 24 (*Burgh Sewerage, Drainage and Water Supply—Scotland*), s. 5. MONTGOMERIE & Co. v. HADDINGTON (PROVOST, &c., OF)
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- 1 Edw. 7, c. 27 (*Intoxicating Liquors—Sale to Children*), s. 2. BROOKS v. MASON
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- 1 Edw. 7, c. cclxxxiv. (*Edinburgh Corporation Order Confirmation*), s. 57. ROSSI v. EDINBURGH CORPORATION
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- 1 Edw. 7, c. cclxix. (*Rugby Water and Improvement*). ATT.-GEN. v. GRAND JUNCTION CANAL Co.
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- 1902.
- 2 Edw. 7, c. 15 (*Musical—Summary Proceedings—Copyright*), s. 2. *Ex parte* FRANCIS
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- ss. 2, 3. MABE v. CONNOR
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- 2 Edw. 7, c. 28 (*Licensing*), s. 4. THOMPSON v. MCKENZIE
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- s. 6, sub-s. 1. COMMISSIONER OF POLICE v. DONOVAN
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- s. 11, sub-s. 4. BUSHELL v. HAMMOND
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- s. 20. REX v. WEST RIDING JUSTICES
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- s. 23. DICKESON & Co. v. MAYES
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- s. 28, sub-s. 1 (f). PLAISTOW WORKING MEN'S CLUB v. HARROD
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- 2 Edw. 7, c. 35 (*New South Wales*), s. 24. NORTON v. TAYLOR
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- 2 Edw. 7, c. 41 (*Metropolis Water*). *In re* SLATER. SLATER v. SLATER
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- s. 2; Sched. IV. *In re* SLATER
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- s. 2, sub-s. 1; s. 24, sub-ss. 1 and 2; s. 37. METROPOLITAN WATER BOARD v. SOLOMON
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- 2 Edw. 7, c. 42 (*Education*). ATT.-GEN. v. WEST RIDING OF YORKSHIRE COUNTY COUNCIL
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- s. 1. *In re* LEEDS INSTITUTE OF SCIENCE, ART, AND LITERATURE AND LEEDS CITY COUNCIL
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- ss. 1, 5, 6, sub-s. 2, 7, sub-s. 1 (d), 13. *In re* BEARD'S TRUSTS
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- ss. 5, 7. CHING v. SURREY COUNTY COUNCIL
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- ss. 5, 25, Sched. II., clause 1. OLDHAM CORPORATION v. BANK OF ENGLAND
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- s. 7. CROCKER v. PLYMOUTH CORPORATION
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- s. 7, sub-s. 1 (c). JONES v. HUGHES
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- s. 7, sub-ss. 1 (a), 3; s. 16. WILFORD v. WEST RIDING OF YORKSHIRE COUNTY COUNCIL
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- s. 7, sub-s. (3). BLENCOWE v. NORTHAMPTONSHIRE COUNTY COUNCIL
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- ss. 7, 13. *In re* SMALLWOOD. GOTTHARD v. CHAPMAN
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- ss. 7, 17; Sched. I., A (6). YOUNG v. CUTHBERT
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- ss. 11, 13. *In re* BLUNT'S TRUSTS
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- s. 17, sub-s. 1; s. 21, sub-s. 3. MILWARD v. BARRY URBAN COUNCIL
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- s. 18, sub-s. (1), (c). REX v. WRAITH. *Ex parte* KENT COUNTY COUNCIL
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- ss. 27, sub-s. 2, Sched. II., clauses, 1, 22. HEBBURN URBAN DISTRICT COUNCIL v. HEDWORTH, MONKTON AND JARROW UNITED DISTRICT SCHOOL BOARD
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- Sched. II., rr. 16, 21. REX v. LONDON COUNTY COUNCIL
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- 2 Edw. 7, c. clxxiii. (*London County Council—General Powers*), Part IX. GILBERT *v.* JONES Div. Ct. [1905] 2 K. B. 691
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- 3 Edw. 7, c. 18 (*Pistols*), ss. 2, 3. BRYSON *v.* GAMAGE, LD. Div. Ct. [1907] 2 K. B. 630
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3 Edw. 7, c. 25 (*Licensing—Scotland*), ss. 11, 19, 20, 103. BOYLE (or WALSH) *v.* WILSON H. L. (Sc.) [1907] A. C. 45
3 Edw. 7, c. 33 (*Burgh Police—Scotland*), s. 82, sub-s. 2. DA PRATO *v.* PARTICK (PROVOST, &C. OF) H. L. (Sc.) [1907] A. C. 153
3 Edw. 7, c. 36 (*Motor Car*), s. 1. DU CROS *v.* SAMBOURNE Div. Ct. [1907] 1 K. B. 40
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—— s. 1, sub-s. 3. REX *v.* HANKEY Div. Ct. [1905] 2 K. B. 687
—— ss. 3, 4, 9. MARTIN *v.* WHITE Div. Ct. [1910] 1 K. B. 655
—— s. 4. REX *v.* MARSHAM. *Ex parte* CHAMBERLAIN Div. Ct. [1907] 2 K. B. 638
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3 Edw. 7, c. 37 (*Irish Land*). *In re* DUKE OF MANCHESTER'S SETTLEMENT Eve J. [1910] 1 Ch. 106
3 Edw. 7, c. 45 (*Employment of Children*), s. 3, sub-s. 1; s. 5, sub-s. 1; s. 6, sub-s. 3. ROBINSON *v.* HILL Div. Ct. [1910] 1 K. B. 94
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3 Edw. 7, c. 46 (*Revenue*), s. 2. MCNICOL *v.* PINCH Div. Ct. [1906] 2 K. B. 352
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- 3 Edw. 7, c. 46 (*Revenue*), s. 11, sub-s. 1 (a). LONDON COUNTY COUNCIL *v.* COOK Walton J. [1906] 1 K. B. 278
3 Edw. 7, c. clxxxvii. (*London County Council (General Powers)*), ss. 53, 54. BAILEY *v.* LOWMAN - Div. Ct. [1910] 2 K. B. 39
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4 Edw. 7, c. 15 (*Prevention of Cruelty to Children*), s. 1, sub-s. 1. REX *v.* CONNOR C. C. R. [1908] 2 K. B. 26
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4 Edw. 7, c. 23 (*Licensing*). REX *v.* SHANN C. A. [1910] 2 K. B. 418
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—— s. 1, sub-s. 2. DARTFORD BREWERY CO. *v.* COUNTY OF LONDON QUARTER SESSIONS - Div. Ct. [1906] 1 K. B. 695
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—— ss. 1, 3. WATKIN *v.* REX Walton J. [1906] 2 K. B. 886
—— ss. 1, 5. REX *v.* SOUTHAMPTON LICENSING JUSTICES Div. Ct. [1906] 1 K. B. 446
—— s. 1, sub-s. 2; s. 5, sub-s. 5. REX *v.* CHESHIRE LICENSING JUSTICES Div. Ct. [1906] 1 K. B. 362
—— s. 1, sub-ss. 1, 2; s. 8, sub-s. 2. PLAISTOW WORKING MEN'S CLUB *v.* HARROD Div. Ct. [1910] 1 K. B. 582
—— ss. 1, 9. REX *v.* DODD C. A. [1905] 2 K. B. 40
—— s. 2. LAW GUARANTEE AND TRUST SOCIETY, LD. *v.* MITCHAM AND CHEAM BREWERY CO. Kekewich J. [1906] 2 Ch. 98
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- 4 Edw. 7, c. 23 (*Licensing*), s. 2. LIVERPOOL CORPORATION *v.* PETER WALKER & SON, LD. - C. A. [1908] 2 K. B. 33
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- s. 2, sub-s. 1. GRIMSDICK *v.* SWEETMAN
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- s. 2, sub-ss. 2, 4. *In re* HARDY'S CROWN BREWERY, LD., AND ST. PHILIP'S TAVERN, MANCHESTER
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- s. 3. *In re* SMITH
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- s. 3, sub-ss. 1, 2. HORTON *v.* PENN
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- s. 3, sub-s. 3. WOOLER *v.* NORTH EASTERN BREWERIES
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- s. 3; Sched. II. LONDON COUNTY COUNCIL *v.* WATNEY, COMBE & CO.
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- ss. 3, 8. REX *v.* INLAND REVENUE COMMISSIONERS. REX *v.* GLAMORGAN JUSTICES. *Ex parte* DAVIES
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- s. 4. GROH *v.* HESKETH
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- s. 4, sub-s. 2. REX *v.* DRINKWATER
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- s. 4, sub-s. 3. REX *v.* JOHNSTONE
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- s. 8, sub-s. 2. REX *v.* SOUTHAMPTON JUSTICES
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- Sched. II. LORD LLANGATTOCK *v.* WATNEY, COMBE, REID & CO.
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- 4 Edw. 7, c. 28 (*Weights and Measures*), s. 14.
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- 4 Edw. 7, c. 34 (*Irish Land*). *In re* DUKE OF MANCHESTER'S SETTLEMENT
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- 4 Edw. 7, c. ccxxxi. (*London County Council—Tramways and Improvements*). *In re* PECKHAM, EAST DULWICH AND CRYSTAL PALACE TRAMWAYS BILL
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- 5 Edw. 7, c. 4 (*Finance*), s. 6, sub-s. 3. TURNER *v.* CARLTON
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- 5 Edw. 7, c. 13 (*Aliens*), s. 4. ATT.-GEN. *v.* SUTCLIFFE
Bray J. [1907] 2 K. B. 997
- 5 Edw. 7, c. 15 (*Trade Marks*), s. 3. MAJOR BROTHERS *v.* FRANKLIN & SON
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- ss. 3, 8, 9. *In re* UNITED STATES PLAYING CARD CO.'S APPLICATION
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- ss. 3, 9, 35, 36. *In re* GESTETNER'S TRADE MARK
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- ss. 3, 9, 35, 36, 37. PHILIPPART *v.* WILLIAM WHITELEY, LD.
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- ss. 7, 39. SLAZENGER & SONS *v.* SPALDING & BROTHERS
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- s. 8; s. 9, sub-s. 5; s. 39. *In re* NATIONAL STARCH CO.'S APPLICATION FOR REGISTRATION OF A TRADE MARK
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- s. 9, sub-ss. 4, 5. *In re* "APOLINARIS" TRADE MARK
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- s. 9, sub-s. 5. *In re* AKTIEBOLAGET B. A. F. HJORTH & CO.'S TRADE MARK "PRIMUS"
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- In re* LEOPOLD CASSELLA & CO. GESELLSCHAFT MIT BESCHRANKTER HAFTUNG
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- In re* ITALIA FABBRICA DI AUTOMOBILI'S APPLICATION
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- ss. 9, 44. *In re* GRAMOPHONE CO.'S APPLICATION
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- ss. 11, 14, 15, 20, 21. *In re* ALBERT BAKER & CO.'S APPLICATION
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- ss. 11, 19, 21. *In re* COMPAGNIE INDUSTRIELLE DES PETROLES APPLICATION
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5 Edw. 7. 5. 15 (*Trade Marks*), ss. 11, 19. *In re*
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— ss. 11, 60, 68. *In re* ROYAL WOR-
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— s. 12, sub-ss. 2, 3; ss. 22, 24, 27, 48.
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5 Edw. 7. c. 18 (*Unemployed Workmen*).
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— s. 1, sub-ss. 3, 5, 7. PORTON v
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5 Edw. 7. c. ccix. (*London Building*), ss. 7, 22.
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6 Edw. 7. c. 32 (*Dogs*), s. 5, sub-s. 1. JOHNSON v.
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6 Edw. 7. c. 43 (*Street Betting*). GORDON v.
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2 K. B. 1080

— s. 1. DUNNING v. SWETMAN
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— s. 2. STEAD v. AYKROYD
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6 Edw. 7. c. 47 (*Trade Disputes*), s. 3; s. 5,
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6 Edw. 7. c. 48 (*Merchant Shipping*), s. 51.
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6 Edw. 7. c. 55 (*Public Trustee*), s. 5, sub-s. 1.
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6 Edw. 7. c. 58 (*Workmen's Compensation*). REX
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- 6 Edw. 7, c. 58 (*Workmen's Compensation*), s. 1, sub-s. 1. HEWITT v. OWNERS OF SHIP "DUCHESS" C. A. [1910] 1 K. B. 772
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- s. 1, sub-ss. 1, 2, and Sched. I., s. 1, sub-s. (a) (i.). UNITED COLLIERIES, LD. v. SIMPSON H. L. (Sc.) [1909] A. C. 383
- s. 1, sub-s. 2 (b); Sched. I., clauses 1 (b), 3. SIMMONDS v. THE STOURBRIDGE GLAZED BRICK AND FIRE CLAY CO., LD. Div. Ct. [1910] 2 K. B. 269
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- s. 4, sub-s. 1. SKATE v. JONES & CO. - C. A. [1910] 2 K. B. 903
- s. 4, sub-ss. 1, 2, 3; s. 13. MARKS v. CARNE - C. A. [1909] 2 K. B. 516
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- 6 Edw. 7, c. 58 (*Workmen's Compensation*), s. 6. CORY & SONS, LD. v. FRANCE, FENWICK & CO., LD. C. A. [1910] W. N. 215
- s. 6, sub-s. 1. PAGE v. BURTWELL C. A. [1908] 2 K. B. 758
- s. 7, sub-s. 1 (e), Sched. I (3). MCDERMOTT v. OWNERS OF SS. "TINTORETTO" - H. L. (E.) [1910] W. N. 274
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- s. 7, sub-s. 2. ADMIRAL FISHING CO. v. ROBINSON C. A. [1910] 1 K. B. 540
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- s. 9, Sched. I., par. 2 (b). BRANDY v. OWNERS OF SS. "RAPHAEL" C. A. [1910] W. N. 266
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- 6 Edw. 7, c. 58 (*Workmen's Compensation*),
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- — — Sched. I., ss. 1, 2. PERRY v. WRIGHT.
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- — — Sched. I., s. 1 (a) (i.); s. 2. PENN v.
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- — — Sched. I., 1 (a) (1), (2), (3). HODG-
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- — — Sched. I. (2) (a). ROSENQVIST v.
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- — — Sched. I., par. 17; Sched. II., pars. 1, 9.
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- — — Sched. I., par. 19. HOSEGOOD & SONS v.
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- — — Sched. II., par. 4. CLAYTON v.
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- — — Sched. II. (4). SUTTON v. GREAT
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- — — Sched. II. (7). BEADLE v. "S.
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- — — Sched. II. (9) (d). RHODES v. SOOT-
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- 7 Edw. 7, c. 9 (*Territorial and Reserve
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- 7 Edw. 7, c. 12 (*Matrimonial Causes*). SHARPE
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- — — s. 1. K. v. K. (otherwise R.)
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- — — s. 3. DAVISON v. DAVISON
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- 7 Edw. 7, c. 17 (*Probation of Offenders*), s. 1,
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- — — ss. 1, 6. REX v. SPRATLING
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- 7 Edw. 7, c. 21 (*Butter and Margarine*), s. 5,
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- — — s. 8. WILLIAMS v. BAKER
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- 7 Edw. 7, c. 23 (*Criminal Appeal*). REX v.
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- — — s. 1, sub-s. 6; s. 4, sub-s. 2. DIRECTOR
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- — — s. 4. REX v. LEWIS C. C. A.
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- — — s. 4, sub-s. 1. REX v. DYSON
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- — — s. 4, sub-s. 3. REX v. DAVIDSON
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- — — s. 6, sub-s. 2. REX v. ELLIOTT
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- — — s. 16. REX v. ELLIOTT C. C. A.
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- — — s. 19; s. 20, sub-s. 2. REX v. JOHN-
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- — — s. 20, sub-s. 2. REX v. HAUSMAN
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- 7 Edw. 7, c. 29 (*Patents and Designs*), s. 18.
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- — — ss. 22, 23, 33. GILLETTE SAFETY
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- — — ss. 22, 23, 92, sub-s. 2. *In re*
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- — — s. 26. *In re* BELDAM'S PATENT
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- 7 Edw. 7 c. 29 (*Patents and Designs*). ss. 49, 50, 93. DOVER, LD. v. NÜRNBERGER CELLULOID WARREN FABRIK GEBRUDER WOLFF - C. A. [1910] 2 Ch. 25
- s. 98 (b). ATKINSON v. BRITTON
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- 7 Edw. 7, c. 43 (*Education—Administrative Provisions*), s. 1. *In re* LEEDS INSTITUTE OF SCIENCE, ART, AND LITERATURE AND LEEDS CITY COUNCIL
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- 7 Edw. 7, c. 46 (*Employers' Liability Insurance Companies*), s. 1. *In re* IRISH CATHOLIC CHURCH PROPERTY INSURANCE CO. Parker J. [1909] W. N. 69
- 7 Edw. 7, c. 47 (*Deceased Wife's Sister's Marriage*), s. 1. BANISTER v. THOMPSON
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- 7 Edw. 7, c. 50 (*Companies*), s. 10. *In re* HERTS AND ESSEX WATERWORKS CO.
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- s. 15. *In re* NEW LONDON AND SUBURBAN OMNIBUS CO.
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- s. 28. *In re* BRITISH EQUITABLE BOND AND MORTGAGE CORPORATION, LD.
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- 7 Edw. 7, c. 59 (*Prevention of Crime*), s. 1. REX v. WATKINS C. C. A. [1910] W. N. 169
- 7 Edw. 7, c. 65 (*Land Transfer*), s. 16, sub-s. (2). *In re* VOSS AND SAUNDER'S CONTRACT
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- 7 Edw. 7, c. cxi. (*City of London—Union of Parishes*). WAGSTAFF v. CITY OF LONDON COMMON COUNCIL
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- 7 Edw. 7, c. clxxi. (*Metropolitan Water Board (Charges)*), ss. 8, 9, 13, 16, 25. SOUTH SUBURBAN GAS CO. v. METROPOLITAN WATER BOARD
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- ss. 8, 16, 25. METROPOLITAN WATER BOARD v. LONDON, BRIGHTON AND SOUTH COAST RY. CO. - C. A. [1910] 2 K. B. 890
- 7 Edw. 7, c. clxxiv. (*Metropolitan Water Board—Various Powers*), s. 53. METROPOLITAN WATER BOARD v. SOLOMON - Joyce J. [1908] 2 Ch. 214
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- 8 Edw. 7, c. 45 (*Punishment of Incest*), ss. 1, 2. REX v. BALL C. C. A. [1910] W. N. 223
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- 8 Edw. 7, c. 53 (*Law of Distress Amendment*), ss. 1, 4. ROGERS, EUNGBLUTT & CO. v. MARTIN - C. A. [1910] W. N. 223

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- 8 Edw. 7, c. 53 (*Law of Distress Amendment*), s. 4. SHENSTONE & CO. v. FREEMAN
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- 8 Edw. 7, c. 59 (*Prevention of Crime*), s. 1. REX v. WATKINS C. C. A. [1910] W. N. 169
- s. 7. REX v. KEATING - C. C. A. [1910] W. N. 198
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- ss. 10, 11, 19. REX v. SMITH. REX v. WESTON C. C. A. [1910] 1 K. B. 17
- 8 Edw. 7, c. 64 (*Agricultural Holdings (Scotland)*), s. 11 (1). STEWART v. WILLIAMSON - H. L. (Sc.) [1910] A. C. 455
- 8 Edw. 7, c. 66 (*Public Meeting*). BURDEN v. RIGLER - Div. Ct. [1910] W. N. 279
- 8 Edw. 7, c. 67 (*Children*), s. 17. REX v. FREDERICK MOON. REX v. EMILY MOON C. C. A. [1910] 1 K. B. 818
- ss. 33, 128. REX v. DICKINSON. *Ex parte* DAVIS Div. Ct. [1910] 1 K. B. 469
- 8 Edw. 7, c. 69 (*Companies (Consolidation)*), ss. 7, 45, 48, 69; Table A, art. 4. *In re* AUSTRALIAN ESTATES AND MORTGAGE CO., LD. - Neville J. [1910] 1 Ch. 414
- s. 9, sub-ss. (1), (3). *In re* ROYAL LONDON MUTUAL INSURANCE SOCIETY, LD. Eve J. [1910] W. N. 226
- ss. 9, 131, 132, 285. *In re* ESSEX AND SUFFOLK EQUITABLE INSURANCE SOCIETY, LD. Warrington J. [1909] W. N. 102
- s. 17, sub-s. 1. MCGLADE v. THE ROYAL LONDON MUTUAL INSURANCE SOCIETY, LD. C. A. [1910] 2 Ch. 169
- s. 20. CYCLISTS' TOURING CLUB v. HOPKINSON - Swinfen Eady J. [1910] 1 Ch. 179
- s. 32. *In re* VAGLIANO ANTHRACITE COLLIERIES, LD. - Joyce J. [1910] W. N. 187
- s. 40, sub-s. 1. NEALE v. CITY OF BIRMINGHAM TRAMWAYS CO.
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- ss. 45, 46, 69. *In re* AUSTRALIAN ESTATES AND MORTGAGE CO.
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- s. 46. *In re* LOUISIANA AND SOUTHERN STATES REAL ESTATE AND MORTGAGE CO. Neville J. [1909] 2 Ch. 552

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- 8 Edw. 7, c. 69 (*Companies (Consolidation)*), s. 55. *In re* TRUMAN, HANBURY, BUXTON & CO., LD. Swinfen Eady J. [1910] 2 Ch. 498
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- 9 Edw. 7, c. 34 (*Electric Lighting*), ss. 6, 16. ATT-GEN. v. LEICESTER CORPORATION - Neville J. [1910] 2 Ch. 359

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TION Co. H. L. (E.) [1908] A. C. 159

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REX v. GOVERNOR OF BRIXTON PRISON.
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- WILD BIRDS PROTECTION (ADMINISTRATIVE COUNTY OF LONDON) ORDER, 1908, art. 4. FLOWER v. WATTS**
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- WORKMEN'S COMPENSATION RULES.**
See Cases under "Table of Statutes judicially considered during the years 1901—1910," p. cdlxxxi., ante. EMPLOYERS AND WORKMEN ACT, 1875 (38 & 39 Vict. c. 90)—EMPLOYERS' LIABILITY ACT, 1880 (43 & 44 Vict. c. 45)—WORKMEN'S COMPENSATION ACTS, 1897 (60 & 61 Vict. c. 37); 1900 (63 & 64 Vict. c. 22)—WORKMEN'S COMPENSATION ACT, 1906 (6 Edw. 7, c. 58)—WORKMEN'S COMPENSATION (ANGLO-FRENCH CONVENTION) ACT, 1909 (9 Edw. 7, c. 16)—FACTORY AND WORKSHOP ACTS, 1878 (41 & 42 Vict. c. 16); 1891 (54 & 55 Vict. c. 75); 1895 (58 & 59 Vict. c. 37); 1901 (1 Edw. 7, c. 22)—AND TRUCK ACTS, 1831 (1 & 2 Will. 4, c. 37); 1896 (59 & 60 Vict. c. 44)—EMPLOYERS' LIABILITY INSURANCE COMPANIES ACT, 1907 (7 Edw. 7, c. 46).
- WORKMEN'S COMPENSATION RULES, 1898—**
1900, r. 15. REX v. OWEN
Div. Ct. [1902] 2 K. B. 436
- — — r. 17. LOWE v. MYERS & SONS
C. A. [1906] 2 K. B. 265
- — — 1907, r. 28. CLAYTON v. JONES'
SEWING MACHINE Co.
C. A. [1908] W. N. 253
- — — r. 56A, par. 4. RHODES v. SOOTHILL
WOOD COLLIERY Co.
C. A. [1909] 1 K. B. 191
- — — 1907—1909, r. 67. HOSEGOOD & SONS v.
WILSON C. A. [1910] W. N. 242
- — — 1908, r. 4. RHODES v. SOOTHILL
WOOD COLLIERY Co.
C. A. [1909] 1 K. B. 191
- — — r. 61 (1). BEADLE v. "S. NICHOLAS"
C. A. [1909] W. N. 227
- YORK-ANTWERP RULES, 1890, r. 3. GRAN-**
SHIELDS, COWIE & Co. v. STEPHENS &
SONS C. A. [1907] W. N. 224
- — — GRANSFIELDS, COWIE & Co. v.
STEPHENS & SONS
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DIGEST OF CASES, 1901—1910.

For table of all Cases reported in the Law Reports and Weekly Notes, see p. xv. : for list of Cases affirmed, reversed, followed, overruled, &c., see "Table of Cases" at p. cccxxiii. : for list of Statutes judicially considered, see "Table of Statutes" at p. cdlxxxi. : for list of Rules judicially considered, see "Table of Rules" at p. dlxv. : for Statutes enacted, see p. cdlxvii.

List of Abbreviations.—In this Digest the following abbreviations are used.

A. C. . . .	House of Lords and Privy Council Appeal Cases.	Metrop. . . .	Metropolis (or Metropolitan).
Appx. . . .	Appendix.	Nov.	November.
Art.	Article (or Articles).	O.	Order.
Att.-Gen. . . .	Attorney-General.	O. in C. . . .	Order in Council.
Aug.	August.	Oct.	October.
Bd.	Board.	P.	Probate.
c.	chapter.	p.	page.
C. A.	Court of Appeal.	P. C.	The Judicial Committee of the Privy Council.
C. C. A. . . .	Court of Criminal Appeal.	Plt.	Plaintiff.
C. C. R. . . .	Crown Case Reserved.	pp.	pages.
Ch.	Chancery.	pt.	part.
Co.	Company.	Parl.	Parliament (or Parliamentary).
col.	column.	Pres.	President.
Commrs. . . .	Commissioners.	Publ.	Publication.
Ct. of Sess. . .	Court of Session.	Q. B.	Queen's Bench.
Dec.	December.	R.	Rule (or Rules).
Def't.	Defendant.	R. S. C. . . .	Rules of the Supreme Court.
Dept.	Department.	Reg.	The Queen.
Div. Ct. . . .	Divisional Court.	Regs.	Regulations.
E.	England.	Rex	The King.
Eccles.	Ecclesiastical.	ry.	railway.
edit.	edition.	Sc.	Scotland.
Educ.	Education.	s.	section.
F.	Form (or Forms).	ss.	sections.
Feb.	February.	Sched.	Schedule.
H. L.	House of Lords.	Secy.	Secretary.
H. M.	His Majesty the King.	Sept.	September.
Ir.	Ireland.	St. O. P. . . .	Stationery Office Publication.
— J.	Mr. Justice —.	St. R. & O. . .	Statutory Rules and Orders.
Jan.	January.	<i>Note.</i> —These annual volumes are published by authority.	
K. B.	King's Bench.	Treas.	Treasury.
Ld.	Limited.	U. K.	United Kingdom of Great Britain and Ireland.
L.J.	Lord Justice.	Vol.	Volume.
Loc. Govt. . .	Local Government.	W. N.	Weekly Notes.
Lond. Gaz. . .	The London Gazette.		
Mar.	March.		
Merch. Shipp.	Merchant Shipping.		

DIGEST OF CASES, 1901—1910.

Explanation of References to the Official and Parliamentary Publications.

The figures and numerals placed after the words "Parl. Paper" refer to the Session, to the Number at the foot of each Paper, and to the price at which it can be obtained of Publishers: thus, in "1910 (375), Price 4d.," 1910 refers to the Session, and (375) to the number at the foot of the paper. Papers presented by Command are distinguished thus [C. 6606]. The F.—Record works are distinguished thus—1910 (F.—Record Works). The House of Lords Papers are distinguished by the letters H. L.: thus, 1910 (H. L. 150). The H.—Legal Official Publications are distinguished thus—1910 (H.—Legal); the I.—Statutes and Statutory Publications—Various thus—1910 (I.—Statutes and Statutory Publications—Various); the K.—Home Office thus—1910 (K.—Home Office); the R.—Local Government Board thus—1910 (R.—Loc. Govt. Bd.); the T.—Miscellaneous are distinguished thus—1910 (T.—Miscellaneous).

The Rules and Orders issued under Statutory Powers are now officially published in a separate form under the Rules Publication Act, 1893.* They are cited as *e.g.* St. R. & O. 1910, No. 1, the number following the year being that by which they have been registered by the King's Printer under this Act. The Orders specially affecting the Legal Profession are also numbered consecutively in a Legal Series, L. I. and so on; all the Orders of the year in this Series can be obtained by ordering the "Legal Series." Copies can be obtained from Publishers at the prices stated by ordering them by the Registered Number. The price of the Statutory Rules and Orders is one penny each, except when otherwise stated.

(1)

- ABANDONED MOTION**—Practice—Right to save motion.
See PRACTICE—Motions. 1.
- ABANDONMENT**—Coal mine—Notice of Secretary of State—Neglect to send—Offence—Limitation of time.
See MINES. 1.
- Domicil of origin—Acquiring fresh domicil—Evidence—Onus of proof.
See DOMICIL. 2.
- Railway company—Parliamentary deposit—Cost of inquiries necessary for distribution of deposit—Practice.
See RAILWAY—Deposit. 1.
- Railway company—Parliamentary deposit—Special Act—No abandonment Act.
See RAILWAY—Deposits. 3.
- Ship—Collision—Removal of wreck—Liability for expenses—Thames Conservancy—Costs.
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- Tramway—Sale of undertaking before works completed—Successors in title—Whether undertaking "abandoned" by company.
See TRAMWAYS. 16.
- Tramway company—Statutory undertaking—Parliamentary deposit—Non-completion—Application of deposit fund.
See TRAMWAYS. 18.
- Voyage—Collision—Damage—Claim by cargo owner—Substituted expense.
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- ABATEMENT**—Action—Libel—Death of defendant—Application by defendant's executors for payment out of money.
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(2)

- ABATEMENT**—*continued.*
- Action—Libel—Death of plaintiff—Payment out of money to plaintiff's executor.
See PRACTICE—Payment, &c. 3.
- Nuisance—Notice to abate—Sewer or drain.
See SEWERS. 8.
- Nuisance—Owner—Default—Jurisdiction of justices.
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- Nuisance—Trespass—Bridge—Liability to repair—Right to repair—Highway.
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- Will—Construction.
See under WILL—Abatement.
- ABORTION**—Using instruments with intent to procure—Admissibility of evidence.
See CRIMINAL LAW—Abortion. 1.
- ABROAD**—Workmen's compensation—Accident happening abroad—Jurisdiction.
See MASTER AND SERVANT—Compensation. 1.
- ABSCONDING BANKRUPT**—Scotch bankruptcy—Warrant for arrest.
See BANKRUPTCY—Scotch Bankruptcy. 1.
- ABSCONDING DEBTOR**—"His property."
See CRIMINAL LAW—Debtors. 1.
- ABSENCE**—Company—Director—Remuneration—Vacating office of director by absence for specified period—Time.
See COMPANY—Directors. 6.
- Company—Winding-up—Petitioner.
See COMPANY—WINDING-UP—Practice. 1.

* Statutory Rules and Orders other than those of a Local, Personal, or Temporary Character, issued in the year 1908; with a list of Statutory Orders of a Local Character arranged in Classes, an Appendix of certain Orders in Council, &c., issued under the Royal Prerogative, and Index. Price 10s.

ABSENCE—*continued.*

— Justices—Hearing of information—Advocacy by police officer—Absence of informant—Offer of justices to adjourn—Refusal of offer.
See JUSTICES. 18.

— Trustee—Appointment—Absence abroad.
See TRUSTEE—Appointment. 1.

ABSENT PERSONS—Power of Court to bind—Extent of jurisdiction.
See under COMPROMISE.

"ABSENTING"—Married woman—"Carrying on" business separately from husband—Receiving order.
See BANKRUPTCY—Act of Bankruptcy. 3.

ABSOLUTE GIFT—Will—Construction.
See under WILL—Absolute Gift.

ACCELERATION—Company, Dissolution of—Lease—Reverter to lessor—Acceleration of reversion—Determination of term—Liability of sureties.
See CORPORATION. 10.

— "Eldest son"—Accelerating period of distribution—Mortgage by younger son—Younger son after becoming eldest son.
See SETTLEMENT. 27.

— Reversion—Limited company lessees—Dissolution of company.
See COMPANY—Leases. 1.

— Succession, Acceleration of—Propulsion of fee—Succession duty.

See REVENUE—Succession Duty. 3.

— Succession duty—New title under appointment.
See REVENUE—Succession Duty. 1.

ACCEPTANCE—Surrender under mistake of fact induced by tenant—Liability of tenant for rent.
See LANDLORD AND TENANT. 84.

— Time for acceptance—Purchase-money and compensation—Offer by promoters.
See LANDS CLAUSES ACTS. 33.

— Written offer containing two alternatives—Verbal acceptance of one—Agreement to let from year to year.
See SPECIFIC PERFORMANCE. 3.

ACCESS—Public right of—Public road—Dedication—National monument.
See WAY, RIGHT OF. 9.

ACCESSION DECLARATION ACT, 1910 (10 *Edw. 7 & 1 Geo. 5, c. 29*).
See under CROWN.

ACCIDENT.

Notice of Accidents Act, 1906 (6 *Edw. 7, c. 53*), amends the law relating to returns and notifications of accidents in mines, quarries, factories, and workshops, and under the *Notice of Accidents Act, 1894*.

Fatal Accidents (Damages) Act, 1908 (8 *Edw. 7, c. 7*), amends the law with respect to the assessment of damages under the *Fatal Accidents Acts*.

ACCIDENT—*continued.*

— Alien—Compensation for death—Negligence of British subject—Cause of action arising on high seas.
See NEGLIGENCE. 1.

— Ambulances.

See under METROPOLITAN AMBULANCES ACT, 1909 (9 *Edw. 7, c. 17*).

— Disrepair—Liability of local authority for accident arising from—Negligence.
See SEWERS. 3.

— Fatal accident—Cause of action—Negligence causing death—"Actio personalis moritur cum persona."
See MASTER AND SERVANT—Fatal Accidents Act. 1.

— Fatal accident—Compensation for death—Alien—Negligence of British subject—Cause of action arising on high seas.
See NEGLIGENCE. 1.

— Fatal accident—Statute of Limitations—Deceased's right of action barred—Public authority, Action against.
See PUBLIC AUTHORITIES PROTECTION. 1.

— Highway—Neglect of duty—Corporation liable to indictment for non-repair of highway—Liability to action for accident caused by non-repair.
See HIGHWAY. 36.

— Insurance.

See under INSURANCE (ACCIDENT).

— Master and servant.

See under MASTER AND SERVANT.

— Mines.

See under MINES.

— Motor cars.

See under MOTOR CARS.

— Motor omnibus—Negligence—Doctrine of "res ipsa loquitur"—Nuisance.
See MOTOR OMNIBUS. 1.

— Policy—Construction—Death from heart failure brought on by physical exertion.
See INSURANCE (ACCIDENT). 1.

— Tramcar, Accident to.

See under TRAMWAYS.

— Unfurnished house—Defective premises—Promise by landlord to repair—Accident arising from defect—Personal injury to wife of tenant.
See LANDLORD AND TENANT. 89.

— Workmen's compensation.

See under MASTER AND SERVANT.

ACCOMMODATION—Seamen—Lascars.

See SHIPPING—Seamen. 1.

ACCOMMODATION WORKS—Railway.

See under RAILWAY—Accommodation Works.

ACCOMPLICE—Evidence of—Absence of corroboration—Omission of judge to caution jury—Effect of on conviction.
See **CRIMINAL LAW—Appeal**. 6.

ACCORD AND SATISFACTION—*Judgment debt—Joint and several debt—Receipt—Release to one co-debtor—Extinguishment of debt—Construction of release—Intention—Surrounding circumstances.*

A. and B. became liable on a "joint and several" guarantee to a bank for a sum of 6000*l.* owing to the bank from a co. Subsequently the bank obtained judgment for that sum against A. and B. "jointly and severally." The judgment not being satisfied, the bank presented a bankruptcy petition against B. alone for the whole judgment debt, but the petition was withdrawn upon terms arranged between B. and the bank and embodied in a receipt given to B. by the bank for 3000*l.* partly in cash and partly in bills paid and given by B. "in full discharge of all claims by the bank against B. in connection with the co. and all guarantees given by him to the bank in connection with that co., and in settlement of any outstanding questions as to the amount due to the bank." The bank then presented a bankruptcy petition against A. alone for 3000*l.*, the alleged "balance" of the judgment debt of 6000*l.* :—

Held, by Rigby and Collins L.J.J. (Romer L.J. doubting), that the receipt amounted to an accord and satisfaction equivalent to a release of B. from the entire joint and several judgment debt, there being no surrounding circumstances qualifying its effect as an absolute release in terms, and consequently that by reason of the release of A.'s co-debtor there was no debt to support bankruptcy proceedings against A.

Ex parte Good, In re Armitage, (1877) 5 Ch. D. 46, distinguished.

The rule of law that the release of one of two joint debtors under a joint and several obligation operates as a release of the other applies as much to a judgment debt as to any other obligation.
In re E. W. A., A DEBTOR

C. A. [1901] W. N. 140 ; [1901] 2 K. B. 642

ACCOUNT AND ACCOUNTS—Action for account—Principal and agent—Express trust.
See **LIMITATIONS, STATUTE OF**. 4.

—Administration—Statute-barred debt owing to estate—Residuary legatee also residuary legatee of debtor's estate.
See **ADMINISTRATION**. 30.

—Administration action—Adding accounts and inquiries after judgment—Breach of trust—Practice.
See **ADMINISTRATION**. 31.

—Appeal—Length of notice.
See **APPEAL**. 10.

—Arbitration—Treatment of summons as summons for account—Undertaking by defendants to furnish account.
See **ARBITRATION—Practice**. 1.

—Audit of accounts—Auditor—Powers and duties—Surcharge—Certiorari to quash—Jurisdiction of Court—London government.
See **LOCAL GOVERNMENT**. 1.

ACCOUNT AND ACCOUNTS—continued.

—Audited accounts—Borough treasurer—His duty and liability.
See **CORPORATION**. 4.

—Authorized security—Loss—Period of account—Apportionment.
See **SETTLED LAND—Apportionment**. 2.

—Bankruptcy—Special manager—Default in accounting—Four-day order—Jurisdiction.
See **BANKRUPTCY—Manager**. 1.

—Bringing into account—Statute-barred debt owing to estate—Residuary legatee of debtor's estate also a legatee of creditor's estate.
See **ADMINISTRATION**. 30.

—Closing account—Banker and customer—Mortgage—Power of sale.
See **BANKER**. 7.

—Company.
See under **COMPANY—Accounts**.

—Evidence—Admissibility—Entry of deceased person against interest.
See **TRUSTEE—Breach of Trust**. 4.

—Falsification of accounts.
See under **CRIMINAL LAW—Falsification**.

—Husband and wife—Action by wife against husband for account—Jurisdiction.
See **HUSBAND AND WIFE—Practice**. 1.

—Lunatic—Committee and receiver—Default—Accounts—Death of lunatic—Subsequent receipts—Surety—Liability.
See **LUNACY**. 1.

—Management of real estates—Limited company appointed agent—Articles of association.
See **PRINCIPAL AND AGENT**. 6.

—Mines—Tenants in common—Working of part of mine by one co-owner—Adverse possession.
See **MINES**. 14

—Mortgages.
See under **MORTGAGE—Accounts**.

—Partner, Right of, to inspection by agent—Books and accounts.
See **PARTNERSHIP**. 1.

—Partnership—Dissolution—Losses and deficiencies of capital—Final settlement of accounts—Distribution of assets.
See **PARTNERSHIP**. 8.

—Partnership—Mortgage of partner's interest—Right of mortgagee to account—Arbitration clause.
See **PARTNERSHIP**. 7.

—Patent—Prolongation—Insufficiency of accounts.
See **PATENT—Prolongation**. 3.

—Principal and agent—Numerous transactions—Dishonesty in some—Right to retain commission—Account of profits.
See **PRINCIPAL AND AGENT**. 13.

ACCOUNT AND ACCOUNTS—continued.

- Purchase by two partners without the knowledge of the third—Suit for an account. *See* TRANSVAAL. 3.
- Redemption action—Compound interest—Proviso for capitalization of interest in arrear. *See* MORTGAGE—Redemption. 1.
- Reopening closed and present transactions—Jurisdiction. *See* MONEY-LENDER. 20.
- Settled account—Default of purchaser—Reasonable conduct—Interest on purchase-money. *See* VENDOR AND PURCHASER—Interest. 1.
- Solicitor. *See* under SOLICITOR—Accounts.
- Stock Exchange—Secret profit, Account for. *See* STOCK EXCHANGE. 1.
- Subscription to charity—Voluntary school rate. *See* TRUSTEE—Costs, &c. 1.
- Trade union—Books—Right to employ agent to inspect. *See* TRADE UNION. 2.
- Trustee. *See* under TRUSTEE—Accounts.
- Underwriter, Bankruptcy of—Right of trustee to books of account. *See* BANKRUPTCY—Books. 2.

ACCOUNTANT—Books—Joint liquidators—Employment of accountant by one liquidator—Costs. *See* COMPANY—Books. 2.

- Professional designation — “Incorporated accountant” — Unauthorized use — Injunction. *See* TRADE NAME. 3.
- Trade union — Books and accounts — Inspection—Right to employ agent to inspect. *See* TRADE UNION. 2.

ACCRETION—No right of—Gift to children—Conditions in restraint of alienation—Enjoyment of usufruct—Grandchildren conditionally substituted. *See* CANADA—Will. 2.

- To holding for benefit of lessor—Presumption—Leaseholds—Encroachment. *See* LIMITATIONS, STATUTE OF. 11.
- Trustees—Shares in company—Unauthorized investments—Income of capital. *See* TRUSTEE—Investments. 13.

ACCUMULATIONS—Contingent legacy by father to child—Contingent life interest—Settled legacy—Right to surplus income and accumulations—Infant—Maintenance—Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), s. 43, sub-s. 2.

A testator by his will, dated June 17, 1898, bequeathed to each of his daughters who should

ACCUMULATIONS—continued.

attain twenty-one the sum of 50,000*l.*; provided that the legacy should not vest absolutely in her, but should be retained by his trustees and held by them upon trust to pay the income to the daughter for her life, and after her death upon trusts for her children and remoter issue. And the testator authorized his trustees to appropriate any part of his personal estate in or towards satisfaction of any legacy given by his will. And trustees should take such steps as should be requisite to make his children who were then under twenty-one wards of Court, and that “notwithstanding anything hereinbefore contained, all powers, whether statutory or otherwise, as to the education, maintenance, or advancement” of his children or any of them should be exercised by his trustees only under the direction of the Court.

The testator died on Nov. 4, 1902. He left four daughters, all of whom were at his death under twenty-one. On Jan. 6, 1903, the trustees appropriated in satisfaction of each of the legacies of 50,000*l.* a sum of 53,527*l.* 10*s.* 6*d.* Consols. On Feb. 9, 1903, an order was made by Joyce J. that a sum of 1000*l.* per annum should be allowed out of the income of the Consols appropriated to the legacy of the eldest daughter for her maintenance during her minority. She attained twenty-one on July 13, 1903.

Upon a summons taken out by the trustees to determine who was then entitled to the unapplied income and the accumulations thereof:—

Held, that the unapplied income and the accumulations thereof formed an accretion to the capital, and that the daughter was entitled only to the interest on them for her life.

Decision of Joyce J., founded on that of Buckley J., in *In re Scott*, [1902] 1 Ch. 918, reversed.

In re Scott, [1902] 1 Ch. 918, disapproved.

Sec. 43, sub-s. 2, of the Conveyancing Act, 1881, provides that the trustees of property held in trust for an infant contingently on his attaining twenty-one shall hold the accumulations of the residue of the income (beyond that which is applied for the infant's maintenance) “for the benefit of the person who ultimately becomes entitled to the property from which the same arise”:

Held, that those words mean “the property the income arising from which has been accumulated,” so that if the contingent legacy is settled the tenant for life is, on the happening of the contingency, entitled only to the interest during his life of the amount of the surplus income and accumulations thereof, that amount forming an accretion to the original legacy.

According to the practice of the Court of Chancery, an infant child, who is under the will of his parent entitled to a legacy contingently on his attaining twenty-one, is entitled to maintenance during his minority out of the income of the legacy.

But, though it has been said that the legacy in such a case bears interest from the testator's death, the legacy is not the less a contingent one, and the infant does not acquire an immediate vested interest in the income, and if he dies under twenty-one the surplus income not applied

ACCUMULATIONS—continued.

for maintenance does not pass to the infant's representatives.

And if the legacy is settled in trust for the infant for life, with remainders over, the surplus income forms an accretion to the capital, and the infant on attaining twenty-one is entitled only to the income thereof during his life.

Per Cozens-Hardy L.J.: Until a fund has been appropriated by the trustees in satisfaction of the contingent legacy, s. 43, sub-s. 2, had strictly no application, because until then it could not be said that any "property" was held by the trustees in trust for the infant legatee, though she was entitled to maintenance out of the income during minority. *In re BOWLBY. BOWLBY v. BOWLBY* - C. A. [1904] W. N. 171; [1904] 2 Ch. 685

Note.

Referred to by Eve J., *In re Abrahams*, [1910] W. N. 237. See *Infant—Interest*. 1.

— *Covenant to settle after-acquired property* —
Property purchased with accumulations of income.

See **SETTLEMENT**. 20.

2.—Devise of real estate in strict settlement—Trust for accumulation—Person who shall be "entitled to the possession and enjoyment"—"Under the trusts and limitations of this my will"—Tenant in tail in possession—Disentailing deed—Right to accumulations—Will—Construction.

Testator devised his real estate to trustees to the use of his wife for life and after her decease to the use of the first and every other son of his son H. successively in tail male with divers remainders over, and he directed that during a certain period the trustees should accumulate the rents and profits of his real estate and hold the same and the accumulations thereof upon trust for the person or persons who at the expiration of the said period should "under the trusts and limitations of this my will be entitled to the possession and enjoyment" of his real estate.

Upon the death of the testator's widow the first tenant in tail executed a disentailing assurance, and, although the period of accumulation had not expired, claimed to be entitled to the receipt of the rents and profits of the estate and to the accumulations:—

Held, that before the disentailing deed the plt. was in possession and enjoyment of his estate tail under the limitations of the will subject to the trust for accumulation, and notwithstanding the disentailing deed he was still in possession under the limitations of the will although he had become owner in fee; that upon the cesser of the period of accumulation he, his heirs or assigns, would be entitled under the limitations of the will, and no one else could be so entitled; and that consequently the trust for accumulation could no longer be enforced, and he was entitled to be let into possession. *In re TREVANION. TREVANION v. LENNOX*

Joyce J. [1910] 2 Ch. 538

3.—Direction to accumulate—Purchase of real estate—"For the purchase of land only"—Accumulations Act. 1892 (55 & 56 Vict. c. 58)—

ACCUMULATIONS—continued.

"Land"—*Interpretation Act*, 1889 (52 & 53 Vict. c. 63), s. 3.

A direction to accumulate for the purchase of real estate is a direction to accumulate "for the purchase of land only" within the meaning of the Accumulations Act, 1892, and is consequently void.

The definition of "land" in s. 3 of the Interpretation Act, 1889, is not confined to corporeal hereditaments.

Dictum of Chitty J. in *In re Danson*, (1895) 13 The Reports, 633, considered and questioned. *In re CLUTTERBUCK. FELLOWES v. FELLOWES*
Byrne J. [1901] 2 Ch. 285

4.—Direction to accumulate income beyond twenty-one years—Residue—Tenant for life—Construction of will.

The testator, who died in 1865, by his will gave two freehold houses to trustees, and directed them to apply the income arising therefrom at their discretion for the benefit of his daughter F. for life, and after her death he gave the premises, together with any surplus accumulation of rents that might not be applied for the benefit of F., upon trust for her children who should attain twenty-one, and in default of such children then over. He gave his residue upon trust for certain persons for life with remainders over. F. died in 1900, at which time the trustees had in their hands a considerable sum representing the accumulated surplus rents:—

Held, that the accumulations beyond the period of twenty-one years from the testator's death were bad under the *Thellusson Act*, and fell into residue; and that the tenant for life of the residue was not entitled to the surplus rents themselves, but only to the income arising from the investment thereof.

Crawley v. Crawley, (1835) 7 Sim. 427; 40 R. R. 170, and *O'Neill v. Lucas*, (1838) 2 Keen, 313, followed.

In re Phillips, (1880) 49 L. J. (Ch.) 198, disapproved. *In re POPE. SHARP v. MARSHALL*
Farwell J. [1901] 1 Ch. 64

— *Discretionary trust for maintenance or—Validity.*

See **WILL—Remoteness**. 3.

— *Disentailing assurance—Protector of settlement—Legal estate in trustees—Void trust for accumulation.*

See **DISENTAILING ASSURANCE**. 2.

5.—Leaseholds—Insurance—Accumulations Act, 1800 (*Thellusson Act* (39 & 40 Geo. 3, c. 98))—Construction of will.

A direction in a will to apply a yearly sum out of the rents of leaseholds, held for a term of more than twenty-one years, from the testator's death, in effecting and keeping on foot a policy of insurance to secure the replacement at the end of the term of the capital that would be lost through not selling the leaseholds, is not a direction to accumulate and does not fall within the *Thellusson Act*. *In re GARDINER. GARDINER v. SMITH* - *Buckley J.* [1901] W. N. 55; [1901] 1 Ch. 697

ACCUMULATIONS—continued.

6. — Leaseholds — Reserve fund to meet liabilities under leases—Validity—Will—Construction—Accumulations Act, 1800 (Thellusson Act) (39 & 40 Geo. 3, c. 98), s. 1, 2.

The testatrix bequeathed leaseholds to trustees upon trust that they should yearly during the residue of the terms of years for which she held the property reserve one fourth part of the net rents and annual profits thereof, and upon further trust to pay the remaining three fourths to her four nieces and her nephew; and she directed that the one fourth part thereinbefore directed to be reserved should once (or oftener if convenient) in every year be invested and that all dividends and interests arising from the investments should be added thereto by way of accumulation, and that the same and all accumulations thereof should be held as a reserve fund to indemnify her executors and trustees from all claims for dilapidations which might arise in respect of the leaseholds; and subject to such indemnity and claims upon trust for the equal benefit of her said four nieces and nephew in like manner as she had declared of the other three fourths of the rents and profits and to the end and intent that her said four nieces and nephew might have the benefit of an accumulated fund to meet the loss of income which would arise at the expiration of the leases of the property. The will also contained a residuary bequest.

The testatrix died in 1879, so that the twenty-one years allowed by the Thellusson Act for accumulations terminated in 1900. The last of the leases expired in 1909. One fourth of the rents and profits had been duly accumulated and the dilapidations had been paid for out of the fund:—

Held, following *Varlo v. Faden*, (1859) 27 Beav. 255; 1 D. F. & J. 211, that the trust to accumulate until the end of the terms was valid and did not come within the Thellusson Act. *In re HURLBATT. HURLBATT v. HURLBATT*

Warrington J. [1910] W. N. 225; [1910] 2 Ch. 553

— Life tenant—Subsisting accumulation trust for discharge of incumbrances—Void trust for purchase of land.

See SETTLED LAND—Powers. 2.

— Marriage contract—Conquest—Wife's acquisitions—Accumulations of income—Legitim.

See SCOTTISH LAW. 16.

7. — Payment of debts—Debts paid out of capital—Provision for recoupment—Accumulations Act, 1800 (Thellusson Act) (39 & 40 Geo. 3, c. 98), s. 2.

A provision for accumulating income to recoup capital applied in payment of debts is not a provision for payment of debts within s. 2 of the Thellusson Act.

Tewart v. Lawson, (1874) L. R. 18 Eq. 490, followed. *In re HEATHCOTE. HEATHCOTE v. TRENCH* — **Swinfen Eady J. [1904] W. N. 79; [1904] 1 Ch. 826**

8. — Remoteness—Accumulations of income—"Portions"—Gift to children as a class—Period

ACCUMULATIONS—continued.

of ascertainment—Will—Construction—Accumulations Act, 1800 (39 & 40 Geo. 3, c. 98), s. 2.

A testator, who died in Mar., 1888, directed that his trustees should out of the income of his residuary estate set apart a yearly sum of 24*l.*, "while and so long as there shall be a child of my daughter S. A., the wife of H. B., for the time being under the age of twenty-one years, subject as hereinafter mentioned," invest the same and accumulate the income thereof, and should hold the aggregated and accumulated fund in trust for such of the children of his daughter S. as being sons should attain twenty-one, or being daughters should marry, in equal shares, the shares to be vested interests and to be paid and payable in the case of a son at twenty-one, and in the case of a daughter at twenty-one or marriage. Subject as aforesaid, the testator directed the trustees to pay the income of his residuary estate to S. for life, and after her death to her husband H. for life; but he directed that if S. should survive H. the trustees should during the rest of her life pay her the whole income of his residuary estate, and should no longer set apart the annual sums (without prejudice to the sums already set apart and invested and the income thereof).

S. and H. survived the testator and had five children, three of whom were born in the testator's lifetime, and two after his death. The eldest child was born in 1882, and attained twenty-one in 1903, and the youngest was born in 1896, and would not attain twenty-one until 1917:—

Held, (1.) that the period prescribed for aggregation and accumulation (subject to earlier cesser by the death of H. in the lifetime of S., and to later cesser by the birth of other children) was, so long as there was a child of S. under twenty-one, whether it was born before or after its eldest brother or sister attained twenty-one—namely, until 1917.

(2.) Following *Beech v. Lord St. Vincent*, (1850) 3 De G. & Sm. 678, that the accumulated fund was a "portion" within the meaning of s. 2 of the Thellusson Act, and the direction to accumulate was valid.

(3.) That the class of children to take was not closed when the eldest child attained twenty-one, but only at the end of the period for accumulation, and that the accumulated fund was not until then divisible.

Watson v. Young, (1885) 28 Ch. D. 436, followed.

In re Wenmoth's Estate, (1887) 37 Ch. D. 266, commented on. *In re STEPHENS. KILBY v. BETTS* — **Buckley J. [1904] 1 Ch. 322**

— Right to accumulations—Infant—Maintenance—Contingent life interest.

See INFANT—Maintenance. 1.

9. — Will—Accumulations Act, 1800 (Thellusson Act) (39 & 40 Geo. 3, c. 98), s. 1—"Minority of person who if of full age would be entitled to the rents and profits"—Person born after the testator's death.

The fourth of the periods mentioned in the Thellusson Act during which accumulation is allowed, viz., "The minority or respective minorities only of any person or persons who,

ACCUMULATIONS—*continued*.

under the . . . trusts of the . . . will . . . directing such accumulations, would, for the time being, if of full age, be entitled unto the rents . . . so directed to be accumulated," is not confined to the minority of persons born in the testator's lifetime.

The dicta in *Haley v. Bannister*, (1819) 4 Madd. 275, and *Jagger v. Jagger*, (1883) 25 O. D. 729, discussed and not followed. *In re CATTELL*. *CATTELL v. CATTELL*

Neville J. [1907] **W. N. 57**; [1907] **1 Ch. 567**

— Will—Testator's children to take equal shares in the residue at majority—Accumulations of income during minority of donee.

See CANADA—Will. 1.

10.—Will—Trust to accumulate surplus rents to buy land—Accumulations Act, 1892 (55 & 56 Vict. c. 58), s. 1—Will made before but taking effect after passing of the Act—Application of the Act—Wills Act, 1837 (1 Vict. c. 26), s. 24.

The Accumulations Act, 1892—which provides that after the passing of the Act there shall not, under any disposition of property, be any accumulation of rents or income for the purchase of land only, for any period longer than the minority of any person who, if of age, would for the time being be entitled to such rents or income—applies to a will made before and coming into operation after the passing of the Act. *In re BARONESS LLANOVER*. *HERBERT v. FRESHFIELD* (No. 2)

Farwell J. [1903] **W. N. 111**; [1903] **2 Ch. 330**

Note.

See also In re Baroness Llanover, Herbert v. Freshfield, C. A. [1903] **2 Ch. 16.**

Discussed by Swinfen Eady J., *In re Baroness Llanover, Herbert v. Ram*, [1907] **1 Ch. 635**. *Settled Land—Powers. 1.*

ACKNOWLEDGMENT—Bond, Action on—Lost acknowledgment—Parol evidence.

See LIMITATIONS, STATUTE OF. 3.

— Debt—Affidavit for probate—Admission.

See LIMITATIONS, STATUTE OF. 1.

— Debt—Special promise to pay.

See LIMITATIONS, STATUTE OF. 5.

— Husband and wife.

See under HUSBAND AND WIFE—Acknowledgment.

— Innocent breach of trust—Appropriation by solicitor—Limitations, Statute of—Payment of interest to tenant for life—Entry of deceased person against interest—Admissibility.

See TRUSTEE—Breach of Trust. 4.

— Light, Enjoyment of—Non-disclosure—Contract—Specific performance—Compensation—Costs.

See VENDOR AND PURCHASER—Contracts. 1.

— Married woman.

See under HUSBAND AND WIFE—Acknowledgment.

— Mortgage—Assignment—Notice by executors of assignee.

See ASSIGNMENT. 8.

ACKNOWLEDGMENT—*continued*.

— Mortgage—Payment of interest—Person "bound to pay."

See LIMITATIONS, STATUTE OF. 13.

— Mortgage—Payment of interest by one devisee—Testator's general estate—Real Property Limitation Act.

See ADMINISTRATION. 28.

— Mortgage debt—Judgment against executor—Payment of interest by devisee of mortgaged property.

See ADMINISTRATION. 28.

— Part payment by cheque—Implied promise to pay balance of debt—Date when promise implied.

See LIMITATIONS, STATUTE OF. 2.

— Probate—Unattached papers forming will—Identification—Execution—Acknowledgment and attestation.

See PROBATE—Execution. 5.

— Simple contract debt—Conditional or limited promise.

See LIMITATIONS, STATUTE OF. 24.

— Simple contract debt—Payment on account by tenant for life—Administration of whole or real estate.

See LIMITATIONS, STATUTE OF. 6.

— Specialty debt—Bond—Lost acknowledgment—Parol evidence—Onus of proof.

See LIMITATIONS, STATUTE OF. 3.

ACQUIESCENCE—Articles of association, Adoption of—Registration of unsigned articles.

See HONG KONG. 2.

— Building scheme—Alteration of character of neighbourhood—Acquiescence in breaches—Covenant.

See BUILDINGS. 4.

— Dividend out of capital—Ultra vires—Directors—Shareholders.

See COMPANY—Directors. 7.

— Of purchase—Weighing machine—"False or unjust."

See WEIGHTS AND MEASURES. 10.

— Way, Right of—Highway—User by public—Dedication—Land in settlement—Possibility of dedication.

See WAY, RIGHT OF. 1.

— Wife's adultery—Passive acquiescence on husband's part—Refusal of decree.

See DIVORCE—Practice. 22.

ACT OF BANKRUPTCY.

See under BANKRUPTCY.

ACT OF PARLIAMENT.

See under STATUTE AND STATUTES.

ACT OF STATE—Annexation of native State—Confiscation of property of infant ruler—Distinction between his private and State property—Assumption of guardianship by Government—Jurisdiction of Municipal Courts.

Where the East India Co., as representing the Crown, has done acts of such a nature, and

ACT OF STATE—continued.

under such circumstances, as to lead to the conclusion that those acts were done in the exercise of supreme power, as acts of State, and to negative any intention to give thereby legal rights, whether contractual or otherwise, to an individual or individuals as against the co., the municipal Courts have no jurisdiction to question the validity of those acts, or to entertain any claim in respect thereof by an individual against the Secretary of State for India, as the successor of the East India Co.

So held by the C. A. (Vaughan Williams L.J., Stirling L.J., and Fletcher Moulton L.J.).

By Fletcher Moulton L.J.: Although an act of State cannot be challenged, controlled, or interfered with by municipal Courts, *semble*, its intention and effect may sometimes be to modify and create rights as between the Government and individuals who are, or who are about to become, subjects of the Government, and in such cases the rights arising therefrom may be capable of being adjudicated upon by the municipal Courts.

The East India Co., as representing the Crown, annexed the territory of a native State, and confiscated the State property, granting to the Maharajah, the ruler of the State, who was then an infant, a pension for life. The co. also assumed the custody of his person during his minority, and took possession of his private property. An action having been brought after his death by the trustee in bankruptcy of his residuary legatee against the Secretary of State for India, as the successor of the East India Co., for arrears of the pension, and for an account of the private property, alleging that the co. had undertaken the legal obligations of guardians of and trustees for the Maharajah in respect thereof:—

Held (Fletcher Moulton L.J. dissenting as to the claim in respect of the private property) that, under the circumstances, the acts done by the co. as aforesaid were so clearly done by them as acts of State, in respect of which no action was maintainable, that the action should be summarily dismissed as frivolous and vexatious.

Secretary of State in Council of India v. Kamachee Boye Sahaba, (1859) 7 Moo. Ind. App. 476; 13 Moo. P. C. C. 22, followed.

SALAMAN v. SECRETARY OF STATE IN COUNCIL OF INDIA - C. A. [1906] 1 K. B. 613

ACT ON PETITION—Mode of trial—Jury—Discretion of Court.

See **DIVORCE—Practice.** 1.

ACTIO DOLI—FRAUD.

See **NATAL.** 1.

“ACTIO PERSONALIS MORITUR CUM PERSONA.”

See **MASTER AND SERVANT—Compensation.**

See **MASTER AND SERVANT—Fatal Accidents Act.** 1.

ACTION—Cause of action—Conspiracy—Inducing a person to break his contract or not to deal with another or continue in his employment—Intent to injure—Interference with trade—Trade union—Trade dispute between employers

ACTION—continued.

and workmen—Conspiracy and Protection of Property Act, 1875 (38 & 39 Vict. c. 86), ss. 3, 7.

A combination of two or more, without justification or excuse, to injure a man in his trade by inducing his customers or servants to break their contracts with him or not to deal with him or continue in his employment is, if it results in damage to him, actionable.

The Conspiracy and Protection of Property Act, 1875, c. 86, s. 3, has nothing to do with civil remedies.

The words “trade dispute between employers and workmen” in s. 3 of that Act do not include a dispute on trade union matters between workmen who are members of a trade union and an employer of non-union workmen who refuses to employ members of a trade union.

Semble, the words are restricted to disputes between an employer and his own workmen.

Temperton v. Russell, [1893] 1 Q. B. 715, is not overruled as to the decision by *Allen v. Flood*, [1898] A. C. 1, but the dicta and reasoning of Lord Esher M.R. cannot be supported.

Allen v. Flood explained and its real effect stated.

The decision of the Irish Court of Appeal, *Leathem v. Craig*, [1899] 2 I. R. 667, affirmed.

QUINN v. LEATHEM - H. L. (Ir.) [1901] W. N. 170; [1901] A. C. 495

Note.—Considered by C. A., *Giblan v. National Amalgamated Labourers' Union of Great Britain and Ireland*, [1903] 2 K. B. 600. *See Trade Union.* 8.

Referred to by C. A. *Glamorgan Coal Co. v. South Wales Miners' Federation*, [1903] 2 K. B. 545; *H. L. (E.)* [1905] A. C. 239. *See Contract.* 23.

The law as laid down by Lord Macnaghten in, applied by C. A., *National Phonograph Co. v. Edison-Bell Consolidated Phonograph Co.*, [1908] 1 Ch. 335. *See* No. 3, below.

—Cause of action—Cheque giving for racing bets—Forbearance to publish default—New consideration. *See* **GAMING.** 2.

2.—Cause of action—Inducing employer to break contract—Justification for interference—Prior contract inconsistent with that of employer.

The plt., who was a workman, entered into a contract by which he was apprenticed to his employers to learn certain work. A friendly society of workmen engaged in similar work protested to the employers against the engagement of the plt. as an apprentice, on the ground that it was a breach of one of the rules of the society which the employers had agreed to and signed, and they gave notice that, if the engagement was continued, they would call out the workmen who were working for the employers, and who were all members of the society. In consequence of this threat the employers refused to continue to teach the plt. under the terms of the deed of apprenticeship. In an action by him against the society and certain of the officers:—

Held, that the plt. had a good cause of action to which the previous agreement between the society and the employers was no answer.

ACTION—*continued*

Order of Div. Ct., [1902] 2 K. B. 88, varied.
READ v. FRIENDLY SOCIETY OF OPERATIVE STONEMASONS OF ENGLAND, IRELAND AND WALES - C. A. [1902] 2 K. B. 732

Note.—Referred to by C. A., *Glamorgan Coal Co. v. South Wales Miners' Federation*, [1903] 2 K. B. 545; H. L. (E.) [1905] A. C. 239. See *Contract*. 23.

— Cause of action—Insolvency of debtor.

See **CANADA—Practice**. 1.

— Cause of action—Issue of writ—Company—Debenture — Floating security — Jeopardy—Receiver.

See **COMPANY—Receiver**. 5.

— Cause of action—Negligence causing death —“Actio personalis moritur cum persona”—Fatal Accidents Act.

See **MASTER AND SERVANT—Fatal Accidents Act**. 1.

3. — Cause of action—Special goods—Conditions of sale—Wholesale and retail dealers' agreements—Fixed prices—Prescribed dealers—Inducing dealers to commit breach of agreement—Fraud—Interference with contractual relation—Violation of legal right—Damage—Sale of goods.

The plts., who were manufacturers, sold their goods wholesale to factors upon the terms of an agreement which provided that factors should only sell the plts.' goods to dealers who had signed a retailer's agreement in a form provided by the plts. Both the factor's agreement and the retailer's agreement provided that the plts.' goods should not be sold at less than the specified current list prices applicable respectively to factors and retailers, or to dealers on the plts.' suspended list. The deft. co., who dealt in goods of the kind manufactured by the plts., and who had been placed on the plts.' suspended list, obtained the plts.' goods from a dealer, who had signed the retailer's agreement, at less than the prescribed retail price. The deft. co. also employed H. and L., other defts., to obtain the plts.' goods from certain factors, who had signed the plts.' factor's agreement, by falsely representing themselves as independent dealers and dealing in fictitious names. The deft. co. paid the prescribed price to the factors through H. and L. and in their assumed names. In consequence of the deft. co. having obtained the plts.' goods the plts. suffered damage in their business. In respect of both transactions the plts. claimed against the deft. co. for an injunction and damages:—

Held (affirming the decision of Joyce J.), that the transaction between the deft. co. and the retail dealer did not give the plts. any cause of action against the deft. co.; but

Held (reversing the decision of Joyce J.), that the plts. were entitled to an injunction and damages in respect of the transactions between the deft. co. and the factors on the ground that the deft. co., in having by fraud induced the factors to sell to them the plts.' goods contrary to the duty owed by the factors to the plts., had interfered without justification with the contractual relations existing between the plts.

ACTION—*continued*.

and the factors, thereby causing damage to the plts.

The law as laid down by Lord Watson in *Allen v. Flood*, [1898] A. C. 1, 96, and by Lord Macnaghten in *Quin v. Leatham*, [1901] A. C. 495, 510, applied. **NATIONAL PHONOGRAPH Co. v. EDISON-BELL CONSOLIDATED PHONOGRAPH Co.** C. A. [1908] W. N. 8; [1908] 1 Ch. 335

— Circuity of action—Indorsement by way of security.

See **BILL OF EXCHANGE**. 4.

— Company.

See under **COMPANY—Practice**.

— Company—General meeting—Notice—Sufficiency—Ultra vires—Action by shareholder—Right to sue.

See **COMPANY—Meetings**. 1.

— County courts.

See under **COUNTY COURT**.

— Crown, Privilege of—Foreshore—Action between subjects involving rights of the Crown—Right of Crown to transfer action to Revenue side.

See **CROWN**. 7.

— Damages—Death of plaintiff's wife through eating food sold to him—Death no part of cause of action.

See **DAMAGE AND DAMAGES**. 1.

— Ecclesiastical law—Hearing of suit after prohibition quousque—Decree.

See **ECCELESIASTICAL LAW—Faculty**. 13, 14.

— Frivolous and vexatious action—Dismissal—Cause of action—Gambling debt—Forbearance to sue—New consideration.

See **PRACTICE—Frivolous, &c., Action**. 1.

— Gaming—Bet—Cause of action—Forbearance to publish default.

See **GAMING**. 2.

— Gaming—Cause of action—Gambling in foreign country—Money lent for purpose of gaming.

See **GAMING**. 3.

— Highway.

See under **HIGHWAY**.

— Inclosure Act—Award—Herbage on road—Right of action—Injury to limited section of public—Attorney-General.

See **INCLOSURE ACT**. 1.

— International law—Street improvement—Contribution—Act of foreign Legislature—Action in England.

See **STREETS**. 10.

— Joinder of causes of action.

See under **PRACTICE—Joinder**.

— Jurisdiction—Action relating to land in Crown Colony.

See **JURISDICTION**. 1.

ACTION—*continued*.**4. — *Lex loci—Lex fori—Right of action in England for acts in foreign country—Territorial waters.***

To found an action in this country for a wrong committed abroad the wrong must be such that it would have been actionable if committed in this country, and the act must not have been justifiable by the law of the place where it was committed.

British goods on board a British ship within the territorial waters of Muscat were seized by an officer of the British Navy under the authority of a proclamation issued by the Sultan, the sovereign ruler of Muscat :—

Held, that the seizure having been shewn to be lawful by the law of Muscat no action could be maintained in this country by the owner of the goods against the naval officer. *CARR v. FRANCIS TIMES & Co. H. L. (E.) [1902] A. C. 176*

— Limitation of action.

See under LIMITATION OF ACTION.

— Limitations, Statute of.

See under LIMITATIONS, STATUTE OF.

— Local government—Plans—Malicious refusal of local authority to approve.

See LOCAL GOVERNMENT. 26.

— Lunatic, Action by—Parties—Committee of estate—Inquisition.

See LUNACY. 2.

— Malicious prosecution, Action for — Onus probandi.

See CEYLON. 2.

— Money paid under a mistake of fact — Whether notice to defendant of mistake is necessary to complete cause of action.

See LIMITATIONS, STATUTE OF. 12.

— Parties to action—Joinder of defendants—Joinder of different causes of action.

See PRACTICE—Parties. 3.

— Public Health (Buildings in Streets) — Whether action for damages maintainable.

See STREETS. 2.

— Railway — Demurrage of trucks — Right of action for damages for detention — Jurisdiction.

See RAILWAY—Trucks. 1.

— Representative action—Action by shippers of goods on a general ship on behalf of themselves and other shippers of goods in the same ship.

See PRACTICE—Representative Action.

5. — *Right of action—Local government—Inclosure Act—Award—Herbage on road—Property vested in parishioners—Damage—Right of action—District council or parish council—Injury to limited section of public—Attorney-General—Right to join as plaintiff.*

By an award made in 1801 under an Inclosure Act the grass and herbage growing in a private road in a parish was to be let yearly by the surveyor of highways or by such other person as the parishioners in vestry assembled should appoint, and the money arising therefrom was

ACTION—*continued*.

to be expended in the repair of public and private roads in the parish. The defts. caused damage to the letting value of the grass and herbage by wrongfully permitting cattle to graze in the road, and an action was brought against them by the Att.-Gen., on the relation of the rural district council, and by the district council for an injunction and damages :—

Held, that the action failed, as regards the district council, because the right of property in the grass and herbage was vested in the parish council and not in the district council ; and as regards the Att.-Gen., because the right of property which had been injured was one enjoyed by only a limited section of the public, namely, the parishioners, and not by the public at large. *ATT.-GEN. AND SPALDING RURAL COUNCIL v. GARNER - Channell J. [1907] 2 K. B. 480*

— Right of action—Perpetuating testimony—Order for examination—Discretion of Court.

See LEGITIMACY. 1.

— Right of action—Prospectus—Misrepresentation—Damages.

See COMPANY—Prospectus. 10.

— Schools (Endowed) — Assistant master — Scheme—Wrongful dismissal—Action against governors.

See SCHOOLS. 2.

— Ship salvaged property of Crown—Action not maintainable.

See NEWFOUNDLAND. 4.

— Staying action—Abuse of process of Court—Cause of action arising out of jurisdiction.

See PRACTICE—Staying Proceedings. 2.

— Trade description—"Passing off" action—Essentials to constitute.

See TRADE DESCRIPTION. 1.

— Trade union—Action for injunction by individual member of union.

See TRADE UNION. 1.

ACTION IN PERSONAM—Writ—Foreign co-defendant—Service out of jurisdiction.

See SHIPPING—Practice. 12.

ACTION IN REM—Damage—Putting out to sea to avoid collision—Loss of anchor and chain.

See SHIPPING—Collision. 1.

— Oyster beds—Property in oysters—Jurisdiction—"Damage done by any ship"—Shipping.

See FISHERY. 4.

— Practice — Parties—Writ—"Co-partners"—"Owners"—Misdescription of plaintiff.

See SHIPPING—Practice. 11.

ACTION QUIA TIMET—Indemnity—Joint and several guarantee of overdraft at bank—No demand by bank for payment—Parties.

See PRINCIPAL AND SURETY. 2.

ACTRESS—Engaged at theatre—Common employment—Negligence of fellow employee—Construction of contract.
See MASTER AND SERVANT. Theatre. 1.

ACTS OF PARLIAMENT.

See under STATUTE AND STATUTES.

ADDITIONAL GIFT—Will—Construction.

See under WILL—Additional Gift.

ADDRESS—Company—Transfer of shares—Refusal to register—"Usual common form"—Address of transferor.
See COMPANY—Shares. 25.

— Of creditor—Bankruptcy notice—Irregularity in judgment.

See BANKRUPTCY. Notice. 2.

ADDRESS BOOK—Company—Shareholders' address book—Right of shareholder to copy—Motives.

See COMPANY. Books. 1.

ADEMPTION—Bequest—"Money invested in" Lambeth Waterworks Company—Transfer of undertaking to Water Board.
See WILL—"Money Invested in." 1.

— Construction of will.

See under WILL—Ademption.

— Settled land—"Capital money"—Premiums—Change of investment.

See POWER OF APPOINTMENT. 33.

"ADJACENT"—Bridges—New Zealand Municipal Corporations Act—Construction.

See NEW ZEALAND. 2.

ADJOURNED SUMMONSES—Costs—Practice.

See WILL—Shelley's Case. 3.

ADJOURNMENTS—Licensing meeting—Power of justices to adjourn into October.

See LICENSING ACTS. 1.

— Power of adjournment—Justices—Jurisdiction—Equal division of opinion.

See JUSTICES. 1.

ADJUDICATION—Bankruptcy.

See under BANKRUPTCY—Adjudication.

— To take whole streets—Widening.

See LONDON—Streets. 13-15.

ADMINISTRATION.

See also under EXECUTOR.

— Abatement—Annuities immediate and reversionary—Deficient estate—Appportionment—Hotchpot.

See ANNUITY. 1.

— Administration bond—Duration of sureties' liability—Title of beneficiaries to the residue.

See AUSTRALIA. 1.

1. *Administration of assets—Order of administration—Insufficient personal estate—Residuary bequest—Trust dehors the will of specified part of residue.*

A testatrix devised her real estate and bequeathed the residue of her personal estate to

ADMINISTRATION—continued.

A., who was one of the executors of the will, and by a subsequent written memorandum (not attested as a will) the testatrix expressed her wish that a specified part of the residue should go to third persons whom she named. The memorandum was communicated by the testatrix to A., and was assented to by her, and she admitted that it created a trust binding upon her. The residuary personal estate (other than that comprised in the memorandum) was insufficient for the payment of the debts of the testatrix:—

Held, that the memorandum must be treated as if its contents had been contained in the will or a codicil, so that for the purpose of administration the trust of the specified part of the residue stood in the same position as a specific bequest of that part:

Held, consequently, that the debts of the testatrix must be paid first out of that part of the residue which was not affected by the trust, and that then the deficiency must be borne rateably by the specified part of the residue and the real estate.

Decision of Kekewich J. [1901] W. N. 118; [1901] 2 Ch. 372, reversed. *In re MADDOCK. LLEWELYN v. WASHINGTON*

C. A. [1902] W. N. 102; [1902] 2 Ch. 220

— Administrator—Convict—Estate tail—Power to disentail—Forfeiture.

See FELONY. 2.

— Administrator—Right to receive fund—Power—Execution—General power—Married woman—Appointment by will.

See POWER OF APPOINTMENT. 23.

— Administrator—Sale of convict's property—Bona fides—Costs.

See FELONY. 1.

— Administrator—Suit or partition of intestate's estate—Administrator not a party.

See CEYLON. 4.

— Annuity.

See under ANNUITY.

— Appropriation—Liability to replace moneys—Evidence—Statute of Limitations.

See APPROPRIATION. 1.

2. *Attendance at proceedings—Leave to attend—Creditor not a party to the action—Creditor's action—Practice—R. N. C. Order XVI., rr. 41-47; Order LV., r. 42; Order XVII., r. 27, sub-s. 23.*

An order had been made in a creditor's action for accounts and enquiries and the administration of the estate. A creditor whose debt had been admitted for 10,000*l.* applied for leave to attend the proceedings at his own expense, or that he might at his own expense be supplied by the debts' solicitors with a copy of the list of claims lodged in the action and copies of affidavits relating thereto, and that the debts' might be directed to give him notice of all proceedings to be taken under the order in reference to claims against the estate.

Held, that there was no power under the rules to give leave; that this was a matter for the discretion of the Court under the general

ADMINISTRATION—continued.

power of the judge to manage the business in his own chambers; that general leave to attend the proceedings would impede the progress of business in chambers and ought not to be given; that the applicant might, if he desired to do so, make a further application for leave to contest any particular claim; and that he ought to be supplied by the defts. with copies of the affidavits and the list of claims at his own expense.

In re SCHWABACHER. STERN v. SCHWABACHER - - - Parker J. [1907] W. N. 69; [1907] 1 Ch. 719

— Bankruptcy.

See under BANKRUPTCY.

— Charitable trust—Crown cannot as defendant impeach the trust—Cy-près.

See NEW ZEALAND. 3.

— Charity.

See under CHARITY.

— Colonial death duties — Incidence of duty—Victoria Administration and Probate Act, 1890.

See WILL—Colonial Duties. 1.

3. — Concurrent Actions — Conduct of Proceedings—Practice.

The general rule that where there are concurrent actions for administration the conduct of proceedings under an order made in either action will be given to the plt. in the action first commenced does not apply where that plt. is a creditor whose claim is bona fide disputed.

In re ROSS. WINGFIELD v. BLAIR

Swinfen Eady J. [1907] W. N. 55; [1907] 1 Ch. 482

— Conduct of proceedings—Concurrent actions—Practice.

See preceding Case.

4. — Contingent future liabilities—Return of assets—Rights of future creditor—Distribution—Practice—Parties—R. S. C., Order LV., r. 3, sub-ss. (e), (g); r. 5.

The executors of a testator whose estate comprised shares of 10l. each in a limited co., of which only 4l. had been called up, took out a summons for a declaration that they were entitled to distribute the estate among the residuary legatees notwithstanding the possible future liability on the shares. The beneficiaries and the co. were made defts. :—

Held—(1.) that the co. could not be brought before the Court adversely on such a question, and the summons as against them must be dismissed with costs: (2.) that it is not the practice of the Court to retain funds in Court for the protection of a contingent future creditor, and it is unnecessary to do so for the protection of the executors, for they are sufficiently protected by the order of the Court in the administration of an estate.

Semble, such an order would not protect the executor unless made in the administration of the estate. The summons was therefore ordered to stand over for an inquiry as to debts and legacies. The cases as to retainer of assets and indemnity to executors examined. *In re KING.*

ADMINISTRATION—continued.

MELLOR v. SOUTH AUSTRALIAN LAND MORTGAGE AND AGENCY CO.

Neville J. [1906] W. N. 194; [1907] 1 Ch. 72

— Contingent legacy without interest—Appropriation of investment.

See EXECUTOR—Investments. 1.

— Convict—Administrator—Power to disentail convict's estate tail—Forfeiture.

See FELONY. 2.

— Costs generally.

See also under COSTS.

5. — Costs — Administration action — Next friend—Infant plaintiffs contingently entitled—Taxation between solicitor and client—Immediate payment.

Further consideration of an action to administer the estate of a testatrix. The plts. were female infants suing by their father as next friend, and were entitled, under a class gift, to the residuary estate of the testatrix contingently upon attaining twenty-one or marrying. There was no gift over in the event of any member of the class failing to attain a vested interest. The estate had comprised, inter alia, a hotel, of which a receiver and manager had been appointed in the action, and which was subsequently sold in pursuance of an order in that behalf, and the proceeds of sale were paid into Court.

The draft minutes provided that the plts.' costs of the action, as between solicitor and client, be taxed and paid out of the fund in Court.

Kekewich J. said that *Damant v. Hennell*, (1886) 33 Ch. D. 224, was an entirely different case. There, infants were suing in respect of a reversion, and the Court had to take upon itself the question whether the action was right and proper. The rule there stated was meant for the special circumstances of that case. *In re Burton*, [1887] W. N. 160, and *In re Aldred*, [1888] W. N. 82, were also cases of reversionary interests, and were really based on the decision in *Damant v. Hennell*. The present was an entirely different case. The Court had no power to order payment of any costs out of the fund to which the infants were contingently entitled without having the next of kin there. But the next of kin were before the Court in the sense that they were represented by the trustees; and it was a case in which it would be wrong to order an inquiry as to the next of kin because non constat that the next of kin would take. The trustees' counsel had properly represented the next of kin, and had stated that it was a very proper and necessary action to have been brought, and one in which the costs ought to come out of the estate. He, therefore, was of opinion that he had ample jurisdiction to give costs out of the estate, and accordingly would direct immediate payment of the plts.' taxed costs of the action as between solicitor and client.

In re SLAUGHTER. WALTON v. AITCHISON

Kekewich J. [1907] W. N. 197

— Costs — Administration action — Inquiries relating to particular share.

See COSTS. 4.

ADMINISTRATION—continued.

-- Costs—Administration action—"Testamentary expenses"—Land transfer.
See COSTS. 5.

-- Costs out of estate—Costs "as between solicitor and client"—Originating summonses.
See POWER OF APPOINTMENT. 27.

6. *Creditor—No known relative of the intestate—Action pending at death—Assets requiring immediate attention—Court of Probate Act, 1857 (20 & 21 Vict. c. 77)—Grant to creditor under s. 73—Citation of next of kin (if any) dispensed with.*

Where an intestate, who had stated, during his lifetime, that he had no relatives, died pending proceedings instituted on his behalf for the recovery of a sum due to him, leaving assets requiring immediate attention and sundry debts owing, the Court granted administration to a creditor, passing over the next of kin (if any), under s. 73 of the Court of Probate Act, 1857. **IN THE ESTATE OF HEERMAN**

Bargrave Deane J. [1910] P. 357

7.—*Debts and legacies—Will—Residuary real and personal estate charged by testator with payment of debts and legacies—Debts and legacies paid out of residuary personality alone—Undisposed of realty—Liability of realty to recoup personality—Date at which value of reversionary realty to be computed.*

The question in this case was whether the fund in Court, which represented the proceeds of the sale of real estate undisposed of, was to bear any, and, if so, what proportion of the debts and legacies. Was that fund to bear its due proportion of the debts and legacies, or was it to be treated as if the reversion had been converted within one year after the testator's death, so as only to bear the proportion that it would have had to bear if it had been converted at that date? This was not the case of a reversionary interest of which the testator was possessed at the date of his death, but of a reversionary interest created by the testator himself, which on the happening of a certain event was to fall into the residue. If on the death of the testator or within a year thereafter the Court had been asked whether the trustees ought to sell the possible interest of the residuary legatees in the real estate, the answer would have been in the negative. They then had no share therein. There was no interest in real estate in the residue until the reversion fell in. That seemed to be the point. The debts and legacies were charged on a mixed residue of realty and personality, and had been paid out of a fund belonging to the next of kin. Then there fell into that mixed residue a fund which represented realty and belonged to the heir-at-law, and that was liable to recoup the personality. The funeral and testamentary expenses, debts and legacies ought to be borne by the realty and personality in the proportion which the proceeds of sale of the realty which fell into residue bore to the personality. **In re MOORE. STRICKLAND v. LONDON UNION FIRE AND LIFE INSURANCE Co.**

Warrington J. [1907] W. N. 181

-- Disappearance of administrator—Motion—Revocation—Fresh grant to creditor.
See PROBATE—Revocation. 3.

ADMINISTRATION—continued.

-- Estate of deceased debtor—Onerous property—Power of trustee to disclaim.
See BANKRUPTCY—Trustee. 9.

-- Evidence—Sufficiencies—Presumption of death without issue.
See EVIDENCE. 10.

-- Executor.

See also under EXECUTOR.

8.—*Executor—Preferential payments—Specialty debt—Administration of assets—Administration of Estates Act, 1869 (Hinde Palmer's Act) (32 & 33 Vict. c. 46).*

Hinde Palmer's Act, the object of which was only to place specialty and simple contract creditors on an equal footing inter se, in no way deprives an executor of his administrative right to pay his testator's debts in any order he may think fit and to pay a simple contract creditor in priority to a specialty creditor, notwithstanding that the result may be that the latter may eventually remain pro tanto unpaid.

Décision of Joyce J. reversed.

In re Hankey, [1889] 1 Ch. 541, overruled.

In re SAMBON. ROBBINS v. ALEXANDER

C. A. [1906] W. N. 190; [1906] 2 Ch. 584

9.—*Exoneration—Real estate—Estate duty—"Equitable charge"—Real Estate Charges Act (Locke King's Acts), 1854 (17 & 18 Vict. c. 113) and 1877 (40 & 41 Vict. c. 34)—Finance Act, 1894 (57 & 58 Vict. c. 30), s. 8, sub-s. 13; s. 9, sub-s. 1.*

The charge, created by s. 2, sub-s. 1, of the Finance Act, 1894, whereby estate duty is charged upon property, is an "equitable charge" within the Real Estate Charges Act, 1877. Where, therefore, land descended on an intestacy in 1904 to B., who himself died intestate in 1907 without having paid the estate duty which became payable on the death of his predecessor:—

Held, that the Real Estate Charges Act, 1877, applied, and that B.'s heir-at-law was not entitled to have the land exonerated from payment of the duty by the personal estate. **In re BOWERMAN. PORTER v. BOWERMAN**

Joyce J. [1908] W. N. 137; [1908] 2 Ch. 340

10.—*Exoneration of general personal estate—Charge on real estate abroad—Executor—Locke King's Acts—Real Estate Charges Act, 1854 (17 & 18 Vict. c. 113), s. 1—Real Estate Charges Act, 1877 (40 & 41 Vict. c. 34), s. 1.*

Testatrix, who died in 1907, by her will, made in 1905, bequeathed certain debentures specifically to a legatee. She had incumbered the debentures to secure moneys. The debentures formed part of a series issued by a co. in 1898, the holders of which were entitled *pari passu* to the benefits of a contemporaneous trust deed, and to a charge on the property comprised therein. The trust deed gave a first mortgage on all the freehold hereditaments and other immovable property and rights of the co. in the Island of Trinidad, and a floating charge on all the other property present and future of the co. in that island. It also contained a trust for sale and other clauses usual in debenture trust deeds.

ADMINISTRATION—continued.

An originating summons was taken out by the executor for the determination of the question whether the specific legatee of the debentures took them subject to the incumbrances on them created by the testatrix, or could call on the executor to redeem them out of the residuary estate.

Parker J. said that he would not be justified in extending the scope of the Acts so as to include every interest which would be an interest in land within the Mortmain Acts and the Statute of Frauds. The Act of 1854 had already been extended by Parliament in 1877 so as to include leaseholds, and if it had been intended that the Acts should have a wider scope, the intention would have been expressed more clearly than it was. The specific legatee must be held entitled to have the charges on the debentures paid off out of the personal estate of the testatrix. *In re CHANTRELL. SUTLEFF v. VON LIVERHOFF* - Parker J. [1907] W. N. 213

11. — Foreign bonds—Foreign shares transferable abroad or in London—Locality—English assets—Will—"Home trustees"—"Foreign trustees."

A testator domiciled in England by his will bequeathed all his personal estate in the United Kingdom to certain persons, whom he called his "home trustees," upon certain trusts; and he bequeathed all his personal estate in South Africa to certain other persons, whom he called his "foreign trustees," upon other trusts. At the time of his decease the testator was possessed of the bonds payable to bearer of a waterworks co. in South Africa, and of the shares of mining cos. in South Africa. The bonds were only payable in South Africa. The mining cos. were constituted according to the laws of the Transvaal and Orange Free State, and had their head offices in South Africa, where the register of shareholders was kept and the directors met; but they also had an office in London, where a duplicate register was kept and shares could be transferred. The testator's name was on the London register of the cos., and all his bonds and share certificates were at his bankers in London:—

Held, that the bonds passed under the bequest to the "foreign trustees," but that the shares passed under the bequest to the "home trustees."

In re CLARK. MCKECKNIE v. CLARK

Farwell J. [1904] W. N. 10; [1904] 1 Ch. 294

— Grant of administration—Probate.

See under PROBATE.

See also No. 24, below.

— Guardian of the poor—Disqualification for office—"Composition or arrangement with creditors"—Administration order. *See POOR LAW. 5.*

12. — Imperfect gift of personality—Bonds to bearer—Continuing intention to give—Donee appointed one of the executors.

The principle laid down by Jessel M.R. in *Strong v. Bird*, (1874) L. R. 18 Eq. 315—that where a testator has expressed in his lifetime an intention to give personal estate belonging to him to one who becomes his executor, the intention to give continuing, the donee is entitled to hold

ADMINISTRATION—continued.

the property for his own benefit—is not confined to the release of a debt; and it is immaterial whether the donee is the only executor or one of several. *In re STEWART. STEWART v. McLAUGHLIN* - Neville J. [1908] W. N. 147; [1908] 2 Ch. 251

Note.

Discussed by Parker J., *In re Innes*, [1910] 1 Ch. 188. *See next Case.*

13.—Imperfect gift of personality—Indefinite gift—Promise to pay in the future—Continuing intention to give—Donee appointed one of donor's executors—Perfect gift.

The plt. lived with and kept house for her father, and frequently asked him to pay her a salary as housekeeper. In 1902 he gave her a document, whereby he declared that from and after Sept. 30, 1902, she should receive from his business 2l. per week, or about fifty-two sums of equal amount per annum, and also an additional sum of 2l. a week, to remain in the business and to be withdrawn by her, if necessary, after an investment lasting for five years, with increase of 5 per cent. per annum. The 2l. a week was never paid, but she received from her father various sums amounting to 78l. 10s. In 1905, at his request, she gave back the document so that he might consult a solicitor about it and see that there should be no doubt of her getting the money; and she found it amongst his papers after his death. By his will the father appointed the plt. to be an executrix and directed that his estate should be equally divided between his children.

The plt. issued this summons for a declaration that she was entitled as a creditor to have the amounts specified in the document paid to her out of the estate, or that her father had constituted himself a trustee of the property specified in the document, or, thirdly, that the gift of the document coupled with her appointment as executrix was a complete gift of the amounts, specified in the document:—

Held, on the evidence, that the plt. was not a creditor of the testator's estate in respect of the sums mentioned in the document; that the testator had not constituted himself a trustee of them for her; and, on the third point, that the rule laid down in *Strong v. Bird*, (1874) L. R. 18 Eq. 315, and extended by *In re Stewart*, [1908] 2 Ch. 251, ought not to be further extended so as to be applicable to a mere promise to pay an indefinite sum at a future time. *In re INNES. INNES v. INNES*

Parker J. [1909] W. N. 238; [1910] 1 Ch. 188

14. — Income tax—Method of calculation—Practice—Insolvent estate—Proof by creditor.

Claim by a creditor in the administration of an insolvent estate. Some discussion took place as to the incidence of the income tax in such a case, and it was suggested that the existing practice involved some hardship on the creditor because income tax would be calculated on a larger sum than that which he received as dividend. In order to ascertain what the practice was, his Lordship referred the matter to the consideration of the Masters, and received from them

ADMINISTRATION—continued.

the following note or memorandum signed by the senior Master :—

"A meeting of the Chancery Masters was held this afternoon when your Lordship's note of the 9th instant was read.

"It was agreed that in the administration of an insolvent's estate creditors are admitted to prove for the amount of the principal of their debt with interest (less income tax) on debts carrying interest by law to the date of the judgment or order for administration. The interest, less tax, and any costs allowed are added to the principal, and the dividend or payment made to the creditor is calculated upon the total debts found due.

"This practice is common to all the chambers.

"The income tax so deducted is not accounted for to the Revenue, because, until the principal sum is paid, it is considered that no income tax is in fact payable."

Kekewich J. read the above note, and observed that it had been suggested that interest was calculated to the date of the certificate, but it now appeared that it was only calculated to the date of the judgment or order. The last paragraph of the note was, perhaps, the most important. That cleared the matter up, and showed that no hardship was involved on any one. *In re GREEN. BALL v. ELLIS*

Kekewich J. [1904] W. N. 78

This case was again mentioned to the Court, and minutes of the order were approved by the Court : *see* [1904] W. N. 105

15.—Indian assets—Will—Executors in England—Letters of administration as on an intestacy obtained by fraud in India—Sale of Indian assets by fraudulent administrator—Purchaser for value without notice—Revocation of Indian letters of administration—Title of executors—Indian Succession Act, 1865 (Act X. of 1865), ss. 2, 3, 5, 179, 180, 187, 188, 190, 191, 234, 242, 243, 260, 262, 269, 278.

In 1898 a testator, domiciled in England, died possessed of English and Indian assets. The Indian assets comprised shares in the Bank of Bengal, and the share certificates were in the custody of C., the testator's agent at Calcutta. The executors in England remained in ignorance of the testator's Indian assets until 1903, when they discovered that in 1902 C. had by fraud obtained from the High Court at Calcutta the grant of letters of administration to the testator's Indian assets as on an intestacy, and acting as such administrator had sold the bank shares in the open market at Calcutta and had squandered the proceeds. Some of the shares C. so sold and transferred to T., who was a purchaser for value, without notice. C. was prosecuted for the fraud and convicted, and the grant of letters of administration to him was revoked, and fresh letters of administration with a copy of the testator's will annexed were granted to the Administrator-General of Bengal. In an action by the executors against T. and the Administrator-General claiming to be entitled to the shares T. had purchased from C. on the ground

ADMINISTRATION—continued.

that the grant of letters of administration to the latter was void ab initio :—

Held, that on the true construction of the provisions of the Indian Succession Act, 1865, the grant of letters of administration to C. was not void ab initio, but only void as from the date of the order of revocation.

Held, therefore, that the sale of the shares by C., qua administrator, to T. was valid and conferred on the latter a good title to the shares. *Ellis v. Ellis*, [1905] 1 Ch. 613, distinguished. **CRASTER v. THOMAS** *Neville J.* [1909] W. N. 143 ; [1909] 2 Ch. 348

16.—Insolvent estate—Administration action—Unsecured debts—Mortgages by testator—Assignment of debts and transfers of mortgages after death to same person—Surplus proceeds of sale of mortgaged property—"Mutual dealings"—Set-off—Judicature Act, 1875 (38 & 39 Vict. c. 77), s. 10—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 38.

A testator by his will, dated in 1890, devised and bequeathed all his real and personal estate to his widow and appointed her his sole executrix. He died in 1891 insolvent. The widow did not prove the will. In 1907 a judgment was given for the administration of his real and personal estate. Between the date of testator's death and the date of the judgment H. purchased and had assigned to him certain bond and simple contract debts due from the testator and also took transfers of certain mortgages upon the testator's real estate. In exercise of the powers of sale contained in the mortgages H. sold the mortgaged properties, and after paying himself principal and interest out of the proceeds there remained in his hands a balance which he claimed to set off in satisfaction pro tanto of the debts due to him from the testator's estate :—

Held, that the purchase by H. after the testator's death of the debts and the transfers to him of the mortgages followed by a sale under the powers of sale were not "mutual dealings" between him and the testator's estate within s. 38 of the Bankruptcy Act, 1883, and that he was not therefore entitled to the right of set-off he claimed. *In re GEDNEY. SMITH v. GRUMMITT*

Warrington J. [1908] W. N. 82 ; [1908] 1 Ch. 804

17.—Insolvent estate—Estate insolvent at date of judgment afterwards found sufficient to pay principal of debts—Interest—Judicature Act, 1875 (38 & 39 Vict. c. 77), s. 10—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 40, sub-ss. 4, 5—R. S. C., 1883, Order LV., rr. 62, 63.

In the administration of an estate which is insolvent at the date of the judgment, but afterwards realizes enough to pay the principal of all the debts, but not the whole of the interest allowed by the Court, whether on debts which by law carry interest, or on debts which do not, the payment of interest must be governed by the rules of bankruptcy and not those of the Ch. Div.

In re Henley (1896) 75 L. T. 307, discussed and not followed. *In re WHITAKER. WHITAKER v. PALMER* **Farwell J.** [1904] W. N. 22 ; [1904] 1 Ch. 299

ADMINISTRATION—continued.

—Interest—Arrears, Mortgagee's right to recover—Real property limitation.

See MORTGAGE—Interest. 1.

—Intestacy.

See also under INTESTACY.

—Intestacy—Advancements to children—Hotchpot.

See DISTRIBUTIONS, STATUTE OF. 1.

18. — *Intestacy — Devolution of real and personal estate—Mortgage secured by a term—Mortgage in fee — Equities of redemption acquired by mortgagee subject to the mortgages—Declaration against merger—Charge created by mortgagee—Death of mortgagee intestate—Devolution of mortgage debts—Merger—Declarations against dower, Effect of—Dower Act, 1833 (3 & 4 Will. 4, c. 105), s. 6.*

In 1866 A. mortgaged freeholds to D. in fee. In 1867 D. charged his mortgage debt and created a term of 1000 years to secure the charge. In 1868 D. foreclosed A., and between 1870 and 1872 mortgaged the fee to G. to secure sums amounting to 5411l. In 1872 D. by his marriage settlement, also charged the fee with 5000l., which sum, in the events which happened, became held in trust for him. In 1874 D.'s equity of redemption under his mortgages of 1870 to 1872 and his interest in the 5000l. were conveyed to G. subject to all existing charges and with a declaration against merger. In 1900 G. took a transfer of the charge (then reduced to 9800l.) and term of years created by the mortgage of 1867 with a declaration against merger, and in 1902 he deposited the deeds of 1866, 1867, and 1900 with a memorandum of deposit with M. by way of equitable mortgage. On G.'s death intestate the question arose between his real and personal representatives whether the above-mentioned three charges of 9800l., 5411l., and 5000l. or any of them had merged in the fee:—

Held that, as M. was entitled under his memorandum of deposit to call for a legal mortgage of the fee and also the term, the charge of 9800l. and the term securing it had not merged in the inheritance, but remained part of G.'s personal estate.

But *held*, following *Tyler v. Lake*, (1831) 4 Sim. 351, that the charges of 5411l. and 5000l. had merged in the fee, for that it would be a fraud on M. to keep them alive against him in favour of G., his mortgagor.

In 1872 A. became bankrupt. In 1873 G., under the power of sale in D.'s mortgage of 1870, sold part of the mortgaged property to H.

Upon G. becoming possessed in 1874 of D.'s equity of redemption in the mortgaged property, he took out administration to D., who had died in 1872, and as D.'s administrator sought to prove in A.'s bankruptcy for the unsecured balance of the mortgage debt under the mortgage of 1866. This involved reopening the foreclosure of 1868, and for this purpose G. obtained from H. on Dec. 30, 1875, a reconveyance of the property sold to him in 1873. This reconveyance contained a declaration by G. to bar dower. Subsequently the foreclosure was reopened, and A.'s trustee in bankruptcy declined to redeem

ADMINISTRATION—continued.

the mortgage of 1866 and conveyed the equity of redemption thereunder to G.:—

Held, that the declaration to bar dower operated to bar any right of G.'s widow to dower as regards the property comprised in the deed of Dec. 30, 1875.

Where the owner of an equity of redemption takes a transfer of an existing mortgage with a declaration that the mortgage is kept on foot as a subsisting charge for the benefit of himself, his heirs and assigns, the mortgage will pass upon his death intestate as personal estate to his next of kin. The result is the same where in a conveyance on sale by a mortgagor and mortgagee the mortgage is conveyed separately with a declaration that the mortgage is to be deemed to be a subsisting charge as a protection to the owner of the equity of redemption, his heirs and assigns, against subsequent incumbrances, but for no other purpose.

A recital in a deed may operate as a sufficient declaration against dower under s. 6 of the Dower Act, 1833. *In re GIBBON. MOORE v. GIBBON* - **Neville J. [1909] 1 Ch. 367**

—Intestacy—Limited foreign grant—Assets in England — Full grant to foreign administrator.

See PROBATE—Practice. 2.

19. — *Intestate's estate—Limitations, Statute of—"Present right to receive the same"—Right to recover by action at law—Incapacity to sue co-executor at law—Suit in equity—Law of Property Amendment Act, 1860 (23 & 24 Vict. c. 38), s. 13.*

In 1864, a trust fund, payable to E. M. P. as the administratrix of the intestate appointee of the fund, was paid to E. M. P. and to her husband, G. P., in her right. E. M. P. was beneficially entitled to one moiety of the fund, and the other moiety was payable to E. M. P., G. P., and J. C. C. as the executors of M. C., in whose estate E. M. P. had a life interest. G. P. paid the money into his private banking account, and never accounted for or gave any acknowledgment in respect of it. G. P. died in 1884, J. C. C. in 1886, and E. M. P. in 1903. In an action by the administrator de bonis non of the appointee for a declaration that G. P.'s estate was liable to make good the portion of the fund unaccounted for, the executor of G. P.'s residuary legatee pleaded the statutory bar under s. 13 of the Law of Property Amendment Act, 1860:—

Appeal from a decision of Kekewich J., [1905] W. N. 178; [1906] 1 Ch. 265, allowed on the facts. *In re PARDOE. McLAUGHLIN v. PENNY* **C. A. [1906] 2 Ch. 340**

—Japanese subjects dying within H. M. dominions, except in the dominion of Canada, Newfoundland, and New Zealand, O. in C. empowering consuls of Japan to administer.

See under JAPAN.

20. — *Lease—Death of lessee—Administrator ad colligenda bona—Power to sell—Entry into possession—Rent—Liability de bonis propriis—Yearly value of premises.*

The lessee of certain premises died intestate on May 24. On June 7 the deft. was appointed,

ADMINISTRATION—continued.

administrator ad colligenda bona with power to sell the lease, and on that date he entered into possession of the premises. On June 24 a quarter's rent became due, but was not paid. On Aug. 23 the plt., the lessor, commenced an action against the deft. for recovery of possession of the premises on non-payment of rent, and for rent and mesne profits. Judgment for possession was obtained under Order XIV., and on Oct. 18 the deft. went out of possession. The rent of the premises under the lease was 450*l.* a year. While the deft. was in possession he used reasonable diligence to find a purchaser of the lease or a tenant, but without success, and the only sum received by him in respect of the premises was 26*l.* 5*s.*, being rent from a sub-tenant of a part of the premises:—

Held, that the deft., having entered into possession, was personally liable to the plt. for rent from June 7 to Aug. 23 at the rate of 450*l.* a year, that being the yearly value of the premises, and for mesne profits at the same rate from the latter date to Oct. 18. **WHITEHEAD v. PALMER** **Channell J.** [1908] 1 K. B. 151

—Leaseholds—Contingent future liabilities—Indemnity.

See EXECUTOR—Indemnity. 1.

—Leaseholds, Settled—No power of sale.

See SETTLED LAND—Leaseholds. 1.

—Lunacy order, effect of—Order for payment of debt.

See LUNACY. 20.

—Lunatic's estate.

See under LUNACY.

21. — Marrelling assets—Direction for payment of debts—Insufficiency of personal estate—Pecuniary legatees and specific devisees.

Where a will contains a general direction for payment of debts, and the personal estate is insufficient, pecuniary legatees are entitled to have the assets marrellled as against specific devisees of the real estate.

In re Bate, (1890) 43 Ch. D. 600, must on this point be treated as overruled.

In re Stokes, (1892) 67 L. T. 223, and *In re Salt*, (1895) 2 Ch. 203, followed. *In re ROBERTS. ROBERTS v. ROBERTS* - **Kekewich J.** [1902] W. N. 196; [1902] 2 Ch. 834

22. — Marrelling assets—Direction for payment of debts—Insufficiency of personal estate—Pecuniary legatees and specific devisees—Effect of Land Transfer Act, 1897 (60 & 61 Vict. c. 65), s. 1, sub-s. 1, and s. 2, sub-s. 3—Intention of testator—Preservation of order in which assets are applicable.

Although Part I. of the Land Transfer Act, 1897, has rendered unnecessary an express charge of debts on real estate, it has not affected the application of the doctrine of marrelling in favour of pecuniary legatees where land is devised subject to an express charge of debts, and the personalty is exhausted in paying debts.

In re KEMPSTER. KEMPSTER v. KEMPSTER **Kekewich J.** [1906] W. N. 38; [1906] 1 Ch. 446

Note.

Applied by Swinfen Eady J., *In re Balls*, [1909] 1 Ch. 791. *See* Will—Charges. 2.

ADMINISTRATION—continued.

—Merger of beneficial interest—Charge—Unraised portion—Intestacy.
See MERGER. 1.

—Overpayments—Adjustment—Trustee also a beneficiary—Right to impound.
See TRUSTEE—Overpayments. 1.

23. — Practice—Secured creditor, Proof by against the real estate—Lapse of time—Application to prove against personalty—Fund in court.

Where in an administration suit there is a fund in court, a creditor for a debt at law, though the appointed time for coming in has long elapsed, is by well-established practice allowed to prove against the general estate, subject to terms as to costs and as to payments already made.

The decision of the Irish C. A., reported as *Beattie v. Cordner*, [1903] 1 I. R. 1, affirmed. **HARRISON v. KIRK**

H. L. (I.) [1903] W. N. 190; [1904] A. C. 1

—Probate.

See also under PROBATE.

24. — Probate action—Costs to come "out of the estate"—Insufficient personalty—Liability of real estate—Land Transfer Act, 1897 (60 & 61 Vict. c. 65), s. 1, sub-s. 1, 3: s. 2, sub-s. 3—R. S. C., Order LXV., r. 14 D—Practice—Particular portions of estate—Costs—Incidence—Direction by Court.

By the judgment in a probate action pronouncing against the validity of the will of the deceased, who died since the commencement of the Land Transfer Act, 1897, the costs of the plts. propounding the will were ordered to be paid "out of the estate." The personal estate of the deceased proving insufficient:—

Held that, by virtue of Part I. of the Act, the word "estate" now meant the real as well as the personal estate of a person dying since the commencement of the Act, and that under sub-s. 3 of s. 2 the real estate of the deceased was subject to the same liability as his personal estate for the costs in question, and must bear those costs.

The Probate Division having acquired jurisdiction over real estate by virtue of Part I. of the Act, the ground upon which the decision in *In re Shaw*, [1894] 3 Ch. 615, was based has disappeared.

It is open to the Court under Order LXV., r. 14D, to distinguish between various portions of the estate, for instance between realty and personalty, and to impose costs accordingly. If the Court makes no such distinction, the costs are payable out of the entirety of the estate in due order of administration. *In re VICKERSTAFF. VICKERSTAFF v. CHADWICK* - **Kekewich J.**

[1906] W. N. 67; [1906] 1 Ch. 763

25. — Real estate—Devise of mortgaged estate—Partition action—Fund in Court representing rents and profits—Administration action—Right of creditors to attach fund before judgment—Administration of Estates Act, 1833 (3 & 4 Will. 4, c. 104).

The Administration of Estates Act, 1833, which makes the real estate of a deceased person assets for the payment of his debts, whether due on simple contract or on specialty, gives no lien

ADMINISTRATION—continued.

or charge on such real estate until a judgment has been obtained.

Testator, who died in 1876, devised and bequeathed his residuary real and personal estate to three persons in equal shares. At the time of his death he was entitled to certain real estate which he had mortgaged in 1839 to secure the repayment of a certain sum and interest. In 1902 the devisees commenced an action for sale in lieu of partition, and in that action certain sums, representing the rents and profits of the mortgaged property, had been paid into Court. In 1903 judgment in the action was given directing the usual accounts and inquiries, and ordering the property to be sold, which had not, however, yet been done. In 1907 the plts., in whom the benefit of the mortgage of 1839 was now vested, issued their writ in the present action, suing on behalf of themselves and all other creditors of the testator, against the devisees, claiming (1) administration of the testator's real and personal estate, and (2) that the devisees might be restrained from applying for the transfer and payment to them of the fund in Court to the credit of the partition action, and that such fund might be ordered to be transferred to the credit of the present action. No judgment had as yet been obtained in this action.

On an application by the plts. for an interim order in the terms of paragraph 2 of the claim in their writ:—

Held, that under the Administration of Estates Act, 1833, neither the corpus nor the rents and profits of the real estate became liable to creditors until a judgment had been obtained, and that, as no judgment had been obtained in the present case, the application must be refused.

In re Hyatt, (1888) 38 Ch. D. 609, distinguished. *In re Moon*. *HOLMES v. HOLMES*

Warrington J. [1907] W. N. 154 ;
[1907] 2 Ch. 304

26. — Real estate—Devise on trust—Alienation by "devisee"—Mortgage of equitable estate — Purchaser for value without notice—Bona fide alienation—Priority over creditor of testator—Debts Recovery Act, 1830 (11 Geo. 4 & 1 Will. 4, c. 47), ss. 6, 8—Administration of Estates Act, 1833 (3 & 4 Will. 4, c. 104).

An equitable tenant for life is a "devisee" within the meaning of ss. 6 and 8 of the Debts Recovery Act, 1830, and consequently a bona fide alienation by such a devisee before action brought will be protected, there being no difference for this purpose between the alienee of an equitable and the alienee of a legal interest.

Dictum of Lord Chelmsford L.C. in *Coope v. Cresswell*, (1866) L. R. 2 Ch. 112, 122, explained and adopted.

British Mutual Investment Co. v. Smart, (1875) L. R. 10 Ch. 567, and *In re Hedgely*, (1866) 34 Ch. D. 379, examined and applied.

Decision of *Joyce J.*, [1908] W. N. 18, reversed. *In re ATKINSON*. *PROCTOR v. ATKINSON* C. A. [1908] W. N. 129 ;
[1908] 2 Ch. 307

— Real estate—Exoneration.

See Nos. 9, 10, above.

ADMINISTRATION—continued.

-- Receiver.

See under RECEIVER.

27. — Retainer — Personal representative — Real representative—Right to retain out of real assets—Land Transfer Act, 1897 (60 & 61 Vict. c. 65), ss. 1, 2, sub-s. 3.

Part I. of the Land Transfer Act, 1897, which establishes a real representative by vesting the real estate of a deceased person in his personal representative, and provides for the administration of real estate in the same manner, subject to the same liabilities for debts, costs, and expenses, and with the same incidents as if it were personal estate, does not confer any new right of retainer or priority in favour of the personal representative as against real assets. *In re WILLIAMS. HOLDER v. WILLIAMS* - *Joyce J.*

[1903] W. N. 199 ; [1904] 1 Ch. 52

— Simple contract debt—Payment on account by tenant for life—Administration of whole or real estate.

See LIMITATIONS, STATUTE OF. 24.

28. — Specialty debt — Mortgagor—Covenant —Real assets—Specific devisees—Payment of interest by one devisee—Testator's general estate—Acknowledgment — Real Property Limitation Act, 1874 (37 & 38 Vict. c. 57), s. 8.

Payment of interest by the specific devisee of part of a testator's real estate, which was subject to a mortgage created by the testator, is sufficient to keep the mortgagee's right of action alive against the specific devisees of other parts of the real estate which was not subject to the mortgage, and thus entitle the mortgagee to an order for administration of the whole of the testator's real estate.

The principles laid down in *Roddam v. Morley*, (1857) 1 De G. & J. 1, applied.

Bradshaw v. Widdrington, [1902] 2 Ch. 430, discussed. Decision of *Kekewich J.*, [1906] W. N. 213, reversed. *In re LACEY. HOWARD v. LIGHTFOOT* C. A. [1907] W. N. 36, 42 ;
[1907] 1 Ch. 330

29. — Specific legacy—Interval between death of testator and assent of executor—Cost of upkeep and preservation—Incidence.

The expense incurred in the upkeep and preservation of specifically bequeathed property between the death of the testator and the assent of his executors to the bequest is payable by the specific legatee, and not out of the general estate of the testator. *In re PEARCE. CRUTCHLEY v. WELLS* - *Eve J.* [1909] W. N. 94 ;
[1909] 1 Ch. 819

30. — Statute-barred debt owing to estate —Residuary legatee of debtor's estate also a legatee of creditor's estate — Bringing into account.

J. B., entitled to a share in the residuary estate of his father, was also the sole residuary legatee and one of the executors of his aunt, who was a debtor for 200*l.* to the father's estate. This debt was long ago statute-barred:—

Held, that this debt and interest need not be brought into account as against J. B.'s share in his father's residuary estate.

Courtenay v. Williams, (1844) 3 Hare, 539 ;

ADMINISTRATION—continued.

on appeal, (1846) 15 L. J. (Ch.) 204, distinguished.

Decision of Neville J., [1908] W. N. 99; [1908] 1 Ch. 850, reversed. *In re BRUCE*. *LAWFORD v. BRUCE* C. A. [1908] W. N. 209; [1908] 2 Ch. 682

31. — Trust, Breach of—Practice—Administration action — Breach of trust alleged in pleadings—Breach made good after issue of writ — Common account and inquiries — Adding accounts and inquiries after judgment—Breaches of trust not alleged in pleadings and proved at trial—"Wilful default"—Removal of trustees, Grounds for.

Where in an administration action a plt. by his pleadings charges trustees with a breach of trust, but at the trial is content to take the common form administration judgment, the Court will refuse to allow him at a later stage of the action to charge the trustees with further breaches of trust alleged to have been committed before the issue of the writ or before the judgment, but not alleged in the pleadings and proved at the trial, either for the purpose of obtaining relief against them on account of such breaches of trust, or merely for the purpose of removing them from their office of trustees.

The rule that, if in an action for administration the plt. by his pleadings alleges wilful default and proves one instance of it, the Court will direct an account on the footing of wilful default does not apply to the case of a breach of trust.

Job v. Job, (1877) 6 Ch. D. 562; *Mayer v. Murray*, (1878) 8 Ch. D. 424; *In re Symons*, (1882) 21 Ch. D. 757; *Smith v. Armitage*, (1883) 24 Ch. D. 727, distinguished on the above ground.

In an administration action the Court has jurisdiction at any time during the proceedings to remove trustees if it considers such removal necessary for the preservation of the trust estate or the welfare of the cestui que trust, and that notwithstanding such removal has not been expressly asked for by the pleadings. *In re WRIGHTSON*. *WRIGHTSON v. COOKE*

Warrington J. [1908] W. N. 82; [1908] 1 Ch. 789

— Trust estate.

See under **TRUSTEE**.

— Victoria Administration and Probate Act—Will — Direction to pay debts out of residue—Colonial death duties.

See **WILL—Colonial Duties**. 1.

— "Widow," Secondary meaning of—Bigamous marriage—Will—Construction.

See **WILL—Words**. 10.

— Will—Construction.

See under **WILL**.

— Will — Destruction — Intention — Executors according to the tenor—Form of grant.

See **WILL—Destruction**. 1.

32. — Will — Immediate gift of share of residue—Debt due from beneficiary to testator payable by instalments—Right of executors to retain shares to answer debt.

Where at the death of a testator a debt is

ADMINISTRATION—continued.

owing to him by a person to whom a share of residue is immediately given by the will, but the debt is payable by instalments, the executors are not entitled to retain the share of the beneficiary as against the future instalments of the debt that may become due, but are bound to pay it to the beneficiary without reference to such instalments.

In re Rees, (1889) 60 L. T. 260, followed.

In re Akerman, [1891] 3 Ch. 212, distinguished. *In re ABRAHAMS*. *ABRAHAMS v. ABRAHAMS*

[1908] W. N. 116; [1908] 2 Ch. 69

— Will—Lapse—Death of all beneficiaries and executor before testator—Administration cum testamento annexo—"Intestate."

See **WILL—Lapse**. 3.

— With will annexed—Joint grant to nominees of sole executrix.

See **PROBATE—Practice**. 5.

ADMINISTRATION PENDENTE LITE—Concurrent suits in Chancery and Probate Divisions.

See **PROBATE—Practice**. 3.

ADMINISTRATOR.

See under **ADMINISTRATION**.

ADMIRALTY.

See under **SHIPPING**.

ADMISSIBILITY—Evidence.

See under **EVIDENCE**.

— Interrogatories—Discovery—Action for seduction—Disclosure of names—Practice.

See **DISCOVERY**. 6.

ADMISSION—Criminal suit by letters of request—Proceedings by default—Admissions by respondent before institution of suit.

See **ECCELESIASTICAL LAW—Discipline**. 1.

— Debt — Acknowledgment — Affidavit for probate.

See **LIMITATIONS, STATUTE OF**. 1.

— Practice — Workmen's compensation — Evidence—Admission from answer.

See **MASTER AND SERVANT—Practice**. 14.

— Ship—Collision — Admission by defendants that partly to blame—Practice—Burden of proof—Right to begin.

See **SHIPPING—Collision**. 53.

— Ship — Salvage — Pleading — Admission of facts — Non-admission of inferences — Exclusion of further evidence.

See **SHIPPING—Salvage**. 21.

ADMITTANCE — Copyhold — Custom to take smaller fine on admittance from tenant of manor than from stranger.

See **COPYHOLDS**. 1.

ADULTERATION.

Fertilizers and Feeding Stuffs Act, 1906 (6 Edw. 7, c. 27.) is an Act to amend the law with respect to the sale of agricultural fertilizers and feeding stuffs.

Butter and Margarine Act, 1907 (7 Edw. 7, c. 21), is an Act to make further provision with respect to the manufacture, importation, and sale of butter and margarine and similar substances.

1. — *Analysis — Deterioration of sample — Analysis by Commissioners of Inland Revenue at request of vendor — Impossibility — Condition precedent to conviction — Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63), ss. 9, 14, 21; 1899 (62 & 63 Vict. c. 51), s. 21.*

On the hearing of a complaint charging the appellant with selling milk in an altered condition contrary to s. 9 of the Sale of Food and Drugs Act, 1875, it having been proved by the analysis of the public analyst (who was not required by the appellant to be called as a witness) that the milk was deficient in butter fat, the appellant required that the sample of the milk, which had been retained by the purchaser in accordance with s. 14 of the Act, should be produced and sent to the Commissioners of Inland Revenue for analysis under s. 21 of the Sale of Food and Drugs Act, 1899. The sample, which had been placed in a bottle, was produced, but the cork of the bottle having become loose, the sample was in consequence in such a condition as to make a satisfactory analysis impossible. The appellant was convicted :—

Held, that it was not a condition precedent to a conviction that the retained sample should have been analysed; but that in order to support the conviction there must be a finding of fact by the magistrate that the sample had been sealed or fastened up in such manner as its nature would permit, as provided by s. 14 of the Act of 1875, and the case was therefore remitted to the magistrate.

Hutchison v. Stevenson, (1902) 4 F., J.C., 69, distinguished. *SUCKLING v. PARKER* Div. Ct. [1906] W. N. 59; [1906] 1 K. B. 527

2. — *Analysis, Purchase for — Sample — Mode of dividing sample — Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63), s. 14.*

Where an article of food is purchased for the purpose of analysis under s. 14 of the Sale of Food and Drugs Act, 1875, each of the three parts, into which the article is required by that section to be divided, must be sufficient to admit of a proper analysis being made of that part. *LOWERY v. HALLARD* - - - Div. Ct.

[1906] 1 K. B. 398

Note.

See Suckling v. Parker, Div. Ct., [1906] 1 K. B. 527. *See preceding Case.*

3. — *Beer — Liability of innocent vendor for beer contaminated by admixture of arsenic — Sufficiency of certificate of analyst — Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63), ss. 3, 6.*

Beer, with which a certain quantity of arsenic injurious to health had been mixed in the process of manufacture accidentally and in ignorance, was sold by a retailer without

ADULTERATION—continued.

knowledge or reasonable grounds for suspicion of the presence of the arsenic in the beer :—

Held, that there was evidence that the beer was not of the nature, substance, and quality of the article demanded by the purchaser, and that the retailer could be convicted under s. 6 of the Sale of Food and Drugs Act, 1875.

Certificates of public analysts stating in one case that the sample of beer "contains arsenic," and in the other case that it "contains a serious quantity of arsenic," held to be insufficient. *GOULDER v. ROOK. BENT v. ORMEROD. LEE v. BENT. BARLOW v. NOBLETT* - Div. Ct. [1901] W. N. 108; [1901] 2 K. B. 290

4. — *British Pharmacopœia — Standard strength of drugs — Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63), s. 6 — Pharmacy Act, 1868 (31 & 32 Vict. c. 121), s. 15.*

A purchaser went into a chemist's shop and asked to be supplied with "mercury ointment." Mercury ointment is one of the medicines contained in the British Pharmacopœia. The chemist supplied him with an ointment containing a less proportion of mercury than that prescribed by the formulary of the Pharmacopœia :—

Held, that, although the purchaser did not refer to the Pharmacopœia, he must be taken to have demanded that the ointment should be compounded of the proportions therein prescribed, and that upon a complaint under s. 6 of the Sale of Food and Drugs Act, 1875, the vendor was rightly convicted of having sold a drug not being of the quality demanded by the purchaser.

White v. Bywater, (1887) 19 Q. B. D. 582, followed.

Held, also, that the fact of the ointment being a compounded drug did not make the sale of it as above mentioned any the less an offence within s. 6. *DICKINS v. RANDERSON* Div. Ct. [1901] W. N. 30; [1901] 1 K. B. 437

5. — *Butter, Importation of — Admixture with foreign fat — Package not conspicuously marked — Application of warranty to importation — Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63), s. 25 — Sale of Food and Drugs Act, 1899 (62 & 63 Vict. c. 51), ss. 1, 20, sub-ss. 1, 2, 3.*

Where a debt is charged under s. 1, sub-s. 1 (b), of the Sale of Food and Drugs Act, 1899, with importing into the United Kingdom adulterated butter in packages not conspicuously marked with a name or description indicating that the butter has been so treated, the fact that he received from the foreign vendor a written warranty of the purity of the butter under circumstances which comply with the provisions of s. 25 of the Sale of Food and Drugs Act, 1875, and s. 20, sub-ss. 1 and 3, of the Sale of Food and Drugs Act, 1899, affords no defence, inasmuch as the written warranty so received only constitutes a defence to a charge of selling adulterated goods in the United Kingdom, and not to a prosecution for importing into the United Kingdom goods in packages insufficiently marked. *KELLY v. LONSDALE & Co.* - Div. Ct. [1906] W. N. 144; [1906] 2 K. B. 466

ADULTERATION—continued.

6. — *Butter—Process of mixing milk with butter—Increased percentage of water—Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63), s. 6.*

In the ordinary process of making butter a large proportion of the water in the milk or cream from which it is made is eliminated.

The appellants, after butter had been made in the ordinary way, mixed milk with it, for the purpose of increasing its weight, by a process which had the effect of retaining the water in the milk, and caused an excessive quantity of water in the butter so treated. They sold the butter so treated to a purchaser as butter:—

Held, that they had committed the offence specified in s. 6 of the Sale of Food and Drugs Act, 1875, namely, selling to the prejudice of the purchaser an article of food not of the nature, substance, and quality of the article demanded by him. **PEARKS, GUNSTON & TEE, LD. v. KNIGHT. THE SAME v. VAN TROMP**

Div. Ct. [1901] W. N. 179; [1901] 2 K. B. 825
See next Case.

7. — *Butter—Sale to prejudice of purchaser—Butter blended with milk—Notice in shop—Label on wrapper—Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63), ss. 6, 8.*

The appellants, a firm of provision merchants, displayed on the wall of their shop in a conspicuous position, so as to be visible to any one entering the shop, a large notice to the effect that their butter, as sold at that establishment, was choicest butter, blended with pure English full cream milk, by new and improved machinery, whereby it retained about 20 to 24 per cent. of moisture. A purchaser who did not see the notice, and whose attention was not called to it, bought half a pound of shilling butter, which when handed to him was wrapped in two pieces of paper; on the inside paper or wrapper was printed a notice similar to that hung up in the shop, the outer wrapper being a piece of plain opaque paper. When analysed, the butter was found to contain 23·8 per cent. of water, which was 7·8 in excess of the natural amount of 16 per cent. :—

Held, that assuming that only one kind of butter was sold in the shop, the seller was protected by the notice displayed on the wall of the shop, and the sale was not to the prejudice of the purchaser within the meaning of s. 6 of the Sale of Food and Drugs Act, 1875 :

Semble, that the label on the inner wrapper in which the butter was delivered was not a sufficient notice by label within s. 8 of the Act. **PEARKS, GUNSTON & TEE, LD. v. HOUGHTON**

Div. Ct. [1902] 1 K. B. 889

8. — *Certificate of analysis—Principal chemist of Government laboratories—Form of certificate—Importation of margarine—Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63), s. 18; Form in schedule—Sale of Food and Drugs Act, 1899 (62 & 63 Vict. c. 51), s. 1—Butter and Margarine Act, 1907 (7 Edw. 7, c. 21), s. 5, sub-s. 1.*

In proceedings by the Commissioners of Customs under s. 1 of the Sale of Food and Drugs Act, 1899, as extended by s. 5, sub-s. 1, of

ADULTERATION—continued.

the Butter and Margarine Act, 1907, for the recovery of a penalty in respect of the importation into the United Kingdom of an article of food specified therein the certificate of the analysis given by the principal chemist of the Government laboratories need not be in the form prescribed by s. 18 and the schedule of the Sale of Food and Drugs Act, 1875. **FOOT v. FINDLAY**
Div. Ct. [1908] W. N. 204; [1909] 1 K. B. 1

9. — *Certificate of analysis—Sufficiency of—Insertion of weight of sample—Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63), s. 18.*

The insertion in the certificate given by a public analyst under the Sale of Food and Drugs Act, 1875, of the weight of the sample analyzed is obligatory only where the weight of the sample is material to the accuracy of the analysis, and its omission does not necessarily invalidate the certificate where the accuracy of the analysis does not in any way depend upon the weight of the sample. **SNEATH v. TAYLOR**
Div. Ct. [1901] 2 K. B. 376

10. — *False warranty—Jurisdiction of justices—Place where article purchased for analysis—Successive warranties—Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63), ss. 25, 27—Sale of Food and Drugs Act, 1899 (62 & 63 Vict. c. 51), s. 20, sub-s. 5, 6.*

Proceedings for giving a false warranty in respect of an article of food cannot be taken, under s. 20, sub-s. 5, of the Sale of Food and Drugs Act, 1899, before a Court having jurisdiction in the place where the article in question was purchased for analysis, if the warranty was not given within the jurisdiction of that Court, unless it was given to the person from whom the article in question was purchased for analysis. **MANNERS v. TYLER** **Div. Ct. [1902] 1 K. B. 901**

11. — *Fertilizers and feeding stuffs—False description—Guilty knowledge—Fertilizers and Feeding Stuffs Act, 1893 (56 & 57 Vict. c. 56), s. 3, sub-s. 1 (b).*

Mens rea is not a constituent element of the offence created by s. 3, sub-s. 1 (b), of the Fertilizers and Feeding Stuffs Act, 1893. **LAIRD v. DOBELL**
Div. Ct. [1906] 1 K. B. 131

12. — *Milk—Inspector of nuisances—Powers—Sample procured outside inspector's district—Sale of Food and Drugs Act Amendment Act, 1879 (42 & 43 Vict. c. 30), s. 3.*

The power conferred upon an inspector of nuisances under s. 3 of the Sale of Food and Drugs Act Amendment Act, 1879, to procure at the place of delivery a sample of milk in course of delivery to the purchaser in pursuance of a contract of sale cannot be exercised by an inspector outside the district for which he is appointed. **McNAIR v. CAVE** **Div. Ct. [1902] W. N. 194; [1903] 1 K. B. 24**

13. — *Milk—Written warranty—Future deliveries—Evidence in writing to connect particular consignment with warranty—Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63), s. 25.*

In Aug., 1905, a farmer contracted to supply the respondent with milk, and gave to the respondent a letter stating that he guaranteed

ADULTERATION—continued.

that the milk supplied by him to the respondent was perfectly pure and with all its cream. In Dec., 1905, milk was consigned to the respondent by the farmer and delivered to him under the contract, and the respondent subsequently sold a pint of that milk to the appellant as and for new milk, which upon analysis was found to contain 16 per cent. of added water. On an information against the respondent for having, contrary to the provisions of the Sale of Foods and Drugs Act, 1875, sold the milk not being of the nature, substance, and quality demanded by the appellant, the respondent relied on the warranty contained in the letter as a defence under s. 25 of the Act:—

Held, that a warranty relating to goods not in existence when the warranty is given may be a good warranty within s. 25; but *held* by Lord Alverstone C.J. and Darling J. (Ridley J. dissenting) that, in the absence of any evidence in writing connecting the particular milk sold to the appellant with the warranty, the warranty afforded no defence to the respondent.

Harris v. May, (1883) 12 Q. B. D. 97; *Laidlaw v. Wilson*, [1894] 1 Q. B. 74; and *Robertson v. Harris*, [1900] 2 Q. B. 117, followed. *Elliott v. Pilcher*, [1901] 2 K. B. 817, not followed. *Watts v. Stevens*—Div. Ct. [1906] W. N. 124; [1906] 2 K. B. 323

Note.

Distinguished by Div. Ct., *Evans v. Weatheritt*, [1907] 2 K. B. 80. See next Case.

14. — Milk — Written warranty — Future deliveries—Evidence in writing to connect particular consignment with warranty—Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63), s. 25.

By a contract in writing, the appellant agreed to purchase from a co. "the whole of the milk required for his dairy" for twelve months from Oct. 1, 1905, and the contract contained a warranty that all milk to be delivered by the co. to the appellant should be pure. In June, 1906, milk was delivered to the appellant by the co. under the contract accompanied by a delivery note, which shewed that the milk came from the co., but which did not in terms refer to the contract. Some of the milk was sold by the appellant, and was found upon analysis to have had 28 per cent. of milk fat abstracted from it. On an information against the appellant for having sold the milk contrary to the provisions of the Sale of Food and Drugs Act, 1875, the appellant relied on the warranty contained in the contract as a defence under s. 25 of the Act:—

Held that, as the warranty was by the contract expressly applied to all milk sold by the co. to the appellant during the specified period, the contract itself was sufficient evidence in writing to connect the particular consignment of milk with the warranty, and that the requirements of s. 25 had been satisfied.

Watts v. Stevens, [1906] 2 K. B. 323, distinguished. *EVANS v. WEATHERITT*—Div. Ct. [1907] 2 K. B. 80

15. — Milk as taken from cow deficient in fat—Sale of Food and Drugs Act, 1875 (38 & 39 Vict.

ADULTERATION—continued.

c. 63), s. 6—*Sale of article not of nature, substance, and quality of article demanded.*

It was proved on an information under the Sale of Food and Drugs Act, 1875, that the appellant, who was a milk-seller, supplied the respondent, an inspector under the Act, on being asked for new milk, with a liquid which had been taken direct from the cow, and had not been tampered with or adulterated, but which in consequence of the length of time which had elapsed since the cow had last been milked, was deficient in fat to an extent of 30 per cent., the remainder of the fat having been absorbed by the cow during the unduly long interval between the milkings:—

Held (by Lord Alverstone C.J. and Channell J., Darling J. dissenting), that the appellant was rightly convicted of having supplied the respondent with an article which was not of the nature, substance, and quality of the article demanded by him. *SMITHIES v. BRIDGE*

Div. Ct. [1902] 2 K. B. 13

16. — Milk prosecution — Defence — Written warranty — Application of warranty to future deliveries of milk—Evidence—Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63), s. 25.

In a prosecution under the Sale of Food and Drugs Act, 1875, for adulterating milk, where the deft. relies on s. 25 as a defence, it is sufficient if, in order to prove that he bought the milk in question with a written warranty, he prove that he had contracted with dairymen to supply him with milk daily; that they gave him a written warranty with respect to all milk which they should so supply, and that the milk in question was sold and supplied to him under that contract and warranty. He need not prove a specific written warranty with respect to each delivery; nor need there be evidence in writing to connect the milk in question with the warranty on which he relies.

Laidlaw v. Wilson, [1894] 1 Q. B. 74, followed.

Harris v. May, (1883) 12 Q. B. D. 97, and *Robertson v. Harris*, [1900] 2 Q. B. 117, not followed. *ELLIOT v. PILCHER*

Div. Ct. [1901] 2 K. B. 817

Note.

Not followed by Div. Ct., *Watts v. Stevens*, [1906] 2 K. B. 323. See No. 13, above.

17. — Practice—Appeal—Importation of margarine—Package not conspicuously marked—Appeal from conviction of Court of summary jurisdiction—Jurisdiction of Court of quarter sessions to hear appeal—Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63)—Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36)—Sale of Food and Drugs Act, 1899 (62 & 63 Vict. c. 51), s. 25.

Section 25 of the Sale of Food and Drugs Act, 1899, which provides that, unless the context otherwise requires, "an offence under this Act shall be treated as an offence under those Acts" (i.e., the Sale of Food and Drugs Acts), does not confer the right of appeal to a Court of quarter sessions from a conviction by a Court of summary jurisdiction, under s. 1 of the Act of 1899, of the offence of importing into the United

ADULTERATION—continued.

Kingdom margarine in packages not conspicuously marked.

So held by Ridley J. and Darling J., Bray J. dissenting.

REX v. OTTO MONSTED, LD. - Div. Ct. [1906] W. N. 143; [1906] 2 K. B. 456

18. — *Practice—Service of summons on limited company—Sale of Food and Drugs Acts—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 62.*

A summons to appear to an information under the Food and Drugs Acts can only be served on a limited co. in the manner prescribed by s. 62 of the Companies Act, 1862, by being left at or sent to the registered office of the co. PEARKS, GUNSTON & TEE, LD. v. RICHARDSON

Div. Ct. [1901] W. N. 226; [1902] 1 K. B. 91

19. — *“Prejudice of the purchaser”—Rum diluted with water—Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63), s. 6—Sale of Food and Drugs Act Amendment Act, 1879 (42 & 43 Vict. c. 30), s. 6.*

A notice exhibited by an innkeeper that “All spirits sold in this establishment . . . in order to comply with the Food and Drugs Act, will not be of any guaranteed strength” is not sufficient to bring to the mind of the purchaser the fact that the spirits sold are diluted to a strength below the standard provided by s. 6 of the Sale of Food and Drugs Act Amendment Act, 1879. Therefore, where rum is sold by the innkeeper consisting of 96·3 parts of rum of 25 degrees under proof as mentioned in s. 6 of the Act of 1879 and 3·7 parts of added water, the notice is not sufficient to protect the innkeeper from conviction under s. 6 of the Sale of Food and Drugs Act, 1875, for selling rum to the prejudice of the purchaser.

So held by Lord Alverstone C.J. and Ridley J. (Darling J. dissenting). DAWES v. WILKINSON - Div. Ct. [1906] W. N. 195; [1907] 1 K. B. 278

20. — *Sale by corporation—“Person”—Liability—“To the prejudice of the purchaser”—Knowledge of purchaser—Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63), s. 6—Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 2, sub-s. 1.*

The Sale of Food and Drugs Act, 1875, s. 6, enacts that no person shall sell to the prejudice of the purchaser any article of food or any drug which is not of the nature, substance, and quality of the article demanded by such purchaser, under a penalty not exceeding 20*l.* :—

Held, that a joint stock co. incorporated under the Companies Acts can be convicted of an offence under s. 6 :

Held, also, that a sale may be to the prejudice of the purchaser within s. 6, although the purchaser had special knowledge, not derived from information given by the seller, that the article sold was not of the nature, substance, and quality demanded by him. The test is whether the sale would have been to the prejudice of a purchaser who has not that special knowledge. PEARKS, GUNSTON & TEE, LD. v. WARD. HENNEEN v. SOUTHERN COUNTIES DAIRIES CO., LD.

Div. Ct. [1902] W. N. 88; [1902] 2 K. B. 1

ADULTERATION—continued.

21. — *Sample—Purchase for analysis—Mode of dividing sample—Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63), s. 14.*

Upon the hearing of an information under s. 6 of the Sale of Food and Drugs Act, 1875, it appeared that the purchaser asked the seller, a grocer, if he sold cream of tartar, and the seller produced a box containing penny packets labelled cream of tartar. The purchaser asked for, and was supplied with, four packets from the box, all of which were similar in size, outward appearance, and label, and paid fourpence for them; he then emptied the contents of the four packets into one heap and divided the whole quantity into three parts and sealed them up, handing one part to the seller, another to the public analyst, and retaining the third himself :—

Held, that each packet was not a separate article for the purposes of the Act, and that the mode in which the contents of the packets were dealt with by the purchaser was a sufficient compliance with the requirements of s. 14 of the Act.

Mason v. Cowdary, [1900] 2 Q. B. 419, distinguished. SMITH v. SAVAGE

Div. Ct. [1905] 1 K. B. 88

22. — *Time—Institution of prosecution—Sale of Food and Drugs Act, 1899 (62 & 63 Vict. c. 51), s. 19, sub-s. 1.*

By s. 19, sub-s. 1, of the Sale of Food and Drugs Act, 1899, a prosecution under the Sale of Food and Drugs Acts “shall not be instituted” after the expiration of twenty-eight days from the time of purchase :—

Held, that the laying of the information, and not the service of the summons, was the institution of the prosecution. BEARDSLEY v. GIDDINGS

Div. Ct. [1904] 1 K. B. 847

Note.

Distinguished by Div. Ct., Brooks v. Bagshaw, [1904] 2 K. B. 798, 801. See next Case.

23. — *Time—Institution of prosecution—Sale of Food and Drugs Act, 1899 (62 & 63 Vict. c. 51), s. 19, sub s. 1.*

By s. 19, sub-s. 1, of the Sale of Food and Drugs Act, 1899, a prosecution under the Sale of Food and Drugs Acts “shall not be instituted” after the expiration of twenty-eight days from the time of purchase.

An information was laid and a summons issued thereon within the twenty-eight days, but, the summons not having been served within the time prescribed by s. 19, sub-s. 2, of the Act, it was allowed to drop, and, after the expiration of the twenty-eight days, a fresh summons was applied for on the same information and issued :—

Held, that there having been no adjudication on the merits of the first summons, a second summons could be issued on the information; and that it was immaterial that the second summons was issued after the expiration of the twenty-eight days, the information, which was the institution of the prosecution, having been laid within that time. BROOKS v. BAGSHAW

Div. Ct. [1904] 2 K. B. 798

ADULTERATION—*continued.*

24. — *Time—Limit of time for proceedings—False warranty—Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63), s. 20—Sale of Food and Drugs Act, 1879 (42 & 43 Vict. c. 30), s. 10—Sale of Food and Drugs Act, 1899 (62 & 63 Vict. c. 51), s. 19; s. 20, sub-s. 6.*

Proceedings under s. 20, sub-s. 6, of the Sale of Food and Drugs Act, 1899, against the original vendor of an article of food or drug for giving a false warranty in writing in respect of it to a purchaser, must be commenced within six calendar months from the date of the giving of the false warranty. *WHITAKER v. POMFRET BROTHERS* — Div. Ct. [1902] W. N. 52; [1902] 1 K. B. 661

25. — *Time for return of summons—Practice—Sale of Food and Drugs Act, 1899 (62 & 63 Vict. c. 51), s. 19, sub-s. 2.*

By s. 19, sub-s. 2, of the Sale of Food and Drugs Act, 1899, it is provided that "In any prosecution under the Sale of Food and Drugs Acts the summons . . . shall not be made returnable in less time than fourteen days from the day on which it is served.

Held, that fourteen clear days must elapse between the date of service and that of return, *MCQUEEN v. JACKSON*

Div. Ct. [1903] W. N. 114;
[1903] 2 K. B. 163

ADULTERY.

See under DIVORCE.

ADVANCEMENTS AND ADVANCES—Administration—Abatement—Annuities immediate and reversionary—Deficient estate—Apportionment—Hotchpot.
See ANNUITY. 1.

— Building society—Infant member—Power to mortgage for advances — Purchase-money—Lien.
See BUILDING SOCIETY. 2.

— Hotchpot—Intestacy.
See DISTRIBUTIONS, STATUTE OF. 1.

— Hotchpot, Stipulation as to.
See under ADMINISTRATION.

— Husband and wife—Purchase of house—Joint tenancy — Purchase-money paid by husband — Advancement — Rebuttal — Decree of nullity of marriage.
See HUSBAND AND WIFE—Purchase. 1.

— Infant borrowing member — Mortgage — Repudiation.
See BUILDING SOCIETY. 2.

— Necessaries, Advancements for — Insurable interest—Agents in United Kingdom of foreign ship.
See INSURANCE (MARINE). 13.

— Will—Construction.
See under WILL—Advances.

ADVERTISEMENT HOARDINGS — Restrictive covenants—"Offensive" trade or business—"Building"—Mandatory injunction.
See BUILDING ESTATE. 1.

ADVERTISEMENT HOARDINGS—*continued.*

— Right to distrain—Fixtures—Landlord and tenant.
See DISTRESS. 3.

ADVERTISEMENTS—*Advertisements Regulation Act, 1907 (7 Edw. 7, c. 27), is an Act to authorize local authorities to make bye-laws respecting the exhibition of advertisements.*

— Advertisement sign — Attached to building — Offences—Limitation of time for commencement of proceedings.
See LONDON—Buildings. 23.

— Advertisement sign attached to front wall of building—"Building or structure."
See LONDON—Buildings. 2.

— Bankruptcy.
See under BANKRUPTCY — Advertisements.

— Company—Winding-up.
See under COMPANY—WINDING-UP—Advertisements, and under COMPANY — WINDING-UP — Practice.

— For claims against estate—Sureties dispensed with — Administration with will annexed.
See PROBATE—Administration. 3.

— House used for betting.
See GAMING. 4, 5.

— Industrial and provident societies—Dissolution — Advertisement of instrument while assets vested in society.
See INDUSTRIAL AND PROVIDENT SOCIETIES. 2.

— Liquidator—Negligence—Damages.
See COMPANY — WINDING-UP — Liquidator. 1.

— Notice of judgment—Service—Unregistered friendly society—Jurisdiction to wind up—Benefit society.
See FRIENDLY SOCIETY. 1.

— Obscene libel — Publication — Aiding and abetting.
See CRIMINAL LAW—Libel. 1.

— Patent.
See under PATENT—Advertisements.

— Patent—Petition for revocation — Motion to amend specification.
See PATENT—Practice. 7.

— Property for sale — Slander of title — Auctioneer cast in damages—Liability of principal.
See AUCTION. 1.

— Reward for return of stolen property—Penalty—Dog—"Any property whatsoever."
See CRIMINAL LAW—Larceny. 1.

— Trade mark—Company—Name or signature — Honest concurrent user.
See TRADE MARK. 28.

— Trade mark—Infringement—Circulars—Passing off goods—Delay—Costs.
See TRADE MARK. 9.

ADVERTISING STATION—Tenancy from year to year—Licence—Revocation—Notice. See **LICENCE**. 1.

ADVOWSON.

See under **ECCLESIASTICAL LAW—Advowson**.

— Advowson in gross—Foreclosure—Equitable mortgage—Stale demand—"Land." See **MORTGAGE—Advowson**. 1.

AFFIDAVIT—Admissibility—Issue as to appealable value to be decided by Court of Appeal.

See **NEW SOUTH WALES**. 26.

1. — *Affidavits not intitled in any matter, and in third person—R. S. C., 1883, Order XXXVIII., r. 2, 7.*

This was the hearing of a partition action in which the evidence was by agreement taken by affidavit. The plts. produced an affidavit sworn in the United States, which was not intitled in any cause or matter, as required by Order XXXVIII., r. 2; and was made in the third person instead of the first, as required by r. 7. It was stated that the practice in the United States was that all affidavits were sworn in the form adopted here, i.e., "Personally appeared before the undersigned authority A. B., who, being first duly sworn, deposes and says that he, &c." All parties desired that the affidavit should be allowed to be filed to avoid the great expense of getting it re-sworn.

Farwell J. said that in *Salvidge v. Tutton*, (1869) 20 L. T. 300, Malins V.-C. made the order on the footing that under the same circumstances the Court had made a similar order. That was in 1869; and on the same footing he would follow the two cases cited, and allow the affidavits to be admitted. **BLAMEY v. BLAMEY**

Farwell J. [1902] W. N. 138.

— Appeals, Affidavits on—Notice.

See under **APPEAL**.

— Attachment—Breach of injunction—Motion—Conflicting affidavits.

See **ATTACHMENT**. 2.

— Company—Winding-up—Petition—Statutory affidavit.

See **COMPANY—WINDING-UP—Practice**. 14.

— Consent by guardian ad litem—Practice—Evidence.

See **CONSENT**. 2.

— Costs—Affidavit relating both to general and to excepted issues.

See **COSTS**. 71.

— Cross-examination on—Issue whether particular person was partner—Jurisdiction to direct issue.

See **PARTNERSHIP**. 18.

— Debt—Acknowledgment—Affidavit for probate—Admission.

See **LIMITATIONS, STATUTE OF**. 1.

— Deed of arrangement with creditors—Contents of debtor's affidavit—Registration. See **FRAUDULENT CONVEYANCE**. 1.

AFFIDAVIT—continued.

— Defect in swearing of affidavit.

See **BANKRUPTCY—Arrangement**. 2.

— Discovery—Affidavit of documents—Conspiracy—Criminal offence—Practice.

See **DISCOVERY**. 1.

— Discovery—Affidavit of documents—Further affidavit—"Specific documents."

See **DISCOVERY**. 2.

— Discovery—Affidavit of ship's papers—Partial land transit.

See **INSURANCE (MARINE)**. 20.

— Discovery of documents—Further affidavit of documents—Relevancy of document—Discretion—Practice.

See **DISCOVERY**. 2, 3.

— Fitness—Appointment of trustees—Compound settlement, Trustees of—Power of appointing—Solicitor of tenant for life—Existing trustees.

See **SETTLED LAND—Trustees**. 3.

— For leave to issue judgment summons against partner—Practice.

See **COUNTY COURT—Practice**. 1.

— Infant defendant—No defence—Motion for judgment—Evidence by affidavit.

See **PRACTICE—Infants**. 2.

— Jurisdiction—Insufficiency of affidavit—Form of affidavit—Prohibition.

See **COUNTY COURT—Practice**. 2.

— Married woman—Pauper—Leave to sue in forma pauperis—Affidavit by husband.

See **HUSBAND AND WIFE—Poor Law**. 1.

2. — *Office copy—Inaccuracy—R. S. C., 1883, Order XXXVIII., r. 15; Order LXVI., r. 7.*

The application was based on an affidavit by the plt. which his Lordship, after careful scrutiny, held to be insufficient to enable him to make an order. Later in the day it was discovered that the office copy, which had been prepared by the plt.'s solicitor and verified in the Central Office, was inaccurate and differed from the original.

Buckley J. thereupon sent for the original affidavit; reheard the motion; made an order; and adjourned the case till the next day to enable inquiries to be made into the causes of the mistake.

Buckley J. said that such mistakes ought not to occur. There was a system of preparing office copies which was intended to ensure that copies should be accurate. The practice in the office was that where an affidavit exceeded four folios in length a writer read it out to another writer, who was paired with him, and the second writer compared it with and corrected the copy. Then both of them put their initials on the copy so that they might be responsible for its accuracy. In this case that system of having a second writer was not followed, because, as was alleged, the copy was wanted for immediate use and the second writer was absent. The writer did not see the mistake, and he put his initials on the copy with the letters C.p.d., which were meant to show that it had been compared with the original. There were two matters which ought

AFFIDAVIT—*continued.*

to receive the censure of the Court. In the first place, the writer who read the copy ought to be censured. Of course everybody was fallible, but the object of the system was that copies should be true. Then there was a higher censure which ought to be pronounced, inasmuch as the usual practice was not followed. The fact that the copy was wanted immediately was no reason for departing from the usual practice. When that was the case the original affidavit could be brought in and handed to the Court, and it could be sent back to the office afterwards. He regretted that the proper practice was not followed in this case, and he hoped that more care would be taken in future. *COLEMAN v. COLEMAN* - Buckley J. [1905] W. N. 160

— Pauper—"Not worth 25*l*."—Married woman plaintiff—Affidavit of want of means.
See HUSBAND AND WIFE—Poor Law. 1.

— Payment out of personalty—Affidavit of no incumbrances not required.
See PRACTICE—Payment out of Court. 1.

— Pedigree—Petition of right—Affidavit on information required from solicitor.
See EVIDENCE. 9.

— Petition—Affidavit that settlement does not affect funds—Certificate of counsel.
See PRACTICE—Payment out of Court. 6.

3. — Scandalous matter — Striking out —
Extracts from letters written without prejudice — Practice—R. S. C., Order XXXVIII., r. 11.

Upon an application by a mortgagor for an order to tax a bill of costs of the mortgagee's solicitor, the solicitor filed an affidavit which contained extracts from certain letters written by the mortgagor's solicitors to him without prejudice with a view to shewing that there had been a settlement of this bill. Thereupon the mortgagor applied that so much of the affidavit as set out extracts from the letters in question, which he alleged applied only to other bills of costs, might be struck out as being embarrassing, vexatious, and oppressive.

Joyce J. dismissed the application with costs.

The C. A. dismissed the appeal.

The Master of the Rolls said that the application was misconceived. For many purposes letters written without prejudice might be read, and the proper time for objecting that they were inadmissible in evidence was when the summons came on for hearing, when all the facts were before the Court. It would be a very bad example to decide the question of admissibility at this preliminary stage.

Buckley L.J. said that under Order XXXVIII., r. 11, it was settled that the Court would strike out from an affidavit matter which was both scandalous and irrelevant; it would not strike out matter which was scandalous but not irrelevant, nor matter which was irrelevant but not scandalous. Beyond that the Court had an inherent jurisdiction to take oppressive documents off the file. But neither under the rule nor under the inherent jurisdiction of the Court

AFFIDAVIT—*continued.*

was there any such practice as was contended for by the applicant. *In re JESSOPP* - C. A. [1910] W. N. 128

— Service, Affidavit of—Necessaries—Default action in rem—Specially indorsed writ.
See SHIPPING—Practice. 11.

— Shipping—Limitation of liability—Loss of life or personal injury.
See SHIPPING—Limitation of Liability. 3.

— Short cause.
See under PRACTICE—Short Cause.

— Striking out pleadings—Summons—Affidavit—Admissibility.
See PRACTICE—Pleadings. 4.

— Verification of petition for judicial separation—Proposed petitioner an inmate of an asylum.
See DIVORCE—Practice. 2.

— Writ—Affidavit in support—Foreign litigant.
See PRACTICE—Writ. 2.

— Writ of extent—Affidavit of debt and danger—Sufficiency of affidavit—Motion to set aside writ.
See REVENUE—Writ of Extent. 1.

AFFILIATION—Bastardy.

See under BASTARDY.

— Res judicata—Affiliation proceedings—Paternity of child—Judgment of quarter sessions—Action for seduction.
See ESTOPPEL. 3.

AFFREIGHTMENT — Contract of — Ship —
Damage to goods—Unseaworthiness.
See SHIPPING—Charterparty. 24.

— Contract of—Ship.
See SHIPPING—Charterparty. 24.

AFRICA—*South Africa Act, 1909 (9 Edw. 7, c. 9), is an Act to constitute the Union of South Africa.*

— *South Africa, Union of—Proclamation, Dec. 2, 1909, uniting the Colonies of the Cape of Good Hope, Natal, the Transvaal, and the Orange River Colony in a Legislative Union under one Government under the name of the Union of South Africa. St. R. & O. 1909, No. 1460. Price 1*d*.*

— Cape of Good Hope.
See under CAPE OF GOOD HOPE.

— Foreign jurisdiction.
See under FOREIGN JURISDICTION.

— Natal, Laws of.
See under NATAL.

— Transvaal.
See under TRANSVAAL.

AFTER-ACQUIRED PROPERTY—Bankruptcy.
See under BANKRUPTCY—Undischarged Bankrupt.

— Covenant by husband to settle—Bankruptcy of husband.
See BANKRUPTCY—Settlement. 1.

AFTER-ACQUIRED PROPERTY—*continued.*

— Covenant to settle—Settlement.
See under SETTLEMENT.

— Undischarged bankrupt.
See BANKRUPTCY — Undischarged Bankrupt. 1.

— Will — Satisfaction — Persons derivatively entitled—Election.
See WILL—Satisfaction. 1.

AGENT—House agent—Authority of—Agreement for lease.
See LANDLORD AND TENANT. 40.

— Principal and agent.
See under PRINCIPAL AND AGENT.

— Will—Reduction—Agent alleged to benefit under will prepared by him—Suspicion—Defect in attestation.
See SCOTTISH LAW. 30.

AGGREGATION—Charges—Collective devise of real estates—Exoneration of personal estate.
See WILL—Exoneration. 2.

AGREEMENT.

See under CONTRACT.

— Workmen's compensation.
See under MASTER AND SERVANT—Compensation.

AGREEMENT TO REFER—Arbitration.
See under ARBITRATION—Agreement to Refer.

AGRICULTURE.

(Agriculture and Fisheries.)

Agriculture Act, 1896, &c., Continuance Act, 1905 (5 Edw. 7, c. 8), extends the Agricultural Rates Act, 1896, &c., Continuance Act, 1901 (1 Edw. 7, c. 13).

Board of Agriculture and Fisheries Act, 1903 (3 Edw. 7, c. 31), transfers to the Board of Agriculture powers and duties relating to the industry of fishing and amends the Board of Agriculture Act, 1889 (52 & 53 Vict. c. 30).

Diseases of Animals Act, 1903 (3 Edw. 7, c. 43), amends the Diseases of Animals Act, 1894, in relation to sheep scab.

Agricultural Holdings Act, 1906 (6 Edw. 7, c. 56), amends the law relating to Agricultural Holdings.

Agricultural Holdings Act, 1908 (8 Edw. 7, c. 28), consolidates the enactments relating to Agricultural Holdings in England and Wales.

Board of Agriculture and Fisheries Act, 1909 (9 Edw. 7, c. 15), is an Act to enable a Second Secretary to be appointed for the Board of Agriculture and Fisheries.

The County Court (Agricultural Holdings) Rules, 1909. Dated Feb. 11, 1909. Rules and Fees under Agricultural Holdings Act, 1908. St. R. & O. 1909, No. 141, 4, (2).

— Agricultural Holdings Act — Landlord' and tenant.
See under LANDLORD AND TENANT.

— Agricultural property—Estate duty—Land in the occupation of a tenant.
See REVENUE—Estate Duty. 1.

— Board of Agriculture and Fisheries—Application by committee to—Compensation for extinguishment of commonable rights — Payment to de facto committee.
See COMMON LANDS. 1.

— Education—Child employed in agriculture—Exemption from school attendance.
See SCHOOLS. 1.

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See MASTER AND SERVANT—Compensation. 15, 16.

— Locomotive—Licence—Exemption — "Agricultural locomotive"—Hauling wheat to mill to be ground.
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— Locomotive used solely for agricultural purposes—Threshing and hauling.
See HIGHWAY. 13.

— Rates.
See under RATES.

— Small holdings and allotments.
See under SMALL HOLDINGS AND ALLOTMENTS.

— Small Holdings and Allotments (Costs) Rules, 1910.
See under SMALL HOLDINGS AND ALLOTMENTS.

— Workmen's Compensation Act.
See MASTER AND SERVANT—Compensation. 15, 16.

AGRICULTURAL HOLDINGS (SCOTLAND) ACT, 1908.
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AIDING AND ABETTING—Conviction—Evidence—Motor car.
See JUSTICES. 15.

— Motor car—Breach of statutory regulation—Mens rea—Negligence—Corporation.
See MOTOR CAR. 1.

— Obscene libel—Publication—Advertisements in a newspaper.
See CRIMINAL LAW—Libel. 1.

AIR.

See under LIGHT AND AIR.

ALBERTA.

See under CANADA.

ALEHOUSES.

See under LICENSING ACTS.

ALEXANDRA (NEWPORT AND SOUTH WALES) DOCKS AND RAILWAY ACT—Negligent navigation—Damage to dock.
See NEGLIGENCE. 5.

ALIENATION—By “devisee”—Real assets—Devise on trust—Mortgage of equitable estate — Purchaser — Priority over creditor of testator.

See **ADMINISTRATION**. 26.

— Conditions in restraint of alienation—Enjoyment of usufruct — Grandchildren conditionally substituted—No right of accretion.

See **CANADA—Will**. 2.

— Convict—Administrator—Estate tail—Power to disentail—Forfeiture.

See **FELONY**. 2.

— Fine on — Ancient demesne — Freehold — Custom — Foreigner — Evidence — Statute Quia Emptores—Prescription.

See **MANOR**. 1.

— Forfeiture on—Act of bankruptcy—Adjudication—Date of vesting.

See **BANKRUPTCY—Dividends**. 1.

— Forfeiture on—Will—Life interest—Garnishee order.

See **WILL—Forfeiture**. 5.

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— Real estate—Bona fide alienation—General creditors—Fraudulent Devises Act.

See **ADMINISTRATION**. 26.

— Restraint on alienation—Charge on future income—Ambiguous instrument.

See **WILL—Forfeiture**. 3.

— Restraint on alienation—Sale of property subject to—Fidei commissum conditionale.

See **CAPE OF GOOD HOPE**. 13.

— Succession duty—Tenant for life—Remainder in tail—Disentailing deed—Succession derived from alienee.

See **REVENUE—Succession Duty**. 5.

— Will—Forfeiture of life interest—“Alienate or incumber”—Petition in bankruptcy by tenant for life.

See **WILL—Forfeiture**. 1.

— Will—Forfeiture or alienation—Cancellation of charge before income payable.

See **WILL—Forfeiture**. 2.

ALIENS—*Aliens Act*, 1905 (5 *Edw.* 7, c. 13), amends the law with regard to aliens.

See also under **NATURALIZATION**.

The Summary Jurisdiction (Aliens) Rules, 1906, dated Jan. 3, 1906. Reprint from *W. N.* 1906 (Jan. 27), p. 53. See **CURRENT INDEX**, 1906, p. lxvii.

— *Order of the Secretary of State for the Home Department*, dated March 9, 1906, under the *Aliens Act*, 1905 (5 *Edw.* 7, c. 13), defining “immigrant ship.” *St. R. & O.*, 1906, No. 199. Price 1d.

Rule, dated March 20, 1906, made by the *Secretary of State for the Home Department*, under the *Aliens Act*, 1905 (5 *Edw.* 7, c. 13), as to attendances of reporters at meetings of immigration boards. *St. R. & O.*, 1906, No. 229.

Order of the Secretary of State for the Home Department, dated Dec. 16, 1907, under the *Aliens*

ALIENS—continued.

Act, 1905 (5 *Edw.* 7, c. 13), as to returns of alien passengers. *St. R. & O.*, 1907, No. 977.

Regulation, May 9, 1910, as to the oath of allegiance to be taken and subscribed in pursuance of the *Naturalization Act*, 1870. *St. R. & O.*, 1910, No. 454. Price 1d.

Rule, May 11, 1910, under the *Aliens Act*, 1905. *St. R. & O.*, 1910, No. 565. Price 1d.

— Compensation for death—Negligence of British subject—Cause of action arising on high seas.

See **NEGLIGENCE**. 1.

— High treason — Resident alien’s duty of allegiance—Special leave to appeal.

See **NATAL**. 5.

— Naturalization and aliens—Privileges conferred or withheld after naturalization.

See **CANADA—Aliens**. 1.

— Power to expel and deport aliens.

See **CANADA—Aliens**. 2.

1. — *Undesirable alien—Stowaway—Expulsion order—Expenses incidental to deportation—Liability of master of ship bringing alien to the United Kingdom—Aliens Act*, 1905 (5 *Edw.* 7, c. 13), s. 4.

Where the Secy. of State makes an order for the expulsion of an alien under the *Aliens Act*, 1905, and pays the expenses incidental to the alien’s deportation under s. 4, sub-s. 1, he may under sub-s. 2 recover the sums so paid by him from the master of the ship in which the alien was brought to the United Kingdom, notwithstanding that the alien had, by secreting himself on board the ship as a stowaway, caused himself to be brought here without the master’s consent. *ATT.-GEN. v. SUTCLIFFE*

Bray J. [1907] *W. N.* 191; [1907] 2 *K. B.* 997

ALIMONY—Divorce.

See under **DIVORCE—Alimony**.

ALKALI, &c. WORKS REGULATION ACT, 1906 (6 *Edw.* 7, c. 14).

ALL ESTATE CLAUSE—Conveyance by husband and wife of moiety of wife’s land — Husband’s rent-charge not mentioned — Release of grant.

See **DEEDS**. 6.

ALLOTMENT—Company.

See under **COMPANY—Allotment**.

ALLOTMENTS, SMALL HOLDINGS AND.

See under **SMALL HOLDINGS AND ALLOTMENTS**.

ALLOWANCE—*Dum casta et sola vixerit*—Allowance to be secured to guilty wife — Restrictive conditions

See **DIVORCE—Practice**. 15.

— Nullity—Insanity—Decree nisi—Application on behalf of respondent for an allowance.

See **DIVORCE—Nullity**. 5.

— Nullity of marriage—Decree—Petition for an allowance—“Conduct of the parties” — Discretion of the Court.

See **DIVORCE—Nullity**. 2.

"**ALMSHOUSE**"—Landlord's property tax—Inhabited house duty—Exemptions.
See **REVENUE—House Duty.** 5.

"**ALTERATION**"—Clock fixed to outside of house—Breach of lessee's covenant.
See **LANDLORD AND TENANT.** 7.

— Club—Rules—Power to alter—Fundamental objects.
See **CLUB.** 1.

— Company—Memorandum and articles of association.
See under **COMPANY—Memorandum.**

— Deed—Alteration after execution—Imperfect execution—Filling up blanks—Alteration of date—Immaterial alteration.
See **DEEDS.** 2.

— Name of party—Misdescription.
See **DEEDS.** 1.

— Trade union—Objects of union—Rules, Alteration of—Ultra vires.
See **TRADE UNION.** 4.

— User—Railway—Accommodation works—Agricultural land.
See **RAILWAY—Level Crossings.** 1.

— Will.
See under **WILL—Alteration.**

ALTERATIONS—Negative covenants—Assignment of lease—Indemnity.
See **LANDLORD AND TENANT.** 52.

ALTERNATIVE ABSOLUTE GIFTS—Will—Construction.
See **CANADA—Will.** 3.

ALTERNATIVE CLAIM—Costs—Scale.
See **COUNTY COURT—Costs.** 9.

ALTERNATIVE DEFENDANTS—Costs—Jurisdiction—"Good cause"—Practice.
See **COSTS.** 31.

ALTERNATIVE GIFTS—Will—Construction.
See under **WILL—Alternative Gifts.**

ALTERNATIVE LIABILITY—Election—Judgment signed against one of two defendants.
See **HUSBAND AND WIFE—Liability.** 1.

AMALGAMATION—Company.
See under **COMPANY—Amalgamation.**
— Railway Company.
See under **RAILWAY—Amalgamation.**

AMBIGUITY—Bill of sale—Instalments including both principal and interest—Construction.
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— Lease—Explanation by reference to counterpart—Forfeiture—Waiver.
See **LANDLORD AND TENANT.** 8.

— Will—Construction.
See under **WILL—Ambiguity.**

— Will—Latent ambiguity—Name—Misdescription—Extrinsic evidence—Instructions—Admissibility.
See **WILL—Name.** 1.

AMBULANCES—*Metropolitan Ambulance Act, 1909 (9 Edw. 7, c. 17), is an Act to enable the London County Council to establish and maintain an ambulance service in London.*

Local authority may provide an ambulance. See Public Health Acts Amendment Act, 1907 (7 Edw. 7, c. 53), s. 50.

Power to establish ambulances. See Metropolitan Ambulances Act, 1909 (9 Edw. 7, c. 17).

AMENDMENT.

— Bankrupt — Shareholder — Amendment of proof—Inadvertence.
See **COMPANY—Bankrupt.** 1.

— Bankruptcy notice — Irregularity — Notice founded on two judgment debts.
See **BANKRUPTCY—Notice.** 8.

— Costs—Date of marriage wrongly stated in petition and decrees—Motion to amend—Order.
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— Costs of action for compensation—Irregular amendment of notified valuation—New South Wales Public Works Act.
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— Delivery of pleadings—Power of arbitrator to allow amendment of pleadings.
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— Discontinuance of Action—Delivery of amended statement of claim.
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— Franchise—Registration—Omission of one of two Christian names—Power to amend.
See **PARLIAMENT.** 17.

— Gaming—New consideration—Amendment of pleadings at trial.
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— Joinder of Attorney-General—Necessity for—Amendment — Terms — Pontypridd Waterworks Act.
See **WATER.** 18.

— Judgment signed for too large an amount—Default of appearance—Accidental slip—Practice.
See **JUDGMENT.** 2.

— Jurisdiction—Remitted action—Claim for unliquidated damages.
See **COUNTY COURT—Jurisdiction.** 7.

— Larceny—Indictment—Separate property of wife laid as property of husband.
See **CRIMINAL LAW—Larceny.** 9.

— Meetings—Notice—Special resolution.
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— Patent—Infringement—Invalidity—Amendment of specification.
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— Patent—Particulars of objection—Leave to amend—Form of order.
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- Pleadings—Ouster of jurisdiction—Omission to plead—Trial of action.
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- Proof inadvertence—Company—Bankrupt shareholder—Lien on shares.
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- Proof—Time—Secured creditor—Increase in value of security.
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- Proof of debt—Secured creditor—Omission to value security—"Inadvertence."
See COMPANY—WINDING-UP—Proof. 1.
- Writ—Default in appearance—Statement of claim filed—Subsequent amendment of writ.
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- American Company—Investment, Trust for—Railway or other "public company."
See WILL—Investments. 4.
- Bill of lading—Harter Act (Act of Congress of U. S. A., 1893), s. 3.
See SHIPPING—Charterparty. 19.

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See under CANADA.

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AMERICAN "HARTER ACT"—Bill of lading—Untrue statement as to condition of goods—Liability of shipowner—Measure of damages.
See SHIPPING—Charterparty. 19.

AMERICAN LAW—Divorce—Judgment in rem—Foreign Court—Domicil—Jurisdiction—Decree of divorce by New York Court—Validity of divorce in England.
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ANCHOR—Fouling of cable by anchor—Sacrifice of anchor—Compensation—Measure of Damages.
See TELEGRAPH. 2.

- Policy—Collision between vessels, What is—Vessel riding at anchor—Collision with anchor.
See INSURANCE (MARINE). 8.

ANCHOR LIGHT—Collision—Salvage—Towing lights—"Under way."
See SHIPPING—Collision. 4.

ANCIENT DEMESNE—Fine on alienation—Statute Quia Emptores—Prescription.
See MANOR. 1.

ANCIENT LIGHTS.

See under LIGHT AND AIR.

ANCIENT MONUMENTS PROTECTION.

See under MONUMENTS (ANCIENT) PROTECTION ACT.

ANGLO-FRENCH CONVENTION ACT, 1904.

(4 Edw. 7, c. 33).

See under FRANCE.

ANIMALS—*Injured Animals Act, 1907, 7 Edw. 7, c. 5, re-enacts with amendments the Injured Animals Act, 1894 (57 & 58 Vict. c. 22).*

Diseases of Animals Act, 1909 (9 Edw. 7, c. 26).

Diseases of Animals Act, 1910 (10 Edw. 7 & 1 Geo. 5, c. 20).

— *The Humane Slaughtering of. Circular, March 20, 1908. 1908 (R.—Loc. Govt. Bd.). Price 1d.*

— Cruelty to animals.

See under CRUELTY TO ANIMALS.

— Diseases of Animals.

See under DISEASES OF ANIMALS.

— Diseases of Animals Act—Stranded vessel—Expenses of burial.

See SHIPPING—Burial. 1.

— Savage animal.

See under SAVAGE ANIMAL.

ANIMUS POSSIDENDI—Foreshore—Crown, Rights of—Adverse possession, Title by—Intention.

See SEASHORE. 2.

ANNEXATION—International law—Liabilities of conquered State—Creditor's rights against conqueror.

See PETITION OF RIGHT. 1.

— Native State—Confiscation—Assumption of guardianship by Government—Jurisdiction of municipal Courts.

See ACT OF STATE. 1.

ANNUITY — *Administration — Abatement — Annuities, immediate and reversionary — Deficient estate—Mode of apportionment—Hotchpot.*

A testator gave an annuity of 400*l.* to his wife, to be paid in preference to all other bequests, and subject thereto he gave an annuity of 160*l.* to his son and of 460*l.* to Mrs. S. for life with remainder to her children in the proportions therein mentioned; and he gave his trustees power, if the income was insufficient, to raise the annuities by mortgage of his real estate. For five years all the annuities were paid in full partly out of moneys raised by mortgage. The estate was then found insufficient, and for the rest of the widow's life her annuity only was paid, and this had to be paid partly out of capital. On the widow's death the residue of

ANNUITY—continued.

the estate was insufficient to pay the arrears of annuities. In settling the proportions of abatement the question was raised whether the sums received by the immediate annuitants during the first five years ought to be brought into hotchpot:—

Held, on principle, that as the income of the testator's estate, during the first five years after his death, could never have been applicable in payment of the reversionary annuities, the annuitants in possession were not bound to bring into hotchpot sums received out of income:

Held, also, on the construction of the particular will, that the trustees might have exhausted the whole of the estate in payment of the immediate annuities, and therefore the sums paid out of capital need not be brought into hotchpot.

Potts v. Smith, (1869) L. R. 8 Eq. 683, considered. *In re METCALF*. *METCALF v. BIENCOWE*.

Farwell J. [1903] W. N. 89; [1903] 2 Ch. 424

2.—Administration — Annuity — Pecuniary legacies — Deficiency of assets — Valuation of annuity — Right of annuitant to payment of amount.

Testatrix by her will, after giving certain pecuniary legacies, bequeathed to her husband an annuity of 1*l.* a week during his life, and directed her trustees to appropriate and set apart and invest such sum of money as would when invested produce by the income thereof an annual sum equal to the amount of the annuity and to apply the income or (if necessary) the corpus of the fund so appropriated in payment of the annuity, which sum should on the dropping of the annuity fall into and form part of her residuary trust estate. And she devised and bequeathed the residue of her real and personal estate to her trustees upon trust for sale and conversion and payment of her debts, funeral and testamentary expenses, and legacies, and to invest the moneys which should remain in certain investments, and to hold such investments upon certain trusts for the benefit of her son.

The estate of the testatrix was insufficient to pay the pecuniary legacies and to set apart a sum sufficient to answer the annuity to her husband in full. It was, however, sufficient to pay the pecuniary legacies and the value of the annuity as at the date of her death:—

Held, that the proper course for the trustees to adopt was to value the annuity as at the date of the death of the testatrix according to the Government scale and to pay the amount of such valuation to the annuitant or invest it in the purchase of an annuity, as he should choose, and to pay the pecuniary legacies in full.

Wright v. Callender, (1852) 2 D. M. & G. 652, applied. *In re COTTRELL*. *BUCKLAND v. BEDINGFIELD*. **Warrington J. [1910] W. N. 21; [1910] 1 Ch. 402**

3. — Charge on income or capital—Direction to pay out of income—Indefinite period—Absolute gift of corpus “subject to the aforesaid annuities”—Will—Construction.

A testator, by his will, gave his real and the

ANNUITY—continued.

residue of his personal estate to his brother upon trust for sale and conversion, and to hold the proceeds “upon trust to pay out of the income thereof the sums following, that is to say” one clear annuity to each of the three depts. for her separate use without power of anticipation, and “subject to the aforesaid annuities” the testator directed that the fund should be held upon trust for his brother absolutely.

The income had recently proved insufficient for the payment in full of the annuities:—

Held, having regard to the terms of the gift over, that the annuities were a charge upon the corpus.

Decision of *Joyce J.*, [1909] W. N. 30; [1909] 1 Ch. 485, varied. *In re HOWARTH*. *HOWARTH v. MAKINSON* **C. A. [1909] W. N. 116; [1909] 2 Ch. 19**

Note.

Referred to by *C. A.* *In re Watkins' Settlement*, [1910] W. N. 232. *See No. 9, below.*

— Company—Irredeemable debenture stock—Floating charge—Perpetual annuity—Borrowing.

See COMPANY—Debentures. 20.

— Contingent liability—Capital and income—Apportionment.

See SETTLED LAND—Capital or Income. 20.

— Covenant to pay annuity for separate use of wife without power of anticipation—Right to annul the covenant on notice to trustee.

See AUSTRALIA. 2.

— Covenant to settle after-acquired property—Life interest.

See SETTLEMENT. 16.

4. — Death of annuitant before probate—Right to value annuity—Will—Direction to purchase annuity of specified amount.

A testator by his will directed his trustees out of the proceeds of sale and conversion of his estate, after payment of his debts, and funeral and testamentary expenses, to purchase in the name of his wife a Government annuity of 400*l.* for her life. The wife survived the testator, but died sixteen days later, before the will was proved or any of the debts were paid:—

Held (affirming the decision of *Swinfen Eady J.*, [1906] W. N. 184; [1906] 2 Ch. 648), that the annuity, and the right to take its value in cash instead of the annual payment, vested in the widow on the testator's death, and that therefore her legal personal representatives were entitled to such a sum as would, at the date of the testator's death, have purchased the annuity.

Dawson v. Hearn, (1831) 1 Russ. & My. 606, observed upon. *In re ROBBINS*. *ROBBINS v. LEGGE* — **C. A. [1907] W. N. 109; [1907] 2 Ch. 8**

Note.

See In re Brunning, *Neville J.*, [1908] W. N. 243; [1909] 1 Ch. 276. *See No. 7, below.*

ANNUITY—continued.

5. — *Direction to pay out of income—Alternative gift—Charge on corpus—Continuing charge on income—Will—Construction.*

A testator gave all his residuary real and personal estate to trustees upon trust for sale and conversion and investment, and to hold the same "In case I shall leave any child living at my decease then upon trust to pay to my said wife during her life and so long as any child of mine shall be living such a sum out of the income of my residuary trust funds as with the income which my said wife shall from time to time receive under or by virtue of the settlement made on our marriage shall make up the total annual income of 8000*l.* But in case I shall leave no child surviving me or leaving such every such child shall die in the lifetime of my wife then upon trust to pay to her during her life such further sum as with the income to be derived from the said settlement shall make up the annual sum of 10,000*l.* and I direct that the said annual sums of 8000*l.* or 10,000*l.* as the case may be shall be deemed to commence and be payable as from my death and subject to the trusts aforesaid in trusts to divide my said residuary trust funds unto and equally between all and every of my children" who shall attain twenty-one or marry. "But in case I shall leave no child surviving me who shall take a vested interest in my said residuary trust funds then subject to the trusts aforesaid I give and bequeath the same to my nephew H." There was no child of the marriage, and the income of the testator's residuary estate was insufficient to pay the annuity :—

Held by Vaughan Williams and Buckley L.JJ. (dissentiente Fletcher Moulton L.J.), that the direction to pay out of income, though expressed only in the case of the 8000*l.* annuity, applied also to the 10,000*l.* annuity, and that this direction charged the annuity only on income during the widow's life, and did not create either a charge on the corpus or a continuing charge on the income. *In re* BODEN. BODEN v. BODEN

C. A. [1906] W. N. 212; [1907] 1 Ch. 132

Note.

Discussed by C. A., *In re Howarth*, [1909] 2 Ch. 19, 22. See No. 3, above.

Referred to by C. A., *In re Watkins' Settlement*, [1910] W. N. 232. See No. 9, below.

6. — *Direction to pay out of income—Continuing charge on income—Will—Construction.*

There is no rule of construction that a direction to pay an annuity out of the income of a residuary estate, without any words limiting the direction to current income, creates a continuing charge upon income. The intention to create such a charge must be found in the will.

B. by will gave her residuary estate to trustees upon trust to realize and invest, and out of the income thereof to pay certain annuities, and subject thereto to pay the income to T. for her life, and after her death to raise out of the capital thereof certain legacies and, "subject to the trust aforesaid," to hold the trust premises and the income thereof in trust for certain named persons in equal shares. The income of the

ANNUITY—continued.

testatrix's estate was insufficient to pay the annuities in full :—

Held, that the annuities were not charged upon the corpus, and were not a continuing charge upon the income, but only on the current income, and must fail so far as the current income was insufficient to meet them. *In re* BIGGE. GRANVILLE v. MOORE. Neville J. [1907] W. N. 94; [1907] 1 Ch. 714

Note.

See *In re Howarth*, [1909] 1 Ch. 485; C. A. [1909] W. N. 116; [1909] 2 Ch. 19. See No. 3, above.

Can no longer be cited as a binding authority by C. A. *In re Watkins' Settlement*, [1910] W. N. 232. See No. 9, below.

7. — *Direction to purchase annuity—Death of annuitant before purchase—Right of annuitant's administratrix to capital value of annuity—Interest—Will—Construction.*

A testator bequeathed an annuity to his sister for life to commence from his decease and to be paid by equal quarterly payments, and directed his executors to provide for the annuity by purchasing a Government annuity. The testator died on Sept. 21, 1907, and on Dec. 20, 1907, his executors made the first quarterly payment of the annuity. The annuitant died on Mar. 16, 1908, before the Government annuity had been purchased :—

Held, that her legal personal representative was entitled to such a sum as would have purchased the annuity on Dec. 20, 1907—that being the date up to which the annuity had been paid—with interest on that sum from that date at the rate of 4 per cent. per annum. *In re* BRUNNING. GAMMON v. DALE

Neville J. [1908] W. N. 243; [1909] 1 Ch. 276

8. — *Duration—Will—Annuity to wife "so long as she remains unmarried"—Death of wife unmarried.*

A testator directed his executor to set aside 200*l.* and thereout pay the testator's wife 3*l.* monthly so long as she remained unmarried, or until the 200*l.* became exhausted, the said payment of 3*l.* monthly to cease on the wife marrying again.

The wife died unmarried before the 200*l.* was exhausted :—

Held, that her executrix was entitled to the balance.

Rishton v. Cobb, (1839) 5 My. & Cr. 145, 152; 48 R. R. 256, followed. *In re* HOWARD. TAYLOR v. HOWARD.

Farwell J. [1901] W. N. 15; [1901] 1 Ch. 412

— Estate duty.

See under REVENUE—Estate Duty.

WILL—Testamentary Expenses. 4—16.

— Estate duty—Gift to charitable society—Reservation of annuity to donor.

See REVENUE—Estate Duty. 30.

— Gift in remainder—Artificial class—Time of ascertainment.

See WILL—Next of Kin. 1.

9. — *Income or corpus—Annuity expressed to be payable out of income followed by gift over "subject thereto"—Settlement—Construction.*

ANNUITY—continued.

By a settlement, dated in 1872, made on the marriage of Mr. and Mrs. Watkins, the husband conveyed and transferred certain real estate and certain funds and securities thereafter called the trust fund to the trustees of the settlement upon trust after his death "out of the rents and profits of the said hereditaments and premises and the income of the said trust fund" to pay to the wife "the clear yearly sum of 400*l.*" in the manner and at the times therein mentioned during her natural life; "and subject thereto" if there should be children of the marriage, upon the trusts therein mentioned, and if there should be no such children, "upon trust after paying out of the rents and profits of the said real estate and the income of the said trust fund and personal estate" to the wife "the said clear yearly sum of 400*l.* during her life in manner and at the times aforesaid and subject thereto," in trust for the husband, his heirs, executors, administrators and assigns. The settlement also conferred on the trustees powers to sell, exchange, and partition during the life of the husband, with his consent, and during the minority of any child of the marriage at their discretion, "free and discharged from all the uses, trusts and powers then subsisting in or of the hereditaments so sold or disposed of by way of exchange or partition, including the said annual sum of 400*l.*, which shall thereupon become charged on the proceeds thereof as aforesaid." The husband died without issue and the widow married a Mr. Wills.

The income of the settled estate having become insufficient to pay the annuity in full, Mr. and Mrs. Wills took out an originating summons for the determination of the question whether, according to the true construction of the settlement, the annuity was not merely a continuing charge upon the income of the settled property, but was a charge on the corpus thereof. Swinfen Eady J. held that the annuity was not a charge upon the corpus.

The C. A. allowed the appeal.

The Master of the Rolls said that this case was absolutely covered by authority binding on the Court. In *Birch v. Sherratt*, (1867) L. R. 2 Ch. 644, it was decided that the words "subject thereto" in this connection meant subject to the payment of the annuity in full. The authority of that decision was in no way impeached by the explanation given in *In re Boden*, [1907] 1 Ch. 132, and it had been since followed by this Court in *In re Howarth*, [1909] 2 Ch. 19. Even if there were any doubt as to the extent of the annuity under the original trusts in this settlement, the terms of the power of sale removed all possible ambiguity.

Per curiam, Neville J.'s decision in *In re Bigge*, [1907] 1 Ch. 714, which was decided before *In re Howarth*, can no longer be cited as a binding authority. *In re WATKINS' SETTLEMENT*. WILLS v. SPENCE

C. A. [1910] W. N. 232

— Income tax—Annuity.

See under REVENUE—Income Tax.

— Income tax—Duty of trustee to deduct.

See TRUSTEE—Income Tax. 1.

ANNUITY—continued.

10. — Interest on arrears not allowed—Administration—Practice.

Owing to misapprehension, an annuity, or annual sum payable out of the income of the testator's residuary real and personal estate, had been treated as determined, whereas it, in fact, according to the construction of the will, as subsequently ascertained, continued. The question was whether the annuitant was entitled to interest on the arrears of the annuity.

Kekewich J. said that on principle he was unable to see why interest should not be payable. An annuity after all was nothing but a legacy payable by instalments, and as it was ordinary practice to calculate interest on legacies as a general rule from twelve months after the testator's death, it was extremely difficult to see why the arrears of an annuity should not carry interest in the same way. But it seemed clear upon the decided cases that the practice was otherwise: *Batten v. Earnley*, (1723) 2 P. Wms. 162; *Anderson v. Dwyer*, (1804) 1 Sc. & L. 301; *Martyn v. Blake*, (1842) 3 Dr. & War. 125; *Taylor v. Taylor*, (1849) 8 Hare, 120; and *Torre v. Broune*, (1855) 5 H. L. C. 555, 577, where Lord Cranworth said, "The general rule of the Court is that arrears of annuity do not carry interest." The interest, therefore, in the present case could not be allowed. *In re HISCOE*. HISCOE v. WAITE

Kekewich J. [1902] W. N. 49;
Correction, 54

— Lands Clauses Acts—Annuitant in possession—Reversioner unknown.

See LANDS CLAUSES ACTS. 13.

— Maintenance and education—Annuity to widow for benefit of infants—Trustee—Death of widow—Annuity continued.

See WILL—Children. 1.

— Release by married woman—Covenant not to sue—Acquiescence—Action by administrator for arrears of annuity.

See HUSBAND AND WIFE—Covenant. 1.

— Settled land.

See under SETTLED LAND—Annuities.

11. — Specific devise of house and bequest of chattels free of all duties—Added pecuniary legacy—Legacy duty—Liability of legatee Will—Construction.

By his will a testator devised and bequeathed his house and surrounding land and all his household furniture and effects to his housekeeper, the deft. S. F., free of all succession, estate, and legacy duties, and the will continued, "I give to her also an annuity of 520*l.* a year, to be paid to her monthly so long as she shall live."

The question arose whether, on the construction of the will, the annuity was given free of all legacy and other duties. The plts., as executors and trustees of the will, had paid 848*l.* 12*s.* 9*d.* legacy duty in respect of this annuity, and now claimed to have it repaid by the annuitant. It was urged, on behalf of the annuitant, that the annuity was an added legacy, and, as such, subject to the same inci-

ANNUITY—continued.

dents as the previous devise and bequest, according to *Johnstone v. Earl of Harrowby*, (1859) 1 De G. F. & J. 183, 192, and *Mann v. Fuller*, (1854) Kay, 624.

Eve J. said that it was urged that, the specific devise and bequest and the pecuniary legacy to the lady being cumulative, there was a rule of construction which bound the Court to treat as attached to the gift of the annuity the same incidents as were attached to the specific devise and bequest, and that the annuity was also given free of duty. It might be stated as a general rule that a substituted legacy became subject to the same conditions and limitations as the original legacy, and in *Johnstone v. Earl of Harrowby*, 1 De G. F. & J. 183, 192, added legacies were placed on the same footing as substituted legacies in this respect. But no one could add 10% to a four-posted bedstead, and although the pecuniary legacy to the legatee, to whom chattels had already been given, was in one sense an added legacy, it was not an added legacy within the meaning of the rule applied in the case referred to. That rule had really no application to cases where the character of the gift was entirely different. The annuity, therefore, was not bequeathed free of legacy duty. *In re HOWE, WILKINSON v. FERNIEHOUGH* Eve J. [1910] W. N. 190

— Succession duty—Annuity payable to trustee of settlement.

See REVENUE—Succession Duty. 2.

12. — Tenant for life and remainderman—Residue.—Testator's liabilities—Life annuities—Capital and income—Apportionment—Past and future instalments—Simple interest.

By his will, dated Oct. 9, 1900, the testator directed his trustees, the plts., to stand possessed of his residuary estate (in the events which had happened) on trust as to two equal third parts thereof for his two daughters in settlement as therein mentioned, and as to the remaining third part in trust for his son absolutely. Part of the testator's residuary estate was subject to the payment of certain life annuities bequeathed by the will of W. F. Low, who died on June 10, 1893, having given the residue of his estate to the testator subject to the payment of the annuities.

No provision for payment of the annuities by appropriation or otherwise had been made, and the whole of W. F. Low's net residuary estate had been paid over to the testator, who had duly paid the annuities until his death on April 11, 1904.

The testator's residuary estate was more than sufficient to meet out of the net income thereof the annuities in question, or to provide a fund of Consols, by the income whereof to meet the annuities, and the plts. had since his death paid out of the income of his residuary estate the annuities by quarterly instalments as they became due.

Joyce J. made a declaration as to the apportionment of past and future instalments of the annuities similar to the declaration in *In re Perkins*, [1907] 2 Ch. 596, and declared that, as to the instalments paid since the testator's death, the trustees ought to recoup income from corpus

ANNUITY—continued.

in accordance with such declaration. The calculation to be made at simple interest as from the testator's death. *In re THOMPSON. THOMPSON v. WATKINS* Joyce, J. [1908] W. N. 195

Note.

Followed by Parker J., *In re Poyser, Landon v. Poyser*, [1910] W. N. 189; [1910] 2 Ch. 444. See *Settled Land—Capital or Income*. 2.

—Tenant for life and remainderman—Public-house—Licence—Compensation.
See LICENSING ACTS. 14.

—Will—Administration—Annuities and legacies charged on property—Continuing liability of residue.
See WILL—Vendor and Purchaser. 1.

13. — Will—Charge on land—Specific devise—Legacy—Testamentary expenses—Estate duty—Mixed fund—Finance Act, 1894 (57 & 58 Vict. c. 30), s. 9, sub-s. 1; s. 14, sub-s. 1—Will—Construction—Rent-charge.

By his will the testator gave to his wife so long as she should remain his widow an annuity of 500*l.*, and he declared that this annuity should be a first charge on all his freehold properties at Greenwich. He gave various legacies, and then devised and bequeathed all his real and personal estate not thereby otherwise disposed of upon trust for sale and conversion, and out of the proceeds to pay his funeral and testamentary expenses and debts and legacies, and to stand possessed of the residuary trust moneys upon certain trusts.

The Greenwich property passed to the trustees under the residuary devise:—

Held, that upon the true construction of the will the annuity was not a rent-charge, but was a personal annuity secured by a charge on the Greenwich property, and the estate duty on it must be paid by the executors as testamentary expenses.

The statement in Theobald on Wills, 5th ed., p. 442, that "a gift of an annuity followed by a direction that it is to be a charge on certain land makes it a charge on that land only, and the personalty is not liable," is accurate only in cases where, upon the construction of the particular will, the gift must have that effect. *In re TRENCHARD. TRENCHARD v. TRENCHARD*

Warrington J. [1904] W. N. 195; [1905] 1 Ch. 82

Note.

Distinguished by Swinfen Eady J., *In re Spencer Cooper*, [1908] 1 Ch. 130. See *Will—Testamentary Expenses*. 18.

—Will—Contingent liability—Past and future instalments—Interest.

See SETTLED LAND—Capital or Income. 2.

14. — Will—Equally among children who should attain twenty-one—Minors at time of enjoyment—Children entitled.

A testator charged his residuary real and leasehold estates with the payment to his two daughters R. M. and L. J. of an annuity of 364*l.* each, and provided that from and after the decease

ANNUITY—*continued.*

of either of his said daughters the annuity to which his daughter so dying was entitled should during the joint lives of the survivor of his said daughters and of his son A. and the lifetime of the survivor of them "be received and enjoyed by the child if only one, and all the children equally if more than one, of my said daughters so dying who either before or after the decease of their parent shall attain the age of twenty-one years." M. died leaving four children, two of whom had attained twenty-one and two were minors.

The question was whether the annuity was now divisible among all the children, or whether the two who had attained twenty-one were entitled to the whole till the next child attained twenty-one :—

Held, that the principle was the same as if the direction had been to raise a legacy of a similar amount per annum, and that the two children who had attained twenty-one were now entitled to receive one moiety of the annuity between them. *In re LATHAM*. SEYMOUR v. BOLTON -

Byrne J. [1901] W. N. 248

ANNULMENT—Bankruptcy.

See under BANKRUPTCY—**Annulment.**

ANTECEDENT DEBT—Security—Policy of assurance—Interests based on valuable consideration.

See CONSIDERATION. 1.

ANTHRAX—Workmen's compensation—Injury by accident—Disease.

See MASTER AND SERVANT—**Compensation.** 55.

ANTICIPATION—Restraint on—Married woman.

See under HUSBAND AND WIFE—**Restraint on Anticipation.**

—Restraint on—Variation of settlement—Jurisdiction—Remarriage after petition but before order.

See DIVORCE—**Settlements.** 14.

ANTWERP—Shipping—General average—York-Antwerp Rules, 1890.

See SHIPPING—**Average.** 1.

APARTMENTS—Lodgings or—Rateability of owner.

See RATES. 20, 21, 22.

—Tenement wholly let out in—Owner—Agent to collect rents—Rateability—Representation of the people.

See RATES. 20.

APPEAL.

Power of Court of Appeal to sit in three Divisions. See Supreme Court of Judicature Act, 1902 (2 Edw. 7, c. 31), s. 1.

Appellate Jurisdiction Act, 1908 (8 Edw. 7, c. 51), amends the law with respect to the Judicial Committee of the Privy Council, and the Court of Appeal in England.

See also under PRIVY COUNCIL.

Court of Appeal—Notice—Judge's notes for use in the Appeal Court should be bespoken when

APPEAL—*continued.*

the appeal is set down. W. N., 1908 (April 4), p. 94. See CURRENT INDEX, 1908, p. xcv.

Court of Appeal—Notice—Affidavits on appeals. In the case of appeals from the Chancery Division, two copies of all necessary affidavits and the "Office" copy of each must be left with the appeal papers in Room 350. In the case of appeals from the King's Bench Division, two copies of such affidavits must be left with the appeal papers as above, and the "Original" affidavits must be bespoken at the same time for the use of the Court. Feb., 1910. By order of the Master of the Rolls. W. N., 1910 (Feb. 26.), p. 83. See CURRENT INDEX, 1910, p. xcvi.

—Adulteration—Jurisdiction of Court of quarter sessions to hear appeal.

See ADULTERATION. 10.

—Affidavits, Admissibility of—Issue as to appealable value to be decided by the Court of Appeal.

See NEW SOUTH WALES. 26.

—Arbitration.

See under ARBITRATION—**Practice.**

—Australian appeals.

See under AUSTRALIA.

—Bankruptcy—Practice.

See under BANKRUPTCY—**Practice.**

—Canadian appeals.

See under CANADA.

—Cape of Good Hope.

See under CAPE OF GOOD HOPE.

1. —Chambers—Appeal from order of judge at chambers—Land injuriously affected by railway—Compensation—Order for trial in superior Court—Appeal to Court of Appeal—"Practice and procedure"—Regulation of Railways Act, 1868 (31 & 32 Vict. c. 119), s. 41—Supreme Court of Judicature (Procedure) Act, 1894 (57 & 58 Vict. c. 16), s. 1, sub-s. 4.

An application to a judge in chambers, under the Regulation of Railways Act, 1868, s. 41, for an order that the question arising on a case of compensation under the Lands Clauses Consolidation Act, 1845, should be tried in the High Court, is not a matter of practice or procedure within the meaning of s. 1, sub-s. 4, of the Supreme Court of Judicature (Procedure) Act, 1894, and an appeal from an order made on such an application lies to the Div. Ct. *LONG v. GREAT NORTHERN AND CITY Ry. Co.*

C. A. [1902] 1 K. B. 813

Note.

Followed by C. A., *In re Frere and Staveley Taylor & Co. and North Shore Mill Co.*, [1905] 1 K. B. 366. See No. 3, below.

2. —Chambers, Appeal from—"Practice and procedure"—Originating summons—Order directing defendant, a solicitor, to pay sum of money to plaintiff—Supreme Court of Judicature (Procedure) Act, 1894 (57 & 58 Vict. c. 16), s. 1, sub-s. 4—Final or interlocutory order.

An appeal will not lie direct to the C. A. against an order of a judge at chambers made upon an originating summons and directing the deft., a solicitor, to pay to the plt. a sum of

APPEAL—continued.

money specified in the summons, the matter not being one of practice and procedure within the meaning of the Supreme Court of Judicature (Procedure) Act, 1894, s. 1, sub-s. 4.

Such an order is a final and not an interlocutory order. *In re MARCHANT*

C. A. [1908] W. N. 67; [1908] 1 K. B. 998

— Charity—Scheme by Charity Commissioners—Validity—Jurisdiction.
See CHARITY. 44.

3. — Chambers, Appeal from—"Practice and procedure"—Order for statement of case pending arbitration—*Supreme Court of Judicature (Procedure) Act, 1894 (57 & 58 Vict. c. 16), s. 1, sub-s. 4—Arbitration Act, 1889 (52 & 53 Vict. c. 49), ss. 4, 19.*

An appeal will not lie direct to the C. A. against an order of a judge at chambers directing an arbitrator to state a case pending an arbitration, the matter not being one of practice and procedure within the meaning of the Supreme Court of Judicature (Procedure) Act, 1894, s. 1, sub-s. 4. *In re FREERE AND STAVELEY TAYLOR & CO. AND NORTH SHORE MILL CO.*

C. A. [1905] W. N. 20; [1905] 1 K. B. 366

Note.

See In re Colman and Watson, C. A. [1907] W. N. 223; [1908] 1 K. B. 47. See No. 21, below.

— Clergy discipline.

See under ECCLESIASTICAL LAW.

4. — Commercial list.

An appeal will lie to the C. A. against an order for entry of a cause in the commercial list if it be not a commercial cause. *SEA INSURANCE CO. v. CARR*

C. A. [1901] 1 K. B. 7

— Company.

See under COMPANY—Practice, and COMPANY—WINDING-UP—Practice.

— Copy of notes including the reasons for the decision, Right of either party to a.
See DIVORCE—Practice. 4, 5.

— Copyright—Registration—Musical composition—Author and publisher—Assignment.

See COPYRIGHT—Music. 2.

5. — Costs, Appeal against—Competency of appeal.

The House of Lords will not entertain an appeal against costs only.

Appeal against a judgment of the First Div of Ct. of Sess., Scotland, (1902) 40 Sc. L. R. 50 dismissed. *CALEDONIAN RY. CO. v. BARRIE*

H. L. (Sc.) [1903] W. N. 60; [1903] A. C. 126

— Costs—Appeal.

See under COSTS.

— Costs—Discretion—Trial by judge without jury.

See CONTRACT. 22.

— Costs—"Solicitor and client"—Public authorities protection.

See CORPORATION. 16.

— Costs—Taxed bill—Successful appeal from part of judgment—Apportionment.

See PATENT—Disclaimer. 1.

APPEAL—continued.

— Costs of appeal—Shipping casualty—Dealing with certificate.

See SHIPPING—Practice. 2.

— Costs of appeal to quarter sessions—Payment by treasurer of county or borough.

See JUSTICES. 4.

— County Court.

See under COUNTY COURT—Appeal.

— County rate—"Cause of appeal"—Time for appeal—Retrospective alteration of basis—Jurisdiction.

See RATES. 2.

— Court of Appeal, Jurisdiction of—Order for new trial unless damages reduced.

See PRACTICE—Trial. 2.

— Court of Appeal, Lord Chancellor sitting alone in—Court of Appeal, Decision binding on.

See MORTGAGE—Interest. 1.

— Court of Criminal Appeal.

See under CRIMINAL LAW.

— Courts-martial—Practice—Special leave to appeal refused.

See NATAL. 4.

6. — "Criminal cause or matter"—Distress—Bailiff—Costs and Charges—Agreement for extra remuneration—Practice—Distress (Costs) Act, 1817 (57 Geo. 3, c. 93)—Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 47.

The C. A. has no jurisdiction to hear an appeal from a decision of a Div. Ct. upon a case stated by justices as to a complaint under s. 2 of the Distress (Costs) Act, 1817, against a certificated bailiff for unlawfully retaining certain charges exceeding those allowed by statute when employed to make a distress for rent for a sum not exceeding 20*l.*, the proceeding before justices being a "criminal cause or matter" within the meaning of s. 47 of the Judicature Act, 1873.

Decision of a Div. Ct., [1907] 1 K. B. 690, affirmed. *ROBSON v. BIGGAR* - **C. A. [1907] W. N. 244; [1908] 1 K. B. 672**

— Criminal law.

See under CRIMINAL LAW.

— Criminal matter—Appeal—Distress—Bailiff.
See preceding Cause.

7. — District Registry, Appeal from order made in chambers in—R. S. C., Order XXXV., r. 12.

Motion by deft. to discharge or vary an order made in chambers by the district registrar in the Birmingham District Registry.

Swinfen Eady J. said it was important that it should be understood that the proper practice for appealing from an order in chambers in a district registry in the Chancery Division was not by a motion in Court; it was the duty of the registrar, on the application of either party, to adjourn the summons to the judge in chambers. The practice in the Chancery Division was correctly stated in the Annual Practice, p. 478, note to Order XXXV., r. 12: "In the Chancery Division the district registrar forwards the papers addressed to 'The Master, Chambers of

APPEAL—continued.

Mr. Justice ———, Royal Courts of Justice, London, W.C.' . . . The Master places the summons in the judge's list of matters to be heard in chambers." He dealt with the matter on its merits and refused the motion, but directed that the costs, which he ordered the debt. to pay, should not exceed those which would have been payable if the matter had been heard by the judge in chambers attended by counsel. **ATKINSON v. BUTTON**

Swinfen Eady J. [1909] W. N. 74

— Employer and workman.

See under MASTER AND SERVANT.

8. — Evidence—Judge's notes—Omission to supply — Adjournment — Costs — Practice — R. S. C., Order LVIII., r. 11.

In the course of the opening of this appeal it appeared that no copies of the judge's notes had been furnished to the members of the Court.

The C. A. decided to proceed with the hearing of the appeal, saying that some time ago they had informed the public, and particularly solicitors, that they would not allow an appeal to proceed unless and until the judge's notes were forthcoming. It was useless for them to lay down a rule unless they adhered to it. This appeal would therefore stand over until the judge's notes were produced, and it would then come on for hearing after any appeal which had already come into the daily cause list. The costs thrown away by the omission to supply the judge's notes would be paid by the appellant's solicitors. **LEWIS v. CORY**

**C. A. [1906]
W. N. 95**

9. — Evidence — Judge's notes — Practice—Appeal to House of Lords—Copies for printing.

On June 2, 1904, Warrington J. made an order dismissing this action with costs. The plts. appealed and their appeal was dismissed. On the hearing of the appeal the notes of Warrington J. of the evidence taken before him at the trial of the action were the only evidence before the Court. The plts. gave notice of appeal to the H. L., and for this purpose desired to obtain a copy of these notes of the evidence, so that they might be printed and included in the appendix to the appeal to the H. L.

Warrington J. said that he had consulted some of the Lords Justices, and had ascertained that the practice of late years had been, not to give copies of the judge's notes to the parties, but to send them to the H. L. if their Lordships desired to have them. The application must, therefore, be refused.

Morris v. Davies, (1857) 5 C. & F. 163, 223; 47 R. R. 50, referred to. SCHWEPPE, LD. v. GIBBENS

Warrington J. [1905] W. N. 28

— Final decree of High Court of the Republic - Jurisdiction in appeal — Law of the Transvaal.

See TRANSVAAL. 4.

— Final judgment — Yukon Territorial Act—Omission in petition for special leave—Costs.

See CANADA—Practice. 10.

APPEAL—continued.

— Final or interlocutory—Company—Compulsory winding-up order.

See COMPANY — WINDING-UP — Practice. 4.

— Final or interlocutory—Company—Reduction of capital.

See COMPANY—Practice. 2.

10. — Final or interlocutory order—Solicitor—Account—Notice, Length of—R. S. C., 1883, Order LII., r. 25; Order LVIII., r. 3.

Appeal from the refusal by Bucknill J. of an application by the plt. by originating summons from an order, under Order LII., r. 25, directing the debts., who were solicitors, to deliver to the plt. a list of the moneys and securities which they had in their custody or control on behalf of the plt., and to bring into court the whole or such part of the same within such time as the Court might order, and to deliver a cash account to the plt. The Master refused the application, and Bucknill J., on July 25, affirmed his decision:—

Held, that In re Herbert Reeves & Co., [1902] 1 Ch. 29, applied (see next Case), and that the order was final. They allowed the objection and dismissed the appeal, without costs, but extended the time for appealing, so that the plt. might be able to give a proper notice. HAYDON v. CARTWRIGHT - C. A. [1902] W. N. 163

Note.

See *In re Marchant*, C. A. [1908] 1 K. B. 998. No. 2, above.

11. — Final or interlocutory, Order whether—Solicitor—Summons for delivery of bill of costs and taxation—Order dismissing summons—Practice—R. S. C., 1883, Order LVIII., rr. 3, 9, 15.

An order dismissing an originating summons for delivery of a bill of costs by a solicitor and taxation is a final order, and an appeal from it should be treated as a final, not an interlocutory, appeal. *In re HERBERT REEVES & Co.*

C. A. [1901] W. N. 213; [1902] 1 Ch. 29

Note.

Applied by C. A., *Haydon v. Cartwright*, [1902] W. N. 163. See preceding Case.

See *Boxson v. Altrincham Urban Council*, C. A. [1903] 1 K. B. 547, next Case.

See *In re Marchant*, C. A. [1908] 1 K. B. 998. No. 2, above.

12.—Final or interlocutory, Order whether—Practice—Order to try preliminary question of liability—Action dismissed.

An order was made in an action, brought to recover damages for breach of contract, that the questions of liability and breach of contract only were to be tried, and that the rest of the case, if any, was to go to an official referee. At the trial the judge held that there was no binding contract between the parties, and made an order dismissing the action, from which order the plt. appealed:—

Held, that the appeal was from a final order.

APPEAL—*continued*.

Shubbrook v. Tufnell, (1882) 9 Q. B. D. 621, followed. *Bozson v. ALTRINCHAM URBAN COUNCIL*

C. A. [1903] W. N. 39; [1903] 1 K. B. 547

Note.

See In re Marchant, C. A. [1908] 1 K. B. 998, No. 2, *above*.

— Fine—Costs—Motor car—Summary jurisdiction.

See JUSTICES. 2.

13. — *Forma pauperis*, *Appeal in*—*Practice*—*Security for costs*—*R. S. C.*, 1883, *Order XVI.*, r. 22—“*Not worth 25l.*”

Application by way of original motion by the appellant Kydd for leave to prosecute his appeal in forma pauperis. The appeal was against an order of the Div. Ct. setting aside a decision in his favour by the Recorder of Liverpool sitting as a Court of quarter sessions. The question in the litigation was as to the amount of pension to which the appellant was entitled as a former constable under the Police Act, 1890.

The appellant supported his application by an affidavit, in which he swore as follows:—“2. I am not worth 25l., my wearing apparel and the subject-matter of the said appeal alone excepted, and I am by reason of my poverty unable to prosecute the said appeal. 3. I am at the present time in receipt of a pension as a retired police constable of the city of Liverpool amounting to 1l. 8s. per week, but this amount is inadequate to provide the necessities of life for myself and wife after paying 8s. 6d. rent for our place of residence.”

The C. A. dismissed the application, holding it was not possible to say that the appellant, who was entitled to a pension of about 70l. a year, was not worth 25l. The fact that the pension was not assignable was not sufficient to warrant such a contention. The test was not whether the appellant had 25l. in his pocket, but whether he was “good for 25l.” *Boddington v. Woodley*, (1842) 5 Beav. 555, which had been referred to, was in point, and was a stronger case than the present. *KYDD v. LIVERPOOL WATCH COMMITTEE*

C. A. [1908] W. N. 26

Note.

Referred to by Eve J., *In re Atkins' Trusts*, *Smith v. Atkins*, [1909] 1 Ch. 471. *Husband and Wife*—*Poor Law*. 1.

Upon another point *Kydd v. Liverpool Watch Committee*, H. L. (E.) [1908] W. N. 164; [1908] A. C. 327. *See Police*. 1.

14. — *Forma pauperis*—*Practice*—*Appeal*—*Application by respondent for leave to appear in forma pauperis*—*Opinion of counsel*—*R. S. C.*, *Order XVI.*, rr. 23, 24.

Application by the respondent in an appeal for leave to appear as respondent to the appeal in forma pauperis.

The respondent having obtained an award of compensation under the Workmen's Compensation Act, 1897, the employers appealed.

The C. A. allowed the application. *HANDFORD v. GEORGE CLARKE, LD.* - C. A. [1906] W. N. 225; [1907] 1 K. B. 181

APPEAL—*continued*.

— *Forma pauperis*, *In*—*Special leave*.
See CEYLON. 6.

— *Forma pauperis*, *Leave to appeal in*.
See ST. LUCIA. 1.

— *Forma pauperis*, *Petition for leave to appeal in*—*Application must be first made to Court below*.

See NEW SOUTH WALES. 1.

— *Forma pauperis*, *Special leave to appeal in*—*Certificate of counsel*.
See NEW ZEALAND. 17.

— *Habeas corpus*—*Criminal cause or matter*—*Fugitive offender*—*Application to Court of Appeal*.
See HABEAS CORPUS. 1.

— *Highway*—*Diversion*—*Certificate of justices*—*Appeal to quarter sessions*—*Statute*—*Construction*.
See HIGHWAY. 5.

— *Hotel*—*Removal of refuse*—*Dispute between occupier and sanitary authority*—*Appeal by special case*.
See LONDON—*Removal of Refuse*. 1.

— *House of Lords*—*Appeal to*—*Divorce*—*New trial*.
See DIVORCE—*Practice*. 25.

— *House of Lords*—*Costs of more than two counsel in appeals*—*Practice*.
See under HOUSE OF LORDS.

— *House of Lords*—*Leave to appeal to*—*Bankruptcy*—*Practice*.
See BANKRUPTCY—*Preference*. 2.

— *House of Lords*—*Note as to postponement of appeals*—*Practice*.
See under HOUSE OF LORDS.

— *India*.

See under INDIA.

15. — *Inferior Court*—*Court of Record of civil jurisdiction*—*Appeal to the King's Bench Division*—*Right of appeal*—*Procedure*—*Judicature Act*, 1884 (47 & 48 Vict. c. 61), s. 23—*R. S. C.*, *Order LIX.*, rr. 10—17.

An appeal from any inferior Court of Record of civil jurisdiction, when there is no statute regulating the appeal, can now be brought to the K. B. Div. under Order LIX., rr. 10—17. *DARLOW v. SHUTTLEWORTH*

Div. Ct. [1902] 1 K. B. 721

16. — *Interlocutory appeal*—*Delay*—*Setting down appeal*—*Production of order*—*Practice*—*R. S. C.*, *Order LVIII.*, r. 8.

Appeal from Warrington J., [1907] W. N. 110.

The appeal was dismissed without going into the merits, and the case is only noted for the sake of the observations of the Court on the delay that so frequently occurs in producing the judgment or order appealed from to the proper officer on setting down the appeal.

The C. A. said the proper course to adopt in cases of this kind, if a compromise or negotiations were pending, was to produce the order appealed from, and comply with the formalities required by Order LVIII., r. 8, forthwith,

APPEAL—continued.

and then apply to the Court that the appeal should not come into the list for hearing for a fortnight or so, as a compromise was possible. In the present case, after a delay of six months, the Court was not prepared to give any further time. The essence of an application for an interlocutory injunction in the Court below was that it should be made with promptness, and the same procedure ought to apply to interlocutory appeals. The Court were unanimously of opinion that this appeal must be proceeded with now.

Counsel not being prepared to open the appeal,

The Court said the appeal must be dismissed with costs, and hoped this case would be a lesson to practitioners not to adopt the course followed by this appellant. There seemed to be an impression that by availing themselves of the practice of the office and failing to produce the order appealed from after the appeal was entered, solicitors could keep the control of an interlocutory appeal in their own hands, and thus prevent it from coming into the list for hearing indefinitely or for as long as might be convenient. This was a very reprehensible practice, and wholly against the spirit of interlocutory applications generally. It was not for the parties to control the hearing in this way. That was for the Court. *SHERWELL v. COMBINED INCANDESCENT MANTLES SYNDICATE, LD.*

C. A. [1907] W. N. 211, 216

17. — *Interlocutory or final order—Practice—Appeal—Leave—Solicitor and client—Taxation—Summons to review—Refusal—Judicature (Procedure) Act, 1894* (57 & 58 Vict. c. 16), s. 1.

An order dismissing a summons to review the taxation of a solicitor's bill of costs under the Solicitors Act, 1843, is not final, but interlocutory, and leave to appeal from such an order is necessary under s. 1 of the Judicature (Procedure) Act, 1894. *In re JEROME*

C. A. [1907] W. N. 124; [1907] 2 Ch. 145

18. — *Interlocutory order—Leave to appeal—Liberty of subject—Refusal to commit—Practice—Supreme Court of Judicature (Procedure) Act, 1894* (57 & 58 Vict. c. 16), s. 1 (b), (i).

A judge having refused an application for the committal of the defts. on the ground of a breach by them of an undertaking which they had given to the Court, and having refused to give leave to appeal:—

Held, that the liberty of the subject was not concerned, and that an appeal could not be brought without leave, which the C. A. refused to give. *BOWDEN v. YOXALL*

C. A. [1901] 1 Ch. 1

— Interpleader — Jurisdiction—Summary decision.

See INTERPLEADER. 1, 2.

— Irish Land Laws—Jurisdiction.

See IRISH LAW. 2.

— Isle of Man.

See under ISLE OF MAN.

— Judge's notes—Shorthand notes.

See EVIDENCE. 7.

APPEAL—continued.

19. — *Jurisdiction—Appeal to House of Lords from order of Court of Appeal in Ireland—Certiorari—Practice—Appellate Jurisdiction Act, 1876* (39 & 40 Vict. c. 59), ss. 3, 12—*Supreme Court of Judicature Act (Ireland), 1877* (40 & 41 Vict. c. 57), s. 86.

No appeal lies to the H. L. from an order of the C. A. in Ireland with respect to the issue of a writ of certiorari. *REG. v. BARTON AND GREAT SOUTHERN AND WESTERN RY. CO. OF IRELAND H. L. (I.)* [1902] W. N. 90; [1902] A. C. 268

— Jurisdiction — Costs — Co-respondent — Consolidated suits—Final or interlocutory order.

See DIVORCE—Practice. 6.

— Jurisdiction, Objection to, first taken on appeal.

See TRAMWAYS. 3.

— Land Transfer Act—Appeal from registrar—“Applicant”—Parties—Locus standi.

See LAND TRANSFER. 2.

— Licensing Acts.

See under LICENSING ACTS.

— Local government — Special expenses — Precept to overseers — Appeal against apportionment — Change of overseers pending appeal—Liability.

See LOCAL GOVERNMENT. 25.

— London Building Act—Railway company—Interference with exercise of statutory powers of—Appeal to tribunal of appeal—Jurisdiction.

See LONDON—Buildings. 6.

— Married woman—Costs—Separate property—Restraint on anticipation.

See HUSBAND AND WIFE—Costs. 2.

20. — *Master, Appeal from decision of—Trial of garnishee issue by Master—R. S. C., Order XL, rr. 6, 6A; Order LIV., r. 21.*

An appeal lies under Order XL., r. 6, to a Divisional Court from the decision of a Master upon the trial of an issue ordered by him under Order XLV., r. 4, in garnishee proceedings. *BLAIR v. CLARK. GRAYDON, GARNISHEE*

Div. Ct. [1908] W. N. 132; [1908] 2 K. B. 548

— “Matter of practice and procedure.

See SOLICITOR—Costs.

21. — *Matter of “practice and procedure”—Arbitration—Application to enforce award in the same manner as a judgment—Supreme Court of Judicature (Procedure) Act, 1894* (57 & 58 Vict. c. 16), s. 1, sub-s. 4—*Arbitration Act, 1889* (52 & 53 Vict. c. 49), ss. 1, 12, 27.

An appeal from an order of a judge at chambers upon an application to enforce an award on a submission to arbitration under the Arbitration Act, 1889, is an appeal in a matter of “practice and procedure” within the meaning of the Judicature (Procedure) Act, 1894, s. 1, sub-s. 4. *In re COLMAN AND WATSON*

C. A. [1907] W. N. 223; [1908] 1 K. B. 47

— Mayor's Court.

See under LONDON—Mayor's Court.

APPEAL—continued.

Midwives Act, 1902, Appeal from Central Midwives Board under. Reprint from W. N. 1904 (Jan. 16), p. 49. See CURRENT INDEX, 1904, p. cxxv.

— Motor car—Evidence—Appeal to quarter sessions.

See MOTOR CAR. 3.

— Motor Car Act—Fine—Costs.

See JUSTICES. 2.

— Natal.

See under NATAL.

— New South Wales.

See under NEW SOUTH WALES.

— New Zealand.

See under NEW ZEALAND.

— Newfoundland.

See under NEWFOUNDLAND.

— Notice of appeal—Substituted service—Jurisdiction.

See PRACTICE—Service. 15.

22. — Official referee—Procedure—Action in Chancery Division—Whole action referred to official referee—Judgment entered in pursuance of direction of referee—Mode of appealing—Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 19—Judicature (Procedure) Act, 1894 (57 & 58 Vict. c. 16), s. 1, sub-s. 5—R. S. C., Order v., r. 9; Order XXXVI., rr. 7 (a), 48—55, 55c; Order XL., rr. 2—6; Order LVIII., rr. 1, 17.

When in an action in the Ch. Div. the whole action has been referred to an official referee for trial, and judgment has been entered in pursuance of his direction, an appeal from the judgment does not lie to the C. A., but an application to set aside the judgment must be made to the judge of the Ch. Div. to whom the action is assigned.

Serle v. Fardell, (1890) 44 Ch. D. 299, not followed.

Sect. 1, sub-s. 5, of the Judicature (Procedure) Act, 1894, applies only to appeals from inferior Courts; it does not apply to an appeal from a judgment or order of the High Court.

Daglish v. Barton, [1900] 1 Q. B. 284, disapproved. WYNNE-FINCH v. CHAYTOR

C. A. [1903] W. N. 139; [1903] 2 Ch. 475

Note.

Referred to by C. A., *Fraser v. Fraser*, [1905] 1 K. B. 368. *See No. 24, below.*

— Patent practice.

See under PATENT—Practice.

— Pilot—Appeal from pilotage authority—Extension of time for appeal.

See SHIPPING—Pilotage. 7.

— Poor law.

See under POOR LAW.

— Poor-rates—Appeals.

See under RATES.

— Privy Council.

See under PRIVY COUNCIL.

— Privy Council Appeals.

See references under PRIVY COUNCIL—Appeals.

APPEAL—continued.

Privy Council Appeals—Appearance Orders—Order in Council dated Mar. 20, 1905. W. N. 1905 (April 8), p. 91. See CURRENT INDEX, 1905, p. xcii.

— Queensland.

See under QUEENSLAND.

— Rates and Rating—Appeals.

See under RATES.

— Rating—Case stated by quarter sessions—Crown Office Rules.

See PRACTICE—Crown Office.

— Receiver—Documents—Production.

See LUNACY. 22.

23. — Reference of action to Master—R. S. C., Order XIV., r. 7.

Where an action is referred to a Master under Order XIV., r. 7, an appeal does not lie from his decision direct to the C. A.

Query, whether in such a case an appeal will lie to the Div. Ct. FRASER v. FRASER

C. A. [1903] W. N. 197; [1904] 1 K. B. 56

Note.

See Fraser v. Fraser, [1904] 2 K. B. 245, 247; C. A. [1905] 1 Q. B. 368. See next Case.

24. — Reference of action to Master—Consent of parties—R. S. C., Order XIV., r. 7; Order XL., rr. 6, 6 (a); Order LIX., r. 3; Arbitration Act, 1889 (52 & 53 Vict. c. 49), ss. 14, 15.

When, under rule 7 of Order XIV., an action is, with the consent of the parties, ordered to be referred to a Master, an appeal lies from his decision to a Div. Ct.

Decision of the Div. Ct., [1904] W. N. 89; [1904] 9 K. B. 245, reversed. *FRASER v. FRASER.*

C. A. [1905] W. N. 10; [1905] 1 K. B. 368

— Registration Act, 1908.

See under PARLIAMENT.

— Registration of voters—Revising barrister—

Rules of evidence—Admissibility—Hearsay evidence.

See PARLIAMENT. 21.

— Revising barrister, Appeal from decision of.

See under PARLIAMENT.

— Sanitary conveniences—Appeal to quarter sessions from requirement of factory inspector.

See MASTER AND SERVANT—Factory Acts. 5.

— School—Appeal by managers—Decision of Board of Education—Jurisdiction of Court—Closing of school.

See SCHOOLS.

25. — Security to satisfaction of Master—Decision of Master as to sufficiency of security—Appeal from Master—Practice—Application for judgment under Order XIV.—R. S. C., Order XIV., r. 6—Order LIV., r. 21.

Where under Order XIV., r. 6, leave to defend an action is given to the deft. on giving security for the amount claimed to the satisfaction of a Master there is no appeal from the decision of the Master with regard to the sufficiency

APPEAL—*continued.*

of the security tendered. **HOARE & Co. v. MORSEHEAD** - C. A. [1903] W. N. 139; [1903] 2 K. B. 359

— Service—Mayor's Court—Notice of appeal—Service on Sunday.

See LONDON—MAYOR'S COURT. 2.

— Shipping.

See under SHIPPING—Practice.

— Street—General line of buildings — Superintending architect's certificate—Appeal to tribunal of appeal.

See LONDON—Streets. 1.

— Street—Private street works—Right of appeal to quarter sessions.

See STREETS. 24.

— Summary decision of judge—Leave to appeal.

See INTERPLEADER. 2.

— Summary Jurisdiction (Married Women) Act.

See under HUSBAND AND WIFE.

26. — Time—Motion for new trial—Trial by judge and jury—Appeal against ruling of judge—Time for appealing—Extension of time—Mistake of counsel—R. S. C., Order XXXIX., rr. 1A, 4; Order LVIII., r. 15; Order LXIV., r. 7.

The action was tried before Darling J. and a special jury. On Nov. 21 the jury found a verdict in favour of the deft., and the judge thereupon entered judgment in his favour. In the course of the trial the deft. admitted that there was an obligation upon him to pay to the plt. a sum of 90*l.*, in reduction of which the deft. had paid to the plt. the sum of 75*l.* The deft. also claimed to take credit for the balance of 15*l.*, which was paid by the deft. to a third party, as the plt. alleged, without the knowledge or consent of the plt., and at the trial the pit. submitted to the learned judge that the deft. was not entitled in law to take credit for this sum, but the judge overruled this contention.

On Dec. 6 the plt. presented at the associate's office a notice of appeal which asked the C. A. to enter judgment in favour of the plt. for 15*l.*, on the ground that the learned judge was wrong in law in entering judgment for the deft. upon the facts admitted and proved in the course of the trial. The plt. had been advised by counsel that he had three months within which to appeal against the judgment. The officials, however, declined to accept the notice of appeal on the ground that the appeal was one which came properly within the terms of Order XXXIX., rr. 1A and 4, and should have been filed within eight days of the trial.

In these circumstances the plt. asked for an extension of time under Order LXIV., r. 7.

The C. A. granted the application. The Court expressed a hope that this matter would soon be brought to the attention of the Rule Committee, and said that, assuming that this notice of appeal was too late, in his opinion this was a case for the exercise of the discretion conferred upon the Court by Order LXIV., r. 7. The language of that rule differed from the language of Order LVIII., r. 15, upon which alone *In re Coles and Ravenshaw*, [1907] 1 K. B. 1, was

APPEAL—*continued.*

decided. The Court would be sorry to limit the operation and effect of the highly beneficial power given by Order LXIV., r. 7. **BAKER v. FABER** C. A. [1908] W. N. 9

27. — Time—Practice—Appeal—Application for new trial—Time for serving notice of motion—Extension of time—By whom granted—R. S. C., Order XXXIX., r. 4; Order LXIV., r. 7.

Application by plt. for judgment or new trial in an action.

The application was made out of time owing to the fact that the plt.'s advisers were not aware of the recent alteration in r. 4 of Order XXXIX., whereby ten days after the trial was substituted for seven days after the end of the circuit as the time for making the application. The plt. then applied to the judge in chambers, Bucknill J., for an extension of time, which was granted.

The C. A. dismissed the appeal as being out of time, holding that it was for the C. A. to extend the time for appealing, and that a judge of first instance had no jurisdiction to grant an extension. In the circumstances they allowed the applicant to apply at the hearing for an extension, but eventually they refused the application. **KARNO v. SPRATT**

C. A. [1909] W. N. 251

— Time, Enlargement of—Clergy discipline.

See ECCLESIASTICAL LAW—Discipline (Clergy Discipline). 3.

28. — Time, Extension of — Conflicting judicial views on question of law — Infant — Practice—R. S. C., Order LVIII., r. 15.

Application by an infant deft., by her guardian ad litem, for leave to appeal from a judgment of Kekewich J., delivered on Jan. 22, 1902 (reported [1902] 1 Ch. 436), notwithstanding that the time limited for appealing had elapsed.

The grounds of the application were (1) that the applicant was an infant, (2) that the question at issue involved a sum of 20,000*l.*, (3) that two other judges (in *In re Oliver's Settlement*, [1905] 1 Ch. 191, and *In re Beale's Settlement*, [1905] 1 Ch. 256, respectively) had declined to follow Kekewich J.'s decision, and (4) that the doubts cast upon the decision had only recently become known to the guardian ad litem.

It appeared that the interest of the plt., who was an adult, was substantially the same as that of the applicant.

The C. A. refused the application, holding that it was clear on the authorities that the circumstance that other judges had subsequently expressed views upon a question of law at variance with the decision sought to be appealed from was not in itself a ground for granting an extension of time. The discretion given to the Court by Order LVIII., r. 15, ought to be exercised on the principles stated by Cotton L.J. in *In re Manchester Economic Building Society*, (1883) 24 Ch. D. 488, 499, and leave ought not to be granted except upon very special grounds. Here the applicant had been properly represented by counsel in the Court below, and it would be mischievous to hold the mere fact of her infancy a ground for extending the time for

APPEAL—*continued.*

appealing. There were no special circumstances which would justify the Court in granting leave to appeal. The largeness of the amount at stake was not a special circumstance. *In re BRADSHAW. BRADSHAW v. BRADSHAW*

C. A. [1906] W. N. 86

29. — Time for appealing — Dismissal of action as frivolous and vexatious—Interlocutory or final—Practice—R. S. C., Order XXV., r. 4 ; Order LVIII., r. 15.

An order dismissing an action as frivolous and vexatious is for the purposes of appeal an interlocutory order. *In re PAGE. HILL v. FLADGATE*

C. A. [1910] W. N. 50 ; [1910] 1 Ch. 489

30. — Time for appealing — Final order in matter not being action — Practice — Appeal to Court of Appeal—R. S. C., Order LVIII., r. 15.

An order of a Div. Ct. affirming an order of an alderman of the City of London made upon a summons for wages taken out by a seaman, under s. 164 of the Merchant Shipping Act, 1894, is a final order in a matter not being an action within the meaning of Order LVIII., r. 15, and no appeal can be brought to the C. A. until after the expiration of fourteen days from the decision of the Div. Ct.

Order of the Div. Ct., reported [1905] 2 K. B. 315, affirmed. *AUSTIN FRIARS STEAMSHIP CO. v. STRACK*

C. A. [1906] W. N. 158 ; [1906] 2 K. B. 449

31. — Time for appealing—Mistake as to effect of rule—Order in matter not being an action—Appeal brought too late—Special leave to appeal—Discretion of Court—Practice—R. S. C., Order LVIII., r. 15.

Where, through a mistake of counsel as to the effect of Order LVIII., r. 15, an appeal was not brought until after the expiration of the time thereby allowed for appealing:—

Held, upon the authority of *In re Helsby*, [1894] 1 Q. B. 742, and *International Financial Society v. City of Moscow Gas Co.*, (1877) 7 Ch. D. 241, that there was no sufficient ground for granting special leave to appeal under the before-mentioned rule. *In re COLES AND RAVEN-SHEAR*

C. A. [1906] W. N. 198 ; [1907] 1 K. B. 1

Note.

Approved and distinguished by C. A., *Baker v. Faber*, [1908] W. N. 9. See No. 26, above.

32. — Time for appealing—Order on further consideration—Report of official referee—Motion to vary—Practice—R. S. C., 1883, Order LVIII., r. 15a.

The action was commenced in 1903, claiming an account of the dealings and transactions by the deft. as manager on behalf of the plts. of the business of an engineering co. The account was directed to be taken before an official referee, who in due time lodged his report. The further consideration of the action and a motion by the deft. to vary the report of the official referee were heard before Kekewich J. in May, 1907, and by an order of May 7, 1907, the motion to vary was dismissed. The deft. appealed, and the appeal was set down on Aug. 1, 1907. On the appeal coming on, the

APPEAL—*continued.*

plts. took the preliminary objection that the appeal was not presented in time, as r. 15a of Order LVIII. only applied to a summons to vary the certificate, and not to a motion to vary the report of an official referee.

The C. A. allowed the objection and dismissed the appeal, being of opinion that r. 15a of Order LVIII. must be construed strictly, and that it did not apply to a motion to vary a report. *SAUNDERS DAVIES v. BAILLIE*

C. A. [1907] W. N. 237

— Trade Mark—Further evidence—Onus of proof.
See **TRADE MARK. 8.**

— Trustees served with notice of appeal—Appearance by counsel—Costs—Taxation—Will—Construction.
See **TRUSTEE—Practice. 1.**

— Victorian appeals.
See under **VICTORIA.**

— Workmen's compensation.
See under **MASTER AND SERVANT.**

APPEARANCE — Conditional — Application to set aside service out of the jurisdiction — Time.

See **PRACTICE—Service. 7.**

— Costs — Taxation — Numerous actions against same defendant — Different plaintiffs — Entering appearance — Scale charge.
See **COSTS. 42.**

— Default in appearance — Fine — Judgment debt—Jurisdiction.
See **COUNTY COURT—Fines. 1.**

— Default in appearance — Writ.
See **PRACTICE—Undertakings. 7.**

— Default of appearance—Judgment signed for too large an amount — Amendment — Practice.
See **JUDGMENT. 2.**

— Divorce—Costs—Alleged adulterer a foreigner domiciled abroad—Dismissal from the suit.
See **DIVORCE—Domicil. 2.**

— Divorce — Costs — Domiciled Irishman — Absolute appearance.
See **DIVORCE—Domicil. 3.**

— Foreign public vessel—Jurisdiction—Appearance entered under misapprehension—Exemption from arrest.
See **SHIPPING—Foreign Ship. 1.**

— Motion for judgment in default of appearance—Injunction—Jurisdiction.
See **PRACTICE—Motions. 3.**

— Practice.
See under **PRACTICE—Appearance.**

— Summary jurisdiction—Summons—Appearance of defendant by counsel—Warrant to compel personal attendance of defendant.
See **JUSTICES. 22.**

APPEARANCE—*continued.*

- Trustees served with notice of appeal—Appearance by counsel—Costs—Taxation.
See **TRUSTEE—Practice.** 1.
- Unqualified person—Acting as a solicitor—Notice of appearance to writ.
See **SOLICITOR—Unqualified Person.** 1.

APPEARANCES—List of — Company — Winding-up—Petition.
See **COMPANY—WINDING-UP—Practice.** 6.

APPOINTMENT—Chairman—Retirement of members—Election of new members—Position of former chairman.
See **LOCAL GOVERNMENT.** 6.

— Check weigher—"Mine."
See **MINE.** 2.

— Company—Directors'.
See under **COMPANY—Directors.**

— Deputy judge — Appointment of two deputies to act respectively for different Courts—Validity.
See **COUNTY COURT—Deputy Judge.** 1.

— Justices' clerk—Power to appoint—Payment of salary.
See **LOCAL GOVERNMENT.** 18.

— Liquidator, Invalid appointment of—Claim for remuneration—Winding-up.
See **COMPANY—WINDING-UP—Liquidator.** 5.

— Lunacy.
See under **LUNACY.**

— Notaries.
See under **NOTARIES.**

— Power of appointment.
See under **POWER OF APPOINTMENT.**

— Protector, Power to appoint new—Estate tail — Disentailing assurance—Three persons appointed by settlor — Death of two.
See **SETTLEMENT.** 28.

— Receiver.
See under **RECEIVER.**

— Remoteness—Special power of appointment — Rule against perpetuities.
See **WILL—Remoteness.** 5.

— Trustees.
See under **TRUSTEE—APPOINTMENT.**

— Trustees—Settled Land.
See under **SETTLED LAND—TRUSTEES.**

APPORTIONMENT—Annuities immediate and reversionary—Deficient estate—Abatement—Hotchpot.
See **ANNUITY.** 1.

— Annuity—Capital and income — Simple interest.
See **SETTLED LAND—Apportionment.** 1.

APPORTIONMENT—*continued.*

— Annuity—Contingent liability—Capital and Income—Past and future instalments—Interest.
See **SETTLED LAND—Capital or Income.** 2.

— Appeal against—Special expenses—Precept to overseers — Change of overseers pending appeal—Liability.
See **LOCAL GOVERNMENT.** 25.

— Commonable rights, Compensation for.
See **COMMON.** 1, 2.

— Compromise for lump sum.
See **SETTLED LAND—Apportionment.** 4.

— Costs—Administration action—Real and personal estate — Land Transfer Act — Practice.
See **COSTS.** 5.

— Costs before taxation—Power to apportion.
See **COUNTY COURT—Costs.** 5.

— Costs — Factory Acts — Underground bakehouse—Lease—Covenant.
See **FACTORY.** 5.

— Costs—Lands Clauses Acts.
See under **LANDS CLAUSES ACTS.**

— Costs — Public authorities protection—Solicitor and client costs.
See **COSTS.** 50.

— Costs.
See under **COSTS.** 50.

— Costs—Taxed bill—Successful appeal from part of judgment.
See **PATENT—Disclaimer.** 1.

1. — *Dividends on shares—Company's articles—Express Stipulation against apportionment—Apportionment Act, 1870 (33 & 34 Vict. c. 35), s. 7.*

A testator bequeathed certain shares in a co. to his trustees upon trust to pay "the income arising therefrom" to his wife for life.

The testator died on Jan. 4, 1906.

Some time after his death a dividend for the financial year ending Oct. 31, 1905, was declared. The full dividend for the next financial year was not yet declared.

The co.'s articles provided (inter alia) as follows:—

Art. 90: "Every dividend, whether arising from past or current profits, shall for all purposes be deemed to accrue and fall due upon the day on which it is declared, and not before."

Art. 91: "Every dividend shall belong and be paid (subject to the co.'s lien) to those members who shall be on the register at the date when every such dividend is declared, notwithstanding any subsequent transfer or transmission of shares":—

Held that, as between the testator's estate and the widow, these articles did not amount to an express stipulation against apportionment within s. 7 of the Apportionment Act, 1870, and the dividends were therefore apportionable.

Whether the express stipulation referred to in s. 7 can be contained elsewhere than in a will

APPORTIONMENT—continued.

or other instrument of gift, *quære*. *In re OPPENHEIMER*. *OPPENHEIMER v. BOATMAN*

Swinfen Eady J. [1907] W. N. 54; [1907] 1 Ch. 399

— Dock charges and expenses—Contribution—Collision.

See SHIPPING—Collision. 12.

— Estate duty—Marriage settlement—Charging sum on death of settlor—Will of settlor—Specific devise.

See REVENUE—Estate Duty. 24.

— Lease—Covenant to pay outgoings—Private street works.

See LANDLORD AND TENANT. 59.

2.—*Liabilities—Bishopric—Committed first fruits and tenths—Apportionment Act, 1870 (33 & 34 Vict. c. 35), s. 2.*

The Apportionment Act, 1870, apportions liabilities as well as rights.

Swansea Bank v. Thomas, (1879) 4 Ex. D. 94; *In re South Kensington Co-operative Stores*, (1881) 17 Ch. D. 161, 165; *In re Wilson*, (1893) 62 L. J. (Q.B.) 628, 632; and *In re Howell*, [1895] 1 Q. B. 844, 847, followed.

The annual sums payable by a bishop in commutation of first fruits and tenths are "periodical payments in the nature of income" within s. 2, and therefore apportionable between successive bishops inter se; but, though now collected and administered by the Governors of Queen Anne's Bounty, they are still in fact Crown debts enforceable by writ of extent, and therefore not apportionable against the Crown or the treasurer of Queen Anne's Bounty. **BISHOP OF ROCHESTER v. LE FANU**

Swinfen Eady J. [1906] 2 Ch. 513.

— Loss—Company—Lost capital—Reserve—Sanction of Court.

See COMPANY—Reduction of Capital. 7.

— New street—Paving expenses.

See under LONDON—Streets.

— Nuisance, Notice to abate—Notice to other owners—Apportionment of expenses.

See SEWERS. 9.

— Pending realization—Settled mortgage—Arrears due at date of settlement.

See SETTLED LAND—Mortgages. 3.

— Preferential payments in bankruptcy—Poor and district rates—Water rate payable by meter.

See COMPANY—WINDING-UP—Preference. 5.

— Rate—Demand—Distress warrant.

See RATES. 10.

— Rent—Assignment by lessee of part of premises—Value of several parts.

See LANDLORD AND TENANT. 79.

— Settled estate—Life annuities—Past and future instalments—Simple interest.

See ANNUITY. 12.

— Settled land.

See under SETTLED LAND—Apportionment.

APPORTIONMENT—continued.

— Shipping—Salvage.

See under SHIPPING—Salvage.

— Tenant for life and remainderman—Covenant to pay life annuities—Capital and income.

See SETTLED LAND—Annuities. 1.

— Tenant for life and remainderman—Investment—Proceeds of realization of insufficient security.

See SETTLEMENT. 31.

— Tenant for life and remainderman.

See under SETTLED LAND—Apportionment.

— Union, Alteration of—Annual sums payable to union.

See POOR LAW. 3.

APPRAISEMENT—Reopening—Salvage—Practice—Basis of value.

See SHIPPING—Salvage. 23.

APPRENTICE—Infant—Apprenticeship—Covenant not to carry on business within certain area.

See INFANT—Apprenticeship. 1.

— Licence—Assessed taxes—Stable-boy—"Male servant."

See REVENUE—Servants. 2.

— Workmen's compensation—Value of tuition.

See MASTER AND SERVANT—Compensation. 65.

— Stamp—Medicinal preparation—Exemption—Contract of apprenticeship not in writing.

See REVENUE—Stamps. 17.

APPROACHES—"Bridge"—Public carriage road carried over railway—Width of bridge—Liability of railway company.

See RAILWAY—Bridges. 1.

— Highway—Bridge, Liability to repair 300 feet from end of.

See BRIDGES. 1.

APPROPRIATION ACT, 1910 (10 Edw. 7 & 1 Geo. 5, c. 14).

APPROPRIATION—Bank—Mortgage to secure current account—Subsequent mortgage—Appropriation of payments—Rule in Clayton's Case.

See MORTGAGE—Bank. 1.

— Company—Debenture—Deficient security—Principal or interest—Income tax.

See COMPANY—Debentures. 8.

— Company—Debenture-holders' action—Supposed deficient security—Principal and interest—Payments on account—Appropriation of payments.

See COMPANY—Debentures. 19.

— Goods to contract, Appropriation of—Bankruptcy of manufacturer—Right of trustee—Ship.

See SALE OF GOODS. 1.

APPROPRIATION—*continued.*

- Licensing Acts—Offences—Appropriation of goods sold.
See LICENSING ACTS. 51.
- Lunatic, Pauper—Maintenance—Lunatic's estate—Payments on account.
See POOR LAW. 10.

1.—*Payment—Statute of Limitations—Option of creditor to appropriate—Limit on exercise of option—Set-off—Solicitor and client—Solicitor's bill—Sum received on account of client.*

The executor of a deceased solicitor brought an action in 1902 to recover costs alleged to be due to his testator's estate from the deft., of which a bill had been delivered to the deft., together with a cash account, on Dec. 2, 1899. The items of the bill extended over a period from 1878 to 1899, and the Statute of Limitations being pleaded, the judge at the trial gave judgment for the deft. in respect of all items prior to 1893, as being statute-barred. He referred the rest of the bill to a Master for taxation, and to take the cash account from 1893, directing that credit should be given to the deft. for all sums of money received by the plt.'s testator for or on account of the deft., in respect of, or which ought to be treated as reducing or discharging, the bill of costs so taxed. Upon taxation the deft. brought in a surcharge in respect of a sum of 66*l.*, which had been received by the plt.'s testator, as the deft.'s solicitor in an action brought by the deft., in 1894, and not accounted for to the deft. No cash account had been delivered by the plt.'s testator to the deft., except the account of Dec. 2, 1899, which, through an inadvertence, contained no entry of the said sum of 66*l.* The plt. claimed that this sum should be treated as appropriated to payment or satisfaction of items which had accrued due from the deft. to the plt.'s testator prior to 1893:—

Held, that the said sum of 66*l.* could not be set off against the statute-barred items under the statutes of set-off; and that, assuming that the plt.'s testator would have had a right to appropriate the said sum to these items, yet, there having been no such appropriation, it was not, having regard to the terms of the judgment of the learned judge at the trial, open to the plt. so to appropriate the said sum subsequently to that judgment: and therefore that the surcharge in respect of the said sum of 66*l.* must be allowed.
SMITH v. BETTY C. A. [1903] 2 K. B. 317

- Specific assets—Leaseholds—Settled shares—Sale and conversion—Land Transfer Act.
See EXECUTOR—Administration. 2.
- Time—Payments—Unregistered dentist—Right to sue for fees.
See DENTIST. 4.
- Trust for sale—Reconversion—Election—Purchase by trustee for sale.
See VENDOR AND PURCHASER—Title. 17.
- Trustee and cestui que trust—Solicitor trustee—Fraud.
See TRUSTEE—Breach of Trust. 1.

ARBITRATION.

Agreement to Refer, col. 90.

Appeal. See under ARBITRATION—Practice.

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Railway. See under RAILWAY—Arbitration.

Staying Proceedings. See under ARBITRATION—Agreement to Refer—and under ARBITRATION—Practice.

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Agreement to Refer.

— *Appealing.*

See under ARBITRATION—Practice.

— *Compromise of action—Authority exceeded by counsel.*
See COUNSEL. 1.

— *Stay of proceedings, Application for—Step in proceedings—Summons for directions.*
See ARBITRATION—Practice. 1.

— “*Submission*”—*Staying proceedings—Agreement to refer disputes to foreign Court.*
See ARBITRATION—Submission. 1.

1.—*Summons for directions—Agreement to refer to Arbitration—Legal proceedings—Application for stay—Step in proceedings—Practice—Arbitration Act, 1899 (52 & 53 Vict. c. 49), s. 4—R. S. C., 1883, Order XXX., r. 4.*

Attendance by a deft. before the Master on a summons for directions, taken out by the plt., and acquiescence, without protest, in a common form order for delivery of pleadings, is taking a step in the proceedings within the meaning of s. 4 of the Arbitration Act (52 & 53 Vict. c. 49), and the deft. is thereby precluded from moving to stay proceedings under that section.

County Theatres and Hotels, Ltd. v. Knowles, [1902] 1 K. B. 480, must be taken to lay down a general rule. *RICHARDSON v. LE MAITRE*.

Swinfen Eady J. [1903] W. N. 101 ; [1903] 2 Ch. 222

ARBITRATION—*continued.***Appeal.**

See under **ARBITRATION—Practice.**

Arbitrators.

1. — *Arbitrator functus officio*—Power to remit matters referred—*Practice—Arbitration Act, 1889 (52 & 53 Vict. c. 49), s. 10.*

The Court has power under s. 10 of the Arbitration Act, 1889, to remit the matters referred to the reconsideration of the arbitrator even although the arbitrator be functus officio. *In re STRINGER AND RILEY BROTHERS*

Div. Ct. [1901] 1 K. B. 105

— Architect's certificate—Architect in position of arbitrator—Negligence.

See **BUILDING CONTRACT. 1.**

— Farming lease.

See **SCOTTISH LAW. 12**

— Finding of fact—Ultra vires.

See **SCOTTISH LAW. 1.**

Jurisdiction of Arbitrators.

— Award as to accounts of Common School Lands Fund—Submission as to accounts and destination of moneys received.

See **CANADA—Arbitration. 3.**

— Jurisdiction of arbitrators—Party wall—Expense of raising—Building notice.

See **LONDON—Buildings. 15.**

2. — *Misconduct—Reduction of award—Verbal agreement to dispense with legal assistance—Alleged refusal of arbitrator to hear further proof.*

The House, holding on the facts that there had been no misconduct on the part of the arbitrator in any form, reversed the decision of the Second Division of the Ct. of Sess. *Paterson & Son, Ltd. v. Glasgow Corporation*, (1900) 2 F. 1201, and restored the judgment of the Lord Ordinary, with costs. **GLASGOW CORPORATION v. PATERSON & SON, Ltd.**

H. L. (Sc.) [1901] W. N. 162

3. — *Qualification—Arbitrator to be member of trade association—Arbitrator not member of association—Estoppel.*

A contract headed "London Corn Trade Association," for the sale by the deft. to the plts. of a quantity of wheat, contained a clause that all disputes from time to time arising out of the contract should be referred to two arbitrators, one to be appointed by each party, the two arbitrators having power to appoint a third and "the arbitrators appointed shall be in all cases principals engaged in the corn trade as merchants, millers, factors, or brokers, and shall also be members of the London Corn Exchange, the Baltic, or the London Corn Trade Association, and residing in the United Kingdom." The clause also provided that either party if dissatisfied with the award might appeal to the committee of appeal elected for the purpose, who were to confirm the award unless four members of the committee decided otherwise. The committee of appeal consisted of five members. A dispute under the contract was referred to arbitration in accordance with the above

ARBITRATION (Arbitrators)—*continued.*

clause, and the parties attended the arbitration proceedings and the three arbitrators made an award in favour of the deft. and the award was confirmed by the committee of appeal. Neither of the arbitrators appointed by the parties was a member of one or other of the three bodies above mentioned, but this fact was not known to the plts. until after the award had been confirmed on appeal. The two arbitrators had, however, on many occasions acted as arbitrators under similar contracts containing a similar arbitration clause. The plts. having brought an action for a declaration that the award was null and void :—

Held, that as the arbitrators were not qualified to act as arbitrators under the contract, they had no jurisdiction to determine the dispute, and the award was null and void; and the plts. were not estopped from relying upon the defect in the qualification of the arbitrator appointed by the deft. **JUNGHEIM, HOPKINS & Co. v. FOUKELMANN - Pickford J.** [1909] 2 K. B. 948

— Railway companies, Difference between—Arbitrator designated by name—Death of person designated.

See **RAILWAY—Arbitration. 1.**

Award.

— Appeal—Application to enforce award in the same manner as a judgment—Practice.

See **APPEAL. 21.**

— Application to enforce award—Service of summons out of jurisdiction.

See **ARBITRATION—Practice. 3, 4.**

— Arbitrators as to value of land expropriated also appointed mediators—Award set aside—Terms of submission exceeded.

See **CANADA—Arbitration. 1.**

— Award of Compensation — Conviction — Penalties.

See **ELECTRIC LIGHT. 7.**

— Bankruptcy notice—Final judgment—Enforcing award—Entering judgment in accordance with award—Jurisdiction.

See **BANKRUPTCY—Notice. 5.**

1. — *Compulsory powers—Award—Waterworks Clauses Act, 1847 (10 & 11 Vict. c. 17), ss. 22, 23.*

The House affirmed with costs the decision of the First Division of the Ct. of Sess., (1901) 3 F. 156. **EDINBURGH AND DISTRICT WATER TRUSTEES v. CLIPPENS OIL Co.**

H. L. (Sc.) [1902] W. N. 157

Note.

See also *Clippens Oil Co. v. Edinburgh and District Water Trustees*, H. L. (Sc.) [1903] W. N. 204; [1904] A. C. 64; *Water.*

— Costs—Reduction of award—Apportionment.

See **SHIPPING—Salvage. 12.**

— Fire policy—Award condition precedent to suit.

See **JERSEY. 1.**

ARBITRATION (Award)—continued.

— Interest on amount awarded—Mines near railway—Compensation.
See RAILWAY—Mines. 5.

— Jurisdiction of arbitrators—Deed of submission—Construction.
See CANADA—Arbitration. 2.

2. — Jurisdiction of arbitrators — Sale of goods by description—Award based on custom subsequently found not to exist—Custom inconsistent with written contract.

By a contract in writing sellers sold to buyers 300 tons of rubber "fair quality Banjermassin Jelutong at 18l. 15s. per ton c.i.f. Liverpool . . . for direct shipment from the East or Straits Settlements to Liverpool. . . ." The contract contained an arbitration clause in the following terms: "Any dispute on this contract to be settled by arbitration here in the usual way." On arrival at Liverpool the buyers refused to take delivery on the ground that the goods were not in accordance with the contract. The dispute was referred to arbitrators, who found that the goods were not in accordance with contract but must be accepted by the buyers at an allowance of 10s. per ton. The award was based upon the existence of an alleged custom applicable to contracts for raw material to be shipped to this country, to the effect that the buyers should accept the goods with an allowance for inferiority of quality, where that inferiority was in the opinion of the arbitrators not excessive or unreasonable. Upon a motion by the buyers to set aside the award, the Court directed an issue to determine the existence of the alleged custom, and upon the trial of the issue the alleged custom was found not to exist:—

Held, that the arbitrators had no jurisdiction to deal conclusively with the question of the existence of the custom for the purpose of making their award, and that, as the custom upon which they based their award had been found not to exist in fact, the award compelling the buyers to accept goods not in accordance with the written contract was bad and must be set aside. *Hutcheson v. Eaton*, (1884) 13 Q. B. D. 861, discussed and followed. *In re NORTH WESTERN RUBBER CO. AND HÜTTENBACH & CO.*

C. A. [1908] 2 K. B. 907

— Land Transfer Act—Appeal from registrar—Parties.
See LAND TRANSFER. 4.

— Lands Clauses Act—Purchasers compelled to take conveyance.
See LANDS CLAUSES ACTS. 11.

— Lease — Renewal — Costs of reference and award as to amount of fine.
See LANDLORD AND TENANT. 6.

— Salvage.
See under SHIPPING—Salvage.

— Setting aside award—Order, whether final or interlocutory.
See PRACTICE—Interlocutory Orders. 1.

— Stamp duty on awards.
See Revenue Act, 1906 (6 Edw. 7, c. 20), s. 9.

ARBITRATION (Award)—continued.

— Validity—Reference by Court of pending action—Ex parte hearing by arbitrator.
See CEYLON. 1.

Company.

— Winding-up—Sale of undertaking—Dissentient member—Purchase of interest—Right of dissentient member to examine officers prior to arbitration.
See COMPANY — WINDING-UP — Examination. 2.

Contract.

— Breach — Damages — Liability of sureties to be sued.
See CONTRACT. 8.

Costs.

— Costs—Workmen's compensation—Review of amount fixed by award or agreement—Discretion of county court judge.
See MASTER AND SERVANT—Practice. 10.

— Costs of arbitration—Award and arbitration ultra vires.
See RAILWAY—Mines. 6.

— Costs of reference and award as to amount of fine payable on renewal of lease.
See LANDLORD AND TENANT. 6.

— Lease—Renewal "at costs of lessee"—Costs of reference and award as to amount of fine payable on renewal.
See LANDLORD AND TENANT. 6.

— New South Wales, Law of.
See under NEW SOUTH WALES.

— Offer by promoters—Conditional offer.
See LANDS CLAUSES ACTS—Conditional Offer. 14.

— Reference of action to Master—Discretion to give costs on High Court scale—Practice.
See COSTS. 49.

— Solicitor of umpire, Costs of—Right to order for taxation—Third party.
See SOLICITOR—Costs. 43.

— Taxation—Review—Scale fee.
See COSTS. 14.

Employer and Workman.

See under MASTER AND SERVANT.

Evidence.

— Company — Right of dissentient member to examine witnesses prior to arbitration.
See COMPANY — WINDING-UP — Examination. 2.

Farming Lease.

— Lease—Outgoing tenant—Sheep stock valuation—Agricultural Holdings (Scotland) Act, 1908.
See SCOTTISH LAW. 12.

Friendly Society.

— Dispute—Arbitration under rules—Order to pay costs—Jurisdiction.
See FRIENDLY SOCIETY. 6.

ARBITRATION—*continued.***Interest.**

- Railway company—Mines—Notice to prevent working—Interest on amount awarded.
See RAILWAY—Mines. 5.

Jurisdiction.

- Buildings—Party wall—Building notice—Difference between building owner and adjoining owner—Jurisdiction of arbitrators.
See LONDON—Buildings. 15.
- Friendly society—Jurisdiction of arbitration committee—Dispute between member and society—Expulsion.
See FRIENDLY SOCIETY. 7.
- Friendly society—Order to pay costs—Jurisdiction—Ultra vires.
See FRIENDLY SOCIETY. 6.
- Railway—Demurrage of trucks—Right of action for damages for detention—Arbitration—Jurisdiction of Court—Great Western Railway Company.
See RAILWAY—Trucks. 1.

Practice.

1. — Agreement to refer—Legal proceedings—Application for stay—Step in proceedings—Summons for directions—Treatment of summons as summons for account under Order XV.—Acquiescence by defendants without protest—Undertaking by defendants to furnish account—*Arbitration Act*, 1889 (52 & 53 Vict. c. 49), s. 4.

Attendance by defts. before a Master on the usual summons for directions taken out by the plt., which the Master proposed to treat as a summons for an account under Order XV., and giving an undertaking to furnish an account as a term of the summons standing over, is taking a step in the proceedings within the meaning of s. 4 of the *Arbitration Act*, 1889, and the defts. are thereby precluded from obtaining a stay of proceedings under that section.

It is not necessary in such a case that an order shall actually have been made.

County Theatres and Hotels, Ltd. v. Knowles, [1902] 1 K. B. 480, followed. *OCHS v. OCHS BROTHERS.* *Warrington J.* [1909] W. N. 128; [1909] 2 Ch. 121

- Application to enforce award in the same manner as a judgment—Practice.
See APPEAL. 21.
- Appeal—Reference of action to master.
See APPEAL. 23.
- Appeal—Reference of action to master—Consent of parties.
See APPEAL. 24.
- Appeal—Salvage—Reduction of award—Costs.
See SHIPPING—Salvage. 3.
- Appeal from chambers—"Practice and procedure"—Order for statement of case pending arbitration.
See APPEAL. 1.

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ARBITRATION (Practice)—*continued.*

- Appeal, Right of—Workmen's compensation—Arbitrator appointed by county court judge.

See MASTER AND SERVANT—Practice.

1.

- Building contract—Certificate of architect—Finality—Reference of disputes to arbitration.

See BUILDING CONTRACT. 1.

- Compulsory reference—Ouster of jurisdiction—Company—Private Act—Statutory agreement.

See MANCHESTER. 1.

- Costs.

See UNDER ARBITRATION—Costs.

2. — Delivery of pleadings—Power of arbitrator to allow amendment of pleadings.

An arbitrator has a discretion as a judicial officer to allow an amendment of pleadings delivered by the parties in compliance with a direction given to them by him. *In re CRICHTON AND THE LAW CAR AND GENERAL INSURANCE CORPORATION, LD.*

Div. Ct. [1910] 2 K. B. 738

3. — Jurisdiction—Service of notice of motion to set aside award on foreign company out of jurisdiction—Rules of the Supreme Court, 1883, Order XI., r. 8A.

There is no jurisdiction under Order XI., r. 8A, of the Rules of the Supreme Court, 1883, to grant leave for service out of the jurisdiction of a summons, order, or notice, except in the circumstances in which there is jurisdiction under Order XI., r. 1, to grant leave for service of a writ of summons out of the jurisdiction.

If leave is granted for service in a country to which Order XI., r. 8, applies, the summons, order, or notice must be served in the manner directed by that rule; if in a country to which r. 8 does not apply, the service must take place in the manner directed by the previous rules having reference to the service of notice of a writ of summons.

An award was made against the respondents, a foreign company carrying on business in Sweden, in an arbitration held in England in pursuance of a clause contained in an agreement entered into in France between the respondents and the applicants, a foreign company carrying on business in France. The clause in the agreement under which the arbitration took place provided that in the event of any dispute arising under the agreement the same should be submitted to arbitrators to be appointed by each party, or in case of need to an umpire to be appointed by the arbitrators. The applicants and respondents respectively appointed a Frenchman and an Englishman as arbitrators, and the arbitrators appointed an Englishman as umpire, by whom the award was made in England. Under the agreement the respondents were to be taken to have elected to have a French domicile:—

Held, that there was no jurisdiction under Order XI., r. 8A, to grant leave to the respondents for service on the applicants out of the jurisdiction of a notice of motion to set aside the

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ARBITRATION (Practice)—continued.

award. *In re* AKTIEBOLAGET ROBERTSFORS AND LA SOCIÉTÉ ANONYME DES PAPETERIES DE L'AA Div. Ct. [1910] 2 K. B. 727

— Official referee, Whole action referred to—Judgment—Mode of appealing—Practice.

See APPEAL. 24.

— Poor law (payment of debts)—Limitation of time for payment—Claim due and payable.

See PUBLIC AUTHORITIES' PROTECTION. 5.

— Reference, Compulsory—Practice—Pleadings—Ouster of jurisdiction—Omission to plead—Trial of action—Amendment.

See COMPANY—Practice. 4.

4. — *Service of summons without the jurisdiction—Practice—Jurisdiction—Application to enforce award—Arbitration Act, 1889 (52 & 53 Vict., c. 49), ss. 1, 12.*

An award had been made against the appellants, who were foreigners resident, out of the jurisdiction, in an arbitration alleged to have been held in pursuance of a provision contained in an agreement between the appellants and the respondent to the effect that, in the event of any dispute arising under the agreement, the same should be submitted to arbitrators to be appointed, to which arbitration, however, the appellants had refused to be parties :—

Held, that there was no jurisdiction to allow service on the appellants out of the jurisdiction of a summons for leave to enforce the award under the Arbitration Act, 1889, s. 12. *RASCH & Co. v. WULFERT. C. A. [1903] W. N. 204; [1904] 1 K. B. 118*

5. — *Stay of action—Step in the proceedings—Summons for directions—Pleadings ordered at joint request of plaintiff and defendant—Arbitration Act, 1889 (52 & 53 Vict. c. 49), s. 4.*

Summons by deft. in a partnership action asking that the proceedings might be stayed and the matter referred to arbitration pursuant to the partnership articles and the Arbitration Act, 1889.

The question was whether the deft. had taken a step in the proceedings within s. 4 of the Arbitration Act, 1889, so as to have lost his right to a stay.

The Court was unable to distinguish *County Theatres and Hotels, Ltd. v. Knowles* [1902] W. N. 22; [1902] 1 K. B. 480, and therefore dismissed the summons. *STEVEN v. BUNCLE. Swinfen Eady J. [1902] W. N. 44*

6. — *Stay of proceedings—Agreement to refer—Legal proceedings in respect of matter agreed to be referred—Application for stay—Step in proceedings—Summons for directions—Arbitration Act, 1889 (52 & 53 Vict. c. 49), s. 4—R. S. O., Order XXX., rr. 1, 2.*

An action was brought for breach of a written contract which contained an agreement to refer matters in dispute between the parties. The deft. attended at chambers on the hearing of a summons for directions taken out by the plts., on which an order was made that the plts., and deft. should respectively make discovery of

ARBITRATION (Practice)—continued.

documents. The deft. subsequently applied under s. 4 of the Arbitration Act, 1889, for a stay of proceedings :—

Held, that the deft. had taken a step in the proceedings, and was, therefore, not entitled to a stay. *COUNTY THEATRES AND HOTELS, LD., v. KNOWLES C. A. [1902] W. N. 22; [1902] 1 K. B. 480*

Note.

Followed by *Swinfen Eady J., Steven v. Buncle, [1902] W. N. 44, preceding Case.*

Explained by *Swinfen Eady J., Richardson v. Le Maître, [1903] 2 Ch. 222. See Arbitration—Agreement to refer. 1.*

Followed by *Warrington J., Ochs v. Ochs Brothers, [1909] 2 Ch. 121. See No. 1, above.*

— Arbitration clause—Leave for term of years—Action for occupation rent—Staying proceedings.

See LANDLORD AND TENANT. 28.

— Disputes between society and members—Rules—Arbitration—Ultra Vires acts—Stay of proceedings.

See INDUSTRIAL AND PROVIDENT SOCIETY. 1.

— Staying proceedings—Cesser clause—Bill of lading—Claim for demurrage.

See SHIPPING—Charterparty. 1.

— Staying proceedings—Partnership—Mortgage of partner's interest—Right of mortgagee to account—Arbitration clause—Stay of proceedings—Appointment as arbitrators of strong supporters of each party.

See PARTNERSHIP. 16.

— Staying proceedings—Practice generally.

See under PRACTICE—Staying Proceedings.

— Staying proceedings—Ship—Berth note—Arbitration clause—"Dispute arising at loading ports"—Stay of proceedings.

See SHIPPING—Practice. 3.

— Staying proceedings—Submission to arbitration—Railway Passengers' Assurance Company's Acts.

See PRACTICE—Staying Proceedings. 5.

— Staying proceedings where submission to arbitration—County Court—Jurisdiction.

See COUNTY COURT—Practice. 17.

— Tramways—Jurisdiction of High Court ousted—Objection to jurisdiction first taken on appeal.

See TRAMWAYS. 3.

— Trespass, Action for—Injunction—Arbitration clause—Failure of company to proceed under their Act.

See CANADA—Arbitration. 4.

Private Act.

— Statutory agreement—Arbitration clause—Compulsory reference—Ouster of jurisdiction.

See MANCHESTER. 1.

ARBITRATION—continued.**Public Authority.**

— Limitation of time for proceedings.

*See under PUBLIC AUTHORITIES' PROTECTION.***Railway.***See under RAILWAY—Arbitration.***Staying Proceedings.***See under ARBITRATION—Agreement to Refer—and under ARBITRATION—Practice.***Submission.**

1. — "*Submission*" — *Agreement to refer disputes to foreign Court—Staying proceedings—Arbitration Act, 1889 (52 & 53 Vict. c. 49), ss. 4, 27.*

A policy of life insurance was effected by a foreigner with an English insurance co., which had a branch office at Budapest. The policy, which was in the French language, provided that the premiums and insurance money should be payable at Budapest, and contained a condition, of which the English translation was as follows: "For all disputes which may arise out of the contract of insurance, all the parties interested expressly agree to submit to the jurisdiction of the Courts of Budapest having jurisdiction in such matters":—

Held, that the above-mentioned condition constituted a "submission" within the meaning of s. 4 of the Arbitration Act, 1889. *AUSTRIAN-LLOYD STEAMSHIP CO. v. GRESHAM LIFE ASSURANCE SOCIETY, LD.* - C. A. [1903] W. N. 7; [1903] 1 K. B. 249

Telegraph.*See also under TELEGRAPH.*

Telegraph (Arbitration) Act, 1909 (9 Edw. 7, c. 20), is an Act to give further powers to the Railway and Canal Commission to determine differences with respect to telegraphs (including telephones).

Umpire.

1. — *Witness called by umpire—Misconduct—Evidence—Removal—Arbitration Act, 1889 (52 & 53 Vict. c. 49), s. 11.*

Neither a judge nor an umpire has any right to call a witness in a civil action without the consent of the parties.

Coulson v. Dishborough, [1894] 2 Q. B. 216, commented on.

Arbitrators are bound to observe the rules of evidence no less than judges.

Att.-Gen. v. Davison, (1825) M'Cl. & Y. 160, considered. *In re Keighley, Maated & Co. and Bryan Durant & Co.* [1893] 1 Q. B. 405, explained. *In re ENOCH AND ZARETZKY, Bock & Co.'s ARBITRATION* - C. A. [1910] W. N. 3; [1910] 1 K. B. 327

Workmen's Compensation.

— Arbitration.

See under MASTER AND SERVANT.

— Judicial proceeding—Perjury.

*See CRIMINAL LAW—Appeal. 17.***ARBITRATOR.***See under ARBITRATION.***ARCHES COURT.***See under ECCLESIASTICAL LAW—Court of Arches.***ARCHES COURT RULES, SEPT., 1903.***See ECCLESIASTICAL LAW—Faculty. 18.*

ARCHITECT—Certificate—Architect in position of arbitrator—Negligence.

See BUILDING CONTRACT. 1.

— Certificate of—Finality—Reference of disputes to arbitration—Right to legal remedies.

See BUILDING CONTRACT. 2.

— Covenant not to practise as an architect or surveyor—Fixed salary.

See RESTRAINT OF TRADE. 6.

1. — *Damages—Negligence of architect in preparing plans—Plans not used—Nominal damages.*

The plts. employed the deft. to prepare plans for a building to be erected on a site belonging to them. The deft. neglected to measure the site, and acting on information which was unauthorised by the plts., prepared plans on the assumption that the site was smaller than it was in fact. The plts., having paid the deft. for the plans, were unable to raise funds to build on the site, and ultimately parted with it, and then discovered the error in the plans. In an action to recover the money paid for the plans on the grounds of a total failure of consideration, or, in the alternative, for damages for negligence:—

Held, that there had not been a total failure of consideration, but that as the deft. had been negligent the plts. were entitled to damages, although, as they had sustained no loss from his negligence, those damages would be only nominal. *COLUMBUS CO. v. CLOWES*

Wright J. [1903] 1 K. B. 244

2. — *Plans—Completion of Work—Property in plans—Claim of Architect—Custom—Reasonableness.*

An architect was employed by a building owner to carry out alterations in certain houses. He prepared plans and superintended the execution of the work, which was completed, and his agreed remuneration at an inclusive percentage on the outlay was paid. The building owner then demanded the plans, which the architect refused to hand over. In an action by the building owner against the architect to recover the plans:—

Held, that a custom set up by the deft. entitling him as architect to the property in the plans after the completion of the work was unreasonable, and afforded no answer to the action. *GIBBON v. PEASE*

C. A. [1905] W. N. 55; [1905] 1 K. B. 810

— Scope of authority—London Building Act—Landlord and tenant.

See LONDON—Party Walls. 18.

— Street—General line of buildings—Superintending architect's certificate—Appeal to tribunal of appeal.

See LONDON—Streets. 1.

ARMS (NAME AND) CLAUSE.

See under NAME AND ARMS CLAUSE.

WILL — Name and Arms Clause.**ARMY AND NAVY.**

Army (Annual) Acts, 1901—1910. See under "THE STATUTES ENACTED DURING THE YEARS 1901—1910." Ante, p. cdlxvii.

Military Works Act, 1901 (1 Edw. 7, c. 40), makes further provision for defraying the expenses of certain military works and other military services.

Militia and Yeomanry Act, 1901 (1 Edw. 7, c. 14), amends the law relating to the militia and yeomanry.

Naval Works Act, 1901 (1 Edw. 7, c. 39), makes further provision for the construction of works in the United Kingdom and elsewhere for the purposes of the Royal Navy.

Volunteer Efficiency. O. in C. declaring what is requisite to entitle a Volunteer to be deemed an Efficient Volunteer. **St. R. & O. 1902, No. 659.**

Royal Naval Reserve Act, 1902 (2 Edw. 7, c. 5), amends s. 1 of the *Royal Naval Reserve (Volunteer) Act*, 1896 (59 & 60 Vict. c. 33), as to qualification as to service.

Militia and Yeomanry Act, 1902 (2 Edw. 7, c. 39), amends the law relating to Militia and Yeomanry.

War Stores Commission Act, 1905 (5 Edw. 7, c. 7), facilitates the proceedings of the Commissioners appointed to hold an investigation respecting war stores in South Africa.

Naval Works Act, 1905 (5 Edw. 7, c. 20).

Seamen's and Soldiers' False Characters Act, 1906 (6 Edw. 7, c. 5).

Reserve Forces Act, 1906 (6 Edw. 7, c. 11).

Territorial and Reserve Forces Act, 1907 (7 Edw. 7, c. 9), is an Act to provide for the re-organisation of His Majesty's military forces, and for that purpose to authorise the establishment of County Associations, and the raising and maintenance of a Territorial Force, and for amending the Acts relating to the Reserve Forces.

Naval Lands (Volunteers) Act, 1908 (8 Edw. 7, c. 25), extends the *Military Lands Acts* to Naval Volunteers.

Naval Marriages Act, 1908 (8 Edw. 7, c. 26), authorizes, for the purpose of marriages in the United Kingdom, the publication of Banns and the issue of Certificates on board His Majesty's ships in certain cases.

Navy. Discipline. — Prisons. Rules and Regulations, Jan. 18, 1908, amending *Regulations for Naval Prisons* under s. 81 of "The Naval Discipline Act." **St. R. & O., 1908, No. 20.** Price 1d.

Territorial Force. O. in C., March 19, 1908, under s. 29 of the *Territorial and Reserve Forces Act*, 1907, transferring units of Yeomanry and Volunteers to the Territorial Force. **St. R. & O., 1908, No. 256.** Price 2d.

ARMY AND NAVY—continued.

Territorial Force. O. in C., March 19, 1908, under s. 28 of the *Territorial and Reserve Forces Act*, 1907, applying certain enactments relating to the Militia and to Officers of the Volunteers to the Territorial Force. **St. R. & O., 1908, No. 256.** Price 1d.

Territorial Force. O. in C., March 19, 1908, under s. 28 of the *Territorial and Reserve Forces Act*, 1907, as to certain Property of the Honourable Artillery Company. **St. R. & O., 1908, No. 257.** Price 1d.

Reserve Forces. O. in C., April 9, 1908, under s. 34 of the *Territorial and Reserve Forces Act*, 1907, transferring units of Militia to the Army Reserve. **St. R. & O., 1908, No. 324.** Price 1d.

Territorial Force. O. in C., April 9, 1908, under s. 29 of the *Territorial and Reserve Forces Act*, 1907, transferring units of Volunteers to the Territorial Force. **St. R. & O., 1908, No. 325.** Price 1d.

Reserve Forces. O. in C., May 5, 1908, adding the Transvaal and the Orange River Colony to the Schedule to the *Reserve Forces Act*, 1906. **St. R. & O., 1908, No. 388.** Price 1d.

Naval Establishments in British Possessions Act, 1909 (9 Edw. 7, c. 18), is an Act to make better provision respecting Naval Establishments in British Possessions.

Colonial Naval Defence Act, 1909 (9 Edw. 7, c. 19), is an Act to amend the *Colonial Naval Defence Act*, 1865.

Naval Discipline Act, 1909 (9 Edw. 7, c. 41).

H.M. Territorial Forces. Correspondence printed at the request of the President of the Law Society. **W. N. 1909 (Mar. 20), p. 105.**

Naval Marriages. O. in C., under *Naval Marriage Act*, 1908 (8 Edw. 7, c. 26), and dated Dec. 21, 1908, adopting provisions of enactments and rules as to publication of banns and issue of certificates. **St. R. & O., 1908, No. 1316.**

Duke of York's School (Chapel) Act, 1910 (10 Edw. 7 & 1 Geo. 5, c. 16).

Territorial Force. O. in C., April 22, 1910, transferring certain properties from trustees to county associations. **St. R. & O., 1910, No. 476.**

— Attachment of debts—Garnishee order—Retired pay of officer in Army—Pension due but not paid—Bank crediting amount to customer.
See ATTACHMENT. 6.

— Licensing Acts—Excise licence for sale in canteen—Sale to civilian.
See LICENSING ACTS. 49.

— Military lands—Streets—Paving, &c. expenses—Liability—Crown.
See STREETS. 18.

1. — Navy—Enlistment—Naval service—*Royal Naval Reserve—Penalty for making false statements—Naval Enlistment Act*, 1853 (16 & 17 Vict. c. 69), s. 16—*Royal Naval Reserve (Volunteers) Act*, 1859 (22 & 23 Vict. c. 40).

Sect. 16 of the *Naval Enlistment Act*, 1853,

ARMY AND NAVY—*continued.*

which imposes a penalty on a person who on offering himself to enter the naval service of the Crown makes a false statement with intent to deceive any person "authorized to enter or enlist seamen or others in or for such naval service," has no application to a person who makes a false statement when seeking to enter the Royal Naval Reserve as established by the Royal Naval Reserve (Volunteers) Act, 1859. *WESTHORPE v. POWLEY* Div. Ct. [1906] 1 K. B. 286

— Navy—Seaman—Contraband of war.

See SHIPPING—Seaman. 2.

— Nuncupative will—Volunteer soldier—Minor —"In actual military service."

See PROBATE—Nuncupative Will. 1.

— Soldier's will.

See under PROBATE—Soldier's Will.

— Vessel employed in coaling ships of navy—King's ship—Pilottage dues—Liability of master.

See SHIPPING—King's Ship. 1.

2. — Volunteer corps—Commanding officer—Liability on contract—Goods supplied for use of corps—Volunteer Act, 1863 (26 & 27 Vict. c. 65), ss. 16, 25—Regulations 407, 587.

Where orders are given by or on behalf of the commanding officer of a volunteer corps personally for goods for the use of the corps, and the goods are accordingly supplied, the commanding officer is personally liable for the price. If he dies before they have been paid for, his personal representatives are liable, and they cannot resist payment on the ground that the property in the goods so ordered and supplied has passed to the succeeding commanding officer.

Decision of Walton J., [1907] 1 K. B. 709, affirmed. *SAMUEL BROTHERS, LD. v. WHETHERLEY* C. A. [1908] 1 K. B. 184

— War.

See under WAR.

— Warships—Shipping—Collision—Single ship and fleet of warships—Crossing rule.

See SHIPPING—Collision. 60.

— Will — Condition — Forfeiture — Entering naval or military services—Invalidity — Public policy.

See WILL—Conditions. 4.

— Will — Construction—Gift to officers' regimental mess to maintain a library—Plate.

See CHARITY. 41.

ARRAIGNMENT—Indictment for offence after previous conviction—Larceny—Error.

See CRIMINAL LAW—Larceny. 6.

ARRANGEMENT.

— Bankruptcy.

See under BANKRUPTCY — Arrangements (Deeds of Arrangement).

— Company.

See under COMPANY—Arrangements.

— Deeds of arrangement with creditors—Registration—Contents of affidavit.

See FRAUDULENT CONVEYANCE. 1.

ARRANGEMENT—*continued.*

— Deeds of arrangement—Deed executed abroad—Title to goods in England—Registration.

See CONFLICT OF LAWS. 1.

— Family arrangement.

See under FAMILY ARRANGEMENT.

ARREARS—Interest.

See under INTEREST.

— Interest—Annuity.

See ANNUITY. 10.

— Interest—Arrears, Mortgagee's right to recover—Real property limitation.

See MORTGAGE—Interest. 1.

— Interest—Several estates comprised in same devise.

See SETTLEMENT. 42.

— Rates.

See under RATES.

— "Rent"—"Landlord"—Execution—Judgment creditor.

See LANDLORD AND TENANT. 33.

— Rent-charge—Application to raise arrears by sale—Effect of creating term.

See RENT-CHARGE. 1.

ARREST—Attachment, Second order for—Re-arrest—Imprisonment.

See ATTACHMENT. 18.

— Belgium—Crime committed in Belgium—Arrest under order of committal after expiration of prescriptive period.

See EXTRADITION. 1.

— Debtor—Forfeiture of bond—Form of bond.

See BANKRUPTCY—Bond. 1.

— Exemption from—Foreign public vessel—Jurisdiction—Appearance entered under misapprehension.

See SHIPPING—Foreign Ship. 1.

— Railway company—Special constable—Arrest on suspicion of felony—Liability of company.

See RAILWAY—False Imprisonment. 1.

— Scotch bankruptcy—Absconding bankrupt—Warrant for arrest.

See BANKRUPTCY — Scotch Bankruptcy. 1.

ARRESTMENT—Ship—Passing of property—Scottish arrestment of ship in course of building.

See SALE OF GOODS. 1.

ARTICLE—Author and publisher—Copyright in contributions—Inference of fact.

See COPYRIGHT—Encyclopædia. 1.

ARTICLES AND MEMORANDUM OF ASSOCIATION.

See under COMPANY, and COMPANY—Winding-up.

ARTIFICIAL CHANNEL—Mill stream—Riparian proprietors—Title to bed of stream—Easement—Right to flow of water—Presumption—Watercourse.
See **STREAM**. 3.

— Precarious easement—Implied grant.
See **WATER**. 1.

ARTIFICIAL WATERCOURSE—Riparian proprietor—Right to use water—Nature of presumed lost grant.
See **WATER**. 1.

ARTIZANS' DWELLINGS—Sanitation—House let in lodgings or occupied by members of more than one family—Local government—Public Health (London) Act, 1891 (54 & 55 Vict. c. 76), s. 94.

A building which is divided into separate tenements which are let as artizans' dwellings is not a "house" within the meaning of s. 94 of the Public Health (London) Act, 1891, so as to enable the sanitary authority to make by-laws for its regulation. **WEATHERITT v. CANTLAY**
Div. Ct. [1901] 2 K. B. 285

ASCENSION DAY—Attendance at school—Elementary education.
See **SCHOOLS**. 4.

ASSAULT—Indecent—Evidence—Admissibility—Particulars of complaint made by prosecutrix—Complaint elicited by question.
See **CRIMINAL LAW—Evidence**. 6.

1. — *Schoolmaster—Assistant teacher—Right of assistant teacher in public elementary school to inflict corporal punishment—School regulations—County court—New trial.*

An assistant teacher in a public elementary school has authority to inflict corporal punishment on a pupil if the punishment inflicted is moderate, is not dictated by any bad motive, is such as is usual in the school, and such as the parent of the child might expect that the child would receive if it did wrong; and the fact that by the regulations of the school assistant teachers are forbidden to inflict corporal punishment will not of itself render the assistant teacher liable in an action by the pupil for assault.

Judgment of Div. Ct., [1907] W. N. 232; 1 K. B. 160 affirmed. **MANSSELL v. GRIFFIN**
C. A. [1908] W. N. 73, 78; [1908] 1 K. B. 947

— Summary conviction on charge of assault—Jurisdiction—Question as to title to an interest in land.
See **JUSTICES**. 13.

ASSAY—Hall-mark—Foreign watches—Customs Act.
See **PLATE**. 1.

— Watch—Cases.
See under **WATCH**.

ASSENT—Personal representative—Devisee—Conveyance.
See **LAND TRANSFER**. 5.

ASSESSMENT—Corporation duty—Real property—"Annual value, income, or profits."
See **REVENUE—Corporation Duty**. 1.

— Damage—Collision—Value of ship lost.
See **SHIPPING—Collision**. 6.

— Rates.
See under **RATES**.

ASSETS—Administration.
See under **ADMINISTRATION**.
See under **EXECUTOR—Administration**.

— Company.
See under **COMPANY—WINDING-UP—Assets**.

ASSIGN.
See under **ASSIGNMENT**.

ASSIGNATION—Trust—Gift of whole or annual income according to trustees' discretion.
See **TRUSTEE—Discretion**. 1.

ASSIGNMENT—"Assign"—Building estate—Restrictive covenant—Breach—Covenant running with the land.
See **LANDLORD AND TENANT**. 23.

— "Assigns"—Will—Limitation—Heirs "and assigns" of survivor.
See **WILL—Limitations**. 1.

— Attachment of Debt.
See under **ATTACHMENT**.

— Author and publisher—Story not in existence.
See **COPYRIGHT—Books**. 2.

— Author's manuscript—Book—Posthumous letter—Proprietorship of copyright.
See **COPYRIGHT—Books**. 3.

— Bankruptcy—Assignment for benefit of certain named creditors only.
See **BANKRUPTCY—Deeds of Arrangement**. 1.

— Bankruptcy—Claim for preference under deed—Trading with trustee—Acquiescence—Estoppel.
See **BANKRUPTCY—Preference**. 1.

— Bankruptcy—Deed of assignment.
See under **BANKRUPTCY—Deed of Assignment**. 1.

— Bankruptcy—Lease—Covenant not to assign—Lessee adjudicated bankrupt on his own petition—Forfeiture.
See **LANDLORD AND TENANT**. 12.

— Bankruptcy—Proof by assignee of creditor—Costs due by creditor to trustee—Dividend on proof—Trustees' right to retain dividend against costs.
See **BANKRUPTCY—Proof**. 1.

— Bankruptcy—Receiving order—Petitioning creditor—Locus standi—Assignment for benefit of creditors.
See **BANKRUPTCY—Receiving order**. 5.

— Bill of sale—Validity—Assignment of lease included in inventory of chattels.
See **BILL OF SALE**. 10.

ASSIGNMENT—continued.

- Book debts—Assignment by deed—One partner's signature a forgery—Validity of assignment—Bankruptcy.
See PARTNERSHIP. 3.
- Book debts—Floating charge—Debenture-holders—Priority—Mortgages.
See COMPANY—Debentures. 9.
- Brewer's lease—Assignment of reversion—Breach of covenant—Injunction at suit of assignee.
See LANDLORD AND TENANT. 20.
- Brewery company, Assignment to covenant—Condition imposing increased rent.
See LANDLORD AND TENANT. 18.
- Building scheme—Restrictive covenants—Rights of purchasers inter se—Benefit annexed to land.
See VENDOR AND PURCHASER—Covenants. 3.
- Charges on expectancy—Notice to executor—Priority—Assignor executor.
See MORTGAGE—Priority. 7.
- Chose in action—Assignment abroad—Notice—Priority.
See CONFLICT OF LAWS. 2.
- Company—Assignment of present and future book debts—Registration of mortgage.
See COMPANY—Mortgages. 1.
- Compensation, Right to—Right of assignee to sue in own name.
See LANDS CLAUSES ACTS. 5.
- Consent—Covenant against assignment without consent unless unreasonably withheld.
See LANDLORD AND TENANT. 18.
- Consent — Covenant not to assign without consent—Power of re-entry on breach—Statutory powers — Waterworks company—Landlord and tenant.
See LONDON—Water. 1.
- Consent — Covenant not to assign without licence—Payment for leave to assign.
See LANDLORD AND TENANT. 13.
- Consent—Covenant—Not to assign or underlet without licence — "Unreasonably withheld."
See LANDLORD AND TENANT. 9, 14, 15.
- Consent — Covenant not to assign without licence "not to be unreasonably withheld"—Unreasonable condition.
See LANDLORD AND TENANT. 9, 14, 15.
- Consent — Lease — Covenant not to assign without consent—Payment for leave to assign.
See LANDLORD AND TENANT. 13.
- Consent—Lease—Licence to assign—Unreasonably withheld — Condition imposing increased rent.
See LANDLORD AND TENANT. 18.

ASSIGNMENT—continued.

- Consent—Lease—Not to assign a lease without consent of lessor—Injunction.
See AUSTRALIA. 9.
- Consent — Lease — Covenant not to assign without consent—Assignment to limited company after consent refused—Forfeiture of lease.
See LANDLORD AND TENANT. 18.
- Consent—Licence to assign—Unreasonable condition—Declaratory order—Costs—Lessor and lessee.
See LANDLORD AND TENANT. 18.
- Contract—Assignability—Right of assignees to require supply of goods.
See CONTRACT. 5.
- Contract—Voidable contract—Privity of contract—Money had and received, Action for.
See VENDOR AND PURCHASER—Contracts.
- Contract to supply goods to company—Assignability—Joinder of assignor in action.
See CONTRACT. 4.
- Copyright — Drawings—Designs—Assignment of copyright to intended company—Validity.
See COPYRIGHT—Drawings. 1.
- Copyright — Equitable assignment—Author and publisher—Story not in existence.
See COPYRIGHT—Books. 2.
- Copyright — Registration — Musical composition—Agreement—Author and publisher—Entry on register.
See COPYRIGHT—Music. 2.
- Costs, Security for—Insolvent plaintiff—Trustee of deed of assignment.
See COSTS. 55.
- Covenantor, Right of action by personal representative against assign of.
See COVENANT. 6.
- Covenants—Assignment of reversion—Liability of assignor on express covenants in lease.
See LEASE. 1.
- Covenants, Negative — Alterations — Assignment of lease—Indemnity.
See LANDLORD AND TENANT. 52.
- "Creditor"—Winding-up order—Petition by equitable assignee of part of a debt.
See COMPANY — WINDING-UP — Practice. 7.
- Creditors, Assignment for benefit of—Deed executed abroad—Title to goods in England—Registration.
See CONFLICT OF LAWS. 1.

1. — *Debt, Assignment of—Equitable assignment—Advance of money to vendor of goods—Direction to pay price to lender—Judicature Act 1873 (36 & 37 Vict.c. 66), s. 25, sub-s. 6.*

ASSIGNMENT—continued.

Merchants agreed with a bank by whom they were financed that goods sold by the merchants should be paid for by a remittance direct from the purchasers to the bank. Goods having been sold by the merchants, the bank forwarded to the purchasers notice in writing that the merchants had made over to the bank the right to receive the purchase-money and requested the purchasers to sign an undertaking to remit the purchase-money to the bank :—

Held, that there was evidence of an equitable assignment of the debt to the bank with notice to the purchasers, and that the bank could recover the debt from the purchasers.

The decision of the C. A., [1904] 1 K. B. 387, reversed, and the decision of Walton J. restored. **WILLIAM BRANDT'S SONS & CO. v. DUNLOP RUBBER CO.** **H. L. (E.) [1905] W. N. 134 ; [1905] A. C. 454**

2. — Debt—Chose in action—Maintenance—Indirect motive on part of assignee—Trust in respect of moneys recovered—Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 25, sub-s. 6.

The plt. took from creditors of the debt, an absolute assignment of their debts in consideration of a covenant by him that, if he should recover the amount of the debts from the debt., he would pay over to them the amounts of their respective debts or so much thereof as he might be able to realize after payment of the costs necessarily incurred by him. Notice in writing of the assignment was given to the debt. It appeared that the plt. and the debt. were co-directors of a co., and the plt., being dissatisfied with the action of the debt. as director of the co., took the assignment with a view to procuring an adjudication of bankruptcy against the debt., and so getting him removed from the directorate of the co. :—

Held (by Collins M.R., Mathew L.J., and Cozens-Hardy L.J., the M.R. doubting), that the assignment of the debts was not invalid as savouring of maintenance or being otherwise against public policy.

Comfort v. Betts, [1891] 1 Q. B. 737, followed. **FITZROY v. CAVE** - **C. A. [1905] W. N. 103 ; [1905] 2 K. B. 364**

3. — Debt — Equitable assignment — Assignment by letters from assignor to debtor and to assignee—Bankruptcy of assignor before receipt of letters.

A firm of merchants in South America, being indebted to the plt., consigned a quantity of ores to the debts., the agents of the South American firm in England, and instructed them by letter to sell the ores and to pay to the plt. the balance of the proceeds remaining after payment of a specified sum to another creditor; they also wrote to the plt. advising him of what they had done. Before either of the letters arrived in England the firm in South America became bankrupt, and the syndic in the bankruptcy telegraphed instructions to the debts. which amounted to a revocation of the directions given in the letter of the consignors as to the disposal of the proceeds of the sale of the cargo :—

ASSIGNMENT—continued.

Held, that upon the posting of the letters in South America there was a binding equitable assignment of the balance of the proceeds to the plt. which remained unaffected by the supervening bankruptcy of the consignors. **ALEXANDER v. STEINHARDT, WALKER & Co.**

Bigham J. [1903] 2 K. B. 208

4. — Debt—Indefinite amount—Right of assignee to sue—Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 25, sub-s. 6.

By an assignment in writing K., in consideration of an advance, assigned to the plt. "so much and such part of my income, salary, and other emoluments from H." (the debt., in whose employment he then was) "as shall be necessary and requisite for payment to you of the sum of 22l. 10s., or of any further or other sums in which I may hereafter become indebted to you." In an action by the plt. as assignee to recover two months' salary due from the debt. to the assignor, who in turn was alleged to be then indebted to the plt. in a larger amount :—

Held, that the assignment, not being of a definite and ascertained amount, was not such an assignment as was contemplated by s. 25, sub-s. 6, of the Judicature Act, and that the plt. could not maintain the action in his own name.

Quere, whether an assignment of an ascertained part of a debt is within the section. **JONES v. HUMPHREYS** **Div. Ct. [1901] W. N. 219 ; [1902] 1 K. B. 10**

— Debt—Judgment debt.
See No. 7, below.

— Debt—Part of—Right of assignee to sue.
See No. 9, below.

5. — Debt — Same debt assigned to different persons—Priority—Notice to debtor—Debt due to firm—Assignment by one partner by deed—Validity.

A debt due to a firm was assigned by one partner to the debts. by writing, and was subsequently assigned by the other partner to the plt. by deed. The plt. gave notice to the debtor before the debts. did so :—

Held, that there was a valid equitable assignment of the debt to the plt., and that having first given notice to the debtor, he was entitled to the debt in priority to the debts. **MARCHANT v. MORTON, DOWN & Co.**

Channell J. [1901] 2 K. B. 829

6. — Debt or chose in action—Absolute assignment (not purporting to be by way of charge only)—Security for debt—Instrument passing whole right of assignor—Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 25, sub-s. 6.

A contractor for certain building works executed an instrument in writing, by which, in consideration of bankers' continuing a banking account with him, and by way of continuing security to them for all moneys due or to become due to them from him on the said account, he assigned to them all moneys due, or to become due, to him from the building owners under the building contract, and he thereby empowered them on his behalf, and in his name, to settle and

ASSIGNMENT—continued.

adjust all accounts in connection with the works, to give effectual receipts for the moneys thereby assigned, which should discharge the person paying the same from being concerned to see to the application thereof, and also, if necessary, to sue for, or take such other steps as they might think necessary for enforcing payment of the moneys thereby assigned, and he further thereby undertook at their request and his own cost to do and execute all such further acts, deeds, and things as they might reasonably require for giving full effect to the security thereby created. Notice in writing of this assignment was given to the building owners :—

Held, that, the above-mentioned instrument having the effect of passing the whole right and interest of the assignor in the moneys payable under the building contract to the assignees by way of security, it was an absolute assignment (not purporting to be by way of charge only) within the meaning of the Judicature Act, 1873, s. 25, sub-s. 6.

Mercantile Bank of London v. Evans [1899] 2 Q. B. 613, distinguished. *HUGHES v. PUMP HOUSE HOTEL CO.* - C. A. [1902] W. N. 124; [1902] 2 K. B. 190

See also PRACTICE—Parties.

— Deed—Assignment for value—Defective title—Equitable estoppel.
See DEEDS. 3.

— Deed of arrangement—Non-registration—Validity.
See BANKRUPTCY—Deeds of Arrangement. 1.

— Deed of assignment—Bankruptcy.
See under BANKRUPTCY—Deed of Assignment. 1.

— Deed of assignment for benefit of creditors—Effect of payment to trustee under deed—Act of bankruptcy.
See BANKRUPTCY—Protected Transaction. 1.

— Defeating individual creditor—Payment by garnishee after notice of order nisi—Cheque—Duty to stop payment.
See DIVORCE—Practice. 20.

— Dower, Action for assignment of—Time for ascertaining value—Recovery of land.
See LIMITATIONS STATUTES OF. 22.

See HUSBAND AND WIFE—Property. 1.

— Equitable mortgages—Subsequent execution by mortgagor of deed of assignment—Registration—Priorities—Yorkshire Registries.
See MORTGAGE—Priority. 3.

— Equity of redemption subject to charge, Assignment of.
See TRUSTEE—Breach of Trust. 2.

ASSIGNMENT—continued.

— Fishing—Covenant against assignment—Denise of exclusive right of fishing—Grant by lessee of limited licence to fish.

See LANDLORD AND TENANT. 17.

— Forfeiture clause—Dispose or attempt to dispose of—Assignment to trustees of marriage settlement.

See POWER OF APPOINTMENT. 38.

— Fraudulent assignment—Insolvent trader—Transfer of his business and another's to company for shares and debentures.

See BANKRUPTCY—Fraud. 1.

— Friendly society—Life policy—Nomination.

See FRIENDLY SOCIETY. 9, 10, 11.

— Future property—Gift from husband.

See SETTLEMENT. 9.

7. — Judgment debt—Assignment of part—Rights of assignee—Leave to issue execution—Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 25, sub-s. 6.

A judgment creditor having assigned part of the judgment debt for valuable consideration, the assignee applied under Order XLII., i. 23, for leave to issue execution :—

Held by Bray J. and by the C. A., that the assignee was not entitled to such leave.

By Bray J. on the ground that there cannot be an absolute assignment within s. 25, sub-s. 6, of the Judicature Act, 1873, of a definite part of an existing debt or other legal chose in action.

By the C. A. on the ground that, as the original judgment creditor could only issue a single execution upon his judgment, and could not split up the judgment debt and issue separate exceptions upon the different parts, he could not give to an assignee of a part of the judgment debt a right which he did not himself possess. *FORSTER v. BAKER* C. A. [1910] W. N. 110, 119; [1910] 2 K. B. 636

— Judgment debt—Leave to receiver to issue execution.

See BANKRUPTCY—Receiver. 1.

— Lands Clauses Acts—Right to compensation—Lands injuriously affected.

See LANDS CLAUSES ACTS. 5.

— Lease—Covenant, Breach of—Forfeiture.

See under LANDLORD AND TENANT.

— Lease—Negative covenant, Right of assignee to enforce—Indemnity.

See LANDLORD AND TENANT. 52.

— Legal chose in action—Right of assignee to sue vendor for damages.

See CHOSE IN ACTION. 1.

— Mine—Subsidence, Compensation for—"Heirs and assigns" of covenantee.

See MINE. 13.

— Money-lenders—Register—Real partner's name not registered—Securities void—Assignee for value without notice.

See MONEY-LENDERS. 12.

ASSIGNMENT—continued.

— Mortgage—Equitable mortgage—Priorities.
See MORTGAGE—Priority. 3.

8. — Mortgage — Notice — Notice by executors of assignee—Acknowledgment in deed by mortgagor of receipt of money—Right to recover amount acknowledged—Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 25, sub-s. 6.

A solicitor was instructed by the defts. to procure a loan of a specified amount on the security of property belonging to them. A mortgage deed was prepared and executed by the defts., purporting to be in consideration of the specified amount, the receipt whereof was acknowledged in the body of the deed. The solicitor himself advanced a sum of money the amount of which was disputed, but the deed was made out in the name of a clerk in the solicitor's office as mortgagee. The mortgage debt was subsequently assigned to the solicitor and by him, by way of sub-mortgage, to the plts.' testator, for whom he was also acting as solicitor for the investment of money on mortgage. The solicitor and the testator of the plts. died without giving to the defts. any notice of the assignments, but notice was subsequently given by the plts. of both assignments, and this action was brought in their names upon the covenants in the principal deed to recover the amount specified therein :—

Held, that, as the plts. were entitled in equity to all the rights of the mortgagee under the principal deed, the notice of the assignments given by them was effectual to give them a legal title to sue upon the covenants contained in that deed :

Held, also, that the testator of the plts. not having had actual or constructive notice that the amount specified in the mortgage deed had not been paid, the plts. were entitled to rely on the acknowledgment contained in that deed, and to recover the amount therein stated to have been received.

Bickerton v. Walker, (1885) 31 Ch. D. 151, applied. *BATEMAN v. HUNT*

C. A. [1904] 2 K. B. 530

Note.

Distinguished by *Joyce J.*, *Powell v. Browne*, [1907] W. N. 152; on appeal, C. A. [1907] W. N. 228. See MORTGAGE—Priority. 4.

— Mortgage—Voluntary assignment of part of property comprised in mortgage—Liability of assignee to contribute.
See MORTGAGE—Contribution. 1.

Mortgage in name of trustee—Redemption—Consolidation—Assignment of equities of redemption to same person.
See MORTGAGE—Redemption. 7.

— Mortgage of chose in action before commencement of bankruptcy—Bona fides.
See BANKRUPTCY—Protected Trans-action. 1.

— Mutual debts—Assignment to defendant of debt owed by plaintiff to third person.
See SET-OFF. 1.

ASSIGNMENT—continued.

9. — Part of debt—Right of assignee to sue—Supreme Court of Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 25, sub-s. 6.

Under s. 25, sub-s. 6, of the Supreme Court of Judicature Act, 1873, an ascertained part of a debt can be assigned, and the assignee can sue in his own name to recover from the debtor the part of the debt assigned.

By a deed of assignment so much of a debt of 125*l.* due to the assignor not exceeding 30*l.* as should cover the costs due from the assignor to the plts. (a firm of solicitors) was assigned to the plts. :—

Held, that the assignment was valid under s. 25, sub-s. 6 of the Judicature Act, 1873, and that the plts. could sue the debtor in their own name to recover from him the portion of the debt assigned to them. *SKIPPER & TUCKER v. HOLLOWAY & HOWARD*

Darling J.
[1910] 2 K. B. 630

On Appeal.

The C. A. was of opinion that the result of the evidence in the case was that the supposed debt, a part of which was alleged to have been made the subject of an assignment, had never in fact come into existence, and therefore the question whether part of a debt could be validly assigned under the Judicature Act, 1873, s. 25, sub-s. 6, which *Darling J.* ([1909] W. N. 230; [1910] 2 K. B. 630, *see preceding case*) dealt with in the Court below, as mentioned in *The Weekly Notes*, did not arise. They therefore allowed the appeal, expressing no opinion upon that question. *SKIPPER & TUCKER v. HOLLOWAY & HOWARD*

C. A. [1910] W. N. 74

— Parties—Title to patent at date of writ—Equitable assignee—Legal owner not a party—Amendment.
See PATENT—Practice. 5.

— Partners, Payment of salaries to—Right of assignee of share to interfere.
See PARTNERSHIP. 2.

— Patent.

See under PATENT.

— Policy not assignable otherwise than by way of nomination.
See FRIENDLY SOCIETY. 9.

10. — Priority—Reversionary trust fund—Notice to one of several trustees—Death of trustee who had notice.

In a contest for priority between assignees of a reversionary interest in a trust fund where one only of several trustees has notice of an assignment and dies, a subsequent assignee who gives notice of his assignment to the then existing trustees is entitled to priority over the prior assignee :—

So *held* on the authority of *Timson v. Ramsbottom*, (1837) 2 Keen, 35; 44 R. R. 183. *In re PHILLIPS' TRUSTS*
Kekewich J. [1902] W. N. 225; [1903] 1 Ch. 183

— Power of revocation—Person entitled to the "actual possession"—Assignment by

ASSIGNMENT—continued.

- tenant in tail of life interest in remainder—Death of tenant for life.
See SETTLEMENT. 37.
- Railway—Severed lands—Grant of right to make “a tunnel” — Uncertainty — Assignability.
See RAILWAY—Accommodation Works. 2.
- Re-entry—Not to assign or sublet, Covenant — Covenant to be “performed” — Provision for re-entry.
See LANDLORD AND TENANT. 71.
- Re-entry for non-payment of rent—Recovery of possession — Right of assignee to maintain action.
See LANDLORD AND TENANT. 74.
- Re-entry of covenantor—Liability for breach of his assigns—Not a continuing breach — Lease.
See COVENANT. 7.
- Rent — Lease — Apportionment of rent — Assignment by lessee of part of premises — Value of several parts.
See LANDLORD AND TENANT. 79.
- Rent—Lease—Liability for rent after further assignment—Covenant—Fine.
See LANDLORD AND TENANT. 78.
- Rent — Lease—Liability of assignee for rent due before adjudication of bankruptcy.
See BANKRUPTCY—Leases. 1.
- Restrictive covenant—Right of action by personal representation against assign of covenantor.
See COVENANT. 6.
- Reversion, Assignment of—Right of assignee.
See LANDLORD AND TENANT. 64.
- Reversion — Breach of covenant for quiet enjoyment.
See LANDLORD AND TENANT. 64.
- Reversion—Lease—Covenant for quiet enjoyment—Interruption by assignee.
See LANDLORD AND TENANT. 66.
- Sale of goods—Agreement by purchaser not to buy similar goods from others—Right of assignee to require supply of goods from vendor.
See CONTRACT. 5.
- Set-off—Mutual debts—Assignment to defendant of debt owed by plaintiff to third person.
See SET-OFF. 1.
- “Settlement”—Absolute assignment by husband to wife—Variation of settlements — Jurisdiction.
See DIVORCE—Settlements. 3.
- Share—Dissolution—Sale of share to co-partner—Rights of mortgagee or assignee—Priority.
See PARTNERSHIP. 23.

ASSIGNMENT—continued.

- Stock Exchange, Rules of — Defaulter — Official assignee—Assignment of assets — Judgment—Charging order.
See STOCK EXCHANGE. 4.
- Trade mark — Registration — Discretion of registrar—Assignment—Costs of registrar.
See TRADE MARK. 19.
- Trade mark—Breach of trade mark—Title to damages.
See HONG KONG. 5.
- Trustee—Assignment of share in reversionary fund—Payment to assignee—Right to delivery of assignment.
See TRUSTEE—Assignment. 1.
- Trustee—Breach of trust—Charge on share of beneficiary — Duty to investigate assignee's title—Constructive notice—Relief.
See TRUSTEE—Breach of Trust. 2.
- Underlessee not an “assign” — Covenant—Priority of contract.
See LANDLORD AND TENANT. 11.
- Vendor and purchaser—Deposit by purchaser to guarantee fulfilment of contract—Default by purchaser or his assignee—Action to recover deposit dismissed.
See CANADA—Contracts. 2.
- Voidable contract—Money had and received.
See VENDOR AND PURCHASER—Contract. 4.
- Voluntary settlement — Expectancy—Power of trustees to call for transfer.
See SETTLEMENT. 47.

ASSURANCE.

See under INSURANCE.

ASSURANCE COMPANIES (LIFE).

See under INSURANCE (LIFE).

ASYLUMS—Officers' *Superannuation Act*, 1909 (9 *Edw. 7*, c. 48).

ASYLUMS (LUNATIC).

See under LUNACY.

ATTACHMENT.

See also under CONTEMPT OF COURT.

1. — *Action by firm—Order for discovery—Refusal of one plaintiff to obey—Application by co-plaintiff for attachment — Jurisdiction — Practice.*

After the dissolution of a partnership one of the two partners commenced an action in the firm name to recover a debt alleged to be due to the partnership, and gave to the other partner, who did not consent to the action and who disclaimed all right to any sum that might be recovered, an indemnity against the costs to be incurred. An order requiring “the plts.” to make a further and better affidavit of documents was served by the debt, upon the partner bringing the action, who made a further affidavit and served a copy of the order on his partner, and, on the refusal of the latter to make an affidavit,

ATTACHMENT—*continued*.

applied for an order of attachment against him on the ground of his non-compliance with the order for a further and better affidavit of documents:—

Held, that the Court had jurisdiction to make the order of attachment. **SEAL AND EDGELOW v. KINGSTON** - **C. A. [1908] W. N. 136; [1908] 2 K. B. 579**

— Affidavits—Motion for attachment.

See Nos. 2, 12, 13, below.

2. — Breach of injunction—Motion—Conflicting affidavits — Motion ordered to be heard with witnesses — Evidence of breaches not specified in affidavits—Surprise—R. S. C., 1883, Order LII., r. 4.

Motion by plts. for liberty to sue out a writ of sequestration against deft. co. and for committal or attachment of the receiver and manager for allowing smoke, oxide of zinc, and other chemical or metallic substances and noxious gas and fumes to issue from the deft. co.'s works, so as to occasion a nuisance and injury to the plts., in breach of an injunction granted on Aug. 2, 1901. *Vide Dean and Chapter of Chester v. Smelting Corporation*, Farwell J., [1901] W. N. 179.

The applicants proposed to prove instances of nuisance and injury not specified in the affidavits.

The respondents submitted that the applicants were only entitled to substantiate by their viva voce evidence the instances of nuisance specified in their affidavits, those being the only instances which the respondents had come prepared to meet.

Farwell J. This objection is not well founded. The last clause of Order LII., r. 4, has no application to a case where a motion launched on affidavit evidence is subsequently ordered to be heard with witnesses. In that case the affidavits are not used. The first clause of the rule requiring the notice of motion to state in general terms the ground of the application applies, and has been complied with, and I cannot see how the respondents are in any way put at a disadvantage. They could have obtained all necessary information by an application for particulars. The evidence is therefore admissible; but, if I think the respondents are in any way taken by surprise, I shall probably grant an adjournment. **CHESTER (DEAN AND CHAPTER OF) v. SMELTING CORPORATION** **Farwell J. [1902] W. N. 5.**

Note.—See also *Chester (Dean and Chapter of) v. Smelting Corporation*, Farwell J. [1901] W. N. 179. *Nuisance*, 4.

3. — Contempt—Disobedience of order to pay money — Fiduciary capacity — Possession or Control—Debtor executor—Debtor's Act, 1869 (32 & 33 Vict. c. 62), s. 4.

A debtor who is appointed executor by his creditor, and who proves the will, is deemed in equity to have paid the debt to himself as executor, and to have the money in his possession in a fiduciary capacity as assets belonging to the testator's estate, and, therefore, where an order is made against him in an administration action declaring him accountable for the debt as assets in his hands belonging to the testator and

ATTACHMENT—*continued*.

ordering him to pay within a given time, and he makes default, he is liable to attachment under s. 4 of the Debtors Act, 1869; but *semble*, the Court in the exercise of its discretion will not make an order for attachment against him when he is not morally blameworthy in the matter, as where he never had any means available for payment of the debt, or where, being insolvent, he honestly seeks the protection of the Court of Bankruptcy.

Where a debtor executor, who had disobeyed an order of a Court of Equity for payment of the debt had, since his appointment as executor, means available for payment, but had denuded himself of his property, and filed a petition in bankruptcy for the purpose of evading payment:—

Held (affirming the decision of Kekewich J., [1906] W. N. 68), that the Court had jurisdiction to make an order for attachment against him, and that the order ought to be made.

Dictum of Malins V.-C. in *Metcalf's Case*, (1880) 13 Ch. D. 815, 820, overruled.

In re Woodward, (1886) 30 Sol. J. 753, explained and distinguished. *In re BOURNE. DAVEY v. BOURNE* - **C. A.**

[1906] W. N. 78; [1906] 1 Ch. 697

— Contempt—Order of Irish Court—Service of order.

See CONTEMPT OF COURT. 2.

— Contempt of Court.

See also under CONTEMPT OF COURT.

4. — Debt—Attachment of—Scotch judgment — Extension to England—Garnishee order nisi — Service on garnishee—Subsequent bankruptcy of judgment debtor in Scotland—Rights of trustee in bankruptcy—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 117.

A judgment for a sum of money which was obtained in an action in Scotland was extended to England under the Judgments Extension Act, 1868, and the judgment creditor served a garnishee order on a firm who owed a debt in England to the judgment debtor.

After the service of the garnishee order nisi the whole estate of the judgment debtor was sequestered under the Scottish bankruptcy law and transferred wherever situated to the appellant as trustee for the creditors with power to recover all estates, debts, or money due to the judgment debtor. In an interpleader issue in England between the trustee and the judgment creditor as to their respective claims to the garnished debt:—

Held that, the judgment creditor having by the service of the garnishee order nisi obtained an attachment in England before the date of the sequestration, the Scottish Court had no power to interfere with the claim of the judgment creditor.

Decision of the C. A., [1910] 1 K. B. 339, affirmed. **GALBRAITH v. GRIMSHAW**

H. L. (E.) [1910] W. N. 167; [1910] A. C. 508

5. — Debts—Attachment of—Garnishee order — Execution—Rights of garnisher—Garnishee company — Debenture-holder — Priorities — R. S. C., Order XLV.

ATTACHMENT—continued.

A judgment creditor obtained and served upon a limited co. a garnishee order absolute attaching debts due from them to the judgment debtor. The garnishees subsequently borrowed, bona fide, a sum of money from W. and issued to him a debenture, covering all their assets and property, to secure the repayment of the loan. Execution against the garnishees was then put in by the garnishor; and the sheriff having seized goods of the garnishees, W. appointed a receiver and claimed the goods under his debenture. On an interpleader issue to try the right to the goods seized as between the garnishor and the debenture-holder:—

Held, that the garnishee order did not give the garnishor any legal or equitable right to the goods in priority to the debenture-holder, who was therefore entitled to succeed in the issue. **GEISSE v. TAYLOR AND HARTLAND. TAYLOR AND HARTLAND, LD., GARNISHEES. WESTON, CLAIMANT** Div. Ct. [1905] 2 K. B. 658

Note.—Referred to by Warrington J., *Norton v. Yates*, [1905] W. N. 175; [1906] 1 K. B. 112. *Company—Receiver.* 7.

6. — Debts — Attachment of — Practice — Garnishee order — Retired pay of officer in Army — Pension due but not paid — Bank crediting amount to customer — Army Act, 1881 (44 & 45 Vict. c. 58), s. 141.

The deft., who was a retired officer of the Army, was entitled to retired pay in respect of past services. The retired pay was payable quarterly, and on each occasion a form of pay warrant had to be filled in and signed by the deft., which contained a declaration that he was entitled to retired pay at a certain rate for the last quarter, followed by the words "received of H.M. Paymaster-General this day of 190 , the sum of pounds, being the amount of retired pay due for the period stated in the above declaration." At the end of the form were the words "This receipt must be presented for payment by a London banker, but may be negotiated in the country or abroad, and is to be left by the banker at the Paymaster-General's office one day for examination." The deft. opened an account at a bank for the sole purpose of collecting his retired pay, no other moneys being paid into this account, and he drew against this account by cheques in the ordinary way. On Jan. 1, 1909, the sum of 6*l.* 13*s.* 8*d.* was standing to his credit at the bank, this sum being the balance of the retired pay previously received by him from the Paymaster-General, and on that day a pay warrant in the form given above, duly filled in and signed, for the sum of 17*l.* 12*s.* 6*d.*, being the amount of his retired pay due to him on that day for the preceding quarter, was handed by him to the bank for collection, and the bank at once credited his account with the amount. On the same day, after the amount had been so credited, a garnishee order nisi was served on the bank, at the instance of a judgment creditor of the deft., attaching all debts owing or accruing due from the bank to the deft. to answer the judgment debt. The pay warrant was paid by

ATTACHMENT—continued.

the Paymaster-General on Jan. 7. The deft. contended that both the above sums were protected from execution by s. 141 of the Army Act, 1881:—

Held, that the 6*l.* 13*s.* 8*d.* had lost its character of retired pay as it had been received from the Paymaster-General at the time when the garnishee order was served, and was therefore liable to attachment; and that the 17*l.* 12*s.* 6*d.* was not liable to attachment, notwithstanding that the amount had been placed by the bank to the deft.'s credit, as it retained its character of retired pay until it had been paid by the Paymaster-General. **JONES & CO. v. COVENTRY** Div. Ct. [1909] 2 K. B. 1029

— Debts — Company — Debenture-holder — Receiver — Judgment creditor — Garnishee order nisi — Priority.
See COMPANY—Receiver. 7.

— Debts — Garnishee order absolute — Priority — Rights of garnishee.
See COMPANY—Debentures. 15.

7. — Debts — Practice — Garnishee order — Money under control of public official — Inspector-General in companies liquidation — Share of surplus assets of company in liquidation — "Companies liquidation account" — R. S. C., Order XLV., r. 1 — Companies (Winding-up) Act, 1890 (53 & 54 Vict. c. 63), ss. 11, 15.

The proportion of the surplus assets of a co. in liquidation belonging to a shareholder who could not be found was, in compliance with sub-s. 15 of the Companies (Winding-up) Act, 1890, paid by the liquidator to the "Companies Liquidation Account" with the Bank of England:—

Held, that the sum so paid in was not a "debt" due to the shareholder, and that it could not be attached by his judgment creditor by means of a garnishee order under Order XLV., r. 1, of the Rules of the Supreme Court.

Decision of Day J. reversed. **SPENCE v. COLEMAN. INSPECTOR-GENERAL IN COMPANIES LIQUIDATION, GARNISHEE**

C. A. [1901] W. N. 97; [1901] 2 K. B. 199

— Discovery, Order for — Action by firm — Refusal of one plaintiff to obey.
See No. 1, above.

— Divorce Division — Practice — Attachment — Contempt of Court.
See No. 10, 11, below.

— Garnishee order — Debts, Attachment of.
See Nos. 4—7, above.

— Garnishee proceedings — Debts owing or accruing — Attachment before date when debts are payable.
See DIVORCE—Practice. 20.

8. — Garnishee summons — Attachment of debt — Payment into court of amount in garnishee order — Balance in hands of garnishee — Assignment — Effect of notice of assignment — Practice.
Money in the hands of the deft. was attached

ATTACHMENT—continued.

under a garnishee order to satisfy a judgment debt. The judgment debtor assigned to the plt. the balance of the amount in the hands of the deft., and notice was given of the assignment. Subsequently a garnishee order was served on the deft. with respect to another judgment debt. The deft. thereupon paid the amount of the first judgment debt into court, and the balance of the money in his hands he paid into court under the second garnishee order. In an action by the plt. to recover the amount of the balance:—

Held, that, when the first garnishee order had been satisfied by payment into court, the assignment took effect as to the balance in the hands of the deft., that the money should have been paid to the plt., and that he was entitled to recover the amount.

Judgment of the Div. Ct., [1901] 1 K. B. 102, reversed. *YATES v. TERRY*

C. A. [1902] W. N. 23; [1902] 1 K. B. 527

— Jurisdiction of King's Bench Division to attach for contempt of inferior Court.

See CONTEMPT OF COURT. 1.

— Matrimonial suit—Divorce Division.

See Nos. 9—11, below.

9. — Matrimonial suit—Non-compliance with order to secure wife's costs—Subsequent compliance—Motion for release—Costs of motion for attachment—Immediate discharge from custody.

The husband had been sent to Holloway for not complying with an order to secure a certain sum in respect of his wife's costs, and had thereafter complied with the said order. Upon an application to discharge him from custody, it was urged on behalf of the wife that, as a condition precedent, he should pay the costs of the motion for attachment which he had been ordered by the vacation judge to pay.

Gorell Barnes J.: The case of *S. v. L.*, [1876] W. N. 220, was different to this, because the man could not purge his contempt by doing any specific act. Here, the husband was committed to prison for not doing something which he had been ordered to do, and which he has now done. In *Clark v. Dyson*, (1882) 26 S. J. 731, Day J. sitting as vacation judge, dealing presumably with a Chancery case, is reported to have said that he considered himself bound by the decision of Hall V.-C. in *Jackson v. Mawby*, (1875) 1 Ch. D. 86, but added, "that the practice in the Common Law Division was to make the prisoner pay the costs of his contempt before getting his discharge, a method of punishing him which appeared reasonable." I think I am also bound by the decision in *Jackson v. Mawby*, and that the husband in the present case is entitled to be immediately discharged from prison. He will, of course, have to pay the costs of the motion for attachment as well as the costs of the present motion, but not as a condition precedent to his discharge. *AYRES v. AYRES*.

Gorell Barnes J. [1901] W. N. 204

— Motion for attachment—Solicitor—Costs—Taxation—Delivery of bill of costs—Default—Order for payment of costs of motion—Enforcement—Practice.

See SOLICITOR—Costs. 30.

ATTACHMENT—continued.

10. — Practice—Divorce Division—Attachment—Contempt of Court—Disobedience to order—Order fixing no time for doing of act directed to be done—R. S. C., 1883, Order XLI., r. 5.

Appeal by the husband, the respondent to the wife's petition for a divorce, from an order of Gorell Barnes P. that a writ of attachment should issue against him for his contempt in disobeying a previous order of the Court. A decree nisi had been made.

On Aug. 4, 1904, it was by consent ordered "that the respondent on the decree being made absolute do secure to the petitioner to the satisfaction of the Court the sum of 600*l.* for her life by way of maintenance." On Feb. 27, 1905, an order was made by the President that the husband "do attend before one of the registrars for the purpose of being examined as to the security he can give to carry out the provisions of the order dated Aug. 4, 1904, and that he do at such time produce before the said registrar all books, documents, and papers relating to such security." This order was personally served on the husband on Sept. 30, 1905. The copy of the order which was then left with him bore the following indorsement: "Mr. Registrar Musgrave has appointed Thursday the 12th of October, 1905, at 2.30 o'clock P.M. for the within-named respondent, J. F. Townend, to attend at the Divorce Registry, Somerset House, Strand, London, to be examined in pursuance of the within order."

This appointment for the attendance of the respondent had in fact been made by the registrar, but the indorsement was not signed by the registrar, and had, as was stated, been made by a clerk of the wife's solicitors. The respondent did not attend for examination, and a motion was then made on behalf of the wife that a writ of attachment might issue against the respondent for his contempt.

The President ordered that the writ should issue. He was of opinion that when the Court made an order for an attendance before the registrar it was implied that the registrar would fix the time for the attendance. That time was fixed and was communicated to the respondent, and then it became an order of the Court. It was clear that he had wilfully disobeyed the order. It did not appear that the attention of the learned President had been called to Order XLI., r. 5.

The Court allowed the appeal, and discharged the order for attachment. In a case affecting the liberty of the subject the rules must be strictly followed. The order of Feb. 27 did not comply with either rule 5 or the old practice of the Court of Chancery, as appeared by *Needham v. Needham*, (1842) 1 Hare. 633, and *Gilbert v. Endean*, (1878) 9 Ch. D. 259, 266, and could not therefore be enforced by attachment. *TOWNEND v. TOWNEND*

C. A. [1905] W. N. 158, 163

See next Case.

Note.

This appeal was by the direction of the Court placed again in the paper. **C. A. [1905] W. N. 178.**

See also next report.

ATTACHMENT—continued.

11. — *Practice—Divorce Division—Attachment—Contempt of Court—Disobedience to order—Order fixing no time for doing act directed to be done—R. S. C., 1883, Order XLI., r. 5.—Matrimonial Causes Act, 1857 (20 & 21 Vict. c. 85), s. 52.*

This appeal (noted [1905] W. N. 158, *see preceding case*) was by the direction of the Court placed again in the paper.

The C. A. said that, though, when the appeal was heard, counsel on both sides had agreed that the old practice of the Court of Chancery, as embodied in r. 5 of Order XLI., applied, and this was the basis of the decision, the Court had since been informed by counsel that it was doubtful whether this rule or practice really governed the practice of the Divorce Division. The Court could not now alter their decision, but it must not be treated as a precedent in any future case of the kind. The question as to the proper practice would remain open for argument. The Court did not say that their former decision was wrong; they expressed no opinion about it. But it could be questioned only in a higher Court; the appeal could not be reargued in this Court. **TOWNEND v. TOWNEND**

C. A. [1905] W. N. 178

See preceding Case.

12. — *Practice—Motion for attachment—Affidavit in support—Exhibits to affidavit—R. S. C., 1883, Order LII., r. 4.*

Copies of exhibits (if any), to the affidavit intended to be used in support of a motion for attachment must be served on the deft. with the notice of motion and affidavit. **ROSENBAUM v. BELSON** — **Byrne J. [1901] W. N. 124**

Note.

Carter v. Roberts, Byrne J. [1903] 2 Ch. 312. *See next Case.*

13. — *Practice—Motion for attachment—Affidavit in support—Exhibits—Service of exhibits—Undertaking—Omission to fix time—Partnership—Committal for non-payment of money—R. S. C., 1883, Order XLI., r. 5; Order LII., r. 4—Debtors Act, 1869 (32 & 33 Vict. c. 62), s. 4.*

It is not necessary within the terms of r. 4 of Order LII. to serve copies of the exhibits to the affidavit on which a motion to attach is founded with the notice of motion and affidavit; but a party moving to attach who does not serve copies of any exhibits reasonably necessary to enable the respondent thoroughly to understand the grounds upon which the application is being made, runs the risk of having the motion dismissed on the ground that the evidence has not been properly brought to the notice of the respondent.

Where an undertaking to pay money into court or to a joint account at a bank has been given, without fixing any time for payment, an order fixing a time is necessary before the undertaking can be enforced; though there may be cases of contempt so gross as to justify attachment without any supplemental order.

An undertaking in a partnership action to pay money into court or to a joint account at a bank cannot be enforced by attachment or committal, having regard to the prohibition in the Debtors Act, 1869, s. 4, against imprisonment for default

ATTACHMENT—continued.

in payment of a sum of money, except in the cases specified by that section. **CARTER v. ROBERTS**

Byrne J. [1903] W. N. 95; [1903] 2 Ch. 312

Note.—See also Carter v. Roberts (No. 2), [1905] W. N. 111, next Case.

Distinguished by Warrington J. *In re Lavender*, [1908] W. N. 49. *See Practice—Undertakings.* 6.

14. — *Practice—Motion for attachment—Undertaking—Omission to fix time—R. S. C., 1883, Order XLI., r. 5—Committal for non-payment of money—Debtors Act, 1869 (32 & 33 Vict. c. 62), s. 4.*

In April, 1902, the plt. commenced this action to set aside a partnership between himself and the deft. on the ground of misrepresentation, and for dissolution. In Aug., 1902, an undertaking was given by the plt. and deft. "to pay all sums of money which shall be received by them in respect of the matters in dispute in this action to the credit of the partnership account of the plt. and deft. with "a certain bank. The plt. now moved that the deft. might be committed for his contempt in not paying into the partnership account, in compliance with his undertaking, moneys received by him, and belonging to the partnership, or in the alternative, that the plt. might be at liberty to issue a writ of attachment against the deft. for his contempt.

Byrne J. held that in a simple case, where there was an undertaking to pay money into court or into a joint account, the party giving the undertaking ought not to be in a worse position than he would be in if an order had been made against him, and that a supplemental order fixing a time was necessary before the undertaking could be enforced, though there might be cases of contempt so gross as to justify committal without such an order. The present case, however, was not one of that character. The Court was of opinion that the second ground of objection was fatal to the present application. **CARTER v. ROBERTS (No. 2)**

Byrne J. [1903] W. N. 111

See also preceding Case.

— *Practice—Motion for attachment against two executors—Service on one.*

See CONTEMPT OF COURT. 3.

15. — *Practice—Notice of motion for attachment—Form of notice—Extension of time—Service of order—Four-day order.*

Before leave to issue a writ of attachment can be obtained, for non-compliance with an order within the time therein limited as extended by a second order, both orders must be served: or if the extended time given by the second order has expired before that order has been drawn up, a four-day order must be obtained and served before moving for attachment. *In re SEAL.* *In re SEAL & EDGELOW*

Byrne J. [1902] W. N. 200; [1903] 1 Ch. 87

16. — *Practice—Process—Attachment—Breach of trust—Misapplication of trust funds—Form of judgment—Judgment for recovery of*

ATTACHMENT—continued.

money — *Four-day order* — *R. S. C.*, 1883, *Order XLI.*, r. 5 ; *Order XLII.*, r. 3.

A judgment that the plt. do recover from the deft. a sum of money cannot be supplemented by an order fixing a time for the payment of the money by the deft.

Therefore where the plt. in an action against a trustee for misapplication of trust funds obtained judgment against him for recovery by the plt. from the deft. of a sum of money representing the loss to the trust estate instead of judgment in the usual form for payment of the money to the plt. by the deft. :—

Held, reversing the decision of Buckley J., that the judgment could not be supplemented by a four-day order so as to found a right to issue a writ of attachment against the deft. in default of payment within the stipulated time.
In re ODDY. MAJOR v. HARNESSE

C. A. [1906] W. N. 5 ; [1906] 1 Ch. 93

17. — Practice—Writ of attachment—Disobedience of order—Personal service, Absence of—Erasure of service—R. S. C., Order XLI., r. 5.

The rule that requires personal service of an order before a writ of attachment can be issued for disobedience of it is subject to an exception where the order has come to the knowledge of the person sought to be attached and he evades service of it.

Hyde v. Hyde, (1888) 13 P.D. 166, followed.
KISTLER v. TETTMAR

C. A. [1904] W. N. 180 ; [1905] 1 K. B. 39

— Publication tending to prejudice fair trial—Contempt of inferior Court—Jurisdiction of King's Bench Division to attach for.

See CONTEMPT OF COURT. 1.

— Publication tending to prejudice fair trial—Jurisdiction of High Court to attach.

See CONTEMPT OF COURT. 7.

18. — Release—Debtor—Order for payment of money — Default — Contempt — Imprisonment—Release from prison—Mistake—Second order for attachment—Rearrest—"One year's imprisonment"—Including period of liberty—Jurisdiction—Debtors Act, 1869 (32 & 33 Vict. c. 62), s. 4.

An order for attachment made under s. 4 of the Debtors Act, 1869—which preserves imprisonment for debt in the six cases of default there specified—is not in the nature of a remedy for the recovery of a debt, but is in the nature of a punishment—that is, punishment for an offence ; and a second punishment cannot be awarded for the same offence.

Therefore where a debtor had been imprisoned under an order made for his attachment for default in payment of a sum of money which he had been ordered to pay (sub-s. 3), but was by mistake released before the expiration of the one year limited for imprisonment by the section :—

Held, by the C. A., reversing the order of Swinfen Eady J.—*Church's Trustee v. Montague Hibbard & Co.* [1902] W. N. 160—that there was no jurisdiction to make a second order for attachment for the same default ; though, *semble*, an order for rearrest might have been made under the original order for attachment.

ATTACHMENT—continued.

Per Mathew L.J. : In case of an order for rearrest, the period of imprisonment must end with the twelve months from the date of the original imprisonment, inclusive of the time the debtor had been at liberty. *CHURCH'S TRUSTEE v. HIBBARD*

C. A. [1902] W. N. 192 ; [1902] 2 Ch. 784

19. — Service—Common order to tax costs—Service of order—Subsequent service of taxing Master's certificate—Money in possession or under control of trustee—Default by trustee—Default by attorney or solicitor—Delivery of documents—Omission to fix time—Debtors Act, 1869 (32 & 33 Vict. c. 62), s. 4—R. S. C., Order XLI., r. 5.

In this case an order was served upon the solicitor personally on July 30, 1909, and was indorsed in the manner required by Order XLI., r. 5. The taxing Master by his certificate, filed on Mar. 1, 1910, certified that 92*l.* 7*s.* 4*d.* was due from the solicitor to the client. Of this sum 15*l.* 4*s.* consisted of the costs of the reference, which were certified to be payable by the solicitor, and the balance consisted of money received by the solicitor on behalf of the client. The certificate was served on the solicitor personally on Mar. 18, 1910. The solicitor not having paid anything within twenty-one days after service, on April 15 the client moved for leave to issue writ of attachment. Upon the hearing of the motion objection was taken that the service was insufficient because there had never been service of an order requiring the solicitor to pay a definite sum, and it was contended that the order ought to have been served with the certificate. No other objection was taken.

Swinfen Eady J., [1910] W. N. 105, overruled this objection and granted leave to issue attachment. The order was in the following form : It appearing to the satisfaction of the Court that Wilde had made default in payment of the 92*l.* 7*s.* 4*d.*, "and that such default was a default made by a trustee or person acting in a fiduciary capacity and ordered to pay a sum in his possession or under his control within the meaning of the Debtors Act, 1869," and that Wilde had also made default in delivery to the petitioner on oath the documents in his custody petitioning to the petitioner, it was ordered that the petitioner be at liberty to issue a writ of attachment against Wilde for his contempt in not having paid the 92*l.* 7*s.* 4*d.* in pursuance of the order of July 28, 1909, and the certificate, and in not having delivered to the petitioner the documents in his custody.

The C. A. allowed the appeal.

The Master of the Rolls thought that the Court could not be too strict in matters affecting the liberty of the subject, and there were defects of form in the order appealed from which made it impossible to attach this solicitor. First, the 92*l.* 7*s.* 4*d.* was not money in the possession or under the control of the solicitor as a trustee or person acting in a fiduciary capacity because part of it consisted of the costs of the taxation. It was said that an order for attachment might have been made against the solicitor as to the latter sum, but that would have been for default

ATTACHMENT—continued.

in payment of costs as an officer of the Court and fell under a different exception in the Debtors Act, and the answer to that contention was that the order was not drawn up in a form which included that default. Secondly, part of the default on which the order for attachment was founded was default in the delivery up of documents, but as to that no time had been fixed by the order of July 28, and a four-day order had not been obtained. The objection taken before Eady J. as to the service had been dealt with more seriously by that learned judge than this Court was disposed to deal with it; it was a preposterous objection. The appellant would have no costs, either in the C. A. or the Court below.

In re WILDE
C. A. [1910] W. N. 128

— Service—Practice.

See Nos. 17, 19, above.

— Solicitor — Undertaking — Proceeding with action—Delay.

See PRACTICE—Undertaking. 5.

— Solicitors Act—Unauthorized person—Lodging caveat—Ministerial act.

See PROBATE—Practice. 4.

— Specific chattel—Judgment for delivery of —Wilful refusal to deliver.

See COUNTY COURT—Practice. 4.

20. — Trustee—Practice—Contempt—Disobedience of order to pay money—Service of order —Presence when order was made—R. S. C., Order XLI., r. 5; Order XLIV., r. 2.

A writ of attachment will not usually be issued against a trustee for disobedience of an order directing him to pay money into Court unless the order has been personally served upon him. The fact that the order was made by consent, and that he was in Court when it was made and initialled one of the briefs, will not make personal service unnecessary unless it is shewn that he is evading service. *In re TUCK. MURCH v. LOOSEMOORE*

C. A. [1906] W. N. 77; [1906] 1 Ch. 692

Note.—Referred to by Warrington J., *In re Lavender*, [1908] W. N. 49. *See Practice—Undertakings. 6.*

21. — Trustee ordered to lodge in court money in possession or under control—Actual receipt—Evidence — Practice—Contempt—Commitment—Debtors Act, 1869 (32 & 33 Vict. c. 62), s. 4—Debtors Act, 1878 (41 & 42 Vict. c. 54).

The Court held that this case could not be distinguished from *In re Fewster, Herdman v. Fewster*, [1901] 1 Ch. 447, in which Joyce J., had held that, in order to bring a trustee within the third exception to s. 4 of the Debtors Act, 1869, it must be proved that the money ordered to be paid into Court was or had been actually "in his possession or under his control," and that the Master's certificate was not sufficient evidence of this. Buckley J. would not express any opinion of his own, but would follow that case and make no order on the motion. *In re WILKINS. EMSLEY v. WILKINS*

Buckley J. [1901] W. N. 202

See next Case.

ATTACHMENT—continued.

22. — Trustee ordered to pay into court—Money in possession or under control—Actual receipt—Evidence—Writ of Attachment—Debtors Act, 1869 (32 & 33 Vict. c. 62), s. 4—Debtors Act, 1878 (41 & 42 Vict. c. 54).

In an action against executors and trustees to recover the plt.'s share of the testator's residuary estate, the Master had by his certificate found that the defts. had received personal estate of the testator nor specifically bequeathed to a certain amount, and had paid, or were entitled to be allowed in account, certain other sums, leaving a balance due from them, one fourth of which was due to the plt. The certificate was based upon, inter alia, an affidavit of the defts., in which they set forth a full account of the testator's personal estate which had come to their hands or the hands of either of them, or to the hands of any person or persons by their order or the order of either of them, or for their use or the use of either of them. The account contained particulars of their receipts, including various sums of cash.

The defts. having failed to comply with an order to pay into Court the amount found to be due from them to the plt., a motion for attachment was made against them:—

Held, that there was no evidence of actual receipt by the defts., and that consequently the money was not shewn to be "in their possession or under their control" within the exception to s. 4 of the Debtors Act, 1869; and no order made on the motion. *In re FEWSTER. HERDMAN v. FEWSTER* Joyce J. [1901] W. N. 17; [1901] 1 Ch. 447

Note.

Followed by Buckley J., *In re Wilkins*, [1901] W. N. 202. *See preceding Case.*

ATTEMPT—Murder, Indictment for—Conviction for attempt—Punishment.

See CRIMINAL LAW—Appeal. 2.

ATTENDANCE — Administration — Creditor's action — Attendance at proceedings—Leave to attend—Creditor not a party to the action.

See ADMINISTRATION. 2.

— At school—Ascension Day.

See SCHOOLS. 4

— Prevention of cruelty to children—Necessity for attendance of child at trial.

See CRIMINAL LAW—Cruelty to Children. 3.

— Summary jurisdiction — Summons—Appearance of defendant by counsel—Warrant to compel personal attendance of defendant.

See JUSTICES. 22.

ATTENDANCES — Costs — Taxation — Motion treated as trial.

See COSTS. 15.

ATTESTATION—Attesting—Wills, Execution of —Notary present without attesting.

See CEYLON. 8.

ATTESTATION—*continued.*

- Informal document—Execution—Witnesses dead—No attestation clause—Presumption.
See PROBATE—Execution. 3.
- Power of appointment—Personalty—Execution—Foreign domicile—Unattested will—Extrinsic evidence of intention.
See CONFLICT OF LAWS. 15, 16.
- Unattached papers forming will—Identification—Execution—Acknowledgment and attestation.
See PROBATE—Execution. 5.
- Unattested will—Domiciled foreigner—Lex rei sitæ—Lex domicilii.
See CONFLICT OF LAWS. 17.
- Unattested will—Extrinsic evidence of intention—Power of appointment—Personalty—Execution—Foreign domicile.
See CONFLICT OF LAWS. 15, 16.
- Will.
See under WILL—Attestation.
- Will—Execution—Acknowledgment—Discrepancy between attestation clause and affidavit of attesting witness.
See PROBATE—Execution. 1.
- Will—Execution—"In the presence" of witnesses.
See WILL—Execution. 1.
- Will—Reduction—Agent alleged to benefit under will prepared by him—Suspicion—Defect in attestation.
See SCOTTISH LAW. 30.

ATTORNEY—Distribution of assets.*See EXECUTOR—Administration.* 1.

- Power of attorney.
See under POWER OF ATTORNEY.
- Power of attorney—Agent—Borrowing—Excess of authority—Money had and received.
See PRINCIPAL AND AGENT. 4.

ATTORNEY - GENERAL—Absence of—Public body—Statutory remedy—Justices, Proceedings before.*See LOCAL GOVERNMENT.* 3.

- Action by Attorney-General—Mandatory injunction—Laches—Delay.
See CANALS. 1.
- Attorney-General as co-plaintiff—New street—Penalty recoverable by summary proceedings.
See STREETS. 13.
- Fiat of Attorney-General—Expired patent—Mode of procedure—Petition for revocation.
See PATENT—Expired Patent. 1.
- Joinder of Attorney-General—Necessity for—Amendment—Terms—Pontypridd Waterworks Act.
See WATER. 18.
- Laches—Delay—London Building Act.
See LONDON—Buildings. 16.

ATTORNEY-GENERAL—*continued.*

- Local sanitary authority—Natural stream—Pollution—Right of Attorney-General to injunction—Discretion.
See STREAM. 2.
- Plaintiff's right to sue without—Water company—Trespass—Ultra vires.
See WATER. 24.
- Right to join as plaintiff—Right of action—Injury to limited section of public.
See INCLOSURE ACT. 1.
- Street—Infringement of building line—Conviction—Subsequent action by Attorney-General for injunction.
See STREETS. 3.
- Suing by Attorney-General—Corporation—Statutory body—Public duties.
See GAS. 2.
- Water company—Trespasser—Plaintiff's right to sue without Attorney-General.
See WATER. 24.

ATTORNEYS AND SOLICITORS.*See under SOLICITOR.***AUCTION**—Auctioneer—Advertising property for sale—Action by person claiming to be owner—Slander of title—Auctioneer cast in damages—Liability of principal.

The defts. instructed the plt., an auctioneer carrying on business in Paris, to advertise for sale a mare which they represented to him was a thoroughbred mare entered and described in the English Stud Book under the name of Pentecost. The plt. accordingly advertised the mare for sale as so named and described. A Frenchman, the owner of a thoroughbred mare also called Pentecost brought an action in France against the plt., alleging that he had suffered damage through the defts.' mare being advertised for sale under that name, and recovered damages. In an action by the plt. against the defts. for an indemnity, it was found as a fact that the representation made by the defts. as to the identity of their mare was true:—

Held, that the defts. were not liable, the damages recovered from the plt. not being due to any wrongful act on their part. *HALBRONN v. INTERNATIONAL HORSE AGENCY AND EXCHANGE, LD.* **Bruce J. [1903] 1 K. B. 270**

2. — Auctioneer—Partnership—Bill of exchange—Implied authority to accept—Trader.

An auctioneer is not a trader, and a partner in a firm of auctioneers has no implied authority to bind the firm by his acceptance of a bill of exchange in the firm name.

Decision of Div. Ct. [1906] W. N. 124; [1906] 2 K. B. 321 reversed. *WHEATLEY v. SMITHERS* **C. A. [1907] 2 K. B. 684**

3. — Auctioneer—Personal liability—Implied authority to sell without reserve—Limitation of authority not communicated to buyer—Liability of principal.

The deft., an auctioneer, was instructed by the owner of a pony to sell it at a public auction with a reserve price of 25l. When the pony was put up at the sale the name of the vendor was

AUCTION—*continued*.

disclosed; but the deft. inadvertently stated that the sale was without reserve. The pony was knocked down to the plt. for fifteen guineas. The deft. immediately afterwards discovered his error, and thereupon put the pony up for sale again, when it was bought in for seventeen guineas. No note or memorandum of the sale to the plt. was made. The plt. brought an action against the deft. claiming (1.) delivery of the pony, or damages for its detention; (2.) alternatively, damages for breach of warranty of authority by the deft.:—

Held, as to (1.), that the action failed by reason of the absence of a written memorandum of the sale:—

Held, as to (2.), that an auctioneer has an implied authority to sell without reserve, and, if he does so, the vendor cannot set up as against the buyer a limitation of that authority not made known to the buyer. There was, therefore, in the circumstances a contract binding on the vendor on which he could (but for the absence of a written memorandum) have been successfully sued by the plt.; and there had been no breach of warranty of authority by the deft.

Warlow v. Harrison, (1859) 1 E. & E. 309, distinguished.

Quere, whether the plt. had a cause of action against the deft. for failing to make a written memorandum of the sale.

Woolfe v. Horne, (1877) 2 Q. B. D. 355, is an authority that an action for wrongful refusal to deliver a chattel sold at public auction may in some circumstances be brought against the auctioneer, although the principal's name has been disclosed to the buyer at the time of the sale. *RAINBOW v. HOWKINS*

Div. Ct. [1904] 2 K. B. 322

4. — *Auctioneer — Personal liability — Sale subject to reserve — Lot knocked down at less than reserve.*

At a sale by auction subject to a reserve price on the article sold, where the fact that there is a reserve is known, the offer of the auctioneer to sell, the bidding, and the knocking down of the article to the highest bidder are all subject to the condition that the reserve price should be reached, and the fact that the auctioneer knocks down the article to a bidder who has bid a less price than the reserve gives the latter no right of action against the auctioneer, either for breach of duty in refusing to sign a memorandum of or otherwise complete the contract, or for breach of warranty of authority to accept the bid. *McMANUS v. FORTESCUE* C. A. [1907] 2 K. B. 1

— Auctioneer, Statement by—Misleading particulars—Compensation—Specific performance.

See VENDOR AND PURCHASER—Conditions of Sale. 3.

5.—*Auctioneer's commission—Practice—Sale by Court—Sale effected subsequently to auction.*

In an administration action an order was made for the sale of lands forming part of the real estate, and an auctioneer was employed to conduct the sale and the usual recognizance was given by him. At the auction the lands were

AUCTION—*continued*.

not sold, but shortly afterwards an advantageous sale was effected, not by the auctioneer nor on his introduction, though probably as a consequence of the attempted sale by auction. The auctioneer, whose recognizance had not been vacated, applied to the Court to be allowed commission on the sale so effected, and on his behalf there was evidence by auctioneers of experience and eminence to the effect that it was the practice of the Court to allow commission in such a case.

Kekewich J. said that he was inclined to doubt the existence of such a practice, but, in order to ascertain definitely whether it did or did not exist, it would be necessary for him to state a question for the consideration of all the Masters of the Chancery Division, and to obtain their collective opinion upon it.

It was then agreed between the parties that the opinion of Master Burney on the point should be accepted. The Court accordingly prepared the following question in writing: "Whether it is the practice of the Chancery Division to allow an auctioneer employed by the Court a commission on a sale effected after the auction but within a reasonable time thereafter, and before recognizance vacated, such sale not being effected by the auctioneer himself or on his introduction."

This question was submitted to the Master, who said that he did not himself know of any such practice, and he had always absolutely refused to allow such a commission, but he could not, of course, say that the practice of all the other Masters was the same. Upon this intimation of opinion having been given, the Court dismissed the application. *In re MAITLAND. PICKTHALL v. DAWES* Kekewich J. [1903] W. N. 143

— Distress—Sale by auction of goods distrained —Purchase by landlord.

See DISTRESS. 20.

— Mistake — Specific performance — Sale by auction—Purchase of wrong lot.

See VENDOR AND PURCHASER—Mistake. 1.

— Mortgage to friendly society—Sale by auction —Purchase by officer of society—Invalidity.

See MORTGAGE—Sale. 2.

AUCTIONEER.

See under AUCTION.

AUDITED ACCOUNTS—Borough treasurer—His duty and liability.

See CORPORATION. 4.

AUDITORS—Company.

See under COMPANY—Auditors.

— Local government — Certiorari — Right of Court to review surcharge.

See LOCAL GOVERNMENT. 1.

— Powers and duties—Surcharge—Certiorari to quash—Jurisdiction of Court—London Government.

See LOCAL GOVERNMENT. 1.

AUSTRALIA.

See also under NEW SOUTH WALES.

QUEENSLAND.

TASMANIA.

VICTORIA.

Australian States Constitution Act, 1907 (7 Edw. 7, c. 7), amends the law relating to the reservation for His Majesty's pleasure of Bills passed by the Legislature of the States forming part of the Commonwealth of Australia, and to confirm certain Acts passed by those Legislatures.

Reserve forces—Commonwealth of Australia. See *Reserve Forces Act, 1906* (6 Edw. 7, c. 11).

The Commonwealth of Australia is a colony within the meaning of the Companies (Colonial Registers) Act, 1883 (46 & 47 Vict. c. 30). See *Companies Act, 1907* (7 Edw. 7, c. 50), s. 43.

Australia, Provision for Judges of High Court to be members of Judicial Committee. See *Appellate Jurisdiction Act, 1908* (8 Edw. 7, c. 51), s. 3.

Order in Council, dated Mar. 26, 1907, applying the provisions of s. 103, of the Patents, &c. Act to the Commonwealth of Australia. **St. R. & O. 1907, No. 263.**

Order in Council, dated Aug. 12, 1907, revoking Order in Council of April 30, 1894, applying the provisions of s. 103, of the Patents, &c. Act to Tasmania. **St. R. & O. 1907, No. 651.**

Queensland—Order in Council assenting to a Colonial Bill providing for the submission of certain Parliamentary Bills of the Electors of the Colony. **St. R. & O. 1908, p. 1038.**

South Australia—Order in Council assenting to a Colonial Bill surrendering the Northern Territory of South Australia to the Commonwealth. **St. R. & O. 1908, p. 1039.**

1. — *Administration bond—Duration of sureties' liability—Title of beneficiaries to the residue—Completion of the administration—Deed of indemnity.*

In a suit in 1904 by the respondents upon an administration bond executed in 1886 and conditioned for the due administration by their eldest sister of the estate of their mother, who had died intestate in 1885, the appellants, as sureties thereto, so far as any misconduct on the part of the administratrix might be proved, pleaded a deed of indemnity duly executed in their favour by herself and the respondents, otherwise that the losses complained of did not result from misconduct as alleged, but from the acts and conduct of the three sisters after the estate had been fully and properly administered and whilst they were absolutely entitled to and in actual enjoyment of the property derived from the intestate :—

Held, on the evidence, overruling the High Court—(1.) that there had been no misconduct by the administratrix and no loss of assets in the course of administration ;

(2.) that the debt of indemnity was fully and properly explained to the respondents, to whom the appellants did not stand in any fiduciary relation, that they perfectly understood it, and that no independent advice could have made the matter clearer ;

AUSTRALIA—continued.

(3.) that after the payment of the intestate's debts the three sisters were entitled to the residue of the estate in equal undivided shares, had consented so to enjoy it, and were jointly responsible for the mode in which it had been dealt with and lost.

Cooper v. Cooper, (1874) L. R. 7 H. L. 53, followed. **BLAKE v. BAYNE**

P. C. [1908] A. C. 371

2. — *Annuity—Covenant to pay annuity for separate use of wife without power of anticipation—Right to annul the covenant on notice to trustee—Wife's waiver of notice valid.*

A deed of separation was executed in 1894 by the respondent and his wife, the former covenanting to pay to a trustee thereunder an annuity for the separate use of the latter without power of anticipation. Power was reserved to the respondent to give notice to the trustee after the expiration of twelve months from the date of the deed of his intention to pay a reduced amount, in which case, unless all the parties agreed as to the amount to be thereafter paid, the covenants in the deed should be void and of no further effect. Before the expiration of twelve months notice of such intention was given to the wife's solicitors, and the wife instructed them to waive the stipulated notice to the trustee.

In an action brought in 1904 to recover all arrears of annuity due under the deed as a still subsisting arrangement, the Supreme Court of the Colony decreed the amount, holding that the wife's waiver of notice to the trustee was in contravention of the restraint clause in the deed :—

Held, that the High Court reversed this decree. On the true construction of the deed the restraint clause applied to the annuity so long as it was payable, but not to the notice. Personal service thereof on the trustee was a mere formality which the wife was entitled to waive. Otherwise it was inequitable that she should enforce an obligation from which she had induced her husband to omit to free himself in the manner stipulated. **MACNAGHTEN v. PATERSON**

P. C. [1907] A. C. 483

— *Appeal—Practice.*

See Nos. 11—16, below.

— *Australian Commonwealth Act, 1903—Construction—Act not retrospective—Right of appeal in suit pending when the Act was passed.*

See QUEENSLAND. 1.

3. — *Banker and customer—Cheques drawn with spaces, afterwards fraudulently filled up—Liability of bank—Duty of customer—Negligence.*

Held, that the mere fact that a cheque is drawn with spaces which can be utilized for the purpose of fraudulent alteration is not by itself any violation of duty by the customer to his banker.

Five cheques were drawn on the deft. bank by the two plts. and deft. M. to the debit of their joint account. After they were signed by the plts. M. enhanced their apparent amounts by adding words and figures in the

AUSTRALIA—continued.

blank spaces to the left of those originally written.

In a suit to recover the balance of account the bank claimed to debit it with the enhanced amounts of the cheques, and the jury found that the bank could not, by the exercise of ordinary care and caution, have avoided paying the cheques as altered, and that the cheques were drawn by the plts. in neglect of their duty to the bank :—

Held (affirming the High Court), that there was no evidence of negligence on the part of the respondents proper to be left to the jury.

Scholfield v. Londesborough (Earl), [1896] A. C. 514, followed. COLONIAL BANK OF AUSTRALASIA, LD. *v.* MARSHALL

P. C. [1906] A. C. 559

4. — *Brewers' colonial ale licences—Storekeepers' licences—Law of South Australia—Acts 1901, No. 773; 1902, No. 784—Act 1905, No. 897, s. 5, sub-s. 2—Construction.*

Held, that brewers' colonial ale licences issued under South Australian Act of 1901, No. 733, are not storekeepers' licences within the meaning of s. 5, sub-s. 2, of the Act of 1905, No. 897, which regulates the working of local option. Act 1902, No. 784, ought not to be so applied as to alter the character of licences under the Act of 1901. *MCGRATH v. ADELAIDE LICENSING JUSTICES* P. C. [1908] A. C. 487

— Colonial Stock.

See under COLONIAL STOCK.

— Covenant not to assign a lease without consent.

See No. 9, below.

5. — *Defamation—Libel—Trade protection society—Communications to subscribers not privileged—Privilege founded on the general interest of society.*

A verdict for damages having been obtained in an action for libel against the respondents, who carried on the business of a trade protection society, that is, of obtaining information with reference to the commercial standing and position of persons in New South Wales and elsewhere, and in communicating such information confidentially to subscribers to the agency in response to their specific and confidential inquiries, the Full Court of New South Wales ordered a new trial, and the High Court of Australia entered judgment for the respondents :—

Held, that the orders of both Courts must be reversed. The occasion was privileged if the communication injurious to the plt.'s character was made in the general interest of society and from sense of duty; not so, if it was made from motives of self-interest by those who for the convenience of a class trade for profit in the characters of other persons, and who offer for sale information which, however cautiously and discreetly sought, may have been improperly obtained. *MACINTOSH v. DUN*

P. C. [1908] A. C. 390

— Extradition.

See under EXTRADITION.

AUSTRALIA—continued.

6. — *False imprisonment, Action for—Contract as to entry on and exit from wharf—Toll—Unreasonable conduct of plaintiff—Nonsuit.*

In an action for damages for assault and false imprisonment it appeared that the plt. had contracted with the defts. to enter their wharf and stay there till the boat should start and then be taken by the boat to the other side. No breach of the defts.' undertaking was alleged, but the plt. after entry changed his mind and desired to effect an exit from their wharf without payment of the prescribed toll for exit, and was for a time forcibly prevented :—

Held, that he ought to have been nonsuited. The toll imposed was reasonable and the defts. were entitled to resist a forcible evasion of it. *ROBINSON v. BALMAIN NEW FERRY CO.*

P. C. [1910] A. C. 295

— Forfeiture of lease.

See No. 10, below.

7. — *Land transfer—Western Australia Land Transfer Act, 1874—Land Transfer Act, 1893, s. 211—Wrongful issue of certificate of title—Liability of registrar of titles—Damages.*

By deed of feoffment in 1841 the land in suit was effectually conveyed to trustees in trust for M., her heirs and assigns, to hold unto the trustees, their heirs and assigns for ever, upon certain special trusts directed to secure M.'s separate enjoyment during coverture and her testamentary power of appointment :—

Held, that, on the true construction of this deed, the trustees, having regard to the habendum clause, took a legal estate in fee; that under the general trust M. took an equitable estate in fee, the special trusts not being in any way inconsistent with, but rather ancillary to it; and that after her coverture ceased M., being sui juris, was competent to convey it.

Held accordingly, in a suit by the appellant as trustee and beneficiary under a deed of marriage settlement executed in 1816 by her in favour of her intended second husband for life, with remainders which, on his death, took effect, that he was entitled to claim against the respondent for deprivation of title in respect of a certificate of title wrongfully issued to F. under the provisions of the Western Australian Transfer of Land Act, 1874.

It appearing that F. derived title under what purported to be an absolute conveyance in 1843 of the land in suit by the feoffor and feoffees of the deed of 1841 and their mortgagee, and by the then trustees of the deed of 1846 and by the husband, who covenanted for title as if he were vendor :—

Held, that the suit must be decreed, for the interests in remainder were unaffected by the conveyance, and consequently F. had, after the husband's death, no beneficial interest in the fee simple conveyed.

Held further, that the trustees' right to sue accrued on the husband's death, and that, therefore, the suit was not barred by s. 211 of the Transfer of Land Act of 1893. *SPENCER v. REGISTRAR OF TITLES* - P. C. [1906] A. C. 503

8. — *Land transfer—Western Australian Transfer of Land Act, 1893—Wrongful*

AUSTRALIA—continued.

registration—Measure of damages—Value of buildings when plaintiff's title accrued.

An O. in C. ([1906] A. C. 503) declared that the plt., who was a remainderman, was entitled to damages under the Transfer of Land Act, 1893, for deprivation of title to the land in suit by reason of a certificate wrongfully issued to F. in 1875, and that the plt.'s cause of action arose in 1903. It then remitted the case for the assessment thereof :—

Held (overruling the Court below), that the damages must be measured by including the value of the buildings on the land at the date when the cause of action accrued, and that the value of the buildings erected after the date of the certificate and before the accrual of the cause of action could not be excluded. **SPENCER v. REGISTRAR OF TITLES** P. C. [1908] A. C. 235

9. — *Lease—Covenant not to assign a lease without consent of lessor—Injunction.*

A covenant by a lessee not to assign without the lessor's consent runs with the land, and applies to a reassignment to the original lessee. An injunction will lie on a threat to commit a breach of it.

Doherty v. Allman, (1878) 3 App. Cas. 709, followed, and held to be especially applicable under the Real Property Act system of land registry in South Australia. **MCEACHARN v. COLTON** P. C. [1902] A. C. 104

10. — *Lease, Forfeiture of—Notice of forfeiture to lessee—Law of Western Australia—Goldfields Act, 1886—Regulations of 1892, clauses 69, 70.*

The decision of the Governor in Council, under clauses 69 and 70 of the Regulations of 1892, to forfeit a lease granted under the Goldfields Act of 1886, must be unequivocally expressed by some overt act :—

Held, that its transmission to the Warden's office was not such an act, and that the decision did not take effect till the day on which it was notified to the lessee.

The seven days' preferent right granted to the applicant for forfeiture by clause 69 to apply for a lease of part of the forfeited land runs from the date of notification : if exercised before that date, the application is invalid and of no effect.

After the expiry of the seven days the respondents applied for a lease of the same land, which had been included in an invalid previous application ; the Governor gazetted his approval thereof, and subsequently cancelled the same on the ground of mistake :—

Held, that the cancellation was ultra vires, and that the Governor was liable in damages to the respondents on their petition of right. **MINISTER OF MINES v. HARNEY** P. C. [1901] A. C. 347

— Melbourne notaries—Appointment—Practice.

See under NOTARIES.

-- New South Wales.

See under NEW SOUTH WALES.

— Patent—Prior publication or user—Amendment of specification—Renewal fees.

See PATENT—Registration.

AUSTRALIA—continued.

11. — *Practice—Appeal—Rule absolute against justices for prohibition without costs—Appeal does not lie as to costs.*

The Court, having made absolute a rule for prohibition at the instance of the appellants against the respondent justices, refused to order them to pay the appellants' costs :—

Held, an appeal did not lie. There had been no mistake of law, and the Court had exercised its judicial discretion. **RIEKEN v. YORKE PENINSULA JUSTICES. KEAM v. ADELAIDE LICENSING JUSTICES** P. C. [1908] A. C. 454

12. — *Practice—Appeal, Special leave to—Australian Commonwealth Constitution Act, 1900, s. 74.*

Special leave to appeal from a judgment of the High Court of Australia holding that goods imported by the State Governments are liable to duties of customs under the laws of the Commonwealth was refused, although the case was within s. 74 of the Commonwealth of Australia Constitution Act, 1900 (63 & 64 Vict. c. 12). **ATT.-GEN. FOR NEW SOUTH WALES v. COLLECTOR OF CUSTOMS FOR NEW SOUTH WALES** P. C. [1909] A. C. 345

13. — *Practice—Appeal, Special leave to—Decree of High Court of Australia.*

Where on a petition of special leave to appeal from the High Court of Australia it appeared that the law as laid down by that Court could not be objected to :—

Held, that the question of the application of that law to the particular case involving simply the construction of a document, however substantial as between the parties, was not one of public importance, and that there was no sufficient ground shown for granting the petition. **WILEY ORE CONCENTRATOR SYNDICATE, LD. v. N. GUTHRIDGE, LD.** P. C. [1906] A. C. 548

14. — *Practice—Appeal, Special leave to—High Court of Australia.*

An application for special leave to appeal from the High Court of Australia will be treated in the same manner as an application for special leave to appeal from the Supreme Court of Canada. It will not be entertained save where the case is of gravity involving matter of public interest, or some important question of law, or affecting property of considerable amount, or where the case is otherwise of some public importance or of a very substantial character.

Prince v. Gagnon, (1882) 8 App. Cas. 103, followed.

Where a limited co., acting upon a deed of transfer executed through a power of attorney signed by the plt. whilst of unsound mind, transferred shares standing in their register in his name, their Lordships, seeing no reason to doubt the correctness of the High Court's judgment to the effect that the power was void and the deed of transfer a nullity, declined to advise that special leave be given. **DAILY TELEGRAPH NEWSPAPER CO. v. McLAUGHLIN** P. C. [1904] A. C. 776

AUSTRALIA—continued.**15. — Practice — Appeal — Special leave to appeal from High Court of Australia.**

Where petitioners for special leave have elected to appeal to the High Court of Australia, from which it is known that there is no further appeal without special leave, their Lordships will not, except in a very special case, entertain their petition.

Clergue v. Murray, [1903] A. C. 521 (where the same rule was laid down in reference to the Supreme Court of Canada), followed. **VICTORIAN RY. COMMS. v. BROWN.** *Ex parte VICTORIAN RY. COMMS.* **P. C. [1906] A. C. 381**

16. — Practice — Appeal — Special leave to appeal refused.

The High Court of Australia having decided, contrary to a decision of their Lordships, that a State had no power to impose income tax upon a salary paid by the Commonwealth to its officers, or to a member of the Commonwealth Parliament, resident in such State, the Commonwealth Parliament thereafter passed an Act expressly authorizing the States to impose such taxation :—

Held, that petitions for special leave to appeal from the High Court decisions must be refused, the amount at stake being inconsiderable, and the controversy having been closed. **NEW SOUTH WALES TAXATION COMMISSIONERS v. BAXTER.** **WEBB v. CROUCH and FLINT**

P. C. [1908] A. C. 214

— Privy Council Appeals.

See under PRIVY COUNCIL.

— Queensland.

See under QUEENSLAND.

17. — Statutory powers—Exercise of statutory powers by public body—Compensation—Western Australia Municipal Institutions Act (59 Vict. No. 10), s. 109.

The appellant municipality, in the exercise of authority conferred by the Western Australia Municipal Institutions Act (59 Vict. No. 10), s. 109, and at the request of the ratepayers, in order to improve a street reduced the gradient opposite the respondent's house so that it was left on the edge of a cutting with a drop of about six or eight feet to the road :—

Held, that the respondent was without remedy, since none had been given by statute, and the applicants had not exceeded the powers conferred. **EAST FREMANTLE CORPORATION v. ANNOIS** **P. C. [1902] A. C. 213**

— Tasmania.

See under TASMANIA.

— Victoria.

See under VICTORIA.

— Will — “Debts” — Colonial death duty — Victoria Administration and Probate Act.

See WILL—Colonial Duties. 1.

AUSTRIA—Cheque stolen abroad—Forged indorsement—Transfer for value in foreign country—Conflict of laws.

See BILL OF EXCHANGE. 2.

AUSTRIA—continued.

— English fund belonging to Austrian who has died without heirs—Right of succession — “*Mobilia sequuntur personam.*”
See BONA VACANTIA. 1.

AUSTRIA-HUNGARY.

FUGITIVE CRIMINAL.] Under Extradition Acts — Austria-Hungary — Order in Council directing that the Extradition Acts shall apply in the case of. **St. R. & O. 1902, No. 737.**

Order in Council applying the provisions of s. 91 of the Patents and Designs Act, 1907 (7 Edw. 7, c. 29), to Austria-Hungary. **St. R. & O. 1909, No. 585.**

AUTHOR — Book — Posthumous letters — Proprietorship of copyright — Author's manuscript.

See COPYRIGHT—Books. 3.

— Encyclopædia—Ownership of copyright in contributions—Author and publisher.

See COPYRIGHT—Encyclopædia. 1.

— Publisher and—Copyright—Equitable assignment — Assignment — Story not in existence.

See COPYRIGHT—Books. 2.

— Publisher and author—Copyright—Registration — Musical composition — Assignment.

See COPYRIGHT—Music. 2.

— Publisher and author—Sale of copyright to publisher on royalties—Bankruptcy of publisher—Trustee carrying on business.
See BANKRUPTCY—Trustee. 3.

AUTHORITY—Implied warranty of—Attorney innocently acting under forged power—Liability to third party.

See PRINCIPAL AND AGENT. 3.

AUTOMATIC MACHINE — Shop containing — Unlawful gaming.

See GAMING. 19.

AVERAGE — “Average weekly earnings.”

See under MASTER AND SERVANT—Compensation.

— General average.

See under INSURANCE (MARINE).

— Shipping—General average.

See under SHIPPING—Average.

AVERAGE WEEKLY EARNINGS—Workmen's Compensation Act.

See under MASTER AND SERVANT.

AVERMENTS — Sufficiency of — Pleading — Indictment.

See CRIMINAL LAW—Indictment. 3.

AWARD—Arbitration.

See under ARBITRATION—Award.

— Salvage — Grounds for an Appeal Court reducing the amount.

See SHIPPING—Salvage. 9.

B.

BAIL—Conspiracy—Agreement—Indemnification of bail—No wrongful intent—Act tending to produce a public mischief.
See CONSPIRACY. 1.

BAILIFFS—County Court.
See under COUNTY COURT—Bailiffs.

— County Court—Execution—Deposit of value of goods—Bailiff remaining in possession—Right to possession fees.
See COUNTY COURT—Execution. 2.

— Distress.
See under DISTRESS.

— Distress—Costs and charges—Agreement for extra remuneration.
See APPEAL. 6.

— Execution—Seizure and sale of goods not the property of judgment debtor—Liability of high bailiff to owner.
See COUNTY COURT—Execution. 4.

— High bailiff's fees.
See under COUNTY COURT—Bailiffs.

— Water bailiff, Powers of—Salmon fishery—Right to search suspected person's pocket.
See FISHERY. 12.

BAILMENT—Bailee—Claim by bailee of contents of lost mail-bags—Possessory title as against wrong-doer.
See SHIPPING—Collision. 42.

1. — *Bailee for hire—Hiring agreement with option to purchase—Power to owner to retake possession on breach of agreement by hirer—Default of hirer in payment of rent—Right of owner to sue for arrears of rent after retaking possession.*

The owner of furniture agreed to let it on hire on the terms of the hirer paying a lump sum in consideration of an option to purchase it at any time during the period of hiring and further paying a monthly sum by way of rent. The agreement provided that the hirer might at any time terminate the hiring on giving a week's notice and delivering up the goods without prejudice to the owner's right to recover any arrears of rent, and that if the hirer did not duly perform the agreement the owner might retake possession of the furniture. The hirer being in arrear with the rent, the owner retook possession under the agreement:—

Held, that the owner by so retaking possession had not abandoned his right to sue for the arrears of rent.

Hewison v. Ricketts, (1894) 63 L. J. (Q.B.) 711, distinguished. *BROOKS v. BEIRNSTEIN*
Div. Ct. [1908] W. N. 238; [1909] 1 K. B. 98

BAILMENT—*continued.*

— Collision—Loss of chattel by negligence of wrongdoer.
See SHIPPING—Collision.

— Employer and workman—Bailor and bailee—Negligence of servant—Injury to article bailed—Liability of master.
See MASTER AND SERVANT—Liability. 2.

— Master and servant.
See under MASTER AND SERVANT—Bailment.

BAKEHOUSE—Underground—Factory Acts—Lease—"Impositions and outgoings."
See FACTORY. 8.

— Underground bakehouse—"Outgoings and impositions," Covenant by lessee to pay and discharge.
See FACTORY. 5.

BALANCE-SHEET—Accounts—Reserve fund—Secrecy—Auditors not to disclose information—Ultra vires.
See COMPANY—Accounts. 1.

BALLASTING—Discharge of cargo delayed by—Demurrage.
See SHIPPING—Charterparty. 54.

BALLOT PAPERS—Position of voter's marks on paper—Sufficiency of—Election petition.
See ELECTION LAW. 1.

BANK.
See under BANKER.

BANK OF ENGLAND—Lunacy—Dividends—Receiver—Accrued dividends—Form of order—Transfer into Court—Indemnity.
See LUNACY. 24.

1. — *Transfer of stock—Execution by person appointed to execute on neglect or refusal by stockholder ordered to execute—Indemnity of bank—Form of order—Judicature Act, 1884 (47 & 48 Vict. c. 61), s. 14—National Debt Act, 1870 (33 & 34 Vict. c. 71), ss. 22, 66.*

S. having recovered judgment against J. N. and R. N. in the King's Bench Division and obtained a charging order on stock standing in their respective names in the books of the Bank of England, commenced proceedings in the Chancery Division against J. N. and R. N. to obtain a sale of so much of the stock as would provide sufficient to pay the amount due under the charging order, and on June 29, 1907, Warrington J. made an order for sale by S. out of Court of portions of the stock, and that the proceeds should be received by S. in discharge of the amount found due to him, and that within seven days after service of the order J. N. and

BANK OF ENGLAND—continued.

R. N. should transfer to S. the stock ordered to be sold, and in case they should neglect to do so, the Court appointed the Stock Exchange broker of the Court to execute the transfer, and ordered him to do so.

The Bank of England's advisers not being satisfied that it was protected by the order, the Bank was by arrangement joined as a deft. in the proceedings in the Chancery Division, and thereupon S. applied to Parker J. asking that, as J. N. and R. N. had neglected to transfer the stock, the Bank might be ordered to act on the order of June 29, and to suffer a transfer of the stock ordered to be sold to be executed in the books of the Bank by the Court broker, or, alternatively, for a fresh order for sale of the stock to satisfy the claim of S. The Bank objected (1.) that any order made should be intitled "In the matter of the Judicature Act, 1884"; (2.) that the Court could not, under s. 14 of that Act, make one anticipatory order for (a) execution of a transfer by stockholders, and (b) for execution of the transfer by some other person in case of non-compliance; and (3.) that it was not clear that, under an order framed in the manner proposed, the Bank would be entitled to any indemnity under the National Debt Act, 1870 :—

Held—(1.) that it was unnecessary and inconvenient to alter the title of the order by referring to the Act of 1884, although as a matter of convenience the order might state that it was made under s. 14 of the Act; (2.) that (without deciding that there was no case in which the Court could make an anticipatory order) before making an order under s. 14 the Court ought as a rule to be satisfied that the person originally ordered to execute a document had neglected or refused to comply with the order, and that in the present case an anticipatory order ought not to be made; and (3.) that as execution by the Court broker of the transfer would in effect be the act of the stockholders, the Bank would be indemnified under the National Debt Act, 1870.

The matter was subsequently brought before the Court, when the Bank urged (1.) that in a case like this there was no indemnity to the Bank; and (2.) that if the Bank was ordered to allow a transfer by the Court broker it should only be on a condition imposed under s. 14 of the Act of 1884 that S. should indemnify the Bank :—

Held—(1.) that when once an order had been made under s. 14, and acted on, the transfer executed by the appointed person had the same effect as if it had been executed by the stockholder, and the Bank was at any rate impliedly indemnified for acting on the order, even if the order turned out to have been invalidly made; and (2.) that, even if the condition asked for could be imposed under s. 14, it ought not to be imposed in the present case.

Form of order. *SAVAGE v. NORTON*

Parker J. [1908] 1 Ch. 290

— Transfer of stock—Personation of holder—Identification of transferor by stockbroker—Effect of transfer—Obligation of bank to replace stock.
See INDIA. 4.

BANK OF ENGLAND—continued.

— Transfer of stock — Power of attorney—Innocent misrepresentation — Forged power—Liability of agent.
See PRINCIPAL AND AGENT. 3.

BANKER—Bank of England.

See under BANK OF ENGLAND.

— Bank—Mortgage debt—Mortgage insurance policy—Indemnity—Guarantee—Suretyship—Contribution.
See PRINCIPAL AND SURETY. 3.

— *Bills of Exchange (Crossed Cheques) Act, 1906 (6 Edw. 7, c. 17), amends s. 82 of the Bills of Exchange Act, 1882 (45 & 46 Vict. c. 61).*

— Bill of exchange—Bill delivered to bankers to be discounted—Time at which property passed—Book debt.
See BILL OF EXCHANGE. 1.

— Cheque — Banker and customer — Cheques drawn up with spaces, afterwards fraudulently filled up—Liability of bank—Negligence.
See AUSTRALIA. 2.

1. — *Cheque—Company—Cheque drawn by directors on behalf of company—Forgery—Negligence—Return of pass-book without objection—Settled account.*

It is the duty of a customer of a bank in issuing mandates to the bank to take reasonable care so as not to mislead the bank; but, beyond the care which must be taken in or immediately connected with the transaction itself, there is no duty on the part of the customer to take precautions in the general course of carrying on his business to prevent forgeries on the part of his servants.

The mere fact that a customer of a bank takes his pass-book out of the bank and returns it without objecting to any of the entries contained therein, there being a pencil entry of the balance, does not amount to a settlement of account as between him and the bank in respect of those entries.

The secretary of a co. forged the signatures of two of the directors of the co. to a number of cheques which purported to have been drawn by the directors on behalf of the co. upon the defts., who were the co.'s bankers, and the defts. paid the cheques so drawn. The forgeries extended over a period of about two months, during which time neither the bank pass-book nor the cash-book of the co. was examined by the directors. In an action by the co. against the defts. to recover the amounts so paid :—

Held, upon the facts, that the co. was entitled to recover. *KEPITIGALLA RUBBER ESTATES, LD. v. NATIONAL BANK OF INDIA, LD.*

Bray J. [1909] 2 K. B. 1010

— Cheque—Company—Debentures—Interest—Cheques for, sent to trustees or by their direction to tenant for life—Non-presentation of cheque for payment.
See COMPANY—Debentures. 51.

2. — *Cheque—Countermand by telegram—Notice—Action for money had and received—*

BANKER—continued.

Bills of Exchange Act, 1882 (45 & 46 Vict. c. 61), s. 75, sub-s. 1.

Though a telegram countermanding a cheque may reasonably be acted upon by a banker, at least to the extent of postponing the honouring of the cheque until further inquiry can be made, yet a banker is not bound to accept an unauthenticated telegram as sufficient authority for the serious step of refusing payment.

On Oct. 31, 1906, the plt. drew a cheque for 63*l.* on his bankers, the defts. On the same day after business hours, he telegraphed to countermand payment of this cheque. The telegram was delivered on the evening of the same day by the Post Office, and, it being after office hours, was placed in the letter-box of the bank. By an oversight on the part of the defts.' servants this telegram was not brought to the notice of their manager until Nov. 2. On Nov. 1 the cheque was presented and paid.

In an action for money had and received:—

Held, that payment of the cheque was not in fact countermanded within the meaning of s. 75 of the Bills of Exchange Act, 1882, although it might well be that it was owing to the negligence of the bank officials that notice of the customer's desire to stop the cheque was not received in time. *CURTICE v. LONDON CITY AND MIDLAND BANK, LD.*

C. A. [1908] W. N. 3; [1908] 1 K. B. 293

3. — Cheque—Defective title—Receiving payment for a customer—"Customer"—Liability of banker—Bills of Exchange Act, 1882 (45 & 46 Vict. c. 61), ss. 81, 82.

To make a person a "customer" of a bank within the meaning of s. 82 of the Bills of Exchange Act, 1882, there must be some sort of account, either a current or a deposit account, or some similar relation.

H. having by false pretences obtained from the appellants a cheque crossed "& Co." and marked "not negotiable," took it to the respondent bank. The bank at his request paid part of the amount of the cheque into the account of one of their customers and handed the balance to H. After the respondents had received payment of the cheque from the bank on which it was drawn H.'s fraud was discovered, and the appellants sued the respondents for the amount. It was found as a fact that the respondents received the payment in good faith and without negligence. They had for years been in the habit of cashing cheques for H. in a similar manner. He had no account or pass-book with them:—

Held, that H. was not a "customer" of the respondents, and that they did not receive payment of the cheque for him, within the meaning of s. 82 of the Bills of Exchange Act, 1882, and were not protected by that section; that H. having no title to the cheque the respondents took no title to it or to the money, and were liable to the appellants for the amount of the cheque.

Decisions of Bigham J., [1899] 2 Q. B. 172, and the C. A., [1900] 2 Q. B. 464, reversed. *GREAT WESTERN Ry. Co. v. LONDON AND COUNTY BANKING CO.*

H. L. (E.) [1901] W. N. 156; [1901] A. C. 164

BANKER—continued.

4. — Cheque—Forged indorsement—Payee—"Fictitious or non-existent person"—Belief or intention of drawers—Bills of Exchange Act, 1882 (45 & 46 Vict. c. 61), s. 7, sub-s. 3.

Where a cheque is drawn by a real drawer who designates an existing person as the payee and intends him to receive the proceeds, the payee is not "a fictitious person" within the Bills of Exchange Act, 1882, s. 7, sub-s. 3.

The drawer of a cheque induced by the fraud of W. drew the cheque to the order of K. an existing person, and intended him to be the payee. W. forged K.'s indorsement, and paid the cheque into his own account at his bankers, who received the amount of the cheque from the drawer's bank:—

Held, that the drawer could recover the amount of the cheque from W.'s bankers.

Decision of the C. A., *Macbeth v. North and South Wales Bank*, [1907] W. N. 205; [1908] 1 K. B. 13, affirmed. *NORTH AND SOUTH WALES BANK, LD. v. MACBETH. NORTH AND SOUTH WALES BANK, LD. v. IRVINE*

H. L. (E.) [1908] W. N. 66; [1908] A. C. 137

5. — Cheque—Conversion—Crossed cheque paid into customer's account—Forged indorsement—Credit given to customer before cheque cleared—Draft by one branch of bank on another—Bills of Exchange Act, 1882 (45 & 46 Vict. c. 61), s. 82—Revenue Act, 1883 (46 & 47 Vict. c. 55), s. 17—Stamp Act, 1853 (16 & 17 Vict. c. 59), s. 19.

Bankers are protected by s. 82 of the Bills of Exchange Act, 1882, only where they receive payment of a crossed cheque as agents for collection for a customer. They are not so protected when they receive payment as holders of the cheque on their own account.

The appellant banks credited a customer with the amounts of cheques as soon as they were handed in to his account and allowed him to draw against the amounts so credited before the cheques were cleared:—

Held, that they were not protected by s. 82.

The protection given by s. 82 applies only to cheques crossed before they are received by the bankers.

The decision of the C. A., [1901] W. N. 247; [1902] 1 K. B. 242, affirmed on the above points.

A banker's draft payable to order on demand addressed by one branch of a bank to another branch of the same bank and not crossed is not a cheque within the meaning of ss. 60, 82 of the Bills of Exchange Act, 1882, nor is it within s. 17 of the Revenue Act, 1883. But it is within s. 19 of the Stamp Act, 1853, which protects bankers bona fide paying such drafts to holders claiming under forged indorsements.

The decision of the C. A. varied to the above effect on this point. *CAPITAL AND COUNTIES BANK, LD. v. GORDON. LONDON CITY AND MIDLAND BANK, LD. v. GORDON*

H. L. (E.) [1903] W. N. 92; [1903] A. C. 240

— Cheque — Forged indorsement — Payee a "fictitious or non-existing person"—Belief or intention of drawer.
See BILL OF EXCHANGE, 3.

BANKER—continued.

6. — *Cheque—Protection of collecting banker—Customer credited in ledger with amount of cheque before clearance—Bills of Exchange Act, 1882 (45 & 46 Vict. c. 61), s. 82.*

Where the customer of a bank delivers to the banker for collection a crossed cheque to which he has no title, the fact that the banker credits the customer in the bank ledger with the amount of the cheque before it is cleared does not deprive the banker of the protection afforded by s. 82 of the Bills of Exchange Act, 1882. *AKROKERRI (ATLANTIC) MINES, LD. v. ECONOMIC BANK*

Bigham J. [1904] W. N. 125 ; [1904] 2 K. B. 465

— Cheque—Gambling in a foreign country—Loan—Consideration.

See GAMING. 3.

— Cheque—Stolen abroad—Forged indorsement—Transfer for value in foreign country—Conflict of laws.

See BILL OF EXCHANGE. 2.

— Cheque—Unregistered dentist—Right to sue for fees—Cheque given by patient—Subsequent dishonour.

See DENTIST. 4.

— Cheque drawn by deceased, Gift of—Overdrawn account.

See DONATIO MORTIS CAUSA. 2.

7. — *Closing account—Banker and customer—Mortgage to secure account current—Power of sale—Notice by mortgagor to bank of appointment of a trustee for his creditors.*

A customer of a bank mortgaged to the bank a policy of assurance on his life to secure the amount from time to time owing by him to the bank in account current. The mortgage provided that the statutory power of sale should be exercisable by the bank if (among other events) default should be made in payment of the balance owing for the space of one calendar month after the account current had been closed.

On Nov. 9, 1899, the customer wrote to the bank manager: "There was a meeting of creditors yesterday. . . . They agreed to accept all the assets I had. I gave them to understand that I was insured . . . and that you held the policy . . . as security for your account. . . . There was a trustee appointed. Trusting every one will get 20s. in the pound," &c.

On Dec. 18 the bank sold the policy under the power in the mortgage:—

Held, that the letter amounted to a closing of the account, and that the bank were justified in realising their security. *BERRY v. HALIFAX COMMERCIAL BANKING CO.*

Kekewich J. [1901] 1 Ch. 188

— Company—Loan by bank—Insufficient assets—Receiver's remuneration—Priorities.

See COMPANY—Receiver. 13.

— Conviction set aside—No evidence of fraudulent appropriation—Liability of bank director.

See ISLE OF MAN. 1.

— Deposit in bank—Obligation of banker to produce and deliver up—Extradition Act.

See SUBPENA DUCES TECUM. 1.

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— Director—Misfeasance—Payment of dividends out of capital—Negligence.

See COMPANY—Directors. 11.

8. — *Evidence—Order for inspection of books—Jurisdiction of magistrate—Bankers' Books Evidence Act, 1879 (42 Vict. c. 11), ss. 7, 10.*

A magistrate before whom criminal proceedings are being taken has power to make an order under s. 7 of the Bankers' Books Evidence Act, 1879, for the prosecutor to inspect and take copies of entries in the books of a bank at which the debt. keeps an account. *REX v. KINGHORN*

Div. Ct. [1908] W. N. 204; [1908] 2 K. B. 949

— Income tax—Purchase of business of another bank.

See REVENUE—Income Tax. 6.

— Indemnity—Action quia timet—Present debt—No demand by bank for payment—Parties.

See PRINCIPAL AND SURETY. 2.

— Liability of bankers—Compradore's limited authority as their agent.

See HONG KONG. 1.

— Liability of director of bank—Overdrafts of customers improperly allowed by cashier of bank.

See CANADA—Bank. 1.

9. — *Lien, Banker's—Stockbroker—Authority to borrow—Pledge of client's security—Overdraft—Special borrowing.*

Though bankers have a general lien upon the securities of a customer deposited with them to secure an overdraft, this lien does not attach to securities deposited by a customer and known to the bank to belong to some other person and to have been deposited for a special purpose.

Where a customer draws a cheque for a sum in excess of the amount standing to the credit of his current account, it is in effect a request for a loan, and if the cheque is honoured the customer has borrowed money; but it does not follow that a transaction of this kind is a borrowing upon security not belonging to the customer and deposited for another purpose.

Hambro v. Burnand, [1904] 2 K. B. 10, distinguished. *CUTHBERT v. ROBERTS, LUBBOCK & Co.*

C. A. [1909] W. N. 125 ; [1909] 2 Ch. 226

— Marked cheque fraudulently altered—Negligence—Notice of dishonour—Reasonable delay.

See CANADA—Bank. 2.

— Mortgage to secure current account—Subsequent mortgage—Appropriation of payments—Rule in *Clayton's Case*.

See MORTGAGE—Bank. 1.

— Practice—Restricted power of liquidators of bank to sue in their own names—Power to amend by adding bank as plaintiffs.

See CANADA—Company. 3.

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See **PRINCIPAL AND AGENT.** 3.
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See **WILL**—"Ready Money." 1.
- Will — Specific legacy — Misdescription — Shares in a bank — Absorption by another bank—Extrinsic evidence.
See **WILL**—**Specific Legacy.** 1.

BANKRUPTCY.

Official Receiver (Order dated April 17, 1907), Appointment of, during temporary vacancy of office, or during temporary absence of any Official Receiver, during illness or otherwise. Reprint from W. N. 1907 (May 4), p. 149. See CURRENT INDEX, 1907, p. lxi.

Bankruptcy Act, 1883, Official Receiver—Order of Board of Trade dated May 30, 1908, directing a person being an officer of the said Board can discharge duties of Official Receiver during any temporary vacancy, &c. Reprint from W. N. 1908 (June 13), p. 172. See CURRENT INDEX, 1908, p. lxxi.

Bankruptcy Rules, 1908, dated July 6, 1908, made pursuant to the Bankruptcy Acts, 1883 and 1890—Warrants and arrests under s. 27 of the Bankruptcy Act, 1883. Reprint from W. N. 1908 (Aug. 1), p. 241. See CURRENT INDEX, 1908, p. lxxi.

Bankruptcy Acts, 1883 and 1890—General Rule, dated Aug. 20, 1908, in substitution for Rule 103 of the Bankruptcy Rules, 1886, made pursuant to s. 127 of the Bankruptcy Act, 1883. Reprint from W. N. 1908 (Aug. 29), p. 247. See CURRENT INDEX, 1908, p. lxxiii.

Bankruptcy Acts, 1883 and 1890. Appendix to the General Rules.—Part II. Scale of Solicitors' Costs (Reprint). 1908 (H.—Legal). Price 2d. Can be obtained of Messrs. Eyre & Spottiswoode, of East Harding Street, Fetter Lane, E.C., or other Publishers.

Bankruptcy Act, 1883. The Lord Chancellor, by Order dated Feb. 10, 1909, assigned to the Hon. Mr. Justice Phillimore the business under the Bankruptcy Act, 1883. Reprint from W. N. 1909 (Feb. 20), p. 87. See CURRENT INDEX, 1909, p. xciv.

Bankruptcy Act, 1883.—General Rule made pursuant to s. 127 of the Bankruptcy Act, 1883.—Bankruptcy Notice on County Court Judgment. Reprint from W. N. 1909 (July 31), p. 283. See CURRENT INDEX, 1909, p. xciv.

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Act of Bankruptcy.

1. — *Bankruptcy notice—Persons entitled to enforce a final judgment—Trustee in bankruptcy of judgment creditor—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 4, sub-s. 1 (g)—Bankruptcy Act, 1890 (53 & 54 Vict. c. 71), s. 1—Order XVII., r. 4; Order XLII., r. 23.*

The trustee in bankruptcy of a judgment creditor, who has obtained an order under Order XVII., r. 4, making him a party to the action, but has not obtained leave to issue execution under Order XLII., r. 23, is not “a person who is for the time being entitled to enforce a final judgment” within the meaning of s. 1 of the Bankruptcy Act, 1890, and is therefore not entitled to issue a bankruptcy notice against the judgment debtor in respect of the judgment debt. *In re CLEMENTS. Ex parte CLEMENTS*

Div. Ct. [1901] 1 K. B. 260

Note.

This case was referred to by C. A., *In re Bagley*, [1910] W. N. 224. See **Bankruptcy—Arrangement**. 2.

- *Deed of assignment for benefit of creditors—Effect of payment to trustee under deed.*
See **BANKRUPTCY—Deed of Assignment**. 1.

2. — *Foreigner resident abroad but trading in England—Jurisdiction—“Debtor”—Assignment executed abroad for benefit of creditors generally—Notice of suspension of payment—Receiving order—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 4, sub-s. 1 (a), (h); s. 6, sub-s. 1 (d).*

The Court of Bankruptcy has no jurisdiction to make a receiving order against a foreigner resident abroad, who without coming into the jurisdiction, has in this country had a place of

BANKRUPTCY (Act of Bankruptcy)—*continued*.
business, contracted debts, and acquired assets, and has executed abroad an assignment of his property for the benefit of his creditors generally. Such a person is not "a debtor" within the meaning of the Bankruptcy Act, 1883, s. 6, sub-s. 1 (d).

Decision of C. A. reported as *In re A. B. & Co.* [1900] 1 Q. B. 541, affirmed. *COOKE v. CHARLES A. VOGELER Co.* **H. L. (E) [1901] W. N. 2; [1901] A. C. 102.**

— Fraudulent assignment—Insolvent trader.

See BANKRUPTCY—Fraud. 1.

3. — Married woman — "Carrying on" business separately from husband—Unpaid debts — "Absenting" — Act of Bankruptcy—Liability of married woman to bankruptcy laws—Receiving order—Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), s. 1, sub-s. 5—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 4, sub-s. 1 (d).

A married woman who has sold a business carried on by her separately from her husband must be deemed to be still "carrying on" the business within s. 1, sub-s. 5, of the Married Women's Property Act, 1882, so long as the debts she has incurred in the business remain unpaid; and therefore, in such a case, she is subject under that sub-section, in respect of her separate property, to the bankruptcy laws, so that a receiving order may be made against her at the instance of a trade creditor.

In re Dagnall, [1896] 2 Q. B. 407, approved.

A married woman who has bought a business out of her separate estate, and is carrying it on as her own, is not the less "carrying on a trade separately from her husband" within the above sub-section because the business happens to be carried on in the house in which she and her husband are living and the husband may be taking some part in the management of it.

A married woman who, while carrying on a business separately from her husband, leaves her place of business without paying her creditors or notifying her change of address, commits an act of bankruptcy by "absenting herself with intent to delay or defeat her creditors" within s. 4, sub-s. 1 (d), of the Bankruptcy Act, 1883, even though she leaves at her husband's request in order to live with him elsewhere. *In re WORSLEY*

C. A. [1901] 1 K. B. 309

4. — "Notice"—Petition—Suspension of payment—Verbal admission of insolvency—Debt—Payment on a contingency—Future partnership — "Liquidated Sum"—Damages—Petitioning creditor's debt—Loan by one partner to another, Recovery of—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 4, sub-s. 1 (h); s. 6, sub-s. 1 (b) —Partnership Act, 1890 (53 & 54 Vict. c. 39), s. 3.

Under an agreement made in Jan., 1900, between M., a stockbroker, and T., with a view to T.'s ultimately becoming a member of the Stock Exchange and entering into partnership with M., T. paid 2000*l.* into M.'s banking account, subject to a condition that if T. should not, on or before Sept. 29, 1900, become a member of the Stock Exchange, or if, having become a member, he should not be at liberty to enter a partnership within that period by reason of his recommenders

BANKRUPTCY (Act of Bankruptcy)—*continued*
withholding their consent, then and in either of those cases T. should have the option of determining the agreement by notice, whereupon the 2000*l.* should be repaid by M.

On June 28 M. was "hammered" on the Stock Exchange, and on July 3 he told T. in conversation that "he was utterly penniless," that "he could not pay anybody," and that "he had lost everything." Thereupon T., without having given any notice purporting to determine the agreement, presented a bankruptcy petition against M., alleging that M. was indebted to him "in the sum of 2000*l.* lent by him to M. pursuant to the agreement," and that the act of bankruptcy was that the debtor gave him "notice" on July 3 of having "suspended payment of his debts":—

Held, that the alleged debt of 2000*l.* was not "a liquidated sum, payable either immediately or at some certain future time," within s. 6, sub-s. 1 (b), of the Bankruptcy Act, 1883, and was therefore not sufficient to support the petition, and that on July 3 T.'s only remedy was in damages for breach of the agreement:

Held, also, by Lord Alverstone C.J., that if on July 3 T. had been in fact a "creditor" of M., the statement then made by M. to T. would have been a "notice" of suspension of payment constituting an "act of bankruptcy" within s. 4, sub-s. 1 (h). *In re MILLER*

C. A. [1901] 1 K. B. 51

— Payment by third person on behalf of bankrupt.

See BANKRUPTCY—Third Party. 1.

— Stock exchange, Default on — Deposit on securities—Objection to return securities.

See BANKRUPTCY—Stock Exchange. 1.

Adjudication.

1. — Practice—Notice to debtor—Adjudication under the Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 20, sub-s. 1—Bankruptcy Rules, rr. 27, 28, 190-192*a*.

When a receiving order has been made against a debtor and the creditors have resolved that he be adjudged bankrupt, the Court, under s. 20, sub-s. 1, of the Bankruptcy Act, 1883, has jurisdiction on the application of the official receiver to make an adjudication without any previous notice to the debtor of the intention to make the application. But as a general rule it is convenient that notice should be given to the debtor.

In re PONSFORD. Ex parte PONSFORD

C. A. [1904] W. N. 163; [1904] 2 K. B. 704

— Receiving order—Debtor's own petition—Committal order, Evasion of.

See BANKRUPTCY—Receiving Order. 1.

Administration Orders.

Bankruptcy Act, 1883 (46 & 47 Vict. c. 52)—General Rules, dated July 10, 1902, as to administration orders under s. 122. And Appendix of Forms. Reprint from W. N. 1902 (Aug. 2), p. 211. See CURRENT INDEX, 1902, p. lxi.

BANKRUPTCY—continued.**Advertisements.**

1. — *Deposit of share certificates—Parol mortgage—Mortgagor's address unknown—Implied power of sale—Advertisement.*

In 1874 N., a French governess in the service of B. in London, deposited with the debtors, a firm of solicitors, three bonds of 400 francs each of the Turkish Lottery Loan and six Ottoman Ry. (Smyrna to Aidin) shares of 20*l.* each as security for advances made to her and amounting altogether to 85*l.*, but no written document was signed by her relating to the said pledge. In 1883 she left the service of B. and returned to France. On the subsequent bankruptcy of the debtors these bonds and shares came into the hands of their trustee in bankruptcy. The loan had not been repaid, and inquiries had failed to ascertain the present address of the mortgagor; the trustee, therefore, could not serve her with a notice to pay off which would entitle him to sell the bonds and shares: see *Deverges v. Sandeman, Clark & Co.*, [1902] 1 Ch. 579. The shares were saleable in London and were worth about 20*l.* each. The bonds were freely saleable in Paris and other places on the Continent at about 5*l.* each, but in London, lotteries being illegal, they could not be sold. Drawings for prizes and for payment off of the bonds took place from time to time—the chief prize was about 12,000*l.*, and there were a number of smaller ones—but none of the three bonds in question had as yet been drawn. The amount due for principal, interest, and costs on the loan exceeded the present value of the bonds and shares, and under these circumstances the trustee now applied to the Court for directions.

Bigham J. directed the trustee to insert a proper advertisement in one French and one English newspaper announcing that the ry. shares would be sold if the mortgagor did not come in and redeem them within one month, and ordered that, after the expiration of that month without any claim by the mortgagor, the trustee should sell the shares and apply the proceeds towards payment of principal, interest, and costs due on the security, and of the costs of the advertisement and this application. But there would be no order as to the Turkish Lottery bonds. *In re HARRISON & INGRAM. Ex parte WHINNEY* Bigham J. [1905] W. N. 143

Annulment.

1. — *Adjudication—Debts—Release—"Payment in full"—Cash payment—Jurisdiction—Discretion—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 35.*

Section 35 of the Bankruptcy Act, 1883, which requires, as a condition precedent to the exercise of the jurisdiction to annul an adjudication in bankruptcy, proof "that the debts of the bankrupt are paid in full," is not satisfied by an unconditional release given to the bankrupt by his creditors. To satisfy the section the "debts"—including at least all debts which have been actually and properly proved in the bankruptcy—must have been fully paid in cash.

The bulk of a bankrupt's creditors who had proved their debts in the bankruptcy executed a

BANKRUPTCY (Annulment)—continued.

deed releasing him absolutely, without any consideration, from his debts owing to them, and agreed to withdraw their proofs; the few remaining creditors he paid in full in cash. He then applied, under s. 35 of the Bankruptcy Act, 1883, for the annulment of his adjudication on the ground that his debts had been "paid in full":—

Held (reversing the decision of the Div. Ct., Bigham and Darling JJ.), that there had been no "payment in full" within the meaning of the section.

Per Stirling L.J.: The jurisdiction conferred upon the Court by s. 35 to annul an adjudication is discretionary; and, in the absence of special circumstances, it would not be a good exercise of that discretion to make an order for annulment, where, if the bankrupt were applying for his order of discharge, an order of discharge would not be granted.

In re E. A. B., [1902] 1 K. B. 457, and *In re Pilling*, [1903] 2 K. B. 53, distinguished. *In re KEET* - - - C. A. [1905] W. N. 104; [1905] 2 K. B. 666

2. — *Discretion of Court—Conduct of bankrupt—Interests of public and of commercial morality—Proposal of composition after discharge of bankrupt—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), ss. 23, 32—Bankruptcy Act, 1890 (53 & 54 Vict. c. 71), s. 9.*

The creditors of a bankrupt, whose discharge had been suspended for two and a half years, after the period of suspension had expired resolved by the proper majority to entertain, under the provisions of s. 23 of the Bankruptcy Act, 1883, a proposal by the bankrupt to pay a composition of 7*s.* 11*d.* in the pound in addition to a dividend of 2*s.* 1*d.* in the pound which had been paid in the bankruptcy, on condition that the bankruptcy should be annulled:—

Held, that, in the exercise of its discretion under s. 23 as to the approval of the scheme, the Court ought to consider, not only the interest of the creditors, but also the interests of the public and of commercial morality, and that; having regard to the facts found by the official receiver in his report on the bankrupt's application for his discharge, the bankruptcy ought not to be annulled.

The Court accordingly refused to approve of the scheme. *In re BEER. Ex parte BEER*

C. A. [1903] W. N. 56; [1903] 1 K. B. 628

3. — *Payment of debts in full—Application to annul adjudication—Discretion to refuse order—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 35, sub-s. 1.*

Where a bankrupt, whose debts have been paid in full, applies, under the Bankruptcy Act, 1883, s. 35, sub-s. 1, for an order annulling his adjudication, the Court has discretion to refuse an order if, having regard to the conduct of the bankrupt, it seems right to do so.

Therefore, where a bankrupt, in his statement of affairs, and on his public examination, concealed the fact that he possessed a large sum of money, and afterwards handed to the official receiver a portion of that money sufficient to pay his debts in full, with interest and expenses, and

BANKRUPTCY (Annulment)—continued.

applied for an order annulling his adjudication, which was refused:—

Held, that the refusal was right. *In re TAYLOR. Ex parte TAYLOR* Div. Ct. [1901] 1 K. B. 744

Appeal.

See under **BANKRUPTCY—Practice.**

Arrangement.**(Deeds of Arrangement.)**

Bankruptcy Act—Deeds of Arrangement Rule—Affidavits—Bankruptcy Act, 1890. General rule, dated July 8, 1905, made pursuant to s. 25 of the Bankruptcy Act, 1890. [Draft rule. W. N. 1905 (June 3), p. 157] W. N. 1905 (Aug. 5), p. 227.

1. — *Non-registration—Validity—Assignment for the benefit of certain named creditors only—Deeds of Arrangement Act, 1887 (50 & 51 Vict. c. 57), s. 4, sub-s. 2; s. 19.*

An assignment by a debtor for the benefit of certain named creditors only without any option to the remaining creditors to assent to the deed is not a deed of arrangement for the benefit of the creditors generally within the Deeds of Arrangement Act, 1887, and consequently does not require registration.

Dictum of Vaughan Williams L.J. in *Hedges v. Preston*, (1889) 80 L. T. 847, explained and distinguished. *In re SAUMAREZ. Ex parte SALAMAN* C. A. [1907] W. N. 109; [1907] 2 K. B. 170

2. — *Registration—Validity—Defect in swearing of affidavit—Bankruptcy notice—Bankruptcy of judgment creditor—Devolution of title—Leave to trustee in bankruptcy to issue execution—Deeds of Arrangement Act, 1887 (50 & 51 Vict. c. 57), ss. 5, 6—Commissioners for Oaths Act, 1889 (52 Vict. c. 10), s. 1, sub-ss. 1, 2—Bankruptcy Act, 1890 (53 & 54 Vict. c. 71), s. 1—Rules of the Supreme Court, Order XVII., r. 4, Order XXXVIII., r. 16, Order XLII., r. 23.*

At the hearing of this case it appeared that the Commissioner for Oaths before whom the affidavit of Bagley which, under the Deeds of Arrangement Act, 1887, was required to be registered with the deed of arrangement was sworn, was solicitor to the trustee of the deed, and it was contended that the deed of arrangement was consequently void because not duly registered.

The registrar overruled the debtor's objections, and made a receiving order. The debtor appealed.

The C. A. dismissed the appeal. The Master of the Rolls, after observing that the effect of the bankruptcy proceedings against Gibson was that the garnishee order ceased to have any operation, said that the first objection to the receiving order under appeal was that the official receiver in Gibson's bankruptcy had assented to the deed of arrangement; to which the answer was that the deed of arrangement was a nullity. The Deeds of Arrangement Act, 1887, required that every deed of arrangement should be registered together with two affidavits, and one of those affidavits was sworn before a commissioner

BANKRUPTCY (Arrangement)—continued.

who acted as solicitor to the trustee of the deed. By the Commissioners for Oaths Act, 1889, s. 1, a commissioner for oaths was empowered to take any affidavit for the purposes of any Court or matter, including matters relating to the registration of any instrument, provided that none of the powers given by the section should be exercised in any proceeding in which he was solicitor to any of the parties. "Proceeding" in the proviso was a compendious term to include all matters comprised in the earlier part of the section, and was not confined, as had been contended, to litigious proceedings or proceedings in Court. Under Order XXXVIII., r. 16, also the so-called affidavit was open to the same objection, namely, that it was sworn before a person who had no authority to take the oath. The result was that this affidavit was no affidavit at all, and that the deed, to the validity of which the filing of the affidavit was essential, was no deed at all. This conclusion was in accordance with *Baker v. Ambrose*, [1896] 2 Q. B. 372, a decision not under the Deeds of Arrangement Act, but under the Bills of Sale Act, 1878; but for the present purpose there was no distinction between the two Acts. The appellant's next objection was that the official receiver, before obtaining leave to issue execution, ought to have been made a party to the action under Order XVII., r. 4; to which the answer was that, having obtained leave to issue execution under Order XLII., r. 23, he had brought himself precisely within the language of s. 1 of the Bankruptcy Act, 1890, and was to be deemed a creditor for the purposes of s. 4 of the principal Act. That answer ought to prevail. It was sufficient to say that the order for leave to issue execution remained unimpeached, but, speaking for himself, preferring the dictum of Cotton L.J., in *In re Woodall*, (1884) 13 Q. B. D. 479, 483, to that of Wright J. in *In re Clements*, [1901] 1 K. B. 260, 263, he thought that it was not necessary for the official receiver, before obtaining leave to issue execution, to get himself made formally a party to the action. *In re BAGLEY* C. A. [1910] W. N. 224

Arrangements.**(Scheme of Arrangement.)**

1. — *Approval by Court—Security for composition—Sufficiency—Bankruptcy Act, 1890 (53 & 54 Vict. c. 71), s. 3, sub-s. 9.*

Though the Court will generally be reluctant to refuse to approve of a proposed scheme of arrangement by a debtor with his creditors which has been approved by the creditors, yet it is the duty of the Court, under s. 3, sub-s. 9, of the Bankruptcy Act, 1890, to consider whether the scheme is for the benefit of the creditors, and in particular whether it provides reasonable security for the payment of 7s. 6d. in the pound on all the unsecured debts provable against the debtor's estate, and to refuse to give the approval of the Court if it is not satisfied on these points.

A proposed scheme of arrangement with creditors (which had been approved by the creditors by the proper majority) provided (inter alia) that the property of the debtors, which would have been divisible among their

BANKRUPTCY (Arrangements)—continued.

creditors if they were bankrupt, should vest in a trustee and should be administered by him as in bankruptcy. The trustee was, on the approval of the scheme by the Court, to pay in full all fees, costs, and expenses, including the remuneration of the trustee, and all preferential debts, and was then to pay to all the unsecured creditors in respect of all debts provable under the receiving order, and in satisfaction of the same, a composition of 20s. in the pound, payable in instalments of not less than 2s. 6d. in the pound, as and when the realization of the debtors' assets would allow. The payment of the preferential debts, fees, &c., and of the composition was to be secured by the vesting of the debtors' property in the trustee :—

Held, that the scheme did not within the meaning of s. 3, sub-s. 9, provide "reasonable security" for the payment of a composition of 7s. 6d. in the pound, and that the scheme ought not to be approved by the Court.

Semble, that, notwithstanding the decision in *In re Pilling*, [1903] 2 K. B. 50, there may be cases in which the Court might approve of a scheme which provided for the conditional withdrawal by some creditors of their claims.

When the Court refuses to approve of a scheme of arrangement with creditors proposed by a debtor, an immediate adjudication of bankruptcy against him will be made only in the most exceptional circumstances. *In re FLEW*, *Ex parte FLEW* - - C. A. [1905] W. N. 3 ; [1905] 1 K. B. 278

See No. 3, below.

2. — *Cessio bonorum—Construction—Agreement—Bankruptcy—Scheme of arrangement.*

Appeal by the plt. from the order of Kekewich J. holding that a fund obtained out of Court by him under an order made on Feb. 29, 1896, the Court being at the time unaware of the agreement of April 20, 1893, referred to in the report below, must be repaid to the Creditors' Assets Co., as being entitled thereto under the agreement :—

Held, that the effect of the agreement and the order approving it, by which "all the property" of the plt. Bath, the debtor, was vested in the co., was a complete *cessio bonorum* made for the purpose of providing the co. with an adequate security for their reimbursement under the obligation they had undertaken of paying the whole of the creditors their debts in full : that the fund in question accordingly passed to the co. absolutely under the agreement, there being nothing in it to narrow its effect. The appeal must, therefore, be dismissed with costs. *BATH v. BATH* - - C. A. [1902] W. N. 91

3. — *Composition—Scheme of arrangement—Withdrawals by creditors—Releases by majority of creditors—Conditional releases—Escrows—Composition payable to minority of creditors—Approval of Court—Bankruptcy Act, 1890 (53 & 54 Vict. c. 71), s. 3.*

A debtor against whom a receiving order had been made submitted for the approval of the Court under s. 3 of the Bankruptcy Act, 1890, a proposed composition scheme consisting partly of releases which had been given him by

BANKRUPTCY (Arrangements)—continued.

two-thirds of his creditors of their debts under private arrangements made with them by himself, and partly of an intended payment of a composition of 7s. 6d. in the pound to the remaining one-third. The particular circumstances under which the releasing creditors had agreed to release their debts were not explained to the Court, and the releases themselves were not absolute in terms, but stipulated that if the proposed composition of 7s. 6d. in the pound should not be approved by the Court, or the receiving order not rescinded, the releases "shall have no force or operation" :—

Held, that, having regard to the form of the releases and to the fact that the circumstances under which they had been obtained had not been submitted to the consideration of the Court as part of the scheme, the scheme was not one which the Court could approve.

In re E. A. B., [1902] 1 K. B. 457, explained and distinguished.

The observations on that case in *In re Baines*, (1902) 86 L. T. (N.S.) 691, disapproved. *In re PILLING*. *Ex parte BOARD OF TRADE*

C. A. [1903] W. N. 76 ; [1903] 2 K. B. 50

Note.

This case was considered by C. A., *In re Flew*, *Ex parte Flew*, [1905] 1 K. B. 278. *See No. 1, above.*

— Deeds of arrangement.

See under BANKRUPTCY—Arrangement (Deeds of Arrangement).

4. — *Firm bankrupt in England and in India—English trustee and Indian official assigned—English creditors and Indian creditors—Agreement for pooling and distributing the assets—Sanction of Court—Jurisdiction.*

Where a firm is bankrupt in England and abroad, and has English and foreign assets and English and foreign creditors, the Court has jurisdiction to sanction an agreement between the trustee in bankruptcy in England and the official assignee abroad for pooling all the assets and distributing them rateably amongst the English and foreign creditors, notwithstanding that the Bankruptcy Act, 1883, contains no express provisions authorizing such a scheme. *In re P. MACFADYEN & CO. Ex parte VIZIANAGARAM CO.*

Bigham J. [1908] W. N. 32 ; [1908] 1 K. B. 675

Note.

See In re Macfadyen, Ex parte Vizianagaram Mining Co., C. A. [1908] 2 K. B. 817, *Bankruptcy—Proof. 3. And see next Case.*

5. — *Partnership, Debtor's share in a—Partnership turned into a limited company—Power of trustee to accept shares in company for debtor's interest—Compromise—Sanction of Court—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 57, sub-ss. 7, 8 ; s. 102, sub-s. 1.*

On Oct. 20, 1906, the firm of P. Macfadyen failed, and the same day Patrick Macfadyen, a member of the firm, died. The affairs of the firm and of Patrick Macfadyen were being administered in bankruptcy one Cooper being

BANKRUPTCY (Arrangements)—continued.

the trustee of the joint estate of the firm and of the separate estate of Patrick Macfadyen.

From 1899 until their failure the firm were the managing agents of a syndicate owning valuable manganese mines in the central provinces of India. The firm financed the syndicate, paid all their liabilities, and collected and received all their moneys. Patrick Macfadyen owned three-tenths of the syndicate; the remaining seven-tenths belonged to three other persons. After P. Macfadyen's death it was ascertained that he had dealt improperly with the moneys of the syndicate, and the three surviving members of it claimed to charge 73,000*l.* against his separate estate and to set off this sum against his interest in the syndicate. The trustee did not admit the claim, negotiations ensued, and eventually it was arranged by way of compromise that the trustee should concur with the surviving members of the syndicate in forming a limited liability co. to purchase as a going concern from Dec. 31 next the mines, &c., of the syndicate for 300,000*l.* in fully paid-up shares of 1*l.* each in the co., that 43,000*l.* of the 73,000*l.* should be written off as a loss of the syndicate, that the balance of 30,000*l.* should be paid out of P. Macfadyen's share of the profits of the syndicate for the current year, which were very large, and that three-tenths of the purchase-price of 300,000*l.* in fully paid-up shares of the co. should be allotted to the trustee in satisfaction of P. Macfadyen's interest in the syndicate. This arrangement was embodied in two conditional agreements, but, as there was a doubt whether the trustee could accept payment in fully paid-up shares in a co., the surviving owners of the syndicate applied to the Court for an order that the trustee might be ordered and authorized to enter into the scheme. The committee of inspection of the joint and separate estates had accepted the proposed terms.

Phillimore J.: I think there is jurisdiction, and under the circumstances I will make an order authorizing the trustee to enter into the scheme. *In re* PATRICK MACFADYEN. *Ex parte* GLASS - Phillimore J. [1908] W. N. 13

See preceding Case.

6. — *Receiving order—Debtor—Scheme of arrangement—Creditor—Withdrawal of Debt—Release—Security—Undue preference—Knowledge of debtor—Composition—"Debts provable"—Approval of scheme—Conduct of debtor—Official receiver's report—Misconduct—"Rash and hazardous speculation"—Bankruptcy Act, 1890 (53 & 54 Vict. c. 71), s. 3, sub-ss. 7, 8, 9, 10.*

Where a scheme of arrangement is submitted by a debtor under s. 3 of the Bankruptcy Act, 1890, and part of the arrangement is that certain creditors withdraw their debts, the Court will not refuse its sanction to the scheme merely on the ground that the withdrawals are on terms giving those creditors an advantage over the other creditors, provided that the withdrawals have not been obtained by the debtor himself, or by any person with the knowledge and on behalf of the debtor.

Thus, a scheme of arrangement submitted by

BANKRUPTCY (Arrangements)—continued.

a debtor against whom a receiving order had been made secured payment to the unsecured creditors, except two who had withdrawn their debts, of a sum of not less than 7*s.* 6*d.* in the pound, as required by s. 3, sub-s. 9, of the Act. The withdrawals had been obtained by the debtor's brother, who had, but without any knowledge whatever on the part of the debtor himself, given them a security placing them, it was said, in a better position than the other creditors under the scheme:—

Held, that, as the security given to the two withdrawing creditors was, neither in form nor in substance, the result of any bargain made by or with the knowledge of the debtor himself, it was not a ground for the Court refusing to sanction the scheme.

The expression "debts provable" in s. 3, sub-s. 9, of the Bankruptcy Act, 1890—which requires that a scheme of arrangement shall, as a condition for its approval by the Court, provide reasonable security for payment of not less than 7*s.* 6*d.* in the pound "on all the unsecured debts provable against the debtor's estate"—means "debts provable," not at the date of the receiving order, but at the time when the scheme comes before the Court for approval, and, therefore, does not include debts which may have previously been withdrawn or released.

Misconduct on the part of a debtor, to be sufficient to justify the Court in refusing its sanction to a scheme under s. 3, sub-s. 9, must be of a gross character, or such as would make the sanction contrary to public policy. The mere fact that the official receiver has found in his report made under sub-s. 7 that the debtor has contributed to his failure by "rash and hazardous speculation" is not by itself a sufficient ground for refusal. *In re* E. A. B.

C. A. [1902] 1 K. B. 457

Note.

Explained and distinguished by C. A., *In re Pilling*, [1903] 2 K. B. 50. *See* No. 3, above.

Distinguished by C. A., *In re Keet*, [1905] 2 K. B. 666. *See* Bankruptcy—Annulment. 1.

— Receiving order—Provable debt carrying interest above 5 per cent.—Dividend.

See BANKRUPTCY—Receiving Order. 7.

Assets.

1. — *Property of Bankrupt—Money advanced to bankrupt for special purpose—Payment to creditor for withdrawal of bankruptcy petition—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 44.*

After the presentation of a bankruptcy petition the debtor's solicitor paid 300*l.* to the petitioning creditor, on condition that the petition should be dismissed, and it was dismissed accordingly. The 300*l.* was advanced by the solicitor, and the debtor gave him a security for it. The debtor was soon afterwards adjudicated a bankrupt upon the petition of another creditor, and the trustee in the bankruptcy applied for an order that the creditor who had received the 300*l.* should refund it:—

Held, upon the evidence, that the 300*l.* was impressed with a trust so that it could not be applied to any other purpose than in paying the

BANKRUPTCY (Assets)—continued.

creditor, and consequently that it did not form part of the bankrupt's general assets :

Held, therefore, that the case was governed by *In re Rogers*, (1891) 8 Morr. 243, and that the trustee was not entitled to recover the money.

Decision of Wright J., [1902] W. N. 103 ; [1902] 2 K. B. 55, affirmed. *In re DRUCKER* (No. 1). *Ex parte* BASDEN - C. A. [1902]

W. N. 133 ; [1902] 2 K. B. 237

Assignment, Deeds of.

See under **BANKRUPTCY—Deeds of Assignment.**

Bankruptcy Notice.

See under **BANKRUPTCY—Notice.**

Bill of Sale.

See under **BILL OF SALE.**

Bond.

1. — *Arrest of debtor — Bond to enforce debtor's attendance for examination—Default of debtor—Forfeiture of bond—Whether Crown or creditors entitled to proceeds of bond—Bankruptcy Act, 1883* (46 & 47 Vict. c. 52), s. 25—*Form of bond.*

Where a debtor, who has been arrested under s. 25 of the Bankruptcy Act, 1883, for failing to attend his examination, gives a bond with sureties to obtain his release from prison, the proceeds of the bond, if it is subsequently forfeited, will go as a general rule, not to the Crown, but to the creditors, subject to any order the Court may make in any special case.

In future the bond is to be given to the senior registrar in bankruptcy for the time being. *In re GORDON, In re SALMOND*

Wright J. [1903] 2 K. B. 164

Books.

1. — *Practice—Trustee's record book—Right of debtor to inspect—Bankruptcy Act, 1883* (46 & 47 Vict. c. 52), s. 80—*Bankruptcy Rules, rr. 16, 285, 287, 292.*

A debtor has no right under any circumstances to inspect the record book of the trustee in his bankruptcy, and the Court has no power to give him leave to do so.

Decision of Bigham J., [1904] W. N. 169 ; [1904] 2 K. B. 760, affirmed. *In re SOLOMONS. Ex parte SOLOMONS* - C. A. [1904] W. N. 188 ; [1904] 2 K. B. 917

2. — *Underwriter at Lloyd's—Business carried on by underwriter on behalf of himself and "names"—Bankruptcy of underwriter—Right of trustee to books of account.*

An underwriter at Lloyd's carried on an underwriting business on behalf of himself and also on behalf of five other persons, called his "names." An agreement was entered into between him and each "name," by which it was stipulated that proper underwriting and account books should be provided and kept in the usual manner, and should at all times be open to the inspection of the "name." The "name" was to pay to the underwriter a fixed sum per annum as a remuneration for his services in conducting the business, keeping and providing books and papers, and for providing a proper office and clerical assistants, &c.

BANKRUPTCY (Books)—continued.

The underwriter in fact kept books of account relating to the transactions in which he was jointly interested with the "names" or any of them, there being in the books six parallel columns, one for each "name," and one for the underwriter himself.

The underwriter became bankrupt, the books being at this time in the possession of accountants :—

Held, that the "names" had a joint property in the books with the bankrupt, and that the trustee in the bankruptcy was not entitled to have the books delivered up to him, but that the "names" must undertake to give to the trustee reasonable facilities for inspecting the books.

Decision of Buckley J., [1904] W. N. 73, reversed. *In re BURNARD. Ex parte BAKER, SUTTON & Co.* - C. A. [1904] W. N. 77 ; [1904] 2 K. B. 68

Committal.

1. — *Non-payment of rates—Imprisonment—Receiving order—Release—Jurisdiction—Legal process—Punitive order—Distress for Rates Act, 1849* (12 & 13 Vict. c. 14), s. 2—*Debtors Act, 1869* (32 & 33 Vict. c. 62), s. 4, sub-s. 2—*Bankruptcy Act, 1883* (46 & 47 Vict. c. 52), s. 10 sub-s. 2.

A commitment under the Distress for Rates Act, 1849, s. 2, for one month, unless the money should be sooner paid, is a punitive order, and is not a legal process to enforce payment within s. 10, sub-s. 2, of the Bankruptcy Act, 1883, so as to enable the Court of Bankruptcy under that sub-section to discharge the debtor from prison on the ground that whilst in prison a receiving order has been made against him. *In re JAMES EDGECOME. Ex parte JAMES EDGECOME*

C. A. [1902] W. N. 141 ; [1902] 2 K. B. 403

Company.

See under **COMPANY—Bankruptcy.**

— *Fraudulent preference—Voluntary followed by compulsory winding-up—Date of act of bankruptcy.*

See **COMPANY—WINDING-UP—Preference.** 4.

Composition.

— *Receiving order—Proposal for a composition rejected by the creditors — Debtor's application to expunge a proof—Locus standi of debtor—Costs.*
See **BANKRUPTCY—Costs.** 1.

— *Will—Trustee—Composition—Acceptance of dividend—Assent to composition.*
See **WILL—Trustee.** 1.

Compromise.

— *Agreement for pooling and distributing the assets—Sanction of Court.*
See **BANKRUPTCY—Arrangement.** 4.

— *Power of trustee to accept shares in company for debtor's interest—Sanction of Court*
See **BANKRUPTCY—Arrangement.** 5.

Contracts.

1. — *Contract for works—Payment by instalments on engineer's certificate—Specified firms to*

BANKRUPTCY (Contracts)—continued.

supply machinery—Power for engineer, on contractor unduly delaying payment for machinery, to order direct payment to firms—Receiving order against contractor—Subsequent order by engineer for direct payment to firms—Title of trustee—Secured creditors—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 168.

In September, 1903, A. signed a contract with a local authority to construct sewage works at a price to be paid to him by monthly instalments, less 10 per cent., on the certificate of the engineer of the local authority; the 10 per cent. to be retained and paid to A. six months after completion of the works. The contract also provided that certain machinery for the works was to be supplied to A. by specified firms, and that (clause 54), "If the engineer shall have reasonable cause to believe that the contractor is unduly delaying proper payment to the firms supplying the machinery, he shall have power if he thinks fit to order direct payment to them."

On Oct. 12, 1904, A. was adjudicated bankrupt on his own petition. At this date the contract was substantially completed, and there was then due under it the sum of 1574*l.* 15*s.* 10*d.* only, of which 1349*l.* 17*s.* 8*d.* was retention money and 224*l.* 18*s.* 2*d.* was a sum payable on the engineer's next certificate, and these two sums were claimed by the trustee in bankruptcy. At the same date A. owed 836*l.* 8*s.* 9*d.* in various amounts to the specified firms for machinery supplied to him for the works; and subsequently the engineer in 1905 made two orders under clause 54 directing payment of the 836*l.* 8*s.* 9*d.* out of the 1574*l.* 15*s.* 10*d.* to the firms in settlement of their accounts:—

Held, that A. by presenting his own petition in bankruptcy "unduly delayed proper payment" to the machinery firms within the meaning of clause 54:

Held, also, that the power conferred by that clause on the engineer was not annulled or revoked by A.'s bankruptcy; and that the firms by virtue of the two orders of the engineer were entitled to be paid the 836*l.* 8*s.* 9*d.* out of the 1574*l.* 15*s.* 10*d.* in priority to the claim of the trustee. *In re WILKINSON. Ex parte FOWLER*

Bigham J. [1905] W. N. 143;
[1905] 2 K. B. 713

Copyright.

— Author and publisher—Sale of copyright to publisher on royalties—Bankruptcy of publisher—Whether royalties payable in full.

See **BANKRUPTCY—Trustee.** 3.

Costs.**(Costs and Fees.)**

Costs—Tuition—Draft rules for amalgamation of Tacing Departments of the Supreme Court with a view to uniformity in taxation of costs. Reprint from W. N. 1901 (Aug. 17), p. 251. See **CURRENT INDEX**, 1901, p. ciii.

Fees and percentages, Order as to, dated Feb. 4, 1902. Reprint from W. N. 1904 (Mar. 5), p. 79. See **CURRENT INDEX**, 1904, p. lxxi.

BANKRUPTCY—(Costs)—continued.

— Bankruptcy of client—Proof by solicitor—Trustee's title to go behind mortgage and stated account and require particulars with vouchers.
See **SOLICITOR—Costs.**

1. — *Composition—Proposal for a composition rejected by the creditors—Debtor's application to expunge a proof—Locus standi of debtor—Costs—Practice—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), Sched. II., r. 25—Bankruptcy Act, 1890 (53 & 54 Vict. c. 71), s. 3.*

Rule 25 in Sched. II. to the Bankruptcy Act, 1883, which empowers the Court to expunge or reduce a proof, in the case of a composition or scheme, upon the application of the debtor, means a composition or scheme that is pending before the Court, i.e., that has been accepted by the creditors.

As a general rule, therefore, a debtor has no locus standi to apply to expunge or reduce a proof either before his proposal for a composition or scheme has been accepted by the creditors or after it has been rejected, but the Court may in exceptional circumstances—as in *Ex parte Bluck*, (1887) 4 Morr. 273—entertain such an application. *In re BENOIST* - **Phillimore J.**

[1909] W. N. 182; [1909] 2 K. B. 784

Note.

Referred to by **Phillimore J.** *In re Pilling*, [1909] 2 K. B. 788, 791. See No. 7, below.

2. — *"Costs of execution"—Execution creditor—Sheriff's fees—Possession money—Possession by sheriff for more than twenty-one days—Act of bankruptcy—Bankruptcy Act, 1890 (53 & 54 Vict. c. 71), ss. 1, 11, sub-s. 1.*

On Mar. 12, 1902, the sheriff levied under a fi. fa. on the goods of a debtor, and, at the request of the execution creditor and of the debtor, remained in possession. On April 3 the debtor committed an act of bankruptcy by the sheriff having been in possession for twenty-one days. On May 16 a receiving order was made against the debtor whereby the title of the trustee in bankruptcy related back to April 3. The sheriff withdrew on May 29:—

Held, that the sheriff's possession money for the period beyond April 3 was not "costs of the execution" within s. 11 of the Bankruptcy Act, 1890, as against the trustee in bankruptcy. *In re ENGLISH & AYLING. Ex parte MURRAY & CO.*

Wright J. [1903] W. N. 49;
[1903] 1 K. B. 680

— "Costs of execution"—High bailiff—Possession money.

See **COUNTY COURT—Bailiffs.** 1.

3. — *"Costs of petitioning creditor"—Costs of rehearing petition—"Actual expenses incurred in realizing assets"—Trustee's solicitors' costs—Priorities—Locus standi of solicitor—Practice—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 57—Bankruptcy Rules, 1886, rr. 125, 183.*

By rule 125 of the Bankruptcy Rules, 1886, the assets remaining, after payment of the actual expenses incurred in realizing any of the assets of the debtor, are liable, subject to any order of the Court, to the payment of—first, the taxed costs of the petitioning creditor; secondly, the

BANKRUPTCY (Costs)—continued.

trustee's necessary disbursements other than the actual expenses of realization heretofore provided for; and, thirdly, the costs of any person properly employed by the trustee:—

Held, that the actual expenses of realizing the assets mean strictly the costs of a sale of any of the assets, and do not extend to the trustee's solicitors' bill of costs:—

Held, also, that the "taxed costs of the petitioning creditor" include as a rule the costs of a rehearing by the registrar and the C. A.

Where more than a year elapsed between the date of a receiving order and an application for a rehearing, and in the meantime the trustee had incurred considerable costs in tracing and getting in the bankrupt's assets and in successful litigation for that purpose, and the assets were insufficient to pay in full the bill of costs of the solicitors properly employed by the trustee in the above matters, and also the petitioning creditor's costs of the rehearing in the Court below and on appeal:—

Held, that no sufficient reason was shewn for varying the order of priorities prescribed by the rule.

Quære, whether a solicitor properly employed by a trustee in bankruptcy can apply direct to the Court for payment of his bill of costs out of the estate, or whether he must apply for leave to use the name of the trustee for that purpose.

In re BRIGHT. Ex parte WINGFIELD & BLEW Wright J. [1903] W. N. 40; [1903] 1 K. B. 735

— Discharge, Bankrupt's application for — Creditors to be notified — Fees.

See BANKRUPTCY—Discharge. 1.

— Divorce Courts, Costs in—Order to pay. *See* BANKRUPTCY—Receiving Order. 2.

— Draft bills of costs—Bankruptcy of client—Proof by solicitor—Trustee's title. *See* BANKRUPTCY—Trustee. 6.

4. — *Jurisdiction—Dismissal of bankruptcy petition—Order on debtor for payment of part of petitioning creditor's costs—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 105, sub-s. 1—Bankruptcy Rules, 1886, r. 183, sub-r. 1.*

Upon the construction of s. 105, sub-s. 1, of the Bankruptcy Act, 1883, and r. 183 (1) of the Bankruptcy Rules, 1886, the Court has no jurisdiction to order a debtor to pay any part of the petitioning creditor's costs of an unsuccessful bankruptcy petition. *In re A DEBTOR (No. 1103 OF 1909) - - - C. A. [1910] W. N. 12; [1910] 1 K. B. 313*

5. — *Pending action continued by a creditor in name of trustee by leave of the Court—Action dismissed—Trustee's indemnity against costs insufficient—Taxation—Certificate—No objections carried in—Review of taxation on trustee's application—Rules of the Supreme Court, Order LXV., r. 27, sub-rr. 39-41.*

In April, 1900, the debtor was adjudicated bankrupt, and G. became the trustee in bankruptcy. An action of *Dillon v. Greenways*, which the debtor had instituted, was pending at the commencement of the bankruptcy. G. declined to go on with the action, being satisfied

BANKRUPTCY (Costs)—continued.

that the debtor's claim was unsubstantial. A creditor then obtained the leave of the Court to continue the action in the name of G., as trustee, on giving security for 700*l.* as an indemnity to G. against the costs of the action. T. & Co. were the solicitors on the record in the action for the debtor, and they continued to carry on the action on behalf of the creditor in the name of G., as the nominal plt. The action was dismissed with costs, and T. & Co., as solicitors for the plt., attended the taxation of the deft.'s costs of the action. On Dec. 22, 1902, the taxing Master gave his certificate for some 936*l.*, and on Dec. 24 G. had notice of the certificate. No objections were carried in by or on behalf of G., but on Jan. 20 he changed his solicitors, and took out a summons asking that the deft.'s bill of costs might be remitted to the taxing Master for reconsideration.

Wright J. granted the application. The circumstances of the case were very peculiar. The trustee's indemnity had proved insufficient, and the creditor had become insolvent. *In re Furber*, (1898) L. J. Notes of Cases, 303, 343, did not apply. *In Charlton v. Charlton*, (1883) 31 W. R. 237, which seemed the nearest case to the present, the application was refused. But here T. & Co., who attended the taxation, were not really the solicitors of the trustee, but of the debtor. The trustee ought to have had notice of the taxation and had an opportunity of being really represented before the taxing Master. There was no authority directly in point, and on the whole the trustee ought to have an opportunity of submitting his views to the taxing Master. *In re DILLON. Ex parte GEAKE Wright J. [1903] W. N. 49*

6. — *Practice—Taxation—Solicitor's bill of costs—Conveyancing business—Duty of taxing officer—Solicitors' Remuneration Act, 1881, General Order, Sched. 1.—Bankruptcy Rules, 1886, Appendix, Part II. (Scale of Costs), Gen. Reg., r. 2.*

It is no part of the duty of the taxing Master in bankruptcy when taxing a solicitor's bill of costs in respect of conveyancing business under r. 2 of the general regulations in Part II. (Scale of Costs) of the Appendix to the Bankruptcy Rules, 1886, to consider or decide out of what funds the bill when taxed is to be paid. His duty is merely to tax the bill in accordance with the general order under the Solicitors' Remuneration Act, 1881; but his allocatur should state that the amount of the bill as taxed and allowed is to be paid in accordance with r. 2 of the above general regulations, leaving it to the parties to apply to the Court, if necessary, to determine the fund (if any) out of which the taxed bill is to be paid.

Semble: The words "proceeds of sale" in the proviso of r. 2 of the above general regulations mean the net proceeds of sale after payment of all the charges on the fund. *In re GARNER. Ex parte PEDLEY - Bigham J. [1906] W. N. 122; [1906] 2 K. B. 213*

7. — *Proposal for a scheme—Debtor's application to expunge a proof dismissed—Adjudication*

BANKRUPTCY (Costs)—continued.

—*Practice—Costs—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 105; Sched. II., r. 25.*

Where, after a receiving order, the debtor carries a composition or scheme, and any applications by him to expunge proofs are dismissed with costs, he must pay such costs in addition to what he pays under the composition or scheme. But if he fails to carry the composition or scheme and is adjudicated a bankrupt, such costs, not being a debt provable in the bankruptcy, are not payable out of the estate and remain a debt enforceable against him after his discharge. *In re PILLING*. **Phillimore J.**

[1909] W. N. 196; [1909] 2 K. B. 788

—Receiving order—Proposal for a composition rejected by the creditors—Debtor's application to expunge a proof—Locus standi of debtor.

See **BANKRUPTCY—Receiving Order. 5.**

8. — Security for costs—Applicant resident abroad—Practice.

C., a creditor of the debtor, had lodged a proof against the debtor's estate for some 14,000*l.* grounded on a judgment debt, and the trustee had admitted the proof. Subsequently, on April 23 last, a notice of motion on behalf of K., an Austrian subject and resident at Constantinople, was served upon C., asking that his proof might be expunged or reduced, or, alternatively, for a declaration that under a certain deed of assignment she was beneficially entitled to the benefit of the proof and to the debt therein claimed, and to the dividends to be paid in respect thereof, subject and without prejudice to certain charges on the said debt. C. now applied that K. might be ordered to pay 20*l.* into Court as security for the costs for her application. It appeared that K. was not a creditor of the debtor and had no property in England available for payment of costs if an order for costs were made against her.

Bigham J.: There is no doubt that the Court has jurisdiction to make the order, and in a recent case before me in chambers I made an order for security for costs. The judgments of the C. A. in *In re Semenza*, [1894] 1 Q. B. 15, shew that the jurisdiction ought not to be exercised except in extreme cases or under peculiar circumstances. No sufficient reason is shewn in the present case. There is no evidence that if an order for costs is made against K. she will not pay them. In the exercise of my discretion I decline to make the order, but the costs of the present application will be reserved to the hearing of the motion. *In re PILLING*. *Ex parte* **CHAPMAN** **Bigham J.** [1906] W. N. 99

9. — Set-off of costs—Costs part of petitioning creditors' debts—Petition dismissed—Practice.

There can be no set-off of costs in bankruptcy proceedings between a creditor and his debtor where the creditor makes costs payable to him part of the debt on which he bases his bankruptcy petition against his debtor; although, if such costs had not been made part of the petitioning creditor's debt, a set-off of costs would have been allowed. Costs payable by a debtor on failing to set aside a bankruptcy notice, and costs payable by the creditor on the

BANKRUPTCY (Costs)—continued.

dismissal with costs of his bankruptcy petition based on such notice, may be set off. *In re A DEBTOR*. *Ex parte* PETITIONING CREDITORS **Bigham J.** [1907] W. N. 202; [1907] 2 K. B. 896

10. — Small bankruptcy—Costs—Taxation—Bankruptcy Rules, 1886–1890, r. 112, sub-ss. 1, 2; Appendix, Part II. (Scale of Costs).

Rule 112 of the Bankruptcy Rules, 1886–1890, which regulates the scale of costs and charges in proceedings under the Bankruptcy Acts, applies only to proceedings in the Bankruptcy Court.

Therefore where in a small bankruptcy a solicitor, acting upon the instructions of the official receiver, applied to the Probate Court for a grant of letters of administration to the estate of the bankrupt's wife:—

Held, that in taking the costs of these proceedings as between solicitor and client the scale of costs provided in the case of small bankruptcies by sub-s. 2 of r. 112, whereby the solicitor is allowed three-fifths only of the charges ordinarily allowed, did not apply, and that the solicitor was entitled to his full costs.

In re Parfitt, (1889) 23 Q. B. D. 40, followed and approved. *In re WEIGHELL*. **C. A.** [1908] W. N. 232; [1909] 1 K. B. 92

—Solicitor's bill of costs—5*l.* deposit on presentation of bankruptcy petition.

See **SOLICITOR—Costs. 19.**

11. — Trustee's solicitors' bill of costs—Notice of taxation not given to new trustee—Retaxation after allocatur signed—Practice—Taxation—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 73, sub-s. 3—Bankruptcy Rules, 1886 and 1890, rr. 120, 122.

Rule 120 of the Bankruptcy Rules, 1886 and 1890, provides that every person whose bill or charges is or are to be taxed shall in all cases give not less than seven days' notice of the appointment to tax the same to the official receiver and to the trustee (if any).

A trustee in bankruptcy passed his solicitor's bill of costs subject to taxation, and the solicitor lodged the bill with the taxing officer and obtained an appointment to tax. Before the date fixed for the taxation arrived a new trustee in bankruptcy was appointed, but the solicitor did not give notice of the appointment to tax either to the official receiver or to the new trustee, and the taxation proceeded in the presence of the solicitor only, and the taxing officer gave his allocatur for the amount of the taxed bill:—

Held, on the construction of the rule, that "the trustee" who ought to have had notice of the appointment to tax was the person who was trustee at the time when the taxation took place, i.e., the new trustee, and that notice should also have been given to the official receiver. A retaxation of the solicitor's bill was accordingly directed with liberty to the new trustee to attend, and in the meantime the allocatur was suspended. *In re SMITH*. *Ex parte* **WILSON**

Phillimore J. [1910] W. N. 138; [1910] 2 K. B. 346

BANKRUPTCY—*continued*.**County Court.**

County Court (England) Jurisdiction. The County Courts (Bankruptcy and Companies Winding-up) Jurisdiction Order. Aug. 11, 1904. St. R. & O. 1904, No. 1428, L. 18. See CURRENT INDEX, 1904, p. xc.

— Bankruptcy—County Court.

See under COUNTY COURT—Bankruptcy.

Death.

1. — *Deceased debtor—Practice—Administration of insolvent estate—Transfer to Court of Bankruptcy—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 125—Bankruptcy Act, 1890 (53 & 54 Vict. c. 71), s. 21.*

Application under s. 125 of the Bankruptcy Act, 1883, as amended by the Bankruptcy Act, 1890, for the transfer of a creditor's action for the administration of the estate of Mr. Kenward, deceased, to the county court at Lewes. The application was made by several creditors of the deceased. The estate was proved to be insolvent. Nothing had been done in the administration action beyond the entry of appearance by the defts., the executors of the will. The deceased was a miller of Uckfield, and nearly all his creditors, among whom his executors were included, were farmers residing in the neighbourhood of Lewes.

Kekewich J., in acceding to the application, said that in cases where questions of difficulty arose, necessitating a reference from time to time to the judge, he thought it better to retain the administration in his own court; but there was nothing of the kind here, and there was at least an equality of convenience in transferring the case to the county court. Upon a comparison of sub-s. 1 and sub-s. 4 of s. 125 of the Bankruptcy Act, 1883, he came to the conclusion that the scheme of the section was to make the administration of the estate of an insolvent deceased person equivalent as far as possible to the administration of the estate of a bankrupt living person, and that the Legislature in sub-s. 4 intended that, unless there was some reason against a transfer, the transfer should take place. *In re KENWARD. HAMMOND v. EADE*

Kekewich J. [1906] W. N. 16

Deeds of Arrangement.

See under BANKRUPTCY—Arrangement (Deed of Arrangement). 1.

Deeds of Assignment.

1. — *Assignment for benefit of creditors—Debts collected by trustee—Assignor adjudicated bankrupt—Money collected not paid to trustee in bankruptcy—Right to recover from original debtor—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), ss. 43, 49.*

A trader executed a deed of assignment of all his property for the benefit of his creditors. The trustee under the deed demanded and received from the deft. a debt due from her to the trader. Within three months from the execution of the assignment the trader was adjudicated bankrupt, the assignment being the act of bankruptcy

BANKRUPTCY (Deeds of Assignment)—*contd.*

alleged. The plt. was appointed trustee in the bankruptcy, and received from the trustee under the deed above one-fifth of the money collected by the latter. In an action to recover the debt of the deft. from her, as a debt due to the estate of the bankrupt:—

Held that, in the absence of evidence that the debt of the deft. or some part of it had been paid over by the trustee under the deed to the plt., there was no defence to the action.

Judgment of the King's Bench Division, [1905] 2 K. B. 528, affirmed. *DAVIS v. PETRIE*

C. A. [1906] W. N. 177; [1906] 2 K. B. 786

Discharge.

1. — *Bankrupt's application for discharge—Creditors "to be notified"—Fees—Practice—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 127—Bankruptcy Act, 1890 (53 & 54 Vict. c. 71), s. 8, sub-s. 6—Bankruptcy Rules, 1886 and 1900, r. 235—Scale of Fees, 1890, Table A.*

Rule 235 of the Bankruptcy Rules, 1886 and 1900, which provides that notice of a bankrupt's application for his discharge shall be sent to the creditors "whether they have proved or not," is not inconsistent with sub-s. 6 of s. 8 of the Bankruptcy Act, 1890, which enacts that the notice shall be sent to "each creditor who has proved." The rule merely imposes a further obligation on the bankrupt. Notice, therefore, of a bankrupt's application for his discharge must be sent not only to each creditor who has proved, but also to each person whose name the debtor has entered in his statement of affairs as a creditor, and the bankrupt must pay the scale fee of "1s. for each creditor to be notified," in Table A to the Act of 1890, in respect of all such creditors. *In re SPATLEY Bigham J.*

[1909] W. N. 31; [1909] 1 K. B. 559

2. — *Conditional order—Discharge of bankrupt—Failure to comply with terms—Modification of order—"No reasonable probability" of complying with terms—Bankruptcy Act, 1890 (53 & 54 Vict. c. 71), s. 8, sub-s. 2—Bankruptcy Rules, r. 244.*

An application, under the proviso at the end of s. 8, sub-s. 2, of the Bankruptcy Act, 1890, for the modification of the terms of a conditional order of discharge ought to be made by the bankrupt himself, not by the trustee in the bankruptcy.

Upon such an application what the Court has to consider is whether there is "no reasonable probability" of the bankrupt's being able to comply with the terms of the order of discharge.

The fact that the bankrupt has failed to comply with the requirements of rule 244 of the Bankruptcy Rules is not a bar to his making an application for the modification of the conditions imposed by the order of discharge. *In re JOHN ROBERTS & Co. Ex parte BONZOLINE MANUFACTURING CO. - C. A. [1904] W. N. 98; [1904] 2 K. B. 299*

3. — *Conditional order of discharge—Non-fulfilment in part of condition—Revocation of order of discharge—Jurisdiction—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 104—Bankruptcy Act, 1890 (53 & 54 Vict. c. 71), s. 8*

BANKRUPTCY (Discharge)—continued.

sub-ss. 2 (iv.), 8—*Bankruptcy Rules*, 1886—1890, rr. 240, 244A; *Appendix, Form 63A*.

When the Court grants a bankrupt a conditional discharge under sub-s. 2 (iv.) of s. 8 of the Bankruptcy Act, 1890, in the terms of Form 63A in the Appendix to the Bankruptcy Rules, 1886—1890, the condition of the discharge is not merely his consenting to judgment being entered against him for the required amount, but his due performance of the judgment by payment of the instalments directed; and if the bankrupt gives the usual consent to judgment but fails without sufficient cause to pay the instalments, the Court has jurisdiction under s. 104 of the Bankruptcy Act, 1883, to revoke the order of discharge. *In re SUMMERS. Ex parte THE OFFICIAL RECEIVER - Bigham J.* [1907] W. N. 112; [1907] 2 K. B. 166

4. — *Conditional order—Refusal of bankrupt to consent to condition—Repetition of order—Bankruptcy Act*, 1890 (53 & 54 Vict. c. 71), s. 8, sub-s. 2—*Bankruptcy Rules*, 1886—1890, rr. 240.

Where under s. 8, sub-s. 2, of the Bankruptcy Act, 1890, the Court grants an order of discharge conditionally upon the bankrupt consenting to judgment being entered against him by the official receiver for a part of the unsatisfied balance of the debts provable in the bankruptcy, and the bankrupt refuses to consent, and the official receiver applies under rule 240, sub-rule 3, of the Bankruptcy Rules, 1886—1890, to have the order revoked, it is not competent for the Court, by repeating its former order, to suspend the discharge until the bankrupt consents; but when the order is revoked, the Court is not bound as the only alternative to make an order suspending the discharge of the bankrupt for two years, but may make such other order as it thinks fit. *In re GASKELL*

C. A. [1904] W. N. 97; [1904] 2 K. B. 478

— Debt—Bankruptcy notice—Set-off—Mutual credits.

See **BANKRUPTCY—Notice**. 1.

5. — *Misdemeanour—Falsifying books—Conviction—Discharge—"Special reasons"—Refusal of discharge—Period of probation—Practice—Registrar's refusal to rehear application for discharge—Rehearing before Court of Appeal—Debtors Act*, 1869 (32 & 33 Vict. c. 62), s. 11, sub-ss. 9, 10—*Bankruptcy Act*, 1890 (53 & 54 Vict. c. 71), s. 8.

The conviction of a bankrupt for an offence against s. 11 of the Debtors Act, 1869, is not in itself an absolute bar to an application for discharge. Upon such an application the Court may, under the discretion given to it by s. 8, sub-s. 2, of the Bankruptcy Act, 1890, of granting or refusing a discharge, take into consideration, as "special reasons" for granting the application, any circumstances connected with the offence which may go in mitigation of it. But it does not follow, if the Court holds that the bankrupt ought to be discharged on the ground of mitigating circumstances, that he is therefore entitled to his immediate discharge, as a matter of right, without any prior period of probation.

Whether good conduct on the part of a bank-

BANKRUPTCY (Discharge)—continued.

rupt subsequent to the refusal of his application for discharge is in itself a "special reason" sufficient to support a renewal of his application, *quære*.

Upon an appeal by a bankrupt from the registrar's refusal to hear his application for discharge, the C. A. will, in a proper case, itself hear the application instead of remitting it to the registrar. *In re SOLOMONS*

C. A. [1903] W. N. 197; [1904] 1 K. B. 106

Disclaimer.

1. — *Administration of estate of deceased debtor—Onerous property of debtor—Power of trustee to disclaim—Bankruptcy Act*, 1883 (46 & 47 Vict. c. 52), ss. 55, 125.

Sect. 55 of the Bankruptcy Act, 1883, which gives the trustee power to disclaim onerous property of a bankrupt, applies to the administration in bankruptcy of the estate of a deceased insolvent under s. 125 of the Act. *In re MELLISON. Ex parte DAY Div. Ct.* [1906] 2 K. B. 68

2. — *Landlord and tenant—Disclaimer of lease—Lease determined as between lessor and lessee—Surety for lessee—Bankruptcy Act*, 1883 (46 & 47 Vict. c. 52), s. 55, sub-s. 2.

The deft. had guaranteed the payment of rent which might from time to time be in arrear for twenty-one days under a lease. There had not been any underlease or assignment of the lease. The lessee having become bankrupt, the trustee in bankruptcy disclaimed the lease. The lessor sued the deft. for an amount which he claimed as rent in arrear in respect of a period subsequent to the disclaimer:—

Held, affirming the judgment of Phillimore J., that, the effect of s. 55, sub-s. 2, of the Bankruptcy Act, 1883, being that the lease was determined from the date of the disclaimer as between the lessor and the lessee, the liability of the deft. for rent in futuro was also determined, and therefore the action was not maintainable. *STACEY v. HILL*

C. A. [1901] W. N. 51; [1901] 1 K. B. 660

3. — *Landlord and tenant—Disclaimer of lease of plot of land—Mortgage by demise of portions of plot—Order resting in mortgagees whole plot including portion not mortgaged—Bankruptcy Act*, 1883 (46 & 47 Vict. c. 52), s. 55, sub-s. 6.

The lessee of a plot of land subject to a rent of 150l. a year mortgaged by sub-demise four portions of the plot to four different mortgagees by separate mortgages. He did not mortgage the remaining portion of the plot nor deal with it in any way. He subsequently became bankrupt, and his trustee in bankruptcy disclaimed the lease. The four mortgagees appointed a trustee of their interests under the mortgages, and he applied to a county court judge on their behalf for an order vesting in him as trustee for them all the rights, interest, and title of the bankrupt under the lease, including the portion of the plot not mortgaged, subject to the rent, covenants, and conditions contained in the lease. The county court judge made the order. The applicant was solvent, and no suggestion was made that he was not a proper

BANKRUPTCY (Disclaimer)—continued.

person to be appointed trustee by the mortgagees:—

Held, that the vesting order was rightly made. *In re HOLMES. Ex parte ASHWORTH*

Div. Ct. [1908] 2 K. B. 812

4. — *Lease—Disclaimer by trustee of bankrupt assignee—Mortgage by sub-demise—Option to accept vesting order or to be excluded from interest in demised property—Persons entitled to apply for order—Application by lessor—Persons to be served with notice—Discretion of Court—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 55, sub-s. 6—Bankruptcy Act, 1890 (53 & 54 Vict. c. 71), s. 13.*

The lessee of a house assigned it, and the assignee again assigned it to a person who afterwards became bankrupt. Before the bankruptcy the bankrupt had mortgaged the house by sub-demise. The trustee in the bankruptcy disclaimed the lease:—

Held, that the lessor was entitled, without serving any one but the mortgagee, to apply, under s. 55, sub-s. 6, of the Bankruptcy Act, 1883, for an order putting the mortgagee to his election whether he would accept an order vesting the house in him, subject to the liabilities in respect of it to which at the date of the filing of the bankruptcy petition the bankrupt was subject under the lease, or to be excluded from all interest in and security upon the property.

In such a case the Court has a discretion as to the persons who are to be served with notice of the application.

But, if the lessee is not served, he is not prejudiced by the order, and it does not prevent him from afterwards applying for an order to vest the property in himself in case the underlessee does not accept a vesting order.

In re Cock, (1887) 20 Q. B. D. 343, *In re Finley*, (1888) 21 Q. B. D. 475, and *In re Morgan*, (1889) 22 Q. B. D. 592, discussed and followed. *In re BAKER. Ex parte LUPTON*

C. A. [1901] W. N. 150; [1901] 2 K. B. 628

— Leasehold property of bankrupt—Mortgage by underlease—Disclaimer by trustee—Vesting order.

See **BANKRUPTCY—Vesting Orders. 1.**

— Leaseholds—Extension of time—"Appointment of trustee."

See **BANKRUPTCY—Trustee. 9.**

5. — "*Unprofitable contract*"—*Contract for sale of lease—Trustee in bankruptcy—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 55.*

The trustee in a bankruptcy cannot, under s. 55 of the Bankruptcy Act, 1883, disclaim a contract entered into by the bankrupt for the sale of a lease unless he also disclaims the lease itself.

Sect. 55 was intended to enable the trustee to get rid of an onerous property or contract, and it does not enable him to disclaim a contract merely because it would be more beneficial to the estate that the contract should not be carried out.

The trustee cannot by a disclaimer take away from a purchaser of land from the bankrupt the equitable interest which vested in him under

BANKRUPTCY (Disclaimer)—continued.

his contract. *In re BASTABLE. Ex parte THE TRUSTEE* - C. A. [1901] W. N. 122; [1901] 2 K. B. 518

Note.

Pearce v. Bastable's Trustee in Bankruptcy, Cozens-Hardy J., [1901] 2 Ch. 122. See *Specific Performance. 1.*

Discovery.

1. — *Interrogatories—Practice—Bankruptcy Rules, 1886—1890, r. 72.*

The petitioning creditor in a bankruptcy petition cannot, before the hearing of the petition, obtain an order for interrogatories or discovery to prove the allegations in the petition. *In re A DEBTOR (No. 7 OF 1910)* - C. A. [1910] W. N. 112; [1910] 2 K. B. 59

Distress.

1. — *Rent, Distress for—Lessee adjudicated bankrupt on the day of distress—Judicial act—Commencement of bankruptcy—Bankruptcy Act, 1883 (46 & 47 Vict. c. 53), ss. 42, 43.*

By virtue of s. 43 of the Bankruptcy Act, 1883, the bankruptcy of a debtor commences "at the time of the act of bankruptcy being committed on which a receiving order is made against him," that is to say, at the actual moment of the day when the act of bankruptcy is committed.

Where, therefore, a debtor presented his own petition, at 12.50 P.M. on Oct. 23, 1907, and consented to a receiving order and an immediate order of adjudication was made against him:—

Held, that his bankruptcy commenced at the moment of time, i.e., 12.50 P.M., when he presented his petition, notwithstanding that the order of adjudication, being a judicial act, would otherwise have operated from the earliest hour of the same day. *In re BUMPUS. Ex parte WHITE* - Bigham J. [1908] W. N. 90; [1908] 2 K. B. 330

Dividends.

1. — *Forfeiture on alienation—Life estate—"Vest in some other person"—Act of bankruptcy—Adjudication—Date of vesting—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), ss. 43, 44, 54.*

Where a person entitled to the receipt of dividends until he shall do or suffer to be done any act whereby the same if payable to himself would become vested in some other person, commits an act of bankruptcy which is followed by adjudication, the date upon which the dividends vest in the trustee in his bankruptcy, and are therefore forfeited, is, under the doctrine of relation back, the date of the act of bankruptcy, not the date of the adjudication. *MONTEFIORE v. GUEDALLA*

Buckley J. [1901] W. N. 8; [1901] 1 Ch. 435

Note.

See also *Montefiore v. Guedalla*, [1903] 2 Ch. 26; [1903] 2 Ch. 723. *Trustee—Appointment.*

Divorce.

— Costs in Divorce Court—Order to pay.

See **BANKRUPTCY—Receiving Order. 2.**

BANKRUPTCY (Divorce)—continued.

- Respondent an uncertificated bankrupt—One of the trustees also an uncertificated bankrupt and his address unknown—Service dispensed with.
See DIVORCE—Settlements. 9.

Examination.

- 1. — *Witness abroad, Examination of—Jurisdiction—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), ss. 27, 168—Bankruptcy Rules, 1886, r. 66.*
The jurisdiction conferred on the Court by s. 27 of the Bankruptcy Act, 1883, to order that any person, who if in England would be liable to be brought before it under the section, shall be examined in Scotland or Ireland, "or in any other place out of England," must be read with some limitation, and does not extend to places abroad which are not within the jurisdiction of the British Crown. *In re DRUCKER* (No. 2). *Ex parte BASDEN* **Wright J.** [1910] **W. N. 114**; [1902] **2 K. B. 210**

- Witness represented by counsel—Right to take notes of examination.
See BANKRUPTCY—Practice. 8.

Execution.

- "Costs of execution"—Sheriff's fees.
See BANKRUPTCY—Costs. 2.
- Judgment debtor—Execution under writ of *fi. fa.*—Absence of overt act by sheriff of seizure of money.
See SHERIFF. 2.
- Sheriff—Execution for a sum exceeding 20*l.*—Bankruptcy.
See SHERIFF. 5.

Extradition.

- 1. — *Fugitive offender—Arrest—Offence committed in foreign State—Bankruptcy of prisoner pending extradition—Property found on bankrupt at date of arrest—Retention by police—Title of trustee in bankruptcy—Evidence of crime—Order for delivery up of property—"Competent authority" to make order—Belgian Extradition Treaty, 1872, art. 12—Extradition Act, 1870 (33 & 34 Vict. c. 52), ss. 9, 10.*

When a fugitive offender, arrested in England on an extradition warrant for offences committed in a foreign State, becomes bankrupt in England pending the hearing of the charge, the property found on him at the date of his arrest vests in his trustee in bankruptcy, subject to this—that it may on his committal be ordered to be delivered up with him to be used as evidence of the crime at the trial; and, in such a case, the Secretary of State, in making the extradition order, should stipulate that, when the criminal proceedings in the foreign State are concluded, the property shall be restored to the jurisdiction of the English Bankruptcy Court.

In such a case the competent authority in the first instance to decide what property found on the prisoner will serve as proof of the crime is the Court which hears the charge and makes the committal order. *In re BOROVSKY & WEINBAUM. Ex parte SALAMAN - Wright J.* [1902] **W. N. 109**; [1902] **2 K. B. 312**

BANKRUPTCY—continued.**Fees and Percentages.**

See under BANKRUPTCY—Costs.

Fraud.

- 1. — *Fraudulent assignment—Act of bankruptcy—Notice to company—Subsequent transferees of debentures—Purchasers for value without notice—Title of trustee in bankruptcy—Insolvent trader—Transfer of his business and another's to company for shares and debentures—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 4, sub-s. 1 (b); ss. 43, 44, 49—13 Eliz. c. 5.*

In Dec., 1902, S., an insolvent trader, through the agency of N., sold and transferred his business and book debts, and also the business of M. which he had contracted to purchase, and a large quantity of stock bought on credit not in the ordinary course of business, for 35,539*l.* to a co. which he promoted for that purpose. The purchase-money was paid, as to 400*l.* in cash, as to 10,000*l.* in 100 debentures of 100*l.* each of the co., and as to the balance in fully paid-up shares of the co. The debentures, at the request of N., were issued as follows—seven to B. fifteen to Z., thirty to N., thirty to M., and eighteen to S. The fully paid-up shares for the balance of the purchase-money were allotted to S., who had been appointed chairman of the board of directors. The debentures issued to N. were the remuneration for his services to S. in the matter and B. and Z. were cash creditors of S. The first acting directors of the co. and N. were the mere instruments of S. in carrying through this transaction, which divested S. of substantially the whole of his property, and left him with trade creditors to a large amount and some cash creditors totally unprovided for. M.'s business was genuine, and he acted in good faith and without notice of any fraud. He accepted the 400*l.* in cash and his debentures as payment for his business; and there were some bona fide shareholders of the co. Within three months S. was adjudicated bankrupt:—

Held, that the transfer of S.'s property to the co. was fraudulent and an act of bankruptcy within sub-s. 1 (b) of s. 4 of the Bankruptcy Act, 1883; that under the circumstances the co. must be taken to have had notice of the fraud; and that under ss. 43 and 44 of the Act the trustee in bankruptcy, as against the co., was entitled to the property of S.:—

Held, also, that under the circumstances N. was a party to the fraud, and that his debentures were not a charge upon the property of S. in the hands of the trustee:

But *held*, that M. was protected by s. 49 of the Act, and that his debentures were a charge upon the property of S. in the hands of the trustee so far as the assets of the co. might prove insufficient to satisfy the same.

In Jan., 1903, in a debenture-holder's action, a receiver was appointed of the business of the co. Subsequently B. and Z. sold their debentures to X. and Y. at a heavy discount. X. and Y. were acquainted with S., and knew that he had transferred his business to the co. and had become bankrupt. They also knew of the debenture-holder's action and of the appointment of

BANKRUPTCY (Fraud)—continued.

the receiver, and they respectively purchased their debentures without making any inquiries:—

Held, that under the circumstances *X.* and *Y.* were put upon inquiry, and could not be said to be purchasers for value without notice, and that their debentures were not a charge upon the property of *S.* in the hands of the trustee.

In re SLOBODINSKY. Ex parte MOORE

Wright J. [1903] W. N. 154; [1903] 2 K. B. 517

— Fraudulent preference.

See under BANKRUPTCY—Preference.

Fraudulent Preference.

See under BANKRUPTCY—Preference.

Friendly Society.

— Defaulting treasurer—Removal from office—Bankruptcy of treasurer—Preferential debt.

See FRIENDLY SOCIETY. 1.

Garnishee.

1. — *Garnishee order nisi*—Payment by garnishee to judgment creditor—Bankruptcy of judgment debtor—Relation back of trustee's title to garnished debt.

Where a debtor commits an act of bankruptcy and judgment is subsequently obtained against him by a creditor who obtains a garnishee order nisi attaching a debt due to the judgment debtor, the garnishee order nisi does not justify the garnishee in forthwith paying the debt to the judgment creditor, and if he does so the debt will still form part of the judgment debtor's estate by virtue of the relation back of the title of the trustee in bankruptcy to the act of bankruptcy. The Court will therefore, in such a case, order the garnishee, upon an application by the trustee, to pay the amount of the attached debt to the trustee. *In re WEBSTER. Ex parte THE OFFICIAL RECEIVER. Div. Ct. [1907] W. N. 31; [1907] 1 K. B. 623*

Guardian of the Poor.

— Disqualification for office—"Composition or arrangement with creditors"—Administration.

See POOR LAW. 5.

Interest.

See also under INTEREST.

— Estate of insolvent at date of judgment afterwards found sufficient to pay principal of debts.

See ADMINISTRATION. 17.

Judgment.

See also under JUDGMENT.

— Judgment summons—Order for payment by instalments—Default.

See BANKRUPTCY—Practice. 1.

1. — *Petitioning creditor's debt*—Judgment—Action by bankrupt to set aside judgment on ground of fraud—Jurisdiction.

Where a person who has been adjudicated a bankrupt in consequence of his failure to

BANKRUPTCY (Judgment)—continued.

comply with a bankruptcy notice to pay a judgment debt alleges that the petitioning creditor's judgment was obtained by fraud, he may apply to the Court in bankruptcy to be allowed to contest the validity of the judgment. He cannot, however, while the adjudication remains in force, bring an action to set aside the judgment on the ground that it was obtained by fraud, and the High Court has no jurisdiction to entertain such an action. *BOALER v. POWER*

C. A. [1910] 2 K. B. 229

— Scottish judgment—Extension to England—Service on garnishee—Subsequent bankruptcy of judgment debtor in Scotland—Priority.

See ATTACHMENT. 4.

Jurisdiction.

See also under COUNTY COURT—Jurisdiction.

1. — *County court*—Claim arising out of the bankruptcy—Lease—Disclaimer—Mortgages by demise—Option to take vesting order or be excluded—Application by landlord—Question of merger—Intention—Evidence—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 102, sub-s. 1.

Where a lessee is adjudicated bankrupt in a county court, and his trustee disclaims the lease, an application by the landlord for an order putting mortgagees by demise to their election to take a vesting order of the lease cum onere, or be excluded from all interest, is an application to enforce a claim arising out of the bankruptcy, which could not have been enforced by action in the High Court prior to the Bankruptcy Act, 1883, and therefore by virtue of s. 102, sub-s. 1, the county court has jurisdiction, without any consent of the parties, to decide all questions of law or fact arising on the application, including the question whether the lease is subsisting, or whether it was merged by a temporary coalescence of the freehold and leasehold estates in the lessee.

The lessee's intention to prevent merger may be gathered (*inter alia*) from his dealings with the property subsequent to the date of coalescence. *LEA v. THURSBY*

Swinfen Eady J. [1904] W. N. 100; [1904] 2 Ch. 57

Leases.

1. — *Landlord and tenant*—Assignment of lease by lessee—Act of bankruptcy by lessee—Relation back of bankruptcy—Liability of assignee for rent due before adjudication of bankruptcy—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), ss. 4, 43, 44, 54.

The lessee of premises assigned the lease with other property to the debt, by a deed which was an act of bankruptcy. The lessee was subsequently adjudicated bankrupt on that act of bankruptcy, and a trustee in bankruptcy was appointed, who disclaimed the lease. During the interval between the assignment of the lease and the date of the lessee's being adjudicated bankrupt, two quarter's rent of the premises accrued due under the lease. Before the lessee's bankruptcy the plts., who were the owners of

BANKRUPTCY (Leases)—continued.

the reversion upon the lease, sued the debt., and recovered judgment against him, for the first quarter's rent. They had commenced an action for the second quarter's rent, when the lessee was adjudicated bankrupt, but the action did not come on for trial until after the adjudication:—

Held, that the debt. was liable for the rent, notwithstanding that the bankruptcy of the lessee had relation back to the act of bankruptcy.
STEIN v. POPE

C. A. [1902] W. N. 40; [1902] 1 K. B. 595

- Lessee — Restrictive covenant—Bankruptcy of lessee — Re-entry by covenantor — Liability of covenantor for his assigns — Past breach.
See COVENANT. 7.

- Re-entry on liquidation, Condition for—Solvent company—Voluntary liquidation — Forfeiture.

See LANDLORD AND TENANT. 75.

Manager.

- 1. — *Special Manager—Default in accounting — Four-day order—Jurisdiction — Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 12; s. 102, sub-s. 5—Bankruptcy Rules, 1886, r. 344.*

The Court has jurisdiction under sub-s. 5 of s. 102 of the Bankruptcy Act, 1883, to make a four-day order for accounts against a special manager of a debtor's business appointed by an official receiver under s. 12 of the Act. *In re JONES. Ex parte OFFICIAL RECEIVER*

Phillimore J. [1908] W. N. 14; [1908] 1 K. B. 204

Married Woman.

See under HUSBAND AND WIFE — Bankruptcy.

Mortgages.

- Advertisement—Mortgagor's address unknown — Implied power of sale.

See BANKRUPTCY—Advertisements. 1.

- Consolidation—Claim to redeem third mortgage only.

See MORTGAGE—Consolidation. 1.

- Disclaimer—Order vesting in mortgagees whole plot of land including portion not mortgaged.

See BANKRUPTCY—Disclaimer. 3.

- Leasehold property of bankrupt—Mortgage by underlease—Disclaimer by trustee.

See BANKRUPTCY—Vesting Orders. 1.

- Life policy, Mortgage of — Bankruptcy of mortgagor — Voluntary payment of premiums by third party.

See BANKRUPTCY—Third Parties. 2.

- Mortgage of chose in action after commencement of bankruptcy—Bona fides.

See BANKRUPTCY—Protected Transaction. 1.

- 1. — *Notice—Mortgage—Priorities—Chose in action.*

A trustee in bankruptcy, being under the bankruptcy laws only statutory assignee of the

BANKRUPTCY (Mortgages)—continued.

bankrupt's choses in action subject to all equities existing therein at the date of the commencement of the bankruptcy, cannot obtain priority over a good equitable mortgagee thereof for value merely by giving notice before the mortgagee. *In re WALLIS. Ex parte JENKS*

Wright J. [1902] W. N. 60 [1902] 1 K. B. 719

- Payment by third person of creditors on behalf of bankrupt.

See BANKRUPTCY—Third Parties. 1.

- Payment by third person on behalf of bankrupt—Notice of act of bankruptcy—Benefit to estate—Ignorance of law—Duty of trustee.

See BANKRUPTCY—Third Parties. 1.

- Policies, Mortgages of—Equitable interests—Notice—Priorities.

See MORTGAGE—Priority. 9.

- Redemption—Consolidation.

See MORTGAGE—Consolidation. 3.

- Solicitor and client—Cash accounts—Draft bills of costs—Proof by solicitor—Trustee's right to go behind mortgage and settled account.

See BANKRUPTCY—Trustee. 6.

Mutual Debts or Dealings.

- Bankruptcy—Set-off of debt against purchase-money.

See BANKRUPTCY—Set-off. 1.

Notice.**(Bankruptcy Notice.)**

- Act of bankruptcy, Notice of—Payment by third person.

See under BANKRUPTCY—Third Parties. 1.

- 1. — *Act of bankruptcy—Notice to suspend payment—Stockbroker—Stock Exchange—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 4, sub-s. 1 (h).*

A stockbroker, being hopelessly insolvent, told his Stock Exchange creditors that he would have a difficulty in paying them at the approaching settlement and suggested that they should close their accounts with him, which they did:—

Held (by the Earl of Halsbury L.C. and Lord Robertson, Lord Macnaghten dissenting), that the stockbroker had no intention in fact to give his creditors notice that he was about to suspend payment of his debts, and that there was in fact no such notice given within the meaning of the Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 4, sub-s. 1 (h).

Decision of the C. A. *sub nom. In re Reis. Ex parte Clough* [1904] W. N. 116; [1904] 2 K. B. 769, affirmed. **CLOUGH v. SAMUEL H. L. (E.) [1905] W. N. 130; [1905] A. C. 442**

- 2 — *Address of creditor—Power of Court of Bankruptcy to go behind judgment—Irregularity in form of judgment—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 4, sub-s. 1 (g); s. 7, sub-s. 3—Bankruptcy Rules, 1886 — 1890, Appendix, Form No. 6—Receiving order.*

BANKRUPTCY (Notice)—continued.

The Court of Bankruptcy has power, on the hearing of a bankruptcy petition founded on a judgment debt, to go behind the judgment and inquire into the consideration for the debt.

But the fact that the judgment may be irregular or wrong in form is not a sufficient reason for going behind the judgment and dismissing the petition. A judgment is conclusive in the Court of Bankruptcy unless the consideration can be questioned.

It is not sufficient for a creditor who issues a bankruptcy notice to give in the notice an address at which he can be heard of; the address must be one at which the debtor can pay him, or secure or compound for the debt. The address must be that of a place at which the creditor is to be found during the seven days limited by the notice, whether the address is of the creditor's residence or of his place of business.

If the address stated in the notice is such an one at the date of the service, the occasional absence of the creditor from the place, even for a whole day, will not render the notice inefficient, unless the absence is such as to deprive the debtor of a reasonable opportunity of paying or securing or compounding for the debt according to the terms of the notice.

Nor would it make any difference that the address was the temporary home of the creditor, who had no permanent home, or that his absence occurred on the last day of the seven.

But if the creditor, after the service of the notice, abandons his place of address, so that it ceases to be a place where at reasonable times he, or some authorized agent on his behalf, can be found to receive payment of the debt, or to deal with the question of security or composition, the bankruptcy notice will cease to be efficient.

In re Stogdon, [1895] 2 Q. B. 534, commented on.

On July 25, 1901, an action for libel was commenced against a deft., who in the writ and the pleadings was described as "a married woman." At that time a decree nisi had been made for the dissolution of the deft.'s marriage. On Nov. 25, 1901, the decree was made absolute. On Oct. 30, 1902, the libel action was tried, when a verdict was found for the plt. with 5000*l.* damages, and the judge directed judgment to be entered accordingly.

The deft. applied for a new trial, and in June, 1903, the C. A. ordered a new trial, unless the plt. would consent to reduce the damages to 1500*l.* To this the plt. afterwards consented, and the judgment was on July 19 amended accordingly, but the date of Oct. 30 was not altered. The judgment as drawn up was in the ordinary form of a judgment against an unmarried woman, instead of in the form of a judgment against a married woman in respect of her separate estate, as settled by the C. A. in *Scott v. Morley*, (1887) 20 Q. B. D. 120.

The 1500*l.* not having been paid, the plt. on July 28 served a bankruptcy notice on the deft. claiming payment of the 1500*l.*, with interest thereon from Oct. 30, 1902. In the notice the creditor gave as her address an hotel in London where she was temporarily residing. She was in the habit of stopping at that hotel, but did not

BANKRUPTCY (Notice)—continued.

permanently retain a room there. On Aug. 4, the last of the seven days limited for compliance with the notice, the creditor at 10.15 A.M. went away from the hotel, leaving no address behind her. She went to Newhaven and thence to France, where she remained till the end of September. The debtor did not comply with the bankruptcy notice, and on Aug. 24 the creditor presented a bankruptcy petition against her founded on the judgment debt and the act of bankruptcy committed by non-compliance with the bankruptcy notice, and on this petition a receiving order was made.

It was objected by the debtor (1.) that the judgment was in a wrong form as a judgment against a deft. who was described in it as "a married woman"; (2.) that too large an amount was claimed in the notice for interest, inasmuch as the judgment for 1500*l.* did not really come into existence until the amendment of the original judgment; (3.) that the address of the creditor given in the notice was not such an address as is required by Form No. 6 in the Appendix to the Bankruptcy Rules, 1886—1890 :—

Held by the C. A. (1.) that, inasmuch as at the date of the trial of the action the deft. was unmarried, and a judgment could have been obtained against her creating a personal debt, the objection to the judgment was one of form only, and the Court of Bankruptcy had no power to go behind the judgment.

(2.) That the objection as to interest was concluded by the judgment.

(3.) That the address given by the creditor in the bankruptcy notice was a sufficient compliance with Form No. 6, and that the creditor could not be taken to have abandoned her temporary address when she left the hotel. *In re BEAUCHAMP. Ex parte BEAUCHAMP.*

C. A. [1904] W. N. 45; [1904] 1 K. B. 572

3. — *Bill of exchange—Conditional payment—Dishonoured bill—Bill outstanding in third party—Receiving order—Bankruptcy Act, 1883* (46 & 47 Vict. c. 52), s. 4, sub-s. 1 (g).

The acceptance by a judgment creditor of a bill, or promissory note, for the amount of his debt operates as an agreement not to enforce that debt during the currency of the bill, and afterwards, notwithstanding dishonour, so long as the bill is outstanding in the hands of a third person to whom it has been indorsed for value by the creditor.

A creditor who had accepted a bill of exchange for the amount of his judgment debt, which was dishonoured but was outstanding in the hands of a third party, issued a bankruptcy notice upon the judgment under the Bankruptcy Act, 1883, s. 4, sub-s. 1 (g) :—

Held, that this was not a debt on which a bankruptcy notice could be served, and that the notice and a receiving order made upon it must be set aside. *In re A DEBTOR. Ex parte THE DEBTOR* - C. A. [1908] 1 K. B. 344

4. — *County court judgment—Form of notice—County Courts Act, 1888* (51 & 52 Vict. c. 43), s. 105—*County Court Rules, 1903 and 1904,*

BANKRUPTCY (Notice)—continued.

Order XXIII, r. 2; Appendix, Form 151—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 4, sub-s. 1 (g)—Bankruptcy Rules, 1883, 1890, r. 136 (1.); Appendix, Form 6.

Where a bankruptcy notice is founded on a county court judgment it must require payment of the judgment debt to the registrar of the county court in accordance with the terms of the judgment; and a bankruptcy notice in the ordinary form requiring payment to the creditor is bad. The bankruptcy notice must also contain a statement of the address of the creditor. *In re A DEBTOR*, 484 of 1908 - C. A. [1908]

W. N. 166; [1908] 2 K. B. 692

5. — *Final judgment — Enforcing award—Entering judgment in accordance with award—Jurisdiction—Arbitration Act, 1889 (52 & 53 Vict. c. 49), s. 12—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 4, sub-s. 1 (g).*

A judgment obtained in pursuance of an order purporting to be made under the Arbitration Act, 1889, to enforce an award on a submission by entering judgment in accordance therewith, is not a final judgment in an action upon which a bankruptcy notice can be founded within s. 4, sub-s. 1 (g), of the Bankruptcy Act, 1883.

Per Vaughan Williams and Fletcher Moulton L.JJ. : The Court has no jurisdiction under s. 12 of the Arbitration Act, 1889, which provides for the enforcement of an award on a submission in the same manner as if it were a judgment, to order judgment to be entered in accordance with the award.

Per Fletcher Moulton L.J. : An application for a bankruptcy notice is not a method of enforcing an award within s. 12 of the Arbitration Act, 1889. *In re A BANKRUPTCY NOTICE* - C. A. [1907] W. N. 4;

[1907] 1 K. B. 478

6. — *“Final judgment”—Judgment under R. S. C., Order XIV.—Bankruptcy Act, 1883, (46 & 47 Vict. c. 52), s. 4, sub-s. 1 (g).*

Appeal from a refusal to set aside a bankruptcy notice served on the debtor by the I. A. Co. The co. brought an action in the King's Bench Division against the debtor upon two bills of exchange for 250*l.* each, of which he was the acceptor, and they obtained under Order XIV. an order empowering them to enter final judgment against the debtor for the amount of their claim. Judgment was afterwards entered, and the co. then served the bankruptcy notice for the amount of the judgment. The debtor applied to set aside the bankruptcy notice, on the ground that the judgment was not a “final judgment” within the meaning of sub-s. 1 (g) of s. 4 of the Bankruptcy Act, 1883. The registrar held that the judgment was final and refused the application.

The Court dismissed the appeal, holding that the appeal was based on a fallacy and that the order of the Court was not a final order; it was only a step in the procedure. But the judgment when it was entered was final. *In re A DEBTOR. Ex parte THE DEBTOR*, No. 2621 of 1902

C. A. [1903] W. N. 6

BANKRUPTCY (Notice)—continued.

— “Final judgment” — Validity of bankruptcy notice.

See No. 15, below.

7. — *Irregularity — Bankruptcy notice — Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 4, sub-s. 1 (g).*

A bankruptcy notice headed “*Ex parte P. and S. trading as the H. Brick Company.*” required the debtor to pay to P., of, &c., and S., of, &c., giving their private addresses, 50*l.* odd, balance due on a final judgment obtained by them against the debtor, unless (among other alternatives) he satisfied the Court that he had a counterclaim, set-off, or cross-demand against “the said P. and S. trading as the H. Brick Company” which equalled or exceeded the sum claimed by them and which could not have been set up in the action. The judgment was obtained by the creditors in their trading capacity:—

Held by Cozens-Hardy M.R. and Kennedy L.J. (Buckley L.J., dissenting), that the notice was calculated to embarrass the debtor, inasmuch as it did not follow the terms of the judgment, and that it ought to be set aside.

Semble, per Kennedy, L.J. : Where judgment has been obtained for a partnership debt by two persons trading as a firm, a proper form of bankruptcy notice would be “Pay to A. and B. trading as, &c., or to either of them.” *In re A JUDGMENT DEBTOR*, 530 of 1908

C. A. [1908] W. N. 145; [1908] 2 K. B. 474

8. — *Irregularity — Notice founded on two judgment debts—Amendment — Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 4, sub-s. 1 (g); s. 143.*

A receiving order was made against a debtor, the act of bankruptcy being non-compliance with a bankruptcy notice. On appeal from the order it was objected that the bankruptcy notice was bad, because it was founded on two judgment debts (as was decided by the C. A. in *In re Low*, [1900] 1 Q. B. 147), and that consequently there was no act of bankruptcy. This objection had not been taken in the Court below:—

Held, that the objection was fatal to the receiving order, and in accordance with *In re Collier*, (1891) 8 Morr. 80, 83, that leave to amend the bankruptcy notice ought not to be given.

But, because the objection was not taken in the Court below, the appellant, though he was allowed his costs of the appeal, was not allowed those of the hearing below. *In re O. C. S. (A DEBTOR). Ex parte THE DEBTOR*

C. A. [1904] W. N. 104; [1904] 2 K. B. 161

9. — *Joinder of judgments in action and counterclaim—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 4, sub-s. 1 (g).*

An action was brought by P. Allen and J. S. Garner against the debtor to recover 105*l.* odd for money lent and interest thereon. The debtor by his defence denied liability, and counterclaimed against the plts. and J. and E. Allen for damages for fraudulent conspiracy. Ultimately the debtor consented to judgment

BANKRUPTCY (Notice)—continued.

being entered for the plts. for the amount claimed in the action and the costs thereof, and for the plts. and J. and E. Allen for the costs of the counterclaim.

The plts. and J. and E. Allen shortly afterwards served a bankruptcy notice on the debtor, requiring him within seven days after service to pay to the plts. 280*l.* odd, and to J. and E. Allen 231*l.* odd, being the amounts claimed to be due to them respectively on the judgment. On the failure of the debtor to comply with this notice the creditors petitioned for a receiving order against him, and the registrar made the order.

The Court allowed the appeal, holding that the judgments in the action and on the counterclaim in this particular case ought to be treated as separate judgments, and therefore *In re Low*, [1891] 1 Q. B. 147, applied, and the bankruptcy notice was bad in form. *In re A DEBTOR*

C. A. [1907] W. N. 4

10. — *Judgment debt—Stay of Execution—Seizure by sheriff and subsequent withdrawal—No return to writ—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 4, sub-s. 1 (g).*

When the sheriff has seized goods of a judgment debtor under a fi. fa., the judgment creditor cannot have another fi. fa. upon the judgment until a return has been made to the first, even though he has abandoned the seizure.

Miller v. Parnell, (1815) 6 Taunt. 370, is a decision to that effect, and the authority of that case has not been shaken by *Peplow v. Galliers* (1820) 4 Moore, 163, or by *Lee v. Dangar*, [1892] 2 Q. B. 337.

But, if under a fi. fa. the sheriff has seized only goods not belonging to the judgment debtor, the principle of *Miller v. Parnell* does not apply, and in such a case there is nothing illegal or irregular in the issue of a second writ of fi. fa. before any return has been made to the first. And in those circumstances there is nothing to prevent the judgment creditor from issuing a bankruptcy notice in respect of the judgment debt. *In re A DEBTOR. Ex parte SMITH*

C. A. [1902] W. N. 128 ; [1902] 2 K. B. 260

11. — *Procedure—Judgment debt—Agreement to pay judgment debt by instalments—Arrears of Instalments—Act of bankruptcy—Bankruptcy notice for overdue instalments—Notice to pay “in accordance with the terms of the judgment”—Validity of Notice—Garnishee order nisi—Stay of execution under judgment—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 4, sub-s. 1 (g).*

Sec. 4, sub-s. 1, of the Bankruptcy Act, 1883, specifying acts of bankruptcy, must be strictly interpreted. Therefore, a bankruptcy notice which requires payment of a judgment debt “in accordance with the terms of the judgment” is not a good notice within sub-s. 1 (g) if founded, not on the judgment according to its terms, but on the judgment as modified by some collateral agreement.

A creditor and his debtor agreed in writing that the debt should stand at a certain sum and that the debtor should consent to a judgment against him for that sum, but that the amount should be payable by instalments. Judgment was accordingly signed for the whole sum, but

BANKRUPTCY (Notice)—continued.

without any reference to payment by instalments. The debtor failing to pay some of the instalments as they fell due, the creditor served him with a bankruptcy notice requiring payment, not of the whole judgment debt, the final instalment of which had not yet become due, but of the total amount of the instalments then in arrear, as being “the amount due on the judgment” :—

Held, that the notice was bad in that it did not require payment of the debt “in accordance with the terms of the judgment” within the above sub-section.

Per Vaughan Williams L.J.: A bankruptcy notice issued for a smaller sum than the judgment debt by reason of credit being given for amounts already paid is a notice to pay “in accordance with the terms of the judgment.”

Per Stirling L.J.: Non-compliance with a judgment is not an act of bankruptcy so long as the terms of the judgment are controlled by an outside agreement between the judgment debtor and creditor.

In re Feast, (1887) 4 Morr. 37, distinguished.

Per Curiam and *Romer L.J.*: A garnishee order nisi obtained by a judgment creditor attaching all debts due to the judgment debtor to answer the judgment does not operate as a stay of execution on the judgment so as to preclude the creditor from issuing a bankruptcy notice under s. 4, sub-s. 1 (g), of the Bankruptcy Act, 1883. *In re H. B.* C. A. [1904] 1 K. B. 94

Note.

Distinguished by C. A. *In re G. J.*, C. A. [1905] 2 K. B. 678. See No. 15, below.

12. — *Security given to satisfaction of creditor—Right of creditor to issue fresh bankruptcy notice—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 4, sub-s. 1 (g).*

A bankruptcy notice was on Jan. 22, 1902, served by a judgment creditor for 2129*l.* on the debtor. On Jan. 28 an agreement was entered into between the creditor and the debtor that the latter should pay 75*l.* in cash to the creditor, and hand over to him a specified bill of exchange for 400*l.* payable two months after Jan. 18. The debtor also undertook to have transferred to the creditor 4000 fully paid-up shares in a specified co., with liberty to the debtor to repurchase the shares on or before Jan. 28, 1903, at the amount of the judgment debt and taxed costs, with interest thereon. This was “to be security for the debt, but judgment still to be in full force.” The 75*l.* was paid and the bill of exchange was handed over to the creditor, and on Jan. 29 an order setting aside the bankruptcy notice was made by consent. The debt, duly carried out his undertaking :—

Held, that, security for the debt to the satisfaction of the creditor having been given within seven days after service of the notice, the requirements of the notice had been complied with, and that, the debtor not having committed any default, the creditor was not entitled during the pendency of the security to serve the debtor with a fresh bankruptcy notice in respect of the same debt. *In re SMITH. Ex parte DURBAN*

C. A. [1902] W. N. 196 ; [1903] 1 K. B. 33

BANKRUPTCY (Notice)—continued.

13. — *Set-off—Mutual credits—Judgment debt—Limited company—Winding-up—Shareholder—Calls, Action for—Application to set aside bankruptcy notice—Set-off to be enforceable at time of hearing application—Bankruptcy—Discharge of debt by set-off—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 4, sub-s. 1 (g); s. 38.*

On an application by a judgment debtor to set aside a bankruptcy notice on the ground that he has a set-off against the judgment debt within s. 4, sub-s. 1 (g), of the Bankruptcy Act, 1883—which enacts that a debtor commits an act of bankruptcy if he does not either comply with a bankruptcy notice demanding payment of a judgment debt, "or satisfy the Court that he has a . . . set-off . . . which equals or exceeds the amount of the judgment debt, and which he could not set up in the action in which the judgment was obtained"—he must satisfy the Court that he has, not merely an inchoate right of set-off which may, in the event of bankruptcy, ripen into an effective set-off under s. 38, but an effective set-off existing at the time the application is heard, that is, a set-off of a debt then capable of being enforced by action.

Thus, where the liquidator of a limited co. in liquidation under a supervision order has obtained judgment in an action against a shareholder for unpaid calls, the judgment debtor cannot, upon an application by him to set aside a bankruptcy notice for payment of the judgment debt, claim to set off a debt alleged to have become due to him from the co. prior to the liquidation; for, until after a receiving order has been made against him, he cannot set off against his unpaid calls the debt due to him from the co. see *Grissell's Case*, (1866) L. R. 1 Ch. 528.

Per Romer L.J. : A bankruptcy notice issued in respect of a judgment debt is not of necessity bad because, if bankruptcy ensues, the debt will be discharged by a set-off. *In re G. E. B., A DEBTOR* C. A. [1903] W. N. 124; [1903] 2 K. B. 340

14. — *Validity—Mistake in amount of interest—Formal defect—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 4, sub-s. 1 (g); s. 143, sub-s. 1.*

A bankruptcy notice required payment of a certain sum as being the balance claimed to be due on a final judgment. In the margin of the notice there was a statement of how the balance was arrived at, namely, debt so much, interest so much, amount credited to debtor so much. It appeared that the interest was wrongly calculated and that the notice claimed 17. 5s. 6d. in excess of the amount due from the debtor:—

Held, that the mistake in the amount of interest was not a formal defect or irregularity which could be remedied under s. 143 of the Bankruptcy Act, 1883, and that the bankruptcy notice was bad.

In re Bates, (1887) 4 Morr. 192, considered. *In re A DEBTOR*, 478 of 1903

C. A. [1908] W. N. 166; [1908] 2 K. B. 684

15. — *Validity of bankruptcy notice—"Final judgment"—"In accordance with the terms of the*

BANKRUPTCY (Notice)—continued.

judgment"—Judgment for debt "and costs to be taxed"—Bankruptcy notice for debt alone issued before taxation of costs—Execution—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 4, sub-s. 1 (g)—R. S. C., 1883, Order XLII., r. 18.

The plt. in an action in the K. B. Div. recovered judgment against the deft. for "1500l. and costs to be taxed." Before the costs had been taxed the creditor served on the debtor a bankruptcy notice claiming payment of the 1500l. alone:—

Held, that, having regard to rule 18 of Order XLII. of the R. S. C., 1883, which entitles a creditor who has recovered judgment for a sum of money and costs to issue separate writs of execution for the sum of money and the costs, the notice was a valid notice under sub-s. 1 (g) of s. 4 of the Bankruptcy Act, 1883.

In re H. B., [1904] 1 K. B. 94, distinguished. *In re G. J.* : *Ex parte G. J.*

C. A. [1905] W. N. 130; [1905] 2 K. B. 678

Offences.

1. — *Offences by bankrupt under Bankruptcy Act—Prosecution—Report of official receiver—Consideration by Court—Filing of report—Debtors Act, 1869 (32 & 33 Vict. c. 62), s. 16—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), ss. 31, 163, 164, 166.*

When the official receiver in bankruptcy has reported to the Court that a bankrupt has committed offences under the Bankruptcy Act, it is the duty of the Court to consider the report, and, even if the official receiver does not ask for an order directing the prosecution of the bankrupt, to determine whether he ought to be prosecuted.

The Court, however, is not bound to determine the question at once, but it may adjourn the determination to a future time.

The Court ought not, simply because the official receiver does not ask for an order to prosecute the bankrupt, to decline to consider the report at all.

When the official receiver has made his report, it ought to be filed. *In re DUNN. Ex parte SENIOR OFFICIAL RECEIVER*

C. A. [1901] W. N. 225; [1902] 1 K. B. 107

— Undischarged bankrupt—Obtaining credit—Limit of punishment.

See BANKRUPTCY—Undischarged Bankrupt. 6.

Official Receivers.

See under BANKRUPTCY—Receiver.

Order and Disposition.

1. — *Building agreement—Chattels on premises "to be deemed annexed to the freehold"—Mortgage of building agreement—Mortgagee empowered to take possession if builder should "become bankrupt"—Bankruptcy of builder—Reputed ownership of chattels—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 44.*

A building agreement provided that all the loose materials and plant brought upon the land should "be deemed to be annexed to the freehold." The builder by deed assigned "all his interest under the building agreement" to H, to

BANKRUPTCY (Order and Disposition)—contd.

secure advances. This deed provided that, if the builder should "become bankrupt," H. might take possession of the land comprised in the building agreement and complete any unfinished houses. A receiving order was afterwards made against the builder, and adjudication followed. H. took possession under the mortgage when the receiving order was made, on the ground that the builder had "become bankrupt," and completed some unfinished houses, using the loose plant and materials then on the premises :—

Held, that "become bankrupt" meant "be adjudicated a bankrupt," and therefore that, the builder not being in default under the mortgage when the receiving order was made, H. was not then entitled to take possession :

Held, also, that the loose plant and materials on the land at the date of the receiving order were in the reputed ownership of the builder with the consent of the true owner, the freeholder, and passed to the trustee in bankruptcy.

The principle of *In re Ginger*, [1897] 2 Q. B. 461, applied. *In re WEIBKING. Ex parte WARD*

Wright J. [1902] W. N. 42;

[1902] 1 K. B. 713

2. — Building agreement — Plant and materials on premises—Lien of building owner—Order and disposition—Forfeiture of plant by builder after bankruptcy — Protected transaction.

By a building contract made between a firm of builders and a school board, it was provided by clause 10 that all plant and materials brought on to the ground by the builders for the purposes of the building should be considered to be the property of the board, and that they should not be removed by the builders or any other person without the licence of the architect, but that the board should not be answerable for any loss or damage which might happen to them; and by clause 20 that, if the builders should delay the performance of their contract, the board might give the builders notice to proceed with the work, and that in the event of their not doing so within seven days the plant, &c., should be forfeited to the board. The builders having become bankrupt, the board subsequently to the commencement of the bankruptcy gave to the builders and to their trustee notice under clause 20 to proceed with the work, and upon non-compliance with the notice the board claimed that the plant and materials upon the premises were forfeited, and that they were entitled to retain them as against the trustee :—

Held, (1.) that clause 10 of the contract did not vest the ownership of the goods in the board, and that consequently they were not in the order and disposition of the debtors by the consent of the "true owner" within the meaning of s. 44 of the Bankruptcy Act, 1883, and did not pass to the trustee as being in the reputed ownership of the debtors; (2.) that the board's right to issue the notice under clause 20 was unaffected by the bankruptcy; and that although the goods were the property of the debtors at the commencement of the bankruptcy, the title of the trustee was determined by the forfeiture,

D.D.

BANKRUPTCY (Order and Disposition)—contd.

and the board were entitled to retain them. *In re KEEN & KEEN. Ex parte COLLINS*

Div. Ct. [1902] 1 K. B. 555

See next Case.

3. — Building contract—Plant and materials—Forfeiture of plant by builder after bankruptcy—Protected transaction.

By a building contract a firm of builders contracted with the school board of the City of Bristol to erect certain school buildings. By clause 10 of the contract it was provided that all plant and materials brought on to the ground by the builders for the purposes of the building should be considered to be the property of the board, and that it should not be removed by the builders or any other person without the licence of the architect, but that the board should not be answerable for any loss or damage which might happen to it; and by clause 20, "that if the builders should delay the performance of their contract the board might give the builders notice to proceed with the work, and that in the event of their not doing so within seven days the plant, &c., should be forfeited to the board." The builders having become bankrupt, the board subsequently to the commencement of the bankruptcy gave to the builders and to their trustee notice under clause 20 to proceed with the work, and upon non-compliance with the notice the board claimed that the plant, &c., was forfeited, and that they were entitled to retain it as against the trustee. On a motion by the trustee in the county court for a declaration that he was entitled to the goods, the county court judge gave judgment for the trustee :—

Held, reversing the judgment of the county court judge, that clause 10 did not vest the plant, &c., in the board, and that it consequently did not pass to the trustee as being in the order and disposition of the debtors by the consent of the "true owner"; secondly, that the board's right to issue the notice under clause 20 was not defeated by the bankruptcy, and that, although the goods were the property of the debtors at the commencement of the bankruptcy, the trustee's title was determined by virtue of the forfeiture.

In re KEEN. Ex parte BRISTOL SCHOOL BOARD

Div. Ct. [1902] W. N. 38; [1902] 1 K. B. 555

Note.

Distinguished by *Farwell J., Hart v. Porthgain Harbour Co.*, [1903] 1 Ch. 690. *See Building Contract. 3.*

See also preceding Case.

— Goods in the order and disposition of a bankrupt—Reputed ownership—Claim by true owner to prove for value of goods.

See BANKRUPTCY—Proof. 4.

4. — Reputed ownership—Possession by bankrupt "in his trade or business"—Consent of true owner—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 44.

In order to establish that goods were within s. 44 of the Bankruptcy Act, 1883, in the order and disposition of the bankrupt as reputed owner at the commencement of the bankruptcy, it is

H

BANKRUPTCY (Order and Disposition)—contd.

essential that the true owner should have consented to a state of things necessarily leading to the inference of ownership by the bankrupt, and in determining the question of the consent of the true owner the real relation of the parties must be taken into consideration.

The bankrupts carried on business as bankers and East India agents, and in connection with that business they sold goods upon commission. Upon the invitation of the bankrupts the applicants, who were wholesale silversmiths, sent certain plated goods to the bankrupts' office to be exhibited in show-cases as samples, and the goods were to remain at the risk of the applicants. The usual practice of the bankrupts was to introduce their customer to the applicants, who supplied him from their warehouse with goods corresponding to the samples, but in case of urgency the bankrupts sold the samples themselves :—

Held, that the goods were not in the reputed ownership of the bankrupts.

Sharman v. Mason, [1899] 2 Q. B. 679, explained and distinguished. *In re WILLIAM WATSON & Co. Ex parte ATKIN BROTHERS*

C. A. [1904] W. N. 163; [1904] 2 K. B. 753

Partnership.

— Bankruptcy—Deceased insolvent partner—Order for administration in bankruptcy—Bankruptcy of surviving partner—Consolidation of proceedings.
See PARTNERSHIP. 4.

— Book debts — Assignment by deed—One partner's signature a forgery—Validity of assignment.
See PARTNERSHIP. 3.

— Deceased partner—Bankruptcy of surviving partner—Forum for winding-up partnership—Receiver.
See PARTNERSHIP. 4.

Patent.

— Vendor's lien for unpaid royalties—Damages—Election.
See PATENT—Sale. 1.

Penal Interest.

1. — *Practice—Moneys improperly retained by trustee—Penal interest—Whether payable to bankrupt's estate or to the Treasury—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 74, sub-ss. 3, 6; s. 76.*

The penal interest of 20 per cent. chargeable against a trustee in bankruptcy under s. 74, sub-s. 6, of the Bankruptcy Act, 1883, for improperly retaining moneys belonging to the estate is payable to the bankrupt's estate, and not to the Treasury. *In re SIMS. Ex parte THE OFFICIAL RECEIVER - Bigham J.*

[1907] W. N. 80; [1907] 2 K. B. 56

Power of Appointment.

1. — *Appointment by bankrupt's will—Assets—Creditors subsequent to receiving order—Property divisible among creditors—Retainer—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), ss. 9—44.*

BANKRUPTCY (Power of Appointment)—contd.

Under a settlement H. G. had a general testamentary power of appointment over a fund. In 1892 he made his will, executed the power in favour of E. L., and appointed him executor. In 1900 a receiving order was made against H. G., and on Oct. 1, 1900, he was adjudicated a bankrupt. E. L. proved in this bankruptcy for 1131*l.* H. G. never obtained his discharge, and in 1904 he died. At the time of his death he was indebted to various persons for debts incurred since the date of the receiving order. The question in dispute was whether the appointed fund ought to be paid to E. L. as executor of H. G. for the benefit of the subsequent creditors, or to the bankruptcy trustee to be administered as assets for payment of the debts provable in the bankruptcy :—

Held, that the property divisible amongst the creditors in the bankruptcy did not include the appointed fund; that the trustee in the bankruptcy was not entitled to receive the fund; that the duty of dividing it devolved upon the executor; that the creditors who had become so after the bankruptcy were the only creditors who had a right to share in the fund; and that the question of retainer by E. L. did not arise. *In re HAIM GUEDALLA. LEE v. GUEDALLA'S TRUSTEE Warrington J.* [1905] W. N. 115; [1905] 2 Ch. 331

— Bankruptcy of donee—Capacity of trustee to release power.

See POWER OF APPOINTMENT. 1.

Practice.

Appeals—Bankruptcy Acts, 1883 and 1890. Draft General Rules made pursuant to s. 127 of the Bankruptcy Act, 1883 (46 & 47 Vict. c. 52). Reprint from W. N. 1904 (Dec. 3), p. 325. See CURRENT INDEX, 1904, p. lxxiii.

Appeals—Restrictions on appeals—Bankruptcy Acts, 1883 to 1890. General Rules dated Jan. 5, 1905, made pursuant to s. 127 of the Bankruptcy Act, 1883. Reprint from W. N. 1905 (Feb. 11), p. 67. See CURRENT INDEX, 1905, p. lxxiii.

1. — *Appeal—Time for appealing—Extension of time—Special circumstances—Mistake of solicitor—Bankruptcy Rules, r. 130.*

Application by petitioning creditors for an extension of the time for appealing from a dismissal of their petition.

The notice of appeal was served within the twenty-one days limited by r. 130 of the Bankruptcy Rules, as the time within which an appeal to the C. A. "shall be brought," but the appeal had not been entered nor the deposit for security for costs paid, and having regard to the case of *In re Taylor*, [1909] 1 K. B. 103, it was conceded that the applicants were out of time. They, however, asked for an extension, upon the ground that their solicitor, relying upon the notes to rr. 130 and 132 in the last edition of Williams on Bankruptcy (which was published before *In re Taylor* was decided), and on *Christopher v. Croll*, (1885) 16 Q. B. D. 66, believed that service of notice of appeal within the twenty-one days was a sufficient compliance with the rules.

BANKRUPTCY (Practice)—continued.

The C. A. refused the application.

The Master of the Rolls said that this was an application under r. 130 of the Bankruptcy Rules to extend the time for appealing on the ground of "special circumstances." It must not be forgotten that this rule had not been altered so as to make it accord with Order LVIII., r. 15, of the R. S. C., as recently amended, and upon the authorities as to the meaning of "special circumstances," it was not open to this Court unless there was here something beyond the mistake of a solicitor's clerk to entertain this application.

Farwell L.J. agreed. He thought that the decision of the C. A. in *In re Coles and Ravenshear*, [1907] 1 K. B. 1, applied to this case although the Supreme Court Rules had since been altered. He did not mean to say that the discretion of the Court could not be exercised in the case of a very unusual mistake. But that did not apply to a case where the legal advisers of the applicant had omitted to read the Law Reports of the previous year. *In re A DEBTOR* (No. 692 OF 1910) - C. A. [1910] W. N. 224

Note.

See *In re Coles and Ravenshear*, [1907] 1 K. B. 1. Appeal. 31.

— Appeal—Time for appealing—Notice of appeal.

See No. 9, below.

2. — Appeal—Time for entering an appeal—Deposit on appeal—Notice of appeal—Extending time—Bankruptcy Rules, 1886, rr. 130, 131, 132, 134—R. S. C., Order LVIII., r. 1.

On appealing from an order made by a Bankruptcy Court, the appeal must be entered and the deposit paid and the notice of appeal must be given within the time limited for bringing an appeal by r. 130 of the Bankruptcy Rules, 1886. *In re TAYLOR. Ex parte BOLTON*

Bigham J. [1908] W. N. 229 ; [1909] 1 K. B. 103

Note.

This case was applied by Phillimore J., *In re Smith, Ex parte Valentine*, [1910] W. N. 23. See No. 10, below.

See also next Case.

3. — Appeal—Time for entering an appeal—Deposit on appeal—Notice of Appeal—Extending time—Form of order.

Notice of appeal against an order of discharge had been served by the bankrupt on the trustee in the bankruptcy, but the appeal had not been entered, within twenty-one days of the signing of the order.

The order as passed and entered was as follows: "It is ordered that this application be and it is hereby refused with costs to be taxed and paid by the above-named bankrupt. . . . And this Court doth further order that if the deposit of 20l. be made by or on behalf of the above-named bankrupt, and the appeal be duly entered by him pursuant to the provisions of rule 131 of the Bankruptcy Rules, 1886 and 1890, within three days of this date, the appeal to be in the list for hearing on Friday, the 6th of April, 1906, the time for entering the appeal,

BANKRUPTCY (Practice)—continued.

paying the required deposit, and duly serving the respondent with notice of appeal be and it is hereby extended meanwhile." *In re DALLMEYER* (Mar. 30, 1906)

C. A. [1909]

1 K. B. 105, n.

— Appeal—Rehearing before Court of Appeal

— Bankrupt—Refusal of Discharge.

See **BANKRUPTCY—Discharge. 5.**

— Consolidation of proceedings—Partnership.

See **PARTNERSHIP. 4.**

4. — Costs of prosecution—Fraudulent debtor—Prosecution by trustee—Debtors Act, 1869 (32 & 33 Vict. c. 62), s. 11, sub-s. 3 ; ss. 16, 17—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 57 sub-s. 3 ; s. 166.

A trustee who prosecutes a debtor for offences committed against the bankruptcy laws without first obtaining an order of the Court for that purpose under s. 16 of the Debtors Act, 1869, will not, as a general rule, be allowed the costs of the prosecution out of the estate, even although the prosecution was expressly sanctioned by the committee of inspection. *In re HOWES. Ex parte WHITE* - Wright J. [1902] W. N. 124 ; [1902] 2 K. B. 290

5. — Costs, Taxation of—Solicitors' retainer—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), ss. 57, 73—Bankruptcy Act, 1890 (53 & 54 Vict. c. 71), s. 15.

In this case Dawes & Sons acted as solicitors for N., the trustee, under his instructions contained in a minute duly entered in the trustee's minute-book, and signed by the committee of inspection as follows: "That Messrs. Dawes & Sons, of 9, Angel Court, Throgmorton Street, be and they are hereby appointed the solicitors to act for and on behalf of the trustee in all actions, proceedings, and applications, and generally herein on the instructions of the said trustee."

Under this retainer and on instructions from the trustee, Dawes & Sons (1) attended the public examination of the bankrupt by counsel ; (2) opposed the bankrupt's discharge by counsel ; (3) and brought actions against certain debtors to the estate. Subsequently, on taxation of the solicitors' bill of costs against the trustee, the taxing Master disallowed all the charges in relation to the three items above mentioned, on the ground that they were not sanctioned by the retainer, which was too general in its terms.

The trustee now applied that the taxing Master might be directed to allow the items in question, and deposed that when the retainer was given it was fully considered by him and the committee of inspection, and was intended to embrace and apply to every matter arising in the bankruptcy on which it would be necessary in his discretion to employ a solicitor, particularly as to bringing actions, if necessary, to collect outstanding accounts.

Wright J. confirmed the decision of the taxing Master and dismissed the application. *In re WHITE. Ex parte NICHOLS*

Wright J. [1902] W. N. 114

6. — County court—Appeal from county court—Leave to appeal—High Court—Jurisdiction—Bankruptcy Appeals (County Courts) Act,

BANKRUPTCY (Practice)—continued.

1884 (47 & 48 Vict. c. 9), s. 2—*Bankruptcy Rules*, r. 129.

An appeal in bankruptcy cannot be brought from an order of a county court relating to property not exceeding 50*l.* in value except by leave of the county court, and the High Court cannot give leave to appeal when it has been refused by the county court. *In re EVERSON. Ex parte THE OFFICIAL RECEIVER*

Div. Ct. [1904] 2 K. B. 619

7. — *Debt—Payment—Petitioning creditor—Neglect to appear—Second petition—Leave—Bankruptcy Act, 1883* (46 & 47 Vict. c. 52), s. 7, sub-s. 5—*Bankruptcy Rules*, 1886 to 1890, rr. 163, 165.

Where a debtor against whom a bankruptcy petition has been presented disputes the debt of the petitioning creditor, and the usual order is made under s. 7, sub-s. 5, of the Bankruptcy Act, 1883, for a stay of proceedings on the petition, upon the debtor giving security, for the trial of the question of the validity of the debt, and upon the trial of that question the debtor admits the debt and pays the amount of the debt and costs into Court, the petitioning creditor is not bound to accept payment of the debt by taking the money out of court, but may proceed with the bankruptcy petition, and, subject to any other objections which may arise upon the hearing of the petition, a receiving order may be made upon it.

So held by the C. A., reversing the decision of the Div. Ct.

Where a petitioning creditor gives notice to the debtor that he does not intend to proceed with the petition, and, on the application of the creditor's solicitor, the petition is dismissed, the creditor has not neglected to appear on his petition, within r. 163 of the Bankruptcy Rules, so as to require the leave of the Court for the presentation of a subsequent petition on the same act of bankruptcy.

So held by the Div. Ct., sub nom. *In re A Debtor* (No. 31 of 1909), [1910] W. N. 29. *In re GENTRY* - C. A. [1910] W. N. 79; [1910] 1 K. B. 825

8. — *Discovery of debtor's property—Person deemed capable of giving information—Witness represented by counsel—Right to take notes of examination—Bankruptcy Act, 1883* (46 & 47 Vict. c. 52), s. 27.

One Childe had been summoned under s. 27 of the Bankruptcy Act, 1883, to give information respecting the debtors, their dealings and property. His examination was conducted by word of mouth by counsel on behalf of the trustee in bankruptcy before the registrar of the county court, the witness himself being also represented by counsel.

During the progress of the examination of the witness, counsel for the trustee in bankruptcy observed that counsel for the witness was taking a note of the questions put to and answers given by the witness, and objected to any note being taken by counsel for the witness. Counsel for the witness insisted on his right to take a note.

The registrar held that he was bound by the authority of *In re Gray's Brewery Co.*, (1883) 25

BANKRUPTCY (Practice)—continued.

Ch. D. 400, to require counsel for the witness to discontinue his notes, and adjourned the further hearing of the evidence to enable this appeal to be brought.

The following authorities were cited: *In re Breech-loading Armory Co.*, (1867) L. R. 4 Eq. 453; *In re Gray's Brewery Co.*, (1883) 25 Ch. D. 400; *In re Scharrer, Ex parte Tilley*, (1888) 20 Q. B. D. 518; *In re Cambrian Mining Co.*, (1881) 20 Ch. D. 376; *In re Merchants' Fire Office*, [1899] 1 Ch. 432; *In re London and Northern Bank, Ltd.*, [1902] 2 Ch. 73.

The Div. Ct. held that the registrar was wrong in refusing simpliciter to allow counsel for the witness to take notes of the witness's examination. Without laying down what conditions the registrar ought to impose as to allowing or prohibiting the future use of the notes, the Court expressed the opinion that the registrar, having permitted the witness to be represented by counsel, must allow counsel to make a note for the purpose of aiding his memory, and so enabling him efficiently to advise and protect his client. *In re WALKER. Ex parte CHILDE*

Div. Ct. [1909] W. N. 104

9. — *Judgment summons—Order for payment by instalments—Default—Order discharged on judgment creditor's application.*

On Nov. 12, 1907, one Eden obtained judgment against Mitchell for 231*l.* 6*s.* 10*d.*, and on Nov. 28, 1908, Bigham J., on a judgment summons issued by Eden against Mitchell, made an order for payment of the judgment debt by Mitchell by instalments of 1*l.* a month. The first two instalments only were paid. Subsequently S. Cohen purchased the judgment debt from Eden and it was duly assigned to him, and he was by an order of the Court substituted as plt. in the action in the place of Eden. Eleven instalments of 1*l.* under the order of Nov. 28, 1908, being in arrear, Cohen now applied that that order might be discharged, on the ground that Mitchell had not complied with the terms thereof. Mitchell on being served with the application obtained 11*l.* and tendered that sum in cash in payment of the arrears of the instalments, but the tender was refused. There was no evidence that Mitchell had means to pay.

Phillimore J.: I think this application should be allowed. The creditor thinks he may be able to obtain payment in some speedier way, possibly either by levying execution or by proceedings in bankruptcy. The order will be discharged, but without costs. *In re MITCHELL. Ex parte COHEN* - Phillimore J. [1910] W. N. 24

10. — *Meeting (first) of creditors—Rejection of proof for voting—Time for appealing—Notice of appeal—Bankruptcy Act, 1883* (46 & 47 Vict. c. 52), ss. 105 (4), 139; *Sched. I., r. 14—Bankruptcy Rules*, 1886, rr. 27, 29, 230.

In this case the first meeting of the creditors was held on Nov. 10, 1909, when a trustee was appointed. A creditor subsequently called a further meeting of the creditors with a view to remove the trustee and to appoint another trustee in his place. At this further meeting of the creditors, which was held on Nov. 24,

BANKRUPTCY (Practice)—continued.

Mr. Valentine lodged a proof for some 3400*l.* which the official receiver, the chairman of the meeting, rejected for voting purposes on the ground that the debt was not proved to his satisfaction. Against this rejection Valentine lodged an appeal on Dec. 15; but his notice of appeal, which was also dated Dec. 15, was not served until Jan. 5, and gave the usual eight days' notice for the hearing of the appeal. On the appeal coming on for hearing the preliminary objection was taken that the appeal was out of time, because the notice of appeal had not also been served within twenty-one days from the rejection of the proof.

Phillimore J.: There seems to have been some doubt about the practice, but I think the objection taken is well founded. In my opinion the appeal falls within s. 129 and r. 14 of Sched. I., and not within rr. 27, 29 and 230, and I think the principle of *In re Taylor*, [1909] 1 K. B. 103, applies. The appeal is, therefore, out of time, but under the circumstances I will extend the time. As both parties desire discovery of documents, there will be the usual cross-orders for discovery and the motion will stand over. *In re SMITH. Ex parte VALENTINE*

Phillimore J. [1910] W. N. 23

— Divorce — Bankrupt petitioner — Claim for damages — Security for costs.

See DIVORCE—Costs. 1.

— Misappropriation by trustee — Evidence — Statement of affairs in bankruptcy — Admissibility.

See CRIMINAL LAW—Evidence. 2.

— Offences by bankrupt under Bankruptcy Act — Filing of report.

See BANKRUPTCY—Offences. 1.

11. — Petition — Company — Presentation of petition by "officer" of the company — Clerk — Limited company — Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 148.

Any person bona fide chosen by a limited co. and duly authorized under seal to be their agent for the signing and presentation of a petition in bankruptcy thereby becomes an "officer" of the co. for that purpose within s. 148 of the Bankruptcy Act, 1883, which provides that for all or any of the purposes of the Act "a corporation may act by any of its officers authorized in that behalf under the seal of the corporation." Thus a clerk in the employ of the co. so authorized, though not in the ordinary sense an "officer," may sign a bankruptcy petition. *In re TOMKINS & Co. - C. A. [1901] W. N. 11; [1901] 1 K. B. 476*

12. — Petition — Evidence — Admissibility — Evidence of debtor — Debtor's books.

On the hearing of a bankruptcy petition the petitioning creditor is entitled to production of the debtor's books for the purpose of proving the allegations in the petition.

The C. A. also expressed their opinion that on the hearing of the bankruptcy petition the petitioning creditor is entitled to call the debtor himself as a witness in support of the petition, on the ground that, now that a debtor can petition for an adjudication of bankruptcy against himself,

BANKRUPTCY (Practice)—continued.

bankruptcy proceedings can no longer be considered as of a quasi-criminal nature. *In re X. Y. Ex parte HABS*

C. A. [1901] W. N. 224; [1902] 1 K. B. 98

— Petition — Stockbroker — Right of Stock Exchange creditor to petition in bankruptcy.

See STOCK EXCHANGE. 3.

13. — Security, Dispensing with — Bankruptcy Rules, 1886 and 1890, r. 131.

The debtor being desirous of appealing from the refusal of the registrar of a county court to allow him to examine a witness under s. 27 of the Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), applied for leave to proceed with his appeal without lodging security.

Rule 131 provides that "At or before the time of entering an appeal the party intending to appeal shall lodge in the High Court the sum of 20*l.* to satisfy, in so far as the same may extend, any costs that the appellant may be ordered to pay. Provided that the C. A. may in any special case increase or diminish the amount of such security or dispense therewith."

The Court gave leave that security might be dispensed with, but directed that notice of the appeal should be served on the official receiver and the county court registrar. *In re GARRARD Div. Ct. [1905] W. N. 90*

14. — Stay of proceedings — Appeal — "Creditors" — Service of notice of appeal — "Parties directly affected by the appeal" — Receiving order — R. S. C., 1883, Order LVIII., r. 2 — Bankruptcy Rules, 1886, r. 134.

A receiving order having been made against a debtor upon a creditor's petition, the registrar, upon the application of the debtor supported by the majority of persons claiming to be creditors, including the petitioning creditor, stayed the issue of advertisements and all other proceedings under the receiving order for a limited period. The official receiver appealed against the stay, the debtor alone being served with notice of the appeal:—

Held, that notice of the appeal must be served also on the petitioning creditor as being a party "directly affected by the appeal" within R. S. C., 1883, Order LVIII., r. 2 (made applicable to bankruptcy appeals by r. 134 of the Bankruptcy Rules, 1886), but not on any other of the alleged creditors. *In re A DEBTOR*

C. A. [1901] W. N. 111; [1901] 2 K. B. 354

Preference.

1. — Act of bankruptcy — Assignment — Clause empowering trustee or committee of inspection to give preference to any non-assenting creditor — Validity of deed — Petitioning creditor — Claim for preference under deed — Trading with trustee — Trustee's title — Acquiescence — Estoppel — Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 4, sub-s. 1 (h).

An act of bankruptcy committed by a debtor under s. 4, sub-s. 1 (h), by the execution of an assignment for the benefit of his creditors, cannot be made the basis of a bankruptcy petition by a non-assenting creditor, if that creditor has done any act or acts amounting to an

BANKRUPTCY (Preference)—continued.

acquiescence in the deed or to a recognition of the trustee's title therein; as, for example, by supplying goods to and receiving payment therefor from the "trustee" as such, or by endeavouring to take advantage of a clause in the deed empowering the trustee of the deed in his own discretion or at the direction of the committee of inspection "to pay in full, or otherwise than by dividends under these presents, any creditor or creditors who shall decline to execute or assent to these presents."

Ex parte Alsop, (1859) 1 De G. F. & J. 289, and *Ex parte Stray*, (1867) L. R. 2 Ch. 374, followed.

Per Cozens-Hardy L.J. A clause such as that above mentioned, in a creditor's deed, is improper as providing a means of bribing a creditor to assent to the deed, and may go far towards invalidating the deed altogether. *In re BRINDLEY. Ex parte TAYLOR, SONS & Co.*

C. A. [1906] W. N. 3; [1906] 1 K. B. 377

— Creditor—Withdrawal of debt—Release—Security—Undue preference.

See BANKRUPTCY—Arrangement. 6.

2. — *Fraudulent preference—Breach of trust—Trustee and cestui que trust—"Debtor and creditor"—Voluntary restitution on eve of bankruptcy—Dominant motive for gift—Appeal to the House of Lords, Leave to—Bankruptcy Act, 1883* (46 & 47 Vict. c. 52), s. 48.

A trustee of a settlement who had misappropriated the trust fund, subsequently, on the eve of his bankruptcy, deposited in the trust box (which was then in his custody, as solicitor to the trust), but voluntarily and without any communication with his co-trustees or cestuis que trust, certain railway debentures belonging to him, accompanied by a memorandum admitting his breach of trust, expressing gratitude for kindness received from his cestuis que trust during his pecuniary difficulties, and stating that the deposit was made in order to make good the breach of trust. He was shortly afterwards adjudicated bankrupt:—

Held by C. A., reversing Wright J., [1901] W. N. 26, that, on the memorandum, the bankrupt's dominant motive for the deposit was, not to prefer his cestuis que trust to his other creditors, but to repair the wrong he had done by his breach of trust, and therefore the transaction could not be set aside as a "fraudulent preference" within s. 48 of the Bankruptcy Act, 1883. Leave to appeal to the House of Lords was refused.

Whether the relation of "debtor and creditor" exists as between a defaulting trustee and his cestui que trust, *quære*.

Dictum of Lord Halsbury L.C. in *Sharp v. Jackson*, [1899] A. C. 419, 426, questioned. *In re LAKE. Ex parte DYER*

C. A. [1901] W. N. 43; [1901] 1 K. B. 710

— Fraudulent preference—Company—Winding-up.

See under COMPANY—WINDING-UP—Preference.

3. — *Fraudulent preference—Transfer of property for past debt—Act of bankruptcy—*

BANKRUPTCY (Preference)—continued.

Protected transaction—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), ss. 4, 49.

A creditor who takes a transfer of substantially the whole of the property of his debtor in payment of a past debt, with notice that there are other creditors, cannot be said to be acting in good faith, and is therefore not entitled to the protection of s. 49 of the Bankruptcy Act, 1883; and such a transaction is an act of bankruptcy and *prima facie* a fraudulent preference on the part of the debtor.

Shears v. Goddard, [1896] 1 Q. B. 406, distinguished. *In re JUKES. Ex parte OFFICIAL RECEIVER. Wright J.* [1902] W. N. 86; [1902] 2 K. B. 58

Preferential Debt.

1. — *Commercial traveller—Fixed sum weekly and commission—"Wages or salary"—Preferential payments in Bankruptcy Act, 1883* (51 & 52 Vict. c. 62), s. 1, *sub-s.* 1 (b).

The receiving order in this case was made on Dec. 28, 1905, and was followed by adjudication, and two trustees were appointed. G. was a commercial traveller and had been in the employ of the debtor for some eighteen months prior to the receiving order, and his pay was 2*l.* a week, with a commission of 3½ per cent. on all business done by him for the debtor, and as a rule he drew 2*l.* 10*s.* a week and left the rest of his commission until he wanted it. At the date of the receiving order there was due to him 24*l.* 12*s.* 3*d.*, which represented the commission due to him for the four months preceding the receiving order. He had been paid his 2*l.* per week. He proved in the bankruptcy for the 24*l.* 12*s.* 3*d.*, and claimed payment in full of this sum on the ground that it was included in his salary and was a preferential debt. The trustees admitted his proof to rank for dividend, but declined to treat it as a preferential debt.

Bigham J. said: Apart from authority I think this is a good preferential debt. G. gave his services to his master, and in respect of those services he was paid weekly a fixed sum and a certain commission as well. That is "salary" within the meaning of the Act. *In re KLEIN. Ex parte GOODWIN Bigham J.* [1906] W. N. 148

Principal and Surety.

— Proof—Bankruptcy of principal—Proof of surety for estimated amount of liability to pay future interest and premiums—Double proof.

See BANKRUPTCY—Proof. 8, 9.

Priority.

— Administration of bankrupt's estate—Priority of the Crown—New South Wales Bankruptcy Act, 1898.

See NEW SOUTH WALES. 2.

Probate.

— Administration—Grant to official receiver in bankruptcy—Sureties dispensed with. *See* PROBATE—Sureties. 1.

BANKRUPTCY—continued.**Proof.**

1. — *Assignee of creditor, Proof by—Costs due by creditor to trustee—Dividend on proof—Trustee's right to retain dividend against costs—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 58.*

A creditor assigned for value all her claims against a bankrupt and her assignees lodged a proof against the bankrupt's estate, which was admitted. A dividend became payable in respect of the proof :—

Held, that the trustee was entitled to retain the dividend against taxed costs which the creditor had been ordered to pay to him. *In re MAYNE. Ex parte THE OFFICIAL RECEIVER Bigham J. [1907] W. N. 202; [1907] 2 K. B. 899*

— Company—Bankrupt shareholder—Unpaid shares—Lien.

See COMPANY—Bankruptcy. 1.

— Company—Bankruptcy of shareholder—Proof by company for unpaid calls and liability to future calls.

See COMPANY—Bankruptcy. 2.

— Company—Winding-up—Proof.

See under COMPANY—WINDING-UP—Proof.

2. — *Composition scheme—Proof by secured creditor for purpose of voting admitted—Appeal by debtor against admission of proof—Conditional withdrawal of proof refused—Leave to amend—Receiving order—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), Sched. II., r. 13.*

A creditor claiming to hold security for part of his debt, and who makes a proof for the unsecured balance for the purpose of voting on a composition proposed by the debtor, which proof is admitted for voting by the official receiver, will not, while an appeal against the decision of the official receiver is pending, be allowed to withdraw the proof conditionally; but leave may be given to the creditor to amend the proof by revaluing his security. *In re CLARK. Ex parte BUENOS AYRES AND PACIFIC RY. CO. Wright J. [1901] W. N. 112; [1901] 1 K. B. 655*

— Debtor's application to expunge a proof—Locus standi of debtor.

See BANKRUPTCY—Receiving Order. 5

3. — *Double proof—Partnership—Breach of trust—Director of company and member of partnership—Misappropriation of company's assets—Proof in respect of distinct contracts—Joint and several contract—Joint and separate proof—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), Sched. II., r. 18.*

Where one member of a firm, being an express trustee, wrongfully concurs in a misappropriation by the firm of the trust fund, proof may be allowed against both the joint estate of the firm and the separate estate of the defaulting trustee; and the fact that the trust fund properly came in the first instance into the hands of the firm for a specific purpose, which the firm omitted to fulfil, makes no difference in this respect; neither does it make any difference that the trust was not express and that the member of the firm had not originally possession of the trust fund.

BANKRUPTCY (Proof)—continued.

The same principle must also apply to every case in which there is a fiduciary relationship resting upon contract, such as that of a promoter, agent, or director of a company.

In re Parkers, (1887) 19 Q. B. D. 84, followed and approved.

Decision of Bigham J., [1908] W. N. 161, reversed.

In re P. MACFADYEN. Ex parte VIZIANAGARAM MINING CO. C. A. [1908] W. N. 198; [1908] 2 K. B. 817

Note.

See In re Macfadyen & Co., Ex parte Vizianagaram Mining Co., Bigham J., [1908] 1 K. B. 675. Bankruptcy—Arrangement. 4.

— Gaming debt—New consideration—Withdrawal of letter to debtor's club—Bankruptcy of debtor—Provable debt.

See GAMING. 1.

4. — *Goods in order and disposition of bankrupt—Reputed ownership—Right of proof by true owner for value of goods—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 37, sub-ss. 3, 8; s. 44, sub-s. 2 (iii.).*

At the date of the bankruptcy of the debtor, an art dealer, there were in his possession goods which had been entrusted to him by a customer to sell at the best prices he could get for them, and by an order made in the bankruptcy it was adjudged that these goods passed to the trustee as being in the order and disposition of the bankrupt within the reputed ownership clause, s. 44, sub-s. 2 (iii.), of the Bankruptcy Act, 1883 :—

Held, that the customer was entitled to prove in the bankruptcy for the value of the goods.

Decision of Bigham J., [1907] W. N. 24; [1907] 1 K. B. 397, reversed. *In re BUTTON. Ex parte HAVISIDE C. A. [1907] W. N. 85; [1907] 2 K. B. 180*

5. — *Husband and wife—Proof of debt—Bankruptcy of husband—Wife surety for husband's debt—Payment of debt by wife—Right of exoneration—Money lent by wife to husband—Onus of proving whether lent for purpose of husband's business—Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), s. 3.*

A wife at the request of her husband (a trader) deposited with his bankers the title deeds of her separate real estate as security for advances to be made by them to him for the purpose of his business. The bankers made advances to him on the security of the deeds and a memorandum of deposit signed by the wife. She afterwards paid off his debt to the bankers. After his death an order was made for the administration of his estate in bankruptcy :—

Held, that s. 3 of the Married Women's Property Act, 1882, did not apply, and that the wife was entitled to prove against the estate for the amount which she had paid to the bankers, with interest thereon.

The wife also lent a sum of money to her husband, and she claimed to prove against his estate for that sum. She did not in her affidavit say that the loan was not made for the purpose of the husband's business, and the trustee of the estate adduced no evidence that it was made for

BANKRUPTCY (Proof)—continued.

that purpose, and he did not cross-examine the wife :—

Held, that the proof ought to be admitted.

Per Vaughan Williams L.J. : *In re Genese*, (1885) 16 Q. B. D. 700, must not be understood as a decision that s. 3 of the Married Women's Property Act, 1882, in every case throws on a wife who is claiming to prove in her husband's bankruptcy for money lent by her to him the onus of shewing that the loan was not made for the purpose of his business. *In re CRONMIRE. Ex parte CRONMIRE* C. A. [1901] W. N. 20 ; [1901] 1 K. B. 480

— "Inadvertence"—Proof of debt—Secured creditor—Omission to value security.

See COMPANY—WINDING-UP—Proof.
1.

6. — *Money-lender, Proof of debt by—Withdrawal of proof—Money-lenders Act, 1900* (63 & 64 Vict. c. 51), s. 1, sub-s. 3—*Jurisdiction of Bankruptcy Court to grant relief under.*

A bankrupt was indebted to a money-lender for money lent, the money-lender holding a security for the debt. The creditor lodged a proof in the bankruptcy for the debt stating the amount at which he valued the security. The proof was not made use of in voting at any meeting of creditors. The trustee having required the creditor to give up the security under Sched. I., r. 12, of the Bankruptcy Act, 1883, he gave notice of withdrawal of the proof and of intention to correct the valuation by a new proof. The trustee then moved the Bankruptcy Court for an order for an account, and for relief under the Money-lenders Act, 1900 :—

Held, that the jurisdiction of the Bankruptcy Court to exercise the powers of the Money-lenders Act arises only under s. 1, sub-s. 3, of that Act, and is confined to cases in which there is an application before the Court relating to the admission or amount of a proof by a money-lender; that, as the proof had not been used either for purposes of voting or of claiming a dividend, the creditor was at liberty to withdraw it without the consent either of the trustee or of the Court; and that, as there was consequently no proof by the money-lender before the Court, it had no jurisdiction to entertain the motion. *In re ATTREE. Ex parte WARD*

Div. Ct. [1907] 2 K. B. 868

7. — *Practice—Administration—Insolvent estate—Secured creditor—Withdrawal of proof—Certificate—Application to restore proof—Bankruptcy Rules—Bankruptcy Act, 1883* (46 & 47 Vict. c. 52), Sched. II.—*Judicature Act, 1875* (38 & 39 Vict. c. 77), s. 10—*R. S. C., Order LV., rr. 44, 57, 70, 71.*

E. McMurdo died in 1889 insolvent, and an order was made for the administration of his estate. A creditor for 47,000*l.* held as security (inter alia) shares and debentures of the Delagoa Bay Ry. The ry. was seized by the Portuguese Government, and an arbitration tribunal was appointed in 1891. The creditor declined to prove for his debt, and stated that he preferred to rely on his securities. In 1893 the chief clerk filed his certificate, in which the creditor's claim was entered as disallowed. In 1900 the award

BANKRUPTCY (Proof)—continued.

was made, and resulted in the creditor only receiving 1448*l.* in respect of his shares and debentures. In Jan., 1902, he took out a summons to vary the certificate by allowing his claim, and for liberty to prove for his debt :—

Held, by Swinfen Eady J., that the Chancery practice still applied to the administration of insolvent estates, although by s. 10 of the Judicature Act, 1875, the Bankruptcy Rules were also in force; therefore the creditors could not come in and prove after certificate, unless he shewed special circumstances in his favour; and that he had not done so.

Held, by the C. A., that under s. 10 of the Judicature Act, 1875, the Bankruptcy Rules applied to the case, and that under them the creditor could come in and prove at any time if there were assets undistributed, and, if no injustice would be caused, that he could do the same thing in an administration in the Ch. Div.; that, inasmuch as his debt had not been adjudicated upon, the disallowance of it in the certificate was not a fatal objection; that if it was necessary to shew special circumstances he had done so; that the certificate need not be varied; and that the creditor must be allowed upon terms to come in and prove.

Semble, a mortgagee of shares is not bound to watch the market so as to sell them at the highest price; and he does not by failing to sell at the most favourable opportunity lose his right to prove against the estate of the mortgagor.

Decision of Swinfen Eady J., [1902] W. N. 87, reversed. *In re McMURDO. PENFIELD v. McMURDO*

C. A. [1902] W. N. 112 ; [1902] 2 Ch. 684

8. — *Principal and surety—Debenture of limited company—Debenture interest guaranteed—Dissolution of company—Bankruptcy of guarantor—Proof for future interest—Companies Act, 1862* (25 & 26 Vict. c. 89), s. 143.

A. guaranteed B. the regular payment of the interest payable under the debenture of a limited co. until the principal sum secured by the debenture was repaid by the co. Some time afterwards the co. went into liquidation and was dissolved by virtue of s. 143 of the Companies Act, 1862. Subsequently A. became bankrupt :—

Held, that, notwithstanding the dissolution of the co., B. was entitled to prove in A.'s bankruptcy for the estimated value of the future interest payable under the guarantee. *In re FITZGEORGE. Ex parte ROBSON*

Bigham J. [1905] W. N. 17 ; [1905] 1 K. B. 462

9. — *Principal and surety—Mortgage of policy of insurance—Covenant to pay interest and premiums—Indemnity of surety by principal—Bankruptcy of principal—Proof of surety for estimated amount of liability to pay future interest and premiums—Double proof.*

By an indenture of mortgage the mortgagor assigned to the mortgagee a policy of insurance on the mortgagor's life to secure the repayment of an advance of 500*l.* which the mortgagor covenanted to repay on a certain date, and the mortgagor and another person as surety jointly and severally covenanted with the mortgagee to

BANKRUPTCY (Proof)—continued.

pay interest so long after the said date as any principal money remained due, and to pay all premiums on the policy, and, if the policy should become void, the cost of effecting a new policy. The mortgagor subsequently agreed to indemnify the surety against any sums which he might be called upon to pay under his covenants with the mortgagee. No part of the principal money was repaid, and the mortgagor became bankrupt. The mortgagee proved in the bankruptcy for the principal money less an amount at which he valued the policy. The surety claimed, under the agreement to indemnify, to prove for the estimated amount of his liability to the mortgagee for future interest and premiums:—

Held, that the surety was not entitled to prove under either head. *In re MOSS. Ex parte HALLET* - Div. Ct. [1905] 2 K. B. 307

— Receiving order—Scheme of arrangement—Provable debt carrying interest above 5 per cent.

See BANKRUPTCY—Receiving Order. 7.

10. — Secured creditor—Increase in value of security—Amending proof—Time—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), Sched. II., r. 13.

In 1895 a debtor, against whom a receiving order had been made, lodged a scheme providing for the payment of 10s. in the pound to his unsecured creditors, exclusive of M., whom he alleged to be fully secured. The scheme was duly accepted by the creditors. M. took no part in the proceedings, but lodged a proof in which he assessed the value of his security at one half of the amount of his debt, and claimed to prove as an unsecured creditor for the other half, and his proof was admitted. The scheme fell through in consequence of M.'s proof, which he refused to withdraw, and the debtor's estate paid only 1s. in the pound. In Jan., 1903, M.'s security became greatly increased in value, and in May, 1904, he applied under rule 13 of Sched. II. to amend his proof by revaluing his security on the footing that he was fully secured:—

Held, that M. had done nothing to disentitle himself to the relief he claimed, and that his application must be granted. *In re FANSHAWE. Ex parte LE MARCHANT*

Bigham J. [1904] W. N. 211;
[1905] 1 K. B. 170

— Secured creditors—Proof—Lumping debts and securities—Debtor's right to redeem.
See BANKRUPTCY—Redemption. 1.

— Secured creditors — Separate securities — Lumping debts and securities.
See BANKRUPTCY—Secured Creditors. 1.

11. — Sham sale by debtor—Part payment of purchase-money—Right of proof by purchaser for money actually paid.

The owner of a business, who had procured A. to become surety for the payment of a debt, and for that purpose to join him in making certain promissory notes, upon the eve of his bankruptcy entered into an agreement with A. for the sale to him of his business and stock-in-trade. By the terms of the agreement A., by

BANKRUPTCY (Proof)—continued.

way of part payment of the purchase-money, took over the sole liability upon the notes. Subsequently the vendor was adjudicated bankrupt, and the trustee in bankruptcy obtained a judgment declaring that the agreement and sale were a sham and void. A., who in the meantime had paid the notes, then put forward a proof against the debtor's estate for the money so paid as in respect of a consideration which had failed:—

Held, upon the authority of *In re Cross*, (1848) 4 De G. & Sm. 364, n., and *Ex parte Phillips*, (1888) 36 W. R. 567, that, although the debtor's estate had had the benefit of the payment, A. could not prove for it, as it had been paid in the course of carrying out a transaction devised in fraud of the general body of creditors; that so much of the fraudulent agreement as was disadvantageous to A., and precluded him from having recourse to the debtor as the principal maker of the notes, was binding on him, though the part which was advantageous to him did not bind the other creditors. *In re MYERS. Ex parte MYERS* - Div. Ct. [1908] W. N. 51; [1908] 1 K. B. 941

— Solicitor and client — Bankruptcy — Cash accounts—Draft bills of costs—Right to require particulars and vouchers.

See BANKRUPTCY—Trustee. 6.

— Trustee, Bankruptcy of—Breach of trust—Proof against bankrupt's estate.

See TRUSTEE—Investments. 17.

— Trustee, Compromise with one—Right to prove in the bankruptcy of another trustee for the full amount of the liability.

See TRUSTEE—Release. 1.

12. — Voluntary payment by third party to creditor for the loss sustained—Creditor's right to prove for the whole debt—Loan on forged security.

At the date of his bankruptcy A. owed B. some 16,500*l.* for moneys advanced to him by B. on the deposit of a transfer of shares which turned out to be a forgery. Subsequently C., who was formerly A.'s partner, whilst repudiating all liability for A.'s fraud, voluntarily paid B. 6500*l.* for the loss thereby sustained. This payment was made without A.'s knowledge:—

Held, affirming Buckley J., [1904] W. N. 64, that the payment was not made on account of either the debt or the debtor, and that C. could prove for the full amount of the debt without deducting the 6500*l.* *In re ROWE. Ex parte DERENBURG & Co.* - C. A. [1904] W. N. 98; [1904] 2 K. B. 483

Protected Transaction.

— Deed of assignment for benefit of creditors.

See under BANKRUPTCY — Deed of Assignment.

1. — Mortgage of chose in action after commencement of bankruptcy—Bona fides—Protected transaction—Assignment—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 49).

After the presentation of a bankruptcy petition against debtors on which a receiving order was made, the debtors, before the date of the

BANKRUPTCY (Protected Transaction)—*contd.*

receiving order, assigned a sum of money payable to them to one of their creditors to secure a debt due by them to him, and he took the assignment in good faith and without notice of any act of bankruptcy committed by the debtors :—

Held, that the assignment was protected by s. 49 of the Bankruptcy Act, and was good as against the trustee in bankruptcy.

In re Badham, (1893) 10 Morr. 252, distinguished. *In re DUNKLEY & SON. Ex parte WALLER* - - **Bigham J.** [1905] W. N. 132; [1905] 2 K. B. 683

Receiver.

Bankruptcy Acts, 1883 and 1890. Duties of official receiver during temporary vacancy. Reprint from W. N. 1906 (June 9), p. 170. See CURRENT INDEX, 1906, p. lxviii.

Official Receiver (Order dated April 17, 1907). Appointment of, during temporary vacancy of office, or during temporary absence of any Official Receiver during illness or otherwise. Reprint from W. N. 1907 (May 4), p. 149. See CURRENT INDEX, 1907, p. lxix.

— Bankruptcy — Mutual dealings — Set-off — Company — Receiver of debtor's interest in debenture stock.
See BANKRUPTCY—Set-off. 4.

1. — *Petitioning creditor—Debt due to a partnership—Dissolution of partnership—Receiver appointed in partnership action—Assignment of judgment debt—Leave to receiver to issue execution—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 6.*

On the dissolution of a firm of stockbrokers by the death of one of the partners the partnership assets, including a debt due to the late firm in respect of certain Stock Exchange transactions, were assigned by the surviving partners to L. for the purpose of winding up the partnership, and notice of the assignment was served on the debtor. L. then recovered judgment for the amount of the debt. Subsequently an action was commenced in the Ch. Div. for the winding up of the partnership, and in that action a receiver was appointed of the partnership assets. The receiver took an assignment of the judgment debt from L., and obtained leave to issue execution. He then served a bankruptcy notice on the debtor, and on the failure of the debtor to comply with the notice a bankruptcy petition was presented against him by the receiver, the surviving partners, and the personal representatives of the deceased partner :—

Held, that inasmuch as the receiver had obtained an assignment of the judgment debt he was a creditor entitled to present a bankruptcy petition.

In re Sacher, (1888) 22 Q. B. D. 179, only decides that a receiver who cannot sue in his own name cannot be a good petitioning creditor.

Dictum of Lord Esher in that case dissented from. *In re MACOUN* C. A. [1904] W. N. 156; [1904] 2 K. B. 700

BANKRUPTCY—*continued.***Receiving Order.**

1. — *Adjudication—Debtor's own petition—Committal order, Evasion of—Abuse of process of Court—Annuling bankruptcy—Jurisdiction—Assets—Personal earnings—Administration in bankruptcy.*

A creditor obtained judgment against a debtor, a furniture dealer's salesman, whose sole income was derived from his salary or wages, payable weekly, and commission on his sales. He had two children dependent upon him. On the debtor failing to pay the judgment debt, the creditor obtained, on a judgment summons, an order for payment of the debt by instalments. The instalments having fallen into arrear, the creditor obtained a committal order for the amount of the arrears, under pressure of which order the debtor paid the money. The instalments having again fallen into arrear, the creditor obtained a second committal order, whereupon the debtor, finding himself unable to comply with it, presented a bankruptcy petition, which was followed, upon his own application, by a receiving order and adjudication. The judgment creditor was his only creditor, and he had no assets beyond the personal earnings from his employment. The judgment creditor then applied for annulment of the bankruptcy proceedings on the ground that they were an abuse of the process of the Court; but the registrar refused the application. On appeal :—

Held, that the proceedings were not, in the circumstances, an abuse of the process of the Court, and in fact would not prejudice the judgment creditor, inasmuch as the personal earnings of the bankrupt, beyond what was necessary for the maintenance of himself and his family, could be applied, in the proceedings, towards payment of the judgment debt : *In re Roberts*, [1900] 1 Q. B. 122. The appeal was therefore dismissed with costs.

Seemle, it was the intention of the Legislature, by the Bankruptcy Act, 1883, to enable a debtor, in a proper case, to relieve himself from the pressure of a committal order by obtaining an adjudication in bankruptcy against himself. *In re HANCOCK* - C. A. [1904] W. N. 37; [1904] 1 K. B. 585

— Bankruptcy notice—Bill of exchange—Conditional payment—Dishonoured bill—Bill outstanding in third party.
See BANKRUPTCY—Notice. 3.

— Contractor, Receiving order against—Subsequent order by engineer for direct payment to firms—Title of trustee—Secured creditors.

See BANKRUPTCY—Contracts. 1.

2. — *Costs in Divorce Court—Order to pay—Default—Judgment summons—Receiving order in lieu of committal—Practice—Debtors Act, 1869 (32 & 33 Vict. c. 62) s. 5—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 103, sub-s. 5.*

The debtor, as the co-respondent to a husband's petition in the Divorce Court, was ordered to pay the petitioner's costs of the suit, which were subsequently taxed at 110*l.* 7*s.* 10*d.* The debtor was then ordered to pay the

BANKRUPTCY (Receiving Order)—continued.

1101. 7s. 10d. by a specified date to the petitioner's solicitors, but did not comply with the order, whereupon the solicitors issued against him a debtor's summons under the Debtors Act, 1869, at the hearing of which there was evidence that he had means to pay :—

Held, that there was jurisdiction under s. 103 of the Bankruptcy Act, 1883, to make a receiving order against the debtor. *In re* HALLMAN. *Ex parte* ELLIS & COLLIER. - **Phillimore J. [1909] W. N. 137; [1909] 2 K. B. 430**

— Foreigner resident abroad but trading in England—Jurisdiction.
See BANKRUPTCY — Act of Bankruptcy. 2.

3. — *Jurisdiction—Foreigner—“ Ordinarily resided ” in England—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 6, sub-s. 1 (d).*

The debtor was an American citizen. He was engaged in some protracted litigation in England, and on Jan. 2, 1900, he came over to England for the purpose of attending to that litigation. He remained here until Aug. 7, 1900, when he went back to America. He returned to England in the middle of Nov., 1900, and remained there till May, 1901. While he was in Europe he stopped in various hotels in London, and paid many short visits to the Continent. In May, 1901, a bankruptcy petition was presented against him, on which the registrar made a receiving order, which was affirmed by the C. A. in Nov., 1901. In Nov., 1902, the Court ordered a rehearing of the petition, mainly on the ground that there had been a mistake in the notes of the evidence. On the rehearing the registrar affirmed his former decision. He held that the debtor had, “ within a year before the date of the presentation of the petition, ordinarily resided ” in England within the meaning of sub-s. 1 (d) of s. 6 of the Bankruptcy Act, 1883.

The registrar came to the conclusion on the evidence that during the year in question the debtor had been for 242 days in England.

The Court dismissed the appeal, and held that for only three months during the year in question was the debtor continuously absent from London. During the remainder of the period he was in London for a definite purpose, which made it necessary, or at any rate most convenient, that he should be there, and, though he made occasional excursions to the Continent, the central place of his dwelling was London. The question was, not whether it could be said of a man at large with reference to his domicile that he “ ordinarily resided ” in England; the Court had to deal only with a specified year, and that would cover the case of a man who was not domiciled in England. A long sojourn was not a *sine qua non*. There must be some duration; two or three days would not be sufficient. The question was one of fact, and one of the matters to be taken into account was the purpose for which the man was in England. There was ample evidence justifying the registrar in coming to the conclusion that the debtor had “ ordinarily resided ” in England within the

BANKRUPTCY (Receiving Order)—continued.

year in question. *Ex parte* C. BRIGHT. *In re* C. BRIGHT. - - - **C. A. [1903] W. N. 17**

— Life policies—Payment of premiums from date of receiving order.

See BANKRUPTCY—Secured Creditors. 1.

— Married woman—“ Carrying on ” business separately from husband—“ Absenting ”—Act of bankruptcy.

See BANKRUPTCY—Act of Bankruptcy. 3.

— Married woman—Separate trading—Separate property.

See HUSBAND AND WIFE—Bankruptcy. 1.

4. — *Money-lender, Debt to — “ Harsh and unconscionable transaction ” — “ Excessive interest ” — Power of Court to reopen transaction—Money-lenders Act, 1900 (62 & 63 Vict. c. 51), s. 1, sub-ss. 1, 3.*

Under s. 1 of the Money-lenders Act, 1900, a transaction with a money-lender can be reopened when the Court is satisfied that the transaction is “ harsh and unconscionable,” even though it is not “ such that a Court of Equity would have given relief ” before the Act.

Decision of Ridley J. in *Wilton & Co. v. Osborn*, [1901] 2 K. B. 110, disapproved.

This power to give relief can be exercised by the Court of Bankruptcy upon the hearing of a petition by a money-lender for a receiving order against a borrower, the petition being founded on a final judgment recovered in an action in which the debtor did not apply for relief under s. 1.

Semble, that the interest charged upon a loan may be so excessive as of itself to render the transaction “ harsh and unconscionable.” *In re* A DEBTOR. *Ex parte* THE DEBTOR

C. A. [1903] W. N. 48; [1903] 1 K. B. 705

5. — *Petitioning creditor—Locus standi—Assignment for benefit of creditors—Petitioning creditor disentitled to use assignment as act of bankruptcy—Petition founded on independent act of bankruptcy.*

A creditor, who has so acted with reference to an assignment for the benefit of creditors executed by his debtor that he cannot be allowed to found a bankruptcy petition against the debtor on the deed as an act of bankruptcy, is yet, if he is not bound by the deed, entitled to present a bankruptcy petition against the debtor founded on an independent act of bankruptcy, though the result may be that the deed will be avoided as against the trustee in the debtor's bankruptcy.

Dictum of Lord Cairns L.J. in *Ex parte Stray*, (1867) L. R. 2 Ch. at p. 381, adopted.

Dictum of Vaughan Williams J. in *In re Woodroff*, (1897) 4 Mans. at p. 49, approved. *In re* MILLS. *Ex parte* MILLS

C. A. [1906] W. N. 4; [1906] 1 K. B. 389

— Power of appointment—Assets—Creditors subsequent to receiving order—Property divisible among creditors.

See BANKRUPTCY—Power of Appointment. 1.

BANKRUPTCY (Receiving Order)—continued.

6. — *Rescind, Jurisdiction to — Abuse of process of Court.*

A debtor, with the intention of evading committal orders made against him upon judgment summonses, presented his own bankruptcy petition, upon which a receiving order was made. He had previously at short intervals and with the same object presented two other bankruptcy petitions upon which receiving orders had been made, and was an undischarged bankrupt under three bankruptcies :—

Held, that the presentation of the petition by the debtor under such circumstances was an abuse of the process of the Court, and that the receiving order founded upon it must be rescinded.

Ex parte Painter, In re Painter, [1895] 1 Q. B. 85, distinguished. *In re BETTS. Ex parte OFFICIAL RECEIVER Div. Ct.* [1901] 2 K. B. 39

— Scheme of arrangement — Creditor — Withdrawal of debt.

See BANKRUPTCY—Arrangement. 3.

7. — Scheme of arrangement—Provable debt carrying interest above 5 per cent.—Dividend—Bankruptcy Act, 1890 (53 & 54 Vict. c. 71), s. 3, sub-s. 9 ; s. 23.

It is competent for a debtor in carrying on a scheme of arrangement under s. 3 of the Bankruptcy Act, 1890, with the consent of his creditors and the approval of the Court, to exclude the application of s. 23 of the Act. *In re NEPEAN. Ex parte RAMCHUND Wright J.* [1903] W. N. 67 ; [1903] 1 K. B. 794

— Stockbroker—Right of Stock Exchange creditor to petition in bankruptcy.

See STOCK EXCHANGE. 3.

Redemption.

1. — Adjudication—Secured creditors—Proof—Lumping debts and securities—Aggregate assessed value—No separate assessment—Shares in ships—Vendor's lien—Admission of proof—Composition—Annulment of bankruptcy—Revesting—Debtor's right to redeem.

The plt. was adjudicated bankrupt on Aug. 26, 1899. The defts., who had various debts and various securities, sent in their proof as secured creditors, lumping together their debts and securities and claiming to prove for the balance. The trustee admitted the proof without separating the debts or having the separate value of the several securities assessed in the proof. Subsequently a scheme for composition was approved, and on payment of the composition the bankruptcy was annulled on Mar. 6, 1901, and the outstanding estate of the plt. ordered to revest in him. In Jan., 1907, the plt. commenced an action for redemption of the securities :—

Held, that at and previous to the composition the estate of the plt. held by the defts., having regard to the proof, formed a security to them for the aggregate assessed value of their securities, and that they had nothing more than a security then or at time of action brought, and that the plt. was entitled to redeem all the securities upon payment of interest from the date of proof.

BANKRUPTCY (Redemption)—continued.

Quære whether, apart from the special circumstances of the case, the defts. were in strictness secured creditors in respect of their vendors' lien for the unpaid purchase-moneys of shares in ships, which shares had been sold by them to the plt. but still remained registered in their names and had never been transferred by them ; and whether these were secured debts. *PEARCE v. BULLARD, KING & CO. - Joyce J.* [1908] W. N. 48 ; [1908] 1 Ch. 780

Note.

Overruled on one point by C. A., *In re Pearce's Trusts*, [1909] 2 Ch. 492. *See* Bankruptcy—Secured Creditors. 1.

— Proof—Lumping debts and securities — Redemption of one of the securities.

See BANKRUPTCY—Secured Creditors. 1.

Reputed Ownership.

— Proof—Goods in order and disposition of bankrupt.

See BANKRUPTCY—Proof. 4.

Sale.

— Sham sale by debtor—Right of proof. 4.

See BANKRUPTCY—Proof. 11.

Sale of Goods.

1. — Contract induced by fraud of purchaser — Vendor's right to disaffirm contract — Disaffirmance after receiving order against purchaser — Title of trustee in bankruptcy — Mutual dealings — Set-off — Damages for fraud — Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), ss. 38, 43, 44.

A sale of goods upon credit was induced by the fraud of the purchaser, who upon obtaining them pledged them with a pawnbroker. After the purchaser had paid part of the price a receiving order in bankruptcy was made against him. The vendor then discovered the fraud and disaffirmed the contract, retaking possession of the goods upon payment to the pawnbroker of the sum advanced upon them. The purchaser having been adjudicated bankrupt, his trustee in bankruptcy brought an action against the vendor, claiming (1.) to recover the goods or their value after giving credit for the sum paid to the pawnbroker to redeem them ; or (2.) in the alternative to recover the amount paid to the vendor on account of the purchase price :—

Held, (1.) upon the authority of *In re Eastgate, Ex parte Ward*, [1905] 1 K. B. 465, that the trustee acquired the property in the goods subject to the right of the vendor to disaffirm the contract of sale and to retake possession of the goods ; that the vendor had a right to disaffirm the contract after the date of the receiving order ; and that therefore the trustee was not entitled to recover the goods or their value ; and (2.) upon the authority of *Jack v. Kipping*, (1882) 9 Q. B. D. 113, that the vendor was entitled, under s. 38 of the Bankruptcy Act, 1883, to set off the damages caused by the fraud of the bankrupt, in this case the sum paid to the pawnbroker to redeem the goods, against the amount paid on account of the purchase price. *TILLEY v. BOWMAN, LD.*

Hamilton J. [1910] 1 K. B. 745

BANKRUPTCY—continued.**Scotch Bankruptcy.**

1. -- *Abscinding bankrupt — Warrant for arrest—Executing warrant in England—Bankruptcy (Scotland) Act, 1856 (19 & 20 Vict. c. 79), s. 89—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 117.*

On June 9, 1903, the estates of Thomas Dobson were sequestered at Edinburgh in terms of the Bankruptcy (Scotland) Act, 1856, and James Craig was duly appointed trustee of the said estates. Thomas Dobson failed to appear at Edinburgh for his public examination on July 8 and absconded from Scotland, and on July 29 a warrant was granted by the Lord Ordinary for the arrest of Thomas Dobson in any part of Great Britain or Ireland, other than Scotland, pursuant to s. 89 of the Bankruptcy (Scotland) Act, 1856, which enacts: "If the bankrupt be in any part of Great Britain and Ireland, other than Scotland, the Lord Ordinary may, on petition by the trustee, grant warrant to all judges, magistrates, justices of the peace, and officers of the law, to apprehend and transmit him to the place of his examination, and to enforce the same, which they are hereby required to do . . . and such warrant shall be a sufficient authority for the apprehension, transmission, detention, and imprisonment of the bankrupt." The trustee, having ascertained that Dobson was in London, transmitted the warrant to the Scotland Yard authorities, and requested them to execute it; but they declined, and alleged that there was a police regulation which prevented their doing so. The trustee now applied ex parte to the English Bankruptcy Court under s. 117 of the Bankruptcy Act, 1883, for assistance in the matter.

Wright J.: I express no opinion on the police regulation. I will make an order for the arrest of the bankrupt, which will be issued to the proper officer of the Court. *In re DOBSON. Ex parte CRAIG* Wright J. [1903] W. N. 155

Secured Creditors.

1. — *Adjudication—Secured creditors—Separate securities—Proof—Lumping debts and securities—Aggregate assessed value—Shares in ships—Vendor's lien—Admission of proof—Redemption of one of the securities—Life policies—Payment of premiums from date of receiving order—Salvage—Interest.*

P. was adjudicated bankrupt in Aug., 1899. B. K. & Co., who had various debts and various securities, sent in their proof as secured creditors, lumping together their debts and securities and claiming to prove for the balance. The securities consisted of (1.) a vendor's lien on ship shares, and (2.) a mortgage of policies, a debt, and freeholds. The trustee asked for details of value, and (1.) was assessed at 1325*l.*, and the property in (2.) at 2481*l.*, making in the aggregate 3806*l.* The trustee, however, did not object to the proof being made for a lump sum, nor did he require the separate values of the securities to be assessed in the proof, but he admitted the proof to rank for the amount claimed less 3806*l.*, the aggregate assessed value of the securities. Subsequently a scheme for a

BANKRUPTCY (Secured Creditors) — continued.

composition was approved, and on payment of the composition the bankruptcy was annulled and the outstanding estate of P. was ordered to revert in him. A subsequent incumbrancer on the freeholds included in mortgage (2.) having claimed to redeem, B. K. & Co. contended that redemption could now only be obtained on payment of the full sum of 3806*l.* :—

Held (reversing the decision of Warrington J.), that the trustee in bankruptcy could not, by accepting the securities as worth the aggregate sum assessed, confer upon the secured creditor any part of the bankrupt's property to which the secured creditor was not entitled, or compel a mortgagee to put a separate value on two different properties included in the same security, and that mortgage (2.) could be redeemed for 2481*l.* after allowing for what had already been received by the mortgagees on this security. *Pearce v. Bullard King & Co.*, [1908] 1 Ch. 780, overruled on this point.

But *held*, also, that B. K. & Co. were entitled to be repaid all premiums paid by them on the life policies from the date of the receiving order with interest from the same date. *In re PEARCE'S TRUSTS* - C. A. [1909] W. N. 116; [1909] 2 Ch. 492

— Bank loan—Letter of lien on goods—Bill of sale.

See BANKRUPTCY—Traders. 1.

— Garnishee order—Application of law in bankruptcy.

See COMPANY—WINDING-UP—Secured Creditor. 1.

2. — *Petitioning creditor's debt — Secured creditor — Estimate of security — Undervalue—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 6, sub-s. 2; s. 7, sub-s. 3.*

Where a secured creditor presents a petition in bankruptcy and gives an estimate of his security, if the estimate is a genuine estimate the Court will not inquire into its correctness or otherwise, although the result of the inquiry might be to show that the balance of the debt after deducting the value of the security was not sufficient to support the petition, and when the petitioning creditor comes in to prove in the bankruptcy, in the absence of evidence of mistake as to value he will not be allowed to depart from his estimate.

Whether he may amend his estimate upon proof of mistake, *quære*.

Ex parte Taylor, In re Lacey, (1884) 13 Q. B. D. 128, and *In re Vautin, Ex parte Saffery*, [1899] 2 Q. B. 549, discussed. *In re BURTON. Ex parte Voss* - C. A. [1905] W. N. 24; [1905] 1 K. B. 602

3. — *Post-nuptial settlement — Power of revocation with consent of trustees—Partial revocation in order to pay debts on condition of further property being settled—Resettlement—Voluntary settlement—"Purchasers for value"—Bankruptcy of settlor—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 47.*

In 1899 A. by a post-nuptial deed settled property upon trust for himself for life and, after his death, upon trusts for his widow and children

BANKRUPTCY (Secured Creditors)—continued.

(if any) with an ultimate trust, in default of issue, for his next of kin. The deed contained a power of revocation with the consent of the trustees, which they had an absolute discretion to give or to withhold. In 1902 A. applied to the trustees to consent to a partial revocation of the settlement in order to raise 1600*l.* out of the settled funds to pay pressing liabilities; but they refused except upon the express condition that he brought into settlement his life interest under the deed of 1899, and also a reversionary interest to which he had since become entitled. A. agreed to this, and, in consideration of the consent and of the 1600*l.*, he, in Dec., 1902, by deed assigned to the trustees his life interest under the deed of 1899 and the reversionary interest upon trusts which gave them during his life an absolute discretion to apply the income for benefit of A. or of his wife or children, and, subject thereto, upon similar trusts for his wife and children and next of kin, as in the deed of 1899, with a like power of revocation. In Sept., 1903, A. was adjudicated bankrupt in respect of debts incurred in that year, and the trustees refused to consent to any revocation of the deed of Dec., 1902:—

Held, that the trustees were not "purchasers for value" within the meaning of s. 47 of the Bankruptcy Act, 1883; and that, therefore, the deed of Dec., 1902, was a voluntary settlement and void against A.'s trustee in bankruptcy to the extent necessary to pay the debts in the bankruptcy. *In re PARRY. Ex parte SALAMAN*
Wright J. [1903] W. N. 206;
[1904] 1 K. B. 129

— Power of appointment, Limited—Bankruptcy of donee of power—Incapacity of trustee in bankruptcy to release the power.
See POWER OF APPOINTMENT. 1.

— Proof.

See under **BANKRUPTCY—Proof.**

1. — *Property of bankruptcy—Secured creditor—Administration action—Order for payment into court of debt due by defendant to testatrix—Non-compliance—Sequestration against defendant—Payment of money into court to "account of sequestrators"—Bankruptcy of defendant—Title of trustee—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), ss. 9, 45.*

The issue of a writ of sequestration to enforce an order for the payment of a debt into court, coupled with the receipt of money of the debtor by the sequestrator, does not of itself make the creditor a secured creditor within the meaning of the Bankruptcy Act, 1883.

An executor, who at the date of the death of his testatrix was indebted to her, was made deft. to an action in the Chancery Division brought by his co-executors for the administration of her estate. On the further consideration of the action an order was made that the deft. should pay into court to the credit of the action the amount which had been found due from him. He failed to obey the order, and on the application of the plts. a writ of sequestration was issued against him. The order was served upon a bank with which he had an account, and an order was afterwards made directing the bank to pay into

BANKRUPTCY (Secured Creditors)—continued.

court to the credit of the action, "the sequestrator's account," the balance standing in their books to the credit of the deft. This payment was accordingly made on Aug. 6, and the same day a receiving order in bankruptcy was made against the deft. upon a creditor's petition presented on the previous July 13. He was afterwards adjudicated a bankrupt:—

Held, that the plts. did not by virtue of the sequestration, or by the subsequent payment into court, become secured creditors of the bankrupt, but that the money in court had passed to the trustee as part of the property of the bankrupt divisible among his creditors.

Decision of Wright J., [1903] W. N. 58, affirmed.

In re Hastings, (1892) 9 Morr. 234, approved and followed.

Per Romer L.J.: The effect and operation of a sequestration explained.

Seem, that if an order had been made that the balance of the fund, after payment of the sequestrator's costs, should be carried to the general credit of the action, the plts. would have been in the position of secured creditors of the bankrupt. *In re H. E. POLLARD. Ex parte S. R. POLLARD*

C. A. [1903] W. N. 87; [1903] 2 K. B. 41

— Receiving order against contractor—Subsequent order by engineer for direct payment to firms—Title of trustee.

See **BANKRUPTCY—Contracts. 1.**

3. — *Settlement of settlor's own property—Limitation to settlor for life determinable on bankruptcy—Validity.*

By a settlement made in 1893 the settlor assigned property to trustees on trust to pay to him the annual income until he was declared bankrupt; thereafter his rights were to cease, and the trustees were to have power to apply at their discretion the income or any part thereof for his personal maintenance and support, and were to apply the residue for the benefit of his children, if any, or to accumulate it and add it to the corpus, which was ultimately to go to his relatives. In 1900 the settlor was adjudicated bankrupt, and the trustee in bankruptcy applied to set aside the settlement, and it was set aside so far as was necessary to pay the bankrupt's debts provable in the bankruptcy. The trustees of the settlement by consent raised a sufficient sum to pay the bankrupt's debts in full and the costs, but the bankruptcy was not annulled. In 1902 the settlor was adjudicated bankrupt for the second time, and the trustee in that bankruptcy applied again to set aside the settlement, but was refused on the ground that at the time of making the settlement the bankrupt was in a position to pay his debts without the aid of the settled property. The trustee in bankruptcy then applied for a declaration that the bankrupt's life estate under the settlement vested in the trustee in bankruptcy. Throughout these transactions the bankrupt was unmarried:—

Held, that the first bankruptcy had operated under that settlement as a forfeiture of the settlor's life estate, and that it did not, therefore, vest in the trustee of the second bankruptcy.

BANKRUPTCY (Secured Creditors)—continued.

In re JOHNSON JOHNSON. *Ex parte* MATTHEWS AND WILKINSON v. JOHNSON JOHNSON AND DIBB - - - Div. Ct. [1904] 1 K. B. 134

Set-off.

— Bankruptcy—Sale of goods—Mutual dealings—Title of trustee in bankruptcy.

See **BANKRUPTCY—Sale of Goods. 1.**

— Costs part of petitioning creditor's debts—Petition dismissed.

See **BANKRUPTCY—Costs. 1.**

1. — *Debtor and creditor—Mutual debts or dealings—Contract by debtor to sell houses—Specific performance—Set-off of debt against purchase-money—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), ss. 37, 38.*

By two contracts dated respectively June 18 and July 2, 1908, the debtor agreed to sell for 880*l.* four houses which were subject to a mortgage for 600*l.* The debtor was indebted to the purchaser in the sum of 257*l.* for work done by the purchaser to certain houses, including those agreed to be sold. On July 11, 1908, the purchaser heard for the first time that the debtor had committed an act of bankruptcy on the previous June 30. On Oct. 12, 1908, a receiving order was made against the debtor in a county court, and adjudication followed. The purchaser, having accepted the title and entered into possession, applied to the county court judge, against the trustee in bankruptcy, for specific performance of the two contracts and for a declaration that he was entitled to set off the 257*l.* due to him from the debtor against the balance of the purchase-money due from him to the debtor after deducting the amount due on the mortgage. The county court judge held that the purchaser was only entitled to specific performance on payment of the balance of the purchase-money in full to the trustee :—

Held by the Div. Ct. and the C. A. (Fletcher Moulton L.J. dissenting), that there had been mutual dealings between the debtor and the purchaser within the meaning of s. 38 of the Bankruptcy Act, 1883, and that the purchaser was therefore entitled to specific performance upon the terms that the 257*l.* due to him from the debtor be set off against the balance of the purchase-money. *In re* TAYLOR. *Ex parte* NORVELL - C. A. [1910] W. N. 26; [1910] 1 K. B. 562

2. — *Husband and wife—Gift of money by bankrupt to wife—Gift void as voluntary settlement—Claim by trustee in bankruptcy—Debt due from bankrupt to wife—Right of wife to set off—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), ss. 38, 47.*

A payment of 250*l.* by a bankrupt to his wife before bankruptcy was declared void against the trustee in bankruptcy as a voluntary settlement. At the date of the bankruptcy a debt of 250*l.* was due from the bankrupt to his wife. In an action by the trustee to recover the sum of 250*l.* from the wife, she claimed to set off the debt of 250*l.* due to her from the bankrupt :—

Held (Fletcher Moulton L.J. dissenting),

BANKRUPTCY (Set-off)—continued.

that the 250*l.* claimed in respect of the voluntary settlement was not a debt due to the bankrupt from his wife, and that there was, therefore, no right of set-off under s. 38 of the Bankruptcy Act, 1883. *LISTER v. HOOSON* - C. A. [1907] W. N. 250; [1908] 1 K. B. 174

3. — *Judgment summons by married woman—Judgment debtor a creditor—Costs in bankruptcy—Set-off—Debtors Act, 1869 (32 & 33 Vict. c. 62), s. 5.*

A creditor of a married woman obtained judgment against her separate estate in respect of a debt of over 50*l.* incurred by her whilst trading. Shortly before the date of the judgment she sold her business. He presented a bankruptcy petition against her based on his judgment debt, but the petition was dismissed with costs, as the evidence failed to establish the act of bankruptcy alleged. She then obtained an order in the Bankruptcy Court for payment by him of her taxed costs of the petition, which he did not comply with. Thereupon she took out a judgment summons against him under s. 5 of the Debtors Act, 1869, for not complying with the order. He had means to pay :—

Held, that the Court had no jurisdiction to set off his judgment debt against her taxed costs of the petition. *In re* DRUMMOND. *Ex parte* ASHMORE Phillimore J. [1909] W. N. 171; [1909] 2 K. B. 622

— “Mutual dealings”—Insolvent estate—Unsecured debts—Mortgages by testator. See **ADMINISTRATION. 16.**

4. — *Mutual dealings—Set-off—Company—Debenture stock—Claim to set off debenture stock against petitioning creditor's debt—Equitable execution—Receiver of debtor's interest in debenture stock—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 7, sub-s. 3; s. 38.*

Moneys which under a bankruptcy become payable to the trustee by the petitioning creditor because they were payable to the debtor come *prima facie* within the mutual credits section (s. 38), but not if they are moneys which upon bankruptcy become payable to the trustee in his right as trustee, and not by virtue of their being payable to the debtor.

In Oct., 1908, a debtor holding debenture stock in the petitioning creditor co. claimed to be entitled to set this off against the petitioning creditor's debt. In Nov. following, but before the bankruptcy petition was disposed of, a receiver was appointed on behalf of another creditor of the debtor's interest in the debenture stock :—

Held (reversing the decision of the registrar in bankruptcy), that an essential change was effected by the appointment of the receiver; thenceforward there were no mutual credits between the petitioning creditor and the debtor, and though the effect of an adjudication in bankruptcy would be to defeat the title of the receiver and give a title to the trustee, that would not suffice to bring s. 38 into force, and consequently that the petitioning creditor was entitled to a receiving order.

In Pollitt, Ex parte Minor, [1893] 1

BANKRUPTCY (Set-off)—continued.

Q. B. 455, applied. *In re A Debtor. Ex parte Peak Hill Goldfield, Ltd.*

C. A. [1909] W. N. 5; [1909] 1 K. B. 430

— Mutual dealings—Trespass—Seizure of goods under credit agreement—Set-off.
See BILL OF SALE.

Settlement.

1. — *Marriage settlement—Covenant by husband to settle after-acquired furniture—Furniture afterwards bought and used at family residence—Bankruptcy of husband—Title of trustee in bankruptcy—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 47, sub-s. 2.*

The debtor by his marriage settlement settled the furniture in his private residence upon trust in the first instance for the use and enjoyment of his wife during her life and covenanted that any furniture afterwards acquired by him during the life of his wife should form part of the settlement. The debtor and his wife, after many changes of residence, ultimately moved into a large house where they lived together until the debtor's bankruptcy, and the debtor purchased a large amount of additional furniture for this house. There was no formal delivery of the additional furniture to the trustee of the settlement, but he occasionally visited the debtor and his wife and saw the furniture. After a receiving order had been made against the debtor he removed all the furniture at the family residence to a warehouse. The trustee in the bankruptcy claimed the after-acquired furniture on the ground that it had not been "actually transferred" to the trustee of the settlement pursuant to the covenant as required by s. 47, sub-s. 2, of the Bankruptcy Act, 1883:—

Held that, in view of the fact that the furniture had been used by the wife in accordance with the trusts of the settlement, no formal transfer to the trustee of the settlement was necessary, but that in the eye of the law there had been an actual transfer made in pursuance of the covenant by the debtor to the trustee of the settlement and by the trustee of the settlement back to the wife, and that the claim of the trustee in the bankruptcy failed. Dictum of Wright J. as to "actually transferred" in *In re Reis*, [1904] 1 K. B. 451, at p. 456, overruled.

Decision of Phillimore J., [1910] W. N. 190, affirmed. *In re Magnus. Ex parte Salaman*
C. A. [1910] W. N. 205; [1910] 2 K. B. 1049

2. — *Post-nuptial settlement—Purchaser for valuable consideration—Refraining from divorce proceedings—“Purchaser”—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 47.*

In order to constitute a person a "purchaser" for valuable consideration within the exception mentioned in s. 47 of the Bankruptcy Act, 1883, it is not necessary that either money or physical property should be given; the release of a right, or the compromise of a claim, may be sufficient to constitute a person a "purchaser" within the meaning of that section.

A post-nuptial settlement of his own property executed by a bankrupt within two years of his bankruptcy in favour of his wife and children, in consideration of the wife refraining from

BANKRUPTCY (Settlement)—continued.

taking proceedings against him in the Divorce Court:—

Held by Cozens-Hardy M.R. and Fletcher Moulton L.J. (Buckley L.J. dissenting) to be within the exception mentioned in s. 47 and valid against the trustee in bankruptcy. *In re Pope. Ex parte Dicksee*

C. A. [1908] W. N. 105; [1908] 2 K. B. 169

Shares.

— Fraud on bankruptcy law—Compulsory transfer at specified price in event of shareholder's bankruptcy.

See COMPANY—Shares. 3.

Sheriff.

— Administration order made under Bankruptcy Act, 1883 — Death of judgment debtor before seizure by sheriff.

See SHERIFF. 2.

— Bankruptcy of execution creditor—Title to money received by execution debtor after entrance of sheriff into possession.

See SHERIFF. 4.

— "Execution for a sum exceeding 20l."—Contingent expenses.

See SHERIFF. 5.

Small Bankruptcy.

— Costs—Taxation.

See BANKRUPTCY—Costs. 10.

Solicitor.

— Solicitor's lien — Bankruptcy of country solicitor.

See SOLICITOR—Lien. 3.

Stock Exchange.

— Broker, Default of—Liquidation under Stock Exchange Rules — Right of Stock Exchange creditor to petition in bankruptcy.

See STOCK EXCHANGE. 3.

1. — *Default on Stock Exchange—Act of bankruptcy—Mortgage—Deposit of securities—Redemption—Tender of amount due on mortgage—Notice of act of bankruptcy—Secured creditor—Title of trustee in bankruptcy—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 9, sub-s. 2; ss. 43, 49.*

A secured creditor is not entitled to receive payment of his debt from his debtor and to hand over the securities after notice of an act of bankruptcy on the part of the debtor; this is not a limitation of the secured creditor's rights and powers to deal with his securities in any way in which he is entitled to deal with them by virtue of his contract with the debtor, but is only the consequence of the debtor having incapacitated himself from tendering the money.

Decision of Buckley J., [1906] W. N. 121, reversed.

In re Lawford & Lawrence, [1902] 2 K. B. 445, overruled.

See BANKRUPTCY—Trustee. 7.

Course to be adopted by the Court, in the event of the debtor attempting to enforce his

BANKRUPTCY (Stock Exchange)—continued.

rights by action, or in the event of its aid being invoked to render effective the obligations of third parties towards the debtor or his estate, discussed and stated.

Seemle, in any event the secured creditor is entitled to his costs of action as well as to interest on the amount due until actual repayment. *PONSFORD, BAKER & CO. v. UNION OF LONDON AND SMITH'S BANK, LD.* - C. A. [1906]

W. N. 182; [1906] 2 Ch. 444

Third Parties.

— Bankruptcy notice—Receiving order—Bill of exchange—Conditional payment—Dis-honoured bill—Bill outstanding in third party.

See **BANKRUPTCY—Notice. 3.**

1. — *Composition — Dissident creditors — Payment by third person of assenting creditors — Notice of act of bankruptcy — Ignorance of law — Duty of trustee — Mortgages.*

The bankrupt having mortgaged two fishing boats to some fish salesmen to secure his current account with them, and having subsequently failed in his business, the mortgagees offered to pay his creditors a composition which nearly all the creditors agreed to accept, and, after having notice that the debtor had committed an act of bankruptcy, they paid this composition in good faith to the assenting creditors, believing that they were entitled under their mortgage to add the money so paid to their security. They then sold the fishing boats, and claimed to retain the balance of the proceeds of sale, after paying themselves the amount due on their mortgage at the date of the act of bankruptcy, on account of the composition paid to the creditors. The official receiver applied that the balance might be paid over to him:—

Held, that the mere fact that the mortgagees were not familiar with the working of the bankruptcy law was not a ground for precluding the official receiver from insisting on his right to treat this balance as part of the debtor's estate, and that the money ought to be paid over to him.

Decision of the Div. Ct., [1906] W. N. 229, affirming the decision of the county court judge, reversed.

Ex parte James, (1874) L. R. 9 Ch. 609, distinguished. *In re HALL. Ex parte OFFICIAL RECEIVER* - C. A. [1907] W. N. 58; [1907] 1 K. B. 875

2. — *Mortgage of life policy — Voluntary payment of premiums by third party — Death of mortgagor — Repayment of premiums to volunteer out of policy money — Duty of trustee.*

The principle established by *Ex parte James*, (1874) L. R. 9 Ch. 609, that the Court of Chancery will not allow its officer, the trustee in bankruptcy, to retain moneys for distribution amongst the creditors, where it would be contrary to fair dealing to do so, is not confined to the case of money paid under a mistake of law, but is of general application.

The bankrupt, having assigned a policy on his own life by way of mortgage to his bankers,

BANKRUPTCY (Third Parties)—continued.

requested his wife on the eve of his bankruptcy to pay the premiums and interest for him, and then, after paying one premium before the commencement of the bankruptcy, paid the premiums and interest during his bankruptcy until his death, when the policy moneys were received by the mortgagees, who retained thereout the amount due to them on their mortgage and paid the balance to the official receiver. The wife claimed to be repaid out of the balance the sums she had paid for premiums and interest. The official receiver had no previous knowledge that the wife had been making these payments, but it subsequently appeared that this fact had been disclosed by the bankrupt in his preliminary examination taken before a former official receiver. The official receiver moved for a declaration that he was entitled to retain the balance of the policy moneys as part of the bankrupt's estate:—

Held, even assuming that all the payments were made during the bankruptcy, that the Court ought not to allow the official receiver, having regard to the knowledge of his predecessor, to retain the policy moneys without repaying to the wife the sums she had paid for premium and interest.

The decision of Bigham J., [1906] 2 K. B. 202, affirmed.

The principle of *Ex parte James*, L. R. 9 Ch. 609, applied. *In re TYLER. Ex parte OFFICIAL RECEIVER* - C. A. [1907] W. N. 52; [1907] 1 K. B. 865

Traders.

1. — *Bank loan to purchase goods—Letter of lien on goods—Construction—"Transfer of goods in the ordinary course of business"—"Documents used in the ordinary course of business as proof of the possession or control of goods"—Secured creditors—Bill of sale—Attornment—Reputed ownership—Order and disposition—Bills of Sale Act, 1878 (41 & 42 Vict. c. 31), s. 4—Bills of Sale Act, 1890 (53 & 54 Vict. c. 53)—Bills of Sale Act, 1891 (54 & 55 Vict. c. 35)—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 44.*

Bankers from time to time made advances to traders to enable them to purchase goods for shipment to the East. The course of business was for the traders to send the goods to bleachers to be bleached, and afterwards they were returned to the traders or sent to packers to be packed for shipment; and on the occasion of each advance the traders sent the bank a letter of lien accompanied by the bleachers' receipts for the goods. The letter was a printed form and (omitting formal parts and so far as material) was in these terms: "We beg to advise having drawn a cheque on you for £—, which amount please place to the debit of our loan account, as a loan on the security of goods in course of preparation for shipment to the East. As security for this advance we hold on your account and under lien to you the under-mentioned goods in the hands of [here followed list of goods and names of bleachers] as per their receipt inclosed. These goods when ready will be shipped to Calcutta, and the bills of lading, duly indorsed, will be handed to you, and we then undertake to repay

BANKRUPTCY (Traders)—continued.

the above advance . . .” On the bankruptcy of the traders :—

Held by the C. A. (Vaughan Williams, Stirling, and Cozens-Hardy L.J.J.), that the letters of lien were not void as being bills of sale not in the prescribed form and unregistered under the Bills of Sale Acts, but were (Stirling L.J. doubting) “documents used in the ordinary course of business as proof of the possession or control of goods,” within the exceptions in s. 4 of the Bills of Sale Act, 1878.

Held, also, that the case was not affected by either of the Bills of Sale Acts, 1890 and 1891.

A few days before the commencement of the bankruptcy the bank gave notice to the bleachers whose receipts they held, claiming all the goods specified in such receipts, and on the same day also gave notice to the traders claiming the goods held by bleachers against which the bank had outstanding advances made to the traders. Bleachers holding for the traders goods not covered by any letters of lien then, at the request of the traders, attorned to the bank before the commencement of the bankruptcy, except in one case in which the attornment was made subsequently :—

Held by the C. A., that none of the goods either specified in the receipts or in respect of which attornment had been made before the commencement of the bankruptcy were, “at the commencement of the bankruptcy, in the possession, order, or disposition of the bankrupts” as “the reputed owners thereof” within the meaning of s. 44 of the Bankruptcy Act, 1883; but without prejudice to the question whether the dealings before the bankruptcy with the goods not covered by any letters of lien could be impeached on the ground of fraudulent preference.

Ex parte North Western Bank, In re Slee, (1872) L. R. 15 Eq. 69, and *Merchant Banking Company of London, Ltd. v. Spotten*, (1877) Ir. Rep. 11 Eq. 586, considered.

Decision of Bigham J., sub nom. *In re Young, Hamilton & Co. Ex parte Carter*, [1905] W. N. 95; [1905] 2 K. B. 381, affirmed.

Whether the letters of lien were “transfers of goods in the ordinary course of a trade or calling” within the exceptions in s. 4 of the Bills of Sale Act, 1878, *quære*. *In re HAMILTON YOUNG & Co. Ex parte CARTER - C. A.* [1905] W. N. 145; [1905] 2 K. B. 772

— Bankruptcy of trader—Agreement for ledger account with a trader.

See BILL OF SALE. 1.

Trustee.**(Trustee in Bankruptcy.)**

— Administration action—Order on executor to pay money into court—Non-compliance—Writ of sequestration—Payment into court under sequestration—Bankruptcy of executor—Equitable execution—Completed execution—Title of trustee in bankruptcy.

See BANKRUPTCY—Secured Creditors.

4.

BANKRUPTCY (Trustee)—continued.

— After-acquired property.

See under BANKRUPTCY—Undischarged Bankrupt.

— Attachment of debt—Scotch judgment—Extension to England.

See ATTACHMENT. 4.

1. — *Bond—Fidelity bond—Surety—Default of trustee—Penal interest—Liability of surety—Unpaid remuneration of trustee—Set-off—Disbursements—Bankruptcy Act, 1883* (46 & 47 Vict. c. 52), s. 74, sub-s. 6.

A trustee in bankruptcy and his surety entered into a bond with the Board of Trade in the sum of 500*l.* (afterwards reduced to 100*l.*) for the due performance by the trustee of his duties as trustee, subject to a condition avoiding the bond if the trustee should “well and sufficiently perform and execute all and singular the duties required of him as trustee by the Bankruptcy Acts, 1883 and 1890,” or if he should fail therein and the surety should “make good any loss or damage occasioned by any such default to the estate of the said bankrupt.” The trustee improperly retained for some years a sum of money exceeding 50*l.*, and, on his default being discovered, he was removed from his office, and, pursuant to s. 74, sub-s. 6, of the Bankruptcy Act, 1883, he was surcharged with interest at the rate of 20 per cent. per annum on the sum he had improperly retained. The trustee made good the sum he had improperly retained, but did not pay the interest with which he had been surcharged :—

Held, that the interest surcharged was in the nature of a penalty and was not a measure of the loss or damage to the estate occasioned by the default of the trustee, and that the surety was not liable under the terms of the bond to pay to the Board of Trade the penal interest or any part of it.

Decision of Phillimore J., [1910] 1 K. B. 401, reversed. *BOARD OF TRADE v. EMPLOYERS' LIABILITY ASSURANCE CORPORATION, LD.*

C. A. [1910] W. N. 161; [1910] 2 K. B. 649

See next Case.

2. — *Bond—Fidelity bond—Surety—Default of trustee—Liability of surety—Unpaid remuneration of trustee—Set-off—Disbursements.*

In this case the Div. Ct. was of opinion that the question must be decided in favour of the Board of Trade. “The single point is whether the debts, in making good the loss or damage occasioned by the default of the trustee in not sufficiently performing his duties, are entitled to deduct from the amount which he has not paid the amount which has not been paid to him, but which has been earned by him by way of remuneration. . . . The contract is, that whatever money is not properly accounted for by the trustee is to be made good by the guarantee society, and we are not to look to such things as the question of whether there is or is not any remuneration due, when that remuneration is declared to be forfeited and therefore is no longer due to the man who has made default.” *BOARD OF TRADE v. GUARANTEE SOCIETY* (June 10, 1896). *Div. Ct.* [1910] 1 K. B. 408, n.

BANKRUPTCY (Trustee)—continued.*Note.*

Followed on one point by Phillimore J., *Board of Trade v. Employers' Liability Assurance Corporation, Ltd.*, [1910] 1 K. B. 401. But Phillimore J.'s decision was reversed by G. A., [1910] 2 K. B. 649. See preceding Case.

3. — *Copyright—Author and publisher—Sale of copyright to publisher on royalties—Bankruptcy of publisher—Continuing contract—Trustee carrying on business—Whether royalties payable in full.*

An author sold the copyright of his book to a publisher upon the terms that the publisher should print and publish it and should pay him certain royalties upon the sales of the book. The publisher became bankrupt, and the trustee in bankruptcy carried on the bankrupt's business until he sold it as a going concern with all copyrights. During the time the trustee carried on the business sales of the book were effected, and the trustee received the proceeds of these sales. The author claimed to be paid in full the royalties on these sales:—

Held, that the transaction between the author and the publisher was analogous to that of a sale of goods at a price varying in amount and depending on certain events, and that the author was only entitled to prove in the bankruptcy for the damages sustained by breach of the contract. *In re GRANT RICHARDS. Ex parte WARWICK DEEPING*. — **Bigham J.** [1907] W. N. 79; [1907] 2 K. B. 33

— Capacity of trustee in bankruptcy to release power of appointment.

See POWER OF APPOINTMENT. 1.

— Disclaimer—Lease.

See BANKRUPTCY—Disclaimer. 4.

— Disclaimer—Onerous property of debtor.

See BANKRUPTCY—Disclaimer. 1.

— Disclaimer by trustee—Vesting order—Terms to be imposed on underlessee.

See BANKRUPTCY—Vesting Orders. 1.

4. — *Inns of Court—Bankruptcy of student—Caution money—Title of trustee.*

In Jan., 1899, M. Ahmed, an Indian subject, entered as a student at Gray's Inn, and on such entrance deposited with the society the sum of 50*l.* and executed the usual bond to observe all the orders of the society and to pay all such sums of money as should become due or owing by or from him to the society. The orders of the society provide (amongst other things) that no person who shall be admitted into any of the Inns of Court shall be called to the English Bar unless he shall, previous to his keeping any of the terms requisite for that purpose, have deposited with the treasurer of the society to which he belongs the sum of 50*l.*, to be returned without interest upon his being called to the Bar or quitting the society, or, in case of his death, to his personal representative; but this is not to excuse him from paying his duties regularly, nor from giving the usual bond upon admission; that no member shall be permitted to withdraw from the society except after petition to the Bench; that the sum of six guineas towards the library fund be paid by students for

BANKRUPTCY (Trustee)—continued.

the English Bar who shall relinquish their intention of being called to the Bar; that members who do not keep commons shall pay the sum of 5*s.* per term as absent commons; and that students be at liberty to compound for all charges in respect of absent commons by a payment of 12*l.*

In Nov., 1900, a receiving order was made against M. Ahmed on a creditor's petition. Adjudication followed, and the official receiver became the trustee in bankruptcy. The bankrupt returned to India, but had not ceased to be a member of the society. There were no assets other than the 50*l.* deposited with the society. The official receiver as trustee in bankruptcy claimed the 50*l.* subject to a deduction only in respect of fees or sums now actually due and payable to the society from the bankrupt. The society submitted that under the terms of the orders the 50*l.* must remain in their hands so long as the bankrupt remained a member of the society and continued to incur liabilities under the orders:—

Held, that the 50*l.* deposited by the bankrupt with the society was a cautionary fund, which they were entitled to retain so long as there was any possibility of a liability for sums due and to become due to them under the orders from the bankrupt. *In re AHMED. Ex parte OFFICIAL RECEIVER* **Wright J.** [1901] W. N. 106

5. — *Interpleader—Execution creditor—Property held on trust—Trustee for benefit of creditors—Right of indemnity out of trust estate—Lien passing to trustee in bankruptcy—Burden of proof—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 44.*

The trustee under a creditors' deed was empowered by the deed to carry on a business for the benefit of the creditors. In so doing he incurred debts, for which he was personally liable. Judgment having been obtained against him for one of these debts, goods which were assets of the business were taken in execution under that judgment. The trustee having become bankrupt, these goods were claimed by his trustee in bankruptcy, and an interpleader issue was directed to try the title to them. Upon the trial of the issue no evidence was given as to the state of the account as between the bankrupt and the trust estate under the creditors' deed, and whether or not the bankrupt was in default to the estate:—

Held, affirming the judgment of the Div. Ct., [1901] 1 K. B. 108, that the bankrupt being entitled to an indemnity out of the trust estate under the creditors' deed against liabilities incurred by him in carrying out the trusts of the deed, he had prima facie a right to a lien on the goods, which passed to his trustee in bankruptcy, and therefore the claimant was entitled to succeed on the issue as against the execution creditor, who had no right to have goods held by the execution debtor upon trust taken in execution. **JENNINGS v. MATHER. GRAY, CLAIMANT** **C. A.** [1901] W. N. 207; [1902] 1 K. B. 1

6. — *Investigation—Solicitor and client—Cush accounts—Draft bills of costs—Contentious business—Delivery of detailed bills waived—Stated*

BANKRUPTCY (Trustee)—continued.

and agreed accounts—Mortgage to secure agreed balance—Proof by solicitor—Trustee's right to go behind mortgage and settled account—Right to require particulars and vouchers—Judgment recovered—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), Sched. II., r. 22.

No judgment recovered against the bankrupt, no covenant for payment given by or on account stated with him, can deprive the trustee in bankruptcy of his right and duty to investigate the nature and grounds of the claim made against the bankrupt's estate: the trustee is therefore entitled to go behind these forms and to require satisfactory evidence that the debt on which the proof is founded is a real debt.

Decision of Bigham J., [1907] 1 K. B. 155 (by mistake there called *Ex parte Pattullo*), affirmed. *In re VAN LAUN. Ex parte CHATTERTON* - C. A. [1907] W. N. 73; [1907] 2 K. B. 23

Note.

See In re Ellis and Ellis, Neville J., [1908] W. N. 215. *Solicitor—Costs.*

— Leaseholds—Property held by the bankrupt as trustee for any other person Trustee in bankruptcy, Position of.
See LANDLORD AND TENANT. 47.

— Misappropriation by trustee—Evidence—Statement of affairs in bankruptcy—Admissibility.
See CRIMINAL LAW—Evidence. 2.

7. — *Pledge of chattels by debtors for loan repayable on a certain day—Redemption on the stipulated date—Delivery of chattels by pledgee with notice of act of bankruptcy—Fraud of debtors—Title of trustee in bankruptcy—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 49.*

On Sept. 14, 1900, A. & Co. pledged chattels with B. as security for a loan to be repaid on Oct. 26 following; and on Sept. 27 they pledged other chattels with B. as security for a further loan to be repaid on Nov. 11 following. On Oct. 26 B. delivered the chattels first pledged to C., who produced a written authority from A. & Co. as purchaser, and paid him off; and on Nov. 11 C. came again to B. with a written authority from A. & Co. as purchaser of the chattels under the second pledge, and by arrangement with B. extended the date of redemption to Jan. 11, 1901, when he paid off B. and took delivery of the chattels. B. acted in good faith, but when paid on Oct. 26 had notice of an available act of bankruptcy committed by A. & Co. on the previous Oct. 6; and when paid on Jan. 11 knew that a receiving order had been made against A. & Co. on Jan. 9. C. was in collusion with A. & Co., and was fraudulent in all that he did: he sold the chattels and disposed of the proceeds. The title of the trustee in bankruptcy related back to the act of bankruptcy committed on the previous Oct. 6, and he claimed from B. the value of the pledged chattels less the loans:—

Held, that B. was not liable, for that, although not protected by s. 49 of the Bankruptcy Act, 1883, he was bound by his contract to deliver up the chattels when tendered on the date of redemption the amount due to him. *In re*

BANKRUPTCY (Trustee)—continued.

LAWFORD & LAWRENCE. *Ex parte THE TRUSTEE* Wright J. [1902] W. N. 129; [1902] 2 K. B. 445

Note.

Overruled by C. A., *Ponsford, Baker & Co. v. Union of London and Smith's Bank, Ltd.*, [1906] 2 Ch. 444. *See Bankruptcy—Stock Exchange.* 1.

— Power of trustee to accept shares in company for debtor's interest—Compromise.
See BANKRUPTCY—Arrangement. 5.

— Release—Breach of trust—Compromise with one trustee—Right to prove in the bankruptcy of another trustee.
See TRUSTEE—Release. 1.

— Release—Capacity to release power -Bankruptcy of donee.
See POWER OF APPOINTMENT. 1.

8. — *Right of action—Property passing to trustee in bankruptcy—Action for trespass and conversion—Claim for personal annoyance—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), ss. 44, 54, 168.*

In an action for trespass and seizure of goods, the plt. alleged damage to the premises, damage to the goods, and personal annoyance to himself and family. It being admitted that no substantial damage was done to the premises or to the goods:—

Held, that upon the bankruptcy of the plt. the right of action did not pass to his trustee in bankruptcy. *ROSE v. BUCKETT*

C. A. [1901] W. N. 118; [1901] 2 K. B. 449

— Settlement, Marriage—Title of trustee in bankruptcy.
See BANKRUPTCY—Settlement. 1.

— Shareholder—Claim to lien under articles for bankrupt's liabilities to company—Trustee's right to registration.
See COMPANY—Shares. 3.

— Ship—Appropriation of goods to contract—Bankruptcy of manufacturer—Right of trustee.
See SALE OF GOODS. 1.

— Title of trustee—Receiving order against contractor—Subsequent order by engineer for direct payment to firms.
See BANKRUPTCY—Contracts. 1.

— Title of trustee in bankruptcy—Voluntary settlement—Evidence.
See FRAUDULENT CONVEYANCE. 3.

9. — “Trustee”—*Onerous property—Leaseholds—Disclaimer, Time for—“First appointment of trustee”—“Reditor's trustee—Official receiver as trustee—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 21, sub-ss. 1, 4, 6; s. 54, sub-s. 1; s. 55, sub-s. 1—Bankruptcy Act, 1890 (53 & 54 Vict. c. 71), s. 13.*

The words “after the first appointment of a trustee” in s. 55, sub-s. 1, of the Bankruptcy Act, 1883—which, as amended by s. 13 of the Bankruptcy Act, 1890, empowers “the trustee . . . at any time within twelve months after the first appointment of a trustee” to disclaim any onerous property of the bankrupt—refer to

BANKRUPTCY (Trustee)—continued.

an appointment of a trustee under s. 21, either by the creditors (sub-s. 1) or by the Board of Trade (sub-s. 6), and not to the official receiver's becoming, under s. 54, sub-s. 1, "the trustee" immediately upon adjudication and until such appointment. Therefore, the time for disclaimer by a trustee appointed under s. 21 runs from the date of the certificate of his appointment (sub-s. 4), and not from the date of the adjudication.

The official receiver, however, in becoming, under s. 54, sub-s. 1, "the trustee" immediately upon adjudication and until a trustee is appointed, may exercise the power of disclaimer given by s. 55, sub-s. 1, as amended, to "the trustee," though without being subject to the limitation of time for the exercise of that power; for this limitation runs, in terms, from a date which has no relation to the trusteeship of the official receiver, because he is never "appointed"; but, nevertheless, under sub-s. 4 of s. 55, he may be required by any person interested in the bankrupt's onerous property to decide whether he will disclaim or not.

In re Parker, (1885) 15 Q. B. D. 196, and *Turquand v. Board of Trade*, (1886) 11 App. Cas. 286, considered. *In re COHEN*

C. A. [1905] W. N. 138; [1905] 2 K. B. 704

10. — *Trustee in bankruptcy, Title of—Sale of goods—Fraud of debtor—Vendor's right to disaffirm sale and retake goods after notice of act of bankruptcy.*

Where a sale of goods is induced by the fraud of the purchaser, the vendor, on discovering the fraud, is entitled within a reasonable time to disaffirm the sale and retake possession of his goods, although he does so with notice of the act of bankruptcy on which the purchaser is subsequently adjudicated bankrupt; for in such a case the trustee in bankruptcy has no higher or better title than the bankrupt. *In re EASTGATE. Ex parte WARD* - Bigham J. [1905] W. N. 18; [1905] 1 K. B. 465

Note.

Followed by Hamilton J., *Tilley v. Bowman, Ltd.*, [1910] 1 K. B. 745. See *Bankruptcy—Sale of Goods*. 1.

11. — *Trustee's power to compromise claims—Sanction of committee of inspection—Opposition by bankrupt—Practice—Application to Court for directions—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 57, sub-s. 6; s. 89, sub-s. 3.*

A trustee in bankruptcy having, under sub-s. 6 of s. 57 of the Bankruptcy Act, 1883, ample power with the sanction of the committee of inspection to compromise all claims, the Court will not, as a general rule, on an application by the trustee under s. 89, sub-s. 3, of the Act for directions, express any opinion upon a proposed compromise, however complicated the matter may be, nor interfere in any way.

Where the trustee and committee of inspection propose to accept a compromise, it is for the party objecting to satisfy the Court that the proposed compromise is one which ought not to be entertained. *In re FILLING. Ex parte SATAMAN* - Bigham J. [1906] W. N. 160; [1906] 2 K. B. 644

BANKRUPTCY—continued.**Undertaking.**

1. — *Lunatic bankrupt—Solicitor's undertaking to refund money to bankrupt's estate—Death of bankrupt—Enforcing undertaking.*

In 1899 the debtor was found to be of unsound mind, and H. was appointed committee of his estate in lunacy. Shortly afterwards the debtor was adjudicated bankrupt, and H. was appointed trustee in the bankruptcy with a committee of inspection, of whom L. was one. One K. acted as solicitor for H. in the lunacy and in the bankruptcy and his bills of costs were taxed and paid. K. also carried in a proof in the bankruptcy under which he claimed 1200*l.* as extra remuneration for special services rendered by him. This claim was considered by H. and the committee of inspection and allowed by them at 1000*l.*, and paid in full. The bankrupt's estate realized sufficient to pay all the creditors in full, and there was a large surplus. Subsequently the official solicitor of the Supreme Court was appointed committee in the lunacy in the place of H. to investigate matters; and on Dec. 14, 1903, on a motion by the official solicitor, K. gave an undertaking to refund the 1000*l.* to the bankrupt's estate on or before Jan. 31, 1904. In the meantime, on Jan. 1, the bankrupt died, and his will made prior to his lunacy was proved by L., who was the sole executrix and residuary legatee. K. thereupon declined to pay the 1000*l.*, on the ground that under the circumstances the official solicitor was no longer in a position to enforce the undertaking, as the only person now entitled to the money was L., the executrix, who had acquiesced in its payment whilst a member of the committee of inspection, and was therefore estopped from requiring its repayment. L. did not admit K.'s allegations. The official solicitor now moved to enforce the undertaking:—

Held, that the official solicitor was without doubt entitled to enforce the undertaking notwithstanding the death of the bankrupt, and made a four-day order on K. to pay the 1000*l.* to the Inspector-General in Bankruptcy, for payment into the Bankruptcy Estates Account, and directed that the money should not be paid out to L. without notice to K. *In re AYTOUN. Ex parte THE OFFICIAL SOLICITOR*

Bucknill J. [1904] W. N. 56

Undischarged Bankrupt.

1. — *After-acquired property—Contract of employment made before bankruptcy—Breach of contract after bankruptcy—Right of bankrupt to sue—Intervention of trustee—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 44.*

An undischarged bankrupt, employed as traveller for a firm under a contract made before the commencement of the bankruptcy, can maintain an action against the firm for a wrongful dismissal occurring after the commencement of the bankruptcy, the trustee in bankruptcy not having intervened in the action.

Judgment of Phillimore J., [1902] 2 K. B. 397, affirmed. *BAILEY v. THURSTON & Co.*

C. A. [1902] W. N. 213; [1903] 1 K. B. 137

BANKRUPTCY (Undischarged Bankrupt) —
continued.

2. — *After-acquired property — Death of bankrupt intestate — Distribution amongst next of kin — Intervention of trustee in bankruptcy — Refunding to trustee by next of kin.*

An undischarged bankrupt effected policies on his life and died intestate and undischarged. The administrator of his estate, without notice of the bankruptcy, distributed the policy moneys amongst the bankrupt's next of kin before the trustee in bankruptcy intervened :—

Held, that the administrator was not personally liable to the trustee for the moneys he had distributed, but that the next of kin must refund to the trustee the shares they had respectively received.

The doctrine of *Herbert v. Sayer*, (1844) 5 Q. B. 965, and *Cohen v. Mitchell*, (1890) 25 Q. B. D. 262, applied.

In re Ball, [1899] 2 I. R. 313, distinguished.

The dictum of Byrne J. in *Hunt v. Fripp*, [1898] 1 Ch. 675, that a party, even with notice of the bankruptcy, may deal honestly and for value with the bankrupt before the trustee intervenes, approved. *In re BENNETT. Ex parte THE OFFICIAL RECEIVER*

Bigham J. [1906] W. N. 221 ;
[1907] 1 K. B. 149

3. — *After-acquired property — Property resting in trustee — Equitable interest in freeholds — Intervention of trustee — Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), ss. 44, 54.*

A freehold house was conveyed to S., who was in fact a trustee for P., an undischarged bankrupt, after his bankruptcy. A lease for ninety-nine years was expressed to be executed by S. to P. under the alias of R. P. then under the same alias executed a mortgage, by demise, of the leasehold interest to the defendant for 1750*l*. The money was paid to P., and the whole transaction was bona fide so far as the defendant was concerned. The trustee in bankruptcy had not intervened at the date of the mortgage. He now brought this action for a declaration that he was entitled to the freehold house free and discharged from the lease and the mortgage. It was alleged that the signature of S. to the lease was forged by P., and the Court held that it had not been proved to be the signature of S. The mortgage did not therefore pass any legal estate to the defendant, but it was contended that it gave a good charge upon the bankrupt's equitable interest in the freehold :—

Held that, in the present state of the authorities, the proposition laid down in *Cohen v. Mitchell*, (1890) 25 Q. B. D. 262, that "until the trustee intervenes, all transactions by a bankrupt after his bankruptcy, with any person dealing with him bona fide and for value, in respect of his after-acquired property, are valid against the trustee" must be considered not to apply to real estate, whether equitable or legal, but only to personal estate including leaseholds.

In re New Land Development Association and Gray, [1892] 2 Ch. 138, and *In re Clayton & Barclay's Contract*, [1895] 2 Ch. 212, discussed.

OFFICIAL RECEIVER (AS TRUSTEE OF PRES-
TON) v. COOKE

Neville J. [1906] W. N. 166 ;
[1906] 2 Ch. 661

BANKRUPTCY (Undischarged Bankrupt) —
continued.

4. — *After-acquired property — Purchase of real estate as partners — Sale to a company — Intervention of trustees in bankruptcy — Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), ss. 44, 54 — Partnership Act, 1890 (53 & 54 Vict. c. 39), s. 22.*

The principle of *Cohen v. Mitchell*, (1890) 25 Q. B. D. 262, applies to after-acquired real estate which undischarged bankrupts purchase as partners for partnership purposes and sell and convey to a bona fide purchaser for value before their respective trustees in bankruptcy intervene. *In re KENT COUNTY GAS LIGHT AND COKE Co., Ltd.*

Neville J. [1909] W. N. 128 ;
[1909] 2 Ch. 195

5. — *After-acquired property — Real estate — Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), ss. 44, 54.*

On Aug. 22, 1900, G. E. C. acquired certain freehold building land at Epsom in fee simple. At this date and throughout the transactions hereafter mentioned C. was an undischarged bankrupt, he having been adjudicated a bankrupt under the name of George Carter in 1891. On Oct. 5, 1900, C. mortgaged this land to M. to secure 280*l*. and interest thereon. On Dec. 18, 1900, C. conveyed the equity of redemption in the land to the plts. in consideration of the sum of 20*l*. The plts. thereupon entered into possession of the land and spent large sums in building houses thereon. On Dec. 20, 1900, the deft. took a transfer of the mortgage of Oct. 5. On Oct. 21, 1901, the deft. acquired from the senior official receiver, as trustee of the property of the bankrupt, all his interest in the land.

The plts., who at the time of their purchase had no notice of C.'s bankruptcy, brought this action for a declaration that they were entitled to the land, subject to the mortgage of Oct. 5, and for redemption of the mortgage. The deft. disputed the plts.' title, on the ground that the conveyance of Dec. 18 was inoperative to confer on the plts., as against the official receiver, any right or title to the equity of redemption.

Kekewich J. said that the plts. relied upon *Cohen v. Mitchell*, (1890) 25 Q. B. D. 262, in which it was laid down by the C. A. that where an undischarged bankrupt entered into transactions in respect of property acquired after the bankruptcy, then until the trustee in bankruptcy intervened all such transactions with any person dealing with the bankrupt bona fide and for value, and whether with or without knowledge of the bankruptcy, were valid against the trustee. But in *In re New Land Development Association and Gray*, [1892] 2 Ch. 138, it was held by Chitty J. that that principle did not apply to real estate, and, although upon the appeal of that case this point was not decided, the C. A. seemed to approve of the view of Chitty J. In *In re Clayton and Barclay's Contract*, [1895] 2 Ch. 212, Chitty J. adhered to his former opinion, and treated it as having met the approval of the Appeal Court, but held that the principle of *Cohen v. Mitchell* applied to leaseholds. In *re New Land Development Association and Gray* had since been followed by Farwell J. in *Bird v. Philpott*, [1900] 1 Ch. 822. In that state of the

BANKRUPTCY (Undischarged Bankrupt) — continued.

law he was bound to decide that the principle of *Cohen v. Mitchell* did not apply to freeholds. The result was unfortunate, since the plts., though they had paid the purchase-money in good faith and had spent money in developing the property, must nevertheless be evicted. LONDON AND COUNTY CONTRACTS, LD. v. TALLACK

Kekewich J. [1903] W. N. 8

6. — Offences — Undischarged bankrupt — Obtaining credit — Limit of punishment — Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 31 — Debtors Act, 1869 (32 & 33 Vict. c. 62), ss. 11, 13.

By the Bankruptcy Act, 1883, s. 31, "Where an undischarged bankrupt who has been adjudged bankrupt under this Act obtains credit to the extent of twenty pounds or upwards from any person, without informing such person that he is an undischarged bankrupt, he shall be guilty of a misdemeanour, and may be dealt with and punished as if he had been guilty of a misdemeanour under the Debtors Act, 1869, and the provisions of that Act shall apply to proceedings under this section."

Sect. 11 of the Debtors Act, 1869, declares certain offences committed by persons adjudged bankrupt to be misdemeanours punishable by a sentence not exceeding two years' imprisonment with or without hard labour. Sect. 13 declares that the offence of fraudulently obtaining credit and certain other offences shall be misdemeanours punishable with imprisonment not exceeding one year with or without hard labour :—

Held, that an offence under s. 31 of the Bankruptcy Act, 1883, was punishable with a maximum sentence of one year's imprisonment, with or without hard labour. **REX v. TURNER**

C. C. R. [1904] 1 K. B. 181

7. — Subsequent trading under another name — Mortgage — Second bankruptcy — Rights of trustees — Vesting order on motion — Practice — Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 35.

This was an application by Rushforth, acting for himself and the other mortgagees, claiming (1.) a declaration that, subject to the rights of the trustee in the first bankruptcy, he was first mortgagee of the hereditaments comprised in his mortgage; and (2.) that upon his paying to the trustee in the first bankruptcy in full the amount required to pay the balance of the bankrupt's debts and liabilities in the first bankruptcy with interest as provided by the Bankruptcy Act, 1883, and all the costs, charges, and expenses of the proceedings in the first bankruptcy, within twenty-one days from the date of the receipt of notice of the amount required for the purpose, the bankruptcy might be annulled and the said hereditaments might be vested in him.

Wright J.: Of course this is a hard case for the trustee in the second bankruptcy; but it is clear that the trustee in the first bankruptcy is entitled to the 113*l.* and to the equity of redemption in the mortgaged property. As between the applicant and the trustee in the first bankruptcy, the order asked for is right and should be made. The 113*l.* must be applied towards payment of the debts in the first bankruptcy.

BANKRUPTCY (Undischarged Bankrupt) — continued.

The order will be, that on the registrar being satisfied that all the debts of the bankrupt provable in the first bankruptcy and the costs and expenses of the trustee in the first bankruptcy are paid in full, including his costs of this motion, annul the first bankruptcy, and direct that the mortgaged property shall vest in the applicant subject to such other equity of redemption as may subsist therein. *In re ADIE. Ex parte RUSHFORTH*

Wright J. [1901] W. N. 98

Vesting Orders.

1. — Leasehold property of bankrupt — Mortgage by underlease — Disclaimer by trustee — Vesting order — Terms to be imposed on underlessee — Discretion of Court — Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 55, sub-ss. 1, 2, 6 — Bankruptcy Act, 1890 (53 & 54 Vict. c. 71), s. 13.

On Mar. 1, 1904, seven leases of seven houses, for the respective terms of ninety-nine years, were granted to lessees, who had erected the houses under a prior building agreement. Each lease reserved a small ground rent. None of the leases contained any restriction on the lessee's right to assign. On the same day the lessees mortgaged all the houses by way of underlease for the respective residues of the several terms, except the last day of each term, to secure the sum of 1864*l.*, with interest.

On Mar. 24, 1904, a bankruptcy petition was filed against the lessees, and on April 19, 1904, they were adjudicated bankrupts.

On Nov. 10, 1904, the trustee in the bankruptcy disclaimed all his interest in the seven leases. There had been no breach of any of the lessees' covenants in the leases :—

Held, that under the circumstances the Court ought to exercise its discretion, under s. 13 of the Bankruptcy Act, 1890, by making an order vesting the disclaimed property in the mortgagees, "subject only to the same liabilities and obligations as if the leases had been assigned to them at the date when the bankruptcy petition was filed."

If in such a case the exercise of the discretion in favour of the mortgagee will place him in no better position, and will place the lessor in no worse position, than if there had been no disclaimer, the discretion ought to be exercised in favour of the mortgagee. *In re CARTER & ELLIS. Ex parte SAVILL BROTHERS*

C. A. [1905] W. N. 46; [1905] 1 K. B. 735

2. — Liquidation by arrangement — Trustee in liquidation — Joint trustees — Surviving trustee — Close of liquidation — Transfer of assets to official receiver — Bankruptcy Act, 1869 (32 & 33 Vict. c. 71), s. 125 — Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), ss. 159, 160, 161 — Bankruptcy (Discharge and Closure) Act, 1887 (50 & 51 Vict. c. 66), s. 3, sub-s. 1.

Where two persons are appointed joint trustees in a liquidation by arrangement under s. 125 of the Bankruptcy Act, 1869, and one of them dies, the survivor continues to be trustee in the liquidation.

Sect. 3, sub-s. 1, of the Bankruptcy (Discharge and Closure) Act, 1887, does not apply to a

BANKRUPTCY (Vesting Orders)—continued.

liquidation by arrangement under the Bankruptcy Act, 1869, so as to close the liquidation and vest the property of the liquidating debtor in the official receiver. Decision of Div. Ct. sub nom. *Tomlins v. Latimer*, [1909] W. N. 39. reversed. *In re BARTON. TOMLINS v. LATIMER*

C. A. [1909] W. N. 176;
[1909] 2 K. B. 841

— Undischarged bankrupt—Subsequent trading under another name.

See **BANKRUPTCY — Undischarged Bankrupt.** 7.

Voluntary Settlement.

— Conveyance by settlor to himself as trustee.

See **STRAITS SETTLEMENTS.** 4.

— “Purchasers for value” — Bankruptcy of settlor.

See **SETTLEMENT.**

BANKRUPTCY NOTICE.

See under **BANKRUPTCY—Bankruptcy Notice.**

BARBADOS—Privy Council Appeals.

See under **PRIVY COUNCIL.**

BARGE—Collision—Barge swinging across fairway unattended and without light.

See **SHIPPING—Collision.** 7.

— Employers' liability — “Seaman” — Hand assisting to navigate barge on river.

See **MASTER AND SERVANT—Compensation.** 164.

— Thames navigation—Hauling barges out of dock—“Navigated.”

See **THAMES, RIVER.** 1.

BARONETAGE—Royal Warrant, Feb. 8, 1910, in regard to the Baronetage. 1910 (K.—Home Office). Price 1d.

BARRISTER.

See under **COUNSEL.**

BASTARDY—Affiliation order—Application by married woman living with husband at date of application—*Bastardy Laws Amendment Act*, 1872 (35 & 36 Vict. c. 65), s. 3.

A married woman, who at the date of the application is living with her husband, cannot obtain an order for the affiliation of her bastard child under the *Bastardy Laws Amendment Act*, 1872, s. 3. *JONES v. DAVIES* - Div. Ct. [1901] 1 K. B. 118

2. — Agreement by father to pay mother for maintenance of bastard child—Death of mother—Right of mother's administrator to sue on agreement.

By an agreement in writing the father of a bastard child agreed to pay to the mother a certain weekly sum until the child should attain a certain age, and in consideration of those payments the mother agreed not to apply to justices for a bastardy order and further agreed to maintain and bring up the child. On the death of the mother before the child had attained the stipulated age the father discontinued the payments. The administrator of the mother's

BASTARDY—continued.

estate brought an action against the father upon the agreement :—

Held, that the father's obligation came to an end with the mother's death and that the action would not lie. *JAMES v. MORGAN* - Div. Ct. [1909] W. N. 31; [1909] 1 K. B. 564

3. — *Bastardy order — Weekly payment — Death of putative father — Enforcement of order — Liability of father's estate — Bastardy Laws Amendment Act*, 1872 (35 & 36 Vict. c. 65), s. 4.

The liability of the putative father under a bastardy order is purely personal; and if the father dies the mother has no right to claim against his estate either arrears or future payments. *In re HARRINGTON. WILDER v. TURNER*

Warrington J. [1908] W. N. 203;
[1908] 2 Ch. 687

4. — *Jurisdiction of justices — Illegitimate child “chargeable” to parish — Cost of relief — Marriage of mother — Application by guardians against putative father, where husband able to maintain child — Poor Law Amendment Act*, 1834 (4 & 5 Will. 4, c. 76), s. 57—*Bastardy Laws Amendment Act*, 1873 (36 & 37 Vict. c. 9), s. 5.

Where an illegitimate child is being maintained by the guardians of a union or parish, justices have jurisdiction, upon the application of the guardians, to make an affiliation order against the putative father of the child under s. 5 of the *Bastardy Laws Amendment Act*, 1873, notwithstanding that the child's mother has married and her husband is able to maintain it. *PLYMOUTH GUARDIANS v. GIBBS*

Div. Ct. [1903] 1 K. B. 177

— Legitimacy.

See under **LEGITIMACY.**

— Res judicata—Affiliation proceedings—Paternity of child—Judgment of quarter sessions—Action for seduction.

See **ESTOPPEL.** 3.

BATH—Water supply — “Domestic purposes”

— School—Swimming bath.

See **WATER.** 16.

BATHING—Public right of—Foresore.

See **SEASHORE.** 3.

BATHS AND WASHHOUSES—Local government

— *Public baths — Letting for music and dancing — Taking money at the doors — Baths and Washhouses Act*, 1899 (62 & 63 Vict. c. 29), s. 2.

By the Baths and Washhouses Act, 1899, the commissioners appointed under the Baths and Washhouses Acts, 1846 to 1899, are empowered to let public swimming baths, when closed, for music or dancing, subject to licence by the county council, but the Act provides that no money for admission be taken at the doors. The defts., an urban district council, being commissioners under the Acts, obtained the requisite licence and let the baths in their district to persons who used them for entertainments comprising music, and at these entertainments money for admission was taken at pay-boxes placed on the defts.' land just outside the building. The hiring agreement between the defts.,

BATHS AND WASHHOUSES—*continued.*

and their lessees contained a condition that no money should be taken at the doors.

In an action by the Att.-Gen. for an injunction to restrain the defts. from taking or permitting to be taken money at the doors :—

Held that, there being no provisions in the Act making the commissioners responsible for the acts of their lessees, the Court would not compel the defts. to take proceedings against their lessees at the risk of a decision that what was done by them was not an unlawful evasion of the Act; and, the defts. not claiming the right to take money at the doors, or to authorize their lessees to do so, no injunction ought to be granted. *ATT.-GEN. v. WALTHAMSTOW URBAN DISTRICT COUNCIL* *Joyce J. [1910] W. N. 35; [1910] 1 Ch. 347*

BAZAARS—Exemption.

See Shop Hours Act, 1904 (4 Edw. 7, c. 31), s. 2 (4).

BECHUANALAND—Bechuanaland Protectorate—Laws of.

See under CAPE OF GOOD HOPE.

— Foreign jurisdiction.

See under FOREIGN JURISDICTION.

BED OF STREAM—Title to—Artificial channel

—Mill stream—Riparian proprietors—

Right to flow of water—Watercourse.

See STREAM. 3.

BEER—Fitness for consumption—Implied warranty—Breach—Damages.

See SALE OF GOODS. 2.

— Licensing Acts.

See under LICENSING ACTS.

— Liability of innocent vendor for beer contaminated with arsenic.

See ADULTERATION. 3.

BEERHOUSE.

See under BREWERY COMPANY.

LICENSING ACTS.

INN.

— Non-renewal of licence—Lease—Impossibility of performing covenant—Continuance of lease—Compensation.

See LANDLORD AND TENANT. 29.

— Licensing Acts.

See under LICENSING ACTS.

BEGGING—Juvenile.

See Prevention of Cruelty to Children Act, 1904 (4 Edw. 7, c. 15), s. 2.

BELGIUM—*R. S. C., Order XI, r. 8, to apply to Belgium.*

See under PRACTICE.

FUGITIVE CRIMINAL.] *Extradition—O. in C. directing that the Extradition Acts shall apply in the case of Belgium, and of the Supplementary Convention of March 5, 1907. St. R. & O. 1907, No. 544.*

BELGIUM—*continued.*

— Belgian law—Collision in river Scheldt—Compulsory pilotage—Liability of owner.

See SHIPPING—Pilotage. 1.

— Crime committed in Belgium—Prescriptive period for punishment—Extradition treaty between United Kingdom and Belgium of Oct. 29, 1901, arts. 9, 11—Belgian Penal Code, arts. 92, 96.

See EXTRADITION. 1.

— Foreign domicile—Administration—Grant to foreign administrators—Execution passed over.

See PROBATE—Foreign Domicil. 1.

BELLRINGING—Charitable bequest—Uncertainty—Overruling charitable intent.

See CHARITY. 2.

BELLS—Church bells—Illegality of use of.

See ECCLESIASTICAL LAW—Faculty. 11.

BENEFICE.

See under ECCLESIASTICAL LAW.

— Income tax—Incumbent of benefice—Easter offerings.

See REVENUE—Income Tax. 8.

— Incumbent of benefice—Perquisites or profits accruing by reason of office.

See REVENUE—Income Tax. 8.

BENEFIT SOCIETY.

See under FRIENDLY SOCIETY.

BERNE CONVENTION, 1887, arts. 2, 7, 9.

See COPYRIGHT—International. 1.

BERTH NOTE—Ship—Arbitration clause—“Dispute arising at loading ports”—Stay of proceedings.

See SHIPPING—Practice. 3.

BETTING—*Street Betting Act, 1906 (6 Edw. 7, c. 43), is an Act for the suppression of betting in streets and other public places.*

1. — *Criminal law—Betting—Evidence of user of premises—Receipt of money—Consideration—Betting Act, 1853 (16 & 17 Vict. c. 119), ss. 1, 3.*

The appellant, who was a bookmaker, was indicted at the Southampton Quarter Sessions for an offence under s. 3 of the Betting Act, 1853 (16 & 17 Vict. c. 119). Evidence was given on behalf of the prosecution to the following effect. In May, 1910, the police, for the purpose of entrapping the appellant, caused a letter to be written in the name of Ellison from Portsmouth to the appellant at Southampton, stating that the writer wished to open a deposit account with the appellant, and on hearing from him would forward 5*l.*, and that none of the writer's commissions would exceed that sum without a further remittance. The appellant answered, sending his book of rules and saying that “on receipt of yours, as suggested, I will place you on my list of clients.” Postal orders for 5*l.* were sent, and bets were made by the appellant on May 26 and 27. On June 1 the appellant's premises were raided,

BETTING—*continued.*

and account books shewing betting transactions and about 160 betting slips were found there.

The Court dismissed the appeal. *REX v. MORTIMER* C. C. A. [1910] W. N. 210

— Gaming.

See under GAMING.

2. — *Street betting—Ground used for the purpose of a racecourse—Street Betting Act, 1906* (6 *Edw.* 7, c. 43), s. 2.

The appellant was convicted of loitering in a certain field for the purpose of betting contrary to the provisions of s. 1 of the *Street Betting Act, 1906*. By s. 2 of that Act it is not to apply to any ground "used for the purpose of a racecourse for racing with horses or adjacent thereto on the days on which races take place." The appellant was a bookmaker, and was betting in a field which was being used on the occasion in question for the purpose of certain athletic sports and horse races. The programme of events at the sports consisted of a number of foot races and athletic competitions, and two horse races. The field was not permanently laid out or used as a racecourse for horse racing, but was adapted for use as such for the occasion.

The Court held that the field was not "used for the purpose of a racecourse" within the meaning of s. 2, and confirmed the conviction. Appeal dismissed. *STEAD v. AYKROYD* Div. Ct. [1910] W. N. 227

3. — *Street betting—Illegality—Gaming—House used for betting—Seizure in house by police of proceeds of street betting—Action to recover money—Street Betting Act, 1906* (6 *Edw.* 7, c. 43) — *Betting Act, 1853* (16 & 17 *Vict.* c. 119), ss. 11, 12—*Metropolitan Police Act, 1839* (2 & 3 *Vict.* c. 47), s. 48.

The plt. deposited in a house, which was occupied by a person employed by him, money which was the proceeds of street betting operations carried on by him. In pursuance of a warrant issued under the *Betting Act, 1853*, s. 11, the police entered the house, and seized therein a number of betting slips and the aforesaid money. The plt. and his above-mentioned employee were subsequently prosecuted for using the house as a gaming house. The plt.'s employee was convicted, but the plt. was acquitted of the charge. The Chief Commr. of the Metropolitan Police having refused to give up the aforesaid money, the plt. brought an action against him to recover the same. At the trial, the defence having been set up by the deft. that the money belonged, not to the plt., but to his above-mentioned employee, the plt. who was called as a witness, in rebutting that defence disclosed the fact that he had obtained the money by street betting. The learned judge at the trial found that the detention of the money was in the first instance lawful as being requisite for the purposes of the prosecution; and he held that the maxim "Ex turpi causa non oritur actio" applied, and that the plt. could not therefore recover :—

Held, reversing the decision of the learned judge, that, the plt.'s cause of action not being shewn to arise out of any illegal transaction, he

BETTING—*continued.*

was entitled to recover. *GORDON v. CHIEF COMMISSIONER OF METROPOLITAN POLICE.*

C. A. [1910] 2 K. B. 1080

4. — *Street betting, What amounts to—Street Betting Act, 1906* (6 *Edw.* 7, c. 43), s. 1.

By s. 1 of the *Street Betting Act, 1906*, "Any person frequenting or loitering in streets or public places, on behalf either of himself or of any other person, for the purpose of . . . betting" shall be guilty of an offence :—

Held, that a person who loiters in a street for the purpose of distributing handbills, stating that a third person therein named is willing to make bets upon the events and at the rates of odds therein specified, and that if the recipients of the handbills will send to such third person written offers to bet accompanied by remittances of money the offers will be accepted, is guilty of an offence under the section. *DUNNING v. SWETMAN* Div. Ct. [1909] W. N. 44; [1909] 1 K. B. 774

BETTING AND LOANS (INFANTS) ACT, 1892.

See under BETTING CIRCULAR.

BETTING CIRCULAR—*Infant—Circular sent to undergraduate—Presumption of knowledge of infancy—"Any person at any university"—Betting and Loans (Infants) Act, 1892* (55 & 56 *Vict.* c. 4), s. 3.

A circular sent to a person at an address in a university town is not sent to a person "at a university" within the meaning of s. 3 of the *Betting and Loans (Infants) Act, 1892*, unless the sender knows that the address is that of a house at which undergraduates are permitted by the university authorities to reside.

So held by Channell and Bray JJ., Lord Alverstone C.J. dissenting. *MILTON v. STUDD* Div. Ct. [1910] W. N. 98; [1910] 2 K. B. 118

BIAS—Justices.

See under JUSTICES.

— Licensing Justices.

See under LICENSING ACTS.

BICYCLE—*Liability to toll—Carriage—5 Geo. 4 c. cxi., s. 78.*

By s. 78 of 5 *Geo. 4*, c. cxi., the owners of a bridge across the Teign were authorized to take the following (amongst other) tolls for passage over the bridge : "For every coach, chariot, hearse, chaise, berlin, landau and phaeton, gig, whiskey, car, chair, or coburg, and for every other carriage hung on springs, the sum of sixpence for each wheel, and for each horse or other beast of draught drawing the same, the sum of twopence" :—

Held, that a bicycle ridden over the bridge was not within the section.

Quære, whether a bicycle is a "carriage hung on springs."

Cannan v. Earl of Abingdon, [1900] 2 Q. B. 66, considered. *SIMPSON v. TEIGNMOUTH AND SHALDON BRIDGE CO.* C. A. [1903] 1 K. B. 405

2. — *Liability to toll—"Sledge drag, or such like carriage"—39 Geo. 3, c. xxxiii. (Local).*

By a special Act, passed in 1799, the trustees of a bridge were authorized to demand before

BICYCLE—*continued*.

any passage should be permitted over the bridge the following (amongst other) tolls : "For every sledge, drag, or such like carriage, the sum of sixpence " :—

Held, that the clause did not authorize the charge of sixpence in respect of a bicycle passing over the bridge. **SMITH v. KYNNESELEY**

C. A. [1903] 1 K. B. 788

BIDDING—Costs of—Sale under direction of Court—Rescission.

See **VENDOR AND PURCHASER—Rescission. 6.**

BIGAMOUS MARRIAGE—Will—Construction—Secondary meaning of "widow"—Administration.

See **WILL—Words. 10.**

BIGAMY—Decree of nullity by French court on grounds unknown to English law—Conflict of laws—*Lex loci contractus*.

See **DIVORCE—Nullity. 1.**

—Indictment—Second marriage contracted abroad—No averment that accused was a British subject.

See **CRIMINAL LAW—Indictment. 1.**

—Nullity of marriage—Marriage in England between Englishwoman and domiciled Frenchman—Irregularity by French law—Conflict of laws.

See **DIVORCE—Nullity. 1.**

1. — *Second marriage performed abroad—Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 57.*

By the Offences against the Person Act, 1861, s. 57, "Whosoever being married shall marry any other person during the life of the former husband or wife, whether the second marriage shall have taken place in England or Ireland or elsewhere, shall be guilty of felony " :—

Held, that the section extends to a case where the second marriage is celebrated beyond the King's dominions. **TRIAL OF EARL RUSSELL**

Before the King in Parliament. H. L.

[1901] W. N. 156 ; [1901] A. C. 446

BILL OF COSTS.

See under **COSTS.**

SOLICITOR—Costs.

BILL OF EXCHANGE.

Bills of Exchange (Crossed Cheques) Act, 1906 (6 Edw. 7, c. 17), amends s. 82 of the Bills of Exchange Act, 1882 (45 & 46 Vict. c. 61).

Bills of Exchange, payable not exceeding three days after date or sight, Provision as to Stamping. See Revenue Act, 1909 (9 Edw. 7, c. 43), s. 10.

—Auctioneer—Partnership—Implied authority to accept—Trader—Business—Implied authority of partner to accept.

See **AUCTION. 3.**

—Bankruptcy notice—Receiving order—Conditional payment—Dishonoured bill—Bill outstanding in third party.

See **BANKRUPTCY—Notice. 3.**

BILL OF EXCHANGE—*continued*.

1. — *Book debt—Receivable bill—Bill delivered to bankers to be discounted—Property in bill—Indorsement.*

By an agreement of Feb. 27, 1905, the plt. agreed to sell, and the deft. to purchase, certain shares in a co. at a price to be ascertained as thereby provided, including a condition that book debts due to the co. should be taken as good at the amounts standing in the co.'s books. The co. received in the ordinary course of business a bill of exchange, which was properly accounted for in their books, and on Feb. 22, 1905, handed it to their bankers to be discounted. On Feb. 28 the bankers credited the co.'s account with the amount of the bill :—

Held, following *In re Stevens*, [1888] W. N. 110, 116, that the bill, being entered in the books of the co. as a receivable bill, was a book debt ; that, inasmuch as it had been handed to the bankers for discount, but had not actually been discounted, it was on Feb. 27 a debt due to the co. ; and that it must be accounted for as a book debt in ascertaining the amount of the price to be paid for the shares. **DAWSON v. ISLE**

Warrington J. [1906] W. N. 58 ; [1906] 1 Ch. 633

—Cheque—Countermand by telegram—Notice—Action for money had and received.

See **BANKER. 2.**

—Cheque—Defective title—Receiving payment for a "customer"—Liability of banker.

See **BANKER. 3.**

—Cheque—Forged indorsement—Banker not acting merely as agent for collection.

See **BANKER. 5.**

—Cheque—Forged indorsement—Payee—"Fictitious or non-existing person."

See **BANKER. 4.**

2. — *Cheque—Forged indorsement—Cheque stolen abroad—Transfer for value in foreign country—Conflict of laws—Bills of Exchange Act, 1882 (45 & 46 Vict. c. 61), ss. 24, 72—Austrian law.*

The rule of international law, that the validity of a transfer of movable chattels must be governed by the law of the country in which the transfer takes place, applies to the transfer of bills of exchange or cheques by indorsement.

Alcock v. Smith, [1892] 1 Ch. 238, followed, as being a decision to that effect.

Per Vaughan Williams L.J. : *Seem*, that the indorsement in a foreign country—valid under foreign law but invalid under English law—of a bill of exchange would be effectual to give the indorsee a good title to the bill as against the drawer or acceptor.

Sect. 24 of the Bills of Exchange Act, 1882, does not apply to an indorsement of a bill of exchange abroad. That section is only declaratory of English law, and does not control the general rule of international law.

Lacave v. Crédit Lyonnais, [1897] 1 Q. B. 148, distinguished.

A cheque on a London bank was drawn in Roumania in favour of the plts., who the same day specially indorsed it to a firm in London, and placed it, with a letter, in an envelope addressed to that firm in London. The cheque was stolen

BILL OF EXCHANGE—continued.

from the envelope by one of the plts.' clerks. The cheque was presented at a bank in Vienna by a person who desired that it might be cashed. It then bore an indorsement, which purported to be that of the plts.' London correspondents, but which was in fact forged. The Vienna bank, acting in good faith and without negligence, cashed the cheque, and then indorsed it to the defts., a bank in London, and sent it to them by post. The defts. cashed it at the bank in London on which it was drawn. The plts. sued the defts. for damages for the wrongful conversion of the cheque. By the Austrian law the defts. had a good title to the cheque as bona fide holders for value without gross negligence :—

Held, that *Alcock v. Smith*, [1892] 1 Ch. 238, applied, and that the Austrian law must prevail, the transfer of the cheque having been made in that country.

Decision of Walton J., [1904] 2 K. B. 870, affirmed. *EMBRICOS v. ANGLO-AUSTRIAN BANK* - - - **C. A. [1905] W. N. 30 ; [1905] 1 K. B. 677**

— Cheque—Forged indorsement—Draft by one branch of bank on another.

See **BANKER. 5.**

3. — Cheque—Forged indorsement—Payee "a fictitious or non-existing person"—Belief or intention of drawer—Bills of Exchange Act, 1882 (45 & 46 Vict. c. 61), s. 7, sub-s. 3.

The plts., market salesmen, had in their employ a confidential clerk and cashier whose duty it was to fill up cheques payable to the order of various customers of the plts. with the names of such customers and the amount payable to them respectively, to obtain the signature of the plts. thereto, and then to post the cheques to the customers. In the course of the years 1901 to 1903 the clerk made out twenty-seven cheques to the order of various customers, amounting in all to 487l., obtained the signature of the plts. thereto, and misappropriated them, and, having forged the indorsements, negotiated them with the deft., who gave full value for them in good faith and obtained payment of them from the plts.' bankers. On an action to recover from the deft. the amount so received :—

Held, that in the circumstances of this case it was impossible to come to the conclusion that the plts. when drawing these cheques had used the names of their customers by way of pretence only, and consequently that the payees were not "fictitious" persons within the meaning of s. 7, sub-s. 3, of the Bills of Exchange Act, 1882, that the fraudulent indorsements by the plts.' clerk were no authority to the deft. to hold these cheques, and that the plts. were entitled to judgment for the amount claimed.

Bank of England v. Vagliano Brothers, [1891] A. C. 107, and *Clutton v. Attenborough & Sons*, [1897] A. C. 90, distinguished. *VINDEN v. HUGHES* **Warrington J. [1905] W. N. 48 ; [1905] 1 K. B. 795**

Note.

Approved by C. A., *Macbeth v. North and South Wales Bank*, [1908] 1 K. B. 13; H. L. (E.) [1908] A. C. 137. *See* **Banker, 4.**

BILL OF EXCHANGE—continued.

— Cheque—Protection of collecting banker—Customer credited in ledger with amount of cheque before clearance.

See **BANKER. 6.**

— Company — Liability — Bill accepted by director in name of company without authority in fact.

See **COMPANY—Liability. 1.**

— Costs of defending action on — Maritime lien — Master's wages — Emoluments — Disbursements.

See **SHIPPING—Wages. 4.**

— Dishonour—Person acting as secretary of two companies—Knowledge in one character — Presumption of notice in other character.

See **COMPANY—Secretary. 1.**

— Inchoate instrument—Negotiation.

See **PROMISSORY NOTE. 1.**

4. — Indorsement by way of security—Signature in blank—Bill not complete and regular on face of it—Estoppel—"Holder in due course"—Bills of Exchange Act, 1882 (45 & 46 Vict. c. 61), s. 20.

The deft. entered into an agreement with the plt. to guarantee the payment by T. for goods sold to him by plt., and for that purpose to indorse bills accepted by T. for the amount. In pursuance of that agreement T. wrote his acceptances across the face of two blank stamped bill forms, and the deft. indorsed them. T. then handed the bill forms to the plt., who filled up the body of the bill for the agreed amount, making them payable to his order, signed them as drawer, and also indorsed them. The plt. duly delivered the goods to T., who eventually was unable to pay for them :—

Held, that as the deft. agreed to be liable for the price of the goods supplied by the plt. to T., and indorsed the bills for that purpose, he was liable on those bills.

Decision of A. T. Lawrence J., [1907] 2 K. B. 507, affirmed. *GLENIE v. BRUCE SMITH* - - - **C. A. [1908] 1 K. B. 263**

— Negotiable instrument—Signature in blank — Authority to fill up note.

See **PROMISSORY NOTE. 2.**

— Promissory note — Inchoate instrument — Negotiation.

See **PROMISSORY NOTE. 1.**

5. — Promissory note—Joint and several—Proviso as to giving time to either party—Bills of Exchange Act, 1882 (45 & 46 Vict. c. 61), s. 83.

The plt. sued as holder of a document described as a joint and several promissory note, which provided for the payment of certain money by instalments, the whole to become due on default in payment of any one instalment. It contained the following clause : "No time given to, or security taken from, or composition or arrangement entered into with, either party hereto shall prejudice the rights of the holder to proceed against any other party" :—

Held, that the document was a valid

BILL OF EXCHANGE—continued.

promissory note within the meaning of s. 83, sub-s. 1, of the Bills of Exchange Act, 1882.

Kirkwood v. Smith, [1896] 1 Q. B. 582, overruled.

Yates v. Evans, (1892) 61 L. J. (Q.B.) 446, approved. *KIRKWOOD v. CARROLL*

C. A. [1903] 1 K. B. 531

— Ship—Coaling contract—Liability of master as drawer—Notice of dishonour—Special circumstances excusing delay.

See SHIPPING—Bills of Exchange. 1.

— Shipping—Action against master—Necessaries. See SHIPPING—Practice. 1.

BILL OF LADING—Shipping.

See under SHIPPING—Charterparty,

1. — *Indorsement of bill of lading by consignee—Right to possession—Property in goods—Intention—Execution creditor of consignee—Sheriff in possession.*

Motion by the claimant as indorsee of a bill of lading for an order barring the claim of an execution creditor of the consignor to goods in the possession of the sheriff under the execution. The question at issue was whether the indorsement of a bill of lading by the consignees of the goods, without consideration, gave the indorsee a special right of property in the goods sufficient to entitle him to maintain his claim as against the execution creditor.

The claimant was a cork merchant and warehouseman, who acted as agent for the consignees and warehoused their goods. The consignees indorsed a bill of lading of certain bills of corkwood to the claimant, in order that he might "remove and warehouse the said goods on their behalf." The goods came from the plt. at Lisbon, and on their arrival at the London Docks they were seized by the sheriff under a writ of fi. fa. on behalf of the deft., who was an execution creditor of the plt. An interpleader summons was taken out to determine the relative rights of the execution creditor and the claimant. It was adjourned to the judge in chambers, who decided that the claimant was barred. The present motion was to discharge that order.

Eve J. said that the claimant must shew two things—(1.) that he had a general or some special property in the goods in question, and (2.) that he had a right to their possession. The indorsement of the bill of lading to the claimant operated as a transfer of the goods, and entitled him to the right of possession; but, in his Lordship's view, that did not clothe him, under the circumstances of the present case, with a special property in the goods so as to enable him to succeed in his claim. In the case of *Morison v. Gray*, (1824) 2 Bing. 260, Best C.J. held that the indorsement of a bill of lading conferred a special property on the indorsee sufficient to entitle him to bring an action of trover, but the real question at issue there was whether such an indorsement entitled the agent to stop in transitu. That case was not intended to overrule the cases of *Waring v. Cox*, (1808) 1 Camp. 369, and *Cox v. Harden*, (1803) 4 East, 211. The question was no longer an open one, as the case of *Sewell v. Burdick*,

BILL OF LADING—continued.

(1885) 10 App. Cas. 74, shewed that the intention of the parties when the indorsement was made must be regarded, and in the present case the object of the indorsement was to enable the indorsee to get possession on behalf of the consignees. It was impossible to infer an intention on their part to pass the property in the goods. Motion dismissed. *BURGOS v. NASCIMENTO, MOKEAND, CLAIMANT* - Eve J. [1908] W. N. 237

BILL OF SALE—Bank loan—Letter of lien on goods.

See BANKRUPTCY—Traders. 1.

1. — *Carriers' lien—Agreement giving credit to trader for carriage of goods subject to preservation of lien—Goods on land in tenancy of trader—Detainer of goods—Bills of Sale Act, 1878 (41 & 42 Vict. c. 31), s. 4.*

A ry. co. by a "ledger agreement" opened a credit account with a coal merchant for the carriage of his coal, the co. to have a continual lien upon the coal conveyed on their lines or being at any time on ground rented of the co. for all charges due to them, and to be at liberty to sell and dispose of any of the coal to satisfy the lien, with the right to close the account by giving one day's notice. By separate agreements the co. let to the merchant allotments within the ry. yard for the purpose only of stacking and dealing with the coal. The co. had the keys of the yard gates and kept them locked at certain times. The payments being in arrear, the co. closed the account, locked the gates, and detained the coal:—

Held by Lord Loreburn L.C. and Lords Macnaghten and Atkinson (Lords Robertson and Collins dissenting), that the inference of fact from the circumstances was that both parties intended the co.'s right of detainer to be preserved and if necessary enforced against the coal while in the ry. yard; that the ledger agreement conferred no licence to take possession of personal chattels or charge of equity thereon and was not a bill of sale within the Bills of Sale Acts; and that the trustee in the merchant's bankruptcy had no claim against the co. in respect of the detainer.

Decision of the C. A. on the above point, [1908] 2 K. B. 54, reversed, and decision of Phillimore J., [1908] 1 K. B. 195, thereon restored. *GREAT EASTERN RY. CO. v. LORD'S TRUSTEE* H. L. (E.) [1909] W. N. 4; [1909] A. C. 109

— Company—Debenture—Bill of sale—Non-registration—Debenture of foreign company.

See COMPANY—Debentures. 1.

2. — *Copy filed on registration—Omissions from copy—Affidavit—Term for maintenance of the security—Covenant to replace worn-out articles—Substituted chattels, Assignment of—Bills of Sale Act, 1878 (41 & 42 Vict. c. 31), s. 10, sub-s. 2—Bills of Sale Act, 1878, Amendment Act, 1882 (45 & 46 Vict. c. 43), ss. 4, 6, 9—Liverpool Court of Passage—Interpleader issue—New trial—Liverpool Court of Passage Act, 1893 (56 & 57 Vict. c. 37), s. 10.*

BILL OF SALE—continued.

An application lies to C. A. for a new trial of an interpleader issue tried in the Liverpool Court of Passage as in the case of any other issue there tried.

Where, a bill of sale in proper form having been duly executed and attested, the copy of it filed in pursuance of the Bills of Sale Act, 1878, s. 10, sub-s. 2, omitted the signature of the grantor, and the signature, address, and description of the attesting witness, but the affidavit filed with the copy stated that the bill of sale was duly executed by the grantor in the presence of the attesting witness, giving his name, address, and description:—

Held, that the bill of sale was valid, as the matters omitted in the copy of the bill of sale might be supplied by reference to the affidavit filed therewith.

Thomas v. Roberts, [1898] 1 Q. B. 657, followed.

By a bill of sale, given as a security for the payment of money, the grantor assigned to the grantee the chattels and things specifically described in a schedule thereto, and also all chattels and things which might at any time during the continuance of the security be substituted for them or any of them. The bill of sale contained a covenant by the grantor that he would during the continuance of the security replace such of the chattels and things expressed to be assigned as should be worn out by other articles of value equal to the present value of the articles worn out, so as at all times to keep up the total value of the chattels and things comprised in the security to the present value:—

Held, that the bill of sale did not deviate from the form in the schedule to the Bills of Sale Act, 1878, Amendment Act, 1882, the assignment of substituted chattels and things only applying to chattels and things substituted under the covenant for the maintenance of the security.

Seed v. Bradley, [1894] 1 Q. B. 319, followed.
COATES v. MOORE - C. A. [1903] W. N. 105 ; [1903] 2 K. B. 140

3. — *Hiring and purchase agreement—Intention of parties to agreement—Inference to be drawn from facts—Bills of Sale Act, 1878 (41 & 42 Vict. c. 31), s. 4—Bills of Sale Act, 1878, Amendment Act, 1882 (45 & 46 Vict. c. 43), ss. 3, 9.*

The owner of an hotel contracted with a purchaser for the sale of the hotel, and the chattels therein for a lump sum. The purchaser, being short of a portion of the purchase-money, applied to the debts. for a loan on mortgage, which was refused; but it was arranged that the debts. should offer to purchase the chattels, and their offer was accepted and the money paid to the vendor. The debts. then entered into an agreement with the purchaser of the hotel for the hiring and purchase by instalments by him of the chattels, and this agreement contained a licence to seize the chattels on certain defaults being made. The purchase of the hotel was then completed, and the purchaser entered and carried on the business. Subsequently the debts. seized the chattels on a default being made. The purchaser became bankrupt, and his trustee

BILL OF SALE—continued.

claimed the chattels, and brought this action to recover them. The learned judge before whom the case came decided that the true inference from the facts was that the money paid by the debts. was a loan to the purchaser of the hotel to enable him to complete the purchase, and that the hire-purchase agreement was a security for that loan, and was void for want of registration under the Bills of Sale Acts. and gave judgment for the plt.

Held, that there was evidence to support the conclusion that the debts. had advanced the money by way of a loan upon the security of the hire-purchase agreement, and that, as the only claim of the debts. to the chattels arose under that agreement, which was void for want of registration as a bill of sale, the plt. was entitled to recover.

Judgment of Wright J., [1902] 1 K. B. 137, affirmed. *TRUSTEE OF G. MELLOR (A BANKRUPT) v. MAAS* C. A. [1903] 1 K. B. 226

Affirmed. See next Case.

Loan—Hire and purchase agreement—Construction—Inference of fact—Registration.

M., who had made a contract to buy a hotel and its furniture, being unable to find all the money, agreed with a wine merchant that he should provide 2000*l.* The wine merchant went to the vendor and paid him 2000*l.*, the vendor giving a receipt for that sum as the purchase-money of the furniture. The same day the wine merchant and M. signed a hire-purchase agreement by which the wine merchant let and M. hired the furniture for 2412*l.* to be paid by instalments, the furniture not to become the property of M. till all the instalments were paid. The purchase was then completed and M. took possession. After paying some of the instalments M. became bankrupt:—

Held, that the circumstances shewed that as a matter of fact the sale to the wine merchant was only colourable, that the transaction between the wine merchant and M. was really a loan upon the security of the hire-purchase agreement, and that the agreement not having been registered under the Bills of Sale Acts was void as against M.'s creditors.

The decision of the C. A., *Mellor v. Maas*, [1903] 1 K. B. 226, affirmed. *MAAS v. PEPPER* H. L. (E.) [1905] W. N. 40 ; [1905] A. C. 102

— *Money-lenders.*

See under MONEY-LENDER.

4. — *Payment by instalments—Equal monetary payments in respect of both principal and interest—Construction of statutory form—Bills of Sale Act, 1878, Amendment Act, 1882 (45 & 46 Vict. c. 43), s. 9.*

By a bill of sale goods were assigned to the grantee to secure an advance of 30*l.* made by him to the grantor, with interest thereon at the rate of 10*l.* in the pound per month, and the grantor further agreed and declared that he would pay to the grantee the principal sum aforesaid, together with the interest then due, by monthly payments of 2*l.* on the 9th day of every month succeeding the date of the bill of sale, the first payment to be made on Nov. 9 then next,

BILL OF SALE—continued.

and that, in default of payment of any instalment of the said principal sum, he would pay interest on such instalment at the rate aforesaid from the date when the same should become due until payment thereof. The real bargain between the parties was that the payment of both the principal and the interest should be made by monthly payments of 2*l.* :—

Held by Vaughan Williams L.J. and Buckley L.J., Fletcher Moulton L.J. dissenting, that, upon the true construction of the bill of sale, it expressed the real bargain between the parties, and that it was not void as not being in accordance with the form in the schedule to the Bills of Sale Act, 1878, Amendment Act, 1882.

Goldstrom v. Tallerman, (1886) 18 Q. B. D. 1, discussed. *ROSEFIELD v. PROVINCIAL UNION BANK* - C. A. [1910] W. N. 185; [1910] 2 K. B. 781

5. — *Registration—Apparent possession—Bona-fide purchase—Execution creditor—Bills of Sale Act, 1878* (41 & 42 Vict. c. 31), s. 8.

In 1903 G., the owner of certain furniture in a house occupied by him, sold the furniture to a limited co. by an agreement which was not registered as a bill of sale. In 1904 the co. bona fide sold the furniture to G.'s mother by a document which was not registered. In 1905 the furniture, which had during the whole time remained in the apparent possession of G., was seized in execution under a judgment obtained against him. His mother having claimed the furniture :—

Held, that, as the claimant could neither shew a registered title, nor that she had taken possession so as to render registration unnecessary, her title could not prevail against that of the execution creditor. *HOPKINS v. GUDGEON* Div. Ct. [1906] 1 K. B. 690

6. — *Registration not renewed—Apparent possession—Bills of Sale Act, 1878* (41 & 42 Vict. c. 31), ss. 4, 8, 11—*Bills of Sale Act, 1882* (45 & 46 Vict. c. 43).

The owner of furniture in a house of which he was the occupier, and in which he resided, granted an absolute bill of sale in respect of the furniture to his mother-in-law, who lived in the same house. This bill of sale was duly registered in the first instance, but the registration was not renewed as required by the Bills of Sale Act, 1878, s. 11. The grantee under this bill of sale subsequently gave a bill of sale in respect of the same goods by way of mortgage to secure an advance. This bill of sale was duly registered. The goods, which remained in the same house, in which the grantor of the first-mentioned bill of sale and his mother-in-law continued to reside, were subsequently taken in execution on a judgment against the said grantor, and were claimed by the grantee of the second bill of sale. On interpleader proceedings between the execution creditor and the claimant :—

Held (affirming the judgment of a Div. Ct.), that the case was governed by *Cookson v. Swire*, (1884) 9 App. Cas. 653, and that the claimant was entitled to the goods as against the execution creditor. *ANTONIADI v. SMITH. SMITH, CLAIMANT* - C. A. [1901] 2 K. B. 589

BILL OF SALE—continued.

7. — *Repayment by instalments—Form in schedule, Deviation from—Omission of monetary denomination—Bills of Sale Act, 1878, Amendment Act, 1882* (45 & 46 Vict. c. 43), s. 9.

A bill of sale to secure a loan of 70*l.* and interest at 1*s.* in the pound per month stipulated that the principal and interest should be repaid by monthly instalments of "seven" on a certain date in each month :—

Held, that as, having regard to the amount of monthly interest, the bill of sale could only be paid off if the repayments were at the rate of 7*l.* per month, the bill of sale was not rendered invalid by the omission of any unit of monetary denomination after the word "seven," and was not void as not being in accordance with the form in the schedule to the Bills of Sale Act, 1878, Amendment Act, 1882. *MOURMAND v. LE CLAIR. PROVINCIAL UNION BANK, CLAIMANTS* Div. Ct. [1903] 2 K. B. 216

— *Traders—Bank loan to purchase goods—Letter of lien on goods—Construction—Reputed ownership.*
See BANKRUPTCY—Traders. 1.

9. — *Validity—Defeasance—Registration—Bills of Sale Act, 1878* (41 & 42 Vict. c. 31), s. 10, sub-s. 3.

By a bill of sale the mortgagor agreed to pay the principal sum (together with the interest then due) by equal weekly instalments. Owing to the difficulty of calculating the varying amount of interest due from week to week the parties agreed to substitute for the mode of payment provided by the bill of sale payment by equal weekly instalments of an increased amount, to cover principal and interest, but this arrangement did not alter the aggregate amount payable by the mortgagor for principal and interest :—

Held, that this was a defeasance within s. 10, sub-s. 3, of the Bills of Sale Act, 1878, which ought to have been contained in the body of the bill of sale, or written on the same paper with it before registration, and that the bill of sale was void.

Reed v. Franks, (1900) 16 Times L. R. 347, overruled. *PETTIT v. LODGE & HARPER*

C. A. [1908] W. N. 45; [1908] 1 K. B. 744

10. — *Validity—Deviation from statutory form— Chattel interest in land—Assignment of lease included in inventory of chattels—Bills of Sale Act, 1878, Amendment Act, 1882* (45 & 46 Vict. c. 43), s. 9.

By a bill of sale the mortgagor assigned to the mortgagee as security for an advance "the chattels and things" specifically described in the schedule thereto "and now being in and about the dwelling-house and premises known as the Lion Hotel, Farningham." The schedule contained a list of articles about the premises, and it concluded with the following item : "Assignment dated Jan. 24, 1902" (the parties being stated) "of lease dated Nov. 13, 1891, of the, said Lion Hotel and all the muniments of title referred to in the said assignment" :—

Held by Vaughan Williams and Romer L.JJ. reversing the judgment of the Div. Ct. (Cozens-Hardy L.J. dissenting), that the bill of sale did

BILL OF SALE—*continued.*

not create a charge upon the leasehold interest, and that it was made in accordance with the statutory form.

Cochrane v. Entwistle, (1890) 25 Q. B. D. 116, distinguished. *SWANLEY COAL CO. v. DENTON* (GILLESPIE, CLAIMANT) C. A.

[1906] W. N. 176; [1906] 2 K. B. 873

11. — *Validity—Form in schedule—Bill of sale given by two grantors—Bills of Sale Act, 1878, Amendment Act, 1882* (45 & 46 Vict. c. 43), s. 9, *Schedule*.

By a bill of sale two persons jointly and severally assigned goods described in a schedule thereto, to secure repayment of an advance. The goods so described did not any of them belong to the grantors jointly, but some belonged to one of them and the rest to the other. The schedule did not specify to which grantor the goods respectively belonged:—

Held (affirming the decision of a Div. Ct., [1901] 1 K. B. 70), that the bill of sale was void as not being in accordance with the form in the schedule to the Bills of Sale Act, 1878, Amendment Act, 1882. *SAUNDERS v. WHITE*

C. A. [1902] W. N. 23; [1902] 1 K. B. 472

12. — *Validity—Form in Schedule, Derivation from—Condition for defeasance of security—Bills of Sale Act, 1878* (41 & 42 Vict. c. 31), s. 10, sub-s. 3—*Bills of Sale Act, 1878, Amendment Act, 1882* (45 & 46 Vict. c. 43), ss. 8, 9.

At the time of the giving of a bill of sale as security for an advance, and before the completion of the transaction, the grantee handed to the grantor a card on which were printed certain conditions, which a jury found were made part of the bargain before the money was lent. One of the conditions was to the effect that borrowers were strictly prohibited from obtaining or endeavouring to obtain money from any other loan office until the account was paid; otherwise they would be liable for the full amount to be called in, as though an instalment had been missed. This condition was not inserted in the bill of sale, which otherwise was in accordance with the form in the schedule to the Bills of Sale Act, 1878, Amendment Act, 1882:—

Held that, as the condition was not inserted in the bill of sale, and would have avoided it if it had been inserted, the bill of sale was not in accordance with the form in the schedule to the Bills of Sale Act, 1878, Amendment Act, 1882; that it was therefore absolutely void under s. 9 of that Act, and the grantor's covenant for payment of interest was consequently not enforceable by the grantee. *SMITH v. WHITEMAN*.

C. A. [1909] W. N. 107; [1909] 2 K. B. 437

BILLIARDS—User for social purposes—Repairs—Borrowing powers.

See LITERARY AND SCIENTIFIC INSTITUTIONS. 1.

BILL - POSTING — Restrictive covenants — "Offensive" trade or business—Advertisement hoarding—Mandatory injunction.

See BUILDING ESTATE. 1.

BIOGRAPHY—Authority to write—Letters, Use of information contained in—Injunction.

See LETTERS. 1.

BIRDS.

Wild Birds Protection Act, 1902 (2 Edw. 7 c. 6), *amends the Wild Birds Protection Acts*.

Wild Birds Protection Act, 1904 (4 Edw. 7, c. 4), *amends the Wild Birds Protection Acts*.

Wild Birds Protection (St. Kilda) Act, 1904, (4 Edw. 7, c. 10), *extends the provisions of the Wild Birds Protection Acts to the Island of St. Kilda, excepting as regards certain Birds required for the support of the Inhabitants of the Island*.

Wild Birds Protection Act, 1908 (8 Edw. 7, c. 11), *amends the Wild Birds Protection Acts, 1880 to 1904*.

— Tidal and navigable river—Right of public to shoot wild fowl.

See FORESHORE. 2.

1. — *Wild birds—Live larks recently taken—Prohibition against "killing or taking" larks in county of London—Possession of larks lawfully taken in another county—Wild Birds Protection Acts, 1880* (43 & 44 Vict. c. 35), ss. 3, 8, and 1881 (44 & 45 Vict. c. 51), s. 1—*Wild Birds Protection (Administrative County of London) Order, 1909*, art. 1.

By s. 3 of the Wild Birds Protection Act, 1880, any person who between Mar. 1 and Aug. 1 in any year shall knowingly and wilfully shoot or attempt to shoot, or shall use any boat for the purpose of shooting or causing to be shot, any wild bird, or shall use any lime, trap, snare, net, or other instrument for the purpose of taking any wild bird, or shall expose or offer for sale or shall have in his control or possession after Mar. 15 any wild bird recently killed or taken, shall be liable to a penalty. By s. 8, a Secy. of State may "by order extend or vary the time (in any county) during which the killing and taking of wild birds or any of them is prohibited by this Act." By s. 1 of the Wild Birds Protection Act, 1881, a person shall not be liable to be convicted under s. 3 of the Act of 1880 of exposing or offering for sale, or having the control or possession of, any wild bird recently killed, if he satisfies the Court that the killing of the wild bird, if in a place to which the Act extends, was lawful at the time when and by the person by whom it was killed, or that the wild bird was killed in some place to which the Act does not extend.

A Secy. of State made an order under s. 8 of the Act of 1880, applicable to the county of London, extending the time during which the "killing or taking" of certain wild birds, including larks, was prohibited to the whole of the year:—

Held, that the words "killing and taking" in s. 8 of the Act of 1880 include all the offences specified in s. 3, and that therefore, by virtue of the order, it is made an offence for a person to have in his possession or control in the county of London at any time of the year live larks which have been recently taken, though they

BIRDS—*continued.*

may have been taken in a place where it is lawful to take them. *FLOWER v. WATTS*

Div. Ct. [1910] W. N. 146;
[1910] 2 K. B. 327

2. — *Wild birds*—"Recently taken"—*Larks*
—*Evidence*—*Wild Birds Protection Act*, 1880
(43 & 44 Vict. c. 35), s. 3—*Wild Birds Protection Act*, 1881 (44 & 45 Vict. c. 51), s. 2.

On the hearing of an information charging the deft. with knowingly and wilfully having in his possession certain wild birds recently taken contrary to s. 3 of the *Wild Birds Protection Act*, 1880, the evidence for the prosecution shewed that on July 30 the deft., a dealer in wild birds, had on his premises in seven cages seven young larks; that they were very wild, beating themselves against the bars of the cages; and that their feathers were of a light colour.

The magistrate at the hearing, without calling on the deft., dismissed the information on the ground that there was no evidence that the birds were "recently taken" within the meaning of the above enactment:—

Held, that there was evidence that the birds were recently taken within the meaning of the enactment, and that the magistrate was wrong in dismissing the information without calling on the deft. *HOLLIS v. YOUNG*
Div. Ct.
[1909] 1 K. B. 629

BIRMINGHAM—Bishopric.

See under ECCLESIASTICAL LAW —
Bishoprics.

BIRTH—Evidence—Date of birth—Register—Entry.
See EVIDENCE. 2.

Notification of Births Act, 1907 (7 Edw. 7, c. 40), is an Act to provide for the early Notification of Births.

Notification of Births. Order, Dec. 20, 1907, prescribing Form under s. 2, sub-s. 5, of the *Notification of Births Act*, 1907, as to *Weekly Returns of Births in London. St. R. & O. 1907. No. 1022. Price 1d.*

BIRTHS AND DEATHS—*Births and Deaths Registration Act*, 1901 (1 Edw. 7, c. 26), amends the law with respect to districts for registration purposes and the appointment of Superintendent Registrars of Births and Deaths in certain unions.

BISHOP.

See under ECCLESIASTICAL LAW —
Bishops.

BISHOPRIC—Liabilities—Commuted first fruits and tenths.
See APPORTIONMENT. 2.

BITE—Cat bite—Workmen's compensation.
See MASTER AND SERVANT — Compensation. 30.

BLACKBURN—Blackburn Improvement Act, 1882—Street—Paving—"Back roads"—"Cross roads"—Local government.
See STREETS. 17.

"BLACK JACKS"—Articles made of leather and mounted with silver rims.
See WILL—Plate. 1.

BLACKMAILING—Actionable words—Charge of bringing a blackmailing action.
See DEFAMATION—Slander. 1.

BLANKS—Company—Meeting of shareholders—Voting—Proxy.
See COMPANY—Meetings. 8.

—Deed—Alteration after execution—Imperfect execution—Filling up blanks.
See DEEDS. 2.

—Promissory note—Signature in blank—Fraudulent negotiation of note by agent—Rights of bona fide indorsee for value—Negotiable instrument.
See PROMISSORY NOTE. 3.

—Will—Construction.
See under WILL—Blanks.

BLIND.

Post Office (Literature for the Blind) Act 1906 (6 Edw. 7, c. 22).

—Blind and deaf children—Child boarded out and educated by education authority—Child without means of support—Recovery of expenses from "parent"—Liability of guardians of union.
See SCHOOLS. 6.

—Blind persons—Gift for benefit of, in particular district.
See CHARITY. 3.

BOARD OF AGRICULTURE AND FISHERIES.
See under AGRICULTURE.

BOARD OF EDUCATION.
See under SCHOOLS.

—Consent of Board of Education—"Endowment"—Sale of charity land—Voluntary contributions.
See CHARITY. 17.

—Mixed endowment—Scheme determining which part held for education.
See CHARITY. 18.

BOARD OF EDUCATION (POWERS) ORDER IN COUNCIL, 1902.
See CHARITY. 18.

BOARD OF GUARDIANS—Member—Collection of rent—Retention of commission—Disqualification—Vacancy.
See LOCAL GOVERNMENT. 14.

BOARD OF TRADE.

—Consent of—Alteration of memorandum—Association not for profit—Licence.
See COMPANY—Memorandum. 10.

—Consent of—Electric lighting—Transfer of powers.
See ELECTRIC LIGHT. 9.

—Consent of Board of Trade—Tramway—Statutory powers—Ultra vires—Agreement for lease to adjacent owner—Licence to work.
See TRAMWAYS. 16.

BOARD OF TRADE—*continued.*

— Trade.

See under **TRADE**.**BOARD OF WORKS**—Consent—General line of buildings in street—Buildings erected beyond the general line.*See* **LONDON—Buildings**. 7.**BOARDING-HOUSE KEEPER**—Goods of guest—Theft by inmate.*See* **NEGLIGENCE**. 2.

— Water—Supply—" Domestic purposes."

See **WATER**. 12.**BOATS**—Fishing.*See* under **SHIPPING—Fishing Boats**.**BODIES CORPORATE (JOINT TENANCY) ACT**

—Power to appoint new trustees—Appointment of corporation jointly with individual.

See **TRUSTEE—Appointment**. 6.**BOGNOR WATER ACT**—Supply—Water company—Special Act—School—" Domestic purposes."*See* **WATER**. 13**BOMBAY**—Laws of.*See* under **INDIA**.**BONA VACANTIA**—Corporation—Dissolution—Chattels real—Landlord and tenant—Lease— Limited company lessees— Sureties for payment of rent during the term.*See* **CORPORATION**. 10.

— Crown—Charity—Cypres—Resulting trust.

See **FRIENDLY SOCIETY**. 8.1. — *English fund belonging to Austrian who has died without heirs—Right of succession—" Mobilia sequuntur personam."*

An Austrian who was entitled to a fund in court in this country died in Vienna, a bastard intestate and without heirs. By Austrian law the succession of an Austrian citizen in such a case is confiscated as heirless property by the fiscus. The Austrian Government having claimed the fund:—

Held, that as the right claimed was not in the nature of a succession, the maxim "*Mobilia sequuntur personam*" did not apply, and that the Crown, by the law of England, was entitled to the fund as bona vacantia. *In re BARNETT'S TRUSTS* - Kekewich J. [1902] W. N. 64 [1902] 1 Ch. 847

— Escheat—Death of testator without heirs—Sale under Settled Land Acts.

See **CROWN**. 1.

— Industrial and provident societies—Dissolution—Appointment of new trustee—Vesting order—Crown.

See **INDUSTRIAL AND PROVIDENT SOCIETIES**. 2.**BOND**—Administration bond—Duration of sureties' liability.*See* **AUSTRALIA**. 1.**BOND**—*continued.*

— Administration bond, Form of—" Not unduly preferring"— Administrator—Creditor—Retainer.

See **EXECUTOR—Retainer**. 1.

— Administration bond, Form of—Sureties dispensed with—Duchy of Lancaster.

See **PROBATE—Administration**. 1.

— Bankruptcy, Trustee in — Bond — Fidelity bond—Surety—Default of trustee—Penal interest—Liability of surety.

See **BANKRUPTCY—Trustee**. 1, 2.

— Bankruptcy.

See under **BANKRUPTCY—Bond**.

— Bearing Interest out of profit—Deficiency in interest—Sale of bonds—Tenant for life and remainderman.

See **COMPANY—Interest**. 1.

— Company.

See under **COMPANY—Bond**.**Income Bond**.

— Debenture-holders' action — Receiver and manager—Sureties — Default — Rights of trade creditors.

See **COMPANY—Receiver**. 14.

— Estate duty—Foreign bonds payable to bearer—Bonds physically situate in the United Kingdom.

See **REVENUE—Estate Duty**. 10.

— Imperfect gift of personalty — Bonds to bearer—Continuing intention to give—Donee appointed one of the executors.

See **ADMINISTRATION**. 12.

— Insane person, Bond passed under power of attorney granted by.

See **NATAL**. 3.

— Lands Clauses Acts—Entry on land before determination of purchase-money — Railway company.

See **LANDS CLAUSES ACTS**. 32.

— Payment out to company—Evidence—Delivery of bond to company.

See **LANDS CLAUSES ACTS**. 32.

— Servitude—Bond to secure amenity—Meaning of the word "unseemly" in a bond of servitude.

See **SCOTTISH LAW**. 22.

— Specialty debt — Lost acknowledgment — Parol evidence—Onus of proof.

See **LIMITATIONS**. 3.

— To secure fidelity of employee—Death of surety — Notice — Determination of liability.

See **PRINCIPAL AND SURETY**. 1.**"BOND OR COVENANT."** — Stamp duty — "Lease"—Purchase of electrical energy from lessors.*See* **REVENUE—Stamps**. 30.**BONUS**—Covenant to settle after-acquired property—Irish Land Acts—Sale of land—Twelve per cent. bonus—Settled land in Ireland—Wife entitled to life estate.*See* **SETTLEMENT**. 7.

BONUS—*continued.*

- Income bond—Construction—Bonus payable out of profits—No profits earned—Issue of paid-up shares in exchange for bonus.
See COMPANY—Income Bond. 1.

BOOK DEBTS—Bankruptcy—Partnership—Assignment by deed—One partner's signature a forgery—Validity of assignment.
See PARTNERSHIP. 3.

- Bill delivered to bankers to be discounted—Property in bill.
See BILL OF EXCHANGE. 1.

BOOKS—Accounts—Right of partner to inspection by agent.
See PARTNERSHIP. 1.

- Banker—Order for inspection of books—Jurisdiction of magistrate—Bankers' Books Evidence Act.
See BANKER. 8.

- Bankruptcy.
See under BANKRUPTCY—Books.

- Company.
See under COMPANY—Books.

- Company—Winding-up.
See under COMPANY—WINDING-UP—Books.

- Copyright.
See under COPYRIGHT—Books.

Documents, Books, and—List of Orders conferring on Urban District Councils powers as to the Custody of Books and Documents. St. R. & O., 1909, p. 882.

- Trade union—Right to employ agent to inspect.
See TRADE UNION. 2.

- "BORN"—Will—Construction.
See under WILL—Words.

BOROUGH—Corporation.
See under CORPORATION.

- Local government.
See under LOCAL GOVERNMENT.

BOROUGH VOTE—Franchise.
*See under PARLIAMENT.***BORROWING**—Banker's lien—Stockbroker—Authority to borrow—Pledge of client's security—Overdraft—Special borrowing.
See BANKER. 9.

- By agent—Excess of authority.
See PRINCIPAL AND AGENT. 4.

- Company—Receiver and manager—Borrowing powers—Limit exceeded—Indemnity—Creditors of manager—Debenture holders—Priority.
See COMPANY—Receiver. 1.

- Company.
See under COMPANY—Borrowing.

BORROWING—*continued.*

- Irredeemable debenture stock—Power of liquidator to pay off stock at par.
See COMPANY—Debentures. 20.

- Money-lenders.
See under MONEY-LENDERS.

- Municipal Corporation—Illegal borrowing—Overdraft at bank.
See CORPORATION. 4.

- Power of attorney—Excess of authority.
See PRINCIPAL AND AGENT. 4.

- Receiver and Manager.
See COMPANY—Receiver. 1, 2, 8, 9, 11-14.

BORROWING MEMBER—Infant—Mortgage for advances—Repudiation on attaining twenty-one.
See BUILDING SOCIETY. 2.**BORROWING POWERS**—Company.
See under COMPANY—Borrowing.

- Corporation—Overdraft—Power to borrow for specific purposes—General overdraft—Interest—Ultra vires.
See CORPORATION. 3.

- Mechanics' institute—User for social purposes—Billiards—Repairs.
See LITERARY AND SCIENTIFIC INSTITUTIONS. 1.

- Municipal corporation—Obligation on corporation to mortgage rates by way of security for loan.
See CORPORATION. 2.

BORSTAL INSTITUTION—Sentence of detention in.
See CRIMINAL LAW—Appeal. 25.**BOUNDARIES — DISTRICT COUNCIL AND PARISH COUNCIL, ENGLAND**—*Boundaries Order, June 28, 1910, altering the Regns. of 1889 as to inquiries and notices under s. 57 of the Local Government Act, 1888. St. R. & O., 1910, No. 675. Price 1d.*

- Alteration of boundaries of union—Transfer of land from one parish to another.
See LOCAL GOVERNMENT. 30.

- Harbour—"Precincts"—Removal of sand from foreshore.
See HARBOUR. 2.

BOUNDARY LINE—Foreshore—Conveyance of land bounded by seashore—Parcels—Plan—Dimensions.
See SEASHORE. 1.**BRADFORD IMPROVEMENT**—Power to order substitution of water-closets for existing privies.
*See WATER-CLOSETS.***BRAWLING**—Clergy discipline—Evidence—Mention.
See ECCLESIASTICAL LAW — Offences. 2.

BREACH OF CONTRACT.*See under CONTRACT.***BREACH OF COVENANT.***See under COVENANT.*

— Landlord and Tenant.

*See under LANDLORD AND TENANT.***BREACH OF DUTY** — Solicitor and client — Representation—Adverse title.*See ESTOPPEL. 2.***BREACH OF PROMISE OF MARRIAGE.***See under MARRIAGE.***BREACH OF TRADE MARK.***See under TRADE MARK.***BREACH OF TRUST.***See under TRUSTEE—Breach of Trust.***BREACH OF UNDERTAKING.***See under PRACTICE — Undertakings.***BREACH OF WARRANTY.***See under WARRANTY.***BREAD**—*Sale otherwise than by weight*—3 Geo. 4, c. cxi., s. 4.

By 3 Geo. 4, c. cxi., s. 4 (which applies in substance to the metropolitan area), any baker or seller of bread who sells, or causes to be sold, bread in any other manner than by weight is liable to a penalty.

A servant of the respondent, a baker, was asked by a purchaser for a half-quartern loaf, and served him with a loaf and two rolls, for which he paid 2d. The loaf and rolls were in the purchaser's presence placed in the pan of a pair of scales, in the opposite scale of which there was already a 2 lb. weight; the beam of the scales did not move, and the weight of the loaf and rolls was not ascertained at the time of sale beyond the clear fact that they weighed less than 2 lbs. On being taken away by the purchaser and weighed, they were found to weigh 5 ozs. short of 2 lbs. :—

Held, that a sale by weight meant a sale by the true weight of the bread sold, and that the respondent had sold bread otherwise than by weight within the meaning of the section, *Cox v. BLEINES.* **Div. Ct. [1902] 1 K. B. 670**

2. — *Sale otherwise than by weight*—*Bread Act, 1836 (6 & 7 Will. 4 c. 37), s. 4.*

Although it is not necessary in order to constitute a sale of bread by weight within the meaning of s. 4 of the Bread Act, 1836, that the bread should be weighed at the very instant of sale, it must be weighed at a time before and with reference to the sale.

The respondent weighed a loaf which then weighed 2 lb., but placed the loaf aside for consumption in his own household. Twelve hours later the loaf was, by mistake, sold by the respondent's brother-in-law, acting on his behalf. At the time of the sale the loaf was not weighed, and in fact was 1½ ozs. under 2 lbs., the loss in weight being due to evaporation which had taken place since it was weighed twelve hours previously :—

Held, that the loaf had not been sold by weight

BREAD—*continued.*

within the meaning of s. 4 of the Bread Act, 1836, inasmuch as there had been no weighing with reference to the sale, and that the respondent had therefore committed an offence under the section.

Cox v. Bleines, [1902] 1 K. B. 670, explained. **MATTINSON v. BINLEY**

Div. Ct. [1908] 2 K. B. 534

3. — *Sale of otherwise than by weight*—“*Fancy Bread*”—*Bread Act, 1836 (6 & 7 Will. 4, c. 37), s. 4.*

To constitute bread “fancy bread” within the proviso to s. 4 of the Bread Act, 1836, it is not necessary that it should be superior in quality to ordinary household bread; it is enough that it is so different in size and appearance as not to be liable to be mistaken for it. **BAILEY v. BARSBY** **Div. Ct. [1909] 2 K. B. 610**

— Sunday observation prosecution — Consent in writing, *See JUSTICES. 19.*

BREWERS—Brewers' Colonial ale licences—Storekeepers' licences—Law of South Australia.

See AUSTRALIA. 4.

— Brewer's lease—Covenant to buy beer of lessors and “their successors in business”—Covenant running with the land, *See LANDLORD AND TENANT. 20.*

— Brewer's lease — Mortgage — “Clog” on redemption—“Tie”—Covenant, *See MORTGAGE—Redemption. 6.*

— Brewer's licence—Tied house—Lessee's covenant to buy malt liquors from lessor—Rise in prices—Breach of covenant, *See LANDLORD AND TENANT. 21, 22.*

1. — *Debenture trust deed*—*Brewery company*—*Mortgaged licensed premises*—*Non-renewal of licence*—*Licensing Act, 1904 (4 Edw. 7, c. 23), s. 2*—*Compensation*—*Capital moneys*—*Investment*—*Powers of debenture trustees.*

A brewery co. by deed conveyed all its licensed premises to trustees to secure an issue of debenture stock. The deed empowered the trustees to permit the co. to hold and enjoy the mortgaged premises until the security became enforceable (which event had not happened), and provided (clause 20) that at any time before the security became enforceable the trustees might with the concurrence of the co. sell, lease, and exchange any of the mortgaged premises, and also “settle, adjust, refer to arbitration, compromise and arrange all . . . controversies, questions, claims and demands whatsoever, open, unsettled or pending with any person or persons in relation to the mortgaged premises,” and also generally might “act in relation to the mortgaged premises in such manner as the trustees might think expedient in the interests of the stockholders”; and declared (clause 21) “that the trustees should hold all capital moneys arising under clause 20,” upon trust for investment in (inter alia) other licensed premises. The deed also contained the usual trust investment clause.

BREWERS—continued.

The licensing authority having refused under the powers of the Licensing Act, 1904, to renew the licence of one of the licensed premises comprised in the trust deed, compensation was awarded under the Act to the co. in respect thereof. The trustees were not parties to the compensation proceedings:—

Held (following *Law Guarantee and Trust Society, Ltd. v. Mitcham and Cheam Brewery Co., Ltd.*, [1906] 2 Ch. 98), that the compensation money must be paid to the trustees of the debenture deed.

Held, also, that the compensation proceedings were a "controversy in relation to the mortgaged premises" within the meaning of clause 20, and, therefore, that the compensation moneys were "capital moneys arising under clause 20" which the trustees could in the exercise of their discretion apply under clause 21 in the purchase of other licensed premises. **NOAKES v. NOAKES & Co.** *Neville J.* [1906] W. N. 193; [1907] 1 Ch. 64

Note.

Approved by Kekewich J., *Dawson v. Braime's Tadcaster Breweries, Ltd.*, [1907] 2 Ch. 359. *See next Case.*

Referred to by Eve J., *Bent's Brewery Co. v. Dykes*, [1909] W. N. 51. *Licensing Acts.* 30.

2.—Brewery Company—Debenture trust deed—Mortgaged licensed premises—Security not yet enforceable—Trustees' powers—Power to sell and convert—Investment of proceeds of sale—Non-renewal of licence—Licensing Act, 1904 (4 Edw. 7, c. 23), s. 2—Compensation—Capital moneys—Applicable as proceeds of voluntary sale.

A brewery co. assured all its licensed premises to trustees upon the trusts of a debenture trust deed, which was in the usual form, for securing an issue on debenture stock, the premises being held by the trustees on trust to permit the co. to hold and enjoy the same and to carry on thereon the business of the co. until the security thereby constituted became enforceable (which event had not happened), and then upon the usual trust for sale and conversion. The deed provided by clause 17 that at any time before the security thereby constituted became enforceable the trustees might (inter alia) sell and convert, or concur in selling and converting, all or any of the mortgaged premises in the same manner as they could do if the primary trust for conversion had then arisen; and, by clause 18, that the trustees should hold the capital moneys arising under clause 17 upon trust to lay out the same in (inter alia) the purchase of the licensed premises suitable to be held for the purposes of the co.:—

Held, that moneys paid under the Licensing Act, 1904, for compensation for the licence of one of the mortgaged premises comprised in the trust deed were capital moneys arising under clause 17 as above set out, and were applicable under the provisions of clause 18.

Law Guarantee and Trust Society, Ltd. v. Mitcham and Cheam Brewery Co., Ltd., [1906] 2 Ch. 98, explained.

Noakes v. Noakes & Co., Ltd., [1907] 1 Ch. 64,

BREWERS—continued.

approved. **DAWSON v. BRAIME'S TADCASTER BREWERIES, LD.** *Kekewich J.* [1907] W. N. 160; [1907] 2 Ch. 359

Note.

Followed by Warrington J., *In re Bentley's Yorkshire Breweries, Ltd.*, [1909] 2 Ch. 609. *See next Case.*

3.—Debenture trust deed—Mortgaged licensed premises—Security not yet enforceable—Trustees' powers—Power to sell and convert—Investment of proceeds of sale—Non-renewal of licences—Licensing Act, 1904 (4 Edw. 7, c. 23), s. 2—Compensation—"Capital moneys"—"Purchase-moneys"—Applicable as proceeds of voluntary sale—Purchase of or investment on mortgage of licensed premises of company.

Where a brewery co. has executed a trust deed to secure debentures with the usual clause providing that the trustees shall on the co.'s application sell or concur in selling any part of the mortgaged premises and hold the proceeds on trust for reinvestment, and the licences of part of the mortgaged premises have been taken away under the Licensing Act, 1904, such a proceeding is a sale, and the compensation moneys awarded under the Act are "purchase-moneys" or "capital moneys" within the meaning of the trust deed.

The trustees in such a case, if possessed of the requisite powers, may invest the "purchase" or "capital moneys" in the purchase or on mortgage of licensed properties, and, if so advised, in the purchase or on mortgage of licensed premises of the co.

Dawson v. Braime's Tadcaster Breweries, Ltd., [1907] 2 Ch. 359, followed.

In re BENTLEY'S YORKSHIRE BREWERIES, LD. *Warrington J.* [1909] 2 Ch. 609

—Income tax—Deductions—Expense of applications for new licences.

See REVENUE—Income Tax. 10.

—Income tax—Deductions—Profits of brewery—Tied licensed houses—Compensation charge.

See REVENUE—Income Tax. 9.

—Landlord and tenant—Lease—Beerhouse—Licence taken away—Covenant—Impossibility of performance.

See LANDLORD AND TENANT. 29.

—Landlord and tenant—Lease—Covenant—Assignment to brewery company—Condition imposing increased rent.

See LANDLORD AND TENANT. 18.

—Lease—Covenant against assignment without consent—Assignment to limited company carrying on a brewery business—Personal residence.

See LANDLORD AND TENANT. 18.

—Licensing Acts.

See under LICENSING ACTS.

—Profits of brewery—Tied licensed houses.

See REVENUE—Income Tax. 9.

—"Tied" leasehold public-house—"Clog" on redemption.

See MORTGAGE—Redemption. 4.

BRIBERY—*Extradition Act, 1906* (6 *Edw.* 7, c. 15), includes bribery amongst extradition crimes.

— Franchise—Borough vote—Bribery by agents at municipal election.
See **PARLIAMENT.** 2.

BRICKFIELD—Settled land—Trustees—Implied power to let from year to year—Royalties.
See **SETTLED LAND—Leases.** 10.

BRIDGE—“Adjacent” New Zealand municipal corporations.
See **NEW ZEALAND.** 2.

1. — *Approaches—Highway—Liability to repair 300 feet from end of bridge—Statute of Bridges* (22 *Hen.* 8, c. 5)—*New River Company's Acts* (3 *Jac.* 1, c. 18; 4 *Jac.* 1, c. 12)—*New River Company's charter.*

The rule laid down by the Statute of Bridges, that the persons liable to repair a bridge are also liable to repair the highway adjoining to each end of the bridge for a distance of 300 feet, applies where the bridge is repairable by the county, and where the liability arises by prescription or (*semble*) *ratione* tenure; but it does not apply in cases where the liability is directly imposed by a later statute.

The Acts authorizing the making of the New River directed that bridges should be made where convenient, and the New River Co.'s charter bound it to maintain the New River and its bridges:—

Held, that the co. were bound to maintain the bridges and the approaches thereto, i.e., so much of the road at each end as had been raised or interfered with by making the bridge, and what the approaches were must be ascertained as a fact in each case. They were not bound to repair 300 feet of the highway in every case. **HERTFORDSHIRE COUNTY COUNCIL v. NEW RIVER (GOVERNORS AND COMPANY OF)**

Swinfen Eady J. [1904] **W. N.** 158; [1904] **2 Ch.** 513

— Approaches—Public carriage road carried over railway—Width of bridge—Liability of railway company.
See **RAILWAY—Bridges.** 1.

— Bridge carrying public highway over railway—Liability to repair.
See **SCOTTISH LAW.** 3.

— Bicycle—Liability to toll—“Carriage hung on springs.”
See **BICYCLE.** 1.

— Canal company—Bridge over canal—Approaches to bridge—Liability to repair.
See **HIGHWAY.** 10.

— Construction of bridge—Contract by surveyor of highways for payment of money by his successors.
See **HIGHWAYS.** 10.

— Franchise—Ancient ferry—Traffic diverted from ferry—Total loss of tolls—Injunction.
See **FERRY.** 2.

BRIDGE—continued.

2. *Liability to repair—Right to repair—Highway—Right to abate nuisance—Trespass—Statute of Bridges* (22 *Hen.* 8, c. 5).

There is a broad difference between removing an obstruction which has been wrongfully placed in the highway, and making good by a permanent structure the result of mere non-feasance on the part of those charged with the duty of repairing; therefore a person who is merely entitled as one of the public to use a bridge carrying the highway over a river is not justified in entering on another person's land, and re-erecting the bridge which has been allowed to fall into a state of decay. An operation of this nature cannot properly fall under the term “abatement,” even if the right to “abate” can be said to exist at all in the case of a nuisance arising from mere non-feasance.

Where there is no obligation to repair, there can be (in the absence of special power given) no right to repair, and the default of a local authority cannot extend the burden placed upon the land, or give to other persons a right which would not have existed if the local authority had not been in default. **CAMPBELL DAVYS v. LLOYD**

C. A. [1901] **W. N.** 150; [1901] **2 Ch.** 518

— Telephone—Bridge carrying public road over railway—Power to lay cable along bridge—Consent.
See **TELEGRAPH.** 3.

BRINE—Salt mine—Underground brine, Rights of adjoining landowners in respect of—Percolating underground water.
See **MINES.** 12.

BRISTOL CHANNEL PILOTAGE ACT—Vessel employed in coaling ships of navy—King's ship—Pilotage dues—Liability of master.

See **SHIPPING—King's Ship.** 1.

BRITISH BECHUANALAND—Laws of.
See under **CAPE OF GOOD HOPE.**

BRITISH COLUMBIA—Laws of.
See under **CANADA.**

BRITISH GUIANA—*Order in Council, dated Feb. 29, 1908, continuing until Dec. 31, 1912, privileges accorded to the combined Court of British Guiana by the Order in Council of June 3, 1842.* See **St. R. & O., 1908, p. 1040.**

1. — *Nuisance, Liability for—Grant of statutory powers—Construction.*

The appellants acquired on the same day, and for the same local area, exclusive power under a lighting order to supply electrical energy for all purposes, public and private, and use the same for the purpose of any undertaking; and also under a tramways licence to generate and supply electrical energy as a motive power for tramways which they were required to make and operate, and for the lighting of their cars and offices.

The lighting order imposed as a condition that the appellants should be liable for any nuisance caused by them. The licence did not repeat this condition, and required as well as

BRITISH GUIANA—*continued*.

authorized the appellants to execute their works, anything in any ordinance of the Colony notwithstanding. —

Held that, the appellants having accepted the lighting order as applying to the production of electricity for every purpose, the obligation not to create a nuisance imposed by that order applied to the tramways licence, which only repeated for a limited purpose the same authority as had been granted by the order. **DEMERRA ELECTRIC CO. v. WHITE** **P. C. [1907] A. C. 330**

BRITISH HONDURAS—*Practice*—*New trial must be on motion—Judgment, in the absence of new trial, must be entered according to the findings—Construction of contract—Breach—Repudiation—Consolidated Laws of British Honduras, Part VI., c. 13, s. 213.*

Consolidated Laws of British Honduras, Part VI., c. 13, s. 213, which prescribes that a new trial must be applied for by motion within a specified period after the trial, is imperative, and in appeal from judgment entered after verdict their Lordships have no power to relax or dispense with it:—

Held, in such appeal, that, as no such motion had been made, no contention directed to a new trial was open to the appellants, and that consequently all questions as to a miscarriage of the trial, or as to any point having been wrongfully left to the jury, or as to misdirection, improper admission of evidence, or as to the correctness of the findings were excluded; and that the only question open was whether the judgment in favour of the respondent was justified by the findings:

Held, also, that as the question in this case as to the breach of the contract sued upon going to the root thereof so as to entitle the respondent to repudiate it depended upon the construction of a written document, the judge was right in deciding it himself, and a finding of the jury on the point was not necessary. **GEORGE D. EMERY CO. v. WELLS** **F. C. [1906] A. C. 515**

BRITISH MUSEUM—*British Museum Act, 1902 (2 Edw. 7, c. 12), enables the Trustees of the British Museum to remove certain newspapers and other printed matter from the present British Museum buildings.*

BRITISH NEW GUINEA—*Order in Council providing for revocation of the Order in Council regulating appeals for the Courts of. St. R. & O., 1902, No. 203.*

BRITISH NORTH AMERICA.

See under CANADA.

BRITISH NORTH AMERICA ACT, 1867.

See under CANADA.

- Foreshore, Provincial—Railway company.
See CANADA—Crown Lands. 1.
- Land in British Columbia—Military reserve.
See CANADA—Land. 1.
- Lands in Ontario surrendered by the Indians—Proprietary right—Power of disposition—*See CANADA—Land.* 2.

BRITISH NORTH AMERICA ACT, 1867—contd.

- Manitoba—Powers of local Legislature.
See CANADA—Licensing Acts. 1.
- Naturalization and aliens—British Columbia provincial elections.
See CANADA—Aliens. 1.
- Ontario Act to prevent the profanation of the Lord's Day ultra vires.
See CANADA—Sunday. 1.
- Powers of Dominion Legislature—Local undertakings extended beyond provincial limits.
See CANADA—Telephone. 1.
- Readjustment of representation—"Aggregate population of Canada."
See CANADA—Dominion House of Commons. 1.

BROKAGE.

- Marriage brokerage—Contract—Illegality—Introduction with a view to marriage.
See MARRIAGE. 5.

BROKER.

- See under STOCK EXCHANGE—Stockbroker.*
- Stockbroker—Stock Exchange—Act of bankruptcy—Notice to suspend payment.
See BANKRUPTCY—Notice. 1.

BROKERAGE CHARGES—Costs—Interim investment—Railway stock.
See LANDS CLAUSES ACT. 20.

- Payment out of court—Proceeds of sale of investments.
See LANDS CLAUSES ACT. 31.

"BROTHERS AND SISTERS"—Will—Construction.

See under WILL—"Brothers and Sisters."

BUILD—Covenant to build—Specific performance—Lease.
See BUILDING CONTRACT. 4.

BUILDER—Mortgagee empowered to take possession if builder should "become bankrupt."
See BANKRUPTCY—Order and Disposition. 1.

BUILDING.

See also under
BUILDING CONTRACT, col. 274.
BUILDING ESTATE, col. 277.
BUILDING SCHEME, col. 277.
BUILDING SOCIETY, col. 278.

Note—As to cases and cross-references relating to the County of London, see under LONDON—Buildings. Some cross-references to LONDON—Buildings have also been inserted under this heading.

- Advertisement sign attached to building—Offences—Limitation of time for commencement of proceedings.
See LONDON—Buildings. 2.

BUILDING—continued.

- Agreement—Light—Implied grant—Derogation from grant.
See **LIGHT AND AIR**. 4.
- “Building”—Reservoir authorized by special Act—Supervision of district surveyor.
See **LONDON—Buildings**. 1.
- “Building”—Screen to prevent acquisition of right to light—Open space.
See **BURIAL**. 5.
- Building agreement—Execution—Plant on premises—Lien of building owner—Seizure by sheriff.
See **SHERIFF**. 1.
- Building Contracts.
See under **BUILDING CONTRACT**.
- Building line—Approval of plans—“Written consent” of urban authority.
See **STREETS**. 2.
- Building line, Infringement of—Penalty—Conviction—Subsequent action by Attorney-General for injunction—Laches.
See **STREETS**. 3.
- Burial ground—Power to build on.
See under **BURIAL**.
- Contract, Building—Completion of contract or work—Extraordinary traffic.
See **HIGHWAY**. 33.
- Contract for construction of works—Building owner's property.
See **BUILDING CONTRACT**. 3.

1. — *Conversion of building into dwelling-house*—“New building”—Breach of by-law—Right to remove, alter, or pull down building—Local government—Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 157, 159.

By s. 157 of the Public Health Act, 1875, every urban authority may make by-laws with respect to (inter alia) the structure of new buildings, and may provide for the observance of those by-laws by enacting therein such provisions as they think necessary as to the power of the authority to remove, alter, or pull down any work begun or done in contravention of the by-laws. By s. 159 of the above-mentioned Act, “for the purposes of this Act . . . the conversion into a dwelling-house of any building not originally constructed for human habitation . . . shall be considered the erection of a new building.”

By a by-law made by an urban council it was provided that, if any work to which any of their by-laws relating to new buildings might apply were begun or done in contravention of any such by-law, the person by whom the work was so begun or done, by a notice in writing, should be required to shew sufficient cause why the work should not be removed, altered, or pulled down; and, if he failed to do so, the council should be empowered, subject to any statutory provision in that behalf, to remove, alter, or pull down such work.

The owner of an old railway carriage, which stood upon a plot of land within the district of the above-mentioned urban council belonging to

BUILDING—continued.

him, converted it into a dwelling by removing the seats, making an opening through a partition inside, putting in a stove and chimney and erecting an earth closet outside it, and then resided in it with his wife and children. The structure thus formed did not comply with the by-laws relating to new buildings made by the urban council under s. 157 of the Public Health Act, 1875. The urban council, after due notice to the owner, pulled down the whole building:—
Held (affirming the judgment of a Div. Ct. [1909] W. N. 9; [1909] 1 K. B. 263), that the whole structure, when converted into a dwelling-house, became by virtue of s. 159 of the Public Health Act, 1875, a new building subject to the by-laws relating thereto, and, as it did not comply with the requirements of those by-laws, the urban council had power to pull down the whole building, and not merely to remove and alter the work by which it was so converted as aforesaid.
HANRAHAN v. LEIGH-ON-SEA URBAN DISTRICT COUNCIL — C. A. [1909] W. N. 107; [1909] 2 K. B. 257

- Corporation—Ultra vires—Special Act—Covenant not to erect buildings—Validity of covenant.
See **VENDOR AND PURCHASER—Corporation**. 1.
- Demolition of buildings—Liverpool Sanitary Amendment Act, 1864—“Court”—Public authorities protection—Public health—Summary jurisdiction—Interference by High Court.
See **LOCAL GOVERNMENT**. 2.

2. — *Deposit of plan—Time limited for commencement of work—Inclusion of several buildings—Commencement of some buildings within time limited—Building not commenced within time limited—Right to proceed without fresh notice and deposit—Local government—Harrogate Corporation Act, 1893* (56 & 57 Vict. c. ccciv.), s. 27.

The Harrogate Corporation Act, 1893, by s. 27 enacts that “The deposit with the corporation of any plan of any street or building shall be null and void if the execution of the work specified in such plan be not commenced . . . as to plans deposited after the passing of this Act, within three years from the date of such deposit . . . and fresh notice and deposits shall, unless the corporation otherwise determine, be requisite.”

The deft., after the passing of the Act, deposited a plan shewing thereon a number of separate buildings. He commenced some of the buildings within three years from the deposit, and after the three years he commenced another of the buildings. On a case stated to determine whether the deft. had a right to proceed with this building without a fresh notice and deposit:—

Held (affirming the judgment of Wright J.), that the plan must be taken to be a plan not of one building but of a number of buildings, and that so far as it related to buildings not commenced within three years from the deposit thereof it was null and void, and, unless the corporation otherwise determined, a fresh notice

BUILDING—*continued.*

and deposit were requisite. **HARROGATE CORPORATION v. DICKINSON**

C. A. [1904] 1 K. B. 468

- Drain, Persons altering—By-laws—Liability of agents carrying out work.
See LONDON—Buildings. 4.
- “Drain” — Semi-detached houses — “One building only” — Local government.
See SEWERS. 5.
- External wall as party wall—User of — Architect—Scope of authority—Landlord and tenant.
See LONDON—Buildings. 18.
- Fees of district surveyor—Liability—Period of limitation.
See LONDON—Buildings. 5.
- Forfeiture of plant by builder after bankruptcy—Protected transaction.
See BANKRUPTCY—Order and Disposition, 2, 3.
- General line of buildings in street—Buildings erected beyond the general line — Consent.
See LONDON—Buildings. 7.
- Glasgow building regulations — Streets — “Width.”
See SCOTTISH LAW. 24.
- Height of building—Workmen’s Compensation Act.
See MASTER AND SERVANT—Compensation. 23, 24, 25.
- Hospital — “Public purpose” — Home for defective children.
See LONDON—Buildings. 11.
- Lands taken for public purposes—Compensation.
See ZANZIBAR. 1.
- Light and air.
See under LIGHT AND AIR.
- Light, Owner’s right to—“Building” — Open space.
See BURIAL. 5.
- Model by-laws—Streets and buildings.
See under STREETS.
- Offences—Erection of premises in advance of building line—Liability of new owner — Local Government.
See STREETS. 16.
- Part of building used for purposes of trade, part for dwelling-house.
See LONDON—Buildings. 14.
- Part only of a house or other building or manufactory, prohibition against the compulsory acquisition of a.
See NEW SOUTH WALES. 12.
- Party wall—Building owner’s notice—Reference to surveyors.
See LONDON—Buildings. 16.
- Party wall — Building notice — Difference between building owner and adjoining owner—Arbitration.
See LONDON—Buildings. 15.

BUILDING—*continued.*

— Party wall—Expense of raising—Jurisdiction of arbitrators.

See LONDON—Buildings. 17.

— Party wall—London, House in—Open contract — Adjoining house — Party-wall notice and award—Non-disclosure.
See VENDOR AND PURCHASER—Rescission.

— Plan—Implied representation.

See BUILDING SCHEME. 1.

— “Public building” — Electrical station — Workhouse.

See MASTER AND SERVANT—Factory Acts. 1.

— Rebuilding — Dangerous structure notice—Liability of lessee.

See LANDLORD AND TENANT. 80.

3. — *Restrictive covenant—Building restrictions—One house—Double-tenement house.*

A building structurally divided into two tenements on different floors, with no internal communication, common staircase, or common front door, constitutes two houses within the meaning of a covenant not to erect more than one house on the site.

Grant v. Langston, [1900] A. C. 383, 399, followed.

Kimber v. Admans, [1900] 1 Ch. 412, distinguished. *ILFORD PARK ESTATES, LD. v. JACOBS. Swinfen Eady J* [1903] W. N. 126; [1903] 2 Ch. 522

— Restrictive covenants—Building scheme.

See VENDOR AND PURCHASER—Covenants, 2, 3.

4. — *Restrictive covenant—Object of covenant—Building scheme — Implied covenants with other purchasers—Alteration of character of neighbourhood — Acquiescence in breaches — Injunction.*

Alteration in the character of a neighbourhood is no defence to an action on a covenant restricting user unless it is proved, by the existence of a building scheme or otherwise, that the covenant was entered into with the object either of securing the common advantage of a number of purchasers, or of protecting other property of the covenantee, and that the covenantee has, by his own acts or acquiescence, made it impossible to attain that object.

The Court will not imply mutual covenants between a number of purchasers unless the persons and the plots of land which are to be found are in some way defined.

O. sold a plot of land to B, and took from B. a covenant, among others, that houses erected thereon should be used as private residences only. The covenants were contained in a printed form of agreement which O. used in the sale of many plots; it contained a power for the vendor to waive or vary the covenants with regard to unsold lots. There had been no sale or attempted sale by auction. No plan was produced to B. shewing what plots were affected by the restrictions. O. afterwards himself built, or allowed to be built, a number of shops on the adjoining plots, and acquiesced in some

BUILDING—*continued.*

slight breaches of covenant in respect of B's land. The deft., who purchased from B., and had notice of the covenant, began to alter two houses erected on the plot into shops. O. brought an action to restrain him :—

Held, that no building scheme had been proved to exist, and in the absence of such a scheme and of proof that the covenant was entered into merely for the protection of O.'s property, the change in the character of the neighbourhood, though caused by his own acts, did not, nor did his acquiescence in minor breaches, disentitle him to an injunction. *OSBORNE v. BRADLEY*

Farwell J. [1903] W. N. 96 ; [1903] 2 Ch. 446

Note.

Distinguished by *C. A., Elliston v. Reacher*, [1908] 2 Ch. 665. *Vendor and Purchaser—Covenants.*

Principle of, applied by *C. A., Reid v. Bickerstaff*. [1909] 2 Ch. 305. *Vendor and Purchaser—Covenants.*

— Restrictive covenant—Objection to submit plans.

See COVENANT. 2.

5. — *Restrictive stipulations—Right to enforce—Notice—Building scheme.*

Where an estate is sold in lots at successive sales under a building scheme imposing restrictive stipulations on the lots, a purchaser can only enforce the stipulations against property shewn as allotted in the plan and subject to the stipulations at the sale at which he purchases.

A purchaser can enforce the stipulations, although his conveyance contains an accidental or (*semble*) an intentional departure therefrom, as, notwithstanding the form of the conveyance, the purchaser is not entitled to the benefit of this departure as against other purchasers, nor are they bound by it.

MacKenzie v. Childers (1889), 43 Ch. D. 265, and *Knight v. Simmonds* [1896] 1 Ch. 653 ; 2 Ch. 294, applied.

Semble. A sub-purchaser of part of a lot can enforce the stipulations, although, previously to his purchase, his vendor had committed a breach on another part.

Where property is sold under an open contract, and no restrictions appear on the title, the mere fact that the vendor's solicitor proposes to insert restrictive stipulations in the conveyance, which are partly waived and insisted on, is not sufficient to affect the purchaser or his solicitor with notice that the property is already subject to restrictions. *ROWELL v. SATCHELL*

Swinfen Eady J. [1903] W. N. 113 ; [1903] 2 K. B. 212

— Semi-detached houses.

See SEWERS. 5.

— Servitude—Contract to secure amenity—Building restrictions.

See SCOTTISH LAW. 22.

— Streets.

See under LONDON STREETS—Streets.

— “Structure”—Projection beyond general line of buildings.

See LONDON—Buildings. 25.

BUILDING—*continued.*

— Theatres and music halls—Structural defects—Notice to remedy—Compliance.

See LONDON—Buildings. 26.

— Way, Right of—Grant—Excessive user—Bona fides—Building extending beyond dominant tenement.

See WAY, RIGHT OF. 4.

— Which exceeds thirty feet in height—Extension of existing building.

See MASTER AND SERVANT—Compensation. 27.

— Wooden structure—Transfer of powers from London County Council.

See LONDON—Buildings. 27.

— Workmen's Compensation Act.

See under MASTER AND SERVANT.

BUILDING CONTRACT — *Architect's certificate—Architect in position of arbitrator—Negligence.*

A building owner employed an architect for reward to supervise the erection of certain houses by a contractor. The building contract provided for payments on account of the price of the works during their progress, and for payment of the balance after their completion, upon certificates of the architect, and that a certificate of the architect, shewing the final balance due or payable to the contractor, should be conclusive evidence of the works having been duly completed, and that the contractor was entitled to receive payment of the final balance :—

Held, by *A. L. Smith M.R.* and *Collins L.J.*, *Romer L.J.* dissenting, that the architect, in ascertaining the amount due to the contractor, and certifying for the same under the contract, occupied the position of an arbitrator, and therefore was not liable to an action by the building owner for negligence in the exercise of those functions. *CHAMBERS v. GOLDTHORPE, RESTELL v. NYE.*

C. A. [1901] W. N. 51 ; [1901] 1 K. B. 624

2. — Architect's certificate — Certificate of architect—Finality—Reference of disputes to arbitration—Right to legal remedies—Construction.

In a building contract an architect was nominated, who was given a general control over the works, which were to be carried out in accordance with his directions and to his satisfaction. By a clause in the contract he was empowered to order the removal of improper materials, and the re-execution of work not done in accordance with the drawings and the specification. By another clause any defects which might appear within twelve months from the completion of the works, arising, in the opinion of the architect, from materials or workmanship not in accordance with the drawings and specification, were upon the written direction of the architect to be made good by the contractor at his own cost, unless the architect should decide that he ought to be paid for the same. A further clause, after providing for payment of the contractor under certificates issued by the architect, declared that “No certificate shall be considered

BUILDING CONTRACT—continued.

conclusive evidence as to the sufficiency of any work or materials to which it relates, nor shall it relieve the contractor from his liability to make good all defects as provided by this contract." The final clause provided that in case any dispute or difference should arise as to the construction of the contract, or any matter or thing arising therefrom, except certain specified things, notice thereof should forthwith be given, and such dispute or difference should be referred to arbitration, and the arbitrator should have power to open up, review and revise any certificate, opinion, decision, requisition, or notice, save in regard to the matters expressly excepted, and to determine all matters in dispute of which notice should have been given.

In an action by the contractor against the building owner to recover sums due on certificates issued by the architect, the defendant set up by way of defence and counter-claim that the work done and materials supplied were defective and unsuitable, and not in accordance with the terms of the contract. At the trial the certificates were held to be conclusive, and judgment was given for the plt. On appeal:—

Held, that the arbitration clause destroyed the finality of the certificates, and that consequently the deft. was entitled to set up the defence and counter-claim to the action:

Held, further, by Stirling L.J., that the provision that no certificate should be considered conclusive evidence as to the sufficiency of work or materials to which it referred was general, and that the clause could not be read as applying only to the liability of the contractor to make good defects.

Judgment of Farwell J., [1904] 2 Ch. 261, reversed. **ROBINS v. GODDARD**

C. A. [1905] 1 K. B. 294

Architect's certificate — Construction — Finality—Reference of disputes to arbitration—Right to legal remedies—Construction.

The decision of Farwell J. in this case, reported [1904] 2 Ch. 261, was reversed by the C. A. on Dec. 14, 1904. The hearing in the C. A. is reported in the March part of the K. B. Div., [1905] 1 K. B. 294. **ROBINS v. GODDARD**

C. A. [1905] 1 Ch. 278

See preceding Case for report of this Case.

— Completion of contract or work—Extraordinary traffic.

See HIGHWAYS. 33.

3. — Construction of works — Plant and materials on premises—Temporary works—Building owner's property.

The usual clause in contracts for the construction of works or for building leases, providing that all materials brought on the ground are to become the property of the building owner, must be construed as vesting the materials in the building owner, subject to a condition of defeasance if the builder completes the works. It is a security to the building owner for the performance of the work. If the contractor fails to complete he cannot recover the materials, although the building owner does not complete the works himself or by another contractor.

BUILDING CONTRACT—continued.

Ex parte Collins, [1902] 1 K. B. 555, distinguished. **HART v. PORTGAIN HARBOUR CO.** **Farwell J. [1903] W. N. 41; [1906] 1 Ch. 690**

4. — Lease—Covenant to build—Specific performance.

The lessee of a plot of land for a term of ninety-nine years, commencing in 1894, covenanted within three years from the commencement of the term to erect seven dwelling-houses on the demised premises, similar to dwelling-houses already erected in a certain street. The lease contained an exception of the minerals (which did not belong to the lessor) and reserved to the owner for the time being full rights of working, including power to destroy the surface. At the date of this lease the lessee had acquired from the owner a lease of the minerals with full surface rights. The houses in the street in question were not exactly alike, some having four rooms and others five. In an action for specific performance of the covenant:—

Held—(1.) upon the construction of the lease, that the covenant was not extinguished by the power reserved by the lease to the mineral owner to destroy the surface; (2.) that damages assessed on the principle of *Ebbetts v. Conquest*, [1895] 2 Ch. 377, would afford no adequate remedy; (3.) that the houses to be erected were sufficiently defined to enable the Court to order specific performance; and specific performance was ordered accordingly. **MOLYNEUX v. RICHARD** - **Kekewich J. [1905] W. N. 164; [1906] 1 Ch. 34**

— Light and air.

See under LIGHT AND AIR.

— Plant and materials—Forfeiture—Protected transaction.

See BANKRUPTCY—Order and Disposition. 2.

5. — Specific performance—Land conveyed in consideration of contract to build—Defined works—Damages not adequate compensation—Exception from general rule as to building contracts.

The plts., an urban sanitary authority, in pursuance of a scheme of street improvement, sold and conveyed to the deft. a plot of land abutting on a street, the deft. covenanting with them that he would erect buildings thereon within a certain time. The nature of the buildings to be erected was not precisely specified by the covenant, but subsequently in consideration of the plts.' giving the deft. further time for performance of his obligation to erect buildings, he agreed to erect on the land eight houses in accordance with certain plans, submitted by him to and approved by the plts., which definitely shewed the nature and particulars of the houses to be erected. The deft. failing to perform this last-mentioned agreement, the plts. brought an action against him claiming specific performance:—

Held, that the case came within the class of cases which has been recognized by the Courts as forming an exception to the general rule that specific performance of a building contract will not be ordered, and that an order ought to be

BUILDING CONTRACT—continued.

made against the deft. for specific performance of his contract to build houses in accordance with the before-mentioned plans. *WOLVERHAMPTON CORPORATION v. EMMONS* - C. A. [1901] W. N. 36; [1901] 1 K. B. 515

Note.

This case was referred to by Kekewich J., *Molynse v. Richards*, [1905] W. N. 164; [1906] 1 Ch. 34. *See preceding Case.*

BUILDING ESTATE—Covenant running with the land — “Assign” — Breach — Damages.

See LANDLORD AND TENANT. 26.

— Disused burial ground—building lease.

See BURIAL. 6.

1. — Restrictive covenants—“Offensive” trade or business—Bill-posting—Advertisement hoarding—“Building”—Mandatory injunction.

The plan and conditions of sale of a residential estate provided that all the lots should be subject to certain restrictive covenants for the general benefit of the estate, and, amongst others, that the purchasers were not to erect any “building” for manufacturing purposes or “for carrying on of any noisy, noisome, offensive or dangerous trade or calling.” A lessee from one of the purchasers of two lots had erected along the boundary of the land where it adjoined the plt.’s plot a hoarding of a permanent nature, 156 feet long and 15 feet high, and covered the hoarding with advertisements. On an action by the plt. for a mandatory injunction for the removal of this hoarding:—

Held by Cozens-Hardy M.R. and Buckley L.J. (affirming the decision of Neville J.), that this hoarding was, within the meaning of the above covenant, a “building” upon which the trade of bill-posting was carried on, and that this was an “offensive” trade to the owners of the adjoining plots, and, consequently, that the plt. was entitled to a mandatory injunction.

But *held* per Fletcher Moulton L.J., that “offensive” meant something ejusdem generis with “noisy, noisome and dangerous,” i.e., some trade the carrying on of which physically interfered with the comfort of a neighbour, and that the hoarding was not a “building” within the covenant.

NUSSEY v. PROVINCIAL BILL POSTING CO. AND EDDISON - C. A. [1909] W. N. 93; [1909] 1 Ch. 734

— Restrictive covenant—Plans to be submitted — Breach of covenant by lessee—Bankruptcy of lessee — Re-entry by covenantor—Liability of covenantor for his assigns.

See COVENANT. 7.

BUILDING SCHEME — Plan—Implied representation—Power to vary—Blocking-up road—Cul-de-sac—Dedication to public—User—Right of way.

The plt. was the owner of a house built on a plot which formed part of an estate laid out by a building society in accordance with a scheme. On the sale of this plot by the society to the plt.’s predecessor in title, it was shewn on a plan of the estate as bounded on one side

BUILDING SCHEME—continued.

by a vacant space, which, though not named in the plan as a road, had been in fact roughly made up by the society as a road. This road ran from the street on which the plt.’s house fronted to a level crossing on a railway over which there was a private right of way for the benefit of the owners of a field on the opposite side of the line. The building society having acquired the field and released the right of way, fenced off the road and sold the site to the deft.’s predecessor in title. All the plots on the building estate were conveyed subject to a condition reserving to the building society the power of allowing variations in the plans and conditions. The plt. claimed to restrain the deft. from digging up the road on the ground, first, that it was a violation of the building scheme, and secondly, that the road had been dedicated to the public by user:—

Held, that under the conditions the society had an absolute power to alter the building scheme by closing the road, and that there was no sufficient evidence of user or dedication to entitle the plt. to succeed.

Decision of Kekewich J., [1905] W. N. 169; [1906] 1 Ch. 253, affirmed.

Per Romer L.J.: It is very difficult to make out dedication by user where the road, so far as the public are concerned, is a cul-de-sac. *WHITEHOUSE v. HUGH* - C. A. [1906] W. N. 151; [1906] 2 Ch. 283

— Restrictive covenants — Vendor and purchaser.

See under VENDOR AND PURCHASER—Covenants.

BUILDING SOCIETY.

Regulation of the Secretary of State, dated Nov. 8, 1906, prescribing Table of Fees in lieu of those prescribed by No. 41 of the Building Society Regulations, 1895. St. R. & O. 1906, No. 838.

Regulation of the Secretary of State, dated Dec. 4, 1906, under the Building Societies Acts, supplementary to the Regulation as to fees, dated Nov. 8, 1906. St. R. & O. 1906, No. 885.

1. — Cancellation of registry—Winding-up—Building Societies Act, 1894 (57 & 58 Vict. c. 47), s. 6, sub-ss. 1, 5; s. 8.

The society was registered in 1878, under the Building Societies Act, 1874, and had a nominal capital of 175,000*l.* in shares, and a paid-up capital of about 82*l.* Prior to 1880 the society became indebted to S., a shareholder, in the sum of about 31*l.* for rent, and moneys paid on behalf of the society. The society did not carry on business after the year 1880, and in 1895 its registration was cancelled under s. 6, sub-s. 5, of the Building Societies Act, 1894. S. petitioned for the winding up of the society, alleging that it had ceased to carry on business for some years, that it was insolvent, and that its assets, so far as he had been able to ascertain, consisted of the sum of 73*l.* and interest in the hands of its bankers.

Buckley J. said that the object of the petition was to obtain payment out, for the benefit of the creditors, of the money in the bank. Sect. 6, sub-s. 5, of the Act of 1894 said that a society

BUILDING SOCIETY—continued.

whose registry had been cancelled should "absolutely cease to enjoy as such the privileges of a society under the Building Societies Acts, but without prejudice to any liability actually incurred by the society, and any such liability may be enforced against the society as if the cancelling . . . had not taken place." And s. 8, sub-s. 1, said that, "notwithstanding anything in the Building Societies Acts, every society under those Acts shall be deemed to be a co. within the meaning of the Companies (Winding-up) Act, 1890." The petition was filed to enforce a liability. In *In re Anglo-American Exploration and Development Co.*, [1898] 1 Ch. 100, Vaughan Williams J. held that where the name of a co. had been struck off the register under the Companies Act, 1880, a creditor's remedy was to petition for a winding-up order. The effect of making a winding-up order against the society would be that the official receiver would be able to get the money from the bank. The winding-up order would therefore be made, but no proceeding under it, beyond obtaining the money from the bank, was to be taken without the leave of the Court. In *re "GROSVENOR" HOUSE PROPERTY ACQUISITION AND INVESTMENT BUILDING SOCIETY* - Buckley J. [1902] W. N. 115

2. — *Infant member — Mortgage by infant member invalid — Lien of building society — Building Societies Act, 1874 (37 & 38 Vict. c. 42), s. 38 — Infants' Relief Act, 1874 (37 & 38 Vict. c. 62), s. 1.*

Although an infant may be a member of a building society registered under the Building Societies Act, 1874, and may by s. 38 "give all necessary acquittances," he cannot execute a valid mortgage to secure advances made to him by the society. Such a mortgage is by the Infants' Relief Act, 1874, s. 1, absolutely void as against the infant.

The decision of the C. A., [1902] 1 Ch. 1, affirmed. NOTTINGHAM PERMANENT BENEFIT BUILDING SOCIETY *v.* THURSTAN - H. L. (E.) [1902] W. N. 212; [1903] A. C. 6

— Mortgage — Statutory receipt — Successive incumbrances—Priority.
See MORTGAGE—Priority. 2.

— Share certificates— Evidence—Delivery.
See DONATIO MORTIS CAUSA. 1.

3. — *Winding-up — Unincorporated society certified after 1862 and before 1874—Repeal of statute under which certified—Illegal company—Jurisdiction to wind-up—Building Societies Acts, 1836 (6 & 7 Will. 4, c. 32); 1874 (37 & 38 Vict. c. 42), s. 40; 1894 (57 & 58 Vict. c. 47), s. 25 — Companies Act, 1862 (25 & 26 Vict. c. 89), ss. 4, 199.*

A building society was established and certified in 1868 under the Building Societies Act, 1836, but was never incorporated. By s. 25 of the Building Societies Act, 1894, the Act of 1836 was repealed as from Aug., 1896, as to all societies certified under it after 1866.

Early in 1900 the society was found to be insolvent, and a winding-up petition was then presented against the society, but C., one of its creditors, did not appear on that petition,

BUILDING SOCIETY—continued.

which was withdrawn, all the other undisputed creditors of the society agreeing to accept 12s. 6d. in the pound, which was paid to them. There was nothing for distribution amongst the shareholders, as the assets when sold did not realize enough to pay the composition. The balance of this was provided by the directors out of their own pockets, and they took an assignment of the claims of the assenting creditors, and retained in hand enough to pay, and offered C. 12s. 6d. in the pound on his debt.

C. refused the offer, and petitioned for a winding-up order, alleging irregularities by the society's officers, and that an investigation into its affairs was necessary. The Court was of opinion that nothing substantial would result from a winding-up order:—

Held, on the facts above stated, that the petition must be dismissed.

Seem, that, the Act of 1836 having been repealed, the society came within the class of co.'s forbidden by s. 4 of the Companies Act, 1862, and that there was no jurisdiction to wind it up under the Companies Acts:—

Held, also, that the society had no status to ask to be paid its cost of the petition while it relied on this point against the petitioner. In *re ILFRACOMBE PERMANENT MUTUAL BENEFIT BUILDING SOCIETY* - Wright J. [1901] 1 Ch. 102

BUNKER COAL—Ship—Mortgage—Freight.
See SHIPPING—Mortgages. 1.

BUOYS—Collision—Sea Reach, river Thames—Starboard hand buoys — Narrow channel.
See SHIPPING—Collision. 74.

BURGAGE TENURE—Married woman—Mortgage—Separate examination—Acknowledgment—Custom.
See HUSBAND AND WIFE—Mortgages. 1.

BURGH. See under SCOTTISH LAW.

— Area without ancient royalty.
See LOCAL GOVERNMENT. 2A.

BURGH SEWERS—Notice in writing to persons interested — Public health (Scotland) Act.
See SEWERS.

BURGH SURVEYOR — Master and servant—Extra work—Delay.
See SCOTTISH LAW. 17.

BURGLARY INSURANCE.

See under INSURANCE (BURGLARY).

BURIAL.

Cremation Act, 1902 (2 Edw. 7, c. 8), regulates the burning of human remains, and enables burial authorities to establish crematoria.

Cremation—Regulations made by Secretary of State for the Home Department, dated March 31, 1903, under Section 7 of the Cremation Act, 1902. St. R. & O. 1903, No. 286.

BURIAL—*continued.*

Burial Act, 1906 (6 Edw. 7, c. 44), amends the law with respect to the consents required for the use of ground for burials and the construction of cemeteries.

Burial Grounds—Sanitary Requirements of. Memorandum on the. 1908. (R.—Loc. Gov. Bd.). Price 2d.

1. — *Addition to burial ground—Land set apart for interments in breach of order in Council—Disused burial ground—Power to build on—Burial Act, 1853 (16 & 17 Vict. c. 134), ss. 1, 5, 6—Metropolitan Open Spaces Act, 1881 (44 & 45 Vict. c. 34), s. 1—Disused Burial Grounds Act, 1884 (47 & 48 Vict. c. 72), s. 3—Open Spaces Act, 1887 (50 & 51 Vict. c. 82), s. 4, and Schedule.*

The provisions of ss. 1 and 6 of the Burial Act, 1853, apply to an addition to an existing burial ground as well as to an altogether new burial ground.

Where a piece of land was set apart for the purposes of interment, and part of it was used for those purposes, in contravention of an O. in C. made under s. 1 of the Burial Act, 1853 :—

Held, that the definition of a "burial ground" in s. 4 of the Open Spaces Act, 1887, which is by that Act rendered applicable to the Disused Burial Grounds Act, 1884, included land which had been "set apart for the purposes of interment," even though it was so set apart in contravention of the O. in C., and consequently could never have been lawfully used for the purposes of interment; and therefore that s. 3 of the last-mentioned Act prohibited the use of any part of the land so set apart for building purposes.

Judgments of Wright J. and Bray J., [1905] 1 K. B. 403, affirmed. *In re BOSWORTH AND GRAVESEND CORPORATION*

C. A. [1905] W. N. 102; [1905] 2 K. B. 426

2. — *Burial authority—Cemetery—Rights of incumbent of parish—Burial fees—Interment of Nonconformist without rites of Church of England—Consecration of part of cemetery—Absence of sanction of Secretary of State to consecration—Burial Act, 1852 (15 & 16 Vict. c. 85), s. 32—Burial Act, 1853 (16 & 17 Vict. c. 134), s. 7—Burial Act, 1900 (63 & 64 Vict. c. 15), s. 3.*

A burial authority which had acquired land for a new cemetery petitioned the Secretary of State, under s. 7 of the Burial Act, 1853, for his sanction to the division of the ground into four approximately equal parts, of which one part (called plot A) was to be consecrated: the sanction was duly given. Subsequently a petition was presented on behalf of the burial board to the bishop of the diocese praying for the consecration of plots A and C: the latter was apparently inserted in error. Both plots were duly consecrated, all the legal requirements and formalities as to the consecration being complied with. In 1904 two burials took place in plot C of two Nonconformist residents, who were buried with the rites of the respective communities to which they belonged, and without any of the rites and ceremonies of the Church of England; no services were rendered by the vicar of the parish or by any one on his behalf in respect of these burials. The vicar having sued the burial

BURIAL—*continued.*

authority to recover a fee of 2s. 6d. in respect of each of these burials :—

Held, first, that plot C, having once been consecrated with the proper legal formalities, remained consecrated ground, notwithstanding the want of the sanction of the Secretary of State to its consecration; but, secondly, that the vicar, having rendered no services in respect of the burials, was not entitled under s. 3, sub-s. 4, of the Burial Act, 1900, to any fees in respect of them. *WILLIAMS v. BRITON FERRY BURIAL BOARD* Div. Ct. [1905] 2 K. B. 565

3. — *Burial fees—Public burial ground—Fees other than for services rendered—Burial Act, 1900 (63 & 64 Vict. c. 15), s. 3, sub-s. 4.*

At the time of the passing of the Burial Act, 1900, the parish of Tooting Graveney possessed an old churchyard still open for burial, and the rector was entitled to charge in respect of such burials "fees other than for services rendered." This parish and four others had by virtue of the London Government Act, 1899, and schemes made thereunder been formed into the borough of Wandsworth and united for civil purposes into one parish called the parish of Wandsworth Borough. At the time of the union all the parishes except Tooting Graveney had adopted the Burial Acts, and three of them had separate public burial grounds provided under those Acts and used by their own parishioners only. The scheme of union provided that the Burial Acts should be in force and be administered by the borough council uniformly throughout the borough. After the union the three public burial grounds above mentioned were used for the whole borough, and parishioners of Tooting Graveney were from time to time buried there. The rector or his representative officiated at these burials, and he claimed to be entitled to the same fees as were paid in the churchyard :—

Held, that the rector had not at the time of the passing of the Act been entitled to any fees in respect of any matter arising in the three public burial grounds, and therefore the proviso in s. 3, sub-s. 4, of the Burial Act, 1900, did not apply, and the "fees other than for services rendered" were not payable. *ANDERSON v. WANDSWORTH BOROUGH COUNCIL*

Neville J. [1908] W. N. 118; [1908] 2 Ch. 81

4. — *Burial ground—Fees to incumbent—Erection of monuments—Consecration—"Payable"—"Used"—Burial Act, 1900 (63 & 64 Vict. c. 15), s. 3, sub-s. 4 (i.).*

In 1893 a burial board acquired eight acres of land adjoining, but separated by a wall from, seventeen acres then being used as a burial ground, with the intention of using this additional land for burial purposes. In 1897 communication was made between the two areas, and the eight acres were laid out as a burial ground. In June, 1900, the Home Secretary sanctioned a division into consecrated and unconsecrated portions. On July 2 the petition for consecration was sent to the bishop. On July 10 the Burial Act, 1900, received the Royal Assent. On Oct. 13 part of the eight acres was consecrated. In Nov., 1902, the first burial in the consecrated

BURIAL—*continued.*

portion took place. The incumbent of a parish, who was entitled to receive fees other than for services rendered in respect of the seventeen acres, claimed, under s. 3, sub-s. 4 (i.), of the Burial Act, 1900, similar fees in respect of the eight acres:—

Held, that as the incumbent's right to fees arose only in respect of the consecrated portion of the burial ground, and that as the actual consecration did not take place until after the passing of the Act, this claim to fees could not be allowed.

Decision of Channell J., [1906] 1 K. B. 338, affirmed, but on different grounds. Meaning of the words "payable," "used," for the purposes of a parish, and "used" before the passing of the Act, discussed. *YOUNG v. KINGSTON-ON-THAMES, SURBITON, NEW MALDEN AND COOMBE JOINT BURIALS COMMITTEE*

C. A. [1907] W. N. 5; [1907] 1 K. B. 416

5. — *Burial ground—Open space—Screen to prevent acquisition of right to light—"Building"* —*Metropolitan Open Spaces Acts, 1877* (40 & 41 Vict. c. 35), s. 1, and 1881 (44 & 45 Vict. c. 34), ss. 4, 5—*Disused Burial Grounds Act, 1884* (47 & 48 Vict. c. 72), s. 3.

A disused churchyard was held and administered by a borough council as an open space under the Metropolitan Open Spaces Acts, 1877 and 1881, and the Disused Burial Grounds Act, 1884. An adjoining landowner built on his land houses which overlooked the churchyard. To prevent these houses from acquiring any right of light, and to administer the ground with a view to its enjoyment by the public as an open space, the council proposed to erect a screen in the churchyard:—

Held, that a screen erected for such a purpose would not be a "building" prohibited by the Acts, and that the council in erecting it would be rightly administering the Acts.

The decision of the C. A., sub nom. *Boyce v. Paddington Borough Council*, [1903] 2 Ch. 556, reversed, and the decision of Buckley J., [1903] 1 Ch. 109, restored. *PADDINGTON CORPORATION v. ATT.-GEN.* - H. L. (E.)

[1905] W. N. 156; [1906] A. C. 1

— *Burial ground—Separated from church—Churchyard—Liability to poor rate.*
See *RATES*. 8.

— *Charity—Repair of burial grounds—Restriction to members of particular sect.*
See *CHARITY*. 4.

— *Churchyard—Liability to poor rate.*
See *RATES*. 8.

— *Disused burial grounds—Irrevocability of faculty except for fraud.*
See *ECCLESIASTICAL LAW—Faculty*. 15.

6. — *Disused burial ground—Letting of unused and unconsecrated land—Application of rents—Parish—Vestry—Church property—Borough council—Transfer of powers and duties—Exception of ecclesiastical powers and duties—Burial Act, 1857* (20 & 21 Vict. c. 81), s. 24—*London Government Act, 1899* (62 & 63 Vict. c. 14), ss. 4, 23.

BURIAL—*continued.*

Land bought with ecclesiastical funds was by a private Act (3 Geo. 3, c. 1) vested in the rector and churchwardens of St. George, Hanover Square, for ever for a burial ground for the inhabitants of the parish. The rector and his successors were to have the burial fees. Under the direction of the vestry, the rector and churchwardens granted building leases of the unconsecrated part of the land. In 1854 the burial ground was closed by an Order in Council. As the building leases fell in and the buildings were pulled down the rector and churchwardens, under the direction of the vestry, granted fresh leases:—

Held, that the land was originally Church property and did not cease to be Church property by virtue of the Burial Act, 1857, and that on the passing of the London Government Act, 1899—which by s. 4 transferred the powers and duties of vestries to borough councils, but by s. 23 excepted any powers or duties relating to the affairs of the Church or any interest of a vestry in any Church property—the power and duty to direct the application of the proceeds of the leases did not pass to the Westminster Corporation as the borough council, but remained in the vestry under s. 24 of the Burial Act, 1857.

The question to what purposes the proceeds of the leases ought to be applied could not be determined in this litigation.

Decision of C. A., [1909] W. N. 66; [1909] 1 Ch. 592, reversed. *ST. GEORGE, HANOVER SQUARE (RECTOR AND CHURCHWARDENS) v. WESTMINSTER CORPORATION* - H. L. (E.)

[1910] W. N. 57; [1910] A. C. 225

— *Expenses of burial—Stranded vessel—Diseases of Animals Acts.*

See *SHIPPING—Burial*. 1.

7. — *Expenses of carrying into execution—Burial Acts—Poor-rate—General district rate—Local government—Urban district council—Transfer of powers of burial board—Burial Acts—15 & 16 Vict. c. 85—Local Government Act, 1894* (56 & 57 Vict. c. 73), ss. 7, 62, 67.

Where an urban district council, under the power given by s. 62 of the Local Government Act, 1894, take over the powers, duties, and liabilities of a burial board within their district, the expenses of carrying the Burial Acts into execution continue to be chargeable upon and payable out of the poor-rate, and are not chargeable upon or payable out of the council's general district rate. *REX v. CONNAH'S QUAY OVERSEERS* - Div. Ct. [1901] 2 K. B. 174

— *Faculty—Reservation by rector of grave space.*

See *ECCLESIASTICAL LAW—Faculty*. 2.

— *Faculty for erection of vestry on disused burial ground—"Enlargement of church."*

See *ECCLESIASTICAL LAW—Faculty*. 22.

— *Faculty for removal of remains from consecrated to unconsecrated ground—Jurisdiction—Discretion.*

See *ECCLESIASTICAL LAW—Faculty*. 19.

BURIAL—*continued.*

— Fatal Accidents Act — Cause of action — Negligence causing death — Recovery of burial expenses.

See MASTER AND SERVANT—**Fatal Accidents Act.** 1.

8. — Ground “not already used as or appropriated for a cemetery” — Burial within 100 yards of dwelling-house — Dwelling-house erected subsequent to acquisition of site for cemetery — “Already” — “Used for burials” — Injunction — *Burial Act, 1885 (18 & 19 Vict. c. 128), s. 9.*

The words in s. 9 of the Burial Act, 1855, “no ground not already used as or appropriated for a cemetery” mean, “used as or appropriated” at the date of the passing of the Act, and, consequently, the owner, lessee, or occupier of a dwelling-house which has been erected subsequently to the acquisition of a site for a cemetery by a burial board is entitled to an injunction to restrain any ground within 100 yards of such dwelling-house from being “used for burials” without his consent in writing.

Decision of Kekewich J., [1906] W. N. 90, affirmed. *GODDEN v. HYTHE BURIAL BOARD*

C. A. [1906] W. N. 126; [1906] Ch. 270

— Rates — Burial ground.
See under **RATES.**

BUSINESS — Right of company to carry on — Debentures — Floating security — Set-off.
See **COMPANY—Debentures.** 16.

— Trust estate — Management — Powers — Investment — Company — Reconstruction.
See **TRUSTEE—Investments.** 14.

— Will — Conversion — Profits of business — Capital or income — Tenant for life and remainderman.
See **WILL—Capital or Income.** 1.

BUTTER.

Butter and Margarine Act, 1907 (7 Edw. 7, c. 21), is an Act to make further provision with respect to the manufacture, importation, and sale of butter and margarine and similar substances.

— Adulteration.
See under **ADULTERATION.**

BY-LAWS—Advertisements.

See under **ADVERTISEMENTS.**

— Building — Conversion of building into dwelling-house — “New building” — Breach of bylaw — Local government.
See **BUILDINGS.** 1.

BY-LAWS—*continued.*

— Buildings — Persons altering drains — By-laws — Liability of agents carrying out work.
See **LONDON—Buildings.** 4.

— Coal — Sufficiency of weighing instrument.
See **WEIGHTS AND MEASURES,** 1, 2.

— Information — Execution of work in contravention of by-law.
See **LOCAL GOVERNMENT.** 16.

— Infringement — Injunction — Special remedy — Proceedings before justices — streets.
See **LOCAL GOVERNMENT.** 3.

— Infringement — Street — “New street,” Laying out — Attorney-General, Absence of.
See **LOCAL GOVERNMENT.** 3.

— Lodging-houses — London.
See under **LONDON—Lodging-houses.**

— Newspapers — By-law — Validity — Reasonableness — Prohibition of sale of papers devoted to racing tips.
See **LOCAL AUTHORITY.** 5.

— Reasonable — Discretion of justices.
See **LOCAL GOVERNMENT.** 4.

— Restraint of trade — Ultra vires — Scottish law.
See **SCOTTISH LAW.** 6.

— Salmon fishery — “Description of nets.”
See **FISHERY.** 10.

— Shops — Ultra vires — Power of magistrates to close shops at 10 P.M.
See **SCOTTISH LAW.** 23.

— Streets.
See under **LONDON—Streets.**

— Tramcars, Use of offensive language in — By-laws for prevention of nuisances — Validity.
See **TRAMWAY.** 4.

— Ultra vires — Ice-cream vendor’s licence — Lawful day — Edinburgh Corporation.
See **SCOTTISH LAW.** 6.

— Ultra vires — Power to charge fees on cattle in municipal sale-yards only.
See **NEW SOUTH WALES.** 35.

— Validity, Evidence of.
See **CORPORATION.** 5.

— Validity — Swearing or using offensive or obscene language in tramcar.
See **TRAMWAY.** 4.

— Water-closets, repairing apparatus of existing — Requirement of notice — Sanitary authority.
See **LONDON—Water-closets.** 1.

C

CABLE—*Pacific Cable Act, 1901 (1 Edw. 7, c. 31), provides for the construction and working of a submarine cable from the Island of Vancouver to New Zealand and to Queensland.*

Pacific Cable Amendment Act, 1902 (2 Edw. 7, c. 26) is an Act to substitute the government of the Commonwealth of Australia, for the Government of the States of New South Wales, Queensland and Victoria in the Pacific Cable Act, 1901 (1 Edw. 7, c. 31).

— Electric current, Escape of—Disturbance to submarine cables.

See CAPE OF GOOD HOPE. 3.

— Submarine telegraphs convention—Protection of cables—Fouling of cable by anchor—Sacrifice of anchor—Compensation.
See TELEGRAPH. 2.

— Telephone—Power to lay cable along bridge without consent of railway company—Consent of Postmaster-General.
See TELEGRAPH. 3.

CABS—Distress—Implement of trade—Landlord and tenant.

See DISTRESS. 7.

— London.

See under LONDON—Carriage.

— Workmen's compensation—Taxi-cab driver—"Workman"—"Contract of service."
See MASTER AND SERVANT—Compensation. 174.

CAICOS ISLANDS.

See under TURKS AND CAICOS ISLANDS.

CALEDONIAN RAILWAY (ADDITIONAL POWERS) ACT, 1872.

See SCOTTISH LAW. 3.

CALLS—Company.

See under COMPANY—Calls.

CAMERA—Power to hear in—Divorce—Practice.

See DIVORCE—Practice. 7.

CANADA.

The cases under this heading comprise those of Canada generally, British Columbia, North West Territories, Nova Scotia, Ontario, New Brunswick, Quebec, and Vancouver.

For the Table of Statutes relating to the above judicially considered during the years 1901—1910, see II. COLONIAL STATUTES, ante, p. dlvi.

Vancouver—Pacific Cable Act, 1901 (1 Edw. 7, c. 31), provides for the construction and working of a submarine cable from the Island of Vancouver to New Zealand and to Queensland.

CANADA—continued.

Reserve Forces Act, 1906 (6 Edw. 7, c. 11), is an Act to amend the law relating to the Reserve Forces.

British North America Act, 1907 (7 Edw. 7, c. 11), is an Act to make further provision with respect to the sums paid by Canada to the several Provinces of the Dominion.

Alberta—Privy Council—Judicial Committee—Order in Council, dated Jan. 10, 1910, regulating appeals to His Majesty in Council from the Supreme Court of Alberta. Reprint from W. N. 1910 (Feb. 19), p. 75. See CURRENT INDEX, 1910, p. cxi.

Administration, col. 289.

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CANADA—*continued.**Master and Servant*, col. 309.*Mines*, col. 310.*Mortmain*, col. 310.*Negligence*, col. 310.*Nova Scotia*. See under NOVA SCOTIA.*Patent*, col. 311.*Pensions*, col. 311.*Petition of Right*, col. 312.*Practice*, col. 312.*Principal and Agent*, col. 316.*Privy Council Appeals*. See also under PRIVY COUNCIL.*Railway*, col. 316.*Revenue*, col. 320.*Schools*, col. 320.*Settlers' Rights*, col. 320.*Shipping*, col. 321.*Snow*, col. 323.*Streets*, col. 323.*Sundays*, col. 324.*Swamp Lands*, col. 324.*Telephone*, col. 325.*Temperance Acts*, col. 325.*Trade Machines*, col. 325.*Trade-Mark*, col. 325.*Trade Union*, col. 326.*Trespass*, col. 326.*Water*, col. 326.*Will*, col. 327.*Yukon Territorial Act*, col. 328.**Administration.**

Administration by Japanese Consuls—Order in Council, dated Dec. 21, 1906, empowering Consuls of Japan to administer estates of Japanese subjects dying within His Majesty's Dominions, except in the Dominion of Canada, Newfoundland, and New Zealand. **St. R. & O., 1906, No. 959.**

Alberta.

Privy Council—Judicial Committee—Order in Council, dated Jan. 10, 1910, regulating appeals to His Majesty in Council from the Supreme Court of Alberta. Reprint from **W. N. 1910 (Feb. 19)**, p. 75. See CURRENT INDEX, 1910, p. cxi.

Aliens.

1. — *British North America Act*, s. 91, sub-s. 25; s. 92, sub-s. 1—*Naturalization and aliens—British Columbia Provincial Elections Act*, s. 8—*Powers of provincial legislature—Privileges conferred or withheld after naturalization—Law of British Columbia.*

Sect. 91, sub-s. 25, of the British North America Act, 1867, reserves to the exclusive jurisdiction of the Dominion Parliament the subject of naturalization, that is, the right to determine how it shall be constituted.

CANADA (Aliens)—*continued.*

The provincial legislature has the right to determine under s. 92, sub-s. 1, what privileges as distinguished from necessary consequences, shall be attached to it.

Accordingly, the British Columbia Provincial Elections Act (1897, c. 67), s. 8, which provides that no Japanese, whether naturalized or not, shall be entitled to vote, is not ultra vires. **CUNNINGHAM AND ATT.-GEN. FOR BRITISH COLUMBIA v. TOMES HOMMA AND ATT.-GEN. FOR DOMINION OF CANADA**

P. C. [1903] A. C. 151

2. — *Power of Dominion Parliament—Validity of Dominion Act 60 & 61 Vict. c. 11, s. 6, amended by 1 Edw. 7, c. 13—Power to expel and deport aliens.*

Held, that s. 6 of the Dominion statute 60 & 61 Vict. c. 11, as amended by 1 Edw. 7, c. 13, s. 13, is intra vires of the Dominion Parliament.

The Crown undoubtedly possessed the power to expel an alien from the Dominion of Canada, or to deport him to the country whence he entered it. The above Act, assented to by the Crown, delegated that power to the Dominion Government, which includes and authorizes them to impose such extra-territorial constraint as is necessary to execute the power. **ATT.-GEN. FOR THE DOMINION OF CANADA v. EVERETT E. CAIN; THE SAME v. GILHULA**

P. C. [1906] A. C. 542**Arbitration.**

1. — *Arbitrators as to value of land expropriated also appointed mediators—Award set aside—Terms of submission exceeded—Law of arbitration—Railway Act, 1903 (Canada, 3 Edw. 7, c. 58), s. 161.*

Where arbitrators were appointed under deeds of submission to value three expropriated lots of ground and the indemnity for damages, it being declared that they should act as mediators (*amiables compositeurs*), but should be bound to conform to the provisions of art. 161 of the Railway Act, 1903, and the award in lieu of valuing the third lot in money ordered that the expropriators should return it in part and construct a road on their own adjoining land, to be maintained by them in perpetuity for the benefit of the parties expropriated:—

Held, that arbitrators who are also appointed mediators cannot disregard their instructions, and that the error vitiated the whole award. **QUEBEC IMPROVEMENT CO. v. QUEBEC BRIDGE AND RAILWAY**

P. C. [1906] A. C. 217

2. — *Award—Jurisdiction of arbitrators—Deed of submission—Construction.*

By agreement of submission dated April 10, 1893, the provinces of Ontario and Quebec referred to a statutory tribunal the "ascertainment and determination of the amount of the principal of the Common School Fund and the method of computing" interest thereon, and of the amount for which Ontario was liable. That fund was established by Canadian Act 12 Vict. c. 200, and consisted (*inter alia*) of the proceeds of public lands received by Ontario and paid to the Dominion:—

Held, that a claim by Quebec that Ontario

CANADA (Arbitration)—continued.

should be debited with uncollected prices of land sold by it, being a claim for wilful neglect and default and in the nature of damages, not suggested in but heterogeneous to the matters actually specified in the submission, was not on its true construction included therein. **ATT.-GEN. FOR ONTARIO v. ATT.-GEN. FOR QUEBEC**

P. C. [1903] A. C. 39

Note.

This case was followed by *P. C.* in *Att.-Gen. for Quebec v. Att.-Gen. for Ontario*, [1910] A. C. 627. See next Case.

3. — Award as to accounts of common school lands fund — Can. Cons. Stat., 1859, c. 26 — Arbitration under Canada Act, 54 & 55 Vict. c. 6; Ontario Act, 54 Vict. c. 2; Quebec Act, 54 Vict. c. 4 — Jurisdiction of arbitrators — Submission as to accounts and destination of moneys received.

By s. 9 of the award dated Sept. 3, 1870, made in pursuance of the British North America Act, 1867, s. 142, it was directed that all moneys received by the Province of Ontario since June 30, 1867, from the school lands set apart by Canadian statutes (consolidated by Can. Cons. Stat., 1859, c. 26) and called the common school fund, should be paid to the Dominion, and that the income derived therefrom should be paid to the Provinces of Ontario and Quebec in the proportions specified in s. 5 of that statute.

On April 10, 1893, the three Governments of the Dominion, Ontario, and Quebec entered under statutory authority into an agreement of submission as to matters in difference in the settlement of accounts between them under the award of 1870, and for the ascertainment and distribution of the said school fund. Thereunder Quebec claimed that certain moneys, which it was admitted had not been actually received by Ontario, had been constructively received, since they were deductions which Ontario was not authorized to make except at her own expense, and should be the subject of distribution between them :—

Held, that the Supreme Court was right in affirming an award to the effect that the arbitrators had no jurisdiction. Moneys actually received by Ontario were alone the subject of the submission, the terms of which could not be extended so as to force a contribution from a larger constructive receipt.

Att.-Gen. for Ontario v. Att.-Gen. for Quebec, [1903] A. C. 39, followed. **ATT.-GEN. FOR QUEBEC v. ATT.-GEN. FOR ONTARIO**

P. C. [1910] A. C. 627

4. — Trespass, Action for — Ontario Act 36 Vict. c. 102, s. 5 — Injunction — Arbitration clauses — Remedy by action — Failure of company to proceed under their Act.

In an action for trespass on the appellant's land and interference with his water rights, the respondents pleaded that they were authorized thereunto by their incorporating Act (36 Vict. c. 102, Ontario), and that the appellant's remedy (if any) was to proceed by arbitration under the Act :—

Held, that according to the true construction of s. 5 the arbitration clauses only come into

CANADA (Arbitration)—continued.

operation on disagreement as to the amount of purchase-money, value, or damages arising after definite notice of expropriation and treaty or tender relative thereto; and that as the respondents had not proceeded in accordance with the directions of their Act, the appellant had not lost his remedy by action.

An injunction was rightly granted in this case, but its effect will cease on the respondents proceeding to expropriate in the manner directed by their Act. **SAUNBY v. WATER COMMS. OF THE CITY OF LONDON AND THE CORPORATION OF THE CITY OF LONDON (ONTARIO)**

P. C. [1906] A. C. 110

Banker.

1. — Liability of director of bank — Overdrafts of customers improperly allowed by cashier of bank — Failure to detect errors in audited accounts — Alleged negligence.

Where the collapse of a bank was due to overdrafts which the cashier, the principal executive officer of the bank under the directors, whose accounts had been duly audited by a board of auditors duly appointed and entirely independent of the directors, had irregularly and improperly allowed to certain customers :—

Held, that by the law of Quebec as by the law of England, a charge of negligence could not be established against the president of the bank simply by reason of his having in good faith failed to detect the cashier's concealment of such overdrafts.

Dorcy v. Cory, [1901] A. C. 477, followed. **PRÉFONTAINE v. GRENIER**

P. C. [1907] A. C. 101

2. — Money paid under mistake of fact — Marked cheque fraudulently altered — Negligence — Notice of dishonour — Reasonable delay.

A cheque for \$5 certified by the respondent bank's stamp was fraudulently altered to \$500 and paid by the respondent to the appellant, a holder for value, under a mistake of fact, which was not discovered till the next day.

In an action by the respondent to recover back \$495 from the appellant :—

Held, (1) that the respondent was at liberty to prove, as between itself and an innocent holder for value, that the cheque had been fraudulently altered after it had been certified.

Schofield v. Earl of Lonsborough, [1896] A. C. 514, followed.

(2) No negligence was imputable to the respondent in cashing the cheque without examining the drawer's account; and even if it were, it did not induce the appellant to treat the cheque as good.

Kelly v. Solari, (1841) 9 M. & W. 54, approved.

(3) Notice of forgery was unnecessary, and the cheque for \$5 was not dishonoured; and, accordingly, the stringent rule laid down in *Cocks v. Masterman*, (1829) 9 B. & C. 902; 33 R. R. 365, to the effect that notice of dishonour of a bill of exchange must be given on the due date, does not apply. The rule will not be extended to other cases where notice of the mistake is given in reasonable time, and no loss

CANADA (Banker)—continued.

has been occasioned by delay. **IMPERIAL BANK OF CANADA v. BANK OF HAMILTON**

P. C. [1903] A. C. 49

Canals.

1. — *Priority of passage into Lachine Canal—Duty of vessel lying by—Canadian Canal Regulations of May 1, 1895, s. 19 (d)—Construction.*

The appellant vessel, a passenger steamer entitled to priority of passage under the Canadian Canal Regulations of May 1, 1895, was clearly to blame for a collision with the respondent's vessel which occurred at the entrance of the Lachine Canal in the harbour of Montreal:—

Held, that the respondent's vessel was not also to blame. It was not her duty under s. 19 (d) to move to some point not less than 300 feet from the entrance to the lock, for she was the only vessel about to enter, and even if she were waiting her turn the local conditions did not require her to lie by at that distance so long as there was accommodation at the wing walls where it was the practice to lie by. **RICHÉLIEU AND ONTARIO NAVIGATION CO. v. TAYLOR. THE "HAVANA"**

P. C. [1910]

A. C. 170

Company.

1. — *Directors—Resolution—Powers of company—Purchase—Effect of resolution by an insufficient quorum—Quebec Act, 1901 (1 Edw. 7, c. 67)—Construction.*

Held, that under Quebec Act, 1 Edw. 7, c. 67, the appellant co. was empowered to acquire and hold for the purpose of its business real or immovable estate not exceeding a specified sum in yearly value in any part of the province except the judicial district of Quebec; and that, acting bona fide, it was the sole judge of what was required for that purpose.

Where a purchase *intra vires* of the above Act had been effected by the co. under a resolution of the directors at a meeting on July 17, 1901, which authorized the completion thereof, subject to an option of reconveying within a specified time:—

Held, that after the lapse of the specified time the purchase was absolute, and that the co., which had furnished the vendor with a copy of the said resolution as one which had been duly and regularly passed, could not avoid it by shewing that it had been passed by an insufficient quorum. **MONTREAL AND ST. LAWRENCE LIGHT AND POWER CO. v. ROBERT**

P. C. [1906] A. C. 196

2. — *Forfeiture of shares—Alleged irregularities in call and forfeiture—British Columbia Companies Acts, 1890–1892—Law of British Columbia.*

In an action by the appellants, being husband and wife, for a declaration that 240 shares in the respondent co. standing to the name of the wife, but of which she had executed a transfer to the husband (on the back of the certificate), had not been validly forfeited by the co., and that the husband was owner thereof and entitled to be registered as such, it appeared that the husband was a director of the co., a party to

CANADA (Company)—continued.

the resolution of the board making calls on the said shares and to the subsequent resolution declaring them to be delinquent and forfeited, and that notice dated May 22, 1895, of the call of that date and of the liability to forfeiture if unpaid was mailed by the secretary to the wife's address in Vancouver, being the address given by her husband in all proceedings connected with the co. from 1891 onwards (no address being registered or given on the certificate):—

Held, that the plts. had by their conduct disentitled themselves to the relief prayed for; that the notice fulfilled all the requirements of the Canadian Companies Act, 1890, s. 35, and the 9th and 10th by-laws of Nov. 5, 1891; and that any objections to the absence of due formalities in the service on the husband of acts to which he was a party, and to the illegality of the allotment, calls, and forfeiture of the shares due to technical irregularities in the original appointment of the husband and others as directors, must be disallowed. **JONES v. NORTH VANCOUVER LAND AND IMPROVEMENT CO., LIMITED LIABILITY**

P. C. [1910]

A. C. 317

3. — *Liquidator—Canadian Winding-up Act, 1886, ss. 15 and 31—Restricted power of liquidators of bank to sue in their own names—Civil Procedure Code, ss. 516 and 521—Power to amend by adding bank as plaintiffs.*

Under the Canadian Winding-up Act, 1886, ss. 15 and 31, a co. in liquidation retains its corporate powers including the power to sue, although such powers must be exercised through the liquidator under the authority of the Court. The liquidator must sue in his own name or in that of the co., according to the nature of the action: in his own name where he acts as representative of creditors and contributors; in that of the co. to recover either its debts or its property.

Where liquidators sued in their own name to recover a debt due to the co.:—

Held, that the error was one of form, which the Court had power to give leave to amend under ss. 516 and 521 of the Code of Civil Procedure. The debt, having admitted the debt and pleaded set-off, and not having excepted to the form of the action, leave to amend should have been given in the sound exercise of judicial discretion. **KENT v. LA COMMUNAUTÉ DES SŒURS DE CHARITÉ DE LA PROVIDENCE**

P. C. [1903] A. C. 220

4. — *Powers of company—Formation and investment of reserve fund—Purchase by director and resale to company—Law of Canada—Canadian Act 27 & 28 Vict. c. 23.*

It is an elementary principle that a Court has no jurisdiction to interfere with the internal management of cos. acting within their powers.

The co. must sue to redress a wrong done to it; but if a majority of its shares are controlled by those against whom relief is sought, the complaining shareholders may sue in their own names, but must shew that the acts complained of are either fraudulent or ultra vires.

A co. formed by letters patent under Canadian Act 27 & 28 Vict. c. 23 is not bound to divide all

CANADA (Company)—*continued.*

its profits on each occasion amongst its shareholders. It can legally reserve any portion thereof at its own discretion, and a Court has no jurisdiction to regulate it. Whether the undivided portion is retained to credit of profit and loss or carried to credit of a reserve, it may lawfully, in the absence of any express power, be invested on such securities as the directors may select subject to the control of a general meeting, but not restricted to such investments as trustees are authorized to make. It is not ultra vires for a co. to invest in the name of a sole trustee. He is strictly accountable, but the dissentient shareholders are not entitled to an injunction against the directors and the co. in respect of such investment so long as it appears to be bona fide.

Where a director purchased property without mandate from the co. and under such circumstances as did not make him a trustee thereof for the co., and thereafter resold the same to the co. at a profit:—

Held, that whether or not the co. was entitled to a rescission of the contract of resale, it was not entitled to affirm it and at the same time treat the director as trustee of the profit made.

In re Cape Breton Co., (1884) 26 Ch. D. 221 and (1885) 29 Ch. D. 795, approved. **BURLAND v. EARLE** **P. C. [1902] A. C. 83**

Note.

This case was referred to by Kekewich J., *Normandy v. Ind, Coope & Co.*, [1907] W. N. 229; [1908] 1 Ch. 84. *Company—Meetings.* 6.

Contracts.

— Agency agreement—Vendor and purchaser agreement—Construction of contract—Appeal from Quebec.
See CONTRACT. 2.

1. — *Contract to deliver on specified terms all the coal required for use in the plaintiffs' works—Construction—Suitable for plaintiffs' works—Reasonably free from stone and shale—Breach of contract—Damages—Specific performance—Law of Nova Scotia.*

Under an agreement dated Oct. 20, 1903, made between the appellant coal co. and the respondent steel co. (each theretofore well acquainted with the business of the other, and the character of the coal won) the former contracted to supply to the latter, on terms and conditions which were specified in great detail, "all the coal that the steel co. may require for use in its works as hereinafter described," with the specific requirement that "all coal furnished shall be freshly mined and of the grade known as run-of-mine, reasonably free from stone and shale, and shall be supplied from such seams then being worked by the coal co. as the steel co. may designate." Other provisions imposed on the steel co. the obligation to purchase all their coal from the coal co. if the latter were ready to supply it, and gave the latter a preferential right to repurchase any excess delivery at less than the cost price. On Nov. 9, 1906, the coal co. notified to the steel co. that the contract was at an end owing to their refusal to accept

CANADA (Contracts)—*continued.*

the coal furnished and to be furnished thereunder.

In a suit for a declaration that the coal co. had no power to rescind, and for specific performance, or in the alternative for damages, the trial judge found, and their Lordships approved the finding—(1.) that the coal rejected was unfit for use by the steel co. for its metallurgical purposes, i.e., the manufacture of steel, owing to the large quantity of sulphur it contained; (2.) that it was not reasonably free from stone and shale:—

Held, that, on the true construction of the contract, "reasonably free from stone and shale" was irrespective of the method by which that result was obtained, and could not be so restricted as to mean as free from stone and shale as it could be made by reasonable and proper picking, and nothing more.

Held, further, that the above obligation to supply related to coal suitable in character for the plts.' works to the extent that the same could be obtained by the reasonable and proper working of their mines. These works were enumerated in great detail, not, as the terms of the contract and surrounding circumstances shewed, for the purpose of measuring the quantity required, but of specifying precisely the uses to which the coal was to be put; and the provision as to repurchase was inexplicable in the case of unsuitable coal.

Held, further, that the plts. were not entitled to specific performance, but, owing to the defts.' wrongful repudiation of the contract, to recover damages for the loss of it, in addition to all damages incurred before repudiation. **DOMINION COAL CO. v. DOMINION IRON AND STEEL CO. LD. AND NATIONAL TRUST CO.**

P. C. [1909] A. C. 293

2. — *Deposit by purchaser to guarantee fulfilment of contract—Default by purchaser or his assignee—Action to recover deposit dismissed.*

Under a contract for sale of ry. stock and also for transfer of bonds to be thereafter executed, a deposit of \$250,000 was received by the respondent vendor as security for and to be credited towards the payment of the price on June 1, 1902, or to be forfeited on default. In an action by the assignee of the purchaser without tendering the price to recover back the deposit, as the bonds were not ready for delivery at due date:—

Held, that, as the evidence shewed that the purchaser or his assignee was responsible for the non-production and non-completion thereof there was default by him in payment of the price, and the action must be dismissed. **SPRAGUE v. BOOTH** **P. C. [1909] A. C. 576**

Conveyance.

1. — *Conveyance void as unregistered—Limitation—R. S. O., 1897, c. 136, s. 87—R. S. O., 1897, c. 133, ss. 4, 22.*

S. having obtained a registered conveyance of the land in suit from one of the respondents, executed, more than ten years before action, a reconveyance to both respondents, indorsing thereon a forged certificate of registration, and

CANADA (Conveyance)—continued.

later on mortgaged it to the appellants within the said ten years :—

Held, that under s. 87 of the Registry Act R. S. O., c. 136, the reconveyance was void against the appellants, who had advanced their money without notice of it.

Held, also, that the respondents were not protected by the Limitation Act (R. S. O., c. 133). The reconveyance was valid between the parties thereto, and no action could have been brought against them before the date of the appellants' mortgage, which was within the statutory period. *McVITY v. TRANOUTH* P. C. [1908] A. C. 60

Copyright.

1. — *Imperial Fine Arts Copyright Act, 1862—Canada Copyright Act, 1875—Copyright within the United Kingdom.*

The Imperial Fine Arts Copyright Act, 1862, confers on British subjects and persons resident in British dominions copyright in pictures, drawings, and photographs. It extends to the whole of the United Kingdom, but does not extend to any part of the British dominions outside the United Kingdom.

Tuck & Sons v. Priester, (1887) 19 Q. B. D. 629, approved.

There is nothing in the Canada Copyright Act, 1875, or in the International Copyright Acts, which conflicts with this view. *HENRY GRAVES & Co. LD. v. GORRIE*

P. C. [1903] A. C. 496

Corporation.

1. — *Guarantee of debentures by a municipality—Invalidity of by-law—Quebec Act 60 Vict. c. 78, ss. 7 (c) and 27—Construction—Approval by ratepayers and Lieutenant-Governor.*

A by-law under the Towns Corporation Act (c. 1, tit. 11, Revised Statutes of Quebec, 1888) by the respondent corporation guaranteed debentures to a specified amount to be issued by a co. with which the corporation contracted for the execution of a public work within the municipality; but the same had not been submitted to the municipal electors for their approval or to the Lieutenant-Governor for his authority :—

Held, in a suit by debenture-holders against the corporation, that the guarantee was in consequence ultra vires :

Held, also, with regard to the special Act (60 Vict. c. 78) under which the co. was incorporated, that the above contract involved a financial obligation on the part of the corporation within the meaning of s. 7 (c). Both under that section and s. 27, which should be read together, a by-law must be approved by a majority of the whole body of ratepayers. *HANSON v. CORPORATION OF THE VILLAGE OF GRAND MÈRE*

P. C. [1904] A. C. 789

2. — *British North America Act, 1867, s. 91, sub-s. 29; s. 92, sub-s. 10 (a)—Dominion Railway Act of 1888, ss. 187 and 188, intra vires—Interpretation Act (R. S. C., 1886, c. 1), s. 7, sub-s. 2—Construction—"Person."*

The Railway Committee of the Privy Council of Canada, by order made under ss. 187 and 188 of the Dominion Railway Act (51 Vict. c. 29),

CANADA (Corporation)—continued.

directed certain measures to be taken for safeguarding the respondents' ry., which is a through ry., and for the protection of the public in traversing it at certain level crossings where it passes across public streets at points within or immediately adjoining the boundary of the appellant city, and directed the cost thereof to be borne in equal proportions by the ry. and the city.

In a suit by the ry. after the execution of works as directed to recover the apportioned amount from the corporation :—

Held, that ss. 187 and 188 were intra vires of the Dominion Legislature, by force of the British North America Act, 1867, s. 91, sub-s. 29, and s. 92, sub-s. 10 (a).

Held, also, that, having regard to s. 7, sub-s. 2, of the Interpretation Act (R. S. C. 1886, c. 1), "person" in s. 188 includes a municipality. *CITY OF TORONTO CORPORATION v. CANADIAN PACIFIC RY. CO.* P. C. [1908] A. C. 54

Crown Lands.

1. — *British North America Act, 1867, ss. 91, 92, 108—Power of the Dominion to legislate for provincial Crown property—Dominion Act, 1881 (44 Vict. c. 1), s. 18 (a)—Provincial foreshore—Railway company—Law of British Columbia.*

Sect. 108 of the British North America Act, 1867, empowers the Dominion Parliament to legislate for any land, including foreshore, which is proved to form part of a public harbour. Sects. 91 and 92, read together, empower the Dominion to dispose of provincial Crown lands, and therefore of a provincial foreshore, for the purposes of the respondent ry., which is a trans-continental ry. connecting several provinces :—

Held, that s. 18 (a) of the respondents' incorporating Dominion Act (44 Vict. c. 1) is not controlled by the Consolidated Railway Act, 1879, and applies to provincial as well as Dominion Crown lands. Power given thereunder to appropriate the foreshore in question includes a power to obstruct any rights of passage previously existing across it. *ATT.-GEN. FOR BRITISH COLUMBIA v. CANADIAN PACIFIC RY. CO.* P. C. [1906] A. C. 204

2. — *Crown land in New Brunswick—Adverse possession for less than sixty years—Grant by the Crown during adverse possession valid—Rights of grantee—21 Jac. 1, c. 14—Construction.*

In an action of ejectment it appeared that the land belonged to the Crown, and was in peaceable possession of its grantee, the deft., but that the plt. and his predecessors in title had enjoyed uninterrupted occupation thereof for a period of fifty-six years down to a date about seven years prior to date of action :—

Held, that judgment was rightly entered for the deft.

Occupation against the Crown for any period less than the sixty years required by the Nullum Tempus Act is of no avail against the title and legal possession of the Crown, and still less against its grantee in actual possession.

The Act 21 Jac. 1, c. 14, only regulates procedure, and its effect is that if an information of

CANADA (Crown Lands)—continued.

intrusion is filed and the Crown has been out of possession for twenty years, the deft. is allowed to retain possession till the Crown has established its title. Where no information has been filed there is nothing to prevent the Crown or its grantee from making a peaceable entry and then holding possession by virtue of title.

Decisions by the Courts of New Brunswick and Nova Scotia, to the effect that when the Crown has been out of actual possession for twenty years it could not make a grant until it had first established its title by information of intrusion, overruled. **EMMERSON v. MADDISON**

P. C. [1906] A. C. 569

— Lands generally.

See under **CANADA—Lands.**

Debts.

1. *Signification to debtor of transfer of debt*—“Third person”—*Law of Lower Canada—Civil Code, arts. 1570 and 1571—Construction.*

Under arts. 1570 and 1571 of the Civil Code of Lower Canada, signification to the debtor of the act of sale of his debt need not be by a notarial act.

Quare, whether the debtor is a “third person” within the meaning of the latter section against whom signification is necessary in order to perfect possession.

Murphy v. Bury, (1895) 24 Can. S. C. 668, doubted.

The institution of an action against the debtor is itself a sufficient signification of the transfer of the debt. **BANK OF TORONTO v. ST. LAWRENCE FIRE INSURANCE CO.**

P. C. [1903] A. C. 59

Divorce.

1. — *Divorce jurisdiction of the Supreme Court—Law of British Columbia.*

The Supreme Court of British Columbia has jurisdiction to entertain a petition for divorce between persons domiciled in that Colony and in respect of matrimonial offences alleged to have been committed therein. **WATTS AND ATT.-GEN. FOR BRITISH COLUMBIA v. WATTS**

P. C. [1908] A. C. 573

Dominion House of Commons.

1. — *British North America Act, s. 51, sub-s. 4; ss. 3 and 146—Readjustment of representation—Construction*—“Aggregate population of Canada.”

Sect. 51 of the British North America Act, 1867, directs after each decennial census a readjustment of the representation in the Dominion House of Commons of the four provinces constituted by that Act. It provides as the rule of readjustment that Quebec shall have the fixed number of sixty-five representatives, and that each of the other provinces shall have that number which bears the same proportion to its population as sixty-five bears to that of Quebec. But its sub-s. 4 prohibits a reduction of the number of the representatives in the case of any province unless the proportion which the number of its population bore to the number of the aggregate population of Canada at the last preceding readjustment is ascertained at the then

CANADA (Dominion House of Commons)—contd.

latest census to have been diminished by one-twentieth part or upwards:—

Held, on a case submitted to the Supreme Court of Canada as to whether New Brunswick was protected from reduction of its members, that on the true construction of sub-s. 4 the expression “aggregate population of Canada” relates to the whole of Canada as constituted by the Act, and therefore includes, not merely the four provinces constituted by proclamation issued under s. 3, but also all the provinces subsequently incorporated and admitted into the Union by O. in C. under s. 146:

Held, also, with regard to the province of Prince Edward Island, which had under s. 146 been admitted into the Union by O. in C. directing that it should have six members, its representation to be readjusted from time to time under the provisions of the Act of 1867, that sub-s. 4 on its true construction did not protect that number from reduction until an increase thereof had been previously effected. **ATT.-GEN. FOR THE PROVINCE OF PRINCE EDWARD ISLAND v. ATT.-GEN. FOR THE DOMINION OF CANADA. ATT.-GEN. FOR THE PROVINCE OF NEW BRUNSWICK v. ATT.-GEN. FOR THE DOMINION OF CANADA**

P. C. [1905] A. C. 37

— Dominion overrides provincial legislation.

See **CANADA—Gas. 1.**

— Powers of Dominion Legislature.

See **CANADA—Telephone. 1.**

— Powers of local Legislature.

See **CANADA—Licensing Acts. 1.**

Ecclesiastical Law.

1. — *Declaration of trust in favour of the Greek Orthodox Church—Construction—Ascertainment of beneficiaries—Exclusion of Roman Catholic and Uniate Churches—North-West Territories.*

Emigrants from Galicia settled in the North-West Territories from 1892, and in 1896 there were thirty Galician families in the neighbourhood of Star, who resolved to provide a place for religious worship and secure the services of a priest.

In Galicia the population is divided between Poles and Little Russians, the former being Roman Catholic, the latter Orthodox Greek, who, as a condition of being allowed to use their own liturgy and conduct their services in the old Slavonic language, are compelled to acknowledge the supremacy of the Pope, all else being allowed to remain Greek. There results a composite Church known as the Uniate Church, liable in Galicia to taxation by the Pope, in consequence of its enforced union with Rome.

The respondents, trustees of the Star congregation, on Dec. 7, 1897, obtained from the Land Office a permit to cut logs for a church on the Government land in suit, “to be used in the erection of a church building for the mission of the Greek Orthodox Church, and for no other purpose”:—

Held, that this permit being an invitation to the trustees to build a church on the land in suit, the land became when the permit was

CANADA (Ecclesiastical Law)—*continued.*

acted on impressed in the hands of the Government with a trust for that purpose, and was dedicated by the Government to the use of the mission of the Greek Orthodox Church and not of the Roman Catholic or Uniate Church.

In an action by the appellants as representative members of the Star congregation for relief as for a breach of trust in consequence of the respondents having without previous consultation with the congregation appointed an Orthodox priest, it appeared that after the permit was granted the lands in suit had been irregularly granted by the Land Office to the Roman Catholic bishop of the diocese in which Star was situated, "in trust for the purposes of the congregation of the Greek Catholic Church" at Star, and had been by the bishop assigned to the respondents with the sanction of the Land Office, but without any alteration in the declaration of trust contained in the grant to the bishop:—

Held, that the operative trust was that created by the permit, and that there had been no breach thereof. **ZACKLYNSKI v. POLUSHIE**

P. C. [1908] A. C. 65

Electric Light.

— Dominion overrides provincial legislation.

See **CANADA—Gas**. 1.

1. — *Powers of Provincial Legislature Quebec Act (58 Vict. c. 69)—By-law of corporation granting exclusive rights—Construction.*

Under a by-law of the Hull City Council, afterwards declared valid by the appellants' incorporating Act (Quebec, 58 Vict. c. 69), the appellants obtained an exclusive right of establishing a system of electric lighting for a certain term of years in the said city, and thereupon sued to revoke a licence previously granted by the city to the respondents for a similar purpose:

Held, that the Quebec Act, passed in favour of a purely local undertaking, was within the exclusive competence of the provincial Legislature, and none the less so because it excluded for a limited time the competition of rival traders:

Held, also, that by the true construction of the by-law the city did not themselves revoke the licence to the respondents under which they were actually supplying electric light to the municipality nor give to the appellants the right to have it revoked, and that the respondents were free to carry on their operations until revocation was effected. **HULL ELECTRIC CO. v. OTTAWA ELECTRIC CO. AND CORPORATION OF THE CITY OF HULL**

P. C. [1902] A. C. 237

Extradition.

See also under **EXTRADITION**.

1. — *Arrest and remand of accused—Writ of habeas corpus—Jurisdiction—Procedure—Release.*

The respondents having been arrested in Montreal by order of the Extradition Commr. for an alleged extradition offence in the State of Georgia, were remanded by him for the

CANADA (Extradition)—*continued.*

purpose of affording the prosecution an opportunity of proving its case. Thereafter one judge in Quebec issued on their application and then quashed writs of habeas corpus, while another judge afterwards issued similar writs and discharged the respondents from custody on the ground that no extradition offence had been disclosed against them in the proceedings before him:—

Held, that this was the question which the Extradition Commr. had jurisdiction to investigate on the remand which he had ordered, that his remand warrant could not be treated as a nullity, that the respondents were in lawful custody, and that in consequence the judge had no jurisdiction to order their release. **UNITED STATES OF AMERICA v. GAYNOR**

P. C. [1905] A. C. 128

Fishing.

1. — *Grant from the Crown—Claim of grantee to exclusive right to fish from the foreshore—Construction.*

The appellant, as grantee of the lands in suit from the French king "with all the fishing and hunting and other rights and privileges which the vendor had or might have as seignior, or along its frontage on the seashore," claimed the exclusive right to fish salmon from the foreshore along their boundary:—

Held, that, on the true construction of the grant, the claim could not be sustained. The above clause was ineffectual to pass the exclusive use of the foreshore so far as fishing is concerned. **CABOT v. ATTORNEY-GENERAL OF QUEBEC**

P. C. [1907] A. C. 511

Gas.

1. — *Dominion overrides provincial legislation—Dominion Act (60 & 61 Vict. c. 72)—Quebec Act (4 Edw. 7, c. 84), s. 3.*

Where a given field of legislation is within the competence both of the Dominion and Provincial Legislatures, and both have legislated, the Dominion enactment must prevail:—

Held, accordingly, that the respondent co., which under Dominion Act (60 & 61 Vict. c. 72) was empowered to supply, sell, and dispose of gas and electricity, with other powers, could not be restrained from operating thereunder at the suit of the appellants, who under later Quebec statutes had exclusive power of so operating in the locality chosen by the respondents. **LA COMPAGNIE HYDRAULIQUE DE ST. FRANÇOIS v. CONTINENTAL HEAT AND LIGHT CO.**

P. C. [1909] A. C. 194

2. — *Negligence—Article of dangerous nature—Contractor—Misfeasance—Gas company.*

In actions for damages in respect of an accident against the appellant gas co. it appeared that the appellants were not occupiers of the premises on which the accident had occurred and had no contractual relations with the pits, but that they had installed a machine on the said premises, and the jury found that the accident was caused by an explosion resulting from gas emitted, owing to the appellants' negligence, through its safety valve direct into

CANADA (Gas)—continued.

the closed premises instead of into the open air:—

Held, that the initial negligence having been found against the appellants in respect of an easy and reasonable precaution which they were bound to have taken, they were liable unless they could shew 'that the true cause of the accident was the act of a subsequent conscious volition, e.g., the tampering with the machine by third parties. DOMINION NATURAL GAS CO. v. COLLINS AND PERKINS P. C. [1909] A. C. 640

Husband and Wife.

1. — *Wife's mortgage of separate property for her husband's benefit void—Onus probandi as to husband's benefit—Civil code of Lower Canada, art. 1301—Construction.*

By the true construction of art. 1301 of the Civil Code of Lower Canada a wife's mortgage of her separate property is void both as to the debt contracted and as to the disposition if it is in any way for her husband's purposes. Ignorance on the part of the lender that the money was borrowed for the husband's purposes is of no avail, and the burden is on him to prove that it was not so borrowed. TRUST AND LOAN COMPANY OF CANADA v. GAUTHIER

P. C. [1904] A. C. 94

Income.

1. — "*Income*"—*British Columbia Assessment Act, 1897—Construction—Law of British Columbia.*

Held, that on the true construction of the British Columbia Assessment Act (R. S. C. 179), the word "income" includes all gains and profits derived from personal exertions, whether such gains and profits are fixed or fluctuating, certain or precarious, whatever may be the principle or basis of calculation. ATT.-GEN. OF BRITISH COLUMBIA v. OSTRUM

P. C. [1904] A. C. 144

Insolvent Estates.

1. — *Insolvent's estate, Distribution of—Landlord's privilege—Effect of 61 Vict. c. 46—Retrospective legislation—Law of Lower Canada.*

Where insolvent tenants judicially abandoned their property for the benefit of their creditors and statute law (61 Vict. c. 46) at the date of the abandonment restricted the lessors' preference to two years' rent, ranking them as ordinary creditors for the balance, while no such restriction was enacted by the law as it stood at the date of the leases:—

Held, that the existing statute applied to all liquidations which arose after its enactment, and governed the lessors' privilege unless expressly excepted therefrom. ROSS v. BEAUDRY

P. C. [1905] A. C. 570

Insurance (Fire).

1. — *Contract of Insurance—Limitation clause imported from original policy—Construction—Clause held to be unreasonable and inapplicable.*

In a contract of re-insurance which was grafted on an ordinary printed form of fire

CANADA (Insurance (Fire))—continued.

insurance policy, and incorporated all its terms, there was a clause which purported to prohibit an action thereon unless commenced within twelve months next after the fire:—

Held, that, having regard to the true construction of the contract, which carelessly purported to include many conditions inapplicable to re-insurance, the above clause must also be regarded as inapplicable. Such a clause is reasonable in the original policy where the assured can sue immediately on incurring loss; it cannot apply where the insured is unable to sue until the direct loss is ascertained between parties over whom he has no control. HOME INSURANCE CO. OF NEW YORK v. VICTORIA-MONTREAL FIRE INSURANCE CO.

P. C. [1907] A. C. 59

2. — *Insurance (fire) policy—Protection from liability while gasoline is stored or kept in the building insured—Construction—"Stored or kept."*

In an action upon a fire insurance policy, the co. relied upon a statutory condition protecting from liability "for loss or damage occurring while gasoline is stored or kept in the building insured." It appears that the fire was caused by a small quantity of gasoline in a stove which was being used for cooking purposes, no other gasoline being in the building:—

Held, that, whatever the precise signification of the words "stored or kept," there was no infringement of the condition having regard to the ordinary meaning of the words used. THOMPSON v. EQUITY FIRE INSURANCE CO.

P. C. [1910] A. C. 592

Insurance (Marine).

1. — *Civil Code of Lower Canada, art. 2522—Insurance against total loss of cargo "by total loss of vessel"—Construction—Total loss of thing insured.*

By a policy of marine insurance a cargo of cement was insured against total loss "by total loss of the vessel." In an action thereon the jury found that barge and cargo had been practically if not completely submerged, that there had been an actual total loss of the cargo, caused by the wreckage of the barge, which, however, was not found in so many words to have been a total loss, and judgment was entered for \$2700 damages:—

Held, that the findings were amply sustained by the evidence, and were to the effect that the loss of the cement insured had occurred in the manner contemplated by the policy; and that the order of the Supreme Court for a new trial directed to the issue whether the barge was a constructive total loss within the meaning of art. 2522, C. C., must be reversed. MONTREAL LIGHT, HEAT, AND POWER CO. v. SEDGWICK

P. C. [1910] A. C. 598

Interest.

1. — *Payments in arrear, Interests on—Ontario Judicature Act (Revised Statutes of Ontario, 1897, c. 51), s. 113—Construction.*

Ontario Judicature Act (Revised Statutes of Ontario, 1897, c. 51), s. 113, enacts that "interest

CANADA (Interest)—continued.

shall be payable in all cases in which it is now payable by law or in which it has been usual for a jury to allow it"—

Held, that under the true construction of this section it is incumbent upon the Court to allow interest for such time and at such rate as it may think right in all cases where a just payment has been improperly withheld, and compensation therefor seems fair and equitable.

An order by the Court below that the appellant co. should pay arrears of track rentals within the limits of the respondent city, over and above their periodical payments already made, and should pay interest thereon, was affirmed. **TORONTO RY. CO. v. TORONTO CORPORATION** **P. C. [1906] A. C. 117**

2. — *Practice—Order on further directions to pay interest on amount decreed—Power of Court—Discretion overruled—Interest intentionally omitted from final decree.*

Where a decree of the C. A. affirmed by an O. in C. had ordered the repayment of moneys received by the appellant in excess of his salary as manager of a co., but was silent as to interest on the sums so overdrawn:—

Held, that the Court had power to order interest on further directions as a matter of discretion, but that as it appeared from the judgment of their Lordships that the O. in C. intentionally omitted a direction to that effect, the discretion of the Court below should be overruled. As no claim for interest was made at the commencement of the action, it should be charged only on the amount decreed from the date of the decree of the C. A. **BURLAND v. EARLE** **P. C. [1905] A. C. 590**

Land.

— Crown lands.

See under CANADA—Crown Lands.

1. — *Land in British Columbia—Military reserve—Title of the Dominion—Transfer by Imperial Government—British North America Act, 1867, ss. 108, 117—Law of British Columbia.*

The land in suit, called Deadman's Island, was de facto a "reserve" by the Government of British Columbia under paragraph 3 of the Proclamation of 1859, and according to the evidence a military reserve:—

Held, that it remained Imperial property at the time of the British North America Act, 1867, and was transferred to the Dominion by special grant dated Mar. 27, 1884. It did not, therefore, fall to the Colony in virtue of s. 117 of the Act, nor to the Dominion in virtue of s. 108. **ATT.-GEN. OF BRITISH COLUMBIA v. ATT.-GEN. OF CANADA** **P. C. [1906] A. C. 552**

2. — *Lands in Ontario surrendered by the Indians—Proprietary right—Power of disposition—British North America Act, 1867 (30 & 31 Vict. c. 3), s. 91.*

Lands in Ontario surrendered by the Indians by the treaty of 1873 belong in full beneficial interest to the Crown as representing the province, subject only to certain privileges of the Indians reserved by the treaty. The Crown can only dispose thereof on the advice of the Ministers of the province and under the seal of the province.

CANADA (Land)—continued.

St. Catherine's Milling Co. v. Reg., (1888) 14 App. Cas. 46, followed.

The Dominion Government having purported, without the consent of the province, to appropriate part of the surrendered lands under its own seal as a reserve for the Indians in accordance with the said treaty:—

Held, that this was ultra vires the Dominion, which had by s. 91 of the British North America Act of 1867 exclusive legislative authority over the lands in question, but had no proprietary rights therein.

The consent of the province having been subsequently provided for by a statutory agreement between the two Governments, the special leave to appeal granted upon the representation of the general public importance of the question involved would probably have been rescinded if a petition to that effect had been made. **ONTARIO MINING CO. v. SEYBOLD** **P. C. [1903] A. C. 73**

3. — *Sale of land for arrears of taxes—R. S. O., 1887, c. 23, ss. 20, 26—Rights of purchaser who has obtained a certificate of sale—R. S. O., 1887, c. 193, s. 184—Prior registration of conveyance by defaulting owner—Actual purchase must be proved.*

Held, that according to the true construction of ss. 20 and 26 of R. S. O., 1887, c. 23, the purchaser at a Government sale of lands for arrears of taxes who has obtained a certificate of sale under s. 20 becomes the effective owner thereof if the defaulting owner does not redeem within one year, and is absolutely entitled to a conveyance under s. 26, notwithstanding that the certificate is in the possession of the defaulting owner:

Held, further, that the plt., who claimed title under a conveyance from the defaulting owner registered prior to the purchaser's, obtained under s. 26, could not rely on an alleged redemption by him after the expiration of one year, but must in order to succeed prove a valid written transfer to him by the purchaser of the lands in suit.

The purchaser having failed to obtain and register his deed of conveyance under s. 20 within eighteen months after the sale:—

Held, that priority of registration by the plt. did not avail under R. S. O., c. 193, s. 184, sub-s. 1, applicable to the case by virtue of s. 31 of the said c. 23, in the absence of proof of his actual purchase. **MCCONNELL v. BEATTY** **P. C. [1908] A. C. 82**

4. — *Sale of lands under Assessment Act, 1897—Notice in writing under s. 184, sub-s. 3—Construction—Waiver—Effect of 3 Edw. 7, c. 86, s. 8—Law of Ontario.*

The plot of land in suit in the city of Toronto belonging to the respondent was advertised to be sold on April 10, 1901, under Ontario Assessment Act, 1897, for arrears of taxes, and after an adjournment was bought by the appellants on April 24. The appellants in the interval had advertised their intention to purchase in case the amount bid was less than the arrears due, but omitted to give the respondent a notice in writing under s. 184, sub-s. 3, to that effect.

In an action by the respondent in Sept.,

CANADA (Land)—*continued.*

1906, to set aside the sale on the grounds (1.) that the land was insufficiently described in the assessment roll; (2.) that he did not receive the said notice:—

Held—(1.) that s. 8 of 3 Edw. 7, c. 86, cured the defect (if any) in the assessment roll; (2.) that the Act intended that the notice under s. 184, sub-s. 3, should be given to the owner, but that the respondent could and did waive it; otherwise that the failure to give it was within the words of the said s. 8 and was cured by it.

Held, further, with regard to the respondent's alternative claim to redeem, that the period of one year from the date of sale allowed by the Assessment Acts of 1892 and 1897 had not been altered by subsequent legislation in any manner applicable to this case. **TORONTO CORPORATION v. RUSSELL** P. C. [1908] A. C. 493

5. — *Treaty of Oct. 3, 1873, extinguishing the Indian interest in lands—Payments by the Dominion under the treaty—Suit by the Dominion against the Province of Ontario for contribution as respects lands within the province—Law of Canada.*

By a treaty dated Oct. 3, 1873, the Dominion Government acting in the interests of the Dominion as a whole, secured to the Salteaux tribe of the Ojibway Indians certain payments and other rights, at the same time extinguishing by consent their interest over a large tract of land about 50,000 square miles in extent, the greater part of which was subsequently ascertained to lie within the boundaries of the Province of Ontario. It having been decided that the release of the Indian interest effected by the treaty enured to the benefit of Ontario, the Dominion Government sued in the Exchequer Court for a declaration that it was entitled to recover from and be paid by the Province of Ontario a proper proportion of annuities and other moneys paid and payable under the treaty:—

Held, affirming the judgment of the Supreme Court, that, having regard to the jurisdiction conferred upon the Exchequer Court, the action must be dismissed as unsustainable on any principle of law. In making the treaty, although it resulted in direct advantage to the province, the Dominion Government did not act as agent or trustee for the province or with its consent, or for the benefit of the lands, but with a view to great national interests—that is, for distinct and important interests of their own—in pursuance of powers derived from the British North America Act, 1867.

St. Catherine's Milling and Lumber Co. v. Reg., (1888) 14 App. Cas. 46, considered. **DOMINION OF CANADA v. PROVINCE OF ONTARIO** P. C. [1910] A. C. 637

Leases.

1. — *Covenant to pay taxes—Usual covenant by lessee—Lease of land.*

Where an agreement between the appellant ry. and the respondent corporation provided for a renewable lease from the latter to the former of a large tract of land for ry. purposes,

CANADA (Leases)—*continued.*

but was silent as to payment of taxes by the appellant:—

Held, that the lease should contain a covenant by the appellant to pay the same, partly because the effect of the Assessment Act in force at the date of the contract was to impose such liability on the lessees of municipal lands without recourse to the corporation, and partly because a covenant to that effect was shown to be a usual covenant in the sense that the corporation invariably insisted on it in their leases. **CANADIAN PACIFIC RY. CO. v. TORONTO CORPORATION**

P. C. [1905] A. C. 33

2. — *Damages—Law of Lower Canada—Action négatoire against proprietor—Liability of lessee to adjoining proprietor in respect of works on his land.*

Where a lessee of defts.' land, being in possession thereof and having a contract for future purchase contained in his lease, raised for the purpose of building operations for his own benefit, and not as mandatory of the defts., the lower part of the leased land with the effect of diverting to the plt.'s adjoining land, and thereby causing him damage, the water which would otherwise have been discharged over the defts.' land:—

Held, that the plt.'s remedy was against the lessee, and that an action négatoire against the defts., who claimed no servitude over the plt.'s land was unnecessary. **KIEFFER v. LE SEMIN-AIRE DE QUÉBEC** P. C. [1903] A. C. 85

3. — *Machines for shoe manufacture, Leases of—Restrictive condition as to user—Prohibition to use other than machines leased by plaintiff—Restraint of trade—Alleged misrepresentation—Election to treat leases as valid.*

By various leases in 1903 and 1904 the appellants leased to the respondents for twenty years machines made and used for certain processes in the manufacture of shoes, containing in each case a "tying clause," the effect of which was to prohibit the use by the respondents in the said manufacture of any machines not leased by the appellants. Some additional leases were granted of other and allied machines to be used for certain ancillary processes in the same manufacture. These latter the respondents called upon the appellants to remove, but continued to work the former in conjunction with machines not leased to them by the appellants.

To an action for an injunction and damages the respondents pleaded that the appellants, by false representations that they were patentees in respect of their machines, had induced them to take the said leases; and that the covenants therein, by reason of their unjust and oppressive nature and of the practical monopoly which the appellants had acquired in Canada in the manufacture and supply of shoemaking machinery, were in restraint of trade and void:—

Held, that as the respondents had not repudiated the leases after discovery of the alleged false representations, but had continued to work the demised machines and paid the royalties reserved, they had elected to treat the leases as subsisting, and could not afterwards avoid them. As the tying clauses merely prescribed the mode

CANADA (Leases)—continued.

of user, and were not severable from the rest of the contracts, they could not be separately repudiated :

Held, further, that the covenants were not in restraint of trade. The shoe manufacturers of Canada were at liberty to hire or not to hire the appellants' machines on the appellants' terms as they pleased. The appellants were at liberty to prescribe the terms so long as they were not illegal, and were under no obligation to produce and dispose of their manufacture on terms similar to those imposed on patentees by the Canadian Patent Act. **UNITED SHOE MACHINERY CO. OF CANADA v. BRUNET**

P. C. [1909] A. C. 330

Licensing Acts.

1. — *Local Legislature, Powers of—British North America Act, s. 92, sub-s. 16—Manitoba Liquor Act, 1900 (63 & 64 Vict. c. 22).*

The Manitoba Liquor Act of 1900 for the suppression of the liquor traffic in that province is within the powers of the provincial Legislature, its subject being and having been dealt with as a matter of a merely local nature in the province within the meaning of British North America Act, 1867, s. 92, sub-s. 16, notwithstanding that in its practical working it must interfere with Dominion revenue, and indirectly at least with business operations outside the province.

Att.-Gen. for Ontario v. Att.-Gen. for the Dominion, [1896] A. C. 348, followed. **ATT.-GEN. OF MANITOBA v. MANITOBA LICENCE HOLDERS' ASSOCIATION** **P. C. [1902] A. C. 73**

Master and Servant.

1. — *Compensation—Employer and workman—Contract that deceased shall have no claim—"Satisfaction" means real and tangible indemnity—Quebec Civil Code, Art. 1056—Construction.*

The right of action conferred by art. 1056 of the Civil Code of Quebec on the widow and relatives of a deceased employee whose death has been caused by the fault of his employer is an independent and personal right, and not derived from the deceased or his representatives.

Robinson v. Canadian Pacific Ry. Co., [1892] A. C. 481, followed :

Held, that the deceased could not be said to have "obtained satisfaction" from the respondent co. within the meaning of that article unless he had obtained a real and tangible indemnity for the fault in question.

Where the deceased, as a condition of his employment, became a member of an insurance and provident society, a by-law of which provided that in consideration of the respondents' subscription thereto no member thereof or his representatives shall have any claim against the respondents for compensation on account of injury or death from accident ; and it appeared from the society's provisions for sick allowance and insurance, that the respondents contributed only to the former, the latter being a scheme for mutual life insurance :—

Held, that assuming this by-law to be valid, the deceased had not obtained satisfaction within the meaning of art. 1056. The insurance money

CANADA (Master and Servant)—continued.

did not proceed from the respondents, had no relation to its offence, and was equally payable in case of natural death : *Reg. v. Grenier*, (1899) 30 Sup. Ct. Can. 42, overruled. **MILLER v. CANADA GRAND TRUNK RY. CO.**

P. C. [1906] A. C. 187

— *Railway—Master and Servant—Compensation.*

See CANADA—Railway. 4.

Mines.

1. — *Mining Regulations of 1889, s. 17—Rights of placer miner as to renewal of his grant—Construction—Dominion Lands Act (Revised Statutes of Canada, c. 54), s. 47.*

Sect. 17 of the Mining Regulations passed under the Dominion Lands Act (Revised Statutes of Canada, c. 54) does not on its true construction extend to the holder of a grant for placer mining the same privileges as to a renewal of his grant which are accorded to the holder of a quartz mining grant.

The placer miner on renewal (to which he has no absolute, but only a preferential, right) holds under an annual grant in substitution for, but not in continuation of, his original grant. And the renewed grant is subject to all such regulations as may be in force at the date when it comes into operation, whether or not it was made during the currency of an existing grant :—

Held, that the Governor in Council has power to make regulations requiring the placer miner to pay a percentage on the proceeds realized from the grant. Such an imposition, called a royalty, is not a tax, but is a reservation which the owner in fee is entitled to make out of his grant. **CHAPPELLE v. REX. CARMACK v. REX. TWEED v. REX** **P. C. [1904] A. C. 127**

— *Railway company—Grants thereunder include mines and minerals.*

See CANADA—Railway. 5.

Mortmain.

— *Testator domiciled in England—Residuary bequest to charity—Colonial mortgages.*

See CONFLICT OF LAWS. 14.

Negligence.

1. — *Electric wires—Negligence in exercising statutory powers—Evidence—Quebec Act, 1 Edw. 7, c. 66, s. 10—Construction.*

A derrick used in putting up a house in one of the streets of Montreal was brought into contact with the overhead wires of the respondent co., with the result that a current of electricity was diverted to the street and killed the appellant's husband :—

Held, that the respondents, being authorized by Quebec Act, 1 Edw. 7, c. 66, s. 10, in the alternative to place their wires either overhead or underground, were not guilty of negligence in adopting one alternative rather than the other, or in neglecting to insulate or guard the wires in the absence of evidence that such precaution would have been effectual to avert the accident. **DUMPHY v. MONTREAL LIGHT, HEAT AND POWER CO.** **P. C. [1907] A. C. 454**

CANADA—continued.**Patent.**

— **Alleged infringement—Coupler—New Combination.**

See CANADA—Patent. 2.

1. — *Expiry of patent—British patent a foreign patent—Canadian Patent Act (Revised Statutes of Ontario, c. 51, s. 8)—55 & 56 Vict. c. 24, s. 1—Construction.*

By the true construction of s. 8 of the Canadian Patent Act, c. 61 of the Revised Statutes of Canada, as amended by Canadian Act, 55 & 56 Vict. c. 24, s. 1, a Canadian patent expires as soon as any foreign patent for the same invention existing at any time during the continuance of the Canadian patent expires. A British patent is a foreign patent within the meaning of the Canadian Patent Act. **DOMINION COTTON MILLS Co. v. GENERAL ENGINEERING Co. OF ONTARIO** P. C. [1902] A. C. 570

2. — *Infringement—Alleged infringement—Coupler with steam-tight fasteners and automatic separator—New combination of known features.*

In an action for infringement of a patent, if the merit of the invention consists in the idea or principle which is embodied in it, and not merely in the means by which that idea or principle is carried into effect, the patentee must shew that the idea or principle is new; and must fail if the merit of his invention lies merely in a new combination of known features.

Where the appellants, patentees for improvements in hose-coupling, had produced a coupler of pipes or hose attached to two ry. cars, so as to secure a steam-tight fastening which would permit an automatic separation of the two ends when the cars were uncoupled; while the respondent's coupler was in all material respects the same as the appellants' and produced the same result, but omitted the use of one particular feature called a "rib" or hinge-joint, which was proved to have been a very material element in the success of the appellants' coupler, their specification shewing that they never contemplated its omission or that their invention could be operated without it:—

Held, that there had been no infringement, for the respondent's coupler was shewn to have been a different and a new way of achieving the end contemplated by the appellants' coupler. **CONSOLIDATED CAR HEATING Co. v. CAME**

P. C. [1903] A. C. 509

Pensions.

1. — *Police pension society—Judicial duties of directors—Rights of members—Claim under the rules by policemen obliged to resign—Procedure on inquiry.*

The rules of the respondent police pension society provided that every application for a pension should be fully gone into by the board of directors, and in particular that any member entitled thereto, who is dismissed from the police force or is obliged to resign, shall have his case considered by a board and his right thereto determined by a majority.

On an application for a pension by the appellant, who had been obliged to resign, the board,

CANADA (Pensions)—continued.

without any judicial inquiry into the circumstances, resolved to refuse the claim, "seeing that he was obliged to tender his resignation":—

Held, in an action by the appellant in effect to compel a due administration of the pension fund, that this resolution was void and of no effect. The tender of resignation gave him the right to appeal to the board, and to have his claim as affected thereby duly considered and determined. It did not by itself forfeit rights acquired by length of service and regular contribution to the pension fund. Case remitted to the Superior Court, with declarations directed to secure to the appellant a due consideration and determination thereof by a differently constituted board. **LAPOINTE v. L'ASSOCIATION DE BIENFAISANCE ET DE RETRAITE DE LA POLICE DE MONTRÉAL** P. C. [1906] A. C. 535

Petition of Right.

1. — *Statutory duty to submit petition of right—Damages for breach must be assessed by a jury—British Columbia Crown Procedure Act, s. 4.*

Under the British Columbia Crown Procedure Act, s. 4, it is the duty of the provincial secretary to submit to the lieutenant-governor a petition left with him as therein directed for that purpose. His definite refusal to do so gave the petitioner a cause of action involving damages which must be submitted to a jury. **FULTON v. NORTON**

P. C. [1908] A. C. 451

Practice.

1. — *Action, Cause of—Insolvency of debtor—Civil Code of Lower Canada, art. 1092.*

Under art. 1092 of the Civil Code of Lower Canada an action to recover the balance of purchase-money of land may be brought although the time for payment has not arrived when the debtor has become insolvent or has diminished the value of the security. **KENSINGTON LAND Co. v. CANADA INDUSTRIAL Co.** P. C.

[1903] A. C. 213

2. — *Action for damages for death of appellants' son—Negligence by respondents—Misdirection as to contributory negligence by deceased—Practice—Judge's charge not excepted to at the trial or in first appeal—Law of British Columbia.*

In an action for damages for the death of appellants' son while acting as engineer of the respondents' lumber train the respondents were charged with negligence in respect of the train having been equipped with defective brakes and an incompetent brakeman, while the deceased was charged with contributory negligence in jumping from the train.

The jury found for the appellants, but a new trial was ordered by the Supreme Court. One judge was dissatisfied with the verdict on the ground of misdirection in regard to contributory negligence, and another judge held, contrary to both his colleagues, that the damages were excessive:—

Held, that the order must be reversed. It was too late for the respondents to rely on misdirection which they had not excepted to at the trial or in the notice of appeal or in oral

CANADA (Practice) —continued.

argument before the Supreme Court. There were no sufficient grounds for a new trial on the head of excessive damages. *WHITE v. VICTORIA LUMBER AND MANUFACTURING CO.*

P. C. [1910] A. C. 606

3. — *Acts done under statutory authority—Non-liability for damage—Civil Code of Lower Canada, art. 356—Dominion Railway Act, 1888, ss. 92, 288—Construction—Practice—Special leave to appeal on terms as to costs.*

A ry. co. authorized by statute to carry on its ry. undertaking in the place and by the means adopted is not responsible in damages for injury not caused by negligence, but by the ordinary and normal use of its ry.; or, in other words, by the proper execution of the power conferred by the statute.

Geddis v. Proprietors of Bann Reservoir, (1878) 3 App. Cas. 430, 438, and *Hammersmith Ry. Co. v. Brand*, (1869) L. R. 4 H. L. 171, 215, followed.

The previous state of the common law imposing liability cannot render inoperative the positive enactment of a statute. Neither the Civil Code of Lower Canada, art. 356, nor the Dominion Railway Act, ss. 92, 288, on their true construction contemplates the liability of a ry. co. acting within its statutory powers:—

So held, where the respondent had suffered damage caused by sparks escaping from one of the appellants' locomotive engines while employed in the ordinary use of its ry.

Appeal allowed, appellants to pay respondent's costs in accordance with the terms on which special leave to appeal was granted. *CANADIAN PACIFIC RY. CO. v. ROY* P. C.

[1902] A. C. 220

4. — *Appeal—Cross appeal—Verdict of jury upheld—Evidence properly submitted—Order granting new trial set aside—Practice—Special leave to cross appeal nunc pro tunc.*

In an action for damages against the appellants for loss of life occasioned by the negligent management of their tramcar by their servant employed to drive it, the jury found that the servant was guilty of negligence in causing the accident and that the deceased was not guilty of contributory negligence, and judgment was accordingly entered for the plts.:—

Held, that the Court in appeal from that judgment was in error in setting it aside and ordering a new trial, there having been evidence on both issues properly submitted to the jury. It is not valid ground for ordering a new trial that the judges differ from the conclusion at which the jury have arrived or consider that the findings shew that the defts. had not had a fair and unprejudiced trial. Special leave to the respondents to cross appeal against the order for a new trial granted nunc pro tunc; the appeal praying that the action should be dismissed. *TORONTO RY. CO. v. KING* P. C.

[1908] A. C. 260

5. — *Appeal—Petition for special leave by appellants to Supreme Court.*

Petition for special leave to appeal from the Supreme Court of Canada dismissed where the petitioners were appellants to that Court and no

CANADA (Practice) —continued.

important question of law raised. *WILLIAM EWING & CO. v. DOMINION BANK*

P. C. [1904] A. C. 806

6. — *Appeal—Powers of provincial Legislature—Appellate jurisdiction of Supreme Court of Canada—Manitoba Act (R. S. M. c. 110, s. 36) limiting right of appeal ultra vires—British North America Act, 1867, s. 101.*

By s. 101 of the British North America Act, 1867, the Parliament of Canada was authorized to establish the Supreme Court of Canada, the existing statute being R. S. C. 1906, c. 139, ss. 35 and 36 of which define its appellate jurisdiction in respect of any final judgment of the highest court of final resort now or hereafter established in any province of Canada.

The Manitoba Mechanics and Wage Earners' Lien Act (R. S. M., c. 110, s. 36) applies to the suit under appeal and enacts that in suits relating to liens the judgment of the Manitoban Court of King's Bench shall be final and that no appeal shall lie therefrom:—

Held, that the provincial act could not circumscribe the appellate jurisdiction granted by the Dominion Act. *CROWN GRAIN CO. v. DAY* P. C. [1908] A. C. 504

—*Appeal—Shipping—Practice—Special leave to appeal unnecessary.*

See CANADA—Shipping. 1.

7. *Appeal—Special leave—Revised Statutes of Canada, 1886, c. 135, s. 71.*

According to s. 71 of Revised Statutes of Canada, 1886, c. 135, there is no appeal from any judgment or order of the Supreme Court of Canada except by special leave of His Majesty in Council.

Where a suitor, having his choice whether to appeal to the Supreme Court or to His Majesty in Council, elects the former remedy, it is not the practice to give him special leave except in a very strong case.

Prince v. Gagnon, (1882) 8 App. Cas. 103, followed. *CLERGUE v. MURRAY. Ex parte CLERGUE* P. C. [1903] A. C. 521

Note.

This case was followed by P. C., *Victorian Railway Commissioners v. Brown*, [1906] A. C. 381. See AUSTRALIA. 15.

Followed by P. C., *Canadian Pacific Co. v. Blain*, [1904] A. C. 453. See next Case.

7A. — *Appeal, Special leave to—Decree of Supreme Court of Canada—Petition by appellant to Supreme Court.*

Special leave to appeal from a decree of the Supreme Court of Canada will not be granted to a petitioner who has elected to appeal to that Court and not to His Majesty direct, unless a question of law is raised of sufficient importance to justify it.

Ex parte Clergue, [1903] A. C. 521, followed. *CANADIAN PACIFIC RY. CO. v. BLAIN*

P. C. [1904] A. C. 453

8. — *Appeal—Admission of—Order of Court—Appealable case—Law of Ontario—Revised Statutes of Ontario, 1897, c. 48, s. 1.*

Under the Revised Statutes of Ontario, 1897,

CANADA (Practice)—continued.

c. 48, s. 1, it is essential that an appeal to the King in Council should be admitted by the C. A. The Court is bound to exercise its judgment whether any particular case is appealable or not; and where it appears by its order that it has left that question open, the appeal is incompetent. **E. W. GILLET & Co. v. LUMSDEN**

P. C. [1905] A. C. 601

9. — Appeal from an award to High Court—Further appeal to Supreme Court incompetent—Canada Railway Act, 1903, s. 168—Supreme and Exchequer Courts Act, R.S.C., 1886, c. 135, s. 26—Construction.

Held, that according to the true construction of s. 168 of the Canada Railway Act, 1903, the appeal given thereby to a superior Court from an award under that Act lies in the province of Ontario to either the Court of Appeal or the High Court of Justice therein at the option of an appellant; but that in case of appeal to the High Court, inasmuch as it is not the Court of last resort in the province within the meaning of the Supreme and Exchequer Courts Act, R.S.C., 1886, c. 135, s. 26, there is no appeal therefrom to the Supreme Court of Canada. **JAMES BAY RY. CO. v. ARMSTRONG**

P. C. [1909] A. C. 624

9A. — Concurrent findings, Practice as to—Avoidance of gifts made by testator—Civil Code, art. 762.

Where there are concurrent findings of fact as to a testator's competence and freedom from undue influence:—

Held, that they will not be disturbed unless it be made plain that there has been a miscarriage of justice, or at least that the evidence has not been adequately weighed or considered:

Held, also, that gifts made by the testator to the respondent during his lifetime would not be avoided under art. 762 of the Civil Code where there was neither allegation nor evidence that they were made in expectation of death. The proviso in the article, "unless circumstances tend to render them valid," requires that those circumstances should be investigated. **ARCHAMBAULT ET VIR v. ARCHAMBAULT ET AL.**

P. C. [1902] A. C. 575

10.—Final judgment—Yukon Territorial Act, 1899, s. 8—Omission in petition for special leave—Costs.

In an action by executors against the appellant to recover certain sums of money due to their estate, the judge of the Territorial Court, at the request of the plts. selected one of the items and adjudicated on the evidence taken that the action in respect thereof be dismissed:—

Held, that this was, within the meaning of the Yukon Territorial Act, 1899, s. 8, a final judgment in respect thereof, notwithstanding that the remaining items in suit were referred and the costs were reserved. No appeal therefrom to the British Columbia Court lay after the expiration of twenty days.

Special leave having been granted from a decree of the Supreme Court of Canada on a petition stating that the construction of the said statute was a matter of general public

CANADA (Practice)—continued.

importance, without stating that it had been repealed:—

Held, that as the omission was immaterial and bona fide the appellant should not be deprived of his costs. **MCDONALD v. BELCHER**

P. C. [1904] A. C. 429

11. — Verdict—Absence of exact proof of cause of injury—Order setting verdict aside reversed—Practice—Damage caused by explosion.

A jury having found that an explosion occurred through the neglect of the deft. co. to supply suitable machinery and to take proper precautions, and that the resulting injury to the plt. was not in any way due to his negligence, the verdict was upheld by the unanimous judgment of two Courts:—

Held, that an order by the Supreme Court setting aside the verdict on the ground that there was no exact proof of the fault which certainly caused the injury must be reversed. Proof to that effect may be reasonably required in particular cases; it is not so where the accident is the work of a moment, and its origin and course incapable of being detected. **MCARTHUR v. DOMINION CARTRIDGE CO.**

P. C. [1905] A. C. 72

Principal and Agent.

1. — (omission on sale of mining property—Sale completed on terms disapproved by agent—Agent the efficient cause of the sale effected.

In an action by the appellant to recover an agreed commission on the proceeds of a sale of mining property by the respondent co. the latter contended that he was not the efficient cause of the particular sale effected:—

Held, that as the appellant had brought the co. into relation with the actual purchaser he was entitled to recover although the co. had sold behind his back on terms which he had advised them not to accept. **BURCHELL v. GOWRIE AND BLOCKHOUSE COLLIERIES, LD.**

P. C. [1910] A. C. 614

Railway.

1. — Contract, Construction of — "Whole operation of its railway"—Limits to whole operation—Civil Code of Lower Canada, Art. 1018.

By art. 1018 of the Civil Code of Lower Canada, "all the clauses of a contract are interpreted the one by the other, giving to each the meaning derived from the entire act."

The appellant co. having contracted with the respondent city to pay annually certain specified percentages on the total amount of their gross earnings arising from the whole operation of their ry., and it appearing from the rest of the contract that the city considered territories of outside municipalities were not included within and that it could only deal with streets within its jurisdiction, and that the co. had to make separate arrangements with outside municipalities in respect of the operation of the ry. within their limits:—

Held, that by the true construction of the contract the city was only entitled to percentages on the gross earnings arising from the whole

CANADA (Railway)—continued.

operation of the lines within its own limits.
MONTREAL STREET RY. CO. v. CITY OF MONTREAL P. C. [1906] A. C. 100

2. — *Electric Cars not real estate — Res judicata — Jurisdiction in appeal from assessment officer — Revised Statutes of Ontario, c. 224, s. 39, sub-s. 2 — Personal estate exempt from assessment.*

Under c. 224 of the Revised Statutes of Ontario, 1897, the personal property of the appellant ry. co. is exempt from assessment (s. 39, sub-s. 2), while its real estate (s. 2, sub-s. 9) includes everything affixed to the land, and all machinery and other things so fixed to any building as to form in law part of the realty:—

Held, that its electric cars are personal estate, inasmuch as they are not part of the ry. and are not fixed in any sense to anything which is real estate:—

Held, also, that a decision between the same parties by the Court of Revision, established under s. 62 of the above Act, and of the Courts in appeal therefrom, to the effect that the electric cars were assessable, is not res judicata. By s. 68 the jurisdiction of those Courts is confined to the amount of assessment, and does not extend to validate an assessment unauthorized by the statute. **TORONTO RY. CO. v. CORPORATION OF THE CITY OF TORONTO** P. C. [1904] A. C. 809

3. — *Map — Railway map — Railway Act, 1888, s. 134 — Railway Act, 1903, ss. 128, 239 — Admissibility of railway map by the Appellate Court — Damages by fire — Ignition of combustible matter on railways — Right of way — Negligence — Law of Canada.*

By s. 239 of the Railway Act, 1903 (3 Edw. 7, c. 58), it is provided that the respondent ry. co. shall at all times keep its right of way free from combustible matter, sub-s. 2 providing that when damage is caused by a fire started by a railway locomotive the co. shall be liable whether guilty of negligence or not, in the latter case the liability being limited to a specified amount.

Where ignition occurred from the respondents' engine sparks at a rocky bluff shewn by a map filed by them in the Dept. of Railways and Canals under s. 134 of the Railway Act of 1888, repeated by s. 128 of the later Act, to be within the delineated right of way, the respondents were held to be liable for the damages assessed by the jury.

The Supreme Court of Canada, having on the objection of the respondents refused to admit the map in evidence on the ground that it had not been tendered at the trial, ordered a new trial:—

Held, that whether or not the Supreme Court was right in refusing to admit the map their Lordships would admit it, that it was conclusive in favour of the appellants, and that there had been no misdirection. **BLUE & DESCHAMPS v. RED MOUNTAIN RY. CO.** P. C. [1909] A. C. 361

4. — *Master and servant — Compensation — Power of Dominion Parliament — Canadian Statute 4 Edw. 7, c. 31 — British North America Act, 1867, s. 92, sub-s. 13.*

CANADA (Railway)—continued.

Held, that the Dominion Parliament is competent to enact s. 1 of Canadian statute, 4 Edw. 7, c. 31, which prohibits "contracting out" on the part of ry. cos. within the jurisdiction of the Dominion Parliament from the liability to pay damages for personal injury to their servants.

That section is intra vires the Dominion as being a law ancillary to through railway legislation, notwithstanding that it affects civil rights which, under s. 92, sub-s. 13, are the subject of provincial legislation. **GRAND TRUNK RY. CO. OF CANADA v. ATT.-GEN. OF CANADA** P. C. [1907] A. C. 65

5. — *Mines and Minerals include grants thereunder — Canadian Act 53 Vict. c. 4 — Orders in council thereunder — Construction — Railway company.*

Held, that the appellant ry. co., being entitled under Canadian Act, 53 Vict. c. 4 and an O. in C. made in pursuance thereof to grants of Dominion lands as a subsidy in aid of the construction of their ry., were entitled to them without any reservation by the Crown of mines and minerals except gold and silver. The Dominion Lands Act, 1886, and the Regulations of 1889 thereunder, which prescribe a reservation to that effect, do not apply. They relate only to the sale of Dominion lands and to the settlement, use, and occupation thereof. The grants in question were not by way of sale. **CALGARY AND EDMONTON RY. CO. v. REX** P. C. [1904] A. C. 765

6. — *Passenger — Third-class passengers — Fare of a penny per mile — Province of Canada, 16 Vict. c. 37, s. 3 — Dominion Railway Act, 1906 (6 Edw. 7, c. 42) — Construction.*

Section 3 of 16 Vict. c. 37 (Province of Canada) is not inconsistent with or impliedly repealed by the Dominion Railway Act, 1906 (6 Edw. 7, c. 42).

Accordingly the appellants are bound to carry third-class passengers for the fare of a penny per mile, and to provide one train every day with third-class carriages between Toronto and Montreal. **GRAND TRUNK RY. CO. OF CANADA v. ROBERTSON** P. C. [1909] A. C. 325

7. — *Sale and purchase of street railway system — Exclusive power of purchasers to operate — Construction — Ontario Act, 55 Vict. c. 99.*

By agreement of sale and purchase between the Toronto City Corporation and the Toronto Ry. Co. dated Sept. 1, 1891, and confirmed by Ontario Act 55 Vict. c. 99, the latter acquired, not merely the material of the ry. undertaking in suit, but also, as was clearly provided, the exclusive right "to operate surface street rys. in the city of Toronto" in the fullest possible way within the period of the agreement:—

Held that, on its true construction, territorial additions to the city made during the term of the agreement were not within its scope.

By clause 14 it was provided that the co. might be required to lay down new lines or extend tracks and car service as approved by the city, and by clause 17 it was provided that on the co. failing so to do the privilege so abandoned

CANADA (Railway)—continued.

might be granted to any other person or co. without any resulting claim to the purchaser for compensation.

Held, that under these clauses, construed so as not to derogate from the exclusive right of the co., the sole remedy in case of non-compliance was that provided by the latter clause, and that a claim for damages was not maintainable.

Held, also, that the exclusive power to operate included the right to determine the route and stopping of the different cars and their inter-relations, which was not displaced by other provisions. In particular, clause 26 gave the city power to determine the speed and service necessary on each main line. But it was included amongst sections headed "track, &c., and roadways," all referring to the physical condition of those entities, and not to the course or direction of the cars, and should not be construed as intended to derogate from the co.'s exclusive powers. **TORONTO CORPORATION v. TORONTO RY. CO. TORONTO RY. CO. v. TORONTO CORPORATION** **P. C. [1907] A. C. 315**

Note.

The judgment in this case was held by P. C. to be perfectly clear, and that the O. in C. thereon was unaffected by Ontario Act, 8 Edw. 7, c. 112, s. 1. See *Toronto Corporation v. Toronto Ry. Co.*, [1910] A. C. 312, No. 9, below.

8. — *Sale of railway by mortgagee—Order of Court—Law of Ontario—Dominion Act 46 Vict. c. 24, ss. 14–16—Dominion Railway Act, 1888 (51 Vict. c. 29).*

Held, that a ry. incorporated in 1873 by an Ontario statute, and declared by a Dominion statute in 1884 to be a work for the general advantage of Canada (thereupon becoming subject to the legislation of the Dominion), can in a suit by the trustees for bondholders to enforce a mortgage thereon be sold by virtue of the provisions contained in Dominion Act 46 Vict. c. 24, ss. 14, 15, and 16, re-enacted by the Dominion Railway Act, 1888 (51 Vict. c. 29). **CENTRAL ONTARIO RY. v. TRUSTS AND GUARANTEE CO.** **P. C. [1905] A. C. 576**

9. — *Streets—Railway—New lines—Ontario Act, 1908, 8 Edw. 7, c. 112, s. 1—Construction and effect.*

An O. in C. in pursuance of the judgment of their Lordships [1907] A. C. 315 ordered that subject to certain conditions contained in their agreement it was for the respondents and not the appellants to determine what new lines should be laid down on streets within the city of Toronto.

Thereafter an order was made by the Ontario Railway and Municipal Board that the respondents construct between ten and fifteen additional miles of single track, and the co. selected certain streets for that purpose. Subsequently the C. A. for Ontario affirmed a decision of the said Board that the co. had the right to select :—

Held, that the judgment in [1907] A. C. 315 was perfectly clear and that the O. in C. thereon was unaffected by Ontario Act, 8 Edw. c. 112, s. 1. **TORONTO CORPORATION v. TORONTO RY. CO.** **P. C. [1910] A. C. 312**

CANADA—continued.**Revenue.**

1. — *Foreign-built ship—Canadian Customs Tariff Act, 1897, s. 4—Duty on imported goods.*

A foreign-built ship bought in the United States and brought to Canada is liable to the duty imposed by the Canadian Customs Tariff Act, 1897, s. 4, Sched. A, item 409. **ALGOMA CENTRAL RY. CO. v. REX**

P. C. [1903] A. C. 478

2. — *Succession duty—Powers of provincial Legislature—British North America Act, 1867, s. 92, sub-s. 2—Ontario Succession Duty Act (R. S. O., 1897, c. 24)—Provincial taxation of property not within the province ultra vires.*

It is ultra vires the Legislature of Ontario to tax property not within the province: see *British North America Act, 1867, s. 92, sub-s. 2* :—

Held, accordingly, that the Succession Duty Act (R. S. O., 1897, c. 24) does not include within its scope movable properties locally situated outside the province of Ontario which it was alleged that the testator, a domiciled inhabitant of the province, had transferred in his lifetime with intent that the transfers should only take effect after his death.

Blackwood v. Reg., (1883) 8 App. Cas. 82, followed. **WOODRUFF v. ATT.-GEN. FOR ONTARIO** **P. C. [1908] A. C. 508**

3. — *Succession Duty (Quebec) Act, 1892—Construction—Quebec taxes apply to Quebec successions.*

Held, that taxes imposed on moveable property by the Quebec Succession Duty Act of 1892 and the amending Acts apply only to property which the successor claims under or by virtue of Quebec law; and have no application to the several items in this case, which formed part of a succession devolving under the law of Ontario. **LAMBE v. MANUEL** **P. C. [1903] A. C. 68**

Schools.

1. — *Teachers—Ontario Separate Schools Act, R. S. O., c. 294, s. 36—Construction—Qualified teachers—Exemption from examination.*

Held, that by the true construction of the Ontario Separate Schools Act, R. S. O., 1897, c. 294, s. 36, those members of the appellant communities who became such after the passing of the *British North America Act, 1867*, are not eligible for employment as teachers in the Roman Catholic schools in the province of Ontario unless they have received certificates of qualification to teach in the public schools. The exemption from examination recognized by that section is limited to those who were members at the date of the Act of 1867. **BROTHERS OF THE CHRISTIAN SCHOOLS v. MINISTER OF EDUCATION FOR ONTARIO AND ANOTHER** **P. C. [1907] A. C. 69**

Settlers' Rights.

1. — *Vancouver Island Settlers' Rights Act, 1904—Construction—Powers of local Legislature—British North America Act, 1867, s. 92, sub-s. 10.*

The *British Columbia Vancouver Island*

CANADA (Settlers' Rights)—continued.

Settlers' Rights Act, 1904, directed that a grant in fee simple without any reservations as to mines and minerals should be issued to settlers therein defined, and thereunder a grant was made to the appellant of the lot in suit.

By an Act of the same Legislature in 1883, land which included the said lot had been granted with its mines and minerals to the Dominion Government in aid of the construction of the respondents' ry., and in 1887 had been by it granted to the respondents under the provisions of a Dominion Act passed in 1884:—

Held, that the Act of 1804 on its true construction legalised the grant thereunder to the appellant, and superseded the respondents' title.

Held, also, that the Act of 1904 was *intra vires* of the local Legislature. It had the exclusive power of amending or repealing its own Act of 1883. The Act, moreover, related to land which had become the property of the respondents, and affected a work and undertaking purely local within the meaning of s. 92, sub-s. 10, of the British North America Act. *MCGREGOR v. ESQUIMALT AND NANAIMO RY. CO.*

P. C. [1907] A. C. 462

Shipping.

1. — *Appeal—Special leave to appeal unnecessary—Admiralty—Canadian Supreme and Exchequer Courts Act, 1875, s. 47—Colonial Courts of Admiralty Act, 1890, s. 6—Judgment of Supreme Court exercising Admiralty jurisdiction.*

Notwithstanding the provisions of the Canadian Supreme and Exchequer Courts Act, 1875, s. 47, with respect to the finality of the judgments of the Supreme Court, an appeal lies as of right under s. 6 of the Colonial Courts of Admiralty Act, 1890, from a judgment of the said Court when pronounced in an appeal thereto from a decree of the Colonial Court of Admiralty constituted in pursuance of and exercising jurisdiction under the said Act. *RICHELIEU AND ONTARIO NAVIGATION CO. (OWNERS OF S.S. "CANADA") v. OWNERS OF S.S. "CAPE BRETON"*

P. C. [1907] A. C. 112

— Canadian Canal Regulations, 1895—Priority of passage into Lachine Canal—Duty of vessel lying by.

See CANADA—Canals. 1.

2. — *Collision—Canadian R. S. c. 79—Arts. 19, 22 and 23 of the Regulations of 1897 for Preventing Collisions—Vessels crossing so as to involve risk of collision—Collision off the entrance to harbour.*

Where two vessels were approaching each other in Canadian waters on courses which converged at a point outside a harbour where each vessel expected to pick up a pilot:—

Held, that as they were so doing on courses and at speeds which would probably bring them to that point so as to present a danger of collision when they reached it, they were vessels crossing so as to involve risk of collision within the meaning of arts. 19, 22 and 23 of the Regulations of 1897, which had been substituted for those contained in Canadian R. S. c. 79; and that consequently it was the duty, negligently disregarded,

CANADA (Shipping)—continued.

of the respondents' vessel, which had the appellants' vessel on her own starboard side, to keep out of her way, there being no special circumstances within the meaning of art. 27 to authorize a departure from that rule.

Held also, that the appellants' vessel was not to blame under art. 21. It was not shewn that with reasonable care she ought to have taken action thereunder earlier than she did. *S.S. "ALBANO" v. ALLAN LINE STEAMSHIP CO., LD. UNION DAMPFSSCHIFFSRHEDEREI ACTIENGESELLSCHAFT v. S.S. "PARISIAN"*

P. C. [1907] A. C. 193

3. — *Exchequer Court of Canada (Admiralty)—Extent of jurisdiction—Suit to enforce mortgage of a ship—Admiralty Court Act, 1861 (Imperial), s. 11—Plea of set-off—Damages for breach of building contract.*

The Exchequer Court of Canada was constituted by the Exchequer Court Act (50 & 51 Vict. c. 16) (Dominion) for the purpose of dealing with matters in which the Crown was concerned (ss. 15 and 16) and has no general common law jurisdiction. It has also under the Colonial Courts of Admiralty Act, 1890 (53 & 54 Vict. c. 27) (Imperial), and the Admiralty Act, 1891 (54 & 55 Vict. c. 29) (Dominion), jurisdiction in Admiralty, including its statutory extensions.

In an action in rem by the appellants in the said Court, British Columbia Admiralty District, to enforce payment of the balance due on the mortgage of a ship, granted in respect of the price of construction, which it was agreed should be treated as money lent, the respondents, the registered transferees of the ship, pleaded by way of equitable defence that they were entitled to set off a sum of money expended by them, which was sufficient to prevent their being in default under the mortgage at the date of the action. It appeared that the set-off was claimed as a defence *pro tanto* so far as it was for a diminution in value of the ship by reason of its having been built negligently and defectively and not in accordance with contract:—

Held, that under the Admiralty jurisdiction as it formerly existed neither appellants nor respondents could have enforced their claims in an Admiralty Court. But s. 11 of the Admiralty Court Act, 1861, extends that jurisdiction so as to include the claim of the appellants, which was in respect of a mortgage duly registered under the Merchant Shipping Act; while the respondents' defence, though pleaded by way of set-off, in reality involved a cross-claim for unliquidated damages under a contract distinct from the mortgage sued upon, which the Court had no jurisdiction to entertain whether the claim was against the ship or the plts. *BOW, McLAUGHLAN & CO. v. SHIP "CAMOSUN" AND UNION STEAMSHIP CO. OF BRITISH COLUMBIA, LD.*

P. C. [1909] A. C. 597

4. — *Pilotage dues—Revised Statutes of Canada, 1886, c. 80, ss. 2 (b), 58 and 59—Construction.*

The respondent's vessels (about 440 tons each), built for the purpose of carrying coal, and carrying sails so as to be able to run before the wind, but not so as to be safely navigated

CANADA (Shipping)—*continued*.

in the ordinary way as sailing vessels, were towed by a steam tug in and out of the port of St. John.

In an action by the respondents to recover pilotage dues paid under the Pilotage Act (Revised Statutes of Canada, 1886, c. 80), ss. 58 and 59;—

Held, that s. 58 applied to the said vessels as ships which navigate within the district of St. John, i.e., perform voyages into or out of the port of St. John; ships being defined by s. 2 (b) as including "every description of vessel used in navigation not propelled by oars," and s. 58 not indicating that in the pilotage waters a ship must at the time possess independent practical power of moving herself.

Held, also, that they were not exempted under s. 59 (e), since they were not ships propelled wholly or in part by steam, the word "propelled" not including traction within its scope. *ST. JOHN PILOT COMMISSIONERS AND ATT.-GEN. FOR THE DOMINION OF CANADA v. CUMBERLAND RY. AND COAL CO.*

P. C. [1910] A. C. 208

Snow.

1. — *Ice and Snow—Contract—Construction—Duty of clearing track of ice and snow—Right to clear ice and snow into the streets—Electric sweeper.*

The city council of Montreal being bound as the road authority to remove the ice and snow on the streets from curb to curb, including the snow thrown or falling thereon from the roofs of houses and removed thereto from the side walks:—

Held, that the respondent street ry. co. having contracted with the city to keep their track free from ice and snow, did not, having regard to the surrounding circumstances and in the absence of words expressly or impliedly forbidding it, commit a nuisance by sweeping their snow into the street.

Ogston v. Aberdeen District Tramways Co., [1897] A. C. 111, distinguished.

Held, also, that the city having granted to the co. all rights and privileges necessary for the proper and efficient use of electric power to operate cars in the streets in the manner successfully in use elsewhere, the latter could not be prevented from using the electric sweepers. *CITY OF MONTREAL v. MONTREAL STREET RY. CO.*

P. C. [1903] A. C. 482

Streets.

2. — *Cost of Improvements—Action to recover assessed amounts—Assessment due on filing the roll—Prescription—Quebec Act (52 Vict. c. 79), ss. 120, 144, 231—Civil Code, Arts. 2227, 2232, and 2236—Construction.*

Under s. 231 of the City of Montreal Charter, 1889 (52 Vict. c. 79), the amount of an assessment becomes due and recoverable on the filing of the roll of assessment in the office of the city treasurer.

In an action by the city to recover after the period of prescription enacted by s. 120, calculated from the date of filing, had elapsed, it appeared that the respondent's predecessor had

CANADA (Streets)—*continued*.

been a party to proceedings had for its annulment:—

Held—(1.) that the period was not interrupted thereby within the meaning of art. 2227 of the Civil Code, for there had been no acknowledgment of liability;

(2.) That there had been no impossibility to sue within the meaning of art. 2232, for the right of action was not by the above Act suspended during such proceedings;

(3.) That the debt in suit was not dependent on a condition within the meaning of art. 2236: though s. 144 of the Act limited the time within which the roll might be annulled, it did not make the date of its coming into force conditional on the roll not being either attacked or annulled. *CITY OF MONTREAL v. CANTIN*

P. C. [1906] A. C. 241

— Street railway—New lines.

See CANADA—Railway. 7, 9.

Sundays.

1. — *Powers of local Legislature—Ontario Act, 1897, c. 246, to prevent the profanation of the Lord's Day, ultra vires—Exclusive power of the Dominion Parliament over criminal legislation—British North America Act, 1867, s. 91, sub-s. 27—Practice as to questions referred.*

Held, that "An Act to prevent the Profanation of the Lord's Day" (Revised Statutes of Ontario, 1897, c. 246) treated as a whole is ultra vires of the Ontario Legislature.

The criminal law in its widest sense is reserved by s. 91, sub-s. 27, of the British North America Act, 1867, for the exclusive authority of the Dominion Parliament; and an infraction of the above Act is an offence against criminal law.

It is not the practice of their Lordships to give speculative opinions on hypothetical questions submitted. The questions must arise in concrete cases and involve private rights. *ATT.-GEN. FOR ONTARIO v. HAMILTON STREET RY. CO.*

P. C. [1903] A. C. 524

Swamp Lands.

1. — *Crown lands—Swamp lands—Canadian Act, 48 & 49 Vict. c. 50, s. 1—Construction—Transfer of proprietary right—Vesting at a future date.*

By s. 1 of the Canadian Act, 48 & 49 Vict. c. 53, subsequently re-enacted by Revised Statutes of Canada, c. 47, s. 4, it was provided that all Crown lands which may be shewn to the satisfaction of the Dominion Government to be swamp lands shall be transferred to the province and ensure wholly to its benefits and uses:—

Held, that by its true construction the section did not operate an immediate transfer to the province of any swamp lands or of the profits arising therefrom, but only from the date of the O. in C., made after survey and selection as prescribed by the Act directing that the selected lands be vested in the province. Down to that date the profits resulting from the transferred land belonged to the Dominion. *ATT.-GEN. FOR MANITOBA v. ATT.-GEN. FOR CANADA* - P. C. [1904] A. C. 799

CANADA—continued.**Telephone.**

1. — *Powers of Dominion Legislature—Local undertakings extended beyond provincial limits—British North America Act, 1867, ss. 91, 92, sub-s. 10 (a)—Dominion Act, 43 Vict. c. 67—Ontario Act, 45 Vict. c. 71.*

Held, that under its Dominion Incorporating Act, 43 Vict. c. 67, the respondent telephone co. was entitled, without the consent of the municipal corporation, to enter upon the streets and highways of the city of Toronto and to construct conduits or lay cables thereunder, or to erect poles with wires affixed thereto upon or along such streets or highways. The scope of the respondents' business contemplated by the said Act and involving its extension beyond the limits of any one province was within the express exception made by s. 92, sub-s. 10 (a), of the British North America Act, 1867, from the class of local works and undertakings assigned thereby to provincial Legislatures. Accordingly, Act 43 Vict. c. 67 was within the exclusive competence of the Dominion Parliament under s. 91.

Ontario Act 45 Vict. c. 71, passed to authorize the exercise of the above powers within the province, subject to the consent of the corporation, was held to be ultra vires, and could not by reason of having been passed on the application of the respondent co. be validated as a legislative bargain. *TORONTO CORPORATION v. BELL TELEPHONE CO. OF CANADA*

P. C. [1905] A. C. 52

Temperance Acts.

1. — *Canada Temperance Act, 1888 (51 Vict. c. 34), s. 10—Issue of search warrant before prosecution—Writ of certiorari refused—Practice as to special leave to appeal in criminal cases—Law of Nova Scotia.*

Under the Canada Temperance Act, 1888 (51 Vict. c. 34), a search warrant was issued and duly executed, and large quantities of intoxicating liquor found on the hotel and premises searched and a conviction of the appellant subsequently obtained in regard thereto, with a consequent order for the destruction of the liquor:—

Held, that, the Supreme Court having dismissed applications for writs of certiorari to remove into the said Court the record of the said search warrant and destruction order, special leave to appeal therefrom must be refused. The decision was plainly right, having regard to s. 10 of the Act under which the warrant was issued. *TOWNSEND v. COX*

P. C. [1907] A. C. 514

Trade Machines.

— Leases of machines for shoe manufacture.

See CANADA—Leases. 3.

Trade Mark.

1. — *"Caledonia Waters"—No exclusive right to the trade word of local source.*

Where the mineral waters of the appellant derived from various Caledonia springs, so called from being in a township of that name, acquired in the market the name of "Caledonia Water";

CANADA (Trade Mark)—continued.

and the respondents having discovered other springs in the same township sold their goods as "from new springs at Caledonia":—

Held, in an action for an injunction, that the appellants had not, in the circumstances, a right to the exclusive use of the word "Caledonia." The respondents were entitled to indicate the local source of their waters, and had sufficiently distinguished their goods from those of the appellants. *GRAND HOTEL CO. OF CALEDONIA SPRINGS, LD. v. WILSON* P. C. [1904] A. C. 103

Trade Union.

1. — *Action against—Trade union—Actionable conspiracy—Misdirection—Resolutions of union calling a strike—New trial.*

In an action against the appellants alleging that they had conspired to injure the plts. in the conduct of their business, and that in pursuance of the conspiracy the union whom they represented caused the plts.' men to go out on strike, the judge in effect directed the jury that if the resolutions of the union calling out the plts.' men were the cause of the strike they were an actionable wrong, without regard to the motive and without regard to the conspiracy alleged:—

Held, that this direction could not be supported and that there must be a new trial. *JOSE v. METALLIC ROOFING COMPANY OF CANADA, LD.*

P. C. [1908] A. C. 514

Trespass.

— Action for trespass—Injunction—Arbitration clauses.

See CANADA—Arbitration. 4.

Water.

1. — *Water—Unrecorded waters—British Columbia—Water Clauses Consolidation Act, 1897, ss. 2, 4—Esquimalt Waterworks Act, 1885, s. 10, and the Extension Act, 1892, s. 10—Construction.*

By the British Columbia Water Clauses Consolidation Act, 1897, s. 4, the right to the use of all unrecorded water in any river, lake, or stream is declared, subject to a proviso in favour of existing legal rights, to be vested in the Crown in right of the province; unrecorded water, by the interpretation clause (s. 2), includes all water not held for the time being under special grant by public or private Act.

In an action by the respondents in effect claiming to appropriate for the purpose of the municipality certain waters described as flowing from two different sources, Goldstream River and Niagara Creek, as being unrecorded water and liable to be recorded in their favour under the said Act, it appeared that the waters so claimed had under the Esquimalt Waterworks Act, 1885, and its Extension Act, 1892, vested in the appellants by force of s. 10 of the former Act, subject to the perpetual and onerous obligation imposed by s. 10 of the Extension Act of supplying water to the respondents if required after notice and in large quantity; that considerable outlay had been incurred by the appellants in storing and conveying the waters in suit with a

CANADA (Water)—continued.

view to meeting such obligation ; and that without the waters in suit they would be unable to meet it :—

Held, (1) that the appellants' Acts of 1885 and 1892 are private Acts, in the sense that they confer special rights and impose special obligations upon them for special purposes.

(2) That the Act of 1897 did not apply to the appellants. It was a subsequent general statute, and could not be intended to interfere with rights granted by special legislation to an extent which prevented the fulfilment of the statutory obligations imposed thereby.

(3) That under the true construction of s. 2 of the Act of 1897 the waters in suit, having been granted to the appellants by special legislation, were not unrecorded within its meaning ; and that the plain intention of the proviso to s. 4 was to preserve any right of diversion or appropriation existing under any Act already passed. **ESQUIMALT WATERWORKS Co. v. CITY OF VICTORIA CORPORATION** **P. C. [1907]**

A. C. 499

Will.

1. — *Accumulations of income during minority of donee—Testator's children to take equal shares in the residue at majority—Will, Construction of.*

The testator gave to each child an equal share of the income of the whole of his residuary estate subject to the provision "that until each child attains the age of twenty-five years what would have been his or her share is to accumulate and form part of my general estate":—

Held, that according to the true construction of this provision the accumulations of each share during conventional minority were intended to increase the general residuary estate of which each child was entitled to a share at twenty-five, and not for the exclusive benefit of the sharer. **FULFORD v. HARDY** **P. C. [1909]** **A. C. 570**

2. — *Alienation—Gift to children—Conditions in restraint of alienation—Enjoyment of usufruct—Grandchildren conditionally substituted—No right of accretion—Construction of will.*

A testator directed that his estates should be divided into seven shares amongst his seven children, the children to have the usufruct and enjoyment of all his property, and, on the decease of his children or any of them, the children to be born of their respective marriages to have the full proprietary right and interest therein. To his grandchildren thus substituted for his children he gave the right to use, enjoy, or dispose of the same as it might seem good to them, instituting them for this purpose his universal legatees.

He prescribed three conditions : (1.) that the property bequeathed to his children should not be assignable, or capable of being seized by their creditors ; (2.) that it should not be sold or alienated under any pretext, but should pass "*en nature*" to his grandchildren ; (3.) that the grandchildren should not alienate the share of the property which should belong in usufruct to their respective fathers or mothers before the said usufruct had come to an end :—

Held, that the effect was that each child was

CANADA (Will)—continued.

entitled to his specific share which had been ascertained by partition, confirmed by 60 Vict. c. 95, as sole proprietor subject to the condition of handing it over to his children at his death ; and that there was no right of accretion amongst either the testator's children or grandchildren. Consequently the share in suit of one of the children who died in 1902 without issue passed under his will to his executor. **PRÉVOST v. PRÉVOST** **P. C. [1908]** **A. C. 541**

3. — *Alternative absolute gifts—Construction.*

A testator gave to his widow his real estate for life, and at her death to his eldest son, John, for life, and thereafter to "become the absolute property" of John's eldest son, alternatively "to become the property of my son James or of his eldest son," and failing either of them to the appellant. John died in the testator's lifetime without male issue ; James and his son who predeceased him survived the widow :—

Held, that the gift to John's eldest son being of an absolute interest, it must, in the absence of words importing a different intention, and having regard to the context, be deemed to have been the intention of the will that the alternate gift to James should also be absolute. The gift over to the appellant in case of the death of James without male issue was defeated if either James or his son lived to take absolutely. **MCCORMICK v. SIMPSON** **P. C. [1907]** **A. C. 494**

Yukon Territorial Act.

— Final judgment—Appeal—Omission to petition for special leave—Costs.
See CANADA—Practice. 10.

CANAL — Bridge over canal—Approaches to bridge—Liability to repair.

See BRIDGE. 1.

1. — *Canal company—Diversion of water from river—Statutory powers—Urban district council—Riparian owners—Statutory power to draw water from river—Action by Attorney-General—Mandatory injunction—Laches—Delay—Union and Grand Junction Canal Act, 1810 (50 Geo. 3, c. 122)—Rugby Waterworks Act, 1863 (26 & 27 Vict. c. xxxiii.)—Rugby Water and Improvement Act, 1901 (1 Edw. 7, c. cclxix.).*

By an Act passed in 1810 a canal co., thereby incorporated, was empowered to make a canal and other works and to take the waters of a certain river and its tributary streams for the purpose of supplying the canal, but was prohibited from reducing the flow of the river below a certain average to be ascertained as therein provided. The canal works were completed in 1837 and had since been in operation without complaint until 1901. By another Act passed in 1894, and reciting that the canal and works had been duly constructed in accordance with the Act of 1810, the canal and undertaking were transferred to the defts. The plts., an urban district council, had statutory powers to supply water in their district, and to draw from the river at a point below the canal works. They had also acquired property upon the banks of the river,

CANAL—*continued*.

In an action by the Att.-Gen. at the relation of the plt. council, and by the plt. council, for an injunction to restrain the deft. from diverting from the river more water than they were entitled to under the Act of 1810, and for an injunction to restrain them from permitting the works to remain so constructed as not to comply with the Act:—

Held, that the defts. had only allowed the works, executed more than sixty years ago, to operate as they had done from the first, and had acquired by lapse of time an absolute right to the use of the water diverted by those works: the action of the plts. as distinct from the claim of the Att.-Gen. therefore failed.

Held, further, with respect to the action by the Att.-Gen., that the Court had a discretion as to granting a mandatory injunction in such a case, and, having regard to the length of time which had elapsed without objection or complaint, no such injunction ought to be granted. *ATT.-GEN. v. GRAND JUNCTION CANAL CO.*

Joyce J. [1909] W. N. 167; [1909] 2 Ch. 505

— Railway—Arbitration—Jurisdiction of Railway and Canal Commission.

See RAILWAY—Arbitration. 2.

— Railway and Canal Commission.

See under RAILWAY—Railway and Canal Commission.

— Railway and Canal Traffic Acts.

See under RAILWAY.

— Repairs—Canal company—Liability to repair approaches to bridge over canal.

See BRIDGE. 1.

CANALS — Canadian Canal Regulations —

Priority of passage into Lachine Canal

—Duty of vessel lying by.

See CANADA—Canals. 1.

— Railway and Canal Traffic Acts.

See under RAILWAY.

CANCELLATION — Charterparty — Ship—Non-arrival by fixed date—Date for exercise of option to cancel charterparty.

See SHIPPING—CHARTERPARTY.

— Debenture—Registration.

See COMPANY—Debentures. 48.

— Forfeiture on alienation — Cancellation of charge before property charged becomes payable.

See WILL—Forfeiture. 2.

— Prospectus—Irregular allotment — Cancellation of allotment — Rescission — Ultra vires.

See COMPANY—Prospectus. 1.

— Ship — Charterparty — Non-arrival by fixed date — Date when option to cancel arises.

See SHIPPING—Charterparty. 21.

— Ship—Charterparty—"Ready for loading"—Discharge of previous cargo.

See SHIPPING—Charterparty. 55.

— Will—Erroneous impression of testator as to the effect of an earlier settlement.

See PROBATE—Cancellation. 1.

CANTEEN —Offences—Excise licence — Sale to civilian.

See LICENSING ACTS. 49.

CAPE OF GOOD HOPE. — *The South Africa Act, 1909 (9 Edw. 7, c. 9), is an Act to constitute the Union of South Africa.*

Death Duties—O. in C., Nov. 21, 1908, revoking O. in C. applying s. 20 of the Finance Act, 1894, to the Colony of the Cape of Good Hope. St. R. & O. 1908, No. 1142.

— Appeal.

See Nos. 10, 11, below.

1. — *Bechuanaland Protectorate — Mining rights—Rules and regulations of the appellant company—Forfeiture of block of mining claims—Certificate of preliminary registration—Law of Bechuanaland.*

Although the mining rules and regulations of the appellant co., which were the contractual terms of the respondent's holding of a block of reef claims within their concession, do not in express terms prescribe or authorize forfeiture, yet the holder's liability thereto is the only sanction of all reservations, whether of rent or otherwise, in the appellant's favour.

A certificate granted thereunder of preliminary registration of the respondent's holding is not equivalent to a lease. The mining rights and privileges conferred by it do not fall under any head or category known to the Roman-Dutch law. The rights of the parties are governed by the terms of their contract, that is, the mining rules and regulations.

In an action for restitution of a mining block, *held* that the appellants were under their rules and regulations entitled to declare it forfeited for non-payment of rent. *TATI CONCESSIONS, LD. v. HEPPLE*

P. C. [1905] A. C. 139

2. — *British Bechuanaland Concession Court—Concessions by native chiefs before 1891—Proclamations of April 25, 1889, and Feb. 1, 1893—Power of Court to modify concession—Minerals.*

Section 23 of the proclamation of Feb. 1, 1893, establishing the British Bechuanaland Concession Court, empowers that Court to modify the terms, conditions and scope of all concessions made by native chiefs prior to 1891; or to impose equitable limitations, restrictions or conditions upon their exercise.

A concession by a native chief in Bechuanaland in 1889 and 1890, applicable to all minerals whatsoever, was in effect confirmed by the said Court, subject to the restriction imposed by the proclamation of April 25, 1889, which related solely to the precious metals, and in effect destroyed the appellants' right thereto:—

Held, that this was a modification within the powers of the Court and not an extinction of the conceded rights. *VILANDER CONCESSIONS SYNDICATE v. CAPE OF GOOD HOPE GOVERNMENT*

P. C. [1907] A. C. 186

3. — *Electric leak—Escape of electric current—Disturbance to submarine cable—Tramway Act—Act 22 of 1895, s. 4—Act 29 of 1896, s. 4—Construction.*

The principle of *Rylands v. Fletcher*, (1868) L. R. 3 H. L. 330, is not inconsistent with the

CAPE OF GOOD HOPE—continued.

Roman law. It imposes a liability on a proprietor which is measured by the non-natural user of his own property, not by that of his neighbour. It applies to a proprietor who stores electricity on his land if it escapes therefrom and injures a person or the ordinary use of property. It does not apply to the case of injury done to a peculiar trade apparatus unnecessarily so constructed as to be affected by minute currents of the escaping force.

In an action for damages by tife appellant co. for disturbances in the working of their submarine cable caused by an escape of electricity stored by the respondents for the due working of their tramway system :—

Held, in regard to that section of the tramway which had not been constructed under statutory authority, *Rylands v. Fletcher* did not apply, because the disturbances only resulted when the cable was constructed without certain precautions, which the evidence shewed had subsequently secured its immunity :—

Held, in regard to those sections of the tramway which had been constructed under statutes (Act 22 of 1895 and Act 29 of 1896), that the escape of electricity, being a natural incident of the operations legalized thereby, and not resulting from a leak within the meaning of the statutory undertaking or condition, did not impose liability on the respondents. *EASTERN AND SOUTH AFRICAN TELEGRAPH CO. v. CAPE TOWN TRAMWAYS COS.* **P. C. [1902] A. C. 381**

4. — *Electric light—Contract, Construction of* —“*Generating light*” includes distribution as well as production — “*Actual cost*” includes depreciation, rent, rates, taxes, and insurance.

The respondents were under contract to establish an electric light central station in B., and to supply light to the inhabitants and to the streets, public places, and private property, and, in order to carry out that undertaking, to do certain specified things and to provide everything which might be necessary, whether specified or not, for the purpose of supplying the electric light to the street lamps. In consideration thereof the appellants by the same contract were bound to pay “at such rates as will yield to the contractors a return equal to 10 per cent. over the actual cost of generating the light” :—

Held, that, according to the true construction of this contract, “generating the light” covered the whole series of operations leading up to the production of the light in the street lamps, and the “actual cost” thereof covered all that the production of the light cost, including depreciation of plant, rent, rates, taxes of the electric works and buildings, and insurance. *BULAWAYO MUNICIPALITY v. BULAWAYO WATERWORKS CO.* **P. C. [1908] A. C. 241**

— Foreign jurisdiction.

See under FOREIGN JURISDICTION.

5. — *Harbour board, liability of—Powers of harbour-master—Negligence in removing and removing vessels in port—Cape Colony Act 36 of 1896.*

The place and method of mooring vessels within a port are within the authority of the harbour-master or port captain.

CAPE OF GOOD HOPE—continued.

Reney v. Magistrates of Kirkcudbright, [1892] A. C. 264, followed.

Where by a harbour-master's orders two vessels were removed from moorings and negligently remoored and retained in new position so that on the occurrence of an extraordinary flood both were carried away and lost :—

Held, that the appellants, a harbour board, constituted by Cape Colony Act 36 of 1896, were liable for the acts of their officer. *EAST LONDON HARBOUR BOARD v. CALEDONIA LANDING, SHIPPING AND SALVAGE CO. EAST LONDON HARBOUR BOARD v. COLONIAL FISHERIES CO.*

P. C. [1908] A. C. 271

6. — *Land, Grant of—Construction—Title—Terms of grant—Diagram.*

In a grant of land with certain specified boundaries “as will further appear by the diagram framed by the surveyor” :—

Held, that, as a matter of construction, where the diagram is repugnant to the terms of the grant, the latter will prevail.

Although by arts. 8 and 13 of the Proclamation of August 6, 1813, there must be a diagram before a title be granted, yet the right of the grantee must be expressed in his title, and, when so expressed, will not be limited by the diagram. *HORNE v. STRUBEN* **P. C. [1902] A. C. 454**

7. — *Lands for railway purposes, Claim to take—Compensation—Cape of Good Hope Act, IX. of 1858, s. 11—Construction.*

It is a sound canon of construction that an intention to take away property without compensation should not be imputed to a Legislature unless it be expressed in unequivocal terms.

Western Counties Ry. Co. v. Windsor and Annapolis Ry. Co., (1882) 7 App. Cas. 178, followed.

Where it appeared that road commrs. claimed to expropriate without compensation the respondent's land for ry. purposes on the ground that s. 11 of Act IX. of 1858 effected a transfer to them of the rights derived by the Government from the Proclamation of 1813, and extended those rights so as to be applicable to the present case :—

Held, that s. 11 must receive a strict construction. Its language was satisfied by the transfer of the existing powers without any extension thereof. It would require a more direct expression of intention to create such a new power of expropriation for ry. purposes without compensation as was claimed. *COMMR. OF PUBLIC WORKS (CAPE COLONY) v. LOGAN*

P. C. [1903] A. C. 355

8. — *Martial law regulations—Review of martial law—Convictions by Supreme Court—Jurisdiction.*

The Supreme Court of the Cape of Good Hope has no jurisdiction to review judgments of martial law Courts.

Where a deputy administrator of martial law was also a resident magistrate, and by mistake used in proceedings relating to acts contravening martial law regulations the printed forms of his Magistrate's Court with headings appropriate thereto :—

Held, that his convictions could not on that

CAPE OF GOOD HOPE—continued.

account be quashed as irregular; it appearing that they were in fact made in the administration of martial law. **ATT.-GEN. FOR THE CAPE OF GOOD HOPE v. VAN REENAN. ATT.-GEN. FOR THE CAPE OF GOOD HOPE v. SMIT**

P. C. [1904] A. C. 114

9. — Mortgages — Law of South Africa — Insolvency liquidation — Preferential right to payment — Priority as between mortgagees depends upon date of advances, not of registration.

Upon an issue as to preferential claim to payment in a liquidation upon an insolvency, it appeared that the mortgage bond under which the appellants claimed was prior in date of execution and registration to that set up by the respondent, but that no present debt was created by the appellants' bond, and no moneys had been advanced to the insolvents thereupon prior to their incurring debts to the respondent :—

Held, that by the Roman-Dutch law applicable to the Cape Colony preference must be determined by the date of the debts, and not of the securities, and that the respondent's actual advance, being prior to that of the appellant's, was entitled to priority of payment. **STANDARD BANK OF SOUTH AFRICA, LD. v. HEYDENRYCH**

P. C. [1907] A. C. 336

— Mortgages by purchaser not a breach of condition.

See No. 13, below.

10. — Practice — Appeal — Special leave — Abstract point of law.

Special leave will not be granted to appeal from a judgment which is not impeached, merely with a view to have an abstract point of law, not arising in the case, decided by their Lordships. **REX v. LOUW. Ex parte ATT.-GEN. FOR CAPE OF GOOD HOPE**

P. C. [1904] A. C. 412

11. — Practice — Appeal, Special leave to — Martial law — Civil tribunals.

Where actual war is raging, acts done by the military authorities are not justiciable by the ordinary tribunals.

The fact that for some purposes some tribunals have been permitted to pursue their ordinary course in a district in which martial law has been proclaimed is not conclusive that war is not raging.

Elphinstone v. Bedreechund, (1830) 1 Knapp, P. C. 316, followed.

Special leave to appeal refused from a judgment affirming the rightful custody of the petitioner by the military authority in a district in which martial law prevails. **D. F. MARAIS v. GENERAL OFFICER COMMANDING LINES OF COMMUNICATION AND THE ATT.-GEN. OF THE COLONY. Ex parte D. F. MARAIS.**

P. C. [1902] A. C. 109

12. — Railway contract — Construction — Penalty for non-completion of line — Liquidated damages — "Actual cost" does not include interest on moneys expended.

It was provided in a railway construction contract that in the event which happened of non-completion of the line within a specified

CAPE OF GOOD HOPE—continued.

period the plt. contractor should forfeit to the deft. Government certain percentages which the Government retained out of moneys payable under this and two other railway contracts as a guarantee fund to answer for defective work and also certain security money lodged with its Agent-General "as and for liquidated damages sustained by the said Government for the non-completion of the said line"; and that it should be lawful for the Government to take possession of the incomplete line and pay the balance due in respect of its "actual cost" :—

Held that, on its true construction, the term "actual cost" was limited to the amount of moneys expended on the work, and that interest thereon could not be added.

Held, further, that the Government was not entitled to the retention and security moneys as liquidated damages; for the total amount thereof was indefinite, and in the case of the retention moneys depended on the progress of construction, the amount of the percentages, and the quantity of defective work. It could not, therefore, be treated as a genuine pre-estimate of loss; but the Government was entitled to obtain judgment in reconvention for such damages as it may have actually suffered through the plt.'s breach of contract, and deduct the same from the funds in question. **PUBLIC WORKS COMMISSIONERS v. HILLS**

P. C. [1906] A. C. 368

— Railway purposes, Claim to take lands for.

See No. 7, above.

13. — Roman-Dutch law — Fidei commissum conditionale — Sale of property subject to restraint on alienation — Construction — Mortgages by purchaser not a breach of condition.

Where husband and wife (married in community) by a duly executed deed in 1881 transferred immovable property to their son for valuable consideration, stipulating that "it shall never be sold or parted with in favour of a stranger, but shall permanently remain among legal heirs," and on the death of the surviving parent his executor executed in 1890 before the registrar of deeds a deed of conveyance to the son, who thereupon mortgaged with notice the property to strangers :—

Held, that the effect of the deed of 1881 followed by the deed of 1890 was to vest the property in the son, subject to a prohibition against alienation to any person not a member of the family.

Held, further, in a suit against the mortgagees brought on behalf of some of the son's heirs in respect of their shares in his inheritance, that, although the prohibition created a fidei commissum conditionale, i.e., a fidei commissum conditioned to come into existence on a breach of the prohibition, yet mortgages by the son, not being absolute alienations, did not constitute a breach of the prohibition until enforced by a judicial sale. **JOSEF v. MULDER**

P. C. [1903] A. C. 190

14. — Shipping — Demurrage — Contract for sale and delivery of coal by shipments — Construction as to clause for demurrage — Consignors not limited to the shipowners' claim — Indemnity — Novation.

CAPE OF GOOD HOPE—continued.

In an action by the vendors and consignors of coals under a contract binding the consignee to accept delivery to the railway authorities immediately on their arrival in port "at the rate of 120 tons per day for sailers and 250 tons per day by steamers," or to be "liable for demurrage at 4*d.* per net registered ton per day for sailers and 6*d.* per net registered ton per day for steamers," to recover demurrage in respect of eight ships calculated according to the specified rate:—

Held, that both upon the plain words of the contract, and also as explained by the action, conduct and mode of dealing of the parties antecedent to its date, it was an absolute and not an indemnity contract. It could not be so construed as to import into it a condition that the consignee was only liable to pay the amount of demurrage due by the consignors under the terms of their charterparties, so far as it did not exceed the contractual total.

Held, also, that by the endorsement and delivery of eight bills of lading in respect of these cargoes (only three of which incorporated the conditions of the charterparties), the consignee did not become bound by way of novation to pay demurrage as stipulated by the charterparties, and was not discharged from the obligation in respect thereof as imposed by the contract sued upon.

Even if the contract had been strictly c.i.f. there is no rule of law that a vendor thereunder, who is also consignee, may not secure for himself a profit under a demurrage clause; nor any indisputable presumption of law that the parties did not so intend. **HOULDER BROTHERS & Co. v. COMM. OF PUBLIC WORKS. COMM. OF PUBLIC WORKS v. HOULDER BROTHERS & Co.**

P. C. [1908] A. C. 276

— Solicitors.

See under **SOLICITOR—Colonies.**

15. — Will—Institution of heirs in specified proportions—Tenants for life—Other proportions in certain assets sold during the life tenancy—Period of distribution—Construction of will.

The testator died in 1900, his brother and partner in 1906. Under the will in the events which happened the brother took a life interest in the entire residue of the testator's estate, the instituted heirs being himself as respects one-fourth thereof and certain "other heirs" represented by some of the respondents as respects three-fourths.

The institution was subject to the condition that the brother besides his life interest was entitled to retain during his life the testator's half share of the partnership assets: distribution among the heirs being postponed till the brother's death, except in the case of a sale during his life, when the distribution of its proceeds was to be made at once, and if the sale was of partnership assets, in that case the shares should be altered to half and half.

The testator also directed that in order to avoid all disputes and differences an inventory and account should be made of his private estate and also of his firm, and that his "other heirs" shall be paid out their three-fourth shares in his private estate and one-fourth share of his firm

CAPE OF GOOD HOPE—continued.

on the valuations and accounts as set forth and contained in the said inventory, whenever such payment may be made to them, and they shall not be entitled to claim any profits or gains made by the brother should he continue to carry on the business, nor on the other hand shall such heirs be responsible for any losses":—

Held, that on the true construction of this clause a partnership asset entered in the inventory but realized after the brother's death was distributable as regards the testator's moiety thereof in the proportion of three-fourths and one-fourth and not in the proportion of half and half. **STEPHAN v. CAPE TOWN BOARD OF EXECUTORS**

P. C. [1909] A. C. 347

CAPITAL—Company.

See under **COMPANY—Capital.**

1. — Income, Capital and — Agreement for letting house to testator — Payment by instalments—Death of testator before payment—Debt—Devisee under will absolutely entitled subject to executory gift over—Contribution of income for debts—Rule in *Allhusen v. Whittell*, (1867) L. R. 4 Eq. 295, inapplicable.

A testator, shortly before his death, agreed to take a London house from Feb. to July, 1903, at the rent of 1000 guineas, payable in three instalments on specified dates. The testator died before the last two instalments became due. By a decision of the House of Lords in 1905 (*Comiskey v. Bowring-Hanbury*, [1905] A. C. 84) it was held, upon the construction of the testator's will, that there was an absolute gift of the testator's real and personal estate to his wife, subject to an executory gift of the same at her death to such of his nieces as should survive her.

Questions were raised upon the master's certificate by two summonses as to whether the unpaid instalments of rent were payable by the widow, or should come out of the capital of the estate, and also whether the income ought to contribute towards the payment of the testator's debts, according to the rule in *Allhusen v. Whittell*, (1867) L. R. 4 Eq. 295.

Eve J. said that although, in a sense, the widow might be regarded as in the position of a tenant for life, yet, under the decision of the House of Lords, she took absolutely, subject to the executory gift over. In the present case there was no reason for the application of the rule in *Allhusen v. Whittell*, which was a case of tenant for life and remainderman, and the executors here were not entitled to treat any portion of the debts of the testator as payable out of the income of the residuary estate. According to the true construction of the letting agreement the testator agreed to pay a fixed sum of 1000 guineas for the hire of the house, and the unpaid instalments, being a debt of the testator's, must be borne by the residuary estate, to the relief of the widow, who was entitled to the income. *In re HANBURY. COMISKEY v. HANBURY*

Eve J. [1909] W. N. 157

Notc.

See In re Hanbury, [1904] 1 Ch. 415. Reversed by H. L. (E.) sub nom. *Comiskey v. Bowring-Hanbury*, [1905] A. C. 84. *Will—Precatory Trusts*. 3.

CAPITAL—*continued.*

- Will—Precatory trusts.
- Will—Annuity—Charge on income or capital.
See ANNUITY. 3.
- Income or—Investment—Accretions.
See TRUSTEE—**Investments**. 13.
- Income or capital—Conversion, Power to postpone—"Residuary trust funds."
See WILL—**Interest**. 2.
- Income or capital—Repairs—Sanitary works, Cost of.
See SETTLED LAND — **Capital Moneys**. 14.
- Income or capital—Settled estate.
See under SETTLED LAND—**Capital or Income**.
- Income or capital—Trustees—Shares in company—Unauthorized investments—Accretion.
See TRUSTEE—**Investments**. 13.
- Increase of capital—Resolution of directors—Validity.
See COMPANY **Memorandum**. 4.
- Periodical payments—Compromise for lump sum—Apportionment—Payment out of capital of estate—Settlement.
See SETTLED LAND—**Apportionment**. 4.
- Reduction of capital—Company.
See under COMPANY — **Reduction of Capital**.
- Return of capital—Company.
See under COMPANY—**Return of Capital**.
- Stamp duty—Local authority—"Issue" of loan capital—Date of issue.
See REVENUE—**Stamps**. 16.
- Stamp duty—Railway company—Increase of nominal capital.
See REVENUE—**Stamps**. 2.
- Tenant for life and remainderman—Annuity—Apportionment—Capital and income.
See SETTLED LAND—**Apportionment**. 1.
- Will—Capital or income.
See under WILL—**Capital or income**.
- "**CAPITAL MONEYS**" — Brewery company—Debenture trust deed—Licensing Acts—Compensation.
See BREWERS. 1, 2, 3.
- Settled land.
See under SETTLED LAND — **Capital Moneys**.
- CAPTURE**—Insurance, Marine—Warranty of freedom from capture—Capture of neutral ship by belligerents—Relation back of title of captor—Subsequent loss by perils of the sea.
See INSURANCE (MARINE). 32.
- Loss before commencement of war—Seizure—Public policy.
See INSURANCE (MARINE). 1.
- Property of alien enemy—Validity of insurance—Public policy.
See INSURANCE—**Capture**. 1.

CAPTURE—*continued.*

- Ship—Seaman—Wages—Termination of service—"Loss of ship."
See SHIPPING—**Seamen**. 10.
- Termination of voyage by capture—Seaman—Right to wages.
See SHIPPING—**Seamen**. 4.
- CAR**—Motor Car.
See under MOTOR CARS.
- CARGO**—Insurance.
See under INSURANCE (MARINE).
- Shipping.
See under SHIPPING.
- CARNARVON**—Harbour dues—Port, Limits of.
See HARBOUR. 4.
- CARRIAGE**—Bicycle—Liability to toll—Bridge—"Carriage hung on springs."
See BICYCLE. 1.
- Contract of carriage—Railway company.
See under RAILWAY—**Carriage**.
- Inland revenue.
See under REVENUE—**Carriages**.
- Local authority—Licence to ply for hire—"Omnibus"—"Hackney carriage."
See RAILWAY—**Light Railways**. 1.
- London.
See under LONDON—**Carriages**.
- Motor car passing tramcar—Duty to pass on off side.
See MOTOR CAR. 10.
- Negligence of driver—Liability of proprietor.
See HACKNEY CARRIAGE. 2.
- Plying or driven for hire—Concealment of number-plate.
See HACKNEY CARRIAGE. 1.
- Railway company.
See under RAILWAY—**Carriage**.
- Shipping.
See under SHIPPING—**Carriage**.
- Tramway—Carriage of passengers—Right of passenger to break journey.
See TRAMWAYS. 11.
- CARRIAGE OF GOODS**—By lighter from ship to warehouse—Limits of liability of wharfinger.
See WHARFINGER.
- Carrier.
See under CARRIER.
- Railway.
See under RAILWAY—**Carriage (Carriage of goods)**.
- Shipping.
See under SHIPPING.
- Wharfinger—Carriage of goods by lighter from ship to warehouse—Limits of liability of wharfinger.
See WHARFINGER. 1.
- CARRIAGE LICENCE**—Revenue.
See under REVENUE—**Carriages**.

CARRIAGE ROAD—Repairs—Recovery of expenses—Jurisdiction of metropolitan police magistrates.

See **LONDON—Carriage Road**. 1.

CARRIAGE TAX—Exemptions.

See **REVENUE—Carriages**. 1, 2.

CARRIAGES.

Lights on Vehicles Act, 1907 (7 Edw. 7, c. 45), is an Act to render compulsory the carrying of lights by vehicles at night.

— London.

See under **LONDON—Carriages**.

— London—Hackney carriages.

See under **LONDON—Hackney Carriages**.

CARRIER—Bill of lading—Damage to cargo—Negligence of carrier's servants—Liability of carrier.

See **SHIPPING—Charterparty**. 11.

— Bill of sale—Carriers' lien—Goods on land in tenancy of trader—Detainer of goods.

See **BILL OF SALE**. 1.

— Carriage—Contract of—Ship—Passengers' luggage—Theft by shipowners' servants.

See **SHIPPING—Passengers**. 1.

1. — *Common carrier—Inherent unfitness of thing to be carried—Damage arising from—Liability of carriers.*

The defts. contracted with the plt. as common carriers to carry for him an engine from his yard to a neighbouring town on the defts.' ry. The engine was on wheels and fitted with shafts to allow of its being drawn by horses. While the defts. were drawing the engine with their horses to the ry. station one of the shafts, owing to its being rotten, broke; the horses took fright and upset the engine, which was damaged. The defective condition of the shaft was not known to either the plt. or the defts., and could not have been discovered by any ordinary examination:—

Held, that as the engine was not in fact fit to be carried in the way in which it was intended to be carried, and the damage resulted in consequence of that unfitness, the defts. were excused. **LISTER v. LANCASHIRE AND YORKSHIRE Ry. Co.**

Div. Ct. [1903] W. N. 84; [1903] 1 K. B. 878

— Dogs, Carriage of—Declaration of value.

See **RAILWAY—Dogs**. 1.

— Lien—Bill of sale—Bankruptcy—Mutual dealings—Set-off.

See **BILL OF SALE**. 1.

2. — *Lighterman—Contract—Exemption from "loss of goods which can be covered by insurance"—Negligence of carrier's servants—Liability of carrier.*

Goods were loaded on a barge under a contract for carriage by which the barge owner was exempt from liability "for any loss of or damage to goods which can be covered by insurance." The barge was sunk owing to the negligence of the servants of the barge owner, and the goods were lost. In an action to recover damages for the loss of the goods:—

Held, that, the exemption being in general

CARRIER—continued.

terms not expressly relating to negligence, the barge owner was not exempt from liability for loss or damage caused by the negligence of his servants:—

Judgment of Walton J., [1903] 1 K. B. 750, affirmed. **PRICE & Co. v. UNION LIGHTERAGE Co., C. A. [1904] W. N. 20; [1904] 1 K. B. 412**

Note.

Followed by Gorell Barnes J., *The Pearlmoor*, [1904] P. 286.

Followed by Bray J., *James Nelson & Sons, Ltd. v. Nelson Line (Liverpool), Ltd. (No. 2)*, [1903] 2 K. B. 804.

Followed by C. A., *James Nelson & Sons, Ltd. v. Nelson Line (Liverpool), Ltd. (No. 2)*, [1907] 1 K. B. 769; [1908] A. C. 16.

— Manchester Corporation tramways—Ultra vires—Business of common carriers.

See **MANCHESTER**. 2.

— Murder—Risks incidental to the employment.

See **MASTER AND SERVANT—Compensation**. 29.

— Railway company.

See under **RAILWAY**.

— Tramway company.

See under **TRAMWAYS**.

3. — *Dangerous goods—Common carrier—Absence of notice of danger to carrier—Implied warranty by consignor that goods are not dangerous—Duty of consignor to inform carrier of nature of goods.*

The defts. delivered to the plt.'s husband, who was the owner of a keel, for carriage thereon, by him, as a common carrier, a quantity of a chemical called ferro-silicon, packed in casks. Ferro-silicon is sometimes, under certain conditions, a dangerous substance, from its liability to give off very poisonous gases. The ferro-silicon was delivered by the defts. to the plt.'s husband as before mentioned under the description of "general cargo," and he was not informed by them and did not know that it was ferro-silicon. In consequence of the ferro-silicon so shipped on the plt.'s husband's keel giving off poisonous gases, the plt.'s husband died, and the plt., who was on board the keel with him assisting in its management, was rendered seriously ill. At the trial of an action brought by the plt. in her own right, and also as administratrix of her husband, to recover damages in respect of her illness and of pecuniary loss occasioned by her husband's death, it appeared that the defts. knew when they shipped the casks that they contained ferro-silicon, but it was found by Walton J., who tried the case without a jury, that they did not know, and he did not find that negligence could be imputed to them in respect of not knowing, that ferro-silicon was dangerous:—

Held, affirming the judgment of the learned judge, that the action was nevertheless maintainable.

By Vaughan Williams L.J.: It was, on the shipment of such an article as ferro-silicon, the duty of the defts. to communicate to the plt.'s husband such information as they had as to the

CARRIER—*continued*.

nature of the article which they were shipping on his keel, and, therefore, to describe it, not as general cargo, but by the name of ferro-silicon, and by reason of neglect of that duty they were liable.

By Fletcher Moulton L.J. and Farwell L.J.: Where a consignor who delivers goods to a common carrier, for carriage by him in performance of his common law obligation to carry, does not give notice to the carrier that the goods are dangerous, he must, unless the carrier knows, or ought to know, the dangerous character of the goods, be taken impliedly to warrant that the goods are fit for carriage in the ordinary way, and not dangerous.

Brass v. Maitland (1856), 6 E. & B. 470, and *Acatos v. Burns* (1878), 3 Ex. D. 282, discussed. *BAMFIELD v. GOOLE AND SHEFFIELD TRANSPORT CO.* C. A. [1910] W. N. 136; [1910] 2 K. B. 94

CARS—Carriage licence.

See under **REVENUE**—Carriage. 1, 2.

— Electric cars not real estate—Personal estate not exempt from assessment—Appeal from Ontario.

See **CANADA**—Railway. 2.

— Motor cars.

See under **MOTOR CARS**.

CASE STATED—Form of Finding facts.

See **JUSTICES**. 17.

CASES—*A list of Cases affirmed, reversed, followed, overruled, or judicially commented on during the years 1901—1910 is given in the Table of Cases Affirmed, &c., ante, p. cccxxiii.*

CASHIER—Murder—Risks incidental to the employment.

See **MASTER AND SERVANT**—Compensation. 29.

CATALOGUE Copyright.

See under **COPYRIGHT**—Catalogue.

CAT-BITE—Workmen's compensation—Accident arising out of and in the course of employment.

See **MASTER AND SERVANT**—Compensation. 30.

CATHEDRAL CHURCH.

See also under **ECCLESIASTICAL LAW**—Church.

— Commissioners—Jurisdiction—Exemption—Endowment for minor canons.

See **CHARITY**. 5.

CATTLE—By-law—Ultra vires—Power to charge fees on cattle in municipal sale-yards only.

See **NEW SOUTH WALES**. 35.

— Contract by seller to insure cattle "against all risks"—Liability of seller.

See **SALE OF GOODS**. 9.

— Policy—Prohibition against entry into country of diseased cattle.

See **INSURANCE (MARINE)**. 24.

CAVEAT—Attachment—Practice—Solicitors Act—Unauthorized person—Lodging caveat—Ministerial act.
See **PROBATE**—Practice. 4.

CEMETERY.

See under **BURIAL ACTS**.

— Burial authority—Rights of incumbent of parish.

See **BURIAL**. 2.

CENSUS (GREAT BRITAIN) ACT, 1910 (10 Edw. 7 & 1 Geo. 5, c. 27), is an Act for taking the Census for Great Britain in the year 1911.

CERTIFICATE—Analysis—Sufficiency—Adulteration.

See under **ADULTERATION**.

— Architect—Finality—Reference of disputes to arbitration—Right to legal remedies.

See **BUILDING CONTRACT**. 2.

— Architect's certificate—Architect in position of arbitrator—Negligence.

See **BUILDING CONTRACT**. 1.

— Charity Commissioners—National school—Action by transferee.

See **CHARITY**. 42.

— Company.

See under **COMPANY**—Certificate.

— Foreign—Limitation of liability—Foreign steam vessel—Gross tonnage—Double bottom for water ballast.

See **SHIPPING**—Limitation of Liability. 2.

— Government stock investment.

See **DONATIO MORTIS CAUSA**. 1, 3.

— Highway, Period for which notice must be affixed at ends of—Certificate of justices.

See **HIGHWAY**. 5.

— Land transfer—Wrongful issue of certificate of title.

See **AUSTRALIA**. 7.

— Mining rights—Forfeiture of block of mining claims—Certificate of preliminary registration.

See **CAPE OF GOOD HOPE**. 1.

— Particulars of objections—Reasonableness—Costs.

See **PATENT**—Infringement. 5.

— Patent—As to validity of patent being in question.

See **PATENT**—International. 1.

— Pawnbroker—Licence—"Successor."

See **PAWNBROKER**. 3.

— Pilotage certificate of master—"Owner"—Compulsory pilotage.

See **SHIPPING**—Pilotage. 5.

1. — *Practice*—Summons to vary master's certificate — Confirmation by judge personally in chambers—Jurisdiction.

It is open to a judge upon a summons to vary to reconsider what he had done in chambers, and to reverse his previous decision, just as much as if a motion were made to vary or discharge an order made by a judge in chambers upon an ordinary summons. *HEWLING v. GRAHAM*.

Joyce J. [1901] W. N. 81

CERTIFICATE *continued.*

- Shares fully paid, Certificate that—**Estoppel—Partnership.**
See COMPANY—Shares. 5.
- Ship—"Owner"—Certificate of master.
See SHIPPING—Pilotage. 5.
- Shipping casualty—Dealing with certificate—Costs of appeal.
See SHIPPING—Practice. 2.
- Solicitor.
See under SOLICITOR—Certificate.
- Workmen's Compensation Acts.
See under MASTER AND SERVANT—Compensation.

CERTIORARI—Appeal to House of Lords from order of Court of Appeal in Ireland—Jurisdiction—Practice.
See APPEAL. 19.

- Auditor—Surcharge—Certiorari to quash—Jurisdiction of Court—London government.
See LOCAL GOVERNMENT. 1.
- Board of Education—Decision—Want of jurisdiction—Mandamus.
See SCHOOLS. 24.
- Canada Temperance Act—Issue of search warrant before prosecution—Writ of certiorari refused.
See CANADA TEMPERANCE ACT. 1.
- Confirming authority, Order of—Justices—Disqualification—Bias, Likelihood of.
See LICENSING ACTS. 2, 5.
- Costs—Jurisdiction of High Court.
See LICENSING ACTS. 5.
- Jurisdiction of justices—Exemption from closing.
See LICENSING ACTS. 8.
- Licensing justices—Bias on part of justices.
See LICENSING ACTS. 2, 5.

CESSER—Nuisance after writ and before trial of action, Cesser of—Injunction—Practice.
See NUISANCE. 4.

- Two settled estates—No longer "principal mansion-house"—Tenant for life—Restriction on powers.
See SETTLED LAND—Mansion-house. 2.

CESSER CLAUSE—Charterparty—Arbitration clause—Bill of lading—Claim for demurrage at port of loading.
See SHIPPING—Charterparty. 1.**CESSPOOLS**—Cleansing of privies and—Power of local authority to undertake duty of.
See LOCAL GOVERNMENT. 27.**CEYLON**—Adulterers, Marriage of—Illegitimacy of children procreated in adultery.
See No. 3, below.

- Appeal in forma pauperis—Special leave.
See No. 6, below.

CEYLON—*continued.***1. — Arbitration—Reference by the Court of a pending action—Ex parte hearing by arbitrator—Validity of award—Ordinance 2 of 1889 (C. C. P.), ss. 676, 677, 685, 691.**

Where the subject of an arbitration is an action in Court, ss. 676, 677, 685 and 691 of the Civil Procedure Code, are applicable. Thereunder the parties state in writing the matter to be referred, the Court refers to an arbitrator agreed on the matter in difference, the award is filed in Court and receives the effect of a judicial decree, and can only be set aside for corruption and misconduct of the arbitrator :—

Held, that the respondent was not entitled at his own option to withdraw from such a reference, and if he did so it was not misconduct in the arbitrator to proceed therein to award.
AITKEN, SPENCE & Co. v. FERNANDO

P. C. [1903] A. C. 200

- Colonial Stock Act, 1900
See under COLONIAL STOCK.

- Lunacy, Order of Master in—Evidence—Admissibility.
See No. 5, below

2. — Malicious prosecution, Action for—Onus probandi—Law of Ceylon.

Held, that under Roman-Dutch as well as English law a prosecution instituted without malice and with reasonable and probable cause does not amount to an act of aggression; that an animus injuriæ (malice) cannot be inferred from the mere fact that the prosecution has failed; and that the onus of proving malice rests on the plt.

In an action for malicious prosecution against the respondent in that he had charged the appellant with theft, criminal trespass, and the forcible removal of his goods, it appeared that the real charge was that of criminal trespass, that the conversion of the charge of removal of goods into that of theft was not done recklessly, that the respondent took action under legal advice in defence of his title to his property in the bona fide belief that the appellant had trespassed and forcibly removed his goods, and that there was no proof of indirect motive or malice of any kind on the respondent's part :—

Held, that the Appellate Court was right in reversing the District Judge's decree for damages, and that the appeal therefrom must be dismissed.
COREA v. PEIRIS

P. C. [1909] A. C. 549

3. — Marriage of adulterers—Illegitimacy of children procreated in adultery—Law of Ceylon—Ordinance No. 6 of 1847, s. 31.

Ceylon Ordinance No. 6 of 1847, s. 31, recognizes the marriage of adulterers, but denies legitimation to children procreated in adultery :—

Held, that a legacy by a Ceylon testator to his widow, who had previously lived with him as his mistress during the life of her first husband, is valid. So also is a legacy to her children born during the widow's former marriage where it is not shewn that they were the children of the testator.
RABOT v. DE SILVA

P. C. [1909] A. C. 376

CEYLON—continued.

4. — *Partition—Civil Procedure Code, s. 547*
—*Suit for partition of intestate's estate—Administrator not a party.*

In a suit brought in 1898 for partition, or alternatively for a sale of certain parts of an intestate's estate, it appeared that the intestate had died in 1884, that no letters of administration had been taken out, that the widow and son had made a division of the immovable estate between themselves and the other heirs and executed certain notarial deeds of gift for the purpose of effecting such division, and various dealings with their respective shares had been made by the allottees :—

Held, that the Supreme Court's decree of dismissal of the suit was right.

By s. 547 of the Civil Procedure Code, which was the law in force when the action was commenced, it was not maintainable in the absence of any administrator on the record.

The action, though in form for partition, was in substance for the recovery of property within the meaning of that section.

No partition could be effected by the Court without a complete administration of the whole of the intestate's estate, which would include an account of the payment of his debts, and of the dealings of the allottees with their respective shares so as to adjust their respective rights.
PONNAMMA v. ARUMOGAM P. C. [1905] A.C. 383

5. — *Practice—Ceylon Procedure Code, c. 12, s. 87—Decree absolute for default—Reasonable excuse for default—Order of Master in Lunacy—Lunacy Act, 1890 (53 Vict. c. 5), s. 116 (Imperial)—Evidence—Admissibility.*

Under the Ceylon Civil Procedure Code, c. 12, s. 87, a decree absolute for default may be set aside if the deft. upon notice to the plt. satisfies the Court by good and sufficient evidence that his default was due to accident, or misfortune, or want of due information of the proceedings.

An order of a Master in Lunacy in England under s. 116 of the Lunacy Act, 1890, reciting that the deft. was in the opinion of the master a person of unsound mind, though not so found by inquisition, and authorizing his wife to defend the action, is admissible as *prima facie* evidence, and if uncontradicted ought to be regarded as sufficient evidence to justify an order under s. 87.
HARVEY v. REX P. C. [1901] A.C. 601

6. — *Practice—Special leave—Appeal in forma pauperis.*

Where a Colonial Code made no provision for appeals in *forma pauperis*, and it was contended that the case was as regards amount, value, and nature fit to be taken in appeal, special leave was under the circumstances of the case granted.
PONNAMMA v. ARUMOGAM. Ex parte PONNAMMA P. C. [1902] A.C. 561

7. — *Probate, Revocation of—Issue as to total invalidity of will—Declaration of partial validity—Words or clauses omitted from probate.*

Words or clauses in a will ought not to be omitted from probate except upon evidence pointedly addressed thereto and shewing their improper insertion.

Where probate granted to the appellant had

CEYLON—continued.

been revoked on issues which impugned the validity of the will as a whole, no issue having been raised or evidence given as to its partial validity, the Supreme Court in appeal varied the decree of revocation by declaring that the deceased died intestate as to his immovable property only and expunging from the will the reference thereto :—

Held, on the evidence, that the revocation was right and that the appeal must be dismissed. There being no cross-appeal as to the modification decreed, it was nevertheless pointed out by their Lordships that it ought not to have been made except as a compromise by consent.
KARUNARATNE v. FERDINANDUS

P. C. [1902] A.C. 405

8. — *Will, Execution of—Wills—Ordinance No. 7 of 1840, s. 3—Notary present without attesting—Testamentary capacity.*

Ceylon Ordinance No. 7 of 1840, s. 3, requires that a testator's signature shall be made or acknowledged in the presence of a licensed notary public and two or more witnesses duly attesting the execution, or, if no notary be present, then in the presence of five or more witnesses duly attesting :—

Held, that the words "if no notary be present" mean present acting in his notarial capacity.

Where a notary was present but refused to act in that capacity by attesting, and the will was in consequence attested by five witnesses, *held*, that it was validly executed.

Where a testator is of sound mind when he gives instructions for a will, but at the time of signature accepts the instrument drawn in pursuance thereof without being able to follow its provisions, *held*, that he must be deemed to be of sound mind when it is executed.

Parker v. Felgate, (1883) 8 P. D. 171, approved. PERERA v. PERERA

P. C. [1901] A.C. 354

CHAIRMAN—Borough justices—County justices
—Mayor of borough.

See JUSTICES. 3.

— Declaration of chairman at meeting.

See COMPANY—WINDING-UP—Meetings. 2.

— Retirement of members—Election of new members—Position of former chairman.
See LOCAL GOVERNMENT. 6.

— Voting—"Personally or by proxy"—Power of chairman to direct manner of taking.
See COMPANY—Meetings. 9.

CHAIRS—Fastened to floor of place of entertainment—Hiring agreement—Mortgage of building and fixtures.
See FIXTURES. 2.

CHALK—Mining lease—Payments for purchase of chalk—Capital or income.
See WILL—Real Estate. 2.

CHAMBERS—Practice.

See under PRACTICE—Chambers.

CHANCEL SCREEN—Faculty—Jurisdiction—Architectural adornment—Admission of fresh evidence on appeal.
See ECCLESIASTICAL LAW—Faculty. 1

CHANNEL—Collision—Crossing rule—Crossing ahead—Narrow channel—Good seamanship.
See SHIPPING—Collision. 14.

CHANNEL ISLANDS—Laws of—Guernsey.
See GUERNSEY. 1.

— Civil marriage in the Channel Islands—Foreign law—Evidence.
See DIVORCE—Channel Islands. 1.

CHAPEL—Wesleyan Methodist chapel—Model deed—Power of sale—Consent of Charity Commissioners.
See LAND REGISTRY. 2.

CHAPEL OF EASE—Faculty for erection of communion table with cross and candlesticks—Chancel steps—Vestry.
See ECCLESIASTICAL LAW—Faculty. 7.

CHAPELRY—Parish, Division of—Parochial chapelry or separate parish.
See PARISH. 1.

CHARACTER—Servants' characters—Giving false character—Conspiracy.
See CRIMINAL LAW—Servants' Characters. 1.

CHARGES—Administration—Exoneration of general personal estate—Charge on real estate abroad.
See ADMINISTRATION. 10.

— Annuities.
See under ANNUITY.

— Company—Debentures.
See under COMPANY—Debentures.

— Costs—Charge on property preserved.
See SOLICITOR—Costs. 8.

— Debts and funeral and testamentary expenses on realty—Non-exoneration of personality.
See WILL—Exoneration. 1.

— Debts and legacies—Will—Construction.
See under WILL—Charges.

— "Equitable charge"—Exoneration—Estate duty.
See ADMINISTRATION. 9.

— Equitable charge—Portions—Mortgage by direction of Court—Priority.
See MORTGAGE—Priority. 10.

— Estate duty—Lunatic—Surplus rents—Charge in favour of next of kin.
See REVENUE—Estate Duty. 25.

— Estate duty—Marriage settlement—Charging sum on death of settlor.
See REVENUE—Estate Duty. 24.

— Land transfer.
See under LAND TRANSFER.

— Mortgages.
See under MORTGAGES.

CHARGES—*continued.*

— Power—Execution—Power to appoint up to a limited amount—General power—Overriding power to appoint mixed fund.

See POWER OF APPOINTMENT. 13.

— Rent-charge.
See under RENT-CHARGE.

— Ship—Charterparty—Lien—Demurrage, payable day by day.
See SHIPPING—Charterparty. 51.

— Trustee—Breach of trust—Charge on share of beneficiary—Constructive notice—Duty to investigate assignee's title—Relief.
See TRUSTEE—Breach of Trust. 2.

— Will.
See under WILL—Charges.

CHARGING ORDER.

R. S. C., Order XLVI., relates to charging orders.

1.—*Company—Debentures—"Stock or shares" of a company—Practice—R. S. C., Order XLVI., r. 1—Judgments Act, 1838 (1 & 2 Vict. c. 110), s. 14.*

Debentures of a co. are not "stock or shares" of or in a co. within the meaning of Order XLVI., r. 1, or the Judgments Act, 1838, s. 14, and therefore they cannot be the subject of a charging order under the provisions of that rule and section. *SELLAR v. CHARLES BRIGHT & CO.*

C. A. [1904] W. N. 128; [1904] 2 K. B. 446

Note.

See also Charles Bright & Co. v. Sellar, C. A., [1904] 1 K. B. 6; Practice—Review.

— Charging order for costs on property "recovered or preserved"—Application ex parte.

See SHIPPING—Charging Orders. 1.

— Company law.
See under COMPANY—Charging Orders.

— Equitable execution—Effect of order—Unascertained residue—Priority.
See RECEIVER. 5.

— For costs on property "recovered or preserved"—Application ex parte.
See SHIPPING—Charging Order. 1.

— Fraudulent conveyance—Judgment creditor—Post-nuptial settlement—Appointment of receiver—Equitable execution—Injunction—Settlement set aside.
See FRAUDULENT CONVEYANCE. 1.

2.—*Interest in shares charged with judgment debt—Application to enforce charge by order for sale of shares—Jurisdiction—Practice—Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 24—R. S. C., Order XLVI., r. 1—Leave for service out of jurisdiction—Action to enforce charging order—Order XI., r. 1 (e)—Judgments Acts, 1838 (1 & 2 Vict. c. 110), ss. 14 and 15.*

Where an order has been made charging a judgment debtor's interests in shares with the amount due on the judgment under the Judgments Act, 1838, that order cannot, under s. 24

CHARGING ORDER—*continued*.

of the Judicature Act, 1873, be enforced summarily by an order made in the original action.

Leggott v. Western, (1884) 12 Q. B. D. 287, followed.

Leave cannot be given for service of a writ out of the jurisdiction under Order XI., r. 1 (e), in an action to enforce such a charging order.

KOLCHMANN v. MEURICE C. A. [1903] W. N. 31 ; [1903] 1 K. B. 534

3. — *Judgment debt—Interest in stock—Judgments Act, 1838* (1 & 2 Vict. c. 110), s. 14—*Judgments Act, 1840* (3 & 4 Vict. c. 82), s. 1.

An American lady, who died in 1903, left a will by which she appointed two persons her executors and trustees with regard to all moneys, bonds, bankers' balances, securities, and property carried on account, or held in custody on her behalf by her bankers or attorneys in England at her death, and she directed her executors and trustees to collect and gather together all such residue of her estate in England at her death, both principal and interest, capital and income and to invest and reinvest, as from time to time might be prudent, and to manage the whole fund ; and she further directed them to accumulate the income of the fund for the period of six years after her death, and at the end of that period to apply the accumulations of income in a certain manner, and to divide the capital of her estate then in their custody and control into three equal parts, one of which was to be paid to and to become the sole property of a person named in the will, against whom a judgment had been recovered in the High Court. The funds subject to the trusts of the will had been invested in Transvaal Government stock :—

Held, that the judgment debtor had an interest in the stock which might be charged with the amount of the judgment debt under the Judgments Act, 1840. *BOLLAND v. YOUNG C. A.* [1904] 2 K. B. 824

Note.

This case was followed by *Kekewich J.*, *Ideal Bedding Co. v. Holland*, [1907] 2 Ch. 157. *Fraudulent Conveyance*. 2.

— Judgment debt — Order for payment by instalments — Default — Execution. *See* EXECUTION. 2.

— Lien for costs—Priority—Partnership action — Judgment creditor. *See* SOLICITOR—Lien. 4.

— Shipping—Charging orders. *See* under SHIPPING—Charging Orders.

— Solicitor—Charging orders. *See* under SOLICITOR—Charging Orders.

— Solicitor—Costs. *See* under SOLICITOR—Costs.

— Stock Exchange, Rules of — Defaulter — Official assignee—Assignment of assets — Judgment. *See* STOCK EXCHANGE. 4.

CHARITY.

— Absence of reference to age or poverty of intended recipients—Legacy. *See* WILL—Condition. 1.

CHARITY—*continued*.

— Absolute gift—Secret trust.

See WILL—Absolute Gift. 9.

— Ademption—Gift to endowment fund—Particular purpose.

See WILL—Ademption. 1.

— Advancement of religion—Charitable bequest. *See* No. 43, below.

1. — *Adowson—Trust to appoint a fit and duly qualified person—Charitable trust.*

The owner of an adowson transferred it to trustees upon trust from time to time as a vacancy occurred to appoint to the living a fit and pious person of godly life and conversation, being in holy orders and capable of holding the same ; and the trust deed provided that three at least of the full number of five trustees should be clergymen of the Church of England, and that only those should be eligible as trustees who should be of godly life and conversation, and should profess themselves members of the Established Church, and should be known to be zealously attached to the principles of the Reformed Faith contained in the Liturgy and Articles of the Established Church :—

Held, not a charitable trust, inasmuch as the deed contained no cestui que trust, and merely provided for the due performance of the duty cast by law upon every legal owner of an adowson to appoint a fit and duly qualified person to the living.

Decision of *Buckley J.*, [1903] W. N. 198 ; [1904] 1 Ch. 41, affirmed. *In re CHURCH PATRONAGE TRUST. LAURIE v. ATT.-GEN.*

C. A. [1904] W. N. 162 ; [1904] 2 Ch. 643

— Bachelors and widowers, Gift for relief of — Uncertainty. *See* No. 22, below.

2. — *Bell-ringing in commemoration of the restoration of the monarchy—Tombstones for pensioners — Charitable bequest — “Public charities and institutions or charitable purposes for the public advantage” to be selected by the trustees — Uncertainty — Overriding charitable intent.*

A testatrix bequeathed—(1.) 200*l.* to the vicar and churchwardens of A., the income to be distributed annually at Christmas as to the sum of 1*l.* to the ringers of the church who should ring a peal of bells on the anniversary of the restoration of the monarchy in commemoration of that event ; (2.) 700*l.* to the vicar and churchwardens of B., the income to be applied in (among other things) the erection and maintenance of headstones to the graves of pensioners in the almshouses at B. who should be buried in the churchyard of B. church ; (3.) the residue to trustees in trust to pay and distribute the same amongst “such public charities and institutions or for such charitable purposes for the public advantage” as the trustees should think fit :—

Held, that all the gifts were effectual charitable bequests. *In re PARDOE. McLAUGHLIN v. ATT.-GEN. Kekewich J.* [1906] W. N. 86 ; [1906] 2 Ch. 184

CHARITY—*continued.***3. — Blind persons—Gift for benefit of in a particular district.**

The testator, J. M. Elliott, devised and bequeathed his residuary estate upon trust to pay and apply the income thereof "exclusively for the benefit of blind persons resident or reputed to be resident in the city of Newcastle-upon-Tyne or the county borough of Gateshead," and provided that the income was to be paid or applied for the maintenance, support or education, or otherwise for the benefit of blind persons only, who in the opinion of his trustees intended to be or were likely to be honest, steady and industrious, his intention being that the payment or application of the income should not take away or weaken the self-respect of the blind persons receiving benefit from it, but make them fit for work and capable of earning an independent living. The trustees were to have an absolute discretion as to the blind persons who should be relieved, and the income was to be distributed without regard to age, sex, religion, or creed, or the absence of creed.

The testator died in 1909, and by originating summons the question was raised whether the trust was a valid charitable trust.

Parker J., after deciding on the construction of the will that the testator intended the blind persons benefited to be those in need of relief, said that he was, in any case, bound by *In re Fraser, Yeates v. Fraser*, (1883) 22 Ch. D. 827, and *In re Dudgeon, Truman v. Pope*, (1896) 74 L. T. 613, to hold that the gift was a good charitable gift. *In re ELLIOTT. RAVEN v. NICHOLSON* - **Parker J. [1910] W. N. 106**

4. — Burial grounds, Repair of—Restriction to members of a particular sect—Advancement of religion—Will—Legacy.

A bequest for the purpose of keeping in good order burial grounds the use of which is restricted to members of the Society of Friends is a gift for the advancement of religion and, therefore, a valid charitable legacy. *In re MANSER. ATT.-GEN. v. LUCAS* - **Warrington J. [1905] W. N. 182; [1905] 1 Ch. 68**

Note.

This case was referred to by Kekewich J., *In re Pardoe*, [1906] 2 Ch. 184. *No. 2, above.*

5. — Cathedral church—Endowment for minor canons—Commissioners—Jurisdiction—Exemption—Charitable Trusts Act, 1853 (16 & 17 Vict. c. 137), s. 62.

An endowment for the minor canons of a cathedral church, which is not part of the capitular estates, or under the control of or held in trust by the dean and chapter, is not an endowment of the cathedral church, so as to be exempt from the jurisdiction of the Charity Commissioners by virtue of s. 62 of the Charitable Trusts Act, 1853, even though the income indirectly relieves the capitular revenue pro tanto from payment of the minor canons' minimum statutory stipends.

In re Meyrick's Charity, (1855) 25 L. T. (O.S.) 92; 1 Jur. (N.S.) 438, distinguished. *In re DOD'S CHARITY* - **Swinfen Eady J. [1905] W. N. 28; [1905] 1 Ch. 442**

CHARITY—*continued.*

— "Charitable and benevolent institutions"—Uncertainty.
See No. 50, below.

6. — "Charitable, educational, or other institutions" — "Charitable gift" — Will—Construction.

A testator bequeathed money to trustees "Upon trust for such charitable, educational, or other institutions of the town of Kendal, and also for such other general purposes for the benefit of the town of Kendal or any of the inhabitants thereof as my said trustees shall in their absolute uncontrolled discretion think fit." And he desired, without in any way binding his trustees, that the following institutions should be carefully considered by them in such distribution: "(1) the Kendal Memorial Hospital; (2) the Kendal Grammar School; (3) the Kendal Free Library" :—

Held, that on the construction of the clause the purposes to which the money could be applied were all limited to general or public purposes for the benefit of the town of Kendal and its inhabitants, and therefore it was a good charitable bequest. *In re ALLEN. HARGREAVES v. TAYLOR* **Swinfen Eady J. [1905] W. N. 127; [1905] 2 Ch. 400**

— Charitable institution — Common lodging-house—No payment by inmates.
See LODGING-HOUSES. 1, 2.

— Charitable institution — Maintenance in — Settlement.
See POOR LAW. 26.

7. — Charitable intention—Practice—General charitable intention—Indefinite objects—Disposition of funds—Scheme or sign manual.

Where property is bequeathed to executors or trustees for charitable purposes, and the objects are not specified or indefinite, the proper mode of carrying out the general charitable intention of the testator is by a scheme under the Court; but where there is a general charitable intention without any trust interposed, the disposition of the gift is in the King by Sign Manual.

Moggridge v. Thackwell, (1803) 7 Ves. 36; 6 R. R. 76, and *Paice v. Archbishop of Canterbury*, (1807) 14 Ves. 364, applied. *In re PYNE. LILLEY v. ATT.-GEN.* - **Byrne J. [1903] 1 Ch. 83**

— "Charitable or religious institutions and societies"—Trust disposition and settlement—Uncertainty.
See WILL—Uncertainty. 4.

8. — Charitable purposes—Bequest "for the charitable purposes agreed upon between" the testatrix and the legatee—Evidence—Admissibility—Will—Construction—Charitable legacy—Limited charitable purposes.

A testatrix bequeathed 4000*l.* to C. "for the charitable purposes agreed upon between us" :—

Held, that this was a gift for limited charitable purposes, and that evidence was admissible to shew what the purposes agreed upon were.

Decision of Farwell J., [1901] W. N. 230; [1902] 1 Ch. 214, on this point, affirmed.

But *held*, that the gift on the face of the will being of the capital of 4000*l.*, evidence was

CHARITY—continued.

not admissible to contradict the will by shewing that the agreement between the testatrix and the legatee was that only the income of the 4000*l.* during his life should be devoted to the charitable purposes.

Decision of Farwell J. on this point reversed.

The Court directed that a scheme should be settled. *In re HUXTABLE. HUXTABLE v. CRAWFORD* C. A. [1902] W. N. 193; [1902] 2 Ch. 793 Note.

Referred to by Joyce J., *In re Hetley*, [1902] 2 Ch. 866, 870. *Will—Power of Disposition*. 1.

—Charitable trust—Advwson.

See No. 1, above.

9. — *Charity Organization Society in Trust* "for such other society or societies as shall in the opinion of the governing body be most in need of help," *Bequest to—Ejusdem generis—Invalidity*.

Testator, after making bequests to two missionary societies, gave the residue of her estate to the treasurer for the time being of the Charity Organization Society in trust to invest the same, and out of the annual income thereof to retain one-tenth part "for the purposes of the society as the governing body may think fit, and to divide and pay the residue of such annual income to such other society or societies as shall, in the opinion of the governing body of the Charity Organization Society, be most in need of help, besides fulfilling the standard of good management, efficiency, and economy of such Charity Organization Society"; and the testator appointed the plt. and the treasurers for the time being of the Charity Organization Society executors and trustees of his will:—

Held, that the gift of the nine-tenths of the income of the residue was not a valid charitable bequest. *In re FREEMAN. SHILTON v. FREEMAN* C. A. [1908] W. N. 44; [1908] 1 Ch. 720

—Churchwardens (Vicar and) to be applied "as they shall think fit," Gift to—Validity. See No. 52, below.

10. — *Clerical society—Bequest for payment of annual dinners—Good charitable gift*.

By his will a testator gave to the chairman, secretary and treasurer for the time being of the Cleveland Clerical Society all his North Eastern Railway Debenture Stock, "upon trust to appropriate the dividends arising therefrom in payment of the expenses of the annual dinners which the society hold, and which have hitherto been paid by members of the society out of their own pockets"; and the testator gave the residue of his estate to be expended by his trustees in the erection of a stained-glass window in a church. The Cleveland Clerical Society (now known as the Cleveland and South Durham Clerical Society) was a voluntary society, all the members of which were in Holy Orders. It was established in 1869 for the purpose of promoting quarterly meetings of the clergy for mutual counsel, and to discuss practical questions connected with their work. The meetings of the society were held quarterly from 11 A.M. to 1 P.M., and as many members came from long

CHARITY—continued.

distances it was customary for them to lunch or dine together, each member so dining making a payment of 2*s.* 6*d.*

The testator was an old member of the society, and attended the meetings down to his death. There was evidence by the secretary and treasurer of the society to the effect that testator's bequest would be a direct benefit to the members attending the meetings, and also to the society as a whole.

The question now raised on a summons, by the surviving executor and trustee of the testator's will, was whether this bequest was a valid charitable gift, or whether it failed as infringing the rule against perpetuities. It was urged on behalf of the residuary legatees that it could not be a good charitable gift because the dinners were not necessary for the furtherance of religion, nor could it be for the relief of poverty, because it relieved the rich as well as the poor.

Eve J. said that the society was clearly of a charitable character for the advancement of religion. The gift for the payment of dinners was a good charitable bequest, helping to increase the attendance at the meetings, and thus adding to the usefulness and efficiency of the society. It would be splitting straws if he were to hold the gift to be bad merely because the dinners in themselves were not religious ceremonies, or merely because some of the persons who partook of these free dinners were able to pay for them. *In re CHARLESWORTH. ROBINSON v. CLEVELAND* - - - Eve J. [1910] W. N. 18

—Company with charitable objects incorporated under Companies Acts—"Endowment"—Exemption—Land registry—Restriction on register.

See LAND REGISTRY. 1.

11. — *Condition precedent—Remoteness—Perpetuity—Postponement of enjoyment—Reserve fund—Uncertain event—Validity of gift—Charity, Gift to—Will—Construction*.

A testator gave his residuary real and personal estate to a trustee upon trust thereout to form a "reserve fund" for the purposes thereafter mentioned, and to pay the balance of the income of his said residuary estate, after payment of outgoings, to his niece during her life, and after her death to pay such income (after payment into the said reserve fund every quarter of a year of 10 per cent. of such income, and also certain outgoings) by equal monthly payments to three annuitants for their respective lives, who should be poor inhabitants of M. And the testator directed that "the said annuities shall not become payable until the said reserve fund shall amount to 400*l.*," and that the said reserve fund should be invested and only used in case of dire need, but be always kept up at 400*l.*: and that if, after the said annuities were payable, it should exceed 400*l.*, then the overplus might be used either to increase the amounts of the said three annuities or to create another annuity.

The testator's net residue consisted solely of real estate, and during the lifetime of the niece, the tenant for life, there was no income available for forming a reserve fund. On the death of the

CHARITY—continued.

niece questions arose upon the construction of the will—(1) whether the charitable gifts of the annuities failed by reason of the direction that the annuities should not come into operation until after the reserve fund amounted to 400*l.*, which might be at a date beyond the limits of the rule against perpetuities; and (2) whether there had been an effectual devotion of the "reserve fund" to charitable purposes:—

Held, by the C. A. (reversing Buckley J.) that, subject to the life estate, the residue had been effectually devoted to charity as from the testator's death, and that the direction to postpone the payment of the annuities until the reserve fund reached 400*l.* was not a condition precedent to the charitable gift coming into effect, but was only a direction as to the particular application of the charitable fund and intended to secure the beneficial working of the charity, and that the case, therefore, fell within the second principle in *Chamberlayne v. Brockett*, (1872) L. R. 8 Ch. 206, 211; also that the reserve fund was equally devoted to a charitable purpose *In re SWAIN. MONCKTON v. HANDS*

C. A. [1905] W. N. 61; [1905] 1 Ch. 669

— Consent of Charity Commissioners—Payment out.

See No. 14, below.

— Corps of Commissionaires, Bequest to committee of—Voluntary association—Perpetuity.

See WILL—Perpetuity. 1.

— Costs—Charity land—Compulsory sale—Payment into Court—Interim investment.

See LANDS CLAUSES ACTS. 1.

12. — *Costs—Land taken by local authority under compulsory powers—Payment of purchase-money into Court—Scheme for administration of charity—Transfer of money in Court to Official Trustees of Charitable Funds—Costs of application for scheme—Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), s. 80.*

Where a local authority in pursuance of the compulsory powers conferred upon them by the Lands Clauses Consolidation Act, 1845, take land belonging to a charity, and as a direct result of the taking of such land the trustees of the charity apply to the Charity Commissioners for a new scheme for the regulation of the charity, the costs of the trustees so incurred fall within s. 80 of the Act, and are payable by the local authority. *In re WOOD GREEN GOSPEL HALL CHARITY. Ex parte MIDDLESEX COUNTY COUNCIL - Warrington J. [1909] 1 Ch. 263*

— Crown cannot as defendant impeach the trust—Cy-près.

See NEW ZEALAND. 3.

13. — *Cy-près—Building held on trust to carry on a national school—Impossibility of carrying on such a school—Scheme—Lease to local education authority.*

In 1871 a piece of land was conveyed to the then vicar and churchwardens of a parish upon trust to permit the buildings erected thereon to be for ever after appropriated and used as a school for the education of children and adults,

CHARITY—continued.

or children only, of the labouring, manufacturing, and other poorer classes in the parish, and as a residence for the teacher and for no other purpose, the school to be always in union with and conducted upon the principles and in furtherance of the ends and designs of the National Society for the Education of the Poor in the Principles of the Established Church, and to be open for inspection. The managers of the school were to be the vicar, his curate or curates if appointed by him, and the churchwardens if members of the Church of England; the religious instruction was to be under the control of the vicar. The buildings were erected and a Parliamentary grant of 224*l.* towards the cost was made in 1874, upon condition that until repayment, which had not been made, the school should be carried on as a public elementary school under the Education Act, 1870. This was done for some years; but in 1882 a board school was opened close by, and all the children went there. The voluntary school was then closed and had never since been opened. The teacher's house had been let, and the rent applied in keeping the buildings in repair and defraying the cost of a Sunday school held in another building nearer to the church.

Action brought by the Att.-Gen. at the instance of the Bd. of Education against the vicar and churchwardens for the administration of the trusts of the deed and the settlement of a scheme.

Swinfen Eady J. said that he thought it was clear that the vicar, though he desired to carry on a Church school, had not the means of doing so. He thought the proper order to make was to direct the administration of the trusts under the direction of the Court and to direct an inquiry whether the trust property could at present be used for the purpose of a Church of England school. If the finding on this inquiry was that it could not, a scheme must be settled. He did not think it desirable that the property should be transferred to the local education authority, because the circumstances under which a Church of England school could not be carried on were temporary. It did not follow, because at present such a school could not be carried on, that the primary purposes of the trust had failed for all time. The Att.-Gen. had suggested that the difficulty might be met by the local education authority taking a lease for a definite period sufficient to justify the necessary outlay in adapting the premises for occupation as an infant school, say, ten years. This would not deprive the vicar and churchwardens of the property itself or the future user thereof, so far as they might be able to use it. The proper plan would be, after directing an inquiry, to refer the matter to chambers for the settlement of a scheme on those lines. ATT.-GEN. v. EDALJI Swinfen Eady J. [1907] W. N. 174

— Cy-près—Non-existence of institution named

See No. 40, below.

14. — *Dedication by deed of land for charitable objects—Construction—Whether resulting trust for donor—Originating summons—Consent of*

CHARITY—continued.

Charity Commissioners—Charitable Trusts Act, 1853 (16 & 17 Vict. c. 137), s. 17.

In 1892 S. by deed conveyed a plot of freehold land at Southampton to trustees upon trust to hold, appropriate, and permit the same to be used as a site for the erection, so soon as sufficient moneys should become available, of almshouses as therein mentioned; and it was thereby declared that the trustees should have the fullest powers of dealing with the premises for the purposes of the trust, and that until the erection of the almshouses the rents and profits (if any) of the premises should be paid to the treasurer of the Hants Female Orphan Asylum. In September, 1903, S. died, having by her will dated May 22, 1902, devised to trustees the plot of land at Southampton upon trust for the Royal South Hants Infirmary, "as I have absolutely abandoned all intention of building almshouses upon the land"; and the testatrix gave the residue of her real and personal estate upon certain trusts. No money had at any time been contributed or promised from any source for building and maintaining the almshouses referred to in the deed.

The preliminary objection was raised that the proceedings were irregular, the sanction of the Charity Comms., under s. 17 of the Charitable Trusts Act, 1853, not having been obtained.

Farwell J. overruled the objection. The application was not to administer the trusts of the charity, but to determine whether there was a valid dedication of the property to charitable purposes. The point was concluded by the decision of Romilly M.R. in *In re St. Giles, &c., Volunteer Corps*, (1858) 25 Beav. 513:—

Held, also, that there was no resulting trust, and directed the matter to be referred to the Att.-Gen. to settle a scheme. *In re SHUM'S TRUST*. PRICHARD v. RICHARDSON

Farwell J. [1904] W. N. 146

— Educational endowment—Schools.

See under SCHOOLS.

15. — Emigration uses, Charitable or—Gift—Uncertainty.

A bequest in trust for "such charitable uses or for such emigration uses, or partly for such charitable uses and partly for such emigration uses" as the trustees should think fit, *held* void for uncertainty.

Decision of Swinfen Eady J., [1907] W. N. 219; [1908] 1 Ch. 126, affirmed. *In re SIDNEY. HINGESTON v. SIDNEY* - **C. A. [1908] W. N. 37: [1908] 1 Ch. 488**

16. — Endowment—Consent of Charity Commissioners—Voluntary subscriptions—Mixed charity—Foundation deed—Implied authority to settle trusts—Investment in land—Charitable Trusts Act, 1853 (16 & 17 Vict. c. 137), ss. 62, 66—Charitable Trusts Amendment Act, 1855 (18 & 19 Vict. c. 124), s. 29.

Where a charity is supported by voluntary subscriptions and donations given for the general purposes of the charity, the individual or committee entrusted with the money must, in the absence of evidence to the contrary, be deemed to have implied authority for or on behalf of the donors to declare by deed the trusts to which the

CHARITY—continued.

sums contributed are to be subjects; this deed, until set aside or rectified by the Attorney-General, must be treated as decisive of the trusts which by the authority of the donors are to regulate the charity.

If, by reason of a deed of this character, it is no longer competent for the governing body to apply as income any real or personal property of the charity, that "investment" is not exempt from the jurisdiction of the Charity Commissioners.

A charity cannot be said to be "wholly maintained by voluntary contributions" if it has freehold premises used for the purposes of the charity, and the fact that this freehold produces no actual income is immaterial.

In re Clergy Orphan Corporation, [1894] 3 Ch. 145, explained and distinguished.

Decision of Kekewich J. reversed. **ATT.-GEN. v. MATHIESON C. A. [1907] 2 Ch. 383**

17. — "Endowment"—Incorporated Educational Society—Voluntary contributions—Scholars' fees—Sale of charity land—Consent of Board of Education—Charitable Trusts Act, 1853 (16 & 17 Vict. c. 137), ss. 62, 66—Charitable Trusts Amendment Act, 1855 (18 & 19 Vict. c. 124), ss. 29, 48—Board of Education Act, 1899 (62 & 63 Vict. c. 33), s. 2.

In 1886 a society incorporated under s. 23 of the Companies Act, 1867, with the object (inter alia) of teaching and training teachers for deaf mutes, and of providing schools and colleges for that purpose, acquired freehold property which it used as a training college for its purposes. The purchase-money for the property was paid partly by voluntary contributions and partly by the proceeds of a bazaar organized for the purpose. The society being an educational charity, the jurisdiction of the Charity Commissioners (if any) with respect to it became, under certain statutory provisions, vested in the Board of Education. The society, apart from the property so acquired, had no endowment, and was entirely supported by—(1) voluntary contributions; (2) payments by or on behalf of scholars; (3) grants from the Board of Education; and (4) grants from school boards out of local rates. In 1907 the society contracted to sell the property:—

Held, that the property, having been purchased with moneys applicable to the general purposes of the society, was not an endowment, and that the society could sell it without the consent of the Board of Education.

In re Clergy Orphanage Corporation, [1894] 3 Ch. 145, followed.

Held, also, that the society was "wholly maintained by voluntary contributions" within the meaning of s. 62 of the Charitable Trusts Act, 1853, notwithstanding that its sources of income included the items (2), (3), and (4) above mentioned.

The difficulty suggested by Lindley M.R. in *In re Stockport Ragged, Industrial and Reformatory Schools*, [1898] 2 Ch. 687, 699, discussed. *In re SOCIETY FOR TRAINING TEACHERS OF THE DEAF AND WHITTLE'S CONTRACT* - **Neville J. [1907] W. N. 188: [1907] 2 Ch. 486**

CHARITY—continued.

—“Endowment”—Land registry—Restriction on register—Exemption.
See LAND REGISTRY. 1.

18. — Endowment — Mixed endowment — Scheme determining what part held for education — Effect of scheme — Permanent or temporary — Board of Education Act, 1899 (62 & 63 Vict. c. 33), s. 2, sub-s. 2 — Board of Education (Powers) Order in Council, 1902.

A testator who died in 1724 gave his residue to trustees on trust to pay half the income for the redemption of Barbary slaves, one-fourth for certain educational charities, and one-fourth for certain non-educational charities.

In 1846, for want of Barbary slaves, the slave fund income was applied by a Court scheme to assisting charity schools.

By the Board of Education Act, 1899, s. 2, sub-s. 2, the powers of the Charity Commissioners in matters appearing to relate to education may be transferred by O. in C. to the Board of Education, provided that any question whether any part of an endowment “is held for or ought to be applied to educational purposes” shall be determined by the Charity Commissioners.

By the Board of Education (Powers) Order in Council, 1902, it is ordered that all powers (except the powers of appointing official trustees and making vesting orders) shall, so far as those powers relate to endowments “held solely for educational purposes,” be transferred to the Board, and where the Charity Commissioners, in exercise of the powers conferred on them by the Charitable Trusts Acts, 1853 to 1894, or the Endowed Schools Acts, 1869 to 1899, determine by scheme or otherwise what part of a mixed endowment is “held for educational purposes,” that part shall, “for the purposes of this order,” be treated as an educational endowment “held solely for educational purposes.”

In 1907 the Charity Commissioners made a scheme under the Charitable Trusts Acts, 1853 to 1894, determining (inter alia) that the slave fund income was “held for and ought to be applied to educational purposes.”

The trustees appealed, contending that the effect of the determination scheme would be to devote the income permanently and in all events to educational purposes. At present, notwithstanding free education, there were managers’ purposes to which the income was and could be applied under the scheme of 1846 without relieving the rates, but when these expenses also were thrown on the rates there would be no proper objects left under the scheme of 1846. On that event the income ought to be applied cy-près the will as a non-educational charity:—

Held, that the determination scheme merely determined the controlling body for the time being, and did not in any way restrict, alter, or affect the objects of the charity or prevent the income being applied by a future scheme to non-educational purposes.

In re Sutton Coldfield Grammar School, (1881) 7 App. Cas. 91, 93, applied. *In re BETON’S CHARITY — Swinfen Eady J.*
[1907] W. N. 252; [1908] 1 Ch. 205

CHARITY—continued.

— Estate duty—Charitable society, Gift to— Succession duty.
See REVENUE—Estate Duty. 30.

— Evidence, Admissibility of—Will—Charitable legacy—Bequest “for the charitable purposes agreed upon between us.”
See No. 8, above.

— Forfeiture—Gift over to residue—School endowment—Trust deed.
See WILL—Forfeiture. 8.

— Friendly society—Cy-près—Resulting trust— Crown—Bona vacantia.
See FRIENDLY SOCIETY. 8.

19. — Friends, Society of—School—Trust for “civil or religious purposes”—Uncertainty—Scheme—Charitable trust.

Under the trusts of a deed relating to a school at L. the school premises and certain funds were settled upon educational trusts under the control of the Society of Friends, with an ultimate trust that, in case the subscribers to the school, or the Society of Friends assembling at L., determined that the school should be discontinued, the trustees should assure the trust estates and funds to such persons and “for such purposes, civil or religious,” as the subscribers, or Friends assembling at L., should appoint. The deed also provided that the trustees should be members of the Society of Friends. At a duly constituted meeting of the Society of Friends and subscribers of the school a resolution was passed that the school should be discontinued, and the trust property be held for the general purposes of the Society of Friends assembling at L. There was evidence that the Society of Friends was a religious body, formed for the furtherance of religious life, and any civil purpose was subordinated to the religious element:—

Held, that the trust on the discontinuance of the school failed as a charitable trust and was void for uncertainty; and the trust premises must be held upon trust for educational purposes, for which a scheme must be settled by the district registrar. *In re THE FRIENDS FREE SCHOOL. CLIBBORN v. O’BRIEN — Eve J.*
[1909] W. N. 189; [1909] 2 Ch. 675

20. — Hospital — Bequest “towards new building and equipment”—New building finished, but hospital not completed or equipped—Desire to benefit charity—Validity—Directions—Cy-près—Will—Charitable gift.

Testatrix, by her will dated April 24, 1902, appointed the plts. her executors, and continued:—“I give the sum of 20,000*l.* towards the new building and equipment to the satisfaction and under the direction of my executors of the Birmingham and Midland Hospital for Women the enlargement of which has been recommended and which charity I have long desired to benefit.” The testatrix then bequeathed various legacies, but did not make any disposition of her residuary real or personal estate. The testatrix died on April 22, 1905.

It appeared from the evidence that in 1902, at the time the will was made, a scheme had been published for the rebuilding of the hospital and the execution of the scheme was subsequently

CHARITY—*continued.*

proceeded with, and the testatrix contributed towards it during her life. At the date of her death the hospital was nearly totally rebuilt, being entirely roofed in and partially plastered, but it was not painted, furnished or equipped, all of which remained to be done before the hospital was completed. Neither of the plts. had at any time or in any way directed the rebuilding or equipment of the hospital.

Summons by plts. for the determination of the question whether the bequest failed to any and, if so, to what extent, the hospital having been rebuilt in the testatrix's lifetime; and for the direction of the Court.

Kekewich J. said that he could not construe the words of the bequest as constituting a gift to the charity, so that what could not be properly expended on rebuilding and equipment belonged to the charity and might be handed over to it. The present case was clearly outside that line of authorities, many of which were examined by V.-C. Wood in *In re Sanderson's Trusts*, (1857) 3 K. & J. 497, in which it had been held that a specified object might be treated as merely the motive of the gift, and that the gift might be fulfilled, notwithstanding that the motive object failed. Whether, so far as the specific object failed, the gift might be treated as charitable and applied cy-pris, was a question which could not be decided in the absence of the Att.-Gen., and if, after the application of what could be properly applied in rebuilding and equipment there were money remaining, an adjournment must be made in order to bring the Att.-Gen. before the Court. He then proceeded to state his critical interpretation of the will for the guidance of the executors in their application of the fund, and intimated that on the report in writing of the result he should be prepared to give them directions, and, if necessary, provide for service on the Att.-Gen., and ordered the summons in the meantime to stand adjourned. *In re UNITE, EDWARDS v. SMITH*

Kekewich J.
[1906] W. N. 26

21. — Hospital—Legacy “to found a bed in a hospital”—*Endowment—Will—Construction.*

A testator gave a legacy of 1000*l.* “to the Belgrave Hospital to found a bed there to be called ‘the Eleanor bed’” :—

Held, that the 1000*l.* must be invested and the income only applied towards maintaining the bed. *ATT.-GEN. v. BELGRAVE HOSPITAL*

Swinfen Eady J. [1909] W. N. 211;
[1910] 1 Ch. 73

— Hospital—Medical charities.

See Nos. 31—33, below.

— Income tax—Allowances—Charitable purposes—Advancement of education.

See REVENUE—Income Tax. 1.

22. — Indigent bachelors and widowers, Gift for relief of—Uncertainty.

The testator, by his trust disposition and settlement, directed his trustees to “employ the whole residue of my estate in instituting and carrying on a scheme for the relief of indigent bachelors and widowers of whatever religious denomination or belief they

CHARITY—*continued.*

may be who have shown practical sympathy either as amateurs or professionals in the pursuit of science in any of its branches, whose lives have been characterized by sobriety, morality and industry, and who are not less than fifty-five years of age; or of aiding any scheme which now exists or may be instituted by others for that purpose.” The next of kin contended that the bequest was void for uncertainty.

Held (affirming the decision of the Second Division of the Ct. of Sess., (1907) S. C. 185) that the bequest was not void for uncertainty, for the trustees or, failing them, the Court would find no difficulty in giving effect to it. *WEIR v. CRUM-BROWN* - H. L. (Sc.) [1908] W. N. 40;
[1908] A. C. 162

— Infant—Maintenance—Subscriptions to local charities.

See SETTLED LAND—Infants. 2.

23. — Inn of Chancery—School of learning—Study of the law—Failure of object—Disposition of property—Charitable purpose.

The Society of Clifford's Inn was one of the Inns of Chancery which were established to provide for the legal education of students of the law. In the year 1618 by an indenture of covenant the messuages and premises occupied by the society were assured to certain members thereof as trustees, in consideration of the payment of a sum of money, and the reservation of certain rents. The indenture declared that the intention of the grantors was that the messuage commonly called Clifford's Inn, which was stated to have been for many years used and employed as an Inn of Chancery for the study and practice of the common laws of the realm, and to have been governed to the good of the Commonwealth and the honour of the grantors and their ancestors, “shall and may hereafter continue to be employed as an Inn of Chancery for the furtherance of the practisers and students of the Common Law of the Realm as aforesaid,” and that the society should from thenceforth be assured of a certain state therein, and the operative part of the deed declared that the true intent and meaning thereof, and of the parties thereto, was that “Clifford's Inn shall for ever hereafter be continued and employed as an Inn of Chancery for the good of the gentlemen of the society and for the benefit of the Commonwealth as aforesaid and not otherwise.” The property had long been dealt with by the society as its own, and for its own purposes, and the surviving members contended that it was not now subject to or affected by any charitable trust, but belonged to the individual members for their own personal benefit, to be divided and disposed of as they might think fit :—

Held, that the property vested in the present trustees was held by them upon trust for charitable purposes.

Judgment of Cozens-Hardy J., [1900] 2 Ch. 511, affirmed. *SMITH v. KERR*

C. A. [1902] 1 Ch. 774

24. — Institute—Gift for benefit of a named institute—Institute erected for general benefit of inhabitants—Use for purposes not strictly charitable—General charitable intention.

CHARITY—continued.

A testatrix gave 3000*l.* to trustees to be applied at their discretion for the benefit of the Mann Institute. The Mann Institute had been erected by the testatrix for the general benefit of the inhabitants of Moreton-in-Marsh. The building had never been conveyed to trustees, nor had any charitable trust thereof been created. It remained in the testatrix's own control, and had been used for purposes beneficial to the inhabitants :—

Held, that the bequest of 3000*l.* was a good charitable gift, and a scheme must be directed for its application. *In re MANN. HARDY v. ATT.-GEN. - Farwell J. [1902] W. N. 231 ; [1903] 1 Ch. 232*

25. — Jurisdiction to direct scheme to be settled — Charitable objects.

P. A. Vagliano, of the City of London, merchant, by his will dated Jan. 16, 1900, directed his executors within twelve months after his decease to pay to the London and Westminster Bank, Ltd., the sum of 500,000*l.*, or to transfer or deliver to the same bank securities of the market value of such part of the 500,000*l.* as should not be paid in cash, and requested and authorized the bank to invest the money in such inscribed stocks and securities (being the securities for the time being authorized by law for the investment of trust funds, but including power to invest in English Colonial Government securities) as the bank might deem fit, with power from time to time to vary and transpose securities. The will proceeded : "And it being my desire to make such provision as hereinafter expressed for charitable purposes in the island of Cephalonia, I direct that all such funds and securities shall be permanently held and retained by the said bank, and that the trustees or trustee for the time being of this my will shall not be empowered to require the said bank to part with such securities or any part thereof." And he directed the bank after making certain deductions to apply the yearly income as follows, namely, during the period permitted by law 10 per cent. of such income to be invested and added to the principal, and, subject to such accumulation, the whole net income to be paid to the trustees and applied by them "for charitable objects in the Island of Cephalonia, such objects to include the establishment of or aid in the establishment of or aids to churches, hospitals, and schools, and also from time to time assistance to poor and aged persons for the time being resident in or natives of Cephalonia," with absolute power and discretion as to the disposal of such income for all or any of the purposes and objects aforesaid, and to depute any such powers and discretions and make payments to any persons having or supposed to have power to receive money without seeing to the application of the money paid.

After the testator's death his will and codicil were proved in England by three of the persons appointed executors, the other person named having renounced probate. Money and securities to the amount of 500,000*l.* (less legacy duty) were paid and transferred to the bank, and many applications were received from Cephalonia.

CHARITY—continued.

The executors (two of whom resided in London and the third in Marseilles) issued an originating summons against one of the residuary legatees, the bank, and the Att.-Gen., asking for the determination of the questions—(1.) whether the gift of the 500,000*l.* was a good and valid charitable gift ; (2.) whether the pits. could apply the income in all or any of the following ways : (a) in the erection of a church in the island, (b) in the erection and maintenance of a pauper lunatic asylum in the island, (c) in the formation and maintenance of a farming school in the island, (d) in the formation and maintenance of a public, commercial, and nautical school in the island, and (e) towards the relief of the poor consequent upon the outbreak of smallpox in the villages of Cephalonia ; (3.) to have a scheme settled by the Court for the application of the bequest or the income thereof :—

Held, that the gift was a good and valid charitable gift ; that all the purposes suggested in the summons were proper purposes for the application of the income ; and that as the fund and two of the trustees were in England it was a proper case for a scheme. The Court accordingly referred it to chambers to settle a scheme for the administration and application of the charity. The Court intimated also that it would be desirable to appoint another trustee resident within the jurisdiction, and in the meantime gave leave to the trustees to expend up to 2000*l.* in relief of smallpox victims in Cephalonia.

In re VAGLIANO. VAGLIANO v. VAGLIANO
Buckley J. [1905] W. N. 179

26. — Land—Sale of land—Purchase-money in Court—Payment out—Trustees with power of sale — Persons absolutely entitled — Consent of Charity Commissioners — Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), s. 69 ; Charitable Trusts Act, 1853 (16 & 17 Vict. c. 137), s. 17.

Trustees of a charity, who have power with the consent of the bishop to sell the charity land and to give a full discharge for the money paid therefor are persons "absolutely entitled" within s. 69 of the Lands Clauses Consolidation Act, 1845 ; and the purchase-money of land of the charity, which has been paid into Court under that Act, can be ordered to be paid out to them without the consent of the Charity Commrs. *In re LORD MAYOR OF SHEFFIELD AND THE TRUSTEES OF ST. WILLIAM'S ROMAN CATHOLIC CHAPEL AND SCHOOLS, SHEFFIELD*

Byrne J. [1902] W. N. 219 ;
[1903] 1 Ch. 208

27. — Land on trust for sale, Devise of— "Personal estate arising from land"—Right of trustees to retain land unsold—Gift to charity —Mortmain and Charitable Uses Act, 1891 (54 & 55 Vict. c. 73), ss. 3, 5.

Land was devised to trustees on trust to sell and to hold the proceeds, after making certain payments thereout, upon trust for a charity. The will contained a power to the trustees to postpone sale :—

Held, that the subject-matter of the gift, being "personal estate arising from land," was within the exception from the definition of "land" contained in s. 3 of the Mortmain and

CHARITY—*continued.*

Charitable Uses Act, 1891, and that therefore s. 5 of the Act was not applicable, and it was competent for the trustees, without obtaining the leave of the Court, to retain the land unsold after the expiration of one year from the death of the testator. *In re WILKINSON*. ESAM v. ATT.-GEN. *Kekewich J.* [1902] 1 Ch. 841

— Land Registry—Restriction on register—Charity—"Endowment"—Exemption—Jurisdiction of Charity Commissioners.

See LAND REGISTRY. 1.

— Land transfer.

See also under LAND TRANSFER.

28. — *Land transfer—Consent of Charity Commissioners to sale of charity lands—Entry on register with restriction—Royal Charter—Charitable Trusts Amendment Act, 1855 (18 & 19 Vict. c. 124), s. 29—Land Transfer Rules, 1903, rr. 29, 83, Sched. I, Form 13.*

A Royal Charter incorporating a charity (though containing provisions for the management of the charity and a power to the charity to sell lands) is not a "scheme legally established" within s. 29 of the Charitable Trusts Amendment Act, 1855, so as to exempt the charity from the necessity of obtaining the consent of the Charity Comms. to a sale of its lands.

In re Mason's Orphanage and London and North Western Ry. Co., [1896] Ch. 596. applied. ATT.-GEN. v. NATIONAL HOSPITAL FOR THE RELIEF AND CURE OF THE PARALYSED AND EPILEPTIC *Kekewich J.* [1904] W. N. 135 : [1904] 2 Ch. 252

— Lessor and lessee—Option to purchase reversion in fee—Perpetuity.

See LEASE. 3.

29. — *Library—Gift of income to library—Perpetuity—Invalidity—Will—Construction*

Testator by his will dated June 1, 1899, gave to his wife during her life "all the income accruing from my estate and effects, both real and personal, what-soever and wheresoever and what nature and quality soever; and on her demise I give the same income to the Chess Club at Penzance for the support and furtherance of chess and the perpetuity of the club of that town in the manner its committee shall from time to time determine; and in case the said chess club shall have ceased to exist by the time this my bequest shall have come into effect, then I give the same income to the Penzance Library." The testator died in 1905. Upon an originating summons taken out by the executor it had been decided that the gift to the chess club was void. The question now was as to the validity of the gift to the library. The library was formed in 1818, and was maintained for the use of subscribers. The management of its affairs was vested in a committee and officers. Its property was vested in the officers for the time being, who were trustees for the members. The rules provided that it should not be broken up until the number of members should be reduced to less than ten, upon the occurrence of which all

CHARITY—*continued.*

donations were to be returned to the donors, and the remaining books and other effects were to be sold and the proceeds applied to the foundation or support of such scientific institution in Penzance as should be determined by the majority of the remaining members.

Joyce J. said that the fact that the gift to the chess club was void did not prevent the bequest to the library taking effect, because it was not a remainder on a void limitation, but an alternate gift. The authorities shewed that a gift to a voluntary association of a legacy which was to go into its coffers and might be spent with its other funds as income was valid. That was involved in *Cocks v. Manners* (1871), L. R. 12 Eq. 574, and also in *In re Allsop's Estate*, [1884] W. N. 196. In the latter case all that appeared from the note in *The Weekly Notes* was that a "Sacred Harmonic Society," established for practise of choral singing and performance of oratorios and similar work, and supported by the subscriptions of the members and receipts from concerts, was held not to be a charity so as to be within the disabilities imposed by the Mortmain Act (9 Geo. 2, c. 36). He had, however, looked at the record in that case, and found that by the decree the Court declared that the society was not a charity and was entitled to a share of the testator's residuary real estate devised to them by a codicil to him. It was not necessary to the validity of such a gift that it must be in accordance with the rules of the society, or possible under the rules, to distribute the money as or by way of bonus to the individual members. In the present case all that was expressed was a gift of income to the library. An indefinite gift of income ordinarily amounted to a gift of the corpus, but only when there was no intention expressed or implied that the donee was not to take more. On the face of this will nothing but the income was intended to be given to the library. That therefore was a perpetuity, or tended to a perpetuity, and the gift was void. *In re SWAIN*. PHILLIPS v. POOLE

Joyce J.
[1908] W. N. 209

30. — *Livery company of city of London, Gift to—Devise for general purposes of company—Authority to company or trustees to make scheme for administration of "charity hereby created."*

Property was devised to trustees in fee simple, upon trust for and to be held by the Masters, Wardens, and Commonalty of the Butchers' Co. of the city of London "for the general purposes of the said company." The testator authorized the company or the trustees "to make and formulate any scheme, rules, regulations, bye-laws, or trusts for the temporary or permanent administration of the charity hereby created," and gave other directions applicable to a charitable bequest:—

Held, that the gift was not a charitable gift, and that the company was entitled (subject to obtaining the proper licence) to have the property conveyed for the general purposes of the company free from any charitable trust.

Livery companies of the city of London are not, unless there is something special in their

CHARITY—*continued*.

charter, charities in any legal sense of the words.
In re MEECH'S WILL, BUTCHERS' CO. v. RUTLAND - **Parker J. [1910] 1 Ch. 426**

— Lodging-house—Keeping without a licence—Charitable institutions.

See **LODGING-HOUSES**. 1, 2.

— Lodging-house — Registration — Licence — Charitable institution—No payment by inmates.

See **LODGING-HOUSES**. 1, 2.

— Maintenance of suit—Charity induced by religious sympathy—Common interest.
See **MAINTENANCE OF SUIT**. 1.

31. — “*Medical charity*” — *Cy-près* — *Scheme by Charity Commissioners — Jurisdiction — Intention of testator — Possibility of carrying out — Charitable Trusts Act, 1860 (23 & 24 Vict. c. 136), s. 2.*

Funds given by a testator for a particular charitable purpose cannot be applied *cy-près* by the Charity Commissioners or the Court unless it is shewn to be impossible to carry out the testator's intention. They cannot be so applied because the Commissioners think some other scheme will be more beneficial than the testator's.

The Court will not overrule the Commissioners on matters of detail, but will restrain them from carrying out a scheme which is *ultra vires*.

A testator who died in 1902 devised to his trustees two houses upon trust to use house A. as a dispensary, cottage hospital, or convalescent home or other medical charity, to be called the Weir Hospital, for the benefit of the inhabitants of the parish of Streatham and the neighbourhood until a restrictive covenant which prevented the house B. (in which he resided) from being so used had expired, and then to use house B. in conjunction or not with house A. for the same purpose; and he gave his residuary personal estate to the same trustees for the maintenance of the hospital.

The trustees established a dispensary at the house A. and maintained it until the covenant expired in 1907. The funds then applicable for the maintenance of the charity were about 100,000*l.* The Charity Commissioners approved a scheme whereby the dispensary was to be maintained, house B. was to be turned into a home for nurses, a very small proportion of whom were to give their services gratuitously, and the bulk of the fund was to be applied in enlarging and maintaining a general hospital called the Bolingbroke Hospital, outside and half a mile from the boundary of the parish of Streatham. This hospital was to be renamed the Weir and Bolingbroke Hospital, and a certain number of beds were to be appropriated so as to give a preference to inhabitants of Streatham:—

Held by the C. A. (reversing the decision of Eve J., [1910] W. N. 82), that the scheme was *ultra vires*, and the order of the Commissioners must be discharged and the matter remitted to the Commissioners for reconsideration.

In re Campden Charities (1881) 18 Ch. D. 310, explained. *In re WEIR HOSPITAL - C. A.* [1910] W. N. 152; [1910] 2 Ch. 124

CHARITY—*continued*

32. — “*Medical charity or charities*” in Scotland—Administration—Scheme—Construction—Application of income—Charity out of jurisdiction,

A scheme sanctioned by the Court for the administration of a charity provided that the income of the charity should be applied for the benefit of a particular hospital in England “or such other medical charity or charities of any kind, school, or teaching whatsoever, and partly or exclusively to one or other of such objects as the trustees may in their uncontrolled discretion from time to time determine.” The trustees desired to apply the income to medical charities in Scotland:—

Held, that the charity must be administered and the trusts of the scheme carried into effect within the jurisdiction of the Court, and that the income could be applied to a “medical charity or charities” in Scotland. *In re MIRRELS' CHARITY. MITCHELL v. ATT.-GEN.*

Joyce J. [1909] W. N. 227; [1910] 1 Ch. 163

— Medical Hospital.

See Nos. 20, 21, *above*.

33. — *Medical Science, Proposed scheme for Institute of—Appeal to public—Fund for project — Voluntary contributions—Legacy to fund by contributor—Subsequent impossibility of scheme — Abandonment — Return of contributions — Charitable intent—Cy-près—Failure of legacy — Will—Construction.*

Testator bequeathed a legacy of 25,000*l.* to “The Institute of Medical Sciences Fund, University of London.” The fund had been started by voluntary contributions in the testator's lifetime, with the object of carrying out a proposed scheme for the establishment of an Institute of Medical Sciences, and the testator himself had contributed largely to the fund. His executors paid the legacy to the trustees of the fund, but, subsequently, the scheme proved impracticable and was finally abandoned, and the various contributions were returned to the respective donors. On the question whether the legacy had been definitely devoted to a charitable purpose and ought to be administered *cy-près*:—

Held (affirming the decision of Joyce J.), [1908] W. N. 182, that the legacy was a gift to take effect upon the happening of a condition which had failed; that there was no general charitable intent to be gathered from the will; and that the legacy must be repaid to the executors. *In re UNIVERSITY OF LONDON MEDICAL SCIENCES INSTITUTE FUND. FOWLER v. ATT.-GEN.* - **C. A. [1909] W. N. 57; [1909] 2 Ch. 1**

34. — *Mortmain*—“*Charitable uses*” — *Will—Construction—Direction to purchase land and build dwelling-houses for the poor — Mortmain and Charitable Uses Act, 1891 (54 & 55 Vict. c. 73), ss. 7, 8—Working Classes Dwellings Act, 1890 (53 & 54 Vict. c. 16), s. 1, sub-s. 1.*

Testator bequeathed personality to trustees upon trust to purchase land and build houses thereon, and let the same at an undervalue to

CHARITY—*continued*.

the poor of London and other populous places as a continuing trust :—

Held, that the words "charitable uses" in s. 7 of the Mortmain and Charitable Uses Act, 1891, meant the same thing as "purposes of the charity" ; that the charitable uses in the present case were, therefore, the continuing trust to let the houses at less than their value, not the direction to purchase land and build houses, and that that trust was not affected by s. 7, but was a valid charitable gift.

Semble, the Working Classes Dwellings Act, 1890, does not apply to charities. *In re SUTTON*. LEWIS v. SUTTON

Buckley J. [1901] W. N. 188 ; [1901] 2 Ch. 640

35. — *Mortmain—Churchyard, Gift for maintenance of—Statute—Implied repeal—Gifts for Churches Act, 1803* (43 Geo. 3, c. 108), s. 1—*Mortmain and Charitable Uses Act, 1891* (54 & 55 Vict. c. 73), s. 7.

The restriction contained in the Gifts for Churches Act, 1803, s. 1, is impliedly repealed by s. 7 of the Mortmain and Charitable Uses Act, 1891 :—

Held, therefore, that a residuary gift by a testatrix of property exceeding 500*l.* in value for the maintenance of a churchyard was a valid charitable gift. *In re DOUGLAS*. DOUGLAS v. SIMPSON - - Kekewich J. [1905] W. N. 7 : [1905] 1 Ch. 279

— Mortmain — Colonial mortgages — Applicability of colonial mortmain law.
See CONFLICT OF LAWS. 14.

36. — *Mortmain—Land—Gift to charity—Devise of real estate in trust for sale—Share of rents until sale—Consent of tenant for life—"Land"—Vesting in official trustee—Mortmain and Charitable Uses Act, 1891* (54 & 55 Vict. c. 73), ss. 3, 5, 6.

A testator, who died in 1900, gave all his real and personal estate to trustees upon trust for conversion, but directed that no part of his freeholds and leaseholds should be sold during the lifetime of his wife without her consent in writing. The income arising from this estate, and the rents of the unsold portion thereof, were distributable during the life of the widow—one-fourth to her, and the remaining three-fourths between four named charities, to whom, after the death of the widow, the whole of the residuary estate was eventually given. On an application by the trustees for the opinion of the Court whether the directions for sale and vesting contained in ss. 5 and 6 of the Mortmain and Charitable Uses Act, 1891, applied to this gift :—

Held, that there were two interests given to the charities, the one a reversionary interest which was not "land" within the meaning of the Act, and the other an immediate terminable interest in the income of land which the trustees were expressly forbidden to sell during the lifetime of the widow without her consent ; no consent having been given, and the land from which the income arose being still unconverted at the expiration of a year from the testator's death, the interest in this income was "land" within the meaning of the Act, and that it was now vested

CHARITY—*continued*.

by force of s. 6 in the Official Trustee of Charity Lands. *In re RYLAND*. ROPER v. RYLAND

Byrne J. [1903] W. N. 13 ; [1903] 1 Ch. 467

37. — *Mortmain—Real estate—Devise—Sale—Extension of time—Jurisdiction—Mortmain and Charitable Uses Act, 1891* (54 & 55 Vict. c. 73), ss. 5, 6.

Where land had been devised to a charity the Court has jurisdiction under s. 5 of the Mortmain and Charitable Uses Act, 1891, when and so often as the circumstances render it desirable, to extend the time for sale beyond the year from the testator's death : and the power of granting an extension of time is not confined merely to an extension for the purpose of carrying into effect a contract for sale made within the year from the death. *In re SIDEBOTTOM*. BEELEY v. SIDEBOTTOM

C. A. [1901] W. N. 76 ; [1901] 2 Ch. 1

Note. See next Case.

38. — *Mortmain—Real estate—Devise of land on trust for sale—Bequest of proceeds to charity—Extension of time for sale—Right of trustees to retain land unsold—Mortmain and Charitable Uses Act, 1891* (54 & 55 Vict. c. 73), ss. 3, 5.

A devise of real estate to trustees upon trust to sell the same and hand over the proceeds to a charity is a gift of "personal estate arising from the land" within the exception to s. 3 of the Mortmain and Charitable Uses Act, 1891, and is not affected by ss. 5, 6, and 8 of that Act. The trustees are not obliged to sell the land within a year from the testator's death, but may retain it without obtaining the leave of the Court. They are not, however, at liberty to postpone the sale indefinitely. *In re SIDEBOTTOM*. BEELEY v. WATERHOUSE.

C. A. [1902] W. N. 132 ; [1902] 2 Ch. 389

Note. See preceding Case.

39. — *Mortmain—Voluntary associations, Officers of—Will—Impure personality—Gift to named persons "or their successors"—Charitable Uses Act, 1735* (9 Geo. 2, c. 36), s. 3.

A testator, who died in 1886, gave the rents of his freehold and leasehold estates to his wife for life, and after her death he directed his trustees to sell the property and to divide the proceeds in (amongst others) the following legacies : "To M. O., H. M., A. C., Nazareth House, Hammersmith, or their successors. 40*l.* To E. M. and M. L., of the Convent of the Assumption, Bromley-by-Bow, or their successors, 300*l.*"

At the date of the will and of the death of the testator M. O., H. M., and A. C. were members and officials of a religious community known as the Poor Sisters of Nazareth ; and E. M. and M. L. were members and officials of a religious community known as the Little Sisters of the Assumption. Both of these communities were societies of Roman Catholic ladies living together in a state of celibacy for the purpose of sanctifying their souls by prayer and pious contemplation ; and also, as to the Poor Sisters of Nazareth, with the object of affording permanent homes for aged and infirm persons of both sexes ; and as to the Little Sisters of the Assumption, with the

CHARITY—continued.

object of gratuitously nursing the sick of the poorest classes in their own homes :—

Held, that the bequests were not gifts to the named individuals for their own personal benefit, but to them as holders of offices and for the benefit of the associations in which they respectively held office ; and that, as the objects of the associations were charitable, the gifts were void under the Mortmain Act, 1736.

Cocks v. Manners, (1871) L. R. 12 Eq. 574, followed. *In re DELANY, CONOLEY v. QUICK*
Farwell J. [1902] W. N. 149 ; [1902] 2 Ch. 642

Note.

This case was referred to by Joyce J., *In re Garrard*, [1907] 1 Ch. 382. See No. 52, below.

40. — Non-existence of institution named—Lapse—Cy-près—Meaning of “charitable institution”—Will—Legacy.

The testatrix by her will gave pecuniary legacies to charities established for a variety of purposes, e.g., to aid consumptive persons, blind persons, orphans, deaf and dumb persons, epileptics and paralytics. One of the legacies was of a sum of 500*l.* to the “Home for the Homeless,” 27, Red Lion Square, London.

After providing that in the event of any question arising as to the designation of any of the charitable institutions, or of any doubt arising as to which one of two or more of them it was intended to benefit, the decision should rest absolutely with her executor, and after giving other legacies, the testatrix provided that her residuary moneys should be “divided rateably among the various charitable institutions which are beneficiaries under this instrument.”

At the date of the will there was not, and there never had previously been, in London any charitable institution known as the “Home for the Homeless.” After making provision for debts and legacies there was a fund distributable as residue among the charitable institutions which were beneficiaries under the will :—

Held, (1.) that the Court was justified in drawing the inference of a general charitable intention with reference to the gift of 500*l.*, and that the gift did not lapse, but must be administered cy-près : (2.) that the word “institutions” was large enough to include any authority or person that would have to administer the fund, and that the authority or person was also entitled to the share of residue which would have been taken by the “Home for the Homeless” if it had existed. *In re DAVIS, HANNEN v. HILLYER*

Buckley J. [1902] W. N. 56 ; [1902] 1 Ch. 876

41. — Officers’ regimental mess to maintain a library, Gift to—Plate—Public general purpose—Army regulations—Gift for old officers—Perpetuity—Residue—43 Eliz. c. 4—“Setting out of soldiers”—Will—Construction.

A testator gave his residuary personalty upon trust for the officers’ mess of his regiment, to be invested and the income to be applied in maintaining a library for the officers’ mess for ever, any surplus to be expended in the purchase of plate for the mess. He then directed that two houses, part of the residue, should be for the use

CHARITY—continued.

of old officers of the regiment at a small rent during their lives :—

Held, that the gift of residue to maintain a library and to purchase plate for the officers’ mess being for a general public purpose tending to increase the efficiency of the army and aid taxation, was a good charitable bequest :—

Held, also, that the gift might be supported as a “setting out of soldiers” within the meaning of those words in the statute of Elizabeth :

But *held*, that the gift of the houses was void for remoteness, and that the houses did not fall back into the residue, but were undisposed of. *In re GOOD. HARLINGTON v. WATTS*

Farwell J. [1905] W. N. 82 ; [1905] 2 Ch. 60

Note.

Followed by Warrington J., *In re Donald*, [1909] 2 Ch. 410.

— Poor law (Scotland)—Settlement by residence—Support by charitable institution.
See POOR LAW. 29.

42. — Practice — Action — Certificate of Charity Commissioners—Practice—Administration—National School—Income of endowments—Transfer to school board—Action by transferee—Administration of Charitable Trusts Act, 1853 (16 & 17 Vict. c. 137), s. 17—Elementary Education Act, 1870 (33 & 34 Vict. c. 75), s. 23.

The buildings and the income of the endowments of a national school were leased by the managers to a school board, under the powers given by s. 23 of the Elementary Education Act, 1870, for a term of years. At a subsequent date the then trustee of the endowments transferred them to the Charity Commrs., and the defts., as official trustees of charitable trusts, received the income arising from the funds. The school board brought an action against the defts. to recover the sums so received by them and for an inquiry as to the trust funds :—

Held, affirming the judgment of a Div. Ct., that the claim of the plts. was under the trusts affecting the endowments and not a relief sought adversely to a charity, and that they were not entitled to bring the action without the consent of the Charity Commrs. under s. 17 of the Administration of Charitable Trusts Act, 1853. **LLANBADARNFAWR SCHOOL BOARD v. OFFICIAL TRUSTEES OF CHARITABLE TRUSTS**

C. A. [1901] 1 K. B. 430

43. — Religion, Advancement of—Charitable bequest—Uncertainty—Trust vested in ecclesiastical officer for time being—“Charitable religious or other objects in connection with the Roman Catholic Faith.”

A residuary bequest in trust for the Roman Catholic Archbishop of Westminster for the time being, to be distributed by him between such charitable, religious or other societies, institutions, persons, or objects in connection with the Roman Catholic faith in England as he shall in his absolute discretion think fit :—

Held not a good charitable bequest, but void for uncertainty. *In re DAVIDSON. MINTY v. BOURNE*

C. A. [1909] 1 Ch. 567

— Schools—Charitable trusts.

See also under SCHOOLS.

CHARITY—continued.

— School—National school—Income of endowments—Transfer to school board.
See No. 13, *above*.

— School—Endowment—Trust deed—Forfeiture—Gift over to residue—Perpetuities.
See WILL—Forfeiture. 8.

44. — *School—Scheme—Religious instruction—Government grant—Board of Education—Modification of scheme to meet regulations of Board—Jurisdiction—Charitable trust.*

Where the primary object for which a secondary school was originally founded cannot be given effect to under its existing constitution without the aid of grants from the Board of Education, the Court will modify the scheme of the Charity Commrs. under which the school was being administered, so far as necessary to comply with the regulations of the Board of Education and enable the school to secure the grants. *In re* QUEEN'S SCHOOL, CHESTER

Eve J. [1910] W. N. 53 ; [1910] 1 Ch. 796

45. — *School for education of poorer classes—Trust deed—Denominational teaching—Discontinuance of week-day school after will, but before death of testatrix—Continued use as Sunday school—No lapse—Will—Legacy to charitable institution.*

Testatrix bequeathed a legacy to "St. Andrew's School, Heybridge," for the benefit thereof. A school of that name was founded by a brother of the testatrix in 1869 for the education of children of the poorer classes, the religious part of the education to be according to the principles of the Church of England. From the date of its foundation this school had been used for the purposes of a Church of England elementary day school on week-days, and of a Sunday school in connection with Heybridge parish church on Sundays, and was so used at the date of the will. For some years previous to the testatrix's death, however, this week-day school had been discontinued, having lost the Government grant, and the school-house had not been used for any other day school under the trusts of the deed of settlement, but it continued to be used for the Sunday school uninterruptedly down to the present time :—

Held, that the legacy had not lapsed, for although the purposes for which the school was founded had to a great extent failed, yet there had not been, so to speak, a "total loss" of the institution, inasmuch as it still survived in the Sunday school and performed its objects on one day in the week. *In re* WARING. HAYWARD v. ATT.-GEN. - Kekewich J. [1906] W. N. 214 ; [1907] 1 Ch 166

46. — *School, Site for—Gift of land for education of poor—Discontinuance of week-day school—Continued use as Sunday school—Cesser of use for purposes of the Act—Reverter—School Sites Act, 1841 (4 & 5 Vict. c. 38), s. 2.*

The expression "ceasing to be used for the purposes in this Act mentioned" in the reverter clause contained in s. 2 of the School Sites Act, 1841, means "ceasing to be used for such of the purposes in this Act mentioned as are specified in the deed of grant."

CHARITY—continued.

In 1868 S. executed a deed poll under s. 2 of the School Sites Act, 1841, conveying to the minister and churchwardens of a parish a piece of land for the purposes of the Act and upon trust to permit the premises and all buildings to be erected thereon to be used as a school for the education of children and adults of the poorer classes of the parish and for no other purpose. The schools were to be open to the inspection of the Established Church inspectors and managed by the principal minister of the parish, who was to superintend the religious and moral instruction of the scholars and might use the premises for a Sunday school. A school was erected on the land and used till 1907 as a public elementary school, when it ceased to be used except as a Sunday school. S. claimed that the premises had reverted to him under the Act ; the Board of Education contended that they were still devoted to charity and that a scheme ought to be settled for the future administration thereof :—

Held, that inasmuch as the school had ceased to be used for the purposes specified in the deed poll it had reverted to the estate of S., the donor, although it had been continuously used for other purposes specified in the Act. ATT.-GEN. v. SHADWELL Warrington J. [1909] W. N. 229 ; [1910] 1 Ch. 92

47. — *"Site"—Trustees—Decision of majority binding minority—Charitable trust—Will—Construction.*

A testator, after appointing trustees for the general purposes of his will, directed them, out of the proceeds of sale of his residuary real and personal estate, to set apart and appropriate a sum amounting as nearly as might be to 1,000,000*l.*, and to pay the same to the plt. and others, to be called the "W. H. trustees," who should stand possessed of the same upon trust from time to time to lay out a sufficient part of the said trust legacy in the purchase of freehold "lands situate in some or one of the western suburbs of London, or in the adjacent country," to be selected by the W. H. trustees "as a site" for the erection of buildings to be used as homes for aged poor persons and to be called "Whiteley Homes for the aged poor," or by such other name or names as the W. H. trustees should think fit, but so that the name of "Whiteley" should form part of such name or names. The will contained further directions that the "site" to be selected should be in a bright and healthy "spot," even "if such a site" could only be acquired at additional expense. The W. H. trustees were also given a very wide discretion in determining the name of the homes and administering the trust generally, and their minimum number was to be nine. Upon a summons taken out by eight of the ten trustees against the other two trustees :—

Held—(1.) That upon the true construction of the will the W. H. trustees were not entitled to select more than one site for the homes.

(2.) That the rule stated in *Wilkinson v. Malin*, (1832) 2 Tyrw. 544, 571, that in the administration of a trust of a "public" nature the act of the majority was to be treated as the act of the whole body, applied equally to a trust

CHARITY—continued.

of a "charitable" nature; and therefore, in selecting a site and in founding the homes, the decision of the majority of the W. H. trustees was binding upon the minority. *In re WHITELEY. BISHOP OF LONDON v. WHITELEY* Eve J. [1910] W. N. 63; [1910] 1 Ch. 600

48. — *Tithes—Annual payment of corn to poor of parish—Charge on great tithes—Inclosure Act—Lands allotted in lieu of tithes—Sale of lands—Lands subject to charge—Mortgagee—Notice of charge—Inclosure Act, 1830 (11 Geo. 4, c. 4), ss. 37, 66—Charitable Trusts (Recovery) Act, 1891 (54 & 55 Vict. c. 17)—Conveyancing Act, 1882 (45 & 46 Vict. c. 39), s. 3, sub-s. 1 (ii).*

In 1881 the deft. purchased from the Eccles. Commrs. certain lands which, in 1834, had been allotted to their predecessors in title under the Inclosure Act, 11 Geo. 4, c. 4, in lieu of the great tithes of the parish of H. There was evidence that from time immemorial an annual payment of a certain quantity of corn had been made out of the tithes for the benefit of the poor of the parish, and from 1834 to 1881 the same payment had been made by the owners or occupiers of the lands in question. The conveyance to the deft. was expressed to be made "free from incumbrances," but was also expressly subject to the unredeemed land tax, tithe commutation rent-charge, both rectorial and vicarial, and to all other payments and outgoings, ecclesiastical or civil, charged upon or payable out of the lands conveyed:—

Held, that the payment of corn constituted a valid charge to which the lands allotted in lieu of the tithes became subject by virtue of s. 66 of the Inclosure Act, and that the deft. by the terms of his conveyance took the lands subject to the charge.

The deft. had mortgaged the lands by a deed which expressly stated in terms similar to those used in the conveyance that the mortgage was subject to all payments and outgoings, ecclesiastical or civil, charged upon or payable out of the mortgaged property. The mortgagee had made no inquiry as to the existence of any charges upon the property:—

Held, that, having regard to s. 3, sub-s. 1 (ii.), of the Conveyancing Act, 1882, the mortgagee must be taken to have had notice of the charge in question, and that the mortgaged property was subject thereto. *In re ALMS CORN CHARITY. CHARITY COMMRS. v. BODE*

Stirling J. [1901] 2 Ch. 750

49. — *Tomb—Gift to charity—Invalid bequest followed by gift of residue to charity—Alms-houses—Will.*

Testator by his will, dated in 1864, gave the sum of 1000*l.* out of his personal estate to trustees, and directed that it should be invested in the names of the vicar and churchwardens of a certain church, upon trust in the first place out of the income to maintain yearly and keep in good repair and condition a tomb belonging to the testator in the churchyard, and in the next place to divide and distribute the remainder among the poor recipients of certain almshouses:—

Held, that the gift to maintain the tomb

CHARITY—continued.

being invalid, the whole income of the fund went to the vicar and churchwardens on behalf of the almshouses.

Fisk v. Att.-Gen., (1867) L. R. 4 Eq. 521, *Dawson v. Small*, (1874) L. R. 18 Eq. 114, and *In re Birkett*, (1878) 9 Ch. D. 576, followed. *In re ROGERSON. BIRD v. LEE.*

Joyce J. [1901] W. N. 56; [1901] 1 Ch. 715

— Trust—Uncertainty—"Charitable or religious institutions and societies."

See WILL—Uncertainty. 4.

— Trustee—Disbursements—Subscription to charity.

See TRUSTEE—Costs, &c. 1.

— Uncertainty—Charitable or emigration uses—Gift.

See No. 15, above.

50. — *Uncertainty, Gift for "charitable and benevolent institutions" not void for—Will—Construction.*

A bequest of residue upon trust for "such charitable and benevolent institutions" as the trustees shall in their discretion determine is not void for uncertainty, but is a good charitable gift.

In re Sutton, (1885) 28 Ch. D. 464, followed.

Dictum of Lord Cottenham in *Ellis v. Selby*, (1836) 1 My. & Cr. 292; 43 R. R. 188, disapproving of *Jemmit v. Verril*, cited in (1826) Amb. 575, n., not followed. *In re BEST. JARVIS v. BIRMINGHAM CORPORATION*

Farwell J. [1904] W. N. 152;

[1904] 2 Ch. 354

— Uncertainty—Indigent bachelors and widowers, Gift for relief of.

See No. 22, above.

51. — *Uncertainty—Trust—Residue—Will—Construction.*

A testator, by the last purpose of his trust disposition and settlement, after bequeathing a number of legacies to specific charities and public institutions, gave his trustees full power "at any time or times" . . . "as and when the said residue or any part thereof becomes available, as they may deem proper, to pay over or divide the said residue or any part or parts thereof to or amongst such local or Scottish charitable institutions and schemes already constituted, or which may hereafter be constituted (and which may include those hereinbefore named), as they may select, or any one or more of such institutions and schemes, and that at such time, in such manner, or in such proportions, as they in their absolute discretion may deem proper." The trustees were also to have the "fullest powers of and in regard to realisation, investment, administration, management, and division as if they were beneficial owners." They were further empowered to retain the investments of which the estate might consist at the time of the testator's death, "and that for such time or times as they may think fit or indefinitely":—

Held (affirming the decision of the First Division of the Court of Session, (1907) S. C. 953), that the bequest of the residue was not void for

CHARITY—*continued*.

uncertainty. *DICK v. COPLAND. DICK v. AUDSLEY* **H. L. (Sc.) [1908] W. N. 136; [1908] A. C. 347**

52. — *Vicar and churchwardens to be applied "as they shall think fit," Gift to—Validity—Will.*

A testatrix bequeathed 400*l.* to the vicar and churchwardens for the time being of K. to be applied by them in such manner as they shall in their sole discretion think fit:—

Held, that the bequest was a good charitable gift for ecclesiastical purposes in the parish. *In re GARRARD. GORDON v. CRAIGIE*

Joyce J. [1907] W. N. 21; [1907] 1 Ch. 382

— Volunteers, Yeomanry, and Militia, Gifts to—Territorial and Reserve Forces.
See WILL—Territorial and Reserve Forces. 1.

— Water supply—Swimming bath—School—Domestic purposes.
See WATER. 16.

— Wesleyan Methodist chapel—Model deed—Power of sale—Proceeds applicable as income.
See LAND REGISTRY. 2.

— Will—Absolute gift—Codicil directing use of legacy for charitable purposes—Precatory trust—"I wish."
See WILL—Precatory Trust. 1.

— Will—Absolute gift—Gift on condition—Precatory trust for charity—"I specially desire."
See WILL—Precatory Trust. 2.

— Will—Uncertainty—"Such charitable or public purposes as my trustee thinks proper"—Trust.
See WILL—Uncertainty. 4.

CHARITY ORGANIZATION SOCIETY—Bequest to—Invalidity.
See CHARITY. 9.

CHARTER—Burgh—Customs and rates—Prescription—Roads and Bridges.
See SCOTTISH LAW. 4.

—Mahomedan law—Administration of wakf estate—Rights of wakifs—Charter of incorporation superseded.
See MAURITIUS. 1.

—Patent—User—Weight of evidence.
See FORESHORE. 1.

CHARTER (ROYAL).

See under ROYAL CHARTER.

CHARTERED COMPANY—Breach of charter—Ultra vires.
See CONFLICT OF LAWS. 3.

CHARTERPARTY—Insurance, Marine—Freight—Loss—Saving of charterparty hire—Commission.

See INSURANCE (MARINE). 7.

—Shipbroker—Signature as agent—Right to sue as principal.
See PRINCIPAL AND AGENT. 12.

CHARTERPARTY—*continued*.

—Shipping.

See under SHIPPING—Charterparty.

"**CHARTREUSE**"—Trade mark—Passing off—French law of associations.
See TRADE MARK. 10.

CHARTS—Maps and—Evidence—Admissibility.
See CUSTOM. 1.

CHARWOMAN—Casual employment.

See MASTER AND SERVANT—Compensation. 31.

CHATELLETS—Bequest of—Tapestries—Right of removal—Question between devisee and legatee.

See FIXTURES. 7.

"**CHATELLETS REAL**"—Rent-charge issuing out—Intestacy.
See WILL—Chattels real. 1.

CHECK WEIGHER—Appointment—Coal mine—"Mine"—Two seams in mine.
See MINES. 5.

—Removal—Coal mine—Interfering with workmen.
See MINES. 2.

CHEMISTS.

See under PHARMACY ACTS.

—Excepted.

See Shop Hours Act, 1904 (1 Edw. 7, c. 31), s. 2, Sched.

CHEQUE.

See under BANKER.

CHICKEN.

See under FOWLS.

CHILD.

See under INFANT.

CHILD-BEARING—Mother past—Will—Illegitimate children—Class gift.
See WILL—Illegitimacy. 3, 4.

—Woman past the age of—Presumption.
See EVIDENCE. 12.

CHILDREN.

See under INFANT.

CHIMNEY—Black smoke—Private dwelling-house—Club.
See NUISANCE. 2.

—Sending forth black smoke—Nuisance—Funnel of steam-tug—London.
See NUISANCE. 5.

CHINA AND COREA.

The Wei-hai-Wei O. in C., 1901, Amendment Order, 1903. St. R. & O. 1903, No. 217.

Merchant Shipping. Hong Kong.] O. in C. confirming Ordinances of the Legislature of Hong Kong repealing certain Provisions of the Merchant Shipping Act, 1894. St. R. & O. 1903, No. 674

CHINA AND COREA—continued.

— Foreign jurisdiction.

See under FOREIGN JURISDICTION.

— Hong Kong.

See under HONG KONG.

1. — *Insurance — Policy of fire insurance — Notice required of additional insurance — Construction — Premium of additional insurance unpaid.*

Where there was a stipulation in a policy of fire insurance that it should become null and void if the insured omitted to give notice of any additional assurance effected on the same goods with another co. without the consent of the insurers :—

Held, that the policy was not avoided by omission to give notice of an additional assurance which, on the true construction of its terms, never became effective by reason of the premium not having been paid. *EQUITABLE FIRE AND ACCIDENT OFFICE, LD. v. THE CHING WO HONG* - - - **P. C. [1907] A. C. 96**

1A. — *Shanghai—Shipping—Collision Regs., art. 29—Signal as to alteration of course—No duty to stop if signal unanswered.*

Where the appellants' steamship came into collision with the respondents' lighter in a narrow channel under circumstances which rendered the respondents' tug clearly to blame :—

Held, that the judge was in error in holding the appellants' steamship also to blame because she did not stop her engines on the tug's failure to answer her signal to the effect that she had altered her course to the starboard. The tug seemed to be acting in accordance with the rule of the road, and the captain of the appellants' steamship in proceeding on his course cautiously at half speed did not fail in his duty in any respect. *CHINA NAVIGATION CO. v. ASIATIC PETROLEUM CO. AND THE TAKU TUG AND LIGHTERAGE CO., THE "TIENTSIN."*

P. C. [1910] A. C. 204

2. — *Shanghai — Shipping — Forfeiture of ship—Decree of—Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), ss. 69, 76 — Merchant Shipping Act, 1906 (6 Edw. 7, c. 48), s. 51—Supreme Court of China and Corea — Jurisdiction.*

The Supreme Court of China and Corea at Shanghai decreed the forfeiture for improperly carrying British colours of a ship owned by Russians which had been registered at Shanghai in the name of a British subject :—

Held, that as the Supreme Court of Shanghai was not within British territory it had no jurisdiction to make the decree. Sect. 76 of the Merchant Shipping Act, 1894, confers the jurisdiction exercised upon no Court except within the dominions of the Crown, and there is no statutory authority extending the jurisdiction thereunder to the Shanghai Court. *OWNERS, &c., OF STEAMSHIP "MAORI KING" v. HIS BRITANNIC MAJESTY'S CONSUL-GENERAL AT SHANGHAI*

P. C. [1909] A. C. 562

3. — *Shipping — Collision in dense fog — Negligence is not going with moderate speed — Failure to stop and ascertain position of the*

CHINA AND COREA—continued.

vessels—Art. 16 of Regulations under Merchant Shipping Act, 1894.

Art. 16 of the King's Regulations, which is in the same terms as art. 16 of the Regulations under the Merchant Shipping Act, 1894, ought to be most carefully adhered to in order to avert the danger of collision in thick weather.

Where a collision took place in a dense fog off the Shantung Promontory, North China, and the judge held that the appellants' vessel was solely to blame for not stopping and going at a speed of 9½ knots an hour in the fog which prevailed :—

Held, on appeal, that the respondents' vessel must be pronounced in part to blame, and that her commander should be held guilty of negligence contributing to the collision in that he was going at a speed of about 6·8 knots an hour, which, having regard to the weather and the circumstances of the case, was not a moderate speed within the meaning of the article, and that by not stopping her engines after hearing the first signals by the appellants' vessel, until he could ascertain her position with certainty and what she was doing, he failed to comply with its directions. *CHINA NAVIGATION CO. (OWNERS OF SS. "CHINKIANG") v. COMMISSIONERS FOR EXECUTING THE OFFICE OF LORD HIGH ADMIRAL OF THE UNITED KINGDOM. CHINA NAVIGATION CO. (OWNERS OF SS. "CHINKIANG") v. LEATHAM*

P. C. [1908] A. C. 251

— Shipping—Forfeiture of ship, Decree of.

See No. 2, above.

4. — *Shipping—Necessaries supplied on credit of ship—Claim of defendants as purchasers of ship—Admiralty Court Act, 1861, s. 5—China and Korea Order in Council, 1904, s. 100.*

In an action in rem against a ship under s. 5 of the Admiralty Court Act, 1861, for necessities supplied to B. on the credit of the ship, it appeared that the registered owners were trustees mainly for the debts, as purchasers who had paid to B. nearly the whole of the purchase-money before the necessities were supplied, B.'s interest being to the extent of a small balance of purchase-money and subject to the obligation of delivery of the ship to the appellants according to his contract :—

Held, that the plts. were entitled to recover. Their claim against the ship was paramount to that of the debts, for the delivery thereof under their contract with B. *FOONG TAI & Co. v. BUCHHEISTER & Co.* - **P. C. [1908] A. C. 458**

CHINA CLAY.

See under CLAY.

— Mines and "other minerals"—Railway company—Compulsory purchase of surface—Right to support.

See MINES. 4.

—Railway company—Right of support.

See MINES. 3.

CHOSE IN ACTION — *Assignment — Contract to sell reversionary interest—Assignment by purchaser of benefit of contract—Right of assignee to sue vendor for damages—Legal chose in action*

CHOSE IN ACTION—*continued*.

— *Judicature Act, 1873* (36 & 37 Vict. c. 66), s. 25, sub-s. 6.

Judgment of the Div. Ct., [1902] 2 K. B. 427, reversed. *TORKINGTON v. MAGEE*

C. A. [1903] W. N. 60; [1903] 1 K. B. 644

Assignment abroad — Notice — Priority — Reversionary interest — Personal estate in England.

See **CONFLICT OF LAWS**. 2.

— Assignment of debt — Maintenance — Indirect motive on part of assignee.

See **ASSIGNMENT**. 2.

— Brewer's lease — Benefit of covenant a chose in action.

See **LANDLORD AND TENANT**. 20.

— Contract to sell reversionary interest — Right of assignee to sue vendor for breach.

See **ASSIGNMENT**. 9.

— Instrument passing whole right of assignor.

See **ASSIGNMENT**. 6.

— Judgment debt — Assignment of part, Validity of — Leave to issue execution.

See **EXECUTION**. 1.

— Mortgage — Notice — Priorities.

See **BANKRUPTCY—Mortgages**. 1.

— Mortgage — Priority — Notice.

See **MORTGAGE—Priority**. 1.

— Mortgage of chose in action after commencement of bankruptcy — *Bona fides*.

See **BANKRUPTCY—Protected Transaction**. 1.

— Shares in company — Power of sale.

See **MORTGAGE—Sale**. 5.

CHURCH.

See under **ECCLESIASTICAL LAW—Church**.

CHURCH DISCIPLINE.

See under **ECCLESIASTICAL LAW—Discipline (Church Discipline)**.

CHURCHWARDEN.

See under **ECCLESIASTICAL LAW—Churchwardens**.

CHURCHWAY.

See under **ECCLESIASTICAL LAW—Churchway**.

— Customary — Manorial custom — Evidence — Inhabitants of parish at large.

See **WAY, RIGHT OF**. 1.

CHURCHYARD.

See under **ECCLESIASTICAL LAW—Burial**.

See under **ECCLESIASTICAL LAW—Churchyard**.

CINEMATOGRAPH.

Cinematograph Act, 1909 (9 Edw. 7, c. 30), is an Act to make better provision for securing safety at cinematograph and other exhibitions.

Cinematograph, England—Regs., Dec. 20, 1909, under the Cinematograph Act, 1909. St. R. & O., 1909, No. 1465. Price 1d.

CINEMATOGRAPH—*continued*.

Circular, Feb. 25, 1910, relating to the Amended Regulations, Feb. 18, 1910, under the Cinematograph Act, 1909. St. R. & O., 1910, No. 189. Price 1d.

1. — *Licence—Condition as to closing on Sunday—Ultra vires—Cinematograph Act, 1909* (9 Edw. 7, c. 30), s. 2.

The appellants granted a licence to the respondents under s. 2 of the Cinematograph Act, 1909, to use certain premises for the purpose of a cinematograph exhibition, in which inflammable films were used, inserting therein a condition that the premises should not be opened on Sundays, Good Friday, or Christmas Day. The respondents were summoned for having opened the premises for the purpose of the exhibition on Sunday, Feb. 27, 1910, and the magistrate held that the powers of the County Council under s. 2 were restricted by the title of the Act to imposing conditions for securing safety, and that the condition as to closing on Sundays, Good Friday, and Christmas Day was ultra vires. He accordingly dismissed the summons. The London County Council appealed.

The Court held that the powers of the County Council under s. 2 were not limited by the title of the Act to imposing conditions for securing safety, and that the condition as to closing the premises on Sundays, Good Friday, and Christmas Day was valid. Appeal allowed. *LONDON COUNTY COUNCIL v. BERMONDSEY BIOSCOPE CO., LD.* Div. Ct. [1910] W. N. 279

CIRCULARS—Betting circular.

See under **BETTING CIRCULAR**.

— Contempt of Court — Fraudulently circularizing shareholders while winding-up petition pending — Company — Winding-up.

See **CONTEMPT OF COURT**. 4.

— Liquidator, Application to remove — Circularizing shareholders — Company — Contempt of Court.

See **CONTEMPT OF COURT**. 5.

— Trade-mark — Infringement — Circulars.

See **TRADE-MARK**. 9.

CITATION—Administration—Court of Probate Act, 1857—Grant to creditor under s. 73 — Citation of next of kin (if any) dispensed with.

See **ADMINISTRATION**. 6.

— Administration — Grant — Widow passed over on ground of marital misconduct.

See **PROBATE—Misconduct**. 1.

— Administration — Intestacy — Divorce — Former husband passed over without citation — Sureties required to justify.

See **PROBATE—Practice**. 1.

— Divorce — Practice — Leave to proceed without service of citation or copy petition — Notice of proceedings.

See **DIVORCE—Practice**. 19.

CITATION—*continued.*

— Married woman—Protection order — Husband's address unknown—Citation dispensed with.

See HUSBAND AND WIFE—Desertion. 2.

— Monition — Faculty — Interest, Insufficiency of.

See ECCLESIASTICAL LAW—Faculty. 4.

CITY OF LONDON.

See under LONDON.

CITY OF LONDON COURT.

See under LONDON—City of London Court.

CIVIL LIST ACT, 1910.

See under CROWN.

CIVIL PROCEDURE ACT.

See under LIMITATION OF ACTION.

CIVIL SERVANT—Additional years of service need not be continuous.

See NEW SOUTH WALES. 3.

CIVIL SERVICE—Compensation on retirement

—Appeal from Australia.

— Superannuation allowance — Construction — "Officer."

See NEW SOUTH WALES. 4.

CLAM—Enjoyment clam—Right to support of dock sides by rods fastened in adjoining owner's land.

See SUPPORT. 1.

CLASS—Donee of power herself a member of the class—Power of donee to appoint to herself—Settlement.

See POWER OF APPOINTMENT. 31.

— Illegitimate child — Class gift — After-born children—Child en ventre sa mère at date of settlement.

See SETTLEMENT. 29.

— Parties—Representative action—Action on behalf of a class of the public — Joinder of plaintiffs.

See PRACTICE—Parties. 4.

— Severance of class—Married woman—Restraint on anticipation—Rule against perpetuities.

See HUSBAND AND WIFE—Restraint on Anticipation. 2.

— Will—Construction.

See under WILL—Class.

CLAY—China clay — Mines and "other minerals"—Railway company—Compulsory purchase of surface.

See RAILWAY—Mines. 1.

— Mines and other minerals—Railway company — Purchase of surface.

See MINES. 4.

CLEANSING—Lodging-house—Duty on "landlord"—Validity of by-law.

See LONDON—Lodging-houses. 1.

CLEANSING—*continued.*

— Privies and cesspools—Power of local authority to undertake duty of.

See LOCAL GOVERNMENT. 27.

— Sewers—Duty of local authority—Meaning of "sewer."

See SEWERS. 18.

CLERGY.

See under ECCLESIASTICAL LAW.

CLERGY RESIDENCES REPAIR ACT.

See ECCLESIASTICAL LAW—Vicarage. 1.

CLERICAL ERROR—Settlement — Mistake of fact—Misdescription—Tail male instead of tail general.

See SETTLEMENT. 35.

— Will—Residuary clause—Motion to rectify—Order to strike out words—Refusal to insert another word.

See PROBATE—Rectification. 1.

CLERICAL SOCIETY—Bequest for payment of annual dinners—Good charitable gift.

See CHARITY. 10.

CLERK—Fraudulent conversion of goods—Estoppel.

See SALE OF GOODS. 11.

— Justices' clerk—Power to appoint—Payment of salary.

See LOCAL GOVERNMENT. 18.

— Licensing Acts—Order by clerk to justify notices to fees in respect of witnesses called in opposition to grant.

See LICENSING ACTS. 26.

— Presentation of bankruptcy petition by "officer" of company.

See BANKRUPTCY—Practice. 11.

CLERKS OF THE PEACE—Appointment of deputies.

See under RECORDERS, &c.

— Licensing Acts—Claim by clerk to justices to fees in respect of witnesses called in opposition to grant.

See LICENSING ACTS. 26.

CLOCK—Fixed to outside of house—Breach of lessee's covenant—"Alteration."

See LANDLORD AND TENANT. 7.

CLOG ON REDEMPTION—Mortgages.

See under MORTGAGE—Redemption.

CLOSING—Carriage-door — Passenger — Negligence.

See RAILWAY—Passengers. 4.

— Dwelling-house unfit for human habitation—Closing order.

See HOUSING OF WORKING CLASSES. 1.

CLOSING ACCOUNT—Banker and customer—Mortgage—Power of sale.

See BANKER. 7.

CLOTHES—Workmen's compensation—Earnings of workmen—Use of clothes provided by employer.
See MASTER AND SERVANT—Compensation. 74.

CLUB.

Order of Secy. of State, dated Oct. 16, 1902, prescribing Form of Register of. St. R. & O., 1902, No. 797.

REGISTRATION OF CLUBS. *See Licensing Act, 1902 (2 Edw. 7, c. 28), Part III., ss. 24—32.*

Shop Clubs Act, 1902 (2 Edw. 7, c. 21), prohibits compulsory membership of unregistered shop clubs or thrift funds, and regulates such as are duly registered.

1. — Alteration of rules—Raising subscription—Expulsion of member—Injunction.

A club which is governed by rules prescribing the amount of the annual subscription, but not containing any provision for the amendment or alteration thereof, cannot by a resolution passed by a majority of the members present at a general meeting raise the amount of the subscription so as to bind existing members, and the Court will interfere by injunction to restrain the expulsion of a dissentient member for refusing to pay the increased subscription. *HARINGTON v. SENDALL* **Joyce J. [1903] W. N. 50 ; [1903] 1 Ch. 921**

— Black smoke—Chimney of private dwelling-house.

See NUISANCE. 2.

— Distress—Goods of underlessee—Proprietary club—Pictures sent by members of club for exhibition and sale on commission.

See DISTRESS. 4.

— Liquor licences duties.

See under REVENUE.

— Order by Court of summary jurisdiction that club be struck off register.

See LICENSING ACTS. 46.

— Pictures sent for exhibition and sale—Proprietary club—Privilege from distress.

See DISTRESS. 4.

1. — Principle upon which clubs are founded—Liability of trustees of club in respect of leases—Liability of the members of a club—Appeal from New South Wales.

The rule that trustees are entitled to be indemnified by their cestuis que trustent against liabilities incurred by their holding trust property does not apply to cases where the nature of the transaction excludes it.

An ordinary club is formed upon the tacit understanding, judicially recognized, that no member as such becomes liable to pay to its funds or otherwise any money beyond the subscriptions required by its rules.

Trustees of a club who have incurred liability under onerous covenants contained in a lease, accepted by them on its behalf, are entitled to indemnity out of any property of the club to which their lien as trustees extends. Its members are not, by reason only of being cestuis que

CLUB—continued.

trustent, personally liable to indemnify them, where there is no rule imposing such liability upon them. *WISE v. PERPETUAL TRUSTEE CO.* **P. C. [1903] A. C. 139**

2. — Rules—Power to alter—Fundamental objects—General meeting—Resolution—Validity.

The H. club was formed in 1868 with express powers to alter any of its rules by the resolution of a prescribed majority. The rules were accordingly altered from time to time, and the subsisting r. 2 read thus : "The club is instituted for the purpose of providing a ground for pigeon-shooting, polo, and other sports surrounded with such accessories and so situated as to render it an agreeable country resort." Pigeon-shooting had been carried on at the club from its commencement down to 1905, prizes being given and competitions arranged by the committee. Polo and other sports had also been carried on for a shorter period. At a general meeting of the club held in May, 1905, a resolution was passed by the requisite majority that as from Dec. 31, 1905, pigeon-shooting should be discontinued at the club. The minority brought an action against the trustees and committee for a declaration that the resolution was null and void, on the ground that it was not competent to the majority, under the guise of altering the rules of the club, to change its fundamental object :—

Held (affirming the decision of *Joyce J.*, [1906] W. N. 45 ; [1906] 1 Ch. 480), that no one of the objects in r. 2 was more a fundamental object of the club, in the sense that it could not be varied or excluded, than any other mentioned in that rule ; that what had been done was within the power of altering the rules ; and that consequently no such declaration as was asked for ought to be made. *THELLUSSON v. VISCOUNT VALENTIA* **C. A. [1907] W. N. 99 ; [1907] 2 Ch. 1**

— Sale by club to agent of member.

See LICENSING ACTS. 55.

— Shop clubs—Friendly societies.

See under FRIENDLY SOCIETIES.

COACH-HOUSE — Improvements — Reimbursement out of capital money.
See SETTLED LAND—Capital Moneys. 5.

COACHMAN—Forage supplied by direction of—Authority to pledge credit of master.
See MASTER AND SERVANT—Liability. 1.

— Negligence—Injury to article bailed—Liability of master—Bailment.

See MASTER AND SERVANT—Liability. 2.

COAL AND COAL MINES.

See under MINES.

— Charterparty—Implied condition that ship-owner will not use ship in manner prejudicial to the charterer—Carriage of bunker coal intended for use on future voyage.

See SHIPPING—Charterparty. 22.

COAL AND COAL MINES—*continued.*

- Mines—Private coal fields—Royalties on coal extracted.
See NATAL. 6.
 - Railway company—Mines—Compensation—Coal required to be left unworked.
See RAILWAY—Mines. 2, 5.
 - Ship—Tonnage—"Deck cargo"—Coal carried on deck for use on voyage.
See SHIPPING—Tonnage. 1.
 - Ship—Mortgage—Freight—Bunker coal.
See SHIPPING—Mortgages. 1.
 - Ship—Warranty of seaworthiness—Provision that charterers should provide coal.
See SHIPPING—Charterparty. 60.
 - Shipping—Charterparty—Implied condition—Carriage of bunker coal intended for use on future voyage.
See SHIPPING—Charterparty. 22.
 - Shipping—Coal—Cargo of—Spontaneous combustion—Liability of ship to contribute to general average.
See SHIPPING—Average. 1.
 - Warranty of seaworthiness, Breach of—Steamship insufficiently provided with coal.
See INSURANCE (MARINE). 33.
 - Weights and measures.
See under WEIGHTS AND MEASURES.
 - Workmen's compensation—Custom to receive allowance coal during incapacity.
See MASTER AND SERVANT—Compensation. 33.
- COAL DUTY**—Estate duty—Conversion of coal duty into annuity—Redemption of annuity—Purchase of real estate.
See REVENUE—Estate Duty. 12.

COALING—Vessel employed in coaling ships of navy—King's ship—Pilotage dues—Liability of master.
See SHIPPING—King's Ship. 1.

CO-DEFENDANTS—Costs.
See SHIPPING—Practice. 5.

— Costs—Taxation—Judgment against one defendant—Practice.
See COSTS. 67.

CODICIL—Probate—Will.
See under PROBATE—Codicil.

— Will.
See under WILL—Codicil.

COERCION—Adultery of petitioner brought about under duress and by coercion of the husband.
See DIVORCE—Practice. 30.

COHABITATION—Ground for cessation of—Misconduct on part of complainant short of matrimonial offence.
See DIVORCE—Desertion. 4.

— Presumption from cohabitation—Marriage—Evidence.
See MARRIAGE. 6.

COHABITATION—*continued.*

- Resumption of cohabitation—Settlement on children of marriage.
See SEPARATION DEED. 1.
- Trust for wife during cohabitation—Validity—Post-nuptial settlement.
See SETTLEMENT. 2.

COLLATERAL AGREEMENT—Lease under seal—Evidence, Inadmissibility of.
See LANDLORD AND TENANT. 32.

— Parol warranty that drains are in order.
See LANDLORD AND TENANT. 31.

COLLATERAL COVENANT—Covenant running with the land—Covenant by lessor to perform covenants of head lease.
See LANDLORD AND TENANT. 26.

— Enlargement for quiet enjoyment.
See LANDLORD AND TENANT. 26.

COLLATERAL SECURITY—Surety—Mortgage.
See PRINCIPAL AND SURETY. 2A.

COLLECTING SOCIETIES AND INDUSTRIAL ASSURANCE COMPANIES—Disputes—County court jurisdiction.
See JUSTICES. 10.

— Justices' jurisdiction.
See INSURANCE (LIFE). 7.

— Life insurance—Notice of transfer.
See INSURANCE (LIFE). 18.

COLLECTOR—Poor-rate collector (Ireland)—Remuneration—Transfer of existing officers to county council.
See RATES. 9.

COLLEGE.
See under UNIVERSITY.

COLLIERY—Right of lessee to sink shaft in land of lessor not demised—Purchase by railway company.
See LANDS CLAUSES ACTS. 6.

COLLIERY GUARANTEE—Exceptions—Charterparty.
See SHIPPING—Charterparty. 52.

COLLISION—Collision.
See under SHIPPING—Collision.

COLONIAL STOCK.

Colonial Stocks—*R. S. C., July, 1903.* Reprint from *W. N. 1903 (July 25)*, p. 217. *See CURRENT INDEX, 1903, p. lxxvii.*

Colonial Stock Act, 1900—Treasury Orders dated Dec. 6, 1900, Sept. 25, 1905, and Oct. 24, 1905, under s. 2 of the Colonial Stock Act, 1900 (63 & 64 Vict. c. 62).—*See CURRENT INDEX, 1905, p. lxiv.*

Australia (South)—Colonial Stock Act, 1900 (63 & 64 Vict. c. 62)—Notice given in respect of South Australia Inscribed Stock, dated Nov., 1906. Reprint from *W. N. 1906 (Dec. 8)*, p. 329. *See CURRENT INDEX, 1906, p. lxix.*

COLONIAL STOCK—continued.

Australia (South)—Colonial Stock Act, 1900 (63 & 64 Vict. c. 62)—Notice, dated Dec., 1909, given in respect of South Australia 3½ per cent. Inscribed Stock (1924); South Australia 3½ per cent. Inscribed Stock (1934). Reprint from W. N. 1910 (Jan. 1), p. 1. See CURRENT INDEX, 1910, p. xc.

Australia (Western)—Colonial Stock Act, 1900 (63 & 64 Vict. c. 62), s. 2—Notice dated Mar. 27, 1907, given in respect of Western Australia 3½ per cent. Inscribed Stock (1927—1947). Reprint from W. N. 1907 (April 6), p. 91. See CURRENT INDEX, 1907, p. lxx.

Australia (Western)—Colonial Stock Act, 1900 (63 & 64 Vict. c. 62)—Notice given in respect of Western Australian 3½ per cent. Inscribed Stock (1935—1955). Reprint from W. N. 1909 (Oct. 2), p. 321. See CURRENT INDEX, 1909, p. ciii.

Canada—Colonial Stock Act, 1900 (63 & 64 Vict. c. 62), s. 2—Notice, dated June 20, 1908, given in respect of Dominion of Canada 3½ per cent. Stock (1930—1950). Reprint from W. N. 1908 (June 27), p. 213. See CURRENT INDEX, 1908, p. lxxiii.

Canadian Pacific Railway—Colonial Stock Act, 1900 (63 & 64 Vict. c. 62)—Notice, dated Aug. 22, 1907, given in respect of Dominion of Canada Inscribed Stock of the Canadian Pacific Railway 3½ per cent. Land Grant Loan, 1938. Reprint from W. N. 1907 (Aug. 31), p. 245. See CURRENT INDEX, 1907, p. lxx.

Ceylon—Colonial Stock Act, 1900 (63 & 64 Vict. c. 62)—Notice, dated Mar. 17, 1910. Addition to List of Stocks under s. 2. Ceylon Government 3½ per cent. Inscribed Stock (1934—1959). Reprint from W. N. 1910 (Mar. 26), p. 99. See CURRENT INDEX, 1910, p. xc.

Gold Coast—Colonial Stock Act, 1900 (63 & 64 Vict. c. 62)—Notice, dated July 17, 1909, given in respect of Gold Coast Government 3½ per cent. Inscribed Stock (1934—1959). Reprint from W. N. 1909 (July 24), p. 277. See CURRENT INDEX, 1909, p. ciii.

Lagos—Southern Nigeria (Lagos)—Colonial Stock Act, 1900 (63 & 64 Vict. c. 62), s. 2. With reference to the notice dated April 25, 1905, given in respect of "Lagos 3½ per cent. Inscribed Stock (1930—1955)," the name of the above Stock has been changed to "Southern Nigeria (Lagos) 3½ per cent. Inscribed Stock (1930—1955)." Reprint from W. N. 1907 (Sept. 28), p. 261. See CURRENT INDEX, 1907, p. lxx.

Mauritius—Colonial Stock Act, 1900 (63 & 64 Vict. c. 62)—Notice given in respect of Mauritius Inscribed Stock, dated Mar. 24, 1906. Reprint from W. N. 1906 (April 7), p. 99. See CURRENT INDEX, 1906, p. lix.

New South Wales—Colonial Stock Act, 1900 (63 & 64 Vict. c. 62), s. 2—Notice, dated Dec. 28, 1906, given in respect of New South Wales 3½ per cent. Stock (1930—1950). Reprint from W. N. 1907 (Jan. 5), p. 1. See CURRENT INDEX, 1907, p. lix.

COLONIAL STOCK—continued.

Newfoundland—Colonial Stock Act, 1900 (63 & 64 Vict. c. 62)—Notice, dated Aug. 26, 1910, given in respect of Newfoundland 3½ per cent. Inscribed Stock, 1910. Reprint from W. N. 1910 (Sept. 3), p. 280. See CURRENT INDEX, 1910, p. xc.

Straits Settlements—Colonial Stock Act, 1900 (63 & 64 Vict. c. 62)—Notice, dated July 30, 1907, given in respect of Straits Settlements Government 3½ per cent. Inscribed Stock (1937—1967). Reprint from W. N. 1907 (Aug. 10), p. 231. See CURRENT INDEX, 1907, p. lxx.

Colonial Stock Act, 1900—Treasury List of Colonial Stocks in respect of which the provisions of the Act are for the time being complied with, 1909 (T.—Miscellaneous). Price 3d.

COLONY (BRITISH).

Colonial Acts Confirmation Act, 1901 (1 Edw. 7, c. 29), confirms certain Acts of Colonial Legislature.

Colonial Marriages (Deceased Wife's Sister) Act, 1906 (6 Edw. 7, c. 30), is an Act to declare the law with respect to a marriage between a man and his deceased wife's sister domiciled in parts of the British Possessions where such a marriage is legal.

Evidence (Colonial Statutes) Act, 1907 (7 Edw. 7, c. 16), is an Act to facilitate the admission in evidence of Statutes passed by the Legislatures of British possessions and protectorates, including Cyprus.

Naval Establishments in British Possessions Act, 1909 (9 Edw. 7, c. 18), is an Act to make better provision respecting Naval Establishments in British Possessions.

Colonial Naval Defence Act, 1909 (9 Edw. 7, c. 19), is an Act to amend the Colonial Naval Defence Act, 1865.

Prisoners—O. in C. applying Colonial Prisoners Removal Act, 1884, to Protectorate of Northern and Southern Nigeria. St. R. & O. 1902, Nos. 204, 205.

— Appeals from the Colonies.

See under PRIVY COUNCIL.

— Colonial death duties—Will—Direction to pay debts out of residue—Specific devise of Colonial property—Incidence of duty.

See WILL—Colonial Duties. 1.

— Criminal law.

See under CRIMINAL LAW—Colonies.

— Domicil.

See under CONFLICT OF LAWS.

— Foreign jurisdiction.

See under FOREIGN JURISDICTION.

— Income tax—Interest from Colonial investments—Remittances not identified as capital.

See REVENUE—Income Tax. 26.

COLONY (BRITISH)—*continued.*

- Income tax, Relief from, on insurances with Colonial companies.
See Finance Act, 1904 (4 Edw. 7, c. 7), s. 9.
- Jurisdiction, Defendant within — Action relating to land in Crown Colony.
See JURISDICTION. 1.
- Marriage, Colonial — Malta — Evidence of validity—Practice.
See MARRIAGE. 3.
- Mortmain—English law, including Mortmain Act, 1736, adopted in colony.
See CONFLICT OF LAWS. 14.
- Notaries.
See under NOTARIES.
- Patents.
See under PATENT—Colonies. 1.
- Privy Council appeals.
See under PRIVY COUNCIL.
- Probate—Colonial probate—Limited grant—Resealing.
See PROBATE—Colonies.
- Savings banks, transfer of deposits to or from Colonial.
See Savings Bank Act, 1904 (4 Edw. 7, c. 8), s. 12.
- Solicitors.
See under SOLICITOR—Colonial Solicitors.
- Statutory declarations made in Colonies—Admissibility.
See EVIDENCE. 3.

COLUMBIA—British Columbia, Laws of.
See under CANADA.

COMMERCIAL LIST—Appeal—Practice.
See APPEAL. 4.

COMMISSION—Agency commission—Profits on sales in London—Transactions of purchase in the Colony.
See NEW ZEALAND. 21.

— Auctioneer's commission.
See under AUCTION.

— Auctioneer's—Sale by Court—Sale effected subsequently to auction.
See AUCTION. 5.

— Broker and client—Purchase of shares—"Net" charge—Secret profit.
See STOCK EXCHANGE. 1.

— Capital money—Obtaining tenant.
See SETTLED LAND—Capital Moneys. 1.

— Charterparty — Freight — Loss — Saving of charterparty hire.
See INSURANCE (MARINE). 7.

— Company—Reconstruction—Sale of undertaking—Consideration—Ultra vires.
See COMPANY—Reconstruction. 8.

— Company.
See under COMPANY—Commission.

COMMISSION—*continued.*

1. — Contract—Personal contract—Death of party—Commission payable "as long as we do business."

The debts, agreed with W. to pay him 5 per cent. commission on all accounts introduced by him so long as they did business with the persons he placed on their books:—

Held, that the commission on accounts introduced by W. continued to be payable to his executors after his death so long as the debts continued to do business with the persons introduced by him. **WILSON v. HARPER**

Neville J. [1908] W. N. 141 ; [1908] 2 Ch. 370

— Costs—Taxation—Collection of rents.
See SOLICITOR—Costs. 33.

— Issue of shares—Option to subscribers to take further shares.
See COMPANY—Shares. 13.

— Issue of shares at a discount.
See COMPANY—Shares. 15.

— Lease—Charges of estate agent for procuring—Application of capital money.
See SETTLED LAND—Leases. 1.

— Payment of commission to agent—Purchase and resale—Costs—Taxation.
See SOLICITOR—Costs. 10, 11.

— Payment of, in consideration of subscribing for shares.
See COMPANY—Shares. 6, 7.

— Principal and agent—Agreement by vendors to pay commission to purchaser's agent—Right to rescind.
See VENDOR AND PURCHASER — Rescission. 1.

— Principal and Agent—Commission on sale of mining property—Sale completed on terms disapproved by agent.
See CANADA—Principal and Agent. 1.

— Principal and agent—Numerous transactions—Dishonesty in some—Right to retain commission—Account of profits.
See PRINCIPAL AND AGENT. 13.

— Right to retain commission—Secret profit.
See PRINCIPAL AND AGENT. 11.

— Secret — Sub-agent—Privity of contract—Fiduciary relation—Money had and received.
See PRINCIPAL AND AGENT. 9.

— Secret profit received by agent without fraud—Right of agent to retain his commission.
See PRINCIPAL AND AGENT. 11.

— Shares, Issue of—Payment of commission for placing shares—Underwriting agreement.
See COMPANY—Shares. 14.

— Sole agent.
See PRINCIPAL AND AGENT. 13.

— Stock Exchange—Broker and client—Purchase of shares—"Net" charge—Secret profit.
See STOCK EXCHANGE. 1.

COMMISSION—*continued*.

— Surcharge—Taxation—Disclosure—Duty to advise—Bargain and client.
See **SOLICITOR**—**Costs**. 10.

— Trustee receiving commission from co-trustee—Fraud of co-trustee acting as broker for the trust—Liability.
See **TRUSTEE**—**Fraud**. 1.

COMMISSION TO TAKE EVIDENCE—Application for—Divorce—Petition filed but not served—Evidence de bene esse.
See **DIVORCE**—**Practice**. 18.

COMMISSIONAIRES—Bequest to committee of Corps of—Voluntary association—Charity—Perpetuity.
See **WILL**—**Perpetuity**. 1.

COMMITTAL.

See also under **ATTACHMENT**.

— Belgium, Crime committed in—Arrest under order of committal after expiration of prescriptive period.
See **EXTRADITION**. 1.

— Extradition treaty with Germany—Additional charges more than two months after apprehension.
See **EXTRADITION**. 2.

— Jurisdiction—Judgment summons, Application for—Existing committal order against co-defendant.
See **COUNTY COURT**—**Jurisdiction**. 1.

— Non-payment of rates—Release—Jurisdiction—Punitive order.
See **BANKRUPTCY**—**Committal**. 1.

— Receiving order in lieu of—Costs in Divorce Court—Order to pay—Default—Judgment summons.
See **BANKRUPTCY**—**Receiving Order**. 2.

— Trustee ordered to lodge in Court money in possession or under control—Actual receipt—Evidence.
See **ATTACHMENT**. 21.

— Undertaking—Order fixing time for compliance, whether necessary.
See **PRACTICE**—**Undertakings**. 6.

— Ward of Court—Jurisdiction—Marriage in contempt.
See **WARD OF COURT**. 1.

— Workmen's compensation—Default in payment—Committal order, Jurisdiction to make.
See **MASTER AND SERVANT**—**Practice**. 13.

COMMITTAL ORDER—Evasion of—Receiving order—Adjudication—Debtor's own petition.
See **BANKRUPTCY**—**Receiving Order**. 1.

— Jurisdiction to make receiving order in lieu of committal order—Absence of evidence of means.
See **COUNTY COURT**—**Jurisdiction**. 4.

COMMITTEE—Lunacy.

See under **LUNACY**.

COMMITTEE OF INSPECTION.

See under **COMPANY**—**WINDING-UP**—**Committee of Inspection**.

COMMON.

Commons Act, 1908 (8 Edw. 7, c. 44), regulates the turning out upon Commons of entire animals.

Crofters Common Grazings Regulation Act, 1908 (8 Edw. 7, c. 50), extends the powers of the Crofters Commission in regard to the regulation of Common Grazings.

Common, England. The Commons Rules June 28, 1909. St. R. & O. 1909, No. 788. Price 1d.

— Inclosure.

See under **INCLOSURE**.

1. — *Compensation for commonable rights—Apportionment—Determination of persons interested—Jurisdiction—Common lands—Lands taken for public undertaking—Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), s. 104—Inclosure Act, 1854 (17 & 18 Vict. c. 97), s. 17.*

The Court dismissed the appeal upon the finding of the arbitrator without giving judgment upon the question of jurisdiction decided by Kekewich J., [1901] W. N. 146; [1901] 2 Ch. 566; C. A. [1902] W. N. 113. **RICHARDS v. DE WINTON. RICHARDS v. EVANS**
C. A. [1903] W. N. 37; [1903] 1 Ch. 507

Note.

This case was referred to by Warrington J., *Salmon v. Edwards*, [1910] 1 Ch. 552.

2. — *Compensation for extinguishment of commonable rights—Common lands—Lands taken for public undertaking—Payment to de facto committee—Application by committee to Board of Agriculture and Fisheries—Dispute as to proper constitution of committee—Action to determine persons interested in compensation—Jurisdiction of Court—Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), ss. 102, 103—Inclosure Act, 1852 (15 & 16 Vict. c. 79), s. 22—Inclosure Act, 1854 (17 & 18 Vict. c. 97), ss. 15, 16, 17—Commonable Rights Compensation Act, 1882 (45 & 46 Vict. c. 15).*

Where under the Lands Clauses Consolidation Act, 1845, and the Inclosure Acts, 1852 and 1854, common lands have been taken for a public undertaking and a committee of commoners has been appointed to receive and has received the compensation payable in respect of the extinguishment of commonable rights, the Board of Agriculture and Fisheries have jurisdiction to entertain an application by the committee under s. 22 of the Act of 1852, without entering into any question as to the appointment or constitution of the committee. It is sufficient that the committee is a de facto committee.

A motion in an action against a de facto committee of commoners by persons suing on behalf of themselves and all other commoners for payment into Court of compensation money in the hands of the committee on the ground that such committee was not properly constituted was

COMMON—continued.

dismissed for want of jurisdiction. *SALMON v. EDWARDS - Warrington J.* [1910] W. N. 68; [1910] 1 Ch. 552

— Presumption of lost grant—Pasturage.
See **PRESCRIPTION**. 2.

3. — *Right of common—Manor—Custom—Stone quarry—Freehold and copyhold tenants—Right to get stone—Court rolls—Evidence.*

In an action for an injunction to restrain the deft. from trespassing on the plt.'s quarry the deft. pleaded that the quarry was part of the waste of a manor of which he was both a freehold and a copyhold tenant, and that by custom of the manor the tenants thereof had a right to get stone from the quarry to be used and spent on their respective tenements. The deft. put in evidence the court rolls, which recorded a presentment dated in 1695, that the freeholders of the manor had a right of getting stone from the waste to be used and spent on their respective tenements :—

Held, that the entry on the rolls was admissible, and was good evidence of the alleged custom, and that such a custom was not unreasonable. *HEATH v. DEANE*

Joyce J. [1905] W. N. 74; [1905] 2 Ch. 86

4. — *Scheme for regulation under Metropolitan Commons Acts—Limits of common as defined by scheme—Binding effect of scheme—Metropolitan Commons Acts, 1866 (29 & 30 Vict. c. 122); 1869 (32 & 33 Vict. c. 107), and Metropolitan Commons (Mitcham) Supplemental Act, 1891 (54 & 55 Vict. c. xvi.).*

Where a scheme for the regulation of a common has been framed and confirmed under the Metropolitan Commons Act, 1866, it is conclusive as to the limits and extent of the common. The owner of any land which is included in the plan embodied in the scheme cannot, after the passing of the Act confirming the scheme, successfully assert his title thereto. *COOK v. MITCHAM COMMON CONSERVATORS*

Farwell J. [1901] 1 Ch. 387

5. — *Scheme made under Metropolitan Commons Acts—Limits of common as defined by scheme—Binding effect of scheme—Injunction.*

The plts. claimed an injunction to restrain the deft. from erecting any wall or building upon any part of the common subject to their jurisdiction.

The plts. were appointed conservators of Chislehurst Common by a scheme made under the Metropolitan Commons Acts of 1866 and 1869. The deft. alleged that he was the owner of a piece of land forming part of the common as defined by the scheme. The plts. alleged that the deft. had purchased the piece of land in question with notice of the scheme and the Act by which it was confirmed, but that he had notwithstanding commenced to build a wall for the purpose of inclosing the land. They consequently brought this action, and now moved for an interim injunction :—

Held, that the plts. were entitled to the order. *CHISLEHURST COMMON CONSERVATORS v. NEWTON*

Chitty J. [1901] 1 Ch. 389, n.

COMMON—continued.

— User in excess of right of—Jurisdiction—Summary conviction on charge of assault—Question as to title to an interest in land.
See **JUSTICES**. 13.

COMMON LANDS.

See under **COMMON**.

COMMON LAW PROCEDURE ACTS—Forfeiture

—Ejectment—Mortgagee of underlease—Relief—Parties—Costs.

See **LANDLORD AND TENANT**. 35.

— Forfeiture for non-payment of rent.

See **LANDLORD AND TENANT**. 38.

COMMON LODGING-HOUSES.

See under **LODGING-HOUSES**.

COMMONABLE RIGHTS COMPENSATION ACT, 1882.

See **COMMON**. 2.

COMMONS, HOUSE OF.

See under **HOUSE OF COMMONS**.

COMMORIENTES—Husband and wife—Grant of administration—Form of oath.

See **PROBATE—Grant of Administration**. 2.

COMMUNION AND COMMUNION TABLE—

Holy Communion.

See under **ECCLESIASTICAL LAW—Holy Communion**.

COMPANY.

See also under **COMPANY—Winding up**.

Fees under the Companies Acts, 1862 to 1900—Alterations and Additions. Reprint from **W. N. 1901 (Jan. 12)**, p. 5. See **CURRENT INDEX**, 1901, p. lxxiii.

Collection of fees. Reprint from **W. N. 1901 (Feb. 9)**, p. 59. See **CURRENT INDEX**, 1901, p. lxxiv.

Costs—Taxation—Draft rules for amalgamation of Taxing Departments of the Supreme Court with a view to uniformity in taxation of costs. Reprint from **W. N. 1901 (Aug. 17)**, p. 251. See **CURRENT INDEX**, 1901, p. ciii.

Companies Acts, 1862-1900—Form E, Summary of capital and shares. Form No. 51, Company limited by shares—Application for a certificate of incorporation to be filed by a company which does not deliver a list of persons who have consented to be directors of the company (s. 2 (2) of the Companies Act, 1900 (63 & 64 Vict. c. 48)). Reprint from **W. N. 1901 (Aug. 31)**, p. 261. See **CURRENT INDEX**, 1901, p. lxxiv.

Companies Act, 1900—Memorandum of satisfaction of mortgage or charge. Reprint from **W. N. 1906 (March 10)**, p. 69. See **CURRENT INDEX**, 1906, p. lxix.

Companies Acts, 1862 to 1900. Table A revised. Regulations for the management of a company limited by shares. Reprint from **W. N. 1906 (Aug. 11)**, p. 233. See **CURRENT INDEX**, 1906, p. lxx.

COMPANY—continued.

Companies Acts, 1862 to 1900. Erratum. In the 74th Clause of Table A, published in the "London Gazette" of July 31, "consolidation" should be substituted for "consideration." Reprint from **W. N. 1906** (Sept. 15), p. 253. See **CURRENT INDEX, 1906, p. lxxviii.**

Companies Act, 1907 (7 Edw. 7, c. 50, is an Act to amend the *Companies Act, 1862 to 1900.*

The Companies Acts, 1862 to 1900—Companies Act, 1862, s. 71—Licence to hold lands—Form substituted for Form F. Reprint from **W. N. 1907** (June 8), p. 209. See **CURRENT INDEX, 1907, p. lxx.**

Company incorporated in a foreign country. Companies Acts, 1862–1907. The Board of Trade prescribes in regard to certified copies and certified translations of documents required by s. 35 of the Companies Act, 1907, to be filed with the Registrar. Reprint from **W. N. 1908** (Feb. 29), p. 69. See **CURRENT INDEX, 1908, p. lxxiii.**

Companies Act, 1908 (8 Edw. 7, c. 12), amends the law with respect to the holding of land by companies incorporated in British Possessions.

Companies Acts, 1862–1907—The Board of Trade, by date Feb. 18, 1908, prescribes in regard to certified copies and certified translations of documents required by s. 35 of the Companies Act, 1907, to be filed with the Registrar. Reprint from **W. N. 1908** (Feb. 29), p. 69. See **CURRENT INDEX, 1908, p. lxxiii.**

Companies Acts, 1862–1907—Fees payable for registering under the Companies Act, 1907:—Mortgages or charges created by a company.

Particulars of a series of debentures.

Appointment of a receiver or manager of the property of a company.

Particulars of the amount outstanding of certain debts.

And for inspecting the register of mortgages and charges.

Reprint from **W. N. 1908** (July 6), p. 217. See **CURRENT INDEX, 1908, p. lxxiv.**

Companies Acts, 1862–1907. Forms prescribed and directed by the Board of Trade and dated June 30, 1908, to be used for the purpose of the Companies Act, 1907 (7 Edw. 7, c. 50). Reprint from **W. N. 1908** (July 11), p. 221. See **CURRENT INDEX, 1908, p. lxxv.**

Fees—Company—Winding-up—Supreme Court Fees—Order dated July 31, 1908. Reprint from **W. N. 1908** (Oct. 24), p. 307. See **CURRENT INDEX, 1908, p. lxxxv.**

Statutes, 1907.

The mistakes in the *Companies Act, 1907*, as originally printed, are the following:—

(1) Page 222, in the heading to Sects. 7 and 8 omit the words "Issue of Shares at a Discount and."

(2) Page 228, Sect. 15.—(1) read "Where either," instead of "Whether either."

Substituted pages have been issued in accordance with the notice given in the **WEEKLY NOTES of December 28, 1907.**

COMPANY—continued.

Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), consolidates the *Companies Act, 1862*, and the Acts amending it.

Assurance Companies Act, 1909 (9 Edw. 7, c. 49), is an Act to consolidate and amend and extend to other companies carrying on assurance or insurance business the law relating to life assurance companies, and for other purposes connected therewith.

Companies (Winding-up) Rules, 1909, and the Limited Partnerships (Winding-up) Rules, 1909.

A copy of these Rules was presented gratis by the Council to subscribers to the entire series of the Law Reports, 1909, in the United Kingdom. These copies were delivered with the May Parts of the Law Reports. **W. N. 1909** (April 24), p. 141.

Rules of the Supreme Court—Procedure on applications for confirmation by the Court of the reduction of the capital of companies under the Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69). Reprint from **W. N. 1909** (May 15), p. 183. See **CURRENT INDEX, 1909, p. cliii.**

Companies (Converted Societies) Act, 1910 (10 Edw. 7 & 1 Geo. 5, c. 23), is an Act to remove doubts as to the validity of the conversion of certain societies into companies.

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- Payment out of Court—Evidence—Production of bond of company. *See LANDS CLAUSES ACTS. 32.*
- Powers of company—Formation and investment of reserve fund—Purchase by director and resale to company. *See CANADA—Company. 4.*
- Railway companies. *See under RAILWAY.*
- Receiver, Use or occupation by—Head-lease—Rent—Breach of covenant—Deben-ture trust deed. *See MORTGAGE—Receiver. 1.*
- Re-entry on liquidation, Condition for—Solvent company—Voluntary liquidation—Forfeiture. *See LANDLORD AND TENANT. 75.*
- Security—Bond of limited company—Ultra vires. *See RECEIVER. 14.*
- Will—Partnership—Conversion into company—Agreement by executors—Jurisdiction to sanction. *See TRUSTEE—Investments. 12.*

Accounts.

- 1. — *Balance-sheet—Reserve fund—Secrecy—Information withheld from shareholders—*

COMPANY (Accounts)—continued.*Auditors not to disclose information—Ultra vires—Companies Act, 1900 (63 & 64 Vict. c. 48), ss. 21, 22, 23.*

A co. under the Companies Acts has no power to make regulations precluding its auditors from availing themselves of all the information to which under the Companies Act, 1900, they are entitled as material for the report to be made by them to the shareholders as to the true state of the co.'s affairs.

Resolutions were passed by a co. to alter their articles by inserting a provision that the directors might set aside out of profits (without disclosing the fact) sums to form an internal reserve fund; that this fund need not be shewn in or disclosed by the balance-sheet, and that no information need be given to the shareholders as to its amount, investment or application; that the directors might invest it as they thought fit without being liable for loss in consequence of such investment; that they might apply it for any purposes which they considered would advance the interests of the co.; and that, while the particulars as to this fund were to be disclosed to the auditors, it was to be the auditors' duty not to disclose any information with regard to it to the shareholders or otherwise:—

Held, that these resolutions were ultra vires as being inconsistent with the obligations imposed upon auditors by s. 23 of the Companies Act, 1900. *NEWTON v. BIRMINGHAM SMALL ARMS Co., Ltd.* - **Buckley J. [1906] W. N. 146; [1906] 2 Ch. 378**

Agent.

- Limited company appointed—Agent—Commission and salaries—Articles of association—Accounts. *See PRINCIPAL AND AGENT. 6.*

Allotment.

- Irregular allotment—Prospectus—Cancellation of allotment—Rescission—Ultra vires. *See COMPANY—Prospectus. 1.*

1. — *Shares—Allotment—Minimum subscription—Application money—"Paid to and received by the company"—Uncleared and dishonoured cheques—Irregular Allotment—Companies Act, 1900 (63 & 64 Vict. c. 48), ss. 4, 5.*

In May, 1905, the directors of a new co. went to allotment on the minimum subscription fixed by the prospectus, and allotted to the plt. the shares for which he had applied. At the date of this allotment the directors had received applications for the full minimum subscription, and cheques for the whole of the application money, but many of these cheques had not been cleared and three of them were not paid on presentation, though they were at once made good by an underwriting co. On an application by the plt. for an interim injunction to restrain the co. from dealing with his application money:—

Held (affirming the decision of Swinfen Eady J., [1905] W. N. 105), that the allotment was irregular and voidable, and that the plt. was entitled to an interim injunction.

COMPANY (Allotment)—continued.

Glasgow Pavilion, Ltd. v. Motherwell, (1903) 6 F. 116, distinguished.

Per Swinfen Eady J., and *semble per Vaughan Williams and Cozens-Hardy L.JJ.* also: According to the true construction of s. 4 of the Companies Act, 1900, it is a condition precedent to a valid allotment that the whole of the application money should have been paid to and received by the co. in cash. Any means by which money can be remitted may be used, but the remittances must be cleared and the actual cash received by the co. before allotment. *MEARS v. WESTERN CANADA PULP AND PAPER CO.*

C. A. [1905] W. N. 120 ; [1905] 2 Ch. 353

Note.

Applied by *Swinfen Eady J.*, *In re National Motor Mail-Coach Co.*, [1908] 2 Ch. 228. *See neat Case.*

Referred to by *Neville J.*, *Burton v. Bevan*, [1920] 2 Ch. 240. *See No. 3, below.*

2. — Minimum subscription — Application money—Paid to and received by the Company—Cheques cleared and honoured after allotment—Delay in presentment — Irregular allotment—Notice of avoidance within one month of statutory meeting—Legal Proceedings after one month—Companies Act, 1900 (63 & 64 Vict. c. 48), ss. 4, 5.

Where a cheque for application money for shares forming part of the minimum subscription for allotment is received on the day of allotment, but not paid into the co.'s bank until some days later, the application money cannot be treated as "paid to and received by the co." before allotment within s. 4 of the Companies Act, 1900, although the cheque is duly honoured.

Mears v. Western Canada Pulp and Paper Co., [1905] 2 Ch. 353, 360, applied.

Glasgow Pavilion, Ltd. v. Motherwell, (1903) 6 F. 116, distinguished.

Section 5, which renders an allotment to an applicant in contravention of s. 4 "voidable at the instance of the applicant within one month after the holding of the statutory meeting of the co. and not later," does not require actual legal proceedings to be taken within the month as a condition of avoidance. Notice of avoidance within the month followed by prompt legal proceedings after the month is sufficient.

Semble, the notice need not specify the ground of avoidance. *In re NATIONAL MOTOR MAIL-COACH CO., ANSTIS' and McLEAN'S CLAIMS* - **Swinfen Eady J. [1908]**

W. N. 153 ; [1908] 2 Ch. 228

Note.

In re National Motor Mail-Coach Co., Clinton's Claim., C. A. [1908] 2 Ch. 515. *See Company—Costs.* 1, 2.

3. — Proceeding to allotment—Proportion of shares applied for—Application money not paid—Liability of directors—"Knowingly contravene"—Companies Act, 1900 (63 & 64 Vict. c. 48), ss. 4, 5.

A co. issued a prospectus offering 20,000 l. preference shares to the public and stating that no allotment would be made unless 15,000 shares had been applied for and the application money

COMPANY (Allotment)—continued.

paid. The plt. applied for 100 shares. The directors proceeded to allotment when 15,000 shares had been applied for, but in some cases the application money had only been paid by cheques which had not been cleared. The plt. paid the full amount of his shares. The co. went into liquidation, and it then appeared that the co. was insolvent and the shares worthless. The plt. brought this action against one of the directors claiming repayment of the money paid on application for the shares under s. 4 and compensation for loss under s. 5 of the Companies Act, 1900. The deft. was not present at the meeting of the board at which the allotment was made, but was present at subsequent meetings at which the minutes were confirmed and a resolution passed to apply for a certificate to commence business:—

Held that, *Mears v. Western Canada Pulp and Paper Co.*, [1905] 2 Ch. 353, having decided that payment by cheque is not payment within s. 4 of the Companies Act, 1900, until the cheque is cleared, there had been a contravention of the Act.

Section 4 applies only before allotment. After allotment is once made, whether in contravention of the Act or not, it is only voidable at the option of the shareholder, and the co. cannot pay back the application money; the only liability of the directors after allotment is the liability to make good the loss under s. 5, sub-s. 2, of the Act. Under that section, "knowingly contravene" means contravene with knowledge of the facts. A director cannot escape liability by ignorance of the law.

But a director does not make himself responsible for an act done at a meeting at which he was not present, and which is complete without further confirmation, merely by voting at a subsequent meeting for the confirmation of the minutes.

Held, also, on all the evidence, that the deft. was not aware of the facts and had not knowingly contravened the Act. **BURTON v. BEVAN - - Neville J. [1908] W. N. 140 ; [1908] 2 Ch. 240**

4. — Prospectus—Minimum subscription—Company—Articles of Association—Companies Act, 1900 (63 & 64 Vict. c. 48), ss. 4, 10.

The liquidator of a co. applied for a balance order against a contributory, who raised the defence that the "minimum subscription" referred to in ss. 4 and 10 of the Companies Act, 1900, was not properly stated in the articles of association, or in the co.'s prospectus. Clause 8 of the articles provided as follows: "If the company shall offer any of its shares to the public for subscription, the directors shall not make any allotment thereof unless and until at least 10 per cent. of the shares so offered shall have been subscribed, and the sums payable on application shall have been received by the company; but this provision is no longer to apply after the first allotment of shares offered to the public for subscription has been made." The co. issued a prospectus offering shares for public subscription, and containing only the following statement as to the minimum subscription:—"The minimum subscription is fixed

COMPANY (Allotment)—continued.

by the articles of association at 10 per cent. of the shares offered."

Neville J. held that the statement was in each case sufficient. There was a statement of an amount, which was ascertained as soon as it was known what shares the directors were offering for public subscription. The real intention of s. 4, taken with s. 10, was that the public, when they were asked to subscribe for shares, should be notified what was the minimum subscription on which the directors could proceed to allotment. In the present case the public was sufficiently notified, and the defence set up failed. *In re WEST YORKSHIRE DARRACQ AGENCY, LD.* - Neville J. [1908] W. N. 236

5. — "*The prospectus*"—*Minimum Subscription not stated—More than one prospectus—Application for shares—Voidability—Companies Act, 1900 (63 & 64 Vict. c. 48), s. 4, sub-ss. 1, 4; s. 5.*

The expression "the prospectus" in s. 4, sub-ss. 1, 4, of the Companies Act, 1900, means that document offering capital to the public upon the basis of which the applicant has actually subscribed.

The statement of the minimum subscription on which the directors may go to allotment, which the section requires to be inserted in the prospectus, must be an express statement, and not one which can be implied from other statements in the prospectus. *ROUSSELL v. BURNHAM* - Parker J. [1908] W. N. 228; [1909] 1 Ch. 127

Amalgamation.

— Companies — Memorandum of association—Ultra vires—Sale of business to another company—Dissenting debenture-holders, Rights of.

See COMPANY—Memorandum. 9.

— Company — Memorandum of association—Reconstruction.

See COMPANY—Reconstruction. 1.

— Company—"Winding-up for the purpose of reconstruction or amalgamation"—"Amalgamation."

See COMPANY—Reconstruction. 6.

— Railway company—Dock company—Water—Powers—Ultra vires.

See RAILWAY—Amalgamation. 1.

— Reconstruction and Amalgamation—Unfair scheme—Dissentient shareholders.

See COMPANY—WINDING-UP—Practice. 24.

— Reconstruction of company.

See under COMPANY—Reconstruction.

Arrangements.**(Scheme of Arrangement.)**

— Costs—Charge on property preserved.

See SOLICITOR—Costs. 8.

1. — Creditors—Agreement for composition—Registration—Deeds of Arrangement Act, 1887 (50 & 51 Vict. c. 57), ss. 4, 5.

The Deeds of Arrangement Act, 1887, does not apply to arrangements made by limited cos.

COMPANY (Arrangements)—continued.

An agreement was made between the co. and some of its creditors, whose names were to be given in a schedule to the agreement, for the payment by instalments, through a trustee, of the debts due to them. A list of these creditors was given to the trustee; several of them signed the schedule, and nearly all assented to it. The agreement was not registered under the Deeds of Arrangement Act, 1887. If all the instalments had been paid the trustee would have received 936*l.*, and the debts of the creditors mentioned in the list amounted to 933*l.* 10*s.* The co. paid 216*l.* to the trustee and then made default. The debenture-holders of the co. claimed the whole, and the other creditors of the co. claimed a share of 216*l.* The co. was not in liquidation:—

Held, that the Act of 1887 did not apply to limited cos.; the agreement was not void for want of registration; that its operation was not confined to the particular creditors who had assented to it; and that all the creditors of the co. were entitled to take advantage of it. *In re RILEYS, LD.* HARPER v. RILEYS

Byrne J. [1903] W. N. 135; [1903] 2 Ch. 590

— Creditors, Arrangement with—Judgment—Staying proceedings.

See COMPANY—Staying Proceedings. 1.

2. — Debenture-holders and guarantors — Scheme of arrangement—Preference to assets of company.

The House, holding that the question turned on the construction of the documents in the case, affirmed the decision of the First Division of the Ct. of Sess. dated Feb. 20, 1908, and dismissed the appeal with costs. *LANCASHIRE TRUST AND MORTGAGE INSURANCE CORPORATION v. MARTIN* H. L. (Sc.) [1909] W. N. 76

3. — Practice—Order to summon meeting—Form of proxy—Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), s. 120.

In order to insure the issue of proper forms of proxies for meetings ordered to be summoned under s. 120 of the Companies (Consolidation) Act, 1908, the order directing the meeting to be summoned should invariably provide that "the proxies are to be in the form officially authorised by Vaughan Williams J. in the Practice Direction, [1896] W. N. 56, or in such other form as may be settled in chambers."

N.B.—The full form is set out in Palmer's Company Precedents, 9th ed., pt. 2, p. 901, Form 879, and the material parts in Buckley on Companies, 9th ed., p. 276. PRACTICE DIRECTION - Swinfen Eady J. [1910] W. N. 154

— Voluntary winding-up—Scheme of arrangement involving reduction of capital.

See COMPANY—Reduction of Capital. 21.

4. — Winding-up—Scheme of arrangement with creditors and contributories—Sanction of Court—Dissent of class of contributories having no interest in assets—Joint Stock Companies Arrangement Act, 1870 (33 & 34 Vict. c. 104), s. 2—Companies Act, 1900 (63 & 64 Vict. c. 48), s. 24.

Under s. 2 of the Joint Stock Companies Arrangement Act, 1870, combined with s. 24 of

COMPANY (Arrangements)—continued.

the Companies Act, 1900, the Court has jurisdiction to sanction a scheme of arrangement with the creditors and contributories of a co. in liquidation, notwithstanding the dissent of one class of contributories, if the Court is satisfied that having regard to the value of the co.'s assets that class has no interest in them.

Under such circumstances the scheme must be treated as made between the co. and their creditors, and between the co. and the other classes of contributories, and a provision made by it for the benefit of the dissentient class must be regarded as in the nature of a gift or concession to them.

Decision of Buckley J. affirmed. *In re TEA CORPORATION, LD. SOBSBIE v. SAME CO.*

C. A. [1903] W. N. 198; [1904] 1 Ch. 12

5. — Winding-up of Company—Meetings of members—Separate classes—Fully-paid shares—Shares partly paid with uncalled balance paid in advance of calls—Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), s. 120.

For the purpose of class meetings of members summoned in a winding-up to approve a scheme of arrangement under s. 120 of the Companies (Consolidation) Act, 1908, holders of shares partly paid with the uncalled balance paid in advance of calls and carrying interest are a different class to holders of fully paid shares.

In re Exchange Drapery Co., (1888) 38 Ch. D. 171, 175, and *In re Wakefield Rolling Stock Co.*, [1892] 3 Ch. 165, 174, applied. *In re UNITED PROVIDENT ASSURANCE CO.*

Swinfen Eady J. [1910] W. N. 199; [1910] 2 Ch. 477

Articles of Association.

See under COMPANY—Memorandum.

Auditors.

— Reserve fund—Secrecy—Auditors not to disclose information—Ultra vires.
See COMPANY—Accounts. 1.

Bankers.

— Cheque drawn by directors on behalf of company—Forgery—Negligence—Return of pass-book without objection—Settled account.
See BANKER. 1.

— Rights of bankers—Transfer of money from company's account to its managing director's overdrawn private account.
See VICTORIA. 1.

Bankruptcy.

— Arrangement—Debtor's share in a partnership—Partnership turned into a limited company—Power of trustee to accept shares in company for debtor's interest.
See BANKRUPTCY—Arrangement. 5.

— Bankruptcy petition—Presentation by "officer" of the company—Clerk.
See BANKRUPTCY—Practice. 11.

1. — Bankrupt shareholder—Unpaid shares—Fully paid shares—Articles of company—Company's lien on unpaid shares—Proof on unpaid

COMPANY (Bankruptcy)—continued.

shares—Subsequent alteration of articles—Lien on fully paid shares—Amendment of proof—Inadvertence—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 50—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), Sched. I., r. 10; Sched. II., rr. 13, 14.

One of the articles of a limited liability co. provided that the co. should have a paramount lien on all the shares not fully paid of any member for all the debts and liabilities due from such member of the co. A member of the co. who held partly paid-up shares and also fully paid-up shares became bankrupt. The co. proved in his bankruptcy for the amount due to them on his partly paid-up shares without claiming any lien under the article, and their proof was admitted. Subsequently the co., under s. 50 of the Companies Act, 1862, passed a resolution altering the article by omitting the words "not fully paid up," such alteration having a retrospective effect, and giving them a lien on the fully paid shares: *see Allen v. Gold Reefs of West Africa, Ltd.*, [1900] 1 Ch. 656. The co. afterwards went into liquidation, and it appeared that there would be surplus assets to distribute on the fully paid-up shares. The liquidator applied in the bankruptcy that the co. might be at liberty to amend their proof, or to withdraw it and lodge a fresh one, and set up their lien on the fully paid-up shares:—

Held, that they were not entitled to do so, for that it was not a case of inadvertence. *In re ROWE. Ex parte WEST COAST GOLD FIELDS, LD.*

Bigham J. [1904] W. N. 125; [1904] 2 K. B. 489

— Company—Winding-up—Fraudulent preference—Date of act of bankruptcy.
See COMPANY—WINDING-UP—Preference. 4.

— Fraudulent assignment—Insolvent trader—Transfer of his business and another's to company for shares and debentures.
See BANKRUPTCY—Fraud. 1.

— Fraudulent preference—Voluntary followed by compulsory winding-up—Date of act of bankruptcy.
See COMPANY—WINDING-UP—Preference. 4.

— Preferential payments in bankruptcy—Salary—"Clerk or servant."
See COMPANY—Debentures. 15.

— Mutual dealings—Set-off—Receiver of debtor's interest in debenture stock.
See BANKRUPTCY—Set-off. 4.

— Proof—Director of company and member of partnership—Misappropriation—Double proof—Partnership—Agents for a company—One partner director of company.
See BANKRUPTCY—Proof. 3.

— Receiver and manager—Insufficient estate—Costs—Priorities—Bankruptcy of receiver.
See COMPANY—Receiver. 1.

2. — Shareholder, Bankruptcy of—Surplus assets—Distribution among shareholders—Bankruptcy of shareholder—Proof by company for

COMPANY (Bankruptcy)—continued.

unpaid calls and liability to future calls—Receipt of dividend—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 133—Company—Winding-up.

The holder of 1*l.* shares in a limited co., on which 10*s.* per share had been paid, became bankrupt, and the co. proved in the bankruptcy for a call of 1*s.* per share, which had been made just before the bankruptcy, and for the bankrupt's liability in respect of the uncalled 9*s.* per share. The proof was admitted, and the trustee in the bankruptcy paid a dividend of 1*s.* 6*d.* in the pound. It was expected that a further dividend of 1*s.* 6*d.* in the pound would be paid. The co. went into voluntary liquidation, and, after satisfying its debts and liabilities, there remained surplus assets in the hands of the liquidator:—

Held, that the bankrupt's shares could not by reason of the proof in the bankruptcy be treated as fully paid shares for the purpose of the distribution of the surplus assets, but that the holders of the other shares, which were in fact paid up in full, were alone entitled to share in the surplus assets until the amount paid on their shares respectively was reduced to that which had been in fact paid on the bankrupt's shares.

Decision of Buckley J., [1905] 1 Ch. 597, affirmed.

Ex parte Hornby, (1819) Buck, 351; and *Stammers v. Elliott*, (1868) L. R. 3 Ch. 195, explained and distinguished. *In re WEST COAST GOLD FIELDS, LD.* ROWE'S TRUSTEE'S CLAIM C. A. [1905] W. N. 157; [1906] 1 Ch. 1

Bond.

1. — *Debenture-holders' action—Receiver and manager—Bond—Sureties—Default—Rights of trade creditors.*

On Aug. 27, 1902, Watkins was appointed receiver and manager in the above debenture-holders' action. On Sept. 15, 1902, Watkins and his sureties gave a bond for 10,000*l.* to two Chancery Masters conditioned to be void if Watkins should duly account for what he received or became liable to pay or account for as receiver and manager. On Dec. 16, 1902, a compulsory winding-up order was made. During his period of office Watkins incurred liabilities to trade creditors for goods supplied, of which the estate had the benefit. On Feb. 11, 1903, a new receiver was appointed, and was ordered to make provision for the liabilities properly incurred by Watkins. Proceedings to ascertain these liabilities then took place. Vide *In re British Power Traction and Lighting Co., Ltd.*, [1906] 1 Ch. 497; [1907] 1 Ch. 528.

By the present summons the indemnity creditors asked that a certificate should issue finding that there was a sum of 400*l.* due from Watkins, and that he had made default in payment of that sum, and that the sureties were liable to make good that default.

Swinfen Eady J. said that in substance the question was whether the loss of the 400*l.* should fall on the creditors or the sureties. The creditors' right was to sue Watkins for the whole 900*l.*, but they could only come against the

COMPANY (Bond)—continued.

estate by enforcing Watkins' right of indemnity. Watkins could only enforce that indemnity on making good his default, and his creditors were in no better position. In other words, their right against the estate was limited to 500*l.*: *In re Johnson*, (1880) 15 Ch. D. 548, 555. The creditors contended that the case must be treated as if the bond were in suit. But the order, on further consideration, was not intended to give them any tactical advantage. It merely enabled them to have the question of principle determined in a summary way. Even if the bond were treated as in suit, the substance of the matter must be regarded, and it would be no use to order the sureties to pay the 400*l.* into Court to a separate account, if it would merely have to be paid back again. The real question was, who was to bear the loss occasioned by Watkins' default. It must fall on the creditors who gave him credit. They had no higher rights than Watkins, and could only claim what he could claim. Application refused. *In re BRITISH POWER TRACTION AND LIGHTING CO. HALIFAX JOINT STOCK BANKING CO. v. BRITISH POWER TRACTION AND LIGHTING CO.* Swinfen Eady J. [1910] W. N. 194:

[1910] 2 Ch. 470

— Income bond—Company.

See under COMPANY—Income Bond.

— Winding-up petition — Bond investment holder — "Contingent or prospective creditor."

See COMPANY—WINDING-UP — Assurance Company. 1.

Books.

1. — *Shareholders' address book—Right of shareholder to copy—Action to enforce right—Mandatory order—Motives—Companies Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 16), s. 10.*

The right given to a shareholder by s. 10 of the Companies Clauses Consolidation Act, 1845, to have a copy of the shareholders' address book is a private right conferred on him as a member of the co. and not as a member of the public. The appropriate remedy, therefore, for enforcing this right is either an injunction to restrain the co. from refusing to supply or a mandatory injunction directing the co. to supply him with the copy required. In granting this relief there is no jurisdiction to inquire into the motives of the applicant.

There is no distinction in principle between granting an injunction to restrain a co. from interfering with a right and granting an affirmative order compelling a co. to grant the right.

Decision of Warrington J., [1909] 1 Ch. 248, affirmed. *DAVIES v. GAS LIGHT AND COKE CO.* C. A. [1909] W. N. 77; [1909] 1 Ch. 708

2. — *Winding-up of Company—Joint liquidators—Inspection by agent—Employment of accountant by one liquidator—Costs.*

By a special resolution duly confirmed in Oct., 1903, it was resolved that the above-named co. be wound up voluntarily, and that R. and S. be appointed joint liquidators for the purpose of winding up the co. R. was a director

COMPANY (Books)—continued.

and had been chairman of the co., and S. was the secretary and had kept the books of the co.

R. not being himself a professional accountant, wished to employ an accountant at his own expense to examine the books of the co. on his behalf. This was objected to by S.; whereupon R. applied by summons that he might at his own expense have inspection of the books of account and all other books and papers of the co. by his accountant or other duly authorized person. There had been some dispute as to the actual control and custody of the books, but when the matter came into Court it was admitted that both liquidators had an equal right of access, and the only question argued was the right of one liquidator to inspect the books by his accountant or other duly authorized agent:—

Held that, so long as the co. was not put to further expense, R. was entitled to make a proper inspection of the books and papers of the co. by his accountant or other duly authorized person, and as S. had denied this right, the Court directed him personally to pay the costs of the application. *In re GOLD COAST FINANCE SYNDICATE, LD.* - *Byrne J.* [1904] W. N. 73

Borrowing.

1. — *Borrowing powers—Unauthorized application of funds—Knowledge of director of lending company of intended misapplication—Imputed notice—Debenture—Ultra vires.*

Where a co. has a general power to borrow money for the purposes of its business, a lender is not bound to inquire into the purposes for which the money is intended to be applied, and the misapplication of the money by the co. does not avoid the loan in the absence of knowledge on the part of the lender that the money was intended to be misapplied.

Davis's Case, (1871) L. R. 12 Eq. 516, overruled on this point.

K., who was the director of co. A. and was also interested in co. B., having ascertained in his private capacity that co. B. proposed to borrow a sum of money for a purpose outside the scope of its business, induced co. A. to advance the money to co. B. on the security of a debenture of that co., and the money was applied by co. B. in the manner proposed. Co. B. had a general power of borrowing under its memorandum and articles of association for the purposes of its business. No other director of co. A. except K. knew how the money was intended to be applied:—

Held, that K.'s knowledge ought not to be imputed to co. B., inasmuch as K. owed no duty to that co. either to receive or to disclose information as to how the borrowed money was to be applied, and that the debenture was a valid security.

Decision of Buckley J. affirmed. *In re DAVID PAYNE & CO. YOUNG v. DAVID PAYNE & CO.*

C. A. [1904] W. N. 128; [1904] 2 Ch. 608

Brewery Company.

See under BREWERS.

Calls.

— Bankruptcy notice—Set-off—Mutual creditor—Judgment debt.

See BANKRUPTCY—Notice. 13.

COMPANY (Calls)—continued.

— Bankruptcy of shareholder—Proof by company for unpaid calls and liability to future calls.

See COMPANY—Bankruptcy. 2.

— Collection of mortgaged debts.

See COMPANY—WINDING-UP—Contributory. 2.

— Company — Winding-up — Contributory — Set-off.

See COMPANY — WINDING-UP — Contributory. 1.

— Company—Winding-up — Surplus assets — Effect as to paying shares up.

See COMPANY—Bankruptcy. 2.

— Enforcing payment of calls made before winding-up.

See COMPANY—WINDING-UP—Contributory. 4.

— Forfeiture of shares—Alleged irregularities in call and forfeiture—British Columbia Companies Acts, 1890, 1892.

See CANADA—Company. 2.

1. — *Indemnity—Calls paid by registered owner of shares—Liability of beneficial owner—Indemnity—Appeal from Hong Kong.*

A party who is sui juris and beneficially entitled to shares which he cannot disclaim is personally bound, in the absence of contract to the contrary, to indemnify the registered holder thereof against calls upon them. It is immaterial whether the beneficial owner originally created the trust by which the registered holder was plainly affected, or accepted a transfer of the beneficial ownership with knowledge of the trust. *HARDOON v. BELILIOS - P. C.* [1901] A. C. 118

Note.

Referred to by Swinfen Eady J., *Matthews v. Ruggles-Brise*, [1910] W. N. 234.

— Mutual insurance association—Ship mortgaged not to be considered insured—Concealment of mortgage—Liability for calls.

See INSURANCE (MARINE). 15.

— Trust, Breach of—Call on shares—Death of co-trustee—Contribution.

See TRUSTEE—Investments. 15.

2. — *Unpaid call—Forfeited shares, Sale of—Power to make fresh call on purchaser—Certificate—Companies Act, 1862 (25 & 26 Vict. c. 89), Sched. I., Table A, art. 22.*

When shares which have been forfeited for non-payment of a call are sold, and a certificate of proprietorship is delivered to the purchaser under art. 22 of Table A of the Companies Act, 1862, stating that he is to be deemed to be the holder of the shares "discharged from all calls due prior to the date" of the certificate, he is liable for the payment of future calls duly made.

The decision of the C. A., *Randt Gold Mining Co. v. New Balkis Eersteling, Ltd.*, [1903] W. N. 23; [1903] 1 K. B. 461, affirmed. *NEW BALKIS EERSTELING, LD. v. RANDT GOLD MINING CO. H. L. (E.)* [1904] W. N. 76; [1904] A. C. 165

COMPANY (Calls)—continued.*Note.*

See In re Randt Gold Mining Co., Buckley J., [1904] 2 Ch. 468, *neat case*.

Referred to by C. A., *In re West Coast Gold Fields, Ltd.*, [1905] W. N. 157; [1906] 1 Ch. 1.

— Unpaid calls — Notice to forfeit shares — Interim injunction restraining forfeiture—Practice.

See COMPANY—Shares. 1.

3. — *Winding-up — Contributory — Forfeited shares — Right of present member to credit for payment of calls made before forfeiture — Companies Act, 1862 (25 & 26 Vict. c. 89), s. 38.*

Where a co. in pursuance of its articles of association has forfeited shares for non-payment of calls, and the articles provide that notwithstanding forfeiture the ex-shareholder shall be liable to pay the amount of the calls, and the shares are subsequently re-allotted to another person, that person is entitled on the winding-up of the co. to be credited with all sums paid by the previous holder, whether in respect of moneys paid by him as shareholder in respect of the shares, or as a debtor in respect of his liability under the articles to pay calls notwithstanding forfeiture. *In re RANDT GOLD MINING CO.*

Buckley J. [1904] W. N. 139; [1904] 2 Ch. 468

Capital.

— Debentures—Capital and income—Interest on money borrowed for the purpose of constructing works—Period of construction.

See COMPANY—Debentures. 2.

— Fixed capital — Circulating capital — Dividends.

See COMPANY—Dividends. 2.

— Reconstruction—Sale of undertaking—Consideration—Shares in new company—Commission, Applying capital for.

See COMPANY—Reconstruction. 7.

— Reduction of capital—Company.

See under COMPANY — Reduction of Capital.

— Return of capital—Company.

See under COMPANY—Return of Capital.

Certificate.

— Debentures — Registration — Certificate of registrar—Conclusiveness of certificate.

See COMPANY—Debentures. 32.

— Deposit — Shares — Equitable mortgage — Pledge—Foreclosure.

See COMPANY—Shares. 9.

— Registrar—Meaning of “conclusive.”

See COMPANY—Reduction of Capital. 4.

— Share certificate fraudulently issued by secretary—Forgery—Principal and agent—Scope of employment—Estoppel.

See COMPANY—Forgery. 2.

— Shares—Negotiable instrument—Title, Prima facie evidence of—Transfer of shares—Registering transfer without production of share certificate—Note on certificate—False declaration.

See COMPANY—Shares. 4.

COMPANY (Certificate)—continued.

— Shares—Priority—Negligence—Possession of certificates.

See COMPANY—Shares. 10.

Charging Orders.

See under CHARGING ORDERS.

1. — *Debenture-holder's action — Surplus assets — Plaintiff's costs — Difference between party and party and solicitor and client costs — Plaintiff unable to pay such difference — Plaintiff's solicitor's costs, charges and expenses — Receiver's costs — Property recovered or preserved — Charging order — Solicitors Act, 1860 (23 & 24 Vict. c. 127), s. 28 — Form of order — Practice.*

In a debenture-holder's action a receiver was appointed, and the same solicitor acted for the plt. and for the receiver. In the course of realizing the estate proceedings were taken at home and abroad with the sanction of the Court, and the solicitor was employed by the receiver for these purposes. In the result property was recovered or pre-served, and the funds paid into Court were sufficient to pay all the debenture-holders in full and to leave a large surplus for the liquidator of the co. The plt. being unable to pay the difference between party and party and solicitor and client costs of the action :—

Held, that the solicitor was entitled to a charging order for such difference upon so much of the funds as belonged to the debenture-holders.

Dictum of Kay J. in *Harrison v. Cornwall Minerals Ry. Co.*, (1884) 32 W. R. 748; 53 L. J. (Ch.) 596, followed.

Held, further, that the solicitor was also entitled to a charging order upon the balance of the funds that would be payable to the liquidator for his costs of recovering and preserving assets at home and abroad, which really were part of the receiver's costs of administration and might have been included in his accounts. *In re W. C. HORNE & SONS, LD.*

HORNE v. W. C. HORNE & SONS, LD.

Farwell J. [1906] W. N. 5; [1906] 1 Ch. 271

Charity.

— Company with charitable objects incorporated under Companies Act—“Endowment” — Exemption.

See CHARITY. 17.

— Land Registry — Restriction on register — “Endowment.”

See LAND REGISTRY. 1.

Chartered Company.

— Debentures, Contract to issue — Floating charge on foreign land—Ultra vires.

See CONFLICT OF LAWS. 3.

Commission.

See also under COMMISSION.

— Company—Shares.

See under COMPANY—Shares.

Companies established outside United Kingdom.

Companies Acts, 1862–1907. The Board of Trade prescribes in regard to certified copies and

COMPANY (Companies established outside United Kingdom)—continued.

certified translations of documents required by s. 35 of the Companies Act, 1907, to be filed with the Registrar. Reprint from W. N. 1908 (Feb. 29), p. 69. See CURRENT INDEX, 1908, p. lxxiii.

Contract of Service.

— Cumulative salary payable out of "profits"
See COMPANY—Directors. 4.

— Restraint of trade — Breach of negative Covenant.
See COMPANY—Directors. 5.

Contracts.

— Assignability—Liquidation of company.
See CONTRACT. 4.

— Company before incorporation, Contract for — Rights of company.
See NATAL. 2.

— Director — Fiduciary relation — Conflict of interest with duty — Contracts with company.
See COMPANY—Directors. 9.

1. — "*Entitled to commence business*" — *Non-commencement before winding-up—Effect on contracts—Companies Act, 1900 (63 & 64 Vict. c. 48), s. 6.*

In s. 6 of the Companies Act, 1900—which provides that "any contract made by a co." (registered after 1900 and inviting the public to subscribe for its shares) "before the date at which it is entitled to commence business shall be provisional only, and shall not be binding on the co. until that date, and on that date it shall be binding"—the word "provisional" means that the contract is to be read as if it contained a provision that it should not be binding on the co. unless and until the co. became entitled to commence business.

The section applies to all contracts of a co., whether preliminary or final, or in the course of carrying on its business.

Where, therefore, a co. had gone into liquidation without having become entitled to commence business, a claim by a person resting on certain alleged contracts with the co., one part of the claim being for moneys paid for furnishing temporary offices for the co. was disallowed. *In re "OTTO" ELECTRICAL MANUFACTURING CO. (1905) LD. JENKINS' CLAIM.*

Buckley J. [1906] W. N. 154; [1906] 2 Ch. 390

— Non-disclosure of contracts—Prospectus.
See under COMPANY—Prospectus.

— Omission to file contract — Shares paid for otherwise than in cash.
See COMPANY—Shares. 17.

2. — *Privity of contract—Contract with promoter for benefit of intended company—Ratification—Adoption—Agreement to grant to promoter and that he or intended company should accept licence to use patent—Right of grantee to enforce agreement against company when formed.*

On Mar. 3, 1897, the plts. agreed to grant

D.D.

COMPANY (Contracts)—continued.

to Phelps, and he agreed that he or a co. then being formed by him should accept, an exclusive licence to use some patents belonging to the plts. The consideration for the grant was to be that (after providing for payment to the shareholders of the co. in each year a cumulative preference dividend of 8 per cent. on a capital of 150,000*l.*, and setting aside such sum as the directors should think fit as a reserve fund) the co. should pay to the plts. in each year out of their remaining profits available for dividend 8 per cent. upon a fixed capital of 150,000*l.*, and that after payment of these sums the plts. should be entitled to receive one-half of the balance (if any) of net profits of the co. available for dividend in each year.

On Mar. 4, 1897, the plts. granted the exclusive licence to Phelps. The licence contained a recital of the agreement of Mar. 3, and was expressed to be made in consideration of that agreement and of the payment therein agreed to be made by the licensee to the plts.

By an agreement dated Mar. 5, 1897, between Phelps (as vendor) and one Piercy, for and on behalf of the intended co., after a recital of the agreement of Mar. 3 and the licence of Mar. 4, it was agreed that Phelps should sell and the co. should purchase the full benefit of the licence and the agreement of Mar. 3 for the consideration therein mentioned.

The intended co. was registered on Mar. 8, 1897.

By an agreement dated April 8, 1897, between Phelps, Piercy, and the co., it was provided that the agreement of Mar. 5 should be adopted by the co. and should be binding on Phelps and the co. in the same manner as if the co. had been in existence at the date thereof, and had by the agreement of April 8, ratified the same.

The co. made some use of the licence, though it was never actually assigned to them by Phelps.

The plts. brought an action against the co. to enforce the performance by them of the provisions of the agreement of Mar. 3 :—

Held, that assuming that the plts. were entitled to sue the defts. upon that agreement, yet upon its true construction nothing had become due to the plts. which had not been paid to them, and consequently that no cause of action has arisen :—

Held also, that there was no privity of contract between the plts. and the defts., and therefore no legal right of action by the former against the latter.

And *per* Vaughan Williams L.J. : The plts. had not, by reason of their having taken the benefit of the agreement of Mar. 3 and the licence, any equitable right to sue the defts.

Per Romer L.J. : *Semble*, that in case any money should thereafter become due to the co. under the agreement of Mar. 3 the plts. might possibly have some remedy by obtaining leave to use the name of Phelps in proceedings against the co. or otherwise.

Decision of Kekewich, J. [1900] W. N. 272; [1901] 1 Ch. 196, affirmed.

Werderman v. Société Générale d'Electricité, (1881) 19 Ch. D. 246, explained and distin-

COMPANY (Contracts)—continued.

guished. *BAGOT PNEUMATIC TYRE Co. v. CLIPPER PNEUMATIC TYRE Co.*

C. A. [1901] W. N. 241 ; [1902] 1 Ch. 146

Note.

This case was followed by *Neville J., Dansk Rekytriffel Syndikat Aktieselskab v. Snell*, [1908] 2 Ch. 127. See *Patent—Sale*. 1.

Costs.

See also under **COMPANY—WINDING UP—Costs.**

— Action in name of company—Majority of co-directors opposing—Motion to strike out name of company as plaintiff. See **COMPANY—Practice**. 1.

— Bank, Loan by — Insufficient assets—Receiver's remuneration — Costs of preservation and realization—Priorities. See **COMPANY—Receiver**. 13.

— Debenture-holder's action. See under **COMPANY—Debentures**.

— Debenture-holder's action—Plaintiff's costs—Charging-order. See **COMPANY—Charging Orders**. 1.

— Directors' liability — Prospectus — Untrue statement—Shareholder's action against some of the directors. See **COMPANY—Prospectus**. 14, 15.

— Loan by bank—Insufficient assets—Receivers' remuneration — Costs of preservation and realization—Priorities. See **COMPANY—Receiver**. 9A.

1. — *Preliminary expenses—Preparation of memorandum and articles of association—Registration fees—Liability of company—Costs—Taxation.*

A solicitor, on the instructions of persons who afterwards joined the board of a co. then about to be formed, prepared the memorandum and articles of association of the co. and paid the fees for its registration :—

Held, by Buckley J. and the C. A., that he was not entitled to recover from the co. the costs of the preparation of the memorandum and articles of association ; but

Held, by Buckley J. (there being no appeal upon this point), that, inasmuch as the co. was under a statutory liability to pay the registration fees, he was entitled to recover those fees from the co.

Per Vaughan Williams and Romer L.JJ. : The fact that a co. adopts and takes the benefit of services rendered under a contract entered into before its formation does not make the co. liable in equity to pay for those services.

Dictum of the C. A. in *In re Hereford and South Wales Wagon and Engineering Co.*, (1876) 2 Ch. D. 621, 624, dissented from. *In re ENGLISH AND COLONIAL PRODUCE Co.*

C. A. [1906] W. N. 150 ; [1906] 2 Ch. 435

Note.

This case was overruled on one point by C. A., *In re National Motor Mail-Coach Co.*, [1908] 2 Ch. 515. See next Case.

COMPANY (Costs)—continued.

2. — *Preliminary expenses—Registration fees—Stamp duty on capital—Payment by promoter—Liability of company—Companies Act*, 1862 (25 & 26 Vict. c. 89), s. 17—*Stamp Act*, 1891 (54 & 55 Vict. c. 39), s. 112—*Finance Act*, 1899 (62 & 63 Vict. c. 9), s. 7.

The mere fact that a promoter pays the registration fees and ad valorem stamp duty on the registration of a co. does not in itself entitle him to recover them from the co.

Judgment of Buckley J. in *In re English and Colonial Produce Co.*, [1906] 2 Ch. 435, 439, overruled on this point.

In re NATIONAL MOTOR MAIL-COACH-Co., CLINTON'S CLAIM - **C. A. [1908] W. N. 172 ; [1908] 2 Ch. 515**

Note.

See *In re National Motor Mail-Coach Co.*, *Austis' and McLean's Claims*, [1908] W. N. 153 ; [1908] 2 Ch. 228. See *Company—Allotment*. 2.

— Receiver and manager — Debenture-holders' action.

See under **COMPANY—Receiver**.

— Security for costs—Bond of foreign company Practice. See **COSTS**. 53A.

— Solicitors' costs. See under **SOLICITOR—Costs**.

— Stamp duty on capital of company—Payment by solicitor—"Disbursement." See **SOLICITOR—Costs**. 12, 35.

— Winding-up of company. See under **COMPANY—WINDING-UP—Costs**.

Debentures.

And see also under **COMPANY—Mortgages**.

— Arrangement, Scheme of—Debenture-holders and guarantors—Preference to assets of company. See **COMPANY—Arrangement**. 2.

— Assets covered by debentures—Company—Winding-up—Debenture-holders' action—Rights of unsecured creditors. See **COMPANY—WINDING-UP—Practice**. 8.

— Attachment of debts—Debenture-holder—Garnishee order—Execution—Rights of garnisher—Priorities. See **ATTACHMENT**. 5.

1. — *Bill of sale—Non-registration—Debenture of foreign company—Incorporated company—Bills of Sale Acts*, 1878 (41 & 42 Vict. c. 31), and 1882 (45 & 46 Vict. c. 43), s. 17.

Debentures of a limited liability co. registered in Guernsey creating a charge on floating real and personal property of the co. are exempted from the operation of the Bills of Sale Acts, 1878 and 1882, by s. 17 of the latter Act. *CLARK v. BALM, HILL & Co.* - **Phillimore J. [1908] 1 K. B. 667**

— Brewery company—Debenture trust deed—Compensation — Powers of debenture trustees.

See **BREWERS**. 1, 2, 3.

COMPANY (Debentures)—continued.

— Business of company carried on by debenture-holders — Company — Winding-up order.

See COMPANY — WINDING-UP — Practice. 28.

2. — *Capital and income—Payment of interest out of capital—Interest on money borrowed for the purpose of constructing works—Period of construction.*

A tramway co., for the purpose of converting its undertaking to a system of electric traction, issued conversion debenture stock. The directors passed resolutions that the interest on this stock should be treated as part of the cost of construction, and chargeable to capital account during the construction of the works. The memorandum and articles of association of the co. contained no provisions relating to this subject :—

Held, that there was no general rule of law which compelled cos. to charge to revenue account interest on money borrowed for the purpose of constructing works, or prohibited them from charging it, during construction, to capital account; that, in the absence of any provision to the contrary, cos. were entitled to act in the same way as commercial men dealing honestly in their own business; and, therefore, that the co. were at liberty to charge the interest in question to capital account. *HINDS v. BUENOS AYRES GRAND NATIONAL TRAMWAYS CO., LD.* — Warrington J. [1906] W. N. 187; [1906] 2 Ch. 654

— Charging order—"Stock or shares" of a company—Practice.

See CHARGING ORDER. 1.

— Claim on debentures—Two insolvent companies — Winding-up — Cross-claims—Adjustment—Damages for misfeasance. See COMPANY — WINDING-UP — Assets. 6.

3. — *Contract to issue debentures — Charge—Execution creditor—Priority.*

Where a co. contracts for consideration to issue debentures charging its property, and before the debentures are actually issued goods intended to be thereby charged are seized in execution of a judgment recovered against the co., the execution creditor is only entitled to the goods subject to a charge in favour of the intended debenture-holders. *SIMULTANEOUS COLOUR PRINTING SYNDICATE v. POWERAKER.*

Wright J. [1901] 1 K. B. 771

— Contract to issue debentures—Floating charge on foreign land—Clog on equity of redemption.

See CONFLICT OF LAWS. 3.

4. — *Costs — Debenture-holder's action — Second mortgage debenture-holders made defendants.*

Second mortgage debenture-holders having been made defts. to a first mortgage debenture-holder's action, and the assets being insufficient to satisfy the first mortgage debentures, the question arose whether the second mortgage debenture-holders were entitled to any costs.

Swinfen Eady J. The rule is correctly stated in Palmer's Company Precedents, 9th ed.

COMPANY (Debentures)—continued.

vol. iii. p. 710, namely, "The deft. co. in a debenture or debenture stock action is not entitled to costs unless, indeed, the action fails: *Mortgage Insurance Corporation, Ltd. v. Canadian Agricultural, Coal and Colonization Co., Ltd.*, [1901] 2 Ch. 377. The co. must look to the surplus; nor are second debenture-holders made defts. entitled to costs, they also must look to the surplus."

This is the same as the general rule in mortgage actions where subsequent incumbrancers are made defts. Where they are made plts. different considerations arise; but I am not dealing with that case. In the present case the second mortgage debenture-holders are defts., and are not entitled to costs.

[The plt. was allowed solicitor and client costs; and, under special circumstances, the other first mortgage debenture-holders attending were allowed solicitor and client costs of a certain application in chambers and of the further consideration.] *In re CLAYTON ENGINEERING AND ELECTRICAL CONSTRUCTION CO., LD.* BODDINGTON v. THE CO.

Swinfen Eady J. [1904] W. N. 28

See next Case.

5. — *Costs—Taxation—Trustees' costs—Same solicitor appearing for trustees and company—Disallowance of company's rights—Right of trustees to full set of costs—Retainer—Joint or separate—Debenture-holders' action.*

Where debentures are secured by a trust deed, the trustees are properly added as defts. to a debenture-holders' action, and where the trustees and the co. appear by the same solicitor, although the co. are not entitled to costs, all the costs of the defts., except any separate costs of the co. ought to be paid out of the assets before distribution amongst the debenture-holders, upon the ground that, subject to that exception, those costs must be treated as incurred by the trustees; and for this purpose the order directing taxation should contain a direction that in taxing the costs of the trustees the taxing master should allow them a full set of costs, except as regards any separate costs of the co., notwithstanding that the trustees and the co. have appeared by the same solicitor. *MORTGAGE INSURANCE CORPORATION, LD. v. CANADIAN AGRICULTURAL, COAL AND COLONIZATION CO.* — Kekewich J. [1901] W. N. 135; [1901] 2 Ch. 377

Note.

Referred to by Swinfen Eady J., *In re Clayton Engineering and Electrical Construction Co.*, [1904] W. N. 28. See No. 4, above.

6. — *Costs of plaintiff—Solicitor and client—Party and party—Deficient estate—Debenture-holders' action.*

The rule in creditors' and legatees' administration actions—that, where the estate is insufficient for payment of the debts or legacies in full, the plt. is entitled to his costs as between solicitor and client, and not as between party and party only—applies, upon the principle stated in *Thomas v. Jones*, (1860) 1 Dr. & Sm. 134, 136 equally to a debenture-holders' action, where the co.'s assets are insufficient for payment of the debentures in full.

COMPANY (Debentures)—continued.

In re Queen's Hotel Co., Cardiff, Ltd., [1900] 1 Ch. 792, distinguished.

Decision of Kekewich J., [1901] W. N. 105, reversed. *In re NEW ZEALAND MIDLAND RY. CO. SMITH v. LUBBOCK*

C. A. [1901] W. N. 111; [1901] 2 Ch. 357

— Debenture stockholder — Company — Winding-up—Petition—Creditor.

See COMPANY — WINDING-UP — Practice. 12.

7. — *Deficient security—Principal or interest—Appropriation of payments—Income tax.*

A debenture trust deed executed by a co. provided that the trustees should appropriate the proceeds of the realization of the securities in the first place towards payment of all arrears of interest on the debentures, and, secondly, towards payment of the principal. The co. made default, and an action was brought on behalf of the debenture-holders to enforce their security. The judgment in the action ordered that the trusts of the deed should be carried into execution, and directed that the usual accounts and inquiries should be taken and made. The securities were gradually realized, and orders were from time to time made under which certain sums were paid to the debenture-holders on account of interest, after deducting income tax. When the order on further consideration was made there was evidence that the securities would prove insufficient, and that order directed that the plts. taxed costs as between solicitor and client should be paid by the trustees out of the moneys in their hands. The subsequent orders for payment to the debenture-holders directed that the payments should be made on account generally of what was due for principal and interest. The securities having been practically all realized, the trustees had in their hands a sum of money which they proposed to pay to the debenture-holders. It was admitted that if the whole of the payments to the debenture-holders were attributed to principal they would be insufficient to discharge the full amount due. The Comrs. of inland Revenue claimed that all the payments made on account generally ought to be attributed to interest in the first place, and that income tax should be deducted from them. Upon a summons taken out by the trustees of the deed to determine this question:—

Held, upon the construction of the orders which directed payments on account generally, and having regard to the circumstances of the case that the Court when making those orders had purposely left open for future determination the question how the payments were to be ultimately appropriated as between principal and interest, and that, it being now clearly for the benefit of the debenture-holders that those payments should be appropriated to principal, they ought to be so appropriated, without putting the debenture-holders to an election how the appropriation should be made, and consequently that income tax ought not to be deducted.

But the order was made without prejudice to the question whether the payments, or any part or parts thereof, ought, in the hands of the

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persons to whom payments had been made, to be treated as principal or interest.

Decision of Byrne J., [1904] 1 Ch. 500, affirmed with a slight variation. *SMITH v. LAW GUARANTEE AND TRUST SOCIETY, LD.*

C. A. [1904] W. N. 172; [1904] 2 Ch. 569

— Discount, Issue of debentures at a—Option to exchange debentures for fully-paid shares.

See COMPANY—Shares. 15.

8. — *Distribution of fund in Court—Debenture-stockholders' action—Company in liquidation—Debenture stock trust deed—No condition protecting transferees against equities—Stockholder a trustee and director—Alleged debt by stockholder to company—Retention of shares of stockholder and his transferees.*

Where a trust fund is being distributed by the Court, a trustee-beneficiary against whom proceedings are pending for moneys alleged to belong to the fund cannot take any share until the amount (if any) due from him has been ascertained and made good.

After the appointment of a receiver in a debenture-stockholder's action and a winding-up order, a stockholder, who was also a trustee of the deed securing the stock and a director, transferred 10,000*l.* stock to certain transferees.

The certificate in the action found that 250*l.* stock belonged to the transferor and 10,000*l.* to the transferees.

Among the assets certified as now subject to the trust deed was a debt alleged to be owing by the transferor to the co. for moneys alleged to have been had and received by him while a director.

Proceedings were being taken to establish this alleged debt, but the amount (if any) due was not yet ascertained or established.

The trust deed did not contain any condition protecting the transferees from any equity, set-off, or cross-claim of the co. against the transferor.

The fund in Court realized in the action was more than sufficient to pay the stockholders in full, and it was proposed to distribute it on the further consideration:—

Held that, pending the ascertainment and establishment of the amount (if any) due from the transferor, the amounts due to the transferor and the transferees must be retained and carried to separate accounts.

In re Akerman, [1891] 3 Ch. 212, 219; *In re Goy & Co., Ltd.*, [1900] 2 Ch. 149, 153; and *In re Brown & Gregory, Ltd.*, [1904] 1 Ch. 627; [1904] 2 Ch. 448, applied.

In re RHODESIA GOLDFIELDS, LD. PARTIDGE v. RHODESIA GOLDFIELDS, LD.

Swinfen Eady J. [1910] W. N. 7; [1910] 1 Ch. 239

9. — *"Floating charge"—Mortgage—Assignment of present and future book debts—Debenture-holders—Priority—Registration of mortgages—Companies Act, 1900 (63 & 64 Vict. c. 48), s. 14, sub-s. 1 (d).*

In Oct., 1902, a co., having to give security to certain guarantors, by deed assigned all its present and future book and other debts, with

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the benefit of all securities for the same to a trustee, subject to redemption, in trust for the guarantors. The deed contained no express provision against possession being taken by the trustee, but contained a declaration that the trustee should at any time, if required by the guarantors, give notice of this assignment to the debtors of the co., with a proviso that it should not be incumbent on the trustee to give notice; there were also provisions that the trustee might at any time give notice, appoint a receiver, and exercise the statutory power of sale, but meantime he was not to be answerable for allowing the co. to receive the book debts. A receiver having been subsequently appointed in a debenture-holders' action, the trustee now applied by motion in that action to enforce his security:—

Held (affirming the decision of Farwell J.), on the construction of the deed of Oct., 1902, that it was not intended by this assignment to stop the co., but that it was intended to allow it to go on receiving the book debts for the purpose of carrying on its business, and accordingly that the deed contained the true elements of a floating charge, and was therefore void for want of registration under s. 14, sub-s. 1, of the Companies Act, 1900, and had no validity against the receiver appointed in the debenture-holder's action.

Per Romer L.J.: A mortgage or charge by a co. which contains the three following characteristics is a "floating charge" within the meaning of s. 14, sub-s. 1 (d): (1.) If it is a charge on a class of assets both present and future. (2.) If that class is one in which the ordinary course of the business of the co. would be changing from time to time. (3.) If it is contemplated by the charge that, until some future step is taken by or on behalf of the mortgagee, the co. may carry on its business in the ordinary way so far as concerns the particular class of assets charged. *In re YORKSHIRE WOOLCOMBERS' ASSOCIATION, LD. HOULDSWORTH v. YORKSHIRE WOOLCOMBERS' ASSOCIATION, LD.*

C. A. [1903] 2 Ch. 284

10. — Floating charge within three months of winding up—Cash paid at the time of creation of charge—Registration—Companies (Consolidation) Act, 1908 (8 *Edu.* 7, c. 69), ss. 93, 212.

Where a floating charge is created on the property of a co. within three months of the commencement of the winding up of the co., the question whether cash is paid "at the time of the creation of the charge" within s. 112 of the Companies (Consolidation) Act, 1908, is a question of fact to be determined by all the circumstances of the case, and as a general rule a payment on account made in consideration for the charge, although made a few days before the execution of the debenture, is made at the time of its creation.

A co. being in need of funds, the directors on Nov. 25, 1909, accepted an offer by S. to advance 1000*l.* upon the security of a floating charge on the property of the co. and passed a resolution that a debenture should be prepared to be executed at the next meeting of the board. On the strength of this resolution S. paid to the co.,

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on account of the 1000*l.*, 350*l.* immediately and a further 350*l.* on Dec. 2. At the next meeting, on Dec. 6, the debenture was duly executed and the balance of the 1000*l.* was paid. The debenture was registered on Dec. 23. The co. went into liquidation in the following Jan., and the liquidator disputed the validity of the charge:—

Held, (1.) that for the purposes of s. 93 of the Companies (Consolidation) Act, 1908, the charge was created at the time when the formal instrument was executed, and that therefore it was registered within twenty-one days of its creation; (2.) that the whole of the 1000*l.* was advanced "at the time" of the creation of the charge within s. 212; consequently that the debenture was a valid security for the full amount.

Decision of Neville J., [1910] W. N. 95; [1910] 1 Ch. 758, affirmed. *In re COLUMBIAN FIREPROOFING CO., LD.*

C. A. [1910] W. N. 142; [1910] 2 Ch. 120

11. — Floating security—Bank—Prior charge precluded—Equitable incumbrancers—Notice—Priority.

On Nov. 26, 1898, the managing director of a limited co., forgetting that their first mortgage debentures, though only constituting a floating security, precluded the creation of any prior charge, deposited their title-deeds with their bank to secure the present and future overdraft of their current account. The bank, though aware that debentures had been issued, some of which they held as security for another customer's account, made no inquiry in the matter:—

Held, that the mere possession of the debentures as security for another customer's account did not affect the bank with notice of their contents in their dealing with the co.;

Held, also, that as the co.'s managing director by depositing the title-deeds impliedly represented that the co. could give a valid first charge, the bank, though aware that debentures had been issued, were not put on inquiry, and were entitled to priority.

English and Scottish Mercantile Investment Co. v. Brunton, [1892] 2 Q. B. 700, and *In re Castell & Brown, Ltd.*, [1898] 1 Ch. 315, followed.

On Nov. 17, 1900, the co. issued a second mortgage debenture to the bank as a collateral security for an extended overdraft. This debenture was expressed to be subject to the first mortgage debentures:—

Held, that the bank did not thereby obtain notice of the terms of the first mortgage debentures so as to postpone their equitable mortgage in respect of subsequent advances. *In re VALLETORT SANITARY STEAM LAUNDRY CO. WARD v. VALLETORT SANITARY STEAM LAUNDRY CO.*

Swinfen Eady J. [1903] W. N. 135; [1903] 2 Ch. 654

Note.

Followed by Farwell J., *In re Bourne*, C. A. [1906] 2 Ch. 427. See *Partnership*, 7.

12. — Floating security—Execution under writ of fi. fa. against company—Payment to sheriff in order to avoid sale—Title to money in hands of sheriff.

COMPANY (Debentures)—continued.

Judgment having been given in an action against a limited co., which had issued debentures giving a floating charge over all its property, the goods of the co. were taken in execution under a writ of *fi. fa.* In order to avoid a sale and to enable them to continue to carry on business, the co. with the assent of the execution creditor, paid daily to the sheriff a certain sum out of their daily takings. Afterwards a receiver was appointed in a debenture-holders' action, who claimed to be entitled to the money paid by the co., which still remained in the hands of the sheriff and had not been handed over by him to the execution creditor:—

Held, that the true effect of the transaction was that the money was paid to the sheriff as part of the debt owing to the execution creditor, who was therefore entitled to retain it as against the debenture-holders.

Robson v. Smith, [1895] 2 Ch. 118, followed.
ROBINSON v. BURNELL'S VIENNA BAKERY CO.

Channell J. [1904] 2 K. B. 624

13. — Floating security—Garnishee order.

A debenture constituting a floating security over the undertaking and assets of a co., does not specifically affect any particular assets until some event occurs or some act on the part of the mortgagee is done which causes the security to crystallize into a fixed security. A demand by the debenture-holder of the payment by the co. of the money secured by his debenture is not such an act; nor is a notice by him to the co.'s bankers claiming payment to him of the co.'s bank balance which has been attached by a judgment creditor of the co. under a garnishee order; for there is no equity in a debenture-holder, whose security is a floating charge, arising from his merely giving notice to seize a particular asset of the co. *EVANS v. RIVAL GRANITE QUARRIES, LD.*

C. A. [1910] 2 K. B. 979

14. — Floating security—Issue of further debentures—Specific charge—Priority—Pari passu—Ordinary course of business.

The debt. co. was formed in 1890 with very extensive powers and a very large capital. It issued debentures for 3,700,000*l.* out of a total authorized issue of 6,000,000*l.* These debentures were headed "first mortgage debenture," and by them the co. purported to create a floating charge on all its property, but this was not to interfere (until default in payment of principal or interest and steps taken to enforce payment) with the dealing with the property by the co. By condition 1 of the debenture it was stated to be "one of an issue of like debentures for the aggregate sum of 7*l.*—part of the said authorized issue of 6,000,000*l.*—the whole of which debentures of such authorized issue are intended to rank *pari passu* as a first charge upon all the co.'s property," and the co. reserved the right to issue the balance. By condition 17 a meeting of debenture-holders might "sanction the creation and issue by the co. of debentures or any other security ranking as part of or *pari passu* with the before mentioned 6,000,000*l.* debentures and to such amounts and bearing such rates of interest and generally on such

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terms and conditions as may be sanctioned or prescribed at any such meeting."

The co. proposed to issue further debentures, and two schemes were suggested—(1.) to create in favour of trustees a fixed and specific charge upon specific assets of the co. to secure the new debentures without any floating charge, the total debenture debt not to exceed the 6,000,000*l.*; (2.) to issue further debentures of the authorized 6,000,000*l.*, the co. to create a specific charge in favour of trustees to secure these debentures as in the first scheme.

The *plt.* was a holder of debentures of the co., and he now moved for an injunction restraining the co. from issuing securities which should constitute a charge on the co.'s assets ranking in front of or *pari passu* with the 6,000,000*l.* first mortgage debentures without first obtaining the assent of a meeting of the debenture-holders, as provided by the conditions indorsed on the debentures:—

Held, that if a rule existed that a co. which had given a floating charge could not subsequently create a specific charge except in the course of its ordinary business, it applied to cos. which were strictly speaking trading cos.; but this was not in the ordinary sense a trading co., but that, if it were, the Court would not assume, in the absence of evidence to that effect, that the schemes were otherwise than in the ordinary course of its business; that the provision of the debenture that the security was not to interfere with the co. dealing with its property was in general terms; that the 17th condition only referred to floating charges, and did not prevent the creation of specific charges on specific assets; and that there was no reason why the co. should not carry out these proposals. *COX MOORE v. PERUVIAN CORPORATION, LD.* Warrington J. [1908] W. N. 62; [1908] 1 Ch. 604

15. — Floating security—Receiver—Judgment creditor—Attachment of debts—Garnishee order absolute—Priority—Rights of garnishee—Preferential payment—Salary—Secretary of company—Clerk or servant—Debenture-holder—Preferential Payments in Bankruptcy Act, 1888 (51 & 52 Vict. c. 62) s. 1, sub-s. 1 (b)—Preferential Payments in Bankruptcy Act Amendment Act, 1897 (60 & 61 Vict. c. 19), s. 3.

In Jan., 1906, a limited co. issued to the *plt.* a mortgage debenture creating a first charge by way of floating security over all the property for the time being of the co. On June 15, 1906, the debt. obtained judgment against the co., and served a garnishee order nisi on a bank in respect of a sum of money standing to the credit of the co. in the books of the bank. On June 25 the garnishee order was made absolute. On June 29 a receiver of the assets of the co. was appointed on behalf of the *plt.* under the powers contained in his debenture. An interpleader issue having been directed to determine whether the *plt.* or the debt. was entitled to the money:—

Held, that a garnishee order absolute does not transfer to the garnishee the property in the garnished debt, and that consequently the fact that the receiver was not appointed until after the garnishee order had been made absolute was

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immaterial, and that the plt. was therefore entitled to the money in priority to the deft.

In re Combined Weighing and Advertising Machine Co., (1889) 43 Ch. D. 99, and *Norton v. Yates*, [1906] 1 K. B. 112, applied.

Robson v. Smith, [1895] 2 Ch. 118, distinguished.

A secretary to a co. may be a "clerk or servant" within s. 1, sub-s. 1 (b), of the Preferential Payments in Bankruptcy Act, 1888, but a secretary who does not give his whole time to the service of the co. and discharges the general duties of his office by a clerk appointed, and paid by himself is not a "clerk or servant" within the section. *CATRNEY v. BACK*

Walton J. [1906] 2 K. B. 746

16. — Floating security — Set-off — Second debenture-holders, Right of—Liberty of company to carry on business.

A debenture issued by a trading co. to their bankers and payable on Aug. 1, 1900, provided that the debenture should be a first charge upon all the co.'s undertaking and property present and future; that such charge was to be a floating security, but so that the co. were not to be at liberty to create any mortgage or charge in priority to, or upon an equality with that debenture; that the co. should be at liberty to carry on their business until default should be made in payment of the principal sum secured, or until a receiver should be appointed, and that from and after such default, or the appointment of a receiver, the liberty of the co. to carry on their business should forthwith cease and determine, and the charge created by the debenture should be immediately enforceable. The co. subsequently issued to the defts., with whom they had been and were trading, a debenture payable on Oct. 1, 1900, and expressed to be subject to the debenture held by the bankers. The co. made default in payment both of the debenture issued to the bankers and of that issued to the defts. The bankers took no steps to stop the co. carrying on their business until Oct. 2, 1901, when they appointed a receiver. In an action brought by the co. and the bankers to recover from the defts. the balance of the price of goods sold and delivered by the co. to the defts. between July 1, 1900, and Oct. 1, 1901:—

Held, that the defts. were entitled to set off the sum which on Oct. 1, 1900, became due under their debenture against the sum due to the plt. for the goods. **EDWARD NELSON & Co. v. FABER & Co. — Joyce J. [1903] 2 K. B. 367**

— Fraudulent assignment—Act of bankruptcy. See **BANKRUPTCY—Fraud. 1.**

— Fraudulent preference—Registered debenture issued in pursuance of unregistered agreement.

See **COMPANY—WINDING-UP—Preference. 3.**

17. — Future property — Floating charge — Trust deed—Restriction against creation of prior mortgages—Purchase by company—Purchase-money to remain on mortgage—Vendor's lien—Legal mortgage — Priority — Registration of

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debentures—Companies Act, 1900 (63 & 64 Vict. c. 48), s. 14—Constructive notice—Extent—Second mortgage — Notice — Power of company — Postponement.

On the sale of freehold property to a co. in 1904, the vendors agreed to let part of the purchase-money remain on mortgage. The conveyances to the co. were executed, but remained in the custody of the vendors' solicitor, and subsequently, on Jan. 27, 1905, the mortgage deed was executed without investigation or inquiry on the part of the vendors as to the co.'s title and without notice of any debentures or trust deed. In 1901 the co. had issued debentures secured by a trust deed, particulars whereof had been duly registered pursuant to s. 14 of the Companies Act, 1900. Both the trust deed and the debenture charged the undertaking of the co. and all its present and future property by way of a floating charge in the usual manner, and both prohibited the creation of any charge on such property ranking in priority to or *pari passu* with the security created in favour of the debentures, but the conditions indorsed on the debenture, a form of which was scheduled to the trust deed, provided that nothing "herein" contained should prevent the creation of specific mortgages upon after-acquired freehold or leasehold property.

On June 7, 1906, the plt., with notice of the debentures and trust deed, took a mortgage from the co. upon the same premises but subject to the mortgage of Jan. 27, 1905, which was afterwards transferred to him. In a foreclosure action:—

Held, as to the mortgage of Jan. 27, 1905, that, whether the vendors had or had not notice of the trust deed and debentures, any equity that attached to the purchased property in favour of the debenture-holders or trustees was subject to the paramount equity of the unpaid vendors, and that the mortgage took priority over any charge to persons claiming through the co.

If the priority had turned upon the question of notice, the particulars registered pursuant to s. 14 of the Companies Act, 1900, would have amounted to constructive notice of a charge affecting the property but not of any special restrictions upon dealings by the co. with its property in the usual manner when the subsisting charge is a floating security.

Held, as to the mortgage of June 7, 1906, that the security created by the trust deed and the debenture was cumulative; that the former was not controlled by the proviso in the conditions indorsed on the debenture; and that the co. had no power to create this mortgage in priority to the trust deed. **WILSON v. KELLAND.**

Eve J. [1910] W. N. 132; [1910] 2 Ch. 306

18. — Goodwill — "Property" — Jurisdiction to appoint manager—Debenture-holders' action.

Debentures issued by a hotel co. charged all the co.'s "lands, buildings, property, stock-in-trade, furniture, chattels, and effects whatsoever, both present and future":—

Held, that the word "property" was sufficient to include the goodwill or business of the co., and that therefore, in a debenture-holder's

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action, the Court had jurisdiction to appoint a manager.

Jennings v. Jennings, [1898] 1 Ch. 378, and *In re David and Matthews*, [1899] 1 Ch. 378. applied. *In re LEAS HOTEL Co.* *SALTER v. LEAS HOTEL Co.* **Kekewich J.** [1902] **W.N. 10**; [1902] 1 Ch. 332

— Guarantee — Insurance — Suretyship — Release of guarantor — Majority of debenture-holders binding minority.

See **COMPANY—Guarantee.** 2.

19. — *Interest — Debenture-holders' action—Supposed deficient security—Principal and interest—Payments on account—Appropriation of payments—Orders directing distribution of dividend—Subsequent surplus.*

A debenture trust deed provided that the trustees should, in case of default by the co., apply the net proceeds of any realization of the securities, first in payment of interest, secondly of the principal, due on the debentures. The co. made default, and a representative action was brought on behalf of the debenture-holders to enforce their security, in which the trusts of the deed were ordered to be carried into execution and the usual accounts were directed. The Master certified the amounts due to the various debenture-holders for principal, but, as the security was believed to be insufficient, he forbore to compute interest. The securities were gradually realised, and orders were made in chambers from time to time whereby dividends of 5s. in the pound, 10s. in the pound, and 5s. in the pound were directed to be paid "on the principal sums by the Master's certificate certified to be due to" the debenture-holders; the last of the dividends being further described as "the balance of the principal sum" so certified. A further sum was subsequently received sufficient to pay all arrears of interest and leave a small surplus for the co. The question now raised was whether by the terms of these orders the debenture-holders had lost their rights under the trust deed:—

Held (affirming the decision of Joyce J.), that there had been no final and complete appropriation by these orders as between principal and interest, and that the debenture-holders were entitled to receive the whole of their arrears of interest in accordance with the provisions of the trust deed, before any surplus was payable to the co. From the first the Court had professed to be carrying into effect the trusts of this deed and not to be varying those trusts. *In re CALGARY AND MEDICINE HAT LAND Co.* *PIGEON v. THE Co.* **C.A.** [1908] **W.N. 213**; [1908] 2 Ch. 652

— Interest guaranteed — Bankruptcy of guarantor Proof for future interest.
See **BANKRUPTCY—Proof.** 3.

20. — *Irredeemable debenture stock—Floating charge—Perpetual annuity—Borrowing—Liquidation—Power of liquidator to pay off stock at par.*

By its memorandum of association one of the objects of the co. was stated to be to borrow money by the issue of any mortgages, debentures, debenture stock, bonds, or obligations.

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By the articles the bd. were authorized to issue debenture stock to be secured upon the property of the co., and to be irredeemable or redeemable as the bd. should determine. The co. issued irredeemable debenture stock charged upon its assets as a floating charge. The undertaking of the co. had been sold and the co. was being wound up voluntarily. The liquidators proposed to pay off the debenture stock at par, and a stockholder took out a summons to determine whether they were entitled to do so:—

Held, that the co. had no power under their memorandum of association to issue irredeemable debenture stock, which was really equivalent to a perpetual annuity; that the articles might be referred to to explain the borrowing powers of the co., but that the granting of perpetual annuities was not a borrowing within those powers; and that the stockholder was only entitled to a return of his money paid to the co. and interest:—

Held, further, that, if this was really a borrowing upon the terms that the debenture stock should not be repayable as long as the co. was a going concern, the applicant, now that the co. was in liquidation, was upon that view also only entitled to a return of his money paid to the co. with interest. *In re SOUTHERN BRAZILIAN RIO GRANDE DO SUL Ry. Co.*

Buckley J. [1905] 2 Ch. 78

21. — *"Issue"—Deposit of blank debenture to secure loan.*

A co. had power to issue a series of mortgage debentures of 100l. each. Each debenture was to be under seal in a certain form, and was to be issued to a holder specified therein and registered. The co. had no power to reissue debentures:—

Held, that the deposit of an unregistered 100l. debenture, sealed in blank without name or date, to secure a temporary loan, was an issue of that debenture, so that it could not be re-issued after repayment of the loan.

Lery v. Abercorris Slate and Slab Co. (1887) 37 Ch. D. 260, 264; *In re Strand Music Hall Co., Ltd.*, (1865) 3 D. J. & S. 147; *In re Regent's Canal Ironworks Co.*, (1876) 3 Ch. D. 43; *In re George Routledge & Sons, Ltd.*, [1904] 2 Ch. 474, 480; and *In re W. Tasker & Sons, Ltd.*, [1905] 2 Ch. 587, 598, applied.

In re PERTH ELECTRIC TRAMWAYS, LD. *LYONS v. TRAMWAYS SYNDICATE, LD. AND PERTH ELECTRIC TRAMWAYS, LD.*

Swinfen Eady J. [1906] **W.N. 113**; [1906] 2 Ch. 216

— Issue of debentures at a discount—Option to debenture-holders to take fully paid shares in exchange for debentures.
See **COMPANY—Shares.** 8.

22. — *Jeopardy. Property in—Debenture-holders' action—Practice—Motion for judgment on admissions in pleadings—Immediate sale—Form of Order—R. S. C., Order LI., r. 1B.*

In a debenture-holders' action, when the property comprised in debentures is in jeopardy, an immediate sale will be ordered under the R. S. C., Order LI., r. 1B, on motion for judgment on admissions in the pleadings, but, unless

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all the debenture-holders subsequent to the plts. are parties to the action, the order will be for sale with the approbation of the judge, so that the absent debenture-holders may be brought in in chambers on the application to approve the conditional contract for sale. *In re CRIGGLESTONE COAL CO. STEWART v. CRIGGLESTONE COAL CO. - Swinfen Eady J. [1906] W. N. 20; [1906] 1 Ch. 523*

Note.

See also *In re Crigglestone Coal Co., C. A. [1906] 2 Ch. 327; Company—Winding-up—Practice. 8.*

23. — Joint debentures issued by three companies—Validity—Ultra vires—Joint and several covenant to pay—Charge by companies respectively on their several undertakings and assets—Proceeds applied in part to use of each company—Articles of association—Construction—Power to raise money “not exceeding amount of preference share capital.”

Three cos., each of which had power to borrow money on the security of debentures, issued joint debentures, by which the cos. jointly and severally agreed to pay to the holder the amount advanced by him, with interest thereon; and the three cos. thereby respectively charged with such payments their several undertakings and all their present and future properties and assets. Each of the cos. received a part of the proceeds of the debentures :—

Held, that, though it was ultra vires for any of the cos. to charge its assets with money advanced to another co., yet, to the extent to which the money advanced had come to the hands of each co., the debentures constituted a valid charge on the assets of that co.

Decision of Byrne J., that the debentures were entirely void, reversed.

The articles of association of a co. empowered the directors to borrow any sum of money, not exceeding the amount of the preference share capital of the co., on the security of the property of the co. by (inter alia) debentures. No preference share capital having been issued :—

Held, that this clause did not limit the amount which could be raised on the security of debentures. *In re JOHNSTON FOREIGN PATENTS CO. In re JOHNSTON DIE PRESS CO. In re JOHNSTONIA ENGRAVING CO. J. P. TRUST LD. v. THE ABOVE COS. - C. A. [1904] W. N. 132; [1904] 2 Ch. 234*

— Leaseholds — Mortgage by sub-demise — Receiver — Rent, Liability for.

See **MORTGAGE—Receiver. 1.**

— Licence—No renewal of — Compensation — Capital moneys—Investment—Powers of debenture trustees.

See **BREWERS. 1—3.**

— Memorandum of association—Ultra vires—Sale of business to another company—Dissenting debenture-holders, Rights of.

See **COMPANY—Memorandum. 9.**

— Mortgage—Clog on redemption—Stipulation that mortgagee shall be employed as broker by the company.

See **MORTGAGE—Redemption. 5.**

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— Mortgage—Stock—Clog on equity of redemption — Irredeemable stock, Power to issue.

See **MORTGAGE—Redemption. 2.**

24. — Pari passu incumbrancers—Deposit of debentures to secure pecuniary assistance—Loan—Repayment of money advanced—Debentures not returned to the company—Extinction of debentures—Further loan—Keeping debentures alive — Power to re-charge — Re-issue — Current account.

A co. issued a series of debentures as floating securities on the terms that they should not without the authority of the debenture-holders create any charge on the mortgaged assets ranking pari passu with or in priority to the charge created by the debentures. They deposited 100,000*l.* of these debentures with a bank as collateral security for a credit of 150,000*l.*, by the terms of which the bank were to accept the co.'s drafts. This credit was not a current account, nor was anything advanced which was strictly speaking a loan. After this arrangement had been in operation for some time the amount due to the bank on the credit was paid off by the co. Immediately before this repayment the bank advanced 500*l.* to the co. in order to avoid the deposited debentures being freed from all charges in favour of the bank; and the debentures were not given back to the co. The other debenture-holders claimed that the deposited debentures were dead, and could not be re-charged with the 500*l.* or any other sum :—

Held that, inasmuch as the whole amount for which the debentures were originally deposited as security had been paid off, the debentures themselves were spent, notwithstanding that they had not been handed back to the co., and that they could not be re-charged with the 500*l.* or any further sum.

In re W. Tushet & Sons, Ltd., [1905] 2 Ch. 587, followed.

Quære, whether such a re-charge would be authorized by an article which gave power to the board to create, issue, make and give debentures for the purpose of borrowing money or for any other purpose.

Per Warrington J.: The rule that if debentures are issued and deposited as security, and the amount nominally secured by them is advanced on that security and is then paid off, no further charge on them can be created without creating an additional charge which purports to rank pari passu with the debentures of the original issue, applies to a current account. *In re RUSSIAN PETROLEUM AND LIQUID FUEL CO. LONDON INVESTMENT TRUST, LD. v. RUSSIAN PETROLEUM AND LIQUID FUEL CO. - C. A. [1907] 2 Ch. 540*

— Pleadings—Necessity for.

See under **PRACTICE — Statement of Claim.**

25. — Practice—Absence of subsequent incumbrancers—Debenture-holder's action.

This case came on as a short cause on motion for judgment in the form sanctioned by certain judges of the Chancery Division some years ago

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(see Seton on Judgments, 6th ed. 2023), and containing "An inquiry what other incumbrances affect the property comprised in or charged by the said debentures or any and what parts thereof and in whom the same are invested"; "An account of what is due to such other incumbrancers respectively"; "An inquiry what are the respective priorities of such other incumbrances and the said debentures respectively."

The plt. sued on behalf of himself and all other the holders of first mortgage debentures of the deft. co., and he had delivered a statement of claim. The co. had approved the minutes of judgment, but pointed out that there was a series of fifty second debentures, and another series of five third debentures, and that the holders of these debentures were not parties to the action.

Buckley J. said that as regarded the joinder of subsequent incumbrancers there was no difference between a debenture-holder's action and an ordinary mortgagee's action. The fact that the judgment proposed to be taken contained an inquiry as to other incumbrancers and their priorities did not enable the plt. to dispense with the presence of known existing subsequent incumbrancers as parties. The case must stand over with liberty to join a second and a third debenture-holder to represent their respective classes. The matter came so frequently before his Lordship that he would be glad if one of the cases could be taken to the C. A. *In re WILCOX & CO. HILDER v. WILCOX & CO.* - **Buckley J.** [1903] W. N. 64

26. — Practice—Debenture-holder's action—Form of judgment.

The note of this case, [1902] W. N. 96, is cancelled. *In re PRINCE & BAUGH, LD. BEDELL v. PRINCE & BAUGH, LD.* - **Buckley J.** [1902] W. N. 96, 120

27. — Practice—Debenture-holder's action—Form of order.

Action by the trustees of a debenture trust deed against the co. to have the trusts of the deed carried out. The co. put in no defence and had passed a resolution for voluntary winding up. The action came on as a short cause or motion for judgment in default of defence. The plt. moved for judgment in the form given in Palmer's Company Precedents, Part III. (10th ed.), p. 555, form 184, which contains the following clauses:—

"4. An inquiry what other incumbrances affect the property comprised in or charged by the said indenture or any and what part or parts thereof and in whom the same are vested.

"5. An account of what is due to such other incumbrances respectively.

"6. An inquiry what are the priorities of such other incumbrances and the said indenture respectively, and what property other than that comprised or charged by the said indenture is comprised in such other incumbrances."

Swinfen Eady J. asked if there were any other incumbrances, and being told that the parties knew of none, said that the practice in chambers had been altered, and that in cases where no other incumbrances were known to exist the words "and in whom the same are

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vested" must be omitted from inquiry (4), while the account (5) and the inquiry (6) must be omitted altogether. Application could be made to add these if the inquiry (4) disclosed any incumbrances. *In re ADDRESSOGRAPH, LD. BACKHOUSE v. ADDRESSOGRAPH, LD.*

Swinfen Eady J. [1909] W. N. 260

28. — Practice—Debenture-holder's action—Motion for judgment—Minutes.

Motion for judgment in default of defence in an ordinary debenture-holder's action.

As the usual judgment was asked for, no minutes had been prepared.

The Court: Counsel's minutes must always be left with the judge on these applications, even if the common form judgment is all that is asked for. The motion must stand over for this to be done. *In re AUTOMATIC MACHINES (HAYDON & URRY'S PATENTS), LD. GRAAFE v. AUTOMATIC MACHINES (HAYDON & URRY'S PATENTS), LD.*

Swinfen Eady J. [1902] W. N. 236

29. — Practice—Debenture-holder's action—Short cause—Motion for judgment—Pleadings—Statement of claim—Declaration—R. S. C., Order XL., r. 1.

On Feb. 19, 1910, the plt. issued a writ in a debenture-holder's action against the Kitson Empire Lighting Co., Ltd., and on Feb. 25 an order was made on his motion appointing a receiver and manager of the business of the co. The co. appeared by counsel and refused to treat the motion as the trial of the action, or to consent to judgment. On Mar. 7 the matter came before the Master on a summons for directions, when the co. was not represented, and the plt. asked for the usual order for pleadings. The Master, however, made an order that the case should be set down on motion for judgment as a short cause without pleadings. Negotiations with a view to the reconstruction of the co. followed, but were unsuccessful, and the plt. served notice of motion for judgment.

On May 2 the case came before Parker J., when the co. did not appear, and his Lordship said that it was impossible to make any order in their absence and without a statement of claim. The case accordingly stood over to see whether the co. would appear by counsel and consent to the order. In the meantime resolutions for the voluntary winding up of the co. had been passed and liquidators appointed, who, at the plt.'s expense, now appeared by counsel and consented to the usual order being made, declaring that the debenture-holders were entitled to a charge, and for accounts and inquiries. The only evidence before the Court was the plt.'s affidavit filed in support of the motion for a receiver; but his Lordship gave leave to file an affidavit proving the liquidation resolutions and the appointment of the liquidators.

Parker J. declined to make the declaration without evidence, and said that orders in such cases ought not to be made in the form adopted by the Master unless the co. appeared before him and stated that they would appear by counsel at the hearing before the judge and would consent to the order; and that in that case, if no party objected, it would be proper to

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give liberty to prove the facts by affidavit evidence. He made the order for accounts and inquiries. *In re KITSON EMPIRE LIGHTING Co. HIGGS v. THE Co.*

Parker J. [1910] W. N. 154

30. — Practice—Discontinuance—Debenture-holder's action—Right of plaintiff to discontinue after judgment.

The rule whereby the plt. in a creditor's administration action is precluded from discontinuing his action after judgment* does not apply to a debenture-holder's action, the reason being that in a creditor's administration action the Court, by directing in the judgment that the estate shall be "applied in a due course of administration," takes upon itself the duty of administering the assets, whereas no such direction is contained in the usual judgment in a debenture-holder's action. Therefore, if the plt. in a debenture-holder's action has no notice that any other debenture-holder claims to have the benefit of the judgment, it is competent for him to discontinue his action.

Handford v. Storie (1825) 2 S. & S. 196; 34 R. R. 272, n., considered. *In re ALPHA Co. WARD v. ALPHA Co.* - - - **Kekewich J. [1902] W. N. 230; [1903] 1 Ch. 203**

— Promissory note—Stamp—Treasury note of foreign Government — Marketable security.

See REVENUE—Stamps. 4.

31. — Purchase of business—"Subject to debts and liabilities set out in schedule"—Scheduled creditor—Debentures—Priority.

By an agreement dated July 15, 1901, and made between H. and the deft. co., H. agreed to sell and the co. to purchase the goodwill, property, and assets of a business which had previously been carried on by the vendor. The agreement provided that the co. should pay, satisfy, and discharge all the debts and liabilities of the vendor in relation to the business set out in a schedule, and that the property forming the subject-matter of the contract should vest in the co. "subject to the debts and liabilities set out in the said schedule." The schedule contained a list of creditors of the business and the respective amounts of their debts. Contemporaneously with this agreement the co. issued debentures creating a charge upon the whole of its undertaking and assets. This was a summons in a debenture-holder's action, taken out by creditors whose names appeared in the schedule, claiming to be incumbrancers upon the property and assets of the co. in priority to the debenture-holders.

Joyce J. said that the creditors were no parties to the contract, and there was no trust express or implied in their favour, although their names were scheduled to the agreement. The claimants, therefore, were not entitled to any charge, and the summons must be dismissed. *In re HARDEN STAR, LAVIS & SINCLAIR Co. MORRIS v. THE Co.*

Joyce J. [1903] W. N. 64

— Receiver—Rolling stock—Proceeds of sale—Priority.

See RAILWAY—Receiver. 2.

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— Receiver.

See under COMPANY—Receiver, and COMPANY—WINDING-UP—Receiver.

— Receiver, Use or occupation by—Head lease—Rent—Breach of covenant.

See MORTGAGE—Receiver. 1.

— Register—Rectification.

See COMPANY—Register. 3.

32. — Registered holder — Equities of company against transferor—Rights of transferee for value without notice.

A co. issued to B. debentures each of which contained a covenant to pay the moneys thereby secured, in accordance with the conditions indorsed thereon, to B. or other the registered holder for the time being. The principal moneys secured became immediately payable in the event of a resolution for winding-up being passed. The conditions indorsed provided as follows:—

"(3.) The registered holder . . . will be regarded as exclusively entitled to the benefit of this debenture, and all persons may act accordingly; and the co. shall not be bound to enter in the register notice of any trust or to recognize any right in any other person save as herein provided.

"(4.) Every transfer of this debenture must be in writing under the hand of the registered holder . . . and must be delivered at the registered office of the co. with . . . such evidence of identity or title as the co. may reasonably require, and thereupon the transfer will be registered.

"(8.) The principal moneys and interest hereby secured will be paid without regard to any equities between the co. and the original or any intermediate holder thereof, and the receipt of the registered holder for such principal moneys or interest shall be a good discharge to the co. therefor."

After a resolution for winding up the co. had been passed, B. transferred the debentures for value to C., who took without notice of any defect in the title of B. thereto.

Notice of the transfer was given to the liquidator, but no demand for registration of the transfer was made.

On a claim by C. in the winding-up that he was entitled to the benefit of the debentures, the Court found that B. had paid nothing for them, but had obtained them from the co. by misrepresentation:—

Held, that, notwithstanding the conditions, the rights of the co. against B. prevailed over the title of C., and that C. was not entitled to the benefit of the debentures.

In re Goy & Co., [1900] 2 Ch. 149, distinguished. *In re PALMER'S DECORATION AND FURNISHING Co. Buckley J. [1904] 2 Ch. 743*

32A. — Registration—Certificate of registrar—Conclusiveness of certificate—Companies Act, 1900 (63 & 64 Vict. c. 48), s. 14.

The certificate of the Registrar of Joint Stock Companies under s. 14 of the Companies Act, 1900, is conclusive evidence that all the requirements of the section as to the registration of debentures have been complied with, and

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where such a certificate has been granted the Court will refuse to go into the question whether such requirements have in fact been complied with.

Decision of Warrington J., [1907] 2 Ch. 471, affirmed.

In re YOLLAND, HUSSON & BIRKETT, LD. LEICESTER v. YOLLAND, HUSSON & BIRKETT, LD. - C. A., [1907] W. N. 249; [1908] 1 Ch. 152

Note.

Applied by Swinfen Eady J., *Cunard Steamship Co. v. Hopwood*, [1908] 2 Ch. 564. See No. 36, below.

33. — Registration—“Charge created by the company”—Mortgage—Debenture stock—Covering deed—Sale of part of mortgaged property—Substitution of other property—Companies Act, 1900 (63 & 64 Vict. c. 48), s. 14.

Debenture stock issued by a co. was secured by a covering deed, executed in 1897, under which the trustees had power, at the request of the co., to sell any part of the mortgaged premises, which included freehold and leaseholds of the co. The freeholds and leaseholds were described as “the specifically mortgaged premises,” and the proceeds of any sale of those premises were to become part of those premises, and were to be applied by the trustees, at the request of the co., in the purchase of (inter alia) any leasehold hereditaments, which were to be assured to the trustees and held by them upon the trusts declared by the covering deed of the specifically mortgaged premises, and were to be deemed to form part of those premises.

Some of the leaseholds comprised in the covering deed having been sold, the trustees, at the request of the co., agreed to apply 2700*l.*, part of the proceeds of sale, in the purchase of a leasehold public-house. By a lease dated Mar. 14, 1902, in consideration of 2700*l.* paid by the co. out of their own funds to the lessor, the public-house was demised to them for a term of 100½ years, at a yearly rental and subject to covenants by the lessees. On Aug. 18, 1902, by a deed which was described as supplemental to the covering deed, the co., in consideration of 2700*l.* paid to them by the trustees, out of moneys held by them under the provisions of the covering deed, sub-demised the public-house to the trustees for the residue of the term (except the last day thereof) upon the trusts of the covering deed concerning the specifically mortgaged property and as part of that property, as if the same had been originally comprised in and demised to the trustees by the covering deed:—

Held, that by the sub-demise a charge was created by the co. within the meaning of s. 14 of the Companies Act, 1900, and that the sub-demise must be registered under that section.

Decision of Byrne J., [1903] 2 Ch. 527, affirmed.

Per Stirling L.J.: When the leasehold public-house had vested in the co., it became part of their assets over which the trustees of the covering deed had by virtue of that deed a floating, not a specific, charge, and on the execution of the sub-demise and payment of the

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2700*l.* by the trustees or the co., the trustees acquired for the first time a specific charge on the public-house, namely, a security of a different kind from which previously existed. Consequently the sub-demise required registration. *CORNBRÖOK BREWERY CO., LD. v. LAW DEBENTURE CORPORATION, LD.*

C. A. [1904] W. N. 6; [1904] 1 Ch. 103

Note.

Distinguished by Parker J., *Bristol United Breweries Ltd., v. Abbot*, [1908] 1 Ch. 279. See *Company—Mortgages*. 2.

Distinguished by Swinfen Eady J., *Cunard Steamship Co. v. Hopwood*, [1908] 2 Ch. 564. See No. 36, below.

34. — Registration—Creation of charge—Re-issue—Companies Act, 1900 (63 & 64 Vict. c. 48), s. 14—Companies Act, 1907 (7 Edw. 7, c. 50), s. 15.

Three years before Jan. 1, 1901 (when s. 14 of the Companies Act, 1900, came into operation), a co. conveyed and assigned all its present and future real and personal property (including uncalled capital) to trustees to secure an issue of debentures, each of which give to the registered holder thereof a first charge on the freehold and leasehold property of the co. and a floating charge on all its other assets. A few days after the execution of the trust deed the debentures were sealed and issued, seven of them (for 100*l.* each) being issued to A. In 1902 the co. purchased from A. the seven debentures and took a transfer of them to U. as its nominee. U. at once deposited them and a blank transfer with a blank to secure an overdraft.

In 1905 the seven debentures were delivered up to the co. and cancelled, and the co. issued one debenture for 700*l.*, but otherwise in the same form, to R. to secure a cash advance. This debenture was never registered under s. 14 of the Companies Act, 1900. In Jan., 1907, a winding-up order was made against the co., and on Aug. 28 there came into operation s. 15 of the Companies Act, 1907 (which retrospectively validates the security of re-issued debentures under certain circumstances). In a debentureholders' action commenced on the same day, the question arose whether, having regard to the non-registration of the debenture given to R., he had any security under either it or the trust deed:—

Held—(1.) that the winding-up order was not an order pronounced before Mar. 7, 1907, “as between the parties to the proceedings in which . . . the order was made” within the meaning of s. 15, sub-s. 5, of the Companies Act, 1907; (2.) that there had been a keeping alive and re-issue of the original debentures within the meaning of s. 15, sub-s. 1; and (3.) that as the charge claimed by R. was created on the execution of the trust deed before Jan. 1, 1901, and not when he advanced money to the co., non-registration of the debenture did not affect his security.

In re Spiral Globe, Ltd. (No. 2). [1902] 2 Ch. 209, followed.

Quære, whether the re-issued debenture would have required registration if it had been issued in the place of debentures requiring registration

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under the Act of 1900. *In re* NEW LONDON AND SUBURBAN OMNIBUS CO. APPELYARD v. SAME CO. - Neville J. [1908] 1 Ch. 621

35. — Registration — Creation of charge — Resolution to issue series of debentures — Sealing — Issue — Companies Act, 1900 (63 & 64 Vict. c. 48), s. 14.

In Aug., 1900, a co. resolved at a meeting of its directors to issue at par twenty debentures at 100l. each bearing interest at 6 per cent. and redeemable at twelve months from date of issue. On Aug. 31, 1900, the twenty debentures were sealed with the co.'s seal. By the debentures the co. charged with the payment of principal and interest thereon its undertaking and all its property by way of floating charge. Ten of these debentures were issued in Sept., 1900, but the remaining ten were retained in the possession of the co., and not issued until Jan. 5, 1901, at which date the Companies Act, 1900, was in force. Sect. 14 of that Act provides for the registration of mortgages or charges "created" by a co. after the commencement of the Act :—

Held, that the debentures issued on Jan. 5, 1901, did not require registration under the Act. *In re* SPIRAL GLOBE, LD. (No. 2). WATSON v. SPIRAL GLOBE, LD.

Joyce J. [1902] W. N. 82; [1902] 2 Ch. 209

Note.

See In re Spiral Globe, Ltd., Swinfen Eady J., [1902] 1 Ch. 396, No. 42, *below*.

Followed by Neville J., *In re New London and Suburban Omnibus Co.*, [1908] 1 Ch. 621. *See* No. 31, *above*.

36. — Registration — Debenture stock — Covering deed — Specific ships — Specific ancillary mortgages — Substituted security — Registration — Companies Act, 1900 (63 & 64 Vict. c. 48), s. 14.

Sect. 14, sub-s. 4, of the Companies Act, 1900, applies to an issue of debenture stock secured by a covering deed containing any charge to the benefit of which the stockholders of that issue are entitled *pari passu*. If the covering deed contains specific equitable charges on specific ships, and the particulars required by s. 14, sub-s. 4, are registered, then for the purposes of s. 14 that registration will not only cover subsequent statutory mortgages of those specific ships required to complete the security, but also statutory mortgages of any ships substituted therefor under the powers of the covering deed.

In re Harrogate Estates, Ltd., [1903] 1 Ch. 498, and *In re Yolland, Husson & Birkett, Ltd.*, [1908] 1 Ch. 152, applied.

Cornbrook Brewery Co. v. Law Debenture Corporation, [1904] 1 Ch. 103, distinguished. *CUNARD STEAMSHIP CO. v. HOPWOOD*

Swinfen Eady J. [1908] W. N. 182; [1908] 2 Ch. 564

Note.

See In re Cunard Steamship Co., Swinfen Eady J., [1908] W. N. 160; *Company — Mortgages*. 4.

37. — Registration — Extending time — Application after commencement of winding-up.

The directors of a co. in 1898 resolved to

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raise 5500l. on debentures of 100l. each charging the co.'s assets, including its uncalled capital, and ranking *pari passu*. Before Jan. 1, 1901 (the date of commencement of the Companies Act, 1900), fifty of the debentures were issued. The remaining five debentures were issued to D. in July, 1901. D. never registered his debentures, having been advised by his solicitor (who had considered the provisions of the Act of 1900) that registration was unnecessary. In Oct., 1901, the co. passed an extraordinary resolution for voluntary winding-up, and subsequently D. applied, under s. 15 of the Act, for an order extending the time for registration of his debentures. The assets were valued at 5030l., without providing for costs :—

Held, that, although the omission to register was not "accidental" or "due to inadvertence" within the meaning of s. 15, it was due "to some other sufficient cause"; but that it would be unjust to the other creditors to grant the extension of time without qualifying the order as *In re Joplin Brewery Co.*, [1902] 1 Ch. 79, and that to make an order in that form in a case where the winding-up of the co. had commenced could not benefit anyone.

The application was accordingly dismissed. *In re S. ABRAHAMS & SONS.*

Buckley J. [1902] W. N. 37; [1902] 1 Ch. 695

38. — Registration — Extending time — Winding-up before date of registration — Companies Act, 1900 (63 & 64 Vict. c. 48), ss. 14, 15.

A co. in June, 1901, executed a trust deed and issued debentures creating a charge which required registration within twenty-one days under s. 14 of the Companies Act, 1900. The charge was not registered within twenty-one days, but on Nov. 1, 1901, an order was made under s. 15 of the Act extending the time for registration until Nov. 15, but "without prejudice to the rights of parties acquired prior to the time when such trust deed and debentures shall be actually registered." The charge was registered on Nov. 15, 1901; but in the meantime—on Nov. 11—the co. passed an extraordinary resolution for voluntary winding-up :—

Held, that the rights of the general body of creditors under the winding-up were protected by the saving words of the order, and that the debenture-holders were not as against them secured creditors.

In re I. C. Johnson & Co., [1902] 2 Ch. 101, explained. *In re ANGLO-ORIENTAL CARPET MANUFACTURING CO.*

Buckley J. [1903] W. N. 78; [1903] 1 Ch. 914

Note. Approved and distinguished by C. A., *In re Ehrmann Bros., Ltd.*, [1906] 2 Ch. 697. *See* No. 44, *below*.

39. — Registration, Extending time for — Debenture trust deed — Property abroad — Companies Act, 1900 (63 & 64 Vict. c. 48), ss. 14, 15.

The Court: The parties appear to have acted *bona fide*. The transaction was commenced, and was being carried to completion in India, some time before the Companies Act, 1900, came into operation. The time for registration will be extended for ten days from to-day. *In re TINGRI TEA CO.* -

Byrne J. [1901] W. N. 165

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40. — Registration—Extension of time—Protection of creditors—Practice—Companies Act, 1900 (63 & 64 Vict. c. 48), ss. 14, 15.

An order under s. 15 of the Companies Act, 1900, extending the time for registration of debentures ought to contain the words: "but that this order be without prejudice to the rights of parties acquired prior to the time when such debentures shall be actually registered." *In re JOPLIN BREWERY CO.*

Buckley J. [1901] W. N. 216; [1902] 1 Ch. 79

Note.

See also *In re Spiral Globe, Ltd.*, [1902] 1 Ch. 396, No. 42, below.

In re S. Abrahams & Sons, [1902] 1 Ch. 695, No. 37, above; *In re I. C. Johnson & Co.*, C. A. [1902] 2 Ch. 101, next Case.

Referred to by Buckley J. *In re Anglo-Oriental Carpet Manufacturing Co.*, [1903] 1 Ch. 914. See No. 38, above.

41. — Registration—Extension of time—Protection of creditors—Series of debentures ranking *pari passu*—Preservation of rights of debenture-holders *inter se*—Practice—Companies Act, 1900 (63 & 64 Vict. c. 48), ss. 14, 15.

The directors of a co. resolved in 1890 to raise 85,000*l.* on debentures. The debentures were secured on property included in a covering deed and by a charge on all the property of the co., including its uncalled capital, for the time being as a floating charge, and were stated to form one series all of which were to rank *pari passu*. Some of the series were issued before the Companies Act, 1900, came into operation, and, therefore, did not require registration. Three hundred and twenty-seven of the remaining debentures were issued after that date, but were not registered. The holders of these debentures and the co. applied for an extension of time to enable them to carry out the registration.

Kekewich J. extended the time, but added to the order the qualification introduced by *In re Joplin Brewery Co.*, [1902] 1 Ch. 79, for the protection of creditors:—

Held, by the C. A., that the order must be varied in such a way as to preserve the rights of equality of the debenture-holders *inter se*. *In re I. C. JOHNSON & CO.*

C. A. [1902] W. N. 91; [1902] 2 Ch. 101

Note.

Explained by Buckley J., *In re Anglo-Oriental Carpet Manufacturing Co.*, [1903] 1 Ch. 914. See No. 38, above.

42. — Registration—Extension of time—Protection of creditors—Winding-up—Companies Act, 1900 (63 & 64 Vict. c. 48), ss. 14, 15.

Debentures containing a floating charge on the assets and undertaking of a co. were not registered as required by s. 14 of the Companies Act, 1900, the omission to register being due to inadvertence. After the commencement of the winding-up of the co., the debenture-holders applied, under s. 15 of the Act, for an order extending the time for registration:—

Held, that the order must state that it was

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"without prejudice to the rights of parties acquired prior to the time when such debentures shall be actually registered."

The principle of *Crew v. Cummings*, (1888) 21 Q. B. D. 420, and *Ex parte Furber*, [1893] 2 Q. B. 122 (as to extending the time for registration of a bill of sale), is not limited in its application to cases in which the ownership of or property in goods has actually changed; it extends to cases in which the rights of third parties have actually accrued and would be prejudicially affected if registration were allowed without saving those rights. *In re SPIRAL GLOBE, LD.*

Swinfen Eady J. [1901] W. N. 250; [1902] 1 Ch. 396

Note.

See *In re Spiral Globe, Ltd.* (No. 2), Joyce J. [1902] 2 Ch. 209, No. 35, above.

43. — Registration—Extension of time—Protection of creditors—Unsecured creditors—Priority—Companies Act, 1900 (63 & 64 Vict. c. 48), ss. 14, 15—Debenture-holder's action—Form of judgment.

Action by plt. on behalf of himself and all other the holders of first mortgage debentures of the deft. co. to enforce their security.

Kekewich J. said that it was obvious that the real position of the unsecured creditors had not yet been decided. He must, therefore, direct inquiries which would leave that question open. Accordingly, in addition to the usual accounts and inquiries, he directed the two following further inquiries: 1. "An inquiry at what dates respectively the several debentures directed to be registered by the order of July 24, 1903, were in fact registered." 2. "An inquiry whether any and which of the unsecured creditors of the deft. co. at the respective dates of registration aforesaid still remain unsatisfied." He refused to add the petitioners as defts., but they would have liberty to attend the proceedings on the two added inquiries. The costs of their attendance on these inquiries and on this hearing to be reserved. With regard to the declaration of charge, he had frequently expressed his opinion that it was unnecessary, but he had not succeeded in inducing the other judges of the Chancery Division to agree with him. He saw no special reason for omitting it in this case, as it would not prejudice the rights of the unsecured creditors. The declaration would therefore stand. *In re EHRMANN BROTHERS, LD. ALBERT v. EHRMANN BROTHERS, LD. Kekewich J. [1904] W. N. 48*

Note.

See next Case.

44. — Registration—Extension of time, Order for—Omission to register—Proviso protecting rights acquired prior to registration—Winding up after registration—Unsecured creditors at date of registration—Right to rank *pari passu* with debenture-holders registered within the extended time—Companies Act, 1900 (63 & 64 Vict. c. 48), ss. 14, 15.

Where debentures are inadvertently omitted to be registered within the twenty-one days prescribed by the Companies Act, 1900, and are subsequently registered under an order extending the time for registration, and the order contains

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the usual proviso that it is to be without prejudice to the rights which may have been or may be acquired against the holders of the debentures in question prior to the time when they shall be actually registered, an ordinary unsecured creditor of the co. at the date when the debentures are registered is not entitled to rank *pari passu* with such debenture-holders unless he has taken steps to enforce his debt, or unless a winding-up has intervened.

So held by the C. A., reversing Joyce J., [1906] W. N. 129.

In re Anglo-Oriental Carpet Manufacturing Co., [1903] 1 Ch. 914, approved and distinguished. *In re EHRMANN BROTHERS, LD. ALBERT v. EHRMANN BROTHERS, LD.*

C. A. [1906] W. N. 169; [1906] 2 Ch. 697

Note.

See preceding Case.

45. — *Registration—Extension of time—Protection of unsecured creditors—Practice—Companies Act, 1900* (63 & 64 Vict. c. 48), ss. 14, 15.

In making an order under s. 15 of the Companies Act, 1900, granting an extension of time for the registration of debentures, the Court will not necessarily impose any terms for the protection of unsecured creditors of the co. *In re CARDIFF WORKMEN'S COTTAGE CO.*

Buckley J. [1906] W. N. 183; [1906] 2 Ch. 627

46. — *Registration—Extension of time—Registration under repealed section—Companies Act, 1900* (63 & 64 Vict. c. 48), s. 14—*Companies Act, 1907* (7 Edw. 7, c. 50), s. 10—*Interpretation Act, 1889* (52 & 53 Vict. c. 63), s. 38, sub-s. 2.

On Jan. 1, 1901, the date of the commencement of the Companies Act, 1900, the Herts and Essex Water Co. had outstanding the whole of an authorized issue of 6250*l.* A debentures and 3256*l.* part of an authorized issue of 6000 B debentures. On various dates afterwards, the last being April 17, 1905, they issued further B debentures to the amount of 450*l.* In 1905 the co. passed a resolution for the issue of 12,250*l.* C debentures in place of the A and B debentures. In pursuance of this resolution C debentures to the amount of 7150*l.* were issued at various dates, of which the latest was May 20, 1908. The A debentures were paid off, but the B series remained outstanding. By the inadvertence of the secretary none of the B debentures issued after the date of the commencement of the Companies Act, 1900, and none of the C debentures had been registered. The co. now applied under s. 15 of the Act of 1900 for an extension of the time for registration. Sect. 14 of the Companies Act, 1900, which requires the registration of debentures, is repealed by s. 10 of the Companies Act, 1907, and that section, which re-enacts their registration, applies only to debentures issued after the commencement of that Act (July 1, 1908). The only considerable creditors of the co. besides the debenture-holders were their bankers, to whom they owed 6000*l.* The only question was whether the debentures would now be registered under the Act of 1900.

The Interpretation Act, 1889 (52 & 53 Vict. c. 63), provides, s. 38, sub-s. 2: "Where this

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Act or any Act passed after the commencement of this Act repeals any other enactment, then, unless the contrary intention appears, the repeal shall not . . . (c) affect any right, privilege, obligation, or liability acquired, accrued, or incurred under any enactment so repealed; . . . or (e) affect any investigation, legal proceeding, or remedy in respect of any such right, privilege, obligation, or liability."

J. T. Prior, for the co., asked for an order in the form settled by the C. A. in *I. C. Johnson & Co.*, [1902] 2 Ch. 101, 111, which preserves the rights of creditors and also of the holders of part of a series of debentures issued before registration was necessary.

Swinfen Eady J. said that the power and duty to register under the repealed s. 14 of the Act of 1900 was preserved by the Interpretation Act, but as the debentures had been left unregistered so long, he thought the consent of the bank should be obtained. He made an order in the form asked, extending the time for three weeks subject to the production to the registrar of the bank's consent in writing. *In re HERTS AND ESSEX WATERWORKS CO.*

Swinfen Eady J. [1909] W. N. 48

47. — *Registration—Omission to register—Inadvertence—Rectification of register—Companies Act, 1900* (63 & 64 Vict. c. 48), ss. 14, 15.

An application was made in this case by ex parte originating motion on behalf of the co., that the time for registration of the debentures might be extended until one month after the date of the order to be made on the motion, or that such further or other order might be made as the judge might think fit for the purpose of granting relief owing to the omission to register such debentures as required by the Companies Act, 1900, which came into operation on Jan. 1, 1901.

The application was supported by an affidavit of the sec. of the co. stating the facts: that he believed that the debentures were created by the resolution; that as the resolution was prior to the commencement of the Act he was in the bona fide belief that the debentures did not require registration under it; that the statutory meeting of the co. was held on Feb. 18, and the statutory return had been made to the registrar containing full particulars of the debentures; and that the non-registration arose from the above-mentioned circumstances, and was due solely to inadvertence.

The Court made an order extending the time for registering the debentures for one month from the date of the order. *In re E. AND F. BEATTIE, LD. Cozens-Hardy J.* [1901] W. N. 152

48. — *Registration—Power of company to cancel unissued debentures and to issue fresh debentures in their place—Companies Act, 1900* (63 & 64 Vict. c. 48), s. 14, sub-s. 1, 6.

A co. which has power to exchange and vary its debentures, and has, in pursuance of an agreement to issue debentures as security for a loan, sealed but not issued or registered those debentures, can retain and cancel them and issue other debentures to the lender; and the other debentures, if registered within twenty-one days

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from the date when they were sealed, will be valid. *In re N. DEFRIES & Co. BOWEN v. N. DEFRIES & Co.*

Buckley J. [1903] W. N. 194; [1904] 1 Ch. 37

49. — Registration—Series of debentures—Covering deed—Subsequent issue—Companies Act, 1900 (63 & 64 Vict. c. 48), ss. 14, 15.

On Nov. 18, 1901, the co. passed resolutions creating a series of debentures to rank *pari passu*. On Dec. 13 a covering deed was executed. On Dec. 13 the deed and ninety-nine debentures which had been already issued were carried in for registration, together with particulars which gave the date of the deed, the total amount secured, a description of the property and the names of the trustees, but by mistake stated that the resolutions were passed on Dec. 13, 1901. The deed and the debentures, each of which also contained a charge, were registered, and the registrar gave a certificate to that effect. On two subsequent occasions the co. registered other debentures of the series, and received certificates which referred to the deed, described the debentures, and stated that they had been registered. On the last occasion, namely, on Jan. 1, 1903, the registrar refused to register other debentures of the same series on the ground that more than twenty-one days had elapsed since their issue.

The co. moved for an order to rectify the mistake in the date of the resolutions, and for an extension of the time for registering the debentures which had been rejected :

Held, that the mistake must be corrected and that the result of the correction would be to make the first registration valid under sub-s. 4 of s. 14 of the Companies Act, 1900 ; that no further registration of debentures subsequently issued was necessary ; and that no order for extension of time need be made.

Observations on the scope and effect of s. 14 of the Companies Act, 1900. *In re HARRGATE ESTATES, LD. — Buckley J. [1903] W. N. 33; [1903] 1 Ch. 498*

Note.

Applied by Swinfen Eady J., *Cunard Steamship Co. v. Hopwood*, [1908] 2 Ch. 564. See No. 36, *above*.

— Registration of mortgage—Debenture stock—Covering deed—Substitution of other property.

See **COMPANY—Mortgages. 2.**

50. — Remuneration of trustees.

In this case the Court held that remuneration could not be given. There was a contract by the co. to pay remuneration ; but there was no contract that the debenture-holders should pay it, or that the property charged by the debentures should be liable to satisfy the claim for remuneration. The provision in clause 35 that the trustees might retain remuneration out of any moneys in their hands did not apply, for they had no moneys in their hands. The rest of clause 35 was fatal to the trustees' claim : for it gave them an indemnity out of the property for liabilities and expenses, but not for remuneration. The relation of trustee and cestui que

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trust excluded any idea of remuneration except by express antecedent contract. *In re ACCLES, LD. HODGSON v. ACCLES, LD.*

Farwell J. [1902] W. N. 164

— Remuneration of directors, As to.

See under **COMPANY—Directors.**

51. — Settlement of debentures—Trustees registered holders—Interest—Cheques for, sent to trustees or by their direction to tenant for life—Indorsement by trustees—Negotiations—Non-presentation of cheques for payment—Claim for interest by trustees as registered holders.

Under a settlement trustees held certain debentures in a co. in respect of which they were registered as holders upon trust for D. for life and after her death for her children. Cheques for the interest on the debentures for the time being standing in the names of the trustees were drawn by the co. sometimes in favour of S., a former trustee, and sometimes in favour of D., as the interest became due. In the former case the cheques were indorsed by S. to D., and in the latter case they were sent by the co. direct to her. The amount represented by the cheques was 1793*l.* 15*s.*, which included an amount for interest on 3000*l.* debentures, the principal money secured by which had been paid off. At the request of her son, who was the managing director of the co., D. had abstained from presenting the cheques for payment, and the interest on the debentures had not in fact been paid. A debenture-holders' action had been commenced against the co. (which was now in liquidation), and the usual order for accounts and inquiries had been made. On taking the accounts the present trustees of the settlement claimed to rank by virtue of their debentures for the aggregate amount of the interest represented by the cheques :—

Held, that the mere giving of a cheque was not conditional payment of a secured debt so as to release the security.

Diction of Farwell L.J. in *Henderson v. Arthur*, [1907] 1 K. B. 10, 13, followed.

Held, also, that the indorsement of the cheques by S. did not preclude the claimants from relying on their security.

Bunney v. Poyntz, (1833) 4 B. & Ad. 568, is inconsistent with, if not expressly overruled by *Gunn v. Bolckow, Vaughan & Co.*, (1875), L. R. 10 Ch. 491.

Held, therefore, that the trustees were entitled to rank as secured creditors for the cheques. *In re J. DEFRIES & SONS, LD. EICH-HOLZ v. J. DEFRIES & SONS, LD. Warrington J. [1909] W. N. 178; [1909] 2 Ch. 423*

— Short cause—Affidavits in support—Debenture-holder's action.

See **PRACTICE—Short Cause.**

— Stamp—Mortgage—Trust deed for securing debenture stock.

See **REVENUE—Stamps. 27.**

— Stamp duty—Consolidation of debenture stock—Issue of loan capital.

See **REVENUE—Stamps. 3.**

COMPANY (Debentures)—continued.

— Stamp duty—"Marketable security"—Given in substitution for a like security—Debenture bond.

See **REVENUE—Stamps. 4.**

— Stamp duty—Trust deed for securing debenture stock—"Mortgage."

See **REVENUE—Stamps. 27.**

— Surplus assets—Plaintiff's costs—Charging order.

See **COMPANY—Charging Orders. 1.**

52. — Transfer — Purchase by company of debenture issued by itself—Registered owner—Subsequent transfer to purchaser for value.

Under powers contained in its memorandum and articles of association the co. issued a series of 750 first mortgage debentures of 100*l.* each to rank *pari passu* as a first charge on the assets of the co. All the debentures were issued. From time to time some of them came into the market, and sixteen of them were there purchased by the co. itself. These debentures were in each case transferred to "George Routledge & Sons, Ltd.," by transfers in common form, and a note of the transfer was indorsed on the debenture. The co. proceeded to enter upon the register of debenture-holder; the name of the co. itself as registered owner of the debenture in question. Subsequently the co. transferred these debentures to various persons by transfers in common form, in which the transferor's name was given as "George Routledge & Sons, Ltd.," and a note of the transfer was indorsed on the debenture:—

Held, that the result of the transfer of the debentures to the co. was that in each case the debt was absolutely gone, and that the security had therefore also ceased to exist; the transferees from the co. had acquired nothing by the transfers to them, and were not entitled to receive new debentures ranking *pari passu* with those of the issue of 75,000*l.* *In re GEORGE ROUTLEDGE & SONS, LD. HUMMEL v. GEORGE ROUTLEDGE & SONS, LD.* - **Buckley J.**

[1904] W. N. 157; [1904] 2 Ch. 474

Note.—Approval by C. A., *In re W. Tasker & Sons, Ltd.*, [1905] 2 Ch. 587. See No. 54, below.

Applied by Swinfen Eady J., *In re Perth Electric Tramways, Ltd.*, [1906] 2 Ch. 216. See No. 21, above.

53. — Transfer of debentures—Claim by company against transferor—Registered holder—Rights against transferee—Trustee for creditors—Debenture-holders' action.

Debentures in a limited co. were assigned by a firm, with other property, to P. as the trustee of a creditor's deed, and P. was registered as the holder of these debentures. The conditions on the debentures provided that the money thereby secured should be paid without regard to any equities between the co. and the original or any intermediate holder, and that the registered holder would be regarded as exclusively entitled to the benefit of the debenture, and that the co. should not be bound to enter in the register notice of any trust, or to recognize any right in any other person. The firm owed the co. 1666*l.*, and the master had certified that the property comprised in the debentures included this debt. On

COMPANY (Debentures)—continued.

application by the debenture-holders for the distribution of a fund in court in this action in payment of a dividend to the debenture-holders:—

Held, by Byrne J., [1904] W. N. 55; [1904] 1 Ch. 627, that P. as assignee of the firm was in no better position than his assignors, being simply general assignee in trust for creditors (neither the co. nor the debenture-holders having come in under the deed), and he could only be entitled to the debentures subject to the same equities as his assignors were subject to; that the conditions in the debentures did not prevent the co. or the debenture-holders from insisting upon their rights against P., just as they could have insisted against his assignors, and that P. must therefore bring into account the 1666*l.* before he could share in the fund now ready for distribution.

In re Goy & Co., [1900] 2 Ch. 149, discussed and distinguished.

Further evidence was adduced in the C. A., and from this it appeared that P. was not the registered owner of the debentures.

The C. A. accordingly dismissed the appeal without prejudice to any application which P. might make to the judge in the Court below to vary the certificate, or to enforce any equitable rights which he might have, on the footing that he was not the registered owner of the debentures. If the application should not be made by Dec. 1, 1904, the appeal would be dismissed with costs. If the application should be made by that date the costs of the appeal would be left to the discretion of the judge in the Court below. *In re BROWN & GREGORY, LD. SHEPHEARD v. BROWN & GREGORY, LD. ANDREWS v. BROWN & GREGORY, LD.*

C. A. [1904] W. N. 173; [1904] 2 Ch. 448

54. — Transfer or new issue — Loan — Collateral security—Debenture paid off and returned to company with blank transfers—Subsequent transfer of debentures by company—Reissue of debentures—Inland revenue—Stamps — Mortgagee and mortgagee—Mortgagor keeping alive paid-off mortgage against subsequent incumbrancers—Pari passu incumbrancers—Extinguishment of charges — Merger — Estoppel — Intention—Presumption—Equities of debenture-holders inter se.

A co. issued debentures as a first charge on the property of the co., who were restricted from creating any mortgage or charge in priority to or *pari passu* with those debentures. Some of the debentures were issued to A. as security for a loan by him to the co. and were registered in his name. The loan was paid off by the co., whereupon A. handed back to them those debentures together with blank transfers. Subsequently the co., on receiving applications for debentures, filled in these blank transfers with the names of the applicants, who duly paid to the co. the full nominal value of the debentures so transferred, and thereupon those transferees (who were ignorant of the circumstances under which the transferred debentures had been issued) were entered on the register of debentures in the place of A.:—

Held (affirming *Kekewich, J.*, [1905] 1 Ch.

COMPANY (Debentures)—continued.

283), that the transaction was not a transfer of original debentures, but a creation of new debentures, inasmuch as the debentures had, by being paid off, been in fact redeemed and were otherwise dead and gone for all purposes and therefore incapable of transfer, and that the holders of those new debentures were not entitled to rank *pari passu* with original debenture-holders.

The principle established by *Otter v. Lord Taur*, (1856) 2 K. & J. 650, 657; 6 D. M. & G. 638, 643—that a mortgagor who pays off an incumbrance created by himself cannot set it up against a subsequent incumbrancer or creditor—applies equally to a case where an existing incumbrancer or creditor ranks *pari passu* with the incumbrancer paid off.

Per Cozens-Hardy L.J. A co. which has once issued debentures to the full authorized amount cannot, in the absence of express power, reissue debentures that have been paid off. A reissue is, in substance, the creation of a fresh charge, and, *semble*, the reissued debentures require restamping.

In re George Routledge & Sons, Ltd., [1904] 2 Ch. 474, approved.

In re Regent's Canal Ironworks Co., (1876) 3 Ch. D. 43, distinguished. *In re TASKER & SONS, LD.* *HOARE v. W. TASKER & SONS, LD.*

C. A. [1905] W. N. 135; [1905] 2 Ch. 587

Note.—Applied by Swinfen Eady J., *In re Perth Electric Tramways, Ltd.*, [1906] 2 Ch. 216. See No. 21, above.

Followed by C. A., *In re Russian Petroleum, etc., Co.*, [1907] 2 Ch. 540. See No. 24, above.

— Trustee—Vesting order.

See COMPANY—Vesting Order. 1.

55. — *Unregistered debenture — Agreement to issue series of unregistered debentures in substitution for original unregistered debenture—Irregularities—Winding-up—Validity of debenture—Purchase for value without notice—Companies Act, 1900 (63 & 64 Vict. c. 48), ss. 14, 15.*

In Oct., 1904, a co. in consideration of a loan agreed to create and issue to the lender a debenture as security for the loan; that fourteen days after the date of the agreement a new debenture similar in all respects (except as to its date) to the first debenture should be created and issued to the lender in exchange for the first debenture; that every succeeding fourteen days a new debenture similar in all respects (except as to its date) to the last debenture previously issued should be created and issued to the lender in exchange for such last previously issued debenture; that the first debenture and every substituted debenture issued as aforesaid should be held as a security for the loan and interest and should not be registered unless default was made in certain events (which happened), when the lender might forthwith register the original debenture or such one of the substituted debentures as might for the time being be in force. The tenth substituted debenture under this agreement was issued on Mar. 2, 1905, and was registered on the 21st of the same month, and the next day the co. went into liquidation. This

COMPANY (Debentures)—continued.

debenture issue did not appear in the books of the co., and there were other irregularities attending the creation and issue thereof:—

Held, that as against the co. the registered debenture was a valid security in the hands of a transferee for value without notice of any defect in it. *In re RENSCHAW & Co.* *Neville J.*

[1908] W. N. 210

— Will — Construction — Bequest of “all my debentures” in a company.

See WILL—Words. 4.

56. — *Unauthorized issue—Bona fide holder for value—Rights as against execution creditor.*

The rights of a bona fide holder for value of a debenture, which is in proper form and charges all the property of the co. as security for the debenture debt, prevail over those of an execution creditor, even where the debenture is issued without authority, no directors of the co. having been appointed and no resolution to issue debentures passed; provided that the holder had no notice of any irregularity in the issue of the debenture. *DUCK R. TOWER GALVANIZING CO.*

Div. Ct. [1901] 2 K. B. 314

— Winding-up petition—Creditor with debt payable at a future date—Debenture stockholder's petition.

See COMPANY—WINDING-UP—Practice. 13.

Deeds of Arrangement.

See under COMPANY—Arrangements.

Defunct Company.

1. — *Defunct company struck off register—Restoration of name—Petition—Terms of order when company in winding-up—Companies Act 1880 (43 Vict. c. 19), s. 7—Companies (Winding-up) Act, 1890 (53 & 54 Vict. c. 63), ss. 1, 2—Companies Act, 1900 (63 & 64 Vict. c. 48), s. 26.*

Petition presented by G. S. Barnes, as official receiver and liquidator, in 1901, intitled, “In the High Court of Justice, Chancery Division, Mr. Justice Wright. In the matter of the Companies Acts, 1862 to 1880, and in the matter of” the co., and asking that the name of the co. might be restored to the register, and that the registrar might be directed to advertise in his official name, in the *London Gazette*, the order of the Court to be made on the petition. The petition came for hearing before Cozens-Hardy J., sitting for Wright J.

The petitioner asked for leave to amend by adding the co. as a petitioner.

The Registrar of Joint Stock Companies pointed out that as the petition had been marked with the name of the judge exercising the jurisdiction of the High Court to wind up cos., the petition ought to be intitled at any rate in the matter of the Companies (Winding-up) Act, 1890, and suggested that as the Act of 1880 had been amended by the Companies Act, 1900, it would be better to intitle the petition “in the matter of the Companies Act, 1862 to 1900.” He also stated that when a co. was in winding-up it was not the practice for the order to require the returns, which ought to have been sent in previously to the winding-up, to be made to the

COMPANY (Defunct Company)—continued.

registrar. (See *Palmer's Company Precedents*, 8th ed. vol. ii. p. 648.)

The Court made an order for the restoration of the co.'s name to the register on the terms above suggested. *In re JOHANNESBURG MINING AND GENERAL SYNDICATE*

Cozens-Hardy J. [1901] W. N. 46

Dentist.

— Registration under Companies Act.

See **DENTIST. 1.**

Directors.

— Agreement to vote in a particular way—Executors.

See **COMPANY—Shares. 28.**

— Allotment, Proceeding to — Liability of directors—"Knowingly contravene."

See **COMPANY—Allotment. 3.**

1. — *Appointing directors—Disqualified directors—Article validating acts of de facto directors—Summoning general meeting—Companies Act, 1862 (25 & 26 Vict. c. 89) ss. 52, 67; Table A, art. 57.*

No. 108 of the articles of a co. provided that all acts done at any meeting of directors or by any person acting as a director should, notwithstanding that it should afterwards be discovered that there was some defect in the appointment of such director or person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed, and was qualified to be a director. The article also provided that two directors should form a quorum; that the continuing directors might act notwithstanding any vacancy in their body; that the directors might fill up any casual vacancy; that the directors might appoint one of their body to be managing director; and (art. 89) that the office of director should (inter alia) be vacated—(a) if he accepted or held any other office under the company; (b) if he by notice in writing to the co. resigned his office.

B., R. and M. were directors of the co. On Oct. 23, 1902, B. was appointed secy. of the co., which office he resigned on Dec. 2. At a bd. meeting held on Dec. 4, and attended only by B. and R., a letter was read from M. resigning his directorship, and B. and R. then passed a resolution appointing B. managing director of the co. At the next bd. meeting, attended only by B. and R., a resolution was passed electing D. a director of the co. These three continued to act as directors, and on Mar. 3, 1903, issued notices convening the annual general meeting of the co. B., R. and D. acted in good faith, and the fact that B. had under art. 89 (a) vacated his directorship on Oct. 23, and the subsequent irregularities were not brought to their attention until after Mar. 3:—

Held, that the irregularities in the appointment of B. and D., and the subsequent acts of B., R. and D. were validated by art. 108 and s. 67 of the Companies Act, 1862, and that they were the duly constituted bd. of directors.

Dawson v. African Consolidated Land and

COMPANY (Directors)—continued.

Trading Co., [1898] 1 Ch. 6, followed. *BRITISH ASBESTOS CO. v. BOYD*

Farwell J. [1903] W. N. 112; [1903] 2 Ch. 439

Note.

This case was applied by *Swinfen Eady J.*, *Boschoels Proprietary Co. v. Fuks*, [1906] 1 Ch. 148. See *No. 16, below.*

— Appointment, Irregularity in—Meeting of shareholders.

See **COMPANY—Meetings. 2.**

2. — *Appointment of limited company—Ultra vires—Winding up—Alteration of constitution of company—"Just and equitable"—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 79 (5).*

A co. registered under the Companies Act, 1862, need not have any directors, and there is nothing in the Companies Acts prohibiting the appointment of a limited co. as a director or manager of another co. *In re BULAWAYO MARKET AND OFFICES CO., LD.*

Warrington J. [1907] W. N. 197; [1907] 2 Ch. 458

3. — *Bankrupt director—Charging order—Articles of association—Qualification shares—Holding shares "in his own right"—1 & 2 Vict. c. 110, s. 14.*

Where articles of association of a co. require a director to be qualified by holding shares "in his own right," it is not necessary that he should hold the shares as beneficial owner, but to comply with the clause he must hold them in such a way that the co. may safely deal with him in respect of the shares, whatever his interest in them may be. And although holding them as a trustee without beneficial ownership is a compliance with the articles, it is not a compliance if he holds them in a representative character.

Plt. was adjudicated a bankrupt in 1888 and never obtained his discharge. In April, 1902, he was a director of and held 1000 shares in a co. the articles of association of which required that the qualification of a director should be the holding "in his own right" of 100 shares, and that his office should be vacated if he ceased to hold the qualifying number of shares. In the same month the plt.'s trustee in bankruptcy wrote to the co. claiming the e shares as his, but postponing his decision whether he would be registered himself or have some nominee registered as transferee. Thereupon the other directors excluded the plt. from the bd. on the ground that he had become disqualified. Subsequently a transfer of 100 other shares in the plt.'s favour was executed and lodged with the co. for registration. Although the trustee had not raised any objection to registration, the directors refused to register the transfer:—

Held, (1.) that the plt. had ceased to hold the shares "in his own right," and was not entitled to an injunction to restrain his exclusion from the bd.; (2.) that he was entitled to have the register of members rectified by the insertion of his name therein as holder of the 100 shares.

The words "in his own right" for the purpose of qualification, and the same words for the purpose of a charging order under 1 & 2 Vict.

COMPANY (Directors)—continued.

c. 110, s. 14, have different meanings. *SUTTON v. ENGLISH AND COLONIAL PRODUCE CO.*

Buckley J. [1902] W. N. 125 ; [1902] 2 Ch. 502

Note.

This case was applied by *Swinfen Eady J., Buschoek Proprietary Co. v. Fuke*, [1906] 1 Ch. 148. See No. 16, below.

— Bills of exchange, Liability upon — Bill accepted by director in name of company without authority in fact.
See COMPANY—Liability. 1.

— Borrowing powers—Knowledge of director of lending company of intended misapplication—Implied notice—Debentures—Ultra vires.
See COMPANY—Borrowing. 1.

— Capital, Increase of—Resolution of directors—Validity.
See COMPANY—Memorandum. 4.

4. — Contract of service. Cumulative salary payable out of "profits"—Winding-up—Payment of creditors and shareholders in full—Surplus in hands of liquidator—Undrawn "profits"—Arrears of salary.

By an agreement dated June 4, 1901, between the co. and themselves, P. and V. were entitled to receive a salary at the rate of 41l. 13s. 4d. per week each, provided that they should not be entitled to draw such salary "except only out of profits (if any) arising from the business of the co. which may from time to time be available for such purpose, but such salary shall nevertheless be cumulative, and accordingly any arrears thereof shall be payable out of any succeeding profits as aforesaid."

The business of the co. included the purchase and sale of shares. In the course of and for the purposes of its business the co. acquired shares and debentures in another co. In 1907 the shares were sold for cash, the proceeds being brought into profit and loss account. The debentures were included in the yearly balance sheets of the co. as an unvalued asset. In 1908 the report of the directors stated that the debentures were still in the hands of the co., and that it was proposed to wind up the co. voluntarily. In the liquidation the debentures were sold, all the creditors except P. and V., to whom 8000l. in respect of arrears of salary was due, were paid in full, and all the subscribed capital was returned, leaving a surplus of 3000l. in the hands of the liquidator. This sum, less costs, was claimed by P. and V. as "profits" out of which their salary was payable.

Swinfen Eady J. held that at the commencement of the winding-up the debentures formed part of the assets of the co., and were not "profits" arising from the business of the co. as a going concern, and therefore that the claimants were not entitled to be paid thereout.

The C. A. allowed the appeal on the ground that the proceeds of the debentures should be treated as undrawn profits arising out of the co.'s business out of which the claimants were entitled to be paid. *In re SPANISH PROSPECTING CO.* - - - C. A. [1910] W. N. 241

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5. — Contract of service—Restraint of trade—Breach of negative covenant—Interdependent contracts—Specific performance—Winding-up—Injunction.

The deft., in July, 1903, entered into an agreement with the plt. co. (of which he was a director) (1.) to hold office for seven years at a fixed salary, and (5.) covenanted that so long as he should continue to hold office, and for seven years after ceasing to hold such office, he would not, either solely or jointly with, or as manager or agent for, any other person or persons or co. directly or indirectly carry on or be engaged or interested in any business that would compete with that carried on by the co. In April, 1909, a receiver and manager was appointed in a debenture-holders' action, and a compulsory winding-up order was made against the co. The receiver and manager having given notice to the deft. that his services would no longer be required, and having ceased to pay his salary, the deft. commenced to carry on business on his own account. In an action to restrain the deft. from carrying on business in competition with the co. in breach of his covenant:—

Held, (Buckley L.J. dissenting), that the plt. co. could not have specific performance of clause 5 without performing, and they could not now perform, clause 1 in favour of the deft., and consequently that he was no longer bound by his restrictive covenant and that the co. were not entitled to an injunction.

Decision of *Joyce J.*, [1910] W. N. 28; [1910] 1 Ch. 336, affirmed.

Held by *Buckley L.J.*, that clauses 1 and 5 were not interdependent contracts, that in the events which had happened clause 5 still remained binding on the deft., and that the plt. co. were entitled to an injunction. **MEASURES BROTHERS, LIMITED v. MEASURES - C. A. [1910] W. N. 136; [1910] 2 Ch. 248**

6. — Contract with company—Articles of association—Secret interest of director—Vacating office—Company's lien on director's shares for repayment of fees—Money paid under mistake of fact—Quantum meruit.

Where the articles of a co. provide that a director shall vacate his office on the happening of some event or the doing of some act, a director automatically vacates his office on the happening of the event or the act being done; and the bd. have no power to waive the event, or to condone the offence or the act, which causes the vacation of the office.

The articles of a co. provided (art. 21) that the co. should have first and paramount lien upon the shares of any shareholder for any money due from him to the co.; (art. 70) that the office of any director should be vacated if he (inter alia) should be concerned in or participate in any contract with the co. not disclosed to and authorized by the bd.; and (art. 75) that the remuneration of the directors should be 1400l. a year, to be divided among them in such manner as the majority of them should direct. W. was a director of the co., and on Dec. 24, 1900, he became secretly concerned in a contract with the co., and did not disclose his interest to the

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bd.; the transaction came to an end in June, 1901. At general meetings of the co. held on July 8, 1901 and 1902, W. in the usual way retired from office and was re-elected a director. In Feb., 1903, the bd. first discovered W.'s secret interest in the contract of Dec., 1900. He then ceased to act as a director and sold his shares in the co.; but the bd. refused to register the transfer of the shares, and claimed that the co., under art. 21, had a lien on the shares for the repayment by W. of the moneys paid to him (under a resolution of the bd.) between Dec., 1900, and Feb., 1903, as his proportion of the directors' fees under art. 75 :—

Held, that under art. 70, W. automatically vacated his office of a director on Dec. 24, 1900.

Turnbull v. West Riding Athletic Club, (1894) 70 L. T. 92, discussed and distinguished.

But *held*, that W.'s disqualification for office only continued so long as the contract continued, and ceased when the transaction came to an end in June, 1901; consequently his re-elections to office in July, 1901 and 1902, were valid.

Held, also, that W. was not entitled to a quantum meruit for his services as a director rendered to the co. between Dec. 24, 1900, and July 8, 1901, but that the co. were entitled to recover from him the fees paid him during that period as being moneys paid him under the mistake of fact that he was a director, and that the co. had a lien on his shares for those moneys. *In re BODEGA CO., LD.* - *Farwell J.* [1904] W. N. 7; [1904] 1 Ch. 276

— Conviction set aside—No evidence of fraudulent appropriation—Liability of bank director.

See ISLE OF MAN. 1.

— Dividend—Payment by dividend warrant—Lost warrant—Action by shareholder—Plea of payment—Powers of directors. *See COMPANY—Dividends.* 3.

7. — *Dividend out of capital—Ultra vires—Shareholders, Action on behalf of—Ratification—Acquiescence—Retention of dividend by plaintiff—Right to maintain action.*

The accounts of a limited co., at the commencement of their financial year, in 1900, shewed a considerable debit balance on the previous year's trading, but the directors illegally though honestly applied a profit made in the earlier part of 1900 in payment of an interim dividend instead of in reduction of the debit balance, thus in effect, paying a dividend out of capital. The balance-sheet for 1900 shewing the debit balance and also the payment of the dividend was submitted to and approved by the shareholders in general meeting. Subsequently, the directors, recognizing their mistake, proposed to apply any future profits in wiping out the debit balance, and this was almost entirely accomplished out of profits in 1901 and 1902, as appeared from the balance-sheets for those years submitted to and approved by the shareholders in general meeting.

In 1903 two of the shareholders who had themselves received their portions of the dividend, and concurring in passing the balance-sheets, commenced an action "on behalf of themselves

COMPANY (Directors)—continued.

and all other the shareholders of the co." against the co., and the directors to compel the shareholders to repay to the co. the amount of the dividend. Afterwards the other shareholders were, at their own request, joined as defts. All the defts. counter-claimed, in the event of the Court holding that the dividend had been illegally paid, for repayment by the plts. of the portions received by them :—

Held, by Byrne J., that, the payment of the dividend being an act ultra vires, the directors were liable to replace the amount, and judgment was given in the action accordingly, the plts. submitting to judgment against themselves on the counter-claim.

On appeal by the defts. from the judgment in the action :—

Held, that in the circumstances the plts. were not entitled to maintain the action, but that the judgment on the counter-claim must stand.

Per Vaughan Williams and Cozens-Hardy L.JJ.: A shareholder in a limited co. who has, with full notice or knowledge of the facts, himself received part of the proceeds of an ultra vires act committed by the directors—such as payment of a dividend out of capital—and who still retains the money, cannot, either individually or as suing on behalf of the general body of shareholders, maintain an action against those directors: nor (*per Vaughan Williams L.J.*) can he do so even if, after action brought and before trial, he repays the money he has wrongfully received. Whether he can do so if, before action, he repays the money, *quære*. *TOWERS v. AFRICAN TUG CO.* - *C. A.* [1904] W. N. 54; [1904] 1 Ch. 558

Note.

Overruled by *C. A.*, *Moseley v. Koffyfontein Mines, Ltd.*, [1910] 2 Ch. 382; *C. A.*, [1910] W. N. 231. *See Company—Memorandum.* 4.

— Dividends—Profits available for distribution—Directors' discretion.

See COMPANY—Dividends. 2.

— Dividends.

See under COMPANY—Dividends.

— Executor—Production of probate—Notice—Director—Qualification—Transfer—Rectification of register. *See COMPANY—Shares.* 11.

8. — *Fiduciary position—Purchase of shares—Negotiations for sale of undertaking—Obligation to disclose.*

The directors of a co. are not trustees for individual shareholders, and may purchase their shares without disclosing pending negotiations for the sale of the co.'s undertaking. *PERCIVAL v. WRIGHT. Swinfen Eady J.* [1902] W. N. 134; [1902] 2 Ch. 421

9. — *Fiduciary relation—Conflict of interest with duty—Contracts with company—Articles of association—Vacation of office—Director having an interest in contracts—Disclosure of interest—Voting—Profits—Account.*

By the articles of association of a limited ry. co., it was provided that a director should

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vacate his office if he was concerned in, or participated in the profits of, any contract with the co. without declaring the nature of his interest; but "no director shall vacate his office by reason of his being a member of any corporation, co., or partnership, which has entered into contracts with, or done any work for, the co.; or by reason of his being interested, either in his individual capacity, or as a member of any co., corporation, or partnership, in any adventure or undertaking in which the co. may also have an interest"; but the director was not to vote on any contract of this kind, and if he did, his vote was not to be counted.

In 1886, shortly after its formation, the ry. co., of which F. was a director, entered into contracts with a steamship co. for the carriage and shipment of bananas. F. was the largest shareholder in the steamship co., and was also a partner in the firm that managed it; no disclosure of F.'s interest was made either in the prospectus of the ry. co., or when the contracts were entered into, nor did he ever "declare the nature of his interest" pursuant to the articles of association; but his co-directors of the ry. co. were aware that he had some interest in the steamship co. F. continued a director of the ry. co. until 1896, when he resigned, and shortly afterwards that co. brought an action against him to make him liable for all profits received by him as shareholder in the steamship co., and as partner in the firm that managed it, under the contracts with the plt. co. F. having died before the trial, the action was revived against his executors:—

Held, affirming the decision of Byrne J., [1901] 1 Ch. 756, that, on the articles of association, and on the authority of *Imperial Mercantile Credit Association v. Coleman*, (1871) L. R. 6 Ch. 568 (not overruled on this point by S. C. (1873) L. R. 6 H. L. 189), F.'s estate was not liable to account for any profits made by him out of the contracts with the plt. co.

Consideration of the equitable rule prohibiting a person who stands in a fiduciary relation from entering into engagements in which his interest may conflict with his duty, except on the condition of accounting for all profits he may receive from such engagements to the person towards whom he stands in the fiduciary relation. *COSTA RICA RY. CO. v. FORWOOD*

C. A. [1901] W. N. 44; [1901] 1 Ch. 746

— Liability.—Prospectus.

See under COMPANY—Prospectus.

10. — Managing director—"Vacating office"

—Resignation.—Withdrawal before acceptance

—Articles.—Construction.

A director of a limited liability co. can, subject to the articles of the co., resign his office on giving a proper notice to the co., and such notice when once given cannot be withdrawn without the consent of the co.

The articles of a limited liability co. provided (article 84) that the office of a director should be vacated (inter alia) if by notice in writing to the co. he resigned his office, provided that the vacation of office should not take effect unless the directors should pass a resolution to the

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effect that he had vacated his office, such resolution to be passed within six months from the happening of the event whereby such director had vacated his office; and (article 85) that the office of a managing director should be vacated upon the happening of any of the contingencies mentioned in article 84 whereby the office of a director should be vacated. A managing director of the co. wrote the co. resigning his office of managing director, but, before the next meeting of the board, he wrote again to the co. absolutely withdrawing his resignation. At the next meeting of the board a resolution was passed that the managing director had vacated his office:—

Held, that the whole of article 84, including the proviso therein, was imported into article 85; that the managing director could not withdraw his resignation without the consent of the co.; that by his letter of resignation he vacated his office; and that the resolution of the board was effective and valid. *GLOSSOP v. GLOSSOP*

Neville J. [1907] W. N. 169; [1907] 2 Ch. 370

— Meeting to pass resolution for winding-up.—Notice issued by secretary without authority of directors.

See COMPANY — WINDING-UP — Meetings. 1.

11. — Misfeasance—Payment of dividends out of capital—Banking company—Advances on improper security—Duty of director—Negligence.

A director of a joint stock banking co. in assenting to the payment of dividends out of capital and to advances on improper security honestly relied on the judgment, information, and advice of the chairman and general manager of the bank, by whose statements he was misled and whose integrity, skill, and competence he had no reason for suspecting:—

Held, that upon the true view of the facts he was not negligent of his duties as director and was not liable in the winding-up.

Decision of C. A. *In re National Bank of Wales Ltd.*, [1899] 2 Ch. 629, affirmed, their Lordships reserving their opinion upon the question of the payment of dividends out of capital discussed by the C. A. and Lord Davey expressing dissent from some of the propositions. *DOVEY AND METROPOLITAN BANK (OF ENGLAND AND WALES) LD. v. CORY*

[1901] W. N. 170; [1901] A. C. 477

Note.—Applied by Farwell J., *Bond v. Barron Harnutt Steel Co.*, [1902] 1 Ch. 353. *See Company—Dividends. 2.*

Followed by P. C., *Préfontaine v. Grenier*, [1907] A. C. 101. *Canada—Banker. 1.*

— Pension, Grant of, to retiring managing director—Ultra vires.

See COMPANY—Meetings. 2.

12. — Powers—Articles of association—Construction—Vesting of management in directors—Control of management by company in general meeting.

By the 75th article of association of a co. the business of the co. was to be managed by the directors, who might exercise all the powers of

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the co. "subject to such regulations (being not inconsistent with the provisions of the articles) as may be prescribed by the co. in general meeting." By the 80th article no resolution of a meeting of the directors having for its object the acquisition or letting of premises should be valid unless notice should have been given to each of the managing directors A. and B. and neither of them should have dissented therefrom.

The directors passed resolutions with the object of acquiring and letting premises, from which B. duly dissented, and resolutions to the same effect were passed at an extraordinary general meeting of the co. by a simple majority of the shareholders:—

Held, that upon the true construction of the articles the resolutions of the co. were inconsistent with the provisions of the articles, and that the co. must be restrained from acting upon them.

Decision of the C. A. *sub nom.* *Salmon v. Quin & Axtens, Ltd.*, [1908] W. N. 254 [1909] 1 Ch. 311, affirmed. QUIN & AXTEENS, LD. v. SALMON — H. L. (E.)

[1909] W. N. 123 ; [1909] A. C. 442

Note.

See *Marshall's Valve Gear Co. v. Manning, Wardle & Co.* *Neville J.*, [1909] 1 Ch. 267; *Company—Practice. 1.*

13. — Powers — Postponement of general meeting.

The directors of a limited co. in the absence of express authority in the articles of association, have no power to postpone a general meeting of the co. properly convened. SMITH v. PARINGA MINES, LD. PARINGA MINES, LD. v. BLAIR. PARINGA MINES, LD. v. BOYLE

Kekewich J. [1906] 2 Ch. 193

14. — Powers—Vesting of management in directors—Resolution by a simple majority of shareholders for sale of undertaking—Refusal of directors to comply with resolution.

A co. had power under its memorandum of association to sell its undertaking to another co. having similar objects, and by its articles of association the general management and control of the co. were vested in the directors, subject to such regulations as might from time to time be made by extraordinary resolution, and in particular, the directors were empowered to sell or otherwise deal with any property of the co. on such terms as they might think fit. At a general meeting of the co. a resolution was passed by a simple majority of the shareholders for the sale of the co.'s assets on certain terms to a new co. formed for the purpose of acquiring them, and directing the directors to carry the sale into effect. The directors being of opinion that a sale on those terms was not for the benefit of the co., declined to carry the sale into effect:—

Held (affirming the decision of Warrington J., [1906] W. N. 46, upon the construction of the articles, that the directors could not be compelled to comply with the resolution. AUTOMATIC SELF-CLEANSING FILTER SYNDICATE Co. v. CUNNINGHAM

C. A. [1906] W. N. 65 ; [1906] 2 Ch. 34

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Note.—*See* *Patentwood Keg Syndicate, Ltd. v. Pearce, Buckley J.*, [1906] W. N. 164. *Company—Meetings. 2.*

Distinguished by *Neville J.*, *Marshall's Valve Gear Co. v. Manning, Wardle & Co.*, [1909] 1 Ch. 267. *See* *Company—Practice. 1.*

Principle of applied by C. A., *Salmon v. Quin & Axtens, Ltd.*, [1909] 1 Ch. 311 ; H. L. (E.), [1909] A. C. 442. *See* *No. 12, above.*

— Powers of directors—Railway company.

See under RAILWAY—Directors.

—Practice—Action—Director holding majority of votes—Majority of co-directors opposing—Motion to strike out name of company as plaintiff—Costs.

See COMPANY—Practice. 1.

—Promissory note—Company—Signature by managing director—Personal liability.

See COMPANY—Promissory Note. 1.

15. — Prosecution—Payment of costs out of assets—Refusal of public prosecutor to prosecute—Discretion—Winding-up of company—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 167.

In order to determine whether leave ought to be given to institute criminal proceedings against the director of a co. which is being wound up, and whether the costs of the prosecution ought to be paid out of the assets of the co., the Court will look at the question from the point of view of an individual, and will consider whether it would be the duty of a good citizen even at a loss to himself to institute and carry on proceedings to punish the criminal. It is not necessary to find that the facts are so plain that a conviction must ensue. The proportion of creditors who support and oppose the application, and the effect which will be produced upon the estate by payment of costs, will be taken into consideration, but not the personal advantage of the individual, nor motives of vengeance against the offender, nor pecuniary benefits to be obtained for the creditors or shareholders. The fact that the law officers of the Crown have refused to allow the public prosecutor to undertake the prosecution is not necessarily relevant. *In re* LONDON AND GLOBE FINANCE CORPORATION, LD.

Buckley J. [1903] W. N. 54 ; [1903] 1 Ch. 728

—Prospectus—Directors' liability.

See under COMPANY—Prospectus.

—Prospectus, Statements in — "Reasonable ground to believe"—Particulars—Practice—Directors' liability.

See DISCOVERY. 15.

—Purchase by director and resale to the company.

See CANADA—Company. 4.

16. — Qualification—Shares held "in his own right"—Shares held as liquidator of another company—Income tax on directors' fees—General meeting convened by de facto directors—Validity of resolutions—Ratification of Acts contrary to articles—No alteration of articles—Special business—Notice.

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The qualification of a director being the holding of 250 shares in his own right, F. was registered as "F. liquidator of the H. Company" with a holding of 500 shares :—

Held, that he was not qualified to be a director.

Bainbridge v. Smith, (1889) 41 Ch. D. 462, 474, and *Sutton v. English and Colonial Produce Co.*, [1902] 2 Ch. 502, applied.

Apart from special provision in the articles directors are not entitled to their fee; free of income tax.

The resolutions of a general meeting convened by de facto directors are not invalidated by any irregularity in the constitution of the board.

Broune v. La Trinidad, (1887) 37 Ch. D. 1; *Grant v. United Kingdom Switchback Rys. Co.*, (1888) 40 Ch. D. 135; *British Asbestos Co. v. Boyd*, [1903] 2 Ch. 439; and *Southern Counties Deposit Bank v. Rider*, (1895) 73 L. T. 374, applied.

In re Haycraft Gold Reduction and Mining Co., [1900] 2 Ch. 230, and *In re State of Wyoming Syndicate*, [1901] 2 Ch. 431, distinguished.

Articles fixing the qualification and remuneration of directors being binding on the co. as well as the directors, the co. cannot ratify an act of the directors in contravention of such articles without first altering them by special resolution.

Imperial Hydropathic Hotel Co., Blackpool v. Hampson, (1882) 23 Ch. D. 1, applied.

Irvine v. Union Bank of Australia, (1877) 2 App. Cas. 366, distinguished.

The notice convening a general meeting stated that it would be held for the purpose of receiving the directors' report, and the election of directors and auditors. The directors' report sent therewith mentioned certain special business not referred to in the notice, viz., the ratification of the board's previous election of R. as a director :—

Held, that the notice and report together were sufficient notice of this special business.

Irvine v. Union Bank of Australia, 2 App. Cas. 366, 375, applied. *BOSCHOEK PROPRIETARY CO. LD. v. FULKE*. - *Swinfen Eady J.* [1906] 1 Ch. 148

17. — Qualification shares—Raising of qualification—Vacation of office — Companies Act, 1900 (63 & 64 Vict. c. 48), s. 3, sub-s. 2.

The plt., a director of a limited liability co., held the necessary qualification under the articles of fifty shares. By a resolution of the shareholders in general meeting the capital of the co. was increased, and at the same time the qualification for a director was raised to 250 shares. The plt., in his capacity of director, was present at the bd. meetings at which the increase of capital and the raising of the directors' qualification were discussed and approved, and also at the general meetings at which the resolutions were passed and confirmed on April 4 and April 19, 1901, respectively. On April 20 the secy. of the co. without the plt.'s knowledge entered the plt.'s name on the register for 200 shares, the number necessary to make up his qualification; the secy.'s act was subsequently ratified by the directors other than the

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plt. at a bd. meeting on May 8. On April 22 the plt., as required by s. 9 of the Companies Act, 1900, signed a copy of the share prospectus, in which his name appeared as a director, and on the following day the prospectus was issued to the public. On May 16 the plt. sent in his resignation of the office of director :—

Held, that upon the passing of the confirmatory resolution the plt. had not vacated his office of director within the meaning of s. 3, sub-s. 2, of the Companies Act, 1900, either by failing to obtain the necessary qualification or by ceasing to hold it :

Held, further, that the plt. had contracted to obtain the necessary qualification within a reasonable time either by transfer from existing shareholders or directly from the company; that a reasonable time for acquiring the qualification had elapsed when the plt. in his capacity of director signed the prospectus that was issued to the public, and that, there being then a binding contract to take the shares, the plt. could not get rid of his liability for calls by subsequently resigning his office of director. *MOLINEAUX v. LONDON, BIRMINGHAM AND MANCHESTER INSURANCE CO.* - *C. A.* [1902] 2 K. B. 589

18. — Quorum — Breach of regulations by directors—Validity of acts as regards third parties.

A co.'s articles of association provided that its affairs should be conducted by a council of administration; that the number of members of the council should not be less than three; that the continuing council might act notwithstanding any vacancy; and that the council might determine the quorum necessary for the transaction of business. The members of the council became reduced to two, and those two members acting in the name of the co. gave securities for debts of the co. to persons who had no knowledge of the irregularity. It was not proved that any resolution fixing a quorum had been passed by the council :—

Held, that the securities so given were binding on the co.

One of the securities was transferred by the creditor to whom it was given to one of the two members of the council, who had himself paid off the secured debt :—

Held, that the security was valid in the hands of the transferee.

Decision of Wright J., (1900) 2 Ch. 272, reversed on the first point and affirmed on the second.

In re Scottish Petroleum Co., (1883) 23 Ch. D. 413, followed. *In re BANK OF SYRIA. OWEN AND ASHWORTH'S CLAIM. WHITWORTH'S CLAIM.* *C. A.* [1901] 1 Ch 115

19. — Quorum of directors—Resolution—Interested director—Validity of resolution—Articles.

The articles of a co. provided that any director might enter into a contract or be interested in any business with the co.; that no director should vote on any matter relating to the contract or business with the co. in which he was interested; and that two directors should be a quorum for the transaction of business :—

Held, that a quorum of directors meant a

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quorum competent to transact and vote on the business before the bd. ; and, therefore, that a resolution passed at a meeting of three directors, two of whom were interested in the subject-matter of the resolution, was invalid. *In re GREYMOUTH POINT ELIZABETH RY. AND COAL CO.* YUILL *v.* GREYMOUTH POINT ELIZABETH RY. AND COAL CO. Farwell J.

[1903] W. N. 187, 190; [1904] 1 Ch. 32

— Railway company.

See under RAILWAY—Directors.

20. — Remuneration, Directors'—Qualification shares received as trustee—Liability of director to account to *cestui que trust* for remuneration.

The D. Co. transferred certain shares which it held in the K. Co. to C., one of its directors, in order to qualify him to become a director of the K. Co., the intention being that C. should represent the interests of the D. Co. on the bd. of the K. Co., and C. executed a declaration of trust of the shares in favour of the D. Co. :—

Held, that the remuneration received by C. as director of the K. Co. was not profit received by him from the use of the property of the D. Co., and that C. was under no liability to account for that remuneration to the D. Co.

Decision of Warrington J., [1907] 2 Ch. 76, affirmed. *In re DOVER COALFIELD EXTENSION, LD.* C. A. [1907] W. N. 226 ; [1908] 1 Ch. 65

Note.

Referred to by Warrington J., *In re Lewis*, [1910] W. N. 217. See *Trustee—Account*.

21. — Remuneration, Directors'—Travelling expenses to and from board meetings—Directors' *act ultra vires*—Liability for payments to co-director—Articles—Indemnity clause.

Directors who are remunerated for their services are not entitled, in the absence of a resolution of the co. or a provision in the articles, to be paid out of the assets of the co. their travelling expenses incurred in attending bd. meetings.

One of the articles of a limited co. provided for the payment of 200*l.* a year to each director "by way of remuneration for his services"; another article declared that no director should vote on any matter in which he was interested; and a further article provided that every director and other officer should be indemnified by the co. against, and it should be the duty of the directors out of the funds of the co. to pay, all costs and expenses which any officer of the co. might incur in the discharge of his duties.

In April, 1902, A. was elected a director of the co. In May, 1902, the directors passed a resolution that all reasonable travelling expenses should be reimbursed to the directors from time to time. At the date of his election A. was residing in the West of England, and remained so resident until his resignation in Jan., 1903, and during his directorship was paid out of the co.'s assets his travelling expenses to and from London incurred in attending the bd. meetings :—

Held, that the resolution was *ultra vires* the directors, and that A. must refund to the co. the

COMPANY (Directors)—*continued*.

moneys paid him for his travelling expenses whilst a director.

But *held*, following *Cullerne v. London and Suburban, &c., Building Society*, (1890) 25 Q. B. D. 485, that A. was not personally liable for the sums paid to his co-directors for their travelling expenses, except to the extent that he had signed cheques for that purpose. *YOUNG v. NAVAL, MILITARY, AND CIVIL SERVICE CO-OPERATIVE SOCIETY OF SOUTH AFRICA, LD.*

Farwell J. [1905] W. N. 41; [1905] 1 K. B. 687

22. — Remuneration fixed by articles of association — Resolution of board to forego—Vacating office of director by absence for specified period—Date from which period runs.

By the articles of association of a co. each of its directors was to be paid out of its funds by way of remuneration 300*l.* per annum, and the office of a director was to be vacated if he absented himself from directors' meetings during a period of three calendar months without special leave of absence from the directors. M. was appointed a director on Aug. 3, 1898, and attended meetings of directors down to Feb. 3, 1899, on which last-named date he attended a meeting at which they, including himself, passed a resolution "that no remuneration be received by the directors for their services until a dividend is declared on the ordinary shares of the bank." There was no further meeting from Feb. 3 to Mar. 3, 1899. From Feb. 3 he absented himself without leave until after May 7, 1899, on which another directors' meeting was held, and on May 8, 1899, received a written notice from the bd. stating that he had ceased to be a director pursuant to the articles, and that the fact of his non-attendance for three months had been ordered to be entered on the minutes. M. did not insist on being reinstated and did not attend a meeting of directors on June 3. The co. went into liquidation on Dec. 29, 1899, and no dividend was declared on the ordinary shares. M. claimed to prove for remuneration from the date of his appointment until the winding-up :—

Held, (1.) distinguishing *Lambert v. Northern Ry. of Buenos Ayres Co.*, (1869) 18 W. R. 180, that, the remuneration not being due until the end of a year, and the agreement to pay it being on Feb. 3 only partially performed and not broken, the resolution was effective; (2.) that the period of absence only began to run from Mar. 3, 1899, terminating on June 3; (3.) that the remuneration was not apportionable, and that the claim of M. failed.

Observations as to when a director absents himself. *In re LONDON AND NORTHERN BANK. MCCONNELL'S CLAIM* — Wright J. [1901] W. N. 12; [1901] 1 Ch. 728

23. — Remuneration of director—Articles of association.

A co. limited by shares was registered on Mar. 25, 1896, with articles of association, one of which provided as follows: "Each of the directors . . . shall be paid out of the funds of the co. by way of remuneration for their services 150*l.* for each year." By another article S. B. Bryant was appointed one of the first directors, and he continued a director until May 28, 1897,

COMPANY (Directors)—continued.

when he was re-elected. From that time he continued to be a director until Mar. 22, 1900, when the co. passed an extraordinary resolution for voluntary winding-up.

In the winding-up the liquidators disallowed Bryant's claim for remuneration for the year ending Mar. 25, 1900. If the resolution for winding up had not been passed on Mar. 25, there would have been no further meeting of directors, and by Mar. 22 the directors' work for the year ending Mar. 25 had been completed. Bryant applied to the Court to reverse the decision of the liquidators :—

Held, that the applicant was entitled to remuneration for the year under the article which said he was entitled "for each year." The co. was in a sense terminated, as a going concern, by the resolution for winding-up, a few days before the year had expired. From the commencement of the year the applicant had been a director and done work in that office, and he continued to be a director until the winding-up commenced and afterwards. Therefore he had been a director for the whole of the year ending Mar. 25, 1900. He did not cease to be a director by the co. going into liquidation, although after that event happened he could not act as a director except in certain events. He had in substance done his work for the year, and it did not follow that because he did nothing during the last few days of the year he was not entitled to be paid the remuneration for the year. Claim allowed. *In re SHAW'S, BRYANT & CO.*

Wright J. [1901] W. N. 124

24. — Remuneration of directors — Fixing time of payment — Condition precedent — Power to postpone payment.

Where the articles of association of a co. provided that there should be allowed to each of the directors out of the funds of the co. as a remuneration for his services a certain sum per annum to be paid at such times as the directors might determine :—

Held, that it was a condition precedent to the right of a director to sue for remuneration in respect of a year's service that the directors should have determined a time for payment thereof. *CARIDAD COPPER MINING CO. v. SWALLOW* **C. A. [1902] 2 K. B. 44**

25. — Remuneration of director — Yearly payment.

Articles of association of a limited co. provided that the directors should be paid out of the funds of the co. by way of remuneration for their services "the sum of 125*l.* per annum, per director, and such further sums as shall from time to time be determined by the co. in general meeting, and the same shall be divided among them in such proportion and manner as the directors by agreement may determine and in default of such determination equally." In an action by a director, who had resigned after serving for a part of a year, to recover remuneration in respect of his services during that period :—

Held, that the articles of association did not entitle a director to recover remuneration for any less period than a year.

COMPANY (Directors)—continued.

Salton v. New Beeston Cycle Co., [1899] 1 Ch. 775, approved. *Swabey v. Port Darwin Gold Mining Co.*, (1889) 1 Megone, Comp. Cas. 385, distinguished. *INMAN v. ACKROYD & BEST, LD.* **C. A. [1901] 1 K. B. 613**

26. — Remuneration under articles of association — Appointment by Court of some of directors as remunerated receivers and managers — Right to receive remuneration in both capacities.

The directors of a co. were entitled under its articles of association to be paid at the rate of a certain sum a year to be divided amongst them as they should agree amongst themselves. In pursuance of their agreement the remuneration was paid to the directors in certain proportions. In a debenture-holders' action against the co. two of the directors were appointed by the Court to be receivers and managers of the co.'s assets and business, and the Court allowed them a remuneration for so acting. Subsequently the co. went into voluntary winding-up :—

Held, that the fact of the two directors being remunerated as receivers and managers did not disentitle them to their remuneration in addition as directors from the time when they were appointed receivers and managers until the commencement of the winding-up. *In re SOUTH WESTERN OF VENEZUELA (BARQUISIMETO) RY. CO.* **Buckley J. [1902] 1 Ch. 701**

27. — "Services" — Improper payments — Negligence — Ultra vires.

Action by the plt. co. against its nine directors to compel them to refund moneys alleged to have been improperly paid by them out of the co.'s funds to F., one of their body, for "services" claimed to have been rendered by him in obtaining subscriptions for shares and in other respects before the co. actually started business. F.'s claim for his "services" amounted to 15,000*l.* *Kekewich J.*, while allowing the debts, any proper expenditure made by F. on behalf of the co., gave judgment declaring that they were liable to refund a sum of about 8000*l.*, on the ground that that sum had been improperly paid, and that the debts had been guilty of gross negligence in paying it.

The Court said the question on the appeal was as to the moneys paid to F. so far as they exceeded his proper expenditure. The excess was claimed by him for "services" rendered by him to the co. What those services were was never properly explained by him to his co-directors or inquired into by them. So far as the Court could see, he did not render any services beyond those rendered by him in his capacity of director, or any for which he was entitled to be paid by the co. any sum outside his ordinary remuneration as director. His claim, therefore, to be paid moneys beyond his expenditure was unfounded, and this was, or ought to have been, known to his co-directors. The Court adopted the language of Lord Lindley, when Master of the Rolls, in *In re National Bank of Wales, Ltd.* [1899] 2 Ch. 629, at p. 671, where, citing from a passage in the judgment of the C. A. in *Lagunas Nitrate Co. v. Lagunas Syndicate*, [1899] 2 Ch. 392, he said that "if directors act within their powers, if they act with such care as is reasonably

COMPANY (Directors)—continued.

to be expected from them, having regard to their knowledge and experience, and if they act honestly for the benefit of the co. they represent, they discharge their equitable as well as their legal duty to the co." The directors in the present case did not bring themselves within the scope of those observations. They appeared, in respect of the transactions now impeached, not to have acted as men with any ordinary degree of prudence would have acted on their own behalf, and to have been guilty of such negligence and misconduct as to make them liable to the co. **MERCHANTS' FIRE OFFICE, LD. v. ARMSTRONG C. A. [1901] W. N. 163**

— "Sham" or "illusory" contract.

See **COMPANY—WINDING-UP—Contributory. 6.**

— Veterinary surgeon—One man company—Unqualified person managing director. *See VETERINARY SURGEON. 2.*

Dividends.**1. — Accretion to capital—Capital or profits.**

The question of what is profit available for dividend depends upon the result of the whole accounts fairly taken for the year, capital, as well as profit and loss, and though dividends may be paid out of earned profits in proper cases, notwithstanding a depreciation of capital, a realized accretion to the estimated value of one item of the capital assets cannot be deemed to be profit divisible amongst the shareholders without reference to the result of the whole accounts fairly taken.

Among the assets taken over by a new co. in 1897, on the purchase of the undertaking of an old co., were promissory notes for \$100,000 given in 1894 to the old co. by the B. Co.; these notes, which had never been considered of any value, and had never appeared as assets in the balance-sheets of the new co., had recently been paid off with arrears of interest, and the directors proposed to treat the whole sum as a windfall in the nature of an unexpected profit and divisible as dividends:—

Held, that the \$100,000 ought not to be distributed as dividend without reference to the other business or assets of the co. **FOSTER v. NEW TRINIDAD LAKE ASPHALT Co. Byrne J. [1901] 1 Ch. 208**

— Apportionment, Express stipulation against—Dividends on shares—Company's articles.

See **APPORTIONMENT. 1.**

— Arrears of dividends—Interest.

See **INTEREST. 1.**

— Director—Payment of dividends out of capital—Negligence—Misfeasance.

See **COMPANY—Directors. 11.**

— Income bond—Dividends out of capital—Ultra vires.

See **COMPANY—Income Bond. 1.**

— Income tax—Gas company—Standard rate of dividend.

See **REVENUE—Income Tax. 19.**

COMPANY (Dividends)—continued.

2. — Loss of capital—Profits available for distribution—Expert evidence—Preference shares—Fixed cumulative dividend—Declaration—Directors' discretion—Interest—Dividend—Profit—Fixed capital—Circulating capital—Realized loss—Estimated loss.

The question whether a co. has profits available for distribution must be answered according to the circumstances of each particular case, the nature of the co., and the evidence of competent witnesses.

In re National Bank of Wales, [1899] 2 Ch. 629, reported on appeal as *Dovey v. Cory*, [1901] A. C. 477, applied.

Although in some cases fixed capital may be sunk and lost, without precluding the payment of a dividend, circulating capital must be kept up, and (*semble*) there is no distinction in this respect between a realized loss and an estimated loss.

Lee v. Neuchatel Asphalte Co., (1889) 41 Ch. D. 1, and *Verner v. General and Commercial Investment Trust*, [1894] 2 Ch. 239, explained.

The distinction between the propositions "Dividends must not be paid out of capital" and "Dividends may only be paid out of profits" explained.

The common article requiring dividends to be declared by the directors applies to fixed cumulative dividends on preference shares, and the Court will not readily override the directors' discretion in relation thereto.

The meaning of the words "interest," "dividend," "profit," "fixed capital," and "circulating capital" discussed.

Leasehold iron ore mines held by a smelting company for the purpose of supplying themselves with ore are circulating capital. **BOND v. BARROW HÆMATITE STEEL Co. Farwell J. [1902] W. N. 17; [1902] 1 Ch. 353**

Note.

Applied by Swinfen Eady J., *In re Acerington Corporation Steam Tramways Co.*, [1909] 2 Ch. 40. **Company—Winding-up—Assets. 1.**

3. — Payment by dividend warrant—Lost warrant—Action by shareholder—Plea of payment—Powers of directors—Request for payment in particular way—Companies Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 16) s. 90.

The general powers conferred upon the directors of a co. by s. 90 of the Companies Clauses Consolidation Act, 1845, authorize the directors to decide within reasonable limits when and how dividends duly declared by a general meeting of the shareholders shall be paid.

The directors of a co. in a half-yearly report and statement of accounts recommended the payment of a certain dividend on preference and ordinary stock, and gave notice that dividends would be paid on a certain day by means of dividend warrants sent by post to the registered address of the stockholder in each case. The shareholders of the co. at their half-yearly general meeting declared the amount of dividend as proposed by the directors, but passed no resolution as to how payment should be made. On the day named in the directors' report a dividend warrant was sent by post to the

COMPANY (Dividends)—continued.

registered address of a stockholder. The warrant was lost in the post :—

Held, that in the circumstances there was a request by the stockholder to the co. to pay the amount due to him by means of a warrant sent by post to his registered address.

Therefore in an action by the stockholder against the co. to recover the amount of dividend in respect of the stock held by him :—

Held, that the above facts supported a plea of payment by the co., and that the remedy, if any, of the stockholder was to put in suit such rights as he had upon the lost warrant.

Norman v. Ricketts, (1886) 3 Times L. R. 182, followed.

THAIRLWALL v. GREAT NORTHERN RY. Co. Div. Ct. [1910] 2 K. B. 509

4. — Payment of dividend — “ Profits available for dividend ” — Setting apart reserve fund — Articles partly excluding Table A — Companies Act, 1862 (25 & 26 Vict. c. 89), Sched. I., Table A, clause 74.

The memorandum of association of a co. provided that, as between the holders of the ordinary shares and the holders of the founders' shares, “ the profits from time to time available for dividend ” should be applicable as follows : (1.) to the payment of a non-cumulative preferential dividend of 15 per cent. per annum on the shares other than the founders' shares ; (2.) of the surplus, two-thirds should be applicable to the payment of a further dividend on the shares other than the founders' shares, and the remaining one-third should be applicable to the payment of dividend on founders' shares.

The articles of association provided (clause 1) that, so far as they did not exclude or modify the regulations contained in Table A in Sched. I. to the Companies Act, 1862, those regulations should, as far as applicable, be deemed to be the regulations of the co. The articles expressly excluded some of the clauses of Table A, but did not expressly exclude clause 74, which provides that “ the directors may, before recommending any dividend, set aside out of the profits of the co. such sum as they think proper as a reserved fund to meet contingencies, or for equalising dividends ” :—

Held, that clause 74 of Table A was not in toto excluded by implication, but that it must be taken to form part of the articles ; that “ profits available for dividend ” meant the net profits after making any deductions which the directors could properly make before declaring a dividend, and that the directors were justified, after paying a dividend of 15 per cent. to the ordinary shareholders, in setting aside as a reserve fund to meet contingencies so much of the surplus of the profits of a year as they thought fit.

Decision of Kekewich J. reversed.

Per Romer L.J. : Whether the directors could have set aside a reserve fund for the purpose of equalizing dividends, *quære*. *FISHER v. BLACK AND WHITE PUBLISHING Co.*

C. A. [1900] W. N. 271 ; [1901] 1 Ch. 174

— Payment of dividend out of capital—Ultra vires—Shareholders—Acquiescence.

See COMPANY—Directors. 7.

COMPANY (Dividends)—continued.

5. — Preference shares—Dividend—Cumulative or non-cumulative.

The deft. co. was incorporated in 1896 under the Companies Acts, 1862 to 1890, with a capital of 110,000*l.* divided into 70,000 preference shares and 40,000 ordinary shares of 1*l.* each. Clauses 7 and 137 of the articles of association are set out in full in this weekly note, [1908] W. N. 24.

No dividend was paid on the preference shares in respect of any of the years ending Sept. 30, 1904, 1905, and 1906.

In a report of the directors sent round to the shareholders on Nov. 30, 1907, to be submitted to the ordinary general meeting to be held on Dec. 11, it was stated that it was proposed to pay a dividend on the preference shares for the year ending Sept. 30, 1907.

An action was on Dec. 7 brought by the plt. (on behalf of himself and the other preference shareholders, other than those who were made defts.) against the co. and its directors and one Bell (sued on behalf of himself and the other holders of ordinary shares) for a declaration that the preference shareholders were entitled to receive out of the profits of the co. a cumulative preferential dividend of 5 per cent. on the amounts paid up on the preference shares, and to have any arrears of such dividend made up to them out of the profits of subsequent years before any distribution of dividend was made in respect of any such subsequent year, and for an injunction to restrain payment of the proposed dividend until the arrears had been made up.

The plt. now moved for an interim injunction in the term of the writ, and the motion, by consent, was treated as the trial of the action :—

Held, that clauses 7 and 137 were the only material articles. If clause 7 stood alone, it might be well contended that the dividend was cumulative. But the words were not absolutely clear, and might be interpreted by clause 137. That article contemplated a yearly division of profits, and at the end of each year they had to be divided between the preference and the ordinary shareholders. If that was strictly carried out, it was impossible to treat the preference dividend as preferential ; and it must be so declared. *ADAIR v. OLD BUSHMILLS DISTILLERY Co.* — **Parker J. [1908] W. N. 24**

6. — Preference shares — Cumulative or non-cumulative dividend.

Motion by an ordinary shareholder of deft. co. to have it determined whether the preference shareholders were entitled to a cumulative or only a non-cumulative preferential dividend.

The co. was originally formed in 1890, but was reconstituted in 1895. By clause 5 of the memorandum of association of the original co. the capital was declared to be 500,000*l.* divided into 21,000 preference shares of 10*l.* each, carrying a cumulative preferential dividend of 6 per cent. per annum and 29,000 ordinary shares of 10*l.* each. The articles provided inter alia that “ the net profit from time to time available for distribution as dividend shall be applied first in payment to the holders of preference shares of a cumulative preference dividend at the rate of

COMPANY (Dividends)—continued.

6l. per cent. per annum, and, secondly, and subject thereto in payment so far as the balance will extend of a dividend on the ordinary shares of the co." Under the reconstruction the capital was reduced and the preference dividend cut down to 5l. per cent., and the memorandum and articles were altered by striking out the word "cumulative" before the word "preference." The question was whether, notwithstanding this omission of the word "cumulative," the preference shareholders were not still entitled to have arrears of unpaid dividends paid out of profits earned in subsequent years before any dividend was paid to the ordinary shareholders.

Joyce J. said that the proper course was first to consider the language of the instruments apart from the authorities. *Prima facie* clause 5 of the memorandum meant that the preference shareholders were to have a cumulative dividend, and there was nothing in the articles to show that it was to be otherwise. This was not inconsistent with the authorities. In *Staples v. Eastman Photographic Materials Co.*, [1896] 2 Ch. 303, the preference dividend was to be paid "out of the net profits of each year." There was nothing of that sort here, and the preference shareholders were entitled to have any deficiency in their past dividends made up out of the profits of subsequent years. *FOSTER v. COLES AND M. B. FOSTER & SONS, LD.*

Joyce J. [1906] W. N. 107

Note.

See *Adair v. Old Bushmills Distillery Co.*, Parker J., [1908] W. N. 24, *preceding Case*.

— Surplus assets—Accumulated profits—Capital—Arrears of preferential dividends.

See COMPANY—WINDING-UP—Assets. 3.

— Surplus profits—Making up deficiency of previous dividend—Prescribed rate.
See WATER. 31.

— Will — Trustee — Retainer — Bankruptcy — Assent to composition—Acceptance of dividend.
See WILL.—Trustee. 1.

— Winding-up — Two insolvent companies — Cross-claims — Adjustment — Claim on debentures—Damages for misfeasance.
See COMPANY—WINDING-UP—Assets. 6.

Electric Light.

See under ELECTRIC LIGHT.

Evidence.

See under EVIDENCE.

Examination.

1. — Officer of company, Examination of — Officer who has retired—Execution—Judgment against company—*R. S. C.*, Order XLII., r. 32.

Where a judgment or order is obtained against a co. for the recovery or payment of money, an order may be made under O. XLII., r. 32, upon a person who has been a director of a co., but has ceased to be so at the time of the making of the order to attend to be examined as to debts owing to the co., and whether the

COMPANY (Examination)—continued.

co. has property or means of satisfying the judgment or order. *SOCIÉTÉ GÉNÉRALE DU COMMERCE ET DE L'INDUSTRIE EN FRANCE v. JOHANN MARIA FARINA & Co.*

C. A. [1904] 1 K. B. 794

Foreign Company.

— Debenture of—Bill of sale—Non-registration.
See COMPANY—Debentures. 1.

— Non-commencement of business for a year—Company registered in England to protect name of foreign company.

See COMPANY—WINDING-UP—Non-commencement. 1.

— Shares held in foreign company—Income tax—Company resident in the United Kingdom—Control.

See REVENUE—Income Tax. 17.

Foreign Laws.

1. — Limited Liability—Company formed for purpose of trading in foreign country—Personal liability of shareholders under the foreign law—Conflict of laws.

An English co., incorporated under the Joint Stock Companies Acts as a limited co., was formed for the purpose of acquiring and working mines in (amongst other countries) the United States of America, and by the articles of association the directors were empowered to do all things necessary to comply with the requirements of the law of any country where the co. might carry on business. The co. acquired and worked mines in the State of California, and for the purposes of those mines purchased from the plts., manufacturers in California, certain machinery. By the law of California, every shareholder of a co., whether incorporated in California or elsewhere, trading within that State is personally liable for such proportion of the co.'s debts as the amount of his shares bears to the whole of the subscribed capital of the co. The co. having become insolvent, the plts. sued the deft., a shareholder of the co., in this country for his proportion of the price of the machinery :—

Held, that the deft. did not by becoming a member of the co. upon the terms of the memorandum and articles of association authorize the directors to pledge his personal credit for the price of the goods supplied, and that, in the absence of express authority on his part, the action could not be maintained against him.

Judgment of Kennedy J., [1905] W. N. 12 ; [1905] 1 K. B. 304, affirmed. *RISDON IRON AND LOCOMOTIVE WORKS v. FURNESS.*

C. A. [1906] 1 K. B. 49

Forgery.

1. Company—Forged transfer of stock—Innocent presentment for registration—Indemnity—Implied contract to indemnify.

A banker innocently sent to a corporation a transfer of corporation stock which purported to be executed by T. and H., the two registered holders of the stock, with a request to the corporation to register the stock in the name of the banker. The corporation innocently acted

COMPANY (Forgery)—continued.

upon this request and granted a fresh certificate to the banker, who transferred the stock to third parties who were registered as holders. Afterwards it was discovered that T. had forged H.'s signature, and H. recovered against the corporation judgment whereby they were compelled to buy equivalent stock and register it in H.'s name, and to pay him the missing dividends with interest :—

Held, that both parties having acted bona fide and without negligence the banker was bound to indemnify the corporation against the liability to H., upon an applied contract that the transfer was genuine.

The decision of C. A., [1903] 2 K. B. 580, reversed, and the decision of Lord Alverstone C.J., [1903] 1 K. B. 1, restored. **SHEFFIELD CORPORATION v. BARCLAY H. L. (E.) [1905] W. N. 118; [1905] A. C. 392**

Note.

Applied by C. A., *Att.-Gen. v. Odell*, [1906] 2 Ch. 47. *Land Transfer*. 4.

Applied by Phillimore J., *Moel Trycan Ship Co. v. Kruger & Co.*, [1906] 2 K. B. 792; C. A., [1907] 1 K. B. 809; H. L. (E.) [1907] A. C. 272. *Shipping—Charterparty*. 9.

Followed by A. T. Lawrence J., *Bank of England v. Cutler*, [1907] 1 K. B. 889; C. A., [1908] 2 K. B. 208. *See India*. 4.

2. — Share certificate fraudulently issued by secretary—Forgery—Master and servant—Scrape of employment—Estoppel.

The appellants advanced in good faith a sum of money to the secy. of the respondent co. for his own purposes on the security of a share certificate of the co. issued to them by the secy. certifying that the appellants were registered in the co.'s register of shareholders as transferees of shares. This certificate was, in point of form, in accordance with the co.'s articles of association, inasmuch as it bore the seal of the co., and appeared to be signed by two of the directors and counter-signed by the secy. The seal of the co. was, however, affixed to it by the secy. fraudulently and without authority, and the signatures of the two directors were forged by him. In an action against the co. for damages for refusing to register the appellants as owners of the shares :—

Held, that, in the absence of any evidence that the co. ever held out the secy. as having authority in this behalf to do anything more than the mere ministerial act of delivering share certificates, when duly made, to the owners of shares, the co. were not estopped by the forged certificate from disputing the claim of the appellants, or responsible to them for the wrongful action of their secy.

Decision of the C.A., [1904] W. N. 163; [1904] 2 K. B. 712, affirmed.

Shaw v. Port Philip Gold Mining Co., (1884) 13 Q. B. D. 103, discussed. **RUBEN v. GREAT FINGALL CONSOLIDATED - H. L. (E.) [1906] W. N. 157; [1906] A. C. 439**

Friendly Society.

See under FRIENDLY SOCIETY.

COMPANY (Friendly Society)—continued.

— Conversion into company—Enlargement of Objects.

See COMPANY—Memorandum. 12.

And also under **FRIENDLY SOCIETY**. 1.

Gratuities.

1. — Officers and servants, Gratuities to—ultra vires.

This was an action by the plt. on behalf of himself and all other shareholders in the deft. co. other than the deft. directors, for a declaration that a resolution, passed and confirmed by the shareholders in general meeting, that a sum of 7800*l.* should be distributed amongst the officers and servants of the co., was ultra vires. The defts. were the co., the managing director, and four other gentlemen, who were his co-directors. The co. had recently sold its undertaking to the Wesleyan body, and at general meetings held respectively on Jan. 28, 1903, and Feb. 16, 1903, resolutions were passed and confirmed by large majorities for the voluntary winding-up of the co. and for the distribution of the sum of 7800*l.* among the directors and other officers and servants of the co. in the manner therein mentioned. It was proved that this sum was to be given as a mere gratuity :—

Held, that the majority of the shareholders had no power to vote gratuities to officials so as to bind the minority in a case where the co. was being wound up. The principle of *Hutton v. West Cork Ry. Co.*, (1883) 23 Ch. D. 634, applied to a trading co. incorporated under the Companies Acts and completely governed this case. The resolution was therefore ultra vires. **STROUD v. ROYAL AQUARIUM AND SUMMER AND WINTER GARDEN SOCIETY, LD.**

Joyce J. [1903] W. N. 146

Guarantee.

1. — Company limited by guarantee — Jurisdiction to wind up — Practice — Statement of amount of guarantee — Companies (Memorandum of Association) Act, 1890 (53 & 54 Vict. c. 62), s. 1, sub-s. 2 — (Companies Winding-up) Act, 1890 (53 & 54 Vict. c. 63), s. 1, sub-ss. 1, 2, 3.

Petition under the Companies (Memorandum of Association) Act, 1890, for the confirmation of an alteration of the memorandum of association of a co. limited by guarantee. The Companies (Memorandum of Association) Act, 1890, s. 1, sub-s. 2, provides that the petition for alteration shall be confirmed by "the Court which has jurisdiction to wind up the co." Up to the date of that Act the Court having that jurisdiction was in all cases the High Court. But the Companies (Winding-up) Act, 1890, which received the Royal assent on the same day as the former Act, provided that "where the capital of the co. paid up or agreed to be paid up exceeded 10,000*l.* a petition to wind up the co. should be presented in the High Court, or the Palatine Courts of Lancaster and Durham in the case of cos. situate within their respective jurisdictions, and in cases where the amount of the capital paid up or credited as paid up does not exceed 10,000*l.* a petition to wind up should be presented to a county court." This Act contained no mention

COMPANY (Guarantee)—continued.

of cos. limited by guarantee. But it appeared that a custom had grown up of inserting in petitions relating to cos. limited by guarantee a statement that the amount of the guarantee exceeded 10,000*l.*, and words to this effect had been inserted in the petition in this case in the registrar's office.

Neville J.: The point is clearly covered by *In re North of England Iron Steamship Insurance Association*, [1900] 1 Ch. 481. The statement of the amount of guarantee is unnecessary and may be struck out and the order made as asked. *In re MONMOUTHSHIRE AND SOUTH WALES EMPLOYERS' MUTUAL INDEMNITY SOCIETY, LD.* - Neville J. [1909] W. N. 6.

2. — Debentures—Guarantee — Insurance — Suretyship—Release of guarantor — "Arrangement or compromise"—Majority of debenture-holders binding minority.

The plt. held debentures of the deft. co. forming part of an issue secured by a trust deed which provided that the debentures should be guaranteed by the Law Guarantee Trust and Accident Society, *LD.*, which was to be the trustee for the debenture-holders. By this deed a sinking fund for the redemption of the debenture was to be established, and the co. were to pay to the society a remuneration for services as trustee and 10*s.* per cent. premium on the amount of the outstanding debentures. A general meeting of the debenture-holders was to have power by extraordinary resolution to assent to any modification of the provisions of the deed which should be proposed by the co., and to assent to any arrangement or compromise proposed to be made between the co. and the debenture-holders, provided that it was one which the Court. would have jurisdiction to sanction under the Joint Stock Companies Arrangement Act, 1870, or any statutory modification thereof, if the co. were being wound up and the requisite majority at a meeting of the debenture-holders summoned pursuant to that Act had agreed thereto; and an extraordinary resolution duly passed at a general meeting was to be binding upon all the debenture-holders whether present or not present at the meeting, and each of the debenture-holders was to be bound to give effect thereto accordingly. Resolutions were passed in Dec., 1909, for the voluntary winding up of the society, and the winding up was now being continued under supervision.

At meetings duly convened and held in Mar., 1910, resolutions were passed by the requisite majority of the debenture-holders of the co. releasing the society from the guarantee; increasing the interest on the debenture debt; appointing new trustees of the deed, and discontinuing the sinking fund. A draft supplemental trust deed was prepared which provided that each debenture-holder should forthwith surrender his debentures to the co. and accept new debentures carrying the higher rate of interest but no guarantee by the society. The plt. did not attend the meetings nor assent to the resolutions, and he declined to surrender his debentures or give up the guarantee. He brought this action against the co., the society and the new trustees

COMPANY (Guarantee)—continued.

for a declaration that the resolutions were not binding on him, and for an injunction to restrain the defts. from acting on them.

Warrington J. held that the guarantee was in the nature of a policy of insurance as well as a contract of suretyship, and was not destroyed by the disappearance of the debt. But the real question was whether the resolutions were an arrangement or compromise which the debenture-holders could pass and the Court could sanction. This transaction was within those words even if it were necessary to shew for that purpose that there had been a dispute or difference between the parties. There was ample authority for saying that the Court had jurisdiction to sanction such an arrangement in a winding-up. The whole scheme of the resolutions was valid and binding on the plt., and the action must be dismissed. *SHAW v. ROYCE, LD.*

Warrington J. [1910] W. N. 251

3. — Guarantee company—Debentures charging present and future assets.

A petition was presented by creditors of a co. limited by guarantee, and not having a capital divided into shares, asking that the co. should be wound up by the Court. The principal defence to the petition was that the assets of the co. were covered by debentures for an amount greater than the value of the assets, and that in the event of a winding-up order being made there would not be anything for the unsecured creditors. The debentures purported to create a charge on the whole of the assets of the co. present and future.

In accordance with Form B. of Sched. II. to the Companies Act, 1862, the Memorandum of Association stated that every member of the co. undertook to contribute to the assets of the co. "in the event of the same being wound up during the time that he is a member, or within one year afterwards for payment of the debts and liabilities of the co. contracted before the time at which he ceases to be a member, and the costs, charges, and expenses of winding up the same, and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required, not exceeding 5*l.*"

Buckley J. said that it would be a melancholy thing if the law were otherwise than as stated in the decision cited (*In re Mayfair Property Co., C. A.* [1898] 2 Ch. 28), for in that case there would be no use in having reserve capital. There must be the usual winding-up order. *In re IRISH CLUB CO.* - Buckley J.

[1906] W. N. 127

— Debenture-holders and guarantors — Preference to assets of company.

See **COMPANY—Arrangement.** 2.

Income Bond.

— Bond—Company.

See under **COMPANY—Bond.**

1. — Income bond — Construction — Bonus payable out of profits—No profits earned—Issue of paid-up shares in exchange for bonus — Dividends out of capital—Want of consideration—Ultra vires.

COMPANY (Income Bond)—continued.

A limited co. being in want of money borrowed it by the issue of 10*l.* bonds on the terms that the co. would, when and so far as there were net profits available for the purpose pay to the bondholder the principal money of 10*l.* together with a bonus of 25*l.*, the principal money and bonus to be paid exclusively out of profits.

Years later, the co. having made no profits whatever and being still in want of money, it was arranged with the consent of all parties interested that new 1*l.* shares should be issued and the bonus of 25*l.* satisfied or extinguished by the allotment of twenty of the new 1*l.* shares considered as fully paid :—

Held, that it was ultra vires for the co. to make the charge on future net profits a charge on capital and a present debt and to issue shares fully paid up in satisfaction of the debt so created, the charge being exclusively on income.

Quære whether it is possible for directors to create a debt against their co. and to saddle their co. with it for the purpose of enabling them to issue shares without payment in cash, however advantageous they may consider the transaction to be.

Decision of C. A., *Bury v. Famatina Development Corporation, Ltd.* [1909] 1 Ch. 754, affirmed. *FAMATINA DEVELOPMENT CORPORATION, LD. v. BURY.*

H. L. (E.) [1910] W. N. 157; [1910] A. C. 439.

Income Tax.

— Colonial companies, Relief from income tax on insurances with.

See Finance Act, 1904 (4 Edw. 7, c. 7), s. 9.

— Company investments.

See REVENUE—Income Tax. 12, 21, 33.

— Company resident in United Kingdom—Holding all the shares in company abroad—Control.

See REVENUE—Income Tax. 17.

— Exemption—Income not exceeding 160*l.*

See REVENUE—Income Tax. 12.

— Gas company—Standard rate of dividend.

See REVENUE—Income Tax. 19.

— Income derived from business—Business carried on in the Colony or profits received.

See NEW ZEALAND.

— Nitrate grounds situate abroad—Profits and gain—Deduction.

See REVENUE—Income Tax. 30.

— Residence—Company registered abroad—Majority of directors in England.

See REVENUE—Income Tax. 33.

— Residence—"Person residing in the United Kingdom"—Company registered abroad—Head office and directing power in United Kingdom.

See REVENUE—Income Tax. 17.

— Single ship company—Average of three years preceding year of assessment—Trade first set up within a period of three years.

See REVENUE—Income Tax. 38.

COMPANY—continued.**Indemnity.**

— Forged transfer of stock—Innocent presentment for registration—Implied contract to indemnify.

See COMPANY—Forgery. 1.

Insurance Companies.

See under INSURANCE, INSURANCE (FIRE), INSURANCE (LIFE), INSURANCE (MARINE) and INSURANCE (PROFESSIONAL).

— Trading and life assurance combined—Tea company—Pensions.

See INSURANCE, LIFE. 2.

Interest.

See also under INTEREST.

1. — Bonds bearing interest out of profits—Deficiency in interest—Sale of bonds—Tenant for life and remainderman.

Second mortgage 6 per cent. gold bonds of a Mexican ry. co. contained a promise by the co. to pay the principal secured in 1917, and interest thereon, "accumulative, at the rate of 6 per cent. per annum" on Mar. 1 and Sept. 1 in each year, "upon surrender of the annexed coupons, as and when earned, out of any net earnings of any year remaining after interest" on the co.'s first mortgage bonds had been paid for such year, and provided as follows: "If in any year the net earnings so remaining available for payment of interest upon the" second mortgage bonds "shall not be sufficient to pay such interest in full, there shall be paid any part thereof earned and available, and any deficiency shall not be waived, but shall be paid to the holder hereof out of the net earnings of any subsequent year or years, as and when there shall be any net earnings available for such purpose."

By a settlement made in May, 1899, some of the second mortgage bonds were settled upon trust to pay the income to M. for life, and after her death to her husband, T., for life, and after the death of the survivor, if T. survived her, in trust for the next of kin (excluding T.) of M.

Interest less than 6 per cent. per annum was paid on the bonds down to 1901, and no deficiency of any year was ever made up out of the earnings of any subsequent year or otherwise.

In March, 1902, the bonds, with the coupons, were sold by the trustees for 2700*l.*, and in May, 1902, M. died leaving T. surviving her, and he was her legal personal representative :—

Held, that T. was not entitled to any part of the 2700*l.* as representing the apportioned amount in respect of any deficiency of interest in M.'s lifetime, but that the whole of the 2700*l.* went to M.'s next of kin. *In re TAYLOR'S TRUSTS.* *MATHESON v. TAYLOR*

Buckley J. [1905] 1 Ch. 734

— Debentures—Settlement of—Trustees registered holders—Interest.

See COMPANY—Debentures. 51.

2. — Insolvent company—Interest on debts.

On Jan. 15, 1906, the co., being insolvent passed a resolution for voluntary winding-up.

COMPANY (Interest)—continued.

On Jan. 27, 1906, creditors of the co. obtained judgment against it, under Order XIV., r. 1, for 23,242*l.* 10*s.* 6*d.* for principal and interest, and 8*l.* 12*s.* for costs. On Oct. 22, 1906, a scheme of arrangement was sanctioned by the Court, by the terms of which the unsecured creditors of the co. were to take preference shares in the re-constructed co. in satisfaction of their debts at the "full face value" of the same. On July 11, 1907, the judgment creditors made a claim under the scheme to be creditors for 24,974*l.* 17*s.* 1*d.*, being the 23,242*l.* 10*s.* 6*d.*, 8*l.* 12*s.* costs, and interest at 5*l.* per cent. on the principal (22,983*l.* 1*s.* 6*d.*) due on the judgment from Jan 27, 1906, to July 26, 1907, which interest amounted to 1,723*l.* 14*s.* 7*d.*

The liquidator offered to admit the proof at 23,242*l.* 5*s.* 5*d.*, the amount indorsed on the writ of summons, with interest to the date of the commencement of the winding-up; but the judgment creditors applied in the winding-up for an order that the debt should be admitted with interest on the 23,242*l.* 10*s.* 6*d.* from Jan. 27, 1906, the date of judgment, at 5 per cent. (the rate reserved by the original contract on which the action was brought) or alternately at 4 per cent.

Neville J. said that s. 10 of the Judicature Act, 1875, applied the rule in bankruptcy to the winding-up of an insolvent co., although the winding-up was voluntary. The claim for interest subsequent to the date of the judgment could not be sustained. *In re THOMAS SALT & Co.* Neville J. [1908] W. N. 63

Investments.

— Income tax.

See under COMPANY—Income Tax.

— Railway or other "public company" — American company—Investment, Trust for.

See WILL—Investments. 4.

— Trustee—Nominal debentures issued under Local Loans Act, 1875.

See TRUSTEE—Investments. 11.

— Will — Construction—"Company"—Investments—Companies not registered in the United Kingdom.

See WILL—Investments. 2.

— Will—Investment clause—Companies "in the United Kingdom."

See WILL—Investments. 6.

Judgment.

See under JUDGMENT.

Jurisdiction.

— Memorandum of association—Alteration of objects—Jurisdiction of Chancery Division.

See COMPANY—Memorandum of Association. 8.

Land.

Companies Act, 1908 (8 *Edw. 7, c. 12*), amends the law with respect to the holding of land by companies incorporated in British Possessions.

COMPANY (Land)—continued.

Licence to hold Lands.—The Companies Acts, 1862 to 1900—Companies Act, 1862, s. 71—Licence to hold lands—Form substituted for Form F. Reprint from W. N. 1907 (June 8), p. 209. See CURRENT INDEX, 1907, p. lxx.

Larceny.

— Officers of public companies — Publishing fraudulent statements — Manager de facto.

See CRIMINAL LAW—Larceny. 10.

Leases.

— Dissolution of company—Reverter to lessor—Acceleration of reversion—Determination of term—Liability of sureties.

See CORPORATION. 10.

— Lease—Assignment to limited company after consent refused—"Respectable and responsible per-on"—Forfeiture of lease.

See LANDLORD AND TENANT. 10.

1. — *Tenant's fixtures—Removal—Determination of lease by forfeiture—Mortgage of lease—Right of mortgagee.*

A lease to a limited co. contained a provision for the determination of the term in the event of the co. going into liquidation. The co. having issued debentures which constituted a floating charge on all its property present and future, a receiver was appointed in a debenture-holders' action. The receiver took possession of the leasehold premises and obtained leave from the judge to sell the tenant's fixtures, the lessor being present and not objecting. After the fixtures had been advertised for sale the co. went into voluntary liquidation, and the lessor thereupon demanded possession of the leasehold premises including the fixtures in question:—

Held, that the voluntary act of the co. in going into liquidation ought not in the circumstances to prejudice the right of the debenture-holders to remove the tenant's fixtures, and that they were entitled to a reasonable time after the determination of the lease for removal.

Pugh v. Arton, (1869) L. R. 8 Eq. 626, commented on. *In re GLASDIR COPPER WORKS, LD. ENGLISH ELECTRO-METALLURGICAL Co. v. GLASDIR COPPER WORKS, LD.* Joyce J. [1904] W. N. 73; [1904] 1 Ch. 819

Note.

In re Glasdir Cooper Mines, Ltd., [1905] W. N. 57; C. A. [1905] W. N. 172; [1906] 1 Ch. 365. See COMPANY—Receiver. 11.

Liability.1. — *Bills of exchange, Liability upon—Bills accepted by director in name of company without authority in fact—"Person acting under the authority of the company"—Companies Act 1862* (25 & 26 *Vict. c. 89*), s. 47.

Certain bills of exchange drawn on a limited co. were accepted by one of its directors in the co.'s name, the bills also being signed by the director.

The co. received no part of the proceeds of the bills nor any consideration for the acceptances, which, although the director had no

COMPANY (Liability)—continued.

fraudulent intention, were in fact in fraud of the co. The plts. were holders in due course of the bills.

Among the objects of the co. as defined by its memorandum were the drawing, making, accepting, indorsing, and discounting of bills and promissory notes, and the directors were authorized to delegate any of their powers to committees consisting of such member or members of their body as they thought fit.

Before the date of the acceptances a resolution had been passed by the directors requiring all bills of exchange to be signed by one director and countersigned by the secretary.

In an action against the co. as acceptors to recover the amount of the bills :—

Held that, as the director had no authority in fact to accept the bills of exchange, he was not, in accepting them, "acting under the authority of the co." within the meaning of s. 47 of the Companies Act, 1862, and that therefore the co. was not liable upon the bills. **PREMIER INDUSTRIAL BANK, LD. v. CARLTON MANUFACTURING CO., LD. AND CRABTREE, LD.** - **Pickford J.** [1909] 1 K. B. 106

Libel.

— Publication to clerks of company exercising privilege.
See **DEFAMATION—Libel.** 15.

Lien.

— Bankrupt shareholder — Lien on fully paid shares — Amendment of proof — Inadvertence.
See **COMPANY—Bankruptcy.** 1.

— Director — Vacating office — Company's lien on director's shares for repayment of fees.
See **COMPANY—Directors.** 6.

Limitations.**(Statute of Limitations.)**

1. — *Dividends unclaimed — Reduction of capital by return of money to shareholders—Limitations, Statute of—Companies Act, 1877* (40 & 41 Vict. c. 26), s. 3.

The holder of shares, the certificate of which is under the seal of the co. and refers (as is usual) to the memorandum and articles of the co., is not barred by the Statute of Limitations until the expiration of twenty years :—

(a) In respect of dividends declared on the shares, from the date of declaration :

(b) In respect of capital to be returned on the shares, from the date of notice of the order of the Court confirming the reduction.

In re Drogheda Steam Packet Co., [1903] 1 I. R. 512, followed. *In re ARTISANS' LAND AND MORTGAGE CORPORATION*

Byrne J. [1904] 1 Ch. 796

Liquidator.

See under **COMPANY—WINDING-UP—Liquidator.**

Livery Company.

— Livery Company of city of London, Gift to—Devise for general purposes of company.
See **CHARITY.** 30.

COMPANY—continued.**Loans.**

— Debentures—Issue—Deposit of blank debenture to secure loans.
See **COMPANY—Debentures.** 21.

Lottery.

— Offence—Corporation—"Person."
See **GAMING.** 14.

Manager.

— Debenture — Goodwill — "Property" — Jurisdiction to appoint manager.
See **COMPANY—Debentures.** 18.

Meetings.

See also under **COMPANY—WINDING-UP—Meetings.**

— Chairman, Declaration of—Company—Winding-up.
See **COMPANY—WINDING-UP—Meetings.** 2.

— Directors—Powers—Postponement of general meeting.
See **COMPANY—Directors.** 13.

— Directors — Qualification — Notice — Special business.
See **COMPANY—Directors.** 16.

1. — *General meeting — Special business—Minutes — Notice — Sufficiency — Resolutions—"Alterations or amendments"—Appointment of additional directors.*

The notice of the annual general meeting of a co. stated that such meeting was for the purpose of considering and, if thought fit, passing certain resolutions, "with such amendments and alterations as shall be determined upon at such meeting." One of such resolutions was that three named gentlemen should be appointed directors. According to the minutes of the general meeting the notice was taken as read, and the three named gentlemen were proposed as directors. An amendment was, however, carried that in addition to these three gentlemen two additional named directors should be appointed. Under the articles of association of the co. it was provided (54.) that the notice of an ordinary general meeting at which special business was to be transacted should specify the general nature of such special business; (69.) that the number of the directors should be no more than seven or less than three; (62.) that the signed minutes of the proceedings at a general meeting should be conclusive evidence that the proceedings were regular.

Upon motion by the co. for an injunction to restrain the two additional directors from acting :—

Held, that the Court was entitled to look at the notice convening the meeting as part of the res gestæ, to see if the proceedings were regular.

Held, further, that, having regard to the terms of the articles of association, the business transacted at the meeting was within the scope of the special business indicated in the notice. **BETTS & CO. v. MACNAUGHTEN**

Eve J. [1910] 1 Ch. 430

COMPANY (Meetings)—continued.

2. — Meeting of shareholders—Requisition—Signature by one of joint-holders—Directors—Irregularity in appointment—Companies Act, 1900 (63 & 64 Vict. c. 48), s. 13.

In this case Buckley J. said it was necessary, in order to see whether the action was really discontinued, to decide whether the three so-called new directors were validly appointed. As to the point on s. 13 of the Act of 1900—if shares were held by A., B. and C. and by D. and E. jointly, a requisition was not signed by all of them unless it was signed by A., B., C., D. and E. If it was sufficient that A., B., C. and D. should sign it must be because E. was not a member. Table A. contained several provisions as to what one of several joint holders might do (*see* Articles 1, 46, and 96); and other things, such as signing a requisition, must be taken as excluded. The requisition was therefore insufficient. Even if the resolutions were valid, they only followed the wording of the notice of the meeting and did not appoint anyone. Moreover, the resolutions ought not to have been put to the poll en bloc, but separately. The directors not having been properly appointed they could not appoint solicitors for the co., and the solicitors whom they attempted to appoint could not discontinue the action. The notice must be taken off the file and set aside, and the solicitors must pay the costs. **PATENTWOOD KEG SYNDICATE, LD. v. PEARSE**

Buckley J. [1906] W. N. 164

3. — Memorandum of association—Increase of capital—Alteration of rights of shareholders—Preference shareholders—Consent of by resolution of meeting—All preference shares held by one shareholder—"Meeting."

In this case Warrington J. said that the question he had to determine was whether the present case was one of those referred to by Lord Coleridge in *Sharp v. Dawes*, (1876) 2 Q. B. D. 26, in which it might be possible to shew that the word "meeting" in clause 5 of the memorandum had a meaning different from its ordinary meaning. He was of opinion that where, as in this case, one person was the owner of a class of shares, inasmuch as he could not "meet" himself, or form a "meeting" with himself in the ordinary sense, it must be assumed the framers of the memorandum and articles having such a probability in contemplation used the word "meeting" not in its strict sense, but as including the case of a single shareholder. He accordingly held that the preference shares had been validly issued and that there was no necessity for the rectification of the register. He therefore refused the motion. **EAST v. BENNETT BROTHERS, LD.**

Warrington J. [1910] W. N. 260

4. — Notice—Company—Special resolution—Notice of meeting—Validity—Notice of both meetings given in one document—Notice of second meeting given contingently—Notice in accordance with articles—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 51.

The articles of association of a co. provided that, "Whenever it is intended to pass a special resolution, the two meetings may be convened

COMPANY (Meetings)—continued.

by one and the same notice, and it shall be no objection that the notice only convenes the second meeting contingently on the resolution being passed by the requisite majority at the first meeting":—

Held, that this clause was not ultra vires as being inconsistent with s. 51 of the Companies Act, 1862, or on any other ground.

With the view of passing a special resolution for the reduction of the co., notice was given that a general meeting would be held on Feb. 15, 1905, at a time and place mentioned, when a resolution (which was subjoined) would be proposed. The notice continued: "Should such resolution be duly passed by the required majority, the same will be submitted for confirmation at a special resolution to a subsequent general meeting of the co., which will be held on Friday, 3rd March, 1905, at the same time and place."

The resolution was duly passed at the first meeting, and was confirmed by the proper majority at the second meeting:—

Held, that the notice of the second meeting was valid: that the second meeting was duly summoned and held and the resolution duly confirmed; and that it became binding on all the shareholders.

Decision of Buckley J., [1905] W. N. 66; [1905] 1 Ch. 609, reversed.

Alexander v. Simpson, (1889) 43 Ch. D. 139, explained and distinguished. *In re NORTH OF ENGLAND STEAMSHIP CO.*

C. A. [1905] W. N. 77; [1905] 2 Ch. 15

5. — Notice—Special resolution—Amendment—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 51.

A special resolution need not follow the exact terms of the notice given under s. 51 of the Companies Act, 1862, but may be amended at the first meeting, e.g., by reducing the remuneration proposed for the directors. **TORBOCK v. LORD WESTBURY** - - - **Swinfen Eady J.**

[1902] W. N. 160; [1902] 2 Ch. 871

— Notice issued by secretary without authority of directors.

See COMPANY—WINDING-UP — **Meetings. 1.**

— Reconstruction of company.

See under COMPANY—**Reconstruction.**

— Scheme of arrangement — Winding-up — Meetings of members—Separate classes.

See COMPANY—**Arrangements. 5.**

6. — Shareholders — General meeting—New regulations—Special resolution — Notice—Sufficiency—"General nature" of business—Non-disclosure — Director's pension — Agreement — Incidental to ordinary business—Ultra vires — Action by shareholders—Right to sue.

The notice of an extraordinary general meeting of a limited co. stated the purpose of the meeting to be to consider and, if thought fit, approve the draft new regulations to be submitted to the meeting, and to pass a resolution approving and adopting the same. It also stated that copies of the proposed new regulations might be seen at the offices of the co., or would be forwarded to shareholders on application. The

COMPANY (Meetings)—continued.

new regulations contained an article enabling the board to grant a retiring pension to any managing director, and confirming an agreement of Jan. 17, 1902, by which the directors, acting on behalf of the co., agreed to pay to one of the retiring managing directors, for consideration, an annual sum of 1000*l.* for ten years, and 500*l.* a year thereafter for the remainder of his life. There were also other new articles (inter alia)—(1.) enabling the board to increase the remuneration of the directors from 3000*l.* to 4500*l.* per annum, and allowing them travelling, hotel, and other expenses; (2.) providing for the appointment of three directors for life; (3.) relieving directors from liability for loss; and (4.) enabling the directors to borrow a further sum of 150,000*l.*

The resolution adopting the new regulations was passed at the meeting and confirmed at a second extraordinary general meeting.

In an action by the shareholders against the co. and the directors to test the validity of the resolutions:—

Held, that the notice of the general meeting, by reason of its omission to refer to the specified matters which were all of importance to the shareholders, did not sufficiently state the “general nature” of the business, as required by the articles of association, and that the resolutions were therefore not duly passed.

What is to be sufficient notice of the general nature of the business must be determined from the particular circumstances of each case by itself.

Held, also, that the agreement of Jan. 17, 1902, although within the powers of the co. in general meeting, was ultra vires the directors without the sanction of such a meeting, as it purported to grant additional remuneration to a director, which, according to the articles, could only be effected by a resolution of the co. in general meeting.

But *held*, that the shareholders were not entitled to maintain the action at all, and must appeal to the co. in general meeting in respect of the irregularity committed by the directors.

No managing or other director is a “person in the employment of the co.” *NORMANDY v. IND, COOPE & Co., Ltd.* - **Kekewich J. [1907]**

W. N. 229; [1908] 1 Ch. 84

— Vesting of management in directors—Control of management by company in general meeting.

See COMPANY—Directors. 14.

7. — Voting—Disqualification—Forfeiture of shares—Purchaser of forfeited shares disqualified from voting whilst calls remain due from original holder.

By the articles of association of a co. it was provided that after the forfeiture of shares the directors of the co. should be entitled to recover from the shareholder calls and other sums due in respect of the forfeited shares, and that no member should be entitled to vote whilst any calls or other sums should be due and payable to the co. in respect of the shares of such member.

Shares were forfeited for non-payment of calls, and resold by the co. to a purchaser, to

COMPANY (Meetings)—continued.

whom a certificate was issued stating that he was to be deemed to be the holder of the shares discharged from all calls due:—

Held, that the purchaser of the shares was not entitled to vote whilst any calls or other sums remained due and payable to the co. from the original holder of the shares. *RANDT GOLD MINING Co. v. WAINWRIGHT*

Kekewich J. [1901] 1 Ch. 184

8. — Voting—Meeting of shareholders—Voting—Proxy—Stamp—Date of meeting uncertain—Blanks in proxy—Authority to fill up blanks—Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 80.

Provided a proxy be stamped with a penny stamp on execution, the date of execution and the date of the meeting at which it is to be used may be filled in afterwards by any person duly authorized by the giver of the proxy to do so; even though at the time of execution the date of the meeting has not been fixed. *SADGROVE v. BRYDEN*

Parker J. [1907] W. N. 23; [1907] 1 Ch. 318

9. — Voting—“Personally or by proxy”—Poll—Power of chairman to direct manner of taking—Polling papers—Invalidity.

The articles of a co. provided in the ordinary way for votes being given either personally or by proxy, the appointment of proxies, &c., but that if a poll was demanded it should be taken “in such a manner and at such time and place as the chairman of the meeting directs.” At a general meeting of the co., a resolution having been lost upon a show of hands, the chairman demanded a poll and directed that it should be taken by means of polling papers signed by the members and delivered at the offices of the co. on or before a fixed day and hour:—

Held that, having regard to the terms of the articles, such a mode of taking the poll was unauthorized and invalid. *McMILLAN v. LE ROI MINING Co.*

Joyce J. [1906] 1 Ch. 331

10. — Voting—Show of hands—Declaration of chairman that resolution is carried—“Conclusive evidence”—Special resolution—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 51.

By virtue of s. 51 of the Companies Act, 1892, the declaration of the chairman of a meeting of the shareholders of a co. that a special resolution has been carried on a show of hands (a poll not having been demanded) is, at any rate in the absence of fraud, absolutely, and not merely prima facie, conclusive of the fact that the resolution has been carried.

In re Hadleigh Castle Gold Mines, [1900] 2 Ch. 419, approved. *In re Horbury Bridge Coal, Iron and Waggon Co.*, (1879) 11 Ch. D. 109, explained. *ARNOT v. UNITED AFRICAN LANDS, Ltd.*

C. A. [1901] W. N. 28; [1901] 1 Ch. 518

Note.—This case was referred to by Buckley J., *In re Carara (New Mines), Ltd.*, [1902] 2 Ch. 498. *Company—Winding-up—Meetings.* 2.

Memorandum.

(Memorandum and Articles of Association.)

— Adoption of articles of association—Registration of unsigned articles—Acquiescence. *See HONG KONG.* 2.

COMPANY (Memorandum)—continued.

1. — *Alteration — Jurisdiction — Company under Joint Stock Companies Acts, 1856, 1857 (19 & 20 Vict. c. 47; 20 & 21 Vict. c. 14) — Companies Act, 1862 (25 & 26 Vict. c. 89), ss. 175, 176 — Companies (Memorandum of Association) Act, 1890 (53 & 54 Vict. c. 62), s. 1, sub-s. 1; s. 3, sub-s. 2.*

The Companies (Memorandum of Association) Act, 1890, applies to a co. formed and registered under the Joint Stock Companies Acts, 1856, 1857, so that the Court has jurisdiction to confirm an alteration of its memorandum.

In re Nitrophosphate and Odams Chemical Manure Co., Ltd., [1893] W. N. 141, *In re Hong Kong and China Gas Co., Ltd.*, [1898] W. N. 158, and *In re Copiapo Mining Co.*, [1899] W. N. 25, followed.

In re General Credit Co., [1891] W. N. 153, not followed. *In re EUPHRATES AND TIGRIS STEAM NAVIGATION CO.*

Swinfen Eady J. [1904] W. N. 23; [1904] 1 Ch. 360

Note.

This case was followed by Eve J., *In re Trust and Agency Co. of Australasia, Ltd.*, [1908] W. N. 229. See No. 3, below.

2. — *Alteration — Memorandum of association — Fundamental objects — Abandonment — Confirmation by Court — Jurisdiction — Discretion — Questions for consideration — Principles applicable — Companies (Memorandum of Association) Act, 1890 (53 & 54 Vict. c. 62), s. 1, sub-ss. 4, 5 (c).*

The Court has jurisdiction under s. 1, sub-s. 5 (c), of the Companies (Memorandum of Association) Act, 1890, to confirm an alteration in the memorandum of association of a co. involving the abandonment of objects of a fundamental character and limiting the operations of the co. from a world-wide area to a comparatively small prescribed region. But in a case where the constitution of the co. placed it in the power of the controlling body of the co., who were in favour of such an alteration, to permit the extended powers of the co. to lie dormant, and where the vast majority of the shareholders, representing over three-fourths of the share capital, had given no indication of their wishes on the subject, the Court refused to sanction the proposed alteration.

The provisions of sub-s. 5 of s. 1 of the Act furnish the only test for determining the question whether the Court has jurisdiction to sanction a proposed alteration of the memorandum of association.

The principles which have been laid down for the guidance of the Court in dealing with applications for confirmation of reduction of capital under s. 11 of the Companies Act, 1867, apply to the case of applications for confirmation of an alteration of the memorandum of association under s. 1 of the Companies (Memorandum of Association) Act, 1890, and, accordingly, all that the Court has to decide is whether the alteration is fair and equitable as between the members of the co. The Court is not concerned to consider the wisdom or desirability of the proposed alteration.

British and American Trustee and Finance Corporation v. Couper, [1894] A. C. 399, and

COMPANY (Memorandum)—continued.

Poole v. National Bank of China, Ltd., [1907] A. C. 229, applied. *In re JEWISH COLONIAL TRUST (JUEDISCHE COLONIAL-BANK), LD.*

Eve J. [1908] 2 Ch. 287

3. — *Alteration — Memorandum of Association — Jurisdiction — Enlargement of area of business — Change of name not imposed as condition — Companies (Memorandum of Association) Act, 1890 (63 & 64 Vict. c. 62), s. 1, sub-s. (5), (c), (d).*

Petition by a co. incorporated in 1860 under the Joint Stock Companies Acts, 1856 and 1857, asking the Court to confirm an alteration of its memorandum of association under the Companies (Memorandum of Association) Act, 1890. By the memorandum of association the objects of the co. were "to invest the moneys of the co. in advances on real estate in Australasia; to transact a general agency and commission business between Australasia and England and elsewhere, including the investment of moneys entrusted to the co."

A special resolution of the co. was duly passed and confirmed at extraordinary general meetings for the alteration of the objects in the memorandum of association so as to enable the moneys of the co. to be invested "in advances on real or immovable property in Australasia and Argentina, or on the security of any leasehold interest therein." The co. had carried on an extensive business in lending money on mortgage in Australia and New Zealand, and the directors desired to extend the local area to Argentina and to include leaseholds in their mortgages.

They did not wish any change to be made in the name of the co. on the ground that it would occasion difficulties in relation to their mortgages, which were largely of lands in countries where titles were registered. It was stated that no one would be prejudiced by the proposed extension of the co's. objects, and there were no respondents to the petition. There appeared to be no reported case of a similar kind in which the condition of altering the name had not been imposed.

Eve J. said that he would follow the case of *In re Euphrates and Tigris Steam Navigation Co., Ltd.*, [1904] 1 Ch. 360, referred to on the question of jurisdiction. The proposed alterations in the memorandum were reasonable and came within the Act. It was a question, however, whether it ought not to be made a condition of confirming the alterations that the name of the co. should be altered, so as to give notice to the world at large of the change in the area of business. It was usual to do so in the case of trading cos.; but having regard to the peculiar nature of the business of the co., namely, that of lending money upon mortgages, and also having regard to the fact that the co. dealt in lands with registered titles, where a change of name would occasion considerable expense as well as difficulty in enforcing the securities, he thought it was not necessary for him to impose upon the co. the condition of altering its name. *In re TRUST AND AGENCY CO. OF AUSTRALASIA, LD.*

Eve J. [1908] W. N. 229

COMPANY (Memorandum)—continued.

4. — *Alteration by special resolution—Increase of capital—Resolution of directors—Validity—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 12—Table A, arts. 26, 55, 68—Directors—Power to increase capital—Shareholder—Acquiescence—Right to maintain action.*

The articles of association of a limited co. incorporated in 1893 provided by art. 53 that "the company in general meeting" might increase its capital by the creation of new shares. By a special resolution, passed and confirmed at extraordinary general meetings of the co. in 1895, art. 53 was modified so that the power of increasing the capital should no longer be exercised by the co. in general meeting, but by "resolution of the directors." In 1903 the directors passed a resolution increasing the capital of the co. By s. 12 of the Companies Act, 1862, it was provided that "any company" limited by shares might so far modify the conditions of its memorandum as to increase its capital by the issue of new shares. In an action by a shareholder seeking to have the resolutions declared ultra vires:—

Held that, reading the Act of 1862 and the schedule together, the Legislature conferred upon the co. powers which it was not necessary that the co. should exercise in general meeting, and s. 12 of the Act of 1862 contained one of such powers.

Held, also, that the provision of further capital for the carrying on of a trading concern was a power exercisable in the management of the co.'s business within the meaning of art. 55 of Table A in the schedule to the Act of 1862.

Held, therefore, that the co. was acting within its powers in modifying its articles so as to give the board of directors power to increase the capital, and the action must be dismissed.

Campbell's Case, (1873) L. R. 9 Ch. 1, 22, followed. *MOSELY v. KOFFYFONTEIN MINES, LD.* **Eve J. [1910] W. N. 176; [1910] 2 Ch. 382; C. A. [1910] W. N. 231**

On Appeal:

The preliminary objection was taken that the plt., while he was a director, had been a party to the passing of the resolutions authorizing the issue, and had himself taken shares under earlier resolutions, so that he was not entitled to maintain the action.

The C. A. allowed the appeal. They overruled the preliminary objection, holding that *Towers v. African Tug Co.*, [1904] 1 Ch. 558, did not apply to a case where an injunction was sought with reference to future dealings. Upon the construction of the articles they held that art. 59 expressly provided that new shares must be issued on such terms as the co. might by resolution of a general meeting declare. The issue was distinct from the creation of shares. Therefore, assuming that the directors had power under art. 53 to create new shares, they had no power to issue them without a resolution by the co. The order of Eve J. must be discharged, and an injunction granted to restrain the directors from issuing new shares. **MOSELY v. KOFFYFONTEIN MINES, LD.**

C. A. [1910] W. N. 231

COMPANY (Memorandum)—continued.

5. — *Alteration of articles of association—Special resolution—Contract—Retrospective effect of altered articles—Issue of shares—Bona fides—Voting power—Injunction—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 50.*

A co. cannot contract itself out of its statutory right to alter its articles, even by an agreement independent of and outside the articles of association. The principle of *Allen v. Gold Reefs of West Africa*, [1900] 1 Ch. 656, applies to a case between the co. and an outsider on a separate contract, as well as to a case between a co. and a shareholder on the contract contained in the articles.

Where shares had been issued by the directors, not for the general benefit of the co., but for the purpose of controlling the holders of the greater number of shares by obtaining a majority of voting power:—

Held, applying the principle of *Fraser v. Whalley*, (1864) 2 H. & M. 10, that they ought to be restrained from holding the meeting at which the votes of the new shareholders were to have been used. **PUNT v. SYMONS & Co.**

Byrne J. [1903] W. N. 121; [1903] 2 Ch. 506

Note.

This case was not followed by C. A., *Baily v. British Equitable Assurance Co.*, [1904] 1 Ch. 374.

But this decision of the C. A. was reversed by the H. L. (E.) [1906] A. C. 35. *See No. 14, below.*

6. — *Alteration of memorandum—Enlarged powers—Indefinite objects—Companies (Memorandum of Association) Act, 1890 (53 & 54 Vict. c. 62), s. 1, sub-s. 5.*

Petition for the confirmation by the Court of alterations which it was proposed to make in the memorandum of association of the co. It was alleged that the position of the co. had been affected by the war in South Africa, where most of its business was carried on, and that the memorandum required to be enlarged so as to meet the change in circumstances. In the altered memorandum, which had been settled by one of the conveyancing counsel to the Court, the objects and powers of the co. were set out in wide terms and at considerable length.

Buckley J. said that he would make the order, though with reluctance. The Companies (Memorandum of Association) Act, 1890, was not intended for the introduction of general expressions and undefined powers, but to enable a co. to do some particular thing which fell within s. 1, sub-s. 5. He made the order in this case because a practice of making such orders had grown up, and it would be hard upon the co. to refuse it; everybody concerned agreed to the alteration; no one would be injuriously affected; and the co. was flourishing. Further, the alterations might be introduced by reconstruction, and the circumstances did not require that the Court should force the co. to take that course. But in future he would look into such petitions carefully, and see whether the parties had made up their minds definitely what things they proposed to do, and had expressed that intention in definite words, and whether those

COMPANY (Memorandum)—continued.

things fell within the sub-section. *In re D. & D. H. FRASER, LD. Buckley J. [1903] W. N. 73*

7. — *Alteration of objects—Extension to new business—Powers of Court—Companies (Memorandum of Association) Act, 1890 (53 & 54 Vict. c. 62), s. 1, sub-s. 5, clauses (a) and (d).*

The alteration in the memorandum of association contemplated by s. 1, sub-s. 5, clause (a), of the Companies (Memorandum of Association) Act, 1890, is an alteration which will leave the business of the co. substantially what it was before, with only such changes in the mode of conducting it as will enable it to be carried on more economically or more efficiently.

The memorandum of association of a club, incorporated as a limited co. stated that its objects were to promote, assist, and protect the use of bicycles, tricycles, and other similar vehicles on the public roads, to provide legal assistance for their riders in the enforcement of their rights to use the public roads; and to promote the comfort and safety of its members while touring on bicycles and tricycles by collecting and furnishing information, and in other ways. On an application by the club, under the provisions of the Companies (Memorandum of Association) Act, 1890, for the sanction of the Court to resolutions altering its memorandum of association by admitting to its membership all tourists, including motorists :—

Held, that the proposed alteration did not fall within either clause (a) or clause (d) of s. 1, sub-s. 5, of the Act, and ought not therefore to be sanctioned by the Court. *In re CYCLISTS' TOURING CLUB*

Warrington J. [1907] 1 Ch. 269

8. — *Alteration of objects—Jurisdiction of Chancery Division—Companies (Memorandum of Association) Act, 1890 (53 & 54 Vict. c. 62), s. 1, sub-s. 1—Companies (Winding-Up) Act, 1890 (53 & 54 Vict. c. 63), s. 2—Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), ss. 9, 131, 132, 285.*

Petition by an insurance society under s. 9 of the Companies (Consolidation) Act, 1908, for the sanction of the Court to a resolution which had been passed for the alteration of the society's memorandum of association.

On the petition being opened a question arose whether under the Companies (Consolidation) Act, 1908, the judges of the Chancery Division other than the two judges to whom the winding-up jurisdiction had been transferred had jurisdiction to entertain applications like the present except upon the request of the latter.

Held, that the Act had not affected the jurisdiction of the judges of the High Court to deal with petitions for the sanction of the Court to resolutions altering memoranda of association. Under these circumstances the usual order would be made confirming the resolution. *In re ESSEX AND SUFFOLK EQUITABLE INSURANCE SOCIETY, LD.*

Warrington J. [1909] W. N. 102

9. — *Amalgamation—Sale of business to another company—Memorandum of association—Objects—Purchase-money—Shares in purchasing company—Agreement not to carry on business—Ceasing to carry on business—Ultra vires—Deben-*

COMPANY (Memorandum)—continued.

tures—Floating charge—Substituted security—Dissenting debenture-holders, Rights of.

The memorandum of association of a limited co. included, among its objects, the carrying on of a business of a specified nature, and also the carrying into effect of arrangements for amalgamation or union of, or sharing in interests whether in whole or in part with, any other co. carrying on any business similar or analogous to any business authorized by the memorandum; and also the sale of all or any part of the co.'s business or property and the holding of any debentures, shares, stocks, or securities of any other co.

The co. sold the whole of its property and assets, including the goodwill, with the exception of certain securities, which it retained as its own property, to a new co. formed for the purpose of acquiring and working the old co.'s business and similar undertakings, the sale being in consideration of debenture stock and shares in the new co. and the old co. agreeing not to carry on any similar business otherwise than in conjunction with and for the benefit of the new co.

The old co. had, before the sale, issued debentures charging, "by way of floating security, all its property, undertaking, and assets for the time being, whether present or future," and becoming immediately payable upon an order or effective resolution to wind up.

In a debenture-holders' action against the old co. claiming that by the sale it had ceased to carry on its objects as defined by the memorandum, and that therefore the debenture charge immediately attached :—

Held, that the plts.' claim failed, because (1) the sale was not ultra vires of the memorandum of association; (2) the old co.'s undertaking had not ceased to be a going concern, so that the debentures were still nothing more than a "floating security"; and (3) the debentures, being a floating security, did not give the holders any right to interfere with what the co. had done in the ordinary course of its business as defined in the memorandum of a association.

Decision of Farwell J. reversed.

Decision of North J., [1899] 2 Ch. 130, disapproved.

Per Vaughan Williams, L.J.: Whether on the sale the old co. could preclude itself from exercising its powers in respect of what was in fact the principal object included in the memorandum, and whether so to do would not endanger the security of the debenture-holders by limiting and altering it, *quære*. *In re BORAX CO. FOSTER v. BORAX CO.*

C. A. [1901] 1 Ch. 326

10. — *Association not for profit—Licence—Alteration of memorandum—Confirmation by the Court—Consent of Board of Trade—Practice—Companies Act, 1867 (30 & 31 Vict. c. 131), s. 23—Companies (Memorandum of Association) Act, 1890 (53 & 54 Vict. c. 62), s. 1.*

Where a co. registered under s. 23 of the Companies Act, 1867, by licence of the Bd. of Trade as a co. not for purposes of gain, with limited liability but without the addition to its name of the word "limited," desires to alter its memorandum of association, the proper course is

COMPANY (Memorandum)—continued.

to apply in the first instance to the Bd. of Trade, and to submit to the Bd. the memorandum shewing all the proposed alterations; and if the Bd. approve them as being consistent with the continuation of the licence the Court will then entertain the application of the co. for the sanction of the Court to the alterations. *In re ST. HILDA'S INCORPORATED COLLEGE, CHELTENHAM* **Buckley J. [1901] 1 Ch. 556**

11. — Conditions—Rights of shareholders inter se—Power of alteration—Validity—Reduction of capital—Special resolution—Confirmation by Court—Limited liability—Companies Act, 1862 (25 & 26 Vict. c. 89), ss. 8, 12—Companies Act, 1867 (30 & 31 Vict. c. 131), ss. 9, 11—Companies Act, 1877 (40 & 41 Vict. c. 26), s. 3.

The memorandum of association of a limited co., besides stating the objects of the co. and the amount of its capital, stated that the capital was to be divided into specified numbers of preference, ordinary, and deferred shares which were to have specified rights inter se. The memorandum further provided that the rights for the time attached to the several classes of shares respectively might be modified or dealt with in the manner mentioned in the accompanying articles of association:—

Held, that inasmuch as s. 8 of the Companies Act, 1862, does not require that the rights of the shareholders inter se shall be stated in the memorandum of a limited co., this power of modification of those rights was valid.

Ashbury v. Watson, (1885) 30 Ch. D. 376, distinguished.

The co. having passed a special resolution for the reduction of its capital, also resolved in accordance with the provisions of the articles that, after the special resolution had been confirmed by the Court, the rights of the shareholders inter se should be altered in favour of the ordinary shareholders at the expense of the preference shareholders. Some of the preference shareholders opposed the co.'s petition for the confirmation of the reduction because of this alteration of their rights:—

Held, that the scheme for reduction, including the alteration of the rights of the shareholders, was fair and equitable, and that the reduction ought to be confirmed.

Decision of Buckley J. affirmed. *In re WELSBACH INCANDESCENT GAS LIGHT CO., LD.*

C. A. [1904] W. N. 4; [1904] 1 Ch. 87

— Electric lighting — Special Act — Statutory prohibition against supplying electric energy beyond statutory areas.

See ELECTRIC LIGHT. 1.

12. — Enlargement of objects—Conversion of friendly society into limited company—Notice—Sufficiency—Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), s. 9, sub-ss. 1, 3—Companies (Converted Societies) Act, 1910 (10 Edw. 7 & 1 Geo. 5, c. 23).

Petition asking for the confirmation by the Court, under the Companies (Consolidation) Act, 1908, of an alteration of the co.'s objects proposed to be effected by a special resolution.

The co. was formerly a registered friendly society, but on July 31, 1908, it was converted

COMPANY (Memorandum)—continued.

into a co. limited by guarantee, pursuant to s. 71 of the Friendly Societies Act, 1896. It now possessed over three million members, with accumulated funds of approximately two millions, and it was stated to carry on its business in every county of the United Kingdom. The objects for which the co. was established were largely in excess of those carried on by the friendly society, and included the carrying on of insurance business in all its branches.

By virtue of the Companies (Converted Societies) Act, 1910, passed in consequence of the decisions in *Blythe v. Birtley*, [1910] 1 Ch. 228, and *McGlade v. Royal London Mutual Insurance Society, Ltd.*, [1910] 2 Ch. 169, the objects of the co. were restricted to those authorized by the rules of the friendly society at the date of its conversion into a co. Those objects were to raise a fund (1.) for insuring a sum, not exceeding 200*l.*, to be paid on the death of a member, or an endowment to be paid to him at a certain age; (2.) for the relief, maintenance, or endowment of the members, their husbands, wives, children, or kindred, in infancy or sickness. On Aug. 30, 1910, and Sept. 16, 1910, the co. duly passed and confirmed a special resolution that the provisions of the memorandum should be altered so as to insure sums payable on the death of children in the United Kingdom of any age, subject to the provisions of s. 13 of the Collecting Societies and Industrial Companies Act, 1896, and ss. 62—67 and s. 84 of the Friendly Societies Act, 1896, and to issue such policies of assurance in the United Kingdom as were defined in s. 36 of the Assurance Company's Act, 1909. There was evidence that the proposed alteration would enable the co. to carry on its business more efficiently. The petition was not served upon any one, and a question was raised as to the sufficiency of the notice contained in the advertisements of the meetings.

Eve J. said that the net result of the Companies (Converted Societies) Act, 1910, was to validate all acts done up to the date of the passing of the Act, but it did not enact that the cos. in the future would be able to carry on the extended business. It would be very desirable that these cos. should take steps at an early date to bring the memorandum of association in each case into conformity with the real powers of the co. Under the circumstances of the present case his Lordship thought he ought to sanction the proposed alteration of the memorandum without imposing any such term. The order asked would, therefore, be made, but subject to the production of evidence that the advertisements of the meetings were inserted in the papers circulating in the counties in which the co. carried on business. *In re ROYAL LONDON MUTUAL INSURANCE SOCIETY, LD.*

Eve J. [1910] W. N. 226

13. — Extension of objects—Companies (Memorandum of Association) Act, 1890 (53 & 54 Vict. c. 62), s. 1.

A co. was registered in 1904 under the Companies Acts, 1862 to 1900, with a memorandum of association stating its objects, the principal one of which was to acquire and deal with land or other immovable property situate "in any

COMPANY (Memorandum)—continued.

district in Egypt which the rys. belonging to or that may at any time hereafter belong to the Egyptian Light Rys. Ld. . . . or any extension or branch thereof existing or hereafter constructed or proposed to be constructed may serve or be intended to serve." Owing to the competition of other undertakings it became difficult to acquire land within the area served by the ry. co., whose ry. did not extend beyond Lower Egypt, and the land co. passed a special resolution varying its memorandum of association by striking out all the words in inverted commas except "in Egypt," and substituting therefor the words "or in the Soudan."

The land co. now presented a petition for confirmation of the proposed alteration.

Parker J. said that the name of the co. ought to be altered so as to shew that the land investments of the co. would not be confined to the Egyptian Delta. Persons who might be willing to invest in shares of a co. buying land in comparatively civilized parts of Egypt might not wish that the funds of the co. should be employed in the purchase of land in the Soudan. He suggested that the words "and Soudan" might be inserted in the name of the co. after the word "Delta," and after referring to *In re Foreign and Colonial Government Trust Co.*, [1891] 2 Ch. 395, said that he would sanction the proposed alteration subject to a proper alteration being made in the co.'s name. The petition accordingly stood over to enable the alteration in name to be made. *In re EGYPTIAN DELTA LAND AND INVESTMENT CO.* Parker J. [1907] W. N. 16

— Filing—Omission to file contract—Relief by Court.

See **COMPANY—Shares.** 17.

— Friendly society.

See under **FRIENDLY SOCIETY.**

14. — Life assurance company—Mutual assurance—Policy-holder participating in profits—Alteration of regulations—Power of company to alter rights of policy-holder.

The respondent became a policy-holder in the participating branch of an assurance co. upon the terms that he would abide by the deed of settlement, by-laws, and regulations of the co. After distributing the profits arising from that branch among the participating policy-holders for many years without deduction for a reserve fund the co. proposed to alter that practice by devoting part of the profits to a reserve fund, and to alter the by-laws accordingly. By the deed of settlement the co. had power to make alterations in the by-laws. The policy-holder having brought an action for an injunction against the co. on the ground that he had taken his policy upon the faith of a prospectus which stated the practice:—

Held, that there was no contract between the co. and the policy-holder not to alter their practice in the distribution of profits, and that the action could not be maintained. The decision of the C. A., *Baily v. British Equitable Assurance Co.*, [1904] W. N. 30; [1904] 1 Ch. 374, reversed. *BRITISH EQUITABLE ASSURANCE CO. v. BAILY*

H. L. (E.) [1906] W. N. 2; [1906] A. C. 35

COMPANY (Memorandum)—continued.

15. — Mistake—Rectification—Jurisdiction—Articles of Association—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 50—Companies Act, 1900 (63 & 64 Vict. c. 48) s. 4.

Motion, in an action by one of the signatories of the memorandum and articles against the other signatories and the co., asking that the articles might be rectified by striking out the words "per cent." :—

Held, that the proper mode of rectifying the mistake in the articles was by special resolution of the co. under s. 50 of the Companies Act, 1862. The general jurisdiction of the Court to rectify instruments of all kinds on the ground of mistake did not apply to an instrument like articles of association, which had only a statutory effect. *EVANS v. CHAPMAN* Joyce J. [1902] W. N. 78

16. — Objects—Ancillary powers—Declaration that all clauses independent—Ultra vires—Injunction—Construction of memorandum of association.

Notwithstanding a declaration, contained in the objects clause of a memorandum of association, "that the objects specified in each paragraph of this clause shall be in nowise limited or restricted by reference to or inference from the terms of any other paragraph or the name of the company," wide powers given in general words will be construed as ancillary only to a specific object mentioned in the first paragraph.

In re German Date Coffee Co., (1882) 20 Ch. D. 169, followed. *STEPHENS v. MYSORE REEFS (KANGUNDY) MINING CO. - Swinfen Eady J.* [1902] W. N. 44; [1902] 1 Ch. 745

Note.—This case was discussed and distinguished by Warrington J., *Pedlar v. Road Bloch Gold Mines of India, Ld.*, [1905] 2 Ch. 427. See next Case.

17. — Objects—Ancillary powers—Ultra vires—Injunction—Memorandum of association—Construction.

The memorandum of association of the deft. co. stated its objects to be—(1.) to take over as a going concern another named gold mining co.; (2.) to acquire gold mines and other mining rights in Mysore and elsewhere, or any interest in the same, and to work, develop, and turn to account such properties. Then followed twenty-two clauses stating the objects of the co. in the widest terms, including (15.) a power to promote any co. for the purpose of acquiring all or any of the property, rights, and liabilities of the deft. co., or for any other purpose calculated to benefit the deft. co. and to subscribe for shares in such co. The property acquired under object (1.) having proved unsuccessful, the directors now proposed to enter into an agreement giving them an option to purchase certain other mining properties and rights in Bombay, which were to be conveyed either to the deft. co., or to another co. to be promoted by the deft. co.

On an application for an injunction by a shareholder to restrain the deft. co. from entering into this agreement :—

Held, on the true construction of the memorandum of association, that as the main object of the deft. co., as defined by clauses 1 and 2, was

COMPANY (Memorandum)—continued.

gold mining generally, not only in the property specified in (1.), but in Mysore "and elsewhere," the proposed agreement to acquire other mining property, or to promote a co. to acquire and work this other property, was within the objects stated in the memorandum of association, and consequently that the injunction must be refused.

Stephens v. Mysore Reefs (Kangundy) Mining Co., Ltd., [1902] 1 Ch. 745, discussed and distinguished. *PEDLAR v. ROAD BLOCK GOLD MINES OF INDIA, LD. Warrington J.* [1905] W. N. 131; [1905] 2 Ch. 427

18. — *Power to sell undertaking for shares in another company—Agreement to sell undertaking for shares in new company—Resolution approving agreement and resolution for voluntary winding-up passed contemporaneously—Validity of agreement—Rights of dissentient shareholders—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 161.*

Decision of *Buckley J.*, [1902] 2 Ch. 837, affirmed. *DOUGHTY v. LOMAGUNDA REEFS, LD. C. A.* [1903] W. N. 57; [1903] 1 Ch. 673

19. — *Preference shares—Alteration of holders' rights—Memorandum of association—Companies Act, 1862 (25 & 26 Vict. c. 89), ss. 8, 12.*

The memorandum of association of a co. divided its capital into preference and ordinary shares, and provided as follows: "Such preference shares shall confer a right to a fixed cumulative preferential dividend at the rate of 7½ per centum per annum. Any shares of the present or any increased capital of the co. may be guaranteed or have any special privilege or advantage, or may be deferred, and may be issued on such special conditions as to priority or postponement, either for dividends or repayment of principal, or as to voting power, and generally in such terms as the co. may from time to time determine":—

Held, that the co. could on increasing its capital issue further preference shares ranking *pari passu* with the original preference shares. *UNDERWOOD v. LONDON MUSIC HALL, LD.*

Cozens-Hardy J. [1901] W. N. 113; [1901] 2 Ch. 309

— Reconstruction of company.

See under COMPANY—Reconstruction.

— Sale of assets for "shares" in new company—Memorandum of association.

See COMPANY—Reconstruction. 3.

20. — *Solicitor—Clause giving solicitor fixed retaining fee—Articles of association.*

A co. was registered in April, 1899, and clause 144 of its articles of association was as follows: "Messrs. Birchall, of No. 85, Gracechurch Street, London, shall be the solicitors of the co. at an annual retaining fee of 100 guineas, and shall be entitled to remuneration notwithstanding that a member of the firm may be a director of the co." A petition asking for the winding-up of the co. was presented by G. Birchall of the same address, and it alleged that the co. was insolvent and unable to pay its debts, and that it was indebted to the petitioner in a sum of about 70*l.* for costs. This sum was arrived at by debiting the co. with 106*l.*, "retaining fee to 1901," a sum of 30*l.* paid to the co.,

COMPANY (Memorandum)—continued.

and several untaxed bills of costs, and crediting it with certain sums received from the co. and other sums received from persons against whom the solicitor had been instructed to take proceedings, the balance alleged to be due being the debt in respect of which the petition was presented:—

Held, that the petition was an abuse of the process of the Court, and must be dismissed with costs. It was incompetent for a solicitor, being in the relation in which he stood towards the co., to insert in its articles of association anything for his own benefit of such an unusual character as this clause; and he could not take advantage of it without explaining it to the directors, and possibly to the shareholders, and giving them an opportunity of taking independent advice on the subject. On the faith of that clause the solicitor had, however, come to the Court asking for a winding-up order. There was a grave dispute whether the solicitor was entitled to the retaining fee which he claimed. Independently of that, there was no evidence whatever of the insolvency of the co. The petition must be dismissed with costs. *In re RHODESIAN PROPERTIES, LD.*

Wright J. [1901] W. N. 130

— Vendor company—Power to acquire land—No express power of sale—Implied power.

See COMPANY—Power of Sale. 1.

21. — *Verbal alteration—Memorandum of association—Companies (Memorandum of Association) Act, 1890 (53 & 54 Vict. c. 62), s. 1, sub-s. 5.*

The Companies (Memorandum of Association) Act, 1890, does not authorize alterations in the memorandum which merely amplify the description of objects clearly comprised in the original memorandum of association. *In re CONSETT IRON CO. Cozens-Hardy J.* [1901] 1 Ch. 236

Money-lenders.

— Contract—Shares in company taken as bonus.

See MONEY-LENDERS. 15.

Mortgages.**(Mortgages and Charges.)**

And *see also under COMPANY—Debentures.*

Companies Act, 1900—Memorandum of satisfaction of mortgage or charge. Reprint from W. N. 1906 (March 10), p. 69. *See Current Index, 1906, p. lxvii.*

1. — *Assignment of present and future book debts—Registration of mortgage—"Floating charge"—Companies Act, 1900 (63 & 64 Vict. c. 48), s. 14, sub-s. 1 (d).*

A co., by way of security to guarantors, assigned by deed all its present and future book and other debts, with the benefit of all securities for the same, to a trustee in trust for the guarantors. The deed contained no express provision against possession being taken by the trustee, but declared that the trustee should at any time, if required by the guarantors, give notice of this assignment to the co.'s debtors, but that it should not be incumbent on the trustee to give notice unless he thought fit; with provisions that the trustee might at any

COMPANY (Mortgages)—continued.

time give notice, appoint a receiver and exercise the statutory power of sale, but meanwhile should not be answerable for allowing the co. to receive the book debts:—

Held, that upon the true construction of the deed it was clearly intended that the co. should carry on its business in the ordinary way and receive the book debts for that purpose, and that the deed was "a floating charge" within the meaning of s. 14 of the Companies Act, 1900, and void for want of registration in a question between the trustee and a creditor of the co.

The decision of the C. A., *Houldsworth v. Yorkshire Woolcombers' Association, Ltd.*, [1903] 2 Ch. 284, affirmed. *ILLINGWORTH v. HOULDSWORTH* - **H. L. (E.)** [1904] **W. N. 138**; [1904] **A. C. 355**

— Debentures.

See under **COMPANY—Debentures**.

— No legal transfer of security—Dissolution of company—Vesting order.

See **COMPANY—Vesting Orders**. 4.

— Power of sale—Mortgage—Shares in company—Chose in action.

See **MORTGAGE—Sale**.

2. — Registration—"Charge created by the company"—Debenture stock—Covering deed—Sale of part of mortgaged property—Substitution of other property—Companies Act, 1900 (63 & 64 Vict. c. 48), s. 14.

Where property is conveyed by a co. to trustees to secure debentures or debenture stock, and the trust deed empowers the trustees to sell any part of the property conveyed before the security is enforceable, and with the proceeds to purchase other property which is to be held upon the like trusts, and the trustees sell part of the property, and with the proceeds of sale purchase other property which is conveyed by the vendor to them upon the trusts of the trust deed, the co. not being a party to the conveyance, the conveyance is not a mortgage or charge requiring registration under s. 14 of the Companies Act, 1900.

Cornbrook Brewery Co. v. Land Debenture Corporation, [1904] 1 Ch. 103, distinguished. *BRISTOL UNITED BREWERIES, LD. v. ABBOT*

Parker J. [1907] **W. N. 239**; [1908] 1 Ch. 279

3. — Registration — Extension of time — Companies Act, 1900 (63 & 64 Vict. c. 48), ss. 14, 15.

In this case the time for registering a series of mortgage debentures and a trust deed for securing them was extended, as the Court held that the facts proved brought the case within s. 15. *In re BOOTLE COLD STORAGE AND ICE Co.* - **Farwell J.** [1901] **W. N. 54**

Note.

See *In re Tingri Tea Co.*, **Byrne J.**, [1901] **W. N. 165**; *Company—Debentures*. 39.

4. — Registration — Whether registration necessary—Refusal of Court to determine point on originating motion to extend time—Companies Act, 1900 (63 & 64 Vict. c. 48), ss. 14, 15.

The co. was registered on May 23, 1878, with a capital of 2,000,000*l.*, divided into 100,000 20*l.*

COMPANY (Mortgages)—continued.

shares. The issued capital was 60,000 fully-paid shares and 40,000 shares with 10*l.* paid up.

On Dec. 3, 1903, a trust deed for securing 2,600,000*l.* first mortgage debenture stock was executed, and on Dec. 22, 1903, it was registered in accordance with s. 14 of the Companies Act, 1900, and a certificate of registration obtained.

Clause 7 of the trust deed provided that the co. should forthwith mortgage certain ships to the trustees, the mortgage in each case to be a first mortgage effected and registered under the Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), for securing the moneys secured by the trust deed.

The ship mortgages were duly effected and registered under the Merchant Shipping Act, 1894, but were not registered under s. 14 of the Companies Act, 1900, the registration of the trust deed being considered sufficient. The time for registration had long expired. Doubts having arisen whether the mortgages ought not to have been registered, the trustees moved under s. 15 for a twenty-one days' extension of time from the date of the order to be made on the motion. The co. opposed the application on the ground that registration was unnecessary having regard to the registration of the trust deed, and that in any case the registrar's certificate was conclusive evidence that the requirements of s. 14 had been complied with.

Swinfen Eady J.: I do not see my way to do more than extend the time for registration. It is not a convenient practice on a motion of this sort to decide whether registration is essential or not. Many inconveniences might arise. Creditors would not be bound. If the parties desire a decision on the point there is no difficulty in obtaining one by an action properly constituted, e.g., a special case. I will extend the time for twenty-one days from the date of the order. *In re CUNARD STEAMSHIP Co.* **Swinfen Eady J.** [1908] **W. N. 160**

Note.

See *Cunard Steamship Co. v. Hopwood*, **Swinfen Eady J.**, [1908] 2 Ch. 564; *Company—Debentures*. 36.

Name.

— Change of name not imposed as condition.

See **COMPANY—Memorandum**. 3.

1. — Corporate name—Trade name—Separate user—Right to protection—Limited company—Companies Act, 1862 (25 & 26 Vict. c. 89), ss. 41, 42.

A limited co. may acquire a right to protection of a trade name used separately from its corporate name, although such user is in contravention of ss. 41, 42 of the Companies Act, 1862.

Pearks, Gunston & Tee, Ltd. v. Thompson, Tulmey & Co., [1901] 18 Rep. Pat. Cas. 185, followed.

Wright v. Horton, (1887) 12 App. Cas. 371, applied. *H. E. RANDALL, LD. v. BRITISH AND AMERICAN SHOE Co.*

Swinfen Eady J. [1902] 2 Ch. 354

2. — Fraud — Name of company — Registration—Fraudulent purpose—Trade name—Foreign firm—Imitation—Signatories to memorandum—Liability—Form of injunction.

COMPANY (Name)—continued.

A foreign trader who has no English agency, but whose goods are in fact frequently imported into England, has a sufficient English market to enable him to restrain piracy of his trade name.

Collins Co. v. Brown, (1857) 3 K. & J. 423, followed.

Where a co. is formed for a fraudulent purpose, the signatories to the memorandum are guilty of a fraudulent conspiracy to effect that purpose.

Where a motor-car manufacturing co. was registered in a name colourably resembling that of existing motor-car manufacturers with the fraudulent intention of obtaining the benefit of their reputation in that business, the co. and the signatories to the memorandum, who were the only directors and shareholders, were restrained from using the name in connection with that business, and the signatories were further restrained from allowing the co. to remain registered under that name. *LA SOCIÉTÉ ANONYME DES ANCIENS ÉTABLISSEMENTS PANHARD ET LEVASSOR v. PANHARD LEVASSOR MOTOR CO.*

Farwell J. [1901] W. N. 153 ; [1901] 2 Ch. 513

3. — Name—Similarity of name—Deception—Right of individual to use his own name—Transfer to company—Trade name.

Although, in the absence of fraud or false representation, a man is entitled to carry on business in his own name in competition with a similar business, previously well established under the same name, notwithstanding that confusion and mistake may in consequence arise, yet, if he has never carried on such a business on his own account or in partnership with others, he cannot, by promoting and registering a co. with a title of which his name forms a part, confer upon that co. the rights which he, as an individual possesses in the use of that name.

Tussaud v. Tussaud, (1890) 44 Ch. D. 678, observed upon. *FINE COTTON SPINNERS AND DOUBLERS' ASSOCIATION, LD. AND JOHN CASH & SONS, LD. r. HARWOOD CASH & CO., LD.*

Joyce J. [1907] W. N. 127 ; [1907] 2 Ch. 184

— Restoration to register.

See COMPANY—Register.

4. — Similarity of name—Injunction—Proposed new company—Registered name—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 20.

On an application by a co. registered under the Companies Act, 1862, to restrain the registration of a new co. with a title alleged to be so similar to that of the old co. as to be calculated to deceive, it is material to consider—(1.) what business has been or is intended to be carried on by the old co., and what is intended to be carried on by the new co.; and (2.) what sort of name has been adopted by the old co.

A co. cannot, merely by registering as its title, or part of its title, a single word, whatever its nature, remove that word from the English language so far as regards its use in the title of subsequent cos.

A co. registered as "Aerators, Ltd." sought to restrain the registration of a new co. with the name "Automatic Aerators Patents, Ltd." on the ground that it so nearly resembled the name of the plt. co. as to be calculated to deceive. The

COMPANY (Name)—continued.

principal object of both cos. was the manufacture of apparatus for the instantaneous automatic aeration of liquids; but the patents and apparatus of the plt. co. were quite different from those of the defts:—

Held, that the plt. co. had no monopoly of the word "Aerator," which was a word in common use in the English language; and the injunction was refused. *AERATORS, LD. v. TOLLITT*

Farwell J. [1902] W. N. 115 ; [1902] 2 Ch. 319

Note.

Referred to by Parker J., *British Vacuum Cleaner Co. v. New Vacuum Cleaner Co.*, [1907] 2 Ch. 312. *See next Case.*

— Similarity of name—Trade name.

See under TRADE NAME.

5. — Trade name—Name descriptive of article and process used—Similarity of name—Injunction—Company—Registered name—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 20.

In considering whether the name of a registered co. so nearly resembles the name of another co. previously registered "as to be calculated to deceive" within the meaning of s. 20 of the Companies Act, 1862, the principles to be applied are at any rate extremely analogous to those which are applicable in ordinary passing off cases in which the Court has to consider whether a trade name, or a trade description, or a description of a particular class of goods, or the get-up of a particular class of goods, is or is not likely to deceive.

A distinction must always be drawn between cases in which the words complained of are words of common ordinary meaning and cases in which the words complained of more or less partake of the character of "fancy" words or primarily do not relate to the article, but to the person who makes it.

The onus of proving that words which are commonly and properly used as descriptive words have such a secondary or subsidiary meaning as to entitle the person who has used them to their exclusive use lies on that person, and is not easily discharged.

In 1901 one B. obtained letters patent in respect of machinery to be used for cleaning carpets and the like by a method depending on suction (caused by a vacuum) operating through pipes the nozzles of which were moved over the articles to be cleaned. B. called his protected machinery a "vacuum cleaner" and the process a "vacuum cleaning." In 1902 B. sold his patent to a co., registered in the same year, called the "Vacuum Cleaner Co., Ltd." In 1903 the patent was assigned to the plt. co., which was registered in that year and called the "British Vacuum Cleaner Co., Ltd." and was formed to take over the undertaking of the previous co. The plt. co. formed and was interested in several other companies, each of which had as part of its name the words "vacuum cleaner" in juxtaposition, with a licence to use B.'s invention within a defined limit distinct from the area of the plt. co.'s operations. In 1904 one X. obtained letters patent for cleaning by suction created by a vacuum and with pipes

COMPANY (Name)—continued.

and a nozzle, but differing in material parts from B.'s invention. In 1906 the deft. co. was registered as the "New Vacuum Cleaner Co., Ltd.," with the view of taking, and working in a district of the metropolis, a licence to use the invention patented by X. In an action to restrain the deft. co. from using the words "vacuum cleaner" in conjunction as part of its registered name or of any other name so as to lead to the deft. co. being taken for the plt. co. or being supposed by the co. to be connected with it, it was proved (a) that a large proportion of the plt. co.'s customers addressed letters to them as the Vacuum Cleaner Co., with or without the word "limited"; (b) that since the registration of that co. the words "vacuum cleaner" had been associated with the machine made under B.'s patent and used by that co., and that those words and the words "vacuum cleaning" had been understood by the public to be a particular kind of cleaning and a particular process, and that while the plt. co. had a monopoly of a cleaner and a process of that sort, the public connoted the fact that the machine was the machine of the plt. co. :—

Held that, the words "vacuum cleaner" being merely descriptive words, the case was within the principles laid down by Lord Davey in *Cellular Clothing Co. v. Maxton*, [1899] A. C. 326, 346; that the words had no secondary or subsidiary meaning; and that the plt. co. was not entitled to have the deft. co. restrained from using the words.

Reddaway v. Banham, [1896] A. C. 199, distinguished.

Held, also, that the plt. co., by allowing subsidiary cos. to be formed under names containing the words "vacuum cleaner" in conjunction, had admitted that another co. with a name so containing those words would not necessarily be confused with the plt. co.

Observations as to the weight to be attached to evidence adduced to shew the probability of deception by the use of somewhat similar names. **BRITISH VACUUM CLEANER Co. v. NEW VACUUM CLEANER Co.**

Parker J. [1907] W. N. 144; [1907] 2 Ch. 312

— Wrong name of company used in order.

See No. 6, below.

6. — Trade name—Wrong name of company used in order.

In a petition to wind up a co. whose real name was "Samuel Birch & Co., Ltd.," the company was called by mistake "The Samuel Birch Co., Ltd.," and a compulsory winding-up order, made on the petition, in like manner mis-named the co.

Parker J. ordered the petition to be amended by inserting the right name of the co., and that, as amended, it should be re-served and re-advertised, and brought on for hearing again. *In re* SAMUEL BIRCH Co., LD.

Parker J. [1907] W. N. 31

— Winding-up of company—Name and address — Notice of intention to appear on petition.

See COMPANY — WINDING-UP — Practice. 9.

COMPANY—continued.**Navigation Company.**

— Prescriptive claim to take surplus water only — User unlimited.

See PRESCRIPTION. 3.

Notice.

See under NOTICE.

One Man Company.

— Unqualified person managing director—Managing director described as "specialist" — Misrepresentation.

See VETERINARY SURGEON. 2.

Pension.

1. — *Ultra vires*—Association not for profit — Gratuitous payment—Pension to retired officer — Memorandum of association—Board of Trade form—Construction—Companies Act, 1867 (30 & 31 Vict. c. 131), s. 23—Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), s. 20.

The Cyclists' Touring Club was registered as an association not for profit by licence of the Board of Trade under s. 23 of the Companies Act, 1867, now replaced by s. 20 of the Companies (Consolidation) Act, 1908.

Clause 4 of the memorandum of association, a clause required by the Board of Trade as a condition of granting a licence, provided as follows :—

"The income and property of the club, whencesoever derived, shall be applied solely towards the promotion of the objects of the club as set forth in this memorandum of association, and no portion thereof shall be paid or transferred directly or indirectly by way of dividend, bonus, or otherwise howsoever by way of profit to the members of the club.

"Provided that nothing herein contained shall prevent the payment in good faith of remuneration to any officers or servants of the club, or to any member of the club or other person in return for any services actually rendered to the club" :—

Held, on the construction of this memorandum, that the grant of a pension by way of gratuity to a retired secretary, who was about to resign his membership, was *intra vires*.

Principles stated in the trading co. cases, *Small v. Smith*, (1884) 10 App. Cas. 119, 129; *Taunton v. Royal Insurance Co.*, (1864) 2 H. & M. 135, 141; and *Hutton v. West Cork Ry. Co.*, (1883) 23 Ch. D. 654, 671, discussed and applied. **CYCLISTS' TOURING CLUB v. HOPKINSON**

Swinfen Eady J. [1909] W. N. 260; [1910] 1 Ch. 179

Power of Sale.

1. — Vendor and purchaser — Commercial company—Memorandum of association—Power to acquire land—No express power of sale—Constitution of company—Implied power.

A commercial corporation has such powers as are expressly or impliedly warranted by its constitution.

The objects of a colliery co. incorporated under the Companies Act, 1862, as expressed in its memorandum of association, included the

COMPANY (Power of Sale)—continued.

purchasing or taking upon lease and working of certain coal mines and mineral lands, the selling of coal and other products, the carrying on generally of the businesses of colliers and coal merchants, and the acquiring of real estate or any right or interest therein. There was no express power of sale of real estate.

Held, that the co. had power to sell land which it had acquired, a power to sell real estate being impliedly warranted by the constitution of the co.

Johns v. Balfour, (1889) 1 Megone, 191, applied. *In re KINGSBURY COLLIERIES, LD. AND MOORE'S CONTRACT* **Kekewich J.**
[1907] W. N. 118; [1907] 2 Ch. 259

Practice.

See also under COMPANY—WINDING-UP—Practice.

— Action by shareholders—Right to sue—Ultra vires.

See COMPANY—Meetings. 6.

1. — Action in name of company—Director holding majority of votes—Majority of co-directors opposing—Motion to strike out name of company as plaintiff—Costs—Companies Act, 1862 (25 & 26 Vict. c. 89), Sched. I., Table A, art. 55.

The M. Co. was incorporated under the Companies Acts and acquired and worked a patent. The powers of its directors were governed by art. 55 in Sched. I. to the Companies Act, 1862, which provides "the business of the co. shall be managed by the directors, who may . . . exercise all such powers of the co. as are not by the foregoing Act, or by these articles, required to be exercised by the co. in general meeting, subject nevertheless to any regulations of these articles, to the provisions of the foregoing Act, and to such regulations being not inconsistent with the aforesaid regulations or provisions, as may be prescribed by the co. in general meeting." A. and three other persons were the four directors of the co. and between them held substantially the whole of the subscribed share capital of the co. A. held a majority, but not a three-fourths majority, of the shares and votes. Disputes arose at the board between A. and the other three directors, who were interested in a patent vested in the N. Co. which, so A. was advised, infringed the M. Co.'s patent and was admittedly a competing patent. The three directors bona fide declining to sanction any proceedings against the N. Co., A. commenced an action against the N. Co. in the name of the M. Co. to restrain the alleged infringement. Thereupon the three directors moved in the name and on behalf of the M. Co. to strike out the name of that co. as plt. and to dismiss the action on the ground that the name of the M. Co. had been used without authority :—

Held, on the construction of art. 55, that the majority of the shareholders had the right to control the action of the directors in the matter, and that the motion must be dismissed with costs as between solicitor and client to be paid by the solicitors who had launched it.

Automatic Self-Cleansing Filter Syndicate Co. v. Cuninghame, [1906] 2 Ch. 34, distinguished.

COMPANY (Practice)—continued.

MARSHALL'S VALVE GEAR CO. v. MANNING; WARDLE & Co. **Neville J.** [1908] W. N. 234
[1909] 1 Ch. 267

Note.

See *Quin & Axtens, Ld. v. Salmon, C. A.* [1909] 1 Ch. 311; *H. L. (E.)* [1909] W. N. 123; [1910] A. C. 442; *Company—Directors*. 12.

2. — Appeal—Final or interlocutory—Reduction of capital.

Appeal from a decision of Byrne J. refusing to sanction a reduction of the capital of the co.: *In re Naval, Military and Civil Service Co-operative Society of South Africa, Ld., C. A.* [1903] W. N. 120, was referred to.

The Court made the order asked for. *In re SAMUEL ALLSOPP & SONS, LD.*

C. A. [1903] W. N. 132

— Charging order—Jurisdiction—Application to enforce charge by order for sale of shares.

See CHARGING ORDER. 2.

— Costs, Security for—Insolvent company—Receiver—Repayment of security.

See COSTS. 54.

3. — Debenture-holders' action—Property in jeopardy—Motion for judgment on admissions in pleadings—Immediate sale—Form of order—*R. S. C., Order LI., r. 1 (b)*.

In a debenture-holders' action, when the property comprised in debentures is in jeopardy, an immediate sale will be ordered under the *R. S. C., Order LI., r. 1 (b)*, on motion for judgment on admissions in the pleadings, but, unless all the debenture-holders subsequent to the plts. are parties to the action, the order will be for sale with the approbation of the judge, so that the absent debenture-holders may be brought in in chambers on the application to approve the conditional contract for sale.

In re CRIGGLESTONE COAL CO. STEWART J.
CRIGGLESTONE COAL CO. - Swinfen Eady J.
[1906] W. N. 20; [1906] 1 Ch. 523

— Discontinuance—Debenture-holders' action—Right of plaintiff to discontinue after judgment.

See COMPANY—Debentures. 4.

— Foreign company carrying on business temporarily in England—Service of writ within the jurisdiction.

See PRACTICE—Service.

4. — Jurisdiction—Pleading—Ouster of jurisdiction, Omission to plead—Trial of action—Amendment—Private Act—Statutory obligations—Statutory agreement—Public and private rights—Protective enactments—Default of company—Disputes—Arbitration clause—Compulsory reference—Declaration of rights, Action for—Damages—Injunction—Jurisdiction, Ouster of—Construction of statute—Dismissal of action—Staying action till further order.

An arbitration clause in a private Act of Parliament, such as a Railway or Canal Act, will oust the jurisdiction of the Court in any case of difference between the parties named falling within the language of the clause, where the clause, either by express words or by necessary implication, imposes upon both parties an

COMPANY (Practice)—continued.

obligation of such a nature as to force them to have their differences settled, not by the ordinary tribunals of the country, but by reference to arbitration, and not merely to render it the duty of the Court to enforce the clause when either party insists on a reference to arbitration.

Sect. 88 of a Canal Act of 1885 enacted that "for the protection of the corporation of W. and of traders and others carrying on business at or near W. the following provisions, unless otherwise agreed on between the corporation and the co., shall have effect." Then followed numerous sub-sections imposing obligations on the co., some for the benefit of the corporation, others for the benefit of the traders, and others for the benefit of both. A further sub-section provided that "If any difference shall arise between the co. and the corporation as to the true intent and meaning of this section, or as to anything to be done or not to be done thereunder, such difference shall be determined by an engineer" to be appointed as therein mentioned.

In 1896, the co. having failed to carry out certain of their statutory obligations, an agreement was entered into between them and the corporation of W. (no traders of W. being parties) modifying those obligations and conferring certain additional rights upon the traders, and also providing that, save as therein mentioned, nothing therein should affect the rights of the corporation and the traders under any Acts relating to the co. or otherwise. Then followed an arbitration clause substantially similar, *mutatis mutandis*, to that in the Act of 1885. That agreement was scheduled to and confirmed by an Act of 1896 conferring further powers on the co.

The co., however, failed to carry out their obligations under their two Acts and the agreement, and an action was accordingly brought against them by certain traders of W., both individually and on behalf of themselves and all other traders of W., and by the corporation, to enforce those obligations. At the trial a preliminary objection was taken by the co., which had not been raised by the pleadings, that by the Acts and agreement the jurisdiction of the Court was ousted and the questions in dispute should be determined by arbitration; but the objection was overruled by Byrne J., who eventually gave judgment for the plts. On appeal, the defts. again raised the objection:—

Held, by Vaughan Williams and Stirling L.JJ., that the objection prevailed as to both the traders and the corporation, but by Cozens-Hardy L.J., as to the corporation only.

Caledonian Ry. Co. v. Greenock and Wemyss Bay Ry. Co., (1874) L. R. 2 H. L. Sc. 347, and *London, Chatham and Dover Ry. Co. v. South Eastern Ry. Co.*, (1888) 40 Ch. D. 100, considered.

In a proper case the Court will allow an objection of ouster of jurisdiction to be raised at the trial of an action, though not previously raised by the pleadings, and will treat the pleadings as amended accordingly. *JOSEPH CROSFIELD & SONS, LD. v. MANCHESTER SHIP CANAL CO.* -

C. A. [1904] 2 Ch. 123;

H. L. (E.) [1905] A. C. 421

COMPANY (Practice)—continued.

— Motion to strike out name of company as plaintiff.

See *COMPANY—Practice*. 1.

5. — *Originating summons—Construction of "written instrument"*—*Company—Articles of association—Questions affecting class of shareholders—Preference shares—R. S. C.*, 1883, *Order XVI.*, r. 32 (b); *Order LIV.*, rr. 1, 2.

A co. proposing to issue new preference shares ranking *pari passu* with its existing preference shares served on one of its preference shareholders (sued on behalf of himself and the other preference shareholders) an originating summons for the determination of certain questions, with reference to the proposed issue, arising on the construction of the articles of association.

Buckley J. refused to appoint the deft. to represent the class, and said that he would not decide the questions so as to bind the class of preference shareholders unless a meeting of them was first called and nominated a person to represent them, in which case he would appoint him to represent the class. He, however, decided the question as between the co. and the deft. *MORGAN'S BREWERY CO. v. CROSSKILL*

Buckley J. [1902] 1 Ch. 898

— Receiver.

See under *COMPANY—Receiver*.

— Service of notice of motion to set aside award on foreign company out of jurisdiction. See *ARBITRATION—Practice*. 3.

— Service of summons on limited company—Sale of Food and Drugs Act. See *ADULTERATION*. 18.

— Short cause—Affidavits in support—Debenture-holder's action. See *PRACTICE—Short Cause*. 1.

— Stay of proceedings—Discretion of Court. See *COMPANY—WINDING-UP—Practice*. 22.

— Third-party procedure—Directors' liability. See *COMPANY—Prospectus*. 13.

Priority.

— Debenture — Floating security — Issue of further debentures—Specific charge. See *COMPANY—Debentures*. 14.

Private Act.

— Statutory agreement—Arbitration clause—Compulsory reference—Ouster of jurisdiction. See *MANCHESTER*. 1.

Promissory Note.

1. — *Signature by managing director—Personal liability.*

A promissory note was signed by the managing director of a co., in the following form: "Six months: after demand I promise to pay to Mrs. M. Chapman the sum of 300*l.* for value received, together with six per cent. interest per annum. J. H. Smethurst's Laundry and Dye Works,

COMPANY (Promissory Note)—continued.

Limited. J. H. Smethurst, Managing Director." In an action upon the note against the managing director :—

Held, that the note was the note of the co. and that the debt, was not personally liable.

Decision of Channell J., [1908] W. N. 224 ; [1909] 1 K. B. 73, reversed. **CHAPMAN v. SMETHURST**

C. A. [1909] W. N. 65 ; [1909] 1 K. B. 927

Promoter.

— Preliminary expenses—Registration fees—Stamp duty on capital—Payment by promoter.

See **COMPANY—Costs. 2.**

Promoters.

1. — Fiduciary relation—Sale of property to company—Secret profit—Fraudulent prospectus—Non-disclosure of promoter's interest—Liability of promoter—Measure of damages—Profit on sale.

The promoters of a co. purchased property for the purpose of selling to the co. when formed. The property was conveyed to a trustee for the promoters nominated by them, and was afterwards by the direction of the promoters conveyed by him to a trustee for the co., who was also nominated by the promoters, they receiving from the co. an increased price on the sale. The promoters also nominated the first directors of the co. and provided the qualification of some of them. The prospectus of the co., which was issued for the purpose of inducing the public to subscribe for its shares, was prepared with the knowledge and privity of the promoters, so that, as the Court held, they were responsible for it. It did not disclose the fact that the promoters were the real vendors of the property to the co., but, on the contrary, represented the promoters' trustee as the vendor. The co. afterwards went into liquidation :—

Upon a summons by the liquidator to compel the promoters to account for the profit which they had obtained on the resale of the property :—

Held, that the promoters as such stood in a fiduciary position towards the persons who were invited to take shares in the co., and that it was their duty to disclose to those persons the fact that they were the real vendors to the co. :

Held, that the prospectus was a fraudulent one, and that for their breach of duty by this non-disclosure the promoters were liable in damages to the co., and that the true measure of the damages was the profit which the promoters had obtained upon the purchase and resale of the property.

Decision of Wright J. affirmed. *In re* **LEEDS AND HANLEY THEATRES OF VARIETIES, LD.**

C. A. [1902] W. N. 141 [1902] 2 Ch. 809

— Misrepresentations by promoters in prospectus.

See **COMPANY—Prospectus. 13.**

— Offer by promoter—Time for acceptance—Purchase-money and acceptance.
See **LANDS CLAUSES ACTS. 33.**

COMPANY (Promoters)—continued.

— Privity of contract—Contract with promoter for benefit of intended company.

See **COMPANY—Contracts. 2.**

2. — Secret profit—Duty as to extent of disclosure.

A syndicate, of which S. was a director and member, was formed in Feb., 1895, to acquire and work a mine, and in the same month issued a prospectus shewing that the directors were aware that similar properties were often resold "to the public" at a profit, and were "not unmindful of the benefit that" might "arise by converting the syndicate into a very much larger co. within a short period."

In Oct., 1895, the directors promoted and brought out a co., with a larger share capital than that of the syndicate, to purchase the mine on the terms of an agreement, already entered into in the same month with a trustee for the co., which provided for the payment of a purchase-money much larger than what had been paid for and expended upon the mine by the syndicate. The same persons were the directors of both the syndicate and the co. In the same month the co. issued a prospectus offering some of its shares for public subscription and stating the names of its directors, that they were directors of the syndicate selling to the co., and the date of, parties to, and consideration for the sale to the co. Inspection of the contract was also offered. The amount of profit on the resale to the co. was not stated, and, subject as aforesaid, there was nothing in the prospectus to shew that the sale was at a profit.

The Court found as a fact that when the syndicate acquired the mine it had no present intention of reselling to or forming another co., but contemplated working it in the first instance.

In the winding-up of the co. it was sought to make S. liable on a misfeasance summons for the secret profit received by him as a promoter of the co. :—

Held, (1) that the syndicate and its directors were not promoters of the co. when the syndicate acquired the property.

(2.) That the disclosure in the prospectus of the co. of the fact that the directors of the syndicate were directors of the co. was a disclosure that some profit was being made.

(3.) That S. and the other directors were guilty of a breach of duty in not disclosing what profit had been made on the resale to the co.

(4.) That although the co. might have had a right to rescind the contract, S. could not be ordered to repay the profit which he had derived from the resale to the co.

Gluckstein v. Barnes, [1900] A. C. 240, distinguished.

Semble, that *Gover's Case*, (1875) 1 Ch. D. 182 ; *In re Cape Breton Co.*, (1885) 29 Ch. D. 795 ; and *Ladywell Mining Co. v. Brooks*, (1887) 35 Ch. D. 400, are still binding authorities. *In re* **LADY FORREST (MURCHISON) GOLD MINE, LD.** — — —

Wright J. [1901] W. N. 13 ; [1901] 1 Ch. 582

Proof.

— Proof for future interest—Dissolution of company—Bankruptcy of guarantor.

See **BANKRUPTCY—Proof. 8.**

COMPANY—continued.**Prospectus.****— Allotment.**

See under **COMPANY—Allotment.**

1. — *Allotment, Irregular—Return of application money—Cancellation of Allotment—Rescission—Ultra vires—Companies Act, 1867 (30 & 31 Vict. c. 131), s. 38—Companies Act, 1900 (63 & 64 Vict. c. 48), ss. 4, 5, 12.*

The deft. co. was registered in 1897, but no public issue of its shares was then made. On May 12, 1904, an agreement was entered into between the plts. and the defts. that the plts. should bear the expense of issuing and advertising a prospectus, which had been prepared by the defts., in return for certain payments. The prospectus was duly issued. It stated that the minimum number of shares upon which allotment would be made was 40,000. As soon as the subscriptions amounted to 40,000 the directors proceeded to allot shares to the applicants, including the plts., and received the application money. It turned out that some of the applications were not effected, and that the minimum subscription had not been reached. The directors of the deft. co. proposed to give to each allottee the option to have the allotment cancelled and the application money returned. The plts. moved for an injunction to restrain them from doing so :—

Held, that the agreement gave the plts. no right to the injunction; that the allotment was irregular under s. 4 of the Companies Act, 1900, and was voidable; that under that section the allottees had a right at any time to rescind their contract to take shares; that the allottees could also rescind on the double ground that there was an untrue statement in the prospectus, and that the condition with respect to the minimum number of shares had been broken; and that the proposed action of the directors was not ultra vires. **FINANCE AND ISSUE LD. v. CANADIAN PRODUCE CORPORATION, LD.**

Buckley J. [1904] W. N. 175 ; [1905] 1 Ch. 37

2. — *Contracts—Non-disclosure of contracts—Directors' liability—Advance copy—Unauthorized Issue—Ratification—"Knowingly issuing"—Companies Act, 1867 (30 & 31 Vict. c. 131), s. 38.*

A director of a co. cannot be made liable under s. 38 of the Companies Act, 1867, for culpable omissions in a prospectus issued without his previous knowledge or authority, although he subsequently ratifies it and derives an advantage from it.

Advance copies of a prospectus which was eventually approved and issued by the directors without material alteration were issued without his knowledge or authority of the directors. The prospectus omitted to disclose a material contract within s. 38. Subsequently applications for shares made on the faith of the advance copies were accepted by the directors, as the Court inferred, with knowledge of all the facts :—

Held, that the directors had not "knowingly issued" the advance copies within the meaning

COMPANY (Prospectus)—continued.

of s. 38, and were not liable under the section in respect of that issue. **HOOLE v. SPEAK**

Kekewich J. [1904] W. N. 145 ; [1904] 2 Ch. 732

3. — *Contracts—Non-disclosure—Person induced to subscribe for shares—Proof of damage—Companies Act, 1867 (30 & 31 Vict. c. 131), s. 38.*

Action by a shareholder in the Strand Wood Co. against the late directors of the co. (inter alia) to recover damages on the ground that the prospectuses on the faith of which he applied for shares did not, as required by s. 38 of the Companies Act, 1867, disclose contracts entered into by the co.

The prospectuses in question were issued in 1898 and 1900, and the plt. alleged that they should have contained references to material contracts entered into by the co. in 1897 and 1899. In cross-examination, however, he admitted that if the prospectuses had contained the dates of those contracts and the parties to them, as required by the section, he would have regarded them as ordinary commercial contracts and would still have applied for the shares.

Warrington J. said that as regarded the claim under s. 38 of the Act the defts. contended that even assuming that contracts had not been disclosed, the plt. had not shewn that he had been induced by that omission to take the shares; that on the contrary he had stated in the witness-box that if the dates of the contracts and the parties to them, which was all the Act required had been furnished it would not have made any difference to him. There was authority in support of that contention, in what was said by Cockburn C.J. in *Twycross v. Grant*, (1887) 2 C. P. D. 469, at p. 533, and in the pertinent remarks of Vaughan Williams L.J. and Romer L.J. in *Nash v. Calthorpe*, [1905] 2 Ch. 237, at pp. 246 and 251. Unless what Romer L.J. said was wrong, there was an end of the plt.'s case against the defts. The plt. had to shew that he had been damaged by the omission of statements which he alleged ought to have been made, and having failed to do so, he could not succeed in his action. **MARSHALL v. MORRISON**

Warrington J. [1907] W. N. 29

4. — *Contracts—Non-disclosure of contract—Person induced to subscribe for shares—Proof of Damage—Companies Act, 1867 (30 & 31 Vict. c. 131), s. 38.*

In an action by a shareholder against directors of a company to recover damages, on the ground that the prospectus, on the faith of which he applied for his shares, did not, as required by s. 38 of the Companies Act, 1867, disclose a contract entered into by the co. :—

Held, that the plt., in order to maintain the action must prove, not only that the undisclosed contract was a material one, but also that he had suffered damage by its non-disclosure.

Per Vaughan Williams and Stirling L.JJ. : In order that the plt. may prove that he suffered damage the evidence must be such as to satisfy the Court that, if the undisclosed contract had been disclosed, the plt. would not have applied for shares.

COMPANY (Prospectus)—continued.

Per Vaughan Williams L.J.: If the omission from a prospectus of a material contract likely to deter a person from taking shares is proved, it cannot be presumed as a matter of law that the plt. was induced by the omission to apply for shares.

Per Romer L.J.: It is sufficient for the plt. in such an action that from the evidence as a whole the Court can reasonably conclude that, if the omitted material contract had been stated, the plt. *might* not have applied for the shares.

Decision of Joyce J. reversed.

Observations of Collins M.R. in *Broome v. Speak*, [1903] 1 Ch. 586, at pp. 620 et seq., discussed and explained. [*Broome v. Speak* was affirmed by H. L. (E.) sub nom. *Shepherd v. Broome*, [1904] A. C. 342.] *NASH v. CALTHORPE* C. A. [1905] W. N. 100; [1905] 2 Ch. 237

Note.

Referred to by Warrington J., *Marshall v. Morrison*, [1907] W. N. 29. See No. 3, above.

5. — *Contract — Omission of material contract — Under writing agreement — Business arrangement — Waiver clause — Liability of directors — Companies Act, 1867 (30 & 31 Vict. c. 131), s. 38.*

In this action the defts. were the same persons as in the action of *Cackett v. Keswick*, [1901] W. N. 159; and the plt., who was an underwriter, sought to recover damages against them for the non-disclosure in the prospectus of the same contract of Mar. 10, 1899, and on the same grounds. But the circumstances were different.

Farwell J.: The plt. is suing on the 38th section of the Act, and not otherwise, and he has to bring his case within the words of the section. He must shew that he acted on the faith of a prospectus, and that such prospectus had been knowingly issued *before* he so acted, in order to bring himself within the section. Now, when the Act says "knowingly issued," I hold that it means intentionally issued to the public: *Twycross v. Grant*, (1877) 2 C. P. D. 469, 541. The Act was not intended and is not expressed in such a manner as to impose the very serious consequences of disobedience to its provisions on persons engaged in settling prospectuses in respect of copies not authorized for publication, but shewn to friends and speculators, not as members of the public, but by way of anticipation of the public, and in order to induce them to co-operate with the promoters in placing shares with the public. Here the co. was not incorporated until May 24, and the prospectus was not issued to the public until on or about that day. This was sufficient to dispose of the plt.'s case; but he failed also on another ground. He had failed to prove that he subscribed on the faith that there was no such contract as that of Mar. 10 in existence because it was not stated in the prospectus, and that such omission was material. It was clear on the evidence that he acted on the faith of the director's names, that he never read the waiver clause in the prospectus and attached no importance to it. The action would be dismissed with costs. *BATEY v. KESWICK* - *Farwell J.* [1901] W. N. 167

See next Case.

COMPANY (Prospectus)—continued.

6. — *Contracts—Omission of material contract—Waiver clause—Companies Act, 1867 (30 & 31 Vict. c. 131), s. 38.*

A waiver clause in a prospectus as to the disclosure of contracts under s. 38 of the Companies Act, 1867, may be enforced against an intending shareholder, if it is honest and not misleading, but not if it fails to give sufficient notice as to the nature of what is to be waived.

The prospectus of a mining co. disclosed (inter alia) an agreement as to the purchase of the produce of the mine, and stated that the directors had guaranteed the subscription of a part of the capital, and would receive a commission for so doing. It then stated that there might also be various trade contracts and business arrangements in addition to the before-mentioned agreement as to the purchase of the produce, and that as these contracts and business arrangements and the above-mentioned underwriting agreements might constitute contracts within s. 38 of the Companies Act, 1867, applicants for shares should be deemed to waive the insertion of the particulars of any such contracts, arrangements, or agreements. The prospectus did not disclose a contract between the promoters and K., the future chairman of the co., whereby a firm of which K. was a member was to receive 12,000 fully paid *l.* vendor's shares, as to 2000 for commission for underwriting, and as to 10,000 for the use of the names of K. and the firm on the prospectus, and for adopting the co. :—

Held, by Farwell J., [1901] W. N. 159, and by the C. A.—(1.) that this was a contract which ought under s. 38 to have been disclosed; (2.) that it was not covered by the waiver clause.

Per Romer L.J.: Apart from s. 38, the contract ought in fairness to intending investors to have been disclosed in the prospectus. *CACKETT v. KESWICK* C. A. [1902] W. N. 118; [1902] 2 Ch. 456

Note.

See also *Batey v. Keswick*, [1901] W. N. 167, No. 5, above.

Referred to by C. A., *Watts v. Fucknall*, [1903] 1 Ch. 766. See next Case.

Referred to by C. A., *Nash v. Calthorpe*, [1905] 2 Ch. 237. See No. 4, above.

7. — *Contracts—Omission to specify material contract — Liability of director — "Knowingly issue" — "Waiver" clause — Companies Act, 1867 (30 & 31 Vict. c. 131), s. 38.*

The prospectus of a co., formed for the purpose of acquiring and working some breweries, stated that a contract for purchase, dated Dec. 1, 1896, had been entered into between two persons, whose names were given, one of them being a trustee for the co. It was further stated that, "during the negotiations for the purchase of the properties and the formation of the co., contracts have been entered into between various parties with reference to the formation and promotion of the co. and the subscription of its capital, but to none of which the co. is a party. . . . The contracts referred to in this paragraph are, or may be, contracts within the

COMPANY (Prospectus)—continued.

meaning of s. 38 of the Companies Act, 1867; and, accordingly, applicants for shares are to be deemed to have notice of the said contracts, and to have agreed with the co. (as trustee for the directors and other persons liable) to waive all claims, if any, against them for not more fully complying with the requirements of the said section, and allotments will only be made upon this express condition." Neither the dates of nor the names of the parties to the contracts thus referred to were stated in the prospectus.

A shareholder, who had applied for his shares on the faith of this prospectus, brought an action for damages against one of the directors, who was responsible for the issue of the prospectus, on the ground that the requirements of s. 38 had not been complied with. The deft. admitted that he had read through the prospectus, but said that he knew nothing of the nature or contents of the contracts referred to, and that he was ignorant of s. 38:—

Held, that the deft. had "knowingly issued" the prospectus within the meaning of s. 38, that he was not protected by the waiver clause, and that he was liable to refund to the plt. the sum which he had paid for his shares.

Decision of Byrne J., [1902] W. N. 163; [1902] 2 Ch. 628, affirmed.

The statement in the prospectus, though it was sufficient to fix the deft. with knowledge of the existence of the contracts in question, and thus to make him liable under s. 38, as having "knowingly" issued the prospectus without specifying the contracts, was not a sufficient "notice" of the contracts within s. 38 so as to deprive the plt. of his remedy under that section, the position of a director and that of an applicant for shares being for this purpose entirely different.

In order that the applicant may be effected with "notice" of a contract within s. 38, he must have notice, not only of the existence of the contract, but also of its contents.

A "waiver" clause in a prospectus of this kind cannot operate to excuse compliance with the requirements of s. 38, except under such conditions as would render a release in general terms effectual. WATTS v. BUCKNALL

C. A. [1903] W. N. 57; [1903] 1 Ch. 766

8. — *Contracts — Omission of contract—Untrue statement—Fraud—"Deemed to be fraudulent"—Companies Act, 1867 (30 & 31 Vict. c. 131), s. 38—Directors' Liability Act, 1890 (53 & 54 Vict. c. 3), sub-s. 1.*

A director of a limited co. knew that a prospectus issued by the directors did not disclose a contract and a resolution of the board of directors which were in fact material but which he was advised were not, and which he honestly believed not to be material. A shareholder who had bought shares in the co. having brought an action against the director for misrepresentation:—

Held, that though the director was not in fact fraudulent, he must be "deemed to be fraudulent" within s. 38 of the Companies Act, 1867, and that proof that the plt. took shares upon the faith of the prospectus would make the

COMPANY (Prospectus)—continued.

director liable both under the Act of 1867 and the Directors' Liability Act, 1890, s. 3, sub-s. 1.

The decision of the C. A., *Broome v. Speak*, [1903] 1 Ch. 586, affirmed. SHEPHEARD v. BROOME H. L. (E.) [1904] W. N. 111; [1904] A. C. 342

Note.

See Hoole v. Speak, Kekewich J., [1904] 2 Ch. 732. *See No. 2, above.*

— Directors' liability—Truth of statements—"Reasonable ground to believe"—Particulars—Practice.

See DISCOVERY. 15.

9. — *Facts to be stated in prospectus—Previous offer of shares—Remedy for omission—Companies (Consolidation) Act, 1908 (8-Edw. 7, c. 69), s. 81.*

The mere fact that a prospectus issued by a co. does not contain some of the facts or contracts required to be stated by s. 81 of the Companies (Consolidation) Act, 1908, does not entitle a person who has taken shares on the faith of the prospectus to rectification of the register. The difference of the wording of that section and s. 38 of the Companies Act, 1867, has not, in this respect, altered the law. *In re WIMBLEDON OLYMPIA, LD.* - Neville J. [1910] W. N. 62; [1910] 1 Ch. 630

— Fraudulent prospectus—Non-disclosure of promoter's interest.

See COMPANY—Promoters. 1.

10. — *Misrepresentation—Damage—Right of Action—Directors' Liability Act, 1890 (53 & 54 Vict. c. 64), s. 3.*

In an action by a shareholder in a limited co., against a director for damages for misrepresentation in the prospectus, the time at which the damages ought to be assessed is the date of the allotment to the plt.; accordingly, where the plt. has applied for and obtained shares upon the faith of a false representation in the prospectus that the co. had already acquired a valuable property, the fact that the property is acquired shortly afterwards affords no answer to the plt.'s claim for damages, unless it be shewn that at the date of allotment the risk that the property would not be acquired was unsubstantial.

In assessing the damages, *prima facie* the price paid for the shares is taken to be the exact equivalent of the value of the shares having the advantages represented in the prospectus.

The principle upon which the damages ought to be assessed considered. MCCONNELL v. WRIGHT

C. A. [1903] W. N. 16 [1903] 1 Ch. 546

11. — *Misstatements—Omissions—Company a "sub-purchaser"—Non-disclosure—Director—Liability—Companies Act, 1900 (63 & 64 Vict. c. 48), s. 10, sub-s. 1 (f)—Directors' Liability Act, 1890 (53 & 54 Vict. c. 64).*

Where a co. on its formation purchases or proposes to acquire from an absolute owner property which is to be paid for wholly or partly out of the proceeds of the issue offered for subscription by the prospectus, s. 10, sub-s. 1 (f), of the Companies Act, 1900, requires that the name and address of the vendor and the amount

COMPANY (Prospectus)—continued.

of the consideration shall be stated in the prospectus. There is no obligation under the sub-section to disclose the amount of the purchase-money, however small, paid by the vendor on his acquisition of the property, however recent.

If the co. buys merely the benefit of a contract for the purchase of property, the consideration for which remains wholly or partly undischarged, and so, pro tanto, a burden on the property, the co. acquiring the benefit of the contract is a "sub-purchaser" within the meaning of the sub-section, and the particulars thereby required must be stated in the prospectus.

A co. is not a "sub-purchaser" for the purposes of the sub-section unless it has to pay purchase-money to some one other than its own vendor, and it is not necessary to state in the prospectus the amount of any consideration paid or to be paid by anyone other than the co. **BROOKES v. HANSEN** *Joyce J.* [1906] **W. N. 87**; [1906] **2 Ch 129**

— Non-disclosure of contracts.

See Nos. 2—4, above.

12. — Non-disclosure of contracts—Directors' liability—Proof of damage—Waiver clause—Companies Act, 1867 (30 & 31 Vict. c. 131), s. 38.

To recover damages under s. 38 of the Companies Act, 1867, a plt. who has subscribed for shares on the faith of a prospectus which did not disclose a material contract must prove that he has sustained damage, and that if he had known of the undisclosed contract he would not have become a shareholder.

Where there is no fraud in fact and the non-disclosure is owing to an honest mistake, a subscriber for shares who has agreed to waive any fuller compliance with s. 38 than is contained in the prospectus cannot maintain an action for damages. The decision of the C. A., *Tait v. Macleay*, [1904] **2 Ch. 631**, reversed on the above grounds. **MACLEAY v. TAIT** - **H. L. (E.)** [1906] **W. N. 2**; [1906] **A. C. 24**

— "Prospectus" — Company — Allotment — Minimum subscription not stated — More than one prospectus.

See COMPANY—Allotment. 5.

— Shares—Director—Ultra vires—Dividend out of capital — Shareholders — Acquiescence.

See COMPANY—Directors. 7.

13. — Subscriptions for shares, Prospectus inviting—Misrepresentation by promoters or directors in prospectus—Contribution between wrongdoers—Action for fraudulent representation—Third-party procedure—Directors' Liability Act, 1890 (53 & 54 Vict. c. 64), ss. 3, 5.

Where two promoters of a co. join in the issue of a prospectus inviting subscriptions for shares in the co., with knowledge that a statement contained in that prospectus is untrue, and damages are recovered by a person induced to take shares in the co. by that statement in an action for fraudulent misrepresentation against one of them, he is entitled to contribution from the other under s. 5 of the Directors' Liability Act, 1890. **GERSON v. SIMPSON. REITLINGER, THIRD PARTY** **C. A.** [1903] **W. N. 116**; [1903] **2 K. B. 197**

COMPANY (Prospectus)—continued.

14. — Untrue statement—Shareholder's action against some of the directors—Compensation paid by defendants—Contribution from other directors—Evidence—Liability of estate of deceased director—Costs—Directors' Liability Act, 1890 (53 & 54 Vict. c. 64), ss. 3, 5—R. S. C., Order XVI., rr., 48, 54.

The directors of a co. issued a prospectus on the faith of which J. Broome applied for and was allotted shares in the co. The co. went into liquidation. Broome brought an action under s. 3 of the Directors' Liability Act, 1890, against three of the directors for compensation on the ground that the prospectus contained an untrue statement. Judgment was given in his favour with costs and an inquiry as to damages directed. The defendants appealed to the C. A. and the H. L., but both appeals were dismissed with costs. The case is reported sub nom. *Broome v. Speak* [1903] **1 Ch. 586**, and sub nom. *Shepherd v. Broome*, [1904] **A. C. 342**. A compromise was arrived at under which the inquiry was dropped, and Broome was paid compensation at the rate of 15s. per share, his taxed costs of the inquiry, and 700*l.* additional costs. Many other shareholders made claims, which were also compromised, and the three defts. in Broome's action and some of the other directors paid large sums in this way. They did not take advantage of third party procedure, but brought this action against the remaining directors and the executors of three of them, who had died since the prospectus was issued, to enforce, under s. 5 of the Directors' Liability Act, 1890, contribution by them of their share of the compensation which had been paid:—

Held, that the statement of facts in the report *Broome v. Speak* ought not to be treated as evidence, but the judgments in that case were an authority for holding on the facts proved in the present action that the prospectus contained an untrue statement.

Held, further, that if Broome had brought an action against all the directors, including those who were now dead, he would have succeeded; that the right to contribution, inasmuch as under the statute it arose as if from contractual relations between the parties, could be enforced against the estates of the deceased directors; and that the defts. must pay, with interest, their share of the compensation and the costs of Broome and other shareholders which had been paid; but they were not liable to contribute in respect of the costs of the defts. in *Broome v. Speak*, Broome's extra costs, the costs of the appeals, and other payments which had been made otherwise than under the provisions of the Act. **SHEPHERD v. BRAY** **Warrington J.**

[1906] **W. N. 131**; [1906] **2 Ch. 235**

On Appeal (Next Case):—

15. — Untrue statement—Action by shareholder against some of the directors—Compensation paid by defendants—Contributions from co-directors—Evidence—Liability of estate of deceased director—Costs—Directors' Liability Act, 1890 (53 & 54 Vict. c. 64), ss. 3, 5.

Appeal from a decision of Warrington J.,

COMPANY (Prospectus)—continued.

[1906] 2 Ch. 235. Settlement arrived at on terms as set out. *SHEPHEARD v. BRAY*
C. A. [1907] W. N. 206; [1907] 2 Ch. 571

Proxy.

— Proxy, shareholder only to be—Nomination of unqualified proxy—Disqualification removed before proxy is used.
See INDIA. 2.

Quorum.

— Directors — Purchase — Effect of resolution by an insufficient quorum—Laws of Canada.
See CANADA—Company. 4.

Railway Company.

See under RAILWAY.

— Powers—Ultra vires—Dock company—Amalgamation—Water obtained from land acquired for purposes of railway.
See RAILWAY—Amalgamation. 1.

Receiver.**(Receiver and Manager.)**

1. — *Borrowing—Receiver and manager—Authority to borrow limited sum for general purposes of the business—Limit exceeded—Indemnity—Priority over debenture-holders.*

Orders were made in a debenture-holders' action appointing a receiver and manager, and authorizing him to borrow 3000*l.* for the general purposes of the business, the sum to be a first charge on the assets. The co. was ordered to be wound up. The manager carried on the business and incurred debts beyond the 3000*l.*, but made no further application for leave to raise money. He retired from his office, and the plts. in the action applied for a declaration that he was not entitled to any indemnity in respect of liabilities incurred beyond the 3000*l.*, or that if he was so entitled he had by his conduct forfeited his rights:—

Held, that the order authorizing him to borrow for the general purposes of the business had not deprived the manager of his right to be indemnified out of the assets; that if without any application to the Court he had incurred further liabilities he would only be entitled to be indemnified in respect of them so far as he could shew that having regard to all the circumstances he was justified in incurring them without leave; that this must be separately determined in each particular case; and that it would not be enough for him to shew that the further liabilities had been incurred bona fide and in the ordinary course of business. *In re* BRITISH POWER TRACTION AND LIGHTING CO. HALIFAX JOINT STOCK BANKING Co. v. BRITISH POWER TRACTION AND LIGHTING CO. **Warrington J.**

[1906] W. N. 33; [1906] 1 Ch. 497

Note.

For further report of this case, *See In re British Power Traction and Lighting Co., Halifax Joint Stock Banking Co. v. British Power Traction and Lighting Co. (No. 2)*, Warrington J., [1907] W. N. 49; [1907] 1 Ch. 528, *next Case*.

COMPANY (Receiver)—continued.

2. — *Borrowing powers—Receiver and manager—Authority to borrow limited sum for general purposes of the business—Limit exceeded—Indemnity—Creditors of manager—Debenture-holders—Priority.*

Orders were made in a debenture-holders' action appointing a receiver and manager, and authorizing him to borrow 3000*l.* for the general purposes of the business, this sum to be a first charge on the assets. The co. was ordered to be wound up. The manager carried on the business, borrowed 3000*l.* from a bank, incurred other debts, and overdraw his account with the bank to the extent of 1500*l.* beyond the 3000*l.*, but made no further application for leave to raise money. He retired from his office, and the debenture-holders applied for a declaration that he was not entitled to any indemnity out of the assets of the co. in respect of liabilities incurred beyond the 3000*l.* His creditors claimed that he was entitled to an indemnity, and that they ought to that extent to be paid out of the assets.

The application came before Warrington J., who held that the order authorizing the receiver and manager to borrow a limited sum for the general purposes of the business had not deprived him of his right to be indemnified out of the assets; that, if without any application to the Court, he had incurred further liabilities, he was only entitled to be indemnified in respect of them so far as he could shew that, having regard to all the circumstances, he was justified in incurring them without leave; that this must be separately determined in each case; and that it would not be enough for him to shew that the further liabilities had been incurred bona fide and in the ordinary course of business.

The case is reported [1906] 1 Ch. 497. *See preceding Case.*

The matter then went back to chambers on inquiries which had been directed by a previous order, and questions now came before the Court whether the receiver was entitled to be indemnified (1.) in respect of bodies supplied for motor-cars which had been ordered by customers either before or after his appointment; (2.) bodies supplied to him for cars which had been prepared for a motor show; (3.) rent of business premises; and (4) the 1500*l.* overdrawn with the bank:—

Held, that inasmuch as the receiver had reasonable ground for believing that he would be able to discharge the liabilities out of the purchase-moneys of the cars, and it would not have been practicable to apply to the Court, he ought to be indemnified in respect of (1.) and (3.); that the motor bodies supplied for the show were ordered as a speculation, so there should be no indemnity in respect of (2.); that, although the 1500*l.* overdraft had all been spent on payments which were necessarily made to keep the business going, there was no reason why the receiver should not have applied to the Court for leave to make these payments, and he was therefore not entitled to an indemnity in respect of (4.) *In re* BRITISH POWER TRACTION AND LIGHTING CO. HALIFAX JOINT STOCK

COMPANY (Receiver)—continued.

BANKING CO. v. BRITISH POWER TRACTION AND LIGHTING CO. (No. 2) - **Warrington J.**
[1907] **W. N. 49**; [1907] **1 Ch. 528**

3. — Cause of action—Issue of writ—Company—Debenture—Floating security—Principal not yet payable—Interest not in default—Jeopardy—Receiver—Practice.

The Court has jurisdiction to appoint a receiver and manager of the undertaking and assets of a co. on the application of the holder of a debenture issued by the co., secured by a floating charge, if the principal money thereby secured has become due before the time when the application is made, although at the date of the issue of the writ no default had been made in payment of interest, the money was not payable, and the security was not in jeopardy.

The holder of a debenture secured by a floating charge on the assets of the co. issued a writ in an action claiming an account, execution of the trusts of the debenture trust deed, realization of the security, and the appointment of a receiver and manager. At the date of the issue of the writ the principal money secured was not due and no default had been made in payment of interest. The plt. moved for the appointment of a receiver and manager, but the motion was refused on the ground that the money was not due, no default had been made, and the security was not in jeopardy. After the money became due the plt. served another notice of motion for the appointment of a receiver and manager. This was opposed on the ground that the plt. had no cause of action when he issued his writ and that the action could not be maintained:—

Held, that the plt. as the holder of a floating security had a right to issue his writ before the money became payable, and that the Court had jurisdiction, inasmuch as the money was now payable, to appoint a receiver and manager.

Bonham v. Newcomb, (1684) **1 Vern. 231**, distinguished. **In re CARSHALTON PARK ESTATE, LD. GRAHAM v. THE CO. TURNELL v. THE CO.** **Warrington J.** [1908] **W. N. 107**; [1908] **2 Ch. 62**

4. — Costs—Official receiver and liquidator—Report alleging fraud—Public examination of persons charged—Person exculpated from charge—Costs—"Proceedings"—Jurisdiction to order official receiver to pay costs personally—Companies (Winding-up) Act, 1890 (53 & 54 Vict. c. 63), s. 8.

A co. having been ordered to be wound up in a county court, the official receiver, who was the liquidator, in his further report to the Court under s. 8, sub-s. 2, of the Companies (Winding-up) Act, 1890, stated that in his opinion the facts set out therein constituted a fraud committed in the promotion or formation of the co., and also in relation to the co. since its formation, and that the persons named in the schedule to the report were parties to the fraud. Among the persons so named was E., a director of the co. Upon this report the county court judge made an order under sub-s. 3 for the public examination of the persons named. After the public examination E. applied to the judge for an order exculpating him from the charge of fraud; this

COMPANY (Receiver)—continued.

application was opposed by the official receiver, but the judge nevertheless made an order exculpating him, and directing the official receiver personally to pay to E. the costs of his examination and of the application, there being no available assets of the co.:—

Held, that so far as the costs of the public examination of E. were concerned, the official receiver was merely discharging a statutory duty of a judicial character, and that there was no jurisdiction to order him personally to pay these costs. The proviso in s. 8, sub-s. 7, of the Act of 1890, empowering the Court to "allow" the exculpated person such costs as the Court may think fit, only applies where there are assets of the co. available for the payment of costs.

Decision of Darling and Bucknill JJ., [1910] **2 K. B. 67**, affirmed.

Held, also, that as the official receiver had accepted the position of a litigant, appeared in Court, and opposed E.'s application for exculpation, he was a party to "proceedings" in the county court, so that the judge had jurisdiction in his discretion to order him to pay the costs of that motion, and on this part of the case the Court could not interfere.

In re Raynes Park Golf Club, [1899] **1 Q. B. 961**, doubted. **In re JOHN TWEDDLE & CO.**

C. A. [1910] **W. N. 168**; [1910] **2 K. B. 697**

— **Costs** — Property recovered or preserved—Charging order.

See under COMPANY—Charging Orders.

5. — Debenture—Floating security—No money payable on debenture—Jeopardy—Receiver.

Debenture-holders, who have a floating security upon the undertaking and all the property, present and future, of a co., are entitled to the appointment of a receiver of the property subject to the debentures if their security is in jeopardy, although nothing is payable in respect of principal or interest, and there has been no default or breach of contract by the co. **In re LONDON PRESSED HINGE CO. CAMPBELL v. LONDON PRESSED HINGE CO.**

Buckley J. [1905] **1 Ch. 576**

Note.—This case was referred to by Buckley J., **In re Alfred Melson & Co.**, [1906] **1 Ch. 841**. **See Company—Winding-up—Practice.** 16.

6. — Debentures—Receiver—Principal and agent—Receiver agent of debenture-holders—Assets charged by receiver—Personal liability of debenture-holders and receiver.

Debentures gave power to the holders to appoint a receiver to take possession of the assets, carry on the business, sell the property, make any arrangements he should think expedient in the interest of the debenture-holders, and apply in a specified way the moneys received; but they did not provide that the receiver was to be the agent of the mortgagors. A receiver appointed under this power made an agreement with the plts. whereby he assigned to them book debts of the co. in consideration of their doing certain work for the co. The debenture-holders afterwards appointed another receiver in the place of the first one. He repudiated the agreement, but wrote to the plts. that he would be prepared to pay for some work which he

COMPANY (Receiver)—continued.

described. The work was done, but the plts.' account was not paid :—

Held (following *In re Vimbos, Ltd.*, [1900] 1 Ch. 470), that the receiver was the agent of the debenture-holders; that he had authority to pledge the assets in priority to the debentures; that the agreement was a valid assignment of book debts paid to the receiver during his agency so far as was necessary to secure payment to the plts.; that the plts. were, therefore, entitled to have the money received in respect of these debts paid over to them; that the debenture-holders were themselves personally liable to pay the plts. the amount due to them; and that the second receiver was by the terms of his letter personally liable to pay for the work thereby ordered.

ROBINSON PRINTING CO. v. CHIC, LD.

Warrington J. [1905] 2 Ch. 123

Note.

See *In re Chic, Ltd.*, Warrington, J., [1905] 2 Ch. 345; *Company — Winding-up — Practice*. 28.

7. — *Debenture-holder — Floating security — Receiver — Judgment creditor — Attachment of debts — Garnishee order nisi — Priority — Rights of garnishor — R. S. C., Order XLV., r. 2.*

In 1903 a limited co. issued a series of debentures creating the usual first charge "by way of floating security" on "all real and personal property now or any time hereafter belonging to the co." On Jan. 17, 1905, Y. & Co obtained judgment against the co., and on the same day they obtained and served on T. & Sons a garnishee order nisi for a debt of 434*l.* owing by that firm to the co. On Jan. 19, a receiver and manager of the co. was appointed in a debenture-holders' action. Notice of this appointment was served on Y. & Co. on Jan. 20. The debt of 434*l.* having been claimed by both the judgment creditor and the receiver, the money was paid into Court. On an interpleader issue to determine the question of priority :—

Held, on the authority of *In re Combined Weighing and Advertising Co.*, (1889) 43 Ch. D. 99, that as service of a garnishee order nisi did not operate as an assignment in equity or amount to a transfer of the debt, the right of the garnishor was subject to such rights and equities as already existed over this particular debt as the property of the co.; that at the time the garnishee order was served there was an existing charge on this property by virtue of the floating security created by the debentures, which was capable of becoming a specific charge when the debenture-holders intervened, and, consequently, that the receiver was entitled to the money now in Court in priority to the judgment creditor.

The dictum of James L.J. in *Ex parte Joselyn*, (1878) 8 Ch. D. 327, at p. 330, that "the moment the order of attachment was served on the garnishee the property in the debt due from him was absolutely transferred from the judgment debtor to the judgment creditor," must not be taken too literally, but must be read in conjunction with the facts and with what was said by the other Lords Justices in that case. *Robson v. Smith*, [1895] 2 Ch. 118, distinguished.

NORTON v. YATES

Warrington J.

[1905] W. N. 175; [1906] 1 K. B. 112

COMPANY (Receiver)—continued.

— Debenture-holders' action—Bond—Sureties—Default—Rights of trade creditors.
See **COMPANY—Bond**. 1.

8. — *Debenture-holders' action—Receiver and manager—Insufficient estate—Costs—Priorities—Bankruptcy of receiver.*

Where a receiver and manager appointed by the Court properly incurs debts in carrying on the business, the Court will see that such debts are satisfied, either by the receiver, or, if the receiver becomes bankrupt or there is any other reason which makes it advisable, by payment direct to the creditors of the business out of the funds in Court available for that purpose.

In a debenture-holders' action a receiver and manager was appointed. The receiver, in carrying on the business of the co., incurred considerable debts without the leave of the Court or the consent of the debenture-holders, and subsequently became bankrupt. The funds in Court were the only assets of the co., and were insufficient to discharge the plts.' costs of realization and the receiver's costs of carrying on the business. The trustee in bankruptcy of the receiver claimed that the funds in Court, less the costs of realization, ought to be paid out to him for distribution amongst the receivership creditors, whilst the plts. contended that the receiver, having acted improperly, was not entitled to be indemnified out of the assets, and that the funds, less costs of realization, ought to be paid to the debenture-holders.

Held (following *Batten v. Wedgwood Coal and Iron Co.*, (1884) 28 Ch. D. 317), that the funds in Court must be applied, first, in payment of the costs of realization; secondly, in payment of the receiver's costs.

Held, also, that the trustee in bankruptcy was not entitled to have the balance of the funds, after the payment of costs of realization, paid to him, but that the Court would distribute such balance subject to an inquiry whether any and what debts had been properly incurred by the receiver in carrying on the business. *In re LONDON UNITED BREWERIES, LD. SMITH v. LONDON UNITED BREWERIES, LD. Neville J.* [1907] W. N. 198; [1907] 2 Ch. 511

8a. — *Debenture-holder's action—Form of debenture—Receiver and manager.*

Action by a debenture-holder on behalf of himself and all the other debenture-holders of the co., claiming an account, foreclosure or sale, and the appointment of a receiver and manager. Plt., who was a director of the co., now moved that he might be appointed receiver of the property comprised in and subject to the debentures, and manager of the business of the co.

The debentures were not quite in common form. The conditions indorsed provided that the money thereby secured should immediately become payable if (amongst other things) "any writ be issued against the co. at the instance of a creditor." Actions had been commenced against the co. in a county court and in the High Court for goods sold and delivered. The co. had been served, but did not appear.

The Court made the order subject to an affidavit being produced to the registrar that

COMPANY (Receiver)—continued.

all the other debenture-holders consented to the appointment of the plt. as receiver and manager. *BUDGETT v. IMPROVED PATENT FORCED DRAUGHT FURNACE SYNDICATE, LD.*

Farwell J. [1901] W. N. 23

9. — *Debenture-holders' action—Receiver and manager—Preservation of assets—Order giving receiver and manager leave to borrow and create first charge on assets—Loan by bank—First charge by deed—Realization—Insufficient assets—Receiver's remuneration—Costs of preservation and realization—Priorities.*

In an action by a debenture-holder on behalf of himself and all the other debenture-holders of a co. to realize his security the usual judgment in a debenture-holders' action was pronounced and a receiver and manager was appointed. On the same day an order was made on the application of the plt. in the action authorizing the receiver to borrow 500*l.* to be secured by a first charge on the assets of the co. in priority to the debenture-holders. The receiver borrowed the money from a bank, and the deed containing the charge did not in express terms exempt the receiver from personal liability to repay the loan. The receiver realized the whole of the assets comprised in the debentures, and there was in Court a fund which was insufficient to satisfy all the claims upon it. The bank claimed that, subject to the costs of realization in the strict sense, they were entitled to be first paid out of the fund their charge, on the ground that the receiver, having borrowed the money from them, was their debtor, and that they were entitled to be subrogated to him in respect of his indemnity against the fund:—

Held, that the proper inference to be drawn from the transaction was that the receiver did not intend to pledge his credit and that the bank did not rely upon it, and therefore that there was no right of indemnity to which the principle of subrogation could apply.

Dictum of Cozens-Hardy L.J. in *In re Glasdir Copper Mines, Ltd.*, [1906] 1 Ch. 365, 384, followed.

Held, therefore, that the fund must be applied, first, in payment of the plt.'s costs of the action as between solicitor and client; secondly, in payment of the receiver's remuneration; and, thirdly in repayment of the loan to the bank, so far as the balance of the fund would extend. *In re A. BOYNTON, LD. HOFFMANN v. A. BOYNTON, LD.*

Warrington J. [1910] W. N. 43; [1910] 1 Ch. 519

— Debenture trust deed—Leaseholds—Mortgage by sub-demise—Rent, Liability for.
See MORTGAGE—Receiver. 1.

10. — *Foreign mine—Obtaining possession—Practice—Debenture-holders' action—Receiver.*

Action by debenture-holders of the co. to enforce and realize their debentures which were secured by the usual trust deed. The plts. held all the debentures, and some 40,000*l.* was due to them. The co. was not in liquidation and its registered office was in London. Its principal asset was a copper mine in Peru, which formed

COMPANY (Receiver)—continued.

part of the security of the debenture-holders. On May 26, 1908, the usual judgment was pronounced, and one Neil, a chartered accountant of London, was appointed receiver and manager on behalf the plts. of all the co.'s property situate in Peru. At the commencement of the action and down to Feb., 1910, Duncan, Fox & Co., of Lima, in Peru, held the power of attorney of the deft. co., and acting under it had taken possession of the mine on behalf of the receiver, but on Feb. 19, 1910, the deft. co. revoked this power of attorney and granted a power of attorney to one Carceres, who thereupon as the agent of the deft. co. ousted Duncan, Fox & Co. from possession of the mine, and had since remained in possession of the mine and was working and picking it to the detriment of the plts.' rights.

On June 23 last the deft. co., on the plts.' motion that the co., its directors and agents, might be ordered forthwith to give such directions and take such steps and proceedings, whether in Peru or elsewhere, to compel Carceres to withdraw from and give complete possession of the mine to the authorized agent in Peru of the receiver, gave an undertaking forthwith by telegram to order Carceres to give up possession of the mine to the nominee of Duncan, Fox & Co. on behalf of the receiver and not to interfere in any way with the receiver's possession. It appeared, however, that the deft. co., beyond sending the telegram and a letter to Carceres, had made no serious effort to fulfil their undertaking, and that Carceres had disregarded the telegram and continued in possession. It also appeared that Duncan, Fox & Co., although holding the power of attorney of the plts. and of the trustees of the debenture trust deed, were powerless to eject Carceres so long as he held the power of attorney of the deft. co., because the Peruvian law recognized the deft. co. alone as legally entitled to possession of the mine. The plts. now moved that the deft. co., its directors and agents, might be ordered forthwith to execute a power of attorney appointing two named persons, members of the firm of Duncan, Fox & Co., attorneys in Peru of the deft. co. in the place of Carceres to take possession of the mine on behalf of the receiver.

Neville J. ordered the deft. co. to revoke their power of attorney to Carceres so far as it related to the mine, and to execute a power appointing one or more named partners of Duncan, Fox & Co., the attorney or attorneys of the co., to take possession of the mine on behalf of the receiver, the plts. to indemnify the co. in respect of the acts of such attorney or attorneys. The power of attorney to be settled by the judge, if necessary. *In re HUINAC COPPER MINES, LD. MATHESON & Co. v. THE Co.*

Neville J. [1910] W. N. 218

11. — *Indemnity—Debenture-holders' action—Receiver and manager—Preservation of assets—Orders giving receiver and manager leave to borrow and create first charge on assets—Loans by plaintiff—Contract by receiver and manager—Principal or agent—First charges by deed—Realization—Insufficient assets—Receiver's remuneration—Costs of preservation and realization*

COMPANY (Receiver)—continued.

—*Priorities—Form of borrowing and charging order—Limited company.*

Where advances for the preservation of a limited co.'s assets are made to a receiver and manager by a party to a debenture-holders' action under an order of Court which direct that the sum advanced shall be a first charge on the assets in priority to the debenture-holders, the receiver and manager is nevertheless entitled to take his costs and expenses properly incurred out of the assets in priority to the sums advanced, if it appears that the true bargain was that the assets should be realized by the receiver and manager for the benefit of all concerned: *Strapp v. Bull, Sons & Co.*, [1905] 2 Ch. 1.

But whether the same rule applies where the person making the advance is a stranger to the action, *quære*.

An order was made in a debenture-holders' action against a mining co. appointing a receiver and manager. Successive orders were then made on the application of the plts. giving the receiver and manager liberty to borrow on the security of first charges to be created by him, certain sums of money for the purpose of preserving the co.'s property and carrying on the business. The receiver and manager borrowed the money from the plts. themselves on the security of deeds executed by him and creating first charges in their favour on the property of the co. comprised in the debentures. By each of those charges the receiver and manager expressly stipulated that he should not be personally liable to repay the sums advanced out of his own moneys; but he made no express reservation of his right to be indemnified out of the assets in respect of his costs and expenses properly incurred. He then continued to carry on the co.'s business, but it proved a failure, and he eventually realized the assets, but the proceeds were insufficient to satisfy both his costs and expenses (including his remuneration allowed by the Court) and also the plt.'s charges:—

Held by the C. A. (affirming Joyce J.), [1905] W. N. 57, that, inasmuch as, in the circumstances, the receiver and manager had acted in the preservation and realization of the assets for the benefit of everyone concerned, he was entitled to indemnity out of the assets in priority to the plts. and all other persons for whose benefit he had so acted.

Strapp v. Bull, Sons & Co., discussed and distinguished.

Per Vaughan Williams L.J.: A receiver and manager, although appointed by the Court, and for the benefit of the debenture-holders, is not the agent to contract, either of the Court or of anybody else, but is a principal.

An order in a debenture-holder's action giving the receiver liberty to borrow money for the preservation of the property comprised in the debentures, and to charge the same on the property, should expressly state whether the charge is to be subject to or free from the receiver's right to indemnity. *In re GLASDIE COPPER MINES, LD. ENGLISH ELECTRO-METALLURGICAL CO., LD. v. GLASDIE COPPER MINES, LD.* . . . C. A. [1905] W. N. 172; [1906] 1 Ch. 365

COMPANY (Receiver)—continued.

Note.

Dictum of Cozens-Hardy L.J. in, followed by Warrington J., *In re A. Boynton, Ltd.*, [1910] 1 Ch. 519. See No. 9, above.

12. — Powers of receiver and manager—Debenture-holders—Shipment of goods by receiver—Bill of lading—Lien for previously unsatisfied freight.

Ind. Coope, & Co., Ltd., a brewery co., used to ship beer in the defts.' vessels to the co.'s agents abroad for the sale of beer. Among these agents was a firm in Malta. The co. being in difficulties, debenture-holders, whose debentures constituted a floating charge on the undertaking and assets of the co., took steps to enforce their security, and, a debenture-holders' action having been brought, the plt. A. W. was by an order of the Court appointed receiver and manager of the business and undertaking of the co. which was not wound up, but continued in existence. By a letter signed "*Ind. Coope & Co.*," by A. W. receiver and manager," the plt. requested the defts. to carry a quantity of beer to Malta consigned to the co., c/o the firm in Malta; and the defts. accordingly carried the beer to Malta under a bill of lading by one of the terms of which the defts. were to have a lien on the beer shipped, not only for the freight due in respect thereof, but also in respect of any previously unsatisfied freight due from the "shippers or consignees" to them. This was the form of bill of lading which had been used in the case of goods carried for the co. by the defts. The defts. refused to deliver the beer shipped as aforesaid unless certain unsatisfied freight due to them from the co. previously to the plt.'s being appointed receiver and manager was paid. No leave had been given by the Court authorizing the plt. to give to the defts. any security in respect of such previously unsatisfied freight:—

Held by Vaughan Williams L.J. and Buckley L.J., Fletcher Moulton L.J. dissenting, that the defts. were not entitled to a lien on the beer shipped as aforesaid for the previously unsatisfied freight, because (1.) the bill of lading had not the effect of giving the defts. such a lien, and (2.) no leave to give them such a lien had been obtained from the Court. *WHINNEY v. MOSS STEAMSHIP CO. C. A. [1910] 2 K. B. 813*

13. — Trade creditors, Rights of—Debenture-holders' action—Receiver and manager—Bond—Sureties—Default—Rights of trade creditors.

A receiver and manager in a debenture-holders' action gave the usual security by a bond with sureties.

He properly incurred and was entitled to be indemnified by the estate against trade liabilities to the extent of 900*l.* for goods supplied to him on credit, of which the estate had the benefit, but his cash account was deficient by 400*l.*, which he was unable to pay.

Held, that the trade creditors could only claim against the estate to the net amount of the receiver's indemnity, *i.e.*, 500*l.*, and they and not the sureties must bear the loss of the 400*l.*

In re Johnson, (1880) 15 Ch. D. 548, 555, applied. *In re BRITISH POWER TRACTION AND LIGHTING CO. HALIFAX JOINT STOCK*

COMPANY (Receiver)—continued.

BANKING Co. v. BRITISH POWER TRACTION AND LIGHTING Co.

Swinfen Eady J. [1910] W. N. 194; [1910] 2 Ch. 470

— Receiver in debenture-holders' action—Goods in possession of company under hire-purchase agreement—Interference with possession of receiver—Injunction—Proceedings in other Court—Jurisdiction.

See RECEIVER. 8.

Reconstruction.

1. — *Amalgamation—Memorandum of association—Reconstruction under power in memorandum—Sale of assets for shares in new company—Partly-paid shares—Distribution of consideration—Offer of shares to all shareholders.*

One of the objects of a co. was to sell and dispose of its property for such consideration as it thought fit, and in particular for shares fully or partly paid up, and to divide the consideration amongst the members of the co. This power was to be exercisable either in view of a winding up of the co. or not. Another object was to distribute any of the assets of the co. among the members of the co.

The co. agreed to sell its assets and undertaking to another co. By the agreement the vendor co. was to be wound up; part of the consideration was to consist of partly-paid shares to be allotted to the vendor co. or its nominees. The vendor co. were within two calendar months to find people to take up these shares, and if any of them were not taken up they were to be at the disposal of the purchasing co., and the vendor co. was not to be liable to take them up itself. Resolutions were passed and confirmed at meetings of the vendor co. to wind up that co. voluntarily, and that the liquidator should offer the new shares to the members at the rate of one such share for each share held by the members.

By the amalgamation scheme it was provided that the liquidator should sell shares which were not accepted by the shareholders and distribute the net proceeds of sale among such members. A shareholder in the vendor co. objected to these proposals:—

Held, that the proposed scheme of reconstruction was within the powers conferred by the memorandum, and ought to be allowed to proceed. **FULLER v. WHITE FEATHER REWARD, Ltd. Warrington J. [1906] W. N. 74; [1906] 1 Ch. 823**

Note.

This case was overruled by *C. A., Bisgood v. Henderson's Transvaal Estates, Ltd.*, [1908] 1 Ch. 743. *See* No. 8, below.

— Amalgamation and reconstruction—Unfair scheme—Dissentient shareholders.

See COMPANY — WINDING-UP — Practice. 24.

— Contemporaneous resolutions for voluntary winding-up and reconstruction scheme—Invalidity of scheme.

See COMPANY — WINDING-UP — Practice. 27.

COMPANY (Reconstruction)—continued.

2. — *Dissentient shareholder—Registered office in Rhodesia—Notice of dissent left at London office—Waiver by liquidator—Conflict of law—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 161—Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), s. 192, sub-s. 3—Evidence of local law.*

The plt. was the holder of fully paid up shares in the deft. co., which was in course of liquidation for the purpose of reconstruction. The co. was registered in 1903 under the Companies Ordinance, 1895, of Southern Rhodesia, and its registered office was in Bulawayo. By the co.'s articles it was provided that the business of the co. should be carried on in England. At extraordinary general meetings held in London on June 18 and July 3, 1909, resolutions had been passed for the voluntary winding up of the co., and all its assets were to be taken over by a new co.

Under s. 158 of the Companies Ordinance, 1895, which was similar to s. 161 of the Companies Act, 1862, a dissentient shareholder had to give notice of dissent at the registered office of the co. within seven days of the date of the meeting. The plt. voted against the resolutions, and on July 5 gave notice of dissent at the London office of the co. On July 6 the liquidator sent him in reply a letter in the following terms: "I am in receipt of your letter of the 5th inst., and note that you do not consent to the reconstruction of the above company." Subsequently the liquidator refused to treat the notice of dissent as valid, on the ground that it was not served at the registered office of the co., and the plt. brought this action. Under the Companies Ordinance, 1895, the liquidator had power to do all acts in the name and on behalf of the co.:—

Held, that the liquidator had waived the irregularity and that the notice of dissent must be treated as valid.

Evidence of an expert in Roman-Dutch law admitted although he had not practised in Rhodesia. **BRAILEY v. RHODESIA CONSOLIDATED, Ltd. Warrington J. [1910] W. N. 123; [1910] 2 Ch. 95**

3. — *Memorandum of association—Reconstruction under power in memorandum—Sale of assets for "shares" in new company—Partly paid shares—Distribution of consideration—Evidence—Unstamped agreement—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 161.*

A co. authorized by its memorandum of association to sell its undertaking for "shares" may if there is nothing in the context or in the memorandum or articles of association as a whole so to qualify the meaning of the word "shares" as there used as to confine it to fully paid shares, accept partly paid shares as consideration. **MASON v. MOTOR TRACTION Co.**

Buckley J. [1905] W. N. 27; [1905] 1 Ch. 419

— Notice of meeting to pass resolutions for reconstruction—Special resolutions for voluntary liquidation.

See COMPANY — WINDING-UP — Voluntary Winding-up. 1.

4. — *Memorandum of association—Power to sell undertaking for shares in another company*

COMPANY (Reconstruction)—continued.

and distribute same in specie—Reconstruction—Proposed sale of undertaking for partly-paid shares—Voluntary liquidation—Option to members of old company to take up new shares—Time limit for exercising option—Realization of rejected shares—Scheme for distribution of proceeds of realization among dissentients—Unfairness—Injustice—Ultra vires.

A co. was empowered by its memorandum of association to sell its undertaking for shares in any other co., and to distribute any of the property of the co. among the members in specie. Part of its nominal capital has been issued and was fully paid. The co. was in need of further capital, and, being unable to place its unissued shares, a scheme for reconstruction was prepared, providing for the sale of the undertaking and assets of the co. to a new co. in consideration (inter alia) of partly-paid shares in the new co. of the same number and nominal amount as the fully-paid shares in the old co., and that if the old co. should go into liquidation before the shares were allotted, every member of the old co. in respect of each share therein held by him was to be entitled to claim an allotment to himself of one partly-paid share in the new co. A time limit was fixed within which members of the old co. were to exercise their option to claim such an allotment; and with regard to the proportion of the shares in the new co. which members of the old co. should be entitled to claim, but should not claim within the time limit, the liquidator was to sell the same in such manner as he in his absolute discretion should think fit, and the net proceeds of sale were to be distributed rateably in accordance with their rights and interests among the members who had not so claimed. This scheme was embodied in a draft agreement between the two cos., and a resolution adopting and authorizing the directors to enter into the agreement with the new co. when formed was duly passed. On a motion by two dissentient members to restrain the co. from acting on the resolution:—

Held, that the agreement was a device for compelling shareholders of the old co. either to subscribe further capital or else to accept a share of the proceeds of sale of the unclaimed shares in the new co. to be ascertained under a scheme of distribution which was likely to be unfair and work injustice to the dissentient members, and was at any rate, not part of the bargain under which they had originally subscribed for their shares, and that the agreement was ultra vires. *Manners v. St. David's Gold and Copper Mines, Ltd.*, [1904] 2 Ch. 593, applied. *Bisgood v. Nile Valley Co., Ltd.* *Kekewich J.* [1906] W. N. 43; [1906] 1 Ch. 747

Note.

This case was approved by C. A., *Bisgood v. Henderson's Transvaal Estates, Ltd.*, [1908] 1 Ch. 748. See No. 8, below.

5. — *Power in memorandum of association to sell undertaking—Agreement to sell to new company for shares in that company—Resolution approving agreement and resolution for voluntary winding-up passed contemporaneously—Validity of agreement—Rights of dissentient shareholder—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 161.*

COMPANY (Reconstruction)—continued.

In the course of the argument the Court intimated that they could not decide that the agreement was ultra vires in the absence of the new co., who were parties to it. The plt., however, declined to incur the expense of bringing the new co. before the Court by amendment.

The Court accordingly dismissed the appeal from the decision of Buckley J., [1902] W. N. 143; [1902] 2 Ch. 837, without expressing any opinion as to the rights of the parties, and that in the absence of the new co. it was not in a position to grant the relief which the plt. claimed, which would at any rate involve a declaration that the agreement for sale was invalid. *DOUGHTY v. LOMAGUNDA REES, Ld.*

C. A. [1903] W. N. 57; [1903] 1 Ch. 673

6. — “Reconstruction”—“Amalgamation”—“Winding-up for the purposes of reconstruction or amalgamation.”

Neither “reconstruction” nor “amalgamation” has any definite legal meaning. Each word is a commercial and not a legal term, and even as a commercial term has no exact definite meaning.

Where an undertaking is being carried on by a co., and is in substance preserved and transferred, not to an outsider but to another co., consisting substantially of the same shareholders, with a view to its being continued by the transferee co., that is a reconstruction; and it is none the less a reconstruction because all the assets do not pass to the new or resuscitated co., and all the shareholders of the transferor co. are not shareholders in the transferee co., and the liabilities of the transferor co. are not taken over by the transferee co.

To constitute “amalgamation” there must be a blending of substantially two or more existing undertakings into one undertaking, the shareholders of each blending co. becoming substantially the shareholders in the co. which holds the blended undertakings; and there may be amalgamation either by the transfer of two or more undertakings to a new co., or by the transfer of one or more undertakings to an existing co.

It is not necessary that a resolution for winding-up should refer to “reconstruction” or “amalgamation” in order to constitute a “winding-up for the purpose of reconstruction or amalgamation,” but the purpose of the winding-up may be gathered from the whole of the circumstances which result in reconstruction or amalgamation.

The S. Co. had powers under its memorandum of association to amalgamate with any other co., and to sell its undertaking, or any part thereof, for shares or debenture stock of any other co., and under its articles of association the liquidator, in the case of winding-up had power to divide amongst the contributories in specie any part of its assets. Its memorandum of association also gave to its preference shareholders the right in the event of a “winding-up for the purpose of reconstruction or amalgamation” to a bonus by way of percentage on the par value of the preference shares.

The S. Co. issued debenture stock, constituted and secured by a trust deed under which the

COMPANY (Reconstruction)—continued.

stock was redeemable only at a premium in the event of the security becoming enforceable by reason of "a voluntary winding-up of the co. for the purpose of reconstruction or amalgamation."

After the S. Co. had carried on business for a short time, a rival co., the I. Co., was formed, and accordingly in Feb., 1902, the A. Co. was incorporated to take over the business and certain of the assets of the S. Co. The memorandum of association and debenture stock deed of the A. Co. gave to its preference shareholders and debenture stock holders respectively rights to bonus and premium in the case of a winding-up of that co. "for the purpose of reconstruction or amalgamation."

In the same month the A. Co. agreed with the S. Co. to purchase the business and some of the assets of the latter for 1,000,000*l.*, to be satisfied in cash and in fully paid preference and ordinary shares and debenture stock of the A. Co. The remaining (unsold assets) of the S. Co. consisted of cash, investments, and other things of the value of over 1,500,000*l.*

In May, 1902, the C. Co. was incorporated with (after an increase of capital) an ordinary capital twice the amount of the ordinary capital of the S. Co., and a preference capital equal to the preference capital of the S. Co.

In Aug., 1902, "heads of agreement" (formally entered into by an agreement of May, (1903) were entered into under which the A. Co. was to sell to the I. Co. the business and assets purchased by the former from the S. Co., and the stock-in-trade and working capital of the A. Co. The purchase consideration was to be 1,650,000*l.*, to be satisfied as follows: 1,000,000*l.* in fully paid shares of the I. Co., representing the 1,000,000*l.* ordinary share capital of the A. Co.; 500,000*l.* in debentures of the I. Co. to replace the preference share capital and debenture stock of the A. Co.; and 150,000*l.* payable to certain firms interested in the I. Co. There was no provision that the A. Co. should wind itself up, but 500*l.* was to be retained out of its assets for liquidation expenses. At a meeting of the A. Co. held in Sept., 1902, a distribution on the lines above indicated was mentioned in speeches by the chairman of the co. and others.

In view of an agreement of Feb., 1903 (referred to below), a meeting of the S. Co. was held at which the chairman and others referred to an intended winding-up of the co., and to the manner in which the shares of the C. Co. were to replace the shares in the S. Co.

By an agreement of Feb., 1903, the S. Co. agreed to sell to the C. Co. all its remaining assets (including the shares in the A. Co. to which it was entitled as the consideration for the previous sale to that co.), excepting assets of the value of 295,000*l.* retained to pay the debts of the S. Co. The consideration for this sale was to be the whole of the 618,000 ordinary shares, and 150,000 preference shares of the C. Co., to be allotted as fully paid up.

Subsequently both the A. Co. and the S. Co. passed special resolutions simply for voluntary winding-up, without referring to any amalgamation or reconstruction, or consideration or distribution of shares. At one of the meetings of

COMPANY (Reconstruction)—continued.

the S. Co. for passing the resolution of that co., reference was made by the chairman to the proposed distribution of the C. Co.'s shares. Afterwards the S. Co. passed an extraordinary resolution authorizing its liquidators to distribute in specie amongst its contributories in the proportion of two shares for every ordinary share in the S. Co. the 618,000 ordinary shares in the C. Co. which formed part of the consideration referred to in the agreement of Feb., 1903:—

Held, that there was a "reconstruction" of the S. Co., and that its winding-up was "for the purpose of reconstruction":

Held, also, that there was an "amalgamation" of the A. Co. with the I. Co., and that the winding-up of the A. Co. was "for the purpose of amalgamation." *In re SOUTH AFRICAN SUPPLY AND COLD STORAGE CO. WILD v. SAME CO.*

Buckley J. [1904] 2 Ch. 268

7.—*Sale of undertaking—Consideration—Shares in new company—Partly paid-up shares, Payment in—Commission, Applying capital for—Underwriting—Memorandum and articles of association—Construction—Offer of shares for public subscription—Ultra vires—Injunction—Companies Act, 1900 (63 & 64 Vict. c. 48), s. 8, sub-s. 1, 2.*

A limited co. formed in 1898, having by its memorandum power to sell its undertaking either for cash or for "shares in any co." entered into an agreement, with a view to reconstruction, with certain "guarantors," for the sale to them of its undertaking, the purchasers agreeing to form a new co. for the repurchase of the undertaking in consideration of the allotment and issue, to such members of the old co. as should accept the same, of partly paid-up shares in the new co., with power for the liquidator of the old co., on its being wound up, to sell any shares not accepted by its members.

To carry out that agreement a new co. was formed in 1902, with power, by its memorandum, to pay out of its funds all expenses it might incur having regard to s. 8 of the Companies Act, 1900, including commission for underwriting shares; and clause 9 of its articles provided that if at any time it should offer its shares to the public for subscription the directors might pay a commission at a "rate" not exceeding 50 per cent. to any person in consideration of subscribing or agreeing to subscribe for shares.

An agreement was then entered into between the guarantors (the original purchasers) and the 1902 co. for the "sale" to that co. of the undertaking of the 1898 co. in consideration of the 1902 co. allotting and issuing to the guarantors its shares, partly paid up, for distribution among the members of the 1898 co., the guarantors agreeing that they by themselves or their nominees would accept an allotment of such of the shares as should not be required by the 1898 co. or its liquidator; and, as the balance of the consideration for the sale, the 1902 co. agreed to pay the guarantors "12,300*l.* in cash." Soon after the date of that agreement the 1898 co. passed resolutions for a voluntary winding-up. No prospectus of the 1902 co. had yet been issued offering any of its shares to the public for subscription.

COMPANY (Reconstruction)—continued.

In an action to restrain the carrying out of the latter agreement as being ultra vires:—

Held, that the sale of the undertaking of the 1898 co., so far as it was in consideration of partly paid-up shares in the 1902 co., was authorised by the memorandum of the former co.; but

Held, that the additional consideration of the payment by the 1902 co. of 12,300*l.* in cash was ultra vires on the ground:—(1.) that it was prohibited by sub-s. 2 of s. 8. of the Companies Act, 1900, as being “commission in consideration of subscribing or agreeing to subscribe for shares”; (2.) that there had been no such “offer of shares to the public for subscription” as to bring the 1902 co. within the protection of sub-s. 1; and (3.) that the sum of cash was not a “rate” within clause 9 of that co.’s articles.

An injunction was therefore granted restraining the 1902 co. from applying its capital in payment of the 12,300*l.*, but without prejudice to any question as to whether the co. could by any means bring the payment within sub-s. 1.

Whether, in the event of a co. offering some of its shares to the public for subscription, and procuring a person or persons to take up the rest in consideration of a commission, that would be a transaction validated by sub-s. 1 of s. 8 of the Companies Act, 1900, *quære*. *ROOTH v. NEW AFRIKANDER GOLD MINING CO., LD.*

C. A. [1902] W. N. 212; [1903] 1 Ch. 295

8. — *Sale of undertaking to new company for partly-paid shares—Distribution of consideration—Ultra vires—Memorandum of association—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 38, sub-s. 4; s. 161.*

The sale of all a co.’s assets and all its undertaking and the distribution of the proceeds cannot be a corporate object so that under a clause for that purpose introduced into the memorandum of association such a sale and distribution can be made without regard to the provisions of s. 161 of the Companies Act, 1862.

A co. limited by shares cannot by its memorandum and articles of association provide as part of its constitution that in an event the incorporator shall either submit to a liability in excess of the limit of liability on his shares or shall be dispossessed of his status as incorporator.

Where, therefore, a limited co., which had issued 1,770,386 fully-paid shares of 1*l.* each, acting under the powers of its memorandum and articles of association, passed resolutions in general meeting approving a scheme of reconstruction and for a voluntary winding-up, and by the scheme the undertaking of the co. was to be sold to a new co. to be formed for the purpose in consideration of a like number of 1*l.* shares in the new co., credited with 17*s. 6d.* per share as paid thereon, and the payment of the debts and the costs of liquidation of the old co., and the liquidator was to offer the shares in the new co. (credited as aforesaid) for distribution among the members of the old co. at the rate of one of such new shares for each share in the old co. held by such members, and, in the event of any of the old members not accepting their due proportion of such shares within a limited time,

COMPANY (Reconstruction)—continued.

was to use his best endeavours to sell such shares and distribute the net proceeds among the non-accepting members in proportion to the number of shares in the old co. held by them respectively:—

Held, that the scheme was ultra vires.

Cotton v. Imperial and Foreign Agency and Investment Corporation, [1892] 3 Ch. 454, and *Fuller v. White Feather Reward, Ltd.*, [1906] 1 Ch. 823, overruled.

Bisgood v. Nile Valley Co., [1906] 1 Ch. 747, approved.

Decision of *Eve J.*, [1908] W. N. 69, reversed. *BISGOOD v. HENDERSON'S TRANSVAAL ESTATES, LD.* C. A. [1908] W. N. 96; [1908] 1 Ch. 743

9. — *Shares partly paid up—Subscribing for shares—Commission—Underwriting agreement—Ultra vires—Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), s. 89.*

In 1909 a limited co. was formed having by its memorandum a power to pay out of its funds all expenses incident to its formation and the issue of its capital, including commissions for underwriting shares whether issued for cash or credited as partly paid; and clause 8 of its articles provided that the co. might pay a commission at a rate of not exceeding 25 per cent. on the amount unpaid on any shares to any person in consideration of his subscribing or agreeing to subscribe for shares. The capital of the co. was divided into shares of 5*s.* each.

The formation of this new co. was part of a scheme for the reconstruction of an old co. of the same name that was to go into liquidation for the purpose, and it was also part of the scheme that the liquidator should sell the undertaking of the old co. (whose capital had been issued in shares of 5*s.* each) to the new co. for a certain number of shares in the new co. credited with 3*s. 6d.* paid up per share to be offered to the shareholders of the old co. share for share. The new co., to ensure working capital and before contracting to purchase the undertaking of the old co., entered into an agreement with certain parties called “contractors,” which recited the scheme and provided (clause 2) that, if the shareholders of the old co. should not within a certain period apply for 400,000 shares in the new co. credited with 3*s. 6d.* paid per share, the liquidator should endeavour to sell to other persons such of the 400,000 shares as should not be so applied for, and, if the liquidator should be unable to sell all the said shares within three days after the expiration of such period, the contractors would within three days thereafter (1.) purchase at a price to be agreed, not exceeding $\frac{1}{2}$ *d.* a share, so many of the said shares as should not be so applied for by the shareholders of the old co. or sold by the liquidator; (2.) apply to the new co. for an allotment of the same; (3.) pay the sum of 3*d.* per share on application for the same; and (clause 3) that when the whole of the 400,000 shares should have been applied for by shareholders of the old co. or by purchasers or by the contractors, and the moneys payable on application should have been received, then the liability of the contractors under clause 2

COMPANY (Reconstruction)—continued.

should cease, and the new co. should thereupon pay the contractors "a sum equal to 10 per cent. upon 30,000l. the amount of the cash assessment on the said 400,000 shares." No prospectus of the new co. had been issued offering any of its shares to the public for subscription. In an action to restrain the carrying out of the agreement as being ultra vires the new co. :—

Held, that the agreement was a valid underwriting agreement within s. 89 of the Companies (Consolidation) Act 1908. **BARROW v. PARINGA MINES (1909), LIMITED - Neville J. [1909]**

W. N. 195 ; [1909] 2 Ch. 658

— Trust estate—Management—Powers—Investment.

See **TRUSTEE—Investments. 14.**

10. — Ultra vires—Memorandum of association
—Powers—Power to sell undertaking for shares in another company and to distribute same in specie—Sale in exercise of powers of memorandum
— Sale of undertaking to new company for partly paid shares — Winding-up— Option to shareholders of old company to take up new shares—Time limit for exercising option—Forfeiture of shareholders' interest in default—Realization of rejected shares and application of proceeds in reduction of purchase-money—Companies Act, 1862 (25 & 26 Vict. c. 89), ss. 133, 161.

A co. was empowered by its memorandum of association to sell its undertaking for shares in any other co., whether wholly or partly paid up, and to distribute the shares in specie, but so that no distribution amounting to a reduction of capital could be made without the sanction of the Court. The capital of the co. having been fully paid up, and the co. being in need of further capital, a scheme of reconstruction was adopted whereby the undertaking of the co. was to be sold to a new co. in consideration (among other things) of partly paid shares in the new co. of the same number and nominal amount as the fully paid shares in the old co., and the shareholders in the old co. were to have the option of taking those new shares in exchange for their existing shares; and in the event of the old co. going into liquidation within a certain period after the completion of the purchase and distributing the shares of the new co., the liquidator was to fix a time within which the new shares were to be taken up; and any shares not accepted within that time were to be realized and applied in reduction of the obligations of the new co. under the scheme. This scheme was embodied in an agreement entered into between the two cos. :—

Held (affirming **Joyce J., [1904] W. N. 147**) that the agreement was not a contract for sale within the contemplation of the memorandum of association, but was a device to compel fully paid shareholders to contribute further capital or forfeit their interest in the co., and that it was ultra vires. **MANNERS v. ST. DAVID'S GOLD AND COPPER MINES, LD. C. A. [1904]**

W. N. 167 ; [1904] 2 Ch. 593

Note.

This case was applied by **Kekewich J., Bisgood v. Nile Valley Co., [1906] 1 Ch. 747. See No. 4, above.**

COMPANY (Reconstruction)—continued.

— Voluntary winding-up—Scheme of arrangement involving reduction of capital.

See **COMPANY—Reduction of Capital. 21.**

Reduction of Capital.

Rules of the Supreme Court—Procedure on applications for confirmation by the Court of the reduction of the capital of companies under the Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69). Reprint from W. N. 1909 (May 15), p. 183. See CURRENT INDEX, 1909, p. cliii.

— Appeal—Final or interlocutory.

See **COMPANY—Practice. 2.**

1. — "Capital" — Cancellation of paid-up shares where capital not lost or unrepresented by available assets or repaid—Companies Act, 1867 (30 & 31 Vict. c. 131), s. 9—Companies Act, 1877 (40 & 41 Vict. c. 26), s. 3.

In speaking of reduction of capital the word "capital" means neither nominal capital to the exclusion of paid-up capital, nor the latter to the exclusion of the former.

A reduction of nominal capital which is paid up must be so made as not to affect the equilibrium of the co.'s balance sheet to the prejudice of the co.'s creditors. This equilibrium is not disturbed where the reduction is effected—(a) by cancelling capital lost or unrepresented by available assets, or (b) by paying off capital in excess of the co.'s wants (in each case under s. 3 of the Companies Act, 1877), because in either case the balance item on the debit or credit side of the balance-sheet (as the case may be) is unaffected; but the section impliedly forbids the writing off of paid-up capital which is not lost or unrepresented by available assets or returned—the result in that case being to disturb the equilibrium of the balance-sheet by striking out of the debit or liability side a sum representing paid-up capital, leaving the credit or asset side unaffected.

A co. had a nominal capital of 700,300l. divided into 1l. shares, of which 350,000l. were preference, 350,000 ordinary, and 300 founders' shares. All the shares were fully paid up. The existence of founders' shares with special rights being found inconvenient, and it being estimated that each fully paid founders' share was worth 260 ordinary shares with a liability to pay 1l. per share thereon, the co. agreed with persons purporting to contract on behalf of themselves and the other holders of founders' shares that the 300 founders' shares should be cancelled on the terms of each holder of those shares taking in lieu thereof 260 unpaid ordinary shares (in all 78,000), which were to be provided by increasing the capital of the co. by at least 78,000l. The agreement was conditional—(1.) on its being ratified by the founders' shareholders and (2.) approved by the co. in general meeting, and (3.) on the capital being increased as above mentioned (4.) on a special resolution being passed for reduction of capital by cancelling the founders' shares, and (5.) on the Court's sanction being obtained to the reduction.

Resolutions were then passed—(a) increasing the capital of the co. to 1,000,300l. by creating 150,000 further ordinary shares and 150,000

COMPANY (Reduction of Capital)—continued.

further preference shares, (b) (special) for reducing the capital to 1,000,000*l.* by cancelling the founders' shares, and (c) approving the agreement. All the holders of founders' shares ratified the agreement.

Before issuing any of the new 300,000 shares the co. petitioned the Court for an order confirming the reduction of capital.

Buckley J. refused to confirm the reduction (as the debit in the balance-sheet in respect of paid-up capital would thereby be reduced by 300*l.*, whereas the amount was only to be recouped by something to be done after the confirmation), but pointed out that the object in view could be attained by other means, for the adoption of which he allowed the petition to stand over.

The holders of the founders' shares having been joined as co-petitioners, on its being alleged and proved that the 78,000 shares had been allotted to them, and that they had paid considerably more than 300*l.* to the co. in respect of those shares, and that they claimed no beneficial right or interest in the founders' shares, but held them in trust for the co. and desired to have them cancelled by the Court:—

Buckley J. confirmed the reduction.

British and American Trustee and Finance Corporation v. Couper, [1894] A. C. 399, distinguished.

Form of minute approved by the Court. *In re* ANGLO-FRENCH EXPLORATION CO.

Buckley J. [1902] 2 Ch. 845

2. — Capital in excess of the wants of the company—Repayment to shareholders—Form of minute—Companies Act, 1867 (30 & 31 Vict. c. 131), ss. 9, 11, 15, 16—Companies Act, 1877 (40 & 41 Vict. c. 26), s. 3.

The co. was incorporated in 1880 with a capital of 10,000*l.* divided into 500 shares of 20*l.* each, the whole of which had been subscribed and paid up with the exception of one call of 20*l.* The capital was in excess of the wants of the co. for the business they were now carrying on, and in Sept., 1903, they passed a resolution that the co. should be at liberty and have power to reduce its capital. By special resolution passed on Oct. 19, and confirmed on Nov. 6, 1903, it was resolved, "That the capital of the Chelmsford Land Co. be reduced from 10,000*l.* to 6000*l.*, and that such reduction be effected by repayment of share capital to the shareholders." The co. had no debts. It was proposed to register a minute in the following form: "Minute approved by the Court. The capital of the Chelmsford Land Co., Ltd., is from henceforth 6000*l.* divided into 500 shares of 12*l.* each, reduced from 10,000*l.* divided into 500 shares of 20*l.* each, and such reduction is to be effected by repaying to the members the sum of 8*l.* on every fully paid share held by them respectively, being capital in excess of the wants of the co., and by reducing each of such shares of the co. from 20*l.* to 12*l.*" The co. by their petition asked that the special resolution might be confirmed and the minute approved.

Buckley J. said he would confirm the special resolution for reduction of capital, and would approve a minute in the form that "the capital of the co. is from henceforth 6000*l.* divided into

COMPANY (Reduction of Capital)—continued.

500 shares of 12*l.* each, instead of 10,000*l.* divided into 500 shares of 20*l.* each," upon the co. producing to the registrar an affidavit that the repayments had been made. *In re* CHELMSFORD LAND CO. **Buckley J. [1904] W. N. 106**

3. — Capital lost or unrepresented by available assets—Use of words "and reduced"—Companies Act, 1877 (40 & 41 Vict. c. 26), s. 4.

A petition, asking the Court to confirm a reduction of capital by cancelling paid-up capital which had been lost or was unrepresented by available assets, was presented on May 14, 1906, and heard on June 13.

It was stated that the co. did a large business with foreign customers, and that it was important that the words "and reduced" should not be used as part of the co.'s name after the hearing of the petition.

Buckley J. directed that the words "and reduced" should be used for a further period of one month only, instead of the usual period of three months. *In re* MONMOUTHSHIRE STEEL AND TINPLATE CO. **Buckley J. [1906] W. N. 126**

4. — Certificate of registrar—Meaning of "conclusive"—Companies Act, 1867 (30 & 31 Vict. c. 131), ss. 9, 15.

A co. had no power in its articles of association to reduce its capital, and never altered its articles by inserting a power to reduce capital. In 1882 it passed special resolutions purporting to reduce its capital. The resolutions were confirmed by the Court, and the registrar gave his certificate, under s. 15 of the Companies Act, 1867, of the registration of the order and minute, which certificate is under that section to be "conclusive evidence that all the requisitions of this Act with respect to the reduction of capital have been complied with, and that the capital of the co. is such as is stated in the minute." In 1898, up to which time every one had treated the reduction as having been legally carried out, the co. went into voluntary winding-up. Doubt having arisen as to whether the reduction was valid, the liquidator issued an originating summons raising the question.

Byrne J. said that he was bound by the decision of the C. A. in *Ladies' Dress Association v. Pulbrook* [1900], 2 Q. B. 376, which could not be fairly distinguished, to hold that the registrar's certificate was conclusive evidence that the requisitions of the Act had been complied with, and that the reduction had been legally carried out. In *In re National Debenture and Assets Corporation*, [1891] 2 Ch. 505, the effect of another provision—s. 18 of the Companies Act, 1862—had been discussed. That section, which was in different words, referred to the certificate of incorporation of a co. being "conclusive," and the question discussed was whether it was conclusive when only six persons had signed the memorandum of association. Under no circumstances could a co. have acquired the power to register with only six persons as signatories, and no special resolutions could have set right the defect. Sect. 2 of the Act of 1862 contained no final prohibition against a co. reducing its capital,

COMPANY (Reduction of Capital)—continued.

but enabled it to do so, if it had not already the power, by adopting certain machinery. *In re WALKER & SMITH, LD. Byrne J. [1903] W. N. 82*

5. — *Confirmation by Court—Preference and ordinary shareholders—Companies Act, 1867 (30 & 31 Vict. c. 131), s. 11—Companies Act, 1877 (40 & 41 Vict. c. 26), s. 3.*

Decision of Cozens-Hardy J., [1900] W. N. 235; [1900] 2 Ch. 846, dismissing a petition for the confirmation by the Court of special resolutions for the reduction of the capital of a co., affirmed, on the ground that the evidence did not prove a loss of capital to the extent alleged in the resolutions.

The C. A. declined to express an opinion upon any of the points of law dealt with by Cozens-Hardy J. *In re BARROW HEMATITE STEEL CO. C. A. [1901] W. N. 208; [1901] 2 Ch. 746*

Note.

This case was explained by C. A., *In re Hoare & Co., Ltd. and Reduced*, [1904] 2 Ch. 208. See No. 19, below.

6. — *Confirmation, Petition for—Losses to be borne equally or rateably in proportion to capital paid up on shares—Shares of the same class with different amounts paid—Article providing for division of capital in winding-up—Jurisdiction to sanction equitable scheme—Companies Act, 1867 (30 & 31 Vict. c. 131), s. 11.*

There is no rule that where the articles of association of a co. provide that, in the case of a winding-up, losses are to be borne by the members in proportion to the capital paid up on their shares, the same principle must be applied in the case of any reduction of capital as between shares in the same class with different amounts paid up. The Court has jurisdiction, after providing for the protection of creditors, to sanction any scheme which is not unjust or inequitable.

Decision of Farwell J., [1902] W. N. 104; [1902] 2 Ch. 178, reversed. *In re CREDIT ASSURANCE AND GUARANTEE CORPORATION, LD.*

C. A. [1902] W. N. 158; [1902] 2 Ch. 601

7. — *Depreciation in value of assets—Arrangement between company and its shareholders—Participation certificates—Sanction of Court—Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), s. 120.*

The co. was incorporated in 1894 under the Companies Acts with a capital of 1,000,000*l.* divided into shares of different classes, and its articles of association contained the usual clause authorizing the co. to reduce its capital by paying off capital or cancelling capital that had been lost or was unrepresented by available assets. The capital of the co. was from time to time increased, and in 1904 stood at 1,950,000*l.* In that year the co., in consequence of losses caused by depreciation in the value of its public-house property, by special resolution confirmed by the Court reduced its capital to 1,554,000*l.* divided into 80,000 preference shares of 10*l.* each and 75,000 Accumulative preference shares of 10*l.* each, and 4000 ordinary shares of 1*l.* each, all fully paid up: see *In re Hoare & Co., Ltd. and Reduced*, [1904] 2 Ch. 208. These preference shares had priority in dividend

COMPANY (Reduction of Capital)—continued.

and capital over the ordinary shares, and the preference dividend was 5 per cent.

Neville J. made an order sanctioning the reduction of capital and the scheme; and directed that the scheme should be scheduled to the order, and that the words "and Reduced" should be continued for one month. *In re HOARE & CO., LD. "AND REDUCED."*

Neville J. [1910] W. N. 87

Note.

See *In re Hoare & Co. Ltd. and Reduced*, C. A. [1904] W. N. 123; [1904] 2 Ch. 208. No. 19, below.

8. — *Dispensing with words "and reduced"—Special undertaking by company.*

Petition for the reduction of the capital of the above co., which carried on the business of publishers and printers.

It was proposed that the co. should give an undertaking to inform their creditors of the reduction, and to use the words "and reduced" on all documents on which by s. 41 of the Companies Act, 1862 (25 & 26 Vict. c. 89), the name was required to be used, as though the words formed part of the name.

The Court made an order dispensing altogether with the addition of the words "and reduced" as part of the co.'s name, on the co. entering into an undertaking to the above effect for a period of one month. *In re LAWRENCE & BULLEN, LD.*

Kekewich J. [1901] W. N. 158

9. — *Extinction of founders' shares—Companies Acts, 1862—1877.*

To give the Court jurisdiction to entertain a petition for the reduction of capital it is not essential to prove that the capital which the co. proposes to cancel is lost or unrepresented by available assets.

The only questions to be considered are: (1.) Ought the Court to refuse its sanction to the reduction out of regard to the interests of those members of the public who may be induced to take shares in the co.? (2.) Is the reduction fair and equitable as between the different classes of shareholders? *POOLE v. NATIONAL BANK OF CHINA, LD.*

H. L. (E.) [1907] A. C. 229

Note.

See *In re Midland Ry. Carriage and Waggon Co., Ltd. and Reduced*, Warrington J., [1907] W. N. 175. No. 18, below.

Applied by Eve J., *In re Jewish Colonial Trust (Juedische Colonialbank), Ltd.*, [1908] 2 Ch. 287. See *Company—Memorandum*. 2.

See *In re Louisiana and Southern States Real Estate and Mortgage Co.*, Neville J., [1909] 2 Ch. 552. See next Case.

—Limitations, Statute of—Reduction of capital by return of money to shareholders—Unclaimed dividends.

See *COMPANY—Limitations*. 1.

10. — *Lost capital—Evidence of loss—Practice—Companies Act, 1877 (40 & 41 Vict. c. 26), s. 3—Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), s. 46.*

COMPANY (Reduction of Capital)—continued.

On a petition under the Companies (Consolidation) Act, 1908, for confirmation of a reduction of capital by cancelling paid-up capital which is lost or unrepresented by available assets evidence that the capital is lost or so unrepresented is not necessary. *In re LOUISIANA AND SOUTHERN STATES REAL ESTATE AND MORTGAGE COMPANY.* - **Neville J. [1909] W. N. 170; [1909] 2 Ch. 552**

11. — Memorandum — Articles — Reorganization of capital—Consolidating different classes of stocks and shares into one stock—Validity of resolutions—Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), ss. 7, 45, 48, 69; Table A, art. 4—“and Reduced” dispensed with.

By the memorandum of a limited co. formed in 1894 under the Companies Acts the capital of the co. was 1,000,000*l.* divided into 100,000 ordinary shares of 10*l.* each, and the capital was afterwards increased by special resolution in the statutory mode. The co.'s articles of association authorized the co. to issue its share capital with such preferences or special rights as they thought fit, and provided (art. 12) that all shares should be held on the terms that any rights or preference or special privilege of the holders of any class of shares should not be interfered with except by special resolution passed and confirmed by shareholders of that class, and every resolution so passed should be a valid resolution binding all shareholders of such class; and (art. 14) that the co. might by special resolution reduce its capital.

In 1903 the co. divided its existing share capital into preference shares and stocks and ordinary stocks by special resolution, which resolution became part of the memorandum. In 1909 the co., having lost capital to a large amount, passed in general meeting, held under s. 69 of the Companies (Consolidation) Act, 1908, a special resolution reducing its capital by writing off the loss in certain proportions from the nominal amount of its then issued preference shares and stock and ordinary stock, and at the same time passed a second special resolution that upon the reduction of capital being sanctioned by the Court the preference rights attaching to the preference shares and stock should be extinguished, and that the preference stock and ordinary stock resulting from the reduction of capital should forthwith thereafter be consolidated into one consolidated ordinary stock ranking *pari passu* for all purposes. Those two resolutions were at the same time also passed at separate meetings of each class of preference share and stockholders and ordinary stockholders held under art. 12. The co. then presented a petition for the sanction of the Court to the resolution reducing its capital. Dissident stockholders opposed on the ground that the second resolution came within s. 45 of the Act and was *ultra vires* as it had not been passed in conformity with that section.

The Court sanctioned the reduction, holding that the resolutions had been validly passed under the articles and that s. 45 did not apply.

The words “and Reduced” were dispensed

COMPANY (Reduction of Capital)—continued.

with as they would be injurious to the co. in Australia. *In re AUSTRALIAN ESTATES AND MORTGAGE CO., LD.* - - **Neville J. [1910] W. N. 44; [1910] 1 Ch. 414**

12. — Paid-up capital under 10,000*l.*—Confirmation by High Court of Justice—Companies Act, 1867 (30 & 31 Vict. c. 131), s. 12—Companies (Winding-up) Act, 1890 (53 & 54 Vict. c. 63), ss. 1, (1), (2), (3), 3, (1).

In this case a petition was presented to the High Court of Justice, Chancery Division, for the confirmation by the Court of a reduction of the capital of a co. having a paid-up capital considerably less than 10,000*l.* and a registered office situate within the district of a county court having jurisdiction to wind up the co.

Neville J. made an order confirming the reduction of capital, but said that it must not be supposed that the High Court would in every case make an order for confirmation when the county court had jurisdiction to make the order. *In re PORTSMOUTH AND DISTRICT VACUUM CLEANER CO.* **Neville J. [1908] W. N. 203**

13. — Paying off capital in excess of company's wants—Procedure—Companies Acts, 1867 (30 & 31 Vict. c. 131), s. 15—Companies Act, 1877 (40 & 41 Vict. c. 26), s. 3.

Where the Court is asked to confirm a reduction of a co.'s capital which is to be effected by paying off capital in excess of the wants of the co., and the Court upon hearing the petition is satisfied that the reduction ought to be confirmed, the proper procedure is to make the order confirming the reduction and then allow the further hearing of the petition to stand over until evidence has been produced that the capital to be paid off has actually been returned to the shareholders, and when this has been done to post-date the order confirming the reduction and approving a minute shewing with respect to the capital, as altered by the order, the particulars required by s. 15 of the Companies Act, 1867, and s. 4 of the Companies Act, 1877.

The Court cannot make the order approving the minute stating the reduced capital until the capital has in fact been reduced by the repayment.

It is sufficient if the minute states the result of what has been done without shewing how that result has been brought about.

Form of minute.

Observations as to the form of minute where the capital is returned on the footing of its being subject to be recalled. *In re CALGARY AND EDMONTON LAND CO.* - **Buckley J. [1906] 1 Ch. 141**

Note.

Not followed by Swinfen Eady J., *In re Lees Brook Spinning Co.*, [1906] W. N. 130; [1906] 2 Ch. 394. See next case.

See also *In re Anglo-Italian Bank, Ltd., and Reduced*, Warrington, J., [1906] W. N. 202. No. 15 below.

Not followed by Parker J., *In re General Industrial Development Syndicate, Ltd.*, [1907] W. N. 23. See No. 16, below.

COMPANY (Reduction of Capital)—continued.

14. — *Paying off capital in excess of company's wants—Term of order—Practice—Procedure—Companies Act, 1867 (30 & 31 Vict. c. 131), ss. 9, 15—Companies Act, 1877 (40 & 41 Vict. c. 26), ss. 3, 4.*

The provisions of the Companies Acts as to reduction of capital by paying off capital in excess of the wants of the co., contemplate that the order of the Court and the registration of the minute stating the reduced capital are to precede any repayment of capital; and they do not contemplate two orders being made on a petition for such reduction, one a preliminary order sanctioning the reduction, and the other an order approving the minute after the reduction has been carried into effect. The minute is intended to shew what the capital will be after the reduction has been carried into effect. There should only be one order sanctioning the reduction and approving the minute.

Form of minute.

In re Calgary and Edmonton Land Co., [1906] 1 Ch. 141, not followed. *In re LEES BROOK SPINNING CO.* - - - **Swinfen Eady J.** [1906] W. N. 130; [1906] 2 Ch. 394

Note.

Followed by Warrington J., *In re Anglo-Italian Bank, Ltd., & Reduced*, [1906] W. N. 202. See next Case.

Followed by Parker J., *In re General Industrial Development Syndicate, Ltd.*, [1907] W. N. 23. See No. 16, below.

15. — *Paying off capital in excess of company's wants—Practice—Procedure—Companies Act, 1867 (30 & 31 Vict. c. 131), ss. 9, 15—Companies Act, 1877 (40 & 41 Vict. c. 26), ss. 3, 4.*

Petition by the co. for the confirmation by the Court of a resolution which had been passed for the reduction of the capital of the co. from 50,000*l.* in 5*l.* shares to 10,000*l.* in 1*l.* shares, by returning to the shareholders cash to the extent of 4*l.* per share upon each of the shares, and by reducing the nominal amount of each of the shares from 5*l.* to 1*l.*

Warrington J. followed the decision in *In re Lees Brook Spinning Co.*, [1906] 2 Ch. 394, and approved of a minute in the following terms:

"The capital of the Anglo-Italian Bank, Ltd. (incorporated A. D. 1866) is 10,000*l.*, divided into 10,000 shares of 1*l.* each, instead of 50,000*l.* divided into 10,000 shares of 5*l.* each. At the date of the registration of this minute each share is to be deemed to be fully paid up." *In re ANGLO-ITALIAN BANK, LD., AND REDUCED.*

Warrington J. [1906] W. N. 202

Note.

Followed by Parker J., *In re General Industrial Development Syndicate, Ltd.*, [1907] W. N. 23. See next Case.

16. — *Paying off capital in excess of company's wants—Procedure—Companies Acts, 1867 (30 & 31 Vict. c. 131), s. 15—Companies Act, 1877 (40 & 41 Vict. c. 26), s. 3.*

Petition for the confirmation by the Court of special resolutions of a co. for the reduction of its capital by paying off capital in excess of the wants of the co.

COMPANY (Reduction of Capital)—continued.

Parker J. made the order asked for, confirming the reduction and approving a minute, following the decisions in *In re Lees Brook Spinning Co.*, [1906] 2 Ch. 394, and *In re Anglo-Italian Bank*, [1906] W. N. 202, and not following *In re Calgary and Edmonton Land Co.*, [1906] 1 Ch. 141. *In re GENERAL INDUSTRIAL DEVELOPMENT SYNDICATE, LD.* **Parker J.** [1907] W. N. 23

17. — *Power to reduce in memorandum of association only—Companies Act, 1867 (30 & 31 Vict. c. 131), s. 9.*

The memorandum of association of a co. stated: "The shares of the co. is 7500*l.*, divided into 7500 shares of 1*l.* each, with power to increase or reduce." The co. had no power to reduce its capital under its articles, and had not altered its articles so as to acquire the power. It nevertheless passed a special resolution purporting to reduce its capital, and petitioned the Court for confirmation of the reduction.

Byrne J. said that the word "regulations" in s. 9 of the Companies Act, 1867, clearly meant the articles and not the memorandum of association, and that it was necessary to alter the articles by inserting a power to reduce capital before passing a special resolution for reduction. The petition must, therefore, stand over to enable this to be done. *In re DEXINE PATENT PACKING AND RUBBER CO.* **Byrne J.** [1903] W. N. 82

18. — *Redeemed Capital—Companies Act, 1877 (40 & 41 Vict. c. 26), ss. 3, 5.*

Petition by the co. asking for the confirmation by the Court of special resolutions reducing the nominal capital of the co. from 720,000*l.* to 400,000*l.* The co. was formed under a deed of settlement in 1853, and registered under the Act 7 & 8 Vict. c. 110. It had an original capital of 50,000*l.* in 1000 shares of 50*l.* each, fully paid. Four hundred fully-paid preference shares were issued in 1856 in pursuance of special resolutions which provided that such shares should "be redeemable at the option of the co. on payment to the holder thereof of a premium." The co. in the same year, and in 1861, increased its capital to 200,000*l.* In 1863 there was a further issue of 400 fully-paid ordinary shares of 50*l.* each, and the proceeds of these shares were in or about 1865 applied in redeeming the 400 redeemable preference shares. The capital (including the redeemable shares) then stood at 220,000*l.* in 50*l.* fully-paid shares. About the same time the nominal capital was increased to 320,000*l.* by the creation of 2000 ordinary shares of 50*l.* each; but these shares were never issued. In 1875 the nominal capital was increased to 420,000*l.* by the issue of 2000 preference shares of 50*l.* each, paid up to the extent of 5*l.* per share. Whatever the legal effect of redeeming and paying off the 400 preference shares might be, the co. treated the 20,000*l.* capital represented thereby as extinguished, and in 1877 subdivided what it considered as its capital (400,000*l.* only) into 40,000 shares of 10*l.* each. In 1881 the co. was registered for the first time as a limited co. under the Companies Act, 1862. The capital was then treated as being 300,000*l.* only (the

COMPANY (Reduction of Capital)—continued.

400 redeemed preference shares and the unissued ordinary shares being ignored), and this was increased on registration to 600,000*l.* by turning the 20,000 issued and fully-paid ordinary shares of 10*l.* each and the 10,000 unredeemed preference shares of 10*l.* each (1*l.* paid up) into shares of 20*l.* each, the extra 10*l.* on each of these 30,000 shares being incapable of being called up except in the event of and for the purpose of the co. being wound up. The capital was, however, stated in the returns as being 720,000*l.* In 1902 Byrne J. made an order sanctioning the substitution of a memorandum and articles of association for the co.'s deed of settlement and certain supplementary deeds, and the articles showed that the 720,000*l.* capital consisted in part of the 400 paid off preference shares, and stated that they had been redeemed and had not been re-issued. Subsequently the co. paid off the whole of a heavy debenture debt, and had a large surplus after making allowance for all its trade debts and for a return of all its paid-up capital. Under these circumstances the co. petitioned for the confirmation by the Court of special resolutions, passed by the shareholders, for reduction of the capital (a) by reducing the nominal amount of the 30,000 issued preference and ordinary shares from 20*l.* to 10*l.* each, and extinguishing the liability in respect of each of these shares of the 10*l.* per share which could only be called up in the event of and for the purpose of a winding up; and (b) by cancelling the 20,000*l.* capital represented by the 400 redeemed preference shares.

Warrington J. made an order confirming the reduction of capital to the extent prayed for—viz., by extinguishing the liability of 10*l.* per share (accruing in case of winding up only) on the 30,000 issued preference and ordinary shares, and by cancelling the 400 redeemed preference shares. As the co. had used the words "and reduced" as part of its name, he dispensed with any further use of those words. *In re MIDLAND RAILWAY CARRIAGE AND WAGON CO., LD., AND REDUCED*

Warrington J.
[1907] W. N. 175

18. — Publication of reasons—Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), s. 55.

Owing to a recent fall in the value of licensed properties a brewery co. that had always had a credit balance to profit and loss and paid dividends found itself compelled to reduce its capital by a very large amount.

In sanctioning the reduction the Court ordered the co. to publish a short memorandum of the reasons for the reduction and the causes which led to it for the information of the public under s. 55 of the Companies (Consolidation) Act, 1908. *In re TRUMAN, HANBURY, BUXTON & CO., LD.*

Swinfen Eady J. [1910] W. N. 200;
[1910] 2 Ch. 498

19. — Sanction of Court — Lost capital — Reserve — Apportionment of loss — Companies Act, 1877 (40 & 41 Viet. c. 26), s. 3.

Under the Companies Act, 1877, the capital of a co. may be reduced if any capital (1.) has

COMPANY (Reduction of Capital) —continued.

been lost, or (2.) is unrepresented by available assets.

The directors of a co. were empowered by the articles of association to create a reserve fund out of the profits of the co. for such purposes as they should think conducive to the interests of the co., and to employ the reserve fund in the business of the co. without being bound to keep the same separate from the other assets. The co. had built up a reserve composed partly of premiums received for leases, partly of premiums received on the issue of preference shares, and partly of ordinary business profits. The reserve was used in the co.'s business, and was not kept separately invested. The co. had incurred a loss arising from the depreciation in the value of its public-houses below the amount stated in the co.'s balance-sheet. The co. accordingly applied for the sanction of the Court to a scheme for reduction of capital whereby the co., while retaining a small portion of the reserve, attributed to the reserve more than its rateable proportion, and to the capital account less than its rateable proportion, of the loss:—

Held (reversing the decision of Buckley J.), that, the reserve having been properly created out of profits, in ascertaining the amount of capital lost, the loss of assets ought to be treated as rateably apportioned between the reserve and the capital account, and that, in the absence of special circumstances, the co. in proposing a scheme for reduction of capital was not bound to wipe out the whole of the reserve, or to attribute to it more than its due proportion of the loss though it might do so if it chose; and the Court sanctioned the scheme.

The decision of Cozens-Hardy J. in *In re Barrow Hematite Steel Co.*, [1900] 2 Ch. 846, explained. *In re HOARE & CO., LD. AND REDUCED* C. A. [1904] W. N. 123;
[1904] 2 Ch. 208

Note.

See *In re Hoare & Co., Ltd. and Reduced*, Neville, J. [1910] W. N. 87. See No. 7, above.

20. — Scheme—Illegality — Nominal reduction—Actual increase—Issue of capital at a discount.

A co. passed a resolution to reduce its capital by cancelling a class of 1*l.* deferred shares in the nature of founders' shares upon the terms of an agreement that the deferred shareholders should consent to the cancellation, and, as soon as the reduction was confirmed, the capital should be increased, and each deferred shareholder should receive 100 *l.* ordinary shares, part thereof, in exchange for each 1*l.* deferred share. The agreement was conditional on the co. obtaining an order confirming the reduction.

The petition for the confirmatory order was supported by all the shareholders. There were practically no creditors, the only debts being a small sum for current expenses:—

Held, that as the reduction scheme in its entirety really involved an increase of capital, and an issue of part thereof at 99 per cent. discount without any consideration to the co. it was wholly illegal, and the reduction could not be confirmed.

COMPANY (Reduction of Capital)—continued.

British and American Trustee and Finance Corporation v. Cooper, [1894] A. C. 399, distinguished. *In re DEVELOPMENT CO. OF CENTRAL AND WEST AFRICA* — **Swinfen Eady J.**

[1902] W. N. 37; [1902] 1 Ch. 547

21. — *Scheme of arrangement involving reduction of capital—Winding-up (voluntary)—Joint Stock Companies Arrangement Act, 1870* (33 & 34 Vict. c. 104).

Where a scheme of arrangement involves a reduction of capital the reduction should be carried out in accordance with the statutes specially dealing with reduction of capital, and the Court directed the petition to stand over with liberty to amend by intituling it also in the matter of the Companies Acts, 1867 and 1877. The Court also gave liberty to the liquidator to call such meetings of shareholders as he might be advised to call. *In re COOPER, COOPER & JOHNSON, LD.* **Byrne J.** [1902] W. N. 199

— Special resolution—Confirmation by Court.

See COMPANY—Memorandum. 2.

— Trustees—Investment—Breach of trust.

See TRUSTEE—Investments. 2.

Register.

1. — *Copies, Right to take—Register of members—Inspection—Companies Act, 1862* (25 & 26 Vict. c. 89), s. 32.

The right conferred by s. 32 of the Companies Act, 1862, to inspect the register of members of a co. under that Act, does not carry with it the right to take extracts from or to make copies of the entries in the register.

Boord v. African Consolidated Land and Trading Co., [1898] 1 Ch. 596, overruled. *In re BALAGHAT GOLD MINING CO.*

C. A. [1901] 2 K. B. 665

— Debentures—Registration.

See under COMPANY—Debentures.

2. — *Ratification—Register of debentures—Practice—Companies Act, 1899* (63 & 64 Vict. c. 48), ss. 14, 15.

Motion, *ex parte*, for leave to file the co.'s debentures with the Registrar of Joint Stock Companies, notwithstanding the twenty-one days within which the same should have been done under s. 14 of the Companies Act, 1900, had expired. It appeared that the matter had not been assigned to any judge.

Farwell J. : The motion of summons should be assigned by ballot to a particular judge by an application to the Central Office in the usual way. The present application must stand over until that has been done, and the affidavit will have to be re-sworn. *In re LEGAL AND GENERAL INVESTMENT CO.* **Farwell J.** [1901] W. N. 72

3. — *Rectification—Transfer—Name of partnership firm—"Person"—Companies (Consolidation) Act, 1908* (8 Edw. 7, c. 69), s. 32.

Motion by Thomas Blair and William Blair Girling (who carried on business as solicitors in partnership), asking that the register of members of this co. might be rectified by entering their names thereon in respect of 250 fully paid shares in the capital of the co. now

COMPANY (Register)—continued.

registered in the name of Mrs. Cook-on. The applicants were the holders of a transfer of the shares in question from Mrs. Cookson. The transferees were expressed upon the face of the transfer to be Messrs. Blair & W. B. Girling, and it purported to be executed by "Blair & W. B. Girling" (the firm name) as transferees. The co. had refused to register the transfer on the ground that they were not bound to enter the name of a firm on the register, except by naming the members.

Joyce J. said that the application failed upon the short ground that the applicants' firm was not a "person." A firm was not a "person" nor a legal entity at all. He referred to Palmer's Company Law (6th ed.), p. 1, and to the observations of Farwell L.J. in *Sadler v. Whiteman*, [1910] 1 K. B. 868, at p. 889, and said that in English law a firm was not a "person." If the applicants were right in their contention that "Smith & Co." might be registered, and if so, why not a cricket club? The application failed. *In re VAGLIANO ANTHRACITE COLLIERIES, LD.* **Joyce J.** [1910] W. N. 187

4. — *Restoration of name to register, Petition for—Jurisdiction—Companies Act, 1880*, (43 & 44 Vict. c. 19).

Petition praying that the name of the above co. might be restored to the register of joint stock cos.

The Board of Trade stated that in a similar case Buckley J. had entertained some doubt whether the application ought not to be made to Wright J. as being the judge to whom co. business is assigned. Other judges of the Ch. Div. had, however, previously made orders on similar petitions.

Kekewich J. made the order. *In re CHACO (PARAGUAY) LAND CO.*

Kekewich J. [1901] W. N. 124

— Shares.

See under COMPANY—Shares.

Register of Members.

1. — *Rectification—Deceased member—Executors, whether to be described as such in register—Order of entry of names—Companies Act, 1862* (25 & 26 Vict. c. 89), ss. 25, 30, 35.

The articles of association of a co. provided (art. 13) that the co. should not be bound by nor recognize any equitable, contingent, future, or partial interest in any share, nor (except only as by its regulations otherwise expressly provided) any right or trust in respect of a share other than an absolute right thereto in accordance with its regulations, in the persons from time to time registered as the holders thereof; (art. 14) that every member should be entitled to a certificate under the seal of the co. specifying the share or shares held by him, and the amount paid up thereon; (art. 24) that the executors or administrators of a deceased member, not being one of several joint owners, should be the only persons recognized by the co. as having any title to his share or shares; (art. 25) that any person becoming entitled to a share in consequence of the death of any member, or by any lawful means other than by

COMPANY (Register of Members) —continued.

an ordinary transfer, might be registered as a member upon such evidence of title being produced as might from time to time be required by the directors; and (art. 26) that any person who had become entitled to a share in consequence of the death of any member might, instead of being registered himself, elect to have some person, to be named by him, registered as a transferee of such shares.

M. was the registered holder of shares of the co. Upon his death his executors requested the co. to register them as members in respect of the shares formerly held by him. The co. refused to register the executors in the co.'s books otherwise than in their representative capacity and as being the parties entitled to legally transfer the shares held by the deceased. On an application by the executors to rectify the register:—

Held, that applicants were entitled to have their names entered on the co.'s register, without any statement that they held the shares in a representative capacity, and to have them inserted in such order as they chose. *In re T. H. SAUNDERS & Co. - Warrington J. [1908] W. N. 29; [1908] 1 Ch. 415*

2. — Rectification of register — Numerous shareholders—Ex parte application—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 35.

Application made by the co. by originating motion, ex parte, asking that the register of members might be rectified by removing therefrom the names of 1026 persons named in the schedule to the notice in respect of about 48,000 shares in the co., on the ground that they had been induced to take the shares by misrepresentations contained in a prospectus issued by the co.

Buckley J. made an order that the register of members of the co. should be rectified by removing therefrom the names of the persons stated in the schedule in respect of the shares respectively held by them, and that the co. should pay to such shareholders respectively the sums paid by them to the co. in respect of their shares, except in those cases in which it appeared by the evidence that such sums had already been paid. The order to lie in the registrar's office for three weeks, and notice in writing to be sent personally or by post to each of the several shareholders, such notice to state that an order had been made rectifying the register by striking his name out and for payment (when payment ordered) of the amount (naming it) ordered to be paid to him, and that such order was not to be delivered out of the registrar's office for three weeks from the date thereof, and that in the meantime he was at liberty to apply to the Court in case he objected to the same—with liberty to apply. *In re LONDON ELECTRO-BUS Co. - Buckley J. [1906] W. N. 147*

Registration.

— Debentures.

See under COMPANY—Debentures.

— Fees—Preliminary expenses—Payment by promoter.

See COMPANY—Costs. 2.

— Mortgages.

See under COMPANY—Mortgages.

COMPANY (Registration) —continued.

— Shares.

See under COMPANY—Shares.

— Trade mark.

See under TRADE MARK.

Resolution.

— Directors—Powers—Resolution by a simple majority of shareholders for sale of undertaking—Refusal of directors.

See COMPANY—Directors. 14.

— Directors—Purchase—Effect of resolution by insufficient quorum.

See CANADA—Company. 1.

— Return of Capital.

See under COMPANY — Return of Capital.

Return of Capital.

1. — Return of capital—Income or capital—Tenant for life and remainderman — Special resolution—Retrospective and prospective effect — Companies Act, 1880 (43 Vict. c. 19), ss. 3, 4, 5.

A testator gave his residuary real and personal estate to trustees upon trust for certain persons for life, with remainders over. His estate comprised fully-paid shares in the S. Co. In each year from 1894 to 1896, the company returned to its shareholders out of profits available for dividends a part of the capital paid up on their shares, increasing the unpaid capital by the same amount. These returns purported to be made under the Companies Act, 1880, but no special resolution was passed until 1905. In that year a special resolution was passed that 7s. 6d. per share should be so returned in that year, that all similar returns in past years should be confirmed and that the directors should be authorized to make similar returns in the future:—

Held, that the special resolution was invalid so far as it purported to have a retrospective or prospective effect, and valid only so far as concerned the return made in 1905; and that the rule to be inferred from *Bouch v. Sproule*, (1887) 12 App. Cas. 385, and other cases is that a tenant for life is entitled to all payments made out of profits in respect of shares in a co. except such as have been validly capitalized by the co. All the returns except the 7s. 6d. per share in 1905 were therefore payable as income to the tenants for life. *In re PIERCY. WHITWHAM v. PIERCY*

Neville J. [1906] W. N. 227; [1907] 1 Ch. 289

2. — Return of capital to be called up again—Some shares fully paid—Return on fully-paid shares only—Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69) s. 40, sub-s. 1.

The deft. co. had an issued capital of 40,000 preference shares of 5l. each fully paid and 60,000 ordinary shares of 5l. each, of which 6047 were fully paid and the residue were only paid to the extent of 1l. a share. By the articles of association dividends were paid in proportion to the amount paid up on the shares. The co. had paid dividends of 10 per cent. on the amounts paid up on the ordinary shares and had accumulated a very large reserve fund consisting

COMPANY (Return of Capital)—continued.

of undivided profits. A special resolution was duly passed and confirmed "That out of the accumulated profits of the company the sum of 4*l.* per share be paid to the holders of 6047 fully paid ordinary shares of the company by way of reduction of capital pursuant to s. 40 of the Companies (Consolidation) Act, 1908":—

Held, that that section could not be construed as only authorizing the return of capital to the whole class of shareholders among whom the accumulated profits were divisible, and therefore the resolution was not ultra vires. **NEALE v. CITY OF BIRMINGHAM TRAMWAYS Co.** **Swinfen Eady J.** [1910] **W. N.** 175; [1910] 2 **Ch.** 464

Sale.

— Directors—Management—Resolution of shareholders for sale of undertaking.
See **COMPANY—Directors.** 14.

— Property in jeopardy—Immediate sale—Form of order.
See **COMPANY—Debentures.** 22.

Satisfaction.

Companies Act, 1900—Memorandum of satisfaction of mortgage or charge. Reprint from W. N. 1906 (March 10), p. 69. See **CURRENT INDEX, 1906, p. lxvii.**

Secretary.

1. — *Bill of exchange—Dishonour—Notice—Person acting as secretary of two companies—Knowledge in one character—Presumption of notice in other character—Bills of Exchange Act, 1882 (45 & 46 Vict. c. 61), ss. 48, 49, 50, sub-s. 2 (b).*

Where a man acts as secretary of two cos., it is not true as a general proposition that a fact which comes to his knowledge as secretary of one co. is notice to him as secretary of the other co. from the mere existence of the common relationship. In order to make it notice, it must be shewn that it was his duty to the first co. to communicate his knowledge to the second co. *In re* **FENWICK, STOBART & Co., LD.** **DEEP SEA FISHERY Co.'s (LD.) CLAIM - Buckley J.** [1902] **W. N.** 33; [1902] 1 **Ch.** 507

2. — *Principal and agent—Representations—Shares—Certification of transfer—Estoppel.*

In permitting its secretary to certify transfers of shares, a co. does not authorize the secretary to do more than give a receipt for certificates of shares which are actually lodged in the office. If the secretary gives a receipt or an acknowledgment for certificates which have not been lodged, the co. is not estopped from setting up the true facts.

Transfers of shares in a co. having been lodged with the co.'s secretary without the certificates for the shares, the secretary fraudulently certified upon the transfers that the certificates for the shares were in the co.'s office. The proposed transferee having brought an action against the co. for refusing to register him as the owner:—

Held (Lord Robertson doubting), that the co. was not estopped from shewing that the proposed

COMPANY (Secretary)—continued.

transferor had no shares to transfer, and that the action would not lie.

Grant v. Norway, (1851) 10 **C. B.** 665, approved.

Observations upon the doctrine of estoppel by representation. **GEORGE WHITECHURCH, LD. v. CAVANAGH** **H. L. (E.)** [1902] **A. C.** 117

Note.

Applied by Swinfen Eady J., *Porter v. Moore*. [1904] 2 **Ch.** 367. *Estoppel.* 5.

— Receipt—Authority to bind company.

See **COMPANY—Shares.** 4.

— Share certificate fraudulently issued by secretary—Forgery—Estoppel.

See **COMPANY—Forgery.** 2.

Servants.

— Libel by servant of corporation—Liability of company for malicious libel.
See **NEW SOUTH WALES.** 1.

— Secretary.

See under **COMPANY—Secretary.**

3. — *Voluntary liquidation—Agreement of service—Resolution to wind up—Dismissal of servant—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 131.*

A resolution for the voluntary winding-up of a limited co. does not operate as a notice of discharge to the servants of the co.

Sheriff's Case, (1872) **L. R.** 14 **Eq.** 417, examined and distinguished on this point. **MIDLAND COUNTIES DISTRICT BANK, LD. v. ATTWOOD** **Warrington J.** [1905] **W. N.** 6; [1905] 1 **Ch.** 357

Shares.**(Shareholders and Shares).**

1. — *Action to rescind contract for shares—Unpaid calls—Notice to forfeit shares—Interim injunction restraining forfeiture.*

On Mar. 31, 1910, the plt. applied for 100 shares in the deft. co. upon the faith of the representations set out in a prospectus issued by the deft. co. on Mar. 24, 1910. On April 2 80 shares of 1*l.* each were allotted to him, in respect of which he paid 60*l.* On Aug. 17 he gave notice to the co. rescinding his contract to take the shares on the ground of misrepresentation in the prospectus. On Oct. 4 the co. sent to the shareholders, including the plt., notice requiring them to pay the balance due upon their shares. On Oct. 8 the plt. issued a writ against the co. claiming (inter alia) (1.) a declaration that the plt. was induced to take the shares by misrepresentations and non-disclosure of material facts: (2.) rescission of the contract to take the shares, and (3.) repayment of the amount paid for the shares with interest. On Nov. 1 the deft. co. gave notice to the plt. that if the unpaid call on his shares was not paid by Nov. 17 the shares would be liable to be forfeited.

On Nov. 7 the plt. applied to Lush J. at chambers for an injunction restraining the deft. co. from making any call in respect of the shares registered in the plt.'s name, and also from

COMPANY (Shares)—continued.

forfeiting the shares pending the trial of this action. Lush J. dismissed the application.

The Court (Buckley L.J. and Kennedy L.J.) allowed the appeal and granted the injunction asked for, the plt. consenting to pay the money into Court.

Buckley L.J. stated that he did not agree with the view expressed by Chitty J. in *Ripley v. Paper Bottle Co.*, (1887) 57 L. J. (Ch.) 327, *JONES v. PACAYA RUBBER AND PRODUCE CO., LD.* **C. A. [1910] W. N. 257**

2. — Action to rescind contract for shares—Unpaid calls—Notice to forfeit shares—Interim injunction restraining forfeiture—Payment into Court—Practice.

Where in an action to rescind a contract to take shares the co. have given notice to forfeit the shares for non-payment of calls, the Court will, on the plt. giving the usual undertaking in damages and paying into Court the amount of the call with interest, restrain the co. from forfeiting the shares until the trial of the action.

Ripley v. Paper Bottle Co., (1887) 57 L. J. (Ch.) 327, not followed. **LAMB v. SAMBAS RUBBER AND GUTTA PERCHA CO., LD.**

Neville J. [1908] W. N. 83 ; [1908] 1 Ch. 845

— Allotment.

See under **COMPANY—Allotment.**

3. — Bankruptcy of member—Claim to lien under articles for bankrupt's liabilities to company—Trustee's right to registration and share certificate not referring to claim—Rectification of register—Companies Act, 1862 (25 & 26 Vict. c. 89), ss. 25, 30, 35 ; Sched. I, Table A, clauses 2, 13.

Where a shareholder of a co. becomes bankrupt and the transmission clause in its articles of association is in the form of clause 13 of Table A in the 1st schedule to the Companies Act, 1862, the trustee is entitled to be registered in respect of and to have a certificate of the shares, and the co. has no right to enter in the register of members or in his certificate any statement as to the co.'s claim under its articles to a lien on the shares for the liabilities of the bankrupt to the co.

The right of the trustee to clean registration may be enforced by motion for rectification of the register under s. 35 of the Act of 1862. *In re W. KEY & SON, LD.* **Byrne J. [1902] W. N. 16 ; [1902] 1 Ch. 467**

— Bankruptcy of shareholder—Proof in bankruptcy for liability in respect of future calls.

See **COMPANY—Bankruptcy. 2.**

— Building society share certificates—Evidence—Delivery.

See **DONATIO MORTIS CAUSA. 1.**

4. — Certificate of shares—Negotiable instrument—Title, Prima facie evidence of—Stock Exchange—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 31—Transfer—Certification—Return of certificate to transferor—Mistake by company's secretary—Fraud of transferor—Second transferee—Loss, Proximate cause of—Safe custody of

COMPANY (Shares)—continued.

documents of title—Duty to the public—Negligence—Liability of company—Duty of company towards third parties—Alteration of position induced by conduct—Estoppel—Secretary—Receipt—Authority to bind company.

If a co., having a certificate of shares in its possession, certificates a transfer of those shares to a proposing transferee, no duty is thrown on the co. with regard to the custody of the certificate, towards any person other than the proposing transferee, or any person claiming through him.

A share certificate is, under s. 31 of the Companies Act, 1862, prima facie evidence only of the title of the registered holder of the shares specified therein : it is not a negotiable instrument, nor is it a warranty of title on the part of the co. issuing it. If the co., having had a certificate lodged with it together with the transfer for certification, subsequently returns the certificate to the transferor in error (for instance, by a mistake on the part of the secretary), and so enables the transferor fraudulently to deal afresh with the shares comprised therein and to obtain an advance thereon from a person ignorant of the circumstances under which the certificate had come to the hands of the transferor, that person cannot maintain against the co. an action to recover the loss sustained by the fraud of the transferor on the ground that the co. was bound to have retained the certificate when lodged ; for the co. owes no duty of safe custody to the public at large.

To entitle a plt. to recover from a deft., on the ground of estoppel, a loss occasioned through culpable neglect on the part of the deft., the plt. must prove that the negligence complained of occurred in the particular transaction in which his loss arose, and also that such negligence was the proximate, direct, or real cause of the loss.

The secretary of a co. does not, when giving a transferee of shares the usual receipt for the transfer upon its being lodged for registration, thereby bind the co. either to recognize the transferee's title to the shares or to issue the corresponding share certificate.

Decision of Farwell J. affirmed. **LONGMAN v. BATH ELECTRIC TRAMWAYS, LD.**

C. A. [1905] W. N. 55 ; [1905] 1 Ch. 646

5. — Certificate that shares fully paid—Estoppel—Partnership—One of the partners a director who signed certificate—Notice—Company—Winding-up.

Coasters, Ltd., was a company incorporated on Nov. 11, 1907. Very soon after that date the co., through Savill, who was a promoter and a director of the co., entered into negotiation with the firm of C. K. & Co. for the purchase of a ship. It was first agreed that the co. should buy the ship for 1500*l.*, of which 1000*l.* should be paid in fully-paid shares in the co. This contract was afterwards modified by an agreement that C. K. & Co. should mortgage the ship for 1000*l.* and pay this sum to the co., for fully-paid shares, and then sell the ship to the co., subject to the mortgage, for 500*l.* This scheme was carried out, and the firm mortgaged the ship for 1000*l.*

COMPANY (Shares) continued.

and handed the mortgagee's cheque for that sum to the co. intending it to be in payment for 1000 fully paid-up shares. No formal application for these shares was made by the firm. Ellis, a promoter of the co., who was at this time acting as secretary, paid the cheque into the co.'s banking account as if paid in by an officer of the co., and the sum was entered in the co.'s books as paid by Ellis as 5s. per share application money on 4000 shares applied for by him. Neither the firm nor either of the partners had any knowledge of or had given any authority for this application of the money. On Dec. 10, 1907, a meeting of directors was held at which 4000 shares, numbered 791 to 4790 inclusive, were allotted to Ellis, and these were entered in the register in his name as paid to the amount of 5s. only. K. was appointed a director of the co. on Feb. 6, 1908.

On June 12, 1908, a certificate was issued to the firm stating that C. K. & Co. was the registered proprietor of 1000 fully paid ordinary shares of 1*l.* each, numbered 891 to 1,890 inclusive in the co. This certificate was signed by two directors, of whom K. was one. In the same month a transfer of the shares so numbered was executed by Ellis to C. K. & Co. and accepted by K. No demand was made on the firm for calls which were made, but the shares remained in the register as having 5s. only paid. The co. was wound up compulsorily on Feb. 7, 1909, and the liquidator put C. K. & Co. on the list of contributors for 15s. on each of their shares. This was a summons by that firm to have their names removed.

Held, that in fact K. had at the time he signed the certificate no knowledge of the transaction, except that his firm had paid 1000*l.* and expected 1000 fully-paid shares; that his position as director did not affect either his firm or himself with constructive notice of what was in the books of the co., so as to prevent their relying on the estoppel set up by the certificate against the co., that the transfer of the shares did not really affect the fact that the co. had certified the shares identified by these numbers to be fully paid. The estoppel therefore prevailed, and the firm's name must be removed from the list. *In re COASTERS, LD.*

Neville J. [1910] W. N. 235

6. — Commission—Issue of shares—Payment of commission in consideration of subscribing for shares—Money derived from issue of shares—Premiums—"Capital money"—Companies Act, 1900 (63 & 64 Vict. c. 48), s. 8.

Action by the plt. for a declaration that he was entitled to and for payment of a moiety of a certain commission, which he claimed was payable by the deft., the Pneumatic Piston Tyre Co., to the deft. Colwill, under a contract for commission between the co. and Colwill. The plt. alleged, and as the Court held proved, that it was agreed between the plt. and Colwill that this commission should be divided between them in equal shares.

The question was then raised whether, having regard to the provision of s. 8 of the Companies Act, 1900, the Court could, in the circumstances

COMPANY (Shares)—continued.

following, make an order on the co. to pay the commission.

Warrington J. said that the result of the whole transaction was that, instead of the co. paying cash to Colwill, it was to issue shares to him, and the question was whether that was legal. That depended on the true construction of s. 8 of the Companies Act, 1900. The section contained two provisions, one an enabling provision and the other a disabling provision. Taking first the enabling part of the section (sub-s. 1), did the present transaction come within that? In his judgment it did not, because there was no "offer of shares to the public for subscription." What the co. did was to give to an individual an option to take up 4000 shares. There was no invitation by the co. to the public. The co. gave to an individual—the co. knowing it, might be, that he would get the money from others—the option of taking up certain shares. Further, in his Lordship's opinion, that section, from the terms in which it was framed, by "any offer of shares to the public for subscription," meant an offer contained in some form of advertisement or intimation to the public generally—through an issue by the co. of something which would come within the definition of a "prospectus" as defined in s. 30—namely, "prospectus, notice, circular, advertisement, or other invitation offering for subscription or purchase any shares or debentures of a co." Unless there was some such thing as was meant by the use of the words "the prospectus," there was no offer to the public within the meaning of the section. The section did not mean that its requirements would be complied with if the commission was stated in the "prospectus," using that word as equivalent to "prospectus" if any. The section contemplated that for the purpose of enabling a co. to pay a commission there should be some document, something which contained an offer to the public of shares, and there being none in the present case, the enabling provision of the section did not apply. Moreover, it might be said that without that enabling provision, having regard to the provision in the memorandum of association, it would be lawful for the co. to pay this commission if not otherwise prevented. His Lordship was not prepared to say that it was so, because he doubted very much whether such a commission as the present would be a proper one for the co. to pay without the special authorization given to it by sub-s. 1. But assuming that but for the disabling sub-section it would be lawful for the co. to pay it, then came the disabling provision (sub-s. 2), and the question was whether the facts brought the present case within the prohibition of that sub-section. Having regard to the facts he had stated, if the Court were to make an order on the co., it could only be an order to issue 1000 shares, 500 to Colwill and 500 to the plt., which would be directing the co. to apply its shares in payment of commission, which was the very thing the section said the co. should not do. That alone would seem to be a sufficient answer to the plt.'s action. But his Lordship would go further, and say that, in his view, even if the commission

COMPANY (Shares) - continued.

was being paid in cash, if it were paid out of the money received by the co. on the issue of those shares, it would be paid out of money which was referred to in the section as "capital money." In that view he was supported by Lord Davey's remarks in *Hilder v. Dexter*, [1902] A. C. 474. In the present case the co. could not have paid the commission in cash except out of money paid by Drew for his shares. If it was paid out of that money that would be paying commission out of money derived from the issue of shares. That was not allowed, having regard to the prohibitive sub-section. But it was unnecessary for his Lordship to go as far as that, because here the fact was that it had not been convenient to the co. to pay the commission in cash, and so it had agreed to pay it in shares instead of cash, and, in paying shares instead of cash, it would be "applying shares in payment of commission." There must be judgment for debts. **SHORTO v. COLWILL** **Warrington J. [1909] W. N. 218**

7. — *Commission—Issue of shares—Payment of commission in consideration of subscribing for shares—Option of subscribers to take further shares—Companies Act, 1900 (63 & 64 Vict. c. 48), s. 8, sub-s. 2.*

To raise working capital a co. offered shares at par to the appellant and some other persons with an option to take further shares at par within a certain time. The appellant subscribed for shares, and, the market price having risen to a premium, desired to take up the further shares :—

Held, reversing the decision of the C. A., that this was not an application of shares or capital money directly or indirectly in payment of commission, discount, or allowance within the meaning of the Companies Act, 1900, s. 8, sub-s. 2, and (the transaction being otherwise unobjectionable) that the appellant was entitled to exercise the option.

Burrows v. Matabele Gold Reefs and Estates Co. Ltd., [1901] 2 Ch. 23, in effect overruled. **HILDER v. DEXTER, H. L. (E.) [1902] W. N. 156; [1902] A. C. 474**

Note.

Referred to by *Warrington J.*, *Shorto v. Colwill*, [1909] W. N. 218. See preceding Case. *Company—Commission. 1.*

8. — *Commission—Issue of Shares at discount—Companies Act, 1900 (63 & 64 Vict. c. 48), s. 8.*

A co. passed a resolution altering their articles of association by providing that it should be lawful for the co. to pay a "commission" to any person in consideration of his subscribing for shares, but such "commission" should not exceed the amount or rate of 90 per cent. In submitting this resolution to the meeting the chairman stated that it was proposed to issue 120,000 shares "at a price which will be equivalent to 3s. per share, a little more than the market price to-day—that is to say, the shares will be issued at par and a bonus returned to each applicant at 70 per cent. of the par value, leaving, as I said, a net value of 3s. per share. It is further proposed to guarantee half of this issue, and this will ensure to us 90000l., and a net

COMPANY (Shares) - continued.

sum, after paying the commission of 10 per cent. on that issue, of 81000l." An action was brought on behalf of shareholders, and the Court was moved for an injunction to restrain the co. and its directors from issuing or attempting to issue any of its shares upon the terms of paying the subscribers a commission at the rate of 90 per cent., or at any other unreasonable rate, or on any other terms of payment colourably amounting to payment or allowance of a discount :—

Held, that what was proposed was in fact the issue of shares at a discount. The Act of 1900 authorized the payment of a commission, and there was no reason why a co. should not pay a man 90l. for taking a 100l. share. But the Act did not authorize the issuing of shares at a discount, which remained as illegal as it ever was. All the facts of the case, and in particular the fact that a genuine commission of 10 per cent. was to be paid, shewed that this was a colourable attempt to issue shares at a discount. Injunction granted. **KEATINGE v. PARINGA CONSOLIDATED MINES, LD. Kekewich J. [1902] W. N. 15**

— *Commission, Payment of—Offer of shares to public—Ultra vires—Injunction—Sale—Shares—Underwriting.*

See **COMPANY—Reconstruction. 9.**

— *Company—Reconstruction.*

See under **COMPANY—Reconstruction.**

— *Contributory.*

See Cases under **COMPANY—WINDING-UP—Contributory.**

— *Dividends—Company's articles—Express stipulation against apportionment.*

See **APPORTIONMENT. 1.**

9. — *Equitable mortgage—Pledge—Deposit of certificate—Foreclosure.*

Where a certificate of shares is deposited as security for a debt and interest without a transfer or memorandum, the remedy of the lender against the shares is an order for transfer and foreclosure. **HARROLD v. PLENTY**

Gozens-Hardy J. [1901] W. N. 119; [1901] 2 Ch. 314

10. — *Equitable title—Right to registration—Conflicting equities—Priority—Negligence—Possession of certificates—Distraints—Lien.*

The owner of all his property to the plts. as trustees for his creditors. The plts. applied to the debtor for the certificates of the shares, but were unable to obtain them, whereupon they gave notice to the co. of the assignment. The debtor afterwards through his brokers, C. & Co., sold the shares on the Stock Exchange, executed a transfer, and received the purchase-money. The co., notwithstanding the notice, entered the purchaser's name on the register as holder of the shares, but subsequently removed her name from the register and refused to issue certificates. At the request of the purchaser C. & Co. provided her with other shares in the co., and then claimed to be entitled to the shares sold on behalf of the debtor. In an action by the plts. for a declaration that they were entitled to the shares :—

Held, that any lien which C. & Co. might have upon the shares was only upon the debtor's

COMPANY (Shares)—continued.

interest, which was subject to the right of the plts.; and that the plts., not having been guilty of any negligence to deprive them of their equity, were entitled to be registered as owners of the shares. *PEAT v. CLAYTON* - *Joyce J.*

[1906] W. N. 40; [1906] 1 Ch. 659

11. — Executors — Production of probate—Transfer to one executor—Nominal consideration—Breach of trust—Notice—Revocation of signature by one transferor—Rectification of register—Registered joint holders — Director — Qualification.

The plt. and others were executors of a shareholder in the deft. co. The co. on production of probate registered them as joint holders of the shares. The plt. was afterwards appointed a director of the co. subject to his acquiring the necessary qualification. The articles of association required each director to be the registered holder of not less than twenty shares. The plt. already held five shares in his own name. The executors executed a transfer of fifteen of the testator's 112 shares to the plt. for a nominal consideration. On the next day one of the transferors wrote to the co. revoking his signature of the transfer and notifying the co. not to register the transfer. The directors of the co. thereupon refused to register the transfer, and subsequently informed the plt. that he had ceased to be a director, not having acquired the necessary qualification within the statutory period, and therefore excluded him from the directors' meetings. In an action by the plt. for an injunction to restrain the directors from excluding him, and for rectification:—

Held, that the notice acquired by the co. by production of probate was limited to a notice of the names and addresses of the persons who had constituted themselves the executors of the testator, and the co. were not justified in gratuitously assuming that the transfer necessarily involved a breach of trust and, in the absence of any specific reason for the withdrawal of the signature, in refusing indefinitely to register the transfer; and that the register must be rectified by the registration of the transfer.

Held, further, that the plt. was qualified to be a director of the co. by virtue of his registration as a joint holder of the testator's shares.

In re Glory Paper Mills Co., [1894] 3 Ch. 473, applied. *GRUNDY v. BRIGGS* - *Eve J.*

[1910] W. N. 17; [1910] 1 Ch. 444

— Forfeiture of shares—Alleged irregularities in call and forfeiture—British Columbia Companies Acts, 1890, 1892.
See CANADA—Company. 2.

12. — Forfeiture of shares—Rescission of forfeiture Articles of association.

The articles of association of a co. provided that on non-payment of a call on shares the directors might forfeit the shares; that the forfeited shares should be the property of the co.; that before the shares were disposed of the directors might "annul the forfeiture" upon such conditions as they thought fit; and that notwithstanding the forfeiture the shareholder

COMPANY (Shares)—continued.

should be liable to pay all calls, interest, and expenses owing in respect of the shares at the time of forfeiture.

The directors passed a resolution forfeiting the shares of L. for non-payment of a call, and gave him notice of the forfeiture. On demand L. paid the call, interest, and expenses, and at the same time wrote that he repudiated any further liability on the shares.

Nine months afterwards the directors passed a resolution purporting to rescind the forfeiture and giving notice to L. that he was registered in respect of the shares. L. replied declining to have his name reinstated as owner of the shares.

Held, that the co. had no power adversely to L. to reinstate him with the liability of a shareholder. *In re EXCHANGE TRUST, LD. LARK-WORTHY'S CASE.*

Buckley J. [1903] W. N. 33; [1903] 1 Ch. 711

— Forgery—Share certificate fraudulently issued by secretary—Estoppel.

See COMPANY—Forgery. 2.

— Forgery—Share certificate issued by secretary—Principal and agent—Scope of authority.

See COMPANY—Forgery. 2.

— Income tax—Company resident in United Kingdom — Holding all the shares in company abroad—Control.

See REVENUE—Income Tax. 16.

13. — Issue of shares—Option to subscribers to take further shares—Commission—Companies Act, 1900 (63 & 64 Vict. c. 48), s. 8, sub-s. 2.

The Court dismissed the appeal upon the ground that the case was covered by the decision of the C. A. in *Burrows v. Matabele Gold Reefs and Estates Co.*, [1901] 2 Ch. 23.

Decision of *Byrne J.*, [1901] W. N. 152, affirmed. *DEXTER v. UNITED GOLD COAST MINING PROPERTIES, LD.*

C. A. [1901] W. N. 157

Note.

But see Hilder v. Dexter. H. L. (E.) [1902] A. C. 474, No. 7, above.

14. — Issue of shares—Payment of commission for placing shares—Underwriting agreement—Option to underwriters to take other shares—Companies Act, 1900 (63 & 64 Vict. c. 48), s. 8.

A co., proposing to issue 80,000 unissued 1l. shares, offered them to the existing shareholders at the price of 2l. 10s. per share. The co. also entered into an agreement with some persons who thereby agreed to underwrite or guarantee the subscription for 60,000 of the 80,000 shares at the issue price, in consideration of an option given to the underwriters to subscribe for and have allotted to them 15,000 other unissued shares of the co. at the price of 2l. 10s. per share. At this time the market price of the co.'s shares exceeded 2l. 10s. The co.'s articles of association authorized the payment of commission for obtaining application for or placing shares, but did not, as required by sub-s. 1 of s. 8 of the Companies Act, 1900, mention any amount or rate per cent. of commission:—

Held, that this agreement involved an

COMPANY (Shares) continued.

application of 15,000 shares in payment of commission for subscribing or agreeing to subscribe for shares of the co., within the meaning of sub-s. 2 of s. 8, and was therefore invalid under that sub-section.

An injunction was accordingly granted, at the instance of a shareholder, to restrain the co. from carrying out the agreement.

Decision of Farwell J. affirmed. **BURROWS v. MATABELE GOLD REEFS AND ESTATES CO.**

C. A. [1901] W. N. 68; [1901] 2 Ch. 23

Note.

Followed by **C. A., Dexter v. United Gold Coast Mining Properties, Ltd.**, [1901] W. N. 151; **C. A. [1901] W. N. 157.** See No. 13, above.

In effect, overruled by **H. L. (E.), Hilder v. Dexter**, [1902] A. C. 474. See No. 7, above.

15. — Issue of shares at a discount—Issue of debentures at a discount—Option to debenture-holders to take fully paid shares in exchange for debentures.

A co. proposed to issue to its shareholders debentures at a discount of 20 per cent., repayable on Nov. 1, 1909, upon the terms of a circular whereby the registered holder was to have the right at any time prior to May 1, 1909, to exchange his debentures for fully paid shares in the co. at the rate of one 17. fully paid share for every 17. of the nominal amount of the debentures; and by the conditions of the debentures, in the event of the debenture-holder given to the co. a written demand for shares in exercise of this right, the principal moneys were to become immediately repayable:—

Held (reversing the decision of Buckley J.), that the proposed issue of debentures was void, inasmuch as it was capable of being used as a means of issuing shares at a discount.

Observations of Vaughan Williams L.J. as to paying for shares otherwise than in cash. **MOSELY v. KOFFYFONTEIN MINES, LD.**

C. A. [1904] W. N. 117; [1904] 2 Ch. 108

— Lien on shares — Set-off against debts due from member — Winding-up.

See **INDUSTRIAL AND PROVIDENT SOCIETY**. 5.

— Mortgage of shares — Stipulation that mortgagee shall be employed as broker by the company — Clog on redemption.

See **MORTGAGE—Redemption**. 5.

— Power of sale — Chose in action — Shares in company.

See **MORTGAGE—Sale**. 5.

— Preference shares — Alteration of holders' rights.

See **COMPANY—Memorandum**. 19.

— Preference shares — Articles of association — Questions affecting class of shareholders.

See **COMPANY—Practice**. 5.

— Preference share — Dividend.

See **COMPANY—Dividends**. 5, 6.

— Proxy. Shareholder only to be — Nomination only of unqualified proxy — Disqualification removed before proxy is used.

See **INDIA**. 2.

COMPANY (Shares) continued.

— Qualification shares — Holding shares "in his own right."

See **COMPANY—Directors**.

— Reconstruction of company — Concurrence of trustees — Management — Powers.

See **TRUSTEE—Investments**. 2.

16. — Rectification of register — Form of order — Special circumstances — Direction that company rectify register.

This was an application by the transferor and transferees of shares in the above co. for an order for rectification of the register of shareholders by the removal therefrom of the name of the transferor and the substitution of the names of the transferees in respect of the shares transferred, and that in default of the co. rectifying the register in accordance with the order, within seven days from the date thereof, the applicants themselves might be at liberty to rectify the register in accordance with the order. The circumstances of the case were peculiar. It appeared that disputes had arisen as to the conduct of the co. (which was a small one, with only seven shareholders), and the transfers in question were executed with a view to the acquisition of voting power. Subsequently to the execution of them, all the directors resigned en bloc, and all the co.'s books except the share register were deposited with the co.'s bankers to the order of the new directors when appointed. The secretary of the co. had also resigned, but still retained the register of members in his possession. The consequence was that there was no one having authority to carry out any order which the Court might make for rectification of the register.

Kekewich J. said that the ordinary form of order simply directed "that the register be rectified," but the special circumstances of this case justified him in so far departing from the common form as to make an order directing that the co. should rectify the register within four days from service of the order on them. That would be a mandatory order, and if necessary the applicants could apply to the Court again under Order XLII., r. 30, or otherwise. He declined to make an immediate order in the alternative form proposed by the applicants. *In re L. L. SYNDICATE, LD.*

Kekewich J. [1901] W. N. 164

— Sale and repurchase by broker — Usage of Stock Exchange.

See under **STOCK EXCHANGE**.

17. — Shares paid for otherwise than in cash — Omission to file contract — Relief by Court — Jurisdiction — Form of memorandum to be filed — Companies Act, 1867 (30 & 31 Vict. c. 131), s. 25 — Companies Act, 1898 (61 & 62 Vict. c. 26), s. 1 — Companies Act, 1900 (63 & 64 Vict. c. 48), ss. 33, 36.

Notwithstanding the repeal of s. 25 of the Companies Act, 1867, by s. 53 of the Companies Act, 1900, the Court has, in a case in which no contract as required by s. 25 has been filed with respect to shares issued before the repeal, power under s. 1 of the Companies Act, 1898, to give relief by ordering the filing of a contract or a memorandum in lieu of a contract, which shall

COMPANY (Shares)—continued.

operate in relation to the shares as if a contract had been duly filed before their issue.

Whether, notwithstanding s. 33 of the Act of 1900, s. 25 of the Act of 1867 has not still some operation as regards transactions to which it applied before the commencement of the Act of 1900, *quære*.

Form of memorandum ordered to be filed under s. 1 of the Companies Act, 1898. *In re BRUTTON & BURNEY, LD. In re BURNEY'S NEW CROSS BREWERY CO., LD.*

C. A. [1901] W. N. 37 ; [1901] 1 Ch. 637

18. — Shares paid for otherwise than in cash—Omission to file contract—Signatory to memorandum—Subsequent agreement—Companies Act, 1867 (30 & 31 Vict. c. 131), s. 25—Companies Act, 1898 (61 & 62 Vict. c. 26), s. 1.

Seven persons signed the memorandum of association of a co. formed for carrying on a business, for specified numbers of shares amounting in the aggregate to 750 shares. On Mar. 3, 1893, the co. was incorporated. The total capital consisted of 1000 shares, of which 750 were mentioned in the memorandum, and 118 had been issued and paid for in cash, leaving a balance of 132 shares. The memorandum and articles referred to an agreement between the signatories and the co. for the sale of the business to the co., and this agreement was executed on Mar. 4, 1893. It referred to the 750 shares, and stated that they were to be fully paid shares. On Mar. 22 it was filed under the Companies Acts, and on April 15 the 750 shares were allotted to the signatories. The signatories were advised that they were liable to pay for the 750 shares in cash, and applied to the Court for liberty to file a memorandum stating that the shares were issued to them as part of the consideration for the assignment of the business :—

Held, that the 750 shares must be taken to have been issued at the date of the registration of the co.; that the fact that the shares were identified, in the sense that the parties intended the shares referred to in the agreement and allotted to the subscribers to be the same as those for which they signed the memorandum, was not sufficient to enable the Court to allow a memorandum to be filed; there was no co. in existence at the date of their signature, so there could not then be a contract to pay for these shares otherwise than in cash, and there could not be a subsequent contract for that purpose.

In re F. W. Jarris & Co., Ltd., [1899] 1 Ch. 193, and *In re Archibald D. Davenay, Ltd.*, [1900] W. N. 152, followed.

In re Whitehead & Brothers, [1900] 1 Ch. 804, distinguished, on the ground that in that case all the shares in the co. had been taken by the signatories. *In re EBENEZER TIMMINS & SONS, LD.*

Buckley J. [1901] W. N. 238 ; [1902] 1 Ch. 238

— Subscription obtained by misrepresentation.

See COMPANY — WINDING UP — Contributory. 5.

19. — Surrender of shares — Invalidity — Release of shareholder's liability — Rectification of register — Discretion of Court — Lapse of time — Limited company — Companies Act, 1862 (25 &

COMPANY (Shares) —continued.

26 Vict. c. 89), ss. 26, 35.; *Sched. 1. Table A, clauses 20, 21.*

A surrender of shares in a limited co., the co. releasing the shareholder, from further liability in respect of the shares, is equivalent to a purchase of the shares by the co., and is therefore illegal and null and void on the principle of *Treco v. Whitworth*, (1887) 12 App. Cas. 409.

A surrender of shares which has the effect of reducing the co.'s capital can be supported only under circumstances which would have justified a forfeiture of the shares, the validity of forfeiture being recognized by s. 26 of the Companies Act, 1862, and by Table A to that Act, clauses 20, 21.

Per Stirling L.J. Teasdale's Case, (1873) L. R. 9 Ch. 54, ought not to have been followed in *Eichbaum v. City of Chicago Grain Elevators*, [1891] 3 Ch. 459, inasmuch as the circumstances of the two cases differed in a material point.

Seem, that *Teasdale's Case* has been overruled by *Treco v. Whitworth*.

Per Cozens-Hardy L.J.: A surrender of fully paid shares is unlawful, except under circumstances which would justify a forfeiture.

A surrender of shares which is illegal and null and void having been made, the Court will, in an action by the surrenderor against the co., order the plt.'s name to be restored to the co.'s register in respect of the surrendered shares, even after the lapse of years, the shares not having been meanwhile reissued or otherwise dealt with by the co.

Decision of *Kekewich J.*, [1901] W. N. 111 ; [1901] 2 Ch. 265, on the former point affirmed, and on the latter point reversed. *BELLERBY v. ROWLAND & MARWOOD'S STEAMSHIP CO.*

C. A. [1902] W. N. 93 ; [1902] 2 Ch. 14

20. — Transfer — Blank transfer — Mortgage — Filing in blank by mortgagee — Refusal to register — Implied obligation of transferor not to hinder registration — Derogation from grant — Damages.

Upon a transfer for value of shares in a limited co. the transferor is under an implied obligation, arising from the relation of grantor and grantee constituted between the parties by the transfer, not to prevent or delay the registration of the transferee as owner of the shares.

W. executed a transfer in blank of certain shares of a mining co. of which he was the registered owner, and handed over the blank transfer and the share certificate to H. with authority to raise money upon them for H.'s own use. At H.'s request the plt. obtained from a bank a temporary loan to himself on the security of the blank transfer and share certificate, and paid over the money to H. upon H. undertaking to repay the loan and authorising the transfer of the shares to the bank or their nominee in default of payment. Default having been made in payment by the plt. and by H., who absconded, the bank, with the plt.'s concurrence, filled in the plt.'s name in the blank transfer, and the plt. executed the transfer, under circumstances which precluded W. from asserting that the transfer was unauthorized. The transfer having been lodged at the co.'s

COMPANY (Shares)—continued.

office for registration, W. put a stop on the registration. The shares subsequently fell in value :—

Held, that W. was under an implied obligation to the plt. not to delay registration, and that the plt. as mortgagor had a sufficient interest in the shares to entitle him to claim damages for the breach of that obligation.
HOOPER v. HERTS C. A. [1906] W. N. 38 ; [1906] 1 Ch. 549

21. — Transfer—Insufficient stamp—Refusal to register—Right to go behind that which appears in document—Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 14, sub-s. 4 ; s. 17.

A transfer to the plt. of shares in the deft. co. was presented for registration. The stamp on the transfer was in accordance with the consideration stated on the face of it, but it was discovered that the consideration so stated was less than that which had been given. The directors thereupon refused to register the transfer. In an action to recover damages arising out of the refusal :—

Held, that since a transfer not duly stamped according to law would not, by reason of s. 14, sub-s. 4, of the Stamp Act, 1891, be available in a Court of law either to enforce rights of the co. against the transferee, or to justify an alteration of the register of shareholders, the directors were entitled to refuse to register the transfer, and that in determining whether the transfer was duly stamped they were entitled to go behind that which appeared on the face of the document. **MAYNARD v. CONSOLIDATED KENT COLLIERIES CORPORATION, LD.**

C. A. [1903] 2 K. B. 121

22. — Transfer — Registration — Transfer in blank—Equitable mortgage of shares—Notice—Priority.

On Mar. 4, 1901, I. executed to the deft. H. as security for a loan a transfer in blank of certain shares in a co., which were registered in his name, but which he held as trustee for his wife, the plt. H. had no notice of the plt.'s title to the shares. On Nov. 23, 1901, H., having filled up the blank transfer in his own name, left it, together with the certificate, at the co.'s office for registration. On Nov. 26 the managing director of the co. had an interview with I. with reference to the transfer, the amount of the consideration, as filled in, not appearing to be the full value of the shares, and I. informed him that H. was not entitled to have the shares registered in his name, and requested the co. to delay registration. On Nov. 27 the directors held a meeting at which the managing director stated what had occurred between I. and himself. The transfer was not formally before the meeting, no resolution was passed with reference to it, and it was not registered. On the same day the plt. brought an action against H. and I. and the co., claiming the shares, and obtained an interim injunction restraining the transfer. The co. were not served with the writ until after the meeting of the 27th, and they had had no previous notice of the plt.'s title.

Upon the trial of the action :—

Held, on the authority of *Société Générale de*

COMPANY (Shares) — continued.

Paris v. Walker, (1885) 11 App. Cas. 20, and *Moore v. North Western Bank*, [1891] 2 Ch. 599, that on Nov. 27 H. had not a present absolute unconditional right to registration, and, consequently, that he had not acquired a legal title to the shares, and the plt.'s prior equitable title must prevail. **IRELAND v. HART**

Joyce J. [1902] W. N. 12 ; [1902] 1 Ch. 522

— Transfer of shares to escape liability—Validity—Transfer out and out.
See COMPANY—WINDING-UP—Contributory. 7.

— Transfer — Secretary—Representations—Certification of transfer—Estoppel—Principal and agent.
See COMPANY—Secretary. 2.

23. — Transfer — Share certificate—Registering transfer without production of certificate—Note on certificate—False declaration—Reasonable inquiry—Title to shares—Getting in outstanding certificates—Duty of company—Notice of prior charge—Notice through agents—Power in articles to “lend money”—Loan to officer of company — Liability of company for wrong registration.

C., the registered holder of shares in a limited co., in May, 1903, deposited the certificate of his shares, and an executed transfer of the shares with the date in blank, with R. as security for a loan. At the foot of the certificate was this note : “Without the production of this certificate no transfer of the shares mentioned therein can be registered.” In June, 1903, C., unknown to R., sold the shares to Y. for 90*l.*, and lodged with the co. for registration a transfer to Y. of the shares, without the certificate, but with a written declaration by C. stating that the certificate was in the possession of “a friend,” but “not as a charge against any loan or other consideration.” C. was a trusted servant of the co., and the directors, acting in good faith, accepted his declaration as sufficient and registered the shares in Y.'s name, and issued to Y. a fresh certificate of the shares. The 90*l.* was paid by Y., not to C., but to the co., towards repayment of a loan which had been made by the co., to C. the loan and the mode of repayment having been arranged by the managing director and two other officers purporting to act on behalf of the co. and who had been informed by C., though not in their official capacities, that his “friend” held the certificate as a security for a debt. In Sept., 1903, R., who was entirely ignorant of C.'s loan transaction with the co. filled in the date of his transfer and lodged it with the co. for registration, together with the original certificate ; but the co. declined to register his transfer because the shares had already been transferred to and registered in the name of Y. In an action by R. against the co. claiming relief for their having wrongfully registered the shares in Y.'s name :—

Held, that the co. were, on the facts, affected with notice of the plt.'s charge, and that he was, therefore, entitled to recover the 90*l.* from the co.

Appeal from Farwell J., [1905] W. N. 8 ; [1905] 1 Ch. 296, allowed.

COMPANY (Shares) continued.

An article empowering directors on behalf of the co. to "lend money" and generally undertake such other financial operations as might in their opinion be incidental or useful to the general business of the co. :—

Held, to authorize a loan to a faithful and confidential servant of the co. **RATFORD v. JAMES KEITH AND BLACKMAN CO., LD.**

C. A. [1905] W. N. 102; [1905] 2 Ch. 147

24. — Transfer, Restrictions on—Compulsory transfer at specified price in event of shareholder's bankruptcy — Articles of association — Repugnancy — Rule against perpetuity — Fraud on bankruptcy law—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 16.

Provisions in a co.'s articles of association compelling a shareholder at any time during the continuance of the co. to transfer his shares to particular persons at a particular price are not void as being repugnant to absolute ownership, or as tending to perpetuity.

There is nothing obnoxious to the bankruptcy law in articles which bona fide provide that a shareholder shall, in the event of his bankruptcy, sell his shares to particular persons at a particular price, which is fixed for all persons alike, and is not shewn to be less than the fair price which might otherwise be obtained.

A share in a co. cannot properly be likened to a sum of money settled upon and subject to executory limitations to arise in the future; it is rather to be regarded as the interest of the shareholder in the co., measured, for the purposes of liability and dividend, by a sum of money, but consisting of a series of mutual covenants entered into by all the shareholders inter se in accordance with s. 16 of the Companies Act, 1862, and made up of various rights and liabilities contained in the contract, including the right to a certain sum of money.

The rule against perpetuity has no application to personal contracts. **BORLAND'S TRUSTEE v. STEEL BROTHERS & CO.**

Farwell J. [1901] 1 Ch. 279

25. — Transfer of shares — Rectification of register—Refusal to register—"Usual common form"—Address of transferor—Distinguishing number of shares.

Directors cannot under articles of a co. which provide that any member may transfer his shares, "but every transfer must be in writing and in the usual common form," refuse to register a transfer because it omits particulars which would be found in a common form but are in the circumstances immaterial. *In re LETHBY & CHRISTOPHER, LD.* **Buckley J. [1904] W. N. 89; [1904] 1 Ch. 815**

26. — Transfer of shares—Register of members—Non-registration—"Default or unnecessary delay" in registration—Accidental mistake—Reconstruction of company—Voluntary liquidation—Unregistered shareholder—Dissent from resolutions, Notice of—Rectification of register—Registration *nunc pro tunc*, Order for—Retrospective registration—Rights of third parties, Protection of—Companies Act, 1862 (25 & 26 Vict. c. 89), ss. 35, 98, 131, 161.

The power given to the Court by s. 35 of the

COMPANY (Shares) continued.

Companies Act, 1862, of rectifying the register of members of a limited co. is exercisable in any of the cases therein mentioned, whether a co. is in liquidation or not; and, accordingly, in a liquidation the power is not, by s. 98, limited to rectification for the purpose of settling the list of contributories.

In ordering rectification of the register under s. 35, whether the co. is in liquidation or not, the Court has power, in a proper case, to fix a particular date at which the registration shall become operative, even to the extent of making it retrospective; but subject, if necessary, to conditions protecting the rights of third persons.

The transferee of shares in a limited co. sent in his transfer to the co. for registration in the usual course, but by mistake or oversight registration of the transfer was omitted. Subsequently the co. passed resolutions for a voluntary winding-up with a view to reconstruction, whereupon the transferee, in the belief that his transfer had been registered, and purporting to act under s. 161 of the Companies Act, 1862, served the liquidator with notice of dissent, which, however, the liquidator disregarded on the ground that the transferee was not a "member" of the co. as required by the section. Upon an application by the transferee, under s. 35, for rectification of the register so as to render his notice of dissent effectual :—

Held, by the C. A. (varying an order of Buckley J.), that there had been such "default or unnecessary delay" in registration as entitled the applicant to an order for rectification by entering his name on the register as on a day prior to the passing of the winding-up resolutions :—

Held, also, that the order did not invalidate the notices to registered members by which the meetings for a voluntary liquidation had been called, and would not, in the circumstances, work any injustice to other members of the co.

Nation's Case, (1866) L. R. 3 Eq. 77, *Breckenridge's Case*, (1865) 2 H. & M. 642 and *Reese River Silver Mining Co. v. Smith*, (1869) L. R. 4 H. L. 64, 80, applied. *In re SUSSEX BRICK CO.*

C. A. [1904] W. N. 38; [1904] 1 Ch. 598

27. — Transfer to infant nominee—Winding-up—Contributories.

At the commencement of the voluntary winding-up of a co., in 1893, S. was the registered holder of twenty shares therein, which in April, 1894, he transferred to L. The liquidator, in pursuance of the power given to him by s. 131 of the Companies Act, 1862, sanctioned the transfer and entered the name of L. as holder of the shares in the register of members. In May, 1894, L. transferred the shares, with the sanction of the liquidator, to D., who after a time was registered as holder of the shares.

The shares were part of a batch of shares purchased from S. by M. and G. (stockbrokers) on the market with a view to a resale, and L., who was their nominee, was a clerk in their employment, and was an infant at the times of the transfers to and by him. D. was also an infant when he became transferee, and this fact was known to the liquidator in 1896, if not earlier.

In 1906, after calls had been made on the

COMPANY (Shares)—continued.

shares, but not paid, the liquidator applied that the names of M. and G. might be substituted for that of D. in the register of members and the list of contributories:—

Held, that, as there was no contractual relation, in respect of the shares, between the co. and M. and G., the principle of *King's Case*, (1871) L. R. 6 Ch. 196, applied, and M. and G. could not be placed on the register or list.

Pugh and Sharman's Case, (1872) L. R. 13 Eq. 566, and *Richardson's Case*, (1875) L. R. 19 Eq. 588, distinguished.

Semble, that any equity which the liquidator might have had against L., by reason of the transfer by him to an infant, was abrogated by the laches of the liquidator. *In re NATIONAL BANK OF WALES, LD. MASSEY AND GIFFIN'S CASE* **Parker J. [1907] 1 Ch. 582**

28. — Voting — Agreement to vote in a particular way — Executors — Directors.

Executors holding shares in a co. agreed to sell part of them to G., who stipulated that as part of the transaction he should nominate X. and W. as directors, and that the executors should, when either X. or W. should retire by rotation, vote for and not against his re-election. The agreement extended to shares whether held by the executors in that capacity or in their own personal capacity. W. was about to retire by rotation, and some of the executors threatened to oppose his re-election:—

Held, that the agreement was valid as regarded shares held by the executors, either as such or as directors, and that on W. undertaking to retire, if required by the Court, at the ordinary meeting next after the trial, an injunction must be granted until the trial restraining such of the executors as threatened to do so from voting against the re-election of W. on his retirement by rotation. **GREENWELL v. PORTER**

Swinfen Eady J. [1902] W. N. 19; [1902] 1 Ch. 530

— Will — General legacy — Gift of shares — Change in value of shares — Will speaking from death — Contrary intention.
See WILL—Company. 1.

— Wrongful sale of shares — Stockbroker — Measure of damages.
See under STOCK EXCHANGE.

Stamps.

— Capital of company — “Increase of registered capital.”
See REVENUE—Stamps. 2.

— Consolidation of debenture stock — Issue of loan capital — Stamp duty.
See REVENUE—Stamps. 3.

— Conveyance on sale — Dissolution of company and reincorporation by same Act — Vesting of property of old company in new.
See REVENUE—Stamps. 8.

— Double duty — Transfer of powers, liabilities and immunities to another railway company — Stamp duty.
See REVENUE—Stamps. 6.

COMPANY (Stamps) —continued.

— “Receipt” — “Discharge” — Acknowledgment that debenture stock has been redeemed, paid off, and satisfied.

See REVENUE—Stamps. 25.

— Stamp duty — Debenture stock, Consolidation of — Issue of loan capital. 3.

See REVENUE—Stamps.

— Stamp duty — Trust deed for securing debenture stock — “Mortgage.”
See REVENUE—Stamps. 27.

Staying Proceedings.

1. — *Company—Arrangement with creditors — Judgment—Staying proceedings — Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), s. 120—Stay of execution.*

On an application by the deft. co. under s. 120 of the Companies (Consolidation) Act, 1908, an order was made that meetings of the creditors and of the members of the co. be summoned for the purpose of considering and, if thought fit, of agreeing to an arrangement proposed to be made between the co. and its creditors and members. Before the meetings had been held, the co. applied to the Court to grant a stay of execution on a judgment recovered by the plt. against the co. previously to the making of the order summoning the meetings:—

Held, that there was no power to grant a stay of execution. **BOOTH v. WALKDEN SPINNING AND MANUFACTURING CO. — Div. Ct. [1909]**

W. N. 112; [1909] 2 K. B. 368

Trade Mark.

— Registration — Honest concurrent user — Name or signature — Advertisements.
See TRADE MARK. 28.

Tramway Company.

See under TRAMWAYS.

Trustees.

— Remuneration of.
See COMPANY—Debentures. 50.

— Trustees — Unauthorised investments — Shares in company — Substitution of shares in different companies.
See TRUSTEE—Investments. 13.

Ultra Vires.

— Allotment, Irregular — Cancellation of allotment.
See COMPANY—Prospectus. 1.

— Borrowing powers — Knowledge of director — Implied notice.
See COMPANY—Borrowing. 1.

— Debenture — Validity — Joint debentures issued by three companies.
See COMPANY—Debentures. 23.

— Dividend paid out of capital — Shareholders — Acquiescence.
See COMPANY—Directors. 7.

— Reconstruction — Sale to a new company for partly paid shares.
See COMPANY—Reconstruction. 7.

COMPANY *continued.***Vesting Orders.**

1. — *Contract to sell assets—Leaseholds—Omission to assign—Dissolution of company—Appointment of new trustee—Vesting order—Trustee Act, 1893* (56 & 57 Vict. c. 53), s. 25, *sub-s. 1, and s. 26.*

By an assignment of Sept. 1890, leaseholds became vested in a limited co. for the residue of a term of ninety-nine years. In 1896 this co. went into voluntary liquidation, and its assets were transferred to a new co.; the purchase-money was paid, the new co. was let into possession, but by inadvertence no assignment of the leaseholds was executed. The old co. having become automatically dissolved under s. 143 of the Companies Act, 1862, a petition was now presented by the new co. under the Trustee Act, 1893, asking for the appointment of a named person, pursuant to s. 25, to be a trustee of the leaseholds in the place of the old co., and for a vesting order :—

Held, that, as it was clearly expedient to appoint a new trustee, the Court was justified in making the order asked for by the petition. *In re Taylor's Agreement Trusts*, [1904] 2 Ch. 737, distinguished. *In re No. 9, BOMORE ROAD*

Warrington J. [1906] W. N. 16 ; [1906] 1 Ch. 359

2. — *Contracts to sell assets—Letters patent—Omission to assign before dissolution—Vesting order—Registration—Companies Act, 1862* (25 & 26 Vict. c. 89), ss. 142, 143—*Trustee Act, 1893* (56 & 57 Vict. c. 53), ss. 25, 35 *Patents, Designs, and Trade Marks Act, 1883* (46 & 47 Vict. c. 57), ss. 23, 87, 90—*Winding-up.*

Further hearing of a case noted [1904] W. N. 99, *sub nom. In re Niger Patent Elastic Enamel Co.* where the facts are stated. The liquidators of a co. had agreed to sell to a purchaser letters patent of which the co. was the registered owner, but the co. was dissolved without any assignment having been executed. The purchaser, who was unable to get himself registered as proprietor of the letters patent, presented a petition asking for an order under s. 35 of the Trustee Act, 1893, vesting them in him.

Buckley J. declined to make the order, and directed that the petition should stand over with liberty to serve it on the Crown, which was done.

Held, that when the co. was dissolved the legal interest in the letters patent, if it vested anywhere, vested in the Crown, and that in that case, although the Crown did not act as trustee, it could not be said within s. 35 of the Trustee Act, 1893, that the trustee "could not be found"; if the legal interest did not vest in the Crown there was no trustee, and again it could not be that the trustee "could not be found"; because there being no trustee it could not be predicated of him that he "could not be found"; therefore a vesting order could not be made under s. 35.

In re General Accident Assurance Corporation, [1904] 1 Ch. 147, not followed.

Held, further, that a new trustee could not be appointed under s. 25 of the Trustee Act, 1893; and that the consent of the Att.-Gen. would not give the Court jurisdiction.

Quere, whether the patent had not merged as

COMPANY (Vesting Orders)—continued.

soon as the legal interest vested in the Crown if it did so vest. *In re TAYLOR'S AGREEMENT TRUSTS*

Buckley J. [1904] W. N. 120 ; [1904] 2 Ch. 737

Note.

Not followed by Farwell J., *In re Richard Mills & Co. (Brierly Hill), Ltd.*, [1905] W. N. 36 *See next case.*

Distinguished by Warrington J., *In re No. 9, BOMORE ROAD*, [1906] 1 Ch. 359. *See No. 1, above.*

3. — *Equitable mortgage of freeholds and copyholds—Judgment in debenture-holder's action—Winding-up of company—Sale—Dissolution of company before completion of sale—Trustee—Vesting order—Trustee Act, 1893* (56 & 57 Vict. c. 53), ss. 26, 35.

This co. was incorporated early in 1902 under the Companies Acts to purchase and work certain collieries, which on Feb. 7, 1902, were conveyed to it, and the co. thus acquired the legal estate in fee simple in some freeholds and an equitable interest in some copyholds, together with the benefit of a covenant to surrender the copyholds by the trustees of one Glaze (a former owner and admitted tenant in fee of the copyholds) to W. Mills (one of the vendors of the co.). On the same Feb. 7, 1902, the co. issued to the plts. Smith and Walker debentures which operated as an equitable mortgage of the said freeholds and copyholds as security for 1,000*l.* and interest, there being no trust deed. The co. proved a failure and became hopelessly insolvent, and in July, 1902, the plts. commenced this action to enforce their debentures. On Aug. 1, 1902, on motion by the plts for a receiver, the co. appeared, and consented to a receiver and to the usual judgment in a debenture-holder's action. In Nov. 1902, the co. went into liquidation, and on Feb. 17, 1903, the liquidator published in the *Gazette* the usual notice of the last meeting of the co. pursuant to s. 142 of the Companies Act, 1862, and in due course the co. was dissolved. In July, 1903, the master made his certificate in the action. On Oct. 24, 1904, the plts. took out a summons in the action for an order (1.) to confirm a conditional contract entered into on Oct. 18, 1904, by the receiver for the sale of the said freeholds and copyholds to a purchaser; and (2.) for a declaration that the co. was a trustee of the said premises, and that the premises on payment of the purchase-money might vest in the purchaser for the estate of the co. therein. This summons was served on the solicitors on the record for the co., who did not appear thereto. On Oct. 28 an order was made confirming the contract and directing it to be carried into effect: and the rest of the summons was ordered to stand over. In Nov., the purchaser having paid her purchase-money, the summons was restored, but, in consequence of the conflicting decisions of Farwell J. in *In re General Accident Assurance Corporation*, [1904] 1 Ch. 147, and of Buckley J. in *In re Taylor's Agreement Trusts*, [1904] 2 Ch. 737, was adjourned into Court. Notice had not been given to the Crown.

Farwell J. On the first point I will follow *In re Crooke's Mortgage*, (1871) L. R. 13 Eq. 26.

COMPANY (Vesting Orders)—continued.

On the second point I will follow my own decision in *In re General Accident Assurance Corporation*. With great respect to Buckley J., I do not think the difficulty exists that he raises on the section. If you know where a trustee is, you can locate him. If you do not know where he is, then, whether it is an individual or a co. that has been dissolved, it is the case of a trustee "who cannot be found." There will be an order vesting in the purchaser the freeholds and the right to sue on the covenant to surrender the copyholds; but the order will not go until notice of it has been given to the Crown. *In re RICHARD MILLS & Co. (Brierly Hill), LD. SMITH v. THE COMPANY* - Farwell J. [1905] W. N. 36

4. — *Sale of assets—Mortgage security—No legal transfer of security—Dissolution of company—Vesting order—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 143—Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 26, sub-s. ii. (c); s. 35, sub-s. 1, cl. ii. (c), and s. 36.*

When a limited liability co. goes into voluntary liquidation for the purpose of carrying out a sale of its property and receives the full purchase consideration, and afterwards becomes automatically dissolved by virtue of s. 143 of the Companies Act, 1862, before the property has been legally conveyed to the purchaser, the Court will in a proper case make an order under the Trustee Act, 1893, vesting the property in the purchaser for all the estate of the co. therein at the date of its dissolution. *In re GENERAL ACCIDENT ASSURANCE CORPORATION, LD.*

Farwell J. [1904] 1 Ch. 147

Note.

Not followed by Buckley J., *In re Taylor's Agreement Trusts*, [1904] 2 Ch. 737. See No. 2, above.

Followed by Farwell J., *In re Richard Mills & Co. (Brierly Hill), Ltd.*, [1905] W. N. 36. See preceding Case.

5. — *Sale of Leaseholds—No assignment by deed—Dissolution of company—Outstanding legal estate—Vesting order—Trustee Act, 1893 (56 & 57 Vict. c. 53), ss. 26, 35, 36, sub-s. 2.*

By deed dated April 13, 1899, M. assigned to a limited liability co. the premises No. 12, Cable Road, Hoylake, Cheshire, for the unexpired residue of a term of ninety-nine years, by way of mortgage to secure a sum of money advanced to him by the co. By a written contract dated May 10, 1900, and made between the General Accident Assurance Corporation, Ltd., of the one part and the co. of the other part, the corporation for the considerations and on the terms therein mentioned agreed to purchase the business, property, and assets of the co. The contract provided that the co. should go into voluntary liquidation; that the co. and its liquidator should execute all such deeds as should be required for vesting in the corporation the business, property, and assets agreed to be sold; and that until such vesting was completed the co. should stand possessed of the same in trust for the corporation. In May, 1900, the co. went into voluntary liquidation, and its liquidator in due course received the purchase consideration and made over to the corporation the business, property, and

COMPANY (Vesting Orders)—continued.

assets of the co.; but the mortgage of April 13, 1899, was not transferred by deed to the corporation. On Dec. 9, 1901, the liquidator passed and filed his final accounts, so that at the expiration of three months therefrom the co. became automatically dissolved by virtue of s. 143 of the Companies Act, 1862.

The corporation now presented a petition under the Trustee Act, 1893, and asked for an order, under ss. 26, 35, 36, sub-s. 2 of the Act, that the premises comprised in the mortgage of April 13, 1899, might vest in them for all the estate of the co.

Farwell J. made the order. *In re No. 12, CABLE ROAD, HOYLAK, CHESHIRE*

Farwell J. [1904] W. N. 8

Veterinary Surgeon.

— One man company — Unqualified person managing director—Injunction. See VETERINARY SURGEON. 2.

Voting.

— Executors—Directors — Agreement to vote in a particular way.

— Meetings—Companies. See under COMPANY—Meetings.

Water Company.

See under WATER.

Will.

— Gift of shares—Change in value of shares—Will speaking from death. See WILL—Company. 1.

— Will—Investment clause — Companies "in the United Kingdom." See WILL—Investments. 6.

Winding-up.

See under COMPANY—WINDING-UP.

COMPANY—WINDING-UP.]

Transfer of business under Companies (Winding-up) Act, 1890. Reprint from W. N. 1901 (Dec. 21) p. 355. See CURRENT INDEX, 1901, p. lxxvii.

General rule pursuant to s. 26 of the Companies (Winding-up) Act, 1890 (53 & 54 Vict. c. 63). Reprint from W. N. 1902 (Aug. 30), p. 229. See CURRENT INDEX, 1902, p. lxxix.

Companies (Winding-up) Act, 1890 (53 & 54 Vict. c. 63), and the Companies (Winding-up) Rules, 1890 and 1891—Liquidator's Statement of Account. Reprint from W. N. 1903 (Feb. 14), p. 62. See CURRENT INDEX, 1903, p. lxx.

NOTE.—A copy of the *Companies (Winding-up) Rules, 1903*, was given gratis to every subscriber to the entire series of the *Law Reports* for 1904 in respect of a subscription paid before the end of that year.

Companies (Winding-up) Act, 1890—Order as to fees—Order dated Dec. 2, 1903, made by the Lord Chancellor with the concurrence of the

COMPANY—WINDING-UP—continued.

Treasury as to fees under the Companies (Winding-up) Act, 1890. Reprint from **W. N. 1904 (Jan. 9)**, p. 5. See **CURRENT INDEX, 1904**, p. lxxii.

County Court (England) Jurisdiction. The County Court (Bankruptcy and Companies Winding-up) Jurisdiction Order, Aug. 11, 1904. **St. R. & O. 1904, No. 1428, L. 18.** See **CURRENT INDEX, 1904**, p. xc.

Companies (Winding-up) Act, 1890. The Companies Acts, 1862 to 1900. New Department to be called the Companies Department. Appointment of Comptroller, dated Oct. 31, 1904. Reprint from **W. N. 1904 (Dec. 10)**, p. 329. See **CURRENT INDEX, 1904**, p. lxxv.

Companies (Winding-up) Rules, 1903—Rules dated March 13, 1906, amending the Companies (Winding-up) Rules, 1903—Rules 27A and 170(2). [Draft Rules dated Jan. 12, 1906—W. N. 1906 (Jan. 20), p. 45.] Reprint from **W. N. 1906 (April 28)**, p. 121. See **CURRENT INDEX, 1906**, p. lxxviii.

Fees—Company—Winding-up—Supreme Court fees—Order dated July 31, 1908. Reprint from **W. N. 1908 (Oct. 24)**, p. 307. See **CURRENT INDEX, 1908**, p. lxxxv.

Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), consolidates the Companies Act, 1862, and the Acts amending it.

Companies (Winding-up) Rules, 1909, and the Limited Partnerships (Winding-up) Rules, 1909.

A copy of these Rules was presented gratis by the Council to subscribers to the entire series of the Law Reports, 1909, in the United Kingdom. These copies were delivered with the May Parts of the Law Reports. W. N. 1909 (April 24), p. 141.

Rules of the Supreme Court—Procedure on application for confirmation by the Court of the reduction of the capital of companies under the Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69). Reprint from **W. N. 1909 (May 15)**, p. 183. See **CURRENT INDEX, 1909**, p. cliv.

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In General.

— Attachment of debts—Garnishee order—"Companies liquidation account." See **ATTACHMENT.**

COMPANY—WINDING-UP (In General)—*contd.*

— Building society—Illegal company—Jurisdiction to wind up—Repeal of statute under which certified.

See **BUILDING SOCIETY**. 3.

— Debentures — Registration — Extension of time—Protection of creditors.

See **COMPANY—Debentures**. 37—45.

— Fraudulent preference—Powers of committee
See **INDUSTRIAL AND PROVIDENT SOCIETY**. 5.

Advertisements.

1. — *Petition, advertisement of—Error as to date for serving notice of intention to appear—Companies (Winding-up) Rules, 1903, rr. 27 (3), 33, 200—Ib., Form 6.*

A petition for the winding-up of a co. was presented by the co. itself on June 8, 1906, and the day appointed for the hearing was June 26. The petition was advertised in the *Gazette* of June 15, and in a daily London newspaper of June 16. The note at the foot of each advertisement stated (in error) that notices of intention to appear on the hearing of the petition must be served not later than 6 p.m. on June 18 (instead of June 25).

Several persons gave notices, after June 18, of their intention to appear at the hearing.

Held, that the mistake ought not to invalidate the proceedings, and a winding-up order made.

In re SAUL MOSS & SONS, LD.

Buckley J. [1906] W. N. 142

Appeal.

— Practice.

See under **COMPANY—WINDING-UP — Practice**.

Arrangements.

(Scheme of Arrangement.)

See under **COMPANY—Arrangements**.

Assets.

— Absence of assets—Compulsory winding-up order.

See **COMPANY—WINDING-UP—Practice**. 28.

1. — *Parliamentary company—Distribution of assets—Preference shares—Priority—Deficiency of capital—Undistributed profits—Undeclared preferential dividends—Companies Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 16), s. 120.*

Apart from some special provision in that behalf, preference shares in a parliamentary co. incorporated by a special Act that incorporates the Companies Clauses Acts have no priority as to capital.

Preference shareholders in such a parliamentary co. have no right or claim to their fixed preferential dividends, cumulative or non-cumulative, unless and until declared under s. 120 of the Companies Clauses Consolidation Act, 1845.

Bond v. Barrow Haematite Steel Co., [1902] 1 Ch. 353, 362, applied.

If the assets realized in a winding-up are insufficient to return the preference and ordinary

COMPANY—WINDING-UP (Assets)—*continued.*

capital in full, the preference shareholders cannot claim any arrears of undeclared preferential dividends out of undistributed profits, but the whole assets must be distributed rateably among all the shareholders in proportion to their capital.

In re Crichton's Oil Co., [1902] 2 Ch. 86, 95, applied. In re ACCORINGTON CORPORATION STEAM TRAMWAYS CO. Swinfen Eady J. [1909] 2 Ch. 40

Note.

See No. 4, below.

2. — *Preference shares—Winding-up—Surplus assets—Preference on repayment of capital—Right to further share of surplus—Distribution according to nominal value of shares—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 133, sub-s. 1, 10—Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), s. 186.*

There is no general rule that where preference shareholders have a preference as to repayment of capital they can have no further share in surplus assets. The question depends on the construction of the memorandum and articles of association. But if these documents contain no provisions on the point, surplus assets must in a winding-up be divided amongst all the shareholders, ordinary and preference, in proportion to the nominal value of the shares.

A co. incorporated in 1884 had an issued capital of 28,222 ordinary and 26,905 preference shares of 5l. each; the preference shares were entitled to a cumulative preferential dividend of 10 per cent. out of "the divisible profits of the co. in each year," and "a preferential right to be repaid the amount paid up thereon and interest out of the assets of the co. if the co. should be wound up." The co. never paid any dividend except in the year 1905, when they paid 3 per cent. on the preference shares. In 1900 the capital of the co. was reduced by writing down the ordinary shares to 1s. per share. In 1908 the co.'s assets were sold for a sum sufficient to pay all their liabilities, repay the capital of both classes of shares, and leave a large surplus:—

Held, that the surplus was not divisible profits of the co. and the preference shareholders were not entitled to have it applied in payment of their cumulative dividends; that they were entitled to have their capital repaid with interest at the rate of 5 per cent. per annum from the date of the winding-up order; and that the surplus, after paying to the ordinary shareholders their reduced capital of 1s. per share, must be divided among the preference and ordinary shareholders in proportion to the nominal value of their shares. *In re ESPEULA LAND & CATTLE CO. Swinfen Eady J. [1909] W. N. 142; [1909] 2 Ch. 187*

3. — *Surplus assets—Accumulated profits—Capital—Arrears of preferential dividends—Direction to pay out of surplus assets—No dividends declared—To what extent arrears payable.*

A co.'s capital consisted of 5 per cent. cumulative preference shares and ordinary shares, the preference shares having priority both as to capital and dividend, and the

COMPANY—WINDING-UP (Assets)—continued.
 preferential dividend being payable before any profits could be carried to reserve.

The articles provided that no dividend should be payable except out of profits, and that, in the event of the co. being wound up, the surplus divisible assets for the time being remaining "after paying the liabilities of the co." should be applied first in repaying the preference capital and "secondly in paying the arrears (if any) of the 5 per cent. preferential dividends thereon to the commencement of the winding-up." The remainder of the surplus assets was to belong to the ordinary shareholders.

No dividends were ever declared, but the profits were accumulated until the co. was wound up :—

Held, that the preference shareholders were entitled to their arrears of preferential dividends, though not declared, but only to the extent of the accumulated profits.

In re Crichton's Oil Co., [1901] 2 Ch. 184; C. A. [1902] 2 Ch. 86, distinguished. *In re W. J. Hall & Co.* - *Swinfen Eady J.* [1909] W. N. 49; [1909] 1 Ch. 521

Note.

See next Case.

— Surplus assets — Company — Winding-up —
 Effect as to paying shares up.
See COMPANY—Bankruptcy. 2.

4. — "*Surplus assets*" — *Loss of capital* —
Profits earned before winding-up — *Dividend not declared* — *Rights of preference and ordinary shareholders inter se.*

The capital of a trading co. consisted of 10l. shares, preference and ordinary, all paid up in full, the former being entitled to a cumulative preferential dividend. The articles of association empowered the directors to set aside out of the profits such sums as they thought proper as a reserve fund. For some years the preferential dividend was paid, and then for three years the business was carried on at a loss, the result being a loss of capital to the amount of 4346l. In the next year there was a profit of 1675l. on the year's trading, but the directors did not declare a dividend or make any appropriation of that sum. The co. went into voluntary liquidation, the debts were all paid, and the capital to the extent of 7l. per share was returned to the shareholders. The sum of 1675l. remained in the hands of the liquidator.

Held, upon the construction of the articles, that the preference shareholders were not entitled to have this sum applied in paying them dividends for the four years in which they had received none, but that it must be divided as capital rateably among all the shareholders.

Decision of Wright J. [1902] W. N. 113; [1901] 2 Ch. 184, affirmed.

In re Bridgewater Navigation Co. [1891] 1 Ch. 155, and *Bishop v. Smyrna and Cassaba Ry. Co.*, [1895] 2 Ch. 265, considered and distinguished. *In re Crichton's Oil Co.*

Note.

Distinguished by Swinfen Eady J. *In re W. J. Hall & Co.*, [1909] 1 Ch. 521. *See No. 3, above.*

COMPANY—WINDING-UP (Assets)—continued.

Applied by Swinfen Eady J., *In re Accorington Corporation Steam Tramways Co.*, [1909] 2 Ch. 40. *See No. 1, above.*

5. — *Surplus assets* — *Preference shares* —
Revenue representing dividends never declared.

In re ODESSA WATERWORKS CO.

Byrne J. [1897] W. N. 166; [1901] 2 Ch. 190, n.

6. — *Two insolvent companies* — *Cross-claims* —
Adjustment — *Claim on debentures* — *Damages for misfeasance* — *Dividend.*

The F. Co. and the T. Co. were both in liquidation; the F. Co. were creditors of the T. Co. for 5100l. on debentures of the T. Co., and were also debtors to the T. Co. for 4323l., the balance of a sum of 12,000l., ordered to be paid to the T. Co. for misfeasance. There being no mutual credit, and consequently no set-off of these two debts, the question now raised was how the claim by the F. Co. for 5100l. against the T. Co. was to be adjusted :—

Held, that in distributing the assets of the T. Co. the liquidator must treat the balance of the debt due from the F. Co. as paid, and must divide the resulting total assets of the T. Co. rateably among all the creditors of the T. Co., including the F. Co., the dividend due to the F. Co. being pro tanto retained in respect of the debt due from them, which must thus be satisfied before any dividend on the 5100l. could be received by the F. Co. *In re LEEDS AND HANLEY THEATRES OF VARIETIES, LD.* *Buckley J.* [1904] 2 Ch. 45

Assurance Company.

See also under INSURANCE.

— Assurance company (Life) — Liquidation —
 Transfer of contracts to another company.

See INSURANCE (LIFE). 18.

1. — *Winding-up petition* — *Bond investment holder* — "*Contingent or prospective creditor*" —
Locus standi of petitioner — *Assurance company* — *Life Assurance Companies Act, 1870* (33 & 34 Vict. c. 61), ss. 2, 21 — *Companies Act, 1907* (7 Edw. 7, c. 50), s. 28 — *Companies (Consolidation) Act, 1908* (8 Edw. 7, c. 69), s. 130, sub-s. (i.); s. 137, sub-s. 1 (c) — *Assurance Companies Act, 1909* (9 Edw. 7, c. 49), ss. 1, 15, 34, 38.

The owner of an investment bond issued by an assurance co., who, upon making periodical payments to the co., will at a future date become entitled to the payment of a certain sum of money, is a "contingent or prospective creditor" of the co. within the meaning of those words in s. 137 of the Companies (Consolidation) Act, 1908, and can under that section petition for the winding up of the co.

Semble, such a bondholder will by virtue of ss. 1 and 34 of the Assurance Companies Act, 1909 (which comes into operation on July 1, 1910), be deemed to be a policy-holder for the purposes of s. 15 of that Act, which is not an enabling but a restrictive section and limits the rights of policy-holders to present a winding-up petition as therein mentioned. *In re BRITISH EQUITABLE BOND AND MORTGAGE CORPORATION, LD.* *Neville J.* [1910] W. N. 53; [1910] 1 Ch. 574

COMPANY—WINDING-UP—continued.**Books.**

See under **COMPANY—Books.**

Calls.

See also under **COMPANY—Calls.**

—Contributories.

See under **COMPANY—WINDING-UP—Contributory.**

Committee of Inspection.

1. — *Altering constitution of—Companies Act, 1862* (25 & 26 Vict. c. 89), s. 91—*Companies (Winding-up) Act, 1890* (53 & 54 Vict. c. 63), ss. 6, 9, 23, 24, *Sched. I., r. 6.*

Where a creditor, or a class of creditors (with a substantial interest), of a co. which is being wound up by the Court is, through no fault of his or its own, unrepresented on the committee of inspection, the Court may direct the liquidator to summon a meeting of the creditors to consider whether one or more members of the committee should be removed and some other person or persons, representative of the "aggrieved" and unrepresented creditor or creditors, appointed in substitution; or *semble*, may order fresh first or further meetings of the creditors and contributories to be summoned for the following purpose of s. 6 of the Act of 1890, namely, to determine whether an application is to be made to the Court to appoint a committee of inspection, and who are to be its members if appointed. *In re RADFORD & BRIGHT, LD.* (No. 1)

Wright J. [1901] 1 Ch. 272

See next Case.

2. — *Creditors unrepresented—Resummoning first meetings—Companies Act, 1862* (25 & 26 Vict. c. 89), s. 91—*Companies (Winding-up) Act, 1890* (53 & 54 Vict. c. 63), ss. 6, 9.

In the winding-up of a company by the Court the Court has power to order the first meetings of the creditors and contributories to be resummoned, and it may limit the purposes of the meetings to the selection of persons to be appointed as members of the committee of inspection.

Where the creditor of a co. for a large amount was unrepresented on the committee of inspection, and at a meeting of the creditors, summoned by the direction of the Court, a resolution was passed that it was desirable that the creditor should be represented on the committee, but a majority of the creditors at the meeting expressed the opinion that it was undesirable that any members of the present committee should retire, the Court directed the first meetings to be resummoned to determine whether a committee should be appointed and who should be the members of it. *In re RADFORD & BRIGHT, LD.* (No. 2)

Wright J. [1901] W. N. 13; [1901] 1 Ch. 735

Contempt of Court.

— Fraudulently circularising shareholders while winding-up petition pending.

See **CONTEMPT OF COURT. 4.**

— Liquidator, Application to remove—Circularising shareholders.

See **CONTEMPT OF COURT. 5.**

COMPANY—WINDING-UP—continued.**Contributory.**

— Amalgamation and reconstruction—Unfair scheme—Contributory's petition impeaching scheme.

See **COMPANY—WINDING-UP—Practice. 24.**

1. — *Call—Set-off—Companies Act, 1862* (25 & 26 Vict. c. 89), ss. 38, 110.

Where a set-off is claimed or pleaded in defence to an action for a debt, the debt sued on is not thereby extinguished to the extent of the debt sought to be set off, but two separate and distinct debts remain until judgment.

When, therefore, a co., while a going concern, sues a shareholder for a call, and he sets up a defence of set-off and before judgment is obtained a winding-up of the co. commences, the defence of set-off in the action does not prevent the application of the ordinary rule that the debt owing by the company to the shareholder cannot be set off in proceedings in the winding-up to obtain payment of the call. *In re HIRAM MAXIM LAMP Co.*

Byrne J. [1902] W. N. 199; [1903] 1 Ch. 70

2. — *Calls—Collection of mortgaged calls—Contributories.*

A bank, which was the first mortgagee of the uncalled capital of a co., applied by summons in the winding-up of a co. (submitting to the jurisdiction) (1.) that the liquidator might be directed to proceed with the settlement of the list of contributories, so far as not already settled, and forthwith to make all such calls as should be necessary to call up the whole of the uncalled capital; (2.) that the manager of one of the branches of the applicant bank might be authorized to take in the name of the co., or of the liquidator, such proceedings as he might be advised against the contributories for the purpose of enforcing payment of the uncalled capital; but so that (a) the co. and the liquidator should be indemnified against all liability for costs, (b) the moneys recovered should be paid into the branch aforesaid, and (c) no compromise should be made and no proceedings (except as specified) should be taken without the consent of the applicant or the leave of the registrar; (3.) that any order made should be without prejudice to the liquidator's claim for the expenses of making calls; (4.) that proper accounts, inquiries, and directions might be taken, made, and given for the purposes of distributing the calls in accordance with the rights of the incumbancers.

Neville J. It appears that it has been the practice for some time past, where a receiver has been appointed in a debenture-holders' action against a co. in liquidation, if uncalled capital is included in the security, to allow, in proper cases, the receiver, upon giving the liquidator a proper indemnity, to use the name of the latter for the purposes of recovering the calls made by him. I see no objection to the continuation of this practice. In the present case the application is in the liquidation alone by the debenture-holder, whose security is upon uncalled capital, that a person nominated by himself, with the approval of the holders of subsequent mortgages, comprising uncalled capital, be allowed to recover the

COMPANY - WINDING-UP (Contributory) — continued.

calls. From inquiry I have made it appears that there is no precedent for such an order, and it appears to me that there are serious objections to the proposed innovation. I can, therefore, only make an order in the terms of the first claim of the summons. The liquidator will take his costs out of the assets. The rest of the summons will be dismissed with costs. The applicant bank may add to its security such costs as are necessary on a summons to obtain what is claimed by claim (1.). The liquidator may take out of the assets such costs as the applicant is not ordered to pay. *In re WESTMINSTER SYNDICATE, LD.* **Neville J. [1908] W. N. 236**

— Costs.

See under COMPANY—WINDING-UP—Costs.

3. — Discharge of contributory on composition — Reduction of discharge after twenty years on allegation of concealment of assets—Lapse of time.

When a co. is wound up and contributories are discharged from further liability on a composition and a period of twenty years supervenes, every intendment must be made in favour of what was done twenty years before as having been lawfully and properly done.

In 1882 the Assets Co. under a private Act of Parliament took over the whole assets and rights of the City of Glasgow Bank, which had gone into liquidation in 1878.

In 1901 and 1902 the Assets Co. brought actions against trustees and beneficiaries of two contributories who had in 1879 been discharged of their liabilities to the bank on compromises with the liquidator, asking for a reduction of the compromises on the ground that the contributories in negotiating with the liquidator concealed or failed to disclose a portion of their property:—

Held, reversing a decision of a majority of the Second Division of the Ct. of Sess., (1904) 6 F. 754, 692, with the assistance of three judges of the First Division, that, having regard to the circumstances of the case coupled with the delay, no concealment or untrue statement of assets had been proved or could at this distance of time be assumed. *WATT v. ASSETS CO. BAIN v. ASSETS CO.* **H. L. (Sc.) [1905] W. N. 98; [1905] A. C. 317**

4. — Enforcing payment of calls made before winding-up—Application to stay proceedings till costs of discontinued action by company paid—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 101—R. S. C., 1883, Order XXVI., rr. 1, 4.

A co., while a going concern, sued Y. for calls on shares alleged to be held by him. Before the action was ripe for trial the co. resolved on voluntary winding-up, and the liquidator settled Y. on the list of contributories in respect of the amount of the calls. The liquidator then by notice discontinued the action, and took out an originating summons against Y. under ss. 101 and 138 of the Companies Act, 1862, for a balance order in respect of the calls. Y.'s costs of the action having been taxed, and the liquidator having refused to pay them, Y. applied for a stay of the originating summons until payment:—

Held, that Y. was not entitled to the stay, but

COMPANY — WINDING-UP (Contributory) — continued.

that the amount of the costs must be deducted from any sum recovered by the liquidator on the originating summons.

Cook v. Hathway, (1869) L. R. 8 Eq. 612, and *McCabe v. Bank of Ireland*, (1889) 14 App. Cas. 413, distinguished. *In re UNITED SERVICE ASSOCIATION* **Wright J. [1901] 1 Ch. 97**

— Forfeited shares—Contributory—Company—Winding-up.

See COMPANY—Calls. 3.

5. — Misrepresentation, Subscription obtained by—Memorandum of association—Companies Act, 1862 (25 & 26 Vict. c. 89), ss. 6, 18, 23.

L. signed the memorandum of association of a co. before its incorporation for 250 shares. After its incorporation he sought to escape from liability on the shares on the ground that he was induced to sign the memorandum by the misrepresentation of a promoter of the company:—

Held, that, assuming the misrepresentation was made and acted on, L. was nevertheless liable on the shares, (a) because the co. before it came into existence could not appoint an agent, and was therefore not liable for the acts of the promoter; (b) that by signing the memorandum L. on the registration of the co. became bound, not only as between himself and the co., but also as between himself and the other persons who should become members.

Karberg's Case, [1892] 3 Ch. 1, distinguished. *In re METAL CONSTITUENTS, LD.* **LORD LURGAN'S CASE Buckley J. [1902] W. N. 43; [1902] 1 Ch. 707**

— Non-assent of contributories having no interest in company's assets.

See COMPANY—Arrangements. 4.

6. — Sale of business to company—Contract—"Sham" or "illusory" contract—Fully paid shares—Gift of shares—Allotment to vendor's nominees—Consideration, want of—Private company—Directors—Misfeasance—Ultra vires.

Two brothers, who carried on the business of working a steam-boiler patent in partnership, arranged with six shipowners to form a private co. to take over the business and patent rights in consideration of 6000*l.* payable half in cash and half in shares, the capital of the co. to be 25,000*l.* in 2500 shares of 10*l.* each, which were to be distributed as follows: The six shipowners were each to take fifty shares and pay for them in cash for the purpose of raising the 3,000*l.* payable in cash to the vendors, and the vendors were to take 300 fully paid shares as the balance of their purchase-money. Of the remaining 1900 shares, each of the six shipowners was to take 300 fully paid shares for his own benefit, and 100 fully paid shares were to be placed in the joint names of three of them, who, eventually, on the formation of the co., became directors, to be applied in rewarding persons who should bring business to the co. The co. was incorporated, and the only shareholders were the vendors and the six shipowners. In order to give effect to the above arrangement, an agreement was entered into between the vendors and the co. whereby the vendors purported to sell their business and

COMPANY — WINDING-UP (Contributory) — continued.

patent rights to the co. for 25,000*l.*, as to 3,000*l.* in cash and as to 22,000*l.* by the allotment to the vendors or their nominees of 2200 fully paid shares, and this agreement was duly registered. Of these 2200 shares, 300 were allotted to the vendors, and, on the nomination of the vendors, the remaining 1900 were allotted, as to 100 to the three directors jointly for the purpose above mentioned, and as to 1800 to the three directors and the other three shipowners in equal shares for their own benefit, the whole of the 2200 shares being so allotted as fully paid.

Upon a summons by the liquidator in the winding-up of the co. against the three directors to render them liable as contributories for payment of the full amount of all the shares allotted to them:—

Held, reversing *Kekewich J.*, [1902] W. N. 26; [1903] 1 Ch. 674, that the case was covered by *Carling's Case*, (1875) 1 Ch. D. 115, and therefore that the directors could not be placed upon the list of contributories as holders of unpaid shares. *In re INNES & Co., LD.*

C. A. [1903] W. N. 93; [1903] 2 Ch. 254

— Scheme of arrangement—Sanction of Court—Dissent of class of contributories having no interest in assets.

See **COMPANY—Arrangements. 4.**

— Shares—Transfer to infant nominee—Winding-up—Contributories.

See **COMPANY—Shares. 27.**

7. — Transfer of shares to escape liability—Validity — Transfer out-and-out — Power for directors to refuse registration.

Where the articles contain no clause authorizing directors to reject a transferee, a shareholder may up to the last moment before liquidation, and for the express purpose of escaping liability, transfer his partly-paid shares to a transferee, even though he be a pauper, and may compel the directors to register that transfer, provided it be an out-and-out transfer reserving to the transferor no beneficial right to the shares direct or indirect. Whether the transfer is of that character is a question of fact.

Hyam's Case (1859), 1 D. F. & J. 75; *Costello's Case*, (1860) 2 D. F. & J. 302; and *Budd's Case*, (1881) 3 D. F. & J. 297, discussed and explained.

Lund's Case, (1859) 27 Beav. 465, overruled.

Where the articles contain a clause empowering the directors to reject a transferee whom they do not approve, the transferor cannot escape liability if he has actively or passively induced the directors to pass and register a transfer (even though it be an out-and-out transfer) which, but for his conduct, they would have refused to register. Here again the question is one of fact.

Whether the articles do or do not contain a clause authorizing the directors to refuse registration, the transferor cannot escape liability where he has obtained the advantage of executing and registering his transfer upon an opportunity obtained by him fraudulently or in breach of some duty which he owed the corporation.

Decision of *Neville J.*, [1909] W. N. 245; [1910] 1 Ch. 207, affirmed.

COMPANY — WINDING-UP (Contributory) — continued.

In re Discoverers Finance Corporation, [1908] 1 Ch. 141, overruled. *In re DISCOVERERS FINANCE CORPORATION, LD. LINDLAR'S CASE*
C. A. [1910] W. N. 42; [1910] 1 Ch. 312

— Voluntary winding-up—Compulsory order.

See **COMPANY—WINDING-UP—Practice. 26.**

Costs.

See also under **COMPANY—Costs.**

Fees—Companies (Winding-up) Act, 1890—Order as to fees—Order, dated Dec. 2, 1903, made by the Lord Chancellor with the concurrence of the Treasury as to fees under the Companies (Winding-up) Act, 1890. Reprint from W. N. 1904 (Jan. 9), p. 5. See CURRENT INDEX, 1905, p. lxxii.

Fees—The Companies (Winding-up) Act, 1890—Order, dated Nov. 8, 1904, made by the Lord Chancellor with the concurrence of the Treasury as to fees under the Companies (Winding-up) Act, 1890. W. N. 1905 (Jan. 7), p. 2. See CURRENT INDEX, 1905, p. lxvii.

1. — Company — Liquidator — Taxation of costs—Disbursements — Professional charges — Omissions from bill of items of costs already taxed — Reduction by one-sixth — R. S. C., Order LXV., r. 19H; r. 27, sub-r. 38B—Solicitors Act, 1843 (6 & 7 Vict. c. 73), ss. 37, 38.

Under an order that the costs, charges, and expenses of a retiring liquidator should be taxed and provided for, he carried in a bill shewing disbursements and professional charges in separate columns. Amongst the latter he included and gave credit for two bills of party and party costs which had been taxed some time previously and paid to him by a third party. The registrar, on the ground that they had already been paid, struck out these items, with the result that the total amount of the costs was diminished. He proceeded to tax the bill on the footing that it must be treated as a whole and the disbursements and professional charges added together; and he thus reduced it by more than one-sixth. Items for drawing the bill of costs and attending the taxation were accordingly disallowed:—

Held, that the bills for party and party costs were properly included, and ought not to have been struck out of the bill; and that for the purpose of ascertaining whether one-sixth had been taxed off the bill the amount of the professional charges only (omitting the disbursements) must be taken into consideration. *In re MERCANTILE LIGHTERAGE CO., LD.*

Warrington J. [1906] W. N. 28; [1906] 1 Ch. 491

1A. — Contributories—Costs of contributories opposing—Copies of evidence filed by petitioner—Charges of fraud against contributories—Taxation—Winding-up petition—Order dismissing petition.

The common order dismissing a winding-up petition and giving to contributories opposing one set of costs does not include the usual charges consequent on taking copies of evidence filed by

COMPANY—WINDING-UP (Costs)—continued.

the petitioner and the co., even though serious charges of fraud are made in the petition against the contributories; if these extra costs are to be allowed, sufficient and special grounds must be shewn at the time the petition is dismissed, and a special direction must be given in the order.

Practice as to costs and position of contributories on a winding-up petition discussed. *In re IBO INVESTMENT TRUST, LD.*

Byrne J. [1903] W. N. 192;

[1904] 1 Ch. 28

2. — Costs of outside litigation — Action brought against company before winding-up—Voluntary winding-up.

Where there is a winding-up of a co. (whether compulsory or voluntary) all claims of creditors, including those in respect of costs, ought *prima facie* to be dealt with in the winding-up in accordance with the rules applicable to the distribution of the assets; but if an action is pending to which the co. is a party, and the co. by its liquidator determines to prosecute or defend the proceedings for the estate, the estate must be treated as the party litigant, and must in case of failure pay the costs in full.

C. brought an action against a co. for damages for breach of contract. After a day had been fixed for the trial the co. passed an extraordinary resolution for voluntary winding-up. Within a week afterwards C. wrote to the liquidator asking whether he was prepared to admit C.'s claim in whole or in part. The liquidator replied that he could not admit the claim. At the trial C. recovered judgment for damages and costs:—

Held, that the liquidator had adopted the defence of the action, and that C.'s costs of it must be paid in full out of the assets of the co.

Bariley and Leetham's Case, (1869) L. R. 8 Eq. 94, followed.

In re Thurso New Gas Co., (1889) 42 Ch. D. 486, distinguished. *In re WENBORN & CO.*

Buckley J. [1905] W. N. 26;

[1905] 1 Ch. 413

— Directors—Prosecution—Payment of costs out of assets.

See COMPANY—Directors. 15.

— Jurisdiction to order official receiver to pay costs personally.

See COMPANY—Receiver.

— Liquidator — Taxation — Disbursements — Professional charges.

See No. 1, above.

3. — Petition—Debt under 50l.—Costs.

In this case a petition was presented, by creditors having a debt of 35l. 3s. 6d., asking for a compulsory winding-up order against the co., and the order was made.

The petition was supported by other creditors whose debts amounted to 128l.

Wright J. made the usual order for costs. *In re LEYTON AND WALTHAMSTOW CYCLE CO.*

Wright J. [1901] W. N. 225

— Petitioner's debt under 50l.—Costs.

See COMPANY — WINDING-UP — Practice. 17, 18.

4. — Private examination—Costs of persons examined—Companies Act, 1862 (25 & 26 Vict.

COMPANY—WINDING-UP (Costs)—continued.

c. 89), s. 115—Supreme Court of Judicature Act, 1890 (53 & 54 Vict. c. 44), s. 5.

An examination under s. 115 of the Companies Act, 1862, is a "proceeding in the Supreme Court" within the meaning of the Judicature Act, 1890.

The Court has, therefore, jurisdiction under the Act of 1890 to order the costs—as distinguished from the expenses—of a person examined to be paid by the person who procured the examination; but *semble*, not where the examinee is a mere witness, and not a person with whom litigation is pending or intended.

A., a creditor of a co. in winding-up, and B., a contributory, and other contributories took out a summons for liberty to issue a misfeasance summons against the directors of the co., and for liberty to examine such persons as they might be advised under s. 115 of the Companies Act, 1862.

On this summons an order was made giving liberty to examine W. and X., and to apply for leave to issue a misfeasance summons after the examination was concluded.

A summons was then issued for the examination of W. and X., and at their examination they employed solicitors and counsel.

A misfeasance summons was then issued by A. and B. against W. and X., who were officers of the co., but was dismissed with costs, which were taxed and paid.

W. and X. then applied for an order that A. and B. should pay the applicants their costs incurred in connection with their examination and being represented thereat by counsel:—

Held, that there was jurisdiction under s. 5 of the Judicature Act, 1890, to make the order, and that, having regard to the object of the examination and the position of the applicants as intended litigants, the order must be made. *In re APPLETON, FRENCH & SCRAFTON, LD.*

Warrington J. [1905] W. N. 87;

[1905] 1 Ch. 749

— Security for costs—Appeal by company.

See COMPANY—WINDING-UP — Practice. 25.

5. — Security for costs—Liquidator—Misfeasance summons — Practice — Companies (Winding-up) Act, 1890 (53 & 54 Vict. c. 63), s. 10.

It is not the practice of the Court to require a liquidator on the ground of poverty to give security for the costs of a misfeasance summons. *In re STRAND WOOD CO. C. A. [1904] W. N. 122;*

[1904] 2 Ch. 1

6. — Security for costs—Practice—Petitioner out of jurisdiction—Admitted debt—Petition for compulsory order after a resolution for a voluntary winding-up.

The Alabama Portland Cement Co. was incorporated in E. under the English Companies Acts with a registered office in London, but its business was carried on in Alabama. On Jan. 11, 1909, the co. passed an extraordinary resolution for a voluntary winding-up, and appointed a liquidator. The Carolina Portland Cement Co., an American co., sent in a claim for a debt for which they had recovered judgment in Courts of

COMPANY—WINDING-UP (Costs)—continued.

New York. The liquidator admitted the claim, but stated that he had no assets in his hands to meet it, as all the property of the co. had been taken possession of and sold by debenture-holders. On June 3 the American co. presented a petition for a compulsory winding-up order, alleging that the sale by the debenture-holders was collusive and ought to be inquired into. The liquidator applied for security for costs.

Neville J. said that he thought the fact that there was a voluntary winding-up, and that there were no assets, made the reasons in which *In re Contract and Agency Corporation*, [1887] W. N. 218, was decided inapplicable to this case, and ordered the petitioner to give security for costs in the sum of 50*l*. *In re ALABAMA PORTLAND CEMENT Co.* **Neville J., [1909] W. N. 157**

7. — *Security for costs—Proof—Creditor out of jurisdiction claiming to prove—Company—Winding-up (Voluntary)—Companies (Winding-up) Rules, 1903, r. 201.*

Where a creditor residing out of the jurisdiction applies in a voluntary winding-up for a declaration that he is entitled to prove in the winding-up, the Court has jurisdiction to require him to give security for costs.

And *semble*, that wherever a person out of the jurisdiction comes forward as an actor in a winding-up, whether voluntary, or under supervision, or by the Court, the ordinary practice of the Court as to ordering security for costs applies. *In re PRETORIA PIETERSBURG RY. Co. (No. 2)*

Buckley J. [1904] W. N. 140 ; [1904] 2 Ch. 359

Note.

See In re Pretoria Pietersburg Ry. Co., C. A. [1904] 2 Ch. 170. See Company—Winding-up—Practice. 5.

8. — *Winding up petition—Appeal—Practice—Costs of contributories and creditors supporting successful party.*

Where an appeal is brought against the decision of the Court of first instance upon a winding-up petition, and by the Order of the Court below, those contributories or creditors who have supported the successful party have been allowed one set of costs between them in accordance with the settled practice, if the appellant does not seek to disturb that part of the order, his proper course is not to serve such contributories or creditors with notice of the appeal, but to inform them by letter of the pendency of the appeal of his intention not to ask for a reversal or modification of the order of the Court below so far as it deals with their costs, and then, if they think fit to appear upon the appeal and the appeal is dismissed, the rule awarding them one set of costs between them will continue to apply upon the appeal. If, on the other hand, the appellant desires to appeal against the whole order and serve such contributories or creditors with notice of appeal, they will be entitled, in the event of the appeal being dismissed, to their separate costs of appeal. *In re IBO INVESTMENT Co.*

C. A. [1903] W. N. 110 ; [1903] 2 Ch. 373

9. — *Winding-up petition dismissed—Creditors and contributories opposing—One set of costs—Separate counsel—Practice.*

COMPANY—WINDING-UP (Costs)—continued.

In this case, after the co. had gone into voluntary liquidation, a contributory presented a petition for a compulsory order, which was dismissed with costs, the usual direction being given of one set of costs to the parties attending and opposing. At the hearing separate counsel, instructed by the same firm of solicitors, appeared for opposing creditors and contributories, and these solicitors, when attending before the registrar to settle the draft order, contended that the judge's direction meant one set of costs to the creditors, and one set of costs to the contributories opposing. The registrar, on the authority of *Re Brighton Marine Palace and Pier Co.*, [1897] W. N. 12, was of opinion that the direction meant one set of costs only between the creditors and contributories opposing. The parties objecting moved to vary the draft order.

Neville J.: The question is whether when the same solicitor represents creditors and contributories, either supporting or opposing a petition, and instructs separate counsel to appear for the creditors and for the contributories, he is entitled to two sets of costs or only one set of costs under the usual direction giving one set of costs to parties attending. I think that the principle of *Re Brighton Marine Palace and Pier Co.* (supra) applies, and that the solicitor as a general rule is entitled to only one set of costs. At the same time this ruling will not interfere with the discretion of the taxing officer to allow in a proper case the costs of separate counsel instructed by the same solicitor, notwithstanding that only the usual order as to costs has been made. *In re SILBERHÜTTE SUPPLY Co.* **Neville J. [1910] W. N. 81**

10. — *Withdrawal of petition—Costs of persons appearing to support or oppose—Companies Winding-up Rules, April, 1892, r. 20.*

When the petitioner for a winding-up order elects at the hearing to withdraw his petition, he will be ordered to pay the costs of those persons who have given notice, within the time limited by the Companies Winding-up Rules, April, 1892, r. 20, of their intention to appear—one set of costs to those supporting, and another set to those opposing. *In re BRITISH ELECTRIC STREET TRAMWAYS*

Buckley J. [1903] 1 Ch. 725

Debentures.

See under COMPANY—Debentures.

Directors.

See under COMPANY—Directors.

Discharge.

— *Discharge of contributory on composition—Reduction of discharge after twenty years on allegation of concealment of assets—Lapse of time.*

See COMPANY—WINDING-UP—Contributory. 3.

Dividends.

See also under COMPANY—Dividends.

1. — *Discretion of Court as to allowing questions by creditors and contributories—Public*

COMPANY WINDING-UP (Dividends) *contd.*
examination—Companies (Winding-up) Act, 1890
 (53 § 54 *Vict. c. 63*), s. 8.

At the public examination of W., formerly the managing director of the co. being wound up, counsel appearing for two contributories of the co. were about to put questions to the witness with reference to an alleged verbal agreement as to the purchase of large blocks of shares in another co., when the official receiver and liquidator objected to the questions on the ground that an action with reference to the same transaction was pending, in which the co. was plt. and to which certain members of the Stock Exchange were parties, and that the answers to the questions might prejudice the co.'s position in the action. The action had been continued with the sanction of the Court. The registrar before whom the examination was being taken refused to allow the questions to be put, and the contributories applied to the Court by motion for its decision whether the questions should be allowed or disallowed. Some doubt was expressed as to whether the application should be by motion, but no objection was taken by the official receiver to the form of the application.

The Court was far from saying that it would be a proper exercise of the discretion to disallow questions simply because there was litigation to which the co. or the liquidator was a party. Each case must be governed by its own circumstances. In the present case it was satisfied that the proposed questions were not bona fide in the interests of the co., its creditors or contributories, but were to be put in the interest of the persons who were litigants with the co.; and the liquidator, representing the shareholders and the public, and expressing the opinion that, at the present stage, to allow the questions would be injurious, the questions must not, at any rate at present, be put. The applicants would have to pay the witnesses' costs of the application. *In re LONDON AND GLOBE FINANCE CO.*

Byrne J. [1902] W. N. 16

— Liquidator's statement of account.

See under COMPANY—WINDING-UP—Liquidator.

2. Private examination—Attendance of solicitor—Undertaking not to disclose—Companies Act, 1862 (25 & 26 *Vict. c. 89*), s. 115.

The examination of witnesses in the winding-up of a co. under s. 115 of the Companies Act, 1862, is a private proceeding; therefore, where a witness directed to be examined under this section was attended by a solicitor who also represented a third party against whom an action by the co. was pending:—

Held, that the registrar might exact from the solicitor, as the condition of his being allowed to be present at the examination, an undertaking not to disclose to any one without the leave of the Court any information he might acquire at the examination.

Decision of Byrne J. [1902] W. N. 55, affirmed. *In re LONDON AND NORTHERN BANK, LD. HADDOCK'S CASE. HOYLE'S CASE*

C. A. [1902] W. N. 84; [1902] 2 Ch. 73

Note.—See In re Walker, Div. Ct. [1909] W. N. 104. Bankruptcy—Practice. 5.

COMPANY—WINDING-UP (Dividends)—contd.
 — Surplus assets.

See under COMPANY—WINDING-UP—Assets.

Examination.

1. Refusal of witness to answer—Documents alleged to have been given by officer of company to defendants in an action by it—Private examination—Companies Act, 1862 (25 & 26 *Vict. c. 89*), ss. 115, 138.

The Court said that in the case relied on, *In re North Australian Territory Co.*, (1890) 45 Ch. D. 87, the person whom the liquidator wished to question was not an officer of the co. in liquidation, but of another co. with which it was in liquidation. He was examined under s. 115, not as an "officer of the co. or person known or suspected to have in his possession any of the estate or effects of the co." in liquidation, but as a "person whom the Court might deem capable of giving information," &c. The present application was quite different, inasmuch as the person under examination was one of its officers. It seemed to be a matter of course that the liquidator should be entitled to know what had been done with documents forming part of the assets of the bank. Even if the sole ground of the application had been to obtain evidence in the action, why was not the bank entitled to find out from its own documents whether it had a good cause of action or not? The witness was bound to answer what documents of the bank he had had in his possession, and what had become of them; and there must be an order on him to attend at his own expense and be further examined. *In re LONDON AND NORTHERN BANK. ARCHER'S CASE*

Wright J. [1901] W. N. 236

This case was affirmed by C. A. [1901] W. N. 247.

2. Sale of undertaking—Dissentient member—Purchase of interest—Arbitration—Right of dissentient member to examine officers prior to arbitration—Companies Act, 1862 (25 & 26 *Vict. c. 89*), ss. 115, 161, 162.

Where the undertaking of a co. in voluntary liquidation is being sold to another co. under s. 161 of the Companies Act, 1862, and the liquidator has elected to purchase the interest of a dissentient member at a price to be determined by arbitration under s. 162, the Court will not give that dissentient member liberty to examine the officers of the co. under s. 115 with the view of obtaining evidence to enhance the value of his interest in the arbitration.

Morgan's Case, (1884) 28 Ch. D. 620, applied. *In re BRITISH BUILDING STONE CO.*

Swinfen Eady J. [1908] W. N. 174; [1908] 2 Ch. 450

Fees.

See under COMPANY—WINDING-UP—Costs.

Fraudulent Preference.

See under COMPANY—WINDING-UP—Preference.

COMPANY—WINDING-UP—continued.**Gratuities.**

See under **COMPANY—Gratuities.**

Guarantee.

See under **COMPANY—Guarantee.**

Insurance, Life.

See under **INSURANCE (LIFE).**

Interest.

See under **COMPANY—Interest.**

Libel.

— Absolute privilege—Official receiver in companies' liquidation—General annual report of Board of Trade.

See **DEFAMATION—Libel. 1.**

Liquidator.

Liquidator's statement of account—Companies (Winding-up) Act, 1890 (53 & 54 Vict. c. 63), and the Companies Winding-up Rules, 1890 and 1891. Reprint from W. N. 1902 (Feb. 14), p. 62. See CURRENT INDEX, 1902, p. lxx.

— Books — Joint liquidators — Inspection by agent.

See **COMPANY—Books. 2.**

— Contempt of Court—Application to remove voluntary liquidator.

See **CONTEMPT OF COURT. 5.**

— Costs, Security for—Misefeasance summons.

See **COMPANY—WINDING-UP—Costs. 5.**

— Costs — Taxation — Disbursements — Professional charges.

See **COMPANY WINDING-UP—Costs. 1.**

— Denial of liability by liquidator—Stay of proceedings in action.

See **COMPANY—WINDING-UP—Practice. 20.**

— Directors — Qualification — Shares held as liquidator of another company.

See **COMPANY—Directors.**

— Irredeemable debenture stock — Power of liquidator to pay off stock at par.

See **COMPANY—Debentures. 20.**

1. — Liability—Voluntary winding-up—Dis-solution—Unpaid creditor—Statutory duty of liquidator to pay debts—Negligence—Liquidator liable in damages—Advertisement for creditors—Companies Act, 1862 (25 & 26 Vict. c. 89), ss. 107, 133, 138, 143—Companies Act, 1900 (63 & 64 Vict. c. 48), s. 25.

It is the duty of the liquidator to find out from the books and papers of the co. and the statement of affairs who are the creditors of the co., and if any creditor omits to put in his claim the liquidator shall communicate with him.

Sect. 133 of the Companies Act, 1862, imposes a statutory duty on the liquidator to pay the debts of the co. *pari passu*, and, subject thereto, to distribute the property of the co. amongst the shareholders; and whilst the liquidation continues a contributory can apply under s. 138 of

COMPANY—WINDING-UP (Liquidator)—contd.

the Act, and a creditor can apply under s. 25 of the Act of 1900, to the Court for relief in respect of his rights. When the co. is dissolved the statutory remedy is gone, but the duty remains, and a contributory or creditor has a remedy at common law for injury caused to him by a breach of the liquidator's statutory duty.

A co. went into voluntary liquidation and appointed a liquidator, and its business and assets were transferred as a going concern to a purchasing co. in consideration of fully paid-up shares in the purchasing co., who covenanted to pay all the debts and liabilities of the liquidating co. The liquidator received the purchase consideration of fully paid-up shares and distributed them amongst the shareholders of the liquidating co. The assets of the liquidating co. were sufficient to pay all its debts in full, but the liquidator, beyond advertising insufficiently for creditors, took no steps to ascertain the creditors of the liquidating co. or to see that they were paid. He left everything to the purchasing co. After the dissolution of the liquidating co. :—

Held, that the liquidator had been guilty of negligence in the discharge of his statutory duty, and was liable in damages to unpaid creditors of the liquidating co. of whose claims he was aware and who had no notice of the liquidation until long after the dissolution of the co.

Dictum of James L.J. in *In re London and Caledonian Marine Insurance Co.*, (1879) 11 Ch. D. 140, approved and followed.

Knowles v. Scott, [1891] 1 Ch. 717, discussed and distinguished. *PULSFORD v. DEVENISH*

Farwell J. [1903] W. N. 179; [1903] 2 Ch. 625

2. — Official receiver—Duty as to giving information to outside liquidator — Companies (Winding-up) Rules, 1903, rr. 53, 144.

Information obtained by the official receiver from officers of the co. under rule 53 of the Companies (Winding-up) Rules, 1903, is not "property" of the co. within rule 144 (1), or "information respecting the estate and affairs of the co. . . . necessary or conducive to the due discharge of the duties of the liquidator" within the meaning of rule 144 (3), which it is the duty of the official receiver to produce to a liquidator superseding him as liquidator.

Quare, whether the Court on sufficient evidence may not direct the official receiver, as its officer, to disclose the information to an outside liquidator. *In re LAKE GEORGE MINES, LD.*

Byrne J. [1904] 1 Ch. 803

— Official receiver and—Jurisdiction to order official receiver to pay costs personally.

See **COMPANY—Receiver.**

3. — Power to compromise action—Extraordinary resolution—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 160.

A compromise by the liquidator of a co. in voluntary liquidation of a claim by the co. against a third party, is, if not set aside, binding on the co., although entered into by the liquidator without obtaining the sanction of an extraordinary resolution of the co. under s. 160 of the Companies Act, 1862. *CYCLEMAKERS' CO-OPERATIVE SUPPLY CO. v. SIMS.*

Div. Ct. [1903] 1 K. B. 477

COMPANY—WINDING-UP (Liquidator)—contd.

4. — *Removal of voluntary liquidator—By whom applications may be made to the Court in a voluntary winding-up—Companies Act, 1862 (25 & 26 Vict. c. 89), ss. 138, 141—Companies Act, 1900 (63 & 64 Vict. c. 48), s. 25.*

All applications to the Court in a voluntary winding-up are made under s. 138 of the Companies Act, 1862, and the fact that a creditor is enabled to apply under the section (by s. 25 of the Companies Act, 1900) may give him a locus standi to apply under the latter part of s. 141 of the Act of 1862 for the removal of a liquidator and the appointment of another liquidator in the voluntary winding-up.

But the omission from the latter part of s. 141 of the words "on the application of a contributory" (which occur in the former part of the section with reference to the appointment of a liquidator where there is no liquidator) does not authorize an application by a person who is not the liquidator, or a contributory, or a creditor of the co. *In re NEW DE KAAP, LD.*

Neville J. [1908] 1 Ch. 589

5. — *Remuneration, Claim for invalid appointment of liquidator—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 67.*

A co. which had resolved on voluntary winding-up by a resolution, which was subsequently set aside by the Court as invalid, appointed the appellant to be liquidator. On a compulsory winding-up of the co. the appellant sought to prove as a creditor for work done and expenses incurred by him while purporting to act as liquidator, and before he knew of the invalidity of his appointment:—

Held, that neither under s. 67 of the Companies Act, 1862, nor on a quantum meruit was he entitled to be paid anything for services rendered as liquidator; but in so far as any work then done by him had been useful to the co. for business purposes unconnected with the voluntary liquidation, or had been used by the official receiver and liquidator in the compulsory winding-up with full knowledge of the facts, he was entitled to claim reasonable remuneration. *In re ALLISON, JOHNSON & FOSTER, LD. Ex parte BIRKENSHAW—Div. Ct. [1904] 2 K. B. 327*

6. — *Remuneration of liquidator—Charges for letters—Winding-up (Voluntary).*

A co. which was being wound up under a compulsory winding-up order was liable for the costs and expenses of the voluntary winding-up of other cos., the undertakings of which it had purchased.

In assessing the amount payable as remuneration to the voluntary liquidator:—

Held, (1.) that the Court would not sanction an alleged practice of accountants to charge for all letters written, irrespective of their character, as having taken half an hour of the principal's time (charged for at a certain rate) in the preparation; (2.) that there was nothing to bind the Court to apply the scale adopted by the Chancery judges and sanctioned by the Lord Chancellor in 1868, which only applied to official liquidators; and (3.) that each case as to the remuneration of a voluntary liquidator must be considered with regard to its own particular

COMPANY—WINDING-UP (Liquidator)—contd.
circumstances. *In re AMALGAMATED SYNDICATES, LD.*

Wright J.
[1901] W. N. 105; [1901] 2 Ch. 181

— Restricted power of liquidators of bank to sue in their own names.
See CANADA. 3.

— Solicitors' lien.

See under COMPANY—WINDING-UP—Solicitors' Lien.

— Solicitor—Lien on documents—Winding-up—Liquidator—Documents in solicitor's hands before winding-up order.

See SOLICITOR—Lien.

7. — *Voluntary liquidator—Officer of the company—Duty to stamp and file contracts with respect to shares issued for a consideration other than cash—Companies Act, 1900 (63 & 64 Vict. c. 48), s. 7.*

A liquidator in the voluntary winding-up of a co. is an officer of the co. within the meaning of s. 7 of the Companies Act, 1900, and it is, therefore, his duty to pay out of the assets of the co. the stamp duty in respect of any unfiled contract constituting the title of an allottee of shares allotted for a consideration other than cash, and to file the contract when duly stamped.

Form of order on application for directions. *In re X. Co., LD.*

Farker J. [1907] 2 Ch. 92

Meetings.

See also under COMPANY—Meetings.

1. — *Meeting to pass resolution for winding-up—Requisition of shareholders—Notice issued by secretary without authority of directors—Companies Act, 1862 (25 & 26 Vict. c. 89), ss. 51, 129 145; Sched. I., Table A, cl. 32—Companies Act, 1900 (63 & 64 Vict. c. 48), s. 13.*

After a requisition for an extraordinary meeting has been deposited under s. 13 of the Companies Act, 1900, the meeting can only, within the next twenty-one days, be summoned by the directors acting together as a board, and the secretary of the co. cannot on his own responsibility lawfully summon the meeting.

In re Hagercroft Gold Reduction and Mining Co., [1900] 2 Ch. 230, followed.

Quære, whether, if the twenty-one days expire without any meeting being summoned by the directors, the requisitionists can call the meeting by notices signed by the secretary.

A co. was governed, so far as the calling of meetings was concerned, by Table A (in Sched. I. to the Act of 1862), clause 32 of which says that "the directors may, whenever they think fit . . . convene an extraordinary general meeting." By the articles of association two directors constituted a quorum. A requisition was sent to the directors in accordance with s. 13 of the Companies Act, 1900, requesting them to convene a meeting to pass an extraordinary resolution for voluntary winding-up. Within the twenty-one days allowed to the directors, by s. 13, for convening the meeting, the secretary of the co., without the authority of the directors, summoned the meeting. At the meeting two directors, the requisitionists, and many shareholders were

COMPANY—WINDING-UP (Meetings)—contd.
present, and the resolution was passed by the required majority.

* At the hearing of a petition by a creditor for the compulsory winding-up of the co., the defence was set up that a voluntary winding-up was pending, and that the petitioner did not shew that he was thereby prejudiced:—

Held, that the secretary had no power to issue the notices, that there was no ratification of his act, that the so-called ratification of the co. was invalid, and that a compulsory winding-up order must be made. *In re STATE OF WYOMING SYNDICATE* Wright J. [1901]

W. N. 141; [1901] 2 Ch. 431

2. — *Special resolution — Winding-up — Declaration of chairman — Companies Act, 1862* (25 & 26 Vict. c. 89), s. 51.

The declaration of the chairman of a meeting called to pass a resolution under s. 51 of the Companies Act, 1862, is not conclusive where the declaration shews on the face of it that the statutory majority has not voted in favour of the resolution.

In re Hadleigh Castle Gold Mines, Ltd., [1900] 2 Ch. 419, and *Arnot v. United African Lands, Ltd.*, [1901] 1 Ch. 518, distinguished. *In re CARATAL (NEW) MINES, LD.* Buckley J. [1902] W. N. 120; [1902] 2 Ch. 498

Memorandum of Association.

See under COMPANY—Memorandum.

Mortgages.

— Company incorporated by statute — Power to mortgage undertaking — Existing debt — Charge upon surplus lands — Ultra vires.
See CORPORATION. 15.

— Debentures.

See under COMPANY—Debentures.

Name.

— Company practice.

See under COMPANY—Name.

Non-Commencement.

1. — *Non-commencement of business for a year — Company registered in England to protect name of foreign company — Companies Act, 1862* (25 & 26 Vict. c. 89), s. 79.

A co. having been registered in Guernsey with the name of Cæmentium (Parent) Company, Limited, a co. carrying on the same kind of business, and having the same directors and the same name, was in 1906 registered in England with a capital of 10*l.*, none of which had been paid up. The English co.'s registered office and the English place of business of the Guernsey co. were both at the same address in London. The English co. had never done any business, and the Guernsey co. had recently complied with the requirements of s. 35 of the Companies Act, 1907 (7 Edw. 7 c. 50), as regards cos. incorporated outside, but having a place of business within the United Kingdom. A shareholder petitioned for the winding-up of the English co. on the grounds that it had not commenced its business within a

COMPANY — WINDING-UP (Non-Commencement)—continued.

year from its incorporation, and that the co-existence of the two cos. was likely to cause confusion and be injurious to creditors.

Neville J. ordered the English co. to be wound up. *In re CEMENTIUM (PARENT) CO., LD.* Neville J. [1908] W. N. 257

Notice.

See under NOTICE.

Practice.

See also under COMPANY—Practice.

Transfer of business under Companies (Winding-up) Act, 1890. W. N. 1901 (Dec. 21), p. 335. See CURRENT INDEX, 1901, p. lxxvii.

1. — *Absence of petitioner at hearing — Substitution of another person as petitioner — Companies (Winding-up) Rules, 1903*, r. 36.

On a petition for the winding-up of a co. coming on for hearing the petitioner did not appear.

Neville J. said that it could not have been intended that because a petitioner did not attend there should be no power for the Court to substitute a creditor or contributory as petitioner; but the rule omitted to provide for such a case, and no order for substitution could be made. The creditors supporting were entitled to one set of costs between them, and the contributory supporting was also entitled to his costs. Petition dismissed. *In re VANGUARD MOTOR-BUS Co.* Neville J. [1908] W. N. 99

— Advertisements.

See under COMPANY—WINDING-UP—Advertisements.

2. — *Advertisement of petition — Omission of word "Limited" — Companies (Winding-up) Rules, 1903*, rr. 27, 200 (1), Form 6.

The advertisement of a petition for winding-up a co. omitted the word "Limited" at the end of the co.'s name.

Buckley J., referring to *In re Army and Navy Hotel*, (1886) 31 Ch. D. 644, where a co. called "The Army and Navy Hotel, Limited," had been described in the advertisement as "The Army and Navy Hotel Company, Limited," and the Court ordered the petition to be re-advertised, said that the petition must be re-advertised and must stand over for a fortnight. *In re LONDON AND PROVINCIAL PURE ICE MANUFACTURING Co.* - - - Buckley J. [1904] W. N. 136

3. — *Affidavit in support of petition — Charge of fraud — Companies (Winding-up) Rules, 1903*, r. 29.

A petition presented for the winding-up by the Court of a co., contained allegations of fraud against one of the officers of the co. The only affidavit in support of the petition was the so-called "statutory affidavit" referred to in r. 29 of the Companies (Winding-up) Rules, 1903.

On an application for an adjournment the question was raised whether the officer need adduce any evidence to rebut the allegation of fraud.

Parker J. said that where fraud was charged

COMPANY—WINDING-UP (Practice)—contd.

the statutory affidavit was not sufficient. The facts of the alleged fraud must be stated on affidavit. *In re LONDON AND HULL SOAP WORKS, LD.* - **Parker J. [1907] W. N. 254**

— Appeal—Costs.

See COMPANY—WINDING-UP—Costs. 8.

4. — Appeal—Final or interlocutory—Compulsory winding-up order.

Application for security for the costs of an appeal from an order made by Buckley J. for the compulsory winding-up of the co. After some discussion it was stated that the application would not be pressed if the hearing of the appeal were advanced.

The Court directed that the appeal should be put in the paper for hearing on the next day on which interlocutory appeals were taken, observing that it would be convenient that appeals from compulsory winding-up orders should be treated as interlocutory and not as final appeals. *In re NAVAL, MILITARY AND CIVIL SERVICE CO-OPERATIVE SOCIETY OF SOUTH AFRICA, LD.*

C. A. [1903] W. N. 120

Note.

In re Samuel Allsopp & Sons, Ltd., C. A. [1903] W. N. 132. See Company—Practice. 2.

5. — Appeal from registrar — Companies (Winding-up) Rules, 1903, r. 7.

An appeal from an order of the registrar in chambers in the winding-up of a co. does not lie direct to the C. A.

The proper course to obtain a reversal of such an order is to move before the judge to discharge it. *In re PRETORIA PIETERSBURG RY. CO.*

C. A. [1904] W. N. 129; [1904] 2 Ch. 170

Note.

See In re Pretoria Pietersburg Ry. Co. (No. 2), Buckley J., [1904] 2 Ch. 359. See Company—Winding-up—Costs. 7.

6. — Appearances, List of—Petition—Companies (Winding-up) Rules, 1903, r. 34.

Buckley J. called the attention of solicitors to r. 34 of the Companies (Winding-up) Rules, 1903, under which a copy of "the list of the names and addresses of the persons who have given notice of their intention to appear on the hearing of the petition, and of their respective solicitors," is, "on the day appointed for hearing the petition," to "be handed by the petitioner, or his solicitor or London agent, to the Court prior to the hearing of the petition," and to the settled practice that where no notice of intention to appear has been given, that fact must be stated in the form handed to the Court prior to the hearing. Referring to the inconvenience which had been caused by non-compliance with r. 34, he said that, as regarded all winding-up petitions presented after June 13, 1906, he should, in case of non-compliance with the rule, disallow the costs of the petitioner's solicitor of attending at the hearing of the petition. In order, however, that solicitors might be reminded of the practice on this point, the registrar would in future hand to the solicitor of the petitioner, on the petition being filed, a notice calling attention to the rule referred to. **PRACTICE DIRECTION Buckley J. [1906] W. N. 127**

COMPANY—WINDING-UP (Practice)—contd.

— Costs.

See under COMPANY—WINDING-UP—Costs.

— Costs—Taxation—Drawing bills of costs—Practice.

See COSTS. 69.

7. — "Creditor"—Winding-up order—Petition by equitable assignee of part of a debt—Companies Act, 1862 (25 & 26 Vict. c. 89), ss. 79, 80, 82.

A co. was indebted to one Noakes in a sum of 115*l.* Noakes made an equitable assignment of a part of the debt, amounting to 51*l.* 8*s.*, to Borton. Borton gave notice of the assignment to the co., and, being unable to obtain payment, served on the co. a statutory demand for payment of the 51*l.* 8*s.* The demand not having been complied with, Borton, as a creditor of the co. in respect of the 51*l.* 8*s.*, presented a petition praying that it might be wound up by the Court:—

Held, that there was a valid equitable assignment of the 51*l.* 8*s.*; that, having regard to s. 80, sub-s. 1, referring to "a creditor, by assignment or otherwise, to whom the co. is indebted at law or in equity," the "creditor" entitled to petition under s. 82 included a creditor by equitable assignment, and that the petitioner was entitled to a winding-up order. *In re MONTGOMERY MOORE SHIP COLLISION-DOORS SYNDICATE*

Bryne J. [1903] W. N. 121

8. — Creditor's petition—Assets covered by debentures—Management of company controlled by debenture-holders—Debenture-holders' action—Rights of unsecured creditors—Companies Act, 1862 (25 & 26 Vict. c. 89), ss. 79, 91.

A creditor's petition for a winding-up order was opposed by debenture-holders, who had a floating charge on all the property of the co., and who had obtained the appointment of a receiver in an action to enforce their security, and by the co., which was under the control of the debenture-holders, on the ground that there were no assets available for the unsecured creditors.

Held, that the onus was on the respondents to prove that there was no reasonable possibility of any benefit accruing to the unsecured creditors from the winding-up, and that unless that onus was discharged the petitioner was entitled to a winding-up order in order that the unsecured creditors might be represented by the official receiver in the proceedings in the debenture-holders' action.

Decision of Buckley J., [1906] W. N. 120, affirmed.

Per Buckley J.: The Court has jurisdiction to make a winding-up order on a creditor's petition which is not opposed by the unsecured creditors if the order will be useful, not necessarily fruitful, and it is no answer that the debenture-holders will or may sweep up all the assets; and tendency of the Court since the passing of the Companies (Winding-up) Act, 1890, is not to refuse a winding-up order in such a case on the ground that there are no assets unless it sees that the petition is presented simply for the purpose of making costs.

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In re St. Thomas's Dock Co., (1876) 2 Ch. D. 116, and *In re Chapel House Colliery Co.*, (1883) 24 Ch. D. 259, discussed. *In re CRIGGLESTONE COAL CO., LD.* C. A. [1906] W. N. 126; [1906] 2 Ch. 327

Note.

See also *In re Crigglestone Coal Co.*, *Stewart v. The Company*, *Swinfen Eady J.*, [1906] W. N. 20; [1906] 1 Ch. 523. *Company—Debentures.* 22.

9. — *Notice of intention to appear on petition—Name and address—Companies (Winding-up) Rules*, 1903, r. 33, Form 11.

Judgment creditors' petition to wind up a co.

Notice of intention to appear and oppose the petition was given on behalf of several creditors by their solicitor under the Companies (Winding-up) Rules, 1903, r. 33, form 11. Vide *Palmer's Company Precedents*, 9th ed., part 2, pp. 107, 1047.

This notice contained the names of the creditors and the amount of their claims, but it did not give their addresses, the only address being that of the solicitor who signed the notice.

The petitioners had therefore not been able to include the creditors' addresses in their "list of parties attending the hearing" as required by r. 34, form 12.

On behalf of the opposing creditors it was suggested that r. 33 and form 11 did not require the creditors' addresses to be inserted.

Swinfen Eady J.: I will hear the opposing creditors on this occasion, as there seems to have been some misapprehension. It is, however, quite clear from the rules and forms that both the names and addresses of persons intending to appear on the hearing of the petition must be stated in the notice under form 11.

The petition was ordered to stand over on certain undertakings in order to give the co. an opportunity to pay. *In re DESCOURS, PARRY & CO.*

Swinfen Eady J. [1909] W. N. 50

10. — *Order of registrar—Motion to discharge—Companies (Winding-up) Rules*, 1903, r. 7.

Application made by motion to discharge an order made by the registrar in chambers.

Buckley J.: Rule 7 of the Companies (Winding-up) Rules, 1903, provides that "Subject to the provisions of the Acts and Rules in every Court the registrar may, under the general or special direction of the judge, hear and determine any application or matter which under the Acts and Rules may be heard and determined in chambers." I have power to give a special or general direction, and I hereby give a general direction that when a person desires to have an order made by the registrar in chambers discharged, he must move before me in Court to discharge the order of the registrar. *In re BRYNDU AND PORT TALBOT COLLIERIES, LD.*

Buckley J. [1904] W. N. 136

11. — *Petition—Affidavit in support—Petition by Attorney-General on behalf of the Crown—Companies Winding-up Rules*, 1890, r. 36.

The Att.-Gen. on behalf of the Crown, desired to present a petition for the winding-up of the

COMPANY—WINDING-UP (Practice)—contd.

above co. Rule 36 of the above rules requires that a winding-up petition shall be verified by an affidavit made by the petitioner. The question arose who should make the affidavit in the present case. The matter was mentioned to *Cozens-Hardy J.*, and he desired that it should be brought before the C. A.:—

Held, that it would be highly inexpedient to adhere so strictly to the rule as to require the affidavit to be made by the Att.-Gen. himself; that the officer of the Court ought to receive the petition if it were verified by the affidavit of some other fit and proper person, and the solicitor to the Inland Revenue would be a proper person for the purpose. *In re BRANDY DISTILLERS' CO.*

C. A. [1901] W. N. 37

12. — *Petition—Creditor—Debenture stockholder—Unpaid interest—Companies Act*, 1862 (25 & 26 Vict. c. 89), s. 82.

A trust deed for securing debenture stock, made between the co. and the trustees for the stockholders, provided that the co. would pay the half-yearly interest direct to the stockholders, whose receipt should be a good discharge to the trustees and the co. The certificate delivered to each stockholder stated the rate of interest and dates of payment, and certified that the stockholder was the registered holder of the stock which "is issued subject to the provisions contained" in the trust deed, but it did not contain any direct covenant with the stockholder to pay him the interest:—

Held, that stockholders whose interest was in arrear were not entitled to present a winding-up petition as creditors under s. 82 of the Companies Act, 1862. *In re DUNDERLAND IRON ORE CO., LD.* *Swinfen Eady J.*

[1909] W. N. 23; [1909] 1 Ch. 446

13. — *Petition—Creditor with debt payable at a future date—Debenture stockholder's petition—Companies Act*, 1862 (25 & 26 Vict. c. 89), ss. 79, 80, 82.

A debenture stockholder of a co. who has no present claim for principal or interest is not a creditor in such a sense as to be entitled to petition for a winding-up order.

In re Australian Joint Stock Bank, [1897] W. N. 48, distinguished.

The effect of provisions in a debenture stock trust deed as to the security being enforceable immediately on a breach of covenant by the co. considered. *In re MELBOURNE BREWERY AND DISTILLERY*

Wright J. [1901] 1 Ch. 453

— *Petition—Debt under 50l.—Costs.*

See COSTS.

14. — *Petition—Evidence in support—Statutory affidavit—Defect or irregularity—Companies (Winding-up) Rules*, 1903, rr. 29, 200.

Rule 29 of the Companies (Winding-up) Rules, 1903, which provides that a petition for winding up a co. shall be verified by an affidavit made by the petitioner, is merely directory as to the kind of affidavit to be accepted as *prima facie* evidence of the statements in the petition. The Court will, therefore, in a proper case, accept the affidavit of the petitioner's attorney or agent, particularly where it is satisfied that the material

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facts are more within the knowledge of the deponent than of the petitioner himself.

In re Charterland Stores and Trading Co., [1900] 2 Ch. 870, dissented from. *In re AFRICAN FARMS, LD.* - **Warrington J.** [1906] W. N. 69; [1906] 1 Ch. 640

15. — *Petition—Statement as to assets—Supervision order—Re-advertisement of petition—File of proceedings.*

Several petitions for the winding-up of cos. omitted any allegation shewing that the co. had any uncalled capital, works, book debts, or other assets upon which a winding-up order, if made, could operate.

Buckley J. directed the petitions to stand over, with liberty to amend by shewing that the cos. had something to wind up; and he stated that he should always look to see whether there was anything belonging to the co. petitioned against sufficiently substantial to produce something if realized.

Buckley J. also said, that where a petition for a compulsory order had been advertised, and at the hearing the petitioner asked for a supervision order only, the petition ought as a general rule to be re-advertised. This appeared to be the practice more recently adopted, the reason for it apparently being that persons who would be satisfied with a compulsory order would not take the trouble to appear if they thought such an order would be made, but might appear and object to a supervision order only being made.

His Lordship also said that he did not intend to look at the files of proceedings, but that parties must come furnished with office copies of affidavits, &c., as in other cases in the Ch. Div., and that the costs of such copies would be allowed. **PRACTICE NOTE** - **Buckley J.** [1902] W. N. 77

16. — *Petition of unsecured creditor—Assets covered by debentures—Business carried on by debenture-holders—"Just and equitable" ground for winding up—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 79.*

A creditor of a co. recovered judgment against it in an action for goods sold and delivered. On threatening to issue execution the creditor discovered that all the present and future assets of the co. were charged by debentures (some of which had been created after the date of his judgment) in favour of debenture-holders who were carrying on the business in the co.'s name although no receiver had been appointed. The judgment creditor presented a petition asking that the co. might be wound up by the Court, and stating the inability of the petitioner to say positively until after proper investigation whether there would be any surplus of assets after satisfying the debenture-holders. The petition was not supported or opposed by the other unsecured creditors:—

Held, that assuming that the assets were insufficient to satisfy the debenture-holders, the Court was entitled to say that it was "just and equitable" within the meaning of s. 79 of the Companies Act, 1862, to wind up a co. so conducted.

The Court was, moreover, not satisfied on the

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evidence that there would be nothing for unsecured creditors in the event of winding-up, and ordered the co. to be wound up. *In re ALFRED MELSON & Co., LD.*

Buckley J. [1906] W. N. 91; [1906] 1 Ch. 841

17. — *Petitioner's debt less than 50l.*

Petition for the compulsory winding up of the co., brought by a solicitor who had recovered judgment for his costs amounting to 41l.

Neville J. I think this petition must be dismissed. I understand the practice of the Court to be, that it does not make an order on a petition for winding up a co. where the petitioner's debt is less than 50l., unless there are special circumstances. *In re World Industrial Bank, Ltd.*, [1909] W. N. 148, I made the order because the co. were using this practice of the Court to enable them to refuse to pay a debt when they had sufficient assets, and I made an order this morning in the case of a co. which obviously could never commence business. But in this case no special circumstances have been shewn, except that the debt has not been paid.

In re INDUSTRIAL INSURANCE ASSOCIATION, LD. - **Neville J.** [1910] W. N. 245

18. — *Petitioner's debt under 50l.—Costs—Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), ss. 137, 129, 130.*

This co. was incorporated in September, 1908, with a capital of 50,000l. in 1l. shares, but only 1007 shares had been issued, and on 1000 of these only 1s. per share had been called up. The co. had never commenced business, and had no assets except its uncalled capital. The co. had incurred a debt to the petitioner for goods supplied and work done amounting to 28l. 11s. 4d., and the petitioner had recovered judgment for that amount and costs amounting to 35l. 11s. 4d. The petitioner had applied in vain for payment, and one of the directors, who held 200 shares upon which only a shilling each was paid, told him that the co. had no assets except its uncalled capital, and he declined to call up capital to pay the petitioner's debt because its amount would not justify the presentation of a petition. The petitioner then presented this petition for a compulsory winding-up.

Neville J. said that he certainly did not wish to encourage the presentation of winding-up petitions for small debts, but it was still more important to prevent the Companies Acts being used as an instrument of fraud. He thought this was emphatically a case in which it was just and equitable that the co. should be wound up. The co. had incurred a liability which they had ample means to discharge by means of their uncalled capital, but the creditor was met with defiance because the co. refused to make calls, and thought he could not file a petition. The order for a compulsory winding-up must be made with the usual order as to costs. *In re WORLD INDUSTRIAL BANK, LD.*

Neville, J. [1909] W. N. 148

NOTE.

This case was followed by *Neville J.*, *In re Industrial Insurance Association, Ltd.*, [1910] W. N. 245. See No. 17, above.

COMPANY—WINDING-UP (Practice)—contd.**19. — Standing-over petition.**

A petition by creditors for the compulsory winding-up of the co. was in the paper.

Counsel for the petitioners said that he was willing that the petition should stand over on the terms of what is known as "a St. Thomas' Dock Order." He referred to Palmer's Company Precedents, vol. ii. 9th ed. 123, where reference is made, not only to the case of *In re St. Thomas' Dock Co.*, (1876) 2 Ch. D. 116, but also to *North-Western of Monte Video, &c., Co.*, Hall, V.-C., April 28, 1876, B. 1377, in which (as appears from earlier editions of the same work) the order set out was made.

Buckley J. said that the undertaking by the co. in the order cited was "not to consent to a winding-up order on any other petition, and not to wind up voluntarily." But a corporation could not bind itself not to go into voluntary winding-up. In *In re St. Thomas' Dock Co.*, Jessel M.R. imposed on the co. an undertaking "not to consent to a winding-up order on the petition of any other creditor, or to a voluntary winding-up," and a similar undertaking—not an undertaking "not to wind up voluntary"—must be given in the present case. *In re ST. NEOT'S WATER CO.* **Buckley J. [1905] W. N. 183**

20. — Stay of proceedings in action—Denial of liability by liquidator—Practice—Voluntary winding-up—Companies Act, 1862 (25 & 26 Vict. c. 89), ss. 85, 87, 138—Companies Act, 1900 (63 & 64 Vict. c. 48), s. 25.

A co. having gone into voluntary liquidation, an action was brought against it for money alleged to be payable to the plt. in respect of services rendered by him to the co. The liquidator denied any liability on the part of the co. On the liquidator's applying for a stay of proceedings in the action on the ground that the co. was in liquidation:—

Held, that the question of the co.'s liability being a matter which was *prima facie* properly determinable in the ordinary way by an action, and no special ground for a stay of proceedings being made out, the application should, in the exercise of the discretion of the Court, be refused. *CURRIE v. CONSOLIDATED KENT COLLIERIES CORPORATION, LD.*

C. A. [1906] 1 K. B. 134

21. — Stay of proceedings—Private company—Undisclosed agreement for promoter participating in vendor's shares—Transfer of vendor's shares to directors—Issuing shares at a discount—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 89—Companies (Winding-up) Act, 1890 (53 & 54 Vict. c. 63), s. 7—Companies Winding-up Rules, 1890, r. 58.

In the exercise of its jurisdiction with reference to staying proceedings under an order for the winding-up of a co., the Court should, so far as possible, act upon the principles which are applicable in exercising jurisdiction to rescind a receiving order or annul an adjudication in bankruptcy against an individual—in which cases the Court refuses to act upon the mere assent of the creditors in the matter, and considers not only whether what is proposed is for the benefit of the creditors, but also whether

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the rescission or annulment will be conducive or detrimental to commercial morality and to the interest of the public at large.

In refusing or postponing a stay of winding-up proceedings the Court will have regard to the following facts:—

(a) That directors have not complied with their statutory duties as to giving information to the official receiver or furnishing a statement as to the affairs of the co.

(b) That there has been an undisclosed agreement between the promoter and the vendor to the co. as to the participation by the former in fully paid shares forming the consideration for the purchase of property by the co. on its formation.

(c) That the promoter has made gifts of fully paid shares to the directors.

(d) That there are any other matters connected with the promotion, formation, or failure of the co., or the conduct of its business or affairs, which appear to the Court to require investigation.

And, *semble*, the same principles are applicable whether the co. has or has not invited the public to subscribe for its shares—at any rate, if any shares held by those originally connected with a co. of the latter description have been transferred to persons not having full knowledge of what has been previously done. *In re TELE-SCRIPTOR SYNDICATE, LD.* - **Buckley J. [1903] W. N. 41; [1903] 2 Ch. 174**

22. — Stay of proceedings—Voluntary winding-up—Dissolution—Companies Act, 1862 (25 & 26 Vict. c. 89), ss. 89, 138, 142, 143.

Though there is no jurisdiction to make an order directly extending the period of three months prescribed by s. 143 of the Companies Act, 1862, for the dissolution of a co. in voluntary liquidation, the Court has jurisdiction, after the registration of the return, but before the expiration of the three months limited by this section, to make an order under ss. 89 and 138 in the matter of the voluntary winding-up to stay all proceedings in relation to such winding-up, and so keep the co. on foot notwithstanding the expiration of the three months limited by s. 143.

In re Crookhaven Mining Co., (1866) L. R. 3 Eq. 69, discussed and applied. *In re EASTERN INVESTMENT CO., LD.* - **Warrington J. [1905] W. N. 5; [1905] 1 Ch. 352**

23. — Transfer of actions—Registrar—Proceedings in chambers—Companies (Winding-up) Rules, 1903, r. 42.

Warrington J. Questions have lately arisen as to the mode in which applications in chambers in actions transferred under rule 42 of the Rules of 1903 should be dealt with. Under the jurisdiction in winding-up it has for some time been the practice, as a general rule, for the registrar in such cases to make such order as he thinks fit, leaving the dissatisfied party to move the judge in Court to discharge it. In the Ch. Div., as we know, the Master adjourns the application to the judge without actually making the order. I have consulted Buckley J., and we have come to the conclusion that, to avoid a diversity of practice in the office, the practice in winding-up

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should be followed in the transferred actions.
PRACTICE NOTE

Warrington J.
[1905] W. N. 128

24. — Voluntary winding-up—Amalgamation and reconstruction—Unfair scheme—Dissentient minority — No agreement executed — Contributory's petition impeaching scheme—Compulsory order—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 161.

Where a scheme for the voluntary winding-up and amalgamation of co. A and co. B by sale and transfer of their assets to a new co. under s. 161 of the Companies Act, 1862, is eminently unfair to the independent minority of co. A, and is only passed as regards co. A by means of a large majority of shares held by co. B, which alone is benefited by the scheme, then, if no agreement for the sale to the new co. has been actually executed, the Court will, at the instance of the minority of co. A, stop the scheme by making a compulsory order to wind up that co., and will not leave that minority to their remedy of being paid out as dissentient members under s. 161. *In re CONSOLIDATED SOUTH RAND MINES DEEP, LD.*

Swinfen Eady J.

[1909] W. N. 35; [1909] 1 Ch. 491

On Appeal.

25. — Appeal by company—Security for costs—Practice—Company—Winding-up order.

The co. appealed: the official receiver and liquidator was made respondent to the appeal.

The C. A. ordered security to be given for 100l.

Cozens-Hardy M.R. said it was quite clear that security, and indemnifying security, ought to be given. A winding-up order had been made, the effect of which was to displace the voluntary liquidator under the previous voluntary liquidation and vest the property of the co. in the respondent to this appeal. The official receiver represented the co., and although the appeal was nominally in the name of the co., and although it might be quite right that the co. should be in a position to appeal against the order which wound it up, still the Court could not allow such an absurd result as this to happen, namely, that if the appeal was unsuccessful and was dismissed with costs, those costs would have to be paid by the successful respondent. Therefore, though the co. had a right to appeal, it ought only to be allowed to do so upon the terms of finding, not from the co.'s fund, but from some outside source—the directors or shareholders who were at the back of the appeal—security, and not merely nominal security, but indemnifying security against the costs of the appeal. *In re CONSOLIDATED SOUTH RAND MINES DEEP, LD.*

C. A. [1909] W. N. 66

26. — Voluntary winding-up—Compulsory order—Contributory—Fully paid shareholder, Petition by—Surplus assets—Directors—Present of shares—Fraud—Breach of trust—Jurisdiction—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 145.

A contributory of a co., even though he is the holder of fully paid shares, is not debarred from presenting a compulsory winding-up petition by the mere fact that there is a voluntary

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liquidation pending in which there is a surplus or probable surplus of assets for distribution. The jurisdiction to make a compulsory order is not limited to cases either where the voluntary liquidation is proved to be a sham or a fraud, or where the petition is supported by creditors, but may be exercised wherever the Court is satisfied that the voluntary liquidation is existing in circumstances which are likely to prejudice the shareholders, and that some benefit will result to the shareholders by the exercise of the jurisdiction.

During the pendency of the voluntary winding-up of a co. having surplus assets, a petition for a compulsory winding-up order was presented by a fully paid shareholder—

Held, that the case was not one in which the Court would exercise its jurisdiction to make a compulsory order, the evidence not being sufficient to shew that any benefit would thereby result to the shareholders. The petition was therefore dismissed, but, in the circumstances, without costs.

Decision of Wright J. affirmed.

In re Haycraft Gold Reduction and Mining Co., [1900] 2 Ch. 230, and *In re Gutta Percha Corporation*, [1900] 2 Ch. 665, approved.

In re Gold Co. (1879) 11 Ch. D. 701, considered. *In re NATIONAL COMPANY FOR THE DISTRIBUTION OF ELECTRICITY BY SECONDARY GENERATORS, LD.* — C. A. [1902] 2 Ch. 34

27. — Winding-up — Validity — Contemporaneous resolution for voluntary winding-up and reconstruction scheme—Invalidity of scheme.

A resolution for a voluntary winding-up is not invalid by reason of its being passed contemporaneously and in concert with resolutions for a reconstruction scheme which are held to be invalid.

Dictum of Turner L.J., in *In re Imperial Bank of China, India, and Japan*, (1866) L. R. 1 Ch. 339, 347, explained and distinguished.

Cleve v. Financial Corporation (1873) L. R. 16 Eq. 363, approved. *THOMSON v. HENDERSON'S TRANSVAAL ESTATES, LD.*

C. A. [1908] W. N. 105; 1 Ch. 765

28. — Winding-up order—Absence of assets—Just and equitable—Business of company carried on by debenture-holders Companies Act, 1862 (25 & 26 Vict. c. 89), s. 79, sub-s. 4, 5.—Companies (Winding-up) Rules, 1903, r. 186.

On a winding-up petition presented by judgment creditors it appeared that after the judgment the debenture-holders of the co. appointed a receiver of all the assets and undertaking of the co. He carried on the business of the co. and incurred further liabilities. The assets were very small and were more than covered by the debentures. Under the circumstances it was impossible for the petitioners to shew that there would be any surplus assets, or that they would get any advantages from a winding-up:—

Held, that in the special circumstances of the case a winding-up order ought to be made. *In re CHIC, LD.* Warrington, J. [1905] W. N. 110;

[1905] 2 Ch. 345

Note.

An action had been brought by the

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Robinson Printing Co. against the co. to enforce a charge on the advertising book debts of the co., when it was held by Warrington J. that the charge was valid. This case is reported; *Robinson Printing Co., Ltd. v. Chic., Ltd.*, [1905] 2 Ch. 123. See *Company—Receiver*. 6.

29. — Winding-up petition by fully paid up shareholder—No assets—Petition dismissed—Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), s. 141, sub-s. 1.

Petition by the holder of 5000 fully paid up shares in the co. asking for a compulsory winding-up order, on the ground that the co. had no assets and was insolvent, and that the whole substratum of the co. was gone.

The preliminary objection was taken that the petition was demurrable. It was settled that a fully paid up shareholder was not entitled to an order.

In re Rica Gold Washing Co., (1879) 11 Ch. D. 36, and Buckley on Companies, 9th ed., p. 321, referred to.

Neville, J. : I think this petition ought to be dismissed. It is a petition by a fully paid up shareholder, and he alleged that the co. has no assets and is insolvent. Under those circumstances the petition must be dismissed with costs. *In re KASLO-SLOCAN MINING AND FINANCIAL CORPORATION, LD.*

Neville J. [1910] W. N. 13

Preference.

1. — Fraudulent preference—Bankruptcy—Surety—"Creditor"—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 164—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 37; s. 48, sub-s. 1.

The word "creditor" in s. 48 of the Bankruptcy Act, 1883 (which avoids as a fraudulent preference a charge or payment made by an insolvent debtor "in favour of any creditor or any person in trust for any creditor with a view of giving such creditor a preference"), means any person who at the date when the charge or payment is made is entitled, if bankruptcy supervenes, to prove in the bankruptcy and share in the distribution of the bankrupt's estate. A surety who has a right of proof under s. 37 of the Act in respect of his contingent liability as surety is such a person. A charge, therefore, given to a surety, before he has been called upon to pay as surety, may be a fraudulent preference.

Ex parte Read, [1897] 1 Q. B. 122, is not on this point inconsistent with, and has not been overruled by *In re Warren*, [1900] 2 Q. B. 138. *In re BLACKPOOL MOTOR CAR CO., LD. HAMILTON v. BLACKPOOL MOTOR CAR CO., LD.*

Buckley J. [1901] 1 Ch. 77

2. — Fraudulent preference—Companies Act, 1862 (25 & 26 Vict. c. 29), s. 164—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), ss. 28 (repealed), 48.

Sect. 164 of the Companies Act, 1862, although it uses the words "undue or fraudulent preference," does not extend the operation of the fraudulent preference clause (s. 48) of the Bankruptcy Act, 1883, which is thereby applied to cos. being wound up under the Companies Acts.

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Within three months before the commencement of its winding-up a co. was indebted to H., and was to the knowledge of its directors unable to pay its debts as they became due from its own moneys. The chairman of its directors was personally liable on an acceptance of the co. for part of the debt due to H. In pursuance of a scheme resolved upon by the directors with the very object of relieving the chairman from his liability, debentures of the co. were allotted to H. as a collateral security for his debts :—

Held, that the transaction was not a fraudulent preference, and that the debentures were valid. *In re STENO-TYPER, LD. HASTINGS BROTHERS v. STENO-TYPER, LD.*

Cozens-Hardy J. [1901] W. N. 4 ;
[1901] 1 Ch. 250

3. — Fraudulent preference — Registered debenture issued pursuant to antecedent unregistered agreement—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 164—Companies Act, 1900 (63 & 64 Vict. c. 48), s. 14.

A co. with a small paid-up share capital was incorporated in March, 1904. It was composed of seven members of the families of J. and B. W. J. was its "permanent director" and the holder of the bulk of its shares, and his son and J. B. were the other directors. The co. had a large turnover necessitating more money, and in Dec., 1904, asked for an overdraft from its bankers. The bank required the guarantee of W. J., and at a meeting of the directors it was resolved that he should be empowered to arrange the overdraft and be requested to secure the same by deposit of securities or otherwise, and that the co. should, "whenever called upon by him to do so," give him security over its assets by means of debentures or other charge for the amount for which he should be liable. The overdraft was obtained, and W. J. deposited securities of his own to cover it. In Feb., 1905, the overdraft was increased, a similar resolution being passed. Neither agreement was registered. On Dec. 8, 1905, W. J. wrote to the co. asking for his debenture, and the same day the other directors resolved to give it to him. He received on Dec. 15 a debenture charging all the co.'s assets with payment of the amount of the overdraft, and this debenture he registered on Dec. 31 under s. 14 of the Companies Act, 1900. On Dec. 29 the directors resolved to call a meeting of the shareholders to pass an extraordinary resolution for voluntary winding-up, and the resolution was passed on Jan. 1, 1906. The co. was unable to pay its creditors in full :—

Held (applying the principle of *Ex parte Fisher*, (1872) L. R. 7 Ch. 636; *In re Gibson*, (1878) 8 Ch. D. 230; and *Ex parte Kilner*, (1879) 13 Ch. D. 245), that, as the giving of the debenture was purposely postponed until the co. was insolvent, in order to preserve the destruction of its credit which would result from registration, the postponement was evidence of an intention to give W. J. a fraudulent preference, and that on that ground the debenture was invalid.

Ex parte Hauzwell, (1883) 23 Ch. D. 626,

COMPANY—WINDING-UP (Preference)—*contd.*
distinguished. *In re JACKSON AND BASSFORD*,
LD.
Buckley J. [1906] W. N. 158 ;
[1906] 2 Ch. 467

4. — *Fraudulent preference—Voluntary followed by compulsory winding-up—Date of act of bankruptcy—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 164—Companies (Consolidation) Act, 1908 (8 Educ. 7, c. 69), s. 210.*

When a voluntary winding-up is followed by a compulsory winding-up, then, for the purpose of the fraudulent preference section (Companies Act, 1862, s. 164 ; Companies (Consolidation) Act, 1908, s. 210), the act of bankruptcy is the presentation of the petition.

In re Taurine Co. (1883) 25 Ch. D. 118, 138, applied. *In re RUSSELL HUNTING RECORD CO.*

Swinfen Eady J. [1910] W. N. 142 ;
[1910] 2 Ch. 78

5. — *Rates — Debenture-holders' action — Receiver in possession—Poor and district rates—Water rate payable by meter—Apportionment—Preferential Payments in Bankruptcy Act, 1888 (51 & 52 Vict. c. 62), s. 1, sub-s. 1 (a)—Preferential Payments in Bankruptcy Amendment Act, 1897 (60 & 61 Vict. c. 19), ss. 2, 3.*

On Nov. 9, 1898, holders of debentures of a co. commenced an action to enforce their security, and a receiver was appointed. The debentures were a charge on the undertaking of the co. and its property present and future. On Dec. 1, 1898, the co. went into liquidation. In Jan., 1899, the receiver paid poor rate and district rate made in Oct. 1898, and water rate, which was payable according to meter. He claimed to be recouped these payments as preferential payments under the Preferential Payments in Bankruptcy Act, 1888, and Amendment Act, 1897 :—

Held, that the question being one between mortgagor and mortgagee, not between successive occupiers, and the poor rate and district rate being due from the co. at the date of the commencement of the winding-up, the liquidators must pay the whole amounts out of the general assets of the co. ; but that the water rate was not due until the water was supplied, and must be apportioned, the liquidators paying only so much as was due at the date of the commencement of the winding-up. *In re MANNESMANN TUBE CO. VON SIEMENS v. MANNESMANN TUBE CO.*

Kekewich J. [1901] W. N. 104 ;
[1901] 2 Ch. 93

6. — *Workmen—Payment partly by commission on work done—"Wages or salary"—Preferential Payments in Bankruptcy Act, 1888 (51 & 52 Vict. c. 62), s. 1, sub-s. 1 (b).*

In this case workmen were employed by the co. and paid for their services partly by fixed salary and partly by way of commission upon the tonnage of ships turned out from the building yards. A resolution had been passed for voluntary winding-up, and a receiver had been appointed in an action by debenture-holders. At the date of the passing of the resolution for winding-up, the co. was indebted to various employees in certain amounts of which they claimed payment in priority to the debenture-holders. The question was whether the amounts

COMPANY—WINDING-UP (Preference)—*contd.*
so claimed were "wages or salary" entitled to priority within the meaning of s. 1, sub-s. 1 (b), of the Preferential Payments in Bankruptcy Act, 1888 :—

Held, that the sums claimed were wages within the meaning of the section. The section did not prescribe that in order to be entitled to priority the wages must be fixed wages. These were wages varying in amount in proportion to the work done, and were none the less "wages" within the Act. *In re EARLE'S SHIPBUILDING AND ENGINEERING CO. BARCLAY & Co. v. EARLE'S SHIPBUILDING AND ENGINEERING CO.*
Joyce J. [1901] W. N. 78

Note.—See *In re Klein, Ex parte Goodwin*, Bigham J., [1906] W. N. 148. *Bankruptcy—Preferential Debt.* 1.

Proof.

— Costs, Security for—Winding-up (Voluntary)
—Creditor out of jurisdiction claiming to prove.

See **COMPANY—WINDING-UP—Costs. 7.**

1. — *Creditor—Proof of debt—Amendment—Secured creditor—Omission to value security—Vote in respect of whole debt—"Inadcertence"—Solicitor—Lien on client's documents—Waiver—Companies (Winding-up) Act, 1890 (53 & 54 Vict. c. 63), Sched. 1, clause 8.*

Solicitors, who had a lien for costs upon title-deeds of a co. which were in their possession, proved their debt in the winding-up of the co., stating in the proof that they held no security for the debt, and they voted at a meeting of creditors in respect of the whole debt.

The solicitors afterwards acted for the liquidator in completing the sale of the co.'s property, and on completion they received the purchase-money and handed over the title-deeds to the purchaser, without any express bargain with the liquidator, that their lien should not be prejudiced. They claimed to retain their debt out of the purchase-money, and applied for liberty to amend their proof by stating in it their security and the estimated value of it, or, in the alternative, to withdraw their proof and rely on their security for payment.

One of the solicitors deposed that the form of proof was filled up by a clerk who was ignorant of the existence of the lien, and this was confirmed by the clerk. The solicitor said that when the proof was put before him by the clerk he asked whether it was in order, and, on being assured by the clerk that it was, he swore the proof. It entirely escaped his attention that the proof stated that his firm held no security for the debt. Neither he nor his partner had any intention of surrendering the security, and they were not aware until some months afterwards that the proof made it appear that they did not hold security. The deponent also said that at the commencement of the liquidation a loss to the creditors of the co. was not anticipated, for the statement of affairs shewed a surplus after paying the creditors, and the official receiver stated that the assets would be more than sufficient to pay the creditors in full. The assets ultimately proved to be deficient :—

Held, that, under the circumstances, leave

COMPANY—WINDING-UP (Proof)—continued.
ought not to be given to amend or withdraw the proof.

Decision of Buckley J. reversed.

Per Vaughan Williams L.J. The definition of "inadvertence" given in *Ex parte Clarke*, (1892) 67 L. T. 232, adopted.

The solicitors had not discharged the onus which lay on them of proving inadvertence on their part. But even if they had discharged that onus, yet they had lost their lien by handing over the deeds to the purchaser without calling the attention of the liquidator to the lien and asking whether he would consent to their retaining the benefit of it.

Stirling L.J. would not say that the omission to value the security did not arise from "inadvertence," though he thought the evidence very unsatisfactory.

But he rested his judgment on this, that the granting of leave to amend or withdraw a proof was not a matter of right, but was subject to the control of the Court, and leave ought not to be granted in a case in which, as here, the position of all parties, and especially that of the liquidator, had been altered since the proof was made. *In re SAFETY EXPLOSIVES, LD.*

C. A. [1904] W. N. 9; [1904] 1 Ch. 226

Note.

See In re Rowe, Bigham J., [1904] 2 K. B. 489. *See Company—Bankruptcy.*

2. — Winding-up — Creditor — Proof for interest—Solvent company—Gaming and wagering contract—Interest on sums deposited as cover.

A co. carrying on the business of outside brokers and transactions with its customers which were held to be illegal gambling transactions. The customers deposited money with the co. as cover for differences on these transactions, and it was held that they were entitled to prove in the winding-up of the co. for the amounts remaining in the co.'s hands as deposits.

The liquidator, on the proofs admitted in respect of deposits, paid by cheques two dividends amounting together to 20s. in the pound, and each creditor gave him a receipt for the amount of the second dividend, describing it as "the amount payable to me in respect of the second and final dividend of 10s. in the pound on and in full discharge of my claim against this co."

After payment to the creditors of 20s. in the pound on the principal of their deposits there remained a surplus in the hands of the liquidator.

It was shewn that by the course of dealing between the co. and its customers interest at 4 per cent. was paid on the deposits:—

Held, that there was an implied contract by the co. to pay interest on the deposits, and that the creditors were entitled to receive out of the surplus interest from the date of the winding-up until the date of payment of the second dividend:

Held, also, that there had been no accord and satisfaction of the claim for interest. *In re W. W. DUNCAN & Co.*

Buckley J. [1905] 1 Ch. 307

Receiver.

See under **COMPANY—Receiver.**

COMPANY—WINDING-UP—continued.

Reconstruction.

See also under **COMPANY—Reconstruction.**

1. — Dissentient shareholder — Registered office in Rhodesia—Notice of dissent left at London office—Waiver by liquidator—Conflict of laws—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 161 — Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), s. 192, sub-s. 3—Evidence of local law.

The plt. was the holder of fully paid up shares in the deft. co., which was in course of liquidation for the purpose of reconstruction. The co. was registered in 1903 under the Companies Ordinance, 1895, of Southern Rhodesia, and its registered office was in Bulawayo. By the co.'s articles it was provided that the business of the co. should be carried on in England. At extraordinary general meetings held in London on June 18 and July 3, 1909, resolutions had been passed for the voluntary winding-up of the co., and all its assets were to be taken over by a new co.

Under s. 158 of the Companies Ordinance, 1895, which was similar to s. 161 of the Companies Act, 1862, a dissentient shareholder had to give notice of dissent at the registered office of the co. within seven days of the date of the meeting. The plt. voted against the resolutions, and on July 5 gave notice of dissent at the London office of the co. On July 6 the liquidator sent him in reply a letter in the following terms: "I am in receipt of your letter of the 5th inst., and note that you do not consent to the reconstruction of the above company. Subsequently the liquidator refused to treat the notice of dissent as valid, on the ground that it was not served at the registered office of the co., and the plt. brought this action. Under the Companies Ordinance, 1895, the liquidator had power to do all acts in the name and on behalf of the co.:

Held, that the liquidator had waived the irregularity and that the notice of dissent must be treated as valid.

Evidence of an expert in Roman-Dutch law admitted although he had not practised in Rhodesia. *BRAILEY v. RHODESIA CONSOLIDATED, LD.* Warrington J. [1910] W. N. 123; [1910] 2 Ch. 95

Reduction of Capital.

See under **COMPANY—Reduction of Capital.**

Sale.

1. — Company—Winding-up—Sale to foreign company—"Company"—Meaning of—Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), ss. 192, 285.

A sale to a foreign co. cannot be effected under s. 192 of the Companies (Consolidation) Act, 1908.

In re Irrigation of France, (1871) L. R. 6 Ch. 176, distinguished. *THOMAS v. UNITED BUTTER COS. OF FRANCE, LD.*

Eve J. [1909] 2 Ch. 484

COMPANY—WINDING-UP—continued.**Scheme of Arrangement.**

See under COMPANY—Arrangements.

Secretary.

See under COMPANY—Secretary.

Secured Creditor.

1. — *Garnishee order—Application of law of bankruptcy—Judicature Act, 1875 (38 & 39 Vict. c. 77), s. 10—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 45.*

Sect. 45 of the Bankruptcy Act, 1883, restricting the rights of creditors under attachments of debts, is not made applicable by s. 10 of the Judicature Act, 1875, to the winding-up of insolvent cos., and therefore it is still the law, as recognized in *In re Stanhope Silkstone Collieries Co.*, (1879) 11 Ch. D. 160, that a judgment creditor who has obtained a garnishee order nisi to attach a debt owing by a co. to his debtor, and has served the order on the co. before commencement of its winding-up, is a secured creditor and entitled to the debt as against the liquidator. *In re NATIONAL UNITED INVESTMENT CORPORATION* — Wright J.

[1901] W. N. 76; [1901] 1 Ch. 950

Shares.

See under COMPANY—Shares.

Solicitors' Lien.

— Documents in solicitor's hands and subject to lien before the date of winding-up order.

See SOLICITOR—Lien.

Supervision Orders.

1. — *Practice—Petition—Costs—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 138—Companies Act, 1900 (63 & 64 Vict. c. 48), s. 25.*

The Companies Act, 1900, s. 25, provides that "in a voluntary winding-up an application under s. 138 of the Companies Act, 1862, may be made by any creditor of the co."

The Court held that, since the coming into operation of the Act of 1900, there was not any real advantage in having a supervision order. It was pointed out that a supervision order ipso facto stayed all actions against the co., whereas in a voluntary winding-up application had to be made to stay each action. The Court would not in future be disposed to allow the costs of a petition for a supervision order unless it could be shewn that there was some sufficient reason for making the order. PRACTICE NOTE

Wright J. [1901] W. N. 14

Trade Name.

See under COMPANY—Name.

Ultra Vires.

— Gratuities to officers and servants.

See COMPANY—Gratuities. 1.

Vesting Orders.

See under COMPANY—Vesting Orders.

COMPANY—WINDING-UP—continued.**Voluntary Winding-up.**

1. — *Special resolutions for—Voluntary liquidation—Notice of meeting to pass resolutions for reconstruction—Companies Act, 1862 (25 & 26 Vict. c. 89), ss. 51, 129.*

A petition was presented by a creditor for a compulsory winding-up order against the co. As between him and the co. the only question was whether there should be a compulsory winding-up order, or what was alleged to be a voluntary winding-up should be continued under the supervision of the Court, and the petitioner was satisfied with a supervision order:—

Held, that there never was passed a valid resolution for voluntary winding-up. The circular and notice of the first meeting meant, "You are asked to consent to something under which a voluntary winding-up in the ordinary sense will not take place, but which is only a reconstruction scheme. If you do not like to consent you will have the usual rights of a dissentient under s. 161 of the Act of 1862. The usual expenses of a voluntary winding-up will not be incurred, as there is a fixed amount payable to the liquidator." At the meeting the only resolution put was for a voluntary winding-up and the appointment of a liquidator. That was altogether different in its results and objects from what was proposed in the notice. It would not bring s. 161 into operation, and it would not limit the amount of the expenses, and, in fact, it was not the resolution of which notice had been given. A shareholder receiving the notice might very well say that he would not trouble to attend an ordinary reconstruction meeting, and at the same time might have the strongest objection to an ordinary voluntary winding-up, which was something more than a winding-up for the limited purpose of reconstructing the company. And *held*, therefore, that there was no valid winding-up in existence, and the usual compulsory winding-up order must be made. *In re TEDEE & BISHOP, LD.*

Cozens-Hardy J.
[1901] W. N. 52

— Supervision orders—Practice.

See COMPANY—WINDING-UP—Supervision Orders.

COMPENSATION—Abolition of office—Emoluments—Period for calculation—Jurisdiction to fix amount—Rescission of resolution—Surcharge—London Government Act, 1899 (62 & 63 Vict. c. 14), s. 30, sub-ss. 1, 2, 4—Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 120, sub-ss. 1, 2, 3, 4, 6—Superannuation Act, 1859 (22 & 23 Vict. c. 26), ss. 2, 7.

Where on a transfer of powers and officers from a vestry to a borough council under the London Government Act, 1899, an officer, whose office is abolished, makes a claim for compensation, the council is the proper tribunal to decide, with a view to assessing his compensation, what has been the amount of his salary and emoluments, and their finding of fact cannot be reviewed by the Court.

Where a borough council after investigation of the circumstances have passed a resolution under s. 120 of the Local Government Act, 1888,

COMPENSATION—*continued.*

assessing the compensation payable to an officer for the abolition of his office, this resolution is binding on the council, and cannot be rescinded by a subsequent resolution on the ground that the amount claimed and assessed is excessive.

In 1874 the plt. was appointed surveyor to the vestry of St. George, Hanover Square, at a salary of 350*l.* a year, which was increased from time to time. By the London Government Act, 1899, the borough of Westminster was constituted, which included the parish of St. George. In May, 1901, the Westminster City Council abolished the plt.'s office, and he sent in his claim for compensation based on the average of his salary and emoluments for the five years previous to the abolition of his office. On Aug. 1, 1901, the council passed a resolution granting him the amount claimed, namely, 518*l.* 12*s.* 4*d.* a year. There was no appeal to the Treasury from this resolution. In Nov., 1902, the auditor disallowed part of the compensation on the ground that it did not properly represent emoluments, and he surcharged the members of the council with the amount. On Nov. 20, 1902, the council passed a resolution rescinding their resolution of Aug. 1, 1901, and reducing the plt.'s allowance to 432*l.* 7*s.* 10*d.* He appealed to the Treasury, but the appeal was disallowed, and in July, 1903, commenced this action against the corporation for the arrears of his allowance :—

Held, that the period of five years of which the plt. had given particulars was the right period, but that it was immaterial, as the council had a general power to assess; that the question what was the amount of the plt.'s salary and emoluments was a question of fact which must be decided by the council, and it was not competent for the Court to review their decision; that even if the council exceeded the right amount their decision was not *ultra vires*; the vote was good up to the proper limit; that the resolution of Aug. 1, 1901, was valid; the council had no power to relieve themselves from the obligation thus rendered binding upon them, and the resolution to rescind it was invalid. **LIVINGSTONE v. WESTMINSTER CORPORATION** - **Buckley J.** [1904] W. N. 69; [1904] 2 K. B. 109

— Agricultural Holdings Act — Covenant — Destruction by fire—Compensation for manorial value.

See LANDLORD AND TENANT. 4.

— Alien—Death—Negligence of British subject —Cause of action arising on high sea.

See NEGLIGENCE.

— Appeal—Railways, Regulation of—"Practice and procedure"—Practice.

See APPEAL. 2.

— Appeal to High Court—Order under s. 5 of Workmen's Compensation Act, 1897.

See COUNTY COURT—APPEAL. 1.

— Apportionment—Common lands.

See COMMON.

— Civil Service—Retirement, Compensation on—Appeal from Australia.

See NEW SOUTH WALES.

COMPENSATION—*continued.*

— Commonable rights, Compensation for extinguishment of—Action to determine persons interested—Jurisdiction.

See COMMON. 1.

— Compromise of all claims, including claim for loss of rateable area—Validity.

See LOCAL GOVERNMENT. 12.

— Compulsory purchase — Street widening — Notice to treat—Withdrawal—Local government.

See STREETS.

— Conditions of sale—Misdescription—Absence of title to mines—Compensation.

See VENDOR AND PURCHASER—Conditions of Sale. 6.

— Contract — Enjoyment of light — Deed of acknowledgment — Non-disclosure — Specific performance—Costs.

See VENDOR AND PURCHASER—Contracts. 1.

— Copyholds—Enfranchisement.

See LANDS CLAUSES ACTS. 15.

— Costs of action for compensation—New South Wales Public Works Act.

See NEW SOUTH WALES.

— Creation of county borough—Loss of borough's contribution to county expenses—Adjustment of financial relations.

See LOCAL GOVERNMENT. 10.

2. — *Damage caused by exercise of statutory powers—Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 308—Sewers.*

The respondents, acting under the powers conferred by the Public Health Act, 1875, constructed an intercepting sewer, a pumping station, a sewage reservoir, and an outfall sewer, which were integral parts of, and together formed, one scheme of sewerage. The sewers were in part constructed on land the property of the claimant; the pumping station and the reservoir were constructed on land the property of other persons. The present value of certain portions of the claimant's land which were in proximity to the pumping station and reservoir was depreciated by reason of the contemplated user of that station and reservoir for sewage purposes :—

Held, that as the acts of user, the contemplation of which causes the depreciation, would be done on land not the property of the claimant, the damage was not sustained "by reason of the exercise of the powers" of the Public Health Act within the meaning of s. 308 of that Act, and consequently that the claimant was not entitled to any compensation under that Act in respect of that depreciation.

Judgment of Bigham J., [1906] W. N. 210; [1907] 1 K. B. 14, affirmed. **HORTON v. COLWYN BAY AND COLWYN URBAN DISTRICT COUNCIL**

C. A. [1908] W. N. 8; [1908] 1 K. B. 327

— Election, Right of—Estates in Scotland and Australia—Two separate wills—Right to equitable compensation.

See NEW SOUTH WALES.

COMPENSATION—*continued*.

- Election to take property as against will—
Amount of compensation, at what date to be ascertained.
See ELECTION. 2.
- Employer and workman.
See under MASTER AND SERVANT.
- Exercise of statutory powers by public body
Appeal from Western Australia.
See AUSTRALIA. 17.
- Glass-houses — Removable fixtures — Fruit trees.
See LANDLORD AND TENANT. 5.
- Housing of the working classes.
See under HOUSING OF THE WORKING CLASSES.
- Interest on amount awarded—Mines.
See RAILWAY—Minerals.
- Lands Clauses Acts.
See under LANDS CLAUSES ACTS.
- Lands Clauses Act—Compensation for personal injury, inconvenience, or annoyance.
See RAILWAY—Lands Clauses Acts.
- Lands for railway purposes, Claim to take—
Cape of Good Hope Act.
See CAPE OF GOOD HOPE. 1.
- Lands taken compulsorily—Injurious affection of adjoining lands—Land taken for fort.
See DEFENCE ACTS. 1.
- Lands taken for public purposes.
See ZANZIBAR.
- Lease — Covenants — Breaches — Re-entry —
Compulsory purchase by public body—
Lands Clauses Acts.
See LEASE. 2.
- Lease—Suspension of pastoral lease.
See NEW SOUTH WALES.
- Licence, Non-renewal of—Capital moneys—
Investment — Powers of debenture trustees.
See BREWERS. 1, 2, 3.
- Licensing Acts.
See under LICENSING ACTS.
- Light.
See under LIGHT.
- London Building Act — Compensation for damage to trade—Jurisdiction of surveyors.
See LONDON—Buildings. 21.
- 3. — *Loss of office*—"Office"—"*Place, situation, or employment*"—*Local Government Act, 1888* (51 & 52 Vict. c. 41), ss. 100, 120.
A local Act, by which a poor law union and rural district were dissolved, provided that any officer of the guardians or rural district council who should be in office at the commencement of the Act, and who by virtue thereof should sustain direct pecuniary loss, should be deemed to be an officer entitled to compensation within the meaning of s. 120 of the Local Government Act, 1888, and that that section should apply

COMPENSATION—*continued*.

accordingly. By s. 100 of that Act the expression "office" includes "any place, situation, or employment," and the expression "officer" is to be construed accordingly.

Solicitors were during a period of about twenty-six years from time to time employed by the board of guardians of the union and the rural district council to do such legal work as those bodies required to have done, receiving by way of remuneration for that work the usual professional costs and charges payable to solicitors; and during that period no other solicitor was employed by the board of guardians or council:—

Held, that the solicitors so employed could not be considered as officers of or as holding any "place, situation or employment" under the board of guardians or rural district council within the meaning of ss. 100, 120 of the Local Government Act, 1888. *CARPENTER v. BRISTOL CORPORATION* - C. A. [1907] W. N. 178; [1907] 2 K. B. 617

- Market Gardeners' Compensation (Scotland) Act — Improvements — Retrospective effect of statute.
See LANDLORD AND TENANT. 3.
- Married woman—Restraint on anticipation—
Removal of disability.
See ELECTION. 3.
- Mines.
See under MINES.
- RAILWAY—Minerals.
- Mines—Reservation of manorial rights—Right to support of surface—Damage to surface.
See INCLOSURE. 2.
- Mining lease—Waterworks clauses—Capital or income—Lessor's compensation.
See SETTLED LAND—Leases.
- New South Wales Acquisition Act.
See NEW SOUTH WALES.
- New Zealand Mining Act.
See NEW ZEALAND.
- Public health—Offences—Sale of unsound meat—Seizure—Prosecution—Acquittal.
See LOCAL GOVERNMENT. 22.
- Railway company—Coal required to be left unworked.
See MINES.
- Railway company.
See under RAILWAY—Mines.
- Sale by the Court — Conditions of sale—
Mistake—Misdescription.
See VENDOR AND PURCHASER—Conditions of Sale. 6.
- Salvage—Injury to salving vessel—Onus probandi.
See SHIPPING—Salvage.
- Specific performance—Misleading particulars —
Statement by auctioneer.
See VENDOR AND PURCHASER—Conditions of Sale. 3.
- Statutory powers—Postmaster-General.
See NEGLIGENCE.

COMPENSATION—*continued.*

— Submarine telegraphs convention—Fouling of cable by anchor—Sacrifice of anchor—Compensation.

See TELEGRAPH.

— To officer on abolition of office—Practice of Treasury—Discretion of council.

See LOCAL GOVERNMENT. 24.

— Trade mark — Registered mark — Innocent infringer—Injunction—Whether plaintiff also entitled to compensation.

See TRADE MARK. 4.

— Tramcar, Accident to—Liability of contractor to lessee — Damages — Compensation paid to passengers—Right of lessee to recover from contractor.

See TRAMWAYS. 9.

— Transfer of powers of London School Board to London County Council—Direct pecuniary loss—Officer of authority whose powers not transferred.

See LOCAL GOVERNMENT. 7.

— Waterworks—Notice to prevent working of mines—Compensation—Rise in value of minerals.

See MINES.

— Waterworks clauses—Construction of statutes.

See under WATER.

— Will—Several persons electing to take against will and taking other benefits under it—Compensation inter se.

See ELECTION. 4.

— Workmen's Compensation Act.

See under MASTER AND SERVANT.

COMPETENCY—Appeal to House of Lords—New trial.

See DIVORCE—Practice. 25.

— Appeal to House of Lords from Scotland—Workmen's compensation.

See MASTER AND SERVANT—Practice.

COMPLETION—Building contract — Completion of contract or work—Extraordinary traffic.

See HIGHWAY. 32.

COMPOSITION—Agreement for—Registration—Creditors—Deeds of arrangement.

See COMPANY—Arrangements. 1.

— Bankruptcy.

See under BANKRUPTCY—Composition.

COMPOUND SETTLEMENT.

See under SETTLEMENT.

COMPRADORE—Liability of bankers—Compradore's limited authority as their agent.

See HONG KONG. 1.

COMPROMISE—*Absent parties—Administration—Claim against executor—Compromise at trial of action—Binding absent parties—R. S. C., Order XVI., r. 9A.*

The plts. were four of the residuary legatees under the will of W. The deft. was the surviving husband of the testatrix, and also the

COMPROMISE—*continued.*

executor of her will. He was also entitled under the trusts of the will to the income of the residuary estate during his life. The other three residuary legatees were not parties to the action, and were believed to be in America.

The plts. claimed a declaration that a sum of 4500*l.* (for a moiety thereof), invested on mortgage, formed part of the estate of the testatrix; and also administration, so far as necessary, of the personal estate of the testatrix. The deft. alleged that the whole of the 4500*l.* belonged to himself absolutely. The action now came on for trial, and the deft. offered certain terms in settlement of all claims against himself whereby a sum of money would be equally divisible at once between the seven residuary legatees. All parties were *sui juris*.

Farwell J. : I think I can safely say that the compromise will be for the benefit of all parties, including the three absent parties, and I will make the order. An affidavit must be produced to the registrar that the absent parties are out of the jurisdiction, and are believed to be in America, and their shares will be carried to separate accounts. *In re WRIGGLESWORTH, WILKINSON v. WRIGGLESWORTH*

Farwell J. [1901] W. N. 172

2. — *Absent parties — Practice—Power of Court to bind absent persons—Extent of jurisdiction—R. S. C., Order XVI., r. 9A.*

An action having been brought on behalf of the holders of bonds (payable to bearer), issued by a ry. co., against the trustees for the bondholders and the co., the Court in 1894 sanctioned a scheme for the compromise of the action, under which all the bondholders should receive a certain sum in respect of each bond delivered up to be cancelled, and ordered that the scheme should be binding on all the bondholders who were not parties to the proceedings:—

Held, that the Court had jurisdiction to make an order on the holders of outstanding bonds whose names and addresses had not been discovered, to come in within a period of six months and accept the sum per bond, or be excluded from the benefit of the scheme.

The decision of the C. A., reported as *Collingham v. Sloper*, [1901] W. N. 50; [1901] 1 Ch. 769, reversed. *SARAGOSSA AND MEDITERRANEAN RY. CO. v. COLLINGHAM*

H. L. (E.) [1904] W. N. 66; [1904] A. C. 159

— Bankruptcy.

See under BANKRUPTCY—Compromise.

— Bankruptcy — Trustee for power to compromise claims.

See BANKRUPTCY—Trustee. 11.

— Company—Winding-up—Liquidator—Power to compromise action.

See COMPANY—WINDING-UP—Liquidator. 3.

— Consent order, Effect of—Waiver of rights—Election of selling partner to affirm sale.

See PARTNERSHIP.

— Costs of trustees—Trustees' right of indemnity—Priority.

See SOLICITOR—Costs.

COMPROMISE—continued.

- Counsel's authority—Agreement to refer—Authority exceeded by counsel.
See BARRISTER.
- Creation of urban district—Subtraction of parish from rural district—Local government—Compensation—Compromise of claims including claim for loss of rateable area.
See LOCAL GOVERNMENT. 12.
- Executor.
See under EXECUTOR—Compromise.
- Infants.
See under INFANT—Compromise.
- Periodical payments—Compromise for lump sum—Apportionment—Payment out of capital of estate.
See SETTLED LAND—Apportionment.
- Sale of tenant for life's interest—Investment.
See SETTLED LAND—Forfeiture.
- Solicitor—Agent's authority—Lay client bound.
See SOLICITOR—Compromise.
- Solicitor—Costs—Lien—Infants—Judgment Form of order.
See SOLICITOR—Costs.
- Solicitor, Authority of, to compromise action—Apparent assent but misunderstanding in fact on part of client as to terms of compromise.
See SOLICITOR—Compromise.
- 3. — *Stay of proceedings—Striking out name of one co-plaintiff—Practice.*
One of several co-plts. has no absolute right to withdraw from an action and have his name struck out.
An application by one or more of several defts. to have all proceedings stayed as between one of several co-plts. and themselves, or to have that co-plt.'s name removed from the record, on the ground that a compromise has been arranged to which the other co-plts. are not parties, is wholly irregular.
In case of a difference between co-plts., the proper course is to make an order that the name of one of them should be struck out as plt. and added as deft. But such an order will only be made on security being given for the deft.'s costs. *In re* MATTHEWS. OATES v. MOONEY
Swinfen Eady J. [1905] 2 Ch. 460
- Trustee.
See under TRUSTEE—Compromise. 1.
- Trustee, Compromise with one—Release pro tanto of the others—Right to prove in the bankruptcy of another trustee.
See TRUSTEE—Release. 1.
- 4. — *Will — Beneficiaries — Conflicting interests — Legal rights — Compromise — Agreement — Family solicitor — Common agent — Mistake of law or fact — Setting aside compromise.*
A compromise between members of a family of their supposed rights under a will or other document, made after a joint consultation with the family solicitor, he acting as the common agent, is, in general, binding upon all the parties, even though it may not be quite in accordance

COMPROMISE—continued.

with the exact legal rights, provided the solicitor has first fully explained to the parties what those rights are. But if any one of the parties has entered into the compromise in consequence of what afterwards proves to have been an erroneous view taken by the solicitor of the facts or of the law, or merely because the solicitor may have considered a compromise would be for the advantage of all parties irrespective of their legal rights, that party may have the compromise set aside.

Decision of Kekewich J. reversed. *In re* ROBERTS. ROBERTS v. ROBERTS
C. A. [1905] 1 Ch. 704

COMP TROLLER—Patent—Petition for revocation—Application to amend specification—Practice.
See PATENT—Practice.

COMPULSORY PILOTAGE—Shipping.
See under SHIPPING—Pilotage.

COMPULSORY POWERS—Award.
See ARBITRATION—Award. 1.

— Lands Clauses Acts.
See under LANDS CLAUSES ACTS.

— Railway company.
See under RAILWAY—Powers.

COMPULSORY PURCHASE—Lands Clauses Acts.
See under LANDS CLAUSES ACTS.

— Street widening—Notice to treat—Withdrawal—Compensation—Local government.
See STREETS.

COMPULSORY WINDING-UP—Company.
See under COMPANY—WINDING-UP.

CONCEALMENT—Material fact—Statement induced by misrepresentation.
See ESTOPPEL. 5.

— Mutual insurance association—Ship mortgaged not to be considered insured—Concealment of mortgage—Liability for calls.
See INSURANCE, MARINE. 15.

— Suppression of material facts—Non-disclosure—Subsequent knowledge by selling partner.
See PARTNERSHIP.

CONCESSION—Deed of—Construction of covenant—Lands in possession of the Crown.
See TRINIDAD AND TOBAGO.

CONCURRENT ACTIONS—Conduct of proceedings—Practice.
See ADMINISTRATION. 3.

CONCURRENT JUDGMENTS—Practice.
See SCOTTISH LAW.

CONDEMNATION—Warranty of freedom from capture—Relation back of title of captors.
See INSURANCE (MARINE). 32.

CONDITION—Alienation, Restraint of—Grandchildren conditionally substituted—No right of accretion.

See CANADA—WILL. 2.

— Arbitration—Workmen's Compensation Act—Condition precedent to jurisdiction of arbitrator.

See MASTER AND SERVANT—Practice.

— Attached to renewal—Licensing justices—Refusal to deliver licence without undertaking.

See LICENSING ACTS. 39, 40, 41.

— Bankruptcy—Conditional order of discharge—Revocation of order.

See BANKRUPTCY—Discharge. 3.

— Bill of sale—Validity—Condition for defeasance of security—Condition not expressed in bill—Avoidance of bill.

See BILL OF SALE. 9.

— Charter of ship for voyage—Implied condition—Carriage of bunker coal intended for use on future voyage.

See SHIPPING—Charterparty.

— Contract—Impossibility of performance—Implied condition—Cargo to be shipped by specified ship.

See CONTRACT. 23.

— Contract—Validity—Condition attached to goods.

See CONTRACT. 30.

— Contract for fixed period—Express term—Implied condition.

See CONTRACT. 15.

— Fetter on power of sale—Condition of residing and providing a home for third party—Condition of trust.

See SETTLED LAND—Sale.

— Fidei-commissum primogenitura—Condition as to surname not authorized by the founder.

See MALTA.

— Implied—Breach—Measure of damages.

See SALE OF GOODS.

— Insurance, Accident—Condition in policy—Immediate notice of accident—Omission to give notice—Insurer's liability.

See INSURANCE (ACCIDENT). 3.

— Land transfer—Registration—Conditions annexed to title.

See VENDOR AND PURCHASER—Covenants. 4.

— Lease—Condition to take over sheep at expiration of lease.

See SCOTTISH LAW.

— Lease—Covenant—Licence to assign—Assignment by husband to wife—Unreasonable condition.

See LANDLORD AND TENANT. 14, 15.

— Lease—Licence to assign—Unreasonably withheld—Condition imposing increased rent.

See LANDLORD AND TENANT. 15.

— Lease—Relief from forfeiture—Conditional order—Non-fulfilment of conditions.

See LANDLORD AND TENANT. 37.

CONDITION—*continued.*

— Leases of machines for shoe manufacture—Restrictive condition as to user—Restraint of trade.

See CANADA—Leases. 3.

— Legacy, Duty of executor to give notice of—Beneficial interest of executor on breach of condition—Estoppel.

See EXECUTOR—Disclosure. 1.

— Licensing justices, power of, to attach conditions—Monopoly value.

See LICENSING ACTS. 41.

— Marriage, Condition as to consent to—Marriage with consent in testator's lifetime—Codicil confirming will after the marriage.

See WILL—Conditions. 2.

— Marriage, Restraint of.

See under MARRIAGE.

— Mortgage—Foreclosure—Conditions of proviso for redemption—Interest.

See MORTGAGE—Foreclosure.

— Name and arms, Condition subsequent requiring assumption of—Infant.

See SETTLEMENT.

— Patent—Licence—Purchase of patented article from licensee without notice of condition—Estoppel.

See PATENT—Infringement.

— Precedent—Charity, Gift to—Remoteness—Perpetuity—Postponement of enjoyment—Construction.

See CHARITY. 11.

— Precedent—Compensation—Tenant—Title.

See LANDS CLAUSES ACTS. 9.

— Precedent, Condition—Rating appeal.

See RATES.

— Precedent, Condition—Order of Secretary of State—Notice of making of order.

See STATUTORY RULES AND ORDERS.

— Precedent, Condition—Poor rate—Objection before assessment committee.

See RATES.

— Precedent, Condition—Public vaccinator—Offer to vaccinate child.

See VACCINATION.

— Precedent, Condition—Workmen's compensation.

See MASTER AND SERVANT—Practice.

— Precedent—Conviction—Analysis—Deterioration of sample.

See ADULTERATION. 1.

— Precedent—Directors' remuneration—Fixing time of payment.

See COMPANY—Directors. 24.

— Precedent—Fire policy—Award condition precedent to suit.

See JERSEY.

— Precedent—Lease—Option to purchase landlord's interest—mortgage—Specific performance.

See LANDLORD AND TENANT. 58.

CONDITION—*continued*.

- Precedent—Mortgage—Foreclosure absolute—Consent order—Effect—Demand in writing.
See MORTGAGE—Foreclosure.
- Precedent—New Zealand Property Law Act, 1908—Suit by lessee on a covenant to renew the lease—No relief against performance of condition precedent.
See NEW ZEALAND.
- Precedent—Poor rate—Appeal.
See RATES.
- Precedent—Warranty against suicide—Policy for benefit of third party.
See INSURANCE (LIFE). 17.
- Probation of offenders—Recognition—Condition as to abstention from intoxicating liquor.
See CRIMINAL LAW—Appeal. 19.
- Railway company—Carrier—Damageable goods carried unpacked—Owner's risk—Reasonable condition.
See RAILWAY—Carrier.
- Restraint on alienation, Sale of property subject to—Mortgages by purchaser not a breach of condition.
See CAPE OF GOOD HOPE.
- Sale of goods.
See under SALE OF GOODS.
- Settled land—Fetter on power of sale.
See SETTLED LAND—Sale.
- Ship—Contract of carriage—Passengers' luggage—Theft by shipowners' servants.
See SHIPPING—Passengers.
- Slaughter-house—Licence—Limitation of time.
See SLAUGHTER-HOUSE.
- Tenant for life—Forfeiture clause—Non-residence—Validity of condition.
See SETTLED LAND—Forfeiture.
- Tramway company—Common carrier of passengers—Negligence—Liability for personal injuries—Special condition limiting liability.
See CARRIER. 1.
- Unreasonable—Covenant by lessee not to assign without licence "not to be unreasonably withheld."
See LANDLORD AND TENANT. 15.
- Vagrancy—Refusal of offer of work subject to conditions.
See POOR LAW.
- Water, Cutting off—Non-payment of rate—Condition precedent.
See WATER.
- Will—Absolute gift—Gift on condition—Precatory trust for charity—"I specially desire."
See WILL—Precatory Trust. 2.
- Will—Construction.
See under WILL—Conditions.

CONDITION—*continued*.

- Will—Not conditional—Dispositions not dependent on a specific event—Document pronounced for.
See WILL—Conditional. 1.
- CONDITIONAL**—Simple contract debt—Acknowledgment—Conditional or limited promise.
See LIMITATIONS, STATUTE OF.
- CONDITIONAL LICENCE**—Licensing Acts.
See under LICENSING ACTS.
- CONDITIONAL OFFER**—Lands Clauses Acts—Arbitration—Costs—Offer by promoters—Conditional offer.
See LANDS CLAUSES ACTS. 14.
- CONDITIONAL ORDER**—Discharge—Bankrupt.
See BANKRUPTCY—Discharge. 1—4.
- CONDITIONAL RELEASE**—Composition—Scheme of arrangement.
See BANKRUPTCY—Arrangements.
- CONDITIONAL SALE**—Clog on redemption.
See MORTGAGE—Redemption.
- Vendor and purchaser.
See under VENDOR AND PURCHASER—Conditions of Sale.
- CONDONATION**—Adultery.
See under DIVORCE—Condonation.
- CONDUCT MONEY**—Probate—Practice.
See under PROBATE—Conduct Money.
- CONDUCT OF ACTION**—Transfer of action from inferior Court—Cross action in High Court.
See SHIPPING—Practice.
- CONDUCT OF PROCEEDINGS**—Practice—Concurrent actions.
See ADMINISTRATION. 3.
- CONFESSION**—Adultery—Divorce—Practice—Evidence.
See DIVORCE—Confession. 1.
- "IN CONFIDENCE"**—Precatory trust—Absolute gift "in confidence."
See WILL—Precatory Trusts. 3.
- CONFIDENTIAL RELATIONS**—Contract of service—Restraint on trade—Winding-up.
See COMPANY—Directors. 5.
- Solicitor and client—Rectification of deed—Independent advice.
See SOLICITOR—Fiduciary Relation.
- CONFISCATION**—Act of State—Annexation of native State—Jurisdiction of Municipal Courts.
See ACT OF STATE. 1.
- Regrant of native lands, Construction of—Trust.
See NEW ZEALAND.

CONFLICT OF LAWS.

See also under INTERNATIONAL LAW.

- Action—Lex loci—Lex fori—Right of action in England for acts in foreign country—Territorial waters.
See ACTION. 4.

1. — *Assignment for benefit of creditors—Deed executed abroad—Title to goods in England—Registration—Deeds of Arrangement Act, 1887 (50 & 51 Vict. c. 57).*

A trustee under a deed of assignment for the benefit of creditors, executed by a foreign debtor in the country of his domicile, and valid by the law of that country, can establish in the Courts of this country a good title, as against an execution creditor, to goods in this country, belonging, at the date of the assignment, to the debtor, although the deed has not been registered pursuant to the Deeds of Arrangement Act, 1887.
DULANEY v. MERRY & SON

Channell J. [1901] 1 K. B. 536

- Bigamy — Foreign decree of nullity on ground unknown to English law—Lex loci contractus.
See DIVORCE—Nullity. 1.

- Cheque stolen abroad—Forged indorsement—Transfer for value in foreign country.
See BILL OF EXCHANGE. 2.

2. — *Chose in action—Assignment abroad—Notice—Priority—Reversionary Interest—Personal estate in England.*

By a deed of June, 1891, A. H. S., being then domiciled in the State of New York, assigned to his wife absolutely his reversionary interest in his late father's estate which was invested in English trust securities. According to the law in the State of New York, notice to the trustees of the will was not necessary to complete an assignment of a chose in action or reversionary interest in personalty, and notice of this assignment was not sent to the English trustees. By a deed of Aug., 1894, A. H. S., being then in England, assigned his reversionary interest in his father's estate to the plt. by way of mortgage to secure 400*l.* Notice of this assignment was forthwith given by the plt. to the trustees of the will. In Sept., 1903, notice of the first assignment was given to the trustees by the wife. In an action to settle the priorities of these two assignments :—

Held, that, as the Court was administering an English trust fund settled by the will of an English testator, the rights of the claimants to that fund must be regulated by English law, and, accordingly, that the plt. was entitled to priority by virtue of the notice he had given to the trustees. KELLY v. SELWYN

Warrington J. [1905] W. N. 69 ;
[1905] 2 Ch. 117

- Colonial domicile of origin — Subsequently acquired foreign domicile.
See No. 5, below.

- Company—Personal liability of shareholders under the foreign law.
See COMPANY—Foreign Laws. 1.

CONFLICT OF LAWS—continued.

- Company — Winding-up — Reconstruction — Dissident shareholders — Registered office in Rhodesia—Notice of dissent left at London office.
See COMPANY—Reconstruction. 2.

- Contract — Intention of parties as to law applicable.
See JERSEY. 1.

3. — *Contract — Proper law — Intention — Contract to issue debentures—Floating charge on foreign land—Clog on equity of redemption—Chartered company—Breach of charter—Ultra vires.*

An English contract to give a mortgage on foreign land, although the mortgage has to be perfected according to the lex situs, is a contract to give a mortgage which, inter partes, is to be treated as an English mortgage subject to such rights of redemption and other equities as the law of England regards as necessarily incident to a mortgage.

The equitable rule against clogging the equity of redemption of a mortgage applies to an English contract for an issue of debentures to secure a loan, and will be enforced against a contracting party in the jurisdiction, although the floating security to be created by the debentures comprises foreign land where the clog doctrine is possibly not recognized.

Decision of Swinfen Eady J. [1910] 1 Ch. 354, affirmed. BRITISH SOUTH AFRICA CO. v. DE BEERS CONSOLIDATED MINES, LD.

C. A. [1910] 2 Ch. 502

4. — *Contract obtained by duress abroad—Threat of prosecution—Contract not illegal where made—Whether enforceable here.*

An English Court will not enforce a foreign contract, though valid by the law of the country in which it was made, in cases where the Court deems the contract to be in contravention of some essential principle of justice or morality.

The plt. who was domiciled in a foreign country, sued on a contract made in that country between himself and the deft., a woman likewise domiciled there, whom he had coerced into signing the contract by threats of a criminal prosecution against her husband for an offence which he had committed, the consideration for the contract being that the plt. would not prosecute the husband. Evidence was given to the effect that the contract was not invalid by the law of the country in which it was made :—

Held, that even assuming that to be so, the Court would not enforce a contract so procured.

Judgment of Wright J., [1904] 2 K. B. 114, reversed. KAUFMAN v. GERSON

C. A. [1904] W. N. 53 ; [1904] 1 K. B. 591

- Copyright within the United Kingdom.
See CANADA—Copyright. 1.

- Covenant to settle after-acquired property—Marriage with foreigner — Domicil—Law applicable.
See SETTLEMENT.

CONFLICT OF LAWS—continued.

— Divorce—Foreign jurisdiction—Putative marriage—Legitimacy of issue—Law of Scotland.

See MARRIAGE.

— Domicil.

See also under DOMICIL.

5. — *Domicil—British subject—Colonial domicil of origin—Subsequently acquired foreign domicil—Nationality—Renvoi.*

Where a British subject, whose domicil of origin is colonial, acquires according to English law domicil of choice in a country whose laws do not recognise domicil, but distribute the movables of a foreigner dying within their jurisdiction according to the law of his nationality, and dies there, the English Courts will distribute his movables according to the law of his domicil of origin.

The testatrix was a British subject born out of wedlock in Malta. Her father was an Englishman domiciled in England; her mother was a Maltese woman domiciled in Malta. They afterwards married in Malta. The testatrix left Malta in 1832, and died in 1894 domiciled at Freiburg in Baden. She made a will, but left some movables undisposed of. It was proved that the law of Baden paid no attention to domicil but distributed the movables of a foreigner dying in Baden, who had not been naturalized, according to the law of the country of which he was a subject:—

Held, that the testatrix's movables must be distributed according to the law of Malta, not the municipal law of England, and therefore went to her next of kin, the testatrix being legitimated by her parents' subsequent marriage.

In re JOHNSON. ROBERTS v. ATT.-GEN.

Farwell J. [1903] W. N. 53; [1903] 1 Ch. 821.

6. — *Domicil—Matrimonial Domicil—English husband and Scotch wife—Marriage contract in Scotch form—Settlement of wife's property—Real estate in Scotland—Inalienable life interest given to husband—"Alimentary provision"—Validity of restriction as against husband's mortgagees—Repugnancy—Public policy.*

The rule that the law of the matrimonial domicil applies to a contract in consideration of marriage will yield to an express stipulation that some other law shall apply, or to other sufficient indications that the parties contracted with reference to some other law.

Scotch "heritable bonds" must be regarded by an English Court as immovable property and therefore governed by Scotch law.

When it is said that a contract, valid by the law of the country in which it is made, cannot be enforced in England because it is contrary to public policy or the policy of English law, it is meant that the contract conflicts with what are deemed in England to be essential public or moral interests—not merely that it would be invalid under English law.

On the marriage in Scotland of a domiciled Englishman with a domiciled Scotswoman the wife's property, which consisted mainly of Scotch heritable bonds, was settled by a marriage contract executed in Scotland in Scotch form. By this contract the trustees, most of whom were

CONFLICT OF LAWS—continued.

domiciled Englishmen, and who were also the trustees of a contemporaneous settlement of the husband's property in English form, were to hold the wife's property upon trust, in case the husband should survive the wife, to pay the income to him during his life, declaring that all payments to him "shall be strictly alimentary, and shall not be assignable nor liable to arrestment or any other legal diligence at the instance of his creditors." The husband survived the wife, having mortgaged his life interest under the Scotch contract to mortgagees in England. He had always retained his English domicil.

By the law of Scotland such a restricted life interest, so far as it does not exceed in amount a reasonable provision, is valid as against creditors, other than "alimentary" creditors, and in such a case, if the husband fails to maintain the children of the marriage, they are entitled to attach the alimentary provision made for him.

Upon a summons by the trustees to determine the rights of the mortgagees as against the husband and the only child of the marriage:—

Held (by Vaughan Williams and Cozens-Hardy L.J.J.), that having regard to all the circumstances and particularly the nature of the limitations in the Scotch contract, it must be taken to have been the intention of the parties that that contract should be governed, not by the law of the English matrimonial domicil, but by Scotch law, and that the "alimentary provision" to the husband, being valid by that law, must be treated as valid by the English Courts, and consequently valid as against the husband's mortgagees, there being nothing in the provision contrary to the policy of English law in the proper sense of that term:

Held, by Stirling L.J., that, though the husband and wife had contracted that their rights in her property should be regulated by Scotch law, and it was the duty of the trustees to pay the "alimentary provision" from time to time as it became payable into his hands, regardless of incumbrances created by him, yet an assignment by him of the "alimentary provision" in favour of a domiciled Englishman ought to be held by an English Court to bind funds coming in respect of that provision to the assignor's hands within the jurisdiction of that Court.

Decision of Joyce J., [1903] W. N. 69; [1903] 1 Ch. 933, reversed. *In re* FITZGERALD.

SURMAN v. FITZGERALD

C. A. [1904] W. N. 61; [1904] 1 Ch. 573

7. — *Domicil—Personal property—Settlement—Power of appointment—Will.*

On the marriage of an Englishwoman with a domiciled Frenchman, English personal property was settled in English form with English trustees on such trusts as the intended wife should by will appoint, and subject thereto for her separate use:

Held, that the settlement was governed by English law, and that, subject to the payment of separate debts of the wife, the settled property passed under the will of the wife notwithstanding limitations imposed by French law on testamentary disposition. *In re* MEGRET. TWEEDIE v. MAUNDER Cozens-Hardy J. [1901] W. N. 15; [1901] 1 Ch. 547

CONFLICT OF LAWS—continued.**8. — Domicil—Marriage settlement.**

Question whether a marriage settlement was to be regulated by a rule of Scotch law or by English law.

The marriage was solemnized in Scotland in 1857 between a Mr. B., a gentleman domiciled in Mauritius, and Miss K., a domiciled Scotchwoman. Two settlements were executed in Scotland previously to the marriage—one of property brought into settlement by the wife's family, in Scotch form; the other of property brought into the settlement by the husband, in English form. The English settlement was settled by English counsel, on instructions given by the Scotch lawyer, who prepared the Scotch settlement, through an English firm of solicitors. There was evidence that English counsel was employed because he was considered to have special knowledge of the law of Mauritius, and no lawyer in Edinburgh was known to have such special knowledge. By the advice of English counsel, a provision was inserted in each settlement to the effect that the law of Mauritius should not apply so far as it was or might be at variance or inconsistent with the provisions, clauses, and agreements contained in the settlements. In the English settlement there was a limitation of the property, on the death of the wife, in the events which happened (namely, the death of the husband without issue, and the re-marriage of the wife), to the persons who would have been entitled to the husband's property, if he had died without issue and unmarried, according to the English Statutes of Distribution. This limitation could be revoked and the property disposed of by the will of the husband if the law of Scotland governed the settlement.

The wife survived her husband; she had married twice since, and recently died. This was a summons to determine, among other questions, whether the law of Scotland prevailed so as to give the first husband a testamentary power to revoke the above limitation. There was a further question, not now decided, whether the first husband had by his will revoked the limitation:—

Held, that the instrument was governed by Scotch law. *In re MUSPRATT-WILLIAMS*. *MUSPRATT-WILLIAMS v. HOWE*

Cozens-Hardy J. [1901] W. N. 14

9. — English testatrix domiciled abroad — General power of appointment—Exercise by will in English form—Wills Act, 1837 (1 Vict. c. 26), s. 27.

Under a settlement dated the 11th of April, 1846, in contemplation of the marriage of G. B. and M. P., power was given to the latter, if she should survive the former, notwithstanding the trusts and provisions in favour of the children of the marriage, by deed or will in writing to direct, limit, or appoint, give or bequeath all or any part or parts, not exceeding one-half of the trust property, to or in favour of such person or persons, and for such interests and purposes, and generally in such manner in all respects as she should think proper or expedient.

She survived her husband and died in 1905,

CONFLICT OF LAWS—continued.

having resided many years in Switzerland and acquired a domicile in that country. A will made by her shortly before her death, and executed and attested in accordance with English law, but invalid according to the law of Switzerland, after making certain specific bequests, concluded as follows: "Any other property whatsoever of which I am or may be possessed I bequeath in equal shares to all my grandchildren."

A summons was taken out by the trustees of the settlement raising the question whether the will was a valid exercise of the power of appointment.

Parker J. said that the will complied in form with all the requisites for a proper exercise of the power, and the only question arose from the Swiss domicile of the testatrix. The effect of the decisions in *In re Price*, [1900] 1 Ch. 442, *In re D'Este's Settlement Trusts*, [1903] 1 Ch. 898, and *In re Scholfield*, [1905] 2 Ch. 408, was that a general power could be exercised by a will, which though not conforming to the requirements of English law, was valid by the law of the testator's domicile, or by a will which, whether valid by that law or not, was valid according to the forms of English law, and that in the former event—that of the will being valid only by the law of the domicile—*prima facie* s. 27 of the Wills Act was not incorporated, and the will would be construed irrespective of the section, although any indication on the face of the document that it was to be construed according to English law would justify that construction being given to it with reference to s. 27. The question, therefore, was whether the will ought to be construed according to the law of the domicile or according to English law, and in the latter event, whether with or without reference to s. 27. If it could be so construed, the general residuary bequest was sufficient to exercise the power. Clearly, for some purposes, the document must be construed according to English law, inasmuch as, if it had been a valid will by the law of the place of domicile, the first thing to be done would have been to ascertain the meaning of the terms used and what was intended to pass by the general bequest. The most reasonable principle to apply was that the will should be construed, not according to hypothetical constructions which might be placed upon it by foreign Courts, but wholly with reference to English law. That being the case, s. 27 was clearly applicable, and the power was therefore exercised by the will. *In re BAKER'S SETTLEMENT TRUSTS*. *HUNT v. BAKER*

Parker J. [1908] W. N. 161

Note.

In re Scholfield, [1905] 2 Ch. 408, referred to in this case, went to the C.A., reported [1907] 1 Ch. 664, where an agreement was arrived at. *See No. 16, below.*

10. — English will — Residuary gift—Life tenant and remainderman—Transvaal leaseholds—Enjoyment in specie—Roman-Dutch law.

A testator domiciled in England made an English will by which he gave, devised, and bequeathed all his real and personal estate, both

CONFLICT OF LAWS—continued.

in England and South Africa, to his wife for her widowhood, with remainders over.

The property included long leaseholds in the Transvaal, where the Roman-Dutch law prevails:—

Held, that the Roman-Dutch law (as stated in an uncontested opinion of an ex-Chief Justice of the Transvaal) was applicable to the Transvaal leaseholds, and the widow was consequently entitled to enjoy them in specie.

Freke v. Lord Carbery, (1873) L. R. 16 Eq. 461, and *In the Goods of Gentili*, (1875) Ir. R. 9 Eq. 541, applied.

In re MOSES. MOSES *v.* VALENTINE

Swinfen Eady J. [1908] W. N. 156;
[1908] 2 Ch. 235

11. — *French law—Fund in Court—French subject entitled—Conflict of laws—"Prodigal"—Status—Capacity to sue—"Conseil judiciaire"—Code Napoléon, § 513—Payment out.*

By the Code Napoléon a French subject of full age, who is of extravagant habits, when adjudged by a French Court of competent jurisdiction to be a "prodigal" is restrained from dealing with, disposing of, alienating, receiving, or giving a receipt for his movable property without the consent of a "conseil judiciaire" (legal adviser). But although this judgment modifies and affects the status of the "prodigal," it is a disqualification unknown to English law, and will be disregarded by English Courts.

Where, therefore, a French subject of full age, who had been adjudged a "prodigal," and placed under the control of a "conseil judiciaire" by the judgment of a French Court of competent jurisdiction, became entitled to a fund in court in England:—

Held, that he was entitled to payment out of the fund to himself on his sole receipt, notwithstanding the opposition of his "conseil judiciaire."

Worms v. De Valdor, (1880) 28 W. R. 346, 49 L. J. (Ch.) 261, discussed and followed. *In re* SELOT'S TRUST - - - Farwell J.
[1902] W. N. 11; [1902] 1 Ch. 488

— International law—Annexation—Liabilities of conquered State—Creditor's right against conqueror—Act of State—Jurisdiction of municipal Courts.

See PETITION OF RIGHT.

— Italian subjects—Italian domicile—Italian marriage—Deceased husband's brother.
See No. 12 below.

— Jurisdiction—Domicil—Husband and wife—English husband and Scotch wife—Settlement of wife's property—Real estate in Scotland—Contract in Scotch form—English trustees.
See No. 6, above.

12. — *Marriage—Capacity—Italian subjects—Italian domicile—Italian marriage—Deceased husband's brother—Lord Lyndhurst's Act (Marriage Act), 1835 (5 & 6 Will. 4, c. 54), s. 2.*

A naturalized Italian domiciled in Italy married her deceased husband's brother, an Italian domiciled in Italy. The marriage, which was solemnized in Italy, after the necessary dis-

CONFLICT OF LAWS—continued.

pensations had been obtained, was admittedly valid in Italy.

Held, that notwithstanding Lord Lyndhurst's Act, the marriage was valid in England.

Semble, the law of the common domicile is sufficient to determine marriage capacity except in the case of marriages stamped as incestuous by the general consent of Christendom. *In re* BOZZELLI'S SETTLEMENT. HUSEY-HUNT *v.* BOZZELLI Swinfen Eady J. [1902] W. N. 51; [1902] 1 Ch. 751

13. — *Married woman—Surety for husband—Immovables in Transvaal—Mortgage—Contract relating to foreign land—Capacity to contract—Lex situs—Law of the Transvaal.*

The capacity of a person to enter into a contract relating to immovables is governed by the *lex situs*.

Therefore, where a married woman whose domicile was English, by a deed executed in England, agreed to mortgage to a bank carrying on business in England and in the Transvaal certain land belonging to her at Johannesburg, the title deeds of which were in the possession of the bank for safe custody, as security for past and future advances by the bank to her husband, but without incurring personal liability for the same, and appointed the bank manager at Johannesburg her attorney to mortgage and transfer this land, and to execute all necessary instruments for that purpose and to appear before the Registrar of Deeds at Johannesburg and take all necessary steps for registering the same, and authorized her attorney to declare in her name that she renounced in favour of the bank the benefit of all rights which the law of the Transvaal granted her in relation to the land in question, and by virtue of two provisions of the Roman-Dutch law, which prevailed in the Transvaal, a married woman (subject to certain immaterial exceptions) was incapable of becoming surety for her husband unless she expressly renounced the benefit of each of these laws after having been informed of her rights thereunder:—

Held, affirming the decision of Eve J., [1909] W. N. 50, that the question of her capacity to enter into this agreement was governed by the law of the Transvaal, consequently that the agreement was void for want of capacity, and that the bank were not entitled to retain the title deeds. *BANK OF AFRICA, LD. v. COHEN*

C. A. [1909] W. N. 136; [1909] 2 Ch. 129

— "Mobilis sequuntur personam"—English fund belonging to Austrian who died without heirs—Right of succession.

See BONA VACANTIA. 1.

14. — *Mortmain—Testator domiciled in England—Residuary bequest to charity—Colonial mortgages—Applicability of colonial mortmain law—Movables or immovables—English law, including Mortmain Act, 1736 (9 Geo. 2, c. 36), adopted in colony.*

English law would treat English land mortgages as immovables, so that a bequest of English mortgages to charity would be governed by the local mortmain law of England, whatever be the domicile of the testator.

CONFLICT OF LAWS—continued.

The general English law, including the Mortmain Act, 1736, and the decisions thereon as to the invalidity of local bequests of local mortgages or other impure personality to charity having been adopted locally in Ontario :—

Held, that a bequest of freehold mortgages in Ontario to charity by a testator domiciled in England and dying on Feb. 22, 1888, when the adopted Mortmain Act, 1736, was locally in force in Ontario, being a bequest of an interest in land forbidden by the local law, was invalid.

Freke v. Lord Carbery, (1873) L. R. 16 Eq. 461, and *Duncan v. Lawson*, (1889) 41 Ch. D. 394, 396, extended.

Canterbury Corporation v. Wyburn, [1895] A. C. 89, 96, applied. *In re HOYLES*. Row v. JAGG Swinfen Eady J. [1910] W. N. 153 ; [1910] 2 Ch. 333

On Appeal :—

The C. A. dismissed the appeal.

Cozens-Hardy M.R. doubted whether the terms "movable" and "immovable," which were not technical terms in English law, were applicable in a case where there was no difference between the law of England and the law of the foreign country, but putting aside that doubt he thought that a mortgage debt secured by land was to be regarded not as a movable, but as an immovable.

Farwell L.J., in agreeing, thought that the Court would fail in its duty if it did not consider the Mortmain Act and the effect of its decision upon devises within it. Regard should be had to the fact that such gifts had been regarded as against public utility and a public mischief, and they ought accordingly to come to such conclusion as would avoid those evils. *In re HOYLES*. Row v. JAGG C. A. [1910] W. N. 275

— Nullity of marriage.

See under DIVORCE—NULLITY.

15. —Power of appointment—Personalty—Execution—Domiciled foreigner—Unattested will—Wills Act, 1837 (1 Vict. c. 26), ss. 9, 10, 27.

Sect. 27 of the Wills Act, 1837—as to general devises and bequests operating as execution of general powers of appointment—is a rule of construction which attributes to a will a meaning which but for the section it would not have, and which is applicable only to those documents as to which the Courts of the United Kingdom (other than Scotland) are the Courts of construction.

Therefore, where under an English settlement there is a general power to appoint personality by will, the power is not exercised by the will of a domiciled foreigner, valid by the law of her domicile, but not attested as required by the Wills Act, containing a general bequest of personality, but not using words introducing the statutory rule of construction.

In re Price, [1900] 1 Ch. 442, distinguished. *In re D'ESTE'S SETTLEMENT TRUSTS*. POULTER v. D'ESTE Buckley J. [1903] 1 Ch. 898

Note.

Discussed by Parker J., *In re Baker's Settlement Trusts*, [1908] W. N. 161. No. 9, above.

D.D.

CONFLICT OF LAWS—continued.

Followed by Kekewich J., *In re Scholefield*, [1905] 2 Ch. 408 ; C. A. [1907] 1 Ch. 664. See next Case.

16. —Power of appointment—Personalty—Execution—Foreign domicile—Unattested will—Extrinsic evidence of intention—Wills Act, 1837 (1 Vict. c. 26), ss. 9, 10, 27.

The general rule of construction introduced by s. 27 of the Wills Act, 1837, which provides that a general testamentary power of appointment may be exercised by a general bequest not referring either to the property or to the power, does not apply to a foreign will not executed in accordance with the provisions of the Wills Act, though valid according to the law of the testator's domicile and admitted to probate in this country, unless the will contains on its face an indication that it is to be construed according to English rules of construction.

So held on the authority of *In re D'Este's Settlement Trusts*, [1903] 1 Ch. 898.

A testatrix domiciled in France, in whom was vested a general testamentary power of appointment over personality under an English instrument by an unattested will, which was admitted to probate as complying with the law of France, created her niece universal legatee of her property in England as well as in France. The will contained no reference either to the power or to the property, but certain unsigned memoranda in the handwriting of the testatrix referred to the property comprised in the power, and shewed a clear intention to appoint in favour of the niece. Powers of appointment were unknown in France, but according to the expert evidence by the law of France the will would pass everything which the testatrix could dispose of, and the unsigned memoranda would be admissible as evidence of her intention :—

Held, that the question of the exercise of the power was to be determined upon evidence admissible by the law of England, and that the will did not operate as a valid exercise of the power. *In re SCHOLEFIELD*. SCHOLEFIELD v. ST. JOHN. *In re YOUNG*. SMITH v. ST. JOHN Kekewich J. [1905] W. N. 123 ; [1905] 2 Ch. 408

On Appeal :—

Appeal from the decision of Kekewich J. On the case being called, counsel informed the Court that the parties, who were sui juris, had agreed to a settlement, and an order was made in the terms which had been agreed. *In re SCHOLEFIELD*. SCHOLEFIELD v. ST. JOHN

C. A. [1907] 1 Ch. 664

Note.

This case was discussed by Parker J., *In re Baker's Settlement Trusts*, [1908] W. N. 161. See No. 9, above.

— Scotch wife, English husband and—Matrimonial domicile.

See No. 6, above.

— Streets improvement—International law Act of foreign legislature—Contribution. See STREETS. 10.

17. —Will—Unattested will—Domiciled foreigner—Immovables—Leaseholds—Adminis-

CONFLICT OF LAWS—*continued.*

tration with will annexed—Lex rei sitæ—Lex domicilii—Act, 1837 (1 Vict. c. 26), s. 9.

The beneficial interest in leasehold property in England will not pass under the will of a domiciled foreigner executed according to the law of his domicile but not attested as required by the Wills Act, 1837, notwithstanding that letters of administration with the will annexed have been granted by the Probate Div.

Decision of Kekewich J. [1900] 2 Ch. 504, affirmed. *PEPIN v. BRUYÈRE*

C. A. [1901] W. N. 208; [1902] 1 Ch. 24

CONJUGAL RIGHTS (SCOTLAND) ACT, 1861.

See **DIVORCE—Scotland.** 1.

CONQUEST—Marriage contract—Wife's acquisitions—Accumulations of income—Legitim.

See **SCOTTISH LAW.** 16.

CONSECRATION—Absence of sanction of Secretary of State to—Burial authority—Rights of incumbent of parish.

See **BURIAL.** 2.

CONSENT—Ancient lights—Enjoyment by "consent or agreement"—"Windows overlooking"—Skylight.

See **LIGHT AND AIR.** 17.

—Appeal—Reference of action to master—Consent of parties—Practice.

See **APPEAL.** 23, 24.

—Bankruptcy—Order and disposition—Reputed ownership—Consent of true owner.

See **BANKRUPTCY—Order and Disposition.** 2, 4.

—Beneficiaries—Voluntary settlement.

See **SOLICITOR—Fiduciary Relation.** 2.

—Board of Trade—Electric lighting—Transfer of powers.

See **ELECTRIC LIGHT.** 9.

—Charity Commissioners.

See under **CHARITY.**

—Condition subsequent—Validity—Restraint of marriage—Settlement.

See **MARRIAGE.** 4.

—"Consent or agreement"—Light—Enjoyment.

See **LIGHT AND AIR.** 17.

—Consent order—Effect of—Affirmation of transaction—Waiver of rights—Estoppel.

See **PARTNERSHIP.** 24.

—Consent order—Patent action—Appeal—Further evidence, Admissibility of.

See **PATENT—Practice.** 9.

—Consent order—Solicitor—Scope of country agent's authority.

See **SOLICITOR—Compromise.** 2.

—Covenant not to assign a lease without consent of lessor—Injunction.

See **AUSTRALIA.** 9.

—Disentailing assurance.

See under **ESTATE TAIL—Disentailing Assurance.**

CONSENT—*continued.*

—Divorce—Settlements, Variation of.

See under **DIVORCE—SETTLEMENTS.**

—Driftway, private—Conversion into public way—Persons whose consent necessary to.

See **HIGHWAY.** 25.

—Faculty—House of Commons—Window—Military colours.

See **ECCLESIASTICAL LAW—Faculty.** 12.

1. —*Injunction, Action for—Motion for interlocutory order—No appearance by defendant—Written consent to judgment—Practice—R. S. C., 1883, Order XLI., rr. 9, 10.*

Action by the proprietor of "Elliman's Embrocation" to restrain the defts., R. & S. Crichton, trading as Father Sequah and Madame Sequah, from representing that they were in possession of the recipe for the plt.'s embrocation, and from using the name of "Elliman" in connection with any recipe, and from in any way representing, advertising, or offering for sale embrocation not of the plt.'s manufacture as being of or similar to the plt.'s manufacture. The defts. entered an appearance to the writ by a solicitor. The plt. now moved for an interlocutory order. The defts. had been served with the notice of motion, but did not appear. They had, however, signed a written consent, attested by their solicitor, admitting the right of the plt., and consenting to the motion being treated as the trial of the action, and to an order for judgment and perpetual injunction in the terms of the indorsement on the writ.

Farwell, J. Whatever the practice in the K. B. Div. may be, it is not the practice in the Ch. Div. to make such an order unless the deft. appears in person and signs the registrar's book. On the evidence I will give you an interlocutory order, and if, before the order is drawn up, the defts. appear and consent in the usual way, I will pronounce judgment. *ELLIMAN v. SEQUAH*

Farwell J. [1903] W. N. 187

—Lease—Contract not to assign without consent—Assignment to limited company—Forfeiture.

See **LANDLORD AND TENANT.** 9, 10.

—Leasing powers—Principal mansion house—Consent of trustees.

See **SETTLED LAND—Leases.** 8.

—Lunacy—Consent of Court in Lunacy to bankruptcy proceedings—Summons for directions.

See **LUNACY.** 3.

2. —*Lunacy—Practice—Evidence—Affidavit—Consent by guardian ad litem of person of unsound mind—R. S. C., Order XVI., r. 21; Order XXXVII., r. 1.*

In an action for sale in lieu of partition, one of the defts. was a married woman, a person of unsound mind not so found by inquisition, who was defending the action by her guardian ad litem. The action came on upon motion for judgment, and the question arose whether the guardian could consent on the deft.'s behalf that the evidence should be given by affidavit without obtaining the sanction of the Court.

CONSENT—*continued.*

Buckley J. said that it was clear that a rule identical with Order XVI., r. 21, was brought to the attention of Hall V.-C. in *Fryer v. Wiseman*, (1876) 24 W. R. 205, yet he held that the guardian ad litem of an infant could give the consent without the Court's sanction; and Jessel M.R. came to the same conclusion in *Knatchbull v. Fowler*, (1876) 1 Ch. D. 604, although it did not appear from the report of the latter case that the rule corresponding to Order XVI., r. 21, was referred to. He could only follow those cases. The practice, based on those cases, was clearly stated in the Annual Practice, at p. 182, and if any change was to be made in the practice, it had better be made by the C. A. The existing practice seemed a reasonable one, and as it was unnecessary for the Court to make an order approving the guardian's consent, no such order would be made. **PIGGOTT v. TOOGOOD**

Buckley J. [1904] W. N. 130

— Marriage—Condition.

See under MARRIAGE.

— Metropolis — Buildings erected beyond the general line—Consent of Metropolitan Board of Works—Alteration of general line of buildings.

See LONDON—Buildings. 7.

— Poor Law—Dissolution of union—Uniting of parishes—Consent of guardians of union.

See POOR LAW. 3.

— Protector of settlement—Disentailing assurance.

See under DISENTAILING ASSURANCE—Estate Tail. 1.

— River—Pollution—Summary proceedings by sanitary authority—Consent of Local Government Board.

See RIVER. 1.

— Short cause—Motion for judgment—Notice. See PRACTICE — Summons for Directions. 2.

— Tenant for life—Compound settlement—Conflict of powers.

See SETTLED LAND—Powers. 1.

— Tenant for life—Sale—"Land"—Mortmain and charitable uses.

See CHARITY. 36.

— Tramways—Consent of Board of Trade.

See TRAMWAYS. 17.

— Weights and measures—Prosecution by inspector.

See WEIGHTS AND MEASURES. 7.

— Will—Condition as to consent to marriage.

See WILL—Conditions. 2.

CONSERVATORS—Navigation—Street—Paving expenses—"Owner"—Rack-rent. See LONDON—Streets. 9.**CONSIDERATION**—*Antecedent debt—Security—Policy of assurance—Interests based on valuable consideration—Assignment.*

The mere existence of an antecedent debt is not valuable consideration for a security given by the debtor.

CONSIDERATION—*continued.*

H. was entitled to a policy of assurance for 5000*l.* on his own life subject to conditions which made the policy void "if the lives assured died by their own hands . . . but without prejudice to the bona fide interests of third parties based on valuable consideration." He was indebted to W. in sums not exceeding 15,000*l.* W. had pressed for payment or reduction of the debt. H. executed a deed of assignment of the policy to W. by way of mortgage to secure all moneys owing to him from H., and delivered the deed duly executed to his solicitors, telling them to use their own discretion whether they should inform W. of the assignment or not. The solicitors obtained time from W. for payment of the debt without producing the deed, and, acting on H.'s instructions, destroyed it. H. shortly afterwards died by his own hand. No notice of the existence of the assignment was given to W. or the insurance society during H.'s life. After his death his estate was being administered in Court, and the fact of the assignment was discovered and communicated to W.'s firm, who had taken in a claim. Notice of the assignment was then given to the insurance society, and the executors of W., who had died, brought this action to recover the policy moneys:—

Held, that there was no valuable consideration for the assignment within the saving clause in the policy, and the action therefore failed. **WIGAN v. ENGLISH AND SCOTTISH LAW LIFE ASSURANCE ASSOCIATION**

Parker J. [1908] W. N. 236; [1909] 1 Ch. 291

— Breach of duty to take care—Damages—Remoteness.

See CONTRACT. 10.

— Cheque—Gambling in a foreign country—Loan—Money consideration.

See GAMING. 10.

— Company—Income bond — Construction—See under COMPANY—Income Bond.

— Contract—Breach of duty to take care—Damages—Remoteness.

See CONTRACT. 10.

— Corporate lands—Power to sell—Perpetual rent-charge—Approval of Local Government Board.

See CORPORATION. 8.

— Estate duty — Incumbrances — Bona fide creation.

See REVENUE—Estate Duty. 2.

— Failure of consideration—Beerhouse—Licence taken away—Covenants—Impossibility. See LANDLORD AND TENANT. 29.

— Failure of consideration — Contract — Impossibility of performance.

See CONTRACT. 25.

— Gaming—New consideration—Amendment of pleadings at trial—Practice.

See GAMING. 2.

— Gaming debt—New consideration—Provable debt.

See GAMING. 1.

CONSIDERATION—*continued.*

- Grant for services rendered — Estate tail whether barrable — Reversion in Crown. *See* CROWN. 3.
- Insufficiency of consideration — Duties of separate solicitor. *See* SOLICITOR—**Fiduciary Relation.** 2.
- Railway—Traffic management—Undue preference — Adequate consideration — Rebate. *See* RAILWAY—**Rates.** 8.
- Railway company—Adequate consideration—Payment in cash and services—Purchase of land. *See* RAILWAY—**Rates.** 8.
- Sale of undertaking—Commission — Ultra vires. *See* COMPANY—**Reconstruction.** 7, 8.
- Settlement—Covenant to settle wife's after-acquired property — Construction — Land in Jersey—Consideration for transfer necessary. *See* SETTLEMENT. 8.
- Stamp — Payable on contingency — Conveyance. *See* REVENUE—**Stamps.** 7.
- Stamp duty—"Conveyance on sale"—Conveyance in France—Consideration payable in England. *See* REVENUE—**Stamps.** 10.
- Uncertainty as to consideration—Contract of sale of land — Specific performance refused. *See* TRANSVAAL. 1.
- Want of—Contributory—Fully paid shares. *See* COMPANY — WINDING-UP — **Contributory.** 6.

CONSISTORY COURT.

See under ECCLESIASTICAL LAW.

CONSOLIDATED FUND ACTS, 1901-1910.

See under table of "Statutes enacted during the years 1901-1910," *ante*, p. cdlxvii.

CONSOLIDATED FUND—Payment out of Court — Wrong person—Liability of Consolidated Fund.

See PRACTICE—**Payment, &c.** 13.

CONSOLIDATED LOANS FUND—Power to use, for fresh loans—Local government—Municipal corporation—Ultra vires. *See* CORPORATION. 3.**CONSOLIDATED SUITS**—Jurisdiction—Costs—Co-respondent—Appeal—Final or interlocutory order.

See DIVORCE—**Practice.** 6.

CONSOLIDATION—Mortgages.

See under MORTGAGE—**Consolidation.**

CONSOLIDATION ORDER—Costs—Independent proceedings—Set-off.

See MORTGAGE—**Foreclosure.** 4.

CONSPIRACY—Action against trade union—Actionable conspiracy—Misdirection—Resolutions of union calling a strike. *See* CANADA—**Trade Union.** 1.1. — *Agreement—Indemnification of bail—No wrongful intent—Act tending to produce a public mischief.*

An agreement by an accused person to indemnify his bail is illegal in that it tends to produce a public mischief, and the parties to the agreement are, therefore, guilty of the offence of conspiracy, although they may have entered into the agreement without any wrongful intent.

Dictum of Martin B. in *Reg. v. Broome*, (1851) 18 L. T. (O. S.) 19, disapproved of. *REX v. PORTER* C. C. A. [1910] W. N. 5; 1 K. B. 369

— Criminal Law.

See under CRIMINAL LAW—**Conspiracy.**

— Conviction insufficiently describing offence—Summary jurisdiction.

See CRIMINAL LAW—**Conviction.** 1.

2. — *Criminal law—Agreement by prisoner with another to do an unlawful act for which the other could not be prosecuted—Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 56.*

The prisoner D. was convicted on an indictment which charged him with unlawfully conspiring with F. M. C., between Aug. 1 and Nov. 4, 1905, by force or fraud to take or decoy away A. M. C., a child under the age of fourteen years, with intent to deprive her lawful guardian, C. J. L., of the possession of the said child. The said F. M. C. was the mother of the child. She had obtained a divorce from her husband, and by an order of the Court, dated Aug. 5, 1902, the said C. J. L. had been appointed guardian of the person of the child. In Aug., 1905, the prisoner, by an agreement between him and F. M. C. undertook to take the child by force or fraud out of C. J. L.'s possession, and he did certain acts for the purpose of carrying out that undertaking:—

Held, that whether F. M. C. was or was not protected by the proviso from a prosecution for an offence prohibited by s. 56, or for a conspiracy to commit such an offence, her immunity could not afford any protection to the prisoner who had unlawfully conspired with her that he should commit an offence under the section, *REX v. DUGUID* C. C. R.

[1906] W. N. 100

— Discovery—Affidavit of documents—Criminal offence—Practice.

See DISCOVERY. 1.

3. — *Indictment—Obtaining a passport by false representations—Direction to jury—Matter of law—Acts tending to produce a public mischief.*

An indictment against two defendants for conspiracy alleged that the defts. unlawfully conspired to obtain a passport in the name of one of the defts. from the Foreign Secretary by falsely pretending and representing that the said deft. desired to use the passport himself while travelling in Russia with intent that the passport should be used by another person in the name of the said deft., and that the defts. in

CONSPIRACY—continued.

pursuance of the conspiracy sent the passport to the other person for use by him in Russia, in fraud of the Foreign Office regulations for the issue of passports, to the injury and prejudice and disturbance of the lawful, free, and customary intercourse between the subjects of the King and those of the Czar of Russia, to the public mischief of the subjects of the King, and to the endangerment of the continuance of the peaceful relations between the King and the Czar and their subjects respectively :—

Held, that the indictment was good.

At the trial of the indictment evidence was given on behalf of the Crown that the defts. combined and conspired together to obtain, and did in fact obtain, from the Foreign Office by false and fraudulent pretences and representations a passport in the name of the deft. McCulloch for his use in Russia with the intent that it should be used in Russia by some other person, and that in fact it was so used with their knowledge and consent. The judge directed the jury as matter of fact that those acts, if proved, tended to produce a public mischief, and that the defts. had committed the offence charged in the indictment :—

Held, that this direction was right. **REX v. BRILLSFORD** **Div. Ct. [1905] 2 K. B. 730**

Note.

This case was followed by *C. C. A., Rex v. Porter*, [1910] 1 K. B. 369. *See No. 1, above.*

4. — *Indictment against two or more for conspiring together—Plea of guilty by one—Acquittal of the others—Withdrawal of plea of guilty before sentence—Jurisdiction to allow withdrawal—Criminal Law Act, 1848 (11 & 12 Vict. c. 78).*

On the trial of an indictment charging three persons jointly with conspiring together, if one pleads guilty and has judgment passed against him, and the other two are acquitted, the judgment passed against the one who pleaded guilty is bad and cannot stand.

A question arising upon a plea of guilty is a question arising "on the trial" within 11 & 12 Vict. c. 78, and the Court for the Consideration of Crown Cases Reserved has power to entertain a case reserving that question, and to make such order as justice may require.

Reg. v. Brown, (1889) 24 Q. B. D. 357, followed.

Reg. v. Clerk, (1866) L. R. 1 C. C. 54, disapproved.

Where a prisoner has pleaded guilty to an indictment, the Court has jurisdiction to allow him, before sentence, to withdraw his plea, and plead not guilty. **REX v. PLUMMER**
C. C. R. [1902] W. N. 126; [1902] 2 K. B. 339

5. — *Pervverting course of justice—Publication of articles in newspaper affecting character and conduct of persons in course of trial—Criminal law.*

During the course of the trial of two persons for felony the reporter for a certain newspaper sent to the editor articles affecting the conduct and character of the persons under trial which would have been inadmissible in evidence against them. The editor published the articles, and, after the conviction and sentence of the two

CONSPIRACY—continued.

persons, he and the reporter were convicted on an indictment charging them with unlawfully attempting to pervert the course of justice by publishing the articles in question and with conspiring to do so :—

Held, that the conviction must be affirmed.
REX v. TIBBITS AND WINDUST

C. C. R. [1902] 1 K. B. 77

— Servants' characters.

See under CRIMINAL LAW—Servants' Characters.

— Trade union.

See under TRADE UNION.

6. — *Wrongful acts—Injury—Injunction.*

The appellant brought an action in the Ch. Div. (Ireland) against the respondent, claiming an injunction to restrain him from unlawfully and maliciously conspiring with other persons to injure the appellant in her business and employment :—

Held, that upon the facts proved there was no evidence to support the claim.

The decision of the C. A. (Ir.), [1906] 1 I. R. 51, affirmed upon the above ground. **SWEENEY (PAUPER) v. COOTE** **H. L. (Ir.) [1907] W. N. 92; [1907] A. C. 221**

CONSPIRACY AND PROTECTION OF PROPERTY — Trade dispute between employers and workmen—Cause of action.

See ACTION. 1, 2.

CONSTABLE.

See under POLICE.

"**CONSTANT TRADER**" — Collision — Compulsory pilotage — Exemption — London district.

See SHIPPING—Pilotage. 2.

CONSTANTINOPLE — Shipping — Collision — Negligence.

See SHIPPING—Collision. 45.

— Salvage—Injury to salving vessel—Compensation—Onus probandi.

See SHIPPING—Salvage. 18.

CONSTRUCTION OF WORKS—Building owner's property.

See BUILDING CONTRACT. 3.

CONSTRUCTIVE NOTICE.

See under NOTICE.

— Adverse title—Notice by tenancy.

See VENDOR AND PURCHASER—Title. 2.

— Lease, Purchase of — Unusual and onerous covenants—Duty of vendor.

See VENDOR AND PURCHASER—Leases.

CONTEMPT OF COURT—Attachment.

See also under ATTACHMENT.

1. — *Attachment—Publication tending to prejudice fair trial—Contempt of inferior Court—Jurisdiction of King's Bench Division to attach for.*

The King's Bench Division has power to

CONTEMPT OF COURT—continued.

punish by attachment contempts of inferior Courts.

Where, a person having been charged at the petty sessions with an indictable offence triable either at the assizes or at quarter sessions, matter is published in a newspaper tending to interfere with the fair trial of the charge, the King's Bench Division has jurisdiction to attach the publisher of such matter for contempt of Court, notwithstanding that at the time of the publication it is uncertain whether the person charged, if committed at all, will be committed to the assizes or to the quarter sessions. *REX v. DAVIES*

Div. Ct. [1905] W. N. 176 ; [1906] 1 K. B. 32

2. — Attachment—Order of Irish Court—Enrolment in Chancery Division in England—Service of order—Practice—Crown Debts Act, 1801 (41 Geo. 3, c. 90), s. 6—Landed Estates Court (Ireland) Act, 1858 (21 & 22 Vict. c. 72), s. 36.

Appeal from an order of Kekewich J. refusing leave to issue a writ of attachment against one S. for contempt in not obeying an order of the Land Judge of the Ch. Div. of the High Court in Ireland.

The Court held that the Act of 41 Geo. 3, c. 90, s. 6, did not make the order of the Irish Court an order of the English Court; it only allowed process to be issued to enforce obedience "as if such order had been originally pronounced in" the English Court, and it contained no provision for service of the enrolled order. It was not an order of this Court. The order of the Irish Court directed S. "within ten days after service" to lodge in Court, or account for, certain deeds; due "service" of that order meant service in Ireland; there had been no service of the order in Ireland; therefore there had been no disobedience to that order. *In re TRYON. Ex parte DAVIS*

C. A. [1901] W. N. 176

3. — Attachment against two executors, Motion for—Service on one.

A creditors' administration action, in which the following order was made on Jan. 31, 1906:—"It is ordered that the defts., W. P. E. and P. H. E., do within four days after service of this order lodge in Court, as described in the schedule hereto, 360*l.* 14*s.* 5*d.* appearing . . . to be due from them as executors of the late deft., M. E. E."

The order was duly served upon the deft. P. H. E. but not upon the deft. W. P. E., who was said to have gone to South Africa, and could not be found.

The evidence shewed that the defts. had sold a house forming part of the testatrix's estate and divided the proceeds between them, after which the deft. W. P. E. went abroad, the only address which he had given being "Post Restante, General Post Office, Cape Town."

The money was not paid into court, and the plts. moved for liberty to issue a writ of attachment against the deft. P. H. E.

The question arose whether the order could be enforced unless and until it had been served on both defts.

Buckley J. said that the question was one of construction. The words "after service" in the

CONTEMPT OF COURT—continued.

order might mean either after service on both defts., or after service on the one against whom it was sought to enforce the order. He thought the latter was the right view, and that the service was sufficient. He therefore gave leave to issue the writ of attachment. *Re ELLIS. HARDCASTLE v. ELLIS*

Buckley J. [1906] W. N. 137

4. — Company—Winding-up—Fraudulently circularizing shareholders while winding-up petition pending—Companies Act (25 & 26 Vict. c. 89), s. 145.

When a petition is pending for the winding-up of a co., it is a contempt of Court to issue a circular to the shareholders of the co. containing misrepresentations with the intent to obtain a resolution of the co. for the voluntary winding-up thereof, and thereby mislead the Court as to the real view of the shareholders and prevent a compulsory winding-up order from being made. *In re SEPTIMUS PARSONAGE & Co.*

Wright J. [1901] W. N. 136 ; [1901] 2 Ch. 424

5. — Company—Winding-up—Liquidator, Application to remove—Circularizing shareholders.

In a voluntary winding-up a shareholder took out a summons on behalf of himself and the other shareholders of the co., asking for the removal of the voluntary liquidator from office, and in support filed an affidavit stating what he alleged to be the facts justifying the application. Before the summons came on for hearing he issued a circular to the other shareholders, in substance repeating what he had stated in the affidavit, and asking the shareholders to support his application. The liquidator then served notice of motion for an injunction to restrain the issuing of the circular or any other like document on the ground that it was a contempt of Court:—

Held, that the circular could not in any way interfere with or prejudice the due trial of the matter, and was not a contempt of Court, and that the liquidator's application must be dismissed.

Seem, that *Coates v. Chadwick*, [1894] 1 Ch. 347, so far as it decided that the plt. had been guilty of contempt, and *In re Crown Bank*, (1890) 44 Ch. D. 649, were not rightly decided. *In re NEW GOLD COAST EXPLORATION Co.*

Cozens-Hardy J. [1901] W. N. 53 ; [1901] 1 Ch. 860

— Divorce—Right of hearing—Married woman.

See **DIVORCE—Practice.**

6. — Practice—Mandatory injunction—Negative form of order—Omission to fix time—Four-day order—R. S. C. 1883, Order XL., r. 5.

On Mar. 8, 1905, the C. A., reversing a decision of Kekewich J., granted a mandatory injunction in the negative form which was in common use prior to *Jackson v. Normanby Brick Co.* [1899] 1 Ch. 438, whereby the defts. were restrained from permitting to remain any stones, soil, or materials so as to interfere with the free access to the plt.'s land; but no time was fixed for carrying out the order.

On Aug. 9, 1905, the plt. moved for a four-day order requiring the defts. to remove the materials pursuant to the order of the C. A.

CONTEMPT OF COURT—*continued.*

Kekewich J. held that, the order of the C. A. not being an order requiring the defts. to do an act within r. 5 of the Order **XLI.**, the Court had no jurisdiction to make a supplemental order fixing the time for compliance, and that the plt.'s proper course was to apply for an immediate order for attachment or committal, and he refused the motion with costs.

The C. A. dismissed the appeal on the merits, but were of opinion that Kekewich J. had refused the motion upon a wrong ground inasmuch as he thought that Order **XLI. r. 5**, deprived him of any jurisdiction to make a time limit order, having regard to the form of the order of the C. A., and as the defts. had supported that judgment, they dismissed the appeal without costs.
MANSSELL v. JONES C. A. [1905] W. N. 168

7. — Publication tending to prejudice fair trial — Newspaper — Cause not yet pending in High Court — Jurisdiction of High Court to attach.

Where a person having been charged before the petty sessions with an indictable offence triable only at the assizes, matter is published in a newspaper tending to interfere with the fair trial of the charge, the High Court has jurisdiction to attach the publisher of such matter for contempt of Court, notwithstanding that at the time of the publication the person charged had not yet been committed for trial. **REX v. PARKE**
Div. Ct. [1903] 2 K. B. 432

— Trustee ordered to lodge in court money in possession or under control — Actual receipt.
See ATTACHMENT. 21, 22.

— Ward of Court—Marriage in contempt—Committal of ward—Jurisdiction.
See WARD OF COURT. 1.

CONTINGENCY—Class—Gift over on death coupled with a contingency—"Die leaving issue"—Divesting—Period of defeasibility.
See WILL—Class. 5.

— Consideration payable on contingency—Stamp—Conveyance.
See REVENUE—Stamps. 7.

— Contingent legacies to son at twenty-five and thirty — Extraordinary contingency — Son not entitled to interest.
See INFANT—Interest. 1.

— Partial happening of contingency—Contingent divesting clause—Gift over.
See WILL—Absolute Gift. 4.

— Remoteness — Will—Perpetuity — Executory limitation.
See WILL—Executory Limitation. 3.

— Will—Contingency of either son dying before his brother—Clause of substitution.
See NATAL. 11.

CONTINGENT—Vested or—Class—Gift over on death "without leaving any children"—Intestacy.
See WILL—Class. 7.

CONTINGENT—*continued.*

— Vested or contingent—Residue—Maintenance clause.

See WILL—Vesting. 4.

CONTINGENT INTEREST—Accumulation.

See WILL—Contingent Interest. 1.

CONTINGENT LEGACY—Infant — Maintenance — Right to surplus income and accumulations.

See ACCUMULATIONS. 1.

— Without interest — Appropriation of investments—Costs.

See EXECUTOR—Investment. 1.

CONTINGENT LIABILITIES—Contingent future liabilities—Return of assets—Rights of future creditor—Distribution—Practice.
See ADMINISTRATION. 4.**CONTINGENT LIFE INTEREST** — Infant — Maintenance — Accumulations, Right to.

See ACCUMULATIONS. 1.

— Maintenance—Accumulations, Right to.

See INFANT—Maintenance. 1.

CONTINGENT LIMITATION—Introduction of Cy-près—Perpetuity.

See CY-PRÈS. 1.

CONTINGENT OR VESTED—Residue to individuals in shares, Gift of—Income for maintenance of all, Gift of.

See WILL—Vesting. 4.

CONTINGENT PROFITS—Damages — Remote-ness—Breach of contract.

See DAMAGE AND DAMAGES. 3.

CONTINGENT REMAINDER—Equitable — Remoteness — Child en ventre sa mère—Relation back.

See PERPETUITY. 1.

— Settlement—Power of appointment — Perpetuity.

See POWER OF APPOINTMENT. 2.

— Will—Construction.

See under WILL — Contingent Remainder.

CONTINGENT REVERSIONARY INTEREST — Not falling into possession during cover-
ture — After-acquired property — Cove-
nant to settle.

See SETTLEMENT. 5.

— Realty and personalty.

See INTESTACY. 2.

CONTINUATION CLAUSES—Validity—Stamp—Time policy for more than twelve months.

See INSURANCE (MARINE). 28.

CONTINUING OFFENCE—Conviction—Averment of commission of offence on several discontinuous days.

See CRIMINAL LAW—Practice. 21.

CONTRABAND OF WAR—Seaman—Contract of service for commercial voyage—Refusal to proceed to belligerent port—Wages—Damage for wrongful discharge.

See **SHIPPING**—Seaman. 2.

—Warranty against—Persons not contraband—Breach of warranty.

See **INSURANCE (MARINE)**. 31.

CONTRACT.

See also under **SPECIFIC TITLES** the subject-matter of **CONTRACT**.

1. — *Action of deceit—Fraudulent representations—Verification of representations by contractor—Principal responsible for fraud of agent—Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61), s. 1.*

A contractor having sued the other party to the contract (a public authority) in an action of deceit for damages for fraudulent representations made by the agent of the public authority as to the nature of the works to be executed, one defence was that by a provision in the contract the plt. must verify all representations for himself and not rely on their accuracy. Another defence was that the action was not brought in due time within the Public Authorities Protection Act, 1893:—

Held, that the contract, truly construed, contemplated honesty on both sides, and protected only against honest mistakes; and that the Public Authorities Protection Act, 1893, did not apply, the act complained of not being done in pursuance of a public duty within the meaning of the statute.

Decision of the C. A. in Ireland, [1907] 2 I. R. 27, 82, reversed, and decision of the K. B. D. (Ireland) restored upon the ground that there was a question of fact for the jury upon the allegation of fraud. The question of the liability of a principal for the fraud of his agent discussed. *S. PEARSON & SON, LD. v. DUBLIN CORPORATION* **H. L. (Ir.) [1907] A. C. 351**

2. — *Agency agreement—Vendor and purchaser agreement—Construction of contract—Appeal from Canada—Quebec.*

In an action by the appellant for a declaration that he was entitled as purchaser to a conveyance from the respondent of the property in suit:—

Held, on consideration of all its terms and of the surrounding circumstances, that the agreement sued upon was not a vendor and purchaser agreement, but an agency agreement: that the appellant never came under any personal liability, present or future, to purchase, the arrangement contemplated being on behalf of third parties who might thereafter be accepted by the respondent. *LIVINGSTONE v. ROSS*

P. C. [1901] A. C. 327

3. — *Agreement—Mutual error—Reconstruction of agreement by the parties—Construction thereof—Interest on price.*

The House (Lords Loreburn L.C., Ashbourne, Gorell, and Shaw of Dunfermline) affirmed with a variation the interlocutors appealed from, dated July 18 and Nov. 14, 1908, and dismissed the appeal; but without costs in this House or in

CONTRACT continued.

the Courts below on the ground that both parties were in fault for the litigation. (*Lord Loreburn L.C. dissented from the payment of interest.*) *GLASGOW AND SOUTH-WESTERN RY. CO. v. GREENOCK PORT AND HARBOUR TRUSTEES* **H. L. (Sc.) [1909] W. N. 152**

4. — *Assignability—Contract to supply goods to company—Assignment of contract—Liquidation of company—Rights of contracting company and assignee—Joinder of assignor in action.*

The appellant, owner of chalk quarries, made a contract with the Imperial Portland Cement Co., Ltd., that he would for fifty years supply to the co., and that the co. would take and buy from him at least 750 tons of chalk per week at a certain price, and so much more (if any) as the co. should require for the whole of their manufacture of Portland cement upon their land. The Imperial Co. afterwards assigned the contract and sold its undertaking, land, works, and business to the Associated Co., Ltd., and went into voluntary liquidation:—

Held (the Earl of Halsbury L.C. doubting and Lord Robertson dissenting), that upon the true construction of the contract it must be read as if it had been expressed to be made with the Imperial Co., its successors and assigns, owners and occupiers of the works; that the Associated Co. was entitled to the benefit of the contract and could enforce it by action without joining the Imperial Co. as plts.

The decision of the C. A., [1902] 2 K. B. 660, affirmed, except on the question of joining the Imperial Co. *TOLHURST v. ASSOCIATED PORTLAND CEMENT MANUFACTURERS (1900), LD. TOLHURST v. ASSOCIATED PORTLAND CEMENT MANUFACTURERS (1900), LD., AND THE IMPERIAL PORTLAND CEMENT CO., LD.*

H. L. (E.) [1903] W. N. 149; [1903] A. C. 414

Note.

Distinguished by C. A., *Kemp v. Baerselman*, [1906] 2 K. B. 604. See next Case.

Referred to by C. A., *Bennett v. White*, [1910] 2 K. B. 643. See Set-off.

5. — *Assignability—Contract to supply goods as purchaser may require for his business—Agreement by purchaser not to buy similar goods from others—Assignment of purchaser's business—Right of assignee to require supply of goods from vendor.*

The debt, contracted with K., a cake manufacturer, to supply him with all the eggs of a specified quality "that he shall require for manufacturing purposes for one year," K. undertaking not to purchase eggs from any other merchant during the year so long as the debts were ready to supply them. During the year K. transferred his business to a co., whereupon the debts claimed to be discharged from their contract, and refused to supply any more eggs either to K. or to the co. In an action brought by K. and the co., as co-plts., for breach of the contract:—

Held, that the debt's contract was with K. personally, that the benefit of it was not assignable, and that the debt, was discharged from his obligation.

Tolhurst v. Associated Portland Cement

CONTRACT—continued.

Manufacturers, [1903] A. C. 414, distinguished.
KEMP v. BAERSELMAN - - - **C. A. [1906]**
W. N. 152; [1906] 2 K. B. 604

6. — Assignment—No title to sue.

The House affirmed the decision of the Second Div. of the Ct. of Sess., (1900) 2 F. 636, and dismissed the appeal with costs. **INTERNATIONAL FIBRE SYNDICATE, LD. v. DAWSON**
H. L. (Sc.) [1901] W. N. 97

— Assignment—Right of assignee to sue vendor for damages.

See **CHOSE IN ACTION**, 1.

— Author and publisher—Registration—Agreement.

See under **COPYRIGHT**.

7. — Breach—Waiver—Damages.

The House affirmed the interlocutor of the First Div. of the Ct. of Sess., dated July 17, 1909, and dismissed the appeal with costs. **REID NEWFOUNDLAND CO. v. BAY OF ISLANDS SLATE SYNDICATE, LD.**
H. L. (Sc.) [1910]
W. N. 185

8. — Breach of contract—Damages—Arbitration—Liability of sureties to be sued.

The House (Lords Loreburn L.C., James of Hereford, Atkinson, Gorell, and Shaw of Dunfermline), dissenting from the order of the First Division of the Court of Session, dated Mar. 19, 1909, reversed the interlocutors appealed from except so far as they dismissed the action against Messrs. Beardmore, and remitted the cause with a direction. Respondents to pay the costs here and below. **JOHANNESBURG MUNICIPAL COUNCIL v. D. STEWART & CO.** - **H. L. (Sc.) [1909] W. N. 161**

9. — Breach of contract—Measure of damages—Penalty or liquidated damages.

The defts., coal exporters at Newcastle, entered into a contract with the plt. for the sale and delivery to him in Germany of a quantity of coal, of which part was to be screened and part small coal, at certain prices per ton c.i.f. The contract, which was drawn up by the defts., contained the following clause: "Penalty for non-execution of this contract by either party 1s. per ton on the portion unexecuted, and the amount of proved loss, if any, on freight actually arranged by us." In an action to recover damages for non-delivery of the coal, the plt. claimed that the 1s. per ton mentioned in the contract was a penalty and might be disregarded, and that he was entitled to recover the difference between the contract price and the market price in Germany, which difference was much in excess of 1s. per ton:—

Held, that, notwithstanding that the parties had called the 1s. per ton a penalty, and that the loss caused to the plt. by the non-delivery might be different in the case of the screened coal and of the small coal and that the difference between the contract and market prices was easily ascertainable, the 1s. per ton was to be treated as liquidated damages. **DIESTAL v. STEVENSON**

Kennedy J. [1906] W. N. 138;
[1906] 2 K. B. 345

CONTRACT—continued.

— Coal—Contract to deliver on specified terms all the coal required for use in the plts.' works—Breach of contract—Appeal from Nova Scotia.

See **CANADA—Contracts**, 1.

— Commission—Personal contract—Death of party—Commission payable "as long as we do business."

See **COMMISSION**, 1.

— Conflict of laws.

See under **CONFLICT OF LAWS**, 3.

10. — Consideration—Breach of duty to take care—Damages—Remoteness—Interfering criminal act of third party causing loss.

The defts., who were newspaper proprietors, advertised in their newspaper that their city editor would answer inquiries from readers of the paper desiring financial advice. The plt., a reader of the paper, wrote to the defts.' city editor asking for a safe investment for 800*l.*, and also for the name of a "good stockbroker." The editor recommended a person who, as he well knew, was an "outside broker," that is, a person who transacted Stock Exchange business, but was not a member of the Stock Exchange. The outside broker had for some months been employed by the editor to advise him on matters connected with the financial correspondence in the defts.' newspaper, and there was no evidence that the editor had any reason to suspect his honesty. The outside broker was, in fact, an undischarged bankrupt, a fact which was unknown to the editor, who might, however, easily have ascertained his financial position if he had made inquiries. The plt. in reliance on the editor's recommendation, sent sums of 1300*l.* and 100*l.* for investment to the outside broker, who immediately misappropriated them:—

Held, that there was a contract between the plt. and the defts. by which the defts. undertook to use reasonable care that the person recommended as a broker should answer the description of a good stockbroker; that the defts.' city editor, in recommending the outside broker without making reasonable inquiries about him, had committed a breach of that contract; and that the plt.'s loss naturally flowed from the defts.' breach of contract, even if the misappropriation of the money by the broker amounted to a criminal offence.

Held, also, by Vaughan Williams L.J. and Sir Gorell Barnes, President (Bigham J. doubting), that the measure of damages was not limited to the 800*l.*, but that the plt. was entitled to recover the actual amount of his loss.

Decision of Lord Alverstone C.J., reported [1907] 1 K. B. 483, affirmed. **DE LA BERE v. PEARSON, LD.** **C. A. [1907] W. N. 244;**
[1908] 1 K. B. 280

— Contract of service.

See under **CONTRACT OF SERVICE**.

— Crown—Prerogative—Servants of the Crown—Liability to be sued.

See **CROWN**, 9.

11. — Damages—Forfeiture of sum deposited—Liquidated damages or penalty.

In deciding whether a sum made payable by

CONTRACT—continued.

way of compensation for breach of a contract is to be treated as liquidated damages or as a penalty, the Court must take all the circumstances into consideration, in order to ascertain the intention of the parties. The fact that the sum in question is to be paid on the breach of any one of a variety of stipulations of different degrees of importance does not necessarily oblige the Court to treat it as a penalty, although it raises a presumption that that was the intention of the parties; nor does the fact that the sum in question had been deposited at the making of the contract compel the Court to treat it as liquidated damages, although it forms a material element to be taken into consideration in ascertaining the intention of the parties. *PYE v. BRITISH AUTOMOBILE COMMERCIAL SYNDICATE, LD.* **Bigham J. [1906] W. N. 35; [1908] 1 K. B. 425**

— Determination—Contract to execute works—Wrongful seizure of works by defendants—Plaintiff entitled to determine the contract.
See NEW ZEALAND. 7.

— Electric light—"Generating light"—"Actual cost"—Construction of contract.
See CAPE OF GOOD HOPE. 4.

— Electricity, Supply of—Loughborough Corporation—Breach of contract—Remedy for.
See STATUTE. 3.

— Entry—Exclusive right of entry on appellants' land for specified purposes—Laws of Newfoundland.
See NEWFOUNDLAND. 1.

12. — Evidence—Contract in writing—Parol evidence to contradict.

Action brought by plts., a firm of builders and contractors, against the administratrix of one T. F., to recover the balance of an account for work done and materials supplied under a building agreement. The agreement was made between R., who was throughout the document referred to as "the proprietor," and the plts., who were throughout styled "the contractors." The county court judge, adopting the contention of the plts. that R. entered into the contract as agent for T. F., gave judgment for the plts.; the Div. Ct. (Darling and Jelf JJ.) reversed that decision, and the plts. appealed. Parol evidence had been tendered by the plts. in the county court to shew that R. had contracted as T. F.'s agent; the case of *Humble v. Hunter*, (1848) 12 A. & E. 310, was cited on behalf of the defts. as shewing that the proposed evidence contradicted the written contract, but the evidence was admitted. The Div. Ct. held, on the authority of *Humble v. Hunter* (supra), that the evidence was inadmissible as contradicting the written contract.

In the C. A. it was contended that the point of law had not been clearly raised and submitted to the county court judge at the trial as required by s. 120 of the County Courts Act, 1888, and that therefore no appeal lay from his decision: see *Smith v. Baker & Sons*, [1891] A. C. 325, and on this ground alone the Court

CONTRACT—continued.

(Vaughan Williams L.J., Farwell L.J., and Kennedy L.J.) allowed the appeal, and restored the decision of the county court judge.

During the argument the plts.' counsel cited *Killick v. Price*, (1895) 12 T. L. R. 264, in which Lord Russell of Killowen C.J. is reported to have said: "He gravely doubted whether that case (*Humble v. Hunter*) would be recognized as an authority at the present time." The Court, without considering the question at length, expressed the unanimous view that the authority of *Humble v. Hunter* (12 A. & E. 310) had not been directly or inferentially impaired. *FORMBY BROTHERS v. E. FORMBY* - - - **C. A. [1910] W. N. (Erratum 67) 48**

13. — Evidence—Parol evidence—Statute of Frauds—Specific performance—Land—Contract—Rescission—Variation.

Parol evidence is not admissible to prove a subsequent agreement to vary the terms of a contract in writing and by law required to be in writing, although it can be admitted to prove rescission of such a contract. *VEZEY v. RASH-LEIGH* - **Byrne J. [1904] W. N. 64; [1904] 1 Ch. 634**

14. — Executed contract—Rescission—Misrepresentation—Absence of fraud—Delay.

The Court will not grant rescission of an executed contract for the sale of a chattel or chose in action on the ground of an innocent misrepresentation:—

In order for the plt. to succeed in such a case fraud must be proved.

Wilde v. Gibson, (1848) 1 H. L. C. 605, 632; 73 R. R. 191, 209, *Brownlie v. Campbell*, (1880) 5 App. Cas. 925, and *Kennedy v. Panama, New Zealand and Australian Royal Mail Co.*, (1867) L. R. 2 Q. B. 580, applied. *SEDDON v. NORTH EASTERN SALT CO., LD.* - - - **Joyce J. [1905] W. N. 4; [1905] 1 Ch. 326**

— Feu contract—Superior and vassal.
See under SCOTTISH LAW.

15. — Fixed period, Contract for—Express term—Implied condition—Construction of contract—Damages.

Tobacco merchants contracted with a retail dealer that—in consideration of his purchasing direct from them and agreeing to continue to buy, display and sell their goods and not to sign any agreement with any other firm which would prevent him from carrying out this contract—they would for the next four years distribute to such of their customers as purchased direct from them their entire net profits on goods sold in the United Kingdom, and also the sum of 200,000*l.* a year, to be distributed every three months in proportion to the purchases. Soon after the manufacturers sold their business, and went into voluntary liquidation:—

Held, that upon the true construction of this particular contract there was an express contract to pay to the retail dealer his due proportion of 200,000*l.* a year for four years, and that he was entitled to damages for the breach of that contract, the merchants having put it out of their own power to carry on the business.

The decision of the C. A., [1904] 2 K. B. 410,

CONTRACT—continued.

affirmed. *OGDENS, LD. v. NELSON. OGDENS, LD. v. TELFORD* **H. L. (E.) [1905] W. N. 54; [1905] A. C. 109**

— Grant of right to make "a tunnel"—Personal contract — Uncertainty — Perpetuity — Assignability.

See **RAILWAY—Accommodation Works. 2.**

— Ice and snow, Right to clear, into the streets — Electric sweeper.

See **CANADA—Snow. 1.**

16. — Illegality—Probate action—Contract by parties that costs shall be paid out of the estate—Infant co-contractor.

The plt. in a probate action sought to establish the validity of a will as residuary legatee, and H., one of the defts. as an executor and the trustee of an infant beneficiary under a will of the testator earlier in date, sought to establish the validity of that will. During the course of the proceedings in the action a contract was made between the plt. of the one part and H. and the infant, who was also a deft., of the other part, whereby it was agreed that, whichever of the two wills was upheld by the Court, the costs of the plt. and of the deft. H. and the infant should be paid out of the estate whether the Court so ordered or not. The Court pronounced in favour of the earlier will, and on application made refused to sanction the contract on behalf of the infant, and directed that the plt. should pay the costs of H. and the infant in the probate action.

In an action by the plt. to recover his costs against the deft. H. under the contract :—

Held, that the contract was not illegal, and that the deft. was personally liable upon it. **PRINCE v. HAWORTH** — **Lawrance J. [1905] 2 K. B. 768**

17. — Illegality — Remoteness—Uncertainty—Statutory confirmation—Pre-emption, Right of—Contract to give "first refusal" of land—Negative contract—Interest in land—Purchaser with notice—Injunction.

An agreement scheduled to an Act of Parliament was thereby "confirmed and declared to be valid and binding upon the parties thereto" :—

Held, that every clause of the agreement had statutory validity, so that no objection could be taken on the ground of remoteness or uncertainty.

An agreement between a racecourse co. and a canal co. contained a clause that if the racecourse should be at any time proposed to be used for dock purposes, the racecourse co. should give the canal co. the "first refusal" thereof :—

Held, that "first refusal" imported either a fair and reasonable offer to sell to the canal co., or that the price at which the racecourse co. were to give the canal co. the "first refusal" was a price which the racecourse co. would accept from other would-be buyers in the event of the refusal of the canal co. to buy at that price : i.e., that the canal co. had a "right of pre-emption" ; and that an offer to the canal co. at an extravagant price which the racecourse co. did not reasonably expect would be given either by the canal co. or any other would-be

CONTRACT—continued.

buyer was not giving a "first refusal" within the meaning of the clause :—

Held, also, that the clause did not create an interest in land so as to entitle the canal co. on that ground to enforce their right of pre-emption as against an intending purchaser with notice of the right ; but that the canal co. were entitled to enforce their right as against the racecourse co. and the intending purchaser on the ground that the contract to give the canal co. the "first refusal" involved a negative contract not to part with the racecourse to anyone else without giving them that "first refusal" : *Lumley v. Wagner*, (1852) 1 D. M. & G. 604.

Appeal from *Farwell J.*, [1900] 2 Ch. 352, dismissed with costs. **MANCHESTER SHIP CANAL CO. v. MANCHESTER RACECOURSE CO.**

C. A. [1901] 2 Ch. 37

— Illegitimate child—Void contract—Contract by mother to give up possession of child — Parent and child.

See **INFANT—Custody. 1.**

— Impossibility of performance.

See *Nos. 20—25, below.*

— Licence—Advertising station—Tenancy from year to year — Licence—Revocation—Notice.

See **LICENCE. 1.**

— Lunatic—Contract by insane person is void, not voidable — Rights of negotiorum gestor.

See **NATAL. 3.**

18. — Memorandum in writing—Signature by agent—Statute of Frauds—Contract for sale of goods.

The House reversed the decision of the C. A. and restored the judgment of *Phillimore J.* for the defts. with costs here and below, holding that, upon the true construction of the correspondence and conduct of the parties, the agreement sued on had not been established in fact. Their Lordships did not decide or discuss the point under the Statute of Frauds on which alone the case is reported, [1899] 2 Q. B. 414. **HUMBER & CO. v. JOHN GRIFFITHS CYCLE CORPORATION, LD.** **H. L. (E.) [1901] W. N. 110**

— Military service, Contract with the Colonial Government for — Payments by the Imperial Government—Payments under the contract.

See **NEW SOUTH WALES. 22.**

19. — Penalty or liquidated damages—Time limit—Waiver.

The Spanish Government contracted with the appellants for the building of four torpedo boats, delivery to be within periods varying from six and a half months to seven and three-quarter months from the date of the contracts. The contracts provided that "The penalty for later delivery shall be at the rate of 500*l.* per week for each vessel." The vessels having been delivered many months after the stipulated period and the price paid, the Spanish Government claimed from the appellants payment of 500*l.* for each week of late delivery :—

Held (affirming the decision of the Second

CONTRACT *continued.*

Div. of the Ct. of Sess., (1903) 5 F. 1016; sequel to [1902] A. C. 524), (1.) that the sum of 500*l.* a week was to be regarded as liquidated damages and not as a penalty, and that the Spanish Government were entitled to recover; (2.) that payment in full of the price of the vessels without reservation was no waiver of the claim for damages for delay in delivery. *CLYDEBANK ENGINEERING AND SHIPBUILDING Co. v. DON JOSE RAMOS YZQUIERDO Y CASTANEDA*

H. L. (Sc.) [1904] W. N. 192; [1905] A. C. 6

20. — Performance, Impossibility of—Coronation procession—Inference that procession would pass — Implied condition—Necessary inference — Surrounding circumstances—Substance of contract.

By a contract in writing of June 20, 1902, the deft. agreed to hire from the plt. a flat in Pall Mall for June 26 and 27, on which days it had been announced that the coronation processions would take place and pass along Pall Mall. The contract contained no express reference to the coronation processions, or to any other purpose for which the flat was taken. A deposit was paid when the contract was entered into. As the processions did not take place on the days originally fixed, the deft. declined to pay the balance of the agreed rent:—

Held (affirming the decision of Darling J.), from necessary inferences drawn from surrounding circumstances, recognized by both contracting parties, that the taking place of the processions on the days originally fixed along the proclaimed route was regarded by both contracting parties as the foundation of the contract; that the words imposing on the deft. the obligation to accept and pay for the use of the flat for the days named, though general and unconditional, were not used with reference to the possibility of the particular contingency which afterwards happened, and consequently that the plt. was not entitled to recover the balance of the rent fixed by the contract.

Taylor v. Caldwell, (1863) 3 B. & S. 826, discussed and applied. **KRELL v. HENRY**

C. A. [1903] 2 K. B. 740.

Note.

See Grimsdick v. Sweetman, Div. Ct. [1909] 2 K. B. 740 *Landlord and Tenant*. 29.

21. — Performance, Impossibility of—Coronation procession—Rights of parties when performance of contract has become impossible.

On May 23, 1902, the plt.'s agent, having seen a plan of certain seats to view the coronation procession appointed to take place on June 27, which seats it was proposed to erect on the ground floor of a shop, paid the defts. fifteen guineas for three numbered seats. The seats were to be on a structure to be erected by the defts., and the structure and seats were afterwards erected by them. The procession not having taken place in consequence of the King's illness, the plt. brought this action. The county court judge gave judgment for the defts. In *Hobson v. Pattenden & Co.* the facts raised substantially the same question:—

Held, that each party must rest in the position

CONTRACT—continued.

in which he is found to be when the event occurs which makes the contract impossible of performance, unless there is something special in the terms of the contract which gives one or other of the parties a different right.

Judgment of the county court judge affirmed.

Taylor v. Caldwell, (1863) 3 B. & S. 826, discussed and applied. **BLAKELEY v. MULLER & Co. HOBSON v. PATTENDEN & Co.**

Div. Ct. [1903] 2 K. B. 760, n.

22. — Performance, Impossibility of—Naval review—Rights of parties when performance of contract has become impossible—Contract—Construction—Costs—Discretion—Appeal—Trial by judge without jury—Order LXV., r. 1—Judicature Act, 1890 (53 & 54 Vict. c. 44), s. 5.

By a charterparty dated Mar. 22, 1902, the defts. agreed to let, and the plt. agreed to hire, the defts.' steamer for the term of three days from the hour she was placed at the plt.'s disposal in London on the day preceding that of the naval review to be held at Spithead on the occasion of the King's coronation in June or July, 1902; the steamer was to take up passengers at London and Southampton, and proceed to Spithead, arriving in time for the review, and returning to London on the third day of the hiring; and the amount to be paid by the plt. for the hire was a lump sum of 1500*l.*, payable "250*l.* on signing the charter, and the balance ten days before the date of the review." The usual exceptions from owners' liability in respect of perils of the seas, &c., were contained in the charterparty. The plt. paid to the defts. 250*l.* on signing the charterparty, and the balance, 1250*l.*, on June 18, the review having in the meantime been fixed to take place on June 28. The review was, in consequence of the King's illness, postponed on June 25, and thereupon notice that the plt. would not require the steamer was given by them to the defts., and accordingly she was not placed at the plt.'s disposal. The defts., before the postponement of the review, had incurred expenses amounting to 500*l.* in fitting out the steamer and in doing other things by way of part performance of the contract, or in order to enable them to perform it. The review was not held until the month of Aug., 1902, and the plt. sued the defts. to recover the 1500*l.* as money paid on a consideration which had failed. At the trial before a judge alone, it appeared that there had been some negotiations for a settlement of the dispute, and the judge expressed his desire that the matter should be left to him to say what, under the circumstances and apart from the strict legal rights of the parties, should be done. The defts. would not agree to that course being taken, and they also declined to accept the judge's suggestion that they should be content to retain the amount of the expenses they had incurred and have their costs. In the result the judge gave judgment for the defts., but ordered that each of the parties should bear their own costs:—

Held, on an appeal by the plt. from the judgment for the defts., that the plt. were not entitled to recover the money they had paid:

Held, also, on the defts.' appeal from the order that each of the parties should bear their

CONTRACT—continued.

own costs, that there were no materials upon which the judge could exercise his discretion by making that order, and, therefore, that the C. A. had power to entertain the appeal and reverse his decision. *CIVIL SERVICE CO-OPERATIVE SOCIETY, LD. v. GENERAL STEAM NAVIGATION CO. C. A. [1903] W. N. 182; [1903] 2 K. B. 566*

Note.

This case was followed by *C. A., King & Co. v. Gillard & Co., [1905] 2 Ch. 7. See Costs. 33.*

23. — Performance, impossibility of—Implied condition—Cargo to be shipped by specified ship—Ship damaged so as to be unable to receive cargo.

By a contract made in Oct., 1899, the defts. sold to the plts. a cargo of cotton-seed, to be shipped per steamship *Orlando* at an Egyptian port during the month of Jan., 1900, and to be delivered to the plts. in the United Kingdom. The contract provided that, in case of prohibition of export, blockade, or hostilities preventing shipment, the contract or any unfulfilled part thereof should be cancelled. In Dec., 1899, the *Orlando* was stranded through perils of the sea without default on the defts.' part, and was so much damaged as to render it impossible for her to arrive at the port of loading in time to load during Jan. In an action by the plts. against the defts. for failure to ship a cargo under the contract :—

Held, by A. L. Smith M.R. and Romer L.J. (Vaughan Williams L.J. dissenting), that the contract must be construed as subject to an implied condition that, if at the time for its performance the *Orlando* should, without default on the defts.' part, have ceased to exist as a ship fit for the purpose of shipping the cargo, then the contract should be treated as at an end; and that the action was therefore not maintainable.

Taylor v. Cudwell, (1863) 3 B. & S. 826, and Howell v. Cowpland, (1876) 1 Q. B. D. 258, followed.

Judgment of Mathew J., [1900] 2 Q. B. 298, affirmed. *NICKOLL & KNIGHT v. ASHTON, ELDRIDGE & Co.*

C. A. [1901] W. N. 97; [1901] 2 K. B. 126

24. — Performance impossible — Payment made "on account of" contract—Express provision in the event of no expense being incurred—Refreshments.

A caterer agreed to supply refreshments at a fixed price to the respondents on the occasion of a naval review to be held on a named day, "300*l.* to be paid to the caterer on account of the refreshments on the Monday previous to the review day," it being expressly stipulated that in the event of the cancellation of the review before any expense was incurred by the caterer there should be no liability on the respondents. A few days before the named day it was known that the review would not be held. The caterer had spent about 20*l.* in crockery, &c., but incurred no expense in providing refreshments. The caterer having sued the respondents upon a cheque for 300*l.* given by them to him in advance in accordance with the contract :—

Held, that upon the true construction of this particular contract the respondents were not

CONTRACT—continued.

liable in respect of refreshments, and could not be sued upon the cheque.

The decision of the C. A., [1904] 1 K. B. 565, affirmed. *ELLIOTT v. CRUTCHLEY*

H. L. (E.) [1905] W. N. 164; [1906] A. C. 7

25. — Performance, impossibility of—Money paid under contract, whether recoverable—Right accrued before performance impossible—Failure of consideration—Coronation procession.

The deft. agreed to let to the plt. a room for the purpose of viewing the coronation procession of June 26, 1902, for the sum of 14*l.* 15*s.* The procession subsequently became impossible, owing to the illness of the King. By the terms of the contract the price of the room was payable before the time at which the procession became impossible. The plt. had paid 100*l.* on account of the price of the room, and the balance remained unpaid :—

Held, that the plt. was not entitled to recover the 100*l.* which he had paid, and that the deft. was entitled to payment of the balance, inasmuch as his right to that payment had accrued before the procession became impossible. *CHANDLER v. WEBSTER - - C. A. [1904] 1 K. B. 493*

— Practice—New trial must be on motion.

See BRITISH HONDURAS. 1.

— Principal and agent—Custom House, Obligation of agent to pass through.

See NEW SOUTH WALES. 27.

26. — Procuring breach of contract—Cause of action—Interference with legal right—Malice—Justification—Trade union.

Procuring a breach of contract is an actionable wrong unless there be justification for interfering with the legal right.

Miners employed in collieries without giving notice to their employers and in breach of their contracts abstained from working on certain days upon the direction or order of a federation of the miners given by their executive council. The federation and council acted honestly without malice or ill-will towards the employers, and with the object only of keeping up the price of coal by which the wages were regulated :—

Held, that an action for damages lay by the employers against the federation and its officers, no justification for their action being shewn.

The decision of the C. A. [1903] 2 K. B. 545, affirmed. *SOUTH WALES MINERS' FEDERATION v. GLAMORGAN COAL CO.*

H. L. (E.) [1905] W. N. 72; [1905] A. C. 239

— Railway—Agreement to construct a railway jointly—Construction—Rights of joint owners.

See NEW SOUTH WALES. 30.

— Railway—Contract, Construction of—"Whole operation of its railway."

See CANADA—Contracts.

— Railway contract—Penalty for non-completion of line—Liquidated damages—"Actual cost."

See CAPE OF GOOD HOPE. 12.

27. — Sale of goods—Principal and agent—Undisclosed principal—Ratification.

A contract made by a person intending to

CONTRACT—*continued.*

contract on behalf of a third party, but without his authority, cannot be ratified by the third party so as to render him able to sue or liable to be sued on the contract, where the person who made the contract did not profess at the time of making it to be acting on behalf of a principal.

The decision of the C. A., [1900] 1 Q. B. 629, reversed for the reasons there given in the dissenting judgment of A. L. Smith M.R. **KEIGHLEY, MAXTED & Co. v. DURANT**

H. L. (E.) [1901] W. N. 110; [1901] A. C. 240

— Sale of land—Specific performance refused—Uncertainty as to consideration.
See TRANSVAAL. 1.

28. — Ship—Naval review—Contract of hiring—Specific performance—Failure of consideration—Liability of hirer—Demise of ship.

In consequence of the public announcement of an intended Royal naval review at Spithead on June 28, 1902, an agreement in writing was entered into between the plts. and the deft. that the plt.'s steamship *Cynthia* should be "at the disposal" of the deft. on June 28, to take passengers from Herne Bay "for the purpose of viewing the naval review and for a day's cruise round the fleet; also on June 29 for similar purposes; price, 250*l.* payable, 50*l.* down, balance before ship leaves Herne Bay."

On the signing of the agreement the deft. paid the 50*l.* deposit. On June 25 the review was officially cancelled, whereupon the plts. wired to the deft. for instructions, stating that the ship was ready to start, and also requesting payment of the balance. Receiving no reply, the plts., on June 28 and 29, used the ship for their own purpose, thereby making a profit. On June 29 the deft. repudiated the contract in toto. During the two days in question the fleet remained anchored at Spithead.

In an action by the plts. to recover the balance less the profits made by their use of the ship during the two days:—

Held, reversing the judgment of Grantham J., that the plts. were entitled to recover, because (1) the venture was the deft.'s, the risk being his alone; and (2) the happening of the naval review was not the sole basis of the contract, so that there had been no total failure of consideration nor a total destruction of the subject-matter of contract:

Held, further, that the contract did not operate as a demise of the ship. **HERNE BAY STEAM BOAT CO. v. HUTTON**

C. A. [1903] W. N. 150; [1903] 2 K. B. 683

Note.

See Elliott v. Crutchley, H. L. (E.) [1906]

A. C. 7. No. 24, above.

Krell v. Henry, C. A. [1903] 2 K. B. 740, 755, n. See No. 20, above.

— Stamps. *See under REVENUE—Stamps.*

29. — Time—"Month"—Lunar month—Construction of documents—Commercial documents—Option to purchase patent rights within six months—Contract to extend time implied from contract—Notice of exercise of option sent by post—Time of exercise.

In legal documents the primary meaning of

CONTRACT—*continued.*

month is lunar month. There is no general exception making it mean calendar month in commercial documents. It can only bear that meaning in cases where, according to the ordinary rules of construction of documents, a secondary meaning can be admitted. The belief or subsequent conduct of the parties cannot affect the construction, but an agreement to extend the time may be inferred from conduct which would make it inequitable to insist on the limit to lunar months. The exercise of an option to purchase patent rights is within the rule laid down in *Henthorn v. Fraser*, [1892] 2 Ch. 27; and if the circumstances shew that the parties must have contemplated that the post might be used as a means of communicating on all subjects connected with the contract, the option will be well exercised at the time of posting notice of its exercise. **BRUNER v. MOORE**

Farwell J. [1904] W. N. 23; [1904] 1 Ch. 305

30. — Validity—Sale to wholesale trader on conditions as to price on resale—"Wholesale trader to be deemed agent of manufacturer"—Purchase by retail trader from wholesale trader with notice—Condition attached to goods.

T. & Co., manufacturers of tobacco, sold packet tobaccos subject to printed terms and conditions fixing a minimum price below which they were not to be sold, and containing the following proviso: "Acceptance of the goods will be deemed a contract between the purchaser and T. & Co. that he will observe these stipulations. In the case of a purchase by a retail dealer through a wholesale dealer, the latter shall be deemed to be the agent of T. & Co." T. & Co. sold to N., who resold for his own profit to S. & Co. S. & Co. had notice of the conditions, but sold to the public at a price below the stipulated minimum:—

Held, that there was no contract between T. & Co. and S. & Co. which T. & Co. could enforce, and that conditions cannot be attached to goods so as to bind all purchasers with notice. **TADDY & CO. v. STERIOUS & CO.**

Swinfen Eady J. [1904] 1 Ch. 354

Note.

Approved and adopted by C. A., *McGruther v. Pitcher*, [1904] 2 Ch. 306. *Sale of Goods. 3.*

— Volunteer corps—Commanding officer—Liability on contract—Goods supplied for use of corps.

See ARMY AND NAVY. 2.

— Will—Revocation by agreement.

See WILL—Revocation. 2.

CONTRACT OF CARRIAGE.

See under CARRIAGE.

CONTRACT OF SERVICE—Director—Restraint of trade—Breach of negative covenant—Interdependent contracts—Specific performance.

See COMPANY—Directors. 5.

— Master and servant.

See under MASTER AND SERVANT—Contract of Service.

— Solicitor.

See under SOLICITOR—Contract of Service.

CONTRACTOR—Liability—Highway—Obstruction—Raised tramlines.
See **HIGHWAY**. 22.

— Negligence—Article of dangerous nature—Misfeasance—Gas company.
See **CANADA—Gas**. 2.

— Tramcar, Accident to—Liability of contractor to lessee—Damages—Compensation paid to passengers—Right of lessee to recover from contractor.
See **TRAMWAYS**. 9.

— Workmen's Compensation Act.
See Cases under **MASTER AND SERVANT—Compensation**.

CONTRIBUTION—Action against one trustee only—Application to join co-trustee for purpose of contribution.
See **PRACTICE—Parties**. 1.

— Breach of trust—Partly paid shares—Death of co-trustee—Call on shares.
See **TRUSTEE—Investments**. 15.

— Cargo of coal—Spontaneous combustion—Liability of ship to contribute to general average.
See **SHIPPING—Average**. 1.

— Collision—Apportionment of dock charges and expenses.
See **SHIPPING—Collision**. 12.

— Co-sureties—Proportion.
See **PRINCIPAL AND SURETY**. 3.

— Creation of county borough, Loss of borough's contribution to county expenses—Adjustment of financial relations—Compensation to county.
See **LOCAL GOVERNMENT**. 10.

— Directors' liability—Prospectus—Untrue statement—Shareholders' action against some of the directors—Liability of representatives of deceased directors.
See **COMPANY—Prospectus**. 14.

— Gambling partnership—Agreement by way of gaming or wagering—Bets paid by one partner—Claim for contribution.
See **GAMING**. 16.

— International law—Act of foreign legislature—Local statute—Street improvement.
See **STREETS**. 10.

— Mortgage—Voluntary assignment of part of property comprised in mortgage—Liability of assignee to contribute.
See **MORTGAGE—Contribution**. 1.

— Mortgage debt—Mortgage insurance policy—Indemnity—Guarantee—Co-suretyship.
See **PRINCIPAL AND SURETY**. 3.

— Re-building party wall—Who entitled to contribution.
See **LONDON—Buildings**. 20.

— Right to contribution—Drains—Nuisance—"Acts or defaults" of two or more persons.
See **LONDON—Sewers**. 1, 2.

CONTRIBUTION—*continued*.

— Service out of jurisdiction—Third-party notice.

See **PRACTICE—Service**. 6.

— Shipping—Liability of ship to contribute in general average.
See **SHIPPING—Average**. 1.

— Street improvement—Act of foreign legislature—Action in England—International law.

See **STREET**. 10.

— Will.

See under **WILL—Contribution**.

— Wrong-doers—Misrepresentations by promoters or directors in prospectus.
See **COMPANY—Prospectus**. 13.

CONTRIBUTORY—Company—Winding-up.
See under **COMPANY—WINDING-UP—Contributory**.

— Industrial and provident societies—Winding-up—Withdrawal of subscriptions—Liability in respect of withdrawals.
See **INDUSTRIAL AND PROVIDENT SOCIETIES**.

CONTRIBUTORY NEGLIGENCE—Collision.
See under **SHIPPING—Collision**.

CONVENIENCES—Sanitary authority—Power to provide sanitary conveniences—Bona fide use of statutory powers.
See **LONDON—Conveniences**. 1.

— Sanitary—Water rate—"Domestic purposes"—"Railway purposes"—Railway station.
See **LONDON—Water**. 3.

CONVERSION—Absolute trust for—Investment clause—Companies "in the United Kingdom."
See **WILL—Investments**. 6.

— Action for trespass and—Property passing to trustee.
See **BANKRUPTCY—Trustee**. 8.

— Cheque—Draft by one branch of bank on another—Bill of exchange—Forged indorsement.
See **BANKER**. 5.

— Fraudulent conversion of goods—Estoppel—Clerk.
See **SALE OF GOODS**. 11.

— Friendly society—Conversion into company—Enlargement of objects—Ultra vires—Registration of company.
See **FRIENDLY SOCIETY**. 5.

— Interim rents—Tenant for life and remainderman—Postponement of sale.
See **SETTLED LAND—Interim Rents**. 1.

— Landlord and tenant—Distress—Uncertificated bailiff—Seizure of goods of third party.
See **DISTRESS**. 9.

— Married Women's Property Act—Conversion into money before coming into possession.
See **WILL—Power of Sale**. 1.

CONVERSION—*continued*.

— Mortgage—Real estate subject to discretionary trust for conversion—Application by mortgagors for payment out—Claim of mortgagees.

See **MORTGAGE—Payments, &c.** 1.

— Mortgage—Surplus proceeds of sale—Realty or personality—Lunacy of mortgagor.

See **MORTGAGE—Sale.** 3.

— Mortgage of settled land for purpose of enfranchisement—Conversion of leasehold land into freehold.

See **SETTLED LAND—Enfranchisement.** 1.

— No trust for conversion—Wasting securities—Tenant for life and remainderman—Will—Construction.

See **SETTLED LAND—Securities.** 1.

— Partition action—Order for sale—Death of person entitled before sale—Devolution of share.

See **PARTITION.** 4.

1. — *Personalty into realty—Direction to hold proceeds of personalty upon the trusts and in manner applicable if they had arisen from a sale under the Settled Land Act, 1882*—*Will—Settled Land Act, 1882* (45 & 46 Vict. c. 38), s. 21; s. 22, sub-s. 5; s. 24, sub-s. 3.

Although the legislature can, by a simple enactment to that effect, make personalty devolve and pass to a series of persons successively for the same interests as if it had been realty, an individual can only do so by the creation of an imperative trust for the conversion of the personalty into realty and for the settlement of that realty to uses which will secure the devolution or create the estates desired to be created.

A declaration that personalty shall devolve or pass to persons successively as realty (although in cases of doubtful construction it may help the Court to construe the instrument as creating an imperative trust for conversion) is not, per se, operative, and a bequest of personalty on trust for sale and to hold the net proceeds "upon the trusts and in the manner upon and in which the same would be held and applicable if they had arisen from a sale of" freehold hereditaments by the same will "devised in settlement under the Settled Land Act, 1882," is not an imperative trust.

Where, therefore, the freeholds referred to had been strictly settled, a person who had become entitled to an estate tail in them was held to have become entitled to the personalty bequeathed without executing a disentailing assurance. *In re WALKER. MACINTOSH-WALKER v. WALKER*

Parker J. [1908] 2 Ch. 705

— Postpone, Power to—Tenant for life and remainderman—Mortgage deferring payment of interest—Will.

See **SETTLED LAND—Interest.** 2.

— Postponement of conversion—Interest, Rate of—Wasting property—Income of invested surplus.

See **SETTLED LAND—Interest.** 1.

CONVERSION—*continued*.

— Postponement of—"Residuary trust funds"—Unauthorized securities—Enjoyment in specie.

See **WILL—Interest.** 2.

— Power to postpone conversion—Residue—Advances—Hotchpot.

See **WILL—Advances.** 11.

— Real estate—Equitable limitations—Power of appointment—Appointment upon trust for sale.

See **POWER OF APPOINTMENT.** 26.

2. — *Real estate—Infant—Sale by order of Court for costs—Surplus proceeds—Realty or personality.*

Since the decision in *Steed v. Preece*, (1874) L. R. 13 Eq. 192, it is established that an order of the Court rightfully made for the sale of real estate operates as a conversion from the date of the order so that the proceeds of sale are personalty.

Decision of *Eve J.*, [1908] W. N. 83; [1908] 1 Ch. 880, reversed.

Scott v. Scott, (1882) 9 L. R. Ir. 367, disapproved. **BURGESS v. BOOTH**

C. A. [1908] W. N. 201; [1908] 2 Ch. 648

— Remoteness—Will—Invalid trust for sale of realty—Validity of gift.

See **WILL—Remoteness.** 1.

— Reversionary interest in land—Woman married before the Act—Accrue of title.

See **WILL—Power of Sale.** 1.

— Sale and—Appropriation of specific assets—Leaseholds—Settled shares—Land Transfer Act.

See **EXECUTOR—Administration.** 2.

— Settlement—Reversionary interest—Conversion for benefit of persons entitled in succession.

See **SETTLEMENT.** 18.

— Timber—Lunacy—Administration.

See under **SETTLED LAND—Timber.**

— Trust for conversion—Failure of objects—Resulting trust—Real estate—Reconversion—Will—Election—Estate duty—Incidence.

See **SETTLEMENT.** 23.

— Trust for conversion—Mining lease—Payments in nature of royalties—Capital or income—Settled estate.

See **WILL—Real Estate.** 1.

— Trust for conversion—Succession duty—Estate duty—Property situate abroad—English will—Liability to duty.

See **REVENUE—Succession Duty.** 1.

— Will—Partnership—Conversion into company—Agreement by executors—Jurisdiction to sanction.

See **TRUSTEE—Investments.** 12.

— Will—Trusts of real estate—Power of sale—Conversion after death of heir-at-law—Real or personal estate.

See **WILL—Real or Personal Estate.** 1.

CONVEYANCE—Compulsory powers—Specific performance—Purchasers compelled to take conveyance.

See LANDS CLAUSES ACTS. 11.

- Concurrence in—Sale in—Sale by life tenant—Mortgagee of life estate—Consent.
- See SETTLED LAND—Sale. 5.

1. — *Construction—Words of limitation—Habendum to grantee “in fee”—Supplying omission from context—Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), s. 51.*

Under s. 51 of the Conveyancing and Law of Property Act, 1881, in a deed, in order to pass the legal estate in fee simple, it is necessary, in the absence of the word “heirs,” to use the actual words of limitation mentioned in the section, namely, in fee simple.

Therefore, where, after the passing of the Act, freehold land, upon payment off of a mortgage thereon, was expressed to be reconveyed to the mortgagor to hold the same unto and to the use of the mortgagor in fee freed from the mortgage :—

Held, that (apart from any question of rectification) the word “simple” could not consistently with the Act be supplied by construction from the context, and that the legal estate in the fee simple did not pass. *In re ETHEL AND MITCHELLS AND BUTLERS’ CONTRACT.*

Joyce J. [1901] W. N. 73 ; [1901] 1 Ch. 945

- “Conveyance on sale”—Stamp duty.

See under REVENUE—Stamps.

- Conveyance void as unregistered—Limitation.

See CANADA—Conveyance. 1.

- Conveyancing and Law of Property Acts.

See under CONVEYANCING AND LAW OF PROPERTY.

- Dispute as to form of—“Wilful default.”

See VENDOR AND PURCHASER—Interest. 2.

- Fraudulent conveyance.

See under FRAUDULENT CONVEYANCE.

- Merger of agreement in—Easement.

See TRAMWAYS. 6.

- Plan.

See VENDOR AND PURCHASER—Plan. 1.

2. — *Real estate—Grant—Common law assurance—Statute of Uses (27 Hen. 8, c. 10), s. 1—Exception—Uncertainty—Election—Limitation of estate of freehold to commence in futuro—Validity.*

A freehold estate was conveyed by a vendor unto and to the use of the purchaser in fee simple, “except and reserving unto the vendor a piece of land not less than forty feet in width commencing at the point A marked on the plan” to the conveyance “and terminating at the nearest road to be made by the purchaser or his assignee on the estate so as to give access to such road from” other lands of the vendor. The exact position of the piece of land so excepted was not in any way defined either by boundaries

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CONVEYANCE—*continued.*

to colour so as to distinguish it from the rest of the land described in the conveyance and plan. Subsequently the purchaser (who had bought the estate for building purposes) prepared a road plan shewing a strip of land forty feet in width as the site for a road extending from the point A on the plan to the conveyance to an intended road, also shewn on the road plan and afterwards completed, and which was the “nearest road” to the point A. This was said to operate as an election by the purchaser defining the “forty feet” piece and so making the uncertain exception certain :—

Held, that the “forty feet” piece so said to have been defined had not been effectually excepted from the conveyance, (1) because the conveyance operated at common law and not under the Statute of Uses, so that the exception, being in the nature of a limitation of an estate of freehold to commence in futuro, was bad ; and (2) because, even if the conveyance could be held to operate under the Statute of Uses, the exception was bad as infringing the rule against perpetuities, since any election necessary to give effect to the exception might not be made, according to the terms of the conveyance, until after the “nearest road” had been made by the purchaser or his assignee, an event not necessarily occurring within the period prescribed by the rule.

Where there is a grant by deed with an exception out of it, the exception is to be taken as inserted for the benefit of the grantor and to be construed in favour of the grantee.

Whether an uncertainty in a grant or exception can be made good by election, *quære*.

Decision of Buckley J. affirmed. SAVILL BROTHERS, LD. v. BETHELL. C. A. [1902] 2 Ch. 523

Note.

This case was explained and distinguished by C. A., *South Eastern Ry. Co. v. Associated Portland Cement Manufacturers* (1900), *Ld.*, [1910] 1 Ch. 12. See *Railway—Accommodation Works*. 2.

- Registration of deeds—Equitable mortgage—Priority.

See MORTGAGE—Priority. 12.

3. — *Reservation—Exception—“All mines and veins of coal”—Underground road—Curriage of foreign minerals—Property in subsoil—Payment of rent—Mistake—Estoppel—Construction.*

The predecessors in title of the defts. were owners in fee simple of land, including both the surface and the strata below the surface. They conveyed the land to the plts.’ predecessors by a deed which contained an exception and reservation of “all mines and veins of coal in or under” the land. The defts. and their predecessors worked the coal mines under the land and made an underground road, which was not confined to the seams of coal, but was cut also through the adjacent strata. Along this road they carried coal obtained from mines beyond the limits of the land conveyed to the plts.’ predecessors :—

Held, that, by virtue of the exception, the property in the strata below the surface

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CONVEYANCE—continued.

remained in the debts sufficiently to entitle them to construct roads therein and use them in any way they pleased.

Proud v. Bates, (1865) 34 L. J. Ch. 406 ; *Duke of Hamilton v. Graham*, (1871) L. R. 2 H. L. Sc. 166 ; and *Eardley v. Granville*, (1876) 3 Ch. D. 826, followed.

Ramsay v. Blair, (1876) 1 App. Cas. 701, distinguished.

The debts, and their predecessors had for some years paid rent to the plt. in the belief that they were bound to do so under a licence from the plt. :—

Held, that this, being a voluntary payment made under a supposed legal liability, created in law no obligation at all, and that the debts, were not thereby estopped from setting up their title under the conveyance. **BATTEN POOLL v. KENNEDY** **Warrington J. [1907] 1 Ch. 256**

— Lease — Covenant — Liability for rent after further assignment — Fine.
See LANDLORD AND TENANT. 19.

— Sale of land for arrears of taxes — Prior registration of conveyance by defaulting owner — Actual purchase must be proved.
See CANADA — Land. 2.

— Stamp duty.
See under REVENUE — Stamps.

— Vendor and purchaser.
See under VENDOR AND PURCHASER — Conveyance.

CONVEYANCING AND LAW OF PROPERTY—

Adverse title — Constructive notice — Notice by tenancy.

See VENDOR AND PURCHASER — Title. 1.

— Agent — Scope of authority — Power of attorney — Power to give discharge for mortgage money.
See PRINCIPAL AND AGENT. 8.

— Bankruptcy — Settlement — Limited power of appointment — Incapacity of trustee in bankruptcy to release the power.
See POWER OF APPOINTMENT. 1.

— Brewer's lease — Covenant to buy beer of lessors and "their successors in business" — Covenant running with the land.
See LANDLORD AND TENANT. 20.

— Conveyance — Covenant for title — Breach — Measure of damages.
See VENDOR AND PURCHASER — Conveyance. 1.

— Conveyance — Implied covenants for title — Breach — Damages.
See VENDOR AND PURCHASER — Title. 3.

— Covenant, Breach of — Personal covenant.
See LANDLORD AND TENANT. 88.

— Covenant for quiet enjoyment — Breach — Assignee of reversion.
See LANDLORD AND TENANT. 64.

CONVEYANCING AND LAW OF PROPERTY—continued.

— Easement, Precarious — Implied grant.
See WATER. 26.

Equitable mortgage — Conflicting equities — Priority.
See PRINCIPAL AND AGENT. 14.

— Forfeiture — Relief granted to lessee — Effect on underlease.
See LANDLORD AND TENANT. 35.

— Forfeiture — Relief of underlessee against — Solvent company — Voluntary liquidation — Discretion of Court.
See LANDLORD AND TENANT. 75.

— General words — Tramway — Express or implied grant — Derogation.
See TRAMWAYS. 6.

— Infant — Accumulations, Right to — Contingent life interest.
See INFANT — Maintenance. 1.

— Infant — Guardian — Settled land — Trustee — Possession of rents and profits during minority.
See INFANT — Management. 1.

— Infant — Maintenance — Right to surplus income and accumulations.
See ACCUMULATIONS. 1.

— Infant, Maintenance of — Trustee — Administrator with will annexed.
See TRUSTEE — Infants. 1.

— Infant taking by descent — Appointment of trustees.
See INFANT — Management. 1.

— Infant tenant for life — Possession during minority — Guardian — Trustee.
See SETTLED LAND — Infants. 1.

— Insurance — Rebuilding after fire — Title to and application of policy moneys — Settled land.
See INSURANCE (FIRE). 1.

— Interesse termini — Underlease exceeding original term — Lessee's right to distrain.
See DISTRESS. 13.

— Lease — Assignment to limited company carrying on a brewery business.
See LANDLORD AND TENANT. 18.

— Lease — Counterpart referred to for explanation of ambiguity — Relief against forfeiture — Breach of covenant not to sub-let without consent — Effect of negligence.
See LANDLORD AND TENANT. 8.

— Lease — Covenant not to assign — Bankruptcy — Forfeiture.
See LANDLORD AND TENANT. 12.

— Lease — Covenant not to assign without consent — Payment for leave to assign.
See LANDLORD AND TENANT. 13.

— Lease — Covenants — Breaches — Re-entry — Compulsory purchase by public body — Severance of reversion.
See LEASE. 2.

CONVEYANCING AND LAW OF PROPERTY—*continued.*

- Lease—Deed of covenant—Owners for time being—Covenant running with the land — Mine—Compensation for subsidence. *See COVENANT.* 1.
- Lease—Forfeiture—Relief — Writ claiming possession — Election to determine tenancy—Underlease. *See LANDLORD AND TENANT.* 36.
- Lease—Forfeiture for non-payment of rent — Underlessee—Relief. *See LANDLORD AND TENANT.* 38, 39.
- Lease—Licence to assign—Unreasonably withheld — Condition imposing increased rent. *See LANDLORD AND TENANT.* 18.
- Lease—Mortgagor in possession—Breach of covenant to repair—Right of mortgagor to sue lessee — Landlord and tenant. *See MORTGAGE—Leases.* 2.
- Lease, Purchase of — Unusual and onerous covenants—Duty of vendor—Constructive notice. *See VENDOR AND PURCHASER—Leases.* 1.
- Lease—Re-entry on liquidation, Condition for — Solvent company—Voluntary liquidation—Forfeiture. *See LANDLORD AND TENANT.* 75.
- Lease by mortgagor—Affirmance by mortgagee—Estoppel in pais. *See ESTOPPEL.* 1.
- Lease by mortgagor in possession — Lease including land other than mortgaged land—Option to determine—Option to renew. *See MORTGAGE—Leases.* 1.
- Lease by mortgagor in possession—Surrender of lease to mortgagee — Rights of mortgagee. *See LANDLORD AND TENANT.* 85, 86.
- Leasehold house — Title — Open contract — Breach of covenant to repair. *See VENDOR AND PURCHASER—Title.* 7.
- Leaseholds — Mortgage—Transfer—"Benefit of said mortgage"—Legal estate. *See MORTGAGE—Transfer.* 1.
- Leaseholds—Mortgage by sub-demise prior to Conveyancing and Law of Property Act. *See MORTGAGE—Transfer.* 1.
- Legal personal representative—Vesting of real estate. *See LAND TRANSFER.* 3.
- Lessee and underlessee — Original lease — Reversionary lease—Interesse termini. *See DISTRESS.* 13.
- Light—Derogation from grant—Implication — Easement. *See LIGHT AND AIR.* 7.
- Light—Implied grant—Building agreement. *See LIGHT AND AIR.* 8.

CONVEYANCING AND LAW OF PROPERTY—*continued.*

- Light—Implied grant—Derogation. *See LIGHT AND AIR.* 12.
- Married woman—Power of appointment—Restraint on anticipation—Release of power. *See POWER OF APPOINTMENT.* 22.
- Married woman — Removal of restraint on anticipation. *See under HUSBAND AND WIFE.*
- Mortgage—Foreclosure—Allowances—Cost of repairs—Receiver. *See MORTGAGE—Foreclosure.* 1.
- Mortgage—Power of sale—Notice requiring payment—Default for three months. *See MORTGAGE—Sale.* 4.
- Mortgage — Priority — Fictitious sale by trustee for sale. *See MORTGAGE—Priority.* 5.
- Mortgagee—Notice of charge—Annual payment of corn to poor of parish. *See CHARITY.* 48.
- Mortgages—Consolidation. *See under MORTGAGE—Consolidation.*
- Notice—Purchaser for value—Appropriation — Mortgage—Priority. *See TRUSTEE—Breach of Trust.* 1.
- Particulars — Misrepresentation — Property described as freehold — Purchaser required to assume facts—Long term—Enlargement into fee simple. *See VENDOR AND PURCHASER—Title.* 10.
- Power of appointment—Bankruptcy of donee — Capacity of trustee to release power. *See POWER OF APPOINTMENT.* 1.
- Power of sale—Notice to mortgagor—Implied power of sale—Shares in company. *See MORTGAGE—Sale.* 5.
- Precarious easement—Implied grant. *See WATER.* 26.
- Public-house — Disputed title — Receiver of licences and of rents and profits. *See RECEIVER.* 11.
- Right of assignee to maintain action. *See LANDLORD AND TENANT.* 74.
- Sale by order of Court—Notice of trust. *See VENDOR AND PURCHASER—Conditions of Sale.* 7.
- Trustee — Appointment by one of three executors, the other two not having proved. *See TRUSTEE—Appointment.* 2.
- Trustee — Appointment of new trustee — "Acting executor of the last surviving trustee." *See TRUSTEE—Appointment.* 7.
- Trustees—Inability of executors of last surviving trustee to execute trust. *See TRUSTEE—Execution of Trust.* 1.

CONVEYANCING AND LAW OF PROPERTY — *continued.*

— Trustees, Power to appoint new—Tenant for life donee of power.
See **TRUSTEE—Appointment.** 4.

— Ways enjoyed with the land sold—Permissive enjoyment—General words.
See **WAY, RIGHT OF.** 10.

— Will—Administration—Annuities and legacies charged on property—Continuing liability of residue.
See **WILL—Vendor and Purchaser.** 1.

— Will—Executory limitations.
See under **WILL—Executory Limitations.**

— Words of limitation—Habendum to grantee “in fee”—supplying omission from context.
See **CONVEYANCE.** 1.

CONVICT—Administrator—Power to disentail convict's estates tail—Forfeiture.
See **FELONY.** 2.

— Administrator—Sale of convict's property—Bona fides—Costs.
See **FELONY.** 1.

CONVICTIONS—Aiding and abetting—Evidence—Motor car.
See **JUSTICES.** 15.

— Condition precedent to conviction—Analysis—Deterioration of sample.
See **ADULTERATION.** 1.

— Criminal law.
See under **CRIMINAL LAW—Convictions.**

— Cruelty to animals.
See under **CRUELTY TO ANIMALS.**

COPARCENARY—Joint tenancy or—Devise to testator's “right heirs”—Co-heiresses.
See **INHERITANCE.** 1.

COPIES—Appeal—Evidence—Judge's notes—Appeal to House of Lords—Copies for printing.
See **APPEAL.** 9.

— Company—Shareholders' address book—Right of shareholder to copy—Motives.
See **COMPANY—Books.** 1.

— “Copy”—Picture—Infringement—Reproduction of substantial part.
See **COPYRIGHT—Pictures.** 1.

— Costs—Copies of documents for the judge.
See **COSTS.** 19.

— Costs—Copy of petition—Quality of paper.
See **COSTS.** 20.

— Costs—Taxation—Copies of evidence filed by petitioner—Charges of fraud against contributories.
See **COMPANY—WINDING-UP—Costs.** 1.

COPIES—*continued.*

— Filed on registration—Omissions from copy—Affidavit.
See **BILL OF SALE.** 2.

— Music—“Pirated copy of musical work”—Perforated music roll—Mechanical instrument.
See **COPYRIGHT—Music.** 1.

— Office copies—Duty to produce—Answer to interrogatories.
See **DISCOVERY.** 7.

— Register of members—Inspection—Right to take copies.
See **COMPANY—Register.** 1.

— Right of either party to a copy of notes, including the reasons for the decision.
See **DIVORCE—Practice.**

— Right to copy—Company—Shareholders' address book.
See **COMPANY—Books.** 1.

— Right to take—Production and inspection of documents.
See **DISCOVERY.** 4.

COPYHOLDS.

Application of Part I. of Act to. See Finance Act (1909—10) Act (10 Edw. 7 and 1 Geo. 5, c. 8), s. 40.

1. — *Arbitrary fine—Custom to take smaller fine on admittance from tenant of manor than from stranger—Colourable purchase—Amount of reasonable fine.*

By the custom of a manor the purchaser of a copyhold tenement was required to pay to the lord on admittance a substantial arbitrary fine if he was a stranger to the manor, but only a nominal fine if he was already a tenant of the manor. A stranger, who was about to buy a copyhold tenement of considerable value, with the object of first becoming a tenant of the manor and thereby avoiding the payment of the larger fine, entered into an agreement with a third person for the sale to him of a cottage of small value in the manor on the terms that the vendor should after the expiration of three months repurchase it, and in the interval should receive the rent of it for his own use, and should pay all outgoings in connection with it. In pursuance of that agreement the cottage was surrendered, and the purchaser was admitted tenant, he paying a comparatively small arbitrary fine in respect of that admittance. The terms of the agreement were not disclosed to the lord. Subsequently the purchaser was admitted tenant of the larger tenement, and, as being already a tenant of the manor, was charged in respect of it only a nominal fine :—

Held, that the stipulation in the agreement for the sale of the cottage that the vendor should retain the rent and remain liable for the outgoings shewed that the purchase was merely colourable; that the admittance of the purchaser was consequently void; and that the lord was entitled to claim a substantial fine upon the admittance to the larger tenement.

COPYHOLDS—continued.

Semble, that the stipulation that the vendor should repurchase after a short interval was not enough to render the purchase merely colourable.

In manors in which such a custom as that above stated obtains the arbitrary fine which the lord is entitled to take from a stranger is not limited, in accordance with the general rule, to two years' improved value of the tenement; something more may be added on account of the fact that admittance will entitle the purchaser to be admitted to future purchase at a nominal fine; and for the purpose of determining how much it is reasonable to add on that account regard must be had to the value of the property, and to the consequent probability that it has been bought with the express object of getting the benefit of the custom on the future admittance to some other property which it is then intended to buy. *ATT.-GEN. v. SANDOVER.*

Channell J. [1904] 1 K. B. 689

— Custody of court rolls—Lord of the manor—Steward.

See MANOR. 3.

— Enfranchisement—Compensation—Fines.

See LANDS CLAUSES ACTS. 2.

— Enfranchisement, Delay in—Compensation—Interest—Quittances.

See LANDS CLAUSES ACTS. 15.

2. — Equitable Interest—Devolution—Person to convey—Vendor and purchaser—Land Transfer Act, 1897 (60 & 61 Vict. c. 65), s. 1, sub-s. 4.

In sub-s. 4 of s. 1 of the Land Transfer Act, 1897, providing that the expression "real estate" in Part I. of the Act is not to be deemed to include "land of copyhold tenure or customary freehold in any case in which an admission or any act by the lord of the manor is necessary to perfect the title of a purchaser from the customary tenant," the concluding words apply to land of copyhold tenure as well as customary freehold.

Therefore an equitable estate or interest in copyholds devolves, on the death of the owner, on his personal representative or personal representatives as if it were a chattel real vesting in him or them. *In re SOMERVILLE AND TURNER'S CONTRACT.* **Kekewich J. [1903] W. N. 153; [1903] 2 Ch. 583**

— Heriot—Freehold of manor—"Dying seised"—Mortgage.

See HERIOT. 1.

— Lands Clauses Acts—Costs—Sale of copyholds—No tenant on court rolls—Fine and steward's fees on admission.

See LANDS CLAUSES ACTS. 17.

— Manor—Custom—Stone quarry—Right to get stone—Court rolls—Evidence.

See COMMON. 3.

3. — Manor — Obligation of copyholder to repair — Breach of obligation — Forfeiture — Action for damages — Remedy of lord against executors of copyholder — Waste.

The lord of a manor alleged a custom of the manor imposing upon the copyholders an obligation to keep their holdings in tenantable repair. For breach of this alleged obligation by a

COPYHOLDS—continued.

deceased copyholder in his lifetime the lord brought an action for damages against his executors as upon an implied contract to perform it. In support of the alleged custom he produced (1.) the customary of the manor, from which it appeared that the copyholders were entitled to house-bote to be used on their copyholds; (2.) entries in court rolls containing presentments by the homage when copyhold tenements were out of repair and forfeitures consequent on failure of the copyholders to repair them after presentment; also admittances of copyhold tenants containing licences to sub-let provided all due reparations had been performed; (3.) oral evidence shewing that the copyholders had repaired their tenements as and when required by the lord without any presentment by the homage;—

Held, that this evidence, being referable to the customary law common to all copyhold tenure whereby a copyhold tenant is liable to forfeiture for waste, was no evidence of any custom imposing on the copyholders a liability from which a contract to keep their holdings in tenantable repair was to be inferred.

Blackmore v. White, [1899] 1 Q. B. 293, distinguished. *GALBRAITH v. POYNTON*

Bigham J. [1905] 2 K. B. 258

— Sale of copyholds—Death of vendor before completion—Fine on heir's admission.

See LANDS CLAUSES ACTS. 16.

— Title — Conditional surrender by way of mortgage — Principal and interest statute-barred — Conditions of sale.

See VENDOR AND PURCHASER—Copyholds. 1.

— Will—Construction—Descent—Real estate—Resulting trust—Customary or common law heir.

See WILL—Intestacy. 1.

— Will—Mistake — "My freehold lands and hereditaments at M."—Customary freeholds.

See WILL—Words. 5.

COPYRIGHT.

Musical Copyright Act, 1906 (6 Edw. 7, c. 36), amends the law relating to musical copyright.

Copyright — By the President of the United States of America—A Proclamation, dated April 9, 1910. Reprint from W. N. 1910 (May 14), p. 167. See CURRENT INDEX, 1910, p. xi.

Bankruptcy, col. 681.

Books, col. 681.

Catalogue, col. 683.

Colonies, col. 683.

Designs, col. 683.

Dramatic, col. 683.

Drawings, col. 684.

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COPYRIGHT—*continued.**Lists*, col. 686.*Music*, col. 687.*Photographs*, col. 689.*Pictures*, col. 690.**Bankruptcy.**See under **BANKRUPTCY**—**Copyright.**

- Author and publisher—Sale of copyright to publisher on royalties—**Bankruptcy of publisher**—Trustee carrying on business.

See **BANKRUPTCY**—**Trustee.** 3.**Books.**

1. — *Agent*—“*Print or cause to be printed*” —*Estoppel*—*Infringement*—*Copyright Act*, 1842 (5 & 6 Vict. c. 45), s. 15.

The defendant Gavin published a book which contained passages copied from a book of the plaintiffs', and thus infringed their copyright. A contract had been entered into between Gavin and the defendants Lloyds that they should print his book, receiving payment from him for so doing. After they had printed some of the sheets (including the title-page) they found that they could not complete the printing of the remaining sheets by the date fixed for the publication of the book, and at Gavin's request they relinquished their contract, so that he might have the remaining sheets printed elsewhere. He accordingly contracted with other printers to print the remaining sheets. When the book was published it bore on the title-page the statement “printed at Lloyds.” The piracy occurred in those sheets which were not printed by Lloyds, and they were ignorant of the piracy until they were informed of it after the publication. The Court were satisfied by the evidence that Gavin and Lloyds were not partners or co-adventurers in the publication of the book, and that the printers who printed the pirated matter were agents of Gavin and not of Lloyds:—

Held, that Lloyds had not printed the pirated matter, and that they had not “caused” it to be printed within the meaning of s. 15 of the Copyright Act, 1842, and that consequently they were not liable under that section.

Decision of Byrne J., [1901] W. N. 22; [1901] 1 Ch. 374, affirmed. **KELLY'S DIRECTORIES, LD. v. GAVIN AND LLOYDS.** C. A. [1902]

W. N. 41; [1902] 1 Ch. 631

Note.

As to costs, *Kelly's Directories, Ld. v. Gavin & Lloyds*, Byrne J., [1901] 2 Ch. 763. See *Costs*. 67.

- “Book” — “Sheet of letterpress” — Illustrated catalogue.

See **COPYRIGHT**—**Catalogue.** 1.

- *Encyclopædia.*

See under **COPYRIGHT**—**Encyclopædia.**

2. — *Equitable assignment*—*Author and publisher*—*Story not in existence*—*Complete copyright*—*Agreement to assign*—“*Assigns*” — “*Employment*” — “*Any book whatsoever*” — *Copyright Act*, 1842 (5 & 6 Vict. c. 45), ss. 2, 18.

The plts., a firm of publishers, agreed with an

COPYRIGHT (Books)—*continued.*

author to pay him 200*l.* for the complete copyright of a story to be written on the lines of a synopsis already approved by them, containing not less than 80,000 words, copy to be delivered within six months. The story was completed and a type-written copy delivered to the plts. within the specified time. Pending a dispute about an alleged deficiency in the number of words, the plts. withheld payment of part of the 200*l.*, and in the interval the author sold the volume rights in the story to the deft., a purchaser for value without notice. The plts. published the story in volume form, and were duly registered as proprietors of the copyright in the book. They now sought to restrain the deft. from publishing the story:—

Held, that the agreement constituted a good equitable assignment of the complete copyright in the story, when written, to the plts., who thereby became “assigns” of the author within the definition contained in s. 2 of the Copyright Act, 1842; and that the plts. were entitled to an injunction, notwithstanding that the case was also a case of employment falling under s. 18 of the Act, under which the plts. could not have succeeded, inasmuch as the story had not as yet been paid for in full by them as required by that section.

The words “any book whatsoever” in s. 18 are not limited to any book ejusdem generis with the books or works previously enumerated, but are to be construed generally as applying to any book to be composed on a bargain between any publisher and any author.

There is nothing in the Act which prohibits the general law concerning the assignment of copyright from being applied to cases which fall within the class of cases contemplated by, and are capable of being determined under, s. 18 of the Act. **WARD, LOCK & CO. v. LONG - Kekewich J.** [1906] W. N. 183; [1906] 2 Ch. 550

3. — *Posthumous letter* — *Proprietorship of copyright* — *Author's manuscript*—*Assignment*—*Right to prevent publication*—*Copyright Act*, 1842 (5 & 6 Vict. c. 45), s. 3.

Although at common law the writer of a letter and his legal personal representatives are entitled to prevent its publication, and this is a right of property, the copyhold in a letter published after the death of the writer is vested by the Copyright Act, 1842, in the proprietor of the letter itself—i.e., of the paper and the writing upon it.

The proprietors of unpublished manuscripts, written by an author long deceased, assigned to S. E. & Co., in 1895, “all copyright which we possess and the exclusive right of publishing the entire collection of letters,” S. E. & Co. “undertaking to return to us all the MSS. when copied.” S. E. & Co. copied the letters, published them in 1895, and returned the originals to the assignors. The deft. subsequently purchased the originals from the assignors, with any rights which they might still have therein. He also took from the legal personal representative of the deceased author an assignment of the copyright and all other rights of the author in the letters. S. E. & Co. were now registered as owners of the copyright:—

Held, that by the assignment S. E. & Co. had

COPYRIGHT (Books)—continued.

become proprietors of the author's manuscript so as to enable them by first publication to obtain the copyright in the letters, and that they were entitled to an injunction restraining the defts. from publishing the letters.

Decision of Kekewich J., [1905] W. N. 173; [1906] 1 Ch. 101, affirmed. **MACMILLAN & Co. v. DENT**. C. A. [1906] W. N. 199; [1907] 1 Ch. 107

Catalogue.

1. — *Illustrated catalogue*—"Book"—"*Sheet of letterpress*"—*Copyright Act, 1842* (5 & 6 Vict. c. 45), s. 2.

A trade advertisement consisting of a sheet of illustrations with no letters except the name of the advertising firm and the names and prices of the articles, is a "sheet of letterpress," and therefore a "book" within the meaning of the Copyright Act, 1842, s. 2, and original illustrations on such a sheet would be entitled to protection even in a case where there was no original letterpress.

DAVIS v. BENJAMIN. **Swinfen Eady J.** [1906] W. N. 160; [1906] 2 Ch. 491

2. — *Illustrated catalogue*—*Infringement*—*Articles falsely called patent*—*Misrepresentations*.

Action to restrain infringement by defts. of plt.'s trade catalogue, which consisted mainly of engravings of articles manufactured by him, with dimensions and prices. Many of the articles were described as "patent," though the plt. had no English patent for them; the catalogue also contained various misleading pictures of buildings, on which the plt.'s name appeared in large letters, which were not wholly occupied by him, but to which his name had been added by hand to the negative or printing block. The infringement was proved, but the defts. contended that the plt. was not entitled to any relief, inasmuch as the misstatements in the catalogue were calculated to deceive the public.

Warrington J., [1905] W. N. 122, was of opinion that the plt.'s catalogue was not entitled to the protection of the Court, as it contained many false statements and misrepresentations to the knowledge of the plt. which were calculated to deceive, and he therefore dismissed the action with costs.

The C. A. dismissed the appeal, taking the same view of the facts as **Warrington J.**, that this was not a case of puffing advertisements or innocent misrepresentation, but that the book as a whole was a dishonest book. **SLINGSBY v. BRADFORD PATENT TRUCK AND TROLLEY Co.** C. A. [1906] W. N. 51

Colonies.

— Copyright within the United Kingdom.

See **CANADA—Copyright**. 1.

Designs.

— "Drawings"—Assignment of copyright to intended company—Registration—Validity of assignment.

See **COPYRIGHT—Drawings**. 1.

Dramatic.

1. — "*Dramatic piece*"—*Accessories of piece as performed*—*Scenic effects*—*Stage business*—

COPYRIGHT (Dramatic)—continued.

Matter incapable of being printed and published—*Infringement*—*Dramatic Copyright Act, 1833* (3 & 4 Will. 4, c. 15), s. 1—*Copyright Act, 1842* (5 & 6 Vict. c. 45).

The Acts relating to dramatic copyright contemplate, as the subject of protection under them, something which can be printed and published. Therefore, where a dramatic piece in which there is copyright is, as regards the verbal composition, in substance entirely different from another dramatic piece alleged to constitute an infringement of that copyright, the mere fact that accessorial matters, such as scenic effects, make-up of actors, or stage "business," in the latter piece, as performed, are similar to those employed in the performance of the former will not constitute an infringement of the copyright therein, such matters, taken by themselves, not being the subject of protection under the Acts relating to dramatic copyright, though in cases where the verbal composition of the pieces is more or less similar such matters may be regarded as throwing light on the question whether there has been an infringement.

Discussion as to what constitutes authorship of a piece. **TATE v. FULLBROOK**.

C. A. [1908] 1 K. B. 821

Drawings.

1. — "*Drawings*"—*Designs*—*Assignment of copyright to intended company*—*Registration*—*Validity of assignment*—*Goods imported after, in execution of an order given before, registration*—*Infringement*—*Injunction*—*Fine Arts Copyright Act, 1862* (25 & 26 Vict. c. 68), ss. 1, 4, 9, 11—*Patents, Designs and Trade Marks Act, 1883* (46 & 47 Vict. c. 57), ss. 47, 48, 60.

M., trading as M. & L., was the author of original drawings of designs for decorating Christmas cards. Dies of the drawings or designs were engraved, and from such dies copies or reproductions of the drawings or designs were struck off or stamped, generally in gold leaf, and were then affixed to the cards. In Feb. 1905, M. contracted with the trustee of an intended co., to be called M. & L. Ld., for the sale to the co., when incorporated, of his business and the copyright of his drawings and designs; and on March 1, 1905, M. signed an instrument whereby he assigned to M. & L. Ld. the copyright of [all his drawings and designs. On March 3, 1905, the co. was incorporated, and afterwards executed the usual adoptive agreement. In Sept. 1906, the co. registered M.'s drawings or designs under the Fine Arts Copyright Act, 1862, and entered on the register Mar. 1 as the date of their assignment and M. & L. and M. & L. Ld. as the names of the parties thereto. In an action by the co. against P. for infringing their copyright in the registered drawings:—

Held, that M.'s drawings or designs were proper subject-matter for registration as "drawings" under the Fine Arts Copyright Act, 1862, and that the copyright extended to the right of multiplying copies or reproductions of them by the method above stated.

Held, also, that for the purposes of the register Mar. 1 was the true date of the assignment and

COPYRIGHT (Drawings)—continued.

that the names of the parties thereto were truly stated, notwithstanding that the co. did not come into existence until Mar. 3.

Held, also, that the importation into the United Kingdom of copies of the drawings after registration, in pursuance of an order given before registration, was an infringement of the co.'s copyright and entitled them to an injunction. *MILLAR & LANG, LD. v. POLAK*

Neville J. [1908] W. N. 19; [1908] 1 Ch. 433

Encyclopædia.

1. — *Article—Author and publisher—Copyright in contributions—Inference of fact—Copyright Act, 1842* (5 & 6 Vict. c. 45), ss. 2, 3, 18.

Where the proprietor of an encyclopædia employs and pays another person to compose articles for publication in the encyclopædia, the question whether the copyright in the articles belongs to the proprietor within s. 18 of the Copyright Act, 1842, depends on an inference of fact—not law—to be drawn by a reasonable man from the nature of the contract and all the circumstances. The contract need not be in writing; no express words need be used; and the inference that the copyright was intended to belong to the proprietor may be fairly drawn where there are no special circumstances and the only material facts are the employment and the payment.

Sweet v. Benning, (1855) 16 C. B. 459, followed.

The decision of the C. A., [1903] 1 Ch. 318, reversed, and the question what the words "separately published" mean in s. 2 left open. *LAWRENCE & BULLEN, LD. v. AFLALO AND COOK*

H. L. (E.) [1903] W. N. 191; [1904] A. C. 17

Gramophone.

1. — *Copyright at common law — Musical composition — Publication — Reproduction — Gramophone records — Infringement.*

Plt. was the author of a musical composition. He alleged that after the publication of his composition the defts. copied, printed, or transcribed his music on gramophone records, which enabled the music to be reproduced by mechanical means by the use of the defts.' gramophones. He contended that this was an infringement of his common law copyright, and by this action claimed (1.) a declaration that he was exclusively entitled to make or authorize the making of gramophone records for the performance of his musical composition; (2) an injunction; and (3) damages. The defts.' case was that after publication the plt. had no common law proprietary right in his composition.

Joyce J. dismissed the action. He said that the question was only as to the right of reproduction. It was well settled that after publication to the world there was no copyright except in so far as it was given by statute. There was no claim here to statutory copyright, and that being so, the action failed altogether. *MONCKTON v. GRAMOPHONE CO.*

Joyce J. [1910] W. N. 277

International.

Copyright, International—Order in Council extending the provisions of the Orders in Coun-

COPYRIGHT (International)—continued.

cil of Nov. 28, 1887, and Mar. 7, 1898, to the Republic of Liberia. St. E. & O. 1908, No. 1314.

Copyright, International—Order in Council, Mar. 2, 1909, extending the provisions of the Order in Council of Nov. 28, 1887, and Mar. 7, 1898, to the German Protectorates. St. E. & O. 1909, No. 256. Price 1d. each.

1. — *International copyright — Foreign musical composition — Registration — Right of public performance reserved—Notice in French language — Copyright (Musical Compositions) Act, 1882* (45 & 46 Vict. c. 40), s. 1—*International Copyright Act, 1886* (49 & 50 Vict. c. 33), ss. 3, 4, 6—*The Berne Convention, 1887, Articles 2, 7, 9—Copyright (Musical Compositions) Act, 1888* (51 & 52 Vict. c. 17), s. 3.

The provision in the Berne Convention, 1887, and the O. in C. adopting the same, that the enjoyment of the rights thereby given to foreign authors is to be subject to the conditions and formalities prescribed by law in the country of origin of the work, means that it is to be subject only to those conditions and formalities, and not to those required by the law of the country in which the right is being enforced. On the true construction of the Berne Convention, the declaration that public performance of musical works is forbidden, thereby required to be made on the title-page of the work, is sufficient if made in the language of the country of origin. It need not be repeated in the language of the country in which the right is to be enforced. The Copyright (Musical Compositions) Act, 1882, s. 1, does not apply to such a case.

Decision of Neville J., [1908] W. N. 19; [1908] 1 Ch. 443, reversed on this point. *SARPY v. HOLLAND*

C. A. [1908] W. N. 126; [1908] 2 Ch. 198

Lists.

1. — *List of brood mares — Competition — Damage—Copyright—Infringement—Injunction.*

The plts. published in the "General Stud Book," a fresh volume of which appeared every four years, lists of all the thoroughbred brood mares at the stud in Great Britain. These volumes were entered and registered at Stationers' Hall. The defts. compiled a book called "Bruce-Lowe Figures to Stud Book, Vol. 21," which contained, without the plts.' permission, practically the whole of the list of brood mares published in vol. 21 of the Stud Book. The plts. brought an action for an injunction restraining the defts. from infringing their copyright. The defts. alleged that they had a right to make use of the list in question, and that their book would be sure to benefit the plts. by increasing the sale of the Stud Book:—

Held, that the lists were not such bare lists of names as to be incapable of copyright; that an unfair use might be made of one book in the preparation of another even if there was no likelihood of competition between the former and the latter; that an action to restrain infringement of copyright would lie though no damage was shewn; and that the plts. were

COPYRIGHT (Lists)—continued.

entitled to succeed in the action. **WEATHERBY & SONS v. INTERNATIONAL HORSE AGENCY AND EXCHANGE, LD.** - **Parker J.**
[1910] W. N. 158; [1910] 2 Ch. 297

Music.

Musical (Summary Proceedings) Copyright Act, 1902 (2 Edw. 7, c. 15), amends the law relating to musical copyright.

— Copyright (musical compositions) — International copyright — Injunction.

See **COPYRIGHT—International. 1.**

— Copyright at common law—Musical composition—Gramophone records.

See **COPYRIGHT—Gramophone. 1.**

1. — "Pirated copy of musical work"—Perforated music roll—Mechanical instrument—Musical (Summary Proceedings) Copyright Act, 1902 (2 Edw. 7, c. 15), ss. 2, 3.

A perforated music roll, which, when put on a mechanical instrument known as a piano player, produces the notes of a pianoforte accompaniment of a copyright song in much the same way as when the accompaniment is played on the piano with the fingers, is not, upon the authority of *Boosey v. Whight*, [1900] 1 Ch. 122, a pirated "copy" of a musical work within the meaning of the Musical (Summary Proceedings) Copyright Act, 1902, so as to authorize proceedings being taken under the Act for the purpose of having the perforated music roll forfeited, destroyed, or otherwise dealt with. **MABE v. CONNOR - Div. Ct. [1909] W. N. 20; [1909] 1 K. B. 515**

2. — Registration — Musical composition — Agreement—Author and publisher—Assignment —Entry on register—Application to expunge—Practice—Appeal—Copyright Act, 1842 (5 & 6 Vict. c. 45), ss. 2, 13, 14.

In July, 1900, J., who was the author of, and registered proprietor of the copyright in, certain musical compositions published in a series under the title of "Music and the Higher Life," entered into an agreement with N., the managing director of a publishing co., whereby, in consideration of J. giving to N. the sole and exclusive right of printing and publishing the series of "Music and the Higher Life," and issuing the same in volume form, N. and J. jointly agreed that—(1) the cost of printing and issuing the volume should be borne by N.; (2) N. should pay to J. 6d. on every copy sold; (3) N. should supply J. with such copies as he might require at 1s. 6d. per copy, any copies supplied to J. not to be liable to the royalty of 6d. N. subsequently assigned his rights under the agreement to the publishing co. That co. afterwards published two other series of musical compositions by J., entitled respectively "The Liedertafel Series" and "The Preacher-Musician Series," and also a work entitled "Music and the Higher Life (abridged edition)," which contained thirty-six numbers from the original series, seven numbers from "The Liedertafel Series," and two numbers from "The Preacher-Musician Series."

In 1903 the publishing co. registered themselves as proprietors of the copyright in "Music

COPYRIGHT (Music)—continued.

and the Higher Life (abridged edition)," and also of the copyright in "The Liedertafel Series" and "The Preacher-Musician Series," claiming to be entitled to do so on the ground that the copyright in the compositions forming the series "Music and the Higher Life" had been assigned to N. by the agreement in July, 1900, and that it had been agreed in writing by J. that the terms contained in that agreement should also apply to the "Liedertafel" and "Preacher-Musician" series. They also alleged that all the three registrations had been made with the oral consent of J.

On an application by J. under the Copyright Act, 1842, s. 14, to expunge these three entries from the register on the ground that he had not parted with the copyright, Kekewich J., [1906] W. N. 170; [1906] 2 Ch. 595, ordered that they should be expunged:—

Held, that an appeal lay to the C. A. from his decision, but

Held (affirming that decision), that the agreement of July, 1900, only passed the sole and exclusive right of printing and publishing the series called "Music and the Higher Life" in a particular form, namely, volume form, and did not amount to an assignment of the copyright in the compositions forming that series; and that, there having been no assignment of the copyright in the above-mentioned works in writing to J. before the registration by the publishing co., that registration could not be regarded as an entry of an assignment of the copyright within s. 13 of the Copyright Act, 1842, and consequently that the publishing co. were not entitled to be registered as proprietors of the copyright. *In re JUDE'S MUSICAL COMPOSITIONS - C. A. [1907] W. N. 100; [1907] 1 Ch. 651*

3. — Seizure of pirated music—Order of Court of summary jurisdiction—Summons, Necessity for—Musical (Summary Proceedings) Copyright Act, 1902 (2 Edw. 7, c. 15), s. 2.

On Oct. 3, 1902, an authorized agent of the appellants requested a constable in writing to seize certain copies of music then being offered for sale in the street by a person who gave his name and address. The constable thereupon seized the music, and informed the person from whom it was seized of the time when and the place where further proceedings with reference to the seizure would be taken. On the following day the music was produced in the police court. Neither the vendor nor any one on his behalf was then present, but the appellants applied to the magistrate to proceed at once to make the order provided for under s. 2, contending that, on proof of infringement of copyright, the statute had given him power to make such order *ex parte*. The magistrate held that before making an order in the matter it was necessary that a summons should be served upon the person in whose possession the music had been found, calling upon him to shew cause why the order prayed for should not be made. The magistrate based his decision on ss. 34 and 51 of the Summary Jurisdiction Act, 1879, and s. 1 of the Summary Jurisdiction Act, 1848.

COPYRIGHT (Music)—continued.

The Court affirmed the decision of the magistrate. **IN THE MATTER OF A COMPLAINT BY DAY** Div. Ct. [1903] W. N. 10

4. — *Seizure of pirated copies of music—Order of Court of summary jurisdiction—Summons, Necessity for—Justices—Musical (Summary Proceedings) Copyright Act, 1902 (2 Edw. 7, c. 15), s. 2.*

Where pirated copies of music have been seized by a constable under s. 2 of the Musical (Summary Proceedings) Copyright Act, 1902, a Court of summary jurisdiction has no power to make an order under s. 2 forfeiting, destroying, or otherwise dealing with such copies, unless the person from whom they have been seized has, by means of a summons, been notified of the intention to apply for such order. *Ex parte FRANCIS*

Div. Ct. [1903] 1 K. B. 275

Photographs.

1. — *Photograph "made for or on behalf of any other person for a good or a valuable consideration"—Photograph taken at request of sitter—Fine Arts Copyright Act, 1862 (25 & 26 Vict. c. 68), s. 1.*

Where a photographer takes a photograph at the request of the sitter upon the terms that the sitter will pay for taking it, or under circumstances which raise an implied promise to pay on the sitter's part, the photograph is "made or executed for or on behalf of any other person for a good or a valuable consideration" within the meaning of s. 1 of the Fine Arts Copyright Act, 1862, and the copyright in the photograph is in the sitter, notwithstanding that the property in the negative, in the absence of any agreement for its purchase, may remain in the photographer. *Pollard v. Photographic Co.*, (1888) 40 Ch. D 345, approved.

Melville v. Mirror of Life Co., [1895] 2 Ch. 531, considered, and observations in judgment disapproved. **BOUCAS R. COOKE**

C. A. [1903] 2 K. B. 227

Note.

This case was referred to by Farwell J., *Stackemann v. Paton*, [1906] 1 Ch. 774. See next Case.

2. — *School, Photographs of—Photographs taken at author's risk—Good or valuable consideration—Fine Arts Copyright Act, 1862 (25 & 26 Vict. c. 68), s. 1.*

The plts., a firm of photographers, sent a traveller to the proprietors of certain private boys' and girls' schools offering to take photographs of the schools "entirely at their own risk." When leave was given a member of the firm attended the school, and took such photographs of the grounds and exterior of the schools and the interior of rooms and groups of pupils as the proprietors suggested or permitted. Proofs were afterwards submitted, and some copies were purchased by the proprietors. The proprietors sent copies of some of these photographs to the defts. in order that they might be reproduced and inserted in "P.'s List of Schools," an advertising publication issued by the defts., and they were reproduced and inserted accordingly. The plts. then registered the copyright

COPYRIGHT (Photographs)—continued.

of the photographs in their own names as authors, and brought this action against the defts. for an injunction to restrain infringement of their copyright:—

Held, that the permitting the photographer to enter the school and take photographs, on the chance of selling copies to the proprietors, was a "good consideration," and the photographs must be deemed to have been "made or executed for or on behalf of the proprietors of the schools for a good or a valuable consideration" within the meaning of the Fine Arts Copyright Act, 1862 (25 & 26 Vict. c. 68), s. 1, and the copyright, therefore, belonged to the proprietors of the schools, and not to the author of the photographs. **STACKEMANN v. PATON**

Farwell J. [1906] W. N. 79; [1906] 1 Ch. 774

Pictures.

1. — *Infringement—"Copy"—Reproduction of substantial part—Fine Arts Copyright Act, 1862 (25 & 26 Vict. c. 68), s. 11.*

The plt. was the owner of the copyrights in several works of art, including an oil-painting of which the principal feature was the winged figure of Psyche, and his business consisted in reproducing these copyright works in various forms and sizes by means of photographic processes and selling the reproductions. The plt. complained that a very rough photographic illustration which appeared in the advertisement portion of a well-known magazine was an infringement of his copyright in this picture. The illustration, which was diminutive and was devoid of artistic merit, contained a rude reproduction of the female figure, but omitted a portion of the background of the picture. The defts., who were vendors of the magazine, on becoming aware of the alleged infringement, took steps to have the illustration torn out before selling any further copies:—

Held, that the illustration was an infringement of the plt.'s copyright, inasmuch as it tended to prevent the sale of the plt.'s goods by familiarizing the public with a base form of reproduction; and judgment was given for the plt. for a farthing damages and costs. **HANFSTAENGL v. W. H. SMITH & SONS**

Kekewich J. [1905] W. N. 36; [1905] 1 Ch. 519

2. — *Infringement—Work of art—Picture—Penalty—"Every such offence"—Minimum amount—Known coin of the realm—Fine Arts Copyright Act, 1862 (25 & 26 Vict. c. 68), s. 6.*

The making or circulating of every unauthorized copy of a picture of which copyright has been acquired under the Fine Arts Copyright Act, 1862, is a separate offence in respect of which a penalty is incurred under s. 6 of the Act.

Ex parte Beal, (1868) L. R. 3 Q. B. 387, approved and followed.

But, when an action is brought to recover penalties in respect of a number of such offences, the Court is not bound to award for each offence a penalty of at least one farthing, but may award for all offences a lump sum, which, if divided by the number of offences, will give for each a fraction less than the least recognized coin of the realm.

COPYRIGHT (Pictures)—continued.

Green v. Irish Independent Co., [1899] 11 R. 386, disapproved.

Decision of Kekewich J. (founded on that case), [1900] W. N. 170, reversed. *HILDESHEIMER v. W. & F. FAULKNER, LD.*

C. A. [1901] W. N. 171; [1901] 2 Ch. 552

3. — *Unpublished picture—Property in picture—Common law right—Infringement—Pirated copy—Innocent publication—Damages.*

Any person who, however innocently, publishes a pirated copy of an unpublished picture, not registered under the Fine Arts Copyright Act, 1862 (25 & 26 Vict. c. 68), is liable to damages for infringement of the owner's common law right of property in the picture.

Decision of Swinfen Eady J., [1908] W. N. 41; [1908] 1 Ch. 567, affirmed.

MANSELL v. VALLEY PRINTING CO.

C. A. [1908] W. N. 173; [1908] 2 Ch. 441

CO-RESPONDENT—Divorce—Practice.

See under **DIVORCE—Co-respondent.**

COREA.

See under **CHINA AND COREA.**

CORONATION PROCESSION—Contract—Impossibility of performance.

See **CONTRACT.** 20, 21.

CORPORATION.

Borough Funds Act, 1903 (3 *Edw. 7*, c. 14), amends the *Borough Funds Act, 1872* (35 & 36 *Vict. c. 91*).

Municipal Corporations Amendment Act, 1906 (6 *Edw. 7*, c. 12). *Municipal Corporations Amendment Act, 1910* (10 *Edw. 7* & 1 *Geo. 5*, c. 19), is an Act to amend the *Municipal Corporations Act, 1882* (45 & 46 *Vict. c. 50*), with respect to the right of Aldermen to vote in the election of Aldermen and Mayor.

1. — *Borough fund—Resolution of owners and ratepayers—Demand of poll, What amounts to—Municipal corporation—Borough Funds Act, 1872* (35 & 36 *Vict. c. 91*), s. 4—*Public Health Act, 1875* (38 & 39 *Vict. c. 55*), *Sched. III.*, r. 6.

By *Sched. III.*, r. 6, of the *Public Health Act, 1875*, which schedule contains the rules as to resolutions of owners and ratepayers under the Act, it is provided that the chairman shall propose the resolution, and the meeting shall decide for or against its adoption, "provided that if any owner or ratepayer demands that such question be decided by a poll of owners and ratepayers," the poll is to be taken in the manner therein provided. A resolution having been declared carried at a meeting of owners and ratepayers, one of the ratepayers present demanded a poll, and another rose and seconded it, "if necessary"; the latter was told by the town clerk that it was unnecessary to second the demand, which had been acceded to; the meeting then separated. Subsequently the original demand for a poll was withdrawn by its proposer, and the mayor refused to treat the action of the seconder as a demand of a poll by him. Upon an application by the second ratepayer for a mandamus to the mayor:—

Held, that the action of the applicant was

CORPORATION—continued.

in substance a demand of a poll by him within the meaning of rule 6 of the schedule.

Quære, whether the original demand for a poll could be withdrawn after the close of the meeting. *REX v. DOVER (MAYOR OF)*

Div. Ct. [1903] 1 K. B. 668

2. — *Borrowing powers—Obligation on corporation to mortgage rates by way of security for loan—Local government—Municipal corporation—Urban authority—Public Health Act, 1875* (38 & 39 *Vict. c. 55*), s. 233.

The borrowing powers conferred upon an urban authority by s. 233 of the *Public Health Act, 1875*, do not enable it to borrow money (for other than temporary purposes) without securing the repayment of the loan by a mortgage of the rates or fund on the credit of which the money is borrowed. Therefore a payment of interest made on behalf of the authority upon money borrowed for a permanent purpose without security is illegal. *REX v. LOCKE* - *Div. Ct. [1910] 2 K. B. 201*

3. — *Borrowing powers—Overdraft—Power to borrow for specific purposes—General overdraft—Interest—Power to use consolidated loans fund for fresh loans—Ultra vires—Local government—Municipal corporation—Urban authority.*

The debt. corporation had statutory powers to borrow money with the sanction of the Local Government Board for the purposes of several undertakings which they were authorized to carry on, including the supply of electricity and electrical fittings and the construction and working of electric tramways. The corporation in 1905 applied to their bank for and obtained leave to overdraw their general account to the extent of 120,000*l.* for six months. The overdraft was allowed on the security of their unexhausted borrowing powers. At this time they had applied for but not yet obtained the sanction of the Local Government Board to a large loan for the purposes of their electricity undertaking. This sanction was afterwards obtained. The overdraft was renewed from time to time for different amounts. At the commencement of this action the limit stood at 50,000*l.*, and before the hearing the overdraft was paid off altogether. The moneys received from the overdraft were paid into the corporation's general account and applied for the purposes of all their undertakings indiscriminately:—

Held, that this borrowing by way of overdraft was illegal.

The corporation were bound by their private Acts to pay every year into an account called the consolidated loans fund sufficient moneys to provide for the interest and instalments of principal to be repaid in respect of all their loans, which were raised by the issue of stock. But they had power when a fresh loan was authorized to borrow from the consolidated loans fund instead of issuing fresh stock. They applied the whole of the consolidated loans fund in reducing their overdraft in anticipation of the assent of the Local Government Board to fresh loans:—

Held, that this application of the consolidated loans fund was illegal. *ATT.-GEN. v. WEST HAM CORPORATION* - *Neville J. [1910] 2 Ch. 560*

CORPORATION—continued.

4. — *Borrowing powers exhausted — Illegal borrowing — Overdraft at bankers — Interest on overdraft — Borough funds — Illegal payments — Audited accounts — Borough treasurer — His duty and liability — Certiorari — Injunction — Parties — Local government — Urban authority — Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 18—21, 25—28, 106, 119, 139—144, 240, Sched. V., Part 1, Sched. VIII., Part 8 — Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 6, 189, 198, 209, 210, 233—237, 245—247, 265.*

A borough which was governed by the Municipal Corporations Act, 1882, and was also an urban authority under the Public Health Act, 1875, had in March, 1903, exhausted all its borrowing powers and had in addition a large fluctuating overdraft at its bankers in respect of expenses previously incurred. The borough kept its banking account in the name of its treasurer, and during 1903 and 1904 the bank charged interest quarterly on the overdraft, and the treasurer in his accounts with the borough debited the borough and credited himself with the charges for interest, and his accounts were audited under ss. 25—28 of the Municipal Corporations Act, 1882, by the borough auditors, who passed the charges for interest, and the audited accounts were submitted to and approved by the borough council. In an action against the treasurer by the Att.-Gen., suing on relation of a Burgess, impeaching his accounts in respect of the charges for interest on the overdraft and claiming an injunction to restrain him from making any further payments for such interest out of the borough funds:—

Held, that the corporation were not necessary parties to the action, as no relief was asked for against them.

Held, also, that the treasurer was not merely the servant of the council, but, as custodian of the borough funds, owed a duty and stood in a fiduciary position to the burgesses as a body, and could not plead the orders of the council for an unlawful act.

Dictum of Erle J. in *Reg. v. Saunders*, (1854) 24 L. J. (M.C.) 45, applied.

Held, also (following *Smith v. Corporation of Southampton*, [1902] 2 K. B. 244), that the overdraft and the payments of interest thereon were illegal, and that the plts. were entitled to the injunction notwithstanding that the payments might be quashed by certiorari under s. 141, sub-s. 2, of the Municipal Corporations Act, 1882, or by appeal to quarter sessions against the rates.

Held, also, that the fact that the deft.'s accounts had been audited under the Act was no bar to the action, there being nothing in the Act which made such audit finally binding and conclusive on the borough and the burgesses.

Held, also, that the deft. could not retain the charges for interest by way of his remuneration under s. 20 of the Municipal Corporations Act, no remuneration in fact having been voted to him by the council.

Observations on the method of auditing borough accounts under the Municipal Corporations Act, 1882. ATT.-GEN. v. DE WINTON Farwell J. [1906] W. N. 87; [1906] 2 Ch. 106

CORPORATION—continued.

— Buildings.

See BUILDING. 2.

— Buildings, Demolition of — Public health — Summary jurisdiction.

See LOCAL GOVERNMENT. 2.

5. — *By-law—Validity—Evidence of—Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 23, 24.*

Upon a proceeding before a Court of summary jurisdiction to recover a penalty for breach of a by-law made by the council of a municipal borough under s. 23 of the Municipal Corporations Act, 1882, the production of a written copy of the by-law authenticated by the corporate seal is sufficient evidence until the contrary is proved, not merely that the by-law has been duly made, but also that all conditions precedent to its becoming a valid operative by-law, such as the fixing of a copy of the by-law for forty days on the town hall before it can come into force, have been complied with. *ROBINSON v. GREGORY* Div. Ct. [1905] 1 K. B. 534

— Chairman of justices—Mayor of borough.

See JUSTICES. 3.

— Contract—Members of corporation “directly or indirectly interested or concerned in” contract.

See ELECTRIC LIGHT. 4.

6. — *Contract—Municipal corporation—Trading corporation—Contract not under seal.*

The argument on this appeal turned upon the questions of fact whether the contracts relied on by the respondents (plts. in the Court below) had ever been entered into either at all or so as to bind the appellants.

Held that, as to one of the contracts, there was no evidence that it ever was made, and, as to the other, that, assuming it had been made, the representative of the appellants who was alleged to have made it had no authority to make it on their behalf.

The judgment of Ridley J., [1908] W. N. 52, was therefore reversed. *BOURNE v. MARLEY-BONE CORPORATION* G. A. [1909] W. N. 14

7. — *Contract not under seal—Executed consideration—Work done at request of corporation—Contract to pay implied from acceptance of benefit.*

Where the purposes for which a corporation is created render it necessary that work should be done or goods supplied to carry those purposes into effect, and orders are given by the corporation in relation to work to be done or goods to be supplied to carry into effect those purposes, if the work done or goods supplied are accepted by the corporation and the whole consideration for payment is executed, there is a contract to pay implied from the acts of the corporation, and the absence of a contract under the seal of the corporation is no answer to an action brought in respect of the work done or the goods supplied.

Clarke v. Cuckfield Union, (1852) 21 L. J. (Q.B.) 349, and *Nicholson v. Bradfield Union*, (1886) L. R. 1 Q. B. 620, approved. *LAWFORD v. BILLERICAY RURAL DISTRICT COUNCIL*

G. A. [1903] 1 K. B. 772

CORPORATION—*continued.**Note.*

This case was followed by *Ridley J., Bourne v. Marylebone Corporation*, [1908] W. N. 52; but the decision of *Ridley J.* was reversed by C. A., [1909] W. N. 14. See *preceding Case*.

8. — *Corporate lands—Power to sell—Consideration—Perpetual rent-charge—Approval of Local Government Board—Municipal corporation—Municipal Corporations Act, 1882* (45 & 46 Vict. c. 50), ss. 108, 109.

A municipal corporation has power under the *Municipal Corporations Act, 1882*, to dispose of its corporate lands, with the approval of the Local Government Board, in consideration of a perpetual yearly chief rent charged upon the lands, *SCARBOROUGH CORPORATION v. COOPER* **Joyce J. [1909] W. N. 228; [1910] 1 Ch. 68**

— Costs of unsuccessful prosecutions—Prosecutions before borough justices.
See **LOCAL GOVERNMENT. 8.**

9. — *Councillor—Disqualification for "holding" office—Bankruptcy—Remedy by quo warranto—Municipal Corporations Act, 1882* (45 & 46 Vict. c. 50), ss. 12, 87 — *Bankruptcy Act, 1883* (46 & 47 Vict. c. 52), s. 32.

By s. 32 of the *Bankruptcy Act, 1883*, a debtor who is adjudged bankrupt is disqualified for (inter alia) being elected to or holding or exercising the office of councillor, a disqualification limited by s. 9 of the *Bankruptcy Act, 1890*, to five years from the date of discharge. By s. 87 of the *Municipal Corporations Act, 1882*, a municipal election may be questioned by an election petition on the ground that the person whose election is questioned was at the time of the election disqualified, and shall not be questioned on that ground except by an election petition.

A debtor was adjudicated a bankrupt in April, 1899, and in the following July obtained an order of discharge subject to suspension for two years and a half, which came into operation in Jan., 1902. In Nov., 1902, an election was held of councillors for a municipal borough, at which he was nominated and declared elected. In 1903 a rule nisi was obtained for a quo warranto calling on him to shew cause why he held and exercised the office of borough councillor:—

Held, that the remedy by quo warranto was taken away by s. 87 of the *Municipal Corporations Act, 1882*, only in those cases where the election was questioned on the ground of disqualification for election, and that bankruptcy being by s. 32 of the *Bankruptcy Act, 1883*, a disqualification not merely for election, but also for "holding" the office of councillor, quo warranto would lie. **REX v. BEER**

Div. Ct. [1903] 2 K. B. 693

— Creditor—Corporate creditor—Grant of administration to officer—Retainer.
See **EXECUTOR—Retainer. 2.**

10. — *Dissolution—Bona vacantia—Chattels real—Landlord and tenant—Lease—Limited company lessees—Sureties for payment of rent during the term—Dissolution of company—Reverter to lessor—Acceleration of reversion—*

CORPORATION—*continued.*

Determination of term—Liability of sureties—Lease vesting in the Crown.

A lease to a corporation for a term of years determines if the corporation is dissolved without having assigned the lease. On dissolution of the corporation the lease does not vest in the Crown as bona vacantia, but the reversion is accelerated, and the land reverts to the lessor.

Therefore, where a lease was made to a limited co. and payment of the rent during the term was guaranteed by sureties, on dissolution of the co. under ss. 142 and 143 of the *Companies Act, 1862*:—

Held, that the lease, not having been assigned, had determined, and with it the liability of the sureties. **HASTINGS CORPORATION v. LETTON** **Div. Ct. [1907] W. N. 105; [1908] 1 K. B. 378**

— Drain—Negligence—Liability of municipal authorities.
See **VICTORIA. 8.**

11. — *Election—Mayor—Validity of vote of disqualified person—Right of chairman to vote—Casting vote—Municipal Corporations Act, 1882* (45 & 46 Vict. c. 50), s. 42, sub-s. 1; s. 61, sub-s. 4; s. 87, sub-s. 1 (d); s. 102.

A town councillor, whose election is subsequently declared void, cannot prior to the avoidance of his election give a valid vote at the election of mayor.

Nell v. Longbottom, [1894] 1 Q. B. 767, followed.

The right under the *Municipal Corporations Act, 1882*, of the mayor of a municipal corporation to vote at the election of his successor can only be modified or taken away by a statutory enactment expressed in unequivocal language.

The expression "equality of votes" in s. 61, sub-s. 4, of the *Municipal Corporations Act, 1882*, means equality of valid votes, and therefore the mayor or chairman presiding at the election of a mayor may give a contingent or hypothetical casting vote, to come into operation if in the course of subsequent proceedings it should appear that there has been an equality of valid votes. **BLAND v. BUCHANAN** **Div. Ct. [1901] 2 K. B. 75**

12. — *Election—Nomination and election of disqualified person—Right of opponent to claim seat—Notice of disqualification—Municipal Corporations Act, 1882* (45 & 46 Vict. c. 50), s. 56, sub-s. 2.

The petitioner and respondent were nominated in proper form for election to the office of councillor for a ward in a borough, and the respondent obtained the majority of votes and was declared elected. Both at the time of his nomination and of the election, however, he was disqualified by reason of his interest in a contract with the council. The petitioner claimed the seat on the ground that his being the only valid nomination he should be declared elected. The respondent admitted the disqualification:—

Held, that, the disqualification not being apparent on the face of the nomination paper, the nomination of the respondent was valid, and that as the petitioner did not allege any notice to the electorate of the disqualification of the respondent, the votes given for him could not

CORPORATION—*continued*.

be treated as having been thrown away, and the petitioner was not entitled to claim the seat. **HOBBS v. MOREY**

Div. Ct. [1904] 1 K. B. 74

13.—*Election—Town councillor—Disqualification—Contract with council—Release by committee—Ratification by council—Relation—Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 12, sub-s. 1 (c).*

A petition was presented against a town councillor, alleging that his election was void on the ground that, at the date of his nomination, he had an interest in a contract with the council.

The respondent, in answer to an advertisement, had offered to supply to the council for twelve months, certain goods at specified prices, and the offer was accepted. Afterwards he applied to a committee of the council to be released from his contract. The committee resolved that, subject to approval by the council, he be released from that date. He was then nominated. After his nomination the council approved the resolution of the committee releasing him.

On argument of questions of law reserved :—

Held, that the advertisement, tender, and acceptance constituted a contract; that the respondent had an interest in the contract; that the ratification, after the respondent's nomination, of the resolution releasing him did not relate back to the date of the resolution, because the interests of persons other than the parties to the contract might be affected, and therefore the respondent, at the date of his nomination, had an interest in a contract with the council, and was disqualified, and his election was void.

Bolton Partners v. Lambert, (1889) 41 Ch. D. 205, distinguished. *In re GLOUCESTER MUNICIPAL ELECTION PETITION*, 1900 (TUFFLEY WARD). **FORD v. NEWTH**

Div. Ct. [1901] W. N. 62; [1901] 1 K. B. 683

— Electric light — Contract — Validity — Members of corporation “directly or indirectly interested or concerned in” contract.

See **ELECTRIC LIGHT**. 4.

— Electric lighting—Municipal corporation.

See under **ELECTRIC LIGHT**.

— Electricity, Supply of—Loughborough Corporation.

See **STATUTE**. 3.

— Execution—Enforcing order against corporation—Writ of sequestration—Injunction to restrain sewage nuisance.

See **SEQUESTRATION**. 2.

— Foreign company carrying on business temporarily in England—Service of writ within the jurisdiction.

See **PRACTICE—Service**. 3.

— Franchise—Qualification—Non-payment of rate—Passive resister.

See **PARLIAMENT**. 13.

— Gasworks, Value of, as a going concern—New Zealand, Law of.

See **NEW ZEALAND**. 8.

CORPORATION—*continued*.

— Guarantee of debentures by a municipality—Invalidity of by-law—Quebec Act.

See **CANADA—Corporation**. 1.

— Highway—Corporation liable to indictment for non-repair of highway.

See **HIGHWAY**. 36.

— Justices—Chairman of borough justices—County justices.

See **JUSTICES**. 3.

— Justices' clerk—Power to appoint—Payment of salary.

See **LOCAL GOVERNMENT**. 18.

— Lands Clauses Act—Landowner—Notice to treat.

See **LANDS CLAUSES ACT**. 10.

— Liability for negligence—Obligation to maintain school premises—Injury to pupil caused by defect in asphalt of playground.

See **SCHOOLS**. 14.

— Libel by servant of corporation—Liability of company for malicious libel.

See **NEW SOUTH WALES**. 20.

— Limitation of time for bringing action—Tramway worked by municipal authority—Injury to passenger.

See **PUBLIC AUTHORITIES PROTECTION**. 4.

— Local education authority—Council of county borough—Corporation acting by council.

See **SCHOOLS**. 13.

— Lottery—Offence—“Person.”

See **GAMING**. 14.

— Manchester.

See under **MANCHESTER**.

— Manchester Corporation—Income tax—Salary—Deductions—Contribution to thrift fund.

See **REVENUE—Income Tax**. 34.

13a.—*Meetings—Municipal corporation—Council meetings—Right of public to attend—Burgess—Newspaper reporter—Right to exclude—Injunction—Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 233; Sched. II., r. 5.*

In a municipal borough neither the public, nor the burgesses, nor reporters for newspapers, have the right to attend the meetings of the borough council without the consent of the council expressed or implied.

Decision of *Kekewich J.*, [1907] W. N. 251, affirmed.

Semble, the same principle applies to the meetings of a district council or of a county council. *TENBY CORPORATION v. MASON*.

C. A. [1908] W. N. 23; [1908] 1 Ch. 457

— Membership—Local Act—Construction—“Any person”—Royal Naval School Act, 1840.

See **INFANT—Corporation**. 1.

— Motor car—Breach of statutory regulation—Mens rea—Negligence—Aiding and abetting.

See **MOTOR CAR**. 1.

CORPORATION—*continued.*

— Oysters—Foreshore, Power to acquire lease of.
See FISHERY. 6.

— Power to appoint new trustees—Appointment of corporation jointly with individual.
See TRUSTEE—Appointment. 6.

14. — *Rector—Corporation sole—Power to hold personality—Mortmain—Irregular investment in land—Eleemosynary Corporations Act, 1571 (13 Eliz. c. 10), s. 3—Trust—Notice.*

By statute 31 Geo. 2, c. 2 (private), South Sea Annuities were vested in a rector and his successors as endowment, subject to a provision for sale and reinvestment in land with the consent of the bishop.

Under statute 16 & 17 Vict. c. 23, the annuities were redeemed and the redemption money paid to the then rector on his sole receipt.

A successor having received the redemption money, acting without the consent of the bishop, invested part in land which was conveyed to himself, his heirs and assigns. He resigned and conveyed the land to the next successor, his heirs and assigns. That successor, with his concurrence, sold and conveyed part of the land to the defendant; he subsequently misappropriated the proceeds. The solicitor acting for both parties believed that the land was "church property."

In an action by the present rector against the purchaser :—

Held, that—

(1.) The South Sea Stock being, by the private Act, exceptionally vested in the rector for the time being as a corporation sole, he could, on its conversion, receive and give a good discharge for the money representing it.

(2.) The purchase of the land did not purport to be and was not under the Act, and did not create any trust for the rector as a corporation sole.

(3.) The land was not subject to 13 Eliz. c. 10, and the conveyance to the deft.'s vendor was not void under that Act, and was not a breach of trust, there being no beneficiary who could elect to take the land in specie.

(4.) The purchase-money having come to the proper hands, the deft. was not answerable for the subsequent misappropriation of it by his vendor, assuming (which was not decided) that the deft. was not a purchaser for value without notice. *POWER v. BANKS* - *Cozens-Hardy J.*
[1901] W. N. 137; [1901] 2 Ch. 487

Note.

Referred to by Swinfen Eady J. *In re Jenkins and H. E. Randall & Co.'s Contract*, [1903] 3 Ch. 362. *Vendor and Purchaser—Title.*

— Repairs—Neglect of duty—Damages—Misfeasance—Non-feasance.
See HIGHWAY. 36.

Retainer of solicitors by resolutions not under seal—Subsequent affixing of seal.
See LOCAL GOVERNMENT. 29.

— Sale by—"Person"—Liability.
See ADULTERATION. 20.

— Signature of party to be charged—"Person"—Signature by agent of company.
See ADULTERATION. 20.

CORPORATION—*continued.*

— Statutory body—Public duties—Attorney-General, Suing by.
See GAS. 2.

— Statutory corporation—Borrowing powers—Receiver, Appointment of.
See MORTGAGE—Validity. 1

15. — *Statutory corporation—Company incorporated by statute—Power to charge surplus lands—Existing debt.*

A navigation co. incorporated by statute had power under a special Act (with which the Lands Clauses Consolidation Act, 1845, was not incorporated) to borrow money upon the security of a mortgage of their undertaking, but no express power was given to mortgage their surplus lands :—

Held, that the co. could create a valid charge upon their surplus lands to secure an existing debt in respect of which the creditor by obtaining judgment would be able to take the surplus lands in execution under a writ of *elegit*.

Blackmore v. Yates, (1867) L. R. 2 Ex. 225, approved.

Decision of Swinfen Eady J., [1902] W. N. 69, affirmed. *STAGG v. MEDWAY (UPPER) NAVIGATION CO.* - *C. A.* [1903] W. N. 3; [1903] 1 Ch. 169

Note.

This case was followed by *Joyce J., Reeve v. Medway (Upper) Navigation Co.*, [1905] W. N. 75. *Mortgage—Validity.* 1.

16. — *Statutory powers—Provisional order—Electric lighting—"Public duty"—Negligence—Action—Acts done in execution of statute—Judgment—Costs—"Solicitor and client"—Appeal—Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61), s. 1 (b).*

By the Public Authorities Protection Act, 1893, s. 1 (b), judgment for the deft. in an action brought in respect of acts, or alleged defaults, in execution of an Act of Parliament, "or of any public duty or authority," carries costs as between solicitor and client.

Held, that the protection of the section extended to a municipal corporation acting under the powers conferred upon it by a provisional electric lighting order, duly confirmed by statute.

The enactment does not apply to appeals. *JEREMIAH AMBLER & SONS, LD. v. BRADFORD CORPORATION* *C. A.* [1902] W. N. 147; [1902] 2 Ch. 585

— Streets—Right of corporation to sue.
See LOCAL GOVERNMENT. 3.

17. — *Trading—County council—Municipal corporation—Tramway business—Omnibus business—Ancillary business—Incidental powers—Ultra vires—Attorney-General, Jurisdiction of—Local Government Act, 1888 (51 & 52 Vict. c. 41), ss. 1, 2, 68, 79—London County Tramways Act, 1896 (59 & 60 Vict. c. li.), ss. 2, 10.*

A county council, being incorporated under s. 79 of the Local Government Act, 1888, is a purely statutory body and has not under s. 2 of that Act the position and powers of a municipal or common law corporation. The statutory powers of the London County Council to purchase and work tramways do not empower it to

CORPORATION—*continued.*

work omnibuses in connection with the tramways, the omnibus business not being incidental to the tramway business.

The council was restrained by injunction from so acting *ultra vires* in an action brought by the Att.-Gen. on the relation of rival omnibus proprietors.

The jurisdiction of the Att.-Gen. to decide in what cases it is proper for him to sue on behalf of relators is absolute.

The decision of the C. A., [1901] 1 Ch. 781, affirmed. **LONDON COUNTY COUNCIL v. ATTORNEY-GENERAL** - **H. L. (E.)** [1902] W. N. 30; [1902] A. C. 165

Note.

This case was applied by C. A., *Att.-v. Mersey Ry. Co.*, [1907] 1 Ch. 81; but the decision of the C. A. was reversed by H. L. (E.), [1907] A. C. 415. See *Railway—Omnibus*. 1.

— Trading corporation — Contract not under seal.

See No. 6, *above*.

— Trustee—Authorized investment—Stock of municipal borough.

See **TRUSTEE—Investments**. 4.

— Trustee — Power to appoint — Corporation joint trustee with individual.

See **TRUSTEE—Appointment**. 6.

— *Ultra vires*—Purchase by agreement—Special Act—Validity of covenant—Restriction of powers given for benefit of public.

See **VENDOR AND PURCHASER—Corporation**. 1.

— Workmen's compensation — Contract for execution of work undertaken by principal.

See **MASTER AND SERVANT—Compensation**. 114.

CORPORATION DUTY—Real property—Principle of assessment—"Annual value, income, or profits."

See **REVENUE—Corporation Duty**. 1.

CORPS—Volunteer corps.

See under **ARMY AND NAVY**.

CORPS OF COMMISSIONAIRES—Bequest to committee of corps of—Voluntary association—Charity—Perpetuity.

See **WILL—Perpetuity**. 1.

CORRESPONDENCE—Admission of documents.

See **EVIDENCE**. 1.

1. — *Entry of documents in judgment as read*

— *Bundle of documents supplied to judge.*

Motion on the part of the plts. for directions that the whole of a bundle of correspondence admitted by the parties and laid before the judge at the trial should be entered as read in the order, though only some of them were actually referred to. This course was adopted by Kekewich J. in *Law v. Law*, [1904] W. N. 152, and appears to have been usually followed (see Seton, 6th ed., pp. 164, 165).

Neville J., after consultation with the registrar, stated that instructions had recently

CORRESPONDENCE—*continued.*

been given by the C. A. that only documents which had been actually and specifically referred to at the trial should be entered as read in the judgment. He had always understood that that was the correct practice. The motion must therefore be refused.

Law v. Law, [1904] W. N. 152, not followed.

MAINWARING v. LORD CLARINA - **Neville J.** [1910] W. N. 14

2. — *Form of judgment—Bundle of correspondence supplied to judge—Some letters not read—Whole of correspondence to be entered in judgment as read.*

Motion by two of the defts. in the action that the minutes of the judgment pronounced by Kekewich J. on March 1, 1904, as given out by the registrar, might be varied by inserting in the schedule to the judgment certain specified letters and telegrams, all of which were comprised in a bundle of copy correspondence furnished to the judge at the trial. The action had reference to a partnership between brothers, and was one of some complication. The applicants contended that the copy correspondence had been treated as put in and admitted, while the plts. contended that there had been no such admission, formal or informal, and that only the letters and telegrams which had been actually read at the trial should be entered in the judgment as read. The registrar acceded to this view, and the question now raised was whether or not the whole of the correspondence comprised in the bundle should be entered in the judgment as read. The actual copy of correspondence furnished to the judge at the trial had been apparently broken up and could not be now reproduced in its entirety.

Kekewich J. said that a well-prepared copy of correspondence was of the utmost importance for the proper conduct of an action. He was perfectly satisfied from his own notes and from the shorthand notes of the arguments of counsel and the examination of witnesses that the copy of correspondence was before him at the trial, that it was referred to on either side, and that it was the intention of the parties that it should be before him :—

Held, that the copy of correspondence before him must be reproduced in the same state in which it was at the trial, and it must be entered in the judgment as read. The parties who objected to this must pay the costs of the application. **LAW v. LAW** - **Kekewich J.** [1904] W. N. 152

Note.

This case was not followed by Neville J., *Mainwaring v. Clarina (Lord)*, [1910] W. N. 14. See *preceding Case*.

CORROBORATION — Divorce — Practice — Absence of verbal corroboration of cruelty.

See **DIVORCE—Practice**.

— Evidence of accomplice—Absence of corroboration — Omission of judge to caution jury—Effect of on conviction. See **CRIMINAL LAW—Appeal**. 6.

COSTS.

[Fees and Costs.]

See also under **SPECIFIC TITLES of Subject-Matter to which COSTS relates.**

And see also under **SOLICITOR—Costs.**

Draft Rules for amalgamation of Taxing Departments of the Supreme Court with a view to uniformity in taxation of costs. Reprint from **W. N. 1901 (Aug. 17), p. 251.** See **CURRENT INDEX, 1901, p. ciii.**

Taxation—Supreme Court Taxing Office—Regulations to come into force on Jan. 11, 1902. Reprint from **W. N. 1902 (Jan. 4), p. 1.** See **CURRENT INDEX, 1902, p. lxxxiv.**

Supreme Court—Taxing Office—Practice Notes on Taxation of Costs—Settled by the Masters in Hilary, Easter, and Trinity Sittings, 1902, 1902 (H. Legal). Price 6d.

Non-contentious costs.—R. S. C., July, 1903. Reprint from **W. N. 1903 (July 25), p. 217.** See **CURRENT INDEX, 1903, p. lxxvii.**

R. S. C., Order LXV. (Costs), Rule 14 (d), added. Appendix IV., No. 106. Reprint from **W. N. 1904 (Jan. 16), p. 49.** See **CURRENT INDEX, 1904, p. cxxv.**

King's Bench Division—Revised fixed costs—Fixed costs in cases of judgment by default, &c., issued by direction of the Practice Masters. Reprint from **W. N. 1906 (June 2), p. 167.** See **CURRENT INDEX, 1906, p. lxxviii.**

Costs in Criminal Cases—Costs in Criminal Cases Act, 1908 (8 Edw. 7, c. 15)—Costs and Expenses—Regulations, dated Dec. 16, 1908, made by the Secretary of State under s. 5 of the Costs in Criminal Cases Act, 1908 (8 Edw. 7, c. 15). Reprint from **W. N. 1909 (Jan. 2), p. 3.** See **CURRENT INDEX, 1909, p. ciii.**

[NOTE.—The Regulations dated Nov. 28, 1908, made under s. 5 of the Costs in Criminal Cases Act, 1908 (8 Edw. 7, c. 15), are set out (as a reprint from **W. N. 1908 (Dec. 12), p. 343**) at p. xcvii. of the Final Part of the Current Index, 1908.]

Small Holdings and Allotments (Costs) Rules, 1910. See under **SMALL HOLDINGS AND ALLOTMENTS.**

—“Actual cost” does not include interest on moneys expended—Railway contract. See **CAPE OF GOOD HOPE. 12.**

—Action, arbitration, and award—Law of New South Wales. See **NEW SOUTH WALES. 7.**

—Action founded on tort—Agreement for lease of house—Removal of fixtures. See **No. 75, below.**

—“Actual cost”—Contract, Construction of—Electric light—“Generating light.” See **CAPE OF GOOD HOPE. 4.**

—Administration Generally. See under **ADMINISTRATION.**

1. — *Administration — Insolvent estate — Claim of creditor—Practice—Costs of successful litigation allowed in full.*

D. D.

COSTS—continued.

A claim having been made, in an action for the administration of an insolvent estate, for commission for the introduction to the deceased of a purchaser of a public-house. the sale of which was not completed, an issue was directed whether the sale went off through the default of the vendor or his legal personal representatives. On the trial of this issue the Court found that the purchase went off through the default of the representatives of the vendor, and that the claimant was, therefore, entitled to his commission:—

Held, that the claimant was entitled to be paid out of the assets the full costs of the trial of the issue which had been directed, and in which he had been successful. *In re DUNN. BRINKLOW v. SINGLETON* **Byrne J. [1902] W. N. 76**

2. — *Administration—Order to pay costs out of fund in court—Insufficient fund—Priority of administrator's costs—Practice.*

An order on the further consideration of an administration action that the costs of all parties are to be paid out of a fund in court does not amount to a direction that they are to be paid equally. If the fund turns out insufficient to pay all the costs, the costs of administrators must be paid in priority to those of other parties.

Gavett v. Taylor, (1843) 2 Hare, 413; 62 R. R. 164, followed.

Swale v. Milner, (1834) 6 Sim. 572, not followed. In re GRIFFITH. JONES v. OWEN

Farwell J. [1904] W. N. 88; [1904] 1 Ch. 807

— *Administration—Originating summons—Costs out of estate—Costs “as between solicitor and client.”*

See **POWER OF APPOINTMENT. 27.**

3. — *Administration—Practice—Power of appointment—Successive appointments of specific sums—Appointment of residue—Costs of administering trust fund—Estate duty.*

A husband and wife, in exercise of a joint power of appointment over a trust fund (subject to their respective life estates therein) amongst the children of the marriage, appointed three sums of 10,000*l.* in trust for their three elder daughters, and appointed the residue, after satisfying the three previous appointments, in trust for their fourth daughter, but so that the appointment should not exceed 10,000*l.* The fund was not sufficient to provide for the appointment of the full sum of 10,000*l.* to the fourth daughter. Upon the distribution of the fund:—

Held, applying the rule laid down by Chitty L.J. in *In re Saunders*, [1898] 1 Ch. 17, 23, that the general costs of administering the trust fund, including the costs of raising the estate duty payable on the respective deaths of the husband and wife and the costs of raising the appointed sums, ought to be borne rateably by the four appointed sums. *In re CHISHOLM. GODDARD v. BRODIE* - - - *Kekewich J. [1902] W. N. 24; [1902] 1 Ch. 457*

4. — *Administration action—Inquiries relating to particular share—Practice—R. S. C., Order LXV., r. 14B.*

In this case an action was commenced by the representatives of a deceased lady who had in

COSTS—continued.

her lifetime become entitled to and received the whole of a Denison fund for the execution of the trusts by the will of the testatrix declared concerning the Cook fund. A number of inquiries were directed for ascertaining the persons entitled to the Denison fund and the Holmes fund respectively. The inquiries relating to the Denison fund proved short and easy, but those relating to the Holmes fund proved very long and costly, Isaac Holmes, the tenant-for-life of that fund, having had eleven children, all of whose issue had to be traced. The case now came on upon further consideration, and the plts. proposed minutes of an Order providing that the costs of inquiries as to the persons entitled to each moiety should be borne by that moiety. They claimed that the R. S. C., Order LXV., r. 14B applied. That rule is: "The costs of inquiries to ascertain the person entitled to any legacy money or share, or otherwise incurred in relation thereto, shall be paid out of such legacy money or share, unless the judge shall otherwise direct."

On the other hand the persons interested under the trusts of the other moiety contended that if the rule applied, "share" must be taken to mean the whole one-third share constituting the Cook fund, and that the costs of all the inquiries ought to be paid out of the whole fund before its division into moieties, and that the costs of the inquiries were testamentary expenses which the testatrix had directed to be paid out of residue.

Neville J. said that he had felt some difficulty in the case, for he did not think the rule very clear. The question was what was the meaning of "share" in the rule. He thought that the moieties of the third share in this case must be "shares" within the meaning of the rule. That being so, he did not think he could give any special directions without falsifying the rule. The rule was in general terms, but it did not mean that special directions were to be given without any special reasons. Each moiety must therefore bear the costs of the inquiries relating to the persons entitled to it. *In re WHITAKER. DENISON-PENDER v. EVANS* Neville J. [1910] W. N. 236

5. — Administration action—Real and personal estate — Apportionment — Land Transfer Act, 1897 (60 & 61 Vict. c. 65), s. 1, sub-ss. 1, 2, sub-s. 3.

The settled practice of the Ch. Div., as stated in *In re Middleton*, (1882) 19 Ch. D. 552, that the costs of an administration action, so far as they have been increased by the administration of the real estate, are to be borne by that real estate, has not been altered or affected by the Land Transfer Act, 1897. *In re JONES. ELGOOD v. KINDERLEY. ELGOOD v. JONES*

Buckley J. [1901] W. N. 217; [1902] 1 Ch. 92

Note.

Followed by Kekewich J., *In re Betts, Doughty v. Walker*, [1907] 2 Ch. 149.

— Administrator—Sale of convict's property—Bona fides.

See FELONY. 1.

COSTS—continued.

— Appeal—Costs—Practice.

See also under APPEAL.

6. — Appeal, Costs of—Documents—Copies used in prior proceedings—Costs not incurred for purposes of appeal—Practice—Costs—Taxation.

Upon interpleader proceedings in the county court with regard to the title to goods taken in execution the claimant succeeded. The county court judge gave the judgment creditors leave to appeal to the Div. Ct. upon condition that, if successful, they should not ask for costs of the appeal. The judgment creditors appealed to the Div. Ct. Copies of certain documents, which were necessary for the use of counsel and the judges upon the appeal to the Div. Ct., were provided by the judgment creditors. The Div. Ct. dismissed the appeal. The judgment creditors obtained from the C. A. leave to appeal from the decision of the Div. Ct., and did so appeal. The before-mentioned copies of documents were necessary, and were used for the purposes of that appeal. That appeal was successful, and the claimant was ordered to pay to the judgment creditors the costs of and incident to the appeal. The bills of costs delivered by the judgment creditors to the claimant included items in respect of the before-mentioned copies of documents, which upon taxation the Master disallowed.—

Held, that these items were rightly disallowed by the Master as not representing costs incurred for the purposes of the appeal to the C. A. *MASSON, TEMPLIER & Co. v. DE FRIES; DE FRIES, CLAIMANT* - C. A. [1910] W. N. 51; [1910] 1 K. B. 535

7. — Appeal—Cross-appeal—Dismissal of appeal and cross-appeal with costs—Taxation—Apportionment of costs—Practice.

A member of a provident society brought an action against the other members, claiming a declaration that he was entitled to remain a member of the society and to the benefits thereof, and an injunction to restrain the defts. from excluding him therefrom. The defts. by their defence admitted that the plt. was entitled to remain a member of the society, and denied that they had done, or threatened to do, anything to entitle the plt. to sue for a declaration or injunction as aforesaid. At the trial of the action by a judge without a jury, the judge gave judgment for the defts., but, thinking that, having regard to the circumstance which gave rise to the action, there had been faults on both sides, he gave the defts. no costs of the action. The defts. appealed against so much of his judgment as refused them their costs, and the plt. then gave a cross-notice of intention to contend that the judgment should be entered for the plt. with costs. The C. A. on the hearing of the appeals ordered that the defts.' appeal should be dismissed with costs to be taxed, and that the plt.'s cross-appeal should also be dismissed with costs to be taxed, one set of costs to be set off against the other. There were no separate briefs on the cross-appeal. On the taxation the Master taxed the costs on the principle that the plt. was entitled to all his costs of the appeal except so far as

COSTS—continued.

they were increased by his cross-notice of appeal, and the debts.' costs should be disallowed except so far as they were increased by the plt.'s cross-notice of appeal. He therefore allowed the plt. items charged in respect of his counsel's briefs and the fees paid to them and to their clerks and disallowed items charged in respect of the debts.' counsel's briefs and the fees paid to them and to their clerks. On appeal to the judge at chambers, he directed the Master to review his taxation by apportioning these costs between the appeal and cross-appeal :—

Held, by the C. A., that upon the terms of the order made by them as applicable to the above-mentioned circumstances the decision of the learned judge was correct. **JONES v. STOTT**
C. A. [1910] 1 K. B. 898

8. — *Appeal—Official referee—Discretion as to costs—Leave to appeal—Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 49—R. S. C., Order XXXVI., r. 55 (b) ; Order LXV., r. 1.*

Where the whole of an action is referred by order of Court to an official referee, without any direction as to costs in the order, his decision as to costs cannot be appealed against except by his leave. **MINISTER & CO. v. APPERLY**

Div. Ct. [1902] 1 K. B. 643

— Appeal—Omission in petition for special leave—Final judgment—Yukon Territorial Act.

See CANADA—Practice. 10.

9. — *Appeal—Order for security—Poverty—Order for leave to prosecute appeal in forma pauperis—Effect of pauper order on order for security.*

An order in the usual form requiring an appellant to give security for the costs of the appeal on the ground of poverty, and containing a stay of proceedings until security is given, ceases to operate if, within the time limited for giving security, the appellant obtains an order for leave to prosecute the appeal in forma pauperis. **WILLÉ v. ST. JOHN** - C. A.
[1910] W. N. 112; [1910] 1 Ch. 701

— Appeal—Taxed bill—Successful appeal from part of judgment—Apportionment.
See PATENT—Disclaimer. 1.

— Appeal—Terms of special leave allowing respondent to cross-appeal without petition.

See NEW SOUTH WALES. 3.

— Appeal against costs—Competency of appeal.
See APPEAL. 5.

10. — *Appeal, Costs of—Counsel's view after trial for purposes of appeal—Further evidence on appeal—Costs of witness attending but not called—Patent action—Taxation—R. S. C., 1883, Order XVIII., r. 4 ; Order LXV., r. 27, sub-r. 29.*

There is no difference in principle between the costs of counsel's view before trial and the costs of counsel's view after trial for the purposes of an appeal ; and although such costs will not as a general rule be allowed in party and party taxation, yet the Court will not interfere with the decision of the taxing Master where, in the exercise of his discretion, he has allowed them.

COSTS—continued.

An appellant gave notice of motion to adduce further evidence on the appeal on two points. At the hearing of the appeal he obtained leave and gave further evidence on the first point, and his witness was not cross-examined. Thereupon it became unnecessary to give further evidence on the second point, and he made no application in respect thereof. The appeal was allowed with costs :—

Held, that the taxing Master had no jurisdiction to allow the appellant the cost of a witness who had attended the C. A. to give evidence on the second point, if called.

Quære, whether if leave to adduce evidence on the second point had been obtained, the costs of a witness attending for that purpose but not called could be allowed. **LEEDS FORGE CO. v. DEIGHTON'S PATENT FLUE AND TUBE CO.**

Farwell J. [1903] W. N. 19 ; [1903] 1 Ch. 475

— Appeal—"Criminal cause or matter"—Distress—Bailiff—Costs and charges.
See APPEAL. 6.

— Appeal, Costs of—Shipping casualty—Dealing with certificate.

See SHIPPING—Practice. 2.

— Appeal to quarter sessions—Payment by treasurer of county or borough.

See JUSTICES. 4.

— Appearance—Entering—Numerous actions against same defendant.

See No. 42, below.

11. — *Appearance by defendant in person—Subsequent employment of a solicitor—Failure to get solicitor's name placed on the record—Irregularity—Practice—Costs—Taxation.*

A deft., who had appeared in an action in person, subsequently employed a solicitor to conduct his defence, but failed to give notice thereof at the Central Office, and consequently no solicitor appeared on the record as acting for the deft. The plt.'s solicitors were, however, aware that the deft.'s solicitor was acting for the deft., and had dealt with him as the deft.'s solicitor in the action. The action being subsequently dismissed with costs for want of prosecution :—

Held that, though the failure to get the deft.'s solicitor's name placed on the record was an irregularity, it ought not, under the circumstances, to be treated as fatal to the deft.'s right to recover his solicitor's charges. **MASON v. GRIGG** - C. A. [1909] W. N. 127 ;
[1909] 2 K. B. 341

— Apportionment—Factory Acts—Underground bakehouse—Lease—Covenant.

See FACTORY. 8.

12. — *Apportionment—Methods of apportionment where one party liable to pay a portion but not the whole of the costs of action—Advantages of the proportionate method of apportionment—"Party and party" costs.*

Administration action which now came on to be heard on further consideration, when it appeared that the costs of the action were to a great extent occasioned by an unfounded claim set up by the deft. In dealing with this matter

COSTS—continued.

Kekewich J. took occasion to make some remarks of a general character as to the apportionment of costs.

Kekewich J. said :—In these cases, which are of frequent occurrence in the Ch. Div., where a deft. or a plt. is liable to pay a large portion of the costs of an action, but is not liable to pay the whole, perhaps the ordinary and stereotyped way of carrying that out is by giving a direction to the taxing Master to distinguish between the costs which the party is liable to pay and those which he is not liable to pay. Sometimes it is done by a direction that the party is to pay all the costs of the action, except so far as they have been increased by particular proceedings. There is also a form of dividing the costs according to the issues, which I think has been more common in the K. B. Div., but this, though logical and strictly right, gives rise to a great deal of trouble. The costs of an issue, or costs increased by a particular claim, do not connote by themselves any of the general costs of the action, and therefore, when the matter comes before the taxing Master, great difficulty occurs in distributing the general costs of the action, and, notwithstanding the great knowledge and experience of the taxing Masters, the difficulty is often not satisfactorily solved. Sometimes it is possible with some care at once to say that the party who is to pay costs shall pay a certain proportion of the whole costs, and if that can be done time and expense are saved. Of course such a method is necessarily rough, and in the nature of an estimate, but still I cannot help thinking that such a rough estimate is just as likely to do what is right as the more logical and precise method. I adopted it the other day in a case which came before me, and I propose to do so again now. I commend the practice to my brother judges as one deserving of their consideration. I am sure that it works well where the judge sees his way. Sometimes, of course, it cannot be done, as in a witness action, for example, where the judge often cannot tell how much trouble has been taken to get up the evidence of a particular witness, who in the result, and because of the course taken by the case, is only asked a few questions. But there are many cases in which I think it may, with reflection, be easily done.

Kekewich J. then dealt with the facts of the case, and directed that the deft. should pay two-thirds of the whole costs of the action.

A further point then arose in reference to the form or order as to taxation of certain costs which it was necessary to tax, not only as between solicitor and client, but also on the ordinary basis of taxation. The question was whether the expression "party and party" costs ought to be used in contradistinction to "solicitor and client" costs, having regard to the new rules of Jan., 1902.

Kekewich J. thought that where "solicitor and client" costs are mentioned it is right also to mention "party and party" costs, and said that he had seen one of the taxing Masters, who had confirmed his opinion. *In re POLLARD.* POLLARD v. POLLARD

Kekewich J.
[1902] W. N. 49

COSTS—continued.

13. — *Apportionment—Taxation—Practice—R. S. C.*, 1883, *Order LXV.*, r. 2.

In this action the plt. made two distinct claims—(1.) for an injunction, and (2.) for damages in respect of different causes of action. The deft. co. paid 60*l.* into court in satisfaction of claim No. 2. This the plt. accepted. At the trial the 60*l.* was ordered to be paid out to the plt. in satisfaction of the cause of action stated in paragraph 8 of the statement of claim (being claim No. 2), and it was ordered "That the defts., the North Eastern Ry. Co., do pay to the plt. his costs of this action so far as relates to the said claim stated in paragraph 8 aforesaid, such costs to be taxed by the taxing Master. And it is ordered that the rest of the plt.'s action do stand dismissed out of court without costs." In taxing the costs under this order, the taxing Master allowed the plt. all the general costs of the action. The defts. objected that the general costs ought to have been apportioned according to the rule laid down in *Jenkins v. Jackson*, [1891] 1 Ch. 89. Farwell J. [1903] W. N. 9, overruled the taxing Master, and held that the principle of *Jenkins v. Jackson* applied.

The Court dismissed the appeal. In their opinion the matter turned entirely upon the terms of the order made at the trial. It was not an order giving the plt. the general costs of the action, except so far as they were increased by one particular issue, but it was an order giving the plt. the costs of the action so far as they related to the claim in paragraph 8. *TODD v. NORTH EASTERN RY. CO.*

C. A. [1903] W. N. 30

— Appropriation of investments—Contingent legacy without interest.

See APPROPRIATION. 1.

— Arbitration.

See under ARBITRATION—Costs.

— Arbitration—Award ultra vires.

See RAILWAY—Mines. 6.

14. — *Arbitration—Scale fee—Costs—Taxation—Review.*

Application for review of taxation of items in two bills of costs delivered by the solicitors of a rural district council in Glamorganshire. The council had had occasion to take for public purposes certain pieces of land, and the value of the several lands taken had been determined by arbitration. In addition to usual charges for inspecting the land, and for hearing evidence, the umpire in each of two arbitrations had charged a fee for the award, which was calculated on an ad valorem scale varying with the amount awarded, namely, 2½ per cent. up to 1000*l.*, and 1½ per cent. above that amount. Taxation was rendered necessary by the fact that the council had to apply to the Local Government Board for a provisional order providing for payment of expenses incurred. The taxing Master, being of opinion that a scale fee could not properly be charged, allowed in each case a sum of five guineas, which was considerably less than the amount charged by the umpire. The council were willing to pay the amounts charged by the umpire, and passed a resolution to that effect

COSTS—continued.

and refusing to sanction any proceedings against the umpire to recover the amounts disallowed. The Court was now asked to vary the taxing Master's certificate by allowing the amounts charged by the umpire.

Kekewich J. said that the objection to the taxation was a most extraordinary one. It happened, fortunately for the ratepayers, that this council were obliged to submit their bill for taxation. It was the duty of the taxing Master to tax all bills laid before him, and to look at them the more narrowly if the taxation was *ex parte*. The applicants complained bitterly of the taxing Master because he had dared to interfere with charges to which everybody now concerned assented, and the ratepayers would in due time be brought to assent. At first sight the sum of five guineas appeared to him to be a sufficient allowance, but he did not think it right to dispose of the case simply according to his own judgment, and he had therefore gone into the matter with a most experienced taxing Master, who assured him that this practice of a scale fee was unknown in the office. It was sufficient, therefore, to say that a scale fee was not in accordance with the practice of the office, it could not be allowed; but without professing himself to be conversant with these matters, he thought that the practice of the office was clearly right. The application was accordingly refused. *In re FRANK JAMES & SONS.*

Kekewich J. [1903] W. N. 99

— Attachment, Costs of motion for—Matrimonial suit.

See ATTACHMENT. 9.

15. — Attendance in court—Taxation—Motion treated as trial—R. S. C., 1883, Appendix N., items 166, 172.

Summons to review taxation.

This case, as already reported [1902] 2 Ch. 768, came before Farwell J. and the C. A. on a motion for an injunction to restrain the defts. until trial from spending local rates levied under the Elementary Education Act, 1870 (33 & 34 Vict. c. 75), in the erection of a pupil teachers' centre. Farwell J. granted an interlocutory injunction.

In the C. A. the motion, which was heard on two successive days, was treated as the trial of the action, and the plts. obtained judgment for a perpetual injunction, with costs.

In taxing the plts.' costs the taxing Master allowed 2*l.* 2*s.* apiece for their solicitor's attendances in the C. A., treating them as attendances on a motion under R. S. C., 1883, Appendix N, item 166. In answer to the plts.' objections, he intimated that if, contrary to his opinion, they were to be allowed as attendances at the trial under item 172, he should allow 3*l.* 3*s.* for the first day and 2*l.* 2*s.* for the second. The plts. issued this summons to review (*inter alia*) this allowance:—

Held, that where, as in this case, a motion was treated as the trial, attendances at the trial should be allowed. **DYER v. LONDON SCHOOL BOARD** **Swinfen Eady J. [1903] W. N. 83**

Note.—The rule stated by Eyre C.B. in, applied by C. A., *The "Venture,"* [1908] P. 218. *See SHIPPING—Sale.* 1.

COSTS—continued.

— Australia—South Australia—Appeal does not lie as to costs.

See AUSTRALIA. 11.

— Bidding, Costs of—Sale under direction of Court—Rescission.

See VENDOR AND PURCHASER — Rescission. 6.

— Burial—London government—Transfer of powers and property—Exception of ecclesiastical powers and property.

See BURIAL. 6.

— Charging order for costs on property "recovered or preserved"—Application *ex parte*.

See SHIPPING—Charging Orders. 1.

— Churchwardens, Criminal suits against—Issue of decree.

See ECCLESIASTICAL LAW — Faculty. 13.

16. — Claim and counter-claim—Practice—Claim dismissed with costs—Counter-claim dismissed with costs—Form of judgment—Practice.

Where the plt.'s claim and the deft.'s counter-claim are both dismissed with costs, the proper form of judgment is to refer it to the taxing Master to tax the deft.'s costs of the action and the plt.'s costs of the counter-claim and to set off the costs of the plt. and deft. and to order payment of the balance by the party from whom the same shall be found to be due to the other party. **JAMES v. JACKSON** **Warrington J. [1910] W. N. 115; [1910] 2 Ch. 92**

— Co-defendants—Judgment against one defendant—Liability of one defendant for all plaintiff's costs.

See No. 67, below.

— Co-defendants—Practice—Collision.

See SHIPPING—Practice.

— Collision.

See under SHIPPING.

— Compensation, Action for—New South Wales Public Works Act.

See NEW SOUTH WALES.

17. — Compulsory purchase—Money in court—Payment out—Failure of part of summons—Order to pay interest—Costs of obtaining order—Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), ss. 76, 80.

By an originating summons issued in respect of a fund in Court, which represented the purchase-money of houses which had been taken compulsorily, the plts. asked for inquiries as to children, a declaration on the construction of a will, payment out of the fund in accordance with the result of the inquiries and declaration, and that the costs might be paid by the promoters of the undertaking. An order was made to the effect that a sum representing interest should be paid to the plts., and that the promoters should pay to the plts. and another respondent "their costs (including therein all reasonable charges and expenses incident thereto) of obtaining this order and of all proceedings relating thereto":—

Held, that the costs payable by the promoters did not include all the costs incurred in connection with the parts of the summons which had

COSTS—continued.

failed, but must be confined to the costs of obtaining the particular order which was made.

In re JACOBS. BALDWIN v. PESCOTT

Warrington J. [1908] 2 Ch. 691

18. — *Compulsory purchase of land by public body—Wilful neglect of vendor to make out good title—Payment of purchase-money into court—Costs of petition for payment out—Discretion of Court—Refusal of vendor to give possession—Warrant to sheriff—Sheriff's costs—"Deduction" from purchase-money—Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), ss. 80, 91—Supreme Court of Judicature Act, 1890 (53 & 54 Vict. c. 44), s. 5.*

Notwithstanding that in s. 80 of the Lands Clauses Consolidation Act, 1845, certain cases are excepted from the power thereby given to the Court to order costs to be paid by the promoters of an undertaking when money has been deposited in court, the Court has now by virtue of s. 5 of the Supreme Court of Judicature Act, 1890, a discretionary power to order payment of costs in the excepted cases.

The sheriff's cost of a warrant to give possession of land, incurred after payment of the purchase-money into court by the promoters, were ordered to be paid out of the fund in court.

In re SCHMARR

C. A. [1902] W. N. 14;

[1902] 1 Ch. 326

19. — *Copies of documents for the judge—Practice—Taxation.*

A summons for the determination of a question depending wholly upon the construction of two settlements. No copies of the settlements had been prepared for the use of the judge, and it was stated that it was not the practice of the taxing Masters to allow the costs of copies prepared for this purpose.

Farwell J. said that it was quite impossible for a judge to decide questions arising on the construction of documents without having copies before him. The costs of copies supplied for the use of the judge ought always to be allowed; and if it was not the practice to allow them, he was prepared to make an order in every case before him, which turned on the construction of documents, that such costs should be allowed.

In re HOUSTON'S SETTLEMENT. SPARKES v. HUTCHELL

Farwell J. [1903] W. N. 187

— Copies of evidence filed by petitioner — Charges of fraud against contributories — Taxation.

See COMPANY—WINDING-UP — Costs. 1.

20. — *Copy of petition—Quality of paper—Practice.*

In this case Byrne J. made the order asked for, but disallowed one-third of the costs of the copy of the petition supplied for the use of the Court, on the ground that it was typewritten on such thin paper that the letters on the second page could be seen through the first page; and said that in future he would disallow all the costs of documents written on similar paper.

POWELL v. HELLICAR

Byrne J. [1903]

W. N. 154

COSTS—continued.

— Copyholds, Sale of—No tenant on court rolls — Fine on heir's admission—Steward's fees.

See LANDS CLAUSES ACTS. 17.

21. — *Costs before action—Threat of proceedings—Preparation for defence before issue of writ—Taxation—R. S. C., 1883, Order LXV., r. 27, sub-r. 29.*

Deft., being threatened with an action for being party or privy to a fraud disclosed in a previous action to which he was not a party, obtained a transcript of the speeches, evidence, and judgment therein before the issue of the writ in the present action, with a view to defending the same. The present action was subsequently dismissed for want of prosecution:—

Held, that the deft. was entitled under Order XLV., r. 27, sub-r. 29, to the costs of only so much of the transcript of the evidence and judgment as related to the issue in the present action.

BRIGHT'S TRUSTEE v. SELLAR

Swinfen Eady J. [1904] W. N. 33;

[1904] 1 Ch. 369

22. — *"Costs of the action"—"Costs, charges and expenses" of trustee—Order silent as to costs of application—"Costs reserved"—"Costs in any event."*

Summons for the review of taxation of costs under an order made on further consideration in the action, dated Dec. 11, 1902, whereby it was ordered "that it be referred to the taxing Master to tax as between solicitor and client the costs of the deft. of this action, including therein any charges and expenses properly incurred by him in the execution of the will of M. R., the testatrix in this action, not already taxed or allowed beyond his costs of this action, and his costs properly incurred and not already taxed or allowed" of two other actions which had reference to the same estate. The case is reported [1896] 2 Ch. 626.

In the course of the proceedings orders had been made on various applications. In some of these orders nothing had been said as to the costs of the particular application, and in others costs had been "reserved." In one case a summons by the deft. for interrogatories had been refused with costs to the plt. "in any event." It was stated that the taxing Master had allowed to the deft. his reserved costs as part of his charges and expenses.

Various questions were raised and discussed as to the effect of the several orders and the course of taxation under them, and the learned judge dealt with the general principles involved.

Kekewich J. said that the real question, strange as it might seem, was what were the deft.'s costs of this action, i.e., those costs which the taxing Master might properly allow. The question was, perhaps, not so simple as it looked. Orders were frequently made providing that the costs of a certain application should be costs in the action. In such cases there could be no question at all. The duty of the taxing Master was to include in the costs all costs which had been disposed of in that way by being made costs in the case. Then again it frequently happened

COSTS—continued.

that nothing was said about costs of an application. In a case where a taxation was directed of the costs of a debt, trustee, still more where it was as between solicitor and client, there was no difficulty at all; the Master ought not to hesitate to include those costs although there was no indorsement on a counsel's brief. But then there were cases in which cases had been "reserved." For some reason, which could not be investigated without going into the whole application, the judge thought fit to reserve the costs. It was argued that that only meant that the costs were reserved as between plt. and deft.; that all that the Court said was that the application might turn out to be entirely wrong, but on the other hand it might turn out to be entirely right, and therefore to have been wrongly opposed. But that was not the only effect. When costs were reserved it was necessarily implied that there was reserved the question of the incidence of those costs, quite apart from the question whether they were to be paid by the plt. or by the deft. It was impossible for the taxing Master dealing with costs to look at any costs which had been reserved. His duty was to see that they were not included in the bill, and if the failure to deal with them was an oversight he must give the party an opportunity of going to the Court. Nothing could be easier than to issue a summons asking that the costs should be allowed, and that could conveniently be done before the taxing Master disposed of the case. In the case where the application was refused with costs to the plt. "in any event," it was suggested that that only meant as between plt. and deft.; but it seemed to his Lordship that costs in any event must by necessary implication exclude the deft.'s own costs from the costs of the action. Then it was said that the deft. might get his reserved costs as part of his charges and expenses, and that the taxing Master had taken that view. But if he had done so that must have been a slip on his part. Nothing of the kind could have been intended by the order, which was in a form which had been used for generations. The order made it clear that there were two separate and distinct things—one the costs of the action, the other the charges and expenses which were outside the costs of the action. *How v. EARL WINTERTON* **Kekewich J. [1904] W. N. 204**

Counsel.

See also under **BARRISTER.**

23. — Counsel—Special fees to counsel—Disallowance—Practice—Taxation—Party and party.

A "special" fee to leading counsel was disallowed on taxation as between party and party, although, owing to previous retainer by other parties, the services of a leader practising in the particular Court could not be obtained by the party whose costs formed the subject of the taxation. *In re PARSON. PARSON v. PARSON*

Joyce J. [1901] W. N. 94; [1901] 2 Ch. 176

— Counsel employed against client's instructions Rules as to retaining counsel 1892, r. 20
— Taxation—Solicitor and client costs.
See **SOLICITOR—Costs.** 17.

COSTS—continued.

24. — Counsel—Fees to counsel on appeals.

The practice in the H. L. has always been to disallow in party and party taxations the charges for a third counsel, except in certain Crown cases upon a certificate from the Att.-Gen. that the employment of three counsel was necessary; but on July 14, 1909, the Appeal Committee resolved that in future the Crown should be in the same position as private litigants, and that the fees of two counsel only should be allowed in every case.

Note, H. L. [1910] W. N. 120

— Counsel's brief—Stamp duty—"Receipt."
See **REVENUE—Stamps.** 24.

— Counsel's fees — Judgment, Attending to hear.
See **LANDLORD AND TENANT.** 77.

26. — Counsel's fees—Practice—Costs—Taxation—Motion—Speedy trial—Motion heard with witnesses and treated as trial—R. S. C., Order LXV., r. 27, sub-r. 47.

The plt. moved in an action for an interim injunction and the Court directed that the motion should be heard with witnesses and treated as the trial of the action. The plt.'s solicitors delivered fresh briefs to counsel as for the trial of the action. On Feb. 24, 1909, at the hearing the case was compromised on terms which included a stipulation that one of the defts. should pay the plt.'s costs. The judgment, which embodied the terms of the compromise, commenced as follows: "Upon motion on the 5th and 12th February 1909 and this day made unto the Court by counsel for the plaintiff which motion was on the 12th February 1909 ordered to be set down for hearing on the 18th February 1909 as a motion with witnesses, to be treated as the trial of the action, and upon reading," &c. The taxing Master allowed the fees marked on the briefs delivered on the motion, but disallowed half the fees marked on the fresh briefs of counsel for the plt., and the plt. took out this summons to vary his certificate:—

Held that, inasmuch as the motion was not disposed of till the hearing on Feb. 24, the taxing Master was right. **COOKSON v. CATTON.**

[1910] W. N. 52; [1910] 1 Ch. 410

27. — Counsel's fees—Refreshers—Taxation—R. S. C., 1883, Order LXV., r. 27, sub-r. 48.

The action was for an injunction to restrain the continuance of a nuisance by noise, and for damages. The trial lasted nine days. In the result the Court declined to grant an injunction, the nuisance having been abated since action brought, but awarded the plt. 40s. damages and costs. In taxing the costs the taxing Master had allowed refreshers to counsel in respect of eight days. The defts. objected that two of the days of the hearing were Saturdays, which were not full days, and that under Order LXV., r. 27, sub-r. 48, refreshers were only payable in respect of clear days of at least five hours each.

Joyce J. said that the theory suggested on behalf of the defts. was quite new. The rule was no doubt a difficult one to construe, but the taxing Master had adopted the practice which had hitherto been followed in such cases, and he

COSTS—*continued.*

declined to interfere with the exercise of his discretion. **DUNNING v. GROSVENOR DAIRIES, LD.**

Joyce J. [1901] W. N. 218

— Counsel's fees—Refreshers.

See No. 51, below.

28. — Counsel's fee for drawing notice of appeal—Discretion—R. S. C., 1883, Order LXV., r. 27, sub-s. (15)—Practice—Costs—Taxation.

Summons by the surviving trustee and executor of a will to review a taxation, and it raised the question, *inter alia*, as to whether a counsel's fee for settling notice of appeal should be allowed. A summons to review the first taxation of the trustee's costs, charges, and expenses in the action was dismissed by Joyce J. on July 30, 1908, and notice of appeal was given. This notice was settled by counsel and was in the ordinary form. The appeal was successful, and by the order of the C. A., dated Oct. 31, 1908, the matter was referred back to the taxing Master to vary his certificate in certain particulars, and the costs of all parties were to be taxed. An objection was now raised to his taxation under the order of the C. A. in respect of three items charged for counsel's fee for drawing notice of appeal, attending him, and copy of the notice, all which the Master had disallowed. In his answer to the objection the taxing Master said that he had perused the notice, which was in the ordinary form, and he saw no reason for allowing a counsel's fee for settling the same.

Eve J. said that, without assuming to lay down any rule as to notices of appeal, it was, as a general practice, extremely desirable that these notices should be submitted to and settled by counsel, as it sometimes happened that an appeal went upon wrong lines owing to inartistic or careless notices of appeal. He considered that the taxing Master in the present case had departed from the principle in regard to the costs of settling notices of appeal, and had exercised his discretion wrongly. The costs in question should have been allowed in a party and party taxation, and the certificate would be amended by including these three items. *In re BAILEY. BAILEY v. BAILEY* **Eve J. [1909] W. N. 110**

29. — Counsel's fees—Three counsel—Scientific evidence—Special circumstances—Qualifying fee of witness not called—Taxation—Practice—R. S. C., Order LXV., rr. 9, 27, sub-rr. 29, 38.

In an action, ultimately dismissed with costs, raising complicated questions of fact and law, involving at the trial the examination of varied scientific theories and investigations, and imposing a large amount of labour and heavy responsibility on those conducting it at the trial:—

Held, that there were such special circumstances in the case as to justify the allowance on taxation of three counsel to one set of depts., and that it was not material to take into account the fact that their co-defts., whose interests up to a certain point were the same, were represented by two counsel.

Each dept. is entitled to fight his own case, and is not to be deprived of the advantage of so

COSTS—*continued.*

doing by the fact that his co-defts. were also doing their duty by themselves in fighting their own battle.

Where a personal view of the locus in quo was essential to enable a scientific witness to make his evidence of most value a proper qualifying fee was allowed, although he was not ultimately called as a witness. **GREAT WESTERN RY. CO. v. CARPALLA UNITED CHINA CLAY CO., LD. (No. 2)** **Eve J. [1909] 2 Ch. 471**

30. — Counsel's fees—Three counsel—Taxation—Practice—R. S. C., Order LXV., rr. 8, 27, sub-rr. 29, 38.

Order LXV., r. 27, sub-r. 29, has not altered the practice of the Court with reference to a review of the taxing Master's decision on the allowance or disallowance of the fees of a third counsel employed by one of the parties in a case. The old authorities still apply; and in deciding whether the costs of three counsel ought to be allowed the Court can take into consideration the length of the documents that had to be examined, the length of time the case was likely to last, the fact that large sums are involved, and that the case is of commercial importance; but the commercial importance of the case, the importance of the issues, and the great public involved are not by themselves sufficient reasons for allowing the costs of a third counsel. **PEEL v. LONDON AND NORTH WESTERN RY. CO. (No. 2)** **Parker J. [1907] W. N. 70; [1907] 1 Ch. 607**

— Counsel's view after trial for purposes of appeal — Witness attending but not called.

See No. 10, above.

— County Court.

See under COUNTY COURT—Costs.

— Covenant to pay "outgoings"—Costs of compliance—County Court.

See FACTORY. 5, 8.

— Criminal law.

See under CRIMINAL LAW—Costs.

— Criminal law—Poor Prisoners' Defence Act.

See under CRIMINAL LAW — Poor Prisoners' Defence.

— Crown—Jurisdiction of Court to order payment of costs by or to the Crown.

See MANDAMUS. 1.

— Declaratory order—Costs—Practice.

See LANDLORD AND TENANT. 14.

31. — Defendants—Alternative defendants—Jurisdiction — "Good cause" — Practice — Supreme Court of Judicature Act, 1890 (53 & 54 Vict. c. 44), s. 5—R. S. C. Order LXV., r. 1.

In an action in the K. B. Div., claiming relief against the defts. in the alternative, the Court has jurisdiction in a proper case to order the unsuccessful dept. to pay the costs of the successful dept., or to order the plt. to pay the costs of the successful dept., and then to add those costs to the costs which the unsuccessful dept. is ordered to pay to the plt.

The latter course should be adopted when the action is tried with a jury and the judge does

COSTS—*continued.*

not think that there is "good cause" for depriving the successful deft. of costs.

Decision of Grantham J. affirmed. **SANDERSON v. BLYTH THEATRE Co.**

C. A. [1903] W. N. 135; [1903] 2 K. B. 533

Note.

This case was applied by C. A., *Bullock v. London General Omnibus Co.*, [1907] 1 K. B. 264.

32. — Detinue — Action founded on tort — Return during progress of case of articles claimed — Rights of parties at date of writ — Practice — County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 116, sub-s. 2.

The plt. brought an action in the High Court to recover from the defts. certain drawings that had been deposited with them as agents for sale, and damages for their detention, and he claimed also an account in respect of such of the drawings as had been sold, and the amount that might be proved to be due on the taking of the account. The defts. pleaded that they had always been ready and willing to return the drawings in their possession, and offered to return them forthwith on obtaining a proper receipt. The plt. replied accepting the offer to return the drawings, and they were accordingly returned to him. They were of the value of 20l. and upwards. The action went to trial on the question of the amount due from the defts. in respect of the drawings that had been sold, and resulted in a verdict for the plt. for 33l. —

Held, that the plt. was entitled to costs on the High Court scale on the grounds (1) that he had recovered the drawings through the exigency of the writ, and that the return of them during the progress of the case did not affect the rights of the parties at the date of the writ; and (2) that the action being one of detinue in which the plt. had recovered the things claimed in specie, it was not within the class of actions founded on tort to which s. 116, sub-s. 2, of the County Courts Act, 1888, applies. **DU PASQUIER v. CADBURY, JONES & Co.**

C. A. [1903] 1 K. B. 104

— Discretion—Appeal—Trial by judge without jury.

See **CONTRACT. 22.**

— Discretion as to costs.

See **Nos. 18, 28, above.**

33. — Discretion of judge—Depriving successful defendant of costs—Right of appeal—R. S. C. Order LXV., r. 1.

A successful deft. cannot be deprived of costs on the ground of improper conduct—e.g., an attempt to deceive the public—not connected with the issue between himself and the plt.

In such a case no material exists for exercise of the discretion of the judge under Order LXV., r. 1.

And if in such a case a successful deft. has been deprived of costs he has a right to appeal.

The defts. in an action for passing off their goods as those of the plt. had stated on the wrappers in which their goods were sold that they had obtained certain medals and awards at exhibitions. The defts. did not state that the

COSTS—*continued.*

medals and awards had been obtained for the goods to which the action related, and in fact they had been obtained for other goods manufactured by the defts. Kekewich J. gave judgment for the defts., but deprived them of costs on the ground that they had acted dishonestly in making the statement about the medals and awards:—

Held, by the C. A. upon the facts, that the defts. had not acted dishonestly, but that even if they had been guilty of misrepresentation it had no relation to the plt.'s case, and was not therefore a ground on which the judge had a discretion to deprive the defts. of costs. **F. KING & Co. v. GILLARD & Co. C. A. [1905] W. N. 68; [1905] 2 Ch. 7**

34. — Discretion of taxing officer—Taxation—"Instructions for originating summons"—R. S. C., Order LXV., rr. 8, 27, sub-rr. 29, 37, Appendix N, No. 65—Order of January, 1902, r. 10—Practice Notes of the Masters of Hilary Sittings, 1902—The "Blue Book."

Under rule 8 of Order LXV., and rule 10 of Jan., 1902 (which is the new sub-rule 29 of rule 27 of the same Order), the discretion of the taxing officer is no longer limited to the maximum fee prescribed by Appendix N; but under these regulations he has now on every taxation a two-fold discretion—first, in ordinary cases, the discretion conferred on him by Appendix N, and, in addition to that, a general discretion in special cases to allow all such costs, charges, and expenses as appear to him to have been necessary or proper for the attainment of justice, or for defending the rights of any party.

The Practice Notes of the Masters of Hilary Sittings, 1902—known as the "Blue Book"—though framed and issued by them under the power conferred on them by sub-rule 37 of rule 27 of Order LXV., have no statutory authority, and do not abrogate or fetter the discretion given them by the Rules of the Supreme Court. They merely define the practice which, as a general rule, should be followed by the Masters on taxations.

McIver & Co., Ltd. v. Tate Steamers, Ltd. [1902] 2 K. B. 184, followed. *In re ERMEN. TATHAM v. ERMEN* — **Farwell J. [1903] W. N. 78; [1903] 2 Ch. 156**

Note.

See **Price v. Clinton, Joyce J.**, [1906] 2 Ch. 487.

— Distress.

See under **DISTRESS.**

— Divorce—Practice.

See under **DIVORCE—Costs.**

— Divorce—Wife's costs.

See **SCOTTISH LAW. 10.**

— Drains.

See under **SEWERS.**

— Executors.

See **PROBATE—Costs. 2.**

— Faculty, Variation of, by consent of petitioners.

See **ECLESIASTICAL LAW—Faculty. 15.**

— Foreclosure—Account—Repairs—Receiver.

See **MORTGAGE—Foreclosure. 1.**

COSTS—*continued.*

— Forfeiture—Ejectment—Mortgagee of under-lease—Relief—Parties.
See LANDLORD AND TENANT. 35.

— Friendly society.
See under FRIENDLY SOCIETY.

— Frivolous and vexatious applications—Interlocutory proceedings—Form of order.
See PRACTICE—**Frivolous, &c., Applications.** 2.

— “Good cause”—Costs—Jurisdiction—Alternative defendants—Practice.
See No. 31, *above*.

35. — *Higher or lower scale—Action of contract against two defendants—Separate causes of action—Judgment for 50l. against both defendants, and for more than 50l. against one defendant—Practice—County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 116—R. S. C. Order LXV., r. 12.*

The defts. B. and R. entered into a joint and several bond in 50l. to the plts., who were the trustees of a friendly society, to secure the fidelity of the deft. B., who was the treasurer of the society. B. having failed to account for 90l., the plts. brought an action in the High Court against both defts., in which they recovered judgment for 50l. against both defts. and for 90l. against the deft. B., with costs against the deft. B. and such costs against the deft. R. as they were entitled to. The judge who tried the case having refused to certify that the case was fit to be tried in the High Court:—

Held, that as against the deft. R. the plts. were only entitled to costs on the county court scale. **DUXBURY v. BARLOW.**

C. A. [1901] W. N. 80; [1901] 2 K. B. 23

36. — *Higher scale—Special grounds—Practice—R. S. C., 1883, Order LXV., r. 9.*

The fact that the title to an estate dealt with in a partition action was a complicated and difficult one, and that the action had been conducted by the solicitors in an exceptionally able and diligent manner, whereby much time and expense had been saved, is not a special ground “arising out of the nature and importance, or the difficulty of the case,” sufficient to enable the Court to order costs to be paid on the higher scale under Order LXV., r. 9.

Williamson v. North Staffordshire Ry. Co., (1886) 32 Ch. D. 399, followed.

Davies Brothers & Co. v. Davies, (1887) 56 L. J. (Ch.) 481, *Re Leeuw*, (1892) 93 L. T. Jour. 333, and *Marriott v. Cobbett*, (1894) 38 Sol. Jo. 620, examined, and not followed. **RIVINGTON v. GARDEN** - **Buckley J. [1901] W. N. 29; [1901] 1 Ch. 561**

— House of Lords—Peer's right to be heard at the Bar—Practice.
See HOUSE OF LORDS. 3.

— Husband and wife.
See under HUSBAND AND WIFE—**Costs.**

— Income tax—Deduction of fair rent in respect of Crown lease.
See NEW SOUTH WALES. 13.

COSTS—*continued.*

— Infant.

See under INFANT—**Costs.**

37. — *Inspection of property, the subject of action—No order—Taxation—Taring Master's discretion—R. S. C., 1883, Order L., r. 3.*

The costs of an inspection of property being the subject of an action will not be disallowed merely because the inspection has been arranged between the solicitors of the parties, without an order for it having been obtained under Order L., r. 3. **ASHWORTH v. ENGLISH CARD CLOTHING Co. (No. 1)** - **Joyce J. [1904] W. N. 49; [1904] 1 Ch. 702**

— Insurance, Marine—Solicitor and client costs—Open cover slip—Damages—Fraudulent representations—Reinsurance—Subrogation.
See INSURANCE (MARINE). 16.

38. — *Interest—Costs paid by unsuccessful party—Repayment on successful appeal—Intermediate interest—Satisfaction of judgment debt—Judgment Act, 1838 (1 & 2 Vict. c. 110), s. 17.*

A plt. whose action was dismissed with costs paid the defts.' costs with interest to date. The C. A. having reversed the decision of the Court of first instance, the defts. repaid the sum they had received with interest to date. Upon further appeal the House of Lords restored the original order, whereupon the plt. repaid to the defts. the sum he had received from them, but without any further interest:—

Held, that the defts. were entitled to interest on that sum from the time when they had paid it to the plt. down to the time of repayment to themselves. **ASHWORTH v. ENGLISH CARD CLOTHING Co. (No. 2)** - **Joyce J. [1904] W. N. 49; [1904] 1 Ch. 704**

— Interlocutory proceedings—Order to prevent—Costs—Form of order.
See PRACTICE—**Frivolous, &c., Applications.** 2.

— Joinder of causes of action—Action of tort—Allegation of joint tort.
See PRACTICE—**Joinder.** 2.

— Judge's notes—Omission to supply—Adjournment.
See APPEAL. 8.

— Judgment signed for too large an amount—Amendment—Accidental slip—Practice.
See JUDGMENT. 2.

— Jurisdiction of quarter sessions over costs before special sessions.
See RATES. 5.

39. — *Libel, Action for—Practice—Pleas of justification and privilege—Defendant successful on one and unsuccessful on the other—Costs of witnesses relating exclusively to plea on which defendant unsuccessful.*

Where in an action for libel pleas of justification and privilege are set up, and the deft. fails to establish the plea of justification, and judgment is given for him on the plea of privilege, the plt. is not entitled to the costs of witnesses

COSTS—continued.

whose evidence does not relate exclusively to the plea of justification. *BROWN v. HOUSTON*

C. A. [1901] 2 K. B. 855

Note.

This case was held to be inapplicable. See *In re Wright, Crossley & Co.*, C. A. [1902] W. N. 54. No. 71, below.

— Light Railways Act, 1896—Order incorporating Lands Clauses Acts—Costs—Review of taxation.

See RAILWAY—Light Railways. 2.

— Mandamus—Confirmation of bishop-elect. Objections on ground of doctrine—Jurisdiction.

See ECCLESIASTICAL LAW—Bishops. 1.

— Married women's liability to.

See under HUSBAND AND WIFE—Costs.

— Master's wages—Emoluments—Disbursements—Costs of defending action on bill of exchange.

See SHIPPING—Wages. 4.

— Mayor's Court—Taxation—Certificate by judge for costs on higher scale.

See LONDON—Mayor's Court. 3.

— Mistake of counsel—Time for appealing.

See APPEAL. 31.

— Money had and received—Interest—Costs in action to which the Crown is a party—Appeal from Sierra Leone.

See SIERRA LEONE. 1.

— Monition—Officiating without leave of incumbent of parish and contrary to inhibition. See ECCLESIASTICAL LAW—Offences. 4.

— Motion for judgment in default of defeat.

See PRACTICE—Short Cause. 2.

— Motor Car Act—Justices—Appeal—Fine—Costs—Summary jurisdiction.

See JUSTICES. 2.

40. — New trial—Costs of application—Practice.

Where an application is made for a new trial and the application is opposed and a new trial is granted, there is no rule of practice that the costs of the application shall abide the event of the new trial, and in the absence of special circumstances the applicant will be allowed the costs of the application. *HAMILTON v. SEAL*

C. A. [1904] W. N. 87; [1904] 2 K. B. 262

41. — Non-contentious business—Practice—Costs—Taxation—Jurisdiction—Proper officer—District Registrar of Manchester—Solicitors Act, 1843 (6 & 7 Vict. c. 73), s. 37—R. S. C., Order XXXV., r. 6A; Order LXI., r. 1B; Order LXV., r. 26A; Order LXXI., r. 1.

Application having been made by originating summons in the Manchester District Registry for an order referring the bill of costs of a solicitor for non-contentious business to the district registrar for taxation:—

Held, that although an originating summons was the proper form in which to make the application and a judge of the K. B. D. had power to refer the bill for taxation, yet the district registrar was not the "proper officer" to

COSTS—continued.

whom a bill for non-contentious business could be referred for taxation within s. 37 of the Solicitors Act, 1843, and that the bill must be taxed by a Master of the Supreme Court. *In re STEAD* - C. A. [1910] W. N. 157; [1910] 2 K. B. 713

— Non-contentious costs.

See Heading of COSTS, *supra*.

— Notaries—Discretion of Master of Faculties as to appointment in Colonies.

See NOTARIES. 4.

— Nuisance.

See under NUISANCE.

42. — Numerous actions against same defendant—Different plaintiffs—Entering appearance—Scale charge—Discretion of taxing Master—Practice—Costs—Taxation—R. S. C. 1883, Order LXV., rr. 8, 27, sub-r. 29; Appx. N, Nos. 59, 60.

Where numerous actions were brought by different plts. against one deft. in respect of the same subject-matter, and the deft.'s solicitor had entered appearance in all the actions at one and the same time:—

Held, that he was entitled on taxation to the full fee allowed by the rules in each action, and that the taxing Master had no jurisdiction under Order LXV., r. 27, sub-r. 29, to reduce the fee in respect of all the appearances subsequent to the first. *PRICE v. CLINTON* - Joyce J. [1906] W. N. 159; [1906] 2 Ch. 487

— Overseer—Solicitor—Exemption—Appeal to quarter sessions—Costs—Writ of privilege.

See POOR LAW. 15.

— Parliament—Registration—Nomination of clerk to county council as respondent.

See PARLIAMENT. 20.

43. — Parties attending—Discretion of taxing Master—Guardian ad litem—Practice—Taxation—R. S. C., Order LXV., r. 27, sub-r. 27.

Originating summons for the determination of questions arising under the will of the testator, A. L. Salmond. The plt. was an executor of the will, and the first deft., W., was his co-executor. The other two defts. were children of the testator, and one of them, B. S., was an infant, and Sir W. Salmond was appointed her guardian ad litem. The plt. and the guardian ad litem were represented by B. B. & Co. as their solicitors; the other defts. were represented by H. S. & Co. as their solicitors. On July 7, 1905, an order was made in the action directing (inter alia) the costs of the plt. and of the defts. to be taxed and paid out of the testator's residuary estate. On July 28 the said solicitors for the plt. and defts. received a notice from the taxing Master to lodge their bills of costs for taxation by Aug. 4. R. B. & Co., as solicitors for the plt. and the guardian ad litem, lodged their bills of costs in due course. H. S. & Co. obtained an extension of time until Oct. 24 for lodging their bills of costs, as solicitors for the other defts., on the ground that they were under a press of business. Meanwhile on Sept. 13 the infant deft. came of age, and thereupon retained

COSTS—*continued.*

H. S. & Co. to act as her solicitors in the proceedings, and on Oct. 14 notice of the change of solicitors was served on R. B. & Co., and the same day the name of Sir W. Salmond as guardian ad litem was struck off the record. In Nov. the bills of costs came before the taxing Master for taxation, and he directed that the late guardian ad litem should attend by his solicitors (R. B. & Co.) on the taxation of H. S. & Co.'s bills of costs. The defts. objected that, as the guardian ad litem was no longer a party to the action and had no interest in the estate, the taxing Master had no jurisdiction to direct him to attend the taxation of H. S. & Co.'s bills of costs. The taxing Master overruled the objection. The defts. now moved for an order that Sir W. Salmond and his solicitors might be "directed not further to attend on the taxation of defts.' costs."

Farwell J. : This is a novel application, and has no substance in it. Order LXV., r. 27, sub-r. 27, provides that the taxing officer shall have authority to arrange and direct what parties are to attend before him on the taxation of costs to be borne by a fund or estate; and in *Stahlschmidt v. Lett*, (1861) 9 W. R. 830, Stuart V.-C. said : "The taxing Master is an officer of this Court to whom the Court intrusts judicial or quasi-judicial functions, and it is of the greatest importance to the due exercise of those functions that this Court should not lightly interfere with the discretion of the Master." In the present case the taxing Master, in the exercise of his discretion, thinks it desirable to have the assistance of the late guardian ad litem, who knows all the facts, on the taxation of the defts.' costs, and has directed him to attend by his solicitors. Under the circumstances I see no grounds whatever for interfering with his discretion or the direction that he has given. The motion must be dismissed with costs. *In re SALMOND; RYDON v. WILLIAMS* - - Farwell J. [1906] W. N. 6

--- Partner appointed receiver — Receiver's remuneration.

See PARTNERSHIP. 21.

--- Partition action—Practice.

See under PARTITION.

44. — "Partly interested"—Practice—Costs—Taxation—Creditor in administration action—*Solicitors Act*, 1843 (6 & 7 Vict. c. 73), s. 39.

A creditor who has obtained judgment for the administration of the estate of a deceased testator is "a party interested" within the meaning of s. 39 of the *Solicitors Act*, 1843, and is therefore entitled to an order for delivery and taxation of bills of costs which have been paid by the testator's executor.

In re Leadbitter, (1878) 10 Ch. D. 388, explained. *In re JONES & EVERETT*

Buckley J. [1904] 2 Ch. 363

45. — Payment into Court—Recovery of less amount—Costs up to payment into Court—Payment out of amount recovered—Practice—*R. S. C.*, Order XXII., r. 6 (c).

Action brought to recover damages for breach of contract, and defts. paid money into Court with a denial of liability. The case went to an arbitrator, who awarded to the plt. a sum less

COSTS—*continued.*

than that paid into Court. The costs were to abide the event. Upon application to enter judgment, a Master made the following order :— "It is ordered that judgment be entered for the defts. in pursuance of the award, and that it be adjudged that the defts. recover against the plt. their costs of the action, reference and award, to be taxed, and that the plt. recover his costs of the issues decided in his favour by the said award, to be taxed; such costs to be set off against the defts.' said costs; and that the money in Court do remain in Court until further order."

The Court allowed the appeal, holding that :— If a deft. in an action for unliquidated damages denies liability, but pays money into Court, and the plt. proceeds with the action and recovers from the deft. an amount which carries costs, but is less than the sum paid into Court, he is entitled to the whole costs of the action down to payment in, and the subsequent costs of issues on which he succeeds; and, further, that the making of an order under Order XXII., r. 6 (c), for payment out of money paid into Court by a deft., with or without a denial of liability, is discretionary, but that the presumption is that the amount recovered by the plt. should be paid out to him, and that it lies on the deft. to rebut that presumption. The order was varied accordingly. *POWELL v. VICKERS, SONS AND MAXIM, LD.* C. A. [1906] W. N. 207; [1907] 1 K. B. 71

46. — Payment into court of a lump sum with denial of liability as to part of claim and admission of liability as to part—Cost of issues found for plaintiff—Issue not going to the whole cause of action—*R. S. C.*, Order XXXVII., rr. 1, 6.

In an action for wrongful dismissal the plt. claimed, amongst other things, three months' full pay and nine months' half pay. The defts. admitted liability for three months' full pay and six months' half pay, and whilst denying any further liability paid a sum of money into court. At the trial the plt. obtained a verdict and judgment for a sum in excess of the sum paid into court. Upon an application by the defts. for judgment or a new trial, the Court held that the plt. was entitled to less than the sum paid into court and gave judgment for the defts., but they decided the issue of six months' or nine months' half pay in favour of the plt. :—

Held, on the principle of *Wagstaffe v. Bentley*, [1902] 1 K. B. 124, that the defts., while entitled to the general costs of the action, must pay the costs of the issue on which they had failed, although it was not an issue going to the whole cause of action.

Semble, per Cur. : Under Order XXII. payment into court of a lump sum with a denial of liability as to part of the claim and an admission of liability as to part cannot be pleaded as a defence to an action. *HUBBACK v. BRITISH NORTH BORNEO CO.* C. A. [1904] W. N. 105; [1904] 2 K. B. 473

--- Payment into Court with denial of liability—Discretion of judge.

See COUNTY COURT—Costs. 1, 2.

COSTS—continued.

47. — Payment into Court with denial of liability — Practice — Recovery of less than amount paid in—Costs of issues found for plaintiff —R. S. C., Order XXII., rr. 1, 6.

In an action to recover damages for injuries arising from the negligence of the defts., they denied the negligence and paid a sum of money into Court with a denial of liability. The plts. did not accept the money paid into Court in satisfaction of their claim, and the action went to trial and resulted in a verdict for a less amount. The judge who tried the case ordered judgment to be entered for the defts. with the general costs of the action, and that the plts. should have the costs of the issues found in their favour :—

Held, that the questions, raised by the pleadings, whether the defts. had been guilty of negligence, and if so, whether the money paid into court was sufficient, were distinct issues, and that the plts. were entitled to their costs on the issue of negligence on which they had succeeded. *WAGSTAFFE v. BENTLEY*

C. A. [1901] W. N. 212; [1902] 1 K. B. 124

Note.—Referred to by Div. Ct., *Dunn v. South-Eastern & Chatham Ry. Co.*, [1903] 1 K. B. 358, 360. See *County Court—Jurisdiction*. 6.

Principle of, applied by C. A., *Hubback v. British North Borneo Co.*, [1904] 2 K. B. 473. See No. 46, above.

48. — Payment out of court—Original and accrued shares—Set of costs for each original share—Practice.

Petition for payment out of fund in Court representing residuary estate of A. B.

A. B., by her will made in 1861, gave her residuary estate to trustees upon certain trusts during J. B.'s lifetime, and after her death, which happened in 1905, as to one moiety for the petitioners absolutely, and as to the other moiety in trust equally for C. J. B., the respondent. A. N., and J. F. A. B., with an accruer clause to the others of them of the share of any of them dying under twenty-one.

C. J. B. and A. N. attained twenty-one, but J. F. A. B. died under twenty-one, and his one-sixth share accrued in moieties to C. J. B. and A. N., thus making each of their shares in the whole fund a one-fourth share.

Held, that a set of costs should be allowed in respect of J. F. A. B.'s original one-sixth, thus allowing four sets of costs out of the fund. *BRETT v. BRETT* **Kekewich J. [1906] W. N. 78**

— Probate—Practice.

See under **PROBATE—Costs.**

49. — Procedure under Order XIV.—Judgment for 20l. and upwards but less than 50l.—Reference of action to Master—Discretion to give costs on High Court scale—Order XIV., r. 7.—County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 116.

Upon an application for judgment under Order XIV. the action was referred to a Master under rule 7, and in the result he made an order after the expiration of twenty-one days from service of the writ, that the plt. be at liberty to sign final judgment for a sum exceeding 20l. but less than 50l., with costs of the action, which

COSTS—continued.

he fixed at a specific sum, and with the costs of the reference and award to be taxed on the High Court scale, and he certified that the action was fit to be brought in the High Court. On an appeal from this order to the judge at chambers :—

Held, that, as there had been no order extending the time—twenty-one days from the service of the writ—within which by the proviso to s. 116 of the County Courts Act, 1888, a plt. who obtains judgment under Order XIV. for upwards of 20l. is entitled to costs on the High Court scale, the plt. was only entitled to costs of the action on the county court scale; but that, with respect to costs of the reference and award, the Master must be deemed to be an arbitrator with the same power as an ordinary arbitrator has of awarding and certifying for costs, and therefore that his order in this respect was right.

Per Phillimore J. : The power to extend the time given by the proviso to s. 116 of the County Courts Act, 1888, is given only to a judge of the High Court. *HAYCOCKS, LD. v. MULHOLLAND* **Phillimore J. [1904] 1 K. B. 145**

50. — Public authority—Action against—Several issues—Payment into court as to one issue—Denial of liability—Action “proceeded with”—Acceptance of payment—Discontinuance—Apportionment—Solicitor and client costs—Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61), s. 1 (c)—R. S. C., 1883, Order XXII., rr. 6, 7; Order XXVI., r. 1.

Plt. sued a public authority for damages on several issues. Defts. paid money into court in respect of one issue, with a denial of liability. Plt. “proceeded with” the action, but ultimately accepted the sum paid into court in satisfaction of all the issues :—

Held—

(1) Defts. must pay plt. her costs of the issue in respect of which the money was paid in, up to the date of that payment, and plt. must pay defts. their costs of the discontinued issues up to that date, and all their subsequent costs.

M’Ilwraith v. Green, (1884) 14 Q. B. D. 766, applied.

(2) Defts. were not entitled to solicitor and client costs from the date of the payment in, as s. 1 (c) of the Public Authorities Protection Act, 1893, is confined to cases in which the action is “proceeded with” to judgment, and does not apply to a discontinuance under Order XXVI., r. 1, where money is paid into court under Order XXII. with denial of liability and not in satisfaction. *SMITH v. NORTHLEACH RURAL DISTRICT COUNCIL* **Farwell J. [1901] W. N. 215; [1902] 1 Ch. 197**

— Public authorities protection.

See under **LOCAL GOVERNMENT.**

— Public authorities protection—“Solicitor and client.”

See **CORPORATION**. 16.

— Public Authorities Protection Act—Act done in “intended” execution of public duty.

See **SHIPPING—Costs**. 1.

COSTS—continued.

— Public authority, Action against—Taxation.

See COUNTY COURT—Costs. 7.

— Railway—Reservation of minerals—Conveyance of surface.

See LANDS CLAUSES ACTS. 35.

— Railway company.

See under RAILWAY.

— Receiver—Indemnity—Charges of personal fraud—Costs of defending action.

See RECEIVER. 4.

51. — *Refresher fees—Discretion of taxing Master—Party and party costs—R. S. C., Order LXV., r. 8; r. 27, sub-rr. 29, 48.*

Under rule 10 of Jan., 1902, of Order LXV. (which is the new sub-rule 29 of rule 27 of the same Order) the discretion of the taxing Master to allow refresher fees is no longer limited, in taxations as between party and party, to the maximum fees prescribed by Order LXV., r. 27, sub-r. 48; and he may allow such fees as shall appear to him to be necessary or proper for the attainment of justice or for defending the rights of any party. *CAVENDISH v. STRUTT*

Buckley J. [1904] 1 Ch. 524.

— Refreshers—Counsel's fees—Costs—Taxation.

See Nos. 23—30, above.

— Repairs—Sanitary works, Costs of—Capital or income.

See SETTLED LAND—Capital Moneys.

52. — *Revenue cases—Special case—Costs before case put on file—Practice—Taxation—Taxes Management Act, 1880 (43 & 44 Vict. c. 19), s. 59—Order LXV., r. 27, regulation 29—Order LXVIII., r. 2.*

Order LXV., r. 27, regulation 29, is applicable to the costs of settling a special case for the opinion of the Court, in an appeal on the Revenue side of the K. B. Div. incurred before the filing of the case. *MANCHESTER CORPORATION v. SUGDEN. GRESHAM LIFE ASSURANCE SOCIETY v. BISHOP*

C. A. [1903] 2 K. B. 171

— Revenue, Information under Acts relating to summary proceedings.

See CROWN. 8.

— Revising barrister.

See under PARLIAMENT.

— Rule against justices—Refusal to do act relating to duties of office—Practice—Application by counsel.

See JUTSICES. 21.

— Salvage—Appeal—Reduction of award.

See SHIPPING—Salvage. 12.

— Security for costs—Action by trustee for wife under separation deed.

See TRUSTEE—Costs. 2.

— Security for costs.

See under COMPANY—WINDING-UP—Costs.

— Security for costs—Appeal in forma pauperis.

See APPEAL. 13.

53. — *Security for costs—Appeal to King's Bench Division from official referee—Inherent jurisdiction of High Court.*

COSTS—continued.

On an appeal from an official referee the K. B. Div. has an inherent jurisdiction to order the appellant to give security for costs. *J. H. BILLINGTON, LD. v. BILLINGTON - Div. Ct. [1907] W. N. 95; [1907] 2 K. B. 106*

53a. — *Security for costs—Bond of foreign company—Practice.*

There is no general rule to the effect that the bond of a foreign co. will never be regarded as a sufficient security for costs. *ALDRICH v. BRITISH GRIFFIN CHILLED IRON AND STEEL CO.*

C. A. [1904] W. N. 177; [1904] 2 K. B. 850

54. — *Security for costs—Insolvent company—Prosecution of company's appeal by receiver in debenture-holders' action—Security for costs of appeal—Reversal of judgment and order for payment out of security to receiver—Appeal to the House of Lords—Reversal of judgment of Court of Appeal—Repayment of security.*

In June, 1898, H. & Co. obtained an order in the C. A. against the Cycle Corporation for security for the costs of the appeal, and 100*l.* was paid into Court by the receiver as security, he having obtained leave in the debenture-holders' action to give security. Shortly afterwards H. & Co. applied to the C. A. that the receiver or the plts. in the debenture-holders' action might be added as parties. The C. A. refused this application, but ordered the security for costs to be increased by 100*l.*, and this sum was paid into Court by the receiver, making 200*l.* in all.

The appeal was heard in July, 1899, and was allowed with costs, and the 200*l.* paid into Court as security was ordered to be paid out to the receiver. H. & Co. appealed to the House of Lords, when the judgment of the C. A. was reversed and the judgment of Phillimore J. restored, and the Cycle Corporation were ordered to pay the costs of the proceedings in the C. A. and in the House of Lords.

H. & Co., who held debentures in the Cycle Corporation and had liberty to attend the proceedings, took out a summons in this action asking that the receiver might be ordered to pay the costs recoverable by them under the order of the House of Lords, or in the alternative to pay to them the 200*l.* paid out to him under the order of the C. A.

The Court dismissed the appeal and held (1.) that the Court had no jurisdiction to make the order; (2.) that assuming the Court had jurisdiction, it was doubtful whether the Court ought to exercise it. *In re JOHN GRIFFITHS CYCLE CORPORATION, LD. DUNLOP PNEUMATIC TYRE CO. v. JOHN GRIFFITHS CYCLE CORPORATION, LD.*

C. A. [1902] W. N. 9

55. — *Security for costs—Insolvent plaintiff—Practice—Trustee of deed of assignment.*

The trustees of a deed of assignment of the property of another, upon trust for the creditors of the assignor, is not, if shewn to be insolvent, exempt from liability to give security for the costs of an action brought to carry out the trusts of the deed. *GREENER (AS TRUSTEE OF HARRIS GOLDBERG) v. E. KAHN & CO.*

C. A. [1906] W. N. 157; [1906] 2 K. B. 374

COSTS—continued.

Note.

This case was discussed by C. A., *White v. Butt*, [1909] 1 K. B. 50.

56. — Security for costs—Judgment directing accounts and inquiries—Application for security after judgment—Jurisdiction—Form of application—Summons for directions—Practice—R. S. C., Order XXX., rr. 2, 5—Order LXV., r. 6.

Where by the judgment in an action some further proceedings are directed to be taken before the judge in chambers or an official referee, the Court has jurisdiction in a proper case to entertain an application for security for costs made after judgment, but the application must be made by summons and not by notice under the summons for directions, inasmuch as the summons for directions is limited to interlocutory applications before judgment. *BROWN v. HAIG* **Kekewich J.**

[1905] W. N. 120; [1905] 2 Ch. 379

57. — Security for costs—Practice—Application for new trial.

An order may be made for security for the costs of an application for a new trial.

Rule in *Heckscher v. Crosley*, [1891] 1 Q. B. 224, no longer to be followed. *WIGHTWICK v. POPE* **C. A.** [1902] W. N. 113; [1902] 2 K. B. 99

58. — Security for costs—Practice—Form of order—Bond to be given to "satisfaction of judge in chambers."

In orders for security for the costs of appeals from the K. B. Div., it is the practice to direct that the security be approved by the judge in chambers. This will be the practice in future with regard to appeals from the Ch. Div. *HOPE v. HOPE* **C. A.** [1902] W. N. 4, 23

59. — Security for costs—Practice—Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37)—Appeal from county court.

An appeal against a decision of a county court judge upon an application for compensation under the Workmen's Compensation Act, 1897, is not in the nature of a motion for a new trial, and the appellant can be ordered to give security for the costs of the appeal. *In re HARWOOD AND ABRAHAM* **C. A.** [1901] W. N. 118; [1901] 2 K. B. 304

— Security for costs—Practice as to—Appeal from Victoria.

See *TRAMWAY*. 14.

60. — Security for costs—Undertaking by solicitor to refund—Practice—Appeal.

The pits.' actions to restrain alleged passing off of their goods by the defts. had been dismissed by Warrington J. with costs. An appeal from this judgment had also been dismissed with costs. The pits. proposed to appeal to the H. L., and now applied for a stay of execution pending this appeal unless the defts.' solicitors gave an undertaking to return the costs received or to be received by them to the pits., in the event of their appeal to the H. L. being successful. No evidence of special circumstances was filed in support of this application. The defts.' solicitors declined to give any undertaking.

COSTS—continued.

The C. A. said they would consult the members of Appeal Court No. 1 after the adjournment.

The C. A. said: We have consulted the other members of the Appeal Court, and the general opinion appears to be, that there is no general rule as to giving or not giving an undertaking to refund in these cases, but that each case depends on its own special circumstances. We think, however, that as the practice does not seem to be as well known as it ought to be, an opportunity should be given to the present applicants of bringing before us the special circumstances which led to their asking for this form of order. The application, will, therefore, stand over for this purpose.

The plts. not appearing, the Court made no order on the application, except that the plts. should pay the costs thereof. *SCHWEPPS, LD. v. GIBBENS. SAME v. W. BISCOMBE & SONS*

C. A. [1904] W. N. 208

Note.—See Richaby v. Richaby, C. A. [1901] P. 134. *Divorce—Costs.* 14.

— Security for costs of appeal—Mayor's Court.

See *LONDON—Mayor's Court.* 1.

61. — Separate issues—Issue on which defendant succeeds—No order affecting costs of issue—Form of judgment—"Event"—Practice—Trial with jury—R. S. C., Order LXV., r. 1.

In an action tried with a jury where there are separate issues, and the plt. obtains a verdict and judgment, but the deft. is successful as to one of the issues, if the judge makes no order with regard to that issue interfering with the incidence of costs under Order LXV., r. 1, the deft. is entitled to have the judgment drawn up so as to give him the costs of the issue on which he succeeds. *HOYES v. TATE* **C. A.** [1907] W. N. 35; [1907] 1 K. B. 656

62. — Set-off of judgments—Judgments for costs in independent litigations—Judgments for costs for and against party in different capacities—Order LXV., r. 14; r. 27, sub-r. 21.

The provisions of Order LXV., r. 14, and Order LXV., r. 27, sub-r. 21, with regard to set-off of costs between parties are confined to cases in which the judgments for costs sought to be set off against each other are in the same action or proceeding, and do not extend to cases in which the judgments for costs are in distinct and independent litigations.

Barker v. Hemming, (1880) 5 Q. B. D. 609, and *Hassell v. Stanley*, [1896] 1 Ch. 607, followed. *DAVID v. REES* **C. A.** [1904] 2 K. B. 435

Note.

Followed by *Parker J., Bahe v. French*, [1907] 1 Ch. 428. *Mortgage—Foreclosure.* 4.

— Settled estates and settled land.

See under *SETTLED LAND*.

— Settled land.

See under *SETTLED LAND—Costs*.

— Sewers.

See under *SEWERS*.

— *Shelley's Case*, Rule in—Costs—Practice—Adjourned summonses—Uniformity.

See *WILL—Shelley's Case.* 3.

COSTS—continued.

— Sheriffs.

See under SHERIFF.

— Shipping—Costs.

See under SHIPPING.

— Shorthand notes notes of judgment.

*See FIXTURES. 9.***63. — Shorthand notes—Transcript—Taxing Master — Discretion — Practice — Taxation of costs.**

Motion made on behalf of certain beneficiaries, defts. in the action relating to the estate of D. N. de Nicols, asking that notwithstanding the provisions of an order the taxing Master might be directed, in taxing the costs under that order, to allow, in the costs of the applicants, the costs of the shorthand writer's notes of certain proceedings in the action and of a transcript thereof, and in the costs of the trustees of the testator's will, the costs of a copy of a transcript thereof.

The matter was brought before the Court on Aug. 10, 1906, on an ex parte application, but it was ordered to be argued in Court. On the same day Kekewich J. wrote a letter to the senior taxing Master, referring to this action and asking for a certificate as to the practice of the Taxing Office as regarded shorthand notes and transcripts in cases where no express directions had been given in the order directing taxation; and if it was the general rule not to allow any such costs, he should wish to be informed what special circumstances were regarded as sufficient to justify a departure from that rule. In compliance with this request, a meeting of the taxing Masters was held on Oct. 25, 1906, and the following reply sent by Mr. W. F. Baker:—

"Shorthand notes are an 'unusual expense' (*Re Blyth*, 10 Q. B. D. 207; *White v. Bolckow, Vaughan & Co.*, 25 L. J. N. C. 125), and would as a general rule be disallowed even on a solicitor and client taxation against a fund or estate, which we gather is the form of taxation in *De Nicols v. Curlier*; but the taxing Masters consider that on such a taxation they have a discretion on the subject in exceptional cases (see *Re Nation, Nation v. Hamilton*, 57 L. T. 648). The discretion to allow the costs of shorthand notes is exercised very sparingly.

"It is difficult to define special circumstances which would influence a taxing Master to allow such costs, but the amount of the estate, the interest of the party who incurs the costs, and the nature of the proceedings are taken into consideration. If there is a substantial estate and complicated questions were dealt with by the judge, rendering it prudent to have a precise record of the judge's decision or directions, then probably the Masters would allow the costs of a shorthand note. If the judge has made an order dealing with shorthand notes in the case, or a part of them, the taxing Master would not go beyond the order."

Kekewich J., after reading the reply of the taxing Master, said that it was a valuable certificate, and seemed to him to be perfectly sound. With regard to the costs reserved in Jan., 1904, he directed that they should be taxed and paid

COSTS—continued.

as ordered by the order of April 4, 1905, such costs to include the costs of the applicants in taking a shorthand note, and of a transcript thereof, and in the costs of the trustees of the will and of the plts. the costs of a copy of such transcript, and as to the costs of any other notes and transcripts he left them to be dealt with by the taxing Master in his discretion on the lines of the letter of Oct. 25, 1906. The same order was made as to the costs of the present application as on April 4, 1905. *In re DE NICOLS. DE NICOLS v. CURLIER* **Kekewich J. [1906] W. N. 192**

64. — Shorthand writer's notes, Transcript of —Practice—Party and party costs—R. S. C., 1883, Order LXV., r. 27 (9).

On June 27, 28, 29, 30, and July 5, 12, 17, 1900, an action of damage by collision was tried before the President, assisted by two of the Elder Brethren of the Trinity House, and resulted in the *Turret Court*, owned by the defts., being found alone to blame. Experts were called on both sides of the question of the cause of the failure of the steam steering gear of the defts.' vessel to act at the critical moment, and, to enable counsel to comment on this evidence, which was of a scientific and technical character, a transcript of a portion of the official shorthand writer's notes was procured by the plts.' solicitors. On taxation as between party and party, the costs of this transcript were disallowed.

The Court affirmed the decision of the taxing Master on the ground that the rule laid down in *Earl de la Warr v. Miles*, (1881) 19 Ch. D. 80, is applicable in all Divisions of the High Court, including Admiralty, namely that the costs of shorthand writers' notes of evidence will not be allowed on taxation unless a direction to that effect has been inserted in the order, for which special application must be made at the hearing. **THE "TURRET COURT"**

Jeune P. [1901] W. N. 62

— Stamp duty—"Receipt"—Counsel's brief—Statement of fees.

*See REVENUE—Stamps. 24.***65. — Summons for directions—Application for further directions — Taxation of costs — R. S. C., 1883, Order XXX., r. 5; App. N, item 51.**

The proper fees to be allowed on an ordinary application for further directions subsequent to a summons for directions are 1s. 6d. for the notice of application, 1s. for the copy for chambers, and 2s. 6d. for the copy and service on the other side, making a total of 5s.

The notice fee is covered by R. S. C., 1883, App. N, item 51, which allows 1s. 6d. "for preparing any necessary or proper notice, not otherwise provided for," although Order XXX., r. 5, under which these applications are now made by a notice instead of a summons, was not in force when App. N was prepared. **MACGUABE v. MILLIGAN Swinfen Eady J.**

[1902] W. N. 209; [1903] 1 Ch. 145**66. — Summons to review—Assessment of lump sum in lieu of taxation—No objections carried in —Duty of taxing officer—R. S. C., 1883, Order LXV., r. 27, sub-rr. 38a, 39—41.**

COSTS—continued.

The discretion given to taxing officers by sub-rule 38a of rule 27 of Order LXV., to assess a lump sum for costs in lieu of taxation, is a very delicate one, to be exercised judicially and only when special circumstances justify that course, and then only on evidence. And if a taxing officer proceeds under the sub-rule, it is his duty to state in his certificate that he has assessed under the sub-rule, and to give his reasons for doing so.

A taxing officer stated in his certificate that he had taxed a bill of costs at a certain figure, but he had in fact proceeded under the sub-rule and had assessed a lump sum for costs in lieu of taxation. On summons to review without carrying in objections.

Held, that the taxing officer had proceeded on a wrong principle, and that the bill of costs must go back for taxation. *In re JOHNSTON. MILLS v. JOHNSTON* Farwell J. [1903] W. N. 193; [1904] 1 Ch. 132

67. —Taxation—Co-defendants—Judgment against one defendant—Liability of one defendant for all plaintiffs' costs.

In an action against two defts. to restrain an infringement of copyright, the plts. obtained an injunction with costs against one deft., G., but failed to obtain any order against the other deft., to whom, however, no costs were given. By the order as drawn up the deft. G. was directed to pay to the plts. "their costs of this action"; the taxing Master allowed the plts. all the costs of the action, including those incurred against the second deft.; the deft. G. objected that in this way he was unfairly made to pay the costs of the plts.' unsuccessful attempt to fix his co-deft. with liability. The taxing Master overruled this objection, on the ground that the order did not direct him to make any deduction on account of the joinder of the second deft.

On a summons to review :—

Held, that the order was clear, that the taxing Master's view was correct, and that the deft. G. must pay all the plts.' costs of the action. *KELLY'S DIRECTORIES, LD. v. GAVIN AND LLOYDS* Byrne J. [1901] W. N. 166; [1901] 2 Ch. 763

Note.

Kelly's Directories, Ltd. v. Gavin and Lloyds, as to copyright in books, see C. A. [1902] 1 Ch. 631; *Copyright—Books*,

68. —Taxation—Common order—Extension of time—Jurisdiction of taxing Master—Practice—Solicitor and client—R. S. C., 1883, Order LXV., r. 27, sub-r. 57.

The common form of order for taxation of a bill of costs, when the order is made upon the application of the client after the expiration of one month but before the expiration of twelve months from the delivery of the bill, provides that the taxing Master "is to make his certificate in a month (unless the said Master shall extend the time to enable him to make his certificate), or this order is to be of no effect."

By Order LXV., r. 27, sub-r. 57, where a time is appointed for any proceeding before the taxing Master, unless the Court or judge shall otherwise direct, the taxing Master is empowered to extend

COSTS—continued.

the time, even though the application for extension is made after the appointed time :—

Held, upon the construction of the order for taxation read in conjunction with sub-rule 57, that the taxing Master had power to grant an extension of the time after the expiration of the month appointed by the order for the making of his certificate.

Decision of Byrne J. sub nom. *In re Mackintosh & Dixon, Solicitors*, [1903] W. N. 95, reversed.

Per the Court of Appeal: The power of the taxing Master to extend the time under an order in this form ought not to be exercised as of course or freely. *In re MACKINTOSH AND THOMAS* C. A. [1903] W. N. 117; [1903] 2 Ch. 394

69. —Taxation—Drawing bills of costs—Company—Winding-up—Practice—Companies Winding-up Rules, April, 1892, r. 17.

The costs of drawing bills of costs are allowed where there is litigation, or where there is a quasi-litigation (e.g., an application for payment out of a fund or to determine the construction of a will), but are never allowed where the order is to tax a bill already delivered, or the order is one as between the solicitor and his own client for delivery of a bill and its taxation.

The rule is applicable in the case of the costs of a liquidator in a voluntary winding-up. *In re NATIONAL BANK OF WALES* - Buckley J. [1902] 2 Ch. 412

70. —Taxation—Guardian ad litem—Official solicitor—Solicitor and client or party and party taxation—Infant—R. S. C., Order LXV., r. 13.

An action for a tort having been brought against an infant, no appearance was entered for him, and on the plt's. application the official solicitor was assigned guardian ad litem to the deft., and he delivered a defence on behalf of the deft. At the trial the issues were found by the jury in favour of the plt. with 450*l.* damages, and judgment was entered for him accordingly; and it was ordered that the plt. should pay the costs of the official solicitor, as guardian ad litem of the deft., to be taxed by the Master :—

Held, that there being in the order no special direction to the contrary, rule 13 of Order LXV. did not apply, and the costs must be taxed as between party and party.

Decision of Grantham J. reversed. *EADY v. ELSDON* - C. A. [1901] W. N. 103; [1901] 2 K. B. 460

71. —Taxation—Order for payment of costs to successful party except so far as increased by certain issues—Affidavit relating both to general and to accepted issues—Practice.

The Court held that the case of *Brown v. Houston*, [1901] 2 K. B. 855, did not apply, because that was a common law action and the order in no way separated the issues, whereas in this case the learned judge had distinctly separated the issues. The Court was of opinion that the common law rule with regard to the evidence of witnesses and the non-splitting of issues in a case where the successful litigant had called a witness who gave hardly any evidence upon the point upon which he had succeeded, and the

COSTS—continued.

bulk of his evidence upon the point upon which he had failed, worked injustice; but it was an injustice which could always be corrected by the judge at the trial making a special order dealing with the costs of the issues and the evidence of witnesses. *In re WRIGHT, CROSSLEY & Co.* C. A. [1902] W. N. 54

72. — *Taxation—Order to tax costs and to include therein remuneration of receiver—Separate certificate as to costs only—R. S. C., Order LXV., r. 27, sub-r. 25.*

Under an order directing the taxing Master to tax the plts.' costs of an action, including the remuneration of the receivers and managers appointed in the action, and to certify the balance after deducting certain costs of the defts., the taxing Master has no power to make a separate certificate for the costs alone.

Decision of Byrne J., [1901] W. N. 158, affirmed. *SILKSTONE and HAIGH MOOR COAL Co. v. EDEY* C. A. [1901] W. N. 170; [1901] 2 Ch. 652

— Solicitor's costs.

See under SOLICITOR—Costs.

73. — *Third parties—Indemnity by—Appeal—Costs as between solicitor and client.*

The plt. recovered judgment against the defts. for damages and costs in an action for injuries sustained by reason of the negligence of the defts.' sub-contractors, who were brought in as third parties, and who had undertaken to be answerable for all accidents and damages that might occur during the progress of the work, and to indemnify and bear the defts. harmless therefrom. The defts. appealed, but the third parties, who received notice of the appeal, did not give any sanction or co-operation to the appeal, which was dismissed with costs:—

Held, that the third parties were not compelled by the indemnity to pay to the defts. the costs of the appeal.

In the absence of special circumstances, a person indemnifying another against the costs of an action must pay them as between party and party, and is not bound to pay them as between solicitor and client. *MAXWELL v. BRITISH THOMSON HOUSTON CO. BLACKWELL & Co., THIRD PARTIES.*

Kennedy J. [1904] 2 K. B. 342

— Third party—Taxation.

See SOLICITOR—Costs.

74. — *Third party order—Form of order—Prefatory words—Practice—Taxation of costs.*

R. & J. H. Ltd., being liable as third parties in respect of a bill of costs delivered by Messrs. P. & V., solicitors to their client W. H., obtained on petition of course an order for taxation under s. 38 of the Solicitors Act, 1843 (6 & 7 Vict. c. 73). The order stated that "it was alleged that the said solicitors were employed by W. H., &c., as his solicitors on or about certain transactions between the said W. H." and other persons named, "and the subsequent issue of debentures by the petitioners in satisfaction of various claims by the parties interested." The order contained a submission by the petitioners "to pay what shall appear to be due to the said

COSTS—continued.

solicitors on the taxation of their said bill," and was in other respects in common form. The taxing Master declined, under this form of order, to tax any items contained in the bill delivered which were not within the prefatory words. The effect of this was, as the solicitors contended, to exclude from taxation many items which were properly charged in the bill, and they accordingly moved the Court that the order might be discharged, or varied by adding a direction that all matters of business included in the bill were to be taxed thereunder:—

Held, that the allegations in the prefatory part of the order did in effect, though not in a straightforward way, allege that the petitioners were liable as third parties. The taxing Master had stated that so far as he was aware the order for the taxation of a bill was regarded as limited by the prefatory words. In this case it seemed that there was only one matter referred, namely, the taxation of the whole bill, and, as the petitioners submitted to pay the whole bill:—

Held, that the taxing Master might properly tax the whole bill, notwithstanding that some of the items therein contained were not covered by the allegations in the prefatory part of the order. There would be an expression of the opinion of the Court to that effect, and no order as to costs.

In re Gray, [1901] 1 Ch. 239, referred to. *In re PETTITT & VALENTINE*

Kekewich J. [1901] W. N. 112

— Three counsel—Counsel's fees—Costs—Taxation.

See No. 30, above.

75. — *Tort, Action founded on—Agreement for lease of house—Removal of fixtures—County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 116.*

By a written agreement the deft. agreed to grant and the plt. to take a lease of certain premises from a future date. After the agreement and before the date at which the lease was to commence, the deft. removed certain fixtures from the premises. The lease was executed and the deft. went into possession. He then discovered that the fixtures had been removed, and brought an action in the High Court against the deft. for wrongfully removing the fixtures, and obtained judgment for 20l. On appeal from an order affirming the taxation of the costs of the plt. on the county court scale:—

Held, that the action was founded on tort within the meaning of s. 116 of the County Courts Act, 1888, and that the plt. was entitled to costs on the High Court scale. *SACHS v. HENDERSON* C. A. [1902] 1 K. B. 612

Note.

See *Edwards v. Mallam*, C. A. [1908] 1 K. B. 1002.

— Tort, Action founded on—Trespass.

See next Case.

— Trade mark.

See under TRADE MARK.

— Treasury Solicitor—Direction to appear for subject—Matter in which the Crown has an interest—Right to costs.

See SOLICITOR—Costs.

COSTS—continued.

76. — Trespass — Claim for damages and injunction—Judgment for nominal damages and injunction—“Action founded on tort” —Practice —County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 116, sub-s. 2.

An action, claiming damages for trespass to land and an injunction, was transferred under s. 69 of the County Courts Act, 1888, from the Ch. Div. of the High Court to a county court. The action resulted in a verdict for the deft., for whom judgment was entered. On appeal a Div. Ct. directed that judgment should be entered for the plt. for nominal damages and an injunction, but without costs, on the ground that the plt. had recovered less than 10% in an action founded on tort, and was disentitled, under s. 116, sub-s. 2 of the Act, to the costs of the action. On appeal :—

Held, that an action which, though nominally brought to recover damages for a tort, includes a claim for an injunction as the main part of the relief sought, is not an action founded on tort within the sub-section, and that the plt. was entitled to the costs of the action.

St. John's College, Cambridge v. Pierrepont, (1891) 61 L. J. (Q.B.) 19, overruled. **KEATS v. WOODWARD** - - - **C. A. [1902] W. N. 30 ; [1902] 1 K. B. 532**

See preceding Case.

Note.

This case was referred to by **C. A., Du Pasquier v. Cadbury, Jones & Co.**, [1903] 1 K. B. 104, 108, 109.

— Trustee—Neglect to account—Costs.

See under TRUSTEE—Accounts.

— Trustee honestly defending settlement.

See FRAUDULENT CONVEYANCE. 2.

— Trustees generally.

See under TRUSTEE.

77. — Two defendants jointly represented — Judgment for one defendant and against the other — Plaintiff liable to pay half the costs of the defence—Practice.

Where two defts. are jointly represented by the same solicitor, and judgment with costs is given in favour of one deft. and against the other, the successful deft. is, in the absence of any agreement between him and his co-deft. as to how their costs are to be borne inter se, entitled to recover from the plt. half the costs of the defence. **BEAUMONT v. SENIOR AND BULL**

Div. Ct. [1903] 1 K. B. 282

78. — Unnecessary defendants—Weekly tenants — Disallowance of costs as unnecessary incurred — Practice—Action for recovery of land—Landlord and tenant—Forfeiture for breach of covenant—R.S.C., Order LXV., r. 27, sub-r. 20.

The owner of the reversions upon four leases, each comprising a number of houses, brought four actions for the recovery of the houses respectively comprised in each lease, on the ground of forfeiture for breach of covenants to repair contained in the leases. He made defts. in the actions a very large number of persons who respectively occupied the houses as weekly tenants to one H., to whom the leases had been assigned. H. obtained leave to appear and

COSTS—continued.

defend the actions; and, subsequently having put the houses into a state of repair, he made application in each action for relief against the forfeiture. An order for such relief was made by consent in each action on condition of his paying the plt.'s costs of the action as between solicitor and client. On taxation of the plt.'s costs, the Master allowed in each action (inter alia) items in respect of copies of the writ for service, and service thereof on each of the weekly tenants. On application for a review of taxation, the Court being of opinion that, under the circumstances, the real object of the actions, namely, to compel the execution of the repairs, might have been attained by one action against H. as sole deft. :—

Held, that the above-mentioned items having been unnecessarily incurred, they must be disallowed under Order LXV., r. 27, sub-r. 20, but that H. having consented to an order for relief in each action being made on condition of his paying the plt.'s costs of the action, the Court could not order that the plt. should only have the costs of one action. **GEEN v. HERRING**

C. A. [1904] W. N. 202 ; [1905] 1 K. B. 152 — Vendor and purchaser.

See under VENDOR AND PURCHASER—Costs.

— Way—Public right of—Removal of obstruction by private individual—Costs.

See WAY, RIGHT OF. 8.

— Where Crown litigant.

See REVENUE—Income Tax. 2.

— Will—Costs.

See under ADMINISTRATION.

PROBATE—Costs.
WILL.

79. — Witness—Examination before examiner —Depositions not used at the trial—“Costs in the action” —Allowing costs of unused depositions or proceedings—Taxing Master—Discretion—Practice—R. S. C., 1883, Order LXV., r. 27 (29).

In the taxation of the costs of an action in which the examination of a witness under the common order before trial has not been used at the trial for some reason, such as the attendance of the witness at the trial or the taking of a judgment by consent, the costs of the examination should not be disallowed under Order LXV., r. 27 (29), merely on the ground that the use of the examination had become unnecessary. The true test in exercising the discretion given to the taxing Master by the rule is whether the costs of the examination were “necessary or proper for the attainment of justice” under the circumstances existing at the time the examination was ordered, irrespective of the eventual state of circumstances at the trial.

There is no hard and fast rule of taxation that the costs of a proceeding should not be allowed unless it has been actually used for some purpose.

Delaroque v. S. S. Owenholme & Co., (1883) **W. N. 120**, approved.

Ridley v. Sutton, (1863) 1 H. & C. 741 ; 32 L. J. (N.S.) (Ex.) 122, disapproved. **BARTLETT v. HIGGINS** - - - **[1901] W. N. 84 ; C. A. [1901] 2 K. B. 230**

COSTS—*continued.*

80. — *Witness before trial, Examination of—Attendance of country solicitor—Taxation—Costs as between party and party—Practice—R. S. C., Jan., 1902, r. 10; Order LXV., r. 27, reg. 29; Appendix N, No. 147.*

Rule 10 of the R. S. C., Jan., 1902, applies to taxation of costs both as between party and party and as between solicitor and client.

In an action upon a charterparty a witness, whose evidence was essential to the plts.' case, was examined in London before the trial of the action. The plts.' solicitor from Liverpool attended at the examination for the purpose of instructing counsel. The plts. having succeeded in the action, upon the taxation of costs between party and party the taxing Master allowed in respect of the solicitor's attendance as aforesaid an amount exceeding two guineas, the maximum allowance for such an attendance specified in Appendix N to Order LXV., No. 147:—

Held, that the taxing Master had power to make the allowance which he made in the exercise of the discretion given to him by rule 10 of R. S. C., Jan., 1902. *McIVER & Co. v. TATE STEAMERS, Ld.* - C. A. [1902] W. N. 123; [1902] 2 K. B. 184

Note.

This case was followed by *Farwell J., In re Ermen*, [1903] 2 Ch. 156.

— *Workmen's Compensation Act.*

See under MASTER AND SERVANT.

81. — *Writ of possession—Order for costs—Jurisdiction to make order—Practice—Judicature Act, 1890 (53 & 54 Vict. c. 44), s. 5.*

The issue of a writ of possession, in pursuance of a judgment for possession of premises, is a proceeding in the Supreme Court, and the costs of and incident thereto are in the discretion of the Court or judge under s. 5 of the Judicature Act, 1890. *DARTFORD BREWERY Co. v. MOSELEY* C. A. [1906] W. N. 38; [1906] 1 K. B. 462

CO-SURETYSHIP—Mortgage debt—Mortgage insurance policy—Indemnity—Guarantee—Contribution.
See PRINCIPAL AND SURETY.

COTTAGE—Gardener's—Improvements—Reimbursement out of capital moneys.
See SETTLED LAND—Capital Moneys.

COUNCIL MEETINGS—Municipal corporation—Right of public to attend—Burgess—Newspaper reporter—Right to exclude—Injunction.
See CORPORATION. 13.

COUNCILLOR—Disqualification—Paid office under the council—Distress committee.
See LOCAL GOVERNMENT. 23.

— Disqualification for "holding" office—Bankruptcy—Remedy by quo warranto.
See CORPORATION.

— Election—Disqualification—Town councillor—Contract with council.
See CORPORATION. 9.

COUNCILS—Contracts—Water supply to adjoining district—Sanction of Local Government Board—District councils.
See LOCAL GOVERNMENT. 13.

COUNSEL. — *General Council of the Bar—Report—Re the work proper to be done by a King's Counsel with or without a Junior.*

Report—Re signing lists of fees for taxation. Reprint from W. N. 1901 (June 29), p. 227. *See CURRENT INDEX*, 1901, p. xcvi.

Report—Re the obligation imposed on counsel to accept retainers, special or general. Reprint from W. N. 1901 (July 27), p. 241. *See CURRENT INDEX*, 1901, p. xcvi.

House of Lords—Costs of more than two counsel in appeals—Practice.

The Appeal Committee resolved that, except in special cases, no costs should be allowed in taxation for more than two counsel of a side in appeals; and the appeals in the name of the Attorney-General or the Lord Advocate should be in the same position as all other appeals. H. L. Record of Business. [1909] W. N. 184.

General Council of the Bar—Re Briefs. Answers to questions on etiquette. Reprint from W. N. 1902 (May 10), p. 137. *See CURRENT INDEX*, 1902, p. lxxix.

— *Appeal—Application by respondent for leave to appear in forma pauperis—Opinion of counsel.*

See APPEAL. 14.

— *Bankruptcy—Practice—Witness represented by counsel—Right to take notes of examination.*

See BANKRUPTCY—Practice. 8.

— *Company—Winding-up petition dismissed—Creditors and contributories opposing—One set of costs—Separate counsel.*

See COMPANY—WINDING-UP—Costs. 9.

— *Compromise of action—Agreement to refer—Authority exceeded by counsel.*

See No. 1, below.

— *Costs—Counsel.*

See COSTS. 23, 30.

— *Counsel—Solicitor—"Disbursements"—Counsel's fees—Fees not paid before delivery of bill—Taxation.*

See SOLICITOR—Costs.

1. — *Counsel's authority—Compromise of action—Agreement to refer—Authority exceeded by counsel—Limitation of counsel's authority unknown to other side.*

A counsel has no authority to refer an action against the wishes of his client or upon terms different from those which his client has authorized. If he does so refer it the reference may be set aside although the limit put by the client on his counsel's authority is not made known to the other side when the reference is agreed upon. The Court before whom the question of setting aside the reference comes is not bound to sanction an arrangement made by counsel which is not in the opinion of the Court a proper one.

COUNSEL—*continued.*

The plt. in an action for defamation of character authorized her counsel to consent to a reference on condition that all imputations on her character were publicly disclaimed in Court. Her counsel, who did not make this limitation of his authority known to the deft.'s counsel, agreed with the latter to refer the action without any disclaimer of imputation:—

Held, that the counsel having exceeded his authority the plt. was entitled to have the agreement to refer set aside and the cause restored to the list for trial.

The decision of the C. A., [1902] 1 K. B. 838, reversed. *NEALE v. GORDON LENNOX*

H. L. (E.) [1902] **W. N. 156**; [1902] **A. C. 465**

— Counsel's fee for drawing notice of appeal.

See **COSTS**.

— Counsel's fees—Costs—Taxation.

See under **COSTS**.

SOLICITOR—**Costs**.

COUNTER-CLAIM—Practice.

See under **PRACTICE**—**Counter-claim**.

COUNTERPART—Ambiguity in lease—Explanation by reference to counterpart—Forfeiture—Waiver.

See **LANDLORD AND TENANT**. 8.

COUNTY—Creation of county borough—Loss of borough's contribution to county expenses—Adjustment of financial relations.

See **LOCAL GOVERNMENT**. 10.

— Local government—Urban district—County borough.

See **LOCAL GOVERNMENT**. 31.

— Remuneration of Procurator Fiscal.

See **SCOTTISH LAW**.

COUNTY BOROUGH—Creation of—Loss of borough's contribution to county expenses—Adjustment of financial relations.

See **LOCAL GOVERNMENT**. 10.

COUNTY COUNCILS.

County Councils (Bills in Parliament) Act, 1903 (3 *Edw. 7, c. 9*), empowers County Councils to promote Bills in Parliament.

Polling Districts (County Councils) Act, 1908 (8 *Edw. 7, c. 13*), makes further provision with respect to the arrangement of polling districts for the election of county councillors.

County Council Mortgages Act, 1909 (9 *Edw. 7, c. 38*), is an Act to remove certain limitations on the borrowing by a County Council by way of mortgage under the *Local Government Act, 1888*.

— Costs of appeal to quarter sessions.

See **JUSTICES**.

— Duties of—Pollution of River Thames by sewage.

See **LONDON**—**Sewers**. 5.

— General powers—Statutory powers—Tramway business—Municipal trading.

See **CORPORATION**. 17.

COUNTY COUNCILS—*continued.*

— Local education authority—Duty to maintain school premises—Negligence.

See **SCHOOLS**.

— Main road—Maintenance and repair—Embankments—Mandatory order.

See **LOCAL GOVERNMENT**. 9.

— Schools—Provision of new hot-water apparatus and earth closets—Charge on parish served by school.

See **SCHOOLS**.

— Trading—Tramway business—Omnibus business—Ancillary business—Ultra vires.

See **CORPORATION**. 17.

— Transfer of existing officers to—Poor rate collector (Ireland)—Remuneration.

See **RATES**.

COUNTY COURT.

County Court Rules (Feb.), 1901, dated Feb. 25, 1901, come into force on April 1, 1901. Reprint from **W. N. 1901 (Mar. 2)**, p. 73. *See* **CURRENT INDEX**, 1901, p. lxxvii.

Fees.] *Treasury Order*, dated Feb. 22, 1901, regulating Court Fees in County Courts. Reprint from **W. N. 1901 (Mar. 16)**, p. 61. *See* **CURRENT INDEX**, 1901, p. lxxvii.

County Courts (Districts) Postponement Order, No. 12, dated Feb. 17, 1902. Reprint from **W. N. 1902 (Mar. 8)**, p. 73. *See* **CURRENT INDEX**, 1902, p. lxxix.

Note.—A copy of the *County Court Rules*, 1903, was given gratis to every Subscriber to the entire series of the *Law Reports* for 1904, in respect of a subscription paid before the end of that year.

County Courts Act, 1903 (3 *Edw. 7, c. 42*), extends the jurisdiction of the County Courts.

County Courts (Districts) Postponement Order, No. 13, dated Jan. 22, 1903. Reprint from **W. N. 1903 (Feb. 14)**, p. 61. *See* **CURRENT INDEX**, 1903, p. lxxii.

County Courts (Districts) Postponement Order, No. 14, dated Mar. 1, 1904. Reprint from **W. N. 1904 (Mar. 19)**, p. 85. *See* **CURRENT INDEX**, 1904, p. lxxvi.

County Courts (District) Postponement Order, dated Nov. 4, 1904, so far as it relates to London, and neighbouring County Court Districts, until Jan. 1, 1906. Reprint from **W. N. 1904 (Nov. 12)**, p. 317. *See* **CURRENT INDEX**, 1904, p. lxxvi.

Fees.] *Treasury Order*, dated Dec. 30, 1903, regulating Court Fees in County Courts. Reprint from **W. N. 1904 (Mar. 26)**, p. 87. *See* **CURRENT INDEX**, 1904, p. lxxvi.

Prisons.] *Prisons to which Committals may be made*—*County Courts Act, 1888*.

Order of the Secretary of State, dated May 21, 1904, directing to what prisons Committals may be made. Reprint from **W. N. 1904 (June 11)**, p. 201. *See* **CURRENT INDEX**, 1904, p. lxxxix.

COUNTY COURT—*continued.*

Order of the Secretary of State, dated Aug. 23, 1904, directing to what prisons committals may be made. Reprint from **W. N. 1904 (Sept. 17)**, p. 268. See CURRENT INDEX, 1904, p. xc.

Order of the Secretary of State, dated Sept. 7, 1904. Reprint from **W. N. 1904 (Oct. 1)**, p. 267. See CURRENT INDEX, 1904, p. xc.

County Courts Order in Council, 1904, dated Dec. 12, 1904. Jurisdiction of certain named county courts with regard to actions in which plaintiff claims a sum exceeding 50l. Reprint from **W. N. 1904 (Dec. 17)**, p. 331. See CURRENT INDEX, 1904, p. xci.

County Court Rules, 1904, dated Dec. 19, 1904. See CURRENT INDEX, 1904, p. xcvi.

County Court (England) Jurisdiction. The County Courts (Bankruptcy and Companies Winding-up) Jurisdiction Order, Aug. 11, 1904. **St. R. & O. 1904, No. 1428, L. 18.**

County Court Rules, 1905, dated June 7, 1905, and which come into force on July 1, 1905. **W. N. 1905 (June 24)**, p. 167. See CURRENT INDEX, 1905, p. lxvii.

County Court, England. Courts and Districts.] Order in Council, directing that the County Court of Somersetshire held at Temple Cloud shall be held at Midsomer Norton as well as Temple Cloud. **St. R. & O. 1905, No. 97. L. 4.**

Remitted actions — Form of request — Appendix. See **R. S. C. (July)**, 1905. **W. N. 1905 (July 29)**, p. 224. See CURRENT INDEX, 1905, p. lxxiii.

Fees—Treasury Order dated Feb. 22, 1906, amending the order of Dec. 30, 1903, regulating court fees in County Courts. Reprint from **W. N. 1906 (March 10)**, p. 69. See CURRENT INDEX, 1906, p. lxxx.

County Court Rules, 1906, dated April 4, 1906. Reprint from **W. N. 1906 (April 21)**, p. 103. See CURRENT INDEX, 1906, p. lxxx.

Fees—Treasury Order dated Aug. 2, 1906, amending the Order of Dec. 30, 1903, regulating Court fees in County Courts. Reprint from **W. N. 1906 (Sept. 29)**, p. 259. See CURRENT INDEX, 1906, p. lxxxvii.

County Court Rules, 1906. Addenda to the County Court Rules, 1906, dated April, 4, 1906. Reprint from **W. N. 1906 (June 9)**, p. 169. See CURRENT INDEX, 1906, p. lxxxv.

Prisons to which committals may be made—Order of the Secretary of State, dated May 18, 1906, directing to what prisons committals may be made. Reprint from **W. N. 1906 (June 16)**, p. 178. See CURRENT INDEX, 1906, p. lxxxvi.

County Courts (Districts) Postponement Order, No. 17, dated Nov. 12, 1906. Reprint from **W. N. 1906 (Dec. 1)**, p. 327. See CURRENT INDEX, 1906, p. lxxxvii.

County Court Rules, 1907, and explanatory memorandum, and appendix. Reprint from **W. N. 1907 (Aug. 17)**, p. 233. See CURRENT INDEX, 1907, p. lxxi.

Fees — Workmen's Compensation Acts —

COUNTY COURT—*continued.*

Treasury Order, dated Jan. 17, 1908. Reprint from **W. N. 1908 (Jan. 25)**, p. 53. See CURRENT INDEX, 1908, p. lxxxvi.

Judges and districts — Order of the Lord Chancellor, dated Feb. 12, 1908. Reprint from **W. N. 1908 (Feb. 22)**, p. 65. See CURRENT INDEX, 1908, p. lxxxvi.

County Court Rules, 1908 — Explanatory Memorandum and Rules. Reprint from **W. N. 1908 (Mar. 21)**, p. 79. See CURRENT INDEX, 1908, p. lxxxix.

County Courts Act, 1888—Prisons to which committals may be made—Order of the Secretary of State, dated Mar. 27, 1908, directing to what prisons committals may be made. Reprint from **W. N. 1908 (April 18)**, p. 97. See CURRENT INDEX, 1908, p. xcii.

County Court (Extended Jurisdiction) Order in Council, 1908, dated April 9, 1908. Reprint from **W. N. 1908 (April 25)**, p. 101. See CURRENT INDEX, 1908, p. xciii.

County Courts (Admiralty Jurisdiction) Order in Council, 1908, dated Nov. 21, 1908, and coming into operation on Jan. 1, 1909. Reprint from **W. N. 1908 (Nov. 28)**, p. 335. See CURRENT INDEX, 1908, p. xciv.

County Courts Act, 1888—Order in Council dated Nov. 21, 1908 — Change of Names:—Brompton County Court of Middlesex: County Court of Kent held at Romney. This Order shall take effect from and after Dec. 1, 1908. Reprint from **W. N. 1908 (Nov. 28)**, p. 335. See CURRENT INDEX, 1908, p. xciv.

London County Courts Directory, containing the streets and places in the City of London, with their county court districts, for the guidance of the officers of the court and the public generally. 4th edition. Price 5s. 1907 (*H.—Legal*.)

County Courts in England and Wales, Index to the parishes, townships, hamlets, and places contained within the districts of the several. 5th edition. Price 6s. 1907 (*H.—Legal*.)

County Court Rules (Dec.), 1908. — Explanatory Memorandum and Rules, dated Dec. 18, 1908. The Rules came into force on Jan. 1, 1909. Reprint from **W. N. 1909 (Jan. 2)**, p. 1. See CURRENT INDEX, 1909, p. civ.

County Court Rules, 1909.—County Court (Agricultural Holdings) Rules, 1909, dated Feb. 11, 1909, and which came into force on Mar. 1, 1909. Reprint from **W. N. 1909 (Feb. 27)**, p. 89. See CURRENT INDEX, 1909, p. cvii.

The County Court Rules, 1909, dated Mar. 18, 1909, and which came into force on April 19, 1909. Reprint from **W. N. 1909 (April 3)**, p. 117. See CURRENT INDEX, 1909, p. cxiii.

County Court Rules, 1909 (No. 2), dated May 24th, 1909, and which came into force on June 15, 1909. Reprint from **W. N. 1909 (June 5)**, p. 202. See CURRENT INDEX, 1909, p. cxv.

COUNTY COURT—continued.

County Court Fees.—*Treasury Order*, dated July 7, 1909, regulating fees in *County Courts*. Reprint from **W. N. 1909 (July 24)**, p. 277. See **CURRENT INDEX**, 1909, p. cxvi.

The County Courts (Bankruptcy and Companies Winding-up) Jurisdiction Order, June, 1909, dated June 28, 1909. Reprint from **W. N. 1909 (July 17)**, p. 275. See **CURRENT INDEX**, 1909, p. cxvii.

County Courts Act, 1888 (51 & 52 Vict. c. 43).—*Order in Council*, dated June 29, 1909—*Consolidation of two or more districts—Districts of County Court of Essex held at Dunmow and at Braintree consolidated.* Reprint from **W. N. 1909 (July 10)**, p. 269. See **CURRENT INDEX**, 1909, p. cxvii.

County Courts Act, 1888.—*Prisons to which committals may be made.*—*Order of the Secretary of State*, dated October, 1909, directing to what prisons committals may be made. Reprint from **W. N. 1909 (Nov. 13)**, p. 383. See **CURRENT INDEX**, 1909, p. cxvii.

County Court Rules, and Explanatory Memorandum, 1910, dated July 26, 1910. Reprint from **W. N. 1910 (Sept. 3)**, p. 277. See **CURRENT INDEX**, 1910, p. xci.

County Courts Act, 1888. *Prisons to which committals may be made.* *Order of the Secretary of State*, dated Dec. 31, 1909, directing to what prisons committals may be made. This Order came into operation on Jan. 17, 1910. Reprint from **W. N. 1910 (Jan. 22)**, p. 53. See **CURRENT INDEX**, 1910, p. xcvi.

County Court, England, Courts and Districts. *Order in Council*, April 22, 1910, transferring the Urban District of Much Woolton from the District of the County Court of Lancashire holden at St. Helens and Widnes to that of the District of the County Court of Lancashire holden at Liverpool. **St. R. & O., 1910, No. 473 L. 9.** Price 1d.

County Court, England, Courts and Districts. *Order in Council*, April 22, 1910, transferring the Urban District of Little Wootton from the District of the County Court of Lancashire holden at St. Helens and Widnes to that of the District of the County Court of Lancashire holden at Liverpool. **St. R. & O., 1910, No. 474 L. 10.** Price 1d.

County Court, England. *Order in Council* July 19, 1910. *County Courts (Districts).* **St. R. & O., 1910, No. 822. L. 14.** Price 1d.

County Court, England. Courts and Districts. *Order in Council*, Aug. 2, 1910, directing that the County Court of Carnarvonshire held at Conway and Llandudno shall be held at Colwyn Bay as well as at Conway and Llandudno. **St. R. & O., 1910, No. 879. L. 23.** Price 1d.

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Appeals.

— **Appeal—Bankruptcy Appeals (County Courts)**
Act—Leave to appeal—Jurisdiction.
See **BANKRUPTCY—Practice. 6.**

1. — **Appeal—Order under s. 5 of Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37)—Appeal to High Court—Practice—County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 120.**

An appeal lies to the K. B. Div. against an order made by a county court judge under s. 5 of the Workmen's Compensation Act, 1897. **KNIVETON v. NORTHERN EMPLOYERS' MUTUAL INDEMNITY CO. Div. Ct. [1902] W. N. 78; [1902] 1 K. B. 880**

2. — **Appeal as of right—Ejection, Action of—County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 120.**

In actions of ejection, as distinguished from actions for the recovery by landlords of tenements, tried in a county court, there is a right of appeal to the High Court, irrespective of the value or rental of the premises sought to be recovered.

Shrewsbury (Earl of) v. Garfield, (1891) 60 L. J. (Q.B.) 765, overruled. MILLETT v. BALLARD C. A. [1904] W. N. 156; [1904] 2 K. B. 593

— **Appeal, Right of—Workmen's compensation—Arbitrator appointed by county court judge.**

See **MASTER AND SERVANT—Practice.**

— **Appeal from county court—Right to appeal on leave to Court of Appeal.**

See **DISTRESS. 19.**

COUNTY COURT (Appeals)—continued.

3. — *Appeals from county courts—Papers for judges—Workmen's Compensation Acts, 1897, 1906.*

Cozens-Hardy M.R. said he wished it to be clearly understood that in every appeal from a county court under the Workmen's Compensation Act, three copies of the application to the County Court and the answer must always be supplied for the use of the judges.

Practice Note, C. A. [1907] W. N. 245

4. — *Appeal to High Court—Misdirection—Refusal of new trial—Practice.*

Although a party who appeals directly to the High Court against the judgment of a county court judge on the ground of misdirection is not entitled to be heard unless he took the objection to the judge's direction at the time of the trial, it is otherwise if he first applies to the county court judge for a new trial on the ground of misdirection, and then upon being refused appeals to the High Court against such refusal. It is enough that the objection to the direction is taken for the first time upon the application for a new trial to the county court judge. **HANDLEY v. LONDON, EDINBURGH AND GLASGOW ASSURANCE CO. Div. Ct. [1901] W. N. 226; [1902] 1 K. B. 350**

5. — *Appeal to judge from registrar—Interlocutory application—Order—County Court Rules, 1903 and 1904, Order XII., rr. 9, 11—Practice.*

By s. 74 of the County Courts Act, 1888, an action may by leave of the judge or registrar be commenced in the Court in the district of which the cause of action wholly or in part arose.

By Order XII., r. 9, of the County Court Rules, when the plt. has obtained leave so to commence an action in a Court distant more than twenty miles from the deft.'s residence or place of business, the deft. may, within a certain time, forward by registered post letter to the registrar of the Court in which the plaint is issued an affidavit disclosing a good defence upon the merits to the action; and the registrar, if satisfied that the affidavit discloses such a defence, is directed forthwith by notice in the prescribed form to call upon the plt. to deposit in Court within a certain time such a sum as the registrar may, having reference to all the circumstances of the case, direct. Where the deposit is not duly made the action is to be struck out.

By Order XII., r. 11 (8), of the County Court Rules, where any interlocutory application may be made to the registrar, and is so made, the judge may vary or rescind any order made by the registrar, and may make such order as may be just:—

Held, that the act of a registrar under Order XII., r. 9, in calling upon a plt. by notice to deposit a sum in Court is not an order within the meaning of Order XII., r. 11 (8), and that the judge of the county court has no power to vary or rescind it. **PORTER v. LONDON AND MANCHESTER INSURANCE CO.**

Div. Ct. [1909] W. N. 70; [1909] 2 K. B. 30

— Stay of execution pending appeal—Jurisdiction of county court judge.

See COUNTY COURT — **Staying Proceedings.**

COUNTY COURT—continued.**Attachment.**

— Garnishee summons—Practice—Attachment of debt—Balance in hands of garnishee. *See* ATTACHMENT. 8.

Bailiffs.

1. — *High bailiff—"Costs of execution"—Possession money—Several warrants against same debtor—Different goods seized on same premises under each warrant—Same man in possession under all the warrants—Practice—County Courts Act, 1888 (51 & 52 Vict. c. 43), ss. 146, 154—Treasury Order, Feb. 22, 1901, r. 35—Bankruptcy Act, 1890 (53 & 54 Vict. c. 71), s. 11.*

When the high bailiff of a county court levies execution on the goods of a judgment debtor under several warrants, and seizes the same goods to satisfy the warrants, he is only entitled to charge one possession fee. But if he seizes and appropriates different goods to satisfy each warrant, he is entitled to possession money under each warrant, although all the goods seized under the several warrants are on the same premises and possession under all the warrants is held simultaneously by one person only. *In re* MORGAN. *Ex parte* BOARD OF TRADE

Wright J. [1903] W. N. 183; [1904] 1 K. B. 68

— Withdrawal of bailiff—Execution—Claim to goods—Deposit—"Dispute."

See COUNTY COURT—**Execution. 1.**

Bankruptcy.

See also under BANKRUPTCY.

1. — *Administration order—Subsequent creditor—Remedy against debtor—Bankruptcy (Administration Order) Rules, 1902, r. 15—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 122.*

By s. 122, sub-s. 1, of the Bankruptcy Act, 1883, where a debtor against whom a judgment has been obtained in a county court is unable to pay the amount forthwith, and where the whole of his indebtedness does not exceed 50l., the county court may make an order for the administration of his estate; and by sub-s. 5, "when the order is made no creditor shall have any remedy against the person or property of the debtor in respect of any debt which the debtor has notified to a county court, except with the leave of that county court, and on such terms as that court may impose . . ."

After an order has been made for the administration of the deft.'s estate, under s. 122 of the Bankruptcy Act, 1883, the plt., who had no notice of the order, obtained judgment in a county court against the deft. in respect of a debt subsequently incurred by him. On an application by the deft. the county court judge directed a stay of execution under s. 122, sub-s. 5, of the Act. On appeal:—

Held, that s. 122, sub-s. 5, applies to creditors of a debtor who has obtained an administration order under that section, whether their debts accrued due before or after the date of the order, and that the stay of execution was rightly made.

COUNTY COURT (Bankruptcy)—continued.

In re Frank, [1894] 1 Q. B. 9, discussed.
PEARSON v. WILCOCK - **C. A. [1906]**
2 K. B. 440

- Bankruptcy notice—County court judgment—Form of notice.
 See **BANKRUPTCY—Notice**. 4.

Company—Winding-up.

See under **COMPANY—Winding-up**.

Costs.

- “Action founded on tort”—Agreement for lease of house—Removal of fixtures.
 See **COSTS**. 75.
- Bailiffs—“Costs of execution.”
 See **COUNTY COURT—Bailiffs**. 1.
- Detinue—Action founded on tort—Return during progress of case of articles claimed.
 See **COSTS**. 32.

1. — *Discretion of judge to refuse costs to successful litigant—Practice—County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 113.*

Action brought for money lent, and debt set up the defence that the debt was barred under the provisions of the Statute of Limitations.

The county court judge gave judgment for the debt, but refused him costs on the sole ground that he had relied on the statute.

The Court allowed the appeal, and reversed the order of the county court judge, holding that the discretion to deal with costs given by s. 113 of the County Courts Act, 1888, to county court judges was the same as that given to the judges of the High Court by Order LXV., r. 1, and must be exercised judicially. The authorities clearly pointed out that it was not a good ground for depriving a successful debt. of his costs that he had availed himself of a defence which the law of the country entitled him to set up. **ELMS v. HEDGES** **Div. Ct. [1906] W. N. 114**

2. — *Discretion of judge as to costs—Practice—Remitted action—County Courts Act, 1888 (51 & 52 Vict. c. 43), ss. 65, 113.*

Sect. 65 of the County Courts Act, 1888, which provides that in the case of remitted actions “the costs of the parties in respect of proceedings subsequent to the order of the judge of the High Court shall be allowed according to the scale of costs for the time being in use in the county courts,” does not take away the general discretionary power of the county court judge over the costs.

Decision of the Div. Ct., [1905] W. N. 96; [1905] 2 K. B. 196, affirmed. **EVERALL v. BROWN** - **C. A. [1906] W. N. 117;**
[1906] 2 K. B. 884

- Judgment for 50*l.* against both defendants, and for more than 50*l.* against one defendant.
 See **COSTS**. 35.

- Mandamus to county court to state case—Practice as to security for costs—Appeal from Victoria.
 See **TRAMWAYS**. 14.

COUNTY COURT (Costs)—continued.

— Married woman's liability to costs.—“Proceeding instituted”—Interpleader proceedings.

See **HUSBAND AND WIFE—Costs**. 1.

3. — *Nonsuit—Costs—Limits of judge's discretion as to—County Courts Act, 1888 (51 & 52 Vict. c. 43), ss. 88, 93, 113—Practice.*

In an action in the county court where the judge is satisfied upon the plt.'s case that the debt is not liable, he has no power to enter a nonsuit, but ought to give judgment for the debt.

Semble, that if in an action in the county court the judge finds that the plt. has sued the wrong party, it is not a ground for depriving the successful debt. of his costs that, having the necessary information to enable the plt. to ascertain who was the proper party to be sued, he neglected to give it to the plt. **WESTGATE v. CROWE** **Div. Ct. [1907] W. N. 208;**
[1908] 1 K. B. 24

4. — *Payment into court of part of claim as condition of leave to defend—Action sent for trial in county court—Order XIV.—Judgment for defendant in county court—County Courts Act, 1888 (51 & 52 Vict. c. 43), ss. 65, 107, 113—County Court Rules, Order IX., r. 12; Order LIII., r. 18.*

An action founded on contract having been brought in the High Court for 71*l.*, the plts. took out a summons for judgment under Order XIV., and an order was made giving the debts. leave to defend on paying 23*l.* into court within seven days, otherwise final judgment for that sum, with liberty to defend as to the residue of the plts.' claim. The debts. paid the 23*l.* into court within the seven days; and, the action having been sent for trial in the county court under s. 65 of the County Courts Act, 1888, the debts. gave notice to the plts., more than five clear days before the day appointed for the hearing, that they consented to judgment for the 23*l.* At the hearing the county court judge gave judgment for the debts. as to the residue of the claim, with costs from the date of their notice consenting to judgment for 23*l.*—

Held, that the debts. were entitled to costs from the date of their notice consenting to judgment, and that those costs ought to be taxed according to Scale C. of the county court scales of costs, being the scale applicable “where the subject-matter or sum recovered exceeds 50*l.*” **ASTON TUBE WORKS, LD. v. DUMBELL**

Div. Ct. [1904] 1 K. B. 535

Note.

This case was approved by C. A., *Everall v. Brown*, [1906] 2 K. B. 884. See No. 2, above.

5. — *Power of county judge to award fixed sum for costs before taxation—County Courts Act, 1888 (51 & 52 Vict. c. 43), ss. 113, 118.*

A county court judge has no power under s. 113 of the County Courts Act, 1888, to award a party a fixed sum for costs which have not been taxed under s. 118. **GOLDING v. SMITH**

Div. Ct. [1910] W. N. 14; [1910] 1 K. B. 462

6. — *Power to order successful defendant to pay costs—Practice—County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 113.*

COUNTY COURT (Costs)—continued.

A county court judge has no power to order a successful deft. to pay the costs of the plt.
ANDREW v. GROVE Div. Ct. [1902] 1 K. B. 625

7. — *Public authority, Action against—Taxation*—"Costs to be taxed as between solicitor and client"—*County Courts Act, 1888* (51 & 52 Vict. c. 43), s. 118—*Public Authorities Protection Act, 1893* (56 & 57 Vict. c. 61), ss. 1, 2.

Where in an action in a county court against a public authority for an act or neglect in the execution of its public duty a judgment is obtained by the deft., the costs "to be taxed as between solicitor and client" given by s. 1 (b) of the Public Authorities Protection Act, 1893, must be taxed on the scale then in force in the county court, in accordance with s. 118 of the County Courts Act, 1888. **TORY v. DORCHESTER CORPORATION** Div. Ct. [1907] 1 K. B. 393

— Reference of action to Master—Discretion to give costs on High Court scale—Practice.
See COSTS. 34.

8. — *Remitted action—Payment by defendant to plaintiff after action brought—Sum "recovered in the action"*—*County Courts Act, 1888* (51 & 52 Vict. c. 43), s. 116.

Sect. 116 of the County Courts Act, 1888, provides, with respect to actions brought in the High Court which could have been commenced in the county court, that if in an action founded on contract the plt. shall recover a sum less than 20*l.*, he shall not be entitled to any costs of the action.

An action founded on contract having been brought in the High Court to recover 27*l.*, the defts., after appearance, paid 8*l.* to the plts., no judgment or order of the Court having been given or made in respect of that payment. The action was subsequently remitted to the county court. In their particulars of claim in the county court the plts. credited the defts. with the payment of 8*l.*, and claimed the balance—19*l.*; but the particulars did not shew that the payment had been made since action brought. The plts. obtained judgment for 19*l.* in the county court, the judgment in form being for 19*l.*, and not for that sum in addition to the 8*l.* credited in the particulars:—

Held by Lord Alverstone C.J. and Channell J., Darling J. dissenting, that, although it should have appeared on the proceedings that the plts. had recovered 19*l.* in addition to 8*l.* paid since action brought, they had in substance recovered in the action a sum not less than 20*l.*, and were, therefore, not disentitled to their costs by s. 116. **PEARCE v. BOLTON** Div. Ct. [1902] 2 K. B. 111

9. — *Scale—Claim for injunction—Costs—Alternative and independent claim—No injunction granted—Judgment on alternative claim for sum not exceeding 10*l.*—Practice—County Court Rules, 1903, Order LIII., rr. 1, 11.*

Order LIII., r. 11, of the County Court Rules, 1903, provides that in actions in which a perpetual injunction is claimed, whether the same is granted or not, the judge may order the costs to be taxed under column A, B, or C, and in

COUNTY COURT (Costs)—continued.

default of any such order they shall be taxed under column B.

In an action in the county court in which a perpetual injunction was claimed there was added another claim which was alternative to and inconsistent with the claim for an injunction. The plt. failed as to the injunction, but got judgment on the other branch of the claim for 4*l.* 4*s.* and costs. No application was made to the judge for an order directing under which scale the costs should be taxed, and on an application to review the taxation the judge held that under Order LIII., r. 11, in default of any order, the costs must be taxed under column B:—

Held that, the claim on which the plt. had recovered judgment being entirely distinct from the claim for an injunction, the case was governed, not by r. 11, but by r. 1, of Order LIII., and that under r. 1 the costs must be taxed under the lower scale, that being the scale applicable to the amount recovered. **CLINTON v. BENNETT** Div. Ct. [1907] W. N. 220; [1908] 1 K. B. 109

— Security for costs—Appeal from county court—Workmen's compensation.
See COSTS. 59.

10. — *Sum less than 10*l.* recovered in action founded on tort—Action "which could have been commenced in a county court"*—*County Courts Act, 1888* (51 & 52 Vict. c. 43), s. 116.

An action is one which "could have been commenced in a county court" within the meaning of the County Courts Act, 1888, s. 116, if it is an action of a kind which a county court can entertain, although the amount claimed by the plt. may exceed the limit of the county court jurisdiction.

Goldhill v. Clarke, (1893) 68 L. T. 414, disapproved of. **Lovejoy v. Cole**, [1894] 2 Q. B. 861, followed. **SOLOMON v. MULLINER**

C. A. [1901] 1 K. B. 76

11. — *Tender—Practice—Amount recovered under 2*l.*—Admiralty actions—County Court Rules, 1892, Order XXXIX. B, r. 80.*

In this case the Court sent the case back to the City of London Court with directions to tax the plts.' costs here and below, on the ground that the limit as to 2*l.* did not apply, for, under the County Court Rules, 1892, Order XXXIX. B, r. 80, "unless the judge otherwise orders, in Admiralty actions, where the amount recovered does not exceed 20*l.*, the costs shall be allowed under column B" of the higher scale in the Appendix to Order L. A (1892) of the County Court Rules, 1889, issued under the County Courts Act, 1881 (51 & 52 Vict. c. 43), s. 118. **THE SKUDENAES** - Div. Ct. [1901] W. N. 142

— Workmen's compensation.

See under MASTER AND SERVANT.

Deputy Judge.

1. — *Appointment of two deputies to act respectively for different courts—Validity of appointment—County Courts Act, 1888* (51 & 52 Vict. c. 43), s. 18.

A county court judge may, under s. 18 of the

COUNTY COURT (Deputy Judge)—continued.

County Courts Act, 1888, lawfully appoint a deputy to act for him in one of the district courts of which he is judge.

So held by Vaughan Williams L.J., Stirling, L.J., and Fletcher Moulton L.J., the last mentioned Lord Justice doubting.

Judgment of Div. Ct., [1905] W. N. 165 ;

[1906] 1 K. B. 22, affirmed. REX v. LLOYD

C. A. [1906] W. N. 66 ; [1906] 1 K. B. 552

Devastavit.

— Statute of Limitations—Claim on guarantee.

See EXECUTOR—Devastavit. 1.

Discretion.

— Costs.

See under COUNTY COURT—Costs.

— Workmen's compensation — Discretion of county court judge.

See under MASTER AND SERVANT—Compensation.

Distress.

See under DISTRESS.

Employer and Workman.

See under COUNTY COURT—Workmen's Compensation.

Execution.

1. — *Claim to goods—Deposit of amount of value—“Dispute”—Withdrawal of bailiff—Order for sale—Retaking possession—County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 156—County Court Rules, 1903, Order XXVII., r. 13.*

Goods which had been taken in execution under a county court judgment were claimed by a bill of sale holder. Notice of the claim was given by the bailiff to the execution creditor. The claim not having been admitted, the claimant deposited with the bailiff, under s. 156 of the County Courts Act, 1888, the amount of the judgment debt and costs, as being the value of the goods. The money was paid into Court by the bailiff, who then withdrew from possession and applied for an interpleader summons. On the same day that the summons was issued the execution creditor gave notice of his intention to apply for an order for the sale of the goods under Order XXVII., r. 13, of the County Court Rules, 1903. On the hearing of the application the execution creditor (who had been given no opportunity of being heard as to the value of the goods before the plt. withdrew) admitted the claimant's title, but alleged, and was prepared with evidence to prove, that the value of the goods was sufficient to satisfy the amount due on the bill of sale and the judgment debt and costs. The county court judge, without hearing the evidence, held that, the bailiff having withdrawn from possession, he had no power to order a sale :—

Held, that if the amount deposited with the bailiff was not the value of the goods his withdrawal from possession was wrongful, and the county court judge had power in that case to order him to retake possession ; and that the case must go back to the county court judge for him

COUNTY COURT (Execution)—continued.

to determine after hearing the evidence whether the circumstances were such that an order for sale ought to be made.

The “dispute” as to the value of goods taken in execution referred to in s. 156 of the County Courts Act, 1888, means a dispute between the claimant and the execution creditor. MILLER

& Co. v. SOLOMON ; ALLEN, CLAIMANT

Div. Ct. [1906] 2 K. B. 91

Note.

See *Newsom, Sons & Co. v. James*, Div. Ct. [1909] 2 K. B. 384, *next Case*.

2. — *Claim to goods—Deposit of value of goods—Sum deposited less than value—Bailiff remaining in possession—Right to possession fees—County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 156.*

Goods which had been taken in execution under a county court judgment were claimed by a claimant. The execution creditor did not admit the claim, and the claimant deposited with the bailiff, under s. 156 of the County Courts Act, 1888, the sum of 26*l.*, which was considerably less than the value of the goods claimed, but was more than sufficient to cover the judgment debt and the costs of the execution. The money was paid into Court by the bailiff, who remained in possession of the goods, and an interpleader summons was issued. Before the return day of the interpleader summons the execution creditor gave notice that he admitted the title of the claimant to the goods, and the bailiff withdrew from possession. Upon the taxation of the costs the bailiff claimed possession fees up to the date when the execution creditor admitted the claimant's title, upon the ground that under s. 156 he was bound to remain in possession until the amount of the value of the goods was deposited with him :—

Held that, as the 26*l.* was deposited with and taken by the bailiff under s. 156 of the Act, he must be deemed to have taken it upon the assumption that it represented the amount of the value of the goods, and therefore he had no right to remain in possession or to possession fees after the date of the deposit. NEWSOM, SONS & Co. v. JAMES - Div. Ct. [1909] W. N. 112 ; [1909] 2 K. B. 384

3. — *Equitable interest in land—Appointment of receiver—Practice—Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 89.*

Under s. 89 of the Judicature Act, 1873, a county court has power to appoint a receiver by way of execution against equitable interests in land. REX v. SELFE - Div. Ct. [1908] 2 K. B. 121

— Foreign Court, Warrant sent to.

See No. 6, below.

4. — *Seizure and sale of goods not the property of judgment debtor—Claim made by owner after sale—Liability of high bailiff to owner.*

Furniture was let for hire with an option to purchase under a hire-purchase agreement, which contained a clause giving the owners the right without previous notice to determine the hiring and retake possession of the furniture, if it should at any time be seized or taken in execution. The

COUNTY COURT (Execution)—continued.

furniture was taken in execution by the high bailiff of a county court, and, no claim having been made to it, was appraised and sold under the execution and the proceeds paid into court, and the furniture delivered to the purchaser. On the day after the sale the owners heard for the first time of the seizure and sale of the furniture, and gave notice of their claim to the proceeds. An interpleader summons was issued at the instance of the high bailiff, and in the course of the interpleader proceedings the execution creditor admitted the title of the claimants, who gave a notice claiming damages against the high bailiff in respect of the alleged conversion of the furniture by selling it:—

Held, that, as under the hiring agreement the claimants had a right to its possession immediately upon its being taken in execution, the sale by the high bailiff amounted to an act of conversion for which he was responsible in damages to them. **JELKS v. HAYWARD; HACKNEY FURNISHING CO. CLAIMANTS**

Div. Ct. [1905] 2 K. B. 460

5.—*Seizure of goods not the property of judgment debtor—No claim made by owner—Sale—Title of purchaser—County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 154.*

Where goods are taken in execution by the bailiff of a county court, and, no claim having been made to them, are sold by the bailiff, and it subsequently appears that they were not the property of the judgment debtor at the time of the seizure or sale, the purchaser does not acquire a good title to the goods as against the real owner.

Goodlock v. Cousins, [1897] 1 Q. B. 348, 558, distinguished. CRANE & SONS v. ORMEROD

Div. Ct. [1903] 2 K. B. 37

— Stay of execution pending appeal—Jurisdiction of county court judge.

See COUNTY COURT—**Practice.** 16.

6.—*Warrant sent to foreign court—Binding the property in goods of execution debtor—Time—Practice—County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 158—Sale of Goods Act, 1893 (56 & 57 Vict. c. 71), s. 26.*

Where a warrant of execution against the goods of a judgment debtor has been issued out of a county court and is sent by the high bailiff of that court under s. 158 of the County Courts Act, 1888, to the registrar of another county court for execution against the goods of the judgment debtor then within the jurisdiction of that other court, the time from which the writ of execution binds the property in those goods of the judgment debtor under s. 26 of the Sale of Goods Act, 1893, is the time at which the warrant of execution is issued by the registrar of that other court to the high bailiff of that court. **BIRSTALL CANDLE CO. v. DANIELS; SAUNDERS, CLAIMANT**

Div. Ct. [1908] 2 K. B. 254

— Writ of execution—Time of application for writ.

See COUNTY COURT—**Practice.** 18.

COUNTY COURT—continued.**Factory Acts.**

— “Factory”—Means of escape in case of fire—Covenant by occupier to pay “outgoings”—County court.
See FACTORY. 2.

Fees.

See paragraphs at the commencement of COUNTY COURT.

Fines.

1.—*Judgment summons—Default in appearance—Fine—Application of fine in reduction of judgment debt—Jurisdiction—Practice—County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 111—County Court Rules, 1903 and 1904, Order XXV., r. 31 (3A).*

By s. 111 of the County Courts Act, 1888, as applied by Order XXV., r. 31 (3A), of the County Court Rules, 1903 and 1904, to a judgment summons, a judgment debtor is liable to a fine for refusing or neglecting, without sufficient cause, to appear at the hearing of a judgment summons, “and the whole or any part of such fine, in the discretion of the judge, after deducting the costs, shall be applicable towards indemnifying the party injured by such refusal or neglect”:—

Held, that the judge has no jurisdiction to apply the fine in reduction of the judgment debt, **REX v. SNAGGE** **C. A. [1909] W. N. 42; [1909] 1 K. B. 644**

Highway.

— Extraordinary traffic—Summary proceedings—Jurisdiction of county court.
See HIGHWAY. 28.

Interpleader.

— Execution—Goods belonging neither to the execution debtor nor to the claimant—Money paid into Court, who entitled to.
See INTERPLEADER. 3.

Juries in County Court Cases.

In a case which came before the Div. Ct. on Wednesday, April 6, Bucknill J. said that, without speaking of any particular county court judge, he felt very strongly that, when a case was set down for trial with a jury, the county court judge ought not to suggest that it should be tried by himself alone. He had known several county court judges when he was in practice who were in the habit of saying “Why do you want a jury?” He had known a county court judge to shew himself vexed when the suggestion involved in the question was not acceded to. He wished to say that he thought that was wrong. **PRACTICE NOTE. Bucknill J. [1910] W. N. 96**

Jurisdiction.

1.—*Application for judgment summons—Existing committal order against co-defendant—County Court Rules, 1889, Order XXV.*

In a county court action against three defts. upon a joint and several promissory note, judgment was given against all the defts. jointly. Upon default in payment of the judgment debt

COUNTY COURT (Jurisdiction)—continued.

a judgment summons was issued against all three debtors., but service could only be effected on one, against whom a committal order was made but suspended on payment of certain monthly instalments. Application was subsequently made for leave to issue a judgment summons against one of the other debtors., but was refused by the county court judge on the ground that he had no jurisdiction to give leave to issue a judgment summons against one joint debtor while a committal order was still in existence against his co-debtor., to which no return had been made :—

Held, that the county court judge had jurisdiction to allow the summons to issue, and that a mandamus must issue to him to determine the application for leave upon the merits. *REX v. BIRMINGHAM COUNTY COURT JUDGE*

Div. Ct. [1902] 2 K. B. 283

— Application for judgment summons — Insufficiency of affidavits—Waiver.
See COUNTY COURT—Practice. 2.

— Bankruptcy, Claim arising out of—Lease—Application for vesting order—Question of merger.

See BANKRUPTCY—Jurisdiction. 1.

— Collision—Damage by ship to pier—County courts Admiralty jurisdiction.

See SHIPPING—Collision.

— County court judge, Jurisdiction of—Workmen's compensation.

See under MASTER AND SERVANT.

2. — *Distress for poor rate — Reasonable charges for taking, keeping, and selling—Action to recover excess—Distress (Costs) Act, 1817 (57 Geo. 3, c. 93), ss. 2, 4—Distress (Costs) Act, 1827 (7 & 8 Geo. 4, c. 17)—Distress for Rates Act, 1849 (12 & 13 Vict. c. 14), s. 1.*

Where a bailiff in distraining for a poor rate has retained out of the amount realized by the sale of the distress an unreasonable charge for the taking, keeping, and selling of the distress, the remedy of the person aggrieved is not confined to an application to justices for an order under s. 2 of the Distress (Costs) Act, 1817. The county court has jurisdiction to try an action in which repayment is claimed of so much of the charge as is unreasonable. *REX v. JUDGE PHILBRICK AND MOREY. Ex parte EDWARDS*

Div. Ct. [1905] 1 K. B. 108

— Industrial assurance company—Disputes.

See JUSTICES. 10.

3. — *Injunction—Claim for injunction only—County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 56—Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 89.*

An action, in which an injunction only is claimed, is within the jurisdiction of a county court, provided that the case is one in which, if there had been a claim for damages, the claim must have been for an amount within the jurisdiction of a county court. *STILES v. ECCLESTONE*

Div. Ct. [1903] W. N. 26 ;

[1903] 1 K. B. 544

4. — *Judgment summons — Jurisdiction to make receiving order in lieu of committal order—Absence of evidence of means—Debtors Act, 1869*

COUNTY COURT (Jurisdiction)—continued.

(32 & 33 Vict. c. 62), s. 5—*Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 103, sub-s. 5.*

The jurisdiction given by s. 103, sub-s. 5, of the Bankruptcy Act, 1883, to a county court judge having bankruptcy jurisdiction, upon the hearing of an application under s. 5 of the Debtors Act, 1869, for the committal of a judgment debtor, to decline to commit and in lieu thereof to make a receiving order against the debtor, cannot be exercised if there is no evidence of the debtor's means before the county court judge.

Reg. v. Sussex County Court Judge, (1888) 59 L. T. 32, considered and distinguished. In re A DEBTOR. Ex parte THE DEBTOR

Div. Ct. [1905] 1 K. B. 374

5. — *Landlord and tenant—Factory—Expense of complying with requirement of sanitary authority—Practice—Factory and Workshop Act, 1891 (54 & 55 Vict. c. 75), s. 7.*

Where the lessor of a factory sues the lessee in the county court, on a covenant by the lessee to pay all charges and outgoings which may be charged or imposed on the lessor in respect of the premises, to recover the expenses to which he has been put in complying with the requirements of the sanitary authority under s. 7 of the Factory and Workshop Act, 1891, the county court judge has jurisdiction, whatever may be the legal effect and construction of the covenant, to make such order apportioning the expense between the parties as may seem just and equitable to him under all the circumstances of the case. *MONK v. ARNOLD*

Div. Ct. [1902] 1 K. B. 761

Note.

Observations of Channell J. in, approved by C. A., *Horner v. Franklin, [1905] 1 K. B. 479.*

— Landlord and tenant—"Factory"—Means of escape in case of fire.

See FACTORY. 7.

— Lease—Disclaimer—Mortgagees by demise—Option to take vesting order or be excluded.

See BANKRUPTCY—Jurisdiction. 1.

6. — *Payment into court with denial of liability—Discretion of judge over costs of specific issues—Practice.*

The plt. having brought an action in the county court for personal injuries caused by the debts' negligence, the debts. paid money into court with a denial of liability. A trial was had, but on appeal the Div. Ct. ordered a new trial, with costs of the first trial to abide the event. On the second trial the plt. recovered a verdict, but for no more than the amount paid into court :—

Held, that, though the debts. were entitled to the general costs of the action, the county court judge had a discretion to give the plt. his costs of the issue of negligence on which he had succeeded, and that that discretion was not taken away by the order of the Court that the costs should abide the event. *DUNN v. SOUTH EASTERN AND CHATHAM RY. CO.*

Div. Ct. [1903] W. N. 20 ; [1903] 1 K. B. 358

COUNTY COURT (Jurisdiction)—continued.

7. — *Remitted action—Amendment—Claim for unliquidated damages—County Courts Act, 1888 (51 & 52 Vict. c. 43), ss. 65, 87.*

An action, commenced in the High Court by a writ specially indorsed with a claim for 33*l.* 12*s.* for demurrage at a specified rate in respect of the detention of the plts.' waggons, was remitted to the county court under s. 65 of the County Courts Act, 1888. At the trial the plts. failed to prove an agreement to pay demurrage :—

Held, that the county court judge had power to amend the particulars of claim by substituting a claim for unliquidated damages. *SPENCE, WHATLEY & UNDERHILL v. FORSTER & Co.*

Div. Ct. [1905] W. N. 22; [1905] 1 K. B. 434

8. — *Sale of equity of redemption—County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 67.*

Sect. 67 of the County Courts Act, 1888, gives the county court jurisdiction in actions for specific performance of any agreement for the purchase of any property where the purchase-money shall not exceed the sum of 500*l.* In an action in the county court for specific performance of an agreement to purchase for 75*l.* some leasehold property which was of the value of more than 500*l.*, but was subject to a heavy charge :—

Held, that the action was within the jurisdiction of the county court, since the test was the actual purchase-money to be paid, and not the value of the property subject to the charge. *REX v. JUDGE WHITEHORNE*

Div. Ct. [1904] W. N. 57; [1904] 1 K. B. 827

9. — *Trade mark, Action for infringement of registered.*

The county court has no jurisdiction to entertain an action for an injunction to restrain an infringement of a registered trade mark.

Appeal from a decision of a Div. Ct., [1904] 2 K. B. 693, allowed. *BOW v. HART*

C. A. [1905] W. N. 25; [1905] 1 K. B. 592

— Trial—Misdirection—Refusal of new trial.

See County Court.—Appeal. 4.

— Workmen's compensation—Appeal to High Court.

See MASTER AND SERVANT. Practice.

Landlord and Tenant.

— Re-entry for non-payment of rent—Recovery of possession.

See LANDLORD AND TENANT. 74.

Licensing Acts.

See under LICENSING ACTS.

Payment into Court.

— Practice generally.

See under PRACTICE—Payment, etc.

Practice.

1. — *Affidavit for leave to issue judgment summons against partner—Judgment against firm—County Court Rules, App. H., Form 52 (c).*

By the County Court Rules, Order xxv., r. 14 (b), it is provided that where a judgment is recovered against a firm, and the plt. seeks to

COUNTY COURT (Practice)—continued.

enforce it by judgment summons against a person whom he alleges to be a partner in the firm, he shall file an affidavit in Form 52 (c), and thereupon a judgment summons shall issue. Paragraph 2 of Form 52 (c) is as follows: "I am informed and believe [*state the sources of information and grounds of belief*] that G. H. was at the date of judgment a partner in the said firm of C. D. & Co." :—

Held, that the statement of the plt.'s sources of information and grounds of belief that the person against whom the judgment summons is sought was a partner is a material part of the form, and that its omission from the affidavit will render irregular the issue of the summons and all subsequent proceedings thereon. *LUMLEY v. OSBORNE*

Div. Ct. [1901] W. N. 39; [1901] 1 K. B. 532

2. — *Affidavit, Form of—Insufficiency of affidavit—Jurisdiction—Application for judgment summons—Prohibition—County Court Rules, 1889, Order xxv., rr. 13, 14a, App. H., Form 52A.*

An affidavit in support of an application for leave to issue a judgment summons out of the district of the county court in which judgment had been obtained stated that the deft. lived in a house apparently of the yearly value of 60*l.* and carried on business as a builder, but it did not state any circumstances shewing that the business was profitable, or that the deft. had means to pay, nor did it state whether the deft. was married, and if so whether he had children. The county court judge gave leave to issue the summons. On an application for a writ of prohibition :—

Held, that the affidavit was not in accordance with Form 52A of Appendix H. to the County Court Rules, 1889, and was therefore insufficient to give the county court judge jurisdiction under Order xxv., r. 14a, of those rules. *MCINTOSH v. SIMPKINS*

C. A. [1901] 1 K. B. 487

Note.

See also Alderson v. Palliser, Div. Ct. [1901] 2 K. B. 833, No. 5, below.

— Appeal—County Courts.

See under COUNTY COURT—Appeals.

— Costs.

See under COUNTY COURT—Costs.

3. — *Cross-judgments—Execution—Payment of judgment debt into court—Solicitor's lien for costs—County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 150.*

By s. 150 of the County Courts Act, 1888, "if there shall be cross-judgments between the parties, execution shall be taken out by that party only who shall have obtained judgment for the larger sum, and for so much only as shall remain after deducting the smaller sum, and satisfaction for the remainder shall be entered, as well as satisfaction on the judgment for the smaller sum; and if both sums shall be equal, satisfaction shall be entered upon both judgments" :—

Held, that this section applied where there were cross-judgments in separate actions, and not merely where there were cross-judgments upon claim and counter-claim in the same

COUNTY COURT (Practice)—continued.

action; also that it applied where the party against whom judgment had been obtained for the larger sum had paid that sum into court so that no execution was taken out; also that the party against whom judgment had been obtained for the larger sum was entitled to have deducted from the sum paid into court the smaller sum for which he had obtained judgment, and that the balance only between the larger and smaller sums should be paid out to the party who had obtained judgment for the larger sum, notwithstanding that the solicitor for the party who had obtained judgment for the larger sum claimed a lien for his costs which exceeded in amount the sum paid into court. **WARD v. HADDRILL**

Div. Ct. [1904] 1 K. B. 399

4. — Judgment for delivery of specific chattel — Warrant of delivery — Wilful refusal to deliver — Attachment — County Court Rules, 1903, Order XXV., rr. 57, 69.

A county court judge has jurisdiction to order a warrant of attachment of a deft. who, in an action for the recovery of a chattel, wilfully refuses to comply with the judgment for the return of the chattel, and this jurisdiction is not affected by the fact that the bailiff to whom a warrant of delivery was issued directing him to seize the chattel, and if it could not be found to distrain the lands and chattels of the deft., did not, on failure to find the chattel, distrain under the warrant. **HYMAS v. OGDEN**

C. A. [1905] 1 K. B. 246

— Jurisdiction — Application for judgment summons — Existing committal order against co-defendant

See COUNTY COURT — Jurisdiction. 1.

5. — Jurisdiction — Application for judgment summons — Insufficiency of affidavit — Waiver — Prohibition — County Court Rules, 1889, Order XXV., rr. 13, 14a, Form 52A.

An affidavit in support of an application for leave to issue a judgment summons out of the district of the county court in which judgment had been obtained was defective as not being in accordance with Form 52A of the County Court Rules, 1889. Leave was granted and an order for commitment made. On an application for a writ of prohibition:—

Held, that the want of jurisdiction appeared on the face of the proceedings, and could not be waived. **ALDERSON v. PALLISER**

C. A. [1901] W. N. 138; [1901] 2 K. B. 833

— Jurisdiction generally.

See UNDER COUNTY COURT — Jurisdiction.

— Misdirection — Refusal of new trial — Appeal to High Court.

See COUNTY COURT — Appeals. 4.

6. — Mortgage reduced from over to under 500l. — Jurisdiction — Foreclosure action — Transfer to Chancery Division under mistake as to jurisdiction — Retransferto County Court — County Courts Act, 1888 (51 & 52 Vict. c. 43), ss. 67, 68.

The deft. Richards gave a mortgage to the plts. to secure 675l., but only 475l. of this sum was actually advanced, and the amount owing was afterwards reduced to 461l. Richards

COUNTY COURT (Practice)—continued.

assigned the equity of redemption to the deft. Rochester. The plts. brought an action for foreclosure in the county court against Richards and Rochester. The county court judge held the mortgage to "exceed in amount the sum of five hundred pounds" within the meaning of s. 67 of the County Courts Act, 1888, and that he had no jurisdiction; and, under s. 68 of the same Act, he transferred the action to the Ch. Div. of the High Court.

The plts. applied, under the latter part of s. 68, for an order retransferring the action to the county Court. The judge of that court had jurisdiction, inasmuch as the mortgage did not exceed 500l. Richards had been served personally, and notice of the application had been left at Rochester's house with his wife, who said he was away and that she did not know when he would return. All the parties were within the county court district, and the inquiries could be more conveniently taken in the county court.

The Court made the order. **SHIELDS, WHITLEY AND DISTRICT AMALGAMATED MODEL BUILDING SOCIETY v. RICHARDS**

Cozens-Hardy J. [1901] W. N. 106

— New trial — Assault — Schoolmaster — Corporal punishment.

See ASSAULT. 1.

7. — New trial — Jurisdiction of judge to grant new trial — County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 93.

The House affirmed the decision of the C. A., **Dean v. Brown**, [1909] W. N. 146; [1909] 2 K. B. 573, holding that the discretion of a county court judge to order a new trial "if he shall think just," conferred by s. 93 of the County Courts Act, 1888, is a judicial discretion, that he is bound by the same rules as the judges of the High Court, and that the new evidence did not justify a new trial. **BROWN v. DEAN**

H. L. (E.) [1910] W. N. 102

8. — New trial, Application for — Jurisdiction — Power to enter judgment — County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 93.

A county court judge has no jurisdiction, on an application for a new trial of an action tried in the county court, to enter judgment for the applicant. **ROBINSON v. FAWCETT & FIRTH**

Div. Ct. [1901] 2 K. B. 325

Note.

See **Rigby & Co. v. Cow** (No. 2), [1904] 2 K. B. 208, 211.

9. — Remittal of action to county court — Action of tort — Practice — County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 66.

The plt. in an action in the High Court alleged in the statement of claim that she employed the deft., a dentist, for reward to extract a tooth by his painless process, but that the tooth was so unskillfully extracted that portions of it were left in the plt.'s jaw, whereby illness, pain, and suffering were caused to her:—

Held, that the action was an action of tort within the meaning of s. 66 of the County Courts Act, 1888, and might be remitted to the county court under that section on the ground that the plt. had no visible means of paying the deft.'s

COUNTY COURT (Practice)—continued.

costs should a verdict not be found for the plt.
EDWARDS v. MALLAM C. A. [1908] W. N. 67;
 [1908] 1 K. B. 1002

10. — *Remittal of action to county court—Claim originally exceeding 100l.—Reduction by amendment of writ—County Courts Act, 1888* (51 & 52 Vict. c. 43), s. 65.

Where in an action of contract the claim indorsed on the writ originally exceeded 100l., but the plt. obtained leave for an amendment of the writ, by which the claim was reduced to 24l. :—

Held, that there was jurisdiction under the County Courts Act, 1888, s. 65, to order the action to be remitted to the county court.

Dierken v. Philpot, [1901] 2 K. B. 380, considered. *SNEADE v. WOTHERTON BARYTES AND LEAD MINING CO.* C. A. [1904] W. N. 21;
 [1904] 1 K. B. 295

11. — *Remitted action—Adding claim to that mentioned in writ—Jurisdiction—County Courts Act, 1888* (51 & 52 Vict. c. 43), s. 66; *Ord. XIV.*, r. 12.

A common law action of tort for personal injuries was commenced in the High Court and remitted to the county court under s. 66 of the County Courts Act, and the plt. lodged the original writ with the registrar as directed by that section. He then delivered particulars of a claim under the Employers' Liability Act. The deputy judge held that as such a claim could not have been tried in the High Court he had no jurisdiction to try it as part of the trial of the remitted action :—

Held that, as under s. 66 a remitted action becomes for all purposes a county court action, and as consequently the plt., if he had delivered particulars of his common law claim, could have amended those particulars under *Ord. XIV.*, r. 12, by adding the claim under the Employers' Liability Act, he ought equally to be allowed to add that claim, although, as he had not delivered any particulars of the original claim, there were technically no particulars to amend. Appeal allowed. *WOOD v. WEBER* - Div. Ct. [1908] W. N. 121

— *Remitted action—Discretion of judge as to costs.*

See COUNTY COURT—Costs. 2.

13. — *Remitted action—Invalid order to remit not appealed against—Objection to jurisdiction at trial—Prohibition—County Courts Act, 1888* (51 & 52 Vict. c. 43), s. 65—*County Court Rules, 1889, Order XXXIII.*, r. 1.

By the County Courts Act, 1888, s. 65, where in any action of contract brought in the High Court the claim indorsed on the writ does not exceed 100l., or where such claim, though it originally exceeded 100l., is reduced by payment, an admitted set-off or otherwise, to a sum not exceeding 100l., an order may be made for the trial of the action in a county court.

In an action of contract brought in the High Court, in which the sum indorsed on the writ exceeded 100l., the plt. at the hearing by a Master of a summons under the above section abandoned the excess above 100l., and the Master

COUNTY COURT (Practice)—continued.

made an order for trial of the action in the county court. The deft. did not appeal against the order, but at the trial in the county court objected to the jurisdiction; the judge, considering himself bound by the order, tried the action and gave judgment for the plt.; the deft. thereupon applied for a writ of prohibition :—

Held, (1.) that the Master's order was improperly made, the excess not having been abandoned before the issue of the writ in the High Court; but (2.) that, the deft. not having appealed against the order, the objection raised at the trial was made too late, and the county court judge was not bound to inquire into the circumstances under which the order was made, and was not guilty of any excess of jurisdiction in trying the action. *DIERKEN v. PHILPOT*

Div. Ct. [1901] 2 K. B. 380

Note.

This case was considered by C. A., *Sneade v. Wotherton Barytes and Lead Mining Co.*, [1904] 1 K. B. 295. *See No. 10, above.*

14. — *Reply, Right of plaintiff to.*

Where the deft. in an action in a county court calls evidence, the plt. has a right to reply. *CLACK v. CLACK* Div. Ct. [1906] W. N. 40;
 [1906] 1 K. B. 483

15. — *Statutory defence—Notice—Gaming and wagering contract—County Court Rules, 1889, Order X., rr. 10, 18a—Gaming Act, 1892* (55 & 56 Vict. c. 9), s. 1.

In an action in the county court for commission, the defence that the promise to pay commission was null and void under s. 1 of the Gaming Act, 1892, as being made in respect of a gaming and wagering contract, is a statutory defence of which notice must be given under *Order X.*, rr. 10 and 18a, of the County Court Rules, 1889. *WILLIS v. LOVICK* Div. Ct.

[1901] W. N. 100; [1901] 2 K. B. 195

16. — *Staying proceedings—Stay of execution pending appeal—Jurisdiction of county court judge—Order that a sum for security for costs be paid into Court—Money "affected by the judgment"—Practice—R. S. C., 1883, Order LIX.*, r. 14.

By *Order LIX.*, r. 14, of the Rules of the Supreme Court, 1883, an appeal from an inferior Court is not to operate as a stay of proceedings unless the inferior Court so orders, or unless within ten days after the decision a deposit is made of or security given to the satisfaction of the inferior Court for a sum to be fixed by that Court, not exceeding "the amount of the money or the value of the property affected by the judgment" :—

Held, that the "money affected by the judgment" includes costs, and that therefore a county court judge has jurisdiction to order a deft. against whom judgment for a sum of money and costs has been given, and who desires to appeal, to deposit in court or give security for a sum for costs in addition to the amount for which judgment has been given as a condition precedent to the appeal operating as a stay of proceedings. *GRIMSHAW, BAXTER & ELLIOTT, LD. v. PARKER* - Div. Ct.

[1910] W. N. 133; [1910] 2 K. B. 161

COUNTY COURT (Practice)—continued.

17. — *Staying proceedings where submission to arbitration—Jurisdiction—Practice—Arbitration Act, 1889 (52 & 53 Vict. c. 49), ss. 4, 27.*

A county court judge has jurisdiction, under s. 4 of the Arbitration Act, 1889, to stay any legal proceedings in his court by any party to a submission against another party in respect of any matter agreed to be referred. MORRISTON TINPLATE CO. v. BROOKER, DORE & CO.

Div. Ct. [1908] W. N. 16;
[1908] 1 K. B. 403

— Trial—New trial.

See Nos. 7, 8, above.

18. — *Writ of execution—Time of application for writ—Where registrar of county court is also high bailiff—Delivery of writ to officer charged with enforcement—Sale of Goods Act, 1893 (56 & 57 Vict. c. 71), s. 26.*

Sect. 26 of the Sale of Goods Act, 1893, as applied to execution in county courts, must be construed as providing that the time from which a writ of execution, in a county court where the registrar is also high bailiff, binds the property in the goods of the execution debtor is the time at which application is made for the writ, and not the time at which the writ is delivered to the officer charged with the enforcement of it.

Quære, whether the same rule does not apply in a county court where the registrar is not also high bailiff. MURGATROYD v. WRIGHT; BANNISTER, CLAIMANT Div. Ct. [1907] W. N. 120;
[1907] 2 K. B. 333

Prisons.

See the paragraphs at the commencement of this *Heading of County Courts*, cols. 744-747, ante.

Prohibition.

1. — *Practice—Prohibition—Alternative remedy—Service out of the jurisdiction—Action founded on breach of contract—Defendant resident in Scotland—County Court Rules, 1903, Order VII., rr. 41 (e), 49.*

The Court, in the exercise of its discretion, will prohibit, on the ground of absence of jurisdiction, further proceedings in a county court action founded on an alleged breach of contract within the district, where, the deft. being resident in Scotland, the county court judge has, contrary to Order VII., r. 41 (e), of the County Court Rules, 1903, made an order for the service of the summons on the deft. in Scotland, although there is an alternative remedy open to the deft. by way of an application to the county court judge, under Order VII., r. 49, to set aside the service or to discharge the order authorizing such service. CHANNEL COALING CO. v. ROSS

Div. Ct. [1907] 1 K. B. 145

— Practice.

See COUNTY COURT—Practice, 16, 17.

Trial.

1. — *New trial—Jurisdiction of judge to grant a new trial—Practice—County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 93.*

The power given by s. 93 of the County Courts Act, 1888, to a county court judge, "if he shall think just, to order a new trial to be had

D.D.

COUNTY COURT (Trial)—continued.

upon such terms as he shall think reasonable," is a judicial, not an arbitrary, discretion, and the judge is bound by the rules binding upon the High Court.

Decision of the C. A., *Dean v. Brown*, [1909] 2 K. B. 573, affirmed. BROWN v. DEAN

H. L. (E.) [1910] W. N. 102;
[1910] A. C. 373

2. — *Right to have action tried with jury—Amount claimed not exceeding 5l.—Enforcement of right relating to land—County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 101—County Court Rules, 1903, Order XXII., r. 3.*

The plt., who was the owner of certain land, demised the exclusive right of sporting and shooting over the land for two years to a person who employed the deft. as his head gamekeeper. A fire having broke out in the heather on the land, the deft., thinking that the means taken by the plt.'s men would not be successful in extinguishing it, set fire to certain strips of heather on the land to leeward of the approaching conflagration in order that the fire might be checked when it reached the places where the strips of heather had already been burnt down by him. The plt. brought an action in the county court claiming 10s. damages for trespass and an injunction. The deft. contended that it was necessary for the preservation of his employer's sporting rights over the land to use the above means for extinguishing the fire, and he gave notice requiring the action to be tried with a jury:—

Held, that the action was brought to enforce a right relating to land and for the recovery of damages in respect thereof within the meaning of Order XXII., r. 3, of the County Court Rules, 1903, and that therefore the deft. was entitled to have the action tried with a jury. REX v. SURREY COUNTY COURT JUDGE - Div. Ct. [1910] 2 K. E. 410

Workmen's Compensation.

See under MASTER AND SERVANT.

— Appeals from county courts—Papers for judges
See COUNTY COURT—Appeal. 3.

COUNTY RATE.

See under RATES.

COUPLER—Patent—Alleged infringement.

See CANADA—Patent.

"COUPON COMPETITION"—Office used for betting—Events relating to horse-races.
See GAMING. 4.

— House used for betting.
See GAMING. 5-7.

COURT OF APPEAL.

See under APPEAL.

PRACTICE—Court of Appeal.

COURT OF ARCHES.

See under ECCLESIASTICAL LAW —
Court of Arches.

COURT OF CHANCERY (FUNDS) ACT, 1872.

See PRACTICE—Payment, &c.

C C

COURT OF CRIMINAL APPEAL.*See* under CRIMINAL LAW.**COURT OF PROBATE.***See* under PROBATE.**COURT OF RECORD OF CIVIL JURISDICTION**—Appeal to the King's Bench Division
—Inferior Court.*See* APPEAL. 15.**COURT ROLLS**—Custody of—Lord of the manor

—Steward.

See MANOR. 3.

—Manor—Custom—Stone quarry—Right to get stone—Evidence.

See COMMON. 3.**COURTS-MARTIAL**—Practice—Special leave to appeal refused.*See* NATAL.**COVENANT**—After-acquired furniture, Covenant by husband to settle—Bankruptcy of husband.*See* BANKRUPTCY—Trustee.

—After-acquired property, Covenant to settle.

See under SETTLEMENT.

—After-acquired property clause — Persons derivatively entitled—Will—Satisfaction.

See WILL—Satisfaction. 1.

—Annuities.

See under ANNUITIES.

—Annuities, Covenant to pay—Apportionment.

See SETTLED LAND—Annuities.

—Annuity — Release by married woman — Covenant not to sue—Acquiescence—Action by administrator for arrears of annuity.

See HUSBAND AND WIFE—Covenant. 1.

—Annuity for separate use of wife without power of anticipation—Right to annul the covenant on notice to trustee—Wife's waiver of notice valid.

See AUSTRALIA. 2.

—Brewer's lease—Beer — "Tied" public-house — Covenant by mortgagor to take beer from mortgagee only.

See MORTGAGE—Redemption.

—Brewer's lease — Covenant to buy beer of lessors and "their successors in business" — Covenant running with the land.

See LANDLORD AND TENANT. 20.

—Brewer's lease — Non-renewal of licence—Impossibility of performing covenant—Continuance of lease.

See LANDLORD AND TENANT. 29.

—Brewer's lease — Tied house — Lessee's covenant to buy malt liquors from lessor—Rise in prices — Breach of covenant.

See LANDLORD AND TENANT. 19, 21, 22.

—Brewers—Public-house—Licences in jeopardy — Recovery of possession—Disputed title — Breach of covenant.

See RECEIVER.**COVENANT**—*continued.*

—Build, Covenant to—Specific performance—Lease.

See BUILDING CONTRACT. 4.

—Building.

See also COVENANT—Restrictive Covenants, *infra*.

—Building—Building restrictions—One house — Double-tenement house.

See BUILDING.

—Building scheme — Alteration of character of neighbourhood — Acquiescence in breaches.

See BUILDING.

—Business, Not to carry on—Restraint of trade

See under RESTRAINT OF TRADE.

—Company—Director—Contract of service—Restraint of trade—Breach of negative covenant.

See COMPANY—Directors. 5.

1. — *Compensation for subsidence—Lease—Owners for time being—Covenant running with the land—Benefit of covenant—Heirs and assigns of covenantee—Covenantee not a party—Mining lease—Real Property Act, 1845 (8 & 9 Vict. c. 106), s. 5—Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), s. 58, sub-s. 1.*

In a mining lease granted by the owners of the minerals (who were not owners of the surface) the lessee (which expression was to include his executors, administrators, and assigns, unless such construction was excluded by the sense or the context) covenanted with the lessors and "as separate covenants with other the owner or owners occupier or occupiers for the time being" of surface lands to pay to the lessors and other the covenantees or covenantee compensation for all damage occasioned by the working of the coal demised. The lease was assigned to a colliery co. and damage was occasioned to the surface by the co.'s working:—

Held, that the covenant was not simply collateral, but affected the nature and value of the land and ran with the land, and that although the surface owners were not parties to the lease, yet under s. 5 of the Real Property Act, 1845, and s. 58, sub-s. 1, of the Conveyancing and Law of Property Act, 1881, the benefit of the covenant might be taken by the devisees of one who was a surface owner at the date of the lease and by the successors in title of others who were surface owners at that date, and that they could sue the executors of the lessee and the colliery co. for compensation for damage done to their surface lands.

Decision of the C. A. sub. nom. *Forster v. Elvet Colliery Co.* *Quin v. the Same.* *Seed v. the Same.* *Morgan v. the Same*, [1908] 1 K. B. 629, affirmed.

Quere, whether s. 5 of the Real Property Act, 1845, is confined to covenants running with the land. *DYSON v. FORSTER.* *DYSON v. SEED, QUIN, and MORGAN* **H. L. (E.) [1909] A. C. 98**

—Conveyance—Implied covenants for title—Breach—Damages.

See VENDOR AND PURCHASER—Title.

3.

COVENANT—continued.

- Corporation — Ultra vires—Covenant not to erect buildings—Validity of covenant.
See VENDOR AND PURCHASER — Corporation. 1.
- Costs — Taxation — Lease—Renewal at the “cost of the lessee.”
See SOLICITOR—Costs.
- Court of Probate.
See under PROBATE.
- Debts—Covenant to exercise power as security for loan—Liability of appointed fund for debts.
See POWER OF APPOINTMENT.
- Deed of concession—Construction of covenant — Lands in possession of the Crown.
See TRINIDAD AND TOBAGO. 1.
- Determination of lease—Notice—Liability of lessee for past breaches of covenant.
See LANDLORD AND TENANT. 20.
- Fixtures — Tenant’s covenant to deliver up demised premises with fixtures — Surrender and creation of new tenancy.
See LANDLORD AND TENANT. 34.
- Forfeiture—New Zealand Property Law Act, 1908—Relief against forfeiture on breach of covenant.
See NEW ZEALAND.
- Forfeiture for breach of—Costs—Unnecessary defendants—Weekly tenants—Practice.
See COSTS. 78.
- Further assurance—Legacy duty—Right to indemnity—Reversionary share—Settlement.
See REVENUE—Legacy Duty. 2.
- Hay and straw on the premises, Covenant to stack and consume — Destruction by fire.
See LANDLORD AND TENANT. 4.
- Husband and wife—Covenants.
See under HUSBAND AND WIFE — Covenant.
- Husband and wife—Insurance.
See under HUSBAND AND WIFE — Insurance.

2. — Implying covenant from recital.

Motion to strike out a statement of claim on the ground that it disclosed no cause of action. In the view which the Court took the case had no legal interest, but it is noted for the sake of the observations of the learned judge upon the head-note in *Monypenny v. Monypenny*, (1861) 9 H. L. C. 114, in the House of Lords.

Kekewich J. said that when *Monypenny v. Monypenny* was before Wood V.-C., 4 K. & J. 174, he invoked the assistance of Bramwell and Watson BB., and adopted the opinion of those learned judges, which was read by Bramwell B. One question dealt with by Bramwell B. was whether a recital by the grantor of an annuity charged on certain lands that he was seised in fee simple of those lands implied a covenant for payment, and he held that it did not. In the C. A., 3 De G. & J. 572, Lord Chelmsford upon the construction of the deed came to the conclusion that there was

COVENANT—continued.

an express covenant, and he thought it unnecessary to determine whether a covenant should have been implied from the recital. In the House of Lords the majority of the noble Lords took the same view as Lord Chelmsford; but in none of the speeches was there anything approaching a declaration that a recital of seisin by itself imported a covenant. Therefore the reporter in the House of Lords, in saying in the first paragraph of his head-note that the recital could be treated by the grantee as a covenant, had been guilty of a mistake. The reporter, observing that the House of Lords had reversed the decision of the Court of first instance, must have supposed that they had reversed that particular conclusion; but the judgments of the House of Lords and the judgment of the Court of first instance proceeded upon different lines. *NORTH BRITISH AND MERCANTILE INSURANCE v. CLIFFORD*

Kekewich J. [1903] W. N. 77

- Impositions—Covenant by lessee to pay and discharge “impositions charged or imposed in respect of the premises.”
See LANDLORD AND TENANT. 41.
- Impositions—Outgoings, Covenant by lessee to pay.
See LANDLORD AND TENANT. 41.
- Impositions — “Outgoings,” Covenant by occupier to pay—“Factory”—Means of escape in case of fire.
See FACTORY. 7.
- Impositions—“Outgoings”—Factory — Expense of complying with requirement of sanitary authority—Landlord and tenant.
See COUNTY COURT—Jurisdiction. 5.
- Impositions—“Outgoings.”
See LANDLORD AND TENANT. 56—60.
- “Impositions and outgoings”—Factory Acts — Underground bakehouse.
See FACTORY. 8.
- Impositions and outgoings—Lease of land—Covenant to pay taxes—Usual covenant by lessee.
See CANADA—Leases. 1.
- Impositions and outgoings — To pay “outgoings”—“Factory”—Means of escape in case of fire—County court.
See FACTORY. 7.
- Insurance—Husband and wife.
See under HUSBAND AND WIFE—Insurance.
- Insure, Covenant to.
See LANDLORD AND TENANT. 44.
- “Interested” in similar business—Servant—Fixed salary.
See RESTRAINT OF TRADE. 3.

3. — Judgment—Merger—Mortgage—Rate of interest—Ancillary and independent covenants.

A mortgage deed contained a proviso for redemption if the mortgagors should pay the principal with interest after the rate thereafter covenanted. The mortgagors covenanted to repay the principal on a day named with interest

COVENANT—*continued.*

at 5 per cent., and if the principal was not then paid, to pay interest at that rate half-yearly on so much of the principal as should remain unpaid. The mortgagors having made default, the mortgagees recovered judgment against them for principal and interest upon the covenant.

An action having been brought by another mortgagee for an account of all moneys due to incumbrancers :—

Held, that though the personal remedy on a covenant to pay a debt merges in a judgment and a judgment carries only 4 per cent. interest, yet upon the true construction of this mortgage deed the mortgagees were entitled to retain their security until they were paid the principal sum and interest at 5 per cent.

The decisions of the Master of the Rolls and the Court of Appeal in Ireland, *Usborne v. Limerick Market Trustees*, [1901] 1 I. R. 85, reversed on this point. ECONOMIC LIFE ASSURANCE SOCIETY *v.* USBORNE

H. L. (Ir.) [1902] A. C. 147

— Land tax, Covenant by lessor to pay—Construction—Value of land improved by building.

See LANDLORD AND TENANT. 45.

— Landlord and tenant.

See under LANDLORD AND TENANT

— Leasehold house — Title — Open contract—Breach of covenant to repair.

See VENDOR AND PURCHASER — **In General.**

— Leaseholds generally.

See under LEASEHOLDS.

— Leaseholds — Onerous covenants — Duty of vendor to disclose—Rescission.

See VENDOR AND PURCHASER—**Rescission.** 3.

— Letting — “Not to let”—Breach—Injunction—Damages.

See LANDLORD AND TENANT. 47.

— Market, Substructure and support of—Lease—Covenant—Iron girders — Deterioration—Standard of strength.

See LANDLORD AND TENANT. 83.

— Mining leases.

See under MINES.

— Mortgage—“Clog” on redemption—Public-house—“Tie”—Restrictive covenant.

See MORTGAGE—**Redemption.**

— Mortgage — Foreclosure — Covenant to pay interest half-yearly—Redemption.

See MORTGAGE—**Foreclosure.**

— Mortgage—Foreclosure—Tacking—Consolidation—Postponement of surety.

See MORTGAGE—**Foreclosure.**

— Mortgage of reversion—Real Property Limitation Act.

See LIMITATIONS, STATUTE OF. 17.

— Mortgages of settled estates—Covenants for title.

See SETTLEMENT.

COVENANT—*continued.*

— Mortgagor in possession—Breach of covenant to repair—Right of mortgagor to sue lessee—Landlord and tenant.

See MORTGAGE—**Leases.**

— Mortgagor to take beer during the term from mortgagee, Covenant by—“Clog” on redemption.

See MORTGAGE—**Redemption.**

— Negative—Lease—Proviso for re-entry.

See LANDLORD AND TENANT. 71.

— Negative covenant, Right of assignee to enforce—Indemnity.

See LANDLORD AND TENANT. 52.

— Not to sue for restitution—Wife's petition—No defence — Existence of deed of separation.

See RESTITUTION OF CONJUGAL RIGHTS. 1.

— Notice to quit.

See LANDLORD AND TENANT. 53—55.

4. — *Option to purchase reversion in fee—Validity — Executory interest in land — Perpetuity—Covenant running with land — Lessor and lessee—Covenants Act, 1540 (32 Hen. 8, c. 34)—Remoteness.*

A lease of land for ninety-nine years granted in 1867 contained a proviso that in case the lessee, his heirs or assigns, should at any time during the term be desirous of purchasing the fee simple of the land at the rate of 500*l.* per acre, the lessor, his heirs or assigns, on receipt of the purchase-money, would execute a conveyance of the land in favour of the lessee, his heirs and assigns.

In 1904 an action was brought by an assignee of the lease, who had given notice of his desire to exercise the option, against assigns of the lessor to compel a conveyance of the land accordingly :—

Held by Warrington J., [1904] W. N. 205, that the option to purchase was invalid on the ground of remoteness.

Held by the C. A., that the proviso or covenant did not come within the statute 32 Hen. 8, c. 34, so as to make the liability to perform it run with the reversion, and that consequently the action could not be maintained against the defts.

Semble, also, that the option was void on the ground of remoteness. WOODALL *v.* CLIFTON.

C A. [1905] W. N. 99; [1905] 2 Ch. 257.

— Outgoings, Impositions and.

See COVENANT—**Imposition**, *supra*.

5. — *Parties — Covenant by covenantor with himself and others—Joint right to enforce obligation—Validity.*

By a marriage settlement W. W. K. assigned to the trustees a policy of assurance to be held upon the trusts of the settlement; and he, T. D. B. and C. J. K. (two of the trustees of the settlement) covenanted with the trustees to keep the policy on foot and pay the premiums. A new trustee was afterwards appointed in the place of one who retired; and the policy and the right to enforce the covenant were vested in T. D. B., C. J. K., and E. H. E. (the

COVENANT—continued.

new trustee) as joint tenants. W. W. K. made default in payment of the premiums, and T. D. B. and C. J. K. refused to continue making the payments personally. E. H. E. brought an action against W. W. K., T. D. B., and C. J. K., the covenantors, for a declaration that they were jointly and severally liable to pay the premiums and for an order on them to do so. T. D. B. and C. J. K. raised a point of law, asking for a declaration that the covenant was void so far as regarded them by reason of their being named therein both as covenantors and covenantees, and that the action might be dismissed:—

Held, that the covenant was void and the action must be dismissed.

De Tastet v. Shaw, (1818) 1 B. & Al. 664, and *Boyce v. Edbrooke*, [1903] 1 Ch. 336, followed.

Rose v. Poulton, (1831) 2 B. & Ad. 822, explained. **ELLIS v. KERR** **Warrington J.**
[1910] W. N. 62; [1910] 1 Ch. 529

— Pasture lands—Covenant not to plough up—Good husbandry.

See LANDLORD AND TENANT. 62.

— Paving expenses—Payment by occupier—Right of deduction from rent—Distress.
See LONDON—Streets. 12.

— Paving expenses—Rates and assessments, Covenant by tenant to pay.
See DISTRESS. 6.

— Premiums, Covenant to pay—Mortgage of life policy—Bankruptcy of mortgagor—Voluntary payment of premiums by third party.
See BANKRUPTCY—Third Parties. 2.

— Purchase of lease—Unusual and onerous covenants—Duty of vendor—Constructive notice.
See VENDOR AND PURCHASER—Leases. 1.

— Quiet enjoyment—Covenant.
See LANDLORD AND TENANT. 64—68.

— Quiet enjoyment, Covenant for—Breach of covenant—Interruption by assignee.
See LANDLORD AND TENANT. 64.

— Quit, Notice to.
See LANDLORD AND TENANT. 53—55.

— Railway company—Conveyance subject to restrictive covenant—Resale of part of land.
See VENDOR AND PURCHASER—Railways. 1.

— Receiver, Use or occupation by—Head lease—Rent—Breach of covenant—Damages.
See MORTGAGE—Receiver.

— Re-entry—Compulsory purchase by public body—Severance of reversion.
See LEASE. 2.

— Re-entry, Proviso for.
See LANDLORD AND TENANT. 71, 72.

— Renewal, Covenant for—Lease.
See UNDER LANDLORD AND TENANT. 76—78.

COVENANT—continued.

— Rent—Landlord and tenant.
See under LANDLORD AND TENANT.

— Rent-charge—Personal covenant to pay—Remedy when barred.
See LIMITATIONS (STATUTES OF). 23.

— Restraint of trade.
See under RESTRAINT OF TRADE.

— Restrictive covenant—Building restrictions—One house—Double tenement house.
See BUILDING. 3.

— Restrictive covenant—Building scheme—Alteration of character of neighbourhood—Acquiescence in breaches.
See BUILDING. 4.

— Restrictive covenant—Building scheme—Rights of purchasers inter se.
See VENDOR AND PURCHASER—Covenants. 2, 3.

— Restrictive covenant—Compensation—Lands injuriously affected.
See LANDS CLAUSES ACTS. 36.

6. — Restrictive covenant—Covenant running with land—Covenant enforceable in equity—Personal and collateral covenant—Sale of all covenantee's land—Breach after death of covenantee—Right of action by personal representative against assign of covenantor.

When on the sale of the whole of a vendor's land the purchaser enters into a covenant restricting the user of the land, the executor of the vendor cannot maintain an action for an injunction against an assign of the purchaser in respect of a breach of the covenant committed after the vendor's death.

Such a covenant is merely personal and collateral, and the principle of *Tulk v. Moxhay*, (1848) 2 Ph. 774, does not apply to it. **FORMBY v. BARKER** **C. A.** [1903] W. N. 133; [1903] 2 Ch. 539

7. — Restrictive covenant—Freehold building land—Plans to be submitted—Construction of covenant—Lease by covenantor—Breach of covenant by lessee—Bankruptcy of lessee—Re-entry by covenantor—Liability of covenantor for his assigns—Past breach.

The purchaser of part of a freehold building estate covenanted with the vendor for himself and his assigns to erect no other than private residences and to submit plans for approval before commencing to build. The purchaser granted a building lease with covenants similar to those in his conveyance; the lessees, without submitting plans for the vendor's approval, commenced a building which was alleged to be and was held a breach of the covenant. The lessees became bankrupt, and their trustee having disclaimed the lease, the purchaser took possession of the land and offending building. The vendor having sold the rest of the estate to the plt. with the benefit of the purchaser's covenants, the plt. brought an action against the purchaser to compel removal of the building, and for damages:—

Held, that there was no continuing breach, the covenant having been broken once for all when the building was erected contrary to it; that the breach was committed not by the

COVENANT—*continued*.

purchaser, but by his lessees, and that he had not by his conduct rendered himself liable for the violation of the covenant; and that neither at law nor in equity was the plt. entitled to any relief.

Decision of Eve. J., [1909] W. N. 61; [1909] 1 Ch. 680, affirmed.

Dictum of Lopes L.J. in *Hall v. Ewin*, (1878) 37 Ch. D. 74, 82, queried. **POWELL v. HEMSLEY** C. A. [1909] W. N. 141; [1909] 2 Ch. 252

— Restrictive covenant—"Offensive" trade or business—Billposting—Advertisement hoarding—"Building"—Mandatory injunction.
See BUILDING ESTATE. 1.

— Restrictive covenants, Freeholds subject to—Covenants to be entered into by purchaser.
See VENDOR AND PURCHASER—Covenants. 1.

— Restrictive covenants—Landlord and tenant.
See under LANDLORD AND TENANT.

— Restrictive covenants—Title by possession—Notice—Acceptance of less than forty years' title.
See VENDOR AND PURCHASER—Title. 12.

— Restrictive covenants—Trespasser—Title by adverse possession—Statute of Limitations.
See VENDOR AND PURCHASER—Title. 13.

— Running with land, Covenant—Covenant by lessor to perform covenants of head lease—Collateral covenant.
See LANDLORD AND TENANT. 26.

— Running with land, Covenant—Lease by mortgagee as "agent."
See LANDLORD AND TENANT. 51.

— Running with land—Indemnity—Quiet enjoyment.
See LANDLORD AND TENANT. 26.

— Running with land—Lands compulsorily taken—Compensation—Tied house.
See HOUSING OF WORKING CLASSES. 2.

— Running with land—Option to purchase freehold—Option during whole term.
See No. 4, above.

— Running with the land, Covenant—Mine—Subsidence, Compensation for—"Heirs and assigns."
See MINE.

— Separation, Deed of—Covenant not to sue for any previous offence—Husband's breaches of other covenants.
See DIVORCE—Practice. 11.

— Settled estates—Lease.
See under SETTLED LAND—Leases.

— Solicitor—Restraint on trade.
See under SOLICITOR—Restraint on Trade.

COVENANT—*continued*.

— Stamp duty—"Bond or covenant"—"Lease."
See REVENUE—Stamps. 30.

— Sub-letting—Forfeiture, Relief against—Breach of covenant not to sub-let without consent—Effect of negligence.
See under LANDLORD AND TENANT.

— Sub-structure, Lease of—Covenant to sufficiently maintain, support, and keep in good repair—Iron girders.
See LANDLORD AND TENANT. 83.

— Title—Breach—Measure of damages—Conveyance.
See VENDOR AND PURCHASER—Conveyance. 1.

— To build, Covenant—Specific performance—Lease.
See BUILDING CONTRACT. 4.

— To stack and consume hay and straw on the premises—Destruction by fire—Compensation.
See LANDLORD AND TENANT. 4.

— Trade fixtures—General words—Ejusdem generis—Tenant's right of removal.
See FIXTURES. 10.

— Trading, Breach of restrictive covenant as to—Right of employers to sue.
See MASTER AND SERVANT—Contract of Service.

— Underlessee—Covenant running with the land—Covenant by underlessor with underlessee to perform covenants of head lease—Collateral covenant.
See LANDLORD AND TENANT. 26.

— Underlessee not an "assign"—Privity of contract.
See LANDLORD AND TENANT. 11.

— Validity—Covenant as to mode of execution of special testamentary paper.
See under POWER OF APPOINTMENT.

— Vendor and purchaser.
See under VENDOR AND PURCHASER—Covenants.

— Water rate—Covenant by lessor to pay rates.
See LANDLORD AND TENANT. 69.

COVERING DEED—Debenture stock.

See under COMPANY—Debentures.

COVERTURE—Power—Appointment—"During coverture by will or deed"—Execution of will during coverture—Death of testatrix discover—Exercise of power—Validity.

See under POWER OF APPOINTMENT.

CRAN MEASURES ACT, 1908 (8 Edw. 7, c. 17), legalizes the use of cran and quarten cran measures in connection with trading in fresh herrings in England and Wales.

CRANE PLATFORM—Workmen's compensation—Temporary wooden structure.
See MASTER AND SERVANT—Compensation.

CREDITOR—Administration generally.

See under ADMINISTRATION.

- Administrator—Retainer—"Not unduly preferring."

See EXECUTOR—Retainer.

- Bankruptcy practice.

See Cases under BANKRUPTCY.

- Company practice.

See Cases under COMPANY and COMPANY—WINDING-UP.

- Corporate creditor—Grant of administration to officer—Retainer.

See EXECUTOR—Retainer. 2.

- County court.

See under COUNTY COURT.

- Creditor's action—Attendance at proceedings.

See ADMINISTRATION. 2.

- Deed of arrangement—Registration—Contents of affidavit.

See FRAUDULENT CONVEYANCE. 1.

- Escheated land—Land Transfer Act—Administration.

See LAND TRANSFER. 6.

- Execution.

See under EXECUTION.

- Execution creditor.

See under EXECUTION CREDITOR.

- Execution creditor—Wrongful seizure—Absence of malice—Action of trespass.

See SHERIFF.

- Executor—Administration.

See under EXECUTOR.

- Fraudulent preference—Winding-up—Powers of committee.

See INDUSTRIAL AND PROVIDENT SOCIETY. 5.

- Grant of administration to creditor under s. 73 of the Court of Probate Act, 1857—Citation of next of kin (if any) dispensed with.

See ADMINISTRATION. 6.

- International law—Annexation—Creditor's rights against conqueror.

See PETITION OF RIGHT.

- Judgment creditor—Equitable execution—Effect of order—Notice to executor—Charging order—Priority.

See RECEIVER.

- Judgment creditor—Garnishee order absolute—Mistake—Setting aside.

See PRACTICE—Setting Aside.

- Judgment creditor—Receiver—Appointment—Jurisdiction—Railway not open for public traffic.

See RAILWAY—Receiver.

- Partition action—Fund in Court representing rents and profits—Administration.

See ADMINISTRATION. 25.

- Priorities—Voluntary debt—Insolvent estate—Bankruptcy rule—Administration.

See EXECUTOR—Administration. 3.

CREDITOR—continued.

- Probate—Practice—Concurrent suits in Chancery and Probate Divisions—Sureties.

See PROBATE—Practice.

- Railway company—Construction of extension line—Separate undertaking.

See RAILWAY—Powers.

- Retainer—Judgment creditor—Judgment against executor—Subsequent administration decree—Insolvent estate.

See EXECUTOR—Retainer. 1.

- Secured creditor.

See under BANKRUPTCY—Secured Creditor.

- Secured creditor—Default on Stock Exchange—Mortgage—Deposit of securities—Redemption—Notice of act of bankruptcy.

See BANKRUPTCY—Stock Exchange. 1.

- Secured creditor—Proof by against the real estate—Lapse of time—Fund in court.

See ADMINISTRATION. 23.

- Secured creditor—Receiver, Appointment of—Notice to vendor—Rescission of contract by consent.

See VENDOR AND PURCHASER—Receiver. 1.

- Trustee carrying on testator's business—Defaulting trustee—Indemnity.

See TRUSTEE—Business. 1.

CREMATION.

See under BURIAL.

- CREW**—Ship—Agreement with crew—Stipulations contrary to law.

See SHIPPING—Crew.

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Criminal Procedure, England—Costs and Compensation. Regulations made by the Secretary of State, dated Nov. 12, 1903, governing the allowances payable to prosecutors and witnesses in criminal prosecutions. Reprint from W. N. 1904 (Jan. 2), p. 1. See CURRENT INDEX, 1904, p. cxi.

Poor Prisoners' Defence—Poor Prisoners' Defence Act, 1903 (3 Educ. 7, c. 38). Regulations of the Secretary of State, dated Dec. 30, 1903, as to the allowances which may be made under s. 1, sub-s. 2, of the Poor Prisoners' Defence Act, 1903. Reprint from W. N. 1904 (Jan. 23), p. 55. See CURRENT INDEX, 1904, p. cxxi.

Rules made by the Attorney-General, dated May 13, 1904, with the approval of the Lord Chancellor and the Secretary of State for the Home Department in pursuance of s. 2 of the Poor Prisoners' Defence Act, 1903. Reprint from W. N. 1904 (June 25), p. 209. See CURRENT INDEX, 1904, p. cxxii.

SUMMARY JURISDICTION.] Summary Jurisdiction Acts. Rule, dated Dec. 30, 1903, made by the Lord Chancellor under s. 29 of the Summary

CRIMINAL LAW—*continued.*

Jurisdiction Act, 1879, as to the taking of recognizances by the governor of a prison. Reprint from **W. N. 1904 (Feb. 20)**, p. 71. See **CURRENT INDEX, 1904**, p. cxxiv.

Criminal Justice Administration Act, 1851 (14 & 15 Vict. c. 55). *Regulations made by the Secretary of State, dated June 14, 1904, governing the allowances payable to prosecutors and witnesses in criminal prosecutions.* Reprint from **W. N. 1904 (July 16)**, p. 225. See **CURRENT INDEX, 1904**, p. cxiii.

Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), is an Act to establish a Court of Criminal Appeal and to amend the law relating to appeals in criminal cases.

Probation of Offenders Act, 1907 (7 Edw. 7, c. 17), is an Act to permit the release on probation of offenders in certain cases, and for other matters incidental thereto.

Costs in Criminal Cases Act, 1908 (8 Edw. 7, c. 15), consolidates and amends the law relating to the payment of costs in criminal cases.

Prosecution of Offences Act, 1908 (8 Edw. 7, c. 3), amends the Prosecution of Offences Acts, 1879 and 1884.

Criminal Appeal (Amendment) Act, 1908 (8 Edw. 7, c. 46), amends the Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), with reference to the Judges of the Court of Criminal Appeal and the Registrar.

Prevention of Crimes Act, 1908 (8 Edw. 7, c. 59), makes better provision for the prevention of crime, and for that purpose to provide for the reformation of young offenders and the prolonged detention of habitual criminals, and for other purposes incidental thereto.

Youthful Offenders — Children Act, 1908 (8 Edw. 7, c. 67).—The Summary Jurisdiction (Children Act) Rules, 1909, dated Mar. 23, 1909. Reprint from **W. N. 1909 (April 3)**, p. 111; and **May 27, 1909, W. N. 1909 (July 10)**, p. 269. See **CURRENT INDEX, 1909**, p. xciv.

Costs in Criminal Cases Act, 1908 (8 Edw. 7, c. 15).—Costs and Expenses.—Regulations, dated Dec. 16, 1908, made by the Secretary of State under s. 5 of the Costs in Criminal Cases Act, 1908 (8 Edw. 7, c. 15). Reprint from **W. N. 1909 (Jan. 2)**, p. 3. See **CURRENT INDEX, 1909**, p. ciii.

[NOTE.—*The Regulations dated Nov. 28, 1908, made under s. 5 of the Costs in Criminal Cases Act, 1908 (8 Edw. 7, c. 15), are set out (as a reprint from W. N. [1908] (Dec. 12), p. 343) at p. xcvi. of the Final Part of the Current Index, 1908.*]

Criminal Appeal Act, 1907 (7 Edw. 7, c. 23) — Shortland writers appointed under, will continue to act until further order. Dated April 19, 1909. Reprint from **W. N. 1909 (April 24)**, p. 141. See **CURRENT INDEX, 1909**, p. cxvii.

Punishment, England. Detention in Borstal Institutions. Regs. June 23, 1909, under s. 4 (2) of the Prevention of Crime Act, 1908. **St. R. & O., 1909, No. 724.** Price 1d.

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Punishment, England. Detention in Borstal Institutions. Regn., July 7, 1910, amending Regn. 15 under s. 4 (2) of the Prevention of Crime Act, 1908. **St. R. & O., 1910, No. 771.** Price 1d.

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Youthful Offenders, col. 835.

Abortion.

1. — *Using instruments with intent to procure abortion—Admissibility of evidence of felonious use of similar instruments on another woman on a previous occasion.*

The prisoner, a medical man, was indicted for feloniously using certain instruments on a certain woman with intent to procure her miscarriage. At the trial evidence was tendered on behalf of the prosecution to shew that some nine months previously the prisoner had used similar instruments upon another woman with the avowed intention of bringing about her miscarriage, and that he had then used expressions tending to shew that he was in the habit of performing similar operations for the same illegal purpose. The evidence was admitted, and the prisoner was convicted:—

Held, by Kennedy, Darling, Jelf, Bray, and A. T. Lawrence JJ. (Lord Alverstone C.J. and Ridley J. dissenting), that the evidence was rightly admitted, and that the conviction must be upheld. *REX v. BOND* - - - C. C. R. [1906] 2 K. B. 389; [1906] W. N. 138

Allowances.

Criminal Justice Administration Act, 1851 (14 & 15 Vict. c. 55). Regulations made by the Secretary of State, dated June 14, 1904, governing the allowances payable to prosecutors and witnesses in criminal prosecutions. Reprint from W. N. 1904 (July 16), p. 225. See CURRENT INDEX, 1904, p. cxiii.

Appeal.**(Criminal Appeal).**

Criminal Appeal Rules, 1908. Rules made with the approval of the Lord Chancellor and the

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Secretary of State, by the Lord Chief Justice and the Judges of the Court of Criminal Appeal, and came into operation on April 18, 1908.

A copy of these Rules was presented gratis by the Council to Subscribers to the entire series of the Law Reports, 1908, in the United Kingdom. These copies were delivered with the April Parts of the Law Reports. Reprint from W. N. 1908 (March 28), p. 83.

Additional Rule made, with the approval of the Lord Chancellor, by the Lord Chief Justice and the Judges of the Court of Criminal Appeal, dated March 27, 1908. Reprint from W. N. 1908 (April 4), p. 94. See CURRENT INDEX, 1908, p. xciv.

Criminal Appeal Act, 1907 (7 Edw. 7, c. 23) — Costs of Appeal. Order of Secretary of State, dated March 27, 1908, under s. 13 (2) of the Criminal Appeal Act, 1907. Reprint from W. N. 1908 (April 11), p. 95. See CURRENT INDEX, 1908, p. xciv.

Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 20 (3)—Rule 17 of Crown Office Rules, 1906, added to. Reprint from W. N. 1908 (June 6), p. 165. See CURRENT INDEX, 1908, p. xcvi.

Criminal Appeal Act, 1907—Rates of payment fixed by the Lords Commissioners of His Majesty's Treasury for Shorthand Writing and Copying under the Criminal Appeal Act, 1907, and the Criminal Appeal Rules, 1908. Reprint from W. N. 1908 (Oct. 17), p. 303. See CURRENT INDEX, 1908, p. xcvi.

Prison, England—Rules, April 8, 1908, under the Prison Act, 1898, and the Criminal Appeal Act, 1907, for the treatment and custody of appellants not admitted to bail. St. R. & O., 1908, No. 282. Price 1d.

Criminal Appeal (Amendment) Act, 1908, (8 Edw. 7, c. 46), amends the Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), with reference to the Judges of the Court of Criminal Appeal and the Registrar.

Criminal Appeal Act, 1907 (7 Edw. 7, c. 23) — Shorthand writers appointed under, will continue to act until further order. Dated April 19, 1909. Reprint from W. N. 1909 (April 24), p. 141. See CURRENT INDEX, 1909, p. cxvii.

1. — *Attempt—Act done with intent to commit offence.*

The deft. was indicted at the Knutsford Quarter Sessions for attempting to obtain money by false pretences from two persons named Slater and Ingham. The deft. represented to Slater and Ingham respectively that he was a partner in a firm of advertising contractors, that the firm were about to transfer their business to a co., and that he was desirous of appointing a person to act as the representative of the co. in a particular district. He told them that the person who got the appointment would make about 600*l.* a year out of it, but would have to invest the sum of 100*l.* in debentures or shares of the co. He proposed to each of them that they should apply for the appointment. At the time when he made these proposals he, with the object of

CRIMINAL LAW (Appeal)—continued.

inducing Slater and Ingham respectively to believe that his business was a substantial one, produced to each of them in turn a balance-sheet which purported to shew a considerable profit, and which he falsely represented to be the balance-sheet of his firm for the preceding year. He was convicted of attempting to obtain the sum of 100*l.* from each of them. He appealed upon the ground that the acts complained of did not amount in law to an attempt to commit the offence:—

Held, that the deft.'s acts sufficiently approximated to the commission of the offence to constitute an attempt to commit it. Appeal dismissed. **REX v. LAITWOOD**

C. C. A. [1910] W. N. 122

2. — Attempt—Indictment for murder—Conviction for attempt — Punishment — Criminal Procedure Act, 1851 (14 & 15 Vict. c. 100), s. 9—Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), ss. 11—15.

A person who upon an indictment charging him with murder is convicted under s. 9 of the Criminal Procedure Act, 1851, of an attempt to murder may be sentenced to penal servitude for life by virtue of the provisions of ss. 11—15 of the Offences against the Person Act, 1861. **REX v. WHITE — C. C. A. [1910] W. N. 122; [1910] 2 K. B. 124**

— Attempt—Sentence.

See No. 24, below.

— Conspiracy.

See under CRIMINAL LAW—Conspiracy.

3. — Conviction involving “no substantial miscarriage of justice.” Meaning of—Power of Court to find facts—Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 4, sub-s. 1.

On the trial of an indictment for manslaughter there was evidence that the prisoner had inflicted injuries upon the deceased more than a year and a day before the date of the death, and also certain further injuries within that period which tended to accelerate the death. The judge directed the jury that they might find the prisoner guilty even if they thought that the death was wholly caused by the earlier injuries. The jury convicted the prisoner.

By s. 4, sub-s. 1, of the Criminal Appeal Act, 1907, “The Court may, notwithstanding that they are of opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if they consider that no substantial miscarriage of justice has actually occurred.”

Upon an appeal against the conviction on the ground of misdirection:—

Held that, although upon a proper direction the jury would probably have found that the later injuries accelerated the death, as it was not certain that they would have done so, and as the Court were not entitled under the above section to substitute themselves for the jury and find the facts necessary for conviction, they could not say that there had been no substantial miscarriage of justice, so as to entitle them to

CRIMINAL LAW (Appeal)—continued.

dismiss the appeal upon that ground. **REX v. DYSON — C. C. A. [1908] W. N. 142; [1908] 2 K. B. 454**

— “Criminal cause or matter” — Distress — Bailiff—Costs and charges—Practice.
See APPEAL. 6.

— Drunkenness — Capacity to manage own affairs when sober.
See DRUNKENNESS. 1.

4. — Drunkenness — Murder — Manslaughter — Prisoner so affected by drink as to be incapable of knowing that his act is dangerous—Direction to jury.

Upon the trial of an indictment for murder the question whether the jury are justified in returning a verdict of manslaughter on the ground of the voluntary drunkenness of the prisoner may be determined by the following rule:—

A man is taken to intend the natural consequences of his acts. This presumption may be rebutted, in the case of a man who is drunk, by shewing his mind to have been so affected by the drink he had taken that he was incapable of knowing that what he was doing was dangerous, i.e., likely to inflict serious injury. If this be proved, the presumption that he intends to do grievous bodily harm is rebutted.

Upon the trial of a prisoner for murder evidence was given that he was drunk at the time of the commission of the act charged, and the judge gave the following direction to the jury:—

“In the first place, every one is presumed to know the consequences of his acts. If he be insane, that knowledge is not presumed. Insanity is not pleaded here, but where it is part of the essence of a crime that a motive, a particular motive, shall exist in the mind of the man who does the act, the law declares this—that if the mind at that time is so obscure by drink, if the reason is dethroned and the man is incapable therefore of forming that intent, it justifies the reduction of the charge from murder to manslaughter.”—

Held, that the direction was right. **REX v. MEADE — C. C. A. [1909] W. N. 62; [1909] 1 K. B. 895**

5. — Drunkenness — Validity of sentence—Habitual drunkard—Conviction for being guilty of disorderly behaviour while drunk—Three previous summary convictions for offences involving drunkenness—Power to order imprisonment in addition to detention—Inebriates Act, 1898 (61 & 62 Vict. c. 60), s. 2, sub-s. 1.

By the Inebriates Act, 1898, s. 2, sub-s. 1, “Any person who commits any of the offences mentioned in the First Schedule to this Act, and who within the twelve months preceding the date of the commission of the offence has been convicted summarily at least three times of any offences so mentioned, and who is a habitual drunkard, shall be liable upon conviction on indictment, or if he consents to be dealt with summarily on summary conviction, to be detained for a term not exceeding three years in any

CRIMINAL LAW (Appeal)—continued.

certified inebriate reformatory the managers of which are willing to receive him " :—

Held, that where a person is convicted on an indictment preferred against him under the section a sentence of imprisonment with hard labour cannot be inflicted upon him in addition to the detention in a certified inebriate reformatory authorized by the section. **REX v. BRIGGS**

C. C. A. [1908] W. N. 244; [1909] 1 K. B. 381

— Drunkenness, Conviction for offence not involving.

See No. 19, below.

— Evidence.

See under CRIMINAL LAW—Evidence.

6. — Evidence of accomplice — Absence of corroboration — Omission of judge to caution jury — Effect of on conviction.

Where a prisoner is convicted upon the uncorroborated evidence of an accomplice the Court of Criminal Appeal may quash the conviction if the judge at the trial omitted to caution the jury against convicting upon such evidence. **REX v. TATE**

C. C. A. [1908] 2 K. B. 680

— False pretences.

See under CRIMINAL LAW — False Pretences.

7. — Habitual criminal—Form of indictment — Crime committed before Act in operation — Sentence of penal servitude and preventive detention — Appeal against sentence without leave — Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 3 (c) — Prevention of Crime Act, 1908 (8 Edw. 7, c. 59), ss. 10, 11, 19.

By s. 10, sub-s. 1, of the Prevention of Crime Act, 1908, "where a person is convicted on indictment of a crime committed after the passing of this Act, and subsequently the offender admits that he is or is found by the jury to be a habitual criminal, and the Court passes a sentence of penal servitude, the Court . . . may pass a further sentence ordering that on the determination of the sentence of penal servitude he be detained for such period not exceeding ten nor less than five years, as the Court may determine, and such detention is hereinafter referred to as preventive detention . . ." By sub-s. 2, "a person shall not be found to be a habitual criminal unless the jury finds on evidence (a) that since attaining the age of sixteen years he has at least three times previously to the conviction of the crime charged in the said indictment been convicted of a crime . . . and that he is leading persistently a dishonest or criminal life . . ."

An indictment containing a count under the above section alleged that the prisoner, since attaining the age of sixteen years, had at least three times previously to the crime charged in the indictment been convicted of a crime within the meaning of the Act, and that he was leading persistently a dishonest and criminal life, but it did not allege that the prisoner was a habitual criminal :—

Held, that the count was sufficient, though from the point of view of pleading it would be better to insert an averment that the prisoner is a habitual criminal.

Held, also, that the words in s. 10, sub-s. 1,

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"crime committed after the passing of this Act," must be read in their natural sense, and that therefore the section applies in the case of a crime committed after the passing of the Act and before it came into operation, where the conviction takes place after the Act came into operation.

By s. 3 (c) of the Criminal Appeal Act, 1907, a person convicted on indictment may, with the leave of the Court of Criminal Appeal, appeal to the Court against the sentence, unless the sentence is one fixed by law. By s. 11 of the Prevention of Crime Act, 1908, "a person sentenced to preventive detention may, notwithstanding anything in the Criminal Appeal Act, 1907, appeal against the sentence without the leave of the Court of Criminal Appeal."

The Court, without deciding whether "the sentence" in s. 11 of the Prevention of Crime Act, 1908, includes the sentence of penal servitude as well as the sentence of preventive detention, said that they would adopt the practice that a prisoner who appeals against the sentence of preventive detention will be considered as having leave to appeal against the sentence of penal servitude, without the necessity of applying for leave. **REX v. SMITH. REX v. WESTON**

C. C. A. [1909] W. N. 210; [1910] 1 K. B. 17

8. — Habitual criminal — Practice—Plea of guilty to crime charged in indictment—Further charge in indictment of being habitual criminal —Swearing jury—Evidence of consent of Director of Public Prosecutions — Evidence of notice of intention to insert charge to officer of Court and to prisoner—Length of notice—Admissibility of evidence of previous convictions — Grounds of charge of being habitual criminal — Form of sentence — Prevention of Crime Act, 1908, (8 Edw. 7, c. 59), s. 10.

An indictment under s. 10 of the Prevention of Crime Act, 1908, charged the prisoner with felony and also with being a habitual criminal. The prisoner pleaded guilty to the felony and not guilty to the charge of being a habitual criminal :—

Held, that upon the inquiry whether the prisoner was a habitual criminal there was no objection to swearing the jury as for the trial of a felony, although it would have been sufficient to swear them as for the trial of a misdemeanour.

Without laying down any general rule as to how the consent (required by s. 10, sub-s. 4 (a)) of the Director of Public Prosecutions to a charge of being a habitual criminal being inserted in an indictment ought to be proved, it will be sufficient if some person who has been in correspondence with the Public Prosecutor is called to say that he received the document containing the consent in the ordinary course of correspondence and believes it to be signed by the Director of Public Prosecutions, but it is not necessary to call a witness who has seen him write.

In order to prove that seven days' notice (required by s. 10, sub-s. 4 (b)) of the intention to insert in the indictment a charge of being a

CRIMINAL LAW (Appeal)—*continued*.

habitual criminal has been given to the proper officer of the court, it is not necessary that the officer himself (e.g., the clerk of the peace) should be called, but there must be some proof of the receipt by him of the notice, e.g., by calling his clerk.

Notice to produce the notice (required by s. 10, sub-s. 4 (b)) to the offender that it is intended to insert the charge of being a habitual criminal in the indictment is not required in order to render secondary evidence of the contents of the notice to the offender admissible.

The seven days' notice to be given to the officer of the Court and to the offender that it is intended to insert a charge of being a habitual criminal in the indictment is seven clear days' notice.

Before the previous convictions mentioned in s. 10, sub-s. 2 (a), can be given in evidence in support of the charge of being a habitual criminal, evidence must be given to shew that the previous convictions were specified in the notice to the offender.

It is not necessary that the notice to the offender of intention to insert a charge of being a habitual criminal in the indictment should contain a statement of the evidence which it is intended to call for the purpose of shewing that he is leading persistently a dishonest or criminal life, but the grounds upon which it is intended to prove that he is leading persistently a dishonest or criminal life must be stated in a general way, e.g., that the prisoner is doing no work and has no honest means of livelihood.

Whether evidence of the prisoner's persistently dishonest or criminal life previous to his last conviction is admissible in evidence in order to prove that he is at present leading a persistently dishonest or criminal life depends on the facts of the case. The evidence may be admissible as a step in proving that he is at present leading a persistently dishonest or criminal life.

If the facts make it doubtful whether the prisoner was over sixteen when the first of the three convictions mentioned in s. 10, sub-s. 2 (a), took place, some evidence of that fact must be given. But a statement of the prisoner to that effect would be sufficient.

Where a person is convicted of, or pleads guilty to, having committed a crime charged in the indictment, the Court ought not to pass a sentence for that crime before the jury inquire into a further charge, contained in the indictment, of being a habitual criminal. *REX v. TURNER* - C. C. A. [1909] W. N. 242 ; [1910] 1 K. B. 346

9. — *Habitual criminal—Sentence—Prevention of Crime Act, 1908* (8 Edw. 7, c. 59), s. 10.

The prisoner was convicted on Oct. 19, 1910, at the Brecon County Quarter Sessions of having stolen two shirts from a clothes line, and also of being a habitual criminal. He was sentenced to three years' penal servitude and five years' preventive detention. Between the years 1890 and 1908 he had been convicted eleven times of offences of larceny and burglary, and had re-

CRIMINAL LAW (Appeal)—*continued*.

ceived sentences amounting in the aggregate to ten years and seven months.

It was suggested on the prisoner's behalf that having regard to the small value of the articles stolen, in the present case the sentence of penal servitude must have been imposed in order to give the Court jurisdiction to pass a sentence of preventive detention.

The Court (Lord Alverstone C.J., Pickford and Bankes J.J.) held that a judge is not entitled to pass a sentence of penal servitude with the object suggested; that the sentence for the particular offence must be such as the judge would be justified in passing if it were not to be followed by a sentence of preventive detention. In this case, however, they thought that, having regard to the appellant's previous history, there was abundant reason for passing a sentence of penal servitude. Application refused. *REX v. JONES* C. C. A. [1910] W. N. 259

10. — *Habitual criminal—Sentence—Prevention of Crime Act, 1908* (8 Edw. 7, c. 59), ss. 10, 12.

The prisoner, aged twenty-two, was convicted on April 7, 1909, at the West Kent Sessions holden at Maidstone, of having stolen, at Penge, on March 23, 1909, a lady's bag containing articles of the value of 4*l.* 10*s.* The only previous conviction against him was dated March 25, 1907, when he was convicted at the Middlesex Sessions on three charges of housebreaking, and was sentenced to twenty-one months' imprisonment. A constable stated that he was a clever thief who had given himself up to housebreaking. The chairman of the West Kent Sessions treated the prisoner as being a habitual criminal, and sentenced him to five years' penal servitude. In a report made by the chairman to the C. C. A. he stated that he was influenced by the consideration that if he imposed that sentence the Secretary of State would have power to commute it to preventive detention under s. 12 of the Prevention of Crime Act, 1908, which provides that "Where a person has been sentenced, whether before or after the passing of this Act, to penal servitude for a term of five years or upwards, and he appears to the Secretary of State to have been a habitual criminal within the meaning of this Act, the Secretary of State may, if he thinks fit, at any time after three years of the term of penal servitude have expired, commute the whole or any part of the residue of the sentence to a sentence of preventive detention, so, however, that the total term of the sentence when so commuted shall not exceed the term of penal servitude originally awarded," and that he could not otherwise provide for that detention which under the circumstances he considered necessary for the protection of the public, as the Act had not yet come into force.

Channell J., delivering the judgment of the Court (Channell, Jelf, and Bray J.J.), said that the chairman was not justified upon the facts proved in treating the prisoner as a habitual criminal within the meaning of the Act of 1908. If, however, upon the evidence it had appeared that he was a habitual criminal, the Court was

CRIMINAL LAW (Appeal)—continued.

of opinion that the provisions of s. 12 were such as the judge, when sentencing the prisoner, might properly take into consideration. As, however, under the circumstances s. 12 did not apply, the Court thought the sentence excessive, and reduced it to fifteen months' imprisonment. Appeal allowed. *REX v. RAYBOULD*

C. C. A. [1909] W. N. 118

11. — Habitual criminal—Trial with another prisoner—Practice—Prevention of Crime Act, 1908 (8 Edw. 7, c. 59), s. 10.

The applicant and another prisoner were indicted together in the first count with house-breaking, and in the second count under the Prevention of Crime Act, 1908, with being habitual criminals. Both prisoners pleaded guilty to the first count and not guilty to the second. The two prisoners were then tried together upon the count charging them with being habitual criminals. The jury found them guilty :—

Lord Alverstone C.J., in delivering the judgment of the Court (Lord Alverstone C.J., Bray and Lord Coleridge J.J.) dismissing the application, said that there was a point of practice of some importance to which, though it was not raised in this case, he ought to refer. The applicant and another prisoner were tried at the same time upon the charge of being habitual criminals. When a person was tried upon such a charge the evidence must necessarily be directed against him individually, as it must relate largely to his mode and habits of life, and it ought to be kept quite separate from the evidence against any other person. Their Lordships could not conceive any case where two persons should properly be tried together upon a charge of being habitual criminals, and therefore they thought it right to lay it down that a person charged with being a habitual criminal ought to be tried separately from any other person. *REX v. BLAKE* C. C. A. [1910]

W. N. 123

12. — Habitual criminal, Charge of being a—Grounds of charge—Sufficiency of notice—Consent of Director of Public Prosecutions, Presumption of—Prevention of Crime Act, 1908 (8 Edw. 7, c. 59), s. 10.

At the trial of an offender on a charge of being a habitual criminal under the Prevention of Crime Act, 1908, the consent of the Director of Public Prosecutions to the insertion of the charge in the indictment, which is required by that Act, will be presumed in the absence of any objection by the offender that no such consent was in fact given.

The requirement of s. 10, sub-s. 4, that the notice to the offender of an intention to insert such a charge in the indictment "shall specify the previous convictions and the other grounds upon which it is intended to found the charge" means that the notice shall specify "the other grounds" if any. It does not mean that the previous convictions may not by themselves be sufficient grounds upon which to found the charge. *REX v. WALLER* C. C. A. [1910]

1 K. B. 364

CRIMINAL LAW (Appeal)—continued.

—Incest.

See under CRIMINAL LAW—Incest.

13. — Incurable rogue—Sentence by quarter sessions—Appeal—Vagrancy Act, 1824 (5 Geo. 4, c. 83), ss. 3, 4, 5,—Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 19; s. 20, sub-s. 2.

The appellant was convicted by a petty sessional court of being an incorrigible rogue within s. 5 of the Vagrancy Act, 1824, for that he did beg for alms after having been twice previously convicted of being an idle and disorderly person, and he was sentenced by quarter sessions to one year's imprisonment with hard labour. The appellant petitioned the Home Secretary against his sentence, who referred the case to the C. C. A. under s. 19 (a) of the Criminal Appeal Act, 1907 :—

Held, that a person sentenced by quarter sessions as an incorrigible rogue can under s. 20, sub-s. 2, of the Criminal Appeal Act, 1907, appeal against the sentence, but not against the conviction.

Held, also, that as the appellant had not at some former time been adjudged to be a rogue and vagabond within s. 4 of the Vagrancy Act, 1824, and duly convicted thereof, the quarter sessions had no power to sentence him as an incorrigible rogue. *REX v. JOHNSON* C. C. A. [1909] W. N. 19; [1909] 1 K. B. 439

—Insanity, Defence of.

See under CRIMINAL LAW—Lunacy.

—Juryman, Illness of—Trial for murder.

See next case.

—Larceny.

See under CRIMINAL LAW—Larceny,

—Lunacy.

See under CRIMINAL LAW—Lunacy.

14. — Murder, Trial for—Illness of juryman—Temporary absence from court—Custody of juryman—Rebutting evidence on behalf of prosecution—Admissibility.

The prisoner was tried at the Central Criminal Court before Lord Alverstone C.J. on Oct. 18, 1910, and following days for the murder of his wife. The jury found him guilty, and he was sentenced to death. He appealed from his conviction upon the grounds (inter alia) :—

(1.) That one of the jurymen, after the prisoner had been given in charge of the jury, absented himself from the rest of the jury without the juryman or the rest of the jury being given in charge of the proper officer of the court.

(2.) That the evidence of James Childers, buyer to Messrs. Jones Bros., Holloway, a witness for the Crown, was wrongly admitted.

The facts so far as material to the two grounds of appeal to which this report relates were as follows :—

On Oct. 18, 1910 (the first day of the trial), two ushers of the Central Criminal Court were sworn as jury bailiffs to take charge of the jury during adjournments. On Oct. 19, about 11.30 A.M., a juryman was taken ill. Two medical men went to the juryman's assistance. The juryman left the jury-box, leaving the others remaining in the box. He was taken out of court, accompanied by the two medical men and

CRIMINAL LAW (Appeal)—continued.

James Phillips, one of the jury bailiffs mentioned above, to a space outside where there was open air and to which the public had no access. After a consultation between the medical men, one of them (Dr. Dyer, medical officer of Brixton Prison) returned into court and gave an opinion as to when the juryman would probably recover, and was sworn to take charge of him. He then returned to the juryman, and the two medical men, a constable, and Phillips remained with him in the open air for three-quarters of an hour. The juryman rejoined his fellows about 1 o'clock, Phillips having been with him the whole time he was absent from the rest of the jury. Phillips was not sworn again at the time he took charge of the juryman. During the whole time the juryman was absent no one spoke to him about the trial. The medical men only spoke to him, and no one else had an opportunity of doing so. On the way to the open air less than a dozen persons had to be passed, and the juryman was in a state of collapse.

At the trial the prisoner was called as a witness on his own behalf. At the close of the prisoner's evidence the prosecution applied for leave to call the witness Childers to give rebutting evidence. Leave was granted, and Childers accordingly was called by the prosecution and gave evidence:—

The Court (Darling, Channell, and Pickford JJ.) held that the appeal must be dismissed. The argument upon the prisoner's behalf was in substance that, although the bailiff in whose charge the juryman was had been sworn on the first day of the trial to take charge of the jurymen during the adjournment, nevertheless, when this juror was taken ill, it being necessary for him to leave the court, he was in law accompanied by an unsworn bailiff and by doctors who examined him and asked him necessary questions. The Court thought that all the rules as to the custody of jurymen were subject to qualification in cases of emergency, for a case might arise when it would be necessary to take a juror away before there was time to swear a bailiff. Nothing had been decided by Lord Alverstone C.J. contrary to law. If there had been an opportunity of tampering with the juryman the Court might have quashed the conviction, but so far from there being such an opportunity, the evidence shewed that there had been none whatever, that no one spoke to the juryman but the doctors, and that the bailiff was in charge all the time. There was not even a suggestion that there had been any tampering with the juryman, in fact. The appeal on this point must therefore be dismissed. As to the objection to the evidence of Childers, rebutting evidence must be admissible evidence. Supposing it to be admissible evidence, it then became a question for the judge at the trial to determine in his discretion whether the evidence, not having been tendered in chief, ought to be given as rebutting the case set up by the defence. The matter was one within the discretion of the judge who presided at the trial, who was in a much better position than any Appeal Court to determine whether it was really fair to allow it

CRIMINAL LAW (Appeal)—continued.

to be given, and whether it did or did not expose the defence to a disadvantage to which it ought not to be exposed. There was no authority for the proposition that if a judge exercised his discretion in a way different to that which a Court of Appeal would have exercised it, that fact alone was sufficient ground for quashing a conviction. The question was one for the discretion of the judge at the trial, who was necessarily in a far better position to exercise it than the C. C. A. could possibly be. In the present case the judge at the trial had exercised his discretion, and, even if the Court had the power to do so, it saw no reason why it should interfere. **REX v. CRIPPEN** C. C. A. [1910] W. N. 243

— Natal—Practice—Appeal, Special leave to, in a criminal case.
See NATAL.

15. — Non-direction — No substantial miscarriage of justice.

The appellant was convicted on a charge of stealing a watch and chain at Blackpool on Mar. 31, 1909. The evidence of the prosecutor was that the watch and chain were in the drawer of a table which, with other furniture belonging to him, was removed from Blackburn to Blackpool. The appellant helped to unload the furniture on its arrival at Blackpool. A witness, J. S., stated that on April 2 the appellant handed the watch and chain to her in a common lodging-house in Preston and asked her to pawn them for him. She took them to a pawnbroker's, and while in the pawnbroker's shop, the appellant waiting outside, two detectives came in and prevented her from pawning the watch and chain. The defence was that the appellant was not in Preston but was at Blackpool on April 2.

The appellant, who was not represented by counsel, did not give evidence himself, but called two police officers to prove that they had seen him in Blackpool on April 2, but the witnesses could not fix the date. The appellant also called one of the detectives who entered the pawnshop, and who stated that he did not see the appellant outside. This witness in the course of his evidence in chief made statements, which were not answers to questions, to the effect that the police had made inquiries and had satisfied themselves that the appellant had been at the lodging-house in question on April 2, and that he had stolen the watch. The prisoner was convicted; several previous convictions were proved; and he was sentenced to twelve months' imprisonment with hard labour.

The Court dismissed the appeal. Lord Alverstone C.J., in the course of delivering the judgment of the Court, said that the defence raised at the trial was an alibi. The prisoner had not suggested his defence at the police court, and had not given evidence and submitted himself to cross-examination at the trial. It was the practice of the Court in these circumstances not to regard with favour a point taken on appeal as to the want of corroboration of an alleged accomplice, which in view of the defence raised at the trial was a point of only secondary importance. The Court were, however, of

CRIMINAL LAW (Appeal)—*continued*.

opinion on the evidence that J. S. was not an accomplice, and, even if she were, there was in fact some corroboration of her evidence. The omission of the chairman to deal with the statements made by the detective was probably due to the fact that the prisoner was striving to establish his defence of an alibi. The alleged misdirection or non-direction could not have had any effect on the jury, and the Court were satisfied that there had not been any substantial miscarriage of justice. **REX v. KIRKHAM**
C. C. A. [1909] W. N. 141

16. — Penal servitude—Remanet sentence—Conviction on indictment for new offence—Order that sentence for new offence run concurrently with, or commence after expiration of, remanet sentence—Jurisdiction of Court—Penal Servitude Act, 1864 (27 & 28 Vict. c. 47), s. 9—Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 3, sub-s. 3.

Where the holder of a licence to be at large during a remanet (*i.e.*, an unexpired portion of a sentence of penal servitude) is subsequently convicted of an indictable offence, the Court before which the subsequent conviction takes place has no power to order that the sentence which it inflicts shall commence after or run concurrently with the remanet which, upon conviction for the new offence, the convict becomes liable to serve under s. 9 of the Penal Servitude Act, 1864, inasmuch as that section provides that a term equal to the remanet shall be served after the convict has undergone the punishment for the subsequent offence. Therefore, in passing sentence for the subsequent offence, the Court should make no reference to the remanet. **REX v. SMITH. REX v. WILSON**
C. C. A. [1909] 2 K. B. 756

17. — Perjury — Judicial proceeding—Arbitration under Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58).

An arbitration before a county court judge to settle a question of compensation under the Workmen's Compensation Act, 1906, is a judicial proceeding, and therefore an indictment for perjury will lie in respect of false evidence given on oath in a material particular in the course of the arbitration. **REX v. CROSSLEY** - C. C. A.
[1909] W. N. 18; [1909] 1 K. B. 411

— Nova Scotia—Appeal from—Practice as to special leave to appeal in criminal cases.

See CANADA—Appeal.

Practice—Plea of guilty to charge of crime in indictment—Further charge in indictment of being habitual criminal—Swearing jury.

See No. 8, above.

18. — Present—Right of prisoner to be present—Appeal to Court of Criminal Appeal involving questions of fact—Waiver of right by counsel—Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 11, sub-s. 1.

Where an appeal to the C. C. A. involves questions of fact and the prisoner desires to be present, the Court has no power under s. 11, sub-s. 1, of the Criminal Appeal Act, 1907, to

CRIMINAL LAW (Appeal)—*continued*.

hear the appeal in his absence. **REX v. DUN-LEAVEY.** - C. C. A. [1908] W. N. 245;
[1909] 1 K. B. 200

19. — Probation of offenders—Conviction for offence not involving drunkenness—Release on probation—Recognizance—Condition as to abstention from intoxicating liquor—Probation of Offenders Act, 1907 (7 Edw. 7, c. 17), s. 1, sub-s. 2; s. 2, sub-s. 2 (b).

When a prisoner has been convicted on indictment of an offence punishable with imprisonment but which was in no way connected with indulgence in drink, and the Court in lieu of imposing a sentence of imprisonment makes an order under s. 1, sub-s. 2, of the Probation of Offenders Act, 1907, discharging the offender conditionally on his entering into a recognizance to be of good behaviour and to appear for sentence when called on at any time during a period not exceeding three years, the Court has no power to order an additional condition as to abstention from intoxicating liquor to be inserted in the recognizance, inasmuch as s. 2, sub-s. 2 (b), of the Act of 1907 only authorizes the condition to be inserted in the recognizance where the offence of which the prisoner was convicted was drunkenness or an offence committed under the influence of drink. Therefore a sentence inflicted for breach of the condition is liable to be quashed. **REX v. DAVIES** - C. C. A. [1909] 1 K. B. 892

— Rape.

See under CRIMINAL LAW—Rape.

-- Receiving.

See under CRIMINAL LAW—Receiving.

20. — Recognizance—Conviction on indictment—Recognizance to appear for sentence—Breach of condition—Power of Court to sentence—Probation of Offenders Act, 1907 (7 Edw. 7, c. 17), ss. 1, 6.

The appellant was convicted on Oct. 21, 1908, at the Somerset Quarter Sessions of larceny, and was required to enter into recognizances under s. 1, sub-s. 2, of the Probation of Offenders Act, 1907, to appear for sentence when called upon. The recognizance contained conditions authorized under the circumstances by the Act, and for a breach of one of these conditions the appellant was called upon to appear before the quarter sessions in June last for sentence, under s. 6 of this Act. It was contended that there was no jurisdiction to pass sentence upon him, because s. 6, sub-s. 5, only applied to persons bound over by a Court of summary jurisdiction, under s. 1, sub-s. 1, to appear for conviction and sentence, and did not apply to a person bound over under s. 1, sub-s. 2, after conviction on indictment, to appear for sentence only.

The Court held, that assuming, as appeared probable, sub-s. 5 of s. 6 was only intended to apply to cases where a person charged before a Court of summary jurisdiction was bound over to appear for conviction and sentence when called on, yet, apart from any statutory provisions, the Court of quarter sessions had power to bind over the appellant to appear for sentence when called upon, which was in effect merely a postponing of sentence. The provisions of the Probation of Offenders Act, 1907, might confer a larger power

CRIMINAL LAW (Appeal)—continued.

of inserting conditions in the recognizance than existed previously, but they could not divest the Court of the jurisdiction to pass sentence which it possessed independently of that Act. It was therefore immaterial whether s. 6, sub-s. 5, of the Act applied to this case or not. The case must be remitted to the quarter sessions in order that sentence might be passed on the appellant. **REX v. SPRATLING C. C. A. [1910] W. N. 216**

21. — Restitution of stolen property, Order for—Appeal by person against whom order made—Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 6, sub-s. 2—Criminal Appeal Rules, 1908, r. 9.

Where upon a conviction an order for the restitution of stolen property has been made by the Court of trial, although, upon an appeal by the convicted person to the Court of Criminal Appeal, the person against whom the order of restitution has been made has, in the event of that Court proposing of its own motion to annul or vary that order, a right to be heard under r. 9 of the Criminal Appeal Rules, 1908, he has no right himself to initiate an appeal against the order. **REX v. ELLIOTT C. C. A. [1908] W. N. 141; [1908] 2 K. B. 452**

22. — Revenue — Criminal Information — Information on Revenue side of King's Bench Division—Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 20, sub-s. 2.

An information was preferred by the Att.-Gen. against the defts., under s. 186 of the Customs Law Consolidation Act, 1876 (39 & 40 Vict. c. 36), claiming penalties in respect of the smuggling of saccharin. The case was tried by Phillimore J. and a special jury. The defts. were found guilty, and Phillimore J. imposed a penalty of 1694*l.*, being treble the value of the saccharin and the duty, with an order for immediate execution, and ordered that one of the defts., Hausmann, who had been on bail, but who had surrendered to his bail, should be detained in custody together with the other two defts.

The judgment of the Court (Lord Alverstone C.J., Darling and Phillimore JJ.), was delivered by

Lord Alverstone C.J., who said that he had had no doubt that there was no right of appeal to this Court, but that, as the point was an important one, he had given leave for the question to be discussed before the full Court. There was no ground for saying that an information on the Revenue side of the King's Bench Division was a criminal information within s. 20, sub-s. 2, of the Criminal Appeal Act, 1907. Short and Mellor's Crown Office Practice at p. 151 correctly stated what a criminal information was. A well-known example was a criminal information for libel, which was a common thing at one time, and which would come within s. 20, sub-s. 2. On the other hand there were numerous forms of proceedings by way of information for the recovery of penalties for breaches of the revenue laws or for non-payment of taxes of which the present case, which was brought under s. 186 of the Customs Laws Consolidation Act, 1876, was an instance. Quite apart from the question of authority there was the point,

CRIMINAL LAW (Appeal)—continued.

which seemed to the learned Chief Justice almost conclusive, that under ss. 31 to 34 of the Crown Suits Act, 1865, there was a right of appeal in these cases to the C. A. and H. L. on complying with certain conditions. There was further a series of authorities, culminating in *Att.-Gen. v. Bradlaugh* ((1885) 14 Q. B. D. 667), in which the C. A., following the view expressed by Platt and Martin BB. in *Att.-Gen. v. Radloff* ((1854) 10 Ex. 84), decided that an information of this character was not a criminal information. He did not think the enactment enabling a deft. in these cases to give evidence had much bearing on this question, for there were many cases, before the passing of the Criminal Evidence Act, 1898, of statutes dealing with various kinds of procedure on information and with various kinds of criminal proceedings which provided that a deft. might give evidence in those cases. The Court was satisfied that this information was not a criminal information, and therefore the Court had no jurisdiction to entertain the appeal. Appeal dismissed. **REX v. HAUSMANN C. C. A. [1909] W. N. 198**

23. — Sentence—Admission by prisoner of other offences—Duty of Court to consider.

The prisoner was indicted at the Northamptonshire Quarter Sessions for obtaining a watch by false pretences from a watchmaker at Oundle, and he pleaded guilty. But he contended, on the supposed authority of *Rex v. Syres*, 73 J. P. 13, that he ought not to have been charged with the offence, as he had a few months previously, on the occasion of his conviction, at the West Riding Quarter Sessions holden at Bradford, of obtaining various other articles by similar false pretences, admitted his guilt in respect of the watch. The chairman at the West Riding Sessions had refused when sentencing him to take the Oundle offence into consideration, upon the ground that he had not given information to the police as to what had become of the watch. The Northamptonshire Quarter Sessions overruled this contention and sentenced him to three years' penal servitude. The prisoner appealed.

Held, that *Rex v. Syres*, supra, only established that a judge, when sentencing a prisoner, was entitled to take into consideration other offences which the prisoner admitted; it was no authority for the proposition that the judge was bound to take them into consideration. Appeal dismissed. **REX v. SHARPCOTE C. C. A. [1909] W. N. 218**

24. — Sentence—Attempt—Common law misdemeanour—Hard labour—Plea of guilty—Sentence quashed—Sentence in substitution—Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 4, sub-s. 3.

Two indictments were preferred against the appellant at the quarter sessions for the borough of Southampton, the first charging him with obtaining money by false pretences, the second charging him with attempting to obtain money and goods by false pretences. To the first indictment the appellant pleaded not guilty. The jury returned a verdict of guilty, and he was sentenced to twelve months' imprisonment

CRIMINAL LAW (Appeal)—continued.

with hard labour. To the second indictment he pleaded guilty, and was sentenced to three months' imprisonment with hard labour, the two sentences to run consecutively. The appeal was against the sentence on the second indictment.

The judgment of the Court (Darling, Walton, and Pickford JJ.) was delivered by Darling J., who said that it was clear that hard labour could not be given for an attempt to obtain money or goods by false pretences, and the Court were of opinion that a different sentence, one of three months' imprisonment without hard labour, should have been passed, and therefore the sentence must be quashed; but the words "and pass such other sentence warranted in law by the verdict" in s. 4, sub-s. 3, had no application to this case, where there had been no verdict, the prisoner having pleaded guilty. Therefore the only thing the Court could do was to quash the sentence. Appeal allowed. **REX v. DAVIDSON - C. C. A. [1909] W. N. 52**

Note.

This case was overruled on one point by **C. C. A., *Rex v. Ettridge*, [1909] 2 K. B. 24.**

25. — Sentence—Detention in Borstal institution—Misconduct—Imprisonment—Order of Home Secretary—Appeal—Prevention of Crime Act, 1908 (8 Edw. 7, c. 59), s. 7.

In this case the judgment of the Court (Lawrance, Darling, and A. T. Lawrance JJ.) was delivered by Lawrance J., who said that under the Criminal Appeal Act, 1907, there might be an appeal against a sentence passed on conviction. In this case the sentence was two years' detention in a Borstal institution. As soon as that sentence was passed the matter passed, under the Prevention of Crime Act, 1908, into the hands of the Home Secretary, who by s. 7, had power, in the circumstances of this case, to commute the unexpired residue of the term of detention to such term of imprisonment as he might determine. The Home Secretary, if he thought proper, might commute the term of detention to a shorter term of imprisonment, but in the present case, having regard to the conduct of the appellant, he thought it right that the appellant should be imprisoned with hard labour for the whole period of the unexpired residue of the term of detention. Speaking for himself, the learned judge was not prepared to say that in no circumstances could this Court deal with a case of a sentence commuted under the Act of 1908; but it was not necessary to decide that point, for the Court was clearly of opinion that in the circumstances of this case the order of the Home Secretary ought not to be interfered with. The case of *Rex v. Kirkpatrick* was decided before the Act of 1908 came into force, and had, therefore, no material bearing on this question. Appeal dismissed. **REX v. KEATING - C. C. A. [1910] W. N. 198**

26. — Sentence—Evidence of character—Accusations against prisoner not proved—Effect on sentence.

The prisoner was convicted upon an indictment for larceny. At the trial the prisoner called evidence as to his good character, and no

CRIMINAL LAW (Appeal)—continued.

evidence was called to shew that he was of bad character. The jury returned a verdict of guilty.

The chairman being under the impression that the prisoner was of good character, at first intended to release him upon his own recognizance, but upon a police-sergeant and other witnesses giving evidence to the effect that a bastardy order had been obtained against the prisoner (a married man), and that he had been previously accused of stealing a purse and other offences, the chairman decided to inflict a sentence of nine months' imprisonment without hard labour, although (with the exception of the bastardy order) the prisoner denied that the accusations were true.

Held, that the sentence must remain unaltered. The only question was whether it was excessive, and was brought about by a view taken by the chairman which was not warranted, and was unfair to the prisoner. At a certain stage the chairman was under the impression that the prisoner was a man against whom nothing was previously known, and of good character, and thought that although he had rendered himself liable to punishment he might put forward his character, and might thus obtain the relief which was sometimes given in cases of that kind, and be released on his own recognizances. Later on it turned out that this impression was erroneous. Evidence was called to shew that this man had been guilty of various other offences, although they were not proved, and were denied by the prisoner. But as he was, as it were, asking for exceptional treatment—for he had been convicted—on the ground that he was of good character, the onus of proof rested on him, and it was shewn that, although not proved, and therefore not in themselves the subject-matter of the punishment, nevertheless charges were made which broke down the case of a good character set up by the prisoner, and were sufficient to justify the change of intention on the part of the chairman. The chairman had no intention of punishing the prisoner for offences which had not been proved, but the effect of the evidence was to place the offence of which the prisoner had been convicted back into the category of offences with which the chairman would deal in the ordinary way. There was no reason to change the sentence. It had been inflicted in order that an army pension to which the prisoner was entitled might not be forfeited, as it would have been if the chairman had inflicted the sentence the present Court would probably have given, viz., three months' hard labour. Appeal dismissed. **REX v. BRIGHT - C. C. A. [1910] W. N. 85**

27. — Sentence—Penal servitude followed by preventive detention.

The prisoner was convicted at the Lincolnshire Quarter Sessions of larceny, and also of being a habitual criminal within s. 10 of the Prevention of Crime Act, 1908. He had been previously convicted fourteen times, in most of the cases for larceny. He was sentenced to five years' penal servitude, to be followed by five years' preventive detention.

CRIMINAL LAW (Appeal)—continued.

The Court held that, as the case was obviously one for preventive detention under the Act of 1908, and as it was advisable that the period of detention should commence at a comparatively early date, it was not necessary to impose so long a sentence of penal servitude as five years. They accordingly reduced the sentence of penal servitude to three years. **REX v. SMITH**

C. C. A. [1909] W. N. 235

28. — Sentence — Plea of guilty — Sentence quashed — Sentence in substitution — Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 4, sub-s. 3.

Where a prisoner pleads guilty at his trial the C. C. A. has power to quash the sentence passed upon him and to substitute such other sentence, warranted in law, as they think ought to have been inflicted.

Rex v. Davidson, [1909] W. N. 52 (see No. 24, above), overruled on this point. **REX v. ETTRIDGE** -

**C. C. A. [1909] W. N. 67;
[1909] 2 K. B. 24**

— Sentence—Right of appellants to show cause before sentence.

See **HONG KONG. 4.**

— Servants' characters.

See under **CRIMINAL LAW—Servants' Characters.**

29. — Shorthand notes of proceedings—Leave to appeal—Practice—Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 16.

The prisoner, having been convicted of larceny from the person and sentenced to six months' imprisonment with hard labour at the Staffordshire Quarter Sessions, applied for leave to appeal from the conviction on the ground that no proper shorthand notes had been taken of the proceedings at the trial. From such notes as were taken it appeared that the offence was clearly proved by the prosecution.

At the close of the case for the prosecution the prisoner elected to give evidence on his own behalf. He went into the witness-box and, having been sworn, began to address the jury, reading from a written statement. The chairman of quarter sessions offered to read the statement for him, and did so.

The shorthand notes continued in these words: "The chairman summed up the case briefly to the jury. He was very inaudibly heard from the seat occupied by the official shorthand writer, but, so far as could be gathered, he said:—" Then followed what purported to be a note of the summing up.

The judgment of the Court (Channell, Jelf, and Bray JJ.) was delivered by Channell J. There is no ground for interfering with the conviction in this case. We wish to repeat what I am sure has been held already in this Court. The provisions of s. 16 of the Act with regard to taking shorthand notes of the proceedings at the trial are directory only, and do not make the taking of such notes a condition precedent to hearing an application for leave to appeal or affirming a conviction. The absence of shorthand notes does not entitle the prisoner to have the conviction set aside, and a trial without shorthand notes is not a mis-trial. It is no doubt true that shorthand notes are often very material

CRIMINAL LAW (Appeal)—continued.

on the hearing of an appeal, where, for instance, there is some doubt as to what took place at the trial; and a conviction may be set aside if this Court has not the means of informing itself as to what did take place. But that has not happened here. Conclusive evidence was given against the prisoner, and we have his written statement, which may be taken as a note of his evidence. From these materials it is clear that no other verdict could reasonably have been returned. The prisoner is not entitled to leave to appeal merely because the summing up of the chairman was more or less inaudible from the seat occupied by the shorthand writer. Leave to appeal refused. **REX v. ELLIOTT** - **C. C. A. [1909] W. N. 118**

30. — Statement made in presence of prisoner — Admissibility of contents — Evidence of acknowledgment of its truth—Direction to jury — Misdirection—Appeal—"No substantial miscarriage of justice"—Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 4, sub-s. 1.

The contents of a statement alleged to have been made in the presence of a prisoner cannot be given in evidence unless and until the judge has satisfied himself, from the evidence contained in the depositions or given at the trial, that there is evidence, fit to be submitted to the jury, that the prisoner by his answer to the statement, whether given in words or by conduct, acknowledged the truth of the statement.

If the contents of the statement are admissible in evidence in accordance with the above rule, the jury should be directed that they are entitled to take the statement into consideration as evidence in the case, not because the statement is evidence of the matters contained in it, but solely because of the prisoner's acknowledgment of its truth.

Where there has been a misdirection of the jury an appeal will not be dismissed under s. 4, sub-s. 1, of the Criminal Appeal Act, 1907, on the ground "that no substantial miscarriage of justice has actually occurred," unless the Court is satisfied that the jury, if properly directed, would, not might, have found the prisoner guilty. **REX v. NORTON** **C. C. A. [1910] W. N. 162;
[1910] 2 K. B. 496**

31. — Trial—Discharge of jury—Discretion of judge—Second trial—Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 4.

The prisoner was indicted at the County of London Sessions on April 6 for obtaining money by false pretences. The trial was fixed for April 20. On that day the trial commenced before the chairman, and seven witnesses for the prosecution were examined. The remaining witnesses for the prosecution, three in number, were, owing to some mistake, not present. The counsel for the Crown asked for an adjournment of the trial to another day with a view to securing the attendance of the missing witnesses, and the continuance of the trial before the same jury. The adjournment being opposed, the chairman discharged the jury, and a fresh trial was fixed for April 30. Upon the second trial coming on before the deputy chairman, counsel for the prisoner objected that the Court had no jurisdiction to try him as he had already been given in charge to a jury upon the indictment, and that

CRIMINAL LAW (Appeal)—*continued.*

jury had been discharged. The deputy chairman overruled the objection, the trial proceeded, and the prisoner was convicted. The prisoner appealed :—

Held, that the rule, that the discharge of the jury in a criminal case is a matter entirely for the discretion of the judge at the trial and that an improper exercise of that discretion affords no bar to a second trial upon the same indictment, is not affected by the Criminal Appeal Act, 1907. Appeal dismissed. **REX v. LEWIS**

C. C. A. [1909] W. N. 128

Betting.

See under BETTING.

Bigamy.

See under BIGAMY.

Colonies.

— Exclusive power of Dominion Parliament over criminal legislation.

See CANADA.

Conspiracy.

See under CONSPIRACY.

— Servants' characters—Giving false character. *See CRIMINAL LAW — Servants' Characters.* 1.

Convictions.

— Aiding and abetting—Evidence—Motor car. *See JUSTICES.* 15.

— Condition precedent to conviction. *See ADULTERATION.* 1.

1. — *Conviction insufficiently describing offence—Conspiracy and Protection of Property Act, 1875 (38 & 39 Vict. c. 86), s. 7—Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49) s. 39, sub-s. 1.*

By s. 7 of the Conspiracy and Protection of Property Act, 1875, a person commits an offence who, "with a view to compel any other person to abstain from doing . . . any act which such other person has a legal right to do . . . wrongfully and without legal authority . . . (1.) injures his property."

The appellant was convicted under this section, the conviction stating that the appellant, on Feb. 4, 1902, "with a view to compel" the respondent "to abstain from working for Messrs. J. B. & Partners, Limited, at F. Colliery, which he had a legal right to do, wrongfully and without legal authority did injure the property" of the respondent :—

Held, that the act, which the appellant sought to compel the respondent to abstain from doing, was sufficiently specified in the conviction; but that the conviction was bad on its face, and must be quashed, in that it did not specify what property of the respondent had been injured.

Reg. v. McKenzie, [1892] 2 Q. B. 519, and *Ex parte Wilkins*, (1895) 64 L. J. (M.C.) 221, discussed.

The Summary Jurisdiction Act, 1879, s. 39, sub-s. 1, which provides that in proceedings

CRIMINAL LAW (Convictions)—*continued.*

before Courts of summary jurisdiction "the description of any offence in the words of the Act . . . creating the offence, or in similar words, shall be sufficient in law," does not do away with the necessity of setting out in a conviction facts which are a necessary ingredient of the particular offence in question. **SMITH v. MOODY** **Div. Ct. [1903] 1 K. B. 56**

— Criminal law generally.

See under CRIMINAL LAW.

— Drunkenness, Conviction for—Evidence—Register of convictions in Court of summary jurisdiction. *See JUSTICES.* 8.

2. — *Duplicity—Highway Act, 1835 (5 & 6 Will. 4, c. 50), s. 72.*

Sect. 72 of the Highway Act, 1835, makes it an offence to lay any substance upon the highway "to the injury, interruption, or personal danger of any person travelling thereon" :—

Held, that a conviction for having laid matter on the highway "to the interruption and personal danger of any person travelling thereon" was not bad for duplicity under the Summary Jurisdiction Act, 1848, for that the act of laying the matter on the highway followed by any one or more of the consequences above mentioned, constituted but one offence. **SMITH v. PERRY.** **Div. Ct. [1906] W. N. 7; [1906] 1 K. B. 262**

— Improper conviction—Witness—Magistrate—Limitation of action. *See PUBLIC AUTHORITIES' PROTECTION.*

— Motor car.

See under MOTOR CAR.

— Previous conviction—Evidence—Register of convictions in Court of summary jurisdiction. *See JUSTICES.* 8.

3. — *Previous convictions, Proof of—Charge of being in public place with intention of committing offence—Proof of previous convictions—Prevention of Crimes Act, 1871 (34 & 35 Vict. c. 112), ss. 7, 9—Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 116.*

On the trial of an indictment charging the prisoner with an offence under s. 7 of the Prevention of Crimes Act, 1871, the previous convictions are a necessary ingredient of the offence, and may be given in evidence before the jury in the first instance. **REX v. PENFOLD.**

C. C. R. [1902] W. N. 28; [1902] 1 K. B. 547

— Review of martial law—Jurisdiction. *See CAPE OF GOOD HOPE.* 8.

— Street—Infringement of building line—Conviction—Penalty—Subsequent action by Attorney-General for injunction. *See STREETS.*

Costs.

See also the paragraphs at the commencement of CRIMINAL LAW.

Costs and compensation—Criminal Procedure, England—Costs and Compensation—Regulations made by the Secretary of State,

CRIMINAL LAW (Costs)—continued.

dated Nov. 12, 1903, governing the allowances payable to prosecutors and witnesses in criminal prosecutions. Reprint from **W. N. 1904 (Jan. 2), p. 1.** See **CURRENT INDEX, 1904, p. cxi.**

Costs in Criminal Cases Act, 1908 (8 Edw. 7, c. 15), consolidates and amends the law relating to the payment of costs in criminal cases.

Costs in Criminal Cases Act, 1908. Costs and expenses. Regulations dated Nov. 28, 1908, made by the Secretary of State under s. 5 of the Costs in Criminal Cases Act, 1908, (8 Edw. 7, c. 15). Reprint from **W. N. 1908 (Dec. 12), p. 343.** See **CURRENT INDEX, 1908, p. xcvi.**

Costs in Criminal Cases Act, 1908 (8 Edw. 7, c. 15)—Costs and Expenses—Regulations, dated Dec. 16, 1908, made by the Secretary of State under s. 5 of the Costs in Criminal Cases Act, 1908 (8 Edw. 7, c. 15). Reprint from **W. N. 1909 (Jan. 2), p. 3.** See **CURRENT INDEX, 1909, p. ciii.**

[NOTE.—*The Regulations dated Nov. 28, 1908, made under s. 5 of the Costs in Criminal Cases Act, 1908 (8 Edw. 7, c. 15), are set out (as a reprint from W. N. 1908 (Dec. 12, p. 343)) at p. xcvi. of the Final Part of the Current Index, 1908.*]

Crimping.

See under **SHIPPING—Crimping.**

Cruelty to Animals.

See under **CRUELTY TO ANIMALS.**

Cruelty to Children.

1. — *Custody of child—Parent living apart from wife—Wilful neglect of child in manner likely to cause unnecessary suffering or injury to health—Omission of parent to send any part of earnings for support of child—Prevention of Cruelty to Children Act, 1904 (4 Edw. 7, c. 15), s. 1, sub-s. 1.*

A parent cannot, by leaving his wife and living apart from her, divest himself of the custody of his child so as to free himself from liability to conviction for an offence under s. 1 of the Prevention of Cruelty to Children Act, 1904; and if so while living apart from his wife he wilfully neglects his child in a manner likely to cause it unnecessary suffering or injury to its health, he will be guilty of a misdemeanour under the section.

The mere omission of the parent to pay any part of his earnings towards the support of his child may constitute wilful neglect within the meaning of the section. **REX v. CONNOR.**

C. C. R. [1908] 2 K. B. 26

2. — *Prevention of Cruelty to Children—Carnally knowing girl above thirteen and under sixteen—Limitation of time for taking proceedings—Extension of time—Retrospective effect of statute—Procedure—Criminal Law Amendment Act, 1885 (48 & 49 Vict. c. 69), s. 5—Prevention of Cruelty to Children Act, 1904 (4 Edw. 7, c. 15), s. 27.*

The prisoner was convicted, under s. 5, sub-s. 1, of the Criminal Law Amendment Act, 1885, of an offence committed on July 15, 1904. The

CRIMINAL LAW (Cruelty to Children)—contd.

prosecution was not commenced until Dec. 27, more than three months but less than six months after the commission of the offence. On Oct. 1 the Prevention of Cruelty to Children Act, 1904, came into operation, by s. 27 of which the time for commencing a prosecution for an offence under s. 5, sub-s. 1, of the earlier Act was extended from three months to six months:—

Held, that s. 27 related to procedure only, and was therefore retrospective, and that the conviction must be upheld. **REX v. CHANDRA DHARMA. REX v. HUTCHINSON. REX v. SLATER. REX v. COURT**

C. C. R. [1905] 2 K. B. 335

3. — *Prevention of cruelty to children—Necessity for attendance of child at trial—Prevention of Cruelty to Children Act, 1894 (57 & 58 Vict. c. 41), s. 16—Prevention of Cruelty to Children Act, 1904 (4 Edw. 7, c. 15), s. 16.*

Section 16 of the Prevention of Cruelty to Children Act, 1894 (which is repealed and partially re-enacted by s. 16 of the Prevention of Cruelty to Children Act, 1904), does not make the presence of the child in Court, except in the cases therein excepted, an essential condition to the hearing of any proceedings with relation to an offence of cruelty within the meaning of the Act. **REX v. HALE C. C. R. [1905] 1 K. B. 126**

Debtors.

See also under **DEBTORS.**

1. — *Absconding debtor—"His property"—Debtors Act, 1869 (32 & 33 Vict. c. 62), s. 12.*

On April 24, 1903, the prisoner, a hay and coal merchant, executed a deed of assignment of all his property for the benefit of his creditors, which deed was on April 27 registered under the Deeds of Arrangement Act, 1887. The deed was also executed by a person as trustee, but not by any of the creditors, none of whom ever knew of its existence. On April 25 the trustee took possession of the prisoner's premises and stock and carried on his business, but otherwise did nothing to carry out the trusts of the deed. At the time the prisoner signed the deed he had in his possession 120*l.* in cash which he had collected from various debtors. He did not pay this sum to the trustee, and on April 28 quitted England taking the 120*l.* with him. On April 30 a bankruptcy petition was presented against the prisoner, on which he was subsequently adjudicated bankrupt.

The prisoner was indicted under s. 12 of the Debtors Act, 1869, for having within four months next before the presentation of the bankruptcy petition quitted England and taken with him 120*l.*, being part of his property which ought by law to be divided amongst his creditors. The prisoner was convicted:—

Held, that no irrevocable trust had been created as to the 120*l.*, and that at the date when the prisoner quitted England the 120*l.* was his property, and not the trustees under the deed; and that the prisoner was, therefore, properly convicted.

Reg. v. Cresse, (1874) L. R. 2 C. C. 105, distinguished. REX v. HUMPHRIS

C. C. R. [1904] 2 K. B. 89

CRIMINAL LAW—continued.**Defamation.**

See under **CRIMINAL LAW—Libel.**
DEFAMATION.

Ecclesiastical Law.

— Church discipline.

See under **ECCLIASTICAL LAW—Discipline.**

— Churchwardens, Criminal suit against.

See **ECCLIASTICAL LAW—Faculty.**

— Holy Communion, Repulsion from—Marriage with deceased wife's sister—Criminal suit—Monition—Prohibition.

See **ECCLIASTICAL LAW—Holy Communion. 2.**

Evidence.

See also under **EVIDENCE.**

— Abortive trial—Rehearing—Evidence on former hearing—Evidence on rehearing.

See **CRIMINAL LAW—Practice. 1.**

— Admissibility of dying declaration.

See **No. 4, below.**

1. Admissibility of evidence—Prisoner in custody—Statement in reply to question put by police constable—Validity of conviction.

The fact that a prisoner's statement is made by him in reply to a question put to him by a police constable after he is in custody does not of itself render the statement inadmissible in evidence.

Reg. v. Gavin, (1885) 15 Cox, C. C. 656, overruled. **REX v. BEST**

C. C. A. [1909] 1 K. B. 692

2. — Bankruptcy—Evidence—Statement of affairs in bankruptcy—Admissibility—Misappropriation by trustee—Larceny Act, 1861 (24 & 25 Vict. c. 96), ss. 80, 85—Bankruptcy Act, 1890 (53 & 54 Vict. c. 71), s. 27, sub-s. 2.

A statement of affairs prepared by a debtor in the course of his bankruptcy under s. 16 of the Bankruptcy Act, 1883, is admissible in evidence against him on a charge, under 24 & 25 Vict. c. 96, s. 80, of misappropriation of money of which he was a trustee. **REX v. PIKE.**

C. C. [1902] W. N. 27; [1902] 1 K. B. 552

— Character, Evidence of—Sentence.

See **CRIMINAL LAW—Appeal. 26.**

— Conviction set aside—No evidence of fraudulent appropriation—Liability of bank director.

See **ISLE OF MAN. 1.**

3. — Cross-examination of prisoner—Questions tending to shew commission of another offence—Admissibility—Criminal Evidence Act, 1898 (61 & 62 Vict. c. 36), s. 1. (f) (i.).

On the trial of a prisoner charged with having had carnal knowledge of a girl aged fourteen, the prosecutrix stated in her examination in chief that on the day after the connection had taken place the prisoner told her that he had previously done the same thing to another girl who was alleged by the prosecution to have been under sixteen at the time. The prisoner gave evidence, and he was asked in cross-examination,

CRIMINAL LAW (Evidence)—continued.

and the questions were allowed by the judge, whether he had made the statement attributed to him by the prosecutrix and whether it was true. The prisoner was convicted:—

Held, that under s. 1 (f) (i.) of the Criminal Evidence Act, 1898, the prisoner was bound to answer the questions, because, although they tended to shew that he had committed another offence or was of bad character, the questions were admissible to shew that he was guilty of the offence wherewith he was then charged. **REX v. CHITSON** **C. C. A. [1909] W. N. 192; [1909] 2 K. B. 945**

4. — Dying declaration, Admissibility of—Evidence.

In order that a dying declaration as to the cause of death may be admissible in evidence at the trial of a prisoner for the murder of the declarant it must be shewn that at the time the statement was made the death of the declarant was imminent and that he had abandoned all hope of living, i.e., believed that death must follow. But it is not necessary to prove that the declarant believed that death would ensue immediately.

Ruling of Lush L.J. in *Reg. v. Osman*, (1881) 15 Cox, C. C. 1, not followed. **REX v. PERRY**

C. C. A. [1909] W. N. 154; [1909] 2 K. B. 697

5. — False evidence, Action against witness for negligently giving—Criminal prosecution—Conviction unreversed.

A person, who has been convicted of a crime, and against whom the conviction stands unreversed, cannot maintain an action against a witness for negligently giving false evidence which caused him to be wrongfully so convicted. **BYNOE v. BANK OF ENGLAND AND WILLIAMS**

C. A. [1902] 1 K. B. 467

— False pretences—Evidence of other frauds—Admissibility.

See **CRIMINAL LAW—False Pretences. 2.**

6. — False pretences—Fraud—Evidence of previous acts of fraud—Admissibility.

Upon an indictment for obtaining credit by means of fraud, it was proved that the deft. hired furnished apartments from the prosecutrix and occupied them for three days, when he left without paying for them or for the food supplied to him. Evidence was admitted that a short time previously to the particular transaction the deft. had gone to several houses and hired apartments and left without paying, and that he still owed the money when he went to the house of the prosecutrix:—

Held, that the evidence, being evidence of similar acts committed by the deft. at a period immediately preceding the commission of the alleged offence, was admissible as tending to establish a systematic course of conduct, and as negating any accident or mistake or the existence of any reasonable or honest motive on his part. **REX v. WYATT**

C. C. R. [1904] 1 K. B. 188

— Incest—Evidence as to previous relationship—Admissibility.

See under **CRIMINAL LAW—Incest.**

CRIMINAL LAW (Evidence)—continued.

7. — *Indecent assault—Particulars of complaint made by prosecutrix—Complaint elicited by question—Admissibility.*

The prisoner was indicted for an indecent assault on a girl under the age of thirteen years, whose consent to the act was therefore immaterial. At the trial evidence was admitted of the answer given by the girl to a question put by another child, in the absence of the prisoner, as to why the girl had not waited for the other child at the prisoner's house. The girl's reply was a complaint of the prisoner's conduct to her :—

Held, that the evidence was admissible, not as evidence of the truth of the charge alleged, but as corroborating the credibility of the girl and as evidence of the consistency of her conduct. **REX v. OSBORNE**

C. C. R. [1905] 1 K. B. 551

— Larceny.

See under CRIMINAL LAW—Larceny.

8. — *Nature and conduct of defence—Evidence of person charged—Cross-examination as to character—Criminal Evidence Act, 1898 (61 & 62 Vict. c. 36) s. 1, sub-s. (f), (ii.).*

Upon the trial of an indictment for conspiring by false pretences to induce the prosecutor to sell a mare, the prosecutor gave evidence that one of the defts. had previously offered to buy the mare on credit. The deft. in question was called as a witness for the defence, and was asked in cross-examination, "Did you ask the prosecutor to sell you the mare in April, or has he invented all this?" To which he replied, "No, it is a lie, and he is a liar." Counsel for the prosecution was thereupon allowed to cross-examine the deft. as to previous convictions :—

Held, that the deft.'s answer amounted only to an emphatic denial of the truth of the charge against him; that the nature or conduct of the defence was not such as to involve imputations on the character of the prosecutor within the meaning of s. 1, sub-s. (f), (ii.) of the Criminal Evidence Act, 1898, and that therefore the deft. was not liable to be cross-examined as to his previous character. **REX v. ROUSE**

C. C. R. [1904] 1 K. B. 184

9. — *Nature or conduct of defence—Evidence of person charged—Cross-examination as to previous conviction—Criminal Evidence Act, 1898 (61 & 62 Vict. c. 36), s. 1, sub-s. (f) (iii.).*

A prisoner who was arrested in possession of stolen property said in answer to the charge that he was acting under instructions from a detective, and at the trial at quarter sessions the detective was cross-examined as to whether he had not employed the prisoner as an informer :—

Held, that the nature or conduct of the defence was not such as to involve imputations on the character of the witnesses for the prosecution under s. 1, sub-s. (f) (ii), of the Criminal Evidence Act, 1898, so as to render the prisoner liable when called in his own defence to be cross-examined as to previous convictions. **REX v. BRIDGWATER** - **C. C. R. [1905] 1 K. B. 131**

10. — *"Nature or conduct of defence"—Imputation on character of witness for prosecution—Evidence—Cross-examination of person charged—*

CRIMINAL LAW (Evidence)—continued.

Criminal Evidence Act, 1898 (61 & 62 Vict. c. 36), s. 1, sub-s. (f) (ii.).

Upon the trial of an indictment for an offence one of the issues was whether the deft. was the man who was seen near the place where the offence was committed. Two witnesses identified the deft. at the police station as the man they had seen near the place, but a third person failed to identify him. With respect to this latter occasion the deft. in his evidence stated that the police inspector, who was present on the occasion and who gave evidence for the prosecution, said to the constable who was sent to bring the person in for the purpose of seeing whether he could identify the deft., "the second," or something like it; that he (the deft.) was placed second from one end of a row of men; and that the person who was brought in did not pick him out, but picked out the man who was second from the other end. Counsel for the prosecution was then allowed to ask the deft. whether he had not been convicted on previous occasions. No reliance was placed upon the above evidence in support of the defence, nor was the defence conducted on the footing that the inspector's evidence ought not to be believed :—

Held, that the allegation of the deft., so far as it reflected on the inspector, was made with reference to the conduct of the identification proceedings, which were relevant to the defence; that, though the identification on the particular occasion had failed, and therefore the allegation was not strictly relevant to the defence, it was natural for the deft. to make some comment on those proceedings; and that the nature or conduct of the defence was not such as to involve imputations on the character of the inspector within the meaning of s. 1, sub-s. (f) (ii.), of the Criminal Evidence Act, 1898, so as to allow the deft. to be cross-examined as to previous convictions. **REX v. PRESTON** - **C. C. A. [1909] 1 K. B. 568**

11. — *"Nature or conduct of the defence"—Imputation on character of witness for the prosecution—Cross-examination of person charged—Criminal Evidence Act, 1898 (61 & 62 Vict. c. 36), s. 1, sub-s. (f) (ii.).*

The prisoner was indicted for a rape upon his daughter, aged thirteen. The prisoner gave evidence. He was asked in cross-examination whether the girl had invented the story. Answer, "She did not invent it herself." "Who invented it for her?" Answer, "Her mother, for one." The mother was one of the witnesses for the prosecution. Later on he was asked what made him say that his wife had induced the girl to tell the story. Answer, "Because I said I was going to sell the things up and leave her." "Leave her—what for?" Answer, "Because we could not agree." "Is that the only reason?" Answer, "I heard the children saying that a man used to come from the house when I was from home." "You suspected your wife of immoral conduct with another man?" Answer, "Yes." On this the judge allowed counsel for the prosecution to ask him whether another daughter of his, then aged sixteen, had

CRIMINAL LAW (Evidence)—continued.

not been delivered of a child, and whether he was not the father of it. The prisoner was convicted. He appealed against the conviction on the ground that the question as to his paternity of the elder daughter's child was not admissible under s. 1, sub-s. (f) (ii.), of the Criminal Evidence Act, 1898.

The Court held that the imputation of misconduct on the part of the mother was sufficiently independent of the defence or of the necessity for developing the defence to render the question objected to admissible, and that it was not the less admissible because the imputation was made in answer to questions put in cross-examination. Appeal dismissed. *REX v. JONES* - C. C. A.

[1909] W. N. 218

12. — Prisoners jointly indicted—Evidence by one prisoner incriminating another—Right of the latter to cross-examine—Criminal Evidence Act, 1898, (61 § 62 Vict. c. 36), s. 1 (f) (iii.).

Where one of two prisoners, jointly indicted, gives evidence under s. 1 of the Criminal Evidence Act, 1898, and in doing so incriminates the other prisoner, the latter is entitled to cross-examine the former. *REX v. HADWEN AND INGHAM* - C. C. R. [1902] W. N. 88;

[1902] 1 K. B. 882

13. — Statement made by one prisoner read over to co-prisoner—Denial of truth of statement—Admissibility against co-prisoner.

The appellant and another person were arrested on a charge of burglary. The appellant's fellow prisoner thereupon made a voluntary statement to a police officer, confessing his guilt and implicating the appellant in that and other burglaries, and the statement was taken down in writing and signed by him. Subsequently the two prisoners were placed together at the police station, and after being duly cautioned they were charged with the burglary. A police officer then read over the above-mentioned statement to both prisoners, and the appellant denied the truth of the whole of it. At the trial the appellant's fellow prisoner pleaded guilty to the indictment, and the trial proceeded against the appellant. The prosecution tendered in evidence the statement which had been read over in the appellant's presence, when it was objected, upon the authority of *Reg. v. Smith*, (1897) 18 Cox, C. C. 470, that such a statement could only be admissible as evidence against the appellant if there had been an admission by him of the truth of the whole or some part of it, and that, as he had denied its truth, it was not admissible. The statement was admitted, and the appellant was found guilty:—

Held, that, notwithstanding the appellant's denial of the truth of the allegations contained therein, the statement was admissible against him.

Reg. v. Smith, 18 Cox, C. C. 470, not followed. *REX v. THOMPSON* - C. C. A. [1910] W. N. 27;

[1910] 1 K. B. 640

— Statement made in presence of prisoner—Admissibility of contents.

See **CRIMINAL LAW—Appeal**. 30.

CRIMINAL LAW (Evidence)—continued.

14. — Subpœna—Setting aside—Inherent jurisdiction of Court—Subpœna not issued for purpose of obtaining relevant evidence.

The K. B. Div. of the High Court of Justice has jurisdiction to set aside a subpœna issued in a criminal proceeding.

A witness served with a subpœna cannot get it set aside by merely swearing that he can give no material evidence. But the Court, being satisfied that writs of subpœna ad testificandum had been issued not bona fide for the purpose of obtaining relevant evidence and that the witnesses named in them were in fact unable to get relevant evidence, set the subpœnas aside.

Where a subpœna is set aside the power of the judge at the trial to order the witnesses to attend, if he thinks their presence necessary, is in no way interfered with. *REX v. BAINES*

Div. Ct. [1908] W. N. 238;
[1909] 1 K. B. 258

Extradition.

See under **EXTRADITION**.

False Imprisonment.

See under **FALSE IMPRISONMENT**.

False Pretences.

1. — "Chattel"—Railway ticket—"Obtain from any other person"—Larceny Act, 1861 (24 § 25 Vict. c. 96), s. 88.

The appellant was tried upon an indictment charging him in one count with obtaining by false pretences from the Midland Ry. Co. a ry. ticket authorizing him to travel from Leeds to London; and in a second count with obtaining credit for 1l. 5s. 9d., the price of the said ticket, by means of fraud other than false pretences. The jury found a verdict of guilty.

Lord Alverstone C.J., in delivering the judgment of the Court (Lord Alverstone C.J., Bray and Lord Coleridge J.J.) dismissing the appeal, said that there was evidence to support the verdict of the jury upon the second count, and the jury must have found facts which proved that the appellant was guilty of the offence charged in that count, and therefore the appeal must in any event be dismissed under the power given to the Court by s. 5 of the Criminal Appeal Act, 1907. He would, however, though it was not necessary for the decision to do so, make some observations upon the objection which had been taken to the first count charging the false pretences. It was said that a ry. ticket was only evidence of a contract, and was therefore not a "chattel" within the Act, and that the appellant did not "obtain" it, as he never deprived, and never intended to deprive the ry. co. of their property in it, the ticket having to be given up at the end of the journey. There was, however, a decision of the Court for C. C. R. in *Reg. v. Boulton*, (1849) 1 Den. C. C. 508, exactly in point, where it was held that a ry. ticket was a "chattel" within the statute, and that a person might "obtain" it by false pretences though the ticket had to be returned at the end of the journey. That decision was binding upon this Court, and it was a decision

CRIMINAL LAW (False Pretences)—continued.

upon this very point. That case was considered and followed in *Reg. v. Morrison*, (1859) Bell, C. C. 158, which related to a pawnbroker's ticket, and in *Reg. v. Kilham*, (1870) L. R. 1 C. C. 261, was distinguished, and in neither of those cases did the Court say that *Reg. v. Boulton*, 1 Den. C. C. 508, was wrong. They were bound by that decision and must follow it, whether they agreed with the reasoning in it or not. *REX v. CHAPMAN* C. C. A.

[1910] W. N. 131

2. — Evidence of other frauds — Admissibility.

At the trial of a prisoner on an indictment charging him with obtaining a pony and cart by false pretences on June 4, 1909, evidence was admitted that on May 14, 1909, and on July 3, 1909, the prisoner had obtained provender from other persons by false pretences different from those alleged in the indictment. The prisoner was convicted :—

Held, that the evidence was wrongly admitted as it did not shew a systematic course of fraud but merely that the prisoner was of a general fraudulent disposition, and therefore it did not tend to prove the falsity of the representations alleged in the indictment; that although there was sufficient evidence of the false pretences alleged to justify the conviction, the evidence as to the other cases might have influenced the jury, and the conviction must therefore be set aside. *REX v. FISHER* C. A. [1909] W. N. 252;

[1910] 1 K. B. 149

3. — Evidence of other frauds—Admissibility — Questions tending to shew that prisoner has committed offence other than that with which he is charged and is of bad character—Opening speech for defence—Evidence of good character—Admissibility of evidence of bad character.

Whether a question put to a person charged with a crime and called as a witness tends to shew, within the meaning of s. 1, clause (f), of the Criminal Evidence Act, 1898, that he has committed or been convicted of or charged with any offence other than that with which he is then charged cannot be decided by looking merely at the single question. Each question must be judged by the light of others asked before and after. The object of the enactment is that it should not, except in the specified circumstances, be suggested to the minds of the jury by means of any questions put to the prisoner that he has committed another offence. Any question or series of questions which would reasonably lead a jury to believe that he had committed another offence would tend to shew that the prisoner had committed that other offence. If the question does so tend, it is quite immaterial whether it would be admissible on other grounds. It is the duty of the judge not to wait for any objection to the question from the prisoner's counsel, but to stop the question himself, and to direct the jury to disregard it and not allow it to influence their minds.

A general examination on behalf of a prisoner as to the surrounding circumstances is not evidence of good character so as to entitle

CRIMINAL LAW (False Pretences)—continued.

the prosecution to prove or to cross-examine as to other offences or convictions. Sub-clause (ii.) of clause (f), s. 1, of the Criminal Evidence Act, 1898, is intended to apply to cases where witnesses to character are called, or where evidence of the good character of the prisoner is sought to be elicited from the witnesses for the prosecution. It is to this class of evidence that the statute refers, not to mere assertions of innocence or repudiation of guilt on the part of the prisoner, nor to reasons given by him for such assertion or repudiation.

The appellant was convicted upon an indictment for obtaining from D. cheques by false pretences. The indictment alleged that he sold various articles of virtu to D. under an agreement that he was to charge D. the cost price plus 10 per cent. profit; that the appellant represented to D. that the cost was much in excess of the real cost; and that by this means he had obtained from D. much larger sums than he was entitled to. The appellant gave evidence on his own behalf, and in cross-examination questions were put to him suggesting that in other transactions he had obtained money from D. by alleging that certain china figures were genuine pieces of old Dresden china, whereas he knew that they were not :—

Held, that the alleged false pretences in representing the articles to be genuine old Dresden china when they were not so were entirely distinct from those with which the prisoner was charged, and that, as upon that ground evidence of the false representations with regard to the articles being genuine old Dresden china was not admissible to shew that he was guilty of the false pretences with which he was charged, the questions put in cross-examination were improperly allowed, inasmuch as they tended to shew that the appellant had committed an offence other than that with which he was charged, and that the conviction must be quashed, as the jury must have been influenced by the questions and answers. *REX v. ELLIS* C. C. A. [1910] 2 K. B. 746

— Evidence of previous acts of fraud—Admissibility.

See CRIMINAL LAW—Evidence. 6.

Falsification.**(Falsification of Accounts.)****1. — Document not belonging to or in possession of employer—Falsification of Accounts Act, 1875 (38 & 39 Vict. c. 24), s. 1.**

The prisoner, a servant, was convicted under s. 1 of the Falsification of Accounts Act, 1875, on an indictment which charged him with making a false entry in an account. It was proved that the account in question did not belong to and was not in the possession of his employer :—

Held, that the conviction must be quashed, since the intention of the Legislature, as manifested in the preamble to the Act, was to punish the falsification by clerks, officers, servants, or others of their employers' accounts. *REX v. PALIN* C. C. R. [1906] 1 K. B. 7

CRIMINAL LAW (Falsification)—continued.

2. — *Falsification of accounts—Falsification of entry in document not belonging to employer—Falsification of Accounts Act, 1875 (38 & 39 Vict. c. 24), s. 1.*

The prisoner was convicted on an indictment which alleged that he, "being the servant to S., unlawfully, wilfully, and with intent to defraud, did make and concur in making a certain false entry in a certain account, to wit, an account of certain rabbits delivered by the said P. to certain tenants of the said S. his master by falsely entering in such account twenty-two rabbits as having been delivered by the said P. to one C., a tenant of the said S., whereas in truth and in fact the said twenty-two rabbits were not delivered to the said C., as he the said P. well knew at the time when he made such false entry as aforesaid."

The evidence shewed that the account in question did not belong to S.

Sect. 1 of the Falsification of Accounts Act, 1875, under which the indictment was framed, provides:—"If any clerk, officer, or servant, or any person employed or acting in the capacity of a clerk, officer, or servant, shall wilfully and with intent to defraud, destroy, alter, mutilate, or falsify any book, paper, writing, valuable security, or account which belongs to or is in the possession of his employer, or has been received by him for or on behalf of his employer, or shall wilfully and with intent to defraud, make or concur in making any false entry in, or omit, or alter, or concur in omitting or altering, any material particular from or in any such book, or any document, or account," he shall be guilty of a misdemeanour.

It was objected that the word "such" governed not only "book," but also the subsequent words "document or account," and that no offence was committed by making a false entry in a document or account not belonging to the employer.

The Court upheld the objection and quashed the conviction, holding that to convict a man of making a false entry in a document not belonging to his employer was to go beyond the purview of the Falsification of Accounts Act, 1875. **REX v. PALIN C. C. R. [1905] W. N. 162**

3. — *Falsification of Accounts Act, 1875 (38 & 39 Vict. c. 24), s. 1—Omission of material particulars—Jurisdiction—Offence partly committed abroad.*

The deft. was employed by a firm, carrying on business in London, to manage their branch establishment in Paris. It was his daily duty to enter on slips an account of all sums received by him in Paris for his employers, and to transmit these slips to them in London in order that the amounts might be entered up in a cash-book kept in London. On a certain date the deft. received three sums in Paris which he fraudulently appropriated to his own use, and omitted to enter the receipt thereof on the slips sent by him on that day to London, knowing and intending that the same would in consequence be omitted from the cash-book, as was the case. The deft. was indicted at the Central Criminal Court under s. 1 of the Falsification of Accounts

CRIMINAL LAW (Falsification)—continued.

Act, 1875, for omitting, or concurring in omitting, material particulars from the cash-book, and convicted:—

Held, that the Court had jurisdiction to try the case, and that the deft. was rightly convicted. **REX v. OLIPHANT C. C. R. [1905] 1 K. B. 67**

4. — *Machine—Taximeter—Falsification of Accounts Act, 1875, (38 & 39 Vict. c. 24), s. 1.*

By s. 1 of the Falsification of Accounts Act, 1875, it is enacted that if any servant shall wilfully and with intent to defraud falsify any account which belongs to his employer, or has been received by him on behalf of his employer, the person so offending shall be guilty of a misdemeanour:—

Held, that a servant may be convicted under the above enactment who wilfully and with intent to defraud tampers with a mechanical instrument used by his employer for registering figures from which an account is subsequently prepared as between the parties.

A co. were the owners of certain motor cabs and had in their service a number of cabdrivers. Each cab was fitted with a taximeter, that is, a mechanical instrument which, when in action, registers upon a dial the amount earned by the driver from persons hiring the cab. The taximeter was put into and out of action, by the driver depressing and raising a lever respectively. From the figures appearing on the dial at the end of the day an account was prepared stating the proportions due to the co. and to the driver for the use of the cab.

For several successive days a driver in the co.'s service took certain passengers on a definite round, receiving from them on each day the same fare. While taking the passengers on this round, the driver wilfully and with intent to defraud drove the cab with the lever of the taximeter raised, so that the instrument was put out of action and registered nothing:—

Held, that the driver was properly convicted of falsifying an account within the meaning of the above enactment. **REX v. SOLOMONS C. C. A. [1909] 2 K. B. 980**

Felony.

See under FELONY.

Fisheries.

See under FISHERY.

Forgery.

See also under FORGERY.

1. — *Practice—Sentence—Hard labour—Common law forgery—"Any cheat or fraud punishable at common law"—Criminal Procedure Act, 1851 (14 & 15 Vict. c. 100) s. 29.*

The prisoner was tried for the common law misdemeanour of forging and uttering writings with intent to defraud. He had fraudulently misappropriated money which he had collected and received from one Cobb. An order was made in a county court that he should render an account of the money received. He delivered papers in which the donors had entered their names and the amounts they had handed him.

CRIMINAL LAW (Forgery)—continued.

He had altered the entries so as to make it appear that smaller amounts had been given. It was not alleged that Cobb had been defrauded or prejudiced, except so far as it appeared that he had been deprived by the prisoner's conduct of the evidence to support his claim. On a case stated, reserving the question, whether there was power to pass a sentence of imprisonment with hard labour :—

Held, that as the indictment charged only a common law forgery, without alleging that any one was thereby defrauded, the case did not come within the Criminal Procedure Act, 1851, s. 29, by which persons convicted of "any cheat or fraud punishable at common law" may be sentenced to hard labour. **REX v. HAMILTON.**

C. C. R. [1901] W. N. 78 ; [1901] 1 K. B. 740

Fugitive Criminals.

See under EXTRADITION.

— Fugitive offender—Appeal—Criminal cause or matter—Application to Court of Appeal.

See HABEAS CORPUS. 1.

Game.

— Conviction of person from whom eggs seized quashed—Liability of police officer in detainee and trover.

See GAME. 5.

Habitual Criminals.

Prevention of Crime Act, 1908 (8 Edw. 7, c. 59), makes better provision for the prevention of crime, and for that purpose to provide for the reformation of Young Offenders and the prolonged detention of Habitual Criminals, and for other purposes incidental thereto.

— Criminal appeal.

See under CRIMINAL LAW—Appeal.

Incest.

1. — *Criminal law—Appeal—Punishment of Incest Act, 1908 (8 Edw. 7, c. 45), ss. 1, 2—Evidence as to previous relationship—Admissibility of such evidence—Appeal to House of Lords—Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 1, sub-s. 6 ; s. 4, sub-s. 2—Practice—House of Lords—"Point of law of exceptional public importance"—Printing papers—Type-written documents accepted.*

Those were appeals brought by the Director of Public Prosecutions, with the consent and certificate of the Att.-Gen., against the decision (Nov. 8, 1910) of the C. C. A., [1910] W. N. 233 (Darling, Pickford and Lord Coleridge JJ.), which quashed the conviction, dated Oct. 14, 1910, of the respondents for incest, and directed a verdict and judgment of acquittal to be entered. Also on Nov. 8 the C. C. A. refused to hold the accused respondents to bail, and they were set at liberty.

There being no rules of the H. L. as yet in respect of criminal appeals, nor any standing order applicable to such appeals, the Law Lords were consulted, and, on Nov. 28 it was ordered (Minutes of H. L.) that the appeals presented by the Director of Public Prosecutions should be read, and the same be ordered to be prosecuted

CRIMINAL LAW (Incest)—continued.

"subject to such standing orders as may be applicable thereto," and the respondent in each appeal was ordered "to lodge a case forthwith in answer thereto." The House also gave notice to both sides to appear at the Bar on this day (Nov. 29, 1910).

The House decided that the papers in this case need not be printed, all the papers necessary for the decision being now before the House and type-written (the petition of appeal alone being printed), and both parties being of opinion such papers were sufficient for the hearing. Their Lordships also specially appointed Thursday, Dec. 15 next, for the hearing, this case to be put first in the list. **DIRECTOR OF PUBLIC PROSECUTIONS v. A. B. AND C. D.**

H. L. (E). [1910] W. N. 255

As there are no rules the reporter thinks it right to give the following list of documents deemed sufficient in these appeals: (1.) Printed Petition of Appeal to the House of Lords embodying the order appealed from, and the certificate of the Att.-Gen. (2.) Copy of depositions. (3.) Copy of exhibits. (4.) List of exhibits. (5.) The indictment. (6.) Transcript of proceedings, including the evidence and the argument at the trial before Scrutton J. (7.) Notice of Appeal. (8.) Certificate of Scrutton J.; and (9.) Transcript of the judgments of the Court of Criminal Appeal.

On Appeal :—

The House, being of opinion that evidence of previous relationship was rightly admitted, reversed the order of the C. C. A. [1910] W. N. 233, and remitted the appeal to the C. C. A. to carry out the reversal. **DIRECTOR OF PUBLIC PROSECUTIONS v. A. B. AND C. D. - H. L. (E).**

(Sitting during Dissolution) (Criminal Appeal) [1910] W. N. 274.

Indictment.

1. — *Amendment of count—Indictment—Substitution of allegation of fraud for false pretences—Criminal Procedure Act, 1851 (14 & 15 Vict. c. 100), s. 1—Debtors Act, 1869 (32 & 33 Vict. c. 62), s. 13, sub-s. 1.*

There is no power to amend an indictment containing a count which charges the prisoner, under s. 13, sub-s. 1, of the Debtors Act, 1869, that in incurring a debt he obtained credit by false pretences, by striking out the allegations of false pretences from the count, and inserting therein an allegation that the prisoner incurred the debt by means of fraud. **REX v. BENSON**

C. C. R. [1908] W. N. 122 ; [1908] 2 K. B. 270

2. — *Bigamy—Second marriage contracted abroad—No averment that accused was a British subject—Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 57.*

On a trial for bigamy where the second marriage has been contracted elsewhere than in England or Ireland it is not necessary that the indictment should contain an averment that the accused was a British subject. **REX v. AUDLEY**

C. C. R. [1907] W. N. 9 ; [1907] 1 K. B. 383

— Conspiracy—Obtaining a passport by false representations—Direction to jury—Criminal law.

See CONSPIRACY. 3.

CRIMINAL LAW (Indictment)—*continued*.

— Larceny.

See under **CRIMINAL LAW—Larceny**.

— Motion to quash indictment—Practice—High treason—Expatriation in time of war.

See **CRIMINAL LAW—Treason**. 1.

— Obscene matter, Indictment for defamatory libel containing—Criminal law.

See **DEFAMATION—Libel**. 3.

— Striking out indorsement on writ—Embarrassing pleading.

See **PRACTICE—Pleadings**.

3. — Sufficiency of averments—Indictment.

In an indictment for receiving stolen goods it is enough to allege that the prisoner received them knowing them to have been feloniously stolen, without further alleging that the stealing of them amounted to a felony at common law or under the Larceny Act, 1861.

An indictment charged that the defendant "one thousand pheasants' eggs of the goods and chattels of and of and belonging to W. G. feloniously did steal &c." It was contended for the defence that the indictment was bad in that it did not allege that the eggs had been reduced into possession, and that without such an averment the eggs, being those of a bird *feræ* nature were *prima facie* not the subject of larceny:—

Held, that the words "of and belonging to," being in addition to the ordinary formal words "of the goods and chattels of," coupled with the fact that the large quantity of the eggs stolen suggested that they had previously to the stealing been taken from the nests and collected into one place, amounted to a sufficient averment that the eggs had at the time of the stealing been reduced into the possession of the person in whom the property was laid.

Rex v. Rough, (1779) 2 East, P. C. 607, distinguished.

Reg. v. Cox, (1844) 1 C. & K. 494, questioned.

REX v. STRIDE AND MILLARD - **C. C. R.**
[1908] W. N. 20; [1908] 1 K. B. 617

Note.

This case was referred to by C. C. A., *Rex v. Garland*, [1909] W. N. 252.

Infants.

See also under **INFANTS**.

— Cruelty to children.

See under **CRIMINAL LAW—Cruelty to Children**.

1. — Indecent assault on female under sixteen years of age—Consent of prisoner to be dealt with summarily—Right of appeal from conviction—Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), s. 12—Children Act, 1908 (8 Edw. 7, c. 67), ss. 33, 128.

If a person, charged before a court of summary jurisdiction with an indecent assault on a female who in the opinion of the Court is under the age of sixteen years, consents to be dealt with summarily by virtue of the power conferred on Courts of summary jurisdiction by s. 12 of the Summary Jurisdiction Act, 1879, and s. 128 of the Children Act, 1908, he has no right of

CRIMINAL LAW (Infants)—*continued*.

appeal under s. 33 of the Act of 1908. *REX v. DICKINSON*. *Ex parte* DAVIS

Div. Ct. [1910] 1 K. B. 469

— Youthful offenders.

See under **CRIMINAL LAW—Youthful Offenders**.

Information.

— Execution of work in contravention of by-law—Continuing offence.

See **LOCAL GOVERNMENT**. 16.

1. — Sale of intoxicating liquors to children—Sale by servant contrary to instructions of licensee—"Knowingly allows any person to sell"—Intoxicating Liquors (Sale to Children) Act, 1901 (1 Edw. 7, c. 27), s. 2.

By s. 2 of the Intoxicating Liquors (Sale to Children) Act, 1901, "every holder of a licence who knowingly sells or delivers, or allows any person to sell or deliver, save at the residence or working place of the purchaser, any description of intoxicating liquor to any person under the age of fourteen years for consumption by any person on or off the premises, excepting such intoxicating liquors as are sold or delivered in corked and sealed vessels in quantities not less than one reputed pint for consumption off the premises only," is made liable to penalties.

Intoxicating liquor was knowingly sold to a child under fourteen in a bottle neither corked nor sealed by a servant of a licensed person contrary to the express orders and without the knowledge of his master, who was himself in charge of the premises at the time of the sale:—

Held, that the licence-holder could not be convicted under s. 2 of "knowingly allowing" a person to sell intoxicating liquor to a child under fourteen in a vessel neither corked nor sealed. **EMARY v. NOLLOTH** - Div. Ct. [1903] 2 K. B. 264

2. — Sale of intoxicating liquor to children—Vessel not properly sealed—Evidence—Gummed paper label—Intoxicating Liquors (Sale to Children) Act, 1901 (1 Edw. 7, c. 27), s. 2.

The appellant was charged under s. 2 of the Intoxicating Liquors (Sale to Children) Act, 1901, with selling beer to a child under fourteen, the beer not being sold in a sealed vessel. It was proved that a gummed paper label was affixed over the screw stopper of the bottle, extending about an inch down two sides of the neck of the bottle. The label was dry at the time of the sale, but by moistening the label with the tongue and so damping the gum the label could be removed without its being torn. The justices found that the bottle was not sealed as required by the Act, and convicted the appellant:—

Held, that there was evidence to support the finding of the justices. **MITCHEL v. CRAWSHAW**
Div. Ct. [1903] 1 K. B. 701

3. — Sale of intoxicating liquors to children—Vessels not properly corked and sealed—Mens rea—Intoxicating liquors (Sale to Children) Act, 1901 (1 Edw. 7, c. 27), s. 2.

By s. 2 of the Intoxicating Liquors (Sale to Children) Act, 1901, every holder of a licence

CRIMINAL LAW (Information)—continued.

who knowingly sells or delivers, save at the residence or working place of the purchaser, any intoxicating liquor to any child under fourteen for consumption by any person on or off the premises, excepting such intoxicating liquors as are sold or delivered in corked and sealed vessels in the prescribed manner, shall be liable to penalties :—

Held, that the holder of a licence, who had delivered intoxicating liquor to a child under fourteen in a vessel not corked and sealed as the Act required, was guilty of an offence under s. 2, although he honestly believed when he delivered the liquor that the vessel was so corked and sealed. *BROOKS v. MASON*.

Div. Ct. [1902] W. N. 193; [1902] 2 K. B. 743

Justices.

See under JUSTICES.

Larceny.

Larceny Act, 1901 (1 Edw. 7, c. 10) amends the Larceny Act, 1861 (24 & 25 Vict. c. 96.)

See also the paragraphs at the commencement of this heading (Criminal Law).

1. — *Advertisement of reward for return of stolen property—Penalty*—"Any property whatsoever"—*Dog—Larceny Act, 1861 (24 & 25 Vict. s. 96), s. 102.*

A dog is included in the words "any property whatsoever" in s. 102 of the Larceny Act, 1861, which imposes a penalty on any one who publicly advertises a reward for the return of any property whatsoever which shall have been stolen or lost, and uses in such advertisement any words purporting that no questions will be asked, and on any one who prints or publishes such an advertisement. *MIRAMS v. OUR DOGS PUBLISHING CO.*
C. A. [1901] 2 K. B. 564

2. — *Case for jury—No evidence of theft.*

In this case the judgment of the Court (Darling, Pickford and Lord Coleridge JJ.) was delivered by Darling J., who said that the question the Court had to decide was whether at the close of the case for the prosecution there was any evidence of larceny to go to the jury. From the facts it appeared that the appellant was the owner, in a perfectly legitimate way, of a number of pheasants. On the night in question his house was being watched, and he was seen to go out about 3.15 A.M. with nothing whatever in his hands and to return about 6.15 with a sack containing eleven tame pheasants. As the birds were tame no question of poaching or offences under the Game Laws arose, and the case was exactly the same as if they had been barn-door fowls. There was evidence before the case for the prosecution was closed that no one could be found who had lost any pheasants, and on these facts the question was whether there was any evidence of larceny to go to the jury. They were not now concerned with the explanations which the appellant gave, but had simply to decide the question of law. In such a case it was necessary to consider all the circumstances, such as the nature of the goods and the hour at which they were being dealt with. If there was no evidence

CRIMINAL LAW (Larceny)—continued.

of stealing it was the duty of the chairman to withdraw the case from the jury on the prisoner's counsel's submission, at the close of the case for the prosecution, that there was no evidence for them. Counsel for the prisoner made that submission in the court below, and as the prisoner had a right to a decision at that moment this Court now would ignore anything that took place during the remainder of the trial after that submission had been made. The present case was quite unlike *Reg. v. Burton* (1854) Dears. 282, which had been cited. The facts were quite consistent with the appellant's innocence. He might have been moving birds of his own from one place to another, and the only suspicious circumstance was the time being 3.15 A.M. There was not sufficient evidence to call upon the prisoner to answer a charge of larceny. Conviction quashed. *REX v. JOINER*.

C. C. A. [1910] W. N. 43

3. — *Deer usually kept in a forest—Killing outside forest—Unlawful possession—Larceny Act, 1861 (24 & 25 Vict. c. 96), ss. 12, 14.*

A person who kills and carries away a deer usually kept in a forest, when it is outside of the limits of the forest and upon the land of a third person, cannot be convicted, under s. 14 of the Larceny Act, 1861, of being in unlawful possession thereof. *THREKELD v. SMITH*.

Div. Ct. [1901] 2 K. B. 531.

— *Evidence—Statement of affairs in bankruptcy—Admissibility—Misappropriation by trustee.*
See CRIMINAL LAW—Practice.

4. — *Fixtures—Agreement for tenancy of house—Taking possession with intention to steal fixtures—Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 31.*

By an agreement in writing dated July 6th, 1910, between King, who was the lessee for a long term of certain houses, and the appellant, the latter agreed within three months to put the houses into repair, and King agreed that, upon completion of the repairs, he would grant to the appellant a lease of the houses for twenty-one years at a yearly rent, the appellant in the meantime to be deemed a tenant-at-will. The appellant entered into possession of the houses, and according to the evidence for the prosecution proceeded to sever and remove the lead and zinc piping from a number of the houses. The case for the prosecution was that the appellant entered into the agreement with the fraudulent intention of getting possession of the houses in order to steal the above fixtures, and that, if that were so, he was, upon the authority of *Rex v. Munday*, (1799) 2 Leach C. C. 850, which was decided under 4 Geo. 2, s. 32, guilty of the offence charged. The jury found the appellant guilty.

Pickford J., in delivering the judgment of the Court (Lord Alverstone C.J., Pickford and Avory JJ.), said that the jury must be taken to have found that, when the appellant entered into the agreement for the tenancy of the houses, he had no intention of becoming a bona fide tenant, but did so for the purpose of getting possession

CRIMINAL LAW (Larceny)—continued.

of the houses in order to steal the lead and zinc piping specified in the indictment. That raised the question whether the decision in *Rex v. Munday*, 2 Leach C. C. 850, ought to be followed. That was a case decided more than a century ago on reference to all the judges, and it had been recognized as an authority ever since. They thought that they ought to follow it, and therefore the conviction must be affirmed. *REX v. RICHARDS* C. C. A. [1910] W. N. 268

5. — *Fraudulent misappropriation by agent*—“*Banker, merchant, broker, attorney, or other agent*”—*Larceny Act, 1861* (24 & 25 Vict. c. 96), s. 75.

By 24 and 25 Vict. c. 96, s. 75, “Whosoever, having been intrusted, either solely, or jointly, with any other person as a banker, merchant, broker, attorney, or other agent, with any money or security for the payment of money, with any direction in writing to apply, pay, or deliver such money or security or any part thereof respectively, or the proceeds or any part of the proceeds of such security, for any purpose, or to any person specified in such direction, shall, in violation of good faith, and contrary to the terms of such direction in anywise convert to his own use or benefit, or the use or benefit of any person other than the person by whom he shall have been so intrusted, such money, security, or proceeds, or any part thereof respectively . . . shall be guilty of a misdemeanour.”

The prisoner, a conjurer and thought-reader, received from the prosecutrix a cheque for the specific purpose of paying a deposit upon an application on behalf of the prosecutrix for shares in a certain ry. co., the cheque to be returned to the prosecutrix in the event of the shares not being obtainable. The prisoner made no application for the shares, but cashed the cheque and misappropriated the proceeds:—

Held, that the words “or other agent” in s. 75 applied only to persons whose occupation was similar to those enumerated in the section, and did not include any ordinary agent who might from time to time be intrusted with chattels or valuable securities, and that the facts disclosed no offence within the meaning of the section.

Reg. v. Portugal, (1885) 16 Q. B. D. 487, approved and followed. *REG. v. KANE*.

C. C. R. [1901] 1 K. B. 472

Note.

Sects. 75, 76 of the Larceny Act, 1861 (24 & 25 Vict. c. 96), are repealed by Larceny Act, 1901 (1 Edw. 7, c. 10).

6. — *Indictment for offence after previous conviction*—*Arraignment*—*Larceny Act, 1861* (24 & 25 Vict. c. 96), s. 116—*Error*.

Section 116 of the Larceny Act, 1861, provides that “In any indictment for any offence punishable under this Act and committed after a previous conviction” the offence may be charged in the manner therein specified; and the section then goes on to say that “the proceedings upon any indictment for committing any offence after a previous conviction . . . shall be as follows”:—

Held, that the words “for committing any offence” in the latter paragraph are perfectly

CRIMINAL LAW (Larceny)—continued.

general and not limited to offences punishable under that Act.

A prisoner was indicted at quarter sessions for attempting to commit larceny, and a subsequent count in the indictment charged a previous conviction. The prisoner was arraigned upon and pleaded to both counts. Objection was taken on his behalf to the arraignment as contravening the provisions of s. 116 of the Larceny Act, 1861, which require that upon an indictment for an offence after a previous conviction the offender shall in the first instance be arraigned upon so much only of the indictment as charges the subsequent offence, and that until he be found guilty of that offence he shall not be called upon to plead to the charge of the previous conviction. The recorder accordingly adjourned the trial to the next sessions. At that sessions the prisoner was tried. There was no fresh arraignment, but his former pleas were treated as standing. He was, however, given in charge to the jury upon the first count only, and was found guilty and sentenced on that count:—

Held, that although the arraignment did not take place at the sessions at which the prisoner was tried, and although the fact of the previous conviction was not disclosed to the jury by whom he was convicted, either by the manner of giving him into their charge or otherwise, the fact that the arraignment did not comply with the provisions of the section was such a substantial defect as could not be cured by verdict, and that the conviction must be quashed. *FAULKNER v. REX*

Div. Ct. [1905] 2 K. B. 76

7. — *Indictment—Form—Receipt of money stolen by wife from husband—Indictment for misdemeanour—Absence of allegation that thief was wife of person from whom money stolen*—*Larceny Act, 1861* (24 & 25 Vict. c. 96), s. 91—*Married Women's Property Act, 1882* (45 & 46 Vict. c. 75), ss. 12, 16.

An indictment charging as a misdemeanour the receipt by a person of money in fact stolen by a wife from her husband knowing the money to have been stolen is good, inasmuch as the stealing by a wife of her husband's property does not amount to a felony either at common law or by virtue of the Larceny Act, 1861, but is made a criminal offence by the Married Women's Property Act, 1882, and therefore the receiving of such stolen property is not a felony within the meaning of s. 91 of the Act of 1861; and as there is no other statute making such receipt a felony, it is a misdemeanour only. It is not necessary (although it may be better) to insert in the indictment an allegation that the money belonged to the husband and had been stolen from him by his wife. *REX v. PAYNE*.

C. C. R. [1905] W. N. 179; [1906] 1 K. B. 97

Note.

This case was referred to by C. C. A., *Rex v. Garland*, [1909] W. N. 252.

8. — *Indictment—Goods the separate property of the wife described as being the property of her husband—Amendment—Criminal Procedure Act, 1851* (14 & 15 Vict. c. 100), s. 1.

Where goods which were the separate property

CRIMINAL LAW (Larceny)—continued.

of a wife were stolen from the house of her husband, in which she was residing, it is not sufficient to lay them in the indictment as the property of the husband. *REX v. MURRAY*.

C. C. R. [1906] W. N. 122; [1906] 2 K. B. 385

9. — *Indictment—Wife stealing goods of husband when about to leave or desert him—Indictment for larceny—Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), ss. 12, 16.*

On the trial of a charge against a wife for stealing the goods of her husband when about to leave or desert him, which is made a criminal offence by ss. 12 and 16 of the Married Women's Property Act, 1882, it is not necessary that the indictment should contain averments that the prisoner was the wife of the prosecutor, and that she took the goods in question when leaving or deserting, or about to leave or desert, her husband. *REX v. JAMES AND JOHNSON*.

C. C. R. [1902] W. N. 27; [1902] 1 K. B. 540

— Mercantile agent—Possession of goods—Consent of owner—Larceny by a trick.
See FACTOR. 3.

10. — *Officers of public companies—Publishing fraudulent statements—Manager de facto—Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 84.*

Sect. 84 of the Larceny Act, 1861, which makes it a misdemeanour for "any director, manager, or public officer of any body corporate or public co." to publish false statements with intent to deceive or defraud, applies to a person who, without having been appointed an officer of the co., has in fact acted throughout as the manager of the affairs of the co. *REX v. LAWSON*.

C. C. R. [1905] 1 K. B. 541

— Pawnner convicted of stealing the chattel—Subsequent prosecution by pawnbroker for illegal pawning.
See PAWNBROKER.

11. — *Pleading—Indictment—Receiving—Omission of "feloniously"—Common law misdemeanour—Evidence—Conviction—Criminal Procedure Act, 1851 (14 & 15 Vict. c. 100), ss. 12, 24—Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 91.*

An indictment which alleges that the prisoner unlawfully received certain goods well knowing them to have been feloniously stolen, against the form of the statute, &c., but not containing the words "and feloniously" after "unlawfully," is a good indictment for the common law misdemeanour of receiving, and, although the evidence given at the trial on an indictment in that form shews that the stealing was a felony within the Larceny Act, 1861, a conviction on that evidence is, by reason of s. 12 of the Criminal Procedure Act, 1851, a good conviction for the common law misdemeanour. *REX v. GARLAND*.

C. C. A. [1909] W. N. 252; [1910] 1 K. B. 154

12. — *Pretended purchase—Passing of property.*

The prisoner was in the habit of buying from time to time from a manufacturing co. portions of the accumulated ashes of the co.'s works. The only agreement made between the managing director of the co. and the prisoner with respect to such purchases was as to the price per ton, the

CRIMINAL LAW (Larceny)—continued.

prisoner being at liberty to take from the accumulation as much as he required, upon the understanding that the amount of his purchase in each case should be determined by the weight as ascertained by the co.'s weigher. It was the duty of the co.'s weigher to enter in a book a record of the weights of the ashes purchased to enable the co. to charge the purchasers with the proper amounts. The co.'s weigher fraudulently and in collusion with the prisoner weighed and delivered to the prisoner 32 tons 13 cwt. of the ashes and entered the weight in the book as being 31 tons 3 cwt. only:—

Held, that on these facts the prisoner was rightly indicted for larceny of 1 ton 10 cwt. *REX v. TIDSWELL* **C. C. R. [1905] 2 K. B. 273**

— Proof of previous convictions—Prevention of crimes.

See CRIMINAL LAW—Convictions. 3.

— Sale of goods—Possession obtained by larceny by a trick—Mercantile agent.
See SALE OF GOODS.

— Trick, Larceny by a—Mercantile agent—Possession of goods—Consent of owner.
See FACTOR. 3.

Libel.

See also under DEFAMATION—Libel.

1. — *Obscene libel—Publication—Aiding and abetting—Advertisement in a newspaper.*

The deft. inserted in a newspaper of which he was the editor, advertisements which, though not obscene in themselves, related, as he knew, to the sale of obscene books and photographs. A police officer wrote to the addresses given in the advertisements, and received in return from the advertisers, who were foreigners resident abroad, obscene books and photographs. The deft. was tried on an indictment charging him with causing and procuring obscene books and photographs to be sold and published, and to be sent by post contrary to the Post Office (Protection) Act, 1884, s. 4. The deft. was convicted:—

Held, that the conviction was right. *REX v. DE MARNY* **C. C. R. [1907] W. N. 10; [1907] 1 K. B. 388**

Loaded Arms.

1. — *Attempt to discharge loaded arms—Evidence for the jury—Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 18.*

The prisoner was indicted under s. 18 of the Offences against the Person Act, 1861, with attempting to discharge a loaded revolver at the prosecutor with intent to do him grievous bodily harm. Evidence was given at the trial that during an interview between the prisoner and the prosecutor the prisoner drew a loaded revolver from his coat pocket. The prosecutor immediately seized the prisoner and prevented him from raising his arm; a struggle ensued, in the course of which the prisoner nearly succeeded in getting his arm free, but after a few minutes the prosecutor wrested the revolver from him and he was taken into custody. During the struggle the prisoner several times said to the prosecutor, "You've got to die":—

Held, that there was evidence upon which

CRIMINAL LAW (Loaded Arms)—continued.

the prisoner could properly be convicted of an attempt to discharge the revolver within the meaning of s. 18. **REX v. LINNEKER**

C. C. R. [1906] 2 K. B. 99

Lunacy.

See also under LUNACY.

1. — *Conviction—Person insane at time he did act charged—Special verdict—Right of appeal—Trial of Lunatics Act, 1883 (46 & 47 Vict. c. 38), s. 2, sub-ss. 1, 2—Criminal Appeal Act, 1907 (7 Edw. 7, c. 23).*

When a special verdict is returned under s. 2, sub-s. 1, of the Trial of Lunatics Act, 1883, to the effect that the accused person was guilty of the act or omission charged against him in the indictment as an offence, but was insane at the time when he did the act or made the omission, and an order for his detention is thereupon made under s. 2, sub-s. 2, of the Act of 1883, the accused is "a person convicted on indictment" within the meaning of s. 3, of the Criminal Appeal Act, 1907, and therefore has the right of appeal given by that section. **REX v. IRELAND**

C. C. A. [1910] W. N. 35; [1910] 1 K. B. 654

— Criminal lunatic—Necessaries—Part obligation—Debt—Claim by Crown for arrears.

See LUNACY. 7.

2. — *Defence of insanity—Evidence at trial—Defence by counsel at request of Court—Trial for murder—Verdict of guilty—Application for leave to appeal on ground that evidence of insanity might have been procured.*

The trial took place on Nov. 12 last at the Nottingham Assizes before Pickford J., the prisoner being defended by counsel at the request of the Court. The defence was that the prisoner was insane at the time he committed the murder, but at the trial no witnesses were called on behalf of the prisoner. The jury found the prisoner guilty of murder:—

Held, that the application must be refused. A defence of insanity must be established by evidence given before the jury at the trial. Sometimes the nature of the crime itself was some evidence of insanity. It was quite impossible for this Court to reverse the verdict of the jury on the ground that some other evidence might possibly have been procured. The recommendation of Pickford J., that further inquiries should be made, would no doubt be acted upon. **REX v. ATHERLEY - C. C. A. [1909] W. N. 251**

3. — *Insanity—Person totally deaf—Incapacity to understand proceedings—Detention during His Majesty's pleasure—Criminal Lunatics Act, 1800 (39 & 40 Geo. 3, c. 94), s. 2.*

A prisoner who was totally deaf and could neither read nor write was arraigned for a felony. Upon being arraigned he stood mute, and a jury, duly impanelled and sworn for the purpose, found that he was mute by the visitation of God. The jury were sworn again to try whether he was capable of pleading to the indictment, and they found that he was incapable of pleading to and taking his trial upon the indictment and of understanding and following the proceedings

CRIMINAL LAW (Lunacy)—continued.

by reason of his inability to communicate with and be communicated with by others. Upon this finding the judge, acting under s. 2 of the Criminal Lunatics Act, 1800, ordered him to be kept in custody until His Majesty's pleasure should be known:—

Held, that the finding amounted to a finding that the prisoner was insane within the meaning of the Act, and that the order was properly made. **REX v. GOVERNOR OF HIS MAJESTY'S PRISON AT STAFFORD. Ex parte EMERY**

Div. Ct. [1909] W. N. 95; [1909] 2 K. B. 81

— Vesting order—Criminal lunatic. *

See LUNACY. 27.

Malicious Damage.

1. — *Shooting at dog—Malicious injury to property—Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), s. 41.*

An information under 24 & 25 Vict. c. 97, s. 41, was laid against the appellant, a game-keeper, for unlawfully and maliciously killing a dog; the dog was at the time near an aviary in which pheasants, the property of the appellant's master, were confined for breeding purposes:—

Held, that the test of the appellant's liability under the section was whether he acted under the bona fide belief that what he was doing was necessary for the protection of his master's property, and that it was the only way in which the property could be protected.

Daniel v. James, (1877) 2 C. P. D. 351, considered. MILES v. HUTCHINGS

Div. Ct. [1903] 2 K. B. 714

Motor Cars.

See under MOTOR CARS.

Offences against the Person.

— Indictment—Bigamy—Second marriage contracted abroad—No averment that accused was a "British subject."

See CRIMINAL LAW—Indictment. 2.

1. — *Summary jurisdiction—"Complaint by or on behalf of party aggrieved"—Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 42.*

By s. 42 of the Offences against the Person Act, 1861, where any person shall unlawfully assault or beat any other person, two justices of the peace, upon complaint by or on behalf of the party aggrieved, may hear and determine such offence.

An assault having been committed upon a person who was so old and infirm, and so much under the control of the assailant, as to be unable to institute or authorize proceedings, an information was laid by a relative of the person assaulted in respect of the assault. Two justices of the peace heard the matter and convicted the offender:—

Held, that the matter had been duly brought before the justices, upon complaint on behalf of the party aggrieved, within the meaning of the above section, and that they had jurisdiction to hear and determine it.

CRIMINAL LAW (Offences against the Person)
—continued.

Nicholson v. Booth, (1888) 16 Cox, C. C. 373 ;
57 L. J. (M.C.) 43, distinguished. *PICKERING v.*
WILLOUGHBY Div. Ct. [1907] W. N. 112 ;
[1907] 2 K. B. 296

Perjury.

— Judicial proceeding — Arbitration under
Workmen's Compensation Act, 1906.
See CRIMINAL LAW—**Appeal.** 17.

Pleading.

— Indictment.
See under CRIMINAL LAW—**Indict-**
ment.

Poaching.

See under GAME.

Poor Prisoners.**(Poor Prisoners' Defence.)**

Poor Prisoners' Defence Act, 1903 (3 Edw. 7,
c. 38), makes provision for the defence of poor
prisoners.

Poor Prisoners' Defence Act, 1903 (3 Edw. 7,
c. 38). *Regulations of the Secretary of State*,
dated Dec. 30, 1903, as to the allowances which
may be made under s. 1, sub-s. 2, of the *Poor*
Prisoners' Defence Act, 1903. Reprint from
W. N. 1904 (Jan. 23), p. 55. *See* CURRENT
INDEX, 1904, p. cxxi.

Rules made by the Attorney-General, dated
May 13, 1904, with the approval of the Lord
Chancellor and the Secretary of State for the
Home Department in pursuance of s. 2 of the
Poor Prisoners' Defence Act, 1903. Reprint from
W. N. 1904 (June 25), p. 209. *See* CURRENT
INDEX, 1904, p. cxxii.

Practice.

1. — *Abusive trial—Rehearing—Evidence on*
former hearing—Evidence on rehearing.

Several persons having been charged with
conspiracy to defraud, a summons was issued,
and the hearing commenced before a magistrate.
When the inquiry had lasted a considerable time,
and the evidence of a large number of witnesses
had been taken, the magistrate fell ill and was
unable to continue the hearing, which had to be
recommenced before another magistrate. At the
commencement of the rehearing counsel for the
prosecution proposed to take the following
course :—To recall some of the witnesses called
at the first hearing ; to swear them ; to read
to them their depositions taken at that hearing,
directing them to correct the evidence if and
where it was inaccurate ; to ask them any addi-
tional questions that might be thought advisable ;
then to tender these witnesses for cross-examina-
tion, with liberty for the prosecution to re-
examine where necessary ; and then to proceed
with the oral examination of those witnesses
whom the prosecution intended to call but had
not called on the first hearing :—

Held, that there was nothing illegal in the
course proposed, and that to accede to the pro-
posal if he thought it expedient in the interests

CRIMINAL LAW (Practice)—continued.

of justice so to do was within the discretion of
the magistrate, with which the Court would not
interfere. *Ex parte* BOTTOMLEY

Div. Ct. [1909] 2 K. B. 14

— Appeal—Criminal law.

See under CRIMINAL LAW—**Appeal.**

— Appeal—Special leave.

See ISLE OF MAN. 4.

2. — *Conviction—Continuing offence—Aver-*
ment of commission of offence on several discon-
tinuous days.

An information charged the deft., a licensed
victualler, with permitting his house to be used
as a brothel on the 26th, 28th, 29th, and 31st
days of Jan., and the 1st, 4th, 5th, and 6th days
of Feb. in the same year, contrary to s. 15 of
the Licensing Act, 1872 :—

Held, that the fact of the days named being
non-consecutive did not prevent the charge from
being a charge of one continuing offence ; that
the information was consequently not bad for
duplicity ; and that the deft. might on such an
information be lawfully convicted of so permit-
ting his house to be used on all the days named.
Ex parte BURNBY

Div. Ct. [1901] W. N. 132 ; [1901] 2 K. B. 458

— Conviction—Night poaching—Previous con-
victions for same offence.

See GAME. 4.

— Discovery—Affidavit of documents — Con-
spiracy—Criminal offence— Practice.

See DISCOVERY. 1.

— Justices.

See under JUSTICES.

— Non-direction—No substantial miscarriage of
justice.

See CRIMINAL LAW—**Appeal.** 15.

— Review of martial law — Conviction by
Supreme Court—Jurisdiction.

See CAPE OF GOOD HOPE.

— Shorthand notes of proceedings—Leave to
appeal.

See CRIMINAL LAW—**Appeal.** 29.

— Summary jurisdiction.

See under CRIMINAL LAW—**Summary**
Jurisdiction, and under Jurisdiction.

— Summons, Irregularity in form of—Election
by prosecution on what charge to
proceed.

See CRUELTY TO ANIMALS. 2.

— Trial—Discharge of jury—Discretion of judge
—Second trial.

See CRIMINAL LAW—**Appeal.** 31.

Prevention of Cruelty to Children.

See under CRIMINAL LAW—**Cruelty to**
Children.

Probation of Offenders.

— Conviction on indictment—Recognizance to
appear for sentence — Breach of
condition.

See CRIMINAL LAW—**Appeal.** 20.

CRIMINAL LAW (Probation of Offenders)—*contd.*

— Convict's property, Sale of—Administrator—
Bona fides—Discretion.

See **FELONY**. 1.

— Release on probation—Recognizance—Condition as to abstinence from intoxicating liquor.

See **CRIMINAL LAW—Appeal**. 19.

Prosecution of Offences.

Prosecution of Offences Act, 1908 (8 Edw. 7, c. 3), amends the Prosecution of Offences Acts, 1879 and 1884.

Rape.**1. — Trial of prisoners charged with rape.**

The Court expressed the opinion that prisoners charged with rape should always be defended by counsel. Lord Alverstone C.J. said that he always made a practice of asking counsel to defend on a charge of rape. In his opinion it was absolutely essential. **PRACTICE NOTE**

C. C. A. [1910] W. N. 206

Receiving.

— Pleading — Indictment — Admission of "feloniously."

See **CRIMINAL LAW—Larceny**. 11.

1. — Receiving stolen goods—Goods "found in his possession"—Prevention of Crime Act, 1871 (34 & 35 Vict. c. 112), s. 19—Evidence—Prisoner called as witness on behalf of fellow prisoner—Cross-examination—Criminal Evidence Act, 1898 (61 & 62 Vict. c. 36), s. 1 (e).

On the trial of a prisoner for receiving goods knowing them to be stolen it was proved that he pawned the goods with a pawnbroker on the day preceding that of his arrest:—

Held, that the goods were "found in his possession" within the meaning of s. 19 of the Prevention of Crime Act, 1871, and that for the purpose of proving guilty knowledge evidence might be given that he had been previously convicted of an offence involving dishonesty.

Reg. v. Drage, (1878) 14 Cox, C. C. 85, and *Reg. v. Carter*, (1884) 12 Q. B. D. 522, not followed.

Where two prisoners are tried for an offence and one gives evidence on behalf of the other, the prisoner so giving evidence may, under s. 1 (e) of the Criminal Evidence Act, 1898, be asked questions in cross-examination tending to criminate him as to the offence charged, none the less because he gave no evidence in support of his own defence. **REX v. ROWLAND**

C. C. A. [1910] 1 K. B. 458

Recognizances.

— Good behaviour, Recognizance to be of—Jurisdiction—Public meetings—Use of insulting language.

See **JUSTICES**. 12.

— Probation of offenders—Condition as to abstinence from intoxicating liquor.

See **CRIMINAL LAW—Appeal**. 19.

1. — Recognizances on case stated—Sufficiency—Summary jurisdiction—Practice—Summary Jurisdiction Act, 1857 (20 & 21 Vict. c. 43), ss. 3, 5.

D. D.

CRIMINAL LAW (Recognizances)—*continued.*

The appellant having been convicted at a metropolitan police court of an offence against the London Building Act, 1894, applied to the magistrate to state a case, and his application was refused. The appellant then entered into a recognizance with one surety with the consent of the magistrate under 20 & 21 Vict. c. 43, s. 3, to prosecute the appeal and applied to and obtained from the High Court a rule absolute for a mandamus to the magistrate to state the case. In the meantime the appellant had been adjudicated bankrupt, and his surety had died. The magistrate stated and signed the case in pursuance of the order of the Court, but declined to deliver it up until the appellant had entered into a fresh recognizance:—

Held, that the recognizance previously entered into was valid, and that the magistrate had no authority to require a fresh recognizance. **REX v. KETTLE AND LONDON COUNTY COUNCIL, Ex parte ELLIS** Div. Ct. [1905] 1 K. B. 212

Restitution of Stolen Property.

— Order for—Appeal by person against whom order made.

See **CRIMINAL LAW—Appeal**. 21.

Riot.

1. — Intention to render mutual help against opposition—Force and violence—Persons riotously and tumultuously assembled—Building injured or destroyed—Riot (Damages) Act, 1886 (49 & 50 Vict. c. 38), s. 2.

In order to constitute a riot five elements are necessary—(1) a number of persons not less than three; (2) a common purpose; (3) execution or inception of the common purpose; (4) an intent on the part of the number of persons to help one another, by force if necessary, against any person who may oppose them in the execution of the common purpose; (5) force or violence, not merely used in or about the common purpose, but displayed in such a manner as to alarm at least one person of reasonable firmness and courage.

In an action under s. 2 of the Riot (Damages) Act, 1886, to recover compensation for the injury or destruction of a building by persons riotously and tumultuously assembled together, the following facts were proved:—At nine o'clock on a night at the end of Oct. a number of youths of ages varying from fourteen to eighteen years were congregated together upon the foot-pavement of a road in a low neighbourhood shouting and using rough language. The pavement adjoined a nine-inch wall of considerable length inclosing a yard and let into a house. Some of the youths were standing with their backs against the wall and others were running against them, or against the wall with their hands extended. After they had gone backwards and forwards in this way for about fifteen minutes, the wall, to the extent of about twelve feet, fell. As soon as it fell the caretaker of the premises came out into the street, and the youths then dispersed in different directions:—

Held, that there was no evidence of any intention on the part of the youths to help one another by force if necessary against any person

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CRIMINAL LAW (Riot)—continued.

who might oppose them in the execution of their common purpose of injuring or destroying the wall; or of any force or violence (other than the force or violence used in the actual demolishing of the wall) displayed in such a manner as to alarm any person of reasonable firmness and courage; and therefore that the youths were not riotously and tumultuously assembled together within the meaning of s. 2 of the Riot (Damages) Act, 1886.

Semble, in order to sustain a claim under that section it is necessary to prove all the elements of a riot. **FIELD v. RECEIVER OF METROPOLITAN POLICE** Div. Ct. [1907] 2 K. B. 853

Servants' Characters.

1. — *Giving false character—Character not in writing—Conspiracy—Servants' Characters Act, 1792* (32 Geo. 3, c. 56), ss. 2, 3.

By s. 2 of the Servants' Characters Act, 1792, "if any person or persons shall knowingly and wilfully pretend or falsely assert in writing that any servant has been hired or retained for any period of time whatsoever, or in any station or capacity whatsoever, other than that for which or in which he, she, or they shall have hired or retained such servant in his, her, or their service or employment," such person or persons shall be liable to a penalty. By s. 3, "if any person or persons shall knowingly and wilfully pretend or falsely assert in writing" that any servant was discharged or left his service at any other time than that at which he was discharged or actually left such service, such person or persons shall be liable to a penalty:—

Held, that the words "in writing" in the above sections only qualify the word "assert," and do not apply to the words "knowingly and wilfully pretend," and that therefore the false pretence as to character may be made orally or by conduct and need not be in writing. **REX v. COSTELLO AND BISHOP** - - - C. C. A. [1909] W. N. 210; [1910] 1 K. B. 28

Slander.

See also under DEFAMATION—Slander.

— Slander—Words actionable per se—Innuendo—Criminal offence—Punishment—Liability to summary arrest.
See DEFAMATION—Slander. 6.

Summary Jurisdiction.

See also under JURISDICTION.

— Justices generally.
See under JUSTICES.

1. — *Justices—Summary jurisdiction—Charge of offence triable summarily—Evidence in course of hearing shewing offence triable by jury—Jurisdiction of justices to convict—“Before the charge is gone into”—Summary Jurisdiction Act, 1879* (42 & 43 Vict. c. 49), s. 17.

By s. 17, sub-s. 1, of the Summary Jurisdiction Act, 1879, "A person when charged before a Court of summary jurisdiction with an offence in respect of the commission of which an offender is liable on summary conviction to be imprisoned for a term exceeding three months . . . may,

CRIMINAL LAW (Summary Jurisdiction)—contd.
on appearing before the Court, and before the charge is gone into but not afterwards, claim to be tried by a jury."

Sub-s. 2: "A Court of summary jurisdiction, before the charge is gone into in respect of an offence to which this section applies, for the purpose of informing the defendant of his right to be tried by a jury in pursuance of this section, shall address him" to the effect in the section set out, and ask him if he desires to be tried by a jury.

A woman was charged before justices with an offence, in respect of which, if it was a first offence, she was liable on summary conviction to be imprisoned for a term not exceeding three months. In the course of the hearing evidence was given by the prosecution that the deft. had been previously convicted of a like offence, and thereupon she became liable on conviction to be imprisoned for a term exceeding three months. The justices, without giving her the option prescribed by the above section, convicted the deft. and sentenced her to three months' imprisonment:—

Held by Walton and Jelf JJ. (Lord Alverstone C.J. dissenting), that the justices had no jurisdiction to treat the case as one of a first offence; that the words "before the charge is gone into" mean in such a case "before the charge in its altered character is proceeded with" and that, as the justices had not, upon the evidence of the previous conviction being given, asked the deft. if she wished to be tried by a jury, the conviction was bad. **REX v. BEESBY** - Div. Ct. [1909] W. N. 52; [1909] 1 K. B. 849

Third Parties.

— Intervening, of third party causing loss—Damages—Remoteness.
See CONTRACT.

Treason.

1. — *High treason—Practice—Motion to quash indictment—Expatriation in time of war—Naturalization Act, 1870* (33 & 34 Vict. c. 14), s. 6.

On a trial for high treason the Court will not entertain a motion to quash the indictment as defective, but will leave the prisoner to his remedy by motion in arrest of judgment or by writ of error.

The Naturalization Act, 1870, provides by s. 6 that "any British subject who has at any time before or may at any time after the passing of this Act, when in any foreign State and not under any disability, voluntarily become naturalized in such State shall, from and after the time of his so having become naturalized in such foreign State, be deemed to have ceased to be a British subject and be regarded as an alien":—

Held, that the section does not empower a British subject to become naturalized in an enemy State in time of war; and that the act of becoming naturalized under such circumstances is itself an act of treason, and ineffectual to afford protection against an indictment for

CRIMINAL LAW (Treason)—continued.

treason in subsequently joining the military forces of the enemy. *REX v. LYNCH.*

Div. Ct. [1903] 1 K. B. 444

Vagrancy.

—Incorrigible rogue — Sentence by quarter sessions—Appeal.

See CRIMINAL LAW—Appeal. 13.

Youthful Offenders.

See also under INFANT.

Youthful Offenders Act, 1901 (1 Edw. 7, c. 20)
—*The Summary Jurisdiction Rules (September, 1903, and Forms, dated September 14, 1903. Reprint from W. N. [1903] (Nov. 21), p. 313. See CURRENT INDEX, 1903, p. lxxx.*

Prevention of Crime Act, 1908 (8 Edw. 7, c. 59), makes better provision for the prevention of crime, and for that purpose to provide for the reformation of Young Offenders and the prolonged detention of Habitual Criminals, and for other purposes incidental thereto.

Youthful Offenders — Children Act, 1908 (8 Edw. 7, c. 67).—The Summary Jurisdiction (Children Act) Rules, 1909, dated Mar. 23, 1909, W. N. 1909 (April 3), p. 111, and May 27, 1909, W. N. 1909 (July 10), p. 269. Reprint from W. N. See CURRENT INDEX, 1909, p. xciv.

Juvenile Offender. Detention and Maintenance.—Regulations, March 8, 1909, as to the contribution out of moneys provided by Parliament towards the cost of maintaining children or young persons when in custody under ss. 97 and 106 of the Children Act, 1908, in a place of detention. St. R. & O. 1909, No. 329.

Juvenile Offender. Detention and Maintenance.—Rules, May 21, 1909, for Places of Detention under s. 109 of the Children Act, 1908. St. R. & O. 1909, No. 591. Price 1d. each.

1. — *Reformation of young offenders—Sentence of detention in Borstal institution—Report by governor of prison as to suitability of case for such sentence—Duty of Court to consider—Prevention of Crime Act, 1908 (8 Edw. 7, c. 59), s. 1.*

Three lads, W., J., and S., aged respectively seventeen, eighteen, and sixteen, pleaded guilty to three indictments for burglary. The burglaries were committed in the course of a period of three weeks. On the first occasion the prisoners secured about 27l., and on the second about 12l. On the third they were caught in the act, when W. pointed a pistol at the head of the owner of the house. The prisoners were the sons of respectable parents, and had never been convicted before. The recorder was of opinion that they were proper cases for sentences of detention in a Borstal institution, but, owing to a report from the governor of the prison, made on behalf of the Prison Commissioners, to the effect that they were not suitable cases for such sentences, he did not think himself at liberty to pass them, having regard to the proviso in s. 1, sub-s. 1, of the Prevention of Crime Act, 1908, that "before passing such a sentence the Court shall consider any report or

CRIMINAL LAW (Youthful Offenders)—contd.

representations which may be made to it by or on behalf of the Prison Commissioners as to the suitability of the case for treatment in a Borstal institution. He accordingly passed a sentence upon W. of two years' hard labour, and upon J. and S. of twenty-one months' hard labour, respectively.

The Court held that the recorder, though bound under the section to "consider" the governor's report, was entitled to disregard it if he disagreed with it. They were of opinion that the cases of W. and J. were proper ones for a Borstal institution, and they amended the sentences by ordering W. to be detained at such an institution for eighteen months, and J. for fifteen months. In the case of S., who in consequence of defective eyesight was unsuitable for such detention, they reduced the sentence from twenty-one months' to four months' hard labour. —Appeals allowed. *REX v. WATKINS - C. C. A. [1910] W. N. 169*

CRIMINAL LUNATIC.

* *See under CRIMINAL LAW—Lunacy.*

—Necessaries—Past obligation — Debt — Claim by Crown for arrears.

See LUNACY. 7.

"**CRIMPING**" — Foreign ship — End of voyage.

See SHIPPING—Crimping.

— "Crimping" — Right of accused to be tried by a jury.

See SHIPPING—Crimping.

CROFTERS — *Crofters Common Grazings Regulation Act, 1908 (8 Edw. 7, c. 50), extends the powers of the Crofters Commission in regard to the regulation of Common Grazings.*

CROSS-ACTION — In High Court — Transfer of action from inferior Court — Conduct of action.

See SHIPPING—Practice.

CROSS-APPEAL.

See under APPEAL.

CROSS-EXAMINATION.

See under EVIDENCE.

— Evidence — Cross-examination of prisoner.

See CRIMINAL LAW—Evidence. 3.

— Evidence — Prisoner called as witness on behalf of fellow prisoner.

See CRIMINAL LAW—Receiving. 1.

CROSS-JUDGMENTS — Execution — Payment of judgment debt into Court — Solicitors' Lien for costs.

See COUNTY COURT—Practice. 3.

CROSSINGS — Railway.

See under RAILWAY—Level Crossings.

CROWN — *Civil List Act, 1901 (1 Edw. 7, c. 4), makes provision for the honour and dignity of the Crown and the Royal Family, and for the payment of certain allowances and pensions.*

Demise of the Crown Act, 1901 (1 Edw. 7, c. 5), amends the law relating to the holding of offices in case of the demise of the Crown.

CROWN—continued.

Demise of the Crown.] *O. in C. approving Proclamation requiring all Persons being in Office of authority or Government at the decease of the late Queen, to proceed in the execution of their respective offices.* **St. R. & O. 1901, No. 190.**

Royal Titles Act, 1901 (1 Edw. 7, c. 15), enables His Most Gracious Majesty to make an addition to the Royal style and Titles in recognition of His Majesty's Dominions beyond the seas.

Crown Lands Act, 1906 (6 Edw. 7, c. 28), amends the Crown Lands Acts, 1829 to 1894.

Crown Lands. See Small Holdings and Allotments Act, 1907 (7 Edw. 7, c. 54), s. 28.

Crown Rights. See Public Health Acts Amendment Act, 1907 (7 Edw. 7, c. 53), s. 12.

Regency Act, 1910 (10 Edw. 7 & 1 Geo. 5, c. 26), is an Act to provide for the administration of the government in case the Crown should descend to any issue of His Majesty while such issue shall be under the age of 18 years, and for the care and guardianship of such issue.

Civil List Act, 1910 (10 Edw. 7 & 1 Geo. 5, c. 28), is an Act to make provision for the honour and dignity of the Crown and the Royal Family, and for the payment of certain allowances and pensions.

Accession Declaration Act, 1910 (10 Edw. 7 & 1 Geo. 5, c. 29), is an Act to alter the form of the declaration required to be made by the Sovereign on accession.

Crown Lands, &c. Provision for increment value duty in case of. *See Finance Act (1909-10) Act, 1910 (10 Edw. 7, and 1 Geo. 5, c. 8), s. 10.*

— Arrest of debtor—Forfeiture of bond—Form of bond.

See BANKRUPTCY—Bond. 1.

— Bankruptcy—Administration of bankrupt's estate—Priority of the Crown—New South Wales Bankruptcy Act, 1898.

See NEW SOUTH WALES.

— Bona vacantia—Charity—Cyprus—Friendly society—objects exhausted.

See FRIENDLY SOCIETY. 8.

— British Columbia Crown Procedure Act—Statutory duty to submit petition of right—Damages.

See CANADA—Petition of right.

1. — *Bona vacantia—Escheat—Legal devise to one for life with no devise over—Death of testator without heirs—Sale under Settled Land Acts—Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 2, sub-s. 2; s. 22, sub-s. 5.*

Land was devised by an owner in fee simple to one for life with no devise over. The testator died in 1882, without an heir. The land was sold by the tenant for life under the powers of the Settled Land Acts, and a fund representing the proceeds of sale remained in the hands of trustees appointed for the purposes of the Acts. On the death of the tenant for life:—

Held, that the fund was a money fund which vested in the Crown as bona vacantia.

CROWN—continued.

Taylor v. Haygarth, (1844) 14 Sim. 8, distinguished. In re BOND. PANES v. ATT.-GEN. Kekewich J. [1901] 1 Ch. 15

— Charitable trust, Administration of—Crown cannot as defendant impeach the trust Cy-près.

See NEW ZEALAND.

— Costs in action to which the Crown is a party—Appeal from.

See SIERRA LEONE.

— Costs where Crown litigant.

See REVENUE—Income Tax. 2.

— Criminal lunatic—Necessaries—Past obligation—Debt—Claim by Crown for arrears.

See LUNACY. 7.

— Crown grant, Construction of—Confirmation of doubtful title.

See NEW SOUTH WALES.

— Crown lands in New Brunswick—Adverse possession for less than sixty years—Grant by the Crown during adverse possession valid.

See CANADA—Crown Lands. 2.

— Crown lands—Grant of foreshore by the Crown—Pier—Unauthorized construction—Public nuisance—Rates for passengers—Rates for vessels "mooring."

See PIER.

— Crown lands—Inquiry as to falsity of statements by applicant for conditional purchase.

See NEW SOUTH WALES.

— Crown lands—New South Wales Crown Lands Alienation Act, 1861.

See NEW SOUTH WALES.

— Crown lands—Pier—Unauthorized construction—Nuisance—Public right of access—Rates for passengers—Rates for vessels "mooring."

See PIER.

— Crown lands—Land revenue records and enrolments.

See under LAND REVENUE RECORDS AND ENROLMENTS.

— Crown lands—Swamp lands—Transfer of proprietary right—Canadian Act.

See CANADA—Swamp Lands. 1.

— Crown prerogative—Exemption—Locomotive driven on service of Crown.

See HIGHWAY. 12.

2. — *Crown prerogative—Exemption—Prison Commissioners—Local Board—By-laws—Prison Act, 1877 (40 & 41 Vict. c. 21), s. 5.*

The questions were whether there was evidence that the part of the plot in question and the buildings thereon formed part of the prison, as defined by the Prison Act, 1865, s. 4, and the Prison Act, 1877, s. 60, and whether the land and buildings being vested in the Prison Commrs. for the use of the Sec. of State for public prison purposes, the by-laws were applicable thereto, and whether, under the circumstances,

CROWN—*continued*.

penalties for breach of the by-laws could be enforced against the Prison Commrs. :—

Held, on the facts, that the buildings were not part of the prison and were not exempt from the by-laws on that ground, but that the plot of ground was State property and property therefore over which the local authority had no control whatever. **GORTON LOCAL BOARD v. PRISON COMMRS.** - Div. Ct. [1904] 2 K. B. 165, n.

— Deed of concession—Construction of covenant—Lands in possession of the Crown.
See **TRINIDAD AND TOBAGO**.

— Dog licences—Duties in respect of dogs—Penalty for keeping dog without licence—Information dismissed—Order to pay costs—Costs paid to clerk to justices—Debt due to Crown.
See **REVENUE—Dog Licences. 2.**

— Fishings, Mussel—Right of Crown to grant.
See **FISHERY. 3.**

— Foreshore—Railway company.
See **CANADA—Crown Lands. 1.**

— Foreshore—Rights of Crown—Encroachment—Adverse possession, Title by.
See **SEASHORE.**

3. — Grant for services rendered—Consideration—Estate tail—Reversion in Crown—King de facto et de jure—Estate tail whether barrable—Fines and Recoveries Acts, 1833 (3 & 4 Will. 4, c. 74, s. 18; 1543, 34 & 35 Hen. 8, c. 20, s. 2).

A reversion to the Crown, expectant on the determination of an estate tail in realty granted by the Crown to a subject for services, being excepted by s. 18 of the Fines and Recoveries Act, 1833, from the operation of that Act, and protected by the statute 34 & 35 Hen. 8, c. 20, cannot be barred; and although the consideration is not stated in the grant, it will be presumed after lapse of time—unless the grant on the face of it clearly shews that it is a voluntary gift—and the onus is on those who seek to take the grant out of the statute of Henry VIII. to prove the want of consideration.

But where a grant from the Crown shews on the face of it that it is a voluntary gift, the reversion expectant on the estate tail created thereunder is not within the statute of Henry VIII., and is barrable. **ROBINSON v. GIFFARD** **Farwell J. [1903] W. N. 69; [1903] 1 Ch. 865**

— Habeas corpus—Foreign country in which the Crown has jurisdiction—Protectorate.
See **HABEAS CORPUS. 2.**

— Industrial and provident societies—Dissolution—Appointment of new trustee—Vesting order—Bona vacantia.
See **INDUSTRIAL AND PROVIDENT SOCIETIES. 2.**

4. — Jura regalia—Treasure trove—Celtic gold ornaments—Alleged præ-Christian votive offerings—Royal charter—Grant of lands to subjects—Construction—General words—“Franchises”—“Royalties”—Title of Crown—Jus tertii.

Where gold or silver articles whose owner is unknown are found buried and lying all together

CROWN—*continued*.

in one place, the presumption is that they were intentionally hidden for the benefit of the depositor, and they are therefore treasure trove.

Treasure trove, being one of the jura regalia which belong to the King by virtue of his Royal prerogative, cannot be claimed under the general grant of franchises in a Royal charter, but must itself be expressly granted; although, when so granted, it becomes a franchise in the grantee.

The rule of construction applicable to grants from the Crown to a subject discussed.

Quære, whether in all claims to property, either real or personal, by the Crown, the deft. can defeat the claim of the Crown only by shewing a better title in himself, or whether he can do so by shewing a better title in some one else. **ATT-GEN. v. TRUSTEES OF BRITISH MUSEUM** - **Farwell J. [1903] W. N. 125; [1903] 2 Ch. 598**

— Jurisdiction—Action relating to land in Crown colony.
See **JURISDICTION. 4.**

— Lands surrendered to the Crown subject to subsisting contracts—Rights of Crown against trespasser.
See **NEW ZEALAND.**

— Lease—Soil of highway—Ownership—Street in town—Rebuttal of presumption.
See **HIGHWAY. 21.**

— Lease vesting in Crown—Corporation—Dissolution—Bona vacantia—Landlord and tenant.
See **CORPORATION. 10.**

— Native title to possession of land—Jurisdiction as to cession to the Crown.
See **NEW ZEALAND.**

— New South Wales Crown Lands Act.
See under **NEW SOUTH WALES.**

— New South Wales Life, &c., Insurance Act, 1902—Crown not bound by the Act.
See **NEW SOUTH WALES.**

— New Zealand Act—Prerogative not taken away except by express words—Special leave to appeal.
See **NEW ZEALAND.**

5. — Prerogative—Chattels belonging to Crown—Distress for rent—Privilege—Landlord and tenant.

The chattels of the Crown on land occupied by a subject are privileged from distress for rent. **SECRETARY OF STATE FOR WAR v. WYNNE** **Div. Ct. [1905] W. N. 150; [1905] 2 K. B. 845**

6. — Prerogative of Crown—Practice—Transfer of action—Selection of Court—Action by Attorney-General at instance of a relator.

The action was brought in the Ch. Div. by the Att.-Gen., at the relation of the corporation of Sunderland, as plt., and by the corporation as co-plts., in effect to compel the defts. to restore the surface of a highway, situate within the district of the corporation, which, as it was alleged, had been deprived of lateral support by means of excavations made by the defts. or their predecessors in title. The defts. applied for the transfer of the action to the Q. B. Div., in order

CROWN—*continued.*

that it might be tried at the Durham Assizes with a special jury. The main ground for the application was that it was desirable that there should be a view of the locus in quo. The plts. resisted the application on the ground (*inter alia*) that the transfer would be an interference with the prerogative right of the Crown to select its own Court:—

Held, that the Att.-Gen. by his fiat merely authorized the relators to bring the action in his name, and did not clothe them with any prerogative of the Crown. The relators then took such steps in the action as they thought proper. The Att.-Gen. not having made any selection, the Court was at liberty and was bound to treat the case as if the action had been brought by the relators only as plts. That being so, the Court ought to make the order for transfer which Kekewich J. would have made, if he had not thought that he was precluded from doing so by the exercise of the discretion of the Att.-Gen.

And *held* also that if the Att.-Gen., on behalf of the Crown, had any right to object to the transfer, he had waived the right. Decision of Kekewich J., [1900] W. N. 263, reversed. ATT.-GEN. v. WILSON - C. A. [1901] W. N. 5

7. — *Privilege of Crown — Action between subjects involving rights of the Crown — Foreshore — Right of Crown to transfer action to Revenue side.*

A statement of claim alleged that the plt. was in possession of an oyster fishery and oyster beds in the estuary of a river and was the owner of large quantities of oysters that he had placed there, and that the defts., being the harbour commrs. of the said estuary, wrongfully caused certain vessels to anchor upon the oyster beds, whereby the oysters were damaged. The Att.-Gen. claimed to have the action removed to the Revenue side of the King's Bench Division upon the suggestion that the rights of the Crown as the owner of the foreshore might be thereby affected:—

Held that, although the plt. did not claim to be in possession under any title, and the defts. did not justify their acts under the authority of the Crown, the Crown was entitled to have the action removed. ULMANN v. COWES HARBOUR COMMRS. Channell J. [1909] 2 K. B. 1

8. — *Prosecution — Summary proceedings — Information under Acts relating to revenue — Costs — Summary Jurisdiction Acts, 1848 (11 & 12 Vict. c. 43), s. 18, and 1879 (42 & 43 Vict. c. 49), s. 53.*

By virtue of the Summary Jurisdiction Acts, 1848 (s. 18) and 1879 (s. 53), a Court of summary jurisdiction has power to give costs for or against the Crown in proceedings taken by the Crown under any of the statutes relating to His Majesty's revenue under the control of the Commrs. of Inland Revenue. THOMAS v. PRITCHARD

Div. Ct. [1903] 1 K. B. 209

9. — *Servants of the Crown — Contracts — Liability to be sued — The Commissioners of Public Works and Buildings.*

An action will lie against His Majesty's Commrs. of Public Works and Buildings, who are incorporated statute for, by damages for

CROWN—*continued.*

breach of a contract entered into by them with a firm of builders for the erection of a public building:—

'So *held*, by Ridley J., because the Commrs. must be taken to have made the contract specially themselves, and not as agents of the Crown:

By Phillimore J., because the Commrs. are in the position of servants of the Crown who may be sued on their contracts for the purpose of obtaining a judgment declaratory of the right of the subject who has contracted with them. GRAHAM v. PUBLIC WORKS AND BUILDINGS COMMRS.

Div. Ct. [1901] 2 K. B. 781

— Ship salvaged property of Crown—Action not maintainable.

See NEWFOUNDLAND.

— Treasury solicitor—Direction to appear for subject—Right to costs.

See SOLICITOR—Costs.

— Trespass—Title to foreshore under a Crown grant—Construction.

See TASMANIA. 1.

CROWN LANDS.

See under CROWN.

CROWN OFFICE.

Crown Office Rules, 1906.—A copy of these was presented gratis by the Council to all subscribers to the entire series of the Law Reports, 1906, in the United Kingdom.

Crown Office Rules, 1906, r. 17, added to—Criminal Appeal Act, 1907 (7 Edw. 7 c. 23, s. 20 (3)). Reprint from W. N. 1908 (June 6), p. 165. See CURRENT INDEX, 1908, p. xcix.

1. — *Rating appeal—Case stated by Quarter Sessions Time for filing special case — Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67), s. 40 — Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), s. 40—Crown Office Rules, r. 25.*

Case stated by the Quarter Sessions for the County of London on an appeal under the Valuation (Metropolis) Act, 1869, and the Local Government Act, 1888, against the valuation of certain hereditaments known as Spitalfields Market in the occupation of Robert Horner, and comprised in a valuation list made on June 28, 1905, for the parish of Christchurch, Middlesex.

The appeal was heard on May 30 and July 16, 1906, when the Court of Quarter Sessions ordered that the valuation list should be altered by reducing the gross value of the said hereditaments from 8500*l.* to 1180*l.*, and by reducing the rateable value from 7650*l.* to 785*l.*, subject to the opinion of the K. B. Div. upon a special case stated.

The special case was filed on Jan. 15, 1907, in the Crown Office.

Held, that by r. 25 of the Crown Office Rules the special case might be filed at any time within six calendar months from the making of the order or determination of the Court of Quarter Sessions. HORNER v. STEPNEY ASSESSMENT COMMITTEE

Div. Ct. [1908] W. N. 101

CRUELTY Divorce.

See under DIVORCE.

CRUELTY TO ANIMALS—*Criminal Law*—*Four animals*—*Information charging one offence*—*Four convictions*—*Validity*—*Cruelty to Animals Act, 1849 (12 & 13 Vict. c. 92), s. 2.*

An information under s. 2 of the Cruelty to Animals Act, 1849, charged the deft. for that he did cruelly ill-treat four ponies between certain dates by neglecting to supply them with nourishing food. The deft. was convicted by a Court of summary jurisdiction and fined 5*l.* in respect of each pony. Four convictions were drawn up, each of which stated that the deft. had been convicted of ill-treating "a pony" in the manner alleged in the information. The deft. had no notice before conviction that he was being charged with a separate offence in respect of each pony:—

Held, that the information alleged only one offence, and that the deft. could not, without previous notice, be convicted on that information of four offences; three of the convictions were bad and must be quashed. *REX v. RAWSON*

Div. Ct. [1909] W. N. 190; [1909] 2 K. B. 748

2. — *Irregularity in form of summons*—*More than one offence charged*—*Election by prosecution on what charge to proceed*—*Criminal law*—*Cruelty to Animals Act, 1849 (12 & 13 Vict. c. 92), s. 2.*

The Cruelty to Animals Act, 1849, s. 2, enacts that "if any person shall . . . cruelly . . . ill-treat . . . abuse, or torture . . . any animal" he shall be liable to a penalty:—

Held, that the words "ill-treat," "abuse," and "torture" create three separate offences, and that therefore a conviction for "ill-treating, abusing and torturing" would be bad.

When a summons is issued under s. 2 of the Cruelty to Animals Act, 1849, the justices cannot decline to proceed merely on the ground that the summons is irregular in form or is open to objection on the ground of an alleged defect. They should hear the evidence, but when it has been given they must make up their minds what offence under the summons has been proved, and at that stage it is not placing too great a burden on the prosecutor to ask him to elect what offence he alleges the evidence proves to have been committed. *JOHNSON v. NEEDHAM*

Div. Ct. [1909] W. N. 26; [1909] 1 K. B. 626

3. — *One act*—*Several animals*—*Cruelty to Animal Act, 1849 (12 & 13 Vict. c. 92) s. 2.*

A conviction for an offence under s. 2 of the Cruelty to Animals Act, 1849, stated that the deft. was convicted for that he did cruelly ill-treat, abuse and torture five cows by causing them to be overstocked with milk. On an objection being taken that the conviction was bad on its face in that it was a conviction for five separate and distinct offences:—

Held, that an act or omission affecting several animals may constitute one offence under s. 2, and that the conviction was not bad on its face. *REX v. CABLE*

Div. Ct. [1906] W. N. 82; [1906] 1 K. B. 719

CRUELTY TO CHILDREN (PREVENTION OF)

See under CRIMINAL LAW—Cruelty to Children.

CUL-DE-SAC—Dedication to public—User—Blocking up road.

See BUILDING SCHEME. 1.

— National monument—Public right of access—Public road—Dedication—User.

See WAY, RIGHT OF. 9.

CULVERT—Title—Misdescription—Latent defect—Underground culvert for water.

See VENDOR AND PURCHASER—Title. 5.

CUMULATIVE—Substitutionary or—Successive appointments.

See POWER OF APPOINTMENT.

CUNARD STEAMSHIP CO.

See under SHIPPING—Cunard Agreement (Money) Act, 1904.

CURATOR—Lunatic out of the jurisdiction—Foreign curator—English stocks and shares—Transfer—Discretion of judge in lunacy.

See LUNACY. 12.

CURATOR BONIS—Lunatic debtor—English lunacy—Committee—Curator bonis—Scottish jurisdiction—Locus standi—Bankruptcy proceedings.

See LUNACY. 4.

CUSTODY—Child—Paternity—Evidence.

See INFANT—Custody. 2.

— Children—Practice—Pleading—Paternity.

See DIVORCE—Practice. 27.

— Court rolls—Lord of the manor—Steward.

See MANOR. 3.

— Divorce.

See under DIVORCE—Custody.

— Innkeeper—Liability of goods deposited "expressly for safe custody."

See INNKEEPER. 1.

— Irish Divorce Bill—Access to children—Practice.

See DIVORCE—Ireland. 4.

— Nullity of marriage—Lunatic—Decree—Custody of child.

See DIVORCE—Nullity. 10.

— Title-deeds—Deeds shewing title to easement and to extinguishment.

See VENDOR AND PURCHASER—Deeds. 1.

— Title-deed—Lease—Surrender.

See DEEDS. 7.

— Title-deeds—Non-negotiable securities—Trustee.

See TRUSTEE—Title-deeds. 1.

— Title-deeds—Trustee—Non-negotiable securities.

See DEEDS.

CUSTOM—Ancient demesne—Fine on alienation—Foreigner—Evidence—Prescription.

See MANOR. 1.

— Authority to pledge, Extent of—"Mercantile agent"—Custom of particular trade.

See FACTOR. 1.

CUSTOM—*continued*.

— Charterparty—Custom of port—Delay by reason of charterer's engagements.
See SHIPPING—Charterparty.

— Charterparty—Custom of port—Obligation of charterer to have cargo ready—Liability of charterer for delay.
See SHIPPING—Charterparty.

-- Charterparty — Damages for detention — Obligation to have cargo ready—Custom of port.
See SHIPPING—Charterparty.

— Contract—Sale by sample—Validity of custom for buyer not to reject.
See SALE OF GOODS.

— Copyholds—Descent—Common law heir or customary heirs.
See WILL—Intestacy. 1.

1. — *Fishing nets, Custom to dry—Validity—Extent—Changes in mode of user—Recession of sea—Land added by accretion—Evidence—Admissibility—“Public Documents”—Official reports—Reputation—Depositions in former suit—Maps and charts.*

An immemorial custom for fishermen inhabitants of a parish to spread their nets to dry on the land of a private owner situate near the sea in the parish, at all times necessary or proper for the purposes of the trade or business of a fisherman:—

Held, to be a valid legal custom.

The use of a modern mode of drying the nets will not deprive the fishermen of the benefit of the custom, provided that an unreasonable burden is not thereby cast upon the landowner.

Land added by accretion, in consequence of the gradual and imperceptible recession of the sea, will become subject to the custom.

Decision of Farwell J., [1904] 2 Ch. 534, affirmed.

In an action to establish the existence and validity of the above custom, as affecting land of a private owner at Walmer, called the “beach ground,” the deft. sought to prove that within legal memory the land had been covered by the sea, and in proof of this he tendered in evidence (inter alia) a survey of Walmer Castle taken in the year 1816 by the direction of the then Lord Warden of the Cinque Ports, and an estimate made by the King's engineer for the reparation of Walmer and other castles. These documents were produced from the Record Office, and they stated that serious damage had been done by the sea to a wall of Walmer Castle:—

Held, that these documents were not admissible in evidence as “public documents,” on the ground that they were not and were not intended to be, records affecting the King's property or revenues, but were to serve temporary purposes only, and in no way affected Crown property, Crown revenues, or Crown grants when the respective purposes were served:

Held also, that the documents were not admissible within the doctrine of *Price v. Earl of Torrington*, (1703) 1 Salk. 285, as records made by a deceased official in the discharge of his official duty, there being nothing to shew that they were made contemporaneously with the

CUSTOM—*continued*.

doing of something which it was the duty of the deceased official to record, and no evidence what his instructions were or of the relation of those instructions to the documents, or of the source of the knowledge or information on which the contents of the documents were based:

Held also, that maps and plans prepared by the directions of the Board of Ordnance in 1641, 1644, and 1647, and produced from the War Office, were not admissible as public documents or as evidence of reputation:—

Held also, that a map or chart published in 1837 and in the possession of the Admiralty, was inadmissible, it not being an Admiralty chart, and not having received in any way the sanction of the Admiralty.

Held also, that the depositions taken in an information by the Att-Gen. in 1639 against persons who claimed to be entitled to the manor of Walmer for causing or suffering the destruction of a bank between the sea and Walmer Castle were not admissible as evidence of reputation, the depositions being only evidence of particular facts.

Decision of Farwell J., [1904] W. N. 136; [1904] 2 Ch. 541—546, affirmed.

The definition of “public documents” given by Lord Blackburn in *Sturte v. Freccia* (1880) 5 App. Cas. 623, 643, discussed and explained.

Mellor v. Walmsley, [1905] 2 Ch. 164, 168, distinguished. *MERCER v. DENNE*.

C. A. [1905] W. N. 140; [1905] 2 Ch. 538

— Jewish marriage—Nullity—Money paid into bank, in joint names, in nature of dower —Petition to restore so-called dower.
See DIVORCE—Nullity. 6.

— Lease—Obligation to take over sheep stock on expiration of lease.
See SCOTTISH LAW.

— Manor—Stone quarry—Freehold and copyhold tenants—Right to get stone.
See COMMON. 3.

— Manorial—Customary churchway—Evidence —Inhabitants of parish at large.
See WAY, RIGHT OF. 1.

— Married woman—Mortgage—Separate examination — Acknowledgment — Burgage tenure.
See HUSBAND AND WIFE—Mortgages. 1.

— “Mercantile agent”—Authority to pledge. Extent of—Custom of particular trade.
See FACTOR. 1.

— Plans, Property in—Completion of work—Claim of architect—Reasonableness.
See ARCHITECT.

— River—Right of public to shoot wild fowl—Birds of warren.
See FORESHORE. 2.

— Sale of goods by description—Award based on custom subsequently found not to exist—Custom inconsistent with written contract.
See ARBITRATION—Award. 2.

CUSTOM HOUSE—Obligation of agent to pass through—Principal and agent.
See **NEW SOUTH WALES**.

CUSTOM OF PORT—Ship — Charterparty — Demurrage—Surf days—Delay caused by surf.
See **SHIPPING—Charterparty**.

CUSTOMARY FREEHOLDS—Misdescription of gift—Mistake.
See **WILL—Words**. 5.

CUSTOMARY HEIR—Real estate—Copyholds—Resulting trust—Descent—Customary or common law heir.
See **WILL—Intestacy**. 1.

"CUSTOMARY TURN"—Demurrage—Charterparty.
See **SHIPPING—Charterparty**.

"CUSTOMER" — Cheque — Defective title — Receiving payment for a "customer" — Liability of banker.
See **BANKER**. 3.

CUSTOMS—Assay—Hall mark — Watch-cases—Foreign watches.
See **PLATE**.

CUSTOMS AND INLAND REVENUE.
See under **REVENUE**.

CY-PRÈS—Building held on trust to carry on a national school—Impossibility of carrying on such a school—Scheme.
See **CHARITY**. 13.

— Charitable intent—Failure of legacy.
See **CHARITY**. 13.

— Charitable trust, Administration of—Crown cannot as defendant impeach the trust.
See **NEW ZEALAND**.

— Charity — Resulting trust — Crown — Bona vacantia—Friendly Society — Objects exhausted.
See **FRIENDLY SOCIETY**. . 8.

— Charity—Scheme by Charity Commissioners — Jurisdiction—Intention of testator—Possibility of carrying out.
See **CHARITY**.

— Hospital — Bequest "towards new building and equipment."
See **CHARITY**. 20.

1. — *Perpetuity — Legal devise to unborn tenant for life with remainders in tail—Introduction of contingent limitation—Will.*

Where land is devised to an unborn person for life with remainder to his children in tail or to his sons in tail male, the Court under the doctrine of cy-près will give legal effect to the general intention of the testator by treating the life estate as an estate tail or an estate tail male, as the case may be; but, except in the case of an executory trust, in which a greater latitude is allowed in moulding the provisions of the will, the doctrine will only be applied in this manner; and the Court will not construe a will cy-près if the result is to include as an object of the testator's bounty any person whom he intended

CY-PRÈS—continued.

to exclude, or to exclude any person whom he intended to include.

Devise of real estate to the use of A. for life, remainder to the use of the first and every other son of A. successively for life, remainder to the use of the first and every other son of that son successively in tail male, remainder to the use of the daughters of each of A.'s sons as tenants in common in tail with cross-remainders, the daughters of each elder son to take before the daughters of the younger sons, remainder to the use of A.'s daughters as tenants in common in tail with cross-remainders, remainder to the use of A. in fee simple. A. survived the testator and died a bachelor. The limitations after A.'s life estate being void as they stood for remoteness, it was proposed, in order to give effect to the general intention of the testator without including in the devise the class of persons omitted by him, namely, daughters of sons' sons, to substitute under the doctrine of cy-près a series of limitations in tail differing in form from the original limitations and involving the introduction of a contingent remainder:—

Held, (affirming the decision of Farwell J., [1905] W. N. 47), that the doctrine of cy-près was not applicable, and that the ultimate limitation to A. in fee simple failed.

Nicholl v. Nicholl, (1777) 2 W. Bl. 1159, and *Pitt v. Jackson*, (1786) 2 Bro. C. C. 51, commented on. *In re MORTIMER*. **GRAY v. GRAY C. A.** [1905] W. N. 139; [1905] 2 Ch. 502

2. — *Power—Testamentary power—Excessive execution.*

A cy-près estate cannot be implied in lieu of excessive limitations of real estate under a testamentary power, unless it will include all persons intended to take under those limitations, and no others.

Monypenny v. Dering, (1852) 2 D. M. & G. 145, and *Hampton v. Holman*, (1877) 5 Ch. D. 183, followed. *In re RISING*. **RISING v. RISING Swinfen Eady J.** [1904] W. N. 33; [1904] 1 Ch. 533

— Will—Charity—Proposed scheme for Institute of Medical Sciences—Failure of legacy.
See **CHARITY**.

3. — *Will—Cy-près doctrine—Perpetual life estates—Stipital distribution—Intestacy.*

A testator, who died before the Wills Act was passed by his will gave real estate to his children C., G., and M. (without any words of limitation), and declared that they and the survivors of them should stand seised thereof in trust to retain the income thereof for their own benefit in equal shares during their natural lives; but the will contained a proviso that if any of such children should die unmarried, or, being married, without leaving a child, his or her share shall accrue to the surviving child or children, equally if more than one, and that the last survivor of the three children should take all the estate devised. The will continued as follows: "But in case such son or daughter so dying shall leave issue at his or her decease . . . the share of such child so dying to go and be divided equally amongst his or her child or children . . . for life, share and

CY-PRÈS—*continued.*

share alike if more than one, and if but one then the whole share to such only child for life . . . and so to be continued and distributed in a descending line per stirpes from issue to issue for life so long as any issue shall be living descended from my said children, the children of the parent dying taking parent's share equally between them in all cases of decease." The will contained no gift over in case of default of issue.

G. died in 1856 a bachelor and intestate.

C. died in 1874 leaving one child only, R.

M. died in 1890 without issue, but having devised her real estate to R., who executed a disentailing deed.

It was admitted that only half of the property passed to M., as the survivor of the three children :—

CY-PRÈS *continued.*

Held, that neither C. nor R. took an estate tail in the other moiety according to the cy-près doctrine, but that on the death of R. there was an intestacy, and that this moiety belonged to the testator's heir.

Mortimer v. West, (1828) 2 Sim. 274; 29 R. R. 104, distinguished and commented on. *In re RICHARDSON*. *PARRY v. HOLMES*

Buckley J. [1904] 1 Ch. 332

CYPRUS—Evidence (Colonial Statutes) Act, 1907 (7 Edw. 7, c. 16).

See under COLONIES.

— Foreign jurisdiction.

See under FOREIGN JURISDICTION.

D.

"DAILY"—Gas—Testing—Interpretation of statutes—London.
See GAS. 2.

DAMAGE AND DAMAGES—*Fatal Accidents (Damages) Act*, 1908 (8 *Edw.* 7, c. 7).

— Action, Cause of—Special goods—Fraud—Interference with contractual relation.
See ACTION. 3.

— Admiralty practice.
See under SHIPPING.

— Adultery—Claim for damages only—Principles and practice applicable to such a petition.
See DIVORCE—Practice.

— Advertising property for sale—Slander of title—Auctioneer cast in damages—Liability of principal.
See AUCTION. 1.

— Ancient lights.
See under LIGHT AND AIR.

— Bankruptcy, Damages for causing.
See BILL OF SALE.

— Beer—Fitness for consumption—Implied warranty—Breach—Damages.
See SALE OF GOODS.

— Breach of contract—Tort—Wrongful dismissal—Damages.
See MASTER AND SERVANT—Dismissal.

1. — *Breach of warranty, Action for—Sale of food—Warranty of article as fit for human consumption—Death of plaintiff's wife through eating food sold to him—Loss of wife's services—Death no part of cause of action.*

In an action for breach of a warranty that tinned salmon sold by the defts. to the plt. was fit for consumption as human food, the plt. claimed damages under the following head, among others, namely, on the ground that his wife having partaken of the salmon had in consequence died, and that, she having performed services for him in the care of his house and family until her death, he was under the necessity after her death of hiring some one else to perform such services. The jury found a verdict for the plt. and awarded 200*l.* in respect of the damages claimed as above mentioned:—

Held that, the death of the plt.'s wife not forming an essential part of the cause of action sued upon, but only an element in ascertaining the damages arising therefrom, there was no rule of law which prevented such damages as aforesaid from being recoverable in the action.

Baker v. Bolton, (1808) 1 Camp. 493, considered and distinguished. JACKSON *v.* WATSON & SONS C. A. [1909] W. N. 83 ;

[1909] 2 K. B. 193

DAMAGE AND DAMAGES—*continued.*

— Building contract—Architect—Certificate—Defective work and materials—Claim for damages.
See BUILDING CONTRACT. 1, 2.

— Building estate—Restrictive covenant—Breach—"Assign"—Damages.
See LANDLORD AND TENANT. 23.

— Charterparty—Shipping.
See under SHIPPING—Charterparty.

— Collision—Shipping.
See under SHIPPING—Collision.

— Common carrier—Inherent unfitness of thing to be carried—Liability.
See CARRIER. 1.

— Company—Prospectus.
See under COMPANY—Prospectus.

— Company—Shares—Transfer—Refusal to register.
See COMPANY—Shares. 20.

— Conditions of sale—Delay—Interest—Loss of expected profits.
See VENDOR AND PURCHASER—Conditions of Sale. 1.

— Contract.
See under CONTRACT.

— Contract—Breach—Construction of Documents.
See SCOTTISH LAW.

— Contract—Breach—Waiver.
See CONTRACT. 7.

— Contract—Right of assignee to sue vendor for damages.
See CHOSE IN ACTION. 1.

— Contract to deliver on specified terms all the coal required for use in plaintiff's works—Breach of contract—Specific performance.
See CANADA—Contract. 1.

— Conveyance—Implied covenants for title—Breach.
See VENDOR AND PURCHASER—Title. 3.

— Copyhold—Breach of obligation of copyholder to repair—Forfeiture—Manor.
See COPYHOLDS. 3.

— Copyright.
See under COPYRIGHT.

— Copyright—Infringement—Injunction—List of brood mares—Competition.
See COPYRIGHT—Lists. 1.

— Costs—"Action founded on tort"—Judgment for nominal damages and injunction.
See COSTS. 75.

DAMAGE AND DAMAGES—continued.

- Covenant by landlord "not to let" adjoining premises for a similar business—Breach of covenant.

See LANDLORD AND TENANT. 47.

- Covenant running with the land—"Assign" Breach.

See LANDLORD AND TENANT. 23.

- Divorce—Bankrupt petitioner—Claim for damages—Security for costs.

See DIVORCE—Costs. 1.

- Divorce—Damages against co-respondent—Death of co-respondent—Liability of his executor.

See DIVORCE—Practice.

- Divorce—Damages and costs against co-respondent—Subsequent condonation—King's Proctor's intervention—Effect of such condonation.

See DIVORCE—Costs.

- Dog, Savage—Liability of owner—Intervening act of third person—Remoteness of damage.

See DOGS. 2.

- Effective cause of damage—Intervening act of third party—Trespassers—Interference by.

See NEGLIGENCE.

- Electric power, Duty to supply—Penalty—Damages.

See CORPORATION. 16.

- Excessive damages—New trial, Application for—Prospective loss of income.

See PRACTICE—Trial.

- Explosion, Damage caused by—Verdict—Absence of exact proof of cause of injury—Order setting verdict aside reversed.

See CANADA—Practice. 11.

- Highway—Repairs—Corporation—Neglect of duty.

See HIGHWAY. 36.

- Highway—Subsidence caused by mining operations—Measure of damages.

See HIGHWAY. 40.

- Infant—Next friend—Unsuccessful action—Costs and damages—Indemnity—Declaration.

See INFANT—Next Friend. 1.

- Injunction—Special damage—Pleading—Evidence—Costs.

See NUISANCE.

- Injunction or—Ancient lights—Future injury—Extortion.

See LIGHT AND AIR. 9.

- Insanitary house—Defective drains—Landlord, Negligence of—Right of wife and children to claim damages for illness.

See LANDLORD AND TENANT. 43.

- Insurance, Marine—Open cover slip—Fraudulent representations—Reinsurance—Subrogation.

See INSURANCE (MARINE). 16.

DAMAGE AND DAMAGES—continued.**2. — Interdict too wide—Measure of damages.**

An interim interdict was obtained by the defenders against the pursuers, a mineral co., who owned a large shale and lime-stone mineral field and also large works for extracting and refining oil. The interdict restrained the pursuers from working and winning the seams of the shale and other minerals within forty yards of the defenders' water-pipes, which passed through the pursuers' property. The interdict was in force for eleven months, when it was recalled. During the eleven months shale to keep the works going could have been obtained from other sources, but only at an expense which would not have been profitable. The pursuers' capital in hand was limited, and prices in the oil trade were at the lowest point. In these circumstances the pursuers closed their works, with the result that their machinery deteriorated, the business connections were lost, and it was found impossible to restart the works after the recall of the interdict.

In an action for damages for wrongous interdict, the first Division of the Court of Session gave the pursuers judgment for 27,000*l.* damages out of claim for 137,000*l.* :—

Held (affirming the decision of the Court below, (1906) 8 F. 731) that the pursuers were not entitled to recover as damages the total loss consequent on the closing of their works; that both parties were in fault; and that the damages awarded were not insufficient. CLIPPENS OIL CO., LD. v. EDINBURGH AND DISTRICT WATER TRUSTEES

H. L. (Sc.) [1907] W. N. 142;
[1907] A. C. 291

- Intervening criminal act of third party causing loss.

See CONTRACT. 10.

- Land Transfer—Wrongful issue of certificate of title.

See AUSTRALIA. 7.

- Lease—Covenants—Breaches—Re-entry—Compulsory purchase by public body—Compensation.

See LEASE. 2.

- Lessor and lessee—Option to purchase reversion in fee—Damages for breach of contract—Contract to convey at time beyond period allowed by rule against perpetuities—Charity.

See LEASE. 3.

- Light—Ancient lights.

See under LIGHT AND AIR.

- Limitation of time for bringing action—Tramway worked by municipal authority—Injury to passenger.

See PUBLIC AUTHORITIES' PROTECTION.

- Liquidated damages—Injunction—Election.

See PRINCIPAL AND AGENT.

- Liquidated damages, Penalty or—Contract.

See under CONTRACT.

- Liquidated damages—Railway contract—Penalty for non-completion of line—“Actual cost.”

See CAPE OF GOOD HOPE. 12.

DAMAGE AND DAMAGES—continued.

- Liquidator—Negligence—Advertisement for creditors.
See COMPANY—WINDING-UP—Liquidator.
- Malicious injury to property—Shooting at dog.
See CRIMINAL LAW—Malicious Damage. 1.
- Market, Loss of—Bill of lading.
See SHIPPING—Charterparty.
- Measure of—Trustee, Bankruptcy of—Breach of trust—Proof against bankrupt's estate.
See TRUSTEE—Investments. 17.
- Measure of damages—Fraudulent prospectus—Non-disclosure of promoter's interest.
See COMPANY—Promoter. 1, 2.
- Measure of damages—Untrue statements by agent—Ship.
See PRINCIPAL AND AGENT.
- Mines.
See under MINES.
- Mines—Reservation of manorial rights—Support—Damage to surface—Compensation.
See INCLOSURE ACT. 2.
- Misfeasance—Winding-up—Two insolvent companies—Cross-claims—Adjustment—Claim on debentures—Dividend.
See COMPANY—WINDING-UP—Assets. 6.
- Negligence of architect in preparing plans—plans not used—Nominal damages.
See ARCHITECT. 1.
- No proof of damage—Action of tort—Parties.
See CONTRACT.
- Patent and registered design for same invention—Estoppel—Liability in damages.
See DESIGN. 2.
- Petition of right, Statutory duty to submit—Damages for breach must be assessed by a jury.
See CANADA.
- Plants in adjoining land, Damage to—Creosote used in paving road.
See TRAMWAYS. 10.
- Poor law—Negligence of officer—Liability of guardians to pauper inmate.
See POOR LAW.
- Prospectus—Company.
See under COMPANY—Prospectus.
- Public Authorities Protection Act—Act done in "intended" execution of public duty.
See SHIPPING—Costs.
- Public Health (Buildings in Streets)—Special damage to adjoining owner—Whether action for damages maintainable.
See STREETS.
- Public health—Unsound meat—Seizure—Prosecution.
See LOCAL GOVERNMENT. 22.

DAMAGE AND DAMAGES—continued.

- Railway—Demurrage of trucks—Damages for detention—Jurisdiction of arbitrator.
See RAILWAY—Arbitration.
- Railway—Demurrage of trucks—Right of action for damages for detention—Jurisdiction.
See RAILWAY—Trucks.
- Railway—Traffic management—Undue preference—Rebate—Claim for damages.
See RAILWAY—Rates.
- Railway accident—Prospective loss of income—Excessive damages—Material.
See PRACTICE—Trial.
- Railway company—Act done under statutory authority—Non-liability for damage.
See CANADA—Railway.
- Railway company—Carrier—Damageable goods carried unpacked—Owner's risk.
See RAILWAY—Carrier.
- Railway company—Passenger—Damages for personal injuries—Failure of railway servants to close carriage doors before starting the train.
See RAILWAY—Passengers.
- Railway company—Statutory contract with landowner—Subsequent contract in derogation of same—Public rights.
See RAILWAY—Contracts.
- 3. — *Remoteness—Breach of contract—Contingent profits—Damages.*
It was agreed at the beginning of 1908 between the plt., who was a breeder of race-horses, and the deft., who was the owner of a stallion, that the deft.'s stallion should during the season of 1909 serve one of the plt.'s brood mares in consideration of a sum of 315*l.* to be paid by the plt. to the deft. at the time of the service. The deft. in the summer of 1908 sold the horse to a purchaser in South America, and thus precluded himself from carrying out the contract. In an action for breach of contract, the plt. gave evidence that the profit he had made from the sale of foals by the same stallion out of other mares belonging to him considerably exceeded the 315*l.*, and he claimed damages upon the footing that he had in all probability lost a valuable foal :—
Held, that the damages claimed were too remote and contingent, and that the plt. was only entitled to nominal damages. *SAPWELL v. BASS* — *Jelf J. [1910] 2 K. B. 496*
- Remoteness—Contract—Consideration—Breach of duty to take care.
See CONTRACT. 10.
- Remoteness—Savage dog—Intervening act of third person causing dog to bite.
See DOGS.
- Remoteness of damages—Slander—Special damage.
See DEFAMATION—Slander. 5.
- Repairs—Neglect of duty—Misfeasance—Non-feasance—Corporation.
See HIGHWAY. 36.

DAMAGE AND DAMAGES—continued.

- Restrictive covenants—Building scheme—Rights of purchasers inter se.
See VENDOR AND PURCHASER—Covenants. 2, 3.
- Riot—Persons riotously and tumultuously assembled—Building injured or destroyed—Damages.
See CRIMINAL LAW—Riot. 1.
- River, Pollution of—Injunction—Nuisance—Continuance of injury.
See RIVER.
- Sale by trustees—Repurchase by one trustee.
See VENDOR AND PURCHASER—Specific Performance. 3.
- Sale of goods—Contract induced by fraud of purchaser—Vendor's right to disaffirm contract—Damages for fraud.
See BANKRUPTCY—Sale of Goods. 1.
- Sale of goods—Implied condition—Breach—Measure of damages.
See SALE OF GOODS.
- Sale of goods—Interest in land—Slag to be severed and removed by purchaser—Breach of contract—Defect in title.
See VENDOR AND PURCHASER—Sale of Goods. 1.
- Ship—Defective berth—Duty of harbour authority—Duty of wharf owner.
See HARBOUR. 5.
- Shipping.
See under SHIPPING.
- Statutory powers, Damage caused by exercise of—Compensation—Public health.
See COMPENSATION. 2.
- Stock Exchange—Client's account closed by broker—Anticipatory breach—Contract.
See STOCK EXCHANGE.
- Trade libel—False statement—Special damage—General loss of business.
See TRADE LIBEL. 1.
- Trade mark, Assignment of—Breach of trade mark—Title to damages.
See HONG KONG. 5.
- Trade union, Liability of, for wrongful acts of agents.
See TRADE UNION. 8.
- Tramcar, Accident to—Liability of contractor to lessee.
See TRAMWAYS. 9.
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See TRUSTEE—**Breach of Trust**. 4.
- Execution by *fiery facias*—Death of judgment debtor before seizure by sheriff.
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- Legatee entitled to share on surviving testator — Disappearance—No evidence of death — Presumption.
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- Satisfaction—Legacy.
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See WILL—Charges. 1.

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- Will—Direction to pay debts out of residue—Colonial death duty.
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- Will—Exoneration—Contrary or other intention—Mortgage debt.
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See WILL—Charges. 2.
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- Lease—Lessor's covenant—Good and substantial repair—Natural decay.
See LANDLORD AND TENANT. 81.

DECEASED DIRECTOR—Liability of estate of—Prospectus—Untrue statement.
See COMPANY—Prospectus.

DECEASED WIFE'S SISTER'S MARRIAGE ACT, 1907.*See* ECCLESIASTICAL LAW—Holy Communion.

- Church discipline—Refusal to administer the Holy Communion.
See ECCLESIASTICAL LAW—Holy Communion.

DECEIT—Action of.*See* TRADE MARK. 1, 2.

- Action of—Fraudulent representation—Public authorities protection.
See CONTRACT.

DECEPTION—Person trading under his own name—Form of injunction.

See TRADE NAME. 1.

DECLARATION—Ancient lights—Action for declaration that there is no easement.
See LIGHT AND AIR. 3.

- Expired patent—Action for declaration of invalidity—Mode of procedure.
See PATENT—Expired Patent.

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- Costs—Lease—Licence to assign—Unreasonably withheld—Condition imposing increased rent.
See LANDLORD AND TENANT. 13, 18.

DECLARATORY ORDER—Costs—Practice—Lessor and lessee.

See LANDLORD AND TENANT. 14.

DEDICATION—Cul-de-sac—Dedication to public

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See BUILDING SCHEME. 1.

— Highway.

See under HIGHWAY.

— Lease—Assignment—Unreasonable condition.

See LANDLORD AND TENANT. 13, 18.

— Manorial market—Extent of franchise—New streets—Presumption.

See MARKET.

— Market.

See under MARKET.

— Mortgage in favour of unregistered money-lender—Validity—Equitable relief—Imposition of terms.

See MONEY-LENDER.

— National monument—Public right of access—Public road—User—Cul-de-sac.

See WAY, RIGHT OF. 9.

— Presumption of dedication—Inclosure award User of footway as cart road.

See TRESPASS. 4.

— Public footway—Private carriage-way along the same line—Presumption.

See WAY, RIGHT OF. 2.

— River—Locks—Stanch—Royal charter, Validity of—Grant of exclusive passage for boats, &c.—Implied obligation to maintain and repair.

See WATER HIGHWAY. 1.

— Roadside waste—Presumption—Evidence—Public authorities protection.

See HIGHWAY. 38.

— Way, Right of—Highway—User by public—Land in settlement—Possibility of dedication.

See WAY, RIGHT OF. 1.

DEDUCTIONS—Income Tax.

See under REVENUE—Income Tax.

— Workmen's compensation.

See under MASTER AND SERVANT—Compensation.

DEED OF ARRANGEMENT.

See under ARRANGEMENT.

DEED OF ASSIGNMENT.

See under ASSIGNMENT.

DEED OF GIFT—New Zealand Deceased Persons' Estates Duties Act, 1881—Stamp Acts—Verbal gift to holder of a power of attorney.

See NEW ZEALAND.

DEED POLL—Settlement—Appointment—Deed Poll—Rescission—Mistake.

See POWER OF APPOINTMENT.

DEEDS, &c.

(Documents, Title-deeds, &c.)

— Affidavit of documents—Discovery.

See under DISCOVERY.

DEEDS, &c.—continued.1. — *Alteration*—Name of party—Misdescription—Mortgage—Reconveyance—Married woman—Trustee mortgagee—Concurrence of husband—Separate acknowledgment.

Upon a sale of freehold property the abstract of title delivered to the purchaser commenced with a mortgage to three persons, of whom the third was described as "William" G. It appeared from the original deed that the name "William" had been erased, and the names "Edward Thomas" substituted. The alteration was made after execution, but it was not known when or by whom. It was proved that the person described as William G. was really Edward Thomas G. and that the misdescription was due to inadvertence.

Held, that the alteration was immaterial, and, in the absence of fraud, did not avoid the deed.

The mortgage was dated in 1878 and was granted to trustees; and in 1896, upon payment of the mortgage debt, the property was reconveyed by the sole surviving trustee, who was a married woman:—

Held, that under s. 16 of the Trustee Act, 1893, she was competent to reconvey without the concurrence of her husband and a separate acknowledgment. *In re HOWGATE AND OSBORN'S CONTRACT* Kekewich J. [1902] W. N. 24 : [1902] 1 Ch. 451

2. — *Alteration after execution*—Imperfect execution—Filling up blanks—Alteration of date—Immaterial alteration.

A deed which required for its validity execution by the Bishop of Exeter was executed on or about Oct. 21, 1899, by all parties other than the bishop. At the time of these executions the date of the day and the month were left in blank, but the year 1899 was written out in full. The bishop executed the deed on Jan. 4, 1900; the blanks were then filled in and the date of the year altered from 1899 to 1900:—

Held, that the alterations had no effect on the validity of the deed.

The rule in *Pigot's Case*, (1614) 11 Rep. 26 b, that any alteration by the obligee after execution invalidates the deed, must since the decision of *Aldous v. Cornwall*, (1868) L. R. 3 Q. B. 573, be taken to apply only to material alterations. *BISHOP OF CREDITON v. BISHOP OF EXETER*

Swinfen Eady J. [1905] W. N. 131 : [1905] 2 Ch. 455

— Ancient deeds. Descriptive catalogues of. (F.—Record Works). Can be obtained of Publishers.

— Ancient reports to Government departments. See CUSTOM. 1.

3. — *Assignment for value*—Defective title—Subsequent acquisition of good title—Equitable estoppel.

If an assignor with a defective title purports and intends to assign property for value, any interest subsequently acquired by him in that property is available in equity to make the assignment effectual, even though the defect in title is apparent on the face of the assignment.

Noel v. Bewley, (1829) 3 Sim. 103, 116, and *In*

DEEDS, &c.—continued.

re Hoffe's Estate Act, 1855, [1900] W. N. 114 ; 82 L. T. 556, followed and applied.

*In re BRIDGWATER'S SETTLEMENT. PART-
RIDGE v. WARD - - Swinfen Eady J.*
[1910] W. N. 188 ; [1910] 2 Ch. 342

— Correspondence.

See under CORRESPONDENCE.

— Costs of deeds—Trustees.

See under TRUSTEE—**Title-deeds.**

— Custody of deeds.

See under CUSTODY.

— Custody of deeds—Vendor and purchaser.

See under VENDOR AND PURCHASER—**Deeds.**

— Deed of arrangement.

See under ARRANGEMENT.

— Deed of assignment.

See under ASSIGNMENT.

— Deposit of title-deeds—Partnership real estate—Executor's lien—Notice—Priorities.

See PARTNERSHIP.

— Discovery.

See under DISCOVERY.

— Equitable mortgage—"Notice"—Fraud of vendor's solicitor—Possession of title-deeds—Priority.

See VENDOR AND PURCHASER—**Priority. 1.**

— Execution of deed—Lunacy.

See under LUNACY.

— Maps and charts.

See under MAPS.

4. — Misrepresentation as to character of deed—Validity—Plea of non est factum—Plea good as to part of deed.

A married woman entitled to a reversionary interest was induced by her husband to execute a document which he represented to be a power of attorney enabling him to raise money at some future time. It was in fact a mortgage of a reversionary interest to which she was entitled for 12,000*l.* containing a personal covenant for payment by the wife. The wife knew that if her husband did eventually raise money under the document it would be raised out of her reversionary interest. She did not intend to create a present charge or incur any personal liability. The mortgages brought this action against the husband and wife for foreclosure and judgment in their covenants. The wife pleaded, among other defences, "non est factum" :—

Held, that the husband's misrepresentation was as to the nature and character of the deed, and the plea was good as to the whole deed, and that, even if the charge on the wife's reversionary interest were valid, the defence ought to prevail as to her covenant to pay principal and interest. *Howatson v. Webb* [1907] 1 Ch. 537, distinguished. *BAGOT v. CHAPMAN*

Swinfen Eady J. [1907] W. N. 138 ; [1907] 2 Ch. 222

Note.

Dictum of Swinfen Eady J. in *Bagot v.*

DEEDS, &c.—continued.

Chapman [1907] 2 Ch. 222, 227, doubted by C. A. in *Howatson v. Webb* [1908] 1 Ch. 1. *See next Case.*

5. — Misrepresentation as to contents—Plea of non est factum.

The deft., a solicitor, who was formerly a managing clerk to one H., acted as his nominee in a building speculation relating to certain property at E. of which H. was the owner. Shortly after leaving H.'s employment he was requested by H. to execute certain deeds, and on asking what those deeds were he was told by H. that they were deeds transferring the E. property. The deft. thereupon signed them. One of the deeds so signed was a mortgage between the deft., as mortgagor, of the one part and W. of the other part, and contained the usual covenant by the mortgagor for payment of principal and interest. In an action by a transferee of the mortgage for payment of the principal debt and interest the deft. pleaded non est factum :—

Held (affirming the decision of Warrington J., [1907] W. N. 62 ; [1907] 1 Ch. 537) that, the misrepresentation being only as to the contents of a deed known by the deft. to deal with the property, the plea failed, and that the deft. was liable on the covenant.

Dictum of Swinfen Eady J. in *Bagot v. Chapman* [1907] 2 Ch. 222, 227-8, doubted.

Quære whether the old authorities on the plea of non est factum extend beyond cases where the party is blind or illiterate. *HOWATSON v. WEBB C. A.* [1907] W. N. 211 ; [1908] 1 Ch. 1

— Non-production of title-deeds—Fraudulent solicitor—Postponement of legal mortgage.

See MORTGAGE—**Priority.**

6. — Operation—All estate clause—Conveyance by husband and wife of moiety of wife's land—Husband's rent-charge not mentioned—Release or grant—Law of Property Amendment Act, 1859 (22 & 23 Vict. c. 35), s. 10.

By a voluntary settlement of 1868 a husband and wife and each of them did "grant release dispose of and confirm" a moiety of the wife's hereditaments "and all the estate right title interest property claim and demand" either of them in, to, and out of the same to trustees and their heirs on certain trusts.

The husband was entitled to a rent-charge issuing out of the hereditaments, but it was not mentioned in the settlement. The settlement contained no covenants for title :—

Held, explaining and applying *Drew v. Earl of Norbury*, (1846) 9 Ir. Eq. Rep. 171, 177 ; 3 J. & Lat. 267, 284 ; 72 R. R. 62, and *Johnson v. Webster*, (1854) 4 D. M. & G. 474, 488, that the settlement operated by way of release and not by way of grant of the rent-charge, and that as the husband and wife, the owners of the unsettled moiety of the hereditaments, had concurred, that moiety, by virtue of the Law of Property Amendment Act, 1859. s. 10, remained subject to the entire charge.

Booth v. Smith, (1884) 14 Q. B. D. 318, 321, followed. *PRICE v. JOHN - Swinfen Eady J.* [1905] W. N. 75 ; [1905] 1 Ch. 744

DEEDS, &c.—continued.

- Possession of title-deeds—Equitable mortgage—Notice—Fraud—Forged receipt.
See VENDOR AND PURCHASER—Priority. 1.
- Production of documents—Practice.
See under DISCOVERY.
- Rectification—Mistake—Solicitor and client—Independent advice.
See SOLICITOR—Fiduciary Relation.
- Registration—Equitable Mortgage—Conveyance—Priority.
See MORTGAGE—Priority.
- Settlement by deed—Construction—“Survivors” read “others.”
See SETTLEMENT.
- Signification to debtor of transfer of debt—Appeal from Quebec.
See CANADA—Debts. 1.
- Solicitor—Lien.
See under SOLICITOR—Lien.
- Time—“Month”—Lunar month—Construction of documents.
See CONTRACT. 29.
- 7. — Title-deeds — Custody — Lease — Surrender.
On the surrender of a term and the grant of a longer term to the same lessee, the lessee is entitled to retain the original lease. *KNIGHT v. WILLIAMS Cozens-Hardy J. [1901] 1 Ch. 256*
- Title-deeds—Possession of—Equitable mortgage—Notice—Fraud—Forged receipt—Priority.
See VENDOR AND PURCHASER—Priority. 1.
- Title-deeds—Possession of title-deeds—Purchaser for value without notice—Mortgage—Priority.
See TRUSTEE—Breach of Trust. 1.
- Title-deeds—Solicitor—Partner, Liability for acts of.
See SOLICITOR—Partnership.
- Title-deeds—Trustee.
See under TRUSTEE—Title-deeds.
- Title-deeds—Trustee's negligence—Omission to get possession of title-deeds.
See MORTGAGE—Priority.
- Vendor and purchaser.
See under VENDOR AND PURCHASER—Deeds.

DEER—Larceny—Deer usually kept in a forest—Killing outside forest—Unlawful possession.
See CRIMINAL LAW—Larceny. 3.

DEFAMATION.

Libel, col. 870.
Pluralities Act, col. 876.
Practice, col. 877.
Slander, col. 877.
Trade Libel. *See* under TRADE LIBEL.

DEFAMATION—continued.**Libel.**

Libraries — Public Libraries Act, 1901 (1 Edw. 7, c. 19), amends the Acts relating to public libraries, museums, and gymnasiums, and to regulate the liability of managers of libraries to proceedings for libel.

R. S. C., July, 1903. Order III., r. 9. Reprint from W. N. 1903 (July 25), p. 217. See CURRENT INDEX, 1903, p. lxxvii.

— Action in Chancery Division—Counter-claim for defamation—Trial by jury.
See PRACTICE—Trial.

1. — *Company — Official receiver — Absolute privilege — Report of official receiver under Companies (Winding-up) Act, 1890 (53 & 54 Vict. c. 63), s. 8, sub-s. 2.*

The absolute privilege attaching to the statement of judicial officers, advocates, and witnesses is not a privilege to be malicious, but a privilege that their statements in judicial proceedings should be exempt from any inquiry whether they were prompted by malice or not, it being for the public interest that such statements should be made without any apprehension of subsequent legal proceedings.

The report of an official receiver made to the Court under s. 8, sub-s. 2, of the Companies (Winding-up) Act, 1890, is absolutely privileged. *BOTTOMLEY v. BROUGRAM Channel J. [1908] W. N. 32; [1908] 1 K. B. 584*

2. — *Company — Official receiver — Absolute privilege — Official Receiver in Companies' Liquidation — Observations published to creditors and contributories of company in liquidation — Inspector-General in Companies' Liquidation — General Annual Report of Board of Trade — Companies (Winding-up) Act, 1890 (53 & 54 Vict. c. 63), ss. 8, 27, 29; First Schedule, s. 3.*

An action for libel will not lie against an official receiver in respect of observations on the affairs of a co. in liquidation published by him to the creditors and contributories of the co. in the performance of his duty as prescribed by the Companies (Winding-up) Act, 1890, First Schedule, s. 3, such observations being absolutely privileged.

Where an officer appointed by the Board of Trade under the Companies (Winding-up) Act, 1890, s. 27, had, in the performance of his duty, prepared for and delivered to that Board a report on matters within s. 29, sub-s. 2, of the Act, for the purpose of its being laid by them before Parliament as part of their general annual report as directed by that sub-section:—

Held, that an action for libel would not lie against him in respect of statements contained in that report. *BUER v. SMITH - C. A. [1909] W. N. 115; [1909] 2 K. B. 306*

— Corporation, Libel by servant of—Liability of company for malicious libel.
See NEW SOUTH WALES.

— Costs—Pleas of justification and privilege—Defendant successful on one and unsuccessful on the other—Practice.
See COSTS. 39.

DEFAMATION (Libel)—continued.

3. — *Criminal law — Indictment — Obscene libel—Indictment for defamatory libel containing obscene matter—Deposit of document containing alleged libel—Exhibit to depositions—Law of Libel Amendment Act, 1888 (51 & 52 Vict. c. 64), s. 7.*

An indictment for publishing a libel, which was bad as a charge of publishing a defamatory libel for not setting out the passages relied upon (see *Bradlaugh v. Reg.*, (1878) 3 Q. B. D. 607), contained an averment that the deft. "unlawfully" . . . did . . . publish . . . a . . . libel . . . in the form of a document . . . which said document . . . contains divers . . . obscene . . . matters and things."

The judge at the trial held that this amounted to an indictment for an obscene libel, and the prisoner was convicted:—

Held, that although it would have been better for the indictment to have followed the old forms; and to have averred that the tendency of the obscene matter was to corrupt the public morals, and that the libel had been published with that intent, the conviction might under the circumstances be upheld.

It is not necessary, in order to satisfy the provisions of s. 7. of the Law of Libel Amendment Act, 1888—which provides that the obscene matter need not be set out in the indictment, but that it shall be sufficient to deposit the document "containing the alleged libel with the indictment or other judicial proceeding"—that the incriminated document should be handed in with the bill of indictment, if it is already in the custody of the clerk of assize as an exhibit attached to the depositions. *REX v. BARRACLOUGH* - - - *C. C. R.* [1905] *W. N.* 166; [1906] 1 *K. B.* 201

— Death of defendant — Abatement of action — Application by defendant's executors for payment out of money.

See *PRACTICE—Payment, &c.*

— Discovery—Interrogatories—Libel—Names of Informants.

See *DISCOVERY*. 8, 9, 10.

4. — *Discovery—Libel—Justification—Particulars of justification—Allegations of misconduct—Inspection of plaintiffs' books—Practice.*

A deft. to an action for libel who pleads a justification must state in his defence or in his particulars of justification the specific facts or instances upon which he relies in order to prove his plea, and he can obtain inspection of the plts.' books or documents only in respect of such specific facts or instances.

To an action by a firm of stock and share dealers for a libel in a newspaper, the innuendo placed upon the alleged libel being that it meant that the plts. carried on their business in an improper manner and were fraudulent stock and share dealers and persons who could not be trusted in business dealings, the deft. pleaded a justification and delivered particulars of the plea, in which he alleged that the plts. were not members of the London Stock Exchange, but were concerned in running a "bucket-shop," and that they did not carry on the ordinary and legitimate business of stockbrokers, but were

DEFAMATION (Libel)—continued.

entirely dependent for their profits upon the losses made by their customers. In a further set of particulars the deft. gave the names of, and extracts from, certain pamphlets on methods of money-making issued by the plts. In neither set of particulars did the deft. give any specific instance of the commission by the plts. of any fraudulent or improper act, or the name of any person alleged to have been defrauded by, or to have suffered loss at the hands of the plts. The deft. having taken out a summons for an order that he should be at liberty to inspect the books of the plts. for a certain period:—

Held that, as the particulars of justification contained no specific instances of the misconduct alleged, they were too general to entitle the deft. to inspection of the plts.' books.

Yorkshire Provident Life Assurance Co. v. Gilbert, [1895] 2 Q. B. 148, discussed and followed. *ARNOLD & BUTLER v. BOTTOMLEY*

C. A. [1908] 2 *K. B.* 151

5. — *Fair comment—Literary work—Honest criticism—Withdrawal of case from jury.*

A "fair comment" upon a literary work, or other such production, submitted to the judgment of the public, that is to say, a comment which is the expression of honest opinion, and does not go beyond the limits of what may fairly be called criticism, is no libel, even although the comment be not such as a jury might think to be a just or reasonable appreciation of the work criticized.

If in an action of libel there is no evidence of anything beyond such a comment as above mentioned, there is no case for the jury. *MCQUIRE v. WESTERN MORNING NEWS CO.*

C. A. [1903] *W. N.* 98; [1903] 2 *K. B.* 100

Note.

This case was commented on and distinguished by *C. A.*, *Joynt v. Cycle Trade Publishing Co.*, [1904] 2 *K. B.* 292.

6. — *Fair comment — Malice — Privileged occasion.*

In an action of libel, where the defence is that the writing complained of is fair comment upon a matter of public interest, evidence that the deft. was actuated by malice towards the plt. is admissible, upon the ground that comment which is actuated by malice cannot be deemed fair on the part of the person who makes it, and, therefore, proof of malice may take a criticism that is *prima facie* fair outside the limits of fair comment.

Campbell v. Spottiswoode, (1863) 3 B. & S. 759; *Hewwood v. Harrison*, (1872) L. R. 7 C. P. 606; and *Merivale v. Carson*, (1887) 20 Q. B. D. 275, discussed. *THOMAS v. BRADBURY, AGNEW & CO.*

C. A. [1906] 1 *K. B.* 627

7. — *Fair comment—Matter of public interest—Personal imputations—New trial.*

If in criticizing the conduct of a man in relation to a matter of public interest the writer goes on to impute to him base and sordid motives, there being no facts to warrant the imputation, the defence of "fair comment" cannot be maintained in an action for libel.

DEFAMATION (Libel)—continued.

Campbell v. Spottiswoode, (1863) 3 B. & S. 769; 32 L. J. 185, followed.

McQuire v. Western Morning News Co., [1903] 2 K. B. 100, commented on and distinguished. *JOYNT v. CYCLE TRADE PUBLISHING CO.* - C. A. [1904] W. N. 92; [1904] 2 K. B. 292

8. — Newspaper, Libel, in — Publication — Intention to defame plaintiff.

In an action for libel it is no defence to show that the deft. did not intend to defame the plt., if reasonable people would think the language to be defamatory of the plt.

The appellants, owners and publishers of a newspaper, published in an article defamatory statements of a named person believed by the author of the article and the editor of the paper to be a fictitious personage with an unusual name. The name was that of the respondent, who was unknown to the author and the editor. In an action for libel against the appellants it was admitted that neither the writer nor the editor nor the appellants intended to defame the respondent, but evidence was given by his friends that they thought the article referred to him.

Held, that the plt. was entitled to maintain the action.

Decision of the C. A., [1909] W. N. 133; [1909] 2 K. B. 444, affirmed. *HULTON & CO. v. JONES*.

H. L. (E.) [1909] W. N. 249; [1910] A. C. 20

— Obscene libel—Publication—Aiding and abetting—Advertisements in a newspaper. See **CRIMINAL LAW—Libel. 1.**

9. — Parliamentary paper—Printing extract from—Privilege—Communication by public servant—Matter of public interest—Duty to communicate—Communication published in Newspaper—Fair comment — Comment on allegation contained in privileged document—Evidence in mitigation of damages—Rules of Supreme Court 1883, Order XXXVI., r. 37—Parliamentary Paper Act, 1840 (3 & 4 Vict. c. 9), s. 3.

A person who bona fide and without malice prints and publishes an extract from or an abstract of a parliamentary paper, though in doing so he does not act by or under the authority of either House of Parliament, is protected by s. 3 of the Parliamentary Papers Act, 1840, in an action for libel in respect of such publication.

Mangena v. Edward Lloyd, Ltd., (1908) 98 L. T. 640, followed.

Where an allegation is made against a person in a privileged document, as, for instance, in a parliamentary paper, a comment upon that allegation by a person who is not the person making the allegation may be fair comment, even though the allegation be untrue.

A communication by a public servant of a matter within his own province concerning the conduct of a person who is for the time taking a public part, the matter being one of public interest as to which the public are entitled to information, may be a privileged communication on the part of that public servant, and, if sent by him to a newspaper and published therein, it may also be the subject of privilege in the

DEFAMATION (Libel)—continued.

proprietor of the newspaper, as that is the ordinary channel by means of which the communication can be made public.

Order XXXVI., r. 37, of the Rules of the Supreme Court, 1883, has not altered the common law as laid down in *Scott v. Sampson*, (1882) 8 Q. B. D. 491, with reference to the admissibility of evidence of the plt.'s bad character in mitigation of damages in an action of libel.

MANGENA v. WRIGHT **Phillimore J. [1909] 2 K. B. 958**

10. — Personal imputation—Plea of fair comment—Meaning and effect of — Misdirection—New trial.

In an action for libel based upon articles published in the defts.' newspaper the plt. alleged that the articles imputed to him improper conduct in the discharge of his duties as deputy returning officer at a municipal election. The defts. pleaded justification and fair comment. At the trial the judge directed the jury that if they found the statements in the articles to be libellous and the facts truly stated, then the question for them would be whether the comment was bona fide and fair, or whether it tended, as alleged, to charge the plt. with improper conduct. No separate questions were left to the jury, and they returned a general verdict for the plt. with damages. Upon an application for a new trial:—

Held, by the C. A., that the question of fair comment had not been properly left to the jury as a separate issue, and that there must be a new trial on the ground of misdirection.

Dakhyl v. Labouchere, H. L. (E.) [1908] 2 K. B. 325, n., applied. *HUNT v. STAR NEWSPAPER CO.* - C. A. [1908] W. N. 80; [1908] 2 K. B. 309

11. — Personal imputation — Plea of fair comment—New trial.

Appeal from a decision of the C. A., setting aside a verdict and judgment for 1000*l.* in favour of the appellant (the plt. in the action) and ordering a new trial.

The appellant was a doctor of medicine, a bachelor of science, and a bachelor of arts in the University of Paris; and he had since Aug., 1902, practised as a doctor in Kensington, specializing in the treatment of diseases of the ear, nose, and throat.

The respondent was the editor and proprietor of the newspaper called *Truth*. In the issue of that paper dated April 2, 1903, he had published the following paragraph relating to the appellant:—

"Sundry inquiries have reached me during the last week or two respecting one Dr. H. N. Dakhyl, of 178, Holland Road, Kensington, who appends to his name the symbols 'B.Sc., B.A., M.D., Paris, &c.,' and describes himself as a 'specialist for the treatment of deafness, ear, nose and throat diseases.' Possibly this gentleman may possess all the talents which his alleged foreign degrees denote, but, of course, he is not a qualified medical practitioner, and he happens to be the late 'physician' to the notorious Drouet Institute for the Deaf. In other words, he is a quack of the rankest species.

DEFAMATION (Libel)—continued.

I presume that he has left the Drouet gang in order to carry on a 'practice' of the same class on his own account, and probably he is well qualified to succeed in that peculiar line."

Appeal dismissed and judgment of C. A. affirmed. **DAKHYL v. LABOUCHERE** (Mar. 14, 1907) - **H. L. (E.) [1908] 2 K. B. 325, n.**

Note.

This case was applied by C. A., **Hunt v. Star Newspaper Co.**, [1908] 2 K. B. 309.

— Pleading—Payment into court — Denial of liability.

See **HUSBAND AND WIFE—Practice. 4.**

12. — Practice—Libel—Defence — Fair comment—Interrogatory—Express malice.

The plts. who were traders, sued the defts. for libel in respect of articles published in the defts.' newspapers relating to the manner in which the plts. were alleged to be carrying on their business. The defts. pleaded justification and fair comment, and the plts. joined issue. The defts., administered to the plts. the following interrogatory:—"Do you intend to set up that the defts., in publishing the words complained of, were actuated by express malice towards the plts.? If yea, state generally the facts and circumstances on which the plts. rely as shewing actual malice":—

Held, that the interrogatory was inadmissible, **LEVER BROTHERS v. ASSOCIATED NEWSPAPERS C. A. [1907] W. N. 167 ; [1907] 2 K. B. 626**

— Practice—Payment into court without denial of liability—Death of plaintiff.

See **PRACTICE—Payment, &c.**

13. — Practice—Pleading—Defence of fair comment—Particulars.

The defence to an action for libel in a newspaper article that "in so far as the words consist of statements of fact, the same are in their natural and ordinary signification true in substance and in fact; in so far as they consist of comment, the same were fair and bona fide comment upon a matter of public interest," is a defence of fair comment and not a justification.

The plt. advertised in a daily paper for a partner with 250*l.* to complete the formation of a syndicate already registered. In reply to a letter of inquiry from a correspondent of the defts., who were the proprietors of a different paper, the plt. forwarded particulars of the syndicate together with reports and other documents relating to it. An article having been published in the defts.' paper, in which the particulars and documents supplied by the plt. were commented upon in a satirical vein, the plt. brought an action for libel, to which the defence set out above was (inter alia) pleaded, and particulars of the defence were given. The plt. applied for further and better particulars of the defence, asking for particulars as to whether the defts. alleged that any of the statements made in the particulars and documents sent by the plt. were untrue, and, if so, which of them:—

Held, that the defence being one of fair comment only, and no justification having been pleaded, the plt. was not entitled to the particulars sought. **DIGBY v. FINANCIAL NEWS, LD. C. A. [1907] 1 K. B. 502**

DEFAMATION (Libel)—continued.

— Practice—Writs—Service out of jurisdiction

— Libel in newspaper—Injunction.

See **PRACTICE—Service.**

14. — Privileged communication—Publication — Post-card—Evidence of malice.

The deft. sent a post-card through the post on an occasion which, as between the deft. and the person to whom the post-card was sent, was privileged. The statements contained in the post-card had reference to the plaintiff, and would, if connected with him, have been defamatory of him, but the post-card did not disclose the name of the plt. or contain any indication that the statements in it referred to him, and no evidence was produced to shew that those statements were understood to refer to the plt. by any person through whose hands the post-card passed except the person to whom the post-card was sent:—

Held, that the plt. had failed to shew publication of a libel on him other than on a privileged occasion, and that, though the mere fact that a communication had been sent by a post-card instead of by a closed letter would generally be evidence of malice, in the present case, inasmuch as the communication would not be understood by the persons through whose hands it passed as referred to the plt., there was no evidence of express malice to avoid the privilege. **SADGROVE v. HOLE C. A. [1901] 2 K. B. 1**

15. — Privileged occasion—Publication to clerks of company exercising privilege—Reasonable and ordinary course of business.

Where a business communication containing defamatory statements concerning the plt. was made by the defts., a co. to another co., on a privileged occasion, and, for the purpose of, and incidentally to, the making of the communication the defamatory statements were, in the reasonable and ordinary course of business, published to clerks of the deft. co.:—

Held, that the privileged occasion covered such a publication of those statements, which was therefore not actionable.

Boxsius v. Goblet Frères, [1894] 1 Q. B. 842, followed.

Pullman v. Hill & Co., [1891] 1 Q. B. 524, discussed and distinguished. **EDMONDSON v. BIRCH & CO., LD., AND HORNER - C. A. [1907] W. N. 18 ; [1907] 1 K. B. 371**

— Trade libel — False statement — Special damage—General loss of business.

See **TRADE LIBEL. 1.**

— Trade protection society—Communications to subscribers not privileged.

See **AUSTRALIA. 5.**

Pluralities Act.

1. — Privilege—Absolute privilege—Beneficed clergyman—Inadequate performance of duties—Inquiry—Commission issued by bishop—Witness — Action in respect of evidence given—Pluralities Act, 1838 (1 & 2 Vict. c. 106), s. 77—Pluralities Acts Amendment Act, 1885 (48 & 49 Vict. c. 54), s. 3.

A commission, issued by the bishop of a diocese under the Pluralities Act, 1838, and the

DEFAMATION (Pluralities Act)—continued.

Pluralities Acts Amendment Act, 1885, to inquire into the inadequate performance of the ecclesiastical duties of any benefice, creates a judicial tribunal, and the occasion on which a witness gives evidence before the Commissioners is absolutely privileged, and no action is maintainable in respect of evidence so given. *BARRATT v. KEARNS* - C. A. [1905] 1 K. B. 504

Practice.

— Action in Chancery Division—Counter-claim for defamation—Trial by jury.
See PRACTICE—Trial.

— Discovery — Interrogatories — Privilege — Names of persons to whom libel published—Practice.
See DISCOVERY. 9.

— Discovery — Interrogatory not administered bona fide for purposes of action—Privilege—Practice.
See DISCOVERY. 10.

— Libel generally.
See under DEFAMATION—Libel.

— Pluralities Act generally.
See under DEFAMATION — Pluralities Act.

— Slander generally.
See under DEFAMATION—Slander.

Slander.

— Auctioneer cast in damages — Liability of principal—Slander of title.
See AUCTION. 1.

1. — *Blackmailing action, Charge of bringing a—Actionable words.*

An action for slander will lie for spoken words imputing to the plt. that he has brought a blackmailing action although no special damage is alleged. *MARKS v. SAMUEL*

C. A. [1904] W. N. 86; [1904] 2 K. B. 287

2. — *Discovery—Interrogatories—Action for slander—Defence of fair comment—Practice.*

The deft. in an action for slander, alleged to have been uttered in a speech made by him as chairman at a licensing meeting, pleaded a defence of fair comment in the following terms: "In so far as the words complained of consist of statements of fact the same are in their natural and ordinary signification true in substance and in fact. In so far as they consist of comment the same are fair and bona fide comment upon matters of public interest." There was no plea of justification. Upon an application by the deft. for leave to administer interrogatories to the plts. directed to proving the truth of the statements of fact in his speech and in the particulars delivered by him of the materials upon which his defence of fair comment was based:—

Held, that the deft. was entitled, notwithstanding the absence of a plea of justification, to administer interrogatories with the object of obtaining admissions of the truth of the material statements of fact in the speech and particulars alleged to be defamatory. *PETER WALKER & SON, LD. v. HODGSON* C. A. [1909] 1 K. B. 239

DEFAMATION (Slander)—continued.

— Discovery — Interrogatories — Privilege — Practice.

See DISCOVERY. 11.

— Evidence—Privilege—Statements made in witness-box and in preparing proof.
See EVIDENCE. 11.

3. — *Evidence—Privilege—Statement made in witness-box and in preparing proof—Defamation.*

The privilege which protects a witness from an action of slander in respect of his evidence in the box also protects him against the consequence of statements made to the client and solicitor in preparing the proof for trial.

Judgments of the Second Division of the Ct. of Sess., Scotland, (1904) 42 S. L. R. 213, reversed. *WATSON v. M'EWAN. WATSON v. JONES* - H. L. (Sc.) [1905] W. N. 130; [1905] A. C. 480

4. — *Magistrate — "Judge" — Criminal charge—Withdrawal of prosecution—Defamatory words against prosecutor—Malice—Privilege—Reasonable cause of action—Striking out pleading—R. S. C. 1883, Order XXV., r. 4.*

A magistrate, when sitting in the course of his judicial duties, is a "judge" within the meaning of the rule laid down by *Munster v. Lamb*, (1883) 11 Q. B. D. 588, and *Hodson v. Pare*, [1899] 1 Q. B. 455—that defamatory observations by a judge in the course of his judicial duties are not actionable. Thus a defamatory statement made by a magistrate, while sitting in the course of his judicial duties, respecting a prosecutor upon or with reference to the withdrawal of a criminal charge before the Court, was held not to be actionable, even though it was alleged that the statement was made falsely and maliciously and without reasonable cause. Accordingly, the statement of claim in an action for slander brought by the prosecutor against the magistrate on the ground of that defamatory statement was ordered to be struck out under R. S. C., Order XXV., r. 4, as disclosing no reasonable cause of action.

Decision of Channell J. affirmed.

Allardice v. Robertson, (1830) 1 Dow. & Cl. 495, is not law in England. *LAW v. LLEWELLYN*

C. A. [1906] W. N. 50; [1906] 1 K. B. 487

5. — *Special damage—Remoteness of damage.*

Where an action of slander was brought in respect of a statement made by the deft. to the plt.'s employers that the plt. had removed from premises, leaving rent due to his landlord, the plt. alleging that he had in consequence of that statement been dismissed from the service of his employers:—

Held, that the action would not lie, the damage alleged being too remote. *SPEAKE v. HUGHES*

C. A. [1904] 1 K. B. 138

6. — *Words actionable per se—Innuendo—Criminal offence—Punishment—Liability to summary arrest.*

Words imputing that the plt. has been guilty of a criminal offence punishable by fine only, but which involves a liability to summary arrest,

DEFAMATION (Slander)—*continued.*

will not support an action for slander without special damage. *HELLWIG v. MITCHELL*

Bray J. [1910] 1 K. B. 609

7. — *Words not actionable per se*—Imputation of insolvency against solicitor—*Words spoken in relation to his profession.*

In an action of slander it was proved that the deft. spoke of the plt., who was a solicitor, upon one occasion: "Have you heard about our neighbour along here? They tell me he has gone for thousands instead of hundreds this time"; and upon another occasion: "Have you heard anything about Mr. Dauncey? It seems to be a worse job than the other was. Miss Allen told me Mr. Dauncey has lost thousands":—

Held, that, in the absence of special damage, the words were not actionable, as they were not reasonably capable of being construed as conveying an imputation on the plt. in his business as a solicitor. *DAUNCEY v. HOLLOWAY*

C. A. [1901] 2 K. B. 441

Trade Libel.

See under TRADE LIBEL.

DEFAULT—Decree absolute for—Reasonable excuse for default—Lunacy—Admissibility.

See CEYLON.

— "Wilful default" of vendor—Delay.

See VENDOR AND PURCHASER — Interest. 2.

DEFEASANCE—Bill of sale—Validity—Registration.

See BILL OF SALE. 9.

DEFEASANCE CLAUSE—Bequest of heirlooms to devolve with real estate—Gift over—"Of" read for "or."

See WILL —Heirlooms. 1.

DEFENCE ACTS—*Lands taken compulsorily—Compensation—Injurious affection of adjoining lands—Land taken for fort—Defence Act, 1842 (5 & 6 Vict. c. 94), s. 19—Ranges Act, 1891 (54 & 55 Vict. c. 54), s. 11.*

Where lands are compulsorily taken under the Defence Acts for the erection of a fort, the owner is entitled to compensation for the injurious affection of his adjoining lands arising from the natural and ordinary use of the lands taken for the purpose of a fort and the firing of guns placed therein.

Reg. v. Abbott, [1897] 2 I. R. 632, and *In re Ned's Point Battery*, [1903] 2 I. R. 192, approved and followed. *BLUNDELL v. REX*

Ridley J. [1905] 1 K. B. 516

DEFUNCT COMPANY.

See under COMPANY — Defunct Company.

DELAY—Appeal, Interlocutory—Setting down appeal—Production of order.

See APPEAL. 16.

— Attorney-General—Laches—London Building Act.

See LONDON—Buildings. 9.

DELAY—*continued.*

— Bill of lading—Shipping.

See under SHIPPING—Charterparty.

— Breach of trust—Negligence—Delay in accounting—Solicitor trustee—Liability to indemnify co-trustee.

See TRUSTEE—Accounts. 1.

— Canal company—Diversion of water from river—Statutory powers—Injunction—Laches.

See CANALS. 1.

— Charterparty—Construction.

See under SHIPPING—Charterparty.

— Conditions of sale—Interest—Damages—Loss of expected profits.

See VENDOR AND PURCHASER—Conditions of Sale. 1.

— Costs.

See TRADE-MARK. 9.

— Damages—Loss of expected profits.

See VENDOR AND PURCHASER—Conditions of Sale. 1.

— Effect of delay in suing after attaining majority.

See GUERNSEY. 1.

— Executed contract—Rescission—Misrepresentation—Absence of fraud.

See CONTRACT. 14.

— Hospital—Judgment for arrears of management expenses—Excusable delay—Mandamus to levy retrospective rate.

See LOCAL GOVERNMENT. 15.

— Interest on purchase-money.

See VENDOR AND PURCHASER — Interest. 1, 2.

— Master and servant—Burgh surveyor—Extra work.

See SCOTTISH LAW.

— Money paid under mistake of fact—Marked cheque fraudulently altered—Negligence—Notice of dishonour.

See CANADA—Banker. 2.

— Reinsurance—Unreasonable delay of voyage—Material alteration of risk.

See INSURANCE (MARINE) 23.

— Roadside waste—Dedication—Action for declaration of title—Public authorities protection.

See HIGHWAY. 39.

— Shares, Transfer of—Non-registration—"Default of unnecessary delay."

See COMPANY—Shares. 26.

— Shipping.

See under SHIPPING.

— Solicitor—Undertaking—Proceeding with action—Attachment.

See PRACTICE—Undertakings.

— Trustee—Delay in accounting—Costs—Liability to indemnify co-trustee.

See TRUSTEE—Accounts. 1.

— "Unreasonable delay"—Respondent's insanity—Decree.

See DIVORCE—Delay. 1.

DELAY—*continued.*

—“Wilful default” of vendor—Interest.

See VENDOR AND PURCHASER —
Interest. 2.

DELIVERY Evidence—Building society share certificates—Post Office Savings Bank deposit-book.

See DONATIO MORTIS CAUSA. 1.

DEMISE — Ship — Contract of hiring — Naval review.

See CONTRACT. 28.

DEMONSTRATIVE LEGACIES — Specific or — Administration.

See WILL—Residue. 4.

DEMURRAGE — Carriage of coal in traders' trucks—Delay in transit.

See RAILWAY—Carriage.

— Railway—Trucks—Right of action for damages for detention —Jurisdiction.

See RAILWAY—Trucks.

— Shipping.

See under SHIPPING—Demurrage.

DEMURRER—Proceeding in lieu of—Right to begin—Practice.

See MARKETS.

DENTIST — Company — Registration under Companies Acts — Use of word “Dentist” — Dentists Acts, 1878 (41 & 42 Vict. c. 33), s. 3 — Deceiving public—Injunction.

Though a limited co. is not “a person” within the Dentists Act, 1878, the Court will restrain such a co. from representing that they carry on the business of dentists in succession to a man who has been struck off the Dentists' Register for misconduct, or taking any name implying that they are registered under the Dentists Act, or are persons specially qualified to practise dentistry. *ATT.-GEN. v. GEORGE C. SMITH, LD.*

Swinfen Eady J. [1909] 2 Ch. 524

2. — *Dentists' Register — Order of Medical Council to erase name—“Professional misconduct” — Partnership, Determination of—Dentists Act, 1878 (41 & 42 Vict. c. 33), ss. 13, 14, 15.*

One of the parties to a partnership deed between dentists was, as a director of the American Dental Institute, Ltd., a party to self-puffing advertisements of the co. in which it was alleged (*inter alia*) that among other advantages the instruments of the co. were always sterilized before use, and that a trained lady nurse was always present at operations so as to prevent any possibility of scandal between an operator and a lady patient :—

Held, that the partner had been guilty of professional misconduct within the meaning of the partnership deed which entitled the other partner to determine the partnership.

Decision of C. A., [1907] 2 Ch. 236, affirmed on the above ground. *CLIFFORD v. TIMMS*

H. L. (E.) [1907] W. N. 243; [1908] A. C. 12

CLIFFORD v. PHILLIPS — *H. L. (E.)* [1907] W. N. 243; [1908] A. C. 15

DENTIST—*continued.*

3. — *Unregistered person — Description — “Specially qualified to practise dentistry” — Dentists Act, 1878 (41 & 42 Vict. c. 33), s. 3.*

The words “specially qualified to practise dentistry” in s. 3 of the Dentists Act, 1878, refer to a qualification by diploma, certificate, or other hall mark, and not to competence or skill.

Decision of the C. A. [1909] W. N. 126; [1909] 2 Ch. 23, affirmed.

Barnes v. Brown, [1909] 1 K. B. 38, overruled. *BELLERBY v. HEYWORTH* — *H. L. (E.)* [1910] W. N. 102; [1910] A. C. 377

4. — *Unregistered dentist—Right to sue for fees—Cheque given by patient—Subsequent dishonour—Action on cheque—Debtor and creditor—Appropriation of payments—Right of creditor to appropriate—Time when appropriation must be made—Appropriation to cost of material—Dentists Act, 1878 (41 & 42 Vict. c. 33), ss. 3, 5.*

A person who is not registered under the Dentists Act, 1878, though he is prohibited by s. 5 of the Act from recovering any fee for the performance of any dental operation, can maintain an action for the price of material, such as gold and false teeth, supplied by him to a patient.

Hennan & Co. v. Duckworth, (1904) 20 Times L. R. 436, followed.

When a payment made by a debtor to his creditor has not been appropriated by the former, the creditor is entitled to elect how he will appropriate the payment “up to the very last moment” (as was said by Lord Macnaghten in *The Mecca*, [1897] A. C. at p. 294), and he may make an appropriation even when he is being examined as a witness in an action by him against the debtor.

A person who was not registered under the Dentists Act, 1878, operated as a dentist on a patient, and supplied him with false teeth and gold. He made a charge of 45*l.*, and the patient gave him two cheques for 20*l.* and 25*l.* respectively, the latter cheque being post-dated. The 20*l.* cheque was duly paid, but the 25*l.* cheque was dishonoured on presentation, the drawer having stopped the payment of it by his bankers.

The dentist brought an action in the county court against the patient on the 25*l.* cheque. The judge found that 21*l.* represented the price of the gold and other material supplied by the plt. The plt. when being examined as a witness claimed to appropriate the 20*l.* cheque to the payment of his professional fees. No appropriation had been made by the patient :—

Held, that the plt. was entitled to make the appropriation, and to recover the 21*l.* in the action.

Decision of the K. B. Div. (Lord Alverstone C.J. and Kennedy and Ridley JJ.) reversed.

On the appeal the plt.'s counsel abandoned his claim to the extra 4*l.*, and the Court declined to express any opinion whether the plt. could have recovered that sum. *SEYMOUR v. PICKETT*

C. A. [1905] W. N. 40; [1905] 1 K. B. 715

5. — *Unregistered person — Description — “Specially qualified to practise dentistry” — Dentists Act, 1878 (41 & 42 Vict. c. 33), s. 3.*

DENTIST—*continued.*

By the Dentists Act, 1878, s. 3, "A person shall not be entitled to take or use the name or title of 'dentist' (either alone or in combination with any other word or words), or of 'dental practitioner,' or any name, title, addition, or description implying that he is registered under this Act or that he is a person specially qualified to practise dentistry, unless he is registered under this Act."

The words in the above section "specially qualified to practise dentistry" are not used in a technical sense as referring only to a qualification conferred by some public body by the grant, for instance, of a diploma or degree, but include special personal qualifications to practise dentistry acquired by study and practice.

The appellant, who was not registered under the Act and was not a legally qualified medical practitioner, carried on a dentist's practice at premises on the inner door and windows of which he exhibited his name and a notice as follows: "H. J. Barnes. Finest artificial teeth at moderate prices. Extractions. Advice free. Hours 10—7. English and American teeth. Advice free. Painless extractions." His room was fitted as a dentist's operating room. The appellant having been convicted by a Court of summary jurisdiction of having taken and used a description implying that he was specially qualified to practise dentistry:—

Held, that there was evidence upon which the appellant could be convicted of an offence under s. 3 of the Act. **BARNES v. BROWN**

Div. Ct. [1908] W. N. 250; [1909] 1 K. B. 38

Note.

Overruled by *Bellerby v. Heyworth*, H. L. (E.) [1910] A. C. 377. *See* No. 3, *above*.

The reasoning of the Scotch Court in *Emalie v. Paterson*, (1897) 24 R. (Just. Cas.) 77, adopted by the C. A. in preference to that of the Div. Ct. in *Barnes v. Brown*, [1909] 1 K. B. 38. *See Bellerby v. Heyworth*, C. A., [1909] 2 Ch. 23; H. L. (E.), [1910] A. C. 377, *supra*.

DEPENDANTS—Workmen's Compensation.

See under **MASTER AND SERVANT—Compensation.**

DEPOSIT—As security for costs of discovery—Disbursements.

See **SOLICITOR—Costs.**

— Bankruptcy—Time for entering an appeal—Deposit on appeal.

See **BANKRUPTCY—Practice.** 2, 3.

— Certificate—Shares—Equitable mortgage—Pledge—Foreclosure.

See **COMPANY—Shares.** 9.

— Contract—Deposit by purchaser to guarantee fulfilment of contract—Default by purchaser or his assignee—Action to recover deposit dismissed.

See **CANADA—Contracts.** 2.

— Debentures—"Issue"—Deposit of blank debenture to secure loan.

See **COMPANY—Debentures.** 21.

DEPOSIT—*continued.*

— Forfeiture of deposit—Specific performance—Default in payment by purchaser—Form of order.

See **VENDOR AND PURCHASER—Deposit.** 3.

— Forfeiture of deposit—Vendor and purchaser.

See **SPECIFIC PERFORMANCE.**

— Lands Clauses Acts—Bond—Entry on land before determination of purchase-money—Railway.

See **LANDS CLAUSES ACTS.** 32.

— Life insurance company—Liquidation—Transfer of business to another company—Deposit—Repayment.

See **INSURANCE (LIFE).** 5.

— Money on deposit—Executor—Retainer—Debt—Ready money.

See **HUSBAND AND WIFE—Separate Property.** 1.

— Parliamentary—Railway company—Abandonment—Costs of inquiries necessary for distribution of deposit—Practice.

See **RAILWAY—Costs.**

— Railway company.

See under **RAILWAY—Deposit.**

— Sums on deposit at banks—Gift of "monies owing to me at the time of my decease."

See **WILL—"Monies."** 1.

— Title-deeds—Partnership real estate—Executor's lien—Notice—Priorities.

See **PARTNERSHIP.**

— Tramway company—Parliamentary deposit—Sale of undertaking before works completed.

See **TRAMWAYS.** 16.

— Tramway company—Statutory undertaking—Parliamentary deposit—Non-completion—Abandonment—Application of deposit fund.

See **TRAMWAYS.** 1.

— Vendor and purchaser.

See under **VENDOR AND PURCHASER—Deposit.**

— Will—Construction—"Ready money"—"Pecuniary investments"—Banker's deposit note.

See **WILL—"Ready money."** 1.

DEPOSIT-BOOK—Post Office Savings Bank.

See **DONATIO MORTIS CAUSA.** 1.

DEPOSITIONS—Exhibit to—Deposit of document containing alleged libel—Criminal law.

See **DEFAMATION—Libel.** 3.

— Evidence—Public documents—Ancient reports to Government departments—Maps and charts—Depositions in former suit—Evidence—Admissibility.

See **CUSTOM.** 1.

DEPRIVATION—Church Discipline—Pretended ordination of priest by incumbent of parish church, not being a bishop.
See ECCLESIASTICAL LAW — Discipline.

DEPUTIES—Appointment of.
See under RECORDERS, &c.

DEPUTY JUDGE—Appointment of two deputies to act respectively for different Courts—Validity.
See COUNTY COURT—Deputy Judge. 1.

DERELICT—Shipping—Salvage.
See under SHIPPING—Salvage.

DEROGATION FROM GRANT.
See under GRANT.

— Air—Obstruction.
See under LIGHT AND AIR.

DESCENT—Copyholds—Customary or common law heir.
See WILL—Intestacy. 1.
 — Root of—"Purchaser"—Devise to testator's "right heirs"—Co-heiresses.
See INHERITANCE. 1.

DESERTION—Divorce.
See under DIVORCE—Desertion.
 HUSBAND AND WIFE—Desertion.

— Poor law.
See under POOR LAW.

— Shipping.
See under SHIPPING—Desertion.

DESIGNS.
See also under PATENT.

Designs Rules, 1908. Patents Rules, 1908. Register of Patent Agents Rules, 1908.

A copy of these Rules has been presented gratis by the Council to all subscribers to the entire series of the Law Reports, 1908. These copies were delivered with the February parts of the Law Reports. W. N. 1908 (Jan. 18), p. 45.

Rules of the Supreme Court (Patents and Designs), 1908, dated June 3, 1908. Reprint from W. N. 1908 (Dec. 6), p. 161. See CURRENT INDEX, 1908, p. cxviii.

Patents and Designs Act, 1908 (8 Edw. 7, c. 4), explains s. 92 of the Patents and Designs Act, 1907.

Designs Rules, 1908 (Second Set)—dated Nov. 14, 1908. These Rules came into operation from and immediately after Dec. 1, 1908. Reprint from W. N. 1908 (Dec. 5), p. 337. See CURRENT INDEX, 1908, p. cxix.

— Copyright.
See under COPYRIGHT—Designs.

— Design—Registration as trade mark.
See TRADE MARK. 3.

1. — Registration — Infringement—"New or original"—*Patents and Designs Act, 1907 (7 Edw. 7, c. 29), ss. 49, 50, 93.*

Sect. 49 of the Patents and Designs Act, 1907, provides for the registration of "any new or original design not previously published in

DESIGNS—*continued.*

the United Kingdom"; and the Act gives protection to a design so registered. The word "original" in that section contemplates that the designer has by the exercise of intellectual activity conceived an idea, which has not previously occurred to anyone else, of applying a particular pattern or shape or ornament to the particular article to which he suggests that it shall be applied. If that state of things be satisfied, then the design may be "original" although the actual pattern or shape or ornament under consideration be old in the sense that it has existed previously with reference to another article.

The plts. were the owners of a registered design in class 3 for a pattern or ornament of hand grip for cycle handles. The design consisted of an engine-turned pattern in wavy lines applied to the hand grip and broken up into panels by deep longitudinal grooves, the hand grip terminating in a ring separating the panels from the smooth end of the cylindrical handle bar. The engine turning was of a common pattern and none of the other details of the design were new. In action for infringement Warrington J. held that the design was "new or original" having regard to the kind of article for which it was registered:—

Held, on appeal, that there was no novelty or originality in applying to a cycle handle a form of decoration which, as was proved, was in common use upon other articles of a cylindrical shape.

Decision of Warrington J. reversed. DOVER LD. r. NÜRNBERGER CELLULOIDWAREN FABRIK GEBRUDER WOLFF. C. A. [1910] W. N. 127; [1910] 2 Ch. 25

2. — Registration — Infringement — Patent and registered design for same invention—*Estoppel*—Infringement in ignorance of registration—*Liability in damages*—*Defence of want of novelty*—*Application to vacate registration*—*Patents, Designs, and Trade Marks Act, 1883 (46 & 47 Vict. c. 57), ss. 13, 47, 51, 58, 59, 60, 61, 90.*

On Nov. 8, 1901, the plts. applied for a patent for improvements in frames for motor cycles, and delivered a provisional specification. On Nov. 18, 1901, the plts. obtained registration of a design for motor cycles. On Aug. 8, 1902, the plts. delivered a complete specification for the patent which was accepted on Oct. 23, 1902, and the patent was afterwards granted bearing date Nov. 8, 1901. The complete specification contained a drawing identical with the registered design. In an action by the plts. to restrain the infringement of the design:—

Held, that the validity of the registration of the design was not affected by the subsequent grant of the patent of prior date.

Until the service of the writ in the action the defts. were ignorant of the registration of the plts.' design, but after service of the writ the defts. sold some machines made according to the registered design, and claimed the right to do so, alleging that the registration was invalid, though upon an application for an interlocutory injunction they offered to keep an account:—

Held, that the plts. were entitled to an

DESIGNS—continued.

injunction, but that they could not recover damages in respect of sales made by the defts. before the writ.

Decision of Byrne J., [1904] 1 Ch. 264, affirmed.

Whether in an action to restrain the infringement of a registered design the defence of want of novelty can be maintained in the absence of an application to vacate the registration, *quære*.

Per Vaughan Williams L.J.: A patent right in an article and a copyright in a design for the same article may co-exist, but the registration of a design which secures mechanical advantages may, as an anticipation, prevent the grant of a subsequent valid patent for the article, and that whether the applicant for the patent be the proprietor of the design or a stranger.

A patentee, who registers a design for an article after he has applied for a patent for it, and before the delivery of a complete specification containing a drawing of the article identical with the registered design, is not, by the subsequent grant of a patent bearing the date of his application, estopped from saying that the design was new and original at the date of registration.

Per ROMER, L.J.: In most cases it will be very difficult for a patent right in respect of a new article and a copyright in a registered design for the shape of the article to co-exist.

But in such circumstances as those of the present case the two rights, being not necessarily the same, might co-exist, though the right which was second in point of date must be held subject to the first right. The grant of the patent in such a case does not destroy the effect of the registration of the design which was valid at the date when it took place, and this whether the owner of the patent and the owner of the design are the same person or different persons.

WERNER MOTORS, LD. v. A. W. GAMAGE, LD.
C. A. [1904] W. N. 174; [1904] 2 Ch. 580

— Trade mark.

See under TRADE MARK.

DESPATCH MONEY—Charterparty—Lay days.

See SHIPPING—Charterparty.

DESTRUCTION—Will—Intention—Executors according to the tenor—Universal legatees in trust—Form of grant.

See WILL—Destruction. 1.

DESTRUCTIVE INSECTS AND PESTS ORDER.

See under INSECTS AND PESTS.

The Destructive Insects and Pests Order, May 3, 1910. St. R. & O. 1910, No. 467. Price 1d.

DETENTION OF GOODS—Action by wife against husband.

See HUSBAND AND WIFE—Practice. 1.

DETERMINATION—Lease.

See under LANDLORD AND TENANT.

— Option to determine—Lease by mortgagor in possession—Lease including land other than mortgaged land—Option to renew.
See MORTGAGE—Leases.

DETERMINATION—continued.

— Partnership—Validity of notice of dissolution.

See PARTNERSHIP.

— Power of sale—Duration—Absolute vesting of estate.

See POWER OF SALE.

DETINUE—Costs Action founded on tort—Return during progress of case of articles claimed—Practice.

See COSTS. 32.

— Costs—Taxation—Implied authority to wife to pledge her husband's credit.

See DIVORCE—Costs. 6.

DEVASTAVIT—Statute of Limitations—Claim on guarantee—Trustee.

See EXECUTOR—Devastavit. 1.

DEVELOPMENT AND ROAD IMPROVEMENT.

See under HIGHWAY.

DEVIATION—Limits of—Medium filum—Railway company—Statutory powers—Deposited plans.

See RAILWAY—Plans.

— Shipping.

See under SHIPPING—Deviation.

DEVIATION CLAUSE—Insurance (marine)—Premium—Subject to "due notice" of deviation—Notice given after loss.

See INSURANCE (MARINE). 10.

DEVISE.

See under WILL.

DEVISEE—Alienation by—Mortgage—Purchaser—Priority.

See ADMINISTRATION. 26.

— Mortgage by devisee to raise legacies—Liability of mortgagee to see to application of money.

See WILL—Charges. 1.

DEVOLUTION—Copyholds—Equitable interest—Person to convey—Vendor and Purchaser.

See COPYHOLDS. 2.

— Freeholds—Mortgagee in possession—Realty or personality.

See MORTGAGE—Devolution.

— Real and personal estate, Devolution of—Death of mortgagee intestate—Devolution of mortgage debts.

See ADMINISTRATION. 18.

DIAGRAM—Grant of land—Construction—Title—Terms of grant.

See CAPE OF GOOD HOPE. 6.

DIGNITY—Jurisdiction—Non-alienability of office of Standard Bearer of Scotland—Sale of office—Prescription.

See SCOTTISH LAW.

DIGNITY—*continued*.

- Married woman—Title of honour—Marriage with a peer of the realm—Divorce—Former wife marrying a commoner.
See HUSBAND AND WIFE—Title of Honour. 1.
- Period of absolute vesting—Will Construction—Bequest to descend with dignity.
See HEIRLOOMS. 1.
- Surrender of peerage to Sovereign Grant by Sovereign of surrendered peerage.
See PEERAGE.

DILAPIDATIONS—Mansion-house—Salvage—Expenditure out of capital—Jurisdiction.
See SETTLED LAND—Mansion-house.

- Mansion-house—Salvage—Repairs—Expenditure out of capital—Jurisdiction.
See WILL—Mansion-house. 10.

DINNERS—Bequest for payment of annual dinners—Clerical society—Good charitable gift.
See CHARITY. 10.**DIRECTORS**—Company practice.
See under COMPANY—Directors.**DISBURSEMENTS**—Bankruptcy—Trustee in—Default—Penal interest—Liability of surety—Set-off.
See BANKRUPTCY—Trustee. 1.

- Costs.
See under COSTS.
- SOLICITOR—Costs.**

- Foreign ship—Wages—Lex loci—Lex fori—Maritime lien.
See SHIPPING—Wages.

- Solicitor.
See under SOLICITOR—Costs.

- Trustees.
See under TRUSTEE—Costs. 1.

DISCHARGE—Bankrupt.
See under BANKRUPTCY—Discharge.

- Cargo—Charterparty.
See under SHIPPING—Charterparty.
- Contributory.
See under COMPANY—WINDING-UP—Contributory.
- Incumbency—Expenses of making street—Charge on premises—Payment by owner.
See SETTLED LAND—Mortgages.
- Life insurance company—Payment into court—No sufficient discharge otherwise obtainable.
See INSURANCE (LIFE). 13.
- Of judgment by consent—Practice—Compensation—Employers' liability.
See HOUSE OF LORDS. 2.
- Seamen.
See under SHIPPING—Seaman.

DISCHARGE—*continued*.

- Stamp—Receipt—"—"—"Discharge"—Debiture stock.
See REVENUE—Stamps. 25.

- Surety.
See under PRINCIPAL AND SURETY.

- Trustee.
See under TRUSTEE—Discharge.

DISCHARGING ORDERS—Practice.
See under PRACTICE—Discharging Orders.**DISCIPLINE**—Church discipline.
See under ECCLESIASTICAL LAW—Discipline.

- Offence against discipline—Seamen—Contraband of war—Refusal of seamen to proceed.
See SHIPPING—Seaman.

DISCLAIMER—Bankruptcy.
See under BANKRUPTCY—Disclaimer.

- By grantee—Revesting of legal estate—Validity of voluntary settlement.
See SETTLEMENT.

- Double registration—Non-essential particulars—Time.
See TRADE-MARK. 18.

- Patent.
See under PATENT—Disclaimer.

- Retainer—Insolvent estate—Executor of sole trustee—Disclaimer of trust.
See EXECUTOR—Retainer. 5.

- Trade-mark.
See under TRADE-MARK.

DISCLOSURE—Commission—Surcharge—Taxation—Duty to advise—Bargain with client.
See SOLICITOR—Costs.**DISCONTINUANCE**—Practice.
See under PRACTICE—Discontinuance.**DISCOUNT**—Company—Issue of shares at a discount.
See under COMPANY.**DISCOVERY**.

- Affidavit of ship's papers—Partial land transit.
See INSURANCE (MARINE).

1. — Affidavit of documents—Conspiracy—Criminal offence—Practice.

In an action for damages for a conspiracy to induce workmen to break their contracts with the plt. the deft. cannot refuse to discover the material documents on the ground that they may tend to incriminate him. **NATIONAL ASSOCIATION OF OPERATIVE PLASTERERS v. SMITHIES** **H. L. (E.) [1906] A C 434**

2. — Affidavit of documents—Further affidavit—"Specific documents"—Practice—*R. S. C., Order XXXI., r. 19A (3).*

To justify an application for discovery of documents under rule 19A (3) of Order XXXI., the party making the application must in his affidavit

DISCOVERY—*continued*.

name and specify, so that they can be identified, the particular documents of which he desires discovery.

It is not sufficient to make a general affidavit based on a priori reasoning that certain classes of documents must be in his opponent's possession or power.

The discovery sought must be of a species, not a genus. *WHITE v. SPAFFORD & Co.*

C. A. [1901] W. N. 104; [1901] 2 K. B. 241

3. — Affidavits—Discovery of documents—Further affidavit of documents—Relevancy of document—Discretion—Practice—R. S. C., Order XXXI., r. 12.

This House affirmed a decision of the majority of the C. A. which affirmed the decision of Jelf J., who affirmed the decision of the Master that the plt. must make a further affidavit of documents—there being no principle of law in dispute and the whole question being one of discretion upon the facts.

Decision of the C. A., [1910] 1 K. B., 904, affirmed. *KENT COAL CONCESSIONS, LD. v. DUGUID*

H. L. (E.) [1910] W. N. 161; [1910] A. C. 452

— Bankruptcy.

See under BANKRUPTCY—Discovery.

— Books—Libel—Inspection of plaintiff's book. *See DEFAMATION—Libel. 4.*

— Company—Winding-up—Documents alleged to have been given by officer of company to defendants in an action by it.

See COMPANY—WINDING-UP—Examination. 1.

4. — Copies, Right to take—Practice—Production and inspection of documents—R. S. C., Order XXXI., rr. 14, 15; Order LXV., r. 27, sub-r. 18.

On the application of the plts., an order was made for the production at the office of the defts.' solicitor of documents in the possession or power of the defts. The order further provided that "the applicants, their solicitors and agents, are to be at liberty to inspect and peruse the documents so produced, and to take copies and abstracts thereof and extracts therefrom, as the applicants shall be advised"—

Held, that under this order the plts. were entitled, as they would have been under such an order made in the Court of Chancery before the Judicature Act, to make copies themselves or by their solicitors or agents of the documents produced in accordance with the order.

Sub-rule 18 of rule 27 of Order LXV. has not taken away the right of a litigant who obtains such an order to make copies himself of the documents produced.

The object of that sub-rule is only to fix the amount of the charge to be paid by the inspecting litigant when he formally requires a copy or extracts to be furnished to him by his opponent.

Decision of Joyce J. affirmed. *ORMEROD, GRIERSON & Co. v. ST. GEORGE'S IRONWORKS, LD.*

C. A. [1905] W. N. 44; [1905] 1 Ch. 505

— Defamation—Slander—Interrogatories.

See No. 11, below.

DISCOVERY—*continued*.

— Defamation—Slander—Interrogatories—Defence of fair comment—Practice.

See DEFAMATION—Slander. 2.

5. — Documents—Production and inspection—Common order—Specified place—Bankers' books—R. S. C., 1883, Order XXXI., r. 17.

Action to foreclose an equitable mortgage created by a deposit of title-deeds—

Held, that rule 17 of Order XXXI. had no reference to a case where the Court had ordered documents to be produced at a specified place. It referred to documents produced on notice under rules 15, 16, and not under the order of the Court. If the Court ordered production at a specified place, that order must be obeyed, notwithstanding rule 17. The "reasonable notice" referred to in the common order for discovery and production had no reference to the "notice" mentioned in rule 17. The plts. could have applied to have the order varied by a direction that the bank-books should be produced at H. This they had not done. They had misconstrued the rules and the order, and were technically in contempt; but, as it was a mere slip, they would be allowed to go on with that part of the case for which the books were not material, and if necessary the rest of the case would stand over to give the deft. the opportunity of examining the books. *LLOYD'S BANK v. LUCK*

Farwell J. [1901] W. N. 130

6. — Interrogatories—Admissibility—Action for seduction—Disclosure of names—R. S. C., Order XXXI., r. 1.

In an action for the seduction of the plt.'s daughter, where the deft. admitted carnal knowledge but traversed the allegation that he was the father of the deft.'s child, an interrogatory whether the deft. alleged that carnal knowledge had taken place between the daughter and any other male person, and, if so, asking for the name and address of such person, is not allowable as tending to call for the names of witnesses whom the deft. may desire to call, or the particular facts on which he means to rely, in support of his defence. *HOOTON v. DALBY*

C. A. [1907] W. N. 87; [1907] 2 K. B. 18

7. — Interrogatories—Answer to interrogatories—Duty to produce office copy.

In this case interrogatories had been delivered by the plt. to the deft., and on the trial of the action the question arose whether it was the duty of the plt. or of the deft. to produce the office copy of the deft.'s answer to the interrogatories. Reference was made to a note in the Annual Practice (p. 404 of last ed.) under Order XXXI., r. 8. to the effect that the duty of producing the office copy "lies on party on whose behalf it is filed: *Marshall v. National Provincial Bank of England*, (1892) 61 L. J. (Ch.) 465."

Kekewich J. said that the case cited was a decision of his own, and he had no doubt that he satisfied himself that the affidavit in that case was filed on behalf of the deft. In the present case he had sent for the original affidavit, and he found that it was described as the answer of the deft. to the interrogatories exhibited by the plt., and had a note on the back, "Filed on behalf of

DISCOVERY—continued.

the defendant." That settled the matter, and the defts. must pay the costs of producing the office copy. *LEVI v. TAYLOR*

Kekewich J. [1903] W. N. 183

8. — Interrogatories — Defamation — Libel in periodical publication — Defence of fair comment — Information on which defamatory statement founded — Names of informants — Practice.

In an action of libel against the publishers of a trade periodical, in respect of an article contained in an issue of their periodical, the defts. pleaded by way of defence that, in so far as the words complained of consisted of expressions of opinion, they were fair comment, made in good faith, and without malice, on a matter of public interest, and, in so far as they consisted of allegations of fact, they were true in substance and in fact. The plts. administered to the defts., among others, interrogatories which were substantially as follows : (5.) What information had you, when you published the said words, which induced you to believe that the expressions of opinion in the said words contained, and which you allege to be fair comment, made in good faith, and without malice, were true? Did you in fact believe that the said opinions were true? (7.) From whom did you obtain the information on which you relied in publishing the said expressions of opinion? The defts. objected to answer these interrogatories :—

Held, that the fifth interrogatory was admissible, and must therefore be answered, but that, according to the general rule of practice in actions of libel against the publishers of newspapers, in respect of matter published in their newspapers, the seventh interrogatory was, in the absence of special circumstances, inadmissible, and the defts. ought not to be compelled to answer it. *PLYMOUTH MUTUAL CO-OPERATIVE AND INDUSTRIAL SOCIETY, LD. v. TRADERS PUBLISHING ASSOCIATION, LD.*

C. A. [1906] W. N. 30 ; [1906] 1 K. B. 403

9. — Interrogatories — Defamation — Privilege — Malice — Information on which defamatory statement founded — Names of informants — Names of persons to whom libel published — Practice.

In an action of libel against a trade protection society, in which privilege was pleaded, the plts. sought to administer to the defts. an interrogatory, asking what inquiries they made as to the truth of the statements complained of, before publishing them, and from whom they obtained the information on which they relied in publishing those statements :—

Held, that such an interrogatory was admissible.

Elliot v. Garrett, [1902] 1 K. B. 870, followed.

The plts. further sought to administer to the defts. an interrogatory, requiring them, by reference to their books, or otherwise, to give the names of the companies, firms, and persons to whom a certain publication of the defts., containing the statements complained of, had been supplied, or shown, by or through the defts. or their agents :—

Held, that the interrogatory was oppressive

DISCOVERY—continued.

and ought not to be allowed. *WHITE & CO. v. CREDIT REFORM ASSOCIATION AND CREDIT INDEX, LD.*

C. A. [1905] W. N. 50 ; [1905] 1 K. B. 653

See next Case.

10. — Interrogatories — Defamation — Privilege — Information on which defamatory statement founded — Name of informant — Interrogatory not administered bona fide for purposes of action — Practice.

In an action for libel, in which the defence of privilege was set up, the plt. sought to administer to the defts. an interrogatory inquiring what information the defts. received which induced them to make the statement complained of, and from whom that information was derived. The Court being of opinion from correspondence which had passed between the parties that the interrogatory as framed was not put bona fide for the purposes of the pending action, but in order to enable the plt. to bring an action against a person or persons from whom the information was derived :—

Held, that the part of the interrogatory which asked from whom the information was derived must be disallowed. *EDMONDSON v. BIRCH & CO.*

C. A. [1905] W. N. 119 ; [1905] 2 K. B. 523

See preceding Case.

11. — Interrogatories — Defamation — Slander — Malice — Privilege — Inquiry as to information inducing belief of defendant in truth of words spoken — Inquiry as to steps taken by defendant to ascertain truth.

In an action for slander in imputing to the plt. that, being a member of a metropolitan borough council, he had accepted a bribe in connection with a matter that came before the council for decision, the deft., who was also a member of the council, pleaded that the words were spoken, if at all, in good faith, without malice towards the plt., and in the discharge of his duty as councillor, and on an occasion which was privileged. The plt. applied for leave to administer to the deft. an interrogatory asking what information the deft. had which induced him to believe that the words spoken by him were true, and what steps he had taken before speaking the words to ascertain whether they were true. On appeal from an order disallowing the interrogatory :—

Held, that the interrogatory should be allowed as being relevant to the issue of malice raised by the pleadings and directed to support the plt.'s case. *ELLIOTT v. GARRETT*

C. A. [1902] 1 K. B. 870

Note.

This case was followed by *C. A., White & Co. v. Credit Reform Association and Credit Index, Ltd.*, [1905] 1 K. B. 653.

— Interrogatories—Jurisdiction of county court judge—Workmen's compensation.

See MASTER AND SERVANT—Compensation.

— Interrogatories—Libel.

See under DEFAMATION—Libel.

DISCOVERY—continued.

12. — Interrogatories — Libel — Innuendo — Interrogatory as to meaning in which defendant used words—Practice.

In an action of libel in which the statement of claim attributed by an innuendo certain meanings to the words complained of, the plt. sought to administer to the def't. interrogatories, asking, in substance, whether the def't. intended by the use of those words the meanings attributed to them by the innuendo :—

Held, that such interrogatories were inadmissible. **HEATON v. GOLDNEY - C. A. [1910] W. N. 92; [1910] 1 K. B. 754**

— Interrogatories — Shipping — Collision — Damage to cargo.

See SHIPPING—Practice.

13. — Interrogatories—Statement of claim — Admission by defence — Leave to interrogate defendant refused — Practice — R. S. C. Order XXXI., rr. 1, 12.

Action to obtain (inter alia) a declaration that the plaintiff was beneficially entitled to fifty fully paid-up shares in a certain railway company. The statement of claim (amongst other things) set out the plt.'s title to the shares, and alleged that the shares were at the commencement of the action registered in the books of the company in the name of the def't. Stevens as mortgagee, and that the def't. Delap claimed to be beneficially entitled to them as against the plt. The def't. Stevens (who was the solicitor of the defendant Delap, and was made a def't. only with respect to these shares) by his defence admitted the allegations in the statement of claim in relation to these shares, and disclaimed all interest whatever in them. An application by the plt., by summons in chambers, for leave to administer interrogatories to the def't. Stevens with respect to these shares and other matters having been dismissed by the judge, the plt. now moved to discharge the order.

Farwell J., without expressing any opinion on the rules, refused, in the exercise of his judicial discretion, to grant the application. There was now no issue between the plt. and Stevens, but the plt. desired to interrogate Stevens to see if his answers would help him. If the interrogatories were answered, the plt. could not read the answers at the trial against any of the other def'ts. The plt., in fact, was seeking to obtain from Stevens a statement on oath of what his evidence would be at the trial of the action. It was a novel application, and must be dismissed with costs. **CODD v. DELAP**

Farwell J. [1906] W. N. 57

The C. A. dismissed the appeal from an order of Farwell J. [1906] W. N. 57, upon the ground that the proposed interrogatories did not touch upon the only question on which the def't. Stevens, having regard to the admissions in his defence, could be interrogated, viz., the circumstances attending the registration of the shares in his name. **CODD v. DELAP**

C. A. [1906] W. N. 78

14. — Interrogatory—Production of documents — Contents — Joint possession — Partnership — Practice—Rules of the Supreme Court, 1883, Order XXXI., r. 2.

D.D.

DISCOVERY—continued.

Procedure summons which raised the question of admissibility of an interrogatory. The action was one by a lady against the def'ts. as trustees of a certain mortgage, asking for a declaration that the deed in question might be cancelled so far as it affected the plt's. property and interest.

A joint affidavit of documents was made by two of the def'ts., stating that they had in their possession the documents relating to the matters in question in the action set forth in the first schedule thereto, and one of the two def'ts. stated that he had in his possession or power, jointly with his six partners in a firm of chartered accountants, the documents set forth in the second schedule thereto, but he objected to produce the same on the ground that they were not in his sole legal possession or power.

The plt. proposed the following interrogatory for the examination of the def'ts.: "What are the contents of the documents specified in the second sched. of the affidavit of documents? . . . Exhibit copies of the said documents in answer to this interrogatory."

The Master struck out this interrogatory on the ground that the information sought was rather a subject-matter for discovery of documents than for interrogatories. The Judge in Chambers adjourned the summons into Court.

The question was whether, under the present practice of the Court, such an interrogatory was admissible.

Eve J. said that there was very little authority on the point since the Judicature Act, except what was said in *Kearsley v. Philips*, (1882) 10 Q. B. D. 36, 37; [affirmed on appeal, (1883) 10 Q. B. D. 465, C. A.]. Not much assistance was derived from the older cases of *Hadley v. M'Dougall*, (1872) L. R. 7 Ch. 312, *Taylor v. Rundell*, (1840) 11 Sim. 391, *Stuart v. Lord Bute*, (1841) 11 Sim. 142; but in the case of *Swanston v. Lishman*, (1881) 45 L. T. 360, which decided that discovery of the documents there asked for must be made, there were some interlocutory observations of the late Master of the Rolls which assisted the plt. He thought that in the present case the interrogatory ought to be allowed, and he made an order accordingly. **RATTENBERRY v. MONRO**

Eve J. [1910] W. N. 245

— Lunacy—Receiver—Documents.

See LUNACY. 22.

— Names of probable witnesses—Order for disclosure.

See DIVORCE—Practice. 26.

— New trial refused—Practice—No application for discovery.

See JAMAICA. 1.

15. — Particulars — Directors' liability — Statements in prospectus—"Reasonable ground to believe" truth of statements—Practice—Directors' Liability Act, 1890 (53 & 54 Vict. c. 64), s. 3.—R. S. C., Order XXI., r. 6.

In an action against directors of a co. claiming compensation under the Directors' Liability Act, 1890, in respect of untrue statements contained in the prospectus of the co., the def'ts. by

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DISCOVERY—continued.

their defence said that they bona fide believed the statements to be true, and that they had reasonable grounds for their belief :—

Held, that the defts. must deliver particulars of the grounds of their belief.

Decision of Day J. reversed. *ALMAN v. OPPERT* - C. A. [1901] W. N. 135 ; [1901] 2 K. B. 576

— Partnership—Action by firm—Order for discovery—Refusal of one plaintiff to obey.

See ATTACHMENT.

— Privilege.

See Nos. 9—11, above.

16. — *Privilege — Communications between solicitor and client — “Evasion” of statute — Practice—Production of documents.*

An information against executors claimed duties under a Colonial statute, alleging that the defts. testator had some time before his death executed voluntary conveyances of Colonial property “with intent to evade the payment of duty” under the statute. One of the defts., a member of the firm of solicitors whom the testator had instructed to prepare the conveyances, was ordered to produce the notes and records of these instructions, but objected to do so on the ground that they were privileged communications between solicitor and client for the purpose of obtaining advice :—

Held, first, that the privilege was not lost by death of the testator; and secondly, that the word “evade” was ambiguous and capable of two meanings, one a perfectly innocent one, and that, without expressing any opinion as to the meaning in which it was used in the statute, there was no proof or even allegation of any fraud or illegality to displace the privilege.

The decision of the C. A., [1900] 2 Q. B. 163, reversed. *BULLIVANT v. ATT.-GEN. FOR VICTORIA* H. L. (E.) [1901] W. N. 96 ; [1901] A. C. 196

17. — *Production of documents—Practice—Action for breach of warranty of seaworthiness—Underwriters—Subrogation—Report made to underwriters—Nominal plaintiffs.*

Cargo owners sued shipowners for alleged breach of a warranty of seaworthiness contained in a bill of lading, by which the cargo was lost. The plts. were insured to the extent of three-fourths of the loss, and, after the commencement of the action, the underwriters paid to the plts. the amount so insured, and the action was thenceforward conducted by their solicitors. The underwriters had, during the loading of the ship, procured an inspection of her condition by a surveyor, who had made a report to them thereon, which was in the possession of their solicitors. The defts. claimed discovery of this document, and applied for a stay of the action until it should be produced :—

Held, that they were not entitled to such discovery.

Willis & Co. v. Baddeley, [1892] 2 Q. B. 324, distinguished. *JAMES NELSON & SONS, LD. v. NELSON LINE (LIVERPOOL), LD.*

C. A. [1906] 2 K. B. 217

DISCOVERY—continued.

18. — *Production of documents between member of trade union and union authorities with a view to assistance in legal proceedings—Practice—Privilege between solicitor and client.*

A member of a trade union who had been dismissed by his employers furnished the union authorities, as required by the rules, with information in writing to enable the authorities to decide whether he was entitled to bring an action for wrongful dismissal at the expense of the union and with the assistance of their solicitor. The information comprised the evidence available in support of the action and the names of the witnesses. The union authorities sanctioned an action brought by the member, with their solicitor acting as solicitor for the plt. Upon a summons for discovery taken out by the defts. :—

Held, that the letters containing the information did not fall within the established rule as to the privilege between solicitor and client and must be produced.

Anderson v. Bank of British Columbia, (1876) 2 Ch. D. 644, approved. *JONES v. GREAT CENTRAL RY. CO.* - H. L. (E.) [1910] A. C. 4

19. — *Ship's papers—Fire insurance—R. S. C., Order XXXI., r. 12.*

The practice with regard to discovery of ship's papers is peculiar to cases of marine insurance, and cannot be extended so as to allow the making of analogous orders for discovery in other cases of insurance. *TANNENBAUM & Co. v. HEATH*

C. A. [1908] 1 K. B. 1032

20. — *Ship's papers—Practice—Marine insurance—Action by underwriters—Recovery of money overpaid—Rights of plaintiffs to full discovery.*

The plts., who were underwriters of a policy of marine insurance entered into by them with the defts., paid a sum of money in respect of a claim arising out of the policy. They subsequently brought this action to recover back a part of the money upon the ground that, owing to a fraudulent misrepresentation of the defts. as to the amount expended upon the repairs of the ship insured, the plts. had paid to the defts. a sum in excess of the amount actually expended upon the repairs. On an application by the plts. for discovery :—

Held, that the plts. were entitled to full discovery by the defts., including the obligation to produce, or to give on oath reasons explaining their inability to produce, documents which were not in their custody, or which were in their custody as agents for other persons, and to give such information as to documents not produced as they could obtain by reasonable exertions on their part. *BOULTON v. HOULDER BROTHERS & Co.*

C. A. [1904] 1 K. B. 784

— Trade-mark — Double registration — Non-essential particulars — Disclaimer — Time.

See TRADE-MARK. 18.

DISCRETION— Bankruptcy.

See under BANKRUPTCY.

DISCRETION—*continued.*

- Compensation to officer on abolition of office — Practice of Treasury — Discretion of council.
See LOCAL GOVERNMENT. 7.
- Convict's property, Sale of — Administrator — Bona fides.
See FELONY. 1.
- Costs.
See under COSTS.
- County court — Costs.
See under COUNTY COURT — Costs.
- County court judge — Workmen's compensation.
See under MASTER AND SERVANT — Compensation.
- Director — Prosecution — Payment of costs out of assets — Refusal of public prosecutor to prosecute — Discretion.
See COMPANY — Directors. 15.
- Discovery of documents — Further affidavit of documents — Relevancy of documents — Practice.
See DISCOVERY. 2, 3.
- Divorce — Practice.
See under DIVORCE.
- Evidence — Faculty — Superstitious reverence.
See ECCLESIASTICAL LAW — Faculty. 18.
- Frivolous and vexatious applications — Interlocutory proceedings — Costs — Form of order.
See PRACTICE — Frivolous, &c., Applications.
- Improvements — Scheme approved by trustees — Discretion of Court.
See SETTLED LAND — Capital Moneys.
- Injunction, Discretion to refuse — Right of way — Landowner uninjured.
See TRESPASS. 3.
- Justices — By-law — Reasonableness.
See LOCAL GOVERNMENT. 4.
- Lunacy practice.
See under LUNACY.
- Maintenance — Discretionary trust for — Remoteness.
See WILL — Remoteness. 3.
- Notaries.
See under NOTARIES.
- Ordinary, Discretion of — Grant of faculty for erection of second communion table.
See ECCLESIASTICAL LAW — Faculty. 8—10.
- Perpetuating testimony — Examination, Order for — Discretion of Court.
See LEGITIMACY. 2.
- Public examination — Questions by creditors and contributories.
See COMPANY — WINDING-UP — Examination. 1.
- Service.
See under PRACTICE — Service.

DISCRETION—*continued.*

- Solicitor — Annual certificate — Duty of registrar.
See SOLICITOR — Certificate.
- Solicitor — Striking off rolls — Punishment — Discretion of Court.
See SOLICITOR — Striking off Rolls.
- Trade mark — Registration — Discretion of registrar — Costs.
See TRADE MARK. 19.
- Trustees.
See under TRUSTEE — Discretion.
- Workmen's compensation — Discretion of county court judge.
See under MASTER AND SERVANT — Compensation.

DISEASE.

- Workmen's compensation.
See under MASTER AND SERVANT.

DISEASE OF ANIMALS.

See also under ANIMALS.

Diseases of Animals Act, 1903 (3 Edw. 7, c. 43), amends the Diseases of Animals Act, 1894, in relation to sheep-scab.

Diseases of Animals Act, 1909 (9 Edw. 7 c. 26), is an Act to provide for the payment of fees to veterinary surgeons and practitioners for notification of diseases of animals.

Diseases of Animals Act, 1910 (10 Edw. 7 § 1 Geo. 5, c. 20), is an Act to amend the Diseases of Animals Acts, 1894 to 1900, in respect of the exportation and shipment of horses.

- Death caused by accident — Intervening cause — Disease directly caused by accident.
See INSURANCE (ACCIDENT). 4.

1. — *Inspector appointed by local authority — Detention of sheep by inspector on suspicion of sheep-scab — Negligence of inspector — Liability of local authority — Diseases of Animals Act, 1894 (57 & 58 Vict. c. 57), ss. 2, 35 — Sheep-Scab Order, 1898 — Local Government.*

Local authorities are not liable for the negligence of an inspector appointed by them under the Diseases of Animals Act, 1894, where the alleged negligence is in respect of his having, whilst acting under the provisions of the Sheep-Scab Order, 1898, seized and detained in a market sheep suspected of sheep-scab. *STANBURY v. EXETER CORPORATION.*

Div. Ct. [1905] 2 K. B. 838

- Stranded vessel — Expenses of burial — Diseases of Animals Act.
See SHIPPING — Burial.

DISSENTAIL — Convict — Administrator — Estate tail — Power to dissentail — Forfeiture.
See FELONY. 2.

DISSENTAILED, LANDS — Succession — Will — Residue of estate to heir entitled to succeed to entail — Intestacy.
See SCOTTISH LAW.

DISENTAILING ASSURANCE—*Estate tail—Disentailing assurance—Execution by tenant in tail—Death of tenant in tail—Subsequent execution by protector signifying his consent—Involment—Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74), ss. 15, 40, 42.*

A tenant in tail executed a disentailing assurance and died. The protector of the settlement subsequently signified his consent by executing the assurance, and the same was then duly inrolled within six months from the execution thereof by the tenant in tail.

Held, that the consent of the protector was effectively given notwithstanding the previous execution of the assurance by, and the death of, the tenant in tail, and that the inrolment after the tenant in tail's death was good.

In re Piers, (1863) 14 Ir. Ch. rep. 452, adopted.

WHITMORE-SEARLE v. WHITMORE-SEARLE

Kekewich J. [1907] W. N. 126; [1907] 2 Ch. 332

— Estate tail — Protector — Three persons appointed by settlor — Death of two.

See SETTLEMENT.

— Of money not yet ascertained—Real estate limited in strict settlement.

See FINES AND RECOVERIES. 2.

— Protector of settlement—Consent where himself the disentailing tenant in tail.

See ESTATE TAIL. 1.

2.—*Protector of settlement—Legal estate in trustees—Trustees for accumulation—Void trust—Beneficial owner—Heir-at-law Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74)—Accumulations Act, 1800 (The Tlusson Act) (39 & 40 Geo. 3, c. 98), s. 1.*

A testator who died on April 3, 1854, devised real estate to trustees during the lives of three persons and the survivor of them upon trust to pay certain annuities and accumulate the surplus rents and profits and hold them upon the trusts therein mentioned during the lives aforesaid. And from and after the termination of the estate limited to the trustees, the testator devised the same to his grandson, John Hughes, in tail. On July 14, 1875, John Hughes executed a disentailing deed in which the only survivor of the trustees joined as protector of the settlement.

By an order of the Court dated Mar. 26, 1879, it was declared that the trust for accumulation contained in the testator's will was void as from April 3, 1875, the expiration of twenty-one years from his death, and from that date the surplus rents belonged to his heir-at-law, the father of John Hughes:—

Held, that at the date of the disentailing deed there was no protector of the settlement. The trustee was not protector, for he had no beneficial interest. The beneficial interest created by the will had come to an end, and the heir-at-law, who was entitled to the beneficial interest, did not take under the settlement made by the will, and was also prevented from being protector by s. 27 of the Fines and Recoveries Act, which forbids an heir to be a protector. The disentailing deed was therefore valid. *In re HUGHES AND LONDON AND NORTH-WESTERN RAILWAY ACT Swinfen Eady J. [1906] W. N.*

172; [1906] 2 Ch. 642

DISENTAILING ASSURANCE—*continued.*

— Succession—Will—Residue of estate to heir entitled to succeed under a deed of entail—Lands disentailed.

See SCOTTISH LAW.

DISENTAILING DEED—By way of mortgage—

Infant—Maintenance—Tenant in tail in remainder—Order sanctioning mortgage of real estate—Jurisdiction of Court.

See INFANT—Maintenance. 3.

— Estates “in defeasance of” estate tail.

See FINES AND RECOVERIES.

— Mortgages of settled estates—Covenants for title.

See SETTLEMENT.

— Subject to ulterior estates and powers annexed thereto—Portions—Mortgages—Priorities—Whether power released.

See SETTLEMENT.

— Succession duty—Tenant for life—Remainder in tail—Alienation—Succession derived from alienor.

See REVENUE—Succession Duty. 5.

— Tenant for life—Power to appoint portions—Mortgage of settled estates—Priority—Implied release of power.

See SETTLEMENT.

— Tenant in tail in possession—Right to accumulations.

See ACCUMULATIONS. 2.

DISMISSAL—Action for wrongful dismissal—Duty of the trial judge—New trial ordered.

See NEW ZEALAND.

— Assistant master—Endowed schools—Scheme—Wrongful dismissal.

See SCHOOLS.

— Assistant master—Power to dismiss “at pleasure”—Action against governors.

See SCHOOLS.

— Employer and workman.

See under MASTER AND SERVANT—Dismissal.

— Right of bankrupt to sue for wrongful dismissal.

See BANKRUPTCY—Undischarged Bankrupt.

— Schoolmistress — Powers of manager — Education.

See SCHOOLS.

— Servant—Company—Voluntary liquidation—Agreement of service—Resolution to wind-up.

See COMPANY Servants. 1.

— Wrongful—Writ for service out of the jurisdiction—Breach of contract.

See PRACTICE—Service.

DISOBEDIENCE — Pauper — Disobedience to lawful order—“Misbehaviour.”

See POOR LAW.

DISOBEDIENCE—*continued.*

- Ship—Seaman—Desertion which is also wilful disobedience.
See SHIPPING—Seaman.

DISPUTES—Friendly Society.
See FRIENDLY SOCIETY. 6.

- Master and servant.
See under MASTER AND SERVANT—Disputes.
- Trade union.
See under TRADE UNION.

DISPUTES (TRADE) ACT, 1906.
*See TRADE UNION.***DISQUALIFICATION**—Board of guardians—Member—Collection of rents—Retention of commission—Vacancy.
See LOCAL GOVERNMENT. 14.

- Councillor—Bankruptcy—Quo warranto.
See CORPORATION. 9.
- Councillor—Paid office under the council—Distress committee.
See LOCAL GOVERNMENT. 23.
- Directors.
See under COMPANY—Directors.
- Disqualification—Removed before proxy is used—Shareholder only to be proxy—Nomination of unqualified proxy.
See INDIA. 2.
- Election—Town councillor—Contract with council—Release by committee.
See CORPORATION. 12.
- Franchise—"Medical assistance."
See PARLIAMENT.
- Guardian of the poor—"Composition or arrangement with creditors."
See POOR LAW.
- Justices—Bias, Likelihood of—Certiorari—Confirming authority, Order of.
See LICENSING ACTS. 5.
- Notice of disqualification—Election—Right of opponent to claim seat.
See CORPORATION. 12.
- Personal interest or bias—Licence—Renewal.
See LICENSING ACTS. 5.
- Voting—Purchaser of forfeited shares disqualified from voting whilst calls remain due from original holder.
See COMPANY—Meetings. 7.

DISSOLUTION—Company—Voluntary winding-up—Stay of proceedings.
See COMPANY—WINDING-UP—Practice. 22.

- Corporation.
See under CORPORATION.
- Industrial and provident societies.
See INDUSTRIAL AND PROVIDENT SOCIETIES. 2.
- Life assurance company—Amalgamation—Repayment of deposit.
See INSURANCE (LIFE). 5.

DISSOLUTION—*continued.*

- Marriage.
See under DIVORCE.
- Partnership.
See under PARTNERSHIP—Dissolution.

DISTRESS.

Law of Distress Amendment Act, 1908 (8 Edw. 7, c. 53), amends the law as regards a landlord's right of distress for rent.

- Appeal—"Criminal cause or matter"—Bailliff—Costs and charges—Practice.
See APPEAL. 6.
- Bankruptcy.
See under BANKRUPTCY—Distress.
- Charges—"Keeping possession" of goods seized—"Man in possession."
See RATES.
- Committal—Non-payment of rates—Release—Jurisdiction—Punitive order.
See BANKRUPTCY—Committal. 1.
- Crown—Prerogative—Chattels belonging to Crown—Distress for rent—Privilege—Landlord and tenant.
See CROWN. 5.

1. — *Exemption—Wearing apparel, bedding, and tools and implements of trade to value of five pounds—Law of Distress Amendment Act, 1888 (51 & 52 Vict. c. 21), s. 4—County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 147.*

The protection from distress conferred by s. 4 of the Law of Distress Amendment Act, 1888, and s. 147 of the County Courts Act, 1888, is limited to wearing apparel, bedding, tools and implements of trade to the value of 5*l.* in all. *BOYD, LD. v. BILHAM - Channell J. [1908] W. N. 206; [1909] 1 K. B. 14*

2. — *Exemption from distress—Things delivered to a person to be managed in the way of his trade—Sample article sent to selling agent for exhibition purposes only.*

Action for wrongful distress.

Plts., who were a co. carrying on business as manufacturers of motor cars, employed a co. called the Simms Welbeck Co. as their agents in the London district for the sale of their motor cars. The Simms Welbeck Co. acted in a similar capacity as agents for certain other motor car manufacturers, and carried on the business of these several agencies in premises rented by them in Dover Street, Piccadilly. In the course of their business the plts. delivered to the Simms Welbeck Co. at their premises in Dover Street a motor chassis (that is to say, the framework and engines of a motor without the body) for exhibition purposes only and as a model of the type of car that the plts. manufactured.

While the chassis was still on the Simms Welbeck Co.'s premises the landlord of the premises distrained it for rent due. The plts. claimed that it was privileged from distress as having been delivered to persons exercising a public trade as motor car factors to be managed in the way of their trade. It was contended on their behalf that the privilege covered a chattels which, though not intended itself to be sold, was intended to conduce to the sale of similar chattels belonging to the depositor.

DISTRESS—continued.

Hamilton J. *held* that the chassis, being delivered for exhibition purposes only, was not privileged from distress. Judgment for the defts. **SIMMS MANUFACTURING CO. v. WHITE-HEAD** **Hamilton J. [1909] W. N. 95**

— Expenses of—Poor rate—Reasonable charges of taking, keeping and selling distress. *See No. 17, below.*

3. — Fixtures — Advertisement hoardings — Right to distrain—Landlord and tenant.

By an agreement in writing the defts. agreed to let and the plts. to take the exclusive right of putting up advertisement hoardings and posting bills thereon upon specified land of the defts. for seven years the plts. 'paying the defts. a fixed annual sum, payable quarterly; rates and taxes to be paid by "the tenants." The plts. erected hoardings, which were affixed in a very substantial manner to the land, and exhibited advertisements upon them. The plts. fell into arrear in their payments under the agreement, and the defts. levied a distress upon the hoardings and ultimately carried them away and sold them. The plts. brought an action to recover damages for wrongful distress, and the defts. counterclaimed for the amount of the arrears due under the agreement :—

Held that, even assuming the agreement created the relation of landlord and tenant between the parties, the advertisement hoardings, although removable by the plts. at the end of the tenancy, were fixtures and not mere chattels, and were therefore not distrainable, and the plts. were entitled to recover damages for the wrongful distress.

Darby v. Harris, (1841) 1 Q. B. 895, approved and followed.

Held, further, that, the plt. co. having gone into liquidation, it would be inequitable to set off the damages recovered by the plts. on the claim against the arrears recovered by the defts. on the counter-claim and to give judgment for the balance, and that separate judgments ought to be given on the claim and counter-claim respectively.

Semble, that the agreement did not constitute a demise creating a tenancy, but amounted only to a licence to enter on the land and do certain specified things upon it. **PROVINCIAL BILL POSTING CO. v. LOW MOOR IRON CO.** - **C. A. [1909] 2 K. B. 344**

4. — Goods of underlessee — Distress for rent due from head lessee — Exemptions — Proprietary club—Public trade—Pictures sent for exhibition and sale—"Managed" in the way of trade—Privilege from distress.

The plt. was the proprietor of the United Arts Club; he was tenant from year to year of the club premises as underlessee; he undertook all the liabilities of the club and received all the profits. One of the objects of the club was to hold exhibitions of pictures sent in by members of the club, mostly for sale on commission, the plt. receiving a commission of 10 per cent. as his profit. The club was managed by a committee, of which the plt. was a member, and the exhibitions were managed by a picture committee.

DISTRESS—continued.

Only members or associates of the club could send pictures, and the exhibitions were not open to the public on payment, but to persons introduced by members or invited. The defts., as superior landlords, had put in a distress for rent due from the lessee, and had seized certain pictures then on the club premises, the property of members, which had been sent in for exhibition and sale. In an action by the plt. to restrain the defts. from proceeding with the distress :—

Held, by Neville J., [1907] W. N. 199, that the pictures were liable to distress unless the plt. could bring his case within the exceptions laid down in *Simpson v. Hartopp*, (1744) Willes, 512; 1 Sm. L. C. p. 437 (11th ed.), as "things delivered to a person exercising a public trade to be managed in the way of his trade or employ." In the present case the plt. was not carrying on the trade of a commission agent with all who chose to deal with him; his trade was essentially a private trade, and for this reason the pictures were not within the exemption.

Held, on appeal, that it was not necessary on the facts to consider the meaning of the words "public trade," but that the word "managed" must be taken to include, if not to be equivalent to, "disposed of"; that the pictures were not delivered to the plt., but to the picture committee, and even if they were delivered to the plt., they were not delivered to him "to be managed in the way of his trade," which was that of a club proprietor, and not that of a picture dealer; that the plt. could not be said to "manage" the pictures, which, according to the rules of the club, were under the management of the committee. On these grounds, therefore, the plt.'s action failed, and the appeal must be dismissed.

The words used by Willes C.J. in *Simpson v. Hartopp* must be taken to define and limit precisely the things privileged from distress, and the Court cannot go beyond the terms in which that privilege is defined. **CHALLONER v. ROBINSON** **C. A. [1907] W. N. 217; [1908] 1 Ch. 49**

5. — Implements of trade—Exempted goods —Law of Distress Amendment Act, 1888 (51 & 52 Vict. c. 21), s. 4—County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 147.

A commercial traveller, who was employed to sell typewriting machines on commission, was entrusted by his employers with one of their machines as a sample. While in his possession the machine was distrained by his landlord for rent due by him :—

Held, that it was not an implement of his trade and was not protected as such from distress by virtue of s. 4 of the Law of Distress Amendment Act, 1888, and s. 147 of the County Courts Act, 1888. **ADDISON v. SHEPHERD**

Div. Ct. [1908] W. N. 102; [1908] 2 K. B. 118

6. — Landlord and tenant — Covenant by tenant to pay rates and assessments—Local authority —Paying expenses—Notice to tenant to pay rent to local authority—Payment by tenant

DISTRESS—*continued.*

to local authority—*Right of landlord to distrain*—*Metropolis Land Management Act, 1862* (25 & 26 Vict. c. 102), s. 96.

Action brought by a tenant to recover damages for an illegal wrongful distress. The plt. was tenant and occupier of a shop under a lease for a term of twenty-one years at a rent of 40l. a year, payable quarterly. The lease contained a covenant by the lessee to pay the rent without deduction (except landlord's property tax), and also to pay all rates, taxes, and assessments whatsoever, and all charges imposed by any local authority upon the frontagers in respect of the taking over the roads and footpaths abutting upon the said premises or the making or repair thereof. On Dec. 18, 1902, the plt. received a notice in writing from the Wandsworth Borough Council not to pay his rent without first deducting 34l. 19s. 2d., due to the council under an apportionment of the estimated costs of paving the road and footpaths. On Jan. 20, 1903, the plt. paid the borough council 10l., being one quarter's rent due on Dec. 25, 1902, and informed the landlord that he had done so. On Jan. 22, 1903, the landlord demanded payment of the rent due on Dec. 25, 1902, which was not paid, and on Feb. 12, 1903, he put in a distress for the rent upon the plt.'s premises. The plt. alleged that the distress was illegal, and brought the action for damages against the landlord and his bailiff.

The Court held that the defts. were entitled to judgment. The Court said that the question was whether at the moment when the distress was levied any rent was due for which the landlord could distrain. It was said the rent was not due, because by s. 96 power was given to the local authority to give notice to the tenant not to pay his rent without deducting from it the costs or expenses which the owner of the property was liable to pay, and to pay these costs and expenses to the local authority to the extent of the rent due, and it was said that the tenant, when he had made that payment, had discharged the rent, so that a distress could not be levied for it. The question was whether the tenant, having regard to the terms of his lease, had a right to deduct or set off this payment when he was called on to pay the rent. On the terms of the lease it was clear that, if it was a payment of the charges of the local authority, the tenant had not that right. It remained to consider the effect of s. 96. The proviso at the end of the section shewed clearly that the section did not affect the tenant's covenant to pay the charges imposed by the local authority. And as to the earlier part of the section, the Court came to the conclusion that the true construction of it was that the tenant did not make the payment to the local authority as rent. The payment was to be a payment of the costs and expenses, though it was to be measured by the amount of rent due. The local authority could not have given the tenant a receipt for the rent; they could only give a receipt for the costs and expenses which they were entitled to demand, and which were paid to them in that way. There was nothing in s. 96 which took away the landlord's right of distress. The result was that the rent remained

DISTRESS—*continued.*

due, and the distress was lawful, and the defts. were entitled to judgment. *SKINNER v. HUNT*

C. A. [1904] W. N. 117;
[1904] 2 K. B. 452

7. — *Landlord and tenant—Distress—Implementation of trade—Cab over the value of 5l.—Privilège—Law of Distress Amendment Act, 1888* (51 & 52 Vict. c. 21), s. 4—*County Courts Act, 1888* (51 & 52 Vict. c. 43), s. 147.

A distress having been levied on a stable, which was in the occupation of a cab-driver, for rent in arrear, the only article on the premises proved to be a cab of the value of more than 5l., which was accordingly seized:—

Held, that the cab was privileged from seizure under s. 147 of the County Courts Act, 1888, as an implement of the man's trade, and that the fact that it was above the value of 5l. did not exclude the operation of the exemption. *LAVELL v. RICHINGS*

Div. Ct. [1906] W. N. 47;
[1906] 1 K. B. 480

Note.

See Boyd v. Bilham, Channell J., [1908] W. N. 206.

8. — *Landlord and tenant—Distress—Protected goods—"Goods comprised in hire purchase agreement"—"Possession, order or disposition"—Reputed ownership—Law of Distress Amendment Act, 1908* (8 Edw. 7, c. 53), s. 4.

Sections 1 and 2 of the Law of Distress Amendment Act, 1908, protect under certain conditions from distress the goods of under-tenants, lodgers, and other persons not being tenants and not having any beneficial interest in any tenancy of the premises.

By s. 4 the Act is not to apply to goods . . . comprised in any bill of sale, hire purchase agreement, or settlement made by the tenant, nor to goods in the possession, order, or disposition of such tenant by the consent and permission of the true owner under such circumstances that such tenant is the reputed owner thereof.

The debt, a broker distraining for rent due to a landlord from his tenant, seized a pianoforte let by the plt. to the wife of the tenant on a hire purchase agreement in consideration of monthly payments and on the terms that, in case of default in the punctual payment of the monthly sums, the plt. might retake possession of the piano. At the date of the seizure the monthly payments were in arrear. The plt. performed the conditions specified in ss. 1 and 2 of the Act. The debt. detained the piano.

On appeal from a county court in an action for illegal distress:—

Held, that the words "hire purchase agreement" in s. 4 mean hire purchase agreement to which the tenant is a party, and therefore that the piano was not "comprised in any hire purchase agreement" within the meaning of that section; that on the facts there was no evidence that the piano was in the possession, order, or disposition of the tenant by the consent and permission of the plt. under such circumstances that the tenant was the reputed owner thereof; and consequently that the piano was not within

DISTRESS—continued.

the exception made by s. 4 to the protection conferred by ss. 1 and 2, and that the debt. was liable. *SHENSTONE & Co. v. FREEMAN*

Div. Ct. [1910] 2 K. B. 84

Note.

This case was followed by *C. A., Rogers, Eungblut & Co. v. Martin*, [1910] W. N. 223. See No. 10, below.

9. — Landlord and tenant — Distress — Uncertificated bailiff — Seizure of goods of third party — Conversion — Law of Distress Amendment Act, 1888 (51 & 52 Vict. c. 21), s. 7.

If a person, not holding a certificate issued under s. 7 of the Law of Distress Amendment Act, 1888, levy a distress for rent, and, in so doing, seizes goods upon the demised premises which are not the property of the tenant but of a third party, the owner of the goods is entitled to recover damages in respect of the seizure of his goods from the landlord who has authorized the distress. *PERRING & Co. v. EMERSON*

Div. Ct. [1905] W. N. 154 ; [1906] 1 K. B. 1

10. — Landlord and tenant — Distress for rent — Exemption — Goods left to wife of tenant — Hire purchase agreement — Declaration — Law of Distress Amendment Act, 1908 (8 Edw. 7, c. 53), ss. 1, 4.

The plts., who were a firm of pianoforte manufacturers, brought an action in the county court against the debt., a certificated bailiff, for the recovery of a piano alleged to have been illegally seized by the debt. under a distress for rent, or its value. The piano in question had been let under a hire purchase agreement by the plts. to the wife of the tenant of the demised premises, one of the terms of the agreement being that until all the instalments of the purchase-money had been paid the piano was to remain the property of the plts. The rent having fallen into arrear, the landlord put in a distress, and the debt. under that distress seized the piano upon the demised premises, where the tenant's wife was living with her husband. The plts. thereupon served upon the debt. a declaration in writing in pursuance of the Law of Distress Amendment Act, 1908, s. 1, stating that the piano was the property of the plts.' firm. This declaration, which was not a statutory declaration under the Statutory Declarations Act, 1835 (5 & 6 Will. 4, c. 62), was signed by one of the members of the plts.' firm, which consisted of three members, on behalf of the firm and with the express authority of his partners. The debt. having refused to give up the piano, the action was thereupon brought.

It was contended for the debt. at the trial that the declaration was bad, on the grounds (1.) that it was not a statutory declaration under the Statutory Declarations Act, 1835, and (2.) that the declaration should have been signed by all the members of the plts.' firm. The county court judge overruled these contentions and gave judgment for the plts. for the recovery of the piano, or its value.

The debt. appealed to the Div. Ct., who affirmed the decision of the county court judge.

The debt. further contended, in addition to

DISTRESS—continued.

the above-mentioned contentions, (3.) that the county court judge was wrong in holding that the piano was exempted from liability to be seized under the distress by the Law of Distress Amendment Act, 1908, on the ground that it was excepted from the exemption given by that Act by s. 4, sub-s. 1, of the Act, inasmuch as the words "made by such tenant" in that sub-section applied only to the word "settlement" which immediately precedes them, and not to the previous words "bill of sale" and "hire-purchase agreement," and (4.) that, under the circumstances, the piano must be taken to have been "in the possession, order, or disposition of such tenant by the consent and permission of the true owner under such circumstances that such tenant" was "the reputed owner thereof," and therefore it was within s. 4, sub-s. 1, of the Act.

The C. A. were of opinion that all the contentions on behalf of the debt. were untenable, and that the judgment of the county court judge was right. *Shenstone & Co. v. Freeman*, [1910] 2 K. B. 84, followed. *ROGERS, EUNGBLUT & Co. v. MARTIN*

C. A. [1910] W. N. 223

See No. 8, above.

11. — Landlord and tenant — Trade fixture — Hiring agreement — Gas engine.

A gas engine was let out by plts. on hire under an agreement in writing which provided for monthly payments, and that the engine should remain the property of the plts. until the hirer had exercised the option of purchase given by the agreement, and should be removable by the plts. on the failure of the hirer to pay any instalment. The engine was affixed to the floor of premises, of which the hirer was the debt.'s tenant, by bolts and screws, and was used by the hirer for the purposes of his trade. The engine was seized by the debt. under a distress for rent due from the hirer and sold.

Held, that the engine had become a fixture, and was therefore not distrainable.

Mobson v. Gorringe, [1897] 1 Ch. 182, and *Reynolds v. Ashby*, [1903] 1 K. B. 87, followed.

Hellawell v. Eastwood, (1851) 6 Ex. 295, not followed. *ROSSLEY BROS., LD. v. LEE*

Div. Ct. [1908] 1 K. B. 86

12. — Landlord and tenant — Trespass ab initio — Second distress for same rent.

A bailiff, employed to levy a distress for rent in arrear, illegally broke in the front door; he then seized the furniture, but before selling it left the house, and, being refused admittance on his return, made no attempt to regain possession. Subsequently the landlord put in a fresh distress in respect of the same rent by a different bailiff acting under a fresh distress warrant who seized the furniture, which was replevied before sale by the owner:—

Held, that the proceeding under the first distress warrant was a trespass ab initio and void as a distress, and that the landlord, having had no opportunity of satisfying his claim for rent by means of that proceeding, could lawfully distrain under the second warrant for the same rent.

DISTRESS—continued.

Decision of the Div. Ct., reported [1905] 2 K. B. 650, affirmed. *GRUNNELL v. WELCH*
C. A. [1906] W. N. 153;
[1906] 2 K. B. 555

13. — *Lessee and underlessee—Original lease—Reversionary lease—Interesse termini—Under-lease exceeding original term—Lessee's right to distrain—Landlord and Tenant Act, 1730* (4 Geo. 2, c. 28), s. 5—*Conveyancing and Law of Property Act, 1881* (44 & 45 Vict. c. 41), s. 44.

As a reversionary lease merely creates an interesse termini until entry thereunder, it does not enlarge the term of the original lease.

Smith v. Day, (1837) 2 M. & W. 684; 46 R. R. 747; *Doe v. Walker*, (1826) 5 B. & C. 111; 29 R. R. 184; *Hyde v. Warden*, (1877) 3 Ex. D. 72; and *Joyner v. Weeks*, [1891] 2 Q. B. 31, followed.

If a lessee with an original lease and a reversionary lease or an agreement therefor underlets the premises for a term exceeding the original lease, he cannot distrain for rent during the original lease either at common law for want of a reversion, or under the Landlord and Tenant Act, 1730, s. 5, or the Conveyancing Act, 1881, s. 44.

Parmenter v. Webber, (1818) 8 Taunt. 593; 20 R. R. 575; *Preece v. Corrie*, (1828) 5 Bing. 24; 30 R. R. 536; and *Beardman v. Wilson*, (1868) L. R. 4 C. P. 57, followed and applied. *LEWIS v. BAKER* - *Swinfen Eady J.*

[1904] W. N. 190; [1905] 1 Ch. 46

14. — *Lodger—Landlord and tenant—Distraint on goods of lodger—Illegal distress—Liability of bailiff to action—Lodgers' Goods Protection Act, 1871* (34 & 35 Vict. c. 79), s. 2.

An action will lie, under s. 2 of the Lodgers' Goods Protection Act, 1871, against a bailiff for an illegal distress.

Judgment of the K. B. Div., [1905] W. N. 111; [1905] 2 K. B. 501, affirmed by the C. A. (Fletcher Moulton L.J. and Farwell L.J., Collins M.R. dissenting). *LOWE v. DORLING & SON* - C. A. [1906] W. N. 177;
[1906] 2 K. B. 772

— *Lodger—Protection of property of, distrained for rent due by immediate tenant.*

See Law of Distress Amendment Act, 1908 (8 Edw. 7, c. 55).

15. — *Lodger's goods—Declaration by lodger—Inventory of goods—"Subscribing" the inventory—Landlord and tenant—Distress for rent—Lodgers' Goods Protection Act, 1871* (34 & 35 Vict. c. 79), s. 1.

The superior landlord of a house having levied a distress upon the goods of a lodger for rent due from the immediate tenant, the lodger served the superior landlord with a correct declaration under the Lodgers' Goods Protection Act, 1871. The declaration stated that the goods, "a list of which is hereunto annexed," were the property of the lodger, and also that "the list of articles hereto annexed is a correct inventory" of the goods referred to in the declaration; and upon a subsequent part of the same piece of paper there was an inventory.

DISTRESS—continued.

The declaration was signed by the lodger at the foot thereof, but the inventory was not otherwise signed by him:—

Held, that the inventory was "subscribed" by the lodger within the meaning of s. 1 of the Lodgers' Goods Protection Act, 1871, which provides that "to such declaration shall be annexed a correct inventory, subscribed by the lodger." *GODLONTON v. FULHAM AND HAMPSTEAD PROPERTY CO.* - Div. Ct.
[1905] 1 K. B. 431

— *Magistrate—Improper conviction—Limitation of action.*

See PUBLIC AUTHORITIES' PROTECTION.

— "No sufficient distress," Evidence of—Small tenements.

See LANDLORD AND TENANT. 74.

16. — *Patented chattel—Seizure and sale under distress for rent—Right of purchaser to use the same—Injunction—Distress Act, 1689* (2 Will. & M. sess. 1, c. 5), s. 2.

The right which the owner of a patented chattel has under his letters patent of making and using the patented chattel and licensing others to use the same is a right of an incorporeal nature. It is a chose in action, at any rate not in possession, distinct from the right of property in the chattel itself, and incapable of seizure under a distress for rent.

Where, therefore, a patented chattel on the premises of a licensee was seized by the landlord of the licensee under a distress for rent, and sold under 2 Will. & M. sess. 1, c. 5, to a purchaser who bought it with notice of the conditions on which the licensee had it, an injunction was granted at the instance of the patentee restraining the purchaser from using the chattel. *BRITISH MUTOSCOPE AND BIOGRAPH CO. v. HOMER* - *Farwell J.* [1901] W. N. 24;
[1901] 1 Ch. 671

— *Paving expenses—Payment by occupier—Right of reduction from rent.*

See LONDON—Streets.

— *Poor-rate—Expenses of distress.*

See also under RATES.

17. — *Poor rate—Expenses of distress—Reasonable charges of taking, keeping and selling distress—Poor rate—Distress (Costs) Act, 1817.* (57 Geo. 3, c. 93), s. 1, *Schedule—Distress (Costs) Act, 1827* (7 & 8 Geo. 4, c. 17)—*Distress for Rates Act, 1849* (12 & 13 Vict. c. 14), s. 1.

The provisions of the Distress (Costs) Act, 1817, as applied by the Distress (Costs) Act, 1827, to distresses for poor rate, are not repealed by the Distress for Rates Act, 1849, s. 1. Therefore, in the case of a distress for poor rate in respect of an amount not exceeding 20*l.*, it is illegal to make any charge for the expenses of the distress in excess of the scale given in the Schedule to the Distress (Costs) Act, 1817.

The decision of the C. A. [1905] 1 K. B. 219, affirmed.

Hill v. Pannifer, [1904] 1 K. B. 811, overruled. *COSTER v. HEADLAND* - H. L. (E).
[1906] W. N. 76; [1906] A. C. 286

DISTRESS—*continued*.

— Poor-rate—Jurisdiction—Reasonable charges for taking, keeping, and selling—Action to recover excess.

See COUNTY COURT—Jurisdiction. 2.

18.—*Poor-rate—Reasonable costs of selling distress—Distress (Costs) Act, 1817, (57 Geo. 3, c. 93), s. 1. Schedule—Distress (Costs) Act, 1827 (7 & 8 Geo. 4, c. 17)—Distress for Rates Act, 1849 (12 & 13 Vict. c. 14), s. 1.*

The schedule to 57 Geo. 3, c. 93, as applied by 7 & 8 Geo. 4, c. 17, to distress for poor-rate, in so far as it prescribes a maximum limit in respect of the costs of sale of the distress, is impliedly repealed by 12 & 13 Vict. c. 14, s. 1, which gives the justices power to order that the levy shall include "the reasonable charges of taking, keeping, and selling of the said distress."

HILL v. PANNIFER Div. Ct. [1904] 1 K. B. 811

Note.

This case was overruled by H. L. (E.). *Coster v. Headland*, [1906] A. C. 286.

— Rate, Form of — Statement of period for which estimated—Retrospective rate—Distress warrant.

See POOR LAW.

— Rates, Recovery of—Illegal distress—Liability. See also under RATES.

— Receiver, Use or occupation by — Loss of remedy by distress—Head-lease—Rent—Breach of covenant—Damages.

See MORTGAGE—Receiver.

— Rent, Distress for—Lessee adjudicated bankrupt the same day—Judicial act.

See BANKRUPTCY—Distress. 1.

— Rent Distress for—Rent due on Sunday—Legality of distress levied on following Monday.

See LANDLORD AND TENANT. 30.

19.—*Sale by auction of goods distrained—Purchase by landlord—Landlord and tenant—2 Will. & M. sess. 1, c. 5, s. 2—Practice—Appeal from county court—Leave to appeal to High Court—Right to appeal on leave to Court of Appeal—Supreme Court of Judicature (Procedure) Act, 1894 (57 & 58 Vict. c. 16), s. 1, sub-s. 5.*

A sale in pursuance of 2 Will. & M. sess. 1, c. 5, s. 2, of goods distrained must be a sale to a third party, and if the landlord purchase the goods himself no property passes.

Judgment of the Div. Ct., [1903] 2 K. B. 168, and dictum of Blackburn J. in *King v. England*, (1864) 4 B. & S. 782, affirmed.

In an action in the county court, where the leave of the judge to appeal to the High Court is required, the giving of leave creates a right of appeal within s. 1, sub-s. 5, of the Supreme Court of Judicature (Procedure) Act, 1894, and a further appeal lies to the C. A. by leave of the Div. Ct. hearing the appeal or of the C. A. MOORE, NETTLEFOLD & Co. v. SINGER MANUFACTURING Co. C. A. [1904] W. N. 76 ; [1904] 1 K. B. 820

— Statutory corporation—Borrowing powers—Appointment of receiver.

See MORTGAGE—Validity.

DISTRESS COMMITTEE—Councillor—Disqualification—Urban district council—Paid office under the council.

See LOCAL GOVERNMENT. 23.

DISTRIBUTION — Assets — Distribution of — Attorney—Administration.

See EXECUTOR—Administration. 1.

— Children dying before period of—Vesting—"Legal representatives."

See WILL—Vesting. 1.

— Contingent future liabilities—Return of assets—Rights of future creditor.

See ADMINISTRATION. 4.

— "Eldest son"—Portions—Period of distribution postponed—Younger son afterwards becoming eldest son—Accelerating period of distribution—Mortgage.

See SETTLEMENT.

— Period of — Advancements — Hotchpot — Interest.

See WILL—Advancements. 4.

— Period of distribution—Will—Institution of heirs in specified proportions—Tenant for life.

See CAPE OF GOOD HOPE. 15.

— Scheme for—Unexpended funds—Unregistered friendly society—Insolvency of society — Jurisdiction to wind up — Benefit society.

See FRIENDLY SOCIETY. 2.

— Trade union — Branch—secession—Distribution of funds—Ultra vires.

See TRADE UNION. 3.

DISTRIBUTION, STATUTE OF — Advances — Stipulation as to hotchpot—Deceased sister's children taking by representation.

See ADMINISTRATION.

— Executors—Express trust of residue—Partial failure of beneficial interest—Next of kin.

See WILL—Advances. 3.

— Illegitimate children — Gift to children nominatim—Gift to next of kin.

See WILL—Illegitimacy. 8.

1. — *Intestacy — Administration — Death of universal legatee and sole executrix before testator — Advancements to children — Hotchpot — Statute of Distributions, 1671 (22 & 23 Car. 2, c. 10) s. 5.*

The provisions of s. 5 of the Statute of Distributions, directing advancements made by the intestate in his lifetime by portions to his children to be brought into account, apply to an intestacy occasioned by a testamentary instrument becoming wholly inoperative by the death of the universal legatee and executrix in the lifetime of the testator, as well as to a case of actual intestacy occasioned by the non-existence of any testamentary instrument.

Decision of Buckley J., [1901] W. N. 218 ; [1902] 1 Ch. 218, affirmed.

Harte v. Meredith, [1884] 13 L. R. Ir. 341, followed. *In re FORD. FORD v. FORD*

C. A. [1902] W. N. 162 ; [1902] 2 Ch. 605

Note.

See *In re Cuffe*, Joyce J., [1908] 2 Ch. 500

501.

DISTRIBUTION, STATUTE OF—*continued.*

— Next of kin, According to the—Time for ascertaining class.
See WILL—Class. 12.

— Next of kin—Class—Joint tenancy or tenancy in common.
See WILL—Class. 10.

— Partial intestacy—Next of kin—Hotchpot—Advancements made to children by testator.
See WILL—Advances. 3.

DISTRICT COUNCILS — Contracts — Water supply to adjoining district—Sanction of Local Government Board.
See LOCAL GOVERNMENT. 13.

DISTRICT NOTARIES ACT.

See under NOTARIES.

DISTRICT REGISTRY—Appeal from order made in chambers in.
See APPEAL. 7.

DISTURBANCE—Ferry from vill to vill—Change of circumstances—New traffic.
See FERRY. 1.

— Market rights—Intention—Injunction.
See MARKETS. 1.

— Statutory market—Injunction—Jurisdiction.
See MARKETS. 2, 5.

DISUSED BURIAL GROUNDS.

See under BURIAL.

DITCH—Alongside of highway—Whether part of highway—Extent of dedication.
See HIGHWAY. 4.

DIVERSION—Highway.

See under HIGHWAY.

DIVESTING—"Born in my lifetime"—Children ventre sa mère—Will—Construction.
See WILL—Estate Tail. 1.

— Class—Gift over on death coupled with a contingency—"Die leaving issue"—Period of defeasibility.
See WILL—Class. 5.

DIVESTING CLAUSE—"Born in my lifetime"

—Child en ventre sa mère.

See WILL—Words. 2.

DIVIDED PARISHES AND POOR LAW.

See under POOR LAW.

DIVIDEND—Company.

See under COMPANY—Dividends.

— Gas company—Income tax, Payment of dividend free of.
See REVENUE—Income Tax. 19.

— Limitations, Statute of—Dividends unclaimed—Reduction of capital by return of money to shareholders.
See COMPANY—Limitations. 1.

— Lunacy — Receiver — Accrued dividends—Form of order—Transfer into Court—Bank of England—Indemnity.
See LUNACY. 24.

DIVIDEND—*continued.*

— Ownership of dividends—Mortgage of house and dividends in one mortgage—Foreclosure—Disclaimer by mortgagee of all interest in house—Liability for repair of house.
See WILL—Leaseholds. 2.

— Receiving order—Scheme of arrangement.
See BANKRUPTCY—Receiving Order. 7.

— Settled land.

See under SETTLED LAND—Dividends.

— Surplus assets—Preference shares—Revenue representing dividends never declared.
See COMPANY—WINDING-UP—Assets. 5.

— Waterworks company.

See under WATER.

DIVISIONAL COURTS—Practice.

See under PRACTICE—Divisional Courts.

DIVORCE.

Supreme Court. Matrimonial Causes Rules. Additional rule and order, dated Aug. 20, 1904, for the Probate, Divorce, and Admiralty Division of His Majesty's High Court of Justice in Divorce and Matrimonial Causes, to take effect on and after Oct. 24, 1904. Reprint from W. N. 1904 (Sept. 17), p. 263. See CURRENT INDEX, 1904, p. cxvi.

Matrimonial Causes Act, 1907 (7 Edw. 7, c. 12), amends the Matrimonial Causes Act, 1857 and 1866, by extending the powers of the Court in relation to maintenance and alimony and leave to interfere.

Alimony, col. 917.

Bigamy, col. 917.

Channel Islands, col. 918.

Colonies, col. 918.

Condonation, col. 918.

Confession, col. 918.

Co-respondent, col. 918.

Costs, col. 920.

Custody, col. 927.

Damages only, col. 927.

Decree nisi, col. 927.

Delay, col. 927.

Desertion, col. 927.

Domicil, col. 931.

Foreign Jurisdiction, col. 932.

Foreign Marriage, col. 932.

Income Tax, col. 932.

Ireland, col. 932.

Judicial Separation, col. 935.

Jurisdiction, col. 936.

King's Proctor, col. 936.

Maintenance, col. 936.

Nullity (Nullity of Marriage), col. 936.

Practice, col. 940.

Restitution of Conjugal Rights, col. 954.

DIVORCE—continued.*Scotland, col. 955.**Separation, col. 955.**Separation deeds, col. 955.**Separation orders, col. 955.**Settlements, col. 956.**Settlements (Variation of Settlements), col. 956.**Summary Jurisdiction, col. 963.**Title of Honour, col. 963.***Alimony.**

1. — *Alimony pendente lite—Maintenance and education of children—Separation agreement—Jurisdiction of Court—Matrimonial Causes Act, 1857 (20 & 21 Vict. c. 85), s. 35; 1859 (22 & 23 Vict. c. 61), s. 4.*

A wife, having petitioned for the dissolution of her marriage, presented a petition for an allowance by way of alimony pendente lite and for the maintenance and education of the children of the marriage. In answer to this petition the husband alleged that prior to the divorce petition he and his wife had entered into an agreement for separation, by which he had agreed to make her an allowance of 600*l.* a year. The wife denied the existence of the agreement:—

Held, that the agreement (if it existed) would not affect the jurisdiction of the Court under s. 35 of the Matrimonial Causes Act, 1857, and s. 4 of the Matrimonial Causes Act, 1859, to make provision for the maintenance and education of the children, and that the husband must make discovery of his means. *BARRY v. BARRY*

C. A. [1901] W. N. 10; [1901] P. 87

— “Alimony,” What is—Wife’s need of support—Discretion of Court.

See DIVORCE—Practice. 3.

— Income tax, Deduction of—Divorce—Separation deed—Alimony—Annuity.

See REVENUE—Income Tax. 18.

— Judicial separation—Permanent alimony—Order of Probate and Divorce Division—Arrears—Action to recover—Husband and Wife.

See DIVORCE—Judicial Separation. 1.

— Restitution of conjugal rights—Alimony pendente lite—Discretion.

See DIVORCE—Practice. 28.

— Separation deed—Annuity—Deduction of income tax.

See REVENUE—Income Tax. 18.

2. — *Voluntary allowance—Income of Husband and wife—Computation—Practice—Summary Jurisdiction (Married Women) Act, 1895 (58 & 59 Vict. c. 39).*

In estimating the respective incomes of a husband and wife upon a matter arising under the Summary Jurisdiction Act, 1895, a voluntary allowance is to be taken into account. *NOTT v. NOTT*

*Div. Ct. [1901] P. 241***Bigamy.**

— Second marriage performed abroad.
See BIGAMY. 1.

DIVORCE—continued.**Channel Islands.**

1. — *Practice—Civil marriage in the Channel Islands—Foreign law—Evidence.*

Where in the case of a marriage in the Channel Islands, the marriage ceremony has been celebrated elsewhere and otherwise than in a church in accordance with the rites and ceremonies of the Established Church of England and Wales, evidence of the validity of the marriage according to local law is still required. *WESTLAKE v. WESTLAKE (OTHERWISE WILLIAMS)*

*Bargrave Deane J. [1910] P. 167***Colonies.**

— British Columbia, Law of—Divorce jurisdiction of the Supreme Court.

*See CANADA—Divorce. 1.***Condonation.**

1. — *Adultery—Desertion—Revival—Decree of dissolution of marriage.*

Desertion for two years without reasonable excuse revives condoned adultery, whether the petitioner be husband or wife.

Houghton v. Houghton, [1903] P. 150, followed. *COPSEY v. COPSEY AND ERNEY*

Gorell Barnes J. [1905] P. 94

— Damages and costs against co-respondent—Subsequent condonation—King’s Proctor’s intervention—Effect of such condonation.

See DIVORCE—Costs. 2.

— Desertion.

*See under DIVORCE—Desertion.***Confession.**

1. — *Confession of Adultery—Practice—Evidence.*

Although it is the general practice in matrimonial cases not to act and grant relief upon uncorroborated confessions of adultery, there is no absolute rule of practice and no rule of law precluding the Court from acting upon such uncorroborated evidence.

The true test seems to be whether the Court is satisfied from the surrounding circumstances in any particular and exceptional case that the confession is true.

If so satisfied, it is open to the Court to grant relief, notwithstanding the absence of independent corroborative testimony.

Semble, a solicitor who has acted for the respondent is a compellable witness; and his evidence as to statements made by the respondent may be accepted by the Court in coming to a conclusion as to the truth of a confession of adultery made by the respondent. *GETTY v. GETTY* . . . *Bucknill J. [1907] P. 334*

Co-respondent.

— Costs—Jurisdiction—Consolidated suits—Appeal—Final or interlocutory order.
See DIVORCE—Practice. 6.

— Costs—Practice.
See DIVORCE—Costs. 3, 16.

DIVORCE (Co-respondent)—continued.

1. — *Damages against co-respondent—Order for payment into Court—Death of co-respondent—Liability of his executor—Jurisdiction of Divorce Court to enforce order.*

On the hearing of a petition for divorce by a husband against his wife the jury assessed damages against the co-respondent at 1500*l.*, a decree nisi was pronounced, and the co-respondent was ordered "within one month from the service of the order to lodge in Court the said sum of 1,500*l.*" Within a month of the order the co-respondent committed suicide without having paid the money into Court. On an application by the petitioner for an order against the executor of the co-respondent to pay the damages and costs out of the assets of his testator:—

Held, (reversing the decision of the President) that there was no provision in the Divorce Act or Rules enabling the executor of a co-respondent to be brought before the Court, the action was a personal action and the cause of action did not survive, and that there was no remedy against the executor of the Divorce Court, and no order for payment could be enforced against the executor in that Court. **BRYDGES v. BRYDGES AND WOOD** C. A. [1909] W. N. 93; [1909] P. 187

2. — *Death of co-respondent after suit commenced—Practice—Motion to strike out his name—Order.*

When a co-respondent named in a petition dies after the commencement of the proceedings, the right form of application to be made by the petitioner is to strike his name out of the suit. **WALPOLE v. WALPOLE**

G. Barnes J. [1901] P. 86

3. — *Husband's petition—Person named and cited as co-respondent—Scotsman—Foreign domicil, allegiance, or residence of co-respondent—Liability for costs or damages—Discretionary power of Court to dismiss co-respondent from suit—Refusal—Co-respondent's motion dismissed with costs.*

Whatever it is that determines the jurisdiction of this Court with regard to co-respondents, that jurisdiction does not depend upon the domicil of the co-respondent, nor is it to be determined by the question whether the co-respondent is or is not a British subject.

So far as a co-respondent is concerned, the citation corresponds with what would have been, before the Matrimonial Causes Act, 1857, came into operation, the writ in an action for criminal conversation.

Service of the citation and sealed copy of the petition upon a co-respondent, if out of E., places him on the same footing with regard to jurisdiction as a deft. properly served with a writ out of the jurisdiction under Order XI. in the K. B. or Ch. Div.

The claim against a co-respondent in a divorce suit is merely a personal claim for money, and is not complicated with questions of international law arising out of status, as in the case of a petitioner and respondent.

Although a judgment, following on a verdict for damages in a divorce suit in this Court, could

DIVORCE (Co-respondent)—continued.

not be enforced against a foreigner in a foreign country, it might possibly be enforced against a Scotsman or an Irishman, in Scotland or Ireland, by means of the Judgments Extension Act, 1868.

The enactment in s. 42 of the Matrimonial Causes Act, 1857, providing for service of any person at any place is only a municipal law in favour of those who sue in this Court; and the Legislature thereby does not concern itself with the question whether an order against a co-respondent for payment of damages or costs in a proceeding begun by citation served abroad would or would not be enforceable as a foreign judgment in another country. The object of the provision is that this Court may make the order and may enforce it against any property which the person against whom the order is made may have within its own jurisdiction or within its own reach.

As the Act gives power to serve anybody as co-respondent anywhere, it gives jurisdiction to make any order against the co-respondent, and to issue process of execution to enforce the order in this country; and this can be done without in any way affecting any international comity or offending any international susceptibilities. **RAYMENT v. RAYMENT AND STUART. CHAPMAN v. CHAPMAN AND BUIST** Samuel Evans, Pres. [1910] P. 271

Costs.

— Attachment—Non-compliance with order to secure wife's costs—Subsequent compliance—Motion for release.
See ATTACHMENT. 9.

1. — *Bankrupt petitioner—Claim for damages—Security for costs.*

There is no settled practice in the Probate and Divorce Div. that a petitioner, who is an undischarged bankrupt and who claims damages from the co-respondent, must give security for costs unless he withdraws the claim for damages.

Decision of Jeune Pres. [1902] W. N. 70 affirmed. **BLACKETT v. BLACKETT AND FRAIL** C. A. [1902] W. N. 91; [1902] P. 170

2. — *Condonation—Practice—Husband's petition—Decree nisi—Damages and costs against co-respondent—Subsequent condonation—King's Proctor's intervention—Effect of such condonation on order for damages and costs.*

The effect of condonation of a wife's adultery by her husband, after decree nisi and before decree absolute, considered.

If a petition is dismissed by reason of condonation it is dismissed for all purposes, and cannot be kept alive temporarily for the purpose of enabling a petitioner to recover damages which have been awarded against a co-respondent in the suit, but the co-respondent may still be held liable for, and may be ordered to pay, the costs of the suit, which, on the intervention of the King's Proctor and by reason of condonation subsequent to decree nisi, has been dismissed.

The petitioner, in such a case, may be ordered to pay the costs of the King's Proctor's intervention, but he may add the amount of these costs to the costs which he is still held entitled to recover from the co-respondent.

DIVORCE (Costs)—continued.

Long v. Long and Johnson, [1890] 15 P. D. 218, doubted. *HYMAN v. HYMAN AND GOLDMAN*
Jeune Pres. [1904] P. 403

3. — Co-respondent—Costs—Practice.

Where, upon an application to make a co-respondent liable for the costs of a petition, the only proof of scientiter was an admission by him that within a fortnight after he first committed adultery with the respondent he became aware that she was a married woman :—

Held, that the petitioner was entitled to an order for costs against the co-respondent. *BILBY v. BILBY AND HARROP* **Jeune Pres. [1902] P. 8**

— Costs in Divorce Court — Order to pay — Default — Judgment summons — Bankruptcy — Practice.

See **BANKRUPTCY—Receiving Order. 2.**

4. — Date of marriage wrongly stated in petition and decrees—Motion to amend—Order—Practice.

The petitioner and respondent, after having been married in a registrar's office went through the form of marriage in a parish church. In a petition for dissolution of marriage, and in the decrees nisi and absolute pronounced thereon, the second marriage only was referred to.

Upon affidavit of service of notice of motion upon the respondent, the Court ordered that the petition and decrees be amended by inserting therein the date of the first marriage. *HAMPSON v. HAMPSON*
Gorell Barnes Pres. [1908] P. 355

5. — Desertion—Petition—Unfounded charges of cruelty and adultery—Finding of desertion—Immateriality—Refusal of decree of judicial separation—Costs—Set-off.

Upon a wife's petition for dissolution of marriage, the charges of cruelty and adultery were negatived by a jury and held by the Court to be without foundation. The jury, in regard to a supplemental petition alleging desertion for two years and upwards, found that desertion was established as from Feb. 1901, whereas the petitioner's case put the desertion as having commenced when the parties ceased living together in July, 1900. The jury, from their finding on the other issues, appeared to have believed the respondent's and disbelieved the petitioner's case.

Upon the petitioner's application for a decree of judicial separation :—

Held, that, inasmuch as the parties, at the date when desertion was found by the jury to have commenced, had been living apart for some time, the finding of desertion at the later date was bad in law and immaterial for the Court to consider ; that the petitioner was not entitled to a decree ; and that the petition and supplemental petition must be dismissed.

The filing and prosecution of a suit for dissolution of marriage (or *quære*, for judicial separation) precluded the petitioner from successfully pleading that the period of desertion was running during the time while the suit was being maintained.

Upon the question of costs :—

Held, that the petitioner was entitled to the costs of the issue of desertion, but to no costs on

DIVORCE (Costs)—continued.

the other issues, and that the respondent was entitled to set off, pro tanto, against his costs of these other issues, the costs to which the petitioner was held entitled in regard to the issue of desertion. *KAY v. KAY*

Gorell Barnes J. [1904] P. 382

— Divorce—Wife's costs.

See **SCOTTISH LAW.**

— Domiciled Irishman—Absolute appearance.

See **DIVORCE—Domicil. 3.**

— Foreigner domiciled abroad, Alleged adulterer a—Appearance—Dismissal from the suit.

See **DIVORCE—Domicil. 2.**

6. — Implied authority to wife to pledge her husband's credit—Divorce—Judicial separation—Retainer—Duration of costs—Detinue—Matrimonial Causes Act, 1857 (20 & 21 Vict. c. 85), s. 26.

Sect. 26 of the Matrimonial Causes Act. 1857, absolutely puts an end to the right of a wife who has obtained a decree for judicial separation to pledge her husband's credit or to contract on his behalf during the continuance of the judicial separation except where alimony has been decreed and has not been duly paid.

Consequently, so long as the husband duly pays the alimony which he has been ordered to pay, the wife has no power to pledge his credit for necessities which the alimony could not have been reasonably supposed to cover, as where the wife has been put to expense by the misconduct of the husband, and the principle of *Turner v. Rooke*, (1839) 10 Ad. & E. 47 ; 50 R. R. 320, no longer applies.

No held by the C. A. (reversing *Warrington J.*).

The provision in the second part of the section with regard to the wife's contracts, that "the husband shall not be liable in respect of any engagement or contract she may have entered into," is governed by the preceding part of the section, which provides that the wife, "whilst so separated," shall be considered a feme sole for the purposes of contract, and is limited to engagements and contracts entered into by the wife during the period of separation.

Consequently the husband is not relieved by a decree of judicial separation from his liability under a contract which has been properly entered into by the wife on his account under her implied agency by reason of the coverture, and which remains in fieri at the date of the decree.

A wife acting under the implied authority of the husband retained a solicitor to defend her in a divorce suit instituted by her husband, and also to commence an action of detinue against her husband in respect of her clothes. The divorce suit was dismissed against the husband with costs, and a decree of judicial separation was made in favour of the wife. After the decree of judicial separation the wife obtained, first, an order increasing the interim alimony which had been previously allowed her, and, afterwards, an order for permanent alimony, and the action for detinue was tried and decided in the wife's

DIVORCE (Costs)—continued.

favour. In the meantime the husband had instituted a second divorce suit, which was also resisted by the wife and dismissed with costs. On the taxation of the wife's costs of these proceedings under an order of course obtained by her solicitor against the husband, the husband, who had duly paid the alimony as required by s. 25 of the Matrimonial Causes Act, 1857, disputed his liability to pay any costs (beyond the party and party costs, which he had been ordered to pay) after the decree of judicial separation :—

Held, (1) as to the costs of the second divorce suit (reversing Warrington J.), that the husband was not liable; (2) as to the costs of the action of detinue (affirming Warrington J.), that the husband was liable inasmuch as the retainer continued until the conclusion of the action unless expressly withdrawn by the husband; (3) as to the costs of the alimony proceedings (affirming Warrington J.), that the husband was liable inasmuch as they were part of the proceedings in the first divorce suit. *In re WINGFIELD & BLEW (SOLICITORS)*

C. A. [1904] W. N. 167; [1904] 2 Ch. 665

Note.

This case was considered by Gorell Barnes P., *Sheppard v. Sheppard*, [1905] P. 185.

7. — Intervener — Successful Defence — Practice.

Upon a wife's petition for dissolution of marriage, the husband filed an answer denying all the charges made against him in the petition, but, when the case was in the paper for hearing, upon an application being made on behalf of the petitioner for a short adjournment, counsel for the husband stated that he was not in a position to defend the suit so far as the charges of desertion and adultery were concerned.

An application was thereupon made on behalf of a person named in the petition that she might have leave to intervene and defend herself in respect of the particular charge of adultery with which her name was associated, and the Court gave leave accordingly.

Upon the case coming on for hearing, the charge of adultery was disproved, but the wife was granted a judicial separation on the ground of the respondent's desertion.

Upon the question arising as to costs :—

Held, that, under the circumstances, the Court ought to place the intervener in the best possible position to obtain the costs of her successful intervention, and that an order should be made in her favour against both the petitioner and the respondent. *WADE v. WADE (BROOKE INTERVENING)*

Gorell Barnes J. [1903] P. 16

8. — King's Proctor—Unsuccessful intervention—Matrimonial Causes Act, 1878 (41 & 42 Vict. c. 19), s. 2—Petitioner's costs to be paid by the King's Proctor—Practice.

The Court possesses full power, in the exercise of its judicial discretion, to condemn the King's Proctor in the costs incurred by a petitioner in resisting an intervention by the King's Proctor.

The mere fact that an intervention by the

DIVORCE (Costs)—continued.

King's Proctor is reasonable will not debar a successful petitioner from applying for costs.

Each application for costs is to be considered by the light of the particular case before the Court, but the general principle is that a successful petitioner, like any other litigant who succeeds, is entitled to costs unless his or her own conduct has really brought about the intervention. *WESTCOTT v. WESTCOTT*

Gorell Barnes Pres. [1908] P. 250

Note.

Approved and followed by C. A., *Higgins v. King's Proctor, King's Proctor v. Carter*, [1910] P. 151. See next Case.

9. — King's Proctor — Unsuccessful intervention — Practice — Matrimonial Causes Act, 1878 (41 & 42 Vict. c. 19), s. 2.

Sect. 2 of the Matrimonial Causes Act, 1878, confers upon the Court a discretion as to the costs of an intervention, whether by the King's Proctor or a member of the public, and the King's Proctor stands in precisely the same position as to costs as any other intervener, except that the Treasury may recoup him for any costs which he may pay to a successful petitioner under order of the Court.

There is no practice not to order the King's Proctor to pay the costs of an unsuccessful intervention, unless he has acted unreasonably in intervening.

Westcott v. Westcott, [1908] P. 250, approved and followed. *Higgins v. Higgins*, [1910] P. 1, reversed by C. A., and *Carter v. Carter*, [1910] P. 4, affirmed by C. A. **HIGGINS v. KING'S PROCTOR. KING'S PROCTOR v. CARTER**

C. A. [1910] W. N. 50; [1910] P. 151

10. — King's Proctor — Unsuccessful plea — Matrimonial Causes Act, 1878 (41 & 42 Vict. c. 19), s. 2—Discretion—King's Proctor condemned in costs.

In this case the King's Proctor filed his plea to shew cause why the decree nisi, obtained by the petitioner on the ground of the respondent's adultery with the co-respondent, a brother of the petitioner, should not be made absolute, the chief point relied on being the alleged connivance of the petitioner at the adultery of his wife. The Court held that the King's Proctor's plea failed, and dismissed it.

Bigham, P.: I have read the reports of the two cases referred to, namely, *Higgins v. Higgins*, [1910] P. 1, and *Carter v. Carter*, [1910] P. 4 (see preceding case). In the one which I decided, I expressed the view that although there were elements of very strong suspicion which amply justified the King's Proctor's plea, yet the fact that the King's Proctor had failed ought to be sufficient to justify me in fixing him with the costs of the successful petitioner. I was told that view was wrong, and cases were cited to me which were said to shew that I was wrong in that view. But Barge Deane J., who decided the other of those two reported cases, and who has had far more experience of these matters than I have, has held that there is no such practice as I was led to believe. That case which I decided, however, differs from this, because in the present

DIVORCE (Costs)—continued.

instance, the case was not, in my opinion, strong enough to justify the King's Proctor in taking action, and I make the order for costs asked for by the petitioner. Leave to appeal refused. **HOWE v. HOWE AND HOWE.**

Bigham Pres.
[1910] **W. N. 30**

Note.

But see *Higgins v. King's Proctor, King's Proctor v. Carter*, C. A. [1910] P. 151, No. 9, above.

— Nullity—Decree nisi—Motion by petitioner to rescind decree and dismiss petition—Consent.

See **DIVORCE—Nullity. 3.**

11. — Practise—Order for payment of costs of divorce proceedings—Mode of enforcing order—Action in King's Bench Division—Jurisdiction—R. S. C., Order XLII., r. 24—Order LXVIII., r. 1.

An action in the K. B. Div. will not lie to recover a sum payable for costs under an order of the Divorce Court, but such order can only be enforced by the methods prescribed by the Divorce Rules and Regulations. **IVIMEY v. IVIMEY** C. A. [1908] **W. N. 115**; [1908] **2 K. B. 260**

12. — Practice—Wife's costs—Stay of proceedings until payment—Husband's petition—Jury discharged without verdict—Proposed retrial—Jurisdiction—Divorce Court Rule, 158.

At the trial of a petition by a husband for divorce, the jury disagreed, and were discharged without giving a verdict. Before and during the hearing the wife had obtained the usual orders for security for her costs of the trial, and a sum of 45*l.* had been paid into Court. The husband now proposed to have the petition retried, though he had not paid the balance of the wife's taxed costs not covered by the 45*l.* in Court:—

Held, that there was jurisdiction to stay all further proceedings by the husband until the whole of the wife's taxed costs had been paid or secured, and security given for the wife's further costs of the retrial.

Joseph v. Joseph, (1897) 76 L. T. 236, approved. **KEMP-WELCH v. KEMP-WELCH AND CRYMES** C. A. [1910] **W. N. 121**; [1910] **P. 235**

13. — Security—Wife's costs—Previous order for separation—Effect—Practice—Matrimonial Causes Act, 1857 (20 & 21 Vict. c. 85), s. 26—Summary Jurisdiction (Married Women's) Act, 1895 (58 & 59 Vict. c. 39), s. 5, sub-s. (a).

Notwithstanding the words of s. 26 of the Matrimonial Causes Act, 1857, and the construction placed thereon by the decision of the C. A. in the case of *In re Wingfield & Blew*, [1904] 2 Ch. 665, the Divorce Court has power to direct a husband, whose wife has obtained a separation order against him, to find security for such costs of the wife as may be considered necessary to enable her to bring a suit for dissolution of marriage. **SHEPPARD v. SHEPPARD** **Gorell Barnes Pres.** [1905] **P. 185**

14. — Security for costs—Practice—Motion for new trial—Divorce petition—Supreme Court

DIVORCE (Costs)—continued.

of Judicature Act, 1890 (53 & 54 Vict. c. 44), s. 1—R. S. C., Order LVIII., r. 15.

The C. A. will not order security to be given for the costs of a motion for a new trial of a divorce petition, it not having been the practice, to require security to be given in such a case before the Supreme Court of Judicature Act, 1890.

Hecksher v. Crosley, [1891] 1 Q. B. 224, followed. **RICKABY v. RICKABY AND SWIFT** C. A. [1901] **W. N. 45**; [1901] **P. 134**

Note.

See *In re An Arbitration between Harwood and Abrahams*, C. A. [1901] 2 K. B. 304.

15. — Separate estate of wife (Respondent)—Husband's petition—Allowance under separation deed—Order for costs against respondent.

Upon a decree nisi for divorce, granted upon a husband's petition, the Court made an order for costs against the respondent whose separate estate consisted of an allowance payable under a separation deed; but, there being no evidence that the respondent was living in adultery at the time of the making of the order, directed that execution should not be enforced beyond one-half of the amount of the allowance.

CLARK v. CLARK AND SALDJI

Gorell Barnes Pres. [1906] **P. 331**

16. — Wife's costs—Co-respondent.

Upon a husband's petition for dissolution of marriage, no verdict was recorded upon the first trial, the jury being unable to agree upon some of the issues. On the second trial the jury found that the respondent and co-respondent had committed adultery, and that the petitioner had also committed adultery, but that the respondent had condoned it. The Court refused to grant the petitioner a decree and dismissed his petition: but, upon the question raised as to costs:—

Held, that the wife was entitled to be paid by the petitioner her full costs of both trials; but

Held, further, that the petitioner was entitled to costs against the co-respondent in respect of the issue found against the latter, and that the order must cover the costs of that issue on both the trials.

Morgan v. Morgan and Porter [1869] L. R. 1 P. & M. 644, and *Grosvenor v. Grosvenor*, (1885) 34 W. R. 140, commented upon. **WAUDBY v. WAUDBY AND BOWLAND**

Gorell Barnes J. [1902] **P. 85**

— Wife's costs—Divorce.

See **SCOTTISH LAW.**

17. — Wife's petition—Decree nisi—King's Proctor's plea—Adultery of petitioner—Intervention of alleged adulterer—Withdrawal of answers to King's Proctor's plea—Motion to dismiss petition—Petitioner and intervener both condemned in costs of King's Proctor—Practice—Matrimonial Causes Act, 1907 (7 Edw. 7, c. 12), s. 3.

Where a person, charged by the King's Proctor with having committed adultery with the petitioner, intervened and filed an answer to the King's Proctor's plea, such person, as well as the petitioner, was, upon the dismissal of the

DIVORCE (Costs)—continued.

petition, condemned in the costs of the King's Proctor. **DAVISON v. DAVISON (MONTGOMERIE INTERVENING)** **Bargrave Deane J. [1909] P. 308**

Custody.

1. — *Child above the age of sixteen—Adultery of mother—Order against child—Wishes of child—Jurisdiction.*

The Court has power, as between the father and mother, to order that one of the parents shall have the custody of the child during minority, but it cannot make an order against a child of sixteen years of age contrary to the child's wishes, unless the child is a ward of Court.

Thomasset v. Thomasset, [1894] P. 295, distinguished.

Adultery by the wife which justifies a divorce ought not to be regarded for all time and under all circumstances as sufficient to disentitle her to access to, or even to the custody of, her daughter, who is under sixteen. **STARK v. STARK AND HITCHINS C. A. [1910] P. 190**

Damages Only.

— Adultery—Claim for damages only—Principles and practice applicable to such a petition.

See **DIVORCE—Practice. 10.**

Decree Nisi.

1. — *Intervention of King's Proctor—"Material facts" withheld.*

The mere concealment of material facts is not the same as collusion which results in the concealment of material facts.

If, upon investigation of all the facts, the Court should be of opinion that, in the exercise of its discretion, a decree dissolving the marriage would have been pronounced, had all the facts been before it at the hearing of the petition, the mere fact of non-disclosure at that hearing is no ground for rescinding the decree then pronounced.

Alexandre v. Alexandre, (1870) L. R. 2 P. & M. 164, approved.

Butler v. Butler, (1890) 15 P. D. 66, discussed.

Roche v. Roche, [1905] P. 142, questioned and not followed. HUNTER v. HUNTER

Gorell Barnes Pres. [1905] P. 217

Delay.

1. — *"Unreasonable delay"—Respondent's insanity—Decree.*

The hope or expectation operating in the mind of a husband, that he may be released from the matrimonial tie by the death of his wife, who, after committing adultery, has become insane, may be accepted as a valid excuse and explanation of what would otherwise be "unreasonable delay" in taking proceedings for the dissolution of the marriage. **JOHNSON v. JOHNSON - Jeune Pres. [1901] P. 193**

Desertion.

See also under **HUSBAND AND WIFE—Desertion.**

D.D.

DIVORCE (Desertion)—continued.

1. — *Condonation—Adultery—Desertion—Revival—Decree of dissolution of marriage.*

Desertion for two years without reasonable excuse revives condoned adultery.

Where a husband was guilty of incestuous adultery, which was condoned by the wife, and he was afterwards guilty of desertion:—

Held, that the desertion revived the condoned adultery, and that the wife was entitled to a decree dissolving her marriage. **HOUGHTON v. HOUGHTON - Bucknill J. [1903] P. 150**

Note.

This case was followed by **Gorell Barnes J., Copsey v. Copsey, [1905] P. 94.**

2. — *Condonation—Effect—Summary Jurisdiction (Married Women) Act, 1895 (58 & 59 Vict. c. 39).*

The effect of condonation of an offence which is specified as a ground of complaint within the terms of the Summary Jurisdiction (Married Women) Act, 1895, does not depend on the wording of any section of that Act, but on the common law.

Therefore, where a wife complained of desertion within the meaning of that Act, and, during an adjournment of the hearing of the summons, resumed cohabitation with her husband, and subsequently, but before the date appointed for the adjourned hearing, separated from him again and obtained an order for separation and an allowance for maintenance:—

Held, that the order must be discharged, as the condonation by voluntary resumption of cohabitation had blotted out the cause of complaint, and there was nothing for the justices to adjudicate upon at the date of the order. **WILLIAMS v. WILLIAMS Div. Ct. [1904] P. 145**

3. — *Condonation—Revival—Matrimonial Causes Act, 1884 (47 & 48 Vict. c. 68), s. 5.*

Desertion by not complying with a decree for restitution of conjugal rights may, after condonation, be revived by adultery committed by the party who was guilty of the statutory desertion. **PAINE v. PAINE Gorell Barnes J. [1903] P. 263**

4. — *"Desertion"—Summary Jurisdiction (Married Women) Act, 1895 (58 & 59 Vict. c. 39), ss. 4, 5 (a)—Matrimonial Causes Act, 1857 (20 & 21 Vict. c. 85), ss. 27, 31—Misconduct, on part of complainant, short of a matrimonial offence—Ground for cessation of cohabitation—Husband and wife.*

"Desertion" under the Summary Jurisdiction (Married Women) Act, 1895, means, and is to be interpreted and dealt with as meaning, the same as desertion under the Matrimonial Causes Act, 1857, save that no period is specified as requisite to constitute the offence. **FROWD v. FROWD Div. Ct. [1904] P. 177**

5. — *Desertion and adultery of husband—Summary Jurisdiction (Married Women) Act, 1895 (58 & 59 Vict. c. 39), s. 5 (a)—Effect of order made under Act.*

An order made under the Summary Jurisdiction (Married Women) Act, 1895, cannot extend, abridge, or alter the jurisdiction of the Divorce

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DIVORCE (Desertion)—continued.

Division of the High Court of Justice under the Matrimonial Causes Acts; and s. 5 (a) of the Act of 1895 is to be read with the qualification that no order made under that Act can be treated as in any way ousting the jurisdiction of the Divorce Division. **SMITH v. SMITH**

Bargrave Deane J. [1905] P. 249

Note.

Not followed by **Gorell Barnes P., Dodd v. Dodd, [1906] P. 189.**

Approved and followed by **Bucknill J., Failes v. Failes, [1906] P. 326. See No. 8, below.**

Overruled by C. A., **Harriman v. Harriman, [1909] P. 123. See No. 10, below.**

6. — *Desertion by petitioner conducing to adultery of respondent — Discretionary bar — Amended prayer for judicial separation — Petition dismissed.*

In considering to what extent desertion, not a matrimonial offence in the Ecclesiastical Courts, is to be held now to be a bar to relief, the Court will especially have regard to the question whether it has conduced to the misconduct of the other spouse, the principles on which the Ecclesiastical Courts acted having been apparently to refuse relief to a petitioner found guilty of conduct conducing to the misconduct of the respondent.

Where the Court found that desertion by the petitioner had conduced to the adultery of the respondent:—

Held, that the petitioner was not entitled to a decree of judicial separation. **HODGSON v. HODGSON AND TURNER**

Gorell Barnes Pres. [1905] P. 233

— Finding of—Desertion — Costs — Set-off — Refusal of decree of judicial separation. **See DIVORCE—Costs. 5.**

— Husband's action for divorce on ground of wife's desertion "without reasonable cause."

See DIVORCE—Scotland. 1.

7. *Practice—Decree in favour of wife—Wife's expenses not paid — Appeal refused — Delay.*

In this case the House dismissed the appeal, (1902) *Scots Law Times*, 281, on the grounds that the appellant had been guilty of great delay in making his application to be put on the Poor's Roll, and had thereby caused the expenses to be increased; and had also refused to obtain employment; and on these grounds the case was not within the established practice as settled by **Robert Gibson, (1845) 7 D. 581; Gow v. Kennedy or Gow, (1855) 17 D. 477; Milne v. Milne, (1885) 13 R. 304; Watts v. Beaman, (1854) 9 Moo. P. C. 81. PATON v. LEWTHWAITE (OR PATON)**

H. L. (Sc.) [1903] W. N. 44

8. — *Practice—Wife's petition—Desertion—Previous Order of a Court of summary jurisdiction — Effect — No estoppel.*

Where a husband leaves his wife under circumstances which clearly point to an intention to desert her, the fact that she subsequently applies to a Court of summary jurisdiction and obtains a separation order there is not a bar to her right to plead such desertion under the

DIVORCE (Desertion)—continued.

Matrimonial Causes Act, 1857 (20 & 21 Vict. c. 85), and, after two years, upon proof of adultery, to obtain against her husband, who has continued to desert her, a decree of divorce.

Smith v. Smith, [1905] P. 249, approved and followed.

Dodd v. Dodd, [1906] P. 189, distinguished.
FAILES v. FAILES **Bucknill J. [1906] P. 326**

Note.

This case was overruled by C. A., **Harriman v. Harriman, [1909] P. 123. See No. 10, below.**

9. — *"Reasonable excuse"—Refusal of wife to allow marital intercourse—Matrimonial Causes Act, 1857 (20 & 21 Vict. c. 85), s. 27.*

After a husband and wife had been for some years living apart by (as the Court held) mutual consent, the husband committed adultery:—

Held, that this was not evidence of desertion by him.

A wife who without cause refuses to permit marital intercourse to her husband cannot allege "desertion" by him "without reasonable excuse" if in consequence he refuses to live with her.

Decision of **Jeune P., [1900] P. 180, affirmed.**
SYNGE v. SYNGE **C. A. [1901] W. N. 164; [1901] P. 317**

— Separation orders.

See under DIVORCE—Separation Orders.

— What constitutes desertion.

See POOR LAW.

10. — *Wife's petition — Desertion — Effect of separation order under Summary Jurisdiction (Married Women) Act, 1895 (58 & 59 Vict. c. 39), s. 5.*

In July, 1905, the respondent deserted the petitioner and never returned to her or contributed to her support. In Mar., 1906, a stipendiary magistrate, upon the complaint of the petitioner that the respondent had deserted her, made an order under s. 5 of the Summary Jurisdiction (Married Women) Act, 1895, that the respondent should pay a specified weekly sum to the petitioner for her support; the order contained also a provision under s. 5 (a) of the Act that the petitioner should no longer be bound to cohabit with the respondent. In 1907 the respondent committed adultery, and in Dec., 1907, the petitioner presented a petition for dissolution of the marriage on the grounds of adultery and of desertion for two years without reasonable excuse:—

Held, that the effect of the non-cohabitation clause in the magistrate's order was to prevent the continuance of the desertion after the date of the order; that there had therefore not been desertion without reasonable excuse for two years by the respondent so as to satisfy the requirements of s. 27 of the Matrimonial Causes Act, 1857; and that the petitioner was not entitled to a decree for dissolution of the marriage.

Dodd v. Dodd, [1906] P. 189, approved.

Smith v. Smith, [1905] P. 249, and Failes v. Failes, [1906] P. 326, overruled.

Where a married woman applies for an order under s. 5 of the Summary Jurisdiction (Married

DIVORCE (Desertion)—continued.

Women) Act, 1895, upon the ground of desertion only, a non-cohabitation clause is in general an inappropriate remedy and should not be inserted in the order. *HARRIMAN v. HARRIMAN*

C. A. [1909] W. N. 46; [1909] P. 123

Domicil.

1. — *Legitimacy Declaration Act, 1858* (21 & 22 Vict. c. 93)—*Foreign domicil—Divorce in another State—Recognition by law of domicil—Effect—English law.*

The Courts of this country will recognize the binding effect of a decree of divorce obtained in a State where the husband was not domiciled, if the Courts of the country or State of his domicil would recognize the validity of the decree.

G., an American citizen temporarily resident and carrying on business in England, but who never abandoned his domicil of origin in the State of New York, married an Englishwoman in England. She afterwards instituted proceedings under the Guardianship of Infants Act, 1886, which were compromised by a deed of separation. Some years later she instituted, in the State of South Dakota, proceedings for a divorce, to which he put in an answer and cross-claim, the latter being dismissed, and a decree being pronounced on the wife's petition, upon a ground which would not constitute a ground for dissolving the marriage either in the Courts of the husband's domicil or in this country.

Upon evidence which satisfied this Court that the Courts of the husband's domicil would recognize a decree so obtained:—

Held, that the South Dakota decree of divorce must be recognized as a valid dissolution of the marriage, and that the subsequent marriages of the respective spouses were consequently valid. *ARMITAGE v. ATT.-GEN.* (GILLIG CITED). *Gorell Barnes Pres.* [1906] P. 135

2. — *Practice—Domicil—Adultery charged in England—Alleged adulterer a foreigner domiciled abroad—Appearance—Dismissal from the suit—Costs.*

Upon a husband's petition for dissolution of marriage, the alleged adulterer, who was served abroad, entered an absolute appearance, filed an affidavit stating that he was a French subject domiciled in France, and moved the Court to dismiss him from the suit.

The Court *held* that it had no jurisdiction over the applicant and dismissed him from the suit, but refused to give him his costs, inasmuch as he had entered an absolute appearance to the citation. *LEVY v. LEVY AND DE ROMANCE*

Bucknill J. [1908] P. 256

3. — *Practice—Domicil—Alleged adulterer named in petition a domiciled Irishman—Adultery in Ireland—Absolute appearance—Subsequent application to be dismissed from the suit—Jurisdiction—Costs.*

Where, upon a husband's petition for divorce, the alleged adulterer is domiciled abroad, and so is not subject to the jurisdiction of the Divorce Court here, the proper practice is for the petitioner to move for leave to proceed without citing

DIVORCE (Domicil)—continued.

him as a co-respondent. *BAKER v. BAKER AND DWYER* *Bucknill J.* [1908] P. 257

See Boyer v. Boyer, *Bargrave Deane J.*, [1908] P. 300—*DIVORCE—Practice.*

Foreign Jurisdiction.

— Putative marriage — Law of Scotland — Legitimacy of issue.
See MARRIAGE.

Foreign Marriage.

— French marriage contract — Personal obligation on divorced husband to pay, from date of divorce, the annuity settled by the contract.

See under HUSBAND AND WIFE — French Marriage Contract.

1. — *Proof—Expert evidence—Practice.*

Expert evidence is required to prove the validity of a foreign marriage, even though in a suit previously determined in this division, between the same petitioner and respondent, to annul that marriage, it has been proved and admitted that the marriage was valid upon the assumption that a decree of divorce, upon which the capacity of the parties to contract the marriage depended, was a valid decree. *BATER v. BATER* *Bucknill J.* [1907] P. 333

See Bater v. Bater C. A., [1906] P. 209—*International Law.*

Income Tax.

— Deduction of Income Tax—Separation deed—Alimony—Annuity.
See REVENUE—Income Tax. 18.

Ireland.

1. — *Adultery and cruelty.*

Bill to dissolve the marriage of Lida Eleanor Purcell FitzGerald, the petitioner, with Gerald Purcell FitzGerald, who, on coming into an estate in Ireland, adopted that country as his domicil [*see The Times*, Feb. 5, 23, 1906]. Evidence was called.

There was no opposition except to one clause in the Bill.

The House being satisfied that the adultery and cruelty had been proved, passed the order for the second reading of the Bill. *FITZGERALD'S DIVORCE BILL (SECOND READING)*

H. L. (Ir.) [1907] W. N. 60

2. — *Adultery of wife—Standing Order No. 177.*

Bill to dissolve the marriage of C. E. Galwey, a captain in the Royal Irish Regiment, with A. L. Galwey, his wife.

The House held that the adultery had been proved and passed the order for the second reading of the Bill. It appeared that the Court in Ireland had not forwarded a copy of the judgment in the crim. con. proceedings against the seducer, and Standing Order No. 177 of the House of Lords having been read, Lord Loreburn L. C. said it ought to have been forwarded to the House with the other papers in the proceedings in Ireland. *GALWEY DIVORCE BILL (SECOND READING)* - *H. L. (Ir.)*

[1907] W. N. 60

DIVORCE (Ireland)—continued.**3. — Bill to validate English decree—Irish domicil.**

Petition by W. H. Murphy-Grimshaw for the second reading of his Bill to remove doubts as to the validity of a decree nisi, dated Oct. 30, 1893, made in the English Divorce Court, dissolving his marriage in 1880 with Mary E. J. Murphy-Grimshaw, then Woodward. It appeared that in 1880 the petitioner was domiciled in Ireland as tenant for life of an estate in co. Antrim. That in 1883 he and his wife came to live in London, and that in 1892 the petitioner commenced in the English Divorce Court the proceedings for divorce which culminated in the above-mentioned decree nisi. After 1893 the petitioner married again, and the respondent also married. Doubts, however, have lately been raised as to the validity of the English decree on the ground that the petitioner had not ceased to have an Irish domicil.

The House allowed the second reading on the ground that it had been sufficiently shewn that there was a doubt as to the validity of the English decree. **MURPHY-GRIMSHAW'S (VALIDATION) BILL** **H. L. [1907] W. N. 134**

4. — Children, Access to—Irish Divorce Bill—Practice.

The H. L. will approve of a clause in a divorce Bill giving the custody of the children of the marriage to the innocent party, but will refuse to order that a provision shall be inserted in the clause giving the guilty party access to the children. Any such provision must be left for arrangement between the parties. **KILLERY'S DIVORCE BILL (SECOND READING)**

H. L. (Ir.) [1907] A. C. 306

5. — Divorce—Decree nisi under the English Divorce Acts—Doubt as to operation in Ireland—Domicil.

Where there are doubts as to the operation in Ireland of a decree under the English Divorce Acts, for the dissolution of the marriage of a domiciled Irishman, the proper course is to apply for an Act of Parliament confirming the decree and removing doubts. **MALONE'S DIVORCE (VALID ACTION) BILL**

H. L. (D.) [1905] A. C. 314

Note.

See Murphy-Grimshaw's Divorce (Validation) Bill, H. L. [1907] W. N. 134. See No. 3, above.

6. — Divorce Bill—Ireland—Practice—Alleged adulterer a foreigner domiciled abroad—Standing Orders, House of Lords, 177; House of Commons, 190.

Where upon a husband's Bill for divorce it is proved to the satisfaction of the House of Lords that the alleged adulterer is domiciled abroad and cannot be found living within the jurisdiction of His Majesty's Courts of Law, the House will proceed with the second reading, notwithstanding that there was no action of crim. con.

Bill to dissolve the marriage of J. R. Torrens, a domiciled Irishman, with E. M. Torrens, his wife.

On Dec. 2, 1908, the King's Bench Division (**Matrimonial**), Ireland, found that Mrs. Torrens

DIVORCE (Ireland)—continued.

had committed adultery with Baron J. L. de Kakucs, of Susak, Fiume, Hungary, a foreigner domiciled abroad, and pronounced a decree a mensa et thoro. No action was or could be brought against the adulterer in Ireland, he never having since committing the said adultery (so far as could be ascertained) been living within the jurisdiction of any of His Majesty's Courts of Law.

Since the proceedings in Ireland the respondent had resided abroad, and by an order of the House dated Mar. 2, 1909, substituted service of the Bill was made on her London solicitors.

Counsel called evidence to prove that the marriage took place in 1902; that in 1907 and 1908 the respondent, unknown to the husband, went to reside with Baron von Liebner at his villa at Susak, Fiume, Hungary; that the Hungarian servants knew her as "the Baroness." They also produced letters written by the respondent, in one of which she distinctly admitted the allegations against her. As to the absence of any report of a trial at nisi prius of crim. con. against the adulterer, counsel stated that the House for good cause dispensed with this where the adulterer died or was outside the jurisdiction: *Roberts on Divorce Bills*, p. 17, citing *Webster's Divorce Bill*, (1851) 83 Lords' Journals, 403-430; *Boileau's Divorce*, 77 Lords' Journals, 96. And they called the husband's solicitor, who swore that he had made every effort to find whether the Baron von Liebner had been living within the jurisdiction, and found he had not. They also stated that by Standing Order 190 of the House of Commons evidence of an action for damages was dispensed with when sufficient cause was shewn why such action was not brought or such judgment not obtained. The Standing Order 177 of the House of Lords does contain this proviso. See also reported decisions on this question: *Martin's Divorce Bill*, (1847) 1 H. L. C. 79, and *Sinclair's Divorce Bill*, [1897] A. C. 469.

The House held that the adultery was proved, and read the Bill a second time. **TORRENS' DIVORCE BILL (SECOND READING)**

H. L. (Ir.) [1909] W. N. 72

7. — Leave to read evidence taken on commission in the House of Lords.

In this case the House granted the prayers of the petition that depositions taken on commission might be read to the House, and for substituted service of a Bill for dissolution of marriage. **HURLY'S DIVORCE BILL**

H. L. (Ir.) [1908] W. N. 41

FURTHER REPORT OF THIS CASE.

Divorce Bill—Evidence taken abroad used on second reading.

The petitioner was examined, and stated that her husband, short of actual violence, did all he could to injure her health, and succeeded to such an extent that at one time she had three doctors attending her.

The House held that the adultery and cruelty had been proved, and read the Bill a second time. The husband to have reasonable access

DIVORCE (Ireland)—continued.

to the children; no order as to costs; and the respective counsel to settle the question of maintenance themselves.

The House did not decide any question as to respondent's liability for costs; the petitioner's counsel withdrawing the clause as proposed in the Bill. **HURLY'S DIVORCE BILL**

H. L. (Ir.) [1908] W. N. 124, 136

Judicial Separation.

— Affidavit in verification of petition—Refusal by Commissioners in Lunacy to authorize access by solicitor and commissioner for oaths.

See **DIVORCE—Practice. 2.**

— Alimony pendente lite—Maintenance and education of children—Jurisdiction of Court.

See **DIVORCE—Alimony. 1.**

1. — *Alimony, Permanent—Order of Probate and Divorce Division—Arrears—Action to recover—Practice—Husband and wife.*

No action will lie in the King's Bench Division to recover arrears of permanent alimony payable under an order of the Probate and Divorce Division, such an order not being a final and conclusive judgment upon which an action of debt to enforce it may be maintained.

Bailey v. Bailey (1884), 13 Q. B. D. 855, applied. **ROBINS v. ROBINS** - - **Joyce J. [1907] W. N. 90; [1907] 2 K. B. 13**

— Costs—Petition by wife for judicial separation—Bill of costs—Insufficiency of.

See **SOLICITOR—Costs.**

— Covenant to settle after-acquired property—"During the marriage."

See **SETTLEMENT.**

— Deed of separation—Covenant not to revive suit—Subsequent adultery by husband.

See **DIVORCE—Practice. 11.**

— Habitual adultery subsequent to separation—Husband's former misconduct conducive to such adultery.

See **DIVORCE—Practice. 32.**

2. — *Practice—Suit for dissolution of marriage—Decree nisi—Expiration of six months from the date of the decree—Motion by respondent to dismiss petition for non-prosecution—Adjournment—Decree nisi rescinded and decree of judicial separation pronounced at the instance of the petitioner.*

A petitioner is entitled to a reasonable time after the expiration of the time at which the decree could, at the earliest possible date, be made absolute, in order to determine whether to proceed further or to have the petition dismissed.

Upon an adjourned motion by a respondent to dismiss a suit for want of prosecution, the Court allowed the petitioner to take a decree of judicial separation in place of the decree nisi previously obtained for dissolution of the marriage. **PARSONS v. PARSONS**

Bucknill J. [1907] P. 331

— Suit for judicial separation—Decree therein—Waiver of alimentary remedy under Act of 1884.

See **DIVORCE—Practice. 3.**

DIVORCE—continued.**Jurisdiction.**

— Damages against co-respondent—Death of co-respondent—Liability of his executor—Jurisdiction of Divorce Court to enforce order.

See **DIVORCE—Co-respondent. 1.**

— Judgment in rem.—Foreign Court—Domicil—Jurisdiction—Decree of divorce by New York Court—Validity of divorce in England.

See **INTERNATIONAL LAW. 1.**

— Wife's petition—Effect of separation order under Summary Jurisdiction (Married Women) Act, 1895.

See **DIVORCE—Desertion. 2, 5.**

King's Proctor.

— Costs—Intervention of King's Proctor.

See **DIVORCE—Costs. 2, 8—10.**

Maintenance.

— Husband and wife.

See under **HUSBAND AND WIFE—Maintenance.**

1. — *Permanent maintenance—Lump sum—Matrimonial Causes Act, 1857 (20 & 21 Vict. c. 85), s. 32.*

The Court has no power to order a lump sum to be paid over to the petitioner by way of permanent maintenance. **TWENTYMAN v. TWENTYMAN** **Jeune Pres. [1903] P. 82**

Nullity.**(Nullity of Marriage.)**

1. — *Bigamy—Marriage in England between Englishwoman and domiciled Frenchman—Irregularity by French law—Decree of nullity by French Court on grounds unknown to English law—Conflict of laws—Lex loci contractus—Jurisdiction.*

In Sept., 1898, a ceremony of marriage in English form was celebrated in England between a domiciled Englishwoman and P., a domiciled Frenchman. By a decree of the French Court in Nov., 1901, this marriage was annulled, on the ground that the consent of the parent, as required by French law, had not been obtained. P. subsequently married a Frenchwoman in France. In July, 1903, the Englishwoman instituted a suit in England for the dissolution of her marriage with P. on the ground of his adultery and desertion. This suit was dismissed for want of jurisdiction. In Oct., 1904, the Englishwoman went through a ceremony of marriage in England with O., a domiciled Englishman, describing herself as a widow:—

Held (following *Simonin v. Mullac*, (1860) 2 Sw. & Tr. 67, and *Sottomayor v. De Barros*, (1879) 5 P. D. 94), that the *lex loci contractus* must prevail, and that this later marriage was bigamous and must be annulled at the suit of O.

Decision of *Bargrave Deane J.*, [1907] P. 107, affirmed.

Quære whether, in circumstances like the present, the Court ought not to have assumed jurisdiction in the wife's suit for the dissolution

DIVORCE (Nullity)—continued.

of her first marriage by treating her as having a domicile in her own country sufficient to support a suit of this kind. *OGDEN v. OGDEN (OTHERWISE PHILIP)* C. A. [1908] P. 46

2. — *Decree—Petition for an allowance—Registrar's report—Motion thereon—Matrimonial Causes Act, 1907 (7 Edw. 7, c. 12)—“Conduct of the parties”—Discretion of the Court—Petition dismissed with costs.*

After a decree of nullity, as well as after a decree of dissolution of marriage, the “conduct of the parties” is one of the material matters to be taken into consideration in dealing with any application for an allowance; and the discretion of the Court, in ordering or refusing an allowance, must be exercised according to the circumstances of each particular case. *DUNBAR v. DUNBAR*

Gorell Barnes Pres. [1909] P. 90

3. — *Decree nisi—Intervention by King's Proctor—Motion by petitioner to rescind decree and dismiss petition—Costs—Consent—Motion granted.*

Upon the petitioner's application—the King's Proctor, who had intervened and filed his plea, assenting—the Court (Jeune P.) rescinded a decree nisi for nullity of marriage and dismissed the petition.

No order for the King's Proctor's costs was made, he having waived his right to ask for the same. *A. v. A.*

Jeune Pres. [1901] P. 284

4. — *Impotence—Marriage settlements—Petition for variation—“Property settled”—Matrimonial Causes Act, 1859 (22 & 23 Vict. c. 61), s. 5; 1878 (41 & 42 Vict. c. 19), s. 3.*

The jurisdiction of the Court, conferred by the 5th section of the Matrimonial Causes Act, 1859, and extended by the 3rd section of the Matrimonial Causes Act, 1878, to inquire into the existence of ante-nuptial and post-nuptial settlements, and to make orders varying the same, is not limited to any particular class of nullity cases, but includes all cases in which a decree of nullity has been pronounced, upon whatsoever ground.

Where, in a marriage settlement, property is charged in favour of the intended beneficiaries, the “property settled,” within the meaning of s. 5 of the Matrimonial Causes Act, 1859, is the charge and not the property charged.

Where property is settled under a marriage settlement, conditionally on the happening of a future event, and the marriage has been pronounced to be void before the happening of the event, the Court cannot ignore the condition, and vary the settlement in respect of the property so settled.

By a marriage settlement the respondent, the intended husband, covenanted with trustees to pay to them, if the marriage should take place, a yearly sum of 200l., in trust to pay the same to the petitioner, the intended wife, during the joint lives of husband and wife. He also, in virtue of certain powers vested in him, appointed in favour of the petitioner, if she should survive him, a jointure rent-charge, to be charged on certain specified hereditaments, and secured by

DIVORCE (Nullity)—continued.

a term of years to commence from his death. He also, in exercise of powers vested in him, appointed certain other hereditaments to the use of the trustees for a term of years, to raise a capital sum, the interest of which was to be paid to him during his life, and after his decease the fund was to be held in trust for the issue of the marriage, and in default of issue for the intended wife, but subject to the proviso that no part should be raised during his lifetime without his consent in writing. The marriage took place, but, on the petition of the wife, a decree of nullity of marriage was made on the ground of the impotence of the respondent. On an application by the petitioner to vary the settlement:—

Held, that, although the marriage had been declared void, and the covenant as to the payment of 200l. a year no longer took effect, the Court had jurisdiction under the Matrimonial Causes Act, 1859, on the application of the petitioner, to vary the settlement in respect of that settled property:

Held, also, that the Court would have had power to vary the settlement as to the jointure rent-charge, and the capital sum directed to be raised, on the ground that they were “property settled” within the meaning of the Matrimonial Causes Act, 1859, but for the conditions that the former was only to commence after the death of the respondent, and that the latter could not be raised in his lifetime without his consent, neither of which events had happened.

Decision of G. Barnes J., [1900] P. 130, reversed. *DORMER v. WARD*

C. A. [1901] P. 20

5. — *Insanity—Decree nisi—Application on behalf of respondent for an allowance—Matrimonial Causes Act, 1907 (7 Edw. 7, c. 12) s. 1.*

An application on behalf of a respondent for an allowance to be made by the petitioner is not confined or limited to the time when the decree nisi is pronounced, but may be made then or at any time up to and including the date when the decree is made absolute; and such allowance, if ordered, for a monthly or weekly sum, under s. 1, sub-s. 2, of the Matrimonial Causes Act, 1907, may not only be discharged, modified, suspended, or revived under the proviso (a) of that sub-section, but is also liable to be increased under proviso (b) of the same sub-section.

It is open to the Court, by consent, to make an order at the time of the decree nisi, and to embody it therein, dealing with the whole question of settlement and allowance. *K. v. K. (OTHERWISE R.)*

Bargrave Deane J.
[1910] P. 140

6. — *Jewish marriage—Custom—Money lodged in bank, in joint names, in nature of dower—Application under Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), s. 17—Petition to recall so-called dower—Order.*

In contemplation of the marriage of the petitioner and respondent, both of whom were of the Jewish persuasion, a sum of money, provided by the intended wife or her relations, was handed to the intended husband and was lodged in a bank in their joint names, in accordance with an

DIVORCE (Nullity)—continued.

alleged custom in the Jewish community, the money being treated as in the nature of dower.

A decree annulling the marriage having been granted upon the wife's petition, she presented a "petition to restore dower," the application being referred to the registrar under the Married Women's Property Act, 1882, s. 17.

Upon the report of the registrar as to the facts and figures:—

The Court confirmed the report and ordered that a sum of 400*l.* standing in a bank in the joint names of the petitioner and respondent should be handed back to the petitioner for her sole and absolute use. **JOSEPH (OTHERWISE KING) v. JOSEPH**

Bigham Pres. [1909] P. 217

7. — Jurisdiction—Nullity suit—Matrimonial residence.

Matrimonial residence within the jurisdiction is sufficient to give the Court power to declare a bigamous marriage null and void, even though the domicile of the respondent be Irish and the de facto marriage celebrated in the Isle of Man. **ROBERTS (FALSELY CALLED BRENNAN) v. BRENNAN**

Jeune Pres. [1902] P. 143

8. — Non-consummation—Impotence presumed—Nullity of marriage.

From the fact of non-consummation of a marriage after a reasonable period of cohabitation, during which one of the parties was always willing and anxious and repeatedly urged that the marriage should be consummated, the Court may draw the inference that something more than seemingly mere wilful refusal must have animated the other party, who has in fact persistently refused to consummate the marriage, and has also refused to obey the usual order to attend for medical inspection. In such a case, the Court may properly assume the existence of some latent impediment amounting to incapacity.

The principle laid down by the Court (**Jeune P.**) in *E. v. P. (falsely called F.)*, (1896) 75 L. T. 192, in the case of a female respondent, followed and extended to the case of a male respondent. **B. v. B.**

Gorell Barnes J. [1901] P. 39

9. — Non-consummation—No cohabitation—Respondent's refusal to submit to inspection—Evidence of incapacity—Husband's petition.

Where there had been entire absence of cohabitation, incapacity to consummate on the part of the wife was found as a fact, on positive evidence arising from a statement made by herself, taken in conjunction with the general facts of the case and her refusal to submit to medical inspection. **W. v. S. (OTHERWISE W.)**

Gorell Barnes Pres. [1905] P. 231

— Settlement, Variation of—Order—Power of Court to rectify.

See **DIVORCE—Settlements. 8.**

— Settlements, Variation of—Nullity suit—Decree.

See **DIVORCE—Settlements. 7.**

10. — Unsoundness of mind—Delusional insanity—Paranoia—Delusions of suspicion—

DIVORCE (Nullity)—continued.

Decree—Custody of child—Cost of the official solicitor as guardian ad litem of the respondent—Form of order.

Upon a petition for nullity of marriage on the ground of insanity, the question which the Court has to determine is not whether the respondent was aware that he was going through the ceremony of marriage, but whether he was capable of understanding the nature of the contract he was entering into, free from the influence of morbid delusions on the subject.

The Court has to look at the nature of the alleged unsoundness of mind to see whether it is of a character which might come on suddenly, or whether it is a matter of progressive growth and development, and to ascertain whether the respondent's insanity can be traced back to an early period to such an extent as will justify the Court in coming to a conclusion that it existed before as well as after the marriage contract was entered into.

In pronouncing a decree of nullity the Court ordered that the child of the union should be given to the petitioner.

The costs of the official solicitor, as the guardian ad litem of the respondent, a person of unsound mind not so found by inquisition, were ordered to be paid by the petitioner, who was given leave to add the same to her own costs of suit, as against the respondent. **JACKSON v. JACKSON**

Bargrave Deane J. [1908] 308

11. — Variation of settlement—Matrimonial Causes Act, 1907 (7 Edw. 7, c. 12)—Form of order.

By indenture of settlement dated June 8, 1894, and made between the respondent, the petitioner, and trustees, the respondent, in consideration of the marriage then intended between himself and the petitioner, transferred to the trustees certain stocks, shares, and securities upon trust (inter alia) to pay the income arising therefrom to himself for life, then to the petitioner, if she should survive him, for her life, whether covert or discover, without power of anticipation, and if there should be no child of the said intended marriage who should attain a vested interest, then in trust for the respondent absolutely.

The marriage having been annulled at the instance of the wife, she presented a petition to vary the settlement. The income of the wife, as found by the registrar, was 197*l.*, and that of the husband 674*l.* per annum.

The Court ordered that the matter be referred to one of the conveyancing counsel of the Court to prepare a deed to provide for the placing in the hands of trustees (to be appointed) a sum, which the respondent was by this order directed to provide, sufficient to produce 100*l.* per annum; that this income be paid to the respondent; and that he be ordered to pay 100*l.* a year to the petitioner for her life dum sola vixerit. **SHARPE v. SHARPE**

Bargrave Deane J. [1909] P. 20

Practice.

1. — Act on petition—Mode of trial—Jury—Discretion of Court—Matrimonial Causes Act,

DIVORCE (Practice)—continued.

1857 (20 & 21 Vict. c. 85), ss. 28, 36—*Divorce Court Rules, Dec.*, 1865, r. 61.

Notwithstanding rule 61 of the Divorce Court Rules, 1865, the Court has a discretion whether an act on petition shall or not be tried with a jury.

Decision of the President (Sir F. H. Jeune, [1903] W. N. 90) affirmed. **LOWENFELD v. LOWENFELD** - C. A. [1903] W. N. 110 ; [1903] P. 177

2. — *Affidavit in verification of petition—Proposed petitioner for judicial separation an inmate of an asylum—Refusal by Commissioners in Lunacy to authorize access by solicitor and commissioner for oaths—Motion—Order forthwith.*

A married woman, confined in an asylum, gave instructions to her solicitor to institute proceedings against her husband for judicial separation, and the solicitor attended with a commissioner for oaths in order to obtain from the proposed petitioner the necessary affidavit in verification of the petition, which had been approved and signed by her previously.

The superintendent of the asylum, acting upon printed instructions purporting to be signed by the secretary and addressed from the Office of the Commissioners in Lunacy, refused to allow the solicitor and commissioner for oaths to see the proposed petitioner, and, upon application being made by the solicitor to the Commissioners in Lunacy, they upheld the refusal of the superintendent.

The Court, upon motion, and upon affidavit, proving notice, made an order, the Commissioners in Lunacy having notice and not opposing, that the Commissioners should forthwith authorize the superintendent of the asylum to permit the solicitor and commissioner for oaths to have access to the proposed petitioner. *In re PETITION FOR JUDICIAL SEPARATION. Ex parte BEECHAM* **Jeune Pres. [1901] P. 65**

3. — *Alimentary provision for wife—Restitution of conjugal rights—Decree—Non-compliance—Matrimonial Causes Act, 1884 (47 & 48 Vict. c. 68), ss. 2, 4—Rights of wife—Election—Suit for judicial separation—Decree therein—Waiver of alimentary remedy under Act of 1884—"Alimony," What is—Wife's need of support—Discretion of Court as to directing inquiry with regard to or ordering or withholding alimony—All the circumstances to be considered in each case—Refusal of order.*

A wife, who has obtained a decree for restitution of conjugal rights, may, if the husband disobeys that decree, either apply for an alimentary provision and to have the same secured to her under the Matrimonial Causes Act, 1884, or, if she elects to petition for a judicial separation, she may apply for alimony, and, after she has obtained a decree, may ask for permanent alimony to be allotted to her ; but it is not open to her, after she has elected, to proceed for a judicial separation, and, after she has obtained a decree in that suit, to ask for an order and for security under the Act of 1884.

The question what is alimony and the practice which still guides the Court in dealing with

DIVORCE (Practice)—continued.

applications for alimony are the same as were laid down in, and which guided the old Ecclesiastical Courts in considering, applications for alimony.

All the circumstances are to be considered in dealing with each particular case.

If the Court should find that the circumstances are such as shew that the wife does not require any order for alimony for her personal support in her normal position, it may refuse to direct the registrar to proceed with an expensive and harassing inquiry, or to make any order for alimony.

Kelly v. Kelly, (1863) 32 L. J. (P. & M.) 181, not followed. **LESLIE v. LESLIE**
Bargrave Deane J. [1908] P. 99

4. — *Appeal—Summary Jurisdiction (Married Women) Act, 1895 (58 & 59 Vict. c. 39)—Notes of proceedings in Court below and reasons for decision—Duties of magistrates' and justices' clerks—Right of either party to a copy of notes including the reasons for the decision—Costs.*

Upon the hearing of an appeal from an order made under the Summary Jurisdiction (Married Women) Act, 1895, the following observations were made by the Court:—

Gorell Barnes P. More than five years ago, in the case of **Cobb v. Cobb**, [1900] P. 145, the late President and I pointed out the importance and necessity of having full and proper notes taken by the clerks to justices or by the justices themselves, and, further, of having properly and fully stated, at the end of the notes, the reasons upon which the justices arrived at their decision in each case under the Summary Jurisdiction (Married Women) Act, 1895.

The present case is a very remarkable illustration of the fact that this Court, which is constituted the C. A. from decisions under that Act, is placed in extreme difficulty in arriving at a conclusion and in deciding any appeal unless an adequate note of the evidence and an adequate statement of the reasons which led the justices to give their decision is taken in the Court below at the time of the hearing.

Unless this is done it is impossible for this Court to deal adequately or properly with appeals under this Act.

In the present case, for some reason or other, the note taken, and which has now been supplied to us, is extremely defective.

Both sides agree that it is so, and they have endeavoured to remedy or supplement the defects by affidavits—a most unsatisfactory process, to my mind.

Consequently we are unable to arrive at a definite decision, and we have no alternative but to send the case back to the justices.

It is most important that these observations should be brought to the attention of all clerks to justices, as well as to the justices themselves.

The orders which the Act of 1895 empowers Courts of summary jurisdiction to make are of the gravest moment, and involve lifelong consequences. They are not like the ordinary kind of orders in other and petty cases that come before them every day. It is because of the lifelong consequences involved in the orders made under

DIVORCE (Practice)—continued.

this Act that it is so very important that this Court, which is constituted the C. A. in these cases, should have before it the notes, and also the reasons, properly and fully set forth.

In *Cobb v. Cobb* this Court stated explicitly and definitely, for the information and guidance of Courts of summary jurisdiction and their clerks, what should be done upon the hearing of all summonses coming before them under the Act of 1895. From our experience in the present case it would seem that there exists, even now, some misconception on the part of some clerks and justices as to their duties and responsibilities. A full note ought to be taken and a copy ought to be supplied on the application of either of the parties or their solicitors; and the reasons for each decision should also be fully and clearly stated.

Without adequate notes and a statement of the reasons for the decision, this Court cannot be in a position to judge with any reasonable certainty whether the decision is right or wrong, or what order this Court ought to make on the appeal.

In the present case there are some important points of fact which ought to be ascertained and determined before arriving at a decision. I say no more as to this, because the matter must go back to be dealt with again by the justices. The costs involved in this necessary rehearing are very heavy, and are the result of the inadequate materials supplied to us. The wife's costs will depend on whether she has separate estate. The costs will be reserved till we see what ultimately comes of the case after it has been fully and properly dealt with.

Bargrave Deane J. I agree with every word which has fallen from the President. **BARKER v. BARKER - Div. Ct. (P.) [1905] W. N. 70**

5. — Appeal—Summary Jurisdiction (Married Women) Act, 1895 (58 & 59 Vict. c. 39)—Notes of proceedings in Court below—Duties of magistrates' and justices' clerks.

Where upon the hearing of a summons under the Summary Jurisdiction (Married Women) Act, 1895, the clerk of the justices allows a shorthand note to be taken in place of the ordinary longhand note, he must certify the transcript of such note as correct, and cannot discharge his duty with regard to the making of the note unless he so certifies the transcript of the shorthand note which he allowed to be taken.

Unless the parties both agree to the taking of a shorthand note in place of the longhand note usually taken in such cases by the clerk to the justices, such longhand note must be taken, and in any event no extra expense must fall upon the parties in case either of them should require a transcript of the note for the purpose of an appeal.

On the facts proved, the wife was shewn to have been compelled to leave her husband under circumstances which, in law, amounted to desertion by him.

An agreement not to take proceedings "for separation, or divorce, or maintenance," signed by the wife after the separation, held bad. **ROYLE v. ROYLE Div. Ct. [1909] P. 24**

DIVORCE (Practice)—continued.

6. — Consolidated suits—Costs—Co-respondent—Appeal—Final or interlocutory order—Leave to appeal—Jurisdiction—Matrimonial Causes Act, 1857 (20 & 21 Vict. c. 85), s. 34—Supreme Court of Judicature Act, 1890 (53 & 54 Vict. c. 44), s. 5.

A wife having filed a petition for judicial separation, on the ground of her husband's cruelty, the husband afterwards filed a petition for dissolution of the marriage. An order was made for the consolidation of the two suits, and they came on for trial together. The wife's charge against the husband was withdrawn, there being no evidence in support of it; and her petition was dismissed. On the husband's petition a decree nisi was made for a dissolution of the marriage, with costs and damages against the co-respondent, and the decree was afterwards made absolute:—

Held, that the consolidation order had not the effect of making the proceedings on the wife's petition part of the proceedings on the husband's petition, and that consequently there was no jurisdiction under s. 34 of the Matrimonial Causes Act, 1857, to order the co-respondent to the husband's petition to pay the costs of the proceedings on the wife's petition.

The question whether the co-respondent could be ordered to pay the costs of the wife's petition arose upon the taxation of the costs under the final decree, and was referred by the registrar to the Court.

The President decided that there was jurisdiction under s. 34 to order the co-respondent to pay these costs:—

Held, that this order was part of the final decree, and that consequently an appeal against the order could be brought without the leave of the Court.

The City of Manchester, (1880) 5 P. D. 221, and *Marsden v. Lancashire and Yorkshire Ry. Co.*, (1891) 7 Q. B. D. 641, followed.

Decision of *Jeune P.*, [1901] W. N. 1116, reversed. **FORBES-SMITH v. FORBES-SMITH AND CHADWICK**

C. A. [1901] W. N. 129; [1901] P. 258

7. — Consolidated suits for judicial separation and dissolution—Power to hear in camera.

The court possesses inherent jurisdiction to order any case to be heard in camera.

In a suit for judicial separation by a wife, the particulars in which disclosed allegations of filthy practices, but in which no suggestion was made of sodomy or bestiality, the Court, notwithstanding the fact that with the wife's suit had been consolidated a suit by the husband for dissolution of the marriage on the ground of the wife's adultery with the co-respondent, ordered, with the consent of all the parties, that the case should be heard in camera by a judge sitting with a special jury. **D. v. D. D. v. D. AND G. Jeune Pres. [1903] P. 144**

8. — Contempt—Person in contempt—Right of hearing—Married woman—Separate estate—Restraint on anticipation—Power to order payment of costs—"Proceeding instituted"—Married Women's Property Act, 1893 (56 & 57 Vict. c. 63), s. 2.

DIVORCE (Practice)—*continued.*

The general rule that a person who is in contempt cannot be heard to make any application to the Court applies *prima facie* to voluntary applications by him—i.e., where he comes to the Court asking for something.

The rule does not prevent a person who is in contempt from appealing against an order, made after the contempt was committed, on the ground that the order was made without jurisdiction.

Per Cozens-Hardy L.J. Whether for this purpose there is in principle any sound distinction between contempt committed before and contempt committed after the order which the person in contempt seeks to challenge, *quære*.

The decree nisi for the dissolution of a marriage on the ground of the wife's adultery directed that the child of the marriage should remain in the custody of the husband until further order, and should not be removed out of the jurisdiction without the sanction of the Court. At that time the child was with the wife out of England, and on the same day an order was made *ex parte* in chambers that the child should be forthwith delivered up to the husband, and should remain in his custody until further order. After the decree nisi had been made absolute the wife, who had in the meantime married the co-respondent, came to England with the child. She then took out a summons asking that the decree nisi and the *ex parte* order might be varied by entrusting the custody of the child to herself. Pending the hearing of this summons the wife by her counsel gave an undertaking not to remove the child out of the jurisdiction without the consent of the Court. On March 10, 1903, the President ordered that the summons be dismissed and that the wife should pay the husband's costs, those costs to be payable out of her separate property, notwithstanding that it was subject to a restraint on anticipation. It was further ordered that the child should be forthwith delivered up by the wife to the husband, and should remain in his custody until further order.

Immediately after this order was made it was found that the wife had sent the child out of England two or three days previously and had herself followed on the day on which the order was made. She had since remained out of the jurisdiction with the child. On March 12 the President pronounced the wife in contempt for breach of her undertaking, and ordered her to be attached for her contempt, and another order was made the same day for her committal for her contempt in non-compliance with the *ex parte* order that the child be not removed out of the jurisdiction. On May 12 the wife gave notice of appeal from so much of the order of March 10 as directed the payment of costs out of her separate property, notwithstanding that it was subject to a restraint on anticipation. It was alleged that under the circumstances the Court had no jurisdiction under s. 2 of the Married Women's Property Act, 1893, to make the order as to the payment of the costs:—

Held, that, notwithstanding her contempt, the appellant was entitled to be heard.

Held, also, that the summons was not a "proceeding instituted by" the wife, within the

DIVORCE (Practice)—*continued.*

meaning of s. 2 of the Married Women's Property Act, 1893, but was a step in the divorce suit, and that consequently there was no jurisdiction under that section to make an order for payment of costs out of the separate property subject to a restraint on anticipation.

The order was accordingly discharged
GORDON v. GORDON C. A. [1904] W. N. 46;
[1904] P. 163

—Costs—Divorce practice.

See under **DIVORCE—Costs.**

9. — Damages—Verdict for amount larger than that claimed in the petition.

Where in an undefended case damages are assessed at a higher figure than that claimed in the petition, a summons must be taken out by the petitioner (if he desire to amend his claim asking for leave to amend and re-serve the petition).

The summons should be served upon the co-respondent, who, although not represented at the trial, will be entitled to be heard in opposition to the application. **BECKETT v. BECKETT**

Jeune Pres. [1901] P. 85

10. — Damages only, Claim for—Adultery—Principles and practice applicable to such a petition—Matrimonial Causes Act, 1857 (20 & 21 Vict. c. 85), ss. 31, 33, 59.

A petition by a husband claiming damages only presented under s. 33 of the Matrimonial Causes Act, 1857, is subject to the same provisions as other petitions presented under the same Act.

Where, therefore, a husband presents a petition for damages only and has himself been guilty of a matrimonial offence, which, in the exercise of the discretion vested in the Court, would lead the Court to refuse to grant him a decree in a suit if a dissolution of the marriage were claimed by him, he is, on the like ground, debarred from recovering damages from the adulterer. **COX v. COX AND WARDE - Gorell**

Barnes, Pres. [1906] P. 267

11. — Deed of separation—Covenant not to sue for any previous offence—Husband's breaches of other covenants—Subsequent adultery—Revival of cruelty—Wife's suit—Cruelty and adultery—Decree nisi.

Where a deed of separation in an undefended case contained a covenant not to sue for a previous matrimonial offence, and the party whose offence had been thus condoned was shewn to have committed serious breaches of his obligations under the deed, and had in effect repudiated it, the Court held the deed not to be a bar to the right of the other party to have the marriage dissolved on grounds partly founded on the matrimonial offence committed before the date of the deed. **BALCOMBE v. BALCOMBE - Gorell**

Barnes Pres. [1908] P. 176

12. — Discovery of documents—Several defendants—Affidavits of documents made on application of one defendant—Inspection by co-defendant—Form of order—R. S. C., 1883, Order XXXI., rr. 14–18, 26.

In an action against several defendants, where the plaintiff has made an affidavit of documents on the

DIVORCE (Practice)—continued.

application of one deft. who has paid the usual deposit, it is competent to the Court to make an order on the application of another deft. that the plt. do produce for his inspection the documents referred to in the affidavit, and if there is no evasion of the provision of Order xxxi., 1. 26, as to deposit, such an order will be made, but with liberty to the plt. to withhold or seal up documents not relating to the matters in question between the plt. and the last-mentioned deft.

Moore v. Peachey, [1891] 2 Q. B. 707, considered. **PARDY'S MOZAMBIQUE SYNDICATE, LD. v. ALEXANDER**

Kekewich J. [1902] W. N. 229; [1903] 1 Ch. 191

13. — Discretion — Husband's suit—Decree nisi—Intervention—Adultery of petitioner—Discretionary bar—Matrimonial Causes Act, 1857 (20 & 21 Vict. c. 85), s. 31—Decree to stand—Motion dismissed.

Where a wife commits adultery before any misconduct is alleged against her husband, the Court ought to pause before sweeping away a decree nisi obtained by him.

In this case, there being no evidence that the petitioner in any way conducted to his wife's adultery, the decree will stand. **COOMBS v. COOMBS** **Jeune Pres. [1903] W. N. 180**

14. — Discretion—Wife's suit—Decree nisi—Intervention—Adultery of petitioner—Discretionary bar—Matrimonial Causes Act, 1857 (20 & 21 Vict. c. 85), s. 31—Decree rescinded and petition dismissed.

In order that the Court should exercise the discretion conferred by the 31st section of the Matrimonial Causes Act, 1857, in favour of a petitioner guilty of adultery, it is not enough that the petitioner's misconduct was more or less pardonable or capable of excuse, but the Court must find, as a fact, that the petitioner's misconduct was caused directly by the matrimonial offence or offences of the respondent.

Constantinidi v. Constantinidi and Lance, [1903] P. 246, distinguished. **WYKE v. WYKE**

Bucknill J. [1904] P. 149

15. — Discretionary bar—Adultery of the wife—Cruelty of the husband—Matrimonial Causes Act, 1857 (20 & 21 Vict. c. 85) s. 31—Allowance to be secured to guilty wife—Restrictive conditions—*Dum casta et sola viverit*.

The Court, in exercising its discretion in favour of and granting a divorce to a husband who had previously been judicially separated on the ground of his cruelty, ordered that the decree dissolving the marriage should not be made absolute unless and until the husband should secure an allowance of 52*l.* a year, payable weekly, to the divorced wife.

The principles which guide the Court in ordering an allowance in such cases, and the rules which lead the Court to determine on the insertion of a *dum sola et dum casta* clause, considered and discussed. **SQUIRE v. SQUIRE AND O'CALLAGHAN** - **Jeune Pres. [1905] P. 4**

16. — Duty of petitioner to place material facts before the Court—Refusal of decree—Adulterous petitioner — Matrimonial Causes Act, 1857 (20 & 21 Vict. c. 85), s. 31.

DIVORCE (Practice)—continued.

The interests of society and public morality are to be considered by the Court in exercising the discretion conferred by s. 31 of the Matrimonial Causes Act, 1857. **EVANS v. EVANS AND ELFORD** **Gorell Barnes Pres. [1906] P. 125**

17. — Evidence—Commission to examine witnesses—Appointment of shorthand writer as commissioner—Divorce Rules and Regulations, r. 133.

In this case the wife petitioned for a divorce on the ground of cruelty and misconduct, and there was a cross-petition by the husband on the ground of the wife's misconduct. For the last four years of their married life the parties had been living in Sorrento. The husband had no means of his own, and was being assisted in his suit to a limited extent by his relatives.

A commission was granted to examine witnesses on both sides in various places in Italy, and by consent the registrar made an order for the appointment of a professional shorthand writer as commr., but ten days later he rescinded this order.

On appeal to Bucknill J. the learned judge at first affirmed the original order of the registrar, but he subsequently rescinded this order on the ground that he had made the original order under a misapprehension, believing that the application was merely to sanction the presence of a shorthand writer to take a note at the examination.

The C. A. dismissed the appeal, being of opinion that Bucknill J. was perfectly right. They did not think it was a normal practice to appoint a shorthand writer as commr., and, if it was, it was a practice which ought not to be sanctioned. It was important that these commissions should be taken by a person skilled in the law, who might use such power as was vested in him in guiding and directing the examination. **BICKNELL v. BICKNELL** **C. A. [1908] W. N. 97**

18. — Evidence de bene esse—Application for commission—Costs—Petition filed but not served.

An order for a commission to take the evidence of witnesses out of the jurisdiction was made, at the risk and expense of the applicant, immediately after the petition had been filed and before there had been time to effect service. **VALENTINE v. VALENTINE**

Jeune Pres. [1901] P. 283

19. — Foreigner domiciled and resident out of the jurisdiction—Practice—Alleged adulterer not subject to the jurisdiction of the Court—Foreigner—Leave to proceed without service of citation or copy petition—Notice of proceedings.

A person whose name has been introduced into a divorce petition as an alleged adulterer is entitled to have notice of the proceedings so as to afford him an opportunity of clearing himself from the charge, if he should desire to do so.

The Court, in relieving a petitioner from the necessity of citing an alleged adulterer on the ground that he was a foreigner domiciled and resident out of the jurisdiction, required the petitioner to give him notice of the pending proceedings. **BOGER v. BOGER** **Bargrave Deane J. [1908] P. 300**

DIVORCE (Practice)—continued.

20. — *Garnishee proceedings—Choses in action—Debts owing or accruing—Attachment before date when debts are payable—Order for wife's support and costs—Official appointments of respondent—Fees earned—Assignment defeating individual creditor—13 Eliz. c. 5—Payment by garnishee after notice of order nisi—Cheque—Duty to stop payment—Garnishee orders nisi made absolute.*

The principles involved in garnishee proceedings arising out of decrees and orders in matrimonial suits examined and considered.

Garnishee orders nisi in respect of sums due or accruing due to the respondent, a medical man, on contracts in respect of his position as public vaccinator and as registrar of births and deaths made absolute for payment of sums due to the petitioner (his wife) under orders of the Divorce Court for her support and for costs of proceedings in that Court.

A public vaccinator earned fees under a contract which specified that he should perform certain ministerial acts before becoming entitled to payment of his fees :—

Held, that the fees were debts accruing due so as to be attachable as soon as the work was performed, even though the contract specified a future date for actual payment.

The Registration Acts prescribe that the accounts of registrars are to be vouched by the superintendent registrar of births and deaths :—

Held, that the fees earned by a registrar in respect of births and deaths actually registered were debts accruing due so as to be attachable before the accounts had been vouched or time for payment had arrived.

Although at the date of garnishee proceedings an assignment by a judgment debtor may not have been executed or even assented to by the assignee, the assignment may, nevertheless, be valid against the claims of the judgment creditor, provided that the assignee afterwards assents to and executes the deed of assignment, whereupon the validity of the deed relates back to the date of its execution by the assignor.

An assignment of choses in action, since these became subject to attachment by the Common Law Procedure Act, 1854 (17 & 18 Vict. c. 125), ss. 60 et seq., may be void under the statute of Elizabeth (13 Eliz. c. 5), as tending to defeat, hinder, or delay creditors.

If one particular creditor only is, in effect, though not necessarily intentionally, defeated, hindered, or delayed by an assignment executed by the judgment debtor, such assignment may be void under the statute of Elizabeth as tending to defeat, hinder, or delay creditors :

If a garnishee has already made payment to the judgment debtor by cheque before notice of a garnishee order nisi, he is, upon receiving notice, under no legal obligation to stop payment of the cheque. **EDMUNDS v. EDMUNDS**

Gorell Barnes J. [1904] P. 362

21. — *Hearing—Suspicion as to truth of petitioner's evidence—Adjournment—Papers sent to King's Proctor—Right of King's Proctor to intervene or to show cause before decree nisi—Practice.*

DIVORCE (Practice)—continued.

At the hearing of a petition by the wife for dissolution of marriage, her counsel, in opening, and the petitioner, in the witness-box, stated that she had committed adultery, but asked the Court to exercise its discretion in her favour; but the Court, having a very strong suspicion that the petitioner's case was in material respects untrue, adjourned the further hearing, at the same time directing that all necessary papers in the matter should be sent to His Majesty's Proctor, in order that, under the directions of the Att.-Gen., the said Proctor should instruct counsel to argue before the Court all questions in relation to the cause which the Court might deem it expedient to have fully argued, and, for that purpose, to take such steps as might be deemed necessary or expedient.

Upon motion by the King's Proctor for directions :—

Held that, as the Court could not compel the Att.-Gen. to issue his fiat, the case would have to remain in the reserve list until that list should be called over and dealt with in the ordinary course.

Hudson v. Hudson and Poole, (1875) 1 P. D. 65, questioned. JACKSON v. JACKSON

Bargrave Deane J. [1910] P. 230

22. — *Husband's petition—Wife's adultery—Passive acquiescence on husband's part—Conduct conducing to adultery—Refusal of decree.*

Where, in a petition for divorce by the husband on the ground of his wife's adultery, it appeared that he had taken no steps beyond mere verbal remonstrances to terminate a course of conduct on the part of his wife and the co-respondent which, if it did not bring about actual adultery at the time, eventually resulted in it :—

Held, that the petitioner was not entitled to relief, and that the petition should be dismissed. **ROBINSON v. ROBINSON AND DEARDEN**

Bucknill J. [1903] P. 155

23. — *Husband's petition for divorce—New Rule, No. 220, 1905—Interpretation—Practice.*

Summons before the judge in chambers that the petition as drawn by counsel, and as tendered by the solicitors at the Divorce Registry, might be filed, the registrar having refused to accept it on the ground that it did not comply with the new rule, which was published in the *Weekly Notes* of July 8, 1905, and became operative on Oct. 24, 1905.

After the formal heading and date, the wording of the heading and of paragraph 1 of the present petition was as follows :—

"The petition of Ernest Leathley Clark, of 139, Sterling Street, in the City of Bradford, in the county of York, sheweth :—

"That your petitioner, being then and now a domiciled Englishman, was, on the 20th day of December, 1888, lawfully married to Jane Clark (then Jane Jackson, spinster) at the Parish Church, Bolton, in the county of York."

It was pointed out in argument before the judge that by the law of this country the wife's domicile was that of the husband, and that it was entirely superfluous to insert anything as to the wife's domicile, especially in a petition where the

DIVORCE (Practice)—continued.

husband was petitioner and where his domicile was, in terms, stated.

Bargrave Deane J. intimated that he would speak to the President, who framed the rule; and having done so, his Lordship acceded to the summons, and directed that the petition as presented should be received and filed at the Divorce Registry. *In re CLARK*

Bargrave Deane J. [1905] W. N. 180

NOTE.—In consequence of several points raised and a number of petitions stopped under the rule in question, the following notice in explanation of the rule has been issued:—

*Principal Probate Registry,
Somerset House, London, W.C.*

DIVORCE RULE 220, 1905.

By direction of the President the following matters as they stand at the time of the institution of the suit must be inserted in the body of the petition:—

1. The description of the husband.
2. The place of residence of each of the parties to the marriage.
3. The domicile of the parties to the marriage—but, unless the petitioner is asserting a domicile for the wife different from that of the husband, it will be sufficient if the domicile of the husband is stated.

24. — Magistrate's order for separation on the ground of "persistent cruelty"—Wife's petition for divorce—Absence of verbal corroboration of cruelty.

It is the practice of the Court to require corroboration of the petitioner's evidence as to cruelty, and the mere production of a certified copy of a separation order previously made between the husband and wife by a Court of summary jurisdiction on the ground of his persistent cruelty is not, as a general rule, to be considered a sufficient corroboration.

The Court, may, however, in an exceptional case, relax this rule of practice where the evidence of the petitioner accounting for the absence of the witnesses who corroborated her when before the magistrate, and the general circumstances of the particular case, coupled with the production of a certified copy of the conviction, commend themselves to the Court as satisfactory and sufficient. *JUDD v. JUDD*

Bargrave Deane J. [1901] P. 241

25. — New trial—Appeal to House of Lords—Competency—Supreme Court of Judicature Act, 1881 (44 & 45 Vict. c. 68), s. 9.

By s. 9 of the Supreme Court of Judicature Act, 1881 (44 & 45 Vict. c. 68), " . . . The decision of the C. A. on any question arising under the Acts relating to divorce and matrimonial causes, . . . shall be final except where the decision either is upon the grant or refusal of a decree on a petition for dissolution or nullity of marriage, . . . or is upon a question of law on which the C. A. give leave to appeal, and, save as aforesaid, no appeal shall lie to the House of Lords under the said Acts."

Where the Divorce Court has granted a decree nisi after a trial before a jury, and the C. A. has

DIVORCE (Practice)—continued.

ordered a new trial, an appeal lies to the House of Lords against the order granting a new trial. *BUTCHART v. BUTCHART and HILL*

H. L. (D.) [1901] W. N. 50; [1901] A. C. 266

26. — Particulars—Witnesses, Names of probable—Order for disclosure.

Where in a petition by the wife against the husband he was, for the purpose of establishing cruelty, charged with using insulting language to her in the presence of servants and guests, with the object of humiliating and degrading her, the petitioner was ordered to give particulars, setting forth the names of such servants and guests. *BISHOP v. BISHOP*

Jeune Pres. [1901] P. 325

27. — Pleading—Custody of children—Paternity.

If a wife, respondent in a suit for dissolution of marriage, wishes to raise any question as to the paternity of any child or children whose custody is claimed by the husband (petitioner), she must file an answer in the suit specifically raising the question as to the paternity of such child or children; and, unless she so plead, she will not be allowed at the hearing to raise any question as to the paternity, in opposition to her husband's application for custody of such child or children. *GORDON v. GORDON*

Jeune Pres. [1903] P. 92

28. — Restitution of conjugal rights—Alimony pendente lite—Discretion—Allowance to wife under voluntary settlement—Covenant to accept allowance in full satisfaction.

The wife having instituted a suit for restitution of conjugal rights presented a petition for alimony pendente lite.

By a voluntary settlement dated in Mar., 1899, the husband settled a sum of 3500*l.* upon trust for his wife for life or until she should have broken her covenants thereinafter contained, and the wife covenanted (inter alia) that she would accept the provision thereby made in full satisfaction of her claim to be maintained at her husband's expense, and would not publish abroad the fact of her marriage, or take up her residence within fifteen miles of the husband's mansion-house.

The husband's income was 2500*l.* a year.

The wife was before marriage in a humble position, and since marriage, although there had been cohabitation, she never lived with her husband as his wife, or enjoyed the comforts of his mansion-house. She lived at a distance in a small house worth about 50*l.* a year provided by her husband, and on the income of the trust fund, which amounted approximately to 150*l.* a year, with the addition of occasional presents from the husband.

The registrar proceeded on the footing that there was a settled rule that a wife is entitled to alimony at the rate of one-fifth of the husband's average income, after allowing for any benefits taken by the wife under a settlement or separation deed, and, estimating such benefits in this case at 200*l.*, he allowed the wife alimony pendente lite at the rate of 300*l.* a year.

The Pres. set aside the order, being of opinion

DIVORCE (Practice)—*continued*.

that the wife was not entitled to anything beyond what she already enjoyed under the settlement.
BIRCH v. BIRCH - C. A. [1908] W. N. 81

See also under **INFANT—Custody**.

— Service out of the jurisdiction—Decree.

See **DIVORCE—Restitution of Conjugal Rights**. 2.

29. — *Substituted service of citations and petition—Respondent and co-respondent resident in Lisbon—Portuguese law Letters of request refused—Service by registered letters.*

Where, upon a citation and petition for dissolution of marriage, it appeared that the respondent and co-respondent were known to be residing at certain addresses in Portugal, the Court, after letters of request had been applied for and refused, dispensed with personal service and ordered substituted service to be effected by registered letter. **WRAY v. WRAY AND D'ALMEIDA**

Gorell Barnes J. [1901] P. 132

30. — *Wife's petition—Adultery of petitioner brought about under duress and by coercion of the husband—Material fact—Suppression—Refusal of decree.*

If a petitioner withholds from the Court, on the hearing of a petition for dissolution of marriage, the fact that she has committed adultery, such withholding of a fact is of itself a ground for refusing to make the decree absolute, even though the adultery is found, on a full investigation of all the facts of the case, to be such as would warrant the Court in granting the petitioner relief, and though, had the facts been fully disclosed to the Court in the first instance, it would, in the exercise of its discretion, have granted relief. **ROCHE v. ROCHE (THE KING'S PROCTOR SHEWING CAUSE)**

Bargrave Deane J. [1905] P. 142

31. — *Wife's petition for dissolution—Cruelty and adultery—Precious suit for judicial separation on ground of same cruelty—Deed of separation—Covenant not to revive suit Subsequent adultery by husband.*

A covenant by a wife in a deed of separation, to the effect that all proceedings in a suit which she had instituted against her husband on the ground of cruelty shall be stayed, and that she "shall in no wise attempt to revive the same in any manner whatever":—

Held no bar to relief in a subsequent suit by the wife for the dissolution of marriage on the ground of the husband's subsequent adultery coupled with the former cruelty.

Rose v. Rose, (1882) 7 P. D. 225; 8 P. D. 98, distinguished. **NORMAN v. NORMAN**

Bargrave Deane J. [1908] P. 6

32. — *Wife's petition—Queen's Proctor's intervention—Wife forced by husband to earn money by prostitution—Separation—Habitual adultery subsequent to separation—Husband's former misconduct conducive to such adultery—Matrimonial Causes Act, 1857 (20 & 21 Vict. c. 85), s. 31—Discretion of Court—Decree made absolute.*

Upon an intervention by the Queen's Proctor after the petitioner had obtained a decree nisi

DIVORCE (Practice)—*continued*.

for the dissolution of her marriage on the ground of the adultery and cruelty of her husband, it appeared that he had by his threats and ill-treatment forced her to prostitute herself for his pecuniary benefit, and that she, after she had left him on account of his continued ill-treatment, resorted to other acts of prostitution to supplement her insufficient means of livelihood, and also cohabited for a period of three years with a certain man as his wife:—

Held, that all her subsequent acts were the outcome of her husband's conduct, and that she was entitled to have the decree which she had obtained made absolute; the three years' cohabitation and some other facts, very material to be considered by the Court and such as ought not to have been withheld at the hearing of the petition, being insufficient to bar the wife's claim to have her marriage dissolved on the grounds of her husband's adultery and cruelty, though amply sufficient to warrant and justify the intervention of the Queen's Proctor.

Symons v. Symons, [1897] P. 167, discussed. **BURDON v. BURDON**

Gorell Barnes J. [1901] P. 52

Restitution of Conjugal Rights.

— "Alimony;" What is—Wife's need of support.
 See **DIVORCE—Practice**. 3.

— Alimony pendente lite—Discretion—Allowance to wife.
 See **DIVORCE Practice**. 28.

1. — *Form of written demand before institution of proceedings—Practice—Divorce Court Rules, 1866, r. 2—Additional Rules and Regulations, 1869, r. 175.*

Upon an undefended petition by the wife for restitution of conjugal rights, the preliminary letter, put forward as in accordance with the rules, was in the terms following:—

"Dear —, —I write to you to express my desire to cohabit and live with you as your wife, and to require from you a full restitution of the conjugal rights of which you have deprived me for now over a year.

"As you are stationed at —, I suggest that I should come to you there, where we could live together, and I trust that you will see your way to fall in with this plan, and I hope to hear from you to that effect soon.

"Yours affectionately, —."

The President: This letter is not quite in the usual form. The word "require" is rather peremptory, and might possibly be taken exception to as not being within the judgments of the C. A.: **Field v. Field**, (1889) 14 P. D. 26; **Smith v. Smith**, (1890) 15 P. D. 47. In my view, however, it is not reasonable to expect a woman to write affectionate letters to her husband under circumstances such as are usually shewn to have existed in this class of cases. All that ought, in my opinion, to be required is that a clear request should be shown to have been made, received and not complied with. I shall allow this letter to pass as a sufficient compliance with the rule, and there will be the usual decree. **ELLIOTT v. ELLIOTT** - **Jeune Pres. [1901] W. N. 203**

DIVORCE (Restitution of Conjugal Rights) — continued.**2. — Service out of the jurisdiction—Decree.**

A citation and petition in a suit for restitution of conjugal rights, as well as the previous letter of demand required by the rules, may now be served out of the jurisdiction; and where a decree is granted, the decree may likewise be served out of the jurisdiction.

In any further proceedings arising out of a non-compliance with the decree, the petitioner must satisfy the Court that the respondent has been served therewith at a place from which he could reasonably have returned to his wife within the period named in the decree. **BATEMAN v. BATEMAN - Gorell Barnes J. [1901] P. 136**

— Wife's petition—No defence—Existence of deed of separation.

See **RESTITUTION OF CONJUGAL RIGHTS. 1.**

Scotland.

1. — Desertion, Divorce for — Husband's action for divorce on ground of wife's desertion "without reasonable cause"—Scottish Act, 1573, c. 55, as amended by the Conjugal Rights (Scotland) Act, 1861 (24 & 25 Vict. c. 85), s. 11.

The House affirmed with costs the decision of the Extra Division of the Ct. of Sess., dated Nov. 2, 1907, holding that the appellant's conduct was such as to form a complete defence against an action of adherence and justified the wife leaving her husband. **COCHRANE v. MORRISON OR COCHRANE - H. L. (Sc.) [1909] W. N. 81**

Separation.

— Divorce—Wife's petition—Effect of separation order under Summary Jurisdiction (Married Women) Act, 1895.
See **DIVORCE—Desertion.**

— Magistrate's order for separation on the ground of "persistent cruelty"—Wife's petition for divorce—Absence of verbal corroboration of cruelty.
See **DIVORCE—Practice.**

Separation Deeds.

— Alimony—Annuity—Deduction of income tax.
See **REVENUE—Income Tax. 18.**

Separation Orders.

1. — Petition by wife—Desertion and adultery—Subsisting order against husband under the Summary Jurisdiction (Married Women) Act, 1895 (58 & 59 Vict. c. 39) s. 5 sub-s. (a)—Effect of separation orders under that Act.

A wife who takes a separation order under the Summary Jurisdiction (Married Women) Act, 1895, within two years from the time when desertion commenced, cannot subsequently, after the expiration of two years, allege that her husband has deserted her for the space of two years and upwards without reasonable excuse, so as to constitute the offence contemplated by the Matrimonial Causes Act, 1857 (20 & 21 Vict. c. 85).

So held by Sir Gorell Barnes Pres., disagreeing with *Smith v. Smith*, [1905] P. 249. **DODD v. DODD - Gorell Barnes Pres. [1906] P. 189**

DIVORCE (Separation Orders)—continued.**Note.**

Distinguished by Bucknill J., *Failes v. Failes*, [1900] P. 326.

Approved by C. A., *Harriman v. Harriman*, [1909] P. 123.

Settlements.

— Post-nuptial settlement—Purchaser for valuable consideration—Refraining from divorce proceedings.

See **BANKRUPTCY—Settlement. 2.**

— Variation of settlement.

See **DIVORCE—Nullity. 11.**

Settlements,**(Variation of Settlements.)**

— "Coverture"—Determination of coverture by decree for dissolution of marriage.
See **SETTLEMENT.**

1. — Effect of divorce on children's provisions—Income undisposed of—Marriage contract—Scottish Act, 1873, c. 55.

By ante-nuptial contract of marriage the intended wife conveyed a sum of about 19,000*l.* to trustees, directing them to pay the annual income to her during her life, and after her death, in the event of her being survived by her husband, to pay the same to him during all the days of his life and survivance, and on the death of the said spouses to pay or deliver the fee or capital of the said means and estate to the child or children of the marriage.

The marriage was dissolved by decree of divorce obtained by the wife against the husband on the ground of desertion. Thereafter the wife died survived by her husband and a daughter. The daughter and her marriage contract trustees claimed that in consequence of the wife's death and the husband being divorced she (the daughter) and her trustees became entitled to the funds in the hands of her mother's marriage trustees:—

Held, affirming the decision of the Second Division of the Ct. of Sess., Scotland, (1901) 4 F. 278: (1) that the divorce of the father was not equivalent to his death in a question as to the vesting of the daughter's provision; (2) that during her father's life nothing fell to the daughter; and (3) that the income, which but for the divorce would have been paid to the father, fell into the executory estate of the wife. **DAWSON v. SMART - H. L. (Sc.) [1903] W. N. 138; [1903] A. C. 457**

2. — Interests of next of kin—Petition to order reconveyance of settled property to petitioner—Refusal.

By a settlement on his marriage with the respondent the petitioner settled certain property upon trust to pay the income to himself until he should alienate, or attempt to alienate, his interest therein, or until some event should occur whereby the income should become payable to some one other than himself, or until his death, whichever should first happen. The second interest was given to the respondent for her life or widowhood, and (there being no children of the marriage) there was an ultimate trust in favour of the next of kin of the petitioner, but this ultimate trust

DIVORCE (Settlements)—continued.

was only to take effect after the death of the respondent if she should have married again and again become a widow.

In 1899 the petitioner gave a certain undertaking in the Chancery Division to the effect that he would apply forthwith to vary the settlement so as to vest the remainder of the settled property in himself absolutely, and that he would in any event give a charge over all his interests under the settlement. After the decree absolute the petitioner contracted a second marriage, and at the present time, were he to die, the persons entitled to share in his estate under the Statute of Distributions would be the second wife, the mother, and a nephew and niece of the petitioner, the last two being also beneficially interested in the mortgage of his interest in the settled property.

Upon motion to confirm the registrar's report upon the petition to vary the settlement and to order the reconveyance of the settled property to the petitioner absolutely:—

Held, distinguishing *Meredyth v. Meredyth and Leigh*, [1895] P. 92, and *Wynne v. Wynne*, (1898) 78 L. T. 796, that this would be going too far, and that the right order to make was simply to extinguish the respondent's interests in the settlement, so that subject to the engagement given by the petitioner in the Chancery Division, the petitioner's resulting life interest in the settled property would become operative.

WALPOLE v. WALPOLE AND GODDARD

Jeune Pres. [1901] P. 196

3. — Jurisdiction—Meaning of "Settlement"

—*Absolute assignment by husband to wife—Matrimonial Causes Act, 1859 (22 & 23 Vict. c. 61), s. 5.*

A husband executed a deed by which he assigned to a trustee a leasehold house and some furniture, upon trust to assign the same at once to the wife absolutely, and the trustee assigned the same accordingly. The wife afterwards obtained a decree of nullity of marriage:—

Held, reversing the decision of the President, that the assignment was not a "settlement" within s. 5 of the Matrimonial Causes Act, 1859, and that the Court had no jurisdiction to vary its provisions.

Chalmers v. Chalmers, (1893) 1 R. 504; 68 L. T. (N.S.) 28, approved. **HUBBARD v. HUBBARD** - **C. A. [1901] W. N. 70; [1901] P. 157**

4. — Jurisdiction to entertain—Petition by guilty party.

Semble, the Court has power to entertain a petition for variation of settlements at the instance of the party through whose misconduct the marriage has been dissolved.

If a wife is in receipt of an allowance derived from funds settled by the husband, and if out of that allowance she keeps up their joint establishment, the husband is not entitled to a reduction of the wife's allowance after she has obtained a divorce by reason of his cruelty and adultery.

WOOTTON-ISAACSON v. WOOTTON-ISAACSON

Gorell Barnes J. [1902] P. 146

5. — Legitimacy of child, Hearing of issue as to—Proceeding not instituted in consequence of**DIVORCE (Settlements)—continued.**

adultery—Co-respondent in divorce suit—Competent and compellable witness on issue as to status of child.

Upon the hearing of an issue, which had been directed for the purpose of determining the status of a child born of the respondent during wedlock, the co-respondent in the former proceedings was called as a witness by the petitioner, and a question was put to him as to adultery between him and the respondent:—

Held, that he was bound to answer the question. **EVANS v. EVANS AND BLYTH**

Gorell Barnes J. [1904] P. 378

6. — Legitimacy of child, Question of—Issue directed.

On a petition for variation of settlements after a decree for dissolution of marriage, where a child had been born between the date of the decree nisi and decree absolute, the paternity of which the petitioner denied, the Court, on the application of the petitioner, directed an issue to be tried to ascertain the status of the child, and postponed the further consideration of the variation of settlements until after the trial of the issue.

In the Matter of the Petition of Chaplin, (1867) L. R. 1 P. & M. 328, *Pryor v. Pryor and Shelford*, (1887) 12 P. D. 165, and *Douglas v. Douglas and Trevor*, (1898) 78 L. T. 88, discussed. **EVANS v. EVANS**

Gorell Barnes J. [1904] P. 274

Note.

See also Evans v. Evans, Gorell Barnes J., [1904] P. 378, preceding Case.

7. — Nullity suit—Decree.

Without deciding whether an ante-nuptial settlement came to an end upon a decree absolute for nullity of the marriage being pronounced, the Court, being of opinion that all points affecting the settlement should be dealt with finally and forthwith, ordered that the interest of the respondent (husband) in the fund settled on behalf of the petitioner (wife) should be extinguished, and that the fund settled by the respondent should, subject to payment thereof by the trustees of their costs and the costs of the petitioner, be handed over to the respondent.

ATTWOOD (OTHERWISE POMEROY) v. ATTWOOD

Gorell Barnes J. [1903] P. 7

8. — Order — Power of Court to rectify—Nullity of marriage.

Where a mistake has been made in drawing up an order the Court or a judge has power to alter it, even where it is under appeal and though the request for alteration be made by the party who has given notice of appeal against the order as drawn up. **E. C. E.** - **Jeune Pres. [1903] P. 88**

— Order, Form of—Variation of settlements.

See **DIVORCE—Nullity. 11.**

9. — Petition for variation of marriage settlement Service — Respondent an uncertificated bankrupt—One of the trustees also an uncertificated bankrupt and his address unknown—Notice to official receiver in bankruptcy Service dispensed with.

The Court dispensed with service of a petition

DIVORCE (Settlements)—continued.

to vary a settlement, made on a marriage now dissolved, in a case where the respondent and one of the trustees were uncertificated bankrupts and the address of the said trustee was not known, and where notice of the motion to dispense with service had been given to the chief official receiver in bankruptcy.

Snelling v. Snelling, (1890) 63 L. T. 263, followed. *GORDON v. GORDON*

Gorell Barnes J. [1905] P. 96

10. — Power of appointment in favour of petitioner's second wife and children of second marriage—Interest of child of dissolved marriage—Matrimonial Causes Act, 1859 (22 & 23 Vict. c. 61), s. 5.

The main object and intent of the Legislature in giving the Divorce Court power to vary marriage settlements is to place the parties in the same position, as far as possible, as if the marriage had not been put an end to through the fault of one of them.

Where, upon a marriage which had been dissolved, power had been given to the innocent party, if survivor, by the terms of the marriage settlement to appoint a portion of the settled fund in favour of a future spouse and the children by any future marriage, the Court, in varying such a settlement, may, although issue of the dissolved marriage survive, permit such power to be exercised in the lifetime of the guilty party, to an extent, having due regard to all the facts, not detrimental to the interests of such issue. *HODGSON ROBERTS v. HODGSON ROBERTS AND WHITAKER*

Gorell Barnes Pres. [1906] P. 142

11. — Practice—Answer to petition before decree absolute—*Lis pendens*—Matrimonial Causes Act, 1859 (22 & 23 Vict. c. 61), s. 5.

A petitioner who has obtained a decree nisi for dissolution of marriage cannot proceed with a petition to vary settlements until the decree has been made absolute; and nothing done between the time when the decree is made absolute and the hearing of the petition to vary can affect the power of the Court to vary the settlements. *CONSTANTINIDI v. CONSTANTINIDI AND LANCE*

C. A. [1904] W. N. 122; [1904] P. 306

Note.

See Constantinidi v. Constantinidi, C. A. [1905] P. 253.

12. — Practice—Property of guilty wife—Matrimonial Causes Act, 1847 (20 & 21 Vict. c. 85), s. 45—Settlement—Principles and extent of jurisdiction.

The principles which should guide the Court in ordering a settlement out of the property of a guilty wife under the powers conferred by s. 45 of the Matrimonial Causes Act, 1857, are similar to those adopted in cases of variation of settlements under s. 5 of the Matrimonial Causes Act, 1859 (22 & 23 Vict. c. 61), but the Court has power, under s. 45 of the Act of 1857, to deal with capital, whether in possession or reversion, as well as with income.

The Court, in ordering a settlement under s. 45, should have regard to the pecuniary position which the husband and child or children

D.D.

DIVORCE (Settlements)—continued.

would have been in if the marriage had not been dissolved through the fault of the wife, and should endeavour, as far as may be, to adjust any alteration made in their pecuniary position by reason of the change in their circumstances due to the wife's misconduct and the consequent dissolution of the marriage. *LORRIMAN v. LORRIMAN AND CLAIR*

Bucknill J. [1908] P. 282

13. — Principle of *quid pro quo*—Power of appointment upon petitioner's second marriage—Children's reversionary interest affected—Extinguishment of respondent's interest—Matrimonial Causes Act, 1859 (22 & 23 Vict. c. 61), s. 5.

The Court has power to vary a marriage settlement so as to deprive infant children of the marriage of part of their interests secured to them by such settlement.

Where a marriage settlement gave the petitioner (wife) power to appoint, after the death of the respondent, in favour of a second husband and the children of a second marriage, the Court recognizing the principle of *quid pro quo* in such cases, gave the petitioner power so to appoint, during the respondent's lifetime, a portion of the fund which had been settled for the ultimate benefit of the children of the marriage upon the ground that the extinguishment of the respondent's interests being part of the order would, while depriving them of that portion, accelerate their interests in the remainder. *WHITTON v. WHITTON* **Jeune Pres. [1901] P. 348**

— “Property settled”—Nullity—Impotence.

See **DIVORCE—Nullity.**

14. — Remarriage—Variation of settlement—Restraint on anticipation—Remarriage—Matrimonial Causes Act, 1859 (22 & 23 Vict. c. 61), s. 5—Matrimonial Causes Act, 1878 (41 & 42 Vict. c. 19), s. 3—Jurisdiction—Remarriage after petition but before order—Practice.

On a petition for variation of settlement, after decree absolute for dissolution of marriage, the Court has full power under the Matrimonial Causes Act, 1859, s. 5, as extended by the Matrimonial Causes Act, 1878, s. 3, to vary such settlement in such a way as to override the restraint upon anticipation clause and put an end to the restraint, notwithstanding the remarriage of the innocent party before an order of the Court is made, though after petition filed. *CHURCHWARD v. CHURCHWARD*

Samuel Evans Pres. [1910] P. 195

15. — Variation of settlements—Discretion of Court—Conduct of the parties—Interests of public morality—Retrospective order—Repayment of past income—Wife's protected life interest—Jurisdiction—Dissolution of marriage—Wife's adultery—Husband's adultery—Matrimonial Causes Act, 1857 (20 & 21 Vict. c. 85), s. 45; Matrimonial Causes Act, 1859 (22 & 23 Vict. c. 61), s. 5; Matrimonial Causes Act, 1878 (41 & 42 Vict. c. 19), s. 3.

In exercising the jurisdiction conferred upon the Court of varying settlements after a dissolution of marriage, regard must be had to the conduct of both the husband and the wife, and

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DIVORCE (Settlements)—continued.

not of one party only, and also to the interests of public morality and decency.

A marriage had been dissolved at the suit of the husband on the ground of his wife's desertion and adultery, notwithstanding that the husband had, both before and after the presentation of his petition, himself been guilty of adultery, as was in fact admitted at the trial, he declining to tender himself for cross-examination. Both husband and wife had executed marriage settlements of their respective properties, the wife's settled property considerably exceeding the husband's. There were no children of the marriage.

Upon a petition by the husband for variation of the wife's settlement, under the discretionary power given to the Court by s. 5 of the Matrimonial Causes Act, 1857, as amended by s. 3 of the Matrimonial Causes Act, 1878, with a view to obtaining a direction for payment to him of part of the income of her settled property:—

Held, that having regard to the admitted and unexplained misconduct of the husband himself and to the interests of public morality, the case was not one in which the Court should exercise its discretionary power by varying the wife's settlement in his favour.

The principles which should guide the Court in exercising its discretionary power of varying settlements considered and stated.

Chetwynd v. Chetwynd, (1865) L. R. 1 P. & M. 39, and *March v. March and Palumbo*, (1867) L. R. 1 P. & M. 440, considered and applied.

Noel v. Noel, (1885) 10 P. D. 179, distinguished.

The jurisdiction given to the Court to vary settlements under the Matrimonial Causes Acts cannot be exercised retrospectively; as, for instance, by directing the trustees of the wife's settlement to recoup to the husband accumulations of past income received by her under the trusts of his settlement.

A wife's protected life interest—that is, a life interest the personal enjoyment of which is to cease in certain events—is not an interest which the Court can control under s. 5 of the Matrimonial Causes Act, 1859, though the existence of such a life interest may be taken into consideration by the Court when making an order for variation of settlements.

Decision of *Jeune P.*, [1903] P. 246, reversed.
CONSTANTINIDI v. CONSTANTINIDI AND LANCE
C. A. [1905] W. N. 119;
[1905] P. 253

Note.

See also No. 11, above.

Distinguished by *Bucknill J.*, *Wyke v. Wyke*, [1904] P. 149.

16. — *Variation of settlements—No issue of marriage—Practice—Matrimonial Causes Act, 1859 (22 & 23 Vict. c. 61), s. 5—Interests of unborn persons—Consent of all living persons interested—Reconveyance of trust property to innocent settlor.*

Where the only living persons who could be interested under the terms of a marriage settlement consented, the Court, upon the petition of the innocent settlor whose marriage had been

DIVORCE (Settlements)—continued.

dissolved, and notwithstanding that the interests of unborn persons might be adversely affected, ordered the trustees to reconvey to the petitioner the whole of the settled property. *MORRISSEY v. MORRISSEY* *Jeune Pres.* [1905] P. 90

17. — *Variation of Settlements—Petition by party against whom decree pronounced—Consent—Order.*

The Court made an order for variation of the marriage settlement at the instance of the respondent in a nullity suit, the petitioner in the suit being stated to be a consenting party to the order. *SUART v. SUART* *Samuel Evans Pres.* [1910] P. 246

18. — *Variation of settlement, Petition for—Petition served on third person, who has appeared and pleaded—Refusal to hear person so served—"Person who may have any legal or beneficial interest in the property in respect of which the application is made"—Procedure—Practice—Matrimonial Causes Act, 1859 (22 & 23 Vict. c. 61), s. 5—Divorce Court Rules, r. 97.*

The petitioner, having obtained a decree absolute for a divorce from his wife, presented a petition for variation of the settlement made on their marriage. By the settlement a fund brought into settlement by the appellant, the wife's mother, was settled upon trusts for the wife for life, and then for the husband for life, with the usual limitations in favour of children of the marriage, and, subject to the foregoing trusts, in trust for the appellant. There were two children of the marriage under age, of whom the petitioner had the custody. The petition for variation of the settlement prayed that the Court would direct the trustees to make to the petitioner during the joint lives of himself and his former wife certain annual payments out of the income of the trust funds, and to make such further order in the matter as might be just. The petitioner caused to be served with the petition, among others, the appellant, who appeared thereto and put in an answer, to which the petitioner put in a reply. Subsequently, when the matter came on for hearing before the registrar, the petitioner applied to him that the appellant should not be heard thereon, on the ground that she was not a person who had any legal or beneficial interest in the property in respect of which the application was made within the meaning of r. 97 of the Divorce Court Rules. The registrar acceded to that application, and on appeal the judge affirmed his decision. On appeal against the judge's order:—

Held that, the petitioner not having obtained any order dismissing the appellant from the proceedings on the petition, she was, as having been made a party thereto, entitled to be heard, and the order was therefore wrong and must be rescinded.

Quere, whether the appellant was entitled to be made a party to the petition. *In re LORD VIVIAN v. LADY VIVIAN* C. A. [1909] P. 57

19. — *Vested interest of child—Respondent husband next of kin—Extinction of all respondent's life and derivative interest—Property*

DIVORCE (Settlements)—*continued.*

settled—*Matrimonial Causes Act*, 1859 (22 & 23 Vict. c. 61), s. 5—*Form of order.*

The Court has jurisdiction, under s. 5 of the *Matrimonial Causes Act*, 1859, to make, in favour of a petitioner, the wife, an order affecting settled property, even after a child of the dissolved marriage has attained a vested interest, by extinguishing all the rights, powers, and interests of the respondent, the husband, over the petitioner's settled fund, including any beneficial derivative interest as next of kin of his deceased child.

Crisp v. Crisp, (1872) L. R. 2 P. & M. 426, discussed.

Decision of Gorell Barnes J., [1902] P. 78, affirmed, with a variation in the form of order.
BLOOD v. BLOOD C. A. [1902] W. N. 100 ; [1902] P. 190

Summary Jurisdiction.

— Desertion—Effect of order.

See **DIVORCE—Desertion**. 5.

Title of Honour.

— Jurisdiction of Divorce Court — Married woman.

See **HUSBAND AND WIFE—Title of Honour**. 1.

DOCK—Collision—Shipping.

See under **SHIPPING—Collision**.

— Dock dues—Right to detain vessel until dues paid—Maritime lien for crew's wages—Priority.

See **HARBOURS**. 3.

— Harbours and Docks.

See under **HARBOUR—Harbours and Docks**.

— Harbour Commissioners — Advertisement of depth of water on dock sill—Warranty of accessibility.

See **HARBOUR**. 6.

— Shipping—Docks.

See under **SHIPPING—Docks**.

— Support—Enjoyment clam—Right to support of dock sides by rods fastened in adjoining owner's land.

See **SUPPORT**.

— Support, Right of—Easement of necessity.

See **SUPPORT**.

— Thames Conservancy by-law — Ultra vires

—Hauling barges out of dock—*"Navigated."*

See **RIVER**.

— Workmen's compensation.

See under **MASTER AND SERVANT—Compensation**.

DOCK COMPANY—Continuous line of railway communication—Through rates.

See **RAILWAY—Sidings**.

— Railway company—Amalgamation — Water obtained from land acquired for purposes of railway—Ultra vires.

See **RAILWAY—Amalgamation**.

— Shipping.

See under **SHIPPING—Docks**.

DOCUMENTS.

See under **DEEDS, &c.**

DOGS—*Dogs Act*, 1906 (6 Edw. 7, c. 32), *consolidates and amends the enactments relating to injury to live stock by dogs, and otherwise to amend the law relating to dogs.*

The Dogs Order of 1906, Price 1d. **St. R. & O. 1906, No. 791.**

— "Canine specialist" — Veterinary Surgeons Act—Qualified person.

See **VETERINARY SURGEON**. 1.

— Carrier—Carriage of dogs — Declaration of value.

See **RAILWAY—Dogs**.

— Dog licence—Exemption—Dogs for tending sheep and cattle—Consent of petty sessional court.

See **REVENUE—Dogs**. 1.

— Larceny—Advertisement of reward for return of stolen property—Penalty.

See **CRIMINAL LAW—Larceny**. 1.

1. — *Not kept under control*—"Dangerous"
Evidence—Attacks on sheep—Dogs Act, 1871 (34 & 35 Vict. c. 56), s. 2.

The fact that a dog has attacked and killed sheep is evidence that it is "dangerous" within s. 2 of the Dogs Act, 1871. **WILLIAMS v. RICHARDS** Div. Ct. [1907] W. N. 90, 92 ; [1907] 2 K. B. 88

— Railway company.

See under **RAILWAY—Dogs**.

2. — *Savage dog—Personal injury—Liability of owner—Scienter—Intervening act of third person—Remoteness of damage—Master and servant—Scope of employment.*

The owner of a dog known by him to be savage entrusted it to the care of a servant, who incited it to attack the plt., and thereupon the dog bit the plt., who brought an action against the owner in the county court for damages. The county court judge having nonsuited the plt. :—

Held, that the action must go down for new trial on the ground that the question whether the servant was acting within the scope of his employment ought to have been left to the jury, and by Cozens-Hardy M.R. and Farwell L.J. (Kennedy L.J. dissenting) on the further ground that a person keeping an animal *feræ naturæ*, or an animal *mansuetæ naturæ* which is known to him to be savage, is answerable in damages for any harm done by the animal, even though the immediate cause of the injury is the intervening voluntary act of a third person.

Decision of Divisional Court [1908] 2 K. B. 352, affirmed. **BAKER v. SNELL** - C. A. [1908] W. N. 187 ; [1908] 2 K. B. 825

— Shooting at—Malicious injury to property—
 See **CRIMINAL LAW—Malicious Damage**.

DOMICIL—*Acquisition of domicile—Intention—Legitim—Scottish law.*

The abandonment or change of a domicile is a proceeding of a very serious nature, and an intention to make such an abandonment must be proved by satisfactory evidence.

A person having a domicile of origin in England does not lose it and acquire a Scottish domicile

DOMICIL—*continued.*

by making his home in Scotland for many years, unless in the circumstances his doing so clearly shews his intention to abandon his original domicile.

The testator, whose domicile of origin was in England, and his chief residence or home in Scotland for thirty years prior to his death. During this time he retained his interests in England as principal partner in a private bank at Manchester, and as proprietor of large landed estates, and continued his occupancy as tenant of a mansion house near Manchester and of a house in London. He left very large personal estate and a will in English form, made a short time before his death, in which he was designated as of Manchester. He also made a will in Scottish form. Apart from making his home in Scotland there was nothing in his conduct to suggest any intention of abandoning his English domicile :—

Held, affirming the decision of the First Division of the Ct. of Sess., [1905] W. N. 140 ; C. A. [1905] W. N. 153 ; [1905] 2 Ch. 656 ; that he had not lost his English domicile. **MARCHIONESS OF HUNTLY v. GASKELL**

H. L. (Sc.) [1906] W. N. 2 ; [1906] A. C. 56

— Administration—Grant to foreign administrators—Executors passed over.

See PROBATE—Foreign Domicil.

— Conflict of laws.

See under CONFLICT OF LAWS.

— Divorce.

See under DIVORCE—Domicil.

— Divorce Bill—Ireland — Practice — Alleged adulterer a foreigner domiciled abroad.

See DIVORCE—Ireland. 6.

— Divorce, Decree of, by New York Court—Validity of divorce in England.

See INTERNATIONAL LAW. 1.

— Divorce — Scotsman — Foreign domicile, allegiance, or residence of co-respondent — Liability.

See DIVORCE—Co-respondent.

2. — Domicil of origin—Abandonment—Acquiring fresh domicile—Evidence—Onus of proof.

The onus of proving that a domicile has been chosen in substitution for the domicile of origin lies upon those who assert that the domicile of origin has been lost. The domicile of origin continues unless a fixed and settled intention of abandoning the first domicile and acquiring another as the sole domicile is clearly shewn.

An American citizen left the United States and lived many years in England, where he died, leaving by will a legacy on which the Crown claimed legacy duty, on the ground that the testator had acquired a domicile in England :—

Held, that the onus of shewing a change of domicile was upon the Crown, and (Lord Lindley dissenting) that the proof of a fixed and settled purpose was not clearly made out, and that legacy duty was not payable.

The decision of the C. A. reversed. **WINANS v. ATTORNEY-GENERAL H. L. (E.) [1904] A. C. 287**

Note.

See Winans v. Att.-Gen. (No. 2), **H. L. (E.) [1910] A. C. 27.**

DOMICIL—*continued.*

— Foreign domicile—Power of appointment—Personalty — Execution — Unattested will—Extrinsic evidence of intention.

See CONFLICT OF LAWS. 7.

— Foreign domicile, will and marriage—English domicile subsequently acquired.

See PROBATE—Foreign Domicil.

3. — Foreign residence — English domicile of origin.

Testator's original name was Emmanuel ; his domicile of origin was English. He carried on business in London as a jeweller for many years, up to 1872, under the name of Emanuel, when he sold his business. He married a Dutch lady in 1852 ; he had one son, who died in 1870 and was buried in the Jews' Cemetery, London. Emanuel resided till 1872 in London ; he was a member of a London synagogue ; he was a member of two London clubs till his death. He kept his London house till 1880, when he sold it ; but after 1872 he travelled till 1879, spending a considerable part of his time in Paris. In 1874 he acquired a Portuguese title ; he repudiated his former name, and was from that time known as Baron Emanuel de Almada. In 1879 he took a lease of a house in Paris, on which he spent a considerable amount. Later he took a lease of another house, on which he spent large sums in improvements. This was his chief residence till he died. He sometimes visited England ; most of his property was in England ; he had a banking account in England and one also in France. In 1880 he was appointed Minister at Paris of the Republic of San Domingo. He held this appointment till his death, with the exception of a period when diplomatic relations between France and San Domingo were suspended. He procured this appointment for the sake of gaining social position in Paris. He belonged to several Paris clubs. He obtained various foreign distinctions, including an order of the Legion of Honour. He made several wills ; in some of these he described himself as a domiciled Englishman. He was buried, in accordance with directions given by himself, in the same grave as his son in the London Jews' Cemetery. His only daughter, the plt., was the wife of a Frenchman.

Held, that the testator had never lost his English domicile of origin. *In re DE ALMEDA. SOURDIS v. KEYSER*

Cozens-Hardy J. [1901] W. N. 142

The Court dismissed the appeal stating that the law applicable to the case was settled, and that the decision of the learned judge Cozens-Hardy J., [1901] W. N. 142, on the facts was correct. *In re DE ALMEDA. SOURDIS v. KEYSER*

C. A. [1902] W. N. 55

— Holograph codicil signed but not attested—Codicil valid by law of domicile—Probate in England—Defective execution aided.

See POWER OF APPOINTMENT.

— Ireland—Divorce.

See under DIVORCE—Ireland.

DOMICIL—*continued.*

— Lunacy—Jurisdiction—Inquiry—Domiciled foreigner temporarily in England.
See LUNACY. 11.

— Marriage—Capacity—Italian subjects—Deceased husband's brother.
See CONFLICT OF LAWS. 12.

— Marriage—Validity—Husband a British subject domiciled in India—Hindu—Personal capacity to contract marriage with an English Christian woman.
See MARRIAGE. 7.

— Marriage with foreigner—Law applicable.
See SETTLEMENT.

— Mortmain—Testator domiciled in England—Residuary bequest to charity—Colonial mortgages—Applicability of colonial mortmain law.
See CONFLICT OF LAWS. 14.

— Next of kin—Sister of the half-blood—Nephews and nieces—Foreign law.
See WILL—Next of Kin. 3.

— Power of appointment—Personalty—Execution—Foreign domicile—Unattested will—Extrinsic evidence of intention.
See CONFLICT OF LAWS. 15, 16.

— Unattested will—Domiciled foreigner—Leaseholds.
See CONFLICT OF LAWS. 17.

DOMINION ACT—Power of Dominion Parliament.
See under CANADA.

DOMINION RAILWAY ACT, 1906—Construction—Laws of Canada.
See CANADA—Railway. 1.

DONATIO MORTIS CAUSA—*Building society share certificate—Post Office Savings Bank deposit-book—Evidence—Delivery.*

W. was possessed of eight investment shares in a building society for 25*l.* each, and 130*l.* in the Post Office Savings Bank. Some two months before his death, and while ill in hospital, W. asked the deft., to whom he was engaged to be married, to go and get the certificates for his building society shares and savings bank book, gave her the key of the drawer in which they were placed, and told her to keep them; the deft. went and obtained the certificates and savings bank book, took them and the key to the hospital, and offered them back to W., when he again said she was to keep them. On several subsequent occasions W. repeated his wish to the deft. that all his property should belong to her in case of his death. The deft. claimed the building society shares and the money standing to the credit of the deceased at the Post Office Savings Bank:—

Held, that the evidence of the deft. was sufficient to establish the gift, if the building society share certificates and savings bank book could be the proper subject-matter of a gift of this kind, and that there had been sufficient delivery to constitute a valid donatio:—

Held, also, that the gift of the building society shares failed as incomplete, but that the

DONATIO MORTIS CAUSA—*continued.*

Post Office Savings Bank book was capable of being well given so as to create a donatio mortis causa.

McGonnell v. Murray, (1869) Ir. Rep. 3 Eq. 460, distinguished on this point. *In re WESTON. BARTHOLOMEW v. MENZIES*

Byrne J. [1902] W. N. 36; [1902] 1 Ch. 680

Note.

Approved by Kekewich J., *In re Andrews*, [1902] 2 Ch. 394, No. 3, *below*.

— Direction to pay testamentary expenses—Estate duty.

See WILL—Testamentary Expenses. 3.

2. — *Gift of cheque drawn by deceased—Non-payment in his lifetime—Overdrawn account.*

On Feb. 19, 1901, B., who was very ill and in expectation of death, drew a cheque for 300*l.* in favour of E., to whom it was at once handed. E. indorsed the cheque, and on Feb. 23 it was presented for payment at B.'s bank, where his account was overdrawn. The bank manager refused payment, stating that the signature of the drawer was not like the ordinary signature of B., and that he required some confirmation of the signature. The Court found that the manager was minded to "lend" the money to pay the cheque if he found that the signature was genuine. B. died on Feb. 25, 1901, without the cheque having been cashed:—

Held, following *Hewitt v. Kaye*, (1868) L. R. 6 Eq. 198, and *In re Beak's Estate*, (1872) L. R. 13 Eq. 489, that there was not a valid donatio mortis causa.

Observations on *Bromley v. Brunton*, (1868) L. R. 6 Eq. 275, and *In re Dillon*, (1890) 44 Ch. D. 76, and as regards what amounts to constructive payment of a cheque. *In re BEAUMONT. BEAUMONT v. EWBANK*

Buckley J. [1902] W. N. 50; [1902] 1 Ch. 889

3. — *Subject-matter—Post Office Savings Bank—Deposit-book—Government Stock investment certificate.*

The delivery of a Post Office Savings Bank deposit-book may constitute a good donatio mortis causa of the balance standing to the credit of the depositor; but where a deposit is invested by the Post Office Savings Bank for the depositor in Government stock under the regulations contained in the deposit-book by having the stock placed on the Savings Bank Investment Account of the National Debt Commrs. and credited to the depositor, the delivery of the investment certificate and the deposit-book cannot constitute a good donatio mortis causa of the Government stock. *In re ANDREWS. ANDREWS v. ANDREWS - Kekewich J.* [1902] W. N. 119; [1902] 2 Ch. 394

4. — *Subsequent will—Revocation—Legacy, of equal amount—Satisfaction.*

When a donor has made a donatio mortis causa, the mere fact that he subsequently makes a will by which he gives to the donee a legacy of equal amount does not raise the presumption that the legacy was intended as a satisfaction of the donation.

Testator gave to the plt., who was hi

DONATIO MORTIS CAUSA—*continued.*

housekeeper, certain deposit notes for sums representing in the aggregate 2000*l.* under such circumstances as to constitute a valid donatio mortis causa of the sums thereby represented. Two days later he made a will by which he gave her a legacy of 2000*l.* :—

Held, that the will was not a revocation of the donation, and that, there being no circumstances from which the Court could infer that the testator intended that the legacy should be a satisfaction of the donation, the plt. was entitled both to the donation and the legacy.

Jones v. Selby (1710) Prec. Ch. 300, considered. **HUDSON v. SPENCER**

Warrington J. [1910] W. N. 157; [1910] 2 Ch. 285

Note.

See In re Hudson, Spencer v. Turner, [1910] W. N. 269; *Will—Testamentary Expenses.*

DOWER—Action for assignment of dower—Time for ascertaining value—Recovery of land.

See LIMITATIONS, STATUTES OF. 22.

—Declarations against dower, Effect of.

See ADMINISTRATION.

DRAINS.

See under LONDON—Sewers.
SEWERS.

DRAINAGE—Land drainage.

See under LAND DRAINAGE.

DRAMATIC COPYRIGHT — Infringement — “Printed or cause to be printed” — Agent.

See COPYRIGHT—Book. 1.

DRAWINGS—Designs—Assignment of copyright to intended company—Registration—Validity of assignment.

See COPYRIGHT—Drawings. 1.

DREDGER—Demurrage of—Measure of damages.
See SHIPPING—Collision.

DREDGING — Conservators—Navigation—Riparian owner.

See THAMES. 1.

DRIFTER — Shipping—Collision—Drifters and trawlers' lights.

See SHIPPING—Collision.

DRIFT-NET FISHING—Collision—Incumbered by nets—“Special circumstances” — Lights—Standing by.

See SHIPPING—Collision.

DRIFTWAY — Private driftway — Conversion into public way—Persons whose consent necessary to.

See HIGHWAY. 25.

DROWNING — Workmen's compensation — Seaman — Unexplained drowning — Evidence—Presumption.

See MASTER AND SERVANT — Compensation.

DRUGS—Sale of food and—Adulteration.

See under ADULTERATION.

DRUNKENNESS.

INEBRIATE REFORMATORIES, ENGLAND.] Regulations, dated Dec. 6, 1900, made by Secretary of State for the Home Department, in pursuance of s. 6 of the Inebriates Act, 1898, respecting the Absence under Licence of Inmates of Certified Inebriate Reformatories. St. R. & O. 1902, No. 532.

Regulations, dated June 4, 1902, made by Secretary of State for Home Department, in pursuance of s. 6 of the Inebriates Act, 1898, respecting the Transfer of Inebriates from a Certified Inebriate Reformatory to a State Inebriate Reformatory, from a State Inebriate Reformatory to a Certified Inebriate Reformatory, and from one Certified Inebriate Reformatory to another. St. R. & O. 1902, No. 558.

INEBRIATE RETREATS.] Regulations, dated Oct. 23, 1902, made by Secretary of State for the Home Department, in pursuance of s. 20 of the Inebriates Act, 1898, respecting the detention of Inebriates committed to a Retreat under s. 5 of the Licensing Act, 1902. St. R. & O., 1902, No. 811.

STATE INEBRIATE REFORMATORIES.] Regulations, dated Dec. 29, 1903, made by the Secretary of State for the Home Department prescribing the Diet for Ill-conducted or Idle Inmates of. St. R. & O., 1904, No. 611.

Regulations dated April 29, 1904, for St. R. & O., 1904, No. 1218.

*Inebriate, England, Retreats. Rules and Regns. Feb. 28, 1901, for Retreats Licensed under the Inebriates Acts, 1879 to 1899. Price 1½*d.* St. R. & O. 1907, No. 198.*

—Conviction—Evidence—Register of conviction in Court of summary jurisdiction.
See JUSTICES. 8.

—Criminal law.

See under CRIMINAL LAW—Appeal.

1. — “*Habitual drunkard*” — Person incapable of managing own affairs when drunk—Habitual drinking to excess—Capacity to manage own affairs when sober—Habitual Drunkards Act, 1879 (42 & 43 Vict. c. 19), s. 3—Inebriates Act, 1898 (61 & 62 Vict. c. 60), s. 2, sub-s. 1.

The expression “habitual drunkard” in s. 3 of the Habitual Drunkards Act, 1879, and s. 2, sub-s. 1, of the Inebriates Act, 1898, applies to a person who habitually drinks to excess, and who is, when drunk, dangerous or incapable of managing himself or his affairs, even though when sober he is capable of managing himself and his affairs. *EATON v. BEST*

Div. Ct. [1909] 1 K. B. 632

DRY-ROT—Rebuilding principal mansion-house.—Salvage.

See SETTLED LAND—Capital Moneys.

DULWICH—Peckham and East Dulwich Tramways Acts.

See TRAMWAYS.

DURATION—Annuity to wife “so long as she remains unmarried”—Death of wife unmarried—Will.
See ANNUITY. 8.

— Power of sale—Determination—Absolute vesting of estate.
See POWER OF SALE.

DURHAM—*University of Durham Act, 1908* (8 Edw. 7, c. 20), *makes further provision with respect to the University of Durham.*

DURESS—Adultery of petitioner brought about under duress and by coercion of the husband—Material fact—Suppression.
See DIVORCE—Practice. 30.

DURESS—*continued.*

— Contract obtained by, abroad—Threat of prosecution—Contract not illegal where made.

See CONFLICT OF LAWS. 4.

DUTCH LAW—Roman-Dutch law—Fidei commissum conditionale—Restraint on alienation.

See CAPE OF GOOD HOPE. 13.

DUTY—Public revenue.

See under REVENUE.

DYING DECLARATION—Admissibility of—Evidence.

See CRIMINAL LAW—Evidence. 1, 2.

E.

EARNINGS—Workmen's compensation.

See under **MASTER AND SERVANT—Compensation.**

EASEMENT—"Accommodation works"—Level crossing.

See **RAILWAY—Accommodation Works.**

— Air.

See under **LIGHT AND AIR.**

— Custody of title-deeds—Deeds shewing title to easement and to extinguishment.

See **VENDOR AND PURCHASER—Deeds. 1.**

— Drain—Prescription—Acquisition of easement by public—Highway.

See **PRESCRIPTION.**

— Lease—Principal mansion-house—"Park"—Easement over mansion-house—Invalidity of agreement.

See **SETTLED LAND—Mansion-house.**

— Level crossing—Agricultural land—Tennis club—Alteration of user.

See **RAILWAY—Level Crossings.**

— Light and air.

See under **LIGHT AND AIR.**

— Necessity, Right of support.

See **SUPPORT.**

— Power of executor to grant easements—Lands Clauses Acts.

See **EXECUTOR—Powers. 1.**

— Precarious easement—Implied grant—Artificial channel—Temporary purpose—Severance of tenements.

See **WATER.**

— Prescription—Enjoyment as between tenants—Unity of ownership.

See **WAY, RIGHT OF. 12.**

— Settled land—Tenant for life.

See under **SETTLED LAND—Easements.**

— Tramway.

See under **TRAMWAYS.**

— Undisclosed easement—Defect of title appearing on conveyance.

See **VENDOR AND PURCHASER—Title. 3.**

— Walls.

See under **WALLS.**

— Water.

See under **WATER.**

— Watercourse.

See under **WATERCOURSE.**

— Way, Right of.

See under **WAY, RIGHT OF.**

EAST INDIA.

See under **INDIA.**

EAST LONDON WATERWORKS ACT.

See **LONDON—Water.**

EASTER OFFERINGS—Income tax—Incumbent of benefice.

See **REVENUE—Income Tax. 8.**

ECCLESIASTICAL LAW.

Advowson, col. 974.

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Burial. See under **BURIAL.**

Chapel and Chapelry, col. 976.

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Rectory, col. 1008.

Vestry, col. 1008.

Vicar-General, col. 1008.

Vicourage, col. 1009.

Advowson.

— Charitable trust—Trust to appoint a fit and duly qualified person.

See **CHARITY. 1.**

1. — *Union of benefices—Single patron—Act of union—No provision for alternate presentation*

ECCLESIASTICAL LAW (Advowson)—continued.

—Order of exchange—Grant of old advowson—Construction.

By an act of union or deed of consolidation, dated in 1738, the rectory and parish of P. were incorporated with the vicarage and church of D. to all intents and purposes in law whatsoever, constituting and appointing the church of D. to be the mother church to which (together with the rectory of P.) all future incumbents should be promoted, instituted, and inducted. At the date of the union there was only one patron of the two benefices, and no provision was made by the deed for alternate presentation or otherwise. By an order of exchange made in 1890 by the Board of Agriculture under the Inclosure Acts, 1845 to 1878, and the Board of Agriculture Act, 1889, certain lands and hereditaments in the two parishes including "the advowson of the vicarage of D.," were ordered to be exchanged:—

Held, affirming the decision of Neville J., that after the union the old advowsons ceased to exist, and that what passed by the order of exchange under the description of "the advowson of the vicarage of D." was the advowson of the new united benefice of D.-cum-P.

Robinson v. Marquis of Bristol, (1851) 11 C. B. 241, distinguished. **LORD ELOHO v. ANDREWS** - - **C. A.** [1910] **W. N.** 79; [1910] 1 Ch. 706

— Mortgage.

See under **MORTGAGE—Advowson.**

2. — Patron — Infant — Trustees to present during minority—Guardian—Statute—Construction.

An Act authorized the sale of glebe land with the consent of the patron, to be given in case of the infancy of the patron by his guardian.

An infant was tenant in tail male under a settlement which gave trustees the right of presentation during the minority of the tenant in tail:—

Held, that the trustees were not patrons within the meaning of the Act, and that the guardian of the infant was the proper person to give the consent of the patron to a sale of glebe land. **LEIGH v. LEIGH Swinfen Eady J.** [1902] **W. N.** 5; [1902] 1 Ch. 400

Bishops.

Bishoprics of Southwark and Birmingham Act, 1904 (4 Edw. 7, c. 30), provides for the foundation of Bishoprics of Southwark and Birmingham and for matters incidental thereto.

Order in Council founding Bishopric of Birmingham. **St. R. & O. 1905, No. 7.**

Order in Council founding Bishopric of Southwark. **St. R. & O. 1905, No. 321.**

Order in Council appointing the Town of Woolwich the See of a Suffragan Bishop. **St. R. & O. 1905, No. 557.** Price 1d. each.

Order in Council, dated June 28th, 1909, appointing the Town of Whalley the See of a Suffragan Bishop. **St. R. & O., 1909, No. 749.**

— Bishopric—Liabilities—Commuted first fruits and tenths.

See **APPORTIONMENT. 1.**

ECCLESIASTICAL LAW (Bishops)—continued.

1. — Confirmation of bishop-elect—Objections on ground of doctrine—Jurisdiction of archbishop and vicar-general—Mandamus—25 Hen. 8, c. 20 —Costs in mandamus.

Upon the confirmation of the election of a bishop-elect by the archbishop or his vicar-general, there is no jurisdiction to entertain objections to the confirmation founded upon questions of doctrine, and a writ of mandamus will not lie to the archbishop or vicar-general to compel them to hear and determine such objections.

Reg. v. Archbishop of Canterbury, (1848) 11 Q. B. 483, discussed.

Semble, a mandamus will not lie to the archbishop to compel him, before proceeding to confirmation, to inform his mind of the fitness of the bishop-elect.

The archbishop has jurisdiction to require notices of objection to be delivered before the date of the confirmation, and to hold a preliminary meeting in chambers for the purpose of considering the objections.

Where the Crown is a party to the argument of a rule for a prerogative writ of mandamus, the Court has no jurisdiction to give costs either to or against the Crown. **REX v. ARCHBISHOP OF CANTERBURY** **Div. Ct.** [1902] **W. N.** 52; [1902] 2 K. B. 503

See also *Rex v. Archbishop of Canterbury.*

C. A. [1903] 1 K. B. 289

Burial.

See under **BURIAL.**

Chapel and Chapelry.

— Parish, Division of—Parochial chapelry or separate parish.

See **PARISH.**

— York's (Duke of) School (Chapel).

See under **ECCLESIASTICAL LAW—Duke of York's School (Chapel).**

Charity.

— Charitable bequest—Advancement of religion —Uncertainty.

See **CHARITY. 50, 51.**

— Charity—Gift to vicar and churchwardens to be applied "as they shall think fit"—Validity.

See **CHARITY. 52.**

Church.

Churches (Scotland) Act, 1905 (5 Edw. 7, c. 12), is an Act to provide for the settlement of certain questions between the Free Church and the United Free Church in Scotland, and to make certain amendments of the law with respect to the Church of Scotland.

Deanery of Manchester Act, 1906 (6 Edw. 7, c. 19), is an Act to make further provision with respect to the revenues of the Dean of Manchester.

— Commissioners — Jurisdiction — Exemption—Cathedral church — Endowment for minor canons.

See **CHARITY. 6.**

ECCLESIASTICAL LAW (Church)—continued.

— Cremation Acts.

See under BURIAL.

— Lands Clauses Acts—Severance and injuriously affecting land—Site of a church.

See LANDS CLAUSES ACTS. 8.

— Marriages Acts.

See under MARRIAGE.

— Site of church—Lands Clauses Act—Compensation—Union of benefices.

See LANDS CLAUSES ACTS. 8.

1. — *Trust — Church — Identity — Fundamental doctrines—Limits to power of union—Union of two dissenting churches—Abandonment of essential fundamental doctrines of incorporation.*

The identity of a religious community described as a Church consists in the identity of its doctrines, creeds, confessions, formularies, and tests.

The bond of union of a Christian association may contain a power in some recognized body to control, alter, or modify the tenets or principles at one time professed by the association; but the existence of such a power must be proved.

The denomination of Christians which called itself the Free Church of Scotland was founded in 1843. It consisted of ministers and laity who seceded from the Established Church of Scotland, but who professed to carry with them the doctrine and system of the Established Church, only freeing themselves by secession from what they regarded as interference by the State in matters spiritual. Two main fundamental doctrines which the appellants, the minority of the Free Church, asserted that the seceders in 1843 carried with them and issued in their Claim, Declaration, and Protest to their supporters and benefactors in that year to stand for all time were the Establishment principle, and the unqualified acceptance of the Westminster Confession of Faith, and they further asserted that these doctrines were part of the constitution of the Church and could not be altered. In 1843 and subsequent years the response to the appeal for funds was most bountiful, and the Free Church was endowed by the liberality of its members, the property being secured under what was called a "Model Trust Deed." For many years efforts had been made to bring about a union between the Free Church and the United Presbyterian Church, also seceders from the Established Church, but a Church pledged to disestablishment. In 1900 Acts of Assembly were passed by the majority of the Free Church and unanimously by the United Presbyterian Church for union, under the name of the United Free Church, and the Free Church property was conveyed to new trustees for behoof of the new Church. The United Presbyterian Church was opposed to the Establishment principle and did not maintain the Westminster Confession of Faith in its entirety. The Act of Union left ministers and laymen free to hold opinions as regards the Establishment principle and the predestination doctrine (in the Westminster Confession) as they pleased. The respondents contended that the Free Church had full power to change its doctrines so long as its identity

ECCLESIASTICAL LAW (Church)—continued.

was preserved. The appellants, a very small minority of the Free Church, objected to the union, maintaining that the Free Church had no power to change its original doctrines, or to unite with a body which did not confess those doctrines, and they complained of a breach of trust inasmuch as the property of the Free Church was no longer being used for behoof of that Church. And they brought this action in the name of the General Assembly of the Free Church, asking substantially for a declarator that they, as representing the Free Church, were entitled to the property :—

Held, reversing the decision of the Second Division of the Ct. of Sess. (Lords Macnaghten and Lindley dissenting, (1902) 4 F. 1083), that the Establishment principle and the Westminster Confession were distinctive tenets of the Free Church; that the Free Church had no power, where property was concerned, to alter or vary the doctrine of the Church; that there was no true union, as the United Free Church had not preserved its identity with the Free Church, not having the same distinctive tenets; and that the appellants were entitled to hold for behoof of the Free Church the property held by the Free Church before the union in 1900.

By Lord Macnaghten. (1.) That the Free Church when it came into existence claimed the power of altering and amending its Confession of Faith, and accordingly could declare the Establishment principle an open question, and could relax the stringency of the formula required from ministers and others; (2.) that provision for expansion and development was part and parcel of the original trust under which the Free Church funds had been collected, and that there had been no breach of trust.

By Lord Lindley: That any interpretation of the Scripture or of the subordinate standards bona fide adopted by the General Assembly of the Free Church, and held by them better to express the doctrine intended to be expressed by the language used in the Confession, was not beyond the power of the Free Church, and that there was no breach of trust. GENERAL ASSEMBLY OF FREE CHURCH OF SCOTLAND v. LORD OVERTOUN. MACALISTER v. YOUNG. H. L. (Sc.) [1904] W. N. 162; [1904] A. C. 515.

Churchwardens.

1. — *Admission of churchwarden — Archdeacon, Duty of—Triennial visitation of bishop — Power of bishop to inhibit—Ministerial act.*

Where an archdeacon was inhibited during the period of the bishop's triennial visitation from exercising any spiritual or ecclesiastical jurisdiction concerning, among other things, the admission of churchwardens :—

Held (reversing the order of a Div. Ct., [1901] 1 K. B. 66), that it was not the duty of the archdeacon during the period covered by the inhibition to admit a churchwarden, and therefore he could not be ordered by mandamus to do so.

Reverend v. Simpson, (Mich. 11 Geo. 1) 1 Str. 609, discussed. REG. v. SOWTER

C. A. [1901] W. N. 11; [1901] 1 K. B. 396

ECCLESIASTICAL LAW (Churchwardens)—*continued.*

- Duty of churchwardens — Faculty — Family pew — Allotment of church seats by churchwardens — Seats not to be filled up before commencement of service.

See **ECCLESIASTICAL LAW—Pews. 1.**

- 2. — *Election of parishioners' churchwarden* — Right of incumbent to vote at — Canon 89 — *Sturges Bourne's Act* (58 Geo. 3, c. 69), s. 3.

An incumbent of a parish, who, upon the failure of himself and the parishioners to agree upon the choice of churchwardens, exercises his right of appointing one churchwarden, is not entitled either by the common law or under s. 3 of the Vestries Act, 1818, to vote in his capacity as a ratepayer to vote at the election of the second churchwarden.

Judgment of Div. Ct., [1901] W. N. 34 ; [1901] 1 K. B. 573, affirmed. **REX v. BISHOP OF SALISBURY** C. A. [1901] 2 K. B. 255

Churchway.

- Highway — Public user — Diversion — Limited dedication — Settled land.

See **HIGHWAY. 3.**

Churchyard.

- Burial ground separated from church — Liabilities to poor rate.

See **RATES.**

- Gift for maintenance of churchyard — Mortmain — Statute — Implied repeal.

See **CHARITY. 35.**

Clergy.

- Clergy Discipline.

See under **ECCLESIASTICAL LAW — Discipline.**

- Corporation sole — Rector — Power to hold personality — Mortmain — Irregular investment in land.

See **CORPORATION. 14.**

- Parish — Statutory commission for raising rector's stipend — Churchwarden, overseers and elected commissioners.

See **LONDON—Parishes. 1.**

Court of Arches.

New rules. Reprint from **W. N. 1903 (Sept. 12), p. 245.** See **CURRENT INDEX, 1903, p. lxxvii.**

Discipline.**(Church Discipline.)**

See also under **ECCLESIASTICAL LAW — Discipline (Clergy Discipline).**

- 1. — *Criminal suit by letters of request* — Church Discipline Act, 1840 (3 & 4 Vict. c. 86), s. 13 — *Proceedings by default* — Evidence — Admissions by respondent before institution of suit — Reservation of the Sacrament of the Supper of Our Lord — Arts. 25 and 28 of the Articles of Religion — Monition.

The reservation of the Sacrament of the Lord's Supper is unlawful.

The incumbent of a parish church was charged in the articles in a criminal suit by letters of request promoted by the bishop of the

ECCLESIASTICAL LAW (Discipline)—*continued.*

diocese with having offended against ecclesiastical law by having on a day specified within two years then last past, kept and caused and permitted to be kept in the parish church, after the service of Holy Communion ended, upon or over the altar part of the bread and wine consecrated at a celebration of the Holy Communion, and kept burning and caused and permitted to be kept burning a light immediately in front of the said consecrated bread and wine. The incumbent did not appear, and the articles having been admitted to proof, evidence was given at the hearing that on the day specified in connection with the above charge, the suffragan bishop in the diocese, having been present in the church and told by the respondent that the sacrament was reserved there and that it was therefore necessary to genuflect before it, had seen the light hanging in the church near the altar, in front of and above it, and the genuflections made by the choir as if they had been properly trained. Evidence was also given that in consequence of a communication from the suffragan bishop correspondence had taken place between the promotor and the incumbent before the institution of the suit, and that the incumbent had stated in one of his letters forming part of that correspondence, in reply to a question by the promotor, that the sacrament had been reserved on or close above the altar at the parish church on the day above referred to, and that a lamp was burning before it, and the choir was trained to genuflect before it.

The Court, being of opinion that the incumbent had been charged with an ecclesiastical offence, and that the offence had been sufficiently proved, directed a monition to be issued to him requiring him to abstain from keeping or causing and permitting to be kept in his church, either over the altar or elsewhere, bread and wine which had been consecrated at a celebration of the Holy Communion and not consumed at or immediately after such celebration, and also from keeping burning or causing or permitting to be kept burning a light in front of the said consecrated bread and wine. **BISHOP OF OXFORD v. HENLY** — **Arches Court of Canterbury** [1907] W. N. 12 ; [1907] P. 88

Note.

See *next Case.*

- 2. — *Criminal Suit by Letters of Request* — Church Discipline Act, 1840 (3 & 4 Vict. c. 86), s. 13 — *Proceedings by default* — Reservation of the Sacrament of the Supper of Our Lord — Disobedience to monition — Contempt — Service not prescribed or appointed by Book of Common Prayer or sanctioned by the Ordinary — Monstrance — Litany addressed to the Virgin Mary — Service of Benediction with the Reserved Sacrament — Sentence of Deprivation ab officio et a beneficio.

The incumbent of a parish church in a diocese within the province of Canterbury having been sued as deft. in a criminal suit by letters of request in the Court of Arches was pronounced by the Court to have been guilty of an ecclesiastical offence in that within two years past the sacrament of the Lord's

ECCELESIASTICAL LAW (Discipline)—continued.

Supper had been reserved by his authority in the parish church of which he was the incumbent, and that a light was kept burning before it, and thereupon the Court decreed a monition to issue against him, admonishing him to refrain in future from causing or permitting the reservation of the sacrament in his church either over the altar or elsewhere, and also from keeping burning, or causing or permitting to be kept burning, a light in front of the reserved sacrament. This monition was duly served on the incumbent, but was disobeyed by him, and subsequently another criminal suit by letters of request was brought against him in the Court of Arches. The amended articles in this second suit charged the deft. with having within two years past offended against the law ecclesiastical by—

(1.) on an occasion subsequent to that referred to in the previous suit reserving or causing or permitting to be reserved in his church upon or over the Communion table consecrated bread which had been consecrated at a celebration of the Holy Communion and not consumed, and keeping or causing or permitting to be kept burning a light in front of it ;

(2.) doing or causing or permitting to be done the same acts notwithstanding and in disobedience to the monition of the Court ;

(3.) as a public service immediately after the service of evensong on a Sunday, in the presence of the congregation then assembled, exhibiting to them a monstrance containing the consecrated bread above mentioned, transferred there from the tabernacle in which it had been placed, this exposition of the consecrated bread being followed by hymns, versicles and responses, and a metrical lity to the Virgin Mary, and the service ending with a ceremonious benediction of the congregation with the consecrated bread contained in the monstrance ; all such acts, ceremonies, and service being unlawful variations from the form and order prescribed by the Book of Common Prayer.

The incumbent did not appear to defend the suit, and the amended articles having been admitted to proof, the evidence of eye witnesses in support of the charges above referred to was given at the hearing, and evidence was also then given that the bishop of the diocese had not sanctioned any part of the acts, ceremonies, or service referred to in the amended articles, and that the light, tabernacle, and monstrance there mentioned had been introduced into the church without the sanction of a faculty.

The Dean of the Arches, being of opinion that the offences charged against the incumbent had been sufficiently proved, and that by the reservation of the consecrated bread with a light burning in front of it, notwithstanding and in disobedience to the monition of the Court and the direction of the bishop, the incumbent had been guilty of incorrigible contumacy, pronounced a sentence of deprivation depriving the incumbent *ab officio et a beneficio*. OXFORD (BISHOP OF) *v.* HENLY. (Second suit.)

Arches Court of Canterbury [1909] P. 319

Note.

See preceding Case.

ECCELESIASTICAL LAW (Discipline)—continued.

3. — *Criminal suit by letters of request—Pretended ordination of priest by incumbent of parish church, not being a bishop—Articles 23, 34 and 36 of Articles of Religion—Officiating in nonconformist chapel in parish of another incumbent—Disobedience to lawful commands of ordinary—Sentence—Discretion—Deprivation—Suspension ab officio et beneficio—Church Discipline Act, 1840 (3 & 4 Vict. c. 86) s. 13.*

It is an offence against ecclesiastical law for the incumbent of a parish church, not being a bishop, to purport to ordain a priest without having been given public authority to take upon himself the power of ordination.

The incumbent of a parish church, not being himself a bishop, after public notice and in express disobedience to the commands of the bishop of the diocese, read Evening Prayer, celebrated Holy Communion according to the use of the Church of England, and preached a sermon in a nonconformist chapel in another parish wherein he had no cure of souls, and also then and there purported to ordain a layman as a presbyter of the Church of God, reading portions of the form of ordering of priests according to the Prayer Book, and taking the part of the ordaining bishop :—

Held, in a criminal suit by letters of request brought under the Church Discipline Act, 1840, within two years of the above acts, in which suit the incumbent appeared as deft, and attempted to justify his actions as lawful, but at the close of the case regretted his error and submitted to the judgment of the Court, that the deft., in so purporting to ordain a priest, was guilty of an offence against ecclesiastical law, punishable in the case of an incorrigible offender by a sentence of deprivation ;

Held, also, that having regard to the defendant having stated at the hearing that he admitted and regretted his error, the Court would not pronounce sentence of deprivation against him, but would decree that the deft. be suspended *ab officio et beneficio* for two years, admonish him to abstain in future from the like offences, and condemn him in the costs of the proceedings.

The Court treated the undoubted and admitted offences of the deft. in officiating in a nonconformist chapel in the parish of another incumbent and in contumaciously disobeying the lawful commands of his ordinary as merged in, and overshadowed by, the offence of purporting to exercise the power of ordination of a bishop. BISHOP OF ST. ALBANS *v.* FILLINGHAM
Arches Court of Canterbury [1906] W. N. 48 ; [1906] P. 163

4. — *Jurisdiction—Church Discipline Act, 1840 (3 & 4 Vict. c. 86), s. 3—Criminal suit by Letters of Request—Incumbent “concerning whom there may exist scandal or evil report as having offended against the laws ecclesiastical”—Application for admission of articles charging offence of occasioning scandal by immoral acts justiciable under the Clergy Discipline Act, 1892 (55 & 56 Vict. c. 82)—Rejection of articles—Citation—Description of judge in citation as “Official Principal and Auditor of the Chancery*

ECCLESIASTICAL LAW (Discipline)—*continued.*
Court of York—*Objection to style of judge not sustained.*

The offence of occasioning scandal within the 3rd section of the Church Discipline Act, 1840, cannot be entertained in a criminal suit by Letters of Request under that Act against a clerk in holy orders of the Church of England in any case where the acts which appear to have occasioned the scandal are immoral acts within the 75th Canon of 1603 and constitute an offence in respect of which the respondent has not been proved guilty; the Courts appointed to have jurisdiction under the Clergy Discipline Act, 1892, being the only Ecclesiastical Courts having jurisdiction to inquire as to the truth of the immoral acts or offences so occasioning the scandal.

The 3rd section of the Church Discipline Act, 1840, read with the 13th section of the same Act, provides that in every case of any clerk in holy orders of the Church of England who may be charged with any offence against the laws ecclesiastical or concerning whom there may exist scandal or evil report as having offended against the laws ecclesiastical it shall be lawful for the bishop of any diocese within which any such clerk shall hold any preferment to—in the circumstances mentioned in the last-mentioned section—send the case by Letters of Request to the C. A. of the province, to be there heard and determined according to the law and practice of that Court.

The 2nd section of the Clergy Discipline Act, 1892, read with the 12th section of that Act, provides, *inter alia*, that if a clergyman in holy orders in the Church of England is alleged to have been guilty of any immoral act, immoral conduct, or immoral habit, or of any offence against the laws ecclesiastical, being an offence against morality, and not being a question of doctrine or ritual, may be prosecuted under that Act (subject to the disallowance by the bishop of the diocese of vague and frivolous charges); the expressions immoral act, immoral conduct, and immoral habit including such acts, conduct, and habits as are proscribed by the 75th and 109th Canons of 1603. By the 14th section of the same Act, the Church Discipline Act, 1840, except certain sections as to procedure not material to this case, shall be repealed as respects any proceeding instituted after the passing of the Act of 1892 for an offence which can be prosecuted under that Act. The articles brought in in a criminal suit by Letters of Request sent to the Chancery Court of York by one of the bishops of the Northern Province under the 13th section of the Church Discipline Act, 1840, alleged, *inter alia*, that by the laws, constitutions, and canons ecclesiastical of this realm, and more particularly by virtue of the 75th Canon of 1603, normal life and sober conversation are required in ministers, who shall have always in mind that they ought to excel all others in purity of life and should be examples to the people to live well and christianly under pain of ecclesiastical censures; that during the period of two years next preceding the commencement of the proceedings in the suit there had been concerning the respondent, a clergyman in holy

ECCLESIASTICAL LAW (Discipline)—*continued.*
 orders of the Church of England and the incumbent of a living in the diocese of the bishop signing the Letters of Request, scandal or evil report as having offended against the laws ecclesiastical above mentioned; and that the promoter would pray that on due proof of the premises the respondent should be deprived ab officio et a beneficio or be otherwise canonically punished. The promoter applied that the articles so brought in might be admitted to proof.

The judge of the Chancery Court of York refused to admit any of the articles, being of opinion that the offence of scandal with which it was sought to charge the respondent could not be adjudicated upon by the Court, inasmuch as such scandal was not cognizable apart from the acts which caused the scandal, which acts constituted offences under the Clergy Discipline Act, 1892, and could not be dealt with under the Church Discipline Act, 1840. **BOWMAN v. LAX**
Chancery Court of York [1910] P. 300

Discipline.

(Clergy Discipline.)

See also under ECCLESIASTICAL LAW
 —Discipline (Church Discipline).

—Appeal on law—Improper admission of evidence in Court below.

See ECCLESIASTICAL LAW—Practice.
 1.

1. — Clergy discipline—Immoral act—Construction—Clergy Discipline Act, 1892 (55 & 56 Vict. c. 32), s. 2.

Held, that the collection of alms on false and fraudulent pretences is an immoral act within the meaning of the Clergy Discipline Act, 1892. **FITZMAURICE v. HESKETH**

P. C. [1904] A. C. 266

2. — Clergy discipline—Occasional swearing and ribaldry—Clergy Discipline Act, 1892 (55 & 56 Vict. c. 32), s. 2.

Held, that on the true construction of the Clergy Discipline Act, 1892, s. 2, habitual swearing and ribaldry is immoral conduct and an offence thereunder, but it is not established by evidence of occasional use of language of that character. **MOORE v. BISHOP OF OXFORD**

P. C. [1904] A. C. 283

3. — Clergy discipline—Petition for leave to appeal—Enlargement of time—Clergy Discipline Act, 1892.

In order to obtain an enlargement of time to appeal, as limited by the rules made under the Clergy Discipline Act, 1892, a perfect explanation must be given of the delay incurred. **LEE v. ATHERTON**

P. C. [1904] A. C. 805

Duke of York's School (Chapel).

Duke of York's School (Chapel) Act, 1910 (10 Edw. 7 & 1 Geo. 5, c. 16), is an Act to vest in the Commissioners of Works, freed from ecclesiastical uses, the chapel comprised in the buildings situate in the Metropolitan Borough of Chelsea, formerly occupied by the Duke of York's Royal Military School.

ECCELESIASTICAL LAW—*continued.***Evidence.**

— Beneficed clergyman—Commission issued by bishop—Witness.

See **DEFAMATION—Pluralities Act. 1.**

Faculty.

1. — *Architectural adornment not shewn to be probably open to abuse—Jurisdiction—Chancel screen with crucifix and figures of the Virgin Mary and St. John—Admission of fresh evidence on appeal—Retention of cause.*

A chancel screen, to the upper portion of the tracery of which is attached over the entrance archway the figure of Our Lord upon the Cross, and on one side of the archway the figure of the Virgin Mary, and on the other side the figure of St. John, is not, either from its character, nature, or position, in itself unlawful in churches or chapels of the Church of England, and may be authorized by faculty, provided the Ordinary is of opinion in his discretion that it is not probable that it will be abused for superstitious purposes.

The mere suggestion that the figures on the screen may cause offence is not a sufficient reason for the Ordinary refusing in his discretion to grant the faculty.

The vicar and churchwardens of a parish church in the diocese of London and the chapelwardens of a chapel of ease in the parish petitioned for a faculty to authorize the erection in the chapel of a chancel screen of oak with the figure of Our Lord on the Cross upon the centre of it, and the figure of the Virgin Mary on one side, and of St. John on the other: the figures not to surmount the screen, but to be attached to the upper portion of the tracery, the central figure immediately over the entrance archway, and the other two figures, one on the right and one on the left, at a somewhat less elevation, upon pedestals affixed to the woodwork. The grant of the faculty was unopposed, and no evidence was given as to whether the figures on the screen would or would not be likely to be abused by superstitious reverence. The Chancellor of the Diocese of London refused to grant a faculty for the figures on the proposed screen, being of opinion that the erection of a chancel screen with the figures as proposed was illegal in itself under the ruling of the Arches Court and the Privy Council in *Clifton v. Ridsdale*, (1876) 1 P. D. 316; (1877) 2 P. D. 276. The petitioners appealed to the Arches Court.

The Dean of Arches at the hearing of the Appeal admitted fresh evidence as to the mode in which the services in the chapel were conducted, and, finding that there was nothing in them to lead the Court to suppose that the proposed screen and figures were likely to be treated otherwise than as architectural decoration, allowed the appeal, retained the cause, and ordered the faculty as prayed to issue from the registry of the Arches Court. *In re ST. ANSELM'S, PINNER*

Arches Court of Canterbury [1901] W. N. 62; [1901] P. 202

2. — *Burial—Reservation by rector of grave space—Confirmatory faculty authorizing burial of non-parishioner in parish churchyard—Order*

ECCELESIASTICAL LAW (Faculty)—*continued.*

on rector to discontinue burials of non-parishioners not dying in the parish.

With the concurrence of the incumbent of a parish church a non-parishioner petitioned the Ordinary to sanction by a confirmatory faculty the exclusive grant of the reservation for the sole use of herself, her executors, administrators and assigns, of a portion of ground in the parish churchyard as a place of burial. The grant of the faculty was opposed by one of the churchwardens of the parish on the ground that the granting of it would be detrimental to the rights of the parishioners to be buried in the churchyard in preference to non-parishioners. At the hearing of the suit it appeared that the petitioner had paid to the incumbent a considerable extra burial fee for the grant of the reservation according to the custom of the parish; that the population of the parish only amounted to forty-six persons; that on the average the number of burials of parishioners was one per annum, and that there was room for about seventy interments in the churchyard, an addition to which had been consecrated some years back with a view of non-parishioners being buried there.

The Court granted the faculty as prayed, but made an order on the incumbent that he should make no further grants of reservations of grave spaces to non-parishioners during his tenure of the living.

Semle: The incumbent of a parish church may make grants of the reservation of grave spaces to non-parishioners on their paying to him, or in some cases to him and the churchwardens, special burial fees, but to complete their title to the grant of faculty from the Ordinary is necessary. *DE ROMANA v. ROBERTS. THE PERIVALE FACULTY Consistory Court of London [1906] P. 332*

3. — *Church decorations—Representation of historical event set up for the purpose of decoration only—Figure of our Saviour in the act of blessing.*

The vicar and churchwardens of a parish church applied for a faculty to authorize them to remove the organ of the church from the east end of the north aisle to another position in the church; to separate the end of the north aisle from which the organ was so proposed to be removed by a screen from the rest of the church; to decorate the portion of the church within the proposed screen in conformity with the decoration of the rest of the church, and, with that view, to place at the east end of the north aisle a figure of our Saviour represented as standing and in the act of blessing, the figure to be sculptured in stone in high relief, under life size, about five feet high, and surrounded by a frame in which were to be representations of angels, and the whole to be supported on a single stone pedestal springing from the floor of the church.

The application was not opposed, and a faculty was granted as prayed, the Ordinary being of opinion that the alteration of the position of the organ would be an improvement for the parish, that the rest of the alterations were desirable and advantageous, and that the proposed figure might be lawfully erected as a

ECCLESIASTICAL LAW (Faculty)—continued.

representation of an historical event set up for the purpose of decoration only. *In re CHRIST CHURCH, EALING* Consistory Court of London

[1906] P. 289

4. — *Citation in civil suit to appear and shew cause why a monition should not issue to remove ornaments introduced into a parish church without a faculty—Allegation of interest—Insufficiency of interest—Secretary of Archbishop—Sequestrator during vacancy of benefice.*

The churchwardens of a parish in the diocese of York, the incumbency of which was vacant by the resignation of the last incumbent thereof, were cited to shew cause why a monition should not be issued calling upon them to remove out of the parish church certain ornaments introduced there without the authority of a faculty. The promoter in the suit was not a parishioner of the parish, but was described in the citation as "Thomas Shepherd Noble, of the city of York, solicitor, secretary to His Grace the Archbishop of York and Ordinary of the Diocese of York." It further appeared, by evidence at the hearing, though not disclosed on the face of the citation, that the promoter had been appointed and was at the time when the citation issued sequestrator of the living during the vacancy :—

Held, that the suit must be dismissed, as the promoter had not the interest required by law to entitle him to promote the suit.

Lee v. Fagg, (1873) L. R. 4 A. & E. 135; (1874) L. R. 6 P. C. 38, followed. *NOBLE v. REAST* Consistory Court of York [1904] P. 34

5. — *Communion table—Constructed of wood and mounted on castors but with the front and sides covered with detachable frames of slate containing marble mosaics. Faculty for the erection of—Church furniture—Canon 82 of 1604—"Carpet of silk or other decent stuff."*

A movable marble Communion Table is not a legal article of Church furniture; but a faculty may, in the discretion of the Ordinary, be granted for a movable wooden Communion Table, on the front and sides of which are suspended slabs of slate decorated with marble mosaics and detachable at will without damage to the table.

The rector and one of the churchwardens of a parish church, who had petitioned the Chancellor of the diocese for a faculty for the introduction into the chancel of the church of a movable Communion Table of marble, by leave of the Court brought in a supplementary petition whereby they prayed that, instead of a faculty being granted for the Communion Table proposed by their original petition, they might be authorized to place in the chancel of the church a movable Communion Table of wood standing on castors, with licence to suspend by wooden screws on the front and sides of the table thin slabs of slate decorated with marble mosaics. The prayer of this supplementary petition was not opposed; and at the hearing of the suit it appeared that the proposed decorated slabs of slate would be detachable at will without damage to the table and be in keeping with the decorations of the rest of the chancel, and that the whole of the surface of the proposed table would be of wood,

ECCLESIASTICAL LAW (Faculty)—continued.

and no marble mosaic of any kind would rest thereon :—

Held, that a faculty could be granted authorizing the proposed wooden Communion Table to be placed in the church with the slate slabs decorated with marble mosaics suspended on the front and sides of the table in the manner proposed in the supplementary petition. *RECTOR AND CHURCHWARDENS OF ST. LUKE'S, CHELSEA v. WHEELER* Consistory Court of London

[1904] P. 257

6. — *Communion Table—In side chapel, Grant of faculty for erection of—Insertion in faculty of proviso reserving power to the Court to order the removal of Communion Table so authorized if ornaments introduced into the chapel without a faculty or unlawful services performed there.*

A faculty was granted on the application of the rector of a parish for the erection and use of a second Communion Table in a side chapel of the parish church, though both the churchwardens of the parish and the parish vestry expressed opinions adverse to the grant, but the Court directed that a proviso should be inserted in the faculty reserving to the Court, on being satisfied that ornaments other than those sanctioned by the present or any future faculty had been introduced into the chapel or unlawful services performed there, to order the removal of the second Communion Table from the chapel. *RECTOR OF ST. ANNE'S, LIMEHOUSE v. PARISHIONERS OF SAME* Consistory Court of London

[1901] P. 73

7. — *Communion table—Faculty for erection of communion table with cross and candlesticks—Chancel steps—Retales—Dorsal and side hangings—Chapel of ease—Vestry.*

Circumstances in which a faculty was granted for placing a Communion Table, with a cross and candlesticks, in the chancel of a chapel of ease in substitution for the communion table originally placed there; the communion table to be so newly erected to be elevated on two steps above the floor of the church, and curtains to be fixed behind, and at the north and south ends of, the communion table, but not so as to prevent the minister, if so desirous, officiating in the Communion Service at the north end of the table.

Observations as to vestry meetings in faculty cases. *VICAR AND CHURCHWARDENS OF WIMBLEDON v. EDEN*; *In re ST. MARK'S, WIMBLEDON (CHAPEL OF EASE)* Consistory Court of Southwark [1908] P. 167

8. — *Communion table—Grant of faculty for erection of second communion table—Partition of chapel from rest of church not essential—Discretion of Ordinary—Practice—Inhibition and citation in Court of Arches.*

A faculty may, at the discretion of the Ordinary, be lawfully granted for the erection of a second communion table in a parish church or chapel of ease.

It is not essential to the legal existence of a second communion table authorized by such a faculty that the portion of the church or chapel of ease where the second communion table is

ECCLESIASTICAL LAW (Faculty)—continued.

placed should be partitioned off from the rest of the church or chapel, but the circumstances which warrant the grant of the faculty and the structural and other arrangements which should be made in any particular church or chapel when a second communion table is sanctioned are matters to be decided by the Court granting the faculty in each case.

The vicar and churchwardens and certain parishioners of a parish church in the diocese of Southwell applied in the Consistory Court of Southwell for a faculty authorizing and empowering the vicar and churchwardens to place an altar with a cross and two candlesticks thereon, or on a ledge in rear, and a credence table adjoining, at the north end of the south transept of the church of St. James the Baptist, a chapel of ease within the same parish, the costs to be defrayed privately. At the hearing of the application it was proved that the use of the nave of St. James' Church for early celebrations of the Holy Communion was inconvenient, and that by the use of the south transept for such celebrations great expense in lighting the church in the winter would be saved; that a resolution in favour of the application had been passed by the parish vestry without opposition; and that the south transept would hold about fifty people, and had for some time been in use for daily morning service. The Court came to the conclusion that the case before it was one in which, if the faculty prayed for could be legally granted, a decree for its issue should as a matter of discretion be made, but refused to decree the grant, on the ground that it had legally no power to grant a faculty for the erection of a second holy table in a parish church or chapel of ease.

The applicants for the faculty appealed.

The Dean of the Arches allowed the appeal, and directed that the faculty applied for should issue. *In re* ST. JAMES THE GREAT, BUXTON. ST. JOHN THE BAPTIST, BUXTON (VICAR) *v.* PARISHIONERS OF THE SAME

Archbishop of Canterbury
[1907] W. N. 192; [1907] P. 368.

9. — Communion table—Grant of faculty for erection of second communion table.

The statutes clearly regard the holy table in a church or chapel whether it be called a "communion table" or an "altar," as a definite single structure standing in a single "loco certo." That the Rubrics of the Prayer Book which refer to the "Lord's table," the "holy table," and the "table" point to a single specific structure which has taken the place of the high altar, and that consequently the Rubrical directions would not be obeyed unless the "table," and that "table" only, were used. Faculty refused. *In re* ST. GEORGE, NEWCASTLE-ON-TYNE. JESMOND CASE (June 3, 1889)

Consistory Court of Newcastle
[1907] P. 361, n.

10. — Communion table—Second communion table—Chancel screen with gates—Refusal of faculty for erection on chancel screen of crucifix and figures of Virgin Mary and St. John—Ancient rood stairs and rood loft door—Proposed

ECCLESIASTICAL LAW (Faculty)—continued.

restoration of pre-Reformation screen and rood—Evidence—Discretion—Superstitious reverence.

So much of an application for a faculty for a chancel screen and other works in a parish church as asked that the Court would sanction by faculty the placing above the centre of the chancel screen a sculptured group of life-size figures in oak, representing our Saviour upon the cross and the Virgin Mary and St. John, was refused where it appeared that, if the faculty was granted as prayed, the Court would be thereby authorizing the restoration of the pre-Reformation screen and rood formerly in the church.

The vicar and churchwardens of a parish church, in which the ancient rood stairs and rood door were still existing, petitioned the Ordinary for a faculty authorizing the placing in the church of a second communion table and a chancel screen with gates, having on its top a platform, gallery or loft on which the ancient rood door would directly open, and above its centre, upon a carved pedestal somewhat higher than the level of the loft floor, a sculptured group of life-size figures in oak representing our Saviour upon the cross and the Virgin Mary and St. John; the loft to be about six feet in width, and the cornice of the screen to stand on each side about a foot or eighteen inches higher than the loft floor. The suit was undefended, and it was proved in evidence that the services in the church were conducted strictly in accordance with the Book of Common Prayer, with extra services as allowed by the bishop of the diocese, subject to the reservation of the sacrament in certain cases. It was also proved that the church was left open in the daytime without a caretaker, and that the organ, the service books, and other articles of church furniture in the chancel required protection:—

Held, that the erection in the church of the pre-Reformation screen and rood as proposed in the identical positions occupied by them before the Reformation would, so far as related to the group of sculptured figures proposed to be placed on the screen, be unlawful, or if not unlawful be inexpedient, and that consequently a faculty must only be decreed for the chancel screen without the group of figures surmounting it.

A faculty was also granted for a second communion table; and the Court authorized the chancel screen being provided with gates, on the ground that sufficient necessity for a chancel screen with gates had been shewn in evidence. *VICAR OF FAIGNTON v. ALL HAVING INTEREST*

Consistory Court of Exeter [1905] P. 111

11. — Crucifix and figures of St. John and the Virgin Mary upon rood beam, Refusal of faculty for—Discretion—Refusal of faculty for alterations to facilitate use of church bell as sanctus bell—Illegality of use of church bell for that purpose.

The vicar and churchwardens of a parish church in the diocese of Bath and Wells petitioned the Ordinary for a faculty for, amongst other alterations in the church, the erection of a carved oaken beam across the chancel arch to be surmounted by a crucifix and

ECCELESIASTICAL LAW (Faculty)—continued.

the figures of St. John and the Virgin Mary, and also for certain structural alterations so that one of the church bells might be rung from the interior of the church. It appeared in evidence that no exceptional services were held in the church, but that ornaments of the minister other than surplices were worn by the officiating clergy in the Communion Service; that the sacrament was reserved to take to the sick; that there was a crucifix in the vestry and also one in the church; and that one of the church bells was rung from the belfry or tower of the church at certain moments in the Communion Service as a sanctus bell. It further appeared that the vicar of the parish intended that the proposed crucifix upon the rood beam with its attendant figures should be an aid to devotion and a defence against erroneous teaching, and that the main object of the proposed alteration in respect of one of the church bells was that the bell might be rung from the interior of the church during the celebration of the Holy Communion.

The Chancellor of the diocese of Bath and Wells refused in his discretion to grant a faculty for the erection of a crucifix and its attendant figures upon the rood beam, being of opinion that the erection was not contemplated simply and purely as a matter of decoration.

He also refused to sanction by faculty the alterations proposed to enable one of the church bells to be used from the interior of the church as a sanctus bell.

The tolling or ringing of one of the church bells of a parish church during the consecration prayer in the Communion Service at the moment of the elevation of each of the sacred elements as a sanctus bell is illegal. *ST. JOHN THE EVANGELIST, CLEVEDON (VICAR AND CHURCHWARDENS) v. ALL HAVING INTEREST.*

Consistory Court of Bath and Wells [1909] P. 6.

12. — Enlargement of chancel of parish church — Re-erection of chancel east wall containing historical painted window presented by House of Commons — Consents required to removal and new position of military colours affixed to chancel walls under faculty — Evidence of Assent of House of Commons to application for faculty.

A faculty for the enlargement of the parish church of St. Margaret's, Westminster, by taking down and rebuilding the east wall of the chancel of the church six or seven feet further to the east and for other alterations in the church, including the re-erection and releading of the historical painted window at the east end of the chancel erected by the House of Commons, was granted, on the application of the rector and churchwardens with the consent of the parish vestry, on it appearing in evidence that official notice of the application for the faculty had been given to the then Speaker of the House of Commons, and that the assent of the members of the House of Commons to the works proposed by the faculty had been sufficiently shewn.

The temporary removal of certain military colours affixed to the walls of the chancel under a previous faculty (see *Vincent and Tomlinson v. Eytton*, [1897] P. 1) was authorized by the Court with the consent of the representative of the

ECCELESIASTICAL LAW (Faculty)—continued.

regiment to which the colours belonged. *In re ST. MARGARET'S, WESTMINSTER.*

Consistory Court of London [1905] P. 286

— Family pew—Allotment of church seats by churchwardens—Seats not to be filled up before commencement of service.
See ECCELESIASTICAL LAW—Pews. 1.

13. — Interest—Parishioner of new ecclesiastical parish—Lord Blandford's Act (19 & 20 Vict. c. 104), s. 15—Right of non-resident ratepayer to promote faculty suit—Removal of illegal ornaments—Stations of the cross—Confessional boxes—Crucifixes—Tabernacles—Holy water stoups—Images of the Good Shepherd, the Virgin Mary and the Sacred Heart and St. Joseph—Effect of sentence of consecration—Criminal suits against churchwardens—Issue of decree—Costs.

The tenant of a house within the limits of an ecclesiastical district formed into a separate parish with a new parish church under Lord Blandford's Act, who has his name on the rate-book of the civil parish out of which the separate parish had been formed, and pays the civil parochial rates levied on him, has a sufficient interest to promote a faculty suit for the removal of illegal ornaments set up in the new parish church, notwithstanding that he does not reside in the ecclesiastical district and has become tenant of the house for the sole purpose of qualifying as a parishioner and ratepayer.

A bishop cannot by a sentence of consecration legalize the retention in a parish church of an ornament which is forbidden by law to be there.

The following ornaments and things were ordered by the ordinary to be removed from a parish church as illegal:—

I. ORNAMENTS AND THINGS IN THE CHURCH AT THE TIME OF ITS CONSECRATION.

I. The fourteen stations of the cross. II. Three confessional boxes. III. A large crucifix fixed near the pulpit. IV. A tabernacle on the communion table in the chancel before which a lamp was kept burning.

II. ORNAMENTS AND THINGS INTRODUCED INTO THE CHURCH SINCE ITS CONSECRATION.

I. A piece of furniture applicable for receiving confessions. II. Two water stoups for holding holy water. III. A tabernacle on the communion table in the side chapel of the church used for the reservation of the sacrament. IV. Images representing (1.) the Good Shepherd, on a pedestal at the west end of the church, with candles on each side and a lighted lamp in front; (2.) the Virgin Mary, on a pedestal standing against the chancel screen with candles on each side, vases of flowers, and a lighted blue lamp before it with canopy, crown, and star over it; (3.) the Sacred Heart and St. Joseph, on either side of the communion table in the side chapel of the church. V. Several crucifixes, one over the communion table in the chancel, another on the chancel screen, and another with a crown over it over the holy table in the side chapel of the church.

ECCELESIASTICAL LAW (Faculty)—continued.

The patent appointing the Chancellor of the Diocese of Chichester confers on him jurisdiction to proceed in the absence of the bishop of the diocese from the Consistory Court of Chichester in all ecclesiastical suits, the decision of which is known by law or custom of the realm to belong to the Ecclesiastical Courts, and finally to decide and determine them without breach of the laws and statutes of the kingdom, "nevertheless first consulting us" [the bishop of the diocese] "and our successors, and having our consent, in case either party earnestly craves our judgment."

The opponents in a cause of faculty instituted in the Consistory Court of Chichester for the removal of certain ornaments out of a parish church alleged in their answer that before any decision or final determination of the cause, the bishop of the diocese should be first consulted and his consent had, and earnestly craved his judgment in the premises, and complained and supplicated that the said bishop should examine and determine the cause in his own proper person in the Consistory Court of the diocese. The petitioner in his reply submitted that the consent of the bishop prayed for in the answer was not necessary to the hearing and determination of the cause, and supplicated that the said cause might be examined and determined by the Chancellor of the diocese. Subsequently the hearing of the cause took place in the Consistory Court of Chichester.

The Chancellor of the diocese heard the cause sitting alone, the bishop not being present, and determined it, delivering judgment without consulting the bishop, and decreeing a faculty to issue for the removal of the illegal ornaments referred to in the petition, holding that the validity of the reservation in his patent in favour of the bishop was a matter for the determination of the temporal Courts; it being within the province of these Courts alone to decide whether a custom for the bishop to exercise the right reserved to him by the patent was valid in law.

Semble, the custom in question, i.e., a custom for the Bishop to veto a judgment come to after the hearing of a suit by the Chancellor, would be unreasonable and bad in law and not a legal custom, as no trace of its exercise could be found in recent times or since the Reformation.

Observations as to the institution of criminal suits against churchwardens for the purpose of obtaining the removal of illegal church ornaments. *DAVEY v. HINDE*

Consistory Court of Chichester [1901] P. 95

Note.

See Davey v. Hinde (Second Hearing), Consistory Court of Chichester, [1903] P. 221, *next Case*.

14. — Interest—Parishioner of new ecclesiastical parish—Lord Blandford's Act (19 & 20 Vict. c. 104), s. 15—Right of non-resident ratepayer to promote faculty suit for removal of illegal ornaments from parish church—Stations of the cross—Confessional boxes—Crucifixes—Tabernacles—Holy water stoups—Images of the Good Shepherd, the Virgin Mary, and the Sacred Heart and St. Joseph—Hearing of suit after prohibition quousque—Decree.

The opponents in a cause of faculty instituted

ECCELESIASTICAL LAW (Faculty)—continued.

in the Consistory Court of Chichester for the purpose of obtaining a faculty for the removal from a parish church in the diocese of Chichester of certain ornaments and articles of church furniture objected to as illegal, after dying in their answer that the promoter was a parishioner or resident inhabitant of the parish, and submitting that he had therefore no interest cognizable by the Court, alleged therein that before any decision or final determination of the suit the Bishop of Chichester should be first consulted and his consent had, and earnestly craved his judgment in the premises, and complained and supplicated that the bishop should examine and determine the cause in his own proper person. The Chancellor of the diocese heard the cause sitting alone, the bishop not being present, and, the petitioner having objected to the bishop being consulted, determined it, delivering judgment without consulting the bishop, holding that the petitioner had a sufficient interest to promote the suit, and dealing with the merits of the case. Subsequently, a writ of prohibition having issued prohibiting the Chancellor from proceeding with the cause until he had consulted the bishop and obtained his consent to hear, decide, and determine the suit, the bishop authorized the Chancellor to hear, decide, and determine the suit. Thereupon a second hearing of the suit took place before the Chancellor; the pleadings filed and the evidence taken on the former proceedings being treated as filed and taken anew, and additional oral evidence being given both on the question of interest and on the merits; the substance of the evidence on the question of interest being that the parish church was a new parish church within a separate ecclesiastical parish formed under Lord Blandford's Act; that the petitioner at the date of his petition, and thenceforth during the proceedings in the suit, was a weekly tenant of a six-roomed house in this ecclesiastical parish, five rooms in which he underlet, keeping in his own occupation one room into which he occasionally went, but where he had never slept; that the house had been taken by him for the sole purpose of giving him a locus standi to bring the suit; and that he was entered in the rate-book of the civil parish out of which the ecclesiastical parish had been formed from before the commencement of the suit up to the time of the hearing, and had paid all rates due and payable by him during that period:—

Held, that the petitioner had a sufficient interest to entitle him to promote the suit:

Held, also, that a faculty must issue authorizing the promoter to remove from the parish church the following ornaments and articles of church furniture objected to as illegal:—

(1.) Fourteen stations of the cross hanging on the walls of the church.

(2.) Three confessional boxes.

(3.) All the crucifixes in the church with any canopy or crown over any of them.

(4.) The tabernacle on or over the communion table in the chancel and the lamp burning before it; also the tabernacle on or over the communion table in the side chapel used for the reservation of the sacrament and the light burning before it.

ECCELESIASTICAL LAW (Faculty) *continued.*

(5.) Two movable holy water stoups.

(6.) The following images and accessories: The image of the Good Shepherd on a pedestal at the west end of the church, and the candles on each side of it and the lighted lamp in front of it. The image of the Virgin Mary on a pedestal against the chancel screen, and the candles on each side of it and the vases of flowers, and the lighted blue lamp in front of it and the curtain and canopy or crown or star over it. The images of the Sacred Heart and St. Joseph on either side of the communion table in the side chapel.

Legal validity given to the decision of the Chancellor of the Diocese of Chichester in *Darey v. Hinde*, [1901] P. 95. **DAVEY v. HINDE**

Consistory Court of Chichester [1903] P. 221

See preceding Case.

15. — Jurisdiction—Irrevocability of faculty except for fraud—Disused Burial Grounds Act, 1884 (47 & 48 Vict. c. 72), s. 3—Faculty authorizing erection of buildings in contravention of Act of Parliament—Meaning of exemption permitting building to be erected “for the purpose of enlarging a church, chapel, meeting-house or other places of worship”—Variation of faculty by consent of petitioners—Practice—Costs.

A faculty granted by the ordinary after citation and unappealed against cannot, in the absence of the consent of all the parties interested, be revoked for any cause other than fraud.

The 3rd section of the Disused Burial Grounds Act, 1884, provides that after the passing of that Act it shall not be lawful to erect any buildings upon any disused burial ground (defined by that Act to mean a burial ground in respect of which an O. in C. has been made for the discontinuance of burials therein in pursuance of the Burial Acts, 1852 and 1853), except for the purpose of enlarging a church, chapel, meeting house or other places of worship.

In June, 1901, on the application of the vicar and churchwardens of a parish church in the diocese of London within the metropolis, the ordinary sanctioned by faculty the erection on a portion of the churchyard of the parish—a disused burial ground within the above Act of 1884—in substitution for the erection on the same churchyard of a parish room over two vestries at the south end of the church sanctioned by a previous faculty (granted in Sept., 1900), a larger hall capable of seating 240 persons, abutting on the church on its north side immediately behind the chancel and communicating with the church by means of a door or doors, together with two vestries on the east side of the church, and lavatories and a kitchen on the sides of the hall, the hall to be used when required as a vestry and for Sunday-schools and mission services and other parochial purposes.

Citations to lead these faculties had been duly served, but no appearance had been entered thereto, and the decrees in pursuance of which they had been granted were not appealed against. In Mar., 1902, the London County Council, the sanitary authority to enforce the Disused Burial Grounds Act within the metropolis, instituted a suit in the Consistory Court of London, and in

ECCELESIASTICAL LAW (Faculty) *continued.*

their petition prayed that the faculty of June 27, 1901, should be revoked or amended in such manner that no authority should be given therein to contravene the above 3rd section of the Act of 1884. The vicar and churchwardens appeared to defend the suit, and pleaded that the Court had no jurisdiction to rescind the faculty; but the sole question relied on and argued at the hearing was whether the faculty sought to be revoked contravened the Act of 1884. The petitioners did not ask for the revocation of the faculty on the ground of fraud, and gave no evidence either of fraud or of the Court having been deceived by the respondents or third parties. The Consistory Court of London refused to revoke the faculty as prayed, holding that the faculty had been properly granted, as the buildings the erection of which had been sanctioned by it were buildings erected for the purpose of enlarging the church within the exception contained in the 3rd section of the above Act.

The London County Council appealed:—

Held, on appeal, that the refusal of the Court below to revoke the faculty was right, as where in a faculty suit a citation has been duly served no Ecclesiastical Court has jurisdiction in the absence of consent to revoke a faculty obtained in the suit without fraud and unappealed against.

Semble, that the faculty sought to be revoked authorized an infringement of the Disused Burial Grounds Acts, 1884, in so far as it sanctioned the erection of the parish hall and the lavatories and kitchen connected with it, and was to that extent a nullity; that the 3rd section of that Act did not extend to render lawful the erecting of buildings which, though under the same roof as the church and in physical communication with it, were intended to be used for ecclesiastical purposes for which the church would not be used in ordinary course, and that so far as the 3rd section of the Act related to churches it only permitted buildings to be erected which were in physical communication with the church and enlarged it for the main and primary purpose of religious worship.

The appeal was dismissed without costs, as the point on which the respondents succeeded as to the irrevocability of the faculty, though raised on the pleadings, had not been relied on or argued in the Court below. **LONDON COUNTY COUNCIL v. DUNDAS** - **Archdeacon Court of Canterbury [1903] W. N. 157; [1904] P. 1**

16. — Jurisdiction—Refusal of faculty for communion table with marble slab forming the top of the same.

A faculty cannot legally be granted for a communion table with a marble slab forming the top of the table though the rest of the table is of wood. **RECTOR, &c., OF HAYES v. FULFORD**

Consistory Court of London [1910] P. 18

17. — Jurisdiction—Movable communion table of oak to have inserted therein on its top surface a square block 24 inches square of stone.

In this case in 1902 a faculty was granted by the Chancellor of the diocese of Ely sanctioning the introduction into the church of St. Mary, Madingley, in the county of Cambridge and diocese of Ely, from which church a stone altar

ECCLESIASTICAL LAW (Faculty)—continued.

had been removed under a previous faculty, of a new movable communion table of oak; the table to have inserted therein on its top surface a square block 24 inches square of stone, to be placed in such a position that each end of the block should be equidistant from the end of the table, and the front of the block to be four inches from the front of the table and eight inches from the hind part thereof. *In re* ST. MARY, MADINGLEY, in the Consistory Court of Ely (not reported) [1910] P. 23, n.

18. — *Ornaments of the church—Liability to abuse by superstitious reverence—Stations of the Cross set up, not for purpose of decoration only, but to take a place in devotions paid to the Deity before them—Sacring bell—Altar cards—Crucifixes—Discretion to refuse confirmatory faculty where opinion of church-going parishioners adverse to retention of ornaments—Decorations—Image of the Good Shepherd—Effect of consecration on church ornaments—Practice—Arches Court Rules, September, 1903.*

A faculty was granted to remove out of a parish church as illegal church ornaments certain pictures known as Stations of the Cross, placed in the church without a faculty having been obtained for their introduction, and set up, not for purposes of decoration only, but intended to take a place and play a part in devotions to be paid to the Deity before them, and having been in fact used as intended.

A confirmatory faculty was also granted for the retention in the same church of a small figure standing on a bracket under a canopy representing our Saviour as the Good Shepherd, the whole figure made of oak and uncoloured, and affixed about ten feet from the ground to the east wall of the church on the south side of the chancel arch, it being held to be a mere architectural decoration not liable to give occasion to superstitious reverence in any form.

An application for a confirmatory faculty to authorize the retention in a parish church of church ornaments not illegal of themselves, but placed in the church without the authority of a faculty, cannot be regarded in any more favourable light than an application for a faculty for the first introduction into the church of the same church ornaments, and in all such cases the Ordinary will refuse to grant the confirmatory faculty prayed for unless there is before him sufficient evidence of a general desire of the churchgoing parishioners for the retention in the church of the church ornaments in question.

Where, therefore, two isolated crucifixes had been placed over the pulpits in a parish church by the incumbent without the sanction of a faculty, the Ordinary, without deciding either whether the crucifixes were illegal per se or whether on the evidence they were or were not liable to be abused by superstitious reverence, being of opinion that it had been sufficiently proved that no general desire on the part of the churchgoing parishioners existed for the retention in the church of such unusual adjuncts of the pulpits of the churches of the Church of England, refused to grant a confirmatory faculty authorising their remaining in the church, and decreed a faculty to issue for their removal.

ECCLESIASTICAL LAW (Faculty) continued.

A bishop does not by consecrating or dedicating a church give any episcopal sanction—direct or indirect—for the retention in the church of church ornaments or decorations which may have been in the church at the time of its consecration or dedication.

Practice where an appeal apud acta is asserted in a case to which the rules and regulations of the Arches Court issued Sept., 1903, are applicable. *MARKHAM v. SHIREBROOK OVERSEERS* - - - Consistory Court of Southwell [1906] P. 239

19. — *Removal of remains from consecrated to unconsecrated ground subject to grant of licence from Secretary of State, Faculty for—Jurisdiction—Evidence—Discretion—The Burial Act, 1857 (20 & 21 Vict. c. 81), s. 25—4 & 5 Will. 4. c. Lxxv.*

The 25th section of the Burial Act, 1857, provides that, except in the cases where a body is removed from one consecrated place of burial to another by faculty granted by the Ordinary, it shall not be lawful to remove any body or the remains of any body which may have been interred in any place of burial without licence under the hand of one of Her Majesty's Secretaries of State.

The Superior of St. Edmund's College—one of the Roman Catholic theological colleges in England—applied to the Court for a faculty to authorize the removal of the remains of a former superior of the college from their place of interment in a vault in the churchyard of a parish church in the diocese of London to a vault under the chapel of the college wherein three of the predecessors of the petitioner and the deceased lay buried. It appeared that the owner of the vault from which it was proposed to remove the remains of the deceased could not be discovered, but that the incumbent of the parish church in whom the freehold of the churchyard was vested and the next of kin of the deceased consented to the proposed removal. No evidence was given that the vault under the college chapel had ever been consecrated.

The Court in its discretion granted the faculty; but, being of opinion that the vault under the college chapel was not a consecrated place of burial within the meaning of the above section, directed that the faculty should issue upon condition that it was not to be acted upon until a licence approving the place of reinterment had been obtained from a Secretary of State.

The removal of remains from unconsecrated places of burial being by the above section placed under the control of a Secretary of State, the Court cannot now, as it would have done before the passing of the Burial Act, 1857, refuse to exercise whatever jurisdiction it might possess to grant a faculty for the removal of remains to unconsecrated ground on account of the objection that the remains when removed would not be sufficiently protected from disturbance. *In re* TALBOT Consistory Court of London [1901] P. 1

20. — *Rood—Faculty for the erection of rood beam surmounted by crucifix with figures of the Virgin Mary and St. John refused—Rood—*

ECCLESIASTICAL LAW (Faculty)—continued.

Illegal church ornament—Ornaments rubric—2 § 3 Edw. 6, c. 1.

A rood with the accompanying figures of the Virgin Mary and St. John erected on a beam surmounting the chancel screen is not a lawful church ornament in churches of the Church of England.

The vicar and churchwardens of a parish church in the diocese of London petitioned the Ordinary to authorize by faculty the erection of a beam across the entrance to the chancel of their parish church bearing the following inscription in Latin on its face, "O Lord God, Lamb of God, Son of the Father, that takest away the sins of the world," and surmounted by, on a central cross, the figure of our Lord "crowned and reigning on the tree," and towards the ends of the beam on the one side the figure of the Virgin Mary and on the other side the figure of St. John; the crucifix and the other figures to be carved in wood, the height of the crucifix to be 13 ft. 10 in., and the two figures of the Virgin Mary and St. John to be each 3 ft. 6 in. high and to be raised above the level of the beam on brackets or pedestals:—

Held, that the faculty petitioned for must be refused, as the rood beam surmounted as proposed by the crucifix and the accompanying figures of the Virgin Mary and St. John was an illegal church ornament forbidden in churches of the Church of England. **ST. PAUL, BOW COMMON (VICAR AND CHURCHWARDENS) v. INHABITANTS OF THE SAME**

Consistory Court of London [1909] P. 245

21. — Tombstone—Inscription on tombstone in parish churchyard — Prayers for the dead—Removal from tombstone of inscription apparently placed there as an invitation for prayers for the relief of the souls of deceased persons named thereon from pains of purgatory—Vestry—Control of incumbent over inscriptions on tombstones—Presumption—Discretion of Ordinary—Court fees.

The incumbent of a parish church objected to the retention on a newly erected tombstone in the parish churchyard of an inscription which had been placed there without his consent or the sanction of a faculty, and the material portion of which consisted of the following words: "Of your charity pray for the repose of the souls of the beloved son of . . . and . . . , died . . . , also of . . . , son of the above . . . died . . . On whose souls sweet Jesus have mercy"; and subsequently applied to the Ordinary for a faculty for the removal of the tombstone out of the churchyard. The parishioner who had caused the tombstone to be erected appeared as respondent in the suit, and, further, himself instituted a suit praying for a confirmatory faculty confirming the erection of the tombstone and its retention in the churchyard with the above inscription on it. The two suits were heard together, and at the hearing it appeared that the deceased persons named on the tombstone were members of a Roman Catholic family, and that the inscription had been composed as being the usual inscription placed on tombstones erected to the memory of Roman Catholics:—

Held, that the onus of satisfying the Court

ECCLESIASTICAL LAW (Faculty)—continued.

that the inscription was in all respects unobjectionable lay upon the petitioner for the confirmatory faculty, and had not been discharged; that the evidence supported the presumption that the inscription was intended to be an appropriate one in memory of Roman Catholics, and in regard to prayers for the dead in conformity with the doctrine of purgatory as recognised and enjoined by the Roman Catholic Church, and that the Court, whilst declining on these grounds and the further ground that the churchwardens and those parishioners who were members of the Church of England entertained conscientious objections to the retention of the inscription, to decree a confirmatory faculty, must decree a faculty to issue to the incumbent authorizing him to remove the tombstone from the churchyard.

Inscriptions proposed to be placed on the tombstones in a parish churchyard are in the first instance subject to the control of the incumbent of the parish, but any decision come to by him may be reviewed by the Ordinary on proper application being made to the Ecclesiastical Court of the diocese.

The solicitors in ecclesiastical suits are as officers of the Court personally responsible for and bound to pay into the registry the Court fees incurred by them on behalf of their respective clients; but the solicitor having so paid the fees is entitled, if his client is successful in the suit, to obtain an order on the unsuccessful party to recoup him for the payments made by him. **PEARSON v. STEAD. STEAD v. PEARSON.**

Consistory Court of Ripon [1903] P. 66

22. — Vestry—Faculty for erection of vestry on disused burial ground — "Enlargement of church"—Disused Burial Grounds Act, 1884 (47 & 48 Vict. c. 72), s. 3.

The rector and churchwardens of a parish united with six other parishes in the City of London and the churchwardens of such six parishes petitioned the Ordinary for a faculty authorizing a choir vestry for the choir of the parish church of the united parishes and an extension of the clergy vestry of the same church being built on a disused burial ground adjoining the church and to which the Disused Burial Grounds Act, 1884, applied; the choir vestry and extension of the clergy vestry to be placed close alongside the church and with a door leading into it. The grant of the faculty was opposed by the London County Council. It appeared in evidence that the existing accommodation for the robing of the choir was most inconvenient and unsuitable, and that there was no reasonable objection to the proposed extension of the clergy vestry; special services attended by very many clergy being held in the church, and members of the Corporation of London when attending the ordinary services robing in the clergy vestry. It further appeared that it was desired by the rector that the two vestries should be separated by a movable wooden partition, so that on occasions they might on the removal of the partition form one long room:—

Held, that the Court in its discretion would decree a faculty to issue for the erection of the choir vestry and the extension of the clergy

ECCLESIASTICAL LAW (Faculty)—continued.

vestry, but that a movable partition between them could not be sanctioned, as the two vestries when they formed one room—upwards of 50 ft. long and 26 ft. wide—would give much more accommodation than would be necessary for the clergy and choir to robe in when in attendance for the services of the church.

Held, also, that what was authorized by the faculty was an "enlargement of the church," within the meaning of s. 3 of the Disused Burial Grounds Act, 1884, that section providing that after the passing of that Act it shall not be lawful to erect any buildings upon any disused burial ground—defined to include any burial ground in respect of which an O. in C. has been made for the discontinuance of burials therein in pursuance of certain Acts—except for the purpose of enlarging a church, chapel, meeting house, or other places of worship. **ST. MARGARET, LOTHBURY (RECTOR, &C.) v. LONDON COUNTY COUNCIL**

Consistory Court of London [1909] P. 310

Fees.**(Ecclesiastical Fees.)**

Notice of the Privy Council, Nov. 29, 1907, as to the amendment of the Table of Ecclesiastical Fees and Payments. St. R. & O., 1908, No. 326. Price 2d.

Order of the Privy Council, dated Oct. 6, 1908, approving Table of Ecclesiastical Fees and Payments. St. R. & O., 1908, No. 879. Price 1d.

Franchise.

—County vote—Qualification—Freehold benefice
—Receipt of pew-rents by vicar.
See PARLIAMENT. 4.

Glebe Lands.

See under GLEBE LANDS.

Holy Communion.

1. — *Criminal suit by letters of request—Church Discipline Act, 1840 (3 & 4 Vict. c. 86)—Refusal to administer the Holy Communion—Marriage with deceased wife's sister—Deceased Wife's Sister's Marriage Act, 1907 (7 Edw. 7, c. 47), s. 1—Persons not included under description of "open and notorious evil liver so that the congregation be thereby offended."*

Lay members of the Church of England who have been baptised and confirmed and between whom a marriage legalized by the Deceased Wife's Sister's Marriage Act, 1907, has been solemnized are not, either by reason of such marriage or by their afterwards living together as husband and wife, open and notorious evil livers within the rubric in the Communion Service, and neither the solemnization of their marriage nor their subsequent cohabitation justifies the incumbent of the parish in which the parties reside in repelling them from the sacrament of the Lord's Supper.

A domiciled Englishman who had gone through the form of marriage with his deceased wife's sister, a domiciled Englishwoman, in a Presbyterian church in Canada, after the passing

ECCLESIASTICAL LAW (Holy Communion)—continued.

of the Colonial Marriages (Deceased Wife's Sister) Act, 1906, but before the Deceased Wife's Sister's Marriage Act, 1907, had come into force, and after the marriage had returned to reside in England, applied, after the coming into force of the last-mentioned Act, to the incumbent of the parish in which he was residing together with his wife that, they being both members of the Church of England, and having been baptised and confirmed, should be admitted to the sacrament of the Holy Communion. The incumbent repelled the applicant and his wife from the Holy Communion, and on their promotion a criminal suit by letters of request was thereupon instituted against the incumbent:—

Held, that the promoters had been illegally repelled from the Holy Communion, and that the incumbent must be admonished for having so repelled them and to refrain from similar acts in the future. **BANISTER v. THOMPSON**

Archdeacon of Canterbury [1908] W. N. 189; [1908] P. 362

—Faculty—Communion table.

See under ECCLESIASTICAL LAW —
Faculty.

2. — *Repulsion from Holy Communion—Lawful cause—Open and notorious evil liver—Marriage with deceased wife's sister—Criminal suit—Monition—Prohibition—1 Edw. 6, c. 1, s. 8—Deceased Wife's Sister's Marriage Act, 1907 (7 Edw. 7, c. 47), s. 1.*

Sect. 1 of the Deceased Wife's Sister's Marriage Act, 1907, validates a marriage between a man and his deceased wife's sister for all purposes, whether the marriage is contracted within or without the realm, and whether before or after the date of the passing of the Act.

The immunity granted by the first proviso in the section to any clergyman of the Church of England from any suit, penalty, or censure, whether civil or ecclesiastical, for anything done or omitted to be done by him in the performance of the duties of his office, to which suit, penalty, or censure he would not have been liable if the Act had not been passed, is limited to matters connected with the solemnization of such a marriage and does not extend to the performance of the general duties of his office.

Since the passing of the Act marriage with a deceased wife's sister is not a lawful cause within s. 8 of 1 Edw. 6, c. 1, for repelling the parties to the marriage from Holy Communion.

Where, therefore, the Archdeacon of Canterbury admonished a clergyman of the Church of England for having, since the passing of the Deceased Wife's Sister's Marriage Act, 1907, repelled the parties to such a marriage from Holy Communion, as being, by reason of their marriage and cohabitation, open and notorious evil livers, and to refrain from so repelling them in future:—

Held by the Div. Ct. (Bray J. dissenting) and by the C. A., that there was no ground for a writ of prohibition to restrain the Ecclesiastical Ct. from proceeding further in the matter of the monition. **REX v. DIBBIN**

C. A. [1909] W. N. 258; [1910] P. 57

ECCLESIASTICAL LAW—continued.**Income Tax.**

- Clergy—Income tax—Incumbent of benefice—Easter offerings.
See **REVENUE—Income Tax.** 8.
- Deductions by clergymen or ministers of religion in respect of dwelling-houses in certain cases.
See **Finance Act, 1907** (7 Edw. 7, c. 13), s. 28.
- Incumbent of benefice—Grant by affiliated branch of Queen Victoria Clergy Sustentation Fund.
See **REVENUE—Income Tax.** 7.

Notaries.

See under **NOTARIES.**

Offences.

1. — *Deprivation—Offences by clergyman—Separation order by court of summary jurisdiction—Persistent cruelty—Clergy Discipline Act, 1892* (55 & 56 Vict. c. 32), s. 1, sub-s. 1 (d), (e) — *Summary Jurisdiction (Married Women) Act, 1895* (58 & 59 Vict. c. 39), ss. 4, 5.

The Clergy Discipline Act, 1892, s. 1, sub-s. 1, directs that, if either (d) an order for judicial separation is made against a clergyman in a divorce or matrimonial cause, or (e) a separation order is made against a clergyman under the Matrimonial Causes Act, 1878, any preferment held by him shall be declared by the bishop to be vacant. By the Matrimonial Causes Act, 1878, a separation order could be obtained by a married woman against her husband upon the ground of his conviction for an aggravated assault upon her within the Offences against the Person Act, 1861. This provision was repealed by the Summary Jurisdiction (Married Women) Act, 1895; but s. 4 of that Act enabled a married woman whose husband had been convicted of an aggravated assault upon her under the Offences against the Person Act, 1861, or (among other things) had been guilty of persistent cruelty to her, to obtain from a court of summary jurisdiction a separation order against him, and s. 5 provided that the separation order while in force should have the effect in all respects of a decree of judicial separation on the ground of cruelty. A separation order having been made against a vicar under this Act on the ground of his persistent cruelty, the bishop declared the vicarage vacant under the Clergy Discipline Act, 1892:—

Held, that the declaration could not be supported under clause (e), because the provision in the Act of 1895 enabling a married woman to obtain a separation order on the ground of persistent cruelty was not a re-enactment with modification within s. 38, sub-s. 1, of the Interpretation Act, 1889, of the repealed provision in the Act of 1878, so as to require the bishop to treat the separation order as a separation order under the Act of 1878; nor under clause (d), because a separation order under the Act of 1895 was not an order for judicial separation in a divorce or matrimonial cause. **SWEET v. BISHOP OF ELY** - **Joyce J.** [1902] **W. N.** 116; [1902] **2 Ch.** 508

ECCLESIASTICAL LAW (Offences)—continued.

2. — *Jurisdiction—Clergy Discipline Act, 1892* (55 & 56 Vict. c. 32), s. 2—*Charge of having been "convicted by a temporal court of having committed an act constituting an ecclesiastical offence"*—*Conviction by magistrates of indecent behaviour in a church of the Church of England during divine service—The Ecclesiastical Courts Jurisdiction Act, 1860* (23 & 24 Vict. c. 32), s. 2—*Brawling—Evidence—Monition.*

Indecent behaviour of a clergyman in a church of the Church of England during the celebration of divine service, though punishable by magistrates under the Ecclesiastical Courts Jurisdiction Act, 1860, is an offence against the general ecclesiastical law.

The Consistory Court of the diocese within which a clergyman holds preferment has jurisdiction under the 2nd section of the Clergy Discipline Act, 1892, to try and sentence him under that Act, in case he is convicted by a temporal court of having committed an act constituting an offence against ecclesiastical law, not being a question of doctrine or ritual, notwithstanding that the offence he is charged with is not an offence against morality. **GIRT v. FILLINGHAM** **Consistory Court of St. Albans** [1901] **P.** 176

3. — *Jurisdiction—Clergy Discipline Act 1892* (55 & 56 Vict. c. 32), ss. 2, 3, 12—*Offence against morality—Immoral conduct—Canons 71 and 109 of 1603—Conduct unworthy of the character of minister of religion.*

The nature and character of the immorality and immoral conduct within the Clergy Discipline Act, 1892, considered. **SWEET v. YOUNG** **Consistory Court of Rochester** [1902] **P.** 37

4. — *Officiating without leave of incumbent of parish and contrary to inhibition of Ordinary—Unconsecrated building—Public performance of divine service—Administration of holy communion—Canon 71 of 1603—Collection of offertory alms—Preaching—Church Discipline Act, 1840* (3 & 4 Vict. c. 86)—*Monition—Custs.*

It is an ecclesiastical offence under the Church Discipline Act, 1840, for a clerk in holy orders of the Church of England to publicly perform any of the services of the Church of England without lawful authority in a parish without the consent and against the express wish of the incumbent of the parish, and such offence is aggravated where the accused clerk has in so acting disobeyed the inhibition of the Ordinary.

The articles in a criminal suit instituted in the Court of Arches by virtue of letters of request under the Church Discipline Act, 1840, charged the respondent, a clerk in holy orders of the Church of England, with having offended against the laws ecclesiastical by having on several specified occasions, in an unconsecrated building in the parish of which the promotor was the incumbent, within two years then last past, without the consent and contrary to the expressed wish of the promotor, and notwithstanding an inhibition of the archbishop of the diocese against the respondent performing any service of the Church in the diocese, read prayers, preached, and performed ecclesiastical duties and divine offices according to the rites and ceremonies of

ECCLESIASTICAL LAW (Offences)—continued.

the Church of England. The respondent did not oppose the admission of the articles, but pleaded (*inter alia*) that there had been no public administration of the services of the Church of England in the building wherein he was charged to have officiated.

At the hearing it was admitted that the respondent had administered the sacrament of the Lord's Supper in a building not being a private chapel dedicated and allowed by the laws ecclesiastical, and it was proved that on the occasions specified the respondent had conducted the services of the Church of England in the building mentioned in the articles in the presence of the owner of a lease for years of the property on a portion of which the building was built, of members of his family and household, and of other persons, either his undertenants or admitted to be present by his permission, and that at some of such services the respondent had collected offertory alms and delivered addresses to those present; all these acts having been done contrary to the expressed wish of the promoter, and some of them after the service on the respondent of the inhibition of the archbishop of the diocese.

The Dean of Arches, being of opinion that the defence of the respondent had not been made out, pronounced that the articles had been sufficiently proved, admonished the respondent from offending in the like manner in the future, and condemned him in the costs of the suit. **NESBITT v. WALLACE**

Arches Court of Canterbury [1901] W. N. 180 ; [1901] P. 354

Ordination.

1. — *Service of the rite of ordination of priests—"Impediment or notable crime"—Objections to candidate for ordination—Allegation of ritualistic practices.*

At the celebration of a service of the rite of ordination of priests, the appellant, a layman, came forth and objected that one of the deacons presenting himself for ordination had taken part in the services in a church in which adoration of the elements and other breaches of the prescribed ritual had taken place:—

Held, that the matters alleged against the deacon did not, if true, constitute an impediment or notable crime within the meaning of the words in the Ordination Service, to be said by the bishop, which call upon any person present, who knows any "impediment or notable crime" in any of the persons presenting themselves for ordination, to come forth and shew what "the crime or impediment" is. **KENSIT v. ST. PAUL'S (DEAN AND CHAPTER)**

Div. Ct. [1905] 2 K. B. 249

Pews.

1. — *Faculty pew—Allotment of church seats by churchwardens subject to control of Ordinary—Duty of churchwardens—Appropriation of seats at all services—Seats not to be filled up before commencement of service.*

The churchwardens of a parish church have vested in them the allotment of seats in the body of the church amongst the parishioners subject to the control of the Ordinary and to the exemption existing in respect of faculty pews or seat s

ECCLESIASTICAL LAW (Pews)—continued.

The allotment, however, in each case must be made in general terms so as to entitle the allottees to occupy the seats allotted to them at all the ordinary services held in the church; the churchwardens not being entitled to attach to the allotment a condition excluding any allottee from the right to attend in the seats allotted any of the ordinary services of the Church prescribed by the rubrics. Thus persons to whom the churchwardens have allotted seats in the body of the church are entitled by law to occupy the seats so allotted to them not only during the Sunday morning service, but also during the Sunday evening service and at the early Sunday morning service held for the administration of Holy Communion, as well as at the ordinary services held on Christmas Day, Ash Wednesday, and Good Friday, and at any other ordinary service held in the church whether on Sundays or on weekdays.

Moreover, up to the commencement of service the seats allotted by the churchwardens to parishioners cannot legally be occupied by other persons against the will of the persons to whom they have been allotted.

Observations as to the circumstances which would at the present day justify the Ordinary in decreeing a faculty for appropriating pews or seats to private individuals. **CLAUVERLEY (VICAR, &C.) v. CLAUVERLEY (PARISHIONERS, &C.). CLAUVERLEY (CHURCHWARDENS) v. CLAUVERLEY (VICAR, &C.). GATACRE AND LEIGH v. CLAUVERLEY (VICAR, &C.)**

Consistory Court of Hereford [1909] P. 195

Practice.

Judicial Committee—Procedure in Ecclesiastical and Maritime Causes. Order in Council as to the charge of the Duties of the Office of Registrar of His Majesty in Ecclesiastical and Maritime Causes. Reprint from W. N. 1904 (July 23), p. 231. See CURRENT INDEX, 1904 p. cxvii.

See also under PRIVY COUNCIL.

1. — *Appeal on law—Improper admission of evidence in Court below—Leave to appeal on facts—Clergy Discipline Act, 1892 (55 & 56 Vict. c. 32), ss. 2, 4, 9—Clergy Discipline Rules, 1892, rr. 68, 69—Fresh evidence on appeal—Discretion.*

Leave to appeal on matters of fact to the Chancery Court of York was granted by the judge of that Court in a case under the Clergy Discipline Act, 1892, where on an appeal on matters of law in the same case it had appeared that material evidence for the prosecutor which ought to have been excluded had been admitted in the Court below.

The 69th rule of the Clergy Discipline Rules, 1892, provides that the appellate Court on any appeal as to the facts under the Act may, if in the opinion of the Court the justice of the case requires it, (a) summon any witness heard at the trial to give evidence with respect to the case, and (b) order any witness not heard at the trial to give evidence with respect to the case. A deft. who had been adjudged guilty in the Consistory Court of the diocese in which he held preferment of immoral acts within the provisions

ECCELESIASTICAL LAW (Practice)—continued.

of the Clergy Discipline Act, 1892, appealed to the Chancery Court of York in respect of matters of law on the ground, *inter alia*, of the improper admission of evidence in the Court below, and also applied in the same case for leave to appeal on matters of fact. On the appeal on matters of law being heard, the appellate Court was of opinion that certain of the evidence alleged by the appellant to have been improperly admitted ought to have been excluded, and, on the application for leave to appeal on matters of fact coming on, granted leave to appeal on fact on the ground of the improper admission of evidence in the case as above stated, and directed that under the above rules three witnesses who had given evidence in the Court below should be recalled for examination at the hearing of the appeal, and that another witness not heard in the Court below should be summoned to give evidence at the same hearing. **CHESNEY v. NEWSHOLME. NEWSHOLME v. CHESNEY (2)**

Chancery Court of York [1908] P. 301

— Appeal, Petition for leave to—Enlargement of time.

See **ECCELESIASTICAL LAW—Discipline (Clergy Discipline). 3.**

2. — Consistory Court—Patent of commissary and vicar-general—Reservation of cause to bishop where party desires his judgment—Legality of reservation—Effect on jurisdiction of vicar-general—Want of jurisdiction apparent on face of proceedings—Prohibition.

By letters patent appointing a Chancellor for a diocese the bishop gave him power, in the absence of the bishop from his Consistory Court, to determine certain causes, "Nevertheless first consulting us and our successors, and having our consent in case either party earnestly crave our judgment." A suit was promoted for the removal of certain ornaments from a church in the diocese, and the respondents in their reply asked that the bishop should be first consulted and his consent had, and earnestly craved his judgment. The Chancellor heard the suit, and delivered a judgment in which he held that he had jurisdiction and dealt with the merits of the case. It appeared from the judgment, though not so stated in terms, that he had not consulted the bishop or obtained his consent either to the hearing of the suit or the terms of the judgment. On appeal from a refusal to direct the issue of a writ of prohibition:—

Held, that the limitation in the patent was not illegal; that it did not relate to procedure, but had the effect of excluding the jurisdiction of the Chancellor over the excepted causes; that the absence of jurisdiction sufficiently appeared on the face of the proceedings; and that, as the objection to the hearing of the suit by the Chancellor had not been abandoned or waived, a writ of prohibition should issue.

Judgment of the Div. Ct., [1901] 2 K. B. 141, reversed. **REX v. TRISTRAM**

C. A. [1902] 1 K. B. 816

— Costs.

See **ECCELESIASTICAL LAW — Faculty.**
13, 15, 21.

ECCELESIASTICAL LAW—continued.**Rates.**

— Burial ground.

See under **RATES.**

Rectory.

1. — Statute—Construction—Mischief—Purview—Residence of parsons on benefices—Lease of rectory—Omission of statutory "condition for avoiding the same" on bishop ordering personal residence—Void or voidable—Pluralities Act, 1838 (1 & 2 Vict. c. 106), s. 59.

With the object of enforcing the residence of parsons on their benefices, if required by the bishop, s. 59 of the Pluralities Act, 1838, provides that "any agreement made for the letting of the house of residence . . . belonging to any benefice, to which house of residence any spiritual person may be required, by order of the bishop as aforesaid, to proceed and to reside therein . . . shall be made in writing, and shall contain a condition for avoiding the same, upon a copy of such order . . . being served upon the occupier thereof, or left at the house, and otherwise shall be null and void."

The section then provides for the service of the order and imposes a penalty of 40s. a day on any person holding over after service. After enabling "the spiritual person so directed to reside" to obtain possession by summary proceedings before a justice of the peace, the section proceeds: "Provided that any person who shall have been in possession of any such house of residence . . . under a verbal agreement only or under any agreement in which the condition aforesaid for avoiding the same shall not be inserted, and who shall be turned out of possession by virtue of this Act, shall be entitled to sue the person with whom he . . . had entered into such agreement for damages occasioned by his . . . being so turned out of possession, to be recovered in any of Her Majesty's superior courts at Westminster."—

Held, that a lease of a rectory for the term of the rector's incumbency, though not containing the statutory condition of avoidance, was not absolutely void, but was good as between the rector and the lessee, and would only become void on the bishop ordering personal residence.

Held, also, that the object of s. 59 in requiring the insertion of the condition of avoidance was to bring the provisions of the law to the attention of the lessee, and the only effect of omitting it was to render the lessor liable in damages under the proviso if the lessee was turned out by reason of the bishop's order. **RICKARD v. GRAHAM**

Swinfen Eady J. [1910] W. N. 85 ;
[1910] 1 Ch. 722

Vestry.

— Communion table with cross and candlesticks, Faculty for erection of—Chancel steps—Ratable—Chapel of ease—Vestry.

See **ECCELESIASTICAL LAW — Faculty.**

7.

Vicar-general.

— Patent of commissary and vicar-general—Reservation to bishop of certain causes.
See **ECCELESIASTICAL LAW — Practice.**

2.

ECCLESIASTICAL LAW—*continued.***Vicarage.**

1. — *Sale*—Purchase of new vicarage with proceeds—Loan of balance of purchase-money—Completion of purchase—Mortgage of revenues of benefice to secure loan—Validity—Lien—Clergy Residences Repair Act, 1776 (17 Geo. 3, c. 53), ss. 1, 4, and 10—Parsonages Act, 1838 (1 & 2 Vict. c. 23), s. 1.

Where under the provisions of the Clergy Residence Repair Act, 1776, and the Parsonages Act, 1838, money is borrowed by an incumbent upon the security of a mortgage of the revenues of his benefice, it is essential to the validity of the mortgage—(1) that the money should be borrowed prospectively for the purpose of paying for future works to be executed, and not for the purpose of repaying money already expended; and (2) that the money should be paid into the hands of a nominee as required by s. 4 of the Act of 1776.

The incumbent of a living, finding that the vicarage house was too small for his requirements, sold it with the consent of the ordinary and patron, and the purchase-money was duly paid to the governors of Queen Anne's Bounty. He subsequently found a house more suitable for the purpose, and the purchase of it was approved by the governors of Queen Anne's Bounty and by the ordinary and patron. The money in the hands of Queen Anne's Bounty being insufficient to provide the purchase-money, it was arranged that the incumbent should find the balance; he accordingly did so by means of a personal loan from members of his own family, and sent a cheque for the balance to Queen Anne's Bounty. Shortly afterwards the purchase was completed. About a year after its completion the incumbent obtained from the ordinary his approval and consent to a mortgage of the revenues of the benefice in favour of the lenders, and that approval and consent were expressed in a memorandum of approval duly executed by the ordinary. A few days later a mortgage in the form scheduled to the Act of 1776, adapted to the case of a purchase, was executed by the incumbent. It purported to charge the whole revenues of the benefice with the repayment to the lenders of the money advanced by annual instalments of principal and interest as provided by the Acts. The incumbent subsequently exchanged his benefice for another, and, the new incumbent finding the vicarage house too large, it was sold and a new vicarage house bought with a part of the proceeds of sale and the balance paid into the hands of the governors of Queen Anne's Bounty:—

Held, that the mortgage having been executed to secure the repayment of money already expended, and the money not having been paid into the hands of a nominee as required by s. 4 of the Act of 1776, the mortgage was not in accordance with the Acts, and was, therefore, invalid.

Held, also, that the mortgagees had no lien on the new vicarage or on the balance in the hands of the governors of Queen Anne's Bounty.

LIDBETTER v. HATCH

Warrington J.

[1907] W. N. 29; [1907] 1 Ch. 404

EDINBURGH.

See under SCOTTISH LAW.

EDINBURGH CORPORATION ACT—By-law—Ultra vires.

See SCOTTISH LAW. 6.

EDINBURGH WATER ACT—Right of support for water pipe—Minerals under pipe.

See WATER. 20.

EDUCATION.

See under SCHOOLS.

“EFFECTS”—Soldier's will—“Effects” to be “credited.”

See PROBATE—Soldier's Will.

EGGS—Game—Seizure and detention by police officer of partridges' eggs—Poaching prevention.

See GAME. 5.

EJECTMENT—Action of—Appeal as of right—Practice.

See COUNTY COURT—Appeal. 2.

— Forfeiture—Mortgagee of underlease—Relief—Parties—Costs.

See LANDLORD AND TENANT. 35.

— Injunction—Mortgage—Power of attorney.

See TURKS AND CAICOS ISLANDS. 1.

“EJUSDEM GENERIS”—Charterparty—Exceptions—Demurrage—Construction.

See SHIPPING—Charterparty. 34.

“ELDEST SON”—Accelerating period of distribution—Younger son afterwards becoming eldest son.

See SETTLEMENT. 27.

ELDEST SON—Exception of, entitled to other estates—Shifting clause—Successive life estates.

See WILL—Shifting Clause. 1, 2.

“ELDEST SON OF MY SISTER”—Will—Construction—Lapsed gift.

See JAMAICA. 1.

ELECTION—After-acquired property clause—Persons derivatively entitled—Will—Satisfaction.

See WILL—Satisfaction. 1.

— Alternative liability—Judgment signed against one of two defendants.

See HUSBAND AND WIFE—Liability. 1.

— Appointment—To determine tenancy—Relief granted to lessee—Effect on underlease.

See LANDLORD AND TENANT. 36.

— Appointment—Validity—Remoteness—“Possibility on a possibility”—Equitable interests.

See POWER OF APPOINTMENT. 6.

— Appointment void for remoteness—Will power—Settlement.

See POWER OF APPOINTMENT. 6.

1. — *Bequest by married woman of husband's property to a third person—Married Women's*

ELECTION—*continued.*

Property Act, 1882 (45 § 46 *Vict. c. 75*), s. 1, sub-s. 1; s. 5.

If, having regard to the Married Women's Property Act, 1882, the will of a married woman would have passed property if it had been her own at the date of the will, her husband is in respect of that property, if it belongs to him, even by acquisition in her right, and is clearly identified, put to election where the will also confers benefits on him.

Where the gift away from the husband is of all the wife's property of a certain description, it is more difficult to shew a case of election even where the wife has little or no property of that description.

Observations on *Rich v. Cockell*, (1802) 9 Ves. 369. *In re HARRIS. LEACHROFT v. HARRIS Parker J. [1909] 2 Ch. 206*

2. — *Compensation—Election to take property as against will—Amount of compensation, at what date to be ascertained.*

Where a beneficiary under a will, being put to his election, elects to take against the will, the amount of the compensation payable to the legatees who are disappointed by the election is to be ascertained at the date of the death of the testator, and not at the time when the election is made. *In re HANCOCK. HANCOCK v. PAWSON Kekewich J. [1904] W. N. 194; [1905] 1 Ch. 16*

3. — *Compensation — Married woman — Restraint on anticipation — Removal of disability.*

A testator, who owned land in Turkey, by his will directed it to be sold and the proceeds treated as part of his residuary estate, and he gave an interest in his residuary estate to a married daughter coupled with a restraint upon anticipation. By the law of Turkey the testator had no power to dispose by will of the proceeds of sale of the Turkish property, which became divisible amongst his children. Pending an application for payment out of court of the proceeds of sale, the married daughter became a widow:—

Held, that the testator by adding the restraint on anticipation shewed an intention inconsistent with the application of the doctrine of election, and that that intention was not affected by the fact that the daughter had subsequently become discoverd:

Held, therefore, that she was not bound to compensate out of her interest in the residue those who were disappointed by the Turkish property not being dealt with as directed by the will.

Hamilton v. Hamilton, [1892] 1 Ch. 396, commented upon. *HAYNES v. FOSTER Kekewich J. [1901] W. N. 22; [1901] 1 Ch. 361*

4. — *Compensation—Several persons electing to take against will and taking other benefits under it — Compensation inter se — Benefits received under will — Compensation received included in benefit.*

B. by his will purported to dispose of property comprised in a settlement, under which he took a life interest only without any power of

ELECTION—*continued.*

disposition, as well as of his own property. Some of the persons entitled under the settlement took other benefits under the will. They all elected to take against the will. This election deprived some of the electing parties of shares in the settled property given to them by the will:—

Held, that the persons electing to take against the will were respectively bound to make compensation to other persons so electing, as well as to persons who took under the will only, for any disappointment occasioned by the election to the extent of the benefits received under the will by the several persons electing to take against it.

Held, also, that all compensation so paid to any person electing to take against the will must be included in the benefits received by him under the will. *In re BOOTH. BOOTH v. ROBINSON Swinfen Eady J. [1906] 2 Ch. 321*

— Costs—Taxation—Public body—Right to elect.

See SOLICITOR—Costs. 31.

— Husband and wife.

See under HUSBAND AND WIFE—Election.

— Lease—Forfeiture—Relief—Writ claiming possession—Election to determine tenancy—Underlease.

See LANDLORD AND TENANT. 36.

— Liquidated damages—Injunction.

See PRINCIPAL AND AGENT. 1.

— Partner's share to co-partner, Sale of one—Election by selling partner to affirm sale—Time for election.

See PARTNERSHIP. 24.

— Perpetuity—Power—Appointment—Settlement.

See POWER OF APPOINTMENT. 5.

— Power—Appointment—Perpetuity—Settlement.

See POWER OF APPOINTMENT. 5.

— Power—Successive appointments—Cumulative or substitutionary.

See POWER OF APPOINTMENT. 38.

— Real estate—Grant—Exception—Uncertainty.

See CONVEYANCE.

— Real estate—Resulting trust—Reconversion—Will—Election—Estate duty—Incidence.

See SETTLEMENT. 23.

— Right of election—Estates in Scotland and Australia—Two separate wills.

See NEW SOUTH WALES. 33.

— To abide by contract with individual—Solicitors—Fraud.

See PARTNERSHIP. 14.

ELECTION LAW.

See also under PARLIAMENT.

1. — *Ballot papers—Position of voter's marks on paper—Sufficiency of—Election petition—Ballot Act, 1872* (35 § 36 *Vict. c. 33*), *Sched. II.*

A ballot paper is not rendered void under the Ballot Act, 1872, by reason of the voter placing

ELECTION LAW—continued.

his mark outside the ruled compartments on the paper, within which compartments it is intended that the voter's mark shall be placed, if the mark is in such a position opposite to the name of a candidate as to leave no doubt for whom the voter intended to vote. *In re* PONTARDAWE RURAL DISTRICT COUNCIL ELECTION PETITION

Div. Ct. [1907] W. N. 130 ; [1907] 2 K. B. 313

— Disqualification—Town councillor—Contract with council—Release by committee.
See CORPORATION. 12.

— Mayor—Validity of vote of disqualified person—Right of chairman to vote—casting vote.
See CORPORATION. 11.

— Parishioners' churchwarden—Right of incumbent to vote at.
See ECCLESIASTICAL LAW—Churchwardens. 2.

— Parliament.
See under PARLIAMENT.

ELECTORAL DISABILITIES ACT — Service franchise—Compulsory absence.
See PARLIAMENT. 20.

ELECTRIC BELL SIGNALS—Telephone—Postmaster-General — Monopoly — Private lines.
See TELEGRAPH. 4.

ELECTRIC CARS — Not real estate — Personal estate exempt from assessment.
See CANADA—Railway. 2.

ELECTRIC CURRENT—Escape of—Disturbance to submarine cable.
See CAPE OF GOOD HOPE. 3.

ELECTRIC LIGHT.

Electric Lighting Act, 1909 (9 Edw. 7, c. 34), is an Act to amend the Acts relating to *Electric Lighting*.

Electric Lighting Acts, 1882 to 1909. Rules, in pursuance of s. 5 of the Act of 1882, with respect to Applications for Provisional Orders. 1910 (E.—Board of Trade). Price 1d.

For the Provisional Orders Confirmation under the *Electric Lighting Acts*, see the various Orders of the Board of Trade stated in Table IV., Class XVI., in the Alphabetical List of Local and Private Acts set out at the latter part of the various Volumes of the Statutes, 1901 to 1910.

— By-law of corporation granting exclusive rights—Construction.
See CANADA—Electric Light. 1.

— Capital money, Application of—Alterations and additions with a view to letting—Leasehold house—Electric lighting installation.
See SETTLED LAND—Capital Moneys. 3, 4.

— Corporation — Statutory powers — “Public duty” — Negligence.
See CORPORATION. 16.

1. — Company incorporated under Companies Acts—General powers—Special statutory powers

ELECTRIC LIGHT—continued.

— *Statutory prohibition against supplying electricity beyond statutory areas*—Statutory power to erect generating station outside statutory areas—*Supplying electricity outside statutory areas*—*Metropolitan Electric Lighting Act, 1889* (52 & 53 Vict. c. cccvi.), s. 5—*Metropolitan Electric Supply Company Act, 1898* (61 & 62 Vict. c. cccxxx.), ss. 2, 16.

In 1889 a limited co., formed under the Companies Acts for the purpose of generating and supplying electric energy, obtained a special Act and certain provisional orders of the Board of Trade empowering them to supply electric energy in three specified areas within the administrative county of London. The special Act and the orders contained clauses in identical terms prohibiting the undertakers from supplying energy or erecting electric works beyond their statutory areas, except by the authority of Parliament or under a licence from the Board of Trade. In 1898 the co., being unable to supply the demands of their customers in their statutory areas from their generating stations in those areas, obtained another special Act authorising them to erect generating works in an urban district outside the county of London. In 1903, the co., purporting to act under the general powers in their memorandum of association, commenced to supply energy from their works in the urban district to a ry. co. in that district. In an action by the Att.-Gen., at the relation of the local authority of the urban district, to restrain the co. from so doing :—

Held, that the prohibition in the Act of 1889 was not limited to the administrative county of London, but was general, and that the co. were acting in contravention thereof.

Decision of FARWELL J., [1905] 1 Ch. 24. affirmed. ATT.-GEN. v. METROPOLITAN ELECTRIC SUPPLY CO. . C. A. [1905] W. N. 61 : [1905] 1 Ch. 757

2. — Connecting two areas of supply of one company by mains—Right to break up streets and lay mains outside company's areas—*Electric Lighting Act, 1882* (45 & 46 Vict. c. 56), ss. 12, 13—*Electric Lighting (Clauses) Act, 1899* (62 & 63 Vict. c. 19), Schedule, s. 12—*London Electric Supply Act, 1908* (8 Edw. 7, c. clxxii.), s. 4.

The deft. co. was a co. to which the London Electric Supply Act, 1908, applied. The co. had one area of supply north of and another south of the Thames and wished to connect the same by mains running through streets outside either area, including London Bridge, a bridge belonging to the Corporation of the City of London as trustees of the Bridge House Estates, and repairable by the Corporation as such trustees and not by any local authority.

Held, that s. 4, sub-s. 3 (B), of the Act of 1908 gave power to the co. to break up the intervening streets and bridge for the purpose of laying therein the connecting mains, subject to the consent either of the Corporation or of the Board of Trade under s. 13 of the *Electric Lighting Act, 1882*, and s. 12, sub-s. 2, of the schedule to the *Electric Lighting (Clauses) Act, 1899*.

SECT. 4 of the Act of 1908 explained. LONDON

ELECTRIC LIGHT—continued.

CORPORATION v. COUNTY OF LONDON ELECTRIC SUPPLY CO. **Parker J. [1910] 2 Ch. 208**

— Contract, Construction of — “Generating light” — “Actual cost.”
See *CAPE OF GOOD HOPE*. 4.

3. — *Contract—Electric energy—Agreement to take the whole from the plaintiffs—Implied contract not to take it from anybody else—Undue preference—“Similar circumstances”—Injunction—Electric Lighting Act, 1882 (45 & 46 Vict. c. 56), ss. 19, 20—Electric Lighting Orders Confirmation (No. 5) Act, 1889, (52 & 53 Vict. c. clxxxi.), (Mid-London), ss. 46, 47, 52.*

The deft. signed a form of request to the plt. co. to supply him with electric energy subject to (inter alia) the following terms: (1) the consumer agrees to take the whole of the electric energy required for the premises mentioned below from the co. for a period of not less than five years; (2) the charge for electric energy to be 4½d. per Board of Trade unit. There was no covenant by the co. to supply, nor by the deft. to take, any energy. Similar forms of request had been signed by other persons for different terms of years and at different prices:—

Held, that the request was in substance a contract not to take energy from any other person, and that it could be enforced by injunction; that under the Electric Lighting Orders Confirmation (No. 5) Act of 1889, ss. 46 and 52, the contract was valid so far as it created rights between the parties for a term of years; that the words “is entitled” in the last part of s. 19 of the Electric Lighting Act, 1882, meant entitled by agreement with the undertakers; that in making such agreements the undertakers might have regard to “special circumstances” as mentioned in s. 19, e.g., the amount of energy consumed, the expense of supplying it and getting payment, uniformity of demand, and the fact that some consumers required the energy by day and some by night; that unless all the circumstances were similar, agreements might therefore be made for different terms and at different rates; and that in this case there had been no undue preference. **METROPOLITAN ELECTRIC SUPPLY CO. v. GINDER**. **Buckley J. [1901] W. N. 93; [1901] 2 Ch. 799**

4. — *Contract—Electric Lighting—Validity—Members of Corporation “directly or indirectly interested or concerned in” contract—Municipal corporation—City of London—City of London Sewers Act, 1848 (11 & 12 Vict. c. clxxiii.), s. 42.*

Contracts for lighting the City of London, made between electric cos. and the Commrs. of Sewers, are, like all contracts by companies with the Commrs., upon the true construction of s. 42 of the City of London Sewers Act, 1848, null and void if at the date of the contracts any of the Commrs., members of the Court of Aldermen or the Common Council were shareholders in the lighting cos. But a valid contract is not made invalid by the mere fact that after the contract was made it was with the consent of the Commrs. transferred to another co. in which Commrs. or members of the Court of Aldermen or of the Common Council were shareholders.

The decision of the C. A., [1901] W. N. 42;

ELECTRIC LIGHT—continued.

[1901] 1 Ch. 602, affirmed. CITY OF LONDON ELECTRIC LIGHTING CO., LD. v. LONDON CORPORATION - **H. L. (E) [1903] W. N. 149; [1903] A. C. 434**

5. — *Default in payment by consumer—Electric lighting company—Power to cut off current—Change of occupancy—Existing supply of current—Receiver appointed by Court—Electric Lighting Act, 1882 (45 & 46 Vict. c. 56), ss. 19, 21—Electric Lighting Orders Confirmation (No. 2) Act, 1889 (52 & 53 Vict. c. clxxviii.), Schedule (London Electric Supply), s. 47.*

Under s. 19 of the Electric Lighting Act, 1882, no person within the area supplied with electric current by an electric lighting co. is entitled to a supply of current by the co. unless and until he has entered into a contract with the co. for the purpose.

Therefore, upon a change in the occupation of premises to which current is being supplied by an electric co., there being a debt due to the co. from the outgoing occupier in respect of current already supplied to him, the co. are entitled to discontinue the supply until the new occupier has entered into a contract with them for a supply to him.

At the instance of debenture-holders of an hotel co., the Court appointed a receiver of the undertaking and property of the co. The order directed the co. to deliver to the receiver possession of the hotel “so far as is necessary for the purpose of such receivership,” and the receiver at once took possession of the hotel. At this time electric current for lighting the hotel was being supplied by an electric lighting co., and a large sum was due to them from the hotel co. for current already supplied:—

Held, that the electric co. were entitled to discontinue the supply of current until the receiver had entered into a new contract with them for its supply.

Decision of Kekewich J. reversed. **HUSEY v. LONDON ELECTRIC SUPPLY CORPORATION**. **C. A. [1902] W. N. 31; [1902] 1 Ch. 411**

6. — *Electric lighting—Municipal corporation—Statutory powers—“Supply” of electricity—“Things necessary and incidental to such supply”—Electric Lighting Act, 1909 (9 Edw. 7, c. 34), ss. 6, 16—Gasworks Clauses Act, 1847 (10 & 11 Vict. c. 15), ss. 6—12, 13, 14, 18—20—Gasworks Clauses Act, 1871 (34 & 35 Vict. c. 41), ss. 38—41, 45, 46.*

The Electric Lighting Act, 1882, s. 10, provides that undertakers authorized to supply electricity may “enter into such contracts and generally do all such acts and things as may be necessary and incidental to such supply.”

A municipal corporation under the provisions of the Act of 1882 and a provisional order of the Board of Trade were the undertakers for the supply of electricity within their area, and, purporting to exercise their statutory powers, supplied every description of electrical fittings and apparatus to consumers of electricity:—

Held, that the statutory powers of the undertakers ceased with the delivery of electrical energy at the terminals, i.e., the meter, on the consumer's premises and was complete at that

ELECTRIC LIGHT *continued.*

point, and that the general power to do "all such acts and things as were necessary and incidental to such supply" was limited to the generation and delivery of such supply.

Held, also, that the analogy of the supply of gas under the Gasworks Clauses Acts, 1847 and 1871, did not apply to the supply of electricity under the Electric Lighting Acts.

Held, therefore, that the supply of electrical fittings and apparatus for the use of consumers was ultra vires the corporation, and an injunction was granted accordingly. **ATTORNEY-GENERAL v. LEICESTER CORPORATION** - **Neville J.**
[1910] W. N. 169; [1910] 2 Ch. 359

— Installation—Capital money—Engine-house.

See SETTLED LAND—Capital Money. 2.

— Factory—Electrical station—"Public Building"—Workhouse.

See MASTER AND SERVANT—Factory Acts. 1.

7. — *Justices—Complaint—Limitation of time—Laying electric lines near gas mains—Arbitration—Award of compensation—Conviction—Penalties—Summary Jurisdiction Act, 1848, (11 & 12 Vict. c. 48), s. 11—Electric Lighting (Clauses) Act, 1899 (62 & 63 Vict. c. 19), Schedule, s. 18.*

By the Electric Lighting (Clauses) Act, 1899, schedule, s. 18, undertakers who lay new electric lines (other than service lines) near the mains of any gas co. shall conform with the reasonable requirements of the gas co. for protecting their mains from injury, and for securing access thereto, and repair any damage done thereto, any question or difference which may arise under that section to be determined by arbitration; and if the undertakers make default in complying with any of the requirements of the section, they shall make full compensation to the gas co. for loss or damage incurred by reason thereof, "and in addition thereto they shall be liable for each default to a penalty not exceeding 10*l.*, and to a daily penalty not exceeding 5*l.*" By s. 1, "the expression 'daily penalty' means a penalty for each day on which any offence is continued after conviction thereof."

In Oct., 1903, an electric light co. were laying in the streets of a town new electric lines (other than service lines) near the mains of a gas co. On Oct. 2, 1903, the gas co. by letter to the electric light co. complained that the lines were being laid in a manner which was injurious to the gas mains, and required the lines to be relaid in a proper manner. Correspondence then ensued between the two cos., in the course of which the gas co., by letters of Oct. 27 and Nov. 2, 1903, respectively, specified their requirements with respect to the laying of the electric lines. Throughout the correspondence the electric light co., who completed the work of laying their lines on or before Oct. 31, 1903, disputed the reasonableness of the gas co.'s requirements, and they did not at any time comply with them.

The questions and differences which had arisen between the two cos. were, shortly after Nov. 2, 1903, referred to arbitration under s. 18 of the schedule to the Act of 1899, and on

ELECTRIC LIGHT *continued.*

Feb. 12, 1904, the arbitrator made his award, finding in effect that the electric light co. had not conformed with the requirements of the gas co., and awarding to the latter a sum as full compensation for the loss and injury they had thereby sustained. On April 29, 1904, the gas co.'s solicitors wrote to the electric light co.'s solicitors pointing out that the electric light co. had made no attempt to comply with the gas co.'s requirements, and threatening proceedings for penalties under s. 18 unless an undertaking were given that those requirements would be complied with. On May 31, 1904, a complaint was made on behalf of the gas co. alleging that "on and since Oct. 2, 1903," the electric light co. had made default in complying with certain requirements of s. 18; that they had laid their new electric lines too near the gas co.'s mains, and did not conform and had not conformed with the gas co.'s requirements for protecting from injury their mains, and for securing access thereto. On the hearing of the complaint before justices they convicted the electric light co. of the offence alleged in it, and adjudged that they should "forfeit and pay to the clerk of the Court the sum of 1*l.*, and the further sum of 1*l.* for every day during default":—

Held, that the complaint and conviction sufficiently alleged an offence completed within six months before the time when the complaint was made, and were, therefore, not bad on the face of them under s. 11 of the Summary Jurisdiction Act, 1848; nor did the facts proved before the justices and above stated show a completed offence before the statutory period of limitation began to run.

[*Semble*, that, whether the complaint was or was not made within the statutory period, the offence was a continuing offence, so that s. 11 did not apply.]

Held, also, that the reference to arbitration and the award did not bar the right of the electric co. to proceed for penalties under s. 18 of the schedule to the Electric Lighting (Clauses) Act, 1899:

Held, further, that the conviction so far as it imposed the additional daily penalties was bad, but that it could be dealt with either by an amendment striking out the part which related to those daily penalties, or by directing that no effect be given to that part in the event of an attempt being made to enforce them, and that the other part of the conviction was good, and could be enforced. **CHEPSTOW ELECTRIC LIGHT AND POWER CO. v. CHEPSTOW GAS AND COKE CONSUMERS' CO.** - **Div. Ct. [1905] 1 K. B. 198**

8. — *Local authority—Electric lighting—Land acquired under special Act for electric generating station—Erection of refuse destructor on part of land so acquired—Combined scheme—Ultra vires—Injunction—Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 175—Electric Lighting Act, 1882 (45 & 46 Vict. c. 56), s. 10—Electric Lighting Clauses Act, 1899 (62 & 63 Vict. c. 19), s. 1, sched., clauses 2, 8.*

A local authority, acting under the powers given to them by a provisional order duly confirmed which incorporated the Electric Lighting

ELECTRIC LIGHT—*continued.*

Acts, purchased land by agreement for the purpose of erecting thereon works for generating electricity. Before the purchase they had determined to adopt a scheme, proposed by their engineer, under which they were to erect a refuse destructor on part of the land and use the surplus heat produced by the consumption of refuse in aid of their machinery for generating electricity. The council had power under the Public Health Act to acquire land for the purposes of erecting a refuse destructor :—

Held, as a matter of fact that the council had acquired the land in exercise of their powers under the Electric Lighting Acts, and not under the Public Health Act.

Held, also, that the erection and use of the refuse destructor was not ancillary to the supply of electricity, and was therefore ultra vires and must be restrained.

Decision of Farwell J., [1905] 2 Ch. 441, affirmed. **ATT.-GEN. v. PONTYPRIDD URBAN COUNCIL** - - - **G. A.** [1906] **W. N.** 117; [1906] 2 Ch. 257

9. — Local Government—Electric Lighting—Provisional order—Local authority named as undertakers—Contract by undertakers—Transfer of powers—Consent of Board of Trade—Corporation—Electric Lighting Act, 1882 (45 & 46 Vict. c. 56), s. 11.

A corporation obtained a provisional order for the supply of electrical energy within their district. They entered into an agreement with the deft. co. which provided that the co. should construct all necessary works for the manufacture, supply, and distribution of electricity within the area of supply, and should manufacture, distribute, and supply electricity therein; carry on the business and indemnify the corporation against all expenses; and that nothing in the agreement was to be deemed to transfer to the co. any powers which the corporation were by the order or by the Electric Lighting Acts, 1882 and 1888, prohibited from transferring. No application was made to the Board of Trade to sanction this agreement. The co. did not construct the works, and the corporation brought an action against them for damages for breach of contract ;—

Held, that the first part of s. 11 of the Electric Lighting Act, 1882, only authorized a corporation which had obtained a provisional order for the supply of electricity to enter into contracts for the construction of works and for the supply to itself of electricity; that the second part of the section prohibited corporations, and also cos. and persons who had obtained orders, from transferring to other persons or divesting themselves of any legal powers given to them, or any legal liabilities imposed on them by the Act or the orders, without the consent of the Board of Trade; that the agreement was on its true construction a transfer of the duties and liabilities of the plt. corporation to the deft. co.; that it was therefore prohibited by the section and could not be enforced. **SUDBURY CORPORATION v. EMPIRE ELECTRIC LIGHT AND POWER CO.** - **Warrington J.** [1905] **W. N.** 68; [1905] 2 Ch. 104

ELECTRIC LIGHT—*continued.*

10. — Nuisance—Statutory powers—Electric supply—Leakage of electricity—Fusion of electric main—Explosion—Fire—Electric Lighting Acts, 1882 and 1888 (45 & 46 Vict. c. 56; 51 & 52 Vict. c. 12)—Manchester Electric Lighting Order, 1890.

The defts. were empowered by the Manchester Electric Lighting Order, 1890, made under the Electric Lighting Acts, 1882 and 1888, and confirmed by Act of Parliament, to supply electrical energy in their district, and for that purpose to lay down electrical mains, but it was provided by clause 70 of the order that nothing therein contained should exonerate them from any indictment, action, or other proceeding for nuisance in the event of any nuisance being caused by them. One of their mains fused, and the bitumen in which the main was laid in consequence became volatilized into an inflammable gas, which accumulated for some time, and then exploded, causing a fire by which the plts.' goods were damaged ;—

Held, that, apart from any question of negligence, the defts. were liable to the plts. as for a nuisance by reason of the provisions of clause 70 of the order. **MIDWOOD & CO. v. MANCHESTER CORPORATION** **C. A.** [1905] 2 K. B. 597

— Nuisance—Vibration—Noise—Electric generating station.

See **NUISANCE**. 13.

— Overhead wires—Road originally acquired by turnpike trustees.

See **STREETS**. 7.

— Public authorities protection—Costs—"Solicitor and client"—Electric lighting.

See **CORPORATION**. 16.

— Supply—Duty to supply electric power—Penalty—Damages.

See **CORPORATION**. 16.

— Supply of electricity—Loughborough Corporation.

See **STATUTE**. 3.

— Turnpike trustees—Road originally conveyed in fee—Vesting in urban authority—Overhead wires—Local Government.

See **STREETS**. 7.

— Victorian Electric Light and Power Act, 1896—Powers of undertakers to vary rates of charge.

See **VICTORIA**. 3.

ELECTRIC SWEEPER—Right to clear ice and snow into the streets.

See **CANADA—Snow**. 1.

ELECTRIC WIRES—Negligence in exercising statutory powers—Evidence—Quebec Act, 1 Edw. 7, c. 66, s. 10.

See **CANADA—Negligence**. 1.

ELEGIT—Writ of—Married woman—Separate estate—General power of appointment—Costs—Execution.

See **HUSBAND AND WIFE—Execution**. 1.

ELEMENTARY EDUCATION.

See under **SCHOOLS**.

EMBANKMENTS—County council—Main road—Maintenance and repair—Mandatory order.

See LOCAL GOVERNMENT. 9.

EMBARRASSING—Pleadings.

See PRACTICE—Pleadings. 2.

EMERGENCY — Investment, Unauthorized, Change of—Sanction of Court—Jurisdiction.

See TRUSTEE—Investments. 16.

EMIGRATION—Charity—Gift—Charitable uses or emigration uses—Uncertainty.

See CHARITY. 15.

EMPLOYER AND WORKMAN.

See under MASTER AND SERVANT.

EMPLOYERS' LIABILITY ACT—Insurance. See under INSURANCE (EMPLOYERS' LIABILITY).

— Master and servant.

See under MASTER AND SERVANT.

EMPTY BUILDING — Rates — Occupation — Intention to use when occasion requires.

See RATES. 23.

"EN AUTRE DROIT"—Costs—Equitable set-off—Debts "en autre droit."

See VENDOR AND PURCHASER—Costs. 1.

EN VENTRE SA MÈRE — Child—Will—Construction — Bequest to a class of children "born" previously to date of will.

See WILL—Words. 1.

— Child—Will — Construction — "Born in my lifetime"—Divesting clause.

See WILL—Words. 1.

— Illegitimate children—Class gift—After-born children.

See SETTLEMENT. 29.

— Remoteness—Contingent remainder—Child en ventre sa mère.

See PERPETUITY. 2.

ENCROACHMENT — Leaseholds — Accretion to holding for benefit of lessor—Presumption.

See LIMITATIONS, STATUTE OF. 11.

ENCYCLOPÆDIA — Author and publisher — Ownership of copyright in contributions.

See COPYRIGHT—Books. 2.

— Ownership of copyright in contributions.

See COPYRIGHT—Encyclopædia. 1.

ENDOWED SCHOOLS.

See under SCHOOLS.

ENDOWMENT—Ademption—Charitable legacy — Particular purpose.

See WILL—Ademption. 1.

— Charity.

See under CHARITY.

ENDOWMENT—*continued.*

— "Endowment"—Exemption—Company with charitable objects incorporated under Companies Acts.

See CHARITY. 17.

ENFRANCHISEMENT—Copyholds—Compensation—Fines.

See LANDS CLAUSES ACTS. 16, 17.

— Delay in — Copyholds — Compensation — Interest—Quittances.

See LANDS CLAUSES ACTS. 15.

— Settled land.

See under SETTLED LAND — **Enfranchisement.**

ENGINE—Collision — Fog signal forward of beam—Duty to stop engines.

See SHIPPING—Collision. 33.

— Invitation to travel on engine—Liability for negligence of servants.

See NEGLIGENCE. 4.

— Railway—Consumption of smoke "as far as practicable."

See RAILWAY—Engines. 1.

— Traction-engine—Thrashing-machine—"Factory."

See MASTER AND SERVANT—Compensation. 176.

— Traction-engine—Locomotive—Nuisance—Interim injunction.

See HIGHWAY. 16.

ENGINE DRIVER—Workmen's compensation.

See MASTER AND SERVANT—Compensation. 6, 115-117.

ENGINEER—Bankruptcy—Contract for works — Receiving order against contractor—

Subsequent order by engineer for direct payment to firms — Title of trustee —

Secured creditors—Priority.

See BANKRUPTCY—Contracts. 1.

ENGINEERING STAFF — Classification of salvors.

See SHIPPING—Salvage. 5.

"ENGINEERING WORK" — Workmen's compensation.

See MASTER AND SERVANT—Compensation. 79-85.

"ENGINE HOUSE"—Capital monies—Electric lighting installation—Improvements—

Tenant for life and remainderman.

See SETTLED LAND—Capital Monies. 2.

— Separate assessment of tramway engine-houses — Rateability—Law of Victoria.

See TRAMWAYS. 14.

ENLISTMENT — Naval service — Penalty for making false statements.

See ARMY AND NAVY. 1.

ENROLMENTS.

See under LAND REVENUE RECORDS AND ENROLMENTS.

ENTAIL—Disentailing deeds.*See under DISENTAILING DEEDS.*

- Estate duty paid by a deceased heir of entail and not specifically charged on entailed estates.

See REVENUE—Estate Duty. 5.

- Lease—Power of heir of entail in possession to burden the estate—Sheep stock—Custom.

See SCOTTISH LAW. 15.

- Provision for widow—Free yearly rental—Deductions for up-keep and management.

See SCOTTISH LAW. 11.

- Succession duty — Propulsion of fee — “Acceleration” of succession.

*See REVENUE—Succession Duty. 3.***“ENTERITIS”**—Workmen's compensation.*See MASTER AND SERVANT—Compensation. 60.***ENTRY** — Contract — Construction — Exclusive right of entry on appellant's land for specified purposes.*See NEWFOUNDLAND. 1.*

- Evidence—Date of birth—Register.

See EVIDENCE. 2.

- Lands Clauses Acts—Entry on land before determination of purchase-money—Bond—Railway.

See LANDS CLAUSES ACTS. 32.

- Mortgage.

See under MORTGAGE—Entry.

- Of deceased person against interest.

See TRUSTEE—Breach of Trust. 4.

- Right of, without permission of occupier—Inspection by local authority.

*See LOCAL GOVERNMENT. 17.***EPILEPTIC FIT**—Fall into hold of ship—Workmen's compensation.*See MASTER AND SERVANT—Compensation. 86.***EQUITABLE ASSIGNMENT** — Copyright — Author and publisher—Story not in existence—Complete copyright.*See COPYRIGHT—Books. 2.*

- Priority—Fund in Court—Notice—Stop order.

*See HUSBAND AND WIFE—Property. 1.***EQUITABLE CHARGE.***See under CHARGES.***EQUITABLE CONTINGENT REMAINDERS**—

Remoteness—Child en ventre sa mère—Relation back.

*See PERPETUITY. 2.***EQUITABLE DEFENCE** — Plaintiff suing as trustee—Unliquidated damages due to defendant from cestui que trust.*See TRUSTEE—Practice. 3.***EQUITABLE ESTATE** — Mortgage of — Real assets—Alienation by “devisee”—Purchaser—Priority.*See ADMINISTRATION. 26.***EQUITABLE ESTATE**—*continued.*

- Remoteness — Contingent remainder — Child en ventre sa mère.

*See PERPETUITY. 2.***EQUITABLE ESTATE IN FEE**—Conveyance to trustees—Omission of words of limitations.*See SETTLEMENT. 33.*

- Limitations — No words of inheritance — Settlement.

See POWER OF APPOINTMENT. 6.

- Real estate—Limitations—No words of inheritance.

*See SETTLEMENT. 34.***EQUITABLE ESTOPPEL.***See under ESTOPPEL.***EQUITABLE EXECUTION.***See under EXECUTION.***EQUITABLE INCUMBRANCERS.***See under MORTGAGE.***EQUITABLE INTEREST.***See under INTEREST.***EQUITABLE JURISDICTION.***See under JURISDICTION.***EQUITABLE LIMITATIONS.***See under LIMITATION.***EQUITABLE MORTGAGE.***See under MORTGAGE.***EQUITABLE SET-OFF.***See under SET-OFF.***EQUITABLE TENANCY IN COMMON.***See under TENANCY IN COMMON.***EQUITABLE WASTE.***See under WASTE.***EQUITY OF REDEMPTION**—Mortgages.*See under MORTGAGE—Redemption.***ESCHEAT**—Bona vacantia—Death of testator without heirs—Sale under Settled Land Acts.*See CROWN. 1.***ESCHEATED LAND** — Land Transfer Act —

Administrator—Creditor.

*See LAND TRANSFER. 6.***ESQUIMALT WATERWORKS ACT**—Unrecorded waters.*See CANADA—Water. 1.***“ESTATE”** — Land transfer—Costs to come “out of the estate.”*See ADMINISTRATION. 22.***ESTATE DUTY**—Public revenue.*See under REVENUE—Estate Duty.*

- Will—Construction.

See under WILL—Testamentary Expenses.

ESTATE PUR AUTRE VIE—*Devise of entirety*—*No words of limitations*—*Intestacy of devisee*—*Devolution*—*Wills Act, 1837* (1 Vict. c. 26), s. 6.

A testator devised an equitable estate pur autre vie, limited to himself, "his heirs and assigns," to certain trustees, "their heirs and assigns," for the use of his grandson, describing the property as freehold hereditaments. The grandson died intestate:—

Held, that, though the entire estate had passed to the grandson, there was nothing on the face of the will to entitle his heir to claim as special occupant, and the estate therefore passed to his administrator under the Wills Act, 1837, s. 6.

Doe v. Lewis, (1842) 9 M. & W. 662, followed.

Philpotts v. James, (1784) 3 Doug. 425, distinguished.

Wall v. Byrne, (1845) 2 J. & Lat. 118, and *In re King*, [1898] 1 I. R. 91; [1899] 1 I. R. 30, not followed.

Held, also, that as the estate was equitable, there was no general occupancy, pending the administrator's appointment, but that when appointed he would take the entirety. *In re INMAN*, *INMAN v. INMAN*. - *Swinfen Eady J.* [1902] W. N. 220; [1903] 1 Ch. 241

— Reversion in settlor—Power of tenant for life to sell fee.

See SETTLED LAND—Sale. 13.

— Trustees with estate pur autre vie—Limited owners with powers of life tenant—Non-beneficial owners.

See SETTLED LAND—Powers. 3.

ESTATE TAIL — Administrator — Convict — Power to disentail the convict's estates tail—Forfeiture.

See FELONY. 2.

— Contingent remainder—Ultimate gift to "survivor's heir or heirs."

See WILL—Estate Tail. 1.

— Covenant to settle after-acquired property.

See under SETTLEMENT.

— Disentailing assurance.

See under DISENTAILING ASSURANCE.

— Disentailing assurance — Protector — Three persons appointed by settlor—Death of two—Power to appoint new protector.

See SETTLEMENT. 28.

1. — *Disentailing assurance* — *Protector of settlement*—*Consent where himself the disentailing tenant in tail*—*Fines and Recoveries Act, 1833* (3 & 4 Will. 4, c. 74), ss. 34, 42.

By the will of a testatrix who died in 1880 realty was devised in trust (in the events which happened) for M. for life, with remainder in trust for his first and other sons successively in tail male, with remainder in trust for M. in tail, with certain remainders over in trust for other persons. M. was advised in 1902 that the sons' estates in tail male were void for remoteness and that he was entitled as tenant in tail male or tenant in tail in possession, and by a disentailing deed executed by him shortly afterwards, after reciting the will, the advice given to him, and that he was desirous of barring his estate in tail male and all other his estates in tail and all other

ESTATE TAIL—*continued*.

estates, interests, and powers to take effect after the determination or in defeasance thereof, he conveyed the real estate to a grantee to the use of himself in fee simple, discharged from all his estates in tail male or in tail and all estates, rights, interests, and powers to take effect after the determination or in defeasance of such estates in tail male or in tail. The deed contained no separate consent by M. as protector of the settlement.

In 1903 it was decided that the estates in tail male of the sons of M. were not void, and that he took in the first place only an estate for life: *In re Wilmer's Trusts*, *Moore v. Wingfield*, [1903] 2 Ch. 411. M. died in 1909 without issue:—

Held, that the execution of the disentailing assurance by M. operated as a consent by him as protector of the settlement, that the estates in remainder on his own estate in tail were barred, and that he took the property in fee simple subject to his own life estate. *In re WILMER'S TRUSTS*. *WINGFIELD v. MOORE* - *Parker J.* [1910] 2 Ch. 111

Note.

In re Wilmer's Trusts, *Wingfield v. Moore*, C. A. [1903] 2 Ch. 411. See PERPETUITY. 1.

— Disentailing deed—Estates "in defeasance of" estate tail.

See FINES AND RECOVERIES. 1.

— "Issue"—Estate in special tail—Rule in *Shelley's Case*.

See WILL—*Shelley's Case*. 1.

— Remoteness—Contingent remainder—Child en ventre sa mère.

See PERPETUITY. 2.

— Revenue—Actual tenant in tail—Restraint on barring entail—Estate duty.

See REVENUE—Estate Duty. 12.

— Rule in *Shelley's Case*—Real estate.

See WILL—*Shelley's Case*. 2.

— Settled estates—Jointuring—Execution of power by testamentary instrument.

See STATUTE. 1.

— Succession duty—Tenant for life—Disentailing deed—Alienation—Succession derived from alienee.

See REVENUE—Succession Duty. 5.

— Whether barrable—Reversion in Crown.

See CROWN. 3.

— Will—Construction.

See under WILL—Estate Tail.

— Will—Construction—*Shelley's Case*, Rule in—Gift to a person for life and then "to his sons and their sons in succession."

See WILL—*Shelley's Case*. 1.

ESTOPPEL — Arbitrator — Qualification — Arbitrator to be member of trade association — Arbitrator not member of association. See ARBITRATION—Arbitrator. 3.

— Assignment—Lease—Forfeiture—Subsequent payment of rent by occupier to lessee. See LANDLORD AND TENANT. 16.

ESTOPPEL *continued.*

- Bankruptcy—Assignment—Claim for preference under deed—Trading with trustee—Trustee's title—Acquiescence.
See BANKRUPTCY—**Preference**. 1.
- Bill of exchange—Indorsement by way of security—Signature in blank.
See BILL OF EXCHANGE. 4.
- Bill of lading—Master's authority—Liability of shipowner—American "Harter Act"—Measure of damages.
See SHIPPING—**Charterparty**. 19.
- Books—Infringement—Agent—"Print or cause to be printed."
See COPYRIGHT—**Books**. 1.
- Company—Secretary—Representations—Shares—Certification of transfer—Principal and agent.
See COMPANY—**Secretary**. 2.
- Company—Share certificate fraudulently issued by secretary—Forgery—Scope of employment.
See COMPANY—**Forgery**. 2.
- Company—Winding-up—Certificate that shares fully paid—Partnership.
See COMPANY—**Shares**. 5.
- Divorce—Wife's petition—Desertion—Previous order of a Court of summary jurisdiction—Effect—No estoppel.
See DIVORCE—**Desertion**. 8.
- Equitable—Estoppel—Deed—Assignment for value—Defective title.
See DEED. 3.
- Fraudulent conversion of goods—Estoppel—Clerk.
See SALE OF GOODS. 11.
- Habeas corpus—Appeal—Estoppel by judgment—Res judicata—Absence of adjudication as of record.
See HABEAS CORPUS. 1.
- Infant workman—Assessment of compensation by the judge.
See MASTER AND SERVANT—**Compensation**. 15.
- Insurance (Life)—Policy—Proposal basis of contract—Effect of absence of signed proposal.
See INSURANCE (LIFE). 12.

1. — *Lease by mortgagor—Affirmance by mortgagee—Estoppel in pais—Mortgage prior to the Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41).*

In 1881, before the coming into operation of the Conveyancing and Law of Property Act, 1881, leasehold premises were mortgaged by way of sub-demise to N. for the residue of a newly created term of sixty years, less the last three days thereof. In 1892 the mortgagor purported to underlet the premises to G. & Co. for twenty-one years at a rent of 140*l.*, and the deed contained a covenant not to sublet without the consent of the landlord. In 1895 N. foreclosed the mortgagor, but did not get in the last three days of the term, and thenceforward G. & Co. paid the rent to N. until his death in 1899.

ESTOPPEL *continued.*

Subsequently G. & Co. sublet the premises under a licence given by N.'s executors, who therein described themselves as being the reversioners on the underlease of 1892. The plt., who claimed through N.'s executors, brought an action against G. & Co. and their sub-lessee to recover possession of the premises upon the footing that the underlease was not binding upon him:—

Held, that he was estopped as against both defts. from denying that he was the reversioner on the underlease, and that the action failed.

Decision of Joyce J. affirmed.

Per Joyce J.: In the case of a lease by a mortgagor (apart from s. 18 of the Conveyancing and Law of Property Act, 1881), the acceptance of rent by the mortgagee from the lessee, though it converts the lessee into a tenant from year to year of the mortgagee, does not of itself imply that the tenancy is to be upon the terms of the lease so far as applicable to the yearly tenancy. **KEITH v. R. GANCIA & Co.**

C. A. [1904] W. N. 63; [1904] 1 Ch. 774

- Legacy, Duty of executor to give notice of—Estoppel—Disclosure of gift without disclosing gift over.
See EXECUTOR—**Disclosure**. 1.
- Mortgage—Fraud of solicitor—Receipt in deed.
See MORTGAGE—**Priority**. 4.
- Negligence—Liability of company—Duty of company towards third parties—Alteration of position induced by conduct.
See COMPANY—**Shares**. 4.
- Negotiable instrument—Signature in blank—Authority to fill up note to a limited amount—Excess of authority.
See PROMISSORY NOTE. 2.
- Patent—Action for infringement—Judgment for patentee—Subsequent revocation of patent—Damages—Estoppel.
See PATENT—**Practice**. 4.
- Patent—Licence—Condition—Purchaser's liability to action for infringement.
See PATENT—**Infringement**. 9.
- Practice—Workmen's Compensation Act.
See MASTER AND SERVANT—**Practice**. 15.
- Power of attorney—Borrowing by agent—Excess of authority—Misappropriation—Liability.
See PRINCIPAL AND AGENT. 7.
- Property in sub-soil—Payment of rent.
See CONVEYANCE. 3.
- Receipt clause—Fraud—Equitable mortgagee—Mortgage.
See PRINCIPAL AND AGENT. 14.
- Reissue of debentures—Extinguishment of charges—Merger.
See COMPANY—**Debentures**. 54.
- 2. — *Representation—Breach of duty—Solicitor and client—Purchase of land by client—Title investigated and conveyance prepared by*

ESTOPPEL *continued.*

solicitor—Adverse title to part of land previously acquired by solicitor.

After having in Oct., 1893, contracted to purchase a house and land, the plt. employed a solicitor to investigate the title and complete the purchase for him. The solicitor on investigation found that a good title was shewn to the whole of the land comprised in the contract, and he prepared a conveyance of it to the plt., and on the execution of the deed the plt. paid his purchase-money. The solicitor was the owner of a house and land immediately adjoining that which the plt. had purchased, and he had in 1880 in erecting a greenhouse encroached, to the extent of a third of the area of the greenhouse, upon the plt.'s land. The boundary of the two properties was not very clearly defined, and the solicitor was entirely ignorant of the encroachment. He might, however, have discovered it when he was investigating the title for the plt., if he had measured the property. Early in 1898 the plt. discovered that part of the greenhouse was in fact situate on the land which he had purchased, but he said nothing to the solicitor about his discovery. The solicitor died in Sept., 1899, and in 1901 the plt. brought an action against his representatives to recover possession of that part of the site of the greenhouse which was comprised in his conveyance.

At the trial the plt. admitted that he was not induced to make the purchase by any representation by the solicitor as to the boundary of the property; that he knew before he entered into the contract that the greenhouse belonged to the solicitor; and that he did not suppose he was purchasing any part of the site of the greenhouse :—

Held, by Buckley J., that the solicitor must be taken to have represented to the plt. that he would have a good title to the whole of the land which he had purchased, and that the whole was effectually conveyed to him, and that, the plt. having paid his purchase-money on the faith of this representation, the solicitor was estopped, both by representation and breach of duty, from setting up as against the plt. his own title by adverse possession to a part of the land, and that the defts. were equally estopped :—

Held by C. A., that as the plt. was not induced to purchase by any representation made by the solicitor, and did not suppose that he was purchasing any part of the greenhouse, and his position was in no way altered after he had entered into the contract for purchase, a representation (if any) by reason of the solicitor's negligence was not the proximate cause of loss to the plt., and consequently that there was no estoppel. **BELL v. MARSH**

C. A. [1903] W. N. 30; [1903] 1 Ch. 528

3. — Res judicata—Affiliation proceedings—Paternity of child—Judgment of quarter sessions—Action for seduction.

In affiliation proceedings against the deft. he appealed to quarter sessions against an order of justices adjudging him to be the father of A.'s illegitimate child, and the court of quarter sessions quashed the order on the ground that he

ESTOPPEL *—continued.*

was not the father. Subsequently an action for damages for the seduction of A. was brought by her mother against the deft. :—

Held, that the plt. in the action was not estopped by the decision of the court of quarter sessions from alleging that the deft. was the father of the child. **ANDERSON v. COLLINSON**

Div. Ct. [1901] W. N. 87; [1901] 2 K. B. 107

4. — Res judicata—Landlord and tenant—Agreement for lease—Action for rent—Defence, no concluded agreement—Second action—Defence, Statute of Frauds—Statute of Frauds, 1677 (29 Car. 2, c. 3), s. 4.

The plt. brought an action for arrears of rent alleged to be due under an agreement for a lease. The defendant relied on the defence that no agreement had been concluded, but did not raise any defence under s. 4 of the Statute of Frauds. Judgment was given for the plt.

Further arrears of rent having accrued due, the plt. brought a second action. In this action the deft. raised the defence that there was no memorandum or note in writing of the agreement for the lease sufficient to satisfy the requirements of s. 4 of the Statute of Frauds :—

Held, that the deft., not having raised this defence in the former action, was precluded from raising it in the second action.

Decision of the Div. Ct., [1910] W. N. 64; [1910] 1 K. B. 796, affirmed. **HUMPHRIES v. HUMPHRIES**

C. A. [1910] W. N. 168; [1910] 2 K. B. 531

— Res judicata—Streets.

See **STREETS**. 6.

— Sale of goods—Loss to one of two innocent persons through fraud of a third person. *See* **SALE OF GOODS**. 11.

— Ship—Registered owner holding as trustee—Priorities — Principal and agent — Negligence.

See **TRUSTEES—Shares**. 1.

5. — Statement induced by misrepresentation—Concealment of material fact.

A person cannot rely by way of estoppel on a statement induced by his own misrepresentation, or by his concealment of a material fact the disclosure of which would have been calculated to make his informant hesitate or seek for further information before making the statement, or where the circumstances would have deterred a reasonable man from acting on it.

Intending mortgagees of a trust fund induced a trustee to sign a memorandum that he had not received any notice of a prior charge, without informing him that the particular form of memorandum had been submitted to and was still under the consideration of his solicitors, whose practice was to refuse to advise trustees to sign such documents, and also, though perhaps unintentionally, giving him the impression that he was signing it with their approval.

The mortgagees were definitely informed before completion that the solicitors never advised trustees to sign the particular form of memorandum.

Some time after completion it was discovered

ESTOPPEL—*continued*.

that the trustee had received and forgotten a notice of a prior charge :—

Held, that the mortgagees could not rely on the memorandum by way of estoppel.

George Whitechurch, Ltd. v. Cavanagh, [1902] A. C. 117, 145, and *Lov v. Bouverie*, [1891] 3 Ch. 82, 113, applied. **PORTER v. MOORE**

Swinfen Eady J. [1904] 2 Ch. 367

— Transfer of stock—Personation of holder—Estoppel—Obligation of bank to replace stock.

See **INDIA STOCK. 4.**

— Waiver of rights—Election by selling partner to affirm sale.

See **PARTNERSHIP. 24.**

6. — Will of woman under incapacity to devise—Entry of tenant for life under will and acquisition by him of possessory title—Rights of remaindermen.

A., the testatrix, was seised in fee simple of the Litchurch property, and to the reversion in fee simple (expectant on the decease of X.) of the Workop property. She was married to W. on Mar. 9, 1871, and by a settlement executed immediately before the marriage the Litchurch property was settled on herself for life, and after her death on E. for life, and after his death on such persons as A. should by will or codicil appoint.

In exercise of the power A. by will in April, 1871, appointed the Litchurch property to W. for life, and after his decease upon trusts in favour of Y., F., and E.

X. died in 1872, and A. by codicil made in 1873 purported to devise the Workop property (to which she was now entitled in possession) to the use of W. for life, and after his death upon trusts in favour of Y., F., and E., providing that if any of them should die in the lifetime of W. leaving issue the issue should take his parent's share in both properties, and that if any of them (Y., F., and E.) should die without issue his share in both estates should go to the survivors.

A. died in 1882, leaving W., Y., F., and E. surviving, and thereupon W. entered into possession of Litchurch (which A. could dispose of by will) and Workop (which, as she was married before 1883, she could not so dispose of). W. remained in undisputed possession of both properties until his death in 1903, and the heir of A. admitted that, as regards Workop, he was barred by adverse possession.

E., F., and Y. all died in the lifetime of W. —E. in 1882 leaving P. his only child; Y. in 1888 without issue; and F. in 1892 without issue, leaving P. his heir and next of kin :—

Held, that W. and those claiming under him were not, by W.'s entry on the Workop property under the testamentary dispositions of A., estopped from saying, as against P., that the testamentary disposition of Workop was invalid.

Board v. Board, (1873) L. R. 9 Q. B. 48, and *Dalton v. Fitzgerald*, [1897] 2 Ch. 86, distinguished.

Paine v. Jones, (1874) L. R. 18 Eq. 320, followed on the point now before the Court. *In re ANDERSON. PEGLER v. GILLATT*

Buckley J. [1906] 2 Ch. 70

EVIDENCE—Abortion—Admissibility.

See **CRIMINAL LAW—Abortion. 1.**

— Accounts—Admissibility—Trustees.

See under **TRUSTEE.**

— Adulteration.

See under **ADULTERATION.**

1. — Admission of documents — Correspondence—R. S. C., Order XXXII., r. 2.

This case is noted only for some observations which fell from the learned judge as to the admission of correspondence.

Kekewich J. said that the rules provided for notice being given by one side to the other to admit correspondence, and no well-advised solicitor would hesitate to admit letters which were relevant to be admitted, because the form of the rule 2 of Order XXXII. was "saving all just exceptions." He was sorry to say solicitors did not sufficiently often give notice to admit documents under this rule, and when notice was given admission was too often refused. The result of admitting the correspondence was that the letters were uniformly paged, and this was a great convenience to the Court and to the counsel, and saved a great deal of time and expense. Solicitors who prepared a well-arranged bundle of correspondence deserved to be adequately remunerated for their trouble, and he understood that the present practice of the taxing Master was to allow a liberal scale of remuneration. **DUDLEY, STOURBRIDGE AND DISTRICT ELECTRIC TRACTION Co. v. DUDLEY CORPORATION - Kekewich J. [1906] W. N. 67**

— Affidavits.

See under **AFFIDAVIT.**

— Aiding and abetting, Conviction for—Motor car.

See **JUSTICES. 15.**

— Ambiguity—Will—Construction.

See under **WILL—Ambiguity.**

— Appropriation—Liability to replace moneys—Statute of Limitations.

See **APPROPRIATION. 1.**

— Arbitration.

See under **ARBITRATION.**

— Attempt to discharge loaded arms—Evidence for the jury.

See **CRIMINAL LAW—Loaded Arms. 1.**

— Banker—Order for inspection of books—Jurisdiction of magistrate — Bankers' Books Evidence Act.

See **BANKER. 8.**

— Bankruptcy.

See under **BANKRUPTCY—Practice.**

2. — Birth, Date of — Register — Entry — Birth and Deaths Registration Act, 1836 (6 & 7 Will. 4, c. 86).

A certified copy of an entry in a register of births and made pursuant to the statute 6 & 7 Will. 4, c. 86, is evidence, not merely of the fact of birth before the date of registration, but of the actual date of birth.

In re Wintle, (1870) L. R. 9 Eq. 373, disapproved. *IN THE ESTATE OF GOODRICH. PAYNE v. BENNETT Jeune Pres. [1904] P. 138*

EVIDENCE—continued.

- Bond, Action on — Acknowledgment in writing—Lost acknowledgment—Parol evidence.
See LIMITATIONS. 3.
- Brawling—Monition—Clergy discipline.
See ECCLESIASTICAL LAW—Discipline. 2.
- By-law.
See under BY-LAWS.
- Charity.
See under CHARITY.
- Charts and maps.
See CUSTOM. 1.
- Civil marriage in the Channel Islands — Foreign law.
See DIVORCE—Channel Islands. 1.
- Clergy discipline.
See under ECCLESIASTICAL LAW.
- Collateral agreement — Evidence, Admissibility of.
See LANDLORD AND TENANT. 32.
- Colonial marriage — Malta — Evidence of validity.
See MARRIAGE. 3.
- Colonists—Evidence (Colonial Statutes) Act, 1907 (7 Edw. 7. c. 16).
See under COLONIES.

3. — Colonies—Practice—Statutory declarations made in colonies—Admissibility.

Upon the hearing of an originating summons, *In re Susanna Hardwick, Boswell v. Hardwick*, [1906. H. 2171], for the determination of the question whether a power of appointment given by the before-mentioned testatrix's will over a trust fund of 3000*l.* had been exercised, or whether the trust fund went as in default of appointment, it was proposed to tender in evidence a statutory declaration made in Wellington, New Zealand, and verified by the affidavit of the plt. trustee. The declaration dealt with the question whether the donee of the power was possessed of any other similar sum. It was intitled in the matter of the donee's post-nuptial settlement by which the donee purported to deal with the fund, and was expressed to be made by virtue of the provisions of the Statutory Declarations Act, 1835.

Kekewich J. said that he would allow the declaration to be read *de bene esse*, but requested counsel to refer him to precedents for the admission of such evidence.

On the following day counsel for the plt. referred to the case of *Simpson v. Hempson*, [1866. S. 49], which was a petition for payment out of a fund standing to the separate account of the share of Nassau George Simpson, who was supposed deceased and for whom advertisements had been directed to be made in Australia, and in which case Warrington J. had recently accepted in evidence the statutory declaration made by a clerk to the firm of solicitors in Australia testifying to the fruitless result of the advertisements. The declaration was not intitled in any cause or matter, and was expressed to be made by virtue of the provisions of an Act of the Parliament of Victoria

EVIDENCE—continued.

rendering persons making false declarations punishable for wilful and corrupt perjury.

He also referred to the case of *In re Prior, Mills v. Prior* [1907. P. 820], in which Neville J. recently made an order in chambers upon (*inter alia*) an affidavit of the English solicitor verifying a statutory declaration made in New Zealand relating to the identity of a person entitled as one of the next of kin under an intestacy. The declaration was not intitled in any cause or matter, and was expressed to be made by virtue of the provisions of the Statutory Declarations Act, 1835.

In the Goods of Lambert, (1866) L. R. 1 P. & D. 138, and *Blamey v. Blamey*, [1902] W. N. 138, were also referred to.

Kekewich J. said that although he did not require the tendered evidence to enable him to come to a decision in this particular summons, nevertheless the question of the admissibility of such evidence was a very important one, and from inquiries that he had made it appeared that the practice of the judges of the Ch. Div. in respect of it was not by any means uniform. PRACTICE NOTE - *Kekewich J.* [1907] W. N. 180

- Commission issued by bishop — Witness — Action in respect of evidence given.
See DEFAMATION—Pluralities Act. 1.
- Company generally.
See under COMPANY and COMPANY—WINDING-UP.
- Company—Reduction of capital.
See under COMPANY — Reduction of Capital.
- Consent by guardian ad litem—Affidavit—Practice.
See CONSENT. 2.
- Contract.
See under CONTRACT.
- Costs—Suit for revocation of probate—Notice by plaintiff to cross-examine.
See PROBATE—Costs. 7.
- Costs—Taxation—Copies of evidence filed by petitioner—Contributories.
See COMPANY — WINDING-UP — Costs. 1A.
- Costs and compensation—Criminal procedure, England.
See under CRIMINAL LAW—Costs and Compensation.
- Court rolls—Manor—Stone quarry—Freehold and copyhold tenants—Right to get stone.
See COMMON. 3.

4. — Credibility of evidence — Breach of verbal contract—Rise in price of coal.

Appellants brought this action against the respondents for damages for breach of contracts for the sale of coal. The chief contract was made verbally for 12,000 tons of coal; the respondents contended no such contract existed. The Statute of Frauds does not apply to Scotland. The Lord Ordinary (Lord Stormonth-Darling) on April 3, 1901, held that the verbal contract was made out; but his decision was reversed on Nov. 8,

EVIDENCE—continued.

1901, by the Second Division of the Court of Session, Scotland.

The House reversed the decision of the Second Division and restored the Lord Ordinary's interlocutor, holding that in a question of the credibility of evidence the judge who has seen and heard the witness examined is always the best judge of the credit which ought to be attached to his testimony. *RENNIE & SON v. NESS & Co.* **H. L. (Sc.) [1902] W. N. 122**

— Criminal law.

See under CRIMINAL LAW.

— Criminal law.

See under CRIMINAL LAW—Appeal.
CRIMINAL LAW—Evidence.

— Damage.

See under DAMAGE AND DAMAGES.

— Death — No evidence of — Disappearance — Onus probandi.

See WILL—Survivor. 1.

— Deceit—Action of—Probability of deception — Inspection—View by judge.

See TRADE MARK. 2.

— Dehors the will—Bequest of "residue and remainder" of specific mortgage debts.

See WILL—Legacy. 4.

— Delivery—Building society share certificates — Post Office Savings Bank deposit-book.

See DONATIO MORTIS CAUSA. 1, 3.

— Dentist—Admissibility of evidence—Order of General Medical Council erasing name from Dentists' Register—Report of dental committee—"Professional misconduct."

See DENTIST. 2.

— Discovery.

See under DISCOVERY.

— Divorce.

See under DIVORCE.

— Documents—Ancient reports to Government departments.

See CUSTOM. 1.

— Dog—"Dangerous"—Not kept under control — Attacks on sheep.

See DOGS. 1.

— Domicil of origin—Abandonment—Acquiring fresh domicil—Onus of proof.

See DOMICIL. 2.

— Dying declaration, Admissibility of.

See CRIMINAL LAW—Evidence. 4.

— Electric wires — Negligence in exercising statutory powers—Quebec Act, 1 Edw. 7, c. 66, s. 10.

— Employer and workman.

See under MASTER AND SERVANT.

— Entry of deceased person against interest—Admissibility.

See TRUSTEE—Breach of Trust. 4.

— Examination—Witness.

See under EXAMINATION.

EVIDENCE—continued.

5. — *Execution of document in Victoria—Notary public — Practice — R. S. C., Order XXXVIII., r. 6.*

Petition for payment out of Court.

Swinfen Eady J. said the case came within the words of r. 6 of Order XXXVIII., and made the order subject to the production of an affidavit proving that all parties had waived their claim to have any part of the fund retained for payment of the costs of the deed.

Brooke v. Brooke, (1881) 17 Ch. D. 833, considered. *In re DAVIES. DAVIES v. ATKINSON*

Swinfen Eady J. [1909] W. N. 212

— Extrinsic evidence—Admissibility—Intention.
See WILL—Real Estate. 1.

— Extrinsic evidence, Admissibility of—"Securities"—Stocks and shares in companies.
See WILL—Investments. 3.

— Extrinsic evidence — Will — Construction — Subsequent acquisition of further real estate—Intestacy.

See WILL—Residuary Legatee. 1.

— Faculty.

See under ECCLESIASTICAL LAW — Faculty.

— False imprisonment.

See under FALSE IMPRISONMENT.

— False pretences—Evidence.

See under CRIMINAL LAW—False Pretences.

— Field-book entries—Deceased surveyor—Professional duty—Admissibility.

See SEASHORE. 1.

6. — *Foreign law—Expert evidence—Qualification of expert—Payment out of Court.*

By an order made in this action certain funds in Court were ordered to be paid out to the plt., Miss Turner, but before this order was carried out Miss Turner was married to a Mr. Lendner, a German subject domiciled in Wurtemberg, and by their marriage settlement the intending wife covenanted to bring into settlement a sum of 7000*l.* New Consols, part of the funds in Court.

This was a petition by Mr. and Mrs. Lendner and the trustees of the marriage settlement for payment out of the funds in Court in accordance with the rights of the parties. The petition was supported by the affidavit of an expert in the laws of Germany, who stated that he was a doctor of laws in the University of Munich and a barrister of Lincoln's Inn, and that he had become conversant with the laws of the German Empire and the several German States through study in Germany, and was well acquainted with the said laws, and that for upwards of fifteen years it had been part of his regular practice to advise on the said laws. He then expressed his opinion that by the law of Wurtemberg the settlement was valid, and that Mr. and Mrs. Lendner were entitled to give a good discharge for the residue of the funds.

The matter came originally before Joyce J., who expressed a doubt as to the sufficiency of the expert's qualification; and it subsequently

EVIDENCE—continued.

came before Kekewich J., who expressed a similar doubt. Ultimately the affidavit in question was supplemented by the affidavit of a barrister practising in the kingdom of Wurtemberg.

Kekewich J. said that, although the question as to the sufficiency of the expert's qualification no longer arose for decision, he wished to state his views upon it, for the convenience of the profession. In his opinion the expert had not shewn by his affidavit that he was duly qualified. In the first place, his Lordship did not think that a diploma granted by the University of Munich was a sufficient qualification, since it did not necessarily imply a knowledge of every branch of the laws of the German Empire. Nor was he able to accept a general statement that the deponent had become conversant with the laws of the German Empire and the several German States as sufficient, unless the affidavit went on to shew that he was conversant with the laws of the particular State in question, for it was common knowledge that the laws of the different States of the German Empire varied considerably, and that to a large extent each State retained its own domestic privileges. There was this further difficulty, that the deponent stated that his knowledge of the German laws was acquired through study in Germany. His Lordship entertained a strong opinion, which he thought was shared with Joyce J., that a man who acquired knowledge of the law of a particular country merely by study was not competent to give evidence as an expert on that law; it was essential that he should be a professional man, or should hold some official position, in the State in question. Certainly he thought that study alone was no sufficient qualification. *In re TURNER, MEYDING v. HINCCLIFF*

Kekewich J. [1906] W. N. 27

— Foreign marriage.

See under **DIVORCE—Foreign Marriage.**

Foreign tribunals—R. S. C., July, 1903. W. N. 1903 (July 25), p. 217. See CURRENT INDEX, 1903, p. lxxviii.

— Foreshore—Patent—Charter—User—Weight of evidence.

See **FORESHORE. 1.**

— Foreshore, Title to, under a Crown grant—Improper rejection of evidence—Acts of user before the grant admissible.

See **TASMANIA. 1.**

— Franchise.

See under **PARLIAMENT.**

— Frauds, Statute of.

See **FRAUDS, STATUTE OF. 1—3.**

— Fugitive offender—Committal by magistrate for return to colony—Jurisdiction.

See **EXTRADITION. 4.**

— Highway.

See under **HIGHWAY. STREETS.**

— Infant—Necessaries—Onus of proof—Sale of goods—Actual requirements.

See **INFANT—Necessaries. 1.**

EVIDENCE—continued.

— Intention—Mistake—Number of legatees—Illegitimate children—Presumption.

See **WILL—Illegitimacy. 7.**

— Interrogatories.

See under **DISCOVERY.**

— Judge's notes—Appeal to House of Lords—Copies for printing.

See **APPEAL. 9.**

— Judge's notes—Omission to supply.

See **APPEAL. 8.**

7. — Judge's notes—Shorthand notes—Appeal, Supplying judge's notes on.

The Court, in remarking upon the inordinate length of the argument, commented in strong terms on the circumstance that the parties had agreed to use, upon the appeal, the voluminous shorthand notes of the evidence taken in the Court below, instead of applying, as they should have done, for the purposes of the appeal, for the judge's notes, which would have been a great advantage to the Court to have had before it, though it did not think it necessary to postpone the hearing of the appeal until those notes had been supplied. Where at the trial of an action the parties agreed in the Court below, with the consent of the judge, that a shorthand note should be taken in the place of notes by the judge, in that case there could be no objection to the C. A. being referred to the shorthand notes alone. But it was to be distinctly understood that, where the judge had himself taken a note of the evidence, the parties were not at liberty, upon an appeal, to agree to use shorthand notes alone, and to deprive the Court of the advantage of seeing the notes of the judge himself. **YORKSHIRE LAUNDRIES, LD. v. PICKLES**

C. A. [1901] W. N. 28

— Judgment, Action to set aside—Alleged fraud

—Revocation of probate—Nature of

evidence necessary to maintain action.

See **RES JUDICATA. 1.**

— Jurisdiction to make receiving order in lieu of committal order—Absence of evidence of means.

See **COUNTY COURT—Jurisdiction. 4.**

— Landlord and tenant.

See under **LANDLORD AND TENANT.**

— Lands Clauses Acts.

See under **LANDS CLAUSES ACTS.**

— Larks—"Recently taken."

See **BIRDS. 2.**

— Legatee entitled to share on surviving testator

—Disappearance—No evidence of death

—Presumption.

See **WILL—Survivor. 1.**

— Legitimacy.

See under **LEGITIMACY.**

WILL—Illegitimacy.

— Licensing Acts.

See under **LICENSING ACTS.**

— Lost acknowledgment—Parol evidence—Onus of proof—Specialty debt—Bond.

See **LIMITATIONS. 3.**

EVIDENCE—continued.

- Lunacy—Admissibility of evidence—Decree absolute for default—Reasonable excuse for default.
See CEYLON. 5.
- Malice—Libel—Privileged communication—Publication—Post-card.
See DEFAMATION—Libel. 14.
- Manorial custom—Customary churchway—Inhabitants of parish at large.
See WAY, RIGHT OF. 1.
- Maps and charts.
See CUSTOM. 1.
- Marriage.
See under MARRIAGE.
- Merchandise marks.
See under TRADE MARK.
- Mines.
See under MINES.
- Motor car—Appeal to quarter sessions.
See MOTOR CAR. 3.

8. — Negligence—Negligent course of conduct—Dangerous practice—Single act or omission—Evidence of similar acts or omissions—Admissibility.

The plt. in an action of negligence alleged that he had contracted an infectious disease through the negligence of the deft., a barber, in using razors and other appliances in a dirty and insanitary condition. In support of his case he tendered the evidence of two witnesses who deposed that they had contracted a similar disease in the deft.'s shop.

Held that, as the negligence alleged was not an isolated act or omission, but was a dangerous practice carried on by the deft., the evidence of these witnesses was admissible. **HALES v. KERR Div. Ct. [1908] 2 K. B. 601**

- Nuisance.
See under NUISANCE.
- Nullity of marriage.
See under DIVORCE—Nullity.
- Ornamental timber—Equitable waste—Injunction.
See WASTE. 1.
- Parol evidence—Admissibility—Avoidance of gift for uncertainty.
See WILL—Uncertainty. 2.
- Parol evidence—Admissibility—Will—Construction.
See WILL—Power of Disposition. 1.
- Parol evidence—Rectification—Marriage settlement—Mistake—Statute of Frauds.
See SETTLEMENT. 39.
- Patent action.
See under PATENT.
- Paternity—Custody of child.
See INFANT—Custody. 2.

9. — Pedigree—Petition of right—Affidavit on information acquired from solicitor.

Petition of right by a claimant to a fund which had been paid to the Crown in default of next of kin of an intestate, and an inquiry as

EVIDENCE—continued.

to next of kin had been directed. The claimant's case depended on the proof of a pedigree, and in support of the pedigree an affidavit was made by a person who deposed to a portion of it by reference to documents and from information "acquired by him from his solicitor." A certificate was made based on this affidavit, and a summons was now taken out to vary the certificate.

Kekewich J. said that the fact that the deponent's solicitor had told him something could not possibly be made evidence by any stretch even in a pedigree case. The certificate must be discharged, and the master directed to continue the inquiry without regard to this particular affidavit. *In re PALMES. PALMES v. REX* : **Kekewich J. [1901] W. N. 146**

- Peerage—Secondary evidence.
See PEERAGE. 2.
- Perpetuating testimony.
See under LEGITIMACY.
- Poor rate.
See under RATES.
- Power of appointment.
See under POWER OF APPOINTMENT.
- Practice—Payment, &c.
See under PRACTICE—Payment, &c.

10. — Presumption of death without issue—Evidence—Sufficiency—Practice.

There is no presumption of the death of a person without issue, it is a matter to be proved by sufficient evidence. *In re JACKSON. JACKSON v. WARD* - **Kekewich J. [1907] W. N. 168; [1907] 2 Ch. 354**

11. — Privilege—Statement made in witness-box and in preparing proof—Slander.

The privilege which protects a witness in respect of his evidence in the box also protects him against the consequence of statements made to the client and solicitor in preparing the proof for trial.

The House, holding as above, reversed the Second Division of the Ct. of Sess. (Nov. 18, 1904), 42 S. L. R. 213, and dismissed the cross-appeal, both with costs to the appellant. **WATSON v. JONES H. L. (Sc.) [1905] W. N. 130; [1905] A. C. 480**

- Public documents—Ancient reports to Government departments—Depositions—Maps and charts.
See CUSTOM. 1.
- Railway company.
See under RAILWAY.
- Rates.
See under RATES.
- Recital—Admissibility—Voluntary settlement—Trustee in bankruptcy.
See FRAUDULENT CONVEYANCE. 3.
- Registration of voters.
See under PARLIAMENT.
- Resulting trust—Presumption—Capital or income.
See HUSBAND AND WIFE—Property. 2.

EVIDENCE—continued.

- Rhodesia—Evidence of local law.
See COMPANY — WINDING - UP —
Reconstruction. 1.
- Roadside waste—Dedication.
See under HIGHWAY.
- Sale of goods.
See under SALE OF GOODS.
- Scottish document registered in Scotland—
Production in England impossible—
Secondary evidence of contents.
See VENDOR AND PURCHASER—**Con-**
tract. 2.
- Seduction.
See under SEDUCTION.
- Shipping.
See under SHIPPING.
- Shorthand writer's notes—Costs.
See COSTS. 63, 64.
- Slander—Privilege—Statement made in wit-
ness-box and in preparing proof.
See DEFAMATION—**Slander.** 4.
- Smallpox hospital — Admissibility — Quia
timet action.
See NUISANCE. 10.
- Specific legacy—Misdescription—Shares in a
bank — Extrinsic evidence — Admissi-
bility.
See WILL—**Specific Legacy.** 1.
- Street.
See under STREETS.
- Timber—"Planted or left for ornament or
shelter"—Injunction.
See WASTE. 1.
- Trade libel—Sufficiency—Special damage.
See TRADE LIBEL. 1.
- Tramway.
See under TRAMWAYS.
- Trustee.
See under TRUSTEE.
- Unseaworthiness — Presumption — Cause of
vessel's loss unascertainable.
See SHIPPING—**Seaworthiness.** 1.
- Unstamped agreement.
See COMPANY—**Reconstruction.** 3.
- User—Weight of evidence.
See FORESHORE. 1.
- Voting — Show of hands — Declaration of
chairman that resolution is carried—
"Conclusive evidence."
See COMPANY.—**Meetings.** 10.
- Waterworks—Notice to prevent working of
mines—Compensation—Rise in value of
minerals.
See MINES. 15.
- Way, Right of.
See under WAY, RIGHT OF.
- Will—Construction — Admissibility — Inten-
tion—Extrinsic evidence.
See WILL—**Real Estate.** 1.
- Will—Ambiguity.
See under WILL—**Ambiguity.**

EVIDENCE—continued.

- Will—Name.
See under WILL—**Name.**
- Will—Validity of — Undue influence—Evi-
dence of executors inadmissible—Laws
of Jersey.
See JERSEY. 3.
- Will torn up in testator's presence without
his authority—Subsequent ratification
inadmissible—Words missing from will
when pieced together—Oral evidence.
See PROBATE—**Lunacy.** 2.
- Witness—Taking the oath—Kissing the book.
See OATHS. 1.
- 12. — *Woman past child-bearing—Presumption*
—Child-bearing—Impossibility of issue—Widow
who has had a child.
A widow, aged fifty-six years and three
months, who had never had but one child (born
when she was between twenty-one and twenty-
two years of age), and lived afterwards with
her husband for twenty-four years until his
death, presumed to be past child-bearing.
The principle of the cases in which spinsters
have been presumed to be past child-bearing
applies also to widows who have had children.
In re WHITE. WHITE v. EDMOND - Buckley J.
[1901] W. N. 39; [1901] 1 Ch. 570
- 13. — *Woman past the age of child-bearing—*
Presumption—Payment out of Court.
H. and her children presented a petition for
payment out of Court of a sum of 3599l. 16s. 5d.
India 3½ per cent. stock, and 1242l. 5s. 8d. India
3 per cent. stock. These sums represented a
trust fund given by the will of C. T. upon trust
for H. for life, and after her decease upon trust
for her children on their attaining twenty-one.
H. was a widow and was upwards of fifty-two
years of age, having been born on Jan. 24,
1852. She was married on Aug. 19, 1875, and
had had five children, all of whom had attained
twenty-one, the youngest having been born in
May, 1882. She lived with her husband until
Jan., 1888, from which date she lived apart
from her husband until his death in Mar., 1896.
Under these circumstances the petitioners asked
that the money might be paid out of Court upon
the presumption that the mother was past the
age of child-bearing. Buckley J. refused to
make the order.
The Court allowed the appeal, saying that it
did not mean to alter any rule which had been
laid down, nor did it wish to be understood as
saying that the mere fact that this lady had
arrived at the age of fifty-two was in itself a
sufficient reason for making the order; but the
Court had always to look at the circumstances
of each case, and, looking at the circumstances
of this case, namely, that this lady was now
between fifty-two and fifty-three, that her last
child was born in 1882, that after that she lived
with her husband for nearly six years and there
was no further child born, and bearing in mind
also that this was a case in which the Court was
not interfering with the rights of any living
person, the Court thought it was safe to make
the order. *In re* THORNHILL. THORNHILL v.
NIXON - C. A. [1904] W. N. 112

EVIDENCE—*continued.*

- Workmen's compensation.
See under MASTER AND SERVANT. 1.

EXAMINATION.

See also under EVIDENCE.

- Bankruptcy — Discovery of debtor's property — Witness represented by counsel — Right to take notes of examination.
See BANKRUPTCY—**Practice**. 8.
- Bankruptcy practice.
See under BANKRUPTCY—**Examination**.
- Bond to enforce debtor's attendance for examination — Forfeiture of bond — Form of bond.
See BANKRUPTCY—**Bond**. 1.
- Company practice.
See under COMPANY and COMPANY—**WINDING-UP**.
- Jurisdiction to dispense with examination of lunatic.
See NEW SOUTH WALES. 21.
- Order for examination—Discretion of Court — Perpetuating testimony.
See LEGITIMACY. 1, 2.
- Witness—Winding-up of company.
See under COMPANY — **Examination** and COMPANY — **WINDING-UP** — **Examination**.

- EXCEPTION**—Real estate—Grant—Uncertainty — Election.
See CONVEYANCE. 2.

EXCHANGE—Bill of.

See under BILL OF EXCHANGE.

- Easements—Settled Land.
See under SETTLED LAND—**Easements**.

EXCISE.

See under REVENUE—**Excise**.

EXCISE LICENCE.

See under LICENSING ACTS.
REVENUE—Excise.

- EXECUTION**—Attachment of debts—Garnishee order—Right of garnishor—Debentureholder—Priorities.
See ATTACHMENT. 5.

- Bankruptcy—Leave to trustee in bankruptcy to issue execution.
See BANKRUPTCY—**Arrangement**. 2.
- Bankruptcy — Mutual dealings — Set-off — Equitable execution — Receiver of debtor's interest in debenture stock.
See BANKRUPTCY—**Set-off**. 4.
- Bankruptcy notice for debt alone before taxation of costs.
See BANKRUPTCY—**Notice**. 15.
- Bill of lading—Indorsement by consignee—Execution creditor of consignor.
See BILL OF LADING. 1.
- Company—Debenture—Floating security—Execution under *fi. fa.* against company — Title to money in hands of sheriff.
See COMPANY—**Debentures**. 12.

EXECUTION—*continued.*

- Corporation, Enforcing order against — Practice—Writ of sequestration — Injunction to restrain sewage nuisance.
See SEQUESTRATION. 2.
- “Costs of execution”—High bailiff—Possession money.
See COUNTY COURT—**Bailiffs**. 1.
- County court.
See under COUNTY COURT—**Execution**.
- County court—Goods belonging neither to the execution debtor nor to the claimant—Money paid into Court, who entitled to.
See INTERPLEADER. 3.
- County courts—Writ of execution—Time of application for writ—Sale of goods.
See COUNTY COURT—**Practice**. 18.
- Cross-judgments—Payment of judgment debt into Court—Solicitor's lien for costs.
See COUNTY COURT—**Practice**. 3.
- Deed—Alteration after execution—Filling up blanks—Alteration of date—Imperfect execution—Immaterial alteration.
See DEEDS. 2.
- Deed—Misrepresentation as to contents — Validity — Plea of non est factum — Mortgage.
See DEEDS. 4.
- Effect of writ of execution—Priority.
See COUNTY COURT—**Practice**. 18.
- Equitable execution — Avoidance of settlement as against creditors — Judgment creditor — Charging order — Appointment of receiver.
See FRAUDULENT CONVEYANCE. 2.
- Equitable execution — Receiver — Ex parte injunction.
See INJUNCTION. 1.
- Estate tail — Disentailing assurance — Enrolment.
See DISENTAILING ASSURANCE. 1.
- Excessive execution—Testamentary power.
See CY-PRES. 2.
- Friendly society—Judgment creditor—Execution before winding-up—Stay of sale.
See FRIENDLY SOCIETY. 3.
- Holograph codicil — Appointment — Donee domiciled in Scotland — Power duly exercised by will—Defective execution aided.
See POWER OF APPOINTMENT. 29.
- Husband and wife.
See under HUSBAND AND WIFE — **Execution**.
- Informal document—Witnesses dead—No attestation clause—Presumption.
See PROBATE—**Execution**. 3.
- Jointure—Power not yet in existence—Defective execution — Intention — Execution by the Court.
See JOINTURE. 2.
- Judgment against company—Examination of officer of company — Officer who has retired.
See COMPANY—**Examination**. 2.

EXECUTION—continued.

— Judgment debt—Assignment of part—Rights of assignee—Leave to issue execution.
See ASSIGNMENT. 7.

1. — *Judgment debt—Assignment of part, validity of—Leave to issue execution—(Chose in action—Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 25, sub-s. 6.*

On Dec. 21, 1908, the plt. Bowles recovered judgment against the deft. Baker for 675*l.* 15*s.* 5*d.* By an indenture dated May 14, 1909, Bowles assigned to Forster "all that the said judgment debt due" from Baker to Bowles "to the extent of 560*l.* thereof to hold the same unto" Forster "absolutely." Notice of the assignment was given to Baker. On May 28, 1909, Forster, the assignee, obtained leave *ex parte* to issue execution on the judgment of Dec. 21, 1908, and then issued a bankruptcy notice against Baker. On July 19, 1909, on a summons to set aside the order giving leave to issue execution, it was ordered that the said order should be discharged, and that the issue whether Forster was entitled to leave to issue execution should be determined by means of a special case. On the hearing of the special case Bray J., [1910] W. N. 24, held that there could not be an assignment of a part of a debt within s. 25, sub-s. 6, of the Judicature Act, 1873.

The C. A. said that a judgment creditor never had, either before or since the Judicature Act, 1873, the power to issue a series of small executions upon his judgment, making up in the aggregate the total amount of the debt; his only right was to issue a single execution upon a single judgment. If, therefore, a judgment creditor assigned a part of his judgment debt, he could not give to his assignee any better right than he had himself. The plt. Forster, as assignee of part of a judgment debt, was therefore not in a position to issue execution upon it, and the appeal must be dismissed. They declined to express an opinion as to whether there can be an absolute assignment within s. 25, sub-s. 6, of the Judicature Act, 1873, of a definite part of an existing debt or other legal chose in action, or as to whether the assignee of the whole of a judgment debt is in the same position with regard to it as the original judgment creditor. Appeal dismissed. *BOWLES v. BAKER* AND *In re FORSTER AND BAKER*.

C. A. [1910] W. N. (Correction 119), 110 ;
[1910] 2 K. B. 636

2. — *Judgment debt—Order for payment by instalments—Execution—Necessity for leave—Execution Act, 1844 (7 & 8 Vict. c. 96), s. 61—Debtors Act, 1869 (32 & 33 Vict. c. 62), s. 5—Rules of Supreme Court, Order XLII., r. 24—Practice—Charging order.*

Where judgment has been recovered in the High Court for a sum of money, and an order has been made by the judge in bankruptcy under s. 5 of the Debtors Act, 1869, for payment of the judgment debt by instalments, execution may issue under Order XLII., r. 24, of the Rules of the Supreme Court for the amount of instalments which have become due and are unpaid.

Seemle, the power to order the issue of

EXECUTION—continued.

execution as provided by s. 61 of the Execution Act, 1844, can be exercised by any judge of the High Court and is not confined to the judge in bankruptcy. *WOODHAM SMITH v. EDWARDS*.

C. A. [1908] W. N. 181 ; [1908] 2 K. B. 899

— "Landlord"—Judgment creditor—Arrears of rent.

See LANDLORD AND TENANT. 33.

— Lunatic so found—Lucid interval—Execution of deed.

See LUNACY. 8.

— Married woman—Judgment.

See HUSBAND AND WIFE—Restraint on Anticipation. 1.

— Mortgage—Foreclosure order nisi—Creditor who has obtained equitable execution.

See MORTGAGE—Foreclosure. 3.

— Partners—Issue to determine liability.

See PARTNERSHIP. 19.

— Power—Aiding defective execution.

See STATUTE. 1.

— Power of appointment.

See under POWER OF APPOINTMENT.

— Probate—Practice.

See under PROBATE—Execution.

— Receiver.

See under BANKRUPTCY—Receiver. RECEIVER.

VENDOR AND PURCHASER—Receiver. 1

— Receiver—Equitable execution—Appointment of receiver of debtor's interest in residuary estate under a will—Judgment creditor.

See WILL—Forfeiture. 6.

— Sheriffs.

See under SHERIFFS.

— Stay of execution—Company—Arrangement with creditors—Judgment—Staying proceedings.

See COMPANY—Staying Proceedings. 1.

— Stay of execution pending appeal—Jurisdiction of county court judge.

See COUNTY COURT—STAYING PROCEEDINGS. 1.

— Stay of execution under judgment—Garnishee order nisi—Bankruptcy notice.

See BANKRUPTCY—Notice. 10.

— Trust.

See under TRUSTEE—Execution of Trust.

— Vendor and purchaser—Receiver.

See under VENDOR AND PURCHASER—Receiver.

— Will—Construction.

See under WILL—Execution.

— Will—Notary present without attesting.

See CEYLON. 8.

EXECUTION CREDITOR—Bill of sale—Registration—Apparent possession—Bona fide purchase.

See BILL OF SALE. 5.

EXECUTION CREDITOR—*continued.*

- “Costs of execution”—Sheriff’s fees—Possession money.
See **BANKRUPTCY—Costs.** 2.
- Interpleader—Indemnity—Lien passing to trustee in Bankruptcy.
See **BANKRUPTCY—Trustee.** 5.
- Priority—Contract to issue debentures—Charge.
See **COMPANY—Debentures.** 3.
- Rights as against—Debenture—Unauthorized issue—Bona fide holder for value.
See **COMPANY—Debentures.** 56.

EXECUTOR.

See also under **TRUSTEE.**

Convention between United Kingdom and Japan for the protection of the Estates of Deceased Persons. Price ½d. [C. 443.]

- Administration, col.* 1048.
- Appointment, col.* 1050.
- Bankruptcy, col.* 1050.
- Bonds, col.* 1050.
- Company, col.* 1050.
- Compromise, col.* 1050.
- Contempt, col.* 1050.
- Death, col.* 1050.
- Debts, col.* 1050.
- Deeds, col.* 1051.
- Destruction of Will.* See under **WILL—Destruction.**
- Devastavit, col.* 1051.
- Disclosure, col.* 1051.
- Divorce, col.* 1052.
- Duty, col.* 1052.
- Imperfect Gift, col.* 1052.
- Indemnity, col.* 1052.
- Indian Assets, col.* 1052.
- Investments, col.* 1052.
- Lien, col.* 1053.
- Lunacy, col.* 1053.
- Mesne Acts, col.* 1053.
- Mortgages, col.* 1053.
- Notice, col.* 1053.
- Partnership, col.* 1053.
- Payment, col.* 1053.
- Power of Appointment, col.* 1053.
- Powers, col.* 1053.
- Probate.* See under **PROBATE.**
- Production of Probate, col.* 1054.
- Residue, col.* 1054.
- Retainer (Right of retainer), col.* 1055.
- Sale, col.* 1057.
- Stamps, col.* 1057.

EXECUTOR—*continued.*

Trustee. See under **TRUSTEE.**
Will, col. 1057.

Administration.

See also under **ADMINISTRATION.**

- According to the tenor—“Administrator.”
See **WILL—Executor.** 1.
- According to the tenor—Trustees—Direction for advancement and maintenance of children.
See **PROBATE—Trustees.** 1.
- Administration or probate—No executor named—Title of administrator to real estate—Land transfer.
See **PROBATE—Practice.** 7.
- Administration with will annexed—Joint grant to nominees of sole executrix.
See **PROBATE—Practice.** 5.
- 1. — *Administrator—Attorney—Distribution of assets.*
Letters of administration of the estate of a person who died in England were granted to the attorney of the widow, a resident in America, who was not legal personal representative of the deceased in any country :—
Held, that the principal could not give a discharge to the attorney, and the attorney was responsible for the due distribution of the assets.
In re RENDELL. **WOOD v. RENDELL**
Cozens-Hardy J. [1901] 1 Ch. 230
- Administratrix—Death of—Nominee of her executors—Administration bond—Sureties dispensed with.
See **PROBATE—Sureties.** 1.
- Advancements to children—Hotchpot—Intestacy.
See **DISTRIBUTIONS, STATUTE OF.** 1.
- Appointment of executor—Practice—Will of domiciled Italian—Probate refused—Administration with will annexed granted.
See **PROBATE—Grant.** 1.
- 2. — *Appropriation of specific assets—Legacy—Residue—Leaseholds—Settled shares—Sale and conversion—Land Transfer Act, 1897 (60 & 61 Vict. c. 65), s. 4, sub-s. 1.*
The principle upon which executors and trustees under a will which contains a trust for sale and conversion have power to appropriate any specific part of the residuary estate towards satisfaction of a legacy or share of the residue, is that they have power to sell the particular assets to the legatee, and to set off the purchase-money against the legacy. The doctrine, therefore, is not confined to pure personal estate, but extends to chattels real, and (*semble*) to real estate which is subject to a trust for sale and conversion.
Sect. 4, sub-s. 1, of the Land Transfer Act, 1897, applies to personal estate as well as to real estate; but it does not, where there is a trust for sale and conversion, take away the former power of appropriation. *In re* BEVERLY. **WATSON v. WATSON** - - **Buckley J. [1901] 1 Ch. 681**

EXECUTOR (Administration)—continued.

- Assets—Order of administration—Insufficiency of general personality.
See ADMINISTRATION. 1.
- Charitable trusts—Certificate of Charity Commissioners.
See under CHARITY.
- Costs—Administration action—Real and personal estate—Apportionment.
See COSTS. 5.
- Costs—Practice—Probate.
See under PROBATE—PRACTICE.
- Exoneration of general personal estate—Charge on real estate abroad.
See ADMINISTRATION. 10.
- Fund carried over to separate account—Payment out—Petition or summons.
See PRACTICE—Payment, &c. 4.
- Intestate's estate—Statute of Limitations—Incapacity to sue co-executor at law.
See ADMINISTRATION. 19.
- Mortgage debt—Judgment against executor—Statute of Limitations not pleaded.
See ADMINISTRATION.
- Preferential payments—Specialty debt—Executor—Administration of assets.
See ADMINISTRATION. 8.

3. — *Priorities—Insolvent estate—Creditors—Voluntary debt—Bankruptcy rule—Judicature Act, 1875 (38 & 39 Vict. c. 77), s. 10—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 40, sub-s. 4.*

The effect of s. 10 of the Judicature Act, 1875, is to introduce into the administration of the estates of deceased insolvents by the Ch. Div. the rule in Bankruptcy that voluntary creditors are to be paid *pari passu* with creditors for value.

Decision of Cozens-Hardy J., [1900] 2 Ch. 676, affirmed.

In re Maggi, (1882) 20 Ch. D. 545, and *Smith v. Morgan*, (1880) 5 C. P. D. 337, disapproved. *In re WHITAKER. WHITAKER v. PALMER.*

C. A. [1901] 1 Ch. 9

Note.

See In re Whitaker, Whitaker v. Palmer, Farwell J., [1904] 1 Ch. 299; *Administration*. 17.

- Public-house—Licensed person—Executor of deceased licensee.
See LICENSING ACTS. 24.
- Renunciation of next of kin solely entitled in distribution—Grant to person without interest in the estate.
See PROBATE—Renunciation. 1.
- Retainer.
See under EXECUTOR—Retainer.
- Shares—Agreement to vote in a particular way—Directors.
See COMPANY—Shares. 28.
- Simple direction to pay debts—Executor according to the tenor.
See WILL—Debts. 1.
- Solicitors—Misconduct—Agreement to share profit costs between solicitors who represent different conflicting interests.
See SOLICITOR—Misconduct. 1.

EXECUTOR (Administration)—continued.

- Trustee.
See under TRUSTEE.
 - When becoming trustee.
See TRUSTEE—Breach of Trust. 5.
- Appointment.**
- Trustee—Persons who are trustees of the will of A.—Executors of last surviving trustee.
See TRUSTEE—Appointment. 7.

Bankruptcy.

- Bankruptcy of executor—Writ of sequestration.
See BANKRUPTCY—Secured Creditors. 4.

Bonds.

- Imperfect gift—Bonds to bearer.
See ADMINISTRATION. 12.

Company.

- Register of members—Rectification—Deceased member—Executors, whether to be described as such in register.
See COMPANY—Register of Members. 1.
- Shares—Production of probate—Transfer to one executor—Nominal consideration—Breach of trust.
See COMPANY—Shares. 11.

Compromise.

1. — *Power of executor to compromise claim of his co-executor—Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 21—Judicial Trustees Act, 1896 (59 & 60 Vict. c. 35), s. 3.*

It is competent for an executor in a proper case to compromise a claim by his co-executor against the estate.

Where an executor, acting honestly and reasonably, allowed, after inquiry, a claim by the testator's widow, who was co-executrix of the will, to a large sum of money which as she alleged belonged to her, but was represented by securities apparently belonging to the testator:—

Held, that the transaction was valid and binding on residuary legatees. *In re HOUGHTON. HAWLEY v. BLAKE Kekewich J.* [1904] W. N. 54; [1904] 1 Ch. 622

Contempt.

- Attachment against two executors, Motion for—Service on one.
See CONTEMPT OF COURT. 3.
- Disobedience of order to pay money—Debtor executor.
See ATTACHMENT. 20.

Death.

- Will—Lapse—Death of executor before testator—Intestates' Estates Act.
See WILL—Lapse. 3.

Debts.

- Will—Immediate gift of share of residue—Right of executors to retain share to answer debt.
See ADMINISTRATION. 32.

EXECUTOR—*continued*.**Deeds.**

- Deed — Misrepresentation as to contents—Plea of non est factum—Validity—Mortgage.
See DEED. 5.

Destruction of Will.

See under WILL—Destruction.

Devastavit.

1. — *Statute of Limitations — Claim on guarantee—Trustee Act, 1888 (51 & 52 Vict. c. 59), s. 8, sub-s. 1 (b)—County Court Rules, 1903, Order XXX., rr. 3, 4; Form 238.*

In an action commenced in the High Court in 1905, and transferred to the county court, against one of two executors of a testator, who died in 1897, in respect of claims accruing due in 1903 and 1904 upon a guarantee given by the testator, the plts. alleged a devastavit to have been committed by the deft., in wrongfully handing over the assets of the testator to a beneficiary under the will in 1898, more than six years before the commencement of the action, without making any provision for future liability under the guarantee. The county court judge having given judgment for the plts., adjudging that the deft. had committed a devastavit, and ordered execution against the deft. de bonis propriis:—

Held (reversing the judgment of Kennedy and A. T. Lawrence JJ.), that the claim in respect of the devastavit was barred by the Statute of Limitations, and therefore the order for execution de bonis propriis was wrong.

Quære whether the Trustee Act, 1888, s. 8, sub-s. 1 (b), applies to such a case. *LACONS v. WARMOLL* - - C. A. [1907] 2 K. B. 350

Disclosure.

1. — *Legatee—Duty of executor to give notice of legacy—Conditional gift—Beneficial interest of executor on breach of condition—Estoppel.*

Where a legacy is given upon a condition, an executor who takes a beneficial interest in the legacy on the breach of the condition owes no duty to the legatee to give notice of the terms of the legacy.

Dictum of Lord Hardwicke in *Chauncy v. Graydon*, (1743) 2 Atk. 616, 619, considered.

A testatrix appointed her son A. her executor and bequeathed a leasehold house to her son B., then abroad, and directed that in case he should not return and claim it it should go to A. After the death of the testatrix, A. wrote to B.: "A house has been left you and according to the will it is to be in my hands until you claim it"; but he did not inform him of the gift over. B. died abroad without having claimed the house:—

Held (affirming Joyce J.) that A. was not estopped by the letter from claiming under the gift over, because (1) there was no sufficiently precise representation that B. was absolutely entitled; (2) it was not proved that the non-return of B. was the consequence of the representation. *In re LEWIS. LEWIS v. LEWIS*

C. A. [1904] W. N. 164; [1904] 2 Ch. 666

EXECUTOR—*continued*.**Divorce.**

- Practice — Damages against co-respondent—Death of co-respondent—Liability of his executor.
See DIVORCE—Co-respondent. 1.

Duty.

- Duty of executor to give notice of legacy—Action to recover legacy.
See LIMITATIONS, STATUTE OF. 4.

Imperfect Gift.

- Imperfect gift of personalty — Bonds to bearer—Continuing intention to give—Donee appointed one of the executors.
See ADMINISTRATION. 12.
- Imperfect gift of personalty—Indefinite gift—Promise to pay in the future.
See ADMINISTRATION. 13.

Indemnity.

1. — *Privity of estate — Distribution — Administration — Leaseholds — Contingent future liabilities—Retention of assets.*

On making an order for the distribution of the estate of a testator amongst his residuary legatees the Court will not set aside any part of his assets to indemnify his executors against possible liabilities which may arise in respect of leases formerly held by him, unless there is privity of estate between the executors and the lessors. *In re NIXON. GRAY v. BELL*

Byrne J. [1904] W. N. 72; [1904] 1 Ch. 638

Indian Assets.

- Will—Executors in England — Indian assets—Fraud in India—Revocation of Indian letters of administration — Title of executors.
See ADMINISTRATION. 15.

Investments.

1. — *Appropriation of investment—Administration—Contingent legacy without interest.*

When a cash legacy is given upon the happening of a contingency, e.g., the attainment of twenty-one by the legatee, but without interest in the meantime, the executor is not entitled to set apart and invest the amount and appropriate the investment to satisfy the legacy, so that in case, on the happening of the contingency, the investment has become depreciated in value, the legatee must bear the loss.

An investment made under such circumstances remains part of the testator's estate, and the legatee is entitled on the happening of the contingency to receive the amount of the legacy in full in cash.

But if an executor sets aside and properly invests a reasonable amount to secure the legacy, he may then distribute the residue of the estate, and he will not be held personally responsible if, when the legacy becomes payable, the investment turns out to be not sufficient to answer it.

Decision of Kekewich J., [1902] W. N. 208, reversed. *In re HALL. FOSTER v. METCALFE*

C. A. [1903] W. N. 93; [1903] 2 Ch. 226

EXECUTOR —continued.**Lien.**

- Partnership real estate—Deposit of title-deeds—Notice—Priorities.
See PARTNERSHIP. 7.

Lunacy.

- Probate—Practice—Lunacy of one of the executors after proving will—Revocation of probate.
See PROBATE—Lunacy. 1.

Mesne Acts.

- Probate—Revocation—Mesne acts of executors—Specific legacy—Bequest of shares to A.—Assent of executors—Transfer—Discovery of codicil—Shares given to B.—Recovery of shares.
See PROBATE—Revocation. 7.

Mortgages.

- Beneficial devise in fee to one executor—Mortgage by devisee to raise legacies—Liability of mortgagee to see to application of money.
See WILL—Charges. 1.

Notice.

- Notice to executor—Equitable execution—Effect of order—Unascertained residue—Charging order—Priority.
See RECEIVER. 5.
- Notice to executor—Renunciation by executor—Charge on expectancy—Priority—Assignor executor.
See Mortgage—Priority. 7.

Partnership.

- Provision for purchase by survivor of share of deceased partner—Surviving partner sole executor of deceased—Valuation.
See NEW SOUTH WALES. 24.

Payment.

- Payment of mortgage debt by executors—Liability of assignee to contribute.
See MORTGAGE—Contribution. 1.

Power of Appointment.

- Personality—Foreign domicile—Unattested will—Extrinsic evidence of intention.
See CONFLICT OF LAWS. 16.

Powers.

1. — Charge of debts and legacies—Will—Power to sell real estate—Law of Property Amendment Act, 1859 (Lord St. Leonards' Act) (22 & 23 Vict. c. 35), ss. 16, 18—Devise to person or persons in fee—Devise to son on attaining twenty-five—Power of executor to grant easement—Special Act—Construction—Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), s. 7.

A testator appointed an executrix, charged his real estate with the payment of his debts and legacies, and devised his real estate in fee to his

EXECUTOR (Powers) —continued.

first son who should attain the age of twenty-five. Thirteen years after the testator's death his eldest son attained twenty-five :—

Held, that the devise to the son was not a devise to any person in fee or in tail within the meaning of s. 18 of Lord St. Leonards' Act (22 & 23 Vict. c. 35), that that section did not apply, and that under s. 16 the executrix had power to sell the real estate.

In re Wilson, (1886) 54 L. T. 600, applied.

In s. 7 of the Lands Clauses Consolidation Act, 1845, the expression "executors and administrators" is to be restricted to executors and administrators who are seised, possessed of, or entitled to land or any estate or interest therein.

Where, therefore, under a special Act persons empowered by the Lands Clauses Acts to sell and convey or release lands were empowered if they thought fit to grant easements :—

Held, that an executrix who had no estate or interest in land, but only a power to sell it, was not empowered to grant an easement over it. *In re BARROW-IN-FURNESS CORPORATION AND RAWLINSON'S CONTRACT*

Kekewich J. [1903] W. N. 8 ; [1903] 1 Ch. 339

- Land transfer—Special executors—General executors, Sale by.
See EXECUTOR—Sale. 1.

- Partnership—Conversion into company—Agreement by executors—Jurisdiction to sanction.
See TRUSTEE—Investments. 12.

Probate.

See under PROBATE.

Production of Probate.

- Company—Shares—Executors—Production of probate—Notice.
See COMPANY—Shares. 11.

Residue.

- Executors—Express trust of residue—Partial failure of beneficial interest—Next of kin.
See WILL—Advances. 3.

1. — Will—Executors—No next of kin—Residue undisposed of—Beneficial title of executors—Equal pecuniary legacies to all—Unequal specific legacies to some—Presumption of intention—Will—Construction.

The rule established by the old law as to executors being trustees of undisposed of residue must not be extended beyond the cases which established it.

By a will in 1881 (to which the Executors Act, 1890, did not apply) the testator appointed three executors, and gave to each an equal pecuniary legacy and to two of them specific legacies of unequal value. There being no gift of residue and no next of kin, the Crown claimed the residuary estate :—

Held that, on the true construction of this will, the peculiar circumstances raised no presumption that the testator intended to make the

EXECUTOR (Residue)—continued.

executors merely trustees, and that they were entitled to the residuary estate for their own benefit.

Decision of the C. A., reported as *In re Glukman, Att.-Gen. v. Jefferys*, [1908] W. N. 46; [1908] 1 Ch. 552, affirmed. *ATT.-GEN. v. JEFFERYS* - - - **H. L. (E.) [1908] W. N. 171; [1908] A. C. 411**

Retainer.**(Right of Retainer.)**

1. — *Administration bond, Form of* — “*Not unduly preferring*” — *Administrator—Creditor—Retainer—Administration decree.*

Under the modern form of a creditor's administration bond—by which the creditor administrator undertakes to pay the debts of the deceased “in a due course of administration rateably and proportionably, and according to the priority required by law, and not unduly preferring his own debt or the debts of any other of the creditors of the deceased by reason of his being an administrator as aforesaid”—he may still retain, out of moneys coming to his hands or in court in an administration action by other creditors, his own debt as against other debts of equal degree.

Davies v. Parry, [1899] 1 Ch. 602, approved. *In re BELHAM. RICHARDES v. YATES*

C. A. [1901] W. N. 80; [1901] 2 Ch. 52

2. — *Corporate creditor—Grant of administration to officer.*

Letters of administration were granted to a person described as manager of a bank; he was himself not a creditor:—

Held, that he could not as administrator retain the amount of a debt due to the bank. *In re RICHARDS. LAWSON v. HARVEY*

Cozens-Hardy J. [1901] W. N. 148; [1901] 2 Ch. 399

— Debt—“Ready money”—Money on deposit.

See HUSBAND AND WIFE—Separate Property. 1.

3. — General rule.

An executor's right of retainer extends only to funds actually or constructively in his possession.

The insolvent estate of a deceased person, the subject of an old administration suit, became entitled to a fund in court to the credit of another suit. The fund was transferred to the credit of the administration suit, and outstanding costs paid out of it:—

Held, that the present administrator of the deceased, a creditor, had no right of retainer against the balance in court. *PULMAN v. MEADOWS - Cozens-Hardy J. [1901] 1 Ch. 233*

4. — *Insolvent estate—Legal personal representative and devisee—Tenant for life—Cestui que trust of the debt—Claim of trustees of settlement.*

A testator, by the settlement made on his marriage with the deft., his wife, covenanted with the trustees for the payment of a sum of 5,000*l.* six months after his death, to be held upon trust for the deft. for life, and for the children of the marriage, and in default of

EXECUTOR (Retainer)— continued.

children for the testator absolutely; the testator's residuary real and personal estate was devised and bequeathed to the deft. absolutely, and letters of administration with the will annexed had been granted to her: there were no children, and the estate was insolvent. The deft., as the widow and personal representative and devisee of the real estate, claimed the right to retain this 5,000*l.* out of the testator's real and personal estate on behalf of herself and the trustees of the settlement in priority to all other creditors:—

Held, that the trustees of the settlement being the persons to sue for and recover this 5,000*l.* debt, and not the legal personal representative, she had no right of retainer.

Loomes v. Stotherd, (1823) 1 S. & S. 458; 1 L. J. (O.S.) (Ch.) 220; 24 R. R. 209, examined, and held to have been overruled on this point by *In re Dunning*, (1885) 54 L. J. (Ch.) 900. *In re HAYWARD. TWEEDIE v. HAYWARD*

Byrne J. [1901] W. N. 6; [1901] 1 Ch. 221

5. — *Insolvent estate—Executor of sole trustee—Disclaimer of trust—Exercise of right of retainer for benefit of trust estate.*

The sole trustee of a fund misappropriated it and died insolvent. His executor had never acted in the trust, and desired to be discharged therefrom:—

Held, that he was entitled to decline to act in the trust, and was not bound to exercise his right of retainer for the benefit of the cestuis que trust in respect of the debt due to him as trustee of the fund. *In re RIDLEY. RIDLEY v. RIDLEY - Joyce J. [1904] W. N. 147; [1904] 2 Ch. 774*

Note.

This case was approved by C. A., *In re Benett*, [1906] 1 Ch. 216. *See Trustee—Retainer. 1.*

6. — *Judgment creditor—Judgment against executor—Subsequent administration decree—Insolvent estate.*

Prior to the decree for administration of an insolvent estate a simple contract creditor obtained a common law judgment *de bonis testatoris* for her debt against the executrix. The executrix, who was also a simple contract creditor, did not plead *plene administravit* or set up her right of retainer in the common law action:—

Held, that the judgment was conclusive that the executrix had assets to satisfy it, and she could not retain against the judgment creditor in the administration action.

Principles stated in the notes to *Wheatley v. Lane*, (1668) 1 Wm. Saund. 216 a, 219 b, and in *Williams on Executors*, 8th ed. pp. 1970, 1986, and *In re Hubback*, (1885) 29 Ch. D. 934, applied. *In re MARVIN. CRAWTER v. MARVIN*

Swinfen Eady J. [1905 W. N. 142 [1905] 2 Ch. 490

7. — *Loan by wife to husband—Wife appointed executrix of husband—Insolvent estate—Judicature Act, 1875 (38 & 39 Vict. c. 77), s. 10—Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), s. 3.*

EXECUTOR (Retainer)—continued.

Sect. 3 of the Married Women's Property Act, 1882, does not affect the right of retainer of a married woman who is the executrix of her deceased husband in respect of a loan made by her to him for the purposes of his business.

Though that section, in combination with s. 10 of the Judicature Act, 1875, prevents a wife from proving for such a loan in the administration of her deceased husband's estate (if insolvent) in competition with his creditors for value, yet, if she is her husband's executrix, she can as against those creditors retain the amount of the loan out of assets in her hands as executrix.

In re May, (1890) 45 Ch. D. 499, and *In re Leng*, [1895] 1 Ch. 652, followed.. *In re AMBLER*. WOODHEAD v. AMBLER.

C. A. [1905] W. N. 63; [1905] 1 Ch. 697

— Right of retainer—Legal personal representative of surviving trustee—Cestui que trust—Request to exercise right of retainer.

See TRUSTEE—Retainer. 1.

Sale.

— Charge of debts and legacies—Will—Power to sell real estate.

See EXECUTOR—Powers. 1.

— Leaseholds, Sale of, by executor—Lapse of time—Actual notice to purchaser that no debts of testator remain unpaid.

See VENDOR AND PURCHASER—Title. 8.

1. — *Special executors—General executors—Sale by general executors—Concurrence of special executors—Vendor and purchaser—Will—Land Transfer Act, 1897 (60 & 61 Vict. c. 65), ss. 1, 2, sub-s. 2; 24, sub-s. 2.*

Where by his will a testator appoints special executors as to property situate in a foreign country or in the Colonies, and by the same will appoints other persons general executors of his will, on a sale by the general executors of the testator's real estate in England a good title can be shewn thereto without the concurrence of the special executors. *In re COHEN'S EXECUTORS AND LONDON COUNTY COUNCIL*

Byrne J. [1901] W. N. 237; [1902] 1 Ch. 187

— Sale of leaseholds by—Lapse of time—Actual notice to purchaser that no debts of testator remain unpaid.

See VENDOR AND PURCHASER—Title. 8.

Stamps.

— Assent in writing of executor—Stamp duty—Conveyance or transfer—Devise of real estate.

See REVENUE—Stamps. 12.

Trustee.

See under TRUSTEE.

Will.

— Validity of will—Undue influence—Evidence of executors inadmissible—Laws of Jersey.

See JERSEY. 3.

EXECUTORY BEQUEST—Or limitation over on death or parent—Rule in *Wild's Case*. See WILL—**Executory Bequest or Limitation**. 2.

EXECUTORY DEVISE—Absolute gift, Cutting down—Gift over on a compound event—Remoteness.

See WILL—**Absolute Gift**. 3.

— Contingent remainder or—Remoteness.

See WILL—**Remoteness**. 1.

— Contingent remainder or—Will—Construction.

See WILL—**Contingent Remainder**. 1.

EXECUTORY GIFT—Precatory trust—Absolute gift “in confidence”—Absolute gift subject to executory gift over.

See WILL—**Precatory Trusts**. 3.

EXECUTORY INTEREST—In land—Lease—Covenant running with land—Option to purchase freehold.

See COVENANT. 7.

EXECUTORY INTEREST IN LAND—Option to purchase reversion in fee—Validity—Perpetuity—Covenant running with land.

See COVENANT. 4.

EXECUTORY LIMITATION—Will.

See under WILL—**Executory Limitations**.

EXECUTORY TRUST.

See under TRUSTEE—**Executory Trust**.

EXEMPTION—Duty—Public revenue.

See under REVENUE.

— From taxes and assessments—City of London consolidated rate.

See STATUTE. 2.

— Land tax—Hospitals—Land in occupation of tenants.

See LAND TAX. 1.

EXHIBIT—Deposit of document containing alleged libel—Exhibit to depositions—Criminal law.

See DEFAMATION—**Libel**. 3.

— Service of—Motion for attachment—Affidavit in support.

See ATTACHMENT. 12.

EXHIBITIONS.

Order in Council, April 2, 1909, applying certain provisions of the Patents and Designs Act, 1907, to the International Exhibition to be held at Brussels in 1910. St. R. & O. 1909, No. 395.

Order in Council, May 17, 1909, applying certain provisions of the Patents and Designs Act, 1907, to the International Exhibition to be held at Rome in 1911. St. R. & O. 1909, No. 581.

Order in Council, May 17, 1909, applying certain provisions of the Patents and Designs Act, 1907, to the International Exhibition to be held at Turin in 1911. St. R. & O. 1909, No. 582.

EXHIBITIONS—*continued.*

Order in Council, Jan. 10, 1910, applying certain provisions of the Patents and Designs Act, 1907, to the International Shooting and Field Sports Exhibition to be held at Vienna in 1910. St. R. & O. 1910, No. 63.

Order in Council, Jan. 10, 1910, applying certain provisions of the Patents and Designs Act, 1907, to the International Exhibition of Railway and Land Transport to be held at Buenos Aires in 1910. St. R. & O. 1910, No. 64.

Order in Council, Jan. 10, 1910, applying certain provisions of the Patents and Designs Act, 1907, to the International Agricultural Exhibition to be held at Buenos Aires in 1910. St. R. & O. 1910, No. 65.

Order in Council, Jan. 10, 1910, applying certain provisions of the Patents and Designs Act, 1907, to the International Exhibition of Hygiene to be held at Buenos Aires in 1910. St. R. & O. 1910, No. 66. Price 1d. each.

— Distress—Exemption from—Sample article sent to selling agent for exhibition purposes only.
See DISTRESS. 2.

EXONERATION—General personal estate—Charge on real estate abroad.
See ADMINISTRATION. 10.

— Real estate—Estate duty—"Equitable charge."
See ADMINISTRATION. 9.

— Will—Construction.
See under WILL—Exoneration.

EXPECTANCY—Interest in—Estate duty—Incumbrances created by reversioner—Deductions.
See REVENUE—Estate Duty. 9.

— Legacy duty—Assignment by person entitled in expectancy—Persons having "an absolute interest therein," who are.
See REVENUE—Legacy Duty. 1.

— Voluntary settlement—Assignment—Power of trustees to call for transfer.
See SETTLEMENT. 47.

EXPENSES.

See under COSTS.

EXPERT EVIDENCE.

See under EVIDENCE.

EXPIRED PATENT.

See under PATENT.

EXPLOSION—Damage caused by—Verdict—Absence of exact proof of cause of injury.
See CANADA—Practice. 11.

— Electric supply—Leakage of electricity—Fire—Nuisance.
See ELECTRIC LIGHT. 10.

EXPLOSIVES—Railway companies, liability of—Loss of life from explosives in a railway carriage—Appeal from Bengal.
See RAILWAY—Passengers. 3.

EXPULSION—Conduct detrimental to partnership business—Conviction by police magistrate.

See PARTNERSHIP. 12.

— Jurisdiction of arbitration committee—Dispute between member and society.
See FRIENDLY SOCIETY. 7.

— Notice—Validity—Partner, Breach of duty as.
See PARTNERSHIP. 11.

EXPULSION ORDER—Undesirable alien—Stowaway—Liability of master of ship bringing alien to the United Kingdom.

See ALIEN. 1.

EXTENT, WRIT OF—Affidavit of debt and danger—Sufficiency of affidavit.

See REVENUE—Writ of Extent. 1.

EXTINGUISHMENT—Custody of title deeds—Deeds shewing title to easement and to extinguishment.

See VENDOR AND PURCHASER—Deeds. 1.

EXTRADITION.

See also under FUGITIVE OFFENDERS.

Fugitive Criminals.

Australia—Order in Council directing that "The Commonwealth of Australia Extradition Act, 1903," shall have effect in the Commonwealth of Australia as if it were part of the Imperial Act. St. R. & O. 1904, No. 316.

*Germany—Treaty between Great Britain and Germany for the Mutual Surrender of Fugitive Criminals of May 14, 1872, arts. 4, 5.
See EXTRADITION.*

India—Order in Council directing that Chapter II. of "The Indian Extradition Act, 1903," shall have effect in British India as if it were part of the Imperial Act. St. R. & O. 1904, No. 317.

India—Order in Council directing that Chapter IV. of "The Indian Extradition Act 1903," shall be recognized and have effect throughout His Majesty's Dominions, and on the High Seas, as if it were part of the Fugitive Offenders Act, 1881. St. R. & O. 1904, No. 318.

Straits Settlements Fugitive Offenders Order, 1904. St. R. & O. 1904, No. 1372.

Cuba—Fugitive Criminal—Order in Council directing that the Extradition Acts shall apply in the case of the Republic of Cuba. St. R. & O. 1905, No. 558.

Switzerland—Order in Council directing that the Extradition Acts shall apply in the case of Switzerland. St. R. & O. 1905, No. 616.

Bribery—Extradition Act, 1906 (6 Edw. 7, c. 15), is an Act to include bribery amongst extradition crimes.

Nicaragua—Order in Council, dated May 11, 1906, directing that the Extradition Acts shall apply in the case of the Republic of Nicaragua—Price 1d. St. R. & O. 1906, No. 382.

EXTRADITION (Fugitive Criminals)—continued.

Order in Council, Oct. 22, 1906, directing that an Act passed by the Parliament of Natal providing for the more convenient administration of the Fugitive Offenders' Act, 1881, shall have effect throughout H.M.'s Dominions and on the High Seas. St. R. & O. 1906, No. 808.

Order in Council applying the Extradition Acts in cases of:—

Belgium, July 6, 1907. St. R. & O. 1907, No. 544.

Norway, July 6, 1907. St. R. & O. 1907, No. 545.

Panama Republic, Aug. 12, 1907. St. R. & O. 1907, No. 648.

Peru Republic, May 7, 1907. St. R. & O. 1907, No. 383.

Sweden, Aug. 12, 1907. St. R. & O. 1907, No. 649.

United States of America, Feb. 11, 1907. St. R. & O. 1907, No. 110.

Canada—Order in Council, July 6, 1907, suspending operations of the Extradition Acts within the Dominion of Canada. St. R. & O. 1907, No. 546.

France—Fugitive Criminal—Order in Council, Dec. 2, 1909, directing that the Extradition Acts shall apply in the case of France in accordance with a Treaty of Aug. 14, 1876, as supplemented by additional Conventions of Feb. 13, 1896, and Oct. 17, 1908; and in the case of Tunis in accordance with Agreements of Dec. 31, 1889, and July 29, 1909. St. R. & O. 1909, No. 1458. Price 1d.

— Arrest — Fugitive offender — Bankruptcy of prisoner pending extradition.

See BANKRUPTCY—Extradition. 1.

— Arrest and remand of accused—Writs of habeas corpus—Jurisdiction—Procedure—Release.

See CANADA—Extradition. 1.

— Belgian Extradition Treaty — “Competent authority” — Fugitive offender — Arrest — Bankruptcy of prisoner pending extradition.

See BANKRUPTCY—Extradition. 1.

1. — *Belgium, Crime committed in—Prescriptive period for punishment—Order of committal to await surrender made within prescriptive period, but during time prisoner serving sentence for crime committed in England—Arrest under order of committal after expiration of prescriptive period—Extradition Act, 1870 (33 & 34 Vict. c. 52), s. 3, sub-s. 3; ss. 10, 11—Extradition treaty between United Kingdom and Belgium of Oct. 29, 1901, arts. 9, 11—Belgium Penal Code, arts. 92, 96.*

Where a metrop. magistrate commits a fugitive criminal alleged to have been convicted in a foreign country of an extradition crime to prison there to await the warrant of a Secy. of State for his surrender under s. 10 of the Extradition Act, 1870, and by virtue of s. 3, sub-s. 3, of the Act the prisoner's surrender does not take place till after the expiration of a sentence

EXTRADITION (Fugitive Criminals)—continued.

inflicted on him in England for an offence committed in England, the order of committal will, if made before exemption from punishment for the extradition crime takes place in the foreign country by lapse of time, be valid and remain in full force until the expiration of the sentence inflicted upon the prisoner in England, although exemption from punishment for the extradition crime may have then taken place in the foreign country by lapse of time; and a writ of habeas corpus to bring up and discharge the prisoner upon the ground that the extradition offence is no longer punishable in the foreign country will not be granted. *REX v. GOVERNOR OF Brixton Prison. Ex parte VAN DER AUWERA* Div. Ct. [1907] W. N. 88; [1907] 2 K. B. 157

2. — *Criminal law—Committal—Additional charges more than two months after apprehension—Extradition Treaty with Germany, arts. 9, 12.*

By art. 9 of the extradition treaty with Germany, where a fugitive criminal is arrested upon a request for extradition, the preliminary investigation of the case is to be conducted as if the apprehension had been for a crime committed in the same country, and by art. 12 the fugitive is to be set at liberty if sufficient evidence for his extradition is not produced within two months from the date of his apprehension.

A fugitive criminal was arrested on Dec. 15 on a warrant issued upon an information charging him with obtaining money by false pretences within the jurisdiction of the German Empire, and was remanded from time to time until the following Feb. 14, when evidence was given upon one charge, which, in the opinion of the magistrate, was sufficient to justify the committal of the prisoner for trial if the crime had been committed in this country. The prosecution having intimated an intention to prefer additional charges, the necessary papers in which had only reached the magistrate on the previous day, the magistrate did not then commit the prisoner for extradition, but further remanded him until Feb. 21, when evidence was taken upon thirty-one additional charges, and the prisoner was committed for extradition upon the original charge and thirty of the additional charges. Upon an application for a habeas corpus:—

Held, that there was in fact upon the depositions sufficient evidence to justify the committal of the prisoner upon the original charge on Feb. 14, and that the prisoner was therefore not entitled to be set at liberty under art. 12.

Semble per Channell and Bucknill JJ., that sufficient evidence upon the original charge having been produced within two months of the arrest to justify a committal upon that charge, the magistrate was entitled after the expiration of the two months to receive evidence upon charges other than that on which the prisoner had been arrested, and that the committal upon those charges was good. *In re BLUHM*

Div. Ct. [1901] 1 K. B. 764

3. — *Discharge of criminal—Exemption from punishment acquired by lapse of time—Treaty between Great Britain and Germany for the*

EXTRADITION (Fugitive Criminals)—continued.

Mutual Surrender of Fugitive Criminals of May 14, 1872, arts. 4, 5.

By art. 4 of the Treaty between Great Britain and Germany for the Mutual Surrender of Fugitive Criminals of May 14, 1872, it is provided that extradition shall not take place if the person claimed has already been tried and discharged.

By art. 5 of the treaty extradition shall not take place if exemption from prosecution or punishment has been acquired by lapse of time according to the laws of the State applied to.

A criminal was by a competent Court in Germany sentenced to a term of imprisonment for several extradition crimes. Before the term had expired he was, under an article of the Criminal Procedure Ordinance of the German Empire, released from custody on account of his health, but with the liability to be called upon subsequently to serve the residue of the term of imprisonment. At a subsequent date, when the term of imprisonment, if it had been served continuously, would have expired, the criminal was called upon by the competent authority in Germany to serve the residue of the term :—

Held, (1) that he had not been discharged within the meaning of art. 4 of the treaty ; and (2) that exemption from punishment had not been acquired by lapse of time according to the laws of the State applied to within the meaning of art. 5 of the treaty ; and that the criminal was liable to be extradited. **REX v. GOVERNOR OF BRIXTON PRISON.** *Ex parte CALBERLA*

Div. Ct. [1907] 2 K. B. 861

EXTRADITION (Fugitive Criminals)—continued.

— Habeas corpus—Appeal—Criminal cause or matter — Application to Court of Appeal.

See HABEAS CORPUS. 1.

4. — *Jurisdiction—Committal by magistrate for return to Colony—Evidence of crime punishable in Colony by imprisonment with hard labour for twelve months or more—Fugitive Offenders Act, 1881 (44 & 45 Vict. c. 69), s. 9.*

In order that a magistrate may have jurisdiction under s. 9 of the Fugitive Offenders Act, 1881, to commit a fugitive offender for return to a Colony, it is necessary that there should be evidence before him that the offender has committed an offence, punishable according to the law of the Colony in which it is alleged to have been committed by imprisonment with hard labour for a term of twelve months or more. **REX v. GOVERNOR OF BRIXTON PRISON.**

Ex parte PERCIVAL **Div. Ct. [1907] 1 K. B. 696**

— Sealed packet containing formula—Deposit in bank—Obligation of banker to produce and deliver up.

See SUBPENA DUCES TECUM.

EXTRAORDINARY TRAFFIC—Highway.

See under HIGHWAY.

EYESIGHT—Workmen's compensation.

See MASTER AND SERVANT—Compensation. 89.

EXTRINSIC EVIDENCE.

See under EVIDENCE.

F.

FACTOR

— Greenock Harbour Acts — Judicial factor — Receiver — Power to increase rates.
See SCOTTISH LAW. 20.

1. — “*Mercantile agent*” — *Authority to pledge, Extent of—Custom of particular trade—Factors Act, 1889* (52 & 53 Vict. c. 45), ss. 1, 2.

The authority given by s. 2 of the Factors Act, 1889, to a mercantile agent, who is in possession of goods with the consent of the owner, to pledge the goods when acting in the ordinary course of business of a mercantile agent, is a general authority given to every mercantile agent, and is not restricted by the existence in any particular trade of a custom that a mercantile agent employed in that trade to sell goods has no authority to pledge them.

Decision of Channell J., [1907] 1 K. B. 510, affirmed. *OPPENHEIMER v. ATTENBOROUGH & SON - C. A.* [1907] W. N. 237; [1908] 1 K. B. 221.

Note.

See *Oppenheimer v. Frazer & Wyatt, C. A.*, [1907] 2 K. B. 50, No. 3, below.

2. — *Mercantile agent—Goods on sale or return—Authority to pledge—Factors Act, 1889* (52 & 53 Vict. c. 45), ss. 1, 2.

The plt., a manufacturing jeweller, was accustomed to send articles of jewellery to F., a retail jeweller, for sale on the terms of a letter written by F. to the plt., in which F., after acknowledging that he had had from the plt. “on sale or return” the goods entered up to date in a book in the possession of the plt., and that he was liable to account to the plt. for such goods, continued: “The goods referred to in that book mentioned are your property, and to remain so until sold or paid for, they being only left with me for the purpose of sale or return, and not be kept as my own stock. The goods I receive from you are to be entered at cost price, and my remuneration for selling them is agreed at one half the profit” :—

Held, that upon the construction of the letter as a whole F. was employed as agent for sale; that he was a mercantile agent within the Factors Act, 1889, and as such had implied authority to pledge the goods entrusted to him; consequently that the plt. could not recover goods pledged by F. with the deft. without express authority from the plt.

Weiner v. Gill, [1906] 2 K. B. 574, explained and distinguished.

Hastings, Ltd. v. Pearson, [1893] 1 Q. B. 62, overruled. *WEINER v. HARRIS*

C. A. [1909] W. N. 234; [1910] 1 K. B. 285

3. — *Mercantile agent—Possession of goods—Consent of owner—Larceny by a trick—Person taking in good faith under disposition by mercan-*

FACTOR —continued.

tile agent—Purchase on joint account—Bad faith on part of one of two joint purchasers—Factors Act, 1889 (52 & 53 Vict. c. 45), s. 2, sub-s. 1.

Where a mercantile agent, who is in possession of goods with the consent of the owner, makes, without the authority and in fraud of the owner, a sale of them to joint purchasers, who act as partners in the particular transaction of the purchase of them as a speculation, and one of the joint purchasers does not act in good faith, the other joint purchasers, although they personally act in good faith, are not within the protection given them by the Factors Act, 1889, s. 2, sub-s. 1.

Semble, where the circumstances under which a mercantile agent has obtained possession of goods from their owner are such as to render him guilty of larceny by a trick, he cannot be said to be in possession of the goods with the consent of the owner within the meaning of the above-mentioned section.

Decision of Channell J., [1907] 1 K. B. 519, in part reversed. *OPPENHEIMER v. FRAZER & WYATT - C. A.* [1907] W. N. 85; [1907] 2 K. B. 50

Note.

See *Oppenheimer v. Attenborough & Son*, Channell J., [1907] 1 K. B. 510.

Affirmed by C. A., [1908] 1 K. B. 221, No. 1 above.

— Sale of goods.

See under SALE OF GOODS.

FACTORY.

FACTORIES AND WORKSHOPS—Factory and Workshop Act, 1901 (1 Edw. 7, c. 22) is an Act to consolidate with amendments the Factory and Workshop Acts.

Employment of Children Act, 1903 (3 Edw. 7, c. 45), is an Act to make better provision for regulating the employment of children.

Notice of Accidents Act, 1906 (6 Edw. 7, c. 53, ss. 4, 5).

Employment of Women Act, 1907 (7 Edw. 7, c. 10), is an Act to repeal s. 57 of the Factory and Workshop Act, 1901, and part of s. 7 of the Coal Mines Regulation Act, 1887, relating to the employment of women and children.

Factory and Workshop Act, 1907 (7 Edw. 7, c. 39), amends the Factory and Workshop Act, 1901, with respect to laundries, and to extend that Act to certain institutions and to provide for the inspection of certain premises.

Statutory Orders relating to Factory and Workshop, in force on Jan. 1, 1910. 1910 (K.—Home Office). Price 2s.

FACTORY—continued.

Factory and Workshops Acts, 1901 and 1907. Electricity Regulations. Memorandum by the Electrical Inspector of Factories. Form 928 Feb., 1910. 1910 (K.—Home Office). Price 3d.

1. — “Article” — *Factory — Workshop — Exercise of manual labour — Natural flowers made into bouquets — Factory and Workshop Act, 1901 (1 Edw. 7, c. 22), s. 149.*

The respondents carried on the business of retail florists, and employed a number of young women and girls, whose duties consisted partly in serving customers in the shop and partly in making up natural flowers into wreaths, crosses and bouquets, and arranging floral decorations, for which purposes frames of wood or wire were sometimes used, in a room behind the shop :—

Held, that the room was a place in which manual labour was exercised by way of trade in or incidental to the making of an article, or the adapting for sale of an article, within s. 149 of the Factory and Workshop Act, 1901, and that the room was therefore a workshop within the Act. *HOARE v. ROBERT GREEN, I.D.*

Div. Ct. [1907] 2 K. B. 315

— Bakehouse, Underground—“Outgoings.”

See Nos. 5, 6, 8, below.

— Compensation—Injury to workman.

See under MASTER AND SERVANT.

2. — *County court—Jurisdiction—Landlord and tenant—“Factory”—Means of escape in case of fire—Requirement of sanitary authority—Cost of compliance—Contribution by occupier—Covenant by occupier to pay “outgoings”—Owner’s right of action—Factory and Workshops Act, 1891 (54 & 55 Vict. c. 75), s. 7, sub-s. 2.*

Sect. 7, sub-s. 2, of the Factory and Workshop Act, 1891, provides that the sanitary authority shall serve on the owner of any factory which is not provided with proper means of escape from fire a notice specifying the measures necessary for providing such means of escape, and requiring him to carry out the same before a specified date; and thereupon the owner shall, notwithstanding any agreement with the occupier, have power to take such steps as are necessary for complying with the requirement; and that, if the owner alleges that the occupier ought to bear or contribute to the expenses of complying with the requirement, he may apply to the county court, and thereupon that Court, after hearing the occupier, may make such order as appears to the Court just and equitable under all the circumstances of the case.

The lessees of a factory covenanted that they would during the term “pay all the existing and future taxes, sewer rates, and rates, assessments, and outgoings of every description for the time being payable by the landlord or tenant in respect of the demised premises (the landlord’s property tax alone excepted).”

The landlord expended money in complying with the requirements of the sanitary authority under the above section, and then brought an action in the High Court against the tenants on their covenant to recover the sum thus expended :—

Held, that the effect of s. 7, sub-s. 2, was to

FACTORY—continued.

exclude the jurisdiction of the High Court, and that the action could not be maintained, the only remedy of the landlord being by means of an application to the county court.

Semble, that in determining what is “just and equitable” the county court judge must take into consideration (inter alia) the terms of the tenancy, expressed or implied.

Decision of Darling J., [1904] 2 K. B. 877, affirmed.

The C. A. expressed no opinion as to whether the expense in question was an “outgoing” within the lessee’s covenant. *HORNER v. FRANKLIN* - **C. A. [1905] W. N. 20; [1905] 1 K. B. 479**

Note.

This case was followed by C. A., *Stuckey v. Hooke*, C. A. [1906] 2 K. B. 20. *See No. 5, below.*

3. — *Fencing of machinery—Offence—Limitation of time for laying information—Factory and Workshop Act, 1901 (1 Edw. 7, c. 22), ss. 10, 135, 146.*

In May, 1905, and again on Mar. 12, 1908, an inspector of factories for the district in which a factory of the respondents was situate visited the factory and found that the fly-wheel of an engine was not fenced as required by the Factory and Workshop Act, 1901. He again visited the factory on July 1, 1908, and found that the fly-wheel was still unfenced. On July 22, 1908, he laid an information against the respondents under s. 135 of the Act for that the factory was on July 1, 1908, not kept in conformity with the Act, in that the fly-wheel was not securely fenced as required by s. 10 of the Act :—

Held, that the information had been laid within three months after the date at which the offence charged in the information came to the knowledge of the appellant within s. 146 of the Act. *VERNEY v. MARK FLETCHER & SONS, LD.*

Div. Ct. [1909] W. N. 25; [1909] 1 K. B. 444

4. — *Fencing of machinery, Absence of—Person suffering bodily injury—Offence—Limitation of time for laying information—Factory and Workshop Act, 1901 (1 Edw. 7, c. 22), ss. 10, 135, 136, 146.*

Sect. 10 of the Factory and Workshop Act, 1901, provides that a factory in which there is a contravention of the provisions of that section with regard to the fencing of machinery “shall be deemed not to be kept in conformity with” the Act, and by s. 135, if a factory is not kept in conformity with the Act, the occupier thereof shall be liable to a fine. By s. 136, if any person suffers any bodily injury in consequence of the occupier of a factory “having neglected to observe any provision” of the Act, the occupier shall be liable to a fine. Sect. 146 provides that the information for an offence under the Act shall be laid within three months after the date at which the offence comes to the knowledge of the inspector for the district within which the offence is charged to have been committed.

On Jan. 21, the fact that certain machinery of the defendants’ factory was unfenced, in contravention of s. 10, came to the knowledge of the

FACTORY—*continued.*

inspector of the district. On July 31, in consequence of the machinery still being unfenced, a person suffered bodily injury. On Oct. 24 an information was laid charging that, on July 31, the defts.' factory was not kept in conformity with the Act, whereby a person suffered bodily injury.

The magistrate dismissed the information on the ground that it was out of time, inasmuch as it had not been laid within three months of Jan. 21 :—

Held, that ss. 135 and 136 create separate and distinct offences; that the offence with which the defts. were charged was the offence under s. 136; and that, that offence having been committed on July 31, that information had been laid in time. **REX v. TAYLOR** - - Div. Ct.

[1908] 2 K. B. 237

5. — *Landlord and tenant—Lease—Covenant by lessee to pay and discharge "outgoings and impositions"—Underground bakehouse—Structural alterations required by borough council—Expenses of—Jurisdiction of High Court ousted—Factory and Workshop Act, 1901 (1 Edw. 7, c. 22), s. 101, sub-ss. 2, 8.*

A lease of premises, which were used for the purposes of a baker's shop, and comprised an underground bakehouse, contained a covenant by the lessee to pay and discharge all burdens, duties, assessments, outgoings or impositions, charged, assessed or imposed on the demised premises, or upon the landlord or tenant in respect thereof (landlord's property tax only excepted). The borough council having refused to grant the certificate necessary for the use of the bakehouse under the Factory and Workshop Act, 1901, s. 101, sub-s. 2, unless certain structural alterations were made, the assignee of the lease, who was in occupation of the premises, applied to a police magistrate, under sub-s. 8 of the above-mentioned section, to apportion the expenses of the alterations between the lessors as owners and himself as occupier of the premises, and the magistrate made an order that three-fourths of the expenses should be borne by the owners and one-fourth by the occupier. The lessors, having carried out the requisite alterations, sued the assignee of the lease upon the above-mentioned covenant to recover the total amount of the expenses of those alterations. The deft. paid into court the proportion of the expenses which the magistrate had ordered to be paid by him :—

Held, on the authority of *Horner v. Franklin*, [1905] 1 K. B. 479 (see No. 2, above), that the jurisdiction of the High Court was excluded in such a case by the Factory and Workshop Act, 1901, s. 101, sub-s. 8, and therefore the action was not maintainable.

Goldstein v. Hollingsworth, [1904] 2 K. B. 578, and *Morris v. Beal*, [1904] 2 K. B. 585, discussed. **STUCKEY v. HOOKE** - - C. A.
[1906] W. N. 95; [1906] 2 K. B. 20

Note.

See No. 2, above, and Nos. 6 and 8 below.

6. — *Landlord and tenant—Lease—Covenant by lessees to pay and discharge "Impositions and outgoings"—Underground bakehouse—*

FACTORY—*continued.*

Structural alterations required by district council—Factory and Workshop Act, 1901 (1 Edw. 7, c. 22), s. 101, sub-ss. 2, 8.

By s. 101 of the Factory and Workshop Act, 1901, an underground bakehouse must be certified by the district council to be suitable for the purpose, and if premises are let as a bakehouse, and the certificate can only be obtained on structural alterations being made, a Court of summary jurisdiction may make such order concerning the expenses or their apportionment between the owner and occupier as appears just and equitable under the circumstances, regard being had to the terms of any contract between the parties.

The lease of premises used as a bakehouse contained a covenant by the lessee to pay "all existing and future . . . impositions and outgoings of every description for the time being payable either by landlord or tenant in respect of the premises." In order to obtain the certificate of the district council for the use of the premises as an underground bakehouse the expenditure of a considerable sum upon structural alterations was requisite :—

Held, that the expenditure came within the expression "impositions and outgoings" in the lessee's covenant, and that a Court of summary jurisdiction was justified upon a consideration of all the circumstances in refusing to order the landlord to pay an apportioned part of the expenses. **GOLDSTEIN v. HOLLINGSWORTH**

Div. Ct. [1904] 2 K. B. 578

Note.

This case was discussed by C. A., *Stuckey v. Hooke*, [1906] 2 K. B. 20. See preceding Case.

— *Landlord and tenant* — "Outgoings" —

Expense of complying with requirement of sanitary authority.

See COUNTY COURT—Jurisdiction. 5.

— *Poor rate*—Rating of factory with machinery.

See RATES. 13.

— *Sewer*—Facilities for carrying off liquids from factories—Rivers pollution prevention.

See SEWERS. 11.

7. — "Tenement factory" — *Fire escape—Factory and Workshop Act, 1901 (1 Edw. 7, c. 22), ss. 14, 149.*

By s. 149 of the Factory and Workshop Act, 1901, the expression "tenement factory" is defined to mean "a factory where mechanical power is supplied to different parts of the same building occupied by different persons for the purpose of any manufacturing process," &c. :—

Held, that by the words "is supplied" must be understood "is supplied from the same source," and that a building the parts of which, being occupied as factories by different persons, have each their own independent supply of mechanical power, is not within the definition.

Toller v. Spiers & Pond, Ltd., [1903] 1 Ch. 362, followed. **BRASS v. LONDON COUNTY COUNCIL** - - Div. Ct. [1904] W. N. 102;

[1904] 2 K. B. 336

FACTORY—*continued.**Note.*

See Toller v. Spiers & Pond, Ltd., [1903] 1 Ch. 362; *Master and Servant—Factory Acts.*
See also Horner v. Franklin, No. 2, above.

8. — *Underground bakehouse—Expenses of alterations necessary to obtain certificated suitability—Covenant by tenant to pay “outgoings” —Power of magistrate to apportion expenses between landlord and tenant—Factory and Workshop Act, 1901 (1 Edw. 7, c. 22), s. 101, sub-s. 8.*

Although premises may have been let as a bakehouse, and although the certificate required by s. 101 of the Factory and Workshop Act, 1901, cannot be obtained unless structural alterations are made, if the lease contains a covenant by the tenant to pay all “outgoings” a magistrate has no jurisdiction to make an order under sub-s. 8 of that section apportioning the expenses of those alterations between the landlord and the tenant.

Semle, per Kennedy J., that premises are not “let as a bakehouse” within the meaning of the section unless the terms of the lease impose an obligation upon the tenant to use them as a bakehouse, and not merely confer a permission so to use them. *MORRIS v. BEAL*. Div. Ct. [1904] W. N. 158; [1904] 2 K. B. 585

Note.

Discussed by C. A., *Horner v. Franklin*, [1905] 1 K. B. 479. *See No. 2, above.*

Discussed by C. A., *Stuckey v. Hooke*, [1906] 2 K. B. 20. *See No. 5, above.*

— *Underground bakehouse—“Outgoings.”*
See Nos. 2, 4, above.

— *Workmen's Compensation Act.*
See under MASTER AND SERVANT.

9. — “*Workshop*”—“*Adapting for sale*”—*Factory and Workshop Act, 1878 (41 & 42 Vict. c. 16), s. 93.*

Premises which were used in the daytime as a shop for the sale of sweetmeats by retail were used at night after shop hours for the purpose of packing the sweetmeats into the ornamental boxes in which they were sold:—

Held, that on those facts there was evidence to justify the finding that the premises were a “workshop” within the meaning of the Factory and Workshop Act, 1878. *FULLER'S, LD. v. SQUIRE*. Div. Ct. [1901] 2 K. B. 209

The Factory and Workshop Act, 1878 (41 & 42 Vict. c. 16), is repealed by the Factory and Workshop Act, 1901 (1 Edw. 7, c. 22), 7th schedule.

FACTORY ACTS.

See under FACTORY and under MASTER AND SERVANT—Factory Acts.

FACULTY—Ecclesiastical law.

See under ECCLESIASTICAL LAW—Faculty.

FAIR COMMENT—Plea of—Meaning and effect of—Misdirection—New trial—Libel.
See DEFAMATION—Libel. 7.

FAIRS—Exempted.

See Shop Hours Act, 1904 (4 Edw. 7, c. 81), s. 2, sub-s. 4.

— *Franchise—Tolls—Stallage.*
See MARKETS. 3.

FAIRWAY — “Fairway” — Collision — Fog — “Fairway” of river — Duty to ring bell when at anchor — Medway Conservancy by-laws.

See SHIPPING—Collision. 31.

— *Ship—Collision—Swansea New Cut—Lights.*
See SHIPPING—Collision. 30.

FALSA DEMONSTRATIO — Foreshore — Conveyance of land “bounded by the seashore” — Parcels — Plan — Evidence — Admissibility.

See SEASHORE. 1.

— *Specific devise—Complete general description.*
See WILL—Specific Devise. 1.

FALSE EVIDENCE—Action against witness for negligently giving—Criminal prosecution—Conviction unreversed.
See CRIMINAL LAW—Practice. 1.

FALSE IMPRISONMENT—Action for—Contract as to entry on and exit from wharf—Toll—Unreasonable conduct of plaintiff—Nonsuit.

See AUSTRALIA. 6.

— *Evidence of implied authority—Manager of public-house.*
See MASTER AND SERVANT—False Imprisonment. 1.

— *Railway company—Arrest by company's special constable—Liability of company.*
See RAILWAY—False Imprisonment. 1.

1. — *Signing the charge sheet—Effect of standing alone—Absence of evidence of causing imprisonment.*

The signing of a charge sheet, standing alone, is not evidence of anything directly causing the imprisonment of the person charged, and will not support an action for false imprisonment against the person who signs. *SEWELL v. NATIONAL TELEPHONE CO., LD. C. A. [1907] 1 K. B. 557*

FALSE PRETENCES—Criminal law.

See under CRIMINAL LAW—False Pretences.

— *Substitution of allegation of fraud for—Indictment—Debtors Act.*
See CRIMINAL LAW—Indictment. 1.

FALSE REPRESENTATIONS—Obtaining a passport by—Conspiracy—Indictment—Direction to jury—Criminal law.
See CONSPIRACY. 3.

FALSE STATEMENTS—Penalty for—Naval reserve—Enlistment.
See ARMY AND NAVY. 1.

FALSE TRADE DESCRIPTION.

See under **MERCHANDISE MARKS.**

- Jurisdiction of justices—Successive warrants.
See **ADULTERATION.** 10.
- Limit of time for taking proceedings—Sale of foods and drugs.
See **ADULTERATION.** 24.

FALSE WARRANTY.

See also under **WARRANTY.**

FALSIFICATION OF ACCOUNTS.

See under **CRIMINAL LAW—Falsification.**

- FAMILY ARRANGEMENT** — Estate duty — Policy of life insurance—Interest provided by the deceased.
See **REVENUE—Estate Duty.** 17.

- Stamp—Conveyance on sale.
See **REVENUE—Stamps.** 9.

- FARM**—Ploughing up pasture—Good husbandry—Waste.

See **LANDLORD AND TENANT.** 62.

- Poor rate—Assessment—Sewage farm.
See **RATES.** 41.

- FARM BUILDINGS** — Improvements — Reimbursement out of capital moneys.

See **SETTLED LAND—Capital Moneys.** 5.

- FARMING LEASE** — Arbitration — Outgoing tenant—Sheep stock valuation—Agricultural Holdings (Scotland) Act, 1908.
See **SCOTTISH LAW.** 12.

- FARMING STOCK**—Things *quæ ipso usu consumuntur*—Construction of will—Gift for life.

See **WILL—Absolute Gift.** 5.

- FARMS** — Ploughing up pasture — Good husbandry—Waste.

See **LANDLORD AND TENANT.** 63.

FATAL ACCIDENTS.

See under **ACCIDENT.**

FEES.

See under **COSTS.**

- Bankruptcy.
See under **BANKRUPTCY—Fees and Percentages.**
- Burial ground—Erection of monuments.
See **BURIAL.** 4.
- Company—Winding-up.
See under **COMPANY—WINDING-UP—Fees.**
- County courts.
See under **COUNTY COURTS—Fees.**
- Directors' fees.
See under **COMPANY—Directors.**
- Incumbent, Fees to—Erection of monuments—Consecration.
See **BURIAL.** 4.

FEES—continued.

- Licensing Acts.

See under **LICENSING ACTS.**

- Sheriff.

See under **SHERIFF.**

- Weights and measures — Verification and stamping—Inspector, Duty of, to take fees.

See **WEIGHTS AND MEASURES.** 8.

FELONY — Administrator—Convict's property, Sale of—*Bona fides*—Discretion—Action by convict against his administrator—Forfeiture Act, 1870 (33 & 34 Vict. c. 23), ss. 12, 17, 18.

Sect. 12 of the Forfeiture Act, 1870, which gives the administrator of a convict's property "absolute power to sell" any part of that property "as to him shall seem fit," imports that the administrator must exercise discretion and care in case of a sale; and if he does so, then, under s. 17, any contract falling within s. 12 is binding and cannot be in any way impeached by the convict on his discharge.

But if an administrator under the Act is proved to have exercised no discretion or care in the matter of a sale, and a loss thereby ensues to the convict's estate, the Court will hold the administrator personally responsible for the loss.

Decision of Buckley J., [1902] W. N. 201; [1903] 1 Ch. 90, affirmed. **CARR v. ANDERSON** C. A. [1903] W. N. 77; [1903] 2 Ch. 279

2. — Convict—Administrator—Estate tail—Power to disentail—Forfeiture Act, 1870 (33 & 34 Vict. c. 23), ss. 8, 10, 12—"Alienation"—Disposition of lands entailed—Actual tenant in tail—Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74), ss. 1, 15, 38, 40.

The Forfeiture Act, 1870, provides that all the real and personal property of a convict shall vest in the administrator appointed under the Act "for all the estate and interest of such convict therein," and that the administrator shall have "absolute power" to sell, convey, and transfer part of such property: by s. 8 the convict, while subject to the operation of the Act, is to be incapable of "alienating" any property:—

Held (affirming the decision of Kekewich J., [1906] W. N. 27; [1906] 1 Ch. 440), that the administrator had no power to bar the estate tail of a convict and convey the fee to a purchaser.

Held, also, that a deed by which the convict simply granted the property to a grantee and his heirs to the use of himself, his heirs and assigns, was not an "alienation" within s. 8 of the Forfeiture Act, and consequently that the convict himself could bar his estate tail and thus enable the administrator to sell the fee. *In re GASKELL and WALTERS' CONTRACT*

C. A. [1906] W. N. 85; [1906] 2 Ch. 1

- Railway company — Special constable — Arrest on suspicion of felony—Liability of company.

See **RAILWAY—False Imprisonment.** 1.

- Refusal to commit—Felony—Case stated—Non-service of notice of appeal and case on respondent — Jurisdiction to state case.

See **JUSTICES.** 9.

FEMALE TRUSTEE—Appointment by Court.
See **TRUSTEE**—Appointment. 3.

FENCE—Duty to—Owner—Public well in shaft of abandoned mine—Vested in local authority.
See **MINES**. 11.

— Highway—Removal of protecting fence—Misfeasance—Liability of highway authority.
See **HIGHWAY**. 2.

FENCING—Machinery—Offence.
See under **FACTORY**.

— Railway company—Defective fence—Turntable—Infant trespasser—Invitation to danger.
See **RAILWAY**—Fences. 1.

FERRY—Disturbance—Ferry from vill to vill—Change of circumstances—New traffic.

A franchise of ferry from vill to vill is a right known to the law.

Under an indenture of lease from the Crown conveying a "ferry or right of passage across the river Medina between East Cowes and West Cowes in the Isle of Wight," together with two landing-places, one in West Cowes and the other in East Cowes, the plts. claimed an exclusive right of ferry between any point on the east bank and any point on the west bank of the river within East Cowes and West Cowes respectively. East Cowes and West Cowes were two populous districts. The termini of the ferry, which was an ancient ferry, had always been two defined points, though not always the same two points, one on each bank of the river :—

Held, that the indenture conveyed a right of ferry between the two landing-places, and not an exclusive right of ferry between any point on the east bank and any point on the west bank of the Medina within East Cowes and West Cowes respectively.

Semle, that East Cowes and West Cowes are not vill in such a sense that an exclusive right of ferry between them could be sustained in point of law.

The defts., a steamboat co. carrying passengers in steamers between the mainland and Cowes, conveyed those and other passengers in steam-launches between East Cowes and West Cowes, embarking and landing them at two pontoons distant respectively 230 yards and 875 yards north of the landing-place of the plts.' ferry. The evidence showed that the defts.' launches dealt with a traffic which had recently come into existence, and which was different from that dealt with by the plts. :—

Held, that there had been no disturbance of the plts.' ferry. **COWES URBAN DISTRICT COUNCIL AND EAST COWES URBAN DISTRICT COUNCIL v. SOUTHAMPTON, ISLE OF WIGHT, AND SOUTH OF ENGLAND ROYAL MAIL STEAM PACKET CO.**

Kennedy J. [1905] 2 K. B. 287

2. — Franchise—Ancient ferry—Bridge—Traffic diverted—Disturbance of ferry.

The franchise of a ferry is not a grant of an exclusive right to carry across a stream by any means whatever, but only a grant of the exclusive right to carry across by means of a ferry.

FERRY—continued.

Where, therefore, a bridge was constructed by private enterprise connecting the same highways as the ferry, whereby the ferry owner lost all the income he used to receive from tolls :—

Held, that the bridge was not a disturbance of the ferry, and that the ferry owner had no remedy.

The dictum of Blackburn J. on this point in *Reg. v. Cambrian Ry. Co.*, (1871) L. R. 6 Q. B. 422, 430, can no longer be supported.

Hopkins v. Great Northern Ry. Co., (1887) 2 Q. B. D. 224, discussed and followed.

Decision of Neville J., [1907] W. N. 30 ; [1907] 1 Ch. 437, affirmed. **DIBDEN v. SKIRROW**

C. A. [1907] W. N. 225 ; [1908] 1 Ch. 41

FERTILIZERS AND FEEDING STUFFS—False description—Guilty knowledge.
See **ADULTERATION**. 1.

FIDEL-COMMISSARY SUBSTITUTION—Will—Direct substitution—Roman-Dutch Law.

See **WILL**—Substitution. 2.

FIDEL COMMISSUM CONDITIONALE—Sale of property subject to restraint on alienation.

See **CAPE OF GOOD HOPE**. 13.

FIDEL-COMMISSUM PRIMOGENITURA—Condition as to surname not authorized by the founder—Power to appoint.
See **MALTA**. 1.

FIDELITY BOND—Surety—Default of trustee—Penal interest—Liability of surety.
See **BANKRUPTCY**—Trustee. 1, 2.

FIDUCIARY CAPACITY—Contempt—Disobedience of order to pay money—Debtor executor.
See **ATTACHMENT**. 3.

— Stock Exchange, Usage of—Sale and repurchase of shares by broker—Profit made by broker on transaction.
See **STOCK EXCHANGE**. 10.

FIDUCIARY RELATION—Director—Contracts with company—Conflict of interest with duty.
See **COMPANY**—Directors. 9.

— Lease—Renewal by one tenant in common.
See **LANDLORD AND TENANT**. 77.

— Limitations, Statute of—Express trust.
See **LIMITATIONS, STATUTE OF**. 4.

— Solicitor and client.
See under **SOLICITOR**—Fiduciary Relation.

— Misrepresentation—Concealment—Sale of one partner's share to co-partner.
See **PARTNERSHIP**. 24.

1. — Person in fiduciary relation—Gift—Influence—Dual relations, one fiduciary, one not—Gift due to non-fiduciary relation.

H. C. had assisted his father in his business of keeper of a retail ale store from the year 1897 until his death in July, 1905. The father owned

FIDUCIARY RELATION—continued.

a long lease of the business premises, and had, as the judge held, expressed a wish that H. C. should have the business after him, but by his will he left all his property to his wife, S. A. C. After his death H. C. acted as manager for his mother in carrying on the business. On Sept. 28, 1905, S. A. C. assigned the lease of the business premises to H. C., and on the next day the licence was transferred to him. He also took possession of the stock in trade and chattels on the business premises. No consideration was stated on the face of this assignment except the usual covenant to pay the rent and perform the covenants of the lease. But it appeared from the evidence that H. C. had agreed to pay, and did pay, his mother 3*l.* a week out of the profits of the business, and that he had promised to pay her more at the end of the year if she found she needed it. Mrs. C. died on July 23, 1906, having by her will left 600*l.* to her son A. B. C., certain leasehold houses to her daughter, Mrs. T., and the residue of her estate to her three children equally. This action was brought by A. B. C. against H. C. and Mrs. T. as defts., claiming that the assignment to H. C. should be set aside on several grounds, of which the only one calling for a report was that H. C., being in a fiduciary relation to his mother, as manager of her business, could not uphold a gift from her unless he proved that she had independent advice. In fact, the assignment had been prepared for Mrs. C. by the solicitor who had acted for her in proving her husband's will. He was not asked for and did not give any advice, but satisfied himself that she quite understood what she was doing. He prepared her will at the same time.

Neville J. said that H. C. was in a fiduciary relation to his mother, as her agent, and the burden was on him to rebut the presumption that the gift was induced by that relation. He had failed to discharge that burden by proving that his mother was independently advised. The question was whether it could be discharged in any other manner. He thought it could. He thought the evidence shewed clearly that the gift by Mrs. C. was not due to any relation which the carrying on of the business by H. C. after his father's death had established between him and his mother. He thought it was wholly independent of that relation, and that Mrs. C. was induced to make the gift out of affection for her son and because she believed that she was thereby giving effect to her husband's wishes. Under these circumstances it would be irrational to hold that the rights of the parties at the time of the assignment were governed by a relation which did not in fact induce the transaction. *In re COOMBER. COOMBER v. COOMBER*

Neville J. [1910] W. N. 278

— Promoter—Fraudulent prospectus.

See COMPANY—Promoters. 1.

— Secret commission—Sub-agent—Privy of contract—Money had and received.

See PRINCIPAL AND AGENT. 9.

FIELD-BOOK ENTRIES—Evidence—Admissibility—Professional duty—Deceased surveyor.

See SEASHORE. 1.

FILING—Company—Shares paid for otherwise than in cash—Omission to file contract.
See COMPANY—Shares. 17, 18.

— Report of official receiver—Offences by bankrupt—Prosecution.
See BANKRUPTCY—Offences. 1.

FINAL JUDGMENT.

See under JUDGMENT.

— Bankruptcy notice.

See under BANKRUPTCY—Notice.

FINAL OR INTERLOCUTORY ORDER—Appeal

—Compulsory winding-up order.

See COMPANY—WINDING-UP—Practice. 4.

— Appeal—Reduction of capital.

See COMPANY—Practice. 2.

— Appeal—Final or interlocutory order.

See APPEAL. 10, 17.

— Appeal to Court of Appeal—Time for appealing.

See APPEAL. 30.

— Consolidated suits—Appeal—Jurisdiction—Costs—Co-respondent.

See DIVORCE—Practice. 6.

— Order, whether final or interlocutory.

See under PRACTICE—Interlocutory Orders.

FINANCE ACTS—Revenue.

See under REVENUE.

FINE ARTS COPYRIGHT.

See under COPYRIGHT.

FINES—On alienation—Ancient demesne—Statute Quia Emptores—Prescription.
See MANOR. 1.

— Compensation—Copyholds—Enfranchisement.

See LANDS CLAUSES ACTS. 2.

— Copyhold—Arbitrary fine—Custom to take smaller fine on admittance from tenant of manor than from stranger.

See COPYHOLDS. 1.

— Copyholds, Sale of—Costs—No tenant on court rolls—Fine on heir's admission—Steward's fees.

See LANDS CLAUSES ACTS. 16.

— Costs—Sale of copyholds—Death of vendor before completion—Fine on heir's admission.

See LANDS CLAUSES ACTS. 19.

— Judgment summons—Default in appearance—Application of fine in reduction of judgment debt—Jurisdiction.

See COUNTY COURT—Fines. 1.

— Lease—Covenant—Liability for rent after further assignment.

See LANDLORD AND TENANT. 19.

— Lease—Licence to assign.

See LANDLORD AND TENANT. 13, 18.

— Lease—Renewal—Interest.

See LANDLORD AND TENANT. 78.

FINES *continued.*

- Lease—Renewal “at costs of lessee”—Award.
See **LANDLORD AND TENANT**. 76.
- Motor car—Appeal—Costs—Summary jurisdiction.
See **JUSTICES**. 2.
- Surrender of lease—Capital or income—Tenant for life and remainderman.
See **SETTLED LAND—Leases**. 2.
- Truck Act—Contract for deductions in respect of fines.
See **MASTER AND SERVANT—Truck Acts**. 1.

FINES AND RECOVERIES ACT.

See under **DISENTAILING ASSURANCE**.

- Actual tenant in tail—Restraint on barring estate.
See **REVENUE—Estate Duty**. 12.
- “Alienation”—Disposition of lands entailed—Actual tenant in tail—Convict—Administrator—Estate tail—Power to disentail.
See **FELONY**. 2.
- Disentailing assurance—Protector of settlement—Void trust for accumulations.
See **DISENTAILING ASSURANCE**. 2.
- Disentailing assurance—Protector of settlement—Consent where himself the disentailing tenant in tail.
See **ESTATE TAIL**. 1.
- Estate tail—Disentailing assurance—Protector—Three persons appointed by settlor—Death of two.
See **SETTLEMENT**. 28.
- Estate tail—Whether barrable—Reversion in Crown.
See **CROWN**. 3.

1. — *Estate tail—Will—Limitations of real estate—Disentailing deed—Estates “in defeasance of” estate tail—Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74), s. 15—Future rights—Unascertained persons—Representation—Trustees.*

A testator devised and bequeathed his real and personal estate unto and to the use of trustees, upon trusts for the benefit of his wife for life; from and after her death, the surplus rents were to be accumulated for the purpose of paying off mortgages on the real estates; and upon the expiration or other determination of the period of accumulation, but subject to the life interest of the wife, the trustees were directed to convey the real estates to the use of G. in tail male; but if G. should be then dead, to the use of the person who should then be the first heir male of the body of G., with remainder to the use of the person who for the time being should be entitled to the dignity and title of Earl of Cardigan in tail male, with remainder to the use of the testator's right heirs. By a codicil the testator revoked the devise of the estate tail to G., and devised the said estates, after the death of his wife, to R., in tail male, “with all the limitations as in my said will mentioned.” R., with the consent of the wife, as protector of the

FINES AND RECOVERIES ACT *continued.*

settlement, had executed a disentailing deed of 100,000*l.* Consols in court, representing proceeds of sale of the settled estates, and the trust for accumulations having now come to an end by the payment off of all the mortgages, R. claimed to be absolutely entitled to this fund, subject to the wife's life interest. On a petition for payment out of this fund by the wife and her incumbancers, with the consent of R. :—

Held, that as the petitioners and R. together were claiming immediate relief, on the ground that between them they were now absolutely entitled to this 100,000*l.* Consols, the question was ripe for decision, and the Court had jurisdiction to devise it; and that all necessarily unascertained persons were sufficiently represented by the trustees of the will :

Held, also, on the question of construction, that R. was now entitled to a vested equitable estate in tail male in remainder expectant upon the decease of the testator's wife, and that the subsequent estates had been barred by the disentailing deed, being estates to take effect in a certain event after, if not in defeasance of, the vested estate in tail male of R., and that the 100,000*l.* Consols in court could be paid out to the petitioners. **LADY CARDIGAN v. CURZON HOWE** - - **Byrne J.** [1901] **W. N.** 147; [1901] **2 Ch.** 479

- Married woman—Mortgage—Separate examination—Acknowledgment—Burgage tenure—Custom—Reasonableness.
See **HUSBAND AND WIFE—Mortgages**. 1.

2. — *Real estates limited in strict settlement—Income of personal estate to be paid to A. for life—On death of A. capital to be invested in land to be held to the uses of the settlement—Disentailing assurance of money not yet ascertained—Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74), ss. 1, 71.*

Personal estate the income of which is directed to be paid to A. for life, and the capital of which is on his death directed to be invested in the purchase of land to be settled to the uses of a strict settlement of real estate created by the same instrument, can be effectually disentailed in the lifetime of A. by the tenant in tail under the settlement with the consent of the tenant for life under the settlement.

Fordham v. Fordham, (1864) 34 **Beav.** 59, discussed and followed. *In re HARVEY. HARVEY v. HARVEY* - **Byrne J.** [1901] **W. N.** 124; [1901] **2 Ch.** 290

- FIRE—Agricultural Holdings Act—Compensation—Destruction by fire.**
See **LANDLORD AND TENANT**. 4.

- Escape from fire—Two factories in one house—Notice to construct works.
See **MASTER AND SERVANT—Factory Acts**. 2.

- “Factory”—Means of escape in case of fire—Covenant by occupier to pay “outgoings”—County Court.
See **FACTORY**. 2.

FIRE *continued.*

— Fire-escape—"Tenement factory."

See FACTORY. 7.

— Insurance.

See under INSURANCE (FIRE).

— Railway.

See under RAILWAY—Fires.

— Railway company—Damages by fire—Admissibility of railway map by the Appellate Court—Right of way.

See CANADA—Railway. 3.

— Shipping—Charterparty—Exceptions—Applicability to charterer.

See SHIPPING—Charterparty. 47.

— Shipping—Damage to cargo—"By reason of" fire—Warranty of seaworthiness.

See SHIPPING—Fire. 1.

— Trespass—Justification—Act done in preservation of property—Extinguishing fire.

See TRESPASS. 2.

— Water for extinguishing—Obligation to allow use of water gratuitously.

See WATER. 3.

FIRE-ESCAPE—"Tenement factory."

See FACTORY. 7.

10.

FIRE HYDRANTS—Capital moneys—Improvements—Irish estates—Principal mansion-house—Water supply.

See SETTLED LAND—Capital Moneys. 10.

FIRE INSURANCE.

See under INSURANCE (FIRE).

FIRTH OF FORTH—A "narrow channel"—Ship—Collision—Damages for loss of life—Ship in fault.

See SHIPPING—Collision. 25.

FISHERMAN—Workmen's compensation—Share in the profits.

See MASTER AND SERVANT—Compensation. 96.

FISHERY.

(Fishery and Fishings.)

Board of Agriculture and Fisheries Act, 1903 (3 Edw. 7, c. 31), transfers to the Board of Agriculture powers and duties relating to the Industry of Fishing and to amend the Board of Agriculture Act, 1889 (52 & 53 Vict. c. 30).

Salmon and Freshwater Fisheries Act, 1907 (7 Edw. 7, c. 15), is an Act to enable Provisional Orders to be made for regulating Salmon and Freshwater Fisheries.

— Board of Agriculture and Fisheries.

See under AGRICULTURE.

— Custom—Validity—Fishing nets, Custom to dry.

See CUSTOM. 1.

1. — *Fishery district—Definition of limits by Board of Trade certificate—River—Reservoir—Salmon Fishery Act, 1865* (28 & 29 Vict. c. 121), s. 35—*Freshwater Fisheries Act, 1878* (41 & 42 Vict. c. 39), ss. 6, 7.

Sect. 6 of the Freshwater Fisheries Act, 1878,

FISHERY *—continued.*

which extends the provisions of the Salmon Fishery Acts relating to fishery districts to "all waters within the limits of this Act frequented by trout or char," does not give fishery boards jurisdiction over waters of a different character from those referred to in the Salmon Fishery Acts, and has, therefore, no application to an artificial reservoir although it is frequented by trout or char. *STEAD v. NICHOLAS* - Div. Ct. [1901] 2 K. B. 163

2. — *Fishery district—River—Tributary, What is—Mill dam—Stream—Licence—Salmon Fishery Act, 1865* (28 & 29 Vict. c. 121), s. 35—*Freshwater Fisheries Act, 1878* (41 & 42 Vict. c. 39), ss. 6, 7.

From a stream, which was a tributary of a salmon river, a mill race was conducted to certain mills. For the purpose of increasing the water-power to the mills a triangular mill pond was constructed opening out of the mill race, and the water flowed backwards and forwards from the pond to the mill race, the water in the pond and race being always at the same level. All the water ultimately, after turning the mills, returned to the stream:—

Held, that the mill pond was a tributary of the stream, and that persons fishing in it required a licence from the fishery board of the district. *MOSES v. IGGO* - Div. Ct. [1906] 1 K. B. 516

— Fishing—Grant from the Crown—Claim of grantee to exclusive right to fish from the foreshore.

See CANADA—Fishing. 1.

— Lease, Fishing—Construction—Covenant against assignment—Demise of exclusive right of fishing—Grant by lessee of limited licence to fish.

See LANDLORD AND TENANT. 17.

3. — *Mussel fishings—Crown rights—Scottish law.*

Mussel scalps on the foreshore or the estuary of a navigable river form part of the patrimonial property of the Crown which it can convey or let in lease to a subject.

The decision of the First Div. of the Ct. of Sess., Scotland, (1902) 4 F. 698, affirmed. *PARKER v. LORD ADVOCATE* H. L. (Sc.) [1904] W. N. 111; [1904] A. C. 364

4. — *Oyster-beds—Property in oysters—Sea Fisheries Act, 1868* (31 & 32 Vict. c. 45), ss. 51, 63—*Jurisdiction—Action in rem—"Damage done by any ship"—Admiralty Court Act, 1861* (24 Vict. c. 10) ss. 7, 35.

The plts., owners of oyster-beds at the mouth of a navigable river, brought an action in rem against the defts., as owners of a vessel, for so negligently navigating her as to ground on the property of the plts., and thereby do damage to their oysters and oyster-beds:—

Held, by Sir F. H. Jeune, P., that the damage was "done by a ship" within the meaning of s. 7 of the Admiralty Court Act, 1861, and therefore the action would lie. Secondly, that as the damage was not done by grounding in the ordinary course of navigation, or without notice of

FISHERY—*continued.*

the existence of the oyster-beds, the defts. were liable for the negligence of those in charge of their vessel; and, thirdly, that as the plts. had property in the soil, and by s. 51 of the Sea Fisheries Act, 1868, in the oysters, they were entitled to enforce their claim for damage not only in respect of the disturbance of the beds, but also in respect of the destruction of the oysters. **THE "SWIFT"** - - **Jeune P. [1901] P. 168**

5. — *Oyster ponds on foreshore—Ancient user—Presumption of legal origin—Right of occupier as against wrong-doer—Public health—Urban Sanitary Authority—Sewer—Discharge of sewage into the sea—Nuisance from sewage—Acts of commission—Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 19, 27.*

Oyster ponds or "layings" had existed as far back as living memory went upon the foreshore of an arm of the sea. The purpose for which these ponds were used was the storage of oysters, which were brought from elsewhere and laid down in the ponds in order to be fattened for the market. Certain ponds of this kind, which were enclosed by boards or concrete, were, and for more than twenty years had been, used in the manner above mentioned by the plt., who had purchased them in 1879 from others who had for a period of between twenty and thirty years previously so used them. There was some evidence that the foreshore had formed part of the waste of a manor, the lord of which had a several fishery thereon.

The defts. were an urban district council which had been constituted in 1894, their district being carved out of that of a previously existing rural sanitary authority. A sewer had been made in the district by the rural sanitary authority, from which an inconsiderable quantity of sewage had been discharged into the sea near the oyster ponds. The defts. made certain new sewers, and connected them with the first-mentioned sewer, and the quantity of sewage discharged from that sewer was thereby greatly increased. The sewage so discharged caused a nuisance to the plt.'s oyster ponds through pollution of the same with sewage to an extent which rendered them unfit for use. In an action by the plt. against the defts. in respect of the nuisance so caused:—

Held, that irrespectively of the question of title to the soil or to a several fishery, the plt., as occupier of the oyster ponds, was entitled to maintain an action for trespass to the same by wrong-doers; that the defts., not having any right to discharge sewage into the sea so as to cause a nuisance, and having by their acts of commission caused such a discharge of sewage, were wrong-doers; and therefore that the action was maintainable.

By **Vaughan Williams L.J.**: *Semble*, the plt. if necessary, could make a title as owner of the oyster ponds.

By **Fletcher Moulton L.J.**: Under the circumstances a legal origin ought to be presumed for the existence and user by the plt. of the oyster ponds.

Query as to the defts.' liability for a nuisance to the plt.'s oyster ponds, if occasioned by their

FISHERY—*continued.*

mere nonfeasance. **FOSTER v. WARBLINGTON URBAN COUNCIL** - **C. A. [1906] W. N. 77; [1906] 1 K. B. 648**

6. — *Oysters—Depositing oysters on foreshore for purpose of storage—Incident of public right of fishing—Municipal corporation—Power to acquire lease of foreshore—Sea Fisheries Act, 1868 (31 & 32 Vict. c. 45), s. 41—Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 250.*

The oysters in an oyster fishery were, when freshly dredged, unfit for consumption by reason of their being contaminated with impurities in the water, and the deft., a fisherman, after dredging, deposited his oysters in a particular portion of the foreshore indicated by boundary marks and left them there until they were ready for market:—

Held, that the deft. had no right, as incidental to the exercise by him of the public right of fishing, to appropriate a portion of the foreshore for the storage of his oysters to the exclusion of the rest of the public.

Where a municipal corporation, empowered by charter to hold lands, tenements and hereditaments, and goods and chattels, has obtained an order from the Board of Trade conferring a right of regulating an oyster fishery under the Sea Fisheries Act, 1868, it may lawfully take a lease of the foreshore of the fishery to enable it to carry out the purposes of the order.

Decision of Wills J., [1901] 2 K. B. 870, varied. TRURO CORPORATION v. ROWE

C. A. [1902] 2 K. B. 709

7. — *Poisoning fish in salmon river—Construction of statutes—Malicious Injuries to Property Act, 1861 (24 & 25 Vict. c. 97), s. 32—Salmon Fishery Act, 1873 (36 & 37 Vict. c. 71) s. 13.*

Although s. 32 of the Malicious Injuries to Property Act, 1861, as amended by s. 13 of the Salmon Fishery Act, 1873, cannot be construed grammatically, the intention of the Legislature is plain, and the section as amended must be construed as making it a misdemeanour punishable with penal servitude for any term not exceeding seven years unlawfully and maliciously to put any lime or other noxious material in any salmon river with intent thereby to destroy the fish. **REX v. VASEY AND LALLY**

C. C. R. [1905] W. N. 150; [1905] 2 K. B. 748

8. — *Prescription in a que estate—Profit à prendre in alieno solo—Presumption of legal origin.*

A prescription in a que estate for a profit à prendre in alieno solo without stint and for commercial purposes is unknown to the law.

Therefore, where by way of defence to an action of trespass by riparian proprietors, the alleged trespass consisting in fishing in a non-tidal reach of a river of which the plts. claimed to be the owners, the defts. set up a prescriptive right to a free fishery or common of fishery vested in the freehold tenants of a certain manor or hundred whose freeholds were situated in any of the parishes adjoining the river, and proved that they and their predecessors in title as such freeholders in exercise of such alleged right for three centuries past had openly and notoriously fished from boats with nets for salmon and other

FISHERY—*continued.*

fish in the portion of the river in question and sold the fish so caught in the market :—

Held, that the Court could not presume a legal origin for the alleged right.

Decision of Neville J., [1907] W. N. 253 ; [1908] 1 Ch. 230 reversed. LORD CHESTERFIELD v. HARRIS C. A. [1908] W. N. 159 ; [1908] 2 Ch. 397

9. — Riparian owners—River within limits of manor — Freeholders of manor — Common of fishery — Prescription — Right to fish.

Wills J. I think this appeal must be dismissed. The magistrates have found that this claim is made *bonâ fide* ; and that, therefore, we need not further discuss. The only other question is whether the claim is one which by law can be made. It may not have been put forward in very correct technical language before the magistrates, but we must not be nice about a matter of that kind if we see that in substance a right is claimed which is capable of existing and that there is some evidence about it. Now the right, as it seems to me, is capable of being claimed when it is expressed in proper phraseology. The allegation is that at some time or other, the epoch being lost in the mists of antiquity, the owner of the soil or bed of this river—the lord of the manor—granted to each of his freehold tenants the right to himself, his heirs and assigns, to fish in it. In the natural course of things, if such a grant as that were made, the freeholders who would enjoy the benefit of that grant might be multiplied ; and, if the right were originally granted in respect of 50,000 acres or 100,000 acres, it might very well be that by the present time there would be 100,000 persons competent to exercise the right. A good deal of the argument on behalf of the appellant has rested, I think, upon the failure to observe the proper distinction between rights which are claimed by custom and rights which are claimed by prescription. A custom must be reasonable, and a custom which destroys the subject-matter of the grant would not be reasonable. A right claimed by prescription is subject to no limitation, as far as its use and reasonableness is concerned, and the owner of the soil, that is, the owner of the bed of the river, has a perfect right if he chooses, if the fishing belongs to him, to grant a right to fish to any number of persons although it may destroy his own right. Therefore the fact that the right may be exercised by an unlimited number of persons is not a circumstance that is fatal to the prescription. It is a circumstance to be taken into consideration when one comes to consider, as a matter of fact, whether the prescription is made out by the evidence, and in dealing with each question of course you would always be apt to take, as one of the circumstances making against the probability of it, the fact that it is capable of indefinite multiplication. That goes no further than its being a matter of observation on the evidence. It seems to me it was perfectly competent for the lord of the manor at the outset, or the owner of the freehold, being at the same time the owner of the bed or soil of this part of the river, the part upon which this so-called right is

FISHERY *continued.*

claimed—and nothing could prevent him from granting the right in question if he chose—to grant the right to the owners of a particular freehold and to their heirs and assigns. EARL OF CHESTERFIELD v. FOUNTAINE (1895, Jan. 21) - - - Div. Ct. [1908] 1 Ch. 243, n.

10. — Salmon fishery—By-law—"Description of nets"—Salmon Fishery Act, 1873 (36 & 37 Vict. c. 71), s. 39, sub-s. 3.

By s. 39 of the Salmon Fishery Act, 1873, a board of conservators may make by-laws to determine (inter alia) "the length, size, and description of nets . . . for taking salmon" :—

Held, that a by-law made under this section which prohibited the use of particular kinds of nets was not *ultra vires*, since the word "description" did not limit the board of conservators to making regulations as to the characteristics of the particular kind of net. CLAYTON v. PEIRSE Div. Ct. [1904] 1 K. B. 424

11. — Salmon fishing—Impeding passage of fish by abstraction of water.

Interference with the free passage of salmon up a river is a wrong against the proprietors of the upper fisheries, and if it materially obstructs the passage of fish can be restrained by interdict.

In 1882 mill owners on the Don river, which is a salmon river, increased their diversion of the water from its natural channel into artificial channels serving the uses of their mill. This was done to such an extent as to leave the natural channel in the neighbourhood of the mill at times bare of water. In 1900 the proprietors of the salmon fisheries in the upper reaches of the river objected to the mill owners' diversion of the water, and asked for an interdict :—

Held (affirming the decision of the First Div. of the Ct. of Sess., (1904) 5 F. 818) that they were entitled to an interdict. ALEX. PIRIE & SONS, LD. v. KINTORE (EARL) (ET Æ CONTRA) - H. L. (Sc.) [1906] W. N. 156 ; [1906] A. C. 478

— Stream, Pollution of—Injunction—Damages—Continuance of injury.

See RIVER. 1.

— Tidal and navigable river—Public rights in sea and foreshore.

See FORESHORE. 2.

12. — Water bailiff—Powers of—Right to search suspected person's pocket—"Bag or other instrument used in carrying fish"—Salmon Fishery Act, 1873 (36 & 37 Vict. c. 71), s. 36, sub-s. 3.

By s. 36 of the Salmon Fishery Act, 1873, "Any water bailiff appointed under the Salmon Fishery Acts, 1861 to 1873, acting within the limits of his district, may . . . (3.) Search and examine all nets, baskets, bags, and other instruments used in fishing or in carrying fish by persons whom there is reasonable cause to suspect of having possession of fish illegally caught," and any person refusing to allow such search is to be liable to a penalty.

On the hearing of an information against the respondent for a refusal to allow his pocket to be searched under the above section the justices found that the pockets of men's coats were

FISHERY—*continued.*

frequently used for the purpose of carrying fish :—

Held that, having regard to that finding, the respondent's pocket was a "bag or other instrument" within the meaning of the section. **TAYLOR v. PRITCHARD**. - Div. Ct. [1910] W. N. 147; [1910] 2 K. B. 320

13.—"Weirs"—*Several fishery—Crown grant—Non-tidal, non-navigable, waters—Ownership of soil—Presumption—"Weirs"—Adverse acts of ownership—Right of way—Incorporeal hereditament—Incorporeal right.*

A several fishery may exist either apart from or as incident to the ownership of the soil over which the river flows; but where a several fishery is proved to exist, the owner of the fishery is to be presumed, in the absence of evidence to the contrary, to be the owner of the soil, whether it is a navigable river or a river neither public nor navigable. The use of the word "several" or "separalis piscaria" is not necessary to create a several fishery.

The grant of "weirs" is a grant, not of a mere right of fishing, but of a corporeal hereditament consisting not only of the soil on which any particular weir is constructed, but of the soil over which the river runs, and upon which there is the right to construct weirs for the purpose of taking fish. A grant purporting to give a definite length of several fishery may still be a good grant of a several fishery in part of the river so included, though as to other part of it the Crown, at the time, had no several fishery to give.

Construction to be placed on apparently adverse acts of ownership discussed.

Simble, an incorporeal right of way along both banks of a river may be appendant to an incorporeal right of fishing, the one being capable of union with the other without any incongruity.

Co. Litt. 121 b considered and explained, and note (7) (Hargrave and Butler's edition) on this point adopted. **HANBURY v. JENKINS**

Buckley J. [1901] 2 Ch. 401

FISHING—Collision—Drift-net fishing—Incumbered by nets—"Special circumstance"—Lights—Starving by.

See SHIPPING—Collision. 28.

FISHING BOATS.

See under SHIPPING—Fishing Boats.

FISHING NETS—Custom to dry—Validity—Change in user—Recession of sea—Land added by accretion—Evidence.

See CUSTOM. 1.

FISHING VESSELS (Regulations of 1884 relating to) art. 10 (g)).

See SHIPPING—Practice.

FISHINGS.

See under FISHERY.

FIXTURES—Advertisement hoardings—Right to distrain—Landlord and tenant.

See DISTRESS. 3.

—Distress—Landlord and tenant—Trade fixtures—Hiring agreement—Gas engine.

See DISTRESS. 11.

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FIXTURES—*continued.*

—Gift of "furniture and other personal effects"—Effect as regards fixtures and trade furniture.

See WILL—Words. 6.

—Glass-houses—Right to remove fruit trees—Agricultural holdings—Removable fixtures—Market gardener's compensation.

See LANDLORD AND TENANT. 5.

1. —Hire-purchase agreement—Subsequent equitable mortgage—Priority.

A co. hired machinery, fixed on its business premises, from L. & H. on the terms of a hire-purchase agreement, which provided that the co. was to pay a monthly rent for the hire of the machinery, and should become the purchaser on payment of a certain sum, in which event credit would be given for the previous payments of rent. Until the purchase the co. was to be a mere bailee of the machinery, and in case of default in making the monthly payments or breach of the conditions of the agreement L. & H. were empowered to enter and remove the machinery.

Subsequently the co. gave to a bank an equitable mortgage of the business premises by a deposit of the deeds thereof, accompanied by a written charge under the common seal of the co. containing an agreement to give a legal mortgage on demand. The bank took without notice of the hire-purchase agreement. The co. failed to pay the instalments and committed breaches of the conditions of the hire-purchase agreement; L. & H. demanded delivery up of the machinery, and a winding-up order was made against the co. The principal secured to the bank was due, with an arrear of interest :—

Held, that the bank being merely an equitable mortgagee, and L. & H. having an equitable interest in the machinery under their hire-purchase agreement, the interest and that agreement had priority over the interest of the bank.

Gough v. Wood & Co., [1894] 1 Q. B. 713; **Hobson v. Gorringe**, [1897] 1 Ch. 182; and **Reynolds v. Ashby & Son**, [1903] 1 K. B. 87; [1904] A. C. 466, distinguished. *In re SAMUEL ALLEN & SONS, LD.*

—Parker J. [1907] 1 Ch. 575

2. —Hiring agreement—Chairs fastened to floor of place of entertainment—Mortgage of building and fixtures—Entry of mortgagee into possession—Right of removal by owner.

Chairs were hired from the plt. for use in a hippodrome by the owner and occupier of the building under an agreement for hire containing an option of purchase which was never exercised. The chairs were fastened to the floor of the building by means of screws, in accordance with the requirements of the local authority :—

Held, that the chairs did not cease to be chattels because they were screwed down to the floor, and that the property in them did not pass as against the plt. to the mortgagee of the freehold under a mortgage of the building and fixtures. **LYON & CO. v. LONDON CITY AND MIDLAND BANK**. - **Joyce J.** [1903] 2 K. B. 135

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FIXTURES—*continued.*

3. — Landlord and tenant—Tenant for life and remainderman—Right of removal—Intention to improve inheritance.

A tenant for life of settled estates granted a lease for twenty-one years of a steam-mill and machinery. The lessee covenanted that he would at the end of the tenancy sell to the lessor all machinery then on the premises other than the demised machinery; and the lessor covenanted that he would pay for it. The tenant brought additional machinery into and affixed it to the mill. On the expiration of the tenancy the tenant for life bought this machinery under the provisions of the lease. He died, and his executrix claimed the machinery thus bought :—

Held, that, as between tenant for life and remainderman, chattels affixed to the soil by the tenant for life for purposes of trade did not become part of the freehold, and might be removed by him. The question must be determined by the intention of the person by whom the chattels were attached; and that, in the absence of evidence to shew that the tenant for life intended to make a present to the remainderman, his executrix was entitled to the machinery. *In re Sir Edward Hulse, Bart. Beattie v. Hulse* Buckley J. [1905] W. N. 17; [1905] 1 Ch. 406

— Lease—Forfeiture—Tenant's fixtures—Removal—Mortgage of lease—Right of mortgagee.

See COMPANY—Leases. 1.

4. — Machinery attached to freehold—Presumption of law—Trade fixtures—Mortgage—Hire-purchase agreement—Rights of mortgagee against owner of machinery—Licence to remove trade fixtures—Entry of mortgagee into possession—Tapestries—Right of removal—Tenant for life and remainderman.

Machines were supplied by the owner of them to the lessee of a factory upon the hire-purchase system, the machines to remain the property of the owner till they had been wholly paid for; upon default in payment the owner to have power to determine the hiring and remove the machines. They were affixed to the floor by bolts and nuts, and could have been removed without injury to the building or to the concrete bed in which the bolts were embedded. The lessee made default in payment, and the owner brought an action to recover the machines or their value from a mortgagee of the term who had taken possession :—

Held, that the machines had been so affixed as to pass by the mortgage to the mortgagee.

The decision of the C. A., [1902] W. N. 218; [1903] 1 K. B. 87, affirmed. *REYNOLDS v. ASHBY & SON, LD.* H. L. (E.) [1904] W. N. 166; [1904] A. C. 466

Note.

Distinguished by Parker J., *In re Samuel Allen & Sons, Ltd.*, [1907] 1 Ch. 575. No. 1, above.

Followed by Div. Ct., *Crossley Bros., Ltd. v. Lee*, [1908] 1 K. B. 86. *Distress*. 11.

5. — Mortgagor or mortgagee—"Dog grates" substituted for fixed grates—Intention to improve inheritance.

The mortgagor of a house, subsequently to the mortgage, removed the ordinary fixed grates

FIXTURES—*continued.*

from various rooms in the house and substituted for them "dog grates" which were of considerable weight, but were not physically attached to the structure of the house in any way :—

Held, that under the circumstances the true inference was that the mortgagor placed the dog grates in the house with the object of improving the inheritance, and that they were therefore fixtures which passed to the mortgagee. *MONTI v. BARNES* C. A. [1901] 1 K. B. 205

Note.

This case was distinguished by Buckley J., *In re De Falbe*, [1901] W. N. 87. See next Case.

— Removal of—Action founded on tort—Costs—Agreement for lease of house.

See COSTS. 75.

6. — Statue—Bronze group—Tenant for life and remainderman—Right of removal.

The question in this case, which arose between the executor of a tenant for life and a remainderman, was whether a statue of Venus placed in the middle of a rose-garden, and a large bronze equestrian group placed on a pedestal in front of the principal entrance to the mansion-house, were in the nature of fixtures and so passed with the inheritance, or whether they remained chattels and belonged to the tenant for life as part of her personal estate. It appeared that the statue and bronze group had been purchased and placed in position by a previous owner of the property who had by his will devised the property to Madame de Falbe for her life, and had bequeathed all his personal estate to her absolutely; also that the statue was merely placed on the ground, but by reason of its weight had sunk a few inches, and that the bronze group rested simply by its own weight on the pedestal, but that the pedestal was fixed in the ground :—

Held, that the recent decision of the C. A. in *In re De Falbe*, [1901] 1 Ch. 523, as to the tapestry applied also to the statue and bronze group, and that they both belonged to the tenant for life as part of her personal estate.

Monti v. Barnes, [1901] 1 K. B. 205, distinguished. *In re DE FALBE. WARD v. TAYLOR* (No. 2) Buckley J. [1901] W. N. 87

Note.

See No. 9, below.

— Taking possession with intention to steal fixtures.

See CRIMINAL LAW—Larceny. 4.

7. — Tapestries—Right of removal—General scheme of decoration—Devise of house—Bequest of chattels—Question between devise and legatee—Will—Construction.

The testator in his lifetime bought a house in which the former owner had fitted and decorated the dining-room as a perfect specimen of an Elizabethan room. As part of this scheme of decoration certain pieces of tapestry had been fixed to the walls by being nailed upon wooden frames which were kept in their place by the mouldings of an oak dado and frieze above it which were fastened to the wall by screws. A picture of Queen Elizabeth, attributed to Zuccherò, painted on wood, was similarly fixed

FIXTURES—*continued.*

in its place over the fireplace by the mouldings of an overmantel which had apparently been constructed for the picture. The picture and tapestries were bought by the testator as part of the house and included in its price. The testator by his will gave his wife all the furniture and chattels in the house, and devised the house to trustees upon trust to permit her to reside there during widowhood, and then upon trusts under which his grandson had become absolutely entitled :—

Held, that the picture and tapestry, having been fixed as part of a general scheme of decoration and not for their better enjoyment as chattels, passed under the devise of the house and not under the gift of chattels.

Leigh v. Taylor, [1902] A. C. 157, distinguished. *In re WHALEY*. *WHALEY v. ROEHRICH* Neville J. [1908] W. N. 62; [1908] 1 Ch. 615
—Tapestries—Right of removal—Tenant for life and remainderman. *No. 4, above.*

8. — Tapestries—Right of removal—Tenant for life and remainderman.

Valuable tapestries were affixed by a tenant for life to the walls of a house for the purpose of ornament and the better enjoyment of them as chattels. They could be removed without doing any structural injury. On the death of the tenant for life :—

Held, that the tapestries, put up with that purpose and attached in that manner, did not pass with the freehold to the remainderman, but formed part of the personal estate of the tenant for life, and were removable by her executor.

The decision of the C. A. in *In re De Falbe*, [1901] 1 Ch. 523, affirmed. *LEIGH v. TAYLOR* H. L. (E.) [1902] W. N. 80; [1902] A. C. 157

Note.

Discussed by C. A. in *Reynolds v. Ashby & Son, Ltd.*, [1902] W. N. 218; [1903] 1 K. B. 87; H. L. (E.) [1904] A. C. 466. *See No. 4, above.*

Distinguished by Neville J., *In re Whalley*, [1908] 1 Ch. 615. *See preceding Case.*

9. — Tapestries—Right of removal—Tenant for life and remainderman—Costs—Shorthand notes of judgment.

Chattels (such as tapestries) affixed by a tenant for life to the walls of a house for the purpose of ornament and the better enjoyment of them as chattels are, as against the remainderman, removable by the tenant for life, or by his executor after his death, even though they have been fixed as firmly as they would have been if it had been intended to annex them permanently to the freehold.

The purpose of the annexation is to be inferred from the circumstances of each case.

Tapestries purchased by the tenant for life of freehold estates were affixed by her to the walls of the drawing-room in the mansion-house. Strips of wood were placed over the paper which covered the walls, and were fastened by nails to the walls. Canvas was then stretched over the strips of wood and nailed to them, and the tapestries were then stretched over the canvas and fastened by tacks to it and the pieces of wood. Mouldings, resting on the surface of the wall and fastened to it, were

FIXTURES—*continued.*

placed round each piece of tapestry. Portions of the walls which were not covered by the tapestries were covered with canvas which was coloured or painted so as to harmonize with the tapestries :—

Held, that the tapestries had been thus affixed for the purpose of ornamentation and the better enjoyment of them as chattels, and that on the death of the tenant for life they did not pass with the freehold to the remainderman, but formed part of the personal estate of the tenant for life and could be removed by her executor :

Held, also, that the executor ought to pay the expense of making good the damage done in removing the tapestries, but that he was not bound to pay the cost of redecorating the room.

Decision of Byrne J. reversed.

Per Rigby L.J.; *D'Eyncourt v. Gregory*, (1866) L. R. 3 Eq. 382, disapproved.

Norton v. Dashwood, [1896] 2 Ch. 497, explained and distinguished.

The cost of a shorthand writer's notes of a judgment appealed from are included in the costs of the appeal without any special order of the Court. *In re DE FALBE*. *WARD v. TAYLOR*

C. A. [1901] W. N. 32; [1901] 1 Ch. 523; *sub nom.* *LEIGH v. TAYLOR*, H. L. (E.) [1902] A. C. 157. *And see preceding Case.*

Note.

This case was followed by Buckley J., *In re De Falbe* (No. 2), [1901] W. N. 87. *See also* C. A. [1901] 1 Ch. 523, *No. 6, above.*

—Tenant's covenant to deliver up demised premises with fixtures—Surrender and creation of new tenancy.
See LANDLORD AND TENANT. 34.

—Trade fixtures—Licensing Acts.
See under LICENSING ACTS.

—Trade fixtures—Hire and purchase agreement—Right of mortgagee against owner of fixtures—Mortgagor in possession.
See MORTGAGE—Fixtures. 1.

10. —Trade fixtures—Tenant's right of removal—Lease—Covenant to yield up at end of term—Construction—General words—Ejusdem generis—Landlord and tenant.

A lease to a tenant, who was therein described as a boot and shoe manufacturer, contained a covenant by the tenant to yield up the demised premises on the determination of the term, together with all doors, locks, keys, &c., wainscots, hearths, stoves, marble and other chimney-pieces, &c., "and all other erections, buildings, improvements, fixtures, and things which are now or which at any time during the said term hereby granted shall be fixed, fastened, or belong to" the demised premises. The word "machinery" did not occur in this covenant. There was also a covenant by the tenant that he would not carry on in the demised premises any trade or business, except that of a boot and shoe manufacturer, without the licence of the lessor, and that the tenant would not erect on the premises any

FIXTURES—*continued*.

machinery other than that propelled by hand or foot without the consent of the lessor.

The tenant placed in the premises for the purposes of his business various machines, which for their more convenient user were fastened by screws or nails to the floor or to the walls of the premises.

The tenant having become a bankrupt, the trustee in the bankruptcy desired to sell the machinery separately from the premises :—

Held, that the general words in the above covenant must be construed as applying only to things ejusdem generis with those described in the previous particular enumeration, which were of the nature of "landlord's fixtures" and that the tenant was not deprived of his ordinary right to remove trade fixtures, such as the machinery in question, and that consequently the trustee was entitled to sell the machinery.

Decision of Kekewich J., [1903] W. N. 58 ; [1903] 1 Ch. 806, reversed.

When in such a covenant the things particularly enumerated belong to one genus—such as landlord's fixtures—general words which follow must be construed as applying only to things of the same genus.

Bishop v. Elliott, (1855) 11 Ex. 113, followed.
LAMBOURN v. McLELLAN - - C. A. [1903]
W. N. 109 ; [1903] 2 Ch. 268

FLATS—House let in—Liability of landlord for disrepair of roof.

See NEGLIGENCE. 6.

— Interference with—Staircase overlooking bedroom—Privacy—Comfort.
See LANDLORD AND TENANT. 49.

— Licence—"Male servant"—Porter employed at block of flats.

See REVENUE—Servants. 1.

1. — Negligence — Dangerous premises — Building let out in flats—Staircase in possession of landlord—Staircase not lighted—Landlord, Liability of, to persons other than tenants—Absence of any undertaking to light staircase.

The deft. was the owner of a building, the different floors of which were let by him as separate offices to different tenants, the staircase by which access to them was obtained not being let, but remaining in the legal possession of the deft. The agreements for the letting of the offices respectively contained no provision with regard to the lighting of the staircase. The tenants respectively had gas lights on the landings outside the entrances to their respective offices, which were supplied with gas from their own meters, and the practice was that each tenant on leaving his office for the night turned off his own light, but it did not appear that there was any agreement between the deft. and the tenants that they should light the staircase. The plt., who was in the employ of one of the tenants, upon coming down the staircase from his employer's offices on an evening in March at 8.15, when, all the lights having been put out, the staircase was in darkness, failed to find his way out through the street door into the street, and, going further down the stairs towards the basement, fell through a door opening upon a

FLATS—*continued*.

flagged courtyard at some distance above the level of the flagstones. This door was used for hoisting goods into and out of the building. In an action brought by the plt. against the deft. in respect of injuries resulting from the fall :—

Held, that there was no duty towards the plt. imposed upon the deft. to light the staircase, and consequently the action was not maintainable.

Miller v. Hancock, [1893] 2 Q. B. 177, discussed and distinguished. HUGGETT v. MIERS
C. A. [1908] W. N. 115 ;
[1908] 2 K. B. 278

— Poor rate—Valuation—Deductions from gross value.

See LONDON—Flats. 1.

— Valuation (Metropolis) Act—Rateable value—Deductions from gross value.

See LONDON—Flats. 1.

FLOATING CHARGE—Company—Debentures.
See under COMPANY—Debentures.

"FLOATING CHARGE"—Company—Winding-up—Debenture—"Floating charge" within three months of winding-up.
See COMPANY—Debentures. 10.

— On foreign land—Debentures, Contract to issue—Clog on equity of redemption.
See CONFLICT OF LAWS. 3.

FLOATING SECURITY—Company—Debentures.
See under COMPANY—Debentures.

FLOODS—Rent-charges imposed for protection of lands from inundation—Poor rate—Rateable value.
See RATES. 40.

— Thames—Prevention of floods—Flood works—Alteration of bank—Repairs.
See LONDON—Floods. 1.

FLOWERS—Workshop—Exercise of manual labour—"Article"—Natural flowers made into bouquets.
See FACTORY. 1.

FOG—Collision.

See under SHIPPING—Collision.

— Collision in dense fog—Negligence in not going with moderate speed.
See CHINA AND COREA. 3.

FOOD—Offences—Unsound food—Liability of vendor.
See LONDON—Offences. 1, 2.

FOOD AND DRUGS—Sale of.
See under ADULTERATION.

FOOT PASSENGERS—Right for.
See HIGHWAY 41.

FOOTBALL PLAYER (PROFESSIONAL) —
—Workmen's compensation—"Workman."
See MASTER AND SERVANT—Compensation. 96.

FOOTPATH—Water company—Unauthorized new waterworks—Ancillary main under public footpath—Trespass—Ultra vires. *See WATER*. 24.

FOOTWAY—Highway.
See under HIGHWAY.

— New street — By-laws — Footway forming principal access to cottages— Width and construction—Local government.
See STREETS. 9.

— Private carriage-way along the same line — Presumption—Dedication.
See WAY, RIGHT OF. 2.

— Streets—Tramway — Dedication to public— Road authority—Powers.
See LONDON—Tramways. 1.

FORAGE—Supplied by direction of coachman— Authority to pledge credit of master.
See MASTER AND SERVANT—Liability. 1.

FORCE MAJEURE—Ship—Damage to jetty— Negligence—Onus of proof.
See SHIPPING—Negligence. 1.

FORECLOSURE.
See under MORTGAGE—Foreclosure.

FOREIGN ADMINISTRATOR—Full grant to— Practice—Administration—Intestacy— Limited foreign grant — Assets in England.
See PROBATE—Practice. 2.

FOREIGN BONDS—Estate duty.
See under REVENUE—Estate Duty.

FOREIGN CERTIFICATE—Limitation of liability—Foreign steam vessel — Gross tonnage — Double bottom for water ballast.
See SHIPPING—Limitation of Liability. 2.

FOREIGN CO-DEFENDANT — Service out of jurisdiction — Writ — "Necessary or proper party."
See SHIPPING—Practice. 12.

FOREIGN COMMITTEE — English lunatic — English property.
See LUNACY. 9.

FOREIGN COMPANY.
See under COMPANY—Foreign Company.

— Carrying on business temporarily in England — Service of writ within the jurisdiction.
See PRACTICE—Service. 3.

— Company formed for purpose of trading in— Personal liability of shareholders under the foreign law— Conflict of laws.
See COMPANY—Foreign Laws. 1.

— Sale to foreign company—Company—Winding-up—"Company," Meaning of.
See COMPANY—WINDING-UP—Sale. 1.

FOREIGN CORPORATION—Income tax—Residence—Company registered abroad— Majority of directors in England.
See REVENUE—Income Tax. 33.

FOREIGN COUNTRY—Action in this country for declaration of rights to assist action in—Staying proceedings—Mortgage.
See SHIPPING—Practice. 13.

— British subject's holograph will in accordance with law of foreign country in which made—Effect on English leaseholds.
See WILL—Leaseholds. 1.

— Gaming in—Cause of action—Money lent for purpose of gaming.
See GAMING. 3.

— Right of action in England for acts in—Lex loci—Lex fori.
See ACTION.

— Service of notice of motion to set aside award in foreign country out of jurisdiction— Practice.
See ARBITRATION—Practice. 3.

— Transfer in—Foreign country—Cheque stolen abroad—Forged indorsement—Conflict of laws.
See BILL OF EXCHANGE. 2.

FOREIGN COURT—Agreement to refer disputes to—"Submission"—Staying proceedings.
See ARBITRATION—Submission. 1.

— Divorce by New York Court, Decree of— Validity of divorce in England.
See INTERNATIONAL LAW. 1.

FOREIGN CREDITORS—Bankruptcy—English creditors—Agreement for pooling and distributing the assets—Sanction of Court.
See BANKRUPTCY—Arrangement. 4.

— Claiming to prove—Security for costs— Voluntary winding-up.
See COMPANY—WINDING-UP — Costs. 7.

FOREIGN CURATOR — English stocks and shares—Transfer—Discretion of judge in lunacy.
See LUNACY. 12.

FOREIGN DEFENDANT—Writ—Notice in lieu of service—Breach of contract.
See PRACTICE—Service. 9.

FOREIGN DOMICIL.
See under DOMICIL.

FOREIGN DONEE OF POWER—Domiciled abroad — Will — Exercise of power— Power exercised in accordance with English but not with law of domicil.
See POWER OF APPOINTMENT. 16.

FOREIGN FIRM—Name of company—Registration—Fraudulent purpose—Trade name—Form of injunction.
See **COMPANY**—**Name**. 2.

FOREIGN GOVERNMENT—Treasury note of—Stamp—Promissory note or marketable security.
See **REVENUE**—**Stamps**. 14.

FOREIGN JUDGMENT—*Jurisdiction of foreign Court—Ownership of property abroad—Contract of partnership abroad—Partner resident in England—Agreement to submit to foreign jurisdiction.*

Neither the fact of possessing property situate in a foreign country nor the fact of entering into a contract of partnership in that country to deal with that property is sufficient to give the Courts of the foreign country jurisdiction in an action in personam over a British subject not resident in the foreign country at the date of the action, who has neither appeared to the process nor expressly agreed to submit to the jurisdiction of the foreign Court.

In 1895 the deft., who was then residing and carrying on business in Western Australia, entered into a partnership for the working of a gold mine situate in the Colony and owned by the partnership. The deft. ceased to carry on business in Western Australia, and in 1899 he left the Colony permanently and came to live in England. In 1901 the plts., being partners other than the deft., brought an action in the Supreme Court of Western Australia claiming a decree for dissolution of the partnership, sale of the mine, and the taking of the partnership accounts. The writ was served on the deft. in England, but he entered no appearance, and took no step to defend the action. The Court decreed a dissolution of the partnership and the sale of the mine, and on taking the accounts found a sum to be due from the partnership. The plts. paid the sum, and brought an action in England to recover the share which they alleged to be due from the deft. :—

Held, that the deft., not being domiciled in Western Australia, nor resident there at the date of the action in the Supreme Court of that Colony, and not having appeared to the process or expressly agreed to submit to the jurisdiction of that Court, was not bound by its finding or decree; and that the action in this country, which was based on that finding and decree, could not be maintained.

Bequet v. MacCarthy, (1831) 2 B. & Ad. 951, commented on.

Sirdar Gurdial Singh v. Rajah of Faridkote, [1894] A. C. 670, followed.

Judgment of Channell J., [1907] 1 K. B. 235, reversed. **EMANUEL v. SYMON**

C. A. [1908] 1 K. B. 302

— Partnership—Colonial firm—Agreement to submit to jurisdiction.
See **PARTNERSHIP**. 13.

FOREIGN JURISDICTION.

For arranged lists of Statutory Rules and Orders passed during the years 1901–1910, referring to Foreign Jurisdiction, see the volumes of Statutory Rules and Orders for those years (published by authority).

FOREIGN LAND—Contract relating to—Immovables—Capacity to contract—Lex situs.

See **CONFLICT OF LAWS**. 13.

— Floating charge on—Contract to issue debentures—Chartered company.
See **CONFLICT OF LAWS**. 3.

FOREIGN LAWS—Bigamy—Foreign decree of nullity on ground unknown to English law—Conflict of laws—Lex loci contractus.

See **DIVORCE**—**Nullity of Marriage**. 1.

— Civil marriage in the Channel Islands—Evidence.

See **DIVORCE**—**Channel Islands**. 1.

— Company.

See under **COMPANY**—**Foreign Laws**.

— Conflict of laws.

See under **CONFLICT OF LAWS**.

— Expert evidence—Qualification of expert—Payment out of court.

See **EVIDENCE**. 6.

— Spanish law.

See under **SPANISH LAW**.

FOREIGN LEGISLATURE—Act of—Street improvement—Contribution—Action in England.

See **STREETS**. 10.

FOREIGN LITIGANT—Writ—Affidavit by solicitor.

See **PRACTICE**—**Writ**. 2.

FOREIGN MARRIAGES.

See under **MARRIAGE**.

— Divorce.

See under **DIVORCE**—**Foreign Marriage**.

FOREIGN MINE—Obtaining possession—Practice.

See **COMPANY**—**Receiver**. 10.

FOREIGN MUSICAL COMPOSITION.

See under **COPYRIGHT**—**Music**.

FOREIGN PATENTS—Expiration of—Prolongation—Petition by assignees.

See **PATENT**—**Prolongation**. 4.

FOREIGN PLAINTIFFS—Collision—Action in personam—Counter-claim—Security for damages.

See **SHIPPING**—**Collision**. 52.

— Jurisdiction—Salvage—Action in rem—Counter-claim in personam—Demurrage.

See **SHIPPING**—**Practice**. 9.

— Jurisdiction—Security for damages—Action in personam.

See **SHIPPING**—**Collision**. 52.

FOREIGN PLATE.

See also under **PLATE**.

Hall-marking of Foreign Plate Act, 1904 (4 Edw. 7, c. 6), amends the law with respect to the hall-marking of foreign plate.

- FOREIGN PROPERTY** — Parties resident in England—Practice.
See JURISDICTION. 2.
- FOREIGN PROSECUTION**—Agreement made abroad to stifle—Agreement not illegal where made — Whether enforceable here.
See CONFLICT OF LAWS. 4.
- FOREIGN PUBLIC VESSEL** — Jurisdiction — Appearance entered under misapprehension — Exemption from arrest.
See SHIPPING—Foreign Ship. 1.
- FOREIGN RESIDENCE.**
See under DOMICIL.
- FOREIGN SHIP**—Agents in United Kingdom of—Insurable interest—Advances for necessities.
See INSURANCE (MARINE). 13.
- End of voyage—"Crimping."
See SHIPPING—Crimping. 1.
- Outside limits of territorial jurisdiction—Collision—Fog.
See SHIPPING—Collision. 33.
- Persuading seamen to desert from—Merchant Shipping Acts—Offences.
See SHIPPING—Seamen. 6.
- Wages—Disbursements—Lex loci—Lex fori.
See SHIPPING—Wages. 1.
- Wages—Repairs—Maritime lien—Priority—Necessaries.
See SHIPPING—Wages. 2.
- FOREIGN STATE**—Contract entered into on behalf of—Parties—Title to sue.
See PRACTICE—Parties. 6.
- FOREIGN TRIBUNALS**—Evidence—*R. S. C.*, July, 1903. *W. N.* 1903 (July 25), p. 217. *See* CURRENT INDEX, 1903, p. lxxviii.
- Agreement to refer disputes to — Foreign tribunal—Contract of service—Implied contract not to divulge—Injunction—Stay of proceedings.
See CONTRACT OF SERVICE.
- "**FOREIGN TRUSTEES**"—"Home trustees"—Locality—English assets.
See ADMINISTRATION. 11.
- FOREIGN WATCHES** — Assay — Hall-mark — Customs Act.
See PLATE. 1.
- FOREIGN WATERS**—Collision in—Lis alibi pendens—Service out of jurisdiction.
See SHIPPING—Practice. 4.
- FOREIGNERS**—Marriage with Foreigners Act, 1906 (6 Edw. 7, c. 40).
See under MARRIAGE.
- Act of bankruptcy—"Debtor"—Assignment executed abroad for benefit of creditors generally.
See BANKRUPTCY—Act of Bankruptcy. 2.

FOREIGNERS—continued.

- Conflict of laws.
See Cases under CONFLICT OF LAWS.
- Divorce—Alleged adulterer a foreigner domiciled abroad — Appearance—Dismissal from the suit—Costs.
See DIVORCE—Domicil. 2.
- Divorce—Alleged adulterer not subject to the jurisdiction of the Court—Notice of proceedings.
See DIVORCE—Practice. 19.
- Divorce Bill—Practice—Alleged adulterer a foreigner domiciled abroad.
See DIVORCE—Ireland. 6.
- Lunacy—Jurisdiction—Inquiry — Domiciled foreigner temporarily in England.
See LUNACY. 11.
- Receiving order — Jurisdiction—"Ordinarily resident" in England.
See BANKRUPTCY—Receiving Order. 3.
- Unattested will—Domiciled foreigner—Leaseholds.
See CONFLICT OF LAWS. 17.
- FOREMAN** — Negligence — Dangerous employment — Infant — Duty to instruct — Delegation of duty—Liability of master.
See MASTER AND SERVANT—Infant. 4, 5.
- FORESHORE.**
See also under SEASHORE.
- Action between subjects involving rights of the Crown—Right of Crown to transfer action to revenue side.
See CROWN. 7.
- Crown lands — Grant of foreshore by the Crown—Pier—Unauthorized construction—Public nuisance.
See PIER. 1.
- Fish from the foreshore, Claim of grantee to exclusive right to — Grant from the Crown—Construction.
See CANADA—Fishing. 1.
- Justices — Jurisdiction — Ouster — Bona fide claim of right—Removal of shingle—Owner.
See JUSTICES. 11.
- Oyster ponds on — Ancient user — Public health—Nuisance from sewage.
See FISHERY. 5.
1. — Patent — Charter — User — Weight of evidence.
- The property in the Merchant's Quay, in the creek of Kilrush, built in 1848 upon the foreshore by the respondent's predecessor in title, having been claimed by the respondent and also by the Crown :—
Held that, without deciding any questions of law, the weight of the evidence derived from user and documents shewed conclusively as a matter of fact that the quay was the property of the respondent.
- Decisions of the M.R. and the C. A. in Ireland, [1905] 1 I. R. 483, 509, affirmed. ATT.-GEN. FOR IRELAND *v.* VANDELEUR
H. L. (Ir.) [1907] *W. N.* 178 ;
[1907] *A. C.* 369

FORESHORE—*continued.*

— Pier—Unauthorized construction—Nuisance
— Public right of access—Rates for passengers—Rates for vessels "mooring"—Crown grants.
See **PIER**. 1.

— Railway company—Power of the Dominion to legislate for provincial Crown property—Laws of British Columbia.
See **CANADA—Crown Lands**. 1.

2. — *Tidal and navigable river — Wild-fowl — Right of public to shoot wild-fowl — Custom — Birds of warren — Public rights in sea and foreshore.*

Action brought by the lord of certain manors adjoining the Severn, a tidal and navigable river, for trespass on the foreshore, parcel of the manors, in a boat and on foot, for the purpose of shooting wild duck. Deft. denied that the foreshore was parcel of the manors and, even if it were, he claimed the right to go upon the foreshore and shoot and carry away wild duck on the ground of immemorial user, in four alternative ways: (1.) as a member of the public in exercise of a general right of all the King's subjects in and over the foreshore of a tidal navigable river; (2.) as one of the inhabitants of the manors by virtue of a trust or reservation in their favour which the Court would presume to have been created by the original grant of the manors to the plt.'s predecessors in title; (3.) as an inhabitant of the manors, being a wild-fowler by occupation, by virtue of a custom of the manors; (4.) by prescription as a right in gross enjoyed by him and his ancestors:—

Held, on the evidence, that the plt. had proved his title to the foreshore as part of the manors, and also to a several fishery in the Severn. The public have no rights over the foreshore of a tidal navigable river, when not covered by the tide, except such as are ancillary to their rights of fishing and navigation in the sea. When covered by the tide the foreshore is part of the sea, and the only rights of the public in or over it are the rights of navigation and fishing and rights ancillary thereto. The right claimed to kill and carry away wild duck is—whether wild-fowl are birds of warren or mere wild birds in which there is no property—a profit à prendre and cannot be claimed by custom, but *semble* wild duck are birds of warren.

Held, also, that there was not sufficient evidence of user to enable the Court to presume the existence of a trust, or to establish a prescriptive right. **LORD FITZGERALD v. PURCELL**. **Parker J.** [1908] W. N. 119; [1908] 2 Ch. 139

— Trespass—Title to foreshore under a Crown grant—Construction.
See **TASMANIA**. 1.

"**FORESTRY**"—Workmen's compensation.
See **MASTER AND SERVANT—Compensation**. 98.

FORFEITURE—Administrator—Convict—Power to disentail the convict's estates tail.
See **FELONY**. 2.

FORFEITURE—*continued.*

— Administrator—Sale of convict's property—Bona fides—Costs.
See **FELONY**. 1.

— Assignment to trustees of marriage settlement—Dispose or attempt to dispose of.
See **POWER OF APPOINTMENT**. 30.

— Bond—Arrest of debtor—Form of bond.
See **BANKRUPTCY—Bond**. 1.

— Breach of covenant—Costs—Unnecessary defendants—Weekly tenants—Practice.
See **COSTS**. 78.

— Building agreement—Forfeiture of plant by builder after bankruptcy—Protected transaction.
See **BANKRUPTCY—Order and disposition**. 3.

— Class gifts—Aliquot shares—Residue—Mode of division.
See **WILL—Class**. 14.

— Company—Calls.
See under **COMPANY—Calls**.

— Company—Shares—Alleged irregularities in call and forfeiture—British Columbia Companies Acts, 1890, 1892.
See **CANADA—Company**. 2.

— Contract—Forfeiture of sum deposited—Liquidated damages or penalty.
See **CONTRACT**. 11.

— Convict—Administrator—Estate tail—Power to disentail.
See **FELONY**. 2.

— Convict's property, Sale of—Administrator—Bona fides—Discretion.
See **FELONY**. 1.

— Copyholder—Breach of obligation of copyholder to repair—Manor.
See **COPYHOLDS**. 3.

— Covenant not to sell a lease for building purposes—Breach—Law of the Transvaal.
See **TRANSVAAL**. 2.

— Deposit—Judgment for specific performance against purchaser.
See **VENDOR AND PURCHASER—Practice**. 2.

— Deposit—Specific performance—Default in payment by purchaser—Form of order.
See **VENDOR AND PURCHASER—Deposit**. 3.

— Landlord and tenant.
See under **LANDLORD AND TENANT**.

— Lease—Condition to take over sheep at expiration of lease.
See **SCOTTISH LAW**. 14.

— Lease—Estoppel in pais—Mortgage by sub-demise.
See **ESTOPPEL**. 1.

— Lease—Landlord and tenant.
See under **LANDLORD AND TENANT**.

— Lease—New Zealand Property Law Act, 1908—Relief against forfeiture on breach of covenant.
See **NEW ZEALAND**. 11.

FORFEITURE—*continued.*

- Lease—Notice of forfeiture to lessee—Appeal from Western Australia.
See AUSTRALIA. 10.
- Lease—Tenant's fixtures—Mortgage of lease—Right of mortgagee.
See COMPANY—Leases. 1.
- Licence—Application for grant or transfer—Discretion of licensing justices to refuse.
See LICENSING ACTS. 1.
- Marriage, Restraint of—Condition subsequent—Validity—Settlement.
See under MARRIAGE.
- Mining rights—Forfeiture of block of mining claims—Certificate of preliminary registration.
See CAPE OF GOOD HOPE. 1.
- Name and arms clause—Infant.
See SETTLEMENT. 3.
- Settled land—Forfeiture.
See under SETTLED LAND—Forfeiture.
- Shares—Call unpaid—Forfeited shares.
See COMPANY—Calls. 2.
- Shares—Rescission of forfeiture.
See COMPANY—Shares. 12.
- Shares—Voting—Disqualification.
See COMPANY—Meetings. 7.
- Ship, Decree of forfeiture of—Supreme Court of China and Corea—Jurisdiction.
See CHINA AND COREA. 2.
- Wages—Seaman—Desertion—Deduction by consent.
See SHIPPING—Wages. 3.
- Wages due but not payable—Dismissal.
See MASTER AND SERVANT—Contract of Service. 3.
- Will—Conditions.
See under WILL—Conditions.
- Will—Construction.
See under WILL—Forfeiture.

FORGED INDORSEMENT—Cheque.*See under BANKER.***FORGED POWER**—Attorney innocently acting under—Liability of agent—Third party—Indemnity.*See PRINCIPAL AND AGENT.***FORGERY**—Attorney innocently acting under forged power—Liability to third party.
See PRINCIPAL AND AGENT. 3.— Bankruptcy—Proof—Forged security—Voluntary payment by third party to creditor on account of loss sustained.
See BANKRUPTCY—Proof. 12.— Book debts—Assignment by deed—One partner's signature a forgery—Validity of assignment—Bankruptcy.
See PARTNERSHIP. 3.— Charge—Forged transfer—Indemnity.
See LAND TRANSFER. 4.— Cheque—Forged indorsement.
*See under BANKER.***FORGERY**—*continued.*

- Cheque stolen abroad—Forged indorsement—Transfer in foreign country—Conflict of laws.
See BILL OF EXCHANGE. 2.
- Company.
See under COMPANY—Forgery. 2.
- Conflict of laws—Cheque stolen abroad—Forged indorsement—Transfer for value in foreign country.
See BILL OF EXCHANGE. 2.
- Criminal law.
See under CRIMINAL LAW—Forgery.
- Forged indorsement—Payee "a fictitious or non-existing person"—Belief or intention of drawer.
See BILL OF EXCHANGE. 3.
- Forged transfer of stock—Innocent presentment of, for registration—Implied contract to indemnify.
See PRINCIPAL AND AGENT. 3.
- Notary Public convicted of forgery struck off the roll of notaries public.
See NOTARIES.
- Partnership—One partner's signature a forgery—Validity of assignment.
See PARTNERSHIP. 3.
- Power of attorney—Bank of England—Transfer of stock—Forged power—Indemnity.
See PRINCIPAL AND AGENT. 3.
- Receipt—Priority—Equitable mortgage—Fraud—Possession of title-deeds.
See VENDOR AND PURCHASER.—Priority. 1.
- "FORGETFULNESS"—Mistake—Appointment—Deed poll—Rescission.
See POWER OF APPOINTMENT. 24.
- **FORMA PAUPERIS**—Practice.
See under PRACTICE.—Forma Pauperis.
- **FOUNDERS' SHARES**—Extinguishment of—Reduction of capital.
See COMPANY—Reduction of Capital. 9.
- **FOWLS**—Straying on highway—Damage to passenger—Liability of owner—Remoteness.
See TRESPASS. 1.
- **FRANCE**—*Anglo-French Convention Act, 1904 (4 Edw. 7, c. 33), approves and carries into effect a convention between His Majesty and the President of the French Republic.*
 - *Workmen's Compensation (Anglo-French Convention) Act, 1909 (9 Edw. 7, c. 16).*
 - *R. S. C., Order XI., r. 8, to apply to France.*
See under PRACTICE.
- "Conveyance on sale"—Stamp duty—Property in France—Conveyance executed in France—Consideration payable in England.
See REVENUE—Stamps. 10.

FRANCE—*continued.*

- Nullity of marriage—Bigamy—Marriage in England between English woman and domiciled Frenchman—Irregularity by French law—Conflict of laws.
See DIVORCE—Nullity of Marriage. 1.
- Power of appointment—Personalty—Execution—Foreign domicile—Unattested will—Extrinsic evidence of intention—Law of France.
See CONFLICT OF LAWS. 16.
- Trade mark—Passing off—"Chartreuse"—French Law of Associations—Effect of French law upon property in English trade marks.
See TRADE MARK. 10.

FRANCHISE—Parliament.

See under PARLIAMENT.

- Fair—Tolls—Stallage.
See MARKET. 3.
- Ferry—Ancient ferry—Bridge—Traffic diverted from ferry—Total loss of tolls.
See FERRY. 2.
- Manorial market—Extent of franchise—New streets—Dedication—Presumption.
See MARKET. 4.
- Title to a franchise—Jurisdiction—Infringement of trade mark.
See COUNTY COURT—Jurisdiction. 9.
- "FRANCHISES"—Treasure trove—Title of Crown—Jus tertii.
See CROWN. 4.

FRAUD.

Fraudulent misappropriation of property. See Larceny Act, 1901 (1 Edw. 7, c. 10).

- Actio doli.
See NATAL. 1.
- Agent—Constructive notice—Solicitor—Trustee—Breach of trust—Relief—Duty to investigate assignee's title.
See TRUSTEE—Breach of Trust. 1.
- Agent, Fraudulent misappropriation by—"Banker, merchant, broker, attorney, or other agent."
See CRIMINAL LAW—Larceny. 5.
- Banker and customer—Cheques drawn with spaces, afterwards fraudulently filled up—Liability of bank—Negligence.
See AUSTRALIA. 3.
- Bankruptcy.
See under BANKRUPTCY—Fraud.
- Bankruptcy—Sale of goods.
See under BANKRUPTCY—Sale of Goods. 2.
- Breach of trust—Solicitor trustee—Appropriation—Mortgage—Priority.
See TRUSTEE—Breach of Trust. 4.
- Company—Prospectus.
See under COMPANY—Prospectus.
- Company—Share certificate fraudulently issued by secretary—Forgery—Scope of employment—Estoppel.
See COMPANY—Forgery. 2.

FRAUD—*continued.*

- Company—Winding-up—Affidavit in support of petition—Charge of fraud.
See COMPANY—WINDING-UP—Practice. 3.
- Company—Winding-up—Fraudulent preference—Registered debenture issued pursuant to antecedent unregistered agreement.
See COMPANY—WINDING-UP—Preference. 3.
- Company—Winding-up—Report alleging fraud—Jurisdiction to order official receiver to pay costs personally.
See COMPANY—Receiver. 4.
- "Concealed fraud"—Third party—Innocent possession.
See LIMITATIONS, STATUTE OF. 7.
- Contempt of Court—Fraudulently circularising shareholders while winding-up petition pending—Company—Winding-up.
See CONTEMPT OF COURT. 4.
- Contract—Action of deceit—Fraudulent representations—Public authorities protection.
See CONTRACT. 1.
- Conviction set aside—No evidence of fraudulent appropriation—Liability of bank director.
See ISLE OF MAN. 1.
- Co-partner, Liability for fraud of—Solicitors.
See PARTNERSHIP. 14.
- Costs—Taxation—Charges of fraud against contributories.
See COMPANY—WINDING-UP—Costs. 1.
- Costs of defending action—Charges of personal fraud against receiver.
See RECEIVER. 4.
- Equitable mortgage—Notice—Fraud of vendor's solicitor—Possession of title-deeds—Priority.
See VENDOR AND PURCHASER—Priority. 1.
- Executed contract—Rescission—Misrepresentation—Absence of fraud—Delay.
See CONTRACT. 14.
- False pretences.
See under CRIMINAL LAW—False Pretences.
- False pretences—Evidence of previous acts of fraud—Admissibility.
See CRIMINAL LAW—Evidence. 6.
- Fraudulent conversion of goods—Estoppel—Clerk.
See SALE OF GOODS. 11.
- Fraudulent debtor—Costs of prosecution by trustee.
See BANKRUPTCY—Practice. 4.
- Fraudulent solicitor—Postponement of legal mortgage—Priority—Non-production of title-deeds.
See MORTGAGE—Priority. 4.

FRAUD—*continued*.

- Husband and wife.
See under **HUSBAND AND WIFE** — **Fraud**.
- Indictment—Substitution of allegation of fraud for false pretences—Amendment of count—Debtors Act.
See **CRIMINAL LAW**—**Indictment**. 1.
- Insurance (Life)—Voidable policy—Principal retaining benefit obtained by fraud of agent—Recovery of paid premiums.
See **INSURANCE (LIFE)**. 19.
- Insurance, Life—Non-disclosure of material facts—Absence of fraud.
See **INSURANCE (LIFE)**. 1.
- Insurance, Marine—Open cover slip—Damages—Fraudulent representations—Reinsurance—Subrogation.
See **INSURANCE (MARINE)**. 7.
- Irrevocability of faculty except for fraud—Disused burial grounds.
See **ECCLESIASTICAL LAW**—**Faculty**. 15.
- Jointure—Bargain between husband and wife—Benefit to husband—Fraud on power.
See **JOINTURE**. 1.
- Judgment, Action to set aside—Alleged fraud—Revocation of probate.
See **RES JUDICATA**. 1.
- Master and servant—False or unjust measure—Possession by servant for own fraudulent purpose.
See **WEIGHTS AND MEASURES**. 6.
- Misrepresentations in prospectus—Directors liability.
See under **COMPANY**—**Prospectus**.
- Mistake by company's secretary—Fraud of transferee—Loss, Proximate cause of.
See **COMPANY**—**Shares**. 4.
- Mortgage by client to solicitor—No money advanced—Fraud of solicitor.
See **MORTGAGE**—**Priority**.
- Name of company—Registration—Fraudulent purpose—Trade name.
See **COMPANY**—**Name**. 2.
- Notary public convicted of criminal offence involving fraud struck off the roll of notaries public.
See **NOTARIES**. 5A.
- Petitioning creditor's debt—Judgment—Action by bankrupt to set aside judgment on ground of fraud—Jurisdiction.
See **BANKRUPTCY**—**Judgment**. 1.
- Pledge—Delivery of chattels by pledgee with notice of act of bankruptcy—Fraud of debtors.
See **BANKRUPTCY**—**Trustee**. 7.
- Power of appointment—Appointment void or voidable—Mortgage by appointee.
See **POWER OF APPOINTMENT**. 17.

FRAUD—*continued*.

- Priority—Equitable mortgage—Notice—Possession of title-deeds—Forged receipt.
See **VENDOR AND PURCHASER**—**Priority**. 1.
 - Probate—Revocation on ground of fraud—Staying proceeding—Res judicata.
See **RES JUDICATA**. 1.
 - Promissory note—Signature in blank—Fraudulent negotiation of note by agent—Rights of bona fide endorsee for value—Negotiable instrument.
See **PROMISSORY NOTE**. 3.
 - Prospectus—Company.
See under **COMPANY**—**Prospectus**.
 - Sale of goods—Estoppel—Loss to one of two innocent persons through fraud of a third person.
See **SALE OF GOODS**. 11.
 - Sale of goods—Fraud of debtor—Title of trustee in bankruptcy.
See **BANKRUPTCY**—**Trustee**. 10.
 - Sale of goods—Special goods—Fixed prices—Action, Cause of—Damage.
See **ACTION**. 3.
 - Secret profit received by agent without fraud—Right of agent to retain his commission.
See **PRINCIPAL AND AGENT**. 11.
 - Transfer of native lands—Fraud in procuring registration.
See **NEW ZEALAND**. 9.
 - Trustee receiving commission from co-trustee—Fraud of co-trustee acting as broker for the trust—Liability.
See **TRUSTEE**—**Fraud**. 1.
 - Trustees' negligence—Omission to get possession of title-deeds—Priority.
See **MORTGAGE**—**Priority**. 6.
 - Vendor and purchaser.
See under **VENDOR AND PURCHASER** — **Fraud**.
 - Weighing article sold with paper wrapper—Fraudulent use of machine.
See **WEIGHTS AND MEASURES**. 9.
 - Will—Executors in England—Indian assets—Revocation of Indian letters of administration—Title of executors.
See **ADMINISTRATION**. 15.
 - Will—Undue influence and fraud unsuccessfully pleaded—Cost out of the estate.
See **PROBATE**—**Costs**. 1.
- FRAUDS, STATUTE OF**—Acknowledgment—Part payment by cheque—Implied promise to pay balance of debt—Date when promise implied.
See **LIMITATIONS, STATUTE OF**. 2.
- Contract in writing—Incorporation of other document—Law Society's conditions.
See **VENDOR AND PURCHASER**—**Conditions of Sale**. 2.

FRAUDS, STATUTE OF—continued.

1. — *Contract—Statute of Frauds, 1677 (29 Car. 2, c. 3), s. 4—Agreement “not to be performed within the space of one year from the making thereof”—Possible performance by one party within the year—Intention.*

On April 11, 1908, the deft. entered the service of the plt., a dairyman, upon the terms of a verbal agreement of that date which provided that the employment of the deft. might be determined by either party giving to the other one week's notice, and that the deft. should not within thirty-six months after quitting the plt.'s service carry on the business of a dairyman within a certain specified area. The deft. quitted the plt.'s service on Feb. 6, 1910, and within thirty-six months started a dairyman's business within the prohibited area. In an action by the plt. claiming an injunction:—

Held, that the agreement was one that was “not to be performed within the space of one year from the making thereof” within s. 4 of the Statute of Frauds, and that, the agreement not being in writing, the action was not maintainable.

Donellan v. Read, (1832) 3 B. & Ad. 899, and *Smith v. Neale*, (1857) 2 C. B. (N. S.) 67, distinguished. *REEVE v. JENNINGS*

Div. Ct. [1910] W. N. 171; [1910] 2 K. B. 522

2. — *Contract not to be performed within a year—Employment for one year—To commence on day next after date of contract—Solicitor—Frauds, Statute of (29 Car. 2, c. 3), s. 4.*

A contract to serve for one year, the service to commence on the day next after that on which the contract is made, is not a contract which is not to be performed within a year, within the meaning of the Statute of Frauds, s. 4.

Dicta in Cawthorne v. Cordrey, (1863) 13 C. B. (N. S.) 406, and in *Britain v. Rossiter*, (1879) 11 Q. B. D. 123, approved of and followed. *SMITH v. GOLD COAST AND ASHANTI EXPLORERS, LD.* **Div. Ct. [1903] 1 K. B. 285**

Affirmed by C. A., [1903] 1 K. B. 538.

— Contract not to be performed within a year — Writing signed by the party to be charged.

See SALE OF GOODS. 12.

— Evidence, Parol — Contract — Rescission — Variation.

See CONTRACT. 13.

— Fraudulent conveyances.

See under FRAUDULENT CONVEYANCE.

— Indemnity—Oral “promise to answer for the debt of another.”

See GUARANTEE. 1.

3. — *Interest in land—Acquisition of interest not dealt with as part of contract—Request to another to acquire interest—Promise to pay amount expended—29 Car. 2, c. 3, s. 4.*

A wife residing with her husband, and desirous of moving into a larger house, requested him to buy the residue of the lease of a particular house, and made a verbal promise to him that if he did so she would pay to him the amount of the purchase-money. The husband bought the lease, and the parties moved into the house and

FRAUDS, STATUTE OF—continued.

resided there. In an action by the wife against her husband he counter-claimed for the amount that he had paid:—

Held, that as the husband was not bound by the terms of the contract to acquire any interest in land, the promise to pay if he did so was not a contract to which the 4th section of the Statute of Frauds applied. *BOSTON v. BOSTON*

C. A. [1904] 1 K. B. 124

— Land — Contract — Rescission — Variation — Parol evidence.

See CONTRACT. 13.

— Marriage settlement—Mistake—Rectification — Parol evidence.

See SETTLEMENT. 39.

— Res judicata—Agreement for lease—Action for rent—Defence, no concluded agreement—Second action—Defence, Statute of Frauds—Estoppel.

See ESTOPPEL. 4.

— Specific performance—Part performance.

See VENDOR AND PURCHASER—Specific Performance. 2.

— Voluntary settlement—Trustee in bankruptcy, Title of.

See FRAUDULENT CONVEYANCE. 3.

— Written offer containing two alternatives—Verbal acceptance of one—Agreement.

See SPECIFIC PERFORMANCE. 3.

FRAUDULENT ASSIGNMENT—Insolvent trader

— Transfer of his business and another's to company for shares and debentures.

See BANKRUPTCY—Fraud. 1.

FRAUDULENT CONVEYANCE—Deed of arrangement with creditors—Delaying creditors—Registration—Contents of affidavit—13 Eliz. c. 5—Deeds of Arrangement Act, 1887 (50 & 51 Vict. c. 57), s. 6, sub-s. 1.

A deed of arrangement with creditors, which is intended to give effect to a bona fide scheme of arrangement for their benefit, is not void under 13 Eliz. c. 5, as tending to delay creditors, merely because it reserves a benefit to the debtor, nor because some of the creditors are intentionally excluded from its operation.

A deed of arrangement is not void because the affidavit of the debtor, required by s. 6, sub-s. 1, of the Deeds of Arrangement Act, 1887, to be filed upon the registration of the deed, does not contain the names and addresses of all the creditors.

Judgment of the Div. Ct., [1902] 2 K. B. 158, affirmed. *MASKELYNE & COOKE v. SMITH.*

C. A. [1903] W. N. 39; [1903] 1 K. B. 671

2. — *Post-nuptial settlement—Intention to “delay, hinder, or defraud creditors”—13 Eliz. c. 5—Equitable reversionary interest in personal estate—Stocks and shares—Judgment creditor—Charging order—Judgments Act, 1838 (1 & 2 Vict. c. 110), s. 14—Appointment of receiver—Equitable execution—Injunction—Settlement set aside—Honest trustee—Costs out of settled fund—Possibility of surplus—Form of order.*

FRAUDULENT CONVEYANCE—continued.

A voluntary settlement in favour of his wife and child by an insolvent settlor of his equitable reversionary interest in personal estate comprising stocks and shares not subject to an imperative trust for sale:—

Held void, under 13 Eliz. c. 5, as against the creditors of the settlor, on the ground that it "delayed, hindered, or defrauded" the plts., who were judgment creditors suing on behalf of themselves, and all other creditors, from obtaining either—

(1) A charging order upon the stocks and shares under s. 14 of the Judgments Act, 1838.

South Western Loan and Discount Co. v. Robertson, (1881) 8 Q. B. D. 17, and *Bolland v. Young*, [1904] 2 K. B. 824, followed.

Quære, whether *Dixon v. Wrench*, (1869) L. R. 4 Ex. 154, is now law.

Or, (2) The advantage of the appointment of a receiver, by way of equitable execution, of the debtor's reversionary interest, which would have operated as an injunction to restrain the debtor from himself receiving the property.

Tyrrell v. Painton, [1895] 1 Q. B. 202, followed.

Semble, that, having appointed a receiver at the instance of the judgment creditor, the Court would not stop short of granting whatever injunction was necessary to prevent the debtor's property from being received by his assignee to the prejudice of the judgment creditor.

In re Marquis of Anglesey, [1903] 2 Ch. 727, adopted.

The trustee, who, with knowledge of the settlor's destitution, prepared the settlement in question, but who acted in good faith and afterwards appeared at the trial to defend the settlement:—

Held, entitled to his costs out of the settled property.

Where there is any possibility of a surplus after payment of the creditors, the proper form of order after declaring the settlement void as against them is not to direct the settlement to be delivered up to be cancelled, but to direct the trustees to join and concur in all acts and things necessary for making the property comprised in the settlement available for satisfying the claims of the creditors. *IDEAL BEDDING CO. v. HOLLAND* *Kekewich J.* [1907] W. N. 117; [1907] 2 Ch. 157

3. — *Voluntary settlement—Intention to defeat or delay creditors—Inference of intent—Protection of creditors—Post-nuptial settlement—Recital of ante-nuptial parol agreement—"Memorandum or note" in writing—Parties—Estoppel—Wife's chose in action—Husband's interest determinable on bankruptcy—Bankruptcy of settlor—Trustee in bankruptcy, Title of—Evidence—Admissibility of recital—13 Eliz. c. 5—Statute of Frauds (29 Car. 2, c. 3), s. 4.*

By a post-nuptial settlement dated in 1873, to which the testamentary guardians of the wife, then an infant, were parties, after a recital that previously to the marriage the husband agreed to make such settlement of the wife's fortune as was thereafter contained, it was witnessed that the husband, being entitled in right of his wife to a

FRAUDULENT CONVEYANCE—continued.

reversionary interest in personalty, subject to the contingency of his predeceasing her without reducing it into possession, covenanted that on the fund falling into possession he and his wife would assign it to the trustees on the usual trusts for the wife, husband, and issue of the marriage, the husband's life interest being determinable on bankruptcy. The husband was not indebted at the time, nor was he contemplating embarking in trade. In 1877 the wife died. In 1898 the husband was adjudicated bankrupt. In 1899 the fund fell into possession. There was issue of the marriage:—

Held, reversing the decision of *Farwell J.*, [1902] W. N. 72; [1901] 2 Ch. 145, that the settlement was good against the trustee in bankruptcy, on the grounds (1.) that there was no evidence of its having been made with intent to defeat creditors so as to render it void under the statute 13 Eliz. c. 5, and no such intent ought, in the circumstances, to be inferred; and (2.) that the deed was not voluntary, but, taken as a whole, constituted such a note or memorandum of the recited parol ante-nuptial contract in consideration of marriage as satisfied the Statute of Frauds (29 Car. 2, c. 3), s. 4, and enabled the contract to be enforced both against the settlor who signed it and against his trustee in bankruptcy, the recital of the contract being admissible in evidence as against the trustee setting up the statute.

But whether the husband's life interest passed to the trustee in bankruptcy, *quære*.

In re Pearson, (1876) 3 Ch. D. 807, overruled.

Barkworth v. Young, (1856) 4 Drew. 1, approved. *In re HOLLAND. GREGG v. HOLLAND* *C. A.* [1902] W. N. 90; [1902] 2 Ch. 360

FRAUDULENT DEVISES ACT—Real estate—Devise on trust—Mortgagee of equitable estate for life.

See ADMINISTRATION. 26.

FRAUDULENT PREFERENCE — Bankruptcy practice.

See under BANKRUPTCY — Preference. 2, 3.

— Company—Winding-up.

See under COMPANY—WINDING-UP—Preference.

— Transfer of property for past debt—Act of bankruptcy—Protected transaction.

See BANKRUPTCY—Preference. 2.

— Winding-up—Powers of committee.

See INDUSTRIAL AND PROVIDENT SOCIETY. 5.

FRAUDULENT PROSPECTUS.

See under COMPANY—Prospectus.

FRAUDULENT STATEMENTS — Publishing—Officers of public companies—Manager de facto.

See CRIMINAL LAW—Larceny. 10.

FREEHOLDS—Of manor—Heriot—Tenant—"Dying seised"—Mortgagor in possession.

See HERIOT. 1.

FREEMASONS' LODGES—Exempted.

See Registration of Clubs (Ireland) Act, 1904 (4 Edw. 7, c. 9), s. 4.

- Payment out of court—French subject entitled, —“Prodigal”—French law.

See CONFLICT OF LAWS. 11.

FREIGHT—Company—Receiver and manager Powers of—Shipment of goods by receiver—Bill of lading—Lien for previously unsatisfied freight.

See COMPANY—Receiver. 12.

- Shipping.

See under SHIPPING—Freight.

FRENCH MARRIAGE CONTRACT.

See under HUSBAND AND WIFE—French Marriage Contract.

FRESHWATER FISHERIES.

See under FISHERY.

FRIENDLY SOCIETY.

Shop Clubs. Registration dated Jan. 1, 1903, made by the Treasury under the Friendly Societies Act, 1896, with reference to Friendly Societies desirous of being certified under the Shop Clubs Act, 1902. St. R. & O. 1903, No. 1.

Regulations dated July 1, 1903, made by the Treasury under the Friendly Societies Act, 1896. St. R. & O. 1903, No. 537.

Outdoor Relief (Friendly Societies) Act, 1904 (4 Edw. 7, c. 32), amends the Outdoor Relief Friendly Societies Act, 1894 (57 & 58, c. 25).

Friendly Societies Registry. Guide Book. 1905. H.—Legal. Price 6d.

Regulations, Dec. 31, 1906, made by the Treasury under the Friendly Societies Act, 1896. Price 1d. St. R. & O., 1906, No. 949.

Friendly Societies Act, 1908 (8 Edw. 7, c. 32), amends the Friendly Societies Act, 1896 (59 & 60, Vict. c. 25).

1. — *Bankruptcy* — Defaulting treasurer — Removal from office—Bankruptcy of treasurer—Preferential debt—Friendly Societies Act, 1896 (59 & 60 Vict. c. 25), ss. 34, 35, 106.

At the date when the treasurer of a friendly society ceased to be an officer of the society he was liable to account for moneys of the society which he had received and had improperly obtained. Shortly afterwards he was adjudicated a bankrupt:—

Held, that the society was entitled, by virtue of s. 35 of the Friendly Societies Act, 1896, to be paid out of his assets the sum due from him in priority to all his other creditors.

In re Miller, [1893] 1 Q. B. 327, followed. *In re EILBECK. Ex parte TRUSTEES OF THE “GOOD INTENT” LODGE, NO. 987 OF THE GRAND UNITED ORDER OF ODDFELLOWS.*

Phillimore J. [1909] W. N. 246; [1910] 1 K. B. 136

2. — *Benefit society*—Unregistered friendly society — Partnership—Insolvency of society — Action for dissolution—Jurisdiction to wind up—Unexpended funds—Scheme for distribution—Notice of judgment—Service—R. S. C., Order LV., rr. 35, 35a.

FRIENDLY SOCIETY—continued.

In the year 1817 a society for the benefit of the workmen in a co. established by Royal Charter was founded, its main objects being to provide, by mutual assistance among its members, aid out of the society's funds towards a comfortable subsistence in times of sickness and old age. Membership was confined to workmen and others in the employment of the co. The members on their admission paid fines varying in amount according to age, and a yearly contribution of 30s. to the funds of the society until they attained sixty-five, when they ceased to contribute and became entitled to a pension of 6s. a week for life. The society was managed by a general committee in accordance with printed rules, which were varied from time to time, the latest being those sanctioned in 1891. The funds stood in the name of the co. as trustee. The society was never registered under the Friendly Societies Acts, and there was no provision in the rules for a dissolution. The co. had ceased to carry on business, and no new members had been admitted since 1889. There were 439 members, of whom 88 had attained the age of sixty-five; and it was admitted that, with no new members coming in, the society was insolvent, and that the younger members would probably receive nothing if the former allowances for sick pay and pensions were continued. A large majority of pensioners and non-pensioners had voted for a dissolution by the Court, and an action was commenced, in which all classes of members were represented, claiming a dissolution:—

Held, that the Court had jurisdiction to interfere and wind up the society, and to ascertain the rights of all the persons beneficially interested in its assets by a reference to chambers to settle a scheme for the equitable distribution of the remaining funds.

Pearce v. Piper, (1809) 17 Ves. 1; 11 R. R. 1, examined and applied.

Held, also, following *In re Printers and Transferers Amalgamated Trades Protection Society*, [1899] 2 Ch. 184, that the principle to be adopted in calculating the amounts payable to the various members was, that the funds were divisible among existing members at the time of the dissolution in proportion to the amount contributed by each member for fines on admission and subscriptions, irrespective of any payments made in accordance with the rules, and without interest.

Form of advertisement in lieu of service of notice of judgment. *In re LEAD CO.'S WORKMEN'S FUND SOCIETY. LOWES v. GOVERNOR AND CO. FOR SMELTING DOWN LEAD WITH PIT AND SEA COAL* Warrington J. [1904]

W. N. 107; [1904] 2 Ch. 196

3. — *Company* — Winding-up — Unregistered company—Friendly society—Judgment creditor — Execution before winding-up—Stay of sale — Companies (Consolidation) Act, 1908, ss. 140, 268.

This was a creditor's petition presented on Oct. 26, 1910, for the compulsory winding-up of a friendly society. The petitioner was the secretary of the co. and was a creditor for 87l. 10s. salary. The society had been registered

FRIENDLY SOCIETY—continued.

under the Friendly Societies Act, 1875, under a different name, and afterwards with its present name under the Act of 1896, but it had not been registered under the Companies Acts, and the petition asked for its winding-up as an unregistered co. under s. 268 of the Act of 1908. It appeared that no order for winding-up a friendly society had been made under the present Act, and no such order had been made in England since 1863, when Kindersley V.-C. ordered the winding-up of the *Alfreton District, &c., Co.* (11 W. R. 300), but the case has been followed in Ireland (*In re Independent Protestant Loan Fund Society*, [1895] 1 Ir. R. 1).

A creditor had recovered judgment against the society for 388l. 6s. and issued execution, and on Oct. 17, 1910, the sheriff had seized the fixtures, furniture, and some extensive printing plant at the co.'s offices, and had advertised their sale for Nov. 10. There was evidence that a forced sale would be very injurious to the society and the other creditors. The petitioner's counsel asked for an order restraining the sale under s. 140 of the Companies (Consolidation) Act, 1908, with provision for the protection of the judgment creditor in the form of the order made in *In re Plas-yn-Mhowys Coal Co.*, (1867) L. R. 4 Eq. 688.

Neville J. said that there was really no doubt about the jurisdiction, and made the order for a compulsory winding-up, but that any application to stay proceedings under an execution which was obtained before the winding-up order must be made to the King's Bench Division in which the action was pending.

In re 20TH CENTURY EQUITABLE FRIENDLY SOCIETY - - - Neville J. [1910] W. N. 236

4. — Conversion into company—Enlargement of objects—Special resolution—Friendly Societies Act, 1896 (59 & 60 Vict. c. 25), s. 8, sub-s. 1; s. 70, sub-ss. 1, 2, 3; s. 71, sub-s. 1; s. 74.

It is not competent for a society, registered under the Friendly Societies Act, 1896, under the guise of converting itself into a limited co. pursuant to s. 71, sub-s. 1, of that Act, to turn itself into a co. with objects much more extensive than and widely differing from the objects specified by the rules of the society or by s. 8, sub-s. 1, of the Act. The procedure under s. 71, sub-s. 1, is a mere matter of machinery under which a society can become a different legal entity having objects identical with the objects prescribed by its rules or by s. 8, sub-s. 1, though when converted it can exercise such powers of altering or enlarging its objects, as defined by its memorandum, as are conferred by the Companies Act on all limited cos.

Decision of Joyce J., [1909] W. N. 252, affirmed. *BLYTHE v. BIRTLEY* - C. A. [1910] W. N. 12; [1910] 1 Ch. 226

Note.

Referred to by C. A., *McGlade v. Royal London Mutual Insurance Society, Ltd.*, [1910] 2 Ch. 169. See next Case.

Referred to, *In re Royal London Mutual Insurance Society, Ltd.*, Eve J., [1910] W. N. 226. See *Company—Memorandum*. 12.

FRIENDLY SOCIETY—continued.

5. — Conversion into company—Enlargement of objects—Ultra vires—Registration of company—Certificate of incorporation—Conclusiveness—Injunction—Form of action—Representative action by member of company—Friendly Societies Act, 1896 (59 & 60 Vict. c. 25), ss. 8, 71, —Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), s. 17, sub-s. 1.

Where a registered friendly society, in avowed exercise of the powers of s. 71 of the Friendly Societies Act, 1896, passed a special resolution to convert itself into a co. under the Companies Acts, with a memorandum of association annexed thereto, and obtained registration of itself as a co., and a member of the co., who had been a member of the friendly society, suing on behalf of himself and all other the members of the co., moved for an injunction to restrain the co. from exercising any of the powers enumerated in the memorandum of association in excess of those allowed by the Friendly Societies Act, 1896:—

Held by Eve J., [1910] W. N. 75, and the C. A., that the action was misconceived and that the motion ought to be refused.

Per Cozens-Hardy M.R. and Buckley L.J.: Whether, notwithstanding the certificate of incorporation, the validity of the special resolution and of the registration could have been successfully impeached by a member of the old friendly society in a properly constituted action, *quære*. *McGLADE v. ROYAL LONDON MUTUAL INSURANCE SOCIETY, LD.* - - - C. A. [1910] W. N. 130; [1910] 2 Ch. 169

Note.

This case was referred to *In re Royal London Mutual Insurance Society, Ltd.*, Eve J., [1910] W. N. 226. See *Company—Memorandum*. 12.

— Conversion of friendly society into limited company—Notice—Sufficiency.
See *COMPANY—Memorandum*. 12.

6. — Dispute — Arbitration under rules — Order to pay costs—Jurisdiction — Ultra vires—Friendly Societies Act, 1896 (59 & 60 Vict. c. 25), s. 68.

The appellant, a member of a friendly society, claimed from the society sick pay on behalf of his son, who was also a member, but was mentally afflicted and unable to claim it for himself. The court arbitration committee decided against the claim, and that decision was affirmed on appeal by the district arbitration committee, who charged the appellant with the expenses of the proceeding. The appellant having refused to pay the expenses was suspended and ceased to be a member. In an action by the appellant against the society claiming an injunction and damages for wrongful exclusion:—

Held, that the questions about sick pay and expenses were disputes within s. 68 of the Friendly Societies Act, 1896, and therefore should be decided only in the manner directed by the rules of the society; that the rules were not ultra vires; that the decisions—even if erroneous in point of law—being given without misconduct were binding and conclusive and not removable into any Court of law or restrain-

FRIENDLY SOCIETY *continued.*

able by injunction and could be enforced without resorting to a county court; and that the action was not maintainable.

Decision of the C. A., [1908] 2 K. B. 458, affirmed. **CATT v. WOOD**

H. L. (E.) [1910] A. C. 404

- Disputes between society and members — Rules — Arbitration — Ultra vires acts — Stay of proceedings.
- See **INDUSTRIAL AND PROVIDENT SOCIETY**. 1.

7. — *Jurisdiction of arbitration committee — Dispute between member and society — Expulsion — Friendly Societies Act, 1896 (59 & 60 Vict. c. 25), s. 68, sub-s. 1.*

Sect. 68 of the Friendly Societies Act, 1896, which enacts that every dispute between a member of a friendly society and the society shall be decided in manner directed by the rules of the society, and that the decision so given shall be binding and conclusive on all parties without appeal, does not apply to a decision given by the arbitration committee without jurisdiction, the rules having been disregarded upon a question of substance.

A member of a friendly society was duly summoned before the arbitration committee for a breach of the rules, and was in his absence expelled from the society by a resolution of the committee upon a different charge, namely, of fraud and disgraceful conduct, of which no written notice had been given to him as required by the rules:—

Held, that the decision was null and void. **ANDREWS v. MITCHELL**

H. L. (E.) [1905] A. C. 78

- Mortgage to—Sale under power—Purchase by officer of society—Invalidity.
- See **MORTGAGE—Sale**. 2.

8. — *Objects exhausted — Surplus or unexhausted funds — Charity — Cyprès — Resulting trust — Bonâ vacantia.*

The Benefit Society for Girls educated at the School of Industry, Kendal, was established in 1808, and was registered as a friendly society under the Friendly Societies Act of 1792 (33 Geo. 3, c. 54), s. 2. It consisted of honorary members and benefited members. The honorary members were ladies who gave in their names when the society was formed or were afterwards elected according to the rules and paid a subscription. They could not in any case derive benefit from the funds of the society. The benefited members were girls educated at the School of Industry; they paid weekly contributions to the society from the age of seven to sixty-five, and were entitled to certain weekly payments in sickness varying with age up to sixty-five and to an annuity of 2s. a week from fifty-six to sixty-five, 2s. 6d. from sixty-five to seventy, and 4s. from seventy for the rest of their lives. All payments by the members and all sick allowances ceased at sixty-five. The annuities became payable automatically on a member attaining fifty-six without any inquiry as to poverty. The rules of the society provided that the contributions of honorary members

FRIENDLY SOCIETY—continued.

should be appropriated, one half to raise a capital the interest of which would be sufficient to pay the allowance to children under fifteen; the other half "to be under the special direction of honorary members for relief in extraordinary cases not provided by the general fund."

The School of Industry was closed in 1845, and after that date no new members were admitted, but subscriptions continued to be received from both classes of members, sick allowances and annuities were paid, and the balance of the funds accumulated. This action was brought by the trustees to decide what was to be done with the accumulations, which amounted to 1901*l.* apportioned to the honorary members' fund and 304*l.* apportioned to the benefited members' fund. The 1901*l.* appeared from the accounts to have arisen wholly from the first half of the honorary members' fund appropriated to provide for the allowances to children under fifteen. The only surviving benefited members were two women over sixty-five in receipt of annuities. Five persons who had claimed to be honorary members were made defts. :—

Held, that the society was not a charity, for the benefited members had a legal title to the benefits on making the payments without regard to their need; that the contributions of honorary members were absolute gifts to the society, and that there could be no resulting trust in favour of the honorary members; that the annuitants had no interest in the funds of the society other than the annuities which they had purchased; and that therefore the surplus of the benefited members' fund, after providing for the annuities, and the whole of the honorary members' fund belonged to the Crown as bonâ vacantia. **BRAITHWAITE v. ATT.-GEN. Swinfen Eady J.** [1909] W. N. 48; [1909] 1 Ch. 510

9. — *Policy not assignable otherwise than by way of nomination—Friendly Societies Act, 1875 (38 & 39 Vict. c. 60), s. 15—Friendly Societies Act, 1896 (59 & 60 Vict. c. 25), ss. 56, 57.*

Policies effected under the Friendly Societies Acts, 1875 and 1896, are not assignable otherwise than by nomination under the Acts.

So held, following decision of Phillimore J. in *Caddick v. Highton*, [1899] 68 L. J. (Q. B.) 281; 80 L. T. 527; 47 W. R. 668; 15 Times L. R. 182 (see [1901] 2 Ch. 476, n.). *In re REDMAN WARTON v. REDMAN* - - - **Kekewich J.** [1901] W. N. 136; [1901] 2 Ch. 471

Note.

Overruled on this point by C. A., *In re Griffin*, [1902] 1 Ch. 135. See No. 11, below.

10. — *Policy of life insurance — "Legal nominee"—Friendly Societies Act, 1875 (38 & 39 Vict. c. 60), s. 15—Friendly Societies Act, 1896 (59 & 60 Vict. c. 25), s. 56. CADDICK v. HIGHTON - Phillimore J. [1901] 2 Ch. 476, n.*

Note.

Followed by Kekewich J., *In re Redman*, [1901] 2 Ch. 471. See preceding Case.

Overruled on this point by C. A., *In re Griffin*, [1902] 1 Ch. 135. See next Case.

FRIENDLY SOCIETY—*continued.*

11. — *Policy of life insurance—Assignment—Nomination—Friendly Societies Act, 1875 (38 & 39 Vict. c. 60), s. 15, sub-s. 3—Friendly Societies Act, 1896 (59 & 60 Vict. c. 25), ss. 56, 57.*

Policies effected under the Friendly Societies Act, 1875, and, *semble*, under the Friendly Societies Act, 1896, are assignable in the ordinary way as well as by nomination under the Acts.

Caddick v. Highton, [1901] 2 Ch. 476, n., and *In re Redman*, [1901] 2 Ch. 471, overruled on this point. *In re GRIFFIN. GRIFFIN v. GRIFFIN* C. A. [1901] W. N. 240; [1902] 1 Ch. 135

FRIENDS (SOCIETY OF)—Charitable trust—School—Trust for “civil or religious purposes”—Uncertainty—Scheme.
See CHARITY. 19.

FRIGHT—Nervous shock resulting from—Remoteness of damage.
See NEGLIGENCE. 7.

FRIVOLOUS AND VEXATIOUS PROCEEDINGS—Practice.
See under PRACTICE—**Frivolous, &c., Proceedings.**

— Dismissal of action as—Time for appealing—Practice.
See APPEAL. 29, 30, 31, 32.

FROST-BITE—Workmen’s compensation.

See MASTER AND SERVANT—**Compensation.** 99.

FRUIT TREES—Right to remove—Compensation.

See LANDLORD AND TENANT. 5.

FUGITIVE CRIMINALS AND OFFENDERS.

See under EXTRADITION.

FUND IN COURT—Payment out to person not entitled—Stop order—Liability to replace fund.

See PRACTICE—**Payment Out.** 8.

FUNERAL EXPENSES—Compensation—Deceased workman—Dependants in part dependent upon his earnings.

See MASTER AND SERVANT—**Compensation.** 100.

“FURNITURE”—Gift of “furniture and other personal effects”—Effect as regards fixtures and trade furniture.

See WILL—**Words.** 6.

FUTURITY—Words of—WILL.

See under WILL—**Futurity, Words of.**

G.

GAMBLING.

See under GAMING.

GAMBLING DEBT — Frivolous and vexatious action — Dismissal — Cause of action — Forbearance to sue — New consideration.

See PRACTICE—Frivolous, &c., Action.

1.

GAME.

Ground Game (Amendment Act, 1906 (6 Edw. 7, c. 21), is an Act to amend the Ground Game Act, 1880 (43 & 44 Vict. c. 47).

1. — *Ground game—Right of killing ground game—“Under this Act or otherwise”—Grantee of right not being occupier—Ground Game Act, 1880 (43 & 44 Vict. c. 47), s. 6.*

Sect. 6 of the Ground Game Act, 1880, after providing that no person having a right of killing ground game under the Act or otherwise shall use any firearms for the purpose of killing ground game between certain hours, proceeds to enact that no such person shall, for the purpose of killing ground game, employ spring traps except in rabbit holes :—

Held, that this enactment does not apply to a grantee of the right to kill and take ground game where the grantee is not the occupier of the land over which the right is granted. **MAY v. WATERS** Div. Ct. [1910] 1 K. B. 431

Note.

See *Waters v. Phillips*, Div. Ct. [1910] W. N. 171 ; [1910] 2 K. B. 465, *next Case*.

2. — *Ground game—Occupier with sporting rights—Prohibition against setting spring traps except in rabbit holes—Ground Game Act, 1880 (43 & 44 Vict. c. 47), s. 6.*

Sect. 6 of the Ground Game Act, 1880, after providing that no person having a right of killing ground game under this Act or otherwise shall use any firearms for the purpose of killing ground game between certain hours, proceeds to enact that “no such person shall, for the purpose of killing ground game, employ spring traps except in rabbit holes” :—

Held, that this enactment applies to an occupier of land who, by reason of the owner not having reserved the sporting rights, has the right, apart from the Act, of killing and taking game upon the land.

Saunders v. Pitfield, (1888) 58 L. T. 108, followed. **WATERS v. PHILLIPS** Div. Ct. [1910] W. N. 171 ; [1910] 2 K. B. 465

Note.

See *preceding Case*.

3. — *Licence to deal in game—Sale of live pheasants bred on pheasant farm—Whether licence necessary—Gaming Act, 1831 (1 & 2 Will. 4, c. 32), ss. 4, 27.*

GAME—continued.

The appellant was charged upon an information under s. 27 of the Game Act, 1831, with having, in Dec., 1909, bought twenty-five live hen pheasants from one W., who was not a person licensed to deal in game. The appellant and W. were both game farmers and made a business of breeding pheasants for profit. Neither W. nor the appellant had a licence to deal in game. The birds in question had been reared by W. and were tame birds.

It was contended for the appellant that the Act did not apply to tame birds, which had never been at large, and that if a licence to deal in game were required in such a case the industry of pheasant farming would become impossible, inasmuch as s. 4 renders it illegal for a person licensed to deal in game to have in his possession any bird of game, whether alive or dead, during the close time for such birds respectively. The justices convicted the appellant.

The Court held that the difficulty arising out of s. 4 must be dealt with, if at all, by the Legislature, and could not affect the plain meaning of the word “game” in s. 27. Appeal dismissed. **COOK v. TREVENER** Div. Ct.

[1910] W. N. 211

4. — *Night poaching—Previous convictions—Person “so offending” a third time—Criminal law—Night Poaching Act, 1828 (9 Geo. 4, c. 69), ss. 1, 9.*

Sect. 1 of the Night Poaching Act, 1828, provides that, if any person by night enters upon any land with any gun or other instrument for the purpose of taking or destroying game, he shall for the first and second offences be liable to certain penalties on summary conviction, and “in case such person shall so offend a third time” he shall be guilty of a misdemeanour :—

Held, that on an indictment for a third offence two previous convictions under s. 1 must be alleged and proved, and that a previous conviction under s. 9 of the Act of the misdemeanour of entering upon land by night armed and to the number of three or more for the purpose of taking game was not a previous conviction within s. 1. **REX v. LINES** C. C. B.

[1901] W. N. 251 ; [1902] 1 K. B. 199

5. — *Seizure and detention by police officer of partridges’ eggs—Justification under statute—Subsequent proceedings under different statute not giving power to seize eggs—Conviction of person from whom eggs seized quashed—Liability of police officer in trover—Restoration of game or “value thereof”—Game Act, 1831 (1 & 2 Will. 4, c. 32), s. 24—Poaching Prevention Act, 1862 (25 & 26 Vict. c. 114), ss. 1, 2.*

GAME—*continued*.

In s. 2 of the Poaching Prevention Act, 1862, "the value" of the game which is to be restored to an innocent person from whom it has been taken by a police officer, in pursuance of the power of seizure given by the section, means the value of the game at the time of the termination in favour of the innocent person of proceedings subsequently taken against him by the police officer under the provisions of the section, and not the value of the game at the time it was seized.

A police officer seized certain partridges' eggs in accordance with the provisions of s. 2 of the Act of 1862 (under which partridges' eggs are "game"), but subsequently took out a summons against the person from whom he seized them charging him before justices with an offence against s. 24 of the Game Act, 1831, which contains no power of seizure. A conviction under the summons was, on a case stated by the justices, quashed. By order of the justices the eggs were destroyed:—

Held, that the police officer was liable for the value of the eggs at the time they were seized in an action founded on trover, inasmuch as it is a condition subsequent to any steps that a police officer takes under s. 2 of the Poaching Prevention Act, 1862, that he should continue to proceed under that section in order to be entitled to its protection. If he seizes game with a bona fide intention of acting under s. 2 of the Act of 1862, but subsequently proceeds under a different statute, his act of seizure is thereby rendered unlawful and he becomes in law a trespasser. *STOWE v. BENSTEAD* - - - Div. Ct.
[1909] W. N. 119; [1909] 2 K. B. 415

— Sporting right — Yearly hiring — Notice of determination.

See LANDLORD AND TENANT. 82.

GAMING—*Bankruptcy—Proof—Gaming debt—New consideration—Withdrawal of letter to debtor's club—Bankruptcy of debtor—Provable debt.*

After an action to recover a gaming debt had been dismissed, the creditor wrote to the committee of the debtor's club complaining of his conduct in not paying his debts of honour. The debtor, in consideration of this letter of complaint being withdrawn, gave the creditor bills in satisfaction of the debt. Before the bills were paid the debtor became bankrupt:—

Held, that the bills were given for a good consideration, and that the creditor could prove for the amount due thereon. *In re BROWNE*. *Ex parte MARTINGELL*

Buckley J. [1904] W. N. 69;
[1904] 2 K. B. 133

— Betting.

See under BETTING.

2. — *Cause of action — Cheque given for racing bets—Forbearance to publish default—New consideration—Gaming Act, 1710 (9 Anne, c. 14); Gaming Act, 1835 (5 & 6 Will. 4, c. 41), s. 1; Gaming Act, 1845 (8 & 9 Vict. c. 109), s. 18—Amendment of pleadings at trial.*

The plt. and deft., who were both book-makers, had betting transactions together, which

GAMING—*continued*.

resulted in the deft. giving the plt. a cheque for the amount of bets lost to him. At the request of the deft. the cheque was held over by the plt. for a time, and part of the amount of the cheque was paid by the deft. Subsequently a fresh verbal agreement was come to between the parties, by which, in consideration of the plt. holding over the cheque for a further time and refraining from declaring the deft. a defaulter and thereby injuring him with his customers, the deft. promised to pay the balance owing in a few days. The balance was never paid:—

Held by Sir Gorell Barnes Pres. and Farwell L.J. (Fletcher Moulton L.J. dissenting), that the forbearance of the plt. to sue, coupled with his forbearance to declare the deft. a defaulter, constituted a good consideration for the fresh agreement, and that the plt. was entitled to recover.

The writ in the action was indorsed with a statement of claim upon an account stated, but at the trial the plt. set up, and recovered upon, the fresh agreement; no formal amendment of the statement of claim was made at the trial, but all necessary amendments were taken as having been made:—

Held, that in all cases where the plt. seeks to recover at the trial upon a different cause of action from that appearing in the pleadings, a formal amendment of the pleadings should be made by the judge. *HYAMS v. STUART KING (A FIRM)* - - - C. A. [1908] W. N. 145;
[1908] 2 K. B. 696

3. — *Cause of action—Gaming in foreign country—Money lent for purpose of gaming.*

Money lent in a foreign country for the purpose of being used by the borrower for gaming, the game not being illegal by the law of that country, may be recovered in the English Courts.

Quarrier v. Colston, (1842) 1 Ph. 147, followed.

Moulis v. Owen, [1907] 1 K. B. 746, discussed. *SAXBY v. FULTON* - - - C. A.
[1909] W. N. 83; [1909] 2 K. B. 208

4. — *"Coupon Competition"—Events relating to horse-races—Office used for betting—Betting Act, 1853 (16 & 17 Vict. c. 119), s. 1.*

The deft. was the occupier of an office and the proprietor of a newspaper published weekly at that office. Each number of the paper contained a notice of what was called a "coupon competition"—that is to say, of a promise by the deft. to pay a certain specified sum of money to such persons as should correctly guess the result of a certain horse-race then shortly about to be run, and should write their guesses upon certain forms called "coupons," which were issued with each number of the newspaper, and should return the coupons so filled up to the deft.'s office, together with the sum of one penny in respect of each guess made. A large number of persons every week sent into the deft.'s office coupons filled up as aforesaid, accompanied by remittances of money. The deft. was upon these facts convicted under the Betting Act, 1853, of having unlawfully kept the office for the purpose of money being received by her as the consideration

GAMING—*continued.*

for undertaking to pay thereafter money on events relating to horse-races :—

Held, that the conviction was right. **REG. v. STODDART** **Div. Ct. [1901] 1 K. B. 177**

Note.

This case was followed by *Div. Ct., Hawke v. Mackenzie* (Nos. 1 and 2), [1902] 2 K. B. 225. *See No. 7 below. See also next Case.*

5. — “*Coupon competition*”—*House used for betting—Advertisement of—Betting Act, 1853* (16 & 17 *Vict. c. 119*), ss. 1, 7; *Betting Act, 1874* (37 *Vict. c. 15*), s. 3.

The plt. was the occupier of an office situate in Holland, and also the proprietor of a newspaper published weekly in London. Each number of the newspaper contained a notice of what was called a “coupon competition,” that is to say, of a promise by the plt. to pay a certain specified sum of money to such person as should correctly guess the result of a certain horse-race then shortly about to be run, and should write their guesses upon certain forms called “coupons,” which were issued with each number of the newspaper, and should send the coupons so filled up to the plt.’s office in Holland, together with the sum of one penny in respect of each guess made. The defts., who had made a contract with the plt. to publish the said newspaper on his behalf, refused to perform their contract upon the ground that the publication of the newspaper was illegal as being an infringement of s. 7 of the Betting Act, 1853, and of s. 3 of the Betting Act, 1874 :—

Held, that, whether the fact of the plt.’s office being situate out of the jurisdiction was sufficient to prevent the business so carried on by the plt. from constituting an offence against the Betting Acts or not, there was nothing in the above-mentioned sections to render illegal the publication by the defts. of the newspaper advertising the said business. **STODDART v. ARGUS PRINTING CO.** **Div. Ct. [1901] W. N. 125; [1901] 2 K. B. 470**

Note.

This case was dissented from by *Div. Ct., Hawke v. Mackenzie* (Nos. 1 & 2), [1902] 2 K. B. 225. *See No. 7, below. See also preceding Case.*

6. — “*Coupon competition*”—*House used for betting—Betting Act, 1853* (16 & 17 *Vict. c. 119*), ss. 1, 3.

The appellant was the occupier of an office in London and the proprietor of a newspaper, called *Football Chat*, published weekly at that office. T., the occupier of an office in Middelburg in Holland, conducted a “football coupon competition,” that is to say, a scheme in which there was a promise by T. to pay a sum of money to such persons as should correctly guess the results of certain football matches, and should write their guesses on certain forms called coupons. The competition was advertised week by week in the appellant’s newspaper, and the coupons were printed as part of the advertisement and could be procured at the appellant’s office; they were, when filled up, to be cut out of the paper and sent with the entrance money to “*Football Chat*,

GAMING—*continued.*

Middelburg, Holland”; the names of the winners and the results of the competitions were also advertised in the appellant’s newspaper. The appellant received for the insertion of these advertisements a sum considerably more than the charge for ordinary advertisements, but he had no other interest in the competition, nor had T. any interest in the newspaper. Upon the hearing of summonses against the appellant under the Betting Act, 1853, for (a) unlawfully permitting the office to be used by T. for the purpose of money being received by T. as the consideration for an undertaking to pay money on events or contingencies relating to the game of football, and (b) unlawfully keeping the office for the purpose of money being received by or on behalf of T. for the like consideration, a magistrate found that T., by permission of the appellant, used the appellant’s office for the purpose of money being received by him as the consideration for his promise to pay money on the result of football matches, and that the appellant opened and kept the office for the purpose of the user by T.; he accordingly convicted the appellant :—

Held, that there was evidence on which the magistrate could properly find that the office was used as an essential part of the machinery for receiving money for an illegal purpose, and that the conviction was right. **MACKENZIE v. HAWKE** **Div. Ct. [1902] 2 K. B. 216**

7. — “*Coupon competition*”—*House used for betting—Information or advice with respect to bet or wager—Advertisement—Betting Act, 1853* (16 & 17 *Vict. c. 119*), ss. 1, 7—*Betting Act, 1874* (37 & 38 *Vict. c. 15*), s. 3, sub-s. 1.

By s. 7 of the Betting Act, 1853, a penalty is imposed on any person publishing any advertisement whereby it is made to appear that any house, office, &c., is opened, kept, or used for the purpose of “making bets or wagers in manner aforesaid.” The proprietor of a newspaper in England published an advertisement of an illegal football coupon competition conducted by a person resident abroad, the coupons for which were printed as part of the advertisement and were to be obtained at the office of the newspaper :—

Held, that the making of bets in “manner aforesaid” included all the modes of betting specified in s. 1 of the Betting Act, 1853, and was not limited to the class of betting described in the first branch of that section—that is, betting with persons “resorting to” the house, office, &c.—and that the proprietor of the newspaper was liable to be convicted upon a summons under s. 7.

By s. 3, sub-s. 1, of the Betting Act, 1874, a penalty is imposed upon the publication of an advertisement whereby it is made to appear that any person will on application give information or advice with respect to any bet or wager or any event or contingency mentioned in the principal Act—that is, the Act of 1853. The proprietor of the same newspaper published in it advertisements by persons offering to give information as to the probable winners of the football matches dealt with in the coupon competition :—

Held, that the proprietor of the newspaper was liable to be convicted of an offence under s. 3, sub-s. 1, of the Betting Act, 1874.

GAMING—continued.

Reg. v. Stoddart, [1901] 1 K. B. 177, followed.
Stoddart v. Argus Printing Co., [1901] 2 K. B. 470, dissented from. **HAWKE v. MACKENZIE**
 (Nos. 1 & 2) **Div. Ct. [1902] 2 K. B. 225**

8. — *Coupon competitions—House used for betting—Receipt of money elsewhere than at house—Betting Act, 1853* (16 & 17 Vict. c. 119), ss. 1, 5—*Gaming Act, 1892* (55 & 56 Vict. c. 9), s. 1.

In order that a case may come within s. 1 of the Betting Act, 1853, it is sufficient that a house or office has been used by the occupier for an essential part of operations carried on for the purpose of money being received by him as the consideration for a promise by him to pay money on events or contingencies of or relating to horse-races or other games or sports, although the receipt of the money did not take place at that house or office.

Sect. 5 of the Betting Act, 1853, is not repealed by s. 1 of the Gaming Act, 1892.

Stoddart v. Hawke, [1902] 1 K. B. 353, approved of. **LENNOX v. STODDART. DAVIS v. STODDART** **C. A. [1902] 2 K. B. 21**

9. — *Credit betting—Place used for purpose of receiving deposit—Betting Act, 1853* (16 & 17 Vict. c. 119), s. 5—"Such person aforesaid"—*Recovery of deposit.*

Deft. was a bookmaker, and plt., a foreigner residing in Germany, had remitted to the deft.'s bank, in March and April, 1905, sums of money to be placed to the deft.'s credit, and to be used by him for making bets on the plt.'s behalf and according to his instructions, and to answer his liability in the betting that was to take place.

Bets on the plt.'s behalf were made from time to time, with varying results, the deft. taking the bets himself; and ultimately, after the plt.'s deposit had become exhausted, the deft. refused to make any more bets for him. The plt. now sought to recover the amount of his deposits, under s. 5 of the Betting Act, 1853.

Joyce J. said that the money in question was clearly within the description in s. 5 of the Betting Act, 1853, "a deposit on any bet, or as or for the consideration for any such assurance, undertaking, promise, or agreement as aforesaid." The question to be decided really came to this—whether the deft. was "such person aforesaid" within the meaning of that expression in s. 5 of the Betting Act, 1853. Having regard to the authorities and the decided cases upon the construction of the Act, it was clear that the place was used by the deft. for the purpose of receiving deposits with a view to betting, and in particular for receiving the deposits from this plt. The repeal of the preamble to the Act in no way affected the construction of the clauses of the Act that were left standing. The deft. was not caught by s. 4. But the deft., within the meaning of the second branch of s. 1, did use 51, Lexington Street for the purpose of money being received by him as consideration for an agreement, &c., relating to horses; and he was also within s. 3, because being a person using 51, Lexington Street, he kept or used the same for one of "the purposes hereinbefore mentioned," namely, receiving money in reference to horse-racing. Then what was the meaning of "such

GAMING—continued.

person aforesaid" in s. 5? Was it limited to the person described in the immediately preceding s. 4, or did it include also persons using the office or place as mentioned in ss. 1 and 3? He thought the expression "such person aforesaid" in s. 5 was not confined to the persons described in s. 4, but included and extended to the persons described in ss. 1 and 2, and that the words used in ss. 1 and 2 applied to and correctly described the deft. It followed, therefore, that he was caught by s. 5, and that the plt. was entitled to succeed. **VOGT v. MORTIMER**

Joyce J. [1906] W. N. 180

— Creditor—Proof for interest—Solvent company—Gaming and wagering contract—Interest on sums deposited as over.
See COMPANY—WINDING-UP—Proof. 2.

— Discretion to deprive informer of portion of penalty.

See JUSTICES. 16.

10. — *Foreign country, Gaming in a—Gaming and wagering—Loan—Cheque—Consideration—Deemed to be illegal—Gaming Act, 1710* (9 Anne, c. 14), s. 1—*Gaming Act, 1835* (5 & 6 Will. 4, c. 41), s. 1.

The deft. gave to the plt. in Algiers a cheque drawn by him on an English bank, partly in payment of money lent by the plt. to the deft. to enable the deft. to play at baccarat in a club at Algiers, and, as to the balance, to be applied by the plt. in discharging debts incurred by the deft. when playing at baccarat in the club. The consideration for the cheque was legal according to the law of France. In an action on the cheque:—

Held, by Collins M.R. and Cozens-Hardy L.J. (Fletcher Moulton L.J. dissenting), that, inasmuch as the transaction was governed by English law, the cheque must be deemed to have been given for an illegal consideration within s. 1 of the Gaming Act, 1835, and that the action was, therefore, not maintainable.

Robinson v. Bland, (1760) 1 W. Bl. 234, 256; 2 Burr. 1077, followed.

King v. Kemp, (1863) 8 L. T. 255, not followed.
MOULIS v. OWEN **C. A. [1907] W. N. 62;**
[1907] 1 K. B. 746

Note.

This case was discussed by C. A., *Sawby v. Fulton*, [1909] 2 K. B. 208. *See No. 3, above.*

11. — *House used for betting—Receipt of money beyond the United Kingdom—Betting Act, 1853* (16 & 17 Vict. c. 119), s. 1.

By s. 1 of the Betting Act, 1853, it is an offence to keep a house for the purpose of money being received by or on behalf of the keeper of the house as the consideration for undertakings to pay thereafter money on events relating to horse-races or games:—

Held, that to constitute an offence under that section it is not necessary that the money should be intended to be received at the house itself, nor need the intended place of receipt be within the United Kingdom. **STODDART v. HAWKE**

Div. Ct. [1901] W. N. 219;
[1902] 1 K. B. 353

GAMING—continued.*Note.*

This case was approved by C. A., *Lennox v. Stoddart*, [1902] 2 K. B. 21. See No. 8, above.

— Place used for betting.

See Nos. 17, 18, below.

12. — *Lottery—Gratuitous distribution by newspaper proprietors of medals bearing numbers—Notification of winning numbers in newspaper—Possibility of obtaining prize without actual purchase of chance—Gaming Act, 1802 (42 Geo. 3, c. 119), s. 2.*

The proprietors of a weekly newspaper caused medals to be distributed gratuitously among members of the public; each medal bore a distinctive number and the words, "Keep this, it may be worth 100l." See the *Weekly Telegraph* to-day; the winning numbers, which were arbitrarily selected by the newspaper proprietors and were unknown to the distributors, were published weekly in the newspaper. There were no coupons, and it was not necessary that the holder of a medal should purchase a copy of the paper as a condition of receiving a prize; information as to the winning numbers could be obtained without charge at the office of the newspaper. The object of the scheme was to induce persons to inspect or buy the paper, and the circulation in fact increased considerably during the progress of the scheme:—

Held, that, although it was possible for an individual holder of a medal to obtain a prize without paying anything for his chance, the medal-holders as a body collectively contributed sums of money to the fund out of which the money came for the prizes, and that the scheme was a lottery within s. 2 of the Gaming Act, 1802. *WILLIS v. YOUNG AND STEMBRIDGE*

Div. Ct. [1907] 1 K. B. 448

13. — *Lottery—Keeping a place for a—User on one occasion only—Gaming Act, 1802 (42 Geo. 3, c. 119), s. 2.*

The use of a room on one occasion for the drawing of tickets in a lottery is not an offence under s. 2 of the Gaming Act, 1802, which forbids the keeping of any place for the purpose of a lottery. *MARTIN v. BENJAMIN*

[1906] W. N. 203; [1907] 1 K. B. 64

14. — *Lottery—Offence—Corporation—Person—Joint stock company—Lotteries Act, 1823 (4 Geo. 1, c. 60), ss. 41, 67—Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 2, sub-s. 1.*

The Lotteries Act, 1823, s. 41, enacts that if any person shall publish any proposal or scheme for the sale of chances in a lottery, not authorized by Act of Parliament, such person shall for every such offence be deemed a rogue and vagabond, and shall be punished as such in the manner thereafter directed. By s. 67 the punishment is imprisonment, and for a second offence imprisonment and whipping. By s. 4 of the Summary Jurisdiction Act, 1879, a fine may be imposed instead of imprisonment:—

Held, that a joint stock co. incorporated under the Companies Acts cannot be convicted of an offence under s. 41. *HAWKE v. E. HULTON & Co.*

Div. Ct. [1909] W. N. 88; [1909] 2 K. B. 93

GAMING—continued.

15. — *Lottery—Sweepstakes on horse-race—Gaming Act, 1802 (42 Geo. 3, c. 119), s. 2.*

The respondent, the keeper of a beer-house, arranged for a sweepstakes on a horse-race to be held on his premises. Sixty-one persons entered, each of whom paid 6d. to the respondent; and prizes amounting in the aggregate to 30s. were paid by the respondent to the persons who respectively drew the first three horses in the race, less the price of a certain quantity of beer which by the conditions of the sweepstakes had to be bought from the respondent by the prize-winners:—

Held, that the sweepstakes was a lottery within s. 2 of the Gaming Act, 1802. *HARDWICK v. LANE*

Div. Ct. [1904] W. N. 12; [1904] 1 K. B. 204

16. — *Money paid in respect of agreement void under the Gaming Act, 1845 (8 & 9 Vict. c. 109)—Agreement by way of gaming and wagering—Gambling partnership—Bets paid by one partner—Claim for contribution—Gaming Act, 1892 (55 & 56 Vict. c. 9), s. 1.*

Where one person advanced money to another for the purpose of making bets on horses on their joint account, and the money so advanced was lost on such bets:—

Held, that, by reason of the provisions of the Gaming Act, 1892, the person who had advanced the money could not maintain an action against the other for half of the amount so lost.

Tatam v. Reeve, [1893] 1 Q. B. 44, approved of. *SAFFERY v. MAYER*

C. A. [1901] 1 K. B. 11

17. — *Place used for betting—Bar of public-house—Betting Act, 1853 (16 & 17 Vict. c. 119), s. 3.*

The appellant, who was a bookmaker, was in the habit of frequenting the bar of an inn at certain hours for the purpose of carrying on a business of ready-money betting with persons resorting thereto, and the fact of his carrying on that business in the bar was known to those persons. He carried on the business there by the permission of the landlord, but he did not for the purposes of it occupy any specific portion of the bar:—

Held, that the above facts amounted to a "use" of the bar by the appellant for the purposes of betting in contravention of s. 3 of the Betting Act, 1853.

Belton v. Busby, [1899] 2 Q. B. 380, followed. *TROMANS v. HODKINSON*

Div. Ct. [1902] W. N. 204; [1903] 1 K. B. 30

Note.

This case was followed by C. C. R., *Rew v. Dearville*, [1903] 1 K. B. 468. See next Case.

18. — *Place used for betting—Bar of public-house—Betting Act, 1853 (16 & 17 Vict. c. 119), s. 3.*

Where a bookmaker is in the habit of frequenting the bar of a public-house for the purpose of carrying on a business of ready-money betting with persons resorting thereto, but for the purposes of that business does not occupy any specific portion of the bar, the question whether he "uses" the bar for the purpose of

GAMING—*continued*.

betting in contravention of s. 3 of the Betting Act, 1853, depends upon whether he so carries on his betting business there with the knowledge and permission of the occupier of the house.

Belton v. Busby, [1899] 2 Q. B. 380, and *Tromans v. Hodgkinson*, [1903] 1 K. B. 30, followed. *REX v. ALBERT DEAVILLE. REX v. JOHN DEAVILLE. REX v. SIMPSON*

C. C. R. [1903] 1 K. B. 468

— House used for betting.

See No. 11, above.

— Statutory defence — Notice — Gaming and wagering contract.

See COUNTY COURT—Practice. 15.

19. — Unlawful gaming — Common gaming-house — Shop containing automatic machine — Gaming House Act, 1854 (17 & 18 Vict. c. 38), s. 4.

The appellant, a shopkeeper, had in his shop an automatic machine which was worked on the following principle: A person desiring to use it put a penny in a slot and pressed and released a spring. According to the force with which this was done the penny fell into one or other of seven compartments. If it fell into either of two compartments it was automatically returned to the sender, and if it fell into the centre compartment he received from the machine a ticket entitling him to twopennyworth of articles sold in the shop. If, however, the penny fell into any of the other compartments it was retained by the machine. It having been proved that a number of boys and men had used the machine on certain days and had lost and won money by means of it, the appellant was convicted under s. 4 of the Gaming House Act, 1854, of having opened, kept, and used his shop for the purpose of unlawful gaming being carried on therein:—

Held, that the conviction was right. **FIELDING v. TURNER** **Div. Ct. [1903] 1 K. B. 867**

20. — Unlawful gaming — Staking money's worth — Gaming Houses Act, 1854 (17 & 18 Vict. c. 38), s. 4.

The appellant was convicted under s. 4 of the Gaming Houses Act, 1854, of keeping a room for the purpose of unlawful gaming. He kept in his shop an automatic machine of the kind known as slot machines for members of the public to play with. The machine contained three balls and three cups. The player placed a halfpenny in the slot and then pulled a lever which caused one of the balls to be thrown upwards. In falling it had to find its way into one of the cups. If it fell into one, the halfpenny was returned to the player; if into another, the ball was returned and could be played again; if into the third, the halfpenny was lost to the player. It was contended for the appellant that the game was played solely for amusement, that the player could not get more than his original halfpenny back or the right to continue playing, and that the element of wagering which is essential to constitute unlawful gaming was absent:—

Held, that the right of a player who recovered his halfpenny with the first ball to continue playing with the two remaining balls was a

GAMING—*continued*.

valuable thing which he had a chance of winning in addition to his stake, and that the use of the machine consequently amounted to unlawful gaming. **ROBERTS v. HARRISON**

Div. Ct. [1909] W. N. 163

21. — Whist — Absence of element of wagering — Licensing Act, 1872 (35 & 36 Vict. c. 94), s. 17.

To constitute gaming the game played must be one which involves the element of wagering; each player must have a chance of losing as well as of winning.

A number of persons hired a room in an hotel for the purpose of playing whist. They played for prizes, which were not subscribed for by the players, but were given by third persons:—

Held, that the whist so played did not amount to gaming within the meaning of s. 17 of the Licensing Act, 1872. **LOCKWOOD v. COOPER**

Div. Ct. [1903] W. N. 136; [1903] 2 K. B. 423

GARDENER — Cottage — Improvements — Reimbursement out of capital moneys.

See SETTLED LAND—Capital Moneys. 5.

— Glass-houses — Market gardeners' compensation — Fruit trees.

See LANDLORD AND TENANT. 5.

— Market Gardeners' Compensation (Scotland) — Improvements — Retrospective effect of statute.

See LANDLORD AND TENANT. 3.

GARNISHEE — Attachment of debt — Balance in hands of garnishee — Practice — Garnishee summons.

See ATTACHMENT. 8.

— Attachment of debts — "Companies Liquidation Account" — Garnishee order.

See ATTACHMENT. 7.

— Attachment of debts — Execution — Rights of garnishee — Debenture-holder — Priorities.

See ATTACHMENT. 5.

— Attachment of debts — Retired pay of officer in Army.

See ATTACHMENT. 6.

— Bankruptcy.

See under BANKRUPTCY—Garnishee.

— Company — Debenture-holder — Receiver — Attachment of debts — Garnishee order nisi — Priority.

See COMPANY—Receiver. 7.

— Forfeiture clause — Gift of income to A. for life or until alienation — Garnishee order.

See WILL—Forfeiture. 5.

— Garnishee order — Company — Debentures — Floating security.

See COMPANY—Debentures. 13.

— Garnishee order nisi — Attachment of debt — Scotch judgment — Extension to England.

See ATTACHMENT. 4.

GARNISHEE—*continued*.

— Garnishee order nisi—Stay of execution under judgment.

See **BAKRUPTCY**—**Notice**. 10.

— Order absolute—Judgment creditor—Mistake—Setting aside.

See **Setting aside**.

— Payment by garnishee after notice of order nisi—Cheque—Duty to stop payment.

See **DIVORCE**—**Practice**. 20.

1. — *Practice — Garnishee order — Discretion to make order — Incomplete discharge of garnishee — Liability to pay a second time — Refusal of order — Debt — R. S. C., Order XLV., rr. 1, 7.*

The making of a garnishee order is discretionary, and an order which would have the effect of leaving the garnishee liable to pay the amount of his debt a second time is inequitable, and will be refused. *MARTIN v. NADEL*; *DRESDNER BANK, GARNISHEES* - C. A. [1906] **W. N. 111**; [1906] **2 K. B. 26**

— Trial of garnishee issue by Master—Appeal from decision of Master—Practice.

See **APPEAL**. 20.

GAS—Arrears of gas rate—Right to recover from incoming tenant—*Gas Works Clauses Act, 1847, (10 & 11 Vict. c. 15), s. 16—Metropolis Gas Act, 1860 (23 & 24 Vict. c. 125), s. 39—Gas Light and Coke Company's Act, 1872 (35 & 36 Vict. c. xxiii.), s. 18.*

When a consumer of gas supplied by the Gas Light and Coke Co. on premises within the co.'s district leaves the premises without paying for the gas, and the incoming tenant continues the trade or business of the outgoing consumer and pays him a consideration for so doing, the co. cannot under its special Act of 1872, c. xxiii., recover by legal process the arrears from the incoming tenant.

The decision of the C. A., *Gas Light and Coke Co. v. Cannon Brewery Co.*, [1903] **1 K. B. 593**, reversed, and the decision of Lord Alverstone C.J., *Darling and Channell JJ.*, restored.

Gas Light and Coke Co. v. Mead, (1876) **45 L. J. (M.C.) 71**, approved. *CANNON BREWERY Co. v. GAS LIGHT AND COKE CO.*

H. L. (E.) [1904] W. N. 110; [1904] **A. C. 331**

— Company—Negligence—Article of dangerous nature—Contractor—Misfeasance.

See **CANADA**—**Gas**. 2.

— Engine (Gas)—Distress—Landlord and tenant—Trade fixtures—Hiring agreement.

See **DISTRESS**. 11.

— Gas company—Additional expense imposed on gas company by reason of existence of tramway—Liability of tramway company.

See **TRAMWAYS**. 2.

— Gasworks—Value of gasworks as a going concern.

See **NEW ZEALAND**. 8.

— Income tax—Gas company—Standard rate of dividend.

See **REVENUE**—**Income Tax**. 19.

GAS—*continued*.

— Laying electric lines near gas mains—Arbitration—Conviction—Penalties.

See **ELECTRIC LIGHT**. 6.

— Sewer gas—"Enteritis"—Workmen's compensation.

See **MASTER AND SERVANT**—**Compensation**. 61.

— Sewers rate—Gas mains liable to be rated as unsewered property—Law of Victoria.

See **VICTORIA**.

— "Supply" of electricity—Electric lighting—Municipal corporation—Statutory powers.

See **ELECTRIC LIGHT**. 6.

— "Supply of gas"—"Supply of water"—Supplying water outside statutory limits—Ultra vires—Injunction.

See **WATER**. 25.

2. — *Testing — Interpretation of statutes — "Daily" — Construing statute by long prevailing practice — Sunday testing — London — Gas Light and Coke and other Gas Companies Acts Amendment Act, 1880 (43 & 44 Vict. c. clxxvi.), s. 7 — Practice — Parties — Injunction — Corporation — Statutory body — Public duties — Attorney-General, suing by.*

By the South Metropolitan Gas Co.'s special Acts of 1869 and 1876 provision was made for the public testing of the quality of the gas supplied by them to their customers. The mode of testing and the situation and number of the testing places, which were to be provided by the co. and to be under the control of the Metropolitan Board of Works (whose powers subsequently became vested in the plts., the London County Council) were to be prescribed by gas referees appointed by the Board of Trade, and "daily" testings were to be made by gas examiners appointed by the Metropolitan Board.

Similar provisions were contained in the special Acts of the other metropolitan gas cos. By an Act passed in 1880, which was applicable to all the metropolitan gas cos., the provisions as to "daily" testings were substantially re-enacted by a section which provided that a gas examiner should, at each testing place, "make daily" such number of tests as the gas referees should prescribe. Other sections gave the Metropolitan Board, as "the controlling authority," the control and management of the testing places.

There was also a provision in the Act of 1869, which was to be read with the Act of 1880, defining "day" as twenty-four hours, beginning at nine o'clock in the forenoon of one day and ending at nine o'clock in the forenoon of the next. The practice under these Acts until 1902 had been to test on week-days only:—

Held (affirming *Joyce J.*, [1903] **W. N. 90**; [1903] **2 Ch. 532**), that the word "daily" in the Act of 1880 must be construed literally, as including Sundays, and that the previous practice under that and the earlier Acts was not sufficient to justify the Court in departing from that literal construction; and, accordingly, that the gas examiners appointed by the London County Council were entitled to test on Sundays the gas supplied by the co.

GAS—continued.

Yewens v. Noakes, (1880) 50 L. J. (Q.B.) 132, considered.

Held, also, that the London County Council, as the body entrusted by Parliament with the control and management of the testing places provided by the co., were proper plts. in an action for an injunction to restrain the co. from preventing the gas examiners from making tests on Sundays; and, therefore, that it was not necessary that the action should be brought by the Att.-Gen. *LONDON COUNTY COUNCIL v. SOUTH METROPOLITAN GAS CO.*

[1903] W. N. 205; C. A. [1904] 1 Ch. 76

— Tramway company, Liability of—Additional expense imposed on gas company by reason of existence of tramway.

See TRAMWAYS. 2.

— Value of gasworks as a going concern.

See NEW ZEALAND. 8.

— Workmen's Compensation—Gas main in street at a distance from works.

See MASTER AND SERVANT—Compensation. 92.

GAS ENGINE.

See under GAS.

GAS LIGHT AND COKE COMPANY.

See Cases under GAS.

GASWORKS.

See under GAS.

GATE—Railway company—Level crossing—Obligation to maintain gate—Straying horse.

See RAILWAY—Level Crossings. 4.

GAVELKIND—Descent—Partibility—Collaterals.

The partibility of lands held in gavelkind among the heirs in equal shares extends to collaterals of every degree, and is not confined to brothers and their issue or nearer relations. The custom of gavelkind is the common law of the land in Kent, and its extension to collaterals is, therefore, a question for the judge, and need not be proved by usage, as in the case of a manorial custom which is in contravention of the common law. *In re CHENOWETH. WARD v. DWELLEY Farwell J.* [1902] W. N. 133; [1902] 2 Ch. 488

GENERAL AVERAGE—Insurance.

See Cases under INSURANCE (Marine).

— Shipping.

See under SHIPPING—Average.

GENERAL COUNCIL OF THE BAR.

See under COUNSEL.

GENERAL WORDS—Covenant—Construction—Trade fixtures—Ejusdem generis—Tenant's right of removal.

See FIXTURES. 10.

— Easement—Tramway—Express or implied grant—Derogation.

See TRAMWAYS. 6.

— Royal charter—Grant of lands to subjects—Construction—Treasure trove.

See CROWN. 4.

GENERAL WORDS—continued.

— Ways enjoyed with the land sold—Permissive enjoyment.

See WAY, RIGHT OF. 10.

GEOGRAPHICAL NAME—Trade mark—Registration.

See TRADE MARK. 32.

GERMANY—Practice—Service out of the jurisdiction—Order of the Lord Chancellor, dated July 4, 1904, that Order XI, r. 8, of the Rules of the Supreme Court shall apply to the German Empire. Reprint from W. N. 1904 (July 23), p. 231. *See* CURRENT INDEX, 1904, p. cxxv.

— Extradition—Treaty between Great Britain and Germany for the Mutual Surrender of Fugitive Criminals of May 14, 1872, arts. 4, 5.

— Fugitive criminals.

See under EXTRADITION.

GLASGOW—Bridge carrying public highway over railway.

See SCOTTISH LAW. 3.

— Insurance—Professional—Widows' fund limited to members of a society—Contributor expelled from society—Glasgow Faculty of Procurators' Widows' Fund Act, 1833.

See INSURANCE (Professional). 1.

— Streets—Glasgow Building Regulations.

See SCOTTISH LAW. 24, 25.

GLASGOW (CITY OF) ACT, 1891.

See SCOTTISH LAW. 3.

GLASGOW COURT HOUSES ACT—Rates—Assessment—Construction of statute.

See RATES. 7.

GLASGOW POLICE ACT, 1866.

See SCOTTISH LAW. 3.

GLASS-HOUSES—Agricultural Holdings—Removable fixtures—Market gardeners' compensation.

See LANDLORD AND TENANT. 5.

GLEBE LANDS—Provision as to glebe lands.

See SMALL HOLDINGS AND ALLOTMENTS ACT, 1907 (7 Edw. 7, c. 54), s. 29.

Glebe Lands Act, 1888 (51 & 52 Vict. c. 20)—*The Sale of Glebe Land Rules, 1909, dated Aug. 13, 1909—Rules made pursuant to the provisions of the Glebe Lands Act, 1888* (51 & 52 Vict. c. 20), with the approval of the Lord High Chancellor of Great Britain, in relation to the sale of glebe land under the said Act. Reprint from W. N. 1909 (Sept. 25), p. 317. *See* CURRENT INDEX, 1909, p. cxviii.

Purchase-money for glebe lands to be paid to Ecclesiastical Commissioners. See Development and Road Improvement Funds Act, 1909 (9 Edw. 7, c. 47), Sched. (6).

Purchase-money for glebe land to be paid to Ecclesiastical Commissioners. See Housing, Town Planning, &c., Act, 1909 (9 Edw. 7, c. 44), Sched. 1 (12).

GLEBE LANDS—*continued.*

- Land tax—Exemption—Glebe lands let on leases—User and occupation.
- See* NEW SOUTH WALES. 18.

GLOUCESTERSHIRE (WEST) WATER ACTS

- “Supply of water”—Supplying water outside statutory limits—Injunction.
- See* WATER. 25.

GOLDFIELDS ACT, 1886—Notice of forfeiture of lease to lessee—Appeal from Western Australia.

See AUSTRALIA. 10.

GOODS—Dangerous goods—Common carrier—Duty of consignor to inform carrier of nature of goods.

See CARRIER. 3.

- Sale of goods.

See under SALE OF GOODS. 3.

GOODS SOLD AND DELIVERED—Action for—Liability of estate of deceased partner.

See PARTNERSHIP.

GOODWILL—Debenture—“Property”—Jurisdiction to appoint manager.

See COMPANY—Debentures. 18.

- Partnership.

See PARTNERSHIP. 5.

1. — Sale of business—Soliciting old customers.

The rule laid down in *Trego v. Hunt*, [1896] A. C. 7, that the vendor of the goodwill of a business may not solicit any person, who was a customer of the old business prior to the sale, to continue to deal with the vendor, or not to deal with the purchaser, applies to all such persons, and ought not to be limited so as to exclude persons who before solicitation have of their own accord become customers of the vendor. *CURL BROTHERS, LD. v. WEBSTER* — **Farwell J.** [1904] W. N. 56; [1904] 1 Ch. 685

- Stamp — Agreement for sale — Agreement “made” in the United Kingdom.

See REVENUE—Stamps. 1.

GOOLE REACH, RIVER OUSE—Navigation of—Collision—Local practice to swing—Helm signal.

See SHIPPING—Collision. 38.

GOVERNMENT STORES—Salvage—Negligence—Liability of charterers of salvaged vessel.

See SHIPPING—Salvage. 16.

GRAMMAR SCHOOL.

See under SCHOOLS.

GRAMOPHONE—Copyright.

See under COPYRIGHT—Gramophone.

- Trade mark — Word directly referring to character of goods—Distinctive word.

See TRADE MARK. 16.

GRANDCHILDREN—Gift to—Illegitimate child described as “son.”

See WILL—Illegitimacy. 5.

GRANDCHILDREN—*continued.*

- Will—Construction—Words of futurity—Gift to grandchildren in case any child “shall predecease me.”

See WILL—Futurity, Words of. 1.

GRANT—Crown lands—Grant of foreshore by the Crown—Pier—Unauthorized construction—Public nuisance.

See PIER. 1.

- Derogation from grant—Disturbance induced by landlord—Action by tenant—Third party notice by landlord for indemnity.

See LANDLORD AND TENANT. 67.

- Derogation from grant—Implied release of power.

See SETTLEMENT. 38.

- Derogation from grant—Light—Trespass—Party wall—Landlord and tenant.

See LONDON—Buildings. 19.

- Easement — Tramway — Express or implied grant—Derogation—General words.

See TRAMWAYS. 6.

- Grant of administration.

See under ADMINISTRATION.

- Highway—Presumption of lost grant—Fee farm rent—Payment for long period.

See under HIGHWAY. 18.

- Land—Construction—Title—Terms of grant—Diagram.

See CAPE OF GOOD HOPE. 6.

- Letters of administration.

See under ADMINISTRATION.

- Light and air.

See under LIGHT AND AIR.

- Lost grant—Pleading—Particulars—Date and parties.

See PRACTICE—Pleadings. 3.

- Lost grant—Right of way.

See under WAY, RIGHT OF.

- Pier—Unauthorized construction—Rates for passengers—Rates for vessels “mooring”—Foreshore—Crown grant.

See PIER. 1.

- Presumption of lost grant—Presumption of legal origin to support long user.

See PRESCRIPTION. 2.

- Probate.

See under PROBATE.

- Railway—Severed lands—Grant of right to make “a tunnel”—Uncertainty—Perpetuity—Assignability.

See RAILWAY — Accommodation Works. 2.

- Real estate—Exception—Uncertainty—Election.

See CONVEYANCE. 2.

- Release or grant—Conveyance by husband and wife of moiety of wife's land—Husband's rent-charge not mentioned.

See DEEDS. 6.

GRANT—*continued.*

- Royal charter—General words—"Franchises"—Title of Crown.
See CROWN. 4.
- Support, right of—Presumed lost grant—Prescription.
See SUPPORT. 1.
- Title to grant of way by the public—Law of the Channel Islands.
See GUERNSEY. 1.
- Trustee—Refusal to act—Disclaimer by grantee—Revesting of legal estate—Voluntary settlement.
See SETTLEMENT. 48.
- Water.
See under WATER.
- Way, right of.
See under WAY, RIGHT OF.
- Will—Destruction—Intention—Executors according to the tenor—Universal legatees in trust—Form of grant.
See WILL—Destruction. 1.

GRANT OF PROBATE.*See under PROBATE.*

- GRATES**—Mortgagor and Mortgagee—"Dog grates" substituted for fixed grates—Intention to improve inheritance.
See FIXTURES. 5.

GRATUITIES—Company.*See under COMPANY—WINDING-UP—Gratuities.*

- GRAVEL**—Gravel pits—Exhaustion of subject-matter of assessment—Value of occupation when rate made—Poor-rate.
See RATES. 14.

- Sand—Mines and minerals—Quarries—Regulation of railways.
See MINES. 6.

GREAT SEAL (OFFICES) ACT, 1874—*Abolition of fees—Order of the Lord Chancellor dated May 19, 1904. W. N. 1904 (June 4), p. 197. See CURRENT INDEX, 1904, p. cxvii.*

GREAT WESTERN RAILWAY COMPANY (RATES AND CHARGES) ORDER CONFIRMATION ACT.*See RAILWAY—CARRIAGE.**RAILWAY—Rates.**RAILWAY—Trucks.*

- GREECE**—Declaration of trust in favour of the Greek Orthodox Church—Construction.
See CANADA—Ecclesiastical Law. 1.

- GREENOCK HARBOUR ACTS**—Judicial factor—Receiver—Power to increase rates.
See SCOTTISH LAW. 20.

GRENADA—Privy Council Appeals.*See under PRIVY COUNCIL.***GROUND GAME.***See under GAME.*

- GROUND-RENTS**—Costs of lease creating—Reinvestment in land.
See LANDS CLAUSES ACTS. 22.

- Investment by trustees—Breach of trust—Purchase of leasehold ground-rents.
See WILL—Investments. 1.

- GUARANTEE**—Bank—Indemnity—Action quia timet—Joint and several guarantee of overdraft at bank—No demand by bank for payment.
See PRINCIPAL AND SURETY. 2.

- Bond to secure fidelity of employee—Death of surety—Notice.
See PRINCIPAL AND SURETY. 1.

- Company.

See under COMPANY—Guarantee.

- Company—Winding-up.

See under COMPANY—WINDING-UP—Guarantee.

- Debentures by a municipality—Invalidity of by-law—Quebec Act.
See CANADA—Corporation. 1.

- Devastavit—Statute of Limitations—Claim on guarantee.
See EXECUTOR—Devastavit. 1.

1. *Indemnity—Oral "promise to answer for the debt of another"—Statute of Frauds (29 Car. 2, c. 3), s. 4.*

The deft., who was a director of and had a large interest as a shareholder in a co., which he had also financed, orally promised the plts., who were judgment creditors of the co., and who had delivered to the sheriff a writ of *fi. fa.*, which they had issued upon their judgment, on which the sheriff had failed to levy because he could not effect an entry, that he (the deft.) would indorse bills for the amount of the debt:—

Held, that this promise was not a contract of indemnity, but was a "promise to answer for the debt of another" within s. 4 of the Statute of Frauds, and that, as it was not in writing, an action for the breach of it could not be maintained:

Held, also, that the case was not excepted from s. 4 by reason of the interest which the deft. had as a shareholder and otherwise in freeing the goods of the co. from the execution, he having no legal interest in or charge upon the goods.

The authorities which have established exceptions from s. 4 considered.

Decision of Mathew J. reversed. **HARBURG INDIA RUBBER COMB CO. v. MARTIN.**

C. A. [1902] W. N. 62; [1902] 1 K. B. 773

- Mortgage debt—Mortgage insurance policy—Indemnity—Guarantee—Co-suretyship—Contribution.

See PRINCIPAL AND SURETY. 3.

- Signed by wife for debt of husband—Creditor procuring guarantee through husband.
See HUSBAND AND WIFE—Guarantee. 1.

- GUARANTOR**—Bankruptcy of—Principal and surety—Proof for future interest.
See BANKRUPTCY—Proof. 8.

GUARD—Railway—Workmen's Compensation—Earnings—Lodging allowance.
See MASTER AND SERVANT—Compensation. 120.

GUARDIAN—Infant.
See under INFANT—Guardian.

GUARDIAN AD LITEM—Appearing in Court in person—Infant defendant.

See INFANT—Guardian ad Litem. 1.

— Costs—Taxation—Official solicitor—Practice.
See COSTS. 70.

— Infant defendants—Costs—Official solicitor.
See SOLICITOR—Costs. 27.

— Nullity of marriage — Lunatic — Decree—Costs of the official solicitor as guardian ad litem of the respondent—Form of order.

See DIVORCE—Nullity. 10.

— Probate — Practice — Lunatic defendant — Position of official solicitor, if appointed guardian ad litem.

See PROBATE—Lunacy. 2.

GUARDIANS (BOARD OF) — Member — Collection of rent for the Board — Retention of commission—Disqualification—Vacancy.

See LOCAL GOVERNMENT. 14.

GUARDIANS (BOARD OF)—*continued.*

— Poor law.

See under POOR LAW.

GUERNSEY—*Law of the Channel Islands—Title to right of way by the public—Grant—Effect of delay in suing after attaining majority.*

In the Channel Islands, where the doctrine of dedication to the public is unknown, (1.) title to a right of way must be made out by the public as by a private individual, by either grant or prescription; (2.) a grant must be matter of record; and, *quære*, whether prescription will avail without proof of title:—

Held, in an action by the appellant to have it determined that the public had no right of way over his property, that a registered minute of a resolution of the Seigneur and resident tenants of the Island of Sark, where it was situated, which did not duly record a completed transaction of grant, being rather a note of an unaccepted offer, was neither in form nor effect sufficient to create a title in the public:

Held, also, that a minor is not required to bring an action of title within a year of his majority. *GODFRAY v. CONSTABLES OF THE ISLAND OF SARK* P. C. [1902] A. C. 534

GYMNASIUM—Library.

See under LIBRARY

H.

HABEAS CORPUS—*Appeal—Criminal cause or matter—Practice—Fugitive offender—Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 47—Application to C. A. under Fugitive Offenders Act, 1881 (44 & 45 Vict. c. 69), s. 10—Estoppel by judgment—Res judicata—Absence of adjudication as of record.*

An appeal will not lie to the C. A. against the refusal of a Div. Ct. to issue a writ of habeas corpus in the case of a prisoner committed under the Fugitive Offenders Act, 1881.

An order nisi for a habeas corpus was obtained in the K. B. Division on the application of a person in custody under the Fugitive Offenders Act, 1881, but was afterwards discharged. The affidavit upon which the order nisi was obtained stated (*inter alia*) matters material as grounds for the exercise of the power given by the Fugitive Offenders Act, 1881, s. 10, but the order nisi was in form simply for a habeas corpus, and not, in the alternative, for relief to the prisoner under s. 10. On the argument of the order nisi, the matters referred to in the affidavit as aforesaid were discussed, and the Court in giving judgment pronounced them insufficient as grounds for the exercise of the powers given by s. 10 of the before-mentioned Act in favour of the prisoner. The order ultimately drawn up was, however, simply for discharge of the order nisi for a habeas corpus. An application was subsequently made to the C. A. to exercise the powers given by s. 10, as having original jurisdiction in that behalf under the Act concurrently with the High Court. A preliminary objection was taken to the hearing of the application on the ground that the matter had been previously adjudicated upon by the K. B. Division, and was therefore *res judicata*.

Held by Vaughan Williams L.J., Fletcher Moulton L.J., and Buckley L.J., that inasmuch as the only matter adjudicated upon by the order of the K. B. Division, as drawn up, was that the order nisi for a habeas corpus should be discharged, the matter of the application to the C. A. was not *res judicata*, and (Buckley L.J. doubting) that the C. A. had original jurisdiction to entertain the application.

Quære, whether, in a case where an application for relief under s. 10 of the Fugitive Offenders Act, 1881, has been adjudicated upon, and an order has been made dismissing the same in the High Court, it is competent for the applicant to make a similar application to the C. A. **REX v. GOVERNOR OF BRITTON PRISON, Ex parte SAVARKAR - C. A. [1910] 2 K. B. 1056**

2. — *Foreign country in which the Crown has jurisdiction—Protectorate—Foreign Jurisdiction*

HABEAS CORPUS—*continued.*

Act, 1890 (53 & 54 Vict. c. 37)—Order in Council—Proclamation—Validity—Arbitrary arrest—Act of State—Person having custody of prisoner—Secretary of State for Colonies—"Foreign dominion of the Crown"—16 Car. 1, c. 10, ss. 6, 8—Habeas Corpus Act, 1862 (25 & 26 Vict. c. 20), s. 1.

By an O. in C. dated May 9, 1891, made "in exercise of the powers by the Foreign Jurisdiction Act, 1890, or otherwise in Her Majesty vested," the High Commissioner for South Africa was authorized to exercise in the Bechuanaland Protectorate the powers of Her Majesty, and to do all such things "as are lawful," and to provide by proclamation for the administration of justice and generally for the peace, order, and good government of all persons within the Protectorate, including the prohibition and punishment of all acts tending to disturb the public peace.

One Sekgome, who claimed to be the chief of a native tribe in the Protectorate, was detained in custody at a place within the Protectorate by virtue of a proclamation authorizing his detention, and expressed to have been made by the High Commissioner, under the powers conferred on him by the O. in C., on the ground that the detention of Sekgome was necessary for the preservation of peace within the Protectorate.

On an application by Sekgome for a writ of habeas corpus to the Secretary of State for the Colonies:—

Held (affirming an order of the Div. Ct. dismissing the application), that the Protectorate was a foreign country in which His Majesty had jurisdiction within the meaning of the Foreign Jurisdiction Act, 1890; that the proclamation was validly made under the powers conferred by the O. in C.; and that the detention of Sekgome was, therefore, lawful.

Sprigg v. Sigau, [1897] A. C. 238, distinguished.

Held, also, by Vaughan Williams and Kennedy L.J.J., that the Protectorate was not a "foreign dominion of the Crown" within s. 1 of the Habeas Corpus Act, 1862.

Quære, whether, in any event, the Secretary of State for the Colonies was a person having the custody of Sekgome, to whom a writ of habeas corpus could be issued. **REX v. CREWE (EARL OF). Ex parte SEKGOME - C. A. [1910] 2 K. B. 576**

3. — *Jurisdiction to order issue of writ—Writ to person out of jurisdiction at date of order.*

There is no power in the Court or a judge to order the issue of a writ of habeas corpus directed

HABEAS CORPUS—*continued.*

to a person who at the date of the order is out of the jurisdiction. *REX v. PINCKNEY*

C. A. [1904] W. N. 63; [1904] 2 K. B. 84

— Writs of habeas corpus—Extradition—Arrest and remand of accused—Jurisdiction—Procedure—Release.

See **CANADA—Extradition. 1.**

HABENDUM—Words of limitation—Habendum to grantee “in fee”—Supplying omission from context.

See **CONVEYANCE. 1.**

HABITUAL CRIMINAL.

See under **CRIMINAL LAW.**

HACKNEY CARRIAGE—Carriages generally.

See under **CARRIAGE.**

1. — *Licence—Carriage plying or driven for hire—Concealment of number-plate—Local Government—By-law—Town Police Clauses Act, 1847 (10 & 11 Vict. c. 89), s. 38.*

A by-law made under the Town Police Clauses Act, 1847, provided that “every proprietor of a hackney carriage” should cause the number of the licence granted to him in respect of that carriage to be marked on a plate fixed on the outside of the carriage, and should not cause or suffer the plate to be concealed from public view “while such carriage may stand, ply, or be driven for hire.” By s. 38 of the Town Police Clauses Act, 1847, every wheeled carriage “used in standing or plying for hire in any street” shall be deemed to be a hackney carriage within the meaning of the Act.

The proprietor of a hackney carriage licensed under the Act, having received an order for a carriage to take a person from his house to a ry. station, sent the licensed carriage direct from the yard with the number-plate concealed from view by a board placed over it, and in that condition the carriage was driven from the house of the person who had given the order to the ry. station along a street within the district to which the by-law applied. The proprietor having been convicted by justices of an offence against the by-law:—

Held, that the carriage, whilst it was so being driven along the street, was a “hackney carriage” within the meaning of s. 38 of the Town Police Clauses Act, 1847; that the by-law applied to it; and that the conviction was, therefore, right. *HAWKINS v. EDWARDS*

Div. Ct. [1901] W. N. 88; [1901] 2 K. B. 169

— *London.*

See under **LONDON—Carriages.**

2. — *Negligence of driver—Liability of proprietor—Relation of master and servant—London Hackney Carriages Act, 1843 (6 & 7 Vict. c. 86), ss. 2, 28, 35—Metropolitan Public Carriage Act, 1869 (32 & 33 Vict. c. 115), s. 6.*

The deft. and her son were partners in the business of cab proprietors in London. A cab belonging to the partners, which was let in the ordinary way to a cabman, through his negligence came into collision with another vehicle, in which the plt. was riding, whereby injuries were occasioned to the plt. The licence for the

HACKNEY CARRIAGE—*continued.*

cab was taken out in the name of the deft.'s son, who appeared on the register of licences as the proprietor thereof. In an action by the plt. against the deft. in respect of the injuries occasioned to the plt. as aforesaid:—

Held, that the action was maintainable on the ground that the liability imposed in such cases on cab proprietors, by virtue of the Acts relating to hackney carriages, is not confined to licensed proprietors, or that the deft. must be considered as being a licensed proprietor in respect of the cab. *GATES v. R. BILL & SON*

C. A. [1902] 2 K. B. 38

HALL-MARK—Plate.

See under **PLATE.**

HARBOUR.

(Harbours and Docks.)

Holyhead Harbour.] By-laws dated June 2, 1905, made for the regulation of the Harbour of Holyhead by Board of Trade in pursuance of the Act of 4 Geo. 4, c. 74. St. R. & O. 1905. No. 655.

1. — *Assessment—Public Health (Scotland) Act, 1897 (60 & 61 Vict. c. 38).*

The House reversed the decision of the Second Division of the Ct. of Sess. (June 1, 1904) 41 S. L. R. 658, with costs. *TRUSTEES OF PORT AND HARBOUR OF GREENOCK v. GREENOCK MAGISTRATES*

H. L. (Sc.) [1905] W. N. 135

2. — *Boundary—“Precincts”—Removal of sand from foreshore—Construction of statute—Musselburgh Harbour Act, 1840 (3 Vict. c. lxiii.), ss. 2, 49, 76.*

By s. 2 of the Musselburgh Harbour Act of 1840 the word “harbour” shall be understood to mean the “harbour of Fisherrow,” and shall include the whole precincts thereof as after specified. By s. 76 the said harbour shall be deemed to extend “along the shore” from the Magdalen Burn on the west to the Ravenshaugh Burn on the east, and to seaward to the extent of 100 yards beyond low water mark opposite to the shore between the aforesaid burns. The distance between the two burns was two miles.

By s. 49 it shall not be lawful for any person to dig or take away from the said harbour or its precincts any sand, gravel, shingle, or stones except from such place or places as shall from time to time be appointed by the harbour commissioners. In an action by the harbour commissioners against persons who were proprietors of part of the foreshore between the two burns to restrain them from digging sand, &c.:—

Held, affirming the decision of the Second Division of the Ct. of Sess., (1903) 5 F. 387, that the harbour and its precincts included the whole foreshore between the two burns, and that the defenders were not entitled to remove sand from their land without the authority of the harbour commissioners.

Att.-Gen. v. Tomline, (1880) 14 Ch. D. 51, followed. *MUSSELBURGH REAL ESTATE CO. v. PROVOST, & C., OF MUSSELBURGH*

H. L. (Sc.) [1905] W. N. 130; [1905] A. C. 491

3. — *Dock Dues—Right to detain vessel until dues paid—Maritime lien for crew's wages—*

HARBOUR—continued.

Priority—Mersey Dock Acts Consolidation Act, 1858, (21 & 22 Vict. c. xciii.), ss. 248, 253.

Sect. 253 of the Mersey Dock Acts Consolidation Acts, 1858, which provides that while any dock tonnage rates remain unpaid in respect of any vessel liable thereto the Mersey Docks and Harbour Board may cause such vessel to be detained, until all such rates have been paid, gives the board a paramount right to detain a vessel until the dock tonnage rates due in respect of her are paid, notwithstanding that the master and crew of the vessel have a maritime lien upon her for wages due before she entered the dock. **THE EMILIE MILLON - C. A. [1905] 2 K. B. 817**

— “Factory” — “Navigable river.”

See MASTER AND SERVANT—Compensation. 149.

— Greenock Harbour Acts—Judicial factor—Receiver—Power to increase rates.

See SCOTTISH LAW. 20.

4. — Harbour dues—Ports—Limits of port—Ships loading or unloading goods within the limits of port—Fiscal or customs port—Commercial or local port—Natural port artificially enlarged—Statute—Construction—33 Geo. 3, c. cxxiii.—49 Geo. 3, c. xxiv.

By two private Acts trustees were authorized to levy rates and duties upon ships loading or unloading “within the limits of the port of Carnarvon” :—

Held that, upon the true construction of the Acts, the words used meant the wider limits of the fiscal port, and not the limits of the local or popularly understood port of Carnarvon.

The decision of the C. A., [1906] 1 Ch. 179, affirmed. **ASSHETON SMITH v. OWEN**

H. L. (E.) [1907] W. N. 72 ; [1907] A. C. 124

— Justices — Jurisdiction—Ouster — Bona fide claim of right—Foreshore—Removal of shingle—Owner.

See JUSTICES. 11.

— Liability of harbour board—Powers of harbour-master—Negligence in removing and remooring vessels in port.

See CAPE OF GOOD HOPE. 5.

— Pier.

See under PIER.

5. — Ship—Damage—Defective berth—Duty of harbour authority—Duty of wharf owner.

In an action by the owners of a steamship against trustees, in whom a harbour was vested by statute with the usual rights as to tolls, and duties as to maintenance, and against a ry. co., owners of a wharf, to recover the amount of damage sustained by their vessel by reason of the defective condition of a berth alongside the wharf in the harbour, the defence on the part of the trustees substantially was that as they had not received any report from the local pilots, upon whom the duty was imposed by their by-laws of making periodical inspections and taking soundings, they had not been negligent in being unaware of the defective condition of the berth. Secondly, that the defect was due to the wrongful act of those in charge of a steamer throwing the stokehold refuse overboard immediately prior

HARBOUR—continued.

to the arrival of the plt.'s vessel, and, therefore, it was not reasonably possible for the trustees to be aware of the defect, as periodical inspections would not have detected it. The defence on the part of the ry. co. was that as the responsibility of keeping the berth in proper condition rested with the trustees, who they knew employed the pilots to take the necessary soundings, they were not negligent in being unaware of a defect due to a breach of the harbour by-laws by persons unknown :—

Held, by the C. A., affirming the decision of the Court below, that both defts. were liable—the trustees because they had negligently omitted to perform the duty laid down in *Mersey Docks Trustees v. Gibbs*, (1866) L. R. 1 H. L. 93, of taking reasonable care to see whether the harbour, including the berth in question, was in a fit condition, and they could not shift this duty on to the local pilots who were not their servants, and whose duty to sound was for the purpose of enabling them efficiently to navigate the vessels employing them. Secondly, assuming without evidence that the defect had been caused so shortly before the plt.'s vessel came in that periodical examinations would not have detected it, this defence was not open to them, because they had not performed their duty of examination of the berth by their servants, and, therefore, could not be heard to say that if they had done their duty the defect would not have been detected. The ry. co. was liable under the rule in *The Moorcock*, (1889) 14 P. D. 64, because as owners of the wharf they had invited the plt.'s vessel alongside for profit to themselves, and could not rely upon the pilots performing the duty cast upon them by the trustees, for, in their capacity as wharf owners, the ry. co. had the opportunity of ascertaining the condition of the berth, and should, therefore, have either satisfied themselves that it was reasonably fit, or warned those in charge of the vessel that they had not done so. **THE BEARN C. A. [1906] P. 48**

6. — Ship — Harbour Commissioners — Dock — Advertisement of depth of water on dock sill — Obligation to use reasonable care to provide for ingress and egress of ships — Warranty of accessibility.

Where harbour commissioners, who are authorized and required by statute to execute works of improvement and maintenance in a harbour, and are empowered to make and maintain docks in connection therewith, and to take harbour and dock tolls and dues in respect of the use of the harbour and docks, advertise that there is a certain depth of water on the sill of a dock belonging to them, they thereby incur, towards shipowners who send their ships to the dock on the faith of that advertisement, the obligation of at least using reasonable care to provide for an access from and to the sea to and from the dock with a sufficient depth of water under the normal conditions of the time of year for all ships of such draught as to enable them to pass over the dock sill.

Therefore, where in such a case the commissioners had not used such care, but had allowed

HARBOUR—*continued*.

silt to accumulate at the entrance of their harbour, and a ship had consequently been detained for four days in the dock :—

Held, that the commissioners were liable to the shipowners in damages for the detention of their ship.

Seem, a warranty of the accessibility of a dock may be implied from such an advertisement, for ships of such draught, as before mentioned, so far as that accessibility depends on the condition of places within the harbour works or so situated that their condition is within the commissioners' powers of inspection and control.

Williams v. Swansea Harbour Trustees, (1863) 14 C. B. (N.S.) 845, discussed. *BEDE STEAMSHIP CO. v. RIVER WEAR COMMS.*

C. A. [1907] 1 K. B. 310

— Shipping—Collision, Vessels crossing so as to involve risk of — Collision off the entrance to harbour.

See CANADA—Shipping. 2.

HARBOURS, DOCKS, AND PIERS CLAUSES ACT, 1847 — Negligent navigation — Damage to dock.

See NEGLIGENCE. 5.

HARD LABOUR—Sentence—Practice—Common law forgery.

See CRIMINAL LAW—Forgery. 1.

HARROGATE CORPORATION — Building — Deposit of plans—Time limited for commencement of work.

See BUILDINGS. 2.

HARTER ACT (Act of Congress of U.S.A., 1893), ss. 1, 2, 3.

See SHIPPING—Charterparty. 3, 17.

— Incorporation of Harter Act—Effect of.

See SHIPPING—Charterparty. 3, 17.

HARWICH HARBOUR — Collision — Damage—Compulsory pilotage—Trinity House Outport District—Termination of voyage.

See SHIPPING—Collision. 19.

HEARING — Divorce — Suspicion as to truth of petitioner's evidence—Adjournment — Right of King's Proctor to intervene or to shew cause before decree nisi.

See DIVORCE—Practice. 21.

— Practice.

See under PRACTICE—Hearing.

— *Shipping Casualties and Appeals and Re-hearings Rules*, 1907. Reprinted 1910. *See under SHIPPING.*

"HEAT"—Bill of lading—Damage to cargo—Negligence of carrier's servants—Liability of carrier.

See SHIPPING—Charterparty. 11.

HEAT-STROKE—Workmen's Compensation.

See MASTER AND SERVANT—Compensation. 101.

"HEIGHT"—Building not of uniform height — "Front or nearest external wall."

See LONDON—Buildings. 9.

HEIRLOOMS—*Bequest to descend with dignity—Period of absolute vesting.*

A testatrix bequeathed diamonds to her son Viscount Hill (who survived her) "until he shall die, and after his death to each and every of the persons who shall in turn succeed to the title and dignity of Viscount Hill, severally and successively as they shall in turn succeed to such title and dignity as aforesaid, my intention being that the said diamonds shall descend as heirlooms as far as the rules of law and equity will permit."

Held, that the case was governed by *Tollemache v. Earl of Coventry*, (1834), 2 Cl. & F. 611; 37 R. R. 260, and that, notwithstanding the words, "as far as the rules of law and equity will permit," on the death of Viscount Hill, the son of the testatrix, his successor in the title became absolutely entitled to the diamonds.

Decision of Swinfen Eady J., [1902] W. N. 26; [1902] 1 Ch. 537, affirmed. *In re HILL. HILL v. HILL C. A. [1902] W. N. 72; [1902] 1 Ch. 807*

2. — *Direction in will for chattels to pass with real estate—Death of infant tenant in tail without having possession.*

E. was legal tenant for life in possession of a mansion house under a will, which limited the mansion house in remainder to his first and other sons in tail, and bequeathed certain pictures as heirlooms, to pass with the house in the same manner as if they were land or other real property appendant or appurtenant thereto, and to continue annexed to the house as long as the law would permit, and be inherited or enjoyed by the several persons who should succeed to the house under or by virtue of the limitations contained in the will. The eldest son of E. died in his lifetime, an infant and unmarried, but E. had two other sons, one of whom had attained twenty-one :—

Held, that E. as next of kin of the deceased son, was entitled absolutely to the chattels settled as heirlooms.

In re Lord Chesham's Settlement, [1909] 2 Ch. 329, distinguished. *In re PARKER. PARKER v. PARKER. Parker J. [1910] W. N. 21; [1910] 1 Ch. 581*

— Power of trustees to insure heirlooms and pay premiums out of income of capital moneys.

See SETTLED LAND—Heirlooms. 1.

— Settled land.

See under SETTLED LAND—Heirlooms.

3. — *Trust of chattels as heirlooms—Construction—To be enjoyed with mansion house—Tenant in tail—Vesting—Intention—Actual possession.*

By a settlement of real estates made in 1877, plate, pictures, and chattels were assigned to trustees "upon trust to permit the same to be used, held, and enjoyed with the mansion house aforesaid by the person who for the time being shall be entitled to the said mansion house under the limitations thereof herein contained," yet so that for the effect of transmission they should not vest absolutely in any person thereby made tenant in tail male by purchase who should not attain the age of twenty-one years.

The eldest son attained twenty-one years but died in the lifetime of the tenant for life. On

HEIRLOOMS—*continued.*

the death of the tenant for life in 1907, the second son, an infant, claimed to be entitled to these heirlooms as tenant in tail male in possession :—

Held (reversing the decision of *Eve J.*), as a question of construction, that there was sufficient indication of intention on the part of the settlor that these heirlooms should go with the mansion house and vest only in a tenant in tail male in possession, and consequently, that they vested in the second son, though liable to be divested in the event of his dying under twenty-one.

Construction put upon this clause by *Chitty J.* in *In re Lord Chesham* (1886) 31 Ch. D. 466, adopted. *In re LORD CHESHAM'S SETTLEMENT, VISCOUNT VALENTIA v. LADY CHESHAM*

C. A. [1909] 2 Ch. 329

— Will.

See under WILL—Heirlooms.

HEIRS—Trustees—Gift to persons upon trust to sell without adding “and their heirs”—Inability of executors of last surviving trustee to execute trust.

See TRUSTEE—Execution of Trust. 1.

“**HEREDITAMENTS**”—Condition requiring resettlement—Money held in trust for investment in land.

See WILL—Resettlement. 1.

— Income tax — Sewer — Vested in local authority.

See REVENUE—Income Tax. 35.

— Will.

See WILL—Resettlement. 1.

HERIOT—Freehold of manor—Tenant—“Dying seised”—Mortgage—Mortgagor in possession.

A mortgagor in possession of customary freeholds is not so “seised” thereof that on his death the lord of the manor is entitled to claim his best beast as a heriot, pursuant to the custom of the manor.

Decision of *Kekewich J.*, [1907] 1 Ch. 366 reversed. *COPESTAKE v. HOPER* C. A. [1908]

W. N. 129; [1908] 2 Ch. 10

HERITAGE—Right in security—Messenger-at-arms.

See SCOTTISH LAW. 13.

HIGH BAILIFF.

See under BAILIFFS.

COUNTY COURT—Bailiffs.

HIGH TREASON—Practice—Motion to quash indictment—Expatriation in time of war—Naturalization.

See CRIMINAL LAW—Treason. 1.

HIGHWAY.

See also under LONDON—Streets.
STREETS.

Development and Road Improvement Funds Act, 1910 (10 Edw. 7, c. 7), is an Act to amend the *Development and Road Improvement Funds Act, 1909* (9 Edw. 7, c. 47).

Lights on vehicles—O. in C., Dec. 21, 1907, exempting certain military service vehicles from

D. D.

HIGHWAY—*continued.*

the provisions of the *Lights on Vehicles Act, 1907*.
Price 1d. St. R. & O., 1907, No. 1,042.

Road Improvement Fund. Provisional Regns., June 8, 1910, for the purpose of s. 12 of the Development and Road Improvement Funds Act, 1909, and s. 90 of the Finance (1909–10) Act, 1910. 1910 (I.—Statutes and Statutory Publications—Various).

Development Fund. Regns., June 13, 1910, under s. 1 (2.) of Part I. of the Development and Road Improvement Funds Act, 1909, as to Applications for Advances. St. R. & O., 1910, No. 592.

Road Board. Regns., May, 13, 1910, under s. 7 (1.) of Part II. of the Development and Road Improvement Funds Act, 1909, as to Constitution of Road Board. St. R. & O., 1910, No. 593. Price 1d. each.

— “Bridge”—Approaches—Public carriage road carried over railway—Width of bridge—Liability of railway company.

See RAILWAY—Bridges. 1.

— Bridge carrying public highway over railway—Liability to maintain road.

See SCOTTISH LAW. 3.

1. — Bridge, Construction of — Agreement between county council and surveyor of highways for a parish—Contract by surveyor of highways for payment of money by his successors—Highways and Bridges Act, 1891 (54 & 55 Vict. c. 63) s. 3.

A surveyor of highways for a parish, acting under the Highways and Bridges Act, 1891, s. 3, entered into an agreement with a county council by which he contracted, for himself and his successors, as highway authority for the parish, to contribute towards the building of a bridge a certain sum by two instalments, the second of which was to be payable after the expiration of his year of office :—

Held, that he had power to make such a contract under the before-mentioned enactment. *COUNTY COUNCIL OF HERTFORDSHIRE v. RURAL DISTRICT COUNCIL OF BARNET*

C. A. [1902] 2 K. B. 48

— Bridge—Liability—Right to repair—Right to abate nuisance—Trespass.

See BRIDGES. 2.

— Bridges—Approaches—Liability to repair 300 feet from end of bridge.

See BRIDGES. 1.

— Burgh—Charter—Prescription—Customs and rates—Roads and bridges.

See SCOTTISH LAW. 4.

— Conviction—Duplicity.

See CRIMINAL LAW—Convictions. 2.

— County council—Maintenance and repair—Embankments—Retaining and supporting walls.

See LOCAL GOVERNMENT. 9.

— Creation of urban district—Subtraction of parish from rural district—Highway expenses—Loss of income.

See LOCAL GOVERNMENT. 12.

HIGHWAY—continued.**2.—Dangerous locality—Removal of protecting fence—Misfeasance—Liability of highway authority—Local government.**

A fence had been formerly erected, by the then existing highway authority, to protect the public using a highway which was dangerous, owing to its liability to be flooded by a stream that ran by the side of the road. The stream was diverted, but the ditch where the former bed of the stream had been was still liable to be filled in time of flood, and the water then flowed over the road. After the fence had been in existence for a number of years, the defts., adopting the report of their surveyor that the fence was in bad repair, that it was no longer necessary, and that all that was required was the erection of a short length at each end, ordered that the work should be done. The fence was removed, and three weeks later and before any new fence had been put up the road was flooded. A man driving along the road drove into the ditch and was drowned. In an action by his administratrix to recover damages for his death, the jury found that the removal of the fence under the circumstances, and in the way in which it had been done, was inconsistent with reasonable regard for the safety of persons using the road. Judgment was given for the plt. On appeal:—

Held, that the defts. were liable. **WHYLER v. BINGHAM RURAL COUNCIL**

C. A. [1901] 1 K. B. 45

3.—Dedication—Public user—Presumption—Settled land—Tenancy for life with remainder in fee—Churchway—Diversion—Limited dedication.

Where land is settled upon a tenant for life with an immediate remainder to a tenant in fee, both of whom are sui juris, it is competent for the tenant for life and remainderman together to dedicate to the public a road over the settled land.

Accordingly, where land was thus settled and was under the control and management of the remainderman, and a new road was laid out by him across the land and was treated by him as a public road, and since the date of its construction, more than sixty years ago, the road had been used by the public in such a way as would have compelled the Court as against an owner in fee to infer dedication:—

Held, that the Court ought to infer from the facts that there had been a dedication to the public by the tenant for life and remainderman.

A landowner desiring to divert or improve a churchway by laying out a new road in substitution therefor cannot confer on the public such rights only over the new road as existed over the churchway.

Decision of Warrington J., [1908] 2 Ch. 586 affirmed. **FARQUHAR v. NEWBURY RURAL COUNCIL**
C. A. [1908] W. N. 213; [1909] 1 Ch. 12

4.—Ditch alongside of—Whether part of highway—Extent of dedication.

There is no rule of law that a ditch running alongside a highway between the road and the

HIGHWAY—continued.

fence cannot be dedicated as part of the highway merely because it is not part of the roadway and cannot be used by the public for purposes of passage.

Decision of Div. Ct., [1906] W. N. 174, 176; [1906] 2 K. B. 612, affirmed. **CHORLEY CORPORATION v. NIGHTINGALE** - **C. A. [1907] W. N. 167; [1907] 2 K. B. 637**

5.—Diversion—Certificate of justices—Appeal, to quarter sessions—Party injured or aggrieved—Findings of jury—Statute—Contradictory terms—Construction—Substitution of “and” for “or”—Highway Act, 1835 (5 & 6 Will. 4, c. 50), s. 89.

In construing a statute “or” may be read as “and” if the context makes that the necessary meaning.

Sect. 89 of the Highway Act, 1835, provides that if, on an appeal to quarter sessions under s. 88 by a person who thinks that he will be injured or aggrieved by a proposed diversion of a highway, the jury find that the proposed new highway is more commodious to the public, or that the party appealing would not be injured or aggrieved, the Court should dismiss the appeal, but that if the jury find that the proposed new highway is not more commodious or that the party appealing would be injured or aggrieved, the Court shall allow the appeal. A jury at quarter sessions found (1.) that a proposed new highway would be more commodious to the public, (2.) that the party appealing would be injured or aggrieved if the existing highway were stopped up and the proposed new one substituted:—

Held, that s. 89 was contradictory and could only be construed by reading the word “or” in the first part of the section as “and,” and that on the findings of the jury the appeal to quarter sessions must be allowed. **WALKER v. YORK CORPORATION**
Div. Ct. [1906] 1 K. B. 724

6.—Diversion, Proceedings for—Certificate of justices—Period for which notice must be affixed at ends of highway—Highway Act, 1835 (5 & 6 Will. 4, c. 50), ss. 84, 85.

In proceedings for the diversion of a highway under s. 85 of the Highway Act, 1835, it is not a condition precedent to the validity of a certificate of justices under that section that the notice of proposed diversion, which is thereby required to be affixed at each end of the highway intended to be diverted, should be first so affixed at such a date as to leave a period of twenty-eight days between the date of the affixing of the notice and the date of the issue of the certificate.

Decision of the K. B. D. [1904] W. N. 113; [1904] 2 K. B. 349, reversed. **REX v. KENT JUSTICES**

C. A. [1904] W. N. 203; [1905] 1 K. B. 378

7.—Diversion—Sufficiency of plan—Highway Act, 1835 (5 & 6 Will. 4, c. 50), s. 85.

On proceedings being taken under s. 85 of the Highway Act, 1835, for the diversion of a highway, the justices certified that the proposed new highway would be more commodious to the public. The plan which it was proposed to enrol together with that certificate consisted of a sheet

HIGHWAY—continued.

of the twenty-five inch ordnance survey map, upon which the lines of the old and new highways were marked in colours, and the width of the new highway was stated in writing, but the lengths of the old and new highways were not so stated :—

Held—(1) that the plan did not sufficiently "describe the old and proposed new highways by admeasurement thereof," and that the quarter sessions were consequently right in refusing to enrol the certificate; (2) that even if they had been wrong, mandamus would not lie under the circumstances to compel them to enrol it. **REX v. SURREY JUSTICES** Div. Ct. [1908] W. N. 16; [1908] 1 K. B. 374

— Drain—Prescription—Acquisition of easement by public.
See **PRESCRIPTION**. 1.

— Drain vested before 1894 in highway authority not being a local authority.
See **SEWERS**. 10.

8. — Drain—Water flowing from highway—Discharge on land of adjoining owner—Absence of defined channel at outlet of drain—Claim of right—Presumption of legal origin—*Highway Act, 1835* (5 & 6 Will. 4, c. 50) s. 67.

The highway authority of a rural district had, for a time beyond living memory, maintained a pipe running through a bank which divided the highway from the deft.'s land adjoining, and had discharged, through the pipe and on to the deft.'s land, water which collected on the highway. There was no defined channel on the deft.'s land into which the water so discharged could flow. The deft. having stopped up the pipe, an injunction was claimed to restrain him from continuing the obstruction. On appeal from the refusal of the injunction :—

Held, that the fact that the pipe was not connected with a defined channel into which the water conveyed by it could flow did not prevent its being a drain within the meaning of s. 67 of the Highway Act, 1835; and that in view of the length of time during which the drain had been used, a legal origin ought to be presumed for the right claimed of passing water through the drain on to the deft.'s land.

Judgment of Lord Alverstone C.J. [1901] 2 K. B. 101, reversed. **ATTORNEY-GENERAL ON RELATION OF BROMLEY RURAL DISTRICT COUNCIL v. COPELAND** C. A. [1902] 1 K. B. 690

— Drainage, Preservation of—Restriction of pasturage on road to sheep.
See **PRESCRIPTION**. 2.

— Extraordinary traffic—Repair.
See Nos. 27—35, below.

— Footpath—New street—By-laws—Footway forming principal access to cottages.
See **STREETS**. 9.

— Footway—Inclosure award—User of footway as cart road—Presumption of dedication.
See **TRESPASS**. 4.

— Fowls straying on highway—Damage to passenger—Liability of owner—Remoteness.
See **TRESPASS**. 1.

HIGHWAY—continued.

— Inclosure Act—Repair of private or occupation roads—Dedication as highway.
See **INCLOSURE ACT**. 4.

— Water company—Ancillary main under public footpath—Trespass—Ultra vires.
See **WATER**. 24.

9. — Inclosure Act—Strip of land running alongside highway—Presumption—Disused tramway—Railway company—Capacity to dedicate—Adjoining owner—Right of Pre-emption—Combined dedication—Admissibility of evidence—Acts of ownership.

A strip of land running alongside a high road and forming the site of a tramway, the user of which as such had been discontinued, was vested in a ry. co., with power for the co. at any time to use the strip for the purpose of their undertaking or to sell it, subject in the latter event to a right of pre-emption in the adjoining owners :—

Held, that the strip of land was capable of being dedicated by the co. to highway uses, and that the co., so long as they did nothing incompatible with their statutory objects, were in a position to dedicate it for the purposes of a public right of way along it, and were not incapacitated from so doing by the right of pre-emption vested in the adjoining owners :—

Held, further, upon the evidence of public user, that dedication of the land in question must be presumed.

On an inquiry whether part of a continuous strip of land has been dedicated to highway purposes, evidence that portions of the strip at each end of the part in dispute have been enclosed to the knowledge of or without interference from the highway authority is not admissible.

In appreciating the true effect of acts of ownership as rebutting an intention to dedicate, it is important to observe whether they are referable to the ownership of the soil rather than to any intention to exclude the passage of the public. In the former case they may tend to confirm the owner's general acquiescence in the continuous user of the surface by the public for highway purposes.

When an owner, alive to the necessity of evidencing his continued possession by periodical perambulations, and active in preventing encroachment upon or interference with his soil and in warning off trespassing wayfarers from parts of his land, at the same time permits, without protest or interference, the unrestricted passage of the public over the surface of the very soil of which he is asserting his ownership, there are cogent grounds for attributing to the public user an origin which, as against the owner of the soil, has established public rights. Decision of *Eve J.* [1909] W. N. 129, affirmed. **COATS v. HEREFORDSHIRE COUNTY COUNCIL** - C. A. [1909] 2 Ch. 579

10. — Interference under statutory powers—Canal company—Bridge over canal—Approaches to bridge—Liability to repair—10 Geo. 4, c. xlviii., s. 26.

HIGHWAY—continued.

Action brought by the Att.-Gen., at the relation of the Warwickshire County Council, and by the County Council, against the proprietors of the Oxford Canal Navigation, who were originally incorporated under that name by some Acts passed in the reign of George III. In constructing their canal under their statutory powers the co. had cut through and crossed a highway in the county of Warwick, and carried the highway over the canal by means of a bridge, called Tussess Bridge. The bridge was above the level of the ancient highway, and the co. constructed on each side of the canal an approach to the bridge by an inclined embankment or causeway, on which the substituted road was placed. This causeway was built upon the site of the ancient highway, but was narrower than it, and was contained entirely within the limits of the ancient highway.

The question was whether the canal co. were liable to repair the fences at the sides of the causeways. The co. had not acquired any part of the site on which the causeway stood.

Kekewich J. held, [1902] W. N. 119, upon the construction of the above Act, and in particular of s. 26, that the Legislature had distinguished between a bridge and the approach to it, that the co. were not liable to keep in repair the approaches or the fences which formed part of them.

The C. A. affirmed the decision, and on the same ground. **ATT.-GEN. v. OXFORD CANAL NAVIGATION** **C. A. [1903] W. N. 39**

11. — Licence to surveyor to take materials from enclosed lands for repair of highways—Excluded lands — Jurisdiction of justices—Time for which licence may be granted — Highway Act, 1835 (5 & 6 Will. 4, c. 50), ss. 53, 54.

By the joint effect of ss. 53 and 54 of the Highway Act, 1835, the justices may licence the surveyor of highways to take materials for the repair of the highways "at such time or times as to such justices shall seem proper" from the enclosed lands of any person, "such lands . . . not being a . . . park."

On an application by a surveyor of highways for a licence under those sections the justices made an order authorizing him to take materials for a period of five years from certain enclosed land which in the opinion of the High Court was a park :—

Held—(1) that the question whether the land was a park or not was one which was preliminary to the exercise of the jurisdiction given by the statute, and that the justices could not by wrongly deciding that the land was not a park give themselves jurisdiction in the matter ;

(2) That a licence, to be valid, must not purport to operate for a longer period than is necessary for the execution of repairs, and that the licence, being for a period of five years without reference to the necessities existing at the date of its grant, was bad. **REX v. BRADFORD** **Div. Ct. [1908] W. N. 14 ; [1908] 1 K. B. 365**

12. — Locomotives — Crown prerogative—Exemption—Locomotive driven on service of Crown — Locomotives Act, 1865 (28 & 29 Vict. c. 83).

HIGHWAY—continued.

By the Locomotives Act, 1865, power is given to local authorities to make regulations as to the speed (not in any case to exceed two miles an hour) at which locomotives may pass through the place subject to their jurisdiction ; and by s. 4 it is provided that, subject to those regulations, it shall not be lawful to drive any such locomotive along any turnpike road or public highway at a greater speed than four miles an hour, or through any city, town, or village at a greater speed than two miles an hour :—

Held, that, in the absence of any express mention of the Crown in the Act, the section did not apply to a locomotive owned by the Crown and driven by a servant of the Crown on Crown service. **COOPER v. HAWKINS** **Div. Ct. [1904] 2 K. B. 164**

13. — Locomotives — Licence—Exemption — "Agricultural locomotive" — Locomotive used solely for agricultural purpose—Hauling wheat to mill to be ground—Locomotives Act, 1898 (61 & 62 Vict. c. 29), s. 9, sub-ss. 1, 9 ; s. 10 ; s. 17.

By s. 9, sub-s. 1, of the Locomotives Act, 1898, every locomotive to which the Act applies shall be licensed by a county council, provided that this enactment shall not apply to any agricultural locomotive, to any locomotive not used for haulage purposes, to any steam-roller, or to any locomotive belonging to a road authority when used by them within their district. By s. 17, the expression "agricultural locomotive" includes "any locomotive used solely for threshing, ploughing, or any other agricultural purpose."

A threshing engine was let out on hire by the appellants to a farmer to thresh wheat and to haul the wheat, when threshed, in trucks to a mill to be ground. There was no evidence as to whether the farmer had sold the wheat or whether it was to be returned to the farm when ground. The trucks were the property of the appellants :—

Held, that the engine, when being used for hauling the wheat to the mill, was not being used for an agricultural purpose, and was therefore at the time not an agricultural locomotive within the exemption in s. 9, sub-s. 1, of the Act. **HODDELL v. PARKER** **Div. Ct. [1910] W. N. 146 ; [1910] 2 K. B. 323**

14. — Locomotives — Light locomotive — Vehicle under five tons in weight unladen propelled by mechanical power—Person employed to accompany locomotive — Exemption from restrictions—Locomotives on Highways Act, 1896 (59 & 60 Vict. c. 36), s. 1, sub-s. 1 ; s. 6, sub-ss. 1, 2—Locomotives Act, 1898, (61 & 62 Vict. c. 29), s. 5, sub-ss. 1, 5 ; s. 17, sub-s. 2—Motor Car Act, 1903 (3 Edw. 7, c. 36), s. 12, sub-s. 1 ; s. 20, sub-ss. 1, 3—Heavy Motor Car Order, 1904, arts. 2, 3.

The effect of art. 3 of the Heavy Motor Car Order, 1904, is that a vehicle propelled by mechanical power, if it is under five tons in weight unladen, is a light locomotive within the meaning of the Locomotives on Highways Act, 1896, s. 1, sub-s. 1. Therefore a person cannot be convicted under s. 5, sub-s. 1 (b), of the Locomotives Act, 1898, for not having three men in attendance on the locomotive, inasmuch

HIGHWAY—continued.

as by s. 17, sub-s. 2, of the Act of 1898 nothing in that Act is to affect light locomotives within the meaning of the Act of 1896. *EVANS v. NICHOLL* - Div. Ct. [1909] W. N. 25; [1909] 1 K. B. 778

— Locomotives on highways—Motor car.

See under MOTOR CAR.

— Motor Car.

See under MOTOR CAR.

15. — *Locomotive — Traction engine—Excessive weight—Injury to water main.*

The plts., who were the road authority within their district, were also the owners of the water mains beneath the roads. A duly licensed traction engine belonging to the deft., weighing upwards of ten tons, and drawing three trucks, broke the water main under one of the streets for which the plts. were the road authority. The main had been laid at least thirty years, but was found as a fact to be sufficiently strong and well laid to withstand the pressure of the ordinary traffic of the district. The plts. had been guilty of no neglect or default in the execution of their duty as the road authority, and neither the deft. nor his servants had been guilty of any neglect or want of skill or care in the construction or user of the traction engine. A county court judge found that the injury was caused by the excessive weight of the deft.'s traction engine, and that the deft. was liable for the cost of repairing the broken water main :—

Held, that in using an exceptionally heavy locomotive the deft. was exercising his right to use the highway in a way that was not necessary in order to enable him to enjoy it, and that the decision was right.

Att.-Gen. v. Scott, [1905] 2 K. B. 160, considered. *CHICHESTER CORPORATION v. FOSTER* Div. Ct. [1906] 1 K. B. 167

16. — *Locomotives—Traction engine—Nuisance — Interim injunction — Locomotive Act, 1861 (24 & 25 Vict. c. 70), s. 13—Locomotive Act, 1898 (61 & 62 Vict. c. 29), s. 6.*

In an action by the Att.-Gen., on the relation of a county council, for an injunction to restrain the deft. from using a traction engine upon a road in such a way as to cause a public nuisance :—

Held, that nothing in the Locomotive Act, 1898, had affected the prohibition in s. 13 of the Locomotive Act, 1861, against causing a nuisance by the user upon a highway of a locomotive engine; and that it was no answer to an application for an interim injunction that the damage to the road would not have happened but for the neglect of the county council to keep it in a proper state of repair. *ATT.-GEN AND MONMOUTHSHIRE COUNTY COUNCIL v. SCOTT*.

C. A. [1904] 1 K. B. 404

Note.

Att.-Gen. and Monmouthshire County Council v. Scott. C. A. [1905] 2 K. B. 160. See next Case.

17. — *Locomotive—Traction engine—Nuisance — Extraordinary traffic — Injury to road — Default of local authority in maintenance of road—Locomotive Act, 1861 (24 & 25 Vict. c. 70),*

HIGHWAY—continued.

s. 13; *Locomotive Act, 1898 (61 & 62 Vict. c. 29)*, s. 6.

In an action by the Att.-Gen., on the relation of a county council, to restrain the deft. from using a traction engine upon a road in such a way as to cause a public nuisance, it was at the trial found by Jelf J. as a fact that the condition of the road was not caused primarily by the deft.'s traction traffic, but partly by the traction traffic, partly by stone haulage by carts and horses, partly by the ordinary traffic, and partly by the weather, but primarily and chiefly by the failure of the county council to maintain the road in a fit state to bear the traffic (including the traction traffic) which was not more unusual or onerous than they ought to have expected to come upon it :—

Held, by the C. A. (affirming the judgment of Jelf J.), that upon the facts so found the plts. were not entitled to a perpetual injunction to restrain the deft. from bringing his traction traffic upon the road, and that an interlocutory injunction which had been granted upon affidavit evidence must be dissolved. *ATT.-GEN. AND MONMOUTHSHIRE COUNTY COUNCIL v. SCOTT*

C. A. [1905] 2 K. B. 160

Note.

Att.-Gen. and Monmouthshire County Council v. Scott. C. A. [1904] 1 K. B. 404. See preceding Case.

18. — *Lost grant—Presumption of lost grant — Ex-turnpike road—Vesting in local authority — Land acquired for widening turnpike road— Fee farm rent — Payment for long period — Liability of local authority—Public Health Act, 1848 (11 & 12 Vict. c. 63), s. 68.*

For more than one hundred years a fee farm rent had been paid to certain charity trustees in respect of a piece of land acquired for the widening of a turnpike road and since forming part of the road, but no conveyance to the turnpike trustees was forthcoming. The rent-charge was paid, first, by the turnpike trustees, who had statutory power to buy land for widening the roads under their control, and, on the expiration of the turnpike trust in 1871 by virtue of the Annual Turnpike Acts Continuance Act, 1870, by the deft. corporation, in whom as the highway authority the road had become vested under the Public Health Act, 1848. The corporation having refused to make any further payments, the charity trustees brought an action against them in the county court for arrears of the rent-charge :—

Held, that the Court ought to presume that the land had been granted to the turnpike trustees as land subject to a perpetual rent-charge, and that the deft. corporation were liable as terre tenants for the payment of the rent-charge. *FOLEY'S CHARITY TRUSTEES v. DUDLEY CORPORATION* C. A. [1909] W. N. 250; [1910] 1 K. B. 317

— Meeting held in highway — Legality of — Public Meeting Act. See MEETINGS. 1.

— Motor cars.

See under MOTOR CARS.

HIGHWAY—*continued.*

— National monument—Public right of access—
Public road—Dedication—Cul-de-sac.
See WAY, RIGHT OF. 9.

19. — *New or substituted highway—Formalities required by Highway Act, 1835—Presumption of compliance with, after lapse of time—Highway Act, 1835 (5 & 6 Will. 4, c. 50), ss. 23, 84, 85.*

Upon the hearing by a court of summary jurisdiction, under s. 8 of the Private Street Works Act, 1892, of objections to the proposals of an urban sanitary authority as to works to be executed by them under the Act, on the ground that the street was a highway repairable by the inhabitants at large, it appeared that in 1842 pursuant to a resolution of the vestry, a new road was substituted for an older public highway repairable by the inhabitants at large; the old highway was then closed, and from that date the new road had been used by the public as a highway. Upon one occasion the new road had been repaired by the surveyor for the parish, though it was uncertain whether in so doing he had acted in his capacity of surveyor. No evidence was given that the formalities required by s. 23 of the Highway Act, 1835, in the case of new highways, or by ss. 84 and 85 in the case of substituted highways, had been complied with:—

Held, that there was evidence upon which the justices might properly find that the new road was a highway repairable by the inhabitants at large, and that the formalities required by the Highway Act, 1835, might after the lapse of time be presumed to have been complied with.
LEIGH URBAN COUNCIL v. REX

Div. Ct. [1901] 1 K. B. 747

20. — *Non-repair—Indictment of inhabitants—Highway Act, 1835 (5 & 6 Will. 4, c. 50), ss. 94, 95—Highways and Locomotives (Amendment) Act, 1878 (41 & 42 Vict. c. 77), s. 10.*

Information having been laid before justices under s. 94 of the Highway Act, 1835, that a certain highway in the parish of Harkstead, within the rural district of Samford in the county of Suffolk was out of repair, the justices under s. 95 directed an indictment to be preferred against the inhabitants of the said parish. A rule for a certiorari was obtained on behalf of the inhabitants to bring up the order to be quashed upon the ground, amongst others, that the procedure under the Act of 1835 had been impliedly repealed by the Highways and Locomotives (Amendment) Act, 1878, s. 10, and that the proper parties to be indicted were the rural district council, whose funds were liable to bear the expense of the repairs:—

Held, that the procedure under the Act of 1835 was not impliedly repealed, and the order of justices was upheld. REX v. MORSE

Div. Ct. [1904] W. N. 114

21. — *Ownership—Soil of highway—Street in town—New street—Crown lease—Presumption that soil of highway ad medium filum passes to adjoining owner—Rebuttal of presumption.*

The Commrs. of Woods and Forests acquired a tract of land under an Act of Parliament passed for the purpose of executing a scheme of street improvements in the metropolis. Under this Act they made Regent Street and leased

HIGHWAY—*continued.*

the houses in the street as they were built, including a house now sub-demised to the plt. The plt. claimed to be entitled to the soil of the moiety of the street next to his house for the residue of his interest therein by virtue of the presumption that the conveyance of a house adjoining a highway passes the soil of the highway usque ad medium filum. The head lease of the plt.'s house described the property by dimensions and abutments and by a map, and referred to it as abutting on a street then forming. Upon the construction of the Act it was doubtful whether the Commrs. had any power to lease the soil of the street:—

Held, that apart from any question as to the powers of the Commrs., the presumption was rebutted by the surrounding circumstances, regard being had to the terms of the lease and the provisions of the Act. MAPPIN BROTHERS v. LIBERTY & CO. Joyce J. [1902] W. N. 209 : [1903] 1 Ch. 118

22. — *Obstruction—Raised tramlines—Contractor—Liability—Contract to execute works—Limitation of Action—Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61), s. 1—London County Tramways (Electrical Power) Act, 1900 (63 & 64 Vict. c. cccxxviii.), s. 6—Tramways Act, 1870 (33 & 34 Vict. c. 78), ss. 25, 62.*

Raised rails laid down by contractors in a thoroughfare for the temporary continuance of tramway traffic during the operation of reconstructing the tramlines for electric traction are not authorized by s. 6 of the London County Tramways (Electrical Power) Act, 1900, as work "necessary for adapting" the line "to be so worked."

The protection given by the Public Authorities Protection Act, 1893, does not extend to an independent contractor doing under contract, and for his own profit, work which a public authority has been authorized to do. T. TILLING, LD. v. DICK KERR & CO., LD. - Warrington J. [1905] W. N. 38 ; [1905] 1 K. B. 562

23. — *Obstruction of highway—Indictable nuisance—What amounts to.*

The deft. unlawfully erected and maintained in the middle of the roadway of a public street a coffee-stall. The stall was of a permanent character, having gas and water laid on to it from the mains, and been assessed to the rates at 32 $\frac{1}{2}$. There was sufficient room for the passage of traffic up and down the street on either side of the stall. On an indictment of the deft. for a nuisance in thereby obstructing the highway, the jury found that the coffee-stall was an obstruction, but that it did not appreciably interfere with the traffic in the street:—

Held, that the findings did not justify the entry of a verdict of guilty. REX v. BARTHOLOMEW C. C. R. [1908] W. N. 20 ; [1908] 1 K. B. 554

24. — *Obstruction on highway—Lamp-post—Interference with trade—Adjoining owner—Public or private nuisance—Local authority—Individual interest in public right—Metropolis Management Act, 1855 (18 & 19 Vict. c. 120), s. 130.*

HIGHWAY—continued.

An owner of premises abutting on a highway enjoys as a private right the right of access from his own premises to the highway, and any interference with that access is an interference with a private right. But his right to transfer goods from vans in the public roadway across the public pavement to his premises is a right enjoyed by him as one of the public entitled to use the highway. It is an individual interest in a public right, but is not a private right which entitles him to restrain a local authority, acting bona fide under statutory powers, from obstructing the highway adjoining his premises in a manner which affects his personal convenience. *CHAPLIN (W. H.) & Co. v. WESTMINSTER CORPORATION* **Buckley J. [1901] W. N. 131 ; [1901] 2 Ch. 329**

25. — Private driftway — Conversion into public way—Persons whose consent necessary to —“Occupiers”—Highway Act, 1862 (25 & 26 Vict. c. 61), s. 36.

Persons entitled to a right of passage, by way of easement or licence, over a driftway or other private road are not “occupiers” of the way within the meaning of s. 36 of the Highway Act, 1862, and their consent is not necessary to an application to justices for a declaration converting the way into a public highway. *REX v. SOMERS* **Div. Ct. [1906] 1 K. B. 326**

— Railway—Level crossing—Highway.

See under RAILWAY—Level Crossings.

26. — Rates, Exemption from—Liability to repair *ratione tenuræ*—Proof of exemption from liability to contribute to repair of other highways—Highway Act, 1835 (5 & 6 Will. 4, c. 50), s. 33.

The existence of a liability *ratione tenuræ* to repair a certain highway does not of itself shew that there is an exemption from liability to contribute to the repairs of other highways in the same highway district; there must be other evidence that the exemption exists in order to prove a legal exemption within s. 33 of the Highway Act, 1835, which provides that, when property, or the owner or occupier in respect thereof, has, prior to the passing of the Act, been “legally exempt” from payment of highway rate, that property and the owners and occupiers thereof shall be exempt from payment of the highway rate thereby imposed. *FERRAND v. BINGLEY URBAN DISTRICT COUNCIL* **Div. Ct. [1903] 2 K. B. 445**

27. — Repair—Extraordinary traffic—Excessive weight—Person by or in consequence of whose order such weight has been conducted—Highways and Locomotives (Amendment) Act, 1878 (41 & 42 Vict. c. 77), s. 23—Locomotives Act, 1898 (61 & 62 Vict. c. 29), s. 12.

The deft., being about to build a house, entered into a contract with a brick co. to supply him with a quantity of bricks to be delivered at the place where he proposed to build. He gave no instructions as to the manner, time, or amount in which the bricks were to be delivered, and the co. without his knowledge delivered them by

HIGHWAY—continued.

means of a traction engine and trucks, the excessive weight of which damaged the plts.’ roads to an extraordinary extent. In an action to recover the amount of the expenses to which the plts. had been put in repairing the roads, the county court judge held that the deft. was not, within s. 23 of the Highways and Locomotives (Amendment) Act, 1878, as amended by s. 12 of the Locomotives Act, 1898, the person “by or in consequence of whose order” such weight had been conducted over the plts.’ roads:—

Held, that the facts justified him in coming to that conclusion. *EGHAM RURAL DISTRICT COUNCIL v. GORDON* **Div. Ct. [1902] 2 K. B. 120**

28. — Repair—Extraordinary traffic—Light locomotives—Summary proceedings—Transfer of jurisdiction of justices—Jurisdiction of county court—Highways and Locomotives (Amendment) Act, 1878 (41 & 42 Vict. c. 77), s. 23—Locomotives on Highway Act, 1896 (59 & 60 Vict. c. 36), s. 1, sub-s. 1; s. 6, sub-s. 1, 2; Schedule—Locomotives Act, 1898 (61 & 62 Vict. c. 29), s. 12, sub-s. 1; s. 17, sub-s. 2—Motor Car Act, 1903 (3 Edw. 7, c. 36), s. 12, sub-s. 1; s. 20, sub-s. 3—Heavy Motor Car Order, 1904, arts. 2, 3.

An action lies in the county court to recover expenses of extraordinary traffic not exceeding 250*l.* caused by light locomotives within the meaning of s. 1 of the Locomotives on Highway Act, 1896, as extended by the Heavy Motor Car Order, 1904, inasmuch as expenses of extraordinary traffic not exceeding 250*l.* ceased by virtue of s. 12, sub-s. 1, of the Locomotives Act, 1898, to be recoverable summarily under s. 23 of the Highways and Locomotives (Amendment) Act, 1878, and became recoverable in the county court; and s. 17, sub-s. 2, of the Locomotives Act, 1898, means that nothing in that Act is to affect light locomotives as distinguished from other vehicles, but it does not mean that light locomotives, as far as they have characteristics in common with other vehicles (one of which is that they may cause extraordinary traffic), are not to be dealt with by the new procedure established by s. 12, sub-s. 1, of the Locomotives Act, 1898. *REX v. JUDGE JAMES AND MIDLAND RY. CO. Ex parte BATH RURAL COUNCIL* **Div. Ct. [1908] 1 K. B. 958**

29. — Repair—Extraordinary traffic—Repair of highway—Recovery of expenses—Limitation of time for bringing action—Locomotives Act, 1898 (61 & 62 Vict. c. 29), s. 12, sub-s. 1 (b).

A municipal corporation, requiring road material for the general purposes of the maintenance and construction of roads within their district, entered into contracts with two contractors, whereby the contractors agreed to supply and deliver to the corporation, during the twelve months from Mar. 31, 1904, to Mar. 31, 1905, flints and ragstone, in such quantities and numbers, at such times, and in such manner as the corporation should from time to time by order in writing direct. The plts., as the authority liable for the repair of highways in their district, incurred extraordinary expenses in repairing a highway in consequence of damage done to it by extraordinary traffic conducted

HIGHWAY—continued.

over it in the haulage of stones by the contractors for the fulfilment of their contracts with the corporation. The last load of stones was carried on Mar. 31, 1905, and on Aug. 22, 1905, the plts. commenced an action against the corporation for the recovery of the extraordinary expenses:—

Held, that the traffic was conducted in consequence of the orders of the corporation.

Held, also (reversing the decision of Walton J., [1907] 2 K. B. 39), that the damage was not the consequence of "any particular building contract or work extending over a long period" within the meaning of s. 12, sub-s. 1 (b), of the Locomotives Act, 1898, and that therefore, under the first part of that sub-section, the plts. could recover only the expenses incurred within twelve months before the commencement of the action. **BROMLEY RURAL DISTRICT COUNCIL v. CROYDON CORPORATION** C. A. [1907] W. N. 244; [1908] 1 K. B. 353

30.—Repair—Extraordinary traffic—Action that could have been brought in county court—Action in High Court—Costs on High Court scale—Locomotives Act, 1898 (61 & 62 Vict. c. 29), s. 12, sub-s. 1 (a).

A highway authority, acting on the certificate of their surveyor, brought an action in the High Court to recover the expenses incurred by reason of extraordinary traffic for which the deft. was responsible. The amount certified by the surveyor and claimed in the action exceeded 250*l.*, but the verdict of the jury was for 60*l.*, and judgment was entered for that amount with costs. The costs were taxed on the High Court scale. On appeal from the refusal of a judge at chambers to order a review of taxation:—

Held, that the jurisdiction of the High Court to try the action was not affected by the provision of s. 12, sub-s. 1 (a), of the Locomotives Act, 1898, that expenses not exceeding 250*l.* may be recovered in the county court, and that the taxation of costs was rightly made on the High Court scale. **CHESTERFIELD RURAL DISTRICT COUNCIL v. NEWTON**

C. A. [1904] 1 K. B. 62

31.—Repair—Extraordinary traffic—Expenses—Excessive weight—Timber Haulage—Staple trade of district—Highways and Locomotives (Amendment) Act, 1878 (41 & 42 Vict. c. 77), s. 23—Locomotives Act, 1898 (61 & 62 Vict. c. 29), s. 12.

The question whether traffic on any particular road is or is not extraordinary within the meaning of the Highways and Locomotives (Amendment) Act, 1878, as amended by the Locomotives Act, 1898, is a question of fact; accordingly if, in an action by a highway authority to recover expenses of extraordinary traffic, it is proved that the traffic complained of was a recognized industry in the district and was carried on in the manner usual in the trade in that district, it is still open to the Court to find that the traffic in question is extraordinary as regards any particular road in the district. **GRIFFITHS RURAL DISTRICT COUNCIL v. GREEN**

C. A. [1909] 2 K. B. 845

HIGHWAY—continued.

32.—Repair—“Extraordinary traffic”—“Extraordinary expenses”—Limitation of time for bringing action—Highways and Locomotives (Amendment) Act, 1878 (41 & 42 Vict. c. 77), s. 23—Locomotives Act, 1898 (61 & 62 Vict. c. 29), s. 12, sub-s. 1.

By the Locomotives Act, 1898, s. 12 sub-s. 1 (a), extraordinary expenses incurred by a highway authority in repairing a highway by reason of damage caused by extraordinary traffic thereon are recoverable by an action in the High Court or county court, and by sub-s. 1 (b) proceedings for the recovery of such expenses "shall be commenced within twelve months of the time at which the damage has been done, or where the damage is the consequence of any particular building contract, or work extending over a long period, shall be commenced not later than six months after the completion of the contract or work."

It being conceded, having regard to *Kent County Council v. Folkestone Corporation*, [1905] 1 K. B. 620, that where the damage was caused by work done under a building contract, or work extending over a long period, an action for recovery of expenses was in time if brought either within twelve months of the doing of the damage, or within six months after the completion of the contract or work:—

Held, that "the completion of the contract" meant the completion of the contract so far as it related to the work causing the damage which gave rise to the action.

Therefore where the damage was caused by work done under a contract which the Court assumed to be a building contract, and the contract contained a maintenance clause which provided that the entire work should be at the risk of the contractor for a certain period after completion:

Held, that the contract was completed, within the meaning of sub-s. 1 (b), at the date of the completion of the work, and that the six months began to run from that date. **LANCASTER RURAL COUNCIL v. FISHER AND LE FANU**

C. A. [1907] W. N. 160; [1907] 2 K. B. 516

Note.

Explained and applied by C. A., *Carlisle Rural Council v. Carlisle Corporation*, [1909] 1 K. B. 471. See No. 34, below.

Referred to by C. A., *Reigate Rural Council v. Sutton District Water Co.*, [1909] W. N. 28. See next Case.

33.—Repair—Extraordinary traffic—Extraordinary expenses—Limitation of time for bringing action—Building contract—Completion of contract or work—Highway and Locomotives (Amendment) Act, 1878 (41 & 42 Vict. c. 77), s. 23—Locomotives Act, 1898 (61 & 62 Vict. c. 29), s. 12, sub-s. 1 (b).

The question in this case turned upon the construction of sub-s. 1 (b) of s. 12 of the Locomotives Act, 1898, which provides that proceedings for recovery of expenses must be commenced within twelve months of the time at which the damage is done, or where the damage is the consequence of any particular building contract or

HIGHWAY—continued.

work extending over a long period not later than six months after the completion of the contract or work.

The deputy county court judge found that the reservoir was not completed until it was made watertight and gave judgment for the plts. for the full amount of the damage.

The Div. Ct., [1908] W. N. 120, held that the county court judge had misdirected himself as to the meaning of "completion of the contract," and that the plts. were entitled in respect only of so much of the damage as was done within the twelve months.

The C. A. allowed the appeal.

The Lord Chief Justice was of opinion that there was no ground for saying that the learned county court judge had misdirected himself. It was quite open to the county court judge to find that the work of construction was not completed until the reservoir was made watertight, and there being evidence to support that finding, their Lordships could not interfere with it. There was no difficulty in the case when the distinction was borne in mind between work in the sense of constructional work and work in the sense of haulage which did the damage. In *Lancaster Rural District Council v. Fisher and Le Fannu*, [1907] 2 K. B. 516, as explained in *Carlisle Rural District Council v. Carlisle Corporation*, [1909] 1 K. B. 471, this Court decided that the completion of the contract meant not the completion of the contractual obligations, but the completion of the constructional work in consequence of which the haulage occurred and the damage arose. *REIGATE RURAL COUNCIL v. SUTTON DISTRICT WATER CO. (EWART, THIRD PARTY)* C. A. [1909] W. N. 28

Note.

Referred to by C. A., *Carlisle Rural Council v. Carlisle Corporation*, [1909] 1 K. B. 471, 477, 482. See next Case.

34.—Repair—Extraordinary traffic—Extraordinary expenses—Limitation of time for bringing action—Damage resulting from building contract—"Completion of contract"—Highways and Locomotives (Amendment) Act, 1878 (41 & 42 Vict. c. 77), s. 23—Locomotives Act, 1898 (61 & 62 Vict. c. 29), s. 12, sub-s. 1 (b).

In s. 12, sub-s. 1 (b), of the Locomotives Act, 1898, which provides that proceedings for the recovery of expenses of extraordinary traffic, "where the damage is the consequence of any particular building contract, or work extending over a long period, shall be commenced not later than six months after the completion of the contract or work," the term "building contract" means a contract for the building of any physical construction and the term "completion of the contract" means completion so far as concerns the constructional work comprised therein; and where the constructional work consists of several component parts so closely connected that each would be useless without the others, the period of six months begins to run from the completion of the whole work, notwithstanding that the damage to the roads may have been caused exclusively by the

HIGHWAY—continued.

haulage of materials in connection with some or one only of the component parts of the work.

Quære whether different considerations may not apply to contracts comprising several independent works; also to contracts comprising work in several different districts where it is shewn that all the work within the district of the plt. authority has been completed more than six months before the commencement of the action.

Accordingly, where the work comprised in a contract included the construction of a reservoir and the laying of a line of pipes therefrom within the plt.'s district, and damage was caused to the roads of the district by haulage in connection with the laying of the pipes, but not in connection with the construction of the reservoir:—

Held, that the contract was a building contract for one compound work, which was a work extending over a long period within the meaning of the sub-section, and that an action for recovery of expenses commenced more than six months after the completion of the line of pipes but before the completion of the reservoir was in time.

Lancaster Rural District Council v. Fisher and Le Fannu, [1907] 2 K. B. 516, explained and applied. *CARLISLE RURAL COUNCIL v. CARLISLE CORPORATION* C. A. [1909] W. N. 22; [1909] 1 K. B. 471

Note.

Referred to by C. A., *Reigate Rural Council v. Sutton District Water Co.*, [1909] W. N. 28. See preceding Case.

35.—Repair—"Extraordinary traffic"—"Extraordinary expenses"—Action for recovery—Limit of time—Public Authorities' Protection—Limitation of time for bringing action—Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61), s. 1—Highways and Locomotives (Amendment) Act, 1878 (41 & 42 Vict. c. 77), s. 23—Locomotives Act, 1898 (61 & 62 Vict. c. 29), s. 12, sub-s. 1.

Sect. 12, sub-s. 1 (b), of the Locomotives Act, 1898, provides that proceedings by a highway authority for the recovery of the extraordinary expenses incurred by them in repairing a highway by reason of extraordinary traffic thereon "shall be commenced within twelve months of the time at which the damage has been done, or where the damage is the consequence of any particular building contract, or work extending over a long period, shall be commenced not later than six months after the completion of the contract or work."

Held, that, notwithstanding this limitation of twelve months, an action under this section against a public authority, in respect of damage to a highway caused by them "in pursuance or execution of any Act of Parliament, or of any public duty or authority," must be brought within the six months limited by s. 1 of the Public Authorities Protection Act, 1893.

But, if the act which causes the damage to the highway is done by an independent contractor employed by a public authority in pursuance of his contract with them, he not being their servant or agent, the limit of six months fixed by s. 1 of

HIGHWAY—*continued.*

the Public Authorities Protection Act, 1893, has no application. In such a case an action in respect of the damage can be brought against the public authority under s. 23 of the Highways and Locomotives (Amendment) Act, 1878, as amended by s. 12 of the Locomotives Act, 1898, as persons "in consequence of whose order" the damage has been done, and the time within which the action must be brought is that which is fixed by s. 12, sub-s. 1 (b).

The effect of the latter part of sub-s. 1 (b) of s. 12 is, "where the damage is the consequence of any particular building contract or work extending over a long period," to give a period of "six months after the completion of the contract or work," in addition to the twelve months fixed by the prior part of sub-s. 1 (b), within which the action may be brought.

A corporation, in carrying out a scheme for the widening of one of their roads, entered into a contract with a contractor for the hauling of stone. The contractor used traction engines to haul the stone, and in so doing caused damage to some other roads which were repairable by the county council as the highway authority. The contract was for a year, commencing on April 1, 1902, and terminating on Mar. 31, 1903. The damage to the roads took place between Jan. 19 and Mar. 24, 1903. The work of widening the road was completed in Sept., 1903. On Feb. 11, 1904, the county council commenced an action against the corporation to recover the additional expenses of repairing the plts.' roads in consequence of the use of the traction engine :—

Held, that the action could be maintained against the corporation as the persons "in consequence of whose order" the damage had been done :

But, *held*, that the limit of six months for bringing the action fixed by s. 1 of the Public Authorities Protection Act, 1893, did not apply, because, the contractor not being the servant or agent of the corporation, the act was not done by them, and it was done by him in performance of his private obligations under his contract, and not in pursuance or execution of any public duty or authority :

Held, therefore, that the time within which the action must be brought was that fixed by s. 12, sub-s. 1 (b), of the Act of 1898 :

Held, also, that the hauling of the stone was a distinct work from the widening of the road, and that the plts. could only recover in respect of the damage done since Feb. 11, 1903, i.e., within twelve months from the issue of the writ in the action.

Judgment of Darling J. varied. **KENT COUNTY COUNCIL v. FOLKESTONE CORPORATION** C. A. [1905] W. N. 30 ; [1905] 1 K. B. 620

Note.

Followed by Warrington J., *T. Tilling, Ltd. v. Dick Kerr & Co., Ltd.*, [1905] 1 K. B. 562. See No. 22, *above*.

36. — Repairs—Neglect of duty—Damages—Misfeasance—Non-feasance—Corporation liable to indictment for non-repair of highway—Liability to action for accident caused by non-repair—Local government.

HIGHWAY—*continued.*

By 9 & 10 Vict. c. cxxvii. the defendant corporation were declared to be the surveyors of highways for the borough of Liverpool ; the control of the streets was vested in them ; and they were empowered to form or pave streets with such materials as they should think fit. By s. 58 it was enacted that the corporation should be liable to be indicted at common law for the want of sufficient repair of any highway in the borough in the same manner as any person or persons liable to the repair of such highways was or were before the passing of the Act. An action was brought against the corporation for injuries caused to the plt.'s horse by the negligence of the defts., in that they had not properly repaired a road. The want of repair was admitted, but there was no evidence of misfeasance on the part of the defts. :—

Held, that the mere fact that a new body was created with the duty to repair roads did not of itself impose on the new body a liability to actions for damages caused by non-repair of roads ; and that if and so far as *Hartnell v. Ryde Commrs.*, (1863) 4 B. & S. 361, laid down a rule to the contrary, it must be taken to have been overruled. No fresh liability was created when the duty to repair was transferred by the Act of 1846 ; and the action could not be maintained. Under the modern authorities a transfer to a public corporation of the obligation to repair roads does not of itself render the corporation liable to an action for damages for non-feasance as distinguished from misfeasance ; and the question whether such a liability is imposed upon them must be determined by the language of the particular Act of Parliament. **MAGUIRE v. LIVERPOOL CORPORATION**

C. A. [1905] W. N. 34 ; [1905] 1 K. B. 767

— Res judicata—Decision that street is a high-highway.

See **STREETS**. 6.

— Road—National monument—Public right of access Public road—User.

See **WAY, RIGHT OF**. 9.

— Road raised to level of railway—Approaches to crossing—Repair of roadway of approaches.

See **RAILWAY—Level Crossings**. 3.

37. — Roadside strip—Right of passage—Land between fences separating highway from adjoining land—Presumption of dedication.

In the case of an ordinary highway running between fences, although the space between them may be of a varying and unequal width the right of passage or way *prima facie*, and unless there be evidence to the contrary, extends to the whole of the ground between the fences, and the public are not confined to the metalled portion. All the space between the fences is presumably dedicated as highway unless the nature of the ground or other circumstances rebut that presumption, and the owner of the adjoining lands is not entitled to inclose any portion of it.

Mere disuse of a highway for any length of time cannot deprive the public of their rights in respect of it. The mere consent of a highway authority to an obstruction or encroachment

HIGHWAY—continued.

upon the highway is ineffectual for the purposes of legalising that obstruction or encroachment.

Neeld v. Hendon Urban Council, (1899) 81 L. T. 405, distinguished. *HARVEY v. TRURO RURAL DISTRICT COUNCIL*

Joyce J. [1903] W. N. 126 ; [1903] 2 Ch. 638

38. — Roadside waste—Dedication — Presumption—Evidence.

Where there are uninclosed spaces by the sides of a metalled highway there is no invariable presumption that the highway extends to the fence on either side.

The nature of the district, the width and level of the margins, and the regularity of the lines of fence are circumstances to be taken into account in determining the fact of dedication. *COUNTESS OF BELMORE v. KENT COUNTY COUNCIL*

Cozens-Hardy J. [1901] W. N. 65 ; [1901] 1 Ch. 873

39. — Roadside waste—Dedication—Presumption—Evidence—Public authorities protection—Action for declaration of title—Delay—Continuance of injury—Cause of action—R. S. C. 1883, Order XXV., r. 5—Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61), s. 1.

Fences by the side of a highway are *prima facie* the boundaries of the highway so as to raise a presumption that the public right of way extends over the whole space of ground between the fences. But the mere existence of fences on either side of a highway is not conclusive. In order to raise the presumption it must be proved that there is nothing to shew that they were not put up as boundaries of the highway.

The plt. claimed that a triangular piece of land abutting on and not fenced off from a highway belonged to him :—

Held that, in the absence of anything to shew the contrary, it must be assumed from the nature and position of the fence surrounding the land that it had been put up as a boundary of the highway ; that the presumption therefore arose that the land formed part of the highway ; and, on the evidence, that there was nothing to rebut that presumption.

The plt. erected a fence round the piece of land. The local authority pulled down the fence and afterwards wrote a letter asserting their claim to the land. More than six months after this letter the plt. brought an action against them for a declaration that the land belonged to him and an injunction to restrain them from trespassing on it. By his statement of claim he alleged that the defts. had pulled down his fence ; that they claimed that the land formed part of the highway, and that this claim prevented him from selling the land :—

Held, that the assertion of the defts.' claim to the land gave the plt. no cause of action, and, therefore, that he could not take advantage of the power given to the Court by the R. S. C., Order XXV., r. 5, to make a merely declaratory judgment ; that the only act of the defts. which gave him any cause of action was the pulling down of the fence ; that the Public Authorities Protection Act, 1893, applied ; the action was brought too late, and must be dismissed with

HIGHWAY—continued.

costs as between solicitor and client. *OFFIN v. ROCHFORD RURAL DISTRICT COUNCIL*

Warrington J. [1906] 1 Ch. 342

— Statutory corporation—Borrowing powers—Appointment of receiver.

See MORTGAGE—Validity. 1.

— Street—Overhead wires—Local government. *See* STREETS. 7.

— Streets.

See under STREETS.

40. — Subsidence caused by mining operations—Action against wrong-doer—Measure of damages—Local Government—Urban Sanitary Authority—Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 149—Highways and Locomotives (Amendment) Act, 1878 (41 & 42 Vict. c. 77), ss. 10, 27.

A mine extended under a highway which was vested under s. 149 of the Public Health Act, 1875, in the local authority. While working the mine the owners let down the surface of the highway, which the local authority, in good faith and on the opinion of skilled advisers, restored to its former level at great cost. An equally commodious road might have been made at less cost :—

Held, that the local authority were not entitled to raise the road to the old level, cost what it might and whether it was more commodious to the public or not, and were only entitled to recover from the mine owners what it would have cost to make the equally commodious road.

Decision of the C. A. [1907] 1 K. B. 78, reversed.

Decision of Jelf J., [1905] 2 K. B. 823, restored. *LODGE HOLES COLLIERY Co. v. WEDNESBURY CORPORATION*

H. L. (E.) [1908] W. N. 158 ; [1908] A. C. 323

— Subsoil of road—Vesting in sanitary authority—Misuse of statutory powers—Injunction.

See LONDON—Conveniences. 1.

— Tramway company.

See under TRAMWAYS.

— Tramway company — Liability for damage from non-repair of road—Transfer of liability.

See TRAMWAYS. 7.

— Tramway, Obligation to keep surface of, in good condition—Liability in damages to individual.

See TRAMWAYS. 15.

41. — Two roads—Right for foot passengers—Prescriptive use—Accumulated use attributable to two roads—Substituted roads—Right of way.

By the law of Scotland, if it can be inferred from the evidence that a new road was taken as of right as a substitute for an old road, the years of use of both roads can be added together to make the prescriptive period. *YOUNG v. KINLOCH*

H. L. (Sc.) [1910] W. N. 3 ; [1910] A. C. 169

— Water company — Liability to reinstate pavement — Subsidence — Omission of road authority to rectify.

See WATER.

HIGHWAY—*continued.*

- Water highway.
See under **WATER HIGHWAY**.
- Way, Right of—User by public—Land in settlement—Possibility of dedication.
See under **WAY, RIGHT OF**.
- Within two jurisdictions—New street—Sewer—Recovery of expenses.
See **LONDON—Streets**. 2.
- Workmen's compensation—Tramway on highway—"Engineering work."
See **MASTER AND SERVANT—Compensation**. 79.

HINDU — Marriage — Validity — Husband a British subject domiciled in India—Personal capacity to contract marriage with an English Christian woman.
See **MARRIAGE**. 7.

HIRE — Charterparty — Shipowners' lien for unpaid hire—Hire accruing due.
See **SHIPPING—Charterparty**. 56.

— Trade fixtures — Mortgage—Rights of mortgagee against owner of machinery—Presumption of law.
See **FIXTURES**. 1.

HIRE-PURCHASE AGREEMENT—Bill of sale.
See under **BILL OF SALE**.

— Chairs fastened to floor of place of entertainment — Mortgage of building and fixtures.
See **FIXTURES**. 2.

— Distress—Landlord and tenant—Trade fixtures—Gas engine.
See **DISTRESS**. 11.

— Liability to repair hired chattel—Lien as against owner.
See **LIEN**. 2.

— Loan—Inference of fact—Registration.
See **BILL OF SALE**. 3.

— Option to purchase—Bailee for hire—Right of owner to sue for arrears of rent after retaking possession.
See **BAILMENT**. 1.

— Subsequent equitable mortgage—Priority.
See **FIXTURES**. 1.

— Trade fixtures—Right of mortgagee against owner of fixtures — Mortgagor in possession.
See **MORTGAGE—Fixtures**. 1.

HIRING AGREEMENT.

See under **CONTRACT**.

HIRE-PURCHASE AGREEMENT.

HISTORICAL EVENT—Representation of, set up for the purpose of decoration only—Faculty.

See **ECCLESIASTICAL LAW—Faculty**. 3.

HOARDINGS — Advertisement hoardings—Right to restrain—Fixtures — Landlord and tenant.
See **DISTRESS**. 3.

HOARDINGS —*continued.*

— Restrictive covenants—Advertisement hoarding—"Building"—Mandatory injunction.
See **BUILDING ESTATE**. 1.

HOLDINGS—Small holdings and allotments.
See under **SMALL HOLDINGS AND ALLOTMENTS**.

HOLIDAYS—Ship—Demurrage—Lay days.
See **SHIPPING—Charterparty**. 39.

HOLOGRAPH CODICIL.

See under **WILL—Codicil**.

HOLOGRAPH WILL.

See under **WILL—Holograph Will**.

HOLY COMMUNION.

See under **ECCLESIASTICAL LAW—Holy Communion**.

HOME SECRETARY—Order of—Appeal.

See **CRIMINAL LAW—Appeal**. 25.

HONG KONG—*Bankers, Liability of—Compradore's limited authority as their agent Action against bankers to recover moneys improperly received by compradore.*

In an action by the respondent to recover from the appellant bank moneys paid to their compradore or Chinese agent at their Hong Kong branch for the purpose of a telegraphic transfer to the plt.'s nominee at Shanghai it appeared that the compradore, to the knowledge of the plt., had no authority without the express approval of the bank manager to receive the money or to fix the rate of exchange or other terms on which the transfer was to be effected:—

Held, that the bank was not liable for the compradore's misappropriation of the said moneys. His authority was limited to arranging the details of the proposed transaction and did not extend to receiving money on account of the bank until a binding contract had been made with the bank manager. There had been no holding out through any negligent or improper act by the bank of the compradore as apparently invested with an authority greater than the limited authority which the plt. knew him to possess. **RUSSO-CHINESE BANK v. LI YAU SAM**
P. C. [1910] A. C. 174

2.—*Company—Adoption of articles of association—Registration of unsigned articles—Acquiescence.*

Although a special resolution is the statutory mode of enacting articles of association, the adoption thereof by a co. may be proved by a long course of acquiescence.

The unsigned articles of a co. incorporated under Hong Kong Ordinance I. of 1865 (similar to the English Companies Acts, 1862) were irregularly registered along with its memorandum of association; but it appeared that they had for nineteen years been published, acted on without objection, and from time to time amended and added to by special resolutions:—

Held, that they must be treated as valid and

HONG KONG—continued.

operative, and as having been adopted by the shareholders. *HO TUNG v. MAN ON INSURANCE Co.* **P. C. [1902] A. C. 232**

3. — *Limitations, Statute of—Cause of action—Grant of letters of administration—Powers of registrar—Hong Kong Ordinances No. 13 of 1864, s. 8; No. 8 of 1860, s. 39; and No. 9 of 1870, s. 1—Construction.*

Held, in a suit for a partnership account brought by the administrator of a deceased partner, that the Statute of Limitations (Hong Kong Ordinance No. 13 of 1864, s. 8) ran from the grant of letters in 1897, and not from the grant of probate in 1886 of a forged will, which on revocation was void ab initio.

By the true construction of s. 39 of Ordinances No. 8 of 1860, and No. 9 of 1870, s. 1, the registrar of the Court was merely placed in the position of a receiver of the intestate's estate pending the grant of letters, but without power to sue in respect thereof. *CHAN KIT SAN v. HO FUNG HANG* **P. C. [1902] A. C. 257**

4. — *Right of appellants to shew cause before sentence—Hong Kong Supreme Court Ordinance, 1873, s. 31—Construction.*

The appellants, having been summarily committed to prison by the Chief Justice under Hong Kong Supreme Court Ordinance 3 of 1873, s. 31, for wilful and corrupt perjury before the Bankruptcy Court, moved unsuccessfully for a discharge of the order on the grounds that they had not been informed by the Chief Justice what statements made by them constituted the perjury and that they had had no opportunity of shewing cause before sentence:—

Held, (1.) that the Ordinance did not contemplate the accusation being formulated in a series of specific allegations of perjury and that its gist had been made sufficiently clear; (2.) that as the Ordinance did not dispense with giving the appellants an opportunity before sentence of explaining or correcting misapprehensions of their statements, it was essential that it should be accorded to them.

In re Pollard, (1868) 5 Moo. P. C. (N.S.) 111; L. R. 2 P. C. 106, followed. *CHANG HANG KIU v. PIGGOTT*, *In re LAI HING FIRM*.

P. C. [1909] A. C. 312

5. — *Trade Mark—Assignment of trade mark—Breach of trade mark—Title to damages.*

In an action for infringement of trade marks it appeared that the business of selling watches in Hong Kong affected thereby did not belong to the plts., and was not carried on for their benefit, but that they as manufacturers supplied to it the watches sold:—

Held, that they must be nonsuited for want of title to maintain the action, *ULLMANN & Co. v. CESAR LEUBA* **P. C. [1908] A. C. 443**

HORSE-RACE—Sweepstakes on—Lottery.

See GAMING. 15.

HORSES—*Diseases of Animals Act*, 1910 (10 *Edw. 7* § 1 *Geo. 5*, c. 20).

See under DISEASE.

— Carcases of dead horses—Receiving—Licence—Public yard.

See LONDON—Dead Horses. 1.

HOSPITALS—*Isolation Hospitals Act*, 1901, (1 *Edw. 7*, c. 8), amends the *Isolation Hospitals Act*, 1893 56 § 57 *Vict. c. 68*.

— Ademption — Charitable legacy — Gift to endowment fund.

See WILL—Ademption. 1.

— Agreement by local authorities for joint use of hospital—Management expenses apportioned.—Notice by one local authority to determine agreement—Validity of notice.

See LOCAL GOVERNMENT. 15.

— “Hospital” —Settlement — Irremovability — Residence.

See POOR LAW. 24.

— Land tax—Exemption—Land in occupation of tenants.

See LAND TAX. 1.

— “Medical charities.”

See CHARITY. 20, 21, 22, 31, 32.

1. — *Negligence—Public Hospital—Liability of governors — Operation—Injury to patient — Hospital staff—Relation of hospital to patients.*

The only duty undertaken by the governors of a public hospital towards a patient who is treated in the hospital is to use due care and skill in selecting their medical staff. The relationship of master and servant does not exist between the governors and the physicians and surgeons who give their services at the hospital, and the nurses and other attendants assisting at an operation cease for the time being to be the servants of the governors, inasmuch as they take their orders during that period from the operating surgeon alone and not from the hospital authorities.

The plt. brought an action against the governors of a hospital for damages for injuries alleged to have been caused to him during an operation by the negligence of some member of the hospital staff.

Held, that the action was not maintainable. *HILLYER v. GOVERNORS OF ST. BARTHOLOMEW'S HOSPITAL*.

C. A. [1909] W. N. 189
[1909] 2 K. B. 820

— Public building—“Public purpose.”

See LONDON—Buildings. 11.

2. — *Public health—Infectious hospital—Discharge of patient while still infectious—Liability of local authority—Public Health Act, 1875 (38 § 39 *Vict. c. 55*). ss. 124, 131, 132.*

The defts., a local authority, acting under the provisions of the Public Health Act, 1875, provided for the use of the inhabitants of their district a hospital for the reception of persons suffering from infectious diseases. A visiting physician, who was a competent medical practitioner, was appointed to the hospital, and acted under the general directions of the hospitals committee of the defts., the rules providing (*inter alia*) that he should be responsible for “the treatment of the patients from the beginning to the end of their stay, and also for their freedom from infection when discharged.” A son of the plt. was treated in the hospital while suffering from a mild attack of scarlet fever, and was ultimately discharged by the visiting

HOSPITALS—*continued.*

physician while still in an infectious condition, and under circumstances which a jury found to amount to a want of reasonable skill and care on his part in and about the discharge; after the boy had returned home, he communicated the disease to three other children of the plt. The plt. then sued the defts. to recover the expense to which he had been put in regard to the illness of his other children owing to the premature discharge of his son from the hospital by the visiting physician :—

Held, that the plt. was not entitled to recover, for the legal obligation of the defts. extended only to the provision of reasonably skilled and competent medical attendance for the patients, which they had discharged, and that there was no absolute undertaking or obligation on their part that no patient should be discharged by the visiting physician while still in a condition which might cause infection. **EVANS v. LIVERPOOL CORPORATION** **Walton J. [1906] 1 K. B. 160**

- Smallpox — Quia timet action — Evidence — Admissibility.
See **NUISANCE**. 10.
- Will — Charitable gift — Bequest “towards new building and equipment.”
See **CHARITY**. 20.
- Will — Construction — Charity — Legacy “to found a bed in a hospital” — Endowment.
See **CHARITY**. 21.

HOTCHPOT—Advancements to children.

See under **WILL**—**Advances**.

- Advancements to children — Intestacy.
See **DISTRIBUTIONS, STATUTE OF**. 1.
- Annuities immediate and reversionary — Deficient estate — Abatement — Apportionment.
See **ANNUITY**. 1.
- Authorized Security — Loss — Period of account — Apportionment.
See **SETTLED LAND** — **Apportionment**. 2.
- Date at which value of appointed stocks should be ascertained.
See **SETTLEMENT**. 1.
- Surrender of appointor's life interest — Immediate possession — Death of appointor.
See **SETTLEMENT**. 1.
- Will — Construction.
See under **WILL**—**Advances**.

HOTEL — Compensation fund — Relief from maximum charge.
See **LICENSING ACTS**. 16.

— Income tax — Deductions — Loss arising from negligence — Injury to guest — Damages.
See **REVENUE**—**Income Tax**. 37.

— Innkeeper.
See under **INNKEEPER**.

HOTEL—*continued.*

- Lessor and lessee — Quiet enjoyment, Implied obligation as to — Printing machinery and hotel bedrooms.
See **NEW ZEALAND**. 6.
- Lodger at — Arriving drunk — Admission of after closing hours.
See **LICENSING ACTS**. 60.
- Manager of — Undisclosed principal — Licence taken out in name of manager — Presumption as to hotel being tied.
See **PRINCIPAL AND AGENT**. 15.
- Noise — Early morning building operations — Injunction — Interference with sleep of guests.
See **NUISANCE**. 7.
- Trade refuse — Removal — Dispute between occupier and sanitary authority — Appeal by special case.
See **LONDON**—**Removal of Refuse**. 1.

HOUSE—Agreement for letting house to testator — Payment by instalments — Death of testator before payment — Debt.
See **CAPITAL AND INCOME**. 1.

— Part of a house or other building or manufactory, Prohibition against the compulsory acquisition of a.
See **NEW SOUTH WALES**. 12.

— Rating — “Inhabitant” — “Occupier.”
See **RATES**. 15.

— Unfurnished house — Defective premises — Promise by landlord to repair — Accident — Damages.
See **LANDLORD AND TENANT**. 89.

HOUSE AGENT—Authority of—Agreement for lease.
See **LANDLORD AND TENANT**. 40.

HOUSE DUTY—Income Tax—Premises let on lease.
See **REVENUE**—**Income Tax**. 20.

HOUSE DUTY AND HOUSE TAX.
See under **REVENUE**—**House Duty**.

HOUSE OF COMMONS—*Mr. Speaker's Retirement Act, 1905* (5 *Edw.* 7, c. 5).

— Costs — Taxation — Parliamentary agent — Solicitor.
See **SOLICITOR**—**Costs**. 29.

— Faculty — Window — Military colours.
See **ECCLESIASTICAL LAW**—**Faculty**. 3.

HOUSE OF COMMONS STANDING ORDERS, 190 — Divorce Bill — Ireland — Alleged adulterer a foreigner domiciled abroad.
See **DIVORCE**—**Ireland**. 6.

HOUSE OF LORDS—Appeal to—Competency—New trial.
See **DIVORCE**. **Practice**. 25.

— Appeal to—Evidence—Judge's notes—Copies for printing.
See **APPEAL**. 9.

HOUSE OF LORDS—continued.

— Appeal to, from Scotland — Competency — Workmen's Compensation.
See MASTER AND SERVANT—Practice. 6.

— Costs — Taxation — Parliamentary agent — Solicitor.
See SOLICITOR—Costs. 29.

1. — Costs of more than two counsel in appeals—Practice.

The Appeal Committee resolved that, except in special cases, no costs should be allowed in taxation for more than two counsel of a side in appeals; and that appeals in the name of the Attorney-General or the Lord Advocate should be in the same position as all other appeals.
PRACTICE NOTE H. L. [1909] W. N. 184

Note as to postponement of appeals—House of Lords.

In an application on Monday, the 26th of July, 1909, to postpone the hearing of an appeal, Lord Loreburn L.C. said:—

“We will allow this application in the present case, but I desire to say a word as to the practice of applying for postponements. Litigants complain of delay in Courts of Law. In this House we have desired to finish every case before the vacation, so that the list might be entirely cleared. There are very few cases still left, some four or five, and we wished to finish them in the course of this week, though they have been put down only a few weeks ago. I think cases ought not to be put down unless the parties are ready to have them tried at once.”
PRACTICE NOTE [1909] W. N. 186

— Divorce — Leave to read evidence taken on commission in the House of Lords.
See DIVORCE—Ireland. 7.

— Leave to appeal to—Bankruptcy—Practice.
See Bankruptcy—Preference. 2.

2. — Practice—Discharge of judgment by consent—Compensation—Employers' Liability Act, 1880 (43 & 44 Vict. c. 42).

Where upon an appeal to the House of Lords the respondent petitions that the judgment of the Court below should be discharged and the case sent back for trial, the consent of both parties to that course must be brought before the House itself. **HANNAH v. HUNTER**

H. L. (Sc.) [1904] A. C. 379

3. — Practice—Peer's right to be heard at the bar—Barrister—Committee for privileges.

A barrister who is also a peer may argue as counsel on an appeal at the bar of the House of Lords, but may not appear as counsel to argue before Committees of the House, or before the House when sitting under the presidency of the Lord High Steward on a criminal case. *In re* LORD KINROSS **H. L. (Sc.) [1905] A. C. 468**

4. — Practice—Reversal—Point not argued.

The defts. in an action relating to a piece of ground, and which involved questions of encroachment, right to the land, title to sue, and possession, appealed to the House of Lords, against all the interlocutors of the Court below. At the

HOUSE OF LORDS—continued.

hearing in the House, [1904], A. C. 73, one only of these questions was argued by the defts., and the appeal was allowed:—

Held, by the Appeal Committee, that the defts. were not entitled to an order for the reversal generally of the interlocutors appealed from, but only for the reversal of the interlocutors so far as they related to the question raised in the House. **MONTGOMERIE & Co. v. WALLACE-JAMES H. L. (Sc.) [1904] A. C. 214**

HOUSE OF LORDS STANDING ORDERS, 177

— Divorce Bill — Ireland — Alleged adulterer a foreigner domiciled abroad.
See DIVORCE—Ireland. 6.

HOUSE REFUSE—London.

See under LONDON—Refuse.

HOUSING OF THE WORKING CLASSES.

Housing of the Working Classes Act, 1903 (3 Edw. 7, c. 39), amends the law.

Order of the Loc. Govt. Bd., dated Jan. 7, 1905, under the Housing of the Working Classes Acts, 1890 to 1903, prescribing Forms. St. R. & O., 1905, No. 3.

DO. LOCAL AUTHORITIES.] Jan. 9, 1905. Forms in Proceedings relating to Closing Orders under the Acts. St. R. & O., 1905, No. 3a.

DO. CIRCULAR.] Courts of Summary Jurisdiction. Forms in Proceedings relating to Closing Orders under the Acts. St. R. & O. 1905, No. 3b.

Order in Council transferring the powers and duties of the Secy. of State under the Housing Acts to the Loc. Govt. Bd. St. R. & O. 1905, No. 136.

Forms—Order, Jan. 11, 1910, under s. 41 of the Housing, Town Planning, &c., Act, 1909, prescribing forms of certain notices and other documents. St. R. & O., 1910, No. 2.

Appeals—Rules, Order, Jan. 11, 1910, under s. 39 of the Housing, Town Planning, &c., Act, 1909, with reference to appeals. St. R. & O., 1910, No. 3. Price 1d. each.

— Capital moneys.

See SETTLED LAND—Capital Moneys. 11.

1. — Closing order — Local government — Local authority—Powers—Dwelling-house unfit for human habitation—Housing of the Working Classes Act, 1890 (53 & 54 Vict. c. 70), ss. 29, 32.

By s. 32, sub-s. 1, of the Housing of the Working Classes Act, 1890, it is the duty of a local authority to take proceedings against the owner or occupier for the closing of a dwelling-house which is unfit for human habitation; and by sub-s. 2, “any such proceedings may be taken for the express purpose of causing the dwelling-house to be closed whether the same be occupied or not.” By s. 29, “In this part of the Act, unless the context otherwise requires, the expression ‘dwelling-house’ means any inhabited building. . . .”

A local authority applied for a closing order in respect of three dwelling-houses which were admittedly unfit for human habitation. The

HOUSING OF THE WORKING CLASSES—*contd.*

houses had been closed by the owner for five and a half years for all purposes of human habitation, and they had not been used for such purposes during that period, nor had the owner any intention of allowing them to be so used in their present condition. A magistrate having refused to make a closing order:—

Held, that the definition of "dwelling-house" in s. 29 did not operate to curtail the powers of the local authority under s. 32: that the mere fact of non-occupancy was not in itself an objection to the making of a closing order, and that the magistrate was wrong. **ROBERTSON v. KING**

Div. Ct. [1901] 2 K. B. 265

2. — *Land compulsorily taken—Compensation—Tied house—Covenant running with land—Fair market value—Housing of the Working Classes Act, 1890 (53 & 54 Vict. c. 70), s. 21.*

In estimating under s. 21 of the Housing of the Working Classes Act, 1890, the compensation payable in respect of the interest of the lessors in a house let as a public-house and taken compulsorily for the purposes of the Act, a covenant tying the house must be taken into consideration. *In re CHANDLER'S WILTSHIRE BREWERY CO. AND LONDON COUNTY COUNCIL*

Wright J. [1903] 1 K. B. 569

3. — *Local authority—Improvement scheme—Compulsory powers—Lands injuriously affected—Business premises—Easement of light—Compensation—Evidence of loss of trade, Admissibility of—Housing of the Working Classes Act, 1890 (53 & 54 Vict. c. 70), ss. 20, 21, 22, 93; Sched. II., cls. 4, 7, 11.*

Where land is injuriously affected by the carrying into effect of an improvement scheme under the provisions of the Housing of the Working Classes Act, 1890, such as the extinguishment under s. 22 of the Act of an easement appurtenant to premises adjoining but not included in the scheme, the arbitrator, in determining the compensation to be paid to the owner of the easement for the loss sustained by him by reason of the operation of the Act, cannot take into consideration the loss of trade or diminution in value of the goodwill of the business carried on at the premises enjoying the easement. *In re HARVEY AND LONDON COUNTY COUNCIL*

Neville J. [1909] W. N. 18 ;

[1909] 1 Ch. 528

— "Reconstruction, enlargement or improvement" of "dwellings available for the working classes."

See SETTLED LAND—Capital Moneys.

11.

HOUSING, TOWN PLANNING, &c., ACT, 1909
(9 Edw. 7, c. 44).

HUMAN REMAINS—Cremation.

See under BURIAL.

HUSBAND AND WIFE.

Married Women's Property Act, 1907 (7 Edw. 7, c. 18), amends the Married Women's Property Act, 1882.

Married Women's Property Act, 1908 (8 Edw. 7, c. 27), renders married women with a separate estate liable for the support of their parents.

HUSBAND AND WIFE—*continued.*

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HUSBAND AND WIFE—continued.**In General.**

- Acknowledgment (Separate)—Mortgage—Reconveyance—Married woman—Trustee mortgagee—Concurrence of husband.
See DEEDS. 1.
- Affiliation order—Application by married woman living with husband at date of application.
See BASTARDY. 1.
- Cancellation for security by married woman for her husband's debts.
See JAMAICA. 1.
- Cohabitation.
See under COHABITATION.
- Custody of child—Paternity—Evidence.
See INFANT—Custody. 2.
- Election—Compensation—Married woman—Restraint on anticipation—Removal of disability.
See ELECTION. 3.
- Franchise—Husband and wife living together—Wife, owner—Husband tenant.
See PARLIAMENT. 11.
- Fraudulent conveyance—Protection of creditors.
See under FRAUDULENT CONVEYANCE.
- Legitimacy.
See under LEGITIMACY.
- Real property limitation—Action to recover land—Person under disability—Claim by husband in right of wife.
See LIMITATIONS, STATUTE OF. 21.
- Solicitor and client—Independent advice.
See SOLICITOR—Fiduciary Relation. 1.

Acknowledgment.

- Married woman—Contract.
See HUSBAND AND WIFE—Separate Property. 1.
- Married woman—Mortgage—Separate examination—Burgage tenure—Custom—Reasonableness—Fines and recoveries.
See HUSBAND AND WIFE—Mortgages. 1.

Authority.

See also under HUSBAND AND WIFE—Liability.

- Implied authority to wife to pledge her husband's credit.
See DIVORCE—Costs. 6.

6. — *Principal and agent—Authority of wife to pledge husband's credit—Goods supplied on order of wife—Contract by wife "otherwise than as agent"—Married Women's Property Act, 1893 (56 & 57 Vict. c. 63), s. 1—R. S. C., Order LVIII., r. 4.*

The respondent, a married woman living with her husband, ordered articles of dress from the appellants with the husband's express authority and gave the appellants her married name. In an action by the appellants against the respondent for the price the jury could not

HUSBAND AND WIFE (Authority)—continued.

agree upon the question whether the appellants knew that she was a married woman, and the learned judge entered judgment for the appellants. The C. A. reversed that decision and entered judgment for the respondent on the ground that there was no evidence that she had contracted "otherwise than as agent" so as to bring the case within the Married Women's Property Act, 1893:—

Held, affirming the decision of the C. A., by Lord Loreburn L.C. and Lord Macnaghten (Lords Robertson and Atkinson dissenting), that it was immaterial whether the appellants did or did not know that the respondent was a married woman, she having as a matter of fact contracted as agent for her husband, and that the respondent was not liable. *PAQUIN, LD. v. BEAUCLEERK* (formerly HOLDEN) **H. L. (E.) [1906] W. N. 64; [1906] A. C. 148**

Bankruptcy.

- Act of bankruptcy—Married woman—"Carrying on" business separately from husband—"Absenting"—Receiving order.
See BANKRUPTCY—Act of Bankruptcy. 3.
- Judgment summons by married woman—Judgment debtor a creditor—Costs in bankruptcy—Set-off.
See BANKRUPTCY—Set-off. 3.

1. — *Married woman—Separate trading—Separate property—Receiving order—Jurisdiction—Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), s. 1, sub-s. 5.*

Sect. 1, sub-s. 5, of the Married Women's Property Act, 1882, imposes only one condition precedent to the jurisdiction of the Court to make a married woman a bankrupt, namely, that she shall be carrying on a trade separately from her husband. The existence of separate property at the date when the receiving order is applied for is not a condition precedent to the jurisdiction of the Court, although the absence of separate property is a matter to be considered by the Court in the exercise of its jurisdiction.

A trade belonging exclusively to a married woman but managed by her husband on her behalf is a trade carried on by the married woman separately from her husband within the meaning of the Married Women's Property Act, 1882.

In re Helsby, (1893) 1 Mans. 12, considered.
In re SIMON - - C. A. [1908] W. N. 253; [1909] 1 K. B. 201

- Proof of debt—Onus of proving whether money lent by wife for purpose of husband's business.
See BANKRUPTCY—Proof. 5.
- Set-off—Gift of money by bankrupt to wife—Claim by trustee in bankruptcy.
See BANKRUPTCY—Set-off. 2.

Breach of Promise of Marriage.

- Promise by married man—Public policy.
See MARRIAGE. 1.

HUSBAND AND WIFE—continued.**Conflict of Laws.**

- Married woman—Surety for husband—Im-movables in Transvaal.
See CONFLICT OF LAWS. 13.

Contract.

1. — *Agreement to pay wife a sum of money in the event of husband being guilty of conduct entitling her to a separation order—Validity of agreement.*

The plt. was the def't's wife. The def't. had been convicted of cruelty to the plt., and a separation order had been made by justices. Upon the making of the order the plt. lived apart from her husband. He subsequently entreated her to return and live with him, which she agreed to do on the terms of a deed whereby he covenanted not to assault her or conduct himself in such a way as to entitle her to obtain a further separation order, and that if he committed a breach of that covenant he would pay her a sum of 150*l.*, and the plt. covenanted that on payment by him of the 150*l.* she would not demand or receive any weekly sum that might be ordered by justices to be paid to her under any further separation order that she might obtain. The plt. returned to live with the def't., who again assaulted her, whereupon she obtained a further separation order from the justices. She then brought her action for the recovery of the 150*l.* due under the covenant :—

Held, that the covenant was not void as against public policy and that the plt. was entitled to recover. *HARRISON v. HARRISON Walton J.* [1909] W. N. 206; [1910] 1 K. B. 35

- By married woman during coverture—Judgment after cessation of coverture.
See HUSBAND AND WIFE—Restraint on Anticipation. 3.

- Separation order.

See under HUSBAND AND WIFE—Separation Order.

Conversion.

- Reversionary interest in land—Woman married before the Act—Conversion.
See WILL—Power of Sale. 1.

Costs.

- Husband and wife co-plaintiffs—Order for payment out of wife's property.
See PRACTICE—Pleadings. 1.

- Judicial separation, Petition by wife for—Bill of costs—Insufficiency.

See SOLICITOR—Costs. 4.

1. — *Married woman's liability to costs—"Proceedings instituted"—Interpleader proceedings—Married Women's Property Act, 1893 (56 & 57 Vict. c. 63), s. 2—County Court Rules, 1889, Order xviii., rr. 1, 2, 4 (a).*

A written claim made by a married woman to goods or chattels taken in execution under the process of the Court, and served by her on the sheriff or high bailiff of a county court, is a "proceeding instituted" by her within the

HUSBAND AND WIFE (Costs)—continued.

meaning of s. 2 of the Married Women's Property Act, 1893. Where, therefore, in the subsequent interpleader proceedings she fails to establish her claim to the goods, the Court has jurisdiction under that section to order payment of the execution creditor's costs of the interpleader proceedings out of property of the claimant which is subject to a restraint on anticipation and to enforce payment by the appointment of a receiver. *NUNN & Co. v. TYSON* Div. Ct. [1901] W. N. 138; [1901] 2 K. B. 487

2. — *Practice—Married woman—Separate property—Restraint on anticipation—Action brought by married woman—Appeal—Application for new trial—Married Women's Property Act, 1893 (56 & 57 Vict. c. 63), s. 2.*

Where, in an action brought by a married woman, an application by her for a new trial was dismissed with costs :—

Held, that the Court had jurisdiction under the Married Women's Property Act, 1893, s. 2, to order payment of those costs out of her separate property subject to a restraint on anticipation.

Hood Barrs v. Cathcart, [1894] 3 Ch. 376, and *Hood Barrs v. Heriot*, [1897] A. C. 177, distinguished. *DRESEL v. ELLIS*

C. A. [1905] W. N. 41; [1905] 1 K. B. 574

3. — *Practice—Married woman plaintiff—Dismissal of action with costs—Order for payment out of separate property notwithstanding restraint on anticipation—Receiver—Married Women's Property Act, 1893 (56 & 57 Vict. c. 63), s. 2.*

In an action by a married woman, on an application for an order, under s. 2 of the Married Women's Property Act, 1893, for payment of the costs of the opposite party out of property which is subject to a restraint on anticipation, the onus is on the married woman to shew why the order should not be made. *PAWLEY v. PAWLEY*

Buckley J. [1905] W. N. 56; [1905] 1 Ch. 593

- Security for costs—Action by trustee for wife under separation deed.

See TRUSTEE—Costs. 2.

- Wife's costs—Technical objection not taken in Court below—Appeal allowed.

See HUSBAND AND WIFE—Practice. 3.

Covenant.

1. — *Annuity—Release by married woman—Covenant not to sue—Acquiescence—Action by administrator for arrears of annuity—Damages for breach of married woman's covenant—Direction in will to pay debts—Assets—Married woman—Restraint on anticipation—Married Women's Property Act, 1893 (56 & 57 Vict. c. 63), s. 1.*

A direction in the will of a married woman that her debts shall be paid makes all the property she has power to dispose of, including arrears of an annuity which was subject to a restraint on anticipation, assets for payment of all liabilities of her separate estate, including damages for breach of covenant by her legal personal representatives.

By a separation deed the husband covenanted to pay 100*l.* to a trustee upon trust to pay the

HUSBAND AND WIFE (Covenant)—continued.

income thereof to the wife for her separate use without power of anticipation, and to pay him a further annual sum upon the same trusts. Afterwards the husband sued for a divorce. The proceedings were compromised by a deed whereby the wife and the trustee purported to release the husband from his covenant to pay the further annual sum, and she and a surety covenanted with the husband that neither she nor any person on her behalf should take proceedings to compel the husband to allow her any support, maintenance, alimony, or additional income other than the income of the 1000*l*. The wife lived ten years after this deed, and on every quarter-day she received from the trustee a cheque for 10*l*., representing the income of the 1000*l*., and made no claim for more. The 1000*l*. was not in fact invested, and the 10*l*. a quarter was found by the husband.

The wife made a will whereby she directed all her debts to be paid, and gave her property to an adopted daughter for life. Her legal personal representative brought this action against the husband for arrears of the annuity. The husband counter-claimed for damages for breach of the wife's covenant:—

Held that, the release of the husband's covenant being admittedly void, the conduct of the wife, in accepting the trustee's cheques for less sums than were due, did not amount either to accord and satisfaction, or to such acquiescence as would prevent the wife claiming the arrears. Her representative was therefore entitled to succeed in the action.

Held, also, that the wife's covenant not to sue was not personal to herself or confined to her lifetime; that it bound all her free separate estate; and that the direction in her will for payment of debts made the arrears of the annuity assets for payment of damages for breach of her covenant.

The husband was therefore entitled to recover back on the counter-claim all the money and costs which he might be ordered to pay in the action. No order was made except that the plt. should pay the costs of the action and of the counter-claim. *SPRANGE v. LEE* - *Neville J.* [1908] W. N. 13; [1908] 1 Ch. 424

— Covenant to pay annuity—Right to annul the covenant on notice to trustee—
Wife's waiver of notice valid.
See AUSTRALIA. 2.

Deceased Wife's Sister's Marriage.

— Church discipline—Refusal to administer the Holy Communion.
See ECCLESIASTICAL LAW—Holy Communion. 1, 2.

Deed.

— Deed—Operation—All estate clause—Conveyance by husband and wife of moiety of wife's land—Husband's rent-charge not mentioned—Release or grant.
See DEEDS. 6.

Desertion.

See also under DIVORCE—Desertion.

HUSBAND AND WIFE (Desertion)—continued.

1. — *Deed of separation—Bar—Summary Jurisdiction (Married Women) Act, 1895* (58 & 59 Vict. c. 39).

If a wife, having cause of complaint, under the Summary Jurisdiction (Married Women) Act, 1895, against her husband on the ground of desertion, enters into a valid deed of separation, the effect is to put an end to any desertion theretofore existing.

Quare, per Sir F. Jeune P. Whether a complaint, if made within six months after the deed, could properly be entertained. *PIPER v. PIPER* - Div. Ct. [1902] P. 198

— Desertion, what constitutes—Married woman deserted by her husband.
See POOR LAW. 8.

2. — *Protection order—Practice—Married woman—Matrimonial Causes Act, 1857* (20 & 21 Vict. c. 85), s. 21—*Matrimonial Causes Act, 1858* (21 & 22 Vict. c. 108)—*Husband's address unknown—Citation dispensed with.*

Upon an application by a wife who had been deserted by her husband, and whose only information as to his whereabouts consisted of a statement by his brother that he was believed to be somewhere in Melbourne, the judge (Jeune P.), in chambers, granted a protection order without notice being given to the husband. *In re MORRIS*
Jeune Pres. [1902] P. 104

Divorce.

See under DIVORCE.

Election.

— Judgment signed against one of two defendants—Alternative liability.

See HUSBAND AND WIFE—Liability. 1.

1. — *Principal and agent—Goods supplied on order of wife—Judgment against wife for part of entire price—Election not to sue husband for balance.*

An action was brought in the High Court to recover 26*l*. 11*s*. 6*d*. for groceries supplied by the plt. to the defts., a husband and wife living together, upon the order of the wife. Judgment was signed against both defts., in default of appearance. This judgment was subsequently set aside, on payment to the plt.'s solicitor of 20*l*., and liberty was given to the defts. to defend.

The wife admitted her liability to the amount of 24*l*. Subsequently, on an application under Order xiv. against both defts., the Master, in view of the wife's admissions that she was originally liable for 24*l*., made an order against her for 4*l*. on account of the plt.'s claim generally, gave both defts. liberty to defend as to the residue of the plt.'s claim, and remitted the action to the county court. At the trial the jury found that there was no joint liability of husband and wife, but that credit was given by the plt. to the husband alone, and judgment was accordingly entered against him for 22*l*. 11*s*. 6*d*. On appeal by the husband to the Div. Ct., it was held by Lord Alverstone C.J. and Kennedy J., Jelf J. dissenting, that recovery of judgment against the wife for 4*l*., although it was part of

HUSBAND AND WIFE (Election)—continued.

an entire claim, was not conclusive evidence of an election not to proceed against the husband for the balance, and that the plt. was entitled to recover.

The C. A. allowed the appeal, holding that the judgment of Jelf J. was correct. The only way in which the husband could have been held liable, consistently with the judgment that had already been obtained against the wife for 4*l.*, would be by making out a joint liability of the husband and wife, the very fact which was negatived by the finding of the jury. Under these circumstances the case of *Morel Bros. v. Westmorland (Earl of)*, [1904] A. C. 11, shewed that the plt. having elected to treat her as liable for the whole, it was too late to make out a second liability against the husband. The Court was also of opinion that the judgment of the county court judge for 22*l.* 11*s.* 6*d.* was clearly wrong under the circumstances, as it failed to make any allowance for the 20*l.* already paid.

Decision of Div. Ct., [1905] W. N. 116 ; [1905] 2 K. B. 580, reversed. FRENCH v. HOWIE AND WIFE C. A. [1906] W. N. 177 ; [1906] 2 K. B. 674

— Will—Election—Bequest by married woman of husband's property to a third person.
See ELECTION.

Execution.

1. — *Married woman—Separate estate—General power of appointment—Costs—Execution—Elegit—Practice—Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), s. 1, sub-s. 2.*

Real property over which a married woman and her husband have a joint general power of appointment by deed cannot be taken in execution under a writ of *elegit* issued under an order for payment of costs by the married woman and her husband by which execution against the married woman is limited to her separate estate. *GOATLEY v. JONES (No. 1)* ; *GOATLEY v. JONES (No. 2)* Neville J. [1909] W. N. 44 ; [1909] 1 Ch. 557

— Receiver—Equitable execution—Weekly payment by husband to wife under order of Court of summary jurisdiction.
See RECEIVER. 7.

Executor.

— Executor—Retainer—Loan by wife to husband—Wife appointed executrix of husband—Insolvent estate.
See EXECUTOR—Retainer. 4.

Fraud.

1. — *Fraud by wife—Tort committed during coverture—Subsequent decree of judicial separation—Husband's liability—Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), s. 1, sub-s. 2—Matrimonial Causes Act, 1857 (20 & 21 Vict. c. 85), s. 26.*

The intention and effect of s. 26 of the Matrimonial Causes Act, 1857, is to put the wife for all civil purposes in the same position as if her husband were dead during all the time that the decree of judicial separation is in force, and,

HUSBAND AND WIFE (Fraud)—continued.

therefore, the pronouncement of the decree, after the commencement of an action against a husband and wife for the wife's tort, but before judgment, entitles the husband to be discharged from the action to which he was a party only for the sake of a rule of conformity which no longer applies to the woman who is being sued.

In an action against husband and wife for fraudulent representations by the wife after the marriage whereby the plt. sustained damage it appeared that the husband had no knowledge of or connection with the fraud, and that the wife had obtained a decree absolute for judicial separation from him after the commencement of the action but before judgment :—

Held that, upon the proper construction of s. 26 of the Matrimonial Causes Act, 1857, the husband was entitled to judgment.

Seroka v. Kattenburg, (1886) 17 Q. B. D. 177, and *Earle v. Kingscote*, [1900] 2 Ch. 585, criticized by Fletcher Moulton L.J. CUENOD v. LESLIE C. A. [1909] W. N. 65 ; [1909] 1 K. B. 880

French Marriage Contract.

1. — *Construction of French marriage contract—Personal obligation on divorced husband to pay annuity at once.*

The House affirmed the decision of the Second Division of the Court of Session, dated Feb. 9, 1907, in the appeal. Cross appeal dismissed without costs and without prejudice to the right to raise the question afresh if necessary. HOPE VERE v. GUILLEMIN OR HOPE VERE H. L. (Sc.) [1907] W. N. 187

Guarantee.

1. — *Guarantee signed by wife for debt of husband—Influence of husband—Sufficient explanation of document not given to wife—Notice to creditor of relationship—Creditor procuring guarantee through husband.*

The plts., having agreed to supply goods to the defts., husband on credit if his wife would guarantee payment by him of their price, sent to the husband a form of guarantee, in order that he might obtain his wife's signature to it, leaving the matter entirely to him. The husband obtained his wife's signature to the guarantee, without sufficiently explaining to her the nature of the document, which she did not understand when she signed it. Goods having been supplied by the plts. to the defts.'s husband, the price of which was not paid, the plts. sued the defts. on the guarantee :—

Held, that the action was not maintainable.

Bischoff's Trustee v. Frank, (1903) 89 L. T. 188, and *Turnbull & Co. v. Duval*, [1902] A. C. 429, followed. CHAPLIN & Co., LD. v. BRAMMALL C. A. [1908] 1 K. B. 233

Insurance, Life.

— Covenant for payment to trustees—Satisfaction—Insurance, Life.
See SETTLEMENT. 30.

— Insurance by husband on wife's life—Insurable interest.

See INSURANCE (LIFE). 6.

HUSBAND AND WIFE (Insurance, Life)—*contd.*

1. — *Policy of assurance—Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), s. 11—Policy "for benefit of wife and children"—Death of wife and subsequent marriage of assured.*

A man, who had a wife and children, effected a policy of assurance on his life under the Married Women's Property Act, 1882, s. 11. The policy was expressed to be "for the benefit of his wife and children." The wife died and the man married again, and had a child by his second wife. On his death :—

Held, that the widow and her child were entitled to participate jointly with the children of the first marriage. *In re BROWNE'S POLICY. BROWNE v. BROWNE* - - - *Kekewich J. [1902] W. N. 225 ; [1903] 1 Ch. 188*

Note.

This case was followed by *Swinfen Eady J., In re Parker's Policies*, [1906] 1 Ch. 526. See No. 3, below.

2. — *Policy of assurance—Married Women's Property Act, 1870 (33 & 34 Vict. c. 93), s. 10—Policy "for benefit of his wife, or if she be dead between his children"—Death of wife and subsequent marriage of assured—Children born before and after issue of policy—Child of second marriage.*

A man who had a wife and four children effected a policy assurance on his life under the Married Women's Property Act, 1870. The policy was expressed to be "for the benefit of his wife, or if she be dead between his children in equal proportions." The wife died, having had four more children after the issue of the policy. The assured subsequently married again, and had one child by his second wife. On his death, leaving his widow and nine children him surviving :—

Held, that the widow was not entitled to participate in the policy moneys, but that they went to the children of the first and second marriages in equal shares.

In re Lyne's Trust, (1869) L. R. 8 Eq. 65, not followed. *In re GRIFFITHS' POLICY*

Joyce J. [1903] W. N. 50 ; [1903] 1 Ch. 739

3. — *Policy of assurance—Married Women's Property Act, 1870 (33 & 34 Vict. c. 93), s. 10—Policy for benefit of widow or children—Death of wife—Second marriage of assured.*

A man, having a wife living, effected two policies on his life in accordance with the provisions of s. 10 of the Married Women's Property Act, 1870. The policy moneys were expressly made payable to his widow and children, or some or one of them, as he should by deed or will appoint. His wife died, he married again, and by deed appointed the policy moneys to his second wife if she should survive him and become his widow. He died leaving his second wife and children of both marriages surviving :—

Held, that an after-taken wife is within the Act of 1870, and the widow was entitled to the moneys. For this purpose there is no difference between s. 10 of the Married Women's Property Act, 1870, and s. 11 of the Act of 1882.

In re Browne's Policy, [1903] 1 Ch. 188, followed. See No. 1, above.

Held, also, on the construction of the policies,

HUSBAND AND WIFE (Insurance, Life)—*contd.*

that if the second wife were outside the Act, she would still have been entitled by virtue of the contract with the insurance co. *In re PARKER'S POLICIES*

Swinfen Eady J. [1906]

W. N. 28 ; [1906] 1 Ch. 526

— *Settlement—Policies—Satisfaction.*

See SETTLEMENT. 30.

Intestacy.

— *Intestates' Estates Act—Intestacy of husband—Widow—Contingent reversionary interest—Real and personal estate—Husband and wife.*

See INTESTACY. 2.

Jointure.

— *Bargain, between husband and wife—Benefit to husband—Fraud on power.*

See JOINTURE. 1.

Judicial Separation.

— *Permanent alimony—Order of Probate and Divorce Division—Arrears—Action to recover.*

See DIVORCE—Judicial Separation. 1.

Larceny.

— *Indictment—Form—Receipt of money stolen by wife from husband.*

See CRIMINAL LAW—Larceny. 7.

— *Indictment—Separate property of wife laid as property of husband—Amendment.*

See CRIMINAL LAW—Larceny. 8.

— *Wife stealing goods of husband when about to leave or desert him.*

See CRIMINAL LAW—Larceny. 9.

Liability.

See also under HUSBAND AND WIFE—Authority.

1. — *Authority of wife to pledge husband's credit—Goods supplied on order of wife—Joint liability—Presumption arising from cohabitation—Principal and agent—Alternative liability—Election—Judgment signed against one of two defendants—Order XIV., r. 5.*

The fact that husband and wife live together and that necessities for the household are supplied on the orders of the wife is not evidence that husband and wife are jointly liable. The presumption that the wife has in such a case authority to pledge the husband's credit may be rebutted by proof that he made her a sufficient allowance, though this arrangement is not known to those who supply the necessities.

Order XIV., r. 5, does not apply where the right of action can only be in the alternative against one or other of two debtors. In such a case judgment against one of the debtors is conclusive evidence of an election not to proceed against the other.

The decision of the C. A., [1903] 1 K. B. 64, affirmed. *MOREL BROTHERS & CO. v. EARL OF WESTMORLAND*

H. L. E. [1903] W. N. 190 ; [1904] A. C. 11

Note.—Referred to by C. A., *French v. Howie*, [1906] 2 K. B. 674. *Husband and Wife—Election. 1.*

HUSBAND AND WIFE (Liability)—continued.

2. — *Goods supplied to a married woman abroad—Lex loci contractus—Lex fori—Liability of wife.*

Further consideration before Lawrence J., after trial by jury.—The action was for the price of clothing supplied by the plt., a Paris dress-maker, to the deft., Mrs. Bell, while resident in Paris with her husband, a domiciled Englishman.—The claim alleged the wife to be the purchaser of the goods and the husband to have guaranteed payment for them by her.

At the time of the sale of the goods Mrs. Bell had no separate estate. She had been previously supplied on several occasions with similar goods by the plt., and her husband had always paid for them to the knowledge of the plt. The husband did not appear to the writ, and the action proceeded against the wife. The jury found that the goods in question were necessities and had been sold on the same terms and to the same customer as the previous parcel of goods for which the husband had paid. But they also found that by French law a wife is liable jointly with her husband for clothes supplied to her.

Held, that although the goods were ordered and delivered in France, the law of England, as being that of the forum in which the action was brought, and not the law of France, determined the question of the judgment that could be recovered; and that as the wife had no separate estate at the time of the contract made, and upon the finding of the jury she had not contracted otherwise than as agent, no judgment could be recovered against her under the English law, and the action must consequently fail. **BEER v. BELL** **Lawrence J. [1906] W. N. 114**

3. — *Joint and several promissory note signed by husband and wife for debt of third party—Influence of husband—Absence of independent advice—Liability of wife.*

The plt. having obtained judgment against a debtor, it was agreed that the judgment debtor and the two defts. in the present action, who were husband and wife, should give the plt. a joint and several promissory note, payable by instalments, for the amount of the judgment. The husband, who had business relations with the judgment debtor, procured his wife's signature to the promissory note, the jury finding that the transaction was sufficiently explained to her and that she knew that the document she was signing was a promissory note, and that she also knew she was incurring a possible liability for the benefit of the judgment debtor in so signing; they also found that her signature was procured by the influence of her husband, but could not agree as to whether it was procured by his undue influence. Default having been made by the judgment debtor in payment of the instalments of the promissory note, the present action was brought against the husband and wife to recover the balance of the instalments of the promissory note. The husband allowed judgment to go by default:—

Held that, notwithstanding the absence of independent advice, the wife was liable upon the promissory note.

Per Lord Alverstone C.J. and Fletcher Moulton L.J.: There is no general rule of universal

HUSBAND AND WIFE (Liability)—continued.

application that the rule of equity as to confidential relationships necessarily applies to the relation of husband and wife, so as to throw on the husband, or on the person who is suing the wife, the onus of disproving an issue of undue influence.

Per Farwell L.J.: The relation of husband and wife does not come within the equity laid down in *Huguenin v. Baseley*, (1807) 14 Ves. 273.

Barron v. Willis, [1899] 2 Ch. 578, approved. **HOWES v. BISHOP** - **C. A. [1909] 2 K. B. 390**

Maintenance.

1. — *Divorce—Permanent alimony—Maintenance of guilty wife—Special circumstances—Conduct of husband—Discretion of Court—Matrimonial Causes Act, 1857 (20 & 21 Vict. c. 85), s. 32.*

There is no rule of practice that a wife against whom a decree nisi for dissolution of marriage is pronounced must shew special circumstances to entitle her to an order under s. 32 of the Matrimonial Causes Act, 1857, that the decree shall not be made absolute except upon the condition of the husband securing a provision for her support. The Court has an absolute discretion vested in it by the section, to be exercised according to the circumstances of each case. Thus, it will order the husband to secure a provision for his guilty wife, even though his own conduct has been unimpeachable, if the wife is proved to be entirely without means of support and unable through ill-health to earn her own living.

Robertson v. Robertson, (1883) 8 P. D. 94, considered.

Decision of Gorell Barnes J. affirmed. **ASHCROFT v. ASHCROFT AND ROBERTS** - **C. A. [1902] W. N. 192; [1902] P. 270**

2. — *Permanent maintenance—Matrimonial Causes Act, 1857 (20 & 21 Vict. c. 85), s. 32—Gross sum—Payment to petitioner.*

The Court ordered a gross sum of money to be paid to a petitioner by way of permanent maintenance. **KIRK v. KIRK**

Gorell Barnes J. [1902] P. 145

3. — *Step-Children—Liability to maintain—Summary Jurisdiction (Married Women) Act, 1895 (58 & 59 Vict. c. 39), s. 4.*

A husband who has been separated from his wife under an order made under the Summary Jurisdiction Act, 1895, by a court of summary jurisdiction, is liable to be ordered to make his wife an allowance for the support of her children by a former marriage. **HILL v. HILL**

Div. Ct. [1902] P. 140

Marriage.

See under **MARRIAGE**.

Marriage Settlements.

See under **SETTLEMENT**.

— *Co-plaintiffs* — Wife's separate property restrained from anticipation—Order for payment out of wife's property.

See **PRACTICE—Pleadings. 1.**

HUSBAND AND WIFE—continued.**Mortgages.**

1. — *Married woman—Real estate—Mortgage—Separate examination—Acknowledgment—Burgage tenure—Custom—Reasonableness—Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74), s. 77.*

Action by a married woman to set aside a mortgage of her real estate on the ground that it had been executed by her husband and herself without having been acknowledged by her. The defts. alleged that the property was held on burgage tenure, and that a local custom existed under which real estate so held by a married woman could be disposed of by her with the consent of her husband without her separate examination and acknowledgment:—

Held, that such a custom was inconsistent with the general principle of the common law that an exercise of free will was essential to alienations and contracts and that a married woman was not in a position to exercise that free will; that the custom was therefore unreasonable and bad; and that the mortgage was void and did not operate to pass the plt.'s interest in her land. *JOHNSON v. CLARK Parker J. [1907] W. N. 253; [1908] 1 Ch. 303*

— Wife's mortgage of separate property for her husband's benefit void—Onus probandi as to husband's benefit.
See CANADA—Husband and Wife, 1.

Paraphernalia.

— Married woman—Judgment debt—Wearing apparel—Dresses purchased by wife—Money supplied by husband—Wife's separate estate.
See HUSBAND AND WIFE—Wearing Apparel, &c. 1.

Partition Action.

— Certificate—Married woman—Description.
See PARTITION, 5.

Poor Law.

See under POOR LAW.

— Maintenance of relations—Liability of married daughter.

See POOR LAW, 13.

— Pauper lunatic—Maintenance order against husband—Liability of son to contribute.
See POOR LAW, 9.

1. — *Pauper—"Not worth 25l."—Married woman plaintiff—52l. yearly income—Restraint on anticipation—Affidavit of want of means—Joinder of husband—Rules of the Supreme Court, 1883, Order XVI., r. 22, 24.*

A married woman in receipt of a yearly income of 52l. without power of anticipation obtained an ex parte order for leave to prosecute in forma pauperis an action in which she was sole plt. Upon the application of the defts. to dispauper her:—

Held, that the married woman was not a person "not worth 25l." within the meaning of Order XVI., r. 22, and must be dispaupered.

The principle of *Boddington v. Woodley*,

HUSBAND AND WIFE (Poor Law)—continued.

(1842), 5 Beav. 555, and *Kydd v. Liverpool Watch Committee*, (1908) 24 Times L. R. 257, applied.

Quære whether the rejoinder of her husband in the affidavit of want of means by a married woman seeking to be admitted to sue in forma pauperis is in all cases absolutely necessary.
In re ATKIN'S TRUSTS. SMITH v. ATKIN

Eve J. [1908] W. N. 228; [1909] 1 Ch. 471

Power of Appointment.

See under POWER OF APPOINTMENT.

Practice.

1. — *Action by wife against husband—Detention of goods—Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), ss. 12, 17.*

An action will lie at the suit of a married woman against her husband for the return of her personal property detained by him. *LARNER v. LARNER - - Div. Ct. [1905] W. N. 116; [1905] 2 K. B. 539.*

2. — *Action by wife against husband for account—Summons by husband for inquiry before Master as to competency of wife to instruct her solicitors—Jurisdiction.*

Action by a wife against her husband claiming an account of his dealings with her property under a power of attorney given by her to him. Upon the writ being served upon him the husband issued a summons asking for an order that an inquiry might be held before the Master as to whether the wife at the date of the issue of the writ on May 12, 1909, was competent to retain her present solicitors. A preliminary objection was taken before the Master that this was contrary to the practice of the Court, and there was no authority for making any such order on the application of a defendant. The matter was adjourned to the judge on the question of whether there was jurisdiction to make the order.

Wartnaby v. Wartnaby, (1821) Jac. 377; *Blake v. Smith*, (1832) Younge, 594; *Brangan v. Gorges*, (1844) 7 Ir. Eq. 221, 225; *Porter v. Porter*, (1888) 37 Ch. D. 420; and *Didisheim v. London and Westminster Bank*, [1900] 2 Ch. 15, cited.

Eve J. said that, on the authority of the cases cited to him, and particularly that of *Blake v. Smith*, Younge, 594, which resulted in an inquiry whether a nominal plt. was imbecile, he must hold that the Court had jurisdiction to direct such an inquiry, in a proper case, upon an application by a deft. He accordingly sent the summons back to chambers with that intimation. *POMERY v. POMERY*

Eve J. [1909] W. N. 158

3. — *Appeal—Husband's appeal—Effect of withdrawal of previous summons—Technical objection not taken in Court below—Appeal allowed—Wife's costs—Summary Jurisdiction (Married Women) Act, 1895 (58 & 59 Vict. c. 39).*

The withdrawal of a summons under the Summary Jurisdiction (Married Women) Act, 1895, has the effect of putting an end to the complaint in respect of which it is issued, and,

HUSBAND AND WIFE (Practice)—continued.

after the withdrawal, no fresh summons can be issued upon the same cause of complaint.

A ground of objection, however technical, is not waived by the omission to take the objection on the hearing of a summons under the Act, but where such an objection is taken by the husband for the first time on the hearing of an appeal and is allowed, the wife (respondent) will be allowed her costs of the appeal. *PICKAVANCE v. PICKAVANCE* **Div. Ct. [1901] P. 60**

— Costs.

See under HUSBAND AND WIFE—Costs.

4. — *Wife's tort—Action against husband and wife jointly—Libel—Pleading Payment into court—Denial of liability—R. S. C., Order XXII., r. 1.*

In a statement of defence in a common law action of tort against a husband and his wife jointly for a libel published by the wife, the husband pleaded payment of money into Court in satisfaction of the claim, and the wife pleaded in denial of liability:—

Held, that such a mode of pleading was inadmissible. *BEAUMONT v. KAYE*

C. A. [1904] W. N. 20; [1904] 1 K. B. 292

Probate.

— Grants of administration, Form of oath to lead—*Commorientes*—Practice.

See PROBATE—Practice. 7.

— Married woman—Intervener—"Proceeding instituted."

See PROBATE—Practice. 8.

— Practice—Married woman—Separation order under the Summary Jurisdiction (Married Women) Act—Will—Administration.

See PROBATE—Practice. 6.

Property.

1. — *Equitable assignment—Priority—Trust fund—Fund in Court—Notice—Stop order.*

Upon the marriage in Morocco in 1865 of a Jewish husband and wife (the husband being domiciled in that country), a document called a "ketubah" was executed, under which it was alleged that the children of the marriage took an interest in the property of the wife. By the will of an English testator, who died in 1858, a sum of 10,000*l.* Consols was bequeathed to trustees, upon trust for the wife's mother for her life, with remainders to her children in equal shares. At the time of the marriage the wife was, subject to her mother's life estate, entitled to one-fourth of the fund. The fund was in court in a suit to administer the testator's estate, and stood to the separate account of the mother and her family. In 1878 the wife died intestate, and the husband took out administration in England to her estate. He in 1885, as her administrator, assigned her share of the fund for value to a reversionary society, and they obtained a stop order upon that share of the fund. The society had no notice of the "ketubah," and no notice had been given to the trustees of the will, and no stop order had been obtained on behalf of

HUSBAND AND WIFE (Property)—continued.

the persons entitled under it. In 1898 the tenant for life died.

Upon a petition in the suit by the society for payment of one-fourth of the fund to them:—

Held, that, the husband having the legal title to dispose of his wife's interest in the fund, the society had by means of the stop order obtained priority, and that the wife's share of the fund must be paid out to them.

In re Freshfield's Trust, (1879) 11 Ch. D. 198, approved and followed.

Decision of Byrne J. reversed upon a ground not taken before him. *MONTEFIORE v. GUEDALLA*

C. A. [1903] W. N. 77; [1903] 2 Ch. 26

Note.—*See also Montefiore v. Guedalla*, Buckley J., [1901] 1 Ch. 435; [1903] 2 Ch. 723. *Trustee—Appointment. 4.*

— Mortgages. *See under HUSBAND AND WIFE—Mortgages.*

2. — *Purchase in name of husband—Payment out of wife's property—Resulting trust—Presumption—Evidence—Capital or income.*

In 1883 the deft. married Colonel Mercier. They kept a joint banking account almost entirely composed of the wife's income, and both husband and wife drew on this account. In 1891 they bought some land, which was paid for out of the joint account and was conveyed to the husband. He died intestate in 1901, and his heir-at-law claimed the land:—

Held (affirming the decision of Buckley J.), that Mrs. Mercier had not made a gift of the purchase-money to her husband, and that the land belonged to her.

Per Romer and Cozens-Hardy L.JJ.: There is no distinction in principle between the presumption of a resulting trust in favour of the wife which arises when her income has been applied to a purchase in her husband's name and that which arises when the payment has been made out of her capital.

Aleander v. Barnhill, (1888) 21 L. R. Ir. 511, explained. *MERCIER v. MERCIER*

C. A. [1903] W. N. 86; [1903] 2 Ch. 98

Purchase.

1. — *House, Purchase of—Joint tenancy—Purchase-money paid by husband—Resulting trust—Advancement—Rebuttal—Decree of nullity of marriage.*

In 1896 the plt., then Miss W., was married to the deft. In 1897 the deft. bought a house for 654*l.*, which was conveyed to him and his wife as joint tenants. The deft. paid 354*l.* out of his own money and borrowed the remaining 300*l.* on the security of a mortgage of the house. This mortgage was executed by both husband and wife and was in the ordinary form of a mortgage by joint tenants. In 1898 the plt. and deft. separated. In 1905 the deft. paid off the 300*l.* mortgage debt and the house was reconveyed to him and the plt. In 1907 the plt. instituted proceedings for a declaration of nullity of marriage, and in October, 1908, a decree absolute was made whereby the marriage was declared "to have been and to be absolutely null and void." The plt. brought this action for a

HUSBAND AND WIFE (Purchase)—continued.

declaration that she was entitled to the house as joint tenant in fee with her late husband :—

Held, that at the date of the purchase the husband intended the house to be an advancement for his wife; that there was no implied condition that the marriage should continue; and that the plt. was entitled to the declaration she claimed. **DUNBAR v. DUNBAR.**

Warrington J. [1909] W. N. 203; [1909] 2 Ch. 639

Restraint on Anticipation.

—Annuity—Release by married woman—Covenant not to sue—Acquiescence—Action by administrator for arrears of annuity.

See **HUSBAND AND WIFE—Covenant. 1.**

—Power of appointment—Release of power—Married woman.

See **POWER OF APPOINTMENT. 22.**

1. — *Ante-nuptial debt, Judgment for—Execution—Separate property—Restraint on anticipation—Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), s. 19.*

A judgment against a married woman in respect of a debt contracted by her before marriage cannot be enforced by way of equitable execution against her separate property subject to a restriction against anticipation, where the restriction is not contained in a settlement, or agreement for a settlement, of her own property, made or entered into by herself. **BIRMINGHAM EXCELSIOR MONEY SOCIETY v. LANE.**

C. A. [1903] W. N. 196; [1904] 1 K. B. 35

2. — *Class, Severance of—Married Woman—Rule against perpetuities.*

A restraint on anticipation imposed by a general clause in a will, upon all the shares of daughters of the testator's children, is good as to the shares of those members of the class who are born in the testator's lifetime, though void as to the shares of those born afterwards.

Herbert v. Webster (1880) 15 Ch. D. 610, followed.

In re Michael's Trusts, (1877) 46 L. J. (Ch.) 651; In re Ridley, (1879) 11 Ch. D. 645, not followed. In re FERNELEY'S TRUSTS

Swinfen Eady J. [1902] W. N. 27; [1902] 1 Ch. 543

Note.

This case was followed by **Warrington J. In re Game, [1907] 1 Ch. 276. See No. 5, below.**

3. — *Contract by married woman during coverture—Judgment after cessation of coverture—Separate property—Restraint upon anticipation—Married Women's Property Act, 1883 (56 & 57 Vict. c. 63), s. 1.*

Where a married woman, who was entitled to the income of trust funds for life, for her separate use, without power of anticipation, signed promissory notes in 1897, and, her husband having subsequently died, judgment was, after his death, recovered against her in an action on the notes :—

Held, on the authority of **Barnett v. Howard, [1900] 2 Q. B. 784**, that a receiver could not be

HUSBAND AND WIFE (Restraint on Anticipation)—continued.

appointed to receive the before-mentioned income by way of equitable execution on the judgment. **BROWN v. DIMBLEBY**

C. A. [1903] W. N. 182; [1904] 1 K. B. 28
— Costs—Separate property.

See under **HUSBAND AND WIFE—Costs.**
— Costs, Power to order payment of—Married woman—"Proceeding instituted."
See **DIVORCE—Practice.**

4. — *Judgment against married woman—Separate estate—Restraint against anticipation—Income due after judgment—Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), ss. 1, 19.*

When judgment is obtained against a married woman payable out of separate estate held in trust for her without power of anticipation, income accrued due after the date of the judgment cannot be attached in the hands of the trustees to answer the judgment.

Whiteley v. Edwards, [1896] 2 Q. B. 48, approved. BOLITHO & Co. v. GIDLEY.

H. L. (E.) [1905] W. N. 34; [1905] A. C. 98

5. — *Married woman—Restraint on anticipation—Rule against perpetuities—Severance of class.*

A testator directed his trustees to stand possessed of and invest a sum of 500*l.* and pay the income arising from such investment to his daughter S. S. during her life, and after her death upon trust for such child or children of the said S. S., or such child or children of a son or daughter of the said S. S. who should die before her as should if a son attain the age of twenty-one years, or if a daughter attain that age or marry; "and as to the share or shares of any girl or girls for her or their separate use without power of disposing of the income or capital thereof, otherwise than by will." S. S. survived the testator, and died leaving two married daughters who were born during the testator's lifetime :—

Held, that the restraint upon anticipation was severable and was valid as to the shares of the two daughters born in the testator's lifetime.

Herbert v. Webster, (1880) 15 Ch. D. 610, and

In re Ferneley's Trusts, [1902] 1 Ch. 543, followed.

In re Ridley, (1879) 11 Ch. D. 645, not followed.

In re Russell, [1895] 2 Ch. 698, applied. In re GAME. GAME v. TENNENT Warrington J. [1907] W. N. 13; [1907] 1 Ch. 276

— Pauper—Married woman—Leave to sue in forma pauperis.

See **HUSBAND AND WIFE—Poor Law. 1.**

— Removal of disability—Married woman—Election—Compensation.
See **ELECTION. 3.**

6. — *Removal of restraint on anticipation—Married woman—Increase of income—Court investments—Absolute interest subject to restraint—"Benefit"—Practice—Application for removal of restraint—Summons—Petition—Conveyancing Act, 1881. (44 & 45 Vict. c. 41), s. 39, sub-s. 1.*

A married woman entitled absolutely, subject only to a restraint on anticipation of the income

HUSBAND AND WIFE (Restraint on Anticipation)—continued.

during coverture, to the capital of a fund in Court standing to her separate account and invested in Court securities, applied, under s. 39 of the Conveyancing and Law of Property Act, 1881, for the removal of the restraint in order that the fund might be paid out to the trustees of her marriage settlement with a view to reinvestment under the wide investment clause therein contained, so as to give her an increased income, the settlement trusts being for herself and her husband successively for life (subject, as to her life interest, to a restraint on anticipation during coverture), with ultimate trusts, in events which had happened, for her sole benefit :—

Held, by C. A., affirming Farwell J., that mere increase of income was not a sufficient "benefit" to the married woman to justify the Court in removing the restraint so as to enable her to effect a change of investment from Court securities into others of a speculative nature, even though sanctioned by the settlement; and the application was therefore refused.

Seem, a married woman's restraint on anticipation may be removed under s. 39 of the Conveyancing and Law of Property Act, 1881, on petition: it is not obligatory to proceed by summonses under s. 69, sub-s. 3. *In re* BLUNDELL

C. A. [1901] W. N. 103; [1901] 2 Ch. 221

Scottish Law.

— Marriage contract — Wife's acquirenda — Accumulations of income—Legitim.
See SCOTTISH LAW. 16.

Separate Property.

Married Women's Property Act, 1908 (8 Edw. 7, c. 27), renders married women with a separate estate liable for the support of their parents.

— Bankruptcy — Married woman — Separate property — Separate trading.

See HUSBAND AND WIFE — Bankruptcy. 1.

— Married woman—General power of appointment—Execution.

See HUSBAND AND WIFE—Execution. 1.

1. — *Married woman—Separate estate—Contract—Acknowledgment of loan made but not creating debt—Married Women's Property Act*, 1893 (56 & 57 Vict. c. 63), s. 1—*Executor—Retainer—Debt—Ready money—Money on deposit.*

Under s. 1 of the Married Women's Property Act, 1893, in order to bind the separate estate of a married woman there must be a contract by her entered into after the passing of the Act, and then entered into for the first time. An acknowledgment since the Act of the fact that the married woman had had moneys advanced to her prior to the Act, but for which she was under no liability, having had no separate estate at the time of the advance, even if such acknowledgment is in such terms as would make a debt

HUSBAND AND WIFE (Separate Property)—continued.

recoverable though barred by the Statute of Limitations, is not sufficient to render her liable to repay such advances.

The right of an executor to retain or set off the share of one of the next of kin in the estate under a partial intestacy against a debt owing by him in the estate, notwithstanding that it is barred by the Statute of Limitations, depends upon whether there was due from the legatee a debt for which he but for the Statute of Limitations could have been sued.

Money on deposit at a bank withdrawable at fourteen days' notice is not ready money.

Mayne v. Mayne, (1897) 1 Ir. Rep. Ch. D. 324, followed. *In re* WHEELER. HANKINSON v. HAYTER *Warrington J.* [1904] W. N. 100; [1904] 2 Ch. 66

Note.

This case was referred to by Warrington J., *In re Abrahams*, [1908] 2 Ch. 69. *See Administration*. 32.

2. — *Married woman—Will—Appointment—Exercise of general power—Separate estate—"Liable for her debts or other liabilities"—Jewellery—Married Women's Property Act*, 1882 (45 & 46 Vict. c. 75), s. 1, sub-ss. 3 and 4; s. 4.

By a marriage settlement on June 2, 1890, the testatrix on her marriage with Mr. Adamson assigned a reversionary interest to trustees upon trust, after the sum had been received by them, upon her request to raise thereout a sum not exceeding 7000*l.* and pay the same to her for her separate use, but so that she should not have power to alienate or charge her interest in the 7000*l.* during coverture, and then upon trusts under which she took a general power of appointment.

By an indenture of Jan. 29, 1891, in consideration of 10,000*l.* advanced by A. to Mr. Adamson, he covenanted to repay the same and interest, and the testatrix covenanted that when the reversionary interest fell in she would immediately request the trustees to raise and pay to her 4000*l.* and that she, her executors or administrators, would pay it over to A., or so much thereof as should be required to satisfy the amount then due. Mr. Adamson died, and on her second marriage with Mr. Fieldwick the testatrix executed a new settlement of her reversionary interest upon trusts under which she had a general power of appointment. The reversionary interest fell into possession in 1901. The testatrix by her will exercised her power of appointment and thus made the fund liable for her debts and other liabilities under s. 4 of the Married Women's Property Act, 1882. She died in 1907. Only about 1200*l.* of the 10,000*l.* had been repaid, and A. now claimed to be paid out of the testatrix's estate the 4000*l.* under the covenant contained in the deed of Jan. 29, 1891. It was admitted that owing to the restraint on alienation contained in the first settlement the covenant was inoperative as a charge :—

Held, that inasmuch as on the evidence the testatrix had no separate estate, in respect of which she could be supposed to have contracted, at the time when she made the covenant,

HUSBAND AND WIFE (Separate Property)—
continued.

it did not constitute a contract with respect to her separate property for breach of which an action for damages would lie against her estate.

In re Ann, [1894] 1 Ch. 549 overruled.

In re FIELDWICK. JOHNSON v. ADAMSON
C. A. [1908] W. N. 212; [1909] 1 Ch. 1

— Restraint on anticipation.

See under **HUSBAND AND WIFE. 1.**

Separation.

— Action by trustee for wife under separation deed — Security or costs — “Nominal plaintiff” — Practice.

See **TRUSTEE—Costs. 2.**

— Deed of—Covenant not to sue for any previous offence—Husband’s breach of other covenants.

See **DIVORCE—Practice. 11.**

— Security for costs — Action by trustees for wife under separation deed.

See **TRUSTEE—Costs.**

1. — Separation order — Adultery of wife—Liability of husband for subsequent weekly payments — Enforcement of order—Appeal by case stated—Summary Jurisdiction (Married Women) Act, 1895 (58 & 59 Vict. c. 39), ss. 7, 9, 11.

Where an order for a weekly payment by a husband to his wife is made under the Summary Jurisdiction (Married Women) Act, 1895, and the wife subsequently commits adultery, the husband is entitled under s. 7 of the Act, on proof thereof before a Court of summary jurisdiction, to have the order discharged in spite of a finding by the Court that he has been guilty of conduct conducing to the adultery; and he is not liable to make any further payments to his wife, although the order may not have been in terms discharged by the adjudication as to the wife’s adultery.

The decision of a Court of summary jurisdiction upon an information or complaint by a married woman alleging that payments due to her from her husband under an order made under the Act of 1895 are in arrear, is not a matter in respect of which an appeal lies under s. 11 of that Act to the Probate, Divorce, and Admiralty Division; but the Court has power to state a case for the opinion of the K. B. Div. upon a point of law arising on the information.

Manders v. Manders, [1897] 1 Q. B. 474, distinguished. **RUTHER**

Div. Ct. [1903] 2 K. B. 270

Separation Order.

— Contract—Husband and Wife—Validity of agreement.

See **HUSBAND AND WIFE—Contract. 1.**

1. — Summary Jurisdiction—Separation order — Order for maintenance of wife—Non-payment by husband—Absence of evidence of means—Committal to prison—Summary Jurisdiction (Married Women) Act, 1895 (58 & 59 Vict. c. 39).

Where an order of justices is made under the Summary Jurisdiction (Married Women) Act, 1895, ordering a husband to pay to his wife a weekly sum by way of alimony, although the

HUSBAND AND WIFE (Separation Order)—
continued.

justices ought to have evidence before them of the husband’s means at the time of making the order, if he fails at any time to comply with that order, while it stands unvaried and undischarged, they have jurisdiction to commit him to prison for such non-compliance notwithstanding that they have no evidence of his means at the date when the payment accrued due. **REX v. RICHARDSON.**

Div. Ct. [1909] W. N. 172; [1909] 2 K. B. 851

Settlements.

See under **SETTLEMENT.**

— Divorce.

See under **DIVORCE — Settlements (Variation of Settlements).**

Title.

— Reversionary interest in land of woman married before the Act — Conversion into money before coming into possession — Accruer of title.

See **WILL—Power of sale. 1.**

Title of Honour.

1. — Dignity—Incorporated hereditament—Marriage with a peer of the realm—Divorce—Former wife marrying a Commoner—Continued use of title derived from former husband—Injunction—Jurisdiction of Divorce Court.

Where the marriage of a commoner with a peer of the realm has been dissolved by decree at the instance of the wife, and she afterwards, on marrying a commoner, continues to use the title she acquired by her first marriage, she does not thereby, though having no legal right to the user, commit such a legal wrong against her former husband, or so affected his employment of the incorporeal hereditaments he possesses in his title, as to entitle him, in the absence of malice, to an injunction to restrain her use of the title.

Only the House of Lords can try questions of right in matters of peerage or dignities connected therewith.

The decision of C. A. [1900] P. 305, reversing the judgment of G. Barnes J., [1900] P. 118, affirmed. **EARL COWLEY v. COUNTESS COWLEY**

**H. L. (E.) [1901] W. N. 162;
[1901] A. C. 450**

— Bigamy—Second marriage performed abroad.

See **BIGAMY. 1.**

Unfurnished House.

— Defective Premises — Personal injury to tenant’s wife — Landlord not liable.

See **LANDLORD AND TENANT. 89.**

Wearing Apparel, &c.

1. — Married woman—Judgment debt—Wearing apparel—Dresses purchased by wife—Money supplied by husband—Wife’s separate estate—Paraphernalia — Married Women’s Property Act, 1882 (45 & 46 Vict. c. 75).

Wearing apparel purchased by a married woman for her personal use with money supplied for the purpose by her husband is *prima facie* her

HUSBAND AND WIFE (Wearing Apparel, &c.)—*continued.*

separate property, and, in the absence of evidence to rebut this presumption or to limit or qualify her possessory title, cannot be claimed by the husband as against an execution creditor of the wife.

Observations of Sir F. Jeune, P., *Tascher v. Tascher*, [1895] P. 1, on paraphernalia, disapproved.

Per Farwell L.J.: Since the Married Women's Property Act, 1882, the old common law exception of paraphernalia from the husband's right to his wife's chattels personal has ceased to exist. *MASSON, TEMPLIER & Co. v. DE FRIES* C. A. [1909] 2 K. B. 831

Note.

See also *Masson, Templier & Co. v. De Fries*. *DE FRIES*, Claimant. C. A. [1910] 1 K. B. 535—Costs. 6.

Will.

1. — *Married woman* — *Will* — *Incalid bequest* — *Assent of husband* — *Administration with will annexed* — *Assent given after wife's death* — *Construction* — “*All I have power to dispose of by this my will*” — *No power to dispose except with husband's assent.*

In order to make the will of a married woman valid as a disposition of property which she has no power to dispose of without her husband's assent, it is not necessary that his assent should be given during her life: assent given after her death is sufficient.

Ex parte Fane, (1848) 16 Sim. 406, followed.

A married woman entitled to a reversionary interest, and having under a settlement a power of appointment over other property but not over the reversionary interest, made a will whereby she appointed the settlement funds “and all and singular other the personal estate which at the time of my decease I shall have power to appoint or dispose of by this my will” to certain persons. Her husband did not assent to her will during her life, but after her death he gave his assent, in a form which recited that he was entitled to

HUSBAND AND WIFE (Will) — continued.

his wife's personal estate over which she had no disposing power, to administration with the will annexed being granted in general form to the executors therein named:—

Held, that the assent of the husband given after his wife's death would have been sufficient to make her will a valid disposition of the reversionary interest if she had purported to dispose of it; but that, as a matter of construction, the gift in the will did not include that interest, and that the husband had not assented to the will as dealing with it. *ELLIOT v. NORTH*

Buckley J. [1901] 1 Ch. 424

— “*Wife*” — *Named legatee misdescribed as wife.*

See **WILL**—**Misdescription.** 1.

— “*Wife*” of a person, gift to for life—*Second wife, whether included*—*Persona designata.*

See **WILL**—**Words.** 11.

— *Will*—*Attesting witness*—*Devise to daughter or her children*—*Attestation by husband*—*Intestacy.*

See **WILL**—**Attestation.** 1.

HUSBANDRY—*Covenant not to plough up pasture lands*—*Waste*—*Good husbandry.*

See **LANDLORD AND TENANT.** 62.

HYDRANTS, FIRE—*Capital money*—*Improvements*—*Irish estates*—*Principal mansion-house*—*Water supply.*

See **SETTLED LAND**—**Capital Moneys.** 10.

HYDRAULIC LIFT — “*Engineering work*” — *Repairs*—*Workmen's compensation.*

See **MASTER AND SERVANT**—**Compensation.** 84.

HYPOTHETICAL CASE—*Shipping*—*Demurrage*—*Charterparty*—*Bill of lading not put in evidence.*

See **SHIPPING**—**Charterparty.** 32.

I.

IOE—Bill of lading—Construction—"Inaccessible on account of ice."

See SHIPPING—Charterparty. 4.

—Ship—Time charter—Cessation of payment of hire—Detention by ice caused by breakdown of steamer.

See SHIPPING—Charterparty. 58.

IDENTITY—Evidence of—Legal estate—Misdescription of purchaser—Name.

See VENDOR AND PURCHASER—Misdescription. 1.

—Trust—Church—Identity—Fundamental doctrines—Limits to power of union.

See ECCLESIASTICAL LAW—Church. 1.

IDIOTS.

See under LUNACY.

ILLEGITIMACY—After-born illegitimate children—Child en ventre sa mere at date of settlement.

See SETTLEMENT. 29.

—"Chargeable" to parish—Cost of relief.

See BASTARDY. 4.

—Legitimacy.

See Cases under LEGITIMACY.

—Marriage of Adulterers—Illegitimacy of children procreated in adultery.

See CEYLON. 3.

—Settlement (Poor Law).

See under POOR LAW.

—Void contract—Contract by mother to give up possession of child.

See INFANT—Custody. 1.

—Will—Construction.

See under WILL—Illegitimacy.

—Workmen's Compensation Act.

See under MASTER AND SERVANT—Compensation.

ILLUSTRATED CATALOGUE.

See under COPYRIGHT—Catalogue.

IMITATION—Name of company—Registration—Fraudulent purpose—Trade name—Injunction.

See COMPANY—Name. 2.

IMMORALITY—Clergy discipline.

See ECCLESIASTICAL LAW—Discipline. 1.

—Conduct unworthy of minister of religion.

See ECCLESIASTICAL LAW—Offences. 3.

IMMOVABLES—Contract relating to foreign land—Capacity to contract—Lex situs.

See CONFLICT OF LAWS. 13.

IMPLICATION—Realty—"What is left"—Life estate by implication—Intestacy.

See WILL—Intestacy. 2.

"IMPOSITIONS AND OUTGOINGS"—Factory

Acts—Underground bakehouse—Lease—Covenant.

See FACTORY. 8.

IMPOSSIBILITY—Contract—Performance.

See under CONTRACT.

IMPOTENCE—Nullity of marriage.

See under DIVORCE—Nullity.

IMPOUND—Overpayments—Adjustment—Trustee also a beneficiary—Right to impound.

See TRUSTEE—Overpayments. 1.

IMPRISONMENT—Action for false imprisonment—Contract as to entry on and exit from wharf—Toll.

See AUSTRALIA. 6.

—False imprisonment.

See under FALSE IMPRISONMENT.

—Master and servant.

See under MASTER AND SERVANT—False Imprisonment.

—Railway company—False imprisonment.

See under RAILWAY—False Imprisonment.

IMPROVEMENT OF LAND—*Special Act—Rent-charges—Prior incumbrances—Priority—General Land Drainage and Improvement Company's Act, 1849 (12 & 13 Vict. c. xci.), ss. 62, 64.*

In this case Joyce J. said that the plt. co. were not bound to investigate or inquire into the title to the land upon which the improvements were executed. The provisional contract was made with the right person as regards the part of the land mortgaged in fee and also, as he thought, with regard to the land charged to the bank. The plt. society were purchasers for value of the charge created by the absolute order of 1906 without notice; there was no suggestion of fraud; and having regard to the provisions of the Act the deft. society appeared to him to have a valid and first charge upon the land. With regard to the land charged to the bank, his Lordship thought that though the legal estate was in the managing director and the statement in the declaration of title was inaccurate, the deft. co. were the true owners in equity. There was nothing in the fact that some of the work was executed before the date of the provisional contract to invalidate the order. If the work were so executed it was not before it was provisionally, if not formally, sanctioned. Upon

IMPROVEMENT OF LAND—continued.

the whole, he found no defect or invalidity in the title of either of the plts. as against the defts.; the absolute orders were valid and operated as provided by ss. 62 and 64 of the Act, and were binding upon every one concerned and interested. There would be a declaration accordingly, but without prejudice to any question as between the plts., and as between the several defts. inter se. **GENERAL LAND DRAINAGE AND IMPROVEMENT CO. v. UNITED COUNTIES BANK, LD.**

Joyce J. [1910] W. N. 187

IMPROVEMENTS—Market Gardeners' Compensation (Scotland)—Retrospective effect of statute.

See **LANDLORD AND TENANT. 3.**

— Settled estates and settled land.

See under **SETTLED LAND.**

INADVERTENCE—"Inadvertence"—Solicitor

—Lien on client's documents—Waiver.

See **COMPANY—WINDING-UP—Proof. 1.**

— Proof, Amendment of—Company—Bankrupt shareholder—Lien on shares.

See **COMPANY—Bankruptcy. 1.**

IN CAMERA—Power to hear—Divorce—Practice.

See **DIVORCE—Practice. 7.**

INCEST.

Punishment of Incest Act, 1908 (8 Edw. 7, c. 45), provides for the punishment of incest.

— Criminal law.

See under **CRIMINAL LAW—Incest.**

INCLOSURE (Inclosure Acts).

See also under **COMMON.**

Tithe Rent-charge—Redemptions of rent-charge under the Tithe Acts, 1836 to 1891. Draft rule by Board of Agriculture, with the approval of the Treasury, proposing in pursuance of the provisions of the Inclosures, &c., Expenses Act, 1868 (31 & 32 Vict. c. 89), to direct that certain specified fees shall be taken in respect of the business transacted by them on and after July 16, 1901. Reprint from W. N. 1901 (June 8), p. 181. See CURRENT INDEX, 1901, p. xcvi. This draft rule was confirmed without alteration. W. N. 1901 (Aug. 16), p. 249. See CURRENT INDEX, 1901, p. xcvi.

Agricultural Holdings—Order of Board of Agriculture, dated Dec. 31, 1900, prescribing fees to be taken in respect of transactions under the Agricultural Holdings Acts, 1883 to 1900, in accordance with the provisions of the Inclosures, &c., Expenses Act, 1868 (31 & 32 Vict. c. 89). St. R. & O. 1901, No. 144.

1. — Award—Herbage on road—Property vested in parishioners—Damage—Right of action—District council or parish council—Injury to limited section of public—Attorney-General—Right to join as plaintiff—Local Government.

By an award made in 1801 under an Inclosure Act the grass and herbage growing in a private road in a parish was to be let yearly by the surveyor of highways, or by such other person as

INCLOSURE—continued.

the parishioners in vestry assembled should appoint, and the money arising therefrom was to be expended in the repair of the public and private roads in the parish. The defts. caused damage to the letting value of the grass and herbage by wrongfully permitting cattle to graze in the road, and an action was brought against them by the Att.-Gen., on the relation of the rural district council, and by the district council for an injunction and damages:—

Held, that the action failed, as regards the district council, because the right of property in the grass and herbage was vested in the parish council and not in the district council; and as regards the Att.-Gen., because the right of property which had been injured was one enjoyed by only a limited section of the public, namely, the parishioners, and not by the public at large. **ATT.-GEN. AND SPALDING RURAL COUNCIL v. GARNER**

— Channell J.

[1907] 2 K. B. 480

— Common.

See under **COMMON.**

— Land—Inclosure of common land—Award of right of way—Non-user—User of other road on servient tenement—Presumption of lost grant—Prescription.

See **WAY, RIGHT OF. 6.**

— Lands Clauses Act—Compensation for commonable rights—Apportionment—Inclosure, &c., of land.

See **COMMON. 1.**

— Lands taken for public undertaking—Action to determine persons interested in compensation.

See **COMMON. 2.**

2. — Mines—Reservation of manorial rights—Right to support of surface—Damage to surface—Compensation—Construction of Inclosure Act.

Before 1757 the lords of a manor had the right to work mines and minerals under the waste lands of the manor so as to let down the surface, provided enough pasturage was left to satisfy the rights of the commoners. By an Inclosure Act of 1757 the waste lands were enclosed and allotted, and the lord of the manor was empowered to work the mines and minerals under the allotments as fully and freely as he might have done if the Act had not passed, and that without making or paying any satisfaction for so doing. A compensation clause in the Act provided that any damage done to an allottee by the exercise of the powers reserved to the lord should be paid for by an assessment upon the occupiers of the other allotments:—

Held, that upon the true construction of the Act, the common law right of the surface owners to the support of the surface was not taken away by express words or necessary implication.

The decision of the C. A. [1904] 2 Ch. 419, affirmed. **BUTTERKNOWLE COLLIERY CO. v. BISHOP AUCKLAND INDUSTRIAL CO-OPERATIVE CO.**

— H. L. (E.) [1906] W. N. 95;

[1906] A. C. 305

INCLOSURE—*continued*.*Note.*

Discussed by Swinfen Eady J., *Markham v. Paget*, [1908] 1 Ch. 697. See *Landlord and Tenant*.

Distinguished by C. A., *Butterley Co. v. New Hucknall Colliery Co.*, [1909] 1 Ch. 37; H. L. (E.) [1910] A. C. 381. See *Mines*.

3. — Mines—Support—Damage to surface—Construction of Inclosure Act.

The mere fact of giving a right to sink pits and to work or get coal does not of itself establish a right to get rid of the common law right of the surface owner to have his surface undisturbed.

The question of right to support is one of construction in each case, and the same principles apply whether the instrument be a grant, lease, or Inclosure Act. *NEW SHARLSTON COLLIERIES CO. v. WESTMORLAND (EARL OF)*

(1900) H. L. (E.) [1904] 2 Ch. 443, n.

Note.

Referred to by C. A., *Bishop Auckland Industrial Co-operative Society, Ltd. v. Butterknowle Colliery Co.*, [1904] 2 Ch. 419, 435, 443; H. L. (E.) [1906] A. C. 305. See *preceding Case*.

— Mortgagee—Notice of charge—Annual payment of corn to poor of parish.
See *CHARITY*. 48.

— Prescription—Lost grant, Presumption of—Award of.

See *PRESCRIPTION*. 2.

4. — Repair of private or occupation roads—Dedication as highway—Highway Act, 1835 (5 & 6 Will. 4, c. 50), s. 23—Inclosure Act, 1845 (8 & 9 Vict. c. 118), s. 68.

A valuer who makes an award under the Inclosure Act, 1845, has a discretion in each case as to the amount of formation and completion of private or occupation roads and ways set out by him in his award. The liability under s. 68 of the Act to maintain and keep repaired the private or occupation roads and ways arises after they have been formed and completed, and is confined to the extent to which they have been formed and made up.

The valuer may, where it is necessary, set out footways to accommodate enclosed lands or adjoining owners.

Observations as the effect of s. 23 of the Highway Act, 1835, with reference to private or occupation roads or ways set out under the Inclosure Act, 1845. *REYNOLDS v. BARNES*

Parker J. [1909] 2 Ch. 361

INCOME—Annuity—Direction to pay out of income.

See under *ANNUITY*.

— Capital and income.

See under *CAPITAL AND INCOME*.

— Capital or—Fine on surrender of lease—Tenant for life and remainderman.

See *SETTLED LAND—Leases*. 3.

— Capital or income—Investment—Substitution of shares in new company—Accretions.

See *TRUSTEE—Investments*. 13.

INCOME—*continued*.

— Capital or income.

See under *WILL—Capital or Income*.

— Capital or income—Repairs—Sanitary works, Cost of.

See *SETTLED LAND—Capital Moneys*. 14.

— Capital or income—"Residuary trust funds"—Wasting securities—Enjoyment in specie.

See *WILL—Interest*. 2.

— Capital or income—Shares in company—Unauthorized investments—Accretion.

See *TRUSTEE—Investments*. 13.

— Gift of residue to individuals in shares—Gift of income for maintenance of all—Vested or contingent.

See *WILL—Vesting*. 4.

— Tenant for life and remainderman—Capital or income.

See under *SETTLED LAND*.

— Will—Capital or income.

See under *WILL—Capital or Income*.

INCOME BOND—Company.

See under *COMPANY—Income Bond*.

INCOME TAX—Company—Directors' fees.

See *COMPANY—Directors*. 16.

— Public revenue.

See under *REVENUE—Income Tax*.

INCONSISTENCY—Codicils of same date—No evidence of priority of execution—Partial inconsistency.

See *PROBATE—Codicils*. 2.

INCORPORATED COMPANY.

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INCORPORATION—Will and codicils.

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INCORPOREAL HEREDITAMENT—Title of honour—Married woman—Jurisdiction of Divorce Court—Injunction.

See *HUSBAND AND WIFE—Title of Honour*. 1.

INCUMBENT.

See under *ECCLESIASTICAL LAW*.

INCUMBERED ESTATES COURT (IRELAND) ACT.

See *IRISH LAW*. 1.

INCUMBRANCES.

See also under *MORTGAGE*.

— Discharge—Settled land—Expenses of paving street—Payment by tenant for life.

See *STREETS*. 20.

— General inquiry as to—Liability of vendor to answer.

See *TRUSTEE—Breach of Trust*. 1.

— Life tenant—Subsisting accumulation trust for discharge of incumbrances—Void trust for purchase of land.

See *SETTLED LAND—Powers*. 2.

INCUMBRANCES—*continued.*

- Street, Expenses of making — Charge on premises — Payment by owner.
See SETTLED LAND—Mortgages. 1.

INDEMNIFICATION — Bail — Conspiracy — Agreement — No wrongful intent — Act tending to produce a public mischief.
See CONSPIRACY. 1.

INDEMNITY — Action quia timet — Present debt — No demand by bank for payment — Parties.

See PRINCIPAL AND SURETY. 2.

- Administration — Trustee carrying on testator's business — Creditors — Defaulting trustee.

See TRUSTEE—Business. 1.

- Administration bond — Duration of surety's liability.

See AUSTRALIA. 1.

- Attorney innocently acting under forged power — Liability of agent — Third party.

See PRINCIPAL AND AGENT. 3.

- Bank of England — Transfer of stock — Indemnity of Bank — Form of order.

See BANK OF ENGLAND. 1.

- Company — Forged transfer of stock — Innocent presentment for registration — Implied contract to indemnify.

See COMPANY—Forgery. 1.

- Company — Receiver and manager — Borrowing powers — Limit exceeded.

See COMPANY—Receiver. 1, 2.

- Contract of — Common interest — Trade rivals — Protection of customers.

See MAINTENANCE OF SUIT. 2.

- Costs — Indemnity by third parties — Appeal — Costs as between solicitor and client — Practice.

See COSTS. 73.

- Costs of plaintiff's solicitors — Costs of trustees — Trustees' right of indemnity — Priority.

See SOLICITOR—Costs. 9.

- Costs — Taxation — Third party — Solicitor and client — Unusual costs — Practice.

See SOLICITOR—Costs. 42.

- Covenant of indemnity — Spes successionis — Covenant to settle after-acquired property — Scots law — Jus relictæ.

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- Covenant running with the land — Quiet enjoyment.

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- Covenants, Negative — Alterations — Assignment of lease.

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- Covenants to be entered into by purchaser — Freeholds subject to restrictive covenants.

See VENDOR AND PURCHASER—Covenants. 1.

INDEMNITY—*continued.*

- Director — Travelling expenses — Ultra vires.
See COMPANY—Directors. 21.

- Employer and workman — "Satisfaction" means real and tangible indemnity — Laws of Canada.

See CANADA—Master and Servant. 1.

- Frauds, Statute of — Verbal "promise to answer for the debt of another."

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- Infant — Next friend — Unsuccessful action — Costs and damages.

See INFANT—Next Friend. 1.

- Insurance (Life) — Payment into Court — Practice — Costs.

See INSURANCE (LIFE). 14.

- Interpleader — Execution creditor — Lien passing to trustee in bankruptcy.

See BANKRUPTCY—Trustee. 5.

- Land law (Ireland) Act — Land Purchase Acts — Redemption of liability for rent out of estate indemnified therefrom — Right over indemnifying lands.

See IRISH LAW. 1.

- Land Transfer Act.

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- Lease, Assignment of — Negative covenant, Right of assignee to enforce.

See LANDLORD AND TENANT. 52.

- Leaseholds — Contingent future liabilities — Privity of estate.

See EXECUTOR—Indemnity. 2.

- Leaseholds — Lien — Right of indemnity — Position of trustee in bankruptcy.

See LANDLORD AND TENANT. 46.

- Legacy duty — Reversionary share — Settlement of part — Covenant for further assurance — Right to indemnity.

See REVENUE—Legacy Duty. 2.

- Lien passing to trustee in bankruptcy — Right of indemnity over assets of trust.

See BANKRUPTCY—Trustee. 5.

- Lunacy — Receiver — Accrued dividends — Form of order — Transfer into Court — Bank of England.

See LUNACY. 24.

- Principal and surety.

See under PRINCIPAL AND SURETY.

- Receiver and manager — Borrowing — Priority over debenture-holders.

See COMPANY—Receiver. 1, 2.

- Receiver, Charges of personal fraud against — Costs.

See RECEIVER. 4.

- Receiver's right to indemnity.

See under COMPANY—Receiver.

- Refusal of purchaser to accept indemnity — Small contingent incumbrance.

See VENDOR AND PURCHASER—Rescission. 5.

INDEMNITY—continued.

- Repayment of costs of litigation—Solicitor and client costs—Interest.
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- Right to indemnity—Breach of trust—Concurrence of cestui que trust—Fund replaced by trustee—Income of replaced fund.
See TRUSTEE—Breach of Trust. 3.
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- Ship—Charterparty—Bill of lading—Duty of master to sign—Bill of lading at variance with charterparty—Indemnity by charterer.
See SHIPPING—Charterparty. 9.
- Shipping—Collision.
See under SHIPPING—Collision.
- Shipping—Demurrage, Construction as to clause for—Contract for sale and delivery of coal by shippers.
See CAPE OF GOOD HOPE. 14.
- Solicitor trustee—Breach of trust—Delay in accounting—Liability to indemnify co-trustee.
See TRUSTEE—Accounts. 1.
- Stock Exchange—Principal and agent—Right of broker to indemnity from client.
See STOCK EXCHANGE. 9.
- Stockbroker, Liability of to indemnify bank.
See INDIA. 4.
- Third parties.
See under PRACTICE—Third Parties.
- Third party notice by landlord for indemnity—Practice—Action by tenant.
See LANDLORD AND TENANT. 67.
- Transfer of stock—Personation of holder—Obligation of bank to replace stock.
See INDIA STOCK. 4.
- Trustee.
See under TRUSTEE—Indemnity.
- Trustee—Delay in accounting—Costs—Liability to indemnify co-trustee.
See TRUSTEE—Accounts. 1.
- Trustee's indemnity against costs insufficient—Taxation.
See BANKRUPTCY—Costs. 11.
- Workmen's compensation.
See under MASTER AND SERVANT—Compensation.

INDIA—*East India Loan (Great Indian Peninsular Railway Debentures) Act, 1901 (1 Edw. 7, c. 25), enables the Secretary of State in Council of India to raise money in the United Kingdom for the purpose of paying off or redeeming debentures of the Great Indian Peninsular Railway Company.*

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INDIA—continued.

Administration of Justice. Salaries, &c., of Judges—Rule, dated Sept. 26, 1902, made by Secy. of State for India in Council, amending the Rules fixing the Salaries, &c., of Judges of the High Courts in India. St. R. & O. 1902, No. 762

Salaries, &c., of Judges of the High Courts in India—Rule, dated Jan. 17, 1902, made by Secy. of State for India in Council, amending the Rules fixing the. St. R. & O. 1902, No. 830.

Foreign Jurisdiction. India outside British India. The Indian (Foreign Jurisdiction) O. in C., 1902. St. R. & O. 1902, No. 466.

Contracts (India Office) Act, 1903 (3 Edw. 7, c. 11), removes doubts as to the mode of execution of certain contracts entered into on behalf of the Secy. of State for India in Council.

Indian Councils Act, 1904 (4 Edw. 7, c. 26), amends the Indian Councils Act, 1874 (37 & 38 Vict. c. 91).

East India Loan (Railways) Act, 1905 (5 Edw. 7, c. 19).

Indian Railways Act (Amendment Act), 1906 (6 Edw. 7, c. 9).

Council of India Act, 1907 (7 Edw. 7, c. 35), amends the law as to the Council of India.

East India Loans Act, 1908 (8 Edw. 7, c. 54), empowers the Secretary of State in Council of India to raise money in the United Kingdom for the construction, extension, and equipment of railways in India by State agency, or through the agency of companies, for the construction of irrigation works; and for other purposes.

Indian Councils Act, 1909 (9 Edw. 7, c. 4), is an Act to amend the Indian Councils Acts, 1861 and 1892, and the Government of India Act, 1833.

East India Loans (Railways and Irrigation) Act, 1910 (10 Edw. 7, c. 5), is an Act to empower the Secretary of State in Council of India to raise money in the United Kingdom for public works purposes.

— Act of State—Annexation of native State—Jurisdiction of municipal Courts.
See ACT OF STATE. 1.

— Bankruptcy—Firm bankrupt in England and in India—Agreement for pooling and distributing the assets—Sanction of Court—Jurisdiction.
See BANKRUPTCY—Arrangement. 4.

1. — *Bombay—Appeal—Right of appeal to the King in Council—Appellate orders of the governor of Bombay in council—Decrees of Courts of political agents in Kathiawar—British political tribunals in a foreign state—Courts established by the executive for political purposes—Suits to enforce and redeem a mortgage.*

The intention of the British Government is and always has been that the jurisdiction exercised in connection with the province of Kathiawar should be political and not judicial in its character; the ultimate appeal being to

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INDIA—continued.

the Secretary of State for India in Council. Kathiawar is not as a whole within the King's dominions. It has been controlled by the British Indian Government for a very long period in different degrees in its various component States, but has never been treated as British territory or as subject to the laws in force in the Bombay Presidency or enacted by the British Indian Legislature. Nor has there been any authoritative assertion of territorial sovereignty therein. A system of judicial administration has been established therein, not by legislation, but by orders of the Executive Government, the judicial officers being Assistant Political Agents, with an appeal to Political Agents to deal with cases both political and civil. In the former cases their functions are "diplomatic and controlling," deciding as they "think proper"; in both the intention of the Government is and has been that the jurisdiction exercised should be guided by policy rather than by strict law :—

Held accordingly in two suits, one classed as civil to enforce a mortgage and the other classed as political to redeem a mortgage, brought in the Courts of Assistant Political Agents in Kathiawar, that an appeal does not lie from appellate orders therein passed by the Governor of Bombay in Council to His Majesty in Council. **HEMCHAND DEVCHAND v. AZAM SAKARLAL CHHOTAMLAL** P. C. [1906] A. C. 212

2. — *Bombay — Company — Proxy — Shareholder only to be proxy—Nomination of unqualified proxy—Disqualification removed before proxy is used.*

Where one of the co.'s articles of association provided that "no person shall be appointed or . . . have authority to act as a proxy who is not a shareholder of the company" :—

Held, that on its true construction it is no objection to a proxy duly lodged that an unqualified person is named therein, provided that the qualification exists when the proxy is lodged and continues when it is used :

Held, further, that as the articles did not require the shareholder using the proxy to be literally "named" therein, the proxy could not be objected to if he were sufficiently described for all business purposes, as for instance a member for the time being of a specified firm. **BOMBAY-BURMAH TRADING CORPORATION, LD. v. DORABJI CURSETJI SHROFF**

P. C. [1905] A. C. 213

3. — *Bombay — Shipping, Law of — Time charter—Sub-charter—Bills of lading—Goods within bill of lading not subject to charter lien—Construction of contract.*

Under a time charter with power to sublet the shipowners retained legal possession of the ship through the captain appointed and paid by themselves, who was to be the agent in several respects for the charterers, and in particular to sign bills of lading at any rates of freight that they might direct "without prejudice to this charter," and they also were entitled to a lien

INDIA—continued.

upon all cargoes for freight or charter money due under the charter :—

Held, that bills of lading granted by the captain to the respondent, a sub-charterer from the charterers with notice of the time charter, were not mere receipts for goods, but contracts which bound the shipowners, and that the respondent, having paid his bill of lading freight, was entitled to his goods free of lien for the time charterer's dues.

Colvin v. Newberry, (1832) 1 Cl. & F. 283 ; 33 R. R. 437, distinguished.

Held, further, that the words "without prejudice to this charter" mean that the time charter remains unaltered as between the owners and the charterers, notwithstanding the bills of lading. They do not limit the power of the captain to issue bills of lading at different rates of freight, or entitle the shipowners to a lien on the goods comprised therein for freight payable under the time charter. **TURNER v. HAJI GOOLAM MAHOMED AZAM** P. C. [1904] A. C. 826

— Explosives—Railway companies, Liability of — Loss of life from explosives in a railway carriage—Appeal from Bengal. See **RAILWAY—Passengers**. 3.

— Extradition.

See under **EXTRADITION**.

4. — *India stock—Transfer of stock—Personation of holder—Identification of transferor by stockbroker—Effect of transfer—Estoppel—Request to Bank to perform ministerial duty—Liability to indemnify—Obligation of Bank to replace stock.*

Under the statutes authorizing the issue of India stock, transfers of that stock are invalid unless they are entered and registered in a book kept at the Bank of England, and are signed therein by the transferor or his attorney. For the purpose of enabling the Bank to be satisfied that the party claiming to transfer India stock is the person entitled to it, it is the custom of the Bank to keep a list of stockbrokers whose identification of intending transferors will be accepted by them. The Bank will also accept identifications made by some of their own officials, or by the representatives of private banks. In the case of transfers of amounts exceeding 2,000*l.* the Bank usually makes an independent inquiry as to the identity of the transferor, but in the case of smaller amounts it is practically impossible to do so. The deft. was on the above-mentioned list of stockbrokers. A woman fraudulently personated another who was a registered holder of India stock, and, having procured herself to be introduced to the deft. as the holder of that stock, instructed him to prepare a transfer. The deft. accordingly sent to the Bank a "ticket," that is, a statement of the names of the transferor and transferee, the nature of the stock, and the amount to be transferred, from which ticket the Bank prepared a transfer in the transfer book, and the personator attended and forged the holder's signature in the book, the deft. identifying her as being the holder. The transfer being for a nominal consideration, the deft., according to

INDIA—continued.

the usual practice in such cases, received a fee of one guinea for his services and attendance at the Bank from the transferor. The stock was subsequently transferred to G., who purchased it bona fide and for value. On discovery of the forgery the original stockholder claimed to be reinstated on the register as the holder of the stock, and the Bank, in satisfaction of that claim, purchased stock of a like amount and transferred it into her name. The Bank then sued the deft. for indemnity in respect of their loss as upon a breach of warranty of the identity of the transferor :—

Held by Farwell L.J. and Kennedy L.J. (Vaughan Williams L.J. dissenting), affirming the judgment of A. T. Lawrence J., [1907] 1 K. B. 889, that there was evidence on which the Court could find, and that the proper inference of fact was, that the deft. requested the plts. to permit the entry and registration of the forged transfer, which involved the legal consequence that the deft. contracted to indemnify the plts. against any liability resulting therefrom; and that the plts. were entitled to recover as damages the loss to which they had been put by having to purchase stock as aforesaid. **BANK OF ENGLAND v. CUTLER C. A. [1908] W. N. 98; [1908] 2 K. B. 208**

— Indian Succession Act, 1865—Will—Executors in England—Will—Executors—Indian assets—Letters of administration obtained in India by stranger—Suppressing the will.

See ADMINISTRATION. 15.

— Indians—Canada, Law of—Treaty of Oct. 3 1873, extinguishing the Indian interest in lands.

See CANADA—Land. 4.

— Lands taken for public purposes—Compensation—Indian Land Acquisition Act, 1894.

See ZANZIBAR. 1.

— Practice—Staying action—Case of action arising out of jurisdiction.

See PRACTICE—Staying Proceedings. 4.

INDICTMENT—Criminal Law.

See under CRIMINAL LAW—Indictment.

INDORSEMENT—By way of security.

See BILL OF EXCHANGE. 4.

— Cheque — Forged indorsement — Payee — “Fictitious person.”

See BANKER. 4.

INDUSTRIAL AND PROVIDENT SOCIETY—Regn. Dec. 31, 1906, made by the Treasury under the Industrial and Provident Societies Act, 1893, St. R. & O. 1907, No. 948.

1. — *Disputes between society and members—Rules—Arbitration—Ultra vires acts—Stay of proceedings—Friendly Societies Act, 1875 (38 & 39 Vict. c. 60), s. 22—Industrial and Provident Societies Act, 1893 (56 & 57 Vict. c. 39), s. 49.*

The rules of an industrial and provident society, which substantially followed the terms of s. 49 of the Industrial and Provident Societies

INDUSTRIAL AND PROVIDENT SOCIETY—continued.

Act, 1893, provided for the reference of all disputes between the society and its members to arbitration.

A member of the society commenced an action against the committee of management of the society for a declaration that certain resolutions passed by them were ultra vires the society, and for consequential relief :—

Held, that the plt.'s claim was a dispute within the arbitration rule and s. 49, and that the proceedings in the action must be stayed.

Where the rules of a registered society contain a provision for the reference of disputes between a member and the society and its officers to arbitration it is not an answer to an application for a stay of proceedings that the question at issue is whether or not the act complained of is ultra vires.

Stone v Liverpool Marine Society, (1894) 63 L. J. (Q.B.) 471, applied. COX v. HUTCHINSON Warrington J. [1910] W. N. 36; [1910] 1 Ch. 513

2. — *Dissolution—Advertisement of instrument while assets vested in society—Appointment of new trustee—Vesting order—Crown—Bona vacantia—Industrial and Provident Societies Act, 1893 (56 & 57 Vict. c. 39), ss. 58, 61—Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 25, sub-s. 1; s. 26; s. 35, sub-s. 1.*

The property of an incorporated industrial or provident society dissolved by instrument of dissolution under ss. 58 and 61 of the Industrial and Provident Societies Act, 1893, is subject to a trust for appropriation and division (after providing for the claims of creditors) in accordance either with the provisions of the instrument or with the award of the chief registrar. Where dissolution took place before the society had handed over some of its property to the person nominated by the instrument of dissolution to realize its assets, the Court (the Crown not claiming the property as bona vacantia) appointed him a trustee in the place of the society, and made an order vesting the property in him on the trusts applicable thereto under the instrument. *In re RUDDINGTON LAND*

Parker J. [1909] 1 Ch. 701

3. — *Special remedy for debts due from “members”—Determination of membership—Industrial and Provident Societies Act, 1893 (56 & 57 Vict. c. 39), s. 23.*

By s. 23 of the Industrial and Provident Societies Act, 1893, “All moneys payable by a member to a registered society shall be a debt due from such member to the society, and shall be recoverable as such either in the county court of the district in which the registered office of the society is situate, or in that of the district in which such member resides, at the option of the society.”

Held, that where a member has contracted a debt to the society of an amount in excess of the ordinary jurisdiction of the county court, the society may recover it in the county court under the above section, although the debtor had ceased to be a member at the time of action brought.

INDUSTRIAL AND PROVIDENT SOCIETY—
continued.

GWENDOLEN FREEHOLD LAND SOCIETY *v.*
WICKS. — Div. Ct. [1904] 2 K. B. 622

— Will—Nomination—Paper.

See WILL—Nomination. 1.

4. — *Winding-up — Contributories — Withdrawal of subscriptions—Liability in respect of withdrawals—Death of member before winding-up—Industrial and Provident Societies Act, 1893* (56 & 57 Vict. c. 39), ss. 10, 34, 58, 60; *Sched. II., clauses 7, 9.*

The rules of a society registered under the Provident and Industrial Societies Acts provided that its capital should be raised by shares of 5*l.* each: that the subscription should be not less than 2*s.* 6*d.* on each share per month, but that a member should not be bound to pay any subscription after the first unless required by the directors; and that a member might withdraw all or any part of his subscriptions. They also provided that a member whose interest in the society was less than 100*l.* might nominate persons to whom his shares were to be paid on his death, but in default of such nomination, or if a member whose interest exceeded 100*l.* should die, his interest was to be payable or transferable only to his executors. Certain members had paid up the subscriptions on their shares in full, and then withdrawn part, and in some cases afterwards paid up part of the subscriptions so withdrawn. All these transactions were entered in the pass-books of members and the books of the co. as payments and withdrawals on account of their shares. Some members had subscribed for one share only in order to obtain an advance and paid the first subscription of 2*s.* 6*d.* and had repaid the whole of the advance, but had not formally withdrawn their shares or obtained repayment of the 2*s.* 6*d.* Other members had died, having at the date of their death some subscriptions to their credit in respect of shares, and their executors had not withdrawn the whole. The society was being wound up compulsorily.

The Industrial and Provident Societies Act, 1893, requires that the rules should make provisions as to withdrawal of shares and provides that a member shall cease to be a member on withdrawal:—

Held, (1.) that so long as a member left any subscriptions standing to his credit in respect of shares, he was liable to pay, on calls made by the directors, or in a winding-up, the difference between the amount so standing to his credit and the nominal amount of the shares including subscriptions which he had paid up and then withdrawn; (2.) that the liability of a member was not terminated by his death: in this respect societies under this Act are to be distinguished from building societies; (3.) that the advanced members were liable for the difference between the 5*l.* nominal amount of their share and the 2*s.* 6*d.* paid notwithstanding that they had repaid their advances. *In re UNITED SERVICE SHARE PURCHASE SOCIETY, LD. — Neville J.* [1909] W. N. 169; [1909] 2 Ch. 526

5. — *Winding-up—Powers of committee—Lien on shares—Set-off against debts due from member*

INDUSTRIAL AND PROVIDENT SOCIETY—
continued.

— *Creditor—Fraudulent preference—Industrial and Provident Societies Act, 1893* (56 & 57 Vict. c. 39), s. 23, sub-s. 2—*Companies Act, 1862* (25 & 26 Vict. c. 89), s. 164.

By the rules of a co-operative society for supplying goods to its members, which was registered under the Industrial and Provident Societies Act, 1893, each member was required to hold a certain number of shares in the society, and was at liberty to withdraw his share capital under certain conditions upon giving notice to the manager. The appellant, a member of the society, being unable owing to a strike to pay for goods supplied to him, the managing committee on four occasions debited the amount standing to his credit as a shareholder with sums due from him to the society for goods, the total amount so debited being about equal to the amount of his share capital; no notice under the rules to withdraw his capital had been given by the appellant. The society was in financial difficulties, and was at the date of the last two transactions hopelessly insolvent to the knowledge of the managing committee: but the committee, who had adopted the same course with other shareholders, acted bona fide and without intent to prefer any particular shareholder. Upon a summons taken out by the liquidator of the society to set aside the transactions:—

Held, that the transactions were not to be treated as withdrawals of capital by the appellant, but were valid under s. 23, sub-s. 2, of the Industrial and Provident Societies Act, 1893, which gives to a society registered under the Act a lien upon the shares of a member and a right to set off any sum credited to a member upon his shares towards the payment of any debt due from him to the society:—

Held, further, that the last transaction, although within three months of the passing of a resolution for winding up the society, was not void under s. 164 of the Companies Act, 1862, as an undue or fraudulent preference of a creditor, the appellant not being a creditor of the society within the meaning of that section. *In re GWAWR-Y-GWEITHYR INDUSTRIAL AND PROVIDENT SOCIETY, LD. DOVEY v. MORGAN*

Div. Ct. [1901] 2 K. B. 477

INDUSTRIAL ASSURANCE COMPANY.

— Disputes—County court jurisdiction.

See JUSTICES. 10.

INDUSTRIAL DISEASES—Workmen's compensation—Seamen—Certifying surgeon.

See MASTER AND SERVANT—Compensation. 104.

INEBRIATE.

See under DRUNKENNESS.

INFANT.

Intoxicating Liquors (Sale to Children) Act 1901 (1 Edw. 7, c. 27), prevents the sale of intoxicating liquors to children.

Youthful Offenders Act, 1901 (1 Edw. 7, c. 20), amends the law relating to youthful offenders and for other purposes connected therewith.

INFANT—continued.

Prevention of Cruelty to Children Act, 1904 (4 Edw. 7, c. 15), amends the law relating to the prevention of cruelty to children.

Children Act, 1908 (8 Edw. 7, c. 67), consolidates and amends the law relating to the protection of children and young persons, reformatory and industrial schools, and juvenile offenders, and otherwise to amend the law with respect to children and young persons.

Juvenile Offender. Detention and Maintenance. Rules, May 21, 1909, for places of Detention under s. 109 of the Children Act, 1908, St. R. & O. 1909, No. 591.

Children Act, 1908 (8 Edw. 7, c. 67).—*The Summary Jurisdiction (Children Act) Rules, 1909, dated March 23, 1909, and May 27, 1909. Reprint from W. N. 1909 (April 3), p. 111; (July 10), p. 269. See CURRENT INDEX, 1909, p. xciv.*

Children Act (1908) Amendment Act, 1910 (10 Edw. 7 & 1 Geo. 5, c. 25), is an Act to amend ss. 17 and 18 of the Children Act, 1908 (8 Edw. 7, c. 67).

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Criminal Law. See under CRIMINAL LAW—Infants.

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Divorce. See under DIVORCE.

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Police Courts, col. 1233.

Poor Law, col. 1233.

Practice, col. 1233.

Prevention of Cruelty to Children. See under CRIMINAL LAW—Cruelty to Children.

Probate, col. 1233.

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INFANT—continued.

Seduction, col. 1233.

Settled Land. See under SETTLED LAND—Infants.

Settlement, col. 1234.

Vesting Orders, col. 1234.

Workmen's Compensation. See under MASTER AND SERVANT—Infants.

Youthful Offenders. See under CRIMINAL LAW—Youthful Offenders.

Apprenticeship.

1. — *Apprenticeship deed—Covenant not to carry on business within certain area after cessation of apprenticeship—Breach of covenant after attaining full age—Injunction.*

By a deed of apprenticeship, dated May 7, 1902, and made between the deft. Robert Thompson (then an infant of between 14 and 15 years of age) and his father of the one part, and the plt., an architect and surveyor carrying on business at Bromsgrove, of the other part, the deft. bound himself to serve the plt. in the profession of an architect for four years. The deed contained a joint covenant by the deft. and his father that the deft. would not within ten years from the expiration of the term practice the profession of an architect or surveyor within a radius of ten miles from Bromsgrove. The deft., subsequently to his attaining full age, committed a breach of the covenant. The action was brought for an injunction to restrain the deft. from committing further breaches. The plt. and another architect practising in Bromsgrove both swore that they would under no circumstances accept an articulated pupil who declined to enter into a similar restrictive covenant.

The county court judge held that the covenant was reasonable and valid, and granted the injunction asked for.

The Court (Phillimore and Lord Coleridge JJ.) held that the principle of the cases cited only applied to the enforcement of the apprentice's covenants during his infancy, and that where an infant has entered into a covenant in an apprenticeship deed, to do or abstain from doing something after the cessation of the apprenticeship, there is no objection to enforcing such a covenant by action, provided that the deft. at the time of action brought has attained full age. Appeal dismissed.

Gylbert v. Fletcher, (1629) Cro. Car. 179; *Farneham v. Atkins*, (1682) 1 Sid. 446; and *De Francesco v. Barnum*, (1889) 43 Ch. D. 165, cited. GADD v. THOMPSON Div. Ct. [1910] W. N. 262

Betting Circular.

— Circular sent to undergraduate—presumption of knowledge of infancy.
See BETTING CIRCULAR. 1.

Building Society.

— Borrowing member—Mortgage for advances—Repudiation on attaining twenty-one.
See BUILDING SOCIETY. 2.

— Power to mortgage for advances—Purchase of land by infant—Lien for purchase-money.
See BUILDING SOCIETY. 2.

INFANT—*continued.***Company.**

- Shares — Transfer to infant nominee — Winding-up—Contributories.
See **COMPANY—Shares.** 27.

Compromise.

- Guardian ad litem—Appearing in Court in person.
See **INFANT—Guardian ad Litem.** 1.

1. — *Trustee — Arrangement altering trust property for benefit of infants—Compromise—Jurisdiction of Court to approve—Trust administration.*

Henry Wells, who died in 1883, gave his residuary estate to trustees upon trust, to pay certain annuities to his two daughters and other persons for their lives, and, after the death of the last surviving annuitant, for such of the children of his two daughters as should be then living and should attain twenty-one or marry.

In 1902 the two daughters, their surviving children, and all other parties interested under the will, executed a deed whereby, subject to the approval of the Court, it was agreed that the trusts of the will should be put an end to, and instead thereof the trustees should hold the property upon trust to purchase Government annuities for the annuitants, and pay the residue to the children then living or the trustees of those who had settled their shares, making their interests absolute instead of contingent. Two of the children had executed settlements under which infants were or might become interested:—

Held, that the Court had jurisdiction to approve the scheme on behalf of the infants.

Peto v. Gardner, (1843) 2 Y. & C. Ch. 312; 60 R. R. 165, and *Day v. Day*, (1845) 9 Jur. 785, not followed. *In re WELLS. BOYER v. MACLEAN*

Farwell J. [1903] W. N. 68 : [1903] 1 Ch. 848

Conditions.

- Name and arms clause—Infant.
See **SETTLEMENT.** 3.

Conversion.

- Real estate—Sale by order of Court for costs — Surplus proceeds—Realty or personalty.
See **CONVERSION.** 2.

Corporation.

2. — *Membership—Local Act—Construction—“Any person”—Royal Naval School Act, 1840 (3 Vict. c. lxxvii.), s. 3.*

By an Act of 1840 (3 Vict. c. lxxvii.) passed for the establishment and government of an institution called the Royal Naval School, it was provided by s. 3 that “any person” who should pay to the treasurer of the institution the amount therein fixed should be a member of the corporation. One of the defendants, on whose behalf the required subscription had been paid, was an infant and a pupil at the school, and voted at a meeting of the institution at which an important proposal affecting the future of the school was debated. Upon a summons raising

INFANT (Corporation)—*continued.*

the question whether the expression “any person” included an infant so that he could become a member of the corporation and vote at meetings:—

Held, that there being nothing in the statute in question to show that the word “person” included an infant, and having regard to the fact that the corporation was formed for the establishment and management of a school, and that every member of the corporation was eligible for appointment to the council of the institution, the Legislature could not have intended that the membership of the corporation should include minors; and the infant, therefore, was not eligible as a member. *In re ROYAL NAVAL SCHOOL. SEYMOUR v. ROYAL NAVAL SCHOOL*
Eve J. [1910] W. N. 88; [1910] 1 Ch. 806

Costs.

- Costs—Next friend—Infant plaintiff's contingently entitled—Immediate payment.
See **ADMINISTRATION.** 5.
- Guardian ad litem of infant defendants—Costs—Official solicitor.
See **SOLICITOR—Costs.** 27.
- Next friend—Unsuccessful action.
See **INFANT—Next Friend.** 1.
- Solicitor—Costs—Lien—Compromise Judgment—Form of Order.
See **SOLICITOR—Costs.** 18.

Criminal Law.

See under **CRIMINAL LAW—Infants.**

Custody.

- Child above the age of sixteen—Adultery of mother—Order against child—Wishes of child—Jurisdiction.
See **DIVORCE—Custody.** 1.

1. — *Illegitimate child—Void contract—Contract by mother to give up possession of child—Contract to relieve mother of responsibility for maintenance of child.*

A contract between the mother of an illegitimate child and another person for the transfer to that person of the rights and liabilities of the mother in respect of the child is invalid. *HUMPHREYS v. POLAK*

C. A. [1901] W. N. 128; [1901] 2 K. B. 385

2. — *Paternity—Evidence—Custody of child.*

In the case of a child born in wedlock, as to whose paternity questions are raised upon an application as to the child's custody, if the husband could, from circumstances of time, place, and health, have had nuptial intercourse with his wife, the mother of the child, and it be not proved that he did not have such intercourse, he must be considered the father of her child, even if she were shown to have committed adultery with any number of men.

Sexual intercourse between man and wife must be presumed, and nothing except evidence that the husband did not have such intercourse at the period of conception can bastardize a child born in wedlock.

INFANT (Custody)—continued.

Upon the authority of *Favard v. Favard*, (1896) 75 L. T. 664, a writ of attachment and a committal order were directed to be issued, upon the ex parte application of the petitioner, against the respondent, who had taken the child out of the jurisdiction. *GORDON v. GORDON AND GRANVILLE GORDON*

Jeune Pres. [1903] P. 141

Note.

See Gordon v. Gordon, [1904] P. 163.

— Practice — Pleading — Paternity — Custody of children.

See **DIVORCE—Practice.** 27.

Delay.

— Effect of delay in suing after attaining majority.

See **GUERNSEY.** 1.

Divorce.

See under **DIVORCE.**

Employment.

— Employer and workman.

See under **MASTER AND SERVANT—Infants.**

Employment of Children Act, 1903 (3 Edw. 7. c. 45), makes better provision for regulating the employment of children.

Guardian.

— Advowson — Patron — Trustees to present during minority.

See **ECCLESIASTICAL LAW—Advowson.** 1.

— Infant tenant for life—Trustee.

See under **SETTLED LAND—Infants.**

1. — *Practice—Guardian ad litem—Appearing in Court in person.*

In this case one of the defts. was an infant appearing by S., his guardian ad litem. S. had briefed counsel to appear on behalf of the infant, but subsequently withdrew the briefs. He now claimed to be heard in person.

S. in person, on the question whether he was entitled to be heard, said that he was not competent to argue this question; and ultimately he undertook to instruct other counsel on behalf of the infant.

Kekewich J. said that it had become unnecessary to decide the very important question which had been raised, but he was strongly of impression that a next friend or guardian ad litem of an infant was not entitled to appear in person on behalf of that infant. *MURRAY v. SITWELL*

Kekewich J. [1902] W. N. 119

Note.

This case was followed by *Kekewich J., In re Berry*, [1903] W. N. 125. *See* **Infant—Guardian ad Litem.** 1.

— Step-children—Liability to maintain.

See **HUSBAND AND WIFE—Maintenance.** 3.

2. — *Ward of Court—Guardian—Religious education—Welfare of the infant—Religion of father—Change of religious education—Discretion of Court—Form of order as to education.*

INFANT (Guardian)—continued.

By an order of April, 1904, the son and daughter of a Jewish father, then aged respectively ten and eight years, were directed to be brought up in their father's religion, and, both parents being dead, were placed in a Jewish household for this purpose. In Mar., 1907, the boy wrote to his guardian that he no longer wished to be educated as a Jew. This letter was sent to the judge, who, after interviews with the boy and further inquiries, came to the conclusion that the welfare of the boy demanded his sanction to a change in his religious education, and he accordingly made an order that both infants should be henceforth brought up in the Christian religion:—

Held (affirming Kekewich J. on this point), that it would be morally injurious to the welfare of the boy not to give effect to his wishes, but as there was no evidence to justify any order changing the religious education of the girl, this portion of the order must be varied.

In all orders relating to the religious education of a ward of Court the words "until further order" must, from the nature of the case, be deemed to be inserted. *In re W. W. v. M.*

C. A. [1907] W. N. 204; [1907] 2 Ch. 557

3. — *Ward of Court—Testamentary guardian—Guardian's change of religion—Removal of guardian.*

A testator, who died in 1896, by his will appointed his sister guardian of his infant daughter, then aged eleven. The testator was a Protestant, and the infant was brought up in that faith. In 1900 the sister, from conscientious motives, became a Roman Catholic:—

Held, that, under the circumstances, it was for the benefit of the infant that the testator's sister should be removed from her guardianship. *F. v. F.*

Farwell J. [1902] 1 Ch. 688

Guardian ad Litem.

1. — *Practice—Infant defendant—Guardian ad litem—Appearing in Court in person—Compromise.*

In this action some of the defts. were infants who appeared by their father as guardian ad litem. The plts. now applied to obtain the sanction of the Court to a compromise of the action.

The guardian ad litem appeared in person, and claimed to be heard on behalf of the infants on the question of the compromise.

Kekewich J., following the opinion which he had expressed in *Murray v. Sitwell*, [1902] W. N. 119, held that the guardian ad litem was not entitled to appear in person on behalf of the infants. *In re BERRY. BERRY v. BERRY.*

Kekewich J. [1903] W. N. 125

Heirlooms.

— Death of infant tenant in tail without having possession.

See **HEIRLOOMS.** 2.

Illegitimacy.

See under **ILLEGITIMACY—WILL—Illegitimacy.**

INFANT—continued.**Interest.**

1. — *Contingent legacies to son at twenty-five and thirty—Interest by way of maintenance—General rule—Exception—Share of residue settled in trust for son—Extraordinary contingency—Son not entitled to interest.*

By his will the testator bequeathed to each of his sons who should be living at his death and attain or have attained the age of twenty-four years the sum of 5,000*l.*, and a further sum of 10,000*l.* to each such son living at his death who should attain or should have attained the age of thirty years. He also bequeathed three fourteenth parts of his net residuary estate in trust for his son Frank, in case and when he attained twenty-one, the said share to be settled upon the usual trusts making Frank the tenant for life with remainder to his children and issue. By a codicil he revoked the legacies of 5,000*l.* and the further legacies of 10,000*l.* to each son, and, instead, bequeathed to each son of his who should be living at his death and should attain or should have attained the age of twenty-five years the sum of 15,000*l.*, and a further sum of 15,000*l.* to each such son living at his death who should attain or should have attained the age of thirty years. The testator died in Sept., 1909, leaving two sons, the elder of whom had attained twenty-five in Feb., 1909. Frank, the younger, was then only thirteen years of age.

The plts., as executors and trustees, took out this summons for the determination (inter alia) of the question whether the above-mentioned legacies to the younger son of 15,000*l.*, and of the further 15,000*l.*, carried interest.

Eve J. referred to the statements of the law by James L.J. in *In re George*, (1877) 5 Ch. D. 837, 843, and by Cozens-Hardy L.J. in *In re Bowlby*, [1904] 2 Ch. 685, 712, that a contingent legacy given by a father to an infant was an exception to the general rule that a contingent legacy does not carry interest while it is in suspense, and that that exception was itself subject to a further exception and did not take effect where the testator had provided another fund for the infant's maintenance, so that the income of the legacy was supposed not to be required for the purpose. Dealing first with the exception to the exception, a precisely similar point had been considered in *In re Moody*, [1895] 1 Ch. 101, where Kekewich J. had held that the gift of a share of residue to an infant on attaining twenty-one, the income of which was subject to the provisions of s. 43 of the Conveyancing and Law of Property Act, 1881, did not create a fund for maintenance such as would lead to the presumption that the income of the legacy was not required for the maintenance of the infant, and was not such a provision of another fund as would bring the case within the exception to the exception. He confessed that he would not have come to the same conclusion himself, but the decision in *In re Moody* had stood for sixteen years, had been cited before the Court of Appeal, and had not been dissented from in any reported case, and he felt himself bound by it, and accordingly must hold in the present case that the gift of the share of residue did not bring this case within the

INFANT (Interest)—continued.

exception to the exception to the general rule. Was the case, then, within the exception itself? From an historical examination of the cases it was clear that the exception had its origin in the desire of the Court to give effect to what the Court presumed must have been the intention of the testator, namely, to provide for the maintenance of his child; and in all the cases cited the contingency had been the attainment of full age or previous marriage, and there was no case where the exception had been held to apply to any other contingency. He did not think he ought to be the first judge to hold that the exception extended to contingencies outside the attainment of full age. He thought that where the contingency had no reference whatever to the attainment of full age the general rule ought to apply, and the case ought not to be treated as coming within the exception. He therefore held that neither of the legacies carried interest. It had been contended that at least until the legatee attained twenty-one the legacies should carry interest, but he thought it the safer course to hold that this present case was altogether outside the class of case which formed the exception to the general rule. *In re ABRAHAM. ABRAHAM v. BENDON* Eve J. [1910] W. N. 237

— Will — Legacy — Interest — Bequest of income to legatee subject to obligation of maintaining infants.
See INTEREST. 2.

Maintenance.

Youthful Offenders Act, 1901 (1 Edw. 7, c. 20), amends the law.

1. — *Accumulations—Contingent life interest—Right of accumulations—Conveyancing and Law of Property Act*, 1881 (45 & 46 Vict. c. 41), s. 43, sub-s. 2.

A testator gave his residuary property to trustees, upon trust for conversion and to hold a portion of the proceeds upon trust for his children who being sons should attain twenty-five, or being daughters should attain twenty-one or marry, to be divided between them in equal shares, and he directed his trustees to retain the share of each daughter, upon trust to pay the income to her for life, and after her death for her children.

Two of the daughters, having attained twenty-one, claimed payment of the accumulations of such part of the income in the meantime of their shares as had not been applied for their maintenance:—

Held, that they were the persons who had become ultimately entitled to the property from which the accumulations had arisen within the meaning of s. 43, sub-s. 2, of the Conveyancing Act, 1881, and that the accumulations must be paid to them.

Semble, that the meaning of sub-s. 2 is as follows: The trustees shall hold the accumulations for the benefit of the person who in the events which happen becomes entitled to the income from the accumulation of which the accumulations arise. *In re SCOTT. SCOTT v. SCOTT* — Buckley J. [1902] W. N. 72; [1902] 1 Ch. 918

INFANT (Maintenance)—continued.*Note.*

This case was disapproved by C. A., *In re Bowlby*, [1904] 2 Ch. 685.

— Allowance for up-keep of family mansion—Subscriptions to local charities.

See **SETTLED LAND—Infants. 2.**

— Annuity to widow for benefit of infants—Maintenance and education—Trustee—Death of widow—Annuity continued.
See **WILL—Children. 1.**

— Contingent life interest—Right to surplus income and accumulations.
See **ACCUMULATIONS. 1.**

— Husband and Wife—Maintenance.
See under **HUSBAND AND WIFE—Maintenance.**

— Interest by way of maintenance—General rule—Exception.
See **INFANT—Interest. 1.**

2. — Protection of trustees—Life interest—Defeasible on bankruptcy—Payment to beneficiaries till forfeiture—Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 43.

A testator directed his trustees to pay the income of his residuary estate to eighteen named persons for life, with a proviso that any life interest should be forfeited on bankruptcy or alienation; and in this event the trustees were authorized to apply the same for the benefit of the persons so forfeiting the same. The will contained no maintenance clause. One of these eighteen persons was an infant. The trustees now applied for the advice of the Court to know whether they ought to make searches or inquiries to ascertain whether any beneficiary had forfeited his interest, or obtain a statutory declaration from each beneficiary before paying him any income; and, secondly, in the case of the infant beneficiary, whether they might pay his share of this income to his mother and guardian, or otherwise apply it for his maintenance and education:—

Held, that, unless the trustees had notice or reasonable cause to suspect that a forfeiture had been incurred, they might safely from time to time pay the income to the adult beneficiaries on a form of receipt stating that no forfeiture had been incurred by the beneficiary giving the same. That as to the income payable to the infant, the trustees, on the authority of *M'Creight v. M'Creight*, (1849) 13 Ir. Eq. 314, could pay it to the mother and guardian of the infant, who could give a valid receipt for the same; and that under s. 43 of the Conveyancing Act, 1881, the trustees also had power to apply the income, when it had accrued, for the maintenance and education of the infant. *In re LONG. LOVE-GROVE v. LONG* **Byrne J. [1901] W. N. 166**

3. — Tenant in tail in remainder—Order sanctioning mortgage of real estate—Remaindermen not parties—Jurisdiction of Court—Disentailing deed by way of mortgage—Trustee Act, 1893 (56 & 57 Vict. c. 53), ss. 30, 33.

The Court has no jurisdiction to authorize a mortgage of the interest of an infant tenant in

INFANT (Maintenance)—continued.

tail in remainder for the purpose of raising money for his maintenance.

In re Hamilton, (1885) 31 Ch. D. 291, and *Cadman v. Cadman*, (1886) 33 Ch. D. 397, followed.

In re Howarth, (1873) L. R. 8 Ch. 415, explained and distinguished.

Where, therefore, in an action, to which none of the remaindermen were parties, the Court by a first order directed trustees to raise money for the maintenance of an infant tenant in tail in remainder by means of a mortgage of his interest in the settled estate, and by a second order the Court declared that the infant was a trustee of his interest directed to be mortgaged within the meaning of s. 30 of the Trustee Act, 1893, and directed certain persons to convey that interest by way of mortgage to secure the money, and in pursuance of the second order a disentailing deed by way of mortgage was executed:—

Held, that the orders were made per incuriam and without jurisdiction, and were therefore of no effect.

Held, also, that the first order, being made without jurisdiction, was not an order directing a mortgage within the meaning of s. 30 of the Trustee Act, 1893, and that the second order, being founded on the first, was equally made without jurisdiction, and the provisions of the Trustee Act, 1893, could not support it.

Held, therefore, that, notwithstanding the orders and the mortgage, the land remained limited to the original uses of the settlement.

In re HAMBROUGH'S ESTATE. HAMBROUGH v. HAMBROUGH **Warrington J. [1909] 2 Ch. 620**

— Trustees.

See under **TRUSTEE—Infants.**

Management.

1. — Appointment of trustees—Practice—Management of land during minority—Infant taking by descent—Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), s. 42, sub-s. 1.

Sect. 42, sub-s. 1, of the Conveyancing and Law of Property Act, 1881, enabling the Court to appoint trustees on the application of a guardian or next friend of an infant beneficially entitled to the possession of any land, applies to the case of an infant taking by descent.

In re Glover, [1899] 1 I. R. 337, followed.
In re COWLEY - **Cozens-Hardy J. [1901] 1 Ch. 38**

Mortgages.

— Building society—Mortgage by infant member invalid—Lien of building society.

See **BUILDING SOCIETY. 2.**

— Infants.

See under **MORTGAGE—Infants.**

Necessaries.

1. — Actual requirements—Evidence—Onus of proof—Sale of Goods Act, 1893 (56 & 57 Vict. c. 71), s. 2.

In an action against an infant for necessities the onus is on the plt. to prove, not only that the goods supplied were suitable to the condition in

INFANT (Necessaries)—continued.

life of the infant, but that he was not sufficiently supplied with goods of that class at the time of the sale and delivery. *NASH v. INMAN* C. A. [1908] W. N. 68; [1908] 2 K. B. 1

Next Friend.**1. — Unsuccessful action—Costs and damages—Indemnity—Declaration.**

Where an action, properly instituted under the advice of counsel, and conducted with diligence and propriety by a next friend in the interest of an infant, has been dismissed with costs and damages to be paid by the next friend, the infant will be held bound to indemnify the next friend against such costs and damages, and the costs, charges, and expenses properly incurred by him on the infant's behalf in relation to such action; but no declaration of charge in respect of such costs will be made upon the infant's property where such property is not being administered by the Court. *STEEDEN v. WALDEN* Eve J. [1910] W. N. 182; [1910] 2 Ch. 393

Police Courts.

— Metropolitan police court—Juvenile Courts.
See under LONDON—Police Courts.

Poor Law.

— Pauper infant—Maintenance—Right of poor law guardians to recover against property of infant.
See POOR LAW. 7.

Practice.

— Infant defendants—No defence Motion for judgment—Evidence by affidavit.
See PRACTICE—Infants. 1.

Prevention of Cruelty to Children.

See under CRIMINAL LAW—Cruelty to Children.

Probate.

— Probate action—Contract by parties that costs shall be paid out of the estate—Illegality—Infant co-contractor.
See CONTRACT. 16.

Railway.

— Railway company—Defective fence—Negligence—Turntable—Infant trespasser—Invitation to danger.
See RAILWAY—Fences. 1.

Real Property.

— Infancy of claimant.
See LIMITATIONS, STATUTES OF. 8.

Restraint of Trade.

— Newspaper reporter—Unusual stipulation—Reasonable protection of covenantee.
See RESTRAINT OF TRADE. 7.

Seduction.

1. — *Children*—Girl under the age of sixteen years—Encouraging seduction—*Children Act*, 1908 (8 Edw. 7, c. 67), s. 17.

INFANT (Seduction)—continued.

By s. 17 of the Children Act, 1908, it is provided that if any person having the custody, charge, or care of a girl under the age of sixteen years causes or encourages the seduction or prostitution of that girl, he shall be guilty of a misdemeanour:—

Held, that the word "seduction" in the above enactment means inducing a girl to surrender her chastity for the first time.

Therefore where a father having the custody of his daughter, a girl under the age of sixteen years who had already been seduced, subsequently encouraged an illicit intercourse between the girl and her seducer:—

Held, that he did not thereby encourage the seduction of the girl within the meaning of the enactment. *REX v. FREDERICK MOON; REX v. EMILY MOON* C. C. A. [1910] 1 K. B. 818

Settled Land.

See under SETTLED LAND—Infants.

Settlement.

— Settlement.

See under SETTLEMENT.

Vesting Orders.

1. — *Vesting order—Practice—Infant—Stock in name of infant and another to which infant is entitled* Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 35, sub-s. 1 (ii.) (a)—*Infants Property Act*, 1830 (11 Geo. 4 & 1 Will. 4, c. 65), s. 32—*Form of order*.

Where stock to which an infant was beneficially entitled had been invested in the joint names of himself and another person:—

Held (reversing the decision of Joyce J.), that the Court had jurisdiction under s. 35, sub-s. 1 (ii.) (a), of the Trustee Act, 1893, notwithstanding some slight difference in the language of this section and sub-sections as compared with s. 3 of the Trustee Extension Act, 1852, to make an order vesting the right to transfer such stock in the infant's guardian.

Per Farwell L.J.: The words "(ii.) Where a trustee entitled alone or jointly with another person to stock or to a chose in action—(a) is an infant," apply to a case where one of the trustees is an infant and the stock is held in trust for the infant.

In re Harwood, (1882) 20 Ch. D. 536, and *In re Barnett's Estate*, [1889] W. N. 216, approved.

In re DEHAYNIN (INFANTS) - C. A. [1909] W. N. 251; [1910] 1 Ch. 223

— Will—Children.

See under WILL—Children.

Workmen's Compensation.

See under MASTER AND SERVANT—Infants.

Youthful Offenders.

See under CRIMINAL LAW—Youthful Offenders.

INFECTIOUS HOSPITAL.

See under **HOSPITAL**.

Order in Council excluding the Jurisdiction of the Salford Hundred Court in certain cases.
Reprint from **W. N.** [1909] (**June 26**), p. 259.
See **CURRENT INDEX**, 1909, p. cxxii.

INFLUENCE — Gift — Person in fiduciary relation.

See under **FIDUCIARY RELATION**.

IN FORMA PAUPERIS—Appeal—Opinion of counsel.

See **APPEAL**. 14.

— Appeal—Security for costs.

See **APPEAL**. 13.

— Married woman—Leave to sue—Affidavit by husband.

See **HUSBAND AND WIFE** — **Poor Law**. 1.

INFORMATION—Dismissal of—Case stated on application of informant — “Either party to the proceeding.”

See **JUSTICES**. 6.

— Execution of work in contravention of by-law — Continuing offence.

See **LOCAL GOVERNMENT**. 16.

— Factory—Fencing of machinery—Offence—Limitation of time for laying information.

See **FACTORY**. 3, 4.

— Hearing of information—Practice.

See **JUSTICES**. 18.

INFORMER—Discretion to deprive, of portion of penalty.

See **JUSTICES**. 16.

INFRINGEMENT — By-laws — Injunction — Special remedy—Streets.

See **LOCAL GOVERNMENT**. 3.

— Copyright.

See under **COPYRIGHT**.

— Design.

See under **DESIGN**.

— Patent.

See under **PATENT**.

— Trade-mark.

See under **TRADE-MARK**.

“**INHABITANT**” — Rating — “House” — “Occupier.”

See **RATES**. 15.

INHABITED HOUSE DUTY — Income tax — Premises let on lease.

See **REVENUE**—**Income Tax**. 20.

— Inland Revenue.

See under **REVENUE**—**House Duty**.

INHERITANCE—No words of—Real estate—Limitations—Equitable estate in fee.

See **SETTLEMENT**. 34.

1. — Root of descent—“Purchaser”—Devise to testator’s “right heirs” Co-heiresses — Joint

INHERITANCE—continued.

tenancy or co-parcenary—Inheritance Act, 1833 (3 & 4 Will. 4, c. 106), s. 3.

Under a devise to or in trust for a testator’s “right heirs,” the person who at the time of the testator’s death is his heir-at-law takes now, by virtue of s. 3 of the Inheritance Act, 1833, as devisee, and not by descent as before the Act.

The word “heir” in that section includes “heirs.”

And s. 3 operates also to alter the quality of the estate taken by the heir; so that, if a testator leaves co-heiresses, they, under such a devise, take as joint tenants, not as co-parceners.

Decision of Farwell J. affirmed.

Re Baker, (1898) 79 L. T. 343, approved.
OWEN v. GIBBONS C. A. [1902] **W. N.** 42; [1902] 1 Ch. 636

— Words of inheritance—Absence of.

See **POWER OF APPOINTMENT**. 28.

INHIBITION — Churchwarden, admission of — Archdeacon, Duty of—Power of bishop to inhibit.

See **ECCLESIASTICAL LAW** — **Churchwardens**. 1.

INJUNCTION—Ancient lights.

See under **LIGHT AND AIR**.

— Breach of injunction—Motion—Conflicting affidavits.

See **ATTACHMENT**. 2.

— Brewer’s lease—Breach of covenant—Injunction at suit of assignee.

See **LANDLORD AND TENANT**. 21.

— Building scheme—Alteration of character of neighbourhood — Acquiescence in breaches—Covenant.

See **BUILDINGS**. 4.

— Burial Acts.

See under **BURIAL**.

— By-laws—Infringement—Injunction—Special remedy—Streets.

See **LOCAL GOVERNMENT**. 3.

— Clock, Erection of, affixed to outside of house.

See **LANDLORD AND TENANT**. 7.

— Club—Alteration of rules—Raising subscription—Expulsion of member.

See **CLUB**. 1.

— Company.

See under **COMPANY**.

— Consent — Motion for interlocutory order—Written consent to judgment.

See **CONSENT**. 1.

— Conspiracy—Wrongful acts—Injury.

See **CONSPIRACY**. 6.

— Contract for benefit of infant—Restraint of trade—Severable stipulations.

See **MASTER AND SERVANT**—**Infant**. 3.

— Contract.

See under **CONTRACT**.

INJUNCTION—*continued.*

- Copyright.
See under **COPYRIGHT**.
- Corporation.
See under **CORPORATION**.
- Corporation — Parties — Attorney-General, Suing by.
See **GAS**. 2.
- Costs—"Action founded on tort" Judgment for nominal damages and injunction.
See **COSTS**. 76.
- County court—Costs—Scale—Claim for injunction.
See **COUNTY COURT**—**Costs**. 9.
- County court—Jurisdiction—Claim for injunction only.
See **COUNTY COURT**—**Jurisdiction**. 3.
- Covenant not to assign a lease without consent of lessor.
See **AUSTRALIA**. 9.
- Dentist—Use of word "dentist"—Deceiving public.
See **DENTIST**. 1.
- Ejectment—Mortgage—Power of attorney.
See **TURKS AND CAICOS ISLANDS**.
- Electric lighting.
See under **ELECTRIC LIGHT**.
- Ferry.
See under **FERRY**.
- Foreshore—Crown, Rights of—Encroachment—Adverse possession, Title by.
See **SEASHORE**. 2.
- Hotel—Early morning building operations—Noise.
See **NUISANCE**. 7.
- Interlocutory—Undertaking.
See **PRACTICE**—**Undertakings**. 2.
- Jurisdiction of Divorce Court—Married woman—Title of honour.
See **HUSBAND AND WIFE**—**Title of Honour**. 1.
- Jurisdiction of High Court of Justice.
See **PRACTICE**—**Motion for Judgment**. 3.
- Landlord and tenant.
See under **LANDLORD AND TENANT**.
- Letters—Biography—Authority to write—Use of information contained in letters.
See **LETTERS**. 1.
- Libel in newspaper—Writ—Service out of jurisdiction—Judicial discretion.
See **PRACTICE**—**Service**. 5.
- Light and air.
See under **LIGHT AND AIR**.
- Liquidated damages—Election.
See **PRINCIPAL AND AGENT**. 1.
- Liverpool Sanitary Amendment Act, 1864—Demolition of buildings—"Court"—Public authorities protection.
See **LOCAL GOVERNMENT**. 2.

INJUNCTION—*continued.*

- Locomotive—Traction engine—Nuisance—Interim injunction.
See **HIGHWAY**. 16.
 - Mandatory injunction—Restrictive covenants—"Offensive" trade or business—"Bill-posting"—Advertisement hoarding.
See **BUILDING ESTATE**. 1.
 - Market rights.
See under **MARKET**.
 - Mines—Overlying and underlying seams of coal—Right to support—Subsidence.
See **MINES**. 10.
 - Name—Company.
See under **COMPANY**—**Name**.
 - Name—Unauthorized use of.
See under **NAME**.
 - Nuisance.
See under **NUISANCE**.
 - Partnership.
See under **PARTNERSHIP**.
 - Patent law.
See under **PATENT**.
 - Patented chattel—Sale under distress for rent—Right of purchaser to use the same.
See **DISTRESS**. 16.
1. — *Practice*—*Ex parte injunction*—*Equitable execution*—*Receiver*—*R. S. C., Order L., r. 15 (a), App. K, Form No. 61 (a)*.
Where on the issue of a summons for the appointment of a receiver of property by way of equitable execution an order was made *ex parte* in the form App. K, No. 61 (a), for an injunction to restrain the judgment debtors from dealing with the property until after the hearing of the application:—
Held, that the injunction ought not to be granted in the absence of anything to shew that there was danger of the property being made away with by the judgment debtors before the hearing of the application for a receiver.
LLOYD'S BANK, LD. v. MEDWAY UPPER NAVIGATION CO. **C. A. [1905] W. N. 102; [1905] 2 K. E. 359**
2. — *Practice*—*Motion by defendant before pleading*—*Mandatory interlocutory injunction against plaintiff*—*Order to deliver up possession of a house*.
Per Buckley J.: A deft. may before delivering a counter-claim apply by motion for an injunction against the plt. if he and the plt. are both suing upon the same contract.
An interlocutory injunction was, on the deft.'s motion, granted to restrain the plt. from interfering with or disturbing the deft. in his possession and occupation of a house.
Spurgin v. White, (1860) 2 Giff. 473, followed.
Decision of Buckley J., [1901] W. N. 55, affirmed. **COLLISON v. WARREN**
C. A. [1901] W. N. 65; [1901] 1 Ch. 812
- Railway company—Parliamentary deposit—Agreement—Breach.
See **RAILWAY**—**Deposits**. 2.

INJUNCTION—*continued.*

- Railway company—Statutory powers—Unreasonable use.
See RAILWAY—**Powers**. 3.
- Receiver, Interference with possession of—Proceedings in other Courts—Jurisdiction.
See RECEIVER. 8.
- Restraint of trade.
See under RESTRAINT OF TRADE.
- Restrictive covenants—Building scheme—Rights of purchasers inter se.
See VENDOR AND PURCHASER—**Covenants**. 1.
- Sanitary conveniences—Misuse of.
See under LONDON—**Conveniences**.
- Sewage nuisance—Practice—Execution—Enforcing order against corporation—Writ of sequestration.
See SEQUESTRATION. 2.
- Sewers.
See under LONDON—**Sewers**.
SEWERS.
- Solicitor—Restraint on trade.
See under SOLICITOR—**Restraint on Trade**.
- Specific performance.
See under SPECIFIC PERFORMANCE.
- Stream—Pollution of.
See under STREAM.
- Streets.
See under LONDON—**Streets**.
STREETS.
- Timber—Contract for purchase of, to be cut and removed by purchaser—Mutuality.
See SPECIFIC PERFORMANCE.
- Timber—"Planted or left for ornament or shelter"—Evidence.
See WASTE. 1.
- Trade mark.
See under TRADE MARK.
- Trade name.
See under TRADE NAME.
- Trade—Restraint of.
See under RESTRAINT OF TRADE.
- Trade union.
See under TRADE UNION.
- Transfer of stock.
See PRACTICE—**Motions**. 2.
- Trespass.
See under TRESPASS.
- Undertaking.
See under PRACTICE—**Undertakings**.
- Veterinary surgeon.
See under VETERINARY SURGEON.
- Waste, Equitable—Ornamental timber—Evidence.
See WASTE. 1.
- Water and waterworks.
See under WATER

INJUNCTION—*continued.*

- Water from river, Diversion of—Canal company—Statutory powers.
See CANALS. 1.
- Watercourse.
See under STREAM.
- Way, Right of.
See under WAY, RIGHT OF.

INJURED ANIMALS ACT, 1907 (7 Edw. 7, c. 5).*See* under ANIMALS.**INJURY**—Conspiracy—Wrongful acts—Injunction.*See* CONSPIRACY. 6.

— Workmen's Compensation Act.

See under MASTER AND SERVANT.**INLAND REVENUE.***See* under REVENUE.**INN**—*Intoxicating Liquors (Sale to Children) Act, 1901* (1 Edw. 7, c. 27), *prevents the sale of intoxicating liquors to children.*

- Betting, Place used for—Bar of public-house.
See GAMING. 17.
 - Brewer's lease.
See under LANDLORD AND TENANT.
 - False imprisonment—Manager.
See MASTER AND SERVANT—**False Imprisonment**. 1.
 - Forfeiture—Relief of underlessee against—Rent—Tied house—Discretion of Court.
See LANDLORD AND TENANT. 39.
 - Hotel.
See under HOTEL.
 - Innkeeper.
See under INNKEEPER.
 - Lands compulsorily taken—Compensation—Tied house.
See HOUSING OF WORKING CLASSES. 2.
 - Licences in peril—Appointment of receiver—Delivery of possession.
See RECEIVER. 11, 12.
 - Licensing Acts.
See under LICENSING ACTS.
 - Mortgage—"Clog" on redemption—"Tied" public-house.
See MORTGAGE—**Redemption**. 6.
 - Re-entry on liquidation—Lease—Forfeiture—Solvent company.
See LANDLORD AND TENANT. 75.
 - Sale of intoxicating liquors to children.
See under CRIMINAL LAW—**Intoxicating Liquors**.
 - "Tied" public-house—"Clog" on redemption.
See MORTGAGE—**Redemption**. 6.
- INN OF CHANCERY**—Study of the law—Failure of object—Disposition of property.
See CHARITY. 23.

INNKEEPER—Hotel.See under **HOTEL**.

— Inn.

See under **INN**.

1. — *Liability of, for goods deposited "expressly for safe custody"*—*Innkeepers' Liability Act, 1863* (26 & 27 Vict. c. 41), s. 1.

By the Innkeepers' Liability Act, 1863 (26 & 27 Vict. c. 41), s. 1, "No innkeeper shall be liable to make good to any guest of such innkeeper any loss of . . . goods or property brought to his inn . . . to a greater amount than the sum of 30*l.* except in the following cases: (1.) Where such goods or property shall have been stolen . . . through the wilful act, default or neglect of such innkeeper or any servant in his employ. (2.) Where such goods or property shall have been deposited expressly for safe custody with such innkeeper":—

Held (affirming the decision of the Extra or Third Division of the Court of Session, Lord Collins dissenting, (1908) S. C. 218), that to constitute an express deposit for safe custody within sub-s. 2 it must be proved that something was said or done by the guest whose property the goods were that would convey to the innkeeper the fact that the goods were being deposited with him for safe custody; and that the innkeeper received them into his charge with the intention of making himself liable for their safety. **WHITEHOUSE v. R. & W. PICKETT**. — **H. L. (Sc.)** [1908] W. N. 158; [1908] A. C. 357

2. — *Obligation to lodge traveller—Shelter and accommodation for the night—Demand of traveller to pass night in public room of inn when bedrooms full.*

If all the bedrooms of an inn be full, the innkeeper is under no obligation at common law to provide a traveller with shelter and accommodation for the night, although the coffee-room be unoccupied and the traveller demands to be allowed to pass the night there. **BROWNE v. BRANDT** — **Div. Ct.** [1902] 1 K. B. 696

3. — *Traveller—Cost of accommodation defrayed by another person—Loss of property—Guest—Customary liability of innkeeper.*

Where a traveller is provided with accommodation and refreshment in an inn, the fact that the expenses thereof are by agreement between the innkeeper and another person to be paid for by that other person does not prevent the relation of innkeeper and guest from arising, and the innkeeper, therefore, incurs the customary liability for the safe custody of the traveller's goods in the inn. **WRIGHT v. ANDERTON** — **Div. Ct.** [1908] W. N. 258; [1909] 1 K. B. 209

INNOCENT POSSESSION—"Concealed fraud"

—Third party.

See **LIMITATIONS, STATUTE OF**. 7.

INNOCENT PURCHASER — *Infringement of patent—Exposing for sale—"Using and vending" the invention.*

See **PATENT—Infringement**. 2.

INNUENDO—*Discovery—Interrogatories—Libel—Interrogatory as to meaning in which defendant used words—Practice.*

See **DISCOVERY**. 12.**INNUENDO**—*continued.*

— *Slander—Words actionable per se—Criminal offence—Punishment—Liability to summary arrest.*

See **DEFAMATION—Slander**. 6.

INQUISITION—*Right of lunatic to traverse—Discretion of judge in lunacy.*

See **LUNACY**. 10.

INSANITARY HOUSE—*Negligence of landlord—Right of wife and children of tenant to claim damages for illness.*

See **LANDLORD AND TENANT**. 43.**INSANITY.**See under **LUNATIC**.

INSCRIPTION—*On tombstone in parish churchyard—Control of incumbent.*

See **ECCLESIASTICAL LAW—Faculty**. 21.

INSECTS AND PESTS—*Destructive Insects and Pests Order, June 18, 1908. St. R. & O., 1908, No. 494. Price 1*d.**

*The Destructive Insects and Pests Order May 3, 1910. St. R. & O., 1910, No. 467. Price 1*d.**

— *Damage by insects—Construction of police—Liability of underwriter.*

See **INSURANCE (MARINE)**. 19.**INSOLVENCY.**See under **BANKRUPTCY**.

— *Contribution—Insolvent estate—Will.*

See **WILL—Contribution**. 1.

— *Debtor—Cause of action.*

See **CANADA—Practice**. 1.

— *Distribution of insolvent estates—Landlord's privilege—Law of Quebec.*

See **CANADA—Insolvent Estates**. 1.

— *Retainer—Judgment creditor—Judgment against executor—Subsequent administration decree.*

See **EXECUTOR—Retainer**. 6.

— *Retainer—Loan by wife to husband—Wife appointed executrix of husband.*

See **EXECUTOR—Retainer**. 7.

— *Retainer—Right of—Claim of trustees of settlement—Insolvent estate.*

See **EXECUTOR—Retainer**. 5.

— *Slander—Words not actionable per se—Imputation of insolvency against solicitor.*

See **DEFAMATION—Slander**. 7.

— *Unregistered friendly society—Jurisdiction to wind up—Benefit society.*

See **FRIENDLY SOCIETY**. 3.

— *Voluntary debt—Creditors—Priorities—Bankruptcy rule—Administration—Insolvent estate.*

See **EXECUTOR—Administration**. 3.

INSOLVENT PLAINTIFF—Security for costs—
Trustee of deed of assignment.
See COSTS. 55.

INSPECTION—Bankruptcy.

See under BANKRUPTCY—**Books**.

— Books and accounts—Right of partner to inspect—Inspection by agent.
See PARTNERSHIP. 1.

— Company—Register of members—Right to take copies.
See COMPANY—**Register**. 1.

— Deceit—Action of—Probability of deception—View by judge—Practice.
See TRADE-MARK. 1, 2.

— Discovery.
See under DISCOVERY.

— Ship—Constructive total loss—Practice—Order to bring within jurisdiction.
See SHIPPING—**Practice**. 14.

— Trade union—Books and accounts—Right to employ agent to inspect.
See TRADE UNION. 2.

INSTALMENTS—Annuity—Settled estate—Past and future instalments.
See ANNUITY. 12.

— Debt due from beneficiary to testator payable by instalments—Right of executors to retain share to answer debt.
See ADMINISTRATION. 32.

— Income tax—Annuity—Sale of railway—Purchase-money—Payment by annual instalments with interest.
See REVENUE—**Income Tax**. 4.

— Payment by instalments, Order for—Judgment debt—Execution—Necessity for leave—Practice.
See EXECUTION. 2.

— Payment by instalments—Bill of sale—Construction of statutory form.
See BILL OF SALE. 4.

— Repayment by instalments—Form in schedule, Deviation from.
See BILL OF SALE. 7.

— Stamp—Sale of goods, Agreement for—Price to be paid by instalments—Liability to ad valorem stamp duty.
See REVENUE—**Stamps**. 26.

— Will—Direction to set apart and pay by instalments on legatee's attaining specified ages—Vesting.
See WILL—**Legacy**. 2.

— Will—Latent ambiguity—Name—Misdescription—Extrinsic evidence—Admissibility.
See WILL—**Name**. 1.

INSTITUTE—General charitable intention—Use for purposes not strictly charitable.
See CHARITY. 24.

INSURANCE. (In General.)

Order, June 6, 1910, making Rules and Regulations and prescribing forms under the Assurance Companies Act, 1909. St. R. & O., 1910, No. 566. Price 1½d.

— Accident.

See under INSURANCE (ACCIDENT).

— Burglary.

See under INSURANCE (BURGLARY).

— Capture.

See under INSURANCE (CAPTURE).

— Contract by seller to insure cattle "against all risks"—Liability of seller.
See SALE OF GOODS. 9.

— Contract of—Limitations clause imported from original policy—Construction.
See CANADA—**Insurance**. 1.

— Employers' liability.

See under INSURANCE (EMPLOYERS' LIABILITY).

— Fire insurance.

See under INSURANCE (FIRE).

— Inhabited house duty—Exemptions—"Profit"—Mutual insurance society.
See REVENUE—**House Duty**. 1.

— Life insurance.

See under INSURANCE (LIFE).

— Marine insurance.

See under INSURANCE (MARINE).

— Mortgage debt—Mortgage insurance policy—Indemnity—Guarantee—Co-suretyship—Contribution.
See PRINCIPAL AND SURETY. 3.

— Professional insurance.

See under INSURANCE (PROFESSIONAL).

1. — *Public policy—Insurance of products of mine in foreign country—Declaration of war—Seizure by enemy's Government of things insured—Validity of insurance.*

The pits were registered as a joint stock co. in Natal, their only property being a gold mine owned and worked by them in the Transvaal. Before Oct., 1899, when war was declared between the Transvaal Republic and this country, the pits had effected with the deft., a British subject, a policy of insurance of certain gold products of their mine, the perils insured against including "enemies," and "arrests, restraints, and detentions of kings, princes, and people." A few days after war was declared the agents of the Transvaal Government seized and carried away some of the gold products insured. The pits had shut down their mine when war was declared, and there was nothing to shew that they intended to continue their business or mining operations in the Transvaal afterwards. In an action on the policy to recover in respect of the gold products so seized:—

Held, that there was no ground of public policy which prevented the policy of insurance from continuing in force after war was declared, and therefore that the pits were entitled to recover. NIGEL GOLD MINING CO. v. HOADE
Mathew J. [1901] 2 K. B. 849

INSURANCE *continued.**Note.*

See also *Driefontein Consolidated Gold Mines, Ltd. v. Janson, H. L. (E.)* [1902] A. C. 484. See *Insurance—Capture*. 1.

— Securities—Contract whether of suretyship or insurance—Co-sureties.

See **PRINCIPAL AND SURETY**. 3.

— Workmen's compensation—Appeal—Refusal to order payment by insurers into savings bank.

See **MASTER AND SERVANT—Practice**. 3.

INSURANCE (ACCIDENT)—"Accidental means"—*Policy—Construction—Injury caused by "violent, accidental, external and risible means"—Death from heart failure brought on by physical exertion.*

A policy of insurance provided for the payment of a sum by the insurers in case the assured should "sustain any bodily injury caused by violent, accidental, external and visible means," and the injury so sustained should be "the sole and immediate cause of death of the assured" within three months of the occurrence of the accident. The assured died on Jan. 25, 1904, whilst the policy was in force, the following circumstances having led up to his death: On the morning of Dec. 26, 1903, he was in the apparent enjoyment of good health and able to discharge the duties of his employment, which were duties requiring some bodily activity. In fact, however, on that day and for a considerable time prior thereto his heart was in a weak and unhealthy condition, although he did not know that fact. During the morning of Dec. 26, being apparently in his usual state of health, he attempted to eject a drunken man from his master's premises, using some physical exertion for that purpose for pushing or pulling in order to overcome the man's passive resistance. The effect of this physical exertion was to cause a strain on the assured's heart, and the increased work of the heart under this strain rendered it, owing to its weak and unhealthy state, incapable of recovering its ordinary condition when the immediate strain ceased, the consequence being that the heart began to dilate, and the dilatation so set up was the cause of death. But for his exertions in attempting to eject the drunken man the assured might have lived a considerable time longer. A claim to receive the policy moneys having been made by the assured's personal representative:—

Held, that the injury which resulted in the death of the assured was not caused by "accidental means" within the meaning of policy, and the insurers were therefore not liable. *In re SCARR AND GENERAL ACCIDENT ASSURANCE CORPORATION, LD.* **Bray J.** [1905] 1 K. B. 387

2. — *Condition in policy—Claim to be made within a year of registration.*

In a copy of Letts's Diary for the year 1906, of which the respondent's husband was owner, there was a coupon policy of insurance which stated that a thousand pounds would be paid to

INSURANCE (ACCIDENT)—*continued.*

the executors of any owner of the diary fatally injured in a ry. accident if he had caused his name to be registered at the head office of the appellants, an insurance co., and if the claim was made within twelve months of the registration. The respondent's husband filled up the form of application for registration by inserting his name and address and the date, Dec. 25, 1905, and forwarded it to the appellants' office. The appellants kept no register, but date stamped and filed the applications. The respondent's husband received a letter from the appellants, dated Jan. 3, 1906, enclosing an official acknowledgment dated Dec. 29, 1905, of the registration of his name as being insured against accidents in the terms of the coupon. He was injured in a ry. accident on Dec. 28, 1906, and died the next day. The respondent, his executor, gave notice of the claim on Jan. 2, 1907. The appellants denied liability, on the ground that the date of registration was Dec. 27, 1905, and that the insurance ended on Dec. 27, 1906:—

Held (affirming the decision of the Ct. of Sess., (1909) S. C. 344), that the twelve months within which the claim must be made had not expired when the claim was made, Jan. 2, 1907, for, there being no regular register, the date of registration must be taken to be the date when the bundle of applications, containing that of the deceased, were arranged alphabetically and filed; and that, in the absence of any definite proof of this date, it must be held, as against the respondents, to be Jan. 3, 1906, the date of the letter containing an official acknowledgment of the registration, and that the claim was accordingly made within the prescribed period. **GENERAL ACCIDENT, FIRE AND LIFE ASSURANCE CORPORATION v. ROBERTSON OR HUNTER**

H. L. (Sc.) [1909] W. N. 153;
[1909] A. C. 404

3. — *Condition in policy—Immediate notice of accident—Omission to give notice—Insurer's liability.*

A policy of insurance covering the liability of an employer to compensate his workmen for injuries by accident in the course of their employment was made subject to a condition that the employer should give immediate notice of any accident causing injury to a workman, and to a further condition that the observance and performance by the employer of the times and terms set out in the policy, so far as they contained anything to be done by the employer, were the essence of the contract.

On Dec. 28, 1904, the employer signed a proposal form for the insurance and received a covering note, to which no conditions were attached. On Jan. 3, 1905, the insurers sealed, and on Jan. 9 delivered to the employer, the policy in question, which expressed that it was to be in force from Jan. 1, 1905, to Jan. 1 in the following year. On Jan. 2, 1905, a workman in the employ of the assured was injured by an accident which was believed to be slight, and of which notice was not given at the time to the insurers. Dangerous symptoms supervened, and the injured workman died on

INSURANCE (ACCIDENT)—*continued.*

Mar. 15; notice of the accident was given by the employer to the insurers on Mar. 14, the day before the workman's death. The insurers repudiated all liability under the policy, on the ground (among others) that immediate notice of the accident was not given by the employer in accordance with the condition in the policy, and that the condition was a condition precedent to the right of the employer to recover. A claim for compensation by the widow was properly settled by the employer for a reasonable sum, and the claim of the latter against the insurers was referred to an arbitrator under the arbitration clause in the policy. The arbitrator held that the condition as to giving immediate notice of injury was a condition precedent, but stated his award in the form of a special case for the opinion of the Court, which reversed the arbitrator's decision. Upon appeal by the insurers:—

Held, by Vaughan Williams L.J. and Buckley L.J. (Fletcher Moulton L.J. dissenting), that, in the absence of evidence that the employer either knew of, or had the opportunity of knowing of, the existence of the condition at the date of the accident, the condition was one with which it was impossible to comply; that, as regards a risk which resulted in a claim before the insured had knowledge of the condition, the true inference was that the insurers never imposed the condition on the employer, and that the latter was therefore entitled to recover on the policy.

Quære, whether upon the construction of the policy as a whole, apart from the particular circumstances, the condition was a condition precedent. *In re COLEMAN'S DEPOSITORIES, LD. AND LIFE AND HEALTH ASSURANCE ASSOCIATION* C. A. [1907] 2 K. B. 798

4. — Death caused by accident—Intervening cause—Disease directly caused by accident.

By the terms of a policy an accident insurance co. undertook, if, at any time during the continuance of the said policy, the insured should sustain any bodily injury caused by violent, accidental, external, and visible means, then, in case such injury should, within three calendar months from the occurrence of the accident causing such injury, directly cause the death of the insured, to pay to the legal personal representatives of the insured the capital sum of 1000*l.* The policy contained the following proviso:—“Provided always and it is hereby as the essence of the contract agreed as follows: That this policy only insures against death where accident within the meaning of the policy is the direct or proximate cause thereof, but not where the direct or proximate cause thereof is disease or other intervening cause, even although the disease or other intervening cause may itself have been aggravated by such accident, or have been due to weakness or exhaustion consequent thereon, or the death accelerated thereby.”

The assured, while hunting, had a heavy fall, and, the ground being very wet, he was wetted to the skin. The effect of the shock and the wetting was to lower the vitality of his system, and being obliged to ride home afterwards,

INSURANCE (ACCIDENT) *continued.*

while wet, still further lowered his vitality. The effect of this lowering of his vitality was to cause the subsequent development of pneumonia in his lungs of which he died. The pneumonia was not septic or traumatic, but arose as a direct and natural consequence from the fact that the diminution of vitality caused through the accident as above mentioned, allowed the germs called “pneumococci,” which in small numbers are generally present in the respiratory passages, to multiply greatly and attack the lungs:—

Held, affirming the judgment of Channell J., that the death of the assured was directly caused by accident within the meaning of the policy, and that the case did not come within the proviso therein, and the co. were consequently liable on the policy. *In re ETHERINGTON AND LANCASHIRE AND YORKSHIRE ACCIDENT INSURANCE CO.* C. A. [1909] W. N. 35; [1909] 1 K. B. 591

5. — “Intervening cause”—Construction of policy.

A person insured himself with the defts. under a policy whereby the defts. agreed to pay him a certain sum in case he should be injured by accidental violence and should die within three months of its occurrence, if the injury should be the “direct and sole cause” of his death. The policy was subject to the condition that it should not apply to “death . . . caused by or arising wholly or in part from” any “intervening cause.” The assured on July 2 accidentally inflicted a wound on his leg with his thumb-nail. His leg became inflamed, and on July 2 erysipelas had set in. This was followed on July 12 by septicæmia, and on July 16 by septic pneumonia, of which complaint he died on July 22. It was conceded by the defts. that the septic germs, the development of which resulted in the man's death, were introduced into his system at the time of the infliction of the wound:—

Held, that the erysipelas, septicæmia, and septic pneumonia were not “intervening causes” within the meaning of the policy, but merely different stages in the development of the septic condition which was immediately brought about by the introduction of the poison, and that the man's death was directly and solely caused by the accidental injury to his leg. *MARDORF v. ACCIDENT INSURANCE CO.* Wright J.

[1903] W. N. 42; [1903] 1 K. B. 584

6. — Principal and agent—Misstatements in proposal made by agent of insurers without knowledge of insured—Authority of agent.

A policy of insurance against accidental injury was effected with an insurance co. through their local agent. The proposal form was filled up by the agent, many of the answers filled in by him being false in material respects; the false answers were inserted without the knowledge or authority of the applicant, who signed the proposal form without reading it. The proposal contained a declaration in which the applicant agreed that the statements in the proposal should form the basis of the policy, and the policy contained a proviso that it was granted on the express condition of the truthfulness of the statements in

INSURANCE (ACCIDENT)—*continued.*

the proposal. Shortly after payment of the premium the insured was accidentally injured :—

Held, first, that it was the duty of the applicant to read the answers in the proposal before signing it, and that he must be taken to have read and adopted them ; and, secondly, that in filling in the false answers in the proposal the agent was acting, not as the agent of the insurance co., but as the agent of the applicant ; and that therefore the policy was void. **BIGGAR v. ROCK LIFE ASSURANCE CO.** - **Wright J.**
[1902] 1 K. B. 516

INSURANCE (BURGLARY)—*Theft—Exception—Theft by member of business staff—Burglary policy.*

The plts., who were jewellers in the Strand, insured their stock of jewellery at Lloyd's against burglary and theft. The policy stated that the plts. had paid to the defts. a certain premium to insure them from loss ^{and} damage by theft or robbery, with or without violence, or burglary of the property therein specified or any part thereof from the plts.' premises during the period therein mentioned, "Provided always that there shall be no claim on this policy . . . for loss by theft, robbery, or misappropriation by members of the assured's household, business staff or other inmates of the insured premises." On a certain day in Jan., 1910, a member of the plts.' business staff, in pursuance of a preconceived scheme, admitted to the premises one of a gang of thieves. He then locked up the premises, as it was his duty to do, and departed, leaving the thief within, and the thief, with other confederates, afterwards cleared the premises of goods to the value of 1200*l.* The plts.' servant subsequently shared in the plunder. The plts. brought an action on the policy.

Walton J. ([1910] W. N. 147) held that the servant was an accessory before the fact, but that, whether he was an accessory before the fact or a principal in the second degree, the theft was a theft by him, and therefore the proviso applied and the defts. were exempt from liability.

The C. A. dismissed the appeal, and held that the proviso applied upon the ground that the servant was guilty of theft as a principal. **SAQUI & LAWRENCE v. STEARNS** - **C. A.**
[1910] W. N. 257

INSURANCE (CAPTURE).

— Property of alien enemy.

See INSURANCE (MARINE). 1.

1. — *Property of alien enemy—Loss before beginning of war—Intention to wage war—Seizure by enemy's Government of property of its own subject—Validity of insurance—Public policy.*

Where a subject of a foreign Government insures treasure with British underwriters against capture during its transit from the foreign State to this country, and the foreign Government seizes the treasure during the transit, and war is afterwards declared between the foreign and the British Governments, the insurance is valid, and an action may be maintained in this country against the underwriters after the restoration of peace, though the seizure is made in contempla-

INSURANCE (CAPTURE)—*continued.*

tion of war, and in order to use the treasure in support of the war.

The important date is the seizure before the declaration of war.

Such an insurance is not against public policy.

Public policy is not a safe or trustworthy ground for legal decision.

The decision of C. A. [1901] W. N. 134 ; [1901] 2 K. B. 419, affirmed. **JANSON v. DRIEFONTEIN CONSOLIDATED MINES, LD.**

H. L. (E.) [1902] W. N. 157 ; [1902] A. C. 484

Note.

See Nigel Gold Mining Co. v. Hoade, [1901] 2 K. B. 849 ; *Insurance (In General). 1.*

See Robinson Gold Mining Co. v. Alliance Insurance Co., [1904] A. C. 359 ; *Insurance (Marine). 1.*

INSURANCE (EMPLOYERS' LIABILITY).

*The Employers' Liability Insurance Companies (Adaptation of Enactments) Order, 1907. St. R. & O. 1907, No. 838. Price 1½*d.**

Rules dated Jan. 17, 1908, made by the Board of Trade under the Employers' Liability Insurance Companies Act, 1907 (7 Edw. 7, c. 46), as to deposits made by members of Lloyd's. St. R. & O. 1908, No. 1187.

With respect to deposits by Employers' Liability Insurance Companies. St. R. & O. 1908, No. 1188, L. 36.

1. — *Company's obligation to deposit money in Court—Company registered in Ireland—Petition for investment—Court having jurisdiction—Securities authorized by Irish but not by English Court—Employers' Liability Insurance Companies Act, 1907 (7 Edw. 7, c. 46), s. 1—Employers' Liability Insurance Companies (Adaptation of Enactments) Order, 1907.*

The co. was incorporated in 1902 as a co. limited by shares, under the Companies Acts, 1862 to 1900, having amongst its objects the carrying on the business of fire insurance and all other kinds of insurance (except insurance upon human life within the meaning of the Life Assurance Companies Act, 1870), but including all kinds of guarantee and indemnity business. The registered office of the co. was in Ireland.

By an extraordinary resolution passed in May, 1908, the co. resolved to carry on, in addition to its existing business, the business of insuring employers against liability to pay compensation or damages to workmen in their employment, bringing itself expressly within the Employers' Liability Insurance Companies Act, 1907, which applies whether the co. was established before or after the passing of the Act. By the joint effect of the Act of 1907 and an O. in C. made Nov. 2, 1907 (Statutory Rules and Orders, 1907, No. 838), which incorporated, with modifications, the Life Assurance Companies Acts, 1870 and 1872, the co. had "to deposit the sum of 20,000*l.* with the Postmaster-General for the time being for and on behalf of the Supreme Court of Judicature, to be invested by him under the direction of the Court in one of the securities usually accepted by the Court for the investment of funds placed

INSURANCE (EMPLOYERS' LIABILITY) —
—continued.

from time to time under its administration, the co. electing the particular security," and the term "Court" was to mean, as to a co. registered in England, the Chancery Division of the High Court, and as to a co. registered in Ireland, the Chancery Division of the High Court in Ireland.

There being no such official in Ireland as the Paymaster-General of the Supreme Court of Judicature, the co. in June, 1908, deposited with the Paymaster-General in England the sum of 20,000*l*. The C. A. in Ireland ordered that the 20,000*l*. should be invested in certain securities, some of which were not accepted by the Chancery Division in England for the investment of funds under its administration, although they were recognized by the Irish Courts as proper investments, and the Assistant-Paymaster-General in England refused to act on the Irish order, and said that he could only recognize an order of the High Court in England.

The co. accordingly petitioned for the investment of the 20,000*l*. in the securities sanctioned by the Irish C. A.

Parker J. held that the definition clause of the O. in C. must, as regarded the term "Court," be construed, as was usual in such cases, as being subject to the words "except where there is an indication of a contrary intention." There was here such an indication in the words "Supreme Court of Judicature," as read into the Act of 1870 by the O. in C. The effect was, therefore, that this Court had jurisdiction. But the word "Court" could not be construed differently in respect of the securities authorized, and the Court could not recognize that certain stocks not recognized by the Court here as proper securities were approved of by the Irish Court. The petition must therefore be amended by asking for the substitution for those stocks of other stocks. *In re IRISH CATHOLIC CHURCH PROPERTY INSURANCE CO.*

Parker J. [1909] W. N. 69

INSURANCE (FIRE)—Award condition precedent to suit.

See JERSEY. 1.

1. — *Contract of fire insurance made by agent without authority—Ratification by principal after and with knowledge of loss by fire—Whether ratification valid in law.*

Where a contract of fire insurance is made by one person on behalf of another without authority, it cannot be ratified by the party on whose behalf it is made after and with knowledge of the loss of the thing insured. *GROVER & GROVER, LD. v. MATHEWS - Hamilton, J.*

[1910] 2 K. B. 401

— Discovery—Ship's papers—Practice.

See DISCOVERY. 19.

— Heirlooms—Power of trustees to insure heirlooms and pay premiums out of income of capital moneys.

See SETTLED LAND—Heirlooms. 1. $\frac{1}{2}$

— Income tax—Covenant by lessor to pay fire insurance premium—Deduction.

See REVENUE—Income Tax. 12.

INSURANCE (FIRE)—continued.

— Income tax—Deduction for unexpired risks.

Fire insurance company.

See REVENUE—Income Tax. 21.

— Notice required of additional insurance—Premium.

See CHINA AND COREA. 1.

— Policy—Protection from liability while gasoline is stored or kept in the building insured—Construction—"Stored or kept."

See CANADA—Insurance (Fire). 2.

2. — *Settled land—House in Devonshire—Settled chattels—Infant life tenant—Insurances by trustees under statutory powers—Premiums paid out of income—Rebuilding after fire—Title to and application of policy moneys—Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), s. 42—Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 18—Fires Prevention (Metropolis) Act, 1774 (14 Geo. 3, c. 78), s. 83.*

During the minority of a life tenant of settled estates in Devonshire, the trustees, acting under the powers of the Conveyancing and Law of Property Act, 1881, s. 42, and the Trustee Act, 1893, s. 18, insured (a) the mansion-house and (b) certain settled chattels and furniture against fire. The policies were taken out in the names of the trustees, and the premiums were paid out of income. The house and chattels were for the most part destroyed by fire, and the trustees recovered 7000*l*. on the house policy and 1244*l*. on the chattel policy.

The trustees, the infant life tenant (aged twenty), and the remaindermen all desired the house to be rebuilt and refurbished, but the infant life tenant, who was not bound to insure, claimed that, as the premiums had been paid out of his income, the policy moneys in the hands of the trustees were his, and that he was entitled to a charge for any amount expended.

The remaindermen appeared, but took no part in the argument:—

Held, that under the Fires Prevention (Metropolis) Act, 1774, s. 83, the remaindermen were entitled to have the 7000*l*. recovered on the house policy applied in rebuilding, and that the infant life tenant was not entitled to a charge.

But *held*, that the infant life tenant was entitled to the 1244*l*. recovered on the chattel policy, to which the Fires Prevention (Metropolis) Act, 1774, s. 83, did not apply.

Seymour v. Vernon, (1852) 16 Jur. 189, *Wurwicker v. Bretnall*, (1882) 13 Ch. D. 188, and *Gausson v. Whatman*, (1905) 93 L. T. 101, distinguished on the first point and (*semble*) followed on the second point. *In re QUICKE'S TRUSTS*. POLTIMORE v. QUICKE - Swinfen

Eday J. [1908] 1 Ch. 887

3. — *Subrogation—Notice to treat for insured property—Loss by fire after notice to treat—Payment by insurers to assured—Renunciation of assured's rights in respect of insured property—Right of insurers to recover from assured the amount paid.*

The debt, insured her buildings against fire with the plt. co. During the currency of the policy a corporation gave the debt. a notice to

INSURANCE (FIRE)—*continued.*

treat for the buildings under the Lands Clauses Consolidation Act, 1845. Before anything had been done under that notice the buildings were destroyed by fire, and the plts. paid to the deft. an agreed sum as the amount of her loss. Subsequently the amount to be paid by the corporation on taking over the property pursuant to their notice to treat was agreed between the deft. and the corporation at a sum arrived at by taking into account the money paid by the plts. to the deft. under the policy, the corporation agreeing to indemnify the deft. against any claim which might be made against her by the plts. :—

Held, that, the contract being one of mere indemnity, the plts. upon payment of the agreed amount of the loss became entitled to all the rights of the deft. in respect of the destroyed property; that those rights included a right to be paid by the corporation the value of the property as it existed at the date of the notice to treat; that the deft. could not by any agreement with the corporation deprive the plts. of that right; and therefore that the plts. were entitled to recover from the deft. the amount paid by them to her in respect of the loss insured against. **PHOENIX ASSURANCE CO. v. SPOONER**

Bigham J [1905] 2 K. B. 753

— Will—Accumulations—Leaseholds.

See ACCUMULATIONS. 5.

INSURANCE FUND—Land Transfer Act.

See LAND TRANSFER. 4.

INSURANCE (LIFE)—*Agreement that statement should be the basis of the contract—Effect of answers to questions put by medical referee of insured to assured—Non-disclosure of material facts—Absence of fraud.*

One R. M. effected with the deft. an insurance upon her own life in pursuance of a proposal in which she made certain statements, the truth of which was not disputed. She signed a declaration that the statements so made were to the best of her knowledge and belief true, and by which she agreed that "this proposal and declaration" should "be the basis of the contract" between her and the deft. Subsequently to the proposal, but before the execution of the policy, certain questions contained in a printed form were put to her by a doctor, who was instructed by the defts. to put these questions with any necessary explanation and fill in her answers thereto, and to report upon her health, and these questions were answered by her. Many of these questions related to matters of health, the answers as to which could only be matter of opinion, even if given by a medical expert. Among these questions she was asked to give the names of any medical men consulted by her, and to state when and for what she consulted them; and whether, among other complaints, she had ever suffered from mental derangement. The answer to the last-mentioned question was in the negative, whereas in fact she had, though not aware of the fact, been in confinement for acute mania; and, in the answer to the first-mentioned question, as filled in by the doctor, the name of one Dr. K. M., whom she had consulted for nervous breakdown following

INSURANCE (LIFE)—*continued.*

influenza, was not mentioned. She signed a second declaration, contained in the before-mentioned form, wherein she declared, "with reference to the proposal for assurance" on her life and her previous declaration, that the answers to the foregoing questions were all true. This declaration did not state that the answers were to form part of the basis of the contract. The policy did not refer to the proposal or either of the declarations. The assured subsequently committed suicide.

An action having been brought on the policy by the executrix of the assured, the defts. resisted the plt.'s claim upon the ground that the accuracy of the answers to the above-mentioned questions was made a condition precedent to the validity of the policy, and upon the ground of misstatement and non-disclosure of material facts by the assured. The doctor who put the questions to the assured was not called as a witness at the trial. The jury found in answer to the following questions as follows:—Did the assured fraudulently conceal from the defts. that she had consulted Dr. K. M. for nervous depression? Answer.—She foolishly, but not fraudulently, concealed this fact. Was the fact that she had consulted Dr. K. M. for nervous breakdown material for the co. to know in considering whether they would insure the assured's life? Answer.—Yes. Upon these answers judgment was entered for the defts. :—

Held, on appeal from the judgment of Lord Alverstone C.J., [1908] W. N. 142; [1908] 2 K. B. 431, that although the terms of the first declaration signed by the assured did not exclude the possibility of the truth of her answers to the questions referred to in the second declaration being material to the validity of the policy, yet, having regard to the nature and purpose of those questions, the truth of the answers to them was not, on the true construction of the documents, made part of the basis of the contract.

Held, further, that under the circumstances of the case, without the evidence of the doctor who put the questions to the assured as to what took place when he put the questions to her, and what explanation of them he gave to her, the second declaration signed by the assured as above mentioned was not per se sufficient evidence to prove that there had been any such non-disclosure of material facts by the assured as would, in the absence of fraud, render the policy voidable. **JOEL v. LAW UNION AND CROWN INSURANCE CO.**

G. A. [1908] 2 K. B. 863

— Antecedent debt—Security—Policy of assurance—Interests based on valuable consideration.

See CONSIDERATION. 1.

— Bankruptcy—Life policies—Payment of premiums from date of receiving order—Salvage—Interest.

See BANKRUPTCY—Secured Creditors. 1.

— Bankruptcy—Mortgage of life policy—Voluntary payment of premiums by third party.

See BANKRUPTCY—Third Parties. 2.

INSURANCE (LIFE)—continued.

— Company—Alteration of regulations—Power of company to alter rights of policy-holder.

See COMPANY—Memorandum. 14.

2. — Company — Tea and life insurance business combined — Life assurance fund — Accumulated profits — Separate accounts — Scheme, Form of— Life Assurance Companies Act, 1870 (33 & 34 Vict. c. 61), s. 4.

Form of scheme enabling a life insurance co. to carry on other business (such as that of selling tea, &c.) besides that of life insurance so as to comply with s. 4 of the Life Assurance Companies Act, 1870, by the required separation of the two businesses. *In re BRITISH WIDOWS' ASSURANCE CO.* - C. A. [1905] W. N. 90; [1905] 2 Ch. 40.

3. — Company—Winding-up—Life assurance company—Separate account of premiums where other business carried on—Reduction of contracts — Life Assurance Companies Act, 1870 (33 & 34 Vict. c. 61), ss. 4, 22.

A co. carrying on business as tea-dealers offered to customers who purchased tea from it consecutively for certain periods pensions payable during widowhood. In order to form the premium income to support the pension contracts the price of the tea was loaded with a sum of 8*d.* per pound, the total price per pound being 2*s.* 4*d.* :—

Held, that s. 4 of the Life Assurance Companies Act, 1870, was disregarded, for the 8*d.* per pound was not a separate sum capable of being carried to a separate fund appropriated for the exclusive benefit of the assured pensioners (as required by that section in the case of "a co. transacting other business besides that of life assurance"), but that the 2*s.* 4*d.* per pound was a contributory sum for securing two benefits—namely, the present receipt of one pound of tea, and the expectation of a future sum of money contingent upon widowhood.

The N. Co., which carried on the joint business of tea-dealing and granting pensions to insured customers in case of widowhood, became insolvent and unable to pay the pensions. On a petition to wind up the N. Co., that co. submitted, as an alternative to winding-up, a scheme which involved that a new co. called the N. T. Co. should sell its tea through the agents of the N. Co. to the insured customers, and should pay 75 per cent. of the loading (6*d.* per pound) to the N. Co., which should, as between the two cos., be the insurer of the insured customers :—

Held that the scheme, being a provision by which the insured customers were to enter into new contracts with a new co. and as the result should be entitled to a reduced benefit from their contracts with the old co., was not authorized by s. 22 of the Life Assurance Companies Act, 1870.

Semble, that although absolute arithmetical equality is not required by s. 22, what the section allows is the reduction of all the contracts of the co. to the relief of the common debtor, and that a scheme which proceeds upon a principle of inequality of reduction is not within the Act. *In re NELSON & Co.* Buckley J. [1905] 1 Ch. 551

INSURANCE (LIFE)—continued.

— Company—Winding-up petition — Bond investment holder—"Contingent or prospective creditor."

See COMPANY—WINDING-UP — Assurance Company. 1.

— Consideration—Antecedent debt—Policy of insurance.

See CONSIDERATION. 1.

4. — Contract—Illegality—Policy on the life of another—Absence of insurable interest—Recovery of premiums—Life Assurances Act, 1774, (14 Geo. 3, c. 48), ss. 1, 2.

The agent of the defts., an insurance co., in good faith and believing his statement to be true, represented to the plt. that an insurance effected by him on the life of his mother would be a valid insurance, and the plt., relying upon that representation, effected such an insurance and paid premiums thereunder. In an action to recover back the premiums :—

Held, that, assuming the policy to be illegal and void for want of an insurable interest, the representation having been innocently made by the agent, the parties were in *pari delicto*, and the premiums could not be recovered back.

Decision of the Div. Ct. [1903] 2 K. B. 92 upon this point reversed. *HARVEY v. PEARL LIFE ASSURANCE CO.* - C. A. [1904] W. N. 44; [1904] 1 K. B. 558

— County court jurisdiction—Industrial assurance company—Disputes.

See JUSTICES. 10.

5. — Deposit—Amalgamation—Dissolution—Repayment of deposit — Life Assurance Companies Act, 1870 (33 & 34 Vict. c. 61), s. 3.

In 1904 the Popular Life Assurance Co. was incorporated and made the statutory deposit of 20,000*l.* They did not accumulate out of premiums any life assurance fund, and in 1906 they agreed to sell their business and assets to the United Provident Assurance Co. in consideration of shares in that co. The vendor co. passed resolutions for a voluntary winding up, and their property and policies had been transferred, the shares allotted, all claims on the vendor co. discharged, and the co. itself dissolved. The purchasing co. now petitioned for the payment out of Court to them of the 20,000*l.* deposited by the vendor co. :—

Held, that although the vendor co. had not accumulated a life assurance fund, yet, inasmuch as their obligations had come to an end on dissolution, the deposit ought to be paid out to the petitioners as their assignees.

Ex parte Scottish Economical Life Assurance Society, (1890) 45 Ch. D. 220, distinguished. *In re POPULAR LIFE ASSURANCE CO.*

Warrington J. [1908] W. N. 222; [1909] 1 Ch. 80

Note.

This case was followed by *Eve J.*, *In re Life and Health Assurance Association, Ltd.*, [1910] 1 Ch. 458. See No. 8, below.

— Estate duty — Interest provided by the deceased—Family arrangement.

See REVENUE—Estate Duty. 17.

INSURANCE (LIFE)—*continued.*

— Estate duty—Marriage settlement—"Interest purchased or provided by deceased."
See **REVENUE—Estate Duty**. 18.

— Estate duty—Policy of life insurance—Settled property.
See **REVENUE—Estate Duty**. 16.

— Friendly society—Life policy—Assignment—Nomination.
See **FRIENDLY SOCIETY**. 9.

— Husband and wife—Insurance.
See also under **HUSBAND AND WIFE—Insurance**.

6. — *Husband and Wife—Insurance by husband on wife's life—Insurable interest—Life Assurance Act, 1774* (14 Geo. 3, c. 48), ss. 1, 3—*Married Women's Property Act, 1882* (45 & 46 Vict. c. 75), s. 11.

A husband has as such an insurable interest in his wife's life; and therefore it is not necessary in order to establish the validity of a policy of insurance effected by a husband upon the life of his wife to give affirmative evidence as to the existence and extent of a pecuniary interest of the husband in the life of his wife. The interest is presumed to the extent of the amount insured by the policy.

A husband and his wife effected with an insurance association a policy whereby, in consideration of a premium of which each paid part, a sum of money was made payable upon the death of whichever of them should die first to the survivor. The wife having died, the husband brought an action upon the policy to recover the policy money:—

Held, upon the footing that the policy was an insurance by the husband upon the life of the wife, that notwithstanding the provisions of the Life Assurance Act, 1774, it was not necessary, in order to maintain the action, that the plt. should prove that he had any pecuniary interest in the life of his wife.

By Farwell L.J. and Kennedy L.J.: The policy might also be regarded as a valid insurance under the Married Women's Property Act, 1882, s. 11, by the wife of her own life expressed to be for the benefit of the husband, contingently on his surviving her. **GRIFFITHS v. FLEMING**

C. A. [1909] W. N. 65;
[1909] 1 K. B. 805

— Husband and Wife—Policy—Settlement—Satisfaction.
See **SETTLEMENT**. 30.

— Husband and wife—Policy "for benefit of wife and children"—Death of wife and subsequent marriage of assured.
See **HUSBAND AND WIFE—Insurance**. 2.

— Income tax—Deductions—Premium on life insurance.
See **REVENUE—Income Tax**. 22.

7. — *Justices—Jurisdiction—Industrial assurance company—Disputes—Collecting Societies and Industrial Assurance Companies Act, 1896* (59 & 60 Vict. c. 26), ss. 1, 7—*County court jurisdiction*.

INSURANCE (LIFE)—*continued.*

By s. 1 (b) of the Collecting Societies and Industrial Assurance Companies Act, 1896, that Act applies to industrial assurance companies granting policies of life assurance for a less sum than 20*l.*, and receiving premiums by means of collectors at a greater distance than ten miles from the registered office or principal place of business of the company at less periodical intervals than two months. By s. 7 disputes between an industrial insurance company and a member or person insured or a person claiming through him may be settled by the county court or by a court of summary jurisdiction:—

Held, that the jurisdiction of a county court or court of summary jurisdiction was limited to disputes arising with regard to policies originally granted for a less sum than 20*l.*

Quere, whether an industrial assurance company issuing policies for 20*l.* and upwards, as well as policies for sums less than 20*l.*, comes within the provisions of s. 7, so as to give any jurisdiction over disputes to a county court or court of summary jurisdiction. **COWLING v. TOPPING**

Div. Ct. [1906] W. N. 17;
[1906] 1 K. B. 466

— Landlord and tenant—Covenant to insure.

See **LANDLORD AND TENANT**. 44.

8. — *Life assurance company—Liquidation—Transfer of business to another company—Deposit—Repayment—Rights of policy-holders—Life Assurance Companies Act, 1870* (33 & 34 Vict. c. 61), ss. 3, 14—*Life Assurance Companies Act, 1872* (35 & 36 Vict. c. 41), s. 7.

A life assurance association which has not accumulated out of premiums a life assurance fund of 40,000*l.* according to s. 3 of the Life Assurance Companies Act, 1870, and which has gone into voluntary liquidation and transferred its business to a purchasing co., is not entitled to a return of any part of the statutory deposit of 20,000*l.*, unless all its policy-holders have released and abandoned their claims against the association and the deposit, and accepted the liability of the purchasing co., such abandonment and acceptance being signified in writing, pursuant to s. 7 of the Life Assurance Companies Act, 1872.

Ex parte Scottish Economic Life Assurance Society, (1890) 45 Ch. D. 220, followed. *In re LIFE AND HEALTH ASSURANCE ASSOCIATION, LD.* **EVE J.** [1910] W. N. 45; [1910] 1 Ch. 458

Note.

See *In re Popular Life Assurance Co.*, Warrington J., [1909] 1 Ch. 80, *No. 5, above*.

— Life assurance company—Winding-up petition by bond investment holder.
See **COMPANY—WINDING-UP—Assurance Company**. 1.

9. — *Lost policy—Payment into court—No sufficient discharge otherwise obtainable—Practice—Life insurance company—Life Assurance Companies (Payment into Court) Act, 1896* (59 & 60 Vict. c. 8), s. 3—*Order LIV. (c)*.

Where an action was brought against a life insurance co. upon a life policy which had been lost, and the directors of the co. were of opinion

INSURANCE (LIFE)—continued.

that no sufficient discharge could otherwise be obtained :—

Held, that the provisions of the Life Assurance Companies (Payment into Court) Act, 1896, were applicable, and therefore leave should be given to the debtors, to pay the amount of the policy into the High Court under Order LIV. (c), r. 3. **HARRISON v. ALLIANCE ASSURANCE CO.**

C. A. [1903] 1 K. B. 184

— Mortgage of life policy — Covenant to pay premiums—Bankruptcy of mortgagor.
See **BANKRUPTCY—Mortgages. 1.**

— Mortgage of policy—Indemnity—Bankruptcy of principal—Proof of surety—Double proof.

See **BANKRUPTCY—Proof. 9.**

10. — Mortgages — Priorities — Notice—Life policy.

Where a person lends money on the security of a policy of life assurance which is not handed over to him, he has, if it is in the hands of a prior mortgagee, constructive notice of the prior mortgage, and cannot obtain priority by giving notice to the assurers before the prior mortgagee gives notice.

Spencer v. Clarke, (1878) 9 Ch. D. 137, followed.

A mortgagee of a life policy is not under any obligation to give notice of his mortgage to a prior mortgagee of whose security he has notice, and if the latter makes further advances to the mortgagor in pursuance of a fresh bargain and a further charge, the security in respect of the further advances has not priority over that of the subsequent mortgagee if he gives prior notice to the assurers.

Quære whether the prior mortgagee would have priority in respect of his further advances if they were made, without notice of a subsequent mortgagee's security, under a contract for security for a present advance and further sums to be advanced. *In re WENIGER'S POLICY*

Parker J. [1910] 2 Ch. 291

Note.

See In re Weniger's Policy, Warrington J., [1910] W. N. 278. *See* No. 14, below.

— Mortgages of policies—Equitable interests—Notice—Priorities—Bankruptcy.

See **MORTGAGE—Priority. 9.**

— New South Wales Life, &c., Insurance Act, 1902 — Crown not bound by Act — Priority of payment.

See **NEW SOUTH WALES. 14.**

— Policy for benefit of wife and children—Death of wife—Second marriage of assured.

See **HUSBAND AND WIFE—Insurance.**

2.

— Policy not assignable otherwise than by way of nomination.

See under **FRIENDLY SOCIETY.**

11. — Policy of insurance made payable to another—Purchase in name of a stranger—Presumption of intention—Resulting trust.

A policy of insurance was taken out by A. on his own life "for behoof of B.," his wife's sister,

INSURANCE (LIFE)—continued.

and the policy provided that B., her executors, administrators, and assigns, should be entitled to receive the policy moneys on A.'s death. A., who survived B., retained the policy, and paid the premiums till his death :—

Held, that the legal personal representatives of B. were trustees of the policy moneys for the legal personal representatives of A. *In re A POLICY No. 6402 OF THE SCOTTISH EQUITABLE LIFE ASSURANCE SOCIETY* — **Joyce J.**

[1901] W. N. 249 ; [1902] 2 Ch. 282

— Policy of life insurance — Estate duty — Interest provided by the deceased — Family arrangement.

See **REVENUE—Estate Duty. 17.**

12. — Policy — Proposal basis of contract — Effect of absence of signed proposal—Estoppel.

The plt. effected with an insurance co. a policy of insurance under the seal of the co. upon the life of her husband, therein called the assured. The policy was expressed to be issued in consideration of the plt. having signed a proposal, such proposal being the basis of the contract, and it being stipulated that if the proposal contained any untrue statement as to the state of health of the assured the policy should be void. Upon the death of the assured the plt., who had duly paid the premiums, claimed the amount insured. The co. resisted the claim on the ground that the proposal on which the policy had been issued contained misrepresentations as to the assured's health. At the hearing before justices of a complaint for non-payment of the sum insured the plt. satisfied the justices that a proposal produced by the co. and purporting to be signed by her was not signed by her or with her authority, and she further stated that no proposal at all had been signed by her or with her authority :—

Held, that the co. having issued the policy and received the premiums were estopped from contending that in consequence of the want of a proposal there was no contract ; that the mere fact that the plt., instead of confining her evidence to the disproof of the proposal put forward by the co., made the admission, irrelevant to her own case, that there had been no proposal at all did not prevent her from taking the benefit of that estoppel ; and that the co. were liable on the policy. **PEARL LIFE ASSURANCE CO. v. JOHNSON. THE SAME v. GREENHALGH**

Div. Ct. [1909] 2 K. B. 288.

13. — Practice—Life assurance company — Deposit in Court — Application for payment of dividends — Whether by petition or summons — Practice — Assurance Companies Act, 1909 (9 Edw. 7, c. 49), ss. 1, 2—Board of Trade Order, 1910, rr. 2, 4, 9—R. S. C., Order LV., r. 2, sub-r. 3.

In this case the corporation had in pursuance of ss. 1 and 2 of the Assurance Companies Act, 1909, and of r. 2 of the Board of Trade Order, 1910, transferred into Court a sum of Bank of England stock equivalent in value to the sum of 20,000*l.* cash required by the Act to be lodged in Court in respect of its life assurance business, and now petitioned under r. 4 of that Order for payment to them of the dividends on

INSURANCE (LIFE)—continued.

the stock as they from time to time accrued. Rule 9 of the Board of Trade Order, 1910, provides: "Any applications under these Rules to the Court shall be made in such manner as shall from time to time be prescribed by Rules of Court, and until otherwise prescribed in the like manner in which similar applications under the Life Assurance Companies Acts, 1870 to 1872, and the Employers Liability Insurance Companies Act, 1907, were made immediately prior to the commencement of the Act."

Neville J. : I think it clear that Order LV., 1. 2, sub-r. 3, does not apply, and that in these cases the application must be by petition in accordance with the practice under the Acts of 1870 and 1872 until a new Rule of Court is made dealing with the matter. You may take your order. *In re ROYAL EXCHANGE ASSURANCE CORPORATION*

Neville J.
[1910] W. N. 211

14. — *Practice—Life policy—Payment into Court—Indemnity—Costs—Life Assurance Companies (Payment into Court) Act, 1896 (59 Vict. c. 8)—R. S. C., Order LV.C, r. 2.*

Summons issued for the purpose of settling various questions between incumbancers on money secured by a policy of insurance. The priorities between the parties had already been decided by Parker J. in *In re Weniger's Policy*, [1910] 2 Ch. 291. *See preceding Case.*

W. had a policy by which the R. Insurance Co. assured payment to him, if alive on Nov. 20, 1909, of 750*l.* with certain additions. W. created several charges on the policy, and was alive on Nov. 20, 1909. The insurance co. declined to pay the money into Court under the Life Assurance Companies (Payment into Court) Act, 1896, unless they received an indemnity in respect of their costs. The first mortgagees accordingly gave them an indemnity, and the money was paid into Court. The claimants now asked to have the money paid out to them.

Warrington J. said that to allow the first mortgagees these costs would be to introduce a most mischievous practice. The insurance co. claimed that they could by this process get out of the funds the costs, which the rule said they were not to get, by merely insisting on having an indemnity. If any one chose to give an indemnity to an insurance co. he must do it at his own risk, and not with the hope of getting the costs paid out of the funds in Court. The insurance co.'s costs could not be allowed. *In re WENIGER'S POLICY*

Warrington J.
[1910] W. N. 278

— Premium—Income tax—Deductions.

See REVENUE—Income Tax. 22.

15. — *Proposal—Misrepresentation—Avoidance—Mistake as to age of assured—Acceptance of premiums after knowledge of mistake—Affirmance of contract—Policy.*

A policy of life assurance was granted upon the basis of a proposal which concluded with a declaration that the answers given in the proposal were true to the best of the proposer's knowledge and belief, and an agreement that the proposal and declaration should be the basis of the

INSURANCE (LIFE)—continued.

contract, and that if it should thereafter appear that the proposer had made any untrue statement therein the policy should be void and the premiums forfeited. In the proposal the assured made a mistake as to her age, and stated that she was three years younger than she was. The policy, after reciting the declaration and the statement by the assured as to her age, evidence of which the insurance co. required to be produced, provided for the payment by the co. of the policy moneys upon proof of the death of the assured, or of her having attained the age of sixty years, and it contained a proviso for avoidance of the policy and forfeiture of the premiums in the event of the policy having been obtained by wilful misrepresentation. After discovery of the mistake as to the age of the assured the co. accepted two annual premiums:—

Held, (1) following *Foukes v. Manchester and London Assurance Association*, (1863) 3 B. & S. 917, that the declaration was to be read with the policy, and that the co. were not entitled to avoid the policy and forfeit the premiums unless the statement in the proposal was designedly untrue, although upon the discovery of the mistake they might have declined to continue the policy upon returning the back premiums; (2) that by accepting premiums after knowledge of the facts they must be taken to have affirmed the policy as it stood, and that consequently they were bound to pay the policy moneys upon the assured actually attaining the age of sixty years, and were not entitled to postpone payment until the assured had attained that age upon the assumption of her age at the date of the proposal having been as therein stated. *HEMMINGS v. SCEPTRE LIFE ASSOCIATION, LD.* — Kekewich J.
[1905] W. N. 16; [1905] 1 Ch. 365

16. — *Sale of life policy—Mistake—Death of assured before contract—Subsequent knowledge by one party—Assignment—Rescission after completion—Contract—Vendor and purchaser.*

A contract for the sale of a life policy was entered into by both parties in the belief that the assured was alive, and the contract was completed by assignment. Between the dates of the contract and the assignment the purchaser received information which led him to believe that at the date of the contract the assured was dead, which after the date of the assignment was ascertained to have been the fact, but the purchaser never disclosed his information to the vendor:—

Held, affirming *Kekewich J.*, [1903] 1 Ch. 453, that the vendor was entitled to have the transaction set aside notwithstanding that it had been completed by assignment. *SCOTT v. COULSON* — C. A. [1903] W. N. 88; [1903] 2 Ch. 249

— Settlement—Covenant for payment to trustees—Satisfaction.

See SETTLEMENT. 30.

— Stamp—Old age endowment policy.
See REVENUE—Stamps. 15.

17. — *Suicide, Warranty against—Condition precedent—Policy for benefit of third party.*

An application for a policy of insurance on

INSURANCE (LIFE)—*continued.*

the life of the applicant for the benefit of creditors stated that it was the basis and a part of the contract; and the applicant thereby warranted and agreed that he would not commit suicide, whether sane or insane, during the period of one year from the date of the contract. The policy subsequently issued in pursuance of the application stated that it was made in consideration of the application, which was thereby made a part of the contract. The applicant committed suicide within the year while temporarily insane. In an action on the policy :—

Held, affirming the judgment of Bigham J., [1904] 1 K. B. 832, that the warranty against suicide was a condition of liability, and that the action was therefore not maintainable. **ELLINGER & Co. v. MUTUAL LIFE INSURANCE Co. OF NEW YORK** - - - C. A. [1904] W. N. 184; [1905] 1 K. B. 31

18. — Transfer to another company—Notice of transfer — Person sought to be transferred — Collecting Societies and Industrial Assurance Companies Act, 1896 (59 & 60 Vict. c. 26), s. 4, sub-s. 2; s. 14, sub-s. 1.

The respondents, a collecting society within the Collecting Societies and Industrial Assurance Companies Act, 1896, were charged, under s. 14, sub-s. 1, with failing to give notice to the appellants, an industrial assurance co. within the same Act, of an application of a person insured with the appellants for admission to the respondent society, contrary to s. 4, sub-s. 2. A collector, who had collected for the appellants, asked the assured to transfer to the respondents. The assured signed a proposal form in the respondent society, and gave up to the collector his policies in the appellant co., receiving policies in the respondent society. The collector had left the appellants and become collector to the respondents. No notice was given.

The magistrate held that, as the policies in both societies were co-existent, there could be no legal transfer, or seeking to transfer, within the Act, and therefore no offence had been committed :—

Held, that the assured was a person sought to be transferred, within the meaning of s. 4, sub-s. 2, and s. 14, sub-s. 1, and therefore the respondents had committed an offence under the Act. **PEARL LIFE ASSURANCE Co. v. SCOTTISH LEGAL LIFE ASSURANCE SOCIETY, LD.**

Div. Ct. [1901] W. N. 33; [1901] 1 K. B. 528

19. — Voidable policy—Principal retaining benefit obtained by fraud of agent — Recovery of paid premiums.

The holder of a policy of insurance being minded to give up paying the premiums was persuaded to continue the payments by a false representation of the insurance co.'s agent that if she paid the premiums for a certain time she would receive a free policy. The representation was made without the authority or knowledge of the co., and the co. refused to grant a free policy, but retained the premiums :—

Held, that the holder of the policy was entitled to recover from the co. the premiums paid upon the faith of the representation.

INSURANCE (LIFE)—*continued.*

Decision of the C. A., [1908] 1 K. B. 545, affirmed. **REFUGE ASSURANCE Co. v. KETTLEWELL** - - - H. L. (E.) [1909] W. N. 64; [1909] A. C. 243

20. — Yearly insurance—Quarterly payments of premium—Days of grace—Payment of premium after death of assured—Payment within days of grace.

The plt. was assignee of a policy of insurance on the life of another person. The policy was for a year, and the premium was payable quarterly, the first quarterly payment being made at the date of the policy. One of the conditions of the policy was that it should be of no effect if, at the time of the death of the assured, any quarterly premium should be more than thirty days in arrear. The assured died during the year after one of the dates fixed for payment of a quarterly premium, but within the days of grace, and the premium was paid after his death by the plt., but also within the days of grace. In an action to recover the amount insured :—

Held, that the policy being for a year, subject to defeasance on non-payment of any quarterly premium, no question arose as to the revival of the policy by payment during the days of grace, but that the policy was prevented from lapsing by such a payment, and that the plt. was entitled to recover.

Pritchard v. Merchants' Life Assurance Society, (1858) 3 C. B. (N. S.) 622, distinguished. **STUART v. FREEMAN** C. A. [1903] 1 K. B. 47

INSURANCE (MARINE).

Marine Insurance Act, 1906 (6 Edw. 7, c. 41), codifies the law relating to marine insurance.

Marine Insurance (Gambling Policies) Act, 1909 (9 Edw. 7, c. 12), is an Act to prohibit gambling on loss by maritime perils.

1. — Alien enemy, Property of—Policy—Loss before commencement of war—Seizure by enemy's Government of property of its own subject in anticipation of war—Warranty free of capture, seizure, and detention.

Gold, the property of a co. registered under the laws of the South African Republic, was insured against "arrests, restraints, and detentions of all kings, princes, and people" during transit from the mines to the United Kingdom, subject to a warranty "free of capture, seizure, and detention, whether before or after declaration of war." During transit the gold was taken possession of by the Government of the Republic on its own territory in anticipation of war with Great Britain, and in accordance with the laws of the Republic, and was afterwards appropriated by the Government :—

Held, that there was a "seizure" of the gold within the meaning of the warranty, and that the insurers were not liable on the policy.

The decision of the C. A., [1902] W. N. 140; [1902] 2 K. B. 489, affirmed. **ROBINSON GOLD MINING Co. v. ALLIANCE INSURANCE Co.**

H. L. (E.) [1904] W. N. 144; [1904] A. C. 359

INSURANCE (MARINE)—continued.

Note.

See *Janzon v. Driefontein Consolidated Mines, Ltd.*, H. L. (E.) [1902] A. C. 484; *Insurance (Capture)*. 1.

— Associated insurance club—Agreement by owners to render mutual assistance—Rights of crew.

See SHIPPING—Salvage. 8.

2. — *Average—General average—One owner of ship and cargo—Insurance of cargo—Liability of underwriters.*

A loss caused by the cutting away of a ship's mast for the safety of the whole adventure is a general average loss to which the underwriters of a policy of insurance on cargo against perils of the sea are bound to contribute, although the assured is owner of both ship and cargo, and, therefore, as between those interests, there can be no contribution to general average.

Decision of Mathew J., [1901] 1 K. B. 147, affirmed.

Judgment of Gorell Barnes J. in *The Brigella* [1893] P. 189, disapproved. MONTGOMERY & CO. v. INDEMNITY MUTUAL MARINE INSURANCE CO. - C. A. [1902] 1 K. B. 734

3. — *Average—General average—Sacrifice made on outward voyage of ship in ballast—Liability of chartered freight to contribute.*

A ship was chartered to proceed to a foreign port, there load a cargo and bring it home, the chartered freight being payable on delivery of the cargo. While the ship was proceeding in ballast to her port of loading she grounded, and a general average sacrifice was made. She subsequently continued her voyage, loaded her cargo, delivered it and received the freight :—

Held, that the chartered freight was liable to contribute to the general average sacrifice.

Judgment of Mathew J., [1901] 2 K. B. 861, affirmed. STEAMSHIP "CARISBROOK" CO. v. LONDON AND PROVINCIAL MARINE AND GENERAL INSURANCE CO. - C. A. [1902] 2 K. B. 681

4. — *Average—General average—Time charter—Voyage charter—Damage by water in extinguishing fire—Delay—Time freight—Practice of average adjusters.*

By the practice of average adjusters, loss of time freight—resulting from detention under repair of general average damage—is not allowed in general average :—

Held, by Gorell Barnes J., that the practice is right, being in accordance with legal principles, for the loss of freight under a time charter caused by the delay is the result of an accidental circumstance peculiar to the shipowner and time charterer, and arising out of the contract between them, with which the cargo owner is not concerned, and where the loss of time is common to all the parties interested, and all suffer damage by the delay, the damage by loss of time may be considered proportionate to the interests, and, therefore, left out of consideration.

The words "all loss" in the definition of a general average sacrifice in *Birkley v. Presgrave*, (1801) 1 East, 220, at p. 228; 6 R. R. at p. 263, explained. THE "LETTRIM"

Gorell Barnes J. [1902] P. 256

INSURANCE (MARINE)—continued.

5. — *Average—General average loss—Valued policy—Ship valued for policy of less than real value—Salvage—Liability of underwriter.*

In an insurance on ship, cargo and freight the ship was insured for the sum at which she was valued in the policy. During the currency of the policy a general average loss occurred and a sum awarded in a salvage action had to be paid. In the salvage action the value of the ship was proved to be above the policy value. In the average statement the proved value was taken as the contributory value of the ship, and the rights of all parties were adjusted on that footing. In an action on the policy :—

Held, that the underwriters were liable only for that proportion of the salvage and general average losses which the policy value bore to the proved value.

The decision of C. A., [1901] 2 K. B. 896, affirmed. STEAMSHIP "BALMORAL" CO. v. MARTIN

H. L. (E.) [1902] W. N. 156; [1902] A. C. 511

6. — *Average—"General average payable according to foreign statement"—Special provision in charterparty as to general average—Foreign law.*

The plt., a shipowner, effected with the defts. a time policy of insurance upon his ship containing the following clause: "General average payable according to foreign statement if so made up." The plt. chartered the ship to third persons, and by the terms of the charterparty it was provided that the ship might carry a deckload of timber, and that "In case of average . . . jettison of deck cargo for the common safety shall be allowable as general average." The ship sailed for Antwerp with a deckload of timber, and in the course of the voyage and during the currency of the policy she suffered damage, so that it became necessary for the common safety, in consequence of perils insured against, to jettison part of the deck cargo. On her arrival at Antwerp an average statement was there made up, and the average adjuster, in accordance with the terms of the charterparty, included the jettison of deck cargo in general average. By the Belgian law, apart from contract, the jettison of deck cargo is not the subject of general average; but that law recognises any special provisions in a charterparty as to what shall be the subject of general average :—

Held, applying the rule in *Harris v. Scaramanga*, (1872) L. R. 7 C. P. 481, that as the statement had been made up in good faith and the charterparty imported no terms of a special and unusual character such as could not reasonably have been contemplated by the parties to the policy of insurance, the defts., the underwriters were bound by the statement, and were therefore liable to indemnify the plt. against the ship's proportion of the loss on the jettison of the deck cargo.

Decision of Kennedy J., [1903] 1 K. B. 109, affirmed. DE HART v. COMPAÑIA ANONIMA DE SEGUROS "AURORA" C. A. [1903] W. N. 142; [1903] 2 K. B. 503

— Canada.

See under CANADA — Insurance (Marine).

INSURANCE (MARINE)—continued.

— Capture—Property of alien enemy—Loss before beginning of war.
See **INSURANCE (CAPTURE)**. 1.

7. — *Charterparty—Freight—Loss—Saving of charterparty hire—Commission.*

Appeal from a decision of Channell J., whose judgment on two of the questions raised in the action is reported [1907] 1 K. B. 259. The sole question argued and decided on the appeal was one of fact, and the case, therefore, does not call for a report.

The Court dismissed the appeal. **UNITED STATES SHIPPING CO. v. EMPRESS ASSURANCE CORPORATION** - C. A. [1907] W. N. 219; [1908] 1 K. B. 115

8. — *Collision between vessels, What is—Vessel riding at anchor—Collision with anchor—Constructive of policy.*

A policy of marine insurance provided that the insurers would pay to the assured the amount of any damage caused to any of his tugs "owing to actual collision between any such tug and any vessel, bridge, wharf, mooring pier, or similar structure." One of the assured's tugs, whilst coming up the river Thames, was damaged by striking upon a vessel's anchor, to which the vessel was riding attached by a chain:—

Held, that the tug had come into collision with a "vessel" within the meaning of the policy, and, therefore, that the insurers were liable. *In re* MARGETTS AND OCEAN ACCIDENT AND GUARANTEE CORPORATION, LD.

Div. Ct. [1901] 2 K. B. 792

— Collision—Total loss—Division of amount received from wrong-doer between shipowner and underwriter.

See **SHIPPING—Collision**. 77.

9. — *Constructive total loss—Policy on ship—Cost of repair—Value of wreck.*

By a policy of marine insurance a ship thereby insured was valued at 23,000*l.*, and that sum was to be taken to be the "repaired value," in ascertaining whether the vessel was a constructive total loss. The ship ran upon the rocks off the coast of Sicily, and the owner thereupon gave notice of abandonment, which was not accepted by the underwriters. A salvage association, acting by the consent, and for the benefit, of all parties concerned, got the ship off, and she was temporarily repaired, so as to enable her to be brought to an English port. The shipowner having brought an action on the policy, claiming as for a constructive total loss, the judge at the trial found that, if the ship were permanently repaired, the total cost of repairs would amount to 22,559*l.*, and he refused to take into consideration the value of the wreck. He therefore held that there was not a constructive total loss of the ship:—

Held (by Vaughan Williams L.J., Stirling L.J., and Mathew L.J., the first mentioned doubting), that the shipowner was not entitled to add the value of the wreck to the cost of repair, in determining whether there was a constructive total loss of the ship.

Dictum in *Young v. Turing*, (1841) 2 Man. & G. 593, at p. 601; 58 B. R. 477, 484, not followed.

INSURANCE (MARINE)—continued.

ANGEL v. MERCHANTS' MARINE INSURANCE CO. - C. A. [1903] 1 K. B. 811

Note.

This case was overruled by *H. L. (E.) Macbeth & Co. v. Maritime Insurance Co.*, [1908] A. C. 144. See No. 35, below.

— Contract of carriage—Liability of shipowner—Unseaworthiness.

See **SHIPPING—Charterparty**. 26.

10. — *Deviation clause—Agreement that vessel shall be recovered at a premium to be arranged—Subject to the "notice" of deviation—Notice given after loss.*

Where a policy of marine insurance contains a clause to the effect that in the event of the vessel making any deviation it shall be held covered at a premium to be arranged, "provided due notice be given by the assured on receipt of advice of such deviation":—

Semble that, if the assured is not advised of the deviation until after loss of the vessel, a notice given by him after loss will be sufficient to satisfy the proviso. *MENTZ, DECKER & CO. v. MARITIME INSURANCE CO.*

Hamilton J. [1910] 1 K. B. 133

— Discovery—Ship's papers—Action by underwriters—Recovery of money overpaid—Practice.

See **DISCOVERY**. 20.

11. — *Freight—Lump chartered freight—Insurance—On "freight chartered or as if chartered"—Loss not by perils insured against—Cesser of liability clause—Loss of bill of lading freight—Waiver of lien for chartered freight.*

Shipowners chartered a ship for a voyage at a lump freight, the charterers' liability to cease upon shipment of the cargo, provided the cargo was worth the freight, dead freight, and demurrage on arrival, and the vessel to have a lien on the cargo for the recovery of all freight, dead freight, demurrage, and all other charges. The shipowners and charterers jointly insured the lump freight "chartered or as if chartered value" at the lump sum "on board or not on board." The charterers loaded the ship with a general cargo, and the master signed bills of lading by which the goods mentioned in each bill were made deliverable upon payment of the bill of lading freight payable in respect of those goods. The aggregate of the bill of lading freight exceeded the chartered freight. On the voyage part of the cargo was lost by jettison upon the ship running aground. The cargo which arrived was worth the freight, dead freight, and demurrage. Owing to the loss of cargo the bill of lading freight payable on the cargo delivered was less than the chartered freight. To recover the difference an action was brought on the policy by the shipowners and charterers jointly:—

Held, that the action was not maintainable, the loss having been caused not by perils of the seas, but by the master's not having reserved in the bills of lading the lien over the whole cargo for the chartered freight.

The decision of the Court of Appeal (reported as *Brankelow Steamship Co. v. Canton Insurance*

INSURANCE (MARINE)—continued.

Office, [1899] 2 Q. B. 178) affirmed. **WILLIAMS & Co. AND BRANKELOW STEAMSHIP CO. v. CANTON INSURANCE OFFICE, LD.**

H. L. (E.) [1901] W. N. 157; [1901] A. C. 462

— Inland transit, Policy on—Damage by insects.
See No. 19, below.

12. — Inland voyage on river—Goods carried on deck—Policy on goods—Liability of underwriters.

The plts. insured goods with the defts. against all risks during transit from London to Néuenahr on the Rhine viâ Amsterdam. The goods on arrival at Amsterdam were transhipped on to a Rhine steamer and there stowed on deck for carriage up the river to Néuenahr. While the goods were so stowed on deck a fire broke out on the steamer, and the goods were burnt. There was evidence that it was a common practice for Rhine steamers to carry goods on deck :—

Held, that the general rule, which exempts underwriters on cargo from liability for loss of goods carried on deck during a voyage by sea does not apply to an inland voyage upon a particular river contemplated by the policy, upon which river there is a usage to carry cargoes on deck.

Quære, whether the above general rule applies in any case to an inland voyage upon a river. **APOLLINARIS CO. v. NORD DEUTSCHE INSURANCE CO.** **Walton J.**, [1903] W. N. 208; [1904] 1 K. B. 252

13. — Insurable interest—Agents in United Kingdom of foreign ship—Advances for necessities—Admiralty Court Act, 1840 (3 & 4 Vict. c. 65), s. 6.

The plts., the agents in the United Kingdom of a foreign ship, effected an insurance for a named voyage "on disbursements against the risk of total and constructive total loss of ship only," the perils insured against including perils of the seas. At the date of the policy the ship-owners were indebted to the plts. to a considerable amount for advances for the ship's disbursements, part of which had been made for the purposes of the particular voyage and part at prior dates. The ship reached her port of destination in the United Kingdom, but suffered severe damage on the voyage from perils of the seas, and the estimated cost of repair exceeding her estimated value if and when repaired, it was admitted that she was a constructive total loss within the meaning of the policy. The freight, which was received and retained by the plts. under their lien, was insufficient to recoup the plts. the amount of their advances, and the plts., who had no lien upon the ship, brought an action on the policy of insurance to recover the balance of their advances :—

Held, that the plts. having a right under s. 6 of the Admiralty Court Act, 1840, to enforce their claim for advances, so far as they were in respect of necessities supplied to the ship, by an action in rem, and for that purpose to arrest the ship, had an insurable interest in the ship to the extent of the unsatisfied balance of those advances. **MORAN, GALLOWAY & Co. v. UZIELLI** [Walton J. [1905] 2 K. B. 555

INSURANCE (MARINE)—continued.

14. — Insurance on advances for disbursements—"Warranted free of all average"—Loss of ship by perils of sea—Obligation of master conditional on arrival of ship—Pledge of freight not conditional—Part of freight payable—Partial loss.

The captain of an Italian ship, in consideration of advances made by bankers for ship's disbursements at the port of loading, signed and indorsed to the bankers a document in the following terms: "Ten days after arrival at port of destination of the steel barque *Cinque*, of which I am master, now lying at Pensacola, Fla., and ready to sail for Southampton, I promise to pay to the order of myself the sum of 760*l.* 12*s.* 9*d.* British sterling, in approved bankers' demand bills on London, value received for necessary disbursements of my vessel at this port, for the payment of which I hereby pledge my vessel and freight; and my consignees at the port of destination are hereby directed to pay the amount of the obligation from the first amount of freight received for account of my said vessel." The bankers effected an insurance of the advances so made against perils of the sea by a policy warranted free of all average. The ship never arrived at the port of destination, but became a constructive total loss on the voyage. Part, however, of the cargo was saved, upon which by Italian law distance freight became payable. In an action by the assured upon the policy as for a total loss :—

Held, that the pledge of freight took effect, although the ship did not arrive at the port of destination, and there was therefore not a total loss of the subject-matter of insurance, and consequently that the action on the policy was not maintainable. **PRICE v. MARITIME INSURANCE CO.** **C. A.** [1901] W. N. 128; [1901] 2 K. B. 412

— Mortgage of ship together with policies of insurance thereon—Repairs by mortgagor.

See SHIPPING—Mortgages. 2.

15. — Mutual insurance association—Membership—Ship mortgaged not to be considered insured—Concealment of mortgage—Liability for calls.

The plts. were a mutual insurance association duly registered under the Companies Acts.

On Feb. 12, 1903, the defts. delivered to the plts. a properly filled up and signed policy of insurance requesting them to insure a certain steamship belonging to the defts. This proposal was accepted, and the defts. were entered in the register of members of the plt. association, and pursuant to the rules of the association calls were made upon the defts. from time to time for the payment of existing claims. These calls having remained unpaid, the present action was brought. By one of the rules of the association, "A ship which is mortgaged by a member shall not be or be considered as insured so far as his shares are concerned, and a ship insured which shall after an insurance thereof is effected be mortgaged by a member shall not be or be considered as insured, so far as his shares as aforesaid are concerned, against losses which shall happen to the ship after the mortgage, unless and until the mortgagee or other person to be approved by

INSURANCE (MARINE)—continued.

the directors guarantee the payment of all contributions which are or may become due to the company in respect of the insurance of the ship, and the directors in their discretion accept such guarantee."

At the time of the proposal by the defts., to insure the steamship in question it was, as they knew, mortgaged; but they did not give notice of this fact to the plts., nor had the plts. any such guarantee for the payment of contributions as was required by this rule. The defts. relied on this fact, and contended that since by the rule their ship under the circumstances was not and was not to be considered as insured so far as their shares were concerned, they were not members of the plt. association, and were therefore not liable for the calls.

Channell, J. gave judgment for the plts., holding that when a person proposed an insurance to the plts. and his proposal was accepted he became a member of the association, and so liable to calls, independently of any fact peculiar to his case which prevented his proposed insurance from becoming effective. The question entirely depended on the words of the particular rules; but in his opinion the proper construction of them was that membership and consequent liability to pay calls was not necessarily dependent on a valid insurance. **NORTH EASTERN 100 A STEAMSHIP INSURANCE ASSOCIATION v. RED "S" STEAMSHIP CO.**

Channell J. [1905] W. N. 124

16. — Open cover slip—Damages—Fraudulent representations—Reinsurance—Subrogation—Costs—Solicitor and client costs.

The plts. gave the defts. an open cover slip by which they undertook to reinsure the defts. to the extent of one-half their interest up to 1000*l.* on certain shipments of lumber. Pursuant to the cover slip, the plts. reinsured the defts. by two policies respectively on interests by two vessels. Under the policies the defts. claimed and were paid by the plts. sums amounting to 1354*l.* 4*s.* 10*d.* The defts. subsequently recovered from the shipowners damages by reason of having been induced to pay losses on the two vessels by fraudulent misrepresentations of an official in their employment. The measure of the damages so recovered by the defts. was the sum which upon inquiry appeared to flow from the liability of the defts. as insurers in respect of the two vessels, and included the 1354*l.* 4*s.* 10*d.* The plts. then sued the defts. for the repayment of the 1354*l.* 4*s.* 10*d.* as money received by them to the use of the plts. :—

Held, (1.) that the plts. were entitled, upon the principles laid down by Brett, L.J. and Bowen L.J. in *Castellain v. Preston*, (1883) 11 Q. B. D. 380, to recover the 1354*l.* 4*s.* 10*d.* upon the ground that the money was obtained by the defts. by enforcing a right which diminished the defts.' loss, and that therefore the doctrine of subrogation applied; (2.) that the defts. were entitled to deduct from the 1354*l.* 4*s.* 10*d.* the reasonable expenses of recovering that sum from the owners.

Hatch, Mansfield & Co. v. Weingott, (1906)

INSURANCE (MARINE)—continued.

22 Times L. R. 366, followed. **ASSICURAZIONI GENERALI DE TRIESTE v. EMPRESS ASSURANCE CORPORATION, LD.**

Pickford J. [1907] 2 K. B. 814

17. — "Pirates," Meaning of in policy—Seizure of goods by political malcontents—"Warranted free of capture, seizure, and detention, piracy excepted."

Goods were shipped upon a vessel for carriage from a place at the mouth of the Amazon to a place far inland upon a tributary of a tributary of that river, situated in a remote territory belonging to Bolivia on the boundary between that country and Brazil. These goods were insured for the voyage by a policy in the form of a marine policy against, among other risks usually specified in such a policy, "pirates" and "all other perils" that should come to the hurt, detriment, or damage of the subject-matter of insurance. The policy contained the following clause :—"Warranted free of capture, seizure and detention, and the consequences thereof, or any attempt thereat, piracy excepted, and also from all consequences of riots, civil commotions, hostilities, or warlike operations, whether before or after declaration of war. The goods insured consisted of provisions and stores which belonged to the Bolivian Government, and were intended for Bolivian troops engaged in establishing the authority of that Government in the before-mentioned territory. Certain malcontents, mostly Brazilians, who were desirous that the authority of the Bolivian Government should not be established there, had fitted out an expedition which ascended the Amazon in armed vessels for the purpose of resisting the Bolivian troops and establishing an independent republic in the before-mentioned territory. Those on board one of these vessels stopped the vessel on which the goods insured were shipped and seized those goods. In an action on the policy claiming as for a loss through pirates :—

Held, affirming the decision of Pickford, J., that, even assuming that the acts of those who seized the goods came within the legal definition of piracy for some purposes, the word "pirates" as used in the policy must be construed in its popular sense, and in that sense it meant persons who plunder indiscriminately for their private gain, not persons who simply operate against the property of a particular State for a public political end, and, therefore, there had not been a loss through "pirates" within the meaning of the policy.

Held, also, that, having regard to the terms of the warranted free clause, the seizure of the goods could not be treated as coming within the general words "all other perils" as being ejusdem generis with piracy. **REPUBLIC OF BOLIVIA v. INDEMNITY MUTUAL MARINE ASSURANCE CO.**

C. A. [1909] W. N. 34 [1909] 1 K. B. 785

18. — Policy effected by owner of ship for all persons to whom the subject-matter might appertain—Right of charterer to benefit of policy—Ratification.

The appellants chartered a ship from the owners. Brokers, instructed by the owners' agents, effected with the respondents a policy of

INSURANCE (MARINE)—*continued.*

insurance on the ship, "as well in their own name as for and in the name and names of all and every other person or persons to whom the subject-matter of this policy does may or shall appertain in part or in all." The policy contained a collision clause. The appellants, having been compelled to pay damages to the owners of another vessel for a collision between the two ships, sued the respondents on the policy. There being no evidence of any intention by the owners to insure on behalf of the appellants:—

Held, that the appellants were not entitled to sue on the policy.

The decision of the C. A., [1905] 1 K. B. 637, affirmed. **BOSTON FRUIT CO. v. BRITISH AND FOREIGN MARINE INSURANCE CO.**

H. L. (E.) [1906] W. N. 110 ; [1906] A. C. 336

19. — Policy on inland transit—"All risks by land and by water"—*Damage by insects—Construction of policy—Liability by underwriter.*

By a policy of insurance in the printed form of an ordinary Lloyd's policy, with the addition of the following clauses in type or writing, goods were insured at and from "on board the import vessel at Savanilla ^{and} or Cartagena to any place or places in the interior of the Republic of Colombia with liberty to proceed to any place or places in the interior irrespective of what may be stated in the invoices ^{and} or elsewhere. Including all risks of robbery with or without violence, all risks of damage by insects and all clauses as attached." The attached clauses contained (inter alia) the following provisions: "Including . . . all risks by land and by water" and "Including risk from the act of God, the King's enemies, fire and all other dangers and accidents of the seas, rivers and navigation, and error and default thereof": also "Including all risks excepted by the negligence clause which may be inserted in or attached to charterparty ^{and} or bill of lading."

During the transit between Savanilla, a port in the Republic of Colombia, and Medellin, a town in the interior of the Republic, fourteen bales of the goods were damaged; twelve of them by an abnormal delay in the transit which necessarily involved exposure of the goods to damp, one by accidental wetting, and another by accidental wetting and injury by worms:—

Held, that the words "all risks by land and by water" must be read literally as meaning all risks whatsoever. The words were intended to cover all losses by any accidental cause of any kind, and as the damage to the goods was a loss within that category the underwriters were liable for it.

Pink v. Fleming, (1890) 25 Q. B. D. 396, distinguished. **SCHLOSS BROTHERS v. STEVENS**

Walton J. [1906] 2 K. B. 665

20. — Practice—Discovery—Affidavit of ship's papers—Partial land transit.

In an action against an underwriter upon a policy of insurance, which is substantially a marine insurance, the fact that a part of the

INSURANCE (MARINE)—*continued.*

transit is by land does not affect the right of the deft. to an affidavit of ship's papers.

Henderson v. Underwriting and Agency Association, [1891] 1 Q. B. 557, questioned. **HARDING v. BUSSELL**

C. A. [1905] 1 K. B. 83
— Practice—Third-party procedure—Insurance (Marine)—Policy of reinsurance.

See PRACTICE—Third Parties. 2.

21. — Reinsurance—Constructive total loss—"To pay as may be paid thereon"—Suing and labouring—Salvage charges.

Shipowners insured their ship with the plts. for a voyage against partial as well as total loss, the sound value of the ship being expressed in the policy to be agreed at a specified sum. The plts. reinsured with the deft. against the risk of total or constructive total loss only, the ship being valued as per original policy. The policy of reinsurance was in the form of an ordinary Lloyd's policy, containing in print the usual undertaking by the assurers to contribute to suing and labouring charges. It also contained in writing the following clauses: "Being a reinsurance subject to the same clauses and conditions as the original policy and to pay as may be paid thereon"; and, "No claim to attach to this policy for salvage charges." During the course of the insured voyage the ship stranded and suffered damage. The probable cost of getting her afloat, taking her to a port of repair, and repairing her, exceeded the agreed value of the ship as expressed in the policy, but as it was in fact less than her real repaired value the owners elected not to give notice of abandonment. The ship was floated and placed in a condition of safety, and subsequently taken to a port of repair and repaired. The owners recovered from the plts. upon their policy 107½ per cent. of their proportion of the agreed value of the ship, that sum being made up partly of the expenses of repairs and partly of the expense of floating her. The plts. then sued the deft. for the full amount underwritten by him as in respect of a constructive total loss, or in the alternative for his proportion of the suing and labouring charges:—

Held, (1) that, there being, in the absence of a notice of abandonment by the owners, no original liability upon the plts. to pay as for a constructive total loss, the mere fact that they had paid, in respect of a partial loss and suing and labouring charges combined, upwards of 100½ per cent. did not entitle the plts. to recover that sum from the deft. as for a constructive total loss under the words "to pay as may be paid thereon"; and (2) that the clause providing that no claim was to attach for "salvage charges" excluded the deft.'s obligation to contribute to the suing and labouring charges, notwithstanding the omission to delete the printed clause imposing that obligation.

Uzielli v. Boston Marine Insurance Co., (1884) 15 Q. B. T. 11, discussed. **WESTERN ASSURANCE CO. OF TORONTO v. POOLE** — **Bigham J. [1903] W. N. 14; [1903] 1 K. B. 376**

22. — Reinsurance—"Excess" policy—Craft risk—"Each craft to be deemed a separate insurance"—Loss in craft—Calculation of excess.

INSURANCE (MARINE)—continued.

The plt. co. having insured a cargo of wheat to the extent of 1914*l.*, reinsured with the defts. by a policy for "1000*l.* excess of 500*l.*" Both the original and the reinsurance policies covered risk of craft, and contained a clause that each craft was "to be deemed a separate insurance." Owing to the sinking of a craft containing a portion of the cargo a loss occurred which the plt. co. sought to recover from the defts. under the reinsurance policy. The interest of the plt. co. in the cargo in the particular craft did not amount to 500*l.*, and the defts. repudiated liability on the ground that, as each craft was to be deemed a separate insurance, there had been no loss of any "excess of 500*l.*" :—

Held, that the clause had no application to the circumstances of the case ; that the "excess" for which the defts. were liable ought to be calculated on the value of the plt. co.'s whole interest at risk, and not on the co.'s interest in the particular craft only ; and that the defts. were therefore liable for their proportion of the loss. **SOUTH BRITISH FIRE AND MARINE INSURANCE CO. OF NEW ZEALAND v. DA COSTA - Bigham J. [1906] 1 K. B. 456**

23. — Reinsurance—Insurance of goods—Unreasonable delay of voyage—Material alteration of risk.

The plts., who had insured all shipments of coal by certain merchants for twelve months by a cover-note at premiums varying according to the date of sailing and port of destination, on July 30 received notice from the merchants of a proposed shipment by a certain vessel from the Tyne. The premiums payable to the plts. would be 12*s.* 9*d.* for Aug. and 15*s.* for Sept. On Aug. 2 they effected a reinsurance for 1500*l.* at a premium of 6*s.* 8*d.* with the deft. and others at Lloyd's, by a slip which named the vessel and purported to be subject to the reinsurance and deviation clauses. The vessel was then, as the underwriters ascertained, near the Tyne, but she did not sail on the proposed voyage until Sept. 25, and was lost on Oct. 2. The policy of reinsurance was issued on Oct. 5, and the plts., having paid the merchants for a total loss, claimed payment from the deft. :—

Held, that the risk was materially altered by the delay of the voyage, and that the underwriters were not liable. **MARITIME INSURANCE CO. v. STEARNS Mathew J. [1901] 2 K. B. 912**

24. — "Restraint of princes and people"—Policy—Prohibition against entry into country of diseased cattle—Warranty against "capture, seizure and detention"—Operation on clause as to restraint.

The operation of the ordinary municipal law of a country affecting or preventing the delivery of insured goods at their port of destination is a "restraint of princes or people" within the meaning of a Lloyd's policy of marine insurance.

A warranty in a policy of marine insurance against "capture, seizure, and detention" operates to release the insurers from liability under the words "arrests, restraints, and detainments of kings, princes, and people" in the body of the policy.

INSURANCE (MARINE)—continued.

Appeal from the judgment of Bigham J., [1902] 2 K. B. 694, dismissed. **MILLER v. LAW ACCIDENT INSURANCE CO. - C. A. [1903] 1 K. B. 712**

Note.

See Yuill & Co. v. Scott Robson, C. A. [1908] 1 K. B. 270, 275. Sale of Goods. 9.

25. — Sale of goods c.i.f.—Policy effected for amount in excess of value of goods—Payment by underwriters of whole amount insured—Title of seller or buyer to the excess of insurance money.

A contract for the sale of goods at a price to cover cost, freight, and insurance contained the clause—"Insurance for 5 per cent. over net invoice amount to be effected by sellers for account of buyers." Subsequently to the sale the sellers effected a policy for a larger amount than 5 per cent. over net invoice, and handed that policy together with the shipping documents to the buyers in exchange for the price. A loss having occurred under the policy, the underwriters paid the buyers upon the whole amount insured :—

Held, that the buyers were not, to the extent to which the money received by them from the underwriters exceeded the amount of their loss, trustees for the sellers, but were entitled to retain it to their own use. **LANDAUER v. ASSER Div. Ct. [1905] 2 K. B. 184**

— Salvage loss—Right of underwriters to pay without authority of assured.

See SHIPPING—Mortgages. 2.

— Ship—Order to bring within jurisdiction—Preservation—Inspection.

See SHIPPING—Practice. 14.

— Stamp duty.

See under REVENUE—Stamps.

26. — Suing and labouring clause—Applicability—Contract of insurance—Insurance of ship-owner's liability to cargo owner.

A number of mules exceeding 20,000*l.* in value, having been shipped on the plts.' steamship for carriage, under a contract which contained no clause exempting the plts. from liability for loss of the mules through the negligence of the plts.' servants, the plts. effected an insurance with the deft. and other underwriters at Lloyd's, to protect the plts. against "liability of any kind to the owners of the mules up to 20,000*l.* owing to the omission of the negligence clause" from the contract. The policy was in the printed form of an ordinary Lloyd's policy, containing the usual suing and labouring clause. During the voyage the vessel was stranded through the negligence of the plts.' servants, and expenses were incurred by the plts. in saving some of the mules, and in attempting to save others which were lost. The plts. sought to recover these expenses, not as a direct loss under the policy, but under the suing and labouring clause as expenses incurred to avert or reduce the amount of the loss :—

Held, that the suing and labouring clause was inapplicable to and formed no part of the contract of insurance, and that the plts. were not entitled to recover in the action.

INSURANCE (MARINE) *continued.*

Decision of Walton J., [1902] 2 K. B. 624, affirmed. **CUNARD STEAMSHIP CO. v. MARTEN C. A. [1903] W. N. 142; [1903] 2 K. B. 511**

27. — Suing and labouring clause—Salvage—Claim of underwriters to salvage award.

By a policy of insurance a vessel was insured against "total or constructive total loss only." The policy contained the usual suing and labouring clause. The vessel having struck on a reef her owner abandoned her, and the underwriters incurred expense in floating her off and bringing her to land. In an action on the policy in which the owner claimed as for a total loss, and the underwriters counter-claimed for the expenses to which they had been put in salving the vessel, the jury found that the vessel was not a total loss, and that the underwriters were not liable on the policy:—

Held, that the underwriters were not entitled to recover the expenses of salving the vessel, either at common law, since those expenses were within the suing and labouring clause in the policy, or as a salvage award, since the underwriters were parties interested in the vessel. **CROFTAN v. STANTER**

Kennedy J. [1904] 1 K. B. 87

28. — Time policy for more than twelve months—Continuation clause, Validity of—Risk or adventure insufficiently defined—Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 93.

A policy of marine insurance upon a ship for the period of twelve months contained the following continuation clause: "Should the vessel be at sea or abroad on the expiration of this policy, it is agreed to hold her covered until arrival at her port of final destination in the United Kingdom or on the continent of Europe at a pro rata daily premium." On the expiration of the twelve months the ship was abroad, and on her voyage home was lost. In an action on the policy:—

Held, that the policy was one entire contract of insurance for a time exceeding twelve months, and therefore invalid as being in contravention of s. 93, sub-s. 3, of the Stamp Act, 1891; and that, if the continuation clause could be regarded as a separate insurance, either for a voyage or time, it did not specify the particular risk or adventure insured sufficiently to satisfy the requirements of the sub-section; and therefore in either view the policy was invalid.

Judgment of Bigham J., [1901] W. N. 132; [1901] 2 K. B. 567, affirmed. **ROYAL EXCHANGE ASSURANCE CORPORATION v. SJOFORSKRINGS AKTIEBOLAGET VEGA C. A. [1902] W. N. 136; [1902] 2 K. B. 384**

— Total loss—Insurance against total loss of cargo "by total loss of vessel"—Construction—Total loss of thing insured.

See CANADA—Insurance (Marine). 1.

29. — Voyage policy—Construction—Termination of risk—Insurance for period after arrival of ship—"Days," how to be reckoned.

In a policy of marine insurance on a ship the insurance was described as being for a voyage to Algoa Bay "and for 30 days in port after arrival," and as continuing "until the ship with all her ordnance, tackle, apparel, &c., shall be arrived at as above upon the said ship, &c., until she

INSURANCE (MARINE) *continued.*

hath there moored at anchor in good safety." The ship arrived at Algoa Bay, and was there moored at anchor in good safety at 11.30 A.M. on Aug. 2, 1902. She remained in Algoa Bay until Sept. 1, 1902, and was there totally lost through perils insured against at 4.30 P.M. on that day:—

Held (affirming the judgment of Bigham J., [1903] 2 K. B. 363), that the expression "30 days" in the policy meant thirty consecutive periods of twenty-four hours, the first of which began to run at 11.30 A.M. on Aug. 2; and, therefore, that the insurance had come to an end before the loss occurred. **CORNFOOT v. ROYAL EXCHANGE ASSURANCE CORPORATION**

C. A. [1903] W. N. 191; [1904] 1 K. B. 40

30. — Warranty—Policy—"Free from particular average and loss"—Meaning of—Understanding amongst underwriters.

A policy of marine insurance upon frozen meat expressed the period of the risk to be as follows: "Risk commencing at the freezing station works and includes a period of not exceeding sixty days after arrival of the vessel." It also contained the following clause:—"Warranted free from particular average and loss unless caused by stranding sinking burning or collision of the ship or craft." Owing to causes arising during the voyage other than the stranding, sinking, burning, or collision of the ship the meat arrived in such a condition that it had to be condemned as unfit for human food, and was consequently a total loss.

Hamilton J. found as a fact upon the evidence of underwriters that the words "Warranted free from particular average and loss" were a well-known formula used in connection with the insurance of frozen meat; that the words "and loss" in that formula were well understood amongst underwriters to mean all loss, total as well as partial; and that the clause, however inapt to express that meaning, was in fact intended to mean that the underwriters only undertook the marine risks of stranding, sinking, burning, or collision. He held that, notwithstanding the provision as to the risk commencing before and continuing after the termination of the voyage, the clause had that meaning in this policy, and he accordingly held that the underwriters were not liable for the loss. **OTAGO FARMERS' CO-OPERATIVE ASSOCIATION OF NEW ZEALAND v. THOMPSON**

Hamilton J. [1910] 2 K. B. 145

— Warranty against "capture, seizure, or detention"—Property of alien enemy. *See INSURANCE (CAPTURE). 1.*

31. — Warranty against "contraband of war"—Persons not contraband—Breach of warranty. Semble, the term "contraband of war," in its natural sense, and in the absence of special circumstances, or of something in the context pointing to another meaning, is applicable to goods only, and not to persons; and therefore the transport of military officers of a belligerent State as passengers on board a neutral ship is not a breach of a warranty against "contraband of war" in a policy of marine insurance.

Judgment of Bigham J., [1908] W. N. 64;

INSURANCE (MARINE)—continued.

[1908] 1 K. B. 910, affirmed. *YANGTZE INSURANCE ASSOCIATION v. INDEMNITY MUTUAL MARINE ASSURANCE CO.* - C. A. [1908] W. N. 145; [1908] 2 K. B. 504

32. — Warranty of freedom from capture—Capture of neutral ship by belligerents—Subsequent loss by perils of the sea—Condemnation—Relation back of title of captor.

In a policy against perils of the sea the risk insured was only against total loss and "warranted free from capture." A neutral ship thus insured during the Russo-Japanese war was captured by the Japanese, and while being navigated towards a court of prize was wrecked and became a total loss. She was afterwards condemned in the prize court:—

Held, that there was in fact a total loss by capture and that the owner could not recover on the policy.

Decision of the C. A., [1908] W. N. 7; [1908] 1 K. B. 601, affirmed on the above ground. *ANDERSEN v. MARTEN* - H. L. (E.) [1908] W. N. 164; [1908] A. C. 334

33. — Warranty of seaworthiness, Breach of—Round voyage by stages—Steamship insufficiently provided with coal—Burning ship's fittings and cargo—Negligence of master—"Held covered" clause in policy—Fixing amount of premium after breach of warranty.

In the case of a voyage policy upon a steamship, where the contemplated voyage must, from its length, be necessarily divided into stages for coaling purposes, the shipowner is, as between himself and his underwriter, under an implied warranty that the ship shall, at the commencement of each stage of the voyage, be seaworthy for that stage, by having on board a sufficiency of coal for that stage.

The plts. insured their steamship with the defts. for a round voyage from the United Kingdom to port or ports on the west coast of South America and back again, with leave to call at any ports or places on the east coast of South America, &c. The insurance included general average. The perils insured against were of the seas, &c., subject to clauses annexed to the policy which provided (inter alia): "This insurance is also to cover loss through the negligence of the master, &c.," and "Held covered in case of any breach of warranty, &c., at a premium to be hereafter arranged."

During the voyage the ship called at Monte Video, and through the negligence of the master sailed thence without having sufficient coal on board to take her to St. Vincent, her next place of call, where in ordinary course she would coal again. Her coal supply failing between Monte Video and St. Vincent, the master burnt for fuel some of the ship's fittings, spars, and some of the cargo, and if he had not done so she would have been in danger of becoming a total loss. The plts. did not know until after the ship reached St. Vincent that she had left Monte Video without sufficient coal, and no premium had been arranged under the "held covered" clause. In an action on the policy to recover in respect of the loss of the fittings, spars, and cargo:—

Held, that the policy was a "voyage policy,"

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INSURANCE (MARINE)—continued.

not a "time policy," and that the voyage was divisible into stages, the case thus falling within *The Vortigern*, [1899] P. 140; and accordingly that as the ship had not, at the commencement of the stage from Monte Video, a sufficiency of coal for that stage, the plts. had broken their implied warranty that she was seaworthy for that stage, so that the policy then ceased to attach to the risks insured against.

Decision of Bigham J., [1903] 1 K. B. 367, affirmed. *GREENOCK STEAMSHIP CO. v. MARITIME INSURANCE CO.* - C. A. [1903] W. N. 150; [1903] 2 K. B. 657

See also SHIPPING—Charterparty.

34. — "Whilst at port or ports, place or places"—Vessel striking on reef.

A ship was insured whilst at port or ports, place or places in New Caledonia. Whilst within the geographical limits of New Caledonia, and on her way to a port in that island, she struck upon a reef and incurred losses:—

Held, that the words "place or places," occurring in connection with the words "port or ports," meant place or places at which the vessel might arrive with some object other than that of merely passing on her way to some other point; that the vessel was not, therefore, "at a port or ports, place or places in New Caledonia" within the meaning of the policy; and that the insurers were not liable. *MARITIME INSURANCE CO. v. ALIANZA INSURANCE CO. OF SANTANDER* Walton J. [1907] W. N. 190; [1907] 2 K. B. 660

35. — Wreck, Value of—Constructive total loss—Test—Policy on ship—Cost of repair.

In determining the question whether a ship seriously damaged by perils insured against can be treated as a constructive total loss, the test is whether a prudent uninsured owner would repair her having regard to all the circumstances. In this calculation the assured is entitled to add the break-up value of the ship to the estimated cost of repairs.

Angel v. Merchants' Marine Insurance Co., [1903] 1 K. B. 811, overruled. *MACBETH & CO., LD. v. MARITIME INSURANCE CO., LD.*

H. L. (E.) [1908] W. N. 66; [1908] A. C. 144

INSURANCE (PROFESSIONAL)—Widows' fund limited to members of a society—Contributor expelled from society—Right to remain a contributor—Glasgow Faculty of Procurators' Widows' Fund Act, 1833 (3 Will. 4, c. lxxiv).

In 1870 J. C. was entered a member of the Faculty of Procurators in Glasgow, a corporation established in 1796 by Royal Charter. At the same time J. C. became a member of a mutual insurance society styled "The Society of Contributors to the Widows' Fund of the Faculty of Procurators in Glasgow." The Glasgow Faculty of Procurators' Widows' Fund, 1833, which constituted the society on a new basis, provided by s. 16 that no person should be admitted a member of the Faculty of Procurators without first paying entrance money to the widows' fund,

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INSURANCE (PROFESSIONAL)—*continued.*

and that after such payment the person so admitted as a member of the Faculty of Procurators should be "held and deemed a contributor to or member of the fund and entitled to the benefit thereof under the provisions of this Act." Under s. 18 every person who should be admitted a member of the said faculty should be bound to pay the society an annual contribution during his life; and under s. 9 one of the purposes of the fund was to pay pensions "to the widows and children of the members of said faculty who now are or may hereafter become entitled to the benefit of the fund under the provisions of this Act as hereinafter specified." By s. 26 the contributor was liable to forfeiture for non-payment of contributions; by ss. 27 and 28 he was entitled to redeem his contributions or renounce his interest in the society; but no express provision was made in the Act for the cessation of the contributions on the contributor ceasing to be a member of the faculty.

In 1899 J. C. pleaded guilty to a charge of embezzlement, and the Faculty of Procurators in Glasgow expelled him. The trustees of the Society of Contributors to the Widows' Fund of the Faculty of Procurators also removed J. C.'s name from the list of the society and refused to receive his contributions.

In 1904 J. C., his wife and children raised an action for reduction of the minute of the society, whereby it was resolved that J. C. had ceased to be a contributor to the widows' fund:—

Held, reversing the decision of the First Division of the Court of Session (Earl of Halsbury and Lords Robertson and Collins dissenting), that, according to the Act of 1833, when once any member of the Society of Procurators became a contributor to the widows' fund, he was entitled to continue a contributor, and was entitled to the benefits offered in exchange, even though he ceased to be a member of the Faculty of Procurators, the Act making no provision that a contributor must remain a member of the faculty till his death.

Decision of the First Division of the Ct. of Sess., (1904) 7 F. 345, reversed. *J. C. v. SOCIETY OF CONTRIBUTORS TO THE WIDOWS' FUND OF THE FACULTY OF PROCURATORS IN GLASGOW* - **H. L. (Sc.) [1908] W. N. 72; [1908] A. C. 182**

INTENTION — Forfeiture clause — Words of futurity.

See WILL—Forfeiture. 7.

INTERDICT — Damages — Interdict too wide—Measure of damages.

See DAMAGE AND DAMAGES. 2.

INTERESSE TERMINI—Underlease exceeding original term—Lessee's right to distrain.

See DISTRESS. 13.

INTEREST—Advancements.

See under WILL—Advancements.

INTEREST—*continued.*

— Agreement—Mutual error—Reconstruction of agreement by the parties—Construction thereof—Interest on price.

See CONTRACT. 3.

— Allowing interest on charge on land—Practice.

See LIEN. 1.

— Annuity.

See under ANNUITY.

— Arrears, Mortgagee's right to recover—Real Property Limitation.

See MORTGAGE—Interest. 1.

1. — *Arrears of dividends—Compound interest.*

In this case the trustees of a settlement under which a sum of 30,000*l.* was to be held upon specified trusts for the benefit of the first Lord Magheramorne and others in succession, with a trust of the corpus over 30,000*l.* for the settlor, Sir J. W. Hogg, had for many years dealt with the trust funds vested in them, which considerably exceeded 30,000*l.*, upon the trusts of the 30,000*l.* The Court having held upon the facts that the estate of Sir J. W. Hogg was entitled to recoupment of a proportionate part of the excess with six years' arrears of the dividends accrued thereon, certain of the parties claiming through Sir J. W. Hogg claimed to be entitled to interest on the dividends so directed to be refunded:—

Held, following *Silkstone and Haigh Moor Coal Co. v. Edey*, [1900] 1 Ch. 167, that it would be contrary to the practice of the Court to allow anything in the nature of compound interest, and, therefore, that the claim to interest on the dividends must be disallowed. *In re LORD MAGHERAMORNE'S ESTATE. HOGG v. HOGG*

Byrne J. [1901] W. N. 152

— Arrears, Recovery of—Real Property Limitation Act.

See VENDOR AND PURCHASER—Lien. 1.

— Bankruptcy—Fidelity bond—Surety—Default of trustee—Penal interest—Liability of surety.

See BANKRUPTCY—Trustee. 1, 2.

— Bankruptcy notice — Validity — Mistake in amount of interest—Formal defect.

See BANKRUPTCY—Notice. 14.

— Bankruptcy, Trustee in — Penal interest — Whether payable to bankrupt's estate or to the Treasury.

See BANKRUPTCY—Penal Interest. 1.

— Bonds bearing interest out of profits—Deficiency in interest — Sale of bonds—Tenant for life and remainderman.

See COMPANY—Interest. 1.

— Company—Debentures—Claim for interest by trustees as registered holders.

See COMPANY—Debentures. 19.

— Company—Debentures — Interest on money borrowed for the purpose of constructing works—Period of construction.

See COMPANY—Debentures. 2.

— Company — Debenture - holders' action — Supposed deficient security—Principal and interest—Payments on account—Appropriation of payments.

See COMPANY—Debentures. 8.

INTEREST—*continued.*

- Company — Winding-up—Petition—Creditor — Debenture stockholder — Unpaid interest.
See COMPANY — WINDING-UP — Practice, 12.
- Contingent legacy without interest—Appropriation of investments—Costs.
See APPROPRIATION. 1.
- Copyholds — Enfranchisement, Delay in — Compensation—Interest—Quittances.
See LANDS CLAUSES ACTS. 2.
- Costs—Taxation.
See SOLICITOR—Costs. 36.
- Costs paid by unsuccessful party—Repayment on successful appeal—Intermediate interest—Practice.
See Costs. 38.
- Dividend—Profit—Fixed capital—Circulating capital.
See COMPANY—Dividends. 2.
- Equitable interest — Copyholds—Devolution — Person to convey—Vendor and purchaser.
See COPYHOLDS. 2.
- Equitable interest — Copyholds — Resulting trust—Descent—Common law heir or customary heirs.
See WILL—Intestacy. 1.
- Equitable interest—Mortgages of policies—Notice—Priorities—Bankruptcy.
See MORTGAGE—Priority. 9.
- Equitable interest in land—Practice—Execution—Appointment of receiver.
See COUNTY COURT—Execution. 3.
- Estate insolvent at date of judgment afterwards found sufficient to pay principal of debts.
See ADMINISTRATION. 17.
- “Excessive”—Money-lenders.
See BANKRUPTCY—Receiving Order. 4.
- Exorbitant—“Harsh and unconscionable.”
See under MONEY-LENDERS.
- Income tax.
See under REVENUE—Income Tax.
- Infant.
See under INFANT—Interest.
- Judgment—Entry of judgment—Damages to be ascertained — Interest on amount recovered—Judgment taking effect from time when given.
See JUDGMENT. 3.
- Judgment debt, Satisfaction of—Practice.
See COSTS. 38.
- Land tax—Redemption—Interest, Recovery of—Lapse of time.
See LIMITATIONS, STATUTES OF. 9.
- Lease—Renewal—Fine.
See LANDLORD AND TENANT. 76.

INTEREST—*continued.*

- Legacy—Gift by appointment under a power.
See WILL—Legacy. 3.
- Limitations, Statute of.
See under LIMITATIONS, STATUTE OF
- 2. — *Legacy—Will—Bequest of income to legatee subject to obligation of maintaining infants.*
A testator bequeathed the income of a trust legacy to his daughter-in-law during her widowhood, subject to the obligation of maintaining her deceased husband's children while minors and unmarried:—
Held, that the legacy did not carry interest from the testator's death.
Raven v. Waite, (1818) 1 Swans. 553, 559, followed.
Pett v. Fellows, (1733), 1 Swans. 561, n.; Leslie v. Leslie, (1835) Ll. & G. t. Sugden, 1; and In re Richards, (1869) L. R. 8 Eq. 119, distinguished. In re CRANE. ADAMS v. CRANE Swinfen Eady J. [1908] W. N. 13; [1908] 1 Ch. 379
- Life policies—Payment of premiums from date of receiving order — Salvage—Interest.
See BANKRUPTCY—Secured Creditors. 1.
- Limitations, Statute of.
See under LIMITATIONS, STATUTE OF.
- Mine-owner stopped from working mines within prescribed distance—Interest on compensation moneys.
See RAILWAY—Minerals. 4.
- Mines near railway—Arbitration—Compensation—Interest on amount awarded.
See RAILWAY—Minerals. 5.
- Money had and received—Interest not recoverable—Costs.
See SIERRA LEONE. 1.
- Money-lenders.
See under MONEY-LENDERS.
- Mortgage — Payment of interest by one devisee — Acknowledgment — Limitations, Statute of.
See ADMINISTRATION. 28.
- Mortgage.
See MORTGAGE—Costs. 2.
- Mortgage debt—Judgment against executor — Statute of Limitations not pleaded—Plene administravit.
See ADMINISTRATION.
- Mortgagee in possession—Right to compound interests—Rests.
See MORTGAGE—Accounts. 1.
- Mortgages.
See under MORTGAGE—Interest.
- On payments in arrear—Practice.
See CANADA—Interest. 1.
- Poor rate — Rateable value — Railway—Interest on cost of construction.
See RATES. 35.

INTEREST—*continued.*

- Practice—Interest intentionally omitted from final decree—Law of Ontario.
See CANADA—Interest. 1.
- Proof for future interest—Dissolution of company—Bankruptcy of guarantor.
See BANKRUPTCY—Proof. 8.
- Proof for interest—Solvent company—Gaming and wagering contract — Interest on sums deposited as cover.
See COMPANY—WINDING-UP — Proof. 2.
- Railway, Mines near—Notice to prevent working—Interest on amount awarded.
See RAILWAY—Mines. 5.
- Rate of — Judgment — Merger—Mortgage—Ancillary and independent covenants.
See COVENANT. 3.
- Settled land.
See under SETTLED LAND—Interest.
- Several estates comprised in same devise—Interest on charges.
See SETTLEMENT. 42.
- Solicitor and client costs—Indemnity—Repayment of costs of litigation.
See VENDOR AND PURCHASER — Title. 3.
- Specific performance—Interest on purchase-money.
See VENDOR AND PURCHASER—Contract. 1.

3. — *Tradesman and customer—Implied agreement by customer to pay interest.*

During a series of years a tradesman, in the yearly accounts which he delivered to his customer, charged him with interest on amounts which had been due for three years and longer. The customer never objected to the charge for interest, and he from time to time made payments to the tradesman on account generally. At the time of the customer's death a large amount was due from him to the tradesman for goods supplied :—

Held, that an agreement on the part of the customer to pay interest ought to be inferred from the course of dealing, and that the tradesman was entitled to prove in the administration of the customer's estate for interest as it had been charged, as well as for principal.

Decision of Cozens-Hardy J. (which was founded on *In re Lloyd Edwards*, (1891) 61 L. J. (Ch.) 22) reversed. *In re HENRY, MARQUIS OF ANGLESEY. WILLMOT v. GARDNER*

C. A. [1901] W. N. 171 ; [1901] 2 Ch. 548

- Trustee.
See under TRUSTEE—Interest.
- Trustee — Liability — Misappropriation — Restoration of capital with interest at 5 per cent.
See TRUSTEE—Liability. 1.
- Vendor and purchaser.
See under VENDOR AND PURCHASER—Interest.
- Vested legacies—Interest until payment—Infants.
See WILL—Legacy. 2.

INTEREST—*continued.*

- Waterworks — Loss of support—Authorized working—Compensation.
See WATER. 28.
- Will—Advances.
See under WILL—Advances.

INTERFERENCE—Receiver and manager.

See PARTNERSHIP. 2.

INTERIM INJUNCTION.

See under INJUNCTION.

INTERIM INVESTMENT.

See under INVESTMENT.

INTERLOCUTORY APPEAL.

See under APPEAL.

INTERLOCUTORY APPLICATION — County court—Appeal to judge from registrar—Order.

See COUNTY COURT—Appeal. 5.

INTERLOCUTORY INJUNCTION.

See under INJUNCTION.

INTERLOCUTORY MATTER — Summons for directions—Order in chambers dismissing action—Jurisdiction.

See PRACTICE—Summons for Directions. 1.

INTERLOCUTORY ORDER—Appeal—Compulsory winding-up order.

See COMPANY — WINDING-UP — Practice. 4.

— Appeal—Order whether final or interlocutory.

See APPEAL. 11, 12.

— Appeal—Reduction of capital.

See COMPANY—Practice. 2.

— Compromise of action—Agreement to refer—Authority exceeded by counsel.

See COSTS. 25.

— Final or — Appeal — Leave — Solicitor and client—Costs—Taxation—Summons to review—Refusal—Practice.

See APPEAL. 17.

— Final or—Consolidated suits—Appeal—Costs—Co-respondent—Jurisdiction.

See DIVORCE—Practice. 6.

— Injunction—No appearance by defendant—Written consent to judgment.

See CONSENT. 1.

— Practice.

See under PRACTICE—Interlocutory Order.

INTERLOCUTORY OR FINAL ORDER—Appealing, Time for—Dismissal of action as frivolous and vexatious—Practice.

See APPEAL. 29.

INTERLOCUTORY PROCEEDINGS — Frivolous and vexatious applications—Abuse of procedure—Costs—Form of order.

See PRACTICE—Frivolous, &c., Applications. 2.

INTERNATIONAL COPYRIGHT.

See under COPYRIGHT.

INTERNATIONAL LAW.

See also under CONFLICT OF LAWS.

1. — *Divorce—Judgment in rem—Foreign Court—Domicil—Jurisdiction—American Law—Residence—English marriage—Decree of divorce by New York Court—Validity of divorce in England.*

A divorce granted by a foreign Court, being a judgment affecting the status of the parties, stands on the same footing as a judgment in rem, and therefore cannot be set aside in this country, even on the ground of fraud, by a person who was no party to the proceedings in which the judgment was pronounced.

Castrique v. Behrens, (1861) 30 L. J. Q. B. 163, approved.

The domicil for the time being of the married pair, when the question of divorce arises, affords the only true test of jurisdiction to dissolve their marriage; and the Court of the bona fide existing domicil has jurisdiction over persons originally domiciled in another country to undo a marriage solemnized in that other country; and such a divorce will be recognized by the English Courts even if granted for a cause which would not have been sufficient to obtain a divorce in England.

Harvey v. Farnie, (1882) 8 App. Cas. 43, and *Le Mesurier v. Le Mesurier*, [1895] A. C. 517, applied.

The resolution of the judges in *Lolley's Case*, (1812) Russ. & Ry. 237, must be treated as confined to the particular facts of the case in which it was given.

In 1880 a marriage was celebrated in England between two English persons. In 1886 the husband commenced divorce proceedings against the wife for adultery with B., which failed upon proof of the husband's cruelty, and in 1889 he sailed for New York, where he lived in adultery with another woman and acquired a domicil in the State of New York. The wife and B. continued to live in adultery, and in 1890 the wife went to New York for the purpose of obtaining a divorce, and subsequently obtained a decree from the New York Court for dissolution of her marriage on the ground of her husband's adultery. There was no collusion between the husband and wife, but her matrimonial misconduct in England was not disclosed to the New York Court. In 1893 the wife went through a ceremony of marriage with B. in New York, which, assuming they were then at liberty to marry, was a valid ceremony. In 1903 B. presented a petition for a declaration of nullity of the New York marriage:—

Held, that, both according to the law of the State of New York and of England, the New York Court had jurisdiction to decree a divorce, as the husband had acquired a domicil in New York, the adultery complained of by the wife was committed in that State, and the wife had elected to make the domicil of the husband her own for the purpose of the divorce proceedings and had acquired a "residence" there according to the law of New York, and consequently that the petition should be dismissed.

INTERNATIONAL LAW—continued.

Decision of the President (Sir Gorell Barnes) affirmed. *BATER v. BATER* C. A. [1906] P. 209
See *Bater v. Bater*. Bucknill J., [1907] P. 333.

— Nullity of marriage—Bigamy—Marriage in England between Englishwoman and domiciled Frenchman—Conflict of laws.
See **DIVORCE—Nullity**. 1.

— Streets.

See under **STREETS—International Law**.

INTERPLEADER—Appeal—Summary decisions—Leave to appeal—Practice—Amount in dispute exceeding 50*l.*—R. S. C., Order LVII., r. 8.

Where, on interpleader proceedings, the amount in dispute exceeded 50*l.*, and a judge ordered that the matter should be decided in a summary manner under Order LVII., r. 8, but gave leave to appeal:—

Held, that the judge had jurisdiction to make the order, and that no appeal lay against it. *HARBOTTLE v. ROBERTS* (PEEL, CLAIMANT)

C. A. [1905] W. N. 31; [1905] 1 K. B. 572

2. — *Appeal—Summary decision of judge—Leave to appeal—Practice—R. S. C., Order LVII., rr. 9, 11—Common Law Procedure Act, 1860 (23 & 24 Vict. c. 126), s. 17—Supreme Court of Judicature (Procedure) Act, 1894 (57 & 58 Vict. c. 16), s. 6.*

Where in interpleader proceedings a judge decides the question as one of law under Order LVII., r. 9, without directing the trial of an issue, or ordering a special case to be stated, his decision is a summary decision within the meaning of the Common Law Procedure by 1860, s. 17, and is not subject to appeal, even leave.

In re Tarn, [1893] 2 Ch. 280, followed. *VAN LAUN & Co. v. BARENG BROTHERS & Co.* (LEWISON, CLAIMANT) C. A. [1903] W. N. 128; [1903] 2 K. B. 277

Note.

See *Harbottle v. Roberts*, C. A. [1905] 1 K. B. 572. *Preceding Case*.

3. — *County court—Execution—Goods belonging neither to execution debtor nor to the claimant—Money paid into Court, who entitled to—County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 156.*

Goods which had been taken in execution upon a county court judgment were claimed by the grantees of a bill of sale upon them, hereinafter called "the claimants," who deposited under s. 156 of the County Courts Act, 1888, a sum of money as representing the value of the goods. The high bailiff of the county court thereupon withdrew from possession of the goods, and issued an interpleader summons in the county court with regard to the money in Court. Subsequently E. D. & Co. gave notice to the high bailiff of a claim to part of the goods, as having been let by them to the execution debtor on a hire-purchase agreement, and the claimants gave notice to the high bailiff that they withdrew their claim to these goods. The high bailiff gave notice of the claim of E. D. & Co. to the execution creditor, who thereupon

INTERPLEADER—*continued.*

gave notice to the high bailiff that he admitted their title to those goods. Upon the hearing of the interpleader summons the county court judge held that the above-mentioned bill of sale was invalid, and he thereupon ordered that a part of the money in Court proportionate to the value of the goods which had not been claimed by E. D. & Co. should be paid out to the execution creditor, but that the remainder of the money should be paid back to the claimants. On appeal the Div. Ct. affirmed his decision:—

Held (reversing the judgment of the Div. Ct.), that the execution creditor, upon the failure of the claimants to prove a title to any of the goods, was entitled to the whole of the money in court. **WELLS v. HUGHES** (DISTRICT LOAN Co.), CLAIMANTS

C. A. [1907] 2 K. B. 845

- Execution creditor—Indemnity—Lien passing to trustee in bankruptcy.
See **BANKRUPTCY—Trustee.** 5.
- Issue — New trial — Liverpool Court of Passage.
See **BILL OF SALE.** 2.
- Married woman's liability to costs—"Proceeding instituted"—Interpleader proceedings.
See **HUSBAND AND WIFE—Costs.** 1.
- Sheriff's "costs of execution"—Interpleader summons.
See **SHERIFF.**
- Trustee in bankruptcy, Lien passing to—Right of indemnity over assets of trust.
See **BANKRUPTCY—Trustee.** 5.

INTERPRETATION—Statutes.

See under **STATUTE.**

INTERPRETATION ACT.

See **CANADA—Corporation.** 2.

- Debentures—Registration.
See **COMPANY—Debentures.** 46.
- Local education authority—Council of county borough—Corporation acting by council.
See **SCHOOLS.** 13.
- Lottery—Offence—"Person"—Corporation.
See **GAMING.** 14.
- Sale by Corporation—"Person"—Liability.
See **ADULTERATION.** 20.

INTERROGATORIES.

See under **DISCOVERY.**

- Bankruptcy—Discovery.
See under **BANKRUPTCY—Discovery.**
- Workmen's compensation — Jurisdiction of county court judge.
See **MASTER AND SERVANT—Compensation.** 188.

INTERRUPTION—Way—User—Acquisition of right against reversioner.
See **WAY, RIGHT OF.** 14.

INTERVENER—Divorce—Practice—Successful defence—Costs.
See **DIVORCE—Costs.** 7.

INTERVENER—*continued.*

— Probate action — Married woman — "Proceeding instituted."
See **PROBATE—Practice.** 8.

INTESTACY — Administration — Divorce — Former husband passed over without Citation—Sureties required to justify.
See **PROBATE—Practice.** 1.

— Administration—Renunciation by next of kin — "Special circumstances."
See **PROBATE—Renunciation.** 2.

— Advancements to children—Hotchpot.
See **DISTRIBUTIONS, STATUTE OF.** 1.

— Charge — Unraised portion — Intestacy of portioner—Owner of land next of kin.
See **MERGER.** 1.

-- Class — Contingent or vested — Gift over on death "without leaving any children."
See **WILL—Class.** 7.

— Cy-près doctrine — Perpetual life estates — Stirpital distribution.
See **CY-PRÈS.** 3.

— Death of mortgagee intestate—Devolution of mortgage debts—Merger.
See **ADMINISTRATION.** 18.

— Entirety, Devise of—No words of limitation — Intestacy of devisee—Devolution.
See **ESTATE PUR AUTRE VIE.** 1.

— Mortgagee—Devolution of mortgaged land—Realty or personalty.
See **MORTGAGE—Devolution.** 1.

-- Probate — Disappearance of administrator — Motion — Revocation — Fresh grant to creditor.
See **PROBATE—Revocation.** 3.

— Rent-charge on leaseholds—Unpaid purchase money.
See **WILL—Chattels Real.** 1.

— "Residuary legatee"—Real estate—Extrinsic evidence.
See **WILL—"Residuary Legatee."** 1.

— Share of residue—Survivorship—Accruer.
See **WILL—Residue.** 2.

— Substantial gift.
See under **WILL—Substitution.**

— Succession—Will—Residue of estate to heir entitled to succeed to entail—Lands disentailed.
See **SCOTTISH LAW.** 26.

1. — *Tenancy at will—Death of tenant—Intestacy—New tenancy granted to administratrix—Accretion to estate—Widow—Intestates' Estates Act, 1890 (53 & 54 Vict. c. 29), s. 5—Mode of valuation.*

In this case a summons was taken out by some of the intestate's next of kin, asking for a decision whether the tenancy acquired by the widow in certain land mentioned formed part of the intestate's estate, and for general administration, with a special inquiry as to the value

INTESTACY—*continued.*

of the intestate's real and personal estate for the purpose of the Intestates' Estates Act, 1890. Sect. 5 of that Act enacts that the net value of real estate shall for the purposes of this Act be estimated in the case of a fee simple upon the basis of twenty years' purchase of the annual value by the year as determined by law for the purposes of property tax, less mortgages and charges. The land in question had never been separately assessed for the property tax, and this method could not be followed exactly. The plts. contended that the section did not apply at all; the widow that it should be followed as nearly as possible by calculating the value on the basis of the assessment for the poor rate.

Neville J., without delivering a formal judgment, made an order for administration of the intestate's real and personal estate, including the property comprised in the widow's acknowledgment of Nov. 2, 1908, and directed that in the inquiry as to value regard should be had to s. 5 of the Intestates' Estates Act, 1890. *In re MANSER. KILICK v. MANSER - Neville J. [1910] W. N. 61*

— Will—Partial failure of trusts—Conversion after death of heir-at-law — Real or personal estate.
See WILL — Real or Personal Estate. 1.

2. — Widow—Contingent reversionary interest—Husband and wife—Intestacy of husband—Real and personal estate—Intestates' Estates Act, 1890 (53 & 54 Vict. c. 29), ss. 1, 5, 6.

An intestate, who left a widow but no issue, was at the date of his death in 1894 entitled to a contingent reversionary interest in certain real and personal property. With the exception of assets to the value of 10%, this interest comprised his whole property. It was of no market value at the time, but in 1904 it fell into possession and proved to be worth about 3500*l.* The widow of the intestate now claimed to be absolutely entitled to the whole under s. 1 of the Intestates' Estates Act, 1890, on the ground that at the date of the death of the intestate the net value of such "real and personal estates" did not exceed 500*l.* :—

Held, that the value of the intestate's real and personal estates must be taken as at his death, and the whole passed absolutely to his widow for such estate and interest as the intestate had therein :

The fact that the Intestates' Estates Act, 1890, only contains provisions for ascertaining the net value of real and personal property in possession does not exclude interests in reversion from the operation of the general words of s. 1 of the Act. *In re HEATH. HEATH v. WIDGEON Kekewich J. [1907] W. N. 127; [1907] 2 Ch. 270*

Note.

This case was referred to by Neville J., *In re Manser*, [1910] W. N. 61. *See preceding Case.*

— Will—Class gift—Revocation by codicil.
See WILL—Class. 2.

INTESTACY—*continued.*

— Will—Construction.

See under WILL—Intestacy.

— Will—Next of kin.

See under WILL—Next of Kin.

— Will—Subsequent acquisition of further real estate—Extrinsic evidence.

See WILL—"Residuary Legatee." 1.

INTESTATES' ESTATES.

See under INTESTACY.

— Tenancy at will — Death of tenant — Intestacy.

See INTESTACY. 1.

— Will—Lapse—Death of all beneficiaries and executor before testator.

See WILL—Lapse. 3.

INTOXICATING LIQUORS.

See under CRIMINAL LAW — Intoxicating Liquors.

INN.

LICENSING ACTS.

INVENTORY—Distress for rent—Lodger's goods — "Subscribing" the inventory—Landlord and tenant.

See DISTRESS. 15.

INVESTMENT—Annuity in possession — Reversioner unknown.

See LANDS CLAUSES ACTS. 13.

— Appropriation of investment — Contingent legacy without interest.

See APPROPRIATION. 1.

— Brewery company—Compensation—Powers of debenture trustees.

See BREWERS. 1, 2, 3.

— Change of investment — Settled land — "Capital money"—Premiums—Ademption.

See POWER OF APPOINTMENT. 33.

— Charity commissioners, Consent of—Foundation deed—Investment in land.

See CHARITY. 14.

— Corporation sole—Rector—Power to hold personality—Mortmain—Irregular investment in land.

See CORPORATION. 14.

— Costs—Re-investment in land—Apportionment.

See LANDS CLAUSES ACTS. 23.

— Debenture trustees, Power of—Licence, Non-renewal of — Compensation — Capital moneys.

See BREWERS. 1, 2, 3.

— Employers' Liability Insurance Companies.

See under INSURANCE (EMPLOYERS' LIABILITY).

— Interest from foreign investments—Income tax—Company—Profits or gains.

See REVENUE—Income Tax. 13.

INVESTMENT—*continued.*

— Lands Clauses Acts.

See under LANDS CLAUSES ACTS.

— Range of investments authorized by instrument creating power of appointment—Extension of, by donee—Validity.

See POWER OF APPOINTMENT. 25.

— Settled land.

See under SETTLED LAND—Investments.

— Tenant for life and remainderman—Proceeds of realization of insufficient security—Apportionment.

See SETTLEMENT. 31.

— Trustees.

See under TRUSTEE—Investments.

— Vendor and purchaser.

See VENDOR AND PURCHASER—Investments.

— Will.

See under WILL—Investments.**IRISH LAW**—Appeal—Certiorari—Practice.*See* APPEAL. 19.

— Common lodging-house — Registration — Licence—Charitable institution — Payment by inmates.

See LODGING-HOUSES. 2.

— Divorce.

See under DIVORCE—Ireland.

— Investment, Petition for.

See INSURANCE (EMPLOYERS' LIABILITY). 1.

— Irish Land Acts—Covenant to settle after-acquired property—Land in Ireland—Sale of land—Twelve per cent. bonus.

See SETTLEMENT. 7.

— Irish Land Acts — Jointure rent-charge — Arrears—"Incumbrance affecting the inheritance"—Discharge out of capital moneys.

See SETTLED LAND—Jointures. 1.

1. — *Landed Estates Court, Ireland*—Land judge's conveyance—Lands sold subject to jointure but indemnified against jointure by unsold lands—Jointure prior to incumbrances—Rights of jointress—*Incumbered Estates Court (Ireland) Act, 1858* (21 & 22 Vict. c. 72), ss. 61, 85.

Lands sold under the *Incumbered Estates Court (Ireland) Act, 1858*, were sold subject to a jointure annuity but indemnified against the jointure by unsold lands, and were so conveyed to the purchasers. Before the sale and conveyance the jointure ranked after incumbrances upon the lands:—

Held, that after the sale and conveyance the effect of s. 61 of the Act of 1858 was to give the jointress the first charge upon the sold lands, and to give those lands a preferential charge in respect of the indemnity upon the indemnifying lands.

Decisions of the C. A. in Ireland, [1907] 1 I. R. 380 and [1908] 1 I. R. 402, reversed, and

IRISH LAW—*continued.*

decisions of Ross J., [1907] 1 I. R. 380, restored. *ROWE v. GOUGH. GOUGH v. BOLTON.*

H. L. (Ir.) 1908 W. N. 249 ; [1909] A. C. 64

2. — *Landlord and Tenant—Land Purchase Acts—Redemption of liability for rent out of estate indemnified therefrom—Right over indemnifying lands—Land Law (Ireland) Act, 1896* (59 & 60 Vict. c. 47), s. 33, sub-s. 4—*Land judge—Jurisdiction—Appeal.*

Where any liability for rent is apportioned and redeemed out of the purchase-money of lands sold under the Irish Land Purchase Acts, and a right of indemnity in respect of such liability exists against other lands:—

Held, that under s. 33, sub-s. 4, of the Land Law (Ireland) Act, 1896, the person who has paid the redemption price is entitled to an annuity on the indemnifying lands equal in amount to the portion of the rent which has been redeemed but ranking after the unredeemed portion of the rent.

Decision of the C. A. in Ireland (reported as *In re Thompson's Estate*, [1907] 1 I. R. 311), reversed, and decision of Ross J., [1907] 1 I. R. 190, restored.

An appeal lies from the decision of the land judge to the C. A. in Ireland, and from that Court to this House. **EVELYN VISCOUNTESS DE VESCI v. O'CONNELL** **H. L. (Ir.) [1908] W. N. 135 ; [1908] A. C. 298**

— Police—Pension—Royal Irish Constabulary.

See POLICE. 5.

— Poor law—Pauper "liable to be removed to Ireland"—Grounds of appeal.

See POOR LAW. 20.

— Poor-rate collector (Ireland)—Remuneration—Transfer of existing officers to county council.

See RATES. 9.

— Power to invest on real security in—Improper investment by trustees—Puisne mortgage.

See TRUSTEE—Investments. 7.

— Railway company—Extension of Powers—Application of assets—Construction of extension line—Creditors—Separate undertaking.

See RAILWAY—Powers. 1.

— Secured creditor—Proof by against the real estate—Lapse of time.

See ADMINISTRATION. 23.

— Service in—Application for leave—Third party notice—Contribution.

See PRACTICE—Service. 6.

— Settled land—Capital money—Improvements—Irish estates.

See SETTLED LAND—Capital Moneys. 10.

IRON GIRDERS—Deterioration—Standard of strength—Lease—Covenant—Substructure and supports of market.
See LANDLORD AND TENANT. 83.

IRREGULARITY—Misdescription of plaintiff—Writ—"Co-partners"—"Owners."

See SHIPPING—Practice. 11.

ISLAND—Presumption that bed of river passes ad medium filum.
See RIVER. 4.

ISLE OF MAN.

Isle of Man (Customs) Act, 1910 (10 Edw. 7 & 1 Geo. 5, c. 18), is an Act to amend the law with respect to Customs in the Isle of Man.

1. — *Criminal law—Conviction set aside—No evidence of fraudulent appropriation—Liability of bank director.*

Conviction of fraudulently appropriating the moneys of a bank set aside, it appearing that there was no evidence of the convict director, who had overdrawn on a so-called trust account irregularly opened in his name, having misappropriated any one draft to his own use in fraud (within the meaning of the Act) of the bank's right to have the money. *NELSON v. REX*
P. C. [1902] A. C. 250

2. — *Practice—Appeal—Jurisdiction—Isle of Man Appellate Jurisdiction Act, 1867, ss. 3, 5—Construction—Appellant's claim for retrial as a matter of right dismissed—Verdict such as might reasonably be found.*

The Isle of Man Appellate Jurisdiction Act, 1867, provides a new mode of procedure with respect to traverses or appeals from verdicts of common law juries which had been abolished by an Act in 1866, re-enacting the old procedure only up to the point of entering the traverse, but no further. Sect. 3 of the Act of 1867 according to its true construction empowers the Court to review proceedings at a trial with respect to questions both of law and fact (except as to the admission and rejection of evidence), to determine all questions of law, and upon questions of fact or damages, subject to certain limitations in its first proviso, to order a new trial or to order judgment to be entered for either party. Sect. 5 of the said Act forbids the consideration of any questions as to any determination, ruling, or direction of the judge at the trial in matter of law unless the points or questions objected or excepted to be stated in the form of a case in writing agreed to or settled by the judge and filed at least three days before the hearing of the traverse.

Where a jury of six found against the appellant on his suit for damages to his land caused by the deft.'s excavations on his land, and the appellant appealed from this finding without complying with s. 5, demanding a retrial of his claim before a jury of twelve on the testimony

ISLE OF MAN—continued.

given in the Court below without recalling the witnesses or admitting further evidence, or in the alternative for a new trial on the ground that the verdict was against the weight of evidence:—

Held, that no question of law was open to the appellant, that the claim for retrial as a matter of right could not be allowed, and that there was evidence on which the jury might reasonably find that the damage was caused by subsidence due to the deft.'s drainage of his own land, and not by the deft.'s withdrawal of lateral support. *GILL v. WESTLAKE* **P. C. [1910] A. C. 197**

3. — *Specific performance—Agreement to purchase land—Manx Local Government Act, 1886, s. 286.*

Specific performance of a contract by the respondent commrs. to purchase the land in suit from the appellant decreed; their contentions—(1.) that one of their number was through his father "indirectly concerned" in the purchase within the meaning of Manx Local Government Act, 1886, s. 286, in a manner which conflicted with his duty; (2.) that the appellant had intimated his intention not to seek it—being overruled as not being established by the evidence. *LAUGHTON v. COMMRS. OF PORT ERIN* **P. C. [1910] A. C. 565**

4. — *Practice—Appeal—Criminal conviction Special leave.*

Special leave to appeal is not given in a criminal case where the sentence was founded on the verdict of a jury, and there was evidence for the jury, and no special matter sufficient to countervail it. *Ex parte ALDRED*
P. C. [1902] A. C. 81

ISOLATION HOSPITALS ACT, 1901 (1 Edw. 7, c. 8), amends the *Isolation Hospitals Act, 1893* (56 & 57 Vict. c. 68).

ISSUE—Costs—Separate issues.

See COSTS. 61.

— Partner — Whether particular person was partner—Jurisdiction to direct issue.

See PARTNERSHIP. 18.

— Will—Construction.

See under WILL—Issue.

ITALY—Marriage—Capacity—Italian domicil—Deceased husband's brother.
See CONFLICT OF LAWS. 12.

J.

JAMAICA—*Practice*—*New trial refused*—*No application for discovery*—*Cancellation of security by married woman for her husband's debts.*

Held, that the appellants could not enforce a charge on the respondent's share in her father's estate, obtained through their agent who was also executor and trustee for her under her father's will, by pressure through her husband, whose debts were to be thereby secured, concealment of material facts, and without independent advice:

Held, further, that the appellants, who before the trial had made no application for discovery of documents, were not entitled to a new trial on the ground of an important document, shown to have been accessible at the trial if called for, having since come to their knowledge. **TURNBULL & CO. v. DUVAL**

P. C. [1902] A. C. 429

Note.

This case was followed by *C. A., Chaplin & Co. v. Brammall*, [1908] 1 K. B. 233. *See Husband and Wife—Guarantee.* 1.

2. — *Will*—“*Eldest son of my sister*”—*Lapsed gift*—*Construction of will.*

A gift “to the eldest son of my sister and his heirs for ever” operates in favour of the elder of her two sons living at the date of the will, though he predeceased the testator, in the absence of any contrary intention appearing in the context. As the gift lapsed on the death of the donee, there was an intestacy in favour of the heir-at-law. **AMYOT v. DWARRIS** - **P. C.**

[1904] A. C. 268

JAPAN—*Japan Administration—Order in Council, Dec. 21, 1906, empowering Consuls of Japan to administer estates of Japanese subjects dying within H.M. dominions except in the Dominion of Canada, Newfoundland and New Zealand.* **St. E. & O. 1906, No. 959.**

JERSEY—*Contract, Construction of*—*Conflict of laws*—*Intention of parties as to law applicable*—*Fire policy*—*Award condition precedent to suit.*

Where the parties to a contract reside in different countries in which different systems of law prevail, their intention is the true criterion to determine by what law its interpretation and effect are to be governed.

Hamlyn & Co. v. Talisker Distillery, [1894] A. C. 202, followed.

Where a fire policy made in Jersey is nevertheless an English contract, no action can be brought upon it until the amount has been settled by arbitration according to the condition contained therein.

Scott v. Avery, (1855) 5 H. L. C. 811, followed. **SPURRIER v. R. G. F. LA CLOCHE** - **P. C.**

[1902] A. C. 446

JERSEY—*continued.*

— *Covenant to settle wife's after-acquired property*—*Construction*—*Land in Jersey*—*Consideration for transfer necessary.*
See SETTLEMENT. 8.

2. — *Jurisdiction of Royal Court*—*Parish vote for application of parish funds*—*Suit to annul a resolution of the parish assembly*—*Laches of plaintiff.*

The civil assembly of a parish in Jersey having on Sept. 3, 1903, voted a specific sum of money for the repairs of the church as recommended by the ecclesiastical assembly, a contract was duly made on Sept. 17 for their execution:—

Held, that an action by the appellant brought on Sept. 20 to declare the resolution of the 3rd illegal and void was too late, inasmuch as he did not take action till after the parish authorities had entered into their contract, though he was a member of both assemblies and knew that repairs were urgent, and that by a series of proceedings from Feb. to Sept. the impugned liability was in contemplation. **ROBERTS v. EREAUT**

P. C. [1905] A. C. 61

— *Real property in Jersey*—*Impossibility of performance of covenant.*
See SETTLEMENT.

3. — *Will, Validity of*—*Undue influence*—*Evidence of executors inadmissible*—*Laws of Jersey.*

In a suit by the heir-at-law of a testatrix against her executors and trustees and beneficiaries to set aside her will and codicil on the ground that at the date of execution thereof she was infirm of body, weak in mind, and under the undue influence of persons named:—

Held—(1.) That by the law and custom of Jersey the evidence of the executors was rightly excluded;

(2.) That certain persons who were neither legatees nor trustees of her charitable trusts, but parochial authorities whose co-operation in administering them might be necessary, were wrongly added as parties, and were not on that account disqualified as witnesses;

(3.) That, on the evidence, the testatrix was of sound mind, memory and understanding, and that there was no evidence of undue influence, since both will and codicil were shown to have been the expression of the testatrix's own wishes, not induced by either fraud or coercion.

Boyse v. Rossborough, (1856) 6 H. L. C. 2, approved.

And, having regard to the jealousy with which evidence is excluded, a plaintiff should be held strictly to the case made by the pleadings

JERSEY—*continued.*

and not allowed to pursue a charge of fraud for which no foundation is laid therein. **BAUDAINS v. RICHARDSON** . **P. C. [1906] A. C. 169**

JETTY—Damage to—Ship—Negligence—Onus of proof—Force majeure.
See SHIPPING—Negligence. 1.

JEWELLERY—Married woman—Appointment—Separate estate—"Liable for her debts or other liabilities."
See HUSBAND AND WIFE—Separate Property. 2.

JEWELS—Heirlooms—Executory trust.
See WILL—Heirlooms. 2.

JEWISH MARRIAGE—Nullity—Custom—Money lodged in bank, in joint names, in nature of dower—Petition to restore so-called dower.
See DIVORCE—Nullity. 6.

JOINDER—Practice.
See under PRACTICE—Joinder.

JOINT ACCOUNT—Payment to one mortgagee—Partnership—Separate debts—Payment to firm.
See MORTGAGE—Payment.

JOINT AND SEVERAL DEBT—Judgment debt—Release of one co-debtor—Extinguishment of debt.
See ACCORD AND SATISFACTION. 1.

JOINT OBLIGATION—Covenant by covenantor with himself and others—Validity.
See COVENANT. 5.

JOINT OWNERS—Rights of—Agreement to construct a railway jointly—Construction.
See NEW SOUTH WALES.

JOINT STOCK COMPANIES.
See under COMPANY and COMPANY—WINDING-UP.

JOINT TENANCY—Conveyance by one joint tenant—Severance—Equitable title—Legal title—Relation back.
See TRUSTEE—Breach of Trust. 1.

—Co-parcenary or—Devise to testator's right heirs—Co-heiresses.
See INHERITANCE. 1.

—Husband and wife—Purchase of house—Purchase money paid by husband—Resulting trust—Advancement—Rebuttal—Decree of nullity of marriage.
See HUSBAND AND WIFE—Purchase. 1.

—Merger—Equitable tenancy in common—Legal joint tenancy.
See MERGER.

—Or tenancy in common—Class—Will—Construction.
See WILL—Class. 10.

—Power to appoint new trustees—Appointment of corporation jointly with individual.
See TRUSTEE—Appointment. 6.

JOINT TENANCY—*continued.*

—Tenancy in common or joint tenancy—Construction of will.
See WILL—Substitution. 1.

JOINT TORTFEASORS—Costs—Collision—Pilot cutter lashed to tow.
See SHIPPING—Collision. 86.

JOINTURE—Bargain between husband and wife—Benefit to husband—Fraud on power.

The donee of a power to jointure may exercise it in favour of his wife in accordance with a bargain by which he himself is benefited, provided this is done, not by diverting from her any part of the jointure itself, but by applying it to its proper use in consideration of his getting something which he is at liberty to take for his own benefit.

A wife may hold a jointure, the whole of which is intended to be enjoyed by herself though she has obtained it by a post-nuptial bargain with her husband and given him or his creditors as a consideration some interest in her own property. The Court will not inquire into the quantum of the consideration.

A testator devised real estate to certain uses, and declared that it should be lawful for each tenant for life under the will, either in contemplation of marriage or after marriage, to charge the hereditaments with the payment of any annual sum not exceeding 300*l.* to any woman whom he should marry for her life. In 1868 the tenant for life married the plt.; and in 1882, whilst they were living apart, he, in consideration of 500*l.* paid to him by her, executed a deed whereby he charged the property with the payment to her, if she should survive him, of the yearly sum of 300*l.* for her life. There was evidence that the jointure was not at that time worth 500*l.* The tenant for life died in 1902:—

Held (reversing the decision of Kekewich J.), that the transaction was not a corrupt bargain nor a fraud on the power, but that the widow was entitled to receive the jointure.

Baldwin v. Roche (1842), 5 Ir. Eq. Rep. 110, approved and followed.

Whelan v. Palmer (1888), 39 Ch. D. 648, overruled. **SAUNDERS v. SHAFTO** [1904] W. N. 203, 207; C. A. [1905] 1 Ch. 126

—Execution of power of jointuring by testamentary instrument.
See STATUTE. 1.

—Incumbered Estates Court (Ireland) Act—Rights of jointress.
See IRISH LAW. 1.

—Jointure rent—charge—Arrears—"Incumbrance affecting the inheritance"—Discharge out of capital moneys—Irish Land Acts.
See SETTLED LAND—Jointures. 1.

—Power of jointuring—Restriction against alienation—Power of sale—Settled land.
See REVENUE—Estate Duty. 31.2

2. —Power not yet in existence—Defective execution—Intention—Execution by the Court.
T. B. Charlton by his will made in 1882

JOINTURE—*continued.*

devised real estate and declared that it should be lawful for every tenant for life thereof to charge it by deed or will with a jointure not exceeding 400*l.* a year in favour of his wife. In 1885 N. J. Charlton, the testator's son, executed a marriage settlement whereby he covenanted to charge all real and personal estate which might come to him from his father with the payment of a jointure of 400*l.* a year to his wife. At the date of the settlement the testator was still alive, and the power to charge had not come into existence. He died in 1886, and N. J. Charlton became tenant for life of his real estate and donee of the power. In June, 1892, a draft deed was settled and approved on behalf of N. J. Charlton, whereby he charged the real estate with 400*l.* a year for his wife; but he died a few days afterwards without having executed the deed. His widow claimed a jointure of 400*l.* a year:—

Held, that the covenant in the settlement was a defective execution of the power to which the Court would give effect; that the approval of the draft deed operated as a selection of the property to be charged; and that the widow was entitled to a jointure of 400*l.* a year charged on the real estate devised by the testator. **CHARLTON v. CHARLTON** - **Warrington J.** [1906] W. N. 179; [1906] 2 Ch. 523

— Power to appoint jointure "to any woman whom he may marry"—Second marriage after divorce at instance of first wife. *See SETTLEMENT.* 32.

— Prior to incumbrance—Rights of jointress. *See IRISH LAW.* 1.

— Settled land. *See under SETTLED LAND—Jointures.*

— "Settlement"—Life estate to settlor—Portions—Term—Remainder to settlor in fee—Merger. *See SETTLED LAND—Settlement.* 1.

JUDGE—Deputy judge—Appointment of two deputies to act respectively for different Courts—Validity. *See COUNTY COURT — Deputy Judge.* 1.

— Function of judge and witness respectively. *See TRADE MARK.* 1, 2.

JUDGE'S NOTES—Evidence—Appeal to House of Lords—Copies for printing. *See APPEAL.* 9.

— Omission to supply judge's notes. *See APPEAL.* 8.

— Shorthand notes—Supplying judge's notes on appeal. *See EVIDENCE.* 7.

— View by judge—Action of deceit—Inspection—Probability of deception—Practice—Evidence. *See TRADE MARK.* 1, 2.

JUDGMENT—*King's Bench Division—Revised fixed costs—Fixed costs in cases of judgment by default, &c., issued by direction of the Practice Masters.* Reprint from **W. N.** [1906] (June 2), p. 167. *See CURRENT INDEX, 1906, p. lxxviii.*

JUDGMENT—*continued.*

— Action on judgment—Part payment—Real property limitation. *See LIMITATIONS, STATUTE OF.* 18.

— Action to set aside—Alleged fraud—Revocation of probate. *See RES JUDICATA.* 1.

1. — *Amendment—Error arising from accidental slip or omission—Item omitted from bill of costs—R. S. C., Order XXVIII., r. 11.*

In an action in the High Court the plts. recovered judgment for an amount to be ascertained by a referee and costs. The referee made his award, and the plts. took it up and paid the amount of his fees. Judgment was drawn up and entered for the plts. for the amount found to be due by the referee, with costs to be taxed. The costs were taxed, and the taxing master's certificate was given, and the deft. paid to the plts. the amount of the judgment and the taxed costs. Subsequently the plts. discovered that the amount of the fees of the referee had been omitted from the bill of costs carried in for taxation. On an application that the deft. should be ordered to pay the amount of those fees, or such part thereof, as should be allowed on taxation:—

Held, that there had been an error in the judgment arising from an "accidental slip or omission," which could be corrected under Order XXVIII., r. 11, by including therein the amount allowed on taxation in respect of the fees paid to the referee. **CHESSUM & SONS v. GORDON** **C. A.** [1901] W. N. 36; [1901] 1 K. B. 694

— Appeal—Omission in petition for special leave—Costs—Final judgment—Yukon Territorial Act. *See CANADA—Practice.* 10.

— Appeal, Jurisdiction in—Final decree of High Court of the Republic—Law of the Transvaal. *See TRANSVAAL.* 4.

— Attachment of debt—Scotch judgment—Extension to England—Garnishee order nisi—Rights of trustee in bankruptcy. *See ATTACHMENT.* 4.

— Bankrupt, Action by, to set aside judgment on ground of fraud—Jurisdiction. *See BANKRUPTCY—Judgment.* 1.

— Bankruptcy—Judgment for debt "and costs to be taxed"—Bankruptcy notice for debt alone issued before taxation of costs. *See BANKRUPTCY—Notice.* 15.

— Bankruptcy notice—Joinder of judgments in action and counterclaim. *See BANKRUPTCY—Notice.* 9.

— Breach of trust—Judgment for recovery of money—Four-day order. *See ATTACHMENT.* 15.

— Charging order—Jurisdiction—Application to enforce charge by order for sale of shares—Practice. *See CHARGING ORDER.* 2.

JUDGMENT—*continued.*

- Charging order — “Stock or shares” of a company—Debentures—Practice.
See **CHARGING ORDER**. 1.
- Company — Arrangement with creditors — Judgment—Staying proceedings.
See **COMPANY—Staying Proceedings**. 1.
- Concurrent judgments—Practice.
See **SCOTTISH LAW**. 5.
- Costs—Motion for judgment in default of defence.
See **PRACTICE—Short Cause**. 2.
- Costs—Taxation—Co-defendants—Judgment against one defendant—Practice.
See **COSTS**. 67.
- Costs paid by unsuccessful party—Repayment on successful appeal—Intermediate interest—Practice.
See **COSTS**. 38.
- Costs, Security for — Judgment directing accounts and inquiries — Application for security after judgment — Practice.
See **COSTS**. 56.
- County Court — Costs — Scale — Claim for injunction — Judgment on alternate claim for sum not exceeding 10*l*.
See **COUNTY COURT—Costs**. 9, 10.
- Debenture-holder's action—Right of plaintiff to discontinue after judgment.
See **COMPANY—Debentures**. 30.
- Declaratory judgment — Costs — Lease — Licence to assign — Unreasonably withheld — Condition imposing increased rent.
See **LANDLORD AND TENANT**. 13, 18.
- Declaratory judgment — Trade union — Restraint of trade—Action by member against society—Illegality.
See **TRADE UNION**. 13, 14.

2. — *Default of appearance—Costs—Judgment signed for too large an amount—Amendment—Accidental slip—Practice—R. S. C., Order XIII., r. 3 ; Order XXVIII., r. 11.*

Where judgment has been signed in an action for a liquidated demand in default of appearance, and, through an error arising from an accidental slip, the amount included in the judgment for costs exceeds by a few shillings the amount properly allowable for costs, the judgment may be amended, under Order XXVIII., r. 11, by reducing it to the proper amount.

In an action by the plt., as indorsee, against the deft., as acceptor, of a bill of exchange for 2500*l*., judgment was signed in default of appearance. The amount included in the judgment so signed for costs was 5*l*. 6*s*., which exceeded by the sum of 12*s*. the amount properly allowable in the particular case according to the scale of costs in force with regard to judgments by default. The plt. having issued a writ of fieri facias upon the judgment, goods of the deft. were seized under the writ. The deft. applied

JUDGMENT—*continued.*

to set aside the judgment as having been irregularly signed. An affidavit made by the clerk to the plt.'s solicitors, who attended at the district registry when the judgment was signed, stated that he looked at the list of costs there exhibited, and inadvertently filled in the wrong amount.

Held by Sir Gorell Barnes, Pres., and Farwell L.J. (Fletcher Moulton L.J. dissenting), that the deft. was not entitled to have the judgment set aside, and that there was power to amend it under Order XXVIII., r. 11, which ought to be exercised.

Anlaby v. Prætorius, (1888) 20 Q. B. D. 764, and *Hughes v. Justin*, [1894] 1 Q. B. 667, distinguished. **ARMITAGE v. PARSONS**

C. A. [1908] W. N. 127 ;
[1908] 2 K. B. 410

- Discharge of judgment by consent—Compensation—Employers' liability.
See **HOUSE OF LORDS**. 2.
- Execution — Judgment against company — Examination of officer of company — Officer who has retired.
See **COMPANY—Examination**. 1.
- Final judgment—Bankruptcy notice—Enforcing award—Jurisdiction.
See **BANKRUPTCY—Notice**. 5.
- “Final” judgment—Res judicata—Estoppel—Appeal.
See **PRACTICE—Pleadings**. 1.
- Foreign judgment.
See under **FOREIGN JUDGMENT**.
- Foreign judgment — Partnership — Colonial firm—Partner resident in England—Agreement to submit to jurisdiction.
See **PARTNERSHIP**. 13.
- Form of judgment — Costs — Claim and counter-claim.
See **COSTS**. 16.
- Fraudulent conveyance—Reversionary interest — Judgment creditor — Charging order — Appointment of receiver — Equitable execution.
See **FRAUDULENT CONVEYANCE**. 2.
- Goods supplied on order of wife—Judgment against wife for part of entire price — Election not to sue husband for balance.
See **HUSBAND AND WIFE—Election**. 1.
- In rem—Foreign Court—Divorce by New York Court, Decree of — Validity of divorce in England.
See **INTERNATIONAL LAW**. 1.
- Interest—Satisfaction of judgment debt.
See **COSTS**. 38.
- Married woman — Separate property — Restraint on anticipation.
See under **HUSBAND AND WIFE—Restraint on Anticipation**.

JUDGMENT—*continued*.

- Merger — Mortgage — Rate of interest — Ancillary and independent covenants.
See COVENANT. 3.
- Motion for judgment — Minutes — Debenture-holder's action.
See COMPANY — Debentures. 28.
- Motion for judgment in default of defence — Specially indorsed writ.
See PRACTICE — Motions. 4.
- New Zealand Act — Prerogative not taken away except by express words — Special leave to appeal.
See NEW ZEALAND. 16.
- Notice of judgment — Service — Unregistered friendly society — Jurisdiction to wind up — Benefit society.
See FRIENDLY SOCIETY. 2.
- Patent — Infringement, Action for — Judgment for patentee — Damages — Subsequent revocation of patent — Estoppel by judgment.
See PATENT — Practice. 4.
- Power of Court of Bankruptcy to go behind judgment — Irregularity in form of judgment.
See BANKRUPTCY — Notice. 7, 8.
- Power to enter judgment — Jurisdiction — Application for new trial.
See COUNTY COURT — Practice. 8.

3. — *Practice — Judgment of Court of Appeal — Entry of judgment — Action for unliquidated damages — Judgment for defendant in Court of first instance — Reversal on appeal — Damages to be ascertained — Interest on amount recovered — Judgment taking effect from time when given — Antedating — R. S. C., Order LXI., r. 3.*

Where a plt. fails in a Court of first instance on a claim for unliquidated damages, but on appeal an order is made that judgment should be entered in his favour for an amount of damages to be ascertained, the judgment does not, as a matter of course, take effect from the date of the trial of the action, so as to entitle the plt. to interest from the date upon the amount recovered, but it will only take effect from the date at which it was given in the C. A., unless an order is made by that Court under Order XLI., r. 3, that its judgment shall be antedated. *BORTHWICK v. ELDERSLIE STEAMSHIP CO. (No. 2) - - C. A. [1905] W. N. 118; [1905] 2 K. B. 516*

— Receiver.

See under RECEIVER.

— Receiver — Vendor and purchaser.

See under VENDOR AND PURCHASER — Receiver.

— Scottish judgment — Extension to England — Service on garnishee — Subsequent bankruptcy of judgment debtor in Scotland.

See ATTACHMENT. 4.

JUDGMENT—*continued*.

- Set-off of — Costs — Judgments for costs for and against a party in different capacities — Practice.
See COSTS. 62.
- Sheriff.
See under SHERIFF.
- Signed against one of two defendants — Alternative liability — Election.
See HUSBAND AND WIFE — Liability. 1.
- Specific performance against purchaser — Forfeiture of deposit — Form of order.
See VENDOR AND PURCHASER — Practice. 1.
- Stay of execution under — Garnishee order nisi — Bankruptcy notice.
See BANKRUPTCY — Notice. 10.
- Stock Exchange, Rules of — Defaulter — Official assignee — Assignment of assets — Charging order.
See STOCK EXCHANGE. 4.
- Summary — Interest — Money-lender's action — Defence.
See MONEY-LENDERS. 1.

JUDGMENT CREDITOR — Company — Debenture-holder — Receiver — Garnishee order nisi — Priority.
See COMPANY — Receiver. 7.

— Equitable execution — Appointment of receiver of debtor's interest in residuary estate under a will.
See WILL — Forfeiture. 6.

— Equitable execution — Effect of order — Notice to executor — Priority.
See RECEIVER. 5.

— Execution — Arrears of rent — "Rent."
See LANDLORD AND TENANT. 33.

— Garnishee order absolute — Mistake — Setting aside.
See SETTING ASIDE. 1.

— Judgment against executor — Subsequent administration — Judgment — Insolvent estate.
See EXECUTOR — Retainer. 6.

— Payment by garnishee to — Garnishee order nisi — Bankruptcy of judgment debtor.
See BANKRUPTCY — Garnishee. 1.

— Receiver — Appointment — Railway not open for traffic — Jurisdiction.
See RAILWAY — Receiver.

— Solicitor — Lien for costs — Charging order — Priority.
See SOLICITOR — Lien. 4.

JUDGMENT DEBT — Assignment of — Receiver appointed in partnership action — Leave to receiver to issue execution.
See BANKRUPTCY — Receiver. 1.

— Assignment of part — Rights of assignee — Leave to issue execution.
See ASSIGNMENT. 7.

— Bankruptcy notice — Set-off — Mutual credits.
See BANKRUPTCY — Notice. 13.

JUDGMENT DEBT—*continued.*

- Charging order—Interest in stock.
See CHARGING ORDER. 3.
- Joint and several debt—Release to one co-debtor—Extinguishment of debt.
See ACCORD AND SATISFACTION. 1.
- Judgment summon—By married woman—Judgment debtor a creditor—Costs in bankruptcy—Set-off.
See BANKRUPTCY—Set-off. 3.
- Married woman—Wearing apparel—Wife's separate estate—Paraphernalia.
See HUSBAND AND WIFE—Wearing Apparel, &c. 1.
- Order for payment by instalments—Execution—Necessity for leave—Practice.
See EXECUTION. 2.
- Seizure by sheriff and subsequent withdrawal.
See BANKRUPTCY—Notice. 10.

JUDGMENT DEBTOR—Seizure and sale of goods not the property of—Execution—Liability of high bailiff to owner.
See COUNTY COURT—Execution. 4.

JUDGMENT SUMMONS—Application for—Insufficiency of affidavit—Waiver—Prohibition—Jurisdiction.
See COUNTY COURT—Practice. 2.

- Application for judgment summons—Jurisdiction—Existing committal order against co-defendant.
See COUNTY COURT—Jurisdiction. 1.
- Costs in divorce Court—Order to pay—Default.
See BANKRUPTCY—Receiving Order. 2.
- Judgment summons—Default in appearance—Fine—Jurisdiction.
See COUNTY COURT—Fines. 1.
- Motion for judgment—Practice.
See under PRACTICE—Motion for Judgment.
- Order for payment by instalments—Default—Order discharged on judgment creditor's application.
See BANKRUPTCY—Practice. 9.

JUDICATURE ACT OF SCOTLAND—Practice.
See SCOTTISH LAW.

JUDICATURE ACTS—*Judicature (Rule Committee) Act, 1909 (9 Edw. 7. c. 11), is an Act to amend the Judicature Acts, 1873 to 1894, with respect to the persons in whom the power of making Rules of Court under those Acts is vested.*

- Action in Chancery Division—Counter-claim for defamation—Trial by jury.
See PRACTICE—Trial. 1.
- Appeal—Application to enforce award in the same manner as a judgment.
See APPEAL. 21.
- Appeal—"Criminal cause or matter"—Distress—Bailiff—Costs and charges—Practice.
See APPEAL. 6.

JUDICATURE ACTS—*continued.*

- Appeal—Final or interlocutory order—Originating summons.
See APPEAL. 17.
- Appeal—"Matter of practice and procedure"—Practice.
See SOLICITOR—Costs. 24.
- Appeal from chambers—"Practice and procedure"—Order for statement of case pending arbitration—Practice.
See APPEAL. 2, 3.
- Assignment of debt—Chose in action—Maintenance.
See ASSIGNMENT. 2.
- Assignment of part of debt—Right of assignee to sue.
See ASSIGNMENT. 9.
- Bank of England—Transfer of stock—Indemnity of Bank—Form of order.
See BANK OF ENGLAND. 1.
- Book debts—Assignment by deed—One partner's signature a forgery—Validity of assignment—Bankruptcy.
See PARTNERSHIP. 3.
- Collision—Action in personam—Foreign plaintiffs—Counter-claim—Security for damages.
See SHIPPING—Collision. 52.
- Collision—Damage—Both ships to blame—Limitation of liability.
See SHIPPING—Collision. 18.
- Company—Winding-up—Private examination—Costs of persons examined.
See COMPANY—WINDING-UP—Costs. 4.
- Costs, Discretion as to—Leave to appeal—Official referee.
See COSTS. 8.
- Costs—Writ of possession—Jurisdiction to make order.
See COSTS. 81.
- Equitable execution—Appointment of receiver—Impediments to ordinary execution.
See RECEIVER. 6.
- Execution—Equitable interest in land—Appointment of receiver.
See COUNTY COURT—Execution. 3.
- Executor—Retainer—Loan by wife to husband—Wife appointed executrix of husband—Insolvent estate.
See EXECUTOR—Retainer. 7.
- Habeas corpus—Appeal—Criminal cause or matter—Fugitive offender—Application to Court of Appeal.
See HABEAS CORPUS. 1.
- Injurious affected—Right of assignee to sue in own name.
See LANDS CLAUSES ACTS. 5.
- Judgment debt—Assignment of part—Rights of assignee—Leave to issue execution.
See ASSIGNMENT. 7.

JUDICATURE ACTS—continued.

— Lands injuriously affected — Assignment of right to compensation.

See LANDS CLAUSES ACTS. 5.

— Lease—Mortgagor in possession—Breach of covenant to repair—Right of mortgagor to sue lessee—Landlord and tenant.

See MORTGAGE—Leases. 2.

— Merger—Lease—Mortgage by underlease—Subsequent purchase by lessee of freehold reversion.

See MERGER. 3.

— Mortgage—Assignment—Notice by executors of assignee—Acknowledgment.

See ASSIGNMENT. 8.

— “Mutual dealings”—Set-off—Insolvent Estate—Unsecured debts—Mortgages by testator.

See ADMINISTRATION. 16.

— Mutual debts—Assignment to defendant of debt owed by plaintiff to third person.

See SET-OFF. 1.

— Part of debt—Right of assignee to sue.

See ASSIGNMENT. 9.

— Payment out of Court—Wrong person—Liability of Consolidated Fund.

See PRACTICE—Payment, &c. 15.

— “Practice and procedure”—Regulation of railways—Appeal from order of judge at chambers—Practice.

See APPEAL. 2.

— Probate action—Service—Summons—Probate Contentious Rules.

See PROBATE—Practice. 10.

— Procedure—Appeal—Leave—Interlocutory or final order—Solicitor and client—Costs—Taxation—Practice.

See APPEAL. 17.

— Proof, Withdrawal of—Certificate—Application to restore proof.

See BANKRUPTCY—Proof. 7.

— Receiver—Appointment—Patent—Equitable execution.

See RECEIVER. 1.

— Receiver—Public-house—Licences in jeopardy—Landlord and tenant—Recovery of possession.

See RECEIVER. 11.

— Set-off—Mutual debts—Assignment to defendant of debt owed by plaintiff to third person.

See SET-OFF. 1.

Settled Land Act, 1882—Order as to fees and stamps. W. N. 1903 (Feb. 28), p. 71. See CURRENT INDEX, 1903, p. lxxiv.

— Stay of proceedings—Foreclosure action—Action in Chancery Division—Concurrent action in King's Bench Division.

See PRACTICE—Staying Proceedings.

— Trial—Action in Chancery Division—Counter-claim for defamation—Trial by jury.

See PRACTICE—Trial.

JUDICIAL COMMITTEE.

See under PRIVY COUNCIL.

JUDICIAL FACTOR.

See under FACTOR.

JUDICIAL SEPARATION.

See under DIVORCE—Judicial Separation.

JUDICIAL TRUSTEES.

See under TRUSTEE.

— Improper investment by trustees—Power to invest on real security in Ireland—Puisne mortgage.

See TRUSTEE—Investments. 7.

— Power of executor to compromise claim of co-executor.

See EXECUTOR—Compromise. 1.

JURA REGALIA—Treasure trove—“Franchises”—Title of Crown—Jus tertii.

See CROWN. 4.

JURISDICTION.

See also under SPECIFIC TITLES.

Summary Jurisdiction (Aliens) Rules, 1906, dated Jan. 3, 1906. Reprint from W. N. 1906 (Jan. 27), p. 53. See CURRENT INDEX, 1906, p. lxvii.

Summary Jurisdiction Act, 1879—Special case, Application for—Rule, dated March 20, 1906, made by the Lord Chancellor in substitution of Rule No. 18, of the Summary Jurisdiction Rules, 1886. [Draft Rules, W. N. 1906 (Feb. 3), p. 59.] Reprint from W. N. 1906 (April 7), p. 99. See CURRENT INDEX, 1906, p. xci.

— Account.

See under ACCOUNTS.

— Act of State—Annexation of native State—Confiscation—Jurisdiction of municipal Courts.

See ACT OF STATE. 1.

— Action of damage by collision—Foreign public vessel—Exemption from arrest.

See SHIPPING—Foreign Ship. 1.

1. — Action relating to land in Crown Colony—Defendant within jurisdiction—Trust—Equities.

This was a point of law set down under Order XXXIV., r. 2, for the determination of the question of jurisdiction.

Joyce J. said that the action was clearly maintainable, at any rate so far as related to the personality and the leaseholds, which vested in the executrix. There was clearly a trust, and there were equities to be worked out. He referred to Westlake on International Law, 3rd ed. § 173, where it is stated that the English Court may perhaps assume to determine the right to the property or possession of foreign immovables “on the ground of movable property being mixed up in the same proceedings.” He made the following order: Declare that the objection to the jurisdiction raised by the defence is not good in law. Order the action to proceed to trial notwithstanding that objection. This order to be without prejudice to any question relating to the immovable property, if any, the

JURISDICTION—continued.

legal interest in which devolved, at the testator's death, directly upon his heir-at-law. *In re CLINTON. CLINTON v. CLINTON*

Joyce J. [1903] W. N. 20

- Adulteration.
See under ADULTERATION.
- Appeal.
See under APPEAL.
- Arbitration.
See under ARBITRATION.
- Attachment.
See under ATTACHMENT.
- Audit of accounts—Auditor—Surcharge—Certiorari to quash—Jurisdiction of Court.
See LOCAL GOVERNMENT. 1.
- Bankers' Books Evidence Act—Order for inspection of books—Jurisdiction of magistrate.
See BANKER. 8.
- Bankruptcy—Practice.
See under BANKRUPTCY.
- Bastardy laws—Justices.
See BASTARDY. 4.
- Betting, House used for—Receipt of money out of jurisdiction.
See GAMING. 11.
- Board of Agriculture and Fisheries, Application by committee to.
See COMMON. 2.
- Board of Education.
See under SCHOOLS.
- Building society.
See under BUILDING SOCIETY.
- Canada. See under CANADA.
- Cause of action arising out of—Staying action—Abuse of process of Court.
See PRACTICE—Staying Proceedings. 2, 3, 4.
- Charging orders.
See under CHARGING ORDER.
- Charity.
See under CHARITY.
- China and Corea, Supreme Court of—Decree of forfeiture of a ship.
See CHINA AND COREA. 2.
- Church discipline.
See under ECCLESIASTICAL LAW.
- Commonable rights.
See under COMMON.
- Company—Practice.
See under COMPANY and COMPANY (WINDING-UP).
- Compromise.
See under COMPROMISE.
- Conspiracy—Jurisdiction to allow withdrawal of plea of guilty before sentence.
See CONSPIRACY. 4.
- Contempt of inferior Court—Jurisdiction of King's Bench Division to attach for.
See CONTEMPT OF COURT. 1.

JURISDICTION—continued.

- Costs.
See under COSTS.
- County courts.
See under COUNTY COURT.
- Criminal Law.
See under CRIMINAL LAW.
- Crown.
See under CROWN.
- Divorce.
See under DIVORCE.
- Divorce by New York Court, Decree of—Validity of divorce in England.
See INTERNATIONAL LAW. 1.
- Ecclesiastical Law.
See under ECCLESIASTICAL LAW.
- Equitable execution—Appointment of receiver—Defendants out of the jurisdiction.
See RECEIVER. 2A.
- Executor, Judgment against—Subsequent administration decree—Insolvent estate—Retainer—Judgment creditor.
See EXECUTOR—Retainer. 6.
- Factory Acts.
See under FACTORY ACTS.
- Foreign country in which the Crown has jurisdiction—Habeas corpus—Protectorate.
See HABEAS CORPUS. 2.
- Foreign judgment—Partnership—Colonial firm—Agreement to submit to jurisdiction—Foreign judgment.
See PARTNERSHIP. 13.
- Foreign jurisdiction.
See under FOREIGN JURISDICTION.

2. — Foreign property—Parties resident in England—Practice.

As a general rule an English Court will not adjudicate on questions relating to the title to or the right to the possession of immovable property out of the jurisdiction of that Court; and the exceptions to this rule depend on the existence between the parties to the suit in England of some personal obligation arising out of contract or implied contract, fiduciary relation, or fraud, or other conduct which in the view of an English Court of Equity would be unconscionable, and do not depend for their existence on the law of the locus of the immovable property.

In 1831 D. entered into a marriage contract with T. in France, both of them being domiciled French subjects. The plt., the only son of this marriage, alleged that according to French law T. thereby became entitled to one half of the after-acquired property of D. and to a life interest in the other half of the property.

In 1836 D. went to India, and in 1839 went through a form of marriage with X., on whom and on others he by a settlement made in 1865 (of which the defts. were trustees) conferred interests in immovable property in Madras. D. died in 1885, and T. died in 1890. In 1893 an official in Madras (who was not a party to the

JURISDICTION—*continued*.

English action mentioned below) took out letters of administration in India of the estate of T. which vested all her movable and immovable property in Madras in him. In 1907 the plt. took out letters of administration of the estate of T. in England. The plt. and the defts. being all in England, the plt. in an English action sought to impeach the settlement of 1865 as being contrary to the law of France and in contravention of his rights thereunder :—

Held, that the action ought not to be entertained.

In re Hawthorne, (1888) 23 Ch. D. 743, followed. **DESCHAMPS v. MILLER - Parker J. [1908] 1 Ch. 856**

- Friendly society.
See under FRIENDLY SOCIETY.
- Fugitive offender—Committal by magistrate for return to colony—Evidence.
See FUGITIVE OFFENDERS. 1.
- Habeas corpus.
See under HABEAS CORPUS.
- Highway.
See under HIGHWAY.
- Husband and wife.
See under HUSBAND AND WIFE.
- Income tax—Prohibition—Trade carried on partly in Great Britain.
See REVENUE—Income Tax. 31.
- Infants.
See under INFANT.
- Injunction.
See under INJUNCTION.
- Injunction—Jurisdiction of High Court of Justice.
See PRACTICE—Motion for Judgment. 3.
- International law—Annexation—Liabilities of conquered state—Jurisdiction of municipal Courts.
See PETITION OF RIGHT. 1.
- Issue whether particular person was partner—Jurisdiction to direct issue.
See PARTNERSHIP. 18.
- Jersey, Law of—Jurisdiction of Royal Court—Laches of plaintiff.
See JERSEY. 1.
- Justices.
See under JUSTICES.
- Land Law (Ireland) Act, 1896—Land judge—Appeal.
See IRISH LAW. 2.
- Land transfer.
See under LAND TRANSFER.
- Lands Clauses Acts.
See under LANDS CLAUSES ACTS.
- Licensing Acts.
See under LICENSING ACTS.
- London generally.
See under LONDON
- Lunacy.
See under LUNACY.

JURISDICTION—*continued*.

- Lunatic, Jurisdiction to dispense with examination of.
See NEW SOUTH WALES. 21.
- Mansion-house — Dilapidations — Salvage — Repairs—Expenditure out of capital.
See WILL—Mansion-house. 1.
- Master—Costs—Solicitor—Taxation — Agreement by third party to pay costs.
See SOLICITOR—Costs. 39.
- Mayor's Court—Alternative modes of proof, one showing jurisdiction, the other not.
See PROHIBITION. 1.
- Money-lenders.
See under MONEY-LENDERS.
- Music, Seizure of pirated copies of—Summons, Necessity for—Summary jurisdiction.
See COPYRIGHT—Music. 3, 4.
- Native title to possession of land—Jurisdiction as to cession to the Crown.
See NEW ZEALAND. 13.
- Notaries public.
See under NOTARIES.
- Nuisance — Abatement — Owner — Default—Jurisdiction of justices.
See NUISANCE. 1.
- Objection to jurisdiction first taken on appeal.
See TRAMWAYS. 3.
- Originating summonses — Construction — Question of fact.
See PRACTICE—Originating Summons. 1.
- Ouster of jurisdiction—Private Act—Statutory agreement—Arbitration clause—Compulsory reference.
See MANCHESTER. 1.
- Oyster-beds—Property in oysters—Action in rem—"Damage done by any ship"—Shipping.
See FISHERY. 4.
- Patent—Practice.
See under PATENT.
- Petition of right.
See under PETITION OF RIGHT.
- Police.
See under POLICE.
- Practice—Staying action—Cause of action arising out of jurisdiction—India.
See PRACTICE—Staying Proceedings. 4.
- Publication tending to prejudice fair trial—Jurisdiction of High Court to attach.
See CONTEMPT OF COURT. 7.
- Railway.
See under RAILWAY.
- Rates.
See under RATES.
- Receiver.
See under RECEIVER.
- Receiving order.
See under RECEIVING ORDER.

JURISDICTION—*continued*.

- Relief—Omission to give notice of non-admission of claims—Relief.
See NEW ZEALAND. 15.
- Review, Jurisdiction of High Court to—Error in law apparent on face of order.
See PRACTICE—Review. 1.
- Review of martial law—Convictions by Supreme Court.
See CAPE OF GOOD HOPE. 8.
- Revising Barrister, Jurisdiction of Supreme Court to direct, to hold fresh Revision Court.
See PARLIAMENT. 9.
- Schools.
See under SCHOOLS.
- Service of notice of motion to set aside award on foreign company out of jurisdiction.
See ARBITRATION—Practice. 3.
- Service out of the jurisdiction.
See under PRACTICE—Service.
- Settled estates.
See under SETTLED LAND.
- Settlement—Contract in Scotch form—English trustees—Mortgage—Husband's life interest.
See CONFLICT OF LAWS. 6.
- Shipping.
See under SHIPPING.
- Solicitor—Undertaking to pay money to person not client—Disciplinary jurisdiction of Court—Summary order for payment.
See SOLICITOR—Undertakings. 1.
- Statutory market—Disturbance—Injunction.
See MARKET. 5.
- Staying action—Cause of action arising out of jurisdiction.
See PRACTICE—Staying Proceedings. 2, 3, 4.
- Streets.
See under LONDON—Streets.
STREETS.
- Summary jurisdiction.
See under specific Titles of the subject-matter referring to Summary Jurisdiction.
- Trustees.
See under TRUSTEE.
- Trade union.
See under TRADE UNION.
- Ward of Court—Marriage in contempt. Committal of ward.
See WARD OF COURT. 1.
- Workmen's compensation.
See under MASTER AND SERVANT.

JURY.

County Common Juries Act, 1910 (10 Edw. 7 & 1 Geo. 5, c. 17), is an Act to amend the Juries Act, 1825 (6 Geo. 4, c. 50).

- Costs—Trial with jury—Separate issues—Form of judgment—"Event."
See COSTS. 61.

JURY—*continued*.

- County court—Trial—Enforcement of right relating to land.
See COUNTY COURT—Trial. 2.
- Direction to jury—Misdirection—Appeal—"No substantial miscarriage of justice."
See CRIMINAL LAW—Appeal. 3.
- Evidence of accomplice—Absence of corroboration—Omission of judge to caution jury—Effect of on conviction.
See CRIMINAL LAW—Appeal. 3.
- Legitimacy declaration—Petition—Right to trial by jury.
See LEGITIMACY DECLARATION. 1.
- Murder—Drunkenness—Manslaughter—Direction to jury.
See CRIMINAL LAW—Appeal. 4.
- Practice.
See under PRACTICE—Jury.
- Verdict of jury upheld—Order granting new trial set aside—Practice.
See CANADA—Practice. 4.

JUS RELICTE—Covenant to settle after-acquired property—Spes successionis—Scots law—Covenant of indemnity.
See SETTLEMENT. 19.

JUS TERTII—Crown, Title of—Treasure trove—"Franchises."
See CROWN. 4.

JUSTICES.

See also under specific Titles.

Justices of the Peace Act, 1906 (6 Edw. 7, c. 16), is an Act to amend the law relating to Justices of the Peace.

Circulars. 2nd Series. A Selection for the use of Clerks of the Peace, Clerks of Assize, and others, of Circulars and Memoranda issued in the years 1901 to 1910. 1910. (K.—Home Office). Price 4d.

- Abortion.
See under CRIMINAL LAW—Abortion.
- Absconding debtor—"His property."
See CRIMINAL LAW—Debtors. 1.

1. — Adjournment, Power of—Jurisdiction—Equal division of opinion—Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43), s. 16.

An information under the Licensing Acts was heard before two justices, who, after hearing the evidence, retired to consider their decision; on their return into Court they announced that they were divided in opinion, and adjourned the information to a future day, when it was reheard before five justices, including the two who had previously heard it. An objection taken to their power to rehear the information was overruled, and in the result they convicted the person charged:—

Held, that the announcement of the justices at the original hearing that they were divided in opinion did not amount to a dismissal of the information so as to deprive them of their power of adjournment under s. 16 of the Summary Jurisdiction Act, 1848; that the power of adjournment

JUSTICES—continued.

was exercised "during such hearing" within the meaning of that section, and that there was consequently jurisdiction to rehear the information. *BAGG v. COLQUHOUN* Div. Ct. [1904] 1 K. B. 554

— Adulteration—Sale of food and drugs.

See under ADULTERATION.

— Affiliation.

See under BASTARDY.

— Alien, Undesirable—Expulsion order—Liability of master of ship bringing alien to the United Kingdom.

See ALIEN. 1.

2. — *Appeal—Fine—Costs—Motor Car Act, 1903* (3 *Edw. 7, c. 36*), s. 11—*Summary Jurisdiction Act, 1879* (42 & 43 *Vict. c. 49*), ss. 5, 49.

By s. 11, sub-s. 1, of the Motor Car Act, 1903, "a person guilty of an offence under that Act for which no special penalty is provided is liable on summary conviction to a fine not exceeding 20*l.*; and by sub-s. 2, an appeal to quarter sessions is given to any person adjudged to pay a fine exceeding 20*s.*

A person convicted under s. 9 of the Act of driving a motor car at a speed exceeding twenty miles an hour was fined 20*s.*, and the conviction adjudged him to pay to the clerk of the peace the sum of 1*l.*, and also pay to the informant the sum of 1*s.* for costs. An appeal to quarter sessions was dismissed on the ground that there was no right of appeal under the Act:—

Held, that a "fine" under s. 11, sub-s. 2, of the Act did not include the costs which the debt. was ordered to pay, and that therefore no appeal lay to quarter sessions. *Ex parte NOVIS*

Div. Ct. [1905] W. N. 96; [1905] 2 K. B. 456

— Appeal—Summary Jurisdiction (Married Women)—Copy of notes.

See DIVORCE—Practice. 4, 5.

— Appeal—Summary Jurisdiction (Married Women)—Notes of proceedings in Court below—Duties of magistrates' and justices' clerks.

See DIVORCE—Practice. 4, 5.

— Appointment of deputies.

See under RECORDERS, &c.

— Bank—Deposit in—Objection of banker to produce and deliver up.

See SUBPOENA DUCES TECUM. 1.

— Banker—Order for inspection of books—jurisdiction of magistrate—Bankers' Books Evidence Act.

See BANKER. 8.

— Bastardy laws.

See under BASTARDY.

— Betting.

See under GAMING.

— Betting—Street betting—What amounts to.

See BETTING. 4.

— Betting circular—Infant—Circular sent to undergraduate—Presumption of knowledge of infancy.

See BETTING CIRCULAR. 1.

— Bicycle.

See under BICYCLE.

JUSTICES—continued.

— Bread otherwise than by weight.

See BREAD. 1, 2.

— Buildings—London.

See under LONDON—Buildings.

— Burial Acts—Expenses of carrying into execution—Poor-rate—General district rate.

See BURIAL. 7.

— By-law—Reasonableness.

See under LOCAL AUTHORITY.

LOCAL GOVERNMENT.

— By-law—Validity, Evidence of.

See CORPORATION. 5.

— Carcasses of dead horses—Receiving—Licence—Public yard.

See LONDON—Dead Horses. 1.

3. — *Chairman of justices—Mayor of borough—Municipal borough—Borough justices—County justices—Petty sessional division—Borough without separate commission of the peace—"Business of the borough"—Municipal Corporations Act, 1882* (45 & 46 *Vict. c. 50*), ss. 155, 158, 159.

Where a borough has no separate commission of the peace and no Court of quarter sessions, and its charter contains no non-intromittant clause prohibiting the county justices from acting within the borough, the county justices and borough justices have co-ordinate jurisdiction in all matters arising within and relating to the borough.

In such a case, when once a matter has been earmarked as county business or borough business by the issue of a proper summons to appear before the county or the borough tribunal, as the case may be, the county justices or the borough justices, as the case may be, have seisin of it to the exclusion of the other set of justices, although the latter have concurrent jurisdiction and may sit with them to hear the matter.

And in such a case, when once a matter arising within the limits of the borough has been earmarked as county business, the mayor of the borough, though a county justice as well as a borough justice, is not entitled under s. 155 of the Municipal Corporations Act, 1882, to act, *virtute officii*, as chairman of the county justices.

The principle of *Rea v. Sainsbury*, (1791) 4 T. R. 451; 2 R. R. 433, followed. *LAWSON v. REYNOLDS*

Farwell J. [1904] W. N. 68; [1904] 1 Ch. 718

— Clerk to justices—Power to appoint—Payment of salary.

See LOCAL GOVERNMENT. 18.

— Coal mines.

See under MINES.

— Compensation—Condition precedent—Tenant—Title.

See LANDS CLAUSES ACTS. 9.

— Conspiracy.

See under CONSPIRACY. 9.

— Constable—Obstructing police in execution of duty—Giving warning of "police trap."

See POLICE. 1.

JUSTICES—continued.

-- Conviction.

See under **CRIMINAL LAW—Convictions.**

-- Copyright—Music—"Pirated copy of musical work" — Perforated music roll — Mechanical instrument.
See **COPYRIGHT—Music.** 1.

4. — *Costs of appeal to quarter sessions—Payment by treasurer of county or borough—Alehouse Act, 1828 (9 Geo. 4, c. 61), s. 29—Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 32.*

By s. 29 of the Alehouse Act, 1828, upon a successful appeal under the Act to quarter sessions from a decision of justices, the justices in quarter sessions are empowered to order the treasurer of "the county or place in and for which such justice whose judgment shall have been so reversed shall have acted on the occasion when he shall have given such judgment" to pay the respondent justices' costs.

A county borough had a separate commission of the peace, but not a separate Court of quarter sessions; it was not directly subject to the county rate, but under a financial adjustment made under s. 32 of the Local Government Act, 1888, it paid a fixed contribution towards the expenses of the county incurred in part on behalf of the borough, including the expenses of quarter sessions:—

Held, that the county borough, not having a separate Court of quarter sessions, and being liable to contribute to quarter sessions expenses, was not a place separate from the county, and therefore not a "place" within the meaning of s. 29 of the Alehouse Act, 1828; that the licensing justices had acted for the county, that their costs were costs of quarter sessions, and that the order of quarter sessions had, therefore, been wrongly made upon the borough treasurer, and should have been made upon the treasurer of the county. **REX v. WARWICKSHIRE JUSTICES**
Div. Ct. [1902] 2 K. B. 101

-- Costs of unsuccessful prosecutions—Prosecutions before borough justices — No separate Court of quarter sessions — Justices' Clerks Act, 1877.
See **LOCAL GOVERNMENT.** 8.

-- Councillor — Disqualification — Paid office under the council.
See **LOCAL GOVERNMENT.** 23.

-- County court.
See under **COUNTY COURT.**

5. — "Court of summary jurisdiction"—*Special petty sessions—Review of jury lists—Power to state a case—Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), s. 33—Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 13, sub-s. 11.*

Justices sitting at special petty sessions, as provided by s. 10 of the Juries Act, 1825, for the purpose of reviewing the lists of persons liable to serve on juries, are not a Court of summary jurisdiction as defined by s. 13, sub-s. 11, of the Interpretation Act, 1889, and have, therefore, no power to state a special case under s. 33 of the

JUSTICES—continued.

Summary Jurisdiction Act, 1879. HAGMAIER v. WILLEDEN OVERSEERS
Div. Ct. [1904] 2 K. B. 316

-- Criminal law.

See under **CRIMINAL LAW.**

-- "Crimping."

See under **SHIPPING—Crimping.**

-- Crown.

See under **CROWN.**

-- Cruelty to animals.

See under **CRUELTY TO ANIMALS.**

-- Dentist—Unregistered person—Description.

See **DENTIST.** 5.

6. — *Dismissal of information—Case stated on application of informant—"Either party to the proceeding"—Summary Jurisdiction Act, 1857 (20 & 21 Vict. c. 43), s. 2—"Any person aggrieved"—Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), s. 33—Coal Mines Regulation Act, 1887 (50 & 51 Vict. c. 58), ss. 49, 50—Agent of mine—Liability for contravention of general rule by manager.*

By the Summary Jurisdiction Act, 1857, s. 2, after the hearing and determination by justices of any information or complaint "either party to the proceeding" may apply to the justices to state a case; and by the Summary Jurisdiction Act, 1879, s. 33, "any person aggrieved" who desires to question a conviction, order, determination, or other proceeding of a Court of summary jurisdiction may apply to the Court to state a special case, and by sub-s. 2 the Act of 1857 shall, so far as it is applicable, apply to a case stated under this section.

A special case, expressed to have been stated under the later Act only, was stated on the application of an informant, the information having been dismissed. An objection was taken that the appeal could not be heard, on the ground that the informant was not a person aggrieved within s. 33:—

Held, that, having regard to sub-s. 2 of s. 33, the provisions of the two Acts as to stating cases must be read together, and that, the informant being a party to the proceeding, the appeal could be heard.

Quære, whether a prosecutor after an acquittal is a person aggrieved so as to be entitled to apply to the High Court under s. 33 for an order requiring a case to be stated.

The Coal Mines Regulation Act, 1887, after providing by s. 49 general rules to be observed in mines, enacts by s. 50 that, in the event of any contravention of or non-compliance with the rules in the case of any mine to which the Act applies by any person whomsoever, the owner, agent, and manager shall each be guilty of an offence against the Act, unless he proves that he had taken all reasonable means, by publishing, and to the best of his power enforcing, the rules as regulations for the working of the mine, to prevent such contravention or non-compliance.

An information was preferred under s. 49 against the agent of a coal mine, in which one of the general rules relating to the ventilation of the mine had not been complied with. The

JUSTICES—continued.

deft. had appointed a duly qualified manager and under-manager, and the non-compliance with the rules, which affected only one heading of the mine and was of a temporary character, was due to their negligence. There was no evidence of personal negligence by the deft., and the deft. was not called as a witness. The justices found that the deft. had taken the proper steps to enforce the rules by appointing a duly qualified manager and under-manager, whose duty it was to carry out the rules, and that the violation of the rules was in no way caused by the deft. omitting to enforce the rules, and they dismissed the information :—

Held, that there was evidence from which the justices might properly come to that conclusion.
STOKES v. MITCHESON

Div. Ct. [1902] 1 K. B. 857

7. — Disqualifying interest—Rating appeal—Justice member of borough council—Possibility of bias.

Rule nisi obtained at the instance of the South Metropolitan Gas Co. calling on the justices of the county of London to shew cause why a writ of certiorari should not issue to remove into the High Court of Justice a certain order made by them or some of them dismissing the several appeals of the applicants against the assessments and valuation lists for the several parishes of Woolwich, Plumstead, Charlton and Kidbrooke, St. Paul, Deptford, St. Nicholas, Deptford, Greenwich, Lewisham, Eltham, Bermondsey, St. Olave, St. Thomas and St. John, Horselydown, in respect of certain hereditaments occupied by the applicants in the several parishes on the ground that one of the justices was disqualified through interest and (or) possibility of bias.

One of the justices forming the court was the chairman of the Holborn Assessment Committee, which, however, was not a party to the appeals, and the question was whether upon that ground he had an interest or there was a possibility of bias on his part which disqualified him from forming a member of the Court of Quarter Sessions for the County of London which heard the appeals, and therefore made the order bad.

Held, that there was no interest or possibility of bias by reason of the justice being chairman of the Holborn Assessment Committee. It was admitted that the justice had no pecuniary interest except as a ratepayer, and the rule was not asked for on that ground. It was said that he could be reasonably suspected of being biased, on the ground that he was a member of the Holborn Borough Council, because it was his duty to see that the rates in other boroughs were put as high as possible, in order to diminish the rates in the Holborn borough as far as possible. It was said that that duty resulted in an interest or possibility of bias, because he had an interest in his borough being treated fairly. That interest was too remote. If one went into such minutiae, it was difficult to say who could not be suspected of being biased. Rule discharged. **REX v. LONDON JUSTICES. Ex parte SOUTH METROPOLITAN GAS CO. — Div. Ct. [1907] W. N. 200**

-- Distress.

See under **DISTRESS.**

JUSTICES—continued.

— Dogs.

See under **DOGS.**

— Drain.

See under **SEWERS.**

— Ecclesiastical law.

See under **ECCLESIASTICAL LAW.**

— Electric light.

See under **ELECTRIC LIGHT.**

— Employer and workman.

See under **MASTER AND SERVANT.**

8. — Evidence—Previous conviction—Register of convictions in Court of summary jurisdiction—Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), s. 22—Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43), s. 14—Prevention of Crimes Act, 1871 (34 & 35 Vict. c. 112), s. 18—Jurisdiction—Conviction for drunkenness—Notice to police—Consent of defendant—Inebriates Act, 1898 (61 & 62 Vict. c. 60), s. 2, sub-s. 1—Licensing Act, 1902 (2 Edw. 7, c. 28), s. 6, sub-s. 1.

The register of the minutes or memorandum of convictions of a Court of summary jurisdiction which has to be kept under s. 22 of the Summary Jurisdiction Act, 1879, by the clerk of the Court is admissible in evidence to prove a previous conviction of the defendant for a similar offence in the same Court.

The consent of the deft. to be tried summarily under s. 2 of the Inebriates Act, 1898, is necessary before a magistrate can make an order under s. 6, sub-s. 1, of the Licensing Act, 1902.
COMMR. OF POLICE v. DONOVAN

Div. Ct. [1903] 1 K. B. 895

— Extradition.

See under **EXTRADITION.**

— Factory Acts.

See under **FACTORY and under MASTER AND SERVANT—Factory Acts.**

— False pretences.

See under **CRIMINAL LAW — False Pretences.**

9. — Felony—Refusal to commit—Case stated—Non-service of notice of appeal and case on respondent—Jurisdiction to state case—Summary Jurisdiction Acts, 1857 (20 & 21 Vict. c. 43), s. 2, and 1879 (42 & 43 Vict. c. 49), s. 33.

The Court has no jurisdiction to hear an appeal against a decision of justices by way of case stated unless the appellant has given the respondent notice in writing of the appeal together with a copy of the case as required by s. 2 of the Summary Jurisdiction Act, 1857, and this is so although the appellant has been unable to serve the respondent, having failed to find him notwithstanding every effort to do so.

Syred v. Carruthers, (1858) E. B. & E. 469, distinguished.

Semble, justices have no power to state a case under s. 33 of the Summary Jurisdiction Act, 1879, where they have dismissed an information for felony and declined to commit the person charged for trial. **FOSS v. BEST — Div. Ct. [1906] W. N. 114; [1906] 2 K. B. 105**

— Fishery.

See under **FISHERY.**

JUSTICES—*continued.*

— Fugitive offender—Committal by magistrate for return to Colony—Jurisdiction.
See FUGITIVE OFFENDERS. 1.

— Game.

See under GAME.

— Gaming.

See under GAMING.

— Habeas corpus.

See under HABEAS CORPUS.

— Hackney carriage—Concealment of number-plate.

See HACKNEY CARRIAGE. 1

— Highway.

See under HIGHWAY.

LONDON—Streets.

— Housing of working classes.

See under HOUSING OF WORKING CLASSES.

— Husband and wife.

See under HUSBAND AND WIFE.

— Insurance (Life).

See under INSURANCE (LIFE).

10. — *Jurisdiction—Industrial assurance company—Disputes—Collecting Societies and Industrial Assurance Companies Act, 1896* (59 & 60 Vict. c. 26), ss. 1, 7—*County court jurisdiction.*

By s. 1 (b) of the Collecting Societies and Industrial Assurance Companies Act, 1896, that Act applies to industrial assurance cos. granting policies of life assurance for a less sum than 20*l.*, and receiving premiums by means of collectors at a greater distance than ten miles from the registered office or principal place of business of the co. at less periodical intervals than two months. By s. 7 disputes between an industrial insurance co. and a member or person insured or a person claiming through him may be settled by the county court or by a court of summary jurisdiction :—

Held, that the jurisdiction of a county court or court of summary jurisdiction was limited to disputes arising with regard to policies originally granted for a less sum than 20*l.*

Quære, whether an industrial assurance co. issuing policies for 20*l.* and upwards, as well as policies for sums less than 20*l.*, comes within the provisions of s. 7, so as to give any jurisdiction over disputes to a county court or court of summary jurisdiction. *COWLING v. TOPPING*

Div. Ct. [1906] W. N. 17 ; [1906] 1 K. B. 466

11. — *Jurisdiction—Ouster—Bona fide claim of right—Foreshore—Removal of shingle—Owner—Harbours Act, 1814* (54 Geo. 3, c. 159), ss. 14, 28.

Sect. 14 of the Harbours Act, 1814, as amended by s. 15 of the Harbours Transfer Act, 1862, provides that no person shall take any shingle from the shore of any harbour, from which the Board of Trade shall by order prohibit the taking of shingle, upon pain of forfeiting for every such offence the sum of 10*l.* ; and s. 28 provides that nothing in the Act shall take away any right of property possessed by any person in the shores of a harbour.

The Board of Trade, by order, prohibited

JUSTICES—*continued.*

the taking of shingle from a part of the shore of a harbour, of which shore the respondent was the owner. The respondent subsequently removed shingle from the shore, and proceedings were taken against him in a Court of summary jurisdiction under s. 14 for the recovery of the penalty. The respondent contended before the justices that he had acted under a bona fide claim of right as owner of the shore, and the justices, without considering the question whether the fact of ownership afforded any defence to proceedings under s. 14, dismissed the information on the ground that, a bona fide claim of right having been raised, their jurisdiction was ousted :—

Held, that the decision of the justices was right. *BURTON v. HUDSON* Div. Ct.

[1909] 2 K. B. 564

12. — *Jurisdiction—Recognizances to be of good behaviour—Public meetings—Use of insulting language—Apprehended breaches of the peace.*

The appellant, a Protestant lecturer, had held meetings in public places in the town of Liverpool, causing large crowds to assemble and obstruct the thoroughfares. In addressing those meetings, he used gestures and language which were highly insulting to the religion of the Roman Catholic inhabitants, of whom there is a large body in Liverpool. The natural consequence of his words and conduct on those occasions was to cause, and his words and conduct had in fact caused, breaches of the peace to be committed by his opponents and supporters, and he threatened and intended to hold similar meetings in the town, and to act and speak in a similar way, in the future. At one of the meetings he told his supporters that he had been informed that the Catholics were going to bring sticks ; and on some of his supporters saying that they would bring sticks too, he said that he looked to them for protection. A local Act in force in Liverpool prohibits, under a penalty, the use of threatening, abusive, and insulting words and behaviour in the streets whereby a breach of the peace may be occasioned :—

Held, that, on proof of those facts before the Liverpool stipendiary magistrate, he had jurisdiction to bind over the appellant in recognizances to be of good behaviour.

Semle, justices have jurisdiction to bind over to be of good behaviour a person who, in addressing meetings in public places, although he does not directly incite to the commission of breaches of the peace, uses language the natural consequence of which is that breaches of the peace will be committed by others, and who intends to hold similar meetings, and use similar language in the future. *WISE v. DUNNING*

Div. Ct. [1902] 1 K. B. 167

13. — *Jurisdiction—Summary conviction on charge of assault—Question as to title to an interest in land—Commoner—User in excess of right of common—Offences against the Person Act, 1861* (24 & 25 Vict. c. 100), s. 46.

In the proviso to s. 46 of the Offences against the Person Act, 1861, which enacts that nothing therein contained shall authorise any justice to

JUSTICES—continued.

hear and determine any case of assault in which "any question shall arise as to the title to any lands, tenements, or hereditaments, or any interest therein or accruing therefrom," the words "title to" govern, not only the words "lands, &c.," but also the words "any interest therein or accruing therefrom."

An assault was committed by one commoner upon another commoner in the course of a dispute as to whether the latter was or was not at the time of the assault in the act of using the common land in a manner in excess of the right of common. The latter summoned the former for assault, and he was convicted :—

Held, that there was no question raised as to the title to any lands or as to the title to any interest in land, and that the jurisdiction of the justices to hear and determine the case of assault was not ousted. **REX v. FRENCH**

Div. Ct. [1902] 1 K. B. 637

14. — Jurisdiction—Threatened breach of the peace—No formal charge—Power to bind over—Form of order—No averment as to going in bodily fear.

On the hearing by justices of a summons against a deft. for threatening to assault the complainant, the deft. alleged that the complainant had used threatening language towards him, but he made no formal charge against the complainant. The justices, after hearing the evidence of the complainant and the deft., found as a fact that there was a real danger of a breach of the peace on the part of both parties, and they ordered both of them to be bound over to be of good behaviour. The order made against the complainant, as drawn up, contained no averment that the deft. went in bodily fear of the complainant :—

Held, that the justices had, in the circumstances, power to order the complainant to be bound over, and that the absence from the order of an averment that the deft. went in bodily fear of the complainant did not render it bad on its face. **REX v. WILKINS**

Div. Ct. [1907] 2 K. B. 380

— Jurisdiction of quarter sessions over costs before special sessions.
See **RATES. 5.**

— Land drainage—Neglect to clean and scour channel—Injury to other land—Water mill.
See **LAND DRAINAGE. 1.**

— Larceny—Criminal law.
See under **CRIMINAL LAW.**

— Licences—Revenue.
See under **REVENUE—Licences.**

— Licensing Acts.
See under **LICENSING ACTS.**

— Live larks recently taken—Wild birds.
See **BIRDS. 1, 2.**

— Local government.
See under **LOCAL GOVERNMENT.**

— Locomotives.
See under **LOCOMOTIVES.**

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— London—Generally.
See under **LONDON.**

— Lottery.
See under **GAMING.**

— Lunacy.
See under **LUNACY.**

— Master and servant.
See under **MASTER AND SERVANT.**

— Merchandise marks—"Trade description"—Unintelligible writing explained by oral statement.
See **TRADE-MARK. 7.**

— Milk—Adulteration.
See under **ADULTERATION.**

— Minerals and mines.
See under **MINES.**

— Money-lenders.
See under **MONEY-LENDERS.**

— Motor cars.
See under **MOTOR CAR.**

— Music, Seizure of pirated copies of—Summons, Necessity for.
See **COPYRIGHT—Music. 9.**

— Navy—Enlistment—Penalty for making false statement.
See **ARMY AND NAVY. 1.**

— Nuisances.
See under **NUISANCE.**

15. — Offence punishable upon summary conviction — Information — Principal offender — Conviction for aiding and abetting—Evidence—Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43), s. 5—Motor Car Act, 1903 (3 Edw. 7, c. 36), s. 1.

A person who has aided and abetted the commission of an offence punishable on summary conviction may, under s. 5 of the Summary Jurisdiction Act, 1848, be convicted upon an information which charges him with having committed the offence as principal offender.

Benford v. Sims, [1898] 2 Q. B. 641, followed.

The appellant appealed to quarter sessions against a conviction for unlawfully driving his motor car at a speed dangerous to the public. At the hearing of the appeal there was a conflict of evidence as to whether the car was being driven by the appellant or by a lady seated by his side in the car. The quarter sessions, without deciding whether the appellant was himself driving the car, dismissed the appeal, finding as facts that if the lady was driving she was doing so with the consent and approval of the appellant, who must have known that the speed was dangerous, and who, being in control of the car, could, and ought to, have prevented it :—

Held, affirming the decision of quarter sessions, that there was evidence on which the appellant could be convicted of aiding and abetting the commission of the offence. **DU CROS v. LAMBOURNE** **Div. Ct. [1907] 1 K. B. 40**

— Offences.
See under **LOCAL GOVERNMENT.**

— Pawnbroker.
See under **PAWNBROKER.**

JUSTICES—continued.

16. — *Penalty—Informer—Discretion to deprive informer of portion of penalty—Metropolitan Police Courts Act, 1839 (2 & 3 Vict. c. 71), s. 34—Betting Act, 1853 (16 & 17 Vict. c. 119), s. 9.*

Under s. 34 of the Metropolitan Police Courts Act, 1839, a metropolitan police magistrate has a discretion to deprive an informer of any share in a penalty inflicted under the Betting Act, 1853, although s. 9 of the latter Act expressly directs that one-half of the penalty is to be paid to the informer. *HAWKE v. MACKENZIE* (No. 3)

Div. Ct. [1902] 2 K. B. 234

— *Pharmacy Acts—Sale of poisons.*

See under PHARMACY ACTS.

— *Pistol—Sale—Conditions—For use by purchaser in his house—Reasonable proof.*

See PISTOL. 2.

— *Police.*

See under POLICE.

— *Poor law.*

See under POOR LAW.

— *Poor rate.*

See under RATES.

— *Practice—Appeal—“Criminal cause or matter”—Distress—Bailiff—Costs and charges—Practice.*

See APPEAL. 6.

17. — *Practice—Form of case stated—Finding facts—Evidence set out—Costs—Summary Jurisdiction Act, 1857 (20 & 21 Vict. c. 43), s. 2.*

Case stated by justices. The facts are not material for the purpose of this report. The Court (Lord Alverstone C.J., Darling J., and Bucknill J.) dismissed the appeal.

Lord Alverstone said that the case brought out in strong relief the necessity of the Court insisting that cases stated by justices should set forth the facts found by them. In the present case the Court was asked to review the finding of the justices on the evidence given before the justices which was set out in the case. If in future cases came up in which the evidence was stated instead of the facts being found, they would be sent back, and the costs would not be allowed. The Summary Jurisdiction Act, 1857, s. 2, provided that the case should set forth the facts. On the merits the Court was of opinion that there was evidence to support the justices' finding, and dismissed the appeal. *STAR TEA CO. v. NEALE* - Div. Ct. [1909] W. N. 200

18. — *Practice—Hearing of information—Advocacy by police officer—Absence of informant—Offer of justices to adjourn—Refusal of offer—Waiver of irregularity—Objection to conviction—Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43), s. 13.*

An information was preferred by the respondent against the appellant under s. 1, sub-s. 1, of the Motor Car Act, 1903, for driving a motor car at a speed which was dangerous to the public having regard to all the circumstances of the case. The appellant appeared before the justices with his solicitor at the hearing of the information, but the respondent was not present either personally or by counsel or solicitor.

JUSTICES—continued.

A police officer, who was one of the witnesses for the prosecution, examined the other witnesses for the prosecution, and during the course of the case the appellant's solicitor requested the justices' clerk to make a note of the police officer's name. The justices thereupon announced that the case was adjourned. The appellant's solicitor, however, said that he preferred that the case should proceed. Accordingly the hearing proceeded and the appellant was convicted:—

Held, that the offer to adjourn having been declined by the appellant's solicitor, neither the absence of the respondent nor the fact that the police officer, although a witness, conducted the examination of the other witnesses for the prosecution invalidated the conviction. *MAY v. BEBLEY* - Div. Ct. [1910] 2 K. B. 722

19. — *Practice—Institution of prosecution—Consent in writing—Bread Act, 1822 (3 Geo. 4, c. cvi.), s. 16—Sunday Observation Prosecution Act, 1871 (34 & 35 Vict. c. 87), s. 1.*

The provision of s. 1 of the Sunday Observation Prosecution Act, 1871, that no prosecution or other proceeding shall be instituted for any offence committed under 29 Car. 2, c. 7 (The Sunday Observance Act, 1677), except by or with the consent in writing of the chief officer of police of the district or with the consent in writing of two justices of the peace or a stipendiary magistrate, has no application to prosecutions under s. 16 of the Bread Act, 1822, for selling or exposing for sale bread on the Lord's Day. *REX v. MEAD*

Div. Ct. [1902] 2 K. B. 212

20. — *Practice—Institution of prosecution—Consent in writing of chief officer of police—Absence of chief constable—Consent by police superintendent—Sunday Observance Act, 1677 (29 Chas. 2, c. 7)—Sunday Observation Prosecution Act, 1871 (34 & 35 Vict. c. 87), ss. 1 and 2, and Schedule.*

By ss. 1 and 2 and the schedule to the Sunday Observance Prosecution Act, 1871, no prosecution shall be instituted against any person for an offence committed by him under the Sunday Observance Act, 1677, except with the consent in writing of the chief officer of police of the police district in which the offence is committed, or of two justices or a stipendiary magistrate having jurisdiction in the place where the offence is committed; and the “chief officer of police” is defined as meaning in a county “the chief constable . . . or other officer having the chief command of the police in the police district.”

In the county and city of Kingston-upon-Hull a superintendent of police was in fact in chief command of the police in the police district during the temporary absence of the chief constable. He consented to the institution of a prosecution against a person for an offence alleged to have been committed by him under the Sunday Observance Act, 1677. At Kingston-upon-Hull there is no office of deputy chief constable:—

Held, that the superintendent of police had no power to give the consent, inasmuch as the Sunday Observance Prosecution Act, 1871, refers

JUSTICES—*continued.*

to the "chief officer of police" as a person designated by name, and the superintendent of police did not necessarily come within the definition of that expression contained in the Act.
REX v. HALKETT Div. Ct. [1909] **W. N. 205** ; [1910] **1 K. B. 50**

— Prohibition without costs, Rule absolute against justices for—Appeal does not lie as to costs—South Australia.
See **AUSTRALIA**. 11.

— Public authorities' protection.
See under **PUBLIC AUTHORITIES' PROTECTION**.

— Publication tending to prejudice fair trial—Jurisdiction of High Court to attach.
See **CONTEMPT OF COURT**. 1.

— Railway company.
See under **RAILWAY**.

— Rates.
See under **LONDON—Rates**.
RATES.

— Recognizances.
See under **CRIMINAL LAW—Recognizances**.

— Res judicata—Affiliation proceedings—Judgment of quarter sessions—Action for seduction.
See **ESTOPPEL**. 3.

21.—*Rule against justices—Refusal to do act relating to duties of office—Practice—Application by counsel*—11 & 12 Vict. c. 44, s. 5.

A motion for a rule against justices under 11 & 12 Vict. c. 44, s. 5, made by counsel.
Ex parte **WALLACE** C. A. [1902] **2 K. B. 488**

— Sale of food and drugs.
See under **ADULTERATION**.

Sanitary authority—Sewage flowing into river Thames—Local government.
See **THAMES, RIVER**. 2.

— Sanitation—House let in lodgings or occupied by members of more than one family.
See **ARTISANS' DWELLINGS**. 1.

— Schools.
See under **SCHOOLS**.

— Schools—Blind or deaf child—Liability of guardians of union.
See **SCHOOLS**. 6.

— Seamen.
See under **SHIPPING—Seamen**.

— Sewers.
See under **SEWERS**.

— Shipping.
See under **SHIPPING**.

— Shops.
See under **SHOP**.

— Shops — By-law—Ultra vires — Power of magistrates to close shops at 10 p.m.
See **SCOTTISH LAW**. 23.

— Slander—Words uttered after withdrawal of case.
See **DEFAMATION—Slander**. 4.

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— Slaughter-house.
See under **SLAUGHTER-HOUSE**.

— Stamp—Medicinal preparation—Exemption.
See **REVENUE—Stamps**. 17.

— Statutory rules and orders—Validity—Condition precedent.
See **STATUTORY RULES AND ORDERS**. 1.

— Streets.
See under **LONDON—Streets**.
STREETS.

— Summary jurisdiction.
See under **JURISDICTION**.

— Summary jurisdiction.
See under specific Titles.

22.—*Summary jurisdiction—Summons—Appearance of defendant by counsel—Warrant to compel personal attendance of defendant—Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43).*

Where in answer to a summons issued by a Court of summary jurisdiction the deft. has appeared by counsel there is no obligation upon him to appear personally, and the justices have no jurisdiction to compel his personal appearance by warrant. **REX v. THOMPSON** — Div. Ct. [1909] **W. N. 150** ; [1909] **2 K. B. 614**

— Thames navigation—Navigation of barges—Hauling barges out of dock—"Navigated."
See **THAMES (RIVER)**. 3.

— Trade union.
See under **TRADE UNION**.

— Tramways.
See under **TRAMWAYS**.

— Truck Act.
See under **MASTER AND SERVANT—Truck Acts**.

— Vaccination.
See under **VACCINATION**.

— Vagrancy.
See under **POOR LAW**.

— Veterinary Surgeons Act—Qualified person—"Canine specialist."
See **VETERINARY SURGEON**. 1.

— Wages.
See under **MASTER AND SERVANT—Wages**.
SHIPPING—Wages.

— Water.
See under **WATER**.

— Water-closets.
See under **WATER-CLOSETS**.

— Water rates.
See under **WATER**.

— Weights and measures.
See under **WEIGHTS AND MEASURES**.

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— Whist—Absence of element of wagering —
Licensing Act.
See GAMING. 21.

— Wild birds—"Recently taken" — Larks —
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See BIRDS. 1, 2.

— Workshops.
See under FACTORY ACTS.
MASTER AND SERVANT —
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JUSTICES' CLERKS ACT — Claim by clerk to
justices to fees in respect of witnesses
called in opposition to grant.
See LICENSING ACTS. 26.

JUSTIFICATION — Discovery — Libel — Particu-
lars of justification — Allegations of

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misconduct — Inspection of plaintiffs'
books—Practice.
See DISCOVERY. 5.

— Plea of—Action for wrongful dismissal—Duty
of the trial judge—New trial ordered.
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— Procuring breach of contract — Cause of
action—Interference with legal right—
Malice.
See CONTRACT. 26.

— Stipendiary magistrate—Petition for inquiry
into a licensing poll.
See NEW ZEALAND. 14.

— Trespass—Act done in preservation of pro-
perty—Extinguishing fire.
See TRESPASS. 2.

K.

KING'S PROCTOR—Costs.*See under* DIVORCE—**Costs**.— Hearing—Suspicion as to truth of petitioner's
evidence — Adjournment — Right of**KING'S PROCTOR**—*continued*.King's Proctor to intervene or to shew
cause before decree nisi.*See* DIVORCE—**Practice**. 21.

L.

LABEL—On wrapper—Butter blended with milk—Notice in shop.
See **ADULTERATION**. 7.

— Trade mark—Colourable imitation.
See **TRADE MARK**. 5.

LABOUR.
See under **MASTER AND SERVANT**.

LABOUR BUREAUX (LONDON) ACT (1902).
See under **LONDON—Labour Bureaux**.

LABOUR EXCHANGES ACT, 1909 (9 *Edw.* 7, c. 7), is an Act to provide for the establishment of Labour Exchanges and for other purposes incidental thereto.

LACHES—Action by Attorney-General—Mandatory injunction—Delay.
See **CANALS**. 1.

— Advowson in gross—"Land"—Limitations, Statute of.
See **MORTGAGE—Advowson**. 1.

— Attorney-General—Delay—London Building Act.
See **LONDON—Buildings**. 9.

— Jersey, Law of—Jurisdiction of Royal Court—Laches of plaintiff.
See **JERSEY**. 2.

— Street—Infringement of building line—Penalty—Conviction—Subsequent action by Attorney-General for injunction.
See **STREETS**. 3.

LACHINE CANAL—Priority of passage into—Duty of vessel lying by—Canadian Canal Regulations, 1895.
See **CANADA—Canals**. 1.

LADDER—"Scaffolding"—Workmen's compensation.
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— Ship—Workmen's compensation.
See **MASTER AND SERVANT—Compensation**. 158.

LADING—Bill of.
See under **BILL OF LADING**.
SHIPPING—Charterparty.

LAMBETH WATERWORKS COMPANY—"Money invested in"—Bequests—Transfer of undertaking to Water Board—Compensation.
See **WILL—"Money invested in"**. 1.

LAMP-POST—Obstruction on highway—Interference with trade—Adjoining owner.
See **HIGHWAY**. 24.

LANCASTER CHANCERY COURT—Regulations as to investments to be made from the surplus suitors' fund deposit interest accounts directed by the Chancellor of the Duchy and County Palatine of Lancaster, with the advice and consent of the Vice-Chancellor of the said County Palatine, to be observed from and after Dec. 17, 1909. Reprint from **W. N. 1910 (Jan. 29)**, p. 59. See *ante*, p. cix.

LANCASTER, DUCHY OF—Probate—Death of holder of title—Administration bond—Sureties dispensed with.
See **PROBATE—Administration**. 1.

LAND—Advowson in gross—"Land"—Limitations, Statute of—Laches.
See **MORTGAGE—Advowson**. 1.

— Canada, Land in.
See under **CANADA—Crown Lands**; **Land**.

— Claim to take lands for railway purposes—Compensation.
See **CAPE OF GOOD HOPE**. 7.

— Common lands.
See under **COMMON**.

— Company—Licence to hold lands.
See under **COMPANY—Licence to hold Lands**.

— Contract of sale—Specific performance refused—Uncertainty as to consideration.
See **TRANSVAAL**. 1.

— Crown grant, Construction of—Confirmation of doubtful title—Laws of New South Wales.
See **NEW SOUTH WALES**. 8.

— Crown land in New Brunswick—Grant by Crown during adverse possession valid—Rights of grantee.
See **CANADA—Land**. 2.

— Crown lands—Inquiry as to falsity of statements of applicant for conditional purchase.
See **NEW SOUTH WALES**. 10.

— Improvement of land.
See under **IMPROVEMENT OF LAND**.

— Injury to other "land"—Water mill.
See **LAND DRAINAGE**. 1.

LAND—continued.

- "Interest in land"—Mortgage—Priority.
See **TRUSTEE—Breach of Trust**. 1.
- "Land"—Direction to accumulate—Purchase of real estate—"For the purchase of land only."
See **ACCUMULATIONS**. 3, 4.
- Land in British Columbia—Military reserve.
See **CANADA—Land**. 1.
- Lands taken for public purposes—Compensation.
See **ZANZIBAR**. 1.
- Mortmain and charitable use—Vesting in official trustee.
See **CHARITY**. 36.
- Native title to possession of land—Jurisdiction as to cession to the Crown.
See **NEW ZEALAND**. 13.
- New South Wales Acquisition Act.
See **NEW SOUTH WALES**. 15.
- New South Wales Crown Lands Act, 1861.
See **NEW SOUTH WALES**. 9.
- Poor rate — Assessment — Railway — Signal-box.
See **RATES**. 33.
- Sale of land for arrears of taxes—Rights of purchaser who has obtained certificate of sale.
See **CANADA—Land**. 2.
- Sale of lands under Assessment Act, 1897—Notice in writing—Waiver — Law of Ontario.
See **CANADA—Land**. 3.
- Trial—Right to have action tried with jury—Amount claimed not exceeding 5*l*.—Enforcement of right relating to land.
See **COUNTY COURT—Trial**. 2.

LAND APPEAL COURT—Jurisdiction of—New South Wales Crown Lands Acts.
See **NEW SOUTH WALES**. 11.

LAND DRAINAGE—Neglect to clean and scour channel—Injury to other "land"—Water mill—*Land Drainage Act*, 1847 (10 & 11 Vict. c. 38), ss. 14, 15.

By the *Land Drainage Act*, 1847, where by reason of the neglect of an occupier of land to cleanse and scour the channel of a stream lying in or bounding his land injury is caused to any other land, the occupier of that land, after due notice, may take steps to cleanse and scour the channel, and recover the expense from the occupier whose neglect had caused the injury.

The respondent was the owner of a water mill, and the appellant was the occupier of adjacent land through or along which the water passed after it had gone over the mill wheel. A quantity of silt formed in the stream where it passed the appellant's land, and in consequence of the appellant declining to cleanse and scour the channel at that point the water was penned back so as partially to submerge the mill wheel. Proceedings having been taken by the respondent under the *Land Drainage Act*, 1847:—

Held (affirming the decision of a Div.

LAND DRAINAGE—continued.

Ct., [1908] 1 K. B. 485), that the provisions of the Act were confined to injury done to the land itself, and did not apply where the injury complained of was injury to a mill. *FINCH v. BANNISTER* - C. A. [1908] W. N. 75; [1908] 2 K. B. 441

LAND JUDGE—Jurisdiction—Appeal.

See **IRISH LAW**. 2.

LAND REGISTRY.

See also under **LAND TRANSFER**.

Pending the erection of new offices work of Middlesex Deeds Department carried on at Bishop's Court, Chancery Lane. Reprint from W. N. 1902 (June 14), p. 181. See **CURRENT INDEX**, 1902, p. lxxix.

Middlesex Deeds Department—Removal to Land Registry, Lincoln's Inn Fields. Reprint from W. N. 1907 (May 11), p. 151. See **CURRENT INDEX**, 1907, p. lxxvii.

1. — *Restriction on register—Charity—Company with charitable objects incorporated under Companies Acts—Endowment*—Exemption—Jurisdiction of Charity Commissioners—Charitable Trusts Act, 1853 (16 & 17 Vict. c. 137), ss. 62–66—*Land transfer*.

The Church Army were incorporated in 1892, under the Companies Acts, 1862 to 1890, as an association limited by guarantee, and were licensed under s. 23 of the Act of 1867 to be registered without the use of the word "limited." The objects of the co., as stated in their memorandum of association, were to carry on the work previously undertaken by an unincorporated society of the same name, and generally to promote the welfare of the poor and the relief of distress by combined social and spiritual agencies, and the co. were empowered to acquire real or personal property convenient for their purposes, to erect, maintain, and alter any buildings upon any land held by them, to borrow or raise money by mortgage or charge, and generally to sell, improve, manage, lease, mortgage, exchange, dispose of, turn to account, or otherwise deal with all or any part of their property. The co. from time to time appealed to the public for subscriptions, and had recently acquired certain leasehold properties for the purposes of new headquarters by means of the subscriptions and donations given for that object. From the time when it was determined to acquire the new headquarters it had been the practice of the Church Army to insert "completion of new headquarters" in its list of objects for which funds were required.

On applying to the Land Registry to register the lease of this recently-purchased property, the registrar took the objection that the Church Army was a charity and could not dispose of its property without the consent of the Charity Commissioners, and suggested that a restriction to that effect ought to be entered on the register.

The Church Army then applied under the Land Transfer Acts, 1875 and 1897, that the registrar might be directed to register the applicants as proprietors of the leasehold land in question, without any restriction on the register,

LAND REGISTRY—continued.

to the effect that no disposition of the land was to be registered without the consent of the Charity Commissioners.

Kekewich J. held ([1905] W. N. 127) that the applicants were entitled to registration without any restriction.

The C. A. held that the only question raised turned on the provisions of the Charitable Trusts Act, 1853, the point being whether the Church Army was exempted from the jurisdiction of the Charity Commissioners by virtue of the provisions of s. 62 of the Charitable Trusts Act, 1853, as interpreted by the various decisions on that subject. No question of law arose, as the law applicable to the present case was clearly stated and laid down by the C. A. in *In re Clergy Orphan Corporation*, [1894] 3 Ch. 145, and the appeal failed on the facts. By its memorandum of association the society reserved to itself full power to deal with its property as it pleased and as occasion should arise; the whole scheme of the society's work involved a subdivision of places and purposes, but everything was worked with a common object and for a common purpose, and funds subscribed for headquarters or for labour homes could be applied for the general purposes of the society. Every person who sent his subscription or donation for headquarters must be taken to be aware of the way in which the society did its business, and with the knowledge that the donation or subscription was part of the general property of the society and so liable to be dealt with in the ordinary way of their business. *In re Church Army*. ATT.-GEN. v. CHURCH ARMY

C. A. [1906] W. N. 73

Note.

Followed by Joyce J., *In re Wesleyan Methodist Chapel in South Street, Wandsworth*, [1909] 1 Ch. 454. See next Case.

— Restriction on register—Charity—"Endowment"—Exemption.
See CHARITY. 28.

2. — Restriction on register—Religious society
—Purchase of land—Wesleyan Methodist chapel
—Model deed—Power of sale—Proceeds applicable as income—Charitable Trusts Act, 1853 (16 & 17 Vict. c. 137), s. 62—Endowment
—Consent of Charity Commissioners—Exemption
—Registration under Land Transfer Acts, 1875 (38 & 39 Vict. c. 87) and 1897 (60 & 61 Vict. c. 65), Part II.

By a conveyance on sale dated Feb. 13, 1906, a piece of land in the administrative county of London and contiguous to other land already held by them was conveyed to the trustees of a Wesleyan Methodist chapel upon the trusts of the model deed for Wesleyan Methodist chapels. Clause 36 of the model deed provided that upon a sale of land subject to the trusts thereof the trustees should apply the net proceeds "either for or towards promoting the preaching of the Gospel amongst the said people called Methodists, in the circuit in which the said chapel or place of religious worship shall, for the time being, be situated, or" otherwise as therein mentioned:—

Held, that inasmuch as the case came within

LAND REGISTRY—continued.

the exemption provided by s. 62 of the Charitable Trusts Act, 1853, the trustees were entitled to be registered as proprietors of the piece of land so conveyed to them, without the entry on the register of any restrictions on their right to deal with the land.

In re Clergy Orphan Corporation, [1894] 3 Ch. 145, and *In re Church Army*, [1906] W. N. 73; 94 L. T. 559, followed. *In re Wesleyan Methodist Chapel in South Street, Wandsworth* - Joyce J. [1909] 1 Ch. 454

LAND REVENUE RECORDS AND ENROLMENTS.

Treasury Orders, dated Dec. 21, 1903, prescribing the fees payable. Reprint from W. N. 1904 (Jan. 2), p. 2. See CURRENT INDEX, 1904, p. cxvii.

Treasury Order, dated Mar. 18, 1903, determining under the *Public Offices Fees Act*, 1879, as to the taking of fees by stamps. St. R. & O. 1903, No. 1169.

— Record Office.

See under RECORD OFFICE.

Land Revenue Records and Enrolments, Office of—Notice under the *Public Offices Fees Act*, 1879, dated Mar. 14, 1903. Reprint from W. N. 1903 (Mar. 28), p. 88. See CURRENT INDEX, 1903, p. lxxii.

LAND TAX.

Land Tax Commission Act, 1906 (6 Edw. 7, c. 52), appoints additional Commissioners for executing the Acts granting a land tax and other rates and taxes, and to remove the qualification by estate required in the case of all such Commissioners, whether appointed under this or any other previous Act.

— Annual sum payable by way of interest—Charge on premises.

See LIMITATIONS, STATUTE OF. 9.

— Covenant by lessor to pay land tax—Construction—Value of land improved by building.

See LANDLORD AND TENANT. 45.

— Glebe lands let on leases—Exemption—User and occupation.

See NEW SOUTH WALES. 18.

1. — Hospitals—Exemption—Land in occupation of tenants—Land Tax Act, 1797 (38 Geo. 3, c. 5), s. 25.

Any houses or lands, which on or before Mar. 25, 1693, belonged to any of the hospitals mentioned by name in s. 25 of the Land Tax Act, 1797, are exempt from land tax, whether they form part of or are appurtenant to the sites of the hospitals or not, and whether they are in the occupation of the hospitals themselves or are let on lease to tenants. GOVERNORS OF ST. THOMAS'S, ST. BARTHOLOMEW'S, AND BRIDEWELL HOSPITALS v. HUDGELL - Wills J. [1901] 1 K. B. 364

2. — Public underground lavatory—Vesting of subsoil of road in sanitary authority—Liability to tax land—Land Tax Act, 1797 (38 Geo. 3,

LAND TAX—continued.

c. 5), s. 4—*Public Health (London) Act, 1891* (54 & 55 Vict. c. 76), ss. 44, 45.

A sanitary authority who, under the powers conferred by the *Public Health (London) Act, 1891*, provide and maintain a public lavatory under a road, have, by reason of the vesting in them, by s. 44 of the Act, of the subsoil of the road, such right of ownership in the lavatory as to render them liable to be charged with land tax in respect of it.

Judgment of Wright J., [1904] 1 K. B. 19, reversed by Collins M.R. and Stirling L.J., Mathew L.J. dissenting. *WESTMINSTER CORPORATION v. JOHNSON. THE SAME v. FULLER C. A. [1904] W. N. 156; [1904] 2 K. B. 737*

— Lease—Covenant by lessor to pay land tax—Construction—Value of land improved by building.
See LANDLORD AND TENANT. 45.

— Redemption—Interest, Recovery of—Lapse of time.
See LIMITATIONS STATUTE OF. 9.

3. — *Redemption of land tax on lands—Liability to assessment of coal mines under redeemed lands—Construction of redemption contract—Land Tax Act, 1797* (38 Geo. 3, c. 5), s. 4.

In redemption contracts the word "lands" must be construed as having its natural meaning, including everything down to the centre of the earth, unless at the time of redemption there is in existence a separate and distinct hereditament liable to be separately assessed; and, if there is such a separate hereditament, all the circumstances of the case existing at the time of redemption must be looked at in order to see whether the intention of the registered certificate was that the surface only should be redeemed or the land and everything beneath it.

As coal and the profit to be derived from mining are nothing but the natural production and profit of the land, unopened seams of coal under land belonging to the same owner, in respect of which the land tax is redeemed, are included in the redemption. *NEWTON, CHAMBERS & CO., LD. v. HALL Bray J. [1907] 2 K. B. 446*

LAND TRANSFER.

Land Transfer Act, 1897 (60 & 61 Vict. c. 65)
— *Operation of Order in Council, dated July 18, 1898, further postponed as regards the City of London.* Reprints from *W. N. 1901 (Mar. 23), p. 95*, and *W. N. 1901 (Dec. 21), p. 354*. *See CURRENT INDEX, 1901, p. xcvi.*

Land Transfer Act, 1897, (60 & 61 Vict. c. 65)
— *Operation of Order in Council, dated July 18, 1898, further postponed as regards the City of London.* Reprint from *W. N. 1901 (Mar. 1), p. 71*. *See CURRENT INDEX, 1902, p. lxxx.*

NOTE.—A copy of the *Land Transfer Rules, 1903*, was given gratis to every subscriber to the entire series of the *Law Reports* for 1904, in respect of a subscription paid before the end of that year.

Land Transfer Acts, 1875 and 1897—Land Transfer Rules, Feb., 1903, dated Feb. 10, 1903—

LAND TRANSFER—continued.

Land held for charitable uses. [Draft Rules, W. N. 1903 (Jan. 3), p. 2.] W. N. 1903 (Feb. 14), p. 61.

Order as to Fees, dated Feb. 10, 1903, made in pursuance of s. 112 of the Land Transfer Act, 1875 (38 & 39 Vict. c. 87), with the consent of the Treasury. [Draft Rules, W. N. 1903 (Jan. 3), p. 1.] W. N. 1903 (Feb. 14), p. 61.

Draft Rules consolidating the existing Rules with amendments, also an Order as to Fees. W. N. 1903 (July 18), p. 215.

Land Transfer Rules, 1907. W. N. 1907 (Aug. 24), p. 239.

Land Transfer Acts, 1875 and 1897—Operation of Land Transfer Rules, Gazetted on Aug. 4, 1908, extended from Oct. 1 to Nov. 1, 1908. W. N. 1908 (Oct. 3), p. 265.

Land Transfer Rules, 1908—The Land Transfer Rules, 1908, dated Nov. 9, 1908, made in pursuance of s. 111 of the Land Transfer Act, 1875, and of s. 22 of the Land Transfer Act, 1897. Reprint from W. N. 1908 (Nov. 21), p. 325. See CURRENT INDEX, 1908, p. cvii.

Land Transfer Fee Order, 1908—The Land Transfer Fee Order, 1908, dated Nov. 9, 1908, made in pursuance of s. 112 of the Land Transfer Act, 1875, and of s. 22 of the Land Transfer Act, 1897—Land Registry. Reprint from W. N. 1908 (Nov. 21), p. 328. See CURRENT INDEX, 1908, p. cxi.

Land Transfer Rules, 1908, and Land Transfer Fee Order, 1908—Notice as to preparing applications intended to be made on or after Jan. 1, 1909. Reprint from W. N. 1909 (Jan. 2), p. 4. See CURRENT INDEX, 1909, p. cxvii.

— Administration or probate—Universal devisee and legatee—No executor named—Title of administrator to real estate.
See PROBATE—Practice. 11.

— Appropriation of specific assets—Leaseholds—Settled shares—Sale and conversion.
See EXECUTOR—Administration. 2.

— Consent of Charity Commissioners to sale of charity lands—Entry on register with restriction—Royal Charter.
See CHARITY. 28.

— Copyholds—Equitable interest—Devolution—Person to convey.
See COPYHOLDS. 2.

— Costs—Administration action—Real and personal estate—Apportionment—Practice.
See COSTS. 5.

— Costs to come "out of the estate"—Probate action—Insufficient personality.
See ADMINISTRATION. 24.

1. — *Debts—Land—Administration—Transfer to devisee—Charge for payment of moneys for which the personal representatives are liable—Liability of personal representatives for unknown debts—Land Transfer Act, 1897 (60 & 61 Vict.*

LAND TRANSFER—continued.

c. 65), s. 2, sub-ss. 2, 3; s. 3, sub-s. 1—*Law of Property Amendment Act, 1859 (22 & 23 Vict. c. 35), s. 29.*

The charge provided by sub-s. 1 of s. 3 of the Land Transfer Act, 1897, does not extend to debts for which prior to the commencement of that Act the personal representatives of the debtor would not be liable as regards the personal estate; and, therefore, where the personal representatives have given the usual statutory notices to creditors, the charge does not apply to debts of which they have no notice at the date of the conveyance to the devisees. *In re CARY AND LOTT'S CONTRACT* - - - **Kekewich J.**

[1901] W. N. 129; [1901] 2 Ch. 463

— Estate duty—Testamentary expenses—Insufficient general personal estate to pay duty—Marshalling.

See WILL—Testamentary Expenses. 17.

— Estate duty payable in respect of real estate. *See WILL—Testamentary Expenses.* 16.

— Executors—Special executors—General executors, Sale of.

See EXECUTOR—Sale. 1.

2. — *Jurisdiction of Court—Land Transfer Act, 1897 (60 & 61 Vict. c. 65), s. 2, sub-s. 2—Application under Part I. of Act.*

Application by executors under Part I., s. 2, sub-s. 2, of the Land Transfer Act, 1897, in reference to the sale of real estate by two out of three executors.

Counsel applied for the direction of the Court as to whether the jurisdiction to entertain the application was vested under the Land Transfer Rules, 1898, r. 234, solely in the senior judge of the Chancery Division, and referred to the Annual Practice, p. 30, note, Land Transfer Acts.

Kekewich J.: The definition under the rules refers only to Part II. of the Act. That is the only part of the Act under which I have exclusive jurisdiction. *In re WALBECK*

Kekewich J. [1904] W. N. 204

3. — *Legal personal representative—Vesting of real estate—Vendor and purchaser—Land Transfer Act, 1897 (60 & 61 Vict. c. 65), ss. 1, 2—Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 70—R. S. C., 1883, Order XVI., r. 8.*

The contract in this matter was entered into by the vendors, who were equitable mortgagees, in pursuance of an order made in a foreclosure action, in which the vendors were plaintiffs, and the debts were the administratrix of the mortgagor, who had died intestate after the Land Transfer Act, 1897, came into operation, and a trustee in whom the legal estate was vested. The purchaser took the objection that the heir-at-law of the mortgagor ought to have been a party, and the vendors could not make a good title without adding him as a party, or making him join in the conveyance; and took out this summons under the Vendor and Purchaser Act for a declaration to that effect.

Farwell J. said that, in the first place, the case was exactly within the words of s. 70 of the Conveyancing Act, and the purchaser was protected by that section; but, besides this, the

LAND TRANSFER—continued.

Land Transfer Act, 1897, s. 1, applied, and made the intestate's real estate vest in the administratrix as if it were a chattel real, and s. 2, sub-s. 2, gave her all the rights and liabilities she would have had with regard to a chattel real, that included the right to redeem and the liability to be sued in a foreclosure action. It was sufficiently clear to his mind that the administratrix represented the real estate within the meaning of R. S. C., Order XVI., r. 8, and it was sufficient under that rule to make her a defendant, though the Court had power to add others, and would do so if there were any doubt whether the legal personal representative was the right person to redeem. In this case the order had been made without doing this, and he had no doubt the point had been considered. Summons dismissed. *In re HARROWBY AND PAINE'S CONTRACT*

Farwell J. [1902] W. N. 137

— Marshalling assets—Effect of Land Transfer Act.

See ADMINISTRATION. 22.

4. — *Mortgage or charge—Registration—"Registered proprietor"—Fraud—Forged transaction—Rectification of register—Compensation—Indemnity—Insurance fund—Registrar, Duties of—Request to register—Implied warranty of title—Practice—Indemnity claim—Hearing before registrar—Award—Appeal from registrar—"Applicant"—Parties—Locus standi—Land Transfer Act, 1875 (38 & 39 Vict. c. 87)—Land Transfer Act, 1897 (60 & 61 Vict. c. 65), s. 7.*

C., the registered proprietor under the Land Transfer Acts, 1875 and 1897, of a charge on registered land in Middlesex, purported to transfer the charge by deed for value to O., who thereupon left the transfer at the Land Registry for registration, and he was accordingly registered as proprietor of the charge. It was afterwards discovered that the transfer was a forgery by C.'s solicitor. There had been no negligence on the part of C., and O. was perfectly honest in the transaction. On the discovery of the fraud C. obtained from **Kekewich J.** an order to rectify the register by removing O.'s name and restoring that of C. O. then applied to the registrar for indemnity under s. 7 of the Land Transfer Act, 1897, and the registrar made an award in his favour, which was confirmed by **Kekewich J.**

On appeal by the Crown from **Kekewich J.**'s decision ([1905] W. N. 81):—

Held, that O. was not entitled to indemnity, on the grounds (1.) that upon the principle laid down in *Sheffield Corporation v. Barclay* ([1905] A. C. 392, 399, 403)—a decision of the H. L. subsequent in date to that of **Kekewich J.**—O., in bringing the transfer to the registrar and requesting him to register it, had affirmed and warranted it to be a genuine document, and that by that act on his part (although innocent) he had directly brought about the registration of the charge in his name, and so "caused or contributed to the loss," within s. 7, sub-s. 3, of the Act of 1897; and (2.) that O. had not in fact any transfer, under s. 40 of the Act of 1875, from

LAND TRANSFER—continued.

"the registered proprietor of the charge," and consequently had not "suffered loss by the rectification," within s. 7, sub-s. 4, of the Act of 1897.

But, *per* Stirling L.J., *quære* whether O. did not, by the removal of his name from the register, lose the benefits which are conferred on the registered proprietor for the time being of a charge by ss. 23—27 of the Act of 1875, and thus become entitled to some compensation.

Per Vaughan Williams L.J.: The act of the registrar in putting the name of a transferee of a charge on the register is a mere ministerial act in the performance of a ministerial duty. It confers on the transferee no estate or right which he had not before registration. The utmost it confers on him is the capacity to transfer to a purchaser for valuable consideration unaware of any irregularity in the transaction.

Per Cozens-Hardy L.J.: In the case of the registration of the transfer of a charge under s. 40 of the Act of 1875, no person, other than the person first registered, can claim any beneficial right or interest from the mere fact of being on the register unless he can also prove that he has a transfer from some person previously on the register, and in that sense has relied upon the register.

The position, duties, and liabilities of the registrar under the Land Transfer Acts considered.

Per Kekewich J.: By s. 7, sub-s. 5, of the Land Transfer Act, 1897, the registrar under that and the principal Act is placed in a judicial position as regards his power to award indemnity to a person suffering loss by a rectification of the register, and is not in the position of a mere arbitrator; and therefore an appeal from his award will lie to the High Court either by the Crown or by the applicant for indemnity.

The registrar being thus in a judicial position, the proper practice appears to be that, upon the hearing of any application to him for indemnity, both the applicant and the Crown should be made parties to the proceedings and be represented before him. *ATT.-GEN. v. ODELL*

C. A. [1906] W. N. 84; [1906] 2 Ch. 47

5. — Personal representative—Devisee—Assent — Conveyance—Land Transfer Act, 1897 (60 & 61 Vict. c. 65), s. 3, sub-ss. 1, 2.

The personal representative of a deceased owner of land is, under s. 3, sub-ss. 1 and 2, of the Land Transfer Act, 1897, entitled to assent to a devise of land contained in his will in preference to executing a conveyance to the devisee.

Where, after the expiration of a year from the death of an owner of land, the devisee of land under his will requested a conveyance to be executed to him, and the personal representative failed to comply with the request, but before service of a summons which had been issued asking for a conveyance sent the devisee a written assent to the devise, upon the summons afterwards being brought to a hearing it was dismissed with costs.

A devisee cannot require an assent to describe the land devised in more precise terms than

LAND TRANSFER—continued.

those comprised in the will. *In re PIX. PLOMLEY v. STILEMAN*

Byrne J. [1901] W. N. 165

6. — Probate—Administration—Creditor—Escheated land—Land Transfer Act, 1897 (60 & 61 Vict. c. 65), s. 1.

Motion for administration with will annexed. Counsel for the Crown: The present position is that it has already been decided in the case of *In the Goods of Hartley*, [1899] P. 40, that the Land Transfer Act, 1897, does not bind the Crown, and the law officers have so advised. Therefore, there can be no objection to the grant going to the creditor in the ordinary form—that is, to all the estate which by law devolves to and vests in the legal personal representative of the deceased. That is the ordinary form, and such a grant would be a purely innocuous grant, leaving the question of law still open. The Solicitor to the Treasury has no power to give any consent to a grant as to the realty: he can only consent to grants in respect of personal estate. The whole subject will, it is believed, shortly be considered again by the law officers of the Crown.

The Court made a grant to the applicant of letters of administration with the will annexed of all the estate of the deceased which by law devolves to and vests in the legal personal representatives of the deceased. The Court could hardly be expected to decide at a moment's notice the extremely difficult point which had been raised, and which would still remain open. *IN THE GOODS OF BALL*

Gorell Barnes J.

[1902] W. N. 226; (Erratum) 228

7. — Registered lease—Unregistered mortgage by sub-demise—Sale by mortgagee under power—Requirement by purchaser that mortgagee should procure registration of himself as proprietor—"Registered land"—"Charge"—Land Transfer Act, 1897 (60 & 61 Vict. c. 65), s. 16, sub-s. 2.

In this case the purchaser delivered requisitions, of which the following were material:—

16. "An authority to inspect the Register of Title No. 62,788 at the Land Registry must be given."

22. "In order to be in a position to execute a proper transfer of the property on the register to the purchaser the vendor must at his own expense get himself put on the register at the Land Registry as the registered proprietor of the property, in accordance with rule 151 of the Land Rules, 1903, 1907 and 1908 (Consolidated)."

In answer to requisition 16 the vendor stated: "The vendor is not selling a registered title and can give no authority," and in answer to requisition 22 he stated: "The vendor will not. He has not contracted to sell a title on the register."

The purchaser thereupon took out the present summons for a declaration that requisitions 16 and 22 had not been sufficiently answered.

Warrington J. said that it was contended that in a case like the present s. 16, sub-s. 2, of the Land Transfer Act, 1897, applied, and in order to see whether that was so or not it was

LAND TRANSFER—continued.

necessary to ascertain what was meant by "charge" in the sub-section. It was obviously a charge giving a power of sale over the land. In the present case, did the charge give a power of sale over the land within the meaning of the sub-section? That led to the question, what was the "registered land" under the sub-section? and for that one must look at the register and see what it was in respect of which the proprietor was registered. The proprietor was registered as proprietor of the leasehold premises in question for the whole term of 99 years, but the present vendor was not the holder of that term, but of a part only. He could not think that the sub-section rendered it incumbent on a person where there was a paramount title to procure the registration of himself as proprietor. What the sub-section meant was that where land was on the register and a person was registered as the proprietor of that land, then, if the vendor was the vendor of the property in respect of which the proprietor was registered, it might be his duty to have himself put upon the register. But here the vendor was not selling the property in respect of which Abrahams was registered as proprietor under the lease of 1885. He was only selling a portion of the term. The answer to the purchaser's claim was that the vendor was not the proprietor of registered land, or of a charge giving a power of sale over the land, within the meaning of the sub-section. There must, therefore, be a declaration that requisitions 16 and 22 had been sufficiently answered. *In re VOSS AND SAUNDER'S CONTRACT* - **Warrington J. [1910] W. N. 217**

8. — *Registered title—Mortgage by deed—Contemporaneous instrument of charge—Order foreclosing mortgage, but not charge—Rectification of register—Form of order—Land Transfer Act, 1875 (38 & 39 Vict. c. 87), s. 95.*

Form of order under s. 95 of the Land Transfer Act, 1875, rectifying the register in a case where a foreclosure order had foreclosed a mortgage by deed of registered land without foreclosing the contemporaneous instrument of charge. **WEYMOUTH v. DAVIS**

Swinfen Eady J. [1908] W. N. 139; [1908] 2 Ch. 169

— Registered title to land—Unregistered deed—Registered charge.
See MERGER.

9. — *Registration—Conditions annexed to title—Building restrictions—Modification—Consent—"Persons principally interested"—Land Transfer Act, 1875 (38 & 39 Vict. c. 87), s. 84.*

Certain building land in Middlesex, forming part of a larger estate belonging to the defts. and registered with an absolute title, was sold by them to the plt. co. The defts., in order to protect their remaining property, enacted from the co. certain restrictive conditions as to the class of houses to be built upon the purchased land, and these conditions were registered against the title of the co. The co. applied under s. 84 of the Land Transfer Act, 1875, with the consent of the defts., for an order modifying these conditions by reducing the minimum size and value of the houses. The

LAND TRANSFER—continued.

co. had mortgaged the purchased land, and had also sold off several plots to various purchasers, and the defts. had contracted to sell their remaining property. The consent of all parties, except the purchasers of three outlying plots, had been obtained:—

Held, (1.) that the Court ought to accept the consent of the parties interested if competent to consent, as sufficient proof within s. 84 that the modifications would be beneficial to them; (2.) upon the evidence, that, in the absence of consent, this fact was not proved to the satisfaction of the Court; (3.) that all the persons who took with notice of the conditions were bound by them and were "persons principally interested" in the enforcement of them within the section, and that the order could only be made subject to their consent being obtained.

Observations as to the meaning of "persons principally interested." **GROUND RENT DEVELOPMENT CO. v. WEST**

Kekewich J. [1902] W. N. 64; [1902] 1 Ch. 674

- Restriction of register—Charity.
See LAND REGISTRY. 1.
- Restrictive covenants—Building scheme—Right of purchasers inter se—Registration—Conditions annexed to title.
See VENDOR AND PURCHASER—Covenants. 4.
- Retainer—Personal representative—Real representative—Right to retain out of real assets.
See ADMINISTRATION. 27.
- Stamp duty—Conveyance or transfer—Devise of real estate—Assent in writing of executor.
See REVENUE—Stamps. 12.
- Western Australia Transfer Land Act.
See under AUSTRALIA.
- Will—Mixed fund—Express charge of debts—Period of limitation.
See WILL—Charges. 2.
- Will—Sale by general executors—Concurrence of special executors—Vendor and purchaser.
See EXECUTOR—Sale. 1.

LANDED ESTATES COURT, IRELAND—Rights of jointress—Incumbered Estates Court (Ireland) Act.
See IRISH LAW. 1.

LANDING STAGE—Collision—Damage—"Vessel"—Preliminary acts.
See SHIPPING—Collision. 39.

LANDLORD AND TENANT.
See also under LEASE.

Agricultural Holdings Act, 1906 (6 Edw. 7, c. 56), amends the law relating to Agricultural Holdings.

Agricultural Holdings Act, 1908 (8 Edw. 7, c. 28), consolidates the enactments relating to agricultural holdings in England and Wales.

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Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), consolidates the enactments with respect to *Small Holdings and Allotments in England and Wales*.

And see under **SMALL HOLDINGS AND ALLOTMENTS**.

Distress for rent—Law of Distress Amendment Act, 1908 (8 Edw. 7, c. 53), amends the law as regards a landlord's right of distress for rent.

— Advertising station—Tenancy from year to year—Licence—Revocation—Notice—Agreement.
See **LICENCE**. 1.

— Advowson—Lease of rectory—Pluralities Act, 1838.
See **ECCLESIASTICAL LAW—Rectory**. 1.

1. — *Agreement for tenancy—Failure as present demise—Operations as agreement for future lease—Specific performance.*

The agent of the owners of a house signed a document by which he purported to "have let" the house to the deft. at a weekly rental, and which continued: "I agree not to raise Mr. Abrahams any rent as long as he lives in the house and pays rent regular. I shall not give him notice to quit. Any time Mr. Abrahams wishes to move out, I promise to return to him the 6l. he has paid me on taking possession of the house." The plts., treating the deft. as a weekly tenant, gave him notice to quit, and brought this action to recover possession of the house:—

Held, that the document could not, having regard to its terms, be treated as creating a weekly tenancy, and that whether it purported to be an attempt to create an immediate demise for the life of the deft., which was void at law as not being by deed, or an agreement to grant a lease for the life of the deft., he was entitled to specific performance.

Browne v. Warner, (1807) 14 Ves. 156, 409; 9 R. R. 259, and *Parker v. Tuswell* (1858), 2 De G. & J. 559, followed.

Cheshire Lines Committee v. Lewis, (1880) 50 L. J. (Q.B.) 121, considered. **ZIMBLER v. ABRAHAMS** - C. A. [1903] 1 K. B. 577

2. — *Agreement of tenancy—Construction of.*

A tenant entered into possession of premises under an agreement of tenancy "for a period of twelve months with the option of a lease after the aforesaid time at a rental of 30l. per annum":—

Held, that under that agreement the tenant had a right to claim a lease for a further period of at least one year after the expiry of the first twelve months.

Semble; per Kennedy J., he had a right to claim a lease for his life. **AUSTIN v. NEWHAM**

Div. Ct. [1906] 2 K. B. 167

— Agreement to let from year to year—Written offer containing two alternatives—Verbal acceptance of one.

See **SPECIFIC PERFORMANCE**. 3.

3. — *Agricultural holdings—Compensation for improvements—Retrospective effect of statute—Agricultural Holdings, (Scotland) Act, 1883*

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(46 § 47 Vict. c. 62)—*Market Gardeners' Compensation (Scotland) Act, 1897* (60 § 61 Vict. c. 22), s. 4.

The *Market Gardeners' Compensation (Scotland) Act, 1897*, is not retrospective, and does not entitle tenants under leases current at the commencement of the Act to compensation in respect of market garden improvements executed prior to the commencement of the Act.

Decision of Ct. of Sess., (1900) 2 F. 1140. **SMITH v. CALLANDER**

H. L. (Sc.) [1901] W. N. 192; [1901] A. C. 297

Note.

This case was followed by *Cozens-Hardy J., Mears v. Callender*, [1901] 2 Ch. 388. See No. 5, below.

4. — *Agricultural holdings—Farming agreement—Covenant to stack and consume hay and straw on the premises—Destruction by fire—Compensation for manurial value—Agricultural Holdings Act, 1900* (63 § 64 Vict. c. 50), s. 1.

By an agreement for the letting of a farm the tenants agreed to stack upon the premises all the crops of hay and straw arising from the farm, and to consume on the farm all the hay, straw, chaff, and green crops arising therefrom, and to carry out and spread upon the farm in regular succession all the dung and manure arising therefrom. During the continuance of the tenancy a quantity of hay and straw stacked on the farm was destroyed by an accidental fire:—

Held, that, upon the termination of the tenancy, the landlord was not entitled, in answer to a claim by the tenants under the *Agricultural Holdings Acts, 1883—1890*, in respect of unexhausted improvements, to claim compensation for the loss of the manurial value of the hay and straw so destroyed as a breach of the agreement. *In re HULL AND LADY MEUX'S ARBITRATION.*

C. A. [1905] W. N. 15; [1905] 1 K. B. 588

— Agricultural purposes, Lease of land for—Covenant not to sell a lease for building purposes—Breach—Forfeiture—Law of the Transvaal.

See **TRANSVAAL**. 2.

5. — *Agricultural holdings—Fixtures, Removable—Glass-houses—Right to remove fruit trees—Compensation—Agricultural Holdings (England) Act, 1883* (46 § 47 Vict. c. 61), ss. 1, 3, 34, 64, 55, 60—*Market Gardeners' Compensation Act, 1895* (58 § 59 Vict. c. 27), s. 4.

A landlord in 1887 demised a farm to deft. for a term expiring in 1901. The lease provided (clause 13) that in the last year the landlord might enter and sow certain seeds, and that the tenant should also leave gratis for the landlord "all the roots remaining unconsumed in the ground, and also all improvements made by the tenant, and all cultivations, dressings, and manures in, consideration of no claim being made by the landlord for similar matters on the tenant now entering"; and (clause 14) that the tenant might, at his own cost, convert into an orchard so much of certain meadow land as he thought proper: and (clause 21) that the Agricultural

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Holdings (England) Act, 1883, should not apply to the contract of tenancy. Shortly after the tenancy commenced deft. turned part of the meadow land into an orchard in which in 1901 were over 1200 trees (apple, pear, plum, and cherry) in good bearing condition, and, though not capable of removal, worth some hundreds of pounds to an incoming tenant. Deft. also erected ten glass-houses. One had concrete sides, and its glass span-roof substantially rested on the sides and could be removed without damaging the walls. In the case of the other houses the glass span-roofs were supported by and nailed to wide sills which in turn were nailed to and supported by wooden piles driven into the ground. In these houses deft. grew grapes, peaches, nectarines, tomatoes, and strawberries, which he sold in Reading and Covent Garden, carrying on the trade of a market-gardener with his landlord's knowledge:—

Held—

(1.) That at common law deft. could not cut down or remove the orchard trees.

(2.) (Following *Penton v. Robart*, (1801) 2 East, 88; 6 R. R. 376, notwithstanding the criticism of it in *Elwes v. Maw*, (1802) 3 East, 38; 6 R. R. 523), that at common law the deft. could lawfully remove the glass-houses unless precluded by clause 13 of the lease.

(3.) That clause 13 did not preclude him, and on the construction of it "improvements" did not include glass-houses.

(4.) (Following *Smith v. Callander*, [1901] A. C. 297, as to the meaning of the similarly worded s. 4 of the Market Gardeners' Compensation (Scotland) Act, 1897), that s. 4 of the Market Gardeners' Compensation Act, 1895, only applied to improvements made after Jan. 1, 1896, and did not assist deft.

(5.) That as the glass-houses were erected without the landlord's written consent required by s. 3 of the Act of 1883, deft. was precluded from obtaining compensation for them.

(6.) That the common law right of deft. to remove the glass-houses was left untouched by the Act of 1883, s. 34 of which was lawfully excluded by clause 21 of the lease.

(7.) That as the orchard was planted with the landlord's consent in writing, which was held to be given by the lease, deft. was entitled to compensation for the trees under ss. 1 and 3 of the Act of 1883, there being nothing in clause 13 of the lease to exclude him from compensation.

(8.) That if clause 13 must be construed as excluding deft. from statutory compensation, the attempted exclusion was inoperative by reason of s. 55 of the Act of 1883.

The deft. was therefore held to be entitled (a) to compensation for the trees, (b) to remove the glass-houses. *MEARS v. CALLENDER*

Cozens-Hardy J. [1901] W. N. 114 ; [1901] 2 Ch. 336

6. — Agricultural holdings—Notice to quit—Service—Registered letter—Agricultural Holdings Act, 1883 (46 & 47 Vict. c. 61), s. 28.

The provisions of s. 28 of the Agricultural Holdings Act, 1883, as to the service of "any notice, request, demand, or, other instrument

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under this Act" are applicable to a notice to quit. *VAN GRUTTEN v. TREVENEN*

C. A. [1902] 2 K. B. 82

7. — "Alteration"—Breach of lessor's covenant—Mandatory injunction—Covenant not to make any alteration to demised premises without consent of lessor—Clock fixed to outside of house.

The lease of a shop occupied by a jeweller and watchmaker contained a covenant by the lessee that he would not make or suffer to be made any alteration to the demised premises without the previous written consent of the lessor:—

Held, that some limitation must be placed on the words of the covenant, and that the erection of a large clock, affixed without the consent of the lessor to the exterior of the wall of the house by means of bolts driven into it, was not a breach of the covenant, and consequently that a mandatory injunction to compel the removal of the clock ought not to be granted.

Decision of Farwell J. reversed.

Per Vaughan Williams and Cozens-Hardy L.J.J.: The word "alteration" in the covenant must be limited to alterations which would affect the form or structure of the building.

Per Stirling L.J.: There must be excepted from the covenant, not only things absolutely essential to the carrying on of the business, but also things fixed to the premises for the purpose of carrying on the business in a reasonable, ordinary, and proper way.

Per Cozens-Hardy L.J.: If, after entering into such a covenant, the covenantor, notwithstanding notice of objection by the covenantee, deliberately commits a breach of it, a mandatory injunction ought to be granted, provided that there has been no laches on the part of the covenantee. *BICKMORE v. DIMMER*

C. A. [1902] W. N. 223 ; [1903] 1 Ch. 158

8. — Ambiguity in lease—Explanation by reference to counterpart—Forfeiture—Waiver—Onus as to proving lessor's knowledge of the facts—Relief against forfeiture—Breach of covenant not to sub-let without consent—Effect of negligence—Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), s. 14—Conveyancing and Law of Property Act, 1892 (55 & 56 Vict. c. 13), s. 4.

A patent ambiguity in a lease may be explained by a reference to the counterpart.

A right to re-enter under a lease is not waived by the lessor, unless, knowing the facts on which the right arises, he does something unequivocal which recognizes the continuance of the lease.

The question whether there has been a waiver in such a case is one of law, and the onus is on the lessee to adduce some evidence of the lessor's knowledge, and proof of an act shewing recognition of the tenancy does not throw the onus of proving want of knowledge on the lessor.

Property held under a lease which contained a covenant against underletting without the consent of the lessor, and a clause of forfeiture in case of any breach of covenant, was mortgaged by sub-demise to the trustees of a co.'s debenture stock deed. The deed comprised a number of other properties. The trustees made no inquiry

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as to whether the lessor's consent was necessary to the sub-demise:—

Held, following *Imray v. Oakshette*, [1897] 2 Q. B. 218, that the trustees had been guilty of negligence, and that the Court was precluded from giving them, under s. 4 of the Conveyancing and Law of Property Act, 1892, relief against the forfeiture. *MATTHEWS v. SMALLWOOD*

Parker J. [1910] W. N. 69; [1910] 1 Ch. 777

9. — *Assign—Assign or underlet without licence, Covenant not to—Licence not to be “unreasonably withheld.”*

Where a landlord occupies part of a building with only one entrance and lets off another part with a covenant by the tenant not to assign or underlet without the landlord's licence, such licence not to be “unreasonably withheld,” it is reasonable for the landlord, before granting a licence to underlet, to ask for what purpose the portion to be underlet is to be used, and to stipulate for a similar covenant between the undertenant and himself. *In re SPARK'S LEASE. BERGER v. JENKINSON* — *Swinfen Eady J.* [1905] W. N. 42; [1905] 1 Ch. 456

Note.

This case was referred to by *Eve J., Evans v. Levy*, [1910] 1 Ch. 452. *See No. 14, below.*

10. — *Assign—Contract not to assign without consent—Consent not to be withheld from “a respectable and responsible person”—Assignment to limited company—Forfeiture—Lease.*

A lessee covenanted to use the demised premises for the business of a jobmaster and livery stable keeper, and not to assign or underlet or part with the possession of the premises without the written consent of the lessor, which was not to be withheld in respect of “a respectable and responsible person”:—

Held, that the word “person” in the covenant included a corporation, such as a limited co., and that a limited co. was capable of being “a respectable and responsible person” within the meaning of the covenant.

Decision of Neville J., [1910] W. N. 95; [1910] 1 Ch. 754, reversed.

In re Jeffcock's Trusts, (1882) 61 L. J. (Ch.) 507, followed.

Harrison, Ainslie & Co. v. Barrow-in-Furness Corporation, (1891) 63 L. T. 834, unless distinguishable on other grounds, overruled. *WILLMOTT v. LONDON ROAD CAR CO.*

C. A. [1910] W. N. 209; [1910] 2 Ch. 525

11. — *Assign—Covenant by landlord to pay rates—Covenant with lessee “his executors, administrators and assigns”—Underlease—Merger of reversion—Benefit of covenant—Privy of contract—Right in equity—Underlease not an “assign”—No right of action.*

An underlessee is not entitled to sue the assign of the freehold and leasehold reversions in the premises comprised in his underlease in respect of a positive covenant by the ground landlord with the original lessee, where the latter has not assigned or demised the benefit of such covenant to, or entered into a similar covenant with, the underlessee.

On the demise of a part of a freehold house the lessee covenanted to pay one-third of the

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water rate payable in respect of the house, and the lessor covenanted to pay all rates and taxes except the water rate to the extent covenanted to be paid by the lessee. The lessee subdemised to the plts., who, with knowledge of the superior lease, covenanted to pay one-third of the water rate payable in respect of the house. Subsequently the freehold reversion and the superior lease became vested in the deft., who, the local authority having separately assessed the part comprised in the lease and underlease, refused to pay any of the rates and taxes in respect of such part. The local authority distrained, and the plts. sought to recover from the deft. the amount which they had been compelled to pay:—

Held, that the action must fail, there being no privity between the parties or any principle of equity upon which the plts. were entitled to succeed.

An underlessee is not an “assign” of his lessor (the original lessee) so as to be entitled to the benefit of a positive covenant entered into with the latter, “his executors, administrators, and assigns,” by the ground landlord in the original lease. *SOUTH OF ENGLAND DAIRIES, LD. v. BAKER* — *Joyce J.* [1906] 2 Ch. 631

12. — *Assign—Covenant not to—Proviso for re-entry on bankruptcy or breach of any covenant—Lessee adjudicated bankrupt on his own petition—Forfeiture—Peaceable re-entry by lessor—Notice—Relief—Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 14, sub-ss. 1, 2, 6—Conveyancing Act, 1892 (55 & 56 Vict. c. 13), s. 2, sub-s. 2—Bankruptcy Rules, 1886, r. 190.*

A lease contained a covenant not to assign without licence, and a proviso for re-entry on bankruptcy of the lessee or breach of any covenant. The lessee having been adjudicated bankrupt on his own petition, the lessor purported to determine the lease under the proviso of re-entry, and obtained peaceable possession from the lessee without giving any notice under s. 14 of the Conveyancing Act, 1881:—

Held, that the lessor's re-entry was void as against the lessee's trustee in bankruptcy, for the statutory notice was necessary before the lessor could obtain possession either peaceably or by action: *Held*, also, that the lessee's being adjudicated bankrupt on his own petition did not operate as a breach of his covenant not to assign. *In re RIGGS. Ex parte LOVELL* — *Wright J.*

[1901] W. N. 81; [1901] 2 K. B. 16

Note.

See also In re Cotgrave, [1903] 2 Ch. 705. *See Will—Forfeiture. 1.*

— *Assign, covenant not to, without consent—Metropolitan Water Board—Power of re-entry on breach.*

See LONDON—Water. 1.

13. — *Assign—Lease—Covenant not to assign without consent—Payment for leave to assign—“Fine or sum of money in the nature of a fine”—Conveyancing and Law of Property Act, 1892 (55 & 56 Vict. c. 13), s. 3.*

Sect. 3 of the Conveyancing Act, 1892, does not make illegal the payment and acceptance of a fine for the lessor's consent to the assignment

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of a lease which contains a covenant against assignment without consent. If such a payment is made by a lessee, not under protest, he cannot recover it back. If consent is refused except on payment, the lessee is entitled to disregard the covenant and assign without consent.

Decision of Channell J., [1907] 2 K. B. 494, affirmed. **ANDREW v. BRIDGMAN** C. A. [1908] W. N. 4; [1908] 1 K. B. 596

— Assign—Covenant not to assign a lease without consent of lessor—Injunction.
See **AUSTRALIA**. 9.

14. — Assign — Lessor and lessee — Lease—Covenant—Licence to assign—“Not to be unreasonably or arbitrarily withheld” — Unreasonable condition—Declaratory order—Costs.

By a lease made in 1901 a house in Oxford Street was demised by the defts. to the predecessors of the plt. for thirty-one years, less fifteen days, at a rent of £50l. a year. The lease contained some onerous covenants, including a covenant by the lessees that they would not, without the licence in writing of the lessors (such licence not to be unreasonably or arbitrarily withheld), assign, transfer, or underlet the demised premises. In 1905 the plt. purchased the residue of the term in the lease and desired to assign it to his wife. The lessors objected to an assignment to a married woman, and would only grant their licence to assign on condition that the plt. executed a covenant for himself, his executors and administrators, at all times during the continuance of the lease of 1901 to pay the rent and perform all the covenants, agreements, and provisions contained in the said lease, as if he had been a party thereto.

Upon a summons in an action by the lessee against the lessors, the lessee claimed a declaration that he was entitled to assign the lease without the licence of the lessors, and free from conditions:—

Held, that the condition sought to be imposed by the lessors was altogether unreasonable, and the declaration asked would be made; but as no relief was sought against the lessors the declaratory order would be made without costs, according to the principle laid down by Swinfen Eady J. in **Jenkins v. Price**, [1907] 2 Ch. 229. **EVANS v. LEVY** — **Eve J.** [1910] W. N. 22; [1910] 1 Ch. 452

15. — Assign without licence “not to be unreasonably withheld,” Covenant by lessee not to—Licence—Unreasonable condition—Assignment without licence—Practice—Jurisdiction—Declaratory order—Lessor and lessee—R. S. C., 1883, Order XXV., r. 5.

Where a lease contains a covenant by the lessee not to assign without the licence in writing of the lessor, “such licence not to be unreasonably withheld,” although the lessor, in refusing a licence to assign, is not bound to give any reason for his refusal, yet if, in granting a licence he attaches to it a condition which, in the opinion of the Court, is unreasonable, the Court will, in an action brought by the lessee for the purpose, make a declaratory order under the R. S. C., 1883, Order XXV., r. 5, declaring that the lessor

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is not entitled to impose the unreasonable condition, and that the lessee is entitled to assign without any further consent of the lessor. **YOUNG v. ASHLEY GARDENS PROPERTIES, LD.**

C. A. [1903] W. N. 93; [1903] 2 Ch. 112

Note.

This case was referred to by Eve J., **Evans v. Levy**, [1910] 1 Ch. 452. See *No. 14, above.*

— Assignment.

See also under **ASSIGNMENT**.

16. — Assignment—Breach of covenant—Forfeiture—Writ claiming possession—Service of writ—Election to determine tenancy—Statement of ground of forfeiture—Determination of tenancy—Effect on rights of third parties—Subsequent payment of rent by occupier to lessee—Estoppel.

The lessee of premises created a yearly tenancy under which the plt. became tenant and occupier of the premises. On the same day the lessee mortgaged the premises by way of sub-demise without obtaining the permission of the lessor. The lease contained a covenant not to assign, underlet, or part with the possession of the premises without the consent in writing of the lessor, and a clause providing for re-entry upon breach of any of the covenants. The lessee, who had been adjudicated bankrupt, failing to pay the interest, the mortgagees appointed a receiver, to whom the plt. paid a quarter's rent due at the following Midsummer. Before the next quarterly rent became due the lessor issued a writ to recover possession of the premises; but the writ, which was served on the plt. (as occupier) and others, did not contain a statement of the ground of forfeiture. The plt. after appearance in that action, but before delivery of statement of claim specifying the cause of forfeiture, paid the rent falling due at Michaelmas to the receiver. He refused to pay the rent falling due at Christmas, and the receiver, under the powers given by the Conveyancing Act, 1881, distrained. In an action by the plt. against the receiver for a wrongful distress:—

Held, that the sub-demise to the mortgagees, without the consent of the lessor, constituted a breach of the covenant as to assignment:

Held, also, that the issue and service of the writ to recover possession of the premises operated as a final election by the lessor to determine the term; that to have that effect it was not necessary that the actual ground of forfeiture should be stated; that with the determination of the term the right of the mortgagees to recover rent from the plt. came to an end; and that the distress was in consequence illegal:

Held, also, that the payment of rent to the receiver by the plt., after the service upon him of the writ to recover possession of the premises, did not estop him from showing, on a claim for subsequent rent, that the title of the mortgagees had determined, inasmuch as the mortgagees were not misled by the payment: and

Per Stirling L.J., on the further ground that payment of rent by a lessee to a lessor after the lessor's title has expired, and after the lessee has notice of an adverse claim, does not amount to an acknowledgment of title in the lessor, unless at the time of payment the lessee knows the precise

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nature of the adverse claim, or the manner in which the lessor's title has expired.

Approving *Fenner v. Duplock*, (1824) 2 Bing. 10; 27 R. R. 537.

Grinwood v. Moss, (1872) L. R. 7 C. P. 360, approved. *SERJEANT v. NASH, FIELD & Co.*

C. A. [1903] 2 K. B. 304

17. — Assignment—Covenant against—Fishing, Demise of exclusive right of—Lease—Construction—Grant by lessee of limited licence to fish.

By an indenture of lease the deft. demised to the plt. the exclusive right of fishing in a certain portion of the river, "together with full liberty of ingress, egress, and regress for the said lessee and his authorized friends at all times" during the term thereby granted "to fish with rods and lines in a proper and sportsmanlike manner" . . . "and the fish which they shall then and there take to have and retain to his and their own use." The lessee covenanted that he would not during the term "underlet, assign, transfer, or set over, or otherwise by any act or deed procure, the said premises to be assigned, transferred, or set over unto any person or persons whomsoever" without the consent in writing of the lessor, his heirs or assigns:—

Held, that, inasmuch as the covenant did not expressly apply to "any part" of the premises, the lessee was not precluded from granting a licence to another person (limited to two rods) to fish in the river during the residue of the term granted by the lease.

Dictum of Lord Eldon in *Church v. Brown*, (1808) 15 Ves. 258; 10 R. R. 74, followed. *GROVE v. PORTAL Joyce J. [1902] W. N. 33; [1902] 1 Ch. 727*

18. — Assignment—Lease—Covenant against assignment without consent unless unreasonably withheld—Covenant to reside upon the premises and personally carry on business of licensed victualler thereon—Assignment to limited company carrying on a brewery business—Demand for increased rent as condition of consent—Conveyancing and Law of Property Act, 1892 (55 & 56 Vict. c. 13), s. 3.

By a lease of an hotel the lessee covenanted (1.) not to assign without the previous consent of the lessor, unless such consent should be unreasonably withheld; (2.) at all times during the term to reside upon the hotel and personally carry on the business of a licensed victualler thereon. The lessee asked permission to assign to a limited co. which carried on a brewery business. The lessor, being of opinion that an assignment to brewers would depreciate the goodwill, gave an unconditional consent to the assignment to a private person, but required as a condition of giving his consent to an assignment to a brewery firm that the rent should be increased and the term of the lease extended. In an action by the lessee for a declaration that the lessor was not entitled to impose such terms as a condition of giving his consent, Swinfen Eady J. (whose attention was not called to the covenant as to personal residence) held that the objection of the lessor was not in itself unreasonable, but that the lessor was acting

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contrary to s. 3 of the Conveyancing Act, 1892, in attempting to insist upon an increased rent as a condition of giving his consent, and he declared that the lessee was entitled to assign to the co. without any further consent. The lessor appealed:—

Held, without expressing any opinion upon either of the points decided by the Court below, [1907] W. N. 153; [1907] 2 Ch. 229, that, having regard to the covenant as to personal residence, the lease could not be assigned to a limited co. *JENKINS v. PRICE - C. A. [1907] W. N. 226; [1908] 1 Ch. 10*

Note.

This case was referred to by Eve J., *Evans v. Levy*, [1910] 1 Ch. 452. See No. 14, above.

19. — Assignment—Lease—Licence to assign—Covenant by proposed assignee—Liability for rent after further assignment—Validity of covenant—"Fine or sum of money in the nature of a fine"—Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 2, sub-s. 9—Conveyancing Act, 1892 (55 & 56 Vict. c. 13), s. 3.

A lease contained a condition against assigning without licence, which was not to be refused unreasonably, but there was no provision as to payment of a fine in respect of such a licence. Upon an application by the holder of the lease for a licence to assign to the deft. in this action the plt., as lessor, required as a condition of granting the licence that the deft. should covenant to pay the rent and perform the covenants of the lease during the residue of the term. The licence to assign was by deed to which the deft. was a party, and in which he entered into the stipulated covenant. The deft. subsequently assigned the lease with licence. In an action on the deft.'s covenant to recover from him one quarter's rent due from but unpaid by the tenant:—

Held that, whether such a covenant as the deft. entered into was or was not in the nature of a fine within the meaning of s. 3 of the Conveyancing Act, 1892, the statute, not having made the payment of a fine illegal, afforded no defence to an action on the deft.'s covenant.

Semble (*per* Vaughan Williams and Stirling L.J.J., Fletcher Moulton L.J. dissenting), that a covenant which secures to a lessor no sum of money beyond the rent to which he is entitled under the lease is not in the nature of a fine within the meaning of s. 3 of the Conveyancing Act, 1892. *WAITE v. JENNINGS - C. A. [1906] 2 K. B. 11*

— Assignment of reversion—Liability of assignor on express covenants in lease.

See *LEASE*. 1.

— Bankruptcy—Lease—Disclaimer.

See under *BANKRUPTCY—Disclaimer*.

— Lease—Beerhouse—Licence taken away—Covenants—Impossibility of performance—Failure of consideration—Liability to pay rent.

See *LANDLORD AND TENANT*. 29.

20. — Brewer's lease—Covenant to buy beer of lessors and "their successors in business"—Covenant running with the land—Lease executed

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by lessee only—Assignment of reversion—Breach of covenant—Injunction at suit of assignee—32 Hen. 8, c. 34—Benefit of covenant a chose in action—Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 25, sub-s. 6—Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), ss. 10, 58.

In 1892 A. executed under seal an agreement to take an hotel as yearly tenant to B. & Co., and thereby covenanted to purchase all his beer of B. & Co. "and their successors in business." The covenant did not mention "assigns." B. & Co. did not execute the agreement, and there was nothing on the face of it to shew that they were brewers. They were, in fact, brewers, and A. occupied the hotel under the agreement as their tenant and purchased beer of them.

In 1899 B. & Co. sold and conveyed their brewery, tied houses (including the hotel), and business to C. & Co., who were brewers, and who incorporated B. & Co.'s business with their own. After the sale B. & Co. ceased to carry on business. Notice of the change of ownership was given by C. & Co. to A., and for a time he purchased beer of them. In an action by C. & Co. to restrain A. from committing a breach of the covenant:—

Held, that the covenant was not personal to B. & Co., but ran with the land, and that C. & Co., as successors in business of B. & Co. and owners of the reversion in fee of the hotel, were entitled to the benefit of it:

Held, also, that C. & Co., as assigns of B. & Co., being clearly entitled against A. to specific performance of the agreement under which he was in possession of the hotel, could sue him on the covenant in the same manner as they could have done, if B. & Co. had actually executed the original agreement.

Clegg v. Hands, (1890) 44 Ch. D. 503, and *Walsh v. Lonsdale*, (1882) 21 Ch. D. 9, followed.

Semle: The benefit of the covenant was a chose in action, assignable in equity before the Judicature Act, 1873, and by virtue of s. 25, sub-s. 6, of that Act the covenant could after an absolute assignment thereof in writing and due notice given, be sued upon by the assignee. **MANCHESTER BREWERY CO. v. COOMBS**

Farwell J. [1901] 2 Ch. 608

21. — Brewer's lease—Tied house — Lessee's covenant to buy malt liquors from lessor—Rise in prices—Breach of covenant—Fair and reasonable prices—Current market prices—Injunction—Form of order.

A tenant's covenant in a brewer's lease of a tied house not to sell on the demised premises any malt liquors other than such as shall have been purchased from the landlord imports an implied covenant by the landlord to supply malt liquors of good quality and at fair and reasonable prices.

Such a tenant's covenant was contained in the plts.' lease of one of their tied houses in the London metropolitan area, and the deft. was the assignee of the lease. In June, 1909, in consequence of the increased licence duties proposed in the Finance Bill of that year, the plts. and substantially all the London brewers (except a few small brewers)

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agreed to raise the price of beers 6s. a barrel to the trade, leaving the trade to recoup themselves by raising the retail price to the public one farthing per half-pint. The increased prices were agreed to by the trade generally, but the deft. refused to pay them and purchased his malt liquors elsewhere at the old prices. In an action by the plts. to restrain the deft. from committing a breach of his covenant:—

Held, that under the circumstances the increased prices were fair and reasonable, and that the plts. were entitled to an injunction.

Form of order in *Catt v. Tourle*, (1869) L. R. 4 Ch. 654, as stated in Seton on Judgments, 6th ed., vol. i., p. 634, not followed.

Quære as to the meaning to be attributed to the words "current market prices" in a landlord's covenant in such a lease. **COURAGE & CO. v. CARPENTER - Neville J. [1910] W. N. 8; [1910] 1 Ch. 262**

See next Case.

22. — Brewer's lease—Tied house — Lessee's covenant to buy malt liquors from lessors—Rise in prices—Breach of covenant—Fair and reasonable prices.

The plts. were brewers and the lessors of a public-house known as the Hollydale Tavern at Peckham. The deft. was a licensed victualler and the assignee of two leases of the same premises granted by the plts. The leases contained covenants by the lessees for themselves, their heirs, executors, administrators and assigns, that they would not during the term of the leases buy, receive, sell, or dispose of either directly or indirectly, or permit to be bought, received, sold, or disposed of either directly or indirectly, in or upon, out of, or about the said premises, or any part thereof, any porter, stout, beer, and ale other than such as should have been bona fide purchased of the lessors or of their successors in business.

Early in 1900, in consequence of the Boer war, an extra duty of 1s. a barrel (called the war tax) was imposed on beer. The principal London brewers met and agreed to put this extra 1s. a barrel on their customers, and in Mar., 1900, the plts. sent a circular letter to all the tenants (including the deft.) of their tied houses in which they said: "You are doubtless aware that Her Majesty's Government have imposed a war tax on beer of 1s. a barrel, and we are consequently compelled to add this amount to the price of all our beer." For some time the plts. supplied and the deft. paid for the beer at the increased price, but subsequently he refused to pay the extra 1s. a barrel, and in July, 1905, the plts. sued him on a specially indorsed writ for 264l. 0s. 2d., being the amount due from him for malt liquors supplied by them to him at the increased price.

By his defence the deft. admitted that the goods mentioned in the claim were sold and delivered by the plts. to him in pursuance of the said covenant, and alleged that it was an implied term of the covenant that the plts. would supply such porter, stout, beer, and ale as the deft. might buy or purchase from them at the fair market prices of the day, and that the

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prices claimed were not the fair market prices of the day for the said goods. Alternatively, he alleged that the prices claimed were unreasonable, unfair, and excessive.

Bray J. on April 28, 1906, gave judgment for the plts. The Court of Appeal on Mar. 26, 1907, affirmed that decision. *NOAKES & Co. v. DAY*

C. A. [1910] 1 Ch. 270, n.

— Brewer's lease—"Tie"—Covenant by mortgagor to take beer from mortgagee—"Clog" on redemption.

See MORTGAGE—Redemption. 4.

23. — Building estate—Restrictive covenant—Lessor's covenant not to infringe the building line on plot adjoining demised premises—Covenant running with the land—"Assign"—Breach—Damages.

A covenant in a lease that the lessor and his assigns will not erect or permit to be erected any buildings in front of the building line on the land adjoining the demised premises is a covenant that "touches or concerns the thing demised" within the second resolution in *Spencer's Case*, (1582) 5 Rep. 16 b; 1 Sm. L. C., 11th ed. p. 55, and therefore runs with the land.

A corporation, owners of a building estate, granted a lease of a plot of land to A. for ninety-nine years, and entered into a restrictive covenant as above with A., his executors, administrators, and assigns, in respect of the plot of land adjoining the demised premises. Afterwards they entered into a building agreement with B. in respect of the adjoining plot of land, under which B. was to submit his building plans to them for approval, and on approval was to build forthwith in accordance with the plans, and on completion of his buildings was to have a ninety-nine years' lease of the plot. On B.'s plan (which did not shew the building line) being approved, he forthwith erected his buildings, which infringed the building line. On complaint by the assignee of A.'s lease, the corporation served B. with a notice to observe the building line, but took no further steps against him, and subsequently proposed to grant him his lease:—

Held, that the covenant in A.'s lease touched or concerned the thing demised and ran with the land so as to entitle his assignee to sue the corporation on the covenant.

Held, also, that B. was an "assign" of the corporation and that they were liable in damages for his breach of the covenant.

Semble, that even if B. was not an "assign" the corporation had under the circumstances "permitted" a breach of the covenant. *RICKETTS v. ENFIELD CHURCHWARDENS*
Neville J. [1909] W. N. 43; [1909] 1 Ch. 544

— Club, Liability of trustees of, in respect of leases.

See CLUBS. 1.

— Company—Leases.

See under COMPANY—Leases.

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— Compensation—Colliery—Right of lessee to sink shaft in land of lessor not demised —Purchase by railway company.
See LANDS CLAUSES ACTS. 6.

— Compensation—Condition precedent—Tenant—Title.

See LANDS CLAUSES ACTS. 9.

— Compensation—Suspension of pastoral lease.
See NEW SOUTH WALES. 19.

— Condition, Unreasonable—Licence to assign —Lessor and lessee.

See Nos. 9—19, above.

— Conditions.

See also under ASSIGNMENT.

— Constructive notice—Adverse title—Notice by tenancy.

See VENDOR AND PURCHASER—Title. 2.

— Corporation — Dissolution — Lease — Bona vacantia—Chattels real—Limited company lessees—Sureties for payment of rent during the term.

See CORPORATION. 10.

— Costs—Action founded on tort—Agreement for lease of house—Removal of fixtures.
See COSTS. 75.

24. — Costs—Lease—Underlease—Covenants to repair — Breach by lessee — Forfeiture—Relief — Breach by underlessee—Damages—Remoteness.

A lease made in 1887 contained covenants by the lessee to repair in general terms, and to repair within three months after notice in writing, and a proviso for re-entry on breach of the lessee's covenants. This lease shewed on its face that the reversion was a leasehold reversion. The head lease, made in 1855, contained covenants to repair and a proviso for re-entry in substantially the same terms as those of the covenants and proviso in the lease of 1887. The head landlord served on his lessee a notice in writing to repair; the lessee served a similar notice on his underlessee, who failed to do the repairs in three months. The head landlord thereupon brought an action for the recovery of the demised premises. The repairs were subsequently executed, and the lessee under the lease of 1855 commenced proceedings for and obtained relief against forfeiture.

In an action by the lessee against the underlessee for breach of the covenant to repair in the lease of 1887,

Lord Coleridge J. held, following a dictum of Lindley L.J. in *Ebbetts v. Conquest*, [1895] 2 Ch. 377, that the plt. could not recover the costs of the proceedings for relief. *CLARE v. DOBSON*

Lord Coleridge J. [1910] W. N. 227

— Costs—Taxation—Preliminary negotiations—Third party.

See SOLICITOR—Costs. 20.

— Costs — Unnecessary defendants — Weekly tenants—Practice.

See COSTS. 78.

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- Costs of lease—Taxation—Concurring parties
- Separate solicitors—Collective bill.
- See **SOLICITOR—Costs, 22.**

25. — Covenant—Past breaches of—Power to lessee to determine lease on notice given—Avoidance of covenants—Omission to reserve lessor's rights—Liability of lessee for past breaches of covenant.

A lease for fourteen years provided that the lessees should have power to determine the lease at the end of the first seven years upon giving six months' notice in writing, and that "in such case this present indenture and every clause, matter, and thing herein contained shall, upon the expiration of the said notice, cease and determine and be void, anything hereinbefore contained to the contrary notwithstanding"; the proviso, however, did not contain the usual reservation or the lessor's rights in respect of existing breaches of the lessee's covenants:—

Held, that, upon the determination of the lease by the lessees under the above power, the lessor was entitled to sue them for existing breaches of their covenants notwithstanding that his right to do so was not expressly reserved. **BLORE v. GIULINI** *Wright J.* [1903] **W. N. 14**; [1903] **1 K. B. 356**

26. — Covenant running with the land—Covenant by underlessor with underlessee to perform covenants of head lease—Collateral covenant.

There is no authority for the proposition that a covenant in a lease to do an act not in respect of the demised premises, but which will protect from forfeiture the estate of the lessee in those premises, is a covenant which runs with the land.

A lease for years of land contained a covenant by the lessee to keep in repair all buildings erected on the land and a proviso for re-entry for breach of that covenant. Of several houses erected on the land two were demised by an underlease in which the underlessor covenanted for himself and his assigns with the underlessee and his assigns (1.) for quiet enjoyment; (2.) for the performance of the covenants of the head lease by the lessee thereof so far as they affected the land included in the head lease and not demised in the underlease; (3.) to indemnify the underlessee and his assigns against breaches of those covenants. The underlessor's assignee (in whom the head lease had vested) failed to perform the covenant to repair in the head lease, and the head lessor re-entered on all the land demised by the head lease, and ejected the assignee of the underlessee from the two houses demised by the underlease:—

Held, that the covenant in the underlease to perform the covenant in the head lease relating to premises not demised by the underlease, being a covenant not touching or concerning the land demised in the underlease, did not run with the land, and that the assignee of the underlessor was not liable for breaches of the above-named covenants in the underlease.

Decision of the C. A., [1908] **1 K. B. 94**, affirmed. **DEWAR v. GOODMAN** *H. L. (E.)* [1908] **W. N. 250**; [1909] **A. C. 72**

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- Covenant running with land—Option during whole term to purchase freehold—Executory interest in land—Perpetuity—32 Hen. 8, c. 34—Lessor and lessee—Lease.
- See **COVENANT. 4.**
- Crown, Chattels belonging to—Prerogative—Distress for rent—Privilege.
- See **CROWN. 5.**
- Crown lands.
- See under **CROWN.**
- Crown, Lease vesting in the—Corporation—Dissolution—Bona vacantia.
- See **CORPORATION. 10.**
- Death of lessee—Administrator ad colligenda bona—Power to sell—Entry into possession—Rent.
- See **ADMINISTRATION. 20.**
- Determination of lease—Liability of lessee for past breaches of covenant.
- See **No. 25, above.**

27. — Determination of lease—Proviso enabling lessees to determine lease by notice—Notice by one of two lessees—Validity.

Where a lease contains a proviso enabling the "lessees" to determine the lease by notice, a notice given by one of two lessees will not, in the absence of evidence of authority from the other lessee to give it or of circumstances from which the Court can infer such authority, be effectual to determine the lease.

Doe v. Summersett, (1830) **1 B. & Ad. 135**, distinguished. *In re VIOLA'S INDENTURE OF LEASE.* **HAMPFREY v. STENBURY** *Warrington J.* [1908] **W. N. 255**; [1909] **1 Ch. 244**

28. — Determination of tenancy—Lease for term of years—Express tenancy at will created on expiration of term—Implied incorporation of terms of lease—Arbitration clause—Action for occupation rent—Staying proceedings—Arbitration Act, 1889 (52 & 53 Vict. c. 49), ss. 4, 27.

A colliery lease, which empowered the lessees to carry foreign coal over the surface, provided that all disputes relating to the lease should be referred to arbitration. Shortly before the expiration of the term the lessees by letter requested the lessors to grant an extension of the lease on the existing terms for six months, and the lessors wrote in reply that the lessees might consider themselves tenants at will of both mine and way-leave pending further arrangements. The lessors having brought an action against the lessees in respect of their exercise of the way-leave during the tenancy at will, the lessees applied for a stay of proceedings under s. 4 of the Arbitration Act, 1889:—

Held, upon the construction of the letters, that the terms of the lease, including the arbitration clause, applied to the tenancy at will, so far as applicable to such a tenancy, and that the proceedings ought to be stayed.

Per Cozens-Hardy M.R.: Where on the expiration of a lease the lessee is expressly authorized to continue in possession as tenant at will, in the absence of evidence of a contrary intention,

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the terms and conditions of the original lease apply to the tenancy at will so far as they are consistent with such tenancy. *MORGAN v. WILLIAM HARRISON, LD.* C. A. [1907] 2 Ch. 137

— Disclaimers—Lease—Mortgagees by demise—Option to take vesting order or be excluded—County court—Jurisdiction. See *BANKRUPTCY*—Jurisdiction. 1.

Distress for Rent—Law of Distress Amendment Act, 1908 (8 Edw. 7, c. 53), amends the law as regards a landlord's right of distress for rent.

— Distress for rent.

See also under *DISTRESS*.

29. — *Distress—Beerhouse—Covenant by lessee to use premises only as beerhouse—Non-renewal of licence—Impossibility of performing covenant—Continuance of lease—Compensation—Licensing Act, 1904* (4 Edw. 7, c. 23), s. 2, sub-s. 1.

By an indenture of lease made in 1895 the plt. demised to the deft. certain premises described as "all that beerhouse and premises with the bakehouse in the rear" for a term of twenty-one years. The lease contained covenants by the deft. to continue the premises as a beerhouse at all times during the term and not to use the premises or permit them to be used in any other manner than as a beerhouse without the consent of the plt. The house had been licensed as a beerhouse since before the passing of the Wine and Beerhouse Act, 1869. In 1905 the renewal of the licence was refused under the Licensing Act, 1904, on the ground that it was not necessary for the requirements of the neighbourhood, and in Aug., 1907, compensation was paid to the plt. and the deft.

In an action to recover a half-year's rent due in Jan., 1908 :—

Held, that the non-renewal of the licence had not the effect of putting an end to the lease, and that the deft. was therefore liable for the rent. *GRIMSDICK v. SWEETMAN* — Div. Ct. [1909] W. N. 182; [1909] 2 K. B. 740

— Distress—Fixtures—Advertisement hoardings—Right to distrain.

See *DISTRESS*. 3.

— Distress—Protected goods—Reputed ownership.

See *DISTRESS*. 8.

— Distress for rent—Exemption—Goods let to wife of tenant—Hire-purchase agreement.

See *DISTRESS*. 10.

30. — *Distress for rent—Rent due on Sunday—Legality of distress levied on following Monday.*

At common law Sunday is not a dies non.

Rent may lawfully be paid by a tenant on a Sunday. Therefore where it is due on that day, and is not paid, it will be in arrear on the following Monday, and the landlord may then lawfully levy a distress for it. *CHILD v. EDWARDS* — Ridley J. [1909] W. N. 172; [1909] 2 K. B. 753

Note.

See also *Milch v. Frankau & Co.*, Div. Ct. [1909] 2 K. B. 100; *London—Mayor's Court*. 2.

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— Distribution of insolvent's estate—Landlord's privilege—Law of Quebec.

See *CANADA—Insolvent Estates*. 1.

31. — *Drains—Collateral agreement—Parol warranty that drains are in order.*

The plt. and the deft. negotiated for the lease of a house by the latter to the former. The terms were arranged, but the plt. refused to hand over the counterpart that he had signed unless he received an assurance that the drains were in order. The deft. verbally represented that they were in good order, and the counterpart was thereupon handed to him. The lease contained no reference to drains. The drains were not in good order, and an action was brought to recover damages for breach of warranty :—

Held, that the representation made by the deft. as to the drains being in good order was a warranty which was collateral to the lease, and for breach of which an action was maintainable. *DE LASSALLE v. GUILDFORD* — C. A. [1901] 2 K. B. 215

— Estoppel in pais.

See *ESTOPPEL*. 1.

32. — *Evidence, Inadmissibility of—Collateral agreement—Lease under seal—Covenant to pay rent in advance—Antecedent agreement to take bill for rent—Contract.*

Where, in an action by lessor against lessee for a quarter's rent upon a covenant in a lease for payment of the rent quarterly in advance, the deft. set up by way of defence that by a parol agreement made between the plt. and the deft. antecedently to the execution of the lease the deft. agreed to take a bill payable at three months by way of payment of each quarter's rent in advance as it became due, and that the deft. had tendered such a bill to the plt. in respect of the rent sued for, which the plt. refused to take :—

Held, that evidence of such an agreement as alleged was inadmissible. *HENDERSON v. ARTHUR* — C. A. [1906] W. N. 207; [1907] 1 K. B. 10

Note.

Dictum of Farwell J. in, followed by Warington J., *In re J. Defries & Sons, Ltd.*, [1909] 2 Ch. 423. See *Company—Debentures*. 51.

33. — *Execution—Judgment creditor—Arrears of rent—"Landlord"—"Rent"—Landlord and Tenant Act, 1709* (8 Anne, c. 18), s. 1.

In 1896 a brewery co. who were lessees of a public-house granted an underlease of the same to I., who mortgaged his interest to the plt., and gave a second mortgage to the co. In 1901 I. became bankrupt, and the deft. was appointed his trustee in bankruptcy. In 1902 the co. went into possession as second mortgagees and let the public-house to a tenant who agreed to pay a rent of 150*l.* a year for the premises and an additional yearly sum of 1250*l.* in lieu of premium for goodwill. On Mar. 8, 1909, the co. obtained judgment against their tenant for 960*l.* and gave him a month's notice to determine his tenancy. On Mar. 9, 1909, before the tenancy expired, the plt. commenced a foreclosure action against the deft. and the co., and

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on Mar. 12 a receiver and manager was appointed, to whom the co. was directed to give up possession. Later on the same day the sheriff levied execution in respect of the co.'s judgment debt :—

Held by Joyce J., [1909] W. N. 244, that the receiver was "landlord" of the premises within the meaning of s. 1 of the Landlord and Tenant Act, 1709, and as such was entitled to be paid by the execution creditor one year's arrears of the rent; and *held* by Joyce J. and the C. A., that the rent comprised the 150*l.* only, the 1250*l.* not being rent within the meaning of the statute. *COX v. HARPER* - C. A. [1910]

W. N. 34; [1910] 1 Ch. 480

— Factory—Expense of complying with requirement of sanitary authority—Jurisdiction.

See COUNTY COURT—Jurisdiction. 5.

— Factory Acts—Covenant by lessee to discharge outgoings—Underground bake-house.

See FACTORY. 8.

— Farming lease—Outgoing tenant—Arbitration—Sheep stock valuation—Agricultural Holdings (Scotland) Act, 1908.

See SCOTTISH LAW. 12.

— Fine on surrender of lease—Tenant for life and remainderman—Capital or income.

See SETTLED LAND—Leases. 2.

— Fixtures.

See under FIXTURES.

34. — *Fixtures—Tenant's covenant to deliver up demised premises with fixtures—Surrender and creation of new tenancy.*

A lease of houses made in 1851 for a term of seventy years contained a lessee's covenant at the expiration or determination of the term to deliver up the demised premises "with all and singular the fixtures and articles belonging thereto."

In 1907 the lease was vested in A., and the premises were occupied and used as a common lodging-house by W., who held as a weekly tenant from A.

In June, 1907, the lessors served on A. a notice to repair the premises, and A. in writing made an offer to surrender the premises at once and to pay 100*l.* towards the repairs, and this offer was accepted by the lessors. W., who had affixed to the premises things alleged to be tenant's or trade fixtures, was aware of what was going on, but the lessors did not know of his sub-tenancy until July 1, 1907. The lessors and A. wished to get rid of the sub-tenancy, and W. knew that this was their intention, and early in Aug. A. gave, and W. accepted, a notice to quit on Aug. 19.

By an agreement in writing dated Aug. 7 between the lessors and W., the latter became the weekly tenant of the lessors as from Aug. 12, but no agreement was entered into with reference to W.'s fixtures.

By a surrender by deed executed on Aug. 9 (but dated Aug. 6 so as to make it precede the agreement with W.) A., as beneficial owner, surrendered and assigned the demised premises

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to the lessors, "to the intent that the residue . . . unexpired of the term of years" therein might merge and be extinguished in the freehold and inheritance.

On Sept. 12, 1907, the lessors served W. with a notice to quit on Sept. 23 :—

Held—(1.) that the lessee's covenant to deliver was binding on W., and was not confined to landlord's fixtures, but extended to tenant's and trade fixtures; (2.) that an agreement to surrender precluded the lessee from removing fixtures then upon the demised premises, although they were tenant's or trade fixtures, but would not affect his sub-tenant's right of removal without the consent of the latter, although the exercise of that right might make the lessee unable to complete his contract with the lessor; (3.) that a contract to surrender a lease was a contract to surrender in possession free from sub-tenancies; (4.) that if W. consented to the surrender, his tenancy was thereby surrendered and his right to remove fixtures was gone; (5.) that if W. did not consent to the surrender, he was between Aug. 9 and 12 the tenant of the lessors under the sub-tenancy granted by A., and even a rightful removal during this period by W. would have been a breach of the covenants for title implied by A.'s surrender; but (6.) that by accepting the tenancy commencing on Aug. 12 W. surrendered such tenancy as he already had and with it any right to remove fixtures.

Semble, that if a tenant, on surrendering his lease in order that a new lease be granted, makes no stipulation to the contrary, he loses his right to remove fixtures, inasmuch as the surrender *prima facie* includes fixtures, and the subject of the new lease is *prima facie* what is surrendered in order to be re-demised; although in exceptional cases a termor remaining in possession after the expiration of his term under circumstances shewing that there is merely a prolongation of the term is allowed to remove fixtures after the term is ended. *LESCHALLAS v. WOOLF*

Parker J. [1908] 1 Ch. 641

— Fixtures, Tenant's—Removal—Determination of lease by forfeiture—Mortgage of lease—Right of mortgagee.

See COMPANY—Leases. 1.

— Fixtures, Trade.

See under FIXTURES.

— Flats, Building let out in—Negligence—Staircase not lighted—Landlord, liability of, to persons other than tenants.

See FLATS. 1.

— Flats, House let in—Liability of landlord for disrepair of roof.

See NEGLIGENCE. 6.

35. — *Forfeiture—Ejectment—Mortgagee of underlease—Relief—Costs—Parties—Common Law Procedure Act, 1852 (15 & 16 Vict. c. 76), ss. 210, 211, 212—Common Law Procedure Act, 1860 (23 & 24 Vict. c. 126), s. 1.*

A lessor having ejected an underlessee for non-payment of ground-rent, mortgagees by sub-demise of the underlease applied for relief under the ordinary equitable jurisdiction and the Common Law Procedure Acts, claiming a direct

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lease for their mortgage term, on the usual conditions.

The lessor opposed the application on the ground that the lessee and the assignee of the head lease were not parties, and on other grounds which failed.

It appeared that the lease had been assigned by the lessee's trustee in bankruptcy twenty-seven years ago, and that the assignee had not been heard of for twenty-six years, and could not be traced :—

Held, that the above circumstances afforded sufficient reason for not making the lessee and assignee parties as *prima facie* required by *Hare v. Elms*, [1893] 1 Q. B. 604, and that the mortgagees were entitled to the relief claimed :

Held, also, that the mortgagees must pay the costs of the action, except so far as they had been increased by the lessor resisting their claim to relief, which increased costs must be paid by the lessor.

Howard v. Fanshawe, [1895] 2 Ch. 581, 592, followed.

Newbolt v. Bingham, (1895) 72 L. T. 852, distinguished. HUMPHREYS v. MORTEN

Swinfen Eady J. [1905] W. N. 66 :
[1905] 1 Ch. 739

36. — Forfeiture — Relief — Writ claiming possession — Election to determine tenancy — Underlease — Relief granted to lessee — Effect of underlease — Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), s. 14.

A lease of premises contained a covenant by the lessee to repair, and a proviso for re-entry upon breach of any covenant in the lease. The lessee sub-let to the deft., the underlease containing a covenant to repair similar to that in the head lease, and a similar proviso for re-entry. The premises having become out of repair, the lessor issued a writ against the lessee to recover possession. The lessee thereupon assigned the lease, subject to and with benefit of the underlease, to an assignee, who obtained an order, under s. 14, sub-s. 2, of the Conveyancing and Law of Property Act, 1881, that all further proceedings in the action should be stayed, and that the assignee should have relief from the forfeiture and should hold the premises according to the old lease without any new lease. The assignee then brought an action against the deft. for rent due upon the underlease subsequent to the issue and service of the writ to recover possession :—

Held, affirming the decision of Darling J., [1909] 2 K. B. 894, that though the issue and service of the writ to recover possession operated as a final election by the lessor to determine the lease, the effect of the order for relief was to restore the lease as if it had never become forfeited, and therefore the underlease also remained in existence, and that the plt. was entitled to recover. *DENDY v. EVANS*

C. A. [1909] W. N. 258 ;
[1910] 1 K. B. 263

— Forfeiture, Relief against—Lease—Counterpart referred to for explanation of ambiguity—Covenant—Breach.
See No. 8, above.

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37. — Forfeiture, Relief from—Conditional order—Non-fulfilment of conditions — Lease — R. S. C., Order XLII., r. 2.

Where an order granting relief against the forfeiture of a lease was expressed to be made upon the defts. performing certain conditions, and the defts. having performed part of the conditions declined to perform the remainder and desired to waive the relief :—

Held, that there was no power to compel the defts. to perform the conditions, and that the order for relief must therefore be treated as abandoned. *TALBOT v. BLINDELL Walton J.*
[1908] W. N. 84 ; [1908] 2 K. B. 114

38. — Forfeiture for non-payment of rent—Lease—Underlessee—"Tenant"—Relief against forfeiture—Common Law Procedure Act, 1852 (15 & 16 Vict. c. 76), s. 212.

On an application under s. 212 of the Common Law Procedure Act, 1852, for relief against forfeiture of a head lease for non-payment of rent by an underlessee, it is not necessary for the applicant to prove his title as underlessee or assignee of the original lessee ; the fact that the applicant is "tenant" in possession is sufficient.

Dictum of Erie J. in *Doe d. Wyatt v. Byron*, (1845) 1 C. B. 623, at p. 634, applied. *MOORE v. SMEE AND CORNISH* — **C. A.**
[1907] W. N. 84 ; [1907] 2 K. B. 8

39. — Forfeiture for non-payment of rent—Underlessee—Relief against forfeiture—Conveyancing and Law of Property Act, 1892 (55 & 56 Vict. c. 13), s. 4—Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), s. 14, sub-s. 8—Common Law Procedure Act, 1860 (23 & 24 Vict. c. 126), s. 1.

Section 4 of the Conveyancing and Law of Property Act, 1892, is not a mere amendment of s. 14 of the Conveyancing and Law of Property Act, 1881, extending the provisions of that section to underlessees, but an independent provision for affording relief to underlessees against forfeiture for breach of any covenant in the head lease, and therefore relief can be given under s. 4 to an underlessee against a forfeiture of the head lease for non-payment of rent. *GRAY v. BONSALE*

C. A. [1904] W. N. 63 ; [1904] 1 K. B. 601

— Foreshore—Power to acquire—Municipal corporation—Oysters.
See FISHERY. 6.

— Forfeiture—Notice of forfeiture to lessee.
See AUSTRALIA. 10.

— Forfeiture of lease—Condition to take over sheep at expiration of lease.
See SCOTTISH LAW.

40. — House agent, Authority of—Agreement for lease.

Action brought for specific performance of an alleged agreement to grant a sub-lease of a flat, or in the alternative for damages for breach of the alleged agreement. The claim for a specific performance was abandoned at the bar ; no special damage was alleged ; and the only claim, if any, sustainable was for nominal damages. The plt., in search of a flat, applied

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to a firm of house agents who had been instructed by the deft. to endeavour to find him a tenant for his flat. The plt. sued on a letter written by the agents to himself. The deft. pleaded that he never authorized the house agents to enter into any agreement on his behalf for a sub-lease of the flat.

Parker J. said that estate agents, as such, had no authority to enter into contracts for their employers; they had only to find persons who were willing to contract, and submit their names and offers to the principals employing them. If any authority to contract was given in any case it must be proved, and could not be inferred from the mere fact that the estate agent had been employed by his principal. In the present case the plt. had not shewn a contract containing all the material terms necessary in order that he might succeed, and the action must be dismissed.*

* *Note*:—"A house or estate agent has no implied or general authority to conclude a contract for sale; his duty is to find a purchaser or tenant, or communicate his offer to his principal." *Per Chatterton V.-C. in Wilde v. Watson*, (1878) 1 L.R. (Ir.) 402, 405. **THUMAN v. BEST** - **Parker J. [1907] W. N. 170**

— Impositions—Outgoings.

See No. 56—61, below.

41. — Impositions—Covenant by lessee to pay and discharge impositions—“Impositions charged or imposed in respect of the premises”—Order by sanitary authority on lessor to do structural works.

A lease for years contained a covenant by the lessee to “pay and discharge all taxes rates including sewers main drainage assessments and impositions whatsoever which now are or may at any time or times hereafter during the continuance of the said term hereby granted be taxed rated assessed charged or imposed upon or in respect of the said premises or any part thereof on the landlord tenant or occupier of the same premises by authority of Parliament or otherwise howsoever (landlord’s property tax and tithe only excepted).” There was no repairing covenant in the lease. Notice was given to the lessor by the sanitary authority of the district, under the Public Health (London) Act, 1891, to abate a nuisance caused by a foul and offensive privy on the premises, by removing the privy, and constructing a water-closet in accordance with the by-laws of the London County Council. The lessor thereupon did the work required by the notice, and subsequently sued the lessee to recover the expense incurred by him in so doing.

Held (reversing the decision of a Div. Ct., [1901] 2 K. B. 151), that this expense was covered by the words “impositions charged or imposed upon or in respect of the said premises on the landlord tenant or occupier of the same” in the covenant, and therefore that the action was maintainable. **FOULGER v. ARDING**

C. A. [1902] W. N. 55; [1902] 1 K. B. 700

Note.

This case was applied by Swinfen Eady J., *In re Warriner*, [1903] 2 Ch. 367. *See No. 56, below.*

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— Income tax—Covenant by lessor to pay fire insurance premium—Deduction.
See REVENUE—Income Tax. 20.

42. — Injury happening to stranger during tenancy, Liability of landlord for—Landlord under no contractual liability to repair—Repairs in fact done by landlord—Negligence of landlord’s servants in executing repairs—Nuisance.

The defts., who were the owners of considerable house property, let a house to a tenant who subsequently sub-let it to a co. whose manager resided on the premises with his wife (the plt.) and his family; the defts. were not liable to do any repairs in the house. In the lavatory of the house was a water tank, which became insecure, owing, as was alleged, to the vibration caused by an engine and machinery upon adjoining premises of the defts., which were used by them for the purpose of generating electricity for the lighting of their property. Complaints of the insecurity of the water tank were made by the plt. and her husband to the tenant, who forwarded them to the defts. Ultimately the defts. sent two workmen, who were their own servants, to do the necessary repairs, and an iron bracket was fixed underneath the tank to support it. Three months afterwards the bracket fell upon the plt. and seriously injured her. The jury found that the bracket fell by reason of the working of the defts.’ engine, that the working of the engine amounted to a nuisance, and that the work of repair in putting up the bracket was done in an improper and negligent manner and the apparatus left in a condition dangerous to persons properly using the lavatory:—

Held, first, that the plt. had no cause of action against the defts. on the ground of nuisance, because she had no interest in the premises or right of occupation in the proper sense of the term; secondly, that she could not recover on the ground of negligence, for there was no contractual relation between the plt. and the defts., and the doing of the repairs was a voluntary act on the part of the defts. not done in the discharge of a duty to the plt.; and that as the defts. had no control of the premises, there was no invitation on their part to the plt., but at the utmost an innocent representation as to the state of the premises, which, as they had employed apparently competent men to do the repairs, gave the plt. no cause of action. **MALONE v. LASKEY** - **C. A. [1907] 2 K. B. 141**

43. — Insanitary house—Negligence of landlord—Right of wife and children of tenant to claim damages for illness.

In Scotland, as well as in England, the wife and children of the tenant of a dwelling-house are not entitled to recover damages from the landlord for loss and injury through illness caused by the insanitary state of the premises, inasmuch as they were not parties to the contract of tenancy.

Cavalier v. Pope, [1906] A. C. 428, followed. *Hall v. Hubner*, (1897) 24 R. 875, dissented from.

Decision of the First Division of the Ct. of

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Sess., (1907) S. C. 475, affirmed. CAMERON v. YOUNG - - H. L. (Sc.) [1908] W. N. 61; [1908] A. C. 176

44. — *Insure, Covenant to*—“*Buildings which at any time during the said term may be erected or placed upon or fixed upon the said demised premises.*”

By an indenture of lease dated Jan. 21, 1901, the plt. let to the predecessors in title of the deft. certain warehouses and sale-rooms, yard, outbuildings, and premises in the county of London. The lessees' covenants included a covenant to paint at certain fixed periods the outside wood, iron, and cement work “of the said premises hereby demised, and any additional buildings which may at any time during the said term be erected thereon,” and also to keep in repair “the said buildings, and all new buildings which may at any time during the said term be erected on and all additions made to the said demised premises,” and after other covenants the indenture went on: “And also that the lessees will at their own cost insure and at all times during the said term keep insured against loss or damage by fire all buildings, erections, and fixtures of an insurable character which at any time during the said term may be erected or placed upon or fixed upon the said demised premises to the amount of the full value thereof, to be determined by the surveyor for the time being of the lessor.”

No new buildings were erected on the premises, after the commencement of the lease, and the deft. contended that under this covenant he was not bound to insure the buildings then existing on the premises. The action was brought for breach of the covenant to insure, and the county court judge gave judgment for the plt.

The Court dismissed the appeal on the ground that, unless the language of the covenant was too strong for the construction put upon it by the county court judge, the onus lay on the appellant to shew that he was wrong. The view taken by the county court judge was reasonable, and the opposite construction would have the unreasonable result that while the lessees would be bound to insure under the covenant all new buildings erected on the premises and also any new fixtures placed by them on the old buildings, the burden of insuring the old buildings would be left to the lessor, which would be extremely inconvenient. It was impossible, therefore, to say that the view taken of the section by the county court judge was wrong. SIMS v. CASTIGLIONE

Div. Ct. [1905] W. N. 112

— Irish Land Purchase Acts—Redemption of liability for rent out of estate indemnified therefrom—Right over indemnifying lands.

See IRISH LAW. 2.

45. — *Land tax—Lease—Covenant by lessor to pay land tax—Construction—Value of land improved by building.*

Where in a lease of premises at a ground rent the lessors covenanted to pay the land tax chargeable on the demised premises:—

Held, that the covenant must be construed as

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referring only to so much of the total land tax chargeable on the premises as was proportionate to the benefit derived therefrom by the lessors, i.e., the amount of the ground rent.

Watson v. Home, (1827) 7 B. & C. 285, and *Smith v. Humble*, (1854) 15 C. B. 321, followed. MANSFIELD v. RELF C. A. [1907] W. N. 235; [1908] 1 K. B. 71

Note.

This case was discussed and distinguished by C. A., *Salaman v. Holford*, [1909] 2 Ch. 602. See No. 70, below.

46. — *Leaseholds—Breach of covenant—Trustee of leaseholds—Lien—Right of indemnity—Bankruptcy of trustee—Debt provable in bankruptcy—Property held by the bankrupt as trustee for any other person—Position of trustee in bankruptcy—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), ss. 37, 44.*

Where a trustee who holds property to secure his own right of indemnity in priority to all claims of his cestui que trust becomes bankrupt, and the retention of such property—e.g., leaseholds with onerous covenants—is necessary to give full effect to such right, the legal estate in the property and right to possession vest in the trustee in bankruptcy to the extent to which they were vested in the bankrupt.

In 1894 R. was the assignee of leaseholds with onerous covenants as trustee for his wife; in 1895 R. was adjudicated bankrupt; in 1896 the trustee in bankruptcy assigned the leaseholds back again to R. as trustee for his wife, and R. obtained his discharge. In 1908 the lessors, who had had no notice of the fact that R. was a trustee or of his bankruptcy, brought an action against R. for arrears of rent and for damages for breach of covenant to repair. R. pleaded the bankruptcy proceedings as a defence:—

Held, reversing the decision of Hamilton J., that the leaseholds vested in the trustee in bankruptcy, who held them, subject to satisfying his own lien and right of indemnity, for R.'s wife; that the leaseholds passed back again to R. by the assignment of 1896; and that the bankruptcy was no defence to the action, and R. was liable as assignee. GOVERNORS OF ST. THOMAS'S HOSPITAL v. RICHARDSON C. A. [1910]

1 K. B. 271

— “*Let*,” Implication from the word—Quiet enjoyment.

See No. 67, below.

—*Letting*—Quiet enjoyment.

See Nos. 64—68, below.

47. — *Letting—Shop—Agreement—Restrictive covenant—Covenant by tenant not to carry on other than a specified business—Covenant by landlord “not to let” adjoining premises for a similar business—Subsequent letting—Overlapping business—Action against landlord—Breach of covenant—Injunction—Damages—Lessor and lessee.*

T., the landlord of an arcade containing shops, agreed in writing, binding himself and his “assigns,” to grant to B., a “fine art dealer,” a lease of one of the shops for a term of twenty-one years, determinable on notice at the end of the seventh or fourteenth year; the lease to contain a covenant by the lessee not to carry on

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upon the premises any other trade or business than such as was therein specified, including that of an "artistic and heraldic stationer"; and also a covenant by the landlord "not to let any other portion of the arcade for the trade or business hereinbefore mentioned to be carried on by the tenant." B. thereupon entered into possession of the shop and carried on his specified trade or business there.

Subsequently T. let a stall forming part of another shop in the arcade to G., a "bookseller and stationer," on a tenancy determinable on three months' notice, and it was agreed that the tenant should not carry on any business other than that of a librarian, newsagent, bookseller, or stationer. G. then proceeded to sell at his stall certain articles commonly included in a business such as that described in his agreement, but which were also included in a business such as that described in B.'s agreement. G. had notice of B.'s agreement.

In an action by B. against T. and G. for an injunction to restrain T. from "letting" and G. from "using" the stall or any other portion of the arcade for any of the purposes of the business described in B.'s agreement:—

Held, (1.) that T. had committed a breach of his covenant with B. "not to let" for which he was liable in damages, and that although, in the circumstances, an immediate injunction against T. was not necessary, B. might apply for an injunction in the event of any future breach; but (2.) that, as the covenant restrained "letting" only and not "using," B. had no remedy against G. either by injunction or damages.

A restrictive covenant as to the letting or user of property will be construed strictly, and not so as to create a wider obligation than is imported by the actual words: *Kemp v. Bird*, (1877) 5 Ch. D. 974. *BRIGG v. THORNTON*

C. A. [1904] 1 Ch. 386

48. — Licensed Premises, Lease of—Construction of covenant—Covenant to keep and conduct premises in a regular and proper manner—Under-lease—Offence by under-lessee against licensing laws—Refusal to renew licence—Liability of lessee.

A lease of licensed premises to a co. contained the following covenant: "Provided always that the co. will not at any time during the continuance of the said term, without the consent of the lessor first had and obtained, convert the said demised premises into a shop, warehouse, or place of sale for goods or merchandise, or into a private dwelling-house, or open or use, or suffer the same to be opened or used, for any other purpose than as a beer-house, and also will at all times during the said term keep and conduct the same in a regular and proper manner in every respect, and will apply for and use his best endeavours when required to obtain a renewal of the existing licences or permission of Her Majesty's justices of the peace for the vending of wines, ale, beer, and tobacco on the said demised premises; and shall not knowingly or willingly do or suffer any act whereby the same may become indorsed, forfeited, or the renewal thereof refused; and will not commit

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any offence against the licensing laws for the time being in force." The lessees having underlet the premises, the under-lessee was convicted of an offence against the licensing laws, by reason of which the renewal of the licences was refused. In an action by the lessor against the lessees for breach of the covenant:—

Held, that there had been a breach of the covenant at all times during the term to keep and conduct the premises in a regular and proper manner in every respect, for which the lessees were liable.

Bryant v. Handcock, [1899] A. C. 442, distinguished. *PALETHORPE v. HOME BREWERY CO.* C. A. [1906] W. N. 96; [1906] 2 K. B. 5

— Licensing Acts.

See under LICENSING ACTS.

49. — Light — Easement—Quiet enjoyment—Derogation from grant — Staircase overlooking bedroom — Privacy — Comfort — Injunction — Flats, Interference with.

In Sept., 1905, a flat consisting of twelve rooms on the ground, first, and second floors of F. Mansions was let to Mrs. L. for five years. In Nov., 1907, a flat on the ground floor of the mansions was let to the plts. for five years. Both flats had windows overlooking a garden belonging to the lessors. Mrs. L.'s agreement contained a clause prohibiting the use of her flat otherwise than as a dwelling-house, and the plts. were prohibited from using theirs otherwise than as a private residence. Each agreement contained a stipulation that the tenants would not do anything on the demised premises which might be a nuisance to the lessors or to the occupiers of adjoining premises or which might tend to lessen the value thereof. In 1909 Mrs. L. sub-divided her flat and, with the consent of the lessors, erected an open-work iron staircase from the garden to an entrance to her flat on the first floor; and in 1910 let it and the part of her flat to which it gave access to K. Her tenancy was also extended for two years. The staircase was situated between the windows of two of the bedrooms in the plts.' flat, and the fact that it was used as the only access to K.'s flat seriously affected the plts.' privacy, for persons using the staircase could see directly into the rooms. The plts. brought this action claiming to have the staircase removed, or compensation. They did not contend that the staircase interfered with their light so as to be actionable within *Colls v. Home and Colonial Stores*, [1904] A. C. 179, but said that in order to ensure their privacy they would have to use curtains of sufficient thickness seriously to affect their comfort.

Parker J. held that Mrs. L. had done nothing on her premises in breach of her covenant; what she had done was on adjoining land of the lessors. The flats in question were not affected by any building scheme. Easements might be impliedly created on the principle that a man must not derogate from his own grant. The law did not recognize any easement of privacy; but the principle covered obligations on the part of the grantor which did not amount to easements. Thus, if land were granted for a particular purpose the grantor must not make the land unfit

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for that purpose. The staircase in the present case did not make the plts.' flat materially less fit for the purposes for which it was demised. There had been no physical interference with the flat, so there had been no breach of the covenant for quiet enjoyment; an interference with comfort was not enough. Action dismissed. **BROWNE v. FLOWER** **Parker J. [1910]**

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Light and air.

See under **LIGHT AND AIR**.

Merger.

See under **MERGER**.

— Merger, Question of—Lease—Claim arising out of bankruptcy—Jurisdiction—County court.

See **BANKRUPTCY—Jurisdiction. 1.**

50. — Mill—Landlord's liability—Room in mill let with machine—Contract to supply power to work machine—Implication of reasonable fitness for purpose—Excessive supply causing damage.

The defts. were tenants of a mill, and they let to the plts., under an oral contract, a room in the mill with the machine therein, and agreed to supply power for the working of the machine. The power was supplied by an engine upon the premises, and owing to a defect in the governor of this engine, it ran at an excessive speed, and caused the drum of the machine in the plt.'s room to revolve at such a speed that it burst, and killed a workman of the plts.' who was working the machine. The plts. paid compensation to the widow of the workman. In an action to recover from the defts. the amount that the plts. had been obliged to pay and the costs incurred by them:—

Held, that the obligation of the defts. to supply power did not arise upon a demise, but upon a specific contract which involved, in the absence of special conditions, that the power supplied should be reasonably fit for the purpose for which it was supplied, and that the defts. were liable for the consequences of a breach of that contract. **BENTLEY BROS. v. METCALFE & Co.** **C. A. [1906] 2 K. B. 548**

— Mining leases.

See under **MINES**.

51. — Mortgagee "as agent," Lease by—Lessee's covenant as to selling or removing hay or manure—Covenant running with land.

R., being the mortgagee of a farm belonging to B. and the collector of the rents thereof for B., but not in possession of the land, entered into an agreement under seal, expressed to be made between R. "as agent, hereinafter called 'the landlord'" and S., "hereinafter called 'the tenant,'" whereby R. let the farm to S. from year to year. The agreement provided that the tenant should consume on the premises all hay and fodder, spread upon the land, all manure and compost produced on the farm, not sell off any hay or fodder, and at the end of the tenancy leave all manure and compost.

R. subsequently sold and conveyed the farm to C., who brought an action to restrain S. from

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acting in contravention of the above-mentioned provision:—

Held—(1) on the construction of the agreement, and having regard to the surrounding circumstances, that the demise was by the mortgagee; (2) that, in a demise under seal by a mortgagee, the description of the person letting "as agent" was not sufficient to prevent the demise operating on the legal estate vested in him; (3) that C., as assignee of the reversion, could enforce any covenant in the lease which ran with the reversion; and (4) that the covenant as to hay and manure did so run. **CHAPMAN v. SMITH** **Parker J. [1907] 2 Ch. 97**

— Mortgages.

See under **MORTGAGE—Leases**.

— Mortgagor—Lease by—Affirmance by mortgagee—Estoppel in pais.

See **ESTOPPEL. 1.**

52. — Negative covenants — Alterations — Assignment of lease—Lessor and lessee—Covenant "to perform and observe" original covenants—Right of assignee to enforce negative covenant—Indemnity.

The true object of the covenant by the assignee usually inserted in the assignment of leaseholds is merely to indemnify and protect the lessee against breach of covenants contained in the lease, and consequently a lessee is not entitled to enforce by injunction the specific performance by his assignee of the negative covenants contained in the original lease by means of the covenant "to perform and observe" the covenants and conditions contained in the lease, and to indemnify the assignor from and against all claims and demands on account of the same.

Observations in *In re Poole and Clarke's Contract*, [1904] 2 Ch. 173, discussed and applied.

Semble: A covenant to perform and observe the negative covenants in a lease is not of itself a negative covenant within the rule which binds the Court to grant an injunction on evidence of its breach. **HARRIS v. BOOTS, CASH CHEMISTS (SOUTHERN), LD.** **Warrington J. [1904]**

W. N. 141; [1904] 2 Ch. 736

See **VENDOR AND PURCHASER—Covenants. 3.**

— New Zealand Property Law Act, 1908—Suit by lessee on a covenant to renew the lease—Specific performance.

See **NEW ZEALAND. 11.**

— Notice to determine—Sporting right.

See **No. 82, below.**

53. — Notice to quit—Tenancy at yearly rent—Habendum "until such tenancy shall be determined as hereinafter mentioned"—Provision for three months' notice to quit—Expiration of notice.

By an agreement of tenancy a public-house was let from a certain date "until such tenancy shall be determined as hereinafter mentioned" at a yearly rent of 70l. clear of all deductions except land and property tax payable quarterly on certain named days, the tenant agreeing (inter alia) to keep the premises in repair. The

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agreement contained a provision that it should be lawful for either party "to determine the tenancy hereby created by giving to the other of them three calendar months' notice in writing for that purpose:—

Held, that the agreement created a yearly tenancy determinable by three months' notice expiring with any year of the tenancy, and not a tenancy for an indefinite term determinable by a three months' notice expiring at any time.

Judgment of Jelf J., [1905] 2 K. B. 576, affirmed. **LEWIS v. BAKER - C. A. [1906] W. N. 151; [1906] 2 K. B. 599**

54. — Notice to quit—Tenancy at yearly rent—Three months' notice—Expiration of notice.

By an agreement of tenancy premises were let "at an inclusive rental of 25*l.* per annum from Oct. 1; the tenant to pay rates and taxes in addition; three months' notice on either side to terminate this agreement":—

Held, that this agreement created a yearly tenancy determinable by three months' notice expiring with a year of the tenancy and not at any other time. **DIXON v. BRADFORD AND DISTRICT RAILWAY SERVANTS' COAL SUPPLY SOCIETY Div. Ct. [1904] 1 K. B. 444**

55. — Notice to quit—Validity of notice.

An agreement of tenancy provided that the tenancy should commence on May 1, 1895, and that the rent should be payable quarterly on May 1, Aug. 1, Nov. 1, and Feb. 1, "subject to three months' notice on either side at any time to terminate this agreement." The lessor on Jan. 24, 1901, gave the tenant three months' notice to quit on April 25:—

Held, that the notice to quit was good. **SOAMES v. NICHOLSON**

Div. Ct. [1901] W. N. 219; [1902] 1 K. B. 157

56. — Outgoings—Covenant—"Impositions"—Covenant by tenant to pay—Three years' tenancy—Notice by sanitary authority to reconstruct drains.

A landlord let a house to a tenant for three years at the "clear yearly rent" of 54*l.*, to be paid "free and clear of and from all deductions whatsoever," property tax excepted.

The tenant covenanted to pay the rent and to pay and discharge "all rates, taxes, assessments, and impositions whatsoever," whether "parliamentary, parochial, or otherwise," that might become due or assessed in respect of the premises during the tenancy, property tax excepted, and to keep the premises in as good repair as at the commencement of the tenancy, fair wear and tear excepted.

The landlord covenanted to keep the main walls and roof in repair during the tenancy:—

Held, that the duty and expense of complying with a notice from the sanitary authority to reconstruct the drains constituted an "imposition" within the agreement which fell on the tenant notwithstanding the absence of such words as "imposed on the landlord or tenant," and notwithstanding the shortness of the tenancy:—

Foulger v. Arding, [1902] 1 K. B. 700, 710, and Stockdale v. Ascherberg, [1903] 1 K. B. 873,

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considered and applied. *In re* **WARRINER BRAYSHAW v. NINNIS**

Swinfen Eady J. [1903] W. N. 118; [1903] 2 Ch. 367

57. — "Outgoings"—Covenant by lessee to pay "outgoings"—Paving expenses—Liability of lessee.

Under a covenant in a lease to pay "all rates, taxes and outgoings now payable or hereafter to become payable in respect of the premises," the lessee is liable for the cost of paving works incurred under s. 150 of the Public Health Act, 1875. **GREAVER v. WHITMARSH, WATSON & Co. Div. Ct. [1906] W. N. 132; [1906] 2 K. B. 340**

— "Outgoings and impositions," Covenant by lessee to pay and discharge—Underground bakehouse.
See **FACTORY. 58.**

58. — Option to purchase landlord's interest—Condition precedent—Lease—Rent "in the meantime" to have been "duly" paid—Part of purchase-money to be left on mortgage—Specific performance.

Def't., the lessee of a house, let the house to plt. at a rent payable quarterly in advance. The tenancy agreement gave plt. an option to purchase def't.'s interest in the house on the plt. giving def't. notice in writing of the intention to purchase, provided plt. should "in the meantime have duly paid the said rent hereby reserved." The plt. did not pay the rent due on Dec. 25, 1907, until Jan. 10, 1908. On Mar. 20, 1908, the plt. gave notice of her intention to purchase:—

Held, that "duly" did not mean punctually, and that the condition precedent to the exercise of the option had been fulfilled.

Held, also, that the fact that the agreement provided that part of the purchase-money should be left on mortgage did not make the agreement an agreement for a loan, and that specific performance of the agreement must be ordered. **STARKEY v. BARTON - Parker J. [1909] 1 Ch. 284**

59. — Outgoings, Covenant by lessee to pay and bear—Private street works—Expenses charged on premises before commencement of term—Completion of works—Final apportionment—Private Street Works Act, 1892 (55 & 56 Vict. c. 57), ss. 12, 14.

Where by a covenant in a lease the lessee covenanted that he would during the term pay and bear all present and future rates, taxes, duties, assessments, and outgoings charged upon the demised premises, or the owner or occupier in respect thereof:—

Held (reversing the judgment of Walton J.), that the covenant did not apply to expenses of private streets works which, under the Private Street Works Act, 1892, had become a charge upon the premises on the completion of the works before the date of the commencement of the term granted by the lease, though not payable until after that date.

Stoek v. Meakin, [1900] 1 Ch. 633, followed. SURTEES v. WOODHOUSE

C. A. [1903] W. N. 28; [1903] 1 K. B. 396

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— “Outgoings”—Covenant by occupier to pay —“Factory”—Means of escape in case of fire.

See **FACTORY**. 2, 7.

— “Outgoings”—Factory—Expenses of complying with requirement of sanitary authority.

See **COUNTY COURT—Jurisdiction**. 5.

— “Outgoings”—“Impositions and outgoings”—Lease—Factory Acts.

See **FACTORY**. 5.

60. — “Outgoings”—Tenancy for three years —Agreement by tenant to pay outgoings—Order by sanitary authority to reconstruct drain—Liability of tenant.

The plt. let a house to the deft. for a term of three years at the yearly rent of 55*l.* the deft. agreeing to pay all “outgoings in respect of the premises.” During the tenancy the plt., in obedience to an order from the sanitary authority, reconstructed the drainage system of the house at a cost of 83*l.* 10*s.* :—

Held, affirming the decision of Wright J., [1903] 1 K. B. 873, that the deft. was liable under the agreement to repay to the plt. the amount so expended. **STOCKDALE v. ASCHERBERG**

C. A. [1904] W. N. 30 ; [1904] 1 K. B. 447

Note.

See *In re Warriner*, Swinfen Eady J., [1903] 2 Ch. 367. See No. 56, *above*.

6 — “Outgoing”—Yearly tenancy—Covenant by tenant to pay outgoings—Defective drain, Reconstruction of—Public Health (London) Act, 1891 (54 & 55 Vict. c. 76), ss. 3, 4.

The owners of a house let to the deft. for a term of three years at a rent of 70*l.*, the deft. agreeing to pay “all rates, taxes, assessments, and outgoings whatsoever in respect of the said premises.” After the expiry of the term the deft. continued in occupation of the house without any fresh agreement, and paid rent for it at the same rate. Subsequently, and whilst the deft. was still in occupation, the sanitary inspector of the district served upon the owners of the house an intimation under s. 3 of the Public Health (London) Act, 1891, that the house was in such a state as to be a nuisance owing to the drain being defective. The owners gave notice to the deft., and required him to do the work necessary to abate the nuisance. Upon the deft. refusing to do so, the owners proceeded to do the work themselves at once without waiting to be served by the sanitary authority with a notice under s. 4 of the said Act requiring them to do the work. The expense incurred by them in doing the work amounted to 70*l.* 1*s.* 6*d.* In an action by the owners to recover that sum from the deft. under his covenant to pay all outgoings :—

Held, that the action could not be maintained upon the grounds—

1. That the owners, having done the work immediately upon receipt of the intimation of the existence of the nuisance and before service of any notice requiring them to abate it, did it voluntarily and not under any obligation, and that the expenditure was consequently not an

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“outgoing” within the meaning of the covenant ; and

2. That even if a covenant to pay outgoings would cover such an expenditure, it was not, having regard to the proportion which the expenditure bore to the yearly rent, a covenant which was applicable to a yearly tenancy, and that the deft. in holding over after the expiry of his term and paying rent could not be presumed to have intended to become a yearly tenant on the terms of such an obligation.

Valpy v. St. Leonards Wharf Co., (1903) 1 L. G. R. 305, followed. **HARRIS v. HICKMAN Wright J.** [1903] W. N. 188 ; [1904] 1 K. B. 13

— Oysters—Municipal corporation—Power to acquire lease of foreshore.

See **FISHERY**. 6.

— Party-wall—Derogation from grant—Light—User of external wall as party-wall—Architect—Scope of authority.

See **LONDON—Buildings**. 18.

62. — Pasture lands—Agreement of tenancy —Construction—Covenant not to plough up pasture lands—Waste—Good husbandry—Costs.

By an agreement made in 1895 the predecessor in title of the plt. let a farm to the deft. from year to year at a rent of 250*l.* subject to twelve months' notice in writing from either party, and the tenant agreed not to commit any waste or spoil, or plough or break up any of the pasture lands, and further to farm the land upon the most approved system of husbandry practised in the neighbourhood. The farm contained 215 acres, of which the most part was pasture, but there were about 53 acres of arable land. Included in the latter was one field of 22 acres which had been regularly tilled by the tenant for thirteen seasons prior to 1894, but in 1895 the tenant laid it down in grass because the crops had deteriorated in quality and quantity. In 1901 he broke up nine acres of this field, but in 1902 he relaid it in grass.

In April, 1909, the landlord gave the tenant notice to determine the tenancy. The tenant required the landlord to pay him, when he went out, for the grass land laid down, and on the landlord's refusal the tenant threatened to plough up this land again. In an action by the landlord for an injunction to restrain the tenant from so doing :—

Held that, upon the true construction of the agreement, the tenant had not broken any of the covenants, as the “pasture lands” in the agreement referred solely to those parts of the farm which were meadow land at the date of the agreement ; and, further, that ploughing the field would not have been waste or spoil on the tenant's part.

An act which admittedly would not be a breach of covenant while the tenant is not under notice is not converted into a breach as soon as notice to quit is served.

The fact that the tenant's conduct was dictated solely by a desire to force the landlord to compensate him did not affect the construction

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of the contract, or disentitle the tenant to the costs of the action. *RUSH v. LUCAS* - *Eve J.*

[1910] W. N. 9; [1910] 1 Ch. 437

— Perpetuity—Lease—Covenant running with land—Option to purchase freehold during whole term.

See COVENANT. 4.

— Poor-rate—Payment—"A term not exceeding three months"—Tenancy from week to week.

See RATES. 26.

— Public-house—Licences in jeopardy—Recovery of possession—Disputed title.

See RECEIVER. 12.

63. — *Public-house, Lease of—Covenant by lessee not to "suffer" an act to be done—Act by sub-lessee through which renewal of licence refused.*

A lease of a public-house contained a covenant by the lessee for himself, his heirs, executors, administrators, and assigns, that he would use the premises as a public-house or beerhouse only, and would carry on, or suffer, on the premises no other trade, business or manufacture during the term without the consent of the lessor, and that he would not do, or suffer to be done on the premises, any act whereby the licences might be forfeited, or indorsed, or the renewal of them withheld. The lease of the premises having been assigned to the deft., he underlet them to an underlessee, who was convicted of an offence against the licensing laws, by reason of which the renewal of the licences was refused. In an action by the plt., as assignee of the reversion, against the deft., as assignee of the lease, for breach of the above-mentioned covenant:—

Held, that, the sub-lessee not being the servant or agent of the deft., the latter could not be said to have done or suffered to be done the act by reason of which the licence was not renewed, and therefore the action was not maintainable. *WILSON v. TWAMLEY*

C. A. [1904] W. N. 97; [1904] 2 K. B. 99

— Purchase of lease—Unusual and onerous covenants—Duty of vendor—Constructive notice.

See VENDOR AND PURCHASER—Leases. 1.

64. — *Quiet enjoyment, Covenant for—Breach—Assignee of reversion—Purchase of adjoining property after date of lease—Conveyancing and Law of Property Act, 1881 (44 § 45 Vict. c. 41), s. 11.*

In 1897 a lease of offices for a term of fourteen years was granted to the plt. by the then owner of the freehold. The lease contained the ordinary covenant by the lessor, for himself, his executors, administrators and assigns, for the quiet enjoyment of the demised premises by the lessee. In 1898 the lessor conveyed the reversion, subject to the lease, to the defts. In 1900 the deft. purchased from a stranger a house adjoining the demised premises, pulled it down, and erected on the site a new building of such a height that it caused one of the plt.'s chimneys to smoke

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so as to affect materially his enjoyment of one room:—

Held, that the defts. were not liable for a breach of the covenant for quiet enjoyment, inasmuch as at the date of the demise the lessor had no interest in the adjoining premises, and could not and did not for the benefit of the lessee put any fetter on their enjoyment, but undertook to respect rights of the lessee which were limited by the fact that the owner of the adjoining land might, if he were so minded, build on it so as to interfere with the draught of the lessee's chimneys:—

Decision of *Byrne J.*, [1902] W. N. 164; [1902] 2 Ch. 635, affirmed. *And see* Errata to the Volume, [1902] 2 Ch.

The ordinary covenant for quiet enjoyment does not enlarge the grant. So far as the covenant is personal or collateral it does not run with the land.

Per Romer and Cozens-Hardy L.JJ.: Whether *Tebb v. Cave*, [1900] 1 Ch. 642, was rightly decided, *quære*.

Per Romer L.J.: Whether an indirect interference with the enjoyment of demised land (not affecting the title or the possession) is a breach of the lessor's covenant for quiet enjoyment, *quære*.

Per Cozens-Hardy L.J.: Sect. 11 of the Conveyancing Act, 1881, has in no way altered the old law as to the class of covenants the burden of which will run with the land. *DAVIS v. TOWN PROPERTIES INVESTMENT CORPORATION LD.* C. A. [1903] W. N. 62; [1903] 1 Ch. 797

65. — *Quiet enjoyment, Covenant for—Implied covenant—Implication arising from the word "let"—Lawful interruption by person claiming under title paramount—Underlease.*

By an agreement, not under seal, operating as an immediate demise, the deft. agreed to "let" to the plt. certain premises for the term of three years. The deft. was himself a lessee of the premises, which, by the terms of the lease to him, were subject to a restrictive covenant, of which the plt. had no notice, as to carrying on any business thereon. The plt. entered into possession, and carried on his business on the premises until restrained by an injunction obtained by the superior landlord. In an action for breach of contract for quiet enjoyment:—

Held, that, whether or not any contract for quiet enjoyment could be implied from the word "let," the use of that word did not create an unrestricted contract for quiet enjoyment which would cover lawful interruption by a person claiming under title paramount, and that the plt. was not entitled to recover.

Baynes & Co. v. Lloyd & Co., [1895] 2 Q. B. 610, considered. *JONES v. LAVINGTON*

C. A. [1903] 1 K. B. 253

Note.

This case was discussed by *Swinfen Eady J.*, *Markham v. Paget*, [1908] 1 Ch. 697. *See* No. 67, below.

66. — *Quiet enjoyment, Covenant for—Lease—Assignment of reversion—Breach of covenant—Interruption by assignee.*

In 1886 a lease for twenty-one years was

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granted to the plt. of certain rooms on the ground and first floors of a block of buildings, the whole of which belonged to the lessor. The lease contained a covenant for quiet enjoyment of the rooms demised to the plt. "without any interruption or disturbance" by the lessor "or any person claiming under him." In 1891 the lessor resigned his reversion in the whole of the buildings. In 1904 the buildings, other than the part demised to the plt., became so dilapidated that an order was made, under the London Building Acts, for their demolition. The assignees of the reversion in carrying out the work of demolition caused an interruption of the enjoyment of the plt.'s premises. The lessor being dead, the plt. sued his representatives to recover damages for breach of his covenant for quiet enjoyment:—

Held, that the assignees of the reversion could not claim under the lessor a right to do the acts which caused the interruption, and that the representatives of the lessor were, therefore, not liable. **WILLIAMS v. GABRIEL** - **Bray J.** [1906] 1 K. B. 155

67. — Quiet enjoyment—Implied contract—Extent—Agreement to "let"—Disturbance—Persons claiming through landlord—Prior mining lessees—Covenant with landlord's trustees to indemnify landlord—Disturbance induced by landlord—Derogation from grant—Action by tenant—Third party—Notice by landlord for indemnity—R. S. C., 1883, Order XVI., r. 48.

By an agreement of Aug. 15, 1895, Joseph Paget, the owner of Stuffynwood Hall, Derby, and the owners of adjoining property agreed to let the undermining minerals to a mining co., together with the usual powers of working.

The agreement, construed by the light of *Butterknowle Colliery Co. v. Bishop Auckland Industrial Co-operative Co.*, [1906] A. C. 305, 313, did not empower the co. to let down the surface, and such a power was not a usual clause in the district.

Joseph Paget died in 1896, having appointed the deft. and others his executors and trustees, and having devised his real estate to the use of his trustees in trust for the deft., his wife, for life.

On Dec. 31, 1901, the Paget trustees (including the deft.) and the adjoining owners carried out the agreement of 1895 by two contemporaneous leases, namely, (a) a trust lease for a long term granted by the Paget trustees and the adjoining owners to certain "demising trustees" on trust to grant a specified mining lease to the co.; (b) the mining lease by the demising trustees to the co.

The mining lease empowered the co. to let down the surface, but there was a provision that, in case serious damage by subsidence was reasonably anticipated, the co. might, without paying for the same, leave sufficient coal as should be agreed upon by the demising trustees for support.

The co. covenanted with the demising trustees to indemnify the owners against damage caused by their workings, and to indemnify the owners and the demising trustees

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against actions in respect of damage arising from the exercise of their powers.

By a tenancy agreement of Dec. 31, 1904, the deft. "agrees to let" Stuffynwood Hall to the plt. She excepted and reserved the minerals with full power to work them, but she did not reserve power to let down the surface, nor was the agreement made subject to the trust and mining leases.

Serious damage to Stuffynwood Hall being subsequently anticipated, the deft. influenced the demising trustees to refuse to agree to any coal being left for support without payment.

The coal was therefore worked, subsidence resulted, and the plaintiff suffered serious consequential damage.

The plt. sued the deft. for damages for derogation from her grant and for breach of the contract for quiet enjoyment implied by the word "let." The deft., who denied the derogation, and said that no contract was implied, claimed indemnity against the co. by third party notice under Order XVI., r. 48;—

Held, that the plt. was entitled to damages on both the above grounds, as—

(a) The deft.'s conduct amounted to derogation from her grant;

(b) A contract for quiet enjoyment without interruption by the deft., or any one claiming through her, was implied by the word "let";

(c) The co. claimed through the deft. and the other Paget trustees, and not merely through their testator.

Hurd v. Fletcher, (1778) 1 Doug. 43, applied.

Held, also, that the co.'s covenant for indemnity did not extend to a liability arising directly from the deft.'s conduct, and that in any case the deft., not being a covenantee, could not enforce the indemnity by third party notice.

Review of the authorities on "implied contract for quiet enjoyment" from *Hart v. Windsor*, (1843) 12 M. & W. 68, to *Jones v. Lavington*, [1903] 1 K. B. 253.

Semble, prior to *Jones v. Lavington*, [1903] 1 K. B. 253, the implied contract, though limited in duration by the lessor's estate, extended to a lawful interruption by title paramount during the continuance of that estate.

Baynes & Co. v. Lloyd & Sons, [1895] 1 Q. B. 820, 826; [1895] 2 Q. B. 610, 615, 616, explained.

MARKHAM v. PAGET **Swinfen Eady J.** [1908] W. N. 81; [1908] 1 Ch. 697

— Quiet enjoyment, Implied obligations as to - Printing machinery and hotel bedrooms.

See NEW ZEALAND. 6.

68. — Quiet enjoyment, Implied undertaking for—Breach—Agreement to let.

Upon the letting of a house for a year, an undertaking by the lessor for quiet enjoyment is to be implied from the mere relation of landlord and tenant.

Bandy v. Cartwright, (1853) 8 Ex. 913, and *Hall v. City of London Brewery Co.*, (1882) 2 B. & S. 737, followed.

Dicta of Kay L.J. in *Baynes & Co. v. Lloyd & Sons*, [1895] 2 Q. B. 610, dissented from.

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Whether there has, or has not, been a breach of a covenant or undertaking for quiet enjoyment is a question of fact in each case. **BUDD-SCOTT v. DANIELL** — **Div. Ct. [1902] W. N. 130 ; [1902] 2 K. B. 351**

— Quit, Notice to.

See Nos. 53—55, above.

— Rate — Poor rate — Assessment — Sewage farm let by sewerage board to tenant.

See RATES. 41.

69. — Rates and taxes—Covenant by lessor to pay rates—“All rates and taxes payable in respect of the demised premises”—Water rate.

The underlease of a shop and basement forming part of a large block of buildings contained a covenant by the lessor to procure to be paid “all rates and taxes payable in respect of the demised premises.” Water was supplied for domestic purposes to the whole building and charged for in one rate which had been hitherto paid by the superior lessees ; —

Held (affirming the decision of Buckley J., who felt himself bound by *Direct Spanish Telegraph Co. v. Shepherd*, (1884) 13 Q. B. D. 202), that the water rate was a “rate” within the meaning of this covenant which was payable by the lessor. **BOURNE & TANT v. SALMON & GLUCKSTEIN, LD.** **C. A. [1907] W. N. 93 ; [1907] 1 Ch. 616**

70. — Rates and taxes—Lease at a rack rent—Lessor’s covenant to pay all present and future rates and taxes—Sub-letting at a profit—Increased assessment—Liability of lessor.

Where in a lease of premises at a rack rent, the lessor covenanted to pay all rates and taxes “now payable or hereafter to become payable in respect of the premises” : —

Held, that the lessor’s liability under his covenant was not limited to the assessment existing at the date of the lease, but extended to an increased assessment.

Watson v. Home, (1827) 7 B. & C. 285 ; *Smith v. Humble*, (1854) 15 C. B. 321 ; and *Mansfield v. Relf*, [1908] 1 K. B. 71, discussed and distinguished.

Decision of *Neville J.*, [1909] W. N. 110 ; [1909] 2 Ch. 64, affirmed. **SALAMAN v. HOLFORD** **C. A. [1909] W. N. 198 ; [1909] 2 Ch. 602**

— Receiver, Appointment of — Public-house — Licences in peril.

See RECEIVER. 11, 12.

— Receiver, Use or occupation by — Head-lease — Rent — Breach of covenant — Damages.

See MORTGAGE—Receiver. 1.

— Re-entry — Lease — Covenants — Breaches — Compulsory purchase by public body.

See LEASE. 2.

— Re-entry, Lessor’s right of — Trespasser — Title against lessee — Surrender of lease.

See LIMITATIONS, STATUTE OF. 10.

71. — Re-entry, Proviso for—Lease—Negative covenant—Covenant not to assign or sublet—Covenant to be “performed.”

A lease of a house contained covenants by

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the lessee to pay the rent, rates, and taxes, to repair, and not to assign or underlet the premises without the lessor’s consent : and it contained a proviso that “if the lessee shall commit any breach of the covenant hereinbefore contained, and on his part to be performed,” then the said lessor may re-enter upon the said premises ; —

Held, reversing the judgment of *Wright J.*, [1903] 2 K. B. 241, that the proviso for re-entry applied to a breach of the covenant not to assign or underlet the premises without the consent of the lessor. **HARMAN v. AINSLIE**

C. A. [1904] W. N. 67 ; [1904] 1 K. B. 698

72. — Re-entry, Proviso for—Mining lease—Breach of covenant—Forfeiture—Notice determining lease—No re-entry—Issue of writ containing inconsistent claims—Unequivocal demand for possession.

A lease of iron ore mine granted in 1900 contained covenants by the lessees to work the mine properly, not to do any act which might occasion loss or damage to the mine, to keep correct maps and plans, and to allow inspection by the lessor and his agents of such maps and plans. It also contained a covenant by the lessees to permit the lessor and his agents at all reasonable times to inspect the mine and its workings, and a proviso that on default by the lessees in performing or observing any of the covenants, the lessor might re-enter, and thereupon the lease should be determined. The lessor died in Jan., 1907. On April 26 his executors’ agent was refused inspection of the mine by the lessees. On April 29 the executors gave the lessees notice in writing that they had determined the lease, and on May 3 they, through their agents, demanded possession of the mine. On May 4 they issued a writ against the lessees, claiming—(1.) recovery of possession of the mine ; (2.) mesne profits ; (3.) an injunction to restrain the lessees from working the mine so as to occasion loss or damage to it ; (4.) an order on the lessees to allow inspection of the mine and its workings ; (5.) a receiver ; and (6.) damages : —

Held that, having regard to the form of the proviso for re-entry in the lease, actual re-entry or its equivalent, the issue of a writ claiming possession simpliciter was necessary in order to determine the lease, and that the notices of April 29 and May 3 were ineffectual for that purpose.

Dicta of *Bayley J.* in *Fenn v. Smart*, (1810) 12 East, 444, 448, and *Parke B.* in *Jones v. Carter*, (1846) 15 M. & W. 718, 725, followed.

Held, also, that the claim in the writ for possession was inconsistent with the claim for an injunction, and that the writ was not therefore an unequivocal demand for possession so as to operate as a final election by the executors to determine the lease.

Evans v. Davis, (1878) 10 Ch. D. 747, followed. **MOORE v. ULLCOATS MINING CO. Warrington J [1907] W. N. 231 ; [1908] 1 Ch. 575 ; C. A. [1908] W. N. 35, 40**

Note.

Moore v. Ullcoats Mining Co., C. A. [1908] W. N. 35, 40. *See Practice—Joinder.*

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73. — Re-entry for breaches of covenant.
Proviso for—Breach of covenant not to underlet—Surrender of lease—Acceptance of, by lessor in ignorance of underlease—Reletting by lessor—Entry by new tenant—Effect of, on interest of underlessee.

A tenant of a field under a lease containing a covenant not to underlet without licence, and a proviso that on breach of the covenant the lessor might re-enter, in breach of his covenant underlet it to the plt. on a yearly tenancy. Subsequently the tenant surrendered his term to the lessor, who accepted the surrender in ignorance of the sub-letting and of the fact of the plt.'s occupation. The lessor then relet the field to the deft, who, upon the plt. refusing to give up possession, entered and turned out the plt.'s cattle. The plt. had received no notice to quit. In an action to recover possession of the land :—

Held, that the plt. was entitled to judgment ;

By Darling J., upon the ground that, assuming that the lessor was not precluded by the surrender from enforcing his right to forfeit the plt.'s interest, inasmuch as he had accepted the surrender without notice of that interest, the reletting to a new tenant and entry by that tenant did not operate as an entry by the lessor so as to effect a forfeiture, and that the plt.'s interest was still subsisting.

By Bucknill J., upon the ground that the acceptance of the surrender by the lessor precluded him from subsequently forfeiting the plt.'s interest, whether at the time of the surrender he had notice of that interest or not.
PARKER v. JONES Div. Ct. [1910] 2 K. B. 32

74. — Re-entry for non-payment of rent—Recovery of possession—Half-year's rent in arrear—"No sufficient distress"—Evidence—Assignee of lessor—Half-year's rent accrued due partly before and partly after assignment—Right of assignee to maintain action—Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), s. 10—County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 139.

By s. 139 of the County Courts Act, 1888, when the rent of premises does not exceed a certain sum, and is in arrear for a half-year, and the landlord has a right to re-enter for non-payment thereof, the landlord may enter a plaint in the county court for the recovery of the premises, and thereupon a summons shall issue to the tenant, and if the tenant shall not shew good cause why the premises should not be recovered, then, on proof (*inter alia*) "that one-half-year's rent was in arrear before the plaint was entered, and that no sufficient distress was then to be found on the premises to countervail such arrear," the judge may order possession of the premises to be given :—

Held, that in order to prove that "no sufficient distress was then to be found on the premises," so as to entitle the landlord to maintain an action for the recovery of possession under the section, it is not necessary that a distress for the half-year's rent shall actually have been levied on the premises, but that the

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fact of there being no sufficient distress may be proved by other evidence.

A half-year's rent accrued due partly before and partly after the reversion in the premises was assigned, and the assignee brought an action under the above section to recover possession for non-payment of the half-year's rent :—

Held, that he was entitled by virtue of s. 10 of the Conveyancing and Law of Property Act, 1881, to maintain the action.
RICKETT v. GREEN Div. Ct. [1909] W. N. 262 ; [1910] 1 K. B. 253

75. — Re-entry on liquidation, Condition for—Limited company—Solvent company—Voluntary liquidation—Forfeiture—Bankruptcy—Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), s. 2, sub-s. xv.; s. 14, sub-s. 6.

A proviso in a lease for re-entry, if the lessees being a co. should enter into liquidation either compulsory or voluntary, applies to the case of a solvent co. going into voluntary liquidation for the purpose of reconstruction or amalgamation only, and is "a condition for forfeiture on the bankruptcy of the lessee" within the Conveyancing and Law of Property Act, 1881, s. 14, sub-s. 6.

The decisions of Kekewich J. and the C. A., [1901] 1 Ch. 499, affirmed as to these points.
Horsey Estates, Ltd. v. Steiger, [1899] 2 Q. B. 79, approved as to these points. **FRYER v. EWART** H. L. (E.) [1902] W. N. 60 ; [1902] A. C. 187

76. — Renewal "at the costs of the lessee"—Costs of reference and award as to amount of fine—Construction of covenant.

By a covenant for renewal in a lease for years the lessor covenanted at any time during the term at the request and "at the costs of the lessee," and on payment by him of a fine calculated upon the number of the expired years of the term and the full improved annual value of the premises at the time of the renewal (the value to be determined by the lessor's surveyor or, at the option of the lessee, by two surveyors to be appointed by the lessor and the lessee respectively, and, in case of their differing, by their umpire), to renew the lease for a further term.

The lessee having required a renewal, and the parties being unable to agree as to the amount of the fine, the question of the improved annual value of the premises at the time of the renewal was referred to two referees or their umpire, and the umpire made an award :—

Held, that upon the natural and true construction of the covenant the cost of the reference and award were payable by the lessee as necessary costs of the renewal.

The decision of the C. A., [1903] 1 K. B. 349, affirmed. **FITZSIMMONS v. LORD MOSTYN**

H. L. (E.) [1904] W. N. 3 ; [1904] A. C. 46

Note.

This case was referred to by Kekewich J., *In re Baylis*, [1907] 2 Ch. 54. See *Solicitor—Costs*. 21.

77. — Renewal—Death of lessee—Intestacy—Next of kin—Infant—Tenants in common—New lease—Renewal by one tenant in common—Partial

LANDLORD AND TENANT—continued.

interest in old lease—Accretion to intestate's estate—Renewal for benefit of estate—Fiduciary relation—Trustee—Constructive trust—Practice—Costs—Taxation—Counsel's fees—Judgment, Attending to hear—Practice Notes on Taxation, 1902.

There is no authority for the general proposition that if a person only partly interested in an old lease obtains from the lessor a renewal, he must be held a constructive trustee of the new lease, whatever may be the nature of his interest or the circumstances under which he obtained the new lease. A person renewing is only held to be a constructive trustee of the new lease if, in respect of the old lease, he occupied some special position by virtue of which he owed a duty towards the other persons interested: as, for example, in the case of a renewal by a tenant for life of settled leaseholds, or by a partner of a partnership lease, or by a mortgagee of a mortgaged lease. In all such cases the new lease is treated as engrafted on or as forming part of the original lease.

A lessor granted a lease for seven years of a house in which the lessee carried on a profitable business. On the expiration of the term, the lessor refused to renew, but allowed the lessee to remain as tenant from year to year at an increased rent. During that tenancy the lessee died intestate, leaving a widow and three children, one being an infant. The widow took out administration to her husband's estate, and she and the two adult children, one of whom was a son, continued to carry on the business under the existing yearly tenancy. The widow and son each applied to the lessor for a new lease for the benefit of the estate, which he refused to grant, but, having determined the yearly tenancy by notice, he granted to the son "personally" a new lease for three years at a still further increased rent.

In an action which had in the meantime been instituted by the three children, including the infant, against the administratrix for administration of the intestate's estate, the administratrix applied to have the new lease treated as having been taken by the son for the benefit of the estate, and for an account of the rents and profits received by him:—

Held, by Buckley J., on the authority of *Ex parte Grace*, (1799) 1 Bos. & P. 376, that the son was a trustee of the new lease for the benefit of the estate, and an account was directed accordingly:

But *held*, by the Court of Appeal, that the evidence took the case out of *Ex parte Grace* in that it shewed that the right or hope of renewal had been determined by the lessor himself before the son intervened, so that the new lease could not be treated as an accretion to the estate of the deceased, and also that the son had in no way abused his position nor stood in any fiduciary relation towards nor owed any duty to the other persons interested in the estate; and that he was therefore entitled to retain the lease for his own benefit.

Dictum of Lord Bathurst L.C. in *Rawe v. Chichester*, (1773) Amb. 715, 719, considered.

Ex parte Grace, distinguished.

LANDLORD AND TENANT—continued.

Palmer v. Young, (1684), incorrectly reported in 1 Vern. 276, considered: see the full report, [1903] 2 Ch. 65 (note).

A separate fee to counsel for attending to hear judgment will not be allowed when judgment is given in the same sittings in which the case was heard: see Practice Notes on Taxation of Costs, issued from the Taxing Office, 1902. *In re Biss*. *Biss v. Biss*

C. A. [1903] W. N. 61; [1903] 2 Ch. 40

Note.

See *In re Manser*, Neville J., [1910] W. N. 61. See *Intestacy*. 1.

78. — Renewal—Fine—Interest.

PALMER v. YOUNG, (1684), incorrectly reported in 1 Vern. 276, considered: see the full report, under *In re Biss*

C. A. [1903] 2 Ch. 40, at p. 65, n.

— Rent, Action for—Defence, no concluded agreement—Second action—Defence, Statute of Frauds—Res judicata. See *ESTOPPEL*. 4.

79. — Rent—Assignment by lessee of part of premises—Apportionment of rent—Value of severed parts—With reference to what date value to be calculated.

Where, premises having been let at a rent, the lessee assigns part of the premises to another, the value of the respective parts with reference to which the apportionment of the reserved rent is to be calculated is the value at the date of the severance, not that at the date of the lease granted. *SALTS v. BATTERSBY*—Div. Ct. [1910] W. N. 116; [1910] 2 K. B. 155

— Rent—"Best rent"—Collusive bargain for reduction of rent. See *SETTLED LAND—Leases*. 12.

— Rent—Company—Lease—Sureties for payment of rent during the term—Dissolution of company. See *COMPANY—Leases*. 1.

— Rent, Distress for. See *Nos. 29, 30, above*, and under *DISTRESS*.

— Rent—Covenant—Liability for rent after further assignment—Fine. See *No. 19, above*.

— Rent—Forfeiture for non-payment of—Relief—Underlessee. See *No. 39, above*.

— Rent—Forfeiture—Subsequent payment of rent by occupier to lessee—Estoppel. See *No. 16, above*.

— Rent—Forfeiture for non-payment of rent—Underlessee—"Tenant"—Relief against forfeiture. See *No. 38, above*.

— Rent—Lease under seal—Antecedent agreement to take bill for rent—Evidence, Inadmissibility of. See *No. 32, above*.

LANDLORD AND TENANT *continued.*

- Rent — Equitable mortgagee — Right to receive rents — Claim by tenant for repayment.
See MORTGAGE—Rents. 1.
- Rent — Execution — Judgment creditor — Arrears of rent — “Rent.”
See No. 33, above.
- Rent — Liability of assignee for rent due before adjudication of bankruptcy.
See BANKRUPTCY—Leases. 1.
- Rent — Re-entry for non-payment of rent — Recovery of possession — Right of assignee to maintain action.
See No. 74, above.
- Rent — Surrender — Liability of tenant for rent.
See No. 84, below.

80. — Repair, Covenant to — Dangerous structure notice — Rebuilding — Liability of lessee.

In this case the Court held that it was really too clear for argument. It was only necessary to take the words of Lord Esher in *Lister v. Lane and Nesham*, [1893] 2 Q. B. 212, 216, where his Lordship, after referring to certain authorities, said this: “Those cases seem to me to shew that, if a tenant takes a house which is of such a kind that by its own inherent nature it will in course of time fall into a particular condition, the effects of that result are not within the tenant’s covenant to repair.” That was clearly applicable to this case. Having regard to the nature and condition of the house as found by Kekewich J. from the evidence given at the trial, it was impossible to come to any other conclusion than that the learned judge was perfectly right, both upon the law and upon the facts. *WRIGHT v. LAWSON* — C. A. [1903] W. N. 108

81. — Repairs — Lease — Lessor’s covenant — Construction — Good and substantial repair — Old building — Natural decay — Extent of obligation.

A covenant by a lessor to keep the outside walls of the demised premises in repair will be construed as a covenant to repair on notice, and there can be no breach of such a covenant until the lessor has notice of want of repair.

The principles of construction, which have been applied to lessees’ covenants to repair, apply equally to similar covenants by lessors. Regard must be had to the age and condition of the buildings to which the covenant refers. A lessor is not bound by such a covenant to rebuild during the term of the lease premises which have at the date at which he receives notice become worn out by age, and, merely from the action of time on the materials used, been reduced to a state in which repair is impossible.

In 1890 the three upper storeys of a house in London were demised to the lessee for a term of eighteen years from Mar. 25, 1890, at a rent of 150*l*. The lessor covenanted to keep the outside of the demised premises in good and substantial repair. The lessee covenanted to keep the inside in repair, to permit the lessor to enter and view the state of repair, and to use the premises for

LANDLORD AND TENANT—continued.

the business of a private hotel-keeper. In 1905 the plt. was the assignee of this lease, and the deft. was the owner of the reversion. On July 13, 1905, the London County Council served on the premises a notice requiring the owner to take down the front and back walls of the house as being dangerous structures. The plt. at once communicated this notice to the deft. and required him to repair the walls. The deft. did nothing, and the London County Council themselves took down the walls from the first floor upwards, propped up the floors with timber, and left the place uninhabitable.

The plt. brought this action against the deft. for breach of the covenant to keep the outside in repair. The deft. had no notice before July 13, 1905, of any want of repair. At that date the house, which was about 200 years old, had by the natural effect of time become so worn out and decayed that it was impossible to repair it except by taking it down and rebuilding:—

Held, that there had been no breach of the lessor’s covenant to repair. *TORRENS v. WALKER* Warrington J. [1906] W. N. 98; [1906] 2 Ch. 166

— Settled land.

See under SETTLED LAND—Leases.

— Sheep—Objection to take over sheep stock on expiration of lease—Custom.
See SCOTTISH LAW. 14.

82. — Sporting right—Yearly hiring—Notice to determine.

A verbal notice to determine a right to shoot pheasants, enjoyed from year to year at an annual payment, was given early in March for the 25th then instant, being the end of the current year:—

Held, that the notice was reasonable. *LOWE v. ADAMS* Cozens-Hardy J. [1901] W. N. 178 [1901] 2 Ch. 598

— Stamp duty — “Bond or covenant” — Covenant relating to the matter of the lease.
See REVENUE —Stamps. 30.

— Street — Paving expenses — Payment by occupier—Right of deduction from rent.
See LONDON—Streets. 12.

83. — Substructure and supports of market—Lease—Covenant to well and sufficiently maintain and keep in repair—Construction—Iron girders—Deterioration—Measure of liability—Standard of strength.

A lease by the Mayor and Corporation of London to a ry. co. of portions of the substructure and supports of Smithfield Meat Market for the purposes of a station for a term of 100 years from Aug. 1, 1878, perpetually renewable, contained a covenant that the lessees would, during the term, “well and sufficiently maintain, uphold, support, and keep in good, substantial, and tenantable repair” all the demised premises, including the walls, piers, pillars, supports, and roof forming part of the same. The substructure had been excavated and the supports for the roof constructed upon a standard of efficiency to the satisfaction of referees appointed on behalf of the lessors and lessees, in pursuance of an agreement of 1862.

LANDLORD AND TENANT—continued.

There was evidence that some of the iron girders supporting the roof and superstructure had become corroded and weakened, and in 1907 notice to repair according to the covenant was given to the lessees:—

Held that, upon the true construction of the lease, the lessors were entitled to require the lessees to maintain the demised premises at a standard of strength and stability corresponding with that originally fixed, and not merely in such a condition as would secure the absolute safety of the superstructure. *In re LONDON CORPORATION. LONDON CORPORATION v. GREAT WESTERN AND METROPOLITAN RAILWAYS* - Eve J. [1910] W. N. 145; [1910] 2 Ch. 314

— Surrender—Title-deed—Custody.
See DEEDS. 7.

84. — Surrender by operation of law—Acceptance of surrender under mistake of fact induced by tenant—Liability of tenant for rent.

The plt. let a house to the deft., a naval officer, for a term of years subject to a proviso that "should the tenant be ordered away from Portsmouth by the Admiralty he may determine this agreement by giving to the landlord one quarter's notice in writing." During the continuance of the tenancy the deft. received an order from the Admiralty to join a ship for foreign service, but shortly afterwards that order was cancelled. Subsequently to the cancellation the deft., purporting to act under the terms of the agreement and in the belief that he was thereby entitled to do so, gave the plt. a quarter's notice of his intention to give up possession. The plt., in the belief that the deft. was at that time under orders from the Admiralty to leave, resumed possession of the house on the expiry of the notice and advertised it for sale. Subsequently the plt. discovered the true facts, and brought the action to recover the rent which had accrued in the interval:—

Held, (1.) that the deft. was under the circumstances not entitled to give the notice to terminate the tenancy; (2.) that, as the non-disclosure of the cancellation of the Admiralty's order was not fraudulent, the fact that the plt. accepted the notice under a mistake induced by the act of the deft. did not prevent that acceptance from working a surrender by operation of law; but (3.) that the giving of the notice was a breach of an implied contract in respect of which the plt. was entitled to recover the amount of the rent due as damages. *GRAY v. OWEN* - Div. Ct. [1910] W. N. 46; [1910] 1 K. B. 622

85. — Surrender of lease to mortgagor—Lease by mortgagor in possession—Rights of mortgagee—Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), s. 18, sub-s. 1, 11.

A mortgagor in possession who has granted a lease under the statutory power conferred on him by s. 18, sub-s. 1, of the Conveyancing Act, 1881, has no power to accept a surrender of the lease without the concurrence of his mortgagee.

Observations of Fry L.J. in *Municipal Permanent Investment Building Society v. Smith*,

LANDLORD AND TENANT—continued.

(1888) 22 Q. B. D. at p. 72, applied. *ROBBINS v. WHYTE Warrington J. [1906] 1 K. B. 125*

— Suspension of pastoral lease—Compensation.
See NEW SOUTH WALES. 19.

— Tithe rent-charge—Agreement by tenant to repay amount of to landlord—Validity of agreement.

See TITHE. 1.

87. — Trade—Lease—Restrictive covenant—Covenant by lessor not to carry on or permit a particular trade on adjoining premises—Lessee—Assigns—Injunction.

The lessee of a person bound by a restrictive covenant can be sued, whether "assigns" are mentioned in the covenant or not.

In a lease by H. to the plt. co., the lessor covenanted that he, his heirs, executors, administrators, and assigns, would not carry on, or permit to be carried on by others, in certain named shops the business of a tailor; H. subsequently demised one of the shops to B. for a tailoring business. In an action by the plt. co. against H. and B. for an injunction to restrain H. from permitting, and B. from carrying on, this business:—

Held, on the construction of the covenant, that the mention of assigns, without mentioning lessees, afforded no ground, standing alone, for holding that the covenant was not binding upon B.; that though "lessees" were not mentioned *eo nomine*, the words of the covenant were sufficient to bind B. not to carry on the particular business referred to, and that an injunction ought to be granted.

Bryant v. Hancock & Co., [1898] 1 Q. B. 716, distinguished.

The decision in *Kemp v. Bird*, (1877) 5 Ch. D. 549, 974, is not inconsistent with that of *Fitz v. Fles*, [1893] 1 Ch. 77. *HOLLOWAY BROTHERS, LD. v. HILL* Bryne J. [1902] W. N. 149; [1902] 2 Ch. 612

— Tramway—Statutory powers—Ultra vires—Agreement for lease to adjacent owner—Licence to work.

See TRAMWAYS. 17.

— Trespass *ab initio*—Second distress for same rent.

See DISTRESS. 12.

— Trustees.

See under TRUSTEE—Leases. 12.

88. — Underlease—Covenant for renewal—Personal covenant—Covenant running with land—Perpetuity—Assignee of reversion—32 Hen. 8, c. 34, s. 2.

D. A., who was sub-lessee of certain premises, demised the same to F. for the residue of the term then vested in him less the last days thereof, and covenanted for himself, his executors, administrators and assigns, that in case he should obtain from the freeholder, his heirs or assigns, any extension of the term for which he then held the premises, then he, his executors, administrators, or assigns, would grant to F. a new lease for such extended term as would include the unexpired residue of the original term granted to F., and the further term, less

LANDLORD AND TENANT—*continued.*

the last days thereof, which might be granted to D. A. by the frecholder, his heirs or assigns. D. A. died, and his reversion became vested in the deft., who surrendered his term to the freeholder and obtained from him a new lease for an extended term, subject to existing underleases. F. having died, the plt. acquired from his executors his interest in the premises, and then claimed specific performance of D. A.'s covenant with F. :—

Held, (1.) on the construction of the covenant, that it was personal to D. A. alone, and did not bind his representatives; (2.) that the covenant was not strictly a covenant for renewal, and did not on that account run with the land; but assuming that it did run with the land, the doctrine of perpetuity had no application; and (3.) following *Breveton v. Tuohey*, (1858) 8 Ir. C. L. Rep. 190, *Kent v. Stoney*. (1859) 9 Ir. Ch. Rep. 249, and *Coe v. Pascoe*, [1899] 1 I. R. 125, that the covenant ran with the reversion which was vested in the covenantor at the time when he entered into the covenant; and, consequently, that the statute 32 Hen. 8, c. 34, s. 2, did not apply. On these grounds the action was dismissed. **MULLER v. TRAFFORD**

Farwell J. [1901] 1 Ch. 54

Note.

This case was referred to by Warrington J., *Woodall v. Clifton*, [1904] W. N. 205; C. A. [1905] 2 Ch. 257. *See Covenant.*

89. — Unfurnished house—Defective premises—Promise by landlord to repair—Personal injury to tenant's wife—Landlord not liable.

The owner of a dilapidated house contracted with his tenant to repair it, but failed to do so. The tenant's wife, who lived in the house and was well aware of the danger, was injured by an accident caused by the want of repair :—

Held, that the wife, being a stranger to the contract, had no claim for damages against the owner.

The decision of the C. A., [1905] 2 K. B. 757, affirmed. **CAVALIER v. POPE**

H. L. (E.) [1906] W. N. 140; [1906] A. C. 428

Note.

This case was followed by H. L. (Sc.), *Cameron v. Young*, [1908] A. C. 176. *See No. 43, above.*

— Waterworks company—Covenant not to assign without consent—Power of re-entry on breach—Alienation—Statutory powers.

See LONDON—Water. 1.

— Will—Construction—Devise of real estate—Lease.

See WILL—Words. 1.

LANDLORD'S PROPERTY TAX—Exemptions—"Almshouse"—Home for ladies in reduced circumstances.

See REVENUE—House Duty. 5.

LANDS CLAUSES ACTS—Charity land—Compulsory sale—Payment into court—Interim investment—Costs—Land Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), ss. 69, 76, 80.

The price of charity land taken compulsorily

LANDS CLAUSES ACTS—*continued.*

by a corporation was settled by arbitration. The corporation, after tendering the purchase-money to the official trustees of charitable funds, paid it into court. The corporation was ordered to pay the costs of a petition for investment. *In re LEEDS GRAMMAR SCHOOL*

Cozens-Hardy J. [1901] 1 Ch. 228

— Common lands—Lands taken for public undertaking—Compensation for extinguishment of commonable rights.

See COMMON. 2.

— Commonable rights, Compensation for extinguishment of—Apportionment.

See COMMON. 1.

2. — Compensation—Copyholds—Enfranchisement—Fines—Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), ss. 95, 96, 97.

Copyholds conveyed to a ry. co. by a conveyance subsequently enrolled under s. 95 of the Lands Clauses Consolidation Act, 1845, pass as freeholds on enrolment, but nevertheless, until enfranchisement by the co., they continue subject (*inter alia*) to fines payable on the deaths of the vendor and his successors before or after enrolment, and these fines must be included in the compensation for enfranchisement.

In re Wilson's Estate, (1862) 2 J. & H. 619, 623; (1863) 3 D. J. & S. 410, 417; *In re Marquis of Salisbury and London and North Western Ry. Co.* (1879), [1892] 1 Ch. 75, n.; and *Lowther v. Caledonian Ry. Co.*, [1892] 1 Ch. 73, 82, 83, 85, applied. **LORD LECONFIELD v. LONDON AND NORTH WESTERN RY. CO.**

Swinfen Eady [1906] W. N. 192; [1907] 1 Ch. 38

3. — Compensation—Compulsory sale of land—Interest in land—Right to supply refreshments in a theatre—Land Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), s. 68.

By a contract made between the lessees of a theatre and the plts., it was agreed that the plts. should have the exclusive right for a term of years to supply refreshments in the theatre, and for that purpose should have the necessary use of the refreshment rooms, bars, and wine cellars of the theatre, and that they should have an exclusive right to advertise, and let spaces for advertisements, in certain parts of the theatre :—

Held, that the contract did not confer on the plts. an interest in land which could form the subject of compensation under the Lands Clauses Consolidation Act, 1845, s. 68. **FRANK WARR & CO., LD. v. LONDON COUNTY COUNCIL**

C. A. [1904] 1 K. B. 713

4. — Compensation—Interest created after notice to treat—Lands injuriously affected—Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), ss. 18, 68.

The owner of land received from a ry. co. notice (under their statutory powers which incorporated the Lands Clauses Consolidation Act, 1845) to treat for part of his land, and the purchase-money was settled by agreement to include compensation for all injurious affection. Between the notice to treat and the agreement the owner leased to the appellant part of the

LANDS CLAUSES ACTS—continued.

land held with the land purchased. The ry. co. exercised their powers and injuriously affected the appellant's land :—

Held, that the sum paid to the owner must be taken to have included compensation for the injury to the lessee's land, and that the lessee was not entitled to compensation under the Lands Clauses Act, 1845.

The decision of C. A., [1903] 1 K. B. 652, affirmed. *MERCER v. LIVERPOOL, ST. HELENS AND LANCASHIRE RY. CO.*

H. L. (E.) [1904] W. N. 150 ; [1904] A. C. 461

Note.

The principle laid down by Lord Lindley in, applied in part by C. A., *Dawson v. Great Northern and City Ry. Co.*, [1905] 1 K. B. 260. *See next Case.*

Referred to by Eve J., *Wild v. Woolwich Borough Council*, [1909] 2 Ch. 287 ; [1910] 1 Ch. 35. *See Streets. 5.*

5. — Compensation — Lands injuriously affected—Assignment of right to compensation — Lands Clauses Consolidation Act, 1845 (8 § 9 Vict. c. 18), s. 68—Judicature Act, 1873 (36 § 37 Vict. c. 66), s. 25.

A claim, under s. 68 of the Lands Clauses Consolidation Act, 1845, to compensation in respect of an interest in lands injuriously affected within the meaning of that section, is not a claim to damages for a wrongful act, but a claim of a right to compensation for damage which might be done in the lawful exercise of statutory powers, and such a claim is capable of assignment.

Judgment of Wright J. [1904] W. N. 12 ; [1904] 1 K. B. 277, reversed. *DAWSON v. GREAT NORTHERN AND CITY RY. CO.*

C. A. [1904] W. N. 210 ; [1905] 1 K. B. 260

6. — Compensation — Lands injuriously affected—Lease of colliery—Right of lessee to sink shaft in land of lessor not demised—Reasonable approval of lessor—Purchase by railway company — Lands Clauses Consolidation Act, 1845 (8 § 9 Vict. c. 18), s. 68.

A lease of a piece of land with colliery shaft, buildings, and works thereon, and of the minerals under that and adjoining land of the lessor, the surface of which was not demised by the lease, comprising together 335 acres, contained a proviso that the lessee might at any time during the term sink a pit or pits in any part of the land the surface of which was not demised, but so that the position of such pit or pits should be subject to the reasonable approval of the lessor, his heirs or assigns. A ry. co., under the powers of a special Act incorporating the Lands Clauses Consolidation Act, 1845, purchased from the lessor five acres of the before-mentioned surface which was not demised, and occupied the same by their ry. and works :—

Held, that the mere fact that the ry. co. had under their Act taken the five acres for the purposes of their ry. was not a reasonable ground under the before-mentioned proviso in the lease for disapproval of the position of any pit proposed to be sunk therein, and that the lessee had a substantial interest under the proviso which entitled him to compensation for being prevented

LANDS CLAUSES ACTS—continued.

by the ry. co.'s taking the land from exercising therein the right of sinking a pit given to him by the lease.

Decision of Darling and Bucknill JJ., [1900] 2 Q. B. 677, affirmed. *In re MASTERS AND GREAT WESTERN RY. CO.* **C. A. [1901] W. N. 76 ; [1901] 2 K. B. 84**

7. — Compensation—Land injuriously affected—Restricted covenant—Lands Clauses Consolidation Act, 1845 (8 § 9 Vict. c. 18), s. 68.

The breach of a restrictive covenant may be the ground for a claim for compensation, under s. 68 of the Lands Clauses Consolidation Act, 1845, by the owner of land for the benefit of which the restriction was imposed.

A ry. co. took, for the purpose of their undertaking, land which was subject to a covenant, entered into by their vendor, not to erect thereon "any building other than private dwelling-houses." The co. erected a ry. embankment on the land :—

Held, that the erection of the embankment was a breach of the covenant. *LONG EATON RECREATION GROUNDS CO. v. MIDLAND RY. CO.*

C. A. [1902] 2 K. B. 574

8. — Compensation — Severance and injuriously affecting land—Site of a church—Construction of special Railway Act—Union of Benefices Act, 1860 (23 § 24 Vict. c. 142)—Lands Clauses Act, 1845 (8 § 9 Vict. c. 18), s. 63.

By their special Acts which incorporated the Lands Clauses Act, 1845 (except where expressly varied), a ry. co. were empowered to take land adjoining a church and an easement or right of using the subsoil under the church, but were prohibited from taking any part of the church. The co. having given notice to treat for part of the adjoining land and the subsoil under the church :—

Held, that upon the true construction of the special Acts there was nothing to shew an intention that the church should remain in situ in perpetuity, and that in assessing the compensation to be paid by the co. the arbitrator was entitled to award compensation under s. 63 of the Lands Clauses Consolidation Act, 1845, for severance or the injurious affecting of the other lands, upon the basis that the site of the church might under a scheme under the Union of Benefices Act, 1860, or otherwise at some future time cease to be the site of a church and become available for building, and that the arbitrator was at liberty to draw his own conclusion as to when that time would be likely to arrive.

The decision of the C. A., [1903] 2 K. B. 728, affirmed. *CITY AND SOUTH LONDON RY. CO. v. UNITED PARISHES OF ST. MARY WOOLNETH AND ST. MARY WOOLCHURCH HAW*

H. L. (E.) [1905] W. N. 1 ; [1905] A. C. 1

9. — Compensation—Tenant from year to year—Determination of amount of compensation—Justices — Jurisdiction to inquire into title—"Required to give up possession"—Condition precedent to right to compensation — Lands Clauses Consolidation Act, 1845 (8 § 9 Vict. c. 18) s. 121.

Where an application is made to justices under

LANDS CLAUSES ACTS—continued.

s. 121 of the Lands Clauses Consolidation Act, 1845, to determine the amount of compensation to be paid to a person claiming an interest as a tenant for a year, or from year to year, in land compulsorily taken, the justices have no jurisdiction to inquire into the title of the claimant to his alleged interest; but in determining the amount of compensation the justices have jurisdiction, and are bound to inquire whether the claimant has been required to give up possession of the land before the expiration of his term or interest, that being a condition precedent to the right to compensation under s. 121. *GREAT NORTHERN AND CITY RY. CO. v. TILLET*

Div. Ct. [1902] 1 K. B. 874

— Compensation for commonable rights—Apportionment.

See COMMON. 1.

— Compensation for extinguishment of commonable rights.

See COMMON. 1.

— Compensation for personal injury, inconvenience, or annoyance.

See RAILWAY—Lands Clauses. 1.

10. — Compulsory powers, Exhaustion of—Corporation—Railway company—Promoters—Landowner—Notice to treat—Counter-notice—Withdrawal of notice to treat—Successive notices to treat—Compensation—Arbitration—Ultra vires—Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), ss. 18, 92.

The compulsory powers of promoters, under s. 18 of the Lands Clauses Consolidation Act, 1845, to purchase land of a particular landowner, are not exhausted by a single notice to treat for part of his land. If that notice is validly withdrawn, as it may be, for instance, upon a counter-notice by the landowner under s. 92 to take the whole of his land, the promoters are in the same position as if no notice to treat had been given, and may therefore give a second notice in respect of the land comprised in the first notice, or any part thereof, and, upon that being validly withdrawn, may give a third notice, and so on during the time limited by their special Act for the exercise of compulsory powers; the result being that they are entitled to proceed to the assessment of compensation upon the latest notice to treat not validly withdrawn. *ASHTON VALE IRON CO. v. BRISTOL CORPORATION*

C. A. [1901] W. N. 8; [1901] 1 Ch. 591

11. — Compulsory powers—Specific performance—Notice to treat—Award—Vendor's action—Purchasers compelled to take conveyance—Form of conveyance—Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), ss. 75, 81, 82—Finance Act, 1895 (58 Vict. c. 16), s. 12.

A public body acquired certain lands and certain easements over other lands of the vendor, a life-tenant of settled estates, under the compulsory powers of a special Act, incorporating the Lands Clauses Consolidation Act, 1845, but not vesting the property. The proceedings were by notice to treat, arbitration, and award, and there was no question as to the vendor's title.

The public body paid the purchase-money into court and took possession, but refused to

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take a conveyance on the ground of expense. There was nothing in the special Act to justify this position:—

Held, that both under the ordinary law of specific performance and under the Finance Act, 1895, s. 12, the public body were bound to take a conveyance, and that this conveyance must be settled by the Court in case the parties differed.

Adams v. London and Blackwall Ry. Co., (1850) 2 Mac. & G. 118; *Regent's Canal Co. v. Ware*, 1857) 23 Beav. 575; *In re Pigott and Great Western Ry. Co.*, (1881) 18 Ch. D. 146; *Mason v. Stokes Bay Pier and Ry. Co.*, (1862) 32 L. J. Ch. 110; *Harding v. Metropolitan Ry. Co.*, (1872) L. R. 7 Ch. 154; and *Wolverhampton and Walsall Ry. Co. v. London and North Western Ry. Co.*, (1873) L. R. 16 Eq. 433, 439, applied. *In re CARY-ELWES' CONTRACT*

Swinfen Eady J. [1906] W. N. 97; [1906] 2 Ch. 143

12. — Compulsory powers—Taking lands—Sufficiency of valuation of surveyor—Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), s. 85—Railway Companies Act, 1867 (30 & 31 Vict. c. 127), s. 36.

Appeal by the plts. from a decision of *Kekewich J.*, [1902] W. N. 86.

The Court dismissed the appeal. Their Lordships based their decision entirely upon the effect of certain letters which passed between the plts.' surveyor and the Board of Trade surveyor, and held that the plts. were thereby precluded from claiming the relief which they sought. *RIVER RODEN CO. v. BARKING TOWN URBAN COUNCIL*
C. A. [1902] W. N. 103

13. — Compulsory purchase of land—Property held for term to secure annuity for lives—Cesser of term on dropping of last life—Annuitant in possession—Reversioner unknown—Investment of purchase-money—Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), s. 79.

By indenture dated Sept. 1, 1810, A. H. covenanted to pay to S. H., his executors, administrators and assigns, during the lives of nine persons and the lives and life of the survivors and survivor of them, an annuity of 100*l.*, and for better securing the annuity A. H. demised certain premises to S. H. for the term of 200 years upon trust, in case default should be made in payment of the annuity, that S. H., his executors, administrators and assigns, should out of the rents and profits, or by selling, demising, or mortgaging the premises, raise sufficient to satisfy the annuity and suffer A. H., her heirs and assigns, to receive the residue of the rents and profits for their own use and benefit; provided that, after the termination of the annuity by the dropping of the last life, the trusts aforesaid should cease. Default was made in the payment of the annuity, and from 1829 to 1900 S. H. and his successors in title had been in continuous receipt of the rents of the premises, and the surplus over and above the amount of the annuity had been retained by the person for the time being entitled to the annuity without any claim on the part of any reversioner. The last life dropped on May 31, 1895. In 1900 the premises were compulsorily acquired by the London County Council, who

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paid the purchase-money into court. Upon a petition by the successor in title of S. H. for payment out, the Court declined to order the fund to be paid out, but directed it to be invested and the dividends to be paid to the petitioner until the lapse of twelve years from May 31, 1895, or further order. *In re HARRIS. Ex parte* LONDON COUNTY COUNCIL

Joyce J. [1901] 1 Ch. 931

14. — *Conditional Offer—Arbitration—Costs—Offer by promoters—Conditional offer—Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), s. 34.*

By s. 34 of the Lands Clauses Consolidation Act, 1845, the costs of an arbitration under the Act are to be borne by the promoters of the undertaking in question unless the arbitrators award the same or a less sum than shall have been offered by the promoters, in which case each party is to bear his own costs.

A co. were by a private Act incorporating the Lands Clauses Consolidation Act, 1845, empowered to construct a bridge and on completion thereof to divert a public footpath which crossed the plt.'s land. The co. having constructed the bridge diverted the footpath. The plt. claimed that his land was injuriously affected; he gave notice that he desired to have the amount of compensation settled by arbitration under the Land Clauses Consolidation Act, 1845, and appointed an arbitrator. The co. then sent to the plt.'s solicitors a letter to this effect: "The co. have made arrangements for the construction of a forty feet road which will put your client's property in direct connection with the new bridge and will more than counterbalance any injurious affection of that property by reason of the closing of the old footpath. The road will be made as soon as practicable, and on the understanding that it will be made we make your client an offer of 50*l.* in settlement of his claim." This offer was refused, and the parties proceeded to arbitration, in which 50*l.* was awarded to the plt. as compensation.

Upon a special case stated between the parties in an action by the plt. against the co. to recover his costs of the arbitration:—

Held, that the offer contained in the above letter was not a good offer within s. 34 of the Lands Clauses Consolidation Act, 1845, in that it was ambiguous and embarrassing. *FISHER v. GREAT WESTERN RY. CO.*

Phillimore J. [1910] 2 K. B. 252

15. — *Copyholds—Enfranchisement, Delay in—Compensation—Interest—Quittances—Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), ss. 95, 96, 97.*

Award stated by an arbitrator in the form of a special case.

In 1901 certain copyhold land was, under the powers of the Burial Acts, 1852 to 1900, and the Lands Clauses Act, 1845, purchased from the copyhold tenants thereof by the local authority of the district for the purpose of a burial ground, and the conveyance was duly enrolled on the court rolls of the manor. The local authority entered into possession, and negotiations proceeded between the lord of the manor and the

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local authority as to the amount of compensation payable to the lord for the enfranchisement of the land in pursuance of s. 96 of the Lands Clauses Act, 1845, and these negotiations were continued until 1908, when it was agreed to refer the matter to an arbitrator. No blame-worthy delay had occurred. The lord continued in possession of all manorial rights, and all rents had been paid to him. The lord claimed compensation for, among other things, the loss of quittances, and also interest upon the compensation money from the date of the obligation to enfranchise to payment. A quitance was a customary charge of 4*d.* for every receipt which a copyholder required to be given to him in respect of any manorial payment, but the charge could not be enforced if a copyholder was content to make the payment without requiring a receipt. The arbitrator awarded compensation for the loss of the quittances, and with regard to the claim for interest he found that the rents received by the lord were not an equivalent for the interest, and he awarded interest at the rate of 4 per cent. per annum.

Held, that the lord was entitled under s. 96 of the Lands Clauses Act, 1845, to compensation for the loss of quittances: and that, upon the principle laid down in *In re Marquis of Salisbury and London and North Western Ry. Co.*, [1892] 1 Ch. 75, n., he was entitled to interest upon the compensation money at the rate of 4 per cent. per annum, deducting therefrom the amount of the rents received by him. *In re DUKE OF NORTHUMBERLAND and TYNE MOUTH CORPORATION*

Phillimore J. [1909] W. N. 111; [1909] 2 K. B. 374

16. — *Copyholds, Sale of—Death of vendor before completion—Fine on heir's admission—Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), s. 82.*

A vendor, as trustee of a will, agreed to sell copyholds to a public tramway co., the co. agreeing to pay "the vendor's costs of title and conveyance as provided by the Lands Clauses Act, 1845." The vendor died before completion, and his customary heir was admitted in order that he might convey under s. 95:—

Held, that the fines and fees payable on this admission must be borne by the co. under s. 82.

In re Liverpool Improvement Act, (1868) L. R. 5 Eq. 282; *Ex parte Keatley*, (1890) 25 L. R. Ir. 265; *In re Lloyd and North London Ry. (City Branch) Act*, 1861, [1896] 2 Ch. 597; and *In re Bear Island Defence Works and Doyle*, [1903] 1 I. R. 164, applied. *In re LONDON UNITED TRAMWAYS ACT*, 1900

Swinfen Eady J. [1906] W. N. 33; [1906] 1 Ch. 534

Note.

Overruled on one point by C. A., *In re Thames Tunnel (Rotherhithe and Ratcliffe) Act*, 1900, [1908] 1 Ch. 493. See next Case.

17. — *Copyholds, Sale of—No tenant on court rolls—"Outstanding interest"—Fine on heirs' admission—Steward's fees—Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), s. 83.*

Trustees of a will agreed to sell a strip of the subsoil under three copyhold houses to the

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London County Council, who by the contract were to pay "the vendors' costs of title and conveyance as allowed by the Lands Clauses Consolidation Act, 1845." On investigating the title it was discovered that there had been no surrender or admission since April, 1870; the vendors, at the request of the council, obtained the admission of the customary co-heirs of the last surviving tenant on the court rolls, a former trustee :—

Held, that the steward's fees and the costs of admittance of the co-heirs must be borne by the council under s. 82;

And *held*, also, by Cozens-Hardy M.R. and Fletcher Moulton L.J. (Buckley L.J. expressing no opinion on this point), that the lord's fine on admission was not payable by the council.

In re London United Tramways, 1900, [1906] 1 Ch. 534, overruled on this point.

In re Bear Island Defence Works and Doyle, [1903] 1 Ir. 164, queried as to the "death duties" there allowed. *In re THAMES TUNNEL (ROTHERITHE AND RATCLIFF) ACT*, 1900

C. A. [1908] W. N. 46; [1908] 1 Ch. 493

Note.

This case was discussed by C. A. *In re Elementary Education Acts*, 1870 and 1873, [1909] 1 Ch. 55. See No. 19, below.

— Costs — Compulsory purchase — Money in Court — Payment out — Failure of part of summons — Order to pay interest — Costs of obtaining order.
See COSTS. 17.

18. — Costs — Compulsory taking of lands, Costs of — Practice — Costs — Taxation — Costs occasioned by adverse litigation — Form of order — Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), s. 80.

A summons to review the taxation of costs under an order for their payment under s. 80 of the Lands Clauses Consolidation Act. The Corporation of West Ham had taken possession of the land and had executed a deed poll in 1904, and paid the purchase-money, 350*l.*, into court. In 1905 the applicant took out an originating summons for payment out of court to him making the West Ham Corporation and the Romford Canal Co., who were supposed to have some title to the land or part of it, defendants. The canal co. were in liquidation, and an order was made in the liquidation that the liquidator should not oppose the summons. On July 16, 1908, an order was made on the summons by consent of the canal co. that the funds in court should be paid out to the applicant, and that the corporation should pay the costs of the applicant pursuant to s. 80 of the Lands Clauses Consolidation Act, 1845. The order was in the form given in Seton, 6th ed., vol. 3, p. 2457, but did not contain the words "except such costs if any as are occasioned by litigation between adverse claimants" which the form in Seton adds "if suggested."

Neville J. said that undoubtedly the practice had been, notwithstanding what was said by the C. A. in *In re Cant*, (1859) 8 W. R. 105, also reported in 1 D. G. F. & J. 153, to omit these words unless the question was raised at the

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hearing. But the question was what was the effect of the omission? It was contended that if the corporation did not raise the point at the hearing it could not be raised on taxation. That could hardly be so, for the Court in ordering these costs to be paid was administering a statutory jurisdiction, and whether the exception was mentioned in the order or not, the Court was bound by the statute, which forbade these costs to be paid. In the case before him there were adverse claimants, and the taxing Master had disallowed the costs of negotiations between them for a settlement. The taxing Master was right, and the summons must be dismissed. *In re HOOD AND In re WEST HAM CORPORATION ACT*, 1902

Neville J.

[1910] W. N. 80

19. — Costs — Death of vendor before completion — Vendor's will — Costs of probate — Taxation of costs — Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), s. 82.

An owner of leasehold property entered into a contract under the Lands Clauses Consolidation Act, 1845, to sell the same to the London County Council, and died after the title was accepted but before the sale was completed, having bequeathed all his property to his wife and appointed her sole executrix :—

Held, that the costs of taking out probate to the vendor's will were not payable by the purchasers under s. 82 of the Act.

Decision of Joyce J., [1908] W. N. 173; [1908] 2 Ch. 503, affirmed. *In re ELEMENTARY EDUCATION ACTS*, 1870 AND 1873

C. A. [1908] W. N. 226; [1909] 1 Ch. 55

20. — Costs — Interim investment — Practice — Purchase-money in court — Brokerage and other charges — Railway stock — Lands Clauses Act, 1845 (8 & 9 Vict. c. 18, ss. 70, 80) — R. S. C., 1883, Order XXII., r. 17 (1) (1888) — Form of order considered.

The costs payable by the promoters for an interim investment of money paid into court under the Lands Clauses Act, 1845, in any of the securities sanctioned by the Court, include the increased cost of brokerage and other charges occasioned by an investment in ry. stock.

Form of order discussed. *In re GASELEE*

Buckley J. [1901] W. N. 66; [1901] 1 Ch. 923

21. — Costs — Investment in land.

Where the purchase-money exceeds the fund in court paid in by a co., and an applicant provides the excess in cash, the co. has to pay the whole costs, except so far as they have been increased by reason of the purchase-money exceeding the fund. *In re METROPOLITAN RY. CO. AND GONVILLE AND CAIUS COLLEGE, CAMBRIDGE*

Kay J. [1906] 1 Ch. 619, n.

— Costs — Payment of purchase-money into court — Scheme for administration of charity — Costs of application for scheme.
See CHARITY. 12.

22. — Costs — Practice — Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), s. 80 — Reinvestment in land — Ground-rent — Costs of lease creating ground-rent.

The trustees of a charity obtained an order

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for the reinvestment of the purchase-money for lands of theirs, which had been taken by a corporation under the Lands Clauses Act, in the purchase of land. The contract entered into by the trustees, and approved by the Court, provided that on the conveyance of the land to the trustees they should grant to the vendors a lease for seventy-three years at a ground-rent, and that each party should pay their own costs of the lease :—

Held, that the corporation were not bound to pay the trustees' costs of the lease as part of the costs of reinvestment. *Ex parte* TRUSTEES OF THAVIES' CHARITY. Farwell J.
[1905] W. N. 26; [1905] 1 Ch. 403

23. — *Costs—Reinvestment in land—Purchase-money exceeding fund in Court—Apportionment—Form of order—Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), s. 80.*

The owners of a fund in Court, representing land taken compulsorily by a public body, proposed to invest more than double the amount of the fund in the purchase of fresh land, paying the purchase-money pro tanto out of the fund in Court and finding the balance themselves :—

Held, that under s. 80 of the Lands Clauses Consolidation Act, 1845, the public body must pay the costs of reinvestment except so far as they were increased by reason of the purchase-money exceeding the fund in Court.

Order in Seton on Judgments, 6th ed. p. 2457, Form 2, adopted.

Practice discussed. *In re* CLARK

Swinfen Eady J. [1906] W. N. 52;
[1906] 1 Ch. 615

— *Costs—Review of taxation—Light Railways Act, 1886.*

See RAILWAY—Light Railways. 2.

— *Costs—Sheriff's costs—"Deduction" from purchase-money—Practice.*

See COSTS. 18.

24. — *Costs—Taxation—Costs of inquiry under Lands Clauses Act—Chancery taxing Masters—Jurisdiction—Lands Clauses Act, 1845 (8 & 9 Vict. c. 18), s. 52—Lands Clauses (Taxation of Costs) Act, 1895 (58 & 59 Vict. c. 11)—Rules of January, 1902, pursuant to Supreme Court of Judicature (Officers) Act, 1879 (42 & 43 Vict. c. 78).*

The Chancery taxing Masters, whose office is amalgamated with, and who are themselves transferred to, the Central Office by virtue of the General Rules pursuant to Supreme Court of Judicature (Officers) Act, 1879, which came into operation on Jan. 11, 1902, have now jurisdiction to tax the costs of an inquiry before a jury under the Lands Clauses Act, 1845. COVINGTON v. METROPOLITAN DISTRICT RY. CO.
Div. Ct. [1903] 1 K. B. 231

— *Easement, Power of executor to grant.*

See EXECUTOR—Powers. 1.

— *Lunatic, Land vested in, as tenant for life—Committee—Power of sale.*

See LUNACY. 6.

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LANDS CLAUSES ACTS—continued.

— *Minerals—Repeal of prior Act—Reservation of vested rights.*

See RAILWAY—Minerals. 6.

— *Minerals, Reservation of—Railway company—Costs.*

See No. 35, below.

25. — *Notice to treat—Creation of new interest—Agreement for tenancy—Surrender—New agreement—Compensation—Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), s. 18.*

By an agreement dated Mar. 15, 1905, one F., as agent for the mortgagees in possession of certain premises, let the premises to one S. for three years from Mar. 14, 1905. On May 15, 1905, notice to treat under the Lands Clauses Consolidation Act, 1845, in respect of the premises was served by the defts., a tramway co., on the lessors. By an agreement dated Jan. 23, 1906, S. agreed to stand possessed of the lease of the premises in trust for the plt., and in Feb. the plt. entered upon the premises. Subsequently S. informed F., the lessors' agent, that he wished to transfer his interest to the plt., and it was arranged between S., the plt., and F. that the old tenancy should be surrendered, and a new tenancy should be granted to the plt. for a term of three years, being about a year longer than the residue of the former term. Accordingly, on Feb. 14, 1906, an agreement was entered into by which F., as the lessors' agent, let the premises to the plt. for three years from that date :—

Held, that either the plt. or S. as trustee for him was entitled to compensation in respect of the tenancy under the original agreement of Mar. 15, 1905, which still subsisted, in the absence of a valid surrender of it.

Judgment of Jelf J., [1908] 1 K. B. 611, affirmed. ZICK v. LONDON UNITED TRAMWAYS, LD. C. A. [1908] W. N. 98;

[1908] 2 K. B. 126

26. — *Notice to treat—Service—Duration of powers under special Act—"Three years from the passing of this Act"—Exclusion of day on which Act received Royal assent—Railway company—Compulsory powers.*

Under a special Act, which incorporated the Lands Clauses Act, 1845, a ry. co. were empowered to take lands compulsorily for the purpose of their undertaking, and the powers of the co. for this purpose were to cease after the expiration of three years from the passing of the Act. The Act received the Royal assent on Aug. 9, 1899, and on Aug. 9, 1902, the co. gave to the plts. a notice to treat for the purchase of lands belonging to them and scheduled in the special Act. On an application for an injunction to restrain the co. from proceeding under this notice :—

Held, that the day of the passing of the Act must be excluded in the computation of the three years, and that the notice was served in time. GOLDSMITHS' CO. v. WEST METROPOLITAN RY. CO. C. A. [1904] 1 K. B. 1

27. — *Payment out—"Absolutely entitled"—Vendor and purchaser—Compulsory purchase—No power of sale—Purchase-money paid into*

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LANDS CLAUSES ACTS—continued.

Court—Payment out—Borough council—Lands Clauses Act, 1845 (8 Vict. c. 18), s. 69.

Petition that a sum of 1255*l.* in Court might be paid out to the treasurer of the petitioners, and the only question was whether the petitioners were persons "absolutely entitled" within s. 69 of the Lands Clauses Consolidation Act, 1845.

The corporation of Woolwich, as successors to the Plumstead Vestry, were, under the London Government Act, 1899, owners in fee simple of land in that parish which was required by the London County Council. By s. 6, sub-s. 5, of that Act the corporation were authorized, with the consent of the Loc. Govt. Bd., to alienate any land for the time being vested in them. The London County Council and the petitioners agreed to a sale of the land, but the Loc. Govt. Bd. refused to sanction it, on the ground that the London County Council had power to acquire the land under the compulsory provisions of the Lands Clauses Act, 1845, without such consent. The purchase-money was accordingly determined by valuation, under s. 9 of that Act, at 1255*l.*, and was paid into Court to the credit of "*Ex parte* The London County Council, in the Metropolitan Management Act, 1855, the Mayor, Aldermen, and Councillors of the Metropolitan Borough of Woolwich vendors without power of sale." No body or person other than the petitioners had any claim upon any part of the money in Court, and the petitioners now asked that it should be paid out to their treasurer.

Warrington J. held that the petitioners were "absolutely entitled" within the section, and made the order as prayed. *Ex parte* WOOLWICH CORPORATION Warrington J. [1908] W. N. 56

28. — Payment out—Compulsory purchase—Payment out of purchase-money with other moneys—Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), s. 80.

There were in Court (a) sums of 426*l.*, Consols and cash, representing the purchase-money of lands comprised in certain deeds, which had been compulsorily taken by the Lynn and Fakenham Ry. Co. under the Lands Clauses Consolidation Act, 1845, and (b) sums of 957*l.*, Consols and cash, representing the proceeds of the enfranchisement of copyholds which were held of a manor comprised in the same deeds.

A petition for payment out of both funds asked that the costs of the petitioner and of all other necessary parties, of and consequent upon the petition and the order to be made thereon, might be taxed, and that the amount by which such costs should have been increased, by reason of the inclusion in the petition of the funds in Court representing the enfranchisement proceeds, should be certified as properly payable out of the same funds, and that the costs when taxed, other than those so certified, might, pursuant to s. 80 of the Lands Clauses Consolidation Act, 1845, be paid by the respondents, the Midland and Great Northern Rys. Joint Committee, which had succeeded to the rights and liabilities of the Lynn and Fakenham Ry. Co.

Parker J. said that he could see no difference between the case before him and the ordinary case of an application for reinvestment in lands,

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in which the Court had adopted the principle that those who had taken the land ought to bear the costs, except in so far as they had been increased by the petition relating to other funds. The only exception referred to was *In re Power's Settlement*, [1876] W. N. 205, and he was not sure how far that case could be regarded as a satisfactory decision. The ry. committee in the present case must pay the costs, except the amount by which they had been increased by including other funds in the petition. *In re* LYNN AND FAKENHAM RAILWAY (EXTENSION) ACT, 1880 Parker J. [1909] W. N. 24

29. — Payment out—Compulsory purchase of land—Property held for term to secure annuity—Cesser of term—Annuitant in possession as owner—No claim by reversioner—Payment out of capital—Statute of Limitations—Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), s. 79.

In this case the petition proposed to deal with a sum of 7777*l.* 15*s.* 7*d.* India 3 per cent. stock, in which the purchase-money for the house had been invested, and a sum of 581*l.* 5*s.* 8*d.* cash, and the petitioners claimed that they were entitled to these capital moneys as being parties in possession within s. 79 of the Lands Clauses Consolidation Act, 1845. A doubt was raised as to whether the possession of the petitioners gave them a title within s. 79 of the Act.

Eve J. said that he thought the order asked for might be made. The termor had received the rents of this property and had been in undisputed possession for fourteen years after the expiration of the term, and no person had come forward to claim by paramount title. The termor was in possession as such down to 1895, and a doubt was suggested—but upon what principle he did not appreciate—as to the origin of the adverse possession. In his view a good possessory title had been acquired as against all the world, and the case came exactly within the decision in the case of *Ex parte Chamberlain*, (1880) 14 Ch. D. 323, which only gave effect to what the Act contemplated. Under these circumstances he was of opinion that the petitioners were entitled to receive the capital moneys, and the order for payment out would be made upon the terms which had been arranged. *In re* HARRIS. HANSLER v. HARRIS - Eve J. [1909] W. N. 181

30. — Payment out—Vendor and purchaser—Compulsory purchase—Purchase-money paid into Court—Payment out—Borough council—"Absolutely entitled"—Consent of Local Government Board—Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), s. 69—London Government Act, 1899 (62 & 63 Vict. c. 14), s. 6 (5).

Petition by the Borough Council of Kensington for the payment out of Court to their treasurer of a sum of 2580*l.*, and the only question was whether the petitioners were persons "absolutely entitled" within s. 69 of the Lands Clauses Consolidation Act, 1845.

The petitioners contended that, having power to alienate with consent, they had power to give receipts for the purchase-money, and consequently were "persons absolutely entitled"

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within the meaning of s. 69 of the Lands Clauses Consolidation Act, 1845.

Swinfen Eady J. refused to make any order for payment out.

When the matter first came on in May last, the Court suggested that application should be made to the Loc. Govt. Bd. for its consent, and the appeal stood over generally for that purpose. On the appeal coming on again at this date, counsel stated that application had been made to the Loc. Govt. Bd. as suggested, but they had refused to consent or take any steps in the matter.

The C. A. dismissed the appeal.

Cozens-Hardy M.R. said, with reference to the case of *Ex parte The Mayor, &c., of Woolwich*, [1908] W. N. 56, there might possibly have been some fact not stated in the report which justified the decision; but as it stood it was a decision which ought not to be followed. *Ex parte GREAT WESTERN RY. CO. In re GREAT WESTERN RAILWAY (NEW RAILWAYS) ACT, 1905* C. A. [1909] W. N. 202

— Payment out of Court—Consent of Charity Commissioners.

See CHARITY. 26.

31. — *Payment out of Court—Practice—Proceeds of sale of investments—Brokerage—Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), ss. 69, 80.*

In cases where money has been paid into Court under a statute incorporating therewith the Lands Clauses Act, 1845, and has been invested in securities, on a petition by the persons absolutely entitled thereto for payment out of the proceeds of sale of the securities, the costs payable by the promoters that paid in the money include the brokerage payable on the sale. *In re MAGDALEN COLLEGE, OXFORD*

Cozens-Hardy J. [1901] W. N. 181; [1901] 2 Ch. 786

32. — *Payment out of Court—Railway company—Entry on land before determination of purchase-money—Deposit of estimated value—Bond—Payment out of deposit to company—Evidence—Delivery up of bond—Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), ss. 85, 86, 87, 124.*

When under s. 85 of the Lands Clauses Consolidation Act, 1845, a ry. co. have entered into possession of land which they are authorized to take, giving a bond to the person who claims to be entitled to the land and depositing money in Court as provided by that section, the co., having satisfied the conditions of the bond and shewing that it has been delivered up to them, are entitled upon a petition by themselves and the obligee of the bond, to have the money deposited repaid to them, without proving that the purchase-money of the land has been paid to the persons really entitled to it.

The rights of any person, other than the obligee of the bond, having an interest in the land are protected by s. 124 of the Lands Clauses Consolidation Act.

Decision of Kekewich J., [1903] W. N. 99, reversed. *Ex parte MIDLAND RY. CO.*

C. A. [1903] W. N. 201; [1904] 1 Ch. 61

LANDS CLAUSES ACTS—continued.

— Poor-rate — Lands taken compulsorily—Deficiency in assessment.

See LONDON—Rates. 2.

33. — *Practice—Notice of intention to summon jury—Purchase-money and compensation—Offer by promoters—Time for acceptance—Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), ss. 38, 51.*

Where in a proceeding to take and purchase lands under the Lands Clauses Consolidation Act, 1845, the promoters have given notice under s. 38 of their intention to summon a jury, and have therein stated the sum which they are willing to give as and for purchase-money and compensation, and, the offer not having been accepted, a jury is summoned, the claimant is entitled at any time before the verdict of the jury is given to accept the offer of the promoters, and the jury should in such a case be directed to return a verdict for the amount of the offer. *REX v. HIGH BAILIFF OF WESTMINSTER. Ex parte LONDON COUNTY COUNCIL*

Div. Ct. [1903] 2 K. B. 189

34. — *Practice—Special agreement as to costs—Costs—Taxation—Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), ss. 82, 83.*

In this case Swinfen Eady J. said: The petition and order do not follow the usual practice under ss. 82, 83, of the Lands Clauses Consolidation Act, 1845. The taxation under that Act ought to be between the vendor and the promoters, not between the vendor's solicitor and the promoters. I am satisfied there was no intention to suppress the agreement. It was carried in with the order, and I am told that the taxing Master would tax under the agreement. But it is not expedient to allow an order irregular in form to stand. Although the taxing Master would probably have allowed costs under the agreement, it is difficult to see that the order empowers him to do so, or to allow any costs not covered by ss. 82, 83. On the other hand, though the solicitor's name is introduced, he is not a party to the order, and there is no order against him. He is allowed costs of taxation in case one-sixth is not taxed off. This rather assumes that he will be the party taxing, but the only direction affecting him is by way of allowance to him. The vendor is not a party to the application. The order was not made under the Solicitors Act, 1843, or in the matter of the solicitor, but under ss. 82, 83, of the Lands Clauses Consolidation Act, 1845, under which there is no jurisdiction to tax the solicitor's bill. The order must be discharged, and I assume that a proper order for taxation will now be obtained. As I am not satisfied that any injustice would have been done if the order had been allowed to stand, the costs of the motion will be reserved until the result of the taxation is known. Liberty to apply. *In re COUNTY OF MIDDLESEX LIGHT RAILWAYS ORDER, 1903*

Swinfen Eady J. [1908] W. N. 167

35. — *Railway—Reservation of minerals—Conveyance of surface—Costs—Lands Clauses Consolidation (Scotland) Act, 1845 (8 & 9 Vict. c. 18), ss. 117, 119.*

The appellants purchased the rights of a

LANDS CLAUSES ACTS —*continued.*

feuar, in whose feu contract the minerals were reserved by the superior, the respondents' predecessor. In 1892 a controversy arose between the appellants and the respondents as to the position of the appellants in respect to their dealings with minerals both above and below the authorised formation of level of the appellants' line. In 1894 the Ct. of Sess. decided that the respondents were entitled to the minerals below the authorized formation, and reserved to the respondents any claim they might have for the value of the minerals in the said lands above the authorized level of the ry., to be determined by arbitration in terms of the Lands Clauses Consolidation (Scotland) Act, 1845, s. 117. In 1896 the respondents applied for compensation for the minerals above the surface. The appellants denied that they were under any liability for compensation, claiming to have purchased the minerals in their conveyance from the feuar of the surface, and that it was within their right to remove them. The respondents then commenced this action, contending that the appellants stood now to be treated as trespassers, it being too late for them to rely on s. 117 of the Act of 1845, they not having lodged a notice to treat within six months from the decision in 1894. The appellants contended that if they were wrong in their claim of ownership, they were still entitled to pay for the minerals by way of compensation, and not by damages, the six months given by the said Act not yet having commenced to run, as they had all along disputed the respondents' right:—

Held, reversing the decision of the Ct. of Sess., (1899) 37 S. L. R. 150, 406, that there had been no final determination, within the language of the section, of the respondents' right, and that, although this House now held their claim good, yet the appellants were not trespassers, and were entitled to the minerals upon payment of compensation:

Held, also, that the claimants (the respondents) were the proper parties to initiate a claim which it would have been possible for the appellants to satisfy. **CALEDONIAN RY. CO. v. DAVIDSON** **H. L. (Sc.)** [1902] **W. N. 156**; [1903] **A. C. 22**

— Re-entry — Lease — Covenants — Breaches —
— Compulsory purchase by public body
— Severance of reversion — Compensation.
See **LEASE**. 2.

— Reservation—Minerals Conveyance of surface only.
See *preceding Case*.

— Sale—Copyholds, Sale of—Costs—No tenant on court rolls.
See **LANDS CLAUSES ACTS**. 17.

— Sale of land — Payment out—Consent of Charity Commissioners.
See **CHARITY**. 26.

— Streets, Statutory power to fix posts "in or under"—Trespass—Taking of land.
See **STREETS**. 21.

36.—*Tramway—Compensation for injuriously affecting other lands—Land taken by tramway*

LANDS CLAUSES ACTS —*continued.*

company for purpose of widening a street and not used as a tramway—Depreciation in value of property by use of tramway.

A tramway co. under statutory powers was permitted to lay a tramway along a street, but was not allowed to do so until that street had been widened to a specified extent. The co., under further statutory powers, took compulsorily a portion of the applicant's land for the purpose of widening a street, and then constructed the tramway along the street, but the tramway did not pass over any portion of the land so taken from the applicant:—

Held, that in assessing the compensation to be paid to the applicant he was entitled to receive the value of the land taken and compensation for any depreciation in the value of his other adjoining property by reason of the land taken being used as part of the street, but that he was not entitled to compensation for the depreciation in the value of that other property by the running of trams along the street. **REX v. MOUNTFORD. Ex parte LONDON UNITED TRAMWAYS** (1901), **LD.** **Div. Ct.** [1906] **2 K. B. 814**

— Waterworks—Notice to prevent working of mines—Compensation—Rise in value of minerals—Evidence.
See **MINES**. 15.

LAPSE—"Charitable institution," Meaning of
—Legacy—Non-existence of institution named—Cy-près.
See **CHARITY**. 40.

— Will—Construction.
See under **WILL**—**Lapse**.

LARCENY.
See under **CRIMINAL LAW**—**Larceny**.

LARKS—Live larks recently taken—Prohibition against "killing or taking" larks in county of London—Possession of larks lawfully taken in another county—Wild birds.
See **BIRDS**. 1, 2.

LASCARS—Accommodation for seamen.
See **SHIPPING**—**Seamen**. 1.

LATENT AMBIGUITY—Gift to "my granddaughter"—Partial blank—Parol evidence—Grant of probate.
See **WILL**—**Ambiguity**. 2.

— Name—Misdescription—Extrinsic evidence—Instructions—Admissibility.
See **WILL**—**Name**. 1.

LATENT DEFECT—Title—Misdescription—Underground culvert for water.
See **VENDOR AND PURCHASER**—**Title**. 5.

LAUNCHERS OF LIFEBOATS—Salvage.
See **SHIPPING**—**Salvage**. 19.

LAUNDRY—Capital moneys—Improvements—Irish estates—Principal mansion-house—Water supply.
See **SETTLED LAND**—**Capital Moneys**. 10.

LAVATORIES—Land tax, Liability to—Vesting of subsoil of road in sanitary authority—Public underground lavatories.
See LAND TAX. 2.

LAW—Charitable purpose—Inn of Chancery—Study of the law—Failure of object—Disposition of property.
See CHARITY. 23.

LAW OF PROPERTY ACT—Conveyance by husband and wife of moiety of wife's land—Husband's rent-charge not mentioned—Release or grant.
See DEEDS. 6.

LAW REPORTS—*Weekly Notes*—Citation.
See SETTLEMENT. 24.

LAW SOCIETY—*Supplemental Charter, dated June 4, 1903*. Reprint from **W. N. 1903 (June 20)**, p. 195. See CURRENT INDEX, 1903, p. lxxiii.

LAY DAYS—Ship—Charterparty—Demurrage.
See SHIPPING—Charterparty. 38, 39.

LEAD-POISONING—Workmen's compensation.
See MASTER AND SERVANT—Compensation. 104.

LEASE.
See also under LANDLORD AND TENANT.

— Bill of sale—Validity—Assignment of lease included in inventory of chattels.
See BILL OF SALE. 9—12.

— Covenant to pay taxes—Usual covenant by lessee.
See CANADA—Leases. 1.

1. — *Covenants—Assignment of reversion—Liability of assignor on express covenants in lease*—32 *Hen. 8, c. 34, ss. 1, 2*.

A lessor who has assigned his reversion remains liable upon his express covenants, running with the reversion, in a lease for years under seal. *STUART v. JOY*

C. A. [1904] 1 K. B. 362

2. — *Covenants—Breaches—Re-entry—Compulsory purchase by public body—Severance of reversion—Involuntary act of lessor—Apportionment of condition—Notice of breaches—Sufficiency—Compensation—Damages—Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), s. 68—Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), s. 14*.

In pursuance of statutory powers a county council gave notice to P. and D. for the compulsory purchase of a strip of land comprising one-third of the site of two cottages, with gardens, for the purpose of widening a road. P. was the owner of the reversion of the premises, which were subject to a lease granted in 1867 for a long term of years, and now vested in D. This lease contained covenants by the lessee to repair the cottages and cultivate the garden ground in a husbandlike manner, with a proviso for re-entry on breaches of covenants. P. conveyed his interest in the strip to the council, but desired that the other two-thirds of the cottages should be left standing. The council, having purchased from D. the whole of the

LEASE—continued.

leasehold interest in the property and obtained an assignment of the lease, entered and entirely demolished the cottages, and let the garden ground for the purposes of a stonemason's yard. P. gave notices to the council, setting out the covenants in the lease, specifying the nature of the breaches, and requiring the council to remedy the same and make compensation. On their failure to comply, P. brought an action against the council to recover possession of the leasehold interest in the two-thirds on the ground of breaches of covenant, and he also claimed mesne profits and damages:—

Held, (1.) that the severance of the reversion having arisen from the involuntary and not the voluntary act of the lessor, the condition of re-entry was still enforceable, and the action maintainable: *Winter's Case*, (1572) 3 Dyer, 208 b, followed.

(2.) That P. was not limited to a claim for compensation under s. 68 of the Lands Clauses Consolidation Act, 1845, which was inapplicable to acts ultra vires of the council.

(3.) That the notices of breaches were sufficient within s. 14 of the Conveyancing and Law of Property Act, 1881, as it was unnecessary for the lessor to indicate what he required the lessee to do.

(4.) That P. was entitled to the relief asked and 100l. damages. *PIGGOTT v. MIDDLESEX COUNTY COUNCIL* - **Eve J. [1908] W. N. 193; [1909] 1 Ch. 134**

— Footway—Adjoining strip of land in lease—Whether termor can dedicate.
See HIGHWAY. 9.

— Machines for shoe manufacture—Restrictive condition as to user—Restraint of trade.
See CANADA—Leases. 3.

— Minerals.
See under MINE.

— Mining lease.
See under MINE.

— Mining lease—Trust for conversion—Payments in nature of royalties—Capital or income—Settled estate.
See WILL—Real Estate. 2.

— Mortgagee "as agent," Lease by—Covenant running with land.
See LANDLORD AND TENANT. 51.

3. — *Option to purchase reversion in fee—Perpetuity—Contract to convey at time beyond period allowed by rule against perpetuities—Remoteness—Damages for breach of contract—Charity—Lessor and lessee*.

In 1878 land was demised to the plt.'s predecessors for thirty years from Sept. 29, 1876, to be used as a public park; and the lease contained a proviso that at any time during the term the lessor, her heirs or assigns, would, on receiving notice from the plts. of their desire to purchase the land, convey it to them for 1325l. The lessor died in 1902. In 1905 the plts. served on her devisees notice of their desire to purchase. The devisees maintained that the option was void as infringing the rule against perpetuities; and the corporation brought this action against them and the lessor's executor for specific performance

LEASE—continued.

of the contract to sell, or in the alternative, damages for breach of contract :—

Held, that the option to purchase was void for remoteness, and could not be enforced by specific performance ; that this defect was not cured by the fact that the option was given for charitable purposes, inasmuch as the interest of the charity did not become effective till the happening of the future event, but that the p^lts. were entitled to recover damages from the de^{fts}. for breach of the covenant to convey.
WORTHING CORPORATION v. HEATHER

**Warrington J. [1906] W. N. 172 ;
 [1906] 2 Ch. 532**

- Reinvestment in land—Costs of lease creating ground-rent.
See LANDS CLAUSES ACTS. 22.
- Restrictive covenant—Building land—Plans to be submitted—Bankruptcy of lessee—Liability of covenantor for his assigns—Past breach.
See COVENANT. 7.
- Scottish law.
See under SCOTTISH LAW.
- Settled land.
See under SETTLED LAND—Leases.
- Trustees.
See under TRUSTEE—Leases.

LEASEHOLD GROUND-RENTS—Purchase of—Investment by trustees—Breach of trust.
See WILL—Investments. 1.

LEASEHOLD HOUSE—Gift of, the legatee performing the conditions of the lease—Mortgage—Foreclosure—Disclaimer by mortgagee of all interest in house—Liability for repairs.
See WILL—Leaseholds. 2.

LEASEHOLDS—Accumulations—Reserve fund to meet liabilities under leases—Validity.
See ACCUMULATIONS. 6.

- Administration—Contingent future liabilities—Indemnity—Privity of estate.
See EXECUTOR—Indemnity. 1.
- Appropriation of specific assets—Settled share—Sale and conversion—Land Transfer Act.
See EXECUTOR—Administration. 2.
- Conditions of sale—Title—Trust for sale—Trustee—Sale by way of underlease.
See VENDOR AND PURCHASER—Conditions of Sale. 8.
- Debenture trust deed—Mortgage by sub-demise—Receiver—Rent, Liability for.
See MORTGAGE—Receiver. 1.
- Disclaimer—Extension of time—Official receiver.
See BANKRUPTCY—Trustee. 9.
- Disclaimer by trustee—Terms to be imposed on underlessee—Discretion of Court.
See BANKRUPTCY—Vesting Orders. 1.

LEASEHOLDS—continued.

- Encroachment—Accretion to holding for benefit of lessor—Presumption.
See LIMITATIONS, STATUTE OF. 11.
- “Enfranchisement”—Conversion of leasehold land into freehold.
See SETTLED LAND—Enfranchisement. 1.
- Licensing Acts—Compensation—Mortgagor and mortgagee—Parties interested.
See LICENSING ACTS. 10.
- Mortgage—Transfer—Legal estate.
See under MORTGAGE—Transfer.
- Onerous covenants—Duty of vendor to disclose—Rescission.
See VENDOR AND PURCHASER—Rescission. 3.
- Receiver, Use or occupation by—Head-lease—Rent—Breach of covenant.
See MORTGAGE—Receiver. 1.
- Rent-charge issuing out of—“Chattel real”—Intestacy.
See WILL—Chattels Real. 1.
- Sale by executor—Lapse of time—Actual notice to purchaser that no debts of testator remain unpaid.
See VENDOR AND PURCHASER—Title. 8.
- Sale of—Costs—Taxation—Death of vendor before completion—Vendor's will—Costs of probate.
See LANDS CLAUSES ACTS. 19.
- Sale of—No assignment by deed.
See COMPANY—Vesting Order. 5.
- Settled land.
See under SETTLED LAND—Leases.
- “Tied” public-house—“Clog” on redemption.
See MORTGAGE—Redemption. 4.
- Title—Trust for sale—Sale by way of under-lease.
See VENDOR AND PURCHASER—Title. 16.
- Transvaal leaseholds—Enjoyment in specie—Roman-Dutch law—English will.
See CONFLICT OF LAWS. 10.
- “Trustee”—Onerous property—Disclaimer, Time for.
See BANKRUPTCY—Trustee. 9.
- Trustee, Reversion purchased by—Leaseholds forming part of trust estate—No right of renewal—Ownership of the fee.
See TRUSTEE—Purchase. 1.
- Trustee in bankruptcy, Position of—Lien—Right of indemnity—Debt provable in bankruptcy.
See LANDLORD AND TENANT. 46.
- Unattested will—Domiciled foreigner—Lex rei sitæ—Lex domicilii.
See CONFLICT OF LAWS. 17.
- Vendor and purchaser.
See under VENDOR AND PURCHASER—Title.
- Will.
See under WILL—Leaseholds.

LEEDS—*Leeds University Act, 1904* (4 Edw. 7, c. 12), *extends the privileges of the graduates of the University of Leeds.*

LEEWARD ISLANDS—*Order in Council annexing the Island of Sombrero to the Colony of St. E. & O. 1904, No. 1430.*

— Privy Council Appeals.

See under PRIVY COUNCIL.

LEGACY—Charitable legacy.

See under CHARITY.

— Duty of executor to give notice of—Beneficial interest of executor on breach of condition—Estoppel.

See EXECUTOR—Disclosure. 1.

— Succession duty.

See REVENUE—Succession Duty. 6

— Will—Construction.

See under WILL.

LEGACY DUTY.

See under REVENUE—Legacy Duty

LEGISLATIVE ASSEMBLY.

See under PARLIAMENT.

LEGITIM—Domicil, Acquisition of—Intention—Scottish law.

See DOMICIL. 1.

— Marriage contract—Conquest—Wife's acquisitions—Accumulations of income.

See SCOTTISH LAW. 16.

LEGITIMACY—Bastardy.

See under BASTARDY.

1. — *Perpetuating testimony* — *Paternity of child born in wedlock—Husband and wife, Statements by as to paternity—Access or non-access before marriage—Evidence—Admissibility.*

Less than six months after the late Earl Poulett's first marriage a son was born, a full-grown child. In a suit to perpetuate testimony, Earl Poulett deposed that he had never had sexual intercourse with his wife before the marriage; that soon after the marriage she confessed to him that she was at the time of the marriage enceinte by another man, the father of the child; that he then separated from his wife for ever and never acknowledged the child as his. Upon the question of the legitimacy of the child in a claim to the peerage:—

Held, that the deposition of Earl Poulett was admissible as evidence that the child was a bastard.

Anon. v. Anon., (1856) 22 Beav. 481; 23 Beav. 273, overruled. *THE POULETT PEERAGE.*

H. L. (E.) Committee for Privileges
[1903] W. N. 142; [1903] A. C. 395

2. — *Perpetuating testimony—Right of action—Evidence—Order for examination—Discretion of Court—Legitimacy Declaration Act, 1858* (21 & 22 Vict. c. 93), s. 1.—*R. S. C.*, 1883, *Order XXXVII.*, r. 35.

An action was brought to perpetuate testimony concerning the validity of the marriage of the plt.'s mother with a view to establish his claim to succeed, on the death of his father, to a peerage and to the family estates, to which the

LEGITIMACY—*continued.*

plt. claimed to be entitled as next tenant in tail male in remainder expectant on the death of his father:—

Held, by the C. A., that inasmuch as the sole question really in dispute was the validity of the marriage of the plt.'s mother, and he could, by proceeding under the Legitimacy Declaration Act, 1858, obtain an immediate judicial determination of that question, an order for the examination of witnesses abroad, for the purpose of perpetuating their testimony, ought not to be made.

Under rule 35 of Order XXXVII. the Court has a discretion as to making such an order, and is entitled to consider all the circumstances of the case.

Decision of Kekewich J., [1903] W. N. 94, reversed.

Per Stirling L.J. : Semble, that the plaintiff could at once, by virtue of the R. S. C., 1883, Order XXV., r. 5, bring an action for a declaration of his title to the estates as tenant in tail in remainder expectant on the death of his father. *WEST v. LORD SACKVILLE.*

C. A. [1903] W. N. 110; [1903] 2 Ch. 378

— Settlement, Variation of.

See under DIVORCE—Settlements.

— Will—Construction.

See under WILL—Illegitimacy.

LEGITIMACY DECLARATION—Foreign domicil

— Divorce in another State — Recognition by law of domicil — Effect — English law.

See DIVORCE—Domicil. 1.

1. — *Petition—Legitimacy Declaration Act, 1858* (21 & 22 Vict. c. 93), ss. 4, 11—*Mode of trial—Right to trial by jury—Discretion of Court—Matrimonial Causes Act, 1857* (20 & 21 Vict. c. 85), s. 36—*Jury refused.*

The judge has absolute discretion as to the mode of trial of the issues arising on a petition for a declaration of legitimacy under the Legitimacy Declaration Act, 1858, and, in exercising such discretion, the judge will have regard to the balance of convenience. Where the issues for trial involved, besides possible questions of character affecting one of the parties, the reading of a mass of evidence, taken on various commissions, the minute and careful examination of numerous documents, and probably questions of admissibility of evidence, which might prejudice the minds of a jury:—

Held, that the difficulty of deciding fairly any question of character or credit that might arise could not outweigh the inconvenience, delay, and possible miscarriage of justice which the trial of such complicated matters before a jury was likely to involve, and that an application by the petitioner for trial by jury should be refused. *SACKVILLE-WEST v. ATT.-GEN.* (LORD SACKVILLE cited) *Bigham, Pres.* [1909]

W. N. 220; [1910] P. 143

LERWICK HARBOUR—Narrow channel—Collision.

See SHIPPING—Collision. 40,

LESSOR AND LESSEE.

See under LANDLORD AND TENANT.
LEASE.

"**LET**"—Quiet enjoyment—Implied contract—Extent.

See LANDLORD AND TENANT. 67.

LETTERS—*Biography*—*Authority to write*—*Use of information contained in letters*—*Extracts and paraphrases*—*Intention of writer*—*Injunction*.

P. and his wife were authorized by W. to write his biography, but no express authority was given to publish any of his letters:—

Held, that P. and his wife were entitled to use the information contained in letters or documents written by W., which had lawfully come into their possession, for the purpose of compiling the biography, without any express or implied authority given by W. for that purpose; but they were not entitled to publish any letters of W., or any extracts therefrom, or paraphrases thereof.

So far as authority goes it is in favour of any use of letters except publication.

There is no warrant for extending the proprietary right to prohibit publication, and, so far as there is no rule of law of general application or created by special circumstances to prevent that result, the possession of a letter ought to be treated as conferring all the rights usually incident to property.

Semble, the intention of the writer of a letter is not a satisfactory test of the lawfulness of the use to which it is put. *PHILIP v. PENNELL*

Kekewich J. [1907] 2 Ch. 577

—Book—Posthumous letter—Proprietorship of copyright—Right to prevent publication.

See COPYRIGHT—Books. 3.

—Charges for letters—Remuneration of liquidator.

See COMPANY—WINDING-UP—Liquidator. 6.

—Practice.

See under CORRESPONDENCE.

—Registered letter—Agricultural holdings—Notice to quit—Service.

See LANDLORD AND TENANT. 6.

—Solicitor—Covenant—Prohibited area—Letters posted outside the area addressed to persons within it.

See SOLICITOR—Restraint on Trade. 1.

LETTERS OF ADMINISTRATION.

See under ADMINISTRATION.

HONG KONG.

PROBATE.

LETTERS OF REQUEST—Criminal suit by—Jurisdiction—Church Discipline—Objection to style of judge not sustained.

See ECCLESIASTICAL LAW—Discipline (Church Discipline). 4.

—Criminal suit by letters of request—Refusal to administer the Holy Communion—Marriage with deceased wife's sister.

See ECCLESIASTICAL LAW—Holy Communion. 1.

LETTERS OF REQUEST—*continued*.

—Divorce—Practice—Substituted service—Portuguese law.

See DIVORCE—Practice. 29.

LETTERS PATENT.

See under PATENT.

—Commissary and Vicar-General—Legality of reservation.

See ECCLESIASTICAL LAW—Practice. 2.

LETTING—Landlord and tenant.

See under LANDLORD AND TENANT.

—Settled land.

See under SETTLED LAND.

LEVEL CROSSINGS—Railway.

See under RAILWAY—Level Crossings.

LEX LOCI—Lex fori—Right of action in England for acts in foreign country.

See ACTION. 4.

LEX LOCI CONTRACTUS—Bigamy—Foreign decree of nullity on ground unknown to English law—Conflict of laws.

See DIVORCE—Nullity. 1.

LEX SITUS—Immovables—Contract relating to foreign land—Capacity to contract—Law of the Transvaal.

See CONFLICT OF LAWS. 13.

LIABILITY.

See under specific Titles.

LIBEL.

See under DEFAMATION—Libel.

LIBERTY OF SUBJECT—Appeal, Leave to—Interlocutory order—Refusal to commit—Practice.

See APPEAL. 18.

LIBRARY—*Public Libraries Act, 1901 (1 Edw. 7, c. 19), amends the Act relating to public libraries, museums, and gymnasia, and to regulate the liability of managers of libraries to proceedings for libel.*

—Gift of income to library—Perpetuity—Invalidity.

See CHARITY. 29.

—Will—Construction—Gift to officers' regimental mess to maintain a library—Plate.

See CHARITY. 41.

LICENCE.

See under specific Titles.

—By-law—Ultra vires—Ice-cream vendor's licence—Lawful day—Edinburgh Corporation.

See SCOTTISH LAW. 6.

—Licensing Acts.

See under LICENSING ACTS.

—Lodging-houses.

See under LODGING-HOUSES.

—Motor car.

See under MOTOR CAR.

LICENCE—continued.

- Newfoundland, Laws of—Effect of grant of licence — Trespass on licensee's land before licence granted—Damages.
See NEWFOUNDLAND. 5.
- Newfoundland whaling industry.
See NEWFOUNDLAND. 6.
- Patent—Infringement—Condition—Estoppel—Purchaser's liability to action for infringement.
See PATENT—Infringement. 9.
- Pawnbroker—Certificate—"Successor"
See PAWBROKER. 3.
- Plate, Licence to deal in—Sale of packets of tea containing coupons—Prizes consisting of plate.
See REVENUE—Plate. 1.
- Public-house—Licences in jeopardy—Recovery of possession—Disputed title.
See RECEIVER. 12.
- Revenue.
See under REVENUE.

1. — *Revocation — Notice — Agreement — Advertising station—Tenancy from year to year.*
By an agreement in writing the deft. agreed to let the plt. erect a hoarding upon the forecourt of a cottage and to allow him the use of a gable end for a bill-posting station at a yearly rent payable on the usual quarter-days from the then ensuing quarter-day :—

Held, that this was not a tenancy from year to year, but a licence revocable at will on reasonable notice, and that a quarter's notice terminating at the end of a year of the currency of the agreement was a reasonable notice. *WILSON v. TAVENER* **Joyce J. [1901] W. N. 25 ; [1901] 1 Ch. 578**

- Slaughter-houses.
See under SLAUGHTER-HOUSE.
- Tramway cars, Licences for conductors and drivers—Liability of tramway company.
See VICTORIA. 10.
- Way—Annual payment—Prescription—Lost grant—Inference from facts.
See WAY, RIGHT OF. 11.

LICENSEES — Grant—"Executors, administrators, and assigns, undertenants and servants."
See WAY, RIGHT OF. 5.

LICENSING ACTS.

Licensing Act, 1902 (2 Edw. 7, c. 28) amends the law relating to the sale of intoxicating liquors and to drunkenness, and provides for the registration of clubs.

Licensing Act, 1904 (4 Edw. 7, c. 23), amends the Licensing Acts, 1828 to 1902, in respect of the extinction of licences and the grant of new licences.

Licensing Rules, 1904. Rules made by the Secretary of State for the Home Department, dated Dec. 20, 1904, under s. 6 of the Licensing Act, 1904. W. N. 1905 (Jan. 7), p. 15. See CURRENT INDEX, 1905, p. lxxvi.

LICENSING ACTS—continued.

Treasury Order dated Feb. 22, 1906, amending the Order of Dec. 30, 1903, regulating Court fees in County Courts. Reprint from W. N. 1906 (March 10), p. 69. See CURRENT INDEX, 1906, p. lxxxvii.

Licensing Act, 1906 (6 Edw. 7, c. 42), removes doubts as to the manner in which the powers and duties of Justices acting in and for a borough may be exercised under the Licensing Acts, 1828 to 1904.

Licensing (Consolidation) Act, 1910 (10 Edw. 7 & 1 Geo. 5, c. 24), is an Act to consolidate the law relating to justices' licences for the sale by retail of intoxicating liquor and to the registration of clubs.

Intoxicating Liquor, England. Rules, Nov. 17, 1910, under s. 47 of the Licensing (Consolidation) Act, 1910. St. R. & O. 1910, No. 1180. Price 2d.

Intoxicating Liquor, England. Justices' Licences. Order, Oct. 29, 1910, prescribing forms of justices' licences for the sale of intoxicating liquors. St. R. & O. 1910, No. 1143. Price 1d.

1. — *Adjournments—Power of justices to adjourn into October—General annual licensing meeting—Alehouse Act, 1828 (9 Geo. 4, c. 61), s. 3—Wine and Beerhouse Act, 1870 (33 & 34 Vict. c. 29), s. 11.*

Where a full licence to sell intoxicating liquors, under 9 Geo. 4, c. 61, is applied for at an adjourned general annual licensing meeting held in Sept., the justices have no power to adjourn that meeting to a date after the end of Sept. in order to allow the applicant, who has not given sufficient notice of his application, to give fresh notices. *REX v. GROOM. Ex parte COBBOLD* **Div. Ct. [1905] 2 K. B. 157**

— Alteration in premises, Order for—Structural alteration.
See No. 58, below.

2. — *Bias—Justices—Reference of renewal of licence to quarter sessions—Right of licensing justice to sit on compensation committee—Licensing Act, 1904 (4 Edw. 7, c. 23), s. 1, sub-s. 2 ; s. 5, sub-s. 5.*

A justice of a borough who has been appointed a member of the committee of quarter sessions under s. 5, sub-s. 5, of the Licensing Act, 1904, is not disqualified from acting on the question of the refusal of the renewal of a licence by the fact that he presided at the meeting of the licensing justices of the borough at which it was decided to refer the question of the renewal of that licence to quarter sessions under s. 1, sub-s. 2, of the Act. *REX v. CHESHIRE LICENSING JUSTICES. Ex parte KAY'S ATLAS BREWERY, LD.* **Div. Ct. [1906] 1 K. B. 362**

— Bias—Licensing Justices.
See No. 5, below.

3. — *Bona fide traveller—Closing hours—Guest of bona fide traveller—Using licensed premises for purpose of obtaining liquor—Guest unlawfully on licensed premises—Licensing Act, 1872 (35 & 36 Vict. 94), s. 25.*

LICENSING ACTS—continued.

A bona fide traveller invited the appellant, who was not a bona fide traveller, to come with him into certain licensed premises as his guest for the purpose of getting something to drink at a time when the premises were required to be closed. When they went in the bona fide traveller ordered and paid for a glass of whisky for each of them. Upon an information charging the appellant, under s. 25 of the Licensing Act, 1872, with being unlawfully on the licensed premises at a time when the premises were required to be closed:—

Held, without expressing an opinion as to whether a bona fide traveller is entitled under any circumstances to order and pay for intoxicating liquor at licensed premises for consumption by another person as his guest, that, as the appellant went to the inn with the bona fide traveller for the sole purpose of getting intoxicating liquor, though the liquor was to be ordered and paid for by the bona fide traveller, he was unlawfully on the premises and was liable to be convicted under s. 25 of the Act. *JONES v. JONES* Div. Ct. [1910] W. N. 145; [1910] 2 K. B. 262

—Brewers' Colonial ale licences—Storekeepers' licences—Law of South Australia.

See AUSTRALIA. 4.

—Brewery business—Income tax—Deductions—Expenses of applications for new licences.

See REVENUE—Income Tax. 10.

—Brewery company—Mortgaged beerhouse—Licence not renewed—Compensation—Powers of debenture trustees.

See BREWERS. 1—3.

4. — *Certificate, Refusal to renew—Evidence on which magistrates entitled to act—Absolute discretion of magistrates—Licensing (Scotland) Act, 1903 (3 Edw. 7, c. 25), ss. 11, 19, 20, 103.*

The pursuer, a widow, by her co-defence averred that she was possessed of a house which had been licensed for fifty years; that in 1904 she applied to the licensing Court under the Licensing (Scotland) Act, 1903, for renewal of her licence, that no complaint of the management or sanitary condition of the premises was ever made, nor any notice of objection given at any time prior to April, 1904; but at the licensing Court on that date an inspector of police objected to the renewal on the ground that the premises were insanitary and the district congested; that he was not put on oath, nor was any evidence given as to either objection; that the pursuer through her agent offered to carry out any recommendation in regard to sanitary arrangements of the premises, but the Court thereupon, without calling any evidence, refused to renew the certificate on the ground that the premises were insanitary and the district congested. She further averred that the licensing authority had prejudiced the question by having come to a resolution previous to the sitting of the Court to reduce the number of licensed premises; and that an appeal to the licensing C. A. was overruled by the same preconceived determination, and that no evidence was heard by the said Court. She brought her action against the

LICENSING ACTS—continued.

licensing authorities and town clerk of the burgh and the members of the licensing C. A. for non-performance of their duty.

Held (affirming the decision of the First Division of the Ct. of Sess., (1905) 7 F. 1009), that the discretion of the licensing authority was absolute when exercised within the limits of its statutory authority, and that the pursuer's averments set out no case of ignorance, prejudice or bias, or refusal to give the hearing prescribed by the Act of 1903; secondly, that the licensing C. A. could give its decision without the appearance of any objector or evidence.

Lundie v. Magistrates of Falkirk, (1890) 18 R. 60, affirmed. *BOYLE (or WALSH) v. WILSON* H. L. (8c.) [1906] W. N. 218; [1907] A. C. 45

5. — *Certiorari—Confirming authority, Order of—Justices—Disqualification—Bias, Likelihood of—Licensing Act, 1872 (35 & 36 Vict. c. 94), ss. 38, 43.*

A writ of certiorari will lie to bring up an order of justices acting as the confirming authority under the Licensing Act, 1872.

Reg. v. Manchester Justices, [1899] 1 Q. B. 571, approved of.

A municipal corporation having, for the purposes of a street improvement, purchased certain premises licensed for the sale of intoxicating liquors, an agreement was entered into between the corporation and a brewery co., by which the co. agreed to pay to the corporation a sum of money, in the event of a licence being granted to the co. for the sale of intoxicating liquors on certain premises belonging to them, and the corporation agreed to close the before-mentioned licensed premises, and not to make, or allow to be made, any application for a renewal of the licence in respect of them.

Certain justices for the borough, who were also members of the borough council, had taken an active part in the council in support of the proposal that the above-mentioned agreement should be entered into by the corporation. These justices subsequently sat on the hearing of an application to the licensing committee on behalf of the brewery co. for a licence in respect of their before-mentioned premises, which was granted. On the application to the confirming authority under the Licensing Act, 1872, for confirmation of the grant of the licence to the co., the same justices again sat to hear the application, which was granted. On an application for a certiorari to bring up and quash the order confirming the grant of the licence:—

Held, that, there being a real likelihood of bias on the part of the before-mentioned justices with regard to the subject-matter of the application to the confirming authority, the writ of certiorari must be issued. *REX v. SUNDERLAND JUSTICES* C. A. [1901] W. N. 122; [1901] 2 K. B. 357

6. — *Children, sale to—Prohibition of—Exceptions—Intoxicating Liquors (Sale to Children) Act, 1901 (1 Edw. 7, c. 27).*

Sect. 2 of the Intoxicating Liquors (Sale to Children) Act, 1901, provides that every person who knowingly sends a child under the age of fourteen years to a public-house for the purpose

LICENSING ACTS—continued.

of obtaining any description of intoxicating liquor, "excepting such intoxicating liquors as are sold or delivered in corked and sealed vessels in quantities of not less than one reputed pint," shall be guilty of an offence:—

Held, that the mere fact that the vessel with which a child is sent to fetch liquor is capable of being corked and sealed by the vendor after being filled is not enough to bring the sender within the exception.

Per Lord Alverstone C.J.: There must be evidence that the sender intended that the vessel in which the liquor was to be delivered to the child should be corked and sealed before delivery.

Per Darling and A. T. Lawrence JJ.: The exception applies only to the case of liquor which is sold in a corked and sealed vessel belonging to the vendor, and the purchaser is not entitled to send a child with an empty bottle in which to fetch the liquor, whether intended to be corked and sealed or not.

Seem, that the sending of a child for less than a reputed pint, although to be purchased in a corked and sealed vessel, would be an offence within the section. *FARNDALE v. DILLON*

Div. Ct. [1907] W. N. 156;
[1907] 2 K. B. 513

Note.

This case was referred to by Div. Ct., *Jones v. Shervington*, [1908] 2 K. B. 539. *See next Case.*

7. — Children, Sale to—Prohibition of — Exceptions—Intoxicating Liquors (Sale to Children) Act, 1901 (1 Edw. 7, c. 27), s. 2.

The holder of a licence who sells or delivers intoxicating liquor to a person under the age of fourteen years in a corked and sealed vessel in a quantity of not less than one reputed pint, for consumption off the premises only, does not commit an offence under s. 2 of the Intoxicating Liquors (Sale to Children) Act, 1901, even though the intoxicating liquor is not of a kind commonly sold in a corked and sealed vessel; inasmuch as the effect of the exception contained in the section is to enable the licence-holder to so sell or deliver not merely intoxicating liquor which is ordinarily sold in a corked and sealed vessel, but any intoxicating liquor which is in fact in a corked and sealed vessel. *JONES v. SHERVINGTON*

Div. Ct. [1908]
W. N. 148; [1908] 2 K. B. 539

8. — Closing, Exemption from—Jurisdiction of justices—Certiorari—Licensing Act, 1872 (35 & 36 Vict. c. 94), s. 26.

An order of justices under s. 26 of the Licensing Act, 1872, extending the hours during which a licensed house may be kept open for the sale of intoxicating liquors is a judicial order, and may be brought up on certiorari. *REX v. JOHNSON*

Div. Ct. [1905] 2 K. B. 59

— Compensation — Debenture trust deed — Capital moneys — Investment — Powers of debenture trustees.
See BREWERS. 1.

9. — Compensation — Charge on renewed licences—Deduction from rent—Unexpired term

LICENSING ACTS—continued.

—*Reversionary lease—Licensing Act, 1904 (4 Edw. 7, c. 23), s. 3, sub-s. 3; Sched. II.*

The expression "unexpired term" in Sched. II. of the Licensing Act, 1904, must be construed strictly and legal effect given to legal language. It does not include an interest in a reversionary lease which is a mere *interesse termini*.

The respondents were lessees of a public-house under a lease expiring at Christmas, 1909, and were also grantees of a lease of the same public-house for a term beginning from the day next but one after the expiration or other sooner determination of the expiring lease. The licence was renewed in Oct., 1908, and quarter sessions imposed a compensation charge under s. 3, sub-s. 1:—

Held, that the unexpired term did not include the lessees' interest in the reversionary lease, which was a mere *interesse termini*.

Decision of C. A., [1910] 1 K. B. 236, affirmed. *LORD LANGATTOCK v. WATNEY, COMBE, REID & Co.*

H. L. (E.) [1910]
W. N. 103; [1910] A. C. 394

10. — Compensation—Refusal to renew licence—Mortgagor and mortgagee—Trust deed—Leaseholds—Parties interested—Licensing Act, 1904 (4 Edw. 7, c. 23), s. 2.

Where a co. has specifically mortgaged leaseholds to trustees to secure debenture stock, the trustees will be entitled to receive the compensation money awarded to the co. under the Licensing Act, 1904, in respect of the refusal of the licensing authority to renew the licence of a leasehold beerhouse included in the security; but the mortgagors, being in possession, will be entitled to the interest received in respect of the investment of such compensation money until the security becomes enforceable. *LAW GUARANTEE AND TRUST SOCIETY, LD. v. MITCHAM AND CHEAM BREWERY CO.*

Kekewich J.

[1906] W. N. 91; [1906] 2 Ch. 98

Note.

Followed by *Neville J., Noakes v. Noakes & Co.*, [1907] 1 Ch. 64. *See Brewers. 1.*

Explained by *Kekewich J., Dawson v. Braime's Tadcaster Breweries, Ltd.*, [1907] 2 Ch. 359. *See Brewers. 2.*

Considered by *Eve J., Bent's Brewery Co. v. Dykes*, [1909] W. N. 51. *See No. 30, below.*

11. — Compensation charge—Deduction from rent—Date from which unexpired portion of term is to be counted—Licensing Act 1904 (4 Edw. 7, c. 23), s. 3; Sched. II.

The date at which the length of the "unexpired term" referred to in Sched. II. of the Licensing Act, 1904, is to be ascertained is Oct. 10, the date on which the compensation charge is payable by the licence-holder. *LONDON COUNTY COUNCIL v. WATNEY, COMBE & Co.*

Div. Ct. [1909] W. N. 32;

[1909] 1 K. B. 637

12. — Compensation charge—Deduction of amount paid by licence-holder from rent—Income tax—Right of tenant to deduct income tax paid on behalf of landlord—"Rent payable"—Income Tax Act, 1842 (5 & 6 Vict. c. 35),

LICENSING ACTS—continued.

s. 60, *Sched. A, No. IV., r. 9—Licensing Act, 1904* (4 *Edw. 7, c. 23*), s. 3.

The right given by s. 3 of the Licensing Act, 1904, to a licence-holder to deduct from his rent a portion of the amount paid by him in respect of compensation charges does not affect the "rent payable" to the landlord within the meaning of the Income Tax Act, 1842, and therefore the tenant of licensed premises is entitled to deduct from the next payment of rent the tax that he has paid on the total rent payable by him to his landlord, although he has not paid to the landlord the whole amount of that rent, but has deducted from it a proportion of the compensation charge in accordance with the provisions of the Licensing Act, 1904. *HAXCOCK & Co. v. GILLARD* - **Bigham J. [1906]**

W. N. 194; [1907] 1 K. B. 47

13. — Compensation charge—Year for which levied—Excise License—Licensing Act, 1904 (4 *Edw. 7, c. 23*), s. 3, sub-s. 1, 2.

The compensation charge imposed in each year in respect of a renewed licence by quarter sessions under s. 3, sub-s. 1, of the Licensing Act, 1904, is imposed in respect of the period from April 5 of the year in which it is payable until April 5 of the succeeding year. *HORTON v. PENN* **Div. Ct. [1907] 1 K. B. 561**

14. — Compensation for non-renewal of licence—Charge for compensation fund—Deductions from rent—Tenant for life and remainderman—Annuitant—Public-house—Licensing Act, 1904 (4 *Edw. 7, c. 23*), s. 3.

The deductions which, under the Licensing Act, 1904, a licence-holder is allowed to make from his rent in respect of charges imposed by quarter sessions to form a compensation fund for non-renewal of licences under that Act are a charge upon the rent. In cases where the reversion is settled, a tenant for life has no right, in the absence of special directions in the will or settlement, to have any part of these deductions paid out of capital. *In re SMITH. SMITH v. DODSWORTH* - **Swinfen Eady J. [1906] W. N. 79; [1906] 1 Ch. 799**

15. — Compensation fund—Liability to contribute—"Existing on-licence renewed"—Provisional licence—Licensing Act, 1904 (4 *Edw. 7, c. 23*), ss. 1, 3—*Rules to the Licensing Act, 1904, rr. 41, 42.*

Licensing justices having on Feb. 10, 1905, referred the renewal of an existing on-licence to quarter sessions under s. 1, sub-s. 2, of the Licensing Act, 1904, granted the renewal of the licence provisionally under r. 41 of the rules to the Act. The quarter sessions refused the renewal on May 8, subject to the payment of compensation. On Oct. 10 the excise duties in respect of the provisional licence became due, but the Commissioners refused to accept them unless the amount due in respect of the contribution to the compensation fund were also paid:—

Held, that a provisional licence was not an "existing on-licence renewed" within the meaning of s. 3 of the Licensing Act, 1904, and that the holder of the provisional licence was not,

LICENSING ACTS—continued.

therefore, bound to pay any contribution to the compensation fund. *MALKIN v. REX*

Walton J. [1906] 2 K. B. 886

16. — Compensation fund—Relief from maximum charge—Hotel—Premises used for a purpose to which the holding of a licence is auxiliary—Licensing Act, 1904 (4 *Edw. 7, c. 23*), *Sched. I.*

By s. 43 of the Inland Revenue Act, 1880, the duties payable on licences to retailers of spirits are fixed, and by sub-s. 4, in the case of premises of the value of 50*l.*, which are structurally adapted for and mainly used as an inn or hotel for the reception of guests and travellers, the duty is not to exceed 20*l.*, but this relief is not to be given if any portion of the premises is set apart and used as an ordinary public-house and the annual value of that portion exceeds 25*l.* By Sched. I. of the Licensing Act, 1904, the maximum rate of charge upon licensed premises as a contribution to the compensation fund for the extinction of licences is fixed, and relief is given in the case of a hotel or other premises to which s. 43, sub-s. 4, of the Act of 1880 applies, and also in the case of any licensed premises certified by the licensing justices to be used "... for any other purpose to which the holding of a licence is merely auxiliary":—

Held, that the holder of the licence of a hotel of the annual value of 450*l.*, a portion of which, exceeding 25*l.* in annual value, was set apart as a public bar and used as an ordinary public-house, was not entitled to relief from the maximum charge to the compensation fund, as the holding of a licence was not merely auxiliary to the business of such a hotel. *REX v. CARTER*

Div. Ct. [1907] 1 K. B. 298

17. — Compensation levy—Charges imposed by compensation authority for county—County borough constituted before charges paid—Separate commission of the peace—Charges in respect of licensed premises in borough—Right of compensation authority for borough—Licensing Act, 1904 (4 *Edw. 7, c. 23*), ss. 3, 8.

The quarter sessions of a county as the compensation authority imposed under s. 3, sub-s. 1, of the Licensing Act, 1904, at the Epiphany sessions, 1908, charges for the ensuing year in respect of all existing on-licences renewed in respect of premises within their area. At that date a borough was within the area of the quarter sessions for the county, but it was constituted a county borough as from April 1, 1908, and in July following a separate commission of the peace was granted to it. In Oct., 1908, the Comms. of Inland Revenue, under s. 3, sub-s. 2, of the Act, collected the charges imposed by the quarter sessions for the county at the preceding Epiphany sessions, including the charges in respect of licensed premises within the borough, and paid over the amount produced by the charges within the borough to the compensation authority thereof, and the amount produced by the charges in respect of licensed premises in the rest of the county to the compensation authority for the county. The latter authority claimed to be entitled to the amount

LICENSING ACTS—continued.

produced by the charges in respect of premises within the borough as being the authority which had imposed those charges :—

Held, that by virtue of s. 3, sub-s. 2, and s. 8 the compensation authority for the borough were entitled to be paid the amount produced by those charges notwithstanding that they had been imposed by the compensation authority for the county. **REX v. INLAND REVENUE COMMRS. REX v. GLAMORGAN JUSTICES. *Ex parte* DAVIES** **Div. Ct. [1910] 1 K. B. 851**

18. — Compensation on non-renewal of licence—Mode of ascertaining value of licence—Evidence of trade done by the house, admissibility of—Consideration of licence-holder's interest—Licensing Act, 1904 (4 Edw. 7, c. 23), s. 2—Finance Act, 1894 (57 & 58 Vict. c. 30), s. 7, sub-s. 5.

By the joint effect of s. 2 of the Licensing Act, 1904, and s. 7, sub-s. 5, of the Finance Act, 1894, where the renewal of a licence is refused under the former Act the amount of the compensation payable on such non-renewal is, in the absence of agreement, to be based on the price which the licensed premises "would fetch if sold in the open market" :—

Held—(1.) That as amongst the possible purchasers in the open market would be brewers, and as the price which they would be willing to pay would depend upon the profits which they might fairly expect to make by the supply of liquor to the licensed premises, it is material to inquire into the quantity and quality of the trade previously done by the house under normal conditions and apart from any considerations of a personal or special character, such as the popularity of the licence-holder or the proximity of the licensed premises to the brewery.

(2.) That there cannot, in addition to the brewer's profit arising from the ownership of the premises and the supply of liquor thereto, be taken into consideration the possible profit which his tenant might expect to make by retailing the liquor so supplied. **ASHBY'S COBBHAM BREWERY CO.; *In re* THE CROWN, COBBHAM. ASHBY'S STAINES BREWERY CO.; *In re* THE HAND AND SPEAR, WOKING** **Kennedy J. [1906] 2 K. B. 754**

19. — Compensation on refusal to renew licence

—Tenants in common of lease of licensed premises

—Action for sale of premises in lieu of partition

—Judgment by consent for sale, and payment of proceeds into Court—Refusal of licence under Licensing Act, 1904, before sale—Award of compensation—Division of compensation among persons interested—Whole of compensation in respect of leasehold interest apportioned to one tenant in common—Licensing Act, 1904 (4 Edw. 7, c. 23), ss. 1, 2—Licensing Rules, 1904, rr. 21—27.

The plts., who claimed that they and others being the children of one J. R., deceased, were interested as tenants in common with the deft. in a lease of certain licensed premises, of which the deft. was in possession through his tenant, brought an action in the Court of Chancery of the County Palatine of Durham, asking for a sale of the property in lieu of partition. In that action the deft. consented to judgment for an inquiry as to who were the persons interested in the property, and for an account of the rents and

LICENSING ACTS—continued.

profits received by him; and by this judgment by consent it was further ordered that, if it were certified by the registrar of the Court that all persons interested in the property who were necessary parties were before the Court, the property should be sold with the approbation of the registrar, and the money to arise by the sale should be paid into Court to the credit of the action, subject to further order. By the certificate of the registrar made in pursuance of the judgment, it appeared that the plts. and the other children of J. R. were entitled to one moiety, and the deft. was entitled to the other moiety, of the leasehold interest. Before any sale of the property was effected, the renewal of the licence in respect of the premises was refused by the compensation authority under the Licensing Act, 1904, ss. 1, 2, and the amount to be paid as compensation to the persons interested in the premises was determined by the Inland Revenue Commrs. under s. 2, sub-s. 2, of that Act to be 900*l*. A supplemental meeting of the compensation authority was subsequently held under the Licensing Rules, 1904, to determine the shares in which the compensation money should be divided among the persons interested in the premises. The Eccles. Commrs., who were the owners of the reversion on the lease, made no claim to any portion of the amount. A claim was made at the supplemental meeting on behalf of the children of J. R., who had not sent to the compensation authority any notice of claim as required by r. 21 of the Licensing Rules, 1904, to be treated as interested in the licensed premises, but the compensation authority refused to entertain their claim, or to hear them, on the ground that they had not complied with the provisions of r. 21, and proceeded to apportion the amount of the compensation as follows, namely, 835*l*. to the deft., who had been registered as the owner of the premises in the register of licences, and 65*l*. to the holder of the licence, his tenant. The deft. having received the 835*l*. so apportioned, an application was made on behalf of the children of J. R. for an order that he should bring that sum into Court, and the Chancellor of the County Palatine granted that application :—

Held, affirming his decision, that the determination of the compensation authority with regard to the shares in which the compensation was to be divided between the various interests in the premises did not determine the rights of the co-owners of the leasehold interest in the licensed premises inter se, and that the deft. was bound to bring the amount paid to him into Court to the credit of the action. **BIRKIN v. SMITH** **C. A. [1909] 2 K. B. 112**

20. — Conditional licence—Hours of opening—Application for occasional licence—Licensing Act, 1904 (4 Edw. 7, c. 23), s. 4—Licensing Act, 1872 (35 & 36 Vict. c. 94), s. 29.

The respondent was granted in 1906, under s. 4 of the Licensing Act, 1904, a licence in respect of certain premises for the period of two years, upon the condition that the premises should only be open for the sale of intoxicating liquors between the hours of noon and 2 P.M.

LICENSING ACTS—continued.

During the currency of the licence the respondent applied to justices in petty sessions, under s. 29 of the Licensing Act, 1872, for an occasional licence exempting him from closing the premises on Dec. 17, 1906, between the hours of 7 P.M. and 11 P.M. The justices granted the occasional licence asked for.

Held (affirming the decision of a Div. Ct., [1907] 2 K. B. 232), that they had power to do so. **GROH v. HESKETH** C.A. [1908] W. N. 27; [1908] 1 K. B. 654

21. — Costs — Justices — Quarter sessions — Jurisdiction—Licensing appeals—Costs of licensing justices—Alehouse Act, 1828 (9 Geo. 4, c. 61), s. 29—Licensing Act, 1902 (2 Edw. 7, c. 28), s. 20.

Upon the hearing of an appeal to quarter sessions from licensing justices, the licensing justices are entitled in the case of an unsuccessful appeal to an order under s. 29 of the Alehouse Act, 1828, upon the appellant for payment of such sum by way of costs as in the opinion of the Court will indemnify them from all costs and charges to which they may have been put; in the case of a successful appeal to a like order under s. 20 of the Licensing Act, 1902, upon the treasurer of the county or place for which the licensing justices acted.

Upon any such appeal the licensing justices are entitled to retain any solicitor whom they select to act for them, and they cannot be compelled to appear by the county solicitor, although it may be part of the duties of that officer to act for licensing justices upon the hearing of appeals from their decisions. Where licensing justices appear by their own solicitor, the Court of quarter sessions has no jurisdiction, in making an order under either s. 29 of the Alehouse Act, 1828, or s. 20 of the Licensing Act, 1902, to attach to it a direction to the clerk of the peace that in ascertaining the amount of the costs he is to exclude the personal professional charges of the solicitor employed by the licensing justices. **REX v. WEST RIDING JUSTICES** - Div. Ct. [1904] W. N. 41; [1904] 1 K. B. 545

22. — Costs—Refusal to renew licence — Compensation—Appeal from decision of Inland Revenue Commissioners — Discretion to order payment of costs by Commissioners—Practice—Licensing Act, 1904 (4 Edw. 7, c. 23), s. 1; s. 2, sub-ss. 2, 4—Finance Act, 1894 (57 & 58 Vict. c. 30), s. 10, sub-s. 3.

Upon a successful appeal from a decision of the Inland Revenue Commrs. fixing the amount of compensation to be paid upon the refusal to renew a licence under the Licensing Act, 1904, s. 1, a judge of the High Court has a discretion to order the Commrs. to pay the appellant's costs; but the mere fact that the appeal has succeeded to a substantial extent is not, per se, a sufficient ground for making such an order. *In re HARDY'S CROWN BREWERY, LD., AND ST. PHILIP'S TAVERN, MANCHESTER* C.A. [1910] W. N. 103; [1910] 2 K. B. 257

23. — County borough—Compensation authority—Refusal to renew licence—Appeal to quarter sessions of county—Licensing Act, 1904 (4 Edw. 7, c. 23), s. 8, sub-s. 2.

Where the whole body of justices of a county

LICENSING ACTS—continued.

borough acting as the compensation authority under the Licensing Act, 1904, refuse to renew an on-licence subject to compensation, no appeal lies from their decision to the quarter sessions of the county under s. 27 of the Alehouse Act, 1828 **REX v. SOUTHAMPTON JUSTICES** - Div. Ct. [1906] W. N. 54; [1906] 1 K. B. 505

— Drunkenness, Permitting.

See Nos. 59, 60, below.

— Excise—Beer—Soliciting or taking order at place other than that specified in licence. *See REVENUE—Excise. 1.*

24. — Executor of deceased licensee—Public-house—Licensed premises—Licensing Act, 1872 (35 & 36 Vict. c. 94), ss. 3, 17.

The executor of a deceased licensed person who continues to carry on the business under the provisions of s. 3 of the Licensing Act, 1872, until the next special sessions is himself a licensed person within the meaning of the Act. **M'DONALD v. HUGHES** Div. Ct. [1902] 1 K. B. 94

25. — Extinction of licence—Compensation—Division among parties interested—Principle of computation—Determination by county court—Appeal—Licensing Act, 1904 (4 Edw. 7, c. 23), s. 2.

Where, under s. 2, sub-s. 3, of the Licensing Act, 1904, the quarter sessions having referred the division of the sum fixed as compensation to be paid for the extinction of a licence among the persons interested in the licensed premises to the county court, and the amount to be received thereout by the licence-holder having been settled by agreement between the parties, the residue had to be apportioned between the lessees of the premises for a term of years, who were brewers, and the freeholders, which apportionment the county court judge made on the basement of the 8 per cent. interest table:—

Held, reversing the judgment of a Div. Ct., that there was no rule or presumption of law, either general or applicable to the circumstances of the particular case, by which the county court judge was bound to treat the respective interests of the parties as 4 per cent. investments, or to adopt the 4 per cent. interest table for the purpose of making the division; that the valuation of the respective interests in the compensation money was entirely a question of fact to be determined by him upon the circumstances of the particular case; and that his determination of that question was not subject to review by the High Court.

Quære, whether in such a case there is any right of appeal from the county court judge.

Judgment of a Div. Ct., reported [1907] W. N. 214; [1908] 1 K. B. 28, reversed. **LIVERPOOL CORPORATION v. PETER WALKER & SON, LD.**

C.A. [1908] W. N. 79; [1908] 2 K. B. 33

26. — Fees — Application for grant of new licence—Claim by clerk to justices to fees in respect of witnesses called in opposition to grant—Justices' Clerks Act, 1877 (40 & 41 Vict. c. 43), s. 8—Alehouse Act, 1828 (9 Geo. 4, c. 61), s. 15.

Sec. 15 of the Alehouse Act, 1828, which provides the sums which are payable by the

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person to whom a licence is granted, is exhaustive. Therefore the clerk to the justices of a petty sessional division is not entitled to receive a fee for the administration of the oath to a witness called at an adjourned annual licensing meeting of the justices to give evidence in opposition to an application for the grant of a licence. *WHITTUCK v. WITBY*. Div. Ct. [1907] W. N. 105; [1907] 2 K. B. 526

27. — Forfeiture of licence—Application for grant or transfer—Discretion of licensing justices to refuse—Licence—Conviction—Alehouse Act, 1828 (9 Geo. 4, c. 61), s. 14—Wine and Beerhouse Act, 1869 (32 & 33 Vict. c. 27), ss. 8, 19—Licensing Act, 1874 (37 & 38 Vict. c. 49), s. 15.

A beerhouse licence, which had been continuously renewed in respect of premises licensed prior to May 1, 1869, was forfeited by reason of the conviction of the holder for selling spirits without a licence. The owners subsequently applied at a special licensing sessions under s. 15 of the Licensing Act, 1874, for a grant of a licence in respect of the premises to another tenant :—

Held, that the licence was not “in force” within the meaning of s. 19 of the Wine and Beerhouse Act, 1869, at the date of the application, and that therefore the licensing justices had a general discretion to refuse the application, and were not limited to the four grounds of refusal specified in s. 8 of that Act.

Ex parte Flinn & Sons (No. 2), [1899] 2 Q. B. 607, discussed and disapproved. *TOWER JUSTICES v. CHAMBERS*. C. A. [1904] 2 K. B. 903

— Hotel, Manager of—Undisclosed principal—Licence taken out in name of manager—Presumption as to hotel being tied. *See PRINCIPAL AND AGENT*. 15.

— Income tax—Deductions—Profits of brewery—Tied licensed house—Compensation charge.

See REVENUE—Income Tax. 9.

— Income tax—Interest of money—Compensation fund—Deposit at Bank—Assessability of quarter sessions.

See REVENUE—Income Tax. 23.

— Inebriates Act—Consent of defendant.

See JUSTICES. 8.

— Jurisdiction of stipendiary magistrate—Petition for inquiry into a licensing poll.

See NEW ZEALAND. 14.

28. — Justices—Jurisdiction—Renewal of licences—Reference of question of renewal to quarter sessions—Notice to licensed person—Evidence on which justices entitled to act—Licensing Acts, 1872 (35 & 36 Vict. c. 94), s. 42; 1904 (4 Edw. 7, c. 23), s. 1.

Sect. 1, sub-s. 1, of the Licensing Act, 1904, provides that the power to refuse the renewal of an existing on licence on grounds other than certain specified grounds (which do not include the ground that the licensed house is not required for the needs of the neighbourhood) shall be vested in quarter sessions instead of the justices of the licensing district, but shall only be

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exercised on a reference from the justices and on payment of compensation. Sub-s. 2 provides: “Where the justices of a licensing district, on the consideration by them, in accordance with the Licensing Acts, 1828 to 1902, of applications for the renewal of licences, are of opinion that the question of the renewal of any particular existing on licences requires consideration on grounds other than those on which the renewal of an existing on licence can be refused by them, they shall refer the matter to quarter sessions, together with their report thereon.”

At an adjournment of the general annual licensing meeting the renewal of an existing on licence was objected to on the ground that the licensed house was not required for the needs of the neighbourhood. An inspector of police gave evidence on oath as to the number of licensed houses within a short distance of the house in question, the amount of population, and the character of the neighbourhood. The licensee-holder had been served with notice to attend, and was present, but called no evidence. The justices had been supplied with plans of all the licensed houses in the district, and were acquainted with the locality and accommodation of the house in question and of the other licensed houses in the neighbourhood, and, acting upon the evidence and upon their own knowledge, they referred the question of the renewal of the licence to quarter sessions, with their report thereon :—

Held, that there was evidence upon which the justices could form the opinion that the question of the renewal of the licence required consideration, and refer the matter to quarter sessions under sub-s. 2.

Licensing justices cannot refer to quarter sessions, under s. 1, sub-s. 2, the question of the renewal of an existing on licence if no notice of objection has been given to the licensee-holder, and he has not been given the opportunity of attending at the hearing of his case before the justices and of tendering evidence.

Where the ground of objection to the renewal of a licence is that the licensed house is not required for the needs of the neighbourhood, the justices must have some evidence on oath that it is not so required before they can form the opinion that the question of the renewal requires consideration on that ground. It is not necessary however, in all cases, that they should have before them detailed evidence differentiating the house in question from the other licensed houses in the neighbourhood; nor are they bound in forming their opinion to exclude their own knowledge of the locality upon such questions as the character of the neighbourhood, the amount of population, and the habits of the inhabitants. *REX v. TOLHURST. Ex parte FARRELL. REX v. COX. Ex parte WEST*

Div. Ct. [1905] 2 K. B. 478

29. — Justices—Licensing justices—Provisional licences with a view to compensation—Bias on part of justices—Qualification of applicant for licence—Person keeping or about to keep alehouse—Beerhouse—Real resident holder and occupier—Licensing Act, 1904 (4 Edw. 7, c. 23),

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s. 1—*Alehouse Act*, 1828 (9 Geo. 4, c. 61), s. 1—*Beerhouse Act*, 1840 (3 & 4 Vict. c. 61), s. 1.

A county borough corporation under statutory powers for the improvement of a district, bought land in the borough, including licensed premises, dismantled the premises and put caretakers therein with a view to suppressing unnecessary licensed premises on payment of compensation to the corporation under the Licensing Act, 1904. At the next annual licensing sessions the caretakers, in pursuance of an arrangement between the corporation and the justices, applied for renewal licences, some under the Alehouse Act, 1828, and some under the Beerhouse Act, 1840. The licensing justices provisionally granted renewal licences subject to a reference to quarter sessions, the compensation authority under the Licensing Act, 1904, s. 1. It was contended that the renewals were void because the caretakers were not persons keeping or about to keep alehouses under the Alehouse Act, 1828, or real resident holders and occupiers under the Beerhouse Act, 1840, and because some of the justices who granted the renewals were members of the corporation and parties to the arrangement:—

Held, that, the justices having honestly exercised their discretion and the transaction being bona fide and for the purpose of carrying out the object of the Licensing Act, 1904, the renewals were valid.

Decision of the C. A., *R. v. Woodhouse (Leeds Justices)*, [1906] 2 K. B. 501, reversed, and decision of the King's Bench Division restored. *LEEDS CORPORATION v. RYDER*

H. L. (E.) [1907] W. N. 195; [1907] A. C. 420

— Lease—Beerhouse—Non-renewal of licence—Impossibility of performing covenant—Continuance of lease—Compensation.
See LANDLORD AND TENANT. 29.

— Lease of licensed premises—Covenant—Underlease—Refusal to renew licence—Liability of lessee.
See LANDLORD AND TENANT. 48.

— Lease of public-house—Act of sub-lessee through which renewal of licence refused.
See LANDLORD AND TENANT. 63.

30. — Lessor and lessee—Improvements during term—Special agreement—Value of premises—Non-renewal of licence—Compensation—Appportionment—Action in High Court to effect a redivision—Jurisdiction—Licensing Act, 1904 (4 Edw. 7, c. 23), s. 2.

In this case Eve J. said that he had no jurisdiction to review what the justices had done, and in his opinion it was not competent for the plts. to maintain an action to bring about a redivision of the compensation fund, or to invite the Court so to construe the contract as to give them a larger interest in the premises than the justices, construing the same contract, had held them entitled to. Accordingly, he held that the deft. was not bound to bring a certain sum of 1000*l.* into account, and in so holding he did not consider he was doing anything contrary to

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the principles laid down by Kekewich J. in *Law Guarantee and Trust Society v. Mitcham and Cheam Brewery Co.*, [1906] 2 Ch. 98, and adopted by Neville J. in *Noakes v. Noakes & Co.*, [1907] 1 Ch. 64. Indeed, as to some of the relief to which he held the plts. were entitled, he was in effect following those decisions. He would make a declaration that the plts. were entitled as equitable mortgagees to a charge on the premises and the sum of 1000*l.* as security for the payment by the deft. under the lease and supplemental deed of such sums as thereby should become due, namely, the difference between 910*l.* and the value of the premises at the expiration of the lease, but not including the 1000*l.* *BENT'S BREWERY CO. v. DYKES*

Eve J. [1909] W. N. 51

31. — Licence—Change of occupation—Transfer of licence—Jurisdiction of justices—Inn—Alehouse Act, 1828 (9 Geo. 4, c. 61), ss. 4, 14.

By s. 4 of the Alehouse Act, 1828, justices are given jurisdiction in special sessions to license by way of transfer "persons intending to keep inns theretofore kept by other persons being about to remove from such inns."

By s. 14, "If any person so licensed"—that is, duly licensed under the Act—"shall remove from or yield up the possession of the house specified in such licence," the justices may transfer the licence "to any new tenant or occupier of the house having so become unoccupied."

The licence-holder of an inn having become bankrupt, the premises were assigned to W., who applied at the general annual licensing meeting for a renewal of the licence to him. The renewal was granted, but the justices at the same time stated that W. was not a fit and proper person to hold the licence, and that they only granted it on the terms that he would not sell liquor under it, but would proceed to transfer it to some one else. W. occupied the house by putting furniture into it, and he let some of the rooms for club meetings, but he sold no liquor there. He subsequently applied at special sessions for a transfer to S., he having in the meantime given up possession to S. —

Held, that the fact of the justices having stated at the time of granting the licence to W. that he was not a fit and proper person to hold it did not prevent the grant from being valid, and that consequently W. was at the time of the application for the transfer a "person so licensed" within the meaning of s. 14; that the requirement of s. 4 that the person removing from the licensed premises should, as a condition of the exercise of jurisdiction under that section, have theretofore kept them as an inn, applies as well to a case in which the licence-holder has already removed from the house at the date of the application for the transfer, as to one in which he still remains in possession at that date, but that W. had sufficiently kept the premises as an inn to satisfy the provisions of the section, notwithstanding that he had sold no liquor there; and that under the circumstances the justices had jurisdiction to grant the transfer to S.

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Reg. v. Cotham, [1898] 1 Q. B. 802, distinguished. *WILSON v. CREWE JUSTICES*

Div. Ct. [1905] 1 K. B. 491

32. — Licence—Provisional licence—Grant for seven years from final order—Validity of—Licensing Act, 1874 (37 & 38 Vict. c. 49), s. 22—Licensing Act, 1904 (4 Edw. 7, c. 23), s. 4, sub-s. 3.

Sect. 4, sub-s. 3, of the Licensing Act, 1904, which provides that "the justices may, if they think fit, instead of granting a new on-licence as an annual licence, grant the licence for a term not exceeding seven years," applies as well to a provisional licence under s. 22 of the Licensing Act, 1874, in respect of a house about to be built as to an ordinary licence for an existing house. Such a provisional licence is not operative as a licence until the house has been completed and the final order made, and consequently a grant of a provisional licence to be in force for seven years from the date of the final order is a grant of a licence "for a term not exceeding seven years" within the meaning of the above section. *REX v. JOHNSTONE*

Div. Ct. [1906] W. N. 17; [1906] 1 K. B. 228

33. — Licence—Renewal—Discretion of justices—Preliminary inquiry as to number and condition of licensed houses—Objection to renewal taken by justices or by their direction—Disqualification from adjudicating on application—Personal interest or bias—Alehouse Act, 1828 (9 Geo. 4, c. 61)—Licensing Act, 1872 (35 & 36 Vict. c. 94), s. 42—Licensing Act, 1874 (37 & 38 Vict. c. 49), s. 26.

The attention of licensing justices having been called to the number of licensed houses in their district, they appointed some of their number a committee to investigate and report on the condition, position, and circumstances of the licensed houses. A detailed report was made, and a recommendation that all applications for renewal should be objected to, and notice given to each of the licensees to attend at the hearing. The report was adopted, and the justices at the annual licensing meeting objected through their chairman to the renewal of all the licences, and directed that notice should be given to each holder of a licence to attend at an adjourned meeting. At that meeting evidence was heard upon oath in each case, and the justices decided against the renewal of nine of the licences. On appeal against a decision of the K. B. Div. refusing an application for a mandamus to the justices to hold a further adjournment of the licensing meeting, and to hear and determine according to law the applications for the renewal of the nine licences:—

Held, that since the justices were entitled to take, or direct their officer or agent to take, objection to the renewal of licences, they were within their rights in making a preliminary investigation as to the licensed houses in their district; and the fact that they had done so, and adopted the report of the committee appointed for the purpose of making the investigation, did not debar them from hearing the applications and deciding on the question of renewal. *REX v. HOWARD*

C. A. [1902] 2 K. B. 363

D.D.

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34. — Licence—Renewal—Alehouse—Licence for sale of excisable liquors—Change of occupancy—Expiration of licence—Subsequent removal—New tenant—Application for licence—Alehouse Act, 1828 (9 Geo. 4, c. 61), s. 14.

The Alehouse Act, 1828, enacts, with regard to persons duly licensed under that Act, "If any person so licensed, or the heirs, executors, administrators, or assigns of any person so licensed, shall remove from or yield up the possession of the house specified in such licence," the justices may grant a licence to any new tenant or occupier of any house having so become unoccupied.

The tenant of an alehouse who was duly licensed under the Alehouse Act, 1828, applied for a renewal of his licence, which was refused. He continued in occupation of the house after his licence had expired, and then removed. A new tenant took possession of the premises, and applied for a licence under s. 14 of the Alehouse Act, 1828. The justices refused the application on the ground that, as the outgoing tenant was not licensed at the time of his removal, they had no jurisdiction to entertain the application:—

Held, affirming a judgment of the King's Bench Division, that the decision of the justices was right.

Simpkin v. Birmingham Justices, (1872) L.R. 7 Q. B. 482, approved. *REX v. LONDON COUNTY JUSTICES*

C. A. [1903] 2 K. B. 19

35. — Licence—Renewal—Value of premises—Disqualification—Break in continuity of licence—Beerhouse—Licensing Act, 1872 (35 & 36 Vict. c. 94), s. 45.

To justify an objection to the renewal of a beerhouse licence on the ground that the premises are not of the annual value required by s. 45 of the Licensing Act, 1872, it must be shown that the premises were not at the date of the passing of that Act licensed for the sale of intoxicating liquors for consumption thereon. The fact that there was a break in the continuity of the licence between that date and the application for the renewal is immaterial.

The decision of the C. A., [1902] 2 K. B. 467, reversed, and the decision of the K. B. Div., [1901] 2 K. B. 740, restored. *IGOE v. SHANN*.

H. L. (E) [1903] W. N. 132; [1903] A. C. 320

36. — Licence—Renewal—Discretion of justices—Many public-houses in locality—Selection of particular house, and refusal to renew licence.

On appeal to quarter sessions against the refusal of a licence a map of the locality was produced, and it was proved that within a short distance of the house in question there were a very large number of licensed houses. No notice of objection had been served on any of these houses; but notice of objection had been served on the house in question by the direction of the borough justices, the ground of objection being that the licence was not required in the locality. The house had been a fully licensed house for ten years, and the character of the locality had not altered except that the population had increased. No further evidence was adduced by the respondents:—

Held, by Lord Alverstone C.J. and Lawrance

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J. (Kennedy J. dissenting), that this evidence did not entitle the quarter sessions to refuse to renew the licence. *RAVEN v. SOUTHAMPTON JUSTICES*. [1904] 1 K. B. 430

37. — Licence—Renewal—Order of licensing justices for structural alterations—“Part of the premises where intoxicating liquor is sold or consumed.”—Jurisdiction—Licensing Act, 1902 (2 Edw. 7, c. 23), s. 11, sub-s. 4.

By s. 11, sub-s. 4, of the Licensing Act, 1902, licensing justices, on renewing a licence, may by order direct that, within a time fixed by the order, such alterations as they think reasonably necessary to secure the proper conduct of the business shall be made in “that part of the premises where intoxicating liquor is sold or consumed” :—

Held, that under this sub-section licensing justices had jurisdiction, upon granting an application for renewal, to make an order that the back entrance to the licensed premises should be closed and kept locked, and that the passage leading from the back entrance to the bars where intoxicating liquor was sold and consumed should be closed, their power including the right to decide what alteration in the means of access was reasonably necessary to the proper conduct of the business. *BUSHELL v. HAMMOND* C. A. [1904] 2 K. B. 563

Note.

This case was distinguished by C. A., *Smith v. Portsmouth Justices*, [1906] 2 K. B. 229. See No. 58, below.

38. — Licence — Renewal — Reference to quarter sessions—Report of renewal authority—Evidence at quarter sessions—Cross-examination as to licensed houses not included in report—Licensing Act, 1905 (4 Edw. 7, c. 23), s. 1.

Where the question of the renewal of an existing on-licence is referred to quarter sessions by the renewal authority, with their report thereon, under s. 1 of the Licensing Act, 1904, the Court of quarter sessions ought not, on the hearing of the matter, to refuse to allow a cross-examination on behalf of the licence-holder of the witnesses called by the renewal authority, if the ground of that refusal be merely that the questions sought to be put in cross-examination relate to other licensed houses in the neighbourhood which are not included in the report of the renewal authority. *MORGAN v. AYLESFORD LICENSING JUSTICES* - - - Div. Ct. [1906] 1 K. B. 437

39. — Licence—Renewal of on-licence—Conditions attached to renewal—Licensing justices—Right to require reasonable undertaking—Refusal to deliver licence without undertaking—Mandamus—Licensing Act, 1904 (4 Edw. 7, c. 23), ss. 1, 9.

The justices of a licensing district have no authority, under s. 9 of the Licensing Act, 1904, to make the renewal of an existing on-licence conditional on the applicant giving an undertaking as to the conduct and management of the business, in respect of matters not covered by the grounds for refusing the renewal of such

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a licence specified in s. 1 of the Act. *REX v. DODDS (BIRKENHEAD LICENSING JUSTICES)* C. A. [1905] 1 K. B. 40

40. — Licence—Renewal of on or off licence—Conditions attached to renewal—Licensing justices—Mandamus.

Application for the renewal of a licence to a house, in respect of which a licence to consume beer either on or off the premises was in existence before May 1, 1869, and had been continuously renewed. The licensing justices, upon the application being made, required that the tenant should give an undertaking that no intoxicating liquor should be supplied to any customer unless such liquor should be paid for at the time of delivery. A rule nisi was obtained by the tenant for a mandamus to the justices to issue the renewed licence to him without requiring him to enter into the undertaking. The justices did not appear, but they filed an affidavit in which they stated that they had not refused to grant the renewal of the licence, and that they considered that the undertaking which, under the powers given them by the Licensing Act, 1904, they required the tenant to give was a reasonable one.

The Div. Ct. made the rule absolute on the ground that the provisions of s. 8 of the Wine and Beerhouse Act, 1869, were expressly kept alive by s. 9, sub-s. 3, of the Licensing Act, 1904, and that there was nothing in that Act which added to the jurisdiction of the justices under the former Act. *REX v. GRIMWADE*

Div. Ct. [1905] 1 K. B. 50, n.

41. — Licence — Renewal of — Power of licensing justices to attach conditions — Monopoly value—Licensing Acts, 1872 (35 & 36 Vict. c. 94), s. 50 ; 1874 (37 & 38 Vict. c. 49), s. 22 ; 1904 (4 Edw. 7, c. 23), s. 4, sub-s. 2.

Sect. 4, sub-s. 2, of the Licensing Act, 1904, giving licensing justices power to attach conditions to the grant of a new on-licence in order to secure to the public the monopoly value, does not apply to an order for the removal of a licence, and licensing justices therefore have no power to attach those conditions to the making of an order for removal. *REX v. DRINKWATER LICENSING JUSTICES (WINCOTT'S CASE)*

Div. Ct. [1905] 2 K. B. 469

42. — Licence — Renewal — Compensation authority in county borough—Licensing Act, 1904 (4 Edw. 7, c. 23), ss. 5, 8.

Where the compensation authority in a county borough—which by virtue of s. 8, sub-s. 2, of the Licensing Act, 1904, consists of the whole body of justices acting in and for the borough—has not delegated its powers to a committee under s. 5, sub-s. 2, of the Act, at least a majority of the justices acting in and for the borough and not disqualified must attend and take part in the proceedings in order to render valid the refusal of the renewal of a licence by the compensation authority. *REX v. LEEDS JUSTICES* *Ex parte BINNS* - Div. Ct. [1906] W. N. 204

43. — Licence — Renewal — Reference to quarter sessions—Report of licensing justices—Admissibility of report as evidence before quarter

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sessions—Licensing Act, 1904 (4 Edw. 7, c. 23), s. 1, sub-s. 2.

Although the report made by licensing justices under s. 1, sub-s. 2, of the Licensing Act, 1904, on a reference by them to quarter sessions of an application for the renewal of a licence has to be considered by the quarter sessions, it is not evidence upon which that Court is entitled to act in dealing with the application. The quarter sessions can only act upon evidence given upon oath before them. **DARTFORD BREWERY Co. v. COUNTY OF LONDON QUARTER SESSIONS** **Ridley J.**

[1906] W. N. 101; [1906] 1 K. B. 695

44. — Licence — Renewal — Reference to quarter sessions — Report of licensing justices — Matters not stated in report — Evidence—Licensing Act, 1904 (4 Edw. 7, c. 23), s. 1, sub-s. 2.

On the hearing by a committee of quarter sessions of an application for the renewal of a licence which has been referred to quarter sessions by the licensing justices under s. 1, sub-s. 2, of the Licensing Act, 1904, evidence as to the structural condition and the state of repair of the premises in question is admissible for the purpose of differentiating from other licensed premises in the neighbourhood, although there is no mention of those subjects in the report of the licensing justices.

So *held*, affirming the judgment of a Div. Ct., [1907] 2 K. B. 340. **HOWE v. NEWINGTON LICENSING JUSTICES** **C. A. [1908] 1 K. B. 260**

45. — Licence—Renewal—Refusal by compensation authority to renew—Payment of compensation—Premises of less than requisite statutory value — Refusal to proceed with assessment of compensation — Refusal of licensing justices to grant further provisional renewal of licence—Beerhouse Act, 1840 (3 & 4 Vict. c. 61), s. 1—Licensing Act, 1904 (4 Edw. 7, c. 23), ss. 1, 2—Licensing Rules, 1904, rr. 31, 41, 42, 43.

The question of the renewal of an on beer licence which had been continuously in force since a date before 1869 was referred by the licensing justices to the compensation authority, the ground of objection being that the licence was not required, and a provisional renewal was granted. The compensation authority refused the renewal, and upon the question coming before the compensation authority whether they should approve the amount of compensation money agreed upon between the persons interested in the licensed premises it appeared that the annual value of the premises was less than that required by s. 1 of the Beerhouse Act, 1840. The compensation authority thereupon refused to approve the amount of compensation money agreed upon or to send the matter to be determined by the Comms. of Inland Revenue. At the next general annual meeting the licensee applied for a further provisional renewal of the licence under r. 43 of the Licensing Rules, 1904, the compensation money not having been paid and not being likely to be paid before April 5 following, but the licensing justices, upon notice of objection duly given, refused to grant the renewal upon the ground that the annual value

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of the premises was less than that required by the Act:—

Held, (1.) that the compensation authority, having refused the renewal of the licence, were not entitled to entertain the question of the annual value of the premises, but were bound either to approve the amount of the compensation money agreed upon or to send the matter for determination to the Comms. of Inland Revenue; and (2.) that the licensing justices at the next general annual licensing meeting were not entitled to entertain the question of the annual value of the premises, but were bound under r. 43 of the Licensing Rules, 1904, inasmuch as the compensation money had not been paid and was not likely to be paid before April 5 following, to grant a further provisional renewal of the licence. **REX v. WALSALL JUSTICES. REX v. WALSALL LICENSING JUSTICES**

Div. Ct. [1910] 2 K. B. 210

46. — Licence — Renewal, Refusal of — Premises subsequently occupied by club—Order by Court of summary jurisdiction that club be struck off register—Refusal to renew licence within twelve months preceding formation of club—Date from which period of twelve months runs—Licensing Act, 1902 (2 Edw. 7, c. 28), s. 28, sub-s. 1 (f)—Licensing Act, 1904 (4 Edw. 7, c. 23), s. 1, sub-ss. 1, 2; s. 8, sub-s. 2—Licensing Rules, 1904, r. 2, clause 1.

By s. 28, sub-s. 1 (f), of the Licensing Act, 1902, a Court of summary jurisdiction may strike a club off the register on the ground that it occupies premises in respect of which within twelve months next preceding the formation of the club the renewal of a licence has been refused.

By ss. 1 and 8, sub-s. 2, of the Licensing Act, 1904, coupled with the definition contained in r. 2, clause 1, of the Licensing Rules, 1904, the power in a county borough to refuse the renewal of an existing on licence (except the power of refusal on certain grounds which do not include redundancy) is transferred from the licensing justices to the "compensation authority," but can only be exercised by that authority on a reference from the licensing justices and on payment of compensation in accordance with the Act.

On May 22, 1908, the compensation authority refused to renew an on licence on the ground of redundancy of the licensed premises. Pending the determination of the amount of compensation payable under the Act of 1904 the licence in respect of the premises was twice provisionally renewed under rr. 41 and 43 respectively of the Licensing Rules, 1904. On June 5, 1909, the compensation was paid to the persons interested, and on June 9, 1909, the premises which had remained open under the provisional renewals of the licence were closed. On June 10, 1909, the premises were opened as a club:—

Held, that the renewal of the licence was refused within the meaning of s. 28, sub-s. 1 (f), of the Licensing Act, 1902, on Mar. 22, 1908, the date when the compensation authority actually gave their decision refusing to renew, and not on June 9, 1909, when the refusal became operative

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by the closing of the licensed premises, and that, as the renewal of the licence had not been refused within twelve months next preceding the formation of the club, the Court of summary jurisdiction had no power to strike the club off the register under the provision contained in s. 28, sub-s. 1 (f), of the Act of 1902. **PLAISTOW WORKING MEN'S CLUB v. HARROD** - Div. Ct. [1910] 1 K. B. 582

— Renewal—"On" licence.

See No. 57, below.

47. — *Licence—Six-day licence—Premises to be closed "during the whole of Sunday"—Christmas Day and Good Friday—Licensing Act, 1872 (35 & 36 Vict. c. 94), s. 49—Licensing Act, 1874 (37 & 38 Vict. c. 49), s. 3.*

By s. 49 of the Licensing Act, 1872, the holder of a six-day licence "shall keep his premises closed during the whole of Sunday." By s. 3 of the Licensing Act, 1874, which regulates the hours of closing of licensed premises generally, "such premises wherever situate shall be closed on Christmas Day and Good Friday . . . as if Christmas Day and Good Friday were respectively Sunday" :—

Held, that the holder of a six-day licence is not bound to close his licensed premises during the whole of Christmas Day when it falls on a day other than a Sunday, but is only bound to close on that day during the hours of closing applicable to licensed premises generally. **DAVIES v. HARRISON** Div. Ct. [1909] W. N. 87 ; [1909] 2 K. B. 104

48. — *Marked measure, Sale in—"Long pull"—Intoxicating liquor—Licensing Act, 1872 (35 & 36 Vict. c. 94), s. 8.*

By the Licensing Act, 1872, s. 8, all intoxicating liquor which is sold by retail, and not in cask or bottle, and is not sold in a quantity less than half a pint, is to be sold in measures marked according to the imperial standards. The appellant, who was the holder of an off-licence for the sale of beer, was asked for a pint of beer by a customer. The appellant, in the presence and sight of the customer, twice filled a properly marked half-pint measure and poured the contents into a jug, which had been handed to him by the customer, and added a further quantity of beer to the jug from the tap. The jug, containing a pint and a gill of beer, was then handed to the customer, who paid the appellant the price of a pint of beer :—

Held that, as the pint of beer had been measured in a properly marked measure in the presence and sight of the customer, no offence had been committed under s. 8, and that the subsequent addition of a further quantity of beer was immaterial.

Addy v. Blake, (1887) 19 Q. B. D. 478, distinguished. **PENNINGTON v. PINCOCK** Div. Ct. [1908] W. N. 101 ; [1908] 2 K. B. 244

— New Zealand Licensing Act—Effect of licensing poll being declared void.

See NEW ZEALAND. 12.

49. — *Offences—Canteen—Exercise licence—Sale to civilian—Licensing Acts, 1872 (35 & 36 Vict. c. 94), s. 3 ; 1902 (2 Edw. 7, c. 28), s. 23—*

LICENSING ACTS—*continued.*

Summary jurisdiction—Case stated by justices—Notice of appeal—Sufficiency—Summary Jurisdiction Act, 1857 (20 & 21 Vict. c. 43), s. 2.

A person who holds a canteen, under the authority of a Secretary of State, and who obtains an excise licence for the sale of beer in the canteen does not commit an offence under s. 3 of the Licensing Act, 1872, if he sells beer in the canteen to a civilian.

Sect. 2 of the Summary Jurisdiction Act, 1857, provides that a party dissatisfied with the determination by justices of an information may apply to the justices to state a case, and such party shall, "after receiving such case, transmit the same to the Court . . . first giving notice in writing of such appeal, with a copy of the case so stated, to . . . the respondent" :—

Held by Lord Alverstone C. J. and Bray J. (Bucknill J. dissenting), that the appellants, who sent to the respondent a copy of their notice of application to the justices to state a case, and a copy of the case, had complied with the requirements of s. 2 of the Act of 1857 as to giving notice of appeal.

Form of notice of appeal in Short and Mellor's Crown Office Practice, 2nd ed., at p. 628, approved of. **DICKESON & CO. v. MAYES** Div. Ct. [1910] W. N. 22 ; [1910] 1 K. B. 452

50. — *Offences—Keeping open during prohibited hours—Licensing Act, 1874 (37 & 38 Vict. c. 49), s. 9.*

In order to constitute the offence of keeping open licensed premises for the sale of intoxicating liquor during prohibited hours, within the meaning of s. 9 of the Licensing Act, 1874, there must be a keeping open of the premises in the sense that people can get in from the outside to procure intoxicating liquor, or can get it supplied to them when outside. **COMM. OF POLICE v. ROBERTS** Div. Ct. [1904] 1 K. B. 369

51. — *Offences—Opening premises during prohibited hours—Delivery on Sunday of goods purchased on Saturday—Appropriation of goods sold—Licensing Act, 1874 (37 & 38 Vict. c. 49), s. 9.*

Two men went into a public-house on Saturday before closing time, and asked if they could have half a gallon of beer and if it could be delivered the next morning to them at the place where they were working ; on being told that they could, they paid for the beer. The beer was directly afterwards drawn and put into a bottle, which was kept during the night in a building within the curtilage of the licensed premises, and was taken by the barman on the Sunday morning during prohibited hours and delivered to the purchasers. A charge against the licensee under s. 9 of the Licensing Act, 1874, of unlawfully opening his licensed premises for the sale of intoxicating liquor during prohibited hours on Sunday, having been dismissed by justices :—

Held, that there had been no sufficient appropriation of the beer to the purchasers on the licensed premises on the Saturday, and that the licensee ought to have been convicted.

Plett v. Beattie, [1896] 1 Q. B. 519, distinguished.

Held, further, by Lord Alverstone C.J. and

LICENSING ACTS—continued.

Kennedy J. (Ridley J. dissenting), that, assuming there had been a complete appropriation of the beer on the Saturday, the licensee was nevertheless liable to be convicted, on the ground that delivery of the beer on Sunday was an essential condition of the purchase, and that by opening his premises on that day for the carrying out of a material part of the contract of sale he had opened them during prohibited hours within the meaning of s. 9.

Per Ridley J. : Assuming that there had been a complete appropriation of the beer on the Saturday, its delivery on Sunday formed no part of the contract of sale. **NOBLETT v. HOPKINSON**
Div. Ct. [1906] 2 K. B. 214

52. — Offences—Practice—Conviction—Continuing offence—Averment of commission of offence on different days.

Motion *ex parte* on behalf of B., the licensed occupier of a public-house, for a certiorari to bring up to be quashed a conviction of the said B. for having, on the 26th, 28th, 29th and 31st days of January, and the 1st, 4th, 5th and 6th days of February, 1901, permitted his premises to be used as a brothel, contrary to s. 15 of the Licensing Act, 1872. The objection to the conviction was that it was bad on the face of it as being one conviction for eight separate offences committed upon eight separate and discontinuous days, whereas s. 10 of the Summary Jurisdiction Act, 1848, provides that every information "shall be for one offence only and not for two or more offences" :—

Held, that notwithstanding that the days mentioned in the conviction were not continuous, the offence stated was one continuing offence, and that the conviction was good. *Ex parte*
BURNBY **Div. Ct. [1901] W. N. 132 ;**
[1901] 2 K. B. 458

53. — Offences—Sale of beer in unlicensed place—Liability of licensee—Sale by servant—Scope of employment—Licensing Act, 1862 (35 & 36 Vict. c. 94), s. 3.

The respondent, who was licensed to sell by retail, at his brewery, beer for consumption off the premises, employed a drayman to deliver beer to customers. The drayman had no authority to sell any beer for the respondent, his sole duty being to deliver beer to customers only who had previously given orders for it, and he had been expressly ordered not to sell or deliver beer to other persons, and to bring back to the brewery any beer which he was unable to deliver. The drayman sold and delivered some bottled beer from his van to persons in a street who had not previously ordered it :—

Held, that the respondent was not liable to be convicted under s. 3 of the Licensing Act, 1872, which prohibits, under penalties, any person licensed to sell by retail intoxicating liquor from selling the same at any place where he is not authorized by his licence so to do. **BOYLE v. SMITH** **Div. Ct. [1906] 1 K. B. 432**

54. — Offences—Sale of wine without licence—Unlicensed restaurant—Refreshment houses and Wine Licences Act, 1860 (23 & 24 Vict. c. 27), s. 19.**LICENSING ACTS—continued.**

The keeper of a restaurant, carrying on business in premises not licensed for the sale of intoxicating liquors, was also a partner in a wine dealer's business carried on upon duly licensed premises in the neighbourhood. A customer, taking a meal in the restaurant, ordered a pint of claret from a waiter and gave him the money for it; the waiter went to the licensed premises, and there bought and paid for a pint bottle of claret which he brought back to the restaurant, where the customer consumed it. Upon the hearing of a summons against the keeper of the restaurant for selling wine without a licence, a magistrate found that there had been a sale at the restaurant of the wine by the defendant's waiter to the customer, and convicted the defendant :—

Held, that there was evidence upon which the magistrate might properly hold that the sale was at the restaurant, and that the conviction was right. **PASQUIER v. NEALE**

Div. Ct. [1902] 2 K. B. 287

55. — Offences—Selling by retail without licence—Club—Sale to agent of member—Licensing Act, 1872 (35 & 36 Vict. c. 94), s. 3.

Where intoxicating liquor is sold by a servant of a bona fide working-men's club, not licensed for the sale of intoxicating liquors, to the duly authorized agent of a member for consumption by the member off the club premises, no offence is committed against s. 3 of the Licensing Act, 1872, and the seller cannot be convicted for selling intoxicating liquors by retail without a licence. **DAVIES v. BURNETT.**

Div. Ct. [1902] W. N. 57 ; [1902] 1 K. B. 666

56. — Offences—Selling intoxicating liquor without licence—Offence of trifling nature—Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), s. 16.

For an incoming tenant of a public-house to carry on the business of the house for a period of nine days without a licence is a serious offence; and the facts that the outgoing tenant had been duly licensed, and that for nine days after his departure, the period in question, no sessions sat at which a temporary transfer of his licence could be applied for, do not warrant a court of summary jurisdiction in treating the offence as one of a trifling nature within the meaning of s. 16 of the Summary Jurisdiction Act, 1879. **BARNARD v. BARTON**

Div. Ct. [1906] 1 K. B. 357

57. — "On" licence—Renewal—Ante-1869 beer-house—Differentiation between redundant houses belonging to different owners—What matters compensation authority may take into consideration—Licensing Act, 1904 (4 Edw. 7, c. 23).

Where under the Licensing Act, 1904, the question of the renewal of two "on" licences of ante-1869 beer-houses belonging to different owners was referred to the compensation authority and the compensation authority were satisfied that only one of them was required for the needs of the neighbourhood :—

Held, by Farwell and Kennedy L.JJ. (Vaughan Williams L.J. dissenting), that for the purpose of differentiating between the two

LICENSING ACTS—continued.

licensed houses and deciding which of the licences should be renewed the compensation authority were not entitled to take into consideration what other licences the owners of the respective licensed houses would be willing to surrender nor what contribution they would be willing to make to the compensation fund in consideration of the renewal of the licence in respect of which the application was made. Judgment of the Div. Ct., [1910] 1 K. B. 10, reversed. *REX v. SHANN* - C. A. [1910] W. N. 113; [1910] 2 K. B. 418

58. — *Order for alteration in premises—Direction to keep door locked—Structural alteration—Licensing Act, 1902* (2 *Edw. 7, c. 28*), s. 11, sub-s. 4.

Where licensed premises had doors giving access respectively from different streets to a part of the premises where intoxicating liquor was sold, and licensing justices, intending to act under the Licensing Act, 1902, s. 11, sub-s. 4, on the renewal of the licence, made an order that one of these doors should be kept locked and not used except for domestic purposes, or for delivering intoxicating liquor, coals, or other goods, when necessary, or for the private use of the licensee, or his household, or bona fide lodgers on the premises, and that the key of the door should be kept by the licensee:—

Held, that the Licensing Act, 1902, s. 11, sub-s. 4, refers only to structural alterations, and therefore did not authorize the justices to make the before-mentioned order.

Bushell v. Hammond, [1904] 2 K. B. 563, distinguished. *SMITH v. PORTSMOUTH JUSTICES* C. A. [1906] 2 K. B. 229

59. — *Permitting drunkenness—Guest after closing hours—Licensing Act, 1872* (35 & 36 *Vict. c. 94*), s. 13.

Two men, who were found drunk on licensed premises after closing hours, were proved to be guests of the licensee and to have been supplied with drink at his expense after closing hours:—

Held, that the licensee was liable to be convicted under s. 13 of the Licensing Act, 1872, of permitting drunkenness upon the premises. *LAWSON v. EDMINSON* - Div. Ct. [1908] W. N. 204; [1908] W. N. 952

60. — *Permitting drunkenness—Lodger at hotel—Arriving drunk—Admission of after closing hours—Licensing Act, 1872* (35 & 36 *Vict. c. 94*), s. 13—*Licensing Act, 1902* (2 *Edw. 7, c. 28*), s. 4.

Premises licensed for the sale of intoxicating liquors do not during the hours when they are closed to the public cease to be licensed premises for the purposes of s. 13 of the Licensing Act, 1872, even as regards lodgers upon the premises.

A guest arrived at an hotel after the closing hour and engaged a bedroom. At the time of his doing so he was drunk to the knowledge of the hotel manager. He was shortly afterwards found drunk upon the premises by a constable:—

Held, that, as by s. 18, a licensed person may refuse to admit to and may turn out of the premises any person who is drunk, the hotel

LICENSING ACTS—continued.

proprietor was liable to be convicted under s. 13 of permitting drunkenness upon his premises, he being unable under the circumstances to discharge the onus cast upon him by s. 4 of the Licensing Act, 1902, of shewing that he took all reasonable steps for preventing drunkenness upon the premises. *THOMPSON v. MCKENZIE* Div. Ct. [1908] W. N. 52; [1908] 1 K. B. 905

— Poor rate—Public-house—Increased licence duty—"Any cause"—Mandamus to assessment committee to appoint valuer.
See RATES. 47.

61. — *Practice—Appeal—Order for structural alterations in licensed premises made by licensing justices for borough—Jurisdiction of recorder—Licensing Act, 1902* (2 *Edw. 7, c. 28*), s. 11 sub-s. 4—*Althouse Act, 1828* (9 *Geo. 4, c. 61*), s. 27.

An appeal from an order of licensing justices for a city or borough having a separate Court of quarter sessions made under s. 11, sub-s. 4, of the Licensing Act, 1902, by which, on renewing a licence, the licensing justices direct certain structural alterations to be made in that part of the premises where intoxicating liquor is sold or consumed, lies to the recorder of the city or borough:—

So *held*, by Lord Alverstone C.J. and Wills J., Kennedy J. dissenting. *REX v. BATH (RECORDER OF)* Div. Ct. [1904] 2 K. B. 570

62. — *Practice—Justices—Committee of quarter sessions acting as compensation authority—Power to state case—Licensing Act, 1904* (4 *Edw. 7, c. 23*), ss. 1, 5.

The committee of quarter sessions appointed under the Licensing Act, 1904, for confirming the grants of new licences and determining any questions as to the refusal of the renewal of licences under the Act has power to state a case for the opinion of the King's Bench Division. *REX v. SOUTHAMPTON LICENSING JUSTICES. Ex parte CADDY* Div. Ct. [1906] W. N. 18 [1906] 1 K. B. 446

63. — *Principal and agent—Sale of liquor without licence—Sale by licensed agent on behalf of unlicensed principal—Licensing Act, 1872* (35 & 36 *Vict. c. 94*), s. 3.

Where intoxicating liquor is sold by retail by an agent on behalf of the owner, the sale is, for the purposes of s. 3 of the Licensing Act, 1872, which prohibits the sale of intoxicating liquors by an unlicensed person, a sale by the owner and not by the agent; and, if the owner is not duly licensed to sell intoxicating liquor, the fact that the agent who conducted the sale was so licensed affords him no defence. *DUNNING v. OWEN* Div. Ct. [1907] W. N. 114; [1907] 2 K. B. 237

64. — *Quitting licensed premises—Public-house—Right of licence-holders to request person to leave licensed premises—Licensing Act, 1872* (35 & 36 *Vict. c. 94*), s. 18.

The occupier and licensee of licensed premises (not being an inn) has a right to request

LICENSING ACTS—*continued.*

any person to leave whom he does not wish to remain upon his premises; his right is not limited to the case of persons who are drunken, violent, quarrelsome, or disorderly within the meaning of s. 18 of the Licensing Act, 1872. **SEALEY v. TANDY** Div. Ct. [1902] 1 K. B. 296

— Rates—Deduction—Expense necessary to command rent—Compensation charge. See **RATES**. 18.

— Rates—Rateable value—Deduction—Necessary expense to command rent—Licensed premises—Compensation fund—Charge. See **RATES**. 18.

— Receiver—Public-house—Licences in jeopardy—Landlord and tenant—Recovery of possession. See **RECEIVER**. 11.

— Sale to children. See **No. 7, above**.

65. — Statute—Construction—"Notwithstanding any agreement to the contrary"—Agreement made after passing of Act—Licensing Act, 1904 (4 Edw. 7, c. 23), s. 3, sub-s. 3.

By s. 3, sub-s. 3, of the Licensing Act, 1904, "Such deductions from rent as are set out in the Second Schedule to this Act may, notwithstanding any agreement to the contrary, be made by any licence-holder who pays a charge under this section":—

Held, that the words "any agreement to the contrary" include agreements made after the passing of the Act. **WOOLER v. NORTH EASTERN BREWERIES** Div. Ct. [1909] W. N. 254; [1910] 1 K. B. 247

LIEN—Banker's lien—Stockbroker—Authority to borrow—Pledge of client's security—Overdraft—Special borrowing. See **BANKER**. 9.

— Bankruptcy—Secured creditors. See under **BANKRUPTCY** — **Secured Creditors**.

— Building society, Purchase-money paid by—Infant member—Power to mortgage for advances. See **BUILDING SOCIETY**. 2.

— Carriers—Bill of sale. See under **BILL OF SALE**.

— Company. See under **COMPANY**—**Lien**.

— Costs. See under **VENDOR AND PURCHASER**—**Costs**.

— Dock dues—Right to detain vessel until dues paid—Maritime lien for crew's wages—Priority. See **HARBOUR**. 3.

1. — *Equitable charge on land—Interest not mentioned in charge—Enforcing charge—Lapse*

LIEN—*continued.*

of time—Presumption of satisfaction—Merger—Allowing interest on charge on land—Practice—Real Property Limitation Act, 1833 (3 & 4 Will. 4, c. 27), s. 40.

Where any settlement or contract contains a provision that a certain fixed sum of money is to be charged on land and to be paid at a fixed time, then, as between the owner of the land and the person entitled to the money, the money, in the eye of a Court of Equity, bears interest from the date fixed for payment of the money, although nothing is said as to interest in the settlement or contract—unless there are circumstances negating the presumption that interest is payable.

In 1823 an order was made in a lunacy giving the lunatic's committee power to purchase on his behalf a freehold estate, and to pay the purchase-money out of the rents and profits of his real estate; and the order went on to declare that the rents and profits so to be applied "shall form a lien on the purchased estate in trust for the lunatic, his executors and administrators"; but the order was silent as to interest. The committees accordingly paid the purchase-money out of the rents and profits of the lunatic's real estate, and in 1824, in consideration of the purchase-money, a conveyance was executed to trustees for the lunatic. The conveyance contained a declaration of lien corresponding to the term of the order, but again without mentioning interest.

In 1828 the lunatic died intestate, leaving a married sister his heiress-at-law and sole next of kin, who thereupon took out administration to his estate. In 1853 she died, when her husband, D., became tenant by the curtesy of the purchased property, and continued in enjoyment as such until his death in 1887. After his wife's death he had taken out administration to her estate, and also to the estate of the lunatic. No steps had ever been taken for raising the amount of the lien or charge, and no interest had ever been paid upon it.

In an action by D.'s legal personal representatives against the persons who had become entitled to the purchased estate to enforce the lien:—

Held, (1) that there had been no merger of the lien either at law or in equity, and nothing to justify a presumption of satisfaction through lapse of time; and (2) that, although interest was not mentioned either in the order in Lunacy or in the conveyance, the Court would in accordance with its well-settled practice in other cases of equitable charges on land where interest is not mentioned (such as loans on deposit of title-deeds, portions and legacies charged on land), and having regard to the circumstances of the case, treat the lien as an interest-bearing debt—that is to say, as bearing interest at 4 per cent. as from the death of the lunatic; and that inasmuch as, in the events which had happened, such interest must be regarded as having been virtually paid down to D.'s death in 1887, the lien was not statute-barred at that date. As by arrangement between the parties the statute was treated as not running from D.'s death, interest was allowed as from that date.

LIEN—*continued.*

Decision of Joyce J. affirmed. *In re* DRAX.
SAVILLE v. DRAX C. A. [1903] W. N. 66;
[1903] 1 Ch. 781

— General lien—Securities of Customer.

See STOCK EXCHANGE. 5.

2. - *Hire-Purchase Agreement—Liability to repair hired chattel—Lien as against owner.*

By a hire-purchase agreement the plt. let a dogcart to a person who in the course of time sent the cart to be repaired to the deft., who was a coach-builder. The hire-purchase agreement contained a clause by which the hirer undertook "to keep and preserve the dogcart from injury." Some instalments under the agreement being unpaid the plt. sought to recover the cart, but the deft. claimed a lien upon it for the cost of the repairs:—

Held, that under the circumstances the hirer had authority to send the cart to be repaired, and therefore that the deft.'s lien was good, not only against the hirer, but also against the plt. KEENE v. THOMAS - Div. Ct. [1905] 1 K. B. 136

— Improvements on real estate in Scotland, Enforcement of—Jurisdiction.
See PRACTICE—Pleadings. 1.

— Interpleader—Execution creditor—Indemnity—Lien passing to trustee in bankruptcy.
See BANKRUPTCY—Trustee. 5.

— Leaseholds—Right of indemnity—Position of trustee in bankruptcy.
See LANDLORD AND TENANT. 46.

— Liability of next of kin to discharge lien—"Chattel real"—Rentcharge issuing out of leaseholds—Intestacy.
See WILL—Chattels Real. 1.

— Mortgages.
See under MORTGAGE—Lien.

— On shares—Set-off against debts due from member—Winding-up.
See INDUSTRIAL AND PROVIDENT SOCIETY. 5.

— Partnership.
See under PARTNERSHIP.

— Patent—Sale—Vendor's lien for unpaid royalties—Breach of contract.
See PATENT—Sale. 1.

— Sale of goods.
See under SALE OF GOODS.

— Shipping.
See under SHIPPING—Lien.

— Shipping—Time charter—Goods within bill of lading not subject to charter lien.
See INDIA. 3.

— Solicitor's lien.
See under SOLICITOR—Lien.

— Solicitor's lien for costs—Cross-judgments—Execution.
See COUNTY COURT—Practice. 3.

— Traders—Bank loan to purchase goods—Letter of lien on goods—Construction—Secured creditors.
See BANKRUPTCY—Traders. 1.

LIEN—*continued.*

— Vendor and purchaser.

See under VENDOR AND PURCHASER—Lien.

— Vicarage—Sale—Mortgage of revenues of benefice to secure loan—Validity.
See ECCLESIASTICAL LAW—Vicarage. 1.

— Waiver of lien for chartered freight—Lump chartered freight.
See INSURANCE (MARINE). 11.

LIFE—Gift for—Will—Construction—Things *quæ ipso usu consumuntur*—Farming stock.
See WILL—Absolute Gift. 5.

LIFE CLAIMS—Shipping—Collision—Damage—Both to blame—Spanish law.
See SHIPPING—Collision. 16.

LIFE ESTATE—By implication—Will—Construction.
See WILL—Intestacy. 2.

LIFE INSURANCE.
See under INSURANCE (LIFE).

LIFEBOATS Launchers of.
See SHIPPING—Salvage. 19.

— Salvage—Information by one person leading to a salvage service by another person.
See SHIPPING—Salvage. 17.

— Salvage—Reward.
See SHIPPING—Salvage. 24.

LIGHT—Electric light.
See under ELECTRIC LIGHT.

— Housing of the working classes—Compulsory powers—Business premises—Easement of light—Compensation.
See HOUSING OF THE WORKING CLASSES. 3.

— Light and air.
See under LIGHT AND AIR.

LIGHT AND AIR—Access of light—Easement—Prescription—Enjoyment—Twenty years—Period before action—"Consent or agreement"—Tenant—Prescription Act, 1832 (2 & 3 Will. 4, c. 71), ss. 3, 4.

Sects. 3 and 4 of the Prescription Act, 1832, must be read together, as explained by Lord Macnaghten in *Colls v. Home and Colonial Stores*, [1904] A. C. 179, at p. 189, with the result that a right to access of light is not absolute and indefeasible, even after twenty years' enjoyment, unless and until some action or suit is commenced in which the right is called in question; until that occurs the right remains inchoate.

In an action to restrain interference with light, the only material period to be considered is the period of twenty years prior to the issue of the writ.

It is competent for the tenant in occupation of the dominant tenement to give the "consent or agreement" mentioned in s. 3 (*semble*), though by doing so he may prejudicially affect the landlord's inchoate right. Rights under s. 3

LIGHT AND AIR—continued.

are acquired or lost by virtue of the acts or acquiescence of the occupier, and not by virtue of his title.

Tapling v. Jones, (1865) 11 H. L. C. 290, discussed and explained.

Simper v. Foley, (1862) 2 J. & H. 555, doubted.

Decision of Parker J., [1907] 2 Ch. 516, affirmed. *HYMAN v. VAN DEN BERGH*

C. A. [1907] W. N. 250; [1908] 1 Ch. 167

2. — *Alteration of building—Ancient lights—Setting forward of wall—Alteration in height of window—New window receiving same light as old—Alterations made during period of acquisition of right—Prescription Act, 1832 (2 & 3 Will. 4, c. 71), s. 3.*

The question whether the right to the access of light to a building which has been enjoyed through one window is preserved upon an alteration of the building depends on the identity of light, not on the identity of aperture.

In cases where the light comes to any window over the roof of higher buildings, at an angle, and the building is altered by advancing the wall in which the window is, the right to access of light will be preserved if any window or aperture in the new wall intercepts and gives access to any substantial part of the light which passed through the old window. It makes no difference that the new window or aperture is at a much higher level than the old window.

No alteration of a building, which would not involve the loss of a right to light when indefeasibly acquired, will, if made during the currency of the statutory period, prevent the acquisition of the right.

Scott v. Pape, (1886) 31 Ch. D. 554, followed.

Colls v. Home and Colonial Stores, [1904]

A. C. 179, explained. **ANDREWS v. WAITE**

Neville J. [1907] W. N. 160; [1907] 2 Ch. 500

3. — *Alteration of easement—Rebuilding of dominant tenement—Diminution of light by owner—Burden on servient tenement—Destruction of easement—Declaration that there is no easement—Ancient lights.*

Where before the rebuilding of premises having ancient lights a partial interference with these lights by the owner of the servient tenement would not be sufficient to entitle the owner of the dominant tenement to an injunction, the same amount of interference, even though completely blocking up the remnant of ancient light left after the rebuilding, will not be an actionable wrong to be restrained by injunction.

Colls v. Home and Colonial Stores, Ltd., [1904] A. C. 179, applied.

Decision of Warrington J., [1906] 2 Ch. 544, affirmed on the facts. **ANKERSON v. CONNELLY**

C. A. [1907] W. N. 100; [1907] 1 Ch. 678

4. — *Air—Easement—Nature of right—Derogation from grant—Obstruction.*

A right to the access of air to a defined aperture over a servient tenement may be acquired though there is no defined channel over the servient tenement through which the air flows.

The grant of such a right may be implied

LIGHT AND AIR—continued.

from general words in a conveyance of a building from a grantor entitled in fee to the adjoining land though such land is subject to a lease.

On Jan. 19, 1905, the H. Co. conveyed to the plt. in fee a piece of land with a stable on it. The stable was ventilated by apertures to which the air had access over an open yard which the co. owned in fee subject to a lease for a term of which twenty-eight years were unexpired. On Aug. 3, 1905, the co. conveyed the yard to the deft., the lessee joining to merge the term. The deft. put up a hoarding entirely closing the ventilators of the stable:—

Held, on the principle of derogation from a grant, that neither the co. nor the deft., as their assignee could erect anything on the yard which prevented the use of the stable as a stable. A mandatory injunction granted to remove the hoarding. **CABLE v. BRYANT** - **Neville J.**

[1907] W. N. 238; [1908] 1 Ch. 259

5. — *Ancient lights—Nuisance—Injunction—Form of order.*

Action for an injunction to restrain the defts. from building so as to obstruct the ancient lights of the parish church of St. George, Hanover Square. The building was not completed, and the question turned wholly upon the evidence as to the amount of obstruction which would be caused when the buildings were completed according to a plan modified from that first proposed by the defts. It was admitted that the defts.' building, if completed, would cause some obstruction, and the only reason for making a note of the case is the form of the order.

Swinfen Eady J. said that upon the whole evidence he had no hesitation in coming to the conclusion that if the new buildings were completed as proposed a nuisance would be occasioned. He therefore granted an injunction in the form suggested by Lord Macnaghten in *Colls v. Home and Colonial Stores*, [1904] A. C. 179, 194, restraining the defts. from erecting any building so as to cause a nuisance or illegal obstruction to the plt.'s ancient windows as the same existed previously to the commencement of the alterations in the defts.' building. The defts. must pay the costs of the action up to and including the hearing. There would be liberty to the plt. to apply not later than three calendar months after receiving notice from the defts. that their new building had been completed for further relief by way of mandatory injunction or damages as they might be advised.

ANDERSON v. FRANCIS

Swinfen Eady J. [1906] W. N. 160

— "Building"—Open space—Screen to prevent acquisition of right to light.

See **BURIAL**. 5.

6. — *Building agreement—Lease to be granted on completion of house—Light—Easement—Implied grant—Derogation from grant—Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), s. 6, sub-s. 2.*

By a building agreement between the Ecclesiastical Commrs. and the deft. the right was given to him to enter upon a piece of land belonging to them for the purpose of erecting a number of houses upon it. As each house

LIGHT AND AIR—continued.

should be erected and completed to the satisfaction of the Commrs. they agreed to grant a lease of it to the deft. for ninety-nine years. The lease was to be in a specified form, one of the clauses in which provided that the Commrs. should have power to erect on the land adjoining the demised land any buildings whatsoever, whether they should or should not affect or diminish the light enjoyed by the lessee. It was also provided by the agreement that nothing therein contained should be deemed to operate as an actual demise of the land to the deft., or to create as between him and the Commrs. the relation of tenant and landlord.

On one of the plots the deft. erected a house (No. 28), and the Commrs. granted to him a lease of that house in the specified form. The deft. sold that house to the plts., and transferred the lease of it to them. He afterwards erected on an adjoining plot a house (No. 30) which when completed obstructed the access of light to some of the windows of the plts.' house. They brought an action against the deft. claiming an injunction and damages : —

Held, that, at the time when the deft. transferred the lease of No. 28 to the plts., he had not under the building agreement such an interest in the adjoining plot (No. 30), as would enable him to make an express grant of an easement of light over it, and that consequently no such grant by him could be implied.

Decision of Kekewich J., [1902] W. N. 163, reversed.

The provision of s. 6, sub-s. 2, of the Conveyancing Act, 1881, that a conveyance of land with houses on it shall operate to convey with the land (inter alia) all lights appertaining to the land or enjoyed therewith, applies only to such lights as the grantor could grant by express words, and does not operate to convey an easement of light which he has no power to grant expressly. *QUICKE v. CHAPMAN*

C. A. [1903] W. N. 47; [1903] 1 Ch. 659

— Contract — Enjoyment of light — Deed of acknowledgment — Non-disclosure.

See **VENDOR AND PURCHASER—Contracts. 1.**

— Derogation from grant — Air — Obstruction.

See No. 4, above.

7. — Derogation from grant—Implication — Building agreement—Plan—Easement—Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), s. 6.

By a building agreement dated in 1884, S. agreed to erect certain specified buildings on an estate belonging to O. which for the purposes of the building scheme was divided into plots, upon each of which a building of a certain character was to be erected. After some of the buildings had been erected, the scheme was departed from to the extent that S., with the consent of O., built upon a site comprising several plots a block of mansions with windows overlooking the adjoining vacant plots. At this time S. contemplated building a corresponding block of mansions upon the adjoining plots, and the wall of the block erected abutting on the adjoining plots was for half its length built as a party wall, while for the

LIGHT AND AIR—continued.

rest of its length provision was made for an open area between the block erected and the intended block, and the foundations of the intended block were so laid as to carry out this scheme. The windows of the erected block looked into this area, and over the adjoining site of the intended block. On May 5, 1886, O. conveyed the erected block of mansions to S. by a deed which contained no express general words, and no reservation to O. of any rights in respect of the adjoining plots, but embodied a plan shewing the party wall and the open area. The second block of mansions was never built, and O. subsequently sold the intended site thereof to S., from whom it was acquired by the defts., who commenced to build upon it so as to obstruct the access of light to the windows of the mansions, but to a less extent than would have happened if the second block contemplated by S. had been erected. The plts., who were the successors in title of S., claimed an injunction on the ground that by s. 6 of the Conveyancing Act, 1881, an express grant of light was imported into the conveyance of May 5, 1886, and that O. could not derogate from his grant by conveying the adjoining land freed from the easement : —

Held, that having regard to the circumstances existing at the date of the conveyance of May 5, 1886, it did not as against O. pass to S. any right to have the access of light unobstructed by any future building on the adjoining ground.

Birmingham, Dudley and District Banking Co. v. Ross, (1888) 38 Ch. D. 295, applied and followed. *GODWIN v. SCHWEPFES, LD.*

Joyce J. [1902] 1 Ch. 926

8. — Derogation from grant—Implication—Reasonableness—Plan shewing building line—Plots sold for building—Easement—Light—Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 6.

Where a landowner contracts to grant a lease of a vacant piece of land when a house of a specified character is built thereon, and accordingly a house is built and a lease of the house and land is granted, the doctrine that a grantor cannot derogate from his own grant must be applied, not to the vacant piece of land, but to the land with the houses on it according to the contract, which must be taken for this purpose to have been fulfilled.

If the land forms part of a building estate, and the contract is entered into by reference to a plan in which the estate is marked out in building plots, with a building line marked on the plan so as to extend through all the plots, including the land which is the subject of the contract, the application of the doctrine is not thereby limited or restricted, and, in the absence of further evidence of the existence of a building scheme or of any reservation of right to the grantor, the purchaser from him of an adjoining plot will be restrained from building on his land, so as to interfere with the access of light to the house as theretofore enjoyed.

Broomfield v. Williams, [1897] 1 Ch. 602, applied. *POLLARD v. GARE* — **Kekewich J. [1901] W. N. 65; [1901] 1 Ch. 834**

— Derogation from grant — Trespass — Party wall—London building—Landlord and tenant. *See* **LONDON—Buildings. 18.**

LIGHT AND AIR—continued.

— Electric light.

See under **ELECTRIC LIGHT**.

— Flats—Negligence—Staircase not lighted—Landlord, Liability of, to persons other than tenants.

See **FLATS**. 1.

9. — *Injunction or damages—Future injury—Oppression—Extortion—Jurisdiction—Ancient lights—Lord Cairns' Act, 1858 (21 & 22 Vict. c. 27), s. 2.*

The plts. brought an action for an injunction to restrain the deft. from erecting a building so as to darken their ancient light. The deft. alleged that the plts. had bought their house merely with a view to extorting money from any person who tried to build on the deft.'s land; that the action was therefore oppressive; that the injury (if any) would be trifling; and that it was a case for damages, and not for an injunction:—

Held, that the plts.' windows were ancient lights, and would be materially interfered with by the deft.'s proposed buildings; that it was not extortion or oppression on the part of the owner of an easement to ask the price which the property for exceptional reasons in fact commanded; and that an injunction ought to be granted.

The principles upon which the Court will give damages instead of an injunction discussed. *COWPER v. LAIDLER* — — — **Buckley J.**

[1903] **W. N. 112**; [1903] **2 Ch. 337**

10. — *Interference, Substantial—Ancient lights—Prescription—Light—Extraordinary purposes—Ordinary purposes—Purposes requiring special quantity of light—Measure of right.*

In considering the question of the right to relief for interference with ancient lights, there is no rule of law that the owner or tenant of the house is entitled only to so much light as may come up to some imaginary standard or measure as to what the house may ordinarily require for purposes of habitation or business. The question is essentially one of comparison—whether by reason of the deprivation of light the house is substantially less comfortable than it was before, having regard to the ordinary uses by way of habitation or business to which the house has been put or may reasonably be supposed to be capable of being put.

Certain trade premises contained ancient lights to which the flow of light was full and uninterrupted. During the latter part only of the statutory period of twenty years before action, and at the time the action was brought, the premises were used by the plts. for a trade requiring an exceptional quantity and quality of light. The deft. erected a building which substantially interfered with the light coming to the plts.' windows, and so darkened the premises as to leave an amount of light sufficient only for purposes of ordinary habitation or business, and materially insufficient for the special requirements of the plts.' present trade:—

Held, reversing *Wright J.*, [1900] **2 Q. B. 722**, that, as the plts.' ancient lights had been substantially interfered with by the defts.' building, and the user of the plts.' premises for the

LIGHT AND AIR—continued.

purpose of a special business requiring much light was not unreasonable, the plts. were entitled to damages for the interference.

The law stated by the C. A. in *Kelch v. Pearson*, (1871) **L. R. 6 Ch. 809**, as to the right to relief for substantial interference with ancient lights, approved of and followed.

Lanfranchi v. Mackenzie, (1867) **L. R. 4 Eq. 421**, and *Dickinson v. Harbottle*, (1873) **28 L. T. (N.S.) 186** overruled. **WARREN v. BROWN**

C. A. [1901] **W. N. 214**; [1902] **1 K. B. 15**

Note.

Overruled by **H. L. (E.)**, *Colls v. Home and Colonial Stores, Ltd.*, [1904] **A. C. 179**. See *next Case*.

11. — *Interference, Substantial—Prescription—Nuisance—Damage—Measure of right—Angle of 45 degrees—Mandatory injunction—Inquiry as to damage, Refusal of—Ancient lights.*

To constitute an actionable obstruction of ancient lights it is not enough that the light is less than before. There must be a substantial deprivation of light, enough to render the occupation of the house uncomfortable according to the ordinary notions of mankind and (in the case of business premises) to prevent the plt. from carrying on his business as beneficially as before.

The nature of the right to light and of an infringement was not altered by the Prescription Act (2 & 3 Will. 4, c. 71).

The decision of the C. A., *Home and Colonial Stores, Ltd. v. Colls*, [1902] **W. N. 3**; [1902] **1 Ch. 302**, reversed, and the decision of *Joyce J.* restored. The decision of the C. A. in *Warren v. Brown*, [1892] **1 K. B. 15**, overruled. **COLLS v. HOME AND COLONIAL STORES, LTD.**

H. L. (E.) [1904] **W. N. 96**; [1904] **A. C. 179**

Note.

See *Abbott v. Holloway*, *Buckley J.*, [1904] **W. N. 124**.

Discussed by *Bray J.*, *Ambler v. Gordon*, [1905] **1 K. B. 417**.

Discussed by *Farwell J.*, *Higgins v. Betts*, [1905] **2 Ch. 210**.

Referred to by *Swinfen Eady J.*, *Anderson v. Francis*, [1906] **W. N. 160**.

Principle laid down in, applied by **H. L. (E.)**, *Jolly v. Kine*, [1907] **A. C. 1**.

Discussed by **H. L. (E.)**, *Morgan v. Fear*, [1907] **A. C. 425**.

Applied by **C. A.**, *Ankerson v. Connelly*, [1907] **1 Ch. 678**.

Explained by *Neville J.*, *Andrews v. Waite*, [1907] **2 Ch. 500**.

Referred to by **C. A.**, *Hyman v. Van den Bergh*, [1907] **W. N. 250**; [1908] **1 Ch. 259**.

12. — *Necessity, Easement of—Light—Grant of one of two adjoining tenements—Derogation from grant—Implied reservation.*

The deft., being the owner of two adjoining tenements, granted one of them to the plt.'s predecessor in title, while retaining the other, without expressly reserving to himself any rights

LIGHT AND AIR—continued.

over the tenement granted. The plt. built a wall on her premises so as to block out the light to two windows in the deft.'s premises. One of these windows lighted a pantry which could not be lighted in any other way except by means of borrowed light, and the obstruction rendered the pantry useless as a pantry :—

Held, that there was no implied reservation to the deft. of the right to the access of light to the pantry window, inasmuch as it was not an easement of necessity within the exception to the rule in *Wheldon v. Burroughs*, (1878) 12 Ch. D. 31.

The principle of *Union Lighterage Co. v. London Graving Dock Co.*, [1902] 2 Ch. 557, applied. **RAY v. HAZELDINE**. **Kekewich J.** [1904] W. N. 112; [1904] 2 Ch. 17

13. — Obstruction—Ancient lights—Nuisance.

The appellant built a house near the respondent's house in a London suburb and thereby obstructed its ancient lights. In an action by the respondent against the appellant Kekewich J. found as a fact the obstruction amounted to a nuisance, but in the course of his judgment said that the room in question was "still a well-lighted room" :—

Held, by Lord Loreburn L.C. and Lord James of Hereford (Lords Robertson and Atkinson dissenting), that there was evidence to justify the finding as to a nuisance, and that there was nothing in the decision inconsistent with the principle laid down in *Colls v. Home and Colonial Stores*, [1904] A. C. 179.

The decision of the C. A., *Kine v. Jolly*, [1905 1 Ch. 480, affirmed. **JOLLY v. KINE**

H. L. (E.) [1907] A. C. 1

14. — Obstruction, Substantial—Ancient lights—Nuisance—Injunction—Damages—Form of order.

In considering whether an obstruction to ancient lights amounts to an actionable nuisance, the test is not whether so much light has been taken as materially to lessen the enjoyment and use of the house that its owner previously had, but whether so much is left as is enough for the comfortable use and enjoyment of the house according to the ordinary requirements of mankind.

This principle, as laid down by the House of Lords in *Colls v. Home and Colonial Stores*, [1904] A. C. 179, accords with the ruling laid down in *Back v. Stacey*, (1826) 2 C. & P. 465; 31 R. R. 679, and *Parker v. Smith*, (1832) 5 C. & P. 438; 38 R. R. 828. There is nothing in *Colls v. Home and Colonial Stores* that overrules *Shelfer v. City of London Electric Lighting Co.*, [1895] 1 Ch. 287, 310. **HIGGINS v. BETTS** **Farwell J.** [1905] W. N. 104; [1905] 2 Ch. 210

— "Open space"—Burial.

See under BURIAL.

15. — Prescription—Dominant and servient tenements held under common landlord—Prescription Act, 1832 (2 & 3 Will. 4, c. 71), s. 3.

Under s. 3 of the Prescription Act, 1832, where two adjoining tenements are held by different lessees under a common landlord, and one lessee has enjoyed the access and use of

LIGHT AND AIR—continued.

light in respect of his tenement over the other tenement for a period of twenty years without interruption, he acquires an absolute and indefeasible right to light as against that other tenement, and this right enures in favour of that lessee and his successors not only as against the adjoining lessee, but as against the common landlord, and all succeeding owners of the adjoining tenement.

Decision of the C. A., [1906] 2 Ch. 406, affirmed.

The doctrine applied in *Frewen v. Philipps*, (1861) 11 C. B. (N.S.) 449; and *Mitchell v. Cantrill*, (1887) 37 Ch. D. 56, was not affected by *Colls v. Home and Colonial Stores, Ltd.*, [1904] A. C. 179, and has been too long acted on to be now disturbed. **MORGAN v. FEAR**

H. L. (E.) [1907] W. N. 196; [1907] A. C. 425

16. — Prescription—Dominant and servient tenements united in one freeholder—Extinguishment of easement—Prescription Act, 1832 (2 & 3 Will. 4, c. 71), s. 3.

Unity of seisin for an estate in fee will not cause an easement of ancient light to be extinguished where there is no unity of possession and enjoyment.

A tenement which had enjoyed the access and use of light over an adjoining tenement for a period of twenty years without interruption was leased for a term of years to the plts. Subsequently and during the continuance of this term the freeholder conveyed the tenement in fee to the freeholder of the servient tenement :—

Held, that the easement acquired by the tenement under s. 3 of the Prescription Act, 1832, was not thereby extinguished. **RICHARDSON v. GRAHAM** **C. A. [1908] 1 K. B. 39**

— Prescription.

See Nos. 15, 16, above.

17. — Skylight—"Window"—Ancient lights—Easement—Enjoyment by "consent or agreement"—"Windows overlooking"—Prescription Act, 1832 (2 & 3 Will. 4, c. 71), s. 3.

In 1873 the plt. erected upon his property adjoining that of the deft. a conservatory with a glazed roof sloping down to the vertical side of the conservatory which side stood practically on the boundary line between the two properties. That vertical side was glazed, having sashes hung on hinges from the top, and made to open outwards over the deft.'s property. The plt. at the time of the erection of his conservatory signed an agreement to pay 1s. a year as an acknowledgment for "allowing the windows in my conservatory adjoining to open on to and overlook" the deft.'s property. The annual payments under the agreement were made down to 1888, when the conservatory was converted into a passage, the glazed side being bricked up, leaving the glazed roof as a skylight to the passage. In 1901 the deft. built a wall on his land along the boundary line, carrying it above the plt.'s skylight so as to obstruct the access of light thereto. In an action to restrain the obstruction of the skylight as an ancient light :—

Held (by Joyce J., [1902] W. N. 68, and by the C. A.), that the skylight was a "window"

LIGHT AND AIR—*continued*.

overlooking the deft.'s property within the terms of the agreement, and consequently that, the access of light having been enjoyed by consent or agreement in writing within s. 3 of the Prescription Act, 1832, the plt.'s action failed. **EASTON v. ISTD** C. A. [1903] 1 Ch. 405

18.—*Special purpose or business—Light necessary for—Ancient lights—Prescription—Ordinary user—Question of fact.*

A right to a special amount of light necessary for a particular business cannot be acquired by twenty years' enjoyment to the knowledge of the owner of the servant tenement.

In considering the question of the right to relief for interference with ancient lights, it is a question of fact whether the user of the premises is one which requires an ordinary or a special amount of light. It cannot be predicated as a matter of law whether any particular business, e.g., an architect's, is an ordinary business in the sense that it only requires an ordinary amount of light.

Colls v. Home and Colonial Stores, [1904] A. C. 179, discussed. **AMBLER v. GORDON**

Bray J. [1905] 1 K. B. 417

— Title — Defect — Guarantee — Restrictive stipulation.

See **VENDOR AND PURCHASER—Title**. 9.

19.—*View of premises by the judge—Reference to independent surveyor to fix amount of damage—Practice—Injunction—Ancient lights—Nuisance—Damage.*

Action brought for an injunction to restrain the defts. from erecting a building so as to obstruct the ancient lights of the plts.' premises.

Buckley J. stated that he had personally inspected the premises, and he suggested to the plts. that they should accept an offer which had been made to them by the defts.

After some discussion an order was by consent made to refer it to an independent surveyor to determine whether the erection of the defts.' buildings, having regard to the increased height thereof, would depreciate to any and what extent the value of the plts.' premises; the defts. to pay to the plts. the sum (if any) so determined; the surveyor to be agreed upon by the parties, or in default to be appointed by the judge, and his fees to be borne by the parties equally; the defts. to pay the plts.' taxed costs of the action; the surveyor not to be attended by one of them on behalf of the parties or to take evidence.

Colls v. Home and Colonial Stores, Ltd., [1904] A. C. 179, referred to. **ABBOTT v. HOLLOWAY** **Buckley J.** [1904] W. N. 124

LIGHT DUES—Shipping.

See under **SHIPPING—Light Dues**.

LIGHT RAILWAYS

See under **RAILWAY**.

LIGHTER—Dock company—Exemption from dock rates.

See under **SHIPPING—Docks**.

— Shipping—Workmen's compensation.

See under **MASTER AND SERVANT—Compensation**.

LIGHTERMAN—Negligence of carrier's servants

—Liability of carrier.

See **CARRIER**. 1.

— Thames Conservancy by-law—Ultra vires — Hauling barges out of dock — "Navigated."

See **THAMES RIVER**. 3.

LIGHTING—Electric light.

See under **ELECTRIC LIGHT**.

LIGHTNING—Injury by—Workmen's compensation.

See **MASTER AND SERVANT—Compensation**. 105.

LIGHTS—Shipping—Collision.

See under **SHIPPING—Collision**.

LIME-WASHING—Lodging-house — Validity of by-law.

See **LONDON—Lodging houses**. 2.

LIMESTONE — Compensation — Railway company—Limestone required to be left unworked.

See **RAILWAY—Mines**. 2.

LIMITATION.

See also under **LIMITATIONS, STATUTE OF**.

— Appointment — Validity — Remoteness—Rule against double possibilities—Successive limitations to unborn children.

See **WILL—Executory Bequest or Limitation**. 3.

— Conveyance void as unregistered.

See **CANADA—Conveyance**. 1.

— Cy-près — Introduction of contingent limitation—Perpetuity.

See **CY-PRES**. 1.

— Equitable estate in fee—No words of inheritance—Settlement.

See **POWER OF APPOINTMENT**. 28.

— Equitable limitation—Real estate—Appointment upon trust for sale—Conversion.

See **POWER OF APPOINTMENT**. 26.

— Habendum to grantee "in fee"—Limitation, words of — Supplying omission from context.

See **CONVEYANCE**. 1.

— Omission of words of limitation—Equitable estate in fee—Conveyance to trustees.

See **SETTLEMENT**. 33.

— Patent actions—Limitation of claim.

See **PATENT—Practice**.

— Real estate — Equitable estate in fee — No words of inheritance.

See **SETTLEMENT**. 34.

— Real estate—Shifting clause—Exception of eldest son "entitled" to other estates.

See **WILL—Shifting Clause**. 1, 2.

— Solicitor-mortgagee—Overcharges — Opening settled accounts.

See **SOLICITOR—Accounts**. 1.

LIMITATION—continued.

- Time for bringing action—Highway, Repair of—Extraordinary traffic—Recovery of expenses.
See HIGHWAY. 29.
- Validity of limitation—Excessive appointment—Remoteness.
See POWER OF APPOINTMENT. 32.
- Will—Construction.
See under WILL—Limitations.
- Will—Intention—Forfeiture clause—Words of futurity—Limitation to events after testator's death.
See WILL—Forfeiture. 7.

LIMITATION OF ACTION—Public authorities' protection.
See under PUBLIC AUTHORITIES PROTECTION.

LIMITATION OF LIABILITY—Shipping.
See under SHIPPING—Limitation of Liability.

LIMITATION OF TIME—For bringing action—Public authorities' protection.
See under HIGHWAY and under PUBLIC AUTHORITIES' PROTECTION.

- For bringing action—Extraordinary traffic—Repair of highway—Recovery of expenses.
See HIGHWAY. 29.
- For laying information—Factory—Fencing of machinery—Offence.
See FACTORY. 3, 4.
- For taking proceedings—Prevention of cruelty to children—Procedure.
See CRIMINAL LAW—Cruelty to Children. 2.
- Highway—Repair—Extraordinary traffic—Limitation of time for bringing action.
See HIGHWAY. 29.

LIMITATIONS, STATUTE OF.

See also under LIMITATION.

1. — *Acknowledgment—Debt—Affidavit for probate—Admission—Limitations, Statute of* (21 Jac. 1, c. 16)—*Lord Tenterden's Act* (9 Geo. 4, c. 14), s. 1.

The question raised in this administration action was whether a sufficient acknowledgment of a debt had been made to take it out of the Statute of Limitations. In May, 1905, a father died, and his son was one of the three executors of the will. In Oct., 1905, the son died, and in Nov., 1905, an order for the administration of his estate was made. The estate proved to be insolvent. A claim was brought in against the estate of the son by the executors of the father, in respect of a sum of 2000*l.* and interest. This debt was statute-barred unless some acknowledgment had been given by the son to take it out of the statute. It appeared that on July 24, 1905, the son, as one of the executors of his father, had joined with the other executors in swearing and signing the usual affidavit for Inland Revenue for the purposes of proving his father's will, and in the schedule of debts owing to the deceased

LIMITATIONS, STATUTE OF—continued.

and appended to the affidavit there appeared an item to the following effect:—"Money lent to Jonathan Gilbert Emmett (the son) 2000*l.*, interest thereon up to day of death, 412*l.* 10*s.*" This entry was the acknowledgment relied upon.

Kekewich J. said that the two cases, *Edwards v. Jones*, (1855) 1 K. & J. 534, and *Smith v. Poole*, (1841) 12 Sim. 17, referred to by the applicant seemed to be conclusive, and the acknowledgment must be held to be good. It was, in fact, a clear admission of the debt, and that involved an implied promise to pay. The claim to the 2000*l.* and interest must be admitted, and a direction to that effect given to the Master. *In re EMMETT. JENKINS v. EMMETT*

Kekewich J. [1906] W. N. 201

2. — *Acknowledgment—Part payment by cheque—Implied promise to pay balance of debt—Date when promise implied—Limitation Act, 1623* (21 Jac. 1, c. 16)—*Statute of Frauds Amendment Act* (9 Geo. 4, c. 14), s. 1.

The debt., being indebted to his solicitor in respect to a bill of costs, handed him on May 10, 1900, a cheque in part payment of the bill; at the same interview it was verbally agreed between the parties that the cheque should not be presented for payment before June 20. On June 20 the cheque was presented for payment at the debt's bankers, and was duly paid. On June 18, 1906, the executors of the solicitor, who had meanwhile died, issued the writ in the present action to recover the balance of the debt upon the bill of costs:—

Held, that the date of part payment of the debt was the date when the cheque was handed by the debt. to his creditor, and not the date when the cheque was in fact paid by virtue of the special arrangement; that, therefore, the only time at which a promise to pay the balance of the debt could be implied from the circumstances under which part payment was made was May 10, 1900, and that, that being more than six years before the issue of the writ, a plea of the Statute of Limitations afforded a good defence to the action. *MARRECO v. RICHARDSON* **C. A. [1908] 2 K. B. 584**

3. — *Acknowledgment—Specialty debt—Bond—Joint and several liability—Acknowledgment in writing—"Party liable by virtue of such specialty"—Acknowledgment by one of several obligors—Lost acknowledgment—Parol evidence—Onus of proof—Civil Procedure Act, 1833* (3 & 4 Will. 4, c. 42), ss. 3, 5.

An acknowledgment in writing by one of several obligors is an acknowledgment by a party liable by virtue of the specialty within the meaning of s. 5 of the Civil Procedure Act, 1833, as interpreted by *Roddam v. Morley*, (1857) 1 De G. & J. 1, so as to take out of the operation of s. 3 of that Act an action founded on the liability of the surviving obligors, and stands on the same footing as payment.

Parol evidence is admissible to prove the contents of a written acknowledgment which has been lost. Onus of proof discussed.

Decision of Channell J., [1909] 1 K. B. 577, affirmed. *READ v. PRICE*

C. A. [1909] 2 K. B. 724

LIMITATIONS, STATUTE OF—continued.

4. — *Action to recover legacy—Share of testator's estate—Express trust—Infant legatee—Duty of executor to give notice of legacy—Real Property Limitation Act, 1874 (37 & 38 Vict. c. 57), s. 8.*

A testator bequeathed all his property to his wife and children, and appointed his wife sole executrix. He left him surviving his wife and two infant children, viz., a son, long since deceased, and a daughter, who attained twenty-one in 1876. The widow married again, and during her daughter's infancy she, in her character of executrix, advanced all the testator's estate to her second husband upon the security of a mortgage which proved insufficient. She survived her second husband, and died in 1885, having left all her property away from her daughter. The daughter, as sole surviving beneficiary under her father's will, claimed the whole of her mother's estate upon the ground that it represented moneys retained by her mother under an order of the Court in part satisfaction of the mortgage, and in 1903 she commenced an action against her mother's executors for an account on this footing:—

Held, that the mother was not an express trustee of these moneys for the plt.; that this was an action to recover a legacy within s. 8 of the Real Property Limitation Act, 1874; and that the claim was statute-barred.

Whether the mother was under any legal obligation to inform her daughter upon attaining twenty-one of the benefit conferred on her under her father's will, *quære*. *In re MACKAY. MACKAY v. GOULD* — **Kekewich J. [1905] W. N. 159; [1906] 1 Ch. 25**

— Advowson in gross—Foreclosure.

See MORTGAGE—**Advowson**. 1.

— Appropriation—Liability to replace moneys—Evidence.

See APPROPRIATION. 1.

— Breach of trust—“Action to which no existing Statute of Limitations applies.”

See TRUSTEE—**Breach of Trust**. 5.

— Cause of action—Grant of letters of administration—Powers of registrar.

See HONG KONG. 3.

— Compulsory purchase of land—Property held for term to secure annuity—Cesser of term—Annuitant in possession as owner—No claims by reversioner.

See LANDS CLAUSES ACT—**Payment Out**. 29.

5. — *Debt—Simple contract debt—Acknowledgment of debt—Special promise to pay.*

Where, in an action commenced in 1902 upon a promissory note given by the deft. to the plt. in 1881, for 100*l.* with interest, payable on demand, it was proved that the deft. had in 1901 written a letter, in which, after asserting that there had been certain payments by him on account of the note, he used expressions importing that he was willing that an account should be taken between himself and the plt., and that he would pay what was thereupon found to be due, and it was found on the trial that no payments had been made on account of the note:—

LIMITATIONS, STATUTE OF—continued.

Held, affirming the judgment of Bruce, J. that the letter afforded sufficient evidence of a new promise to take the case out of the Statute of Limitations. **LANGRISH v. WATTS**

C. A. [1903] 1 K. B. 636

6. — *Debt—Simple contract debt—Payment on account by tenant for life—Acknowledgment—Real assets—Administration of Estates Act, 1833 (3 & 4 Will. 4, c. 104)—Tenant for life of part—Limitation Act, 1623 (21 Jac. 1, c. 16)—Administration of whole of real estate.*

Payment on account of a simple contract debt of the testator by the devise for life of a part of his real estate is sufficient to keep a right of action alive, not only as against the person making it, but as against all other persons interested in the real estate, so as to entitle a simple contract creditor to an order for administration of the whole of the testator's real estate.

The principles laid down in *Roddam v. Morley*, (1857) 1 De G. & J. 1, and *Dibb v. Walker*, [1893] 2 Ch. 429, applied. *In re* CHANT. **BIRD v. GODFREY** — **Warrington J. [1905] W. N. 94; [1905] 2 Ch. 225**

Note.

Commented on by C. A., *In re Lacey*, [1907] 1 Ch. 330. *See* ADMINISTRATION. 28.

— Devastavit—Claim on guarantee.

See EXECUTOR—**Devastavit**. 1.

— Dividends unclaimed—Reduction of capital by return of money to shareholders.

See COMPANY—**Limitations**. 1.

— Executor—Mortgage debt—Judgment against executor—Admission of debt—Statute of Limitations not pleaded—Plene administravit.

See ADMINISTRATION. 19.

— Foreshore—Crown, Rights of—Encroachment—Riparian owner—Adverse possession, Title by.

See SEASHORE. 2.

7. — *Fraud—“Concealed fraud”—Third party—Innocent possession—Real Property Limitation Acts, 1833 (3 & 4 Will. 4, c. 27), s. 26; 1874 (37 & 38 Vict. c. 57), s. 1.*

Per Lord Alverstone C.J. and V. Williams L.J.: The “concealed fraud” which by s. 26 of the Real Property Limitation Act, 1833, will prevent time running against the true owner of real estate must be the fraud of the person who sets up the statute, or of some one through whom he claims.

Per Rigby L.J.: Sect. 26 applies to every case of a “concealed fraud” which deprives the true owner of the possession of land, except as regards a bona fide purchaser for value without notice of the fraud at the time of his purchase.

In Sept., 1884, a husband conveyed a freehold house to his wife in fee, and in the same month she executed a conveyance of the house to their daughter in fee. The mother did not inform her daughter of the conveyance, and there was evidence that she purposely concealed it from her. In 1888 the mother died, and in 1899 the father died, having by his will devised and bequeathed all his property to the deft. The father had continued in possession of the house

LIMITATIONS, STATUTE OF—continued.

after the conveyance to his wife and down to the time of his death, and on his death the deft. entered into possession of the house. There was no evidence that the father had any knowledge of the mother's conveyance to the daughter. After his death she was for the first time informed of her title to the house, and she brought an action to recover possession of it from the deft. :—

Held, by Lord Alverstone C.J. and Rigby L.J. (V. Williams L.J. doubting), that there had been a "concealed fraud" by the mother within the meaning of s. 26 of the Real Property Limitation Act, 1833.

But, *held*, by Lord Alverstone C.J. and V. Williams L.J. (Rigby L.J. dissenting), that, if there had been a "concealed fraud" by the mother, yet, as the deft., and the father through whom she claimed, were not party or privy to the commission of the fraud, s. 26 did not prevent the plt.'s right from being barred by the statute :—

Held, by Rigby L.J., that, as the plt. had been deprived of her estate by means of the concealed fraud, s. 26 prevented her right from being barred by the lapse of time.

Petre v. Petre, (1853) 1 Drew. 371, considered. Decision of Kekewich J. reversed. *In re MCCALLUM. MCCALLUM v. MCCALLUM*

C. A. [1901] 1 Ch. 143

8. — *Infancy of claimant—Real Property Limitation Act, 1874* (37 & 38 Vict. c. 57), s. 1.

Where time under the Statute of Limitations has commenced to run in favour of a person in possession of land against an owner who is under no disability, the running of the time is not interrupted by the infancy of a person succeeding to the owner's interest, even if the legal title is in trustees.

Murray v. Watkins, (1890) 62 L. T. 796, followed. *GARNER v. WINGROVE*

Buckley J. [1905] W. N. 110 ;

[1905] 2 Ch. 233

— Innocent breach of trust—Misappropriation by solicitor—Acknowledgment—Payment of interest to tenant for life.

See TRUSTEE—Breach of Trust. 4.

— Interest—Arrears, Mortgagee's right to recover.

See MORTGAGE—Interest. 1.

— Interest—Arrears, Recovery of.

See VENDOR AND PURCHASER—Lien. 1.

— Intestate's estate—Incapacity to sue co-executor at law.

See ADMINISTRATION. 19.

— "Land"—Adwoson in gross—Equitable charge—Foreclosure.

See MORTGAGE—Adwoson. 1.

— Land tax.

See under LAND TAX.

9. — *Land tax—Redemption—"Rent"—Annual sum payable by way of interest—Charge on premises—Land Tax Redemption Act, 1802* (42 Geo. 3, c. 116), ss. 123, 125—*Real Property Limitation Act, 1874* (37 & 38 Vict. c. 57), ss. 1, 8.

The lessee of premises redeemed the land tax

LIMITATIONS, STATUTE OF—continued.

charged thereon under the Land Tax Redemption Act, 1802, which by s. 123 provides that, where any person having any estate (other than an estate of inheritance) in any lands, tenements, or hereditaments redeems the land tax charged thereon, such lands, tenements, or hereditaments shall be chargeable for his benefit with the amount of the moneys paid as the consideration for the redemption of such land tax, and with the payment of a yearly sum of money by way of interest thereon, equal in amount to the land tax redeemed. In 1879 the lessee assigned to the plt. the benefit of the contract for redemption of the land tax. No yearly sum having been paid by way of interest on the money paid for redemption of the land tax since 1879, the plt. sued the deft., in whom the lease of the premises had become vested in 1885, to recover 9*l.* as a yearly payment due Jan. 1, 1900, under s. 123 of the before-mentioned Act, by way of interest on the money paid for redemption of the land tax :—

Held, that the case came either within s. 1 of the Real Property Limitation Act, 1874, or within s. 8 of that Act, and therefore the plt.'s claim was barred.

Judgment of a Div. Ct., [1901] 2 K. B. 7, affirmed

SKENE v. COOK C. A. [1902] W. N. 60 ; [1902] 1 K. B. 682

10. — *Lease—Action to recover land—Trespasser—Title against lessee—Surrender of lease—Expiration of term—Lessor's right of re-entry—Real Property Limitation Act, 1833* (3 & 4 Will. 4, c. 27), s. 34—*Period of Limitation—"Future estate"—Real Property Limitation Act, 1874* (37 & 38 Vict. c. 57), s. 2.

Where a trespasser on land let on lease has as against the lessee acquired a title under the Statutes of Limitations, and the lessee subsequently surrenders the lease to the lessor, the lessor has no right of re-entry, and the period of limitation does not begin to run, until the expiration of the term for which the lease was granted.

A reversion in fee simple expectant on the determination of a lease for years or lives is not a "future estate or interest" expectant on a particular estate within s. 2 of the Real Property Limitation Act, 1874. *WALKER v. YALDEN*

Div. Ct. [1902] 2 K. B. 304

11. — *Leaseholds—Settlement by lessee—Encroachment by cestui que trust on other land included in the same settlement—Accretion to holding for benefit of lessor—Presumption—Person claiming through a trustee—Real Property Limitation Act, 1833* (3 & 4 Will. 4, c. 27), ss. 7, 25.

Two adjoining pieces of land, herein referred to as the foundry and the stable, were in 1819 and 1831 respectively demised by the same lessor to the same lessee for ninety-nine years or three lives. The leases contained a covenant by the lessor to renew in certain events. In 1846 both pieces and certain other lands of the lessee were assigned by him to trustees to hold in trust for the lessee for life, and thereafter as to the foundry upon one set of trusts, and as to the residue upon another set of trusts. From some date prior to

LIMITATIONS, STATUTE OF—continued.

1843, and down to the death of the lessee in 1858, two portions of the stable property were occupied by the lessee as part of and in connection with the business carried on by him on the foundry property. After his death these two portions continued to be so occupied by the cestuis que trust of the foundry, and the defts., their successors, without any acknowledgment, down to the date of this action. In March, 1856, the foundry lease, and in Aug., 1856, the stable lease, were renewed, new leases on the same terms for ninety-nine years or three lives being granted to the trustees of the settlement. In July, 1890, a new lease of the foundry was granted to the then cestui que trust occupying the foundry and the two portions of the stable property. This lease was subsequently sold to the defts. In 1894 a new lease of the stable was granted to the trustees, which was again renewed in 1898. This renewed lease was in 1901 sold to the plts., who on July 18, 1901, commenced this action, claiming to recover from the defts. the two portions of the stable property which had been occupied as part of the foundry property :—

Held, that the plt.'s claim was not barred ; that at the date of the stable lease of Aug., 1856, the possession in law of the disputed portions was in the trustees so as to enable them to surrender them to the lessor and to obtain a regrant from him, and that the Statute of Limitations did not begin to run against the lessor in 1856, but only in 1894, on the determination of the stable lease of Aug., 1856 ; that the occupiers of the disputed portions were persons claiming through a trustee within s. 25 of the Statute of Limitations, 1833, and that the statute, therefore, did not run in their favour :

Held, also, that, assuming that the statute began to run in 1856 against the lessor, the disputed portions became an accretion to the property comprised in the foundry lease, and on the determination and surrender of that lease in July, 1890, i.e., within twelve years of the commencement of the action, the lessor acquired a new right of possession, there being nothing to rebut the presumption that the encroachment enured for the benefit of the lessor. **EAST STONEHOUSE URBAN DISTRICT COUNCIL v. WILLOUGHBY BROTHERS, LD.**

Channell J. [1902] 2 K. B. 318

— Legacy, Action to recover—Duty of executor to give notice of legacy.

See **LIMITATIONS, STATUTE OF. 4.**

— London building—Fees of district surveyor—Liability—Period of limitation.

See **LONDON—Buildings. 5.**

— Lunatic pauper — Maintenance — Lunatic's estate.

See **POOR LAW. 10.**

— Minerals, Conveyance of land with—Parcels—Wrongful working under colour of title.

See **VENDOR AND PURCHASER — Minerals. 1.**

— Mines—Tenants in common—Working of part of mine by one co-owner — Adverse possession—Account.

See **MINES. 14.**

D.D.

LIMITATIONS, STATUTE OF—continued.

12. — Money paid under a mistake of fact—Mistake shared by both parties — Action to recover back—From what date statute begins to run—Whether notice to defendant of mistake is necessary to complete cause of action.

Where in answer to an action to recover back money paid, under a mistake of fact the deft. relies on the Statute of Limitations the statute must be taken to have run from the date of payment, and not from the date of the discovery of the mistake, nor from the date when the plt. might have discovered it by the exercise of reasonable diligence.

Brooksbank v. Smith, (1836) 2 Y. & C. Ex. 58, explained.

Where money has been paid under a mistake of fact which was shared by both the party paying and the party receiving it, in order to entitle the payor to maintain an action for the recovery back of the money so paid it is not necessary that he should have given the payee notice of the mistake and demanded repayment. In such a case the cause of action is complete the moment the money is paid.

Freeman v. Jeffries, (1869) L. R. 4 Ex. 189, distinguished. **BAKER v. COURAGE & CO.**

Hamilton J. [1910] 1 K.B. 56

— Mortgage.

See under **MORTGAGE — Limitations, Statute of.**

13. — Mortgage—Acknowledgment—Payment of interest “by the person by whom the same shall be payable”—Person “bound to pay”—Real Property Limitation Act, 1874 (37 & 38 Vict. c. 57), s. 8.

The solicitor who acted for a mortgagor and after his death for his executors, and also for the mortgagees, paid the interest upon the mortgage debt to the mortgagees regularly up to a period within twelve years before the commencement of an action to enforce the mortgage :—

Held, that this was prima facie a payment within s. 8 of the Real Property Limitation Act, 1874, “by the person by whom the same shall be payable,” so as to throw on the representatives of the mortgagor the onus of proving that the statute had run and the mortgage debt had not been kept alive.

Held, also, that the payment of interest by a person who, as between himself and the mortgagor, was bound to pay it, though he was under no contract with the mortgagee to do so, was a payment, “by the person by whom the same shall be payable” within the meaning of s. 8, so as to prevent the statute from running.

Decision of Buckley J., [1901] W. N. 148, affirmed.

Harlock v. Ashberry, (1882) 19 Ch. D. 539, considered and explained. **BRADSHAW v. WIDDRINGTON** — **C. A. [1902] W. N. 107 ; [1902] 2 Ch. 430**

— Mortgage — Interest — Arrears, Mortgagee's right to recover.

See **MORTGAGE—Interest. 1.**

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LIMITATIONS, STATUTE OF—continued.

14. — *Mortgage—Real estate subject to trust for conversion—Rents and profits of unconverted real estate—Payment into Court by trustees under Trustee Act, 1893—Payment out—Mortgagee's claim for principal and interest—Res judicata—Real Property Limitation Act, 1833 (3 & 4 Will. 4, c. 27), s. 34—Real Property Limitation Act, 1874 (37 & 38 Vict. c. 57), s. 8.*

A testator, who died in 1878, by his will gave the residue of his real and personal estate to trustees upon trust to convert at their discretion, and to divide the proceeds among his four children in equal shares. Part of the testator's residuary real estate consisted of an estate pur autre vie in a freehold house, which the trustees, in the exercise of their discretion, retained. In 1889 two of the children mortgaged their interests in this property and the proceeds thereof. More than twelve years later, namely, in 1905, the trustees paid into Court under the Trustee Act, 1893, certain sums representing the shares of the mortgagors in the rents and profits of this property. Up to this time no steps had been taken to enforce the mortgage, nor had any part of the principal or interest ever been paid, nor had any acknowledgment been given. Subsequently in 1905 the mortgagees applied for payment out of the fund in Court to them and other incumbrancers or the mortgagors in order of priority; but this summons was dismissed, and no appeal was brought from that dismissal. The mortgagors then applied for payment out of the fund to them:—

Held, that the mortgagors were entitled to have the fund paid out to them without satisfying the mortgage debt, inasmuch as (1.) the mortgagees were precluded by the dismissal of their summons from asserting any claim against the fund; (2.) the effect of s. 34 of the Real Property Limitation Act, 1833, was to extinguish their title to the mortgage.

In re Lloyd, [1903] 1 Ch. 385, explained and distinguished.

Decision of Warrington J., [1907] 1 Ch. 686, reversed. *In re HAZELDINE'S TRUSTS*

C. A. [1907] W. N. 218; [1908] 1 Ch. 34

15. — *Mortgage deed, Action on covenant in—Devise of land in trust for sale—Mortgage of reversionary interest in proceeds—"Money charged upon or payable out of land"—Real Property Limitation Act, 1874 (37 & 38 Vict. c. 57), s. 8.*

A testatrix died having devised her real estate to trustees in trust for A. for life, and after A.'s death in trust to sell and divide the proceeds among the debts. The debts joined in executing a mortgage of their reversionary interest in the property to the plt. to secure an advance. The mortgage deed contained a joint and several covenant to repay the loan with interest. More than twelve years and less than twenty years after the last payment of interest or acknowledgment by the debts. the plt. brought his action to recover the amount of principal and interest due under the covenant in the mortgage deed. A. was still living at the date of the action:—

Held, that the money payable under the

LIMITATIONS, STATUTE OF—continued.

covenant was money "charged upon or payable out of land" within the meaning of s. 8 of the Real Property Limitation Act, 1874, and that the limitation of twelve years imposed by that section applied to the personal action upon the covenant even though the subject-matter of the mortgage was a reversion, and though that reversion had not yet fallen into possession at the date of the action. *KIRKLAND v. PEATFIELD*
Wright J. [1903] W. N. 70; [1903] 1 K. B. 756

16. — *Mortgage—Extinction of title of second mortgagee—Effect of possession of first mortgagee—Non-suspension of statutory period—Real Property Limitation Act, 1833 (3 & 4 Will. 4, c. 27), ss. 2, 3, 5—Real Property Limitation Act, 1874 (37 & 38 Vict. c. 57), ss. 1, 2.*

When the right of action of a mortgagee to recover land has accrued, the possession of the land by a prior mortgagee does not suspend the running of the period of limitation against the subsequent mortgagee.

The dictum of Romer J. in *Kibble v. Fairthorne*, [1895] 1 Ch. 219, followed.

Trustees, Executors, and Agency Co. v. Short, (1888) 13 App. Cas. 793, explained. *SAMUEL JOHNSON & SONS, LD. v. BROCK - PARKER J.*
[1907] W. N. 189; [1907] 2 Ch. 533

— Mortgagee in possession—Devolution of mortgaged estate—Realty or personality.
See MORTGAGE—Devolution. 1.

17. — *Mortgages—Entry or action within twelve years after last payment of interest—Real property—Mortgage—Real Property Limitation Act, 1837 (7 Will. 4 & 1 Vict. c. 28).*

The Real Property Limitation Act, 1837, which provides that a person entitled to or claiming under a mortgage of land may make an entry or bring an action at law or suit in equity to recover such land at any time within twenty [now twelve] years next after the last payment of any part of the principal or interest secured by such mortgage, applies, not only as against the mortgagor and persons claiming under him, but also as against a person who has acquired a good title by virtue of the Statute of Limitations as against the mortgagor and those claiming under him. *LUDBROOK v. LUDBROOK*

C. A. [1901] 2 K. B. 96

— Negative covenants—Title by adverse possession.

See VENDOR AND PURCHASER—Title. 2.

18. — *Part payment—Judgment, Action on—Real Property Limitation Act, 1874 (37 & 38 Vict. c. 57), s. 8.*

In 1884 the plt. recovered judgment against the deft. in England for 15,067l. 9s. 11d.; in 1886 he brought an action upon the judgment in the Courts of the South African Republic, where the deft. was domiciled. The foreign Court refused to enforce the judgment in full, but gave judgment for the plt. for the sum (including interest) of 9635l. 4s. 6d. Sequestration proceedings were then taken against the deft. in South Africa, and eventually the 9635l. 4s. 6d. was paid to the plt. by the curators under the deft.'s sequestration

LIMITATIONS, STATUTE OF—continued.

and insolvency, and the debt. was released from all debts claimable against his estate. In 1900 the plt. brought an action in England against the debt. to recover the balance remaining due under the original judgment and interest thereon :—

Held, that, the action not having been brought within the period of twelve years prescribed by s. 8 of the Real Property Limitation Act, 1874, the plt.'s right to recover was barred by that section, and that the part payment of the 9635*l.* 4*s.* 6*d.* did not operate to take the case out of the statute, it not having been made under circumstances from which an acknowledgment of liability and a promise to pay the balance could be inferred :

Held, further, that the plt. had elected to take the foreign judgment in discharge of his whole cause of action, and could not afterwards sue for the residue of the original judgment debt in England. *TAYLOR v. HOLLARD*

Jelf J. [1902] 1 K. B. 676

19. — Part payment — Solicitor's bill—Recovery of moneys due to client — Retainer on account with assent of client.

A solicitor brought in a claim for costs against a deceased client's estate which was being administered by the Court. Most of the costs were incurred more than six years before the judgment in the administration action. The solicitor, who had acted for the client in various matters for many years, during the whole of which period the client was heavily indebted to him, on several occasions recovered moneys for the client and made certain payments thereout on the client's behalf and, with the assent of the client, retained the balance on account of the client's indebtedness to him. On another occasion he received from an interested party a contribution to the costs of an action which formed the principal item of the claim, and, with the assent of the client, placed the sum so received to the credit of the client's account :—

Held, that these transactions did not constitute part payments so as to take out of the operation of the Statute of Limitations the items which were barred at the date of the judgment :—

Whether, when a payment on account is made by the debtor and there has been no appropriation by either the debtor or the creditor, the law will appropriate it to the earliest of the items which at the date of the payment were not statute-barred, or will treat it as attributable *pari passu* to all such items so as to take them out of the operation of the statute, *quære*. *In re BOSWELL. MERRITT v. BOSWELL*

Kekewich J. [1906] W. N. 22 ; [1906] 2 Ch. 359

On Appeal :—

Settlement arrived at under which the appeal was to be dismissed without costs. *In re BOSWELL. MERRITT v. BOSWELL*

C. A. [1907] 2 Ch. 331

— Pauper lunatics — Maintenance — Lunatic's estate—Payments on account.
See POOR LAW, 10.

LIMITATIONS, STATUTE OF—continued.

20.—Principal and agent—Moneys remitted to agent for special purpose and not accounted for—Express trust—Action for account.

In 1882 the debt. went to the United States as the agent of the plt. co. to buy timber lands for the co.; but finding that the timber lands had been already acquired by third persons, the debt. in 1883 proposed to the co. as an investment certain prairie lands of which he had secured the refusal. The co. instructed the debt. to buy the lands, and from time to time in 1883 on his request remitted to him moneys for that purpose. The debt. purchased the lands and paid for them out of these moneys, and conveyed the lands to the co. In 1901 the co., having then for the first time discovered that the debt. had charged the co. more than he had paid for the lands, brought an action to recover from the debt. the balance of the moneys remitted to him and not accounted for :—

Held, by Kekewich J., [1903] W. N. 206 ; [1904] 1 Ch. 242, that, the moneys having been remitted by the co. to the debt. as their agent for investment in a specified manner, the debt. was an express trustee for the co. of those moneys, and that the Statute of Limitations was not a bar to the action.

Burdick v. Garrick, (1870) L. R. 5 Ch. 233, and *Soar v. Ashwell*, [1893] 2 Q. B. 390, followed.

Watson v. Woodman, (1875) L. R. 20 Eq. 721, and *Friend v. Young*, [1897] 2 Ch. 421, explained and distinguished.

Decision of Kekewich J., [1904] 1 Ch. 242, affirmed. **NORTH AMERICA LAND AND TIMBER CO. v. WATKINS** - **C. A. [1904] W. N. 144**
[1904] 2 Ch. 233

— Railway company—Possession of minerals—*Ultra vires*.

See VENDOR AND PURCHASER — Minerals 1.

— Rates, Recovery of—Limitation of time—“Complaints.”

See RATES. 1.

21. — Real property—Action to recover land—Person under disability—Claim by husband in right of wife—Real Property Limitation Acts (3 & 4 Will. 4, c. 27, ss. 16, 17, 34 ; 37 & 38 Vict. c. 57, ss. 3, 5)—Will—Construction—Gift of “all the shares of my late husband's estate”—Real estate, whether passed.

B. died intestate in Dec., 1869, possessed of copyholds held of the manor of Taunton Dene, which by the custom of that manor devolved upon his widow. He left surviving him, besides his widow, his son P. and two daughters, of whom one was the plt., Mrs. H. The widow died on Jan. 7, 1870, having by her will devised to her two daughters “the share of her late husband's estate” that she took or was entitled to on his decease, to be divided between them share and share alike. She also gave them pecuniary legacies, and declared that she made this provision for them in lieu of the freehold and copyhold lands which descended to her son

LIMITATIONS, STATUTE OF—continued.

on the intestacy of her husband; and she appointed H., the husband of Mrs. H., to be her executor. On her death it was erroneously assumed that the Taunton Dene copyholds had, upon B.'s death, devolved upon P. as his customary heir, and from that time the rents were collected by H., and applied to the maintenance of P. until he attained twenty-one, in 1878, when H. accounted to him and handed over the title-deeds. P. continued in possession till his death in 1890, having devised all his real estate to the depts. The facts as to the devolution of the copyholds on B.'s death having been discovered, on Sept. 25, 1900, an action was brought by Mrs. H. and her husband in her declaration for a right that they were entitled to a moiety of the copyholds under the will of B.'s widow:—

Held, assuming that the copyhold passed under the will, that inasmuch as P. had been in possession through H. from the death of the widow, the action was barred by s. 5 of the Real Property Limitation Act, 1874, it not having been brought within thirty years of Jan. 7, 1870, when the plt.'s right first accrued; but,

Semble, on the construction of the will, the copyholds did not pass thereunder. **HOUNSELL v. DUNNING** **Joyce J. [1902] W. N. 11; [1902] 1 Ch. 512**

22. — Recovery of land—Action for assignment of dower—Time for ascertaining value—Real Property Limitation Act, 1833 (3 & 4 Will. 4, c. 27), s. 2—Real Property Limitation Act, 1874 (37 & 38 Vict. c. 57), s. 1.

The Real Property Limitation Act, 1833, as amended by the Real Property Limitation Act, 1874, does not apply to an action for assignment of dower.

Marshall v. Smith, (1865) 5 Giff. 37, overruled upon this point.

A dowress has two separate and independent rights, namely, a right to one-third of the rents and profits from the death of the husband, and a right to have dower assigned to her; and if she claims and enjoys her right to the receipt of the rents and profits she will not be prejudiced by reason of not having, during that period, claimed her right to an assignment.

But *semble*, if for more than twelve years she does not claim any of her rights, the Court ought to refuse her relief on the ground of laches.

Dower ought to be assigned according to the value at the time of the assignment, and not according to the value at the time of the husband's death. **WILLIAMS v. THOMAS**

C. A. [1909] W. N. 73; [1909] 1 Ch. 713

23. — Rent-charge—Personal covenant to pay—Remedy when barred—Civil Procedure Act, 1833 (3 & 4 Will. 4, c. 42), s. 3—Real Property Limitation Act, 1874 (37 & 38 Vict. c. 57), s. 1.

The effect of s. 1 of the Real Property Limitation Act, 1874, upon s. 3 of the Civil Procedure Act, 1833, is to cut down the period within which a covenant to pay a rent-charge can be enforced, so that after the expiry of twelve years from the last payment without acknowledgment the remedy on the personal covenant is gone as well

LIMITATIONS, STATUTE OF—continued.

as the remedy against the land on which the money was charged. **SHAW v. CROMPTON**

Div. Ct. [1910] 2 K. B. 370

— Restrictive covenants—Title by possession—Notice—Acceptance of less than forty years' title.

See **VENDOR AND PURCHASER—Title. 9.**

— Set-off—Payment—Solicitor's bill.

See **APPROPRIATION. 1.**

— Shares of intestate's estate.

See **ADMINISTRATION. 19.**

24. — Simple contract debt—Acknowledgment—Unconditional admission of liability coupled with expression of hope to pay—Conditional or limited promise.

To an action for recovery of a debt due on a bill of exchange the deft. pleaded the Statute of Limitations. Shortly before the commencement of the action and after the time fixed by the statute had run, the deft. wrote, in answer to a formal demand for payment by the plt.'s solicitors, "I admit I owe your client the sum of 210l. 5s. but I cannot meet this liability at the moment although I hope to call upon you within fourteen days to make a definite proposal for repayment of that amount with interest from date of loan"—

Held, that this was a sufficient acknowledgment to prevent the operation of the statute.

Tanner v. Smart, (1827) 6 B. & C. 603, and **Smith v. Thorne**, (1852) 18 Q. B. 134; 21 L. J. (Q.B.) 199, distinguished. **COOPER v. KENDALL**
C. A. [1909] W. N. 23; [1909] 1 K. B. 405

— Solicitor—Bill of costs—Taxation—Submission to pay—Items barred by Statute of Limitations.

See **SOLICITOR—Costs. 5.**

— Statute-barred debt owing to estate—Residuary legatee of debtor's estate also a legatee of creditor's estate—Bringing into account.

See **ADMINISTRATION. 30.**

— Street — Paving expenses — Apportioned amount—Demand.

See **LONDON—Streets. 10.**

— Superfluous land—Tunnel—Space above usque ad coelum—Telegraph wires.

See **RAILWAY—Tunnel. 1.**

— Tenants in common—Coal mines—Working by one tenant in common—Adverse possession.

See **MINES. 14.**

— Trustee.

See under **TRUSTEE—Limitations, Statutes of.**

— Trustee—Breach of trust—Action to which no existing Statute of Limitations applies."

See **TRUSTEE—Breach of Trust. 5.**

— Vendor's lien — Personal estate — Interest—Arrears, Recovery of.

See **VENDOR AND PURCHASER—Lien. 1.**

LIMITATIONS, STATUTE OF—*continued.*

- Will—Mixed fund—Implied charge of legacies
- Express charges of debts—Period of limitation.
- See **WILL**—Charges. 2.

LIQUIDATED DAMAGES.

See under **DAMAGES**.

- “**LIQUIDATED SUM**”—Act of bankruptcy—Debt—“Notice.”
- See **BANKRUPTCY**—Act of Bankruptcy. 4.

LIQUIDATION—Bankruptcy.

See under **BANKRUPTCY**.

- Condition for re-entry on liquidation—Lease
- Solvent company—Voluntary liquidation—Forfeiture.
- See **LANDLORD AND TENANT**. 75.

LIQUIDATOR—Company—Winding-up.

See under **COMPANY**—**WINDING-UP**—Liquidator.

- LIS ALIBI PENDENS**—Collision in foreign waters—Service out of jurisdiction.
- See **SHIPPING**—Practice. 4.

- LIS PENDENS**—Divorce—Settlements, Variation of—Answer to petition before decree absolute.
- See **DIVORCE**—Settlements. 11.

- Registration in England—Liability of Scotch real estate.
- See **PRACTICE**—Pleadings. 1.

- LISTS**—Copyright—Infringement—Lists of brood mares—Competition.
- See **COPYRIGHT**—Lists. 1.

LITERARY AND SCIENTIFIC INSTITUTIONS

— *User for social purposes—Billiards—Repairs—Borrowing powers—Literary and Scientific Institutions Act, 1854 (17 & 18 Vict. c. 112), ss. 18, 19, 33.*

The Literary and Scientific Institutions Act 1854, does not authorize the establishment of institutions for the purposes of recreation or enjoyment, e.g., the playing of billiards as distinguished from the literary, scientific, and other instructional purposes specified in s. 33 of the Act.

An institution established under the Act has no implied general power of mortgaging or borrowing money, and its power to mortgage or charge its property is limited to the purposes mentioned in s. 19.

Money cannot be borrowed on mortgage by a literary or scientific institution for the purpose of erecting a billiard-room, although it may be so borrowed for the purpose of making necessary repairs of the institution's buildings. *In re BADGER. MANSELL v. VISCOUNT COBHAM*

Buckley J. [1905] W. N. 37; [1905] 1 Ch. 568

- LITIGATION**—Pending—Conditions of sale—Rescission—Costs—Jurisdiction.
- See **VENDOR AND PURCHASER**—Rescission. 2.

- Liverpool Court of Passage—Interpleader issue—New trial.
- See **BILL OF SALE**.

LIVERPOOL.

University of Liverpool Act, 1904 (4 Edw. 7, c. 11), extends the privileges of the graduates of the University of Liverpool.

High Court of Justice—Liverpool district registrars—Order dated Feb. 29, 1908, directing that the present district registrar and the district probate registrar be joint district registrars. Reprint from **W. N. 1908 (March 7), p. 73.** See **CURRENT INDEX, 1908, p. cxv.**

- Compulsory pilotage—Port of Liverpool—Limit of compulsion outwards.

See **SHIPPING**—Pilotage. 4.

- Compulsory pilotage—Vessel passing through port of Liverpool—Limits of port—Port of Manchester.

See **SHIPPING**—Pilotage. 4.

- Public park—Poor rate—Rateable value—Beneficial occupation.
- See **RATES**. 25.

- Special Act—Liverpool Sanitary Amendment Act, 1864—Demolition of buildings—“Court.”

See **LOCAL GOVERNMENT**. 2.

LIVERPOOL COURT OF PASSAGE.

The Liverpool Court of Passage Rules, 1909, dated March 16, 1909, and which came into operation on April 1, 1909. Reprint from **W. N. 1909 (April 10), p. 123.** See **CURRENT INDEX, 1909, p. cxxii.**

- LIVERY COMPANY**—Gift to Livery Company of City of London—Devise for general purpose of company.

See **CHARITY**. 30.

LOADED ARMS—Criminal law.

See under **CRIMINAL LAW**—Loaded Arms.

- LOAN**—Debentures—Issue—Deposit of blank debenture to secure loan.

See **COMPANY**—Debentures. 21.

- Excessive interest.

See under **MONEY-LENDERS**.

- Gambling in foreign country—Cause of action.

See **GAMING**. 10.

- Hire and purchase agreement—Inference of fact—Registration.

See **BILL OF SALE**. 3.

- Mortgage of revenues of benefice to secure loan—Validity.

See **ECCLIASTICAL LAW**—Vicarage. 1.

- LOANS**—Loans Act, 1902 (2 Edw. 7, c. 4).

- Trustee—Investments—Nominal debentures under Local Loans Act.

See **TRUSTEE**—Investments. 11.

LOCAL AUTHORITY.

See under **LOCAL GOVERNMENT**.

LOCAL GOVERNMENT.

Local Government Act, 1888 (51 & 52 Vict. c. 41)—*Rule under s. 89* (3). Reprint from **W. N. 1902** (Dec. 6), p. 317. See **CURRENT INDEX**, 1902, p. lxxx.

Local Government (Transfer of Powers) Act, 1903 (3 Edw. 7, c. 15), amends s. 10 of the *Local Government Act*, 1888 (51 & 52 Vict. c. 41).

Local Authorities (Admission of the Press to Meetings) Act, 1908 (8 Edw. 7, c. 43), provides for the admission of representatives of the Press to the meetings of certain Local Authorities.

Local Authorities (Treasury Powers) Act, 1906 (6 Edw. 7, c. 33), is an Act to transfer to the Local Government Board the powers of the Treasury under enactments relating to Local Authorities.

1. — *Auditor—London—Metropolitan borough—Audit of accounts—Powers and duties—Surcharge—Certiorari to quash—Jurisdiction of Court—London Government Act*, 1899 (62 & 63 Vict. c. 14), s. 14—*Public Health Act*, 1875 (38 & 39 Vict. c. 55), s. 247—*Poor Law Amendment Act*, 1844 (7 & 8 Vict. c. 101), s. 35.

On an application for a certiorari under s. 247, sub-s. 8, of the Public Health Act, 1875, to remove and quash disallowances and surcharges made by an auditor acting in pursuance of that section, the jurisdiction of the Court is not confined to error in point of law, but extends to error in point of fact.

So held by the C. A., affirming the decision of the Div. Ct., [1907] 2 K. B. 878.

Reg. v. Haslehurst, (1887) 51 J. P. 645, followed and approved.

Per Cozens-Hardy M.R. and Farwell L.J.: An auditor appointed by the Local Government Board under s. 247 of the Public Health Act, 1875, to audit the accounts of a metropolitan borough council is authorized and required by sub-s. 7 to decide whether any member or officer of the council has been guilty of negligence or misconduct in relation to the accounts whereby loss has been occasioned to the council, and to assess the amount of the loss.

Per Fletcher Moulton L.J.: The powers and duties of the auditor under sub-s. 7 of s. 247 are strictly confined to auditing, and the words "person accounting" in the latter part of that sub-section, which requires the auditor to "charge against any person accounting the amount of any deficiency or loss incurred by the negligence or misconduct of that person," mean the person who brings in accounts for audit. Therefore, where the accounts submitted for audit are the accounts of a metropolitan borough council, the person accounting is the council, and the auditor has no power to inquire into the negligence or misconduct of the individual members or servants of the council. **REX v. CARSON ROBERTS** C. A. [1908] **W. N. 9**; [1908] **1 K. B. 407**

— Baths and washhouses.

See under **BATHS AND WASHHOUSES**.

— Borrowing powers exhausted—Illegal borrowing—Overdraft at banker's.

See **CORPORATION**. 4.

LOCAL GOVERNMENT—continued.

— Buildings.

See under **BUILDINGS**.

LONDON—Buildings.

2. — *Buildings—Local Government—Special Act—Liverpool Sanitary Amendment Act*, 1864 (27 & 28 Vict. c. lxxiii.)—*Public health—Demolition of buildings—"Court"—Public Authorities Protection Act*, 1893 (56 & 57 Vict. c. lxxiii.), s. 1 (a)—*Jurisdiction—Injunction—Proceedings before justices*.

The plt. was the owner of No. 6 Court, Great Homer Street, Liverpool, containing on one side six houses with odd numbers and on the other side six houses with even numbers. In 1904 the grand jury presented by presentment "A" that No. 6 Court, and by presentment "B" that the six houses with odd numbers, were unfit for human habitation and ought to be demolished. Copies of the presentments were served on the plt. together with notices referring to s. 23 of the Liverpool Sanitary Amendment Act, 1864, which provided that the owner should within three months take down the premises, and that in default the corporation should take down and in either case should pay compensation. The plt. elected to retain the site of the court and of the odd-numbered houses, and compensation was paid to her in respect of the six houses, which were subsequently demolished. In Mar., 1909, notices were served on the plt. under ss. 32 to 34 (which make no provision for compensation) of the Housing of the Working Classes Act, 1890, in respect of the six houses with even numbers, and summonses for closing orders in respect of each house were issued. The plt. then commenced this action for (1.) a mandamus commanding the defts. to take down No. 6 Court pursuant to the provisions of the Act of 1864, and to have compensation assessed, on the ground that presentment "A" extended to the whole court and all the houses therein, and that the defts. had been guilty of statutory neglect in not taking down all the houses, and (2.) an injunction to restrain the defts. from proceeding with the applications for closing orders before the magistrates on the ground that the demolition was really part of a scheme for reconstruction or ventilation projected by the defts. which ought to be dealt with under the parts of the Act of 1890 entitling the plt. to compensation, and not under ss. 32 to 34:—

Held, that under the Act of 1864 the word "court" meant the passage or place on to which the houses opened, and did not extend to include also the houses themselves, and that the plt.'s claim to a mandamus failed.

Even if the plt.'s interpretation of the word "court" had been correct, s. 1 (a) of the Public Authorities Protection Act, 1893, would have been a complete answer to her claim, inasmuch as she had elected to accept the status quo in preference to enforcing her statutory rights.

Held, also, that there were no special circumstances to warrant interference with the proceedings before the magistrates, and that the claim for an injunction must be refused.

Grand Junction Waterworks Co. v. Hampton

LOCAL GOVERNMENT—continued.

Urban Council, [1898] 2 Ch. 331, followed.
MERRICK v. LIVERPOOL CORPORATION

Eve J. [1910] W. N. 202; [1910] 2 Ch. 449

— Building line—Approval of plans—"Written consent" of urban authority.

See **STREETS**, 2.

2a. — *Burgh county—Area within ancient royalty.*

The House reversed the decision of the First Division of the Ct. of Sess., (1901) 38 Sco. L. R. 457. **LOWER WARD OF COUNTY LANARK v. RUTHERGLEN MAGISTRATES** - **H. L. (Se.)**

[1902] W. N. 157

— Burial Board—Powers of.

See under **BURIAL**.

3. — *By-laws—Infringement—Erection of houses abutting on public highway—"New street," Laying out—Injunction—Public body—Statutory remedy—Justices, Proceedings before—Information, Proceedings by—Attorney-General, Absence of—Jurisdiction—Urban authority.*

The defts. were the owners of a triangular piece of land within the plts.' borough. Two sides of the triangle abutted upon public highways within the borough. The defts., in pursuance of a building scheme, commenced erecting houses on their land fronting the highways. The plts. alleged that the defts. were laying out the highways as "new streets" which did not comply with the requirements of the borough by-laws as to width, and they claimed, first, an injunction, and, secondly, a declaration that the plts. were entitled to remove or pull down any work begun or done by the defts. in contravention of the by-laws. The by-laws which were framed under the Public Health Act, 1875, prescribed a penalty for infringement, to be recovered by summary proceedings, and provided that the plts. might, subject to any statutory provision in that behalf, remove, alter, or pull down any work begun or done in contravention of the by-laws:—

Held, affirming **Joyce J.**, [1902] W. N. 73; [1902] 2 Ch. 182, (1.) that the facts were not sufficient to justify the inference that the defts. were laying out the highways as "new streets" within the meaning of the by-laws; and (2.) that the action was not maintainable in the absence of the Att.-Gen.

Att.-Gen. v. Ashborne Recreation Ground Co., [1903] 1 Ch. 101, approved. **DEVONPORT CORPORATION v. TOZER** **C. A.** [1903] W. N. 38; [1903] 1 Ch. 759

Note.

See *Att.-Gen. v. Ashborne Recreation Ground Co.*, [1903] 1 Ch. 101. *See* **Streets**, 13.

Referred to by **Farwell J.**, *Att.-Gen. v. Wimbledon House Estate Co.*, [1904] 2 Ch. 34. *See* **Streets**, 3.

Followed by **Warrington J.**, *Att.-Gen. v. Pontypridd Waterworks Co.*, [1908] 1 Ch. 388. *See* **Water**, 18.

4. — *By-laws—Reasonableness—Rural district—Discretion of justices—Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 157.*

A rural sanitary authority, invested with

LOCAL GOVERNMENT—continued.

urban powers, made a by-law under s. 157 of the Public Health Act, 1875, prohibiting the erection within their district of a new building not constructed of brick, stone, or other hard and incombustible material:—

Held, that the fact that the by-law did not reserve to the sanitary authority any power to exempt exceptional cases from its operation, as for instance where the building was remote from other dwellings and had all its rooms on the ground floor, did not make the by-law unreasonable and void; but that if, upon the hearing of an information for a breach of the by-law, the justices were of opinion that, having regard to the purposes for which the by-law was made, it was not necessary to enforce it under the special circumstances of the case, they might in the exercise of their discretion under s. 16 of the Summary Jurisdiction Act, 1879, notwithstanding that a breach of the by-law had in fact been committed, dismiss the information or impose only a nominal penalty. **SALT v. SCOTT HALL**

Div. Ct. [1903] 2 K. B. 245

5. — *By-law—Validity—Reasonableness—Prohibition of sale of papers devoted to racing tips—Local authority.*

A by-law made by a county council imposed a penalty on any person frequenting and using any street or public place "for the purpose of selling or distributing any paper or written or printed matter devoted wholly or mainly to giving information as to the probable result of races, steeplechases, or other competitions:—

Held (by Lord Alverstone C.J. and Kennedy J., Phillimore J. dissenting), that the by-law was unreasonable and could not be supported. **SCOTT v. PILLINER**

Div. Ct. [1904] 2 K. B. 855

— Carriage plying or driven for hire—Concealment of number-plate.

See **HACKNEY CARRIAGE**, 1.

— Cesspools, Cleansing of privies and.

See **Nos. 27, 28, below.**

6. — *Chairman—Urban district council—Retirement of members—Election of new members—Position of former chairman—Appointment of new chairman—Inherent right to appoint—Chairman absent—Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 199; Sched. I, rr. 3, 5—Local Government Act, 1894 (56 & 57 Vict. c. 73), ss. 23, 29.*

By s. 199 of the Public Health Act, 1875, every urban authority (not being the council of a borough) is to hold an annual meeting, and meetings of local boards are to be held and conducted in accordance with the rules as to meetings and proceedings contained in Sched. I. to the Act. By r. 3 of those rules every local board shall at their annual meeting appoint one of their number to be chairman for one year at all meetings at which he is present. By r. 5, if the chairman is absent from any meeting, the members present shall appoint one of their number to act as chairman thereat.

By s. 59 of the Local Government Act, 1894, it is enacted that s. 199 and Sched. I. of the Public Health Act, 1875, shall apply in the case of every urban district council (other than a

LOCAL GOVERNMENT—*continued.*

borough council) as if such district council were a local board. By s. 23, sub-s. 6, of the last-mentioned Act it is provided that a county council may in certain circumstances direct that the members of an urban district council shall retire together on April 15 in every third year, and that such order shall have full effect.

The members of an urban district council, in pursuance of an order so made by the county council, retired together on April 15, 1910. New members of the council were elected on April 4, 1910. Among the newly-elected councillors was one who had been on May 4, 1909, appointed chairman of the council composed of the retiring members. At the first meeting of the newly-elected members on April 19, 1910, this member claimed to act as chairman until a new chairman was appointed, on the ground that by r. 3 of the rules in Sched. I. to the Public Health Act, 1875, his appointment as chairman lasted for one year; and, acting as chairman, he gave a casting vote on the election of a new chairman to the council:—

Held, that the former chairman had no right as such to act as chairman at the meeting of the newly-appointed councillors on April 19, 1910; for that by the order of the county council the former members of the council, including their chairman, retired on April 15; and consequently that the new chairman was not validly appointed.

Held, also, that the proper course for the newly-elected councillors to adopt was to appoint one of their number to act as chairman for the first business of the meeting, including the appointment of a chairman for the year; and that this might be done either in pursuance of the inherent right of a corporation to appoint one of their number to act as chairman, or under and by virtue of r. 5 of the rules in Sched. I. to the Public Health Act, 1875, on the ground that the chairman of the council was absent within the meaning of that rule. *REX v. ROWLANDS.* *Ex parte BEESLEY* Div. Ct. [1910] 2 K. B. 930

— Chairman of justices — Borough justices — County justices — Mayor of borough. *See JUSTICES.* 3.

— Compensation.

See also under COMPENSATION.

7. — *Compensation — Transfer of powers of London School Board to London County Council — Direct pecuniary loss — Officer of authority whose powers not transferred — Education Act, 1902 (2 Edw. 7, c. 42), Sched. II., rr. 16, 21 — Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 120.*

Before the Education Act, 1902, came into operation in London the expenses of the London School Board were defrayed out of the consolidated rate, which was raised in the City of London by a precept directed to the Corporation of the City, and was collected for the Corporation by the applicant, who received a commission on the amount collected. When the Act came into operation the powers of the London School Board were transferred to the London County Council, and the education expenses were defrayed out of the poor-rate which was collected

LOCAL GOVERNMENT—*continued.*

by the overseers. The applicant, having thus lost a proportion of the commission he formerly earned, claimed compensation under r. 21 of Sched. II. of the Education Act, 1902, and s. 120 of the Local Government Act, 1888:—

Held, by Lord Alverstone C.J. and Ridley J. (Darling J. dissenting), that he was not entitled to compensation from the London County Council, since none of the powers or property of the Corporation of the City of London, whose officer he was, had been transferred to the County Council. *REX v. LONDON COUNTY COUNCIL.* *Ex parte NORRIS* Div. Ct. [1906] W. N. 17; [1906] 1 K. B. 346

— Corporation, Municipal.

See under CORPORATION.

8. — *Costs of unsuccessful prosecutions — Borough having separate commission of the peace — No separate Court of quarter sessions — Prosecutions before borough justices — Justices' Clerks Act, 1877 (40 & 41 Vict. c. 43), s. 6 — Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 140; Sched. V., Part II.*

A borough with a population exceeding 10,000 had a separate commission of the peace with a justices' clerk, but not a separate Court of quarter sessions. It had the right to provide and pay for its own police, but by agreement the borough was for police purposes consolidated with the county, and the county supplied the police for which the borough paid. The county rate was leviable in the borough:—

Held, that the costs of prosecutions undertaken by the police before the borough justices in cases in which such costs were not remitted or were not paid by the parties chargeable were chargeable to the borough fund and not to the funds of the county in which the borough was situate. *GEORGE v. THOMAS* Scrutton J. [1910] 2 K. B. 951

9. — *County council — Main road — Maintenance and repair — Embankments — Retaining and supporting walls — Mandatory order — Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 11.*

The liability imposed upon county councils by s. 11 of the Local Government Act, 1888, of maintaining and repairing main roads is general, it being left to them to determine the best means of discharging that liability. The Court will not prescribe what particular works or repairs are necessary for the maintenance of the roads.

No mandamus will lie against a local authority to do any particular works.

Whether any liability, as distinct from duty, is imposed upon county councils by the section, *quære.* *ATT.-GEN. v. STAFFORDSHIRE COUNTY COUNCIL* Joyce J. [1905] W. N. 5; [1905] 1 Ch. 336

10. — *Creation of county borough — Loss of borough's contribution to county expenses — Adjustment of financial relations — Compensation to county — Local Government Act, 1888 (51 & 52 Vict. c. 41), ss. 32, 62.*

When a new county borough is created by separation of the borough from the county the financial adjustment between the borough and the county must not include compensation from

LOCAL GOVERNMENT—continued.

either to the other for the loss of a contributing area.

Upon the true construction of the Local Government Act, 1888, the meaning of s. 32 is not that the entire financial position of the county and the county borough is to remain the same relatively to each other, but that it is to be so as regards the distribution of the Exchequer contributions; and that in adjusting the financial relations between the two bodies an equitable provision shall be made for imposing upon each its fair share of the burden, which was a joint burden and is no longer to be joint.

Decisions of Channell J., [1905] 2 K. B. 340, and of the C. A., [1906] 2 K. B. 186, reversed.

The reasoning of *Caterham Urban Council v. Godstone Rural Council*, [1904] A. C. 171, adopted and applied. **WEST HARTLEPOOL CORPORATION v. DURHAM COUNTY COUNCIL**
H. L. (E.) [1907] W. N. 137 ; [1907] A. C. 246

11. — *Creation of urban district—Subtraction of parish from rural district—Highway expenses—Loss of income—Matter requiring adjustment—Local Government Act, 1888 (51 & 52 Vict. c. 41), ss. 57, 62—Local Government Act, 1894 (56 & 57 Vict. c. 73), ss. 54, 68.*

By order of a county council under s. 57 of the Local Government Act, 1888, a parish which was part of a rural district was separated from that district and made an urban district, and the parish ceased to be rated for the highway expenses of the rural district:—

Held, that the loss of this contribution was not a matter which required to be adjusted between the rural district and the new urban district under s. 62 of the Local Government Act, 1888. That section does not give compensation for any such loss of profit. The word "income" in s. 62 means existing income, and does not include income which may afterwards be derived from making rates.

The decision of the C. A., *In the matter of Godstone Rural District Council and Caterham Urban District Council*, [1903] W. N. 48; [1903] 1 K. B. 554, reversed.

In re Rochdale Union and Haslingden Union, [1899] 1 Q. B. 540, and *Bucks County Council and Herts County Council*, [1899] 1 Q. B. 515, overruled on the above point. **CATERHAM URBAN DISTRICT COUNCIL v. GODSTONE RURAL DISTRICT COUNCIL**
H. L. (E.) [1904] W. N. 96 ; [1904] A. C. 171

Note.

Referred to by Warrington J., *Holsworthy Urban Council v. Holsworthy Rural Council*, [1907] 2 Ch. 62. *See next Case.*

Reasoning of, adopted and applied by H. L. (E.), *West Hartlepool Corporation v. Durham County Council*, [1907] A. C. 246. *See preceding Case.*

12. — *Creation of urban district—Subtraction of parish from rural district—Loss of rateable area—Compensation—Compromise of claims, including claim for loss of rateable area—Validity—Local Government Act, 1888 (51 & 52 Vict. c. 41), ss. 57, 62—Local Government Act, 1894*

LOCAL GOVERNMENT—continued.

(56 & 57 Vict. c. 73), ss. 54, 68—*Costs—Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61), s. 1.*

It is no ground for setting aside a compromise that the claim, or one of the claims, made by one of the parties was not well founded in law, provided that it was put forward bona fide.

On the formation in 1900 of an urban district out of a rural district an adjustment had to be made between the two councils under the Local Government Act, 1894, of the property, income, debts, liabilities, and expenses affected by the formation of the urban district. A number of claims were put forward by the two councils against each other, including one by the rural council in respect of loss of income owing to the transfer of rateable area from the district of the rural council to that of the urban council. After considerable negotiations the two councils entered into an agreement of compromise by which the urban council covenanted to pay to the rural council a sum of 1500*l.* by thirty annual instalments of 50*l.* each, in consideration of which the rural council released the urban council from certain specified claims, including the claim for compensation for loss of income owing to the transfer of rateable area, and all other claims (if any) which the rural council had or might have against the urban council in respect of any property, income, debts, liabilities, or expenses, and the urban council also released the rural council from all claims in a similar way. At the time when the agreement was made it was considered that loss of rateable area was a matter of adjustment, but in 1904 the House of Lords decided in *Caterham Urban Council v. Godstone Rural Council*, [1904] A. C. 171, that loss of rateable area was not a matter of adjustment. In 1906 the urban council brought an action for a declaration that the agreement was ultra vires the urban council and not binding on it:—

Held, that the agreement, having been entered into bona fide by both councils, was not rendered invalid by the fact that one of the claims included in the compromise subsequently proved to be unfounded in law.

Held, also, that the case was not one which fell within s. 1 of the Public Authorities Protection Act, 1893, and, therefore, that the rural council was not entitled to solicitor and client costs. **HOLSWORTHY URBAN DISTRICT COUNCIL v. HOLSWORTHY RURAL DISTRICT COUNCIL**
Warrington J. [1907] W. N. 103 ; [1907] 2 Ch. 62

13. — *District councils—Contracts—Water supply to adjoining district—Sanction of Local Government Board—Particular area—Penalty clause—Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 61, 174.*

Sect. 61 of the Public Health Act, 1875, merely empowers the Local Government Board to sanction the supply of water by the local authority of one district to the local authority of an adjoining district, and does not require them to consider the terms of the agreement between the local authorities.

An agreement for the sale of water by an urban authority to a rural authority does not

LOCAL GOVERNMENT—continued.

require a penalty clause under s. 174, sub-s. 2, as that sub-section is confined to cases where work, materials, matters, or things are to be furnished, had, or done to or for an urban authority for a price to be paid by that authority. **SOOTHILL UPPER URBAN DISTRICT COUNCIL v. WAKEFIELD RURAL DISTRICT COUNCIL**

Swinfen Eady J. [1904] W. N. 200 ; [1905] 1 Ch. 53

On Appeal :—

The C. A. held that under s. 61 the Local Government Board had power to give a limited sanction, namely, to sanction a supply of water by one local authority to a specified area of the district of an adjoining local authority. This was what had been done in the present case. The Local Government Board had only sanctioned the supply of water by the plts. to the parishes of East and West Ardsley, and an agreement for the supply of water to a larger area of the same district required the sanction of the Local Government Board. This sanction had never been given to the agreement of Jan. 31, 1895, and consequently that agreement was invalid, as indeed was provided by clause 9. The plts. were, therefore, thrown back upon the earlier agreements of July 17, 1882, and Sept. 29, 1885.

The defts. then took the objection that those agreements were invalid, because they did not contain a penalty clause in accordance with s. 174, sub-s. 2, of the Public Health Act, 1875.

The Court affirmed the decision of Swinfen Eady J. on this point.

Romer L.J. was of opinion that sub-s. 2 of s. 174 is directory only, not imperative, and that the omission of a penalty clause did not render the contract invalid.

Stirling J. agreed with Romer L.J.

Vaughan Williams L.J. differed, being of opinion that the provision of s. 174, sub-s. 2, was imperative.

The decision of the questions of the form of the judgment to which the plts. would be entitled and how the costs should be borne was postponed to the Michaelmas Sittings. **SOOTHILL UPPER URBAN DISTRICT COUNCIL v. WAKEFIELD RURAL DISTRICT COUNCIL AND URBAN DISTRICT COUNCIL OF ARDSLEY, EAST AND WEST**

C. A. [1905] W. N. 138 ; [1905] 2 Ch. 516

— Drains.

See under SEWERS.

— Dwelling-house unfit for human habitation—Closing order.

See under HOUSING OF WORKING CLASSES.

— Electric lighting.

See under ELECTRIC LIGHT.

14. — Guardians, Board of—Member—Collection of rent for the Board—Retention of commission—Subsequent payment to the Board—Termination of employment—Disqualification—Vacancy—Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 46, sub-s. 1 (e), 7.

A member of a board of guardians agreed with the board to collect on their behalf rent

LOCAL GOVERNMENT—continued.

receivable by the board in respect of a certain house. There was no express agreement as to any fee or commission to be paid to the member for so doing. He collected the rent until the house was sold, and then paid to the board the amount of the rent received by him, less a sum which he claimed to be entitled to retain as commission, but he subsequently paid to the board the sum which he had retained. After receiving it the board declared the member's office of guardian to be vacant, on the ground that, by reason of charging commission for the collection of the rent, he had become disqualified under s. 46, sub-s. 1 (e), of the Local Government Act, 1894, for being a member of the board :—

Held, that the fact that before the declaration of vacancy the employment had terminated, and the amount of commission had been paid by the member to the board, did not prevent him from being disqualified, and that the office was, therefore, vacant. **REX v. ROWLANDS**

Div. Ct. [1906] 2 K. B. 292

— Guardian of the poor—Disqualification for office—Bankruptcy.

See POOR LAW. 5.

— Highway.

See under HIGHWAY.

15. — Hospital—Agreement by local authorities for joint use of hospital—Management expenses apportioned—Notice by one local authority to determine agreement—Validity of notice—Judgment for arrears of management expenses—Excusable delay—Mandamus to levy retrospective rate—Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 210—Adjustment of liabilities—Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 62.

Under s. 210 of the Public Health Act, 1875, which corresponds with s. 89 of the Public Health Act, 1848, and enacts that a retrospective rate may be levied to pay charges and expenses incurred within six months of the making of the rate, a judgment, obtained in an action brought to enforce a liability incurred more than six months before the commencement of the action, itself operates as a charge within the meaning of the section, and a mandamus may go to levy a retrospective rate to satisfy such judgment where the delay in bringing the action was under the circumstances excusable.

Under the terms of a deed made in 1885 the predecessors in title of the plts. and of the defts., and the corporation of B., were entitled to the joint use of a hospital, and the expenses of maintaining the hospital were yearly apportioned between and paid by the several authorities. In 1898 another deed was made between the same authorities or their successors by which the provisions of the deed of 1885 as to the management of the hospital were varied, and it was provided that that agreement might be determined by a six months' notice in writing. Under the terms of a third deed made in 1905 between the plts. and the defts. and the corporation, and stated to be supplemental to the two previous deeds, the corporation withdrew and were released from all liability under the deeds of 1885 and 1898, and

LOCAL GOVERNMENT—continued.

the provisions for the management of the hospital were again varied. In April, 1906, the defts. gave notice under the deed of 1898 to determine the three deeds and ceased to use the hospital and to contribute to its maintenance. After long negotiations which terminated in Nov., 1909, the plts. in Dec., 1909, brought an action to recover from the defts. their proportion of the management expenses of the hospital for the three years prior to Mar. 31, 1909 :—

Held, that the notice was invalid and that the deeds of 1885 and 1905 were still subsisting, and constituted an agreement adjusting liabilities and expenses within the meaning of s. 62 of the Local Government Act, 1888, and that the defts. were not entitled to have the questions between themselves and the plts. referred to arbitration under sub-s. 2 of that section.

Held, also, that the delay in commencing the action was in the circumstances excusable, and that the plts. were entitled to judgment for the arrears and a mandamus ordering the defts. to levy a rate to satisfy the judgment and interest.

Principle of *Reg. v. Rotherham Local Board*, (1858) 8 E. & B. 906, and *Worthington v. Hulton*, (1865) L. R. 1 Q. B. 63, applied. **WOLSTANTON UNITED URBAN DISTRICT COUNCIL v. TUNSTALL URBAN DISTRICT COUNCIL**

Neville J. [1910] W. N. 144; [1910] 2 Ch. 347

On Appeal :—

After the appeal was opened the following order was agreed :—By consent discharge the judgment of Neville J., after the declaration that the deeds dated June 1, 1885, and Aug. 2, 1905, were valid and subsisting, and that the defts. had no power to determine them, and, subject thereto, refer the matters in difference in the action to an arbitrator for adjustment. **WOLSTANTON UNITED URBAN DISTRICT COUNCIL v. TUNSTALL URBAN DISTRICT COUNCIL**

C. A. [1910] W. N. 232

— Housing of the working classes.

See under **HOUSING OF THE WORKING CLASSES**.

— Inclosure Act—Award—Herbage on land—Right of action—Injury to limited section of public.

See **INCLOSURE**. 1.

16. — Information—Execution of work in contravention of by-law—Continuing offence—Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 158.

Where an information charged the appellant with executing certain work in contravention of the by-laws of a local authority, and it was proved that he was responsible for the continued existence of the work after receiving notice that it was in contravention of the by-laws :—

Held, that he might be convicted on this information by virtue of s. 158 of the Public Health Act, 1875, of a continuing offence as well as of the offence specifically charged. **AIREY v. SMITH** - - - **Div. Ct. [1907] W. N. 96; [1907] 2 K. B. 273**

17. — Inspection by local authority—Admission to private premises—Right of entry without permission of occupier—Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 102, 306.

LOCAL GOVERNMENT—continued.

Sect. 102 of the Public Health Act, 1875, provides that a local authority or any of their officers "shall be admitted into any premises for the purpose of examining as to the existence of any nuisance thereon," and if admission is refused application may be made to a magistrate for an order to admit.

By s. 306, any person who wilfully obstructs any member of a local authority in the execution of the Act is liable to a penalty.

Members of the appellant council, purporting to act under s. 102, entered a yard on the respondent's premises in his absence without having first requested or obtained his permission so to do, and, while there, were locked in by the respondent :—

Held, that s. 102 does not authorize an entry on private premises without the permission of the occupier being first requested; that the members of the appellant council while on the premises of the respondent were, therefore, not engaged in the execution of the Act; and that the respondent had not committed an offence under s. 306. **CONSETT URBAN DISTRICT COUNCIL v. CRAWFORD**

Div. Ct. [1903] 2 K. B. 183

18. — Justices — Justices' clerk — Power to appoint—Payment of salary—Fines and fees payable to county treasurer—Borough without separate commission of the peace—Justices' Clerks Act, 1877 (40 & 41 Vict. c. 43), s. 5—Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 154—159.

Courts of petty sessions cannot be held for a borough without a separate commission of the peace except as courts for the petty sessional division in which the borough is situate.

A separate clerk cannot be appointed by the justices usually acting in a borough in which petty sessions are so held, but the justices of the petty sessional division may appoint a separate clerk in respect of each place appointed for holding petty sessions in the division, under s. 5 of the Justices' Clerks Act, 1877.

The salary of every clerk so appointed is payable by the county council; and the unappropriated fines and fees must be paid to the county treasurer. **HUNTINGDON CORPORATION v. HUNTINGDON COUNTY COUNCIL**

Div. Ct. [1901] 2 K. B. 257

— Local Government Board—Approval of—Corporate lands—Sale.

See **CORPORATION**. 8.

— Local Government Board—Consent of—Purchase-money paid into Court—Payment out.

See **LANDS CLAUSES ACTS — Payment Out**. 30.

19. — Local inquiry — Person appointed by county council — Remuneration—"Expenses"—Liability of district council—Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 72, sub-s. 4.

Sect. 72, sub-s. 4, of the Local Government Act, 1894, provides that where a county council holds a local inquiry under that Act or under the

LOCAL GOVERNMENT—continued.

Local Government Act, 1888, on the application of any inhabitant of a district, the expenses incurred by the county council in relation to the inquiry (including the expenses of any committee or person authorized by the county council) shall be paid by the council of that district :—

Held, that a district council is not liable under that section to pay for the remuneration of a barrister appointed by a county council to hold a local inquiry under s. 57 of the Local Government Act, 1888. **MIDDLESEX COUNTY COUNCIL v. KINGSBURY URBAN COUNCIL**

C. A. [1909] W. N. 23 ; [1909] 1 K. B. 554

— Lodging-houses.

See under LONDON—Lodging-houses.

— London building.

See under LONDON—Buildings.

20. — *Meetings—Local Authorities* (Admission of the Press to Meetings) Act, 1908 (8 Edw. 7, c. 43), provides for the admission of representatives of the Press to the meetings of certain Local Authorities.

— Nuisances.

See under NUISANCE.

LONDON—Nuisances.

21. — *Offences—Diseased meat—“Depositing for the purpose of sale”*—Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 116, 117—Public Health Acts Amendment Act, 1890 (53 & 54 Vict. c. 59), s. 28, sub-s. 1.

A person who has deposited, on premises other than his own, for the purpose of sale, diseased meat belonging to him and intended for the food of man, does not thereby commit any of the offences in respect of dealing with diseased meat which are specified in s. 117 of the Public Health Act, 1875, as amended by s. 28, sub-s. 1, of the Public Health Acts Amendment Act, 1890. **FIRTH v. MCPHAIL**

Div. Ct. [1905] 2 K. B. 300

Note.

This case was referred to by C. A., *Hobbs v. Winchester Corporation*, [1910] 2 K. B. 471. See next Case.

22. — *Offences—Sale of unsound meat—Seizure—Prosecution—Acquittal—Compensation for damage from exercise of statutory powers—Costs of defending prosecution—Default of claimant—Mens rea*—Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 116, 117, 308.

Where meat intended for human consumption is exposed for sale and is condemned as unsound, the person in whose possession or on whose premises the meat is found is liable to conviction under s. 117 of the Public Health Act, 1875, whether he is or is not aware of the unsoundness of the meat.

Accordingly, where a summons was taken out by a local authority under s. 117 against a butcher for selling for human consumption meat condemned as unsound, but was dismissed, and the butcher claimed compensation under s. 301 against the local authority for damage sustained by him by reason of the exercise by the local authority of the powers of the Act, and, upon the matter being referred to arbitration, the umpire found that a small portion of the meat

LOCAL GOVERNMENT—continued.

was unsound, but that the butcher and his assistants were unaware of the fact, and could not have discovered it by any examination which they could reasonably have been expected to make :—

Held, that the butcher sold the unsound meat at his peril, and that this was a matter as to which he was himself in default within s. 308, and, consequently, that he was not entitled to compensation. Decision of Channell J., [1910] 2 K. B. 46, reversed. **HOBBS v. WINCHESTER CORPORATION.** - C. A. [1910] W. N. 162 ; [1910] 2 K. B. 471

23. — *Office—Councillor—Urban district councillor—Disqualification—Paid office under the council—Distress committee—Registrar and inquiry agent—Local Government Act, 1894* (56 & 57 Vict. c. 73), s. 46, sub-ss. 1, 8—*Unemployed Workmen Act, 1905* (5 Edw. 7, c. 18).

By s. 46 of the Local Government Act, 1894, a person is disqualified for being a member of a district council if he holds any paid office under the council.

A distress committee established for an urban district under the Unemployed Workmen Act, 1905, and the Urban Distress Committees (Unemployed Workmen) Order, 1905, is by virtue of that Act and Order constituted a committee of the council of the urban district for which it is established ; and the person who holds a paid office under such a committee holds a paid office under the district council within the meaning of s. 46 of the Local Government Act, 1894. **CRUMP v. LEWIS**

Div. Ct. [1908] W. N. 51 :

[1908] 1 K. B. 858

Note.

See *Att.-Gen. v. Ashborne Recreation Ground Co.*, [1902] W. N. 208 ; [1903] 1 Ch. 101. Streets. 13.

24. *Officer on abolition of office, Compensation to—Practice of Treasury—Discretion of council—Metropolitan borough—London Government Act, 1899* (62 & 63 Vict. c. 14), s. 30—*Local Government Act, 1894* (56 & 57 Vict. c. 73), s. 81—*Local Government Act, 1888* (51 & 52 Vict. c. 41), s. 120.

By s. 120 of the Local Government Act, 1888, which is incorporated by reference in the London Government Act, 1899, and which regulates the amount of compensation to be paid to an officer who suffers loss by the abolition of his office, it is provided that regard shall be had to the nature of his office, the duration of his service, &c., “and to all the other circumstances of the case, and the compensation shall not exceed the amount which under the Acts and Rules relating to Her Majesty’s Civil Service is paid to a person on abolition of office,” and the section goes on to give the person aggrieved an appeal to the Treasury.

The council of a metropolitan borough having resolved to abolish the office of vestry clerk to a local authority which had been transferred to them, considered that they were bound by an ascertained practice of the Treasury to make a deduction of one-fourth of the amount of compensation where the officer had not been required

LOCAL GOVERNMENT—continued.

to devote his whole time to the duties of his office :—

Held, that a mandamus would lie to compel them to take the facts of the case into consideration, and to exercise a discretion in the matter. **REX v. STEPNEY CORPORATION**

Div. Ct. [1902] 1 K. B. 317

25. — Overseers — Rural district council—Special expenses—Precept to overseers—Appeal against apportionment — Change of overseers pending appeal—Liability of overseers to whom precept directed—Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 229, 230.

A rural sanitary authority made an apportionment under s. 229 of the Public Health Act, 1875, of the special expenses of a drainage scheme among certain contributory places in their district, including the parish of B., and issued to the respondents, who at that time were the overseers of B., a precept for the amount of the contribution payable by that parish. The respondents appealed to the Local Government Board against the apportionment. While the appeal was still pending a summons was issued against the respondents for non-payment of the amount of the precept, and the justices adjourned the hearing until the appeal should be decided. The Local Government Board eventually confirmed the apportionment, but in the interval the respondents had gone out of office as overseers. On the summons coming on for hearing the justices refused to issue their distress warrant against the respondents for the amount of the precept :—

Held, that they had jurisdiction to do so. **PLYMPTON ST. MARY RURAL DISTRICT COUNCIL v. REYNOLDS**

Div. Ct. [1909] 1 K. B. 768

— Plans—High building—Deposit of plans.

See **LONDON—Buildings. 10.**

26. — Plans — Malicious refusal of local authority to approve plans—Action.

An action will not lie against a local authority for maliciously refusing to approve of building or drainage plans deposited with them. If the local authority in rejecting the plans has been actuated by improper motives, and has merely pretended to exercise its power without addressing its mind to the question before it, the remedy of the person aggrieved is by a mandamus to the local authority to hear and determine his application. **DAVIS v. BROMLEY CORPORATION**

C. A. [1908] 1 K. B. 170

— Poor law.

See under **POOR LAW.**

— Poor-rates.

See under **RATES.**

— Privies.

See also under **WATER CLOSETS.**

27. — Privies—Cleansing of privies and cess-pools—Power of local authority to undertake duty of—Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 42.

A local authority may, under s. 42 of the Public Health Act, 1875, undertake the cleansing of earth-closets, privies and ashpits in their district without at the same time undertaking

LOCAL GOVERNMENT—continued.

the cleansing of cesspools. **STAINLAND AND HOLYWELL GREEN INDUSTRIAL CORN AND PROVISION SOCIETY v. STAINLAND WITH OLD LINDLEY URBAN DISTRICT COUNCIL**

Div. Ct. [1906] 1 K. B. 233

28. — Privies—Undertaking by local authority to cleanse—Limited undertaking—Neglect of duty—Reasonable excuse—Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 42, 43.

By s. 42 of the Public Health Act, 1875, "Every local authority may . . . themselves undertake . . . the cleansing of . . . privies . . . either for the whole or any part of their district." And by s. 43 a local authority who, having so undertaken, fail "without reasonable excuse" to cleanse the privies of any house shall be liable to a penalty.

A local Act provided that all privies in a certain borough should be subject to the approval of the corporation. The corporation as the local authority of the borough undertook for the whole of their district the cleansing of all privies that had received their approval. The appellants, who occupied premises in the borough, laid an information against the corporation under s. 43 for neglecting to cleanse their privies. The privies in question had not been approved by the corporation :—

Held, (1.) that the words "any part of their district" in s. 42 referred to a particular area, and had no reference to a class of houses in the district, and that the limitation which the corporation attached to their undertaking was inoperative ; (2.) that the undertaking being treated as applying to all houses in the district, the non-approval of the privies by the corporation was not a "reasonable excuse" for their neglecting to cleanse them within the meaning of s. 43. **PEGG & JONES, LD. v. DERBY CORPORATION**

Div. Ct. [1909] W. N. 158 ; [1909] 2 K. B. 511

— Public health.

See under **PUBLIC HEALTH.**

— Rates.

See under **RATES.**

— Res judicata — Decision that street is a highway.

See **STREETS. 6.**

29. — Retainer of solicitors by resolutions not under seal—Subsequent affixing of seal after work partly done under retainer—Costs of local inquiry—Costs of parliamentary opposition to confirmation of Provisional Order—Urban district council—Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 174, 297, 298—Municipal Corporations (Borough Funds) Act, 1872 (35 & 36 Vict. c. 91), s. 8—Local Government Board's Provisional Orders Confirmation (No. 14) Act, 1900 (63 & 64 Vict. c. clxxviii.).

An urban district council, by resolutions not under seal, retained the plts., a firm of solicitors, to represent them at a local inquiry as to the proposed inclusion of their district in adjoining areas, and to oppose in Parliament a bill for the confirmation of a provisional order made by the Local Government Board for carrying the proposed scheme into effect. Subsequently, after

LOCAL GOVERNMENT—*continued.*

the work had been done by the plts. under the retainers, the seal of the council was affixed to the resolutions by which the plts. were retained as solicitors, and sealed copies of these resolutions were sent to the plts.; the retainer was not accepted in writing by the plts. The confirming Act having passed, the plts. delivered their bill of costs to the urban district council and afterwards, upon the dissolution of the council, to the defts., between whom the district had been divided :—

Held, that the confirmation under seal of the original retainers was binding on the district council without a new consideration, and that the requirements of s. 174 of the Public Health Act, 1875, and of the common law had been complied with; that the costs were costs properly incurred under ss. 297 and 298 of the Public Health Act, 1875, as being the reasonable costs of a local authority in respect of a provisional order made in pursuance of the Act and of the inquiry preliminary thereto; that they were not subject to the requirements of the Municipal Corporations (Borough Funds) Act, 1872, but came within the exception contained in s. 8 of that Act; and that therefore the urban district council were before their dissolution under a liability, subject to taxation and to the sanction of the Local Government Board, to pay the plts.' bill of costs;

Held, further, that upon the true construction of art. 18 of the Torquay Order, 1900, confirmed by the Local Government Board's Provisional Orders Confirmation (No. 14) Act, 1900, the liability of the urban district council had been transferred to the defts. **BROOKS, JENKINS & Co. v. TORQUAY CORPORATION AND NEWTON ABBOT RURAL DISTRICT COUNCIL**

Walton J. [1902] 1 K. B. 601

— River.

See under RIVER.

— Sanitary authority—Power to provide sanitary conveniences—Bona fide use of statutory powers.

See LONDON—Conveniences. 1.

— Sanitation—House let in lodgings or occupied by members of more than one family.

See ARTIZANS' DWELLINGS. 1.

— Schools.

See under SCHOOLS.

— Sewers.

See under LONDON—Sewers.
SEWERS.

— Sheep-Scab Order, 1898—Negligence of inspector—Liability of local authority.

See DISEASES OF ANIMALS. 1.

— Slaughterhouses.

See under SLAUGHTERHOUSES.

— Streets.

See under LONDON—Streets.
STREETS.

— Thames—Sanitary authority—Sewage flowing into river Thames.

See THAMES, RIVER. 2.

30. — Union—Parish—Transfer of land from one parish to another—Alteration of boundaries

LOCAL GOVERNMENT—*continued.*

of union—Local Government Act, 1888 (51 & 52 Vict. c. 41), ss. 57, 58.

Land forming part of parish D. in the poor law union of Bootle was, by order of the county council confirmed by the Loc. Gov. Bd., transferred to parish S. in the union of Whitehaven, and parish S. was transferred from the rural district of Whitehaven to the rural district of Bootle. The order did not purport to affect the boundaries of the unions :—

Held, that the whole of parish S., as enlarged by the order, was comprised within the union of Whitehaven. **BOOTLE GUARDIANS v. WHITEHAVEN GUARDIANS** **Byrne J. [1903] W. N. 100 : [1903] 2 Ch. 142**

31. — Urban district—County borough—Transfer of powers, &c.—Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 62.

Sect. 62 of the Local Government Act, 1894, which empowers the council of an urban district to transfer to themselves the powers, duties, property, debts, and liabilities of any authority in their district, constituted under any of the adoptive Acts, applies to a county borough. **KIRKDALE BURIAL BOARD v. LIVERPOOL CORPORATION** **Swinfen Eady J. [1904] W. N. 79 : [1904] 1 Ch. 829**

— Urinals.

See under LONDON—Urinals.

— Water.

See under WATER.

— Water-closets.

See under WATER-CLOSETS.

— Way, Right of.

See under WAY, RIGHT OF.

LOCAL GOVERNMENT BOARD—General Order of Oct. 18, 1898, arts. 26, 27.

See VACCINATION. 2.

— Approval of—Corporate lands—Power to sell.

See CORPORATION. 8.

— Consent—River—Pollution—Summary proceedings by sanitary authority.

See RIVER. 3.

LOCAL LOANS—*Public Works Loans Act, 1910.* *See under PUBLIC WORKS LOANS ACT, 1910.*

— Trustee—Investments—Nominal debentures issued under Local Loans Act, 1875.

See TRUSTEE—Investments. 11.

LOCAL SANITARY AUTHORITY — Natural stream — Pollution — Sewage works—Discharge of injunction on subsequent facts.

See STREAM. 2.

— Sewage works — Natural stream—Pollution — "Deterioration of the water"—Injunction.

See STREAM. 2.

LOCKE KING'S ACT—Rent-charge on leaseholds — Unpaid purchase-money — Intestacy.

See WILL—Chattels Real. 1.

— Will—Construction.

See under WILL—Exoneration.

LOCKS—Stanch—Royal Charter, Validity—
Implied objection to maintain and
repair.
See **WATER HIGHWAY**. 1.

LOCOMOTIVES.

Petroleum. Regns. dated March 18, 1903, made by Secy. of State under s. 5 of the Locomotives on Highways Act, 1896, as to the keeping and use of petroleum for the purposes of light locomotives. St. R. & O. 1903, No. 225.

— Highway—Extraordinary traffic—Excessive weight.
See under **HIGHWAY**.

— Motor cars.
See under **MOTOR CAR**.

LOCUS STANDI—Lunatic debtor—English lunacy—Committee—Curator bonis—Scottish jurisdiction—Bankruptcy proceedings.
See **LUNACY**. 4.

LODGER—Distress for rent—Lodger's goods—Distress.
See under **DISTRESS**.

— Hotel, Lodger at—Arriving drunk—Admission of after closing hours.
See **LICENSING ACTS**. 60.

LODGER FRANCHISE.
See under **PARLIAMENT**.

LODGING ALLOWANCE—Workmen's compensation—Railway guard—Earnings.
See **MASTER AND SERVANT—Compensation**. 120.

LODGING CAVEAT—Unauthorized person—Practice—Attachment—Solicitors Act—Ministerial act.
See **PROBATE—Practice**. 4.

LODGING-HOUSES—Inhabited house duty on—Amendment of 53 & 54 Vict. c. 8, s. 26. See *Finance Act, 1901* (1 Edw. 7, c. 7), s. 13.

— Cleansing—Duty on "landlord"—Validity of by-law.
See **LONDON—Lodging-houses**. 1.

1. — Common lodging-house—Charitable institution—No payment by inmates—Common Lodging Houses Act, 1851 (14 & 15 Vict. c. 28)—London County Council (General Powers) Act, 1902 (2 Edw. 7, c. clxxiii.), Part IX.

A house carried on as a charitable institution for the reception of destitute persons of the poorest class who are treated in a manner similar to that in which the frequenters of common lodging-houses are treated, with the exception that no payment of any kind is made by or on behalf of the persons admitted, is a common lodging-house within the Common Lodging Houses Act, 1851, and Part IX. of the London County Council (General Powers) Act, 1902.

Logsdon v. Booth, [1900] 1 Q. B. 401, and *Logsdon v. Trotter*, [1900] 1 Q. B. 617, followed.
GILBERT v. JONES Div. Ct. [1905] W. N. 136; [1905] 2 K. B. 691

Overruled by C. A., *Parker v. Talbot*, [1905] 2 Ch. 643.

See next Case.

LODGING-HOUSES—continued.

2. — Common lodging house—Registration—Licence—Charitable institution—Payment by inmates—Local Government—Common Lodging Houses Act, 1851 (14 & 15 Vict. c. 28), ss. 6, 8, 12, 14—Common Lodging Houses Act, 1853 (16 & 17 Vict. c. 41), ss. 3, 11—London County Council (General Powers) Act, 1902 (2 Edw. 7, c. clxxiii.), Part IX.—Common Lodging Houses Act, Ireland, 1860 (23 Vict. c. 26), ss. 2, 3.

The expression "common lodging-house" in the Common Lodging Houses Acts, 1851 and 1853, is explained by the Common Lodging Houses Act, Ireland, 1860, to mean a house where persons are lodged for hire; and that explanation is not affected by the circumstance that the last-mentioned Act has been repealed. Therefore a house carried on as a charitable institution for the reception of destitute persons of the poorest class, who are treated in a manner similar to that in which the frequenters of common lodging-houses are treated, is not a common lodging-house within the Common Lodging Houses Acts, 1851 and 1853, and Part IX. of the London County Council (General Powers) Act, 1902, if no payment of any kind is made by or on behalf of the persons admitted.

Gilbert v. Jones, [1905] 2 K. B. 691, overruled, *PARKER v. TALBOT* C. A. [1905] W. N. 149; [1905] 2 Ch. 643

— Lime-washing—Validity of by-law.
See **LONDON—Lodging-houses**. 2.

— London generally.
See under **LONDON—Lodging-houses**.

— Water-closet accommodation—Validity of by-law.
See **LONDON—Lodging-houses**. 3.

— Apartments or—Rateability of owner.
See **RATES** 21, 22.

LONDON.

Port of London Act, 1908 (8 Edw. 7, c. 68), provides for the improvement and better administration of the Port of London, and for purposes incidental thereto.

Metropolitan Ambulance Act, 1909 (9 Edw. 7, c. 17), is an Act to enable the London County Council to establish and maintain an Ambulance Service in London.

Port of London Act, 1908. The Port of London Stock Regs., Mar. 22, 1909. St. R. & O. 1909, No. 284.

Mayor's Court of London Rules, 1908, made in pursuance of the Mayor's Court of London Procedure Act, 1857 (20 & 21 Vict. c. 157), and the *Supreme Court of Judicature Act, 1884* (47 & 48 Vict. c. 61). These Rules came into operation on Jan. 1, 1909. Reprint from W. N. 1909 (Jan. 2), p. 3. See **CURRENT INDEX, 1909**, p. cxxiv.

Metropolitan Police Courts—Police Court Divisions—Order in Council dated Feb. 15, 1909, altering and re-defining the boundaries of Bow Street and Westminster Police Court Divisions. Reprint from W. N. 1909 (Mar. 27), p. 107. See CURRENT INDEX, 1909, p. cxxv.

LONDON—*continued.*

Ambulance, col. 1502.
Assessment Committee, col. 1502.
Auditor, col. 1502.
Betting, col. 1502.
Birds. See under **BIRDS**.
British Museum. See under **BRITISH MUSEUM**.
Buildings, col. 1502.
Burial. See under **BURIAL**.
Cabs. See under **LONDON—Carriages**.
Carriage Road, col. 1515.
Carriages, col. 1515.
City of London Court, col. 1516.
Commons, col. 1516.
Compensation, col. 1516.
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Drains. See under **LONDON—Sewers**.
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Hackney Carriages. See under **LONDON—Carriages**.
Insurance (Fire), col. 1519.
Land Tax. See under **LAND TAX**.
Land Transfer. See under **LAND TRANSFER**.
Light and Air, col. 1519.
Lighting, col. 1519.
Livery Company, col. 1519.
Local Government. See under **LOCAL GOVERNMENT**.
Lodging-houses, col. 1519.
Mayor's Court, col. 1520.
Nuisances. See under **NUISANCE**.
Offences, col. 1522.
Parishes, col. 1523.
Party-walls, col. 1524.
Paving, col. 1524.
Plans, col. 1524.
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Police Courts, col. 1524.
Poor Law, col. 1525.
Port of London, col. 1525.
Rates, col. 1525.
Removal of Offensive Matter, col. 1527.
Removal of Refuse, col. 1527.

LONDON—*continued.*

Sanitary Conveniences. See under **LONDON—Conveniences**.
Sanitary Works, col. 1528.
Sewers, col. 1529.
Shipping. See under **SHIPPING**.
Streets, col. 1531.
Tramways, col. 1539.
Urinals, col. 1540.
Walls. See under **LONDON—Buildings**.
Water, col. 1549.
Water-closets, col. 1543.

Ambulance.

Metropolitan Ambulance Act, 1909 (9 Edw. 7. c. 17), is an Act to enable the London County Council to establish and maintain an Ambulance Service in London.

Assessment Committees.

Order in Council confirming "The London (Assessment Committees) Scheme, 1902." **St. R. & O. 1902, No. 210.**

Auditor.

— Powers and duties—Surcharge—Certiorari to quash—Jurisdiction of Court.
 See **LOCAL GOVERNMENT. 1.**

Betting.

— Gaming—Street betting—Metropolitan Police Act, 1839.
 See under **BETTING**.

Birds.

See under **BIRDS**.

British Museum.

See under **BRITISH MUSEUM**.

Buildings.

NOTE—As to cases and cross-references to Cases relating to places outside the County of London.

See under **BUILDINGS**.

— "Building"—Burial ground—Screen to prevent acquisition of right to light.
 See **BURIAL. 5.**

1. — Building—"Reservoir authorized by special Act—Supervision of district surveyor—London Building Act, 1894 (57 & 58 Vict. c. cccxlii.), ss. 138, 145, 154.

By s. 138 of the London Building Act, 1894, "subject to the provisions of this Act and to the exemptions in this Act mentioned, every building or structure, and every work done to, in, or upon any building or structure . . . shall be subject to the supervision of the district surveyor appointed to the district in which the building or structure is situate." By s. 145 notice is to be given to the district surveyor by the builder or other person causing or directing the work to be executed, when a building or structure or work is about to be begun; and by s. 154 certain fees are payable by the builder, or in his default by the owner or occupier of the building or structure, to the district surveyor.

A water co. was empowered by a special Act to

LONDON (Buildings)—continued.

make and maintain in the lines and situation and according to the levels shewn on the deposited plans and sections the reservoirs, lines of pipes, and other works thereafter described, with all proper wells, filtering beds, and other appliances for collecting, filtering, storing and distributing water. The co. constructed, under the powers of the Act, two covered storage reservoirs in the metropolitan district of the cubical extent of 2,900,000 cubic feet, and 2,769,000 cubic feet respectively. The reservoirs had a flooring of concrete, with walls of brickwork backed by concrete and earth, and were covered in by a series of brick arches supported by brick piers twenty feet high. The brick arches were covered with a layer of concrete with earth on top. The reservoirs in some portions projected above the surface of the ground:—

Held, that the reservoirs were "buildings or structures" within the meaning of the above sections of the London Building Act, 1894; that the application of those sections was not inconsistent with the provisions of the special Act; and that therefore it was the duty of the district surveyor to supervise the construction of the reservoirs, and that he was entitled to his fees for such supervision. **MORAN & SON, LD. v. MARS-LAND** - - - Div. Ct. [1909] 1 K. B. 744

2. — "*Building or structure*"—*Erection of beyond general line of buildings—Advertisement sign attached to front wall of building—London Building Act, 1894 (57 & 58 Vict. c. ccxviii.), s. 22, sub-s. 1; s. 200, sub-s. 3.*

By s. 22, sub-s. 1, of the London Building Act, 1894, "No building or structure shall without the consent in writing of the council be erected beyond the general line of buildings in any street . . ."

The respondents, without the consent of the appellants, erected upon the front walls of their house, twelve cases used as electrical advertisement signs; they were constructed of sheet-iron and supported by iron supports pinned through the wall, and stood out ten inches in front of the wall and of the general line of buildings; the whole of the cases, except the iron supports, could be removed in a day without injury to the building:—

Held, by Lord Alverstone C.J. and Kennedy J. (Wills J. dissenting), that the cases were not structures within the meaning of the section.

HULL v. London County Council, [1901] 1 K. B. 580, discussed and disapproved. **LONDON COUNTY COUNCIL v. ILLUMINATED ADVERTISEMENTS CO.** - - - Div. Ct. [1904] 2 K. B. 886

Note.

Referred to by Div. Ct., **London County Council v. Schewchik**, [1905] 2 K. B. 695, 698, 701. See No. 25, below.

Followed by Div. Ct., **London County Council v. Hancock and James**, [1907] 2 K. B. 45. See No. 24, below.

— Dangerous structure notice—Rebuilding—Liability of lessee.

See **LANDLORD AND TENANT**. 80.

3. — *Drainage of houses on low-lying land—London Building Act, 1894 (57 & 58 Vict. c. ccxviii.), s. 122.*

D.D.

LONDON (Buildings)—continued.

Land is "so situate as . . . to admit of being drained by gravitation into an existing sewer" within the meaning of s. 122 of the London Building Act, 1894, if it is situate at such a level that the drainage from it will find its way by gravitation into the sewer under the ordinary conditions of the sewer, although during a substantial number of days in the year that drainage is in fact prevented from passing into the sewer by reason of the sewer becoming surcharged with rain-water and of the pressure of that water inside the sewer closing a flap or valve at the inlet of the sewer. **ELLIS v. LONDON COUNTY COUNCIL** Div. Ct. [1904] 1 K. B. 283

4. — *Drains, Persons altering—By-laws—Liability of agents carrying out works.*

By-laws of the London County Council provided that "Any person who shall construct or reconstruct any pipe communicating with sewers" in connection with a building "shall cause every pipe in such building for carrying off waste water to a sewer to discharge in the open air over a properly trapped gully," and that "Every person who shall make any addition to or alter any pipes communicating with a sewer" shall cause a deposit to be made with the sanitary authority of the plans and particulars of the proposed addition or alteration.

A plumber was employed by the owner of a house to execute certain work in the house involving the alteration and reconstruction of certain pipes communicating with the sewer. In carrying out the work the plumber caused a waste pipe from a sink to discharge otherwise than in the open air over a properly trapped gully. Whether he did so by the orders of the owner did not appear. He also neglected to deposit plans of the proposed alteration:—

Held, that the mere fact that he did the work did not constitute him a person reconstructing or altering the pipes within the meaning of the by-laws so as to render him liable to penalties for their breach. **KERSHAW v. BROOKS** Div. Ct. [1909] 2 K. B. 265

5. — *Fees of district surveyor—Liability of builder, owner, or occupier—Period of limitation—Local Government—London Building Act, 1894 (57 & 58 Vict. c. ccxviii.), ss. 154, 157—Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43), s. 11.*

By s. 157 of the London Building Act, 1894, it is enacted that at the expiration of fourteen days after the roof of any building surveyed by a district surveyor has been covered in he shall be entitled to receive the fees due to him from the builder or from the owner or occupier of the building, and if any such builder, owner or occupier refuse to pay the fees, they may be recovered in a summary manner on its being shewn to the satisfaction of the Court that a proper bill specifying the amount of the fees was delivered to him:—

Held, that the period of limitation fixed in such a case for taking proceedings by s. 11 of the Summary Jurisdiction Act, 1848, does not begin to run until the bill has been delivered to the party from whom the fees are sought to be

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recovered in a summary manner. *CORBETT v. BADGER* Div. Ct. [1901] 2 K. B. 278

6. — *General building line—Certificate of superintending architect—Railway company—Interference with exercise of statutory powers of—Appeal to tribunal of appeal—Jurisdiction—London Building Act, 1894 (57 & 58 Vict. c. ccciii.), s. 81.*

The tribunal of appeal under the London Building Act, 1894, has no jurisdiction to entertain an appeal by a ry. co. against a certificate of the superintending architect defining the general line of buildings in a street if the only ground of the appeal is that the certificate would affect the exercise of powers conferred on the ry. co. by their special Acts. *SOUTH EASTERN AND CHATHAM RY. CO.'S MANAGING COMMITTEE v. LONDON COUNTY COUNCIL* - - Div. Ct. [1907] W. N. 81; [1901] 2 K. B. 91

7. — *General line of buildings in street—Buildings erected beyond the general line—Alteration of general line of buildings—Metropolis Management Amendment Act, 1862 (25 & 26 Vict. c. 102), s. 75 (repealed)—London Building Act, 1894 (57 & 58 Vict. c. ccciii.), ss. 22, 27, 216.*

The House affirmed the decision of the C. A., [1909] 2 K. B. 317, holding that a limited consent given by the Metropolitan Board of Works, the predecessors of the London County Council, in proper cases, to an alteration in the line of buildings did not operate as a general consent in all cases. *FLEMING v. LONDON COUNTY COUNCIL. METROPOLITAN RY. CO. v. LONDON COUNTY COUNCIL (CONSOLIDATED APPEALS)*

H. L. (E.) [1910] W. N. 223

8. — *Government—Transfer of powers to borough councils—District surveyors—Fees—Wooden structures—London Building Act, 1894 (57 & 58 Vict. c. ccciii.), s. 84—London Government Act, 1899 (62 & 63 Vict. c. 14), s. 5; Sched. II., Part I.*

The transfer by the London Government Act, 1899, of the powers and duties of the London County Council as to licensing the erection of wooden structures under s. 84 of the London Building Act, 1894, to the borough councils established by the Act of 1899 does not operate as a transfer of the powers and duties of the district surveyors with respect to the supervision or inspection of those structures. Under the licence granted by a borough council a district surveyor has no powers, duties, or liabilities imposed upon him, unless he is named in the licence as the person to exercise supervision or inspection.

Wooden structures falling within s. 84 of the London Building Act, 1894, are works of which a district surveyor is entitled to notice under s. 145 of that Act, and as to which he may have duties of supervision and inspection independently of the terms of the licence of the borough council:—

The right to receive the fees for supervision and inspection specified in the London Building Act, 1894, has not been transferred to the borough councils, nor has it wholly lapsed; a right to

LONDON (Buildings)—continued.

receive proper fees for duties necessarily performed remains in the district surveyor. *WESTMINSTER CORPORATION v. WATSON* - - Div. Ct. [1902] 2 K. B. 717

9. — *"Height"—"Front or nearest external wall"—Building not of uniform height—Width of street—Method of measurement—London Building Act, 1894 (57 & 58 Vict. c. ccciii.), s. 5, sub-ss. 15, 21; s. 49.*

In determining whether a building which is not of uniform height contravenes the provisions contained in s. 49 of the London Building Act, 1894, regulating the height of the buildings, it is a question of fact in each case whether the building under consideration should be treated as a whole, or whether it may be regarded as several distinct buildings, the height of which may be measured according to different standards.

The question what constitutes "the front or nearest external wall" of a building within the section is also a question of fact to be dealt with in each case.

Where a portion of a building is set back from the general line of frontage it does not necessarily follow that that portion must be treated as a separate building entitled to have its height measured according to a different standard from that applied to the building regarded as a whole.

It is not possible, without contravening the provisions of s. 49, to erect a building in steps or terraces with a series of front walls running up one behind the other to a height exceeding that which is permissible for the front wall of that portion of the building which abuts upon the street.

Decision of Kekewich J., [1907] 2 Ch. 23, reversed. *ATT.-GEN. v. METCALF & GREIG*

C. A. [1908] 1 Ch. 327

10. — *High building—Deposit of plans—"Before or at the same time" as the building notice—Provision directory only—Local government—London Building Act, 1894 (57 & 58 Vict. c. ccciii.), s. 145—London Building Acts (Amendment) Act, 1905 (5 Edw. 7, c. ccciv.), ss. 7, 22.*

The provision in s. 7 of the London Building Acts (Amendment) Act, 1905 (which deals with means of escape in case of fire in certain new buildings), requiring the deposit of plans "before or at the same time" as the building notice, is directory only, and not a condition precedent either to the jurisdiction of the county council to approve or reject the plans or to the right of the building owner to appeal under s. 22 of the Act to the tribunal of appeal from the rejection of the plans.

So where a building owner, having given a building notice in the case of a high building, subsequently deposited plans shewing the means of escape in case of fire, which were rejected by the county council:—

Held, that he was not precluded from appealing to the tribunal of appeal from the rejection by reason of his failure to deposit the plans before or at the same time as the building notice. *LONDON COUNTY COUNCIL v. SPINK & SON, LD.* - - [1908] 2 K. B. 447

11. — *Hospital—"Public purpose"—Home for defective children—Public building—London*

LONDON (Buildings)—continued.

Building Act, 1894 (57 & 58 Vict. c. ccciii.), s. 5, sub-s. 27.

A house provided by the managers of the Metropolitan Asylums District as a permanent home (but not as a school) for children, who by reason of defect of intellect or physical infirmity cannot be properly trained in association with children in ordinary schools, is not a "public building" within the meaning of the London Building Act, 1894. *MOSES v. MARSLAND.*

Div. Ct. [1901] 1 K. B. 668

— Leasehold house — Title — Open contract — Dangerous structure.

See VENDOR AND PURCHASER — Title.
78.

— Malicious refusal of local authority to approve plans—Action.

See LOCAL GOVERNMENT. 26.

12. — Notice — Building notice — School — Local education authority—Obligation to serve notice—London Building Act, 1894 (57 & 58 Vict. c. ccciii.), ss. 145, 201.

The appellants as the local education authority for London commenced to erect a building to be used as a public elementary school.

By the code of building regulations for public elementary schools issued by the Board of Education in pursuance of the Education Acts, 1870 to 1902, such buildings are required to comply with the provisions therein stated as to the height and dimensions of the rooms, corridors, and staircases, the construction of the walls, floors, roofs, and staircases, the lighting, ventilating, and warming of the buildings, and the sanitary arrangements in connection with them.

By s. 201, sub-s. 5, of the London Building Act, 1894, "public buildings occupied for public purposes by the County Council of London" are exempt from the operation of the portion of that Act relating to the construction of buildings.

The appellants did not before commencing to build serve a building notice upon the district surveyor in accordance with s. 145 of the said Act:—

Held, that the appellants were not exempt from the obligation to serve a building notice either by the fact that the building was a public elementary school and as such subject to the jurisdiction of the Board of Education, or that it was a "public building occupied" by the appellants "for public purposes," or that the district surveyor was an officer appointed and dismissible by the appellants. *LONDON COUNTY COUNCIL v. DISTRICT SURVEYORS' ASSOCIATION AND WILLIS* **Div. Ct. [1909] 2 K. B. 138**

13. — Notice of buildings before commencing the same—Building ancillary to work authorized by private Act—Inconsistent enactments—Local government—Metropolis Management Act, 1855 (18 & 19 Vict. c. 120), s. 76.

By s. 76 of the Metropolis Management Act, 1855, it is required that before beginning to lay or dig out the foundations of any new building seven days' notice in writing should be given to the local authority by the person intending to build. In 1894 a dock co. obtained statutory authority to make certain alterations in their

LONDON (Buildings)—continued.

dock premises, and it became necessary as ancillary to those alterations to demolish a certain workshop and erect another in its place. No notice of the intention of the dock co. to erect the new workshop was given to the local authority:—

Held, that the interference and control involved in s. 76 of the Metropolis Management Act, 1855, was inconsistent with the powers conferred upon the dock co. under their statutory authority, and that there was therefore no need for them to give notice to the local authority of their intention to erect the new workshop. *SURREY COMMERCIAL DOCK CO. v. BERMONDSEY CORPORATION* **Div. Ct. [1904] 1 K. B. 474**

— Open space—Owner's right to light—"Building"—Non-joinder of Attorney-General.
See BURIAL. 5.

14. — Part of building used for purposes of trade, part for dwelling-house—London Building Act, 1894 (57 & 58 Vict. c. ccciii.), s. 74, sub-s. 2.

In a special case stated by a metropolitan police magistrate upon an objection raised by a district surveyor that s. 74, sub-s. 2, of the London Building Act, 1894, applied to a building about to be erected as a beerhouse, the magistrate found as a fact that the basement and ground-floor of the building were intended to be used for the purpose of the trade of a beerhouse and that the part above the ground-floor was intended to be used as a dwelling-house for the licensed occupier; but he held that the case was governed by the decision in *Carritt v. Gudson*, [1899] 2 Q. B. 193, and overruled the objection of the district surveyor. The decision of the magistrate was affirmed by a Div. Ct. On appeal:—

Held, that the question whether the building was within s. 74, sub-s. 2, of the Act was concluded by the finding of fact in the case at bar, which was binding on the Court.

Judgment of the Div. Ct., [1901] W. N. 94; [1901] 2 K. B. 122, reversed. *DICKSEE v. HOSKINS* **C. A. [1901] 2 K. B. 660**

15. — Party-wall—Building notice—Difference between building owner and adjoining owner—Arbitration—Jurisdiction of arbitrators—London Building Act, 1894 (57 & 58 Vict. c. ccciii.), ss. 88, 89, 90, 91, 95.

The plts. and defts. were the freeholders of adjoining houses in London. In 1902 the tenant of the plt.'s house, being about to rebuild it in pursuance of a building agreement in a manner which involved the rebuilding of the party-wall between the houses, gave notice to the defts. of his intention to do the work under s. 90 of the London Building Act, 1894; and the defts., as adjoining owners, served upon him a notice under s. 89 setting out the requisitions with which they required him to comply. A difference having arisen between the parties in respect of the execution of the works within the meaning of the Act, it was referred under s. 91 to the arbitration of certain surveyors, who by their award, after deciding as to the dimensions and mode of erection of the party-wall, further

LONDON (Buildings)—continued.

awarded (inter alia) that the adjoining owners (the defendants) should have the right at any time to raise the wall as they might desire. The building operations were then carried out by the plts.' tenant. In 1904 the defts. proceeded to raise the height of the party-wall and to build upon it without giving a building owner's notice to the plts. (who had in the meantime acquired the interest of their tenant), contending that they were entitled to do so under the terms of the award:—

Held, that the defts., when they became desirous of building upon the party-wall, became "building owners" within the meaning of the Act, and were under an obligation to serve a building owner's notice under s. 90 upon the plts. before commencing the work; (2.) that the jurisdiction of the arbitrators was limited by s. 91 to differences arising with reference to the work to which the original notice given to the defts. under s. 90 related, that the arbitrators had acted beyond their jurisdiction in awarding that the defts. might in the future raise the wall as they desired, and that their award was pro tanto invalid. **LEADBETTER v. MARYLEBONE CORPORATION** C. A. [1904] 2 K. B. 893

See next Case.

16. — Party-wall Building owner's notice—Six months' limitation Difference between building owner and adjoining owner—Reference to surveyors—Work not begun within six months—London Building Act, 1894 (57 & 58 Vict. c. ccxiii.), s. 90, sub-ss. 4, 7; s. 91.

The provision of the London Building Act, 1894, s. 90, sub-s. 4, which enacts that a party-wall or structure notice shall not be available for the exercise of any right, unless the work to which the notice relates is begun within six months after the service thereof, does not apply to a case in which a difference having arisen between the building owner and the adjoining owner with regard to the work to be done under the notice, there is a reference to surveyors under s. 91 of the Act, and their award is not made within six months after the service of the party-wall notice. **LEADBETTER v. ST. MARYLEBONE CORPORATION**

C. A. [1905] W. N. 54; [1905] 1 K. B. 661
See preceding Case.

17. — Party-wall—Expense of raising—Building notice—Difference between adjoining owners—Arbitration—Jurisdiction of arbitrators—London Building Act, 1894 (57 & 58 Vict. c. ccxiii.), ss. 89, 90, 91, 95.

The owners of a house in London made an addition to it which involved the raising of the party wall between it and the adjoining house. They afterwards let the house to the appellant for twenty-one years. Some time after the respondent, who was the owner of the adjoining house, pulled it down and rebuilt it, thereby using the party-wall to a greater extent than before the alteration. The respondent having given notice to the appellant of his intention to do the work under s. 90 of the London Building Act, 1894, and the appellant not having consented thereto, a difference thereupon arose

LONDON (Buildings)—continued.

between the respondent, as building owner, and the appellant, as adjoining owner, within the meaning of s. 90 of the Act. Arbitrators having been appointed to settle that difference under s. 91 of the Act, they by their award (inter alia) directed payment by the respondent to the appellant of a sum of money in respect of the extended use by the respondent of the party-wall:—

Held, that the appellant was not, as tenant of the first-mentioned house, entitled to any such payment, and that the arbitrators, in awarding such a payment, had acted beyond their jurisdiction, and consequently pro tanto their award was invalid. *In re STONE AND HASTIE*

C. A. [1903] 2 K. B. 463

18. — Party-wall—Landlord and tenant—Derogation from grant—Light—Trespass—Party-wall—User of external wall as party-wall—Architect—Scope of authority—London Building Act, 1894 (57 & 58 Vict. c. ccxiii.), s. 5, sub-ss. 15, 16; s. 59, sub-s. 1.

The plts. were lessees from the defts. of a plot of land which at the date of the lease was partially covered with buildings and was occupied by the defts. together with the adjoining property as business premises, and the lease contained a covenant by the plts. to build on the demised land a warehouse according to approved plans which shewed that the back wall of the warehouse was to contain certain windows on the first floor overlooking the defts.' premises. The defts., in pursuance of a collateral agreement to clear the demised land of buildings, demolished one end of a cart shed which stood partly on the demised land and partly on the land reserved by the defts., but they left remaining certain stanchions and roof beams, which slightly projected over the plts.' boundary and which were eventually built into the back wall of the warehouse under a verbal agreement between the plts.' architect and the defts. The architect was employed to superintend the building of the warehouse in accordance with the approved plans, and the agreement was made without the express authority or knowledge of the plts. The wall was built entirely on the demised land. Subsequently the plts. were called upon by the local authority to block up the windows in the back wall on the ground that the building in of the stanchions and roof beams had converted it into a party-wall within the meaning of the London Building Act, 1894. In an action for an injunction to restrain the defts. from using this wall as a party-wall:—

Held, that during the continuance of the lease the plts. were entitled by implied grant as against the defts. to an unqualified right to the access of light coming through the windows in question; that the agreement was beyond the scope of the architect's authority; and that the user of the wall by the defts. as a party-wall constituted a derogation from their grant and a trespass; and the defts. were ordered to disconnect their buildings from the wall. **FREDERICK BETTS, LD. v. PICKFORDS, LD.**

Kekewich J. [1906] W. N. 51; [1906] 2 Ch. 87

LONDON (Buildings)—continued.

— Party-wall—Open contract—House in London
— Adjoining house—Party-wall notice
and award—Non-disclosure.

See **VENDOR AND PURCHASER—Rescission.** 4.

19. — Party-wall — Railway company — Building acquired by agreement for station purposes outside limits of deviation—Demolition — Adjoining owner — Interference with party structure — Party-wall notice — “ Building owners ” — Railways Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 20), ss. 16, 45—Charing Cross, Euston, and Hampstead Railway Act, 1893 (56 & 57 Vict. c. ccciv.), s. 31—London Building Act, 1894 (57 & 58 Vict. c. ccciii.), s. 5, sub-s. 31, and s. 201; Part. VIII.

By the Charing Cross, Euston, and Hampstead Railway Act, 1893 (56 & 57 Vict. c. ccciv.), which incorporated the Lands Clauses Acts, the Companies Clauses Acts, and the Railways Clauses Consolidation Act, 1845, the co. were authorized (s. 5) to make and maintain, in certain lines and according to certain levels, the railway and other works described in the Act, with all necessary and proper stations, works, and conveniences therewith. By s. 31 the co. were empowered to take by agreement for the extraordinary purposes mentioned in the Railways Clauses Consolidation Act, 1845 (which included station purposes), any quantity of land not exceeding five acres; and it was provided that “any buildings erected on any land acquired under this section (except such buildings or parts of buildings as may be used for the purposes of a station) shall be subject to the provisions of the Acts relating to buildings in the metropolis.” Under s. 31 of the Act the co. acquired by agreement for the purposes of one of their stations a building which was situate outside their limits of deviation and not within their compulsory powers, and proceeded to pull it down without serving on the adjoining owner the party-structure notice required by the London Building Act, 1894 :—

Held, that assuming that the party structure was affected by what the co. had done, the co. were not exempted by s. 31 of their Act from Part VIII. of the London Building Act, 1894, and were consequently bound to give to the owners of the adjoining premises the usual party-structure notice, and that in default of their so doing the remedy of the adjoining owners was by injunction and not compensation under the Lands Clauses Consolidation Act, 1845 :

But *held*, upon the facts, that the co. were not “building owners” within the meaning of s. 5, sub-s. 31, of the London Building Act, 1894, inasmuch as they had done nothing which in substance amounted to an interference with the party structure. **LEWIS & SOLOME v. CHARING CROSS, EUSTON, AND HAMPTSTEAD RY. CO.**

Warrington J. [1906] 1 Ch. 508

20. — Party-wall—Rebuilding party-wall — Sale of house by building owner—Subsequent use of party-wall by adjoining owner—Contribution to expenses of building—Who entitled to contribution—London Building Act, 1894 (57 & 58 Vict. c. ccciii.), s. 99.

LONDON (Buildings)—continued.

By the London Building Act, 1894, it is provided that where a building owner rebuilds a party-wall, if at any time the adjoining owner makes use of the party-wall for building purposes he shall bear a certain proportion of the expense of building the wall; and by s. 99 of that Act, “where the adjoining owner is liable to contribute to the expenses of building any party structure, then until such contribution is paid the building owner at whose expense the same was built shall stand possessed of the sole property in the structure” :—

Held, that the words “the building owner at whose expense the same was built” mean the building owner or his assigns as the case may be, and that where the building owner has after rebuilding the party-wall sold his house, the purchaser or sub-purchaser who is in possession of the house at the time when the adjoining owner makes use of the party-wall is the person who is entitled to receive the contribution. **MASON v. FULHAM CORPORATION**

Div. Ct. [1910] W. N. 38; [1910] 1 K. B. 631

21. — Party-wall — Settlement of difference between building and adjoining owners—Compensation for damage to trade—Jurisdiction of Surveyors—London Building Act, 1894 (57 & 58 Vict. c. ccciii.), s. 88, sub-s. 6, s. 91.

Where a difference has arisen between a building owner and an adjoining owner under s. 90 of the London Building Act, 1894, with respect to the raising of a party-wall under s. 88, sub-s. 6, of that Act, the surveyors appointed under s. 91 of the Act to settle that difference have no jurisdiction to entertain a claim for compensation by the adjoining owner against the building owner for damage caused to the trade of the former through the exercise by the latter of the rights given to him by the before-mentioned subsection.

Judgment of a Div. Ct., reported [1906] 2 K. B. 767, affirmed. **ADAMS v. MARYLEBONE BOROUGH COUNCIL**

C. A. [1907] W. N. 187; [1907] 2 K. B. 822

22. — Party-wall—Statutory notice by building owner—“Adjoining owner”—Various interests in adjoining premises—London Building Act, 1894 (57 & 58 Vict. c. ccciii.), s. 5, sub-s. 29, 32; ss. 90, 173.

The expression “adjoining owner” in s. 90 of the London Building Act, 1894, as defined by sub-ss. 29 and 32 of s. 5 of the Act, means every person holding an interest in the adjoining premises other than tenants from year to year or at will. A building owner, therefore, must serve his statutory notice under s. 90 upon every such person; except that, where a class of persons, such as joint tenants or tenants in common, are entitled to a particular interest in the adjoining premises, notice on one of the class will be sufficient.

List v. Tharp, [1897] 1 Ch. 260, discussed. **CROSBY v. ALHAMBRA CO., LD.**

Neville J. [1907] W. N. 8; [1907] 1 Ch. 295

— Plans — High building—Deposit of plans.

See No. 10, above.

LONDON (Buildings)—continued.

— Plans—Malicious refusal of local authority to approve—Action.

See LOCAL GOVERNMENT. 26.

23. — Projection beyond general line of buildings in street—Advertisement sign attached to building—Offences—Limitation of time for commencement of proceedings—London Building Act, 1894 (57 & 58 Vict. c. ccxiii.), s. 73, sub-s. 8—Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43), s. 11.

By s. 73, sub-s. 8, of the London Building Act, 1894, "No projection from any building," (except certain specified projections) "shall extend beyond the general line of buildings in any street" without the consent of the London County Council. By s. 11 of the Summary Jurisdiction Act, 1848, where no time is specially limited by Act of Parliament for making a complaint or laying an information, the complaint shall be made or the information laid within six months from the time when the matter of such complaint of information arose.

The appellant was convicted on an information charging him with the offence specified in s. 73, sub-s. 8, of the London Building Act, 1894, the projection complained of being a wooden case attached to the external wall of a building by iron brackets, and used as an advertising sign. It had been put up more than six months before the information was laid :—

Held, that the conviction was wrong because, first, the sign was not a projection within the meaning of s. 73, sub-s. 8, which applies only to projections forming part of the building from which they project, and, secondly, the prosecution was barred by s. 11 of the Summary Jurisdiction Act, 1848. **HULL v. LONDON COUNTY COUNCIL** Div. Ct. [1901] 1 K. B. 580

Note.

Disapproved of by Div. Ct., *London County Council v. Illuminated Advertisements Co.*, [1904] 2 K. B. 886. See No. 2, above.

Followed by Div. Ct. *London County Council v. Schewzik*, [1905] 2 K. B. 695. See No. 25, below.

— Streets.

See under STREETS.

24. — "Structure"—Erection beyond general line of buildings—Show-case of wood and glass—London Building Act, 1894 (57 & 58 Vict. c. ccxiii.), s. 22; s. 200, sub-s. 3 (a)—London Building Act, 1894 (Amendment) Act, 1898 (61 & 62 Vict. c. cxxxvii.), s. 7.

The respondents carried on business at premises the front main wall of which stood back about seven feet from the public way. The front door of the premises was in the front main wall, and was approached from the public foot-way by a flight of four stone steps and a stone landing at the top of the steps. The respondents, without the consent of the London County Council, erected upon the steps and landing a show-case of wood and glass, the length of which was 7 ft. 6 in., the width 1 ft. 10 in., and the height above the street level 9 ft. 3 in. The show-case stood upon the respondent's property, and took the place of a shop front which projected 6 ft. 3 in. beyond the general line of

LONDON (Buildings)—continued.

buildings. The houses in the street in which the respondent's premises were situated had bay windows in front of the general line of buildings, and the show-case was slightly in front of the bays :—

Held, that the show-case was not a "structure" within the meaning of s. 22 of the London Building Act, 1894, and that the respondents, by erecting it without the consent of the council, had not acted in contravention of that section. **LONDON COUNTY COUNCIL v. HANCOCK & JAMES** - Div. Ct. [1907] W. N. 88; [1907] 2 K. B. 45

25. — "Structure"—"Projection" beyond general line of buildings—London Building Act, 1894 (57 & 58 Vict. c. ccxiii.), s. 22, sub-s. 1; s. 73, sub-s. 8; s. 164.

An iron framework, filled in on the front and sides with leaded glass and covered on the top with zinc, about 10 feet 6 inches long, and about 5 feet 6 inches high from the bottom to the top of the gable, was fixed to the front wall of a building by means of bolts at the bottom and stay-rods at the top. It came forward about 5 feet 6 inches from the front wall of the building, and at its lowest point was 11 feet above the pavement :—

Held, that the framework was not "a structure erected beyond the general line of buildings" within s. 22, sub-s. 1, of the London Building Act, 1894, and was not a "projection" within s. 73, sub-s. 8.

Hull v. London County Council, [1901] 1 K. B. 580, followed. **LONDON COUNTY COUNCIL v. SCHEWZIK** - Div. Ct. [1905] 2 K. B. 695

26. — Theatres and music halls—Structural defects causing danger from fire—Notice to remedy—Compliance—Power to give subsequent notice—Metropolis Management and Building Act, 1878 (41 & 42 Vict. c. 32), s. 11.

Where a notice has been served upon the owner of a building, under s. 11 of the Metropolis Management and Building Act, 1878, requiring him to remedy structural defects from which special danger from fire may result, and the requirements of that notice have been complied with, there is no power subsequently to serve another notice under that section in respect of the same building. **St. JAMES'S HALL CO. v. LONDON COUNTY COUNCIL**

Channell J. [1901] 2 K. B. 250

27. — Wooden structure—Transfer of powers from county council—London Building Act, 1894 (57 & 58 Vict. c. ccxiii.), s. 84—London Government Act, 1899 (62 & 63 Vict. c. 14), s. 5; Sched. II., Part I.

A structure made wholly of wood, except so far as nails are used in its construction, and erected for the temporary purpose of enabling persons to view a public procession or spectacle, is a wooden structure within the meaning of s. 84 of the London Building Act, 1894, and the power to license the setting up of such a structure, and to take proceedings for default in obtaining or observing the conditions of a licence, is transferred by the London Government Act, 1899, from the London County Council to each of the borough councils established by that Act

LONDON (Buildings)—continued.

as respects their borough. **COUNCIL OF THE CITY OF WESTMINSTER v. LONDON COUNTY COUNCIL** - - Div. Ct. [1902] 1 K. B. 326

Burial.

See under **BURIAL**.

Cabs.

See under **LONDON—Carriages.**

Carriage Road.

1. — *Repairs—Carriage road not repairable by inhabitants at large—Repairs by local authority—Recovery of expenses—Jurisdiction of metropolitan police magistrate—"Court of competent jurisdiction"*—*Metropolis Management Amendment Act, 1890* (53 & 54 Vict. c. 66), s. 3.

A metropolitan police magistrate is a "court of competent jurisdiction" within the meaning of s. 3 of the *Metropolis Management Act, 1890*, and has jurisdiction to entertain proceedings for the recovery from the frontagers of the expenses of repairs done by a borough council under the provisions of that section to a carriage road which is not repairable by the inhabitants at large. **REX v. GARRETT**

C. A. [1907] W. N. 43; [1907] 1 K. B. 881

Carriages.

Metropolitan and City Police Districts, Hackney and Stage Carriages. Order, dated Dec. 26, 1905, made by the Secretary of State in pursuance of the Metropolitan Public Carriage Act, 1869 (32 & 33 Vict. c. 115). **St. R. & O., 1906, No. 97. Price 1d.**

London Cab and Stage Carriage Act, 1907 (7 Edw. 7, c. 55), amends the laws relating to stage carriages in London.

Metropolitan and City Police Districts, Hackney and Stage Carriages. Order, Mar. 15, 1907, made by the Secretary of State in pursuance of the Metropolitan Public Carriage Act, 1869. Price 1d. St. R. & O., 1907, No. 199.

Metropolitan and City Police City Districts, Hackney Carriages. Order, Dec. 20, 1907, exempting all stations of the Metropolitan Railway from the operation of s. 2 of the London Cab and Stage Carriage Act, 1907. Price 1d. St. R. & O., 1907, No. 1001.

Metropolitan and City Police Districts, Hackney and Stage Carriages Order, Dec. 30, 1907, in pursuance of the Metropolitan Public Carriage Act, 1869, and the London Cab and Stage Carriage Act, 1907. Price 1½d. St. R. & O., 1907, No. 1035.

Metropolitan and City Police Districts, Hackney and Stage Carriages. Additional Order, June 29, 1909, made in pursuance of the Metropolitan Public Carriage Act, 1869 (Licences). St. R. & O., 1909, No. 721. Price 1d.

1. — *Hackney carriage—Breach by driver of regulations for enforcing order at standings—Offence against statute—Incorporation of statute—Effect of repeal of section—London Hackney Carriages Act, 1843* (6 & 7 Vict. c. 86), s. 29—*London Hackney Carriages Act, 1850* (13 & 14

LONDON (Carriages)—continued.

Vict. c. 7), ss. 4, 8—London Hackney Carriage Act, 1853 (16 & 17 Vict. c. 33), s. 19—*Statute Law Revision Act, 1874* (No. 2) (37 & 38 Vict. c. 96), s. 1; *Schedule.*

Where a statute gives power to an authority to make regulations, a breach of the regulations so made is an offence against the provisions of the statute.

A breach of regulations made under s. 4 of the *Hackney Carriages Act, 1850*, for enforcing order at standings for hackney carriages, is subject to the penalty of 40s. provided by s. 19 of the *Hackney Carriage Act, 1853*, for offences against that Act; inasmuch as the effect of s. 21 of the Act of 1853, which provides that the Acts of 1850 and 1853 are to be construed as one Act, is that s. 4 of the Act of 1850 has the same operation as if it were in fact contained in the Act of 1853, and therefore an offence against regulations made under s. 4 of the Act of 1850 is an offence against the Act of 1853.

Quære whether the effect of s. 8 of the *Hackney Carriages Act, 1850*, which provides that that Act is to be construed as one Act with the *Hackney Carriages Act, 1843*, is to make the penalty provided by s. 29 of the Act of 1843 for disobedience by the driver of a hackney carriage of regulations made under that section applicable to a breach by him of regulations of a different kind made by virtue of s. 4 of the Act of 1850, which imposes no penalty for a breach thereof.

Semble, the *Statute Law Revision Act, 1874*, which partially repeals s. 29 of the *London Hackney Carriages Act, 1843*, does not, so far as the *London Hackney Carriages Act, 1850*, is concerned, affect the operation of s. 29 of the Act of 1843. **WILLINGALE v. NORRIS**

Div. Ct. [1909] 1 K. B. 57

City of London Court.

Style and title of the judges of the City of London Court. Reprint from **W. N. 1902** (March 8), p. 73. See **CURRENT INDEX, 1902**, p. lxxix.

Commons.

— Scheme for regulation under *Metropolitan Commons Acts—Limits of common—Binding effect of scheme.* See **COMMON. 4, 5.**

Compensation.

— Abolition of office—Emoluments—Period for calculation—Jurisdiction to fix amount. See **COMPENSATION. 1.**

Conveniences.

1. — *Sanitary authority—Power to provide sanitary conveniences—Bona fide use of statutory powers—Local government—Public Health (London) Act, 1891* (54 & 55 Vict. c. 76), s. 44

In providing sanitary conveniences under the *Public Health (London) Act, 1891*, s. 44, the sanitary authority must use their statutory powers bona fide and reasonably, and if they so act their discretion as to the mode of acting cannot be interfered with.

Where the conveniences are so provided

LONDON (Conveniences)—continued.

under a street with a subway it is no objection that the public can use the subway as a means of passing from one side of the street to the other.

The decision of the C. A., [1904] W. N. 67; [1904] 1 Ch. 759, reversed upon the facts, and the decision of Joyce J., [1901] W. N. 230; [1902] 1 Ch. 269, restored by the Earl of Halsbury L.C. and Lords Macnaghten and Lindley, Lord James dissenting. **WESTMINSTER CORPORATION v. LONDON AND NORTH WESTERN RY. CO.** - **H. L. (E.) [1905] W. N. 126; [1905] A. C. 426**

County Council.

— Costs of appeal to quarter sessions—Payment by treasurer of county or borough.
See JUSTICES. 4.

— Tramway business—Omnibus business—Ultra vires.
See CORPORATION. 17.

Dead Horses.

1. — *Carcases of dead horses—Receiving—Licence—Public Yard—“Yard building or other premises”—London County Council (General Powers) Act, 1903 (3 Edw. 7, c. cxxxvii.), ss. 53, 54.*

By s. 53 of the London County Council (General Powers) Act, 1903, it is not lawful for any person to use any yard, building, or other premises within the county for receiving . . . the carcases of dead horses unless he shall hold a licence from the council to use such yard, building, or other premises for that purpose. Any person contravening the provisions of this section is liable to a penalty:—

Held, that the words “yard building or other premises” mean yard, building, or other premises used by the accused as owner, occupier, or licensee, but do not include a public place to which he merely has access as one of the public and not otherwise. **BAILEY v. LOWMAN**
Div. Ct. [1910] 2 K. B. 39

Drains.

See under SEWERS.

Education.

See under SCHOOLS.

Electric Light.

See under ELECTRIC LIGHT.

Flats.

1. — *“Houses or buildings let out in separate tenements”—Rateable value—Deductions from gross value—Poor Rate—Valuation—Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67), Sched. III.*

By s. 52 of the Valuation (Metropolis) Act, 1869, it is enacted that, in calculating the rateable value of hereditaments for the purposes of the Act, the percentage or rate of deductions to be made from the gross value is not to exceed the amounts in the Third Schedule to the Act.

The Third Schedule, which shews the several

LONDON (Flats)—continued.

classes into which the hereditaments inserted in a valuation list in the metropolis are to be divided, contains in a footnote a provision to the effect that the maximum rate of deductions prescribed therein shall not apply to houses or buildings let out in separate tenements, but that the rate of deductions in such cases shall be determined in each case according to the circumstances and the general principles of law.

W. was the owner and occupier of a building in the metropolis consisting of two shops on the ground floor, a flat on the first floor extending over both the shops, and two similar flats on the second and third floors. Each shop consisted of one room with a yard and small offices in the rear, and a basement. Each flat consisted of a suite of rooms reached by a common staircase approached from the street by a passage at the side of one of the shops. Each flat had its own outer door opening on to the staircase. The passage way had a door opening on to the street. The two shops and three flats were five separate rateable hereditaments:—

Held, that the building was a “house or building let out in separate tenements” within the meaning of the footnote to the Third Schedule to the Act, notwithstanding that the shops and flats were separate rateable hereditaments; and that therefore, in arriving at the rateable values of the shops and flats, the assessment committee might allow deductions from the gross values at a rate greater than the maximum rate of deductions specified in the Third Schedule.

Decision of a Div. Ct., [1907] 2 K. B. 323, affirmed. **WESTERN v. KENSINGTON ASSESSMENT COMMITTEE** **C. A. [1908] 1 K. B. 811**

Floods (Prevention of Floods).

1. — *River Thames—Prevention of floods—Flood works—Alteration of bank—Repairs—Metropolis Management (Thames River Prevention of Floods) Amendment Act, 1879 (42 & 43 Vict. c. cccxiii.), s. 23.*

Sect. 23 of the Metropolis Management (Thames River Prevention of Floods) Amendment Act, 1879, provides that if any person make any alteration to any bank of the river Thames so as to affect the security of adjoining premises from flooding, without the previous sanction in writing of the London County Council, he shall be liable to a penalty.

The respondents in the course of and for the purpose of carrying out the duty imposed on them by the Act of repairing a portion of the bank removed certain timbers forming part of the bank in order to replace them by new timbers, and in so doing caused the height of the bank during nine days to be two feet lower than the height sanctioned under the Act. During the progress of the work, flood water flowed through the gap caused by the removal of the timbers, doing damage to adjoining premises. The respondents had not before commencing the work of repair obtained the sanction in writing of the London County Council:—

Held, that the respondents had not made an alteration to the bank within the meaning of s. 23, and were not liable to a penalty under that

LONDON (Floods (Prevention of Floods))—contd.
 section. LONDON COUNTY COUNCIL *v.* LONDON,
 BRIGHTON AND SOUTH COAST RY. CO.

Div. Ct. [1906] 2 K. B. 72

Gas.

See under GAS.

Hackney Carriages.

See under LONDON—Carriages.

Insurance (Fire).

— Fires Prevention (Metropolis) Act, 1774—
 Settled land—Rebuilding after fire—
 Title to and application of policy
 moneys. •

See INSURANCE (FIRE). 2.

Land Tax.

See under LAND TAX.

Land Transfer.

See under LAND TRANSFER.

Light and Air.

See under LIGHT AND AIR.

— “Open space”—Disused burial ground—
 Adjacent landowner—Right to access
 of light.

See BURIAL. 5.

Lighting.

— Electric lighting.

See under ELECTRIC LIGHT.

Livery Company.

— Livery company of City of London, Gift to—
 Devise for general purpose of company.

See CHARITY. 30.

Local Government.

See under LOCAL GOVERNMENT.

Lodging-houses.

1. — *Cleansing—Duty on “Landlord”—*
Validity of by-law—Public Health (London)
Act, 1891 (54 & 55 Vict. c. 76), s. 94, sub-s. 1 (e);
s. 116.

A by-law made by the council of a metropoli-
 tan borough under s. 94 of the Public Health
 (London) Act, 1891, required the landlord of a
 lodging-house to cause every part of the premises
 to be cleansed in the month of April, May, or
 June in every year. “Landlord” was defined
 as the person for the time being receiving the
 rack-rent of the lodging-house, whether on his
 own account or as agent or trustee for any other
 person, or who would so receive the same if such
 premises were let at a rack-rent; and “lodging-
 house” was defined as a house or part of a
 house let in lodgings or occupied by members of
 more than one family, where the rent payable
 per week was below a certain sum. A penalty
 was imposed for breach of the by-law, but pro-
 ceedings were not to be taken against the
 landlord until he had failed, after notice, to
 comply with the by-law:—

Held, that the by-law was unreasonable and

LONDON (Lodging-houses)—continued.

bad, inasmuch as it applied to the case of a
 landlord who had let the house and had no right
 of entry, and who would therefore commit an
 act of trespass if he complied with the require-
 ments of the by-law. *ARLIDGE v. ISLINGTON*
CORPORATION Div. Ct. [1909] 2 K. B. 127

— Common lodging-house—Registration—
 Licence—Charitable institution—Pay-
 ment by inmates.

See LODGING-HOUSES. 2.

2. — *Lime-washing—Validity of by-law—*
Public Health (London) Act, 1891 (54 & 55 Vict.
c. 76), s. 94, sub-s. 1 (d) (e).

In two metropolitan boroughs a by-law with
 respect to houses let in lodgings was made by
 the council of the borough under s. 94 of the
 Public Health (London) Act, 1891, requiring the
 landlord of a lodging-house (the definition of
 which included any house occupied by members
 of more than one family) to cause every part of
 the premises to be cleansed, and the ceilings and
 interior walls to be lime-washed, in the first week
 of April of every year. In one case “landlord”
 was defined as the person who received the rack-
 rent of the premises; and in the other case the
 definition included the person who received the
 profits arising from the letting of the house as a
 lodging-house:—

Held, that having regard to the wide defini-
 tion of lodging-house and landlord the by-law
 was, in both cases, unreasonable and bad, because
 it contained no provision that a landlord, before
 becoming liable to a penalty for the breach of the
 by-law, should receive notice that the require-
 ments of the by-law had not been complied
 with:—

Held, also, by Lord Alverstone C.J. and
 Kennedy J., Wills J. dissenting, that in so far as
 the by-law required the work to be done in the
 first week of April, the by-law was not unreason-
 able. *STILES v. GALINSKI. NOKES v. ISLINGTON*
CORPORATION (No. 2). — Div. Ct. [1904]
 1 K. B. 615

3. — *Water-closet accommodation—Validity*
of by-law—Public Health (London) Act, 1891
(54 & 55 Vict. c. 76), ss. 37, 39.

A by-law with respect to water-closet accom-
 modation made by the London County Council
 under the provisions of s. 39, sub-s. 1, of the
 Public Health (London) Act, 1891, required the
 landlord or owner of any lodging-house to pro-
 vide and maintain in connection therewith water-
 closet, earth-closet, or privy accommodation in
 the proportion of not less than one water-closet,
 earth-closet, or privy for every twelve persons,
 and a penalty was provided for any offence
 against the by-law:—

Held, that the by-law was unreasonable and
 bad, because it contained no provision for
 giving notice of the requirements of the sanitary
 authority to the person against whom it was
 contemplated that proceedings should be taken
 for breach of the by-law. *NOKES v. ISLINGTON*
CORPORATION (No. 1) — Div. Ct. [1904]
 1 K. B. 610

Mayor's Court.

Mayor's Court of London, Rules, 1903, made in
pursuance of the Mayor's Court of London Act,

LONDON (Mayor's Court)—continued.

1857 (20 & 21 Vict. c. clvii.), and the *Supreme Court of Judicature Act, 1884* (47 & 48 Vict. c. 61). Reprint from **W. N. 1903 (Aug. 15)**, p. 231. See **CURRENT INDEX, 1903**, p. lxxiii.

Mayor's Court of London Rules, 1908, made in pursuance of the Mayor's Court of London Procedure Act, 1857 (20 & 21 Vict. c. 157), and the *Supreme Court of Judicature Act, 1884* (47 & 48 Vict. c. 61). These rules came into operation on Jan. 1, 1909. Reprint from **W. N. 1909 (Jan. 2)**, p. 3. See **CURRENT INDEX, 1909**, p. cxxii.

— Alternative modes of proof, one shewing jurisdiction, the other not.
See **PROHIBITION. 1.**

1. — Practice—Appeal—Security for costs of appeal—Mayor's Court of London Procedure Act, 1857 (20 & 21 Vict. c. clvii.), s. 8.

The Court allowed the appeal, holding that the prohibition ought to issue. Where the plt. was appealing there was no power under s. 8 to order him to give security for anything but the costs of the appeal; it was otherwise in the case of a deft. The assistant judge might in the exercise of his discretion have increased the amount of security, but he had no jurisdiction to order the plt. to give security for the amount of the deft.'s costs of the action, and it was obvious, from the terms of the deft.'s application on which the order of Dec. 4 was made, that this was what he had in fact done. **GREEN v. ISAACS - Div. Ct. [1907] W. N. 10**

2. — Practice — Appeal, Notice of — Time within which notice must be served—Service on Sunday—Sunday Observance Act, 1677 (29 Car. 2, c. 7), s. 6—*Mayor's Court of London Procedure Act, 1857* (20 & 21 Vict. c. clvii.), s. 8.

By s. 8 of the Mayor's Court of London Procedure Act, 1857, notice of appeal from the determination or direction of the Court in point of law or upon the admission or rejection of any evidence shall be given "within two days after such determination or direction":—

Held, that if the period of two days expires on a Sunday the notice of appeal may be given on the following Monday. *Reg. v. Middlesex Justices*, (1848) 17 L. J. (M.C.) 111, followed. **MILCH v. FRANKAU & Co. Div. Ct. [1909] W. N. 95; [1909] 2 K. B. 100**

Note.

See also *Child v. Edwards*, Ridley J., [1909] 2 K. B. 753, at p. 756; *Landlord and Tenant. 30.*

3. — Practice—Costs, Taxation of—Solicitor and client—Amount recovered under 50l.—Certificate by judge for costs on higher scale—Rule 13 of the Mayor's Court Rules, 1890.

Where in an action in the Mayor's Court for 40l. the plt. succeeded, and the judge, under rule 13 of the Mayor's Court Rules, 1890, certified for costs on the Mayor's Court scale applicable to cases in which an amount of or exceeding 50l. has been recovered:—

Held, that, upon taxation of the bill delivered by the defts.' solicitors in respect of their costs in the action as between them and the defts.' under

LONDON (Mayor's Court)—continued.

the Solicitors Act, 1843, the Master was right in taxing upon the same scale. *In re JAMES BRIGGS & SON - C. A. [1903] W. N. 105; [1903] 2 K. B. 156*

Nuisances.

See under **NUISANCE.**

Offences.

1. — Unsound Food—Article "liable to be seized"—Article in possession of purchaser—Liability of vendor—Public Health (London) Act, 1891 (54 & 55 Vict. c. 76), s. 47, sub-s. 3.

The respondent, a wholesale dealer, sold to a retail pork butcher a quantity of pigs' plucks, one of which was unsound, unwholesome, and unfit for the food of man. The unsound pluck was seized in the purchaser's shop by the appellant, a sanitary inspector, who obtained an order for its destruction. In proceedings against the respondent under s. 47, sub-s. 3, of the Public Health (London) Act, 1891, for selling an article liable to be seized and condemned under the section, the magistrate found that the unsound pluck was not exposed for sale and would not have been sold or offered for sale by the retail shopkeeper until the sanitary inspector had passed it, and he accordingly, without calling upon the respondent, dismissed the summons, holding that no offence had been committed under sub-s. 3:—

Held, that the magistrate was wrong in stopping the case; that a prima facie case had been made out against the respondent calling for an answer; and that the case must go back to the magistrate to be proceeded with.

Per Lord Alverstone C.J.. Sub-s. 3 of s. 47 is intended to deal with the case of the vendor of an article intended for the food of man, which in fact at the time it is sold by him is in such a condition that it is liable to be seized, that is, in the condition of being unsound and unfit for the food of man.

Per Channell J.: The words "any article liable to be seized" in sub-s. 3 mean any article prima facie liable to be seized by reason of its condition.

Reg. v. Dennis, [1894] 2 Q. B. 458, considered. **GRIVELL v. MALPAS Div. Ct. [1906] 2 K. B. 32**

2. — Unsound meat—Information by sanitary inspector — Necessity for authority — Right of private person to prosecute — Public Health (London) Act, 1891 (54 & 55 Vict. c. 76), s. 47, sub-s. 2; s. 107, sub-s. 3; s. 123

The respondent, a sanitary inspector of a borough council, entered the premises of the appellant, a butcher, and seized certain meat which was then taken before a magistrate and by him condemned as unsound and ordered to be destroyed. On the same day a summons was issued on an information laid by the respondent under s. 47, sub-s. 2, of the Public Health (London) Act, 1891, charging the appellant with having the meat in his possession for the purpose of sale. Both the information and the summons stated that the respondent was acting on behalf of the borough council, but he had not been expressly authorized by the council to take

LONDON (Offences)—continued.

proceedings against the appellant. The appellant was convicted :—

Held, affirming the conviction, that a private person can prosecute for an offence under s. 47, sub-s. 2, and that the absence of authority on the part of the respondent did not invalidate the proceedings, the words "on behalf of" the borough council in the information and summons being a surplusage.

Allman v. Hardcastle, (1903) 2 L. G. R. 13, followed. *GIEBLER v. MANNING* - Div. Ct. [1906] W. N. 81; [1906] 1 K. B. 709

Parishes.

1. — *Statutory commission for raising rector's stipend—Churchwarden, overseers and elected commissioners—Union of parishes—Appointment of overseers of united parish—No separate overseers of individual parish—No transfer of duties of raising stipend—Effect on constitution of commission—4 Geo. 4, c. cxviii.—City of London (Union of Parishes) Act, 1907 (7 Edw. 7, c. cxl.).*

By the statute 4 Geo. 4, c. cxviii., passed on June 27, 1823, a body of commissioners was constituted to raise 700*l.* a year for the rector of the parish of St. Andrew, Holborn, in lieu of tithes.

The commission consisted of the churchwarden chosen out of the city liberty of the parish, which contained three liberties, the two overseers of the poor of the liberty (not being Quakers), and ten elected commissioners liable to a penalty for refusing, but not compellable to serve.

The commissioners were personally responsible for the stipend, whether raised or not. The quorum at any meeting was not to be less than five, provided there were so many persons then holding the office of commissioners.

By the City of London (Union of Parishes) Act, 1907, the parish of St. Andrew, Holborn, and 111 other parishes were, for all purposes other than ecclesiastical or charitable purposes, or purposes of income tax, inhabited house duty or land tax, united into one parish called "the parish of the City of London," and the common council were appointed the overseers of that parish. Certain rating duties were imposed on them, but the statutory duties of the overseers under the Act of 1823 were not expressly transferred. There were no longer any separate overseers of the city liberty of St. Andrew, Holborn.

Summons issued to determine how the commission was now constituted.

Swinfen Eady J. held on the construction of the Acts that the common council, though overseers of the united parish, were not overseers of the liberty for the purposes of the Act of 1823, and were not members of the commission. He also held on the construction of the Act of 1823 that the commission consisted of the churchwarden, the overseers (if any) of the liberty (not being Quakers), and the elected commissioners if willing to serve, and that, as there were no longer any overseers of the liberty, the commission was now constituted by the church-

LONDON (Parishes)—continued.

warden and elected commissioners alone. *WAGSTAFF v. CITY OF LONDON COMMON COUNCIL Swinfen Eady J.* [1908] W. N. 202

Party-walls.

See also under BUILDINGS.

— London.

See under LONDON—Buildings.

Paving.

See also under LONDON—Streets.

1. — *Passage not being a thoroughfare—Requirement of owner to pave a second time with different material—Metropolis Management Act, 1855 (18 & 19 Vict. c. 120), ss. 99, 100.*

The owner of a court, passage, or public place, not being a thoroughfare, who has once in obedience to a notice in that behalf under s. 100 of the Metropolis Management Act, 1855, paved or covered the same to the satisfaction of the vestry, cannot be called upon a second time to pave or cover it with a different material; all he can be required to do is to repair the existing pavement or covering. *HARRISON v. OWNER OF NEW STREET MEWS* - Div. Ct. [1906] W. N. 102; [1906] 1 K. B. 703

Plans.

— London Building Acts — High building — Deposit of.

See LONDON—Buildings. 16.

Police.

See also under POLICE.

Metropolitan Police (Commission) Act, 1906, (6 Edw. 7, c. 6), is an Act to facilitate the proceedings of the Commissioners appointed to hold an inquiry respecting the duties of the Metropolitan Police in dealing with cases of Drunkenness, Disorder, and Solicitation in the Streets.

*Metropolitan Police District—Superannuation of Staff—Order, Mar. 22, 1910, made in pursuance of the Metropolitan Police Staff (Superannuation) Act, 1875, as amended by the Metropolitan Police Staff (Superannuation) Act, 1885, and by the Police Act, 1909, respecting the Superannuation Allowances of certain Officers of the Staff of the Metropolitan Police and Police Courts. St. R. & O. 1910, No. 375. Price 1*l.**

Police Courts.

Metropolitan Police Courts — Police Court Divisions—Order in Council altering and defining the Boundaries of the West London, Marylebone, Clerkenwell, and North London Police Court Divisions, and removing and renaming the Court for the Southwark Division. St. R. & O. 1905, No. 99, L. 5.

*Metropolitan Police Courts—Order in Council dated May 11, 1906, removing the Worship Street Court, and re-naming it "The Old Street Police Court." St. R. & O. No. 385, L. 8. Price 1*l.**

Metropolitan Police Courts — Police Court Divisions—Order in Council altering and re-defining the Boundaries of Bow Street and Marlborough Street Police Court Divisions, dated

LONDON (Police Courts)—continued.

July 6, 1907. Reprint from **W. N. 1907 (Aug. 17)**, p. 236. See **CURRENT INDEX**, 1907, p. lxxx.

Metropolitan Police Courts—Police Court Divisions—Order in Council dated Feb. 15, 1909, altering and re-defining the Boundaries of Bow Street and Westminster Police Court Divisions. Reprint from **W. N. 1909 (Mar. 27)**, p. 107. See **CURRENT INDEX**, 1909, p. cxxv.

Metropolitan Police Courts—Juvenile Courts—Order in Council, Dec. 2, 1909, establishing Juvenile Courts at certain of the Metropolitan Police Courts and assigning Divisions thereto; and as to the Holding of such Courts. **St. R. & O.**, 1909, No. 1459, L. 46. Price 1d.

Metropolitan Police Courts—Juvenile Courts—Order in Council, Mar. 5, 1910, altering the days for holding Juvenile Courts at Bow Street Police Court and conferring on that Court jurisdiction as to applications from other Divisions for Licences for employment of children. **St. R. & O.**, 1910, No. 303. Price 1d.

Poor Law.

— School district, Dissolution of—Property of dissolved district—Vesting order.
See **POOR LAW**. 21.

Port of London.

Port of London Act, 1908 (8 Edw. 7, c. 68), provides for the improvement and better administration of the Port of London and for purposes incidental thereto.

Port of London Act, 1908. The Port of London Stock Regs., Mar. 22, 1909. **St. R. & O.**, 1909, No. 284.

Rates.

NOTE.—As to cases relating to places outside the County of London,

See under **RATES**.

1. — **Deficiency in assessment to poor-rate—Liability of promoters of undertaking—General rate—Poor-rate—Lands taken compulsorily—Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), s. 133—London Government Act, 1899 (62 & 63 Vict. c. 14), s. 10, sub-s. 2.**

By s. 133 of the Lands Clauses Consolidation Act, 1845, promoters of undertakings to whom that Act applies who become possessed of lands liable to be assessed to the poor-rate are to make good the deficiency in that rate caused by their taking or using the lands for the purposes of their works until their works are completed and assessed to the poor-rate.

By s. 10, sub-s. 2, of the London Government Act, 1899, the general rate and the poor-rate are to be assessed, made, and levied together by the borough council as one rate, termed the general rate, which is to be assessed, made, collected, and levied as if it were the poor-rate, and all enactments referring to the poor-rate are (subject to the provisions of the Act as to audit) to be construed as referring also to the general rate:—

Held, that promoters who in the exercise of their statutory powers had compulsorily taken land in London since the coming into operation of the London Government Act, 1899, were only

LONDON (Rates)—continued.

liable to make good the deficiency in so much of the general rate as represented the poor-rate or anything chargeable on that rate, and were not liable to make good the whole of the deficiency in the general rate.

Decision of Wright J., [1902] 2 K. B. 701, affirmed. **ISLINGTON BOROUGH COUNCIL v. LONDON SCHOOL BOARD**. **C. A.**

[1903] **W. N. 124**; [1903] 2 K. B. 354

— Gas—Testing—“Daily.”

See **GAS**. 2.

2. — **Partial exemption of land covered with water in Woolwich—London Government Act, 1899—Continuation of exemption—Land covered with water not separately assessed in valuation list—Rate made upon full value of the whole hereditament—Right of appeal to quarter sessions without objection before assessment committee—London Government Act, 1899 (62 & 63 Vict. c. 14), ss. 10, 19—17 Geo. 2, c. 38, s. 4.**

Before 1900 general district rates were made in Woolwich under the Public Health Act, 1875, under s. 211 of which the owners and occupiers of land covered with water were liable to be assessed to certain rates upon one-fourth part only of the annual value thereof. The London Government Act, 1899, by s. 10, provided that a scheme under the Act should provide for protecting the interests of owners and occupiers of any hereditament exempt from any rate or liable to be assessed thereto at a less amount than other hereditaments; and, by s. 19, that a scheme under the Act should provide for placing Woolwich under the general law applicable to metropolitan boroughs and for the repeal of the application thereto of the Public Health Acts; and the scheme made under the Act provided accordingly. The owners of land in Woolwich, part of which was covered with water, were assessed in the valuation list in one amount for the whole hereditament, and in 1901 were rated in respect thereof to the general rate upon the full annual value and to the full amount of the rate. The owners appealed to quarter sessions against the rate:—

Held, that the partial exemption of land covered with water in Woolwich was preserved, and that the owners were liable to be assessed in respect thereof upon one-fourth part only of the annual value:

Held, also, that the owners were entitled to appeal to quarter sessions against the rate without first objecting to the valuation list before the assessment committee. **LONDON AND INDIA DOCKS CO. v. BOROUGH OF WOOLWICH**

Div. Ct. [1902] 1 K. B. 750

— Poor rate — Public-house — Quinquennial valuation — Mandamus to assessment committee to appoint valuer.

See **RATES**. 47.

— Poor rate—Railway company—Reduction of value of railway through competition of tramways and tube railways.

See **RATES**. 36.

— Statutory exemption from liability to poor rate—Insertion of rateable value of excepted premises—Mandamus.

See **RATES**. 29.

LONDON (Rates)—continued.

— Water rate—Railway station—Sanitary conveniences—Metropolitan Water Board (Charges) Act, 1907.
See **RATES**. 37.

Removal of Offensive Matter.

Removal of Offensive Matter Act, 1906 (6 Edw. 7, c. 45), repeals the provisions of the Metropolitan Police Act, 1839 (2 & 3 Vict. c. 47), s. 60 (4), with respect to the Removal of Offensive Matter in places within the Metropolitan Police district.

Removal of Refuse.

1. — *Hotel—Trade refuse—Dispute between occupier and sanitary authority—Decision of petty sessional Court "shall be final"—Appeal by special case—Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), s. 33—Public Health (London) Act, 1891 (54 & 55 Vict. c. 76), s. 33, sub-s. 2—Metropolis Management Acts.*

In any dispute between the occupier of premises and the sanitary authority as to what is to be considered trade refuse, the decision of the magistrate under s. 33, sub-s. 2, of the Public Health (London) Act, 1891, is final, and no appeal will lie to the High Court, notwithstanding the Summary Jurisdiction Act, 1879, s. 23, which provides for the stating of a case upon a point of law upon the application of any person aggrieved by a decision of a magistrate.

Decision of C. A., [1907] 1 K. B. 910, affirmed. **WESTMINSTER CORPORATION v. GORDON HOTELS, LD.** - **H. L. (E.)** [1908] W. N. 67; [1908] A. C. 142

Note.

Distinguished by H. L. (E.), *Kydd v. Liverpool Watch Committee*, [1908] A. C. 327. See **Police**.

Applied by Div. Ct., *J. Lyons & Co. v. London Corporation*, [1909] 2 K. B. 588. See **No. 3, below**.

[NOTE.—*Westminster Corporation v. Gordon Hotels, Ltd.*, [1906] 2 K. B. 39, was affirmed on another point in the Court of Appeal, [1907] 1 K. B. 910, and in the House of Lords, [1908] A. C. 142.]

2. — *Removal of house refuse—Failure of sanitary authority to remove—Reasonable cause—Public Health (London) Act, 1891 (54 & 55 Vict. c. 76), s. 30.*

By a by-law of the London County Council, made under s. 16 of the Public Health (London) Act, 1891, it was provided that, where a sanitary authority arranged for the daily removal of house refuse in their district or in any part of it, the occupier of any premises therein should, at such hour of the day as the sanitary authority should fix and notify by public announcement, deposit on the kerbstone or outer edge of the footpath immediately in front of the house or in a conveniently accessible position on the premises as the sanitary authority might prescribe by written notice served upon the occupier, a movable receptacle in which the house refuse should be placed for the purposes of removal. A sanitary authority, desiring to start a system of daily removal of

LONDON (Removal of Refuse)—continued.

house refuse, and assuming to act under the by-law, gave notice by means of a printed notice to all the occupiers of houses within a specified area, requiring them to deposit on the kerbstone or edge of the footpath immediately in front of their respective houses a movable receptacle in which should be placed for the purposes of removal the house refuse which had accumulated since the preceding collection; the notice contained a statement that the dustmen were prohibited from going on the premises for dust in the streets within the prescribed area.

An occupier of a detached house standing back forty feet from the highway, and approached by a carriage drive, who had a conveniently accessible position on his premises in which he was willing to put his house refuse in a movable receptacle for the purposes of removal, refused to comply with the notice by placing his house refuse in a receptacle on the kerbstone, and the sanitary authority refused to remove his house refuse from his premises, notwithstanding the service upon them by him of a written notice, under s. 30 of the Public Health (London) Act, 1891, requiring them to do so. A summons was taken out under s. 30, sub-s. 2, of that Act by the occupier against the sanitary authority for unlawfully and without reasonable cause failing to comply with the notice to remove the house refuse from his premises, and the sanitary authority were convicted of the offence charged:—

Held, that the notice was not a proper prescription of a conveniently accessible position as contemplated by the by-law, as it went beyond the by-law in prescribing that every occupier within a given area must place his house refuse in a receptacle on the kerbstone; that the sanitary authority had therefore failed without reasonable cause to discharge their statutory duty of securing the removal of the house refuse from the premises of the occupier, he being willing to place it in an accessible position from which they could conveniently remove it, and that the conviction was right. **WANDSWORTH CORPORATION v. BAINES** Div. Ct. [1906] W. N. 22; [1906] 1 K. B. 470

3. — *Restaurant—House or trade refuse—Public Health (London) Act, 1891 (54 & 55 Vict. c. 76), ss. 30, 33, 141.*

The refuse of a restaurant, consisting of ashes, clinkers, coffee grounds, egg shells, dust and general dirt, broken crockery, tea leaves, parings and scrapings, &c., is house refuse within the meaning of s. 30 of the Public Health (London) Act, 1891, which the sanitary authority is bound to remove without payment.

Westminster Corporation v. Gordon Hotels, Ltd., [1906] 2 K. B. 39, applied. **J. LYONS & CO. v. LONDON CORPORATION** - Div. Ct. [1909] 2 K. B. 588

Sanitary Conveniences.

See under **LONDON—Conveniences**.

Sanitary Works.

— Cost of sanitary works—Repairs—Capital or income.

See **SETTLED LAND—Capital Moneys**. 14.

LONDON—*continued.***Sewers.**

NOTE.—As to cases and cross-references relating to places outside the County of London,
See under SEWERS.

— Drainage—Buildings.

See also under LONDON—Buildings.

— Covenant by tenant to pay outgoings—Yearly tenancy—Defective drain.

See LANDLORD AND TENANT. 61.

1. — *Drain or sewer* — Nuisance—“Intimation” notice—Service on person not liable—Compulsion—Recovery of expense of abating nuisance.

A nuisance having arisen from the obstruction of a pipe which carried off the drainage from the plts.’ premises, the defts.’ sanitary inspector served on the plts. an “intimation” notice under the Public Health (London) Act, 1891, requiring them to abate the nuisance. The plts. contended, and it was the fact, that the pipe was a sewer, and therefore repairable, not by them, but by the defts.; but the plts. did the work necessary to abate the nuisance under protest, and sued the defts. to recover the expense incurred by them in so doing as money paid by them under compulsion which the defts. were compellable to pay :—

Held, that the plts. were entitled to recover.

Oliver v. Camberwell Borough Council, (1904)

68 J. P. 165, distinguished. WILSON’S MUSIC AND GENERAL PRINTING CO. v. FINSBURY BOROUGH COUNCIL

Channell J. [1908]

1 K. B. 563

— Drainage of houses on low-lying land.

See LONDON—Buildings. 3.

— Drainage of two houses by combined operation.

See SEWERS. 4.

2. — *Drains* — Public health — Nuisance—“Acts or defaults” of two or more persons—Right to contribution—Public Health (London) Act, 1891 (54 & 55 Vict. c. 76), ss. 4, 5, 120.

The defts.’ premises were drained through a drain running under the plt.’s premises, which drain for part of its length carried only the defts.’ drainage, and for the rest of its length carried the drainage of both premises. The defts. had a right so to use the drain. A nuisance having arisen on the plt.’s premises owing to the whole of the drain being defective and permitting sewage to escape, the sanitary authority took proceedings against him, under ss. 4 and 5 of the Public Health (London) Act, 1891, and obtained an order upon him to do the work necessary to abate the nuisance. The plt. did the work and abated the nuisance, all the work being done upon his own premises :—

Held, that the plt. could not recover from the defts. a proportionate part of the costs of abating the nuisance as being one of two or more persons “by whose act or default” the nuisance had been caused, within the meaning of s. 120 of the Public Health (London) Act, 1891. NATHAN v. ROUSE

Div. Ct. [1905] 1 K. B. 527

— New street—London.

See under LONDON—Streets.

LONDON (Sewers)—*continued.*

— Recovery of expenses—Highway within two jurisdictions—New street.

See LONDON—Streets. 2.

— Settled land—Tenant for life and remainderman—Sanitary work, Cost of.

See SETTLED LAND—Capital Moneys. 14.

3. — “Sewer” — Drain — Drain receiving drainage from more than one building—Rain water—Metropolis Management Act, 1855 (18 & 19 Vict. c. 120), s. 250.

Where a drain was used for drainage of two adjoining houses, not being a drain for the drainage of a block of houses by a combined operation under the order of a vestry or district board :—

Held, that it was a “sewer” within the definition given by s. 250 of the Metropolis Management Act, 1855, although from one of the houses it carried away rain water only. SILLES v. FULHAM BOROUGH COUNCIL

C. A. [1903] 1 K. B. 829

Note.

This case was discussed by Channell J., *Heaver v. Fulham Borough Council*, [1904] 2 K. B. 383. See SEWERS. 4.

4. — Storm-water overflow—Main drainage system—Sewers—Discharge into tidal navigable creek — Riparian owners — Interference with private rights—Trespass—Nuisance—Injunction—Metropolis Management Act, 1855 (18 & 19 Vict. c. 120), ss. 135, 150, 151 — Metropolis Management Amendment Act, 1858 (21 & 22 Vict. c. 104), ss. 1, 2, 23, 31.

The plt. co. owned large manufacturing works on both sides of a navigable tidal creek forming part of the Thames within the metropolis, and also the bed and banks of the creek subject to the public right of navigation therein. By the Metropolis Management Act, 1855, a brook which discharged into the creek and which had become an open sewer was with other sewers vested in the Metropolitan Board of Works, the predecessors in title of the defts., with power to alter, divert, or discontinue such sewers when necessary. By that Act and the Metropolis Management Amendment Act, 1858, the bd. were authorized and required to construct, according to such plans as should to them seem proper, all necessary sewers and works for the improvement of the main drainage of the metropolis and for preventing as far as practicable the sewage of the metropolis from passing into the river within the metropolis; but they were to cause the authorized works to be constructed and kept, and to exercise their powers of disposing of the sewage, so as not to create a nuisance. Under these Acts a vast system of sewers was constructed so as to carry the sewage down the Thames beyond the limits of the metropolis, and the brook in question was culverted and connected with a low level sewer so that it no longer discharged into the creek. In 1907 the defts., as part of the main drainage system and to relieve the pressure in the low level sewer in times of heavy rains, erected a pumping station at the mouth of the creek, and when occasion

LONDON (Sewers)—continued.

required pumped the storm overflow into the creek. The storm-water was heavily charged with sewage matter, which adhered to the banks of the creek and created a nuisance:—

Held, that the defts. could not justify their acts on the plea that they were carrying out their statutory obligations, and that the plts. were entitled to an injunction both on the ground of nuisance and (Kennedy L.J. doubting) on the ground of trespass.

Dixon v. Metropolitan Board of Works, (1881 7 Q. B. D. 418, distinguished.

Decision of Neville J., [1908] W. N. 131, affirmed. PRICE'S PATENT CANDLE CO. v. LONDON COUNTY COUNCIL - - - C. A. [1908] W. N. 188; [1908] 2 Ch. 526

5. — *Thames—Pollution of river by sewage—Duties of county council—Metropolis Management Act, 1855 (18 & 19 Vict. c. 120), s. 135—Metropolis Management Amendment Act, 1858 (21 & 22 Vict. c. 104), s. 1—River Thames.*

Under s. 135 of the Metropolis Management Act, 1855, and s. 1 of the Metropolis Management Amendment Act, 1858, the London County Council, as successors of the Metropolitan Board of Works, have a discretion to decide what sewers and works are necessary in carrying out their duties with regard to the prevention of the sewage of the metropolis from flowing into the Thames; and therefore they are not bound to construct sewers which would be properly district sewers for the purpose of intercepting the drainage of every house in the metropolis that in 1855 drained into the Thames. WESTMINSTER CORPORATION v. LONDON COUNTY COUNCIL

Bray J. [1906] W. N. 123; [1906] 2 K. B. 379

Shipping.

See under SHIPPING.

Streets.

Metropolitan Streets Act, 1903 (3 Edw. 7, c. 17), amends the Metropolitan Streets Act, 1867 (30 & 31 Vict. c. 134).

NOTE.—As to cases and cross-references relating to places outside the County of London, See under HIGHWAY.

STREETS.

1. — *Building—General line of buildings—Superintending architect's certificate—Appeal to tribunal of appeal—London Building Act, 1894 (57 & 58 Vict. c. ccciii.), ss. 22, 182.*

Where under the London Building Act, 1894, the superintending architect has by his certificate defined the general line of buildings in a street, the tribunal of appeal under the Act has no power to define a general line of buildings in that part of the street other than the general line defined by the certificate, if the certificate has not been appealed against and no buildings have been erected since the date of the certificate which altered or might alter the general line defined by it.

The object of the Act was to secure general lines of building to which all must conform. LILLEY v. LONDON COUNTY COUNCIL

H. L. (E.) [1910] A. C. 1

LONDON (Streets)—continued.

2. — *Highway within two jurisdictions—New street—Sewer—Recovery of expenses—Metropolis Management Act, 1855 (18 & 19 Vict. c. 120), s. 105—Metropolis Management Amendment Act, 1862 (25 & 26 Vict. c. 102), ss. 52, 112.*

The boundary between two parishes, one of which was in the county of London and the other in Middlesex, ran along the middle of an old highway 2993 feet in length. At the time when the Metropolis Management Act, 1855, came into operation, buildings had been erected on the Middlesex side of the highway, along nearly the whole of its length, but on the London side there were only seven or eight buildings situated at various points. A number of buildings having recently been erected along the London side of the highway, the vestry of the parish to which that portion of the highway belonged laid down a sewer under it for the purpose of draining those buildings, and apportioned the expenses of making the sewer among the frontagers upon that side of the highway on the ground that it was a new street. One of the frontagers having refused to pay the amount apportioned upon him, application was made to justices by the vestry for an order for payment by him of that amount. The justices found as a fact that, at the time when the Metropolis Management Act, 1855, came into operation, the highway, as a whole, had already become a street; and, that being so, they decided that they could not deal with the London side of the highway by itself for the purpose of determining whether it was a new street, and therefore they dismissed the application:—

Held, affirming the judgment of a Div. Ct., [1901] 1 K. B. 264, that, upon the finding of the justices as above mentioned, their decision was right. CLERKENWELL VESTRY v. EDMONDSON & SON C. A. [1902] W. N. 8; [1902] 1 K. B. 336

3. — “*New street*”—*Widening of old street—Paving expenses—Liability of frontagers—Metropolis Management Act, 1855 (18 & 19 Vict. c. 120), s. 105; 1862 (25 & 26 Vict. c. 102), ss. 77, 112—Public Health Act, 1875 (38 & 39 Vict. c. 65), s. 150—London Building Act, 1894 (57 & 58 Vict. c. ccciii.), ss. 9, 215.*

Where an old street repairable by the inhabitants at large, and having houses upon one side of it, is widened by the addition of a longitudinal strip of land of a substantial width upon the opposite side, the strip so added becomes itself a new street, and the expenses of paving the added strip, whether under the Metropolis Management Acts, 1855 and 1862, or the Public Health Act, 1875, must be apportioned solely among the owners of property abutting upon that strip, and not upon the owners of property abutting upon the old street.

Richards v. Kessick, (1888) 57 L. J. (M.C.) 48, and *White v. Fulham*, (1896) 74 L. T. 425, approved. PROPERTY EXCHANGE, LD. v. WANDSWORTH BOARD OF WORKS - C. A. [1902] 2 K. B. 61

—Obstruction—Raised tramlines—Contractor—Liability—Highway.
See HIGHWAY. 22.

LONDON (Streets)—continued.

— Ownership—Street in town—Soil of highway—Crown lease—Rebuttal of presumption.

See **HIGHWAY**. 21.

4. — *Paving expenses—Apportionment—New street—Frontager—Metropolis Management Act, 1855 (18 & 19 Vict. c. 120), s. 105—Metropolis Management Amendment Act, 1862 (25 & 26 Vict. c. 102), s. 77.*

The cases which decide that in the absence of mala fides the Court will not question the principle upon which the expenses of paving a new street have been apportioned amongst the adjoining owners by a vestry or district board under the Metropolis Management Acts, 1855 and 1862, apply only to an apportionment made upon the persons properly chargeable; and if any owners are omitted by the authority under a mistaken view of the facts, it is competent for the Court in a proper case to entertain an action by an aggrieved owner for a declaration that the apportionment is invalid whether any consequential relief can be claimed or not.

Semble, an apportionment ought to refer to the owners by name, or at least ought to specify the properties to be charged in such a way as to preclude the possibility of mistake. **ELSDON v. HAMPSTEAD CORPORATION**

Joyce J. [1905] W. N. 149; [1905] 2 Ch. 633

5. — *Paving expenses—Laying out street without sanction of London County Council—"New street laid out or made"—Charging estimated expenses on frontagers—Metropolis Management Act, 1855 (18 & 19 Vict. c. 120), s. 105—London Building Act, 1894 (57 & 58 Vict. c. cxxiii.), ss. 7, 213.*

By s. 105 of the Metropolis Management Act, 1855, the vestry or district board of a parish or district (now the metropolitan borough council) may pave "any new street laid out or made or hereafter to be laid out or made," and charge the frontagers with the estimated expenses thereof. By s. 7 of the London Building Act, 1894, "no person shall commence to form or lay out any street for carriage traffic or for foot traffic without having obtained the sanction of the" London County Council; and s. 200 imposes a penalty for a breach of the above provision. By s. 213, "nothing in this Act shall take away or interfere with the powers of the local authorities with respect to the paving of new streets under the Metropolis Management Acts."

A public road, which before 1907 had been widened, with the sanction of the London County Council, to a width of 20 feet, was in 1907 further widened to a total width of 40 feet, and was laid out as a street without the sanction but with the knowledge of the London County Council, and houses were erected on each side. The appellants, within whose district the street lay, thereupon decided to pave the street as a new street under s. 105 of the Metropolis Management Act, 1855, and apportioned the estimated expenses among the frontagers. The respondent, who was one of the frontagers, contended that, as the street had been formed and laid out without the consent of the London

LONDON (Streets)—continued.

County Council, it had been illegally formed and laid out, and that therefore s. 105 of the Act did not apply so as to entitle the appellants to apportion the expenses:—

Held, that as the street was in fact a new street the appellants had power under s. 105 of the Act of 1855 to pave it and to apportion the estimated expenses among the frontagers. **CAMBERWELL CORPORATION v. DIXON**

Div. Ct. [1910] 1 K. B. 424

6. — *Paving expenses—"Owner"—Open spaces—Metropolis Management Acts—Land capable of being made a source of profit—18 & 19 Vict. c. 120, s. 250—25 & 26 Vict. c. 102, s. 77—40 & 41 Vict. c. 35, s. 1—44 & 45 Vict. c. 34, s. 5—56 & 57 Vict. c. lxxvi.*

Land was conveyed to a vestry in fee simple "to the end and intent that the same premises should be at all times thereafter kept and maintained as an open space for the perpetual use thereof by the public for exercise and recreation." The land was an open space abutting on a new street, and was acquired under the powers conferred on the vestry by the Open Spaces Acts, 1877 and 1881, by which the land was held in trust for the perpetual use thereof by the public for exercise and recreation, and for no other purpose.

By the London Open Spaces Act, 1893, the vestry might erect on the land convenient and ornamental buildings, and such appliances as they might think fit for purposes of exercise and recreation, and for other like purposes. They erected a band stand, a cloak-room, and a refreshment stall. The refreshment stall was let at a rent to a caterer. The band stand was not let, but seats for the public were let by the vestry to a contractor at a rental.

The vestry assessed the respondent, as owner of houses on the opposite side of the street, upon the basis that the cost of paving the new street should be defrayed by the owners of the houses and lands on the opposite side of the street, and not in any part by the owners of the land which included the open space.

A summons to recover the amount apportioned on the respondent was dismissed on the ground that the apportionment was invalid, because a part of the cost of paving ought to have been apportioned on the vestry as owners of the open space.

Held, that the open space was not land which was incapable of becoming a source of profit, and therefore the vestry were the persons who would receive the rent of the land if the same were let at a rack-rent, and were owners of the open space within the definition in the Metropolis Management Act, 1855, s. 250, and were liable as owners to contribute to the cost of paving the new street, and the summons was rightly dismissed. **FULHAM VESTRY v. MINTER** **Div. Ct. [1901] W. N. 25; [1901] 1 K. B. 501**

Note.

This case was overruled by C. A., *London County Council v. Wandsworth Borough Council*, [1903] 1 K. B. 797. See No. 9, below.

7. — *Paving expenses—"Owner"—Building agreement—New street—Metropolis Management Act, 1855 (18 & 19 Vict. c. 120), s. 250.*

LONDON (Streets)—continued.

The owner in fee of land made an agreement with a builder whereby it was agreed that the builder might enter upon the land and should build houses thereon, and that a lease should be granted of each house when erected, and that the builder should in the meantime pay 200*l.* a year (which was not a rack-rent) until the leases were granted, and that "this agreement is intended to operate as an agreement only and not as an actual demise of the premises, or to give the intended lessee any legal interest therein until the leases hereinbefore agreed to be granted shall have been executed." The land had not been used, and no houses had been erected by the builder :—

Held, that the builder was not the owner of the land within the meaning of s. 250 of the Metropolis Management Act, 1855.

Holland v. Kensington Vestry, (1867) L. R. 2 C. P. 565, followed. *DRISCOLL v. BATTERSEA BOROUGH COUNCIL* Div. Ct. [1903] 1 K. B. 881

8. — *Paving expenses—"Owner"—New street—Land abutting on street—Restrictions on user imposed by special Act—Metropolis Management Act, 1855 (18 & 19 Vict. c. 120), ss. 105, 250—Metropolis Management Act, 1862 (25 & 26 Vict. c. 102), s. 77.*

By the provisions of a special Act of a ry. co., inserted for the protection of a landowner, the co. were bound to acquire all his land adjoining a certain street, and to leave a strip of land along the whole length of the street, and to plant the strip with trees and shrubs and fence it off from the street, and to maintain it in that condition. The co. acquired the land, and planted and fenced a strip along and contiguous to the whole length of the street :—

Held, that the ry. co. were "owners" of the strip of land within s. 250 of the Metropolis Management Act, 1855, and therefore were liable to contribute to the expense of paving the street as a new street.

Decision of Bigham J., [1904] 2 K. B. 802, affirmed. *HAMPSTEAD CORPORATION v. MIDLAND RY. CO.* - - C. A. [1905] W. N. 31 ; [1905] 1 K. B. 536

9. — *Paving expenses—"Owner"—Rack-rent—Public recreation ground—Metropolis Management Act, 1855 (18 & 19 Vict. c. 120), ss. 105, 250—Metropolis Management Amendment Act, 1862 (25 & 26 Vict. c. 102), s. 77.*

By virtue of a scheme certified by the Inclosure Commrs. pursuant to the Metropolitan Commons Act, 1866, and afterwards confirmed by the Metropolitan Commons (Supplemental) Act, 1873, a common was vested in the Metropolitan Board of Works, whose successors are the London County Council, for the purpose of being dedicated to the public as a recreation ground. By the scheme it was provided that the common should be regulated and managed by the Board, and that no house or other buildings should be erected on it, except such lodges or other buildings as might be necessary for the maintenance and management of the common or recreation ground. The county council derived small annual profits from the

LONDON (Streets)—continued.

herbage on the common and from certain buildings erected thereon for purposes subsidiary to its use as a public recreation ground, but the expenses annually incurred by the county council in the management and regulation of the common far exceeded the amount of any profits so received by them. The Wandsworth Borough Council claimed from the London County Council, as owners of the common, a sum of 319*l.* as their proportion of the estimated expenses of paving a new street, on which the common abutted to the extent of 474 feet, under the Metropolis Management Act, 1855, s. 105, and the Metropolis Management Amendment Act, 1862, s. 77 :—

Held, that the London County Council were not "owners" of the common within the definition of the word "owner" contained in the Metropolis Management Act, 1855, s. 250, and therefore they were not liable to pay the amount claimed.

Fulham Vestry v. Minter, [1901] 1 K. B. 501, overruled. *LONDON COUNTY COUNCIL v. WANDSWORTH BOROUGH COUNCIL*

C. A. [1903] W. N. 72 ; [1903] 1 K. B. 797

10. — *Paving expenses—Owner of house—New street—Action to recover apportioned amount—Demand—Statute of Limitations (21 Jac. 1, c. 16)—Metropolis Management Act, 1855 (18 & 19 Vict. c. 120), s. 105—Metropolis Management Act, 1862 (25 & 26 Vict. c. 102), s. 77.*

In 1891 a vestry paved a new street in the metropolis and apportioned the expenses ; in the same year they demanded payment of an apportioned part of the expenses from the then owner of a house in the street, but he did not pay. In 1896 the deft. became owner of the house, and in 1898 the vestry demanded payment of the amount from him. In an action brought in 1903 to recover the amount :—

Held, that, under s. 105 of the Metropolis Management Act, 1855, as amended by s. 77 of the Act of 1862, an action would lie to recover the apportioned part of the expenses, and that the Statute of Limitations would not begin to run in favour of the deft., if at all, until payment was demanded from him. *HAMPSTEAD CORPORATION v. CAUNT* - - - Wright J. [1903] 2 K. B. 1

11. — *Paving expenses—"Owner"—Rack-rent—Conservators of navigation—Land used as embankment of river—Metropolis Management Act, 1855 (18 & 19 Vict. c. 120), ss. 105, 250—Metropolis Management Amendment Act, 1862 (25 & 26 Vict. c. 102), s. 77.*

The conservators of a public navigable river purchased under their statutory powers a strip of land, which they used for the purpose of a retaining bank for the waters of a cut forming part of the navigation. They were empowered to take tolls for the use of the navigation, but any moneys received by them under their Acts were applicable only to payment of the expenses of carrying out their Acts, and of moneys borrowed for the purposes of those Acts, and interest thereon, and not to any purposes of profit beyond what might be necessary for such payment. They had power to construct docks, wharves, and other works on the river, and to sell any lands

LONDON (Streets)—continued.

vested in them which they might not require for the purposes of their Acts. It appeared that it would be possible, if a retaining wall were substituted for the bank, that the residue of the before-mentioned land might be otherwise applied for purposes of profit:—

Held, that the conservators were "owners" of the land within the definition given by the Metropolis Management Act, 1855, s. 250, and therefore liable under the Metropolis Management Acts to contribute in respect of it to the paving expenses of a new street on which it abutted. **HACKNEY CORPORATION v. LEE CONSERVANCY BOARD** - **C. A. [1904] 2 K. B. 541**

12. — Paving expenses—Payment by occupier—Right of deduction from rent—Landlord and tenant—Distress for rent—Covenant by tenant to pay charges imposed by local authority—Metropolis Local Management Act, 1862 (25 & 26 Vict. c. 102), s. 96.

Sect. 96 of the Metropolis Local Management Act, 1862, empowers a local authority to require the payment of any expenses, which the owner of any premises may be liable to pay, from the owner or occupier of the premises, and provides that the owner shall allow the occupier to deduct what he so pays "out of the rent from time to time becoming due in respect of the said premises, as if the same had been paid to such owner as part of such rent." And there is a proviso that nothing in the section contained shall be taken to affect any contract whatsoever between landlord and tenant:—

Held, that a payment made by a tenant to a local authority under this section is not a payment of or on account of rent, but a payment of or on account of expenses.

Held, therefore, that when a tenant has covenanted with his landlord that he will bear the expenses which he has under s. 96 paid to the local authority, he has, by reason of the proviso, no right to deduct from the rent the amount which he has so paid, and the landlord's right to distress for unpaid rent is unaffected.

Decision of Ridley J. reversed. **SKINNER v. HUNT** - **C. A. [1904] W. N. 117; [1904] 2 K. B. 452**

—Sanitary conveniences, Power to provide — Subway—Subsoil of road.

See **LONDON—Conveniences. 1.**

—Street in town—Soil of highway—Ownership — Crown—Lease—Rebuttal of presumption.

See **HIGHWAY. 21.**

13. — Widening—Compulsory powers—House—Separate ownership of separate floors—Adjudication to take whole—Part to be thrown into street—Prior agreement to resell surplus portion of ground floor subject to owner's right of pre-emption—Bona fides—Michael Angelo Taylor's Act, 1817 (57 Geo. 3, c. xxxix.), ss. 80, 96.

Where a local authority are taking a house, let in separate floors, for the purpose of widening a street under s. 80 of Michael Angelo Taylor's Act, the owner of the ground floor is not absolutely and in all circumstances entitled to restrain them from taking more than the part to be thrown into the street.

LONDON (Streets)—continued.

Thomas v. Daw, (1866) L. R. 2 Ch. 1, 7; *Teuliere v. Vestry of St. Mary Abbots, Kensington*, (1885) 0 Ch. D. 642, 648; and *Gordon v. Vestry of St. Mary Abbots, Kensington*, [1894] 2 Q. B. 742, 754, followed.

If for any reason, such as danger or excessive cost of severance, it is in fact essential for the local authority to acquire the whole building, an adjudication to that effect is not vitiated by a prior agreement to resell the surplus portion of the ground floor subject to the owner's right of pre-emption under s. 96. **PESCOD v. WESTMINSTER CORPORATION** - **Swinfen Eady J. [1905] W. N. 142; [1905] 2 Ch. 475**

14. — Widening—Power to take part of house—Metropolis management—Michael Angelo Taylor's Act, 1817 (57 Geo. 3, c. xxxix.), ss. 80, 82.

Plts., knowing of a scheme of a municipal corporation for widening a street which would affect premises about to be taken by them, took a lease of a house and became liable under the covenants therein to make substantial alterations in the premises (with a view to the same being used by plts. as an outfitters' and tailors' shop).

The premises at the date of the lease consisted of an old house in the middle of the front of which stood a large chimney stack connected with several fireplaces, and the building had three floors. The alterations to be made by plts. involved the destruction of the stack (so as to give a greater space for the new shop on the ground floor) and the fireplaces, the conversion of the three floors into two floors, raising the ceiling of the ground floor, and throwing the remains of the house into a first-floor room running from back to front. The corporation, for the purpose of widening the adjoining street, gave notice to treat (purporting to be under s. 82 of Michael Angelo Taylor's Act) for part of the house, consisting of frontage of from 5 ft. 2 in. to 7 ft. 2 in. in depth, the result of taking which would have been to destroy the stack and fireplaces, to render practically useless rooms on the first and second floors, to absorb the space acquired by removing the stack into the street, and (unless the adjoining houses were both thrown back to a like extent, a change which had not yet been effected) to throw the frontage of the plts.' building back from the main line of frontage:—

Held, that the proposed acquisition, if allowed, would result in destroying the house as a house, that their knowledge of the scheme did not preclude the plts. from relief, and that an injunction must be granted restraining the corporation from proceeding under the notice to treat.

Observations on the judgment of Kindersley V.-C. in *Thomas v. Daw*, (1866) L. R. 2 Ch. 2, n. **THOMPSON v. HAMMERSMITH CORPORATION** **Buckley J. [1906] 1 Ch. 299**

15. — Widening street—Notice to treat for "part of" a factory—Invalid notice—Injunction—Metropolis management—Michael Angelo Taylor's Act, 1817 (57 Geo. 3, c. xxxix.), s. 80.

A local authority requiring part of a factory for the purpose of widening a street cannot under

LONDON (Streets)—continued.

Michael Angelo Taylor's Act compel the owner to sell such part only, if the removal of that part will substantially injure the factory so that it can no longer be used and enjoyed as it was before, even if the part that would be left would be a substantial building which would with some alteration and rearrangement be capable of being efficiently used as a factory, though with some diminution in area and output.

The ruling of Stirling J. in *Gibbon v. Paddington Vestry*, [1900] 2 Ch. 794, 802, discussed and applied. **GREEN v. HACKNEY CORPORATION**

Neville J. [1910] W. N. 124 ; [1910] 2 Ch. 105

— Width of street—Method of measurement—"Front or nearest external wall."

See **LONDON—Buildings. 9.**

Tramways.

1. — Footway—Dedication to public—Road authority—Powers—Widening of roadway—Narrowing of footway—Tramway—Delegation of statutory powers—57 *Gen. 3, c. xiv.*, (*Michael Angelo Taylor's Act*), s. 52.

In 1883 building land in the metropolis was demised to C. for a term of eighty-two years, and L., under an agreement with C., built several shops on a part of the land which fronted a highway. The shops were not built to the edge of the demised land, but a strip of land three feet wide was left between the front wall of the shops and the public footway. Subsequently in 1883 L. applied to the local authority to pave the footway in front of his shops right up to the building line, and the local authority informed him that on the slip of land being given up to form part of the public footway the footway would be paved. L. made no reply, and the footway was paved up to the wall of the shops. In the meantime C., who had no knowledge of L.'s application to the local authority, had granted L. separate underleases of the shops for eighty years, and had also assigned to him for value the head lease with a proviso against merger. In 1898 C. repurchased the head lease for value from L.'s successors in title. In 1906 the London County Council under the powers of a special Act converted a horse tramway in the highway in question into an electric tramway, and in connection with this work they widened the road and reduced the width of the footway and took up the pavement (including the pavement of the three-foot strip of land) in front of the shops. This work was done under an agreement made in May, 1906, with the borough council, whereby the borough council, in consideration of the reconstruction of the tramway, consented to the narrowing of the footway and agreed to pay part of the cost of paving, which was to be done by the county council. C. and the assignees of some of the underleases then brought this action against the London County Council for an injunction and damages in respect of (1) the taking up of the pavement of the strip of land ; (2) the reduction of the width of the footway. In answer to the first claim the defts. alleged that the strip of land had been dedicated to the public by L. in 1883 and was part of the public

LONDON (Tramways)—continued.

footway, and in answer to the second that the borough council had power to authorize the defts. to make the reduction in the width of the footway, and that the work was done by the defts. under the authority of the borough council given by the agreement of May, 1906 :—

Held, first (affirming the decision of Neville J., [1907] 1 Ch. 704), on the evidence, that, whatever claim the local authority might have had against L., the plts. were purchasers for value without notice of any claim for dedication, and were entitled to relief in respect of trespass ; secondly (reversing the decision of Neville J.), that s. 52 of Michael Angelo Taylor's Act empowered the borough council, as the road authority, to alter the division of the roadway into footway and carriageway, that they must be taken by their agreement to have authorized the defts. to execute these alterations on their behalf, and that this was not a delegation of their statutory powers ; consequently that in respect of the narrowing of the footway the plts.' claim failed. **CORSELLIS v. LONDON COUNTY COUNCIL** **C. A. [1907] W. N. 227 ; [1908] 1 Ch. 13**

— Obstruction—Raised tramrails—Contractor. See **HIGHWAY. 22.**

Urinals.

— Conveniences.

See under **LONDON—Conveniences.**

— Water-closets.

See under **LONDON—Water-closets.**

Walls.

See under **LONDON—Buildings.**

Water.

NOTE.—As to cases relating to places outside the County of London,

See under **WATER.**

Metropolis Water Act, 1902 (2 Edw. 7, c. 41), is an Act for establishing a Water Board to manage the supply of water within London and certain adjoining districts, for transferring to the Water Board the undertakings of the Metropolitan Water Companies, and for other purposes connected therewith.

Order of Local Govt. Board, dated Dec. 24, 1902 (No. 44, 950), providing for the constitution of the Metropolitan Water Board. St. R. & O. 1902, No. 973.

Order of Local Govt. Board, dated Jan. 9, 1903, under the Metropolis Water Act, 1902, providing as to the constitution, &c., of Joint Committees for appointing members of the Metropolitan Water Board. St. R. & O. 1903, No. 3.

Order of Local Govt. Board, dated March 12, 1903, under Metropolis Water Act, 1902, prescribing Regulations as to First Meeting and Proceedings of Metropolitan Water Board. St. R. & O. 1903, No. 176.

Order in Council confirming the Metropolitan Water Stock Regulations, 1903. Price 2d. St. R. & O. 1903, No. 673.

Metropolitan water area—The Metropolitan Water Board (Appointment of Members) Order, April 6, 1907. St. R. & O. 1907, No. 267. Price 1d.

LONDON (Water)—continued.

— “Building”—Reservoir authorized by special Act—Supervision of district surveyor.
See **LONDON—Buildings**. 1.

— Main drainage system—Sewers—Storm-water overflow—Discharge into tidal navigable creek.

See **LONDON—Sewers**. 4.

1. — *Metropolitan Water Board—Waterworks company—Transfer of undertaking—Leasehold premises—Statutory vesting—Covenant not to assign without consent—Power of re-entry on breach—Alienation—Statutory powers—Metropolis Water Act, 1902 (2 Edw. 7, c. 41), s. 2, sub-s. 1; s. 24, sub-ss. 1 and 2; s. 37—Metropolitan Water Board (Various Powers) Act, 1907 (7 Edw. 7, c. clxxvii.), s. 53.*

By virtue of the provisions of the Metropolis Water Act, 1902, the undertaking and property of the Grand Junction Waterworks Co., comprising (inter alia) leasehold premises demised to the co. by a lease of Mar. 14, 1881, were transferred to and became vested in the plt. Bd. The lease contained a covenant on the part of the co., its successors and assigns, not to sell, assign, or underlet the demised premises without the previous written consent of the lessors, and also a power for the lessors to re-enter on breach of any of the covenants in the lease. The plt. Bd. did not require the premises in question, and proposed to underlet them to an intended tenant for the residue of their term less three days. The defts., in whom the leasehold reversion was vested, refused their consent. In an action by the plt. Bd. for a declaration that, notwithstanding the covenant, they were entitled, in exercise of their powers under the Metropolis Water Act, 1902, and the provisions of the Public Health Act, 1875, incorporated therein, and the Metropolitan Water Board (Various Powers) Act, 1907, to sell, assign, or underlet the premises without the previous consent in writing of the defts. :—

Held, that what the plt. Bd. possessed was not an absolute term of years, but only a lease liable to be determined in the event (inter alia) of an assignment or underletting without the previous written consent of the defts.; that the plt. Bd.'s statutory powers only enabled it to dispose of such estate and interest as it might have, and did not deprive the defts. of their right to re-enter for breach of the covenant against assigning or underletting without the necessary consent; and that, consequently, the action failed. **METROPOLITAN WATER BOARD v. SOLOMON** - **Joyce J. [1908] W. N. 98; [1908] 2 Ch. 214**

— Neglect or refusal to supply—Defect.

See **WATER**. 17.

2. — *Supply of water by meter—“Premises”—Land used for building operations—Waterworks Clauses Act, 1847 (10 & 11 Vict. c. 17), s. 43—East London Waterworks Act, 1853 (16 & 17 Vict. c. clxvi.), s. 79.*

The word “premises” in s. 79 of the East London Waterworks Act, 1853, does not include land upon which the owner and occupier proposes to conduct building operations. Therefore

LONDON (Water)—continued.

the East London Waterworks Co. are not liable to conviction under s. 43 of the Waterworks Clauses Act, 1847, and s. 79 of the Act of 1853, for neglecting to afford to the owner or occupier of the land a supply of water by meter for purposes other than the purposes in respect of which water rates are, by the Act of 1853, provided or limited. **METROPOLITAN WATER BOARD v. PAINE** **Div. Ct. [1907] 1 K. B. 285**

— Water rate—“Domestic purposes”—“Railway purposes”—Railway station—Sanitary conveniences.
See **RATES**. 37.

3. — *Water rate—“Domestic purposes”—“Railway purposes”—Railway station—Sanitary conveniences—Metropolitan Water Board (Charges) Act, 1907 (7 Edw. 7, c. clxxvii.), ss. 8, 16, 25.*

The Metropolitan Water Board (Charges) Act, 1907, provides by s. 8 for the supply of water for “domestic purposes” at the request of the owner or occupier of any house or building occupied as a separate tenement within the limits of supply of the Metropolitan Water Board at a rate based on the rateable value of the house or building. The same Act by s. 16 provides for a supply of water by measure for “purposes other than domestic” at the request of any owner or occupier of any premises situate as therein described at rates varying with the quantity supplied. By s. 25 “domestic purposes” are deemed to include water-closets and baths of a certain capacity, but are not to include a supply of water for “railway purposes.”

A ry. co. owned a station as described in s. 16 and within the limits of supply of the Bd. The station was separately rated; it contained no stationmaster's house, but contained waiting-rooms, a porter's room, and a booking office; on the up and down platforms were urinals and two water-closets, one for passengers and one for the staff; there was also on each platform a tap from which water was drawn for drinking and for cleansing the platform:

Held by the Div. Ct. (Phillimore and Bucknill JJ.), that water supplied by the Bd. for these purposes was not supplied for “domestic purposes” within the meaning of s. 8, but was supplied for “purposes other than domestic” within the meaning of s. 16 of the Act.

Per Bucknill J., that the water was used for “railway purposes” within the meaning of s. 25. **METROPOLITAN WATER BOARD v. LONDON, BRIGHTON AND SOUTH COAST RY. CO.**

Div. Ct. [1910] 1 K. B. 804

Note.

This case was affirmed by C. A., [1910] 2 K. B. 890. See **Rates**. 37.

4. — *Water rate—Trade premises—Sanitary conveniences—“Domestic purposes”—Waterworks Clauses Act, 1863 (26 & 27 Vict. c. 93), s. 12—Metropolitan Water Board (Charges) Act, 1907 (7 Edw. 7, c. clxxvii.), ss. 8, 9, 13, 16, 25.*

The Metropolitan Water Board (Charges) Act, 1907, s. 8, provides for a supply of water for “domestic purposes” to any house or building within the limits of supply of the Bd. at a

LONDON (Water)—continued.

rate based on the annual rateable value of the house or building; ss. 9 and 13 prescribe the machinery for ascertaining such rate; s. 16 provides for a supply of water to any premises by meter when required for "purposes other than domestic" at rates varying with the quantity supplied; and s. 25 defines "domestic purposes" to include water-closets and baths of a certain capacity, but not to include "a supply of water for . . . any trade manufacture or business."

A gas co., whose works were within the limits of supply of the Bd., provided at their works in pursuance of their statutory obligations under the Factory and Workshop Act, 1901, all necessary sanitary conveniences for their workmen. No one resided at the works, which were exempt from inhabited house duty. The co. claimed to be entitled under s. 16 of the Act of 1907 to a supply of water by meter for the sanitary conveniences on the ground that such supply was "for purposes other than domestic," i.e., for trade purposes, and that their works were within the exception of "any trade manufacture or business" in s. 25 of the Act:—

Held, that the question was not the character of the premises, but the character of the purposes for which the water was used; that the supply in question was for domestic purposes; and, therefore, that the co. were not entitled to a supply under s. 16, but were entitled to a supply under ss. 8, 9, and 13 of the Act. **SOUTH SUBURBAN GAS CO. v. METROPOLITAN WATER BOARD** - **Neville J. [1909] W. N. 199** : [1909] 2 Ch. 666

— Will—Bequest—"Money invested in" Lambeth Waterworks Company—Ademption—Transfer of undertaking to Water Board.

See **WILL**—"Money Invested in." 1.

Water-closets.

— Lodging-houses.

See **LONDON**—Lodging-houses. 3.

— Order by sanitary authority on lessor to construct.

See **LANDLORD AND TENANT**. 41.

5. — *Repairing apparatus of existing water-closets—Requirements of notice to sanitary authority before doing so—Public Health (London) Act, 1891 (54 & 55 Vict. c. 76), s. 39, By-laws under—By-laws 5, 14.*

By by-law 14 of the by-laws made under s. 39 of the Public Health (London) Act, 1891, "Every person who shall intend to construct any water-closet . . . or to fit or fix in connection with any water-closet any apparatus or any trap or soil pipe shall, before executing any such works, give notice in writing to the clerk of the sanitary authority":—

Held, that the by-law applied to a person intending to renew the pan or trap of a water-closet constructed before, as well as of a water-closet constructed after, the making of the by-law. **LONDON AND SOUTH WESTERN RY. CO. v. HILLS** **Div. Ct. [1906] W. N. 60**; [1906] 1 K. B. 512

— Sanitary conveniences.

See under **LONDON**—Conveniences.

LONDON AND BIRMINGHAM RAILWAY COMPANY ACT, 1833.

See **RAILWAY**—Mines. 2.

LONDON AND NORTH WESTERN RAILWAY—

Carriage of goods in traders' trucks—Delay in transit—Demurrage.

See **RAILWAY**—Carriage. 9.

LONDON AND ST. KATHARINE DOCKS.

See **SHIPPING**—Docks. 1.

LONG VACATION.

(*Council of Judges of Supreme Court. W. N. 1904 (May 14), p. 157.*)

Supreme Court of Judicature—The Long Vacation for the future to commence on Aug. 1 and terminate on Oct. 11. W. N. 1907 (March 16), p. 79.

LORD CAIRNS'S ACT—Vesting order—Criminal lunatic.

See **LUNACY**. 27.

LORD CHANCELLOR—Sitting alone in Court of Appeal—Court of Appeal, Decision binding on.

See **MORTGAGE**—Interest. 1.

LORD OF THE MANOR.

See under **MANOR**.

LORDS, HOUSE OF.

See under **HOUSE OF LORDS**.

LOSS—Apportionment—Settled fund.

See under **SETTLED LAND**—Apportionment.

— Shipping—Collision.

See under **SHIPPING**—Collision.

LOST GRANT—Pleading—Date and parties.

See **PRACTICE**—Pleadings. 3.

LOTTERY.

See under **GAMING**.

LOUGHBOROUGH CORPORATION — Electricity.

See **STATUTE**. 3.

LUGGAGE—Railway company.

See under **RAILWAY**—Luggage.

Ship—Passengers' luggage—Contract of carriage

—Theft by shipowners' servants.

See **SHIPPING**—Passengers. 1.

LUNACY.

Lunacy Act, 1908 (8 Edw. 7, c. 47), amends the Lunacy Acts, 1890 (53 & 54 Vict. c. 5) and 1891 (54 & 55 Vict. c. 65).

1. — *Accounts—Committee and receiver—Default—Death of lunatic—Subsequent receipts—Surety—Liability.*

The committee or receiver of the estate of a lunatic is not accountable in the lunacy, in his character of committee or receiver, for rents and profits received by him after the lunatic's death; and consequently, where the committee or receiver has made default, his surety is not

LUNACY—continued.

liable in respect of any such receipts. *In re WALKER* - C. A. [1907] W. N. 123 ; [1907] 2 Ch. 120

2. — *Action by lunatic — Parties — Committee of estate — Inquisition — Special finding — Incapable of managing affairs — Capable of managing himself — Lunacy Act, 1890 (53 & 54 Vict. c. 5), s. 98, sub-s. 2 ; s. 108, sub-s. 3 — R. S. C., 1883, Order XVI., r. 17.*

Where a lunatic so found by inquisition sues by the committee of his estate under Order XVI., r. 17, the committee must be a co-plaintiff.

Furnham v. Milward & Co., [1895] 2 Ch. 730, 735, followed.

A special finding under s. 98, sub-s. 2, of the Lunacy Act, 1890, that the alleged lunatic, the subject of the inquisition, "is of unsound mind, so as to be incapable of managing his affairs, but that he is capable of managing himself, and is not dangerous to himself or to others," constitutes him a lunatic so found by inquisition within the above practice. *In re LORD TOWNSEND'S SETTLEMENT. LORD TOWNSHEND v. ROBINS* - *Swinfen Eady J.* [1907] W. N. 252 ; [1908] 1 Ch. 201

3. — *Administration of estate — Alteration of character of property — Repairs — Permanent improvements — Payment of expenses out of personality — Charge on realty — Charge for general costs in lunacy — Jurisdiction — Discretion — Benefit of lunatic — Lunacy Act, 1890 (53 & 54 Vict. c. 5), s. 118.*

In exercising the power given to the judge by s. 118 of the Lunacy Act, 1890, to charge money expended or to be expended under his order for the permanent improvement of the property of a lunatic upon the improved property, the judge may take into consideration, not only the benefit of the lunatic personally, but also what is fair and right as between his real and personal estates.

Regard ought also to be had to the nature and extent of the estate and to the difficulty in drawing a clear line between ordinary repairs and permanent improvements.

A new tenant of a farm, part of a large agricultural estate belonging to a lunatic, agreed to take the farm on condition that an old malt-house should be converted into cottages for labourers. An order was made in the lunacy authorizing the committee to carry out the conversion and to pay the expense of it out of the lunatic's personal estate. The work having been carried out and paid for, the next of kin of the lunatic applied for an order charging the expense upon the real estate in favour of the personal estate :—

Held, that this expense might properly be regarded as incurred in the course of the ordinary management of the real estate, and that it ought not to be charged upon the real estate in favour of the personality.

Under s. 118 there is jurisdiction to order money already expended under a previous order in permanent improvements to be charged on the improved property, but an application for such a charge should be made promptly.

As a general rule, when an order is made

LUNACY—continued.

authorizing the expenditure of money in permanent improvements, the order should at the same time say whether the expenditure is or is not to be charged on the improved property, or, if not, the order should be made expressly without prejudice to the question how as between the real and personal estates the expenditure is ultimately to be borne :—

Held, also, that an order made by the Master charging part of the general costs in the lunacy upon the lunatic's real estate ought to be discharged. *In re GIST* C. A. [1904] W. N. 26 ; [1904] 1 Ch. 398

— Appeal, Special leave to—Practice—Victoria Lunacy Act.

See No. 23. below.

— Bankrupt, Lunatic—Solicitor's undertaking to refund money to bankrupt's estate — Enforcing undertaking.
See BANKRUPTCY—Undertaking. 1.

4. — *Bankruptcy — Lunatic debtor — Committee in England — Curator bonis in Scotland — Receiving order in England — Application by curator bonis to rescind receiving order — Locus standi — Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), ss. 35, 104.*

In Nov., 1898, R. D. was appointed curator bonis in Scotland of the Scottish estates of A., who was in failing health. A. owed considerable debts in London, where he was residing. Subsequently A. became of unsound mind, and in Jan., 1900, one H. was appointed committee of his estate by the Master in Lunacy.

In Jan., 1901, H. on behalf of the lunatic filed a declaration of insolvency pursuant to leave granted by the Lord Justices in Lunacy. In Feb., 1901, certain English creditors filed a bankruptcy petition against the lunatic grounded on his declaration of insolvency. R. D., as curator bonis, opposed this petition ; but the C. A. held he had no locus standi in the matter : *see In re R. S. A.*, [1901] 2 K. B. 32 :—

Held, that although R. D. might be interested in the estate as a creditor, yet in substance he was applying as curator bonis under the order of the Scottish Court. The application was covered in principle by the decision of the C. A. in the case of *In re R. S. A.*, [1901] 2 K. B. 32. R. D. therefore had no locus standi, and his application must be dismissed with costs.

The lunatic was then adjudicated bankrupt on the application of the official receiver. *In re AYTOUN*

Wright J. [1901] W. N. 165

5. — *Bankruptcy — Lunatic debtor — English lunacy — Committee — Curator bonis — Scottish jurisdiction — Locus standi — Bankruptcy proceedings by committee — Right to represent lunatic — Lunacy jurisdiction — Procedure — Consent of Court in Lunacy to bankruptcy proceedings — Directions, Summons for — Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 148.*

Where, in an English lunacy, a committee has been appointed, a curator bonis appointed by the Scottish Court of the lunatic's estates in Scotland (especially where appointed, prior to the lunacy, on account of physical incapacity) has no locus standi, under s. 141 of the Bankruptcy

LUNACY—continued.

Act, 1883,—which provides that, for the purposes of the Act, “a lunatic may act by his committee or curator bonis”—to intervene in English bankruptcy proceedings by the committee in the name and on behalf of the lunatic. The committee is, when appointed, the only person entitled under the section to represent the lunatic in the proceedings and the curator bonis is only entitled to act therein for the lunatic where there is no committee.

Where the committee of a lunatic debtor has been authorized by the Court in Lunacy to take preliminary proceedings with a view to making him bankrupt, by filing in his name a declaration of insolvency, no subsequent steps such as admitting the debt of a creditor who may have presented the bankruptcy petition, or consenting to an adjudication, should be taken by the committee without first obtaining the sanction of the Court in Lunacy. *In re R. S. A.* - C. A.

[1901] W. N. 58; [1901] 2 K. B. 32

Note.

This case was followed by Wright J., *In re Aytoun*, [1901] W. N. 165. See preceding Case.

— Bankruptcy of donee of power—Incapacity of trustee in bankruptcy to release the power—Settlement—Limited power of appointment.

See POWER OF APPOINTMENT. 1.

6. — Committee—Person of unsound mind not so found by inquisition—Power exercisable by committee under order of judge—Power of sale—Land vested in lunatic as tenant for life—Lunacy Act, 1890 (53 & 54 Vict. c. 5), ss. 116, 120, 128—Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), s. 7—Settled Land Act, 1882 (45 & 46 Vict. c. 38), ss. 3, 62.

The Lunacy Act, 1890, s. 116, does not empower the Judge in Lunacy to authorize the quasi-committee appointed under that section with regard to the estate of a person of unsound mind not so found by inquisition to exercise, on behalf of that person, in respect of land of which he is only tenant for life, the power of sale given by s. 7 of the Lands Clauses Consolidation Act, 1845.

In re Baggs, [1894] 2 Ch. 416, n., followed.

In re X., [1894] 2 Ch. 415, and *In re Salt*, [1896] 1 Ch. 117, discussed. *In re S. S. B. (A PERSON OF UNSOUND MIND NOT SO FOUND BY INQUISITION)* - C. A. [1906] W. N. 85; [1906] 1 Ch. 712

— Condition that devisee should “take and use” testator’s name.

See WILL—Conditions. 1.

— Consent by guardian ad litem—Practice—Evidence—Affidavit.

See CONSENT. 2.

7. — Criminal lunatic—Necessaries—Past maintenance—Implied obligation—Debt—Claim by Crown for arrears—Criminal Lunatics Act, 1884 (47 & 48 Vict. c. 64) s. 10, sub-s. 1, 3—Lunatic Asylums Act, 1853 (16 & 17 Vict. c. 97), s. 104.

Under the Criminal Lunatics Act, 1884, s. 10, sub-s. 3, which incorporates by reference the language of s. 104 of the Lunatic Asylums Act,

LUNACY—continued.

1853, the cost of the maintenance of a criminal lunatic can be recovered by the Crown against property to which the lunatic has become entitled, as being due under an implied obligation to pay for that maintenance as a necessary; and this is a statutory liability for the whole amount expended in respect of which there is no limitation against the Crown. *In re J. (A PERSON OF UNSOUND MIND)*

C. A. [1909] 1 Ch. 574

— Criminal law.

See under CRIMINAL LAW—Lunacy.

— Criminal lunatic—Person totally deaf—Incapacity to understand proceedings.

See CRIMINAL LAW—Lunacy. 3.

— Divorce—Affidavit in verification of petition—Refusal by Commissioners in Lunacy to authorize access by solicitor and commissioner for oaths.

See DIVORCE—Practice. 2.

— Divorce—Nullity—Decree nisi—Application on behalf of respondent for an allowance.

See DIVORCE—Nullity. 5.

— Divorce—“Unreasonable delay”—Respondent’s insanity—Decree.

See DIVORCE—Delay. 1.

— Estate duty—Lunatic entitled to both real and personal estate—Merger of charge.

See REVENUE—Estate Duty. 25.

— Evidence—Admissibility—Decree absolute for default—Reasonable excuse for default.

See CEYLON. 5.

8. — Execution of deed—Power of Court to direct trial of validity or perpetuation of testimony—Lunatic so found—Lucid interval—Power to dispose of property—Lunacy Act, 1890 (53 & 54 Vict. c. 5), ss. 123, 341.

When a person has been found lunatic by inquisition, so long as the inquisition has not been superseded, but continues in force, he cannot, even during a lucid interval, execute a valid deed dealing with or disposing of his property.

The Court will not recognize such a deed even by directing proceedings to be taken to try the question of its validity or to perpetuate testimony as to the state of the lunatic’s mind when it was executed, but will treat the deed as entirely null and void.

The difference between the execution of a deed and the execution of a will by a lunatic so found explained.

Ex parte Sir Benjamin Wright, (1683) 1 Vern. 155, considered. *In re WALKER (A LUNATIC SO FOUND)* - C. A. [1904] W. N. 185; [1905] 1 Ch. 160

9. — Foreign committee—English lunatic—English property.

A foreign committee of the property of a domiciled Englishman resident abroad and found to be a lunatic in the forum of his residence cannot as of right recover personal property of the lunatic in this country.

The widow of a domiciled Englishman, who and whose relatives resided in New York, was

LUNACY—continued.

found on a New York inquisition to be insane. A New York tribunal appointed a co. committee of both the person and property of the lunatic.

The Court, in its discretion, though the lunatic's income was more than sufficient for her maintenance, ordered English trustees of personal property of the lunatic to pay accrued income, and gave the trustees liberty to pay future income to the committee.

Didisheim v. London and Westminster Bank, [1900] 2 Ch. 15, considered. **NEW YORK SECURITY AND TRUST CO. v. KEYSER**

Cozens-Hardy J. [1901] **W. N. 14** :
[1901] 1 Ch. 666

—Franchise—Disqualification—“Medical assistance.”

See **PARLIAMENT**. 5.

10. — Inquisition—Traverse of inquisition — Right of lunatic to traverse — Discretion of Judge in Lunacy—Lunacy Act, 1890 (53 & 54 Vict. c. 5), s. 101.

Upon the petition under s. 101 of the Lunacy Act, 1890, of a person found by inquisition to be of unsound mind for leave to traverse the inquisition :—

Held, that leave to traverse the inquisition was a matter of right, but that this does not prevent the Judge in Lunacy from exercising such a control in the matter as may be necessary for the protection of the person and estate of the alleged lunatic by satisfying himself (e.g., by a personal interview) that the application is bona fide, and that the alleged lunatic is competent to exercise an act of volition upon the subject. *In re Cumming*, (1852) 1 D. M. & G. 537, applied. *n re GILCHRIST*

C. A. [1906] **W. N. 199** :
[1907] 1 Ch. 1

10a. — Insolvent estate—Proof of debt—Rate of interest.

The old rate of interest on debts has not been altered. Four per cent. is allowed on a judgment debt. *In re HUNT. HARVEY'S CLAIM*

Mathew L.J. [1902] 2 Ch. 318, n.

11. — Jurisdiction — Inquiry — Domiciled foreigner temporarily in England.

The Court in Lunacy has jurisdiction to order an inquiry into the state of mind of a domiciled foreigner who is temporarily resident in England. *In re BURBIDGE*

C. A. [1902] **W. N. 141** ;
[1902] 1 Ch. 426

12. — Jurisdiction—Lunatic out of the jurisdiction—Foreign curator—English stocks and shares—Transfer—Discretion of Judge in Lunacy—Special circumstances—Lunacy Act, 1890 (53 & 54 Vict. c. 5), s. 134.

Order made under s. 134 of the Lunacy Act, 1890, upon the application of the curator of a lunatic resident in France, and under the special circumstances of the case, for the transfer of stocks and shares in England to which the lunatic was entitled, although the same were not required for his maintenance.

In re Elias, (1851) 3 Mac. & G. 234, followed. *In re J. L. S. DE LARRAIGOTI (A PERSON OF UNSOUND MIND)*

C. A. [1907] 2 Ch. 14

13. — Jurisdiction—Person of unsound mind not so found—Management and administration

LUNACY—continued.

—“Lawfully detained”—*Jurisdiction — Idiots Act, 1886 (49 & 50 Vict. c. 25), s. 5—Lunacy Act 1890 (53 & 54 Vict. c. 5), s. 116, sub-s. 1 (c).*

The expression “lawfully detained as a lunatic though not so found by inquisition,” as used in s. 116, sub-s. 1 (c), of the Lunacy Act, 1890, means “lawfully detained” under the provisions of the Acts of Parliament of this country ; and consequently there is jurisdiction to make administrative orders in the case of a person of unsound mind not so found who is detained in accordance with the Idiots Act, 1886.

In re Watkins, [1896] 2 Ch. 336, explained and distinguished. *In re MARK WHALLEY AND In re W. R. WHALLEY - C. A.* [1906] **W. N. 42** :
[1906] 1 Ch. 565

—Lunatic pauper—Maintenance.

See under **POOR LAW**.

14. — Lunatic who is not a pauper—Order for reception into asylum—Classification as private patient—Application of lunatic's property to his maintenance—Jurisdiction of justice to order—“Chargeable to any union or local authority”—Lunacy Act, 1890 (53 Vict. c. 5), ss. 13, 299—Lunacy Act, 1891 (54 & 55 Vict. c. 65), s. 3.

A person for whose reception and detention in a county lunatic asylum an order has been made under s. 13 of the Lunacy Act, 1890, is a person “chargeable to a union or local authority” within the meaning of s. 299 of that Act, and a justice has jurisdiction under the latter section to order any property of the lunatic to be seized and applied to the expenses of his maintenance, none the less because at the time of the application for that order the lunatic has been “classified as a private patient” in accordance with the provisions of s. 3 of the Lunacy Act, 1891. **REX v. FULHAM GUARDIANS**

Div. Ct. [1909]
2 K. B. 504

15. — Maintenance—Pauper—Asylum—Pauper lunatic settled outside asylum area—Expenses of maintenance—Limit of charge—Lunacy Act 1890 (53 & 54 Vict. c. 5), s. 283, sub-s. 3.

The visiting committee of a lunatic asylum are not entitled, under s. 283 of the Lunacy Act, 1890, to fix a greater weekly sum than 1*4s.* to be charged for the expenses of the lodging and maintenance of pauper lunatics in the asylum, even in the case of pauper lunatics other than those sent from or settled in a parish or place within the county or borough to which the asylum belongs.

Decision of Div. Ct., [1904] **W. N. 159** ; [1904] 2 K. B. 709, affirmed. **FITCH v. BERMONDSEY GUARDIANS.**

C. A. [1905] **W. N. 15** ; [1905] 1 K. B. 524

16. — Maintenance — Pauper lunatic — Expense of maintenance—Reasonable charges—Order of justices—Lunacy Act, 1890 (53 Vict. c. 5), ss. 283, 287.

The action was brought in the county court under s. 314 of the Lunacy Act, 1893, to recover a balance due to the plts. for the maintenance expenses of two pauper lunatics confined in the Glamorgan County Asylum, being at the rate of 1*l.* *1s.* per week and 1*7s.* 6*d.* per week respectively, which sums were ordered by two justices

LUNACY—continued.

of the peace, under s. 287 of the Act, to be paid to the plts. by the defts. The two lunatics had been removed to the Glamorgan County Asylum from Cardiff, a place within the deft. union, and not within the county to which the asylum belonged; and they were chargeable to the deft. union. The only question at issue between the parties was whether the justices acting under s. 87 of the Lunacy Act, 1890, were bound by the limit of 14s. per week imposed by s. 283, sub-s. 1.

The county court judge gave judgment for the plts. for the amount claimed, and his decision was affirmed by the Div. Ct., [1910] W. N. 172; [1910] 2 K. B. 547.

The C. A. dismissed the appeal, being of opinion that the reasonable charges of maintenance in s. 287 were not the same as the expenses mentioned in s. 283, and that the limit imposed by s. 283 had no application to orders made under s. 287. Both the language and the objects of the two sections were different. The primary object of s. 283 was to enable the rating authorities to ascertain how much money they ought to require from the unions liable to contribute to the maintenance of an asylum. Under s. 287 the justices had to consider the case of the particular lunatic before them, and if the special circumstances of the case required a larger weekly charge than the limit fixed by s. 283, they were not bound by that limit. The duties of the justices under s. 287 were not ministerial but judicial. It was true that an order under that section might be obtained *ex parte*; and, as a general rule, that would be unobjectionable, because no more would be asked for than the sum fixed by the visiting committee under s. 283. But whenever the circumstances were exceptional, the justices would be exercising a wise discretion in declining to make an order except in the presence of the persons to be charged; also any order by the justices, whether made *ex parte* or on notice, should not be absolute in form but should be until further order only, to provide for any change of circumstances, and all the more because the order was not appealable. *Dictum* of Wright J. in *Suffolk County Lunatic Asylum v. Stow Union*, (1897) 76 L. T. 494, overruled. **GLAMORGAN COUNTY ASYLUM v. CARDIFF UNION** - - - **C. A. [1910] W. N. 258**

17. — Maintenance — Pauper lunatic — Receiver—Debt—Death of lunatic—Administration action—Creditors, Rights of—Jurisdiction.

A pauper lunatic, while being maintained by the guardians of a union, became entitled to a fund, whereupon, on a summons in lunacy by the guardians, who claimed six years' arrears for past maintenance, an order was made by the Court in Lunacy appointing a receiver of the fund, and directing him to pay thereout to the guardians part of the arrears and to apply the balance for future maintenance. While under the care of the guardians the lunatic died. There then being a surplus in the hands of the receiver, the guardians commenced a creditors' administration action in the Chancery Division against the lunatic's administrator to obtain payment of the balance of the six years' arrears:—

Held, reversing the decision of Kekewich J.,

LUNACY—continued.

that the balance of arrears was a valid legal debt enforceable after the lunatic's death, and that the order in lunacy was no bar to the action. *In re* TAYLOR. **EDMONTON UNION v. DEELY**

C. A. [1901] W. N. 21; [1901] 1 Ch. 480

18. — Maintenance—Payment out of Court—Petition—Chancery Division—Judge in Lunacy—Jurisdiction—Person of unsound mind not so found—Lunacy Act, 1890 (53 & 54 Vict. c. 5), s. 116.

E. C. was a person of unsound mind not so found, and was incapable of managing her affairs. Her only property was a sum of 1250*l.* bequeathed upon trust for her by the will of B., deceased. This sum had been paid into Court under the Trustee Act, 1893. This was a petition by the lunatic by her next friend asking that an annual sum of 50*l.* might be allowed for her maintenance, and might be paid to her sister out of the dividends of the fund as far as they would extend, and the remainder by sale from time to time of a sufficient part of the capital:—

Held, that the application ought to have been made to the Court in Lunacy, which was the proper jurisdiction having regard to s. 116 of the Lunacy Act, 1890. In lunacy there were facilities for requiring the person appointed as receiver to furnish periodical accounts. The Court declined to exercise the jurisdiction in Chancery, but gave liberty to amend the petition by entitling it in Lunacy. *In re* BARKER'S TRUSTS - - - **Joyce J. [1904] W. N. 13**

19. — Maintenance, Application of property for—Jurisdiction of Chancery Division—Person of unsound mind not so found—Lunacy Act, 1890 (53 & 54 Vict. c. 5), s. 116.

A lady, who was of unsound mind but not so found by inquisition, had been for some years in an asylum in Germany. Under the will of her father she was absolutely entitled to a trust fund. An originating summons was taken out in her name as plt. by a next friend, the trustees being defts., asking for directions as to the maintenance of the plt., out of the income, and as to the application of the residue of the income and of so much (if any) of the capital as the Court should think fit for the comfort and benefit of the plt. The fund was invested partly in India stock and partly on mortgage.

On the hearing of the summons Joyce J. declined to give any directions as to the maintenance of the plt., being of opinion that, having regard to s. 116 of the Lunacy Act, 1890, that matter would be more properly dealt with in the Lunacy jurisdiction.

Upon the undertaking of the trustees to transfer the stock into Court and to deposit in Court the mortgage deed and other deeds in their hands relating to the mortgaged property, the C. A. ordered that the interest on the stock and on the mortgage should, during the plt.'s life or until further order, be paid to the plt.'s sister (one of the trustees), she undertaking to apply the same for the maintenance, comfort, and benefit of the plt. General liberty to apply was reserved. *In re* CARR'S TRUSTS. **CARR v. CARR** **C. A. [1904] W. N. 82; [1904] 2 Ch. 792**

LUNACY—continued.

— Mortgage—Surplus proceeds of sale—Realty or personality—Lunacy of mortgagor.
See MORTGAGE—Sale. 3.

— Nullity of marriage—Delusional insanity—Decree—Custody of child—Costs.
See DIVORCE—Nullity. 10.

20. — *Person not detained as or found of unsound mind, but incapable of managing his affairs—Order for payment of debt in priority—Subsequent death of debtor and administration of his estate in High Court—Effect of Lunacy Order—Lunacy Act, 1890 (53 & 54 Vict. c. 5), ss. 116, 117.*

H. was a person not detained as or found lunatic, but found to be incapable of managing his affairs through mental infirmity arising from disease.

In 1898 a Master in Lunacy made an order under s. 116 of the Lunacy Act, 1890, that H.'s wife should be authorized to do such things as the Masters should approve of for the purpose of protecting his estate and to exercise the powers of a committee of his estate.

In 1902 an order was made in lunacy that H.'s wife should apply certain funds in payment to his creditors of a dividend of 6*d.* in the pound on their debts.

In 1904 an order was made in lunacy that B. & Co., who had not previously claimed, should be admitted as creditors in respect of a certain debt, and should participate in future dividends out of H.'s estate, and should rank in priority to other creditors to the extent of 6*d.* in the pound upon that debt.

Before effect could be given to the order of 1904 H. died, and proceedings for the administration of his estate were taken in the Chancery Division of the High Court :—

Held, that the jurisdiction in lunacy ended at the death of H.; that the order of 1904 did not bind the High Court when administering his estate; that on the death of H. his creditors were entitled to have his assets collected and distributed according to their rights as creditors on the estate of a deceased person irrespective of the fact that up to his death his estate was subject to the jurisdiction in lunacy; and that the claim of B. & Co. to priority therefore failed. *In re SEAGER HUNT. SILICATE PAINT CO. AND J. B. ORR & CO. v. HUNT* - Buckley J. [1906] 2 Ch. 295

— Poor law—Desertion—Separation order—Lunatic—Irremovability—Appeal to quarter sessions.
See POOR LAW. 2.

— Power of appointment—Bankruptcy of donee—Capacity of trustee to release power.
See POWER OF APPOINTMENT. 1.

21. — *Power of appointment among children—Committee—Powers exercisable by committee under order of judge—Power vested in lunatic "in the character of trustee"—Lunacy Act, 1890 (53 Vict. c. 5), ss. 116, 128.*

Where a marriage settlement conferred on the husband and wife a joint power of appointment by deed among the children of the marriage, and

LUNACY—continued.

the wife afterwards became a lunatic not so found :—

Held (Cozens-Hardy L.J. dissenting), that the Judge in Lunacy under s. 128 of the Lunacy Act, 1890, had jurisdiction to authorize the person appointed under s. 116 to exercise the powers of a committee of the estate to concur on behalf of the alleged lunatic in exercising the joint power of appointment as being a power vested in the alleged lunatic "in the character of trustee" *In re A.* - - - C. A. [1904] W. N. 151; [1904] 2 Ch. 328

— Power of sale—Duration—Determination—Absolute vesting of estate.
See POWER OF SALE. 1.

22. — *Practice—Alleged lunatic—Inquiry into mental condition—Receiver—Documents—Production—Appeal—Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 18, sub-s. 5.*

In this case an inquiry was pending as to the alleged lunacy of C. The official solicitor had in the meantime been appointed receiver of her estate, and in that capacity he had in his possession a large mass of documents belonging to her. Upon an application made on her behalf to Matthew L.J. sitting in Lunacy, for liberty to inspect and take copies of such of the documents as she might require for her defence on the inquiry, an order was made directing that the official solicitor should furnish within seven days copies of such documents only as he intended to use against her :—

Held, that the appellant had a right to appeal to this Court. The proper course would be for the Master in Lunacy, who had charge of the inquiry, to look through the documents himself and ascertain what were relevant to the inquiry; but the parties were not at liberty to go before the Master for that purpose. *In re CATHCART*

C. A. [1902] W. N. 80

23. — *Practice—Appeal, Special leave to—Victoria Lunacy Act, 1890—Construction.*

Neither under the Victoria Lunacy Act of 1890 nor under a habeas corpus is a person lawfully detained as a lunatic entitled as of right to have the question of his lunacy decided by means of a jury :—

Special leave to appeal from certain orders of Court refused, the petitioner's object being to obtain a jury's decision as to his lunacy. *Ex parte GREGORY* P. C. [1901] A. C. 128

— Practice—Evidence—Affidavit—Consent by guardian ad litem.
See CONSENT. 2.

24. — *Practice—Mental infirmity—Stockholder—Dividends—Receiver—Accrued dividends—Form of order—Transfer into Court—Bank of England—Indemnity—Lunacy Act, 1890 (53 & 54 Vict. c. 5), ss. 116, 146, 333.*

Where an order is made by a Master in Lunacy under s. 116 of the Lunacy Act, 1890, appointing a receiver, on completing his security, to receive all dividends and arrears thereof to which a person suffering from "mental infirmity" is or may become entitled, "including dividends accrued and to accrue due before lodgment upon the funds to be lodged

LUNACY—*continued*.

pursuant to the lodgment schedule," and directing the lodgment in Court of certain Bank of England securities, the Bank must pay all arrears of dividends accrued before lodgment direct to the receiver and not into Court.

The Bank may safely act upon an order in this form, and in so doing is clearly within the indemnity provided by ss. 146 and 333.

In re Browne, [1894] 3 Ch. 412, discussed and applied. *In re Spurling* — C. A. [1909] 1 Ch. 199

— Practice—Vesting orders.

See Nos. 25, 27, 28, 29, below.

25. — Practice—Vesting orders, Form of—Applications to vest or procure the conveyance or transfer of outstanding property in or to trustees.

The Master of the Rolls and the Lords Justices have issued the following note with regard to certain points of Lunacy Practice:—

1. Upon applications to vest or procure the conveyance or transfer of outstanding property in or to trustees, it is not necessary, unless in any particular case the Court otherwise directs, to deduce the beneficial title to the property or to serve beneficiaries.

2. Orders in Lunacy for vesting or appointing a person to convey or transfer any property are to be drawn in the form employed for similar orders in the Chancery Division, and schedules and any other devices may be employed for shortening orders.

Practice Note, C. A. [1908] W. N. 75

26. — Principal and agent—Lunatic not so found by inquisition—Person appointed under Lunacy Act to carry on business of lunatic—Personal liability on contracts made in carrying on business—Lunacy Act, 1890 (53 & 54 Vict. c. 5), ss. 116, 120, 124.

By an order made by a Master in Lunacy under s. 116 and s. 120 of the Lunacy Act, 1890, the deft. was authorized to exercise the powers of a committee of the estate of a lunatic not so found by inquisition as in the case of a person of unsound mind so found by inquisition, and to carry on his business, which had been carried on by the lunatic in the name of a firm of which he was the sole partner. While carrying on the business under the order, the deft. ordered goods in the name of the firm, and the goods were supplied by the plts. for the purposes of the business. The plts. having sued the deft. personally for the price of the goods supplied by them:—

Held, that the effect of the order made under the Lunacy Act, 1890, was to make the deft. the agent of the lunatic for the purpose of carrying on his business, and that, in the absence of evidence that the deft. intended to pledge his personal credit, the mere fact that he carried on the business under the order did not make him personally liable to the plts. for the goods supplied by them.

Burt, Boulton & Hayward v. Bull, [1895] 1 Q. B. 276, and *Owen & Co. v. Cronk*, [1895] 1 Q. B. 265, considered. **PLUMPTON v. BURKINSHAW** — C. A. [1908] 2 K. B. 572

— Probate—Practice—Lunacy of one of the executors after proving will.

See PROBATE—Lunacy. 1.

LUNACY—*continued*.

— Probate—Practice—Lunatic defendant—Position of official solicitor, if appointed guardian ad litem.

See PROBATE—Lunacy. 2.

— Probate—Practice.

See under PROBATE—Lunacy.

— Sale by mortgagee—Surplus proceeds of sale—Lunacy of mortgagor.

See MORTGAGE—Sale. 3.

— Sale by trustees—Power of sale—Consent of tenant for life—Lunatic not so found—Quasi committee.

See SETTLED LAND—Sale. 17.

— Solicitor—Lunacy of client—Liability of solicitor personally to pay plaintiff's costs.

See SOLICITOR—Costs. 24.

— Substituted service on alleged lunatic—Service on Master in Lunacy—Jurisdiction to dispense with examination of lunatic. *See NEW SOUTH WALES. 21.*

— Timber—Conversion—Administration.

See SETTLED LAND—Timber. 1.

— Trade union—Member—Alteration during member's insanity of rule as to benefits. *See TRADE UNION. 6.*

27. — Vesting order—Stock—Trust fund—Trustee—Criminal lunatic—Repealing Act—Saving clause, Effect of—Jurisdiction, Reservation of—Lord Cairns's Act—Trustee Act, 1850 (13 & 14 Vict. c. 60), s. 5—Lunacy Act, 1890 (53 & 54 Vict. c. 5), ss. 136, 340, 342—Form of vesting order.

As the Lunacy Act, 1890, gives no jurisdiction to make a vesting order in the case of a trustee who is a criminal lunatic (see ss. 136 and 340), the old jurisdiction in such a case under s. 5 of the Trustee Act, 1850, is preserved by the proviso or saving clause in s. 342, notwithstanding that by that section s. 6 of the earlier Act is in terms repealed, there being nothing in the later Act inconsistent with the preservation of that jurisdiction; and the Court in Lunacy will exercise that jurisdiction accordingly by making a vesting order under the Act of 1850.

Where an Act conferring a certain jurisdiction is repealed by a subsequent Act containing a saving clause to the effect that the repeal shall not affect any jurisdiction established under the repealed Act, the jurisdiction under the repealed Act should, in the absence of any inconsistency between the two Acts, be regarded as preserved by virtue of the saving clause.

The dictum of Baggeallay L.J. in *Sayers v. Collyer*, (1884) 28 Ch. D. 103, 107, as to the preservation of the jurisdiction under Lord Cairns's Act by the saving clause in the repealing Act (the Statute Law Revision and Procedure Act, 1883), considered.

Form of vesting order of stock standing in the name of a criminal lunatic trustee. *In re R. C. A. [1906] W. N. 57; [1906] 1 Ch. 730*

28. — Vesting order—Jurisdiction of Master—Trust property—Lunacy Acts, 1890 (53 & 54 Vict. c. 5), ss. 116—130, 136; 1891 (54 & 55 Vict. c. 55), s. 27, sub-s. 1.

LUNACY—*continued*.

A Master in Lunacy has not jurisdiction to make a vesting order as to trust property which, new trustees having been already appointed, remains vested in the old trustees, one of whom is a lunatic.

A vesting order in such a case is not part of the administration or management of the lunatic's estate within s. 27, sub-s. 1, of the Lunacy Act, 1891, which confers jurisdiction on a Master.

In re Fuller, [1900] 2 Ch. 551, distinguished.

In re LANGDALE (A LUNATIC) - - - C. A.
[1901] 1 Ch. 3

29. — *Vesting orders—Practice—Direction to transfer stock—Title of proceedings—Lunacy Act*

LUNACY—*continued*.

1890 (53 & 54 Vict. c. 5), s. 116, sub-s. 1 (d); ss. 133, 333—*Rules in Lunacy*, 1892, rr. 9, 57, 58; *Schedule, Form 1*.

An order in lunacy directing a transfer of stock under s. 133 of the Lunacy Act, 1890, should be intituled in the matter of the Lunacy Acts, 1890 and 1891, as well as in the matter of the particular lunacy; but this is not to apply to a case under s. 116, sub-s. 1 (d) (of a person who through mental infirmity arising from disease or age is incapable of managing his affairs), where the title contains a reference to the statutes “53 Vict. c. 5, and 54 & 55 Vict. c. 65.” *In re*

PURVIS - - - Vaughan Williams L.J.
[1904] W. N. 47; [1904] 1 Ch. 373

M.

MACHINE—Contract to supply power to work machine — Excessive supply causing damage.

See LANDLORD AND TENANT. 50.

MACHINERY—Poor rate —Rating of factory with machinery.

See RATES. 13.

— Trade fixtures — Hire-purchase agreement — Entry of mortgagee into possession.

See FIXTURES. 2.

— Trade fixtures — Mortgage — Hire-purchase agreement — Presumption of law — Rights of mortgagee against owner of machinery.

See FIXTURES. 4.

— Workmen's Compensation Acts.

See under MASTER AND SERVANT—**Compensation**.

MAGISTRATE.

See under JUSTICES.

MAHOMEDAN LAW—Administration of wakf estate—Rights of wakifs—Scheme of administration—Charter of incorporation superseded.

See MAURITIUS. 1.

MAIL SHIPS.

See under SHIPPING—**Mail Ships**.

MAINS — Tramways — Protection of mains — Notice by promoters to owner of mains of intention to construct tramway—Limit of time for giving counter-notice.

See TRAMWAYS. 12.

“**MAINTAIN**” — Local education authority — Duty to “maintain” school — Negligence.

See SCHOOLS. 14, 15.

MAINTENANCE—Alimony

See under DIVORCE.

— Assignment of debt—Chose in action—Indirect motive on part of assignee.

See ASSIGNMENT. 2.

— Bastardy.

See under BASTARDY.

— Churchyard, Gift for maintenance of—Mortmain—Statute—Implied repeal.

See CHARITY. 35.

— County council — Main road — Maintenance and repair—Mandatory order.

See LOCAL GOVERNMENT. 9.

MAINTENANCE *continued*.

— Discretionary trust for—Validity—Remoteness.

See WILL—**Remoteness**. 3.

— Divorce.

See under DIVORCE.

— Husband and wife.

See under HUSBAND AND WIFE.

— Infant.

See under INFANT—**Maintenance**.

— Infant—Right to surplus income and accumulations.

See ACCUMULATIONS. 1.

— Lunacy.

See under LUNACY.

— Poor law.

See under POOR LAW.

— Residue to individuals in shares at twenty-one—Vested or contingent.

See WILL—**Vesting**. 4.

— Shipwreck — “Distressed seaman” — Expenses of maintenance, &c., abroad.

See SHIPPING—**Seaman**. 9.

— Tenant for life—Will—Gift to widow during widowhood for the maintenance of herself and her children.

See SETTLED LAND—**Powers**. 4.

— Will — Legacy payable at twenty-one—General intention to provide maintenance.

See WILL—**Interest**. 1.

— Will—Vesting gift to son at thirty-five—Discretionary trust for maintenance.

See WILL—**Vesting**. 2.

MAINTENANCE OF SUIT—*Charity induced by religious sympathy—Common interest.*

Although there is an inducement based on a common religious belief which leads a rich person out of charity to assist a poor one in defending a suit, the assistance given is none the less charitable, and the case falls within the specific exception from the law against maintenance established by the authorities founded on the interest arising out of charity. HOLDEN v. THOMPSON

Div. Ct. [1907] W. N. 129;
[1907] 2 K. B. 489

2. — *Common interest—Trade rivals—Protection of customers—Contract of indemnity.*

The plts. and the defts. were rival manufacturers of an apparatus for conveying cash from one part of business premises to another. The defts. obtained contracts for the hire of their apparatus from three of the plts.' customers, who

MAINTENANCE OF SUIT—*continued.*

were under contracts to use the plts.' apparatus at the time, and they agreed to indemnify the customers against any claims by the plts. against them for breach of contract. Two of these customers were originally customers of the defts., and the third gave a contract to the plts. in the belief that he was dealing with the defts. The plts. in each case sued the customer for breach of contract and in two instances recovered damages and costs, which the defts. paid under their contract of indemnity. The plts. claimed relief against the defts. on the ground of maintenance :—

Held, that the defts. in giving these contracts of indemnity were acting in the legitimate defence of their commercial interests and were not liable for maintenance. **BRITISH CASH AND PARCEL CONVEYORS, LD. v. LAMSON STORE SERVICE Co., LD.** - **C. A. [1908] W. N. 73; [1908] 1 K. B. 1006**

MALE SERVANTS—Revenue.

See under **REVENUE**—**Male Servants.**

— Execution creditor—Wrongful seizure—Debt paid before issue of writ—Absence of malice—Trespass.
See **SHERIFF**. 3.

— Libel.

See under **DEFAMATION**—**Libel.**

— Libel by servant of corporation. Liability of company for malicious libel.
See **NEW SOUTH WALES**. 20.

— Plans—Malicious refusal of local authority to approve—Action.
See **LOCAL GOVERNMENT**. 26.

— Slander.

See under **DEFAMATION**—**Slander.**

— Trade union.

See under **TRADE UNION.**

MALICIOUS DAMAGE—Criminal law.

See under **CRIMINAL LAW**—**Malicious Damage.**

MALICIOUS INJURIES TO PROPERTY—

Fisheries—Poisoning fish in salmon river—Construction of statutes—Criminal law.

See **FISHERY**. 7.

MALICIOUS PROSECUTION—Action for—Onus probandi—Law of Ceylon.

See **CEYLON**. 2.

— Action for—Verdict set aside—New trial.

See **QUEENSLAND**. 3.

MALTA—*Code of Rohan, bk. 4, c. 2, ss. 3 and 4*—*Fidei-commissum primogenitura—Duration of tenure until fourth gradus—Construction of gradus—Conditions as to surname not authorized by the founder—Power to appoint—Law of Malta.*

The entailed Maltese property in suit was subjected by will in 1790 to a fidei-commissum unto the fourth degree in terms of the Code of Rohan (bk. 4, c. 2, ss. 3 and 4), which directed that after the fourth degree every tie and burden shall cease, and the property shall pass unburdened to the heir of the fourth and last substitute, the

MALTA—*continued.*

four degrees being counted in capita and not in stirpes without including therein the instituted heir.

The testator's son in 1839, having no children, under a power of appointment contained in the said will, created a primogenitura in favour of his universal heir and grand-nephew P. "in terms always of the said paternal will and unto the fourth degree contemplated in the said paternal will and allowed by the laws now in force" to endure as long as the fidei-commissum founded by his said father "under the fetters pacts laws and conditions hereinafter stated."

One of these conditions was that in the event which happened of failure of male descent the primogenitura should pass to his only daughter, whose male child when born was to enjoy the primogenitura during his natural life, and after his death it was to pass to his male descendant until the exhaustion of the four degrees, with the proviso "that any holder of the said primogenitura descended from a female shall be bound to add the surname 'Bonici' to his own on penalty of forfeiting the possession of the said primogenitura, which on such contingency occurring shall pass, ipso facto, to the person next called thereto." The said only daughter had sons living at her father's death, including the appellant and respondent, so that the entailed property never came into her possession, but into that of the appellant, her first-born son.

In a suit for a declaration that the appellant, who had been in possession of the property in suit for twenty-two years without taking the name of Bonici, had forfeited his right thereto, and that the same had developed ipso facto on the respondent, his younger brother, it was pleaded that the condition as to name was not warranted by the will of 1790, and that the appellant, as holder in the fourth degree after that of the instituted legatee, was entitled to keep the property free from any burden :—

Held, that there was no indication in the will of 1790 of a desire on the part of the founder of the fidei-commissum that the beneficiaries should bear his name, and that the power of appointing a primogenitura given thereby did not include an authority to impose that condition on its successive holders.

Held, also, that on the true construction of ss. 2 and 3 of the code the four degrees mentioned therein are degrees of generation and not of actual possession, and therefore include the generation to which the mother of the parties belonged, so that the appellant was the fourth and last substitute. But *quære*, whether under the like construction he holds the property unburdened, or whether it remains burdened until after it has passed to his heirs. **STRICKLAND v. STRICKLAND** - **P. C. [1908] A. C. 551**

— Colonial marriage—Evidence of validity—Practice.

See **MARRIAGE**. 3.

MANAGER—Bankruptcy—Special manager—Default in accounting—Four-day order—Jurisdiction.

See **BANKRUPTCY**—**Manager**. 1.

MANAGER—*continued.*

- Hotel—Undisclosed principal—Licence taken out in name of manager—Presumption as to hotel being tied.
See **PRINCIPAL AND AGENT.** 15.
- Publishing fraudulent statements—Officers of public companies—Manager *de facto*.
See **CRIMINAL LAW—Larceny.** 10.
- Receiver and—Company.
See under **COMPANY—Receiver.**
See under **RECEIVER.**
- Receiver and—Debenture-holders' action—Form of debenture.
See **COMPANY—Receiver.** 9.
- Receiver and—Interference.
See **PARTNERSHIP.** 9.

MANCHESTER — *Company — Private Act — Statutory agreement—Arbitration clause—Compulsory reference—Ouster of jurisdiction—Manchester Ship Canal Acts, 1885 (48 & 49 Vict. c. clxxxviii.), s. 88, and 1896 (59 & 60 Vict. c. clxxvii.).*

The Manchester Ship Canal Act, 1885, s. 88, enacted that certain provisions for the protection of the corporation of Warrington and traders unless otherwise agreed on by the corporation and the Ship Canal Co. should have effect, and by sub-s. 22 that any difference arising between the co. and the corporation as to the meaning of the section or anything to be done or not to be done thereunder should be determined by an engineer to be appointed (unless otherwise agreed on) by the Board of Trade, whose decision should be final and binding on both parties.

By s. 202, any question arising between the co. and any person touching anything to be done or not to be done or any money to be paid under the provisions of the Act should be determined by arbitration in manner provided by the Railways Clauses Consolidation Act, 1845.

An action having been brought by the corporation and traders against the co. to enforce the statutory obligations:—

Held, upon a preliminary objection as to competency, that as to the corporation the action must be dismissed, the jurisdiction of the Court being ousted by the special provisions, but that the traders were entitled to proceed with the action and have the merits of their case determined.

The decision of the C. A., [1904] 2 Ch. 123, affirmed upon the first point and reversed upon the second. **JOSEPH CROSFIELD & SONS, LD. v. MANCHESTER SHIP CANAL CO.**

H. L. (E.) [1905] **W. N.** 126;
[1905] **A. C.** 421

- Costs—Taxation—Non-contentious business—Proper officer—District Registrar of Manchester.
See **SOLICITOR—Costs.** 26.

Deanery of Manchester Act, 1906 (6 Edw. 7, c. 19), is an Act to make further provision with respect to the Revenues of the Deanery of Manchester.

- Electric lighting—Nuisance—Leakage of electricity—Explosion—Fire.
See **ELECTRIC LIGHT.** 10.

MANCHESTER—*continued.*

- Income tax—Salary—Deductions—Contribution to thrift fund—Manchester Corporation.
See **REVENUE—Income Tax.** 34.

2. — Manchester Corporation — Statutory powers — Corporation by charter — General powers—Tramways—Power to use tramways for the purpose of conveying and delivering parcels—Ultra vires—Ancillary business—Business of common carriers—Manchester Corporation Tramways Act, 1899 (62 & 63 Vict. c. ccliv.)—Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50).

By virtue of various provisional orders and private Acts of Parliament the Manchester Corporation had power to use all tramways belonging to or in lease to the corporation, or on which they had power to place or run carriages, "for the purpose of conveying and delivering animals, goods, minerals, or parcels." The corporation worked a large system of tramways, of which they were owners or lessees, extending all over the city and suburbs of Manchester, and a considerable surrounding district. They had commenced, or advertised their intention to commence, a general parcels delivery business within and beyond the area covered by their tramways, not confined to parcels and goods carried on their tramways. This action was brought by the Attorney-General on the relation of Manchester ratepayers, to restrain the carrying on of such a business:—

Held that, under the power given by the Act of 1899, the corporation had power to carry on the business of common carriers upon their tramways, and as ancillary to that business to do all things necessary for the collection and delivery of parcels carried on their tramways. For this purpose they had power to maintain stations or warehouses for receiving and storing parcels or goods, to provide horses, vans, carts, and to employ servants, messengers, and agents for the purpose of collection and delivery. But all these services must be confined to parcels or goods carried or to be carried on the tramways; the corporation had no power to carry on a general parcels delivery business apart from their tramways.

Held, also, that the part of the general business which was in excess of the statutory powers of the corporation must cause some expense to the city funds, and therefore the corporation were prevented by the Municipal Corporations Act, 1882, from carrying it on under their general powers as a corporation by charter. **ATT.-GEN. v. MANCHESTER CORPORATION**

Farwell J. [1906] **W. N.** 39;
[1906] 1 Ch. 643

- Compulsory pilotage—Vessel passing through port of Liverpool—Limits of port—Port of Manchester.
See **SHIPPING—Pilotage.** 4.

- Manchester Ship Canal—Collision—Fog.
See **SHIPPING—Collision.** 43.

MANDAMUS—Board of Education—Decision—Want of jurisdiction—Certiorari.
See **SCHOOLS.** 16.

MANDAMUS—continued.

— Costs—Confirmation of bishop-elect—Objections on grounds of doctrine—Jurisdiction.

See ECCLESIASTICAL LAW—Bishops. 1.

— County court to state case, Mandamus to—Appeal from Victoria.
See TRAMWAYS. 14.

— Hospital—Mandamus to levy retrospective rate—Agreement by local authorities for joint use of hospital—Excusable delay.
See LOCAL GOVERNMENT. 15.

— Licence—Conditions attached to renewal.
See LICENSING ACTS. 39.

— Poor rate.
See under RATES.

1. — *Prerogative writ* — Costs—Jurisdiction of Court to order payment of costs by or to the Crown.

Rules nisi had been granted at the instance of two different prosecutors calling on the Archbishop of Canterbury and the Vicar-General of the province to shew cause why a prerogative writ of mandamus should not issue commanding them, or one of them, to hear opponents of the confirmation of the bishop-elect of Worcester. Notice of the rules was directed to be served on the Dean and Chapter of Worcester; there was no similar direction to serve the Treasury on behalf of the Crown, but, as the application affected the rights of the Crown, the law officers appeared at the hearing on behalf of the Crown without objection, and shewed cause against the rules. After argument the rules were discharged and costs were allowed to the Archbishop, who was represented by separate counsel, the question of the jurisdiction of the Court to order the prosecutors to pay costs to the Crown being reserved for further consideration.

The Court held that the contention of the prosecutors was correct, and that the Court had no jurisdiction to order them to pay costs to the Crown. They expressed no opinion as to their power to order payment of costs by or to the Crown in matters other than the prerogative writ of mandamus, or even as to that writ when it is applied for by or against the officers of executive departments of the public service in relation to their statutory or other duties. *REX v. ARCH-BISHOP OF CANTERBURY* — Div. Ct.
[1902] W. N. 52; [1902] 2 K. B. 503

MANDATORY INJUNCTION.

See also under INJUNCTION.

— Alteration to demised premises—Erection of clock affixed to outside of house.
See LANDLORD AND TENANT. 7.

— Ancient lights—Prescription—Measure of right—Angle of 45 degrees.
See LIGHT AND AIR. 11.

— Canal company—Diversion of water from river—Statutory powers.
See CANALS. 1.

— Clock fixed to outside of house—Breach of lessee's covenant—"Alteration."
See LANDLORD AND TENANT. 7.

MANDATORY INJUNCTION—continued.

— Restrictive covenants—"Offensive" trade or business—Bill-posting—Advertisement hoarding.

See BUILDING ESTATE. 1.

MANDATORY INTERLOCUTORY INJUNCTION

— Practice—Motion by defendant before pleading.

See INJUNCTION. 2.

MANDATORY ORDER—County council—Main roads—Maintenance and repair.

See LOCAL GOVERNMENT. 9.

— Shareholders' address book—Right of shareholders to copy—Motives.

See COMPANY—Books. 1.

— To pull down—Street—Infringement of building line—Penalty—Conviction.

See STREETS. 3.

MANITOBA—Laws of.

See under CANADA.

— Privy Council appeals.

See under PRIVY COUNCIL.

MANOR — *Ancient demesne*—Freehold—Custom—Fine on alienation—Foreigner—Evidence—Prescription—Statute Quia Emptores Terrarum (18 Edw. 1, c. 1).

The freehold of land held in socage of a manor of ancient demesne is in the tenant.

A manorial custom in a manor of ancient demesne to exact a fine on alienation to a foreigner (of arbitrary amount in its origin) held bad, under the statute Quia Emptores Terrarum and otherwise, as being a restriction on the right of a freeman to alienate.

The plt. sued as lord of a manor and soke in ancient demesne, formerly vested in Henry VIII. The present existence of and the plt.'s title to the manor and soke were disputed. The rolls of courts held on behalf of the plt.'s predecessors going back to 1576 were produced:—

The Court held the plt.'s title to the manor established, if necessary by the presumption of a lost grant. *MERTTENS v. HILL*

Cozens-Hardy J. [1901] W. N. 47;
[1901] 1 Ch. 842

— Copyhold—Obligation of copyholder to repair—Breach of obligation—Forfeiture.

See COPYHOLDS. 3.

— Custom to take smaller fines on admittance from tenant of manor than from stranger.

See COPYHOLDS. 1.

— Customary churchway—Manorial custom—Evidence—Inhabitants of parish at large.

See WAY, RIGHT OF. 1.

2. — *Heriot*—Freehold of manor—Tenant—"Dying seised"—Mortgage—Mortgagor in possession.

A mortgagor in possession of a freehold tenement within a manor is so "seised" of that tenement that, on his death, the lord of the manor is entitled to claim his best beast as a

MANOR—*continued*.

heriot, pursuant to the custom of the manor.
COPESTAKE v. HOPER - **Kekewich J. [1907]**
W. N. 43; [1907] 1 Ch. 366

On Appeal:—

Reversed by C. A. **COPESTAKE v. HOPER**
[1898] W. N. 129; [1908] 2 Ch. 10
See under HERIOT.

3. — Lord of the manor—Steward—Solicitor—Custody of court rolls.

Both the lord of a manor and the steward have a qualified right to the custody of the court rolls. The steward is entitled to keep them for the purpose of discharging the duties of his office; and there is no rule that the lord is entitled as of right, in the absence of misconduct, to call upon the steward to give them up to him.

The decision in *Rawes v. Rawes*, (1836) 7 Sim. 624; 5 L. J. (N.S.) (Ch.) 114; 40 R. R. 191, must be understood as addressed to a case where the steward had misconducted himself. *In re JENNINGS, A SOLICITOR* - **Buckley J. [1903] W. N. 69; [1903] 1 Ch. 906**

— Market—Extent of franchise.

See MARKET. 4.

— Reservation of manorial rights—support—
*See INCLOSURE ACT. 3.***— Stone quarry—Right to get stone—Court rolls—Evidence.**
*See COMMON. 3.***MANSION-HOUSE**—Capital money—Improvements—Irish estates.

See SETTLED LAND—Capital Moneys. 10.

— Heirlooms—Trust of chattels as—Construction—To be enjoyed with mansion-house.
*See HEIRLOOMS. 3.***— Settled land.**
*See under SETTLED LAND—Mansion-house.***— Will—Construction.**
*See under WILL—Mansion-house.***MANSLAUGHTER.**

See under CRIMINAL LAW—Appeal.

MANUSCRIPT—Book—Posthumous letter.
*See COPYRIGHT—Books. 3.***MANX LOCAL GOVERNMENT ACT, 1886.**
*See ISLE OF MAN. 3.***MAPS**—Admissibility of railway map by the Appellate Court—Right of way.
*See CANADA—Railway. 3.***— Evidence — Admissibility — Charts — Public documents—Ancient reports to Government departments—Depositions.**
*See CUSTOM. 1.***MARGARINE.**

See under BUTTER.

— Butter and Margarine Act, 1907.
*See under ADULTERATION.***MARGARINE**—*continued*.

1. — Sale by retail—Printed matter on wrapper—"Fancy or other descriptive name"—Margarine Act, 1887 (50 & 51 Vict. c. 29), s. 6—Sale of Food and Drugs Act, 1899 (62 & 63 Vict. c. 51), s. 6—Butter and Margarine Act, 1907 (7 Edw. 7, c. 21), s. 8.

On April 26, 1910, the appellant sold by retail and delivered to the respondent half a pound of Karmo (a kind of margarine) in a paper wrapper on which the words "Karmo Margarine" were printed. In respect of this sale the appellant was charged with an offence under s. 6 of the Margarine Act, 1887, as amended by s. 6 of the Sale of Food and Drugs Act, 1899, which in substance provide that margarine when sold by retail shall be delivered to the purchaser in a paper wrapper, "on which" shall be printed the word "Margarine," "and no other printed matter shall appear on the wrapper."

The word "Karmo" was a fancy or descriptive name approved by the Board of Agriculture under s. 8 of the Butter and Margarine Act, 1907, and it was contended for the appellant that he was therefore entitled to print the words "Karmo—Margarine" on his wrapper. Sect. 8 provides that: "If in any wrapper enclosing margarine . . . a person dealing in margarine describes it by any name other than 'Margarine,' or a name combining the word 'Margarine' with a fancy or other descriptive name approved by the Board of Agriculture, . . . he shall be guilty of an offence" under that Act.

The magistrate held that the appellant was not entitled to use the word "Karmo" in combination with the word "margarine" on the wrapper, and he convicted the appellant.

The Court dismissed the appeal, being of opinion that s. 8 of the Act of 1907, which dealt with what might be printed "in" the wrapper had not by implication repealed the provision of s. 6 of the Act of 1899, that the word "margarine," and no other printed matter, should appear "on" the wrapper. **WILLIAMS v. BAKER** **Div. Ct. [1910] W. N. 280**

— Sale of food and drugs.

See under ADULTERATION.

MARGINAL CLAUSE—Bill of lading—Damage to cargo—Negligence of carrier's servants.
*See SHIPPING—Charterparty. 11.***MARINE INSURANCE.**

See under INSURANCE (MARINE).

MARITIME LIEN.

See under SHIPPING—Lien.

MARKETS—By-law—Ultra vires—Power to charge fees on cattle in municipal sale-yards only—Law of New South Wales.
*See NEW SOUTH WALES. 35.***1. — Disturbance—Rival market—Intention—Injunction.**

Plt. was the lessee of a market granted to one M. by a Royal Charter of 1698, to be held at Southall on every Wednesday for ever, with also two annual fairs for ever, for the sale of horses

MARKETS—continued.

and cattle. The deft., a farmer, advertised a sale of Welsh ponies to take place on Wednesday, Aug. 20, 1902, being Southall market-day, in a field about 300 yards from the entrance to the market, and the sale was held accordingly. The plt. brought this action for an injunction to restrain the deft. from advertising and holding his market, on the ground that this was a "disturbance" of his, the plt.'s, ancient market.

It appeared from the evidence that during the market-day the deft. induced several persons to come over to his field and buy ponies there. Kekewich J. held, upon the facts, that there had been no such invasion of the plt.'s market rights as to render the deft. liable to an injunction, and dismissed the action with costs.

The Court were of opinion, upon the evidence, that there had been a disturbance of the plt.'s market, for what the deft. had in fact done was to establish, upon the particular day in question, a new market rivalling the old market. Once that conclusion was arrived at, it was quite immaterial that the deft. had, as was alleged, no intention of doing so. But, as the evidence shewed that he had acted to a large extent under provocation from the plt., the case was not one for an injunction; and therefore there would simply be a declaration that the acts of the deft. constituted a disturbance of the plt.'s market, with liberty to the plt. to apply for an injunction if the wrongful acts of the deft. were repeated. The plt. to have the costs of the appeal, but each party to pay his own costs of the action in the Court below. *WILSON v. STEEL* - C. A.

[1903] W. N. 205

2. — Franchise—Market rights—Rival market—Disturbance—Intention—Injunction.

The plt. was the lessee of a market, granted in 1698 by Royal Charter, for weekly sales of horses and cattle, the grant and also the lease including the right to receive the market tolls; and weekly sales were regularly conducted at the market accordingly.

In 1902 the deft., who was an auctioneer and had been in the habit of holding auction sales of horses and cattle at the weekly market, took a field near the market for the purpose of holding sales there of horses and cattle, and then advertised that an auction sale of Welsh ponies would be held by him there upon a particular market day. On that day, after concluding his usual sale of horses and cattle at the market, he induced several of the persons present to leave the market and accompany him to the sale in his field, and the sale then took place.

In an action brought by the plt. against the deft. for an injunction, the deft. disclaimed any intention of setting up a rival market, and excused himself by saying that the market was for various reasons an unsuitable place for the sale of the ponies, which were wild and unbroken :—

Held (reversing the judgment of Kekewich J.), that the deft.'s acts constituted such a disturbance of the plt.'s market and invasion of his market rights as might be restrained by injunction, the question of intention being immaterial.

MARKETS—continued.

Goldsmid v. Great Eastern Ry. Co., (1883) 25 Ch. D. 511, and *Mosley v. Walker*, (1827) 7 B. & C. 40; 31 R. R. 146, considered. *WILCOX v. STEEL* - C. A. [1904] 1 Ch. 212

3. — Franchise—Fair—Fair and market held on same day—Merger—Change of days for which charter granted—Tolls—Stallage.

The plt., as lord of the manor of Worksop, was owner of a weekly provision and cattle market (held on Wednesdays) and two annual fairs granted by ancient charters with right of toll. The defts. were lessees of the markets under a lease granted in 1851 for ninety-nine years. This lease expressly excepted and reserved the fairs. In 1845 the then lord of the manor had, without licence from the Crown, changed the days of holding the fairs from Mar. 21 and Oct. 2 and 3, the days named in the charter, to the second Wednesdays in Mar. and Oct. Until the date of the lease the markets and fairs were held in the streets. After that date the markets were held in buildings or on land provided by the defts. or their predecessors in title. On the two new fair days the fair was duly proclaimed by the crier of the lord, but nothing further was done by the lord. On these fair days the defts. charged an increased toll for stalls in the market to persons who only attended on fair days, but allowed regular attendants at the market to have stalls at the usual market rate. The defts. had also issued lists of tolls shewing an increased toll on fair days for "lots" of eggs, but this had not been collected. The plt. brought this action for an account of all tolls received by the defts. on fair days on the ground that they were fair tolls and not market tolls. It appeared that tolls were taken at the fair in the reign of Edward III., but there was no evidence of the payment of any fair tolls between that date and the date of the lease :—

Held, that there is no impossibility in holding a market and a fair in the same manor on the same day, and no presumption that the market is absorbed in the fair; that, though the change of days did not of itself forfeit the franchise of the fair, the lord could not legally recover tolls on days not named in the charter; that the increased tolls charged by the defts. on fair days were stallage payable to them as owners of the soil; that the owner of a fair or market, so long as he does not charge unreasonable tolls, is not bound to charge all persons alike, but may remit part of the toll to favoured persons; and that the parties had contracted for the lease upon the basis that no fairs were payable. *DUKE OF NEWCASTLE v. WORKSOP URBAN DISTRICT COUNCIL*

Farwell J. [1902] W. N. 77; [1902] 2 Ch. 145

— Lease—Substructure and supports of market
— Covenant—Iron girders—Deterioration—Standard of strength.

See LANDLORD AND TENANT. 83.

— Loss of market—Damages—Bill of lading.
See SHIPPING—Charterparty. 2.

4. — Manorial market—Extent of franchise—
New streets—Dedication—Presumption—Local

MARKETS—continued.

Authority—Right in salesman subject to directions to move to a more convenient place according to the opinion of the proper authority—Form of order.

There was in the parish of Whitechapel, which was included in the manor of Stepney, an ancient manorial market without metes and bounds, which was held in a street called High Street. There was evidence from which it might be inferred that the right to hold the market extended to holding it in streets adjoining High Street, when that street was overcrowded. Under an Act of Parliament passed in 1840 two new streets were made adjoining High Street on ground that included the sites of pre-existing streets which adjoined that street. Under an Act of Parliament passed in 1865 another new street, by which an existing street was connected with High Street, was made upon ground previously covered with houses. These streets were all in the parish of Whitechapel. The Acts under which they were respectively made provided that, when the streets were made, the ground laid open into them should form part of the streets, and should be used by the public accordingly. There was evidence that the streets so made had been for many years used for the purposes of the market without interference by the highway authority:—

Held, by Vaughan Williams L.J. and Buckley L.J., that the right to hold the market extended to holding it in these streets, when High Street was overcrowded, and that the statutory dedication of them as highways must be taken to be subject to the user of them for the purposes of the market.

Fletcher Moulton L.J. dissented, on the ground that in his view the facts of the case did not justify the inference that there was a prescriptive right to hold the market in any other street than High Street, and that the statutory dedication of the new streets was absolute, and not subject to any right of using them for the purposes of the market.

Judgment of Swinfen Eady J., [1906] 2 K. B. 468, affirmed subject to a slight variation of the declaration made by the order. GINGELL, SON & FOSKETT, LD. v. STEPNEY BOROUGH COUNCIL C. A. [1908] 1 K. B. 115

On Appeal:—

Judgment of the C.A., [1908] 1 K. B. 115, affirmed. STEPNEY CORPORATION v. GINGELL, SON & FOSKETT, LD. - H. L. (E.) [1909] W. N. 72; [1909] A. C. 245

Public Health Act, 1908 (8 Edw. 7, c. 6), makes the provisions of the Public Health Act, 1875 (38 & 39 Vict. c. 55) with respect to the provision and regulation of markets applicable in rural districts.

5. — *Statutory market—Disturbance—Statutory remedy—Injunction—Jurisdiction—Practice—Proceeding in lieu of demurrer—Right to begin—R. S. C., 1883, Order XXV., r. 2.*

Where a statute provides a particular remedy for the infringement of a right of property thereby created or re-enacted, the jurisdiction of the High

MARKETS—continued.

Court to protect that right by injunction is not excluded, unless the statute expressly so provides.

On a proceeding in lieu of demurrer under Order xxv., r. 2, the party who by his pleading raises the point of law has the right to begin. STEVENS v. CHOWN. STEVENS v. CLARK

Farwell J. [1901] W. N. 54
[1901] 1 Ch. 194

MARKET GARDENER—Compensation—Glass-houses—Fruit trees—Removable fixtures—Agricultural holdings.

See LANDLORD AND TENANT. 5.

MARKET GARDENER'S COMPENSATION (SCOTLAND)—Improvements—Retrospective effect of statute.

See LANDLORD AND TENANT. 3.

MARRIAGE—Marriage Legalization Act, 1901 (1 Edw. 7, c. 23), is an Act for legalizing marriages heretofore solemnized in certain churches and places.

Marriage Legislation Act, 1903 (3 Edw. 7, c. 36), renders valid marriages heretofore solemnized at the Ellerker Chapel-of-ease and at other named churches.

Provisional order of (Marriages) Act, 1905 (5 Edw. 7, c. 23), is an Act to enable provisional orders to be made for removing any invalidity or doubt attaching to marriages by reason of some informality.

Colonial Marriages (Deceased Wife's Sister) Act, 1906, (6 Edw. 7, c. 30), declares the law with respect to a marriage between a man and his deceased wife's sister domiciled in parts of the British possessions where such a marriage is legal.

Marriage with Foreigners Act, 1906 (6 Edw. 7, c. 40), amends the law with respect to marriages between British subjects and foreigners.

— *Naval Marriages Act, 1908 (8 Edw. 7, c. 26). See under ARMY AND NAVY.*

Deceased Wife's Sister Marriage Act, 1907 (7 Edw. 7, 47), is an Act to amend the law relating to marriage with a deceased wife's sister.

England—Rules and Regulations, made by the Registrar-General, Oct. 4, 1909, and approved by the Local Government Board, Oct. 8, 1909, under the Marriage Act, 1898, for the guidance of Authorized Persons and of the Trustees or other Governing Bodies of Registered Buildings in which Marriages may be Solemnized without the presence of a Registrar. St. R. & O., 1909, No. 1332. Price 2½d. (Postage 1d.).

— *Administration suit—Pedigree—Evidence. See PROBATE—Marriage. 1.*

— *Adulterers, Marriage of—Illegitimacy of children procreated in adultery. See CEYLON. 3.*

— *Bigamy—Foreign degree of nullity. See DIVORCE—Nullity. 1.*

— *Bigamy—Second marriage performed abroad. See BIGAMY. 1.*

1. — *Breach of promise of marriage—Contract—Promise to marry on death of wife—Knowledge of promisee—Public policy.*

MARRIAGE—continued.

The deft., who was to the knowledge of the plt. a married man, promised to marry the plt. on the death of his wife. He did so with the intention, known to the plt., of inducing her to commit adultery with him, and she did so after the promise and before the death of deft.'s wife:—

Held, that such a promise was contrary to public policy, and could not be enforced. **SPIERS v. HUNT** - **Phillimore J.** [1908] **W. N. 16**; [1908] **1 K. B. 720**

2. — *Breach of promise of marriage—Contract—Promise to marry on death of wife—Knowledge of promisee—Public policy.*

A promise of marriage made by a man, who to the knowledge of the promisee was at the time of the making of the promise married, is void as being against public policy, and therefore cannot be enforced by action after the death of the promisor's wife. **WILSON v. CARNLEY**

C. A. [1908] **W. N. 36**; [1908] **1 K. B. 729**

— Capacity—Italian subjects—Deceased husband's brother.

See **CONFLICT OF LAWS**. 12.

— Channel Islands, Civil marriage in the — Foreign law— Evidence.

See **DIVORCE—Channel Islands**. 1.

3. — *Colonial marriage—Malta—Evidence of validity—Practice—Matrimonial suit.*

In a matrimonial suit, where there is a practical difficulty in the way of a petitioner adducing the usual evidence of a lawyer who is or has been practising in the Courts of the Colony where the marriage of the petitioner was celebrated, the Court may accept the evidence of a gentleman, who, not as a mere amateur, but from his professional research and experience in relation to the marriage laws of the Colony in question, is, in the opinion of the Court, sufficiently qualified to express an opinion as to the validity of a marriage there celebrated. **WILSON v. WILSON** **Jeune, Pres.** [1902] **P. 157**

4. — *Condition—Validity—Restraint of marriage—Forfeiture on marriage at any time without consent of named persons—Condition subsequent—Gift over—Practice—Parties—Representation of unborn children—Settlement—Trustees—R. S. C., 1883, Order XVI., 32 (a).*

A condition subsequent in partial restraint of marriage, e.g., a condition providing for the forfeiture of interests, given by a settlement to a daughter of the settlor and her children, upon the marriage of the daughter at any time without the consent of named persons, is valid and enforceable if it be accompanied by a gift over of the fund on marriage without the required consent.

Decision of Warrington J., [1904] **W. N. 118**, affirmed.

The validity of such a condition was settled in **Dashwood v. Lord Bulkeley**, (1804) 10 Ves. 230, and **Lloyd v. Branton**, (1817) 3 Mer. 108, and earlier cases, and those decisions cannot now be questioned.

Per Byrne J. The Court has no power to appoint a person to represent a class of which

MARRIAGE—continued.

there is no member in existence, e.g., unborn children.

Upon a summons to determine the construction and effect of a settlement, unborn children who take an interest under the trusts are sufficiently represented by the trustees. *In re* **WHITING'S SETTLEMENT**. **WHITING v. DE RUTZEN** **C. A.** [1904] **W. N. 199**; [1905] **1 Ch. 96**

5. — *Contract—Illegality—Marriage brokerage—Introductions with a view to marriage—Contract for reward to bring about introductions—Expense incurred in carrying out contract—Rescission of contract—Recovery of money paid.*

A contract for reward to introduce another to persons of the opposite sex, with a view to marriage with one of those persons, is a marriage brokerage contract and illegal; and money paid under such a contract can be recovered back by the person who paid it, although the other party to the contract had brought about introductions and has incurred expense in so doing.

Decision of the Div. Ct., reported [1905] **1 K. B. 24**, reversed. **HERMANN v. CHARLES-WORTH** **C. A.** [1905] **W. N. 61**;

[1905] **2 K. B. 123**

— Deceased wife's sister, Marriage with— Repulsion from Holy Communion.

See **ECCELESIASTICAL LAW—Holy Communion**. 2.

— Dignity—Marriage with a peer of the realm — Divorce—Former wife marrying a commoner.

See **HUSBAND AND WIFE—Title of Honour**. 1.

— Divorce.

See under **DIVORCE**.

— “During the marriage”—After-acquired property—Covenant—Judicial separation. *See* **SETTLEMENT**. 15.

6. — *Evidence—Presumption from co-habitation—Husband and wife.*

An English man and woman travelled to France with the intention of getting married, and there purported to go through a form of marriage; and they had since lived together in England as man and wife for thirty years and had several children. There was some evidence of recognition of children by the family. It was assumed by the Court that a marriage such as was alleged was impossible according to French law and the habits of law-abiding people in France:—

Held, that this fact was not sufficient to rebut the presumption in favour of marriage arising from the long-continued cohabitation of the parties as man and wife.

The principle of **Sastry Velaidar Aronegary v. Sambecutty Vaigalie**, (1881) 6 App. Cas. 364, applied. *In re* **SHEPHERD**. **GEORGE v. THYER** **Kekewich J.** [1904] **1 Ch. 456**

— Foreign domicile, will, and marriage—English domicile subsequently acquired.

See **PROBATE—Foreign Domicil**. 2.

FOREIGN MARRIAGES. *Marriage of British Subjects Abroad. The Foreign Marriages O. in* **C. 1903. St. R. & O., 1903, No. 215.**

MARRIAGE—continued.

— Foreign marriage—Proof—Expert evidence
— Divorce—Practice.

See **DIVORCE—Foreign Marriage. 1.**

— Forfeiture clause—Intention—Words of futurity—Limitation to events after testator's death.

See **WILL—Forfeiture. 7.**

— Naval marriages.

See under **ARMY AND NAVY.**

— Nullity of marriage.

See under **DIVORCE.**

— Settlements, Marriage.

See under **SETTLEMENT.**

7. — Validity — Celebration in England — Husband a British subject domiciled in India — Hindu—Personal capacity to contract marriage with an English Christian woman.

Any incapacity of either a man or a woman which, though recognized and enforced by the law of the domicile of either, is of a kind to which the Courts of this country refuse recognition, does not render a marriage celebrated here invalid on account of any such incapacity.

A foreigner or a British subject domiciled abroad who enters into a contract of marriage with an Englishwoman domiciled in England—a marriage which would be recognized by the law of England as valid if contracted between persons domiciled in this country—does not carry with him any disability of a personal character imposed by the law of his domicile so as to preclude him from contracting a valid marriage with her in this country.

A foreigner or a British subject domiciled abroad who, being in England, contracts in due form according to the laws of England a marriage with a person domiciled in England is not to be permitted to assert that he was under the burden of an incapacity, imposed by the law of the foreign domicile, to do that which he in fact did voluntarily and in due form according to the laws of England, and he cannot repudiate the marriage on the ground of such personal incapacity.

Where both parties to a marriage are domiciled in a country the laws of which forbid them to marry, considerations may apply differing from those which would be applicable in cases where one party only is domiciled in a country the laws of which forbid such a marriage. **CHETTI (VENUGOPAL) v. CHETTI (VENUGOPAL)**

Gorell Barnes, Pres. [1909] P. 67

— Ward of Court—Marriage in contempt—Committal of ward—Jurisdiction.

See **WARD OF COURT. 1.**

— Will—Condition as to consent to marriage—Marriage with consent in testator's lifetime—Codicil confirming will after the marriage.

See **WILL—Conditions. 2.**

— Will—Construction—Gift of income to daughter until marriage—Gift over on marriage—Death of daughter unmarried.

See **WILL—Residue. 3.**

MARRIAGE—continued.

— Will—Forfeiture clause—Words of futurity—Forbidden marriages.

See **WILL—Forfeiture. 7.**

8. — Will—Marriage with consent—Consent given—Power of retraction—Construction of will.

A person in loco parentis is justified in altering his mind and withdrawing his consent to a marriage if circumstances subsequently come to his knowledge which, had they been known at the time, would have caused him originally to withhold his consent. This power of retraction, however, is not unlimited, and cannot be exercised for mere caprice or without just and exceptional reasons.

Merry v. Hykes, (1757) 1 Eden, 1 and Dashwood v. Lord Bulkeley, (1804) 10 Ves. 280, discussed and applied.

By a codicil made in 1901 a testator directed that, in the event of his daughter marrying against her mother's wish, a legacy of 500*l.* and her share in his residuary estate were to be settled on the daughter for life, with remainder to her children. In May, 1893, the daughter became engaged with the consent of the testator and his wife, conditionally on the marriage being deferred for two years. In February, 1895, the testator died; the engagement was still recognized by the widow, who stipulated for a further delay till August. To this the daughter agreed. Subsequently there were disputes between the mother and daughter as to the form of the settlement and other matters; the daughter left her mother's house and was married in June. Immediately before the marriage the mother wrote withdrawing her consent to the marriage:—

Held, that under the circumstances the consent originally given could not be withdrawn and that the daughter was absolutely entitled to the legacy and to her share in the testator's residuary estate. **In re BROWN. INGALL v. BROWN**

Byrne J. [1903] W. N. 209 ; [1904] 1 Ch. 120

MARRIAGE CONTRACT—Wife's acquirenda—

Accumulations out of income.

See **SCOTTISH LAW. 16.**

MARRIAGE SETTLEMENT.

See under **SETTLEMENT.**

— Variation of marriage settlement, Petition for—Nullity—Impotence—"Property settled."

See **DIVORCE—Nullity. 4.**

MARRIED WOMAN.

See under **HUSBAND AND WIFE.**

MARSHALLING — Assets — Administration — Effect of Land Transfer Act.

See **ADMINISTRATION. 22.**

— Assets—Pecuniary legatees and specific devisees.

See **ADMINISTRATION. 21.**

— For payment of mortgage—Priority of cestui que trust.

See **SETTLEMENT. 48.**

MARTIAL LAW—Appeal—Special leave—Civil tribunals.

See **CAPE OF GOOD HOPE**. 11.

- Review of martial law—Convictions by Supreme Court—Jurisdiction.
See **CAPE OF GOOD HOPE**. 8.

MASTER—Appeal from decision of—Trial of garnishee issue by Master—Practice.
See **APPEAL**. 20.

- Appeal—Reference of action to master.
See **APPEAL**. 23.

- Appeal from master—Security, Decision of master as to sufficiency of—Practice.
See **APPEAL**. 25.

- Jurisdiction of master—Costs—Solicitor—Taxation—Agreement by third party to pay costs.
See **SOLICITOR**—Costs. 39.

MASTER (SCHOOLMASTER).

See under **SCHOOLS**—Masters.

MASTER AND SERVANT.

Labour Bureaux (London) Act, 1902 (2 Edw. 7, c. 13), authorizes the establishment of Labour Bureaux throughout the Metropolis.

Notice of Accidents Act, 1906 (6 Edw. 7, c. 53), is an Act to amend the law relating to returns and notifications of accidents in mines, quarries, factories, and workshops, and under the Notice of Accidents Act, 1894.

Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), consolidates and amends the law with respect to compensation to workmen for injuries suffered in the course of their employment.

Employers' Liability Insurance Companies Act, 1907 (7 Edw. 7, c. 46), is an Act to apply the provisions of the Life Assurance Companies Acts, 1870 to 1872, to companies carrying on the business of insuring employers against liability to pay compensation or damages to workmen in their employment.

The Workmen's Compensation Rules, 1907. A copy of these Rules has been presented gratis by the Council to all subscribers to the entire series of the LAW REPORTS, 1907, in the United Kingdom. These copies were delivered with the July Parts of the LAW REPORTS. W. N. 1907 (June 22), p. 213.

County Courts—Workmen's Compensation Act, 1906—Fees—Treasury Order, dated May 30th, 1907; regulating fees in County Courts. W. N. 1907 (July 6), p. 217. See CURRENT INDEX, 1907, p. lxxi.

County Courts—Fees—Workmen's Compensation Acts—Treasury Order, dated Jan. 17, 1908. Reprint from W. N. 1908 (Jan. 25), p. 53. See CURRENT INDEX, 1908, p. lxxxvi.

Workmen's Compensation Rules, 1908. Forms additional to Appendix to principal rules and memorandum, dated Mar. 14, 1908. Reprint from W. N. 1908 (Mar. 28) p. 83. See CURRENT INDEX, 1908, p. xcix.

MASTER AND SERVANT—continued.

Workmen's Compensation Rules, 1908 (No. 2), dated Nov. 24, 1908. These Rules come into operation on Jan. 1, 1909. Reprint from W. N. 1908 (Dec. 5), p. 337. See CURRENT INDEX, 1908, p. civ.

Workmen's Compensation Act, 1906. Regn., Jan. 15, 1908, under s. 12 of the Act, as to Returns to be furnished each year by Employers in certain Industries with respect to the Compensation paid under the Act during the previous year. Price 1d. St. R. & O., 1908, No. 17.

Workmen's Compensation (Anglo-French Convention) Act, 1909 (9 Edw. 7, c. 16), is an Act to authorize the making of such modifications in the Workmen's Compensation Act, 1906, in its application to French citizens, as may be necessary to give effect to a convention between His Majesty and the President of the French Republic.

Workmen's Compensation—The Workmen's Compensation Rules, 1909, dated May 19, 1909, and which came into operation on June 1, 1909. These Rules shall have effect under the Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58.) Reprint from W. N. 1909 (May 29), p. 193. See CURRENT INDEX, 1909, p. clxiii.

Workmen's Compensation (Anglo-French Convention) Act, 1909. Order in Council, Nov. 22, 1909, giving effect to the Convention between His Majesty and the President of the French Republic by modifying the Workmen's Compensation Act, 1906, in its application to Workmen who are French Citizens. St. R. & O., 1909, No. 1372, L. 44. Price 1d.

Workmen's Compensation Act, 1906. Regn., May 10, 1910, as to references to, and remuneration and expenses of, Medical Referees in England and Wales under s. 8 of the Act. St. R. & O., 1910, No. 596. Price 1d.

Regn., May 10, 1910, as to the duties and remuneration of Medical Referees in England and Wales under the provisions of the First and Second Schedules to the Act. St. R. & O., 1910, No. 599. Price 1d.

Arbitration, col. 1579.

Bailment, col. 1580.

Burgh surveyor, col. 1580.

Company, col. 1580.

Compensation, col. 1581.

Contract of Service, col. 1660.

County Court Judge, col. 1663.

Criminal Law, col. 1662.

Dismissal, col. 1663.

Disputes, col. 1663.

Evidence, col. 1664.

Extra Service, col. 1664.

Factory.—See under FACTORY.

Factory Acts, col. 1664.

MASTER AND SERVANT—*continued.**False Imprisonment*, col. 1668.*False Measure*, col. 1668.*Fatal Accidents Act*, col. 1668.*Forgery*, col. 1668.*Infant*, col. 1669.*Interference*, col. 1674.*Labour Bureau*, col. 1674.*Liability*, col. 1674.*Libel*, col. 1675.*Licences*, col. 1675.*Mines*, col. 1675.*Motor Omnibus*, col. 1675.*Negligence*, col. 1675.*Poor Law Guardians*.—See under **POOR LAW**.*Practice*, col. 1679.*Restraint of Trade*.—See under **RESTRAINT OF TRADE**.*Schools*.—See under **SCHOOLS**.*Scope of Employment*, col. 1689.*Scottish Law*.—See under **SCOTTISH LAW**—**Master and Servant**.*Servants' Characters*, col. 1689.*Shop Clubs*, col. 1689.*Theatre*, col. 1689.*Theft*, col. 1690.*Trade Union*.—See under **TRADE UNION**.*Truck Acts*, col. 1690.*"Undertakers"*.—See under **MASTER AND SERVANT—Compensation**.*Unemployed Workmen*, col. 1690.*Wages*, col. 1691.*Women*, col. 1691.**Arbitration.**

— Arbitration—Condition precedent to jurisdiction of arbitrator.

See **MASTER AND SERVANT—Practice**. 7.

— Arbitration clause—Companies—Winding-up—Insurance.

See **MASTER AND SERVANT—Compensation**. 35.

— Award—Infant—Payment into court.

See **MASTER AND SERVANT—Infants**. 2.

— Award terminating at future date—Jurisdiction of arbitrator.

See **MASTER AND SERVANT—Compensation**. 130.

— Liability of insurers—Arbitration clause in policy—Workmen's compensation.

See **MASTER AND SERVANT—Compensation**. 35.1. — *Weekly payment ended by arbitrator—Application to review—New circumstances***MASTER AND SERVANT (Arbitration)**—*contd.*— *Power of arbitrator to review again—Res judicata—Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37).*

A workman having been injured by an accident in the course of his employment, his employer agreed to make him weekly payments to continue during his incapacity for work, "or until the same shall be ended, diminished, increased or redeemed in pursuance of the Workmen's Compensation Act, 1897." Upon an application for review and termination of the payment the arbitrator made an award that the weekly payments should be ended on the ground that the incapacity had ceased. The workman did not appeal, but afterwards applied for another arbitration with respect to the review and increase of the weekly payment on the ground that he was unable to work through the accident:—

Held (affirming the decision of the C. A.), that the award ending the weekly payments was upon the true construction of it final.

Quære whether the claim of the workman can be kept alive in case of the incapacity recurring by an award which suspends instead of ending the weekly payments. **NICHOLSON v. PIPER** **H. L. (E.) [1907] A. C. 215**

Bailment.1. — *Liability of bailee—Theft by servant—Scope of employment.*

The plt., a wholesale silversmith, hired from the deft., a jobmaster, a brougham, horse, and coachman for the purpose of driving the plt.'s traveller about London with samples of the plt.'s wares to be shown to customers. It was known to the deft. that, in the course of business, occasions would arise when the traveller would have to leave the brougham with samples in it in charge of the coachman. On one of such occasions the coachman, in pursuance of an arrangement made with confederates, drove the brougham to a place where a great portion of the samples in it was stolen by them. In an action brought by the plt. against the deft. to recover the value of the goods so stolen:—

Held, that the deft. was not responsible in respect of the criminal act of his servant, the same not having been done within the scope of his employment.

Abraham v. Bullock, (1902) 86 L. T. 796, distinguished. **CHESHIRE v. BAILEY**

C. A. [1905] W. N. 2; [1905] 1 K. B. 237

— Negligence of servant—Injury to article bailed.

See **MASTER AND SERVANT—Liability**. 2.**Burgh Surveyor.**

— Extra work—Delay.

See **SCOTTISH LAW**. 17.**Company.**

— Share certificate fraudulently issued by secretary—Forgery—Scope of employment—Estoppel.

See **COMPANY—Forgery**. 2.

MASTER AND SERVANT (Company)—contd.

—Voluntary liquidation—Agreement of service—Resolution to wind up—Dismissal of servant.

See COMPANY—Servants. 1.

Compensation.

1. — *Abroad, Accident happening—Claim by dependant—Jurisdiction—Scope of Workmen's Compensation Act, 1906* (6 Edw. 7, c. 58).

The Workmen's Compensation Act, 1906, has no application outside the territorial limits of the United Kingdom, except in the case of seamen and apprentices as provided by s. 7.

Where an English workman in the employment of English contractors was sent out by them to Malta to work for them there, and met with a fatal accident :—

Held, that his widow was not entitled to compensation under the Workmen's Compensation Act, 1906. **TOMALIN v. S. PEARSON & SON, LD.**

C. A. [1909] W. N. 85 ; [1909] 2 K. B. 61

2. — *Acceptance of scheme under Workmen's Compensation Act, 1897—Effect on right to sue independently of Act—Negligence—Employers' Liability Act, 1880* (43 & 44 Vict. c. 42)—*Workmen's Compensation Act, 1897* (60 & 61 Vict. c. 37), s. 1, sub-s. 2 (b) ; s. 3, sub-s. 1.

A workman who had joined a scheme duly certified by the Registrar of Friendly Societies under s. 3, sub-s. 1, of the Workmen's Compensation Act, 1897, received fatal injuries, alleged to have been caused by the personal negligence of his employers, or of some person for whose act or default his employers were responsible. After the workman's death his legal personal representatives brought an action to recover damages under the Employers' Liability Act, 1880 :—

Held, reversing the judgment of the Div. Ct., that the contract by the workman that the provisions of the scheme should be substituted for the provisions of the Act was an exercise of the option given to him by s. 1, sub-s. 2 (b), of the Act to claim compensation under the Act, and was a bar to the claim to the recovery by his representatives of damages under the Employers' Liability Act, 1880. **TAYLOR v. HAMSTEAD COLLIERY CO.**

C. A. [1904] W. N. 76 ; [1904] 1 K. B. 838

3. — *Accident—“Arising out of and in the course of the employment”—Workmen's Compensation Act, 1897* (60 & 61 Vict. c. 37), s. 1, sub-s. 1.

Upon an application for compensation under the Workmen's Compensation Act, 1897, the burden is upon the applicant of giving evidence to show that the accident arose “out of” as well as “in the course of” the employment of the injured workman. Although the fact that the accident happened in the course of the employment may be admitted, that burden is not discharged if the manner in which the accident happened is left wholly unexplained, and if the evidence is equally consistent with the view that it happened in

MASTER AND SERVANT (Compensation)—contd.
consequence of something which did not arise out of the employment.

Wakelin v. London and South Western Ry. Co., (1886) 12 App. Cas. 41, considered and applied. **POMFRET v. LANCASHIRE AND YORKSHIRE RY. CO.** **C. A. [1903] 2 K. B. 718**

4. — *Accident arising out of and in the course of employment—Accident to workman on employer's premises before commencement of work—Ticket office—Workmen's Compensation Act, 1897* (60 & 61 Vict. c. 37), s. 1.

A number of the workmen employed on certain building work in the country had to come down from London each day by a train which brought them to the place of employment about twenty minutes before the time fixed for commencing work in the morning. The workmen employed on the works were paid by the hour, and each of them had, within three minutes after the time fixed for commencing work for the day, to deposit a ticket at a ticket office at the entrance of the works. It was to the knowledge of the employers the practice of the men coming from London, on their arrival by the train, to come to the works about twenty minutes before the time fixed for commencing work, and, after depositing their tickets at the ticket office, to go for refreshment to a mess cabin provided by the employers on the works for the supply of necessary refreshment to the workmen employed. One of these workmen, who had come from London one morning, while proceeding to deposit his ticket at the ticket office about twenty minutes before the time fixed for commencing work, sustained injuries through accidentally falling into an excavation on the works near the ticket office :—

Held, that the accident arose out of and in the course of his employment within the meaning of the Workmen's Compensation Act, 1897, s. 1. **SHARP v. JOHNSON & CO., LD.**

C. A. [1905] W. N. 80 ; [1905] 2 K. B. 139

—Accident arising out of and in the course of employment.

See Nos. 5-10, below.

—Accident—Course of employment—Collier.

See No. 34, below.

5. — *Accident arising out of and in the course of employment—Collier—Duration of employment—Accident on employers' premises while workman is leaving by usual and permitted route—Workmen's Compensation Act, 1906* (6 Edw. 7, c. 58), s. 1.

A collier left his work, after coming up from the pit, by a route which crossed on the level some lines of rail belonging to and under the control of his employers. At the time the workman tried to cross there were some trucks standing on the line, and he tried to get under them ; as he was doing so the trucks moved, and he was seriously injured. The county court judge found on the facts that there were three ways by which the workman might have gone home, but the way he went by was the shortest, was always used by all the workmen

MASTER AND SERVANT (Compensation)—*contd.*
who lived in the same direction as the applicant, and was so used with the knowledge and consent of the employers :—

Held, that the accident arose out of and in the course of the applicant's employment within the meaning of the Workmen's Compensation Act, 1906, s. 1. **GANE v. NORTON HILL COLLIERY CO.** C. A. [1909] W. N. 140; [1909] 2 K. B. 539

6. — *Accident arising out of and in the course of the employment — Engine driver — Workman going to work*—*Workmen's Compensation Act, 1897* (60 & 61 Vict. c. 37), s. 1, sub-s. 1.

An engine driver in the employ of a ry. co. had, in order to commence his day's work, to go in the morning to the co.'s engine shed. His proper route to the engine shed was through a gate opening from the public road on to the ry., and thence by a pathway which did not cross the rails. One morning, on getting through the gate, instead of going along the pathway towards the engine shed, he went in the opposite direction along the ry. to a signal box, which stood in the middle of the line with rails on both sides of it, in order to get some information from the signalman for his own purposes. After obtaining the information which he required, he proceeded from the signal box towards the engine shed along the ry. Some time afterwards he was found lying on the line seriously injured, having presumably been run down by an engine, and he subsequently died of his injuries. On a claim for compensation by his dependants against the co. under the Workmen's Compensation Act, 1897 :—

Held, that the accident could not be said to have arisen out of and in the course of the deceased man's employment, and therefore the claim for compensation must fail. **BENSON v. LANCASHIRE AND YORKSHIRE RY. CO.**

C. A. [1904] 1 K. B. 242

7. — *Accident arising out of and in the course of employment*—*Workmen's Compensation Act, 1906* (6 Edw. 7, c. 58), s. 1, sub-s. 1.

A lady's maid in the course of her employment was sewing in her employer's nursery, which was lighted by electric light. A cockchafer flew into the room by an open window and so alarmed her that she involuntarily hit her eye with her hand and permanently injured her eyesight. Upon an application for compensation under the Workmen's Compensation Act, 1905 :—

Held, that the injury was not caused by an accident arising out of the employment within the meaning of the Act and that the application failed. **CRASKE v. WIGAN**

C. A. [1909] W. N. 136; [1909] 2 K. B. 635

8. — *Accident arising out of and in the course of employment — Hot water tank — Workmen's Compensation Act, 1906* (6 Edw. 7, c. 58), s. 1, sub-s. 1.

A workman employed at certain works climbed on to a hot water tank in the building to eat his supper. The tank was only partially covered in. On returning to his work the man

MASTER AND SERVANT (Compensation)—*contd.*
fell into the tank and was scalded to death. The workmen were not allowed on the tank :—

Held, that the accident did not arise "out of the employment" within the meaning of the Workmen's Compensation Act, 1906, and that compensation was not recoverable under that Act. **BRICE v. EDWARD LLOYD, LD.**

C. A. [1909] W. N. 187; [1909] 2 K. B. 804
— Accident arising out of employment—Hot water tank.

See No. 8, above.

9. — "Accident"—*Injury "by accident" — Turning wheel of a machine — Workmen's Compensation Act, 1897* (60 & 61 Vict. c. 37), s. 1, sub-s. 1.

In the Workmen's Compensation Act, 1897, the word "accident" is used in the popular and ordinary sense, and means a mishap or untoward event not expected or designed.

A workman employed to turn the wheel of a machine, by an act of over-exertion ruptured himself :—

Held, that he suffered an "injury by accident" within the meaning of the Act and was entitled to compensation.

HENSEY v. WHITE, [1900] 1 Q. B. 481, overruled. **FENTON v. J. THORLEY & CO.**

H. L. (E.) [1903] W. N. 149; [1903] A. C. 443

Note.

Test laid down in, applied by C. A., **HIGGINS v. CAMPBELL and HARRISON, LD.**, [1904] 1 K. B. 328. *See No. 57, below.*

Referred to by C. A., **BRODERICK v. LONDON COUNTY COUNCIL**, [1908] 2 K. B. 807. *See No. 60, below.*

Applied by C. A., **HUGHES v. CLOVER, CLAYTON, & CO.**, [1909] 2 K. B. 798; H. L. (E.), [1910] A. C. 242. *See No. 54, below.*

10. — "Accident," *Injury by — Workmen's Compensation Act, 1897* (60 & 61 Vict. c. 37), s. 1, sub-s. 1.

It was the duty of a workman employed in a factory to remove the empty yard beams from looms. He had, in the ordinary course of duty, removed such a beam, weighing about 100 lbs., from a loom, and was in the act of lifting it on to his shoulder, when, finding that it was unevenly balanced, he gave it an extra lift up to get it on his shoulder. The sudden strain so caused had the effect of lacerating the muscles on the right side of his back. Before this occurrence he was in good health, and had not found anything wrong with his back. Upon a claim made by him for compensation under the Workmen's Compensation Act, 1897, the county court judge found that he had been injured by an "accident" :—

Held, that the decision of the county court judge was correct. **BOARDMAN v. SCOTT & WHITWORTH**

C. A. [1901] W. N. 222;

[1902] 1 K. B. 43

11. — *Agreement out of Court—Weekly payments—Return of workman to work—Abandonment of right to further compensation—Death resulting from accident—Claim by dependants—Workmen's Compensation Act, 1897* (60 & 61 Vict. c. 37), Sched. I., clause 1 (a) (i.).

MASTER AND SERVANT (Compensation)—*contd.*

A workman who was injured by an accident arising out of and in the course of his employment within the Workmen's Compensation Act, 1897, made an arrangement with his employer out of court whereby he received for a certain time after the accident a weekly payment, and then, believing himself to have recovered, returned to work, nothing being said on either side as to the continuance or cessation of the compensation, and he subsequently died from the effects of the accident :—

Held—(1.) that these facts afforded no evidence that the workman had abandoned his right against the employer to further compensation ; (2.) that, assuming that the workman had abandoned his right, his dependants had a separate right to compensation of which the workman could not deprive them, subject to this, that the employer was not bound to pay in the aggregate more than the maximum compensation allowed by the Act, and was entitled to take credit for the sums advanced to the workman by way of weekly payment. **WILLIAMS v. VAUXHALL COLLIERY CO.**

C. A. [1907] W. N. 143; [1907] 2 K. B. 433

12. — Agreement — Registration of memorandum—Genuineness—Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), Sched. II., s. 8.

Sched. II., s. 8, of the Workmen's Compensation Act, 1897, provides that where the amount of compensation under the Act shall have been ascertained by agreement, a memorandum thereof shall be sent by any party interested to the registrar of the county court, who, "on being satisfied as to its genuineness," shall record it in a special register :—

Held, that the registrar could not refuse to record the memorandum merely because owing to altered circumstances the workman was no longer entitled to the amount of compensation fixed by the agreement, but that his only duty was to ascertain whether the memorandum accurately represented the agreement which had been entered into. **BLAKE v. MIDLAND RY. CO.**

Div. Ct. [1904] 1 K. B. 503

13. — Agreement — Registration — Review of weekly payment — Form of application to review—Date from which review may be ordered—Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), Sched. I., par. 12; Sched. II., par. 8.

An application under the Workmen's Compensation Act, 1897, to record an agreement between a workman who had been injured by an accident arising out of and in the course of his employment and his employer for payment of a weekly sum to the workman during incapacity was opposed by the employer on the ground that the man had recovered. The county court judge, however, ordered the agreement to be recorded, but granted a stay to enable the employer to apply for a review. The employer by his application to review asked for termination of the weekly payment, the ground alleged in the particulars being that "the respondent has completely recovered" from the accident, without specifying any date. The county court judge found

MASTER AND SERVANT (Compensation)—*contd.*

that the incapacity of the workman had ceased at an antecedent date and ordered that the payment should terminate from that date :—

Held, that upon an application to review in this form the judge had no jurisdiction to order a review from a date antecedent to the application, and that the award ought to be set aside. **UPPER FOREST AND WESTERN STEEL AND TINPLATE CO. v. THOMAS**

C. A. [1909] 2 K. B. 631

Note.

Followed by **C. A., Charing Cross, Euston and Hampstead Ry. Co. v. Boots, [1909] 2 K. B. 640. See next Case.**

14. — Agreement — Registration — Review of weekly payment — Form of application to review—Date from which review may be ordered—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), Sched. I., par. 16; Sched. II., par. 9.

Upon an application under the Workmen's Compensation Act, 1906, for a review and termination of a weekly payment payable by way of compensation to a workman who has been injured by an accident arising out of and in the course of his employment, under an agreement between the employer and the workman, where the ground on which termination is claimed is stated in the particulars to be that the incapacity resulting from the injury has ceased, without specifying any date, it is not competent to the arbitrator to award that the payment shall terminate from a date antecedent to the application to review.

So held by the **C. A. (Buckley L.J. dissenting)** on the authority of **Upper Forest and Western Steel and Tinplate Co. v. Thomas, [1909] 2 K. B. 631. See preceding case.**

But *semble* where the application to review asks in express terms for termination from a definite antecedent date it is competent to the arbitrator to order termination from that date. **CHARING CROSS, EUSTON, AND HAMPSTEAD RY. CO. v. BOOTS**

C. A. [1909] W. N. 161; [1909] 2 K. B. 640

15. — Agriculture, Employment in — Accident elsewhere than on land of employer—Workmen's Compensation Act, 1900 (63 & 64 Vict. c. 22).

To entitle an applicant to an award of compensation under the Workmen's Compensation Act, 1900, it is not necessary that the employment of the workman, at the time of the accident in respect of which compensation is sought, should have been "on or in or about" the land of the employer. **SMITHERS v. WALLIS**

C. A. [1902] W. N. 228; [1903] 1 K. B. 200

16. — Agriculture, Employment in — Workmen's Compensation Act, 1900 (63 & 64 Vict. c. 22).

A workman was employed on a farm as farm carpenter, and assisted at hay and corn harvests, rick-making, and mangel-carting, and did work like the other farm labourers when he was with them. During three months of the year he was employed as gamekeeper.

MASTER AND SERVANT (Compensation)—*contd.*
He sustained an injury by an accident, and applied for and obtained an award of compensation under the Workmen's Compensation Act, 1900. On appeal :—

Held, that there was evidence on which the county court judge could find that the applicant was employed in agriculture within the meaning of the Act. **SMITH v. COLES**

C. A. [1905] W. N. 152; [1905] 2 K. B. 827

— Anthrax—Disease.

See No. 55, below.

— Apprentice—Value of tuition.

See No. 65, below.

— Arbitration.

See under MASTER AND SERVANT—Arbitration.

17. — *Award of weekly payment to workman—Subsequent death of workman through injury—Claim by dependants—Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), Sched. I., s. 1 (a), sub-s. (i).*

The appellants claimed compensation as persons who had been dependent upon a workman to whom injury had been occasioned through an accident arising out of and in the course of his employment on building work, of which the respondent was the undertaker. The accident, by which the workman was injured, took place on Feb. 1, 1899. He took proceedings to obtain compensation from the respondent, and in Sept., 1899, by consent, an order was made in his favour for a weekly payment of 15s. Weekly payments were made under this order until Oct. 12, 1900, when the workman died in consequence of the injuries occasioned by the accident. The appellants then claimed compensation under Sched. I. s. 1 (a), sub-s. (i), of the Act, giving credit for the amount of the weekly payments made as above mentioned. Upon the claim so made coming before the county court judge, he declined to entertain it, holding that the order made on the claim by the workman in his lifetime disposed of the matter finally. He accordingly refused to make any award of compensation.

The Court allowed the appeal, and remitted the case to the county court judge. **O'KEEFE v. LOVATT** — **C. A. [1901] W. N. 223**

18. — *Basis of calculation—Average weekly earnings—"Grade"—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), Sched. I., ss. 1, 2.*

In estimating the average weekly earnings under s. 2 (a) of Sched. I. of the Workmen's Compensation Act, 1906, the object should be to arrive at the normal rate of remuneration of the injured man at the date of the accident; and where exact computation is impracticable, the Court for its guidance may have regard to the average weekly amount earned during the previous twelve months by a person in the same grade employed by the same employer,

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or, failing that, in the same class of employment in the same district.

"Grade" refers to the particular rank in the industrial hierarchy occupied by the workman, and not to his greater or less excellence in that rank; it is a question of fact whether there is a grade to which the workman belongs.

The Court, having found that the workman has a grade, is not bound to adopt the average wages in that grade as the basis of compensation, but may take into consideration the personal capacity of the workman.

In an ordinary case the average weekly earnings are to be calculated by dividing the total earnings of the workman during the relevant period, not by the number of weeks in that period, but by the number of weeks actually worked within that period; days in which no work is done and no wages are earned are to be disregarded. But this principle does not apply to cases under s. 1 (a) (i.) of the First Schedule.

Per Fletcher Moulton L.J. : The principle does not apply to cases where the limitation upon the time worked arises from the nature of the employment itself, e.g., the case of a charwoman, where a certain amount of discontinuity is an incident of the employment.

In determining whether there has been any change of employment, "employment by the same employer," for the purpose of the First Schedule, means employment in the same grade, and any step up or down from one grade to another is to be regarded as constituting a fresh employment; but in calculating any of the periods mentioned in s. 1 of the schedule absence due to illness or to causes beyond the control of the workman is to be disregarded, and the employment is to be reckoned as continuous.

A collier, who had partially recovered from an accident for which he was receiving compensation, was offered and accepted light employment under a registered agreement with his employers upon the terms of his submitting to a reduction in the rate of compensation. Six months later he met with a fatal accident in the course of such employment. Upon an application by the widow for compensation under the Workmen's Compensation Act, 1906 :—

Held, that compensation ought to be calculated solely on the basis of the earnings of the deceased from the light employment without taking into account the compensation he received under the agreement. **PERRY v. WRIGHT. CAIN v. FREDERICK LEYLAND & Co. (1900), LD. BAILEY v. G. H. KENWORTHY, LD. GOUGH v. CRAWSHAY BROTHERS, CUFARATH, LD. C. A. [1908] W. N. 5; [1908] 1 K. B. 441**

19. — *Basis of calculation—"Average weekly earnings"—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), Sched. I., ss. 1, 2.*

In estimating for the purpose of compensation under the Workmen's Compensation Act, 1906, the amount of a workman's "average weekly earnings" the true test is what were his earnings in a normal week, regard being

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 had to the known and recognized incidents of the employment. If work was discontinuous, that is an element which must be taken into account.

Decision of the C. A., [1909] 1 K. B. 352, affirmed. **ANSLOW v. CANNOCK CHASE COLLIERY Co., LD.** **H. L. (E.)** [1909] W. N. 115; [1909] A. C. 435

20. — Break in employment—Accident during dinner hour—Workmen permitted to remain on premises—Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), s. 1.

A workman was paid by the hour for the number of hours per week that he was actually engaged on his work, not including the mid-day dinner hour. During that hour he was at liberty to stay and take his meal on the premises, or to go elsewhere. He stayed on the premises, and sat down to eat his dinner, and while so doing a wall fell upon him, and he was injured. On appeal from the refusal of an application for an award of compensation under the Workmen's Compensation Act, 1897 :—

Held, that during the dinner hour there had been no break in the employment of the workman, and that he was entitled to claim compensation. **BLOVELT v. SAWYER**

C. A. [1904] W. N. 4; [1904] 1 K. B. 271

21. — Building of—Demolition of—Use of machinery driven by steam. MURNIN v. CALDERWOOD **Ct. of Sess. (Sc.)** [1902] W. N. 185

22. — Building — Temporary wooden structure—Crane platform—Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), s. 1, sub-s. 1.

A temporary wooden structure of a substantial nature, such as a platform sixty-two feet in height for a steam crane, to be used in construction of a building, may be a building within the meaning of s. 7, sub-s. 1, of the Workmen's Compensation Act, 1897. **AYLWARD v. MATTHEWS** **C. A. [1905] 1 K. B. 343**

23. — Building exceeding thirty feet in height—Lowest point from which to measure Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), s. 7.

On an application for compensation under the Workmen's Compensation Act, 1897, it was proved that the applicant was injured in the course of his employment on a building which, whether measured from the bottom or from the top of the footings, was more than thirty feet in height. There was evidence that, at the time of the accident, the footings had been filled in, and that the building had not reached the stage at which more than the footings had been covered in :—

Held, that the height of the building to be determined was the height at the time of the accident, and, there being no evidence that at that time anything more than the footings had been covered in, the height of the building might have been taken from the top of the footings, and, as the height so measured exceeded thirty feet, the award must be upheld. **MCGRATH v. NEILL & SONS**

C. A. [1902] 1 K. B. 211

MASTER AND SERVANT (Compensation)—*contd.*
24. — Building exceeding thirty feet in height — "Undertakers" — Sub-contractor, Workman of—Work not merely ancillary to business of undertakers—Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), ss. 4, 7.

A firm of builders entered into a contract with the owner of two adjoining houses in a street, numbered respectively 16 and 17, for the demolition of No. 17 and the erection of a new building on the site of it, and for alterations and repairs to No. 16. The firm habitually entered into contracts for the demolition of buildings and the erection of new buildings on their sites. It was, however, their practice not to execute the work of demolition themselves, but to sub-contract for that work with another person, which they accordingly did with regard to the house No. 17. The two houses respectively, and the party wall common to both, were of a height exceeding thirty feet. An accident happened to a workman employed by the sub-contractor in the demolition of No. 17 in the course of his employment, which caused his death. At the time of the accident No. 17 had been reduced to a height of about eleven feet, excepting the party wall, which was not to be pulled down, and remained standing. On a claim by the workman's widow for compensation for herself and children as dependants on the deceased under the Workmen's Compensation Act, 1897, the county court judge found that the workman was employed in the demolition of a building which at the time of the accident exceeded thirty feet in height, and that the builders were liable to make compensation to his dependants under s. 4 of the Act :—

Held, that there was evidence to support the county court judge's finding as above mentioned; that the builders were "undertakers" of the work of demolition within the meaning of the Workmen's Compensation Act, 1897, s. 7, sub-s. 2; that that work was not merely ancillary to their business; and therefore that they were liable under s. 4 of the Act. **KNIght v. CUBITT & Co.** **C. A. [1901] W. N. 213; [1902] 1 K. B. 31**

Note.

Distinguished by C. A., **Bush v. Hawes**, [1902] 1 K. B. 216. *See next Case.*

25. — Building exceeding thirty feet in height—"Undertakers"—Workmen in employ of sub-contractor—Work ancillary to business of undertakers—Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), ss. 4, 7.

The respondent, a builder, entered into a contract to erect a building which was to have an iron roof. It was no part of his usual business to construct or erect such a roof, and he had no one in his employment who could do this. He accordingly entered into a sub-contract with a firm to do the work, and one of the workmen employed by that firm was killed while engaged on the work. On an application for compensation under the Workmen's Compensation Act, 1897, the county court judge found that the erection of such a roof was no part of the ordinary business of the respondent, but that it was part of such a business

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as ordinarily carried on, and was therefore not ancillary to the business carried on by the respondent within the meaning of s. 4 of the Act. On appeal :—

Held, that the test, whether a sub-contract is for work ancillary to the business carried on by the undertaker, is whether the work is that of the particular undertaker, and not whether it is generally undertaken by persons carrying on a similar business.

Knight v. Cubitt & Co., [1902] 1 K. B. 31, distinguished. *BUSH v. HAWES*

C. A. [1902] 1 K. B. 216

26. — *Building, What included in construction of—Measuring up of work when done—Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), s. 7, sub-s. 1.*

The employers of a workman had entered into a sub-contract for the execution by them of the plumbing work included in a contract for the erection of a factory, which exceeded thirty feet in height. It was necessary under the sub-contract that the plumbing work should be measured up when completed. At the time when the after-mentioned accident occurred, the plumbing work had been finished, though not measured up, but the construction of the factory was not complete, and steam-pipes were being fitted in it by means of a scaffolding. The workman, while employed in measuring up the plumbing work, sustained injury through an accident arising out of and in the course of that employment, in respect of which he claimed compensation under the Workmen's Compensation Act, 1897 :—

Held, on the authority of *Frid v. Fenton*, (1900) 69 L. J. (Q.B.) 436, and *McCabe v. Jopling*, [1904] 1 K. B. 222, that, the measuring up of the plumbing work being incidental to part of the work of constructing the building, the workman was entitled to compensation under the Workmen's Compensation Act, 1897, as having been, at the time of the accident, employed by the undertakers on, in, or about a building which exceeded thirty feet in height, and was being constructed by means of a scaffolding, within the meaning of the Act. *PLANT v. WRIGHT & Co.* (No. 2)

C. A. [1905] 1 K. B. 353

27. — *Building which exceeds thirty feet in height—Extension of existing building—Wall common to two buildings—Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), s. 7, sub-s. 1.*

The employer of a workman entered into a contract for the construction of a building by way of addition to an existing building which exceeded thirty feet in height. The new building, when completed, was to form one building with the existing building, to be used as a station for generating electrical power ; and for that purpose it was intended that the walls of the new building should be built into the end wall of the existing building, and that alterations should be made in that building. At the time when the after-mentioned accident happened, the new building was being constructed by means of a scaffolding, but no part

of it had reached the height of thirty feet. Its walls had not been connected with that of the old building, but some of the footings for the walls were in actual contact with that building. The workman, while engaged in the building operations on the new building, sustained injuries from an accident arising out of and in the course of his employment, in respect of which he claimed compensation under the Workmen's Compensation Act, 1897 :—

Held, that, the case being one of a new building by way of an extension of the old building, which involved alteration of that building, the workman might be regarded as having been employed about a building which exceeded thirty feet in height, and, therefore, was entitled to compensation. *HARTLEY v. QUICK*

C. A. [1905] 1 K. B. 359

28. — *Carpenter — Sharpening tools — Employment—Accident arising out of and in the course of the employment—Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), s. 1.*

A workman was employed as a carpenter, and part of his duty was to sharpen his tools on a grindstone rotated by machinery. He had received orders not to touch the machinery. The band that rotated the grindstone having slipped he endeavoured to replace it, and in doing so was injured. On a claim for compensation under the Workmen's Compensation Act, 1897, the county court judge found that the accident arose out of and in the course of the employment of the workman, and negatived serious and wilful misconduct on his part, and made an award in his favour. On appeal :—

Held, that the disobedience of the master's order did not of itself prevent the act of the workman from being an act done in the course of his employment, and that as it had not been shewn that the replacing of the band was an act on the part of the workman so remote from his ordinary duties that it could not fairly be said to be one arising out of and in the course of his employment, the award must stand. *LOWE v. PEARSON*, [1899] 1 Q. B. 261, distinguished. *WHITEHEAD v. READER*

C. A. [1901] 2 K. B. 48

29. — *Cashier — Murder — Accident arising out of the employment—Risks incidental to the employment—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 53), s. 1, sub-s. 1.*

A cashier, while travelling in a railway carriage to a colliery with a large sum of money for the payment of his employers' workmen, was robbed and murdered. On an application by his widow for compensation :—

Held, that the murder was an "accident" from the standpoint of the person who suffered from it, and that it arose "out of" an employment which involved more than the ordinary risk, and consequently that the widow was entitled to compensation under the Workmen's Compensation Act, 1906, s. 1, sub-s. 1.

Challis v. London and South Western Ry. Co., [1905] 2 K. B. 154, applied. *NISBET v. RAYNE & BURN*

C. A. [1910] W. N. 194 ; [1910] 2 K. B. 689

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30. — *Cat bite—Accident arising out of and in the course of employment—Workmen's Compensation Act, 1906* (6 Edw. 7, c. 58), s. 1.

A teamster in the course of his employment was eating his dinner in his employer's stable, and while doing so was bitten by a cat belonging to the stable and was seriously injured. Upon an application for compensation under the Workmen's Compensation Act, 1906 :—

Held, that the accident arose out of and in the course of his employment. **ROWLAND v. WRIGHT** C. A. [1909] 1 K. B. 963

31. — *Charwoman—Casual employment—Workmen's Compensation Act, 1906* (6 Edw. 7, c. 58), s. 13.

The applicant, a charwoman, who had been employed by the respondents on Fridays and alternate Tuesdays for a considerable period, met with an accident while working for them on one of the stated days. She came regularly to the respondents on those days without any special instructions. Upon an application for compensation under the Workmen's Compensation Act, 1906, the county court judge found that the applicant was in the regular, and not casual, employment of the respondents, and made an award in her favour.

Held, that it was not competent to the Court to interfere with this finding, there being ample evidence to support it. **DEWHURST v. MATHER** C. A. [1908] W. N. 181 ; [1908] 2 K. B. 754

32. — *Claim for compensation—No demand for specific sum—Compensation for injuries by accident—Workmen's Compensation Act, 1897* (60 & 61 Vict. c. 37), s. 2.

In making a claim for compensation under the Workmen's Compensation Act, 1897, it is not necessary to specify any sum.

Former authorities and dicta to the contrary effect overruled : *per* Lord Atkinson and Lord Shaw of Dunfermline, they proceeded on a misunderstanding of dicta in *Powell v. Main Colliery Co.*, [1900] A. C. 366. **THOMPSON v. GOULD & Co.** H. L. (E.) [1910] A. C. 409

— Clothes, Use of, provided by employer.

See No. 74, below.

33. — *Coal—Injury by accident—Custom to receive allowance coal during incapacity—Assessment of compensation under Workmen's Compensation Act—Right to sue employer for allowance coal—Workmen's Compensation Act, 1906* (6 Edw. 7, c. 58), s. 1, sub-s. 2 (b) ; *Sched. 1., clauses 1 (b), 3.*

The plt. was employed by the defts. as a miner in their colliery. There was a custom in collieries in the district that a miner was entitled, in addition to his wages, to (1.) a load of allowance coal every twenty-four turns while in work, (2.) a load of allowance coal every five weeks during incapacity caused by accident. The plt., having being incapacitated for work by an accident arising out of and in the course of his employment, was awarded a weekly payment during incapacity as compensation under the Workmen's Compensation Act, 1906. In an action to recover

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the allowance coal for the period since the date of the accident or its value :—

Held, that the right to the allowance coal under the custom formed one of the terms of the plt.'s contract of employment and was not in the nature of compensation for the injury, and that therefore he was not debarred by s. 1, sub-s. 2 (b), of the Workmen's Compensation Act, 1906, from maintaining the action. **SIMMONDS v. STOURBRIDGE GLAZED BRICK AND FIRE CLAY CO.** Div. Ct. [1910] 2 K. B. 269

— Collier—Accident arising out of and in the course of employment.

See No. 5, above.

34. — *Colliers—Course of employment—Workmen's Compensation Act, 1906* (6 Edw. 7, c. 58), s. 1.

A large number of colliers, who resided at D., six miles away from the colliery where they were employed, were conveyed every morning by a train composed of carriages belonging to the employers, but driven by the ry. co., to a platform a quarter of a mile away from the colliery. The platform was erected by the employers on land belonging to the ry. co. for the exclusive use of the colliers, and was under the control of the employers. The colliers walked from the platform along the high road to the colliery. In the evening a similar train conveyed the colliers from the platform to D. The colliers were conveyed free of charge, and it was an implied term of the contract of service that colliers residing at D. should have the right to travel to and fro without charge. One of the colliers was knocked down and killed while waiting on the platform for the return train. Upon an application by the widow for compensation under the Workmen's Compensation Act, 1906 :—

Held (affirming the county court judge), that the accident arose in the course of the employment, which began when the colliers entered the train in the morning and ceased when they left the train in the evening. **CREMINS v. GUEST, KEEN & NETTLEFOLDS, LD.** C. A. [1908] W. N. 6 ; [1908] 1 K. B. 469

35. — *Company—Winding-up—Insurance—Liability of insurers—Arbitration clause in policy—Workmen's Compensation Act, 1906* (6 Edw. 7, c. 58), s. 5 (1.).

In the case of bankruptcy or winding-up of an employer who is insured s. 5 of the Workmen's Compensation Act, 1906, only gives the workman the same right against the insurers as the employer would have had. Where a policy of insurance contains a clause that any dispute between the insured and the insurers shall be referred to arbitration under the Arbitration Act, and that an award under that Act shall be a condition precedent to any right of action against the assured, and there is a bona fide dispute, a workman cannot take proceedings in the county court to have compensation awarded until the matter has been referred to arbitration under the Arbitration Act, and an award obtained. **KING v. PHENIX ASSURANCE CO.** - C. A. [1910] W. N. 186 ; [1910] 2 K. B. 666

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— Contract that deceased shall have no claim

— "Satisfaction" means real and tangible indemnity—Laws of Canada.

See CANADA—Master and Servant. 1.

36. — *Contracting out — Scheme of compensation—Jurisdiction of county court—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 3.*

H., who was employed by the Admiralty as a tinsmith, agreed to come under a scheme of compensation certified by the Chief Registrar of Friendly Societies under s. 3 of the Act. In Dec., 1909, he died of lead poisoning.

His dependants claimed compensation from the Admiralty, but they did not admit liability, there being a question whether the death was due to the service. The depts. then filed an application for arbitration. The Admiralty set up the scheme as an answer to the application, but at the hearing they admitted their liability under the scheme.

The county court judge held, upon the construction of s. 3, that the scheme ousted the provisions of the Act as regards the scale of compensation, but not as regards the liability to pay, and he made an award in favour of the applicants for the amount admitted to be due under the scheme.

The C. A. allowed the appeal, being of opinion that a scheme duly certified by the registrar, when accepted by the workman, was to be substituted for the Act for all purposes.

HORN v. LORDS COMRS. OF THE ADMIRALTY
C. A. [1910] W. N. 242

37. — *Damages — Remedies against both employer and stranger—"Circumstances creating a legal liability"—"Proceedings"—"Recover"—Compensation—Payments by person other than the employer—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 6, sub-s. 1.*

"Circumstances creating a legal liability" in s. 6 of the Workmen's Compensation Act, 1906, mean, not merely circumstances which in fact create a legal liability, but circumstances which are alleged to create a legal liability, which would be the foundation of an action for negligence.

The meaning of "proceedings" in s. 6, sub-s. 1, is not to be confined to legal proceedings actually taken, but is satisfied if a claim is made against some person other than the employer for negligence.

To "recover" compensation does not necessarily mean to recover by means of legal proceedings: it is sufficient if the workman has claimed compensation and received it.

A workman who had been injured in the course of his employment made a claim for compensation against a person other than his employer whom he alleged to be under liability for negligence, and received various payments in satisfaction of his claim without having resort to legal proceedings, though legal liability was not admitted:—

Held, that the workman was precluded by s. 6, sub-s. 1, from obtaining compensation

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from his employer under the Workmen's Compensation Act, 1906. PAGE v. BURTWELL

C. A. [1908] 2 K. B. 758

— Death of dependant before making claim.

See No. 39, below.

38. — *Death resulting from the injury — Natural or probable consequence—Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), s. 1; Sched. I., clause 1 (a).*

Where a workman receives personal injury from an accident arising out of and in the course of his employment and death ensues, the death may be the result of the injury within the meaning of Sched. I., clause 1 (a), of the Workmen's Compensation Act, 1897, even though in fact it may not be the natural or probable consequence thereof. DUNHAM v. CLARE

C. A. [1902] W. N. 123;

[1902] 2 K. B. 292

Note.

This case was discussed by C. A., *Ystradowen Colliery Co. v. Griffiths*, [1909] 2 K. B. 533, 535. See No. 56, below.

39. — *Dependant — Death of dependant before making claim—Right of representative of deceased dependant to claim compensation — Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1, sub-ss. 1, 2, and Sched. I., s. 1, sub-s. a (1).*

The right of a dependant of a deceased workman to make a claim and take proceedings under the Workmen's Compensation Act, 1906, passes to the executor of the sole dependant who has died without having made a claim.

The maxim "Actio personalis moritur cum persona" is not applicable to cases under the Workmen's Compensation Act, 1906.

A workman in the employment of the appellants, a colliery co., was knocked down by a waggon while in the course of his employment on July 9, 1907. He died of his injuries on July 14. His mother, alleged to have been dependent upon him, died on Oct. 16, 1907, without making any claim upon the appellants. The executrix made a claim on Dec. 10, 1907, under the Workmen's Compensation Act, 1906, as representative of the mother:—

Held, affirming the decision of the First Division of the Ct. of Sess. (Lord Dunedin dissenting), (1908) S. C. 1215, that the claim must be admitted in law.

Darlington v. Roscoe & Sons, [1907] 1 K. B. 219, approved.

O'Donovan v. Cameron, Swan & Co., [1901] 2 I. R. 633, dissented from. UNITED COLLIERIES, LD. v. SIMPSON (OR HENDRY)

H. L. (Sc.) [1909] W. N. 146; [1909] A C. 383

40. — *Dependant — Partial dependency — Basis of compensation—Earnings—Deduction of cost of maintenance—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), Sched. I., par. 1 (a) (ii.).*

The applicant was the father of a deceased workman who met with a fatal accident while in the employment of the respondent. At the

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The county court judge held that the father was not a dependant or partial dependant, inasmuch as the 6s. 11d. was not more than sufficient to maintain the deceased.

The Court (Cozens-Hardy M.R. and Fletcher Moulton L.J., Farwell L.J. dissenting) allowed the appeal.

The Master of the Rolls said that it was established by *Main Colliery Co., Ltd. v. Davies*, [1900] A. C. 358, that the father was partially dependent upon the boy's earnings, and he was bound by *Osmond v. Campbell & Harrison, Ltd.*, [1905] 2 K. B. 852, to hold that in a case of partial dependency it was not legitimate to have regard to the amount which the maintenance of the deceased would have cost. The matter should, therefore, go back to the judge to award such sum as he might consider to be reasonable and proportionate to the injury of the applicant. As at present advised he did think that the boy's services as barber were earnings within the Act.

Fletcher Moulton L.J. was of opinion that apart from *Osmond v. Campbell & Harrison, Ltd.*, *infra*, which was binding upon him, but which he personally thought went too far, the applicant was entitled to compensation on the ground that the earnings of the boy by labour at home might be properly regarded, not as earnings under the Act, but as lessening the magnitude of the burden which the boy was to the father.

Farwell L.J. thought that *Osmond v. Campbell & Harrison, Ltd.*, did not prevent the county court judge from taking into consideration the expenses of maintaining the deceased out of the common fund. The decision was only that the county court judge might in a proper case give the maximum amount allowed by the Act in a case of partial dependency. He also thought that the boy's services to the father could not be taken into account because they were not earnings within the Act. *HALL v. TAWORTH COLLIERY CO.*

C. A. [1910] W. N. 268

41.—Dependant — Partial dependency — Family fund—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 13.

The House, in view of its recent decision in *Hodgson v. Owners of West Stanley Colliery*, [1910] W. N. 67; [1910] A. C. 229, and on the petition of the appellant (the respondents consenting), reversed, with costs, the decision of the C. A., [1909] 2 K. B. 521 (so far as it related to the appellant), and made an award in her favour for 30l. upon the ground that she was partially dependent upon her son's earnings. There was no appeal from the decision against the claim made by the

MASTER AND SERVANT (Compensation)—*contd.* appellant's husband. *McLEAN v. MOSS BAY HEMATITE IRON AND STEEL CO.*

H. L. (E.) [1910] W. N. 102

Note.

This case was overruled by H. L. (E.), *Hodgson v. West Stanley Colliery*, [1910] A. C. 229. See No. 53, below.

42. — "Dependant" — Posthumous illegitimate child — Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), ss. 1, 13.

A workman, who had admitted that he was the father of a child en ventre sa mère and had promised to marry the mother and intended to provide for the child, was killed by an accident for which his employers were liable to pay compensation. The child was born some months afterwards:—

Held, that the child was a "dependant" within the meaning of the Workmen's Compensation Act, 1906, and entitled to compensation.

Decision of the C. A., sub nom., *Schofield v. Orrell Colliery Co.*, [1908] W. N. 243; [1909] 1 K. B. 178, affirmed. *ORRELL COLLIERY CO. v. SCHOFIELD — H. L. (E.) [1909] W. N. 115; [1909] A. C. 433*

43.—"Dependant" — Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), s. 7, sub-s. 2; *Sched. 1., clause 1 (a). (ii.)*.

A pauper inmate of a workhouse, towards whose maintenance no contribution is in fact made by his son, is not as a matter of law in part dependent on the son's earnings within the meaning of s. 7, sub-s. 2, of the Workmen's Compensation Act, 1897, notwithstanding the son's indirect obligation under the poor law to contribute to his father's maintenance. *REES v. PENRIBYBER NAVIGATION COLLIERY CO.*

C. A. [1903] 1 K. B. 259

44. — Dependant—Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), s. 7, sub-s. 2.

In an arbitration under the Act, a Sheriff-substitute found a father entitled to compensation for the death of his only son, on the ground that the father was in part dependent on the earnings of the son. The son's employer appealed, on the ground that the father was dependent on the son only because the father supported a crippled brother who lived with him and the son.

The Court affirmed the judgment of the Sheriff-substitute, holding that there was nothing stated in the case for appeal to show that the Sheriff-substitute had committed an error in law. *LEGGET v. BURKE*

(1902) Ct. of Sess. (Sc.) [1903] W. N. 163

45. — Dependent in part on workman's earnings—Mode of assessing compensation—Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), *First Schedule*, s. 1 (a) (ii.).

The widow of a deceased workman, who met his death through an accident arising out

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of and in the course of his employment, was mainly dependent upon her husband's earnings at the time of his death, but was earning about 2s. a week herself. The deceased workman did not appear to have any source of income other than his wages. The widow claiming compensation under the Workmen's Compensation Act, 1897, against the employers of the deceased, a county court judge awarded her the sum of 150*l.*, being 5*l.* less than the amount of the deceased workman's earnings in the same employment during the three years prior to the accident. The employers appealed against the award, on the ground that, in assessing the compensation, the county court judge had not complied with the provisions of the Workmen's Compensation Act, 1897, First Schedule, s. 1 (a) (ii.), which provides that, in cases of partial dependency, the compensation shall be such a sum as may be determined to be reasonable and proportionate to the injury to the dependants, because he had not taken into account the amount which the maintenance of the workman, if alive, would have cost, by way of reduction of the compensation, and that he had therefore misdirected himself:—

Held, that it was not shown that the county court judge had proceeded otherwise than in accordance with the provisions of the Workmen's Compensation Act, 1897, First Schedule, s. 1 (a) (ii.), and therefore his award was good. *OSMOND v. CAMPBELL & HARRISON, LD.*

C. A. [1905] 2 K. B. 852

Note.

This case was followed by *C. A., Hall v. Tamworth Colliery Co., Ltd.*, [1910] W. N. 268. See No. 40, above.

46. — *Dependant of deceased workman—Claim of compensation by dependant—Death of sole dependant before award—Legal personal representative of deceased dependant—Survival of right to compensation—Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), s. 1, sub-s. 1; s. 7; First Schedule, s. 1 (a).*

Where the sole dependant of a deceased workman, whose death was caused by an accident arising out of and in the course of his employment, made a claim against his employers for compensation under the Workmen's Compensation Act, 1897, but died before any award was made in respect of that claim:—

Held, that the right to compensation survived, and passed to the legal personal representative of the deceased dependant. *DARLINGTON v. ROSCOE & SONS*

C. A. [1907] W. N. 4; [1907] 1 K. B. 219

47. — *Dependants—Total or partial dependency—Maintenance of family by workman—Workman's earnings supplemented by children's wages—Claim of widow—Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), Sched. I., clause 1 (a) (i.) (ii.).*

The widow and young children of a workman are none the less "dependants wholly dependent on his earnings at the time of his death" within the meaning of the Workmen's Compensation Act, 1897, because the workman has been enabled through the receipt by him,

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or through his wife as his agent, of moneys from wage-earning children or of moneys coming to him through other channels to augment the fund out of which he has maintained his family. *SENIOR v. FOUNTAINS & BURNLEY, LD.*

C. A. [1907] W. N. 159;
C. A. [1907] 2 K. B. 563

48. — *Dependants wholly dependent—Earnings of workman at time of his death—Money coming to dependants on death of workman—Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), Sched. I., clause 1 (a) (i.).*

In the case of the death of a workman leaving dependants, the test by which to determine whether they were wholly dependent on his earnings at the time of his death, within the meaning of the Workmen's Compensation Act, 1897, is whether that the workman was earning at the time of his death was the sole source to which they could look for maintenance at that time, and the fact that money came to them on the death of the workman cannot therefore be taken into consideration. *PRICE v. PENRIKYBER NAVIGATION COLLIERY CO.*

C. A. [1902] 1 K. B. 221

49. — *Dependency—Death of workman—Widow—Total or partial—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 13, First Sched. (1) (a), (i.) and (ii.).*

In 1881 the applicant married the deceased workman, a collier. In 1888 she left her husband on account of his cruelty, taking her four children away with her. The husband promised her 1*s.* 6*d.* a week for each child, but as a fact never paid her anything; meantime the applicant lived with her parents and did work at times as a servant, while at times she worked in a factory; the children remained with her parents until they grew up. In 1900 she obtained work as a housekeeper at 16*s.* a week, and she was supporting herself in this way at the time of her husband's death. There was no agreement for a separation, and there had been no application for maintenance against the husband during his lifetime, as the applicant was afraid he might take the children from her. In Jan., 1910, the applicant's husband met with a fatal accident while employed at the respondents' collieries, and the applicant claimed compensation under the Workmen's Compensation Act, 1906, against the respondents as the widow and dependant of her deceased husband.

The county court judge held that there had been no abandonment of her rights by the applicant, and on the footing of partial dependency he awarded her 263*l.* as compensation.

The C. A. dismissed the appeal.

Cozens-Hardy M.R. said that the decisions in *Coulthard v. Consett Iron Co., Ltd.*, [1905] 2 K. B. 869, and *Williams v. Ocean Coal Co., Ltd.*, [1907] 2 K. B. 422, were still binding on this Court, and ought to be followed. *Hodgson v. West Stanley Colliery*, [1910] A. C. 229, was one of those common fund cases where the question was considered whether a wife could be wholly dependent on her husband and partially dependent upon her sons, and where the

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H. L., differing from this Court, held that the wife might be entitled to compensation in respect of the deaths of her husband and sons. That case had but a very indirect bearing upon the present case, and in his Lordship's opinion it would not be right to consider the mere dicta of some of the noble Lords in that case as in any way impeaching the decisions of this Court as to the implied dependency of the wife on her husband, even when separated from him and not actually dependent upon his earnings. *KEELING v. NEW MONCKTON COLLIERIES, LD.*

C. A. [1910] W. N. 249

50. — *Dependency on workman's earnings at time of his death—Widow of deceased workman—Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), s. 7.*

Upon a claim for compensation under the Workmen's Compensation Act, 1897, by the widow of a deceased workman, it appeared that she had lived with and been maintained by him from their marriage up to June, 1904, when being out of work he left her and never afterwards contributed to her maintenance. Her only means of subsistence, after her husband left her, consisted of casual work and the charitable gifts of relatives, and she was for a week in the workhouse. About three weeks before his death, which occurred in Oct., 1904, the husband obtained employment, and he was earning wages when his death was occasioned by an accident arising out of and in the course of his employment. The widow stated in evidence that, before her husband's death, she was expecting him back every day to provide a home. The county court judge found that she was dependent on her husband's earnings at the time of his death, and accordingly awarded her compensation.

Held, that the facts justified his finding. *COULTHARD v. CONSETT IRON CO., LD.*

C. A. [1905] W. N. 153 ;
[1905] 2 K. B. 869

Note.

This case was followed by C. A., *Keeling v. New Monckton Collieries, Ltd.*, [1910] W. N. 249. See preceding Case.

51. — *Dependency on workman's earnings at time of death—Widow.*

Not reported, but a judgment from notes of counsel was read to the Court. The facts in that case were as follows : The applicant was married to the deceased on Sept. 6, 1885. There were eight children of the marriage, three being alive at the date of the death. In March, 1904, the deceased left the applicant to look for work. Previously to that they had lived at Middlesbrough for seventeen years. The applicant never heard from the deceased after March, 1904, and did not know where he was. She thought he would come back as he had done once before after an absence of nine weeks. He was killed while in the employ of the respondents in 1906. After her husband left her the applicant maintained herself and her children for some weeks and then went into the workhouse with them for three months. She afterwards lived with her mother

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The county court judge held that the applicant was not dependent on the deceased at the time of his death. On appeal from that decision the C. A. held that there was a presumption of dependency of the wife upon the husband which had not been rebutted. They therefore reversed the decision of the county court judge. *STANLAND v. NORTH EASTERN STEEL CO., LD.* C. A. [1907] 2 K. B. 425, n.

52. — *Dependency on workman's earnings at time of death—Widow—Posthumous child—Accidental death of workman—Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), s. 7, sub-s. 2.*

A workman was married to his wife in 1903, and for about nine months they lived with her parents. They then lived in apartments for three months, and afterwards with the husband's parents for about six weeks. The wife subsequently returned to her own parents, her husband having left her to seek work, and being ultimately employed as a miner in an adjoining village, where she occasionally went to see him. She last saw him in Dec., 1905, and in April, 1906, he was killed while working for the deft. co. A posthumous child, of which the deceased was the father, was born in Sept., 1906. The husband had not contributed to the wife's support since 1904, and in Jan., 1906, she went into domestic service, where she was earning 12*l.* a year at the time of the death.

In these circumstances, upon a claim by the widow and child for compensation under the Workmen's Compensation Act, 1907, the county court judge held that neither the wife nor the child was dependent on his earnings :—

Held, on appeal, that the county court judge had overlooked the legal presumption of dependency in the case of the wife, and had considered that the fact that the wife was receiving nothing from her husband at the time of his death was conclusive. His decision was wrong, and there was a total dependency of the wife.

Held, further, applying the rule in *Villar v. Gibbey*, (1907) A. C. 139, that the posthumous child was also a dependant. *WILLIAMS v. OCEAN COAL CO., LD.*

C. A. [1907] W. N. 143 ; [1907] 2 K. B. 422

Note.

Principle of, applied by C. A., *Schofield v. Orrill Colliery Co.*, [1909] 1 K. B. 178. See No. 40, above.

Followed by C. A., *Keeling v. New Monckton Collieries, Ltd.*, [1910] W. N. 249. See No. 49, above.

53. — *Dependency, total and partial—Common fund—Father and two sons killed—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 53), s. 13 ; First Sched. (1.) (a).*

A father and his two sons, workmen in the same employment, were killed by one and the same accident. The earnings of all three

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 formed a common fund out of which the whole family was maintained. The mother and her surviving children (none of whom earned wages) were as a matter of fact dependent upon the earnings of each and all of the three deceased :—

Held, that the mother and her surviving children were entitled to compensation in respect to each of the three deaths under the Workmen's Compensation Act, 1906.

Decision of the C. A. (not reported) reversed.

Senior v. Fountains, [1907] 2 K. B. 563, and *McLean v. Moss Bay Co.*, [1909] 2 K. B. 521, overruled. On April 15, with the consent of the respondents, the House reversed the decision of the C. A. in *McLean v. Moss Bay Co.* on the question of the wife's dependency, and made an award in her favour for 30*l.* and costs. *HODGSON v. WEST STANLEY COLLIERY*

H. L. (E.) [1910] W. N. 67; [1910] A. C. 229

Note.

Followed by H. L. (E.) in *McLean v. Moss Bay Hematite Iron and Steel Co.*, [1910] W. N. 102. See No. 41, *above*.

Referred to by C. A., *Keeling v. New Monckton Collieries, Ltd.*, [1910] W. N. 249. See No. 49, *above*.

—Disease—"Accident."

See Nos. 3—10, *above*.

54. —Disease—Accident—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1.

A workman suffering from serious aneurism was employed in tightening a nut by a spanner when he suddenly fell down dead from rupture of the aneurism. The county court judge found upon conflicting evidence that death was caused by a strain arising out of the ordinary work of the deceased operating upon a condition of body which was such as to render the strain fatal :—

Held by Lord Loreburn L.C. and Lords Macnaghten and Collins (Lords Atkinson and Shaw of Dunfermline dissenting), that there was evidence to support the finding, and that it was a case of "personal injury by accident arising out of and in the course of the employment" within the Workmen's Compensation Act, 1906.

Decision of the C. A., [1909] 2 K. B. 798, affirmed. *CLOVER, CLAYTON & Co., LD. v. HUGHES*

H. L. (E.) [1910] W. N. 73; [1910] A. C. 242

55. —Disease—Anthrax—"Injury by accident"—Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), s. 1.

While a workman was employed sorting wool in a factory a bacillus (according to the medical evidence) passed from the wool to the eye of the workman and infected him with anthrax of which he died :—

Held, by the Earl of Halsbury L.C. and Lords Macnaghten and Lindley, Lord Robert-son dissenting, that this was a case of

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 "injury by accident" within the meaning of the Workmen's Compensation Act, 1897.

The decision of the C. A., *Higgins v. Campbell & Harrison, Ltd., Turvey v. Brintons, Ltd.*, [1904] 1 K. B. 328, affirmed. *BRINTONS, LD. v. TURVEY* - H. L. (E.) [1905] W. N. 72; [1905] A. C. 230

Note.

Discussed by C. A., *Broderick v. London County Council*, [1908] 2 K. B. 807. See No. 60, *below*.

Explained by C. A., *Elke v. Hartdyke*, [1910] 2 K. B. 667. See No. 61, *below*.

56. —Disease—Incapacity resulting from injury—Disease—Natural result—Injury by accident—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1; Sched. I., par. 1 (b).

Where a workman receives personal injury from an accident arising out of and in the course of his employment and disease ensues which incapacitates him for work, the incapacity may be the result of the injury within the meaning of Sched. I., par. 1 (b), of the Workmen's Compensation Act, 1906, even though it is not the natural result of the injury. The question to be determined on a claim for compensation is whether the incapacity is in fact the result of the injury. *YSTRADOWEN COLLIERY Co. v. GRIFFITHS*

C. A. [1909] W. N. 134; [1909] 2 K. B. 533

58. —Disease communicated by material worked on—Lead poisoning—Gradual accumulation of lead in system—Ultimate injury—Notice of accident—Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), ss. 1, 2.

A workman, whose employment necessitated the handling of white and red lead, gradually accumulated lead in his system, with the ultimate result that he suffered from lead-poisoning, which produced partial paralysis and incapacity for work. On appeal from an award of compensation under the Workmen's Compensation Act, 1897 :—

Held, that to bring a case within the Act there must be, by reason of s. 2, sub-s. 1, an injury by an accident of which notice can be given, and that, since it was not possible to indicate a time at which there was an accident which caused the injury to the workman, he was not entitled to an award under the Act. *STEEL v. CAMELL, LAIRD & Co.*

C. A. [1905] W. N. 84; [1905] 2 K. B. 232

—Disease, Industrial—Seamen.

See No. 157, *below*.

60. —Disease—Sewer gas—"Enteritis"—Injury by accident—Disease—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1, sub-s. 1.

A workman contracted enteritis from inhaling sewer gas in the course of his employment :—

Held, that this was not a case of "injury by accident" within the meaning of the Workmen's Compensation Act, 1906, s. 1, sub-s. 1.

The decision in *Brintons, Ltd. v. Turvey*, [1905] A. C. 230, is not to be taken as involving the doctrine that all diseases contracted

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by a workman in the course of his employment are to be regarded as accidents within the meaning of the Workmen's Compensation Acts. *BRODERICK v. LONDON COUNTY COUNCIL*

C. A. [1908] W. N. 187; [1908] 2 K. B. 807

Note.

This case was explained by C. A., *Eke v. Hartydyke*, [1910] 2 K. B. 677. See next Case.

61. — *Disease—Sewer gas—Ptomaine poisoning—Notice of accident—Prejudice to employer—Reasonable cause—Injury by accident*—*Workmen's Compensation Act, 1906* (6 Edw. 7, c. 58), s. 1, sub-s. 1.

An objection that an employer has been prejudiced in his defence by the want, defect, or inaccuracy of a notice under s. 2, sub-s. 1, may be satisfied by shewing that such want, defect, or inaccuracy has been occasioned by a "reasonable cause" under the later part of proviso (a), which is independent of the earlier part.

Except in the case of the industrial diseases provided for by s. 8, unless the applicant can indicate the time, day, circumstance, and place in which the accident occurred which occasioned the disease, by means of some definite event, a case of "injury by accident" within the meaning of the Workmen's Compensation Act, 1906, s. 1, sub-s. 1, cannot be established.

Brintons, Ltd. v. Turvey, [1905] A. C. 230, and *Broderick v. London County Council*, [1908] 2 K. B. 807, explained. *EKE v. HART-DYKE*

C. A. [1910] W. N. 181 :
[1910] 2 K. B. 677

— Dock—Shipping generally.

See Nos. 143—167, below.

— Dog—Savage dog—Liability of owner—Intervening act of third person—Scope of employment.

See Dogs. 2.

62. — *Earnings—Average weekly earnings—Continuous employment—Employment for two days a week—Earnings outside employment—Work for same or other employers—Workmen's Compensation Act, 1897* (60 & 61 Vict. c. 37), *First Schedule* (1), (b).

A workman was under an agreement to work for his employers on the nights of Thursday and Friday in each week, for a period extending over two weeks, and at a fixed rate of wages for each night. During the rest of each week he worked at times for the same employers, when they had work to give him, and at other times for other firms carrying on a similar business to that of the employers. The workman was injured during the third week of his employment under the agreement. He claimed compensation under the Workmen's Compensation Act, 1897, and an award was made in his favour based on the weekly wages earned by him in respect of the two nights a week during which he worked under the agreement. On appeal:—

Held, that the employment for two nights

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a week was a continuous one, and that the earnings on those two nights were properly taken into account in determining the weekly payment to be made to the applicant:

Held, also, that the amount received for casual work done for the same or different employers could not be taken into account in estimating the average weekly earnings of the applicant. *HATHAWAY v. ARGUS PRINTING CO.*

C. A. [1901] 1 K. B. 96

63. — *Earnings—Average weekly earnings—Deductions from wages—Miner—Deduction from wages for lamp oil—Workmen's Compensation Act, 1897* (60 & 61 Vict. c. 37), *First Schedule* (1), (a).

By the rules of a colliery co. 6d. a week was deducted from the wages of each miner for lamp oil supplied by the employers. On an application for compensation under the Workmen's Compensation Act, 1897, the county court judge took as the basis of his award the full weekly wages of the injured miner without regard to the weekly deduction therefrom. On appeal:—

Held, that the principle on which the award was based was correct. *HOUGHTON v. SUTTON HEATH AND LEA GREEN COLLIERIES CO.*

C. A. [1901] 1 K. B. 93

Note.

This case was approved of by H. L. (E.) *Abram Coal Co. v. Southern* [1903] A. C. 306. See No. 75, below.

64. — *Earnings—"Average weekly earnings"—Employment for less than two weeks—"Factory," Occupier of—Loading and unloading from wharf, &c.—Stevedores—Factory and Workshop Act, 1895* (58 & 59 Vict. c. 37), s. 23, sub-s. 1 (ii.), (a)—*Workmen's Compensation Act, 1897* (60 & 61 Vict. c. 37), s. 1, sub-s. 1; s. 7, sub-s. 2; *First Schedule* (1) (a), (i.) (b).

The right to compensation given by s. 1 of the Workmen's Compensation Act, 1897, is not restricted by the schedule to employments by the week, or for weekly wages, or for two weeks at least. Employment by the day for one or more days is within the Act.

The word "average" in the expression "average weekly earnings" is used loosely and inaccurately in the First Schedule to the Act.

Decisions of C. A., [1900] 1 Q. B. 780, and [1900] 2 Q. B. 95, reversed.

Stevedores were loading a vessel in a dock by means of machinery. The cargo had been put into the hold, and the men employed by the stevedores were "finishing off" by slinging iron beams across the hatchway. The machinery having become entangled, one of the workmen went to disentangle it, was caught by it, and injured so that he died:—

Held, by the Earl of Halsbury L.C. and Lords Macnaghten, Shand, Davey, Brampton, and Robertson (Lord Lindley dissenting), that the stevedores were occupying a "factory," namely, the machinery, within the meaning of the Workmen's Compensation Act, 1897, s. 7, sub-s. 2, and the Factory and Workshop Act, 1895, s. 23, sub-s. 1 (ii.), and that the deceased

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 was injured in the course of his employment in loading from the wharf, the process of loading not being complete till the hatchway was secured, within the meaning of those Acts. *LYSONS v. ANDREW KNOWLES & SONS, LD. STUART v. NIXON & BRUCE*

H. L. (E.) [1901] W. N. 2; [1901] A. C. 79

Note.

Followed by Ct. of Sess. (Sc.) *Fleming v. Lochgelly Iron and Coal Co.* [1903] W. N. 165. See No. 70, below.

See *Giles v. Bedford, Smith & Co., C. A.* [1903] 1 K. B. 843, No. 66, below.

65. — Earnings—Average weekly earnings before accident—Review of weekly payment—Average amount workman able to earn after accident—Apprentice—Value of tuition—Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), First Schedule (2), (12).

An apprentice sustained an injury to his right hand which prevented his working as a skilled artisan, and the indenture of apprenticeship was cancelled. On an application for compensation under the Workmen's Compensation Act, 1897, he obtained an award of a weekly payment based on his wages for the previous year. He returned to the employment of the same employers as a workman, at weekly wages higher than his wages at the time of the accident, but less than those that would be ordinarily paid to a workman employed on the same class of work, since the injury he had sustained affected his ability to earn full wages. On an application by the employers for the review and termination of the weekly payment, the county court judge dismissed the application, on the ground that the workman was earning less, by a sum equal to the amount of the weekly payment awarded, than if he had had the use of his right hand. On appeal:—

Held, that, on a review of a weekly payment made by award under the Act, the test to be applied is the difference between the amount of the average earnings before the accident and the average amount which the workman is able to earn after the accident; that in the absence of evidence of advantages incidental to the employment, and capable of being appraised at a money value, the earnings before the accident must be determined by the wages received; that the county court judge was therefore wrong in refusing to review the weekly payment; but that the weekly payment should be continued at a nominal amount, in order to preserve the right of the applicant to make any further application that might become necessary.

Semble, that the value of the tuition given to an apprentice should not be taken into account in arriving at the amount of his average weekly earnings. *POMPHELY v. SOUTH-WARK PRESS* - **C. A. [1901] 1 K. B. 86**

Note.

The report of the judgment of Collins L.J. in this case at p. 91 should be amended by striking out the words, "The maximum that can be awarded is one-half the

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 difference so ascertained." See *Ayres v. Buckenridge*, [1902] 1 K. B. 57, 61, n., No. 78, below.

66. — Earnings—Average weekly earnings—Mode of calculation—Dock labourer—Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), First Schedule (1) (b).

A stevedore's labourer claimed compensation under the Workmen's Compensation Act, 1897, in respect of injuries occasioned to him by an accident on Nov. 28, 1902, while in the employment of a firm of master stevedores. He was not engaged by the firm for any definite period, but had been from time to time employed by them, as labour was required, upon tendering himself for employment. During the year prior to Nov. 28, with the exception of the months of May, June, and July, when he was in hospital, he had been employed by the firm upon a greater or less number of days in most weeks. He was not employed by the firm from the 2nd to the 10th of Nov., but on the days from the 11th to the 28th he was employed by them. The county court judge found that during the period between the 2nd and 10th of Nov. he was not in the employment of the firm, but that from the 11th to the 28th he was continuously in their employment, and awarded him compensation based upon the average of his weekly earnings during the last-mentioned period:—

Held, that, notwithstanding the decision of the House of Lords in *Lysons v. Knowles & Sons*, [1901] A. C. 79, the decision of the county court judge was correct.

Jones v. Ocean Coal Co., [1899] 2 Q. B. 124, followed. *GILES v. BELFORD, SMITH & CO.*

C. A. [1903] W. N. 80; [1903] 1 K. B. 843

67. — Earnings—Average weekly earnings—Week—Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), Sched. I. (1), (b).

M'CUE v. BARCLAY, CURLE & CO.

(1902) Ct. of Sess. (Sc.) [1903] W. N. 170

68. — Earnings—Average weekly earnings—Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), s. 1, sub-s. 1, Sched. I. (1), (b).

In estimating average weekly earnings for the purpose of assessing compensation under the Workmen's Compensation Act, 1897, only the period of continuous employment prior to the accident in the service of the same employer is to be taken into account, and where that period is only part of a day the actual sum earned is to be taken as the average weekly earnings.

Ayres v. Buckenridge, [1902] 1 K. B. 57, No. 78, below, not followed. *GREWAR v. CALEDONIAN RY. CO.*

(1902) Ct. of Sess. (Sc.) [1903] W. N. 167

Note.

Followed by Ct. of Sess. (Sc.), *M'Cue v. Barclay, Curle & Co.*, [1903] W. N. 170. See preceding Case.

Principle of, applied by Ct. of Sess. (Sc.), *Gibb v. Dunlop & Co.*, [1903] W. N. 171. See No. 71, below.

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69. — *Earnings—Average weekly earnings—Amount of compensation—Calendar week—Workmen's Compensation Act, 1897* (60 & 61 Vict. c. 37), *Sched. I., s. 1 (a), (i).*

The First Schedule of the Workmen's Compensation Act, 1897, provides, that in certain cases where (1) "the period of the workman's employment by the said employer has been less than the said three years, then the amount of his earnings during the said three years shall be deemed to be 156 times his average weekly earnings during the period of his actual employment under the said employer."

In a question as to the amount of compensation due for the death of a workman who had been employed by the same employer for three days in one week and during the whole of the next two weeks, and on the Sunday of the fourth week, *held*, that in computing the average weekly earnings of the deceased the total amount of his earnings must be divided by the number of calendar weeks, *i.e.*, four, over which his employment extended. *PEACOCK v. NIDDRIE AND BENHAR COAL CO.*

(1902) Ct. of Sess. (Sc.) [1903] W. N. 162

Note.

Explained by Ct. of Sess. (Sc.), *Fleming v. Lochgelly Iron and Coal Co.*, [1903] W. N. 165. See next Case.

Followed by Ct. of Sess. (Sc.), *M'Cue v. Barclay, Curle & Co.*, [1903] W. N. 170. See No. 67, *above*.

70. — *Earnings—"Average weekly earnings"—Workmen's Compensation Act, 1897* (60 & 61 Vict. c. 37), *Sched. I. (1) (b).*

Held, (1) that "average weekly earnings" means the total amount actually earned by the workman during his employment, divided by the number of weeks during which, or part of which, he was employed; and (2) that the week to be taken as the unit of division was not the calendar week, but the trade or pay week of the particular employment.

Knowles v. Lyons, [1901] A. C. 79, followed.

Peacock v. Niddrie and Benhar Coal Co. (1902) 4 Fraser, 443; [1903] W. N. 162, explained. *FLEMING v. LOCHGELLY IRON AND COAL CO.*

(1902) Ct. of Sess. (Sc.) [1903] W. N. 165

Note.

This case was followed by Ct. of Sess. (Sc.), *Campbell v. Fife Coal Co.*, [1903] W. N. 171. See No. 72, *below*.

71. — *Earnings—Average weekly earnings—Break in employment—Workmen's Compensation Act, 1897* (60 & 61 Vict. c. 37), *First Schedule* (1), (b).

A workman was employed by a firm of coal-owners for over twelve months prior to Aug. 16, 1901, the employment being terminable at the will of either party. On that date he was accidentally injured in the course of his employment; and, thereafter, from Aug. 31, 1901, until his recovery on Oct. 15, 1901, he was unable to work, and was paid compensation by his employers under the Workmen's Compensation Act, 1897. On Oct. 15, 1901, having resumed

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his former employment, he worked for two hours, when he was again accidentally injured:—

Held, that the Act constituted a substantially continuous employment; that the period during which the workman was unable to work constituted a break in his employment; and that the workman was entitled to compensation under the Act in respect of the second injury, on the footing that he had been in the employment only from the date of his resuming work on Oct. 15, 1901.

Principle of *Grewar v. Caledonian Ry Co.*, [1903] W. N. 167, applied. See No. 68, *above*. *GIBB v. DUNLOP & CO.*

(1902) Ct. of Sess. (Sc.) [1903] W. N. 171

72. — *"Earnings"—"Average weekly earnings—Trade week or calendar week—Amount of compensation—Workmen's Compensation Act."* 1897 (60 & 61 Vict. c. 37), *First Schedule, s. 1.*

Held, that in calculating a workman's "average weekly earnings" in the sense of the Workmen's Compensation Act, 1897, First Schedule, s. 1, where the employment is by trade weeks, the total earnings of the workman are to be divided by the number of trade weeks in which he has been employed, and not by the number of calendar weeks.

Fleming v. Lochgelly Iron and Coal Co., [1903] W. N. 165 followed. See No. 70, *above*.

CAMPBELL v. FIFE COAL CO.

(1902) Ct. of Sess. (Sc.) [1903] W. N. 171

73. — *Earnings—Average weekly earnings—Fall in wages since accident—Review of weekly payment—Partial incapacity—Discretion of county court judge—Workmen's Compensation Act, 1897* (60 & 61 Vict. c. 37), *Sched. I., sub-ss. 1 (b), 2, 12.*

A workman employed as a haulier at a colliery was, by an accident arising out of and in the course of his employment, totally incapacitated for work. Compensation was, by arrangement, paid him by his employers at the maximum rate under the Workmen's Compensation Act, 1897, namely 17s. per week, that being 50 per cent. of 11. 14s., the amount of his average weekly earnings before the accident. He subsequently so far recovered from the effects of the accident as to be capable of light work, and his employers took him back into their service as a lampman at wages of 11. 9s. 5d. per week, and ceased to pay him compensation. At that time the rate of wages paid to hauliers in the colliery had fallen to 11. 9s. 5d. per week. The workman having filed a request for arbitration in the county court to assess compensation under the Act, the county court judge refused to award him compensation, giving reasons for so doing which indicated that he might have acted on the view that the amount of the average weekly earnings to be taken as the basis for determining the amount of compensation was subject to variation in accordance with the fluctuations in the rate of wages in the employment subsequent to the accident:—

Held, that the amount of the workman's average weekly earnings as originally ascertained for the purpose of fixing the maximum compensation was not subject to variation by reason of

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the fall in the rate of wages paid to hauliers since the accident; and that it was a matter for the discretion of the county court judge whether he would award to the workman any substantial amount, and, if so, what proportion of the difference between the amount of his average weekly earnings before, and the average amount which he was able to earn after the accident: and the case must therefore be remitted to the county court judge for reconsideration. *JAMES v. OCEAN COAL CO.* - C. A. [1904] W. N. 111; [1904] 2 K. B. 213

74. — Earnings—Clothes—Earnings of workman—Use of clothes provided by employer—Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), First Schedule (1) (a) (i).

Where a workman was allowed by his employers to have the use for the purposes of his employment of a uniform, which was provided by them, and the property in which remained in them:—

Held, that the value to the workman of the use of the uniform formed an element which must be taken into account in estimating his earnings for the purpose of compensation under the Workmen's Compensation Act, 1897. *GREAT NORTHERN RY. CO. v. DAWSON*

C. A. [1905] W. N. 14; [1905] 1 K. B. 331

75. — "Earnings"—Deductions from wages—Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), Sched. I. (1), (a).

In estimating the compensation payable to an injured workman under the Workmen's Compensation Act, 1897, the word "earnings" in the Act means the sum the workman receives for his labour when he comes to it properly equipped according to the general understanding and practice in the particular trade.

From the weekly wages of a collier his employers deducted by agreement sums for cleaning lamps, supply of oil, sharpening picks, and checking weights:—

Held, that his "earnings" under the Act for the purpose of estimating compensation for injury were his full wages without the deductions.

The decision of the C. A. in *Houghton v. Sutton Heath and Lea Green Collieries Co.*, [1901] 1 K. B. 93, approved. *ABRAM COAL CO. v. SOUTHERN* - H. L. (E.) [1903] W. N. 124; [1903] A. C. 306

76. — "Earnings"—"Tips" or gratuities—Earnings in the employment—Rate of remuneration—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), Sched. I., s. 1 (a) (i.); s. 2.

"Earnings in the employment of the same employer" in respect of which compensation is recoverable under the Workmen's Compensation Act, 1906, need not always come from the employer; and where the employment is of such a nature that the habitual giving and receiving of "tips" is open and notorious, and sanctioned by the employer, the money thus received with his knowledge and approval must be brought into account in estimating the "average weekly earnings" in respect of which compensation has to be awarded. *PENN v. SPIERS AND POND, LD.* C. A. [1908] W. N. 47; [1902] 1 K. B. 766

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— Earnings—Review of weekly payments.

See Nos. 188, below.

77. — Employment—Casual Employment—Incapacity resulting from injury—Accident on first day of employment—Mode of arriving at amount of award—Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), First Schedule, 1 (b).

On an application for compensation under the Workmen's Compensation Act, 1897, it was proved that the applicant, a casual dock labourer, who had not been previously employed by the respondents, was engaged for a day at a certain rate of wages per hour, but subject to discharge on an hour's notice. He met with an accident in the course of that day. The county court judge took into consideration the average weekly earnings of a labourer such as the applicant, taking one week with another, by whomsoever employed, and awarded a weekly payment of half that sum. On appeal:—

Held, that this mode of arriving at the amount of compensation to be awarded was erroneous, as it was not based upon the period during which the applicant had been in the employment of the same employer as required by the schedule to the Act. *BARTLETT v. TUTTON & SONS* - C. A. [1902] 1 K. B. 72

78. — Employment for less than two weeks—Mode of arriving at sum to be awarded—Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), Sched. I., s. 1 (a), (i.); s. 1 (b).

On an application for an award of compensation under the Workmen's Compensation Act, 1897, in the case of a workman who had met with his death from an accident occurring in the course of his employment, it was proved that the deceased had been promised work for sixty hours a week at a given rate of wages per hour, but that he was liable to be dismissed at an hour's notice. He actually worked for four days, and the accident which caused his death happened on the fourth day. The county court judge awarded the maximum compensation on the basis of an employment to work sixty hours a week at the agreed rate of wages per hour:—

Held, that it was a fair inference from the terms of the engagement that the employment was not casual, but was to continue from week to week; and that the county court judge was therefore entitled to treat the deceased as a person whose standard of wages at the time he met with the accident was sixty hours a week at the agreed rate of wages per hour; and that the award must stand.

On an application for an award of compensation under the Workmen's Compensation Act, 1897, in the case of a workman who had met with an accident in the course of his employment, it was proved that the applicant had worked from Wednesday in one week up to and including Wednesday in the next week, and that he then met with an accident which incapacitated him. The county court judge awarded a weekly payment calculated on the basis of an employment to work six days a week at the agreed rate of wages per day:—

Held, that the county court judge was not bound to divide the actual sum earned by the

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applicant by 2 so as to average the amount by reference to the two weeks in which it was earned, but that he was entitled on the evidence to arrive at the conclusion that the average weekly earnings of the applicant, had he had the opportunity of earning wages in two or more weeks, would have been six times the amount of the agreed daily wages, and that the award must stand. *AYRES v. BUCKERIDGE. WHEALE v. RHYMNEY IRON CO. JONES v. RHYMNEY IRON CO.* -

C. A. [1901] W. N. 222 ;
[1902] 1 K. B. 57

Note.

This case was not followed by Ct. of Sess. (Sc.), *Grewar v. Caledonian Ry. Co.*, [1903] W. N. 167. See No. 68, above.

— Engine — Steam engine used on farm —
“ Factory.”

See Nos. 95, below.

— Engine-driver.

See Nos. 115-117, below.

79. — “ *Engineering work* ” — *Alteration of railroad—Tramway on highway—Alteration of roadway by telephone company—Workmen’s Compensation Act, 1897 (60 & 61 Vict. c. 37), s. 7.*

The Workmen’s Compensation Act, 1897, s. 7, sub-s. 2, defines “ *engineering work* ” as meaning (among other things) any work of alteration of a railroad.

A telephone co., which had statutory powers, employed a contractor to lay certain telephone wires. These wires had to be carried across a public highway, along which a tramway company had, by virtue of statutory powers, laid two lines of electric tramway, an up and a down line. This operation was being carried out in the following manner. A trench had been made in the roadway at right angles to the lines of the tramways up to a point close to the outer rail of the down line. The wires were to be carried along this trench, through a small tunnel under the rails of the down line, along a trench which had been made in the roadway between the up and down lines, and thence, through a tunnel under the rails of the up line, to a trench dug across the remainder of the roadway. A workman in the employ of the contractor, while engaged in making the before-mentioned tunnel under the down line, was killed by a passing tramcar :—

Held, by Collins, M.R. and Matthew L.J., Romer L.J. dissenting, that the deceased workman was employed in a “ *work of alteration of a railroad*,” and therefore in an “ *engineering work* ” within the meaning of the Workmen’s Compensation Act, 1897. *ADAMS v. SHADDOCK*
C. A. [1905] W. N. 152 ; [1905] 2 K. B. 859

80. — *Engineering work—Employment within area of work—Workmen’s Compensation Act, 1897 (60 & 61 Vict. c. 37) s. 7.*

A contract was entered into for the construction of a reservoir and for laying down pipes for the supply of water from it. The contractor was engaged in constructing the reservoir by means of machinery worked by steam power, and had staked out and taken possession of the land in which the pipes were to be laid. A workman in the employment of the contractor was engaged

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in laying pipes in a trench, at a point 500 yards distant from the reservoir, by means of a crane worked by hand power. While using the crane he met with an accident which caused injury to his hand. On an application for compensation under the Workmen’s Compensation Act, 1897 the county court judge found that the work of constructing the reservoir and laying the pipes was one piece of work, and made an award in favour of the applicant. On appeal :—

Held, that at the time of the accident the workman was employed on or in or about an engineering work, within the meaning of s. 7 of the Act. *ATKINSON v. LUMB*

C. A. [1903] 1 K. B. 861

81. — *Engineering work, Employment on—“ Railroad ”—Tramway—Workmen’s Compensation Act, 1897 (60 & 61 Vict. c. 37) s. 7.*

A tramway laid along a public road is a “ *railroad* ” within the definition of engineering work in s. 7, sub-s. 2, of the Workmen’s Compensation Act, 1897, and, therefore, employment on the construction, alteration, or repair of a tramways is an employment to which the Act applies. *FLETCHER v. LONDON UNITED TRAMWAYS, LD.*

C. A. [1902] W. N. 123 ;
[1902] 2 K. B. 269

82. — “ *Engineering work* ” — *Employment on or in or about an—Work ancillary to engineering work—Workmen’s Compensation Act, 1897 (60 & 61 Vict. c. 37), s. 7.*

A workman in the service of the respondents who had contracted to take up the rails of horse tramways in a town and lay down rails for electric tramways, while employed in unloading and stacking rails for the new tramways in a ry. yard, was injured by an accident. The rails had been brought by the ry., and the contractors were allowed by the ry. co. to use the yard for the storage of the rails till they were required for the tramways. At the time of the accident the only work then begun under the contract was the taking up rails in a street about 700 yards from the ry. yard :—

Held, by Lords Davey, Robertson, and Atkinson (Lord Loreburn L.C. and Lord James of Hereford dissenting), that the workman was not at the time of the accident employed “ *on or in or about an engineering work* ” within the meaning of the Workmen’s Compensation Act 1897, s. 7.

The decision of the C. A., [1905] W. N. 80 ; [1905] 2 K. B. 148, affirmed. *BACK v. DICK KERR & CO.*

H. L. (E.) [1906] W. N. 105 ; [1906] A. C. 325

83. — “ *Engineering work* ” — *Machinery worked by hand power—Contractor—Work ancillary or incidental to, and being no part of, or process in, a business—Workmen’s Compensation Act, 1897 (60 & 61 Vict. c. 37) s. 4 ; s. 7, sub-s. 2.*

A firm of engineers contracted with the owners of a cotton-spinning factory to put a new driving wheel into the steam-engine belonging to the factory. While engaged in the work of fixing the new wheel, a workman employed by the engineers met with an accident which caused his death :—*Held*, that, the work being merely ancillary or incidental to, and no part of, or process in,

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the business of the owners of the cotton-spinning factory, the case did not come within s. 4 of the Workmen's Compensation Act, 1897; and therefore that a dependant of the deceased workman was not entitled to compensation under the Act against the owners of the cotton-spinning factory. *WRIGLEY v. BAGLEY & WRIGHT AND WHITTAKER & SONS* - C. A. [1901] W. N. 64; [1901] 1 K. B. 780; H. L. (E.) [1902] A. C. 299
Note.

See also No. 91, below.

This case was referred to by Ct. of Sess. (Sc.) *Dempster v. Hunter & Sons*, [1903] W. N. 163. *See No. 191, below.*

84. — "Engineering work" — Repairs — Hydraulic lift — Using machinery driven by mechanical power — Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37) s. 7, sub-s. 2.

The "machinery driven by steam, water, or other mechanical power" referred to in the definition of "engineering work" in s. 7, sub-s. 2, of the Workmen's Compensation Act, 1897, includes, not only mechanical power supplied by the undertakers for the purpose of repairs, but also mechanical power which is actually part of the work on which the workman is engaged when he meets with the accident for which compensation is claimed. *TULLOCK v. B. WAY-GOOD & Co.* C. A. [1906] W. N. 118; [1906] 2 K. B. 261

85. — Engineering work — Tramway — Employment on repairs — Physical area of undertaking — Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), s. 7, sub-s. 1.

An applicant for compensation under the Workmen's Compensation Act, 1897, was a workman in the employment of a corporation, who were the owners of a system of electric tramways, and his duty was to repair the overhead wires. On the day on which he met with an accident he had repaired the wires at one place by means of a tower-wagon. In proceeding along a street, which followed the line of the tramway, to a place at which he had also to repair the wires, he was thrown from the wagon and injured. On the application an award was made in his favour. On appeal:—

Held, that, having regard to the obligation on the corporation, as undertakers, to repair and keep in repair the whole extent of the tramway system, each act of repair by the workman at different parts of the tramway could not be treated as a separate engineering work and that it was competent to the arbitrator to find that the accident happened within the area of the engineering work on which the workman was employed so as to entitle him to compensation under the Act. *ROGERS v. CARDIFF CORPORATION.*

C. A. [1905] W. N. 148; [1905] 2 K. B. 832

86. — Epileptic fit—Fall into hold of ship — Accident arising out of employment—Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), s. 1, sub-s. 1.

A workman employed in unloading coal from a ship, who was required in the course of his duty to stand by the open hatchway through

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which the coal was being brought up from the hold, was seized with a epileptic fit while at work, and fell into the hold and was seriously injured:—

Held, that regard must be had to the proximate cause of the accident resulting in the injury, which was to be found in the necessary proximity of the workman to the hatchway; that the accident therefore arose "out of" as well as "in the course of" his employment, and that he was entitled to compensation under the Workmen's Compensation Act, 1897. *WILKES v. DOWELL & Co.*

C. A. [1905] W. N. 84; [1905] 2 K. B. 225

87. — Evidence—Accident arising out of and in course of employment—Workmen's Compensation Act, 1906 (6 Edw. 7. c. 58), s. 1, sub-s. 1.

A donkeyman, whilst returning on board his employer's ship from the shore, fell off the gangway and struck an iron girder and was killed. His widow applied for compensation under the Workmen's Compensation Act, 1906, but adduced no evidence as to the purpose for which the deceased went on shore:—

Held, that the applicant had failed to prove that the accident arose out of and in the course of the deceased's employment. *MCDONALD v. OWNERS OF S.S. "BANANA"* - C. A. [1908] W. N. 192, 195; [1908] 2 K. B. 926

Note.

Followed by C. A., *Moore v. Manchester Liners, Ltd.*, [1909] 1 K. B. 417; but the decision of the C. A. was reversed by H. L. (E.) [1910] A. C. 498. *See No. 158, below.*

88. — Evidence—Inference—Onus of proof—Accident arising out of and in course of employment — Workmen's Compensation Act, 1906 (6 Edw. 7 c. 58), s. 1, sub-s. 1.

It is competent for the Court to draw an inference from the facts proved that the accident causing injury or death did happen "in the course of" and arose "out of" the employment, although no person was present who could give direct evidence how and when the accident happened, but the onus of proof is on the applicant in every case, and none the less so because by the death of the workman a greater burden is placed on the dependants of the deceased.

While a steamship was on the high seas, the chief cook and baker was lost overboard: the weather was fine at the time, the ship was steady, and there was a four-foot rail and bulwark all round. The deceased was last seen at 5.35 A.M. going aft. His widow applied for compensation under the Workmen's Compensation Act, 1906:—

Held, that there was no evidence which would enable the Court to draw the necessary inference that the accident causing death arose "out of" as well as "in the course of" the employment. *BENDER v. OWNERS OF STEAMSHIP "ZENT"* C. A. [1909] W. N. 82; [1909] 2 K. B. 41

Note.

This case was followed by C. A., *Gilbert v. Owners of Steam Trawler "Nizam"*, [1910] 2 K. B. 555, 559. *See No. 161, below.*

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89. — *Eyesight—Review of weekly payments—Remit by sheriff to official medical practitioner to report—Report conclusive of condition—Injury to eyesight—Reduction of weekly payments to nominal sum—Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), Scheds. I. (11), (12), and II. (13).*

In an application by an employer for review of an order for weekly payments of 6s. 3d. to an injured workman, the Sheriff-substitute, as arbitrator, remitted to the medical practitioner appointed by the Secretary of State to report as to the workman's condition. The report stated that the power of vision of the right eye was permanently reduced by one-half, and that the left eye was quite sound; and that, in the opinion of the reporter, "he will never be able for any work for which unimpaired vision is essential, but he is quite able to undertake his ordinary work as a labourer." The Sheriff-substitute, without further proof, reduced the compensation to 5s. per week.

In an appeal upon a stated case, the Court (diss. Lord Young) held that the report was conclusive evidence that the incapacity of the workman arising from his injuries had ceased to the effect of disentitling him to a continuance of the compensation at the present rate, and remitted to the Sheriff-substitute to reduce the compensation to 1d. per week until further order. *FERRIER v. GOURLAY BROTHERS & CO.*

(1902) Ct. of Sess. (Sc.) [1903] W. N. 164

— Factory.

See also under FACTORY.

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—Factory Acts.**

90. — *Factory—Dock, wharf, or quay—Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), s. 7, sub-s. 2.*

An accident happened in Oct., 1900, to a workman, while engaged in removing timber from a stack upon a piece of land, which was within the ambit of a system of docks belonging to a ry. co., and which had been let by the co. to timber merchants for the storage of timber. This piece of land was about forty yards from the water of a dock. Between it and the water ran the lines of a dock ry. or tramway, but it was not separated from the adjoining wharf or quay space by any fence or other such physical barrier. Timber had sometimes been landed from the before-mentioned dock and brought to the said piece of land, but during the year 1900 all the timber stacked thereon had been landed from other docks forming part of the dock system more or less remote, and brought to the said piece of land by rail. On a claim by the workman for compensation under the Workmen's Compensation Act, 1897, the county court judge found as a fact that the place where the accident happened was a factory as being a dock, wharf, or quay within the meaning of the Workmen's Compensation Act, 1897, s. 7, sub-s. 2.

On appeal to C. A. : —

Held, that there was evidence to support his finding, and therefore the Court were bound by it.

Haddock v. Humphrey, [1900] 1 Q. B. 609, distinguished. *KENNY v. HARRISON.*

C. A. [1902] 2 K. B. 168

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91. — *Factory—Employment on or in or about a factory—Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), s. 7.*

The enactment in s. 7, sub-s. 1, of the Workmen's Compensation Act, 1897, "This Act shall apply only to employment by the undertakers as hereinafter defined on or in or about a . . . factory . . ." means employment on or in or about their own factory. Therefore a workman who is sent by his employers on their business to a factory in respect of which they are not the occupiers, and therefore not the undertakers within the meaning of the Act, is not entitled to compensation from them for an injury which he receives there.

Francis v. Turner Brothers, [1900] 1 Q. B. 478, approved.

The decision of the C. A., [1901] 1 K. B. 780, affirmed on this point. *WRIGLEY v. WHITTAKER & SONS* — H. L. (E.) [1902] W. N. 84; [1902] A. C. 299

92. — *"Factory"—Employment "on or in or about a factory"—Gasworks—Gas main in street at a distance from works—Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), s. 7.*

A workman in the employ of a gas company was, in the course of his employment, engaged in making a trench in the roadway, under which one of their gas mains was laid, at a distance of a quarter of a mile from the works where the gas was manufactured, which works came within the definition of a "non-textile factory" given by the Factory and Workshop Act, 1901, s. 149, sub-s. 1 (c), when he was injured by an accident arising out of and in the course of his employment. The workman having claimed compensation under the Workmen's Compensation Act, 1897, the county court judge held that, at the time of the accident, he was employed "about a factory," inasmuch as the gas main was part of the gasworks, which were a factory, and accordingly awarded him compensation :—

Held, that the main was not part of a factory and that the workman was not employed "about a factory" within the meaning of the Act, and therefore was not entitled to compensation, *SPACEY v. DOWLAIS GAS AND COKE CO.*

C. A. [1905] W. N. 156; [1905] 2 K. B. 879

93. — *Factory—Machine worked by hand-power—Warehouse—Factory and Workshop Act, 1878 (41 & 42 Vict. c. 16), s. 93—Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), s. 7.*

Premises in which machinery is set in motion and kept in motion by hand-power only are not premises wherein "mechanical power" is used within the meaning of s. 93 of the Factory and Workshop Act, 1878, and the use of such machinery does not constitute the premises a factory within the meaning of s. 7 of the Workmen's Compensation Act, 1897.

A warehouse may be a factory within the meaning of s. 7 of the Workmen's Compensation Act, 1897, although it is not part of, or adjacent to, a dock, wharf, or quay, and is not contiguous to water. *WILLMOTT v. PATON*

C. A. [1902] 1 K. B. 237

—Factory—"Warehouse"—Injury to workman, See No. 185, below.

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—Factory—Warehouse—Retail business—Injury to workman.

See No. 186, below.

—“Factory”—Wharf.

See Nos. 90, above.

94. —“Factory”—*Workmen's Compensation Act, 1897* (60 & 61 Vict. c. 37), s. 7, sub-s. 2—*Factory and Workshop Act, 1901* (1 Edw. 7, c. 22), s. 195, sub-s. 2 (b).

The fact that a building comes within s. 105, sub-s. 2 (b), of the factory and Workshop Act, 1901, as being a building which exceeds thirty feet in height, and in which more than twenty, persons, not being domestic servants, are employed for wages, does not make such a building a “factory” for the purposes of the Workmen's Compensation Act, 1897. *DYER v. SWIFT CYCLE CO.* C. A. [1904] W. N. 86; [1904] 2 K. B. 36

95. —*Farm, Steam-engine used on*—“Factory”—*Meal ground as food for stock*—“By way of trade or for purposes of gain”—*Factory and Workshop Act, 1878* (41 & 42 Vict. c. 16), s. 93—*Workmen's Compensation Act, 1897* (60 & 61 Vict. c. 37), s. 7, sub-s. 2.

Where a workman who was employed by a farmer on his farm to drive a movable steam-engine, for the purpose of working a mill for grinding meal intended to be used for food for stock on the farm, and not for sale, was injured by an accident arising out of and in the course of that employment:—

Held, that the workman was not employed on, in, or about a “factory” within the meaning of the Factory and Workshop Act, 1878, s. 93, and therefore was not entitled to compensation under the Workmen's Compensation Act, 1897, in respect of the injuries occasioned to him as before mentioned. *NASH v. HOLLINSHED*

C. A. [1901] W. N. 64; [1901] 1 K. B. 700

—Fireman on steamer—Employment of workman not in relation to use of wharf.

See No. 162, below.

96. —*Fisherman—Share in profits*—*Workmen's Compensation Act, 1906* (6 Edw. 7, c. 58), s. 7, sub-s. 2.

A claimant under the Workmen's Compensation Act, 1906, was employed as engineer upon a steam fishing boat and was paid by a share in the profits with a guarantee from the owners that his share in the profits should never be less than 30s. a week:—

Held, that he was remunerated by a share in the profits within the meaning of s. 7, sub-s. 2, of the Act, and was therefore excepted from the Act and not entitled to compensation. *ADMIRAL FISHING CO. v. ROBINSON* C. A. [1910]

W. N. (57) 49; [1910] 1 K. B. 540

96. —*Football player (Professional)*—“Workman”—*Workmen's Compensation Act, 1906* (6 Edw. 7, c. 58), s. 13.

The applicant, a professional football player, had entered into a written agreement to serve the respondents for one year at a weekly wage by playing football with the respondents' team when required and attend regularly to training and observe the training and general instructions of the club. The training regulations

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required the players to attend at the ground every day at 10.30 and to be under the orders of the trainer for the day. The applicant met with an accident while playing in a match. The respondents paid him his wages to the end of the year, and he then claimed compensation for permanent incapacity:—

Held, that the applicant was a “workman” within the meaning of the Workmen's Compensation Act, 1906. *WALKER v. CRYSTAL PALACE FOOTBALL CLUB, LD.* [1909] W. N. 225; C. A. [1910] 1 K. B. 87

See also No. 193—198, below.

98. —“Forestry”—*Workmen's Compensation Act, 1900* (63 & 64 Vict. c. 22), s. 1, sub-s. 3.

A workman, in the employment of a saw-miller, was employed to cut down growing trees, which had been purchased by his employer, and cart them to the saw mill, and, while so employed, was killed by being crushed between a standing tree and the trunk of a tree which he was removing on a cart. The cutting down and removing of the trees was an ordinary part of the employer's business:—

Held, that the employment in which the deceased was killed was not “forestry” in the sense of the Act of 1900, and consequently that his representatives were not entitled to compensation under the Act. *MEALLY v. M'GOWAN.*

(1902) Ct. of Sess. (Sc.) [1903] W. N. 165

99. —*Frost-bite—Accident arising out of the employment*—*Workmen's Compensation Act, 1906* (6 Edw. 7, c. 58), s. 1, sub-s. 1.

The question raised by this appeal was whether a journeyman baker whose right hand and arm had been injured by frost-bite while out on his rounds with his employer's cart could obtain compensation for this injury as “an accident arising out of” his employment. The county court judge found that there was nothing in the nature of the applicant's employment which exposed him to more than the ordinary risk of cold to which any person working in the open was exposed on that day, and declined to award him any compensation.

The C. A. (Cozens-Hardy M.R. and Farwell L.J., Fletcher Moulton L.J. dissenting) dismissed the appeal.

Cozens-Hardy M.R. said he felt considerable doubt whether there was “an accident” here within the meaning attributed to that word by this Court and by the House of Lords, but assuming this point in the applicant's favour, he could not see that there was any peculiar danger to which the applicant was exposed beyond that to which that large section of the population who were drivers of vehicles, or who were otherwise engaged in outdoor labours, were exposed. The county court judge's finding of fact on this point could not be interfered with, and the appeal must be dismissed.

Fletcher Moulton L.J. said the applicant undoubtedly sustained a physiological injury, which was the direct result of the work he was engaged in, and he sustained it in the reasonable performance of his duties, and he thought the applicant had met with this injury by “an accident” within the meaning of the decided

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cases. His Lordship also said he could not picture to himself a more typical case of an accident arising "out of" the employment. The case of extreme heat or extreme cold was similar to that of such a natural agency as lightning, except that it was easier, as in this case, to shew the direct connection between the accident and the employment, but the rule was the same. If the employment brought with it greater exposure and injury resulted, that injury arose out of the employment.

Farwell L.J. agreed with the conclusions arrived at by Cozens-Hardy M.R. **WARNER v. COUCHMAN** - C. A. [1910] W. N. 266

100. — Funeral expenses—Deceased Workman—Dependants in part dependent upon his earnings—Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), Sched. I., s. 3 (a), sub-s. (ii).

The arbitrator, in assessing the amount payable as compensation under the Workmen's Compensation Act, 1897, Sched. I., s. 1 (a), sub-s. (ii), to a person in part dependent upon the earnings of a deceased workman, is entitled to take into consideration expenses in respect of the workman's funeral. **BEVAN v. CRAWSHAY BROTHERS (CYFARTHA), LD.** C. A. [1901] W. N. 213; [1902] 1 K. B. 25

—Guard, Railway—Earnings—Lodging allowance.

See No. 120, below.

101. — Heat-stroke, Death by—Accident—Workmen's Compensation Act, 1906 (6 Edw 7, c. 58), s. 1, sub-s. 1.

A workman, in a weak and emaciated condition, while raking out ashes from under the boiler in the stokehole of a steamship received a heat-stroke from the effect of which he died:—

Held, (by Lord Loreburn L.C. and Lord Ashbourne, Lord Macnaghten dissenting), that this was a case of death by accident within the meaning of the Workmen's Compensation Act, 1906. **ISMAY, IMBIE & Co. v. WILLIAMSON**

H. L. (1.) [1908] W. N. 192; [1908] A. C. 437

Note.

This case was applied by C. A., **Hughes v. Clover, Clayton & Co.**, [1909], 2 K. B. 798; **H. L. (B.) [1910] A. C. 242.** See No. 54, above.

102. — Indemnity—Amount fixed by agreement—Right to indemnity from person liable—Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), s. 6.

Sect. 6 of the Workmen's Compensation Act, 1897, provides that where the injury for which compensation is payable under the Act was caused under circumstances, creating a legal liability in some person other than the employer to pay damages in respect of it, the workman may, at his option, "proceed, either at law against that person to recover damages, or against his employer for compensation under this Act . . . and if compensation be paid under

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this Act, the employer shall be entitled to be indemnified by the said other person":—

Held, that the section applied where the compensation was paid under an agreement made between the injured workman and the employer after notice of the accident and of the claim for compensation had been given by the workman to the employer, but before any further proceedings had been taken. **THOMPSON & SONS v. NORTH EASTERN MARINE ENGINEERING Co.**
Kennedy J. [1903] 1 K. B. 428

103. — Indemnity—Liability of sub-contractor—Repair of a building—Scaffolding, sub-contract for—"Undertaker"—Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), ss. 4, 7.

The contractor for the repair of a building over thirty feet in height entered into a sub-contract with another person for the supply and erection of a scaffolding for the purpose of the work and its subsequent removal. A workman in the employ of the sub-contractor, while engaged in the removal of the scaffolding, met with an accident which caused his death. His dependants having recovered compensation under s. 4 of the Workmen's Compensation Act, 1897, against the principal contractor:—

Held, that the latter was entitled to indemnity against the sub-contractor under that section on the ground that he was the "undertaker" in respect of an essential portion of the work of repair. **MCCABE v. JOPLING AND PALMERS' TRAVELLING CRADLE LD.** C. A. [1904] 1 K. B. 222

Note.

This case was followed by C. A., **Plant v. Wright & Co.** (No. 2), [1905] 1 K. B. 353. See No. 26, above.

—Indemnity—Agreement between undertaker and workman—Liability of sub-contractor to indemnify undertaker—Right to bring action in High Court.

See MASTER AND SERVANT.—Practice 20.

—Infants.

See under MASTER AND SERVANT.

Infants.

—Ladder.

See Nos. 136—138.

—Ladder—Ship—Accident arising out of and in the course of employment.

See No. 158, below.

—Lead-poisoning—Disease.

See No. 58, above.

104. — "Lead poisoning or its sequela"—Proximate or ultimate cause of death—Death caused by industrial disease—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 8 sub-s. 1 and 2, Sched. III.

In order to bring the case of a deceased workman within the operation of s. 8, sub-s. 1, of the Workmen's Compensation Act, 1906, which section applies the Act to industrial diseases, it must be established that a disease mentioned in the third Schedule to the Act was either the proximate or ultimate cause of his death. It is not sufficient that the death was caused by a complaint which might in some cases be a sequela of the disease, but might also be a sequela of

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something else. It must be proved that the death was at least a remote consequence of the disease in the case of the particular individual.

Sub-s. 2 of the section has no effect until the case has been brought within the operation of sub-s. 1. *HAYLETT v. VIGOR & Co.* - C. A. [1908] W. N. 197; [1908] 2 K. B. 837

105.—Lightning, Injury by—Accident arising out of employment—Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), s. 1, sub-s. 1.

Where the place and circumstances in which a workman is employed involve a greater than ordinary risk of injury by lightning, such an injury may be considered as caused by an accident arising out of his employment within the meaning of the Workmen's Compensation Act, 1897, s. 1, sub-s. 1. *ANDREW v. FAILS-WORTH INDUSTRIAL SOCIETY LD.* C. A. [1904] W. N. 86; [1904] 2 K. B. 32

106.—Local authority—Contract for execution of work undertaken by principal—Municipal corporation—Workmen's Compensation Act, 1906 (6 Edu. 7, c. 58), s. 4, sub-s. 1; s. 13.

A municipal corporation acquired for the purpose of a market a plot of land occupied by a ruinous building, and they accepted an offer by a contractor to purchase the building materials for 15l. on the terms of his pulling down the building and clearing the site. A workman employed by the contractor to do the work was killed by an accident arising out of and in the course of his employment, and his widow applied for compensation under the Workmen's Compensation Act, 1906, against both the contractor and the corporation:—

Held, that the contract between the corporation and the contractor was a contract for the execution of work undertaken by the corporation, and that it was entered into by them in the exercise and performance of their powers and duties, and consequently that the corporation were liable as employers under s. 4, sub-s. 1, of the Act. *MULROONEY v. TODD* - C. A. [1908] W. N. 242; [1909] 1 K. B. 165

107.—Machinery, Defect in condition of—Machine no longer in use—"Machinery or plant connected with or used in the business of the employer"—Injury to workman—Employers' Liability Act, 1880 (43 & 44 Vict. c. 42), s. 1, sub-s. 1.

A machine used in the defts.' business broke down, and the foreman directed that it should be removed from the position in which it had been placed while in use. The plt., who was a workman in the employment of the defts., assisted in removing the machine, and was injured while doing so by reason of a defect in the machine which was within the knowledge of the foreman. In an action under the Employers' Liability Act, 1880:—

Held, that the fact that the machine at the time of the accident had broken down, and was no longer in use, did not necessarily shew that it had ceased to be "machinery or plant connected with or used in the business of the employer" within the meaning of s. 1, sub-s. 1, of the Act.

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Judgment of the K. B. Div., [1901] 2 K. B. 483, reversed. *THOMPSON v. CITY GLASS BOTTLE CO.* C. A. [1900] W. N. 228; [1902] 1 K. B. 233

108.—Medical practitioner, Examination of workman by—Employer's right—Condition—Workman requiring presence of his own medical man—Workmen's Compensation Act, 1906 (6 Edu. 7, c. 58), Sched. I., clause 14.

A medical man instructed by the employers asked a workman in receipt of weekly payments under the Workmen's Compensation Act to submit himself to examination. The man answered that he had no objection provided his own medical man was present:—

Held, that he had not refused to submit himself to examination within the meaning of the Act. *DEVITT v. OWNERS OF STEAMSHIP "BAINBRIDGE."* C. A. [1909] 2 K. B. 802

—Mine—"Serious and wilful misconduct."
See No. 142, below.

—Mine—"Workman"—Contract by workman with mine-owner to obey regulations.
See No. 196, below.

109.—Mines—"Accident arising out of and in the course of the employment"—Workman leaving mine after ceasing work—Disobedience of orders—Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), s. 1.

The appellant, a workman, while working in the respondents' colliery was, for disobedience of orders, suspended from work, pending an inquiry into the matter by the under-manager of the colliery. It appeared that men were not allowed to remain in the workings of the colliery when not at work; and the practice was for a workman who was suspended while at work to go to the pit bottom, i.e., the bottom of the shaft in which the cage worked, by which access to or egress from the mine was obtained. The appellant, when he was suspended, went into a place called a "pass-by," at the side of the tramway leading to the pit bottom. While sitting there he was ordered by the deputy to go to the pit bottom. He remained however in the pass-by, where, about two hours later, a fall from the roof took place, by which he was injured. If the appellant had gone to the pit bottom as directed, he could not have got out of the mine till the cage went up in the ordinary course, which was later than the time at which the accident happened. Upon a claim by the appellant for compensation under the Workmen's Compensation Act, 1897, the county court judge found that the accident did not arise out of and in the course of the appellant's employment:—

Held, that there was evidence upon which he was entitled so to find. *SMITH v. SOUTH NORMANTON COLLIERY CO.*

C. A. [1903] W. N. 2; [1903] 1 K. B. 204

—Misconduct—"Serious and wilful misconduct."
See No. 141, 142, below.

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— Misconduct, Wilful.

See No. 141, 142, below.

— Murder—Cashier—Risks incidental to the employment.

See No. 29, above.

— Negligence.

See under MASTER AND SERVANT—Negligence.

110.—*Nervous shock—Neurasthenia—Earning capacity of workman—Accident—Workmen's Compensation Act, 1906* (6 *Edw. 7*, c. 58), s. 1.

A nervous shock caused by the excitement and alarm resulting from a fatal accident to a fellow workman while engaged in the employment:—

Held to be a case of "personal injury by accident arising out of and in the course of the employment" within the Workmen's Compensation Act, 1906.

Nervous shock causing incapacity to work is as much "personal injury by accident" as a broken limb or other physical injury. *YATES v. SOUTH KIRKBY, & CO. COLLIERIES, LD.*

C. A. [1910] W. N. 174; [1910] 2 K. B. 538

111.—*Notice of accident—Written notice necessary—Failure to give notice—Prejudice to employer—Onus of proof—Workmen's Compensation Act, 1906* (6 *Edw. 7*, c. 58), s. 2.

The notice of the accident which is to be given to the employer under s. 2, sub-s. 1, of the Workmen's Compensation Act, 1906, must be in writing. Under proviso (a) of sub-s. 1 the onus lies on the workman of showing that the employer has not been "prejudiced in his defence by the want, defect, or inaccuracy" of any such notice. *HUGHES v. COED TALON COLLIERY CO.* - **C. A. [1901] W. N. 77; [1909] 1 K. B. 957**

112.—*Partial incapacity for work—Maximum amount of compensation—Discretion of county court judge—Workmen's Compensation Act, 1897* (60 § 61 *Vict. c. 37*), *Sched. I*, clauses 1 (b), 2.

In awarding compensation under the Workmen's Compensation Act, 1897, *Sched. I*, clauses 1 (b), 2, to workmen partially incapacitated for work, a county court judge cannot lay down any general rule as to the amount of compensation which he will award. The judge must exercise his discretion with regard to the circumstances of the particular case.

The decision of the C. A., [1904] 1 K. B. 218, affirmed by consent upon terms. *WEBSTER (PAUPER) v. SHARP & CO.*

H. L. (E.) [1905] A. C. 284

113.—*Partner working at wages—Workmen's Compensation Act, 1897* (60 § 61 *Vict. c. 37*), s. 1, sub-s. 1, and s. 7, sub-s. 2.

A member of a partnership formed for the purpose of working a mine, by arrangement with his co-partners, worked in the mine as a working foreman, and received weekly wages out of the profits of the business. While working in the

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mine, he met with an accident which caused his death, and his widow thereupon claimed compensation under the Workmen's Compensation Act, 1897, from the surviving partners:—

Held, that the case contemplated by the Workmen's Compensation Act, 1897, was that of a workman employed by some other person or persons; that, the deceased having been himself one of the partners in the firm for which he was working, he could not be said to have been employed by them; and therefore that the case was not within the Act, and the applicant was not entitled to compensation. *ELLIS v. JOSEPH ELLIS & CO.* - **C. A. [1905] W. N. 10; [1905] 1 K. B. 324**

— Practice.

See also under MASTER AND SERVANT—Practice.

114.—*Principal, Liability of—Execution by contractor of work undertaken by principal—Shipping—Lighter—Workmen's Compensation Act, 1906* (6 *Edw. 7*, c. 58), s. 4, sub-ss. 1 and 4.

A limited co. carried on the business of coal merchants in various parts of the world, including Cape Verd, and, as incidental to that business, the business of lightermen, and they purchased in England a lighter for use in their business at Cape Verd. By an agreement entered into between the co. and G., G. agreed for a lump sum to navigate the lighter from England to Cape Verd and deliver her into the co.'s hands there, and to provide and pay for the crew, and the co. agreed to pay all demands for insurance, also clearances at the port of departure. B, who was appointed by G. to take command of the lighter, engaged the crew. The boatswain, who was incapacitated by an accident on the voyage, applied against the co. for compensation under the Workmen's Compensation Act, 1906:—

Held, that the co. in the course or for the purposes of their business had contracted with G. for the execution by or under G. of part of the work undertaken by them and were liable as principals under s. 4, sub-s. 1, of the Act. *DITTMAR v. OWNERS OF SHIP "V 593."*

C. A. [1909] 1 K. B. 389

— Quay.

See Nos. 145, 146, 150-153, below.

115.—*Railway—Engine driver—Accident to workman—arising out of and in the course of the employment—Workmen's Compensation Act, 1897* (60 § 61 *Vict. c. 37*), s. 1.

An engine driver in charge of his engine left it, and, for a purpose of his own and not in the execution of his duty or in the interest of his employers, crossed a siding. On returning to his engine he was killed by a waggon which was being shunted:—

Held, that the accident did not arise out of and in the course of his employment within the meaning of the Workmen's Compensation Act, 1897, s. 1. *REED v. GREAT WESTERN RY. CO.*

H. L. (E.) [1908] W. N. 212; [1909] A. C. 31

Note.

This case was distinguished by H. L. (Sc.). *Low (or Jackson) v. General Steam Fishing Co.*, [1909] A. C. 523.

See No. 187, below.

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116. — Railway — Engine-driver — Stone wilfully thrown at train — Accident arising out of the employment — Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), s. 1.

Where an engine-driver, while driving a train under a bridge, was injured through a stone wilfully dropped on a train by a boy from the bridge:—

Held, that his injuries were caused by an accident arising out of and in the course of his employment within the meaning of the Workmen's Compensation Act, 1897, s. 1. **CHALLIS v. LONDON AND SOUTH WESTERN RY. CO.**

C. A. [1905] W. N. 80; [1905] 2 K. B. 154

Note.

This case was applied by **C. A., Nisbet v. Rayne & Burn, [1910] 2 K. B. 689.** See No. 29, above.

117. — Railway — Engine-driver — Workman killed while disobeying well-known rule of employer — "Serious and wilful misconduct" — Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37).

An engine-driver left the foot-plate of his engine and went on to the tender while the engine was in motion, in breach of a rule of the ry. co. prohibiting the act and well known to him, and was killed by collision with a bridge. In a claim by the widow for compensation the county court judge found upon the evidence that there was nothing to justify the driver in going on to the tender at the time in question, and that his act amounted, in fact, to "serious and wilful misconduct," within the Workmen's Compensation Act, 1896, and made his award in favour of the co.:—

Held, that there was evidence upon which the judge might properly find as he did. **BIST v. LONDON AND SOUTH WESTERN RY. CO.**

H. L. (E.) [1907] A. C. 209

118. — Railway carter — Employment "about" a railway — Course of employment — Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), ss. 7, 1.

A carter in the employment of contractors, who had a contract with a ry. co. for the cartage of goods to and from a station of the co., had delivered certain goods at the station. This finished his day's work, and as he was leaving the station with his horse and lorry, on the way to the contractor's stables, the horse took fright and bolted just outside the gate of the station, and, in consequence, the carter was injured by the horse and lorry dashing into a shop 315 yards distant:—

Held, that the accident did not arise "out of and in the course of" his employment "in and about a railway" and directed the arbitrator to dismiss the claim. **BATHGATE v. CALEDONIAN RY. CO.**

(1901) Ct. of Sess. (Sc.) [1903] W. N. 161

119. — Railway carter — "Undertakers" — In and about a "factory" — Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), ss. 4, 7.

The firm of C. & Co. had a sausage factory in Glasgow, and sale premises in London and Leeds. Under a contract with a ry. co., the servants of the co. called daily with carts at the factory to

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collect the manufactured goods for transmission by rail to the sale premises, charging for so doing an inclusive rate for collecting, ry. carriage, and delivery. A ry. carter while engaged in taking goods from the factory to his lorry on the opposite side of the street, at a point about 32 feet distant, accidentally sustained injuries from which he ultimately died. In a claim under the Act, it was

Held, (1) that C. & Co. were the undertakers of the work in which the deceased was engaged at the time of the accident:

(2) That the work was part of their business: and

(3) That the accident occurred in or about C. & Co.'s factory. **M'GOVERN v. COOPER & CO. (1901) Ct. of Sess. (Sc.) [1903] W. N. 160**

120. — Railway guard — "Earnings" — Lodging allowances — Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), 1st Sched. (1), (a), (i).

A ry. guard was paid in addition to his wages a fixed sum whenever his duties required him to lodge away from home. No inquiry was made whether he spent that sum or any sum:—

Held, that these fixed sums were part of his "earnings" within the meaning of the Workmen's Compensation Act, 1907, 1st Schedule.

The decision of the **C. A., Sharpe v. Midland Ry. Co. [1903] 2 K. B. 26**, affirmed. **MIDLAND RY. CO. v. SHARPE - H. L. (E.) [1904] W. N. 111; [1904] A. C. 349**

121. — Recorded agreement — Review — Reduction of payments as from antecedent date — Over-payment — Application of excess in payment of reduced amount — Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), Sched. I., par. 19 — Workmen's Compensation Rules, 1907—1909, r. 67.

On July 16, 1908, W. sustained an injury from an accident arising out of and in the course of his employment, and compensation at the rate of 14s. 7d. per week was paid him from that day until Feb. 25, 1910, when, in consequence of the certificate of the medical referee as to the man's condition, the compensation was stopped. W. thereupon sent a memorandum of agreement to the registrar of the county court for registration, and, notwithstanding the opposition of the employers, the memorandum of agreement was ordered by the judge to be recorded on April 5, 1910. Under this agreement the employers were bound to pay compensation at the rate of 14s. 7d. per week from Feb. 25, 1910, until such time as they could get the amount reduced or terminated.

On April 7, 1910, the employers applied for a termination or reduction of the payments under the agreement, as from Feb. 18, 1910, and on July 4, 1910, the county court judge made an award reducing the payments to 10s. per week as from the date mentioned in the application. It followed that the employers, having paid 14s. 7d. per week from Feb. 18 to July 4, had paid too much for twenty weeks, or 4l. 11s. 8d. too much in all, and they accordingly stopped payment of the reduced compensation with a view to making up the over-payment. When two weeks' payments of 10s. each were unpaid, the

MASTER AND SERVANT (Compensation)—*contd.* workman applied to the registrar for leave to issue execution for 1*l.* The registrar referred the matter to the judge, who certified that the employers had made default in payment of the sum of 1*l.* due under the award of July 4.

The C. A. dismissed the appeal.

Cozens-Hardy M.R. said that the effect of the recorded agreement to pay 14*s.* 7*d.* per week was that execution might issue in respect thereof, and the effect was the same in respect of the reduced payment of 10*s.* per week. On behalf of the employers it was contended that though they were under a legal obligation at the time when the payments were made to pay 14*s.* 7*d.* per week, they must now be considered as having paid 10*s.* a week only in respect of their legal obligation, and that the remaining 4*s.* 7*d.* was something which they were entitled to apply towards the payment of the subsequent 10*s.* per week. In his Lordship's opinion, the answer to that contention was to be found in par. 19 of the First Schedule to the Act. Although the employers might recover the excess from the workman by action, the payments of 14*s.* 7*d.* were in respect of a then existing obligation, and could not be regarded as payments made in advance in respect of a future obligation. *HOSEGOOD & SONS v. WILSON*

C. A. [1910] W. N. 242

122. — Redemption of employer's liability—Application limiting sum for redemption—Jurisdiction of county court judge—Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), First Schedule, Clause 13.

It is not competent, under clause 13 of the First Schedule to the Workmen's Compensation Act, 1897, for employers to apply for redemption of their liability to make weekly payments by way of compensation subject to a limit specified in the application of the sum to be payable for redemption; and a county court judge has no jurisdiction to entertain an application so limited.

CASTLE SPINNING CO. v. ATKINSON

C. A. [1905] W. N. 14; [1905] 1 K. B. 336

123. — Reduction — Misrepresentation of material facts—Compensation for total claim for injury—Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37).

The appellant, a boilermaker, on Dec. 20, 1902, when in the employment of the respondents, sustained severe injuries. The respondents admitted liability for the accident under the Workmen's Compensation Act, 1897, and agreed to pay compensation at the rate of 18*s.* per week. A memorandum of said agreement was recorded in the sheriff court. The position of the appellant, therefore, was that he had the statutory equivalent to a decree in his favour for 18*s.* a week. Compensation was paid to him till Sept. 3, 1903. On that date the appellant was induced by the manager of the Iron Trades Employers' Insurance Association; Ltd., with whom the respondents were insured against accidents to their workmen, to sign a receipt and discharge, by which, in consideration of payment of 20*l.* then made to him by Sutherland, he discharged his right to 18*s.* a week and all claims competent to him

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The evidence proved that the appellant could never work as a boilermaker again, also that Sutherland had led him to believe that the doctor had reported that he would be able to resume work in Oct., whereas the doctor's July report of the appellant's condition was "that the probable duration of disability would be some months—but his progress had been so disappointing and slow that I cannot give a prediction."

The House, holding that there had been misrepresentation, reversed the decision of the Second Division of the Court of Session, Scotland (Mar. 18, 1905, 12 Scots. L. Times, 702, 855), and allowed the appeal. *CROSSAN v. CALEDON SHIPBUILDING AND ENGINEERING CO.*

H. L. (Sc.) [1906] W. N. 104

124. — Refusal of sheriff to state a case—Accident arising "out of and in the course of" the employment—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1, sub-s. 1.

The appellant's husband was employed by the respondents to watch trawlers as they lay in Granton Harbour. He was on duty for twenty-five hours, during which time he had to provide his own food; and in connection with his duties it was occasionally necessary for him to be on the quay. In the course of his watch he left the trawlers and went to an hotel which was a short distance away from the harbour, where he got half a glass of whisky and a glass of beer. He was absent a very short time, and on his return to the quay, while descending to a fixed ladder attached to the quay to go on board one of the trawlers, he fell into the water and was drowned:—

Held, reversing the decision of the Second Division of the Ct. of Sess. (1909) S. C. 63 (Lord Loreburn L.C. and Lord Gorell dissenting), that the accident arose "out of and in the course of" the employment of the deceased within the meaning of the Workmen's Compensation Act, 1906, for when the accident occurred he had returned to the quay which was the scene or sphere of his duty.

By Lord Loreburn L.C.: That the deceased at the time of the accident was not using the ladder in the course of his employment, inasmuch as he was not upon the ladder in the course of his duty, but in the course of returning to it.

By Lord Gorell: That the deceased had no business to leave his duty of watching, and that the accident occurred during an excursion which he had made for his own purposes.

Reed v. Great Western Ry. Co., [1909] A. C. 31, distinguished.

Query, must a party claiming compensation under the Workmen's Compensation Act, 1906, prove affirmatively not only that the accident causing the injury happened during the workman's employment, but also arose out of and in the course of his employment? And if the facts proved are equally consistent with the existence or non-existence of these essential conditions, must the applicant fail?

Practic—Appeal—Competency—Workmen's Compensation Act, 1906.

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In a Scottish case the sheriff-substitute refused to state a case for the opinion of the Ct. of Sess. on the ground that the question proposed was not a question of law, but of fact. The Court being of opinion that the sheriff as arbitrator was bound to state a case, it was thereupon, on the suggestion of the Court and in order to minimize expenses, agreed by the parties that instead of the case being remitted to the sheriff it should be disposed of as "if upon a case stated by the sheriff in terms of the statute" :—

Held, that the judgment of the Ct. of Sess. following on the said agreement was not pronounced extra cursum curiæ and was subject to appeal. **LOW OR JACKSON (PAUPER) v. GENERAL STEAM FISHING CO.** - **H. L. (Sc.)** [1909] **W. N. 185**; [1909] **A. C. 523**

Note.

This case was referred to by C. A., *Hewitt v. Owners of Ship "Duchess,"* [1910] 1 K. B. 772. See No. 150, below.

— *Res judicata*—Change of circumstances—Application to review.
See next Case.

125. — Review, Application to—Res judicata—Change of circumstances—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), Sched. I. (3.), (16.).

The amount which an injured workman "is earning or is able to earn in some suitable employment" at the date of an application to review a weekly payment under the Workmen's Compensation Act, 1906, cannot necessarily have been finally determined at any period of time, and cannot therefore be *res judicata*. The issue on such an application is the same as if it were an original award made at the date of the application to review.

Where subsequent experiment has shewn that the previous decision based on expert evidence was wrong, there is a change of circumstances which will justify an application to review the weekly payments.

Sharman v. Holliday & Greenwood, Ltd., [1904] 1 K. B. 235, applied. **RADCLIFFE v. PACIFIC STEAM NAVIGATION CO.** - **C. A.** [1910] **W. N. 58**; [1910] 1 K. B. 685

126. — Review of weekly payment—Application—Res judicata—Change of circumstances—Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), Sched. I., clause 12.

Upon an application by employers for a review of the weekly sum paid as compensation to a workman in respect of injuries arising from an accident under the Workmen's Compensation Act, 1897, the county court judge, acting on the opinion of medical experts that the workman was not incapacitated for work, made an award, ordering the weekly payment to be reduced to a nominal amount. On an application for further review of the payment by the workman, evidence was tendered to shew that, since the previous hearing, he had repeatedly applied for employment, and had been unable to obtain it on account of his condition arising from the acci-

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dent. The county court judge refused to entertain the application on the ground that the condition of the workman was *res judicata*, and that there had been no change of circumstances since the previous hearing, so as to give him jurisdiction to review the payment :—

Held, that the doctrine of *res judicata* did not apply to the decision of the county court judge on the previous hearing, and that, there apparently being evidence of a change of circumstances, he ought to entertain the application.

Crossfield & Sons v. Tanian, [1900] 2 Q. B. 629, distinguished. **SHARMAN v. HOLLIDAY & GREENWOOD, LD.** - **C. A.** [1904] 1 K. B. 235

Note.

This case was applied by C. A., *Radcliffe v. Pacific Steam Navigation Co.*, [1910] 1 K. B. 685. See preceding Case.

127. — Review of weekly payment—Average weekly earnings before accident—Average amount workman able to earn after accident—Earnings in independent business—Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), Sched. I. (2.), (12.).

The respondent, a workman, met with an accident, and was awarded a weekly payment as compensation under the Workmen's Compensation Act, 1897. Upon an application by his former employers to review the weekly payment, the county court judge refused to take into consideration the earnings of the respondent in a business that he had started after the accident. On appeal :—

Held, that the expression "the average amount which he is able to earn after the accident," in paragraph 2 of the First Schedule to the Act, is not restricted to earnings in the service of an employer, but includes earnings in an independent business. **NORMAN & BURT v. WALDER** **C. A.** [1904] 2 K. B. 27

128. — Review of weekly payment—Earning capacity of workman—Nervous prostration—Loss of will power—Physical and muscular recovery—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), Sched. I. (16.).

On an application by an employer under the Workmen's Compensation Act, 1906, Sched. I. (16.), to have the weekly payments reviewed, the nervous and mental as well as the physical condition of the injured workman must be taken into consideration in estimating the extent of his recovery and consequent earning capacity. It is not sufficient for the employer to shew that the muscular and physical mischief caused by the accident has come to an end. **EAVES v. BLAENCLYDACH COLLIERY CO.**

C. A. [1909] 2 K. B. 73

129. — Review of weekly payment—Nominal award—Jurisdiction—Suspensory order—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), Sched. I. (16.)—Practice.

On an application by an employer under the Workmen's Compensation Act, 1906, Sched. I. (16.), to have the weekly payments reviewed on the ground that the incapacity no longer existed, there is jurisdiction, in a case

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where the incapacity, owing to the effects of the original accident, may recur, to suspend instead of ending the compensation by awarding a nominal sum or by making a declaration of continuing liability, and this is the proper course to be adopted in these cases.

Singer Manufacturing Co. v. Clelland, (1905) 42 Sc. L. R. 757, questioned on this point. **OWNERS OF THE VESSEL "TYNRO" v. MORGAN** C. A. [1908] 2 K. B. 66

130. — *Review of weekly payments—Prospective order—Award terminating at a future date—Jurisdiction of arbitrator—Onus of proof—Workmen's Compensation Act, 1906* (6 Edw. 7, c. 58), *Sched. I*. (16.).

On an application to review weekly payments under the Workmen's Compensation Act, 1906, an arbitrator has no jurisdiction to make a prospective award terminating the compensation at a given date. An arbitrator has only jurisdiction to award payments during the incapacity of the workman, and his duty is to ascertain what is the workman's earning capacity at the date of the application and to award accordingly, leaving it to the employer to apply for a reduction in the event of the workman's recovery. A prospective award is also wrong inasmuch as it shifts the onus of proof from the employer to the workman in a way that may be unfair to the workman.

Allan v. Thomas Spowart & Co., Ltd., (1906) 43 Sc. L. R. 599, approved. **BAKER v. JEWELL** C. A. [1910] W. N. 180; [1910] 2 K. B. 673

131. — *Review of weekly payment—Time from which weekly payment may be ended, diminished, or increased—Workmen's Compensation Act, 1897* (60 & 61 Vict. c. 37), *Sched. I*, ss. (b), 12.

When an application to review a weekly payment made under the Workmen's Compensation Act, 1897, on the ground that the workman's incapacity has ceased, is brought before an arbitrator, he is not bound to treat the agreement for or award of a weekly payment as enforceable up to the time of his decision, but has jurisdiction to inquire whether the incapacity had ceased when the application to review was made, or at any and what subsequent time before the hearing, and to make his award with reference to the date so determined. **FRANCIS MORTON & Co. v. WOODWARD** C. A. [1902] 2 K. B. 276

132. — *Scaffolding, Building constructed by means of—Structure of trestles and boards within building—Whether scaffolding question of fact for arbitrator—Workmen's Compensation Act, 1897* (60 & 61 Vict. c. 37), s. 7, sub-s. 1.

By s. 7, sub-s. 1, of the Workmen's Compensation Act, 1897, the Act is to apply (inter alia) to employment "on, in, or about any building which exceeds thirty feet in height, and is either being constructed or repaired by means of a scaffolding."

A new house more than thirty feet high had been roofed in and the external scaffolding removed. The applicant was engaged in plastering the walls and ceiling in one of the rooms, and in order to reach his work was standing on a structure of trestles with boards on them. While at work in this manner he met with an accident,

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for which he claimed compensation. An arbitrator appointed by a county court judge decided that the structure was not a scaffolding and refused to make an award of compensation, but referred the matter to the county court judge, who reversed the decision of the arbitrator and awarded the compensation provisionally settled by the arbitrator. On appeal:—

Held, that the question whether the structure was a scaffolding or not was a question of fact for the arbitrator, and that his finding was not open to review. **FERGUSON v. GREEN** C. A. [1901] 1 K. B. 25

133. — *"Scaffolding"—"Construction" or repair—Building—Height of—Workmen's Compensation Act, 1897* (60 & 61 Vict. c. 37), s. 7, sub-s. 1.

The Workmen's Compensation Act, 1897 (s. 7, sub-s. 1), applies only (inter alia) to employment on, in, or about any building which exceeds thirty feet in height "and is being constructed or repaired by means of a scaffolding."

These words do not confine the employment to the construction or repair of the building as a whole. "Construction" here includes a case where the building has been constructed and believed to be complete, but having been afterwards thought to be faulty and unstable is being strengthened by the addition of stays or supports.

"Scaffolding" may be external or internal and includes an internal staging arranged with planks and trestles and without poles.

Decision of C. A. reversed and the award of the county court judge restored ([1899] 1 Q. B. 1018) by Lords Macnaghten, Morris, Davey, and Brampton, Lords Shand and Lindley dissenting. **HODDINOTT v. NEWTON, CHAMBERS & Co.**

H. L. (E.) [1901] A. C. 49

Note.

This case was referred to by C. A., *Dredge v. Conway, Jones & Co.*, [1901] 2 K. B. 42. *See next Case.*

134. — *Scaffolding—Construction or repair of building—Whitewashing—Workmen's Compensation Act, 1897* (60 & 61 Vict. c. 37), s. 7, sub-s. 1.

A workman employed in whitewashing a ceiling in a house exceeding thirty feet in height, fell from a scaffolding on which he was standing and was killed. In an action by his widow to recover compensation:—

Held, that the employment of the deceased was in a building which was being repaired within the meaning of s. 7, sub-s. 1, of the Workmen's Compensation Act, 1897, and that the applicant was entitled to an award.

Since the decision of the House of Lords in *Hoddinott v. Newton, Chambers & Co.*, [1901] A. C. 49, the decision of the Court of Appeal in *Wood v. Walsh & Sons*, [1899] 1 Q. B. 1009 is no longer law. **DREDGE v. CONWAY, JONES & Co.** C. A. [1901] W. N. 68; [1901] 2 K. B. 42

135. — *"Scaffolding"—Employment on building over thirty feet in height—Workmen's Compensation Act, 1897* (60 & 61 Vict. c. 37), s. 7, sub-s. 1.

A workman suffered injury while engaged in

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the repair of the roof of a house more than thirty feet high by means of a ladder and a crawling-board, which was a contrivance ordinarily used in the repair of roofs, and consisted of a wooden plank about 18 to 20 feet long and ten inches wide, across which were nailed transverse pieces of wood to give support to the man while working upon it; on the under side at one end was fastened a cross-piece of wood which fitted over the ridge of the roof and kept the board in position. At the time of the accident the workman was on the roof fixing the crawling-board, while the lower end of the board was being steadied by an assistant standing on the ladder :—

Held, by Collins M.R. and Mathew L.J. (Stirling L.J. dissenting), that there was evidence to justify the finding of a county court judge that the crawling-board was a scaffolding within the meaning of s. 7 of the Workmen's Compensation Act, 1897. **VEAZEY v. CHATTLE**

C. A. [1902] 1 K. B. 494

136. — “Scaffolding”—Ladder—Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), s. 7, sub-s. 1.

A workman was injured through an accident while employed on a house exceeding thirty feet in height, which was being repaired by means of a ladder. On a claim for compensation under the Workmen's Compensation Act, 1897, the county court judge found that the ladder was not “a scaffolding” within the meaning of the 1st sub-section of the 7th section of the Act :—

Held, that, it being impossible to say, as a matter of law, that the ladder must be “a scaffolding” within the meaning of the Act, the Court was bound by the finding of the county court judge. **MARSHALL v. RUDEFORTH**

C. A. [1902] W. N. 118; [1902] 2 K. B. 175

137. — “Scaffolding”—Ladder—Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), s. 7, sub-s. 1.

Where, during the operation of whitewashing a building, workmen used a ladder by placing it against a wall, and standing or sitting on the rungs of it for the purpose of applying the whitewash, and a county court judge found, on a claim for compensation under the Workmen's Compensation Act, 1897, that the ladder so used was not a scaffolding within the meaning of the 7th section of the Act :—

Held, that it was impossible to say as a matter of law that the ladder must be a scaffolding within the meaning of the Act, and therefore the Court was bound by the finding of the county court judge. **CROWTHER v. WEST RIDING WINDOW CLEANING CO.** - C. A. [1904] 1 K. B. 232

138. — Scaffolding—Ladder used as scaffold—Accident—Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), s. 7.

A workman, employed on a building which was under repair and exceeded thirty feet in height, fell from a ladder, on one of the rungs of which he was standing for the purpose of doing work which was necessary on the building. The ladder had been used on previous occasions and on the same day for a similar purpose. On a claim for compensation under the Workmen's

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Compensation Act, 1897, the county court judge held that the ladder was scaffolding within the meaning of the Act, and made an award in favour of the applicant. On appeal :—

Held, that there was no legal principle on which a ladder could be excluded from the category of possible scaffolding, and that, as there was evidence on which the county court judge could arrive at his conclusion of fact, the Court was bound by his finding. **O'BRIEN v. DOBBIE & SON** - C. A. [1905] W. N. 15; [1905] 1 K. B. 346

—Scaffolding, Sub-contract for—Indemnity—Liability of sub-contractor.

See No. 103, above.

139. — Scaffolding—Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), s. 7, sub-s. 1.

A workman was injured by an accident while painting the outside of a house, more than thirty feet high, which was being repaired. In order to paint the lower part of the outside of the house he was standing, at the time of the accident, on painter's steps of a height of eight feet, constructed with steps on one side and wooden supports on the other. On appeal from an award under the Workmen's Compensation Act, 1897, in favour of the employers :—

Held (by Collins M.R. and Mathews L.J., Stirling L.J. dissenting), that there was evidence on which the county court judge could have found that the house was being repaired by means of a scaffolding within the meaning of s. 7, sub-s. 1, of the Act. **ELVIN v. WOODWARD & CO.**

C. A. [1903] 1 K. B. 838

—“Seamen.”

See Nos. 140, 143—166, below.

140. — Shipping—Seamen—Average weekly earnings—Rate of remuneration—Board and lodging in addition to cash wages—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), Sched. I. (2) (a).

On a claim for compensation under the Workmen's Compensation Act, 1906, by a seaman who received a weekly sum in cash and his board and lodging on the ship :—

Held, that, having regard to the circumstances under which an ordinary seaman is necessarily engaged and paid, there is no other practicable test for computing the value to him of the board and lodging provided by the employer than (in the absence of special circumstances) the actual cost of these allowances to the shipowner. **ROSEUNQVIST v. BOWRING & CO., LD.**

C. A. [1908] W. N. 88; [1908] 2 K. B. 108

141. — “Serious and wilful misconduct”—Master and servant—Accident—Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37).

A workman was found fatally injured in a lift on his employers' premises without a load. Upon the lift was a notice that no one was allowed to use it except in charge of a load. There was no evidence as to the circumstances under which the workman entered the lift. In an application for compensation by the widow :—

Held, that the burden of proving that the workman was guilty of “serious and wilful misconduct” within the meaning of the Workmen's Compensation Act lay upon the employers;

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that there was no evidence of serious and wilful misconduct within the meaning of the Act; and that the applicant was entitled to compensation.

The meaning of "serious and wilful misconduct" discussed. *JOHNSON (PAUPER) v. MARSHALL, SONS & Co., LD.*

- **H. L. (E.)**
[1906] **A. C. 409**

142. — "*Serious and wilful misconduct*" — *Workmen's Compensation Act, 1906* (6 Edw. 7, c. 58), s. 1, sub-s. 2 (c) — *Coal Mines Regulation Act, 1887* (50 & 51 Vict. c. 58), ss. 49, 51, 52: r. 3.

By the Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1, sub-s. 2 (c), if it is proved that the injury to a workman is attributable to the serious and wilful misconduct of that workman, any compensation claimed in respect of that injury shall be disallowed.

The appellant was a bottomer in the respondents' colliery. His working place was at mid-working situate forty feet above the main coal bottom. The mid-working was a working to which No. 3 of the additional special rules of the Coal Mines Regulation Acts, 1887 to 1896 (50 & 51 Vict. c. 58 and 59 & 60 Vict. c. 43), applied. That rule was, *inter alia*, "That the bottomer shall not open the gate fencing the shaft until the cage is stopped at such mid-working." On the occasion when the accident happened the appellant called for the cage to ascend, and he, expecting the cage to stop at his level without any further signal being given, and acting on this assumption without ascertaining whether the cage had stopped, opened the gate guarding the shaft, went some three yards along the level behind a full hutch, and pushed the hutch forward to the shaft. The cage had passed the level without stopping, and the appellant pushed the hutch into the shaft and fell with it:—

Held (affirming the decision of the First Division of the Ct. of Sess., (1908) S. C. 846), that there was evidence on which a reasonable man could hold that the appellant had been guilty of "serious and wilful misconduct," and therefore the appellant was not entitled to compensation.

Observations *per* Lord Loreburn L.C. and Lord Robertson on the extent to which the breach of a rule may be *prima facie* evidence of misconduct. *GEORGE W. GLASGOW COAL CO.*

H. L. (Sc.) [1908] **W. N. 219**; [1909] **A. C. 123**

— Sewer gas — Disease — Ptomaine poisoning.

See Nos. 61, above.

143. — *Shipping—Seaman—Employment on a ship afloat in a dock*—"Undertaker"—*Workmen's Compensation Act, 1897* (60 & 61 Vict. c. 37), ss. 1, 7—*Factory and Workshop Act, 1901* (1 Edw. 7, c. 22), s. 104.

Seamen employed in performing their ordinary duties as seamen afloat on board ship are not entitled to compensation for injury under the Workmen's Compensation Act, 1897, although the ship is at the time in a dock and the dock is a factory. In such a case the shipowner is not an "undertaker" within the meaning of the Act.

So *held* by the Earl of Halsbury L.C. and

MASTER AND SERVANT (Compensation)—contd.
Lords Macnaghten and Lindley, Lord James dissenting.

The decision of the C.A., *Griffin v. Houlder Line Ltd.*, [1904] **W. N. 44**; [1904] **1 K. B. 510**, reversed. *HOULDER LINE, LD. v. GRIFFIN*

H. L. (E.) [1905] **W. N. 72**; [1905] **A. C. 220**

Note.

This case was discussed and applied by C. A., *Smith v. Standard Steam Fishing Co.*, [1906] **2 K. B. 275**. *See No. 166, below.*

144. — *Ship in dock—Factory—Undertakers*—"Actual use or occupation"—*Factory and Workshop Act, 1895* (58 & 59 Vict. c. 37), s. 23, sub-s. 1 — *Workmen's Compensation Act, 1897* (60 & 61 Vict. c. 37), s. 7, sub-s. 2.

A firm of employers contracted to do the painting and plumbing on a ship lying in a dock, and sent workmen on board to do the work. Some of the crew were in charge of the ship for the owners, but the firm were in possession of the ship so far as was necessary for the work that they had contracted to do:—

Held, that the ship was a factory within the meaning of the Act, and that the possession of the shipowners, for a purpose not inconsistent with the possession of the employers, did not prevent the latter from having the actual use or occupation of the ship within the meaning of the *Factory and Workshop Act, 1895*. *BARTELL v. W. GRAY & CO.* - **C. A.** [1902] **1 K. B. 225**

Note.

This case was followed by C. A., *Wearings v. Kirk & Randall*, [1904] **1 K. B. 213**. *See No. 182, below.*

145. — *Ship moored alongside a quay*—"Undertakers"—"*Actual use and occupation*"—"Engineering work"—*Driller and fitter—Employment "in, on, or about a factory"*—*Workmen's Compensation Act, 1897* (60 & 61 Vict. c. 37) ss. 1, 7, sub-ss. 1, 2—*Factory and Workshop Act, 1901* (1 Edw. 7, c. 22), s. 104.

The mere juxtaposition of a ship to a quay is not of itself sufficient to make the person who meets with an accident in the ship a person employed on, in, or about a factory, and he will not be entitled to compensation unless the operations going on in the ship involve such a use of the quay as will bring in the provisions of s. 104 of the *Factory and Workshop Act, 1901*.

An "engineering work" must not only have reference to the locality, but also to the nature of the work which is being done at the time of the accident. *HANDFORD v. GEORGE CLARK & CO.* **C. A.** [1907] **2 K. B. 409**

146. — *Ship moored alongside a quay*—"Undertakers"—*Employment "in, on, or about a factory"*—"Actual use and occupation"—"*Dock.*"

In order that a workman may entitle himself to compensation under the *Workmen's Compensation Act, 1897*, he must show that he has been employed "on, in, or about" a factory in respect of which his employer is "the undertaker." Unless he can fulfil those conditions he does not come within the remedy provided by the Act.

Headnote to the case of *Bartell v. Gray & Co.*, [1902] **1 K. B. 225**, corrected. *Thompson*

MASTER AND SERVANT (Compensation)—*contd.*
v. F. & W. Sinclair, [1906] 2 K. B. 275, indistinguishable. *HARRISON v. OCEANIC STEAM NAVIGATION CO., LD.* (Dec. 18, 1906).

C. A. [1907] 2 K. B. 420, n.

147. — *Ship's captain — Remuneration — Board and allowances in addition to cash wages — "Workman" — Workmen's Compensation Act, 1906* (6 *Edw.* 7, c. 58), s. 13.

Sect. 13 of the Workmen's Compensation Act, 1906, provides that "workman" does not include any person employed otherwise than by way of manual labour whose remuneration exceeds 250*l.* a year. Upon a claim for compensation by the widow and children of a ship's captain, who was accidentally killed by a tramcar at a port where his ship was in dock, it appeared that the remuneration of the deceased was 216*l.* a year in cash in addition to his board :—

Held, that, in considering whether the remuneration exceeded the limit prescribed by the section, the test of the money value of the board provided by the owners was not what the captain saved by the arrangement, or, in other words, what he could have boarded himself for, but what the reasonable style of board provided by the owners would have cost him if he had had to purchase it himself. *DOYHIE v. MACANDREW & Co.*

C. A. [1908] W. N. 45 ; [1908] 1 K. B. 803

— Shipping—Collision—Claim for compensation for loss of life—Remoteness of damage
See SHIPPING—Collision. 25.

— Shipping—Collision—Negligence of defendants' servant causing original damage—Liability.
See SHIPPING—Collision. 46.

148. — *Shipping—Dock—Employment on, in, or about a ship in a dock—"Factory"—Factory and Workshop Act, 1895* (58 & 59 *Vict.* c. 37), s. 23, sub-s. 1 — *Workmen's Compensation Act, 1897* (60 & 61 *Vict.* c. 37), s. 7, sub-ss. 1, 2.

By the combined effect of the Workmen's Compensation Act, 1897, s. 7, sub-ss. 1, 2, and the Factory and Workshop Act, 1895, s. 23, sub-s. 1, every dock is a factory within the meaning of the Compensation Act, and persons who are in the actual use or occupation of a dock (or, *semble*, of a berth in a dock) and employ workmen in cleaning or repairing a ship in the dock are "undertakers" within the meaning of the Compensation Act, and liable to pay compensation to a workman injured in the course of his employment.

Ship repairers took a ship into a dry dock which they had hired for the purpose of cleaning and repairing the ship. One of their workmen engaged in cleaning the ship was sent to the quay, and while crossing the gangway from the ship to the quay fell into the dock and died of the injury :—

Held, reversing the decision of C. A., that the dock was a factory, and the ship repairers were occupiers thereof within the meaning of the Workmen's Compensation Act, 1897, and were liable to pay compensation.

Flowers v. Chambers, [1899] 2 Q. B. 142,

MASTER AND SERVANT (Compensation)—*contd.*
 disapproved; *Merrill v. Wilson*, [1901] 1 K. B. 35, approved. *RAINE v. JOBSON & Co.*

H. L. (E.) [1901] W. N. 134 ; [1901] A. C. 404

— Shipping—Dock labourer—Average weekly earnings.

See No. 66, above.

— Shipping—Ladder.

See No. 158, below.

149. — *Shipping—Machinery used in loading or unloading ship—"Harbour"—"Navigable river"—"Factory"—Interpretation Act, 1889* (52 & 53 *Vict.* c. 36), s. 38 — *Workmen's Compensation Act, 1897* (60 & 61 *Vict.* c. 37), s. 7—*Factory and Workshop Act, 1901* (1 *Edw.* 7, c. 22), s. 104.

By the Interpretation Act, 1889, s. 38, sub-s. 1. "Where this Act or any Act passed after the commencement of this Act repeals and re-enacts, with or without modification, any provisions of a former Act, references in any other Act to the provisions so repealed, shall, unless the contrary intention appears, be construed as references to the provisions so re-enacted."

The Factory and Workshop Act, 1901, repeals the Factory Act, 1895, and, so far as the definition of a "factory" is concerned, re-enacts by s. 104 the definition in the former Act with certain additions :—

Held, that the modification mentioned in the Interpretation Act, 1889, includes additions : and that consequently, in the definition of a "factory" in the Workmen's Compensation Act, 1897, the reference to the Factory and Workshop Act, 1895, must be construed as if it were a reference to the provisions of s. 104 of the Factory and Workshop Act, 1901, so as to include in the definition among other things, machinery used in the process of unloading a ship in a navigable river. *STEVENS v. GENERAL STEAM NAVIGATION CO.*

C. A. [1903] 1 K. B. 890

150. — *Shipping—Quay—Accident arising out of and in course of employment—Evidence—Return to sphere of employment—Workmen's Compensation Act, 1906* (6 *Edw.* 7, c. 58), s. 1, sub-s. 1.

The master of a small ship which was lying in Bangor Roads during a trading voyage from Liverpool to Penmaenmawr and back went on shore in the evening, went to a hotel near the quay for half an hour, then returned to the quay and hailed his ship to send a boat. Before the boat reached him he fell off the quay side and was drowned. There was no evidence whether he had gone to the hotel on his own business or on that of the ship, but it was proved that he had a perfect right to be on the quay, and might have been there in discharge of his duty to the ship. His widow claimed compensation under the Workmen's Compensation Act, 1906 :—

Held, that the claimant had not discharged the burden laid upon her of proving that the accident arose out of and in the course of her husband's employment, and that she was not

MASTER AND SERVANT (Compensation)—*contd.*
entitled to compensation. *HEWITT v. OWNERS OF SHIP "DUCHESS"* C. A. [1910] W. N. 49; [1910] 1 K. B. 772

151. — *Shipping—Quay—Machinery used in loading from a quay—Occupier—Person using machinery—"Undertaker"*—*Workmen's Compensation Act, 1897* (60 & 61 Vict. c. 37), s. 7—*Factory and Workshop Act, 1895* (58 & 59 Vict. c. 37), s. 23, sub-s. 1.

The person using machinery in the process of loading a ship from a quay is an occupier of a factory within s. 23, sub-s. 1, of the *Factory and Workshop Act, 1895*, and therefore an "undertaker" within the meaning of the *Workmen's Compensation Act, 1897*, s. 7. *CARRINGTON v. BANNISTER & Co.* C. A. [1901] 1 K. B. 20

152. — *Shipping—Quay—Occupier—Undertaker—Factory—Factory and Workshop Act, 1895* (58 & 59 Vict. c. 37), s. 23—*Workmen's Compensation Act, (1897) 60 & 61 Vict. c. 37*, s. 7.

A coal co. contracted with a steam packet co. to supply the steamers of the packet co. with bunker coal f.o.b. at Glasgow Harbour. The coal co. contracted with a coal-porter to put such bunker coal on board at a particular berth of the harbour, and the coal-porter employed labourers, for whose wages he alone was responsible, to do the work of loading. One of the labourers so employed by the coal porter, after having been engaged in bringing coal from the co.'s carts and laying it upon the breast of the quay ready to be shipped, was awaiting the arrival of the packet co.'s steamers when he fell into the river and was drowned. His widow claimed compensation, under the *Act of 1897*, from the coal co. :—

Held, (1) that, assuming the quay to be a factory, the coal co. were not, on the occasion in question, the occupiers of the quay, or of any part of it, within the meaning of s. 23 of the *Factory and Workshop Act, 1895*; and (2) that they were, therefore, not within the meaning of s. 7 of the *Workmen's Compensation Act, 1897*, the undertakers of the employment at which the husband of the claimant met his death. *STEWART v. DARGAVIL COAL CO.*

(1902) Ct. of Sess. (Sc.) [1903] W. N. 162

153. — *Shipping—Quay, Ship alongside of—"Factory"—"Undertakers"—"Actual use or occupation"*—*Workmen's Compensation Act, 1897* (60 & 61 Vict. c. 37), s. 7, sub-ss. 1, 2—*Factory and Workshop Act, 1895* (58 & 59 Vict. c. 37), s. 23, sub-s. 1.

Where the owners of a ship moored alongside of a quay, who acted as their own stevedores, had the use of the portion of the quay alongside of which their ship lay, for the purpose of unloading the ship's cargo on to the quay, and a workman employed by them was killed through an accident arising out of and in the course of his employment on the quay :—

Held, that the shipowners, having the "actual use" of a portion of the quay within the meaning of the *Factory and Workshop Act, 1895*, s. 23, sub-s. 1, were "undertakers" in respect of a factory within the meaning of the *Workmen's Compensation Act, 1897*, s. 7, and liable to make compensation to the dependants of the workman

MASTER AND SERVANT (Compensation)—*contd.*
under that Act. *MERRILL v. WILSON, SONS & Co.* C. A. [1901] 1 K. B. 35

Note.

This case was approved of by H. L. (E.), *Raine v. Jobson & Co.*, [1901] A. C. 404. See No. 148, above.

154. — *Shipping—Seaman—Accident arising out of and in course of employment—Unexplained drowning—Evidence—Workmen's Compensation Act, 1906* (6 Edw. 7, c. 58), s. 1.

An engineer employed on board a steam trawler lying in a harbour basin went on deck (as he said) to cool himself on a very hot night. His dead body was found the next morning in the water just under the rail on the starboard quarter where he was in the habit of sitting in hot weather. There was no evidence how the death happened :—

Held, by Lords Atkinson, Shaw of Dunfermline, and Mersey (Lord Loreburn L.C. and Lord James of Hereford dissenting), that as a matter of fact there was no evidence to shew that the engineer's death was caused by an accident arising out of his employment.

Decision of the C. A., [1909] 2 K. B. 46, affirmed. *MARSHALL v. OWNERS OF S.S. "WILD ROSE."*

H. L. (E.) [1910] W. N. 179; [1910] A. C. 486

155. — *Shipping—Seaman—Compensation—Mode of assessment—Workmen's Compensation Act, 1906* (6 Edw. 7, c. 58), s. 7, sub-s. 1 (e), *First Sched.*, par. 3.

The House reversed the decision of the C. A. [1909] 2 K. B. 704, holding that no deduction ought to be made of the amount of compensation to an injured seaman in respect of the cost of maintenance in a foreign hospital, for which the shipowners are liable under the *Merchant Shipping Acts*. *MCDERMOTT (PAUPER) v. OWNERS OF THE STEAMSHIP "TINTORETTO"*

H. L. (E.) [1910] W. N. 274

156. — *Shipping—"Seaman"—Employers and Workmen Act, 1875* (38 & 39 Vict. c. 90), s. 13—*Employers' Liability Act, 1880* (43 & 44 Vict. c. 42), s. 8.

The definition of the word "seaman" in the *Merchant Shipping Acts, 1854 and 1894*, ought not to be imported into the *Employers' Liability Act, 1880*, which excludes seamen from its operation.

The respondent was injured while employed on board a steamship in helping to unmoor and warp her from one berth to another across a large dock in Liverpool. She was taken across by means of a tug and a rope and was at no moment entirely free from a quay, and did not use her steam or any motive power of her own. The respondent was not one of the ship's crew and had not been to sea for several years.

In an action by the respondent against his employers the shipowners to recover damages for the injury under the *Employers' Liability Act, 1880* :—

Held, that the respondent was not a "seaman" and was not excluded from the operation of the Act.

MASTER AND SERVANT (Compensation)—*contd.*

Decision of the C. A., [1909] 2 K. B. 811, affirmed. **MACBETH & CO. v. CHISLETT**

H. L. (E.) [1910] W. N. 33; [1910] A. C. 220

157. — Shipping — Seamen — Industrial diseases—Certifying surgeon—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), ss. 7, 8; Sched. III.

The applicant, whose home was at Liverpool, was employed by the respondents as a boatswain, and whilst painting the ship's hold at sea contracted lead poisoning. He was discharged in New York in April, 1908, subsequently returned to Liverpool, and in Jan., 1909, obtained a certificate from the certifying surgeon for the Liverpool district under the Factory and Workshop Act, 1901, that he was disabled by lead-poisoning from following his usual employment :—

Held, that under s. 8, sub-s. 1, par. 1. of the Workmen's Compensation Act, 1906, before the applicant could make any claim for compensation in respect of an industrial disease he must get a certificate from the certifying surgeon appointed under the Factory and Workshop Act, 1901, for the district in which he was employed; and that, inasmuch as there was no district in which he was employed at the time when he contracted the disease, he could not successfully make a claim. **CURTIS v. BLACK & CO. [1909]**

W. N. 134; C. A. [1909] 2 K. B. 529

158. — Shipping — Seaman — Ladder — Employment—Accident arising out of and in the course of the employment — Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1, sub-s. 1.

A seaman employed on a ship in port went ashore after work was over with leave of absence, bought things he wanted for himself, and spent some time in drinking. On returning to the ship at midnight, while climbing a ladder insecurely fixed between the quay and the ship (the only means of communication), he fell into the water and was drowned :—

Held, by Lord Loreburn L.C. and Lords Ashbourne and James of Hereford (Lords Macnaghten and Mersey dissenting), that the accident arose out of and in the course of his employment and that the seaman's widow was entitled to compensation.

Lords Macnaghten and Mersey held that the accident did not arise out of or in the course of his employment, the seaman having gone ashore for his own purposes.

Decision of the C. A., [1909] 1 K. B. 417, reversed. **MOORE v. MANCHESTER LINERS, LTD.**

H. L. (E.) [1910] W. N. 184; [1910] A. C. 498

Note.

This case was referred to by C. A., *Hewitt v. Owners of Ship "Duchess,"* [1910] 1 K. B. 772. See No. 150, above.

159. — Shipping — Seaman — Member of Naval Reserve—Concurrent contracts of service—Compensation—Amount — Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 9, Sched. I., par. 2 (b).

The applicant, who was employed as a stoker on a merchant vessel, and was also a Royal Naval Reserve stoker, met with an accident on board the merchant vessel which disabled him from continuing to serve in the Royal Naval Reserve.

MASTER AND SERVANT (Compensation)—*contd.*

Under the regulations which govern the Royal Naval Reserve, to entitle a man to be enrolled as a stoker therein he must produce evidence either of his employment at sea in a capacity not lower than fireman, or of his ability as a fireman ashore, and make a declaration of his intention to follow the sea for at least five years. He is liable at any moment to be called out on active service, and he has to undergo a period of training during three weeks in each year, for which he is paid at a fixed rate. For this claim upon his services he is entitled to a retainer of 6*l.* per year, which works out at 2*s.* 4*d.* per week.

The sole question between the parties was whether in estimating the amount of compensation payable to the applicant this 2*s.* 4*d.* per week ought to be taken into account as being earnings under a concurrent contract of service.

The county court judge decided this question in the affirmative and awarded that half the 2*s.* 4*d.* should be added to half his weekly earnings from the shipowners.

The C. A. (by a majority, Cozens-Hardy M.R. and Fletcher Moulton L.J., Farwell L.J. dissenting) dismissed the appeal.

The Master of the Rolls held that, apart from sub-s. 9, there were here concurrent contracts of service within par. 2 (b) of the First Sched., and that, although under s. 9 the Crown was exempted from liability under the Act in this case, the Court might nevertheless have regard to the fact that the man was receiving money from the Crown under the contract of service.

Farwell L.J. differed. He thought it clear that if the accident happened while the man was in the service of the Crown the man could get no compensation under the Act at all, because he was not a workman nor was the Crown an employer within the meaning of the Act, and he failed to see how the Court could treat the Crown and workman as within the Act when the workman was in the employment of another person. **BRANDY v. OWNERS OF STEAMSHIP "RAPHAEL"**

C. A. [1910] W. N. 266

160. — Shipping — Seaman — Return to ship—Accident arising out of and in course of employment — Workmen's Compensation Act, 1906, (6 Edw. 7, c. 58).

These two cases both depended on the question whether an accident which happened to a sailor during his return from leave on shore to his ship arose out of his employment. In the first case a sailor returning from leave fell into the water between the wharf and the ship and was drowned. The access to the ship was by a gangway which was well lighted; there was no evidence whether the sailor had or had not reached the gangway when he fell.

In the second case the sailor was also returning from leave on shore. Another ship lay between the *Portslade*, the ship in which the sailor was engaged, and the wharf, and the access to the *Portslade* was by a gangway between the two ships. The sailor had reached the gangway, fell from it, and was drowned. In both cases the county court judge had found the owners liable, and the owners appealed.

MASTER AND SERVANT (Compensation)—*contd.*

The C. A. allowed the appeal in the first case, and dismissed it in the second.

Cozens-Hardy M.R. said that he had read and agreed with the judgment of Fletcher Moulton L.J.

Fletcher Moulton L.J. said that any accident which happened to a sailor in his time of leisure, whether on board his ship or on shore with leave, arose in the course of his employment. But any accident which happened to him while on shore on leave was generally, if not necessarily, due to a danger to which he was exposed as a member of the public, and not as one of the crew of the ship, and therefore did not arise out of his employment. But if it became necessary for him, in fulfilment of his employment, to get on board his vessel, an accident ensuing in his doing so was normally an accident arising out of his employment, because it was due to a danger incidental to his service in that ship. In the cases before the Court, the accident occurred on the return of the seaman to the ship, immediately prior to his actual getting on board. This was the critical moment when the dangers to which he was exposed changed from being of the one class to being of the other, and it would frequently be a difficult task to draw the line between the two. But the general principle by which the decisions of this Court ought to be guided was not difficult to lay down. The return to the ship was in the course of the sailor's employment, but the risks did not become risks arising out of his employment until he had to do something specifically connected with his employment. Applying this rule to the cases before the Court, he thought that in the first case there was no evidence that the sailor had ever reached the gangway at all or to negative the possibility that he had gone to the wharf side for his own purposes and slipped over. In that case, therefore, the appeal must be allowed. In *Leach v. Oakley, Street & Co.* the sailor fell from the gangway supplied for him to return to the ship by and the accident arose out of his employment. The appeal in this case must therefore be dismissed.

Farwell L.J. concurred as to the result of the appeals, but expressed his opinion that in Kitchenham's case the accident did not arise either "in the course of" or "out of" the sailor's employment. *KITCHENHAM v. OWNERS OF S.S. "JOHANNESBURG."* *LEACH v. OAKLEY, STREET & CO.* C. A. [1910] W. N. 275

161. — Shipping—Seaman returning to ship—Accident arising out of and in course of employment—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1.

An engineer on a ship which was lying in dry dock, after completing his morning's work of getting stores on board, went home to his dinner, and on his return fell into the dry dock, where his dead body was found:—

Held, that there was no evidence that the accident arose out of and in the course of his employment within the meaning of the Workmen's Compensation Act, 1906, and that his dependants were not entitled to compensation.

MASTER AND SERVANT (Compensation)—*contd.*

GILBERT v. OWNERS OF STEAM TRAWLER "NIZAM" C. A. [1910] W. N. 180; [1910] 2 K. B. 555

162. — Shipping—Seaman—Wharf—Ship moored to wharf—Use of wharf by employer—Employment of workman not in relation to use of wharf—Fireman on Steamer—Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), s. 7.

A seaman, employed as fireman on a steamer, was injured by an accident while attending to the boilers. The vessel was a passenger steamer, and was made fast by ropes to a pontoon outside a dock. She was so moored to the pontoon at the time when the accident happened, and for some time previously gangways had been out connecting the vessel with the pontoon to enable passengers to go on board. On an application for compensation under the Workmen's Compensation Act, 1897, an award was made in favour of the applicant. On appeal:—

Held, by Collins M.R. and Romer L.J., Mathew L.J. dissenting, that the employment of the applicant was not an employment having relation to the purposes for which his employers had the use of the pontoon, that his employment was, therefore, not "about" a wharf, and the case did not come within s. 7 of the Act. *OWENS v. CAMPBELL, LD.* C. A. [1904] 2 K. B. 60

163. — Shipping—Seamen—Application of Act to—Fisherman—Share in the profits—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 7, sub-s. 1, 2.

In this case the county court judge was of opinion that the applicant's remuneration was by shares, so that he was, as he described himself, a share-hand, and within s. 7, sub-s. 2, and he consequently dismissed the application with costs.

The C. A. dismissed the appeal. Cozens-Hardy M.R. said: The position of a share fisherman is that of a co-adventurer, interested in the totality of the venture and not merely in one part of it. The conveying the fish from the trawler to the cutter and stowing the fish in the cutter is essential to the success of the venture. The right to earn a share in the sovereign was enjoyed by reason of the applicant's position as a share fisherman. This casual employment arose out of and was really part of his employment as a share fisherman. The sovereign was treated as something in which the master of the *Equerry*, being a share fisherman, was entitled to participate, although he did not go to the *Argyll* and assist in stowing. In truth there was only one contract of employment, and this stowing was a matter arising out of and incidental to the engagement as share fisherman. The above reasons, which are substantially those of the learned county court judge, lead me to the conclusion that s. 7, sub-s. 2, of the Workmen's Compensation Act, 1906, applies. *WHELAN v. GREAT NORTHERN STEAM SHIPPING CO.* C. A. [1909] W. N. 135

164. — Shipping—"Seaman"—"Workman"—Hand assisting to navigate barge on river—Employers' Liability Act, 1880 (43 & 44 Vict. c. 42), s. 8—Employers and Workmen Act, 1875 (38 &

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39 *Vict. c. 90*), s. 13—*Merchant Shipping Act*, 1854 (17 & 18 *Vict. c. 104*), s. 2.

The term "seaman" in s. 13 of the Employers and Workmen Act, 1875, means "seaman" as defined by s. 2 of the Merchant Shipping Act, 1854.

A vessel which is not propelled by oars is not the less a "ship" within the meaning of the Merchant Shipping Act, 1854, because she is navigated only on a tidal river.

The plt. was one of the crew of two hands employed on board a spiritsail barge to navigate her in the estuary and upper tidal waters of the Thames. The plt., acting under the orders of the other hand, assisted in navigating the barge, though his main duty was to assist in loading and unloading her :—

Held, that the plt. was a "seaman," and was consequently excluded from the operation of the Employers' Liability Act, 1880. **CORBETT v. PEARCE** *Div. Ct.* [1904] 2 K. B. 422

Note.

This case was overruled by C. A., *Chislett v. Macbeth & Co.*, [1909] 2 K. B. 811; H. L. (E.) [1910] A. C. 220. *See No. 156, above.*

165. — *Shipping—Stevadore—Unloading ship—Defect in ship's tackle—Injury—Compensation—Defective plant—Employers' Liability Act*, 1880 (43 & 44 *Vict. c. 42*), s. 1, sub-s. 1; s. 2, sub-s. 1.

A stevedore's workman while engaged in unloading a ship was injured by the fall of a bale of cargo. Part of the tackle used for the unloading was supplied by the ship, and the accident was caused by a defect in this part of the tackle. The workman having brought an action in the county court against the stevedore for compensation under the Employers' Liability Act, 1884, the judge withdrew the case from the jury on the ground that the stevedore was not responsible for a defect in the ship's tackle, and his decision was affirmed by the Div. Ct. :—

Held, that the stevedore owed a duty to the workman to take reasonable care in seeing that this tackle was in a proper condition, and that the action must be sent back for a new trial. **BIDDLE v. HART** *C. A.* [1907] W. N. 34; [1907] 1 K. B. 649

166.—*Shipwright—Employment "in or about a factory"—Ship in dock—Dock wet or dry—"Undertakers"—"Actual use and occupation"—Workmen's Compensation Act*, 1897 (60 & 61 *Vict. c. 37*), ss. 1, 7—*Factory and Workshop Act*, 1901 (1 *Edw. 7, c. 22*), s. 104.

A workman employed on a ship in dock is not necessarily employed on, in, or about a "factory" within the meaning of s. 7, sub-s. 1, of the Workmen's Compensation Act, 1897; neither does a ship in dock of necessity become a part of a dock "or of premises within the same or forming part thereof," so as to render the owner or employer liable as the occupier of a factory, but the circumstances and purpose of the "actual use and occupation" of the dock, and the nature of the employment at the time of the accident, must be taken into consideration in each case.

In cases of this kind no true distinction can

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be drawn between a ship in a wet dock and a ship in a dry dock, or from the fact that the ship is actually moored to the structure of the dock.

Houlder Line, Ltd. v. Griffin, [1905] A. C. 220, discussed and applied. Query whether, after that decision, *Flowers v. Chambers*, [1899] 2 Q. B. 142, ought still to be treated as overruled? *SMITH v. STANDARD STEAM FISHING CO., LTD. A. M. BURDON v. GREGSON & CO.*

C. A. [1906] W. N. 118; [1906] 2 K. B. 275 — Steam-engine used on farm.

See No. 95, above.

167.—*Sub-contracting—"Work undertaken by the principal"—Workmen's Compensation Act*, 1906 (6 *Edw. 7, c. 58*), s. 4, sub-s. 1.

To constitute a man a principal under s. 4, sub-s. 1, of the Workmen's Compensation Act, 1906, the existence of both a head contract and a sub-contract is not necessary; the section extends to the case of a man who for the purposes of his trade or business undertakes work on his own account, and employs a contractor to do the whole or part of the work, provided that the work is such as the person employing the contractor usually undertakes for another in the ordinary course of his trade or business, but not otherwise.

Therefore where two shopkeepers and a billiard saloon keeper proposed to open a skating rink and purchased an existing iron building for that purpose, and contracted with a builder for the removal and re-erection of the building, and a workman employed by the builder in the re-erection met with an accident arising out of and in the course of his employment and applied for compensation against the purchasers of the building :—

Held, that the work of re-erection was not work "undertaken" by the respondents within the meaning of the Act, and that the applicant was not entitled to compensation against them. **SKATES v. JONES & CO.** *C. A.*

[1910] W. N. 204; [1910] 2 K. B. 903

168. — *Sub-contractor, Workman employed by—Liability of principal—Accident "on or in or about premises"—Workmen's Compensation Act*, 1906 (6 *Edw. 7, c. 58*), s. 4, sub-s. 1, 4.

A workman who was employed in connection with certain paving operations by a sub-contractor, his duties being to cart materials for the work, and remove rubbish, while so engaged was accidentally killed in the public street at a distance of two miles from the site of the work :—

Held, that the accident had not occurred "on, or in, or about premises" on which the principal contractor had undertaken to execute the work, or which were "otherwise under his control or management" within s. 4, sub-s. 4, of the Workmen's Compensation Act, 1906, and that consequently the principal was not liable to pay compensation under the Act. **ANDREWS v. ANDREWS AND MEARS** *C. A.* [1908]

W. N. 150; [1908] 2 K. B. 567

169. — *"Suitable employment"—Workmen's Compensation Act*, 1906 (6 *Edw. 7, c. 58*), *Sched. I.* (3).

The applicant, a collier, whilst getting coal at the coal face in the respondents' colliery, met

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with an accident owing to a piece of coal flying from the face into his left eye, which was thereby rendered practically useless. The respondents, having paid him compensation for several months, offered him work at the coal face at his old wages, and, on his refusal to accept this work, ceased making any further payments on the ground that the work offered was suitable employment within the meaning of the Workmen's Compensation Act, 1906, so as to relieve them from further liability. The county court judge was satisfied on the medical evidence that there was some appreciable increase of risk of injury to the remaining eye, and of injury generally in working at the coal face with only one available eye, instead of two, and was of opinion that this was not quite suitable employment. He therefore made an award in favour of the applicant:—

Held, that the finding of the county court judge meant that the work was not suitable employment, though it came near to suitability, and that there being evidence to support that finding, it could not be disturbed. *EYRE v. HOUGHTON MAIN COLLIERY CO., LD.*

C. A. [1910] W. N. 51; [1910] 1 K. B. 695

170.—Surgical operation—Accident—Refusal to undergo operation—Cause of incapacity—Onus of proof—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1.

A seaman on board ship, having injured his finger as the result of an accident arising out of and in the course of his employment, refused to undergo a slight operation proposed by the ship's doctor. After his discharge he had to have his finger amputated. Upon an application for compensation under the Workmen's Compensation Act, 1906, the county court judge found that the man acted unreasonably in refusing to submit to the operation proposed by the ship's doctor, but, having regard to the conflict of medical testimony, was unable to come to any conclusion upon the question whether the operation would have saved the finger:—

Held, that the employers had failed to discharge the onus which lay upon them of proving that the loss of the finger was due not to the accident, but to the refusal to submit to the operation, and that the man was entitled to compensation. *MARSHALL v. ORIENT STEAM NAVIGATION CO., LD.* C. A. [1909] W. N. 225; [1910] 1 K. B. 79

171.—Surgical operation—Cause of death—Remoteness—Accident—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1.

Where a workman is injured by an accident arising out of and in the course of his employment within the meaning of the Workmen's Compensation Act, 1906, and death ensues from an operation consequent thereon, the test of the question whether death was caused by the accident so as to entitle his dependants to compensation is whether in the circumstances the operation was a reasonable step to be taken to obviate the consequences of the accident.

A workman met with an accident arising out of and in the course of his employment whereby his hand was badly lacerated. A competent

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surgeon proposed, instead of amputating the hand by means of a double operation, to graft skin on it which would completely preserve the hand. An anæsthetic was properly administered at each stage of the operation, but on the second occasion death unexpectedly ensued.

Upon an application by the widow under the Workmen's Compensation Act, 1906, the county court judge found that death was caused not by the accident, but by the administration of the anæsthetic, and held that the employers were not liable:—

Held, that the county court judge had misdirected himself in not applying his mind to the question whether the deceased had acted reasonably, and that the widow was entitled to compensation. *SHIRT & CALICO PRINTERS' ASSOCIATION, LD.*

C. A. [1909] W. N. 84; [1909] 2 K. B. 51

172.—Surgical operation, Refusal to undergo—Discretion—Right to further compensation—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1.

Where a workman refuses to undergo a reasonable and safe operation which will relieve or remove his incapacity, his continued inability to work at his trade is the result of his refusal of remedial treatment, and not the result of the original accident, and consequently he is not entitled to further compensation under the Workmen's Compensation Act, 1906.

Rothwell v. Davies, (1903) 19 Times L. R. 423, explained and distinguished.

Decision of the majority of the judges in *Donnelly v. William Baird & Co., Ltd.*, (1908) 45 Sc. L. R. 394, approved and adopted. *WARNCKEN v. R. MORELAND & SON, LD.*

C. A. [1908] W. N. 252; [1909] 1 K. B. 184

Note.

This case was distinguished by C. A., *Tutton v. Owners of S.S. "Majestic"*, [1909] 2 K. B. 54. See next Case.

173.—Surgical operation—Refusal to undergo—Period of compensation—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1.

The question whether a workman who has met with an accident and refuses to submit to a surgical operation is entitled to compensation under the Workmen's Compensation Act, 1906, beyond the period when he might have been expected to recover from the effects of the accident if he had submitted to the operation depends on the question whether his refusal is in the circumstances reasonable; and where the operation is of a serious character, and the workman, in good faith, follows the advice of his own doctor, whose honesty and competency are not impeached, he cannot be said to be acting unreasonably, although on the balance of the medical testimony given at the hearing the county court judge may find that the operation was one which might reasonably and properly have been performed.

Warncken v. R. Moreland & Son, Ltd., [1909] 1 K. B. 184 [see preceding case], distinguished. *TUTTON v. OWNERS OF STEAMSHIP "MAJESTIC"*

C. A. [1909] W. N. 92; [1909] 2 K. B. 54

MASTER AND SERVANT (Compensation)—*contd.*

174. — *Taxi-cab driver*—"Workman"—"*Contract of service*"—*Workmen's Compensation Act, 1906* (6 *Edu.* 7, c. 58), ss. 1, 13.

The driver of a taxi-cab while using it sustained injuries from the effects of which he died. His widow claimed compensation under the Workmen's Compensation Act, 1906, against the respondents, a co., who owned the cab. The co.'s drivers were paid a percentage of the takings registered by the taximeters of the cabs. When a driver took out a cab from the yard he went where he pleased and kept the cab, sometimes until the next day or for several days, and, except by refusing to let a driver have a cab the next time he applied for one, the co. had no control over and could not dismiss him :—

Held, that the relation between the co. and the deceased driver was not that of master and servant, and that the claimant was not entitled to compensation. *DOGGETT v. WATERLOO TAXI-CAB CO.* C. A. [1910] W. N. 137; [1910] 2 K. B. 336

175. — "*The contractor*" — *Sub-contracting*—"Workman"—*Member of employer's family*—*Workmen's Compensation Act, 1906* (6 *Edu.* 7, c. 58), s. 4, sub-ss. 1, 2, 3; s. 13.

C. contracted with M. to execute certain work for him; M. employed his son, who was dwelling in the same house with him, to help in the work; the son met with an accident arising out of and in the course of his employment, for which he claimed compensation under s. 4, sub-s. 1, of the Workmen's Compensation Act, 1906, from C. It was admitted that, having regard to the definition of workman in s. 13, the son could not claim against M. :—

Held, that C., "the principal," was not liable to pay compensation to a man who had no claim against M., "the contractor," his true employer.

Construction of s. 4, sub-ss. 1, 2, and 3, considered. *MARKS v. CARNE* - C. A. [1909] W. N. 134; [1909] 2 K. B. 516

176. — *Threshing machine in transit*—"Factory"—*Threshing-machine connected with engine for haulage purposes only*—*Traction-engine*—*Factory and Workshop Act, 1878* (41 *Vict.* c. 16), s. 93, sub-s. 3—*Workmen's Compensation Act, 1897* (60 & 61 *Vict.* c. 37), s. 7, sub-s. 2.

Held, that a threshing-machine or traction-engine in transit to a place where they were to be used for threshing, the engine being connected with the machine for no purpose but that of haulage, did not constitute a "factory" within the meaning of the Factory and Workshop Act, 1878, or the Workmen's Compensation Act, 1897.

Opinions reserved on the question whether a traction-engine and threshing-machine, engaged in threshing at a particular place, fell within the statutory definition of "factory." *GEORGE v. MACDONALD* - (1901) Ct. of Sess. (Sc.) [1903] W. N. 159

177. — *Tortious act of fellow-workman*—*Act having no relation to the employment*—*Accident*

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arising out of and in the course of the employment—*Workmen's Compensation Act, 1897* (60 & 61 *Vict.* c. 37), s. 1, sub-s. 1.

Where an accident happened to a workman, while engaged at his work, through the tortious act of a fellow-workman which had no relation whatever to their employment :—

Held, that the accident did not arise out of the employment within the meaning of the Workmen's Compensation Act, 1897, s. 1, sub-s. 1. *ARMITAGE v. LANCASHIRE AND YORKSHIRE RY. CO.* - C. A. [1902] W. N. 118; [1902] 2 K. B. 178

Note.

This case was followed and approved by C. A., *Fitzgerald v. W. G. Clarke & Son*, [1908] 2 K. B. 796. See next Case.

178. — *Tortious act of fellow-workman*—*Act having no relation to the employment*—*Accident arising "out of and in the course of" the employment*—*Workmen's Compensation Act, 1906* (6 *Edu.* 7, c. 58) s. 1, sub-s. 1.

An employer is not liable under the Workmen's Compensation Act, 1906, to pay compensation for injury caused to a workman while engaged at his work by the tortious act of a fellow-workman which had no relation to the employment.

Armitage v. Lancashire and Yorkshire Ry. Co., [1902] 2 K. B. 178, followed and approved.

Per Buckley L.J. : The words "out of and in the course of the employment" in s. 1, sub-s. 1, of the Act are used conjunctively, and are not to be used as meaning out of—that is to say, in the course of. The words "out of" point to the origin or cause of the accident; the words "in the course of" to the time, place, and circumstances under which the accident takes place. *FITZGERALD v. W. G. CLARKE & SON*

C. A. [1908] 2 K. B. 796

179. — *Tramway*—"Factory"—*Workshop for repairs incidental to non-factory business*—*Workmen's Compensation Act, 1897* (60 & 61 *Vict.* c. 37), s. 7—*Factory and Workshop Act, 1878* (41 & 42 *Vict.* c. 16), s. 93, sub-s. 3 (b).

A cable tramway co. had a covered shed for their cars 550 feet long and 160 feet wide, and adjoining it a machine-room or workshop 75 feet long and 50 feet wide, which contained lathes, turning machines, and boring machines, driven by two electric motors. This workshop was used solely for the repair of the grippers and other parts of the cars. The cars were always brought to the shed for repairs, and were repaired in it. No mechanical power was used in the shed except the power employed to move a travelling platform for moving the cars, which was derived from a steam-engine adjoining the shed.

A car-driver was injured when employed in oiling his car in the shed at a point 374 feet distant from the machine-room :—

Held, that the accident occurred "in or about" a "factory" within the meaning of s. 3, sub-s. 3 (b), of the Factory and Workshop Act, 1878, and affirmed the award of the arbitrator granting

MASTER AND SERVANT (Compensation)—*contd.*
compensation. *MOONEY v. EDINBURGH AND DISTRICT TRAMWAY CO.*

(1901) Ct. of Sess. (Sc.) [1903] W. N. 161

180. — “Undertaker” — “Employer.” — *MALCOLM v. M’MILLAN*

Ct. of Sess. (Sc.) [1902] W. N. 186

— Undertaker — Liability of sub-contractor to indemnify.

See **MASTER AND SERVANT—Practice.**
20.

— Undertakers.

See Nos. 143—146, *above*.

— “Undertaker” — Scaffolding, Sub-contract for — Indemnity.

See Nos. 167, 168, *above*.

181. — *Undertakers Sub-contractor — Liability of sub-contractor to indemnify undertakers — Workmen’s Compensation Act, 1897* (60 & 61 Vict. c. 37), ss. 1, 4, 7.

In the case of a building a sub-contractor may be an undertaker within the meaning of the Workmen’s Compensation Act, 1897.

The appellants undertook to build a house, and agreed with a sub-contractor that he should slate the roof. A workman employed by the sub-contractor was killed in the course of his employment, and his widow was awarded compensation against the appellants as undertakers under the Workmen’s Compensation Act, 1897 :—

Held, by the Earl of Halsbury L.C. and Lords Shand and Davey, Lords Brampton and Robertson dissenting, that the sub-contractor would have been liable as an undertaker independently of s. 4 of the Act, and that the appellants were entitled to be indemnified by him against the amount of compensation awarded.

Cass v. Butler [1900] 1 Q. B. 777, overruled. *COOPER & CRANE v. WRIGHT*

H. L. (E.) [1902] W. N. 106 ; [1902] A. C. 302

182. — “Undertakers” — Warehouse — “Actual use or occupation” — *Workmen’s Compensation Act, 1897* (60 & 61 Vict. c. 37), s. 7, sub-s. 2 — *Factory and Workshop Act, 1901* (1 Edw. 7, c. 22), s. 104.

The respondents had contracted to erect certain pigeon holes twelve feet high in the upper storey of a warehouse, which was being built within the precincts of Woolwich Dockyard for the Government by other contractors. A workman, who was employed by the respondents in that work, together with ten or twelve other men, was killed through an accident arising out of and in the course of his employment. At the time of the accident, the lower storey of the warehouse was already in use by the Government for the storage of military accoutrements; the foremen and two workmen of the contractors for the building were engaged at work in the upper storey; and the Government by their own workmen were fixing hydraulic cranes at each end of the floor. The clerk of the works of the Government was in charge of the work, to see that the men did their duty and the contractors complied

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with the specifications. The premises were locked, and unlocked, by the person in charge of the dockyard, and the keys were kept by the man at the gates. Upon a claim for compensation by the widow of the deceased under the Workmen’s Compensation Act, 1897 :—

Held, that, the respondents having such use or occupation of part of the warehouse as was necessary for the work which they had contracted to do, they were in actual use or occupation thereof within the meaning of the Factory and Workshop Act, 1901, s. 104, and therefore “undertakers” in respect thereof under the Workmen’s Compensation Act, 1897, s. 7, sub-s. 2.

Bartell v. W. Gray & Co., [1902] 1 K. B. 225, followed. *WEAVINGS v. KIRK & RANDALL C. A.* [1904] W. N. 4 ; [1904] 1 K. B. 213

183. — *Unemployment — Provision of temporary work—Contract of service—Unemployed Workmen Act, 1905* (5 Edw. 7, c. 18), ss. 1, sub-ss. 3, 5, 7 — *Workmen’s Compensation Act, 1906* (6 Edw. 7, c. 58), ss. 1, 13.

A man employed upon temporary work by the Central (Unemployed) Body for London under the provisions of the Unemployed Workmen Act, 1905, was killed by an accident arising out of and in the course of his employment. Upon granting his application for work the Central Body supplied him with a circular containing the conditions of employment :—

Held, that the deceased was a workman employed by the Central Body under a contract of service within the Workmen’s Compensation Act, 1906, and that his widow was entitled to compensation. *PORTON v. CENTRAL (UNEMPLOYED) BODY FOR LONDON — C. A.* [1908] W. N. 242 ; [1909] 1 K. B. 173

184. — *Wages—Right of workman receiving compensation for injury to wages—Workmen’s Compensation Act, 1897* (60 & 61 Vict. c. 37).

A workman engaged at a weekly salary, who has claimed and received compensation under the Workmen’s Compensation Act, 1897, in respect of partial incapacity for work resulting from injury received by him during the course of his employment, is not entitled to claim his wages during the time for which he has been incapacitated. *ELLIOTT v. LIGGENS*

Div. Ct. [1902] 2 K. B. 84

— Warehouse — “Actual use or occupation” — “Undertakers.”

See No. 182, *above*.

185. — “Warehouse” — *Injury to workman—Factory—Workmen’s Compensation Act, 1897.* (60 & 61 Vict. c. 37), s. 7, sub-s. 2.

A place used in connection with, or as ancillary to, a wholesale business, for the storage of goods in large quantities to be sold in the business, is a warehouse within the meaning of s. 7, sub-s. 2, of the Workmen’s Compensation Act, 1897.

Colvine v. Anderson, (1902) 5 F. 255, considered. *GREEN v. BRITTEN & GILSON C. A.* [1904] 1 K. B. 350

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This case was explained by C. A., *Moreton v. Reeve*, [1907] 2 K. B. 401. *See next Case.*

186. — *Warehouse—Retail business—Injury to workman—Factory—Workmen's Compensation Act*, 1897 (60 & 61 Vict. c. 37), s. 7, sub-s. 2.

There is no absolute rule of law that a store attached to a retail business cannot be a warehouse within s. 7, sub-s. 2, of the Workmen's Compensation Act, 1897.

Green v. Britten & Gilson, [1904] 1 K. B. 350, explained. *MORETON v. REEVE*.

C. A. [1907] W. N. 137; [1907] 2 K. B. 401

187. — *Watching trawlers—Quay—Refusal of sheriff to state a case—Accident arising out of and in course of employment—Workmen's Compensation Act*, 1906 (6 Edw. 7, c. 58), s. 1, sub-s. 1.

The appellant's husband was employed by the respondents to watch trawlers as they lay in Granton Harbour. He was on duty for twenty-four hours, during which time he had to provide his own food, and in connection with his duties it was occasionally necessary for him to be on the quay. In the course of his watch he left the trawlers and went to an hotel, which was a short distance away from the harbour, where he got half a glass of whisky and a glass of beer. He was absent a very short time, and on his return to the quay, while descending a fixed ladder attached to the quay to go on board one of the trawlers, he fell into the water and was drowned.

The House (Lords Ashbourne, James of Hereford, Atkinson, and Shaw of Dunfermline) (Lords Loreburn L.C. and Gorell dissenting) reversed the decision, with costs, of the Second Division of the Ct. of Sess., (1909) S. C. 63, holding that the accident arose in the course of the man's employment, because when the accident occurred he had returned to the quay, which was within the sphere of his duty. *LOW OR JACKSON (PAUPER) v. GENERAL STEAM FISHING CO.* H. L. (Sc.) [1909] W. N. 185; [1909] A. C. 523

188. — *Weekly payments—Redemption—Agreement for lump sum—Memorandum—Registration—County court judge—Jurisdiction—Power to assess amount—"Such order as under the circumstances he may think just"—Injury to workman—Permanent incapacity—Workmen's Compensation Act*, 1906 (6 Edw. 7, c. 58), Sched. II., clause 9 (d).

Where the registrar of a county court has refused to register an agreement between an employer and a workman who has been injured in his service, for the redemption of a weekly payment by a lump sum, on the ground of the inadequacy of the sum agreed upon, and has referred the matter to the judge under Sched. II., clause 9 (d), of the Workmen's Compensation Act, 1906, the sole question for the judge is whether the agreement is one which ought or ought not to be recorded. He is not entitled to treat the agreement as a submission by the

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employer to pay any sum which the judge may, under the circumstances, think reasonable.

MORTIMER v. SECRETAN C. A. [1909] W. N. 92; [1909] 2 K. B. 77

— Weekly payments, Review of.

See Nos. 125—131, above.

189. — *"Wharf, Meaning of—Structure moored, at a distance from shore—Factory"—Workmen's Compensation Act*, 1897 (60 & 61 Vict. c. 37), s. 7, sub-s. 2.—*Factory and Workshop Act*, 1895 (58 & 59 Vict. c. 37), s. 23, sub-s. 1.

A structure moored in a river at some distance from, and not connected with, the shore, which was used for the purpose of discharging coal from ships into barges:—

Held, to be a "wharf" within the meaning of the Factory and Workshop Act, 1895, s. 23, sub-s. 1, and therefore a "factory" within the meaning of the Workmen's Compensation Act, 1897, s. 7, sub-s. 2. *ELLIS v. WILLIAM CORY & SON, LD.*

C. A. [1901] W. N. 214; [1902] 1 K. B. 38

190. — *Wharf—"Factory"—Workmen's Compensation Act*, 1897 (60 & 61 Vict. c. 37), s. 7, sub-s. 2.

Every wharf is a factory within the meaning of the Workmen's Compensation Act, 1897, whether any provision of the Factory Acts is applied to it or not.

Hall v. Snowden, Hubbard & Co., [1899] 2 Q. B. 136, is impliedly overruled by *Raine v. Jobson & Co.*, [1901] A. C. 404. *BARRETT v. KEMP BROTHERS* - C. A. [1904] W. N. 16; [1904] 1 K. B. 517

— Wharf, Employment of workman not in relation to use of—Fireman on steamer.

See No. 162, above.

191. — *Window cleaner—Part of a process in trade or business carried on by undertakers—Workmen's Compensation Act*, 1897 (60 & 61 Vict. c. 37), s. 4.

A window cleaner, while engaged, in the employment of a window-cleaning co., in cleaning the windows of a workshop belonging to a firm of tailors, fell from one of the windows and was injured. He claimed compensation from the firm of tailors as being the undertakers within the meaning of the Workmen's Compensation Act, 1897.

The Sheriff-substitute, as arbitrator, dismissed the claim and stated a case for appeal.

In the argument for the appellants, amongst other authorities, the English case of *Wrigley v. Bagley & Wright*, [1901] 1 K. B. 780, was referred to:—

Held, that the work of cleaning the windows was not a part of or process in the trade or business carried on by the respondents as undertakers of their factory, and affirmed the decision of the arbitrator dismissing the claim. *DEMPSTER v. HUNTER & SONS* - (1902) Ct. of Sess. (Sc.) [1903] W. N. 163

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192.—*Window cleaner*—"Workman"—"Person whose employment is of a casual nature"—*Workmen's Compensation Act, 1906* (6 *Edw.* 7, c. 58), ss. 1, 13.

A man who earned his living by doing odd jobs was employed by the occupier of a private house to clean his windows. He had been so employed at irregular intervals of about six weeks during a period of two years. He was usually sent for when the windows required cleaning, and when he came was paid 6s. 6d. a day for his work. There was no agreement between the parties or either permanent or periodic employment. While so employed the man met with his death through an accident:—

Held, that the employment was "of a casual nature"; that the deceased was therefore not a "workman" within s. 13 of the *Workmen's Compensation Act*; and consequently that the employer was not liable to pay compensation under the Act. *HILL v. BEGG* - C. A. [1908] W. N. 151 [1908] 2 K. B. 802

Note.

Inapplicable, *Dewhurst v. Mather*, C. A. [1908] 2 K. B. 754. See No. 31, above.

193.—*"Workman"*—"Contract of service"
Basis of assessment—*Concurrent employment*—*Professional services*—*Workmen's Compensation Act, 1906* (6 *Edw.* 7, c. 58), s. 13, *Sched. I., par. 1 (b), par. 2 (b)*.

A laundry girl, aged nineteen, injured her hand from an accident arising out of and in the course of her employment. She earned 7s. a week at the laundry and she also gave piano lessons to a man's children at his house at 3s. a week. She applied under the *Workmen's Compensation Act, 1906*, that the latter sum might be taken into account under par. 2 (b) of the First Schedule in assessing the amount of compensation. The county court judge held that qua music teacher she did not come within the definition of workman in the Act and awarded her 7s. a week compensation in accordance with par. 1 (b), proviso (b), of the First Schedule:—

Held, that the question whether an applicant in any particular case was a workman within the Act was a question of fact and that there was evidence to support the finding of the county court judge.

The meaning of "contract of service" discussed. *SIMMONS v. HEATH LAUNDRY CO.*

C. A. [1910] W. N. 59; [1910] 1 K. B. 543

—"Workman."

See under words "WORKMAN."

194.—"Workman"—*Independent contractor*—*Workmen's Compensation Act, 1897* (60 & 61 *Vict.* c. 37), s. 7, sub-s. 2.

Where a man was injured by an accident while doing work for manufacturers at their works as an independent contractor with them, and not as their servant:—

Held, that he was not a workman in their employment within the meaning of the

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Workmen's Compensation Act, 1897. *VAMPLEW v. PARKGATE IRON AND STEEL CO.*

C. A. [1903] W. N. 80; [1903] 1 K. B. 851

195.—"Workman"—*Manager of coal mine paid by salary*—*Workmen's Compensation Act, 1897* (60 & 61 *Vict.* c. 37), s. 7, sub-s. 2.

The certificated manager of a coal mine, who is paid a yearly salary, and who, although his duties require his presence in the mine, is not required to engage in manual labour, is not a "workman" within the meaning of the *Workmen's Compensation Act, 1897.* *SIMPSON v. EBBW VALE STEEL, IRON, AND COAL CO.*

C. A. [1905] W. N. 20; [1905] 1 K. B. 453

Note.

This case was applied by C. A., *Bagnall v. Levinstein, Ltd.*, [1907] 1 K. B. 531. See No. 198, below.

196.—"Workman"—*Person employed in coal mine by contractor*—*Contract by workman with mine-owner to obey regulations*—*Liability of mine-owner*—*Coal Mines Regulation Act, 1887* (50 & 51 *Vict.* c. 58)—*Employers and Workmen Act, 1875* (38 & 39 *Vict.* c. 90), s. 10—*Employers' Liability Act, 1880* (43 & 44 *Vict.* c. 42), s. 8.

The owners of a colliery entered into an agreement with a contractor by which the latter contracted to sink and wall a shaft in the colliery. One of the workmen employed upon the work by the contractor, and paid by him, was fatally injured by an explosion of gas in the mine. The deceased had, like all the other men employed by the contractor, signed the "record book" kept by the colliery owners, by which, in consideration of being employed in the mine, he became bound to observe the regulations and conditions laid down for the safety of the mine and for the guidance of the persons employed therein. The administrator of the deceased having brought an action against the colliery owners under the *Employers' Liability Act, 1880*, to recover damages for his death:—

Held, affirming the decision of a Div. Ct., [1901] 1 K. B. 756, that the signature of the conditions by the deceased did not create a contract of service between him and the colliery owners; that the deceased was not a "workman" who had entered into or worked under a contract with the colliery owners as his employers within the meaning of s. 10 of the *Employers and Workmen Act, 1875*; and that the *Employers' Liability Act, 1880*, did not therefore apply. *FITZPATRICK v. EVANS & Co.*

C. A. [1902] W. N. 31; [1902] 1 K. B. 505

197.—"Workman"—*Remuneration exceeding 250l. a year*—*Purser*—*Bonus*—*Perquisites*—*Workmen's Compensation Act, 1906* (6 *Edw.* 7, c. 58), s. 13.

The applicant was the dependant of a purser on board the steamship *Waratah*, which was taken to have been lost with all hands. The application was resisted on the ground that the deceased was a man employed otherwise than by way of manual labour whose remuneration exceeded 250l. a year, and was therefore not a workman within the Act. The deceased was originally appointed in 1906 to a smaller ship

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These sums were described in the shipowners' accounts as "extra wages" to which the purser was "entitled," but were preceded by the statement: "It having been reported that everything has been satisfactory during the voyage, no complaints having been received and justified and everything found in order on arrival in London." The receipts given by the deceased described these extra payments as "conditional money."

It further appeared that on board these vessels the purser was debited with 4*s.* for a bottle of whisky, and that nips were charged for at 6*d.*, and that a bottle supplied more nips than were required to make up the 4*s.* The shipowners recognized that the purser, either alone or in conjunction with the barman, was entitled to keep the surplus, and paid him less wages in consequence.

The county court judge, in estimating the amount of the steward's remuneration, had not taken into account those two items, and he estimated the total amount at about 230*l.* The shipowners appealed.

The C. A. allowed the appeal.

The Master of the Rolls was of opinion that the additional sums in question were not voluntary gratuities, but were extra wages, which ought to have been taken into account in estimating the amount of remuneration, and not the less so because they were conditional payments. He also thought that something ought to have been allowed in respect of the nips. Although there was no direct evidence as to the amount, it was the duty of the judge to estimate as best he could what sum ought to be allowed under this head. The matter should therefore go back to the judge to consider the case on these two items.

Farwell L.J. agreed with the Master of the Rolls.

Fletcher Moulton L.J. was of opinion that the jurisdiction of the tribunal was decided by the contract, and not by that which had actually happened thereunder during any particular period, and he did not agree that the county court judge was wrong as to either of the two items. As, however, the judge did not direct his attention to the issues necessary to the proper determination of the question before him, he agreed that the case should go back. *SKATLES v. BLUE ANCHOR LINE, LD.*

C. A. [1910] W. N. 287

198. — "*Workman*"—*Skilled expert in business of employer*—*Manual labour incident to employment*—*Workmen's Compensation Act, 1897* (60 & 61 Vict. c. 37), s. 7, sub-s. 2.

A man, who had taken a degree in science, entered the employment of a dye and chemical manufacturing co., under a written agreement for five years' service, and upon terms with

MASTER AND SERVANT (Compensation)—*contd.* regard to salary, commission on profits of inventions or improvements in manufacture discovered by him, restrictions as to employment after the termination of his engagement, and disclosure of matters relating to the business of the co. and his own researches, applicable to employment as a skilled expert in the business of his employers. His employment involved manual labour on his part. In the course of his employment he met with an accident which caused his death. On an application under the Workmen's Compensation Act, 1897, an award of compensation was made by a county court judge, on the ground that the fact that the man did manual labour brought the case within the Act. On appeal:—

Held, by Collins M.R. and Cozens-Hardy L.J. (Farwell L.J. dissenting), that the governing factor in determining whether the man was a workman within the meaning of the Act was the question what he was employed to do, and that the judge misdirected himself by not taking into consideration the terms of the employment as disclosed in the agreement, and in treating the performance of manual labour in the discharge of his duties as conclusive that the man was a workman within the meaning of the Act.

Simpson v. Ebbw Vale Steel, Iron and Coal Co., [1905] 1 K. B. 453, applied. *BAGNALL v. LEVINSTEIN, LD.* C. A. [1907] 1 K. B. 531

Contract of Service.

See also under CONTRACT OF SERVICE.

— Action, cause of—Inducing breach of contract — Conspiracy.

See TRADE UNION. 5.

1. — *Agreement for employment*—*Right to terminate*—*Necessity for notice*.

An agreement for the employment of a clerk or trade assistant in Africa for two years at a salary at and after the rate of 250*l.* a year provided that the employers might at any time at their absolute discretion terminate the engagement at any earlier date than that specified if they desired to do so:—

Held, that the power to terminate the engagement at an earlier date than that specified could only be exercised after giving reasonable notice. *In re AFRICAN ASSOCIATION LD. AND ALLEN*

Div. Ct. [1910] W. N. 18 ; [1910] 1 K. B. 396

2. — *Breach of contract*—*Agreement to engage and employ servant*—*Refusal to provide servant with work*.

The defts. agreed to engage and employ the plt. as their representative salesman for a period of four years. Before the expiration of that time the deft., though willing to continue to pay wages to the plt., refused to give him any work to do as their representative salesman. In an action to recover damages for breach of contract:—

Held, that there was no obligation on the

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continued.

defts. to provide the plt. with work. *TURNER v. SAWDON & CO.* C. A. [1901] 2 K. B. 653

Note.

This case was referred to by Warrington J., *Midland Counties District Bank, Ltd. v. Attwood*, [1905] 1 Ch. 357. See *Company—Servants*. 1.

— Common employment—Implied term of contract of service—Negligence of fellow-servant.

See **MASTER AND SERVANT—Negligence**. 2.

— Contract not to be performed within a year—Employment for one year—To commence on day next after date of contract. See **FRAUDS, STATUTE OF**.

— “Contract of service”—Taxi-cab driver—“Workman.”

See **MASTER AND SERVANT—Compensation**. 174.

— Implied term of contract of service—Common employment.

See **MASTER AND SERVANT—Negligence**. 2.

3. — Period of hiring—Piecework—Wages due but not payable—Dismissal—Forfeiture.

The plt. was employed at the defts.' colliery as a “putter” on a verbal contract of service. The service was terminable on 14 days' notice on either side, which might be given on any day in the week. Each putter in the defts.' service was paid according to the number of tubs of coal drawn by him underground, the rate of payment being 1s. for every score, consisting of twenty-one tubs, drawn over a distance not exceeding 130 yards, with the addition of 1d. for every like score for every additional thirty yards, or part thereof, over which the tubs were drawn. Putters over twenty-one years of age, including the plt., received an additional payment of 4d. per score.

The wages were payable and paid fortnightly. The total amount of work done each day was ascertained daily, and the wages in respect of each shift became due as they were earned, toties quoties, on the completion of successive shifts, though not payable except at the time and in the manner following: A pay-note of the total amount due in respect of the fortnight's work was made out on the Thursday following the completion of each fortnight, and the men were paid on the following day.

The plt. wrongfully absented himself from the colliery for a whole day, and was accordingly dismissed by the defts. for misconduct. At the time of his so absenting himself he had already worked for four days of the current fortnight. The defts. claimed to forfeit the four days' wages on the ground that the fortnightly wages were an entire sum and that nothing was due to the workman until the expiry of the fortnight. The plt. sued the defts. (inter alia) to recover the four days' wages. The county court judge gave judgment for the plt.

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continued.

On appeal the Div. Ct., [1907] W. N. 81, affirmed the judgment of the county court.

The C. A. dismissed the appeal. *PARKIN v. SOUTH HETTON COAL CO.*

C. A. [1908] W. N. 7

4. — *Piece-work—Contract by workman not to quit employment without giving a month's notice—Inability of employer to keep works open except at a loss—Implied obligation to provide workman with a reasonable amount of work.*

The plt. was a workman employed by the defts. at their works upon the terms that he was to be paid by piece work, and that he should not quit or be discharged from the works without giving or receiving a month's notice. The defts., finding that owing to the state of the trade they could not keep their works running at a profit, closed them, and subsequently gave the plt. a month's notice to quit. In an action to recover damages for breach of an implied agreement by the defts. to find the plt. work during the period between the closing of the works and the expiry of the notice:—

Held, that there was an implied undertaking by the defts. to provide the plt. with a reasonable amount of work so long as the employment lasted, the measure of what was reasonable being the average amount of the plt.'s earnings previously to the stoppage of the works. *DEVONALD v. ROSSER & SONS* C. A. [1906] W. N. 152; [1906] 2 K. B. 728

— Restraint on trade—Company—Winding-up—Specific performance.

See **COMPANY—Directors**. 5.

5. — Restriction on trade—Wrongful dismissal—Right of servant to treat wrongful dismissal as repudiation and to sue for breach of contract—Mutual and independent covenants.

Employers agreed with their manager that he should hold office subject to termination at twelve months' notice by either party and with a restriction on his right to trade after its termination. The employers having wrongfully dismissed him without notice:—

Held, that he was entitled to treat the dismissal as a repudiation of the contract and to sue them for damages for breach of contract, and was no longer bound by the restriction on trade.

Decision of the C. A., [1908] 1 Ch. 537, affirmed. *GENERAL BILLPOSTING CO. v. ATKINSON* H. L. (E.) [1909] W. N. 3; [1909] A. C. 118

Note.

Principle of, applied by C. A., *Measures Brothers, Ltd. v. Measures*, [1910] 2 Ch. 248. See **Company—Directors**. 5.

— Unemployment—Provision of temporary work—Unemployed Workmen Act, 1905. See **MASTER AND SERVANT—Compensation**. 183.

Criminal Law.

— Perjury—Judicial proceedings—Arbitration under Workmen's Compensation Act. See **CRIMINAL LAW—Appeal**. 17.

MASTER AND SERVANT—continued.**County Court Judge.****(Workmen's Compensation.)**

- County court judge—Jurisdiction—Power to assess amount.
See MASTER AND SERVANT—Compensation. 188.
- County court judge, Decision of, on preliminary question—Appeal to C. A.—Jurisdiction.
See MASTER AND SERVANT—Compensation.
- Infant dependants—Payment into court—Approval of registrar—Jurisdiction of county court judge.
See MASTER AND SERVANT—Infants. 6.
- Interrogatories—Discovery—Jurisdiction of county court judge.
See MASTER AND SERVANT—Compensation.

Dismissal.**1.—Breach of contract—Tort—Wrongful Dismissal—Damages.**

Where a servant is wrongfully dismissed from his employment the damages for the dismissal cannot include compensation for the manner of the dismissal, for his injured feelings or for the loss he may sustain from the fact that the dismissal of itself makes it more difficult for him to obtain fresh employment:—

So held by Lord Loreburn, L.C., and Lords James of Hereford, Atkinson, Gorell, and Shaw of Dunfermline (Lord Collins dissenting).

Order of C. A. (not reported, Feb. 5, 1909) reversed. *ADDIS v. GRAMOPHONE CO.*

H. L. (E.) [1909] A. C. 488

- Contract of service—Restriction on trade—Wrongful dismissal as repudiation—Breach of contract.
See MASTER AND SERVANT—Contract of Service. 5.
- Workman—Including dismissal by threats—"Trade dispute."
See TRADE UNION. 8.

Disputes.

1. — Dispute between employer and workman—Subsisting claims—Jurisdiction of Court of summary jurisdiction to adjust and set off—Set-off of employers claim for damages against workmen's wages—Employers and Workmen Act 1875 (38 & 39 Vict. c. 90), s. 3, sub-s. 1; s. 4.

By s. 3, sub-s. 1, of the Employers and Workmen Act, 1875, in any proceeding before a county court in relation to any dispute between an employer and a workman arising out of or incidental to their relation as such, the Court may adjust and set off all such claims on the part either of the employer or of the workman arising out of or incidental to the relation between them, as the Court may find to be subsisting. By s. 4 a similar jurisdiction (up to a limited amount) is conferred upon Courts of summary jurisdiction.

An employer preferred a summons against a workman in a Court of summary jurisdiction

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claiming (1) damages for breach of contract by reason of the workman having wrongfully absented himself from his work, and (2) that the wages earned by and due to the workman should be ascertained, and that the respective claims for damages and wages, should be adjusted and set off by the Court. The workman made no claim for his wages in the Court of summary jurisdiction and contended that the Court had no jurisdiction to set off the damages against a claim for wages which had not in fact been made by him:—

Held, by Vaughan Williams L.J. and Farwell L.J. (Fletcher Moulton L.J. dissenting) that the jurisdiction of the Court under ss. 3 and 4 of the Act extended to the adjustment of all subsisting claims between the parties, and that as the workman's claim for wages, although not put forward by the workman himself, had been brought to the knowledge of the Court by the employer, the Court had jurisdiction to set off that claim against the employer's claim for damages.

Decision of Div. Ct., [1910] 1 K. B. 386, affirmed. *KEATES v. LEWIS MERTHYR CONSOLIDATED COLLIERIES, LD.* **C. A. [1910] W. N. 130; [1910] 2 K. B. 445**

Evidence.

- Pilot, Evidence of—Ship—Collision—Compulsory pilotage—practice.
See SHIPPING—Collision. 51.
- Compensation.
See under MASTER AND SERVANT—Compensation.
- Salvage—Pleading—Admission of facts—Non-admission of inferences—Exclusion of further evidence.
See SHIPPING—Salvage. 21.

Extra Service.

- Burgh surveyor—Delay.
See SCOTTISH LAW. 17.

Factory.

See under FACTORY.

Factory Acts.**(Factory and Workshop Acts.)**

See also under FACTORY.

Factory and Workshop Act, 1901 (1 Edw. 7, c. 22), consolidates with amendments the Factory and Workshop Acts.

Sanitary Accommodation Order of Feb. 1903—Factory and Workshop. St. R. & O. 1903, No. 89.

Factory and Workshop Act, 1901. Duties of Local Authorities. March 1903. Price 2d. 1903 (K.—Home Office).

- "Factory."

See MASTER AND SERVANT—Compensation. 3.

- Compensation—Machine worked by hand-power—Warehouse.
See MASTER AND SERVANT—Compensation. 93.

MASTER AND SERVANT (Factory Acts)—*contd.*

1. — *Factory—Electrical station—“Public building” — Workhouse—Factory and Workshop Act, 1901 (1 Edw. 7, c. 22), s. 149, sub-s. 1; Sched. VI., Part I., clause 20.*

By s. 149, sub-s. 1, of the Factory and Workshop Act, 1901, “non-textile factory” means (inter alia) any places named in Part I. of Sched. VI. of the Act. By clause 20 of Part I. of that schedule “electrical stations” are defined as being “any premises or that part of any premises in which electrical energy is generated or transformed for the purpose of supply by way of trade, or for the lighting of any street, public place, or public building, or of any hotel, or of any railway, mine, or other industrial undertaking.”

An engine-house and machinery, forming part of the premises of a workhouse, were used for the purpose of generating electrical energy for lighting the workhouse and infirmary, and for other purposes. One of the engines in the engine-house was unfenced:—

Held, that the workhouse was a public place within Sched. VI., Part I., clause 20, and was therefore a non-textile factory within the meaning of s. 149, sub-s. 1, of the Factory and Workshop Act, 1901. **MILE END GUARDIANS v. HOARE**

Div. Ct. [1903] W. N. 136; [1903] 2 K. B. 483

2. — *Factory — Escape from fire — Two factories in one house—Tenement factory—Notice to construct works—Separate notices for each factory — Owner’s right to enter on occupier’s factory—Public Health—Factory and Workshop Act, 1901 (1 Edw. 7, c. 22), s. 14, sub-ss. 2, 3, 7; ss. 87, 149.*

The plt. owned a building the whole of which up to and including the fourth floor, but with the exception of the second floor, formed one factory and was leased to and occupied by the defts. The second floor was not a factory. The fifth, sixth, and seventh floors formed another factory. Each of these factories produced its own motive power. The county council gave notice to the plt. to provide better means of escape from fire; an arbitration took place at which the defts. were not present, and an award was made to the effect that an additional staircase ought to be made starting at the level of the third floor and extending to the seventh floor, and communicating with each of the intermediate floors. The county council served notice on the plt. requiring him to construct the works. The notices and the award treated the building as a whole, and did not deal with the factories as separate factories.

In an action brought by the plt. for an injunction to restrain the defts. from hindering him in making the staircase:—

Held, that the factories were separate factories and that the whole building was not a tenement factory inasmuch as the occupiers produced their own power, and the building was therefore not one “where mechanical power is supplied” within s. 149 of the Factory and Workshop Act of 1901; that there was nothing in the Act which gave the plt. any right to enter on one of the factories in order to construct works for the benefit

MASTER AND SERVANT (Factory Acts)—*contd.*

of the other factory; the fact that the defts. were not present did not exempt them from being bound by the arbitration; but the notices and the award ought to have treated the factories as separate factories, and as this had not been done the proceedings were ineffectual, and the plt. was not entitled to enter upon the defts.’ premises. **TOLLER v. SPIERS & POND, LD.**

Buckley J. [1903] W. N. 4; [1903] 1 Ch. 362

Note.

This case was followed by Div. Ct., *Brass v. London County Council*, [1904] 2 K. B. 336. See *Factory. 7.*

3. — *“Factory,” what is—Premises used for adapting articles for sale—Mechanical power used “in aid of” manufacturing process—Process of bottling beer and washing bottles—Factory and Workshop Act, 1878 (41 & 42 Vict. c. 16), s. 93.*

By s. 93 of the Factory Act, 1878, the expression “non-textile factory” means, inter alia (sub-s. 3 (c)), any premises wherein any manual labour is exercised by way of trade or for the purposes of gain “in or incidental to the adapting for sale of any article, and wherein or within the close or curtilage or precincts of which, steam, water, or other mechanical power is used in aid of the manufacturing process carried on there.”

The respondents occupied premises which they used solely for the purpose of washing bottles and bottling beer in their trade of wholesale and retail beer dealers. Before the bottles were filled with beer, which was done by manual labour only, they were washed inside by a rotary brush driven by a small gas-engine, the bottles being held in position by hand:—

Held, upon the facts above stated, that the respondents’ premises were not a “factory” within the definition in s. 93, sub-s. 3 (c). **LAW v. GRAHAM**
Div. Ct. [1901] 2 K. B. 327

4. — *Overtime employment — Place where allowed—“Warehouse not used for any manufacturing process” — Factory and Workshop Act, 1901 (1 Edw. 7, c. 22), s. 49, Sched. II., clause 4.*

By s. 49 of the Factory and Workshop Act, 1901, overtime employment of women is permitted on a limited number of days in the year and this permission is declared to apply to “the non-textile factories and workshops and parts thereof and warehouses specified in the second schedule to this Act.” By Sched. II., factories and workshops in which overtime employment is allowed include (clause 4) “any part of a factory (whether textile or non-textile) or workshop which is a warehouse not used for any manufacturing process or handicraft, and in which persons are solely employed in polishing, cleaning, wrapping, or packing up goods”:—

Held, that the prohibition in Sched. II., clause 4, against overtime work being carried on in a part of a factory used for a manufacturing process or handicraft, extended to any part of the factory in which a manufacturing process or handicraft was carried on during the ordinary working hours, and did not merely prevent the overtime work being carried on in a part of the

MASTER AND SERVANT (Factory Acts)—*contd.*
factory which was at the same time being used for a manufacturing process or handicraft. *SMITH v. SIBRAY, HALL & Co.*

Div. Ct. [1903] 2 K. B. 707

— Quay — Machinery used in loading from a quay.

See **MASTER AND SERVANT—Compensation. 149.**

5. — Sanitary conveniences, Provision of—
Failure of sanitary authority to take proceedings on notice from factory inspector — Power of factory inspector to make requirement—Jurisdiction of justices to inquire into sufficiency of sanitary accommodation — Appeal to quarter sessions from requirement of factory inspector—
Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 38—Factory and Workshop Act, 1878 (41 & 42 Vict. c. 16), s. 4—Public Health Acts Amendment Act, 1890 (53 & 54 Vict. c. 59), ss. 7, 22—Factory and Workshop Acts, 1891 (54 & 55 Vict. c. 75), s. 2 ; 1895 (58 & 59 Vict. c. 37), ss. 3, 35.

By the Factory and Workshop Act, 1891, s. 2, sub-s. 2, where notice of an act, neglect, or default is given by a factory inspector under s. 4 of the Factory and Workshop Act, 1878, to a sanitary authority, and proceedings are not taken within a reasonable time for punishing or remedying the act, neglect, or default, the inspector may take "the like proceedings for punishing or remedying the same as the sanitary authority might have taken." A factory inspector having given notice to a sanitary authority that there was a deficiency of sanitary accommodation in a certain factory within their district, and the sanitary authority not having taken within a reasonable time any proceedings for punishing or remedying the same, the inspector gave notice to the factory owner under this sub-section and under s. 22 of the Public Health Acts Amendment Act, 1890, which had been adopted in the district, requiring him to erect certain specified sanitary conveniences, and on his neglect to comply with the notice summoned him before justices in petty sessions :—

Held (by Lord Alverstone C.J., Grantham, Bruce, and Darling J.J., Phillimore J. dissenting), that the justices had no jurisdiction to inquire into the suitability or sufficiency of the sanitary accommodation existing at the factory, or required by the notice of the inspector.

Semle, that an appeal lies to quarter sessions under s. 7 of the Public Health Acts Amendment Act, 1890, from the requirement of the factory inspector in such a case. *TRACEY v. PRETTY & SONS*

Div. Ct. [1901] W. N. 17 ; [1901] 1 K. B. 444

6. — Ventilation — Factory— Dust generated and inhaled by workers to injurious extent—No evidence of actual injury—Factory and Workshop Act, 1878 (41 & 42 Vict. c. 16), s. 36.

By s. 36 of the Factory and Workshop Act, 1878, where in any factory a process is carried on by which dust is "generated and inhaled by the workers to an injurious extent," the factory inspector has power to require a fan or other means of ventilation to be provided. In proceedings under this section :—

Held, that it was not necessary to prove that

MASTER AND SERVANT (Factory Acts)—*contd.*
any worker had sustained actual injury from inhaling the dust, but that it was sufficient if it was proved that dust was generated and inhaled by the workers to an extent that must in the long run be injurious. *HOARE v. RITCHIE & SON*

Div. Ct. [1901] W. N. 18 ; [1901] 1 K. B. 434

— "Workshop" — "Adapting for sale."

See **FACTORY. 9.**

False Imprisonment.

1. — Evidence of implied authority—Manager of public-house.

The plt. was head barman and cellarman in a public-house of which the deft. was owner ; the deft. took no part in the management of the house, though he visited it nearly every day, the manager on behalf of the deft. being one M., who had the general management of the house. While the plt. was superintending the operation of bringing mineral waters into the cellar, the manager, acting under the mistaken impression that whisky was being removed from the cellar, sent for a policeman and gave the plt. into custody on a charge of stealing whisky. Before reaching the police station the manager admitted that he had made a mistake, and on arrival at the police station the plaintiff was released by the inspector. In an action for false imprisonment :—

Held, that there was no evidence that the manager had an implied authority from the deft. to give the plt. into custody, the act not being reasonably necessary for the protection of his master's property, and that the deft. was therefore not liable. *HANSON v. WALLER*

Div. Ct. [1901] 1 K. B. 390

False Measure.

—Measure, False or unjust—Possession by servant for own fraudulent purpose.

See **WEIGHTS AND MEASURES. 6.**

Fatal Accidents Act.

1. — Cause of action — Negligence causing death—"Actio personalis moritur cum persona"—Parent and child—Recovery of burial expenses—Fatal Accidents Act, 1846 (9 & 10 Vict. c. 93).

A master cannot maintain an action for injuries which cause the immediate death of his servant.

A father cannot recover, either at common law or under the Fatal Accidents Act, 1846 (Lord Campbell's Act), the funeral expenses to which he has been put in burying an unmarried infant daughter, whose death was caused by reason of the defts.' negligence, and who was residing with her father at the time of her death.

Osborn v. Gillet, (1873) L. R. 8 Ex. 88, approved. *CLARK v. LONDON GENERAL OMNIBUS Co.*

C. A. [1906] W. N. 153 ; [1906] 2 K. B. 648

Forgery.

— Company — Share certificate fraudulently issued by secretary—Forgery—Scope of employment.

See **COMPANY—Forgery. 2.**

MASTER AND SERVANT—continued.**Infants.**

1. — *Compensation to a minor—Review of weekly payments—Probable earnings—Former employment—Workmen's Compensation Act, 1906* (6 *Edw. 7*, c. 58), *Sched. I.* (16).

Upon a review of the weekly payments to a workman who has been injured by an accident entitling him to compensation and who was then under age, if the review takes place more than twelve months after the accident "the amount of the weekly payments may be increased to any amount not exceeding 50 per cent. of the weekly sum which the workman would probably have been earning at the date of the review if he had remained uninjured, but not in any case exceeding 1*l.*," as enacted by the proviso to clause 16 of *Sched. I.*

The probable earnings there referred to are not restricted to what the workman would probably have been earning in his actual employment under the same employer, but are left to the discretion and good sense of the county court judge upon the evidence.

Decision of *C. A.*, *Evans v. Vickers, Sons & Maxim, Ltd.* [1910] *W. N.* 41; [1910] 1 *K. B.* 554, affirmed. *VICKERS, SONS & MAXIM, LD. v. EVANS* **H. L. (E)** [1910] *W. N.* 161; [1910] *A. C.* 444

2. — *Committee representative of an employer and his workmen—Permanent incapacity—Award of lump sum—Infant—Payment into Court—Excess of jurisdiction—Duty to record award—Workmen's Compensation Act, 1906* (6 *Edw. 7*, c. 58), *Sched. I.*, par. 17; *Sched. II.*, pars. 1, 9.

Where there exists under par. 1 of the Second Schedule to the Workmen's Compensation Act, 1906, a committee representative of an employer and his workmen with power to settle matters under the Act, which means with the function as incident to its constitution of settling matters under the Act, that is the tribunal to which for the purpose of settling any matter which under the Act is to be settled by arbitration the parties are to resort, subject to the right of either party by notice in writing within the time prescribed by the Act to object; it is not necessary that each individual workman should upon entering the employment have expressly or impliedly agreed to refer any dispute under the Act to such committee.

Semble, per Cozens-Hardy M.R. and Kennedy L.J., the award of such committee upon any matter within its jurisdiction is binding on an infant.

Where the award of such committee relates to a matter required by the Act to be settled by arbitration it is the duty of the registrar of the county court on being satisfied as to its genuineness to record it, and the judge has no jurisdiction to review it; but where the award is outside the jurisdiction of the committee there is no obligation to record it.

There is no jurisdiction under the Act to award a lump sum to a workman who is incapacitated by an accident except under par. 17 of the First Schedule, which is limited to the case where

MASTER AND SERVANT (Infants)—continued.

a weekly payment has been continued for not less than six months.

Where, therefore, a workman, who was a minor, met with an accident whereby he lost two fingers, and, after his employers had paid him a weekly sum for five months and had taken him back to work, referred the question of compensation in respect of his permanent injury to a committee representative of the employers and their workmen, and the committee awarded him a lump sum and paid the money into the county court:—

Held, that the county court judge was not bound to record a memorandum of the award and that the money paid into Court ought to be paid out to the employers.

MULLHOLLAND v. WHITEHAVEN COLLIERY CO. C. A. [1910] *W. N.* 120; [1910] 2 *K. B.* 278

3. — *Contract—Restraint of trade—Severable stipulations—Contract for benefit of infant—Injunction.*

An infant's contract of service is not necessarily invalid because it contains stipulations some of which are void as being in restraint of trade and unnecessary for the protection of the master's business. If the void stipulations are severable from the rest of the contract they may be disregarded, and the rest of the contract is binding on the infant if it is for his benefit.

BROMLEY v. SMITH **Channell J.** [1909] 2 *K. B.* 235

4. — *Dangerous employment—Infant—Duty to instruct—Delegation of duty—Foreman—Negligence—Common employment—Liability of master.*

The plt., a girl fifteen years old, was employed in the defts'. cartridge factory in the work of testing the gauge of loaded cartridges. She worked under a forewoman, whose duty it was to give her proper instructions and warning as to the dangerous nature of the work, and in consequence of the forewoman's negligent failure to do so the plt. caused a cartridge to explode, thereby sustaining personal injuries, in respect of which she sued the defts. :—

Held, that the doctrine of common employment applied and the defts. were not liable, because, although there is a duty on an employer to give instructions to a young or inexperienced person employed by him in dangerous work, that duty is one which may be delegated by him to a foreman, and the negligence of the foreman is a risk which a fellow-servant, even though an infant, takes upon himself. *CRIBB v. KYNOCH, LD.*

Div. Ct. [1907] 2 *K. B.* 548

Note. See also *No. 7*, below.

This case was referred to by *C. A.* in *Young v. Hoffman Manufacturing Co.*, [1907] 2 *K. B.* 646. See next Case.

5. — *Dangerous machinery—Infant workman—Duty of employer to instruct—Delegation to foreman—Negligence—Common employment.*

The question was whether the defence of "common employment" could be raised in an action for negligence by an infant against his employers where he had been injured owing to an alleged want of proper instruction in the working of a machine.

MASTER AND SERVANT (Infants)—continued.

The plt., a boy of fifteen, was injured by a circular saw while working in the defts.' engineering works. The jury found that there was negligence on the part of the defts. in not instructing the plt. sufficiently in the working of the machine. They found that the defts.' foreman, to whom the duty of instructing the plt. had been delegated, had not fully instructed or cautioned the plt. The defts. at the trial desired to raise the point that they were not liable to the plt. for the negligence of their foreman. Ridley J. declined to allow this, and gave judgment for the plt.

The Court allowed the appeal, saying that it had been argued that as against an infant workman the defence of common employment could not be raised. There was no justification for any distinction in that respect between an adult and an infant workman. The principle applicable was stated by Lord Cairns in *Wilson v. Merry*, (1868) L. R. 1 H. L. Sc. 332. It could not be suggested that the nature of the contract varied according to the age of the workman; nor could it be that the master warranted that proper instruction should be given to an infant workman by competent persons, whereas he only contracted with an adult workman that he would employ competent persons whose duty it should be to give proper instruction. It had been argued that the doctrine rested on the theory that the workman contemplated risks from the negligence of his fellow-workman, and agreed that his master should not be liable for such negligence; and that an infant could not thus agree. The Court could not assent to that view. It was not necessary to refer to the authorities, which were fully discussed in *Cribb v. Kynoch, Ltd.*, [1907] 2 K. B. 548; 23 T. L. R. 550. (See preceding Case.) The case must go down for a new trial. **YOUNG v. HOFFMAN MANUFACTURING CO.**

C. A. [1907] W. N. 174; [1907] 2 K. B. 646

6. — Infant dependant—Agreement as to amount of compensation—Payment into Court—Approval of registrar—Jurisdiction of county court judge—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), Second Sched., par. 9 (d)—Workmen's Compensation Rules, 1907, r. 56A, par. 4—Workmen's Compensation Rules, 1908, p. 4.

Where a claim for compensation under the Workmen's Compensation Act, 1906, is made by dependants some of whom are infants and the employer admits liability, and some one on behalf of the infant dependants enters into a conditional agreement with the employer as to the amount of compensation, the agreement has no validity until it has come before the registrar of the county court, whose duty it is to consider it on behalf of the infants; but if the money is sent to the registrar for payment into Court under par. 4 of r. 56A of the Workmen's Compensation Rules, 1907, upon a præcipe according to Form 53A, and the registrar signifies his approval by signing a receipt for the money, the agreement becomes binding for all purposes, and the employer is freed from all further liability, and the county court judge has no jurisdiction to require his appearance in any further proceedings, e.g., proceedings as to the apportionment of the money in Court.

MASTER AND SERVANT (Infants)—continued.

An agreement as to the amount of compensation payable to dependants under the Workmen's Compensation Act, 1906, ought not to be signed by the dependants' solicitor on their behalf. **RHODES v. SOOTHILL WOOD COLLIERY CO.**

**C. A. [1908] W. N. 252
[1909] 1 K. B. 191**

Note. See Explanatory Memorandum to the Workmen's Compensation Rules, 1909, Current Index, 1909, p. clxx.

7. — Infant workman—Accident causing personal injury—Notice—Unsuccessful action against employer—"Option"—Subsequent claim for compensation under the Act—Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), s. 1, sub-s. 2 (b), 4; s. 2, sub-s. 1.

The "option" given to a workman by the Workmen's Compensation Act, 1897, s. 1, sub-s. 2 (b), either to claim compensation under the Act or take other proceedings cannot be confined to an option binding only in the case of success.

The procedure prescribed by s. 1, sub-s. 4, of the Workmen's Compensation Act, 1897, must be strictly followed, and that sub-section has no application except when proceedings based on the common law liability of the employer have been commenced within six months from the occurrence of the accident.

A workman cannot give the notice required by s. 2, sub-s. 1, as a foundation for future proceedings under the Act, in the event of a common law action commenced after the expiration of six months from the occurrence of the accident being unsuccessful.

The plt., a girl under age, who had been injured by an accident arising out of and in the course of her employment, gave notice of the accident and of a claim for compensation within the prescribed time, but took no further proceedings under the Act; thirteen months after the accident, an unsuccessful action to recover damages against the employers was brought. After the dismissal of this action, an application was made to the county court judge, pursuant to the aforesaid notice, for compensation under the Workmen's Compensation Acts:—

Held, on the construction of s. 1, sub-s. 2 (b) and 4, read together, that this application for compensation could not now be entertained.

EDWARDS v. GODFREY, [1899] 2 Q. B. 333, applied.

ROUSE v. DIXON, [1904] 2 K. B. 628, discussed and explained.

Decision of the majority of the Court in **BECKLEY v. SCOTT & CO.**, [1902] 2 I. R. 504, disapproved. **CRIBB v. KYNOCH, LD.** (No. 2)

C. A. [1908] 2 K. B. 551

Note. See also No. 4, above.

8. — Infant workman—Injury caused by negligence of employer—Claim under Workmen's Compensation Act—Subsequent action for negligence—Action more for benefit of infant than claim—Exercise of option not binding—Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), s. 1, sub-s. 2 (b).

A workman, who was an infant, received personal injuries caused by the negligence of his

MASTER AND SERVANT (Infants)—continued.

employers. He made a claim under the Workmen's Compensation Act, 1897, and the employers agreed to pay him and he received from them the maximum amount payable to him under the Act during his incapacity for work. He subsequently brought through his next friend an action for negligence, on which he recovered a sum much larger than the amount received as compensation under the Act :—

Held, that the Act, by including an apprentice in the general word "workman," did not alter the law applicable to contracts made by infants, and that the claim under the Act was no bar to the bringing of the subsequent action for negligence. **STEPHENS v. DUDBRIDGE IRONWORKS CO.** C. A. [1904] 2 K. B. 225

9. — *Infant workman—Injury to workman—Action against employer, Failure of—Assessment of compensation by the judge—Estoppel—Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), s. 1, sub-s. 2 (b), 4.*

Where, upon the dismissal of an action brought by a workman under age, by his next friend, against his employers to recover damages in respect of personal injuries occasioned to the plt. by an accident arising out of and in the course of his employment, an application was made to the judge who tried the action to assess compensation to the plt. under the Workmen's Compensation Act, 1897, s. 1, sub-s. 4, and the judge accordingly awarded such compensation :—

Held, that the plt. was estopped by the election to take such compensation and the award thereupon made from proceeding further with the action, and therefore a subsequent application by him for judgment or a new trial in the action could not be entertained.

Isaacson v. New Grand (Clapham Junction), Ltd., [1903] 1 K. B. 539, discussed. *NEALE v. ELECTRIC AND ORDNANCE ACCESSORIES CO.*

C. A. [1906] W. N. 169; [1906] 2 K. B. 558

—Posthumous child.

See MASTER AND SERVANT—Compensation. 52.

10. — *Unlawful employment of children—Contract between employer and child—Engagement of child by servant of employer—Liability of employer—Employment of Children Act, 1903 (3 Edw. 7. c. 45), s. 3, sub-s. 1; s. 5, sub-s. 1; s. 6, sub-s. 3.*

By a by-law made under s. 3, sub-s. 1, of the Employment of Children Act, 1903, no child shall be employed between certain hours; and by s. 6, sub-s. 3 of the Act, "where an employer is charged" with an offence under the Act he shall be entitled upon information laid by him to have the person whom he charges as the actual offender brought before the Court, and if "after the commission of the offence has been proved" the Court is satisfied that the employer had used due diligence to comply with the provisions of the Act, and that the other person had committed the offence in question without the employer's knowledge, consent, or connivance, the other person shall be summarily convicted of the offence, and the employer shall be exempt from any fine.

MASTER AND SERVANT (Infants)—continued.

A vanman in the employment of the respondent, a baker, employed for his own convenience and benefit a child to deliver bread to the respondent's customers during hours forbidden by the by-law. The child was actually engaged and his wages paid by the vanman, and his engagement was a voluntary and gratuitous act on the part of the vanman and formed no part of any arrangement between him and the respondent. The respondent had no knowledge that the child was so employed except during permitted hours.

The respondent was charged with having unlawfully employed the child during prohibited hours contrary to the by-law :—

Held, (1.) that the mere fact that the respondent was charged with the offence did not, in the absence of any evidence of a contract of employment of the child during prohibited hours by or on behalf of the respondent, make it incumbent upon him, under s. 6, sub-s. 3, of the Act, in order to claim exemption from a fine, to charge the vanman as the actual offender; (2.) that as there was no evidence of any unlawful employment of the child by the respondent, either directly or by an agent purporting to employ the child on his behalf, no offence by the respondent had been proved. **ROBINSON v. HILL** Div. Ct. [1909] W. N. 206; [1910] 1 K. B. 94

Interference.

—Coal mine—Check-weigher—Removal—Interfering with workmen.

See MINES. 2.

Labour Bureaux.

Labour Bureaux (London) Act, 1902 (2 Edw. 7. c. 13), authorises the establishment of Labour Bureaux throughout the Metropolis.

Liability.

—Bailment.

See under MASTER AND SERVANT—Bailment.

1. — *Forage supplied by direction of coachman—Authority to pledge credit of master—Liability of master.*

The relation of master and coachman does not clothe the latter with ostensible authority to pledge his master's credit for forage supplied for his horses.

Precious v. Abel, (1795) 1 Esp. 350, and *Rimell v. Sampayo*, (1824) 1 C. & P. 254, commented on. **WRIGHT v. GLYN**

C. A. [1902] 1 K. B. 745

2. — *Negligence of servant—Coachman—Bailment—Bailor and bailee—Injury to article bailed—Liability of master.*

The deft. sent his carriage to be repaired by the plt. who was a coach-builder. The plt. lent a carriage of his own to the deft. for use while the repairs were going on. The coachman of the deft., without his knowledge, took the plt.'s carriage out for his own purposes, and while he was driving the carriage it was injured through his negligence. In an action to recover the cost of repairing it :—

Held, that as the coachman at the time when

MASTER AND SERVANT (Liability)—*contd.*

the injury was done to the carriage was not acting in the course of his employment, the debt, was not liable.

Coupé Co. v. Maddick, [1891] 2 Q. B. 413, considered. *SANDERSON v. COLLINS*

C. A. [1904] 1 K. B. 628

—Ship in dock—Undertakers—"Actual use or occupation."

See **MASTER AND SERVANT—Compensation**. 146.

Libel.

—Corporation, Libel by servant of—Liability of company for malicious libel.

See *NEW SOUTH WALES*. 20.

Licences.

—Assessed taxes—"Male servant"—Stable-boy—Apprentice.

See **REVENUE—Servants**. 2.

—"Male servant"—"House porter."

See **REVENUE—Servants**. 1.

Mines.

—Coal mine—Negligence—Statutory duty. See under **MINES**.

Motor Omnibus.

1. — *Driver of motor omnibus—Employers' Liability Act, 1880* (43 & 44 Vict. c. 42), s. 8—*Employers and Workmen Act, 1875* (38 & 39 Vict. c. 90), s. 10—"Otherwise engaged in manual labour."

The driver of a motor omnibus who has, when out with the omnibus, to do such necessary repairs to it as he is able to do, is a person "otherwise engaged in manual labour" within s. 10 of the *Employers and Workmen Act, 1875*, and is, therefore, entitled to the benefit of the *Employers' Liability Act, 1880*.

Cook v. North Metropolitan Tramways Co., (1887) 18 Q. B. D. 683, distinguished. *SMITH v. ASSOCIATED OMNIBUS CO.* - Div. Ct. [1907] W. N. 74; [1907] 1 K. B. 916

Negligence.

1. — *Burden of proof—Statutory duty—Coal Mines Regulation Act, 1887* (50 & 51 Vict. c. 58), s. 49, r. 12, s. 50—*Coal Mines Regulation Act, 1896* (59 & 60 Vict. c. 43), s. 6.

An explosion in a mine was caused by a blasting operation conducted in breach of the rules of the *Coal Mines Regulation Acts*. In an action against the mine-owners to recover damages for injury to a miner by the explosion the judge held that the burden of proving that the owners had neglected their duty to enforce the statutory rules lay on the plt., and, as the plt. had failed to produce evidence on that point, the defts. obtained a verdict and judgment:—

Held, that upon the question whether the mine authorities had done their duty in taking proper care of the safety of the miners the burden of proof did not lie upon the plt.

Order of the C. A. for a new trial, [1909] 2 K. B. 146, affirmed, but some of the reasons

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disapproved. *BRITANNIC MERTHYR COAL CO., LD. v. DAVID* H. L. (E.) [1909] W. N. 257; [1910] A. C. 74

2. — *Common employment—Risk incidental to employment—Negligence of fellow servants—Implied term of contract of service.*

Colliery proprietors, who possessed a railway in connection with the colliery, ran a train thereon for the carriage of their colliers, free of charge, from the colliery towards their homes after the day's work. One of the colliers while being so carried met his death through an accident occasioned by the negligence of servants of his employers engaged in the repair of a bridge over the railway:—

Held, that the deceased must as between himself and his employers be deemed to have undertaken the risk of such an accident, and that an action could not be maintained against his employers under the *Fatal Accidents Act, 1846*, in respect of his death.

Decisions of *Bray J.* and the C. A., [1909] 1 K. B. 530, affirmed. *COLDRICK v. PART- RIDGE, JONES & Co., LD.* - H. L. (E.) [1909] W. N. 257; [1910] A. C. 77

—Contributory negligence—*British Columbia Families Compensation Act—Action for damages for death of appellant's son—Negligence by respondents—Misdirection as to contributory negligence by deceased—Practice.*

See **CANADA—Practice**. 2.

—Engine, Invitation to travel on—Liability for negligence of servants.

See **NEGLIGENCE**. 4.

—Liability.

See under **MASTER AND SERVANT—Liability**.

3. — *Misconduct—Accident arising "out of" the employment—Unnecessary risk—Workmen's Compensation Act, 1906* (6 Edw. 7, c. 58), s. 1, sub-ss. 1, 2 (c).

A boy engaged as a "clumper" in a colliery got into one of a number of empty corves or tubs that were being hauled by an endless chain, to get to the place in the colliery where he had to begin his work, some distance away from the pit shaft; while riding in this manner his head came in contact with the roof, and he received injuries from which he died. His father as a dependant claimed compensation.

There was evidence that the boys were forbidden to ride in empty tubs, and there was a rule and a notice to this effect in the colliery, and that fines were inflicted if the boys were caught breaking this rule; but that the boys constantly did ride in these tubs whenever they could do so without being found out.

The county court judge being of opinion that the accident arose "out of" the employment awarded 70% compensation.

The C. A. (Cozens-Hardy M.R. and Farwell L.J., Fletcher Moulton L.J. dissenting) allowed the appeal.

Cozens-Hardy M.R. said a distinction must be drawn between a negligent act in the carrying out of work which a man was employed to do and the

MASTER AND SERVANT (Negligence)—contd.

doing of a negligent act that was wholly unauthorized, and the question to be considered in the present case was similar to the question considered and decided in *Brice v. Edward Lloyd, Ltd.* [1909] 2 K. B. 804, namely, was the deceased acting within any authority which he had—whether in fact he was not needlessly exposing himself to a risk which could not be fairly said to arise out of the employment? The deceased was committing a negligent act outside the scope of his employment, and the proper inference was that this accident did not arise “out of” the employment. The case of *Robertson v. Allan Brothers*, (1908) 77 L. J. (K. B.) 1072, which was relied on by the respondents, was distinguishable; the injured man in that case had got home, so to speak, he had actually returned to the ship and fell into the hold from the deck. The present case was entirely covered by the observations of the Court in *Brice v. Edward Lloyd, Ltd. (supra)*, and the appeal must be allowed.

Fletcher Moulton L.J. said that in considering the question whether the accident arose “out of” the employment, the Court must bear in mind s. 1, sub-s. 2 (c) of the Act of 1906, which provided that if it was proved that the injury to the workman “is attributable to the serious and wilful misconduct of that workman,” compensation was to be disallowed, “unless the injury results in death or permanent disablement.” This sub-section shewed that the fact that the injury was caused by wilful misconduct did not prevent it being an injury arising “out of” the employment. The tests therefore laid down by *Brice v. Edward Lloyd, Ltd. (supra)*, were not satisfactory. The deceased in going to his work had been guilty of disobedience, but conduct of this kind was not sufficient to take the deceased outside the scope of his employment; so to hold would be to disregard entirely the provisions of s. 1, sub-s. 2 (c). In *Robinson v. Allan Brothers (supra)* the deceased had returned to the ship by the cargo skid, the use of which for this purpose was strictly forbidden, and yet the Court held that his dependants were entitled to compensation for that the accident had arisen “out of” his employment, notwithstanding his breach of discipline. Here the deceased was in the colliery and on his way to the place where he had to work; true he was going there in a forbidden way, but the accident nevertheless arose out of the employment, and his dependants were entitled to compensation. For this reason he thought the appeal should be dismissed. *BARNES v. NUNNERY COLLIERY CO.*

**C. A. [1910]
W. N. 248**

— Negligence of servant—Liability of guardians to pauper inmate in action of tort—Common employment.
See *POOR LAW*. 4.

4. — Negligence on the part of employer and also of third party—Compensation recovered by workman—Action for indemnity by employer against third party—*Workmen's Compensation Act*, 1906 (6 Edw. 7, c. 58), s. 6.

The action was brought under s. 6 of the *Workmen's Compensation Act*, 1906, by the plts., who had been the employers of two

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workmen, against the defts., who were the owners of a staith on the river Wear, for indemnity in respect of compensation which the plts. had been rendered liable to pay under the before-mentioned Act to one of the workmen and to the dependants on the other, respectively.

The facts, so far as material to the point of law decided, were as follows:—The plts. were the owners of a steamship which was proceeding to a berth on the before-mentioned staith for the purpose of taking in a cargo of coals. The two workmen in their employ were in a boat taking a hawser from the vessel to the staith, when, in consequence, as the learned commissioner found, of negligence on the part both of a servant of the defts. employed at the staith and of the officers employed by the plts. in charge of the vessel, the boat was upset, with the result that one of the workmen was drowned and the other was injured. The plts. having been thereupon compelled to pay compensation under the *Workmen's Compensation Act*, 1906, sued the defts. for indemnity, as above-mentioned.

The learned commissioner held that the plts. having, through their servants, been guilty of negligence contributory to the accident, were not entitled to be indemnified by the defts. under s. 6 of the *Workmen's Compensation Act*, 1906, and therefore gave judgment for the defts.

The C. A. were of opinion that the construction put by the learned commissioner upon s. 6 of the *Workmen's Compensation Act*, 1906, was correct. Vaughan Williams L.J. and Buckley L.J., Kennedy L.J. dissenting, were further of opinion upon the facts that, if there was any negligence which caused the accident it was negligence on the part of those in charge of the ship and not of the defts.'s servant, and for that reason also s. 6 did not apply. Appeal dismissed. *CORY & SONS, LD. v. FRANCE, FENWICK & CO.*

C. A. [1910] W. N. 215

— Negligent repair—Injury to driver arising from defect—Liability of contractor.

See *NEGLECTANCE*. 3.

5. — Nursing association—Contract to supply nurse—Injury to patient through negligence of nurse—*Master's liability*.

The defts. were an association whose object was to provide for the supply of duly qualified nurses to attend on the sick in a certain neighbourhood. The association for that purpose appointed and paid salaries to nurses, for whose services they made charges to persons on whose application the nurses were supplied. The association issued printed rules and regulations with regard to the duties of their nurses and other matters with a view as well to the protection of the nurses as to ensuring their efficiency while engaged in nursing. These regulations provided for the exercise of certain supervision over the nurses by a superintendent appointed by the association; but, with regard to the work of a nurse while engaged in nursing a patient, it was provided (*inter alia*) that, while so engaged, she should not absent herself from duty without the permission of the patient's friends, and that she should implicitly follow

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the instructions of the patient's medical man. A form which was sent out by the association upon supplying nurses, indicated to the person applying for the nurse that; while engaged in nursing the patient, the nurse was to be regarded as employed by that person. Two nurses were supplied by the association for the purpose of nursing the female plt. through an operation which was about to be performed upon her by a medical man in attendance upon her. An injury was occasioned to the female plt. through the negligence of the nurses, or one of them, while engaged in nursing her:—

Held, that, upon the true construction of the documents in relation to the supply of the nurses, the contract of the association was, not to nurse the female plt. through the agency of the nurses as their servants, but merely to procure for her duly qualified nurses, and that the nurses were not, in nursing the female plt., acting as the servants of the association; and therefore the defts. were not liable in respect of negligence of the nurses supplied by them. *HALL v. LEES*

C. A. [1904] 2 K. B. 602

Note:

This case was referred to by C. A., *Hillyer v. Governors of St. Bartholomew's Hospital*, [1909] 2 K. B. 820. *See Hospitals*. 1.

6. — Servant of one person lent to another—Negligence of servant—Control of servant.

A co., which carried on the business of iron-founders, entered into a written contract with the deft. for the hire from him of a van, horse, and driver, for the purpose of delivering goods to their customers. The contract provided that the deft. was to supply a capable man to drive and take charge of the van and horse, that the man in deft.'s employ, and all charges and claims whatsoever in reference to the van, horse and man were to be paid for by the deft., who was to be responsible for the same, and that the co. were only to be responsible for the payment for the van, horse, and man at a certain rate per annum by monthly payments. The driver of a van supplied to the co. by the deft. under the above-mentioned contract was guilty of negligence when delivering a girder at the premises of a customer of the co. by which the plt., a servant of the customer, was injured. There was no evidence that any one representing the co. exercised any control over the driver in respect of the delivery of goods for the co.:—

Held, that, upon the true construction of the contract, the implication was that the control of the driver, when delivering goods for the co., remained in the deft., and that the deft. was therefore liable for his negligence. *WALDOCK v. WINFIELD*

**C. A. [1901] W. N. 145;
[1901] 2 K. B. 596**

— Shipping—Collision—Negligence of defendant's servant causing original damage—Liability for consequential damage.
See SHIPPING—Collision. 46.

Practice.

— Acceptance of scheme under Workmen's Compensation Act, 1897—Negligence.
See MASTER AND SERVANT—Compensation. 2.

MASTER AND SERVANT (Practice)—*continued.*

— Action, Cause of—Inducing employer to break contract.

See ACTION. 2.

1. — *Appeal—Arbitration—Arbitrator appointed by county court judge—Right of appeal—Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), Sched. II. (2), (3), and (4).*

An appeal will not lie direct to the C. A. upon the award of an arbitrator appointed by a county court judge under clause 2 of the 2nd schedule to the Workmen's Compensation Act, 1897. *GIBSON v. WORMALD & WALKER, LD.*

C. A. [1904] 2 K. B. 40

2. — *Appeal—Refusal to direct review of taxation of costs—Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), Sched. I., clause 12; Sched. II., clause 4.*

An appeal will not lie to the C. A. under clause 4 of the Second Schedule to the Workmen's Compensation Act, 1897, against the refusal of a county court judge to direct a review of taxation of costs of an application under clause 12 of the First Schedule to review a weekly payment. *RIGBY & Co. v. COX*

C. A. [1904] 1 K. B. 358

Note.

See Rigby & Co. v. Cox (No. 2), [1904] 2 K. B. 208, No. 10, *below*.

3. — *Appeal—Refusal to order payment by insurers into savings bank—Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), s. 5; Sched. II., clause 4.*

An appeal will not lie to the C. A. under clause 4 of the Second Schedule to the Workmen's Compensation Act, 1897, against the refusal of a county court judge to direct insurers to pay insurance money into the Post Office Savings Bank in accordance with the provisions of sub-s. 1 of s. 5 of the Act. *LEECH v. LIFE AND HEALTH ASSURANCE ASSOCIATION*

C. A. [1901] W. N. 64; [1901] 1 K. B. 707

4. — *Appeal—Time—Date from which time runs—Award in favour of respondents—Workmen's Compensation Act, 1906 (6 Educ. 7, c. 58), Sched. II., par. 4—Workmen's Compensation Rules, 1907, r. 28—R. S. C., Order LIX., r. 12.*

Application by a workman for an extension of the time for appealing against an award of a county court judge under the Workmen's Compensation Act, 1906.

The application was rendered necessary by reason of a doubt in the associates' office as to the date from which the time for appealing ran where an award under the Workmen's Compensation Act was made in favour of the respondents. If the time began to run from the date when the award was delivered, the notice of appeal was out of time, but if it began to run from the date when the award was signed, it was in time. The question turned upon the construction of Order LIX., r. 12.

The C. A. held that the application was justified in the circumstances. Upon the construction of Order LIX., r. 12, the time from which the period should be calculated was the time at which the award was signed. The rule distinguished between a judgment or order and

MASTER AND SERVANT (Practice)—*continued.*
a refusal, and in the latter case provided that the time should run from the date of the refusal. But this was not a case to which that part of the rule applied, because in cases under the Workmen's Compensation Act, 1905, there must be an award in any event. The county court judge did not dismiss an unsuccessful application as in an action, but awarded that the applicant was not entitled to compensation. Rule 28 of the Workmen's Compensation Rules, 1907, clearly shewed that an award was not perfected until it was signed. The costs would be the applicant's in any event. *CLAYTON v. JONES' SEWING MACHINE CO., LD.* C. A. [1908] W. N. 253

5. — *Appeal to High Court—County court—Order for payment by insurers in respect of employer's liability—Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), s. 5—County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 120.*

An appeal lies to the K. B. Div. against an order made by a county court judge under s. 5 of the Workmen's Compensation Act, 1897. *MORRIS v. NORTHERN EMPLOYERS' MUTUAL INDEMNITY CO.* - C. A. [1902] W. N. 113; [1902] 2 K. B. 165

— *Appeal to High Court—Order under s. 5 of Workmen's Compensation Act, 1897.*
See COUNTY COURT—Appeal. 1.

6. — *Appeal to the House of Lords from Scotland—Competency—Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), Sched. II., s. 14 (c).*

By s. 14 (c) of the 2nd schedule to the Workmen's Compensation Act, 1897, which applies to Scotland, "Any application to the sheriff as arbitrator shall be heard, tried, and determined summarily in the manner provided by the fifty-second section of the Sheriff Courts (Scotland) Act, 1876, save only that parties may be represented by any person authorised in writing to appear for them, and subject to the declaration that it shall be competent to either party within the time and in accordance with the conditions prescribed by Act of Sederunt, to require the sheriff to state a case on any question of law determined by him, and his decision thereon in such case may be submitted to either Division of the Court of Session, who may hear and determine the same finally, and remit to the sheriff with instructions as to the judgment to be pronounced":—

Held, that in cases within this enactment no appeal lies to the House of Lords from a decision of the Court of Session. *OSBORNE v. BARCLAY, CURLE & CO.* H. L. (Sc.) [1901] A. C. 269

7. — *Arbitration—Condition precedent to jurisdiction of arbitrator—Question as to liability to pay, or as to amount or duration of compensation—Agreement by which question settled—Injury occasioned by accident—Incapacity for work—Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), s. 1, sub-s. 3.*

Where, a workman having been incapacitated for work by an accident arising out of and in the course of his employment, his employers had, since the second week after the accident, paid to him, by way of compensation, weekly payments

MASTER AND SERVANT (Practice)—*continued.*
of the full amount mentioned in Sched. I., s. 1 (b), of the Workmen's Compensation Act, 1897, and promised to continue to do so during the period of his incapacity; but the workman, nevertheless, filed a request for arbitration in the county court, and the county court judge made an award for compensation in his favour:—

Held, that, under the Workmen's Compensation Act, 1897, s. 1, sub-s. 3, it was a condition precedent to the jurisdiction of the county court judge that a question should have arisen as to the liability to pay, or as to the amount or duration of, compensation under the Act, and that, no such question having arisen, the county court judge had no jurisdiction to make an award. *FIELD v. LONGDEN & SONS*

C. A. [1901] W. N. 224; [1902] 1 K. B. 47

8. — *Claim made under the Workmen's Compensation Act, 1897—Withdrawal of claim—Subsequent action under Employers' Liability Act, 1880 (43 & 44 Vict. c. 42)—Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), s. 1, sub-s. 2 (b).*

A workman injured by accident in the course of his employment claimed compensation from his employer under the Workmen's Compensation Act, 1897, and filed a request for arbitration. The employer having filed his answer, the workman gave notice withdrawing his claim for compensation, and subsequently brought an action for damages under the Employers' Liability Act, 1880, in respect of the same accident:—

Held, that the claim made under the Workmen's Compensation Act, 1897, was not a bar to the subsequent action for damages under the Employers' Liability Act, 1880. *ROUSE v. DIXON*
Div. Ct. [1904] 2 K. B. 628

Note.

This case was discussed and explained by C. A., *Cribb v. Kynoch, Ltd.* (No. 2), [1908] 2 K. B. 551. *Master and Servant—Infants. 7.*

— *Costs—Compensation.*

See next Case.

9. — *Costs—Lump sum—Right to taxation—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), Sched. II. (7.)—Workmen's Compensation Rules, 1907, r. 61 (1.).*

The county court judge had awarded a lump sum of 5 guineas for the applicant's costs, and the only question in this appeal was whether he had power or jurisdiction to make such an order.

The C. A. allowed the appeal.

Cozens-Hardy M.R. said the language of sub-s. 7 of Sched. II. of the Act of 1906 was express "The costs . . . shall not exceed the limit prescribed by rules of court and shall be taxed in manner prescribed by those rules." Rule 61 (1.) also provided for taxation of costs. It was a common practice in the High Court for a judge to make an order for a lump sum for costs, but in the High Court there were rules which expressly authorized this being done; there was no such rule in the Workmen's Compensation Rules, 1907, and the wording of the Act was expressly to the contrary. The case must therefore be remitted to the county court judge to make a proper order as to costs, which

MASTER AND SERVANT (Practice)—*continued*.
could then be taxed, if necessary, in the usual way. *BEADLE v. "S. NICHOLAS"*

C. A. [1909] W. N. 227

— Costs, Security for—Appeal from county court.
See COSTS. 59.

10. — *Costs — Workmen's compensation — Review of amount fixed by award or agreement — Interlocutory or original proceeding—Discretion of county court judge — Practice — Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), Sched. I. clause 12.*

A county court judge has no jurisdiction to give a general direction to the registrar that the costs of all applications under clause 12 of Sched. I. of the Workmen's Compensation Act, 1897, to vary the amount of compensation fixed by award or agreement shall be treated as though the application were a mere interlocutory application in the matter of the arbitration, and not an original arbitration or proceeding. *RIGBY & Co. v. Cox (No. 2)* Div. Ct. [1904] W. N. 101 ; [1904] 2 K. B. 208

11. — *County court—Employer and workman —Dismissal of action under Employers' Liability Act, 1880 (43 & 44 Vict. c. 42)—Application for compensation under Workmen's Compensation Act, 1897—Right of appeal from dismissal of action — Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), s. 1, sub-ss. 2, 4.*

Where, upon the dismissal of an action under the Employers' Liability Act, 1880, an application is made under s. 1, sub-s. 4, of the Workmen's Compensation Act, 1897, for an assessment of compensation under that Act, the making of that application does not amount to the exercise of an option on the part of the plt. so as to estop him from appealing against the dismissal of the action under the Employers' Liability Act, and the plt. is entitled to appeal against both decisions.

Edwards v. Godfrey, [1899] 2 Q. B. 333, considered. *ISAACSON v. NEW GRAND (CLAPHAM JUNCTION), LD.* Div. Ct. [1903] 1 K. B. 539

Note.

This case was discussed by C. A., *Neale v. Electric and Ordnance Accessories Co.*, [1906] 2 K. B. 556. See *Master and Servant — Infants*. 9.

12. — *Decision of county court judge on preliminary question—Appeal to Court of Appeal—Jurisdiction—Certified scheme—Rules of management—Rules not certified—Scheme under Act of 1897—Commencement of Act of 1906 — Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 15 ; Sched. II. (4.)—Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), s. 3.*

Under clause 4 of Sched. II. to the Workmen's Compensation Act, 1906, an appeal now lies to the C. A. from a decision by a county court judge on a preliminary question of law, or as to his jurisdiction to entertain proceedings, and not, as formerly, only after an award has been made.

A scheme of compensation certified by the Registrar of Friendly Societies under s. 3 of the Workmen's Compensation Act, 1897, cannot,

MASTER AND SERVANT (Practice)—*continued*.
unless recertified under the Act of 1906, apply to an accident happening after the commencement of the Act of 1906, though within the six months at the end of which the scheme is declared to be revoked by s. 15.

A scheme providing a fund for the compensation of the servants of a ry. co. provided that the fund should be managed by a committee thereby constituted according to rules (not inconsistent with the terms of this scheme) to be framed from time to time by the committee. Rules had been framed containing a contract by the workmen that the Act should not apply, and other provisions held by the Court not to be in accordance with the scheme. The scheme was certified but the rules were not :—

Held, that there was no properly certified scheme excluding the Act. *MOSS v. GREAT EASTERN RY. CO.* C. A. [1909] W. N. 82 ; [1909] 2 K. B. 274

13. — *Default in payment of compensation—Committal order, Jurisdiction to make—"Enforceable as a county court judgment"—Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), Sched. II. (8.)—Debtors Act, 1869 (32 & 33 Vict. c. 62), s. 5.*

The memorandum of the compensation awarded by an arbitrator under the Workmen's Compensation Act, 1897, when recorded in the manner prescribed by Sched. II. (8.) of the Act, may be enforced by an order of committal under the Debtors Act, 1869, s. 5. *BAILEY v. PLANT* C. A. [1901] 1 K. B. 31

14. — *Defence of no claim being made within statutory period—Evidence of claim—Accident—Claim for compensation—Particulars of demand and answer—Admission from answer—Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), s. 2—Workmen's Compensation Rules, 1898—1900, r. 17.*

A claim for compensation under the Workmen's Compensation Act, 1897, need not be in writing.

The respondents to an application for compensation under the Workmen's Compensation Act, 1897, by their answer stated as a fact which they desired to bring to the notice of the arbitrator that within a few weeks of the accident they had paid to the applicant a certain sum which he had accepted in satisfaction of all claims, and they denied any further liability under the Act. The answer also raised the defence that no claim for compensation was made within six months of the accident. The county court judge dismissed the application on the ground that there was no evidence of a claim having been made within the statutory six months :—

Held, that the statement in the answer as to the payment of compensation was an admission of fact on which the applicant was entitled to rely and afforded some evidence of a claim having been made, and that the application ought to be remitted to the county court judge for a rehearing.

The nature of the particulars of demand and the answer under the Workmen's Compensation

MASTER AND SERVANT (Practice)—*continued*.
Act, 1897, discussed. *LOWE v. M. MYERS & SONS* -
C. A. [1906] W. N. 119 ;
[1906] 2 K. B. 265

— Discharge of judgment by consent—Compensation—Employers' liability.
See HOUSE OF LORDS. 2.

15. — *Estoppel—Infant workman—Injury to workman—Action against employer, Failure of—Assessment of compensation by the judge—Estoppel—Workmen's Compensation Act, 1897* (60 & 61 Vict. c. 37), s. 1, sub-ss. 2, 4.

Where, upon the failure at the trial of an action brought by a workman under age, by his next friend, against his employers to recover damages in respect of personal injuries occasioned to the plt. by an accident arising out of and in the course of his employment, an application was made to the judge who tried the action to assess compensation to the workman under the Workmen's Compensation Act, 1897, s. 1, sub-s. 4, and the judge accordingly awarded such compensation :—

Held, that the plt. was estopped by the election to take such compensation and the award thereupon made from proceeding further with the action, and therefore a subsequent application by him for judgment on a new trial in the action could not be entertained.

Isaacson v. New Grand (Clapham Junction), Ltd., [1903] 1 K. B. 539, discussed. *NEALE v. ELECTRIC AND ORDNANCE ACCESSORIES CO.*

C. A. [1906] W. N. 169 ; [1906] 1 K. B. 558

16. — *Interrogatories—Discovery—Jurisdiction of county court judge—Workmen's Compensation Act, 1906* (6 Edw. 7, c. 58), Sched. II. (4) — *Workmen's Compensation Rules, 1907*, r. 27.

A county court judge sitting to hear an application for compensation under the Workmen's Compensation Act, 1906, is acting as an arbitrator only, and has no jurisdiction to make an order for discovery before hearing either by affidavit of documents or by interrogatories.

Mountain v. Parr, [1899] 1 Q. B. 805, applied. *SUTTON v. GREAT NORTHERN RY. CO.*

C. A. [1909] W. N. 177 ; [1909] 2 K. B. 791

17. — *Jurisdiction of county court where accident occurred—Injury by accident in England—Employer resident in Scotland—Workmen's Compensation Act, 1897*, (60 & 61 Vict. c. 37), 2nd Schedule, clause 9—*Workmen's Compensation Rules*, r. 15.

When a workman resident in England is injured by an accident occurring in England, but his employer resides in Scotland, proceedings for compensation under the Workmen's Compensation Act, 1897, may be taken in the county court of the district in which the accident occurred, and service of the necessary notices may be effected by registered post. *REX v. OWEN*

Div. Ct. [1902] 2 K. B. 436

18. — *Medical examination, Obligation to submit to—Medical referee—Condition precedent to claim for further compensation—Workmen's Compensation Act, 1897* (60 & 61 Vict. c. 37), Sched. I., clause 11.

The provision in clause 11 of the First Schedule of the Workmen's Compensation Act,

MASTER AND SERVANT (Practice)—*continued*.

1897, for suspension of the payment of compensation, "if the workman refuses to submit himself to such examination," refers to the examination to which, under that clause, the workman may be required by the employer to submit, namely, an examination by a medical practitioner, provided by the employer, or, if the workman prefers it, by one of the medical referees appointed under the Second Schedule of the Act, and not to the examination by one of the medical referees, to which the clause gives the workman an option to submit, if dissatisfied by the certificate of the medical practitioner provided by the employer : and, therefore, it is not a condition precedent to the workman's right to claim further compensation that he should have exercised that option. *NEAGLE v. NIXON'S NAVIGATION CO., LD. EDWARDS v. GUEST, KEEN & NETTLEFOLDS, LD.* - C. A.
[1904] W. N. 16 ; [1904] 1 K. B. 339

19. — "*Proceeding against employer—Action against third person—Option, Exercise of—Payments by employer—Receipts without prejudice—Workman—Personal injury—Compensation—Damages—Workmen's Compensation Act, 1897* (60 & 61 Vict. c. 37), s. 6.

Where, as between an employer and his workman who has received personal injuries in the course of his employment, there is a payment of money to and a receipt given by the workman under the Workmen's Compensation Act, 1897, and the receipt is not qualified either in terms or by a consideration of the surrounding circumstances, that is sufficient to bring the case within the operation of s. 6, and to put the workman in the position of having exercised the option given him by the section—of proceeding, either at law for damages against the person legally liable for the injury, or against the employer for compensation under the Act, but not against both—and so to preclude him from suing the person legally liable.

Semble, per Romer L.J. . Proceedings by a workman against his employer, under s. 6, for compensation for personal injuries, should not be held to irrevocably bind the workman in the exercise of the option given him by the section unless they have resulted in some compensation, as such, being paid to and received by the workman in such a manner as to bind both parties.

A workman who had been injured in the course of his employment, gave notice of his injury to his employer, but without formally claiming compensation. The employer, by an agent, then made a first weekly payment, for which the workman, who was then in hospital, signed a receipt stating that the sum paid had been received "on account of compensation which may be or become due to me under the Workmen's Compensation Act, 1897, in respect of the accident which occurred to me on," &c. Upon the employer's agent bringing him the second payment, the workman stipulated that he would only accept that, and all future payments "without prejudice." To this the agent assented, whereupon the second and subsequent payments were accepted by the workman, he giving on each occasion a receipt in the same form as

MASTER AND SERVANT (Practice)—continued.

before, but not stating in terms that the payment was "without prejudice." Eventually he refused to accept any further payments from his employer, and brought an action for damages against the person legally liable for his injury:—

Held, reversing the judgment of Jelf J., that, in the circumstances, the reservation of "without prejudice" was applicable to the first as well as to all subsequent payments, so that the first did not irrevocably bind the plt. as an exercise of the option given him by s. 6, and thus preclude him from bringing his action against the other person and recovering damages.

Rendall v. Hill's Dry Docks and Engineering Co., Ltd., [1900] 2 Q. B. 245, explained.

Little v. MacLellan, Ltd., (1900) 2 F. 387, distinguished. *OLIVER v. NAUTILUS STEAM SHIPPING Co.* **C. A. [1903] W. N. 132 ; [1903] 2 K. B. 639**

20. — Right to bring action in High Court—Accident—Compensation—Workman in employment of sub-contractor—Agreement between undertaker and workman—Liability of sub-contractor to indemnify undertaker—Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), s. 1, sub-s. 3; s. 4.

A workman in the employment of a sub-contractor sustained a personal injury by accident under circumstances that entitled him to compensation under the Workmen's Compensation Act, 1897. The undertaker who had contracted to do the whole of the work agreed to pay to the workman during incapacity one-half of his average weekly earnings, and made payments accordingly. In an action brought by the undertaker to recover from the sub-contractor the amount so paid:—

Held, affirming the judgment of Wills J., that there was nothing in the Act which affected the right of the plt. to bring the action in the High Court. *EVANS v. COOK, LANCASHIRE AND YORKSHIRE ACCIDENT INSURANCE Co., LD. (THIRD PARTIES)* **C. A. [1904] W. N. 193 ; [1904] 1 K. B. 53**

— Trade union.

See under **TRADE UNION**.

21. — Unsuccessful proceedings under the Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37)—Right to institute subsequent proceedings independently of the Act.

When a workman has proceeded to have compensation for his injuries assessed under the Workmen's Compensation Act, 1897, and is defeated by reason of a ruling that his case does not come within the provisions of the Act, he is not thereby prevented from instituting subsequent proceedings independently of the Act, to enforce any previously existing remedy to which he may have been entitled.

In Sept., 1900, the plt. instituted proceedings in the Recorder's Court for compensation, under the Workmen's Compensation Act, for injuries sustained on Aug. 4, 1900. On Oct. 18, 1900, the Recorder dismissed the application on the ground that the plt., not having been employed for at least two weeks, was not within the Workmen's

MASTER AND SERVANT (Practice)—continued.

Compensation Act, on the authority of two decisions of the C. A. in England. These decisions were overruled by the House of Lords on Dec. 14, 1900. The plt. brought an action for damages for negligence in the Superior Courts with respect to the same injuries as were the subject of the proceedings in the Recorder's Court:—

Held, by the K. B. Div. (Boyd J. dissenting), that the proceedings in the Recorder's Court were no bar to the action in the Superior Court:—

Affirmed by the C. A. (FitzGibbon and Walker L.JJ., diss. Holmes L.J.). *BECKLEY v. SCOTT & Co.* **C. A. (Ir.) [1903] W. N. 173**

Note.

Referred to by C. A., *Taylor v. Hampstead Colliery Co.*, [1904] 1 K. B. 838, 847. See *Master and Servant—Compensation. 2.*

Decision of the majority of the Court in, disapproved by C. A., *Cribb v. Kynoch (No. 2)*, *Ld.*, [1908] 2 K. B. 551. See *Master and Servant—Infants. 7.*

22. — Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), Sched. II. (8)—Memorandum of agreement—Registration—Ministerial or judicial act—Appeal.

The applicant, a brewers' drayman, was injured by an accident while working in the course of his employment. The respondents, the applicant's employers, were insured under a policy containing a clause whereby the insurance co. contracted to pay to any workman of the assured who was injured by accident in the course of the employment, under circumstances giving rise to no legal liability on the part of the employers, half his weekly wages during the period of disablement, not exceeding six months in all.

As the place where the accident happened was not one of those mentioned in s. 7, sub-s. (1), the insurance co. denied that there was any legal liability on the part of the respondents, but paid the half wages to them under the above clause from the date of the accident, and the respondents paid the money so received by them over to the applicant, but without informing him of their reason for paying it. On the expiry of the six months the payment was discontinued. It being then too late for the applicant to make a claim for compensation, the time limited by s. 2 for making it having expired, the applicant claimed that the respondents had by paying him half wages for the six months, and thereby inducing a belief in his mind that they admitted their liability to pay him compensation under the Act, impliedly agreed to pay him such compensation, and he accordingly applied to the registrar of the county court to register a memorandum of that implied agreement. The registrar refused to register it. The applicant then applied to the county court judge, who held that such an agreement was to be inferred from the respondents' conduct, and ordered it to be registered.

The Court declined to follow the decision of the Ct. of Sess. (*Binning v. Easton & Sons*, 8 Fraser, 407), holding that the order of the county court judge was a judicial order, and was

MASTER AND SERVANT (Practice)—*continued*.
appealable under s. 120 of the County Courts Act, 1888, and upon the merits they held that there was no evidence upon which the judge could find the existence of the alleged agreement. Appeal allowed. **JOHNSTON v. MEW, LANGTON & Co.** Div. Ct. [1907] W. N. 156

Restraint of Trade.

See under RESTRAINT OF TRADE.

Schools.

See under SCHOOLS.

Scope of Employment.

— Sale by servant—Beer—Offences.
See LICENSING ACTS. 53.

Scottish Law.

See under SCOTTISH LAW.

Servants' Characters.

— Criminal law.

See under CRIMINAL LAW—Servants' Characters.

Shop Clubs.

Shop Clubs Act, 1902 (2 Edw. 7, c. 21), prohibits compulsory membership of unregistered shop clubs or thrift funds, and regulates such as are duly registered.

Theatre.

1. — *Common employment—Actress engaged at theatre—Implied undertaking of risks of employment—Negligence of fellow employee—Burden of proof—Construction of contract.*

The plt. was engaged by the defts., a theatre co., to perform in the chorus in a pantomime. On the close of a performance, the plt. was, in leaving the stage, passing by a place where scene-shifters were shifting the scenery, when she was injured by something which fell on her head. In an action brought by the plt. against the defts. to recover damages in respect of the injury so occasioned to her, evidence was given for the plt. of the above facts, but there was no evidence as to the precise manner in which, or by whose negligence, the accident was caused:—

Held, that the case came within the rule that a person employed impliedly undertakes, as incidental to his employment, the risk of negligence on the part of a fellow employee engaged in the same employment, and that, inasmuch as the plt. had given no evidence to show that the accident had been caused by the negligence of the deft. co., or of any person for whose negligence they would be responsible, the action was not maintainable.

A clause in a written contract of employment, providing that, notwithstanding anything contained in the Employers' Liability Act, 1880, the employer shall not be liable to the employee for injury occasioned to him through the negligence of any person in the service of the employer entrusted with superintendence, or to whose orders the employee was bound to conform, does not rebut the legal implication that the employee undertakes the risk of negligence by any fellow

MASTER AND SERVANT (Theatre)—*continued*.
employee in the same employment. **BURR v. THEATRE ROYAL, DRURY LANE, LD.**

C. A. [1907] W. N. 48; [1907] 1 K. B. 544

Theft.

— Liability of bailee—Theft by servant—Scope of employment.

See MASTER AND SERVANT—Bailment.
1.

Trade Union.

See under TRADE UNION.

Truck Acts.

1. — *Contract for deduction in respect of fines—Specification of Acts or omissions in respect of which fine may be imposed—Truck Act, 1896 (59 & 60 Vict. c. 44), s. 1.*

By s. 1, sub-s. 1, of the Truck Act, 1896, an employer may not contract with a workman for any deduction from wages in respect of fines unless (inter alia) "the contract specified the acts or omissions in respect of which the fine may be imposed."

One of the rules of a factory provided that "all workers shall observe good order and decorum while in the factory," and imposed a fine of sixpence or less upon any worker guilty of an infringement of the rule:—

Held, that the rule, although not specifying the particular acts or omissions amounting to such a breach of good order or decorum as to justify the infliction of a fine, was a sufficient compliance with the requirements of the section. **SQUIRE v. BAYER & Co.** [1901] 2 K. B. 299

2. — *Deduction from wages—Set-off—Debt due from workman to employer—Truck Act, 1831 (1 & 2 Will. 4, c. 37), s. 3.*

The Truck Act, 1831, does not allow an employer when paying wages to a workman to make any deductions except those expressly sanctioned by the Act. Therefore he cannot deduct money which a Court of summary jurisdiction has ordered the workman to pay to the employer in respect of breaches of contract to work.

The decision of the C. A. [1904] W. N. 97; [1904] 2 K. B. 44, reversed. **WILLIAMS v. NORTH'S NAVIGATION COLLIERIES (1889) LD.**

H. L. (E.) [1906] W. N. 62; [1906] A. C. 136

"Undertakers."

See under MASTER AND SERVANT—Compensation.

Unemployed Workmen.

Unemployed Workmen Act, 1905 (5 Edw. 7, c. 18), is an Act to establish organization with a view to the provision of employment or assistance for unemployed workmen in proper cases.

The Temporary Regulations (Organization for Unemployed), Jan. 13, 1906. Price 1d. St. R. & O. 1906, No. 7.

Unemployed Workmen. The Regulations (Organization for Unemployed) 1906. (Record Paper Amendment.) Dated Jan. 13, 1906. Price 1d. St. R. & O. 1906, No. 6.

MASTER AND SERVANT (Unemployed Workmen)—continued.

- Unemployed Workmen Act, 1905—Councillor
- Disqualification—Paid office under the council—Distress committee—Registrar and inquiry agent.

See LOCAL GOVERNMENT. 23.

Wages.

1. — *Wages—Deductions in respect of damaged goods*—“Workman”—*Employers and Workmen Act*, 1875 (38 & 39 Vict. c. 90), s. 10—*Truck Act*, 1896 (59 & 60 Vict. c. 44), s. 2.

The respondents, a firm of lacemakers, whose premises were a factory within the meaning of the *Factory and Workshop Act*, 1901, were in the habit in common with other lacemakers of handing finished lace after its removal from the machines to women called “clippers” for the purpose of having superfluous threads and material removed. The clippers, who were not employed exclusively by any one firm, undertook to get lace clipped, and applied to the manufacturers for lace, which they took home with them for that purpose. The lacemakers had no control over the clippers, who might and often did employ others to assist them in the work; the clippers might execute the work themselves or give it to others to execute, or might return it unexecuted. The clippers were responsible in case of the non-return of the lace, and were paid at the end of each week according to the work done; they were required to pay for damage done to the lace in clipping.

Lace was handed by the respondents to two clippers; one was an outsider who had never worked in the respondents' factory, and did the clipping at home herself; the other was employed daily in the factory, and after it was closed at night she occasionally took the work home to do, and was assisted by her daughter. The lace handed to the two clippers having been damaged, a sum of sixpence was in each case deducted from the amount due to them at the end of the week, the conditions of s. 2, of the *Truck Act*, 1896, as to the making of deductions in respect of damaged goods were not complied with, and the deductions were illegally made if the clippers were workwomen within the Act:—

Held, that, as the clippers were not bound by the terms of their contracts to execute the work or any part of it themselves, they were not workwomen within the meaning of s. 10 of the *Employers and Workmen Act*, 1875, and, therefore, were not entitled to the protection of s. 2 of the *Truck Act*, 1896.

Ingram v. Barnes, (1857) 7 E. & B. 115, 132, and *Pillar v. Llynvi Coal Co.*, (1869), L. R. 4 C. P. 752; 38 L. J. (C.P.) 294, followed. *SQUIRE v. MIDLAND LACE CO.*

Div. Ct. [1905] 2 K. B. 448

Women.

Employment of Women Act, 1907 (7 Edw. 7, c. 10), is an Act to repeal s. 57 of the *Factory and Workshop Act*, 1901, and part of s. 7 of the

MASTER AND SERVANT (Women)—continued.

Coal Mines Regulation Act, 1887, relating to the employment of women and children.

MATCHES—*White Phosphorus Matches Prohibition Act*, 1908 (8 Edw. 7, c. 42), prohibits the Manufacture, Sale, and Importation of Matches made with White Phosphorus, and for other purposes in connection therewith.

MATRIMONIAL CAUSES ACTS.

See under DIVORCE.

- After-acquired property—Covenant—“During the marriage”—Judicial separation.

See SETTLEMENT. 15.

- Husband and wife.

See under HUSBAND AND WIFE.

- Legitimacy declaration.

See under LEGITIMACY DECLARATION.

MAURITIUS—*Colonial Stock Act*, 1900 (63 & 64 Vict. c. 62)—*Notice given in respect of Mauritius Inscribed Stock*, dated March 24, 1906. Reprint from *W. N. 1906* (April 7), p. 99. See CURRENT INDEX, 1906 p. lxix.

1. — *Mahomedan law—Administration of wakf estate—Rights of wakifs—Practice of Court—Scheme of administration—Charter of incorporation superseded.*

The wakf properties in suit, situated at Port Louis, in the island of Mauritius, were as to a considerable portion of them successively purchased from 1852 onwards “for the whole Mahomedan congregation of the island,” consisting of Indian immigrants from Cutch, Hallal, and Surat, all of the Soonee school, and their descendants, and were dedicated by the deeds inalienably for the purpose of a mosque. The overwhelming majority of the congregation belonged to the Cutchee class, and in 1877 the deeds of purchase for the first time declared that the properties comprised therein were bought on behalf of the Cutchees, a committee of whom was to administer them and all the other properties belonging to the mosque. Later purchases were expressed to be made, some on behalf of the Cutchees, others on behalf of the congregation. In 1903 two deeds were executed by a body of Cutchees by which they formed themselves into a society afterwards incorporated under Ordinance 22 of 1874 for certain pious and charitable purposes, declared that they brought into the society in full ownership all the said purchased properties, with extensive powers of selling and letting the same, other than the mosque and its accessories, of which latter they reserved to themselves the exclusive management.

In actions brought respectively by the Hallaye and Soortee classes the Court below ordered the deeds to be set aside so far as they gave exclusive administration as of right to the Cutchees, and substituted for the portion thus set aside a scheme giving to the plts. a share in the administration, but subject to future modifications:—

Held, in appeal, that as the deeds could not be maintained consistently with the rights of the plts. they should be set aside in toto.

MAURITIUS—*continued*.

Held, further, that as the charter of incorporation in consequence became inoperative, the amending scheme must also be set aside. The Court could neither grant a new charter nor under the circumstances amend the superseded one. **IBRAHIM ESMAEL v. ABDOOL CARRIM PEERMAMODE**; **IBRAHIM ESMAEL v. ABOO BAKAR MAMODE TAHER**

P. C. [1908] C. A. 526

—Unseaworthiness—Presumption—Evidence—Cause of vessel's loss unascertainable—Appeal from Mauritius.
See SHIPPING—Seaworthiness. 1.

MAXIMS OF LAW—"Actio personalis moritur cum persona."

See MASTER AND SERVANT—Fatal Accidents Act. 1.

—Profit à prendre in alieno solo.
See FISHERY. 8.

—Consensus ad idem. **VAN PRAAGH v. EVERIDGE** C. A. [1903] 4 Ch. 434

—"Mabilia sequuntur personam."
See BONA VACANTIA. 1.

—"Omnia præsumuntur rite esse acta."
See PROBATE—Execution. 3.

—Quæ ipso usu consumuntur—Farming stock—Gift for life.
See WILL—Absolute Gift. 5.

—"Res ipsa loquitur."
See MOTOR OMNIBUS. 1.

MAYORS—Election of—Validity of vote of disqualified person—Right of chairman to vote—Casting vote.
See CORPORATION. 11.

MAYOR'S COURT—London.
See under LONDON—Mayor's Court.

MEASURES—Weights and.
See under WEIGHTS AND MEASURES.

MEAT—Offences—Diseased meat—"Depositing for the purpose of sale."
See LOCAL GOVERNMENT. 21.

—Offences—Unsound meat—Information by sanitary inspector—Necessity for authority.
See LONDON—Offences. 2.

MECHANICS' INSTITUTE—Borrowing powers—Enlarging billiard-room—Repairs.
See LITERARY AND SCIENTIFIC INSTITUTIONS. 1.

"**MEDICAL ASSISTANCE**"—Maintenance of voter's wife in pauper lunatic asylum—Disqualification.
See PARLIAMENT. 5.

MEDICAL ATTENDANCE—Seaman injured in service of ship—Expenses after seaman's return to home port.
See SHIPPING—Seamen. 5.

MEDICAL CHARITY.

See under CHARITY.

MEDICAL COUNCIL—Order of, to erase name—Dentists' register—"Professional misconduct"—Partnership, Determination of.
See DENTIST. 2.

MEDICAL EXAMINATION—Obligation to submit to—Workmen's compensation.
See MASTER AND SERVANT—Compensation. 108.

—Pharmacy Acts.
See under PHARMACY ACTS.

MEDICAL PRACTITIONER—Examination of workman by—Employer's right—Condition—Workman requiring presence of his own medical man.
See MASTER AND SERVANT—Compensation. 108.

—Public hospital—Liability of governors—Operation—Injury to patients.
See HOSPITAL. 1.

MEDICAL PROFESSION—Order in Council directing that Part II. of the Medical Act, 1886 shall apply to Italy. St. R. & O. 1901, No. 204.

Medical Act (1886) Amendment Act, 1905 (5 Edw. 7, c. 14), amends the Medical Act, 1886.

Order in Council, dated May 4, 1906, directing that part II. of the Medical Act, 1886, shall apply to the Province of Nova Scotia. 1906, No. 383 St. R. & O., Price 1d.

Order in Council dated Feb. 29, 1908, directing that Part II. of the Medical Act, 1886, shall apply to the Province of Quebec. St. R. & O. 1908, No. 203.

Order in Council, Jan. 10, 1910, directing that Part II. of the Medical Act, 1886, shall apply to the Province of Prince Edward Island. St. R. & O., 1910, No. 71.

—"Medical assistance"—Franchise—Disqualification.
See PARLIAMENT. 5.

MEDICAL SCIENCES—Proposed scheme for Institute of—Will—Charitable intent—Cyprus—Failure of legacy.
See CHARITY. 33.

MEDICINE—Stamp duty.
See REVENUE—Stamps. 18.

—Stamp—Medicinal preparation—Exemption—Contract of apprenticeship not in writing.
See REVENUE—Stamps. 18.

MEDWAY—Shipping.
See under SHIPPING—Medway.

MEDWAY CONSERVANCY BY-LAWS, arts. 43 (c), 48. THE "CLUTHA BOAT 147." Gorell Barnes, Pres., [1909] P. 36.
See SHIPPING—Collision. 31.

MEETINGS—*Local Authorities (Admission of the Press to Meetings) Act, 1908* (8 Edw 7, c. 43), provides for the admission of Representatives of the Press to the meetings of certain Local Authorities.

Public Meeting Act, 1908 (8 Edw. 7, c. 66), is an Act to prevent disturbance of public meetings.

See under **COMPANY—Meetings**; and **COMPANY—WINDING-UP—Meetings**.

1. — *Criminal law—Lawful public meeting—Acting in disorderly manner for purpose of preventing transaction of business—Meeting held in highway—Legality of—Public Meeting Act, 1908* (8 Edw. 7, c. 66).

In this case the justices dismissed the information on the ground that the meeting, being held on the highway, was not in itself a "lawful public meeting" within the purview of the Public Meeting Act, 1908.

The Court held that the appeal must be allowed. The proceedings were taken in respect of interference with a meeting held on June 20, 1910, on a public highway. The evidence in support of the charge having been partly given, the justices declined to proceed further with the summons on the ground that the meeting, being held on a highway, was ipso facto an unlawful meeting. That went much too far. Whether or not there was an obstruction he could express no opinion; that would depend upon the facts. The justices ought to entertain the summons, and if any point arose upon the evidence as to an obstruction or otherwise, it could be reserved, if necessary, for the consideration of this Court, but they had no right to assume that, simply because the meeting was held on a highway, it could not be the subject of the circumstances dealt with by the Public Meeting Act, 1908. Appeal allowed, and the case remitted to the justices to be further dealt with. *BURDEN v. RIGLER* - Div. Ct. [1910] W. N. 279

— **Club—Rules—Power to alter—Resolution—Validity.**

See **CLUBS**. 2.

— **Municipal corporation—Council meeting—Privacy—Newspaper reporter.**

See **CORPORATION**. 13.

— **Notice—Appeal against poor-rate—Consent of guardians.**

See **POOR LAW**. 1.

MELBOURNE.

See under **AUSTRALIA**.

— **Licences for tramway cars, conductors, and drivers—Liability of tramway company.**

See **VICTORIA**. 10.

MELBOURNE NOTARIES—Appointment of notaries public in a Colonial district—Practice.

See **NOTARIES**. 5.

"**MEMBER**"—Industrial and provident society. See **INDUSTRIAL AND PROVIDENT SOCIETY**. 4.

MEMORANDUM AND ARTICLES OF ASSOCIATION—Company.

See under **COMPANY—Memorandum**.

MENS REA—Coal—Representation by employer—Innocent delivery by servant.

See **WEIGHTS AND MEASURES**. 5.

— **Public health—Offences—Sale of unsound meat—Seizure—Prosecution—Acquittal—Compensation.**

See **LOCAL GOVERNMENT**. 22.

MERCANTILE AGENT—Authority to pledge. See **FACTOR**. 2.

— **Possession of goods—Consent of owner—Larceny by a trick.**

See **FACTOR**. 3.

MERCANTILE LAW.

See under **SHIPPING**.

MERCANTILE MARINE FUND—Shipwreck—"Distressed seaman"—Expenses of maintenance, &c., abroad. See **SHIPPING—Seamen**. 9.

MERCHANDISE MARKS—*False trade description—Merchandise Marks Act, 1887* (50 & 51 Vict. c. 28), ss. 2, 3.

Where the generic name of certain commodities has by the usage of the trade come to be confined to a particular species, the fact that the application of that name to another species is literally correct will not prevent it from being a false trade description within the meaning of s. 3, sub-s. 1, of the Merchandise Marks Act, 1887.

Washing soda and Glauber's salt are both salts of soda in a crystalline form; but the description "soda crystals" is by the usage of the trade of manufacturing chemists applied only to the former. The appellant sold Glauber's salt under the name of "soda crystals":—

Held (by Lord Alverstone C.J. and Wills J., Darling J. dissenting), that he had applied to the goods a false trade description. *FOWLER v. CRIPPS* - Div. Ct. [1905] W. N. 161; [1906] 1 K. B. 16

MERCHANT SHIPPING.

See under **SHIPPING**.

MERGER—Agreement in conveyance—Easement.

See **TRAMWAYS**. 6.

1. — *Charge—Unraised portion—Intestacy of portioner—Owner of land next of kin—No administration—Merger of beneficial interest.*

An owner of freehold land who became entitled to an unraised portion charged thereon, as next of kin to an intestate portioner, died without taking out administration to the portioner's estate.

It would have been for the landowner's benefit to merge the charge:—

Held, that the landowner's beneficial interest in the charge, subject to the liabilities (if any) of the portioner's estate, had merged in the land.

Lord Compton v. Osenden (1793), 2 Ves. Jun. 261; 4 Bro. C. C. 397; *Forbes v. Maffett*, (1811) 18 Ves. 384, 390; 11 R. R. 222; and *Swabey v. Swabey*, (1846) 16 Sim. 106, 502, followed.

MERGER—continued.

In re Radcliffe, [1892] 1 Ch. 227, distinguished. *In re French-Brewster's Settlements*. **WALTERS v. FRENCH-BREWSTER**

Swinfen Eady J. [1904] **W. N. 64;**
[1904] 1 Ch. 713

2. — Equitable tenancy in common — Legal joint tenancy.

Where equitable and legal estates, equal and co-extensive, unite in the same persons, the former merges, although the former is a tenancy in common and the latter a joint tenancy.

Selby v. Alston, (1797) 3 Ves. 339; 4 R. R. 10, followed and extended. *In re SELOUS, THOMSON v. SELOUS* - - **Farwell J.** [1901] 1 Ch. 921

— Estate duty—Lunatic entitled to both real and personal estate—Merger of charge.
See REVENUE—Estate Duty. 25.

— Judgment — Mortgage — Rate of Interest—Ancillary and independent covenants.
See COVENANT. 3.

3. — Lease—Mortgage by underlease—Subsequent purchase by lessee of freehold reversion—Contemporaneous mortgage by purchaser—Intention to preserve term—Registered title to land—Legal estate — Unregistered deed — Registered charge — Statutory form—Addition—Grant of legal estate to Mortgagees—Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 25, sub-s. 4—Land Transfer Act, 1875 (38 & 39 Vict. c. 87), ss. 22-28, 29, 32, 49, 93-96—Land Transfer Act, 1897 (60 & 61 Vict. c. 65), s. 20—Land Transfer Rules, 1898, rr. 106, 107, 110.

The transfer of land by a registered disposition takes effect by virtue of an overriding power, not by virtue of any estate in the registered proprietor. After land has been placed upon the register the legal estate in it will pass by an unregistered deed, subject to the risk of the grantee having his title defeated by an exercise of the statutory power of disposition given to the registered proprietor; but the grantee can by an entry on the register protect himself against that risk.

There is nothing in the Land Transfer Acts to prevent the passing of the legal estate in land by an ordinary mortgage deed executed by the owner in fee, whether he is or is not registered as proprietor.

By virtue of rule 107 of the Land Transfer Rules, 1898, a charge upon registered land may, with the approval of the registrar, be registered with the addition to the statutory form of a conveyance of the legal estate in the land to the mortgagee, though he cannot insist upon such an addition being made.

In 1871 a lease was granted of a public-house for a term of ninety-nine years at a rent of 100*l.* per annum. The lease contained a proviso for re-entry on default for twenty-one days in payment of the rent. This lease was assigned to the deft. Rhodes.

In May, 1897, Rhodes, "as beneficial owner," demised the house by way of mortgage to Flower & Sons for the residue of the term, less the last day thereof. No rent was reserved by this deed, and Rhodes covenanted to indemnify Flower &

MERGER—continued.

Sons against the original rent. The deed contained provisions making Rhodes in effect a trustee of the last day of the term for the mortgagees or a purchaser from them.

By a deed dated July 27, 1899, the house was conveyed to Rhodes in fee at the price of 3650*l.*, "subject to, but with the benefit of," the lease. To enable him to complete the purchase he arranged to borrow 3000*l.* from the plt. bank on the security of the house; and on July 27, 1899, a mortgage to the bank was executed immediately after the conveyance to Rhodes, the 3000*l.* being paid by the bank directly to the vendors. The property had been described to the bank as "a freehold ground rent of 100*l.* a year" secured on the house. By the mortgage deed Rhodes conveyed to the bank by way of mortgage the hereditaments comprised in the documents specified in a schedule, as to such of them as were freehold in fee simple, and as to such of them as he was entitled to for any term of years for the residue of such term, except the last day thereof. The schedule comprised the conveyance of July 27 and the other title-deeds relating to the freehold and the counterpart of the lease of 1871, but no other document relating to any leasehold interest.

At this time registration of title to land under the Land Transfer Acts had been made compulsory on sale in the parish in which the house was situate.

On Aug. 28, 1899, Rhodes applied for the registration of himself as proprietor of the house, with a possessory title.

On the same day he executed an instrument charging the house with the payment to the bank of the 3000*l.* and interest.

The charge was in the form No. 39 in the schedule to the Land Transfer Rules, 1898, but there was added to it a grant of the house to the bank in fee, subject to redemption. This charge was also taken in for registration, and on Sept. 18, 1899, the registrar issued a certificate that Rhodes was registered as proprietor of the house with a possessory title, and another certificate that the bank were registered as proprietors of the charge.

In April, 1901, Rhodes executed a deed of arrangement with his creditors to which the bank were not parties. Flower & Sons took possession of the house, and the bank demanded payment of the rent of 100*l.* from them, as well as from the trustees of the deed of April, 1901, but it was not paid.

The bank then brought an action against Rhodes, Flower & Sons, and the trustee of the deed of arrangement, claiming to enforce their security by foreclosure or sale. They claimed also a declaration that the term had not merged in the fee, and that they were entitled to re-enter for non-payment of the rent:—

Held, that, having regard to all the circumstances, it could not have been the intention of the parties that the term should merge in the fee; that before the Judicature Act there would in equity have been no merger; and that, consequently, by virtue of s. 25, sub-s. 4, of the Judicature Act, 1873, there was now no merger at law; that the term was still in existence, and that the bank, if the legal estate in the fee was

MERGER—*continued.*

vested in them, were entitled to enter for default in payment of the rent :

Held, also, by Romer and Cozens-Hardy L.J.J. (Collins, M.R., doubting, but not dissenting), that by virtue of the registered charge with the added words the legal estate in the fee had passed to the bank.

Decision of Kekewich, J., [1902] W. N. 94, reversed.

The equitable rule that merger depends upon intention applies to the merger of estates as well as to the merger of charges.

Chambers v. Kingham, (1878) 10 Ch. D. 743, and *Ingle v. Vaughan Jenkins*, [1900] 2 Ch. 368, approved.

Per Romer and Cozens-Hardy L.J.J. : The register of proprietors under the Land Transfer Acts is not material for the purpose of determining in whom the legal estate in land is vested. **CAPITAL AND COUNTIES BANK, LD. v. RHODES** C. A. [1903] W. N. 45 ; [1903] 1 Ch. 631

— Lease—Question of merger—Intention—Evidence.

See **BANKRUPTCY—Jurisdiction.** 1.

— Lien—Presumption of satisfaction—Lapse of time—Interest.

See **LIEN.** 1.

— Mortgage in fee—Equities of redemption acquired by mortgagee subject to the mortgages—Declaration against merger—Death of mortgagee intestate.

See **ADMINISTRATION.** 18.

— Mortgages.

See under **MORTGAGE—Merger.**

— Reissue of debenture—Extinguishment of charges—Estoppel.

See **COMPANY—Debentures.** 34.

— Reversions—Benefit of covenant—Privity of contract—Underlessee not an "assign."
See **LANDLORD AND TENANT.** 11.

— Sale—Life estate—Partial merger—Continuance of powers.

See **SETTLED LAND—Sale.** 9.

— "Settlement"—Life estate to settlor—Remainder to settlor in fee.

See **SETTLED LAND—Settlement.** 1.

MERSEY—Collision.

See **SHIPPING—Collision.** 5.

— Mersey Dock—Compulsory pilotage—Port of Liverpool—Limit of compulsion outwards.

See **SHIPPING—Pilotage.** 3.

— Mersey Dock—Compulsory pilotage—Vessel passing through port of Liverpool—Limits of port—Port of Manchester.

See **SHIPPING—Pilotage.** 4.

— Mersey Dock—Dock dues—Right to detain vessel until dues paid—Maritime lien for crew's wages—Priority.

See **HARBOURS.** 3.

MESSENGER-AT-ARMS—Heritage—Right in security.

See **SCOTTISH LAW.** 13.

METALLIFEROUS MINES.

See under **MINE.**

METROPOLIS.

See under **LONDON.**

METROPOLIS WATER—Will—Bequest—Ademption—"Money invested in" Lambeth Waterworks Company—Transfer of undertaking to Water Board.
See **WILL**—"Money Invested In." 1.

METROPOLITAN COMMONS ACTS—Limits of common—Binding effect of scheme.
See **COMMON.** 4, 5.

METROPOLITAN OPEN SPACES—Burial ground—Addition to—Disused burial ground—Power to build on.
See **BURIAL.** 1.

METROPOLITAN POLICE ACT, 1839.

See **BETTING.** 3.

METROPOLITAN POLICE COURTS—JUVENILE COURTS—*Order in Council, March 5, 1910, altering the days for holding Juvenile Courts at Bow Street Police Court and conferring on that Court Jurisdiction as to applications from other Divisions for Licences for Employment of Children.* St. R. & O. 1910, No. 303. Price 1d.

METROPOLITAN WATER BOARD (CHARGES) ACT, 1907.

See under **Water.**

MICHAEL ANGELO TAYLOR'S ACT, 1817.

See **LONDON—Streets.** 13.

— Streets—Widening—Compulsory powers—House—Separate ownership of separate floors.

See **LONDON—Streets.** 14.

MIDDLESEX—*Middlesex County Council Act, 1898. Rules made in pursuance of s. 36, sub-s. 2, and dated May 25, 1906. Reprint from W. N. 1906 (June 16), p. 177. See CURRENT INDEX 1906, p. lxxxviii.*

MIDDLESEX DEEDS DEPARTMENT.

See under **LAND REGISTRY.**

MIDLAND RAILWAY COMPANY (RATES AND CHARGES) ORDER CONFIRMATION ACT, 1891.

See **RAILWAY—Sidings.** 3.

MIDWIVES—*Midwives Act, 1902 (2 Edw. 7, c. 17), is an Act to secure the better training of midwives and to regulate their practice.*

Appeal from Central Midwives' Board under Midwives Act, 1902. Reprint from W. N., 1904 (Jan. 16), p. 49. See CURRENT INDEX, 1904, p. cxxv.

Midwives Act, 1902 (2 Edw. 7, c. 17). Memorandum, April, 1903. 1903 (R.—Loc. Govt. Bd.).

MILITARY.

See under ARMY AND NAVY.

MILITARY COLOURS—Consents required to removal and new position of, affixed to chancel walls under faculty.

See ECCLESIASTICAL LAW—Faculty. 12.

MILITARY LANDS—Streets—Paving, &c., expenses—Liability—Crown.

See STREETS. 18.

MILITARY RESERVE—Land in British Columbia.

See CANADA—Land. 1.

MILITARY SERVICE—Contract with the Colonial Government for—Payments by the Imperial Government—Payments under the contract.

See NEW SOUTH WALES. 22.

MILITIA.

See under ARMY AND NAVY.

MILITIA (VOLUNTEERS, YEOMANRY AND)—Will—Construction.

See WILL Territorial and Reserve Forces. 1.

MILK.

See under ADULTERATION.

— Supplied for consumption—Implied warranty of fitness.

See SALE OF GOODS. 16.

MILL—Landlord and tenant—Liability—Room in mill with machine—Contract to supply power to work machine.

See LANDLORD AND TENANT. 50.

— Water mill—Land drainage—Injury to other "land."

See LAND DRAINAGE. 1.

MILLDAM—Fishery district—River—Tributary, What is—Licence.

See FISHERY. 2.

MILL OWNERS—Salmon fishings—Abstraction of water by mill owner—Right to interdict by upper fishery proprietors.

See FISHERY. 11.

MILL STREAM—Artificial channel—Riparian proprietors—Title to bed of stream—Easement—Right to flow of water—Presumption—Watercourse.

See STREAM. 3.

MINERALS.

See under MINES.

MINES.

(Mines and Minerals.)

Coal Mines Regulation Act (1887) Amendment Act, 1903 (3 Edw. 7, c. 7), amends s. 23, sub-s. 1, of the Coal Mines Regulation Act, 1887 (50 & 51 Vict. c. 28).

Abandoned Mines. Plans of, deposited in the Home Office under the Coal and Metalliferous Mines Regulation Acts. List of. Corrected to Dec. 31, 1903. 1903 (K.—Home Office). Price 1s.

MINES—continued.

Coal Mines (Weighing of Minerals Act, 1905 (5 Edw. 7, c. 9), amends the provisions of the Coal Mines Regulation Act, 1887, which relate to the weighing of minerals.

Notice of Accidents Act, 1906 (6 Edw. 7, c. 53).

Mines and Quarries. Notice of Accidents Act, 1906, Order, Dec. 22, 1906, by the Secretary of State requiring the reporting of certain classes of dangerous occurrences in mines and quarries whether personal injury is caused or not. St. R. & O., 1906, No. 934.

Mines and Quarries in the United Kingdom, Codes of Rules in force in. 1908 (K.—Home Office). Price 4s. 6d.

Mines in the United Kingdom and the Isle of Man, 1907, List of. 1908 (K.—Home Office). Price 4s.

Quarries in the United Kingdom and the Isle of Man, 1907, List of. 1908 (K.—Home Office). Price 5s.

Coal Mines Regulation Act, 1908 (8 Edw. 7, c. 57), amends the Coal Mines Regulation Act, 1887 to 1903, for the purpose of limiting hours of work below ground.

Mines Accidents (Rescue and Aid) Act, 1910 (10 Edw. 7 & 1 Geo. 5, c. 15), is an Act to make provision with respect to organization for the purpose of rescue and aid in the case of accidents in mines.

1. — Abandonment — Notice to Secretary of State—Neglect to send—Offence against Act—Limitation of time—Coal Mines Regulation Acts, 1887, 1896 (50 & 51 Vict. c. 58, s. 38, sub-s. 5; 59 & 60 Vict. c. 43, s. 4).

The respondent was charged, as owner of a mine, for failing to comply with the Coal Mines Regulation Act, 1887, s. 38, as amended by the Coal Mines Regulation Act, 1896, s. 4, in not sending to a Secretary of State, within three months after abandonment of a seam in the mine, a plan as prescribed by the Acts.

By s. 38, sub-s. 5, the information may be laid at any time within six months after abandonment, or after service on the owner of a notice to comply with the requirements of the section, whichever last happens.

On Jan. 25, 1900, after the abandonment, the appellant wrote to the respondent: "I beg to point out to you that no plan of the abandoned workings in the seven-feet coal seam has yet been forwarded, as required by s. 38 of the Mines Act. Will you please give the matter your early attention." On May 25 the appellant again wrote, requiring the respondent to comply with the Act. The information was laid on July 27, 1900. The justices dismissed the information:—

Held, that s. 38, sub-s. 5, was a clause of limitation, that the letter of Jan. 25 was a good notice, and that, six months after service of the notice having expired before proceedings were taken, the information was out of time, and the decision of the justices was right. *STOKES v. HILL* . . . Div. Ct. [1901] W. N. 30;

[1901] 1 K. B. 493

MINES—continued.

- Action, Cause of—Interference with legal right—Justification—"Stop-day."
See **TRADE UNION**. 8.
- Agent of mines—Liability for contravention of general rule by manager.
See **JUSTICES**. 6.
- British Bechuanaland Concession Court—Concessions by native chiefs before 1891.
See **CAPE OF GOOD HOPE**. 2.
- Canadian Act (53 Vict. c. 4)—Grants thereunder includes mines and minerals.
See **CANADA—Railway**. 1.

2. — *Check-weigher—Removal—Interfering with workmen—Coal Mines Regulation Act, 1887* (50 & 51 Vict. c. 58), s. 13.

By s. 13, sub-ss. 4 and 5, of the Coal Mines Regulation Act, 1887, it is provided that on the complaint of the owner of a mine a Court of summary jurisdiction may order the removal of a check-weigher on the ground, amongst others, that he has "interfered . . . with any of the workmen":—

Held, that interference with the workmen within the above section is not limited to acts done by a check-weigher by virtue of or in connection with his office, or to acts done at the mine. **SYKES v. BARRACLOUGH**

Div. Ct. [1904] 2 K. B. 675

3. — *Clay—Compulsory purchase—Mines and minerals—Railways Clauses Consolidation Act, 1845* (8 & 9 Vict. c. 20), ss. 77, 78, 79.

Clay forming the surface or subsoil, and constituting the "land" compulsorily taken for the purposes of an undertaking, is not a mineral within the meaning of ss. 77, 78, or 79 of the Railways Clauses Consolidation Act, 1845.

Lord Provost of Glasgow v. Farie, (1888) 13 App. Cas. 657, explained.

Heat v. Gill, (1872) L. R. 7 Ch. 699, and *Jersey (Barl) v. Neath Guardians*, (1889) 22 Q. B. D. 555, commented on.

Great Western Ry. Co. v. Blades, [1901] 2 Ch. 624, approved. *In re Todd, Birleston & Co. and North Eastern Ry. Co.*

C. A. [1903] 1 K. B. 603

See next Case.

4. — *Clay—Mines and other minerals—Railway company—Purchase of Surface—"Mineral"—Railways Clauses Consolidation Act, 1845* (8 & 9 Vict. c. 20), ss. 77, 78.

The principles governing cases like *Heat v. Gill*, (1872) L. R. 7 Ch. 699, which deal with a reservation of minerals by virtue of a grant or contract, are not applicable to the determination of cases arising out of a statutory reservation of minerals, like that contained in s. 77 of the Railways Clauses Consolidation Act, 1845.

Though a mineral *prima facie* includes anything lying under the land which has a value of its own as being capable of being used independently of the land, yet that rule may be modified by the circumstances of the case where the mineral in question is accepted only by virtue of a statutory reservation. Clay forming the surface or subsoil and constituting "the land" purchased for the purposes of the undertaking is not

MINES—continued.

a "mineral" within s. 77 of the Railways Clauses Consolidation Act, 1845, as interpreted by *Lord Provost and Magistrates of Glasgow v. Farie*, (1888) 13 App. Cas. 657.

Semble, the same clay may be a mineral in one district and not in another. **GREAT WESTERN RY. CO. v. BLADES** **Buckley J.** [1901] W. N. 160; [1901] 2 Ch. 624

Note.

Approved by C. A., *In re Todd, Birleston & Co. and North Eastern Ry. Co.*, [1902] 1 K. B. 603. *See preceding Case.*

See Great Western Ry. Co. v. Carpalla United China Clay Co., Eve J., [1908] W. N. 178; C. A. [1909] 1 Ch. 218; H. L. (E.) [1910] A. C. 83.

5. — *Coal mine—Check weigher—Appointment—"Mine"—Two seams in mine—Coal Mines Regulation Act, 1887* (50 & 51 Vict. c. 58), s. 13, sub-s. 1.

By s. 13, sub-s. 1, of the Coal Mines Regulation Act, 1887, it is provided that the persons who are employed in a mine and are paid according to the weight of mineral gotten by them may appoint a check weigher.

In a mine not divided into parts under s. 19 of the Act there were two seams of coal worked as one mine by separate gangs of miners paid according to the weight of mineral gotten by them:—

Held, that the two seams together constituted a "mine" within the meaning of s. 13, and consequently that the miners working in one of the seams could not under that section appoint a check weigher in respect of the mineral gotten from that seam. **THORPE v. DAVIES**

Sutton J. [1908] 2 K. B. 750

— Coal mines—Mine-owner, Liability of—Contractor—Contract by workman with mine-owner to obey regulations.

See **MASTER AND SERVANT—Compensation**. 196.

— Coal mines regulation—Negligence—Burden of proof.

See **MASTER AND SERVANT—Negligence**. 1.

— Compensation—Rise in value of coal after notice to treat, whether arbitrator can consider in assessing compensation.

See **No. 15, below.**

— Conditions of sale—Right to rescind—Misdescription—Absence of title to mines—Compensation.

See **VENDOR AND PURCHASER—Conditions of Sale**. 6.

— Contract to deliver on specified terms all the coal required for use in the plaintiffs' works—Construction—Breach of contract.

See **CANADA—Contracts**. 1.

— Foreign mine—Obtaining possession—Practice.

See **COMPANY—Receiver**. 10.

6. — *Gravel and sand—Mines and Minerals—Quarries Act, 1894* (57 & 58 Vict. c. 42), s. 1—*Regulation of Railways Act, 1871* (34 & 35 Vict. c. 78), s. 6.

MINES—continued.

Gravel and sand are minerals within the meaning of s. 1 of the Quarries Act, 1894.

The digging of ballast by a ry. co. upon its own land for the purposes of the ry. is not an act done "in the course of working the railway" within the meaning of s. 6 of the Regulation of Railways Act, 1871. *SCOTT v. MIDLAND RY. CO.*

Div. Ct. [1901] 1 K. B. 317

— Highway—Subsistence.

See under HIGHWAY.

— Inclosure Acts, Construction of—Support.

See under INCLOSURE.

— Income tax—Nitrate grounds situate abroad—Profit and gains—Deduction to meet exhaustion of material.

See REVENUE—Income Tax. 30.

— Landlord and tenant—Quiet enjoyment—Implied contract—Extent—Disturbance—Prior mining lessees—Indemnity.

See LANDLORD AND TENANT. 72.

— Land tax, Redemption of—Liability to assessment of coal mines under redeemed land.

See LAND TAX. 3.

7. — *Lease—Construction—Covenant to work "in a fair, proper, and workmanlike manner and according to the best mode of working for the time being adopted in the neighbourhood"—Covenant not to injure working of seams next beneath or next above—Mines and minerals.*

Leases of seven seams of coal for mining purposes contained covenants by the lessees to work the coal "in a fair, proper, and workmanlike manner, and according to the best mode of working for the time being adopted in the neighbourhood," and to work the seams "so as not to injuriously affect or make it more difficult and expensive to work the seam or seams lying next beneath or next above," and not to injure or endanger buildings by undermining their foundations or by the working. In the neighbourhood of the mines the system of working usually adopted was the "long wall" system, or the "Barry" system (a modification of it), under which systems all the coal was worked and no pillars were left. In an area of forty-two acres, beneath a village in which there were many houses, the lessees worked the lower vein of the two into which the seam there lying was divided on the "pillar and stall" system, under which many large pillars of coal were left to support the surface and houses:—

Held (1.) that, in arriving at the meaning of what was "fair, proper, and workmanlike" working, all the circumstances must be considered, including the lessees' obligation to support the surface; (2.) that the "best mode of working" meant the best under all the circumstances, and that even the system in general use, if meant, was only to be used where applicable; (3.) that the "pillar and stall" system was properly used under the area of forty-two acres; and (4.) that the covenant as to working seams without injury to others applied to the seven seams demised and not to the two veins of one seam.

BREWER v. RHYMNEY IRON CO. - *Parker J.*

[1910] 1 Ch. 766

MINES—continued.

— Lands Clauses Acts.

See under LANDS CLAUSES ACTS.

8. — *Lease—Mines and minerals—Construction—Clause against working adjoining minerals—Absolute prohibition.*

The pursuers were the trustees and proprietors of part of the lands of A. The defenders were tenants of the coal seams under the said lands, but the mineral field worked by the defenders comprised also coal seams under lands belonging to several adjoining proprietors which were worked by plts. on the said lands of A. The whole was to be worked as one general scheme. The pursuers sought to enforce as absolute against the defenders the following prohibition contained in a minute of agreement of the same date of the leases:—"The second parties (the defenders) hereby undertake and bind themselves and their foresaids that from and after . . . they will work the coal in the adjoining properties only to such an extent as to enable them to pay the several proprietors thereof such sums of lordship as will amount to but not exceed the fixed rents agreed by their existing leases to be paid to such proprietors respectively. Declaring that if in any year during the currency of this lease the sums payable to such adjoining proprietors shall exceed the said fixed rents (which amount in cumulo to 550*l.* sterling per annum) then and in that event the second parties shall be bound . . . to pay to the first party (the pursuers' author) the sum of one penny per ton on every ton of coal worked from the lands of such adjoining proprietors in excess of the quantities necessary to make up . . . the said fixed rents . . . In consideration whereof the first party . . . renounces from and after . . . the right to exact the wayleave of one penny per ton presently payable to him":—

Held (reversing the decision of the First Division of the Ct. of Sess., (1908) 45 Sc. L. R. 290), that the clause was an absolute prohibition and not one giving the defenders a licence to work as much coal as they pleased from beneath the adjoining lands so long as they paid the stipulated one penny per ton. *FORREST v. MERRY & CUNINGHAME, L.D.* - *H. L. (Sc.)*

[1909] W. N. 160; [1909] A. C. 417

9. — *Lease, Mining—Construction—Covenant to win, work and get fairly, duly and honestly the whole of the coal—Damages.*

By a mining lease a seam of coal under land of the lessors was demised for a term of years at an annual rent, and until the working began at a nominal dead rent, and the lessees covenanted that they would at all times during the term fairly, duly and honestly win, work and get the whole of the seam in a proper and workmanlike manner. Owing to difficulties in working it was found to be impossible to work the coal without heavy pecuniary loss, and the lessees therefore abandoned the undertaking:—

Held, that upon the true construction of this particular lease the lessees had broken their covenant, and were liable in damages to the lessors.

MINES—continued.

The decision of the C. A., *Watson v. Charlesworth*, [1905] 1 K. B. 74, affirmed. *CHARLES-WORTH v. WATSON* H. L. (E.) [1905] W. N. 168 : [1906] A. C. 14

- Lease, Mining—Payments for purchase of chalk—Capital or income.
See *WILL—Real Estate*, 9.
- Mine-owner, Liability of—Contractor—Contract by workman with mine-owner to obey regulations.
See *MASTER AND SERVANT—Compensation*, 196.
- Mining lease—Proviso for re-entry—Breach of covenant—Forfeiture—Unequivocal demand for possession.
See *LANDLORD AND TENANT*, 72.
- Mining regulations—Rights of placer miner as to renewal of his grant.
See *CANADA—Mines*, 1.
- New South Wales, Laws of.
See under *NEW SOUTH WALES*.
- New Zealand Mining Act, 1898—Compensation.
See *NEW ZEALAND*, 4.

10. — *Overlying and underlying seams of coal—Powers of working—Subsidence—Right to support—Evidence—Necessary implication.*

The owner of land granted to the appellants a lease of a seam of coal overlying another seam, with full powers of working the overlying seam, but reserving to the owner the right of granting a lease of the underlying seam, with full powers of working subject to a covenant by the owner to indemnify the lessees of the overlying seam against physical damage caused by working the underlying seam : the appellants to have the first offer of a lease of the underlying seam. That offer having been made and refused, a lease of the underlying seam was granted to the respondents. It appeared from the leases and from evidence of the practice of mining that the parties must have contemplated that the underlying seam would be worked concurrently with the overlying seam, and that the proper mode of working the underlying seam was by the long wall system, which would of necessity produce subsidence in the overlying seam :—

Held, that the respondents were entitled to work the underlying seam by the long wall system, leave to cause subsidence being clearly implied.

Decision of C. A., [1909] 1 Ch. 37, affirmed. *BUTTERLEY CO. v. NEW HUCKNALL COLLIERY CO.* H. L. (E.) [1910] W. N. 102 : [1910] A. C. 381

11. — *Owner—Duty to fence—Metalliferous Mines Regulation Act, 1872 (35 & 36 Vict. c. 77), ss. 13, 41—Public well in shaft of abandoned mine—Vested in local authority—Public Health Act, 1875 (38 & 39 Vict. c. 55) s. 64.*

By s. 13 of the Metalliferous Mines Regulation Act, 1872, where a mine is abandoned or the working thereof is discontinued, the owner thereof and every other person interested in the minerals of the mine shall cause the top of the shaft to be fenced ; by s. 41 the term "mine"

MINES—continued.

includes a shaft belonging to a mine, and the term "owner" does not include a person who is merely the owner of the soil and not interested in the minerals of the mine.

The shaft of an abandoned mine contained water, and was used as and was in fact a public well, which under s. 64 of the Public Health Act, 1875, was vested in the defts., the local authority :—

Held, that the defts. were not the owners of the mine or of the shaft within the Metalliferous Mines Regulation Act, 1872, and were, therefore, not liable in an action for damage sustained through the top of the shaft not having been fenced. *KNUCKEY v. REDRUTH RURAL COUNCIL* Div. Ct. [1904] 1 K. B. 382

- Payment of miners according to amount excavated.
See *NEW SOUTH WALES*, 23.
- Private coal fields—Royalties on coal extracted.
See *NATAL*, 6.
- Railway company.
See under *RAILWAY—Mines*.
- Rise in price of coal—Evidence, Credibility of.
See *EVIDENCE*, 4.
- Rise in value of coal after notice to treat, whether arbitrator can consider in assessing compensation.
See *No. 15, below*.
- Royalties, Mining—Wasting property—Interest, Rate of—Income of invested surplus.
See *SETTLED LAND—Interest*, 1.

12. — *Salt mine—Underground brine, Rights of adjoining landowners in respect of—Percolating underground water.*

The plaintiffs were the owners of a group of rock-salt mines which had for many years been flooded with brine, by reason of the fact that the working of the mines had caused the ground above them to subside, with the result that surface water found its way down to the beds of rock-salt below, where it became saturated with the salt. These mines had for many years been connected with one another by means of old underground channels and passages, which it was no longer possible to close, and they formed one large reservoir of brine. Into this reservoir there also found its way a certain quantity of other brine which came through fissures in the soil from land outside the plts.' property, but a substantial portion of the brine therein was formed by the dissolution of the plts.' salt rock in the manner above mentioned. The defts., in the exercise of a licence to pump brine granted to them by the previous owner of one of the plts.' mines, pumped large quantities of brine from the said mine and from the reservoir and appropriated it for their own profit :—

Held, that the defts. were not guilty of any actionable wrong in so doing, notwithstanding that they thereby abstracted salt which had formed part of the plts.' rock, and that the continuance of the pumping would cause fresh surface water to dissolve further portions of the plts.' rock into brine, which in its turn would be

MINES—*continued*.

abstracted by the defts.' pumps. **SALT UNION, LD. v. BRUNNER, MOND & CO.**

Lord Alverstone C.J. [1906] 2 K. B. 822

— Scottish law—Superior and vassal—Casualty or composition—Annual value of minerals.

See SCOTTISH LAW. 27.

— Settled land.

See under SETTLED LAND—Mines.

— Sewer and sewage works—Right to support of mines and minerals—Adjacent lands.

See SEWERS. 19.

— Stamp—"Conveyance on sale"—Sale, what amounts to—Minerals under railway.

See REVENUE—Stamps. 11.

— Statutory rules and orders—Validity—Condition precedent.

See STATUTORY RULES AND ORDERS. 1.

— Subsidence. Compensation for—Mining lease—Benefit of covenant—Heirs and assigns of covenantee—Covenantee not a party.

See COVENANT. 1.

— Subsidence. Highway.

See under HIGHWAY.

13. — Subsidence—Measure of damages—Risk of future subsidence—Remoteness—Working of minerals.

In assessing the damages recoverable by a surface owner for subsidence owing to the working of minerals under or adjoining his property, the depreciation in the market value of the property attributable to the risk of future subsidence must not be taken into account. To recover damages the surface owner must wait until the damage or injury caused by subsidence has happened.

Decision of the C. A., [1906] 2 Ch. 22, reversed; and decision of Swinfen Eady J., [1905] 2 Ch. 390, restored. **WEST LEIGH COLLIERY CO. v. TUNNICLIFFE & HAMPSON, LD.**

H. L. (E.) [1907] W. N. 249; [1908] A. C. 27

— Support of surface, Right to—Damage to surface—Compensation—Reservation of manorial rights.

See INCLOSURE. 2, 3.

14. — Tenants in common—Working of part of coal mine by one co-owner—Adverse possession—Constructive possession—Presumption—Trespasser—Account—Real Property Limitation Act, 1833 (3 & 4 Will. 4, c. 27), ss. 12, 34—Real Property Limitation Act, 1874 (37 & 38 Vict. c. 57), s. 1.

Where title is founded on an adverse possession, the title will be limited to that area of which actual possession has been enjoyed, and as a general rule, constructive possession of a wider area will only be inferred from actual possession of the limited area, if the inference of such wider possession is necessary to give effect to contractual obligations, or to preserve the good faith and honesty of a bargain.

The plts., who were together entitled to one undivided one-sixth part of the mines under a

MINES—*continued*.

mountain of ninety-two acres, brought an action against the deft., who was admittedly entitled to another undivided one-sixth part of the same mines, and asked for an account of the coal worked by him. It was proved in evidence that more than twelve years before the commencement of the action the predecessors in title of the deft., under licences from the owners of the other four-sixths of the mines, but without the licence of the plts., had commenced to work out the coal under the mountain from an area of two acres, and had remained in possession of that worked-out area, or cavity, ever since. The deft. claimed that possession of part of the mine entitled him to constructive possession of the whole area of the mine horizontally and vertically under the mountain:—

Held, that the d. ft., having been in adverse possession of the plts.' one-sixth part, which must be treated as a separate tenement, for more than the required statutory period, had acquired a good title under the Statute of Limitations to the two-acre area, of which his predecessors had been in actual possession, and no more.

Held, therefore, that the plts. were entitled to an account of the coal, except that taken from the two-acre area, such account to be limited to six years before action brought. **GLYNN v. HOWELL**

Eve J. [1909] W. N. 37; [1909] 1 Ch. 666

— Trustees—Power to grant mining leases—Unopened mines.

See TRUSTEE—Leases. 1.

— Underground road—Carriage of foreign materials—Property in sub-soil—Payment of rent—Estoppel.

See CONVEYANCE. 3.

— Vendor and purchaser.

See under VENDOR AND PURCHASER—Minerals.

— Vendor and purchaser—Absence of title to mines—Compensation.

See VENDOR AND PURCHASER—Conditions of Sale. 6.

— Water pipe, Right of support for—Minerals under pipe.

See WATER. 20.

— Waterworks company stopping mining works—Direction of interdict—Measure of damages.

See DAMAGE AND DAMAGES. 2.

— Waterworks—Mines—Support, Right to.

See WATER. 5.

15. — Waterworks—Notice to prevent working of mines—Compensation—Arbitration—Rise in value of minerals—Evidence—Waterworks Clauses Act, 1847 (10 & 11 Vict. c. 17), ss. 6, 22–25—Lands Clauses Acts.

Owners of coal mines under and near waterworks gave the undertakers notice under s. 22 of the Waterworks Clauses Act, 1847, that they intended to work the coal. The undertakers replied by a counter-notice requiring the mine owners not to work and stating their willingness to make compensation. In an arbitration under

MINES—*continued.*

the Act and the Lands Clauses Acts to assess the compensation the mine owners gave evidence to prove that coal rose in value after the date of the counter-notice :—

Held, that there was no purchase of the coal or transfer of the property in the coal; that the inquiry was not what was the value of the coal at the date of the counter-notice, but what would the coal-owners, if they had not been prohibited, have made out of the coal during the time it would have taken them to get it; and that the evidence was admissible.

The decision of the C. A., [1902] W. N. 102; [1902] 2 K. B. 135, reversed, and the decision of Ridley and Phillimore JJ., [1901] 2 K. B. 798, restored. *BWLLFA AND MERTHYR DARE STEAM COLLIERIES* (1891), *LD. v. PONTYPRIDD WATERWORKS CO.*

H. L. (E.) [1903] W. N. 149; [1903] A. C. 426

— Workmen's compensation.

See under MASTER AND SERVANT—Compensation.

MINUTES—Debenture-holder's action—Motion for judgment.

See COMPANY—Debentures. 28.

— Criminal Law.

See under CRIMINAL LAW—Larceny.
CRIMINAL LAW—Practice.

MISAPPROPRIATION—Agent, Borrowing by—Excess of authority—Notice—Liability.
See PRINCIPAL AND AGENT. 4.

— Bankruptcy — Proof — Breach of trust — Director of company and member of partnership.

See BANKRUPTCY—Proof. 3.

— By solicitor — Innocent breach of trust — Limitations, Statute of—Acknowledgment.

See TRUSTEE—Breach of Trust. 4.

— Trustee—Liability — Restoration of capital with interest at 5 per cent.

See TRUSTEE—Liability. 1.

" MISBEHAVIOUR "—Pauper—Disobedience to lawful order.

See POOR LAW. 14.

MISCONDUCT — Administration — Grant—Citation—Widow passed over on ground of marital misconduct.

See PROBATE—Misconduct. 1.

— Allegations of—Discovery—Libel—Justification — Inspection of 'plts.' books — Practice.

See DISCOVERY. 5.

— " Professional misconduct "—Dentists' register — Order of Medical Council to erase name.

See DENTIST. 2.

— Receiving order—Scheme of arrangement—"Rash and hazardous speculation."

See BANKRUPTCY—Arrangement. 6.

MISCONDUCT—*continued.*

— Solicitor—Inquiry—Necessity of appearing by counsel.

See SOLICITOR—Practice. 1.

— Solicitors.

See under SOLICITOR—Misconduct.

— Workmen's compensation — " Serious and wilful misconduct."

See MASTER AND SERVANT—Compensation. 141, 142.

MISDEMEANOUR — Bankrupt — Discharge — " Special reasons."

See BANKRUPTCY—Discharge. 1.

— Pleading—Indictment—Receiving—Omission of " feloniously "—Common law misdemeanour.

See CRIMINAL LAW—Larceny. 11.

MISDESCRIPTION—Conditions of sale—Right to rescind—Absence of title to mines—Compensation.

See VENDOR AND PURCHASER—Conditions of Sale. 6.

— Of plaintiff — Admiralty — Practice—Parties.

See SHIPPING—Practice. 11.

— Sale by the Court—Conditions of sale—Mistake—Compensation—Rescission.

See VENDOR AND PURCHASER—Conditions of Sale. 4.

— Settlement—Mistake of fact—Clerical error—Tail male instead of tail general.

See SETTLEMENT. 35.

— Title, Failure to shew—Latent defect—Underground culvert for water.

See VENDOR AND PURCHASER—Title. 5.

— Vendor and purchaser.

See under VENDOR AND PURCHASER—Misdescription.

— " Wife " — Named legatee misdescribed as wife.

See WILL—Misdescription. 1.

— Will — Mistake — " Freehold " — Customary freeholds.

See WILL—Words. 5.

— Will—Name.

See under WILL—Name.

— Will—Specific bequest.

See WILL—Specific Legacy. 1.

MISDIRECTION—New trial.

See DEFAMATION—Libel. 11.

— New trial—Action against trade union—Actionable conspiracy—Resolutions of union calling a strike.

See CANADA—TRADE UNION. 1.

— Omission of counsel to suggest questions to judge at trial—New trial, Application for.

See PRACTICE—Trial. 5.

MISFEASANCE—Costs, Security for—Liquidator—Misfeasance summons.

See COMPANY—WINDING-UP—Costs. 5

MISFEASANCE—*continued.*

- Damages for misfeasance — Winding-up — Two insolvent companies — Cross-claims — Adjustment — Claim on debentures — Dividend.
See COMPANY — WINDING-UP — Assets. 6.
- Director — Payment of dividends out of capital — Negligence.
See COMPANY — Directors. 11.
- Highway.
See under HIGHWAY.
- Negligence — Article of dangerous nature — Contractor — Gas company.
See CANADA — GAS. 2.
- River.
See under RIVER.

MISJOINDER — Parties — Public elementary school.
See SCHOOLS. 9.

MISREPRESENTATION — Costs, Depriving successful defendant of — Appeal — Misrepresentation not affecting plaintiff.
See COSTS. 33.

- Deed — Misrepresentation as to contents — Validity — Plea of non est factum.
See DEED. 5.
- Executed contract — Rescission — Absence of fraud — Delay.
See CONTRACT. 14.
- Illustrated catalogue — Infringement — Articles falsely called patent.
See COPYRIGHT — Catalogue. 2.
- Innocent Misrepresentation — Bank of England — Transfer of stock — Attorney.
See PRINCIPAL and AGENT. 3.
- Insurance, Life — Policy — Mistake as to age of assured — Acceptance of premiums after knowledge of mistake.
See INSURANCE (LIFE). 15.
- Name, Unauthorised use of — Holding out as partner — Injunction.
See NAME. 1.
- Particulars — Property described as freehold.
See VENDOR AND PURCHASER — Title. 10.
- Prospectus.
See under COMPANY — Prospectus.
- Repayment of premiums obtained by.
See INSURANCE (LIFE). 15.
- Sale under direction of Court — Contract — Rescission — Costs recoverable by purchaser.
See VENDOR AND PURCHASER — Rescission. 6.
- Shares — Subscription obtained by misrepresentation.
See COMPANY — WINDING-UP — Contributory. 5.
- Statement induced by misrepresentation — Concealment of material fact.
See ESTOPPEL. 5.

MISREPRESENTATION—*continued.*

- Veterinary surgeon — One man company — Unqualified person managing director — Managing director described as "specialist."
See VETERINARY SURGEON. 2.

MISSTATEMENTS — In proposal made by agent of insurers without knowledge of insured — Authority of agent.
See INSURANCE (ACCIDENT). 6.

MISTAKE — Absence of — Compromise of action — Agreement to refer — Authority exceeded by counsel.
See COUNSEL. 1.

- Agreement — Mutual error — Reconstruction of agreement by the parties — Interest on price.
See CONTRACT. 3.
- Appealing, Time for — Mistake as to effect of rule — Discretion of Court — Practice.
See APPEAL. 31.
- Appointment — Deed poll — Rescission — "Forgetfulness" a ground for equitable relief.
See POWER OF APPOINTMENT. 24.
- Articles of association.
See COMPANY — Memorandum. 15.
- Bankruptcy notice — Validity — Mistake in amount of interest — Formal defect.
See BANKRUPTCY — Notice. 14.
- Bill of lading — Description of goods.
See SHIPPING — Charterparty. 7.
- Insurance, Life.
See under INSURANCE (LIFE).
- Judgment creditor — Garnishee order absolute — Setting aside.
See SETTING ASIDE. 1.
- Marriage settlement — Non-execution of a power — Death of donee — Rectification. — Parol evidence.
See SETTLEMENT. 39.
- Money paid to agent under mistake of fact — When recoverable back.
See RAILWAY — Rates. 2.
- Money paid under mistake of fact — Marked cheque fraudulently altered — Negligence.
See CANADA — Bank. 2.
- Money paid under a mistake of fact — Mistake shared by both parties.
See LIMITATIONS, STATUTE OF. 12.
- Notice — Validity of notice — Street — Paving — Local government.
See STREETS. 17.
- Number of legatees — Illegitimate children — Presumption — Evidence of intention.
See WILL — Illegitimacy. 7.
- Property in sub-soil — Payment of rent — Estoppel.
See CONVEYANCE. 3.
- Rectification of deed — Solicitor and client — Independent advice.
See SOLICITOR — Fiduciary Relation. 1.

MISTAKE—continued.

- Release by governor of gaol—Leave to issue further writ.
See ATTACHMENT. 18.
- Settlement—Mistake of fact—Misdescription—Clerical error—Tail male instead of tail general.
See SETTLEMENT. 35.
- Ship—Bill of lading—Intentional letting in of sea-water—Negligent mistake.
See SHIPPING—Charterparty. 12.
- Testamentary papers—Execution by one person of codicil of the other person—Intention—Effect—Refusal of probate.
See PROBATE—Execution. 4.
- Vendor and purchaser.
See under VENDOR AND PURCHASER—Mistake.
- Will—Erroneous recital—Legatee—Alleged advance—Hotchpot clause.
See WILL—Mistake. 1.
- Will—Inaccurate enumeration—Class.
See WILL—Class. 9.
- Will—Inadvertence of solicitor—Words eliminated from probate.
See PROBATE—Execution. 2.
- Will—Misdescription of gift—“Freehold”—Customary freeholds.
See WILL—Words. 5.

“**MOLASSES REFINED IN BOND**”—Victoria Customs and Excise Duties.
See VICTORIA. 4.

MOLESTATION—Interference with employment—Trade Union Officers, Liability of.
See TRADE UNION. 8.

“**MONEY**”—Will—Construction—“The rest of my money”—Other property.
See WILL—Words. 9.

MONEY HAD AND RECEIVED—Action for—Cheque—Countermand by telegram—Notice.
See BANKER. 2.

— Agent—Power of attorney—Borrowing—Excess of authority.
See PRINCIPAL AND AGENT. 7.

— Interest not recoverable—Costs in action to which the Crown is a party.
See SIERRA LEONE. 1.

— Misrepresentation—Voidable contract—Assignment of contract.
See VENDOR AND PURCHASER—Contract. 4.

— Secret commission—Sub-agent—Privity of contract—Fiduciary relation.
See PRINCIPAL AND AGENT. 9.

— Voidable contract—Assignment of contract—Privity of contract.
See VENDOR AND PURCHASER—Contracts. 4.

MONEY-LENDERS.

County Court Rules (Feb.), 1901, dated Feb. 25, 1901—Proceedings under the Money-lenders Act, 1900 (63 & 64 Vict. c. 51), s. 1. Reprint from W. N. 1901 (March 2), p. 73. See CURRENT INDEX, 1901, p. lxxvii.

Order, Oct. 21, 1909, as to the alteration of the amount of Fees to be paid under the Money-lenders Act, 1900, in respect of the Inspection of the Register and for a copy of a Registered Return, and Treasury Order, Oct. 26, 1909, as to the Collection of the same by means of Stamps. St. R. & O., 1909, No. 1223. Price 1d.

1. — Action by money-lender — Practice — Summary judgment—Interest *prima facie* excessive—Harsh and unconscionable transaction—R. S. C., Order XIV.—Money-lenders Act, 1900 (63 & 64 Vict. c. 51), s. 1.

Where in an action by a money-lender to recover money lent with interest it appears that the interest claimed is *prima facie* excessive, the case cannot, as regards the claim for interest, be dealt with upon an application for summary judgment under Order XIV., but the action must go to trial for the purpose of having it determined whether the interest is so excessive as to render the transaction harsh and unconscionable within the Money-lenders Act, 1900, and to entitle the debt. to relief under that Act. *WELLS v. ALLOTT* C. A. [1904] 2 K. B. 842

Note.

Explained and distinguished by C. A., *Lazarus v. Smith*, [1908] 2 K. B. 266. *See* No. 11, below.

2. — Business carried on at other than registered address — Loan effected at borrower's residence — Illegality — Bill of Sale — Money-lenders Act, 1900 (63 & 64 Vict. c. 51), s. 2, sub-s. 1 (b).

The Money-lenders Act, 1900, in requiring that a money-lender “shall carry on the money-lending business in his registered name and in no other name and under no other description, and at his registered address or addresses and at no other address,” does not mean that every stage and every incident of every piece of the money-lending business is to be transacted at the registered office.

The question is a question of fact, not of law, and must be answered according to the circumstances of the case.

Decision of C. A., *Gadd v. Provincial Union Bank*, [1909] 2 K. B. 353, reversed and the interim injunction discharged. *KIRKWOOD v. GADD* H. L. (E.) [1910] W. N. 157; [1910] A. C. 422

3. — Carrying on business at registered address—Cheque for amount of loan sent by post to borrower — Isolated part of transaction — Illegality—Money-lenders Act, 1900 (63 & 64 Vict. c. 51), s. 2, sub-s. 1 (b).

The terms of a loan were arranged between a registered money-lender and the borrower at the money-lender's registered address, and the promissory notes which were given as security for the loan were signed there. For the mutual convenience of both parties a cheque for the

MONEY-LENDERS—continued.

amount of the loan was sent by the money-lender by post to the borrower's address :—

Held, that the mere fact that the cheque for the money advanced was sent to the borrower by post instead of being handed to the borrower at the money-lender's registered address did not make the transaction void as being a carrying on of the money-lending business elsewhere than at the registered address in contravention of s. 2, sub-s. 1 (b), of the Money-lenders Act, 1900.

JACKSON v. PRICE - - Darling J. [1909] W. N. 262 ; [1910] 1 K. B. 143

Note.

This case was referred to by Div. Ct., *In re A Debtor* (No. 2 of 1910), [1910] W. N. 70. See next Case.

4. — *Carrying on business at registered address—Loan made through the post—Illegality—Money-lenders Act, 1900* (63 & 64 Vict. c. 51), s. 2, sub-s. 1 (b).

The appellant was a duly registered money-lender, his registered address being 11, Cork Street, London. In Jan., 1910, he presented a bankruptcy petition against the respondent in the Preston County Court. The act of bankruptcy was the execution by the respondent of a deed of assignment for the benefit of his creditors. The appellant's alleged debt was 64*l.* due on the respondent's dishonoured promissory note given by him to the appellant in consideration of a loan. The respondent, who resided in Lancashire, had received one of the appellant's business circulars, and he applied to him by letter for a loan. Negotiations were carried on by correspondence, and terms having been arranged, the appellant sent a promissory note to the respondent. He signed it and returned it to the appellant, who then forwarded by post a cheque for the amount of the loan, which the respondent paid into his bank. The whole of the business was carried out by correspondence between the appellant, writing from his registered address, and the respondent, at his residence.

The registrar held that the transaction had not been carried out at the appellant's registered address within the meaning of s. 2, sub-s. 1 (b), of the Money-lenders Act, 1900, and that there was, therefore, no valid debt, and he accordingly dismissed the petition.

The Court allowed the appeal.

Phillimore J. said that this transaction had been carried out at the money-lender's registered address within the meaning of the Act ; the result of holding otherwise would be that no money-lending transaction could be carried out wholly through the post. The Act had not said that, and it would be wrong so to construe it as to give it that meaning, particularly having regard to the fact, as was pointed out by Darling J. in *Jackson v. Price*, [1910] 1 K. B. 143, that the result would be not only to render the transaction void, but to subject the money-lender to a heavy penalty as a criminal. *In re A Debtor* (No. 2 of 1910) - - Div. Ct. [1910] W. N. 70

5. — *Carrying on business at registered address—Loan made through the post—Illegality*

MONEY-LENDERS—continued.

—*Money-lenders Act, 1900* (63 & 64 Vict. c. 51), s. 2, sub-s. 1 (b).

The terms of a loan having been arranged by correspondence between the borrower and a money-lender, the latter sent to the former an unsigned promissory note, which the borrower signed and returned to the money-lender, who then sent the borrower a cheque for the amount of the loan. The money-lender's letters, the unsigned promissory note, and the cheque were all sent by post from the money-lender's registered address to the borrower's residence :—

Held, that the business of the loan had been carried on by the money-lender at his registered address within s. 2, sub-s. 1 (b), of the Money-lenders Act, 1900. *In re SEED. Ex parte KING* Div. Ct. [1910] 1 K. B. 661

6. — *Carrying on business elsewhere than at registered address—Collecting repayment of loans—Money-lenders Act, 1900* (63 & 64 Vict. c. 51), s. 2, sub-s. 1 (b).

A money-lender who receives at a place which is not his registered address money in repayment of loans previously made does not thereby carry on business elsewhere than at his registered address within the meaning of s. 2, sub-s. 1, of the Money-lenders Act, 1900. *HOPKINS v. HILLS* Div. Ct. [1910] W. N. 98 ; [1910] 2 K. B. 29

7. — *Definition—Exception—“Business not having for its primary object the lending of money”—Discounting bills of customers and friends—Financing a business—Money-lenders Act, 1900* (63 & 64 Vict. c. 51), s. 6, sub-s. (d).

The Money-lenders Act, 1900, s. 6, defines a money-lender to be “every person whose business is that of money-lending, or who . . . holds himself out in any way as carrying on that business,” but excepts sub-s. (d), “any person bona fide carrying on any business not having for its primary object the lending of money, in the course of which and for the purposes whereof he lends money.”

A. carried on business as an art dealer for many years prior to 1903, and in the course of his business it was necessary and incidental thereto to give long credit and to take from his customers bills in payment of the amounts they owed to him for their purchases, and to discount and renew the bills from time to time. In 1903 he retired from the business and sold off his stock by public auction, and took bills for the greater part of the purchase-moneys, which he discounted and renewed from time to time, and some of which were still running. After his retirement he carried on business as an expert art valuer and adviser, and he also assisted two art businesses, in which he was largely interested, by discounting for them their customers' bills and by taking bills for the interest from time to time due on the debentures he held in one of those businesses. He also assisted some old friends in the curio trade, and a few persons with whom he had been connected in business, about ten in all, with loans and by discounting bills for them. He did not advertise as a money-lender, and did not discount bills for any outsiders. In an action by A. on bills given him

MONEY-LENDERS—continued.

in 1904 for a loan made by him to an old customer:—

Held, that A. was not, and never had been, a money-lender within the meaning of s. 6 of the Money-lenders Act, 1900; and that, as to the bills given on the sale of his stock and renewed and still running, he came within exception (d) in the section. *LITCHFIELD v. DREYFUS* Farwell J. [1906] W. N. 70; [1906] 1 K. B. 584

—“Excessive interest”—Power of Court to reopen transaction.

See **BANKRUPTCY—Receiving Order. 4.**

8. — *Interest—Excessive interest—“Harsh and unconscionable”—Borrower—Loan transaction—Money-lenders Act, 1900 (63 & 64 Vict. c. 51), s. 1.*

In this case Coleridge J., in giving judgment, said that the question was whether the interest was so excessive as to make the transaction harsh and unconscionable. It was clear from *Samuel v. Newbold*, [1906] A. C. 461, that this might be inferred from excessive interest. On this point the decision of Channell J., in *Carringtons, Ltd. v. Smith*, [1906] 1 K. B. 79, had been overruled, but the rest of the judgment in that case had not been overruled. No amount of interest could be stated to be of itself excessive, because that would be a re-enactment of the old usury laws. Having looked at the transaction and all the circumstances he was unable to hold that the interest was of itself so excessive as to make the transaction harsh and unconscionable. Judgment for the plts. *FIELDINGS v. PAWSON*

Coleridge J. [1907] W. N. 231

9. — *Loan transaction—Borrower—Absence of risk—Exorbitant interest—“Harsh and unconscionable”—Jurisdiction—Policy of Act—Relief—Money-lenders Act, 1900 (63 & 64 Vict. c. 51), s. 1.*

The relief which the Money-lenders Act, 1900, extends to a borrower is not limited to cases in which before the Act the Court of Chancery would have given relief.

The policy of the Act is to enable the Court to prevent oppression, leaving it in the discretion of the Court to weigh each case upon its own merits and to look behind a class of contracts which peculiarly lend themselves to an abuse of power.

Decision of the C. A., *Saunders v. Newbold*, [1905] 1 Ch. 260, affirmed. *SAMUEL v. NEWBOLD* H. L. (E.) [1906] W. N. 157; [1906] A. C. 461

Note.

Referred to by Coleridge J., *Fieldings v. Pawson*, [1907] W. N. 231. See preceding Case.

10. — *Loan transaction—Excessive interest—Risk—“All the circumstances”—Money-lenders Act, 1900 (63 & 64 Vict. c. 51), s. 1, sub-s. 1.*

The deft., a director of a co. with an income of 1000*l.* a year and possessed of furniture and pictures of considerable value, being in want of 150*l.* in order to pay sundry creditors, but not being in great necessity, as his creditors, though pressing for payment, were not threatening proceedings, obtained a loan of 150*l.* from the plts.,

MONEY-LENDERS—continued.

who were money-lenders, and gave them two promissory notes, one for 150*l.* and one for 72*l.*, repayable respectively by twelve and six equal monthly instalments. The notes each contained a default clause, the nature and effect of which the deft. clearly understood, providing that on default of payment of any instalment the whole of the amount of the note then remaining unpaid should become due and payable. The interest on the loan worked out at 75 per cent. per annum. The plts. obtained no security for the loan, but at the time were informed by the deft. as to his financial position. The deft. paid off all the instalments of the 72*l.* note, and, after paying seven instalments of the 150*l.* note, made default, and on being sued for 62*l.* 10*s.*, the balance, claimed relief under the Money-lenders Act, 1900:—

Held, that although the rate of interest was high, that fact did not of itself necessarily render the transaction “harsh and unconscionable,” and that, having regard to the risk and to all the circumstances of the case, amongst which the Court was entitled to consider the fact that the deft. understood the transaction, and without any misrepresentation or pressure by the plts. voluntarily agreed to pay the interest asked, 75 per cent. per annum was a reasonable rate of interest, and not “excessive” within the meaning of the Act, and the transaction was not “harsh and unconscionable,” and that the deft. was therefore not entitled to relief. *CARRINGTONS, LTD. v. SMITH* Channell J. [1906] 1 K. B. 79

Note.

Referred to by Coleridge J., *Fieldings v. Pawson*, [1907] W. N. 231. See No. 8, above.

11. — *Practice—Summary judgment—Interest—Money-lender's action—Defence under Money-lenders Act, 1900 (63 & 64 Vict. c. 51)—Admission of balance remaining due on actual advance—R. S. C., Order XIV., r. 4.*

Where the plt. in a money-lender's action applies for leave to sign final judgment under Order XIV., and the deft. sets up a defence under the Money-lenders Act, 1900, but admits that he still owes some part of the money actually advanced, the proper order is to order summary judgment for the amount admitted to be due without interest and to give leave to defend for the residue of the claim.

Wells v. Allott, [1904] 2 K. B. 842, explained and distinguished. *LAZARUS v. SMITH* C. A. [1908] W. N. 115; [1908] 2 K. B. 266

— Proof of debt by money-lender—Withdrawal of proof—Jurisdiction of Bankruptcy Court to grant relief.

See **BANKRUPTCY—Proof. 6.**

12. — *Register—Firm name—Partner's names—Real partner's name not registered—Securities void—Assignee for value without notice—Money-lenders Act, 1900 (63 & 64 Vict. c. 51), ss. 1 (5), 2, 3.*

In the register under the Money-lenders Act, 1900, the names of C. A. Bond and J. C. Bennett were entered as money-lenders trading in the firm name of Lewis & Co., and their names were also entered as constituting the

MONEY-LENDERS—continued.

individual members of the firm. C. A. Bond was not, in fact, a member of the so-called firm, but was merely the nominee or agent of one G. C. Bond, who found all the capital:—

Held, that securities taken in the individual names of C. A. Bond and J. C. Bennett or either of them, or in the names of Lewis & Co., were illegal and void under ss. 2 and 3 of the Act.

Held, also, that a bona fide purchaser for value of the securities without notice of the defect in the registration of the firm was in no better position. *In re ROBINSON. CLARKSON v. ROBINSON* Neville J. [1910] W. N. 226; [1910] 2 Ch. 571

13. — Registered address—Carrying on business elsewhere—Avoidance of contract—Money-lenders Act, 1900 (63 & 64 Vict. c. 51), s. 2, sub-s. 1 (b), (c).

Action on a promissory note given for money lent. Plts. were money-lenders whose sole registered address was the Bridge, Walsall.

The deft. being in want of money in Jan., 1906, went to one Lester, who had an office in Jermyn Street, London, and who made a business of introducing customers to money-lenders, and he signed a contract agreeing to pay Lester a commission of 2½ per cent. on all loans procured by him and on all renewals of such loans. Lester introduced the deft. to the plts., who advanced him 550*l.* on a promissory note payable at Lester's office in Jermyn Street three months after date, with interest at the rate of 25 per cent. The money so lent was handed to the deft. by Lester on behalf of the plts. at Jermyn Street. The note was subsequently renewed three times. On the occasion of each renewal the plts. sent up the note from Walsall to Lester, who procured the deft.'s signature to the new note and received from the deft. the 2½ per cent. commission as agreed. The office in Jermyn Street was Lester's office. He paid the rent, rates and taxes, and the plts. had no interest in it. Lester had done business with the plts. for about nine years, during which time he had introduced to them upwards of a thousand similar customers. He received no commission from the plts., and obtained his sole remuneration from the customers themselves. In each case so introduced the money was actually advanced at Jermyn Street, the promissory notes given by the borrowers were made payable there, and the renewals, if any, were signed there. But the plts.' books were all kept at their office at Walsall, and in each case the question whether an advance should be made or a loan renewed was determined at a board meeting of the plt. co. at Walsall. Lester had no general authority to negotiate loans or renewals on their behalf.

Lester's business at Jermyn Street was not confined to procuring customers for the plts., he introduced customers to other money-lenders also, and also lent money there on his own account.

The deft. contended that the promissory note was void by reason of s. 2, sub-s. 1 (b), of the Money-lenders Act, 1900, which provides that a money-lender "shall carry on the money-lending

MONEY-LENDERS—continued.

business in his registered name, and in no other name and under no other description, and at his registered address or addresses and at no other address."

It was contended that under the circumstances the plts. carried on business at Jermyn Street. For the plts. it was contended that the object of the Act was to ensure that the borrower should know whom he was dealing with, and that it was a sufficient compliance with the section if at the time of the negotiation of the loan the identity and address of the lender were disclosed:—

Held that, having regard to the number of the transactions of loan conducted by the plts. through Lester at Jermyn Street, they carried on business there, and that as their address there was not registered the note sued upon was void. *STAFFORDSHIRE FINANCIAL CO. v. HUNT*

A. T. Lawrence J. [1907] W. N. 258

14. — Registered name—Contract—Validity of contracts by non-registered money-lender—Money-lenders Act, 1900 (63 & 64 Vict. c. 51), s. 1; s. 2, sub-ss. 1 (a), (c), 2.

Appeal from Buckley J., [1905] 2 Ch. 624, dismissed with costs without argument, in consequence of the approval of the decision of Buckley J. expressed by the Court in the case of *Bonnard v. Dott*, [1906] W. N. 66; [1906] 1 Ch. 740. *VICTORIAN DAYLESFORD SYNDICATE, LD. v. DOTT* C. A. [1906] W. N. 90

Note.

Followed and approved by C. A., *Bonnard v. Dott*, [1906] 1 Ch. 740. *See next Case.*

Referred to by Farwell J., *Litchfield v. Dreyfus*, [1906] 1 K. B. 584. *See No. 7, above. See next Case.*

15. — Registration—Contract of unregistered money-lender—Validity—Money-lenders Act, 1900 (63 & 64 Vict. c. 51), s. 2, sub-ss. 1 (a), (c), 2.

Sect. 2, sub-s. 1 (c), of the Money-lenders Act, 1900, applies to a money-lender who has not registered himself as such under the regulations of the Act, and prohibits him from making any agreement with respect to the advance and repayment of money, and from taking any security for money, in the course of his business as a money-lender. Consequently any such agreement is illegal and void, and, the statutory prohibition being intended for the protection of the borrower, the borrower under any such agreement may recover any securities which he has given to the money-lender, although the money-lender cannot recover the money which he has advanced. *Victorian Daylesford Syndicate, Ltd. v. Dott*, [1905] 2 Ch. 624, followed and approved. *BONNARD v. DOTT* - C. A. [1906]

W. N. 66; [1906] 1 Ch. 740

Note.

See Victorian Daylesford Syndicate, Ltd. v. Dott, C. A., [1906] W. N. 90. *See No. 14, above. See preceding Case.*

16. — Registration—Contract of unregistered money-lender—Void transaction—Usury—Action to recover securities—No offer to repay advances

MONEY-LENDERS—continued.

—*Equitable jurisdiction—Terms—Money-lenders Act, 1900* (63 & 64 Vict. c. 51), s. 2.

In an equitable action by a borrower to recover securities mortgaged to an unregistered money-lender the mortgagee will not be ordered to give up to the mortgagor the securities the subject of the mortgage except upon the terms that the mortgagor shall repay the money which has been advanced to him.

Quere, what would be the result of an action at common law for this purpose?

Authorities on the old usury law considered and applied. *LODGE v. NATIONAL UNION INVESTMENT CO.* **Parker J.** [1907] **W. N. 9** : [1907] **1 Ch. 300**

Note.

This case was distinguished by *C. A., Chapman v. Michaelson*, [1909] **1 Ch. 238**. See next Case.

17. — *Registration—Mortgage in favour of unregistered money-lender—Validity—Declaratory order—Equitable relief—Imposition of terms—Money-lenders Act, 1900* (63 & 64 Vict. c. 51), s. 2, sub-s. 1 (a), (b), 3—*R. S. C.*, 1883, *Order XXV.*, r. 5.

The trustee of a debtor under a scheme of arrangement with his creditors brought an action against an unregistered money-lender, who, in the course of his business, had taken a mortgage from the debtor to secure a loan, for a declaration that the mortgage was illegal and void under s. 2 of the Money-lenders Act, 1900 :—

Held, that the Court had power to give a declaratory judgment, although no ancillary relief was claimed, and that it ought not to impose upon the plt. equitable terms as to repayment of the actual money advanced as a condition of giving the declaratory judgment.

Lodge v. National Union Investment Co., [1907] **1 Ch. 300**, distinguished.

Decision of *Eve J.*, [1908] **2 Ch. 612**, affirmed. **CHAPMAN v. MICHAELSON** **C. A.** [1908] **W. N. 241** ; [1909] **1 Ch. 238**

18. — *Registration—New address—Places at which business carried on—Particulars to be inserted in form of application—Money-lenders Act, 1900* (63 & 64 Vict. c. 51), ss. 2, 3.

A registered money-lender, carrying on business at a registered address, who desires to be registered in respect of another and additional address, must in the form of application in respect of the latter address insert the name of the registered address at which he is already carrying on business as well as the address in respect of which he is applying for registration. *STAFFORDSHIRE FINANCIAL CO. v. VALENTINE* **C. A.** [1910] **2 K. B. 233**

19. — *Registration—"Usual trade name"—Carrying on more than one business—Money-lenders Act, 1900* (63 & 64 Vict. c. 51), s. 2.

Under the Money-lenders Act, 1900, s. 2, sub-s. 1 (a), a name assumed by a money-lender for the first time for the purpose of registration cannot be described as his "usual trade name."

A money-lender who under different names carries on one business as an individual and another as a member of a partnership firm carries on business "in more than one name"

MONEY-LENDERS—continued.

within the meaning of s. 2, sub-s. 1 (b), and incurs the penalty imposed by s. 2, sub-s. 2, of the Act.

The provision in s. 2, sub-s. 1 (c), strikes at a money-lender who is actually registered by the registration authorities and contracts otherwise than in his registered name, and not at a money-lender who being so registered contracts in that name.

Decision of *C. A., Sadler v. Whiteman*, [1910] **1 K. B. 868**, affirmed on the first two points (Lord Mersey dissenting as to the first point). Decision reversed on the third point. **WHITEMAN v. SADLER** - **H. L. (E.)** [1910] **W. N. 193** ; [1910] **A. C. 514**

20. — *Reopening closed and present transactions—Absence of deception or pressure—Excessive interest—Money-lenders Act, 1900* (63 & 64 Vict. c. 51), s. 1.

In this case *Pickford J.* held that the first transaction between the parties, which was finally closed on Dec. 9, 1908, by payment of all that was asked for by the plt., ought not to be reopened. It was clear that the deft. was prepared to pay a very high rate of interest for a temporary loan. He thoroughly understood what he was doing, and though that was not conclusive to prevent him from having relief, it was a matter to be considered. The plt. did not appear to have taken advantage of the deft. except as regards the rate of interest, but seemed to have acted in a straightforward way. The interest was, however, very high—it had been stated to be 170 per cent.—and the first question was whether the transaction which was closed on Dec. 9, 1908, was to be reopened. It might not be very logical to deal with transactions which had been closed in a different way from those which were still running, but they ought to be dealt with on a different footing. As there had been no deception or pressure he did not think that he ought to reopen the closed transaction. As to the subsequent transactions which the deft. had not voluntarily closed, they might be looked on in a somewhat different light. The rate of interest was practically about the same as in the transaction which had been closed. The deft. knew he was paying a very high rate and thought that it was between 60 and 100 per cent. This was a case in which a high rate might properly be charged, but as it stood it was too high, and it was sufficiently high to justify him in giving relief. On what basis he ought to give it was a very difficult question. There ought to be repayment of 450%, the sum advanced, with interest at 60 per cent. **MICHAELSON v. NICHOLS** - **Pickford J.** [1910] **W. N. 69**

21. — *Reopening of transaction—"Harsh and unconscionable transaction"—Money-lenders Act 1900* (63 & 64 Vict. c. 51), s. 1.

By s. 1, sub-s. 1, of the Money-lenders Act, 1900, where proceedings are taken in any Court by a money-lender for the recovery of money lent after the commencement of the Act, and there is evidence which satisfies the Court that the interest charged in respect of the sum actually lent is excessive, or that the amounts charged for

MONEY-LENDERS—*continued.*

expenses, inquiries, fines, bonus, premium, renewals, or any other charges, are excessive, and that, in either case, the transaction is "harsh and unconscionable, or is otherwise such that a Court of Equity would give relief," the Court may reopen the transaction and give relief to the person sued:—

Held, that the words "or otherwise is such that a Court of Equity would give relief" are not exclusive of the words "harsh and unconscionable," and that in order to entitle the person sued to relief the transaction must be such that a Court of Equity would relieve against it on the ground of its being harsh and unconscionable. *WILTON & Co. v. OSBORN* [1901] 2 K. B. 110

22. — "*Usual trade name*"—*Registered name*—*Money-lender partner in a firm carrying on money-lending business at one address in a partnership name*—*Money-lending business also carried on by money-lender in a different name at a different address*—*Money-lenders Act, 1900* (63 & 64 Vict. c. 51), s. 2.

By s. 2, sub-s. 1 (a), of the Money-lenders Act, 1900, a money-lender shall register himself as a money-lender "under his own or usual trade name and in no other name":—

Held, that the expression "usual trade name" means the name by which the money-lender elects at the time of registration to be known, whether he adopted it before or after the commencement of the Act.

Held, further, that a money-lender who carries on business at one address as a member of a firm with a partnership name, and at the same time carries on business alone at another address in a name different from that of the partnership, commits a breach of the provisions contained in s. 2, sub-s. 1 (b), of the Act, for which he is liable to a penalty under s. 2, sub-s. 2, and that a promissory note given to him at the address where he carries on business alone, by way of security for a loan made by him at that address in the name he uses there, is void. *STIRLING v. STIRLING & PYMAN - Bucknill J.* [1909] W. N. 204; [1910] 1 K. B. 67

Note.

This case was dissented from by Bray J., *Sadler v. Cobb & Co.*, [1910] W. N. 29. See next Case.

23. — "*Usual trade name*"—*Registered name*—*Money-lending business carried on at two addresses*—*Money-lenders Act, 1900* (63 & 64 Vict. c. 51), s. 2.

The question was raised (*inter alia*) whether a money-lender can carry on two businesses.

Bray J. held that there was nothing in the Money-lenders Act, 1900, which prevents a money-lender carrying on two businesses, and dissented from the decision of Bucknill J. on that point in *Stirling v. Silburn & Pyman*, [1910] 1 K. B. 67. See preceding Case. *SADLER v. COBB & Co.* Bray J. [1910] W. N. 29

MONEY-ORDERS.

See under POST OFFICE.

— Church Discipline.

See under ECCLESIASTICAL LAW — Church Discipline.

MONEY-LENDERS—*continued.*

— Citation—Interest, Insufficiency of.

See ECCLESIASTICAL LAW—Faculty. 4.

— Officiating without leave of incumbent of parish and contrary to inhibition of Ordinary—Unconsecrated building.

See ECCLESIASTICAL LAW — Offences. 4.

— Repulsion from Holy Communion—Marriage with deceased wife's sister—Criminal suit—Prohibition.

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"MONTH"—Time—Lunar month—Construction of documents.

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MORTGAGE—continued.**Accounts.**

1. — *Practice—Mortgagor and mortgagee—Redemption—Mortgagee in possession—Accounts—Sale of part of the mortgaged property—Rents and profits—Rests.*

In a redemption action against a mortgagee in possession, who has from time to time sold parts of the mortgaged property, where a decree has been made directing the usual accounts and inquiries, but giving no direction as to rests, the mortgagor is not entitled to have the account of rents and profits taken, like the account of proceeds of sale, with rests.

Thompson v. Hudson, (1870) L. R. 10 Eq. 497, is not an authority against that proposition.

Wrigley v. Gill, [1905] 1 Ch. 241, followed *AINSWORTH v. WILDING*

Joyce J. [1905] W. N. 11; [1905] 1 Ch. 435 — Purchase from mortgagee by father of infants — Liability to account.

See MORTGAGE—**Infants**. 1.

Administration.

See under ADMINISTRATION.

Advertisements.

— Mortgagor's address unknown—Implied power of sale.

See BANKRUPTCY—**Advertisements**. 1.

Advowson.

1. — *Mortgage—Foreclosure—Advowson in gross—Equitable mortgage—No payment of principal or interest for forty-eight years—Stale demand—"Land"—Real Property Limitation Act, 1833 (3 & 4 Will. 4, c. 27), s. 1.*

The plts. sought foreclosure of an equitable mortgage of an advowson in gross. The mortgage was created by deed in 1860, accompanied by deposit of the title deeds. No claim for, or payment of, principal or interest had ever been made, and no acknowledgment ever given. The plts. were assigns of the original mortgagees, but the express power of sale did not extend to assigns. The debt. had been the incumbent of the living since 1865, and in 1892 had bought the advowson, with notice of the mortgage, from the official receiver in bankruptcy of the original mortgagor.

An advowson is not "land" within the meaning of that term as used in the Real Property Limitation Act, 1833.

Held, that the equitable doctrine of staleness of demand applied, and that the plts.' claim failed. *BROOKS v. MUCKLESTON*

Joyce J. [1909] W. N. 188; [1909] 2 Ch. 519

Agents.

— Agent—Scope of authority—Power of attorney — Power to sell property belonging to principal.

See PRINCIPAL AND AGENT. 8.

Assignment.

— Notice by executors of assignee—Acknowledgment in deed by mortgagor of receipt of money.

See ASSIGNMENT. 8.

MORTGAGE—continued.**Bank.**

1. — *Mortgage to secure current account—Subsequent mortgage—Appropriation of payments—Rule in Clayton's Case.*

The rule in *Clayton's Case*, that payments carried by a creditor to a current account which is communicated to the debtor are to be appropriated to liabilities in order of date is founded on a presumption of the creditor's intention and will not be applied in a case where it is proved by the conduct of the parties that the creditor had no such intention.

In Sept., 1893, G. mortgaged property to a bank to secure an overdraft on his current account limited to 2500*l.* The bank held other security for the overdraft to the amount of 1000*l.* In 1895 G. mortgaged the same property to D. to secure 3500*l.* This mortgage recited the mortgage to the bank and was expressly made subject to it. Notice was given to the bank, but they continued the current account with G. instead of opening a fresh account. G. from time to time made payments to his account which, if applied according to the rule in *Clayton's Case*, would have paid off the moneys due at the date of the second mortgage by Jan. 6, 1896. The bank never allowed G. to overdraw beyond the limit of 3500*l.* for which they held security, except temporarily on deposit of fresh security. G. also often appropriated payments in to meet particular cheques. D., through her husband, who was her agent and acted as solicitor for G., had full notice of all the dealings between G. and the bank. G. was made bankrupt in 1899, and the bank in that year realized their security for a price just sufficient to pay them the amount due. D. did not at that time complain, and her husband procured from the bank a release of a guarantee of their mortgage given by T. G., and thereupon D. got a release of a counter-guarantee given by her to T. G.

In April, 1905, D. commenced this action for an account against the bank on the footing that they were not entitled to charge for advances made to G. after notice of the mortgage to D. :—

Held by Fletcher Moulton and Buckley L.J.J. (dissentiente Cozens-Hardy M.R.), that there was sufficient evidence to shew that the bank had not intended to appropriate the payments in discharge of the debts secured by the mortgage and that the rule in *Clayton's Case* did not apply.

Decision of Eve J. affirmed.

Clayton's Case, (1816) 1 Mer. 572, and *Hopkinson v. Rolt*, (1861) 9 H. L. C. 514, discussed. DEELEY v. LLOYDS BANK. C. A. [1910] 1 Ch. 648

Bankruptcy.

See under BANKRUPTCY—Mortgages.

Benefice.

— Vicarage — Sale — Mortgage of revenues of benefice to secure loan — Validity.

See ECCLESIASTICAL LAW—Vicarage.

1.

Brewery Companies.

See under BREWERY COMPANY.

MORTGAGE—continued.**Broker and Client.**

— Purchase of shares—Carry over—Mortgage of shares — Blank — Transfer — Implied power of sale—Wrongful conversion. *See* STOCK EXCHANGE. 1.

Colonial Mortgages.

— Mortmain—Colonial mortgages—Applicability of colonial mortmain law. *See* CONFLICT OF LAWS. 14.

Company.

— Debentures.

See under COMPANY—Debentures.

— Mortgages.

See under COMPANY—Mortgages.

Consolidation.

1. — *Bankruptcy—Several mortgages on same property—First mortgage reserving right of consolidation—Third mortgage including other property—Claim to redeem third mortgage only—Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), s. 17.*

Three mortgages of the same property were granted by the same mortgagor to three different parties, the third mortgage also including other property. Only the first mortgage contained a clause reserving a right of consolidation. On the bankruptcy of the mortgagor, the second mortgagee took transfers of the first and third mortgages :—

Held, that the trustee in bankruptcy could not redeem the third mortgage without also redeeming the first and second mortgages. *In re SALMON. Ex parte THE TRUSTEE*

Wright J. [1902] W. N. 255 ; [1903] 1 K. B. 147

2. — *Equities—Express contract—Contrary intention—Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), s. 17.*

A mortgage to the debts of leasehold property, M., contained a provision that the mortgagor should not be entitled to redeem without first paying all moneys that might be secured to the mortgagees by any other mortgage executed by the mortgagor. The mortgagor then mortgaged another leasehold, R., to the debts, and the day after gave a second mortgage of it to the plts. Of this mortgage the debts. had notice. He subsequently gave two further mortgages of different properties to the debts.

In an action by the plts., as second mortgagees to redeem R. :—

Held, that the debts., as first mortgagees of R., were entitled to consolidate their prior mortgage on M. with their mortgage on R., but not the two mortgages subsequent in date to the plts.' mortgage. *Hopkinson v. Rolt*, (1861) 9 H. L. C. 514, applied. *HUGHES v. BRITANNIA PERMANENT BENEFIT BUILDING SOCIETY Kekewich J.* [1906] W. N. 178 ; [1906] 2 Ch. 607

— Mortgage in name of trustee—Mortgage of different properties by different mortgagees — Assignment of equities of redemption to the same person.

See MORTGAGE—Redemption. 7.

MORTGAGE (Consolidation)—continued.

3. — *Redemption—Legal mortgage—Subsequent equitable mortgage between the same parties but of different property—Agreement to execute legal mortgage as the mortgagee may require—Clause excluding s. 17 of the Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41)*

The plt. mortgaged freeholds by a deed which contained no provision excluding the operation of s. 17 of the Conveyancing Act, 1881, which abolishes consolidation of mortgages. She subsequently made an equitable mortgage of other property to the same mortgagee, and signed a memorandum whereby she agreed at any time during the continuance of the security to execute a legal mortgage with such powers and provisions and in such form as the mortgagee might require for further securing the principal and interest.

Held (following *Whitley v. Challis*, [1892] 1 Ch. 64), that this covenant was not intended to enlarge the subject-matter of the security, and, therefore, that the mortgagee was not entitled to have executed by the plt. a legal mortgage containing a clause excluding the operation of s. 17. **FARMER v. PITT**

Byrne, J. [1902] W. N. 65; [1902] 1 Ch. 954

4. — *Taxation of costs—Mortgage—Mortgagee in possession—Notices to tenants—Practice.*

Application by trustees of a will to review the taxation of costs charged against them as mortgagors in respect of the transfer of a mortgage. The mortgagees were in possession. The solicitors who acted for the mortgagees sent in certain bills of costs in relation to the transfer of the mortgage which the trustees paid under protest, reserving their right to tax. An order for taxation was obtained, and by the taxing Master's certificate the bills, which amounted to 83l. 9s. 10d., were allowed at 69l. 19s. 10d. One of the objections by the trustees, which was overruled by the taxing Master, was in respect of notices served upon various tenants requiring them to pay their rents to the mortgagees. The first item objected to was for drawing such a notice—"Folios 4, and fair copy in duplicate, 10s." This the taxing Master had reduced to 6s. 8d. (being 1s. a folio for drawing, and 4d. a folio for each of two copies), but he allowed the same sum for five other notices to tenants. It was urged for the applicants that these subsequent notices should only be allowed for at copying charges of 4d. a folio, with nothing for drawing, as the first notice had been settled by counsel, and only formal alterations of names, &c., were necessary.

Eve J. said that the question raised must frequently have arisen before, and there must be a settled practice, although no authority had been cited. His attention had been directed to precedent 48 in "Scott's Guide to Costs," vol. i., p. 105, where the following charges were stated in proceedings upon a writ of sequestration:—"drawing notice to tenants to attorn . . . 5s.; copy such notice, each per folio . . . 4d." He had consulted the taxing Masters and received an intimation from them to the effect that the precedent referred to was in accordance with the settled practice, and that in the case of a notice to a tenant to pay rent to a mortgagee going

MORTGAGE (Consolidation)—continued.

into possession the invariable practice was to allow 1s. per folio for settling the first notice, and 4d. a folio for all copies, and for filling up subsequent notices to the various tenants. The certificate would therefore be varied by allowing 4s. for drawing and settling the first notice, and with regard to subsequent notices no charge would be allowed for drawing the same, but two copies of each notice would be allowed at 4d. a folio. As other objections had failed, there would be no order as to costs. *In re TWEEDIE'S TAXATION* - - Eve J. [1908] W. N. 257

Note.

See In re Tweedie, Eve J. [1909] W. N. 110.
Solicitor—Costs. 38.

Contribution.

1. — *Voluntary assignment of part of property comprised in mortgage—No covenants for title, express or implied—Paramount charge—Administration of assignor's estate—Payment of mortgage debt by executors—Liability of assignee to contribute.*

An assignor deposited with his bankers the title-deeds of certain leasehold premises together with a policy of assurance on his own life and certain dock warrants, and executed a deed of charge and memorandum of deposit to secure the payment of the balance for the time being due on any accounts he might have with the bank. He subsequently, by a voluntary deed, assigned the leasehold premises to his wife. The deed contained no reference to the charge and memorandum of deposit, and no covenants for title, express or implied. By his will he gave all his property to trustees upon trusts for the benefit of his wife and children. On the death of the assignors his executors paid off the debt due to the bank. On an application to the Court for the determination of the question whether the widow, as assignee of the leaseholds, was liable to contribute to the payment of the debt:—

Held, that the charge being one created by the assignor himself, and not a charge paramount to his own title, the widow was under no liability to contribute.

Ker v. Ker, (1869) Ir. R. 4 Eq. 15, explained and distinguished.

In re Jones, [1893] 2 Ch. 461, distinguished.
In re DARBY'S ESTATE. RENDALL v. DARBY
Warrington J. [1907] 2 Ch. 465

Copyholds.

— *Heriot—Freehold of manor—"Dying seised"—Mortgage.*

See HERIOT. 1.

— *Title—Conditional surrender by way of mortgage—Principal and interest statute-barred—Conditions of sale.*

See VENDOR AND PURCHASER—Copyholds. 1.

Corporation.

— *Municipal corporation—Borrowing powers—Obligation on corporation to mortgage rates by way of security for loan.*

See CORPORATION. 2.

MORTGAGE—continued.**Costs.**

— Application to be added as defendant and for extension of time for redemption—Form of order.

See **MORTGAGE—Foreclosure.** 3.

— Mortgage to secure agreed balance of stated account—Bankruptcy of client.
See **BANKRUPTCY—Trustee.** 6.

1. — Mortgagee's costs—Costs of negotiating loan and preparing mortgage deed.

A mortgagee's solicitor's costs of negotiating the loan and preparing the mortgage deed become, on completion of the transaction, simple contract debt at common law due to the mortgagee by the mortgagor; and cannot be added by the mortgagee to his security as part of the costs, charges, and expenses properly incurred under or by virtue of his mortgage. **WALES v. CARR**

Farwell J [1902] W. N. 43; [1902] 1 Ch. 860

2. — Mortgagor and mortgagee—Realization of whole property by mortgagees in possession — Overpayment — Conduct — Costs—Set-off — Date when balance to be struck—Simple interest.

In this case **Eve J.** said that the cases of **Charles v. Jones**, (1886) 33 Ch. D. 80, **Hall v. Howard**, (1886) 32 Ch. D. 430, and **Ashworth v. Lord**, (1887) 36 Ch. D. 545, established three propositions: (1) That a mortgagee has an absolute right to costs unless they are forfeited by misconduct; (2) that if the absolute right is forfeited by misconduct, the costs are in the discretion of the judge; and (3) that the raising of an untenable defence, or a claim of a balance due after the mortgage has been fully paid off, both constitute misconduct by which the absolute right to costs is forfeited. On the other hand, he did not think that the statement in **Barlow v. Gains**, (1856) 23 Beav. 244, 246, where Lord Romilly said, "If the mortgagor had alleged and proved that the mortgagee was fully paid off at the filing of the bill, the mortgagee ought not to have put the mortgagor to file a bill at all, and the mortgagee would then have to pay the costs of the suit," must be read as meaning that in every case where a mortgagee has been overpaid he ought to be ordered to pay the costs of the action: **Charles v. Jones**, (1887) 35 Ch. D. 544, 548. He came to the conclusion in the present case that, by their conduct, the mortgagees had forfeited their absolute right to costs, and they would have no costs down to judgment, except those relating to the abandoned issue. On the other hand, having regard to the circumstances of the case, including the delay in commencing the action, he would not order the mortgagees to pay any costs down to judgment. The costs of action subsequent to judgment must be paid by the defts., and there would be a set-off. If, on taxing and setting off the costs, a balance should be found in favour of the defts. they would be charged with simple interest at 4 per cent. on the 236*l.* 15*s.* from Oct. 21, 1896, down to May 4, 1905, when the writ was issued, and as on that day the balance of costs certified to be due to them would be deducted from the 362*l.* 15*s.*, and they would be charged with 4 per

MORTGAGE (Costs)—continued.

cent. interest on the reduced amount. **HEATH v. CHINN** - - **Eve J. [1908] W. N. 120**

— Taxation by third party—Taxation of bill of mortgagee's solicitor on application of mortgagor.

See **SOLICITOR—Costs.** 41.

Devolution.

1. — Freeholds — Mortgagee in possession — Real Property Limitation Act, 1874 (37 & 38 Vict. c. 57), s. 7—Devolution of mortgaged estate — Realty or Personality.

L. was the mortgagee in fee of land of which he took possession in 1861. He remained in possession till his death in 1864. By his will he made his widow executrix and tenant for life, and subject thereto died intestate, leaving **I.** his heir. The widow and **I.** were entitled to **L.**'s personality.

On **L.**'s death his widow took possession, which she retained until her death in 1900.

Buckley J. held that although the land descended to **I.** as heir, he held it as trustee for the widow who was entitled to the mortgage debt as executrix; that **I.** was not discharged from the trusteeship when the mortgagor was statute-barred; and that the land devolved on the executrix of **L.** as personality: *In re Loveridge, Drayton v. Loveridge*, [1902] 2 Ch. 859.

I. died in 1880, having been of unsound mind ever since the death of **L.** He died intestate, and **P.** was his administrator and **A.** and **X.** were his co-heiresses.

Held, by **Buckley J.**, (1) that the mortgagor was statute-barred on Jan. 1, 1879, when s. 7 of the Real Property Limitation Act, 1874, came into force; (2) that the one-half share of the land in which **I.** was beneficially interested vested in him as realty and descended on his death to his co-heiresses. *In re LOVERIDGE, PHARCE v. MARSH* **Buckley J. [1904] 1 Ch. 518**

Enfranchisement.

— "Enfranchisement" — Mortgage of settled land for purpose of enfranchisement—Conversion of leasehold land into freehold.

See **SETTLED LAND—Enfranchisement.**

1.

Entry.

2. — Land—Right of entry of mortgagee—Entry—Relation back of right of possession—Trespass antecedent to entry—Right of action.

After entry by a mortgagee of land his right of possession relates back to the time at which his legal right to enter accrued, so as to enable him to support an action against a wrong-doer for a trespass committed at a time antecedent to the entry.

Barnett v. Guildford (Earl), (1855) 11 Ex. 19, approved and applied. **OCEAN ACCIDENT AND GUARANTEE CORPORATION, LD. v. ILFORD GAS Co.** - - - **C. A. [1905] W. N. 108; [1905] 2 K. B. 493**

Execution.

— Deed — Misrepresentation as to contents — Validity—Plea of non est factum.

See **DREED.** 5.

MORTGAGE—continued.**Fixtures.**

See also under **FIXTURES**.

- Rights of mortgagee against owner of machinery.

See **FIXTURES**. 4.

- Trade fixtures.

See also under **FIXTURES**.

1. — *Trade fixtures—Hire and purchase agreement—Right of mortgagee against owner of fixtures—Mortgagor in possession.*

In the absence of an express stipulation to the contrary, a mortgagor in possession has the right to permit trade fixtures to be put up and removed from the mortgaged premises provided they are removed before the mortgagee takes possession, but this right of removal ceases when possession is taken by the mortgagee.

In Nov., 1902, a freehold laundry was mortgaged in the usual form for 400%, the mortgagor covenanting not to remove any fixtures without the written consent of the mortgagee. In June, 1903, trade machinery was fixed up in the premises under a hire and purchase agreement, which provided that it should not become the property of the hirer until all instalments had been paid, and should be removable by the owner on the failure of the hirer to pay any instalment. Default having been made in payment of an instalment, the owner entered and removed the machinery. In an action by the mortgagee against the owner of the machinery for wrongful removal:—

Held (reversing the decision of Phillimore J.), that the machinery passed to the mortgagee as part of the freehold.

Gough v. Wood & Co., [1894] 1 Q. B. 713, examined and distinguished. *ELLIS v. GLOVER & HOBSON, LD.* — **C. A.** [1908] 1 K. B. 388

Foreclosure.

1. — *Account—Allowances—Cost of repairs—Mortgagee out of possession—Receiver—Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), ss. 19, 24, sub-s. 8 (iii).*

First mortgagees of leasehold premises, acting under the powers of the Conveyancing and Law of Property Act, 1881, appointed as receiver the manager of a guarantee society which had guaranteed them against loss on their mortgage. The mortgagors were under covenant with their lessor to keep the premises in repair, and were under covenant with the first mortgagees to observe the covenants of the lease. The premises being out of repair, the receiver put them into repair and paid the cost out of moneys found by the society. These repairs were not authorized in writing by the first mortgagees, and the cost of them was in excess of the rents and profits in the hands of the receiver. In an action for foreclosure by the first mortgagees against the second mortgagee and the mortgagors:—

Held, that, in taking the account of what was due to the first mortgagees under their security, the cost of these repairs (assuming them to be necessary and proper) ought not to be allowed, whether such cost was to be treated as a payment by the receiver or by the first mortgagees themselves.

MORTGAGE (Foreclosure)—continued.

The position of a receiver under the Conveyancing and Law of Property Act, 1881, discussed.

WHITE v. METCALF — — — *Kekewich J.*
[1903] W. N. 134; [1903] 2 Ch. 567

- Advowson in gross—Equitable mortgage—Stale demand—"Land."

See **MORTGAGE—Advowson**. 1.

- Collateral security—Tacking—Contribution—Different securities—Payment by surety.
See No. 6, below.

- Estoppel in pais—Validity—Mortgage by sub-demise.

See **ESTOPPEL**. 1.

2. — *Foreclosure absolute—Puisne incumbrancer—Consent order—Effect—Right to sue on covenant in mortgage—Condition precedent—Demand in writing—Following assets in hands of residuary legatees and devisees of mortgagor—Judgment against heir-at-law—Form of order—Debts Recovery Act, 1830 (11 Geo. 4 & 1 Will. 4, c. 47), s. 3.*

Where various parties to an action agree an order purporting to be a consent order, the agreement must be treated as embodying terms to which all assent, and by which all are bound.

A puisne incumbrancer who voluntarily submits to a foreclosure order absolute being made upon an originating summons, without insisting upon his right to have a time allowed within which to deem a prior incumbrancer, does not thereby preclude himself from suing on the covenant for payment in the mortgage deed and recovering his debt from the residuary legatees and devisees of the deceased mortgagor.

A mortgage of a leasehold public-house by a testatrix contained a covenant that she, or those deriving title under her, would, upon demand in writing left at the public-house, repay the principal sum advanced with interest. No demand in writing was ever made on the premises:—

Held, that effect was given to the true intention of the parties to the deed if it was brought home to the mortgagor, or those claiming under her, that the mortgagees were demanding their money and were about to take proceedings to recover it. *WORTHINGTON & CO., LD. v. ABBOTT* — *Eve J.* [1909] W. N. 238; [1910] 1 Ch. 588

3. — *Foreclosure order nisi—Creditor who has obtained equitable execution—Application to be added as defendant and for extension of time for redemption—Costs—Form of order—Mortgagor and mortgagee—Practice.*

Where in a foreclosure action a mortgagee had obtained a foreclosure order nisi, and subsequently a judgment creditor in another action, who had obtained the appointment of a receiver by way of equitable execution of the property of the mortgagor, applied to be added as a deft. to the foreclosure action, and that the period for redemption might be extended, the Court made an order adding the applicant as deft., but refused to extend the period for redemption.

Order in Campbell v. Holyland, (1877) 7 Ch. D. 166, 168, followed. *In re PARBOLA, LD. BLACKBURN v. PARBOLA, LD.* *Warrington J.* [1909] W. N. (185), 179; [1909] 2 Ch. 437

MORTGAGE (Foreclosure)—continued.

4. — *Order nisi for foreclosure, on a principal charge and four supplementary charges—Omission of fifth supplementary charge—Action for foreclosure on the six charges—Res judicata—Practice—Costs—Set-off—Independent proceedings—Consolidation Order—R. S. C., Order LXV., rr. 14, 27, sub-r. 21.*

The debt. charged her property with repayment of 100l. and interest to the plt., and subsequently gave him four supplementary charges to secure further advances. She then gave him another supplementary charge to secure a further advance and his professional costs. The plt. brought an action on the first five charges, omitting the sixth, which was mislaid, and obtained an order for foreclosure nisi. He afterwards found the sixth charge, and applied for an order extending the relief to that charge, but his application was dismissed with costs. He then brought a fresh action for foreclosure on all the six charges. The debt. took out a summons asking that the proceedings might be stayed on the ground that the plt. was estopped by the foreclosure order :—

Held, by Warrington J., that the subject-matter of the fresh action was not the same as that in the first action, and that in the circumstances the plt. was not estopped from setting up his present case, and that the debt.'s application must be dismissed with costs.

The costs payable to the debt. in the first action having been taxed, an order was made by the Master consolidating the two actions, giving relief by way of foreclosure nisi in respect of all the six charges, and ordering the taxation of the costs in both actions.

The plt. then applied that the costs payable to him under the order of Warrington J. might be directed to be set off against the costs payable by him in the first action :—

Held, by Parker J., following *David v. Rees*, [1904] 2 K. B. 435, that the provisions, as to set-off of costs, of Order LXV., rr. 14, 27, sub-r. 21, had no application to costs in independent proceedings; and that, notwithstanding the consolidation order, the costs were in independent proceedings; that, as under the practice before those rules there could be no set-off in independent proceedings otherwise than subject to the solicitor's lien for costs, the plt.'s application must be dismissed with costs, but that these costs could be set off against the costs under the consolidation order. **BLAKE v. FRENCH**

Warrington J.; Parker J. [1907] W. N. 39, 63; [1907] 1 Ch. 428

— Power of sale, Exercise of.

See **MORTGAGE—Sale. 1.**

— Practice—Foreclosure action—Stay of proceedings—Action in Chancery Division—Concurrent action in King's Bench Division.

See **PRACTICE—Staying Proceedings. 1.**

5. — *Principal not due—Covenant to pay interest half-yearly—Temporary default—Conditions of proviso for redemption—Construction.*

A mortgage of Jan. 30, 1900, contained the following provisions :—

1. A covenant to pay the principal on

MORTGAGE (Foreclosure)—continued.

Jan. 1, 1914, "with interest that may be then due" at a specified rate.

2. A covenant to pay interim interest half-yearly on specified days.

3. A conveyance of the property "subject to the proviso for redemption hereinafter contained."

4. A proviso that the mortgagee would not call in the principal before Jan. 1, 1914, if the half-yearly interest were paid on the specified days or within twenty-one days thereof.

5. A proviso that the mortgagor should not pay off the principal before Jan. 1, 1914.

6. A proviso that if the mortgagor should on Jan. 1, 1914, pay the principal, "with interest for the same in the meantime at the rate aforesaid that may be due and unpaid," the mortgagee would reconvey.

The mortgagor having paid an instalment of interest twenty-seven days after the specified day, the mortgagee sued for foreclosure :—

Held, on the construction of the deed, that the proviso for redemption did not import a condition that interest was to be paid half-yearly on the specified days or within twenty-one days thereof, and consequently that, as there was no condition broken, the mortgagee's estate was not absolute at law, and there could be no foreclosure.

In re Turner, (1895) 43 W. R. 153; 13 R. 132, followed.

Edwards v. Martin, (1856) 25 L. J. (Ch.) 284; *Burrowes v. Molloy*, (1845) 2 J. & Lat. 521, 526; and *Stanhope v. Manners*, (1763) 2 Eden, 197, distinguished. **WILLIAMS v. MORGAN**

Swinfen Eady J. [1906] W. N. 80; [1906] 1 Ch. 804

— Registered title—Mortgage by deed—Contemporaneous instrument of charge—Order foreclosing mortgage, but not charge.

See **LAND TRANSFER. 8.**

— Shares—Equitable mortgage—Pledge—Deposit of certificate.

See **COMPANY—Shares. 9.**

— Stamps—Foreclosure order before 1898.

See **REVENUE—Stamps. 13.**

6. — *Successive incumbrances—Real estate—Tenant for life of equity of redemption—Transfer of first mortgage to second mortgagee—Covenant by tenant for life for payment of first mortgage debt—Collateral security—Surety—Principal debtor—Payment by surety—Tacking—Consolidation—Postponement of surety.*

R. was tenant for life of real estate subject to a first mortgage to S. and to a second mortgage (which included additional property) to N., both created by R.'s predecessors in title. Subsequently N. paid off the first mortgage and took a transfer of it, R., the tenant for life, who had been keeping down the interest on both mortgages, joining by covenanting with N. for payment of the first mortgage debt, with a proviso that, as between R., his heirs, &c., estate and effects on the one part, and the first mortgaged premises and the owner or owners for the time being thereof on the other part, the said premises

MORTGAGE (Foreclosure)—continued.

should be the primary fund for payment of the first mortgage debt, and that R.'s covenant should be "only a collateral security" for such payment, but that, notwithstanding N., his executors, &c., might resort to either means for enforcing payment in preference to such other means.

R. and N. being both dead, a mortgagee's action was brought by N.'s representatives against R.'s representatives, claiming payment of the first mortgage debt pursuant to R.'s covenant, and also the right to tack the second mortgage to the first. The defts. contended that R. had covenanted as a surety, and that, therefore, on payment by them of the first mortgage debt they would be entitled to stand in the place of the plts., the first mortgagees, and to have an assignment of the securities for that debt. At the trial of the action, which proceeded on the assumption that R. had entered into the covenant as surety and not as principal debtor.—

Held, by Byrne J., [1903] W. N. 49, though with reluctance, that he was bound by *Farebrother v. Wodehouse*, (1856) 23 Beav. 18, and that, therefore, the plts. could, as mortgagees, at the same time enforce payment of the first mortgage debt under R.'s contract of suretyship, and claim the right to tack the second mortgage to the first as against the right of the surety to the transfer of securities; also that the defts. would not, on making such payment, be entitled, under a foreclosure judgment, to a rateable proportion of the securities held by the plts. for both debts.

On Appeal:—

Held, by Romer and Stirling L.JJ. (Vaughan Williams L.J. dissenting), that upon the construction of the transfer and of R.'s covenant therein R. was a principal debtor and not a surety, and that consequently, upon the authority of *Duncan, Fox & Co. v. North and South Wales Bank*, (1880) 6 App. Cas. 1, 11, and *Newton v. Chorlton*, (1853) 10 Hare, 646, neither he nor his representatives could claim the rights of a surety as against either N. or his representatives. The appeal was, therefore, dismissed with costs:

Held, by Vaughan Williams L.J., that, upon the construction of the proviso to the covenant by R. to pay the first mortgage debt, R. was to have the rights of a surety and to be entitled to an assignment of the first mortgage on payment of the principal and interest. **NICHOLAS v. RIDLEY** - - - **C. A. [1904] 1 Ch. 192**

Heriot.

— Freehold of manor—Tenant—"Dying seised"
—Mortgagor in possession.
See HERIOT. 1.

Hire-Purchase.

— Trade fixtures—Hire-purchase agreement—Entry of mortgagee into possession.
See MORTGAGES—Fixtures. 1.

Husband and Wife.

See under HUSBAND AND WIFE—Mortgages.

Income Tax.

See under REVENUE—Income Tax.

MORTGAGE—continued.**Infant.**

— Maintenance—Tenant in tail in remainder—Order sanctioning mortgage of real estate—Jurisdiction of Court.
See INFANT—Maintenance. 3.

1. — Purchase from mortgagee by father of infant—Liability to account.

J. by will gave N. House and M. House to his daughter S., the wife of O., for life, with remainder to their children as tenants in common, and gave B. House, W. House, and Y. House to the children of J. J. equally. At the death of J. the children were infants, and N. House, M. House, and B. House were comprised in a single mortgage to X. to secure 1350*l.*, while W. House and Y. House were subject to several mortgages to other persons. S. and O. and J. J. determined that, to give effect to the will, the mortgage debt of 1350*l.* should be apportioned between N. House and M. House on the one hand and B. House on the other. O. and J. J. communicated with X., the mortgagee, and it was arranged that N. House and M. House should be purchased by O. and B. House, W. House, and Y. House by J. J. for amounts equal to the sums due on the mortgages, there being no valuation or bargaining, or evidence of the previous intention of the mortgagees to sell, although the power to sell had become exercisable. O. at once began to look out for sub-purchasers of N. House and M. House, and in Mar., 1880, a sub-purchaser of N. House having been found to buy it, O. raised the balance of the purchase-money payable by him on a mortgage of M. House. On completion the properties were conveyed to O. and J. J. respectively in the manner and with the recitals usual in the case of mortgagees selling under their powers of sale, and O. conveyed N. House to the sub-purchaser and mortgaged M. House for the balance. The value of the two houses was at least 1580*l.*, whereas O. paid only about 1246*l.* for them. S. died in 1882:—

Held (applying the principles of *Keech v. Sandford*, (1726) Sel. Cas. 61; 2 W. & T., 7th ed., p. 693), that O. was a trustee of N. House and M. House (subject to the life interest of S.) for the children of O. **GRIFFITH v. OWEN**

Parker J. [1907] 1 Ch. 195

Insurance.

— Life policy—Mortgages—Priorities—Notice.
See INSURANCE (LIFE). 10.
— Policy of insurance—Indemnity—Bankruptcy of principal—Proof of surety—Double proof.
See BANKRUPTCY—Proof. 9.
— Repayment of premiums to volunteer out of policy moneys—Duty of trustee.
See BANKRUPTCY—Third Parties. 1.

Interest.

1. — Arrears, Mortgagee's right to recover—Mortgagor and mortgagee—Proceeds of sale of real and personal estate—Reversionary interest, Mortgage of—Administration action—Fund in

MORTGAGE (Interest)—continued.

court—Payment out—Summons—Application by mortgagor—Redemption—Interest—Real Property Limitation Act, 1833 (3 & 4 Will. 4, c. 27), s. 42—Lord Chancellor sitting alone in Court of Appeal—Court of Appeal, Decision binding on.

Where a mortgagor applies by summons as against the mortgagee, that a fund in court in an administration action, being the proceeds of sale of the mortgaged property (real and personal estate under a will), may be paid out to him, the mortgagor, after payment thereof to the mortgagee of six years' interest only, in addition to the principal, he is in the same position as if he had brought an action for redemption, and therefore cannot recover the fund except upon the usual redemption terms of payment of principal together with the full arrears of interest, s. 42 of the Real Property Limitation Act, 1833, having no application to the case.

A testator who died in 1862, by his will gave his real and personal estates to trustees upon trust to pay the income to his widow for life, and after her death to sell the same and stand possessed of the proceeds in trust for his children equally. In Jan., 1867, F., one of the children, conveyed his reversionary interest in his share under the will to A., subject to a proviso for redemption on repayment to A. of 500*l.*, with interest at 5 per cent. per annum, in July, 1867. The mortgage contained the usual mortgagor's covenants for payment of the principal, and also of interest at 5 per cent. per annum so long as the principal remained unpaid: and it was agreed that A., his heirs, &c., should, out of any real and personal estate which should be received by him and them under the mortgage, pay all moneys owing on the security and pay the surplus (if any) to F. The mortgage contained a power of sale, but there was no power of attorney enabling the mortgagee to sue or give receipts in the absence of the mortgagor.

In Aug., 1867, F. died intestate. In 1872 an action was brought for the administration of the testator's estate, and under orders made in the action his real and personal estates were sold, F.'s share of the proceeds being carried to his separate account in the action. In 1887 A. died, having by will appointed executors. The testator's widow died in 1900, and in 1901 F.'s administrator applied by summons, A.'s executors being respondents, for payment out to him of F.'s fund in court, after payment thereof to A.'s executors of the principal due on the mortgage, together with not more than six years' arrears of interest:—

Held (reversing *Farwell J.*, [1902] W. N. 224), that, notwithstanding s. 42 of the Real Property Limitation Act, 1833 (3 & 4 Will. 4, c. 27) A.'s executors were entitled to receive out of the fund their full arrears of interest before F.'s administrator received anything.

In re Slater's Trusts, (1879) 11 Ch. D. 227, overruled.

Whether the decision of a Lord Chancellor sitting alone in the C. A. is binding on that Court, discussed. *In re LLOYD. LLOYD v. LLOYD* - - C. A. [1902] W. N. 224: [1903] 1 Ch. 835

MORTGAGE (Interest)—continued.*Note.*

Explained and distinguished by C. A., *In re Hazeldine's Trusts*, [1908] 1 Ch. 34. See *Limitations, Statute of*. 14.

Land Transfer.

See under LAND TRANSFER.

Leaseholds.

- Will—Gift of leasehold house, the legatee performing the conditions of the lease —Mortgage of house and dividends in one mortgage — Foreclosure — Disclaimer—Liability for repairs to house. See WILL—Leaseholds. 2.

Leases.

- Covenant running with land—Lease by mortgagee "as agent." See LANDLORD AND TENANT. 51.
- Disclaimer—Mortgagees by demise—Option to take vesting order or be excluded—County court—Jurisdiction. See BANKRUPTCY—Jurisdiction. 1.
- Estoppel in pais—Lease by mortgagor—Affirmance by mortgagee. See ESTOPPEL. 1.
- Fixtures—Tenant's fixtures—Removal—Determination of lease by forfeiture—Mortgage of lease—Right of mortgagee. See COMPANY—Leases. 1.
- Forfeiture—Ejectment—Mortgagee of underlease—Relief—Parties—Costs. See LANDLORD AND TENANT. 35.
- Merger—Mortgage by underlease. See MERGER. 3.

1. — *Option to determine—Option to renew—Mortgagor in possession, Lease by—Lease including land other than mortgaged land—Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), s. 18.*

A lease made under the provisions of s. 18 of the Conveyancing and Law of Property Act, 1881, by a mortgagor in possession is valid as against the mortgagee notwithstanding that it contains an option for the lessee to determine the lease before, or to renew the lease after, the determination of the term.

But if the demised premises include land other than the mortgaged land, and one inclusive rent only is reserved, the lease is invalid as against the mortgagee. A deed of apportionment subsequently executed between the mortgagor and his lessee apportioning the rent as between the several parcels does not validate such a lease as against the mortgagee. *KING v. BIRD*

Bucknill J. [1909] 1 K. B. 837

- Option to purchase landlord's interest—Condition precedent — Part of purchase-money to be left on mortgage. See LANDLORD AND TENANT. 58.

2. — *Repairs—Landlord and tenant—Lease—Mortgagor in possession—Breach of covenant*

MORTGAGE (Leases)—continued.

to repair—Right of mortgagor to sue lessee—*Conveyancing and Law of Property Act, 1881* (44 & 45 Vict. c. 41), s. 10—*Judicature Act, 1873* (36 & 37 Vict. c. 66), s. 25, sub-s. 5.

The *Conveyancing and Law of Property Act, 1881*, s. 10, gives to a mortgagor entitled to possession or to receipt of the rents and profits of land subject to a lease, whose mortgagee has neither taken possession nor given notice of his intention to take possession, the right to sue the lessee for damages for breach of a covenant to repair contained in the lease.

The *Judicature Act, 1873*, s. 25, sub-s. 5, gives the mortgagor no such right. *TURNER v. WALSH* C. A. [1909] W. N. 133; [1909] 2 K. B. 484

— Surrender of lease to mortgagee—Lease by mortgagor in possession—Rights of mortgagee.

See LANDLORD AND TENANT. 73.

Licensing Acts.

— Compensation under—Mortgagor and mortgagee—Trust deed—Leaseholds—Parties interested.

See LICENSING ACTS. 10.

Lien.

— Vicarage—Sale—Purchase of new vicarage with proceeds—Loan.

See ECCLESIASTICAL LAW—Vicarage. 1.

Limitations, Statute of.

See also under LIMITATIONS, STATUTE OF.

— Mortgage—Covenant—Payment of interest by one devisee—Acknowledgment.

See ADMINISTRATION. 28.

— Real estate subject to trust for conversion—Mortgagee's claim for principal and interest.

See LIMITATIONS, STATUTE OF. 14.

Lunacy.

— Contract by insane person is void, not voidable—Bond passed under power of attorney granted by insane person—Law of Natal.

See NATAL. 3.

Married Women.

See under HUSBAND AND WIFE—Mortgages.

Merger.

See also under MERGER.

1. — Subrogation—Payment off by stranger—Equitable transfer—Presumption that security is kept alive—Ignorance of mortgagor—Agreement by stranger to take different security.

Mrs. Rice, the wife of C. L. Rice, was the owner of a leasehold house in Bristol and of pro-

MORTGAGE (Merger)—continued.

perty in Cardiff, which were together subject to a charge in favour of a bank to secure 450*l.* and interest, and the title deeds of both properties were deposited with the bank. Mr. Rice asked the plt. to lend him 450*l.* for the purpose of paying off the mortgage. The plt. thought the mortgaged property belonged to Mr. Rice and did not know of the Cardiff property, and he agreed to advance the money upon having a legal mortgage for 300*l.* on the Bristol property and a guarantee of 150*l.* by Mr. and Mrs. Rice's solicitor, who was to hold the deeds for him in the meantime. Mrs. Rice did not know of this transaction. The money was paid and the deeds of the Bristol property were now in the custody of the solicitor as stakeholder. Mrs. Rice refused to execute a mortgage in favour of the plt., and he brought this action against her, her husband, and the solicitor, for a declaration that he was entitled to a charge on the Bristol property for 450*l.* and interest. The question was whether the mortgage must be presumed to have been kept alive in the plt.'s favour.

Held, on the facts, that it must be presumed that the plt. intended to keep the charge alive in his own favour; that the fact that Mrs. Rice the owner of the mortgaged property, had not, requested him to make the payment and did not know of the transaction was immaterial; that the fact that he intended to take a different security did not affect the question; and that he was entitled to a charge on the Bristol property for 450*l.* and interest. *BUTLER v. RICE* - Warrington J. [1910] W. N. 143; [1910] 2 Ch. 277

Money-lender.

— Mortgage.

See under MONEY-LENDERS.

Partnership.

— Mortgage of partner's interest—Right of mortgagee to account—Arbitration clause—Stay of proceedings.

See PARTNERSHIP. 16.

— Partnership assets, authority to mortgage—Death of partner—Priorities—Notice.

See PARTNERSHIP. 7.

Payment.

1. — Joint account—Payment to one mortgagee—Partnership—Separate debt—Payment to firm.

Where mortgagees have advanced money on a joint account, payment to one of them during the other's lifetime, though a good discharge of the debt at law, only discharges the security to the extent of the payee's beneficial interest (if any), even though the payee ultimately becomes the survivor of the joint account.

Matson v. Dennis, (1864) 4 D. J. & S. 345, followed.

Steeds v. Steeds, (1889) 22 Q. B. D. 537, explained.

Payment to a firm of a separate debt due to a partner will not support a plea of payment to

MORTGAGE (Payment)—*continued*.

that partner in the absence of evidence, express or implied, that he has authorized the firm to receive it. **POWELL v. BRODHURST**

Farwell J. [1901] W. N. 106; [1901] 2 Ch. 160

Practice.

- Appeal—Right of appeal to the King in Council—Suits to enforce and redeem a mortgage.
See **INDIA. 1.**
- County court—Jurisdiction—Foreclosure action—Mortgage reduced from over to under 500*l.*
See **COUNTY COURT—Practice. 6.**
- Creditor who has obtained equitable execution—Application to be added as defendant and for extension of time for redemption.
See **MORTGAGE—Foreclosure. 3.**
- Dispensing with service on mortgagor.
See **PRACTICE—Payment, &c. 10.**
- Staying proceedings—Action in this country for declaration of rights to assist action in foreign country.
See **SHIPPING—Practice. 13.**

Principal and Surety.

See under **PRINCIPAL AND SURETY.**

Priority.

- Appointment void or voidable—Fraud on power—Mortgage by appointee.
See **POWER OF APPOINTMENT.**
- Assignment of book debts—"Floating charge"—Debenture-holders.
See **Company—Debentures. 9.**

1. — *Chose in action—Land held by several persons on trust for sale—Mortgage of beneficial reversionary interest of one of trustees—Absence of notice to other trustees—Subsequent mortgage with notice to trustees—Priority.*

Land was settled upon trust to sell the same and pay the income to X. for life, and after her death to divide the proceeds among her children, one of whom was P. P., being then one of the three trustees of the settlement, in the lifetime of X. and before the land was sold, mortgaged his share to G., but no notice of this mortgage was given to the other trustees. P. subsequently (concealing the mortgage to G.) mortgaged his share to the plts., who made inquiry of the trustees as to prior incumbrances, and themselves gave notice of their own mortgage to the trustees:—

Held, (1) that, having regard to the trust for sale, the principle of *Dearle v. Hall*, (1828) 3 Russ. 1; 27 R. R. 1, applied; (2) following *Brown v. Savage*, (1859) 4 Drew. 635, that the mortgage of the plts. had priority over that of G. **LLOYDS BANK v. PEARSON**

Cozens-Hardy J. [1901] W. N. 59; [1901] 1 Ch. 865

2. — *Building Society—Statutory receipt—Successive incumbrancers—Priority—Right to call for legal estate—Equitable charge with*

MORTGAGE (Priority)—*continued*.

undertaking to give legal mortgage—Equitable transferees—Merger—Building Societies Act, 1874, (37 & 38 Vict. c. 42), s. 42.

In 1902 D., a solicitor, gave a mortgage in fee simple of certain property to a building society to secure 1650*l.* In June, 1905, D. arranged with a bank to pay off the mortgage, and on June 23, 1905, the society's solicitors wrote that the society would indorse the statutory receipt when the money was paid, and that the bank would pay the money to the society's account, and would take all the deeds except the society's mortgage. On June 26, 1905, the bank paid the money to D.'s account; D. immediately drew a cheque for the amount which was credited to the society; the society handed to the bank's solicitors all the deeds (except the mortgage) and an undertaking to indorse the statutory receipt; and D. gave the bank an equitable charge on the property comprised in the deed, including the mortgage (described as being already indorsed with the statutory receipt) to secure 1600*l.*, the charge containing an undertaking to execute a legal mortgage if and when required. Shortly afterwards the society handed the mortgage, with the statutory receipt indorsed on it, to the bank's solicitors:—

Held, that the undertaking to give a legal mortgage did not amount to a contract that the legal estate should vest in D., and that the effect of the statutory receipt was to vest the legal estate in the bank.

In Nov., 1905, D., by shewing L. what purported to be a conveyance of the same property to D., but which was a forgery, induced L. to lend him 850*l.* and gave L. (who had no notice of the bank's mortgage) what purported to be a mortgage in fee of the same property to secure that amount.

In Dec., 1906, D. arranged that the plts. should pay off the bank, and they did so, receiving the deeds and the bank's security (indorsed with a statement that all claims thereunder had been satisfied), and D. gave the plts. (who had no notice of L.'s mortgage) what purported to be a legal mortgage for the amount paid:—

Held, that the plts.' mortgage had priority over that of L. **CROSBIE-HILL v. SAYER**
Parker J. [1908] 1 Ch. 866

- Chose in action—Notice.
See **BANKRUPTCY—Mortgages. 1.**
- Equitable execution—Effect of order—Notice to executor—Subsequent mortgagees and judgment creditors.
See **RECEIVER. 5.**
- Equitable mortgage—Notice—Fraud of vendor's solicitor—Possession of title-deeds.
See **VENDOR AND PURCHASER—Priority. 1.**
- 3. — *Equitable mortgages—Subsequent execution by mortgagor of deed of assignment of all his property for benefit of creditors—Registration—Priorities—Yorkshire Registries Act, 1884, (47 & 48 Vict. c. 54), s. 14.*
On Oct. 3, 1906, C. executed a legal mortgage of land situate in Yorkshire to a bank, and that mortgage was duly registered under the

MORTGAGE (Priority)—continued.

Yorkshire Registries Act, 1884. C. had previously created an equitable charge on the land in favour of H. & W., but that charge was not registered until Oct. 5, 1907. On Aug. 30, 1907, C. executed a deed of assignment in common form of all his real and personal estate to a trustee for the benefit of his creditors generally, and that deed was registered on Sept. 11, 1907. There were other equitable mortgages which had been created by C. prior to 1907, but which had not been registered. In 1908 the bank sold the property comprised in their security, and after satisfying their claim had a balance in their hands. This balance was claimed by the trustee as against H. & W. on the ground that his deed, though later in date of execution than H. & W.'s charge, was prior to it in date of registration:—

Held, upon the construction of the deed, that only such interest in the property as C. then possessed passed to his trustee, namely, the property subject to the equitable mortgages upon it, and therefore that the question as to priority of registration did not arise.

Held, therefore, that the claim of the trustee must be postponed to the claims of all the prior equitable mortgagees who established them, whether their mortgages were registered or not.

JONES v. BARKER - Warrington J. [1909]
1 Ch. 321

4. — *Equitable reversionary interest—Mortgage by client to solicitor—Receipt in deed—No money advanced—Fraud of solicitor—Sub-mortgage by solicitor—No inquiry by sub-mortgagee—Reliance on recital—Knowledge of assignee—Equities—Postponement.*

The plt. at the instance of his solicitor, one Bloomer, executed a mortgage to him of the plt.'s equitable reversionary interests under his grandfather's will. The deed was dated Feb. 3, 1906, and was expressed to be in consideration of 2500*l.* "this day lent by the mortgagee to the mortgagor, the receipt whereof the mortgagor doth hereby acknowledge." No money, in fact, passed, the purpose, as proposed by Bloomer, being that the plt. should re-lend the money to another of Bloomer's clients at a higher rate of interest, and that the plt. should thus profit by the difference between the two rates of interest. In executing the deed the plt. had no reason to distrust Bloomer, but understood and believed that Bloomer would advance the money, and on the plt.'s behalf lend it to the other client at the higher rate of interest. Bloomer never made any advance to the plt., or on his behalf, his only intention, presumably, being to commit a fraud for his own benefit. On April 24, 1906, Bloomer executed to the deft. Browne, another solicitor, an instrument purporting to be a sub-mortgage of the mortgage of Feb. 3, 1906, and containing a recital that the principal sum of 2500*l.* still remained owing to Bloomer with interest thereon as from Feb. 3, 1906. On this sub-mortgage and another security Bloomer obtained 1200*l.* from the deft. Browne, who took the sub-mortgage without requiring the plt. to join as a party, or requiring any evidence with respect to the state of account between the plt. and Bloomer in reference to the mortgage

MORTGAGE (Priority)—continued.

security or otherwise, and did not give any notice of his sub-mortgage to the plt.

In June, 1906, Bloomer in due course absconded, and the plt. subsequently commenced this action against the deft. Browne and Bloomer's trustee in bankruptcy for a declaration that as against the plt. the mortgage and sub-mortgage were void and of no effect, and for reconveyance of the reversionary interests in question.

Joyce J. in giving judgment said that as between Bloomer and the plt. there never had been in truth any advance or any mortgage security, and at no time could Bloomer have recovered a farthing against the plt. upon the deed of Feb. 3, 1906, and at the time when Bloomer absconded the plt. was entitled to have the mortgage deed delivered up to him without payment. The question then arose which of the two innocent parties, the plt. or the deft. Browne, had the better equity. The assignee of a chose in action took it subject to all equities affecting it. The deft. Browne knew that Bloomer had acted as solicitor to the plt. in the particular transaction, and that knowledge disentitled the deft. Browne, without further satisfactory evidence, to place reliance upon the acknowledgment of payment or receipt in the deed, if in fact he did rely on it. On the principle of *Spencer v. Topham*, (1856) 22 Beav. 573, the deft. Browne was put upon inquiry whether any such advance as mentioned in the mortgage deed prepared by Bloomer and taken by him from his own client was ever made. The fact of this knowledge on the part of the deft. Browne created a most material distinction between this case and the cases of *Bickerton v. Walker*, (1885) 31 Ch. D. 151, and *Bateman v. Hunt*, [1904] 2 K. B. 530. If the decision in *Bickerton v. Walker* did not govern the present case, it appeared clear that Bloomer could not give the deft. a better security or more than he himself possessed, and the plt. therefore had the better equity and was entitled to the relief he sought. POWELL v. BROWNE - Joyce J. [1907]

W. N. 152

On Appeal:—

The C. A. allowed the appeal.

Cozens-Hardy M.R. said the way in which this case presented itself to his mind was an exceedingly simple one, and one which did not require the Court to construe s. 55 (1) of the Conveyancing Act, 1881, or to consider the numerous authorities that had been cited. The plt. knew quite well that Bloomer had not in fact paid him 2500*l.*, though the receipt of this sum was formally acknowledged in the mortgage deed; this deed was handed over after execution to Bloomer for the express purpose of obtaining, by its use, money to be thereafter applied by Bloomer for the plt.'s advantage. Armed with this deed Bloomer did obtain 1200*l.* from the deft. Browne by means of the sub-mortgage; under these circumstances the question appeared to be the simplest possible case of estoppel; the plt. was estopped by his own receipt, on the faith of which Browne had made the 1200*l.* advance, from saying as against Browne that he,

MORTGAGE (Priority)—continued.

the plt., had not received the money acknowledged to have been received by the mortgage of Feb. 3, 1906. An attempt had been made to get over this objection by relying on the fact that Browne was put upon inquiry because this was a mortgage by a client to his solicitor, and that the doctrine of constructive notice applied; in his lordship's opinion there was no justification in principle here for that doctrine, and as had been said by North J. in *Saunders v. Kent*, [1885] W. N. 147, the fact that Bloomer was the solicitor of the plt. (even if it were shown that Browne was aware of it) was no notice that there were accounts between them, and that the 2500*l.* was not due. **POWELL v. BROWNE C. A. [1907] W. N. 228**

5. — *Fictitious sale, by trustee for sale—Conveyance containing receipt for money never paid—Equitable mortgagee without notice—Priority of beneficiaries—Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), s. 54, sub-s. 1; s. 55, s. 1.*

A testator died in 1895, having by his will given his real estate to his son C. and L., upon trust to sell and divide the proceeds among his four children (including C.), each share being settled on trusts for a child for life, and afterwards for the children of that child. L. having died in Aug., 1904, from then till Jan., 1905, C. was the sole executor and trustee of the will. In Sept., 1904, C. and another severally owed money to one M. on promissory notes for 2000*l.* C. and M., in fraud of the rights of the beneficiaries under the will (M. having full notice of the breach of trust), arranged that the 2000*l.* should be further secured on part of the trust estate, and to carry out the arrangement C. on Sept. 29, 1904, executed and delivered to M. what purported to be a conveyance on sale of part of the land held in trust to M. in consideration of 2000*l.* The deed contained the usual receipt for the purchase-money, but no part of the 2000*l.* was ever paid, it being arranged that the deed was to be held as security for the money due on the notes to the extent to which they should be dishonoured. In Apr., 1905, M. deposited the deed with B., and gave him a memorandum charging the land conveyed with 1000*l.* lent by B., who had no actual or constructive notice that any breach of trust had been committed, or that the 2000*l.* had not been paid by M., and had not been guilty of any conduct which would have made his equity inferior to that of the beneficiaries :—

Held, that there was no contract of sale, and therefore no vendor's lien, but an equity in the beneficiaries to have the property sold and the proceeds divided; that the beneficiaries were not estopped by the receipt from saying that the money had not been paid or that the real transaction was not a sale and purchase; and that, the equities of the beneficiaries and B. being equal in every other respect, the equity of the beneficiaries must prevail by reason of their priority in point of time.

Lloyds Bank, Ltd. v. Bullock, [1896] 2 Ch. 192, distinguished. **CAPELL v. WINTER**

Parker J. [1907] W. N. 164; [1907] 2 Ch. 376

MORTGAGE (Priority)—continued.

— Hire-purchase agreement—Subsequent equitable mortgage—Priority.

See **FIXTURES. 1.**

6. — *Legal estate — Subsequent equitable interest — Postponement — Fraud—Negligence—Omission to get possession of title-deeds—Trustee's negligence—Position of cestui que trust.*

By his marriage settlement W. conveyed real estate to trustees to be held upon trusts under which he took a life interest determinable on alienation, and, subject to that and to a discretionary trust in the event of his interest determining in his lifetime, his wife was entitled for her life. The same solicitors acted for all parties. They had in their possession a bundle of deeds purporting to be the title-deeds of the property, and were not aware that W. still retained the deed by which the property was conveyed to him. Some years after the marriage W. mortgaged the property and handed over the conveyance to the mortgagee, who afterwards sold the property. Neither the mortgagee nor the purchaser from him had any notice of the settlement. W. absconded, and his wife brought an action against the purchaser, the trustees, and her husband for a declaration that W.'s life interest had determined and that the purchaser's interest in the property was subject to her interest under the settlement :—

Held, that all the parties except W. had acted honestly, but that the trustees had been guilty of negligence, and their legal estate must be postponed to the subsequent equitable interest of the purchaser from the mortgagee; and that the plt., although ignorant of the absence of the conveyance, was in no better position than her trustees.

Lloyds Banking Co. v. Jones, (1885) 29 Ch. D. 221, followed. **WALKER v. LINOM - Parker J. [1907] W. N. 128; [1907] 2 Ch. 104**

— Innocent trustee mortgage—Legal estate acquired by mortgagee after notice of trust.

See **TRUSTEE—Breach of Trust. 4.**

— Marshalling for payment of mortgage—Priority of cestui que trust—Voluntary settlement.

See **SETTLEMENT. 48.**

— Notice—Fraud of vendor's solicitor—Possession of title-deeds—Priority.

See **VENDOR AND PURCHASER — Priority. 1.**

7. — *Notice—Incumbrances—Personal estate—Charges on expectancy—Notice—Priority—Assignor executor—Renunciation by executor—Notice to executor—Notice to person having legal dominion of fund—Fund without trustee—Administrator, Subsequent notice to.*

In 1897 D. charged his expectant interest in a legacy bequeathed to him by the will of his father, who was then living, in favour of S., and in 1898 he charged it in favour of B. The father died in 1902, D. being named his sole executor. In Jan., 1903, D., who had never acted as executor, renounced probate, and on Mar. 4 administration, with the will annexed, was granted to his sister. On the following day B. gave notice to the administratrix of his charge. On Mar. 12

MORTGAGE (Priority)—continued.

S., who then became aware for the first time of the grant of administration, gave the administratrix notice of his charge. Subsequently the legacy, which had been in Court, was paid out to the administratrix :—

Held, by the C. A., that, although S.'s delay in giving notice to the administratrix was not due to any negligence on his part, yet, applying the rule in *Dearle v. Hall*, (1828) 3 Russ. 1; 27 R. R. 1, recognized in *Ward v. Duncombe*, [1893] A. C. 369, B. was entitled to priority through his having been the first to give notice to the administratrix as being the first person having legal dominion of the fund after it had come into existence by the death of the testator :

Held, further, that the case was governed by *Johnstone v. Cox*, (1880) 16 Ch. D. 571; (1881) 19 Ch. D. 17, and that the circumstance that on the death of the testator, when the fund charged came into existence, there was no trustee or other person having the legal dominion of the fund to whom effective notice could be given, was immaterial to alter the priority obtained by notice given to the person who subsequently had such legal dominion.

Notice given by an assignee of a fund to the person who is himself the assignor is not an effectual notice so as to alter priorities : *Browne v. Savage*, (1859) 4 Drew. 635.

Semble, notice given by an incumbrancer to an executor who afterwards renounces without having in any way acted in the office is invalid.

Decision of Buckley J. affirmed. *In re DALLAS*

C. A. [1904] W. N. 37; [1904] 2 Ch. 385

8.—Notice—Legal mortgage—Prior equitable mortgage—Non-production of title-deeds—Fraudulent solicitor—Postponement of legal mortgage.

A purchaser who without requiring delivery or production of the title-deeds takes a title from a mortgagee who has deposited the deeds by way of sub-mortgage is affected with constructive notice of the sub-mortgage, and the legal estate conveyed to the purchaser is in his hands subject to the equitable incumbrance, and this notice will raise a trust to the amount of the sub-mortgage. It is immaterial whether the purchaser employs a solicitor or not, and whether the solicitor, if one is employed, informs the purchaser of the sub-mortgage or not.

B. mortgaged two freehold houses to C., a solicitor, for 2100*l*. C. then deposited the mortgage and title-deeds with his bankers to secure the balance of his banking account, which continued to be overdrawn for more than 10,000*l*. until his bankruptcy in 1902. The bank advisedly omitted to give notice of their security to B. Subsequently B. and C. mortgaged one of the houses to H. for 650*l*., which was paid to C. in partial discharge of the original mortgage debt, and the house was expressed to be discharged from the mortgage; and they mortgaged the other house to W. for 550*l*. on precisely similar terms. B. also gave C. a second mortgage on both houses to secure 900*l*., the balance remaining due on the original mortgage. In the three

MORTGAGE (Priority)—continued.

last-mentioned mortgages C. acted as solicitor for all parties, none of whom had any actual knowledge of the bank's sub-mortgage. In an action by the bank to enforce their security :—

Held, that H. and W. were affected with constructive notice of the sub-mortgage, and were respectfully trustees of the legal estate for the bank; but

Held, that B. was not bound to require production of the title-deeds on paying off part of the original mortgage debt; and

Semble, that he was not affected with notice of the sub-mortgage and was discharged from liability under the original mortgage to the extent of the two sums of 650*l*. and 550*l*. *BERWICK & CO. v. PRICE*

Joyce J. [1905] 1 Ch. 632

9.—Notice—Priorities—Bankruptcy—Mortgages of policies—Equitable interests.

A solicitor entrusted by a client with money to invest misappropriated it. Afterwards he executed a mortgage of certain life policies in favour of the client to secure part of the money misappropriated, but did not inform the client of the existence of the mortgage nor give notice of it to the insurance offices. Subsequently, he made a second mortgage of the same policies to a clerk in his office as a trustee for other clients whom he had defrauded, but did not disclose the first mortgage. The second mortgagee gave notice to the insurance officers. On the bankruptcy of the solicitor the first mortgage was discovered, and notice of it was at once given to the insurance offices :—

Held, that the second mortgagee was entitled to priority over the first mortgagee. *In re LAKE. Ex parte CAVENDISH* - - - *Wright, J.* [1902] W. N. 230; [1903] 1 K. B. 151

10.—Portions—Mortgage by direction of Court—Portions charged on real estate—Equitable charge—Legal mortgage.

A testator who died in 1851 charged three sums of 5000*l*. for children's portions on his real estate. In 1880, two of the portions had become raisable, and, in an action brought for the purpose of clearing the estate from charges, an order was made in May, 1882, directing that the two portions should be raised by a mortgage of the estate to be settled by the judge to a person who was then willing to lend the money. The mortgage as settled contained recitals of the title to the portions and of the proceedings in the action, and was expressed to be without prejudice to any charge which might be subsisting in the mortgaged hereditaments under the will. The money was paid into court by the mortgagee, and was afterwards distributed among the persons interested in the two portions. The estate being now believed to be insufficient to pay the whole of the said persons, the mortgagee commenced the present action for the realization of his mortgage, and claimed priority over the persons interested in the remaining portion :—

Held, on the construction of the proceedings in the action, the judgment obtained, and the circumstances under which it was given, that no interference with the charge of the remaining

MORTGAGE (Priority)—continued.

portion was contemplated or authorized, and that there was nothing in the form of the mortgage settled by the judge which entitled the plt. to more than a charge on the estate for the two sums of 5000*l.* *pari passu* with the third 5000*l.* charged thereon in equity by virtue of the will.

Decision of Kekewich J., [1902] W. N. 108; [1902] 2 Ch. 117, affirmed. *NIGHTINGALE v. REYNOLDS*

C. A. [1903] W. N. 108; [1903] 2 Ch. 236

— Priority as between mortgagees depends upon date of advances, not of registration—Law of South Africa.

See *CAPE OF GOOD HOPE*. 9.

11. — Real estate — Equitable mortgages — Legal estate—Notice—Priority.

A testator, after bequeathing legacies and annuities, devised his real estate to three trustees, of whom K. was one, upon trust out of the rents and profits in aid of his personal estate to pay his debts, funeral and testamentary expenses, and the said legacies and annuities, and, subject thereto, to hold the said premises upon trust as to a certain freehold house for K., his heirs and assigns. The testator then disposed of his residue. He died in Mar. 1872. In Sept., 1872, K. assigned his interest under the will by way of mortgage to the plt., who gave notice to K.'s two co-trustees. In 1879 K., by the death of his co-trustees, became sole trustee of the will. In 1890 he deposited the deeds of the house and the probate of the will with the depts., his bankers, and executed to them a memorandum of charge to secure an overdraft, and in 1903 he conveyed the legal estate in the house to the depts. by way of mortgage to secure the existing debt and further advances. The depts. did not know, either in 1890 or 1903, of the plt.'s equitable mortgage, but on the occasion of their first advance the bank manager examined the deeds without professional assistance, and took no steps to have the title property investigated. In 1890 all the debts, legacies, and annuities had been satisfied except a legacy of 100*l.* bequeathed to a tenant for life (who was still living) with remainder to her children. In an action to determine the priorities of the mortgagees:—

Held, that in 1903 the trusts of the will not having been fully executed, K.'s equitable interest had not become merged in his legal estate; that the bank, knowing K. to be the surviving trustee of the will, and having notice that what they took from him was part of his trust estate, took it subject to all the subsisting trusts to which it was subject, including the mortgage of 1872, and therefore had not priority over the plt.'s earlier equitable mortgage.

PERHAM v. KEMPSTER Joyce J. [1907] W. N. 13; [1907] 1 Ch. 373

12. — Registration of deeds—Equitable mortgage—Deposit of title-deeds—Conveyance—Consideration—Antecedent debt—Priority—Registry Act (6 Anne (Ir.), c. 2), ss. 3, 5.

A customer of a bank in Ireland, having overdrawn his account and being pressed by the bank, undertook by letter to deposit a title-deed

MORTGAGE (Priority)—continued.

of an Irish estate as security for his overdraft. He deposited the title-deed with the bank, who did not register the charge. The customer afterwards mortgaged the estate to the appellants, who registered their charge without notice of the prior charge. Upon the question of the priority of the two incumbrances:—

Held, that the customer's letter amounted to an agreement to create an equitable charge upon the estate and ought to have been registered as a conveyance under 6 Anne (Ir.), c. 2; and that in default of registration it ranked after the mortgage to the appellants.

The decision of the Irish C. A., *In re Stevenson's Estate*, [1902] I R. 23, reversed and the judgment of Meredith J. restored. *FULLERTON v. PROVINCIAL BANK OF IRELAND*

H. L. (I.) [1903] W. N. 128; [1903] A. C. 309

— Shares—Registration—Transfer in blank—Equitable mortgage—Notice.
See *COMPANY—Shares*. 20.

13. — Transfer without notice to mortgagee — Payment of mortgage debt by mortgagor—Fraud of mortgagor's solicitor—Priority of mortgagee and subsequent transferee.

In 1886, a mortgage debt for 1500*l.* was duly transferred and the mortgaged property was conveyed by way of security, to F., the plt., the mortgagor, being a party. Several subsequent transfers to which the plt. was not a party, were made and in Feb., 1896, the mortgage debt and the security were vested in one Hamp. In 1892 the plt. gave Harrison, her solicitor, the money to pay off the mortgage, which he did not do, though he continued to pay interest on the mortgage as it became due to the transferee for the time being. The plt. made no inquiry in 1892 for the conveyance nor for the title-deeds, but left the whole matter in the hands of her solicitor. In Oct., 1897, Hamp transferred the mortgage debt and the property to Harrison, and the next day Harrison transferred the same to the deft., to whom the deeds were handed. The cheque for 1500*l.* from the deft. was paid by Harrison into his private account, and the cheque to Hamp was drawn by Harrison on his firm's account, which was then in funds, at another bank. In Dec., 1899, application was made by the deft. to the plt. for arrears of interest, and the fraud was discovered. On an action by the plt. to establish her priority over the deft., and for a reconveyance of the mortgaged property:—

Held, that on the transfer to Harrison the mortgage debt became discharged, and he held the property as trustee for the plt.; that the deft., having taken the transfer from Harrison without the privity of the mortgagor, could only hold it against the mortgagor subject to the state of account between Harrison and the mortgagor, and as between them the debt was non-existent; that the plt. had never lost the right to redeem, and that directly the agent, who had received the amount to pay off the mortgage, became himself the transferee, the debt was extinguished, and no transferee from him could treat the debt as a subsisting charge upon the property, and that the

MORTGAGE (Priority)—continued.

plt. was therefore entitled to priority and to have a reconveyance from the deft. **TURNER v. SMITH**
Byrne J. [1901] 1 Ch. 213

Railways.

— Sale of railway by mortgagee—Order of Court
— Law of Ontario.
See CANADA—Railway. 8.

Receiver.

1. — *Leaseholds—Mortgage by sub-demise—Mortgagor and mortgagee—Company—Action by mortgagee or debenture-holder—Debenture trust deed—Trustee mortgagees—Receiver, Use or occupation by—Head-lease—Rent—Breach of covenant—Damages—Landlord—Head-lessor, Rights of—Privy of estate—Sale of goods by receiver—Distress, Loss of remedy by.*

Since a mortgagee of leaseholds by sub-demise in the usual form is, through absence of privity of estate, not himself liable to the head-lessor for rent or other outgoings, whether he is in possession or not, it follows that a receiver appointed by the Court in an action by the mortgagee against the mortgagor to enforce the security is also under no such liability, his appointment being in right of the mortgagee. Hence the head-lessor cannot require the receiver to pay, out of moneys coming to his hands while in the use or occupation of the mortgaged premises as receiver, any rent or other outgoings in respect of such use or occupation. And there is no equity entitling the head-lessor to claim payment from the receiver by reason of the latter having been put into use or occupation as an officer of the Court, even though he has, by the direction of the Court, sold off the mortgagor's goods on the premises, and so deprived the head-lessor of his landlord's remedy by distress.

Thus, in a debenture-holder's action against the trustees of the trust deed who were mortgagees from the co. by sub-demise of premises, of which the co. were lessees, the C. A., affirming *Stirling J.*, disallowed a claim by the head-lessor against the receiver appointed by the Court to payment, out of the proceeds of the co.'s goods sold by the receiver while in occupation of the premises, of rent in respect of the occupation and of damages for the breach of the co.'s covenant in the head-lease to repair. *HAND v. BLOW*

C. A. [1901] W. N. 140; 1901 2 Ch. 721

— Partition action — Sale by mortgagee with sanction of Court — Purchase by receiver without sanction.
See RECEIVER. 13.

— Repairs, Cost of — Foreclosure — Account — Allowances.
See MORTGAGE—Foreclosure. 1.

2. — *Second mortgagee's action for a receiver—Back rents paid to receiver—Right of first mortgagee against receiver.*

In an action by second mortgagees against the mortgagor, to which the first mortgagee was not a party, a receiver was appointed of the rents of mortgaged premises subject to the rights of the first mortgagee. On motion in the action

MORTGAGE (Receiver)—continued.

by the first mortgagee to discharge the receiver and to be let into possession:—

Held, that the first mortgagee was entitled to back rents paid to the receiver after the date of the service of his notice of motion. **PRESTON v. TUNBRIDGE WELLS OPERA HOUSE, LD.**

Farwell J. [1903] 2 Ch. 323

Redemption.

1. — *Accounts—Compound interest—Proviso for capitalization of interest in arrear—Mortgagee in possession—Receipt of rents available for payment of interest—Redemption action—Mortgagor and mortgagee.*

A mortgage of leaseholds contained a proviso that, if and so often as any interest due under the mortgagor's covenant should be in arrear for twenty-one days, after the day appointed for the payment thereof, that interest should be treated as an accession to the capital secured by the deed as on the day on which the same ought to have been paid, and should thenceforth bear interest at the rate and on the days provided by the deed.

The mortgagee entered into possession of the property and received the rents.

On the taking of the accounts in a redemption action:—

Held, that, if on the expiration of twenty-one days after any interest became due, the mortgagor not having paid the interest, there was in the hands of the mortgagee, after deducting ground rent and other proper outgoings, an amount arising from the rents received by him sufficient for the payment of the interest, though it had not been actually appropriated to that purpose, the interest could not be said, within the meaning of the proviso, to be in arrear, and the mortgagee therefore was not entitled to have it capitalized.

Decision of Warrington J., [1905] 1 Ch. 241, affirmed.

Union Bank of London v. Ingram, (1880) 16 Ch. D. 53, and *Bright v. Campbell*, (1889) 41 Ch. D. 388, distinguished.

Dictum of Cotton L.J. in *Cockburn v. Edwards*, (1881) 18 Ch. D. 463, preferred to that of Jessel M.R. in the same case, 18 Ch. D. 456. **WRIGLEY v. GILL**

C.A. [1905] W. N. 148; C.A. [1906] 1 Ch. 165

Note.

This case was followed by *Joyce J.*, *Ainsworth v. Wilding*, [1905] 1 Ch. 435. See MORTGAGE—Accounts. 1.

— Accounts—Mortgagee in possession—Right to compound interest—Rests.
See MORTGAGE—Accounts. 1.

— Assignment of equity of redemption subject to charge—Charge on share—No notice to trustees.

See TRUSTEE—Breach of Trust. 2.

— Barred by lapse of time, Equity of redemption—Realty or personality.

See No. 8, below.

— Clog on equity of redemption—Chartered company—Contract to issue debentures—Floating charge on foreign land.
See CONFLICT OF LAWS. 3.

MORTGAGE (Redemption)—continued.

2. *Clog on equity of redemption—Option to purchase mortgaged stock—Stock—Limited company, Mortgage by.*

A mortgagee is not allowed at the time of the loan to enter into a contract for the purchase of the mortgaged property.

A limited co. borrowed money upon the security of their debenture stock subject to the lender having the option to purchase the stock at 40 per cent. within twelve months; the loan to become due and payable with interest at thirty days' notice on either side. Within the twelve months and before the co. gave notice of their intention to repay the loan, the lender claimed to purchase the stock at the agreed price :—

Held, that the option was void, and that the co. was entitled to redeem the loan on payment of principle, interest, and costs.

The decision of the C. A., *Jarrah Timber and Wood Paving Corporation, Ltd. v. Samuel*, [1903] 2 Ch. 1, affirmed. *SAMUEL v. JARRAH TIMBER AND WOOD PAVING CORPORATION, LTD.*

H. L. (E.) [1904] W. N. 110; [1904] A. C. 323
Note.

Applied by Swinfen Eady J., *British South Africa Co. v. De Beers Consolidated Mines, Ltd.* C. A. [1910] 2 Ch. 502. *See Conflict of Laws.* 3.

3.—*Clog on redemption—Agreement subsequent to mortgage—Option to purchase mortgaged property—Conditional sale.*

A mortgagor and mortgagee may by a separate and independent transaction subsequent to the mortgage, make a valid agreement which gives the mortgagee the option of purchasing the mortgaged property, and thus may have the effect of depriving the mortgagor of his right to redeem.

The decision of the C. A., [1901] W. N. 223; [1902] 1 Ch. 53, affirmed. *REEVE v. LISLE*

H. L. (E.) [1902] W. N. 152; [1902] A. C. 461

4.—*"Clog" on redemption—"Once a mortgage always a mortgage"—"Tied" public-house—Mortgage of leasehold public-house—Covenant by mortgagor to take beer during the term from mortgagee only.*

In a mortgage of a leasehold public-house by a licensed victualler to brewers the mortgagor covenanted with the mortgagees that he and all persons deriving title under him should not during the continuance of the term, and whether any money should or should not be owing on the security of the mortgage, use or sell in the house any malt liquors except such as should be purchased of the mortgagees :—

Held, that this covenant was a "clog" on the equity of redemption, and that the mortgagor, on payment of all that was due upon the security, was entitled to have a reconveyance of the property, or at his option a transfer of the security, free in either case from the "tie."

Santley v. Wilde, [1899] 2 Ch. 474, commented on.

The decisions of Cozens-Hardy J., [1900] 1 Ch. 213, and the C. A., [1900] 2 Ch. 445, affirmed. *NOAKES & CO. v. RICE*

H. L. (E.) [1901] W. N. 247; [1902] A. C. 24

MORTGAGE (Redemption)—continued.

Note.

Principle of, applied by C. A., *Jarrah Timber and Wood Paving Corporation, Ltd. v. Samuel*, [1903] 2 Ch. 1. *See No. 2, above.*

Referred to by H. L. (E.), *Bradley v. Carritt*, [1903] A. C. 253. *See next Case.*

Referred to by Joyce J., *Morgan v. Jeffreys*, [1910] 1 Ch. 620. *See No. 6, below.*

Applied by Swinfen Eady J., *British South Africa Co. v. De Beers Consolidated Mines, Ltd.*, C. A. [1910] 2 Ch. 502. *See Conflict of Laws.* 3.

5. *Clog on redemption—Mortgage of shares in company—Stipulation that mortgagee shall be employed as broker by the company.*

A holder of shares in a tea co. mortgaged the shares to secure a loan and agreed to use his best endeavours to secure that "always thereafter" the mortgagee should have the sale of all the co.'s teas as broker, and in the event of the co.'s teas being sold otherwise than through the mortgagee to pay him the amount of the commission he would have earned if the teas had been sold through him. The mortgage was paid off and the co. afterwards changed their broker. The quondam mortgagee having brought an action against the shareholder for breach of the above agreement :—

Held, by Lords Macnaghten, Davey, and Robertson, Lords Shand and Lindley dissenting, that the case fell within the principle of *Browne v. Ryan*, [1901] 2 I. R. 653, approved by this House in *Noakes v. Rice*, [1902] A. C. 24, that the agreement was not binding, and that the action could not be maintained.

The decision of the C. A., [1901] 2 K. B. 550, reversed. *BRADLEY v. CARRITT*

H. L. (E.) [1903] W. N. 92; [1903] A. C. 253

Note.

Referred to by Joyce J., *Morgan v. Jeffreys*, [1910] 1 Ch. 620. *See next Case.*

Applied by Swinfen Eady J., *British South Africa Co. v. De Beers Consolidated Mines, Ltd.*, C. A. [1910] 2 Ch. 502. *See Conflict of Laws.* 3.

6.—*"Clog" on redemption—Public-house—"Tie"—Restrictive covenant by mortgagor—Proviso against redemption without consent of mortgagee for twenty-eight years.*

In 1896 a lessee of land on which he had built a hotel mortgaged it to a brewer to secure £500l. and interest, and covenanted to buy all beer and other liquors consumed at the house from the mortgagee for a period of twenty-eight years and so long after as any money should remain due upon the security. The deed also provided that the mortgagor should not be entitled to pay off the mortgage before 1924 without the consent of the mortgagee. There was a power of sale without notice upon the happening of any one of numerous events, and upon a sale under the power the purchaser might be required to take a conveyance subject to the "tie." In an action by the mortgagor to redeem the mortgage :—

Held, that the proviso against redemption for

MORTGAGE (Redemption)—continued.

twenty-eight years, even if it might be supported in a case where there was a similar provision against calling in the mortgage, exceeded all reasonable limits and could not be enforced.

MORGAN v. JEFFREYS - Joyce J. [1910] W. N. 59; [1910] 1 Ch. 620

— Conditions of proviso for redemption — Construction—Foreclosure.

See MORTGAGE—Foreclosure. 2.

— Consolidation—Express contract.

See MORTGAGE—Consolidation. 2.

7. — Consolidation — Mortgage in name of trustee—Mortgage originally made by different mortgagors — Assignment of equities of redemption to same person.

S. executed to R. separate mortgages of four leasehold houses and assigned the equities of redemption to the plt. One house was sold and the mortgage upon it paid off. The plt. then acquired the freehold of another house (No. 7) and granted a long lease of it to C., who executed a mortgage of the leasehold to R. In this transaction C. was a mere trustee for the plt. Subsequently the plt. got rid of the freehold reversion in No. 7 and took an assignment from C. of the equity of redemption in the leasehold interest. R. died, and this summons was taken out by the plt. against his executors for redemption of No. 7. The defts. claimed to consolidate the mortgage on No. 7 with those on the other three houses. All the mortgages contained clauses excluding s. 17 of the Conveyancing Act, 1881 :—

Held, that, the fact that C. was a trustee for the plt. gave the defts. no right to consolidate with the mortgage of No. 7 made by C. the other three mortgages, for a mortgagee has no right for the purpose of consolidation to go behind the mortgagor and enquire into equitable interests.

Held, also, that the assignment of C.'s interest to the plt. gave no right of consolidation for the right to consolidate can only arise when all the mortgages were originally made by the same mortgagor. It is not enough that the different equities of redemption have got into the same hands by assignment. SHARP v. RICKARDS - Neville J. [1908] W. N. 234; [1909] 1 Ch. 109

— Consolidation of mortgages.

See under MORTGAGE—Consolidation.

— County court—Jurisdiction—Sale of equity of redemption.

See COUNTY COURT—Jurisdiction. 8.

— Equities of redemption acquired by mortgagee subject to the mortgages—Declaration against merger — Death of mortgagee intestate — Devolution of mortgage debts.

See ADMINISTRATION. 18.

8. — Freeholds — Mortgagee in Possession — Equity of redemption barred by lapse of time — Intestacy of mortgagee—Devolution of mortgaged land—Realty or Personality.

Where a mortgagee of freeholds enters into possession of the mortgaged land, and dies, leaving all his property to his widow for life but

D.D.

MORTGAGE (Redemption)—continued.

otherwise intestate, and the possession is continued by the widow, who is not solely entitled to the mortgage debt, until the equity of redemption is barred by the Real Property Limitation Act, 1874, the mortgaged land passes as personality to his next of kin. *In re LOVERIDGE*. DRAYTON v. LOVERIDGE.

Buckley J. [1902] W. N. 165; [1902] 2 Ch. 859

Note.

See *In re Loveridge, Pearce v. Marsh*, [1904] 1 Ch. 518; *Mortgage—Devolution*. 1.

— Interest — Arrears, Mortgagee's right to recover.

See MORTGAGE—Interest. 1.

— Invalidity—Redemption.

See MORTGAGE—Sale. 2.

— Surety—Mortgage—Redemption—Tacking.

See PRINCIPAL AND SURETY. 2A.

Registration.

— Company—Debenture Stock.

See COMPANY—Debentures. 36.

— Land transfer—Mortgage or charge.

See LAND TRANSFER. 4.

Rent-charge.

— Mortgage of land subject to freehold rent-charge—Whether mortgagor liable for rent-charge as terre-tenant.

See RENT-CHARGE. 2.

Rents.

— Accounts—Rents and profits—Rests.

See MORTGAGE—Accounts. 1.

1. — *Equitable mortgagee—Right to receive rents—Claim by tenant for repayment.*

Although an equitable mortgagee has no legal rights to be paid the rents of the mortgaged property, yet if he has been paid rent by a tenant of the equitable mortgagor after notice to the tenant that the rent is claimed by him as equitable mortgagee, he cannot be compelled to refund the rent to the tenant. FINCK v. TRANTER.

Div. Ct. [1905] 1 K. B. 427

Repairs.

— Receiver — Cost of repairs — Foreclosure — Allowances.

See MORTGAGE—Foreclosure. 1.

Sale.

1. — *Foreclosure action—Order nisi for foreclosure—Exercise of power—Pursuit of all remedies at once.*

A mortgagee cannot, after the usual order nisi for foreclosure and before the foreclosure is made absolute, exercise his power of sale without the leave of the Court. But the power is suspended only, not extinguished; and a bona fide purchaser without notice may get a good title under the power. STEVENS v. THEATRES LD.

Farwell J. [1903] W. N. 68; [1903] 1 Ch. 857

2. — *Invalidity—Friendly society, Mortgage to—Sale under power—Sale by auction—Purchase*

MORTGAGE (Sale)—continued.

by officer of society—Mortgagor and mortgagee—Redemption.

In 1899 the plt. mortgaged certain property to the trustees of a friendly society to secure an advance. In 1902 they, in exercise of their power of sale, which had arisen, put up the property for sale by auction, such sale being directed and entirely managed by a committee of the society, whose duty it was to realize mortgage securities. Previous to the sale D., a member of the committee, had on his own account inspected the property. He knew the reserve, if he had not himself fixed it, and he took part in instructing the auctioneer, who was nominated by him. He attended the auction, and bought the property for himself, the plaintiff, who had only accidentally heard of the sale three days before it took place, being present and bidding against him. The sale was at a small undervalue. In an action against the trustees of the society and D.:—

Held, that the sale was invalid, and that the plt. was still entitled to redeem the mortgage. **HODSON v. DEANS** *Joyce J.* [1903] W.N. 130; [1903] 2 Ch. 647

3. — Lunacy of mortgagor—Surplus proceeds of sale—Sale by mortgagee—Trust for mortgagor, "his heirs or assigns"—Conversion—Realty or personality.

The trust of the surplus proceeds of sale provided that they should be paid to the mortgagor, "his heirs or assigns." The mortgaged property was sold in 1900 under the power of sale contained in the mortgage, and there was a considerable surplus. The mortgagor became a lunatic after the mortgage, but before the sale, and continued in that condition until his death intestate in 1906:—

Held, that the surplus proceeds of sale must be treated as personality notwithstanding the language of the trust.

Decision of Parker J., [1907] W. N. 23; [1907] 1 Ch. 313 affirmed. *In re* GRANGE. **CHADWICK v. GRANGE. — C. A.** [1907] W. N. 125; [1907] 2 Ch. 20

— Partnership—Dissolution—Sale of share to co-partner—Rights of mortgagee or assignee—Priority.
See PARTNERSHIP. 23.

— Power of sale—Notice by mortgagor to bank of appointment of a trustee for his creditors—Banker and customer—Closing account.
See BANKER. 7.

4. — Power of sale—Notice requiring payment—Default for three months—Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), ss. 19, 20.

A notice served by a mortgagee upon a mortgagor, after the mortgage money has become payable, requiring payment at the expiration of three months from the date of the notice, is a good notice under s. 20 of the Conveyancing Act, 1881. The three months' default in payment mentioned in that section begins to run from the service of such a notice, not from the date fixed by the notice for payment.

MORTGAGE (Sale)—continued.

Selwyn v. Garfit, (1888) 38 Ch. D. 273, distinguished. *BARKER v. ILLINGWORTH.*

Swinfen Eady J. [1908] W. N. 116
[1908] 2 Ch. 20

5. — Power of sale—Shares in company—Implied power of sale—Notice to mortgagor—Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), ss. 19, 20.

The mortgagee of shares (the mortgage not being by deed) has, in the absence of an express power of sale, an implied power to sell the shares on default by the mortgagor in payment of the amount due at the time appointed for payment, or, if no time be fixed, then on the expiration of a reasonable notice by the mortgagee requiring payment on a day certain.

Per Stirling and Cozens-Hardy L.JJ.: A month's notice, or even less, would be a reasonable notice.

Sects. 19 and 20 of the Conveyancing Act, 1881, do not affect the power of sale which is implied in the case of a mortgage of shares not made by deed.

Decision of Farwell J., [1901] 1 Ch. 70, that the defendants were justified in selling shares which had been mortgaged to them by the plt., without any express power of sale, affirmed, *Vaughan Williams L.J.* dissenting, on the ground that a proper notice, requiring payment of the mortgage debt on a day certain, had not been given by the defts. to the plt. **DEVERGES v. SANDEMAN, CLARK & Co. — C. A.** [1902] W. N. 48; [1902] 1 Ch. 579

— Receiver—Purchase by, without leave of Court—Sale by mortgagee.
See RECEIVER. 13.

— Redemption — Account — Mortgagee in possession—Sale of part of mortgaged property—Rests.
See MORTGAGE—Accounts. 1.

Settled Land.

See under SETTLED LAND.

Settlement.

See under SETTLEMENT.

Shipping.

See also under SHIPPING—Mortgages.

— Ship mortgaged not to be considered insured—Mutual insurance association—Concealment of mortgage—Liability for calls.
See INSURANCE (MARINE). 15.

Stamps.

— Stamp.
See under REVENUE—Stamps.

Stock Exchange.

— Deposit of securities—Stock exchange, Default on—Secured creditor—Costs.
See BANKRUPTCY—Stock Exchange. 1.

1. — Pledge of shares by broker with jobber against settling day—Outside principal—Default in payment of loan—Transaction closed under

MORTGAGE (Stock Exchange)—continued.

Stock Exchange rules—Subsequent sale of shares—Liability of jobber to account as mortgagee.

Brokers on the Stock Exchange, acting for an undisclosed outside principal, pledged share certificates with a jobber on the exchange as security for a loan to be repaid the next settling day. The outside principal failed to put the brokers in funds to repay the loan, whereby the brokers made default and were hammered, and the jobber, under the rules of the Stock Exchange, was obliged to take over the shares at the official price of the day. Afterwards the shares rose in the market, and the jobber sold them at a profit, and was then sued by the outside principal for an account of the proceeds of sale on the footing that he was only mortgagee of the shares:—

Held, that the relation of mortgagor and mortgagee existed between the outside principal and the jobber; that the Stock Exchange rules did not apply as between them; and that the jobber was bound to account and, after deducting his principal, interest, and costs, to pay over the surplus proceeds of sale to the mortgagor.
PONSOLLE v. WEBBER. - **Neville J. [1908]**
W. N. 12; [1908] 1 Ch. 254

Tacking.

— Mortgages—Consolidation—Bankruptcy.
See **MORTGAGE—Foreclosure.** 6.

— Surety—Collateral security.
See **PRINCIPAL AND SURETY.** 2A.

Trade Fixtures.

See under **MORTGAGE FIXTURES.**

Transfer.

1. — *Conveyancing—Leaseholds—Mortgage by sub-demise prior to Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41)—Statutory transfer subsequent to Act—Habendum—"Benefit of said mortgage"—Legal estate—Technical words—Intention—Conveyancing and Law of Property Act, 1881, ss. 27, 63; Sched. III., Part II., Form A.*

Before the commencement of the Conveyancing and Law of Property Act, 1881, a lessee executed a mortgage of his leaseholds by sub-demise. Subsequently to the commencement of the Act the executors of the mortgagee executed to one of themselves a transfer of the mortgage by supplemental deed in the statutory form (A) in Part II. of Sched. III. to the Act, by which, after reciting the will of the mortgagee, his death, and probate of his will, it purported to "convey and transfer all the benefit of the said mortgage" to the transferee:—

Held, affirming the decision of Kekewich J., that the transfer did not operate either in terms or by intention, to pass the legal estate in the mortgaged leaseholds. *In re BEACHEY. HEATON v. BEACHY*
C. A. [1903] W. N. 205;
[1904] 1 Ch. 67

— No legal transfer of security—Dissolution of company—Vesting order.
See **COMPANY—Vesting Orders.** 4.

MORTGAGE—continued.**Trustees.**

— Appointment of trustees of compound settlement for purposes of Settled Land Acts—Definition of such trustees.
See **SETTLED LAND—Trustees.** 2.

— Trustee—Investments.
See under **TRUSTEE—Investments.**

Validity.

1. — *Statutory corporation—Public undertaking—Borrowing power—Powers to mortgage undertaking—Mortgage of chattels to secure payment of pressing creditors—Validity—Appointment of receiver—Highway—Expenses of repairs—Distress—Highways Act, 1862 (25 & 26 Vict. c. 61), ss. 35, 47.*

The debt. co. was incorporated by the Medway (Upper) Navigation Act, 1739 (13 Geo. 2, c. 26), to exercise the powers conferred upon certain undertakers by the Medway (Upper) Navigation Act, 1664 (16 & 17 Car. 2, c. 11), for making navigable the river Medway in Kent and Sussex, and, as a reward for the expense of making the river navigable, the co. were empowered to carry on the business of carriers by water, and to own barges and other vessels for the purposes of this business. By the Medway (Upper) Navigation Act, 1892 (55 & 56 Vict. c. lxxxvii.), the co. were empowered to borrow on mortgage of their undertaking a sum of 6000*l.* in order to repay an antecedent debt. Under this power the co. in 1893 mortgaged their undertaking to one Levett for 6000*l.* In 1902, Levett desiring to be paid off, this mortgage was transferred to the plts., who also obtained from the co. a mortgage of their surplus lands as additional security. The co. had express power to sell their surplus lands, but not to mortgage them. The validity of this further mortgage was called in question in *Stagg v. Medway Upper Navigation Co.*, [1903] 1 Ch. 169, when the mortgage was upheld upon the principal of *Blackmore v. Yates*, (1867) L. R. 2 Ex. 225.

In June, 1904, the plts., at the request of the co., paid 220*l.* to certain pressing creditors, and to secure the repayment of these sums, and also to further secure the mortgage debt of 6000*l.*, the co. mortgaged seventeen barges to the plts. in the manner prescribed by the Merchant Shipping Acts, and entered into a collateral agreement with the plts., explaining the purposes for which these mortgages were made.

This action was brought by the plts. against the co. to enforce their securities, and by an order made therein a receiver was appointed of the undertaking, of the surplus lands, and of the barges.

The co. were originally liable to repair certain roads and bridges; but under the Highways Acts, 1862 and 1864, the Maidstone Rural District Council took over this liability in consideration of the payment by the co. of a sum fixed by the justices and made payable by instalments. These Acts provided that these moneys should be recoverable by distress. The co. having made default, the council obtained a summary order for payment, and they now applied in this

MORTGAGE (Validity)—*continued.*

action for leave to levy a distress on the goods and chattels of the co. for the amount adjudged to be paid to them notwithstanding the appointment of the receiver. The real object of the application was to contest the validity of the mortgages upon the seventeen barges.

Joyce J. said that these barges might have been taken in execution by any creditor who had obtained judgment against the co.; and the present applicants could not deny that, because they were asking for a special form of execution upon these very barges. Having regard to the object for which these mortgages were made, it followed from *Stagg v. Medway Upper Navigation Co.* that the barges were validly charged and could not be touched by the local authority. *Pegge v. Neath District Tramways Co.*, [1895] 2 Ch. 508, was distinguishable, because in that case the order in respect of which leave to levy distress was asked was an order to enforce a condition imposed by the Act which regulated the constitution of the co.; and, further, the receiver in that case ought never to have been appointed receiver of any chattels at all, but only of the undertaking. The application failed, and ought to be refused with costs. *REEVE v. MEDWAY (UPPER) NAVIGATION CO.*

Joyce J. [1905] W. N. 75

Vendor and Purchaser.

See under **VENDOR AND PURCHASER—Mortgages.**

Vicarage.

—Sale—Purchase of new vicarage with proceeds—Loan—Mortgage—Lien.

See **ECCLIASTICAL LAW—Vicarage. 1.**

Will.

—Exoneration—Direction to pay debts, "except mortgage on Blackacre"—Other mortgages.

See **WILL—Exoneration. 3.**

—Charges.

See under **WILL—Charges.**

—Mortgage—Land subject to incumbrances—Option of purchase—Real Estate Charges Act, 1854.

See **WILL—Mortgages 1.**

MORTMAIN.

See under **CHARITY.**

—Colonial mortgages—Applicability of colonial mortmain law.

See **CONFLICT OF LAWS. 14.**

MOTION — Attachment — Solicitor — Costs — Taxation — Delivery of bill of costs — Default — Motion for attachment — Practice.

See **SOLICITOR—Costs. 30.**

—Costs — Taxation — Speedy trial — Counsel's fees—Practice.

See **COSTS. 26.**

—For attachment—Affidavit in support—Service of exhibits.

See **ATTACHMENT. 12.**

MORTGAGE (Will)—*continued.*

—Judgment, Motion for.

See under **PRACTICE—Motion for Judgment.**

—Practice.

See under **PRACTICE—Motions.**

MOTORS CARS.

Motor Car Acts, 1896 and 1898. Circular, Sept. 19, 1908, to County Councils, and to Town Councils of Boroughs with population over 10,000. [Danger and Annoyance not infrequently caused by the Driving of Motor Cars.] 1908 (R.—Loc. Govt. Bd.). Price 1d.

Motor Car Act, 1903 (3 Edw. 7, c. 36), amends the Locomotives on Highways Act, 1896 (59 & 60 Vict. c. 36).

Motor Car Act, 1903. Registering Authorities in the United Kingdom—List of, shewing the index mark and the address of the Clerk of each Authority. R. Loc. Govt. Board. Price 2d.

England—Motor cars—use of on highways. The Motor Cars (Use and Construction) Order, March 9, 1904. St. R. & O., 1904, Nos. 315, 316.

Locomotive, England. Motor Cars. Use of on Highways. The Heavy Motor Car Order, Dec. 27, 1904, prescribing Regns. as to Weights, Conditions of Use, Construction and Speed of Heavy Motor Cars. St. R. & O., 1904, No. 1809.

Do. Circular to Local Authorities. St. R. & O., 1904, No. 1809a.

Do. Width of Tires. St. R. & O., 1904, No. 1809b.

Locomotives, England. Use of motor cars on highways. The Motor Cars (Use and Construction) Amendment Order, April 19, 1909. St. R. & O., 1909, No. 394.

Locomotives, England. Circular, April 19, 1909, to Councils of Counties, County Boroughs, Metropolitan Boroughs, Urban and Rural Districts, and the Common Council of the City of London. St. R. & O., 1909, No. 394.

Motor Car (International Circulation) Act, 1909 (9 Edw. 7, c. 37).

Locomotive, England. Motor Cars. Use of Motor Cars on Highways. The Motor Cars (Use and Construction) Amendment Order, April 19, 1909. St. R. & O., 1909, No. 394.

Locomotive, England. Motor Cars. Use of Motor Cars on Highways. Circular, April 19, 1909, to Councils of Counties, County Boroughs, Metropolitan Boroughs, Urban and Rural Districts, and the Common Council of the City of London. St. R. & O., 1909, No. 394.

Locomotive. Motor Cars. Order in Council, April 22, 1910. The Motor Car (International Circulation) Order, 1910. St. R. & O., 1910, No. 421.

Motor Car (International Circulation) Order. 1910. Order May 2, 1910, under Article I. (2) 1910 (R.—Local Government Board). Price 1d. each.

Finance (1909-10) Act, 1910. Horse-power of Motor Cars. Regulations made by the Treasury

MOTOR CARS—continued.

for the purpose of s. 86 (2.) of the Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8). Reprint from *W. N.*, 1910 (June 18), p. 231. See CURRENT INDEX, 1910, p. iii.

Foreign Motor Cars. Exemption from duty of. Provisional Regulations, May 1, 1910, under s. 86 (1.) of the Finance (1909-10) Act, 1910, 1910 (7.)—Statutory Rules and Orders—Various. Price 1d.

See under LOCOMOTIVES.

— Appeal—Summary jurisdiction—Costs—Fine—Motor Car Act. See JUSTICES. 15.

1. — *Conditions of user—Identification plate—Lamp—Breach of statutory regulation—Mens rea—Negligence—Aiding and abetting—Corporation—Locomotives on Highways Act, 1896 (59 & 60 Vict. c. 36), s. 6—Motor Car Act, 1903 (3 Edw. 7, c. 36), s. 7—Motor Car (Registration and Licensing) Order, 1903, art. 11.*

Art. 11 of the Motor Car (Registration and Licensing) Order, 1903, made by the Board of Trade under the Motor Car Acts, 1896 and 1903, provides that whenever during the period between one hour after sunset and one hour before sunrise a motor car is used on a public highway a lamp shall be kept burning on the car, so contrived as to illuminate, by means of reflection, transparency, or otherwise, and render easily distinguishable, every letter or figure on the identification plate fixed on the back of the motor car.

By s. 7 of the Locomotives on Highways Act, 1896 (which is one of the Motor Car Acts, 1896 and 1903), a breach of any regulation made under that Act may, on summary conviction, be punished as therein provided.

The appellants, a limited co., who were motor cab proprietors, were convicted before a magistrate of aiding and abetting a driver in their service in using a motor cab in contravention of the above regulation on the following facts: The driver was using a motor cab more than one hour after sunset having a lamp, which was lighted, hanging too low to illuminate the identification plate. The motor cab was fitted with a proper and permanent bracket on which to hang the lamp. The appellants had in their service a foreman who was charged by them with the duty of seeing that the cabs left their premises in such a condition as to comply in all respects with the Motor Car Acts, 1896 and 1903, and the regulations of the Board of Trade made thereunder. The magistrate found that the appellants were careless in not seeing to it that a proper lamp was fixed on the cab:—

Held, that there was evidence on which the appellants might be convicted of aiding and abetting their driver in committing a breach of the above regulation. *PROVINCIAL MOTOR CAB CO. v. DUNNING* - - - Div. Ct. [1909] 2 K. B. 599

Note.

This case was referred to by Div. Ct., *Dickeson & Co. v. Mayes*, [1910] 1 K. B. 452. See *Licensing Acts*. 49.

MOTOR CARS—continued.

— Conviction for aiding and abetting — Evidence. See JUSTICES. 15.

2. — *Conviction for driving at excessive speed—Indorsement on licence—First or second offence—Locomotives—Parks Regulation Act, 1872 (35 & 36 Vict. c. 15)—Rules 3 and 4 of the Rules made by the Commissioners of Works and Public Buildings—Motor Car Act, 1903 (3 Edw. 7, c. 36), s. 4.*

Where the driver of a motor car is convicted of a first or second offence of exceeding a speed limit fixed in a lawful way other than under the Motor Car Act, 1903, e.g., under rules made by the Commissioners of Works and Public Buildings in connection with the regulations prescribed by the Parks Regulation Act, 1872, the Court before whom the conviction takes place has no power under s. 4 of the Act of 1903 to indorse on the convicted person's licence particulars of the conviction. *REX v. MARSHAM. Ex parte CHAMBERLAIN* Div. Ct. [1907] W. N. 163; [1907] 2 K. B. 638

3. — *Driving at speed dangerous to public—“having regard to all the circumstances of the case”—Appeal to Quarter Sessions—Evidence—Traffic “which might reasonably be expected to be on the highway”—Motor Car Act, 1903 (3 Edw. 7, c. 36), s. 1, sub-s. 1.*

The driver of a motor car was convicted before justices under s. 1, sub-s. 1, of the Motor Car Act, 1903, of driving the car on a certain public highway “at a speed which was dangerous to the public having regard to all the circumstances of the case.” At the hearing of an appeal to the quarter sessions evidence was given by the respondent as to the traffic which might reasonably be expected to be on the highway, although the admission of any evidence as to hypothetical traffic was objected to by the appellant:—

Held, that the evidence was properly admitted. *ELWES v. HOPKINS* - - - Div. Ct. [1906] 2 K. B. 1

4. — *Exceeding speed limit—Parks regulations—Indorsement of licence—Motor Car Act, 1903 (3 Edw. 7, c. 36), s. 4.*

A court before whom a person is convicted of a third offence of driving a motor car in a Royal park at a speed exceeding the limit prescribed by the parks regulations has power to indorse on the driver's licence under s. 4 of the Motor Car Act, 1903, notwithstanding that the parks regulations prescribing the speed limit were not made until after the Motor Car Act, 1903, had come into force. *REX v. PLOWDEN.*

Div. Ct. [1909] W. N. 87; [1909] 2 K. B. 269

— Highway.

See under HIGHWAY.

5. — *Licence—Indorsement—Offence in connection with the driving of a motor car—Obstruction of highway—Motor Cars (Use and Construction) Order, 1904—Motor Car Act, 1903 (3 Edw. 7, c. 36), s. 4.*

A breach of art. IV. of the Motor Cars (Use and Construction) Order, 1904, in allowing a motor car to stand on a highway so as to cause

MOTOR CARS—continued.

an unnecessary obstruction thereof is not an offence in connection with the driving of a motor car within the meaning of s. 4 of the Motor Car Act, 1903; and therefore a driver who, after being convicted of that breach of the Order of 1904, refuses to produce his licence for the purposes of indorsement cannot be convicted of an offence under the Motor Car Act, 1903. *REX v. YORKSHIRE (WEST RIDING) JUSTICES. Ex parte SHACKLETON* Div. Ct. [1910] W. N. 23; [1910] 1 K. B. 439

6. — *Licence, Indorsement of—Exceeding speed limit—Previous convictions—Evidence of identification—Contents of licence—No notice to produce—Identity of name and address—"Proof of the identity"—Prevention of Crimes Act, 1871 (34 & 35 Vict. c. 112), s. 18—Motor Car Act, 1903 (3 Edw. 7, c. 36), ss. 3, 4, 9.*

The appellant, Lionel Walker Birch Martin, of Ryder Street Chambers, St. James's Street, London, who held a licence to drive a motor car issued by the London County Council and numbered 5080, was in 1909 convicted by a Court of summary jurisdiction of driving a motor car on a public highway at a speed exceeding twenty miles an hour contrary to s. 9 of the Motor Car Act, 1903. It was then proved that the driver of a motor car of the name of Lionel Martin and of the same address as the appellant had been convicted of a similar offence in 1907; and that a person having the same four names and of the same address as the appellant had held a licence from the London County Council from a date before 1907 continuously down to the present time, that the licence was numbered 5080, and that no one having a London address could have that number except the person having those four names and that address. A police constable gave evidence that he stopped the motor car upon the occasion in 1907, and the driver upon demand produced to him a licence which was issued by the London County Council and numbered 5080. No notice to produce the licence was given. It was next proved by the production of a certified copy of the conviction that a person with the same four names and of the same address as the appellant was convicted of a similar offence in 1908. The appellant, who was represented by counsel at the hearing, absented himself from the Court and was not called as a witness. The justices found upon the above evidence that the appellant was the person who had been convicted on both the former occasions, and they imposed a fine of 20*l.* and ordered his licence to be indorsed:—

Held that, with regard to the conviction in 1907, the evidence of the police constable as to the contents of the licence produced to him on the occasion when the offence was committed was admissible as evidence of the identity of the appellant with the person who was then convicted, and that no notice to produce the licence was necessary; that, with regard to the conviction in 1908, the identity of the names and of the address was some evidence of the identity of the appellant with the person who was then convicted; and that the justices were entitled to have regard to the appellant's wilful

MOTOR CARS—continued.

absence and conclude that he was the person who was convicted on both those occasions and to order his licence to be indorsed.

"Proof of the identity" of the person against whom it is sought to prove the conviction with the person named in the record of the conviction, required by s. 18 of the Prevention of Crimes Act, 1871, does not mean conclusive proof, but means such evidence as will entitle a jury to find that the identity is proved. *MARTIN v. WHITE* - - Div. Ct. [1910] 1 K. B. 665

7. — *Licence—Offence in connection with driving motor car—Driving without lighted lamp—Conviction—Order for indorsement on licence—Jurisdiction of justices—Motor Car Act, 1903 (3 Edw. 7, c. 36), s. 4.*

Motion *ex parte* for a rule nisi for a writ of certiorari to bring up and quash an order of justices that a conviction under the Motor Car Act, 1903, should be indorsed upon a licence held under that Act.

On July 6, 1910, before a Court of summary jurisdiction, the applicant was convicted by justices for the county of Bucks upon a summons which charged him for that he then, being the person in charge of a motor car on a certain highway called High Street, Slough, unlawfully did not carry a lamp so constructed and placed on the extreme right or off-side of the said car so as to exhibit, during the period between one hour after sunset and one hour before sunrise, a white light visible within a reasonable distance in the direction towards which the said car was then proceeding, contrary to the Motor Cars (Use and Construction) Order, 1904, and to the form of the statute in such case made and provided. The justices inflicted a fine of 1*s.* 6*d.*, and ordered the applicant's licence to be indorsed. It appeared from an affidavit made by the applicant that when he left Eton for Slough about 9 p.m. on June 24 last, both his side lamps were alight, but when he arrived at Slough his attention was called by a policeman to the fact that there was no lamp upon the near side of the car, and that the off-side lamp was out. He was not aware that the near-side lamp had fallen out, or that the off-side lamp was not burning. The affidavit contained a statement that "all the ten years I have been motor driving this has not happened before."

Held, that the rule must be refused. The offence with which the applicant was charged was an offence in connection with the driving of a motor car, and therefore the provisions of s. 4 of the Motor Car Act, 1903, applied. It was therefore competent to the justices to order the particulars of the conviction to be indorsed upon the licence. *Ex parte SYMES* - - Div. Ct. [1910] W. N. 219

— Locomotive.

See under LOCOMOTIVE.

— Omnibus, Motor.

See under MOTOR OMNIBUS.

8. — *Owner—Refusal to give name and address of driver—Conviction, Form of—Motor Car Act, 1903 (3 Edw. 7, c. 36), s. 1, sub-s. 3.*

A conviction of the owner of a motor car under s. 1, sub-s. 3, of the Motor Car Act, 1903,

MOTOR CARS—continued.

stated that the deft. did unlawfully refuse to give the name and address of the person who at a specified time and place was driving the deft.'s motor car, such name and address being required in order that proceedings might be taken against him under s. 1 of the Motor Car Act, 1903, and rule 6, art. 4, of the Statutory Rules and Orders, 1904:—

Held, that the conviction was bad, in that it did not state what offence the driver of the motor car was alleged to have committed.

It is not a condition precedent to the obligation of the owner of a motor car to give the name and address of the driver of his car that the driver should previously have been asked for and should have refused to give his name and address.
REX v. HANKEY - Div. Ct. [1905] 2 K. B. 687

9. — *Police trap—Driver exceeding speed limit—Warning given to driver by third person—Wilful obstruction of constable in execution of his duty—Prevention of Crimes Amendment Act, 1885 (48 & 49 Vict. c. 75), s. 2.*

Constables were on duty observing and timing the speed of motor cars driven along a certain road with a view to the prosecution of the drivers of such cars as should be travelling at an illegal speed. For that purpose they had measured a certain distance along the road. The deft. warned the drivers of cars which were approaching the measured distance of the presence of the constables and the purpose for which they were there. There was evidence that at the time the warning was given the cars were being driven at an illegal speed, and the drivers upon receipt of the warning slackened their speed and proceeded over the measured distance at a lawful speed, whereby the constables, as the deft. intended, were prevented from obtaining such evidence as would be accepted as sufficient in a police court that the drivers of the cars were committing an offence:—

Held, that the deft. had wilfully obstructed the constables in the execution of their duty within the meaning of the Prevention of Crimes Amendment Act. **BETTS v. STEVENS Div. Ct. [1909] W. N. 200; [1910] 1 K. B. 1**

10. — *Tramcar proceeding in same direction—Motor car passing tramcar—Duty to pass on off side—"Carriage"—Motor Cars (Uses and Construction) Order, 1904, arts. 1, 4 (3).*

By art. 1 of the Motor Cars (Uses and Construction) Order, 1904, "In this order the expression 'carriage' includes a waggon, cart, or other vehicle." By art. 4, "Every person driving or in charge of a motor car when used on any highway shall comply with the regulations hereinafter set forth; namely . . . (3.) He shall, when meeting any carriage, horse, or cattle, keep the motor car on the left or near side of the road, and when passing any carriage, horse, or cattle proceeding in the same direction, keep the motor car on the right or off side of the same."

A tramcar running on tramway rails in a highway is a "carriage" within the meaning of the above order, and therefore a motor car, when passing a tramcar proceeding in the same direction, must pass it on the right or off side thereof.
BURTON v. NICHOLSON - Div. Ct. [1909] W. N. 19; [1909] 1 K. B. 397

MOTOR CARS—continued.

— Will—Bequest — "Household furniture and effects"—Motor cars.
See WILL—Words. 8.

MOTOR CAR (HEAVY) ORDER, 1904, arts. 2, 3.
See HIGHWAY—Locomotives. 14.

MOTOR CAR (REGISTRATION AND LICENSING) ORDER, 1903, art. 11.
See MOTOR CAR. 1.

MOTOR CARS (USE AND CONSTRUCTION) ORDER, 1904, arts. 1, 4 (3).
See MOTOR CAR. 10.

MOTOR OMNIBUS — Driver of — "Otherwise engaged in manual labour."
See MASTER AND SERVANT—Motor Omnibus. 1.

1. — *Nuisance—Negligence—Accident to passenger—Doctrine of "res ipsa loquitur."*

A motor omnibus belonging to the defts., in which the plt. was a passenger, "skidded" upon a road the surface of which was greasy from rain, and ran into an electric light standard, and the plt. was in consequence injured. At the trial of an action brought by the plt. in the county court in respect of the injury so occasioned to her, there was no evidence given for the plt. of anything (beyond the above-mentioned facts) in the nature of negligence on the part of any servant of the defts. in the driving or management of the omnibus, or of any defect in the construction or condition of the particular omnibus, or that motor omnibuses generally were of such a character as to constitute a nuisance, but it was apparently assumed, and not disputed by the defts., that motor omnibuses however well constructed, had a tendency to skid when the road was greasy. The defts. called no witnesses except as to quantum of damage. The case was left to the jury, who found a verdict for the plt., but subsequently the county court judge, being of opinion that there was no evidence for the jury of liability on the part of the defts. entered judgment for them:—

Held, by Vaughan Williams L.J. and Fletcher Moulton L.J. (Buckley L.J. dissenting), that, upon the above-mentioned facts, there was no evidence for the jury that the defts. allowing the motor omnibus to run under the circumstances constituted a nuisance, and therefore the decision of the county court judge was correct.

By Buckley L.J.: Upon the facts there was evidence of negligence on the part of the defts. in allowing the motor omnibus to run under the circumstances.

Question, when the doctrine of "res ipsa loquitur" applies, discussed. **WING v. LONDON GENERAL OMNIBUS CO.**

C. A. [1909] 2 K. B. 652

MUNICIPAL BOROUGH—Stock of—Trustee—
Authorised investment.
See TRUSTEE—Investments. 4.

MUNICIPAL CORPORATION.
See under CORPORATION.

MUNICIPAL ELECTIONS (CORRUPT AND ILLEGAL PRACTICES) ACT.*See* PARLIAMENT. 2.**MURDER.***See* under CRIMINAL LAW—**Appeal.**

— Indictment for murder—Conviction for attempt—Punishment.

See CRIMINAL LAW—**Appeal.** 2.

— Workmen's compensation—Cashier—Risks incidental to the employment.

See MASTER AND SERVANT—**Compensation.** 29.**MUSEUM**—*British Museum Act, 1902 (2 Edw 7, c. 12).**See* under BRITISH MUSEUM.**MUSIC.***Musical Copyright Act, 1906 (6 Edw. 7, c. 36), amends the law relating to musical copyright.*

— Copyright.

See under COPYRIGHT.**MUSSEL FISHINGS**—Crown rights—Scottish law.*See* FISHERY. 3.**MUSSELBURGH HARBOUR ACT**—Boundary—"Precincts"—Removal of sand from foreshore—Construction of statute.*See* HARBOUR. 2.**MUTUAL DEBTS**—Assignment to defendant of debt owed by plaintiff to third person—Set-off by defendant of assigned debt against debt claimed from him by plaintiff.*See* SET-OFF. 1.**MUTUAL DEBTS OR DEALINGS**—Bankruptcy.
See under BANKRUPTCY—**Mutual Debts or Dealings.**

— Mutual dealings—Bankruptcy—Practice—Set-off of purchase-money.

See BANKRUPTCY—**Set-off.** 1.

— Mutual dealings—Bankruptcy—Set-off—Sale of goods—Title of trustee in bankruptcy.

See BANKRUPTCY—**Sale of Goods.** 1.

— Mutual dealings—Set-off—Company—Receiver of debtor's interest in debenture stock.

See BANKRUPTCY—**Set-off.** 4.**MUTUAL WILLS**—Fresh will made by party who predeceases the other—Notice on death—No relief to survivor.*See* PROBATE—**Mutual Wills.** 1.**MUTUALITY**—Contract—Specific performance—Injunction.*See* SPECIFIC PERFORMANCE. 2.

N.

NAME—Company.

See under COMPANY—**Name**.

— Company—Winding-up.

See under COMPANY — **Winding-up** — **Name**.

— Condition that devisee should take and use testator's name—Lunacy and death of devisee.

See WILL—**Names and Arms Clause**. 2.

— Fidei-commissum primogenitura—Condition as to surname not authorized by the founder.

See MALTA. 1.

1. — *Injunction—Unauthorized use of name—Holding out as partner—Misrepresentation—Reasonable probability of risk and liability.*

A dealer in cycles having advertised his goods in a manner which satisfied the Court that he intended the public to believe that the proprietors of *The Times* newspaper were either the vendors, for whom he acted as manager, or partners or in some way responsibly connected with the sale of "Times" cycles :—

Held, on the authority of *Routh v. Webster*, (1847) 10 Beav. 561, that as the plts., the proprietors of *The Times*, were exposed to some risk and liability by the unauthorized use of the name of their newspaper by the deft., and that as there was a reasonable probability of *The Times* being exposed to litigation, and possibly being made responsible, had the plts. not taken steps to disconnect the name of their newspaper from the advertisements and circulars issued by the deft., an interim injunction ought to be granted restraining the deft. from in any way representing that the cycles offered by him for sale were in fact offered for sale by the plts., or that he was carrying on business as a department of *The Times*, or in any way holding out *The Times* to be the owners of or connected with his business.

Principles on which injunctions are granted in cases of this nature discussed. *WALTER v. ASHTON* - *Byrne J.* [1902] W. N. 66 ; [1902] 2 Ch. 282

— Sale of poison—Label—"Name" of seller.

See PHARMACY ACTS. 1.

— Street—Name put up by local authority—Removal by owner.

See STREETS. 2.

— Trade mark—Passing off—Secondary meaning of name—"Chartreuse"—French law of associations.

See TRADE MARK. 10.

— Trade name.

See under TRADE NAME.

— Trade union—Right to sue or be sued in registered name.

See TRADE UNION. 12.

NAME—continued.

— Will—Construction.

See under WILL—**Name**. 1.

NAME AND ARMS CLAUSE—Infant—Settlement of real estate—Condition subsequent requiring assumption of name and arms.

See SETTLEMENT. 3.

— Will—Condition precedent or subsequent.

See WILL—**Conditions**.

— Will—Construction.

See under WILL — **Name and Arms Clause**.

NATAL.

The South Africa Act, 1909 (9 Edw. 7, c. 9), is an Act to constitute the Union of South Africa.

1. — *Actio doli—Fraud.*

Even assuming that an *actio doli* will only lie in Natal when no other action is open, in accordance with the texts of Roman law, it is nevertheless open to a plt. who by the fraud of which he complains has been deprived of his other remedies ; and by Roman-Dutch law is not barred in two years. *DOUGLAS v. SANDER & Co.*

P. C. [1902] A. C. 437

2. — *Company—Contract for company before incorporation—Rights of company.*

A co. cannot by adoption or ratification obtain the benefit of a contract purporting to have been made on its behalf before the co. came into existence. In order to do so a new contract must be made with it after its incorporation on the terms of the old one.

Kelner v. Baxter, (1866) L. R. 2 C. P. 174, approved. *NATAL LAND AND COLONIZATION Co. v. PAULINE COLLIERY AND DEVELOPMENT SYNDICATE* -

P. C. [1904] A. C. 120

3. — *Contract by insane person is void, not voidable—Bond passed under power of attorney granted by insane person—Mortgage—Rights of negotiorum gestor—Law of Natal.*

By the Roman-Dutch law, which prevails in Natal, a mortgage bond passed by virtue of a power of attorney executed by an insane person is not legally enforceable where it appears that the mortgagor derived no benefit from the bond, and that the mortgagee had no knowledge of the insanity. According to the authorities of that law, a contract made by an insane person is void and not voidable only.

Where moneys so advanced are devoted to purposes beneficial to the insane person, the Roman-Dutch law recognizes the equity of allowing them to be recovered, as moneys expended in good faith by his *negotiorum gestor*. *MOLYNEUX v. NATAL LAND AND COLONIZATION Co.*

P. C. [1905] A. C. 555

NATAL—*continued*.**4. — Courts-martial—Practice—Special leave to appeal refused.**

There is no analogy between courts-martial, so called, administering punishments and restraining acts of repression and violence under the supervision of a military commander and the regular proceedings of Courts of justice.

Where the local Legislature has declared sentences of this kind to be lawful, the Judicial Committee has no power to inquire as to their propriety or as to the propriety of the legislation; and a petition for special leave to appeal from any such sentence must be dismissed. *TILONKO v. ATT.-GEN. OF THE COLONY OF NATAL*

P. C. [1907] A. C. 93

Note.

See also *Tilonko v. Att.-Gen. of Natal*, P. C. [1907] A. C. 461, No. 8, *below*.

5. — High treason—Resident alien's duty of allegiance—Special leave to appeal.

A resident alien within British territory owes allegiance to the Crown, and if he assists invaders during the absence of State forces for strategical or other reasons he is rightly convicted of high treason. Special leave to appeal from a judgment to that effect refused. There is no sufficient authority for the doctrine that the alien's duty of allegiance ceases if an enemy makes good his military occupation of the district in which the alien resides. *DE JAGER v. ATT.-GEN. OF NATAL*

P. C. [1907] A. C. 326

6. — Mines—Private coal fields—Royalties on coal extracted—Construction—Natal Mines Act, 1899, s. 25.

Held, that the appellants, who owned and worked their collieries before the passing of the Natal Mines Act, 1899, their title to do so having been expressly affirmed by Law No. 34 of 1888, were, by the true construction of s. 25 of the Act of 1899, exempted from liability to take out licences for working the same, and consequently from liability to pay royalties on the coal extracted therefrom. *DUNDEE COAL CO., LD. v. MINISTER OF AGRICULTURE OF THE COLONY OF NATAL*

P. C. [1906] A. C. 511

7. — Practice—Appeal—Special leave—Conviction by Special Court Acting judge—Colonial Laws Validity Act—Construction.

The obvious meaning of the Colonial Laws Validity Act (28 & 29 Vict. c. 63) is to preserve to the Imperial Parliament a right to legislate for a Colony to which a local legislature has been assigned, and to forbid the local legislature to enact anything repugnant to Imperial legislation so effected, but not otherwise to derogate from the general powers of Colonial legislatures.

An acting judge of the Supreme Court is a judge thereof within the meaning of Natal Special Court Act, No. 14 of 1900.

Special leave to appeal from a conviction by a Special Court of Natal (constituted under the said Act) refused. *In re REG. v. MARAIS, Ex parte MARAIS*

P. C. [1902] A. C. 51

8. — Practice—Special leave to appeal.

Special leave to appeal refused where the question raised had been settled by an Act of the Colonial Legislature. *TILONKO v. ATT.-GEN. OF NATAL*

P. C. [1907] A. C. 461

NATAL—*continued*.**9. — Practice—Special leave to appeal in a criminal case.**

Special leave to appeal in a criminal case was refused in a case of disputed evidence, on which the judges had differed.

In re Dillet, (1887) 12 App. Cas. 459, followed *TSHINGUMUZI v. ATT.-GEN. OF NATAL*

P. C. [1908] A. C. 248

— Roman-Dutch law—Will—Direct substitution
—Fidei-commissary substitution.

See **WILL—Substitution, 2.**

10. — Shipping — Charterparty — Unseaworthiness at starting—Personal negligence of owner in lading.

Unless the conditions of a charterparty relieve the owner as distinct from his servants and agents from the consequences of personal negligence, he is liable if his ship, in other respects seaworthy, is rendered unseaworthy in being so laden under his orders as to become topheavy at starting, with the result that her deck cargo was partly jettisoned and partly swept overboard in a gale which otherwise could have been weathered in safety. *MASTER AND OWNERS OF SS. "CITY OF LINCOLN" v. SMITH*

P. C. [1904] A. C. 250

11. — Will—Vested interest—Contingency of either son dying before his brother—Clause of substitution—Construction of will.

The testator, after dividing equally his residuary estate between his two sons, directed that "in the event of either of my two sons dying before his brother without legitimate issue; then his share shall become the property of his surviving brother; but if there are any legitimate children surviving their father, then" for their benefit as directed:—

Held, that the bequest created a vested interest in the sons, but one liable to be divested as to the son first dying (whether before or after the testator's death) in favour of the objects named in the clause of substitution. *DUFFILL v. DUFFILL*

P. C. [1903] A. C. 491

NATIONAL DEBT—Bank of England.

See under **BANK OF ENGLAND**.

— Revenue.

See under **REVENUE**.

— School district, Dissolution of—Property of dissolved district.

See **POOR LAW, 21.**

— Transfer of property—Vesting—Consols.

See **SCHOOLS, 23.**

NATIONAL GALLERY—*National Gallery (Purchase of Adjacent Land) Act, 1901 (1 Edw. 7, c. 16), is an Act for the acquisition of certain land, near the National Gallery in London, and for purposes connected therewith.*

NATIONAL MONUMENT—Public right of access
—Public road—User—Dedication.

See **WAY, RIGHT OF, 9.**

NATIONAL SCHOOL, 9.

See under **SCHOOLS**.

NATIONAL SCHOOLS—*continued.*

- Income of endowments—Transfer to school board—Action by transferee—Certificate of Charity Commissioners.
See CHARITY. 42.

NATIVE LANDS—Construction of regrant of—Trust.

See NEW ZEALAND. 5.

NATIVE RIGHTS—Native title to possession of land—Jurisdiction as to cession to the Crown.

See NEW ZEALAND. 13.

NATURALIZATION.

See also under ALIENS.

Alien—Regns. dated April 29, 1904, made by Secretary of State for the Home Department under the Naturalization Acts, 1870 to 1895, respecting the Grants of Certificates of Naturalization to Aliens serving on British ships. St. R. & O., 1904, No. 701.

The Summary Jurisdiction (Aliens) Rules, 1906, dated Jan. 3, 1906. Reprint from W. N. 1906 (Jan. 27), p. 53. See CURRENT INDEX, 1906, p. lxvii.

- Aliens and naturalization—Privileges conferred or withheld after naturalization.
See CANADA—ALIENS. 1.
- High treason—Motion to quash indictment—Expatriation in time of war.
See CRIMINAL LAW—TREASON. 1.
- Negligence—Alien—Compensation for death.
See NEGLIGENCE. 1.

NAVAL OR MILITARY SERVICES—Entering

—Will—Condition—Forfeiture—Invalidity—Public policy.
See WILL—CONDITIONS. 4.

NAVAL REVIEW—Contract of hiring.

See CONTRACT. 22.

NAVAL (ROYAL) SCHOOL ACT, 1840.

See INFANT—CORPORATION. 1.

NAVIGATION — Conservators — Dredging — Riparian owner.

See THAMES. 1.

- Navigable non-tidal river — Tolls — “Tolls traverse.”
See WATER HIGHWAY. 1.

- Prescriptive claim against statutory navigation company — Prescriptive claim to take surplus water only — User unlimited.
See PRESCRIPTION. 3.

- Thames Conservancy by-law—Ultra vires—Navigation of barges—Hauling barges out of dock—“Navigated.”
See THAMES. 3.

NAVY.

See under ARMY AND NAVY.

NECESSARIES—Criminal lunatic—Past maintenance—Debt—Claim by Crown for arrears.

See LUNACY. 7.

NECESSARIES—*continued.*

- Infant—Evidence—Onus of proof.
See INFANT—NECESSARIES. 1.

- Master, action against—Bills of exchange.
See SHIPPING—PRACTICE. 1.

- Shipping.

See under SHIPPING—NECESSARIES.

- Supplied on credit of ship—Claim of defendants as purchasers of ship.
See CHINA AND COREA. 4.

NECESSITY—Easement of — Light and air—Derogation from grant—Implied reservation.

See LIGHT AND AIR. 12.

NEGATIVE COVENANT —Lease—Proviso for re-entry.

See LANDLORD AND TENANT. 52.

NEGATIVE COVENANTS.

See under COVENANTS.

NEGLIGENCE—Action for damages for death of appellants' son—Negligence by respondents—Misdirection as to contributory negligence by deceased—Practice.

See CANADA—PRACTICE. 2.

- Actress engaged at theatre—Negligence of fellow employee—Construction of contract.

See MASTER AND SERVANT — Theatre. 1.

1. — *Alien—Compensation for death—Negligence of British subject—Cause of action arising on high seas—Fatal Accidents Act, 1846 and 1864 (9 & 10 Vict. c. 93; 27 & 28 Vict. c. 95).*

The Fatal Accidents Acts, 1846 and 1864, apply as well for the benefit of the representatives of a deceased foreigner as for those of a British subject, at all events as against an English wrong-doer.

A collision occurred upon the high seas between a British and a foreign ship owing to the negligence of those in charge of the former. As a result of the collision a foreign seaman on board the foreign ship was drowned:—

Held, that the personal representative of the deceased seaman had a right of action by the said Acts against the owners of the British ship.
DAVIDSSON v. HILL Div. Ct. [1901] W. N. 137; [1901] 2 K. B. 606

- Architect—Preparing plans—Plans not used—Nominal damages.
See ARCHITECT. 1.

- Architect's certificate—Architect in position of arbitrator.
See BUILDING CONTRACT. 1.

- Articles of dangerous nature—Contractor—Misfeasance—Gas company.
See CANADA—GAS. 2.

2. — *Boarding-house keeper—Goods of guest—Theft by inmate.*

The plts. became boarders in a boarding-

NEGLIGENCE—*continued*.

house kept by the deft. They informed the deft.'s manager that they had property which they wished to keep under lock and key, and asked for a key of their bedroom door. They were told by the manager that a second key could not be supplied, that they must not remove the key from the lock, as it was required for the purpose of giving the servants access to the room, and that the room would be quite safe as the people in the house were all known. On a subsequent occasion the plts. again became boarders in the deft.'s boarding-house, and occupied the same bedroom, in which a chest of drawers had in the meantime been placed. They asked the manager for a key of the chest of drawers, but none was supplied. The female plt. having left some jewellery in a locked hand-bag in one of the drawers, it was stolen by another inmate of the house, who had been admitted as a boarder without references, or introduction, or inquiry concerning him, and who turned out to have been previously convicted of theft. In an action by the plts. against the deft. for the loss of the jewellery:—

Held, by Collins M.R. and Mathew L.J., that there was a duty on the part of a boarding-house keeper to take reasonable care for the safety of property brought by a guest into his house, and evidence for the jury of a breach of that duty:

Held, by Romer L.J., that there was a duty on the part of a boarding-house keeper to carry on his business with reasonable care, having regard to the nature and normal conduct of the business, as known to the guest, or as represented to the guest by him, and evidence of a breach of that duty whereby the plts.' property was lost.

Dansey v. Richardson, (1854) 3 E. & B. 144, followed.

Holder v. Soulby, (1860) 8 C. B. (N.S.) 254, commented upon. *SCARBOROUGH v. COSGROVE*
C. A. [1906] 2 K. B. 805

— Carrier's servants—Liability—Lighterman—Contract.
See CARRIER. 2.

— Causing death—"Actio personalis moritur cum persona"—Parent and child—Recovery of burial expenses.
See MASTER AND SERVANT—Fatal Accidents Act. 1.

— Charterparty—Shipping.
See under SHIPPING—Negligence.

— Cheques drawn with spaces, afterwards fraudulently filled up—Liability of bank.
See AUSTRALIA. 3.

— Cheque drawn by directors on behalf of company—Forgery.
See BANKER. 1.

— Collision—Shipping.
See under SHIPPING—Negligence.

— Company—Shares.
See under COMPANY—Shares.

NEGLIGENCE—*continued*.

— Company—Liquidator—Damages—Advertisement for creditors.

See COMPANY—WINDING-UP—Liquidator. 1.

3. — Contract with owner to repair van—Negligent repair—Injury to driver arising from defect—Liability of contractor—Duty owed to driver.

The deft. contracted to keep in repair a number of vans owned by a firm. The plt. was a driver in the employment of the firm, and while he was driving one of the vans a wheel came off and he sustained injuries by falling from the van. The van had been in the hands of the deft.'s workmen shortly before and on the day of the accident, and the plt.'s cause of action was based upon the negligence of the workmen in failing properly to inspect and repair the defective state of the van, and the negligent manner in which the repairs were done:—

Held, affirming the judgment of a Div. Ct., that the deft. was under no duty to the plt., and that there was no cause of action.

Winterbottom v. Wright, (1842) 10 M. & W. 109; 62 R. R. 534, followed. *EARL R. LUBBOCK*
C. A. [1905] 1 K. B. 253

— Dangerous employment—Infant—Duty to instruct—Delegation of duty—Foreman.
See MASTER AND SERVANT—Infant. 4.

— Dangerous goods—Knowledge of vendor—Duty of vendor to purchaser.
See SALE OF GOODS. 14.

— Dangerous premises—Staircase in possession of landlord—Staircase not lighted—Liability.
See FLATS. 1.

— Directors.
See under COMPANY—Directors.

— Drain.
See under SEWERS.

— Electric wires—Negligence in exercising statutory powers—Quebec Act, 1 Edw. 7, c. 66.
See CANADA—Negligence 1.

4. — Engine—Action for personal injuries—Invitation to travel on engine—Duty to take reasonable care under the circumstances—Liability for negligence of servants.

The deft. was contractor for making a tunnel for a tube ry., and had constructed, for the purpose of carrying out the work, a temporary line on which an electric engine ran. This engine was used to draw trucks containing the excavated material to a spot where it could be brought to the surface. It was not fitted for passengers, and the deft. had directed that no one should be allowed to ride on it but the driver and a guard. It had, however, been used to carry officials in the employment of the deft. and of the ry. co., with the knowledge and concurrence of the deft.'s representative. The plt. was an inspector of works appointed by the engineer of the ry., and he accepted from the deft.'s timekeeper, who was riding on the engine, an invitation to be conveyed by it to his destination. An accident happened while the plt. was on the engine, and

NEGLIGENCE—*continued.*

he sustained injuries. In an action to recover damages from the deft. in respect of these injuries, the jury found that the plt. was on the engine for his own convenience, but with the permission of the deft.'s representative, and that the accident was due to the negligence of the deft.'s servants:—

Held, that the deft. must be taken, through his representative, to have permitted the plt. to ride on the engine, and that his liability was that of a person who undertakes the carriage of another gratuitously; and that the duty in such a case is that the care exercised must be reasonable under the circumstances; that there was evidence of such a failure of due care on the part of the deft.'s servants as would make him responsible for damage arising therefrom; and that the plt. was entitled to judgment. **HARRIS v. PERRY & Co.** - **C. A. [1903] 2 K. B. 219**

— Evidence—Negligent course of conduct—Dangerous practice—Evidence of similar acts or omissions.
See EVIDENCE. 8.

— Guardians of the poor—Liability of, to pauper inmate in action for negligence—Common employment.
See POOR LAW. 4.

— Guardians—Negligence of servant—Liability of guardians to pauper inmate in action of tort.
See POOR LAW. 4.

— Hackney carriage—Negligence of driver—Liability of proprietor.
See HACKNEY CARRIAGE. 2.

— Harbour board, Liability of—Powers of harbour-master—Negligence in removing and remooing vessels in port.
See CAPE OF GOOD HOPE. 5.

— Hospital, Public—Liability of governors—Operation—Injury to patient—Hospital staff—Relation of hospital to patients.
See HOSPITAL. 1.

— Income tax—Deductions—Negligence—Damages.
See REVENUE—Income Tax. 37.

5. — *Infringement of public right—Special and particular damage—Negligent navigation—Damage to dock—Right of public to enter dock—Closing of dock for repairs—Harbours, Docks, and Piers Clauses Act, 1847 (10 & 11 Vict. c. 27), s. 33—Alexandria (Newport and South Wales) Docks and Railway Act, 1882 (45 & 46 Vict. c. ccli.).*

By careless navigation the defts. damaged the gates of a certain dock owned by a dock co. so that it was found necessary to close the dock for several days for repairs.

The dock co.'s special Act incorporated s. 33 of the Harbours, Docks, and Piers Clauses Act, 1847, which provides that upon payment of the rates made payable by that and the special Act the dock shall be open to all persons for the shipping and unshipping of goods.

The plt.'s ship arrived outside the dock in order to take a cargo which was in the dock ready for her to load. Owing to the dock being

NEGLIGENCE—*continued.*

closed she was detained outside the dock gates for two days and a half. The plts. claimed from the defts. damages for this detention:—

Held, that the negligent act of the defts. was too indirectly related to the plts.' loss to constitute a good cause of action, and that the defts. were entitled to judgment.

Ricket v. Directors, &c., of the Metropolitan Ry. Co., (1867) L. R. 2 H. L. 175, considered. **ANGLO-ALGERIAN STEAMSHIP Co., LD. v. HOULDER LINE, LD.** - **Walton J. [1908] 1 K. B. 659**

— Insurance, Marine—Time charter—Negligence of master and crew of chartered ship.

See INSURANCE (MARINE). 33.

— Landlord, Negligence of—Insanitary house—Right of wife and children of tenant to claim damages for illness.
See LANDLORD AND TENANT. 43.

6. — *Landlord and tenant—House let in flats—Liability of landlord for disrepair of roof—Limits of duty.*

The plts. were tenants of a floor in a building of which the defts. were landlords. A rain-water gutter in the roof, the possession and control of which was retained by the defts., became stopped up. Notice of the stoppage was given by the plts. to the defts., but the defts. neglected to have the gutter cleared out till after the lapse of four or five days from the receipt of the notice, and in the meantime the plts. had suffered damage by reason of rain-water having found its way into their premises in consequence of the stoppage:—

Held, that the fact of the gutter being under the control of the defts. imposed upon them a duty to take care that it was not in such a condition as to cause damage to the plts., and that as they had notice of its being stopped up and neglected to clear it out within a reasonable time after the receipt of the notice, they were guilty of a want of due care, and were consequently responsible for the damage done. **HARGROVES, ARONSON & Co. v. HARTOPP**

Div. Ct. [1905] W. N. 18; [1905] 1 K. B. 472

— Liability of director of bank.

See CANADA—Banker. 1.

— Liability of landlord for injury happening to stranger during tenancy—Repairs—Nuisance.

See LANDLORD AND TENANT. 42.

— Master and servant.

See under MASTER AND SERVANT—Negligence.

— Mines.

See under MINES.

— Money paid under mistake of fact—Marked cheque fraudulently altered—Notice of dishonour.

See CANADA—Bankers. 2.

— Motor omnibus—Accident to passenger—Doctrine of "res ipsa loquitur."

See MOTOR OMNIBUS. 1.

NEGLIGENCE—continued.**7. — Nervous shock resulting from fright—Remoteness of damage.**

Damages which result from a nervous shock occasioned by fright unaccompanied by any actual impact may be recoverable in an action for negligence if physical injury has been caused to the plt.

Victorian Railways Commrs. v. Coultas, (1888) 13 App. Cas. 222, not followed. *DULIEU v. WHITE & SONS* - Div. Ct. [1901] 2 K. B. 669

— Nursing association—Master's liability—Contract to supply nurse—Injury to patient through negligence of nurse.

See **MASTER AND SERVANT—Negligence.** 5.

— Passenger—Railway companies.

See under **RAILWAY—Passengers.**

— Pawnbroker—Pledge—Neglect to deliver to pledgor—Reasonable excuse—Loss of pledge.

See **PAWNBROKER.** 4.

— Railway.

See under **RAILWAY—Negligence.**

— Savage animal—Liability of owner to trespassers.

See **SAVAGE ANIMAL.** 1.

— School premises, Obligation to maintain—Corporation—County council—Liability for negligence.

See **SCHOOLS.** 14.

— Schools—Local education authority—Duty to "maintain" school—Dangerous condition of premises—Injury to scholar.

See **SCHOOLS.** 15.

— Servant—Bailor and bailee—Injury to article bailed—Liability of master—Bailment.

See **MASTER AND SERVANT—Liability.**

— Sheep-Scab Order, 1898—Negligence of inspector—Liability of local authority.

See **DISEASES OF ANIMALS.** 1.

— Shipping.

See under **SHIPPING—Negligence.**

8. — Statutory powers — Compensation — "Damage sustained by reason or in consequence of the exercise of powers"—Negligence—Ultra vires—Burden of proof—Postmaster-General—Telegraph Acts, 1863 (26 & 27 Vict. c. 112), and 1868 (31 & 32 Vict. c. 110).

The Telegraph Acts, 1863 and 1868, give power to the Postmaster-General to place and maintain a telegraph under any public street or road, and for that purpose to open or break up any street or road. The Acts also provide that in exercise of these powers the Postmaster-General shall do as little damage as possible and shall make full compensation to all persons interested for all damage sustained by them by reason or in consequence of the exercise of such powers, the amount of such compensation to be determined in manner provided by the Lands Clauses Consolidation Act. The Postmaster-

NEGLIGENCE—continued.

General broke up King Street, St. James', for the purpose of laying a telegraph. In doing the work the contractors broke an iron water-pipe under the surface, thereby causing the flooding of a culvert containing a copper conductor or main for the supply of electricity belonging to the above-named co. and caused damage. The co. brought a petition of right claiming compensation. The answer and plea put in by the Att.-Gen. merely stated that the matters complained of in the petition of right did not cause damage within the meaning of the compensation clause in the Telegraph Acts. The amount of compensation had been assessed by a jury at 145*l.*, without prejudice to the question of right.

Held, that, if a public body or office relied upon the negligence of agents or contractors as a defence to a claim for compensation, the burden of proof was upon the defts., and it was not sufficiently discharged by the statement in the suppliant's letters; therefore the suppliants must succeed. *In re St. James and Pall Mall Electric Lighting Co.*

Farwell J. [1904] W. N. 88

9. — Third party, Intervening act of—Liability—Effective cause of damage—Interference by trespassers—Railway sidings.

The defts.' servants shunted some trucks and a brake-van, all coupled together, on to a siding which was on an incline running down to a level crossing over a highway. The siding had a catch-point which would have prevented the vehicles, if set loose, from running down the incline; but, for the convenience of their shunting operations, the defts.' servants did not place the vehicles beyond the catch-point, but screwed down their brakes and left them in a position in which they would not have caused any damage if not interfered with. Some boys, however, trespassing on the siding, uncoupled the van from the trucks, and released its brake, so that it ran down the incline and injured the plt., who was lawfully passing along the highway over the level crossing. The defts. were aware that boys were in the habit of trespassing on the siding and meddling with vehicles placed upon it.

Kennedy J., on the findings of a jury, held that the defts. were liable for the damage sustained by the plt., since they were aware of the danger of interference with the vehicles, and negligently omitted to take reasonable precautions to prevent the consequences of that interference:—

Held, that there had been really no evidence to go to the jury at all, and no evidence of any neglect on the part of the defts., of any duty the neglect of which would have led to the accident. But even assuming there had been evidence to go to the jury of neglect by the defts. of such care as a reasonable man would have taken to avoid obvious danger, the rule laid down by Lord Esher M.R. in *Englehart v. Farrant & Co.*, [1897] 1 Q. B. 240, was the rule the Court must adopt, which was this: "If a stranger interferes it does not follow that the deft. is liable; but equally it does not follow that because a stranger

NEGLIGENCE—*continued*.

interferes the deft. is not liable if the negligence of a servant of his is an effective cause of the accident." Here, upon the evidence, it appeared that negligence on the part of the defts. was not the "effective cause" of this accident. That being so, the defts. were not liable.

Decision of Kennedy J., [1902] 1 K. B. 618 reversed. *McDOWALL v. GREAT WESTERN RY. Co.* - C. A. [1903] W. N. 117; [1903] 2 K. B. 331

— Tramway, Lease of—Negligence by contractor in executing repairs—Accident to tramcar—Liability of contractor to lessee.

See *TRAMWAYS*. 9.

— Tramway company—Common carrier to passengers—Liability for personal injuries.

See *CARRIER*. 1.

— Trustee—Investment—Breach of trust.

See under *TRUSTEE—Investments*.

— Water company—Liability.

See under *WATER*.

— Workmen's compensation.

See under *MASTER AND SERVANT*.

NEGOTIABLE INSTRUMENT—*Debtenture payable to bearer—Usage—Conversion—Sale by broker on Stock Exchange—Holder for value.*

Certain debtenture bonds, some issued by an English co. in England and others by foreign cos. abroad, and expressed to be payable to bearer, and not being promissory notes, were stolen from the plt. by his clerk. For the purpose of selling the bonds the clerk employed a broker at Bradford, who instructed the defts., brokers on the London Stock Exchange. The defts., acting in good faith, entered into contracts for the sale of the bonds to jobbers. The bonds were then sent by the broker to the defts., who handed them to the jobbers and remitted the price received to the broker. In an action by the plt. against the defts. for conversion of the bonds, it was proved that, by the usage of the mercantile world and of the Stock Exchange, bonds of the kind in question are treated as negotiable instruments transferable by mere delivery:—

Held, that the bonds were negotiable instruments, and that when the defts. received the bonds they became holders for value.

Bechuanaland Exploration Co. v. London Trading Bank, [1898] 2 Q. B. 658, followed.

Held, also, that it is not now necessary to tender evidence to prove that bonds of the kind in question are negotiable instruments, that being a fact of which the Court will take judicial notice. *EDELSTEIN v. SCHULER & Co.*

Bigham J. [1902] 2 K. B. 144

— Promissory note.

See under *PROMISSORY NOTE*.

NEGOTIATION—Promissory note—Inchoate instrument.

See *PROMISSORY NOTE*. I.

NEPHEWS—Class—"My own nephews and nieces"—Half-blood.

See *WILL—Class*. 11.

— Will—Construction.

See *WILL—Futurity, Words of*. 2, 3.

NEPHEWS AND NIECES—Gifts to—Will—Construction—Words of futurity—Niece dead at date of will leaving child.

See *WILL—Futurity, Words of*. 4.

NERVOUS PROSTRATION—Workmen's compensation—Loss of will power.

See *MASTER AND SERVANT—Compensation*. 110.

NERVOUS SHOCK—Neurasthenia—Workmen's compensation—Accident.

See *MASTER AND SERVANT—Compensation*. 110.

— Resulting from fright—Remoteness of damage.

See *NELIGENCE*. 7.

"NET"—Commission—"Net" charge including broker's remuneration and cantango—Non-disclosure to client—Secret profit.

See *STOCK EXCHANGE*. 1.

NETS—Collision—Drift-net fishing—Incumbered by nets—"Special circumstances"—Lights—Standing by.

See *SHIPPING—Collision*. 28.

— Custom to dry fishing nets—Validity—Changes in user—Encroachment and Recession of sea—Accretion.

See *CUSTOM*. 1.

— Salmon Fishery—By-law—"Description of nets."

See *FISHERY*. 10.

NEURASTHENIA—Nervous shock—Workmen's compensation—Accident.

See *MASTER AND SERVANT—Compensation*. 110.

NEW BRUNSWICK—Laws of.

See under *CANADA*.

NEW RIVER COMPANY—Bridges—Approaches—Highway—Liability to repair 300 feet from end of bridge.

See *BRIDGES*. 1, 2.

NEW SOUTH WALES.

Solicitors—Order in Council applying the Colonial Solicitors Act, 1900 (63 & 64 Vict. c. 14), to the State of New South Wales. Reprint from W. N. 1901 (Nov. 2), p. 325. See *CURRENT INDEX*, 1901, p. xcvi.

Privy Council—Judicial Committee—Order in Council, dated April 2, 1909, regulating appeals to His Majesty in Council from the Supreme Court of the State of New South Wales.

NEW SOUTH WALES—continued.

Reprint from **W. N. 1910 (Feb. 19) p. 75.** See **CURRENT INDEX, 1910, p. cx.**

1. — *Appeal in forma pauperis, Petition for leave to—Application must be first made to Court below—Practice.*

It is a rule of general if not universal application that the Judicial Committee will not entertain a petition for leave to prosecute an appeal in forma pauperis where the Court below has power to grant leave on the usual conditions, unless in the first instance an application for leave to appeal has been made within due time to the Court from which it is proposed that the appeal should be brought. **WALKER v. WALKER. Ex parte WALKER - P. C. [1903] A. C. 170**

— Appeal — Costs — Terms of special leave allowing respondent to cross-appeal without petition.
See No. 3, below.

— Australia—In general.
See under **AUSTRALIA.**

2. — *Bankruptcy—New South Wales Bankruptcy Act, 1898—Administration of bankrupt's estate—Priority of the Crown.*

Held, that in the administration of a bankrupt's estate under the New South Wales Bankruptcy Act, 1898, the Crown is entitled to preferential payment over all other creditors. **NEW SOUTH WALES TAXATION COMMISSIONERS v. PALMER - P. C. [1907] A. C. 179**

3. — *Civil servant—Additional years of service need not be continuous—Terms of special leave allowing respondent to cross-appeal without petition—Costs—New South Wales Civil Service Act, 1884, s. 48—Construction.*

Where an officer within the meaning of the New South Wales Civil Service Act, 1884, held office as a civil servant from 1857 to 1861, then was employed by the Government from 1861 to 1880 as a licensed surveyor but not as an officer as aforesaid, then as an officer from 1880 to 1896, when he was superannuated:—

Held, that the years of service from 1857 to 1861 were additional years within the meaning of s. 48, entitling him to superannuation allowance in respect thereof. There was nothing in the Act to show that the service in respect of which allowance was provided must be continuous.

Special leave granted on special terms as to costs, reserving to respondent a right to cross-appeal without petition to that effect. **WALKER v. SIMPSON - P. C. [1903] A. C. 208**

4. — *Civil Service Act, 1884, ss. 2, 48—Public Service Superannuation Act, 1899—Superannuation allowance—Construction—"Officer."*

Held, that according to the true construction of the New South Wales Civil Service Act, 1884, the respondent, who had held office from Sep. 24, 1868, to Dec. 31, 1869, as temporary draftsman, was during that period an officer in the Civil Service. He held during that period a permanent salaried office, and was therefore within the term "officer" as defined in s. 2, and not within the exception as a "person employed temporarily."

NEW SOUTH WALES—continued.

Held, further, that under s. 48 read in connection with the Public Service Superannuation Act, 1899, he was entitled to reckon the above period as additional service for the purpose of computing his superannuation allowance. **WILLIAMS v. MACHARG**

P. C. [1910] A. C. 476

5. — *Conditional purchaser cannot convert his purchase after he has fulfilled his conditions—Grant in fee simple—New South Wales Crown Lands Alienation Act, 1861, s. 21—Lands Act Amendment Act, 1875, s. 8.*

According to the true construction of New South Wales Crown Lands Alienation Act, 1861, its amendments, and regulations made thereunder, the words "conditional purchaser" in s. 21 mean a purchaser who purchased originally on certain conditions which have not been fulfilled. A purchaser who has fulfilled the conditions of his purchase is under s. 8 of the amending Act of 1875 the "rightful owner," and his purchase has ceased to be conditional although he has not obtained a grant in fee simple:—

Held, that the option given by Regulation 40, made under the said Acts, of converting a conditional purchase into a conditional purchase for mining purposes ceases on the fulfilment of all conditions and cannot be reserved indefinitely by delay in obtaining the grant in fee simple. **CHIPPENDALL v. WILLIAM LAIDLEY & CO.**

P. C. [1909] A. C. 199

6. — *Constitution Act of New South Wales No. 32, 1902, s. 15—Validity of standing order of the Legislative Assembly—Power to suspend an accused member till verdict—Order not punitive but preventive.*

A standing order of the Legislative Assembly of New South Wales made under the power given to it by Constitution Act No. 32 of 1902, s. 15, and approved by the Governor, empowered the House to suspend from the service of the House a member charged with an offence until a verdict given or further order:—

Held, that the standing order, being to regulate the orderly conduct of the Assembly, was within the terms of the power conferred. The House was sole judge as to the occasion requiring it; and a Court of law could not question its validity so long as it related to orderly conduct. Accordingly a suspension under it till verdict given of the respondent, who had been charged with a criminal offence, made with a view to defend the regularity of its proceedings and not by way of punishment, was enforceable against him. **HARNETT v. CRICK**

P. C. [1908] A. C. 470

7. — *Costs of action, arbitration and award—Law of New South Wales—Public Works Act, 1900, s. 116, sub-s. 2 (b).*

Where the respondents tendered 2000*l.* as compensation due under the New South Wales Public Works Act, 1900, and the appellants were awarded 18,450*l.* by the arbitrators, and recovered 17,609*l.* in an action brought:—

Held, that by the unambiguous language of s. 116, sub-s. 2 (b), the appellants must bear all the costs of the action, arbitration, and award,

NEW SOUTH WALES—continued.

notwithstanding the inadequate tender made by the respondents. **PACIFIC CO-OPERATIVE STEAM COAL CO. v. RAILWAY COMMS. OF NEW SOUTH WALES** - - - **P. C. [1904] A. C. 795**

8. — Crown grant, Construction of—Confirmation of doubtful title—Effect of reservation of land in Crown grant—Claim by Crown against registered title.

In 1826 the Crown granted a charter incorporating certain persons as trustees of clergy and school lands in the colony, whereby it was declared that "glebe lands" (admitted to include the land now in question) should on the death or resignation of the then incumbents become vested in the corporation.

In 1828 the corporation sold (inter alia) the land in question by auction to D., purporting to act under the charter. The incumbent had previously agreed to resign, but there was no evidence of formal resignation. A confirming grant from the Crown, which was usual in practice, was applied for but not obtained before the sale.

In 1829 the Crown granted certain glebe lands to the corporation, reserving all coast land within 100 feet of high-water mark. The land in question would have passed by the general description, if vested in the Crown, but was within the terms of the reservation. D. was not a party to this grant.

In 1830 the corporation conveyed to D. the land he had purchased in 1828, reciting the grant of 1829, and in that recital referring to "the reservation and conditions" therein contained, but not expressing any reservation or exception in the operative part, and taking a mortgage for part of the purchase-money.

In 1883 the corporation was dissolved, and its property reverted to the Crown under the charter of 1826.

In 1840 D. paid off his mortgage to the Crown and the Crown granted and confirmed to D. in fee the premises comprised in the deed of 1830. There was no mention of any exception, and the stated acreage would have been short without the coast strip of 100 feet.

Later discussion arose between the Crown and the respondents, who claimed by purchase through D. The respondents were registered as owners in 1887. In 1900 the Crown claimed the coast strip, as having been reserved in 1829 and not included in the grant of 1840 :—

Held, affirming the decision of the Supreme Court, that the corporation had no title to grant the land in question, but that the conditions of sale of 1828 might have misled the purchaser, and the conveyance of 1830 was ambiguous, and that the Crown grant of 1840 was intended to remove the doubt, and did confirm to D. the land down to the water's edge.

Quere, whether it was open to the Crown to dispute the registered title. **ATT.-GEN. FOR NEW SOUTH WALES v. DICKSON.**

P. C. [1904] A. C. 273

9. — Crown lands—Contract of sale of conditional purchases—Subject to the provisions of local laws and regulations—New South Wales D.D.

NEW SOUTH WALES—continued.

Crown Lands Alienation Act, 1861, ss. 13 and 14—Construction.

In an action by a vendor to recover a forfeitable deposit from the purchaser (and stakeholders) on the purchaser's failure to complete, the latter pleaded that as regards two portions of the land sold the vendor did not disclose a title as against the Crown to mine thereon for the minerals other than gold :—

Held, that he was not bound to do so, and was entitled to a decree. The contract specified that the said portions were sold subject to reservations mentioned in the schedule and to the local laws and regulations affecting the same. Gold was reserved to the Crown as mentioned in the schedule; all minerals were reserved by force of ss. 13 and 14 of New South Wales Crown Lands Alienation Act, 1861; and on the true construction of the contract there was no express or implied obligation on the vendor to shew that they had been acquired under s. 13 rather than s. 14 so as to be convertible into mining lands on terms prescribed by the Legislature. **BARTON v. LEMPRIERE.** **P. C. [1910] A. C. 330**

10. — Crown Lands—Inquiry as to falsity of statements by applicant for conditional purchase—Powers of Land Board—Findings of fact by Land Court Final—Power to reserve points of law—Jurisdiction of Supreme Court—Crown Lands Acts, 1884, ss. 20, 26; 1889, ss. 5, 8, sub-s. 6.

A Land Board and a Land Appeal Court having found on an inquiry directed by the Minister for Lands under s. 20 of the Crown Lands Act, 1884, that certain statements made by the respondent in applying for a conditional purchase were false within the meaning of s. 26 :—

Held, on a special case submitted to the Supreme Court under s. 8, sub-s. 6, of the Crown Lands Act of 1889 :

(1) that the jurisdiction of the Supreme Court is confined to the decision of submitted questions of law.

(2) that the decision on questions of fact by the Land Board or by the Land Appeal Court is final and conclusive.

(3) that the inquiry directed was within the cognizance of the Land Board under s. 20 of the Act of 1884.

(4) that the Land Appeal Court has power to review the finding of the Land Board, and as incident thereto to reject irrelevant evidence, draw reasonable inferences of fact, correct errors and shortcomings of the Board; to act as a Court of rehearing as well as of appeal.

Under s. 5 of the Act of 1889 and No. 7 of the Crown Lands Regulations of Dec. 2, 1889, the Minister for Lands can order the inquiry to be held at any place that he may think fit. **MINISTER OF LANDS v. WILSON.**

P. C. [1901] A. C. 315

11. — Crown lands—New South Wales Crown Lands Acts—Agreement by the Crown with licensee of land—Jurisdiction of Land Appeal Court.

An agreement by the Government that in consideration of a licensee of land paying licence

NEW SOUTH WALES—continued.

fees as demanded (which had been refused because of a dispute as to a new appraisalment) a notification to the effect that the licences had not been renewed owing to non-payment thereof should be revoked and that the licensee should quietly enjoy his holding is not ultra vires the Crown as being contrary to the New South Wales Crown Lands Acts; and on breach thereof by the Government an action will lie.

Held, also, that the Land Appeal Court had no jurisdiction to determine the status of such land and to hold that the said land was not held by the licensee under the said agreement, but was available for annual leases. **WILLIAMS v. G'KEEFE.** P. C. [1910] A. C. 186

12. — House or other building or manufactory, prohibition against the compulsory acquisition of a part only of a—New South Wales Public Works Act, 1900, s. 131—Construction.

Held, that the prohibition in the New South Wales Public Works Act, 1900, s. 131, against the compulsory acquisition of a part only of a house or other building or manufactory where the owner is willing and able to convey the whole, applies on the true construction and intention of the Act to both methods of acquisition authorized thereby, whether by notification in the Gazette or by notice to the parties. **WILLIAMS v. PERMANENT TRUSTEE CO. OF NEW SOUTH WALES, LD.** P. C. [1906] A. C. 249

13. — Income tax—New South Wales Land and Income Assessment Act, 1895 (59 Vict. No. 15), s. 28, sub-s. 1—Construction—Income Tax—Deduction of fair rent in respect of Crown lease—Practice—Costs.

Held, under New South Wales "Land and Income Tax Assessment Act of 1895," that the respondent, who carried on the business of a grazier on land held under a Crown lease (and therefore exempt from land tax), was not entitled to deduct from the taxable amount of his income in 1899 a sum representing the fair rental value of the leasehold premises and improvements hereon for that year. The deduction is not authorized by s. 28, sub-s. 1, the rental value not being an outgoing, loss, or expense within the meaning of that sub-section.

Decree of the Court below reversed, the appellant paying respondent's costs in accordance with the terms on which special leave to appeal had been granted. **COMRS. OF TAXATION v. ANTILL** P. C. [1902] A. C. 422

14. — Insurance—New South Wales Life, &c., Insurance Act, 1902, s. 4—Crown not bound by the Act—Prerogative right to priority of payment.

Sec. 4 of New South Wales Life, Fire and Marine Insurance Act, 1902, purports to protect the proceeds of a life assurance policy from payment of the debts of the deceased:—

Held, that, whatever the true construction and effect of the section, the Act itself did not bind the Crown, which was entitled to be paid and by virtue of its prerogative to be paid in priority to all other creditors of the deceased. **ATT.-GEN. FOR NEW SOUTH WALES v. CURATOR OF INTESTATE ESTATES**

P. C. [1907] A. C. 519

NEW SOUTH WALES—continued.

— Land—Crown lands.

See Nos. 8—11, above.

15. — Land—New South Wales Lands acquisition Act (44 Vict. No. 16), s. 13—Prima facie case for compensation—Rightful owner unknown—Claim in respect of possessory title.

Land in New South Wales having been duly resumed by the Minister of Public Instruction, it appeared that at the date of resumption the rightful owner was unknown and out of possession, but that F. C. had ten years previously entered into possession thereof as vacant land, enclosed it by substantial fencing, and thenceforth up to the date of resumption held exclusive possession thereof without notice of any adverse claim, received rents and paid rates and taxes in respect of the said land, which stood in his name in the rate books of the municipality:—

Held, that F. C. was not a mere trespasser, but had a possessory title, good at the date of resumption, against everyone but the rightful owner, and in the course of becoming absolute against him. Having been deprived of the land, he had a prima facie case for compensation within the meaning of s. 13 of the Act of 1880 (44 Vict. No. 16) which was not excluded by the circumstance that under the Public Works Act, 1900, the Minister had acquired the title of the rightful owner. **PERRY v. CLISSOLD**

P. C. [1907] A. C. 73

16. — Land—Resumption of—Costs of action for compensation—Irregular amendment of notified valuation—New South Wales Public Works Act (26 of 1900), ss. 96, 99.

Under s. 96 of the New South Wales Public Works Act the Minister notified in the scheduled form that 9460l. was the valuation of land resumed under statutory authority, and subsequently by letter not in scheduled form increased the valuation to 9900l.:—

Held, that this letter was a sufficient though irregular amendment of the previous formal notification, and that, the Court having fixed the compensation to be paid at 9900l., the owner must pay the costs as directed by s. 99. **MINISTER OF PUBLIC WORKS v. HART**

P. C. [1904] A. C. 259

17. — Lands—Non-renewal of licences gazetted by mistake—Power of the Minister to reverse the same—Effect of the reversal—New South Wales Crown Lands Act, 1899, s. 33; of 1891, s. 3.

The lands in suit had been reappraised in 1899, but the reappraisal was not finally settled till Jan. 19, 1900, and accordingly the fees in respect of the appellant's licences for 1900 had not been paid before the expiration of 1899. By error his lands had been gazetted in Sept., 1899, as requiring payment of fees at the old rates, and on Jan. 6, 1900, non-renewal of the licences had also been gazetted. The appellant thereupon paid the fees at the old rates on account, and obtained a reversal of the non-renewal.

Thereafter the respondent applied for and obtained annual leases of the same lands; but, *held*, that they were still under licence to the appellant, and therefore not available for lease under s. 33 of the Land Act of 1889.

NEW SOUTH WALES—continued.

There had not been under the circumstances default by the appellant, and consequently there was no authority to refuse renewal of his licences. The notice purporting to that effect was a mistake which it was in the power and duty of the Minister to rectify.

Semble, under s. 3 of the Land Act of 1891 the Minister's reversal of the non-renewal had the same effect as if the non-renewal had never been notified or declared. *O'KEEFE v. MALONE*

P. C. [1903] A. C. 365

18. — Land tax—New South Wales Land and Income Tax Assessment Act of 1895 (59 Vict. No. 15), s. 11, sub-s. 5—Glebe lands let on leases—User and occupation—Exemption from land tax.

Held, that under the New South Wales Land and Income Tax Assessment Act, 1895, s. 11, sub-s. 5, glebe lands by Crown grant vested in the respondents for parochial church purposes in connection with the Church of England, but let on building leases or subdivided for that purpose, were not exempt from assessment for land tax as being lands occupied or used exclusively in connection with public charitable purposes or a church.

Although the rents and profits of those lands might be so used by the trustees, yet so far as the lands were let on building leases they were not so used by the lessees, and so far as they were not let they were not occupied or used for any purpose. *COMMISSIONERS OF TAXATION v. TRUSTEES OF ST. MARK'S GLEBE* - **P. C. [1902] A. C. 416**

19. — Lease—Suspension of pastoral lease—Compensation—New South Wales Mining Act, 1874 (37 Vict. No. 13), ss. 13, 25—Construction.

Held, that s. 13 of the New South Wales Mining Act of 1874 is plain and unambiguous. It confers on the Governor power to suspend a pastoral lease so far as may be necessary for certain defined purposes relating to the public safety and welfare. That power is not confined to land uncultivated or unimproved, or to water flowing in a natural watercourse. The effect of suspension is that while it lasts, and so far as it extends, all the rights of the lessee derived from the lessor are in abeyance, and the lessor is in the same position as if the lease had never been granted, and accordingly can resume possession. The compensation to which the lessee is entitled is limited to the return or remission of rent, no provision being made for cases where compensation so restricted is inadequate :—

Held, further, that the construction of s. 13 cannot be controlled by s. 25, which relates to a different subject. *COOK v. RICKETSON*

P. C. [1901] A. C. 588

20. — Libel by servant of corporation—Liability of company for malicious libel.

A corporation cannot be held to be incapable of malice so as to be relieved of liability for malicious libel when published by its servant acting in the course of his employment.

Although the servant may have had no actual authority, express or implied, to write the libel complained of, containing statements against the plt. which he knew to be untrue, if he did

NEW SOUTH WALES—continued.

so in the course of an employment which is authorized, the corporation is liable.

Barwick v. English Joint Stock Bank, (1867) L. R. 2 Ex. 259, approved. *CITIZENS' LIFE ASSURANCE CO. v. BROWN* - **P. C. [1904] A. C. 423**

21. — Lunacy—Substituted service on alleged lunatic—Service on Master in Lunacy—Jurisdiction to dispense with examination of lunatic—New South Wales Lunacy Act, 1898, s. 106, sub-s. 2; s. 110.

By s. 106, sub-s. 2, of the New South Wales Lunacy Act of 1898, according to its true construction, personal service on an alleged lunatic of a petition by his wife to declare him of unsound mind may be dispensed with when there is evidence on which the Court can conclude that it is inexpedient.

The rules of Court provide that substituted service should be effected on "some adult inmate at the dwelling-house." Where the wife and his two attendants are the only adult inmates, it is within the jurisdiction and discretion of the Court to order service on the Master in Lunacy.

It is also within the jurisdiction of the Court under s. 110 to dispense with any examination of the alleged lunatic, if there is evidence on which it can find that it is inexpedient to examine him. *In re McLAUGHLIN*

P. C. [1905] A. C. 343

22. — Military service, Contract with the Colonial Government for—Payments by the Imperial Government—Payments under the contract.

Where a Colonial Government had entered into a contract with the respondent for military services in South Africa at a certain rate of pay :—

Held, that it did so on behalf of the Crown, and that any payments made by the Crown to the respondent through the Imperial Government for services so rendered to the Crown were in part discharge of moneys due under the contract, and that the Colonial Government was entitled to the benefit of them. *WILLIAMS v. HOWARTH*

P. C. [1905] A. C. 551

23. — Mines—Payment of miners according to amount excavated—New South Wales Coal Mines Regulation Act, 1896 (60 Vict. No. 12), s. 38, sub-s. 1—Construction.

The respondent having been convicted of contravening s. 38, sub-s. 1, of the New South Wales Coal Mines Regulation Act of 1896 by not paying his miners according to the actual weight gotten by them of the mineral contracted to be gotten :—

Held, that on the true construction of the section, as it appeared that by the contract of employment the miners were to be paid according to the yardage of excavation, which had no necessary or constant relation to the amount of mineral gotten, the Act was inapplicable and the conviction was erroneous. *HUMBLE v. HUMPHREYS*

P. C. [1902] A. C. 207

24. — Partnership—Provision for purchase by survivor of share of deceased partner—Surviving partner sole executor of deceased—Valuation an incident in the purchase—Error in

NEW SOUTH WALES—continued.

valuation to be strictly proved after long delay—Validity of purchase—Law of partnership.

By a clause in articles of partnership executed in 1878 between two brothers it was provided that on the death of either the survivor should pay to the executors of the deceased the full share to which they should be entitled on the taking of a general account in writing of the partnership assets, "such stock and other assets as shall not consist of money to be valued either by mutual agreement or valuation in the usual way nothing being charged for goodwill."

One brother died in 1886, and the survivor as sole executor under his will effected the valuation as directed, paid for the share as surviving partner, and thenceforth carried on the business on his own account.

In an action brought in 1908 by the residuary legatees under the said will against the surviving partner in effect for an account on the footing that there had been no operative sale and purchase in 1886 by reason of the valuation then made not being in manner authorized by the clause, and that the business must be deemed to have been carried on for the benefit of both parties to the suit:—

Held, that on the true construction of the clause there was a binding contract of sale and purchase, and that the valuation was only an incident in carrying out the same. The evidence shewed that a substantially accurate method had been adopted, but even if error had been shewn either in the method or the results it could not destroy the contract, but would fall to be corrected by the Court on being clearly and conclusively proved. The price of goodwill must in any event be excluded from the valuation, and the appellants could not rely exclusively on the dual character of the debt, which had been imposed upon him by their own testator.

Vyse v. Foster, (1874) L. R. 7 H. L. 318, and *Dinkham v. Bradford*, (1869) L. R. 5 Ch. 519, approved. *HORDERN v. HORDERN*

P. C. [1910] A. C. 465

25. — Penalty, Liability to—New South Wales Act (2 Edw. 7, No. 35), s. 24—Construction.

Under the New South Wales Act (2 Edw. 7, No. 35), s. 24, according to its true construction, a person holding a civic office is not liable to a penalty as being knowingly interested in a contract with his municipality when he has merely supplied materials to a contractor who chooses to buy them from him without any concerted arrangement that he should do so. *NORTON v. TAYLOR*

P. C. [1906] A. C. 378

26. — Practice—Appealable value—Issue as to appealable value to be decided by Court of Appeal—Admissibility of affidavits—New South Wales Mining Act, 1874 (37 Vict. No. 13), s. 115.

Sect. 115 of the New South Wales Mining Act, 1874, gives a right of appeal to the Supreme Court in mining cases where the amount involved is not less than 500*l.*

Held, that the Supreme Court was wrong in refusing to hear an appeal on the ground that the value should be found and stated by the

NEW SOUTH WALES—continued.

Court appealed from, and could not be ascertained by themselves on affidavit.

Scully v. Murn, (1893) 14 N. S. W. R. 289, overruled. *FALKNERS GOLD MINING CO. v. MCKINNERY* P. C. [1901] A. C. 581

27. — Principal and agent—Construction of contract—Obligation of agent to pass goods through the Custom House—Action for not expediting clearance so as to avoid a newly imposed duty.

Where the respondents contracted for certain fixed charges to lighter and load on railway trucks the machinery of the appellants brought by ship, and also to pass it through the Customs without extra charge:—

Held, that this obligation did not involve the duty of expediting the clearance of the appellants' goods in less than the twenty-four hours allowed by the Customs Regulation Act, 1879, so as to avoid the payment of duty, which came into force before the expiration of that time. The appellants, who sued to recover the amount of the duty so paid, had not requested that the clearing should be expedited, though the circumstances were not within the contemplation of the contract, and were rightly nonsuited. *COMMONWEALTH PORTLAND CEMENT CO. v. WEBER, LOHMANN & CO.* P. C. [1905] A. C. 66

28. — Probate duty—Duty claimed on property subject to special power of appointment by deceased—New South Wales Stamp Duties Acts, 1898, s. 49, sub-s. 2 A (a)—Construction.

More general language in a probate duty statute applicable to the property of deceased persons and to property subject to their general power of appointment does not extend to property subject to a special power to appoint amongst a limited class. The intention to include the latter must be clearly expressed and accompanied by apt provisions:—

Held, on a consideration of all the provisions of the New South Wales Stamp Duties Act, 1898, that s. 49, sub-s. 2 A (a), does not on its true construction apply to property over which a deceased person has only a special as distinguished from a general power of appointment by will. *COMMISSIONER OF STAMP DUTIES v. STEPHEN*

P. C. [1904] A. C. 137

29. — Public Service Act, 1895, s. 60, sub-s. 1; s. 67—Civil Service Act, 1884, s. 46—Construction—Compensation on Retirement—Law of New South Wales.

Under the New South Wales Public Service Act, 1895, the plt.'s services in the Bankruptcy Dept. as a member of the New South Wales Civil Service were dispensed with as from June 30, 1896, and he received under that Act a refund of his contributions to the Superannuation Account established by the Civil Service Act, 1884, and a gratuity as provided by s. 60, sub-s. 1, of the Act of 1895, and in addition a pension under the Public Service (Superannuation) Act, 1899.

In June, 1905, he sued for an increased pension on the ground that his services had been dispensed with in consequence of the abolition of his office and that he was entitled to the benefits in that case provided by the Act of 1884, s. 46:—

NEW SOUTH WALES—continued.

Held, that, whether or not the plt.'s retirement was "in consequence of the abolition of his office" within the meaning of that expression in the Act of 1884, it was incompetent for him to fall back upon that Act after having received the full compensation provided by s. 60 of the Act of 1895. All compensation other than that provided by the said Act was expressly excluded by s. 67 thereof. There was no grant or reservation to him of a right (if any) under the Act of 1884.

WILLIAMS v. CURATOR OF INTESTATE ESTATES
P. C. [1909] A. C. 353

30. — Railway—Agreement to construct a railway jointly—Construction—Rights of joint owners.

Where two colliery cos. agreed to construct a ry. between their respective collieries and the Government ry., and by the New South Wales Act which empowered the same it was provided that the new ry. should be open to the public upon payment of a toll to the two cos. for every ton of goods carried for the public, and that owners and occupiers of lands traversed by the ry. may construct branch rys. communicating therewith :—

Held, that, in the absence of prohibitive words in the agreement, either colliery co. was at liberty to construct a branch ry. and have its coal thence brought to the joint ry. carried over it free of the toll, which was chargeable only to the public. **CALEDONIAN COAL CO. v. SEAHAM COLLIERY CO.** -
P. C. [1901] A. C. 554

31. — Revenue — Income tax — New South Wales Land and Income Tax Assessment Act, 1895 — Regulations thereunder — Return compulsory of income of whatever amount — Default assessment conclusive unless questioned under the Act.

Under the New South Wales Land and Income Tax Assessment Act of 1895 (59 Vict. No. 15), and the regulations made thereunder, every person in the receipt of any income of whatever amount is bound to make a return thereof to the Commrs. in the prescribed form, although after all authorized deductions it does not exceed the taxable limit of 200l. If he neglects to do so the Commrs. may make a default assessment, which becomes binding and conclusive unless questioned by appeal under the Act.

The High Court of Australia having ruled to a contrary effect :—

Held, on appeal therefrom, which had been granted on special terms as to costs and subject to the default assessment being amended if so directed, that a default assessment by the Commrs. of 225l. should be reduced to a nominal amount, and that they should pay to the respondent his costs of this appeal as between solicitor and client. **TAXATION COMMRs. v. MOONEY**

P. C. [1907] A. C. 342

32. — Revenue — Stamp duties — New South Wales Stamp Duties Act, 1898 — Probate Duties (Amendment) Act, 1899 — Share of deceased partner — Business carried on in the Colony.

The share of a deceased partner is situate where the business was carried on at the time of his death.

In re Erwing (1881), 6 P. D. 23, approved.

NEW SOUTH WALES—continued.

Where two brothers residing in England carried on the business of graziers and sheep farmers in partnership by their agent in New South Wales :—

Held, that the interest therein of one of them at the date of his death was liable to pay the duties imposed by the New South Wales Stamp Duties Act, 1898, as amended by the Probate Duties (Amendment) Act, 1899. **STAMP DUTIES COMMISSIONER v. SALTING**

P. C. [1907] A. C. 449

33. — Streets — Rates — Sydney Corporation Act of 1879 — Moore Street Improvement Act, 1890 — Construction — Owners for the time being liable for the rates.

The Sydney Corporation Act of 1879 authorized the municipal council to impose rates, called a city rate, on all rateable property within the city, to be paid by the occupier, or in his default by the owner thereof for the time being.

The Moore Street Improvement Act of 1890 was passed to carry out certain improvements of Moore Street on "an equitable system," and provided that the cost thereof should be divided between the whole body of ratepayers liable to the city rate and those who were owners of property within the improvement area :—

Held, overruling the Court below, that, according to the true construction of the later Act, owners of property within the improvement area meant owners for the time being. The intention was to create a charge on their property, and not a mere personal charge on the persons who happened to be owners thereof at the date of assessment. **SYDNEY MUNICIPAL COUNCIL v. TERRY**
P. C. [1907] A. C. 308

34. — Sunday trading at railway refreshment rooms — Actual or intending passengers — New South Wales Police Offences Act, 1901, s. 61 — Construction.

The respondent, lessee of the refreshment rooms at a railway station at Sydney, traded on Sunday by selling cigarettes. Upon an information filed against him under s. 61 of the New South Wales Police Offences Act, 1901, it was contended that the Sunday trading clauses of that Act did not bind the Crown, that the Railway Commissioners were in the same position as the Crown, and that the respondent was acting in accordance with a lease granted by the Commissioners and was therefore protected :—

Held that, as the lease did not authorize the supply of refreshments to other than actual or intending passengers, the onus lay on the respondent to prove that the purchaser of the cigarettes in this case was an actual or intending passenger, and as he had failed to do so he ought to have been convicted.

Quare whether the Sunday trading clauses in the said Act are binding upon the Crown. **KELLY v. HART**
P. C. [1910] A. C. 192

35. — Sydney Corporation Act, 1879, s. 130 — Construction — By-law No. 10 ultra vires — Power to charge fees on cattle in municipal sale-yards only.

By ss. 132 and 138 of the Sydney Corporation Act, 1879, the appellants were authorized to establish and license, within certain local limits,

NEW SOUTH WALES—continued.

sale-yards for the sale of cattle, and also places for the slaughter thereof; and by s. 139 they were empowered to charge fees set forth in by-laws to be made in that behalf on cattle intended for slaughter "yarded or brought for sale by auction to any sale-yards or premises in the city of Sydney or within the distance of fourteen miles therefrom as hereinbefore provided," the schedule of maximum charges being confined to animals received into the yards for sale and not referring to animals intended for slaughter:—

Held, that by the true construction of s. 139 it contemplated an owner of cattle intended for slaughter bringing them to sale-yards established by the appellants, and that a by-law authorising charges on cattle brought by the respondents to their own private yards within the same local limits and there slaughtered was ultra vires. **MUNICIPAL COUNCIL OF SYDNEY v. AUSTRAL FREEZING WORKS, LD.** - P. C. [1905] A. C. 161

36. — Wharves—Rights to levy wharfage rates on all wharves vested in the Commissioners—Sydney Harbour Trust Act, s. 68—Construction.

Held, that s. 68 of the Sydney Harbour Trust Act authorizes the levy of wharfage rates on all wharves vested in the Commrs., whether private, or public, or private sufferance wharves:

Held, also, that the appellants had no interest in the wharves in suit which under s. 27 would preclude the levy of rates. Their Crown leases thereof had expired, and after the passing of the Trust Act could not be renewed. A right as rent-paying tenants after the expiration of a Crown lease to occupy the wharves as their private wharves is not an interest within s. 27 of the Act, and would be ineffectual to exempt the appellants from liability. **LUKEY v. SYDNEY HARBOUR TRUST COMMRS.** P. C. [1904] A. C. 382

37. — Will—Codicil — Construction—Period of distribution.

Where a testator gave an annuity to his widow till death or remarriage and created other fixed charges on his estate in favour of all his children during minority and of his daughters after attaining majority, and directed that on his youngest child attaining majority his two sons if alive would become absolutely and indefeasibly entitled to the residue of his estate, share and share alike:—

Held, that the period of distribution thus plainly indicated was not postponed by a codicil which directed that in case all his children died without issue his brother should take the whole residue and gave the trustee a discretionary power at any time to enhance the widow's annuity. As regards the discretion it appeared to have been exercised, and the widow appeared to have consented that no further enhancement should be made. **HORDERN v. HORDERN**

P. C. [1909] A. C. 210

38. — Will—Election, Right of—Estates in Scotland and Australia—Two separate wills forming one scheme of testamentary intention—Testator's widow electing to take against one cannot claim under the other—Right to equitable compensation.

By two testamentary instruments, called respectively a British will and an Australian

NEW SOUTH WALES—continued.

will, a testator domiciled in Scotland made a complete disposal of his estates, British and Australian, directing that the British will should be construed and administered according to the law of Scotland, the Australian will according to the law of New South Wales. His widow, on his death without issue, obtained a decree of the Ct. of Sess. in Scotland establishing her legal right in name of *jus relictae* and *terce*, with consequential relief, the Court declining jurisdiction as against the Australian trustees. Under a summons issued in the Supreme Court of New South Wales by the respondent trustees of the Australian will, the widow claimed the beneficial dispositions in her favour contained therein; the Court decided in her favour, and an appeal therefrom was instituted by the above appellant, party thereto, who took beneficially under the Scottish will, but not under the Australian:—

Held, that the two instruments formed one will containing a coherent scheme of intention, and that the widow, having elected to defeat the will in part, could not claim under it, and accordingly took no interest under the Australian will.

Held, also, that the appellant had a locus standi to maintain the appeal, being interested in protecting the Australian estate in order to compensate those who had been deprived of benefits under the will by the widow's election. **DOUGLAS-MENZIES v. UMPHREY**

P. C. [1908] A. C. 224

NEW TRIAL—County Court—Practice.

See under COUNTY COURT.

— Practice.

See under PRACTICE—Trial.

NEW ZEALAND — Pacific Cable Act, 1901 (1 Edw. 7, c. 31), provides for the construction and working of a submarine cable from the Island of Vancouver to New Zealand and to Queensland.

Privy Council — Judicial Committee — Order in Council, dated Jan. 10, 1910, regulating appeals to His Majesty in Council from the Court of Appeal and from the Supreme Court of New Zealand. Reprint from **W. N., 1910 (Feb. 19), p. 76.** *See* Current Index, 1910, p. cxi.

1. — Action for wrongful dismissal—Plea of justification—Verdict for damages—Duty of the trial judge—New trial ordered.

There is no fixed rule of law defining the degree of misconduct which will justify dismissal from service.

It is a question for the jury whether the degree of misconduct was inconsistent with the fulfilment of the express or implied conditions of service, so as to justify dismissal.

The judge should not submit any issue to them if, in his opinion, no evidence of justification has been given. If he submits the issue he should direct, guide and assist them; direct, by informing them of the nature of the acts which as a matter of law, would justify dismissal; guide, by calling their attention to the material facts; assist, in a manner and to an extent which there is no reason to define.

NEW ZEALAND—continued.

In an action for wrongful dismissal where a plea of justification was substantially set up:—

Held, that the judge was right in submitting the issues of fact to the jury; that the verdict for the plt. was so unsatisfactory that it ought not to be maintained; that r. 5 in the Sched. to the Court of Appeal (New Zealand) Act, 1882 (similar to Order LVIII., r. 4, 1875), enabled judgment to be entered according to the evident justice of the case; but that under the circumstances a new trial should be directed. **CLAUSTON & Co. v. CORRY**

P. C. [1906] A. C. 122

2. — Bridges — “Adjacent” — New Zealand Municipal Corporations Act, 1900, s. 219—Construction.

Sect. 219 of the New Zealand Municipal Corporations Act, 1900, empowers the construction of bridges by municipal councils, and provides that in certain circumstances the local authority of an adjacent district should contribute to the cost:—

Held, that the word “adjacent” is not a word of precise and uniform meaning, and the degree of proximity denoted is a question of circumstances. The Court below having decided that the appellant city was adjacent to the respondent borough although there was a distance of over six miles between their boundaries and three other local divisions intervened, its discretion was not interfered with. **MAYOR OF WELLINGTON v. MAYOR OF LOWER HUTT.**

P. C. [1904] A. C. 773

— Cable—Pacific Cable Act.

See Heading to New Zealand at the commencement of New Zealand.

3. — Charitable trust, administration of — The Crown cannot as defendant impeach the trust — Construction of grant—Valid gift for charitable purposes—Failure of specified purpose—Cy-près.

It is contrary to the established practice of the Court to permit a deft. to an action for the administration of the trusts of a settlement not void on the face of it to impeach the settlement in his defence to that action.

Where the crown, as party deft. to a suit for the administration of a charitable trust, obtained from the Court below an order that the trust was void and that the land and money in suit had become its property:

Held, that the suit was not one in which the order could properly be made.

Where it appeared that certain Maori chiefs had in 1848 ceded 500 acres of land, part of the native reserves, with the consent of the Crown, which waived its right of pre-emption thereof, to the Bishop of New Zealand in trust for a college to be erected thereon for the general purpose of promoting religion, and no college had been erected, the land having in course of time become an unsuitable site, while the accumulations of its rent had amounted to a considerable sum:—

Held, that there had been an express gift of land and money for charitable purposes; that such a gift is not invalidated by the fact that the particular application directed cannot immediately take effect, or will not of necessity take

NEW ZEALAND—continued.

effect within any definite limit of time, and may never take effect at all; and that the doctrine of cy-près was applicable. **WALLIS v. SOLICITOR-GENERAL FOR NEW ZEALAND.**

P. C. [1903] A. C. 173

4. — Compensation — New Zealand Mining Act, 1898, ss. 232, 233—Public Works Act, 1894, s. 44—Amount must be settled by agreement or judicial decision—Summary procedure unauthorized.

The incorporation by s. 232 of the New Zealand Mining Act, 1898, of the machinery of the Public Works Act, 1894, for ascertainment and settlement of compensation is expressly made subject to all the provisions of the incorporating Act. Where the applicant claimed compensation for land injuriously affected by the authorized pollution of a river, and obtained judgment under the Public Works Act, s. 44, for the same, as not having been disputed by the Minister within the time prescribed thereby:—

Held, that the judgment must be set aside, because the claim, not having been settled by agreement, should have been adjudicated upon as provided by s. 233 of the Mining Act, which precludes the summary procedure of s. 44 of the earlier Act. **HESLOP v. MINISTER OF MINES FOR NEW ZEALAND**

P. C. [1904] A. C. 781

5. — Confiscation—Regrant of native lands—Trust—Construction of regrant.

The expression “to be held in trust” for a definite class of persons is not always sufficient to create an equitable right or obligation which can be enforced by legal proceedings.

Kinloch v. Secretary of State for India in Council, (1882) 7 App. Cas. 625, referred to.

By an agreement in 1870 between the Government of New Zealand and certain natives whose names were scheduled thereto (which agreement was afterwards incorporated in the Mohaka and Waikare District Act, 1870), it was provided that the block of lands in suit, over which the Government had by force of a proclamation in 1867 issued under the New Zealand Settlement Act, 1863, an absolute power of disposition, native titles having been thereby extinguished, should be allotted to T., a Maori chief, and held in trust by him “in the manner provided or hereinafter to be provided by the General Assembly for native lands held under trust.” In a suit by the appellants against T.’s devisees thereof to declare that the said block was held by T. as a trustee for the loyal owners thereof according to native custom and usage the natives beneficially entitled thereto:—

Held, that, under all the circumstances and notwithstanding the words of trust in the agreement, T. took absolutely and beneficially; and that the respondents were not affected by any trusts in favour of the appellants. The allottees of each block comprised in the agreement or their successors were the only persons beneficially entitled thereto.

Those circumstances were—that the Act contained no reference to any native custom or trust, but treated the scheduled persons as entitled to grants in fee simple (an expression inapplicable to lands held by native custom); that there was

NEW ZEALAND—continued.

no evidence as to who were regarded in 1867 as loyal inhabitants or entitled to the benefits of the proclamation; that by the Native Lands Acts Amendment Act, 1881, certificates were to be given and grants made to the persons named in the schedule to the agreement of 1870 or their successors as tenants in common and not as joint tenants; that in 1882 certificates were ordered to be issued accordingly, and that T. received a certificate and a grant to hold to him, his heirs and assigns, for ever as from Sept. 12, 1870, subject to certain restrictions specified in s. 8 of the Act of 1881, but without reference to any trust or native custom; and that the General Assembly were not shewn to have declared any trusts in favour of the appellants. **TE TEIRA TE PAEA v. TE ROERA TAREHA** **P. C. [1902] A. C. 56**

6. — Contract—Lessor and lessee—Implied obligations as to quiet enjoyment—Common intention—Printing machinery and hotel bedrooms—Nuisance from noise and vibration.

Implied obligations in a contract must be governed by the common intention of the parties.

In an action by the respondents as lessees against the appellants for an injunction and damages, it appeared that both parties had agreed to a rebuilding of the appellants' printing-house on terms that the respondents were to rent from the appellants the upper floors as additional bedrooms for their adjoining hotel, and the appellants were to have on the ground floor an engine-house and printing machinery for the prosecution of their business, both parties believing that the noise and vibration which were the cause of action would be so slight that it might be disregarded:—

Held, that in the absence of evidence that the appellants had erected the building or worked the machinery and plant improperly the action must be dismissed. Both parties contemplated that the appellants should keep on printing, and that the respondents should have reasonably quiet bedrooms, but the later intention could not be enforced if it would frustrate the former. **LYTTLETON TIMES CO., LD. v. WARNERS, LD.** **P. C. [1907] A. C. 476**

7. — Contract to execute works—Wrongful seizure of works by defendants—Plaintiff entitled to determine the contract.

Where the appellants having guaranteed the due performance of a contract made with a municipal corporation for the execution of works on its land, agreed on the contractor's default with the respondent to complete the execution of the works on the terms of the original contract, and in effect delegated the supervision of the contract and all incidental arrangements to the corporation, and the corporation, according to the findings of the jury, improperly prevented the respondent from proceeding with the stipulated expedition and wrongfully seized the works and extruded the respondent:—

Held, that the appellants, having by their conduct constituted the corporation their agents and the delay being attributable to their acts, could not justify the seizure and re-entry; and

NEW ZEALAND—continued.

that the respondent was entitled to treat the contract as at an end and sue on quantum meruit. **LODDER v. SLOWEY**

P. C. [1904] A. C. 442

8. — Gasworks—Municipal Corporations Act, 1886, ss. 369, 370—Hamilton Gas Works Act, 1895, s. 46—Construction—Expropriation—Value of gasworks as a going concern.

Under New Zealand Hamilton Gasworks Act, 1895 (59 Vict. No. 1), statutory power was granted to construct and maintain gasworks in the town of Hamilton and to supply the said town and its suburbs with gas. Sect. 46 provided that the Hamilton Corporation should be entitled at any time after the expiration of twelve years from the date of the Act coming into operation "to purchase the gasworks and plant at a price to be determined by arbitration":—

Held that, on the true construction of the section, the price to be paid for the said gasworks and plant should be the commercial value thereof as a going concern, and not merely their structural value.

The respondents were constituted by the Municipal Corporations Act, 1886 (50 Vict. No. 50), and if they had exercised their powers of acquisition under ss. 369 and 370 of that Act would have had to pay the full commercial value. Had the intention of the Act of 1895 been to introduce a more limited signification of the term "gasworks," the language used should have plainly excluded therefrom either monopoly, goodwill, or undertaking as such. **HAMILTON GAS CO. v. HAMILTON CORPORATION**

P. C. [1910] A. C. 300

9. — Land—Transfer of native lands—Land Transfer Acts, 1870–1885—Effect of registration—Native Land Act, 1873—Native Lands Fraud Prevention Act, 1881, ss. 4, 6, 15—Native Land Court Act, 1894, ss. 59, 73—Fraud in procuring registration—Errors of procedure in Native Land Courts—Orders of freehold tenure—Memorandum of transfer indorsed by trust commissioner.

Under the system of land registry introduced into New Zealand in 1860, governed from 1870 to 1885 by the Land Transfer Act of 1870 and its amendments, and afterwards by the Land Transfer Act of 1885, registration is conclusive and confers an unimpeachable title on the registered owner except in certain specified cases, of which fraud is one.

The transfer to Europeans of lands held by natives under their native customs was till 1886 regulated by the Native Land Act, 1873, which provided for a judicially ascertained memorial of their ownership, and eventually, in case of a memorandum of transfer by them being judicially approved, for an order of freehold tenure indorsed by the Court on the memorial, the effect of which was to extinguish the native title, confer a new right on the purchaser, and authorize a Crown grant by the Governor. The Land Court had jurisdiction to make this order, by which the district land registrars under the Act of 1870 were bound. By the Native Land Court Act, 1894, s. 73, native customary land was subjected

NEW ZEALAND—continued.

to the Land Transfer Act, 1885, and its owner made absolute proprietor subject to all equities affecting the same. The registration was thereby authorized of any transferee of an interest therein under a transfer made prior to the Act and duly confirmed.

In actions by natives to recover from the appellants three parcels of lands (subject to the Land Transfer Act, 1885), of which they were registered owners in possession, it appeared that the first parcel had been registered in the names of the appellants on production of a warrant or Crown grant dated May 7, 1889; the second under an Act of Parliament (Glasgow Bank Act, 1882), vesting in them, subject to existing liabilities, a title which had been previously registered in the names of liquidators of the bank; the third on production of certificates of title from the Native Land Court and Crown grants:—

Held, that as the registration had been obtained in each case bona fide the effect thereof was conclusive to confer on the appellants a title unimpeachable by the respondents.

By the Land Transfer acts of 1870 and 1885 the fraud which must be proved in order to invalidate the title of a registered purchaser for value, whether he buys from a prior registered owner or from a person claiming under a title certified under the Native Land Acts, is actual, not constructive fraud, brought home to the person whose registered title is impeached or to his agents. Fraud by the person from whom he claims does not affect him unless knowledge of it is brought home to him or his agents.

Gibbs v. Messer, [1891] A. C. 248, distinguished.

With regard to the natives' contention that the registration was invalid by reason of the invalidity of the orders of the Native Land Court on which Crown grants or their statutory equivalents had been issued:—

Held, with regard to the first parcel, that serious errors of procedure in the Native Land Court which might have affected the validity of the order of freehold tenure made by it, on which the warrant of May 7, 1889, had been issued, could not avail to invalidate a registered title. It was not the duty of the district land registrar under the Transfer and Native Land Acts to examine its validity, but to act upon it:

Held, with regard to the second parcel, that the Glasgow Bank Act, 1882, under which these lands vested in the appellants, must be read so as to work in harmony with the Colonial Acts in force at the time and as conferring upon them the right to procure registration, their transfers having been registered as owners under the Land Transfer Act, 1870, and its amending Acts:

Held, with regard to the third parcel that the memoranda of transfer having been approved and indorsed by the trust commissioner under the Native Lands Fraud Prevention Act of 1881, the effect thereof was that under s. 57 of the Native Land Court Act of 1894 the transfers were confirmed, and accordingly there was nothing to invalidate the appellants' registration. *ASSETS CO. v. MERE ROHI. ASSETS CO. v. WIREMU PERE. ASSETS CO. v. PANAPA*

NEW ZEALAND—continued.

WAIHOPI. ASSETS CO. v. WI PERE. ASSETI CO. v. TEIRA RANGINUI. ASSETS CO. v. HENS TIPUNA - **P. C. [1905] A. C. 176**

10. — *Lands surrendered to the Crown subject to subsisting contracts—Rights of Crown against trespasser—Possession for less than sixty years—Law of New Zealand—Imperial Act, 1847—New Zealand Act (10 & 11 Vict. c. 112).*

In an action of ejectment by the Crown it appeared that the lands in suit had in 1845 been included in a Crown grant to the New Zealand Land Co., which thereby acquired the legal estate therein subject to an equitable estate in favour of P., resulting from a prior contract of sale made with him by the co. In 1850 the co. surrendered its lands including those in suit to the Crown, which thereupon, under an Imperial Act (10 & 11 Vict. c. 112), vested in Her Majesty, "subject nevertheless to any contract which should then be subsisting in regard to any of the said lands." No conveyance was ever made to P. by the co., and after the surrender neither P. nor any of his heirs applied to the Crown for completion of the contract. In 1870 B. entered on the lands in suit which had been left derelict, and in 1885 conveyed them to the appellant:—

Held, that according to the true construction of the above Act the lands surrendered vested in the Crown in absolute ownership, unfettered as to any portion of them by any trust cognizable and enforceable by any Court of law or equity. Even if P.'s contractual rights against the co. had passed to the appellant, they were not such as a Court could enforce. The appellant was simply an intruder, who had not been in possession long enough to acquire title against the Crown. *RIDDIFORD v. REX.*

P. C. [1905] C. A. 147

11. — *Lease—Suit by lessee on a covenant to renew the lease—Specific performance—No relief against performance of condition precedent—Relief against forfeiture on breach of covenant—New Zealand Property Law Act, 1908, ss. 93 and 94.*

Held, that ss. 93 and 94 of the New Zealand Property Law Act, 1908, which provide for relief against forfeiture of a lease based on failure to perform a covenant, do not apply where the lessor is resisting specific performance of a covenant to renew conditional on the performance of its covenants. There is no provision therein which purports to grant relief against the performance of a condition precedent.

Where the evidence disclosed a persistent course of wilful neglect of his covenants by the lessee, *held*, overruling the Court below, that he could not enforce a covenant for an extended term expressed in the lease to be conditional on their performance. Even if there were jurisdiction to grant relief, the circumstances of the lessee's breach must be such as to found an equitable claim thereto. *GREVILLE v. PARKER*

P. C. [1910] A. C. 335

12. — *Licensing Acts—Effect of licensing poll being declared void—New Zealand Interpretation*

NEW ZEALAND—continued.

Act, s. 5, sub-s. 7—New Zealand Licensing Act, 1895, s. 3—Construction.

Sect. 5, sub-s. 7, of the New Zealand Interpretation Act (1888, No. 15) provides that Acts should be liberally construed so as to ensure the attainment of the object of the Act according to its true intent, meaning, and spirit.

According to the literal meaning of s. 3 of the New Zealand Licensing Act of 1895, the appellant's publican's licence for an hotel in the Newtown district could not be renewed; for the last licensing poll of the electors having been declared void, a determination by the electors as required by that section had not been made.

But *held* that as, having regard to s. 2, sub-s. 3, and s. 8, sub-s. 4, of the same Act, and to s. 21 of the Licensing Act of 1893, the plain intention of the Legislature appeared to be that existing licences should continue until a determination had been made by the electors, effect must be given thereto; and accordingly a mandamus was directed to the respondents, the licensing committee of the said district, to hear and determine the appellant's application for a renewal. *SMITH v. MCARTHUR* - P. C. [1904] A. C. 389

13. — *Native title to possession of land—Land Act of 1892 (56 Vict. No. 37), ss. 136, 137—Jurisdiction as to cession to the Crown—Native Right Act, 1865 (32 Vict. No. 11) ss. 3, 4, 5.*

The Civil Courts have jurisdiction under the Native Rights Act, 1865, ss. 3, 4, 5, to ascertain as therein provided native title to and interest in land according to custom or usage of the Maori people. And they are bound in any action in which such title is involved to recognize the rightful possession and occupation of lands by the natives until lawfully extinguished, and to give effect to it.

The appellant having alleged a native title of occupancy to the lands in suit in a manner which was consistent with the Crown's seisin thereof in fee :—

Held, that his suit to restrain an unauthorized invasion of it was maintainable, and that the Court had jurisdiction to decide at least that the title alleged was in existence and had not been extinguished by cession to the Crown in manner provided by statute, or by other proceeding legally effective for that purpose.

Wi Parata v. Bishop of Wellington, 3 N. Z. J. R. (N.S.) S. C. 72, considered.

Quære, whether native title can be extinguished by an exercise of the prerogative.

The respondent as Commissioner of Crown Lands having notified the land in suit under s. 136, of the Land Act of 1892, offered it for sale or selection in terms of s. 137, and advertised the sale thereof :—

Held, that the appellant was entitled to sue for an injunction until his title was extinguished according to law, and the Court had jurisdiction to decide whether the respondents' action was within his statutory powers. *NIREHAHA TAMAKI v. BAKER*

P. C. [1901] A. C. 561

14. — *New Zealand Magistrates' Court Act, 1893—Jurisdiction of stipendiary magistrate—*

NEW ZEALAND—continued.

Petition for inquiry into a licensing poll — Alcoholic Liquors Sale Act of 1895.

Although under the New Zealand Resident Magistrates Act, 1867, the jurisdiction of magistrates was purely local, yet under the Magistrates' Courts Act, 1893, stipendiary magistrates appointed thereunder do not hold office for particular districts, but possess a general jurisdiction throughout the whole Colony, controlled in practice by departmental arrangements.

Where a stipendiary magistrate receives in an official capacity in any part of the Colony a petition presented under the Alcoholic Liquors Sale Act of 1895 for inquiry into a licensing poll, and assumes the duty of dealing with it, he has jurisdiction to act.

The Act of 1895 directs the inquiry to be made in the manner prescribed by s. 48 of the Regulation of Local Elections Act, 1876, which refers to the Court of the district resident magistrate appointed under the Act of 1867 at that time in force. But, *held*, that under s. 6 of the Act of 1893 such reference must be construed as if made to a stipendiary magistrate. *BASTINGS v. CALLAGHAN*

P. C. [1905] A. C. 351

15. — *Omission to give notice of non-admission of claims—Jurisdiction—Relief—New Zealand Public Works Act, 1894 (58 Vict. No. 42), s. 44.*

The appellants, having expropriated the lands of the respondents under the New Zealand Public Works Act, 1894, inadvertently omitted to give them notice, under s. 44, of non-admission of their claims for compensation within sixty days of receiving the same; and accordingly the respondents filed copies of their claims, with receipts for the service thereof, in the Supreme Court.

Held, that, the claims having thereupon become enforceable awards under the Act, the appellants were not entitled, under the Act or otherwise, to any relief against the consequences of their omission. *WELLINGTON CORPORATION v. JOHNSTON. WELLINGTON CORPORATION v. LLOYD* - P. C. [1902] A. C. 396

16. — *Practice—Appeal—Judgment final and conclusive—Prerogative not taken away except by express words—Special leave to appeal—New Zealand Act (85 Vict., No. 43), s. 93.*

Sect. 93 of New Zealand Act (58 Vict. No. 43), declares that the decisions of the Native Appellate Court established thereby shall be "final and conclusive," but does not expressly exclude His Majesty's prerogative :—

Held, that, the legal rights subjected to the said Court, being rights in the matters of land, succession, and probate, an appeal would have lain to His Majesty if the said Court had not been established and could not be taken away except by express words.

Théberge v. Laudry, (1876) 2 App. Cas. 102, and *Cushing v. Dupuy*, (1880) 5 App. Cas. 409, distinguished. *In re WIMATUA'S WILL*

P. C. [1908] A. C. 448

17. — *Practice—Special leave to appeal in forma pauperis—Certificate of council,*

NEW ZEALAND—continued.

Petition for special leave to appeal in forma pauperis refused on the merits. It was explained that in accordance with English practice, so far as the same was applicable, the absence of a certificate signed by independent counsel, that is who had not appeared in the Court below, was not in itself a sufficient ground for a local Court of Appeal refusing leave to appeal in similar form from the Court of first instance. **MITCHELL v. NEW ZEALAND LOAN AND MERCANTILE CO.** *Ew Parte MITCHELL*

P. C. [1904] A. C. 149

18. — *Prohibited goods, Forfeiture of, by innocent holder—New Zealand Patents, Designs, and Trade Marks Act, 1889, No. 12, ss. 89, 104—Construction.*

Matchboxes, belonging to the respondents, stamped "New Zealand" but filled with London matches, thus bearing a false trade description, were seized on arrival in New Zealand as contraband. It was conceded that there was no fraudulent intention, or any intention to transgress the law of the Colony.

In an action against the appellant contesting the legality of the seizure:—

Held, that under ss. 89 and 104 of the New Zealand Patents, Designs, and Trade Marks Act, 1889, reproducing the Imperial Merchandise Marks Act, 1887, ss. 2, 16, the seizure must be upheld as of goods whose importation was prohibited. The only remedy was under s. 267 of the Customs Law Consolidation Act, 1882, by means of an application to the Governor. **COMMISSIONER OF TRADE AND CUSTOMS v. R. BELL & Co.** - P. C. [1902] A. C. 563

19. — *Revenue—Estate duty—Liability to duty—Residuary estate taken under appointment empowered by the will—New Zealand Deceased Persons' Estates Duties Acts of 1881, s. 36; of 1885 s. 18.*

Held, that, under the New Zealand Deceased Persons' Estates Duties Act of 1881, s. 36, and the Amending Act of 1885, s. 18, a widow who takes her husband's estate by her own appointment under his will takes an estate upon which the duty payable under the Act is a charge imposed as from the date of the death, and cannot claim the exemption to which she would have been entitled had she acquired the estate directly under the will. **JACKSON v. COMM. OF STAMPS**

P. C. [1903] A. C. 350

20. — *Revenue—Income tax—Income derived from business—Business carried on in the Colony or profits received—New Zealand Land and Income Assessment Act, No. 49 of 1900, s. 59—Construction.*

By s. 59 of the New Zealand Land and Income Assessment Act, No. 49 of 1900, taxable income derived from business includes profits derived from New Zealand as well as profits received in New Zealand.

The respondent co., with its head office in London, carried on the business of international telegraphy in New Zealand and at various places in Australia and elsewhere in accordance with the rules contained in the St. Petersburg Convention of 1875 and subsequent regulations.

In an action by the appellant to recover

NEW ZEALAND—continued.

income tax (inter alia) on profits derived by the respondents, but not received in New Zealand, for transmitting messages beyond Australia and over their cables other than those between New Zealand and the Australian Colonies:—

Held, that these were not profits derived from New Zealand, or from business done there within the meaning of s. 59. There was no evidence of any contractual relation, expressed or implied, having been established in New Zealand, either with the New Zealand Government or with the senders of the telegrams, to carry the telegrams to their ultimate destination. Having regard to the terms of the convention and regulations and published conditions of the respondents' business, it was not shewn, and could not be implied, that the New Zealand Government contracted to do more than start the telegrams and then hand them over to the owners of the next stage.

Erichsen v. Last, (1881) 8 Q. B. D. 414, distinguished. **COMMISSIONERS OF TAXES FOR NEW ZEALAND v. EASTERN EXTENSION AUSTRALASIA AND CHINA TELEGRAPH CO., LD.**

P. C. [1906] A. C. 526

21. — *Revenue—Income tax—Profits on sales in London—Transactions of purchase in the Colony—Agency commission—Profits not derived from business in the Colony—New Zealand Land and Income Tax Assessment Act, 1900, s. 51.*

Where the appellants' profits consisted of a commission deducted by them from moneys received in London under agency contracts of sales effected in London of goods brought from New Zealand as a result of transactions made by them in that Colony:—

Held, that the profits were actually made in London, and that the earlier transactions in New Zealand were insufficient to render those profits taxable under the New Zealand Land and Income Assessment Act (49 of 1900), s. 51, as profits derived from business carried on in that colony. **LOVELL & CHRISTMAS, LD. v. COMMISSIONER OF TAXES** P. C. [1908] A. C. 46

Solicitor, Colonies. Order in Council applying the Colonial Solicitors' Act, 1900, to the Colony of New Zealand. St. R. & O. 1904, No. 320. Price 1d.

22. — *Stamp Acts—Verbal gift to holder of a power of attorney—Deeds of gift—Disposition of property to evade taxation—New Zealand Deceased Persons' Estates Duties Act, 1881, s. 35.*

The testator some years before his death executed a power of attorney in favour of his daughter, the respondent, and by a verbal gift, in order to escape taxation, authorized her to appropriate the purchase-moneys received thereunder of lands sold by him and of mortgage moneys due to him, to relend the latter to the mortgagors in her own name, and generally to invest his moneys in her own name:—

Held, that the gift to the respondent being verbal could not be stamped; that the deeds executed in carrying out the transaction of gift were not deeds of gift within the meaning of the New Zealand Stamp Acts, and did not operate a disposition of property within the

NEW ZEALAND—continued.

meaning of s. 35 of the New Zealand Deceased Persons' Estates Duties Act, 1881. **MINISTER OF STAMPS v. TOWNEND.** P. C. [1909] A. C. 633

NEWFOUNDLAND—Colonial stock.

See under COLONIAL STOCK.

1. — Contract—Construction—Exclusive right of entry on appellants' land for specified purposes.

Where by mutual agreement between the appellant ry. co. and the respondent telegraph co. the latter was exclusively entitled to erect and work lines on the property of the former for the purposes of its own business and bound to furnish for the use of the former a special wire for the purposes of the ry. as it existed at the date of the contract:—

Held, reversing the judgment of the Court below, that the respondent's exclusive right for the purposes of its own business did not exclude the ry. co. from erecting and working telegraph lines on its own property for the purposes of its ry. business. **REID-NEWFOUNDLAND CO. v. ANGLO-AMERICAN TELEGRAPH CO.**

P. C. [1910] A. C. 560

2. — Practice — Appeal admitted by the Supreme Court dismissed as incompetent—Special leave to appeal refused.

Where a final decree for money was made against the appellant on April 6, 1898, and a motion to set it aside was dismissed on June 7, 1899, and again on Aug. 29, 1904, and the appellant's application to restrain execution was refused on March 20, 1905:—

Held, on the respondent's petition, that an appeal from the order of Mar. 20, 1905, must be dismissed. It was merely a repetition of the order of Aug. 29, 1904, from which an appeal was barred.

Held, also, on the appellant's petition, that special leave to appeal from the orders of June, 1899, and Aug., 1904, must be refused, having regard to delay, and the impossibility of obtaining any relief without reversing the final judgment of April 6, 1898, to which no objection could be maintained. **GRIEVE v. TASKER**

P. C. [1906] A. C. 132

3. — Railway—St. John's Street Railway Act, 1896, s. 42—Construction—Conditional power to remove snow from railed tracks—Implied obligation to remove snow from the streets—Law of Newfoundland.

The respondents were empowered by s. 42 of their charter to remove snow and ice from their tracks so as to enable them to operate their cars, conditioned upon their levelling the said snow and ice on each side of the tracks to a uniform depth to be determined by the appellant's engineer and so as not to impede the ordinary traffic of the streets:—

Held that, if removal of some of the snow from the streets was necessary to comply with the engineer's undisputed requirement as to level, such removal, though not expressly prescribed, must be effected by the respondents as physically necessary to the fulfilment of the condition. **SHEA v. REID-NEWFOUNDLAND CO.**

P. C. [1910] A. C. 520

NEWFOUNDLAND—continued.

4. — Shipping—Salvage services—Ship salvaged the property of the Crown—Action not maintainable.

Where a ship is the property of the Crown, an action in rem or otherwise for salvage can be maintained. The only mode in which an application can be made to the Crown in respect of contractual rights is that which is provided by statute. **YOUNG, MASTER OF S.S. "FURNESIA" v. S.S. "SCOTIA"** P. C. [1903] A. C. 501

5. — Trespass on licensee's land before licence granted—Damages—Consolidated Statutes of Newfoundland (2nd series), c. 13, s. 51—Effect of grant of licence.

A licence granted by the Government to the respondent in pursuance of s. 51 of c. 13 of the Consolidated Statutes of Newfoundland (2nd Series), giving an exclusive right of occupation of land, though subject to reservations or to a restriction as to its user, is in law a demise of land.

Prior to its grant the appellants, expecting and believing that they would obtain the licence, commenced cutting timber on the land comprised therein, and continued to do so until three days after its grant, notwithstanding a formal notice from the respondent; and after that date they removed the logs so cut:—

Held, that the appellants were wrong-doers, and that the respondent as lessee had lawful possession of the logs so cut, which established a good title against the appellants with a right to consequent relief—that is, to the value of the logs removed without deducting the expenses of the said wrongful acts except so far as agreed. **GLENWOOD LUMBER CO. v. PHILLIPS**

P. C. [1904] A. C. 405

6. — Whaling industry—Licences—Newfoundland Whaling Industry Act, 1902—Construction.

Licences under the Newfoundland Whaling Industry Act, 1902 (2 Edw. 7, c. 11), can only be granted by the Governor in Council in the manner prescribed by the Act.

A receipt for a licence fee, not granted by the Governor and not containing words appropriate to the grant of a licence, is not a licence, and cannot operate as such. Nor can it be evidence of a contract to grant a licence in terms of the application. **NEWFOUNDLAND STEAM WHALING CO. v. GOVERNMENT OF NEWFOUNDLAND** - - P. C. [1904] A. C. 399

NEWPORT CORPORATION—Streets, Statutory power to fix posts "in or under"—Trespass—Taking of land.

See **STREETS**. 21.

NEWSPAPER—Advertisement in a newspaper—Obscene libel—Publication—Aiding and abetting.

See **CRIMINAL LAW—Libel**. 1.

— Conspiracy—Publication of articles in newspaper—Perverting course of justice—Criminal law.

See **CONSPIRACY**. 5.

NEWSPAPER—*continued.*

- Fair comment — Libel — Interrogatories — Names of informants.
See DISCOVERY. 8.
- Libel—Parliamentary paper—Printing extract from—Privilege—Communication published in newspaper—Fair comment.
See DEFAMATION—Libel. 9.
- Libel in—Practice—Writ—Service out of jurisdiction—Injunction—Judicial discretion.
See PRACTICE—Service. 5.
- Libel in newspaper—Publication—Intention to defame plaintiff.
See DEFAMATION—Libel. 8.
- News-vendors' shops exempted.
See Shop Hours Act, 1904 (4 Edw. 7, c. 31), s. 2, Sched.
- Publication tending to prejudice fair trial—Jurisdiction of High Court to attach—*See* CONTEMPT OF COURT. 7.
- Wireless telegraph stations, Power to grant special licences to registered newspapers.
See Wireless Telegraphy Act, 1904 (4 Edw. 7, c. 24), s. 2, sub-s. 3.
And see under TELEGRAPH.

NEWSPAPER REPORTER—Right to exclude—Municipal corporation—Council meetings—Right of public to attend—Burgess—Injunction.
See CORPORATION. 13.

- Unusual stipulation — Infant — Reasonable protection of covenant — Public policy.
See RESTRAINT OF TRADE. 7.

NEWSPAPER STALL—Shop—Temporary newspaper stall at railway station—Notice of hours of employment of young persons.
See SHOP. 1.**NEXT FRIEND**—Action—Costs of unsuccessful action properly brought — Indemnity from infant.
See INFANT—Next Friend. 1.

- Costs—Infant plaintiffs contingently entitled.
See ADMINISTRATION. 5.

NEXT OF KIN—According to the Statute of Distribution — Time for ascertaining class.
See WILL—Class. 12.

- Agreement to settle wife's after-acquired property—Next of kin claiming benefit of covenant.
See SETTLEMENT. 4.
- Court of Probate Act, 1857—Grant to creditor under s. 73—Citation of next of kin (if any) dispensed with.
See ADMINISTRATION. 24.
- Executor—Express trust of residue—Partial failure of beneficial interest.
See WILL—Advances. 3.

NEXT OF KIN—*continued.*

- Executors—No next of kin—Residue undisposed of—Beneficial title of executors—Will
See EXECUTOR—Residue. 1.
- Refunding by next of kin to trustee in bankruptcy.
See BANKRUPTCY — Undischarged Bankrupt.
- Wife's property—Ultimate trust for next of kin — "Die without having been married."
See SETTLEMENT. 26.
- Will—Construction.
See under WILL—Next of Kin.

NIECES.*See* under NEPHEWS AND NIECES.

- Class—"My own nephews and nieces"—Half-blood.
See WILL—Class. 11.
- Will—Construction.
See under WILL.

NIGERIA—Foreign jurisdiction.*See* under FOREIGN JURISDICTION.

- Privy Council Appeals.
See under PRIVY COUNCIL.

NIGHT POACHING—Game—Previous convictions—Person "so offending" a third time—Criminal law.
See GAME. 4.**NITRATE GROUNDS**—Situate abroad—Income tax—Deduction to meet exhaustion of material.
See REVENUE—Income Tax. 30.**NOISE**—Hotel—Interference with sleep of guests—Early morning building operations—Injunction.
See NUISANCE. 7.

- Trade district—Noisy neighbourhood—Printing machinery—Injunction.
See NUISANCE. 11.
- Vibration — Nuisance — Electric generating station—Injunction.
See NUISANCE. 13.

NOMINATION—Friendly society—Life policy—Assignment.
See FRIENDLY SOCIETY. 9-11.

- Partners, Consent or refusal by continuing—Rights of nominee.
See PARTNERSHIP. 17.
- Will—Nomination paper—Industrial societies.
See WILL—Nomination. 1.

NON EST FACTUM—Plea of—Validity—Deed — Misrepresentation as to contents—Mortgage—Execution.
See DEEDS, &C. 5.

- Plea of—Validity—Misrepresentation as to character of deed—Plea good as to part of deed.
See DEEDS, &C. 4.

NONCONFORMIST—Interment of, without rites of Church of England—Burial fees.
See BURIAL. 2.

—Officiating in chapel in parish of another incumbent.
See ECCLESIASTICAL LAW—Discipline. 3.

NON-FEASANCE—Highway—Repairs—Corporation—Neglect of duty—Damages—Misfeasance.
See HIGHWAY. 36.

—Pollution of stream—Injunction—Misfeasance—Continuance of injury.
See RIVER. 1.

NONSUIT—Costs—Limits of judge's discretion as to.
See COUNTY COURTS—Costs. 3.

—False imprisonment, Action for—Contract as to entry on and exit from wharf—Unreasonable conduct of plaintiff.
See AUSTRALIA. 6.

NORTH EASTERN RAILWAY (HULL DOCKS ACT)—Railway company—Dock company—Amalgamation—Water—Supply to dock—Ultra vires—Powers.
See RAILWAY—Amalgamation. 1.

NORWAY—Collision—Repatriation of seamen—Payment by consul—Norwegian law.
See SHIPPING—Seamen. 8.

NOTARIES—Appointment—Notaries public—Rule in Faculty Office as to appointment of a second notary public where only one notary public practising—Number of notaries public appointed at Rochdale.

In this case the Master of the Faculties referred to a rule of practice in the Faculty Office to the effect that where there was only one notary public practising in a town the appointment of a second notary public for the same town would always be made by the Court as a matter of course if the applicant was a fit and proper person for the appointment, unless some special reason was shewn against the appointment.

The Master of the Faculties: I think I must appoint the applicant a notary public for Rochdale. What I am really impressed with is that Rochdale is a town with a population of over 83,000, with seven banks, and that there is there only one resident notary public. The city of Manchester is about ten miles distant, and no doubt some consideration ought to be shewn to the notaries public of Manchester who are appointed to practise in Manchester and within a radius of ten miles of that city, but it is clear that there is a very important body of business people at Rochdale who ask for the appointment of the applicant to be made. The district round Rochdale within which the present notary residing there may practise is a district seven miles round Rochdale, but I think that Mr. Hudson's appointment should be for Rochdale and a district within a radius of five miles from Rochdale Town Hall. *In re* ROCHDALE NOTARIES.
HUDSON v. BOUTFLOWER

Ct. of Faculties
[1910] W. N. 228

NOTARIES—continued.

2. — Appointment of notaries public—District Notaries Act, 1833 (3 & 4 Will. 4, c. 70)—Number of notaries practising at Birmingham—Practice.

The Master of the Faculties (Sir Lewis Dibdin) refused to increase the number of notaries practising in Birmingham and within the distance of seven miles thereof beyond nine, but having regard to the fact that one notary included in that number had ceased to practise, appointed the applicant C. a notary public for Birmingham and a district seven miles round, and the applicant T. a notary public for Redditch and a district twelve miles round. *TUNBRIDGE v. MATHEWS. COLMORE v. MATHEWS. CLARKE v. MATHEWS*

Ct. of Faculties [1903] W. N. 158

Note.

See *Baillieu v. Victorian Society of Notaries*, Ct. of Faculties, [1904] P. 180, 186. See No. 4, below.

3. — Appointment of notaries public—District Notaries Act, 1833 (3 & 4 Will. 4, c. 70)—Number of notaries practising at Norwich—Evidence required where number of notaries alleged insufficient—Practice.

In these two suits an application made by Frederick Ray Eaton, solicitor and registrar of the Archdeaconry Court of Norwich, to be appointed and admitted a notary public under the District Notaries Act, 1833, for Norwich and a district ten miles round was opposed by Ernest I. Watson and Henry R. Everitt, solicitors and notaries public practising as Watson & Everitt, and by John B. Tooke Hales and Walter E. Hansell, notaries public, two of the partners in the firm of Hansell & Hales.

The memorialist also made an application to be appointed and admitted a notary public to practise whenever occasion might require in his office of registrar of the Archdeaconry Court of Norwich; but this last-mentioned application was not opposed.

The Master of the Faculties (Sir Lewis Dibdin) intimated that, the applicant having been appointed registrar of the Archdeaconry Court of Norwich, his appointment as a notary public for ecclesiastical purposes would be a matter of course, his personal fitness being admitted; and a question on which the notaries in the locality had never been heard in practice. No question arose as to the applicant not being personally fit to be appointed, but that the sole issue raised was whether there was need for the appointment of another notary at Norwich, and that the affirmative of that issue had been established by the general evidence to be found in the very influential memorial of the applicant, though no specific instance of inconvenience having been experienced through the want of another notary had been given in evidence. He wished he could have had more specific evidence before him, and hoped that in subsequent cases where a similar issue was raised he would not be asked to decide in favour of applicants without more specific evidence having been produced. In the result he granted the applicant a faculty as a notary public both for ecclesiastical purposes and for the city

NOTARIES—continued.

of Norwich and a district ten miles round under 3 & 4 Will. 4, c. 70. There would only be one patent required. *EATON v. WATSON. SAME v. HANSELL. (NORWICH NOTARIES)*

In the Court of Faculties 1904 W. N. 24

Note.

See Bailleau v. Victorian Society of Notaries, [1904] P. 180, 186, neat Case.

4. — *Appointment of notaries public* — 25 *Hen. 8, c. 21—Discretion of Master of Faculties as to appointments in Colonies—Number of notaries public practising at Melbourne—Practice—Costs.*

The jurisdiction of the Court of Faculties to appoint notaries public in the Colonies is derived from the statute of 25 *Hen. 8, c. 21*, and neither that nor any other statutory enactment prescribes any qualifications to be possessed by applicants, who in all cases are appointed in the discretion of the Master of the Faculties.

Where, therefore, a chartered accountant, holding the appointments of official assignee of insolvent estates in the State of Victoria and commissioner for taking affidavits in the Supreme Courts of several States of the Australian Commonwealth, applied to be appointed a notary public for the State of Victoria, and supported his application by an influential memorial and the usual certificate of personal fitness, the Master of the Faculties, though the more recent practice had been to appoint solicitors, thought fit in the special circumstances of the case to grant the applicant a faculty for his appointment as prayed.

By this appointment the number of notaries practising at Melbourne and in the State of Victoria was raised to thirty-seven.

Circumstances which guide the Master of the Faculties in fixing the number of notaries public to be appointed in any particular place where the appointments are made in his discretion. *BAILLEAU v. VICTORIAN SOCIETY OF NOTARIES (MELBOURNE NOTARIES).*

Ct. of Faculties [1904] P. 180

See preceding Case.

5. — *Appointment of notaries public in a Colonial district—Practice—Melbourne notaries.*

In considering an application by a person to be appointed a notary public in a Colonial district, the Master of the Faculties attaches great weight to the views of a society of notaries practising in the district. An appointment was, however, made for Melbourne, in the State of Victoria, notwithstanding the opposition of such a society, on very strong evidence that the applicant was personally suitable, and that the number of existing notaries at Melbourne was insufficient for the convenience of the public. *FAY v. SOCIETY OF NOTARIES FOR THE STATE OF VICTORIA - Ct. of Faculties [1909] P. 15*

5a. — *Criminal offence—Notary public convicted of criminal offences involving fraud struck off the roll of notaries public.*

Application on behalf of the Incorporated Society of Provincial Notaries Public of England and Wales to strike P. off the roll of notaries public:—

Held, that P. having been convicted of a

NOTARIES—continued.

criminal offence involving fraud, must be removed from the roll of notaries public. *In re PRIOR. Ex parte INCORPORATED SOCIETY OF PROVINCIAL NOTARIES PUBLIC OF ENGLAND AND WALES Ct. of Faculties [1908] W. N. 193*

— Execution of document in Victoria—Notary public.

See EVIDENCE. 5.

6. — *Notary public convicted on his own confession of forgery with intent to defraud struck off the roll of notaries public.*

Application on behalf of the Incorporated Society of Provincial Notaries for England and Wales to strike T. off the roll of notaries public:—

Held that, T. having been convicted of forgery, his name must be removed from the roll of notaries public. *In re TERRILL. Ex parte INCORPORATED SOCIETY OF PROVINCIAL NOTARIES PUBLIC OF ENGLAND AND WALES Ct. of Faculties [1908] W. N. 194*

7. — *Striking off roll—Notary public—Inherent jurisdiction for proper cause to strike notary public off roll of notaries—Discretion—Notaries Act, 1533 (25 *Hen. 8, c. 21*), ss. 3, 4—Public Notaries Act, 1801 (41 *Geo. 3, c. 79*), s. 10—Public Notaries Act, 1833 (3 & 4 *Will. 4, c. 70*), s. 4—Public Notaries Act, 1843 (6 & 7 *Vict. c. 90*), s. 9—Stamp Act, 1891 (54 & 55 *Vict. c. 39*), s. 44.*

The Court of Faculties has inherent jurisdiction to strike a notary public off the roll of notaries public, and can exercise this jurisdiction in any proper case where it is not precluded from doing so by statute.

A solicitor of the Supreme Court of Judicature in England, admitted and enrolled a notary public under the Public Notaries Act, 1833, was struck off the roll of solicitors for professional misconduct in relation to property of which he had been appointed administrator. Thereupon, after notice to him as respondent, an application to strike him off the roll of notaries public was made in the Court of Faculties.

The Master of the Faculties being of opinion that the Court of Faculties had inherent jurisdiction to grant the application, ordered that the respondent should be struck off the roll of notaries public. *In re CHAMPION. Ex parte SOCIETY OF PROVINCIAL NOTARIES PUBLIC OF ENGLAND AND WALES*

Ct. of Faculties [1906] W. N. 36; [1906] P. 86

Note.

See In re Prior, Ct. of Faculties, [1908] W. N. 193. See No. 5, above.

— Present without attesting, Notary—Execution of wills.

See CEYLON. 8.

NOTICE — Notice of Accidents Act, 1906 (6 *Edw. 7, c. 53*).

— Appeal.

See under APPEAL.

— Assignment.

See under ASSIGNMENT.

NOTICE—continued.

- Attachment.
See under ATTACHMENT.
- Banker—Cheque—Countermand by telegram
—Notice to bank manager.
See BANKER. 2.
- Bankruptcy.
See under BANKRUPTCY.
- Bill of Exchange—Coaling contract—Liability
of master as drawer—Special circum-
stances excusing delay.
See SHIPPING—**Bills of Exchange**. 1.
- Building.
See under BUILDINGS.
LONDON—**Buildings**.
- Burgh sewers—Notice in writing to persons
interested.
See SEWERS. 13.
- Chose in action—Assignment abroad—Notice
—Priority.
See CONFLICT OF LAWS. 2.
- Company—Allotment—Notice of avoidance
within one month of statutory meeting.
See COMPANY—**Allotment**. 5.
- Company—Borrowing powers—Ultra vires—
Knowledge of director of lending com-
pany of intended misapplication—Im-
plied notice.
See COMPANY—**Borrowing**. 1.
- Company—Dissentient shareholder—Regis-
tered office in Rhodesia—Notice of
dissent left at London office.
See COMPANY—WINDING-UP—**Recon-
struction**. 1.
- Company—Executors—Production of Probate
Transfer to one executor—Nominal
consideration—Breach of trust.
See COMPANY—**Shares**. 11.
- Company—Floating security—Priority.
See under COMPANY—**Debentures**.
- Company—meeting.
See under COMPANY—**Meetings**.
- Compulsory purchase—Widening street—
Notice to treat—Withdrawal—Compen-
sation.
See STREETS. 28.
- Constructive—Extent—Second mortgage.
See COMPANY—**Debentures**. 4.
- Constructive notice—Adverse title—Notice by
tenancy.
See VENDOR AND PURCHASER—**Title**.
1.
- Constructive notice—Charging order for costs
—Charge on Ship—Priority.
See SHIPPING—**Charging Orders**. 1.
- Constructive notice—Lease, Purchase of—
Unusual and onerous covenants—Duty
of vendor.
See VENDOR AND PURCHASER—**Leases**.
1.
- Constructive notice—Trustees' liability—
Fraud of agent—Relief.
See TRUSTEE—**Breach of Trust**. 2.

NOTICE—continued.

- Constructive notice—Power of attorney—
Borrowing by agent—Excess of autho-
rity—Misappropriation—Liability.
See PRINCIPAL AND AGENT. 4.
- Corporation sole—Rector—Power to hold
personalty—Mortmain—Irregular in-
vestment in land.
See CORPORATION. 14.
- Covenant to pay annuity—Wife's waiver of
notice valid.
See AUSTRALIA. 2.
- Criminal law—Practice.
See under CRIMINAL LAW.
- Discontinuance of action.
See under PRACTICE—**Discontinuance**.
- Dishonour—Money paid under mistake of fact
—Marked cheque fraudulently altered
—Negligence.
See CANADA—**Banker**. 2.
- Disqualification—Election—Right of oppo-
nent to claim seat.
See CORPORATION. 11, 12.
- Divorce—Alleged adulterer not subject to the
jurisdiction of the Court—Notice of
proceedings.
See DIVORCE—**Practice**. 19.
- Drains.
See under LONDON—**Sewers**.
SEWERS.
- Employment, Agreement for—Right to ter-
minate—Necessity for notice.
See MASTER AND SERVANT—**Contract
of Service**.
- Equitable assignment—Priority—Fund in
Court—Stop order.
See HUSBAND AND WIFE—**Property**. 1.
- Equitable execution—Effect of order—Notice
to executor—Subsequent mortgagees
and judgment creditors.
See RECEIVER. 6.
- Equitable mortgage
See under MORTGAGE.
- Executor, Duty of, to give notice of legacy—
Disclosure of gift without disclosing
gift over.
See EXECUTOR—**Disclosure**. 1.
- Insurance (Fire)—Notice required of addi-
tional insurance.
See CHINA AND COREA. 1.
- Forfeiture of lease—Notice to lessee—Appeal
from Western Australia.
See AUSTRALIA. 10.
- Guarantee—Bond to secure fidelity of
employee—Death of surety.
See PRINCIPAL AND SURETY. 1.
- Highway—Diversion, Proceedings for—Period
for which notice must be fixed at ends
of highway.
See HIGHWAY. 6.

NOTICE—continued.

- Hospital, Agreement by local authorities for joint use of—Notice by one local authority to determine agreement—Validity of notice.
See LOCAL GOVERNMENT. 15.
- Insurance, Accident—Condition in policy—Immediate notice of accident—Omission to give notice—Insurer's liability.
See INSURANCE (ACCIDENT). 3.
- Insurance—Life policy—Mortgages—Priorities.
See INSURANCE (LIFE). 10.
- Insurance (Marine)—Deviation clause—Subject to "due notice" of deviation—Notice given after loss.
See INSURANCE (MARINE). 10.
- Judgment, Form of advertisement in lieu of service of—Unregistered friendly society—Jurisdiction to wind up—Benefit society.
See FRIENDLY SOCIETY. 2.
- Landlord and tenant.
See under LANDLORD AND TENANT.
- Lands Clauses Acts.
See under LANDS CLAUSES ACTS.
- Legacy—Action to recover—Duty of executor to give notice of legacy.
See LIMITATIONS, STATUTE OF. 4.
- Legacy, Duty of executor to give notice of—Conditional gift—Beneficial interest of executor on breach of condition—Estoppel.
See EXECUTOR—Disclosure. 1.
- Licensing Acts.
See under LICENSING ACTS.
- Life insurance—Transfer—Collecting societies and industrial assurance companies.
See INSURANCE (LIFE). 18.
- London buildings.
See under LONDON—Buildings.
- Money paid under a mistake of fact—Whether notice to defendant of mistake is necessary to complete cause of action.
See LIMITATIONS, STATUTE OF. 12.
- Money-lenders.
See under MONEY-LENDERS.
- Mortgage—Priority.
See under MORTGAGE.
- Mortgagee—Notice of charge—Annual payment of corn to poor of parish.
See CHARITY. 48.
- Mutual wills—Fresh will made by party who predeceases the other—Notice on death—No relief to survivor.
See PROBATE—Mutual Wills. 1.
- Partnership.
See under PARTNERSHIP.
- Payment out of court to representative—Notice to beneficiaries.
See PRACTICE—Payment out of Court. 12.

NOTICE—continued.

- Poor law.
See under POOR LAW.
- Poor rate.
See under RATES.
- Probate, Suit for revocation of—Notice by plaintiff to cross-examine—Costs.
See PROBATE—Costs. 7.
- Public-house—Licence in jeopardy—Recovery of possession—Disputed title.
See RECEIVER. 11.
- Purchaser for value without notice—Doubtful title.
See SETTLED LAND—Leases. 12.
- Purchaser for value without notice—Fraudulent assignment—Title of trustee in bankruptcy.
See BANKRUPTCY—Fraud. 1.
- Purchase for value without notice—Revocation of Indian letters of administration—Title of executors.
See ADMINISTRATION. 15.
- Quit, Notice to.
See under LANDLORD AND TENANT.
- Railway company—Owner's risk note—Mode of packing likely to cause injury—Notice to company—Wilful misconduct—Carrier.
See RAILWAY—Carriage. 4, 5.
- Rescission—"Without prejudice."
See VENDOR AND PURCHASER—Rescission. 5.
- Restrictive covenants—Acceptance of less than forty years' title—Squatter's title—Statute of Limitation.
See VENDOR AND PURCHASER—Title. 13.
- Revocation—Licence—Advertising station—Tenancy from year to year—Agreement.
See LICENCE. 1.
- River—Pollution—Summary proceedings by sanitary authority—Consent of Local Government Board.
See RIVER. 1.
- Sale of goods.
See under SALE OF GOODS.
- Sale of lands under Assessment Act, 1897—Notice in writing—Waiver—Law of Ontario.
See CANADA—Land. 3.
- Sale of leaseholds by executor—Actual notice to purchaser that no debts of testator remain unpaid.
See VENDOR AND PURCHASER—Title. 8.
- Service out of jurisdiction—Third-party notice—Contribution.
See PRACTICE—Service. 17.

NOTICE—*continued.*

— Sewers.

See under LONDON SEWERS—**Sewers.**

— Shares—Transfer—Duty of company—Notice of prior charge.

See COMPANY—**Shares.** 22.

— Sporting right—Yearly hiring—Notice to determine.

See LANDLORD AND TENANT. 82.

— Statutory defence—Gaming and wagering contract.

See COUNTY COURT—**Practice.** 15.

— Streets.

See under LONDON STREETS—**Streets.**

— Third party.

See under PRACTICE—**Third Parties.**

— Title—Adverse title—Constructive notice—Notice by tenancy.

See VENDOR AND PURCHASER—**Title.** 2.

— To treat—Lands Clauses Acts—Interest created in other land subsequently to date of notice—Right to compensation.

See LANDS CLAUSES ACT. 25.

— Trade mark—Register of trade marks.

See TRADE MARK. 29.

— Tramways—Protection of mains—Notice by promoters to owner of mains of intention to construct tramway—Limit of time for giving counter-notice.

See TRAMWAYS. 12.

— Trust, Notice of—Sale by order of Court—Conditions of sale.

See VENDOR AND PURCHASER—**Conditions of Sale.** 7.

— Trustee—Constructive notice—Breach of trust—Duty to investigate assignee's title—Liability—Relief.

See TRUSTEE—**Breach of Trust.** 2.

— Water-closets, Repairing apparatus of existing—Requirement of notice—Sanitary authority.

See LONDON—**Water.** 5.

— Waterworks—Notice to prevent working of mines—Compensation—Rise in value of minerals—Evidence.

See MINES. 15.

— Workmen's Compensation Act—Notice of accident.

See under MASTER AND SERVANT—**Compensation.**

— Writ—Notice in lieu of service—Foreign defendant—Breach of contract.

See PRACTICE—**Service.** 4.**NOTICE OF MOTION**—Title of—Transfer of stock.*See* PRACTICE—**Motions.** 2.**NOTICE TO QUIT**—Tenancy at yearly rent—Three months' notice—Expiration of notice.*See* LANDLORD AND TENANT. 53.**NOVA SCOTIA**—Laws of.*See* under CANADA.**NOVATION**—Contract—Validity—Corporation shareholders—City of London—Electric lighting.*See* ELECTRIC LIGHT. 4.

— Co-partner, Liability for fraud of—Election—Solicitors.

See PARTNERSHIP. 14.

— Demurrage, Construction as to clause for—Contract for sale and delivery of coal by shipments.

See CAPE OF GOOD HOPE. 14.

— Release of principal debtor—Discharge of surety.

See PRINCIPAL AND SURETY. 4.**NOVELTY**—Want of—Particulars of objection.*See* PATENT—**Particulars.** 3.**NOXIOUS TRADE**—Injunction—Reasonable use of premises.*See* NUISANCE.**NUISANCE.***Model By-laws: — II. Prevention of Nuisances arising from Snow, Filth, Dust, Ashes, and Rubbish. Prevention of the Keeping of Animals on any Premises so as to be Injurious to Health.* 1908 (R.—Loc. Gov. Bd.). Price 2d.**1. — Abatement—Owner—Default—Jurisdiction of justices to make order on person who has ceased to be owner—Local Government—Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 4, 94, 95, 96, 98, 104.**

A local authority took proceedings under the Public Health Act, 1875, against the agent of the owner of certain property for the abatement of a nuisance. The justices held that the respondent was not the owner within the meaning of the Act, and dismissed the summons. Their decision was reversed by the Div. Ct. and the case remitted to them. At the second hearing it appeared that the respondent had resigned the agency since the first hearing, and the justices again dismissed the summons:—

Held, that the justices had jurisdiction to make an order on the respondent requiring him to abate the nuisance, although he was no longer the agent of the owner of the property. **BROADBENT v. SHEPHERD** Div. Ct. [1901] 2 K. B. 274

— Ancient lights—Obstruction.*See* under LIGHT AND AIR.**2. — Black smoke—Chimney of private dwelling-house—Club—Public Health (London) Act, 1891 (54 & 55 Vict. c. 76), s. 24 (b).**

By the Public Health (London) Act, 1891, s. 24 (b), "any chimney (not being the chimney of a private dwelling-house) sending forth black

NUISANCE—continued.

smoke in such quantity as to be a nuisance" is declared to be a nuisance liable to be dealt with summarily under the Act.

A club of 750 members, managed by a committee of the members, had for many years occupied premises which had previously been a private dwelling-house; the premises comprised the ordinary accommodation of a club, and there were five bedrooms for the use of the members and eight for the club staff. In the basement were cooking ranges, a large roasting grate, and a vertical boiler with furnace attached, which latter were used for heating the premises; the smoke from all of them was discharged into one flue or chimney, which sent forth black smoke in such quantity as to be a nuisance. A summons against the respondent, the club secretary, for making default in complying with a notice of the local authority requiring him to abate the nuisance was dismissed by the magistrate on the ground that the chimney was the chimney of a private dwelling-house:

Held, that the dismissal of the summons was wrong; that the premises as used were not a private dwelling-house within the meaning of the section, and that the respondent ought to have been convicted of the offence charged. **MENNAIR v. BAKER** Div. Ct. [1904] 1 K. B. 208

3. — *Black smoke—Evidence—Metropolis—Public Health (London) Act, 1891 (54 & 55 Vict. c. 76), s. 24 (b).*

By s. 24, sub-s. (b), of the Public Health (London) Act, 1891, "Any chimney (not being the chimney of a private dwelling-house) sending forth black smoke in such quantity as to be a nuisance" is a nuisance liable to be dealt with summarily under the Act.

Upon the hearing of complaints under this section it was proved that black smoke issued from a chimney several times a day during a series of days for periods varying from a few minutes to upwards of an hour.

Held, that upon these facts the magistrate was justified in finding that the smoke issued in such quantity "as to be a nuisance," although there was no evidence that any particular person or property was injuriously affected thereby. **SOUTH LONDON ELECTRIC SUPPLY CORPORATION v. PERRIN**

Div. Ct. [1901] W. N. 100; [1901] 2 K. B. 189

— Bridge—Liability to repair—Right to repair—Nuisance—Right to abate—Trespass. *See BRIDGES. 2.*

4. — *Cesser of nuisance after writ and before trial of action—Damages—Injunction—Practice.*

The plts., the dean and chapter, were the freeholders, and the co-plts., P. and B., were their tenants, of certain lands in the county of Chester. The deft. corporation had recently erected large smelting works close to the plts.' lands; and since Sept. last the smoke, fumes, and gas from the defts.' chimneys had deposited on the hedges and herbage on the plts.' lands large quantities of oxide of zinc and other chemical and metallic substances noxious to animal and vegetable life, whereby the horses, cattle, and sheep of the plts.' tenants were seriously injured, and some of such horses,

NUISANCE—continued.

cattle and sheep had died. The plts. issued their writ in Jan., 1901, and claimed an injunction to restrain the defts. from carrying on their works so as to occasion any nuisance or injury to the plts., and damages.

In Mar., 1901, the defts. ceased to carry on their works, and a receiver took possession on behalf of debenture-holders. In Apr. the defts. passed resolutions for a voluntary winding-up. The action now came on for trial, and at the close of the plts.' evidence counsel for the defts. submitted to an inquiry as to damages.

Farwell J.: *Dunning v. Grosvenor Dairies, Ltd.*, [1900] W. N. 265; *Carr & Co. v. Bath Gas Light and Coke Co. (ib.)*, are not consistent with the rule laid down in *Imperial Gas Light and Coke Co. v. Broadbent*, (1859) 7 H. L. C. 600, where it is stated that if a plt. applies for an injunction to restrain the violation of a common law right, and establishes his right at law, he is entitled, except under special circumstances, to an injunction as of course. No doubt the Court in the exercise of its discretion can refuse an injunction. I have referred to my brother Joyce, and he informs me that in *Dunning v. Grosvenor Dairies, Ltd.*, he did not intend to lay down the rule that it is contrary to the practice of the Court to grant an injunction where the nuisance has ceased after action brought: and in *Carr & Co. v. Bath Gas Light and Coke Co.* it is to be observed that the plts. did not press for an injunction. Speaking for myself, I shall follow the rule laid down in *Imperial Gas Light and Coke Co. v. Broadbent*, and in the exercise of my judicial discretion I see no reason why an injunction should not be granted in this case. The plaintiffs have sustained serious damage, and I grant an injunction with costs. **DEAN AND CHAPTER OF CHESTER v. SMELTING CORPORATION, LD.** Farwell J. [1901] W. N. 179

Note.

See Dean and Chapter of Chester v. Smelting Corporation, Ltd., Farwell J., [1902] W. N. 5; *Attachment. 2.*

5. — "*Chimney*" — *Chimney sending forth black smoke—Funnel of steam tug—Specification in order of works to be executed—Local Government—Public Health (London) Act, 1891 (54 & 55 Vict. c. 76), s. 5, sub-s. 5; s. 24, sub-s. (b).*

By s. 24 (b) of the Public Health (London) Act (1891), "any chimney (not being the chimney of a private dwelling-house) sending forth black smoke in such quantity as to be a nuisance" is liable to be dealt with summarily:—

Held, that the funnel of a steam-tug was a chimney within the section.

An abatement or prohibition order is not bad because it does not, under s. 5, sub-s. 5, of the Act, specify the works to be executed for the purpose of abating or preventing the recurrence of the nuisance, although the person on whom the order is made may have required them to be specified. **TOUGH v. HOPKINS**

Div. Ct. [1904] 1 K. B. 804

— Covenant by lessee to pay and discharge "impositions"—Order by sanitary authority on lessee to abate nuisance.

See LANDLORD AND TENANT. 41.

NUISANCE—*continued.*

— Drain or sewer—"Intimation" notice.
See LONDON—SEWERS. 1.

— Drains—"Acts or defaults" of two or more persons—Right to contribution.
See LONDON—SEWERS. 2.

— Electric supply—Leakage of electricity—Explosion—Fire.
See ELECTRIC LIGHT. 10.

— Highway—Obstruction of—Indictable nuisance—What amounts to.
See HIGHWAY. 23.

— Highway, Obstruction on—Lamp-post—Interference with trade—Adjoining owner—Public or private nuisance.
See HIGHWAY. 24.

6. — *Injunction—Damages—Practice—Special damage—Pleading—Evidence—Costs.*

Action for an injunction to restrain a nuisance by noise and vibration, and for damages.

Plt. was lessee of 27, Thayer Street, and defts. were printers carrying on business at 26, Thayer Street. Plt. complained that the noise from defts.' machinery was a nuisance, and occasioned loss of sleep and injury to health and great personal discomfort to the plt. and his family, but he did not plead special damage. At the trial of the action, the Court referred it to an expert to report, and after the expert had made his report defts. gave an undertaking to remove certain machinery in the basement of No. 26; and plt. eventually accepted that undertaking. Defts., however, contended that plt. ought to be deprived of some part of his costs because he had put forward an exaggerated case and supported it by untrustworthy evidence. Plt. then insisted upon his claim for damages, and tendered evidence of special damage which the Court refused to admit.

Kekewich J. said that the real remedy in this action was injunction, the equivalent for which was provided by the undertaking. Here the claim for damages was for general and not special damage, and the claim for damages was ancillary only to the injunction, and no particulars were given or could have been obtained. There was no reason for awarding substantial damages in such a case. They were not usually given in analogous cases, such as trespass where a right of way was claimed. On the other hand, the plt. was entitled to recover something, not by way of compensation, but as an acknowledgment of the wrong. He awarded 40s. With regard to the costs, a successful plt. was entitled to costs unless (1) there were separate issues, and the plt. failed on one; (2) he had been guilty of misconduct. But a plt. ought not to be deprived of costs because some of his witnesses had been guilty of exaggeration and were untruthful in certain particulars. The nuisance having been established, he did not think that there was any ground for depriving the plt. of even a part of his costs. LIPMAN v. PULMAN

Kekewich J. [1904] W. N. 139

— Liability for nuisance—Grant of statutory powers—Construction.

See BRITISH GUIANA. 1.

NUISANCE—*continued.*

— Liability of landlord for injury happening to stranger during tenancy—Repairs—Negligence.
See LANDLORD AND TENANT. 42.

— Light.
See under LIGHT AND AIR.

— Locomotive—Extraordinary traffic—Traction engine—Injury to road.
See HIGHWAY. 17.

— Motor omnibus—Negligence—Accident to passenger—Doctrine of "res ipsa loquitur."
See MOTOR OMNIBUS. 1.

7. — *Noise—Early morning building operation—Hotel—Interference with sleep of guests—Injunction.*

The defts. were lessors to the plt. of premises in Bury Street, St. James's, upon which he carried on the business of an hotel proprietor. His customers were chiefly members of clubs who used the hotel for sleeping purposes, but he had also permanent guests. The defts. owned other premises adjoining the hotel at the back, which premises were in course of being pulled down and reconstructed. The plt. complained that the defts.' building operations were so conducted as to cause a nuisance by noise, dust, and vibration, and in particular he complained that by reason of the early hour at which the work was commenced in the morning the sleep of his guests was so much interfered with that many of them had left the hotel and others threatened to do so unless the work was stopped during the early hours. He accordingly moved for an injunction to restrain the defts. from carrying on their work before 7 or 7.30 in the morning in such a manner as by noise to disturb the plt. and the occupants of his hotel.

Joyce J. said he had no doubt that the defts.' works caused a serious annoyance to the plt. and injury to his business, and he would have granted an injunction if he could, but, having regard to the authorities, he did not see his way to do so. The motion must be refused. CLARK v. LLOYDS BANK, LD.

Joyce J. [1910] W. N. 187

8. — *Noxious trade—Reasonable use of premises—Injunction.*

In an action to restrain a nuisance, the question whether the deft. is acting reasonably from his own point of view is not material, and if he is carrying on business so as to cause a nuisance to his neighbours he is not acting reasonably as regards them, and may be restrained by injunction, although he may be conducting his business in a proper manner.

Reinhardt v. Mentasti, (1889) 42 Ch. D. 685. 690, is not inconsistent with the observations of Lord Selborne in *Ball v. Ray*, (1873) L. R. 8 Ch. 467, or with *Bamford v. Turnley*, (1860) 3 B. & S. 62. ATT.-GEN. v. COLE & SON

Kekewich J. [1901] 1 Ch. 205

NUISANCE—*continued*.

— Oyster ponds on foreshore—Ancient user—Nuisance from sewage—Public health. See **FISHERY**. 6.

— Pier — Unauthorized construction — Public nuisance—Rates for passengers—Rates for vessels "mooring." See **PIER**. 1.

9. — *Practice—Local Government—Nuisance in respect of drains—Order to abate—Necessity for signature by two justices—Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 96.*

An order of a Court of summary jurisdiction under s. 96 of the Public Health Act, 1875, must be signed by two justices. **WING v. EPSOM URBAN COUNCIL** Div. Ct. [1904] 1 K. B. 798

— River, Pollution of—Injunction—Continuance of injury. See **RIVER**. 1.

— Sewage—Injunction to restrain—Practice—Execution—Enforcing order against incorporation—Writ for sequestration. See **SEQUESTRATION**. 2.

10. — *Smallpox hospital—Quia timet action—Evidence—Admissibility—Injunction refused—Public health.*

The theory of the aerial convection or dissemination of the disease of smallpox has not received the unequivocal sanction of medical science; and the establishment of a smallpox hospital, properly conducted, is not of itself necessarily such a serious source of danger to persons resident, working, or passing by in its immediate vicinity—say, a radius of 50 feet—as to constitute a public or a private nuisance for which an injunction will lie in a quia timet action.

In such an action evidence is admissible to shew what has occurred in the neighbourhood of other smallpox hospitals carried on under similar conditions, per Cotton L.J. in *Hill v. Metropolitan Asylum District*, (1879) 42 L. T. 212; approved on appeal, (1882) 47 L. T. 29, per Lord Selborne, dissentiente Lord O'Hagan. *Sed quere*, whether the admission of such evidence is not wrong in principle as raising a number of side issues on which it is impossible for the Court to adjudicate without injury to absent parties. **ATT.-GEN. v. NOTTINGHAM CORPORATION**

Farwell J. [1904] W. N. 55; [1904] 1 Ch. 673

— Storm-water overflow—Discharge into tidal navigable creek—Trespass—Injunction. See **LONDON—Sewers**. 4.

11. — *Trade district—Noisy neighbourhood—Printing machinery—Noise, Increase of—Residence—Standard of comfort—Injunction.*

To give a householder a right of injunction against a neighbour for carrying on a noisy business in a trade district the noise must amount to a nuisance, regard being had to the nature and habits of the neighbourhood and to the pre-existing noises.

NUISANCE—*continued*.

The decision of the C. A., [1906] W. N. 3; [1906] 1 Ch. 234, affirmed upon the facts. **POLSBY & ALFIERI, LD. v. RUSHMER**

H. L. (E.) [1907] W. N. 67; [1907] A. C. 121

— Tramcars, Use of offensive language in—By-law—Validity. See **TRAMWAYS**. 4.

— Tramway company—Damage to plants in adjoining land. See **TRAMWAYS**. 10.

12. — *Trees—Overhanging trees—Damage—Injunction.*

An action lies against an adjoining landowner for allowing his trees to overhang the boundary to the damage of the plt.'s crops. **SMITH v. GIDDY** Div. Ct. [1904] W. N. 130; [1904] 2 K. B. 448

13. — *Vibration—Noise—Electric generating station—Borough council—Statutory powers—Provisional order under Electric Lighting Act—Construction of works—Temporary nuisance—Injunction.*

The defts., a borough council, acting under a provisional order, erected an electric generating station in proximity to houses of which the plts. were lessees and occupiers. The order provided that nothing therein should exonerate the undertakers from an action for nuisance in the event of any being occasioned by them. In an action for an injunction it was admitted that the vibration caused by the defts.' machinery constituted an actionable nuisance unless it was excusable upon the ground of being merely temporary. The defts. alleged that the nuisance could be removed in time by experiment and alteration of the machinery; and contended that until the machinery was perfected the construction of their works was not complete, and the action would not lie against them:—

Held, that the nuisance was not temporary, nor were the defts. to be excused within the principle laid down in *Harrison v. Southwark and Vauxhall Water Co.*, [1891] 2 Ch. 409; and that the defts. were not entitled to carry on their works unless and until they could do so without creating a nuisance. An injunction was granted during the continuance of the plts.' leases.

One of the plts. had granted a sub-lease for the remainder of his term less the last three days thereof:—

Held, that he was entitled to an injunction in respect of injury to his reversion. **COLWELL v. ST. PANCRA'S BOROUGH COUNCIL**

Joyce J. [1904] W. N. 40; [1904] 1 Ch. 707

NULLITY OF MARRIAGE.

See under **DIVORCE—Nullity**.

1. — *False notice—Widow married in maiden name—Marriage before registrar—Marriage and Registration Act, 1856 (19 & 20 Vict. c. 119), ss. 3, 17, 18, 19.*

In order to keep her second marriage secret a widow, whose life interest under her first husband's will ceased on remarriage, was married before a registrar in her maiden name, the previous statutory notice given under the

NULLITY OF MARRIAGE—*continued.*

Marriage and Registration Act, 1856, s. 3, being false to the knowledge of both spouses in this and other respects:—

Held, that the marriage was valid and the widow's life interest had ceased.

Holmes v. Simmons, (1898) L. R. 1 P. & M. 523, 529; *Prowse v. Spurway*, (1877) 46 L. J. (P. D. & A.) 49; *Lane v. Goodwin*, (1843) 4 Q. B. 361; and *Mayhew v. Mayhew*, (1812) 2 Phillim. 11, applied. *In re RUTTER*. DONALDSON *v.* RUTTER **Swinfen Eady J.** [1907] W. N. 207; [1907] 2 Ch. 592

2. — *Impotence — Pleading — Insincerity — Alleged adultery of petitioner — Materiality — Evidence — Practice.*

In order to raise the question of insincerity in a suit for nullity, it is necessary that the answer should specifically allege it.

NULLITY OF MARRIAGE—*continued.*

Adultery may be alleged, and, if established, is material matter for consideration on the question of the petitioner's insincerity.

The petitioner is, however, not bound to answer questions tending to establish adultery.

M. v. D., (1885) 10 P. D. 175, not followed. *S. (OTHERWISE G.) v. S.*

Bargrave Deane J. [1907] P. 224

NUNCUPATIVE WILL — Volunteer soldier — Minor — "In actual military service." *See* PROBATE—**Nuncupative Will.** 1.

NURSE — Master's liability — Nursing association — Injury to patient through negligence of nurse.

See MASTER AND SERVANT—**Negligence.** 5.

O.

OATHS.

Commissioners for Oaths (Prize Proceedings) Act, 1907 (7 Edw. 7, c. 25), is an Act for amending the Law relating to the Administration of Oaths for the purpose of Proceedings in Prize Courts.

Oaths Act, 1909 (9 Edw. 7, c. 39), is an Act to amend the Law as to Oaths.

Promissory Oaths—Order in Council, Mar. 5, 1910, directing that the Oath of Allegiance and the Official Oath shall be tendered and taken by the President of the Board of Trade in the presence of His Majesty in Council. St. R. & O., 1910, No. 304. Price 1d.

— Commissioner for Oaths Act, 1889.

See BANKRUPTCY—Arrangement.

— Form of—Grant of administration—Husband and wife—Commorientes.

See PROBATE—Grant. 2.

1. — *Practice—Witness—Taking the oath—Kissing the Book—Scottish form of oath—Oaths Act, 1888 (51 & 52 Vict. c. 46), s. 5.*

It is open to a witness to elect whether he will be sworn in the English form or in the Scottish form; and, if he elects the Scottish form, he is not asked his reason for so doing. There is no excuse whatever for any witness, purporting to take the oath in one form, refraining from doing that which goes to show the sanctity of the act which he is performing, and for a man refraining from kissing the Book because he is afraid that disease will be communicated to him when he has only to elect to take the oath in another form. PRACTICE NOTE - - Byrne J. [1902] W. N. 5

— Probate practice.

See PROBATE—Practice.

OBSCENE LANGUAGE—Tramcar—By-law—Validity.

See TRAMWAYS. 4.

OBSCENE LIBEL.

See under LIBEL.

OBSTRUCTING POLICE—In execution of duty.

See under POLICE.

OBSTRUCTION—Ancient lights.

See under LIGHT AND AIR.

— Highway.

See under HIGHWAY.

— Way.

See under WAY, RIGHT OF.

OCCUPATION—Rates.

See under RATES.

OCCUPATION RENT—Vendor in occupation of land sold—Farming losses—Interest.

See VENDOR AND PURCHASER—Interest. 2.

“OCCUPIER”—Rating.

See under RATES.

“OF”—Read for “or”—Bequest of heirlooms to devolve with real estate—Defeasance clause—Gift over.

See WILL—Heirlooms. 1.

OFFENCES.

See under specific Titles of subject of offences.

OFFENCES AGAINST THE PERSON.

See under CRIMINAL LAW—Offences against the Person.

CRIMINAL LAW—Appeal.

— Jurisdiction—Summary conviction on charge of assault—Question as to title to an interest in land.

See JUSTICES. 13.

OFFENSIVE LANGUAGE—Use of, in tramcars

—By-laws—Validity.

See TRAMWAYS. 4.

OFFENSIVE MATTER—Removal of.

See under LONDON—Removal of Offensive Matter.

OFFICE COPIES.

See under PRACTICE—Office Copies. 1.

— “Officer” — Civil Service — Superannuation allowance—Construction.

See NEW SOUTH WALES. 4.

— “Officer” — Company — Presentation of bankruptcy petition.

See BANKRUPTCY—Practice. 11.

— Trade union—Liability to penalties—Absence of fraud.

See TRADE UNION. 9.

OFFICIAL RECEIVER.

See under RECEIVER.

OFFICIAL REFEREE—Appealing, Mode of—Judgment entered in pursuance of direction of referee—Mode of appealing—Practice.

See APPEAL. 22.

— Costs, Discretion as to—Leave to appeal.

See COSTS. 8.

OLD AGE — Endowment policy — Stamp — "Policy of life insurance."
See **REVENUE—Stamps.** 15.

OLD AGE PENSIONS.
See under **PENSION.**

OMNIBUS—Driver of motor omnibus—"Otherwise engaged in manual labour."
See **MASTER AND SERVANT—Motor Omnibus.** 1.

OMNIBUS BUSINESS—County council—Tramway business—Ultra vires.
See **CORPORATION.** 17.

— Railway company.
See under **RAILWAY—Omnibus.**

OMNIBUS, MOTOR — Negligence—Accident to passenger — Doctrine of "res ipsa loquitur."
See **MOTOR OMNIBUS.** 1.

ONTARIO—Laws of.
See under **CANADA.**

ONUS OF PROOF—Trade mark—Registration.
See **TRADE MARK.** 24.

ONUS PROBANDI—Action for malicious prosecution.
See **CEYLON.** 2.

— As to husband's benefit—Wife's mortgage of separate property for her husband's benefit void.
See **CANADA—Husband and Wife.** 1.

— Legatee entitled to share on surviving testator — Disappearance—No evidence of death — Presumption.
See **WILL—Survivor.** 1.

— Negligence—Liability of railway companies — Loss of life from explosives in a railway carriage.
See **RAILWAY—Passengers.**

— Presumption of death—Person not heard of for seven years—Time of death.
See **PRESUMPTION.**

— Salvage—Injury to salving vessel—Compensation.
See **SHIPPING—Salvage.**

OPEN SPACES.

Open Spaces Act, 1906 (6 Edw. 7, c. 25), consolidates enactments relating to open spaces.

— Burial ground.
See under **BURIAL.**

— Open space—Screen to prevent acquisition of right to light—"Building."
See **BURIAL.** 5.

— Streets—Paving expenses—"Owner."
See **LONDON—Streets.** 6.

OPIUM—Straits Settlements Opium Ordinance, 1906—Construction.
See **STRAITS SETTLEMENT.**

OPTION—Bill of lading—Discharge of cargo—Option of shipowner as to remedy.
See **SHIPPING—Charterparty.**

OPTION—continued.

— Commission—Option of subscribers to take further shares.
See **COMPANY—Shares.** 7.

— Lease—Covenant running with land—Option to purchase freehold—Option during whole term.
See **COVENANT.** 4.

— Lease—Option to purchase landlord's interest — Condition precedent—Specific performance.
See **LANDLORD AND TENANT.** 58.

— Lease by mortgagor in possession—Lease including land other than mortgaged land—Option to determine—Option to renew.
See **MORTGAGE—Leases.** 1.

— "Option"—Workmen's compensation.
See under **MASTER AND SERVANT—Compensation.**

— To purchase mortgaged property — Clog on redemption.

See under **MORTGAGE—Redemption.**

— To purchase reversion in fee—Validity—Perpetuity — Covenant running with land.
See **COVENANT.** 4.

ORAL EVIDENCE.

See under **EVIDENCE.**

ORANGE RIVER COLONY.

The South Africa Act, 1909 (9 Edw. 7, c. 9), is an Act to constitute the Union of South Africa.

ORCHARD TREES — Agricultural holdings — Market gardeners' compensation.
See **LANDLORD AND TENANT.** 5.

ORDER AND DISPOSITION.

See under **BANKRUPTCY—Order and Disposition.**

ORDERS OF COURT—*Rules and Orders of Court judicially considered during the years 1901—1910, see Table of Rules and Orders of Court judicially considered, ante, p. dlxv.*

Rules and Orders of Court, &c., published in the Weekly Notes during the year 1906, see CURRENT INDEX, p. lxxvii.

— Rules and orders—Validity—Condition precedent.
See **STATUTORY RULES AND ORDERS.** 1.

ORDINATION—Church discipline — Pretended ordination of priest by incumbent of parish church, not being a bishop.
See **ECCLESIASTICAL LAW—Discipline.** 2.

ORDINATION OF PRIESTS — Objections to candidate — Allegation of ritualistic practices.
See **ECCLESIASTICAL LAW—Ordination.** 1.

ORIGINATING SUMMONS—Practice.

See under PRACTICE — **Originating Summons**.

ORNAMENTAL TIMBER—Equitable waste — Evidence—Injunction.

See WASTE. 1.

OSBORNE ESTATE ACT, 1902 (2 Edw. 7, c. 37), *makes provision with respect to the disposition and management of His Majesty's Osborne Estate in the Isle of Wight.*

OUSE (RIVER)—Goole Reach—Navigation of—Collision—Local practice to swing—Helm signal.

See SHIPPING—Collision. 38.

"OUTBUILDING"—Restrictive covenant—Objection to submit plans.

See COVENANT. 7.

"OUTGOINGS"—Factory—Expenses of complying with requirement of sanitary authority—Jurisdiction.

See COUNTY COURT—Jurisdiction. 5.

— "Factory"—Means of escape in case of fire—Covenant by occupier to pay "outgoings."

See FACTORY. 7.

— Factory Acts — Underground bakehouse — Lease—Covenant.

See FACTORY. 8.

— Landlord and tenant.

See under LANDLORD AND TENANT.

— Paving expenses.

See under STREETS.

— Repairs—Costs of compelling tenant to repair—Incidence of burden.

See SETTLED LAND—Repairs. 1.

— Vendor and purchaser.

See under VENDOR AND PURCHASER — Outgoings.

OVERDRAFT—Corporation—Borrowing powers —Power to borrow for specific purposes —General overdraft—Interest—Ultra vires.

See CORPORATION. 3.

OVERHANGING TREES—Damage—Injunction.

See NUISANCE. 12.

OVERPAYMENTS—Trustees.

See under TRUSTEE.

OVERSEERS—Franchise—Old lodger list—Objection by overseers—Duty of overseers to appear.

See PARLIAMENT. 10.

— Illegal distress — Recovery of rates — Liability of overseers for act of assistant overseer.

See RATES. 12.

OVERSEERS—continued.

— Poor law — Solicitor — Exemption — Appeal to quarter sessions — Costs — Writ of privilege.

See POOR LAW. 15.

— Special expenses — Precept to overseers — Appeal against apportionment—Change of overseers pending appeal.

See LOCAL GOVERNMENT. 25.

"OWNER"—Collision—Limitation of liability —Charterer by demise.

See SHIPPING — Limitation of Liability. 1.

— Duty to fence — Public well in shaft of abandoned mine — Vested in local authority.

See MINES. 11.

— Highway.

See under HIGHWAY.

— "Owner"—Compulsory pilotage — Pilotage certificate of master.

See SHIPPING—Pilotage. 5.

— "Owner"—Street—Paving expenses.

See under LONDON—Streets. STREETS.

— "Owners"—Writ—Misdescription of plaintiff —Irregularity.

See SHIPPING—Practice. 11.

— Recovery of water rate from "owner"—Receiver of rents.

See WATER.

— Reputed ownership—Chattels "to be deemed annexed to the freehold"—Mortgage of building agreement.

See BANKRUPTCY — Order and Disposition. 1.

OWNERSHIP—Highway — Dedication — Pre-emption—Disused tramway—Railway company—Acts of ownership.

See HIGHWAY. 9.

OYSTERS—Laying oysters on foreshore—Municipal corporation—Power to acquire lease of foreshore.

See FISHERY. 6.

— Ponds on foreshore—Ancient user—Public health — Discharge of sewage into the sea.

See FISHERY. 5.

OYSTER-BEDS—Property in oysters—Jurisdiction—Action in rem—"Damage done by any ship"—Shipping.

See FISHERY. 4.

P.

PACIFIC CABLE.

See under **CABLE**.

PAPER BAGS—Sale of tea with—"False or unjust" scales.

See **WEIGHTS AND MEASURES**. 9.

PARAPHERNALIA.

See under **HUSBAND AND WIFE**—**Paraphernalia**.

PARCELS—Foreshore—Conveyance of land bounded by seashore—Plan—Dimensions—Boundary line.

See **SEASHORE**. 1.

—Form of Conveyance—Description by reference to plan—Restrictive words—Right of vendor to insert.

See **VENDOR AND PURCHASER**—**Plan**. 2.

—Minerals, Conveyance of land with—Adjoining railway, the boundary—Highway.

See **VENDOR AND PURCHASER**—**Minerals**. 1.

—Mistake—Error in parcels—Common mistake—Rectification of conveyance—Laches.

See **VENDOR AND PURCHASER**—**Mistake**. 1.

PARENT AND CHILD—Double portions—"Advances"—Satisfaction—Ademption.

See **WILL**—**Advances**. 1.

—Illegitimate child—Void contract—Contract by mother to give up possession of child.

See **INFANT**—**Custody**.

—Satisfaction—Double portions.

See **WILL**—**Advances**. 2.

PARISH—Division of parish—Parochial chapelry or separate parish.

A chapelry may form part of a parish although the inhabitants of the chapelry have never been assessed for church-rates or repairs, or taken any part in the election of churchwardens of the parish church, and although owing to the magnitude of the parish the chapelry has always appointed separate overseers and levied separate poor-rates under the Poor Relief Act, 1662.

The fact that the vicar of the parish receives the vicarial tithe of the chapelry and that residents in the chapelry are in the habit of being married at the parish church is almost conclusive evidence that the chapelry is part of the parish. *In re SANDBACH SCHOOL AND ALMSHOUSE FOUNDATION*. ATT.-GEN. v. EARL OF CREWE

Farwell J. [1901] 2 Ch. 317.

PARISH—continued.

—Transfer of land from one parish to another—Alteration of boundaries of union. See **LOCAL GOVERNMENT**. 30.

PARISH COUNCIL—ELECTIONS.] *The Parish Councillors' Election Order (Jan. 14), 1901. Price 3d. St. R. & O. 1901, No. 2.*

GUARDIANS' URBAN AND RURAL DISTRICT COUNCILLORS, AND PARISH COUNCILLORS—ELECTIONS.] *The Local Elections (Alteration of Dates) Order (Jan. 15), 1900. St. R. & O. 1901, No. 3.*

—London.

See under **LONDON**—**Parishes**.

PARK—Motor car—Exceeding speed limit—Parks regulation.

See **MOTOR CARS**. 2.

—Poor rate—Rateable value—Beneficial occupation—Public park—Liverpool Improvement Act.

See **RATES**. 25.

—Settled Land Acts—"Usually occupied therewith—Lease of park—Easement over mansion-house.

See **SETTLED LAND**—**Mansion-house**. 1.

Royal Parks. Tower Gardens. Rules, Jan. 18, 1909, for the Tower Gardens in connection with the Regs. prescribed by "The Parks Regulation Act, 1892." St. R. & O. 1909, No. 286. Price 1d.

Royal Parks. Rules, June 8, 1910, in connection with the Regs. prescribed by "The Parks Regulation Act, 1892." Hyde Park. St. R. & O. 1910, No. 689.

Royal Parks. Rules, June 8, 1910, in connection with the Regs. prescribed by "The Parks Regulation Act, 1892." St. James' and the Green Parks. St. R. & O. 1910, No. 690.

Royal Parks. Rules, June 8, 1910, in connection with the Regs. prescribed by "The Parks Regulation Act, 1892." Kensington Gardens. St. R. & O. 1910, No. 691.

Royal Parks. Rules, June 8, 1910, in connection with the Regs. prescribed by "The Parks Regulation Act, 1892." Parliament Square Garden. St. R. & O. 1910, No. 692.

Royal Parks. Rules, June 8, 1910, in connection with the Regs. prescribed by "The Parks Regulation Act, 1892." Regent's Park. St. R. & O. 1910, No. 693.

PARK—*continued.*

Royal Parks. Rules, June 8, 1910, in connection with the Regs. prescribed by "The Parks Regulation Act, 1892." *Primrose Hill. St. R. & O. 1910, No. 694.*

Royal Parks. Rules, June 8, 1910, in connection with the Regs. prescribed by "The Parks Regulation Act, 1892." *Greenwich Park. St. R. & O. 1910, No. 696.*

Royal Parks. Rules, June 8, 1910, in connection with the Regs. prescribed by "The Parks Regulation Act, 1892." *Hampton Court Park. St. R. & O. 1910, No. 699.*

Royal Parks. Rules, June 8, 1910, in connection with the Regs. prescribed by "The Parks Regulation Act, 1892." *Hampton Court Gardens. St. R. & O. 1910, No. 697.*

Royal Parks. Rules, June 8, 1910, in connection with the Regs. prescribed by "The Parks Regulation Act, 1892." *Hampton Court Green. St. R. & O. 1910, No. 698.*

Royal Parks. Rules, June 8, 1910, in connection with the Regs. prescribed by "The Parks Regulation Act, 1892." *Richmond Park. St. R. & O. 1910, No. 699.*

Royal Parks. Rules, June 8, 1910, in connection with the Regs. prescribed by "The Parks Regulation Act, 1892." *Bushy Park. St. R. & O. 1910, No. 700.*

Royal Parks. Rules, June 8, 1910, in connection with the Regs. prescribed by "The Parks Regulation Act, 1892." *Holyrood Park. St. R. & O. 1910, No. 701.*

Royal Parks. Rules, June 8, 1910, in connection with the Regs. prescribed by "The Parks Regulation Act, 1892." *Linlithgow Peel or Park. St. R. & O. 1910, No. 702.*

Royal Parks. Rules, June 8, 1910, in connection with the Regs. prescribed by "The Parks Regulation Act, 1892." *Royal Botanic Garden and Arboretum, Edinburgh. St. R. & O. 1910, No. 703.*

Royal Parks. Rules, June 8, 1910, in connection with the Regs. prescribed by "The Parks Regulation Act, 1892." *Victoria Tower Gardens. St. R. & O. 1910, No. 704.*

Royal Parks. Rules, June 8, 1910, in connection with the Regs. prescribed by "The Parks Regulation Act, 1892." *Natural History Museum Gardens. St. R. & O. 1910, No. 705.*

Royal Parks. Rules, June 8, 1910, in connection with the Regs. prescribed by "The Parks Regulation Act, 1892." *Canning Statue Enclosure. St. R. & O. 1910, No. 706.*

Royal Parks. Rules, June 8, 1910, in connection with the Regs. prescribed by "The Parks Regulation Act, 1892." *Osborne. St. R. & O. 1910, No. 707.*

Royal Parks. Rules, June 8, 1910, in connection with the Regs. prescribed by "The Parks Regulation Act, 1892." *Tower Gardens. St. R. & O. 1910, No. 708. Price 1d. each.*

PARLIAMENT.

See also under **ELECTION LAW.**

PARLIAMENT—*continued.*

Polling Arrangements (Parliamentary Boroughs) Act, 1908 (8 Edw. 7, c. 14), amends the law relating to the arrangement of polling districts in Parliamentary boroughs.

Registration Act, 1908 (8 Edw. 7, c. 21), amends the law relating to the time for an appeal from the decision of a revising barrister, and matters consequential thereon.

— **Apartments, Tenement wholly let out in—**
Owner—Agent to collect rents—Rate-ability—Representation of the people.
See **RATES.** 20—22.

— **Constitution Act of New South Wales—**Power to suspend an accused member until verdict.
See **NEW SOUTH WALES.** 6.

— **Costs of local inquiry—**Costs of parliamentary opposition.
See **LOCAL GOVERNMENT.** 19.

1. — **Deposits and bonds—***Railway—Bill not allowed to proceed during present session—Return of deposit—**Railway Deposits Act, 1846 (9 Vict. c. 20), s. 5.*

Application for the transfer and payment out of court of certain sums of stock and cash standing to the credit of "Ex parte the Undertaking of the Central London Railway Bill, 1901."

By a resolution of the House of Lords dated Aug. 2, 1901, it was resolved that the promoters of the above-mentioned bill (amongst others) should have leave to suspend any further proceedings thereon in order to proceed with the bill if they should think fit in the next session of Parliament, and that the money deposited in accordance with the standing orders of the House in respect of such bill might thereupon be returned to the depositors.

The Court directed the transfer and payment of the stock and cash in court to the applicants.
In re CENTRAL LONDON RAILWAY BILL (1901)
Byrne J. [1901] W. N. 177

2. — **Franchise — Borough vote — Bribery by agents at municipal election—***Report by municipal election Court—Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 6, sub-s. 3 (a); s. 38, sub-s. 5—Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70), s. 2; s. 3, sub-s. 2; s. 23.*

If a candidate at a municipal election is reported by an election Court to have been guilty by his agents of a corrupt practice at the election, the effect of the report is that he is not capable of being elected to or holding any corporate office in the borough during a period of three years from the date of the report, and if he has been elected his election is void, but he is not deprived of his right to vote at a parliamentary election, inasmuch as the case is governed by s. 3, sub-s. 2, of the *Municipal Elections (Corrupt and Illegal Practices) Act, 1884.*

Sect. 6, sub-s. 3 (a), and s. 38, sub-s. 5, of the *Corrupt and Illegal Practices Prevention Act, 1883*, extended to municipal elections by ss. 2 and 23 of the *Municipal Elections (Corrupt and Illegal Practices) Act, 1884*, which disqualify the person so reported from voting at a parliamentary

PARLIAMENT—continued.

election during a period of seven years from the date of the municipal election, apply only where the person reported has been personally guilty of a corrupt practice. **MORRIS v. SHREWSBURY TOWN CLERK** Div. Ct. [1909] 1 K. B. 342

3. — *Franchise — Borough vote — Lodger franchise—Declaration—Prima facie evidence of claim — Rebutting evidence — Relationship between lodger and landlord — Parliamentary Registration Act, 1843 (6 & 7 Vict. c. 18), ss. 38, 39—Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 23.*

The prima facie evidence of the qualification of a person claiming to vote as a lodger, constituted under s. 23 of the Parliamentary and Municipal Registration Act, 1878, by the declaration annexed to the claimant's notice of claim, is not rebutted by the mere fact that the claimant's landlord is his father. **MAJOR v. SHREWSBURY TOWN CLERK**

Div. Ct. [1909] 1 K. B. 348

4. — *Franchise—County vote—Qualification—Freehold benefice—Receipt of pew-rents by vicar — Occupation of church within limits of parliamentary borough — Representation of the People Act, 1832 (2 & 3 Will. 4, c. 45), s. 24.*

The vicar of a parish, constituted under the Church Building Acts and situate within the limits of a parliamentary borough, who receives the pew-rents as part of his stipend, is not the occupier of the church within the meaning of s. 24 of the Representation of the People Act, 1832, and is not deprived by virtue of that section of his right to a vote for the county in respect of his freehold benefice.

Legal possession of the freehold of a church by the vicar, coupled with the receipt of pew-rents, is not sufficient to create an occupation within s. 24; to create such an occupation, there must be actual, as well as legal, possession. **WOLFE v. CLERK OF SURREY COUNTY COUNCIL. REVE v. THE SAME**

Div. Ct. [1905] K. B. 439

5. — *Franchise — Disqualification — Maintenance of voter's wife in pauper lunatic asylum — "Medical assistance"—Medical Relief Disqualification Removal Act, 1885 (48 & 49 Vict. c. 46), s. 2.*

Where upon the revision of the lists of voters it appears that a voter or claimant has during the qualifying period received relief which is of the nature both of medical relief and ordinary relief, it is a question of fact for the revising barrister as to what was the real character of the relief and which kind of relief was merely incidental to the other.

The wife of a claimant had been removed as a dangerous lunatic to a pauper lunatic asylum, and had been detained there for two years at the expense of the ratepayers, no contribution towards her maintenance being made by her husband. The revising barrister held that the permanent maintenance of a lunatic was distinguishable from the medical treatment of a patient under a temporary attack of mental disease, and was not "medical assistance"

PARLIAMENT—continued.

within the meaning of the Medical Relief Disqualification Removal Act, 1885 :—

Held, that the finding was one of fact that the relief, which had been in the first instance medical, had become ordinary relief, and that there was evidence to support the finding. **KIRKHOUSE v. BLAKEWAY**

Div. Ct. [1901] W. N. 250 ;
[1902] 1 K. B. 306

6. — *Franchise — Dwelling-house — "Inhabitant occupier" or "lodger"—Resident landlord—Prima facie proof of ground of objection—Rebutting evidence—Representation of the People Act, 1867 (30 & 31 Vict. c. 102), s. 3, sub-s. 2 ; s. 4—Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 5 ; s. 28, sub-s. 10, 11.*

At a Court held by a revising barrister the appellant claimed to be entitled to the franchise as an "inhabitant occupier" under s. 3, sub-s. 2, of the Representation of the People Act, 1867, and s. 5 of the Parliamentary and Municipal Registration Act, 1878.

The revising barrister found—

(1.) That the house, part of which was alleged to be separately occupied as a dwelling, was itself a house of the description popularly known as an ordinary dwelling-house.

(2.) That the immediate landlord to whom the person in question paid rent resided in the house.

(3.) That such landlord was rated for the entire house as a separate tenement :—

Held, that these facts constituted evidence upon which the revising barrister could decide that there was prima facie proof of the ground of objection within s. 28, sub-s. 10, of the Parliamentary and Municipal Registration Act, 1878.

In order to rebut the prima facie proof of the ground of objection the appellant produced a document signed by himself and his landlord containing (inter alia) a statement to the effect that the landlord had no control over the appellant's rooms ; but the revising barrister did not accept the statements in the document as facts, and held that the document was not sufficient to rebut the prima facie proof.

Held, that it was competent to the revising barrister to come to that conclusion.

Decision of Div. Ct., [1907] 1 K. B. 126, affirmed. **DOUGLAS v. SMITH — C. A. [1907] W. N. 150 ; [1907] 2 K. B. 568**

7. — *Franchise — Dwelling-house — Part of house—"Inhabitant occupier" or "lodger"—Resident landlord—Representation of the People Act, 1867 (30 & 31 Vict. c. 102), s. 3, sub-s. 2, s. 4—Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 5—Representation of the People Act, 1884 (48 & 49 Vict. c. 3), ss. 2, 7.*

In determining whether a person resident in part of a house is an "inhabitant occupier" under s. 3, sub-s. 2, or a "lodger" under s. 4 of the Representation of the People Act, 1867, the fact that the landlord lives on the premises is not, of itself, conclusive that the person so resident can only be entitled to the

PARLIAMENT—continued.

franchise in respect of a lodger qualification, and cannot be entitled as possessing a household qualification. *KENT v. FITTALL*

C. A. [1906] 1 K. B. 60

8. — *Franchise—Freeholders of Haverford-west to vote for borough of Pembroke, Right of—Registration—Reform Act, 1832 (2 & 3 Will. 4, c. 45), s. 12, Sched. E.—Redistribution of Seats Act, 1885 (48 & 49 Vict. c. 23), ss. 2, 7, 11, Scheds. I. and V.*

By the Redistribution of Seats Act, 1885, a new parliamentary borough of P. and H. was created, consisting of the parliamentary borough of P. and the places comprised in the area of the parliamentary borough of H., and by the same Act, the borough of H., which was a county of itself, ceased to return any member:—

Held, that the freeholders of the old borough of H., who had had as such a right to vote for that borough, had no right as freeholders to vote for the new borough of P. and H. *JAMES v. IVEY* Div. Ct. [1901] 1 K. B. 193

9. — *Franchise—Objection—Prima facie proof of ground of objection—Rebutting evidence—Evidence of repute—Jurisdiction of Supreme Court to direct revising barrister to hold fresh Revision Court—Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 28, sub-s. 10.*

The provisions of s. 28, sub-s. 10, of the Parliamentary and Municipal Registration Act, 1878, which require an objector to give prima facie proof of the ground of his objection before the revising barrister, and provide for the giving of such prima facie proof to the satisfaction of the revising barrister "by evidence, repute, or otherwise," are in aid of the objector, who may give prima facie proof of his objection by evidence of repute; the sub-section does not authorize the revising barrister to rely upon evidence of repute as distinguished from proof in order to defeat the objection.

Where the Court, upon the hearing of a case stated by a revising barrister, is of opinion that the effect of proceedings before the revising barrister is to shew that certain entries in the lists of voters of names objected to have not in fact been revised according to law, it may in the exercise of its inherent jurisdiction direct the revising barrister to hold another Court for the revision of those entries, notwithstanding that the period limited by statute for revising the lists has expired. *KENT v. FITTALL (No. 2)*

C. A. [1908] 2 K. B. 933

Note.

See *Kent v. Fittall (No. 3)*, Div. Ct., [1909] 1 K. B. 215, 221, 227. See No. 16, below.

10. — *Franchise—Old lodger list—Objection by overseers—Duty of overseers to appear—Direction by revising barrister to overseers—Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 22; s. 28, sub-ss. 9, 10, 11.*

Where a person whose name is on the existing register of voters in respect of lodgings sends in a claim to the overseers to be entered on the next register in respect of the same lodgings, and the overseers, acting under s. 22 of the

PARLIAMENT—continued.

Parliamentary and Municipal Registration Act, 1878, enter his name on the list of persons so claiming, and add in the margin opposite his name the words "objected to," the overseers must appear by themselves or by some person on their behalf before the revising barrister in support of their objection, otherwise the revising barrister must retain the name on the list. If the overseers so appear, then by s. 28, sub-ss. 10, 11, they are not required to give prima facie proof of the ground of objection, and, unless the person objected to appears by himself or by some one on his behalf and proves that he is entitled, the revising barrister must expunge his name.

By s. 22, if the overseers "have reasonable cause to believe that any person whose name is entered on the list is not entitled to be registered" they shall add in the margin of the list opposite his name the words "objected to," and such person shall be deemed to be duly objected to.

Semble, a direction by a revising barrister to the overseers that in his opinion as matter of law they have such reasonable cause in cases where the parties are parent and son or master and servant, and that they must object in such cases, does not relieve the overseers of the duty of satisfying themselves in each case that they have such reasonable cause before making an objection. *CARTWRIGHT v. SHREWSBURY TOWN CLERK* Div. Ct. [1909] W. N. 77; [1909] 2 K. B. 169

11. — *Franchise—Qualification—Husband and wife living together—Wife, owner—Husband, tenant—Occupier—Representation of the People Act, 1867 (30 & 31 Vict. c. 102), s. 3.*

A husband living with his wife in a house of which the wife is the owner and of which the husband is tenant under an agreement of tenancy with the wife is entitled to be registered as a voter under s. 3 of the Representation of the People Act, 1867. *PEARCE v. MERRIMAN*

Div. Ct. [1903] W. N. 200; [1904] 1 K. B. 80

12. — *Franchise—Qualification—Lodger claim—Objection—Evidence—Rateable Value—Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), ss. 23, 28, sub-ss. 10, 11.*

The power of a revising barrister to disallow a claim to the lodger franchise after notice of objection is not confined to cases where prima facie proof of the ground of objection has been given in the manner specified in s. 28, sub-s. 10, of the Parliamentary and Municipal Registration Act, 1878, and the claimant has failed to make good his claim. Although the requirements of sub-s. 10 as to what is to be deemed to be prima facie proof of the ground of objection may not have been satisfied, the revising barrister is entitled, and ought, to give effect to the evidence given in support of the objection, if in his opinion it outweighs the prima facie evidence of the claim afforded by the declaration of the claimant, and any other evidence adduced in support of the claim. No appeal lies from a decision of the revising barrister as to the effect of the evidence.

In determining whether lodgings, in respect of which the lodger franchise is claimed, are of

PARLIAMENT—*continued.*

the "clear yearly value, if let unfurnished, of 10l. or upwards," the rateable value of the house in which the lodgings are situate is an element of proof, though not conclusive, which the revising barrister is entitled to take into consideration.

Where a claim to the lodger franchise is duly made, a revising barrister has no power to make the personal attendance of the claimant at his Court a condition of allowing the claim. *JENKINS v. GROCOTT* Div. Ct. [1904] 1 K. B. 374

13. — Franchise — Qualification — Non-payment of rate—Passive Resister—Representation of the People Act, 1867 (30 & 31 Vict. c. 102), s. 3, sub-ss. 3, 4—Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 9, sub-s. 2 (d), (e).

A person who on or before July 20 in any year has not paid the whole of the rates assessed upon him as poor-rate in respect of the qualifying property up to the preceding Jan. 5 is not entitled to be on the parliamentary or Burgess list of voters. *ASH v. NICHOLL. COX v. MERIMAN* Div. Ct. [1905] 1 K. B. 139

14. — Franchise — Qualification — Schoolmaster—Permission to occupy house—Inhabitant occupier—Representation of the People Act, 1884 (48 & 49 Vict. c. 3), ss. 2, 3.

A schoolmaster was permitted, but not required by his employers to live in a certain house so long as he continued to hold the appointment of schoolmaster:—

Held, that the schoolmaster did not occupy the house by virtue of his employment, and, therefore, was entitled to have his name inserted in Division 1 of the list of voters. *DOVER v. PROSSER* - Div. Ct. [1903] W. N. 199; [1904] 1 K. B. 84

15. — Franchise — Rating — Successive occupation—Representation of the People Act, 1832 (2 & 3 Will. 4, c. 45), ss. 27, 28, 30—Representation of the People Act, 1867 (30 & 31 Vict. c. 102), ss. 3, 26, 56, 59—Poor Law Amendment Act, 1868 (31 & 32 Vict. c. 122), s. 38.

The appellant, who was on the occupation list of voters, was the inhabitant occupier, during the whole of the qualifying period from July 15, 1907, to July 15, 1908, of two dwelling-houses in immediate succession. He occupied the first house until June, 1908, when he went into occupation of the second house. He was rated and paid all the rates due in respect of the first house, but inasmuch as the building of the second house was not completed in April, 1908, when the rate for the half-year ending Sept. 29, 1908, was made, the house was not entered in the rate-book, and no one was rated in respect thereof until after the termination of the qualifying period, and no claim to be rated in respect thereof nor tender or payment under s. 30 of the Representation of the People Act, 1832, of the sum which would have been due had he been rated was ever made by the appellant:—

Held by Buckley and Kennedy L.J.J. (Joyce J. doubting), that the appellant was not entitled to the franchise under ss. 3 and 26 of the Representation of the People Act, 1867.

Decision of Div. Ct., [1909] 1 K. B. 227, affirmed. *PITTS v. MICHELMORE* - C. A. [1909] W. N. 97; [1909] 2 K. B. 244

PARLIAMENT—*continued.*

— Franchise—Right of women graduates to vote.
See SCOTTISH LAW.

16. — Occupation franchise — Objection—Prima facie proof of ground of objection—Evidence admissible before revising barrister—Houses similarly occupied—Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 28, sub-s. 10.

At a Court held by a revising barrister objection was taken to the names of certain persons being retained in division 1 of the occupiers' list for a borough on the ground in each case that they had not occupied as owner or tenant the premises named in the list for twelve months immediately preceding July 15 in the year. The objector proved as to each of the persons objected to—(1.) that the dwelling-house in respect of which he claimed to be placed on the list formed part of a house which was itself a house of the description known as an ordinary dwelling-house; (2.) that the landlord or landlady to whom he paid rent also resided in the house; and (3.) that the landlord or landlady was rated and paid the rates for the whole house as a separate tenement. The revising barrister then examined the assistant overseer and the registration clerk for the borough as to the conditions of letting, in the majority of cases in the borough, of houses of the same description as those occupied by the persons objected to:—

Held, that the revising barrister, if he believed that the proof of the three facts above stated applied to the particular house and occupation as to which the objection was taken, ought then to have inquired into the circumstances of the occupation in that particular case; he must not, as he had done in the present case, act upon general evidence with regard to the majority of houses similarly occupied in the borough, and he must therefore be directed to complete the revision.

It is always for the revising barrister to judge whether the evidence brought before him on behalf of the objector (which may not be strictly legal evidence) is prima facie proof or not of the ground of objection. *KENT v. FITTALL* (No. 3) Div. Ct. [1909] 1 K. B. 215

— Powers of provincial Legislature — Appellate jurisdiction of Supreme Court of Canada — Limiting right of appeal ultra vires.
See CANADA—Practice. 6.

— Powers of provincial Legislature — Ontario Succession Duty Act—Provincial taxation of property not within the province ultra vires.
See CANADA—Revenue. 2.

— Rateability of owner—Parliamentary borough — Tenement wholly let out in apartments as lodgings—Representation of the People Act.
See RATES. 20—22.

17. — Registration—Borough rate — Description of occupier—Omission of one of two Christian names—Power to amend—Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), ss. 24, 28.

PARLIAMENT—continued.

Where objection was duly taken before a revising barrister to the name of a certain voter being retained on division 1 of the list of voters for a borough, and it was proved that the second Christian name of the voter had been omitted on the list, but he made no declaration of misdescription as provided in s. 24 of the Parliamentary and Municipal Registration Act, 1878 :—

Held, that the revising barrister had power under s. 28, sub-s. 1, to amend the mistake and insert the voter's full name on the list. **GREEN v. WANKLYN** Div. Ct. [1906] 1 K. B. 394

18. — Registration — Borough vote — Occupiers' list—Description of nature of qualification—Power of revising barrister to amend—Effect of declaration — Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 24.

Where a voter has made a declaration under s. 24 of the Parliamentary and Municipal Registration Act, 1878, in order to correct an erroneous description of his qualification in the list, the revising barrister has power to make an amendment which would change the description of the qualification as it appears in the list. **GOODRICH v. GREAT GRIMSBY (TOWN CLERK)**

Div. Ct. [1902] 1 K. B. 301

19. — Registration — County vote—Service franchise — Occupation of servant excluding occupation of master — Representation of the People Act, 1832 (2 & 3 Will. 4, c. 45), s. 24—Representation of the People Act, 1884 (48 & 49 Vict. c. 3), s. 3.

Sect. 3 of the Representation of the People Act, 1884 (which provides that where a man inhabits any dwelling-house by virtue of any office, service or employment, he shall be deemed for the purposes of the Representation of the People Acts to be an inhabitant occupier of such dwelling-house as a tenant), does not operate to exclude the legal occupation of the man's employer so as to give that employer, being the freeholder, a freehold vote for the county in respect of the dwelling-house. **BROOKS v. BAKER**

Div. Ct. [1905] W. N. 161 ;
[1906] 1 K. B. 11

20. — Registration — Service franchise — Inhabitant occupier — Compulsory absence — "Office, service, or employment"—Appeal from decision of revising barrister—Nomination of clerk to county council as respondent—Costs—Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 38—Representation of the People Act, 1884 (48 & 49 Vict. c. 3), s. 3—Electoral Disabilities Removal Act, 1891 (54 & 55 Vict. c. 11), s. 2.

A break of inhabitancy where the occupier has not the legal right to return has the same effect in disqualifying the occupier for the service franchise as for the ordinary dwelling-house franchise.

The voter, a coachman, occupied a dwelling-house by reason of his employment, but was compulsorily absent from the house for more than four months during the qualifying period. His wife and family resided with him during the qualifying period, but they might have been

PARLIAMENT—continued.

left at the dwelling-house if he had wished during the period of his absence :—

Held, that he was not entitled to be registered on the list of voters for the parish, inasmuch as he was placed in the same position as an inhabitant occupier by s. 3 of the Representation of the People Act, 1884, and s. 2 of the Electoral Disabilities Act, 1891, could only protect him in respect of compulsory absence for not more than four months during the qualifying period.

Where the clerk to a county council is nominated under s. 38 of the Parliamentary and Municipal Registration Act, 1879, by a revising barrister as respondent to an appeal from his decision, the High Court has jurisdiction under the section to grant the appellant, if successful, his costs, even though the respondent does not appear. **LARCOMBE v. SIMEY**

Div. Ct. [1906] W. N. 203 ;
[1907] 1 K. B. 139

21. — Registration of voters—Revising barrister — Rules of evidence — Admissibility — Hearsay evidence — Appeal — Parliamentary Registration Act, 1843 (6 & 7 Vict. c. 18), s. 65.

A revising barrister, before whom evidence is adduced in support of a claim to be on the list of voters, is bound, if objection is taken to that evidence, to decide the question whether it is admissible by reference to the legal rules on the subject of the admissibility of evidence. If he has so decided that question and has, accordingly, admitted or rejected the evidence, as the case may be, then s. 65 of the Parliamentary Registration Act, 1843, prohibits any appeal from his decision ; but that section does not enable him to admit and act on evidence, though objected to, irrespective of the question whether it is admissible or not according to the law of evidence. **STOREY v. BERMONDSEY TOWN CLERK**

C. A. [1910] W. N. 4 ; [1910] 1 K. B. 203

— Revising barrister—Power of, to amend—Description of nature of qualification—Effect of declaration.
See No. 18, above.

— Trade union — Objects of union—Rules — Parliamentary representation — Ultra vires—Alteration of rules.
See TRADE UNION, 4.

PARLIAMENTARY AGENT — Costs—Taxation — Solicitor—Costs of obtaining private Act of Parliament.
See SOLICITOR—Costs. 29.

PARLIAMENTARY AND MUNICIPAL REGISTRATION ACT.
See under PARLIAMENT.

PARLIAMENTARY DEPOSIT — Railway companies.
See under RAILWAYS—Deposits.

— Railway company—Abandonment—Costs of inquiries necessary for distribution of deposit—Practice.
See RAILWAY—Deposit, 1.

PARLIAMENTARY DEPOSITS AND BONDS ACT, 1892.

See under TRAMWAYS.

PARLIAMENTARY PAPER—Printing extracts from—Privilege—Libel—Communication published in newspaper—Fair comment.

See DEFAMATION—Libel. 9.

PAROCHIAL ASSESSMENT.

See under RATES.

PAROL EVIDENCE.

See under EVIDENCE.

PAROL WARRANTY—That drains are in order—Collateral agreement.

See LANDLORD AND TENANT. 31.

PARSONAGE—Sale—Purchase of new vicarage with proceeds—Mortgage—Validity.

See ECCLESIASTICAL LAW—Vicarage. 1.

PARTICULARS—Libel—Defence of fair comment—Practice—Pleading.

See DEFAMATION—Libel. 13.

— Misrepresentation—Property described as freehold.

See VENDOR AND PURCHASER—Title. 10.

— Practice.

See under DISCOVERY.

PARTICULARS OF OBJECTIONS—Costs—Certificate of reasonableness—No evidence offered by plaintiff.

See PATENT—Infringement.

— Patent action.

See under PATENT.

PARTIES—Practice.

See under PRACTICE—Parties.

PARTITION—Costs—Practice—Partition action.

Action for partition of property consisting of houses in London. The statement of claim alleged that the plts. were entitled to five-twelfths of the property, and that the other seven-twelfths belonged to the defts. in the proportions therein mentioned. The case now came on motion for judgment. The plts. asked for an order directing the usual inquiries and a partition by the judge in chambers, and that all the costs of the action should be borne by the parties rateably in proportion to their respective shares. No one asked for a sale, and the proposed order was agreed to except as to costs, the defts. contending that according to the usual practice no order should be made as to costs up to the hearing, and only the subsequent costs should be borne by the parties rateably.

Farwell J. said that since the Partition Act all the costs were in the discretion of the Court; but in a case where no benefit was obtained from the Act itself, and partition only was granted, he saw no reason to allow the costs up to the hearing to be charged rateably. The case might

PARTITION—continued.

be different where the defts. actually desired a petition. *HILLS v. ARCHER*

Farwell J. [1904] W. N. 113

2. — Costs — Practice—Partition action — Real estate—Proceeds of sale—Incumbered shares — Incumbrances—Costs—Separate sets.

Further consideration of a partition action. Some of the shares were incumbered. The question arose whether in taxing the costs only one set of costs should be allowed in respect of each of the incumbered shares, or whether separate sets of costs should be allowed for each beneficiary and each incumbrancer.

Joyce J., following *Catton v. Banks*, [1893] 2 Ch. 221, in preference to *Belcher v. Williams*, (1890) 45 Ch. D. 510, held that only one set of costs should be allowed in respect of each share. He said that it would only create confusion if, after the decisions in *Catton v. Banks*, [1893] 2 Ch. 231, *Ancell v. Rolfe*, [1896] W. N. 9, and *In re Vase*, (1901) 84 L. T. 761, he were to go back to what was held by North J. in *Belcher v. Williams*, a case which had never been followed. *CARROLL v. HARRISON*

Joyce J. [1910] W. N. 104

3. — Incumbered shares—Costs.

This was the further consideration of an action for sale in lieu of partition. There were incumbrances on all the shares, but on one of the shares there was a third mortgage, the holder of which was attending the proceedings, and claimed to be entitled to a separate set of costs.

Cozens-Hardy J. said he did not doubt that he had a discretion, but that in this case, and in other cases, unless there were some special circumstances requiring a different decision, he should follow *Catton v. Banks*, [1893] 2 Ch. 221.

Belcher v. Williams, (1890) 45 Ch. D. 510, considered. *In re VASE. LANGRISH v. VASE*

Cozens-Hardy J. [1901] W. N. 124

Note.

This case was followed by Joyce J., *Carroll v. Harrison*, [1910] W. N. 104. See preceding Case.

— Partition action—Devise of mortgaged estate — Fund in Court representing rents and profits—Administration action—Right to creditors to attach fund before judgment.

See ADMINISTRATION. 25.

4. — Partition action—Order for sale—Conversion—Death of person entitled before sale—Devolution of share.

An order for sale properly made in a partition action operates as a conversion of the share of a person sui juris as from the date of the order, and, therefore, on the death before sale of the person entitled, his share of the unsold real estate will devolve as personality. *In re DODSON. YATES v. MORTON*

Eve J. [1908]

2 Ch. 638

5. — Partition action—Practice—Certificate — Married woman—Description.

Further consideration of a partition action in which judgment had been taken in common form directing the usual accounts and inquiries. In answer to the inquiry as to the persons interested

PARTITION—*continued.*

in the property forming the subject of the action, it was found by the certificate that among the persons beneficially entitled was the deft., Marion Arthurine Smith, the wife of Alfred Smith. She was described in the certificate simply as "Marion Arthurine Smith (def.)."

Joyce J. said that in a partition action where a married woman was by the certificate found entitled to any real property, if she was entitled for her separate use and was married before the Married Women's Property Act, 1882, she should be described in the certificate as being entitled "for her separate use." If she was entitled by virtue of the Act, then she should be described as being entitled to the property in question "as her separate property." **BROAD v. ASKHAM**

Joyce J. [1909] W. N. 236

6. — This was also the further consideration of a partition action. Among the persons interested in the hereditaments and premises the subject of the action was the deft. Emma Caroline Watts, who was married to the deft. E. E. Watts in 1877. She was beneficially entitled in fee simple to one-fifth of the property, but not for her separate use. By the certificate it was found that "the deft. E. E. Watts was interested in fee simple in right of his wife the deft. Emma Caroline Watts" to one undivided fifth part of the property.

Joyce J. directed the certificate to be amended by making the finding as to Mrs. Watts' share read, "The defts. E. E. Watts and Emma Caroline Watts in fee simple in right of the said Emma Caroline Watts." **BARRETT v. WATTS**

Joyce J. [1909] W. N. 237

— Sale by mortgagee with sanction of Court—Purchase by receiver without sanction.
See RECEIVER. 13.

— Suit for partition of intestate's estate—Administrator not a party.
See CEYLON. 4.

PARTNERSHIP.

The Limited Partnership Rules, 1907, dated Dec. 17th, 1907, made pursuant to section 17 of the Limited Partnership Act, 1907 (7 Edw. 7, c. 24). Reprint from W. N. 1908 (Jan. 4), p. 1. See CURRENT INDEX, 1908, p. cxv.

Partnership—Limited Partnerships Act, 1907 (6 Edw. 7, c. 24), is an Act to establish limited partnerships.

Limited Partnerships (Winding-up) Rules, 1908—The Limited Partnerships (Winding-up) Rules, 1908, dated Dec. 19, 1908, made under s. 6, sub-s. 4, of the Limited Partnerships Act, 1907 (7 Edw. 7, c. 24). These rules came into operation on Jan. 1, 1909. Reprint from W. N. 1909 (Jan. 30), p. 71. See CURRENT INDEX, 1909, p. cxxvi.

[NOTE.—*The above Rules are annulled by the Limited Partnerships (Winding-up) Rules, 1909 [see next paragraph], as from the commencement of these Rules, except so far as regards any proceedings for the winding-up of any limited partnership under those Rules which may be*

PARTNERSHIP—*continued.*

pending in any Court at the date of the commencement of these Rules, and for the purpose of such winding-up those Rules shall be deemed to remain in full force. See Rule 21—Repeal. These Rules came into operation on April 1, 1909.]

Companies (Winding-up) Rules, 1909, and the Limited Partnerships (Winding-up) Rules, 1909.

A copy of these Rules was presented gratis by the Council to subscribers to the entire series of the Law Reports, 1909, in the United Kingdom. These copies were delivered with the May Parts of the Law Reports. W. N. 1909 (April 24), p. 141.

1. — *Accounts—Books and accounts—Right of partner to inspection by agent—Partnership Act, 1890 (53 & 54 Vict. c. 39), sub-s. 9.*

Partnership articles provided that proper books of account should be kept by the managing partners for the time being, and that each of the partners should have free access to, and liberty to examine and copy, or take extracts from any of the books and writings of the partnership at all reasonable times:—

Held, that under this provision, as well as under s. 24, sub-s. 9, of the Partnership Act, 1890, any partner was entitled to have the books and accounts examined on his behalf by an agent appointed by him for the purpose, provided that the agent was a person to whom no reasonable objection could be taken by the other partners, the agent also undertaking not to make use of the information which he should thus acquire except for the purpose of confidentially advising his principal.

Decision of Joyce J., [1901] W. N. 61; [1901] 1 Ch. 724, reversed. **BEVAN v. WEBB**

C. A. [1901] W. N. 85; [1901] 2 Ch. 59

Note.

See In re Gold Coast Finance Syndicate, Ltd., Byrne J., [1904] W. N. 73. See Company—Books. 2.

Followed by Parker J., Norey v. Keep, [1909] 1 Ch. 561. See Trade Union. 2.

— Appointment by partners of son as salesman—Liability of son to account for salary.
See TRUSTEE—Account. 3.

2. — *Assignment of share—Payment of salaries to partners—Right of assignee to interfere—Partnership Act, 1890 (53 & 54 Vict. c. 39), ss. 24, 31.*

Three partners were carrying on business under the terms of a deed which provided that they should be entitled to the profits in equal shares, but contained no affirmative clause defining the duties of the partners, nor any provision for the payment of a salary to any partner. By a settlement made in 1889 one of the partners charged his share in the undertaking with payment to trustees of 10,000*l.* and interest, and also covenanted to pay to them all the rest of his share of the profits after making certain payments. Subsequently to the date of this settlement the partners came to an agreement under which, in consideration of their doing more work for the business, they received salaries. It was proved that this was done bona fide, and that the partners did work for their salaries:—

Held, that payment of the salaries was part

PARTNERSHIP—*continued*.

of the "management or administration of" the business within s. 31 of the Partnership Act, 1890, and was binding on the assignees under the settlement. *In re GARWOOD'S TRUSTS*. GARWOOD v. PAYNTER - Buckley J. [1902] W. N. 231; [1903] 1 Ch. 236

— Attachment—Action by firm—Order for discovery—Refusal of one plaintiff to obey. See ATTACHMENT. 1.

— Attachment, Motion for — Undertaking — Debtors Act. See ATTACHMENT. 9, 10.

— Auctioneer — Bill of exchange — Implied authority to accept—Trader. See AUCTION. 3.

— Bankruptcy — Arrangement — Partnership turned into a limited company—Power of trustee to accept shares in company for debtor's interest. See BANKRUPTCY—Arrangement. 5.

— Bankruptcy — Double proof — Partnership — Agents for a company—One partner director of company. See BANKRUPTCY—Proof. 3.

3. — Bankruptcy—Book debts—Assignment by deed—One partner's signature a forgery—Validity of assignment—Partnership Act, 1890 (53 & 54 Vict. c. 39), s. 6—Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 25.

One of the two partners of a firm purported by deed to assign the book debts of the firm as security for a debt due by the firm, and signed the deed in his individual name and also (without authority) in the name of his partner:—

Held that, whether or not the deed was valid as a deed, it operated as a good equitable assignment, for that it was, within s. 6 of the Partnership Act, 1890, an act or instrument relating to the business of the firm, and done in a manner shewing an intention to bind the firm by a partner who, by reason of the partnership, had authority to bind the firm. *In re BRIGGS & CO. Ex parte WRIGHT* Bigham J. [1906] W. N. 131; [1906] 2 K. B. 209

4. — Bankruptcy—Practice—Deceased insolvent partner—Order for administration in bankruptcy—Bankruptcy of surviving partner—Consolidation of proceedings—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), ss. 106, 108, 112, 125.

When a member of a partnership dies insolvent and an order is made under s. 125 of the Bankruptcy Act, 1883, for the administration of his estate in bankruptcy, and afterwards the surviving partner becomes bankrupt, the Court has jurisdiction to direct the proceedings in the two estates to be consolidated. *In re C. GREAVES*. *In re W. H. GREAVES. Ex parte THE OFFICIAL RECEIVER* Bigham J. [1904] W. N. 124; [1904] 2 K. B. 493

— Bankruptcy—Undischarged bankrupts—After-acquired property — Purchase of real estate as partners—Sale to a company—Intervention of trustees in bankruptcy. See BANKRUPTCY—Undischarged Bankrupt. 4.

PARTNERSHIP—*continued*.

— Breach of trust—Director of company and member of partnership—Misappropriation—Joint and several proof. See BANKRUPTCY—Proof. 3.

— Breach of trust—Discharge—Liability of retired partners for trust debt. See TRUSTEE—Breach of Trust. 7.

5. — Contract—Deceased partner, Liability of estate of—Action for goods sold and delivered—Goods ordered in lifetime of partner but delivered after his death—"Debt or obligation"—Partnership Act, 1890 (53 & 54 Vict. c. 39), s. 9.

The estate of a deceased partner is not liable in an action for the price of goods sold and delivered where the order for the goods is given in the lifetime of the deceased partner but delivery does not take place till after his death. BAGEL v. MILLER - Div. Ct. [1903] 2 K. B. 212

5A. — Contract with partnership—Death of partner—When contract terminated by.

A partnership, consisting of the depts. and another person, carried on the business of music-hall proprietors under the name of the A. Co. The plts., a troupe of music-hall performers, entered into a contract with the A. Co. to give certain performances at the co.'s music-hall. The plts. had no knowledge of the persons of whom the co. consisted. After the making of the contract and before the time for performance arrived the depts.' partner died:—

Held, that the contract was not of such a personal character on the part of the partnership as to be put an end to by the death of the deceased partner, and that it could be enforced against the depts., the surviving partners. PHILLIPS v. ALHAMBRA PALACE CO.

Div. Ct. [1900] W. N. 253; [1901] 1 K. B. 59

-- Conveyance—Misdescription of purchaser — Name—Evidence of identity — Legal estate.

See VENDOR AND PURCHASER—Misdescription. 1.

— Deceased partner—Executor's lien — Partnership real estate—Deposit of title deeds by surviving partner for his own debt — Notice—Priorities.

See No. 7, below.

6. — Deceased partner — Specific devise of partnership realty—Solvent partnership—Will — Construction.

One of the two partners in a solvent business died and by his will, after bequeathing his share in the partnership to his executors upon certain trusts, made a specific devise of his share in certain freeholds which formed part of the partnership assets. The other partnership assets were more than sufficient to pay the partnership debts:—

Held, that as between the beneficiaries claiming under the will, the specific devise of the share in partnership freeholds was valid, and that the devisees took it free from liability, to contribute to the partnership debts.

Farquhar v. Hadden (1871), L. R. 7 Ch. 1, distinguished. *In re HOLLAND. BRETTELL v. HOLLAND* - Neville J. [1907] W. N. 120; [1907] 2 Ch. 88

PARTNERSHIP—continued.

— Debt due to firm—Assignment by one partner by deed—Validity—Priority.
See ASSIGNMENT. 5.

— Determination of partnership — Dentists' register—Order of Medical Council to erase name — "Professional misconduct."
See DENTIST. 2.

— Discovery—Interrogatories—Joint possession.
See DISCOVERY. 14.

7. — *Dissolution—Death of partner—Business carried on by surviving partner—Authority to mortgage partnership assets—Mortgage by deposit of title deeds of partnership real estate—Lien of deceased partner's executors—Priorities—Notice—Partnership Act, 1890 (53 & 54 Vict. c. 39), r. 39.*

A surviving partner, for the purpose of winding up the partnership affairs, may continue the business and may mortgage the partnership property, whether real or personal, to secure a partnership debt.

The principle of *In re Langmead's Trusts*, (1855) 20 Beav. 20; affirmed on appeal, 7 D. M. & G. s. 53, applied to real estate.

A surviving partner carried on the business in the partnership name and continued the partnership banking account, which was overdrawn at the death of the deceased partner, and remained overdrawn until the final winding up of the business. After paying certain moneys into this account and drawing certain moneys out, he deposited with the bank the title deeds of certain partnership real estate to secure the overdraft :—

Held, that in the absence of evidence to the contrary, the bank were entitled to assume that the dealings with the account were for the purpose of winding up the partnership, and that their mortgage was a valid security, and took priority over the lien of the deceased partner's executors, on the surplus assets for his share in the partnership.

Decision of Farwell J., [1905] W. N. 169; [1906] 1 Ch. 113, affirmed. *In re BOURNE*.

BOURNE v. BOURNE C. A. [1906] W. N. 136; [1906] 2 Ch. 427

8. — *Dissolution—Losses and Deficiencies of capital—Final settlement of accounts—Distribution of assets—Partnership Act, 1890 (53 & 54 Vict. c. 39), s. 24, sub-s. 1; s. 44.*

G., M. & W. went into partnership under a parol agreement that the capital of the business should be contributed by them, in certain unequal shares, but that profits should be divided equally. Upon a dissolution, after satisfying all liabilities to creditors and the advances of two of the partners, the assets were insufficient to make good the capital. A considerably larger sum was due in respect of capital to G. than to M. :—

Held, that, having regard to s. 44 of the Partnership Act, 1890, the true principle of division of assets was for each partner to be treated as liable to contribute an equal third share of the deficiency, and then to apply the assets in paying to each partner rateably what was due to him in respect of capital. *GARNER v. MURRAY*

Joyce J. [1903] W. N. 194; [1904] 1 Ch. 57

PARTNERSHIP—continued.

9. — *Dissolution—Receiver and manager—Interference.*

Where a partnership is dissolved by the Court, and a receiver and manager is appointed with a view to the sale of the business as a going concern, any deliberate act, whether by a partner, party to the action, or a stranger, calculated to destroy the value of the business, is an interference with the receiver and manager, and may be restrained as such, even though not otherwise illegal.

E.g., tampering with the employees of the business (and inducing them to give notice to leave and join a rival business, is an act of interference, although no breach of contract is instigated. *DIXON v. DIXON Swinfen Eady J.* [1903] W. N. 156; [1904] 1 Ch. 161

— Dissolution—Stockbroking business—Goodwill—Asset of partnership—Sale.

See No. 15, below.

10. — *Dissolution—Validity of notice of dissolution—Partnership determinable "by mutual arrangement only"—Partnership Act, 1890 (53 & 54 Vict. c. 39), ss. 26, 32.*

By s. 26, sub-s. 1, of the Partnership Act, 1890, where "no fixed term" has been agreed upon for the duration of the partnership, any partner may determine it at any time by notice.

By s. 32, "subject to any agreement between the partners," a partnership "for an undefined time" may be dissolved by notice.

An agreement of partnership was entered into between two persons by which it was provided that the partnership should be terminated "by mutual arrangement only" :—

Held (affirming the judgment of a Div. Ct [1910] 1 K. B. 465), that one of the partners could not determine the partnership by notice against the will of the other partner. *MOSS v. ELPHICK*

C. A. [1910] W. N. 94; [1910] 1 K. B. 846

11. — *Expulsion—Breach of duty as partner—Expulsion—Notice—Validity.*

A deed of partnership provided that, in the event of either partner committing any breach of the partnership articles or any other flagrant breach of his duties as a partner, the other partner might by notice in writing terminate the partnership, provided that if any question should arise whether a case had happened to authorize the exercise of his power it should be determined by arbitration, if the offending partner so requested in writing within a given time. Under this clause one partner, without any preliminary warning to his co-partner, served him with a notice of dissolution on the ground that he had committed breaches of certain specified articles and had also committed a flagrant breach of his duties as a partner :—

Held (affirming the decision of Neville J.) that, in the absence of mala fides, it was not a condition precedent to the validity of the notice that the partner serving the notice should before serving it disclose to his co-partner the causes of complaint against him or give him an opportunity of being heard in his defence, and that the notice was valid.

PARTNERSHIP—continued.

Dicta of Romer J. in *Barnes v. Youngs*, [1898] 1 Ch. 414, overruled. *GREEN v. HOWELL C. A.* [1910] W. N. 74; [1910] 1 Ch. 495

12. — Expulsion clause—Conduct detrimental to partnership business—Breach of duty as a partner—Conviction by police magistrate—Dishonesty—Interim injunction.

Articles of partnership provided that in the event of either of the junior partners being "addicted to scandalous conduct detrimental to the partnership business," or being guilty of "any flagrant breach of the duties of a partner," the senior partner might give the offending partner six days' notice of expulsion from the partnership. One of the junior partners having been convicted by a police magistrate of travelling without a ticket with intent to avoid payment, and fined the full penalty, the senior partner served him with notice of expulsion. On motion by the junior partner for an interim injunction to restrain his expulsion:—

Held, that, as the plaintiff had been convicted of dishonesty, the notice of expulsion was justified, and under the circumstances the Court declined to interfere by interlocutory injunction. *CARMICHAEL v. EVANS - Byrne J.* [1904] W. N. 28; [1904] 1 Ch. 486

On appeal an order was taken by consent that all further proceedings in the action and on the appeal should be stayed upon the terms of an agreement whereby the plt. was to acquire the whole of the business and business premises, and each party was to pay his own costs. *CARMICHAEL v. EVANS - C. A.* [1904] W. N. 47

13. — Foreign judgment—Foreign partnership—Colonial firm—Real estate—Partner resident in England—Agreement to submit to jurisdiction.

In 1895 the deft., who was then residing and carrying on business in Western Australia, entered into a partnership for the working of a gold mine, owned by the partnership, in that Colony. In 1899 the deft. left Western Australia permanently and came to reside in England. In 1901 the plts., being the partners other than the deft., commenced an action in the Supreme Court of Western Australia against the deft. claiming a decree for the dissolution of the partnership, the sale of the mine and the taking of partnership accounts. The writ was served on the deft. in England, but he did not enter an appearance or take any step to defend the action. The Court decreed the dissolution of the partnership and the sale of the mine, and on taking the account a sum was certified to be due from the partnership. The plts. paid the sum, and sought to recover the share due from the deft. in an action on the decree and certificate:—

Held, that the deft. by entering into a partnership in Western Australia relating to real estate in the Colony, had by implication agreed to submit to the jurisdiction of the Courts of Western Australia as to disputes arising during the continuance and on the termination of the partnership, and that the decree was, therefore, binding on him.

PARTNERSHIP—continued.

Copin v. Adamson, (1874) L. R. 9 Ex. 345; 1 Ex. D. 17, applied.

Quære, whether the assignment by a partner in a firm, consisting of more than two members, of his share in it to another partner operates as a dissolution of the partnership. *EMANUEL v. SYMON - Channel J.* [1907] 1 K. B. 235

On appeal:—

The C. A. allowed the appeal, holding that the ownership of real estate in a foreign country, though it bound the owner to submit to the decrees of the Courts of the foreign country so far as they affected the property itself, did not involve a submission to the general jurisdiction of the foreign Courts; and that partnership in a foreign firm did not without an express agreement to that effect constitute a submission to the foreign jurisdiction by a person who was neither resident nor domiciled in the foreign country. *EMANUEL v. SYMON*

C. A. [1907] W. N. 236; [1908] 1 K. B. 302

— Foreign judgment—Jurisdiction of foreign Court—Contract of partnership abroad—Partner resident in England.
See FOREIGN JUDGMENT. 1.

14. — Fraud of co-partner, Liability for—Contract with individual before partnership—Novation—Election to abide by contract with individual—Solicitors.

Where A. has a contract with B., and B. takes C. into partnership and gives A. notice, A. has an option whether he will abide by his contract with B. alone or accept the liability of the partnership. If he elect to abide by his contract with B., C. is not liable for a fraud committed by B. against A. in respect of the contract, though B. was acting within the scope of the partnership business.

The plts. appointed B. their solicitor, and instructed him to act for them in a mortgage transaction. While the business was pending, B. took the deft. into partnership, and gave the plts. notice in writing. The plts. paid no attention to the notice, continued to correspond with B. in his own name, and finally sent him the money to advance on the mortgage by cheque made payable to his order, and accepted his receipt in his own name. B. paid the money into his own account and misappropriated it:—

Held, that the plts. had elected to continue to employ B. alone, and the deft. was not liable for B.'s fraud. *BRITISH HOMES ASSURANCE CORPORATION, LIMITED v. PATERSON - Farwell J.* [1902] W. N. 133; [1902] 2 Ch. 404

— Gambling partnership—Agreement by way of gaming or wagering—Bets paid by one partner—Claim for contribution.

See GAMING. 16.

15. — Goodwill—Stockbroking business—Dissolution—Asset of partnership—Sale—Division of assets.

H. and F. carried on business as stockbrokers in London under articles of partnership which contained no mention of goodwill. The term for which the partnership was constituted expired, and the business was carried on by them

PARTNERSHIP—continued.

as partners at will upon the conditions of the articles so far as applicable. H. died, and F. continued to carry on the business. For this purpose he obtained the permission of the committee of the Stock Exchange to use the name of the firm. He accounted for H.'s capital, but declined to pay anything in respect of goodwill :—

Held, that the nature of a stockbroker's business was not such that there could not be a saleable goodwill thereof; and that, in the absence of any provisions to the contrary in the articles, the goodwill must be sold and the proceeds accounted for.

Wilson v. Williams, (1892) 29 L. R. Ir. 176, distinguished. *HILL v. FEARIS Warrington J.* [1905] W. N. 12; [1905] 1 Ch. 466

— Lease to donee of power and his partners—Settled estates—Statutory requirements.

See SETTLED LAND—Leases. 11.

— Loan by one partner to another, Recovery of—Act of bankruptcy—Debt—Future partnership.

See BANKRUPTCY—Act of Bankruptcy. 4.

— Misdescription of purchaser—Name—Evidence of identity—Legal estate.

See VENDOR AND PURCHASER—Misdescription. 1.

— Mortgage—Joint account—Payment to one mortgagee—Separate debt—Payment to firm.

See MORTGAGE—Payment. 1.

— Money-lender—"Usual trade name"—Registered name.

See MONEY-LENDERS. 22, 23.

16. — *Mortgage of partner's interest—Right of mortgagee to account—Arbitration clause—Stay of proceedings—Discretion—Appointment as arbitrators of strong supporters of each party—Arbitration Act, 1889 (52 & 53 Vict. c. 49), s. 4—Partnership Act, 1890 (53 & 54 Vict. c. 39), s. 31, sub-s. 2.*

A partnership deed between three partners contained a power for any two partners by notice to determine the partnership so far as the third partner was concerned if he did not keep up his capital. It also contained a clause providing for arbitration in the usual way "if any difference shall arise between the said partners or between one or more of them and the executors or administrators of the others or other of them or between their respective executors or administrators." Two of the partners had given notice to the third, and it was admitted that the partnership had been determined so far as he was concerned. Before this determination the outgoing partner had mortgaged his share. Questions had arisen as to the right of the continuing partners to purchase the outgoing partner's share, and the amount of his interest in the goodwill, which depended on the construction of the partnership deed. The continuing partners gave notice to the outgoing partner that they had appointed an arbitrator and requiring him to do the same,

PARTNERSHIP—continued.

He did this, and the arbitrators agreed on an umpire, but nothing more had been done in the arbitration. The mortgagees brought this action against all three partners for an account of the outgoing partner's share from the date of dissolution. The continuing partners moved for a stay of proceedings under the Arbitration Act, 1889, s. 4 :—

Held, that the right of the mortgagees to an account was an independent right, given by the Partnership Act, and not depending upon the partnership deed; that, the arbitration clause not including in terms persons claiming under the partners, the mortgagees were not bound by the clause and would not be bound by any account taken in the arbitration, and therefore their action for an account could not be stayed.

The Court has a discretion as to staying proceedings under s. 4 of the Arbitration Act, and the facts that there are questions of law to be decided, and, *semble*, that the arbitrators appointed are each of them partisans who have expressed strong opinions in their respective appointor's favour, are reasons for not exercising the discretion by staying proceedings. *BONNIN v. NEAME Swinfen Eady J.* [1910] W. N. 94; [1910] 1 Ch. 732

— Name, Unauthorized use of—Holding out as partner—Injunction.

See NAME. 1.

17. — *Nomination—Articles of Partnership—Power for any partner to nominate successor—Acceptance by nominee—Consent or refusal by continuing partners—Rights of nominee—Specific performance—Equitable relief.*

Where, in partnership articles, it has been agreed between the partners that any one of them shall be at liberty to nominate and introduce any other person into the partnership, and a valid nomination is made by one partner accordingly, followed by acceptance of the nomination by the nominee, the other partners are bound to give effect to the nomination, and, in case of their refusal to admit the nominee as partner or to do and execute the acts and deeds necessary for conferring upon him the rights of a partner, he is entitled, as against them, to such relief as Courts of Equity are in the habit of granting to persons standing in the relation of partners, subject to his fulfilling, on his part, such conditions of his admission as may be contained in the articles, such as executing a proper deed, or otherwise.

Lovegrove v. Nelson, (1834) 3 My. & K. 1, 20; 41 R. R. 12; *Page v. Cow* (1851) 10 Hare, 163; and *Lindley on Partnership*, 6th ed. p. 368, considered. *BYRNE v. REID C. A.* [1902] 2 Ch. 735

— "Person"—Name of partnership firm—Transfer.

See COMPANY—Register. 3.

18. — *Practice—Action by partners—Writ in name of firm—Disclosure of partners' names—Affidavit—Cross-examination on affidavit—Partners when cause of action accrued—Issue whether particular person was partner—Jurisdiction to direct issue—R. S. C., Order XLVIII, rr. 1, 2.*

PARTNERSHIP—continued.

Where an action is brought by partners in the name of their firm, and the names of the persons constituting the firm are disclosed under the provisions of Order XLVIIIa, rr. 1, 2, there is no jurisdiction to direct a cross-examination on an affidavit disclosing the names, or to order a separate issue to determine the question whether a person whose name has been disclosed was a partner at the time of the occurring of the cause of action. *ABRAHAMS & Co. v. DUNLOP PNEUMATIC TYRE CO.* C. A. [1905] 1 K. B. 46

— Practice — Affidavit for leave to issue judgment summons against partner.

See COUNTY COURT—Practice. 1.

19. — Practice — Partners—Action against partner in name of firm—Execution against person as member of firm—Issue to determine liability — "Was or has held himself out as partner in firm"—Order XLVIIIa, r. 8.

In an action against the deft. firm, appearance was entered by one person as having been sued in the firm's name. Judgment was entered against the firm, and the plt. applied for a summons under Order XLVIIIa, r. 8, to determine whether another person was liable to have execution issued against him on the judgment—

Held, that an order for an issue, in which the question should be whether that person "was or had held himself out as a partner in the deft. firm," was rightly made. *DAVIS v. HYMAN & Co.* C. A. [1903] 1 K. B. 854

20. — Principal and agent—Scope of authority—Tortious act of one partner—Liability of firm—Bribing servant to disclose employer's secrets—Partnership Act, 1890 (53 & 54 Vict. c. 39), s. 5.

Where it was in the course of the business of the defts., a firm of grain merchants, which consisted of two partners, to obtain by legitimate means information in regard to contracts made or tendered for with brewers or with buyers of grain by competing firms, and one of the partners obtained such information by bribing a clerk of the plt., a competitor in business, to break his contract of service by dishonestly and improperly communicating to him knowledge obtained in the course of the clerk's employment:—

Held, that both the partners were responsible in damages to the plt. for the action of one of them as aforesaid, on the ground that it was within the general scope of the authority given to him as a partner to conduct the business of the firm. *HAMLIN v. JOHN HOBSON & Co.*

C. A. [1902] W. N. 218; [1903] 1 K. B. 81

— Probate duties—New South Wales Stamp Duties Act, 1898—Share of deceased partner.

See NEW SOUTH WALES. 28.

— Purchase by survivor of share of deceased partner, Provision for—Surviving partner sole executor of deceased—Valuation. See NEW SOUTH WALES. 24.

— Purchase by two partners without the knowledge of the third—Suits for an account—Scope of partnership.

See TRANSVAAL. 3

PARTNERSHIP—continued.

— Receiver appointed in partnership action—Assignment of judgment debt—Leave to receiver to issue execution. See BANKRUPTCY—Receiver. 1.

21. — Receiver—Partner appointed receiver—Receiver, *quid* partner, indebted to partnership—Remuneration—Costs.

Action brought to wind up the partnership that had subsisted between one Davy and the deft. The plt. was the executrix of Davy, who had died in June, 1903. In Oct., 1903, the deft. was appointed receiver, on giving security, to receive, collect, and get in the partnership assets. In July, 1905, the Master filed his certificate, whereby it appeared that the deft. had passed his accounts as receiver, and there was in his hands a balance of 1392*l.* 12*s.* 8*d.*, and that there was also due to the partnership from the deft. 1457*l.* 19*s.* 5*d.* The Master also certified that he had allowed the deft., as receiver, 280*l.* for remuneration, and 48*l.* 1*s.* 6*d.* for costs, making altogether 328*l.* 1*s.* 6*d.* The action now came on for further consideration, and it appeared that the deft. was unable to pay any part of the 1457*l.* 19*s.* 5*d.* he owed to the partnership. The question was whether the 328*l.* 1*s.* 6*d.* ought to be set off against the 1457*l.* 19*s.* 5*d.* the deft. owed to the partnership, or whether he was entitled to deduct that sum from the 1392*l.* 12*s.* 8*d.* in his hands. There was no direct authority on the point.

Farwell J. held that the deft., as receiver, was an officer of the Court and entitled to be paid for the work that he was employed to do. He was therefore entitled to retain the 328*l.* 1*s.* 6*d.* that had been allowed him by the Master for remuneration and costs, out of the 1392*l.* 12*s.* 8*d.* in his hands, notwithstanding that he was indebted to the partnership and unable to pay what he owed. *DAVY v. SCARF*

Farwell J. [1905] W. N. 165; [1906] 1 Ch. 55

22. — Receiver—Partnership action—Consent order appointing receiver and manager—Payments by receiver—Insufficiency of assets—Indemnity.

Action brought by plt. against defts. for dissolution of partnership and the winding up of the partnership affairs. In July, 1907, an order was made by consent dissolving the partnership as from the date of the writ, appointing a receiver and manager, and directing the usual accounts and inquiries, a sale of the partnership business as a going concern, and payment out of first moneys to be received by the receiver of the debts due and to become due from the partnership. In Sept., 1907, an order was made authorizing the receiver to borrow a sum of money for the purpose of paying rent and making certain urgent payments. In Jan., 1910, the assets of the partnership business were sold and the proceeds paid into Court. In May, 1910, an order was made directing the money in Court to be paid out to the receiver to be applied by him in repayment of the money borrowed. The receiver's account had been taken, and by a certificate of the Master, dated June 3, 1910, it was certified that there was due to the receiver as the balance

PARTNERSHIP—continued.

of such account the sum of 1020*l*. In July, 1910, the money in Court was paid out to the receiver and applied by him towards repayment of the moneys borrowed, and there now remained a balance due to him of 481*l*.

Summons taken out by the receiver asking that the plts. and the defts. might be ordered to pay him the 481*l*.

Warrington J. said that the receiver put his claim on two grounds: first, he said that he undertook at the request of the partners, who all consented to the order, to perform certain duties on their behalf, and that any expenditure made or liabilities properly incurred by him in the performance of those duties was so made, or were so incurred, on an implied promise of indemnity arising out of the relation of the parties or, if that was not so, then out of the fact that the expenditure was made or the liabilities incurred at the request of the partners. Secondly, he said, that at all events so far as the balance was made up of money expended by him in the payment of rent or the other debts for which the partners were liable, he was entitled to be subrogated to the right of the creditors whom he had paid and so recover from the ultimate debtors. The principles of the cases relating to trustees or persons in a fiduciary capacity which were relied upon did not apply to the case of a receiver and manager. To hold that they did would be to run counter to all the decisions in cases relating to receivers appointed by the Court. Such a receiver was an officer of the Court. He was not the agent of the parties or a trustee for them, and they could not control him. It was a matter of the utmost importance that receivers in that position should know that they must look for their indemnity to the assets which were under the control of the Court. The Court itself could not indemnify them, but it could and would do so out of the assets so far as they extended for expenses properly incurred, but it could go no further. Receivers must understand that it was at their own risk that they incurred expenses when they had no money in hand or assets to which they could look for recoupment. Further, the fact that the judgment was by consent did not make any difference. The contention of the receiver that he was entitled to be subrogated to the rights of the creditors he had paid was the same ground over again, because he could only be entitled to be subrogated if he had paid the debts at the request express or implied of the persons whose debts they were. The application must be dismissed. *BOEHM v. GOODALL* Warrington J. [1910] W. N. 259

23. — Sale—Mortgage or assignment of share—Dissolution—Sale of share to co-partner—Rights of mortgagee or assignee—Priority—Accounts—Partnership Act, 1890 (53 & 54 Vict. c. 39), s. 31.

The mortgagee or assignee of a share in a partnership is not bound by a sale subsequently made of the share by the mortgagor-partner to his co-partners on a dissolution, or by any agreement then made between the partners themselves purporting to alter the amount or value of the share as fixed by the articles. So long as the

PARTNERSHIP—continued.

partnership continues, the mortgagee or assignee is precluded by sub-s. 1 of s. 31 of the Partnership Act, 1890, from interfering in the management or administration of the partnership or requiring accounts, or inspecting the books, and he must accept the accounts of profits agreed to by the partners; but immediately upon a dissolution he becomes entitled, under sub-s. 2, to have an account taken, as from the date of the dissolution, for the purpose of ascertaining and receiving the actual share of the mortgagor in the partnership assets, quite irrespective of any agreement between the partners for valuing and dealing with such share as between themselves.

One of two partners who were carrying on a business under a partnership deed mortgaged his share with the knowledge of his co-partner, and afterwards, without the mortgagee's consent, agreed to a dissolution on the terms that he should sell his share to his co-partner for a sum which was less than the amount of the mortgage debt:—

Held, by C. A., affirming Farwell J., that the agreement was not binding upon the mortgagee, and that he was entitled, under sub-s. 1 of s. 31 of the above Act, to an account, as from the date of the dissolution, for ascertaining the actual share of the mortgagor-partner in the partnership assets, and to payment of the amount of the share when so ascertained. *WATTS v. DRISCOLL*.

C. A. [1901] 1 Ch. 294

24. — Sale of one partner's share to co-partner—Duty of purchasing partner—Fiduciary relation—Misrepresentation—Concealment—Suppression of material facts—Non-disclosure—Subsequent knowledge by selling partner—Rescission of contract, Equitable right to—Action for fraudulent representation—Compromise—Consent order, Effect of—Affirmation of transaction—Waiver of rights—Estoppel—Election by selling partner to affirm sale—Time for election.

It is clear law that, in a transaction between co-partners for the sale by one to the other of a share in the partnership business, there is a duty resting upon the purchaser who knows, and is aware that he knows, more about the partnership accounts than the vendor, to put the vendor in possession of all material facts with reference to the partnership assets, and not to conceal what he alone knows; and that unless such information has been furnished, the sale is voidable and may be set aside: *Maddeford v. Austwick*, (1826) 1 Sim. 89; 27 R. R. 167.

But if the vendor on discovering that certain material facts have been concealed from him by the purchaser, and though believing that there has been a concealment of further material facts nevertheless does acts constituting a deliberate election on his part not to insist on his right to a full disclosure, he is bound by that election, and neither he nor his representatives after his death can afterwards, on discovering the full extent of the concealment, repudiate the sale.

There is no authority for the proposition, and it is contrary to principle, that the duty of full disclosure resting on the partner purchasing from his co-partner is such that the purchasing partner cannot rely on any binding election on the part

PARTNERSHIP—*continued.*

of the selling partner unless and until full disclosure has been made.

Decision of Kekewich J. affirmed. **LAW v. LAW** C. A. [1905] 1 Ch. 140

25. — *Sale of share—Vendor's right to indemnity—Partnership Act, 1890 (53 & 54 Vict. c. 39), s. 31.*

The purchaser of a share in a partnership must personally indemnify the vendor against the partnership liabilities. **DONSON v. DOWNEY**

Farwell J. [1901] W. N. 167 ; [1901] 2. Ch 620

— Solicitor—Liability for acts of partner—Title-deeds.

See **SOLICITOR—Partnership. 1.**

— Solicitor—Lien for costs—Judgment creditor—Charging order—Priority.

See **SOLICITOR—Lien. 4.**

— Will—Conversion into company—Agreement by executors—Jurisdiction to sanction. See **TRUSTEE—Investments. 12.**

26. — *Winding up partnership, Forum for — Partnership at will — Deceased partner — Bankruptcy of surviving partner—Receiver.*

In this case (noted [1907] W. N. 162) proceedings had been commenced in the Ch. Div. by the executors of the deceased partner to wind up the partnership, and on June 21, on their application, an order was made appointing a receiver of the partnership assets. The order was made on an allegation that the deceased partner's estate was solvent, which statement was not challenged by the trustee in bankruptcy of the surviving partner. But on July 5, before the order was drawn up, the trustee in bankruptcy applied that the motion might be reheard on the ground that the order had been made under a misapprehension of the true facts, for that the partnership and deceased partner's estate were insolvent, and the Court directed the motion to be reheard with liberty to both sides to file further evidence, and the motion now came on again. There was a considerable conflict of evidence, but it appeared that the estate of the deceased partner, apart from his share in the partnership, was very small, and that its solvency depended upon a surplus being realized from the partnership assets; that the principal asset of the partnership was a freehold mill the mortgagees of which had now taken possession; and that the debts of the partnership were considerable and the realization of a surplus after payment of the partnership debts was very doubtful.

Neville J. discharged the order for a receiver and stayed all further proceedings in the Chancery action. Under the circumstances it seemed more desirable that the partnership should be wound up under the bankruptcy jurisdiction of the local county court, where all the partnership creditors and the partnership assets were located. **HULME v. ROWBOTHAM - Neville J. [1907] W. N. 162, 189**

— Winding-up—Unregistered friendly society—Insolvency of society—Jurisdiction to wind up—Notice of judgment—Service—Benefit society. See **FRIENDLY SOCIETY. 3.**

PARTRIDGE EGGS—Seizure and detention by police officer of — Justification under statute—Subsequent proceedings under different statute—Liability. See **GAME. 5.**

PARTY WALL—Damage by smoke. See **WALLS. 1.**

— London.

See under **LONDON—Buildings.**

PASS-BOOK—Bank—Return of pass-book without objection—Settled account. See **BANKER. 7.**

PASSAGE—Not being a thoroughfare—Requirement of owner to pave a second time with different material. See **LONDON—Paving. 1.**

— Salmon fishing—Impeding passage of fish by abstraction of water. See **FISHERY. 11.**

— Way, Right of—User for domestic and business purposes—Substitution of railway station. See **WAY, RIGHT OF. 7.**

PASSENGERS—Accident to—Motor omnibus—Negligence—Doctrine of "res ipsa loquitur"—Nuisance. See **MOTOR OMNIBUS. 1.**

— Pier—Unauthorized construction—Public nuisance—Rates for passengers. See **PIER. 1.**

— Railway company.

See under **RAILWAY—Passengers.**

— Ship.

See under **SHIPPING—Passengers.**

— Tramway—Carriage of passengers—Right of passenger to break journey. See **TRAMWAYS. 11.**

— Tramway company—Common carrier of passengers—Liability for personal injuries—Negligence. See **CARRIER. 1.**

PASSING OFF—Action for—Calculated to deceive—Functions of judge and witness respectively—Deceit. See **TRADE MARK. 1, 2.**

— "Passing-off" action—Essentials to constitute—Trade description—Necessity for identification. See **TRADE DESCRIPTION. 1.**

1. — *Get-up—Useful combination—Article in common use—Claim for monopoly Injunction.*

The plts. had for many years sold laundry blue put up in little bags with a stick protruding for the convenience of immersing and mixing the contents with water without staining the fingers, and they claimed that the presence of the stick had come to be a means by which the public recognized and were in the habit of asking for their goods. No other makers used this stick until the defts. began to do so this year. The defts. put their name on the bags of blue, the plts. did not. On a motion to restrain the defts.

PASSING OFF—*continued*.

from passing off their goods as the goods of the plts. :—

Swinfen Eady J. granted an interim injunction in the terms of the motion.

The C. A. allowed the appeal, being of opinion that the useful part of an article as distinguished from an ornamental addition could not be regarded as part of the get-up of the article ; and that no length of exclusive user could entitle a trader to a monopoly in the manufacture and sale of a useful combination not protected by patent. *W. EDGE & SONS, LD. v. W. NICCOLLS & SONS, LD.* - C. A. [1910] W. N. 250

—Trade name—Parties—Injunction.

See TRADE NAME. 2.

PASSPORT — Obtaining a passport by false representations — Conspiracy — Indictment — Direction to jury — Criminal law
See CONSPIRACY. 3.

PASTURAGE—Prescription—Profit à prendre—Surveyor of highways—Unallotted land.
See PRESCRIPTION. 2.

—Presumption of lost grant—Presumption of legal origin to support long user.
See PRESCRIPTION. 2.

PASTURE LANDS—Covenant not to plough up—Good husbandry—Waste.
See LANDLORD AND TENANT. 62.

PATENT.

Patents Act, 1901 (1 Edw. 7, c. 18), amends the law with reference to international arrangements for patents.

Patents Act, 1902 (2 Edw. 7, c. 34), amends the law with reference to applications for patents and compulsory licences and other matters connected therewith.

Patent Rules (Jan. 12), 1903. St. R. & O. 1903, No. 231. Price 3d.

Proceedings before Judicial Committee. Order in Council making Rules regulating Proceedings before the Judicial Committee on Petitions for the grant of Compulsory Licences. St. R. & O. 1908, No. 124, L. 7.

Patent Rules, 1905, dated Oct. 20, 1904. Reprint from W. N. 1904 (Nov. 19), p. 319. See CURRENT INDEX, 1904, p. cxviii.

Patents, Designs, and Trade Marks.] International Arrangements. Order in Council applying the provisions of s. 103 of the Patents, &c., Act to the Republic of Cuba. St. R. & O. 1905, No. 10.

Patents and Designs (Amendment) Act, 1907 (7 Edw. 7, c. 28), is an Act to amend the law relating to patents and designs.

Patents and Designs Act, 1907 (7 Edw. 7, c. 29), is an Act to consolidate the enactments relating to patents for inventions and the registration of designs and certain enactments relating to trade marks.

Patents and Designs Act, 1908 (8 Edw. 7, c. 4), explains s. 92 of the Patents and Designs Act 1907 (7 Edw. 7, c. 29).

PATENT—*continued*.

Designs Rules, 1908—Patents Rules, 1908—Register of Patent Agents Rules, 1908.

A copy of these rules has been presented gratis by the Council to all subscribers to the entire series of the Law Reports, 1908. These copies were delivered with the February parts of the Law Reports. W. N. 1908 (Jan. 18), p. 45.

Rules of the Supreme Court (Patents and Designs), 1908. Procedure in actions for infringements of Patents and under the Patents and Designs (Amendment) Act, 1907 (7 Edw. 7, c. 28), dated June 3, 1908. Reprint from W. N. 1908 (June 6), p. 161. See CURRENT INDEX, 1908, p. cxviii.

Designs Rules, 1908 (second set), dated Nov. 14, 1908. These Rules came into operation from and immediately after Dec. 1, 1908. Reprint from W. N. 1908 (Dec. 5), p. 337. See CURRENT INDEX, 1908, p. lxxix.

Patents and Designs—Patents and Designs Act, 1907 (7 Edw. 7, c. 29)—Procedure under s. 27 and Patents Rules 78-81. Reprint from W. N. 1909 (May 29), p. 198. See CURRENT INDEX, 1909, p. cxxxi.

Advertisements, col. 1872.

Amendment, col. 1873.

Colonies, col. 1873.

Company, col. 1873.

Costs, col. 1873.

Designs, col. 1873.

Disclaimer, col. 1874.

Expired Letters Patent, col. 1874.

Foreign Patent, col. 1874.

Foreshore, col. 1874.

Infringement, col. 1874.

International, col. 1880.

Lapse, col. 1881.

Licence, col. 1881.

Particulars, col. 1881.

Practice, col. 1883.

Prolongation, col. 1888.

Purchase, col. 1890.

Receiver, col. 1890.

Registration, col. 1890.

Revocation, col. 1891.

Sale, col. 1893.

Threats, col. 1894.

Trade Mark, col. 1895.

Advertisements.

1. — *Petition for extension — Advertisement.*

Under the Patents Act, 1883, the Board has no power to entertain a petition for extension where there has not been any advertisement as

PATENT (Advertisements)—continued

prescribed by s. 25, sub-s. 1. It has no power to dispense with the express provisions of a statute. *In re FRIEZE-GREEN'S PATENT* P. C. [1907] A. C. 460

Amendment.

See under PATENT—Practice.

Colonies.

Patents, Designs, and Trade Marks. Colonial Arrangements.—O. in C. March 26, 1907, applying the provisions of s. 103 of the Patents, &c., Act, to the Commonwealth of Australia. St. R. & O. 1907, No. 263.

Company.

—Agreement to grant to promoter and that he or intended company should accept licence to use patent—Privy of contract.

See COMPANY—Contracts. 2.

—Company winding-up—Contract to sell assets—Letters patent Omission to assign before dissolution—Registration—Vesting order.

See COMPANY—Vesting Orders. 2.

Costs.

—Particulars of objection—Leave to amend—Form of order—Discontinuance—Costs.

See PATENT—Particulars. 2.

1. — *Taxation of costs—Action for infringement of patent—Defences of non-infringement and invalidity—Separate issues—Dismissal of action with costs—Costs of separate issues—Particulars of objections—Practice Patents, Designs, and Trade Marks Act, 1883 (46 & 47 Vict. c. 57), s. 29, sub-s. 6—Order LXV., r. 2.*

In an action for infringement of a patent the defts. denied infringement, and alleged want of subject-matter and of novelty by reason of a large number of alleged anticipations. At the trial the judge dismissed the action with costs on the ground of want of novelty in respect of two anticipations only:—

Held, that the taxing Master, in taxing the costs, must not disallow costs incurred with respect to issues on which the judge found that the defts. had failed, or tax the costs as if the action had been confined to proving the two objections on which the defts. succeeded, but must tax the whole of the defts.' costs, disallowing only the costs of those objections in respect of which no certificate was given pursuant to s. 29, sub-s. 6, of the Patents, Designs, and Trade Marks Act, 1883. *HASKELL GOLF BALL CO. v. HUTCHINSON & MAIN* Warrington J. [1906] W. N. 34; [1906] 1 Ch. 518

Designs.

See also under DESIGNS.

—“Drawings”—Assignment of copyright to intended company—Validity—Registration.

See COPYRIGHT—Drawings. 1.

PATENT—continued.**Disclaimer.**

1. — *Revocation—Leave to amend—Conditions—Infringements prior to amendment—Discretion—Form of order—Patents, Designs, and Trade Marks Act, 1883 (46 & 47 Vict. c. 57), ss. 18, 19, 20—Costs—Taxed bill—Successful appeal from part of judgment—Apportionment.*

In a proceeding for revocation of a patent, the C. A. will not review the exercise by a judge of the discretion given to him by s. 19 of the Patents, Designs, and Trade Marks Act, 1883, as to the terms and conditions of an order for revocation where the judge has exercised his discretion with a full knowledge of all the circumstances of the case.

Appeal from Buckley J. as to form of order for revocation, [1903] 2 Ch. 715, dismissed.

Where the unsuccessful party at the trial of an action has been ordered to pay the costs of the successful party, and those costs have been actually taxed and paid, the C. A. will, upon a successful appeal from part of the judgment, and without remitting the matter to the taxing Master, itself examine the taxed bill and fix the proportion to be repaid to the successful appellant. *In re GEIPEL'S PATENT* - C. A. [1904] W. N. 21; [1904] 1 Ch. 239

Note.

This case was followed on one point by Neville J., *In re Klaber and Steinberg's Patent*, [1908] 1 Ch. 847. See PATENT—Practice. 7.

Expired Patent.

1. — *Action for declaration of invalidity—No consequential relief—Discretion of Court—R. S. C., 1883, Order XXV., r. 5—Mode of procedure—Petition for revocation—Practice—Fiat of Attorney-General—Patents, Designs, and Trade Marks Act, 1883 (46 & 47 Vict. c. 57), ss. 26, 32.*

An action claiming merely a declaration of invalidity of letters patent already expired, where no legal right of the plt. has been infringed, is not maintainable.

Decision of Joyce J., [1906] 1 Ch. 324, affirmed.

The proper mode of procedure in a case of this kind is by petition for revocation under s. 26 of the Patents, Designs, and Trade Marks Act, 1883.

The mere fact that a patent has expired is not of itself a sufficient reason for refusing a fiat for a petition for revocation. *NORTH EASTERN MARINE ENGINEERING CO. v. LEEDS FORGE CO.* C. A. [1906] W. N. 163; [1906] 2 Ch. 498

Foreign Patent.

—Expiry of patent—British patent a foreign patent.

See CANADA—Patent. 1.

Foreshore.

—Charter—User—Weight of evidence.

See FORESHORE. 1.

Infringement.

1. — *Abroad—Article made abroad by the use of material manufactured by the patented process*

PATENT (Infringement)—continued.

—*Importation into and sale in England—Costs*
—*Certificate that validity of patent has come in question—“Subsequent action”*—*Patents, &c., Act, 1883 (46 & 47 Vict. c. 57), s. 31.*

The deft. imported into and sold in this country an article made abroad. A material made by a process similar to that protected by the plt.'s patent was used in the manufacture. The nature of this material was chemically changed by subsequent operations in the course of the manufacture, and the imported article was the material after such chemical change:—

Held, that the defts. were indirectly depriving the patentees of the benefit of their invention, that they had infringed the patent, and that they must be restrained from so doing.

In s. 31 of the Patents, &c., Act, 1883, the words “any subsequent action” mean an action commenced after the certificate was granted. *SACCHARIN CORPORATION, LD. v. ANGLO-CONTINENTAL CHEMICAL WORKS*

- **Buckley J.**
[1901] 1 Ch. 414

2. — *Abroad—Patented articles bought in England and sent abroad for sale—Innocent purchaser—Transport of patented articles—Exposing for sale—“Using and vending” the invention—Patents, &c., Act, 1883 (46 & 47 Vict. c. 57), Sched. I., Form D—Damages, Measure of.*

A person who has in his possession, for the purpose of sale, an article which is an infringement of a patent thereby renders himself liable for infringement, however innocently he may have acquired the article—as, for instance, by an innocent purchase from an infringing manufacturer—and notwithstanding that he may not have actually exposed it for sale.

Exposing a patented article for sale is a “using and vending” of the invention.

Minter v. Williams, (1835) 4 Ad. & E. 251; 1 Web. Pat. Cas. 135, considered.

Whether mere possession of a patented article, without any intention of selling it or using it in trade, by a person other than the patentee in itself constitutes a “user” of the patent, *quære*.

The defts. were innocent purchasers in England, from an infringing manufacturer, of twenty-seven articles protected by letters patent for the United Kingdom only, in the Form D, in Sched. I. to the Patents, &c., Act, 1883, conferring upon the patentee the sole privilege to “make, use, exercise and vend” the invention. Eight of these articles they sold in England, and the remaining nineteen they sent to their branch business house in Paris, where they were sold to various foreign purchasers:—

Held, that as, upon the evidence, the defts. had purchased the whole twenty-seven for the purpose of sale, that was a “user” of the invention constituting an infringement in respect of the nineteen sent abroad as well as of the eight sold in England, and that the plts. were entitled to damages (in addition to an injunction, to which the defts. had already submitted) in respect of the whole twenty-seven.

The measure to be applied in assessing damages for infringement of a patent is the pecuniary loss actually sustained by the patentee through the infringement, and no more.

PATENT (Infringement)—continued.

The principle of assessment stated in *Pneumatic Tyre Co. v. Puncture Proof Pneumatic Tyre Co.*, (1899) 16 Rep. Pat. Cas. 209, approved of. *Penn v. Jack*, (1867) L. R. 5 Eq. 81, 87, considered.

Whether mere transport from place to place of a patented article is an infringement, *quære*. *Badische Anilin und Soda Fabrik v. Basle Chemical Works, Bindschedler*, [1898] A. C. 200, 208, considered. **BRITISH MOTOR SYNDICATE, LD. v. TAYLOR & SONS**
C. A. [1901] 1 Ch. 122

3. — *Combination, Patent for—Sale of component part—Intention of purchaser to infringe—Knowledge of vendor.*

The sale of a component part of a combination, the subject of a patent, the vendor knowing that the purchaser intends to use the article for the purpose of infringing the patent, is not an infringement by the vendor.

Townsend v. Haworth, (1875) 12 Ch. D. 831, n.; 48 L. J. (Ch.) 770, n., followed.

Decision of *Swinfen Eady J.*, [1904] W. N. 11; [1904] 1 Ch. 164, affirmed. **DUNLOP PNEUMATIC TYRE CO. v. DAVID MOSELEY & SONS, LD.**

C. A. [1904] W. N. 60; [1904] 1 Ch. 612

Note.

This case was discussed by *Swinfen Eady J.*, *Sirdar Rubber Co. v. Wallington, Weston & Co.*, [1905] 1 Ch. 451. See next Case.

4. — *Combination—Specification—Insufficient description—Repair—Old and new component parts.*

Decision of *Swinfen Eady J.*, [1905] 1 Ch. 451, affirmed on the ground of insufficiency of specification alone, the C. A. expressing no opinion upon the question of law dealt with by him, namely, whether, assuming the plts.' patent for a combination of rim and tyre to be good, the defts. had infringed it by fitting, by way of repair, a new tyre for which there was no patent into a rim for which there was a patent. **SIRDAR RUBBER CO., LD. v. WALLINGTON, WESTON & CO.**

C. A. [1906] W. N. 24;
[1906] 1 Ch. 252

5. — *Costs—Practice—Infringement action—No evidence offered by plaintiffs—Action dismissed—Particulars of objections—Certificate of reasonableness—Patents, Designs, and Trade Marks Act, 1883 (46 & 47 Vict. c. 57), s. 29, sub-s. 6.*

In an action to restrain the infringement of a patent the plts. offered no evidence, and the action was consequently dismissed with costs. The defts. asked for a certificate that their particulars of objection were reasonable and proper within the Patents, Designs, and Trade Marks Act, 1883, s. 29, sub-s. 6.

Farwell J.: *Mandleberg v. Morley*, [1895] W. N. 9; 12 Rep. Pat. Cas. 35, which is exactly in point, shews conclusively that in the absence of evidence I cannot grant a certificate, and that it is not the practice of the Court to hear evidence for that purpose only. **AMERICAN STEEL AND WIRE CO. v. GLOVER & CO.**

- **Farwell J.**
[1902] W. N. 17

— *Coupler—New combination of known features—Alleged infringement.*

See CANADA—*Patent*. 1.

PATENT (Infringement)—continued.

6. — *Discontinuance—Terms on which allowed—Action for infringement—Patents, Designs, and Trade Marks Act, 1883* (46 & 47 Vict. c. 57), ss. 18, 19, 20—*Patents, Designs, and Trade Marks Act, 1888* (51 & 52 Vict. c. 50), s. 5—*R. S. C., 1883, Order XXVI., r. 1.*

The plt. having brought an action for an injunction to restrain infringement of his letters patent for an invention, and the deft. having delivered his defence with particulars of objection, the plt. delivered his reply. Deft. then gave notice of an application for liberty to amend his particulars by stating certain alleged defects in the specification, but abandoned the application. The notice of application disclosed to the plt. something which assured him that he could not succeed in the action unless he corrected his patent, and with a view to doing this he applied for leave to discontinue the action :—

Held, that leave should only be given on the terms of the plt. not bringing any action against the deft. in respect of any infringement alleged in the present action, and paying the costs of that action, including the costs of the particulars of objection. ROBERTSON v. PURDEY

Buckley J. [1906] 2 Ch. 615

— *Illustrated copyright—Infringement—Articles falsely called patent—Misrepresentation.*

See COPYRIGHT—Catalogue. 2.

7. — *Interpretation of specification—Infringement by licensee—Damages.*

The appellant was assignee of letters patent for an invention relating to an improvement in balls for use in the game of golf.

The specification set forth : “ In carrying out my invention I substitute for the core hitherto used a core consisting of an incompressible fluid such as water or other liquid or semi-liquid contained in a suitable receptacle or shell made of elastic material. . . . Any convenient incompressible fluid having no detrimental action on the receptacle such as water, glycerine or the like may be used to form the core, though in practice I have found that water gives very satisfactory results.” And the first claim was for “ a ball for use in the game of golf made with a core or nucleus of incompressible fluid forced into and contained within a receptacle of elastic material which, when expanded to the required size, is closed and thereafter wound round with rubber thread or tape substantially as hereinbefore described.”

The respondents were the exclusive licensees from the patentee to manufacture for six years golf balls under the patent, which were called “Mingay” balls. These balls were a great success, and large numbers were manufactured. Subsequently the respondents manufactured a ball called the “Ace,” constructed mechanically in precisely the same way as the “Mingay” ball, but with a core consisting of 85 per cent. of water and 15 per cent. of gelatine. The appellant alleged that the “Ace” ball was an infringement of the specification and claimed damages :—

Held (reversing the decision of the First Division of the Ct. of Sess., (1907–1908) 25 Rep.

PATENT (Infringement)—continued.

Pat. Cas. 9, 757), that the specification, which was a part of the respondents’ contract of manufacture, included not merely liquids like water, but also sticky substances, and therefore the “Ace” balls were an infringement of the patent and the appellant was entitled to damages in lieu of royalty. ROGER v. J. P. COCHRANE & Co.

- H. L. (Se.) [1909] W. N. 106 ;
[1909] A. C. 285

8. — *Invalidity—Amendment of specification—Disclaimer—Terms—Damages—Injunction—Member of public—Patents and Designs Act, 1907* (7 Edw. 7, c. 29), ss. 22, 23, 33—*R. S. C., Order LIIII., r. 23.*

As a general rule the Court will not in the exercise of its discretion in allowing an amendment of a patent under s. 22 of the Patents and Designs Act, 1907, impose a condition, in the absence of special circumstances, preventing the applicant from maintaining any actions whatever in respect to matters prior to the date at which leave to amend is given ; but it will in some cases declare that, in addition to the restriction on recovery of damages provided by s. 23, the patentee shall not sue for an injunction in respect of the use of the invention before disclaimer, unless he establishes that his original claim was framed in good faith and with reasonable skill and knowledge.

The plts. in an action for infringement of their patent applied by motion for an order that they might be at liberty to amend their specification by way of disclaimer and that the specification so amended might be used in evidence at the trial of the action upon such terms as the Court might think fit. On Nov. 26, 1909, an order was made by consent whereby, the plt. undertaking not to proceed with and (if required) to consent to orders staying (pending the application) all proceedings in all their other pending actions for infringement of their patent, and to abide by the order of the Court as to the terms which the Court might thereafter think fit to impose as to the matters mentioned in R. S. C., Order LIIII., r. 23 (b), including terms as to the costs of the action and all the other pending actions for infringement of the patent, and not in the meantime to threaten actions for infringement, and to give notice of this order to all the defts. in the other pending actions for infringement, the Court ordered that the applicants should be at liberty to proceed with their application for leave to amend, and that the application should be heard on affidavit evidence. The application now came on for hearing :—

Held, that the proposed amendments came within s. 22 of the Patents and Designs Act, 1907, and that they ought to be allowed upon the terms that the applicants should pay the costs of and occasioned by the application to amend, including costs of persons who had served notice of opposition under R. S. C., Order LIIII., r. 23 ; that by consent all the other pending actions for infringement brought by the applicants should be discontinued, with the usual order as to costs ; that no relief by way of damages or injunction

PATENT (Infringement)—continued.

should be sought by the applicants in respect of any razors made in or imported into England before Nov. 26, 1909, if the judge at the trial should hold that their original claim was not framed in good faith or with reasonable skill and knowledge; and that the applicants should undertake not to claim any relief in respect of any razor purchased by or coming to the hands of any member of the public, as distinct from the trade, prior to Nov. 26, 1909. *GILLETTE SAFETY RAZOR COMPANY v. LUNA SAFETY RAZOR COMPANY - Parker J.* [1910] **W. N. 170**; [1910] **2 Ch. 373**

9. — *Licence — Condition — Purchase of patented article from licensee without notice of condition — Estoppel — Purchaser's liability to action for infringement.*

Action for infringement of a patent. The plts. alleged that the deftd. had bought their patented dye from their licensees with knowledge that the licence was restricted; that the licensees were bound to sell to consumers only, and not to dealers; and that the deftd. was a dealer, and had sold the dye to other persons.

Buckley J. (reported [1906] **W. N. 45**; [1906] **1 Ch. 605**), after discussing the law on the subject, held that the licence in question was an implied licence to sell the dye subject only to conditions mentioned in a label attached to the tins in which the dye was sold. Those conditions implied that purchasers of unopened tins might resell the dye; and, inasmuch as the deftd. had bought the dye only in that way, he had not infringed. He therefore dismissed the action.

The C. A. said that the only restriction on the sale of the dye which had been proved was that contained in the labels attached to the tins in which it was sold. It was therefore unnecessary to dispose of any of the other questions which had been raised. Buckley J. had come to a right conclusion on the evidence. Appeal dismissed. *BADISCHE ANILIN UND SODA FABRIK v. ISLER* **C. A. [1906] W. N. 163**; [1906] **2 Ch. 443**

10. — *Mechanism—Infringement of patent.*

The House reversed the decision of the Second Division of the Ct. of Sess. (1904, 6 and 7 F, pp. 1001 and 97 respectively), with costs, being of opinion there was no infringement of the respondent's patent, their claim not including the appellant's mechanism. *JOHN HASTIE & Co. v. ANDREW BETTS, BROWN, AND BROWN BROTHERS & Co.* **H. L. (Sc.) [1906] W. N. 72**

— Particulars of objection.

See under **PATENT—Particulars.**

— Practice—Parties—Title to patent at date of writ.

See **PATENT—Practice. 5.**

11. — “Vend”—*Letters patent—Construction—Infringement—“Exercise and vend”—Sale in England—Delivery abroad.*

Where a contract is made in the United Kingdom to sell patented goods which are abroad, and is completed by appropriation or delivery abroad, the vendor does not use, exercise,

PATENT (Infringement)—continued.

or vend the invention in the United Kingdom within the meaning of the patent.

Decision of the C. A., [1905] **2 Ch. 495**, affirmed. *BADISCHE ANILIN UND SODA FABRIK v. HICKSON* **H. L. (E.) [1906] W. N. 134**; [1906] **A. C. 419**

International.

Patents Act, 1901 (1 Edw. 7, c. 18), amends the Law with reference to International Arrangements for Patents.

Patents, Designs, and Trade Marks—International Arrangements—O. in C., May 17, 1909, applying the provisions of s. 91 of the Patents and Designs Act, 1907, to Austria-Hungary. **St. B. & O. 1909, No. 585.**

1. — *International convention—Application by patentee for protection in foreign State—Subsequent publication of same patent by another person in this country—Later application by patentee in this country for patent—Anticipation—Certificate of objection—Certificate as to validity of patent being in question—Patents, Designs, and Trade Marks Act, 1883 (46 & 47 Vict. c. 57). ss. 29, sub-ss. 2, 6, 31, 103; sub-ss. 1, 2.*

When a patentee was applied under s. 103 of the Patents, Designs, and Trade Marks Act, 1883, for protection for any invention in any foreign State with which the British Government has made an arrangement and afterwards makes an application in this country for his patent, he has two alternatives: he may either take a patent to run from the date of his prior application to the foreign State, or he may take a patent to run from the date of his English application, but in either alternative the date of his application in this country for the patent to which he is entitled under the section if he asks for it must be within seven months from the date of his foreign application: in other words, he must elect from what date his patent is to run within seven months from the date of his foreign application.

The plts. sued and went to trial in respect of an alleged infringement of four patents. At the trial they abandoned their case as to the first three patents and proceeded on the fourth. The Court held that the fourth patent was invalid for want of novelty, and that there had been no infringement even if it had been valid, and dismissed the action with costs:—

Held, that the Court could not give a certificate under s. 29 of the Patents, &c., Act, 1883, that the particulars of objection delivered by the defts. in respect of the first three patents were reasonable and proper.

Mandleberg v. Morley, [1895] **W. N. 9**; 12 Rep. Pat. Cas. 35, followed.

In respect of the fourth patent the defts. had delivered particulars of objection, including (a) a reference to certain inventions which shewed that the patent was void for want of novelty; (b) a specification and particulars referring to certain electric furnaces previously invented by other persons. The patent made no claim to an electric furnace as part of the invention, but claimed for a process in which electric furnaces were used:—

Held, that it was a matter for proof and not

PATENT (International)—continued.

for particulars of objection to shew what the furnaces were, and that the defts. were not entitled to a certificate under s. 29 as to the particulars of objection (*b*).

The plts. asked that, notwithstanding the fourth patent had been declared invalid, the Court should give them a certificate, under s. 31 of the Act, that the validity of the patent had come in question :—

Held, that the certificate under the section could only be granted where the patent had been declared valid.

Haslam Co. v. Hall, (1887) 5 Rep. Pat. Cas. 1, 27 (see also *ibid*. 144), not followed. **ACETYLENE ILLUMINATING Co. v. UNITED ALKALI Co.** **Buckley J. [1902] W. N. 25; [1902] 1 Ch. 494**

Lapse.

1. — *Lapse due to "unintentional" omission to pay fee—Application for restoration—Patents and Designs Act, 1907 (7 Edw. 7, c. 29), s. 20.*

The holder of a patent in respect of an invention applied for a fresh patent in respect of improvements on it, intending to include in it the old invention. Under the erroneous impression that the new patent would protect the original invention and that the patent already protecting it might be allowed to lapse, he omitted to pay the fee in respect of it and allowed it to lapse. On an application for restoration of the lapsed patent :—

Held, that the omission was not an "unintentional" one within the meaning of s. 20 of the Patents and Designs Act, 1907, and that the Court had no jurisdiction to restore the patent.

Quære, whether there is an appeal from the Comptroller-General until after there has been advertisement and opposition under s. 20, sub-s. 3. *In re LAND'S PATENT* - **Parker J. [1910] 2 Ch. 236**

Licence.

— Burden attaching to property — Right of action.

See COMPANY—Contracts. 2.

— Distress for rent, Seizure and sale under—Right of purchaser to use the same.

See DISTRESS. 17.

Particulars

1. — *Alleged infringement—Defence of prior user—Particulars—R. S. C., 1883, Order LIIA, r. 18.*

The keynote of the provision in Order LIIA, r. 18—that where prior user is alleged as an objection to the validity of a patent the particulars of the prior user must "contain a description (accompanied by drawings if necessary) sufficient to identify such alleged prior user, and if such user relates to any machinery or apparatus shall specify whether the same is in existence and where the same can be inspected"—is in the words "sufficient to identify such alleged prior user," and the object of the rule was to meet the difficulties which arose under the former practice by reason of a party being ignorant up to trial as to the case of prior user which he had to meet, and his opponent being unfettered as to

PATENT (Particulars)—continued.

what at the trial he should adduce as an example of prior user.

Nature of order to be made on application for further particulars of prior user. **CROSTHWAITE FIRE BAR SYNDICATE v. SENIOR**

Parker J. [1909] 1 Ch. 801

2. — *Practice — Particulars of objection—Leave to amend—Form of order—Discontinuance—Costs—Patents, Designs, and Trade Marks Act, 1883 (46 & 47 Vict. c. 57), s. 29, sub-s. 6—Patents and Designs Act, 1907 (7 Edw. 7, c. 29), s. 98 (b)—R. S. C., Order LIIA, r. 22.*

Action by patentees for infringement of a patent. The statement of claim was delivered on Oct. 12, 1908. A statement of defence, alleging, among other defences, anticipation, and particulars of objection were delivered on Nov. 6, 1908. On Mar. 23, 1909, the deft. took out a summons for leave to amend the defence and particulars by adding other instances of anticipation. The District Registrar of Birmingham made an order in this summons in the usual form, which was settled in *Baird v. Moules' Patent Earth Closet Co.*, (1876) 17 Ch. D. 139, n., and followed ever since, which provided that the plt. should, within four weeks from the delivery of the deft.'s amended defence and particulars of objection, elect whether he would discontinue his action, and that, in case he should so elect to discontinue the action, the taxed costs of the plt. from Nov. 6, 1908, to the date of the delivery of such amended defence and particulars should be borne by the deft., and the taxed costs of the deft. up to and including Nov. 6, 1908, should be borne by the plt. The effect of this order had been that, where a plt. discontinued his action, the deft. never got the costs of his particulars, because the Patents, Designs, and Trade Marks Act, 1883, s. 29, sub-s. 6, enacted that "on taxation of costs the plt. and deft. respectively should not be allowed any costs in respect of any particular delivered by them, unless the same is certified by the Court or a judge to have been proven, or to have been reasonable and proper"; and the Courts had refused to give any such certificate when the action was not heard. This section was, however, with others, repealed by s. 98 (b) of the Patents and Designs Act, 1907, "as from the date when R. S. C. regulating the matters dealt with in those enactments come into operation." Order LIIA of the R. S. C., which regulates procedure under the Patents and Designs Act, 1907, came into operation on June 3, 1908, and r. 22 of that order provides that the old rule shall apply when an action proceeds to trial, "but subject as aforesaid the costs of the issues raised by the particulars of breaches and the particulars of objections shall be in the discretion of the taxing Master." The plts. now moved to vary the order.

Neville J. said that the form of the order made by the district registrar was right, and he saw no reason for altering the form of order hitherto adopted in such cases. It might be that the new rule had altered the effect of the order, but in his opinion it was desirable in such cases that the taxing Master should decide upon taxation whether or not the deft. should

PATENT (Particulars)—continued.

have the costs of the particulars of objections. There were obvious disadvantages in dealing with the matter in Court. *ATKINSON v. BRITTON* Neville J. [1909] W. N. 102

3. — Practice—Patent action—Particulars of objection—Want of novelty—Sufficiency—R. S. C., 1883, Order LIIIA, r. 18.

Rule 18 of Order LIIIA, which deals with particulars of objection as to want of novelty in a patent action, distinguishes between a patent for a process and a patent for machinery or apparatus, and requires less detailed particulars in the former case than in the latter; and where prior user is alleged and the plt.'s patent is for a process only, if the deftd. has satisfied the requirements of the rule as to names, places, and dates, he will only be required in addition to give a description sufficient to identify the alleged prior user; he will not be required to give particulars of the apparatus employed by him in working the process relied upon by him as an anticipation nor to allow inspection of any samples in his possession of substances treated by that process. *MINERALS SEPARATION, LD. v. ORE CONCENTRATION CO. (1905), LD.*

C. A. [1909] 1 Ch. 744

Practice.

1. — Amendment—Leave to amend specification—Jurisdiction of comptroller—Petition for revocation presented after application for leave to amend but before decision thereon—Patents, Designs, and Trade Marks Act, 1883 (46 & 47 Vict. c. 57), s. 18, sub-s. 10; s. 19—Patents, Designs, and Trade Marks Act, 1888 (51 & 52 Vict. c. 50), s. 5.

An application for leave to amend the specification of a patent having been made to the comptroller under s. 18 of the Patents, &c., Act, 1883:—

Held, that the subsequent presentation of a petition for revocation of the patent, before the comptroller had given his decision, did not, by virtue of sub-s. 10 of s. 18, operate to suspend his jurisdiction, but that he could, notwithstanding the pendency of the petition, grant leave to amend.

Decision of Kekewich J., [1902] W. N. 137, affirmed. *WOOLFE v. AUTOMATIC PICTURE GALLERY, LD.*

C. A. [1903] 1 Ch. 18; [1902] W. N. 222

2. — Amendment of specification—Disclaimer—Pending litigation—Liberty to apply for leave to disclaim—Form of order—Patents, Designs, and Trade Marks Act, 1883 (46 & 47 Vict. c. 57), s. 19.

Upon an application by a patentee to the Court under s. 19, of the Patents, Designs, and Trade Marks Act, 1883, for liberty to apply at the Patent Office for leave to amend his specification by way of disclaimer, the Court is not concerned with the terms of the proposed amendment except for the purpose of guiding it in the exercise of its discretion under the section.

Consequently the Court will not refuse an application under this section upon the ground that the proposed amendment is not an amendment by way of disclaimer as distinguished from

PATENT (Practice)—continued.

correction or explanation unless it is satisfied that this is so by a mere perusal of the specification. *In re ALSOP'S PATENT* C. A. [1906]

W. N. 4; [1906] 1 Ch. 86

— Amendment of specification—Disclaimer—Terms—Infringement—Invalidity. See PATENT—Infringement. 8.

8. — Appeal—Time for appealing—Vacation—Extension of time—Special circumstances—Dilatoriness—Patent—Revocation—Patents and Designs Act, 1907 (7 Edw. 7, c. 29), s. 26—R. S. C., Order LIIIA, r. 4; Order LVIII, r. 15; Order LXIV, r. 7.

On Aug. 4, 1910, the comptroller refused an application for revocation of Mr. Beldam's patent. The applicant thereupon instructed his solicitors to take the necessary steps to appeal, but their clerk, who was in charge of the matter, had gone away for his holiday, and by some mistake nothing was done till the end of August, when instructions were sent to counsel to prepare a petition for appeal. But he was away from London and wrote that he had no facilities for drawing it, and could not do so. This letter reached the solicitors on Sept. 2, too late to make an application in chambers or instruct other counsel. The time limited by Rules of the Supreme Court, Order LIIIA, r. 4, for presenting a petition for appeal is one calendar month, and this expired on Sept. 4:—

Held, that time included in the Long Vacation must count in ascertaining the month allowed for appealing, and therefore that the appeal was out of time; and, further, that dilatoriness was not a "special circumstance" within Rules of the Supreme Court, Order LIIIA, r. 4, so as to enable the applicant to obtain an enlargement of the time. *In re BELDAM'S PATENT.* Parker J. [1910] W. N. 225

— Appeal, Jurisdiction in—Final decree of High Court of the Republic—Law of the Transvaal. See TRANSVAAL.

— Costs—Inspection of property, the subject of action—No order—Taxation. See COSTS. 37.

— Costs—Particulars of objection—Reasonableness—No evidence offered by plaintiffs. See PATENT—Infringement. 5.

4. — Estoppel—Action for infringement—Judgment for patentee—Order for inquiry as to damages—Subsequent revocation of patent—Estoppel by judgment.

A patentee brought an action for infringement of the patent. The defts. set up by way of defence that the patent was invalid on the ground of user prior to the grant of the patent. That defence failed, and the plt. at the trial obtained judgment for an injunction, and an order for an inquiry as to damages. Pending the inquiry, the defts., having discovered further instances of prior user, petitioned for revocation of the patent, and obtained an order for its revocation:—

Held (affirming the judgment of Parker J.)

PATENT (Practice)—continued.

that, for the purposes of the inquiry as to damages, the defts. were estopped by the judgment in the action from alleging that the patent was invalid, and therefore the plt. was entitled to substantial damages, notwithstanding the revocation of the patent. *POULTON v. ADJUSTABLE COVER AND BOILER BLOCK CO.* - **C. A. [1908] W. N. 167; [1908] 2 Ch. 430**

5. — *Parties—Title to patent at date of writ—Application for payment—Assignment of benefit of protection—Equitable assignee—Legal owner not a party—Amendment—Patent action—Infringement—R. S. C., 1883, Order XVI., r. 11.*

Appeal from a decision of Warrington J., [1904] W. N. 106; [1904] 2 Ch. 86, dismissed on the ground that there was no order against which the plts. could appeal. *E. M. BOWDEN'S PATENTS SYNDICATE, LD. v. HERBERT SMITH & Co.* - **A. C. [1904] W. N. 133; [1904] 2 Ch. 122**

6. — *Pending action for infringement—Amendment of specification without leave of Court—Subsequent action on amended specification—Invalidity of amendment—Patents, Designs, and Trade Marks Act, 1883 (46 & 47 Vict. c. 57), s. 18, sub-s. 1, 9, 10; s. 19—Patents Designs, and Trade Marks Act, 1888 (51 & 52 Vict. c. 50), s. 5.*

Sects. 18 and 19 of the Patents, &c., Act, 1883, which relate to the amendment of a specification, must be read together. Sect. 18 states what an applicant may do before litigation, and s. 19 states what he may do whilst in litigation; and if an applicant, whilst litigation is pending and without leave of the Court under s. 19, amends his specification under s. 18 by leave of the comptroller, the amendment is irregular and void notwithstanding sub-s. 9 of s. 18.

Sub-s. 10 of s. 18 is not limited to litigation pending between the same parties at the time when the application to amend is made, but refers to any action for infringement or petition for revocation pending at that time in relation to the patent. *J. B. BROOKS & Co. LD., v. LYCETT'S SADDLE AND MOTOR ACCESSORY CO., LD.* **Farwell J. [1904] W. N. 40; [1904] 1 Ch. 512**

7. — *Petition for revocation—Motion to amend specification—Comptroller—Advertisements—Terms—Costs—Practice—Patents and Designs Act, 1907 (7 Edw. 7, c. 29), ss. 22, 23, 92, sub-s. 2.*

An application under s. 22 of the Patents and Designs Act, 1907, for leave to amend a specification does not fall within sub-s. 2 of s. 92 of the Act, and therefore does not require to be made to the patent judge.

Notice of an application under s. 22 of the Act must be given to the comptroller, and the proposed amendments must be advertised in the Official Journal, before the amendments are considered by the Court; and the comptroller will be entitled to his costs of appearing on the application.

When amendments are allowed it will, as a general rule, be a term of the order that no injunction shall be asked in any action brought

PATENT (Practice)—continued.

for infringement of the patent in respect of articles made prior to the date of the order allowing the amendments, unless the patentee shall establish to the satisfaction of the Court that his original claim was framed in good faith and with reasonable skill and knowledge.

In re Geipel's Patent, [1903] 2 Ch. 715, followed on this point. *In re KLABER AND STEINBERG'S PATENT* - **Neville J. [1908] W. N. 50, 57, 89; [1908] 1 Ch. 847**

— Registration - Infringement - Patent and registered design for same invention. See *DESIGN*. 2.

8. — *Revocation, Petition for—Hearing in Court.*

A petition for revocation of a patent should be heard in open Court, and not, even by consent, in chambers.

Observations on *In re Scott's Patent*, (1903) 20 Rep. Pat. Cas. 604. *In re CLIFTON'S PATENT* **Buckley J. [1904] 2 Ch. 357**

— Sale of goods—Contract—Warranty—Patent or trade name—Evidence. See *SALE OF GOODS*. 6.

9. — *Several patents, Claim on—Separate causes of action, combining in one action—Particulars of objections—Defence—Embarrassing defendant—Limitation of claim—Procedure—Patent—Infringement—Patents, Designs, and Trade Marks Act, 1883 (46 & 47 Vict. c. 57), s. 29, sub-s. 2—R. S. C., 1883, Order XVIII., rr. 1, 8, 9; Order XIX., r. 27—Appeal—Further evidence, Admissibility of—Consent order.*

In a patent action for infringement, as in every other kind of action, the onus is on the plt. to prove that he has a definite cause of action against the deft., and he is not entitled to call upon the deft. to disprove the alleged infringement—in other words, to prove that the plt. has no cause of action against him. And this is so even where the plt. may be suing upon several patents in one action upon the ground that it is impossible for him, unless the deft. discloses the process of manufacture of the infringing article, to state definitely which of the patents in particular have been infringed.

The plts., the owners of twenty-three patents for "Saccharin," sued the deft., a trader who had purchased and imported from foreign manufacturers an article called "Sucramine," for alleged infringement, all twenty-three patents being united in one action. In their particulars the plts. stated generally that the deft. had infringed "all" the patents, but alleged only two specific cases of infringement. To enable him to prepare and deliver his defence with particulars of objections as required by s. 19, sub-s. 2 of the Patents, Designs, and Trade Marks Act, 1883, the deft., who said he did not know the process of the manufacture of sucramine, applied to Kekewich J. by summons that the plts. might be ordered to give further and better particulars of breaches, specifying which of the twenty-three patents they relied on as having been infringed, or that, under R. S. C., 1883, Order XVIII., rr. 1, 8, 9, and Order XIX., r. 27, the trial of the action might be limited to such

PATENT (Practice)—continued.

of the twenty-three patents, as being separate causes of action, as to the Court might seem just. The evidence on the summons showed that the patents were capable of division into three separate groups, so that the infringements specifically charged, if infringements of one group, could not be infringements of the others; but the plt. professed his inability to say which of the groups had been infringed. Kekewich J. ordered the summons to stand over until after the defence had been delivered:—

Held, on appeal, that the plts. were not entitled to unite the twenty-three patents in one action, but must be limited to selecting a certain number of them, not exceeding three in the first instance, upon which they would proceed with their action.

Saccharin Corporation, Ltd. v. Quincey, [1900] 2 Ch. 246; 17 Rep. Pat. Cas. 337, and *Saccharin Corporation, Ltd. v. Dawson*, (1902) 19 Rep. Pat. Cas. 169, distinguished.

In a patent action further evidence by affidavit and cross-examination thereon is not admissible upon an appeal except under special circumstances, or by the consent of the parties. *SACCHARIN CORPORATION, LD. v. WILD*

C. A. [1903] W. N. 7; [1903] 1 Ch. 410

Note.

See *Saccharin Corporation, Ltd. v. White (R.) & Sons*, *Ld.*, C. A. [1903] W. N. 120. See next Case.

10. — *Several patents, Claim on—Separate causes of action, Combining in one action—Particulars of objections—Defence—Embarrassing defendant—Limitation of claim—“In the first instance”—Procedure—Patent—Infringement—Patents, Designs, and Trade Marks Act, 1883 (46 & 47 Vict. c. 57), s. 29, sub-s. 2—R. S. C., 1883, Order XVIII., rr. 1, 8, 9; Order XIX., r. 27.*

This was a similar action to that of *Saccharin Corporation, Ltd. v. Wild*, [1903] 1 Ch. 410. [See preceding Case.] The plts. sued the defts. for infringement of the same twenty-three patents as formed the basis of that case; and the defts. asked that the plts. should specify which of the patents they relied on. By their notice of application for further directions the defts. asked “that an order might be made limiting the trial of this action in the first instance to such out of the said twenty-three letters patent as to the Court seemed just.”

The Court expressed an opinion that the restriction on the number of the patents to be sued upon ought not in the circumstances to be qualified by the words “in the first instance.”

Eventually the following order was agreed to by the parties:—

“This Court doth order that the order so far as it directed that the plts. should be limited in the first instance at the trial of this action to such number of the letters patent sued on herein not exceeding four as they might select be varied. And it is ordered that the plts. be at liberty to amend their statement of claim and particulars of breaches by discontinuing this action except as to seven patents, and by alleging as one cause of action infringement of one or other patent out

PATENT (Practice)—continued.

of a group of three patents, and as an additional cause of action infringement of one or other patent out of another group of four patents.

“And it is ordered that if the plts. shall not as to any of the patents so sued upon open or proceed upon their case sufficiently to enable the judge at the trial to decide whether any particulars of objections which may be delivered by the defts. are reasonable and proper the plts. shall be taken to admit that such particulars of objections are reasonable and proper, and a certificate to that effect shall be granted by the judge, and it is ordered that the costs of this appeal and in the Court below be costs in the action.” *SACCHARIN CORPORATION, LD. v. R. WHITE & SONS, LD.*

C. A. [1903] W. N. 120

Note.

See preceding Case.

Prolongation.

1. — *Extension of term—Jurisdiction to grant second extension—Patents and Designs Act, 1907 (7 Edw. 7, c. 29), s. 18.*

When a patent has once been extended for a further term the power given by s. 18 of the Patents and Designs Act, 1907, is exhausted, and the Court has no jurisdiction to grant a second extension. *In re THOMPSON'S PATENT*

Parker J. [1909] 2 Ch. 447

2. — *Insufficiency of accounts—Practice.*

The accounts presented to the Committee on an application for extension of a patent must be intelligible and complete, showing what remuneration the patentee has actually received. He cannot be allowed, except perhaps in very special circumstances, to supplement them by oral evidence. *In re WUTERICH'S PATENT*

P. C. [1903] A. C. 206

3. — *Petition by assignee of patents—Inventor dead—Prolongation refused.*

Where it appeared that the patented invention had no exceptional merit and involved no new principle, that the assignee of the patents had neither by himself nor his agents displayed suitable energy and business capacity in pushing them and that the inventor was dead and could not possibly, if living, have derived advantage from their extension:—

Held, that their prolongation must be refused.

In re VAN GELDER'S PATENTS. Ex Parte THOMPSON - - - P. C. [1907] A. C. 174

4. — *Petition by assignees—Expiration of foreign patents.*

Where the petitioners were assignees and purchasers of a British patent as a commercial speculation, and their accounts did not disclose with any clearness the extent of the profits made either by the inventor or the petitioners:—

Held, that prolongation must be refused, although the invention was one of great merit and worthy of exceptional consideration.

Hopkinson's Patent, [1897] A. C. 249, followed.

Sawby's Patent, (1870) L. R. 3 P. C. 292, followed.

PATENT (Prolongation)—continued.

Held, further, that the expiration of the foreign patents for the same invention and the failure of the British patentee to push the invention in this country for the first seven years of the life of the patent were serious, though not in themselves objections to a prolongation.

Semet and Solway's Patent, [1895] A. C. 78, followed. *In re HENDERSON'S PATENT*

P. C. [1901] A. C. 616

5. — *Petition by assignees—Prolongation of patent—Accounts of inventor's profits.*

Petition by assignees of a patent for its extension dismissed, no means of judging whether the inventor had been remunerated having been given. An application for adjournment was refused as unprecedented. *PEACH'S PATENT. Ex parte PEACH AND BOSWELL, HATFIELD & CO.*

P. C. [192] A. C. 414

6. — *Petition for prolongation—Particulars of objections—Patents and Designs Act, 1907, (7 Edw. 7, c. 29), s. 18—R. S. C. (Patents and Designs), 1908, Order LIIA, rr. 3, 17.*

Rule 3 of Rules of the Supreme Court (Patents and Designs), 1908 (Order LIIA), forms in itself, taken in connection with the Rules of the Supreme Court which are made applicable, a code by which all questions of practice relating to petitions for the extension of patents are to be governed, and the subsequent rules of the order as to particulars in cases of petitions for revocation and actions for infringement are governed by different considerations.

Rule 3 (C) gives the Court considerable latitude as to what particulars of objections to a prolongation should be given, and the considerations which apply are those which apply to pleadings generally. But the objector should at the earliest stage possible give the petitioner particulars of what he relies on as preventing the patent from being novel or from having subject-matter, including a concise statement of what he knows as to any literature, specifications, and the like documents relied on. *In re JOHNSON'S PATENT*

Parker J. [1908] 2 Ch. 487

Note.

See next Case.

7. — *Petition for prolongation—Questions to be considered—Patents and Designs Act, 1907 (7 Edw. 7, c. 29), s. 18.*

The power given to the Court by s. 18 of the Patents and Designs Act, 1907, to extend the term of a patent is a discretionary power which can only be exercised when the Court is satisfied that the patentee has been inadequately remunerated by his patent, and it is only where the value of the patentee's disclosure to the public largely exceeds the benefit derived by him from the patent that he can be said to have been inadequately remunerated. On an application for extension the first question for consideration is the nature of that disclosure, and, to determine what that nature is and what its value to the public is, questions of novelty and subject-matter, though not directly in issue, are of considerable materiality; evidence on these points cannot be altogether excluded, and it is the applicant's duty at the outset to bring to the notice of the Court all that may in any way

PATENT (Prolongation)—continued.

affect its judgment on these matters, but as a general rule it is sufficient for the petitioner to shew a *prima facie* case in support of novelty and subject-matter. The Court will pay especial attention to the fact that, although the thing disclosed may be minute as compared with the sum total of what was known previously, it may be the *sine qua non* of the successful application of existing knowledge and thus fall within the category of great inventions.

For the purpose of considering whether a patentee has been adequately remunerated profits on his foreign as well as on his English patents must be taken into account, and some allowance ought to be made for future profits on either which will probably be received before their expiration.

An applicant for extension must prove that he has done all a patentee could do to launch his invention on the British market, and it is his duty to state in his petition the facts of any alleged anticipation and to give such explanation as he can thereof, without leaving it to an objector to bring out those facts.

Duty of the Comptroller-General, when opposing an extension on the ground that British traders will unduly suffer if the extension be granted, defined. *In re JOHNSON'S PATENT* (No. 2) — **Parker J. [1909] 1 Ch. 114**

Purchase.

— Time—"Month"—Option to purchase patent rights within six months.

See CONTRACT. 29.

Receiver.

— Appointment—Practice—Patent—Equitable execution.

See RECEIVER.

Registration.

1. — *Prior publication or user—Amendment of specification—Renewal fees—West Australian Patent Act, 1888 (52 Vict. No. 5), ss. 23, 49—Letters of registration—Invalidity—Appeal from Western Australia.*

Under the provisions of s. 49 of the West Australian Patent Act, 1888, holders of patents obtained in Great Britain or any other country are enabled to obtain letters of registration in the Colony without the formalities and delay necessary on an application for a patent, but subject to all the incidents and conditions to which letters patent would be subject:—

Held, accordingly, that prior publication, or even prior user of an invention in the Colony after the date of its patent, affects the letters of registration.

The provisions of s. 23, as to "amendment of specification," are made applicable by s. 49 to letters of administration.

Where leave to amend a specification has been neither asked for nor granted, but the registrar has simply recorded an amendment without any jurisdiction to do so, it is invalid.

Renewal fees charged by the 2nd schedule of the Act on letters patent are not payable in respect of the letters of registration.

PATENT (Registration)—continued.

AUSTRALIAN GOLD RECOVERY CO. v. LAKE
VIEW CONSOLS - - P. C. [1901] A. C. 142

Revocation.

- Amendment—Petition for revocation—Application to amend specification—Comptroller—Practice.

See PATENT—Practice. 1.

- Disclaimer.

See PATENT—Disclaimer. 1.

- Hearing in Court—Patent—Petition.

See PATENT—Practice. 7.

- Leave to amend specification—Jurisdiction of comptroller — Petition for revocation presented after application for amendment—Jurisdiction.

See PATENT—Practice. 1.

1. — *Patented article or process manufactured or carried on exclusively or mainly out of United Kingdom—Failure in United Kingdom—Patents and Designs Act, 1907 (7 Edw. 7, c. 29), ss. 24, 27.*

If a patentee proves that he has done his best to fulfil the obligations arising under the Patents and Designs Act, 1907, by establishing in this country an industry in the patented article, and that his want of success has been due to circumstances beyond his control and not to the manner in which he has exercised the rights conferred upon him by his patent, the patent ought not to be revoked. *In re BREMER'S PATENT. Ex parte BRAULIK. In re HÖGNER'S PATENT. Ex parte BRAULIK* - Parker J. [1909] 2 Ch. 217

2. — *Patented article or process manufactured or carried on exclusively or mainly out of United Kingdom—Patents and Designs Act, 1907 (7 Edw. 7, c. 29), ss. 24, 27.*

Sect. 24 of the Patents and Designs Act, 1907, deals primarily with cases where the trade of this country has been injured by an abuse of the monopoly conferred by the patent, irrespective of anything which is being done abroad, while s. 27 deals primarily with cases where the object or effect of the use of such rights in the way they have been used has been to favour the development of industries abroad at the expense of industries in the United Kingdom.

The keynote of s. 27 is forfeiture of the patent for the abuse of the monopoly at the instance of a common informer, and any one, whether a foreign or a British subject, and whatever his motive, can, by satisfying the Comptroller of the existence of the circumstances contemplated in sub-s. 1, throw on the patentee the onus of proving, to prevent revocation, that the patented process or article is carried on or manufactured to an adequate extent within the United Kingdom, or of giving a satisfactory reason why it is not so carried on or manufactured.

Sect. 27 does not mean that in every case where more than 50 per cent. of the patented articles manufactured anywhere are made abroad the patentee can be called upon to defend his

PATENT (Revocation)—continued.

patent rights; if the article is manufactured in the United Kingdom to as great an extent as can reasonably be expected, having regard to the industrial development of other countries, no presumption against the patentee arises.

Sect. 27, sub-s. 1, institutes a comparison between the extent to which the article or process is manufactured or carried on in this country and the extent to which it is manufactured or carried on abroad, whether the articles are or are not imported into this country, and the section is meant to hit every abuse of the patentee's monopoly the object or result of which is to benefit foreigners at the expense of traders within the United Kingdom.

In determining whether there has been "adequate" manufacturing in the United Kingdom, or whether "satisfactory reasons" for the inadequacy are given by the patentee, it is left to the Comptroller, subject to appeal to the Court, to determine in each case, and having regard to all the circumstances, whether the home manufacture is adequate, or, if not, whether the reasons are satisfactory, he bearing in mind (a) that that manufacture is not adequate if it is lessened by the patentee exercising his patent rights to the hurt of British industry—e.g., by giving foreign traders a preference as to licences or otherwise over British traders—and (b) that reasons are not satisfactory which do not account for the inadequacy of the home manufacture by causes operating irrespective of any abuse of the monopoly.

On the other hand, a patentee who has allowed part of the demand in this country to be supplied by the importation of goods from abroad has not necessarily precluded himself from proving that there is adequate home manufacture or giving satisfactory reasons for the inadequacy of that manufacture, the policy of s. 27 being to secure fair play between foreign and British industries.

Statement of matters which may be considered in determining whether home manufacture is adequate, and what are satisfactory reasons for the inadequacy of that manufacture.

Sect. 27 applies both to patents in existence before the Act of 1907 and patents subsequently granted, although reasons might be accepted as satisfactory in the case of the former which would not be so accepted in the latter; but the fact that a patentee has before the Act precluded himself by licence or contract from working his patent in this country is not a satisfactory reason.

Observations on the then existing rules of procedure as to applications for the revocation of patents.

In 1900 two patents were granted to H. for inventions relating to a process of manufacturing imitation stone slabs. The invention was in commercial operation in Germany, France, and Belgium, but was never worked in the United Kingdom. The patentee devoted himself to the establishment abroad of industries in which the patented process was carried on, and used his monopoly to secure to a Belgian co., to whom in 1905 he granted an exclusive licence for the United Kingdom, the monopoly of selling in the

PATENT (Revocation)—*continued*.

United Kingdom articles manufactured by the co. in Belgium :—

Held, affirming the Comptroller, that the patent ought to be revoked forthwith, although in July, 1908, the patentee and the Belgian co. had issued newspaper advertisements in the United Kingdom expressing their willingness to sell or enter into working arrangements for the manufacture of goods in the United Kingdom under the patented process. *In re HATSCHEK'S PATENTS*. *Ex parte ZERENNER*. - **Parker J.** [1909] 2 Ch. 68

3. — Practice — Petition for revocation—Transfer to general list—Time for hearing.

Application to fix a date for the bearing of petition for revocation of a patent which had been transferred to the general list. Neither of the parties were ready for trial.

Buckley J. When a petition is presented for the revocation of a patent, it simply goes to be answered in the ordinary way. The respondent is not there; therefore, although it may be almost a foregone conclusion that it must go into the general list, there is no one there to say so. I have inquired into the practice, and there seems to be no means of putting the matter into proper train. The petition goes into the petition list, and council are instructed to appear and ask that it should go into the witness list. I am de-irous of making that a useful application; and I think that that is the time at which the judge should be asked to fix a date at which the petition should be put into the witness list as an effective cause. This was not done in this case, and there is a further application before me, and I am now asked to direct that the petition should not come into the list for hearing until a fixed date. In other words, I am asked to do now what might have been done on the first occasion. That is not a reasonable practice. When it comes into the petition list, as it must do, then in the presence of both parties liberty should be given to either of the parties to put it into the witness list for trial on or after a future day to be then fixed; that is, on a day when they are ready for trial. That has not been done, and counsel are here now and are not ready to go on with the petition. I therefore order the petition to be struck out of the list, and I give liberty to either of the parties to set it down when it shall be ready for trial on or after a day which I will fix now, not before. *In re BORROWMAN'S PATENT* - **Buckley J.** [1902] W. N. 56

— Leave to amend—Conditions.

See **PATENT—Disclaimer**. 1.

Sale.

1. — Contract for sale — Consideration, in part royalties—Assignment of patent—Sub-sale—Vendor's lien for unpaid royalties—Breach of contract—Damages—Election—Bankruptcy of defendant—Motion for judgment against defendant not appearing—Costs—Practice.

In 1904 the plts. agreed to sell S. some patents, and, as the consideration for the sale, S. agreed to pay them a sum of 5000*l.* cash and certain royalties, and S. also guaranteed the

PATENT (Sale)—*continued*.

payment of certain annual sums by way of minimum royalties during the continuance of the patents, the first payment to be made in June, 1906, and if default were made in payment of any minimum royalty the whole of the minimum royalties were to become immediately payable. S. paid the 5000*l.*, and the plts. by two deeds in common form assigned the patents to him for a nominal consideration and without reference to the agreement or any reservation of royalties. In 1905, S. sold and assigned the patents for value to a co. with notice of the agreement of 1904, and the co. paid the plts. the minimum royalty that fell due in June, 1906. Subsequently S. wrongfully repudiated the agreement of 1904, and the plts. brought an action against him and the co., alleging that S. by his wrongful repudiation had committed a breach of the agreement which entitled them "to treat it as at an end and to sue him in damages for the breach," and claiming, as against S., the total sum of the unpaid minimum royalties by way of damages for the breach, and, as against the co., a lien on the patents for the royalties as unpaid purchase-money. Subsequently S. became bankrupt, and his trustee in bankruptcy was added as a deft., but declined to take any part in the action. The co. pleaded that the plts., having elected to treat the agreement as at an end, had no claim for royalties thereunder against them :—

Held, that the plts. had not by their pleadings irrevocably elected to rescind the agreement, but could not sue both in damages for the breach and also for the consideration.

Held, also, following *Werderman v. Société Générale d'Électricité* (1881), 19 Ch. D. 246, as explained in *Bagot Pneumatic Tyre Co. v. Clipper Pneumatic Tyre Co.*, [1902] 1 Ch. 146, that the plts. had a vendor's lien on the patents in the hands of the co. for the unpaid minimum royalties.

Held, also, that the plts. were entitled, as against S., to an account of the royalties payable under the agreement of 1904 and to prove in his bankruptcy for the amount found due on the account.

Form of order as to costs when an action comes on for trial against one deft., and on motion for judgment against another deft. who has not appeared to the writ or does not appear at the trial, and the plt. recovers judgment against both with costs. **DANSK REKYLRIFFEL SYNDIKAT AKTIESELSKAB v. SNELL**

Neville J. [1908] W. N. 69; [1908] 2 Ch. 127

Threats.

1. — Action to restrain threats—Damages—Action for infringement—Discontinuance—Patents, Designs, and Trade Marks Act, 1883 (46 & 47 Vict. c. 57), s. 32.

The deft. owned a patent for an article of ladies' underwear. On May 24, 1906, her patent agent wrote to P. R., Id., who were customers of the plts., a letter which Kekewich J. and the C. A. held to be a threat within s. 32 of the Patents, Designs, and Trade Marks Act, 1883. Some correspondence followed, and on July 11, 1906, the deft.'s agent wrote to the plts. saying

PATENT (Threats)—*continued*.

that he had seen at the shop of P. R., Ltd., an invoice of an alleged anticipation, and the articles were admittedly very similar to those made under the deft.'s patent. He intimated that the deft. would not continue her threats, but that if damages were pressed for they must be settled by a judge. On July 13, 1906, the plts. brought their action under s. 32 of the Patents Act, 1883, for an injunction to restrain the threats made by the deft. to P. R., Ltd., and for damages. On July 18 the deft. commenced an action against the plts. for infringement of her patent. Particulars of alleged anticipations were put in by the plts., and the action was discontinued and the threats withdrawn.

Kekewich J. [1907] (W. N. 206) held that the action for infringement could not possibly have succeeded, and was not one in which the issue between the parties could be tried, and therefore the case did not come within the proviso at the end of s. 32 "that this section shall not apply if the person making the threats with due diligence commences and prosecutes an action for infringement of his patent":—

Held, that s. 32 had given a new cause of action to threatened persons in place of their old right at common law, which depended on their proving that the threats were mala fide. But this new right was subject to the proviso at the end of the section. If the plt. in the threats action contended that a patentee who had brought an action was not entitled to the benefit of this proviso the burden was on the plt. in the threats action to prove that the action for infringement was a bogus action. In this case there was no evidence whatever, and the mere opinion of the plt.'s agent could not prevent the issue being tried in that action. Appeal allowed. **CRAIG v. DOWDING - C. A. [1908] W. N. 22.**

2. — Injunction—Patents, Designs, and Trade Marks Act, 1883 (46 & 47 Vict. c. 57), s. 32.

Appeal by the deft. co. against an interlocutory injunction granted by Byrne J., [1902] W. N. 32, under s. 32 of the Patents, Designs, and Trade Marks Act, 1883, to restrain the co. from threatening legal proceedings against persons selling goods of the plt.'s manufacture as being an infringement of the deft. co.'s patented articles.

After the appeal was opened, it was by arrangement ordered that the injunction should be dissolved upon the deft. co. commencing an action against the plt. who was a domiciled foreigner, or against his agent in England, for infringement, the plt., undertaking in either case to give security for the costs of the action to the satisfaction of the judge in chambers. Liberty to apply. **ENGELS v. HUBERT UNCHANGEABLE EYELET CO. - C. A. [1902] W. N. 48**

Trade Mark.

— Patented article — Registration — Removal from register after twenty years.
See TRADE MARK. 21.

— Registration — Descriptive name — Patented article.
See TRADE MARK. 23.

PATENT (LETTERS PATENT)—Commissionary and Vicar-General—Legality of reservation.

See ECCLESIASTICAL LAW—Practice. 2.

PATERNITY—Evidence—Custody of child.

See INFANT—Custody. 2.

— Husband and wife, Statements by as to—Access or non-access before marriage.

See LEGITIMACY. 1, 2.

— Practice—Pleading—Custody of children.

See DIVORCE—Practice. 27.

PATRON—Advowson—Infant—Trustees to present during minority—Guardian.

See ECCLESIASTICAL LAW—Advowson. 1.

PAUPER—Married woman plaintiff.

See under HUSBAND AND WIFE—Practice.

— Poor law.

See under POOR LAW.

PAUPER LUNATIC.

See under LUNACY.

PAUPERIS—In forma—Appeal—Opinion of counsel.

See APPEAL. 13.

PAVING AND PAVING EXPENSES.

See under LONDON—Streets.

STREETS.

— Passage not being a thoroughfare—Requirement of owner to pave a second time with different material.

See LONDON—Paving. 1.

— Lease—Covenant by lessee to pay "outgoings"—Liability of lessee.

See LANDLORD AND TENANT. 57.

PAWNBROKER—*Illegal pawn of chattel—Pawner convicted of stealing the chattel—Subsequent prosecution by pawnbroker for illegal pawning—Pawnbrokers Act, 1872 (35 & 36 Vict. c. 93), s. 33.*

The conviction of a person for larceny of a chattel is no bar to his subsequent prosecution, under s. 33 of the Pawnbrokers Act, 1872, for illegally pawning the chattel which he had stolen. **PICKFORD v. CORRI**

Div. Ct. [1901] 2 K. B. 212

2. — Illegal pawning—Restitution on terms—Magistrates' order—Civil remedy—Pawnbrokers Act, 1872 (35 & 36 Vict. c. 93), s. 30.

An agent of the plts. having been convicted by a Court of summary jurisdiction of larceny as a bailee in respect of certain goods of the plts. which he had pawned with the deft., a pawnbroker, the Court made an order under s. 30, sub-s. 2, of the Pawnbrokers Act, 1872, on the application of the police officer in charge of the case, which application the plts.' representative, though present, neither supported nor opposed, for the return of the goods on payment by the plts. of the amount of the loan. The plts.

PAWNBROKER—continued.

did not comply with the order, and subsequently sued the deft. in the county court for the return of the goods and obtained judgment :—

Held, that the judgment was right. LEICES-TER & CO. v. CHERRYMAN - Div. Ct. [1907] W. N. 95 ; [1907] 2 K. B. 101

3. — *Licence — Certificate — “Successor” — Exemption from necessity of obtaining certificate — Pawnbrokers Act, 1872 (35 & 36 Vict. c. 93), s. 39.*

By s. 39 of the Pawnbrokers Act, 1872, a pawnbroker's licence is only to be granted to an applicant upon the production of a certificate granted under the Act, “save that it shall not be necessary for any person being at the commencement of this Act a licensed pawnbroker, or for his executors, administrators, assigns, or successors, to obtain such certificate” :—

Held, that the exemption in favour of a successor only enabled him to carry on without obtaining a certificate the actual business in which he had succeeded a pawnbroker licensed at the commencement of the Act of 1872, and did not enable him to open or carry on a new business merely upon the payment of the licence duty and without obtaining a certificate.

Reg. v. Commrs. of Inland Revenue (Ohlson's Case), [1891] 1 Q. B. 485, discussed. REX v. INLAND REVENUE COMMS. *Ex parte* SILVESTER - Div. Ct. [1906] W. N. 216 ; [1907] 1 K. B. 108

4. — *Pledge—Neglect to deliver to pledgor—Reasonable excuse—Loss of pledge—Pawnbrokers Act, 1872 (35 & 36 Vict. c. 93), s. 31.*

Where a pawnbroker has lost an article pledged to him, and is therefore not in possession of it at the time the person entitled to have delivery seeks to redeem it, the loss of the article constitutes, in the absence of dishonesty, a reasonable cause within the meaning of s. 31 of the Pawnbrokers Act, 1872, for neglecting to deliver the pledge to the person entitled to have delivery thereof. The pawnbroker is therefore not liable to be convicted of an offence under that section. ALLWORTHY & WALKER v. CLAYTON - Div. Ct. [1907] 2 K. B. 685

PAY — “Annual pay” — Pension — Free rooms and fuel.

See POLICE. 2.

PAYMENT—Action on judgment—Part payment—Real property limitation.

See LIMITATIONS, STATUTE OF. 18.

— Bankruptcy — Adjudication — Annulment—“Payment in full.”

See BANKRUPTCY—Annulment. 3.

— Cheque—Defective title—Receiving payment for a “customer”—Liability of banker.

See BANKER. 3.

— Debts paid out of capital — Provision for recoupment.

See ACCUMULATIONS. 7.

— Deed of assignment for benefit of creditors —Effect of payment to trustee under deed—Act of bankruptcy.

See BANKRUPTCY—Protected Transaction. 1.

PAYMENT—continued.

— Garnishee—Order nisi—Payment by garnishee to judgment creditor—Bankruptcy of judgment debtor.

See BANKRUPTCY—Garnishee. 1.

— Interest on payments in arrear—Law of Ontario.

See CANADA—Interest. 1.

— Mortgage—Joint account—Payment to one mortgagee—Partnership.

See MORTGAGE—Payment. 1.

— Notice requiring—Mortgage—Power of sale—Default for three months.

See MORTGAGE—Sale. 4.

— Part payment—Solicitor's bill.

See LIMITATIONS, STATUTE OF. 19.

— Payments on account — Pauper lunatic — Maintenance.

See POOR LAW. 9, 10.

— Practice.

See under PRACTICE—Payment, &c.

— Preferential payments—Administration of assets—Executor—Specialty debt.

See ADMINISTRATION. 8.

— Sham sale by debtor — Part payment of purchase-money—Right of proof.

See BANKRUPTCY—Proof. 11.

— Simple contract debt—Payment on account by tenant for life—Acknowledgment.

See LIMITATIONS, STATUTES OF. 24.

— Solicitor — Undertaking to pay money to person not client—Disciplinary jurisdiction of Court—Summary order for payment.

See SOLICITOR—Undertakings. 1.

— Solicitor's bill—Part payment—Retainer.

See LIMITATIONS, STATUTE OF. 19.

— Specific performance—Default in payment by purchaser—Forfeiture of deposit—Form of order.

See VENDOR AND PURCHASER—Deposit. 3.

— Trade union — Branch — Secession — Threatened distribution of funds —

Ultra vires—Action by head trustees for injunction and payment over of branch funds.

See TRADE UNION. 3.

PAYMENT INTO AND OUT OF COURT AND TENDER.

See under PRACTICE—Payment, &c.

PAYMENT OUT.

See under TRUSTEE—Payment out.

— Lands Clauses Acts.

See under LANDS CLAUSES ACTS—Payment out.

— Practice.

See under PRACTICE—Payment, &c.

PAYMENT OUT OF COURT—Practice.

See under PRACTICE—Payment, &c.

PECKHAM AND EAST DULWICH TRAMWAYS ACTS.*See* TRAMWAYS. 16.**PEDIGREE**—Evidence—Marriage—Administration suit.*See* PROBATE—Marriage. 1.

— Petition of right — Affidavit on information acquired from solicitor.

See EVIDENCE. 9.**PEERAGE**—Surrender of peerage to Sovereign—Grant by Sovereign of surrendered peerage—Honour—Dignity.

A peer cannot surrender his peerage to the Sovereign in any manner; and this law must be applied to a surrender made in 1302.

In 1302 Roger le Bygod, Earl of Norfolk, surrendered the earldom to Edward I. In 1312 Edward II. granted to Thomas de Brotherton and to the heirs of his body the earldom so surrendered. Thomas de Brotherton was frequently summoned by writ to parliament and sat there. Lord Mowbray, having proved his pedigree as senior co-heir of Thomas de Brotherton, alleged that the earldom had fallen into abeyance, and claimed that the abeyance should be determined in his favour as senior co-heir :—

Held, that the surrender by Roger le Bygod was invalid; that the charter of 1312 was consequently invalid; that the sitting in Parliament under the King's writ could not create an earldom; and that Lord Mowbray had not made out his claim. **EARLDOM OF NORFOLK PEERAGE CLAIM** (Committee for Privileges).

H. L. (E.) [1907] A. C. 10**2. — Secondary evidence.**

The House resolved that Albert Kirby Fairfax had made out his claim to the peerage, title, dignity and honour of Baron Fairfax of Cameron in the peerage of Scotland.

A predecessor of the claimant, the Rev. Bryan Fairfax, had made out his claim to be eighth Lord Fairfax in 1800, and the evidence produced by the claimant was mostly the testimony of relatives, an old family Bible and monumental inscriptions, there being no early record of births, deaths and marriages in Virginia, U.S., where the family had settled since 1750. And most of what records had existed were destroyed by the Northern Army during the American Civil War. In these circumstances the House accepted secondary evidence. **THE FAIRFAX PEERAGE. COMMITTEE FOR PRIVILEGES.**

H. L. (Sc.) [1908] W. N. 226**PENAL INTEREST**—Whether payable to bankrupt's estate or to the Treasury.*See* BANKRUPTCY—Penal Interest. 1.**PENAL SERVITUDE**—Order that sentence for new offence run concurrently with, or commence after expiration of, remanent sentence—Jurisdiction of Court.*See* CRIMINAL LAW—Appeal. 16.**PENALTIES**—Contract, Breach of — Measure of damages — Penalty or liquidated damages.*See* CONTRACT. 9.**PENALTIES**—*continued.*

— Liability to penalty—Laws of New South Wales.

See NEW SOUTH WALES. 25.

— Liquidated damages or—Forfeiture of sum deposited.

See CONTRACT. 11.

— Railway contract—Penalty for non-completion of line—Liquidated damages.

See CAPE OF GOOD HOPE. 12.

— Trade Union—Officer—Liability—Absence of fraud.

See TRADE UNION. 9.**PENALTY**—Advertisement of reward for return of stolen property — Dog — "Any property whatsoever."*See* CRIMINAL LAW—Larceny. 1.

— Copyright — Infringement — "Every such offence" — Minimum amount.

See COPYRIGHT—Pictures. 2.

— Customs Act—Using ship stores, duty being unpaid—Penalty for breaking seals on ship goods.

See VICTORIA. 6.

— Discretion to deprive informer of portion of penalty.

See JUSTICES. 16.

— Electric lighting—Laying electric lines near gas mains.

See ELECTRIC LIGHT. 7.

— Gas—"Daily" tests.

See GAS. 2.

— Liquidated damages or penalty—Contract—Time limit—Waiver.

See CONTRACT. 19.

— Navy—Enlistment—Penalty for making false statements.

See ARMY AND NAVY. 1.

— Street.

See under STREETS.

— Water supply to adjoining district—Sanction of Local Government Board—Penalty clause.

See LOCAL GOVERNMENT. 13.

— Waterworks—Water—Insufficiency of supply.

See under WATER.**PENANG (SETTLEMENT OF)**—Straits Settlements, Laws of.*See* STRAITS SETTLEMENTS. 2, 3.**PENDENTE LITE**—Alimony—Maintenance and education of children — Separation agreement—Jurisdiction of Court.*See* DIVORCE—Alimony. 1.**PENDING LITIGATION**—Conditions of sale—Rescission—Costs—Jurisdiction.*See* VENDOR AND PURCHASER—Rescission. 2.

PENSION.

— *Police Reservists Act*, 1902 (2 *Edw.* 7, c. 10).
See under **POLICE**.

— *Prison Officers (Pensions) Act*, 1902 (2 *Edw.* 7 c. 9).
See under **PRISON**.

— *Fiji, Colony of—Pension funds—Treasury determination, Jan. 4, 1907, declaring the revenues of the Colony of Fiji to be a public fund within s. 4 of the Superannuation Act, 1892. Price 1d. St. R. & O. 1907, No. 1.*

— *Old Age Pensions Act*, 1908 (8 *Edw.* 7, c. 40), provides for old age pensions.

The Old Age Pensions Regulations, Aug. 20 1908. St. R. & O. 1908, No. 638. Price 1d.

The Old Age Pensions Regulations, Aug. 20, 1908. Circular, Aug. 21, 1908, to Councils appointing Local Pension Committees. St. R. & O. 1908, No. 638. Price 1d.

Old Age Pensions Act, 1908. Financial Instructions for Pension Committees and Sub-committees, Aug. 20, 1908. 1908 (T.—Miscellaneous). Price 1d.

The Old Age Pensions Regulations, Oct. 15, 1908. St. R. & O. 1908, No. 812. Price 2d.

Old Age Pensions. O. in C., dated Dec. 21, 1908, annulling Regulation 25 of the Old Age Pensions Regulations, 1908. St. R. & O. 1908, No. 1319. Price 1d.

Pension Funds. Treasury Determination, May, 1910, declaring the Funds of the Colonial Audit Department to be a Public Fund within s. 4 of the Superannuation Act, 1892. St. R. & O. 1910, No. 472. Price 1d.

— Attachment of debts — Garnishee order — Retired pay of officer in army—Pension due but not paid—Bank crediting amount to customer.
See **ATTACHMENT**. 6.

— **Company**.
See under **COMPANY—Pension**.

— **Company—Ultra vires—Gratuitous payment—Pension to retired officer.**
See **COMPANY—Pension**. 1.

— **Police—Royal Irish Constabulary.**
See **POLICE**. 5.

— **Police constable.**
See under **POLICE**.

— **Police pension society—Claim under the rules by policeman obliged to resign.**
See **CANADA—Pensions**. 1.

— **Tea company—Trading and life assurance combined.**
See **INSURANCE (LIFE)**. 2.

PER STIRPES OR PER CAPITA—Bequest of residue—"Equally between" statutory next of kin.
See **WILL—Residue**. 1.

— **Per stirpes Will—Construction—Gift to issue "according to the parent stock."**
See **WILL—Issue**

PERFORMANCE—Contract—Impossibility.
See under **CONTRACT**.

PERJURY—Criminal law.
See under **CRIMINAL LAW—Perjury**.

PERPETUATING TESTIMONY—Examination, Order for—Discretion of Court.
See **LEGITIMACY**. 1, 2.

PERPETUATION OF TESTIMONY—Power of Court to direct trial of validity or—Lunatic so found—Lucid interval—Execution of deed.
See **LUNACY**. 8.

PERPETUITY.
See also under **REMOTENESS**.

— Absolute gift, Cutting down—Gift over on a compound event—Remoteness.
See **WILL—Absolute Gift**. 3.

1. — **Appointment—Remoteness—"Possibility on a possibility"—Gift to an unknown person for life, and after his death to his children—Personal estate.**

The old rule against "a possibility on a possibility," namely, that although an estate may be limited to an unborn person for life, yet a remainder cannot be limited to the children of that unborn person as purchasers, has no application to personal estate.

By a marriage settlement personal estate was settled in trust, after life interests given to the husband and wife, for the children of the marriage, or any issue born in the lifetime of the survivor of the husband or wife, in such shares and manner as they should jointly appoint. They appointed in equal shares to the three children of the marriage for life, and after their respective deaths to such of their children born in the lifetime of the husband and wife as should attain twenty-one:—

Held, a good appointment, and not void for remoteness. *In re Bowles, AMEDROZ v. Bowles* Farwell J. [1902] 2 Ch. 650

— **Charity—Gift to.**
See **CHARITY**. 11.

— **Company—Shares—Compulsory transfer at specified price in event of shareholder's bankruptcy.**
See **COMPANY—Shares**. 24.

— **Cy-pres—Legal devise to unborn tenant for life with remainders in tail.**
See **CY-PRES**. 1.

— **Dignity—Period of absolute vesting—Will—Construction.**
See **HEIRLOOMS**. 1.

— **Election—Power—Appointment.**
See **POWER OF APPOINTMENT**. 2, 5, 6.

— **Lessor and lessee—Option to purchase reversion in fee—Interest in land—Charity.**
See **LEASE**. 3.

— **Married woman.**
See **HUSBAND AND WIFE—Restraint on Anticipation**. 5.

PERPETUITY—*continued.*

- Option to purchase reversion in fee—Validity—Covenant running with land.
See COVENANT. 4.
- Power — Appointment — Election — Settlement.
See POWER OF APPOINTMENT. 2, 5, 6.
- Power of appointment—Title—Independent alternative gifts—Validity of ultimate gift—Settled land.
See VENDOR AND PURCHASER — Title. 11.
- Railway—Accommodation works—Place and time indefinite.
See RAILWAY—Accommodation Works.
- Railway—Severed lands—Grant of right to make “a tunnel” — Uncertainty — Assignability.
See RAILWAY—Accommodation Works.
- Remoteness—Possibility on a possibility—Settlement—Appointment—Validity.
See POWER OF APPOINTMENT. 23.

2. — *Remoteness—Devise—Contingent remainder—Equitable estate—Estate tail—Child en ventre sa mère—Retrospective operation of gift—Relation back.*

A testatrix devised real estate to trustees upon trust to pay the income to M. during her life, and after her death to stand possessed of the corpus upon trust for the second and every younger son of M., “born or to be born,” successively, during his life, with remainder, after the death of each such son, upon trust for his first and other sons, successively, in tail male.

The testatrix died in October, 1880, at which date M. had had (a) a son who died in 1887, (b) a son who was disqualified by the will from taking under the limitations, and she was pregnant of (c) a third son, S., who was born in Feb., 1881. M. died in 1886, S. being then still living:—

Held, affirming Buckley J., [1903] 1 Ch. 374, that the limitations after S.’s life estate were valid as not transgressing the rule against perpetuities.

For the purpose of deciding a question of perpetuity arising upon a gift such as the above, there is an established rule that a child en ventre sa mère at the time of the testator’s death, who is subsequently born, must be treated as having been alive at the testator’s death (*Long v. Blackhall*, (1797) 7 T. R. 100; 4 R. R. 73); and that rule is not to be departed from merely because it may be in the interest of the child to contend that the gift is void as infringing the rule against perpetuity. *In re WILMER’S TRUSTS.* MOORE v. WINGFIELD C. A. [1903] W. N. 118; [1903] 2 Ch. 411

Note.

See In re Wilmer’s Trusts, Wingfield v. Moore, Parker J., [1910] 2 Ch. 111. *See Estate Tail.* 1.

- Settlement—Power of appointment—Contingent remainder.
See POWER OF APPOINTMENT. 2.
- Underlease—Covenant for renewal—Personal covenant—Assignee of reversion.
See LANDLORD AND TENANT. 88.

PERPETUITY—*continued.*

- Will—Construction.
See under WILL — Perpetuities—Remoteness.

“PERSON.”

See CANADA.—Railway. 1.

- Lease—Assignment to limited company—Consent not to be withheld from “a respectable and responsible person”—Forfeiture.
See LANDLORD AND TENANT. 10.
- Lottery—Offence—Corporation.
See GAMING. 14.
- Name of Partnership—Firm—Transfer.
See COMPANY—Register. 3.

“PERSONAL ESTATE”—Leaseholds.

See WILL—Leaseholds. 1.

PERSONAL REPRESENTATIVE — Non-existence of legal—Sale.
See RECEIVER. 3.

PERSONALTY—Charge of debts and funeral and testamentary expenses on realty—Non-exoneration of personality.
See WILL—Exoneration. 1.

- Power to charge limited sum on real estate—General gift of personality—Effect as to exercising power to charge realty.
See WILL—Charges. 3.
- Realty or—Conversion.
See under CONVERSION.
- Realty or—Sale by mortgagee.
See MORTGAGE—Sale. 3.

PERVERTING COURSE OF JUSTICE—Publication of articles in newspaper.
See CONSPIRACY. 5.

PESTS.

See under INSECTS AND PESTS.

PETITION—Bankruptcy.

See under BANKRUPTCY.

- Company—Winding-up.
See under COMPANY—WINDING-UP—Practice.
- Patent — Prolongation — Questions to be considered.
See PATENT—Prolongation. 7.
- Patents.
See under PATENT.
- Payment into and out of Court.
See under PRACTICE—Payment, &c.
- Payment out of Court—Service.
See under PRACTICE—Service.
- Summons—Married woman.
See HUSBAND AND WIFE—Restraint on anticipation. 6.
- Summons or—Payment out—Fund carried over to separate account.
See PRACTICE—Payment out of Court. 4.

PETITION OF RIGHT — *International law Annexation — Liabilities of conquered State — Creditor's rights against conqueror — Act of State — Jurisdiction of municipal Courts.*

A petition of right alleged that, before the outbreak of war between the late South African Republic and Great Britain, gold, the produce of a mine in the Republic owned by the suppliants, had been taken from the suppliants by officials acting on behalf of the Government of the Republic; that the Government by the laws of the Republic was liable to return the gold or its value to the suppliants; and that by reason of the conquest and annexation of the territories of the Republic by Her late Majesty the obligation of the Government of the Republic towards the suppliants in respect of the gold was now binding upon His Majesty the King.

Held, on demurrer, that the petition disclosed no right on the part of the suppliants which could be enforced against His Majesty in any municipal Court.

There is no principal of international law by which after annexation of conquered territory, the conquering State becomes liable, in the absence of express stipulation to the contrary, to discharge financial liabilities of the conquered State incurred before the outbreak of war. *WEST RAND CENTRAL GOLD MINING CO. v. REX* Div. Ct. [1905] 2 K. B. 391

— Rent not to be deducted from salary where the officer is entitled to quarters.
See VICTORIA. 5.

— Statutory duty to submit — Damages for breach must be assessed by a jury.
See CANADA — Petition of Right. 1.

PHARMACY ACTS.

Poisons and Pharmacy Act, 1908 (8 Edw. 7, c. 55), regulates the sale of certain poisonous substances, and to amend the Pharmacy Acts.

— Medical profession.

See under MEDICAL PROFESSION.

— Sale of food and drugs Standard strength of drugs — *British Pharmacopœia.*
See ADULTERATION. 4.

1. — *Sale of poison — Label "Name" of seller — Pharmacy Act, 1868 (31 & 32 Vict. c. 121), s. 17.*

By s. 17 of the Pharmacy Act, 1868, "It shall be unlawful to sell any poison . . . unless the . . . bottle . . . in which such poison is contained be distinctly labelled with the . . . name and address of the seller of the poison . . . and any person selling poison otherwise than is herein provided shall, upon a summary conviction . . . be liable to a penalty . . ."

A duly qualified chemist sold poison which was contained in a bottle labelled with his trade name but not with his personal name.

Held, that the "name" of the seller mentioned in the section includes his trade name; that there had therefore been a sufficient compliance with the section; and that the chemist was not liable to the penalty imposed by it upon a person who sells poison contained in a bottle not labelled with the name of the seller. *EDWARDS v. PHARMACEUTICAL SOCIETY OF GREAT BRITAIN*

Div. Ct. [1910] 2 K. B. 766

PHARMACY ACTS—continued.

2. — *Sale of poisons—Order taken by canvassing agent—"Seller"—Pharmacy Act, 1868 (31 & 32 Vict. c. 12), s. 11.*

The deft., a seedsman and florist at Worcester, acted as agent to receive orders for a limited co. at Liverpool, who were the manufacturers of a preparation called "Weed Killer," which contained arsenic. The deft. took at his shop, for transmission to the co., an order for "Weed Killer," and received on account of the co. the price of the quantity ordered, for which he gave a receipt on a bill headed with the name of the co. He subsequently transmitted the order to the co., who sent the "Weed Killer" ordered to the giver of the order direct. The deft. was in the habit of taking, and dealing with, orders for "Weed Killer" in the manner above described, and he received a commission from the co. in respect of orders so transmitted by him and executed by the co. In an action in the county court against the deft. for a penalty for selling poison in contravention of the Pharmacy Act, 1868, s. 15, the county court judge gave judgment for the deft., on the ground that the deft. was not the seller of the "Weed Killer" within the meaning of the section, and he found as a fact that the deft. was in the position merely of a canvasser for the co., with authority to receive money on their account. On appeal against his decision:—

Held (affirming the judgment of Div. Ct., [1900] 1 Q. B. 454), that, there being evidence to support the county court judge's finding of fact, the Court was bound thereby, and that, upon that finding, the deft. did not sell the "Weed Killer" within the meaning of s. 15 of the Pharmacy Act, 1868. *PHARMACEUTICAL SOCIETY v. WHITE* C. A. [1901] W. N. 37; [1901] 1 K. B. 601

3. — *Sale of poisons—Pharmaceutical Society — Powers—Resolution—"Ought to be deemed a poison"—Pharmacy Act, 1868 (31 & 32 Vict. c. 121), ss. 2, 17, Sched. A.*

The appellant, a registered chemist, was convicted of selling veratrine, a poison, without having complied with the provisions of s. 17 of the Pharmacy Act, 1868, applicable to the sale of poisons within Part 1 of Sched. A. to the Act. Veratrine is a poisonous vegetable alkaloid, and therefore a poison within Part 1 of Sched. A. The veratrine in question formed one of the ingredients of an ointment sold by the appellant for the destruction of vermin. In 1869 the Pharmaceutical Society in pursuance of s. 2 of the Act declared by resolution that every compound containing any poison within the meaning of the Act, when sold for the destruction of vermin, should be deemed a poison within the Act, but did not place these compounds in pt. 1 of Sched. A. :—

Held, that the Pharmaceutical Society has power to declare that a compound containing as one of its ingredients a poison mentioned in pt. 1 of Sched. A. ought to be deemed a poison within pt. 2 of Sched. A.; that the article sold by the appellant was a poison within pt. 2 of Sched. A., and that the conviction was, therefore, wrong. *BROWN v. LEGGETT* Div. Ct. [1906]

1 K. B. 330

PHARMACY ACTS—*continued.*

4. — *Unregistered pharmaceutical chemist—Use of "name, title, or sign"—"Pharmacy"—Implication—Pharmacy Act, 1852 (15 & 16 Vict. c. 56), s. 12.*

Sect. 12 of the Pharmacy Act, 1852, provides that if a person, not being registered under the Act as a pharmaceutical chemist, shall assume, use, or exhibit any name, title, or sign implying that he is a person registered under the Act or that he is a member of the Pharmaceutical Society he shall be liable to a penalty.

The debt, carried on the business of a vendor of medicine at a shop over the door of which was his name followed by the words "The Pharmacy." The debt. was not registered as a pharmaceutical chemist under the Act of 1852:—

Held, that the debt had not assumed, used, or exhibited a name, title, or sign implying that he was registered under the act of 1852 or that he was a member of the Pharmaceutical Society.

PHARMACEUTICAL SOCIETY OF GREAT BRITAIN *v.* MERCER Div. Ct. [1909] W. N. (Correction, 223) 213; [1910] 1 K. B. 74

PHOSPHORUS (WHITE) MATCHES PROHIBITION ACT, 1908 (8 Edw. 7, c. 42).

See under MATCHES.

PHOTOGRAPHS—School—Good or valuable consideration.

See COPYRIGHT—Photographs. 2.

PHOTOGRAPHY—Multiplication by—Reproduction of substantial part.

See COPYRIGHT—Pictures. 1.

PICTURES—Copyright.

See under COPYRIGHT—Pictures.

— Distress—Proprietary club—Pictures sent for exhibition and sale.

See DISTRESS. 4.

PIECE-WORK—Implied obligation to provide workman with a reasonable amount of work.

See MASTER AND SERVANT—Contract of Service. 3, 4.

PIER—Damage by ship to—"Collision"—County Courts Admiralty Jurisdiction.

See SHIPPING—Collision. 11.

1. — *Unauthorized construction—Nuisance—Public right of access—Rates for passengers—Rates for vessels "mooring"—Recovery of rates paid under protest—Foreshore—Crown grant—Harbours, Docks, and Piers Clauses Act, 1847 (10 & 11 Vict. c. 27), ss. 2, 25, 33, 47—General Pier and Harbour Act, 1862 (25 & 26 Vict. c. 19), ss. 6, 13, 17, 19—Crown Lands Act, 1829 (10 Geo. 4, c. 50), s. 73—Crown Lands Act, 1866 (29 & 30 Vict. c. 62), s. 20.*

A provisional order of the Board of Trade, confirmed by a special Act of Parliament, authorized a co. to construct a pier and provided that when a certificate of the due construction of the pier had been given by the Board the co. might levy certain rates on passengers using the pier and on vessels "mooring" within limits defined by the order. In 1900 H., who had acquired the pier from the

PIER—*continued.*

assigns of the liquidator of the co., discovered that the pier had not been constructed within the limits of deviation fixed by the order, and that the certificate of the Board of Trade had not been given; and thereupon, with the view of perfecting his title, he obtained from the Crown a grant of the foreshore and bed of the sea on which the pier stood. In 1907 the plts. ran passenger steamers to the pier, and the M. Co., to whom H. had leased the pier, refused to allow the plts.' steamers to come alongside the pier except on payment of a lump sum for the season for passenger rates, and also "mooring" rates. The plts. brought an action for an injunction to restrain the M. Co. and H. from excluding them and their passengers from using the pier and for repayment of rates paid under protest:—

Held, that H. was now by virtue of grants from the Crown owner of the soil and the structure upon it, and was entitled to say that the pier had not been built under the powers conferred by, and was not subject to the liabilities imposed by, the provisional order; that it was his pier, and whether it was a nuisance or not (as to which the Court expressed no opinion) he was in a position to exclude the plts. from it.

Decision of Neville J., [1908] 2 Ch. 460, affirmed. LIVERPOOL AND NORTH WALES STEAMSHIP CO. *v.* MERSEY TRADING CO.

C. A. [1908] W. N. 233; [1909] 1 Ch. 209

PILOTAGE—Shipping.

See under SHIPPING—Pilotage.

"PIRATES"—Meaning of, in policy—Seizure of goods by political malcontents.

See INSURANCE (MARINE). 17.

PISTOLS—*Pistols Act, 1903 (3 Edw. 7, c. 18), regulates the sale and use of pistols or other fire-arms.*

1. — *Air-gun—Toy or weapon—Sale by retail—Pistols Act, 1903 (3 Edw. 7, c. 18), ss. 2, 3.*

The Pistols Act, 1903, does not apply to a mere toy, but it does apply to an air-gun if it is a weapon from which a shot, bullet, or other missile can be discharged, although it is not a firearm. BRYSON *v.* GAMAGE, LD.

Div. Ct. [1907] W. N. 164; [1907] 2 K. B. 630

2. — *Sale—Conditions—For use by purchaser in his house—Reasonable proof—Statement signed by Inspector of Police or Justice of the Peace—Pistols Act, 1903 (3 Edw. 7, c. 18), s. 3.*

On the sale of a pistol to a person who being a householder purposes to use such pistol only in his own house or the curtilage thereof it is necessary under s. 3 of the Pistols Act, 1903, not only that reasonable proof of these facts shall be given to the vendor, but also that the intending purchaser shall produce to the vendor a statement to that effect signed by himself and either by a police officer or a justice of the peace. MATTHEWS *v.* GRAY - - - Div. Ct. [1909]

W. N. 88; [1909] 2 K. B. 89

PITWOOD—Carriage—Rates—Measurement weight or actual weight.

See RAILWAY—Carriage. 1.

PLANS—Building scheme.*See* BUILDING SCHEME. 1.

— Deposit of plan—Buildings—Time limited for commencement of work.
See BUILDINGS. 2.

— Foreshore—Conveyance of land “bounded by seashore” — Parcels — Dimensions — Boundary line.
See SEASHORE. 1.

— Highway—Diversion—Sufficiency of plan.
See HIGHWAY. 7.

— Implied representation—Power to vary — Cul-de-sac—Dedication to public.
See BUILDING SCHEME. 1.

— Light—Derogation from grant—Implication — Building agreement—Easement.
See LIGHT AND AIR. 7.

— London.
See under LONDON—Plans.

— Malicious refusal of local authority to approve — Action.
See LOCAL GOVERNMENT. 26.

— Negligence of architect in preparing plans — Plans not used—Nominal damages.
See ARCHITECT. 1.

— Property in plans—Completion of work— Claim of architect—Custom—Reasonableness.
See ARCHITECT. 2.

— Railway company — Statutory powers — Deposited plans — Limits of deviation — Medium filium.
See RAILWAY—Plans. 1.

— Restrictive covenant—Building land—Plans to be submitted—Bankruptcy of lessee — Re-entry by covenantor—Liability of covenantor for his assigns—Past breach.
See COVENANT. 7.

— Vendor and purchaser.
See under VENDOR AND PURCHASER—Plan.

PLANTS — Tramway company — Damage to plants in adjoining land.
See TRAMWAYS. 10.

PLATE — *O. in C., dated May 11, 1906, fixing distinctive mark on foreign plate, and prescribing form of statement when plate is brought to be assayed.*—**ST. R. & O. 1906, No. 386** — *Price 1d.*

1. — *Assay — Hall mark — Watch-cases — Foreign watches—Customs Act, 1842 (5 & 6 Vict. c. 47), s. 59.*

Gold and silver watch-cases, forming parts of finished watches imported into the United Kingdom from abroad, are gold and silver plate within the meaning of the Customs Act, 1842 (5 & 6 Vict. c. 47), s. 59.

So held, reversing the judgment of Channell J., [1905] 2 K. B. 586. GOLDSMITHS' Co. v. WYATT C. A. [1906] W. N. 219; [1907] 1 K. B. 95

— Licence to deal in plate—Sale of packets of tea containing coupons—Prizes consisting of plate.
See REVENUE—Plate. 1.

PLATE—*continued.*

— Will—Construction.

See under WILL—Plate.

— Will— Construction — Gift to officers' regimental mess to maintain a library.
See CHARITY. 41.

PLEA—Deed—Misrepresentation as to contents — Plea of non est factum.
See DEED. 5.

PLEADING.*See* under PRACTICE—Pleading.

— Criminal law.

See under CRIMINAL LAW.

PLEDGE—Authority of wife to pledge husband's credit—Contract by wife “otherwise than as agent.”
See HUSBAND AND WIFE—Authority. 1.

— Authority of wife to pledge husband's credit — Presumption arising from co-habitation.
See HUSBAND AND WIFE—Liability. 1.

— Banker's lien — Stockbroker — Authority to borrow—Pledge of client's security—Overdraft—Special borrowing.
See BANKER. 9.

— Delivery of chattels by pledgee with notice of act of bankruptcy — Fraud of debtors.
See BANKRUPTCY—Trustee. 7.

— Freight not conditional, Pledge of—Part of freight payable—Partial loss.
See INSURANCE (MARINE). 14.

— Implied authority to wife to pledge her husband's credit.
See DIVORCE—Costs. 6.

— “Mercantile agent” — Authority to pledge, Extent of—Custom of particular trade.
See FACTOR. 1.

— Mercantile agent—Goods on sale or return— Authority to pledge.
See FACTOR. 2.

— Pawnbroker.
See under PAWNBROKER.

— Sale or return—Sale for cash only—Passing of property—“Act adopting the transaction.”
See SALE OF GOODS. 17.

— Shares — Equitable mortgage — Deposit of certificate—Foreclosure.
See COMPANY—Shares. 9.

— Stock Exchange—Pledge of shares by broker with jobber against settling day—Liability of jobber to account as mortgagee,
See MORTGAGE—Stock Exchange. 1.

PLENE ADMINISTRAVIT—Judgment against executor—Insolvent estate.
See EXECUTOR—Retainer. 6.

— Mortgage debt—Judgment against executor — Statute of Limitations not pleaded.
See ADMINISTRATION. 28.

PLURALITIES ACT—Beneficed clergyman—Commission issued by bishop—Evidence.

See **DEFAMATION—Pluralities Act.** 1.

— Lease of rectory—Omission of statutory “condition for avoiding the same” on bishop ordering personal residence—Void or voidable.

See **ECCELESIASTICAL LAW—Rectory.** 1.

POACHING—Game.

See under **GAME.**

POACHING PREVENTION ACT, 1862—Conviction of person from whom eggs seized quashed—Liability of police officer.

See **GAME.** 5.

POISONS.

Poisons and Pharmacy Act, 1908 (8 Edw. 7, c. 55), regulates the sale of certain poisonous substances, and to amend the Pharmacy Acts.

England and Scotland. Order in Council, April 2, 1909, making Regs. under s. 2 of the Poisons and Pharmacy Act, 1908, as to the Sale of certain Poisonous Substances for Agricultural and Horticultural Purposes. St. R. & O., 1909, No. 345. Price 1d.

— Fisheries—Poisoning fish in salmon river—Construction of statutes—Criminal law.
See **FISHERY.** 7.

— Sale of—“Name” of seller.

See **PHARMACY ACTS.** 1.

— Sale of—Order taken by canvassing agent—“Seller.”

See **PHARMACY ACTS.** 2.

— Sale of—Pharmaceutical Society—Powers—Reservation—“Ought to be deemed a Poison.”

See **PHARMACY ACTS.** 3.

POLICE.

See also under **LONDON—Police.**

Police Reservists Act, 1902 (2 Edw. 7, c. 10), amends the law as to pensions and gratuities of police reservists called out on permanent service.

Police (Superannuation) Act, 1906 (6 Edw. 7, c. 7), is an Act to amend the law relating to the superannuation of constables.

Police (Superannuation) Act, 1908 (8 Edw. 7, c. 5), amends the law relating to the superannuation of the police.

Police (Liverpool Inquiry) Act, 1909 (9 Edw. 7, c. 35).

Police Act, 1909 (9 Edw. 7, c. 40), is an Act to amend the Metropolitan Police Acts, 1829 to 1899, and to make better provision for the widows and children of constables who lose their lives in the execution of their duty.

Police (Weekly Rest-day) Act, 1910 (10 Edw. 7 & 1 Geo. 5, c. 13), is an Act to facilitate the grant to members of the constabulary of one day's rest off duty in every seven.

1. — Constable—Obstructing police in execution of duty—Giving warning of “police trap”—Motor cars—Prevention of Crimes Amendment Act, 1885 (48 & 49 Vict. c. 75), s. 2.

POLICE—continued.

Two constables, having measured certain distances on a road much frequented by motor cars, were watching in order to ascertain the pace at which each car passed over the measured distance, with a view to discovering whether it was proceeding at an illegal rate of speed. The respondent gave a warning of this fact to approaching cars, which then slackened speed. There was no evidence that the respondent was acting in concert with any of the drivers of the cars, or that any car when the warning was given was going at an illegal pace:—

Held, that the respondent was not guilty of the offence of obstructing the constables when in the execution of their duty within the meaning of s. 2 of the Prevention of Crimes Amendment Act, 1885. **BASTABLE v. LITTLE**

Div. Ct. [1906] W. N. 196; [1907] 1 K. B. 59

— Costs—Criminal prosecutions.

See under **CRIMINAL LAW—Costs.**

— Game—Seizure and detention by police officer of partridge eggs—Justification under statute—Subsequent proceedings under different statute—Liability.

See **GAME.** 5.

— Motor car—Police trap—Wilful obstruction of constable in execution of his duty.

See **MOTOR CARS.** 9.

2. — Pension—“Annual pay”—Free rooms and fuel—Police Act, 1890 (53 & 54 Vict. c. 45), *Sched. I., rr. 1, 11.*

By the Police Act, 1890, a constable, after a certain number of years' approved service is entitled to a pension, which is to be calculated on the amount of his “annual pay” at the date of his retirement.

A divisional inspector of police with his family resided free of rent at the police station, and had the free use of fuel, gas, and water:—

Held, that the value of the free residence and fuel, gas, and water was not part of his “pay” for the purpose of calculating his pension.

When a constable appeals to quarter sessions, under s. 11 of the Police Act, 1890, from the decision of the watch committee as to the amount of his pension, a case may be stated for the opinion of the K. B. Div. on a question of law. **GOODWIN v. SHEFFIELD CORPORATION**

Div. Ct. [1902] 1 K. B. 629

3. — Pension — “Approved service”—Continuity of service—Character of service—Certificate of chief constable—Evidence to contradict certificate—Police Act, 1890 (53 & 54 Vict. c. 45), *ss. 1, 4.*

The “approved service” for not less than twenty-five years required by the Police Act, 1890, s. 1, to entitle a constable to a pension on retirement need not be continuous service.

The decisions of the K. B. Div. [1904] 1 K. B. 522, and of the C. A. [1904] 2 K. B. 514, on this point reversed.

A certificate of “approved service” under s. 4, sub-s. 1, of the Act, that is, of diligent and faithful service, must be under the order of the police authority. A certificate signed by the chief officer of a police force under s. 4, sub-s. 2, is a certificate of the period of the service, not of

POLICE—continued.

its character. *GARBUTT v. DURHAM JOINT COMMITTEE* **H. L. (E.) [1906] W. N. 76 ; [1906] A. C. 291**

4. — *Pension of police constable—Justices—Quarter sessions—Jurisdiction of the High Court—Practice—Case stated from quarter sessions—Enactment that order of the quarter sessions shall be final—Police Act, 1890 (53 & 54 Vict. c. 45), s. 11.*

Where under s. 11 of the Police Act, 1890, there is an appeal to quarter sessions as to the amount of a constable's pension, the Court of quarter sessions may make such an order as appears to the Court just, and from that order there is no appeal.

Decision of the C. A., [1907] 2 K. B. 591, reversed.

Decision of the K. B. Div. (not reported) restored. *KYDD v. LIVERPOOL WATCH COMMITTEE* **H. L. (E.) [1908] W. N. 164 ; [1908] A. C. 327**

Note

Upon another point, *Kydd v. Liverpool Watch Committee*, C. A., [1908] W. N. 26. *See Appeal.* 13.

5. — *Pension—Service in more than one "police force"—"Police force with a salary paid out of money provided by Parliament"—Royal Irish Constabulary—Determination of proportions in which pension payable—Mandamus to Treasury—Servants of Crown—Police Act, 1890 (53 & 54 Vict. c. 45), ss. 14, 33.*

By s. 14 of the Police Act, 1890, "where a person has served in two or all of the following capacities—(i.) as a civil servant within the meaning of the Superannuation Act, 1817 ; (ii.) in a police force with a salary paid out of the police fund ; (iii.) in a police force with a salary paid out of money provided by Parliament ; he shall be entitled to reckon his entire period of service in both or all capacities for the purposes of pension Provided as follows . . . (2.) The pension shall be payable from money provided by Parliament and from the police pension fund in such proportions as the Treasury may determine, regard being had to the period of service and the salary received in each capacity." By s. 33 : "In this Act, unless the context otherwise requires . . . the expression 'police force' means a force maintained by one of the police authorities mentioned in the Third Schedule to the Act. By s. 40 the Act is not to extend to Scotland or Ireland.

A member of the Royal Irish Constabulary, which was a force with a salary paid out of money provided by Parliament, removed from that force with the written sanction of the chief officer thereof to the police force of a county in England. Upon his retirement from this latter force he became, under the Police Act, 1890, entitled to, and was granted by the police authority of the county, a pension calculated upon the number of years of his approved service in both forces. The police authority of the county applied to the Treasury, under s. 14 of the Act, to determine the proportions in which the pension should be payable from money provided

POLICE—continued.

by Parliament and from the county police pension fund, but the Treasury refused to do so upon the ground that the Royal Irish Constabulary was not a "police force" within the definition in s. 33, as it was not maintained by any of the police authorities mentioned in Sched. III., and that therefore s. 14 did not apply. Upon an application by the police authority for a mandamus :—

Held, that, as the Royal Irish Constabulary was the only police force in which the salaries of the members were paid out of money provided by Parliament, the context required that the expression "police force" in s. 14, clause (iii.), should have its ordinary meaning, and not the limited meaning contained in the definition in s. 33, and that therefore it included the Royal Irish Constabulary, and s. 14 applied ; and that a mandamus would lie to the Treasury to determine the proportions in which the pension was payable under s. 14. *REX v. LORDS COMMISSIONERS OF HIS MAJESTY'S TREASURY*

Div. Ct. [1909] 2 K. B. 183

6. — *Pension—Special duty allowance—"Annual pay"—Police Act, 1890 (c. 45), Sched. I., Rules 1, 11.*

By the Police Act, 1890, a constable who has completed a certain number of years' approved service is entitled to a pension which is to be "calculated according to the amount of his annual pay at the date of his retirement."

A constable at the date of his retirement was receiving 39s. a week, namely, 32s. being the ordinary pay of his rank and service, and 7s. in respect of special duty which he had performed for some years. He signed the weekly pay-lists in which the 32s. was entered in a column headed "Amount of Pay," and the 7s. in a column headed "Allowance for Special Duties" :—

Held, that the 7s. a week formed no part of his "pay" for the purpose of calculating his pension.

By Lord Davey : It would have formed part of his "pay" if he had not by signing the weekly pay-sheets in that form contracted himself out of the right to claim it.

The decision of the C. A., [1901] 1 K. B. 384, affirmed. *UPPERTON v. RIDLEY*

H. L. (E.) [1906] W. N. 104 ; [1903] A. C. 281

— Police trap—Motor car.

See MOTOR CAR. 9.

— Railway company—Arrest by company's special constable—Liability of company.

See RAILWAY—False Imprisonment. 1.

— Street betting—Metropolitan Police Act, 1839.

See under BETTING.

— Sunday observation prosecution—Consent in writing of chief officer of police.

See JUSTICES. 19.

POLICE COURTS—London.

See under LONDON—Police Courts.

POLICY—Insurance.

See under **HUSBAND AND WIFE**—**Insurance**, **INSURANCE**, **INSURANCE (ACCIDENT)**, **INSURANCE (EMPLOYERS' LIABILITY)**, **INSURANCE (FIRE)**, **INSURANCE (LIFE)**, **INSURANCE (MARINE)**, and **INSURANCE (PROFESSIONAL)**.

POLL—Demand of, What amounts to.

See **CORPORATION**. 1.

— Voting—"Personally or by proxy"—Power of chairman to direct manner of taking.

See **COMPANY**—**Meetings**. 9.

POLLING—County councils.

See under **COUNTY COUNCILS**.

— Parliamentary boroughs.

See under **PARLIAMENT**.

POLLUTION—Duties of county council—River Thames—Sewer.

See **LONDON**—**Sewers**. 5.

— River.

See under **RIVER**.

— Sewers.

See under **SEWERS**.

— Stream.

See under **STREAM**.

— Water.

See under **WATER**.

PONTOONS—Rates—"Land covered with water"—Pontoons floating over excavated ground.

See **RATES**. 50.

PONTYPRIDD WATERWORKS—Water supply

— Action—Joinder of Attorney-General—Necessity for.

See **WATER**.

POOR LAW.

Poor Law (Dissolution of School Districts and Adjustments) Act, 1903 (3 Edw. 7, c. 19), gives power to dissolve School Districts formed under the Acts relating to the relief of the poor, and for facilitating adjustments on alterations of areas or authorities under those Acts.

Guardians. Poor Law Conferences Order, Feb. 26, 1903. St. R. & O. 1903, No. 163. Price 1d.

Poor Law Authorities (Transfer of Property) Act, 1904 (4 Edw. 7, c. 20), makes provision for the transfer of property and other matters consequent upon the dissolution of districts and poor law unions or the addition of one poor law union to another.

Released Persons (Poor Law Relief) Act, 1907 (7 Edw. 7, c. 14), is an Act to make better provision as to the relief of persons released from detention in prisons, reformatory and industrial schools, and inebriate reformatories.

POOR LAW—continued.

Prisoner, England. Removal. Order, under the Released Persons (Poor Law Relief) Act, 1907, prescribing Form of Order of a Justice for Removal of an Inebriate on Release to, and for Reception in, a Workhouse. St. R. & O. 1907, No. 1036. Price 1d.

Prisoner, England. Removal. Order, under the Released Persons (Poor Law Relief) Act, 1907, prescribing Form of Order of a Justice for Removal of an Inmate of a Reformatory or Industrial School on Release to, and for Reception in, a Workhouse. St. R. & O. 1907, No. 1037. Price 1d.

Prisoner, England. Removal. Order, under the Released Persons (Poor Law Relief) Act, 1907, prescribing Form of Notice of intended Release of an Inmate of a Reformatory or Industrial School who, by reason of Infirmary of Mind or Body, requires immediate Poor Law Relief. St. R. & O. 1907, No. 1038. Price 1d.

Prisoner, England. Removal. Order, under the Released Persons (Poor Law Relief) Act, 1907, prescribing Form of Notice of intended Release of an Inebriate who, by reason of Infirmary of Mind or Body, requires immediate Poor Law Relief. St. R. & O. 1907, No. 1039. Price 1d.

Poor (England)—Relief. The Boarding-out (Within Unions) Order, Dec. 31, 1909. St. R. & O. 1909, No. 1498. Price 1d.

Children under the Poor Law. Circular, June 16, 1910, to Board of Guardians. 1910 (R.—Local Government Board).

1. — *Appeal against poor rate—Assessment committee as respondents—Consent of guardians—Notice of meeting of guardians—Union Assessment Committee Amendment Act, 1864 (27 & 28 Vict. c. 39), s. 2—Divided Parishes and Poor Law Amendment Act, 1882 (45 & 46 Vict. c. 58), s. 12.*

Sect. 12 of the Divided Parishes and Poor Law Amendment Act, 1882, which enacts that where, under the Poor Law Amendment Act, 1834, or any of the Acts amending the same, the consent in writing of a majority of the guardians of a union is required it shall be deemed a sufficient compliance with such requirement if a resolution giving consent is passed at a meeting of the guardians, of which meeting, and of the business to be transacted thereat, not less than fourteen days' notice shall be given to each guardian, is confined to cases of statutory enactments by which the consent in writing of a majority of the guardians of a union is required, and a fourteen days' notice is not necessary of a meeting at which the consent of the guardians is to be asked, under s. 2 of the Union Assessment Committee Amendment Act, 1864, to the appearance of the assessment committee as respondents to an appeal against a poor-rate. *SMITH v. LEIGH UNION*

C. A. [1904] 1 K. B. 484

— Auditor—Certiorari—Right of Court to review surcharge.

See **LOCAL GOVERNMENT**. 1.

POOR LAW—continued.

— Bastardy laws—Jurisdiction of justice.
See **BASTARDY**. 4.

2. — *Desertion—Separation order—Lunatic—Irremovability—Appeal to Quarter Sessions—Poor Removal Act, 1861 (24 & 25 Vict. c. 55), s. 3, —Lunacy Act, 1890 (53 & 54 Vict. c. 5), ss. 294, 303.*

On Oct. 28, 1902, a married woman left her husband because he had contracted a venereal disease by misconduct with other women. On Nov. 17, 1902, on a complaint by her that her husband had deserted her, a Court of summary jurisdiction granted a separation order under the Summary Jurisdiction (Married Women) Act, 1895. The wife never subsequently cohabited with her husband, and she resided in the district of the respondent union for more than a year previously to Oct. 6, 1908, on which date she was sent to an asylum as a pauper lunatic :—

Held, that the husband had deserted his wife within the meaning of s. 3 of the Poor Removal Act, 1861; that the separation order did not put an end to the desertion; and that the wife was, therefore, irremovable from the respondent union.

Quære, whether the separation order was conclusive, or admissible, evidence of the fact of desertion.

Sects. 286 to 298 of the Lunacy Act, 1890, which provide that, where the settlement of a pauper lunatic can be ascertained, the expense of maintaining the lunatic shall be paid by the union in which the lunatic's settlement is, and, where that cannot be ascertained, by the union in which the lunatic has become chargeable, must be read subject to the exception in s. 294 that where a lunatic has become irremovable from a union the expenses shall be paid by that union, and not by the union where the lunatic's settlement is, and, therefore, s. 303, which gives a right of appeal to quarter sessions against an order of justices adjudging the settlement of a lunatic must be read as giving a similar right of appeal against an order adjudging that a lunatic has become irremovable. **EASTBOURNE GUARDIANS v. CROYDON GUARDIANS.**

Div. Ct. [1910] 2 K. B. 16

3. — *Dissolution of union—Uniting of parishes—Consent of guardians of union—Local government—Divided Parishes and Poor Law Amendment Act, 1876 (39 & 40 Vict. c. 61), s. 11—Poor Law Amendment Act, 1844 (7 & 8 Vict. c. 101), s. 64.*

Under the Divided Parishes and Poor Law Amendment Act, 1876, the Local Government Board has power to dissolve any union, whether formed under a general or a local Act.

The consent of the guardians of a union is not required to the uniting of a parish with other parishes under s. 64 of the Poor Law Amendment Act, 1844. The consent required concerns only the guardians of the parish, where there are such guardians.

Decision of the C. A., [1908] 2 K. B. 368 reversed, and decision of the K. B. D. restored. **LOCAL GOVERNMENT BOARD v. SOUTH STONEHAM UNION** - **H. L. (E) [1908] W. N. 241; [1909] A. C. 57**

POOR LAW—continued.

— Forma pauperis, Plaintiff suing in—Solicitor, Assignment of—Official solicitor.
See Practice—**Forma Pauperis**. 1.

— Friendly societies.
See Outdoor Relief (Friendly Societies) Act, 1904 (4 Edw. 7, c. 32).

— Guardians—Limitation of time for payment—Claim due and payable.
See **PUBLIC AUTHORITIES' PROTECTION**. 5.

4. — *Guardians—Negligence of officer—Liability of guardians to pauper inmate—Action for damages—Common employment.*

The employment of a pauper set to work by the guardians of the poor under the powers given to them by the Poor Law Acts and Orders is not contractual, but statutory, and therefore the defence of common employment is no answer to an action by a pauper so employed against the guardians to recover damages for injury suffered in such employment through the negligence of an officer of the guardians. But the setting the paupers to work is part of the administrative duties imposed on the guardians by statute, and an action by the pauper against the guardians for negligence of their officer in discharge of these duties will not lie.

Levingston v. Lurgan Guardians, (1868) I. R. 2 C. L. 202, distinguished.

Brennan v. Limerick Guardians, (1878) 2 L. R. Ir. 42, and *Dunbar v. Ardee Guardians*, [1897] 2 I. R. 76, followed.

Decision [of a Div. Ct. [1906] 1 K. B. 538, reversed. *TOZELAND v. WEST HAM UNION*.

C. A. [1907] W. N. 48; [1907] 1 K. B. 920

Note.

This case was distinguished by Bucknill J., *Ching v. Surrey County Council*, [1909] 2 K. B. 762. See **Schools**. 14.

5. — *Guardians of the Poor—Disqualification for office—"Composition or arrangement with creditors"—Administration order—Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 46, sub-s. 1 (c)—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 122.*

Where a guardian of the poor obtains an administration order under s. 122 of the Bankruptcy Act, 1882, providing for the payment of less than 20s. in the pound in respect of his debts, he has made a "composition or arrangement with his creditors" within the meaning of s. 46 of the Local Government Act, 1894, and is disqualified for office.

Observations on *Lowe v. Lowrie* (1902) 18 Times L. R. 553. **BRADFIELD v. CHELTENHAM GUARDIANS** **Buckley J. [1906] W. N. 137; [1906] 2 Ch. 371**

6. — *Illegitimate child—Settlement by residence—Irremovability—Residence of child under sixteen with reputed parent—Acquisition of settlement under sixteen—Settlement and removal—Divided Parishes and Poor Law Amendment Act, 1876 (39 & 40 Vict. c. 61), ss. 34, 35—Poor Removal Act, 1846 (9 & 10 Vict. c. 66), ss. 1, 3—Poor Removal Act, 1848 (11 & 12 Vict. c. 111), s. 1.*

POOR LAW—continued.

An illegitimate child can, under s. 34 of the Divided Parishes and Poor Law Amendment Act, 1876, before the age of sixteen, acquire a settlement by residence under the requisite conditions in a parish with its reputed father who is irremovable therefrom.

Decision of the C. A., [1906] 2 K. B. 240, affirmed upon the above ground. *FULHAM PARISH v. WOOLWICH UNION* **H. L. (E.) [1907] W. N. 137 ; [1907] A. C. 255**

Note.

This case was followed by Div. Ct., *Kingston-upon-Hull Corporation for the Poor v. Hackney Guardians*, [1910] W. N. 246. See No. 28, below.

7. — Infant — Expenses of maintenance — Arrears — Right of poor law guardians to recover against property of infant — Poor Law Amendment Act, 1849 (12 & 13 Vict. c. 103), s. 16.

The rule that, where necessities are supplied to a person who from any disability cannot himself contract, the law implies an obligation to pay for them out of his property extends to the case of an infant pauper supported by guardians in discharge of their statutory duty. This liability is not cut down by the Poor Law Amendment Act, 1849, s. 16, which gives special means of recovering one year's maintenance; and the guardians can therefore recover six years' arrears of moneys expended for the maintenance of an infant pauper.

Dictum of Chitty J. in *In re Newbegin's Estate*, (1887) 36 Ch. D. 477, not followed. *In re CLABDON* — **Farwell J. [1904] W. N. 157 ; [1904] 2 Ch. 465**

8. — Irremovability — Married woman deserted by her husband — Desertion, what constitutes — Poor Removal Act, 1861 (24 & 25 Vict. c. 55), s. 3.

Where a married woman is, whether rightfully or wrongfully, sent away by her husband to lead a separate and independent life of her own, she is deserted by him within the meaning of the Poor Removal Act, 1861, s. 3, and can so reside as to acquire the status of irremovability apart from him under that section.

A married woman, having contracted habits of intemperance, frequently pawned her husband's goods in order to procure drink, and on several occasions used for other purposes money given to her by him for payment of his rent, and had conducted herself in such a manner as to render it impossible for her husband to keep a respectable home for his children. He in consequence informed her that they must live apart for a time; that she might take sufficient furniture to furnish a bedroom, and he would allow her 8s. a week; and that she must endeavour to get rid of her drinking habits, and if she did so they could live together again. She accordingly left him and took a lodging for herself, and for eleven months he continued to make her the promised allowance, but then, finding that she had been guilty of adultery, he discontinued it, and she thereupon went to cohabit with another man, and her husband never again lived with her:—

Held, that the husband had deserted his

D.D.

POOR LAW—continued.

wife within the meaning of the Poor Removal Act, 1861, s. 3.

Reg. v. Maidstone Union, (1879) 5 Q. B. D. 31, followed. *SOUTHWARK UNION v. CITY OF LONDON UNION* **C. A. [1906] W. N. 111 ; [1906] 2 K. B. 112**

9. — Lunacy — Pauper lunatic — Maintenance — Order against husband — Liability of son to contribute — Poor Relief Act, 1601 (43 Eliz. c. 2), s. 7 — Poor Law Amendment Act, 1850 (13 & 14 Vict. c. 101), s. 5.

The fact that an order has been made against the husband of a pauper lunatic, under s. 5 of the Poor Law Amendment Act, 1850, to pay a weekly sum to the guardians towards the cost of the wife's maintenance in an asylum does not exempt the son of the pauper lunatic from liability under 43 Eliz. c. 2, s. 7, to contribute towards relief for her maintenance. *COLE v. BROWN* **Div. Ct. [1907] W. N. 113 ; [1907] 2 K. B. 301**

— Lunatic — Maintenance.

See under Lunacy.

10. — Lunatic — Maintenance — Pauper — Lunatic's estate — Payments by Receiver in Lunacy — Death of lunatic — Arrears of maintenance — Payments on account — Appropriation — Limitations Act, 1623 (21 Jac. 1, c. 16), s. 3.

A lunatic not so found by acquisition was maintained in a pauper lunatic asylum by the guardians of a union from 1876 until her death in 1904 at an annual cost of about 21l. The lunatic was entitled to property producing about 8l. per annum. By an order in lunacy a receiver was appointed of this income of the lunatic, and was directed to apply the same in and for the maintenance and benefit of the lunatic. Pursuant to this order the receiver paid the income to the guardians from 1887 to 1903 for the maintenance of the lunatic, and the guardians in their books appropriated each payment of the receiver as a payment on account of the arrears of maintenance due to them at the date of each payment. At the death of the lunatic considerable arrears of maintenance were due to the guardians, and in an action by them against the administratrix of the lunatic for these arrears the administratrix contended that the guardians were only entitled to six years' arrears prior to the date of the writ:—

Held, that under the circumstances the payment by the receiver took the case out of the Statute of Limitations, and that the guardians were entitled to payment of all the arrears due to them.

In re Newbegin's Estate, (1887) 36 Ch. D. 477, and *In re Watson*, [1899] 1 Ch. 72, distinguished. *WANDSWORTH UNION v. WORTHINGTON*.

Farwell J. [1906] W. N. 34 ; [1906] 1 K. B. 420

11. — Maintenance — Wilful refusal or neglect of person to maintain himself — Refusal of offer of work subject to conditions — Vagrancy Act, 1824 (5 Geo. 4, c. 83), s. 3.

By s. 3 of the Vagrancy Act, 1824, a person who is able wholly or in part to maintain himself by work or by other means, and wilfully refuses or neglects so to do, by which refusal or neglect

POOR LAW—continued.

he becomes chargeable to the parish, is made liable to conviction as an idle and disorderly person.

An able-bodied pauper was offered work at a farm colony, in return for which he was to receive board and lodging and a small weekly payment; the offer was subject to certain conditions (inter alia) that he would not only not enter any premises where intoxicating drink was sold, but would discourage others from doing so; that he would attend the meetings on Saturday nights of the particular body to which the colony belonged and special meetings fixed from time to time, and would attend some place of worship once on a Sunday. The pauper refused to sign an agreement embodying those terms and left the colony, and again became chargeable to the parish:—

Held, that, in considering whether the refusal of the pauper to accept work was reasonable, regard must be had to the conditions upon which the work was offered; that in order to constitute a wilful refusal or neglect within the meaning of the section the conditions attached to the offer of work must be such as relate to the work itself or to the workman's conduct in its performance; that the above-mentioned conditions, though not in themselves unreasonable conditions to attach to an offer of employment, were not such that a refusal to accept work on such conditions amounted to a wilful refusal or neglect on the part of the pauper to maintain himself, and that he was therefore not liable to be convicted as an idle and disorderly person. **POPLAR GUARDIANS v. MARTIN.**

Div. Ct. [1905] 1 K. B. 728

12. — Maintenance of pauper — Right of guardians to recover expenses of maintenance — Principle upon which expenses are recoverable.

A pauper who has been maintained by the guardians of a poor law union in their infirmary is liable to pay to the guardians a reasonable sum for the necessities supplied to him. Such necessities include not only a reasonable sum for the food, clothing, drugs, coal, gas, and water supplied, but also a reasonable sum in respect of the pauper's share of the establishment expenses incurred for the purpose of keeping up the infirmary as a place of residence for the paupers, such as the salaries of the officers of the infirmary and their rations and uniforms if supplied as part of the terms of their service, the cost of the furniture, of the painting, repairs, and insurance of the building, of timber and other building materials, and the cleaning of windows, the wages of certain workmen employed therein, a sum for printing and stationery, and the parochial rates payable in respect of the infirmary, and also a sum in respect of the capital cost of the site and building. **ST. MARY, ISLINGTON, GUARDIANS OF THE POOR v. BIGGENDEN.**

Bray J. [1910] 1 K. B. 105

13. — Maintenance of relations — Liability of married daughter — Poor Relief Act, 1601 (43 Eliz. c. 2) s. 7 — Married Women's Property Act, 1882 (45 & 46 Vict. 3. 75), s. 1, sub-s. 2.

A married woman cannot be ordered to

POOR LAW—continued.

maintain her father under the Poor Law Acts, even though she has separate estate and is of sufficient ability to maintain him. **PONTYPOOL GUARDIANS v. BUCK.**

**Div. Ct. [1906] W. N. 195
[1906] 2 K. B. 896**

14. — "Misbehaviour" — Pauper — Disobedience to lawful order — Poor Relief Act, 1815 (55 Geo. 3. c. 137), s. 5.

Wilful disobedience by a pauper of a lawful order of a workhouse official is not necessarily "misbehaviour" within the meaning of s. 5 of the Poor Relief Act, 1815. **MILE END GUARDIANS v. SIMS**

Div. Ct. [1905] 2 K. B. 200

15. — Overseer — Solicitor — Exemption — Appeal to quarter sessions — Costs — Writ of privilege — Poor Relief Act, 1601 (43 Eliz. c. 2) s. 5.

A practising solicitor is exempt from serving the office of overseer of the poor, and if he is appointed to the office by a district council he is entitled to appeal to quarter sessions for an order to quash the appointment; but if the district council do not appear on the appeal to oppose the solicitor's claim to exemption, quarter sessions have no power to order the district council to pay the costs of the appeal. **REX v. DERBYSHIRE JUSTICES. Ex parte NEW MILLS URBAN COUNCIL**

**Div. Ct. [1909]
W. N. 26; 1 K. B. 449**

16. — Parish of settlement — Addition to Parish — Pauper — Divided Parishes and Poor Law Amendment Act, 1876 (39 & 40 Vict. c. 61) — Poor Law Act, 1879 (42 & 43 Vict. c. 54).

Parish A., to the area of which an addition has been made out of parish B., by an order under the Divided Parishes and Poor Law Amendment Act, 1876, does not lose its identity, and the settlement of a pauper in parish A. is not affected.

The decision of the C. A., [1902] 1 K. B. 562, affirmed.

Query, whether *Reg. v. Tipton*, (1842) 3 Q. B. 215; 61 R. R. 203, and the cases following it were rightly decided. **WEST HAM UNION v. LONDON COUNTY COUNCIL.**

H. L. (E.) [1904] W. N. 3; [1904] A. C. 40

— Poor-rate.

See under RATES.

— Public authority — Limitation of time for proceedings — Poor law guardians.

See PUBLIC AUTHORITIES' PROTECTION. 5.

17. — Rate — Form of — Statement of period for which estimated — Retrospective rate — Distress warrant — Poor Rate Assessment and Collection Act, 1869 (32 & 33 Vict. c. 41), s. 14.

A poor-rate, which states in the heading that it is estimated to meet all the expenses that will be incurred before the — day of — next, sufficiently states "the period for which the same is estimated" to satisfy the requirements of s. 14 of 32 & 33 Vict. c. 41, although it does not specify the date at which the expenses begin.

If a poor-rate is made after the commencement of a half-year to meet the expenses of the whole half-year, the objection that the rate is in

POOR LAW—continued.

part retrospective is not one that can be taken on the hearing of an application for a distress warrant. *CHENEY v. TALLOWIN*

Div. Ct. [1904] 2 K. B. 763

— Rates.

See under RATES.

— Rating—Franchise—Representation of the People Acts.

See under PARLIAMENT.

18. — *Removal—Adoption of pauper child by guardians—Poor Law Act, 1899 (62 & 63 Vict. c. 37), s. 1.*

Where the guardians of a poor law union have passed a resolution under the Poor Law Act, 1899, that the rights and powers of the parent of a child maintained by them shall vest in them, they are not precluded by that resolution from subsequently removing the child to the union in which it has a settlement. *WANTAGE UNION v. BRISTOL UNION* - Div. Ct.

[1906] W. N. 204; [1907] 1 K. B. 68

19. — *Removal order—Notice of appeal—Validity—Entry of appeal at next sessions—Jurisdiction of subsequent sessions—Poor Relief Act, 1662 (13 & 14 Car. 2, c. 12), s. 1, 2—Poor Law Amendment Act, 1834 (4 & 5 Will. 4, c. 76) s. 81—Poor Law Procedure Act, 1848 (11 & 12 Vict. c. 31), s. 9.*

On Feb. 26, 1908, an order of removal of a pauper and her child from the Wayland Union to the Forehoe Union was made. Both unions are in the county of Norfolk. On Mar. 31, 1908, the Forehoe Union gave notice of appeal against the order. The notice did not mention any sessions as those to which it was intended to appeal. On April 8 a Court of quarter sessions for the county of Norfolk was held, but no appeal against the order of removal was entered for those sessions. The succeeding quarter sessions were held on July 1, 1908, and the appeal against the order was entered for those sessions. The parties treated the notice of appeal as being given for those sessions:—

Held, that the sessions of July 1, 1908, had jurisdiction to hear the appeal and to decide whether it had been entered at the next practicable sessions so as to comply with the requirements of the Poor Relief Act, 1662, s. 2.

Held, further, that as the parties treated the notice of appeal as having been given for the sessions of July 1, 1908, the objection could not be taken that it applied only to the sessions of April 8. *REX v. NORFOLK JUSTICES. Ex parte WAYLAND UNION* Div. Ct. [1909] 1 K. B. 463

20. — *Removal of pauper from England to Ireland—Order of justices made on erroneous statements of fact—Appeal by guardians of union in Ireland to which pauper ordered to be removed—Grounds of appeal—Pauper “liable to be removed to Ireland”—Poor Removal Act, 1845 (8 & 9 Vict. c. 117), s. 2—Poor Removal (No. 2) Act, 1861 (24 & 25 Vict. c. 76), s. 2—Poor Removal Act, 1863 (26 & 27 Vict. c. 89), s. 7.*

The right of appeal to quarter sessions conferred upon the guardians of any union in Ireland by s. 7 of the Poor Removal Act, 1863, from an order of justices made under s. 2 of the

POOR LAW—continued.

Poor Removal Act, 1845, and s. 2 of the Poor Removal (No. 2) Act 1861, ordering that a pauper be removed from England to the union in Ireland, is limited to one of two grounds. The appellants must shew either that the pauper was legally settled in some parish in England or was not in law liable to be removed to Ireland. Therefore where a pauper is admittedly liable to be removed to some union in Ireland, but is not removable to that union to which the justices (acting upon erroneous statements of fact by the pauper) have ordered her to be removed, a Court of quarter sessions will not, on appeal by the guardians of the union to which the pauper is so ordered to be removed, set aside the removal order. *LOCAL GOVERNMENT BOARD OF IRELAND v. BLACKBURN GUARDIANS*

Div. Ct. [1909] 1 K. B. 454

21. — *School district—Incorporated board of management—Dissolution of school district—Property of dissolved district—Powers of last acting managers—Transfer of Consols—Vesting order—Poor Law Amendment Act, 1844 (7 & 8 Vict. c. 101), ss. 42, 43, 44, 45—Metropolitan Poor Amendment Act, 1869 (32 & 33 Vict. c. 63), s. 1—Dissolved Boards of Management and Guardians Act, 1870 (33 & 34 Vict. c. 2), ss. 1, 12, —National Debt Act, 1870 (33 & 34 Vict. c. 71), s. 22—Local Government Board—Validity of order—Form of order.*

A school district formed under s. 40 of the Poor Law Amendment Act, 1844, and the board of management for that district formed under s. 42 of that Act, are distinct and separate entities, the latter being by s. 45 of the same Act constituted a corporation to hold the property of the district; and when the district is dissolved by virtue of an order of the Local Government Board made under s. 1 of the Metropolitan Poor Amendment Act, 1869, the corporation created by s. 45 of the Act of 1844 remains in existence.

In such a case the property of the district does not automatically vest in the last acting managers of the corporation by virtue of the words “shall be transferred to and vested in” in s. 12 of the Dissolved Boards, &c., Act, 1870, but must be transferred to them or to other parties, as the case may be, by a proper document, and the last acting managers or the survivors of them, as the last acting corporators, can for that purpose affix the seal of the corporation to the document.

Quere, whether the Local Government Board, when they have issued an order under s. 1 of the Act of 1869 dissolving and fixing a date for the dissolution of a school district, have power from time to time by subsequent orders to postpone the date of dissolution.

Quere, also, whether, when an order is issued under s. 1 of the Act of 1869 dissolving a school district, the Local Government Board ought not, “prior to” issuing such order, to make an order under the section for the sale of the property of the managers of the district and the application of the proceeds.

Semble, when the Local Government Board make an order under s. 1 of the Dissolved Boards, &c., Act, 1870, extending the period for which

POOR LAW—continued.

the last acting managers of a dissolved district are to continue in office, the order should follow the words of the section, and should state the "special purpose" for which the last acting managers are to continue to act. *MORTON v. BANK OF ENGLAND* - - *Farwell J. [1904]*

W. N. 49; [1904] 1 Ch. 664

22. — Settlement—Capacity of deserted wife to acquire a settlement—Poor Law Settlement (Scotland) Act, 1898 (61 & 62 Vict. c. 21), s. 1.

By s. 1 of the Poor Law Settlement Act, 1898. "No person shall be held to have acquired a settlement in any parish in Scotland by residence therein, unless such person shall . . . have resided for three years continuously in such parish and shall have maintained himself . . . and without having received or applied for parochial relief . . .":—

Held, that a married woman having a husband living from whom she has derived a settlement cannot, although deserted by him, acquire a settlement different from that of her husband.

Gray v. Foulie, (1847) 9 D. 811, affirmed.

Decision of the Ct. of Sess., Scotland, (1901) 3 F. 705, reversed. *RUTHERGLEN PARISH COUNCIL v. GLASGOW PARISH COUNCIL*.

H. L. (Sc.) [1902] W. N. 106; [1902] A. C. 360

23. — Settlement—Division of Parish—Parts of parish, added to other parish by order of county council—Confirmation of order by Local Government Board—Local Government Act, 1888 (51 & 52 Vict. c. 41), ss. 57, 59; Local Government Act, 1894 (56 & 57 Vict. c. 73), ss. 36, 42.

By s. 42 of the Local Government Act, 1894, "When an order under s. 57 of the Local Government Act, 1888, has been confirmed by the Loc. Govt. Bd., such order shall at the expiration of six months from that confirmation be presumed to have been duly made, and to be within the power of that section, and no objections to the legality thereof shall be entertained in any legal proceeding whatever. By s. 36, sub-s. 10 of the Local Government Act, 1894, an order made by a county council in pursuance of Part III. of that Act is to be deemed to be an order under s. 57 of the Act of 1888.

A joint committee of a county council and of the council of a county borough made an order with regard to a parish which, at the passing of the Local Government Act, 1894, was situate in more than one urban district, which order, in providing for the union of part of the parish with another parish and the constitution of the remaining part into a separate parish, further provided that the alteration of the parish should not have the effect of destroying settlements already acquired therein prior to the coming into operation of the order:—

Held, that, whether the order was made under the Local Government Act, 1888, or the Local Government Act, 1894, and whether or not there was originally jurisdiction to insert in the order the provision dealing with pauper settlements, s. 42 of the Local Government Act, 1894, applied, and no objection to the legality of the order could be entertained, more than six months

POOR LAW—continued.

having elapsed since its confirmation by the Loc. Govt. Bd.

Decision of the Div. Ct., [1906] 2 K. B. 365, affirmed. *REX v. MIDDLESEX JUSTICES. Ex parte WALSALL UNION* **C. A. [1907] 2 K. B. 581**

— Settlement—Illegitimate child—Residence of child under sixteen with parent.

See No. 6, above.

24. — Settlement—Irremovability—Residence — "Hospitals" — Poor Removal Act, 1846 (9 & 10 Vict. c. 66), s. 1.

An institution partially endowed by a private person and founded with the object of providing a home and medical treatment, together with suitable employment and recreation, for persons suffering from epilepsy, the main part of the expenses being defrayed by payments of the inmates, is a "hospital" within the proviso to s. 1 of the Poor Removal Act, 1846.

Judgment of the Div. Ct. [1902] W. N. 193; [1903] 1 K. B. 19, affirmed. *ORMSKIRK UNION v. CHORLTON UNION*.

C. A. [1903] W. N. 138; [1903] 2 K. B. 498

25. — Settlement—Irremovability—Residence for one year—Husband and Wife—Departure of husband—Animus revertendi—Residence of wife before and after departure of husband—Poor Removal Act, 1846 (9 & 10 Vict. c. 66) s. 1—Poor Removal Act, 1848 (11 & 12 Vict. c. 111), s. 1—Union Chargeability Act, 1865 (28 & 29 Vict. c. 79), s. 8—Divided Parishes Act, 1876 (39 & 40 Vict. c. 61), s. 35.

By s. 1 of the Poor Removal Act, 1846, as amended by s. 8 of the Union Chargeability Act, 1865, no person shall be removed from any parish in which such person shall have resided for one year next before the application for the warrant for removal.

A married woman resided in a parish for part of a year with her husband, a foreigner having no settlement. The husband then went abroad intending to return. The wife continued to reside with her children in the parish for the remainder of the year, after the expiration of which, during her husband's absence, she became chargeable to the parish:—

Held, that the married woman could not be removed from the parish.

Reg. v. St. George-in-the-East, (1870), L. R. 5 Q. B. 364, followed.

Guardians of Midway Union v. Guardians of Bedminster Union, (1889) 14 App. Cas. 465, distinguished. *TEWKESBURY UNION v. BIRMINGHAM UNION*

Div. Ct. [1904] 2 K. B. 395

26. — Settlement and removal — Illegitimate child—Settlement by residence—Irremovability—Residence by child under sixteen with parent—Divided Parishes and Poor Law Amendment Act, 1876 (39 & 40 Vict. c. 61), ss. 34, 35.

An illegitimate child under sixteen resided with her mother in a parish for three years in such manner and under such circumstances in each of those years as would, in accordance with the statutes in that behalf, render her irremovable. After she reached sixteen the question of her settlement arose:—

Held, that by her residence she had acquired a settlement in that parish.

POOR LAW—continued.

The decision of the C. A. [1904] W. N. 91; [1904] 2 K. B. 121, affirmed. **WEST HAM UNION v. HOLBEACH UNION**

H. L. (E.) [1905] W. N. 134; [1905] A. C. 450
Note.

See No. 6, above.

27. — Settlement—Pauper—Parish, Division of—Destruction of settlement—Divided Parishes and Poor Law Amendment Act, 1876, (39 & 40 Vict. c. 61)—Local Government Act, 1894 (56 & 57 Vict. c. 73).

A pauper who has acquired a settlement in a parish which is afterwards divided into more than one parish does not lose his settlement by the division.

Reg. v. Tipton, (1842) 3 Q. B. 215, and the other cases which followed that one, overruled as to the above point. **WEST HAM UNION v. EDMONTON UNION**

H. L. (E.) [1907] W. N. 235; [1908] A. C. 1

28. — Settlement by residence—Irremovability—Residence of child under sixteen with deserted mother—Acquisition of settlement under sixteen—Settlement and removal—Poor Law Removal Act, 1846 (9 & 10 Vict. c. 66), ss. 1, 3—Poor Removal Act, 1848 (11 & 12 Vict. c. 111), s. 1—Divided Parishes and Poor Law Amendment Act, 1876 (39 & 40 Vict. c. 61), ss. 34, 35.

The question in this case for the opinion of the Court was, whether the paupers, M. P. and her illegitimate child, were settled in Kingston-upon-Hull or not.

The Court (Lord Alverstone C.J., Darling and Pickford JJ.) held (Darling J. dissenting), following the opinions expressed in *West Ham Union v. Holbeach Union*, [1905] A. C. 450, and in *Fulham Parish v. Woolwich Union*, [1907] A. C. 255, that the appellants' contention was right, and that M. P. acquired a settlement in the parish of Newhaven. **KINGSTON-UPON-HULL INCORPORATION FOR THE POOR v. HACKNEY GUARDIANS** Div. Ct. [1910] W. N. 246

Note.

See No. 6, above.

29. — Settlement by residence — Maintenance without recourse to common begging or receipt of or application for parochial relief—Support by charitable institution—Bodily and mental unfitness for self-maintenance—Poor Law (Scotland) Act, 1898 (61 & 62 Vict. c. 21), s. 1.

Under s. 1 of the Poor Law (Scotland) Act, 1898, which enacts that "no person shall be held to have acquired a settlement in any parish in Scotland by residence therein unless such person shall . . . have resided for three years continuously in such parish and shall have maintained himself without having recourse to common begging . . . and without having received or applied for parochial relief" :—

Held, that a person who had for three years continuously resided in a charitable institution in the appellant parish, and during that period had not had recourse to common begging and did not apply for parochial relief, had acquired a residential settlement, and that the fact that during the whole time of her residence she suffered from mental weakness and chronic

POOR LAW—continued.

physical disease, which made her incapable of maintaining herself, did not take her out of the enactment.

Kirkintilloch Parish Council v. Parish Council of Eastwood, (1902) 5 F. 274, approved.

Judgment of the Second Division of the Ct. of Sess., Scotland, (1904) 6 F. 457, affirmed. **KILMALCOLM PARISH COUNCIL v. GLASGOW PARISH COUNCIL** **H. L. (Sc.)** [1906] W. N. 117; [1906] A. C. 344

30. — Union, alteration of—Apportionment of property—Annual sums payable to union—Poor Law Amendment Act, 1834 (4 & 5 Will. 4, c. 76), s. 32.

Where, on the separation of a parish from a union of which it previously formed part under the Poor Law Amendment Act, 1834, s. 32, the Local Government Board, by an order intended to be made under that section, directed that sums payable annually by the county council to the union under the Local Government Act, 1888, s. 24, sub-s. 2 (d), and s. 26, sub-s. 1, should be apportioned between the union and the parish in each year according to their respective rateable values for the time being :—

Held, that the Local Government Board had no power to make such an order, inasmuch as s. 32 of the Poor Law Amendment Act, 1834, contemplates a final settlement between the two bodies based on an estimate of the existing proportionate values of their respective interests in the property to be apportioned. **REG. v. LOCAL GOVERNMENT BOARD**

C. A. [1901] 1 K. B. 210

POOR PRISONERS.

See under CRIMINAL LAW—Poor Prisoners.

POOR RATE.

See under LONDON—Rates.
RATES.

POOR RATE ASSESSMENT AND COLLECTION ACT, 1869.

See RATES.

PORT — "Limits of port" — Ships loading or unloading goods within limits of port—Natural port artificially enlarged.

See HARBOUR. 4.

PORT OF LONDON ACT, 1908 (8 Edw. 7, c. 68), provides for the improvement and better administration of the Port of London, and for purposes incidental thereto.

PORTIONS — Advancements — Will — Construction.

See under WILL—Advancement.

— Mortgage—Priority.

See MORTGAGE—Priority. 10.

— "Portions" — Accumulation of income — Remoteness—Gift to children as a class — Period of ascertainment.

See ACCUMULATIONS. 8.

— Settlement—Disentailing deed—Mortgages—Priorities—Whether power released.

See SETTLEMENT, 38.

PORTUGUESE LAW—Divorce practice—Substituted service of citations and petition—Letters of request refused.
See **DIVORCE—Practice**. 29.

POSSESSION—Absolute gift—Actual possession—Intention.
See **WILL—Absolute Gift**. 7.

— Bill of sale—Registration not renewed—Apparent possession.
See **BILL OF SALE**. 6.

— Heirlooms—Trust of chattels as—Construction—To be enjoyed with mansion house—Tenant in tail—Vesting—Actual possession.
See **HEIRLOOMS**. 3.

— High bailiff's fees.
See under **COUNTY COURTS—Bailiffs**.

— Infant tenant for life—Possession during minority—Guardian—Trustee.
See **SETTLED LAND—Infants**. 1.

— Land surrendered to the Crown subject to subsisting contracts—Rights of Crown against trespasser.
See **NEW ZEALAND**. 10.

— Larceny—Deer usually kept in a forest—Killing outside forest—Unlawful possession.
See **CRIMINAL LAW—Larceny**. 3.

— Lease—Death of lessee—Administrator ad colligenda bona—Power to sell—Entry into possession—Rent—Liability de bonis propriis.
See **ADMINISTRATION**. 20.

— Mines—Tenants in common—Working of part of mine by one co-owner—Adverse possession—Constructive possession—Account.
See **MINES**. 14.

— Mining lease—Forfeiture—Issue of writ containing inconsistent claims—Unequivocal demand for possession.
See **LANDLORD AND TENANT**. 36.

— Mortgagee—Extinguishment of title of second mortgagee—Effect of possession of first mortgagee—Non-suspension of statutory period.
See **LIMITATIONS, STATUTES OF**. 16.

— Power of revocation—Person entitled to the "actual possession."
See **SETTLEMENT**. 37.

— Recovery of possession—Public-house—Licences in jeopardy—Disputed title.
See **RECEIVER**. 11, 12.

— Restrictive covenants—Notice—Title by adverse possession—Statute of Limitations.
See **VENDOR AND PURCHASER—Title**. 13.

— Right of entry of mortgagee—Relation back of right of possession—Trespass antecedent to entry—Right of action.
See **MORTGAGE—Entry**. 1.

POSSESSION—*continued*.

— Sheriff's fees.

See under **SHERIFF**.

— Ship—Mortgage—Imperilling security of mortgagee.
See **SHIPPING—Mortgages**. 3.

— Ship—Sale—Claim to share of proceeds in Court—Evidence.
See **SHIPPING—Sale**. 1.

— Substitutional gift—Death "before becoming entitled" to a share—Entitled in "possession" or in "interest."
See **WILL—Substitution**. 3.

— "Tenant for life."

See under **SETTLED LAND—Tenant for Life**.

— Title by adverse possession—Foreshore—Crown, Rights of—Intention.
See **SEASHORE**. 2.

— Title by possession—Restrictive covenants—Notice—Acceptance of less than forty years' title.
See **VENDOR AND PURCHASER—Title**.

— Writ of possession—Costs—Jurisdiction to make order.
See **COSTS**. 81.

— Writ of possession—Writ of assistance.
See **RECEIVER**. 10.

POSSESSORY TITLE—Will of woman under incapacity to devise—Entry of tenant for life—Rights of remaindermen.
See **ESTOPPEL**. 6.

POSSIBILITY—Perpetuity—Possibility on a possibility—Settlement.
See **POWER OF APPOINTMENT**. 28.

— "Possibility on a possibility"—Appointment—Remoteness.
See **PERPETUITY**. 1.

POST-CARD—Libel—Privileged communication—Publication—Evidence of malice.
See **DEFAMATION—Libel**. 14.

POSTHUMOUS ILLEGITIMATE CHILD—Workmen's compensation—Dependant.
See **MASTER AND SERVANT—Compensation**. 42.

POST-NUPTIAL SETTLEMENT.

See under **SETTLEMENT**.

POST OFFICE.

Post Office Act, 1904 (4 Edw. 7, c. 14), amends the Post Office Acts with respect to cumulative commissions on money orders and the use of embossed and impressed stamps.

Post Office Money Orders Act, 1906 (6 Edw. 7, c. 4).

Post Office (Literature for the Blind) Act, 1906 (6 Edw. 7, c. 22), is an act to facilitate the transmission by post of books and papers impressed for the use of the blind.

Post Office Act, 1908 (8 Edw. 7, c. 48), consolidates enactments relating to the Post Office,

POST OFFICE—*continued.*

Mail Ships. See under SHIPPING—**Mail Ships.**

Postmaster-General, col. 1931.

Savings Banks, col. 1931.

Shop Hours, col. 1931.

Mail Ships.

See under SHIPPING—**Mail Ships.**

Postmaster-General.

Assistant Postmaster-General Act, 1909 (9 Edw. 7, c. 14), is an Act to enable an Assistant Postmaster-General to sit in the House of Commons.

— Licence of—Telephone—Power to lay cable along bridge without consent of railway company.

See TELEGRAPH. 3.

— Limitation of liability—Claim by bailee of contents of lost mail-bags—Possessory title as against wrong-doer.

See SHIPPING—**Collision.** 42.

— Monopoly — Private lines — Electric bell signals.

See TELEGRAPH. 4.

Savings Banks.

Savings Bank Act, 1904 (4 Edw. 7, c. 8), amends the Savings Banks Acts.

Post Office Savings Bank Act, 1908 (8 Edw. 7, c. 8), amends s. 11 of the Savings Banks Act, 1904.

Post Office Savings Banks (Public Trustee) Act, 1908 (8 Edw. 7, c. 52), amends the Post Office Savings Bank Acts, 1861 to 1908, with respect to deposits by the Public Trustee.

— Savings bank — Deposit-book — Evidence — Delivery.

See DONATIO MORTIS CAUSA. 1—3.

Shop Hours.

See Shop Hours Act, 1904 (4 Edw. 7, c. 31), s. 2, sub-s. 5, Schedule.

POSTPONEMENT—Conversion.

See under CONVERSION.

— Directors—Powers—Postponement of general meeting.

See COMPANY—**Directors.** 13.

— Will.

See under WILL—**Postponement.**

POSTS—Streets, Statutory power to fix posts “in or under”—Trespass—Taking of land.

See STREETS. 21.

POULTRY.

See under FOWLS.

POWER—Revocation.

See under REVOCATION.

POWER OF APPOINTMENT—Absolute gift—

Property or power—Power to use capital if income not “sufficient.”

See WILL—**Absolute Gift.** 6.

— Absolute gift or estate for life with power of appointment—Construction of will.

See WILL—**Absolute gift.** 2.

— Ademption—Special testamentary power of appointment — Exercise — Subsequent compulsory sale of property subject to power.

See WILL—**Ademption.** 5.

— Appointment — Validity—Remoteness—Rule against double possibilities.

See No. 28, *below*.

1. — *Bankruptcy of donee — Capacity of trustee to release power — Settlement — Limited power of appointment — Ultimate reversion in donee — Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 44—Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), s. 52—Lunacy Act, 1890 (53 & 54 Vict. c. 5), s. 120.*

Order of Farwell, J. [1904] W. N. 152; [1904] 2 Ch. 348, discharged by consent.

On the point decided by Farwell J., namely, that the trustees in the bankruptcy of the donee of a limited power of appointment could not release the power for the benefit of the bankrupt's estate, the C. A. expressed no opinion. *In re ROSE, HASLUCK (TRUSTEE IN THE BANKRUPTCY OF E. T. ROSE) v. ROSE*

C. A. [1904] W. N. 199; [1905] 1 Ch. 94

— Bankrupt's will, Appointment by—Assets—Property divisible among creditors.

See BANKRUPTCY—**Power of Appointment.** 1.

— Conflict of laws—English testatrix domiciled abroad—Exercise by will in English form.

See CONFLICT OF LAWS. 9.

— Conflict of laws—Personalty—Execution—Foreign domicile—Unattested will.

See CONFLICT OF LAWS. 15, 16.

2. — *Contingent Remainder — Perpetuity—Settlement—Power of appointment among children — Exercise of power—Appointment of income to children equally and of whole income to survivor for life.*

By a settlement made in 1844 on the marriage of W. and G. real estate was settled to the use of G. for her life, and after her death to the use of such children of the marriage in such shares and manner as G. should by will devise the same. The only two children of the marriage were L. (born in 1846) and A. (born in 1852). G. died in 1877, having by her will devised that the yearly income of the settled estate should be equally divided “during their respective lives between my daughters L. and A.,” and that “in the event of the death of either the survivor shall receive the whole income,” and that on her

POWER OF APPOINTMENT—continued.

death the estate should be sold and the proceeds divided among the children of L. and A. :—

Held, that the gift to the survivor was a contingent and not a vested estate, and as the survivor might be a person not ascertainable within twenty-one years from the death of G., the gift was void as contravening the rule against perpetuities. *WHITBY v. VON LUEDECKE*

Buckley J. [1906] 1 Ch. 783

— Costs of administering trust fund—Successive appointments of specific sums—Appointment of residue.

See COSTS. 3.

— Covenant to settle after-acquired property—Power or property.

See SETTLEMENT. 12.

— Cy-près—Testamentary power—Excessive execution.

See CY-PRES. 2.

3. — Debts—General testamentary power—

Exercise—Covenant to exercise power as security for loan—Liability of appointed fund for debts—Priority.

The donee of a general testamentary power of appointment over a fund borrowed money and as security covenanted with the lender that he would make a will appointing that the loan should be a first charge on the fund and that he would not revoke the will. He made a will accordingly and died :—

Held, that the lender was not entitled to priority as regards the fund over the appointor's general creditors; for personalty appointed by will under a general power is subject to the payment of the appointor's debts, as declared by Knight Bruce, L.J., in *Fleming v. Buchanan*, (1853) 3 D. M. & G. 976, 980.

The decision of the C. A., *In re Lawley, Zaiser v. Lawley* [1902] W. N. 195; [1902] 2 Ch. 799, affirmed. *BEYFUS v. LAWLEY*

**H. L. (E.) [1903] W. N. 148;
[1903] A. C. 411**

— Divorce—Variation of settlements—Interest of child of dissolved marriage.

See DIVORCE—Settlements. 10.

— Divorce—Variation of settlements—Principle of quid pro quo.

See DIVORCE—Settlements. 13.

— Domicil—Personal property—Settlement—Will.

See CONFLICT OF LAWS. 7.

4. — “During coverture by will or deed”—

Execution of will during coverture—Death of testatrix discover—Exercise of power—Validity.

By a marriage settlement, made in 1878, the trustees were to hold the trust funds upon trust, after the death of the wife, for such persons as she should “during coverture by will or deed appoint,” and in default of appointment, then in trust for her statutory next of kin. By her will, made in 1884, in the lifetime of her husband, she appointed the settled funds to her five brothers and sisters in equal shares as tenants in common. The husband died in 1886. In 1898 the widow made a codicil to her will, appointing the plaintiffs to be executors of her will and in other respects

POWER OF APPOINTMENT—continued.

confirming her will. She died in 1908, discover :—

Held, that the execution by the lady of her will while under coverture, operated as a good exercise, of the power of testamentary appointment contained in the settlement, notwithstanding that she died discover.

Burnham v. Bennett, (1845) 2 Coll. 254, and *Cave v. Cave*, (1856) 8 D. M. & G. 131, considered and applied. *In re ILLINGWORTH. BEVIR v. ARMSTRONG*

**Eve J. [1909] W. N. 149;
[1909] 2 Ch. 297**

5. — Election — Perpetuity—Settlement — Power—Appointment.

When a testamentary appointment fails for infringing the rule against perpetuities, persons taking in default of appointment are not bound to elect between their interests in the settled fund and interests in the appointor's own property given to them by the will.

In re Bradshaw, [1902] 1 Ch. 436, not followed.

*In re BEALES' SETTLEMENT. BARRETT v. BEALES. Warrington J. [1904] W. N. 206;
[1905] 1 Ch. 256*

Note.

This case was followed by Buckley J., *In re Wright*, [1906] 2 Ch. 288. *See* Settlement. 36.

6. — Election—Real estate — Limitations — Equitable estate in fee—No words of inheritance — Will Power—Appointment void for remoteness.

A limitation in a deed of a trust of real estate for a class of children without any words of inheritance may confer the equitable fee upon them where the intention to do so is expressed or sufficiently shown on the face of the instrument.

By a marriage settlement dated in 1831 real estate was conveyed to a trustee upon trust for the husband and wife successively for life, and after their deaths upon trust to convey and transfer the trust estate between or among the children of the marriage as the husband and wife should jointly appoint, and in default as the survivor should appoint, and in default to all the children of the marriage who attained twenty-one, or married, in equal shares. The settlement contained a provision that no child taking under any appointment should receive anything more until all the other children had received shares equal in value to the appointed share; a power of advancement up to one-half of the value of each child's share; and a gift over if no child attained a vested interest :

Held, that there was on the face of the instrument amply sufficient indication of an intention that the children should take equitable interest in fee simple.

In re Tringham's Trusts, [1904] 2 Ch. 487, followed.

The husband, having survived his wife, by will, in exercise of the power given him by this settlement, appointed shares of the property to his three daughters for life, with remainder to their respective children, and gave his daughters interests in property of his own :

Held, that the appointments being void for perpetuity, no case of election was raised by the will,

POWER OF APPOINTMENT—continued.

In re Bradshaw, [1902] 1 Ch. 436, not followed. *In re OLIVER'S SETTLEMENT. EVERED v. LEIGH*.

Farwell J. [1904] W. N. 191; [1905] 1 Ch. 191

Note.

Followed by Warrington J., *In re Beale's Settlement*, [1905] 1 Ch. 256. *See preceding Case.*

Followed by Buckley J., *In re Wright*, [1906] 2 Ch. 288. *See Settlement.* 36.

Approved and followed by C. A., *In re Nash*, [1910] 1 Ch. 1. *See Power of Appointment.*

Referred to by C. A., *In re Thursby's Settlement Trusts*, [1910] 2 Ch. 181. *See Power of Appointment.*

— Estate duty—Appointed fund—Residue—Testamentary expenses.

See REVENUE—Estate Duty. 13.

— Estate duty—Appointment of specified amounts—Residue of fund—Incidence—Will.

See REVENUE—Estate Duty. 27.

— Estate duty—Exercise of general power of appointment by will—Appointed fund—Residue.

See REVENUE—Estate Duty. 4.

— Estate duty—Incidence—Appointed fund—Residue.

See REVENUE—Estate Duty. 15.

— Estate duty—Incidence—Direction to pay testamentary expenses.

See WILL—Testamentary Expenses. 8.

— Estate duty—Incidence—Will exercising power of appointment—Appointed fund. *See WILL—Testamentary Expenses.* 11.

— Estate duty, Liability to—Residuary estate taken under appointment empowered by the will.

See NEW ZEALAND. 19.

— Estate duty payable in respect of appointed fund—"Property passing to executor as such."

See REVENUE—Estate Duty. 15.

7. — *Excessive appointment—Appointment under special power to uses of existing settlement, or such as are "capable of taking effect"—Validity of limitation—Remoteness—Construction of will.*

Where under a special power of appointment a testator appoints to the uses or trusts of an antecedent instrument or such of them as are "capable of taking effect," the phrase "capable of taking effect" may be construed as meaning what the law allows to take effect, and need not be confined to a reference to the uses or trusts which, by reason of the deaths of parties and other intervening circumstances, are still in fact existing, or capable of coming into existence; and if therefore some of the uses or trusts fail by reason of the cestui que trust not being objects of the power, or by reason of the rule against perpetuities being infringed, those uses or trusts

POWER OF APPOINTMENT—continued.

may be treated as excluded from the appointment.

Dictum of Jessel M.R. in *Line v. Hall*, (1873) 43 L. J. (Ch.) 107, 108, considered and applied.

In re FINCH AND CHEW'S CONTRACT.

Kekewich, J. [1903] W. N. 129;

[1903] 2 Ch. 486

8. — *Execution—Document "purporting" to be a will.*

Under a settlement dated in 1848 a married woman had a power of appointment amongst her children exercisable by any deed or deeds, writing, or writings, with or without power of revocation and new appointment, to be by her sealed and delivered in the presence of and attested by two or more credible witnesses, or by her last will or testament, "or any writing in the nature of or purporting to be a will or codicil." She signed a written document which was expressed to be her "last will," and which, if valid as a testamentary instrument, would have operated as an execution of the power. This document, having been insufficiently executed, was not admitted to probate:—

Held, that although the document might not be "in the nature of" a will, yet, as it clearly "purported to be" the will of the donee of the power, it was a valid execution of the power. *In re BROAD. SMITH v. DRAEGER.*

Kekewich, J. [1901] W. N. 90; [1901] 2 Ch. 86

Note.

This case was not followed by Warrington J., *In re Barnett*, [1908] 1 Ch. 402. *See No. 14, below.*

— Execution—Domiciled foreigner—Unattested will.

See CONFLICT OF LAWS. 17.

9. — *Execution—General power—Married woman—Appointment by will—Administrator with the will annexed—Right to receive fund.*

An administrator with the will annexed can give a valid receipt for settled personalty appointed by will under a general power, even where the appointor was a married woman who died before the coming into operation of the Married Women's Property Act, 1882 (45 & 46 Vict. c. 75).

Re Philbrick's Trusts (1865) 13 W. R. 570, and *In re Hoskin's Trusts*, (1877) 5 Ch. D. 229; 6 Ch. D. 281, applied. *In re PEACOCK'S SETTLEMENT. KELCEY v. HARRISON. Swinfen Eady, J.* [1902] W. N. 51; [1902] 1 Ch. 552

10. — *Execution—General testamentary power—Express reference required—General reference to all testamentary powers.*

A fund was settled in trust for such persons as the settlor should by will "expressly referring to this power" appoint.

By her will the testator gave and devised the residue of her estate, both real and personal, of which she should die possessed or entitled to "and over which I shall have any power of disposition by will" to certain beneficiaries:—

Held, that this was sufficient reference to execute the power.

POWER OF APPOINTMENT—continued.

In re Waterhouse, (1907) 96 L. T. 688; 98 L. T. 30, and *In re Rolt*, [1908] W. N. 76, applied.

Phillips v. Cayley, (1889) 43 Ch. D. 222, and *In re Teape's Trusts*, (1873) L. R. 16 Eq. 442, distinguished. *In re LANE. BELLI v. LANE.*

Swinfen Eady, J. [1908] 2 Ch. 581

11. — Execution—Limited power—No other power—Exercise by will—“Appoint, devise, and bequeath”—Sufficient reference—Evidence.

A testatrix made the following disposition by her will: I appoint, devise, and bequeath my real estate and the residue of my personal estate to my trustees upon trust to sell or convert the same into money, and to pay and divide the proceeds (after paying my debts, funeral and testamentary expenses) equally between “four named nephews and nieces, “or such of them as shall be living at my decease.” The four nephews and nieces survived the testatrix.

It appeared that the testatrix had testamentary power of appointing a share of personal estate among her nephews and nieces, and evidence was tendered to shew that she had no other power of appointment:

Held, that the evidence was admissible, and that the limited power was exercised.

In re Teape's Trusts, (1873) L. R. 16 Eq. 442, and *In re Swinburne*, (1884) 27 Ch. Div. 696, followed.

Dictum of Chatterton V.-C. in *In re Richardson's Trusts*, (1886) 17 L. R. Ir. 436, 442, dis-sented from. *In re MAYHEW. SPENCER v. CUTBUSH* - - **Farwell J. [1901] W. N. 55; [1901] 1 Ch. 677**

Note.

Followed by Jeune, Pres., *Kent v. Kent*, [1902] P. 108. See No. 21, below.

12. — Execution—Limited power—Testamentary appointment—Incomplete disposition—Intention—“After the death of A.” read “subject to A.'s interest.”

Under a marriage settlement the husband and wife took successive life interests in a trust fund, the wife's interest being cut down to one moiety on remarriage, and subject thereto the fund was settled on trust for the issue of the marriage as the husband should appoint, and in default of appointment for the sons at twenty-one or daughters at twenty-one or marriage, with the usual hotchpot clause. By his will, which recited that he had power to appoint the fund after the death of his wife, the husband appointed that “after the death of my said wife” three-fifths of the fund should be held in trust for his elder son and two-fifths for his younger son, these sons being the only issue of the marriage.

The wife having remarried after her husband's death:—

Held, that the moiety of the income thereby set free during her life passed under the appointment, the Court finding on the face of the will an intention to appoint the whole fund subject to the wife's interest, and being therefore at liberty, in accordance with the principle in *Maddison v. Chapman*, (1858) 4 K. & J. 709, 719, to read the words “after the death of my said wife” as “subject to my said wife's interest.”

POWER OF APPOINTMENT—continued.

In re SHUCKBURGH'S SETTLEMENT. ROBERTSON v. SHUCKBURGH - - **Farwell J. [1901] 2 Ch. 794**

13. — Execution—Power to appoint up to a limited amount—General power—Exclusion from benefit thereunder of person disputing will—Charge—Overriding power to appoint mixed fund—Wills Act, 1837 (1 Vict. c. 26), s. 27.

W. by his will gave his real and personal estate to trustees in trust to permit his wife to receive the income during her life, and directed that she should have power by her will to appoint that the trustees of his will should on her death raise and set apart out of his estate and effects enough money to produce the sum of 2l. 10s. per week, and that she should have absolute power by her will to dispose of that sum when raised and the income thereof as she might think fit, expressing by his will a wish that she should be able, if she desired, to direct the payment of the 2l. 10s. per week to his son J. during his life, but that, if she should not think fit to exercise the power in favour of J., she should have full power to dispose of the sum so raised and the income thereof in such manner as she might in her uncontrolled discretion think best. “Subject as aforesaid” W. gave his estate and effects in trust, after his wife's death, in favour of his children. A power of sale was given by W.'s will, whereby it was also declared that any of W.'s children who should call in question his will should be deprived of all interest thereunder, and that if J. should do so, testator's wife should not be able to exercise the power to appoint in his favour.

J. died before the wife, who by her will gave all the residue of her real and personal estate not thereby otherwise disposed of upon certain trusts:—

Held, (1.) that a charge on the testator's residuary real and personal estate for any sum which his wife might appoint under the power was created by the words “subject as aforesaid”; (2.) that, notwithstanding the words as to the children calling in question the will, she had, in the events which happened, a general power of appointment in respect of the sum which might be raised; (3.) that, although there was no trust for conversion, the power was an overriding one to appoint a fund of mixed realty and personalty; and (4.) that, by virtue of s. 27 of the Wills Act, 1837, the power was exercised by the residuary gift in the wife's will.

In re Jones, (1886) 34 Ch. D. 65, followed.

In re Salvin, [1906] 2 Ch. 459, distinguished.

In re WILKINSON. THOMAS v. WILKINSON
Parker J. [1910] 2 Ch. 216

14. — Execution—“Writing or writings”—“Appointment made by will”—Testamentary document not provable as will—Validity—Wills Act, 1837 (1 Vict. c. 26), ss. 1, 9, 10.

Mrs. Barnett assigned a policy of assurance on her own life to trustees by a settlement which contained a proviso that it should be lawful for her at any time during her life “by any deed or deeds writing or writings with or without power of revocation to be by her duly executed in the presence of two or more credible

POWER OF APPOINTMENT—continued.

witnesses to revoke all any or either of the "provisions of the settlement, and to appoint other trusts in their place. She subsequently signed a document by which she did not in terms revoke any of the provisions of the settlement, but purported to make certain dispositions of (inter alia) the property the subject of the settlement in testamentary form. This document was signed by her in the presence of two credible witnesses, but, inasmuch as her signature was not placed at the foot or end thereof, it could not be admitted to probate as a will. The question now raised was whether the document operated as an exercise of the power of appointment:—

Held, that the document was a "writing in the nature of the will in exercise of a power," and therefore by s. 1 of the Wills Act, 1837, a "will" within the meaning of that statute; it was therefore an "appointment made by will" within the first sentence of s. 10, and, inasmuch as it was not executed as a will in accordance with s. 9, it was invalid as an exercise of the power.

In re Broad, [1901] 2 Ch. 86, not followed.
In re BARNETT. DAWES v. IZER.

**Warrington J. [1908] W. N. 28 ;
[1908] 1 Ch. 402**

— Exercise—"Usual" clauses in settlements—
Covenant to settle after-acquired
property.

See SETTLEMENT. 21.

15. — "Express" reference to power—Exercise by will—Sufficient reference.

Sir John Rolt, who died in 1871, by a codicil to his will directed that, in the events which happened, a sum of 1500*l.* should be held in trust for such person or persons and for such purposes as his daughter Sarah should by any will or codicil "expressly referring to the present power" appoint.

Sarah Rolt, by her will, after appointing executors and bequeathing certain legacies, proceeded as follows: "All the rest residue and remainder of my real and personal estate not hereby or by any codicil or otherwise specifically disposed of and which I can dispose of by will in manner I think proper either as beneficially entitled thereto or under any general power I bequeath" to the persons therein mentioned.

The present summons was taken out for the determination of the question whether the power of appointment given by the codicil of Sir J. Rolt had been validly exercised by the will of Sarah Rolt.

Warrington J. said that the question was whether the will of the donee of the power "expressly" referred to the power. The contest was between the person entitled under Sarah's will and the persons taking under Sir John Rolt's will in default of appointment. It was said by the latter that there was no "express" reference in Sarah's will to the powers contained in Sir John Rolt's codicil. That codicil did not say that the donee of the power must "specifically" refer to the power; all it said was that there must be an "express" reference. "Express" was distinguished from "implied,"

POWER OF APPOINTMENT—continued.

and was intended to exclude an exercise which could only be implied by virtue of s. 27 of the Wills Act, 1837, or in some other way. It would be going too far to say that no will could be an exercise of the power unless it "specifically" referred to the power; the very use of that word "specifically" shewed that it was necessary to go outside the words of the will to express one's meaning. There was an "express" reference to the power. The donee of the power first gave all her estate, and then specified two modes in which she thought she had power to dispose of it—either as being beneficially entitled or under any power she might possess, that was, any power which gave her the power to select the objects of the gift and the mode in which the property should be enjoyed. If the donee had possessed several powers of appointment—although that was an aspect of the case to which no great importance was to be attached—they would have been referred to in the reference which she made to any power which she possessed. The power had, therefore, been validly exercised. *In re SIR JOHN ROLT. ROLT v. BURDETT - Warrington (J.) [1908] W. N. 76*

Note.

This case was applied by Swinfen Eady J., *In re Lane*, [1908] 2 Ch. 581. *See No. 10, above.*

16. — Foreign donee of power domiciled abroad—Exercise of power—Power exercised in accordance with English law but not with law of domicile—Will.

Where an English power of appointment by will is exercised by a will executed in English form, though the appointor be domiciled abroad and the will be not validly executed according to the law of domicile, the document may be admitted to probate as a will for the purpose of the appointment, though not admissible for other purposes. This practice has been too long observed to be now disturbed. *MURPHY v. DEICHLER - H. L. (I.) [1909] W. N. 167 ; [1909] A. C. 446*

17. — Fraud on power—Appointment void or voidable—Mortgage by appointee—Defence of bona fide purchaser without notice—Fund carried to separate account—Action to declare appointment void—Priority.

By a settlement on the marriage in 1877 of H. and his wife, certain funds were settled in trust for them and the survivor of them for their respective lives, with remainder to such of the children as they should by deed, or the survivor should by will or deed, appoint, and in default of appointment to the children who should attain twenty-one equally. As soon as the eldest surviving son of the marriage attained twenty-one in Oct., 1899, H. and his wife appointed 4000*l.* to him, and about two years afterwards appointed the residue of the fund to him. These appointments were made under a bargain that the son would raise money to pay his parents' debts. He mortgaged his interests under the appointment to S., and sold the equity of redemption to a co., who assigned to the Property and Estates Co., and handed over the proceeds to his father,

POWER OF APPOINTMENT—continued.

In 1904 an action (*Woodbridge v. Harvie*) was commenced by a mortgagee of Mrs. H.'s life interest for the carrying into execution the trusts of the settlement, to which all the children of the marriage were debts. A compromise of this action was agreed upon, and by an order dated Nov. 16, 1908, the compromise was approved and a sum representing the share appointed to the son was carried to a separate account entitled "Share of the Property and Estates Co., Ltd., and its incumbrancers subject to the life interest of Mrs. H. and her mortgagee." The present action was commenced in 1909 by two of the daughters of the marriage asking for a declaration that the appointments were void as frauds on the power, and that the debts, claiming thereunder had no interest in the trust funds. The debts were the transferees of the mortgage, the said co., and the trustees of the settlement.

The plts. had signed the agreements for the compromise of the action of *Woodbridge v. Harvie*, but the judge held upon the evidence that they had then no notice that the appointments were invalid.

Neville J. said that the appointments were very clearly frauds on the power, but on the evidence neither the debts, nor their predecessors in title had any notice of the fraud. But he thought on the balance of authority that a fraud on the power made the appointments void and not merely voidable, and therefore the debts could take no interest under them, and the defence of purchase for value without notice was not open to them. There remained the question whether the carrying the funds to the separate account of the debt. co. gave them what was equivalent to a legal estate in the funds, and the plts. are precluded by this order from proceeding to set aside the appointments. The validity of the appointments was not a question raised in the action, nor had the plts. any notice of their invalidity at the time they signed the agreement for a compromise of the action. He did not think, therefore, that the debts could, while their interest was still reversionary, acquire an interest in the funds which was equivalent to a legal estate. The plts. were not, therefore, precluded by the order from bringing this action and were entitled to the declaration claimed. *CLOUTTE v. STOREY*

Neville J. [1910] W. N. 163

On Appeal:—

The C. A. dismissed the appeal. *CLOUTTE v. STOREY*

C. A. [1910] W. N. 250

18. — Fraud on power—Exercise—Validity—Special power—Appointment to object of power on condition of payment of appointor's debts.

Under the will of A. Cohen, dated in 1900, S. B. Cohen was the donee of a power to appoint a sum of 3000*l.* per annum in his absolute discretion to his wife and children. By his will, dated in 1908, in exercise of the power he appointed and declared that the trustees of the will of A. Cohen should stand possessed of his share under the will upon trust to pay an annuity of 1200*l.* to his wife during widowhood, to be reduced to 600*l.* per annum in the event of

POWER OF APPOINTMENT—continued.

her marrying again, and further to pay to her an additional annual sum of 100*l.* for the maintenance of each of his children until they attained twenty-one or married under that age. And he further appointed, in case his residuary estate should be insufficient to pay his just debts, that the said trustees should pay to his wife an additional annual sum of 500*l.* so long as any of his debts should remain unpaid, or for a period of ten years from his death, whichever should be the shorter period, on condition that so long as she should expend the sum of 400*l.* in every year in the payment of his debts, and after the debts should have been fully paid by her or after the expiration of ten years from his death, whichever should be the shorter period, to pay to her, if she should have fulfilled the condition, instead of the said additional annuity of 500*l.* an additional annuity of 100*l.* for the remainder of her life, and, subject to the trusts thereinbefore declared, he appointed the trust funds to his children. A. Cohen died in 1901, and S. B. Cohen died in 1909, leaving his widow, the plaintiff, and three children (infants) him surviving. His estate was insolvent.

Summons taken out by the plt., now Mrs. Brookes, for the determination of the question (*inter alia*) whether the appointment of the annual sums to her on condition to pay her late husband's debts was valid.

Held, that the condition in this case could not fairly be separated from the appointment. The case fell within the proposition laid down in Farwell on Powers (2nd ed.), p. 421; and the execution of the power was fraudulent and void as having been made for a purpose wholly foreign to the power. The appointment of the additional annuity of 500*l.* was therefore bad.

In re COHEN. BROOKES v. COHEN

Joyce J. [1910] W. N. 216

19. — General power—Execution—Exercise by will—Appointment of executors and bequest of pecuniary legacies—Estate of testatrix alone insufficient to pay debts and legacies—Wills Act, 1837 (7 Will. 4 & 1 Vict. c. 26), s. 27.

S. S. by her will devised and bequeathed the residue of her real and personal estate to trustees upon trust to sell and to invest the proceeds as therein mentioned, and she declared that her trustees should stand possessed of one third part of the said trust funds and securities upon trust to pay the annual income arising therefrom unto her daughter S. M. S. for life, and she declared that her trustees should upon the death of her said daughter stand possessed of the said one third part of the said trust funds and securities upon trust for such person or persons as her said daughter should by her last will or by any codicil direct or appoint, and in default of such direction or appointment, in trust for the next of kin, her said daughter.

S. M. S. by her will made specific devises of her real estate and directed that the "remainder of my property in houses and lands" should be equally divided among all her nephews, with the condition that they should pay to each of her three nieces the sum of 500*l.* She then made certain specific bequests and concluded her will

POWER OF APPOINTMENT—*continued.*

as follows: "And I appoint as executors of this my will W. B. . . . A. G. and . . . P. S., to each of whom I direct to be paid for their services the sum of 50*l.*" The will contained no residuary gift of personal estate.

The estate of S. M. S. was not sufficient to pay her debts and the legacies given by her will unless the share over which she had a power of appointment under the will of S. S. was available for this purpose.

Summons taken out by the surviving executor and trustee of the will of S. S. for the determination of the question (inter alia) whether the will of S. M. S. was an exercise of the power of appointment given her by the will of S. S.

Warrington J., after referring to s. 27 of the Wills Act, 1837, said that it was decided in *Hawthorn v. Shedden*, (1856) 3 Sm. & Giff. 293, that the appointment of executors, coupled with the gift of pecuniary legacies, amounted to an appointment of a fund which was the subject of a general power of appointment to the extent of the amount which was necessary for the payment of the legacies. That decision appeared to involve the further proposition that if the estate of the donee of the power was insufficient, apart from the fund to which the power applied, for the payment of her debts, the appointment must be taken as extending to such an amount as was sufficient for the payment, not only of the legacies, but of the debts, inasmuch as the debts must first be discharged before the legacies could be paid. That appeared to be the view expressed by Wickens V.-C. in *In re Davies' Trusts*, (1871) L. R. 13 Eq. 163, 166. Assuming then that the gift of the legacies was to some extent an exercise of the power, that was, to the extent of the amount required to pay the legacies, it must be an effectual exercise of the power to the extent which was necessary to enable that payment to be carried into effect. He therefore held that the will of S. M. S. operated as an exercise of the general power of appointment which she possessed under the will of S. S. over the one third of the trust funds to such an extent as would enable the executor of S. M. S. to pay, with the aid of her own property, her debts and the legacies given by her will.

In re SEABROOK. GRAY v. BADDELEY

Warrington J. [1910] W. N. 244

20. — *General power — Exercise by will — Extent of exercise — Intention — Blending of appointed property with testator's own property — Wills Act, 1837 (1 Vict. c. 26), s. 27.*

A testatrix, who had a general power of appointment over the funds comprised in her marriage settlement, by her will in exercise of the power appointed that the trustees of the settlement should stand possessed of 9000*l.*, part of the funds, in trust for six persons named in the will. And in further exercise of the power she appointed that the trustees should stand possessed of the residue of the funds in trust as to 1000*l.* for W. P. Shaw, and as to the residue thereof in trust for Henry Shaw. And, after bequeathing some specific and pecuniary legacies, the testatrix made the following bequest: "As to the rest and residue of my real and personal

POWER OF APPOINTMENT—*continued.*

estate I devise, bequeath, and appoint the same, subject to the payment thereof of my debts, funeral and testamentary expenses, unto Henry Shaw." Henry Shaw died before the testatrix. The testatrix had personal estate of her own, but she had no real estate:—

Held, by Romer and Cozens-Hardy, L.J.J., that the testatrix had by her will exercised the power for all purposes and had blended the settlement funds with her own property, and that the appointed fund, so far as it had lapsed by the death of Henry Shaw, went, subject to the payment thereof of her debts and funeral and testamentary expenses and her pecuniary legacies, to her next of kin, and not to the persons entitled under the settlement in default of appointment:

Held, by Vaughan Williams L.J., that, having regard to other clauses in the will, the testatrix had not shown an intention to exercise the power for all purposes so as to make the settled fund her own, and that, so far as the appointment had lapsed, the fund went to the persons entitled in default of appointment.

Decision of Byrne J. reversed.

Per Romer L.J.: *In re Davies' Trusts*, (1871) L. R. 13 Eq. 163, and *In re De Lusi's Trusts*, (1879) 3 L. R. Ir. 232, distinguished.

Per Cozens-Hardy L.J.: *Cozen v. Rowland*, [1894] 1 Ch. 406, approved. *In re MARTEN. SHAW v. MARTEN* - C. A. [1902] W. N. 2; [1902] 1 Ch. 314

Note.

See In re Marten, Shaw v. Marten, Byrne J., [1901] 1 Ch. 370; *Will—Legacy*. 3.

21. — "Give, devise, bequeath, and appoint"—*Exercise by will—Subsequent will—No clause of revocation—No reference to power—Power held to be exercised—First will excluded from probate.*

Where a testator, having made a will reciting a power of appointment and exercising or purporting to exercise that power, made a subsequent will, which contained no clause of revocation and no reference to the power, but by which he purported to "give, devise, bequeath, and appoint" all his real and personal estate:—

Held, that the word "appoint" was, under the circumstances, a sufficient exercise of the power, and that the second will, by implication, revoked the first.

The principle of the decision in *In re Mayhew, Spencer v. Cutbush*, [1901] 1 Ch. 677, followed. *KENT v. KENT* - Jeune, Pres. [1902] P. 108

—Ireland, Settled land in—Wife entitled to life estate—Dissolution of marriage—Appointment to self—Bonus—Irish, Land Acts.

See SETTLEMENT. 7.

—Jointuring—Execution of power by testamentary instrument.

See STATUTE. 1.

—Jointuring—"To any woman whom he may marry"—Second marriage after divorce at instance of first wife.

See SETTLEMENT. 32.

POWER OF APPOINTMENT—continued.

— Legacy—Gifts by appointment under a power —Interest.

See **WILL—Legacy. 3.**

— Lunacy—Committee—Marriage settlement—Power of appointment among children.
See **LUNACY. 21.**

— Married woman — Appointment — Separate estate—"Liable for her debts or other liabilities."

See **HUSBAND AND WIFE—Separate Property. 2.**

22. — Married woman—Power of appointment—Restraint on anticipation—Release of power—Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), s. 52.

A married woman had, under a settlement executed on her marriage in 1872, a life interest in personality, subject to a restraint on anticipation, with a power of appointment amongst her children:—

Held, that under s. 52 of the Conveyancing and Law of Property Act, 1881, she could by deed unacknowledged release her power. *In re CHISHOLM'S SETTLEMENT. In re HEMPHILL'S SETTLEMENT. HEMPHILL v. HEMPHILL*

Stirling J. [1901] 2 Ch. 82

— Married woman—Separate estate—General power of appointment—Execution.

See **HUSBAND AND WIFE—Execution. 1.**

23. — Married woman—Settlement—General power to appoint by will—Event in which power to arise — Non-occurrence — Exercise of power during coverture—Married Women's Property Act, 1893 (56 & 57 Vict. c. 63), s. 3—Wills Act, 1837 (1 Vict. c. 26), s. 24.

Under a marriage settlement property was settled upon trust for the wife and her husband for life, and if there should be no children and the husband should die in the lifetime of the wife (both of which events happened), then after his death in trust for her absolutely. Then followed a trust, in the event of the husband surviving the wife, giving her (subject to his life interest) a general power of appointment by will notwithstanding coverture, and subject thereto the trust funds were to go to her next of kin. The husband died in 1905 and the wife in 1908. By her will, dated in 1895, the wife, in exercise of the power and of all other powers (if any) thereunto enabling her, appointed that the trustees should after the death of her husband stand possessed of the property subject to the settlement for certain named persons, and, after making specific bequests, she gave her residue to her husband absolutely:—

Held, that the effect of s. 3 of the Married Women's Property Act, 1893, was to make the will operate upon all that the testatrix had at her death; that at her death, in the events which happened, the settled property was held upon trust for her and passed to the appointees as a specific disposition under her will. *In re JAMES. HOLE v. BETHUNE*

Joyce J. [1909] W. N. (Correction 242) 236; [1910] 1 Ch. 157

POWER OF APPOINTMENT—continued.

— Married woman — Will — Appointment — Exercise of general power — Separate estate.

See **HUSBAND AND WIFE—Separate Property. 2.**

24. — Mistake — Forgetfulness—Settlement—Appointment—Deed poll—Rescission—Intention—Equitable relief.

An appointment by deed poll, made in entire forgetfulness by the appointor of an earlier appointment to the same person, may be rescinded and set aside on the ground of mistake. **LADY HOOD OF AVALON v. MACKINNON**

Eve J. [1909] W. N. 38; [1909] 1 Ch. 476

— Non-execution—Death of donee—Marriage settlement—Rectification—Parol evidence.

See **SETTLEMENT. 39.**

25. — Partial exercise of, by donee—Range of investments authorized by instrument creating power—Extension of, by donee—Validity.

Where the donee of a power of appointment does not appoint to objects of the power he cannot alter the range of investments authorized by the instrument creating the power.

A testator by his will gave all his real and personal estate to trustees upon trust to sell and convert and to invest the proceeds in certain investments which did not include mortgages of leaseholds, and he directed them to pay the income of the trust estate to his wife for life, and after her death to hold the trust estate upon trust for such of his nine children as his wife should by will or codicil appoint, and in default of appointment upon trust to divide the same among his nine children in equal shares. The testator's widow by her will, in exercise of the power given her by the testator's will, appointed certain sums to her daughters in respect of their one-ninth shares, and declared that the trustees of the testator's will might invest the moneys subjects to the trusts of that will in certain securities which were not within the range of investments thereby authorized, including mortgages of leaseholds. By a codicil to her will the widow, in further exercise of the power, declared that the trustees of the testator's will should hold two of the one-ninth shares of the trust estate upon trusts in favour of certain objects of the power, and, subject to a slight modification in the amounts of the sums appointed by her will, made by a second codicil, she allowed the bulk of the trust estate to pass under the testator's will in default of appointment. After her death the trustees of the testator's will invested part of the trust estate upon mortgage of certain leasehold premises:—

Held, that the trustees of the testator's will had no power to invest upon leasehold security funds representing shares subject to the trusts of the will passing in default of appointment. *In re WILLIAM FALCONER'S TRUSTS. In re ANN FALCONER'S TRUSTS. PROPERTY AND ESTATES Co., LD. v. FROST*

Warrington J. [1908] W. N. 28; [1908] 1 Ch. 410

POWER OF APPOINTMENT—*continued.*

— Perpetuity—Power which might be exercised so as to create perpetuity, but not so exercised.

See **VENDOR AND PURCHASER—Title.**
11.

— Personality—Execution—Foreign domicil—Unattested will—Extrinsic evidence of intention.

See **CONFLICT OF LAWS.** 16.

— Portions — Disentailing deed subject to anterior estates and powers annexed thereto—Mortgages—Priorities.
See **SETTLEMENT.** 38.

— Power—Execution—"Writing or writings"—"Appointment made by will"—Validity.
See **No. 14, above.**

— Power of disposition—Will.
See under **WILL—Power of Disposition.**

— Probate duty claimed on property subject to special.
See **NEW SOUTH WALES.** 28.

26. — Real estates—Equitable limitations—Appointment upon trusts for sale—Conversion.

The rule laid down in *Kemworthy v. Bate*, (1802) 6 Ves. 793; 6 R. R. 46, that a power to appoint land is well exercised by an appointment to trustees upon trust for sale, applied to a case where the limitations were equitable and trustees were directed to convey the property to such child or children, and "for such estate or estates, manner and form" as the donee of the power should appoint. *In re REDGATE*.
MARSH v. REDGATE — **Buckley J.**
[1903] 1 Ch. 356

— Remoteness—"Possibility on a possibility."
See **PERPETUITY.** 1.

— Remoteness—Special power of appointment—Exercise—Rule against perpetuities.
See **WILL—Remoteness.** 5.

27. — Remoteness, Appointment void for—Covenant as to mode of execution of special testamentary power—Will—Election—Originating summons—Administration—Costs out of estate—Costs "as between solicitor and client"—R. S. C., 1883, Order LXV., r. 27, sub-r. 29 (R. S. C., Jan., 1902, r. 10).

In applying the doctrine of election as to taking under or against an instrument, there is no distinction in principle between an appointment which is void because it is in excess of the power and an appointment which is void as transgressing the rule against perpetuity.

A covenant to exercise a special testamentary power in a particular way is void.

W. B. by his will gave property upon trust for the children of A. B. as A. B. should by will appoint, and in default of appointment for the children equally. A. B. covenanted with the trustees of his marriage settlement to exercise the power in a particular way. A. B. by his will

POWER OF APPOINTMENT—*continued.*

made an appointment to his son for life with an appointment over which was void as transgressing the rule against perpetuity, and he also made a bequest of property of his own in favour of the son. The covenant was not satisfied by the terms of the will :—

Held, that the son of A. B. was bound to elect between the interest bequeathed to him in the property of A. B. and his interest in default of appointment under the will of W. B. :

Held, also, that the covenant was void, and therefore could not be enforced against the estate of A. B.

In re Warren's Trusts, (1884) 26 Ch. D. 208, distinguished. *In re BRADSHAW. BRADSHAW v. BRADSHAW* — **Kekewich J.** [1902] W. N. 15; 1902 1 Ch. 436

Note.

Not followed by Warrington J., *In re Beales' Settlement*, [1905] 1 Ch. 256. See **No. 5, above.**

Not followed by Farwell J., *In re Oliver's Settlement*, [1905] 1 Ch. 191. See **No. 6, above.**

Not followed by Buckley J., *In re Wright*, [1906] 2 Ch. 288. See **Settlement.** 36.

28. — Revocation—Settlement—Special power—Investment of part of trust fund in real estate—Appointment of real estate with power of revocation—Subsequent appointment of whole of trust fund without reference to previous appointment—Inconsistency—Equitable interest—Absence of words of inheritance.

A marriage settlement conferred upon the husband and wife a joint power to appoint the trust moneys, stocks, funds and securities comprised in the settlement amongst children and issue, and the settlement contained a power to invest the trust funds in the purchase of real estate. The husband and wife appointed certain real estate purchased out of the trust funds, upon trust upon the death of the survivor for their eldest son, his heirs and assigns, with a power of revocation and reappointment, and subsequently, without referring to the previous appointment, they, in exercise of the power of appointment given to them by the settlement and of every other power enabling them in that behalf, appointed the whole of the trust moneys, stocks, funds, and securities comprised in the settlement, upon trust (subject to their respective life estates) for all their children equally :—

Held, that the second appointment was not a revocation of the first.

Per Farwell L.J. : *Semble*, if the second appointment had operated to pass the real estate, having regard to the absence of words of inheritance, the children would have taken life estates only.

In re Tringham's Trusts, [1904] 2 Ch. 487, and *In re Oliver's Settlement*, [1905] 1 Ch. 191, explained. *In re THURSBY'S SETTLEMENT. GRANT v. LITLEDAL* — **C. A.** [1910] W. N. 151; [1910] 2 Ch. 181

29. — Scotland—Appointment—Limited power amongst donee's children—Exercisable by will—

POWER OF APPOINTMENT—continued.

Special formalities—Trust fund—Donee domiciled in Scotland—Power duly exercised by will—Subsequent disposition of part of fund—Holograph codicil—Defective execution—Codicil valid by law of domicile—Probate in England—Defective execution aided—Pro tanto revocation of prior appointment—Wills Act, 1837 (1 Vict. c. 26), s. 10—Wills Act, 1861 (Lord Kingsdown's Act) (24 & 25 Vict. c. 114).

The testatrix, a domiciled Scotswoman, was the donee of a special power of appointment over a trust fund in favour of her children exercisable "by her last will and testament in writing or any codicil or codicils thereto to be signed in the presence of and attested by two or more witnesses." She made a will, with the necessary formalities, duly exercising the power and appointing the whole fund to her three daughters. Subsequently, by the first of a series of holographic dispositions written from time to time, and under the last of which her unattested signature appeared, she referred to the fund and gave thereout 500*l.* to each of her sons therein named. One son afterwards died, and then by a later writing of the series she cancelled the gift of 500*l.* to him and gave it to her three daughters. The holograph writings were effective according to Scots law and were, with the will, admitted to confirmation in Scotland, and were also admitted to probate in England along with the will and as a codicil thereto:—

Held—(1.) that the domicile of the testatrix being Scottish, s. 10 of the Wills Act, 1837, which does not extend to Scotland, had no application; and that, quite independently of the provisions of Lord Kingsdown's Act, the codicil, having been recognized as a valid testamentary instrument by the Probate Division, was capable of operating as an execution of a power of appointment by a will over personal estate:

In re Price, [1900] 1 Ch. 442, followed;

(2.) that, there being no express revocation of the appointment by will, the codicil only revoked the will to the extent to which the appointment in the codicil effectively interfered with the dispositions of the will:

Duguid v. Fraser, (1886) 31 Ch. D. 449, followed; and

(3.) that the Court would aid the defective execution in favour of the two surviving sons, who were consequently entitled to 500*l.* each out of the fund, the rest of which went to the three daughters:

Morse v. Martin, (1865) 34 Beav. 500, followed.

In re WALKER. MACCOLL v. BRUCE
Joyce J. [1908] W. N. 47; [1908] 1 Ch. 560

—Settled fund—Wife's general power of appointment—Wife's contingent reversionary interest.

See SETTLEMENT. 5.

30. — Settlement — Appointment — Special power of appointment — Appointment of trust funds for the time being subject to the trusts of the settlement—Assignment by appointee of his share in the trust funds and all other (if any) his estate and interest of and in all other the trust funds for the time being subject to the trusts of the

POWER OF APPOINTMENT—continued.

settlement—Subsequent acquisition of interest by trustees of settlement—Marriage settlement.

By marriage articles dated in 1845 certain funds were settled upon trust for the husband, Sir R. W., for life, then for the wife, Lady W., for life, then for the children of the marriage as the husband should appoint, or in default of appointment by the husband as the wife should appoint. In 1876 Sir R. W. died without having exercised his power of appointment except as to a specific portion of the funds appointed in trust for a daughter. In 1879 Lady W. appointed that after her decease the trustees should stand possessed of the trust funds for the time being subject to the trusts of the articles (other than the sum appointed by Sir R. W.) in trust for the remaining six children of the marriage in equal shares. In 1893 one of the sons, William, by his marriage settlement assigned to trustees his one-sixth share of the trust funds (which he specified in a schedule) to which he was entitled on the death of his mother, and all other (if any) his estate and interest of and in all other the trust funds for the time being, subject to the trusts of the articles of 1845. By a codicil dated in 1878 Mrs. B. directed that the property which she had left by her will to Sir R. W. should be transferred to the trustees of the marriage articles and be held upon the trusts thereof, and she died in 1900. Subsequently, in 1900, Lady W. appointed this property in trust for certain of her children (including William):—

Held, first, that the appointment of 1879 did not operate as an appointment of any moneys not then subject to the trusts of the marriage articles; secondly, that William's marriage settlement passed only such estate as he then had in the trust funds; and, therefore, that his share of the property bequeathed by Mrs. B.'s codicil was not included in that settlement.

Semle. The effect of Mrs. B.'s bequest was not to make the property an accretion to the funds originally settled by the marriage articles, but to create a new referential settlement of such property upon similar trusts. *In re WALPOLE'S MARRIAGE SETTLEMENT. THOMSON v. WALPOLE* Joyce J. [1903] 1 Ch. 928

—Settlement.

See under SETTLEMENT.

—Settlement—Limited power of appointment—Ultimate reversion in donee—Bankruptcy of donee—Capacity of trustee to release power.

See No. 1, above.

31. — Settlement—Power to appoint in favour of a particular class—Donee of power herself a member of the class—Right of donee to appoint to herself—Construction of settlement.

Under a settlement the trust funds in a certain event were to be held in trust for such persons and purposes and in such manner as the settlor should by deed or will appoint, so only that every such appointment should be made to or in favour of one or more of a specified class of persons, and in default of appointment in trust for the members of the class equally. The settlor was herself a member of the class:—

Held, that it was competent to the settlor

POWER OF APPOINTMENT—continued.

under the power to appoint the trust funds to herself. *TAYLOR v. ALLHUSEN* - *Kekewich J.* [1905] 1 Ch. 529

32. — Settlement—Real property—Appointment—Validity—Remoteness—Rule against double possibilities—Successive limitations to unborn children—Election.

The rule commonly known as the rule against double possibilities, namely, that after an estate has been limited to an unborn person for life a remainder cannot be limited to any child of that unborn person, applies to equitable as well as legal estates.

So held upon the authority of *Monypenny v. Dering*, (1852) 2 D. M. & G. 145.

Where by his will a testator makes an appointment which is held to be invalid as transgressing the rule against double possibilities, and also confers benefits upon the persons entitled in default of appointment, no question of election arises.

In re Oliver's Settlement, [1905] 1 Ch. 191, approved and followed.

In re Bradshaw, [1902] 1 Ch. 436, overruled.

Decision of *Eve J.*, [1909] W. N. 162; [1909] 2 Ch. 450, affirmed. *In re NASH. COOK v. FREDERICK* - *C. A.* [1909] W. N. 209; [1909] W. N. 226; [1910] 1 Ch. 1

33. — Special power—Exercise by will—Change of investment—Ademption—Premiums—"Capital money"—Wills Act, 1837 (1 Vict. c. 26), ss. 23, 24, 27—Settled Land Acts, 1882 (45 & 46 Vict. c. 38), s. 22, sub-s. 5, and 1884 (47 & 48 Vict. c. 18), s. 4.

A tenant for life of real estate who had under the settlement power to appoint the estate by will among his children after his own death exercised the power and appointed the estate among his children. Afterwards the testator granted under the Settled Land Act, 1882, leases of parts of the appointed property in consideration of premiums paid by the lessees. The premiums were paid to the trustees of the settlement and invested by them:—

Held, that there being in the will no apparent intention to appoint the property representing the premiums, that property did not pass under the appointment.

The decision of the *C. A.* in *In re Moses. Beddington v. Beddington*, [1902] 1 Ch. 100, affirmed.

The decision of *Farwell J.* in *In re Dowsett*, [1901] 1 Ch. 398, approved. *BEDDINGTON v. BAUMANN* - *H. L. (E.)* [1902] W. N. 212; [1903] A. C. 13

34. — Special power—Exercise by will—Use of word "appoint"—Indications of contrary intention.

By a settlement made in 1863 on the marriage of *W.* and *X.*, leasehold hereditaments were settled upon trust, after the decease of the survivor of them, for all and every the children and child of the marriage in such parts and shares as the survivor should by will or codicil appoint.

W. survived *X.*, and by his will, after making bequests of a watch, a picture, and an organ, he gave, devised, bequeathed, and appointed all the residue of his "estate," "real as well as personal,"

D. D.

POWER OF APPOINTMENT—continued.

unto trustees, upon trust to convert into money such parts of "the said trust premises" as should not consist of money, and out of the proceeds to pay his funeral expenses and debts, and to pay and divide the residue of "such trust moneys and premises unto and equally between" his sons *A.*, *P.*, and *R.* (declaring that he made no provision for his other children because they were sufficiently provided for). The testator then empowered his trustee *s* to postpone the conversion of his "real and personal estate" for so long as they should think proper, and during the postponement to manage, lease, or let his "real and leasehold estates," and out of the capital or income thereof to make any proper outlay for improvements, repairs, insurance, or otherwise for the benefit of his "real or personal estate," but declared that no property not actually producing income which should form part of his estate should be treated as producing income. The testator also declared that the trustees might invest the "trust moneys representing the shares" of *P.* and *R.* during their respective minorities in certain specified securities, and that during their minorities the trustees should pay the whole income of those shares to *A.* as their guardian for their maintenance:—

Held, that the will did not operate as an exercise of the special power given by the settlement.

In re Cotton, (1888) 40 Ch. D. 41, followed.

In re Mayhew, [1901] 1 Ch. 677, distinguished. *In re WESTON'S SETTLEMENT. NEEVES v. WESTON* - *Buckley J.* [1906] 2 Ch. 620

Note.

Referred to by *Gorell Barnes P.*, *Wrigley v. Lowndes*, [1908] P. 348. See *No. 36, below*.

35. — Special power—Limited power—Will—Execution of power—General gift—"Disposing power"—Power non-existent at date of will—Exercising power by anticipation—Intention.

H. H. the younger, by his will dated in 1884 and confirmed by a codicil dated in March, 1893, gave "all the residue of the property over which at the time of my death I shall have a disposing power" to trustees upon trust for sale, conversion, and investment, and directed them to pay the yearly income arising from his trust estate to his wife for life or widowhood, and subject to the trust aforesaid to stand possessed of his trust estate upon trusts for his children.

H. H. the elder, the father of *H. H.* the younger, by his will, dated in June, 1893, empowered each child of his by his or her will, or any codicil thereto, to appoint in favour of his or her wife or husband the whole or any part of the yearly income of his or her share of his (the testator's) residuary estate for the life of such wife or husband, and directed that a sum of 4000*l.* thereby directed to be raised should be held upon the same or the like trusts and subject to the same or the like powers and provisions as were thereinbefore declared with respect to the share of his son *H. H.* the younger in the residue.

H. H. the elder died in 1895, and *H. H.* the younger in 1899 leaving a widow and three

POWER OF APPOINTMENT—continued.

children. H. H. the younger had no power of appointment exercisable in favour of his widow other than the power contained in the will of his father :—

Held, that the language of the will of H. H. the younger was not sufficient to shew an intention to execute a non-existent special power, and accordingly that his will did not operate as an appointment under the power given him by the will of his father.

Whether it is possible, as a matter of law, to execute by anticipation a special power not created until after the alleged execution, *quære*.

Decision of Byrne, J., [1900] 2 Ch. 332, affirmed. *In re HAYES. TURNBULL v. HAYES* C. A. [1901] W. N. 175 ; [1901] 2 Ch. 529

36. — Special power of appointment—Will—Exercise by earlier will—No express clause of revocation—Complete exercise of power—Later will alone admitted to probate.

Whether a special power of the appointment has been exercised or not by will must depend, in the absence of any specific reference to the power, or the property subject to the power, upon whether it can be gathered from the terms of the will that the donee of the power had the power in mind and meant to exercise it.

The testatrix (donee of a special power of appointment) made a will by which she duly and in terms exercised such special power of appointment. In a later and holograph will executed by her were these words, "I wish to leave at my death everything I have power to will to my husband" :—

Held, that the testatrix meant to exercise and did exercise the special power by the later will, and that that will revoked the earlier will.

In re Weston's Settlement, Neeves v. Weston, [1906] 2 Ch. 620. referred to. *WRIGLEY v. LOWNDES - Gorell Barnes, Pres.* [1908] P. 348

37. — Special testamentary power—Release—Restriction on exercise in favour of particular object—Inconsistent appointment.

The donee of a testamentary power of appointment among children and issue may covenant that he will not exercise the power in such a way as to reduce the share of a particular object below a certain amount, and thereafter the power can only be exercised subject to the limitation or fetter imposed by the negative covenant. The donee may satisfy the covenant either by appointing by will to the covenantee the named sum or by so appointing to other objects as that there shall remain unappointed such a sum as shall result in the covenantee receiving the named sum, but the covenant cannot operate affirmatively as an appointment, since that would be to allow a power exercisable by will only to be exercised by deed.

Daries v. Huguenin, (1863) 1 H. & M. 730, overruled on this point.

A lady had under her marriage settlement a testamentary power of appointment over a fund among her children and issue, and in default of appointment the fund was to be divided after the death of the survivor of the husband and wife

POWER OF APPOINTMENT—continued.

among her children equally. In exercise of her power of appointment she appointed by her will a sum of 60,000*l.* to be divided between her six sons and settled upon them and their children and the residue to be divided into sevenths and settled upon her six sons and her daughter and their children. Subsequently she covenanted with three of her sons not to exercise her testamentary power of appointment in such a way as to reduce their respective shares in the fund below 7000*l.* apiece :—

Held, that the fetter imposed by these covenants involved the consequence that each of her seven children should receive 7000*l.* absolutely as in default of appointment, and that the appointment operated only over the balance of the fund after deducting 49,000*l.* *In re EVERED. MOLINEUX v. EVERED.*

C. A. [1910] 2 Ch. 147

— Stamp—Settlement—Exemption.

See *REVENUE—Stamps*. 29.

— Succession duty, Acceleration of—New title under appointment.

See *REVENUE—Succession Duty*. 1.

38. — Successive appointments—Cumulative or substitutionary — Election — Intention — Life interest — Forfeiture clause — Dispose or attempt to dispose of — Assignment to trustees of marriage settlement.

Sir Thomas and Lady Tancred, acting under a power contained in a settlement to appoint in favour of children (other than an eldest son), appointed one-seventh of a sum of 7000*l.* to each of two of their daughters. At the dates of those appointments there were living seven children besides an eldest son. After the death of Sir T. T., and when there were living only six children (besides an eldest son), of which six the two said daughters were two, Lady T. by two deeds poll appointed the whole fund equally to all her children other than the eldest son in sixths :—

Held, that no question of election arose ; that the question depended upon the true construction of the deeds of appointment ; and that the two daughters who had each received one-seventh could not also take one-sixth, inasmuch as it was the intention of Lady T., as shewn by the last appointments, that the whole fund should go in sixths.

England v. Lavers, (1866) L. R. 3 Eq. 63, explained and followed.

A person entitled to a life interest, determinable if he should dispose or attempt to dispose of it, assigned it to the trustees of his marriage settlement upon trusts under which he was to receive the income for life. By the settlement he appointed the trustees his attorneys to receive the income, and gave them power to pay the expenses of managing the trusts :—

Held, that this was not a disposition or attempted disposition of his life interest so as to cause it to be forfeited.

Observations upon *In re Porter*, [1892] 3 Ch. 481. *In re TANCRED'S SETTLEMENT, SOMERVILLE v. TANCRED. In re SELBY. CHURCH v. TANCRED* - *Buckley J.* [1903] 1 Ch. 715

POWER OF APPOINTMENT—*continued.*

- Tenant for life—Power to appoint portions--Disentailing deed—Mortgage of settled estates—Priority.
See SETTLEMENT. 38.
- Title—Perpetuity—Independent alternative gifts—Validity of ultimate gift—Settled land.
See VENDOR AND PURCHASER—Title. 11.
- Trustees.
See under TRUSTEE.
- Trustees, Appointment of new—Donee of power appointing himself—Validity of appointment.
See TRUSTEE—Appointment. 4.
- Trustees, Power to appoint new—Appointment of corporation jointly with individual.
See TRUSTEE—Appointment. 6.
- Trustees directed to pay and transfer the property to appointees—Deduction of title.
See VENDOR AND PURCHASER—Title. 15.

39. — Will—"Bequest of personal property described in a general manner"—Exercise of general power of appointment—Gift of stocks, shares, and securities—*Wills Act, 1837* (1 Vict. c. 26), s. 27.

A married woman, having general powers of appointment under her marriage settlement and her father's will (subject to a life interest in her husband) over personal property which at the time of her death consisted of ry. and colonial stocks, made a will by which subject to her husband's life interest she bequeathed to her three sisters "all stocks, shares and securities which I possess or to which I am entitled." The husband survived the testatrix :—

Held, that there was a "bequest of personal property described in a general manner" within the meaning of s. 27 of the *Wills Act, 1837*, which operated as an appointment of the stocks under the powers.

Turner v. Turner, (1852) 21 L. J. (Ch.) 843, followed. *In re JACOB. MORTIMER v. MORTIMER* - - Parker J. [1907] W. N. 40 ; [1907] 1 Ch. 445

- Will—Foreign donee of power—Exercise of power—Power exercised in accordance with English but not with foreign law.
See No. 16 above.

POWER OF ATTORNEY—Agent—Borrowing—Excess of authority—Money had and received.

- See PRINCIPAL AND AGENT.* 4.
- Agent—Scope of authority—Power to sell property belonging to principal—Mortgage.
See PRINCIPAL AND AGENT. 8.
- Attorney innocently acting under forged power—Liability of agent—Third party—Indemnity.
See PRINCIPAL AND AGENT. 3.

POWER OF ATTORNEY—*continued.*

- Bond passed under, granted by insane person—Law of Natal.
See NATAL. 3.
- Borrowing by agent—Misappropriation—Excess of authority—Liability.
See PRINCIPAL AND AGENT. 4.
- Ejectment—Injunction—Mortgage—Laws of.
See TURKS AND CAICOS ISLANDS.
- Forged power—Liability of agent.
See PRINCIPAL AND AGENT. 3.
- Verbal gift to holder of a—Deeds of gift—New Zealand Deceased Persons' Estates Duties Act, 1881—Stamp Acts.
See NEW ZEALAND. 22.

POWER OF DISPOSITION.

See WILL—Power of Disposition. 1.

POWER OF JOINTURING.

See under JOINTURE.

POWER OF SALE.

See also under SALE.

- Company.

See under COMPANY—Power of Sale.

1. — Duration — Determination — Absolute vesting of estate—Incapacity of persons entitled.

The question of the duration of a power in a settlement is, if the rule against perpetuities is not infringed, one of intention. A power of sale given by a will to trustees to enable them to perform a trust for the maintenance, out of capital as well as income, of a lunatic during his life is not determined by the lunatic's becoming absolutely entitled to the property so long as he is unable to call for a conveyance. *In re JUMP. GALLOWAY v. HOPE* - - Swinfen Eady J. [1902] W. N. 202 ; [1903] 1 Ch. 129

- Friendly society, Mortgage to—Sale by auction—Purchase by officer of society—Invalidity.
See MORTGAGE—Sale. 2.
- Implied — Shares in company — Notice to mortgagor.
See MORTGAGE—Sale. 5.
- Lunatic, Land vested in, as tenant for life—Committee.
See LUNACY. 21.
- Mortgage—Notice by mortgagor to bank of appointment of a trustee for his creditors—Banker and customer—Closing account.
See BANKER. 7.
- Mortgage of shares—Blank transfer—Implied power of sale—Wrongful conversion.
See STOCK EXCHANGE. 1.
- Mortgagees.
See under MORTGAGE—Sale.
- Sale.
See under SALE.
- Settled land.
See under SETTLED LAND—Sale.
- Vendor and purchaser.
See under VENDOR AND PURCHASER.

POWERS—Appointment.

See under **POWER OF APPOINTMENT**.

—Attorney.

See under **POWER OF ATTORNEY**.

—Directors.

See under **COMPANY—Directors**.

—Executor.

See under **EXECUTOR—Powers**.

—Jointuring.

See under **JOINTURE**.

—Lands Clauses Acts.

See under **LANDS CLAUSES ACTS**.

—Local legislature—Ontario Act to prevent the profanation of the Lord's Day *ultra vires*.

See **CANADA—Sunday**. 1.

—Railway company.

See under **RAILWAY—Powers**.

—Retraction—Marriage with consent.

See **MARRIAGE**. 8.

—Settled land.

See under **SETTLED LAND—Powers**.

—Trust—Church—Identity—Fundamental doctrines—Limits to power of union.

See **ECCLESIASTICAL LAW—Church**. 1.

—Trustees.

See under **TRUSTEE—Powers**.

—Water company.

See under **WATER**.

PRACTICE.

NOTE.—The cases digested under this heading affect the practice of the Supreme Court generally; for cases as to practice and procedure of other Courts and special matters, see specific titles.

Rules and Orders of Court judicially considered during the years 1901—1910. See ante. p. dlxv.

Supreme Court of Judicature Act, 1902 (2 Edw. 7, c. 31), amends the Supreme Court of Judicature Acts.

SUPREME COURT FUNDS RULES.] *Deduction of income tax from interest*. Reprint from **W. N. 1902 (Jan. 18)**, p. 45. See **CURRENT INDEX**. 1902, p. lxxxii.

SUPREME COURT RULES.] *Rules of Supreme Court, July, 1902*. Reprint from **W. N. 1902 (July 19)**, p. 203. See **CURRENT INDEX**, 1902, p. lxxxii.

Supreme Court Fees—Draft Order. Reprint from **W. N. 1903 (Jan. 3)**, p. 2; **Confirmed Feb. 10**. **W. N. 1903 (Feb. 21)**, p. 67. See **CURRENT INDEX**, 1903, p. lxxv.

Supreme Court Rules—Draft Rules. Reprint from **W. N. 1903 (May 30)**, p. 152; **Confirmed July 4**. **W. N. 1903 (July 25)**, p. 217. See **CURRENT INDEX**, 1903, p. lxxvii.

Supreme Court Draft Rules, Jan., 1904, which came into operation on Jan. 15, 1904. Reprint from **W. N. 1903 (Dec. 12)**, p. 323. See **CURRENT INDEX**, 1903, p. lxxx.

SUPREME COURT FEES.] *Order as to Supreme Court Fees, 1834, dated Nov. 30, 1903, which*

PRACTICE—continued.

comes into operation on Jan. 15, 1904. Reprint from **W. N. 1903 (Dec. 19)**, p. 325. See **CURRENT INDEX**, 1903, p. lxxvi.

SUPREME COURT RULES.] *Money paid into Court in action remitted to County Court—Draft rule*. **W. N. 1905 (Jan. 7)**, p. 2. See **CURRENT INDEX**, 1905, p. cxxxi.

Rules of the Supreme Court (July) 1905. [Draft rules. W. N. 1905 (June 24), p. 167.] W. N. 1906 (July 29), p. 223. See **CURRENT INDEX**, 1905, p. cxxxi.

Supreme Court Funds Rules, 1905. W. N. 1905 (Sept. 23), p. 251. See **CURRENT INDEX**, 1905, p. xc.

Order by the Lord Chancellor, dated March 21, 1906, under Order XI, r. 8, of the Supreme Court. Reprint from **W. N. 1906 (April 7)**, p. 99. See **CURRENT INDEX**, 1906, p. xcii.

Rules of the Supreme Court (May), 1906, dated May 25, 1906, in respect of Orders XIII, r. 12; XXVII, rr. 11A, 12, XXIX, r. 16; XXIV, r. 55D, and LXVIII, r. 2A. [Draft Rules, W. N. 1906 (April 14), p. 101.] Reprint from W. N. 1906 (June 2), p. 166. See **CURRENT INDEX**, 1906, p. xcii.

SUPREME COURT FEES.] *Substitution of records in Order as to Supreme Court Fees, 1884, item 92, dated May 28, 1906*. Reprinted from **W. N. 1906 (June 9)**, p. 170. See **CURRENT INDEX**, 1906, p. xci.

SUMMONS AND ORDER DEPARTMENT.] *Supreme Court of Judicature. Regulations as to the Summons and Order Department of the Central Office*. Reprint from **W. N. 1906 (Aug. 18)**, p. 239. See **CURRENT INDEX**, 1906, p. xci.

Rules of Supreme Court (December), 1906, dated Dec. 21, 1906, in respect of Order XXXVII, rr. 59, 60. Reprint from **W. N. 1907 (Jan. 5)**, p. 1. See **CURRENT INDEX**, 1907, p. lxxxii.

Rules of Supreme Court, (Aug.) 1907, dated Aug. 3, 1907, in respect of Order XXXVII, rr. 59, 60; Order LXIII, r. 6. Reprint from **W. N. 1907 (Aug. 10)**, p. 231. See **CURRENT INDEX**, 1907, p. lxxxii.

Practice of Courts—Chancery Division—Distribution of special work among the Judges.—Reprint from **W. N. 1908 (Feb. 1)**, p. 59. See **CURRENT INDEX**, 1908, p. cxxii.

Rules of Supreme Court (June), 1908, which come into operation on July 1, 1908. Reprint from **W. N. 1908 (June 6)**, p. 161. See **CURRENT INDEX**, 1908, p. cxxx.

Rules of Supreme Court (Patents and Designs), 1908, dated June 3, 1908. Reprint from **W. N. 1908 (June 6)**, p. 161. See **CURRENT INDEX**, 1908, p. cxviii.

Crown Office Rules, 1906, r. 17 added to—Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 20 (3). Reprint from **W. N. 1908 (June 6)**, p. 165. See **CURRENT INDEX**, 1908, p. xcix.

Rules of Supreme Court (July), 1908, Order LIV. Rules of the Supreme Court as to Judges' summonses in the King's Bench Division. These Rules came into operation on Oct. 12, 1908.

PRACTICE—*continued*.

Reprint from **W. N. 1908 (Sept. 5)**, p. 251. See **CURRENT INDEX**, 1908, p. cxxxii.

Judicature (Rules Committee) Act, 1909 (9 Edw. 7, c. 11), is an Act to amend the *Judicature Acts, 1873 to 1894*, with respect to the persons in whom the power of making Rules of Court under these Acts is vested.

Rules of the Supreme Court (May), 1909, dated May 3, 1909, and came into operation on June 1, 1909. Reprint from **W. N. 1909 (May 15)**, p. 183. See **CURRENT INDEX**, 1909, p. cliii.

Rules of Supreme Court — Procedure on applications for confirmation by the Court of the reduction of the capital of companies under the Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69). Reprint from **W. N. 1909 (May 15)**, p. 183. See **CURRENT INDEX**, 1909, p. cliv.

Supreme Court Fees—Order as to Supreme Court (June), 1909. Reprint from **W. N. 1909 (July 10)**, p. 269. See **CURRENT INDEX**, 1909, p. cliii.

Rules of Supreme Court (August), 1909, dated Aug. 25, 1909, and came into operation on Oct. 12, 1909. Reprint from **W. N. 1909 (Sept. 4)**, p. 307. See **CURRENT INDEX**, 1909, p. cliv.

Rules of Supreme Court (October), 1909, dated Oct. 21, 1909. These rules were declared urgent. Reprint from **W. N. 1909 (Oct. 30)**, p. 373. See **CURRENT INDEX**, 1909, p. clx.

Supreme Court of Judicature Act, 1910 (10 Edw. 7 & 1 Geo. 5, c. 12), is an Act to provide for the appointment of two additional judges of the High Court.

Supreme Court Order. Order by the Lord Chancellor, dated Aug. 2, 1910, applying Order XI., r. 8, of the Rules of the Supreme Court to the three countries of France, Spain, and Belgium. Reprint from **W. N. 1910 (Aug. 20)**, p. 270. See **CURRENT INDEX**, 1910, p. cxxi.

Rules of the Supreme Court (July), 1910, dated Sept. 15, 1910. Reprint from **W. N. 1910 (Sept. 24)**, p. 293. See **CURRENT INDEX**, 1910, p. cxxii.

Action—See under **ACTION**.

Appearance. See under **APPEARANCE**
Chambers, col. 1961.

Correspondence. See under **CORRESPONDENCE**.

Counter-claim, col. 1961.

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Discharging Orders, col. 1962.

Discontinuance, col. 1963.

Discovery. See under **DISCOVERY**.

District Registries, col. 1964.

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Form of Request, col. 1965.

Forma Pauperis, col. 1965.

PRACTICE—*continued*.

Fricolous, &c., Action, col. 1966.

Hearing, col. 1966.

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Interest. See under **INTEREST**.

Interlocutory Orders, col. 1967.

Joinder, col. 1967.

Judgment (Leave to Sign), col. 1969.

Judicial Separation, col. 1970.

Jury, col. 1970.

Masters, col. 1970.

Motions, col. 1971.

Office Copies, col. 1972.

Originating Summons, col. 1973.

Particulars, col. 1974.

Parties, col. 1974.

Pauper, col. 1978.

Payment, &c. (Payment into and out of Court)—*Payment into Court*, col. 1978.

Payment out of Court, col. 1980.

Petition. See under **PETITION**.

Pleadings, col. 1986.

Privy Council Appeals. See under **PRIVY COUNCIL**.

Production and Inspection of Documents. See under **DISCOVERY**.

Receiver. See under **RECEIVER**.

Reply, col. 1989.

Representative Action, col. 1989.

Rescind, Motion to, col. 1990.

Review, col. 1990.

Right to begin, col. 1991.

Sequestration. See under **SEQUESTRA-
TION**.

Service, col. 1991.

Setting aside. See under **SETTING
ASIDE**.

Settled Land. See under **SETTLED
LAND**.

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Standing Over, col. 2003.

Statement of Claim, col. 2003.

Staying Proceedings, col. 2005.

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Summary Jurisdiction. See under **SUMMARY JURISDICTION**.

Summons, col. 2010.

Summons for Directions, col. 2010.

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Undertakings, col. 2017.

PRACTICE—*continued.**Writ, col. 2021.***Action.***See under ACTION.***Appearance.***See under APPEARANCE.***Chambers.***R. S. C., Order LIV., relates to applications and proceedings at Chambers.**R. S. C. (July) (1901), Order LIV., r. 49. W. N. 1901 (July 13), p. 235; Correction, W. N., (Aug. 3), p. 245. See CURRENT INDEX, 1901, p. cii.**"Order LIV., r. 4 F (10), the word 'sureties' substituted for the word 'securities'."**Order LIV., r. 21 added to. See R. S. C. (July), 1905. W. N. 1905 (July 29), pp. 223, 224. See CURRENT INDEX, 1905, p. cxxi.*

— Appeal from order of judge at—Railways, Regulation of — "Practice and procedure"—Practice.
See APPEAL, 1.

— Appeal from order made in chambers in district registry.
See APPEAL, 7.

— Appeal from chambers—"Practice and procedure"—Originating summons.
See APPEAL, 2.

Correspondence.*See under CORRESPONDENCE.***Counter-claim.**

— Claim dismissed with costs—Counter-claim dismissed with costs—Form of judgment.
See COSTS, 16.

— Counter-claim in personam—Action in rem—Foreign plaintiffs—Demurrage.
See SHIPPING—Practice, 9.

— Discontinuance of action before appearance—Collision.
See SHIPPING—Practice, 7.

— Security for damages—Collision—Action in personam—Foreign plaintiffs.
See SHIPPING—Collision, 52.

— Third-party notice—Indemnity over against person not party to action.
See PRACTICE—Third Parties, 1.

— Trial—Action in Chancery Division—Counter-claim for defamation—Trial by jury.
See PRACTICE—Trial, 1.

Court Business.

The following statement was made on May 10, 1905, by Buckley J. with respect to the business of the Court :—

I desire to call the attention of the suitors to the fact that any action which is forthwith set

PRACTICE (Court Business)—*continued.*

down for trial before me may now be tried very quickly, probably early next week. I shall be ready to try any such upon the expiration of the notice of trial, or with the consent of the parties even earlier. In default of work of my own I shall shortly offer my services in aid of the K. B. Div., and when I take up that work I shall, according to my ordinary practice, continue it (except under exceptional circumstances) until I have cleared the list which I take over. From information which has reached me I have reason to believe that there are Chancery actions, some of them of weight and importance, which are ready or may be made ready for trial, but which have not been set down. In case any such are set down during the present week, I will take care that they shall not be postponed to any work which I take over from the K. B. Div. It is for the suitors to say whether they will avail themselves or not. PRACTICE NOTE

Buckley J. [1905] W. N. 82

Court of Appeal.*See also under APPEAL.***Business of the Court—King's Bench Division Appeal Lists.**

Cozens-Hardy M.R. announced that it was proposed next sittings to make a change in the method of keeping the K. B. Div. lists of final appeals and new trials.

Instead of two separate lists, one a final list, and the other the new trial paper, which formerly were dealt with separately, with the result that the final list got into arrears while the new trial paper was being proceeded with, and vice versa, there would in future be only one list for both final appeals and new trials, which would be heard and disposed of by the Court in the order in which they were set down.

His Lordship also stated that at the beginning of next sittings appeals from the K. B. Div. would be taken in both Courts of Appeal. Whether one Court would take the even numbers and the other the odd, he could not for the present say, but both Courts would endeavour to keep level with each other.

The interlocutory lists would be disposed of on days to be mentioned later on as occasion required; the Chancery interlocutory appeals would be taken in Court II., and the K. B. interlocutory appeals in Court I. Practice Notice, C. A. (Dec. 21, 1908) [1909] W. N. 6

Discharging Orders.

— Discharge of judgment by consent—Compensation—Employers' liability.
See HOUSE OF LORDS, 2.

1. — *Ex parte order by Court of Appeal for service out of jurisdiction—Application to discharge order—R. S. C., Order XI., r. 1 (g).*

Application (by summons adjourned from chambers) to discharge an order made *ex parte* by the C. A. on Mar. 3, 1904, under Order XI., r. 1 (g), for service in Scotland on the applicants as co-defts. in the action. The preliminary question was raised whether this Court had jurisdiction to entertain the application.

Kekewich J. referred to the Yearly Practice,

PRACTICE (Discharging Orders)—continued.

1904, p. 193 (where the article in the *Solicitors' Journal* is mentioned), and said that as the case of *Honduras Banking Co. v. Compagnie Générale, &c.*, though unreported, had not only been noticed in the *Solicitors' Journal*, but had received recognition in books of practice which were in the hands of the members of the profession and constantly used by them, he thought that he ought to regard the case as an authority for the proposition contended for, and that, although he might be surprised to find that he had jurisdiction to discharge an order of the C. A., he ought not to concern himself with any considerations for or against the propriety of the procedure. The Court, therefore, entertained the application:—

Held, however, upon the merits that the order of the C. A. had been rightly made, and the application was therefore refused. **BALFOUR v. WYLIE** - **Kekewich J. [1904] W. N. 72**

— Registrar, Order of—Motion to discharge.

See COMPANY—WINDING-UP—Practice. 10.

Discontinuance.

1. — *Action, Discontinuance of—Notice—Proceeding taken in action after receipt of defence—Delivery of amended statement of claim—R. S. C., 1883, Order XXVI., r. 1.*

Action by the plts. for an injunction to restrain the defts. from infringing their patents. At the trial the plts. alleged that they had discontinued the action by a notice of discontinuance dated Oct. 1, 1907, and the only question arising for decision was whether that notice was an effectual one.

The facts were shortly as follows: On March 13, 1907, the writ in the action was issued. On May 6 a motion was made by the plts. for an interlocutory injunction. By consent no order was made, the plts. undertaking to set down the action for trial seven days after the delivery of the defence. On May 16 the plts. delivered their statement of claim, and on May 30 the defts. delivered their defence and particulars of objection. The particulars of objection (*inter alia*) raised certain questions as to the plts.' title. On June 24 the plts. amended this statement of claim by adding parties and amending the averments of title, and on July 29 they delivered their amended statement of claim. On Oct. 1 the plts. gave the defts. notice in writing of their intention to wholly discontinue the action. On an *ex parte* application of the defts., based upon the plts.' undertaking to set down the action for trial as above stated, the case was put into the paper.

Warrington J. said that the only question was whether the plts. effectually discontinued the action on Oct. 1. On July 29, after the receipt of the defence, the plts., in consequence of certain interlocutory proceedings, delivered an amended statement of claim. That was not a mere formal proceeding on their part, but was done in order to enable them to prosecute successfully the action which without such amendment they could not have done. The delivery of that amended statement of claim was

PRACTICE (Discontinuance)—continued.

a proceeding other than an interlocutory application within Order XXVI., r. 1. The present case was not at all like *Spencer v. Watts*, 23 Q. B. D. 350, as far as the facts were concerned, but the dicta of Lindley L.J. applied. His Lordship in that case, referring to the rule (at p. 353), said: "I think that the exception (i.e., of interlocutory applications) throws some light upon the meaning of the words 'before taking any other proceeding in the action,' and having regard to it and to the object of the rule. I think what is meant is, 'taking any proceeding with the view of continuing the litigation with the person against whom the proceeding is taken.'" The delivery of the amended statement of claim in the present case was to use the words of Lindley L.J., "taking a proceeding with the view of continuing the litigation with the person against whom the proceeding was taken." The notice of discontinuance was therefore bad. Action dismissed. **VICKERS, SONS & MAXIM, LD. v. COVENTRY ORDNANCE WORKS, LD.**

Warrington J. [1908] W. N. 12

— Charitable institution—Discontinuance of week-day during testatrix's lifetime.
See CHARITY. 45.

— Costs—Public authorities protection.
See under PUBLIC AUTHORITIES PROTECTION.

— Debenture-holder's action—Right of plaintiff to discontinue after judgment.
See COMPANY—Debentures. 30.

— Discontinuance of action before appearance—Counter-claim—Collision.
See SHIPPING—Practice. 7.

— Patent—Action for infringement—Discontinuance—Terms on which allowed.
See PATENT—Infringement. 6.

— Patent—Particulars of objection—Leave to amend—Form of order—Discontinuance—Costs.
See PATENT—Particulars. 2.

— Public authorities protection—Solicitor and client costs.
See CO-TS. 50.

— Stay proceedings till costs of discontinued action by company paid, Application to—Contributory—Enforcing payment of calls.
See COMPANY—WINDING-UP—Contributory. 4.

Discovery.

See under DISCOVERY.

District Registries.

R. S. C., Order XXXV., relates to proceedings in District Registries.

Order XXXV., rule 9 added to. R. S. C. (July), 1905. W. N. 1905 (July 29), p. 223. See CURRENT INDEX, 1905, p. cxxxii.

Divisional Courts.

R. S. C., Order LIX. (Divisional Courts), rr. 19, 20, added. Reprint from W. N. 1904

PRACTICE (Divisional Courts)—continued.

(Jan. 16), p. 49. See CURRENT INDEX, 1904, p. cxxxv.

On the sitting of the Div. Ct. (consisting of Lord Alverstone C.J. and Darling and Channell J.J.), the Lord Chief Justice made the following statement:—

The judges of the King's Bench Division have been considering in what way they can best provide for continuous sittings for each class of business as far as possible, and also for as little change as it may be possible to arrange in the constitution of the various Courts that are taking a particular class of business. We hope to be able to provide that a Divisional Court of three shall sit throughout the year whenever a Divisional Court is required, and to maintain the personnel of the Court—that is to say, to secure that as far as possible the same judges shall sit for a considerable time during the sittings, or, if necessary, for a longer period than the sittings. Whether we shall be able to do it as a Court of three judges must depend to a great extent on the calls that are made on the services of the King's Bench judges for the performance of other duties, such as Circuits, Nisi Prius, and so on; but our great object is to have a Divisional Court, composed to a large extent of the same judges, sitting whenever required. We hope by that means to keep the list down, so that there will be substantially no arrears, and we shall be able to dispose of the cases now pending before the Court. It is the opinion of the King's Bench judges that as a result of the Divisional Court sitting as a Court of three judges the judgments will in all probability be such as will lay down the practice on the various points of practice that come before them, and will be a better guide to those who have to raise similar points than the judgments of a Divisional Court composed as hitherto of different judges, and sitting intermittently. We are aware of the difficulties in our way, and if we find that we cannot arrange the business as we propose we must fall back on the old system; but I have made this statement because we wish it known that the King's Bench judges are taking steps in the direction I have indicated with a view of having as little change as possible in the sittings of the various Courts. PRACTICE NOTE - Div. Ct. [1901] W. N. 218

Form of Request.

Appendix—County Court—Remitted actions, R. S. C. (July), 1905. W. N. 1905 (July 29), p. 224. See CURRENT INDEX, 1905, p. cxxxi.

Formâ Pauperis.

—Appeal in formâ pauperis, Leave to—Order granting leave discharged.

See ST. LUCIA. 1.

—Appeal in formâ pauperis—Special leave.

See CEYLON. 6.

1. — Plaintiff suing in formâ pauperis—Solicitor, Assignment of—Official solicitor—Order XVI., r. 26.

Except under very special circumstances the official solicitor ought not to be assigned to assist a pauper litigant under Order XVI., r. 26. MOUTRIE v. MITCHELL - C. A. [1901] W. N. 33; [1901] 1 Q. B. 596

PRACTICE—continued.**Frivolous &c., Action.**

1. — Frivolous and vexatious action—Dismissal—Cause of action—Gambling debt—Forbearance to sue—New consideration.

To an action commenced by a bookmaker by specially indorsed writ for a sum alleged to be due on a stated account, the deft. pleaded in his defence that the debts were gambling debts and this was admitted by the plt. by his answer to interrogatories, but the plt. stated by his answer, as other considerations for the deft.'s indebtedness, the plt.'s forbearance to sue and his giving time to the deft. at the latter's request. The deft. applied to have the action dismissed as being frivolous and vexatious:—

Held, that the forbearance to sue at the deft.'s request, in view of the possible apprehension of the deft. of the consequences of not paying the gambling debt, which it would be competent to the plt., consistently with the pleadings, to allege and prove, might constitute a new and valid consideration for the debt, and that the action ought not to be summarily dismissed. GOODSON v. GRIERSON - C. A. [1908] W. N. 55; [1908] 1 K. B. 761

2. — Frivolous and vexatious applications—Abuse of procedure—Interlocutory proceedings—Discretion—Costs—Form of order.

Form of order for preventing the repetition of frivolous interlocutory applications in an action.

Grepe v. Loam, (1887) 37 Ch. D. 168, applied. Order of Warrington J., [1905] W. N. 88, affirmed. LORD KINNAIRD v. FIELD

C. A. [1905] W. N. 108; [1905] 2 Ch. 306

Hearing.

—Patent—Petition for revocation—Hearing in Court.

See PATENT—Practice. 8.

—Right of hearing—Married woman—Person in contempt—Costs.

See DIVORCE—Practice. 8.

Infants.

See also under INFANT.

1. — Infant defendant—No defence—Motion for judgment—Evidence by affidavit—R. S. C., Order XIX., r. 13; Order XXVII., r. 11; Order XXXVI., r. 6.

Action by a widow against four defts. to set aside a written agreement alleged to have been obtained by them from her by misrepresentation and under pressure. One of the defts. was an infant about nineteen years of age, and a guardian ad litem had been appointed for him. The guardian ad litem and the other defts. appeared to the writ, but put in no defence to the plt.'s statement of claim.

The plt. now moved, under Order XXXVI., r. 6, for judgment against all the defts., and as against the infant deft. filed an affidavit verifying the allegations in the statement of claim.

Neville J.: I will follow *Fitzwater v. Waterhouse*, (1883) 52 L. J. (Ch.) 83; *Gardner v. Tapling*, (1885) 33 W. R. 473; otherwise great

PRACTICE (Infants)—*continued.*

expense might have to be incurred if, in the case of an infant deft. like the present, the action had to be set down for trial and the claim proved by the oral evidence of witnesses. You may take your order. *CHEEK v. CHEEK*

Neville J. [1910] W. N. 87

Interest.

See under INTEREST.

Interlocutory Orders.

1. — *Order, whether final or interlocutory—Arbitration—Setting aside award—Arbitration Act, 1889 (52 & 53 Vict. c. 49), ss. 5, 10, 11—R. S. C., Order LVIII., r. 3.*

Where, in an arbitration held under a submission to arbitration contained in an agreement, the arbitrator made his award in the form of a special case, but a Div. Ct. subsequently made an order setting the award aside on the ground of misconduct on the part of the arbitrator:—

Held, that the order so made was an interlocutory and not a final order. *In re CROASDELL AND CAMELL, LAIRD & CO.* — C. A. [1906] W. N. 170; [1906] 2 K. B. 569

Joinder.

1. — *Action for recovery of land—Joinder of other causes of action—Application for leave of Court—R. S. C., Order XVIII., r. 2.*

A mining lease contained certain covenants by the lessees to work the mine properly and to allow inspection by the lessor of the mines and workings, and also a proviso of re-entry for breach of the covenants.

On May 4, 1907, the executors of the lessor issued a writ against the lessees claiming (1) recovery of possession of the mines; (2) mesne profits; (3) an injunction to restrain the defts. from working the mines improperly; (4) an order on the defts. to allow inspection of the mines and workings; (5) a receiver, and (6) damages; but on the following day the plts. discontinued the action.

On May 6 the plts. applied to the Court for leave to join other causes of action with their claim to recover possession, the junior counsel for the plts. having certified, in accordance with what was stated to be the usual practice, that this was a proper case for leave to be granted, and upon his certificate leave was obtained. Thereupon this action was commenced for the same relief.

Warrington J., [1907] W. N. 231, held that the claim in the writ for possession was inconsistent with the claim for an injunction, and was not therefore an unequivocal demand for possession by which both parties were bound, and he dismissed the action with costs.

In the course of the arguments a question arose as to the proper mode of procedure upon an application under Order XVIII., r. 2, for leave to join other causes of action with an action for recovery of land.

The C. A. intimated that it was improper in a matter which involved an important exercise of judicial discretion for counsel to certify that in the circumstances of the particular case leave ought to be granted, and for the Master to act

PRACTICE (Joinder)—*continued.*

upon that certificate. This discretion ought only to be exercised on proper evidence.

[Ultimately, after many days' argument, the appeal was settled on terms which were not disclosed to the Court.] *MOORE v. ULLCOATS MINING CO., LD.* Warrington J. [1907] W. N. 231; [1908] 1 Ch. 575; C. A. [1908] W. N. (Erratum 40), 35

Note.

Moore v. Ullcoats Mining Co., Ltd., [1908] 1 Ch. 575; C. A. [1908] W. N. 35, 40. See *Landlord and Tenant*. 72.

— Bankruptcy notice—Joinder of judgments in action and counter-claim.

See **BANKRUPTCY—Notice**. 9.

— Contract to supply goods to company—Assignability—Joinder of assignor in action.

See **CONTRACT**. 4.

— Defendants, Joinder of—Railway and Canal Commission—Undue preference—Through rate.

See **RAILWAY—Rates**. 7.

2. — *Joinder of causes of action—Action of tort—Allegation of joint tort—Alternative allegation of separate torts—Costs—Costs against plaintiff of successful defendant—Addition to costs recoverable from unsuccessful defendant—Order XVI., rr. 4, 7.*

The plt. was injured by a collision between two vehicles, and brought an action against the respective owners. The statement of claim alleged that the injury to the plt. was caused by the joint negligence of the two defts., and it also alleged in the alternative negligence on the part of each deft. causing the injury. No application was made to strike out either of the defts., and the case went to trial. The jury found negligence on the part of the deft. first named on the record, and negatived negligence on the part of the other deft. The judge entered judgment for the plt. against the first-named deft. and judgment for the successful deft., with costs in each case. The judge further ordered that the costs so payable by the plt. should be included in the costs recoverable from the first-named deft. On appeal:—

Held, that after verdict and judgment it was too late to object to the jurisdiction to try the action on the ground that torts were alleged severally against the two defts.

Held, also, that in an action of tort tried with a jury, in which relief is claimed against two or more defts. in the alternative, there is jurisdiction to direct that costs payable to a successful deft. should be included in the costs recoverable by the plt. from an unsuccessful deft.

Per curiam: After the alteration of r. 1 of Order XVI., following on the decision in *Smurthwaite v. Hannay*, [1894] A. C. 494, the joinder, in an action of tort, of defts. against whom the right to any relief, in respect of or arising out of the same transaction, is claimed, whether jointly, severally, or in the alternative, is authorized by r. 4 of the Order.

Sanderson v. Blyth Theatre Co., [1903] 2 K. B. 533, applied.

PRACTICE (Joinder)—continued.

Sadler v. Great Western Ry. Co., [1896] A. C. 450, distinguished. *BULLOCK v. LONDON GENERAL OMNIBUS CO.*

C. A. [1906] W. N. 224; [1907] 1 K. B. 264

3. — *Joinder of causes of action—Leave of Court or judge—Leave given after issue of writ—Waiver of objection by defendant—Rules of Supreme Court, Order XVIII., r. 2; Order LXX., rr. 1, 2.*

Leave to join another cause of action with an action for the recovery of land may be given by the Court or a judge after issue of the writ in which the causes of action have been improperly joined. Such a joinder is an irregularity only, and an objection to the writ on that ground is capable of being waived by the defendants.

In re Pilcher, Pilcher v. Hinds, (1879) 11 Ch. D. 905, and *Smurthwaite v. Hannay*, [1894] A. C. 494, considered. **LLOYD v. GREAT WESTERN DAIRIES CO. - C. A. [1907] 2 K. B. 727**

— Parties to action—Joinder of defendants—Joinder of different causes of action.

See PRACTICE—Parties. 3.

— Pauper—"Not worth 25l."—Married woman plaintiff—Joinder of husband.

See HUSBAND AND WIFE—Poor Law. 1.

— Payment of lump sum into Court—Joinder of several causes of action.

See PRACTICE—Payment, &c. 1.

— Plaintiff's right to sue without Attorney-General—Water company—Trespass—Ultra vires.

See WATER.

— Separate causes of action, combining in one action.

See PATENT—Practice. 9.

— Several causes of action—Payment of lump sum into Court.

See PRACTICE—Payment, &c. 1.

Judgment.**(Leave to Sign.)**

1. — *Action "for debt or liquidated demand in money"—Claim for instalment of contract price of ship—R. S. C., Order XIV., r. 1; Order III., r. 6.*

The operation of Order III., r. 6 (A), and Order XIV., r. 1, is not confined to cases in which the old action of debt would have been maintainable.

By a contract between the plts. and the defts. for the construction of a steamer by the former the price of the steamer was to be 89,800l., to be paid by the defts. by five instalments, which were respectively to become due at different stages of the construction of the vessel. By the terms of the contract the hull and materials of the vessel were, upon payment of the first instalment, to become the absolute property of the purchasers, subject only to the builders' lien for any unpaid purchase-money; and, in the event of any instalment of the purchase-money remaining unpaid for fourteen days after the same was due, the builders were to be entitled to interest thereon at 5l. per cent. per annum

PRACTICE (Judgment)—continued.

until payment, and, in the event of such default, they were to be at liberty to suspend the work, and the time of suspension was to be added to the contract time, or they might complete the vessel at any time after the expiry of fourteen days' notice given to the purchasers, and might sell her after completion, and any loss on such vessel was to fall upon the purchasers, and any balance of the proceeds of such sale which might remain, after satisfying all lawful claims of the builders, was to be paid by the builders to the purchasers.

The first instalment of the purchase-money having by the terms of the contract become due, and remaining unpaid, the plts. brought an action for the same, and applied for leave to sign judgment for the amount so claimed under Order XIV., r. 1:—

Held, that the case came within the provisions of Order XIV., r. 1, and therefore the leave so applied for might be granted. **WORKMAN, CLARK & CO. v. LLOYD BRAZILEÑO**

C. A. [1908] W. N. 73; [1908] 1 K. B. 968

— Motion for judgment.

See under PRACTICE—Motions.

Judicial Separation.

— Permanent alimony—Order of Probate and Divorce Division—Arrears—Action to recover—Husband and wife.

See DIVORCE—Judicial Separation. 1.

Jury.

See also under JURY.

— "Court of summary jurisdiction"—Review of jury lists—Power to state a case.

See JUSTICES. 5.

— "Crimping"—Right of accused to be tried by a jury.

See SHIPPING—Crimping. 2.

— Notice of intention to summon jury—Offer by promoters—Time for acceptance.

See LANDS CLAUSES ACTS. 33.

— Question whether for judge or jury—Covenantant—Reasonableness of restriction.

See RESTRAINT OF TRADE. 5.

— Trial—Action in Chancery Division—Counterclaim for defamation—Trial by jury.

See PRACTICE—Trial. 1.

— Trial, Mode of—Jury—Discretion of Court—Act on petition.

See DIVORCE—Practice. 1.

— Withdrawal of case from—Libel—Honest criticism.

See DEFAMATION—Libel. 5.

Masters.

Masters of the Supreme Court. R. S. C., July, 1903. W. N. 1903 (July 25), p. 217. See CURRENT INDEX, 1903, pp. lxxvi, lxxviii.

— Appeal from decision of Master.

See APPEAL. 20.

PRACTICE (Masters)—continued.

— Authority to Masters to take opinion of counsel.

See **PRACTICE — Originating Summons. 2.**

— Reference of action to Master—Appeal.

See **APPEAL. 23.**

Motions.**1. — Abandoned motion—Right to save motion.**

Where counsel has been duly instructed to move on the motion day mentioned in the notice of motion, he is entitled on the motion day to save the motion by mentioning it to the Court at any time before the Court has risen for the day, and notwithstanding the fact that the Court has finished the hearing of motions. See Smith's Chancery Practice, 7th ed. (1862), p. 248, note (2).

Semble, the statement of the effect of *Re Compton-Smith*, (1857) 23 Beav. 284, in Daniell's Chancery Practice, 6th ed. (1884), vol. ii., p. 1559, and in Annual Practice, 1901, p. 947, is not accurate. *YAPP v. WILLIAMS*.

Byrne J. [1901] W. N. 91

— Attachment—Breach of injunction—Motion—Conflicting affidavits.

See **ATTACHMENT. 2.**

— Attachment, Motion for — Exhibits to affidavit.

See **ATTACHMENT. 12.**

2. — Injunction—Transfer of stock—Restraining order under the Court of Chancery Act, 1841 (5 Vict. c. 5), s. 4—Title of notice of motion.

Ex parte application by an executor for an injunction to restrain the Bank of England, until the hearing of an originating summons which had been issued, from transferring or paying dividends on a fund standing in their books in the names of the testatrix and her niece :—

Held, that the notice of motion was not properly intituled : it ought also to be intituled in the matter of the trusts of the will ; and granted an injunction till Feb. 28, i.e., over the next regular motion day but one. *In re COURT OF CHANCERY ACT, 1841, AND PIKE*.

Byrne, J. [1902] W. N. 42

— Judgment, Motion for—Minutes—Debentureholder's action.

See **COMPANY—Debentures. 22.**

— Motion by defendant before pleading—Mandatory interlocutory injunction against plaintiff—Order to deliver up possession of a house—Practice.

See **INJUNCTION. 2.**

3. — Motion for judgment—Appearance, Motion for judgment in default of—Injunction—Jurisdiction of High Court of Justice—Evidence.

The claim indorsed on the writ was for "damages for libel contained in certain postcards published by the defendant and bearing certain post-mark dates and addresses. . . . And the plts. claim an injunction to restrain the deft. from writing and publishing libellous matter of and concerning the plts."

The plts. had filed a "statement" of claim

PRACTICE (Motions)—continued.

under Order XIX., r. 10, and moved that judgment be entered for them with costs, for an injunction to restrain the deft., her servants and agents, from writing and publishing of and concerning the plts. or any of them any libellous, blasphemous, or defamatory matter, for an interlocutory judgment for damages, and for an order for a writ of inquiry as to damages.

Dymond v. Croft, (1876) 3 Ch. D. 512, and *Young v. Thomas*, [1892] 2 Ch. 134, cited.

Hamilton J. The plts. electing not to claim damages, there will be an injunction as prayed. *DYKES v. THOMSON*.

- **Hamilton J.**

[1909] 1 W. N. 104

4. — Motion for judgment in default of defence — Specially indorsed writ — R. S. C., Order XX., r. 1 ; Order XXVII., r. 11 ; Order XXX.

The plt. in this action by a specially indorsed writ claimed—(1) repayment of 5000*l.* money lent by him to the deft., together with 145*l.* interest thereon ; (2) in the alternative, an order that the deft. complete the security upon which the loan was made with certain incidental relief.

The deft. duly entered an appearance, and required a statement of claim. On the summons for directions, which was heard on Mar. 15, the Master ordered that no further statement of claim be required, and that the deft. should deliver his defence within ten days. On Mar. 27 a further order was made by the Master that the deft. should deliver his defence within ten days peremptory. No defence was delivered, and on April 17 the plt. served notice of motion for judgment for 5145*l.* and costs in default of defence :—

Held, that the Master had dispensed with the statement of claim for the purpose of enabling the deft. to plead, and not for the purpose of enabling the plt. to move for judgment in default of defence. The Court, however, gave the plt. leave to amend his writ by striking out the claim for alternative relief and to re-serve the notice of motion. *MILBANK v. FRANCIS*

Byrne J. [1901] W. N. 91

5. — Practice Note.

Buckley J. called attention to a printing error in the list of business for the remainder of the sittings. It was there stated that he would take motions on Mar. 25, and also on Mar. 27 motions by order. Both of these statements were mistaken. He was not going to take motions on Mar. 25, and he was not going to take them on the 27th by order, but in the usual way. The remaining motion days of these sittings were Mar. 20 and 27 and April 3, and on Tuesday, April 7, he would take any urgent motions which might require to be disposed of.

- **Buckley J. [1903] W. N. 58**

— Short cause—Motion for judgment—Consent.

See **PRACTICE — Summons for Directions. 2.**

Office Copies.

— Copies.

See under **COPIES.**

— Duty to produce—Answer to interrogatories.

See **DISCOVERY. 7**

PRACTICE—*continued*.**Originating Summons.**

— Administration—Costs out of estate—Costs “as between solicitor and client.”
See **POWER OF APPOINTMENT**. 27.

— Appeal from chambers—Final or interlocutory order—“Practice and procedure.”
See **APPEAL**. 1.

— Articles of association—Questions affecting class of shareholders.
See **COMPANY—Practice**. 5.

1. — *Construction—Question of fact—Jurisdiction—R. S. C., Order LIV.A, rr. 1, 4.*

By a deed of 1897 an executor handed over securities to a legatee upon terms which included a guarantee by the executor that until Dec. 31, 1903, the securities should be of a certain value. The legatee mortgaged his interest in the estate by a deed which did not mention the guarantee. The mortgagees, by a deed which recited (*inter alia*) the guarantee, sold the mortgaged property to L. He brought an action in the K. B. Div. against the executor claiming the alleged difference between the guaranteed value of the securities and the amount realized. This action was by agreement dropped and another action brought in the Ch. Div. The mortgagees then executed a deed conveying by way of confirmation to L. all the premises comprised in the mortgage. L. discontinued his action, and took out an originating summons asking for a declaration that according to the true construction of the deeds the benefit of the guarantee had been assigned to and vested in him, and for an account :—

Held, that inasmuch as questions both of fact and of construction were involved, and a decision of the questions of construction would not, in whichever way they were decided, necessarily put an end to the litigation, an originating summons under Order LIV.A was not the proper mode of procedure. **LEWIS v. GREEN**

Warrington, J. [1905] W. N. 121; [1905] 2 Ch. 340

— Costs of taking and vouching account—Trustee—Neglect to account.
See **TRUSTEE—Accounts**. 2.

— Mortgage—Refusal of Court to determine point on originating motion to extend time.
See **COMPANY—Mortgages**. 3.

— Trustee, Improper investment by—Common account—Procedure.
See **TRUSTEE—Practice**. 4.

2. — *Sufficiency of proceedings—Authority to Masters to take opinion of counsel.*

Kekewich J., in dealing with a case on adjourned summons (which does not call for special notice), said that he greatly regretted to find that many summonses, from defect of parties, insufficiency of evidence, or from other causes, were not ready for hearing, and had to stand over, with the result that costs were incurred which ought not to have been incurred. He had consulted with the Masters, and had, given them authority to require the opinion of

PRACTICE (Originating Summons)—*continued*.

counsel to be taken, where necessary. Cases were often sent up from the country and, without counsel seeing the papers, went before the Masters and were adjourned into Court. The authority thus given ought, of course, not to be used in an excessive degree, or where there was nothing to prevent the Master from deciding for himself as to the sufficiency of the proceedings. But in difficult cases the opinion of counsel should be taken, and the Master should make a note for the taxing officer with a view to the allowance of the fee. **PRACTICE NOTE**

Kekewich J. [1903] W. N. 72

3. — *Trust instrument—Declared trust void for illegality—Resulting trust—Application to enforce—No question of construction—R. S. C., Order LIV.A, rr. 1, 4; Order LV., r. 3.*

Where the trust declared by an instrument is void for illegality, the settlor claiming by way of resulting trust is not a “*cestui que trust* under the trust of” that instrument and cannot therefore enforce the resulting trust by an originating summons under Order LV., r. 3.

Semble. If no question of construction arises under the instrument, the Court, even if it has jurisdiction, will not give partial relief by making “a declaration of the rights of the persons interested” under the discretionary Order LIV.A, rr. 1, 4, but will leave the whole matter to be dealt with in an action to enforce the resulting trust. *In re AMALGAMATED SOCIETY OF RAILWAY SERVANTS (PARLIAMENTARY FUND TRUSTS)*. **ADDISON v. PILCHER**

Swinfen Eady J. [1910] W. N. 210; [1910] 2 Ch. 547

— Trustee—Beneficiary—Same counsel.
See **TRUSTEE—Practice**. 2.

Particulars.

See also under **DISCOVERY**.

— Claim to ownership of bed of stream—Deduction of title—Statement of claim—Embarrassing.
See **PRACTICE—Pleadings**. 2.

— Libel—Practice—Pleading—Defence of fair comment—Particulars.
See **DEFAMATION—Libel**. 13.

— Patent.
See under **PATENT—Particulars**.

Parties.

See also under **PARTIES**.

— Absent parties, Power to bind—Extent of jurisdiction.
See **COMPROMISE**. 2.

1. — *Adding defendant—Joint and several liability of trustees—Action against one trustee only—Application to join co-trustee for purpose of contribution—R. S. C., 1883, Order XVI., r. 11.*

G. and C. were the trustees of a settlement. C. died, and X., his legal personal representative, lived in Ireland. M., the *cestui que trust*, brought an action against G., alleging a breach of trust by him and C., and claiming payment by G. of the amount lost by the breach. A third-party notice, by which G. claimed contribution

PRACTICE (Parties)—continued.

from the estate of C., and the order giving leave to serve it on X. in Ireland, were set aside by the C.A. without prejudice to an application by G., under Order XVI., r. 11, to add X. as a deft. to the action. *McCheane v. Gyles*, [1902] 1 Ch. 287.

On the application to add X. being made, it was opposed by the plt. :—

Held, that X. ought not to be added as a deft. against the plt.'s wish.

Dix v. Great Western Ry. Co. (1886) 34 W. R. 712, and *Montgomery v. Foy, Morgan & Co.*, [1895] 2 Q. B. 321, distinguished. *McCHEANE v. GYLES* (No. 2)

Buckley J. 1902 1 Ch. 911 ; [1902] W. N. 67

2. — Adding or substituting plaintiff —
R. S. C., Order XVI., rr. 2, 11.

Where an action has through a bona fide mistake been commenced in the name of the wrong person as plt., the fact that the original plt. has no cause of action does not take away the jurisdiction of the Court to order the substitution of another person as plt. *HUGHES v. PUMP HOUSE HOTEL CO.* (No. 2)

C. A. [1902] 2 K. B. 485

See also ASSIGNMENT. 6.

— Administration — Contingent liabilities — Retention of assets.

See ADMINISTRATION. 4.

— Admiralty—Practice—Action in rem—Writ —“Co-partners”—“Owners”—Misdescription of plaintiff.

See under SHIPPING—Practice.

— Bankruptcy—Third parties.

See under BANKRUPTCY—Third Parties.

— Contingent future liabilities—Distribution.

See ADMINISTRATION. 4.

— Contract—Special goods—Fixed prices—Prescribed customers.

See CONTRACT. 5.

— Corporation—Injunction—Attorney-General, Suing by.

See GAS. 2.

— Indemnity—Action quia timet—Present debt —No demand by bank for payment.

See PRINCIPAL AND SURETY. 2.

— Joinder of Attorney-General.

See under ATTORNEY-GENERAL.

3. — Joinder of defendants—Parties to action — Practice — Relief claimed against several defendants in the alternative—Joinder of different causes of action—R. S. C., Order XVI., rr. 4, 7.

The power to join several defts. in the same action for the purpose of claiming relief against them severally or in the alternative under Order XVI., r. 4, is not confined to cases in which the causes of action alleged as against the several defts. are exactly identical, but extends to cases where the subject-matter of complaint as against the several defts. is substantially the same, although the causes of action as against them respectively are, technically, different in form, and the several liabilities alleged against

PRACTICE (Parties)—continued.

them respectively are to some extent based on different grounds.

By a contract between H. Brothers & Co., who were the owners of a line of steamers, and the plts., who were exporters of frozen meat, carrying on business at Buenos Ayres, H. Brothers & Co. agreed to carry from the Argentine to Europe frozen meat to be shipped from time to time by the plts. on certain named steamers belonging to H. Brothers & Co. or on other suitable steamers in addition to or substitution for the named steamers. It was subsequently agreed that frozen meat should be shipped by the plts. on an additional steamer, procured by H. Brothers & Co., which was called the *Devon* and belonged to another co., for carriage from Bahia Blanca to England on the terms of the first-mentioned contract. This meat was accordingly shipped, and the master of the *Devon* signed bills of lading in respect of it. In an action brought by the plts. in respect of damage to this meat alleged to have been caused by the unseaworthiness of the *Devon*, the plts. joined as defts. H. Brothers & Co. and the owners of the *Devon*, claiming against the former on the terms of the before-mentioned contract and against the latter upon the bill of lading :—

Held, that the defts. were rightly joined.

Smurthwaite v. Hannay, [1894] A. C. 494, and *Sadler v. Great Western Ry. Co.*, [1896] A. C. 450, discussed.

Frankenburg v. Great Horseless Carriage Co., [1900] 1 Q. B. 504, and *Bullock v. London General Omnibus Co.*, [1907] 1 K. B. 264, followed. *COMPANIA SANSINENA DE CARNES CONGELADAS v. HOULDER BROTHERS & Co.*
C. A. [1910] W. N. 150 ; [1910] 2 K. B. 354

— Land Transfer Act—Appeal from registrar—“Applicant”—Locus standi.

See LAND TRANSFER.

— Lunatic, Action by—Parties—Committee of estate.

See LUNACY. 2.

— Municipal corporation—Illegal borrowing—Overdraft at bankers.

See CORPORATION. 4.

— “Necessary or proper party”—Writ —Foreign co-defendant—Service out of jurisdiction.

See SHIPPING—Practice. 12.

— Parties—Trade name—Passing-off action—Injunction.

See TRADE NAME. 2.

— Patent action—Infringement—Title to patent at date of writ—Equitable assignee—Legal owner not a party—Amendment

See PATENT—Practice. 5.

— Pleading—Lost grant—Date and parties.

See PRACTICE—Pleadings. 3.

— Power of Court to bind absent parties —Extent of jurisdiction.

See COMPROMISE. 2.

PRACTICE (Parties)—continued.

- Representation of unborn children—Trustee—Settlement.
- See MARRIAGE. 4.

4. — Representative action—Action on behalf of a class of the public—Joinder of plaintiffs—Joinder of several causes of action—R. S. C., Order XVI., rr. 1, 9.

Order XVI., r. 9, which provides for persons suing or being sued as representing a class, is not confined to persons who have or claim some beneficial proprietary right which they are asserting or defending. To justify a person suing in a representative character, it is enough that he has a common interest with those whom he claims to represent.

Several plts. sued on behalf of themselves and all others the growers of fruit, flowers, vegetables, roots and herbs, within the meaning of the Covent Garden Market Act, 1828, to enforce various preferential rights to stands in the markets, which they alleged to have been given to the class of growers by the Act. The deft. was the lord of the market :—

Held, that without prejudging the construction of the Act the plts. had an interest in common, and that the deft. was not entitled to have the action stayed either on the ground that the plts. had no beneficial proprietary right, or that the joinder of plts. claiming separate and different rights under the Act, both personally and as representing a class, would embarrass or delay the trial.

Decision of C. A., [1899] 1 Ch. 494, affirmed by Lords Macnaghten, Morris and Killanin, and Shand, the Earl of Halsbury L.C. and Lord Brampton dissenting. *Temperton v. Russell*, [1893] 1 Q. B. 435, reflected on.

Quære, whether it was necessary to join the Att.-Gen. as a deft. **DUKE OF BEDFORD v. ELLIS H. L. (E.) [1901] A. C. 1**

- Restricted power of liquidators of bank to sue in their own names.
- See CANADA—Company. 3.

5. — Settlement—Trustee—Administration—Representation of trust estate.

An action for breach of trust was brought by a beneficiary under a settlement against, as sole defts., the executors of one of the two trustees, but not the surviving trustee, of the settlement. The surviving trustee was also dead, and no new trustees of the settlement had been appointed, although the person in whom the power to appoint was vested was prepared to exercise it :—

Held, that the representatives of the surviving trustee must be added as defts., or that new trustees of the settlement must be appointed and added as defts. *In re JORDAN. HAYWARD v. HAMILTON* - **Byrne J. [1904] W. N. 7; [1904] 1 Ch. 260**

- Third parties.
- See under PRACTICE—Third Parties.

6. — Title to sue—Contract entered into on behalf of a Foreign State.

There is no such rule as that the monarch or other titular head of a foreign sovereign State is

PRACTICE (Parties)—continued.

the only person who can sue here in respect of the public property or interest of that State.

The Spanish Minister of Marine in Madrid and two other persons brought an action in the Ct. of Sess. against the respondents for damages for failure to deliver warships within the time stipulated by contract. The parties to the contract were described as "The chief of the Spanish Royal Navy Commission," and "the Commissary of the Commission (mentioning their names) both in the name and representation of his Excellency the Spanish Minister of Marine in Madrid, hereinafter called the Spanish Government on the one part," and the respondents (a shipbuilding co. in Scotland) on the other part :—

Held, reversing the decision of the Second Division of the Ct. of Sess., (1901) 4 F. 319, that the Spanish Minister of Marine for the time being was entitled to maintain the action though he was not Minister of Marine at the date of the contract. **DON JOSE RAMOS YZQUIERDO Y CASTANEDA v. CLYDEBANK ENGINEERING AND SHIPBUILDING Co. - H. L. (Sc.) [1902] W. N. 152; [1902] A. C. 524**

- Trustees — Representation—Future rights—Unascertained persons.
- See FINES AND RECOVERIES. 2.

Pauper.

- "Not worth 25*l*."—Married woman plaintiff—Restraint on anticipation.
- See HUSBAND AND WIFE—Poor Law. 1.

Payment, &c.**(Payment into and out of Court.)**

Payment into Court, col. 1978.

Payment out of Court, col. 1980.

Payment into Court.

- Charity land — Compulsory sale — Interim investment—Costs.
- See LANDS CLAUSES ACTS. 1.
- Costs.
- See under COSTS.
- Costs—County Court, Judgment for defendant in.
- See COUNTY COURT—Costs. 4.
- Indemnity—Costs—Life policy.
- See INSURANCE (LIFE). 14.

1. — Joinder of several causes of action—Payment of lump sum into Court—R. S. C., Order XVI., r. 1; Order XXII., r. 2.

Order XXII., r. 2, of the R. S. C. provides that payment into Court shall be signified in the defence, and that the claim or cause of action in satisfaction of which the payment is made shall be specified therein.

In an action constituted under Order XVI., r. 1, brought by a number of plts. severally claiming relief in respect of the same transaction, the defts. paid a lump sum into Court, saying in their defence that the amount paid into Court was sufficient to satisfy the plts.' claims, but without further specifying the claims or causes of action in satisfaction of which the payment was made :—

PRACTICE (Payment into Court)—continued.

Held, that the payment into Court was a good payment, and that if the plts. were embarrassed by it their proper course was to apply by summons for particulars of the payment. **BENNING v. ILFORD GAS CO.** Div. Ct. [1907] W. N. 106; [1907] 2 K. B. 290

- Libel—Pleading—Denial of liability.
See **HUSBAND AND WIFE—Practice.** 4.
- Life insurance company—No sufficient discharge otherwise obtainable.
See **INSURANCE (LIFE).** 9.
- Payment into Court—Scheme for administration of charity—Costs of application for scheme—Lands Clauses Acts.
See **CHARITY.** 12.
- Payment into Court—Shipping—Salvage—Payment into Court with denial of liability—Recovery of less than amount paid in.
See **SHIPPING—Salvage.** 20.
- Payment into Court—Vested legacies—Interest until judgment—Infants.
See **WILL—Legacy.** 3.
- Payment into Court of lump sum with denial of liability as to part of claim and with admission of liability as to part—Costs.
See **COSTS.** 47.

2. — *Payment into Court without denial of liability—Action of libel—Death of plaintiff—Abatement of action—Jurisdiction as to disposal of money in Court—Payment to executor of plaintiff.*

In an action of libel the deft. pleaded an apology and payment of money into Court. The plt. did not take the money out of Court; and he died before the action came on for trial. An order was made by a judge at chambers that the money should be paid out to the executor of the plt. On appeal:—

Held, that the judge had power in his discretion to make the order.

Brown v. Feeney. [1906] 1 K. B. 563, applied. **MAXWELL v. VISCOUNT WOLSELEY**

C. A. [1906] W. N. 225; [1907] 1 K. B. 274

3. — *Payment into Court without denial of liability—Action of libel—Death of defendant—Abatement of action—Application by defendant's executors for payment out of money—R. S. C., Order XXII., rr. 1, 5.*

In an action of libel the deft. paid money into Court in satisfaction of the claim, without denying liability. The plt. did not take the money out of Court, and proceeded with the action. The action being yet untried, the deft. died, and the action therefore abated. The deft.'s executors thereupon applied for an order that the money in Court should be paid out to them:—

Held, that their application should be refused and the money paid out to the plt. **BROWN v. FEENEY** C. A. [1906] W. N. 66; [1906] 1 K. B. 563

Note.

This case was applied by C. A., **Maxwell v. Viscount Wolseley**, [1907] 1 K. B. 274. See *preceding Case.*

PRACTICE—continued.**Payment out of Court.**

1. — *Affidavit of no incumbrances not required—Practice—Petition—Payment out of personalty—R. S. C., 1883, Order XXII., r. 1.*

Petition for the payment out of certain funds which had been paid into Court in an administration action, and which represented a trust legacy and residuary estate. The respondents were reversioners entitled under the trusts of the will which were being administered. The question arose whether an affidavit of no incumbrances ought to be made by the reversioners in respect of the personal estate.

His Lordship desired that the matter should be mentioned again upon this point, so that the practice might be ascertained and settled once for all.

Kekewich J. said that he had consulted two of his brother judges and some of the registrars with regard to the practice, and their view was that the rule requiring an affidavit of no incumbrances in the case of realty did not apply to personal estate. Although there might be cases where it would be necessary, he held that in the present case he would not require an affidavit of no incumbrances from any of the reversioners. **EDWARDS v. GROVE** — **Kekewich J.** [1906] W. N. 191

- Brokerage—Proceeds of sale of investments.
See **LANDS CLAUSES ACTS.** 31.
- Consent of Charity Commissioners.
See **CHARITY.** 14.
- Costs.
See under **COSTS.**
- Costs — Compulsory purchase — Money in Court—Payment out—Failure of part of summons — Order to pay interest—Costs of obtaining order—Practice.
See **COSTS.** 17.
- Costs — Payment out of amount recovered.
See **COSTS.** 48.

2. — *Duties—Payment out of Court.*

On July 2, 1907, on the petition of the parties interested, a sum of 111,611*l.* 9*s.* 9*d.* Consols, standing to the credit of the above action to an account entitled "Account of the Settled Estate Legacy subject to duty," was ordered to be transferred out of Court to the trustees of the will and codicil of J. Bowes, the testator in the action, to be held by them upon certain trusts in the said will and codicil mentioned under which the present Earl of Strathmore was tenant for life with remainders over. Under the Legacy Duty Act, 1796 (36 Geo. 3, c. 52), s. 19, the legacy duty on the settled estate legacy (being a legacy liable to be invested in land and to be enjoyed by persons in succession) had to be calculated by way of annuity on the various life interests until some person should become absolutely entitled; and the duty had been assessed on the life interest of the present Earl and was payable by four annual instalments. One of these instalments had been paid, and the remaining three instalments were not yet payable. There was no other present claim for legacy duty on the capital of the legacy.

PRACTICE (Payment out of Court)—continued.

The registrar, having regard to s. 25 of the Legacy Duty Act, 1796, was of opinion that it was the duty of the Court to see that all duties payable were provided for, and suggested that not only should the three remaining instalments of the duty on the life interest of the present Earl be paid, but that a sum should be retained out of the fund and remain in Court to provide for the duty on the capital of the legacy which would become payable upon the death of the present Earl. He accordingly declined to let the order go, until all duty on the settled estate legacy was paid or provided for, without the special direction of the judge.

Neville J.: As this is a point of practice, I reserved my decision until I had an opportunity of consulting my brethren. I understand that all duty presently payable in respect of the sum ordered to be paid out of Court has been paid or provided for. I have consulted my brethren and we are all of opinion that there is no such practice as that suggested by the registrar. I direct the order to be drawn up without providing for the future duties. *In re BOWES, STRATHMORE v. VANE* - **Neville J. [1907] W. N. 198**

3. — Estate duty—Tenant for life—Release—Finance Act, 1900 (62 & 63 Vict. c. 7), s. 11.

Petition for payment out by persons now entitled to funds in Court. A life tenant had released her life interest. The question was raised whether the fund could be properly paid out without providing for duty payable in case the tenant for life died within twelve months of the date of the release.

Cozens-Hardy J. said he had made inquiries, and found that the practice of other judges was to retain a sufficient sum in Court to satisfy the maximum amount that could be payable in respect of duty on the death of the tenant for life till the year should have expired after the release. He should follow that practice. Perhaps the petitioners could make some arrangement with the revenue authority; he would, of course, recognize such arrangement. *TAYLOR v. PONCIA* **Cozens-Hardy J. [1901] W. N. 87**

— Evidence—Production of bond of company.

See **LANDS CLAUSES ACTS, 32.**

— Foreign law. Expert evidence.

See **EVIDENCE, 6.**

— French subject entitled—Conflict of laws—"Prodigal."

See **CONFLICT OF LAWS, 11.**

4. — Fund carried over to separate account—Payment out—Petition or summons—Administration action—R. S. C., Order LV., r. 2 (1).

Action to administer the estate of John Birkin, deceased, who bequeathed the residue of his personal estate, in the event which had happened, in trust for his son W. H. Birkin on his attaining twenty-one. Cash and securities to the value of 5000*l.* had been carried over in the action to the credit of a separate account entitled "Residuary Estate of John Birkin, deceased." W. H. Birkin had attained twenty-one, and now petitioned for payment out of the funds in Court to him.

PRACTICE (Payment out of Court)—continued.

A doubt had arisen whether there was not jurisdiction to make the order on summons in chambers under Order LV., r. 2 (1), which says that applications for payment can be made in chambers "where the title depends only upon proof of the identity or the birth, marriage, or death of any person."

The Court in making the order intimated that rule 2 (1) only applied to cases where the fund was carried over to the separate account of a particular person. *In re BIRKIN, BIRKIN v. BIRKIN* - **Farwell J. [1901] W. N. 33**

5. — Fund in Court—Payment out—Petition—"Account of A. B. with remainder over"—Service on trustees.

Joyce J., upon the hearing of a petition for payment out of a fund in Court standing to the credit of the cause "account of A. B. with remainder over," said that although it was not necessary to serve the trustees in the case of payment out of money standing to the credit of the "account of A. B." merely, yet where it was the "account of A. B. with remainder over" the trustees must be served, because, for instance, they might have received notice of assignments or dealings affecting the fund. **PRACTICE NOTE Joyce J. [1907] W. N. 44**

6. — Funds in Court—Petition—Payment out—Settlement—Evidence—Affidavit that settlement does not affect funds. Certificate of counsel.

At the hearing of a petition for payment out of Court of certain funds, it appeared that on the marriage of one of the petitioners a settlement was executed by her and her intended husband. In order to prove that the settlement did not affect her share in the funds in Court, an affidavit by her husband and herself and a solicitor had been filed, in which the husband and wife proved the marriage and the settlement, the solicitor deposed that according to the best of his judgment the wife's share in the funds in Court was not subject to or affected by the settlement, and the wife stated that she had not incumbered her share except by a specified charge.

Warrington J. made an order according to the prayer of the petition, but said that the fact that the settlement did not affect the wife's share of the funds in Court must be proved by a certificate of counsel. *In re SMITH, SMITH v. NEW* **Warrington J. [1907] W. N. 188**

7. — Fund in Court—Payment out—Shares of residue. Sums under 20*l.*—Payment to representatives—Letters of administration.

Application on behalf of some of the respondents to vary the minutes of an order, made on a petition for payment out and distribution of a fund in Court, by inserting in the order a direction to pay certain shares of residue to which certain deceased persons were entitled (amounting respectively to less than 20*l.*) to the persons who would have been entitled to take out letters of administration without requiring them to have been actually granted.

The beneficiaries were dead at the date of the order, so that rule 62 of the Supreme Court Funds Rules, 1894, did not apply, and some of

PRACTICE (Payment out of Court)—continued.

the persons entitled to take out administration were resident abroad.

Byrne J., in declining to make the addition proposed, said that the judges of the Chancery Division had recently very fully considered the practice in matters of this kind, and had come to the conclusion that, inasmuch as probate or administration for estates under 100*l.* could now be obtained for 15*s.*, the practice laid down by *Hinings v. Hinings*, (1864) 2 H. & M. 32. ought no longer to be followed. **FROGLEY v. PHILLIPS**

Byrne J. [1901] W. N. 243

8. — Fund in Court—Payment out to person not entitled—Absence of stop order—Treasury Commissioners—Liability to replace fund—Default of paymaster.

Petition in the action and in the matter of the Court of Chancery (Funds) Act, 1872, asking for the certificate of the Lord Chancellor to the Treasury Commrs. that the Paymaster-General had been guilty of default in allowing a share of certain funds in Court to the credit of a particular account in the action to be sold and transferred without notice to the petitioner Fielding, in disregard of the directions contained in a certain order in the action, and that such sum as represented the share in question, and the costs of the petitioners, ought to be paid out of the Consolidated Fund to the credit of the Paymaster-General; and that the sum so certified might be paid by the Paymaster-General to the petitioner Gibbons.

The Lord Chancellor declined to make an order upon the petition. **JONES v. JONES**

Earl Cairns L.C. [1901] 1 Ch. 464, n.

Note.

See next Case.

9. — Fund in Court—Payment out to person not entitled—Non-disclosure of facts by applicant and his solicitor—Absence of stop order—Commissioners of Treasury—Liability to replace fund—Default of paymaster—Court of Chancery (Funds) Act, 1872 (35 & 36 Vict. c. 44), s. 5.

If a person becoming interested in a fund in Court standing to an account in the name of another, does not obtain any stop order against the fund, and the fund is subsequently paid out in disregard of his interest to a person apparently, but not in fact, entitled to it, the Paymaster-General is not guilty of default within the meaning of s. 5 of the Court of Chancery (Funds) Act, 1872, so as to make the Treasury liable to make good the fund out of the Consolidated Fund.

So held, on the authority of the decision of Earl Cairns L.C. in the unreported case of *Jones v. Jones*, [1901] 1 Ch. 464, n. *See preceding Case.* **BATH v. BATH** **Kekewich J. [1901] W. N. 11; [1901] 1 Ch. 460**

Note.

Referred to by Swinfen Eady J. *In re Williams' Settled Estates*, [1910] 2 Ch. 481. *See No. 13, below.*

— Lands Clauses Acts.

See under LANDS CLAUSES ACTS.

— Mortgagee's fund in Court—Application by mortgagor—Redemption.

See MORTGAGE—Interest. 1.

PRACTICE (Payment out of Court)—continued.

10. — Mortgagor—Petition for payment out—Practice—Service—Fund in Court—Mortgage of reversionary interest in whole fund—Absolute assignment under mortgagee's power of sale—Dispensing with service on mortgagor.

On the death of J. J. C. in Oct., 1903, the Law Life Assurance Society, as assignees of the interest of G. under the will of J. R. C., became entitled to a sum of 300*l.* odd Consols in Court, representing the residuary estate of the testator, subject to the question whether the gift to G. was not void as transgressing the rule against perpetuities. The testator died in 1865, and an action was commenced for the administration of his estate, to which G. (then Miss W.) was a deft., and this action was still pending. By an indenture of mortgage dated in Nov., 1885, G.'s reversionary interest in the sum in question was mortgaged by her and her husband to one L. to secure 500*l.*, and the deed was separately acknowledged by the wife. In 1888 L., in exercise of his power of sale under the mortgage deed, assigned G.'s reversionary interest to the Law Life Assurance Society absolutely. This was a petition in the action by the society for payment out to them of the sum in Court. G. had not been heard of for many years, and although inquiries had been made and advertisements issued in the newspapers, no information could be obtained as to her whereabouts.

Kekewich J. said that there being here a mortgage of the whole fund with a power of sale which had been properly exercised, and there being no question about the title of the mortgage, he did not think it was in accordance with the practice of modern times to insist upon bringing the mortgagor before the Court. **CATTERSON v. CLARK** **Kekewich J. [1905] W. N. 173**

11. — Nominee—Payment out of Court—Payment to nominee of person entitled.

Petition by a number of persons entitled to a fund in Court for payment out to two persons not entitled as trustees. At the first hearing Farwell J. refused to order payment to mere nominees. The petition now came on again, and a power of attorney in favour of the proposed trustee was produced and accepted as sufficient.

Farwell J. This petition was presented by a number of persons entitled to a fund in Court asking for payment out to persons nominated by them to receive it as trustees, and deal with it in accordance with the directions of the persons entitled. No deed of assignment to the proposed recipients had been executed, nor has any power of attorney been given them. I pointed out at the hearing that it was not in accordance with the practice of the Court to pay to persons other than the persons actually entitled except on the usual power of attorney required by the Paymaster-General. The only exceptions are—(1) in the case of corporations, where the petition has been sealed with the corporate seal; and (2) in the case of the mayor and corporation of the City of London, on whose unsealed petition it is the practice to pay out to the Chamberlain of the City by reason of the dignity of his office :

PRACTICE (Payment out of Court)—continued.

Ex parte Mayor and Corporation of London, (1878) W. N. 238. The judges of the Ch. Div. agree that this practice ought to be regarded as settled. If there has been a deal of assignment on trusts duly executed and proved, payment can, of course, be made to the assignees as persons actually entitled. So, too, the Court may accept a power of attorney duly executed and proved, although not strictly in the Paymaster-General's form. No exception in case of small sums under 10*l.* is now allowed, having regard to the facilities which now exist of forwarding small sums cheaply: vide Annual Practice, 1904, p. 754. *In re BRETtingham*. MELHADO v. WOODCOCK

Farwell J. [1904] W. N. 168

—Payment out of Court—Petition—Service—Trustee.

* See PRACTICE—Service. 13.

—Railway—Parliamentary deposit—Special Act—No Abandonment Act—Payment out.

See RAILWAY—Deposits. 3.

12. — Representative—Payment out of Court to representative—Notice to beneficiaries—Modification of existing practice.

Kekewich J. intimated that the judges of the Ch. Div. have had under their consideration the practice rule requiring notice to be given to beneficiaries of any application for payment of money out of Court to a legal personal representative, made twenty years or more after the death of the testator or intestate, and they have come to the following resolution (which involves an important modification of the former practice): "that as a general rule funds in Court belonging to the estate of a deceased person should not, after the expiration of ten years from his death, be paid to his legal personal representative without notice to beneficiaries." PRACTICE NOTE

Kekewich J. [1904] W. N. 135

—Sheriff's costs—"Deduction" from purchase-money—Lands Clauses Acts.

See COSTS. 18.

—Trust moneys.

See under TRUSTEE—Payment out.

—Woman past the age of child-bearing—Presumption—Payment out of Court.

See EVIDENCE. 13.

13. — Wrong person—Payment out of Court—Liability of Consolidated Fund—Court of Chancery (Funds) Act, 1872 (35 & 36 Vict. c. 44), ss. 5, 6, 14—Supreme Court of Judicature (Funds, &c.) Act, 1883 (46 & 47 Vict. c. 29), ss. 1, 2, 3.

Where money is ordered to be paid out of Court to a person apparently but not really entitled, and the Paymaster-General obeys the order, then, except possibly in cases where the order was obtained by fraud or forgery, the person really entitled, though not before the Court when the order was made, has no claim upon the Consolidated Fund.

Court of Chancery (Funds) Act, 1872, and

PRACTICE (Payment out of Court)—continued.

Supreme Court of Judicature (Funds, &c.) Act, 1883, considered and explained.

In re Dangar's Trusts, (1889) 41 Ch. D. 178, 186, followed.

Jones v. Jones, (1879) [1901] 1 Ch. 464, n., and *Bath v. Bath*, [1901] 1 Ch. 460, explained.

Slater v. Slater, (1888) [1897] 1 Ch. 222, n., and *Marsh v. Joseph*, [1897] 1 Ch. 213, distinguished.

In re WILLIAMS' SETTLED ESTATES Swinfen Eady J. [1910] W. N. 200; [1910] 2 Ch. 481

Petition.

See under PETITION.

Pleadings.

—Assignment of right to compensation—Right of assignee to sue in own name.
See LANDS CLAUSES ACTS. 5.

—Criminal Law.

See under CRIMINAL LAW.

—Custody of children—Paternity.

See DIVORCE—Practice. 27.

—Gaming—New consideration—Amendment of pleadings at trial.

See GAMING. 2.

—Indictment.

See under CRIMINAL LAW.

1. — Indorsement on writ, Striking out — Embarrassing pleading—Abuse of the process of the Court—English action—Scotch property—Lien for improvements on real estate in Scotland, Enforcement of — Jurisdiction — Lis pendens — Registration of, in England—Liability of Scotch real estate—Dismissal of action—Vacating lis pendens—Res judicata — "Final" judgment — Estoppel—Appeal—Husband and wife co-plaintiff — Wife's separate property restrained from anticipation—Costs—Order for payment out of wife's property—Judgments Acts, 1839 (2 & 3 Vict. c. 11), s. 14—Lis Pendens Act, 1867 (30 & 31 Vict. c. 47), s. 2—Married Women's Property Act, 1893 (56 & 57 Vict. c. 63), s. 2.

Where the Court is of opinion that the indorsements on a writ are embarrassing or otherwise an abuse of the process of the Court, it will order the whole of them to be struck out, notwithstanding that the deft. may have applied to strike out certain portions only; but without prejudice to the plt.'s issuing a new writ claiming relief in proper form.

Whether, assuming that a lien for improvements on real estate situate in Scotland is allowed by the Scotch law, such a lien may not be claimed and enforced in an English action between parties resident in England, *quære*.

Semble, the registration, under the Act 2 & 3 Vict. c. 11, of an English action as a *lis pendens* affects lands in Scotland which are the subject-matter of the action, for s. 14 of the Act excludes "Ireland" only from the operation of the Act.

Per Cozens-Hardy L.J.: "Final" as applied to the judgment on the trial of an action does not

PRACTICE (Pleadings)—*continued*.

mean a judgment not open to appeal, but merely "final" as opposed to an "interlocutory" judgment. A judgment on the trial of an action operates as an estoppel between the parties when bringing a subsequent action raising a contention which is in substance *res judicata*, and not the less so because that judgment is liable to be reversed on appeal.

An action brought by husband and wife, but in which the wife was the real plt., having been dismissed with costs, the Court, under s. 2 of the Married Women's Property Act, 1893, ordered payment of the defts.'s costs, when taxed, out of separate property of the wife which was subject to a restraint on anticipation.

Judgment of Kekewich J., [1905] W. N. 140, varied. **MARCHIONESS OF HUNTLY v. GASKELL** C. A. [1905], W. N. 153, 157; [1905] 2 Ch. 656

— Libel—Defence of fair comment—Particulars. See **DEFAMATION—Libel**. 13.

— Libel—Payment into court—Denial of liability.

See **HUSBAND AND WIFE—Practice**. 4.

— Nuisance — Injunction — Special damage — Evidence—Costs.

See **NUISANCE**. 6.

— Nullity of marriage—Impotence—Insincerity — Alleged adultery of petitioner — Materiality—Evidence.

See **DIVORCE—Nullity**. 4.

— Ouster of jurisdiction—Omission to plead—Trial of action—Amendment—Arbitration clause.

See **COMPANY—Practice**. 4.

2. — *Particulars—Claim to ownership of bed of stream—Deduction of title—Statement of claim—Embarrassing.*

Plts. claimed, as owners of a certain water-mill, to be absolutely entitled to an artificial watercourse which conveyed water to the mill-wheel. By their original statement of claim they alleged that they were entitled to the bed of the stream as appurtenant to the mill. The defts. were owners of the land on either side of the stream. On their application the plts. were ordered to give particulars of the way by which the soil or bed of the stream was appurtenant to the mill, and of the ways in which the plts. were entitled to the said soil or bed. The plts. thereupon delivered an amended statement of claim, by which they alleged that by a deed dated in 1805 the fee simple of the stream together with the mill and other hereditaments was duly assured by the then owners thereof to one Hutton, the predecessor in title of the plts. Alternatively, they said that their title was based on continuous possession by them and their predecessors for a period sufficient within the Statutes of Limitations. An application in chambers by the defts. for further and better particulars having been dismissed, the defts. now moved to discharge that order.

Joyce J. said that what was really suggested was that the plts. should set forth some sort of abstract of their title; not because they did not know what case they had to meet, but it was

PRACTICE (Pleadings)—*continued*.

suggested that they might be able to pick a hole in the deduction of title. The statement of claim was not embarrassing, and no further particulars were necessary to enable the defts. to plead. It was quite plain what case they had to meet, and their application must be refused with costs. **PLEDGE v. POMFRET - Joyce J. [1905] W. N. 56**

3. — *Particulars — Lost grant — Date and parties—Right of way.*

Under the modern practice, a lost grant may be pleaded without stating date or parties.

Hendy v. Stephenson, (1808) 10 East, 55, not followed. **PALMER v. GUADAGNI**

Swinfen Eady J. [1906] W. N. 165; [1906] 2 Ch. 494

— Patent—Vendor's lien for unpaid royalties — Damages—Election.

See **PATENT—Sale**. 1.

— Salvage—Practice—Admission of facts—Non-admission of inferences—Exclusion of further evidence.

See **SHIPPING—Salvage**. 21.

— Setting down for trial before pleadings closed — Ineffective actions.

See **PRACTICE—Trial**. 7.

4. — *Striking out pleadings—"Fivolous and vexatious action"—Summons—Affidavit—Admissibility — Inherent jurisdiction — Rules of the Supreme Court, 1883, Order XXV., r. 4.*

One of the defts. in an action applied by summons that the statement of claim might be struck out and the action dismissed against him, "under the inherent jurisdiction of the Court," and on the ground that the statement of claim disclosed no cause of action against him, and was frivolous and vexatious. The plt. sued in the action on behalf of himself and all other shareholders of an American co., and claimed eight declarations in respect of the transfer of the property of the co. in which he was a shareholder to a new co., and also in respect of various acts of the defts., who was secretary, director, and treasurer of the old co. Upon the summons coming on in chambers, the defts. tendered an affidavit in support of his application. The plt. objected to its admission, and the question now before the Court, on the adjournment of the summons, was whether this affidavit was admissible or not. The affidavit in question went to show that the old co. in America had long since been dissolved, and that no relief could now be claimed on behalf of any of its shareholders.

Kekewich J. said that it was not necessary to put into the notice the words "under the inherent jurisdiction of the Court," as if it was a properly drawn application it would invoke the inherent jurisdiction of the Court as well as that given by Order XXV., r. 4. In the case of *Willis v. Earl Howe*, [1893] 2 Ch. 545, an affidavit was admitted in support of a similar application, and for the purpose of destroying the plt.'s case. Although the affidavit in the present case might turn out to be useless, his lordship could not reject it in the first instance, and the summons must be sent back to the Master with an intimation that he was to receive

PRACTICE (Pleadings)—continued.

the affidavit. *VINSON v. PRIOR FIBRES CONSOLIDATED, LD.* - **Kekewich J.**

[1906] **W. N. 209**

— Striking out—Reasonable cause of action.

See **DEFAMATION—Slander. 4.**

— Title of proceedings—Lunacy—Vesting orders

— Direction to transfer stock.

See **LUNACY. 29.**

Privy Council Appeals.

See under **PRIVY COUNCIL.**

Production and Inspection of Documents.

See under **DISCOVERY.**

Receiver.

See under **RECEIVER.**

Reply.

— Right of plaintiff to reply.

See **COUNTY COURT—Practice. 14.**

Representative Action.

1. — *Action by shippers of goods on a general ship on behalf of themselves and other shippers of goods in the same ship—"Persons having the same interest in one cause or matter"—R. S. C., Order XVI., r. 9.*

The plts. shipped goods on a general ship of the defs. for a voyage from New York to Japan. Before arriving at its destination the ship was sunk by a Russian cruiser on the ground that she was carrying contraband of war, and both ship and cargo were lost. In the writs in the present actions the plts. were respectively described as suing "on behalf of themselves and others owners of cargo lately laden on board the s.s. *Knight Commander*," and the writs were endorsed with a claim for "damages for breach of contract and duty in and about the carriage of goods by sea." A letter written by the plts.' solicitors to the defs.' solicitors on the day of the issue of the writs stated that plts. were suing on behalf of themselves and forty-four other persons, firms, or cos. (whose names were given) who had shipped goods on board the ship:—

Held, that, upon the writs as they stood, the plts. and those whom they purported to represent were not "persons having the same interest in one cause or matter" within the meaning of Order XVI., r. 9, and that the plaintiffs were not entitled to bring representative actions.

Held, further, by Vaughan Williams L.J. and Fletcher Moulton L.J. (Buckley L.J. dissenting), that shippers of goods in a general ship could not have "the same interest in one cause or matter" within the meaning of that rule, and that the writs were incapable of being so amended as to enable the plts. to maintain representative actions.

Held by Buckley L.J., that the writs should be amended by describing the plts. as suing on behalf of themselves and all others the owners of cargo lately laden on board the s.s. *Knight Commander*, not being shippers of goods which are contraband of war, and the indorsements

PRACTICE (Representative Action)—continued.

amended by asking for a declaration that the defs. were liable to the plts. and to those on whose behalf they sued for breach of contract and ^{and} duty in and about the carriage of goods by sea.

Per Fletcher Moulton L.J.: No representative action can lie where the sole relief sought is damages. *MARKT & CO., LD. v. KNIGHT STEAMSHIP CO., LD. SALE & FRAZER v. KNIGHT STEAMSHIP CO., LD.* - **C. A.**

[1910] **2 K. B. 1021**

Rescind, Motion to.

1. — *Irregularity—Motion to rescind or carry Master's order.*

Motion by a plt. asking that an order of the Master staying further proceedings in the action as frivolous and vexatious and an abuse of the process of the law, might be rescinded or varied, and the action be allowed to proceed. The plt.'s claim in the action was for a declaration that she was a beneficiary under the trusts of a will of which the defs. were trustees, and for an account. The merits of the case do not call for notice.

Kekewich J., in refusing the motion, observed that these motions to vary or discharge an order made by a Master sitting as deputy for the judge and without the matter having been mentioned to the judge in person were wholly irregular, and he was desirous of stopping them. The Master's duty was to adjourn to the judge any matter which the suitor wished, and no Master ever took upon himself to refuse to adjourn any question to the judge, though he might himself think the case to be perfectly clear. That was the proper course to take, and then it was for the judge to say whether he would decide it in chambers or adjourn it into court. If an order was made in chambers it was open to anyone to move to discharge the order in court. He could not sanction the practice of seeking by a motion in court to discharge an order not made by the judge in person, but by the Master. It must be understood that any motion of this character to vary or discharge such an order would be refused with costs upon that ground alone, without going into the merits. In the present case the action would be dismissed with costs, including the costs of the application.

HARRINGTON v. RAMAGE

Kekewich J. [1907] W. N. 137

Note.

See In re Lord Townshend's Settlement, Swinfen Eady J., [1908] 1 Ch. 201; Lunacy. 2.

Review.

1. — *Action to review—Order of High Court—Error in law apparent on face of order—Jurisdiction of High Court to review.*

Since the passing of the Judicature Act, 1873, the High Court has no jurisdiction to review its own order, in an action brought to review the order on the ground of error in law, apparent on the face of it, the remedy of the party complaining being by appeal to the C. A. **CHARLES BRIGHT & CO. v. SELLAR**

C. A. [1904] 1 K. B. 6

PRACTICE (Review)—continued.

- Appeal—Workmen's compensation—Refusal to direct review of taxation of costs.
See MASTER AND SERVANT—Practice. 2.
- Auditor—Certiorari—Right of Court to review surcharge.
See LOCAL GOVERNMENT. 1.
- Martial law—Convictions by Supreme Court—Jurisdiction.
See CAPE OF GOOD HOPE. 8.
- Summons to review—Refusal—Solicitor and client—Costs—Taxation—Practice.
See APPEAL. 17.
- Summons to review—No objection carried in—Duty of taxing officer.
See COSTS. 66.
- Weekly payment—Workmen's compensation.
See under MASTER AND SERVANT—Compensation.

Right to begin.

- Ship—Collision—Admission by defendants that partly to blame—Burden of proof—Right to begin.
See SHIPPING—Collision. 53.

Sequestration.

See under SEQUESTRATION.

Service.

- Absence of personal service—Evasion of service.
See ATTACHMENT. 17.
- Acceptance of service—Solicitor—Undertaking—Proceeding with action—Delay—Attachment.
See PRACTICE—Undertakings. 5.
- 1. — Amended writ—*Re-service*—Personal service—Non-appearing defendant—Discretion of Court—*R. S. C., Order IX., r. 2; Order XVI., r. 13; Order XVII., r. 4; Order XIX., r. 10; Order XXVIII., rr. 1, 10; Order LXVII., rr. 4, 5.*
There is no hard and fast rule that an amended writ, whatever be the nature of the amendment, must be re-served personally on a deft. who has not appeared to the original writ.

The Rules of the Supreme Court make no provision for the personal service of an amended writ, and therefore r. 4 of Order LXVII. applies, and an amended writ may be served on a deft. who has not appeared by filing it with the proper officer. When this has been done the Court has jurisdiction to proceed to try the action as against such a deft.

But the Court has a discretion in the matter, and, if it can see that there is any probability of injustice being otherwise done to the absent deft., it will require that he be served personally with the amended writ—e.g., if the indorsement on the writ has been amended in such a way as substantially to enlarge the relief claimed against him, and to make the writ in effect a new writ:

Per Stirling L. J.: On granting leave to amend a writ the judge can, if he thinks it right to do so, impose the condition that the amended writ

PRACTICE (Service)—continued.

shall be served personally on the deft. who has not appeared to the original writ.

An action was brought by a Colonial ry. co. and the then Governor of the Colony, who in the statement of claim was stated to be suing on behalf of the Government. One of the defts. did not appear to the writ. A change of Governor took place, and, in pursuance of leave given by the Court, the writ was then amended by adding the name of the new Governor as a plt., and the statement of claim was amended by stating that he was suing on behalf of the Government:—

Held, that the non-appearing deft. was sufficiently served by filing the amended writ in pursuance of r. 4 of Order LXVII.

Decision of Swinfen Eady J., [1905] W. N. 58, reversed.

The Cassiopeia, (1879) 4 P. D. 188, *Webster v. Myer*, (1884) 14 Q. B. D. 231, *Gee v. Bell*, (1887) 35 Ch. D. 160, *In re Hartley*, [1891] 2 Ch. 921, and *Tilling, Ltd. v. Blythe*, [1899] 1 Q. B. 557, discussed and explained. JAMAICA RY. CO. v. COLONIAL BANK - C. A. [1905] W. N. 62; [1905] 1 Ch. 677

Note.

Applied by Swinfen Eady J., *Morison v. Telfer*, [1906] W. N. 31. *See No. 2, below.*

Distinguished by Kekewich J., *Southall Development Syndicate, Ltd. v. Dunsdon*, [1907] W. N. 16. *See Practice—Writ.* 1.

- Attachment generally.

See under ATTACHMENT.

- Attachment—Scottish judgment—Extension to England—Service on garnishee.
See ATTACHMENT. 4.

- Attachment against two executors, Motion for—Service on one.

See CONTEMPT OF COURT. 3.

- Company, Service of summons on limited—Sale of Food and Drugs Acts.
See ADULTERATION. 18.

- Award—Practice—Service of notice of motion to set aside award on foreign company out of jurisdiction.

See ARBITRATION—Practice. 3.

- 2. Default of appearance—No proceeding for a year—Notice of intention to proceed—Personal service—*R. S. C., 1883, Order LXIV., r. 13.*

Motion for judgment against T. in default of appearance. Early in 1903 the plt.s., who were stockbrokers, brought this action against T. and other defts. for a declaration that they were jointly and severally liable to pay the plt.s. 1565*l.* the balance due in respect of the buying and selling of certain shares, an order for payment, an account if necessary, and such relief as might be necessary in respect of certain securities deposited with the plt.s. to secure their account. T. was served with the writ on Feb. 12, 1903, but went abroad without entering an appearance. His address was unknown. The statement of claim was delivered to the appearing defts. on June 12, 1903, and subsequently filed against T. The defence of the appearing defts. was delivered on July 7, 1903, and the reply was delivered on July 31,

PRACTICE (Service)—continued.

1903. The action proceeded against the appearing defts. until, on Feb. 22, 1905, it was compromised on their paying 1207l., and all proceedings against them were stayed. The plts. had also received 717l. in respect of part of the securities in their hands. On Nov. 24, 1905, the plts., having obtained leave under Order XL r. 9, moved for judgment against T., but Farwell J. held that as there had been no proceeding for a year against him, a month's notice of intention to proceed must be given under Order LXIV., r. 13. He accordingly refused the motion. On Nov. 28, 1905, the plts., being unable to serve T. personally, owing to his disappearance, filed a notice of intention to proceed and move for judgment against him, and on Jan. 23, 1906, they filed a fresh notice of motion for judgment.

The motion came on on Feb. 3, and the only question was whether it was sufficient to file the notice of intention to proceed, or whether personal service was necessary.

Swinfen Eady J.: I have consulted the Masters, and am informed that the actual office practice is correctly stated at p. 871 of the "Annual Practice," 1906. I think, however, that the recent decision of the C. A. in *Jamaica Ry. Co. v. Colonial Bank*, [1905] 1 Ch. 677, covers the point and alters the office practice in this respect, and that where a debt has been duly served and has not appeared, and there has been no proceeding for a year against him, the filing of a month's notice to proceed is a sufficient compliance with order LXIV., r. 13, and a personal service is unnecessary.

The plts. being willing to give credit for the 1207l. received from the other defts., and the 717l. received in respect of part of the deposited securities, will have judgment against T. for the 1347l. balance, and on satisfaction of this judgment they will deliver up the rest of the deposit securities to him. T. must pay the costs of the action so far as they relate to the claim against him. MORISON v. TELFER

Swinfen Eady J. [1906] W. N. 31

— Exhibits, Service of—Motion for attachment

—Affidavit in support.

See ATTACHMENT. 12.

— Foreign company out of jurisdiction—Service of notice of motion to set aside award.
See ARBITRATION—Practice. 3.

3. — *Foreign corporation—Foreign company carrying on business temporarily in England—Service of writ within the jurisdiction—“Stand”*—*R. S. C.*, Order IX., r. 8; Order LXX., r. 3.

The defts., a foreign corporation, who were manufacturers of motor-cars abroad, hired a "stand" at the Crystal Palace for the exhibition of articles of their manufacture at a cycle show and exhibited at the show, which lasted for nine days, among other articles, a motor-car fitted with tyres, which were alleged by the plts. to be an infringement of their patent. The defts.' "stand" was in charge of a person employed by them as their representative, whose duty it was to explain the working of the articles exhibited, and to take orders for and press the sale of the defts.' goods :—

PRACTICE (Service)—continued.

Held, that, during the continuance of the show, the defts. were carrying on business so as to be resident at a place within the jurisdiction, and therefore could be served there with a writ in an action by the plts. for infringement of their patent under Order IX., r. 8. *DUNLOP PNEUMATIC TYRE CO. v. ACTIEN-GESELLSCHAFT FÜR MOTOR UND MOTORFAHRZEUGBAU VORM. GEDELL & CO.*

C. A. [1902] W. N. 8;
[1902] 1 K. B. 342

4. — *Jurisdiction—English contract—Foreign defendant—Assets in foreign country—Receiver—Service out of the jurisdiction—Necessary or proper parties*—*R. S. C.*, 1883, Order XI., r. 1 (g).

Since the Court has the same jurisdiction with regard to any contract made, or equity between, persons in this country, respecting lands or assets in a foreign country, as it has where the lands or property are situate in England, to allow service of the writ out of the jurisdiction in a case within the terms of Order XI., r. 1 (g), is not to extend the jurisdiction, but to enable the old jurisdiction to be exercised in cases where formerly this jurisdiction could not have been exercised by reason of defective rules of procedure.

In an action against (1.) a Dutch corporation's trustees of a debenture deed, (2.) the receiver, appointed under this deed, resident in England, and (3.) an English company having property and assets in Brazil, to enforce an alleged prior equitable charge, made in England, upon property and assets in Brazil, and now vested in the first debt :—

Held, that as the first defts. were necessary and proper parties to the action, within the terms of Order XI., r. 1 (g), and that as the Court had jurisdiction to grant the relief asked, service of the writ on the first debt, ought to be allowed; and on the application of the plts. a receiver of the assets in the debenture deed was also appointed. *DUDER v. AMSTERDAMSCH TRUSTEES KANTOOR*

Byrne J. [1902] W. N. 95; [1902] 2 Ch. 132

— Jurisdiction, Service out of—Prohibition—Defendant resident in Scotland.

See COUNTY COURT—Prohibition. 1.

5. — *Jurisdiction, Service out of—Writ—Libel in newspaper—Injunction—Judicial discretion*—*R. S. C.*, Order XI., r. 1 (f).

In an action against a newspaper co. registered in Scotland and carrying on business solely in that country, the plts. claimed damages for alleged libels in a newspaper belonging to the defts., and also an injunction against the repetition of the alleged libels within the jurisdiction. The circulation of the newspaper was practically confined to Scotland, although a few copies were sold on the bookstalls at two ry. stations just within the English border. The defts. disclaimed any intention of repeating the alleged libels in their newspaper, but intended to justify them at the trial :—

Held that, although by their claim of an injunction against a repetition of the alleged libels within the jurisdiction, and on the assumption that that claim was made bona fide, the plts.

PRACTICE (Service)—continued.

had technically brought the case within the provisions of Order XI., r. 1 (f), the Court, in the exercise of its judicial discretion, ought to refuse leave to issue a writ for service out of the jurisdiction, there being, under the circumstances, no reasonable probability that the plts. would obtain an injunction at the trial of the action. *WATSON & SONS v. "DAILY RECORD" (GLASGOW)*, LD. - C. A. [1907] W. N. 61; [1907] 1 K. B. 853

— Mayor's Court—Practice—Notice of appeal—Service on Sunday.

See LONDON—Mayor's Court. 2.

— Necessaries—Default action in rem—Specially indorsed writ—Affidavit of service.

See SHIPPING—Practice. 10.

— Notice of judgment, Form of advertisement in lieu of service of—Unregistered friendly society—Jurisdiction to wind up—Benefit society.

See FRIENDLY SOCIETIES. 2.

— Notice to quit—Registered letter.

See LANDLORD AND TENANT. 55.

— Notice to treat—Compulsory powers.

See LANDS CLAUSES ACTS. 26.

— Out of jurisdiction—Award, Application to enforce.

See ARBITRATION—Practice. 4.

— Out of jurisdiction—Ex parte order by the Court of Appeal for service—Application to discharge order.

See PRACTICE—Discharging Orders. 1.

— Out of jurisdiction—Foreign defendant.

See SHIPPING—Practice. 12.

— Out of jurisdiction, Leave for service—Charging order.

See CHARGING ORDER. 2.

6. — Out of jurisdiction—Procedure—Action for breach of trust—Relief claimed by defendant—Contribution—Third-party notice—Third party out of jurisdiction—"Necessary or proper party"—Service out of jurisdiction—Service in Ireland—Application for leave—Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 24, sub-s. 3.—R. S. C., 1883, Order XI., rr. 1 (g), 2; Order XVI., rr. 11, 48.

The third-party procedure, which is the creature of the Judicature Act, 1873, s. 24, sub-s. 3, is governed, as regards service out of the jurisdiction of a third-party notice issued by a deft. under R. S. C., 1883, Order XVI., r. 48, by Order XI., r. 1; so that a deft. can only obtain leave to serve such a notice on a third party out of the jurisdiction when the subject-matter of his claim falls under one or other of the specific cases mentioned in Order XI., r. 1, in which service of a writ out of the jurisdiction will be allowed.

Thus where, in an action by a cestui que trust against the survivor of two trustees for breach of trust, the deft. applied under Order XI., r. 1 (g), for leave to serve the legal personal representative, resident in Ireland, of the deceased trustee, as being a "necessary or proper party" to the action, with a third-party notice issued

PRACTICE (Service)—continued.

under Order XVI., r. 48, and claiming contribution:—

Held, by the C. A., that Order XI., r. 1 (g), had no application to a third-party notice for contribution (unless, *semble*, there were at least two contributors, one of whom was within the jurisdiction); and that contribution from a single contributor was not one of the cases mentioned in that order in which service of a writ out of the jurisdiction could be allowed. An order made by Buckley J., giving the deft. leave to serve his notice on the third party in Ireland was therefore discharged, but without prejudice to any application by him under Order XVI., r. 11, to add the third party as a deft. to the action. *MCHEANE v. GYLES* C. A. [1902] 1 Ch. 287

Note.

This case was referred to, *McCheane v. Gyles* (No. 2), [1902] 1 Ch. 911. See Practice—Parties. 1.

— Out of jurisdiction—Restitution of conjugal rights—Decree.

See DIVORCE—Restitution of Conjugal Rights. 2.

— Out of jurisdiction, Service—Collision in foreign waters—Lis alibi pendens.

See SHIPPING—Practice. 4.

7. — Out of jurisdiction, Service—Conditional appearance—Application to set aside service—Time.

The plt. had obtained or order for substituted service of the writ by which the plt. was to be at liberty to serve the writ on the deft. "at Yokohama or elsewhere in the empire of Japan," time for appearance to be within ninety days of service. The deft. was served at Hong Kong. On May 19 the deft. obtained leave to enter a conditional appearance on the usual terms, namely: "This appearance is to stand as unconditional unless the deft. applies within ten days to set aside the writ or service thereof and obtains an order to that effect." On May 28 the deft. took out a summons returnable on June 1 to set aside the service. Ridley J. made no order on the summons.

Held, that service at Hong Kong was not such a service as was contemplated by the order, and it was therefore a service out of jurisdiction, for which leave had not been obtained, and it must be set aside. The application was in time.

The practice, as stated in the Yearly Practice of the Supreme Court for 1908, at p. 93, that "unless the application to set aside the writ or service is made, and the order obtained, within the time limited, the appearance stands as unconditional," was incorrect. Appeal allowed. *BONNELL v. PRESTON* C. A. [1908] W. N. 155

8. — Out of jurisdiction, Service—Writ of summons—Foreigner—Breach of contract, whether within or out of the jurisdiction—Contract for sale of goods, c.i.f.—R. S. C., Order XI., r. 1 (e).

Goods were sold under a c.i.f. contract by a foreigner carrying on business and resident abroad to purchasers in England, who paid the price in exchange for the bill of lading. On inspection of the goods after their arrival in England, the purchasers alleged that they were

PRACTICE (Service)—continued.

not of the description stipulated for in the contract, and obtained leave to issue a writ, of which notice was to be served (and was served) on the deft. out of the jurisdiction, claiming a return of the money paid or damages for breach of contract:—

Held that, the contract of sale being a c.i.f. contract, the alleged breach had taken place out of the jurisdiction, and that therefore the case did not fall within Order XI., r. 1 (e), and the writ and service must be set aside. *Barrow v. Myers*, (1888) 4 T. L. R. 411; 52 J. P. 345, overruled. *UOZIER, STEPHENS & Co. v. AUERBACH* - C. A. [1908] W. N. 68; [1908] 2 K. B. 161

9. — *Out of jurisdiction, Service—Writ of summons—Contract*, “which according to the terms thereof, ought to be performed within the jurisdiction” — *Place of payment—R. S. C., Order XI., r. 1 (e).*

Where, in an action for the price of goods sold by sellers in England to foreigners resident abroad, it appeared that, though the contract of sale did not expressly state where payment for the goods was to be made, the implication which, under the circumstances, reasonably arose from the contract was that it should be made in England:—

Held, that leave to serve notice of the writ upon the defts. out of the jurisdiction was properly given.

Comber v. Leyland, [1898] A. C. 524, discussed.

Reynolds v. Coleman, (1887) 36 Ch. D. 453, and *Rein v. Stein*, [1892] 1 Q. B. 753, followed. *CHARLES DUVAL & Co. v. GANS*

C. A. [1904] 2 K. B. 685

10. — *Out of jurisdiction—Setting aside—Discretion of Court—Comparative cost and convenience—R. S. C., Order 1883, XI., rr. 1 (g), 2.*

Motion to discharge an order giving leave to serve notice of a writ out of the jurisdiction and to set aside the service.

The plts. were Spaniards residing in Spain. The defts. were a co. registered in England but carrying on business in Spain, and a Spanish lady residing in Spain, being the administratrix of the Spanish deft. Chavarri, who had died since the issue of the writ.

The action related to the title to certain shares in the deft. co. claimed both by the plts. and the administratrix, and depended on questions of fact relating to matters that had happened in Spain, and also on questions of Spanish law. The witnesses were all resident in Spain.

An interim injunction restraining the co. from registering any transfer of the shares until trial had been obtained, and leave to serve the administratrix with notice of the writ was given under Order XL., r. 1 (g), the administratrix being a necessary party to the action against the co.

The administratrix moved to discharge the order.

In cases under rule 2 the Court was bound to regard the elements of comparative cost and convenience though they might be small, but in

PRACTICE (Service)—continued.

cases under rule 1 its discretion was unfettered in that respect. Other matters might be more important than comparative cost and convenience, and the Court would consider whether the true interests of justice would be best served by trying the question here, or leaving it to the foreign tribunal. In the present case, having regard to the fact that the parties and witnesses resided in Spain, that if the action were tried here their evidence would have to be taken on commission or by the aid of a Spanish judicial tribunal, and that the Spanish law would have to be ascertained as a question of fact by the evidence of Spanish experts, whose evidence might be conflicting:—

Held, that the Spanish Court was clearly the proper tribunal to deal with the matter. The order would therefore be discharged, and the service set aside. *LOPEZ v. CHAVARRI*

Farwell J. [1901] W. N. 115

— *Out of jurisdiction—Writ—Foreign co-defendant—“Necessary or proper party.”*

See SHIPPING—Practice. 12.

11. — *Out of the jurisdiction, Writ for service—Breach of contract, whether within or out of the jurisdiction—Wrongful dismissal—Letter written abroad—R. S. C., Order XI., r. 1 (e).*

The plt. was employed by the deft., a foreigner resident abroad, as the London correspondent of a newspaper, of which the deft. was the proprietor. The deft. gave notice of dismissal to the plt. by a letter written and posted abroad to the plt. in this country. In an action for wrongful dismissal by the plt. against the deft., leave had been given to issue a writ of which notice was to be served on the deft. out of the jurisdiction, and notice of the writ had been accordingly served upon him abroad:—

Held, that, the alleged breach of contract having taken place out of the jurisdiction, the case did not fall within Order XI., r. 1 (e), and therefore the writ and service must be set aside. *HOLLAND v. BENNETT* - C. A. [1902] W. N. 76;

[1902] 1 K. B. 867

12. — *Out of the jurisdiction, Service—Writ of summons—Contract “which ought to be performed within the jurisdiction”—Breach within the jurisdiction—Agent for foreign principal—Employment in England and elsewhere—Implied covenant not to prevent agent acting—Breach in England—Order XI., r. 1 (e).*

By an agreement between the plts., who were insurance agents in London, and the defts., a Spanish insurance co., entered into at Tenerife, where the latter were domiciled, the defts. agreed to employ the plts. as their exclusive representatives for a period of five years in England and elsewhere. At the end of one year the defts. sent their agent-general to England, with authority to revoke the agreement, which he did by notice in writing sent through the London post to the plts. at their place of business. An action for breach of contract was thereupon commenced, and an order for service out of jurisdiction was obtained. On appeal from the

PRACTICE (Service)—continued.

refusal of a judge at chambers to set aside the writ and subsequent proceedings :—

Held, that there was to be implied from the agreement a contract by the defts. not to do anything to prevent the plts. from acting as their representatives in England during the agreed term; that the action was therefore founded on a breach within the jurisdiction of a contract which, according to the terms thereof, ought to be performed within the jurisdiction, and that the order for service out of the jurisdiction was rightly made under Order XI., r. 1 (c). *MUTZENBECHER v. LA ASEGURADORA ESPANOLA* - C. A. [1906] 1 K. B. 254

— Payment out.

See under **PRACTICE—Payment, &c.**

— Personal service, Absence of — Evasion of service — Writ of attachment — Disobedience of order of Court.

See **ATTACHMENT. 17.**

10. — Petition — Service — Payment out of Court—Trustee—Subsisting settlement—Tender of 30s.

Petition by a widow for payment out of Court to her of certain funds which had been paid into Court in an action brought to administer the trusts of the settlement made on her first marriage in 1860. The funds were thereby assigned to trustees upon trust, during the joint lives of herself and her intended husband, to pay the income to her for her separate use, and after her husband's death, if she should survive, to pay the income to her for her life, and after the death of the survivor of her and her husband, upon trust for her children by that or any future marriage as such survivor should appoint, and subject thereto for her children who should attain twenty-one, or, being daughters marry, in equal shares, and if there were no such children, for the petitioner absolutely. There was only one child, a daughter of the said first marriage, and she died an infant and unmarried. The petitioner's first husband died in 1874, and she was married three times afterwards. On her third marriage another settlement was made whereby the funds in Court were settled subject to the subsisting trusts under the first settlement in favour of the petitioner's children upon trusts for her separate use for her life, and afterwards, in default of children, if she should survive her intended husband, upon trust for such persons as she should by deed or will appoint, and in default of appointment for her absolutely. No settlement was made upon the petitioner's fourth marriage. Her fourth husband died in 1906. The petitioner was now aged 67, and asked for the payment out of the money to herself on the ground that, being past child-bearing, she was absolutely entitled. The trustees of the settlement made on the third marriage was duly served. The surviving trustee of the settlement made on the first marriage had been served with the petition, but with a tender of 30s. for costs of perusal and a notice under R. S. C., Order 65, r. 27 (19) that his costs would be objected to if he appeared. The petitioner had not exercised her power of

PRACTICE (Service)—continued.

appointment under the settlement of her first marriage.

Swinfen Eady J. said that as the petitioner had not exercised her power of appointment the first marriage settlement was still subsisting, and that the practice of tendering 30s. for costs was never intended to apply to the trustee of a subsisting settlement; the petition must therefore stand over to be served on the trustee in the usual way. *LOWE v. MOORE*

Swinfen Eady J. [1906] W. N. 142

— Probate—Practice.

See under **PROBATE.**

— Receiving order — Stay of proceedings — "Creditors" — Service of notice of appeal.

See **BANKRUPTCY—Practice. 14.**

14. — Scottish Corporation carrying on business in England—Service of writ of summons—"Statutory provisions regulating service of process"—R. S. C., Order XI., r. 8.

Order IX., r. 8, provides for the service of writs of summons of corporations "in the absence of any statutory provisions regulating service of process."

The writ of summons in an action against the Bank of Scotland, upon a cause of action which apparently arose in Scotland, was served upon the manager of a branch of the deft. bank at the office of that branch in the City of London in accordance with Order IX., r. 8. The deft. bank was constituted under statutes which contained no provision for the service of process upon the bank. The Citation Amendment (Scotland) Act, 1882, relates exclusively to process issued from Courts in Scotland, and contains no provision applicable to the service of process issuing from an English Court :—

Held, that the service effected upon the deft. bank as above mentioned was valid under Order IX., r. 8. *LOGAN v. BANK OF SCOTLAND*
C. A. [1904] W. N. 139; [1904] 2 K. B. 495

— Scottish judgment—Extension to England—Service on garnishee.

See **ATTACHMENT. 4.**

— Service dispensed with.

See under **PRACTICE—Payment, &c.**

— Service dispensed with—Petition for variation of marriage settlement—Bankruptcy.

See **DIVORCE—Settlements. 9.**

— Special case — Application for service on justices—Summary jurisdiction.

See **SPECIAL CASE. 1.**

— Substituted service — Divorce practice — Portuguese law — Letters of request refused.

See **DIVORCE—Practice. 29.**

15. — Substituted service—Notice of appeal—Jurisdiction.

The C. A. has jurisdiction to make an order for substituted service of a notice of appeal :— *see* *Ex parte Warburg*, (1883) 24 Ch. D. 364.

In the present case, where the present address of one of the respondents to the appeal of the London County Council was unknown, so that it

PRACTICE (Service)—continued.

was impossible to serve him personally with the notice of appeal, the Court made an order for substituted service upon him by posting a copy of the notice of appeal in a registered letter to his last known address, and, if the letter should be returned through the Dead Letter Office, then by publication in *Lloyd's Weekly Newspaper*. *In re LONDON COUNTY COUNCIL*

C. A. [1901] W. N. 7

— Substituted service on alleged lunatic—Service on Master in Lunacy.

See NEW SOUTH WALES. 21.

16. — *Substituted service within the jurisdiction—Writ issued for service out of jurisdiction—R. S. C., Order x.*

Where a concurrent writ has been issued for service out of the jurisdiction an order for substituted service by post to several addresses, some within and some without the jurisdiction, is regular.

Note to Order x. in Annual Practice, 1905, p. 59. "In ordering substituted service on a person out of the jurisdiction, the kind of service ordered is not restricted to service out of the jurisdiction, but may be by substitution effected within the jurisdiction," approved. *WESTERN SUBURBAN AND NOTTING HILL PERMANENT BENEFIT BUILDING SOCIETY v. RUCKLIDGE*

Swinfen Eady, J. [1905] W. N. 141;
[1905] 2 Ch. 472

17. — *Third party notice—Leave to issue—Service on plt.—Ex parte application—R. S. C., 1883 Order XVI., r. 48.*

An application in the Ch. Div. for leave to issue and serve a third party notice under Order XVI., r. 48, need not be served on the plt. in the first instance, but may be made ex parte.

It is always competent to the Court or judge to require the plt. or any other person to be served with the application. *Wye Valley Ry. Co. v. Hawes*, (1880) 16 Ch. D. 489, commented upon. *FURNESS, WITHEY & Co., LD. v. PICKERING*

Joyce J. [1908] W. N. 152;
[1908] 2 Ch. 224

— Trustees, Application for appointment of new—Service on beneficiaries.

See TRUSTEE—Appointment. 9.

— Trustee—Contempt—Disobedience of order to pay money—Service of order.

See ATTACHMENT. 20.

Setting Aside.

See under SETTING ASIDE.

Settled Land.

See under SETTLED LAND.

Short Causes.

(1908) Short Cause Rules on the Admiralty side of the Probate, Divorce, and Admiralty Division.

See under SHIPPING—Short Causes.

1. — *Affidavits in support—Debenture-holder's action.*

This was a debenture-holder's action which the Master had directed to be set down as a short

PRACTICE (Short Causes)—continued.

cause to come on with minutes of the proposed order.

Byrne J. said that in such cases as this, which came on as short causes without pleadings or notices of motion, copies of the affidavits in support ought to be left with the papers for the use of the judge. *In re CHURCH STRETTON MINERAL WATER CO. McLAUGHLIN v. THE COMPANY* - Byrne J. [1904] W. N. 48

2. — *Costs—Motion for judgment in default of defence—Admissions—Consent by letter to judgment in chambers—R. S. C., 1883, Order XXVI., r. 1; Order XXXVII., r. 11; Order XXXII., r. 6; Order XL., r. 1.*

A point of practice was raised in this case as to whether a motion in court or a summons in chambers was the proper form of proceeding. In Aug., 1907, an action was commenced by the tenant for life in possession of a large estate against the deft., asking for a declaration that the deft. was not entitled to any right of way over the plt.'s land, and for an injunction to restrain a trespass. A defence was delivered in Dec., 1907, in which the deft. claimed to be entitled to the right of way in dispute, as a member of the public. In Feb., 1908, the deft. gave notice of an application in chambers, pursuant to Order XXVI., r. 1, that his defence might be withdrawn or struck out; and by a letter of Mar., 1908, his solicitors wrote admitting the plt.'s claim and consenting to an order being made in chambers giving the plt. the relief to which he was entitled. The plt. elected not to accept the admission, being desirous of having the issue determined by a public adjudication of the Court.

On Mar. 11, 1908, the matter came before the Master, and the deft. obtained leave to withdraw his defence. The plt. now moved under Order XXVII., r. 11, for judgment, in default of defence, for a perpetual injunction and costs, and the only question was whether he was entitled to the additional costs of obtaining the order in Court.

Eve J. said that, under the circumstances of the case, the plt. was justified under the rules in setting down the action as a short cause, on motion for judgment in default of defence. He therefore made an order for a perpetual injunction in the form asked for by the plt. That would include an order that the deft. should pay the costs of the action. *COOPER-DEAN v. BADHAM* - Eve J. [1908] W. N. 100

— Debenture-holder's action—Motion for judgment—Pleadings.

See PRACTICE—Statement of Claim. 1.

3. — Papers for the judge.

Buckley J. called attention to the statement printed at the foot of his cause list on the Sittings Paper, that "any cause intended to be heard as a short cause must be so marked in the cause book at least one clear day before the same can be put in the paper to be so heard, and the necessary papers, including minutes of the proposed judgment or order, must be left with the judge's clerk one clear day before the cause is to be put into the paper."

PRACTICE (Short Causes)—continued.

His Lordship said : I have eight short causes in the paper to-day, and I think in only one case has that part of the rule which refers to leaving the necessary papers been complied with. I do not propose to take any steps this morning because sufficient notice has not been given ; but I want solicitors to understand that that rule must be complied with, and if it is not complied with the causes will be struck out. I shall mention the matter to Mr. Justice Byrne.

PRACTICE NOTE **Buckley J. [1901] W. N. 78**

4. — Probate practice —Proof in solemn form —“Short cause.”

On this case, which was in the list for hearing on Monday, after motions, being called on, counsel for the debt. asked that the attesting witnesses to the will in question should be out of Court during the opening statement of counsel for the plt. The President thereupon inquired how the case came to be in the paper, no application having been made to him for that purpose. Counsel for the plt. stated that one of the registrars at the principal Probate Registry had allowed it to be put in, and the case had been entered in the book kept there containing a list of short Probate causes. Counsel for the debt. also stated that this was the usual practice in such cases.

The President said that he never authorized such a book or list to be kept, and the registrars had no authority to put cases into the Court list for that or any other Monday. It should be clearly understood that counsel must apply, on motion, to him (the President), or to the judge who might be taking Probate motions, for leave to have any short cause put into the list for any Monday, to be disposed of after motions. Unless such application were made and leave obtained from the presiding judge, no case should be put into the Monday's list.

IN THE ESTATE OF SUGDEN — Jeune, Pres. [1904] W. N. 70

— Setting down for trial—Motion for judgment —Consent.

See PRACTICE—Summons. 2.

— Shipping—Short causes.

See under SHIPPING—Short Causes.

Standing Over.

— Witness actions—Business of the Court.

See PRACTICE—Trial. 7.

Statement of Claim.

1. — Debenture-holder's action—Short cause—Motion for judgment—Pleadings—Necessity for statement of claim — Representative order — R. S. C., Order XVI., r. 9.

This debenture-holder's action came on for hearing on motion for judgment as a short cause. The action was brought by the holder of first debentures against the co., the present trustees of the debenture trust deed, and T. (on behalf of himself and all others the holders of the second debentures of the co.), who had been added by amendment. The notice of motion asked for judgment in the terms of agreed minutes which were in

PRACTICE (Statement of Claim)—continued.

common form, and the motion was, in accordance with directions given by the Master, brought on without pleadings. An affidavit in support had been filed, although no directions to that effect had been given.

Buckley J. made the order, saying that he adhered to the opinion which he had expressed in *In re Pringle & Co.*, [1903] W. N. 207, that in such a case a statement of claim was unnecessary. The co. appeared, and would be bound by the order. He had consulted Kekewich and Warrington JJ., and they agreed in this view, and he had been informed that *Romer L.J.*, when a judge of first instance, had expressed a similar opinion.

Held also that it was not necessary to make an order appointing T. to represent the second debenture-holders. *In re CADOGAN AND HANS PLACE ESTATE (No. 2), LD. GRAHAM v. CADOGAN AND HANS PLACE ESTATE (No. 2), LD.*

Buckley J. [1906] W. N. 112

Note.

See also *In re Dupont, Ltd.*, *Swinfen Eady J.*, [1906] W. N. 14, *next Case.*

2. — Debenture-holder's action—Summons for directions—Order to set down action as a short cause on motion for judgment with agreed minutes —Necessity for statement of claim.

Motion for judgment in a debenture-holder's action. The writ was issued on Nov. 16, 1905, and on Nov. 24 a receiver and manager was appointed on motion. The debt. co., however, found that it could not continue to carry on its business, and in order to save the expense of a statement of claim and trial it consented to the action being set down on motion for judgment with agreed minutes. On Dec. 16 the plt. accordingly issued a summons for directions, asking for an order “that this action be set down as a short cause on motion for judgment with agreed minutes in the form annexed hereto.” On Dec. 23 the Master made the order, and on Jan. 2, 1906, notice of motion was given, and the action was set down accordingly.

Swinfen Eady J. took the objection that there was no statement of claim.

No statement of claim is necessary under the circumstances. The Master has not ordered pleadings, and the Court can give judgment without them (*In re Pringle & Co., Ltd.*, [1903] W. N. 207). A motion is often treated as the trial of an action and final judgment given, although there are no pleadings. In the present case all the facts are stated on oath in the affidavits filed on the motion for a receiver and manager, and it is superfluous to restate them in an unsworn statement of claim.

Swinfen Eady J. : There is no doubt about the jurisdiction, but as a matter of general convenience I think there should be a statement of claim on these applications. *Farwell J.* has given a general direction to his masters to that effect, and I think the practice should be uniform. Where judgment is given on a motion without pleadings, the judge has all the affidavits before him and the facts are fresh in his mind, but where, as in the present case, the action comes on as a short cause, so that there are

PRACTICE (Statement of Claim)—continued.

no affidavits before the Court, it is more convenient to have a statement of claim. The case must stand over till a statement of claim is delivered. *In re DUPONT, LD. DUPONT v. DUPONT, LD.* - **Swinfen Eady J. [1906] W. N. 14**

Note.

See In re Cudogan and Hans Place Estate (No. 2), LD., Buckley J., [1906] W. N. 112. See preceding Case.

— Discovery—Admissions by defence—Leave to interrogate defendant refused.
See DISCOVERY. 13.

— Embarrassing—Pleading—Particulars.
See PRACTICE—Pleadings. 1.

Staying Proceedings.

— Arbitration.
See under ARBITRATION.

— Company—Practices.
See under COMPANY—Staying Proceedings.

— Company—Winding-up.
See under COMPANY—WINDING-UP—Practice.

— County Court.
See under COUNTY COURT—Staying Proceedings.

— Disputes between society and members—Rules—Arbitration—Ultra vires acts.
See INDUSTRIAL AND PROVIDENT SOCIETY. 1.

— Divorce—Wife's costs—Husband's petition—Jury discharged without verdict—Proposed retrial—Stay of proceedings until payment—Jurisdiction.
See DIVORCE—Costs. 12.

— Partnership—Mortgage of partner's interest—Right of mortgagee to account—Arbitration clause.
See PARTNERSHIP. 16.

— Ship—Berth note—Arbitration clause—"Dispute arising at loading ports."
See SHIPPING—Practice. 3.

1. — *Foreclosure action—Action in Chancery Division—Concurrent action in King's Bench Division Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 24, sub-s. 5.*

As a mortgagee who brings an action in the Ch. Div. for an account of principle and interest due under the mortgage has a complete remedy by claiming in that action a personal order for payment, a second action brought in the K. B. Div., while the Chancery action is pending, to recover principle and interest, is improper, and should be stayed.

Poulett v. Hill, [1893] 1 Ch. 277, followed WILLIAMS v. HUNT C. A. [1905] 1 K. B. 512

— Frivolous and vexatious proceedings.
See PRACTICE—Frivolous, &c., Action.

PRACTICE (Staying Proceedings)—continued.

— Lease for term of years—Arbitration clause—Action for occupation rent.
See LANDLORD AND TENANT. 28.

— Mortgage—Action in this country for declaration of rights to assist action in foreign country.
See SHIPPING—Practice. 13.

— Receiving order—"Creditors"—Service of notice of appeal.
See BANKRUPTCY—Practice. 14.

2. — *Staying action—Abuse of process of Court—Cause of action arising out of jurisdiction—Accessible Court where cause of action arose—Oppression—Injustice to defendant.*

An action was commenced in England, in which the plt., a married woman, claimed an account under a settlement made in India on the occasion of her marriage in 1897, and she further alleged a wilful default by the defts., one of whom the plt.'s husband, had been appointed a trustee of the settlement by a subsequent deed, the other two being the original trustees of the settlement. The defts. were all domiciled in England, but were ordinarily resident in India, the plt.'s husband being a barrister practising in Calcutta, and the other defts. holding appointments in the Indian Civil Service. The property comprised in the settlement was in India. From 1902 down to the commencement of the action the plt. was living in France apart from her husband. She then came to England, where, as she alleged, she intended thenceforth to reside permanently. The husband and another of the defts. were served with the writ during their temporary presence in England. They applied to stay all proceedings in the action on the ground that it was an abuse of the process of the Court.

The Court was of opinion on the evidence that the plt. had in fact brought the action in England instead of in India, not for any bona fide purpose, but in order to obtain an undue advantage over the defts., and that the continuance of the proceedings in England would necessarily be productive of injustice to the defts. :—

Held, that, in these circumstances, the action ought to be stayed.

Egbert v. Short, [1907] 2 Ch. 205, approved. In re NORTON'S SETTLEMENT. NORTON v. NORTON C. A. [1908] 1 Ch. 471

3. — *Staying action—Cause of action arising out of jurisdiction—Action brought vexatiously and oppressively—Accessible Court where cause of action arose.*

The Court will stay an action, brought within the jurisdiction, in respect of a cause of action arising out of the jurisdiction, if satisfied that no injustice will be done thereby to the plt., and that the deft. would be subject to such injustice in defending the action as would amount to vexation and oppression, to which he would not be subjected if an action were brought, in another and accessible Court, where the cause of action arose. *LOGAN v. BANK OF SCOTLAND (No. 2) C. A. [1906] 1 K. B. 141*

PRACTICE (Staying Proceedings)—continued.

Note.

This case was applied by Warrington J., *Egbert v. Short*, [1907] 2 Ch. 205. See next Case.

4. — *Staying action — Cause of action arising out of jurisdiction—India—Action brought vexatiously and oppressively—Accessible Court where cause of action arose—Inconvenience causing injustice to defendant.*

In 1902 a deed of separation was executed in India between the plt. and her husband, of which the deft. was the trustee. The plt. was the wife of an American domiciled in India, and the deft. then and still was a solicitor practising at Madras. The husband made default in paying the allowance which by the deed he had covenanted to pay, and the complaint of the plt. against the deft. was that he had wilfully or negligently delayed taking proceedings, and had so wilfully or negligently conducted proceedings against her husband that she had been unable to recover the moneys due to her in respect of the allowance. In Oct. 1906, the deft. happened to be in England on a holiday, and on the day before he left for India he was served with the writ in the action. At the date of the issue of the writ the plt. was temporarily in England, but left shortly afterwards for America, where she still remained. The plt. knew of her alleged cause of action when she was resident in India. On an application by the deft. to dismiss or stay the action on the ground that it was an abuse of the process of the Court :—

Held, that, inasmuch as the alleged cause of action arose in India, and that the liability, if any, of the deft. would have to be determined according to the law of India, and upon the evidence of Indian witnesses, the proper place for the action to be brought was India; that the action was not brought bona fide in England; that the injustice to the deft. in bringing the action in this country was so great that the Court would not allow the action to proceed; and that the fact that the plt. happened to be in England at the date of the issue of the writ was not in itself sufficient to preclude the Court from dismissing the action.

Logan v. Bank of Scotland (No. 2), [1906] 1 K. B. 141, applied. *EGBERT v. SHORT* Warrington J. [1907] W. N. 131; [1907] 2 Ch. 205

Note.

This case was approved by C. A., *In re Norton's Settlement*, [1908] 1 Ch. 471. See No. 2, above.

— 1 Ch. 201 on col. 1990. Staying proceedings where submission to arbitration—Jurisdiction.

See COUNTY COURT—Practice. 17.

— Striking out name of one co-plaintiff.

See COMPROMISE. 3.

— “Submission”—Agreement to refer dispute to foreign Court.

See ARBITRATION—Submission. 1.

5. — *Submission to arbitration — Railway Passengers' Assurance Company's Acts, 1864 and 1892* (27 & 28 Vict. c. cxxv. and 55 Vict. c. viii.) — *Arbitration Act, 1889* (52 & 53 Vict. c. 49), s. 4.

The Railway Passengers' Assurance Company's Act, 1864, contained provisions by which

PRACTICE (Staying Proceedings)—continued.

any question arising on any contract of insurance should, if either party required it, be referred to arbitration. Sect. 33 of the Act provided, that, if any policy-holder or his representatives should begin an action against the co. in respect of the matters to be referred to arbitration under the provisions of the Act, the Court or a judge, on application by the co., might make an order staying all proceedings in the action. This Act was repealed by a consolidating Act of the co. passed in 1892, but all contracts in force at the date of the repeal were to be valid and effectual as if the consolidating Act had not passed.

The representative of the holder of a policy issued under the Act of 1864, and containing a condition that questions arising under it should, if the co. or the assured or his representatives required it, be referred to arbitration in the manner specified in the co.'s Act, made a claim against the co., who gave notice that they required the question to be referred to arbitration. The representative named an arbitrator, to whom the co. objected. No further steps were taken, and this action upon the policy was commenced. The co. took out a summons to stay the proceedings in the action, and an order was made to that effect. On appeal :—

Held, that, by virtue of the reservation in the consolidating Act, there was a subsisting submission to arbitration to which s. 4 of the Arbitration Act, 1889, was applicable, and the Court or a judge had jurisdiction to make an order staying the proceedings in the action. *HODSON v. RAILWAY PASSENGERS' ASSURANCE CO.*

C. A. [1904] 2 K. B. 833

— Till costs of discontinued action by company paid — Contributory — Enforcing payment of calls.

See COMPANY — WINDING-UP — Contributory. 4.

Striking Out.

— Affidavit—Scandalous matter—Extracts from letters written without prejudice.

See AFFIDAVIT. 3.

— Death of co-respondent after suit commenced — Motion to strike out his name — Practice—Order.

See DIVORCE—Co-respondent. 2.

1. — *Defence, Striking out—Abuse of process of the Court.*

The defts. in an action to recover damages for negligence brought by a foreigner residing out of the jurisdiction, after obtaining an order that the plt. should give security for costs (with which he complied), delivered a defence in which they denied the negligence and paid a sum of money into Court with a denial of liability. With the defence was delivered a letter written by the defts.' solicitor, in which, after stating that the traverse of negligence was a technical plea merely to secure that the money paid into Court should remain there until the trial unless taken out by the plt. in satisfaction of his claim, he unreservedly undertook on behalf of the defts. not to contest liability at the trial :—

Held, that the defence was a sham defence,

PRACTICE (Striking Out)—continued.

and must be struck out as being an abuse of the process of the Court.

Remington v. Scoles, [1897] 2 Ch. 1, considered and applied. CRITCHELL v. LONDON AND SOUTH WESTERN RY. CO.

C. A. [1907] 1 K. B. 860

— Name of company as plaintiff—Majority of directors opposing—Costs.
See COMPANY—Practice. 1.

— Name of one co-plaintiff—Practice—Stay of proceedings.
See COMPROMISE. 3.

— Part of indorsement on writ—Abuse of the process of the Court.
See PRACTICE—Pleadings. 1.

— Pleading—"Frivolous and vexatious action"—Summons—Affidavit—Admissibility.
See PRACTICE—Pleadings. 4.

— Pleadings—Reasonable cause of action.
See DEFAMATION—Slander. 4.

2. — *Pleadings, Striking out—Reasonable cause of action—Relief against the Crown—Declaratory judgment—Attorney-General defendant—R. S. C., 1883, Order XXV., rr. 4, 5—Finance (1909-1910) Act, 1910, Form IV.*

The plt., an owner of a house and agricultural land, commenced this action against the Att.-Gen. to test the validity of the notices issued by the Commrs. of Inland Revenue under the Finance (1909-1910) Act, 1910, commonly known as Form IV. By his statement of claim the plt. alleged that a notice under the Finance Act, 1910, Form IV., had been served upon him signed by the Secretary to the Commrs. of Inland Revenue, requiring him to deliver certain returns within thirty days under a penalty not exceeding 50L; that certain requisitions in the said form were illegal and unauthorised, and that the Commrs. threatened to enforce the penalty for failure to make the return. The plt. therefore claimed a declaration that he was not under any obligation to comply with the notice or to furnish information as thereby required.

The Att.-Gen. took out a summons under R. S. C., Order XXIV., r. 4, to strike out the statement of claim as disclosing no reasonable cause of action. Lush J., affirming a previous decision of the Master, made an order in the terms of the summons.

The C. A. allowed the appeal.

Cozens-Hardy M. R. said that Order XXIV., r. 4, was not intended to take the place of a demurrer, and ought not to be applied to an action involving serious investigation of ancient law and questions of general importance, and on this ground alone the plt. was entitled to have the action proceed to trial in the usual way, leaving the Att.-Gen. to take any objection he might be advised to raise by his statement of defence. As, however, the question had been argued whether the Att.-Gen. could be sued in a case like this, he thought it right to state his views on this point. It had been settled for centuries that in the Court of Chancery the Att.-Gen. might in some cases be sued as a deft. as representing the Crown, and that in such a suit relief could be given against the Crown. *Pawlet v. Att.-Gen.*, (1658) Hardre's,

PRACTICE (Striking Out)—continued.

Rep. 465, was an early authority on the point. *Hodge v. Att.-Gen.*, (1839) 3 Y. & C. Ex. 342, was a distinct authority that the Court had jurisdiction to maintain an action against the Att.-Gen. as representing the Crown, although the immediate and sole object of the suit was to affect the rights of the Crown in favour of the plt. The jurisdiction of the Court to make a declaratory judgment had been enlarged by Order XXV., r. 5, and there was no reason why this rule should not apply to an action in which the Att.-Gen., as representing the Crown, was a party, and the present was a case to which r. 5 might with advantage be applied. The plt. therefore in this case was entitled to assert his rights in an action against the Att.-Gen., and was not bound to proceed by petition of right. DYSON v. ATT.-GEN. - C. A. [1910] W. N. 276

Summary Jurisdiction.

— Summary Jurisdiction.

See under JURISDICTION.

Summons.

— Adjourned summonses—Costs—Practice.
See WILL—Shelley's Case. 3.

— Costs—Taxation—Summons to review.
See COSTS. 66.

— Criminal law.
See under CRIMINAL LAW—Practice.

— Cruelty to animals—Irregularity in form of summons—Criminal law.
See CRUELTY TO ANIMALS. 2.

— Married woman—Removal of restraint on anticipation—Petition.
See HUSBAND AND WIFE—Restraint on Anticipation. 6.

— Music, Seizure of pirated—Necessity for Summons.
See COPYRIGHT—Music. 3.

— Originating summons.
See under PRACTICE—Originating Summons.

— Petition or summons.
See under PRACTICE—Petition or Summons.

— Probate Contentious Rules.
See PROBATE—Practice. 9.

— Time for return of—Sale of food and drugs.
See ADULTERATION. 25.

Summons for Directions.

— Application for stay—Stop in proceedings.
See ARBITRATION—Agreement to Refer. 1.

— Consent of Court in Lunacy to bankruptcy proceedings.
See LUNACY. 5.

PRACTICE (Summons for Directions)—continued.

— Necessity for statement of claim.

See **PRACTICE—Statement of Claim.** 1.

1. — *Notice of application to master—Interlocutory matter—Order in chambers dismissing action—Jurisdiction—R. S. C., Order XXX., rr. 1, 2, 4, 5.*

Where a summons for directions has been issued under Order XXX., r. 1, there is jurisdiction, upon an application by a deft. in chambers for further directions on notice under rule 5, to strike out a statement of claim on the ground that it discloses no reasonable cause of action, and to dismiss the action with costs as frivolous and vexatious. An application of this nature is an interlocutory matter within rule 5, which is not controlled or limited by rule 2 to the matters therein particularly enumerated. *PEPPERELL v. HIBD* — — — *Byrne J.* [1902] **W. N.** 17; [1902] 1 **Ch.** 477

2. — *Short cause—Setting down for trial—Motion for judgment—Notice—Evidence—Consent—R. S. C., Order XVI., r. 21; Order XXX., r. 2; Order XXXVI., r. 14; Order XL., r. 1; Order LII., r. 5.*

This debenture-holder's action came on for hearing as a short cause. The action was brought against the co. and two holders of subsequent debentures. All the defts. entered appearances, but one of them was not represented at the hearing. It appeared that on a summons for directions the Master had on Nov. 14, 1903, made an order that the action be set down for trial in Middlesex without pleadings, to be heard as a short cause, and judgment applied for on minutes; the evidence to be taken by affidavit. Notice of motion for judgment in the terms of a schedule to the notice was given by the plts. on Nov. 25 for Nov. 28; and an objection was taken at the hearing that this was not in compliance with the Master's order, and that ten days' notice of trial ought to have been given under Order XXXVI., r. 14.

On the production of a consent brief for the deft. who had been absent, the Court ultimately made the order asked for. *In re PRINGLE & CO., LD.* *POWELL v. PRINGLE & CO.*

[1903] **W. N.** 207

Note.

See *In re Dupont, Ltd.*, *Swinfen Eady J.*, [1906] **W. N.** 14. See **Practice—Statement of Claim.** 2.

Followed by *Buckley J.*, *In re Cadogan and Hans Place Estate (No. 2), Ltd.*, [1906] **W. N.** 112. See **Practice—Statement of Claim.** 1.

— Stay of proceedings—Step in proceedings.

See **ARBITRATION—Practice.** 6.**Tender.**

— Admiralty practice—Tender with denial of liability—Practice.

See **SHIPPING—Salvage.** 28.— Costs—Amount recovered under 2*l.*—Admiralty actions.See **COUNTY COURT—Costs.** 11.**PRACTICE (Tender)—continued.**

— Salvage—Apportionment—"Runners."

See **SHIPPING—Salvage.** 27.

— Stock Exchange—Default on—Tender of amount due on mortgage—Secured creditor—Notice of act of bankruptcy. See **BANKRUPTCY—Stock Exchange.** 1.

Third Parties.See also under **Practice—Parties.**

— Attorney innocently acting under forged power—Liability of agent—Indemnity. See **PRINCIPAL AND AGENT.** 3.

— Bankruptcy.

See under **BANKRUPTCY—Third Parties.**

— Bill outstanding in—Third party—Bankruptcy notice—Receiving order—Bill of exchange—Conditional payment—Dis-honoured bill.

See **BANKRUPTCY—Notice.** 3.

— Company—Directors' Liability—Third-party procedure.

See **Company—Prospectus.** 13.

— Contract—Consideration—Breach of duty to take care—Intervening criminal act of third party causing loss.

See **CONTRACT.** 10.

— Costs—Taxation.

See **SOLICITOR—Costs.** 39-43.

1. — *Counter-claim—Indemnity over against person not party to action—Right of plaintiff to issue third-party notice—R. S. C., Order XVI., r. 48.*

The right given by Order XVI., r. 48, to a deft., who claims to be entitled to contribution or indemnity over against any person not a party to the action, to issue a third-party notice, is applicable to the case of a plt. in an action against whom a counter-claim is raised by the defence, the plt. in such a case being in the position of deft. to the counter-claim. *LEVI v. ANGLO-CONTINENTAL GOLD REEFS OF RHODESIA, LD.* *TAYLOR, THIRD PARTY*
C. A. [1902] **W. N.** 146; [1902] 2 **K. B.** 481

— Indemnity—Innocent misrepresentation.

See **PRINCIPAL AND AGENT.** 3.

— Indemnity by third parties—Costs—Appeal—Costs as between solicitor and client—Practice.

See **COSTS.** 3.

— Insurance (Marine)—Third-party procedure—Policy of reinsurance.

See **No. 2, below.**

— Intervening Act of third party—Liability—Effective cause of damage.

See **NEGLIGENCE.** 9.

— Notice, Third party—Collision—Damage—Contract of indemnity.

See **SHIPPING—Collision.** 78.

— Notice, Third party—Leave to issue—Service on plt.

See **PRACTICE—Service.** 17.

PRACTICE (Third Parties)—continued.

— Notice, Third-party—Service out of jurisdiction—Contribution.
See **PRACTICE—Service**. 6.

— Policy for benefit of third party—Warranty against suicide—Condition precedent.
See **INSURANCE (LIFE)**. 17.

2. — Third-party procedure — Insurance (Marine)—Policy of reinsurance—R. S. C., Order XVI., r. 48.

Where in an action on a policy of marine insurance the debts sought under Order XVI., r. 48, to bring in as a third party the underwriter of a policy of reinsurance on the same subject-matter :—

Held, that the third-party procedure was not applicable to such a case, inasmuch as a contract of reinsurance was not one of "indemnity" within the meaning of the rule. **NELSON v. EMPRESS ASSURANCE CORPORATION, LD. FABER, THIRD PARTY - C. A. [1905] W. N. 93; [1905] 2 K. B. 281**

— Towage—Third-party notice—Appeal by person not a party—Collision.
See **SHIPPING—Collision**. 78.

— Voluntary payment of premiums by third party.
See **BANKRUPTCY—Mortgages**. 1.

Title of Action.

— Shipping—Limitation of liability—Life claims.
See **SHIPPING—Limitation of Liability**. 4.

Trial.

1. — Action in Chancery Division—Counter-claim for defamation—Trial by jury—R. S. C., Order XXXVI., rr. 2, 7—Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 100.

A debt, who counter-claims in respect of any of the matters specified in rule 2 of Order xxxvi. is not a plt. within the meaning of that rule, and is not entitled thereunder as of right to have the issues of fact raised by the counter-claim, tried by a jury; but, in the absence of special circumstances, the Court in the exercise of its discretion will direct those issues to be tried by a jury, if so desired.

A debt, in an action brought in the Ch. Div. to enforce an agreement for a compromise counter-claimed for relief in respect of various matters including libel, and applied that the action and counter-claim might be transferred to the K. B. Div. for trial by a jury :—

Held, that the inclusion in the counter-claim of a claim for libel was not a ground for directing a transfer of the whole action, and, the debt, not desiring that the issues relating to libel alone should be sent to a jury, the application was refused.

Decision of Warrington J. affirmed. Lord KINNAIRD *v.* FIELD **C. A. [1905] W. N. 126; [1905] 2 Ch. 361**

PRACTICE (Trial)—continued.

— Amendment of pleadings at trial—Gaming—New consideration.
See **GAMING**. 3.

— Appeal.
See under **APPEAL**.

— Colonies—Mode of trial applicable to—Practice and procedure
See under **SPECIFIC TITLES OF THE VARIOUS COLONIES**.

— Costs.
See under **COSTS**.

— County Court.
See under **COUNTY COURT**.

— Criminal law.
See under **CRIMINAL LAW—Practice**.

2. — Damages—New trial—Jurisdiction of Court of Appeal—Order for new trial unless damages reduced—Tort—Verdict for excessive damages.

When in an action of tort the jury find a verdict for the plt. for a sum which the C. A. considers unreasonable and excessive that Court has no jurisdiction, without the debt's consent, to order that unless the plt. consents to reduce the damages there shall be a new trial.

The opinion of the C. A. on this point in *Belt v. Laues*, (1884) 12 Q. B. D. 356, overruled. **WATT v. WATT - H. L. E. [1905] W. N. 60; [1905] A. C. 115**

— Isle of Man.
See under **ISLE OF MAN**.

3. — Judgment in default of appearance—Application to restore—Extending time for application—Trial of action—R. S. C., 1883, Order XXXVI., r. 33; Order LXIV., r. 7.

In this case a clerk of the debt's solicitor deposed that on instructions from his principal he searched the Chancery Cause List to see if the case had been set down for hearing pursuant to notice, and on several occasions he searched the cause book of Swinfen Eady J.; that he only searched the cause book of Swinfen Eady J. because the notice was given for the trial of the action before him, and that he forgot for the moment that such judge was not taking witness actions at that time, which were being tried by Farwell J.; that not finding any entry in the said cause book, he had assumed that the action had not been set down, and that the notice of trial had lapsed; that it was not until Nov. 29 that his principal was aware that the action had been tried when on that day he received a notice from the taxing Master fixing Dec. 5 for the taxation of the plt.'s costs of the action.

Farwell J. : I am very unwilling to deprive a litigant from having his case heard. I think there has been a slip here. I understand the costs of the action are to be taxed to-day. There will be liberty to restore the action to the list on condition that the debt, within seven days of the taxing Master's certificate, pays all the costs that have been thrown away and the costs of this application, and 10*l.* must be deposited in the joint names of the solicitors of both parties to pay the taxed cost of this application. **ASHTON v. EMANUEL Farwell J. [1902] W. N. 231**

PRACTICE (Trial)—continued.

— Legitimacy Declaration Act — Petition — Mode of trial—Right to trial by jury.
See **LEGITIMACY DECLARATION**. 1.

— New trial—Practice.
See under specific Titles.

4. — *New trial, Application for—Action for personal injuries—Railway accident—Prospective loss of income—Excessive damages—Matters wrongly considered by jury or wrong measure of damages adopted.*

The rule laid down in *Praed v. Graham*, (1889) 24 Q. B. D. 53—that a new trial will not be granted on the ground of excessive damages unless, having regard to all the circumstances of the case, the Court is of opinion that the amount is so large that no twelve men could reasonably have given it—must be construed in the light of other decisions of the C. A., e.g., *Phillips v. London and South Western Ry. Co.*, (1879) 4 Q. B. D. 406; 5 Q. B. D. 78, the effect of which is that a verdict may be set aside and a new trial granted if the Court, without imputing perversity to the jury, comes to the conclusion, from the amount of the damages and the other circumstances, that the jury must have taken into consideration matters which they ought not to have considered, or applied a wrong measure of damages.

The decision in *Rowley v. London and North Western Ry. Co.*, (1873) L. R. 8 Ex. 221, adopted as showing that, in awarding damages for a prospective loss of income from professional or other earnings the jury ought not to give the plt. such a sum as, if invested, would produce the full amount of income which he would probably have earned, but ought in estimating the damages to take into account the accidents of life and other matters, and to give the plt. what they consider under all circumstances a fair compensation for his loss. **JOHNSTON v. GREAT WESTERN RY. CO. C. A. [1904] W. N. 92; [1904] 2 K. B. 250**

5. — *New trial, Application for—Misdirection—Omission of counsel to suggest questions to judge at trial.*

Application by deft. for a new trial of the action on the ground of misdirection by Wright J., who tried the action. At the end of his summing-up the learned judge asked the counsel whether they wished any other questions to be put to the jury, and the counsel on both sides answered in the negative.

On the hearing of the application for a new trial it was objected on behalf of the plt. that the deft. was debarred from raising the question of misdirection, because his counsel did not suggest in answer to the judge any other question to be put to the jury. *Neville v. Fine Art, &c., Insurance Co.*, [1897] A. C. 68, and *Seaton v. Burnand*, [1900] A. C. 135, 143, were referred to:—

Held, that there had been no misdirection and refused the application. **WEISER v. SEGAR C. A. [1904] W. N. 93**

— New trial — Interpleader issue — Liverpool Court of Passage.
See **BILL OF SALE**. 2.

D.D.

PRACTICE (Trial)—continued.

6. — *New trial—Notice of motion—Time—Action tried with jury—R. S. C., Order XXXIX., r. 4.*

Upon the trial of an action with a jury, the jury answered the questions of fact left to them by the judge, and were discharged. The judge then referred the question of the amount due to the plt. upon those findings to a special referee for report. Upon further consideration, after receiving the referee's report, the judge gave judgment for the plt. for a certain amount. Four days after the judgment, but a year after the verdict, the defts. gave notice of motion to the C. A. for (inter alia) a new trial:—

Held, that the date to be regarded for the purpose of giving notice of motion for a new trial under Order XXXIX., r. 4, was the date of the findings of the jury, and not that of the judgment on further consideration, and that therefore the notice of motion, so far as it asked for a new trial, was out of time. **GREENE v. CROOME C. A. [1908] 1 K. B. 277**

— New trial must be on motion.
See **BRITISH HONDURAS**. 1.

— Service out of the jurisdiction.
See under **PRACTICE—Service**.

7. — *Setting down for trial before pleadings closed—Business of the Court—Ineffective actions—Pleadings to be delivered—Practice.*

The former practice of allowing actions to be set down for trial, before pleadings had been delivered, ought now to cease, as it only opened the door to abuse and delay. The Court therefore ordered the action marked "Pleadings to be delivered" to be taken out of the list of witness actions, and a notice giving their names and other particulars to be affixed to the notice-boards of the Court; and the Court desired the solicitors in these cases to inform it whether the cases were still effective or not, with a view to striking out of the cause books such of them as had become ineffective, and giving directions for the trial of such of them as remained. **PRACTICE NOTE**

Buckley, J. [1901] W. N. 94

8. — *Standing over—Witness actions—Business of the Court.*

Where parties to an action ask that it may stand over for their convenience, or for any reason which is not one which affects the fair trial of the action, the application if acceded to is one which interferes unfairly with the continuity of the list for the convenience or benefit of one suitor to the inconvenience or detriment of others. In witness actions a large number of parties, witnesses and others, have of necessity to hold themselves at the disposal of the Court when the action shall happen to be reached, and to render the uncertainty which necessarily exists as small as possible it is desirable that there should be as far as possible certainty as to the number of actions which stand before them for trial. I do not, therefore, allow actions to stand over simply because all parties agree, or for any reason not addressed to the fair trial of the action. I reserve to myself full liberty to deal with any particular case as I think the circumstances justify. If an action were a long way

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PRACTICE (Trial)—continued.

down the list and could not be reached, say for six weeks, I should accept a less reason than would be required if it were within a short distance of being heard. But in any case I require a sufficient reason to justify an interference with what would otherwise be the order of the list. **PRACTICE NOTE**

Buckley J. [1901] W. N. 107

Undertakings.

— Bankruptcy.

See under BANKRUPTCY.

— Costs, Security for—Undertaking by solicitor to refund—Practice—Appeal.
See COSTS. 60

1. — Injunction—Motion for injunction—Undertaking—Cross-undertaking as to damages—Agreement between parties—Implied cross-undertaking.

As a general rule, where upon a motion for an injunction an undertaking is given to the Court in lieu of an injunction, a cross-undertaking in damages is not implied, but must be expressly asked for.

So held by the C. A., reversing the decision of Farwell J., [1904] W. N. 182. **HOWARD v. PRESS PRINTERS, LD.** - **C. A. [1904] W. N. 198**

2. — Interlocutory injunction—Undertaking—Implied cross-undertaking as to damages—Action by principal against agent—Counterclaim for damages on cross-undertaking.

Action by plt. co. as principals against deft. as their agent, claiming damages in respect of an alleged breach of the duty of the agent in sending out a circular letter shortly before the termination of the agency, soliciting the plt's. customers. The plt's. also claimed an injunction to restrain the deft. from making use of confidential information. The deft. counterclaimed for an account, and also for damages in respect of an interlocutory injunction granted against him on Dec. 21, 1904, on the *ex parte* application of the plt's. This order was made by Kekewich J. upon an affidavit which his lordship now found not to have stated all the material facts.

On Dec. 30, 1904, the day before the termination of the agency agreement, the injunction was continued by the vacation judge. On Jan. 13, 1905, the matter came before Joyce J., and it stood over, the deft. giving a limited undertaking as to soliciting customers. No cross-undertaking by the plt's. was mentioned. On Jan. 20, 1905, the motion for an injunction was finally dismissed by Joyce J. The question was now raised under the counterclaim whether this cross-undertaking in damages by the plt's. could be implied.

Kekewich J. said that this question was a serious one affecting the practice of the Court, and it was the first case which he was aware of in which it had been raised by the counterclaim in an action. If all the facts had been before him on Dec. 21, 1904, the *ex parte* injunction of that date would not have been made, and the deft. would be entitled to an enquiry as to damages. By the order of Jan. 13, 1904, a limited undertaking was given by the deft., and

PRACTICE (Undertakings)—continued.

any cross-undertaking by the plt's. must be equivalent to it, and cover the same ground. With regard to the practice in this respect, Farwell J., in the case of *Howard v. Press Printers, Ltd.*, [1904] W. N. 182, considered that it was an invariable rule that when an injunction was moved for and an undertaking given to the Court, a cross-undertaking as to damages should be inserted in the order. But on appeal from this decision the C. A. ([1904] W. N. 198) held that there was no general practice to that effect. The general practice of the Court in the future was now expressed in the resolution adopted by the judges of the Ch. Div., which was to be found under Practice Note [1904] W. N. 203, namely, that whenever an undertaking to the Court was given in lieu of an interlocutory injunction, there should be inserted in the order a cross-undertaking in damages by the applicant, unless the contrary was agreed and expressed at the time. He intended to follow that practice, and he therefore directed an enquiry as to damages, unless the parties accepted his suggestion that 5*l.* was the proper amount. **OBERREHEINISCHE METALLWERKE. G. M. B. H. v. COCKS** **Kekewich J. [1906] W. N. 127**

3. — Motion for injunction—Undertaking—Cross-undertaking in damages.

The judges of the Ch. Div. have adopted the following resolution: In future whenever an undertaking to the Court is given in lieu of an interlocutory injunction there shall be inserted in the order a cross-undertaking in damages by the applicant unless the contrary is agreed and expressed at the time. **PRACTICE NOTE** - **[1904] W. N. 203**

4. — Motion for injunction—Undertaking in damages—Undertaking in lieu of injunction.

The judges of the Ch. Div. have had under their consideration the practice as to an undertaking in damages where an undertaking is given in lieu of an injunction, and they have resolved that in future an undertaking in damages will follow as a matter of course without being mentioned wherever there is an undertaking given in lieu of an injunction, unless there is a stipulation expressed to the contrary. **PRACTICE NOTE** **[1904] W. N. 208**

— Solicitor.

See under SOLICITOR—Undertakings.

5. — Solicitor—Writ of summons—Service, Acceptance of—Entering appearance—Undertaking—Proceeding with action—Delay—Writ enforceable after twelve months—Attachment—Application, Form of—R. S. C., 1883, Order VIII., r. 1; Order IX., r. 1; Order XII., r. 18.

Where, with the authority of the deft. in an action, his solicitor accepts service of the writ on his behalf and gives a written undertaking, under R. S. C., 1883, Order IX., r. 1, "to enter an appearance in due course," that undertaking is unconditional and must be performed forthwith, and, at the instance of the plt., it can be enforced by attachment of the solicitor under Order XII., r. 18.

PRACTICE (Undertakings)—*continued.*

The solicitors to the deft. in an action accepted, by his authority, service of the writ on his behalf, and at the same time gave the plt.'s solicitor a written undertaking to enter an appearance in due course, but, on account of a proposal by the deft. for settlement, the time for appearance was extended for two months. No appearance was ever entered, and no step was taken in the action for a further period of eighteen months, when the plt., desiring to proceed, required the deft.'s solicitors to enter appearance pursuant to their undertaking, which they declined to do, on the ground that their clients, considering the action at an end, had directed them not to enter appearance.

Upon an application by the plt., under Order XII., r. 18, to attach the solicitors for breach of their undertaking, the C. A., affirming Farwell J., [1900] W. N. 274, ordered the solicitors to enter appearance forthwith, with liberty to the plt. to renew his application in case of their default.

An original writ of summons, notwithstanding the expiration of the twelve months limited by Order VIII., r. 1, and even though not renewed under that rule, still continues effectual for all purposes except that of service, the limit of time applying to service only.

An application by a plt. under Order XII., r. 18, to enforce by attachment a written undertaking by the deft.'s solicitor to enter an appearance to the writ, should be made and intitled, not in the action, but in the matter of the solicitor, by virtue of the jurisdiction of the Court over its officers.

Per Farwell J. . A written undertaking by a solicitor acting on the authority of a deft., to enter an appearance to the writ, constitutes a contract on the part of the deft. by the solicitor or his agent to enter appearance, and differs from an ordinary contract only in that it may be enforced against the solicitor himself by attachment at any time within six years, provided the action continues effective. *In re KERLEY, SON & VERDEN* - C. A. [1901] W. N. 8 ; [1901] 1 Ch. 467

6. — *Undertaking to do an act on or before a fixed day*—*Service of order containing undertaking—Breach—Committal—Order fixing time for compliance, whether necessary.*

In this case Warrington J. said that he was satisfied on the evidence that the money in the deft.'s hands was money held by him as trustee of the testator's will. The only point of any importance was that the order of Jan. 31 was not served upon the deft., but that fact was not an answer to the present application. The question was not one in reference to an order of the Court requiring a certain thing to be done, but to an undertaking given to the Court. It was not an undertaking to do a certain thing "forthwith," but an undertaking to pay a certain sum of money on or before a named day. The rule of practice as to undertakings as distinguished from orders of the Court was clearly stated by Cozens-Hardy J. in *D v. A & Co.*, [1900] 1 Ch. 484, 486. In that case the learned judge, after stating that the first objection taken by the defts. was that the order, which contained

PRACTICE (Undertakings)—*continued.*

the undertaking, had not been served upon them, said : "As to the first objection, I think it is not well founded. It is settled law that an order granting an injunction may be enforced by committal, although the order has not been served. It is sufficient if it be shewn that the deft. had notice of the order. There might be some doubt as to that statement being applicable after *In re Truck* [1906] 1 Ch. 692, but for the present purposes that was not material. He continued : "If this holds good where a hostile order has been made, it must equally hold good where the deft. has voluntarily given an undertaking. Indeed, in such a case I think no notice at all is requisite, for, in the words of Chitty J. in *Callow v. Young*, (1886) 55 L. T. 544, it 'is not necessary to shew that the person sought to be attached had knowledge of his undertaking. He must be presumed to have known that he had given his undertaking.' Having regard to the settled practice of giving an undertaking in the terms of a notice of motion, it would be highly dangerous to hold that the deft. who had given an undertaking could disregard it unless and until the order was served. I do not think Kekewich J. intended to intimate a contrary opinion in *Halford v. Hardy*, [1899] W. N. 243." That disposed of one of the questions which his Lordship had to consider. But there was a second question, namely, whether where an undertaking was given to the Court to pay a sum of money within a limited time it was necessary to serve an order upon the deft. with an indorsement upon it warning him of his liability to committal in the event of his not complying with the undertaking within the time fixed. That question was to some extent discussed before Kekewich J. in *Halford v. Hardy*, [1899] W. N. 243, but when that case was fully considered it would be seen that it did not touch this point. In that case the undertaking given was to do something "forthwith," and the question was not as to the service of the order upon the deft., but whether it was necessary before the order could be enforced that a limit of time should be fixed for compliance with it. In his judgment, Cozens-Hardy J. was quite justified in saying in *D v. A & Co.*, [1900] 1 Ch. 484, 487, that he did not think that Kekewich J. "intended to intimate a contrary opinion in *Halford v. Hardy*, [1899] W. N. 243." The same question came before Byrne J. in *Carter v. Roberts*, [1903] 2 Ch. 312, and again the question was not whether service of the order embodying the undertaking on the deft. was required, but whether it was necessary where the undertaking was to do something "forthwith" that an order should be made fixing a time for complying with it. The head-note to that case, so far as material, was this : "Where an undertaking to pay money into Court or to a joint account at a bank has been given, without fixing any time for payment, an order fixing a time is necessary, before the undertaking can be enforced; though there may be cases of contempt so gross as to justify attachment without any supplemental order." Byrne J. (at p. 320) first referred to Order XLI., r. 5, and said : "That rule, as was pointed out by Sir George Jessel in *Gilbert v. Endean*, (1878) 9 Ch. D. 259,

PRACTICE (Undertakings)—continued.

does not apply to an undertaking. The question of the enforcement of an undertaking for payment of money was considered by Kekewich J. in *Halford v. Hardy*, [1899] W. N. 243. There the undertaking was not for the payment of money, but the order was 'forthwith' to execute a certain indenture, and no time was mentioned further." Then he quoted the judgment of Kekewich J. in that case and continued: "The case before Cozens-Hardy J. of *D. v. A. & Co.*, [1900] 1 Ch. 484, does not involve this point, because the undertaking there was to do something on or before a named day." It seemed therefore that *Halford v. Hardy*, [1899] W. N. 243, and *Carter v. Roberts*, [1903] 2 Ch. 312, were distinguishable because in those cases no day was fixed for the fulfilment of the undertaking. In the present case the day was fixed. The only question therefore was whether it was necessary that an order embodying the undertaking should be personally served on the deft. He had already stated that in his opinion it was not, and he thought that point was decided in the negative by *D. v. A. & Co.*, [1900] 1 Ch. 484. There would therefore be the order asked for.

In re LAUNDER; *LAUNDER v. RICHARDS*

Warrington J. [1908] W. N. 49

Writ.

- Certiorari, Writ of, refused—Temperance Act.
See CANADA—Temperance Act. 1.

1. — *Default in appearance—Statement of claim filed—Subsequent amendment of writ—Motion for judgment—Filing another statement of claim—R. S. C.*, 1883, *Order XX.*, r. 4.

In this case Kekewich J. said that the case of *Jamaica Ry. Co. v. Colonial Bank*, [1905] 1 Ch. 677, did not seem to bear directly on the case before him, because in the present case the writ had been amended. If the plts. had been content not to amend, then, having filed their statement of claim, the authorities cited would have justified the Court in saying that the plts. were right. The difficulty, however, arose from the fact that the writ was amended, and the statement of claim was filed before the amendment. It was quite true that a plt. by amending his writ did not begin a new action, but still the writ was the basis on which depended the whole of the proceedings. If the deft. had appeared the difficulty could have been easily overcome, but where the deft. did not appear the Court had to see that all technicalities had been complied with. The statement of claim filed in this case referred on the face of it to the writ on which the plts., having amended, were not now suing. The amendment was of the slightest possible character, but nevertheless, the writ had been amended, and plts. were now proceeding on a different writ from that which they originally served on the deft. That was his difficulty, and he could not see anything to justify him in saying that the statement of claim filed under the original writ was to hold good after that writ had been amended, and, therefore, he was reluctantly obliged to hold that the plts. must file another statement of claim. **SOUTHALL DEVELOPMENT SYNDICATE, LD. v. DUNSDON**

Kekewich J. [1907] W. N. 16

PRACTICE (Writ)—continued.

- Defendant out of jurisdiction at date of issue of writ.

See HABEAS CORPUS. 3.

- Execution, Writ of.

See under EXECUTION.

- Joinder of causes of action—Leave of Court or judge—Leave given after issue of writ—Waiver of objection by defendant.

See PRACTICE—Joinder. 3.

- Necessaries—Default action in rem—Specially indorsed writ—Affidavit of service.

See SHIPPING—Practice. 10.

- Sequestration, Writ of.

See under SEQUESTRATION.

- Service.

See under PRACTICE—Service.

2. — *Special indorsement—Liquidated demand—Affidavit in support—"Any other person"—Foreign litigant—Affidavit by solicitor—Information and belief—Order III., r. 6; Order XIV., r. 1.*

The plt., who had acted as the legal representative of the defts. during litigation in South America, sent in his bill of costs to their solicitors in England, and afterwards issued a specially indorsed writ against them, claiming 1469*l.* for professional charges and disbursements. An application for leave to sign judgment under Order XIV. was supported by an affidavit made by a member of the English firm of solicitors who represented the plt. The affidavit was sworn in London, and the deponent stated that he was a member of the firm of solicitors acting for the plt.; that the defts. were justly and truly indebted to the plt. in the sum of 1469*l.* for professional charges; gave the history of the case; and added that it was within his own knowledge that the debt was incurred and was still owing, such knowledge being obtained from correspondence received from the plt. and from correspondence and conversations the deponent had had with the defts.' solicitors, and that he was duly authorized by the plt. to make the affidavit:—

Held, that there was a liquidated demand, but that the affidavit was irregular, inasmuch as the deponent was not a person who could swear positively to the facts and verify the cause of jurisdiction to make an order under Order XIV., r. 1, and his affidavit was only made on information and belief. The conditions imposed by the rule were not fulfilled, and the Court had no jurisdiction to make an order under Order XIV. **LAGOS v. GRUNWALDT - C. A. [1909] W. N. 216; [1910] 1 K. B. 41**

- Striking out indorsement on writ - Embarrassing pleading.

See PRACTICE—Pleadings. 1.

- Writ of extent—Affidavit of debt and danger—Sufficiency of affidavit—Motion to set aside writ.

See REVENUE—Writ of Extent. 1.

- Writ of fi. fa.—Execution creditor—Wrongful seizure—Indorsement on writ of fi. fa.

—Debt paid before issue of writ.

See SHERIFF. 3.

PRACTICE (Writ)—*continued.*

- Writ of possession—Practice—Costs—Jurisdiction to make order.
See COSTS. 81.
- Writ of possession—Writ of assistance—Order fixing time for obedience.
See RECEIVER. 10.
- Writ of privilege—Overseer—Solicitor—Exemption—Appeal to quarter sessions—Costs.
See POOR LAW. 15.

PRECATORY TRUSTS.

See under WILL—**Precatory Trusts.**

- “**PRECINCTS**”—Harbour—Boundary—Removal of sand from foreshore.
See HARBOUR. 2.

PRE-EMPTION—Highway—Dedication—Presumption—Disused tramway—Railway company—Capacity to dedicate—Adjoining owner—Right of pre-emption.
See HIGHWAY. 9.

- Right of—Contract to give “first refusal” of land—Negative contract.
See CONTRACT. 17.

PREFERENCE—Bankruptcy.

See under BANKRUPTCY—**Preference.**

— Company.

See under COMPANY and COMPANY—WINDING-UP.

- Undue preference—Electric light.
See under ELECTRIC LIGHT.

- Undue preference—Railway company—Rates.
See under RAILWAY.

PREFERENCE SHARES Company.

See under COMPANY and COMPANY—WINDING-UP.

PREFERENTIAL DEBT.—Bankruptcy.

See under BANKRUPTCY—**Preferential Debt.**

- Friendly Society—Defaulting treasurer—Removal from office—Bankruptcy of treasurer.
See FRIENDLY SOCIETIES. 1.

PREFERENTIAL PAYMENTS—Administration of assets—Executor—Specialty debt.
See ADMINISTRATION. 8.

PREFERENTIAL PAYMENTS IN BANKRUPTCY—Poor and district rates—Water rate payable by meter—Apportionment.
See COMPANY—WINDING-UP—**Preference.** 5.

PREJUDICE—Receipts “without prejudice”—Workmen’s compensation.
See MASTER AND SERVANT—**Practice.** 19.

PREMISES—East London Waterworks Act.
See LONDON—**Water.** 2.

PREMIUMS—Bankruptcy—Life policies—Payment of premiums from date of receiving order—Salvage—Interest.
See BANKRUPTCY—**Secured Creditors.** 1.

— Insurance.

See under INSURANCE (FIRE), INSURANCE (LIFE), INSURANCE (MARINE), and INSURANCE (PROFESSIONAL). 1.

PREROGATIVE—New Zealand Act—Prerogative not taken away except by express words—Special leave to appeal.
See NEW ZEALAND. 16.

PREROGATIVE OF CROWN.

See under Crown.

PREROGATIVE WRIT—Crown—Costs.

See MANDAMUS. 1.

PRESCRIPTION—Ancient Demesne—Fine on alienation—Statute Quia Emptores.
See MANOR. 1.

— Ancient lights.

See under LIGHT AND AIR.

- Burgh—Customs and rates—Charter—Roads and bridges.

See SCOTTISH LAW. 4.

1. — *Drain—Acquisition of easement by public*—Highway Act, 1835 (5 & 6 Will. 4, c. 50), s. 67.

The highway authority of a rural district had for upwards of twenty years maintained a pipe running from a highway through a bank which divided the highway from the deft.’s land adjoining, and had during that period caused the rain water collecting upon the highway to be discharged through the pipe on to the deft.’s land. The water on leaving the pipe did not fall into any channel, but simply spread over the surface of the land. The deft. having obstructed the pipe, the highway authority and the Att.-Gen. claimed an injunction to restrain the deft. from continuing the obstruction on the grounds: first, that from their long enjoyment of the pipe it ought to be inferred that the highway authority had by agreement with the owner of the adjoining land acquired a right to keep open the pipe under s. 67 of the Highway Act, 1835: and, secondly, that the public, as occupiers of the surface of the highway for the statutory period, had acquired a prescriptive right to the easement of discharging the water on to the deft.’s land:—

Held, (1) that the pipe, being unconnected with any outfall channel, was not a drain within the meaning of s. 67 of the Highway Act, and that that section had consequently no application; and (2) that the public right of passage was not such a right as was capable of having the easement claimed attached to it. *ATT.-GEN. v. COPELAND*

Lord Alverstone C.J. [1901] 2 K. B. 101

Note.

This case was reversed by C. A., [1902] 1 K. B. 690. *See* Highway. 8.

PRESCRIPTION—*continued.*

- Dignity—Jurisdiction — Non-alienability of office of Standard Bearer of Scotland—Sale of office.

See SCOTTISH LAW. 8.

- Drainage, Prescriptive right of — Trade effluent.

See SEWERS. 15.

- Fishery.

See under FISHERIES.

- Light and air.

See under LIGHT AND AIR.

2. — *Lost grant, Presumption of—Inclosure Act—Award—Drainage, Preservation of—Restriction of pasturage on road to sheep—Presumption of legal origin to support long user.*

A lost grant cannot be presumed where such a grant would have been in contravention of a statute.

By an Act providing for the inclosure of certain commons, and their drainage in connection with that of a larger area in a fen level, as a work of public utility, it was enacted that the herbage on roads to be set out under the Act should belong to the person or persons to whom the Inclosure Commrs. should by their award allot the same, and that in their award the Commrs. should insert such orders, regulations, and determinations to be observed and followed by the several proprietors, as should be necessary or proper to be inserted therein, for the completing and maintaining of the said drainage and inclosure. By their award the Commrs. awarded that the herbage on certain roads, which adjoined watercourses, should belong to the surveyor of highways, to be by him let annually for the depasturing of sound and healthy sheep, but of no other cattle or stock whatever. The surveyors of highways had for more than fifty years made a practice of letting the herbage on the roads for the depasturing of a certain number of horses and cattle as well as sheep:—

Held, that, upon the true construction of the Act and award, the prohibition of the pasturage on the roads of stock other than sheep was intended to be a permanent provision; that it was meant, not merely for the protection of the allottees of land under the Act, but also for the preservation of the drainage system in the public interest; that it was therefore not competent for the allottees or any body of persons to make a grant or release in favour of the surveyor of highways, so as to extend the right of pasturage to stock other than sheep; and that consequently a legal origin could not be presumed in order to support the above-mentioned practice of the surveyors of highways.

Decision of Cozens-Hardy J., [1901] 1 Ch. 22, reversed. NEAVEYSON v. PETERBOROUGH RURAL DISTRICT COUNCIL

C. A. [1902] W. N. 46; [1902] 1 Ch. 557

3. — *Navigation company—Prescriptive claim against statutory navigation company—Prescriptive claim to take surplus water only—User unlimited.*

The relators and plts., a statutory navigation co. claimed to restrain the defts. from taking water from a river forming part of their

PRESCRIPTION—*continued.*

navigation. The defts. did not admit that the river was vested in the plts. and claimed a prescriptive right to take from the river superfluous water not required for the purposes of the navigation. The user proved was that the defts. took as much water as they required without regard to the needs of the navigation:—

Held by Neville J., that the prescription must be limited and defined by the user, and the user being unlimited and not confined to water not needed for the discharge of the statutory duties of the plt. co., the prescription was for a right which the plts. could not grant and which could not be obtained against them by prescription.

Held by the C. A., that the plts. had not under their statutes any proprietary right in the water, and therefore the claim failed. The point decided by Neville J. doubted but not decided. ATT.-GEN. v. GREAT NORTHERN RY. CO.

C. A. [1909] 1 Ch. 775

- Street—Cost of improvements—Assessments—Laws of Canada.

See CANADA—Streets. 1.

- Support, Right of—Enjoyment *clam*—Easement of necessity.

See SUPPORT. 1.

- Way, Right of—Easement—Presumption of lost grant—Inclosure of common land—Award of right of way—Non-user.

See WAY, RIGHT OF. 11.

- Way—User.

See under WAY.

PREScriptive USE — Highway — Right for foot passengers — Accumulated use attributable to two roads—Substituted roads.

See HIGHWAY. 41.

PRESENT—Right of prisoner to be present—Court of Criminal Appeal.

See CRIMINAL LAW—Appeal. 18.

PRESS—*Local Authorities (Admission of the Press to Meetings) Act, 1908 (8 Edw. 7, c. 43), provides for the admission of representatives of the Press to the meetings of certain Local Authorities.*

PRESUMPTION—Authority of wife to pledge husband's credit—Presumption arising from cohabitation—Election.

See HUSBAND AND WIFE—Liability. 1

- Betting circular—Presumption of knowledge of infancy — Circular sent to undergraduate.

See BETTING CIRCULAR. 1.

- Child-bearing, Woman past—Impossibility of issue—Widow who has had a child.

See EVIDENCE. 12.

- Collision—Statutory presumption of fault—Foreign vessel outside limits of territorial jurisdiction.

See SHIPPING—Collision. 55.

PRESUMPTION—continued.

1. — *Death—Person not heard of for seven years—Time of death—Continuance of life—Onus probandi.*

A testatrix gave a share of the income of her residuary estate upon trust to be paid half-yearly equally to and between the children of her late niece during their lives, with divers trusts over. J., one of the children, survived the testatrix, who died in 1890, but had not been heard of since Mar. 31, 1895, and an order was made declaring that he was to be presumed to be dead at the expiration of seven years from that date. Upon a summons by the trustees to determine how J.'s share of income should be dealt with:—

Held, that the onus was on J.'s representative to prove that he survived the period when he was last heard of, and that his share ought to be dealt with on the footing that he died on Mar. 31, 1895.

In re Phene's Trusts, (1870) L. R. 5 Ch. 139, discussed. *In re ALDERSEY*. *GIBSON v. HALL Kekewich J.* [1905] 2 Ch. 181

— Death—Surrounding circumstances—Form of oath.
See PROBATE — **Presumption of Death**. 1.

— Death without issue—Evidence—Sufficiency.
See EVIDENCE. 10.

— Executors—No next of kin Residue undisposed of—Beneficial title of executors—Equal pecuniary legacies to all—Unequal specific legacies to some—Presumption of intention—Will.
See EXECUTOR—**Residue**. 1.

— Fishery, Common of — Profit à prendre — Fluctuating body — Prescription—Presumption of legal origin.
See FISHERY. 8.

— Highway — Dedication — Public footway — Private carriage-way along the same line.
See WAY, RIGHT OF. 2.

— Highway—Dedication—Roadside strip—Right of passage.
See HIGHWAY. 37.

— Highway—Dedication — Roadside waste — Evidence.
See HIGHWAY. 38.

— Highway—Dedication—Strip of land running alongside highway—Disused tramway.
See HIGHWAY. 9.

— Highway—Dedication—User of footway as cart road.
See TRESPASS.

— Highway—Drain—Water flowing from highway—Presumption of legal origin.
See HIGHWAY. 8.

— Highway—Lost grant—Fee farm rents—Payment for long period.
See HIGHWAY. 18.

— Highway — New or substituted highway — Formalities—Lapse of time.
See HIGHWAY. 19.

PRESUMPTION—continued.

— Highway—Rebuttal of presumption—Soil of highway—Ownership—Street in town—Crown—Lease.
See HIGHWAY. 21.

— Leaseholds — Encroachment — Accretion to holding for benefit of lessor.
See LIMITATIONS, STATUTE OF. 11.

— Legatee entitled to share on surviving testator — Disappearance—No evidence of death.
See WILL—**Survivor**. 1.

— Lost grant—Pasturage—Presumption of legal origin to support long user.
See PRESCRIPTION. 2.

— Lost grant—Right to use of water.
See WATER. 1.

— Manorial market—Extent of franchise—New streets—Dedication.
See MARKET. 4.

— Mistake — Number of legatees — Illegitimate children—Evidence of intention.
See WILL—**Illegitimacy**. 7.

— Marriage — Evidence — Presumption from cohabitation.
See MARRIAGE. 6.

— Mortgage—Merger—Subrogation—Payment off by stranger—Equitable transfer—Presumption that security is kept alive—Ignorance of mortgagor.
See MORTGAGE—**Merger**. 1.

— “*Omnia præsumuntur rite esse acta.*”
See PROBATE—**Execution**. 3.

— Oyster ponds on foreshore—Ancient user—Presumption of legal origin—Nuisance from sewage.
See FISHERY. 5.

— Policy made payable to another—Purchase in name of a stranger—Presumption of intention.
See INSURANCE (LIFE). 11.

— Resulting trust—Evidence—Capital or income.
See HUSBAND AND WIFE—**Property**. 2.

— Riparian proprietor—Presumption that bed of river passes ad medium filum—Island in middle of river.
See RIVER. 4.

— Satisfaction—Lien—Merger—Lapse of time—Interest.
See LIEN. 1.

— Ship—Collision—Failure to stand by—Statutory presumption of fault—Proof to the contrary.
See SHIPPING—**Collision**. 55.

— Subway approaches—Property in subsoil of road ad medium filum.
See LONDON—**Conveniences**. 1.

— Trade fixtures — Mortgage — Hire-purchase agreement—Rights of mortgagee against owner of machinery — Presumption of law.
See FIXTURES. 10.

— Trade - mark — Registration — Presumption arising from long user.
See TRADE-MARK. 31.

PRESUMPTION—continued.

- Unseaworthiness — Evidence — Cause of vessel's loss unascertainable.
See SHIPPING—Seaworthiness. 1.
- Water.
See under WATER.
- Watercourse — Artificial channel — Right to flow of water.
See STREAM. 3.
- Way, Right of — Easement — Presumption of lost grant — Inclosure of common land — Award of right of way — Non-user.
See WAY, RIGHT OF. 6.
- Way, Right of — User — Public highway — Possibility of dedication.
See WAY, RIGHT OF. 1.
- Will — Execution — Witnesses dead — No attestation clause.
See PROBATE—Execution. 3.
- Woman past the age of child-bearing — Payment out of Court.
See EVIDENCE. 12.
- Workmen's compensation — Seaman — Unexplained drowning — Evidence.
See MASTER AND SERVANT—Compensation. 154.

PRESUMPTION OF LAW — Clauses in will inserted by inadvertence of solicitor — Due execution — Knowledge and approval.
See PROBATE—Execution. 2.

PREVENTION OF CORRUPTION ACT, 1906 (6 Edw. 7, c. 34), is an Act for the better prevention of corruption.

PREVENTION OF CRIMES.
See under CRIMINAL LAW.

PREVENTION OF CRUELTY TO CHILDREN.
See under CRIMINAL LAW—Cruelty to Children.

PRIMOGENITURA — Fidei-commissum — Condition as to surname not authorized by the founder.
See MALTA. 1.

PRINCIPAL AND AGENT — Advertising property for sale — Slander of title — Auctioneer cast in damages — Liability of principal.
See AUCTION. 1.

— Agent entrusted with moneys for special purpose — Express trust.
See LIMITATIONS, STATUTE OF. 20.

1. — Agreement by agent not to interfere with business after ceasing to be employed — Liquidated damages — Injunction — Election.

An assurance co. appointed an agent, and by the terms of the agreement between them it was provided that in the event of the agent ceasing to act for the co. he should not give information as to the co.'s connections, or interfere directly

PRINCIPAL AND AGENT—continued.

or indirectly with their business, or represent any other co. doing similar business, within a radius of fifty miles from the headquarters of his agency for one year from the date of his ceasing to act, and that in case of breach he should pay the co. 100% as ascertained and liquidated damages :—

Held, that the co. could not, upon the agent's breach of agreement, claim an injunction as well as the 100% liquidated damages, but must elect between the two remedies. **GENERAL ACCIDENT ASSURANCE CORPORATION v. NOEL**

Wright J. [1902] 1 K. B. 377

— Agreement by vendor to pay commission to purchaser's agent — Right to rescind.

See VENDOR AND PURCHASER—Rescission. 1.

— Alternative liability — Election — Judgment signed against one of two defendants.
See HUSBAND AND WIFE—Liability. 1.

— Auctioneer — Personal liability — Implied authority to sell without reserve — Limitation of authority not communicated to buyer.
See AUCTION. 3.

2. — Authority of agent — Contract made by agent in name of principal, but in his own interests — Liability of principal.

Where an agent, in contracting on behalf of his principal, has acted within the terms of a written authority given to him by the principal, but the existence of which was not known to the other party to the contract, the principal cannot, if the other party has acted bona fide, repudiate liability on the contract on the ground that the agent, in making it, acted in his own interests, and not in those of his principal.

Judgment of Bigham J., [1903] 2 K. B. 399, reversed. **HAMBRO v. BURNARD**

C. A. [1904] W. N. 77 ; [1904] 2 K. B. 10

Note.

This case was distinguished by C. A., **Cuthbert v. Roberts, Lubbock & Co.**, [1909] 2 Ch. 226.
See Banker. 9.

3. — Bank of England — Transfer of stock — Power of attorney — Implied warranty of authority — Innocent misrepresentation — Indemnity — Forged power — Liability of agent.

The principal of **Collen v. Wright**, (1857) 8 E. & B. 647, 657, is not confined to cases where the transaction with the person representing himself to be an agent results in a contract.

A broker applied to the Bank of England for a power of attorney for the sale of Consols believing himself to be instructed by the stockholder, and bona fide induced the bank to transfer the Consols to a purchaser upon a power of attorney to which the stockholder's signature was forged :—

Held, that the broker must be taken to have given an implied warranty that he had authority, and he was therefore liable to indemnify the bank against the claim of the stockholder for restitution.

Decision of Kekewich J., **Oliver v. Bank of England. Starkey, Leveson and Cooke, Third**

PRINCIPAL AND AGENT—continued.

Parties [1909] W. N. 45; [1901] 1 Ch. 652, and the C. A. [1902] W. N. 42; [1902] 1 Ch. 610, affirmed. *STARKEY v. BANK OF ENGLAND*

H. L. (E.) [1903] W. N. 52; [1903] A. C. 114

— Bankers, Liability of—Compradore's limited authority as their agent.

See HONG KONG. 1.

— Books—Infringement—"Print or cause to be printed"—Estoppel.

See COPYRIGHT—Books. 1.

4. — Borrowing by agent—Excess of authority—Debts of principal paid with money borrowed—Relief of lender in authority of agent—Equitable right of lender to recover.

The defts., a country firm, opened a branch of their business in London, and appointed an agent to carry it on. The defts. had an account with a London bank in their name, upon which the agent was entitled to draw. The agent had no authority to borrow money, but the banking account being low, he borrowed a sum of money of the plt., who was told that it was for the use of the firm, and believed that the agent had authority to borrow. The money was paid into the bank, and part of it was used by the agent in the payment of obligations of the defts. Subsequently the defts. supplied further sums of money, which would have been sufficient to meet their obligations, but for the agent drawing, on his own account, sums to which he was not entitled. The agent meanwhile borrowed other sums of money of the plt., portions of which were alleged to have been used in discharging further obligations of the defts. In an action to recover the amount so borrowed:—

Held that, to the extent to which the money borrowed should be found on inquiry to have been in fact applied in paying legal debts of the defts., the plt. was entitled in equity to stand in the same position as if that amount had been originally borrowed by them. *BANNATYNE v. D. & C. MACIVER* **C. A. [1906] 1 K. B. 103**

— Broker—Usage of Stock Exchange.

See under STOCK EXCHANGE.

— Buildings—Persons altering drains—By-laws—Liability of agents carrying out work.

See LONDON—Buildings. 4.

— Commission on sale of mining property—Sale completed on terms disapproved by agent.

See CANADA—Principal and Agent. 1.

— Company.

See under COMPANY—Principal and Agent.

— Company—Secretary—Representations—Certification of transfer—Estoppel.

See COMPANY—Secretary. 2.

— Contract—Action of deceit—Fraudulent representations—Public authorities protection.

See CONTRACT. 1.

— Contract—Construction—Agency.

See CONTRACT. 2.

PRINCIPAL AND AGENT—continued.

5. — Contract by agent on behalf of principal—Want of authority—Liability of agent—Knowledge of want of authority by other contracting party.

A person who purports to contract as agent on behalf of an alleged principal is liable on an implied warranty of his authority only if the other contracting party relied on the existence of authority in fact. He is not so liable if, at the time of purporting to contract, he expressly disclaimed any present authority.

Collen v. Wright, (1857) 7 E. & B. 301; 8 E. & B. 647, followed.

The observations of Mellish L.J. in *Beattie v. Lord Ebury*, (1872) L. R. 7 Ch. 777, 800, applied.

The proposition in *Smout v. Ilbery*, (1842) 10 M. & W. 11, that there must be some wrong or omission on the part of the agent in order to make him personally liable in respect of a contract made in the name of his principal, is negatived by *Collen v. Wright*. *HALBOT v. LENS*

Kekewich J. [1901] W. N. 6; [1901] 1 Ch. 344

— Contract of fire insurance made by agent without authority—Ratification by principal after and with knowledge of loss by fire—Whether ratification valid in law.

See INSURANCE (FIRE). 1.

— Covenant in restraint of trade—Combination of firms—Separate businesses—Engagement by agent on behalf of combination—Reasonableness.

See RESTRAINT OF TRADE. 4.

— Custom House, Obligation of agent to pass goods through.

See NEW SOUTH WALES. 27.

— Dramatic copyright—Infringement—"Printed or cause to be printed"—Estoppel.

See COPYRIGHT—Books. 1.

— Equitable mortgagee—Conflicting equities—Priority—Estoppel—Mortgage.

See No. 14, below.

— Express trust—Moneys remitted to agent for special purposes and not accounted for.

See LIMITATION, STATUTES OF. 20.

— Fraud of insurance agent—Avoidance of policy—Recovery back of premiums.

See INSURANCE (LIFE). 19.

— Fraudulent misappropriation by agent—"Banker, merchant, broker, attorney, or other agent."

See CRIMINAL LAW—Larceny. 5.

— Husband and wife—Authority of wife to pledge husband's credit—Contract by wife "otherwise than as agent."

See HUSBAND AND WIFE—Authority. 1.

— Husband and wife—Goods supplied on order of wife—Judgment against wife for part of entire price—Election not to sue husband for balance.

See HUSBAND AND WIFE—Election. 1.

PRINCIPAL AND AGENT—*continued.*

- Insurance (Accident)—Misstatements in proposal made by agent of insurers without knowledge of insured.
See INSURANCE (ACCIDENT). 6.
- Insurance (Life) Voidable policy—Principal retaining benefit obtained by fraud of agent—Recovery of paid premiums.
See INSURANCE (LIFE). 79.
- Lease by mortgagee "as agent"—Covenant running with land.
See LANDLORD AND TENANT. 51.
- Licensing Acts—Sale by licensed agent on behalf of unlicensed principal.
See LICENSING ACTS. 63.
- Lunacy—Person appointed to carry on business of lunatic—Personal liability on contracts.
See LUNACY. 26.

6. — *Management of real estates Limited company appointed agent—Company employing its officials in the management on commission and salaries—Articles of association—Accounts.*

The principle that, in a contract of agency between individuals, the agent cannot make a profit for himself beyond the remuneration fixed by the contract, equally applies to the directors of a corporation that contracts with an individual to act as his agent at a certain remuneration.

Where, therefore, a limited co. agreed with the plt. to manage, develop, and realize his estates on certain terms, and in the course of such management employed one of its directors, who was a solicitor, to act professionally for the estates and paid his bills of costs, which included profit items; another director, who was an estate agent, to manage at a salary a business connected with the estates; an auctioneer, to act as auctioneer on all sales of the estates at the usual commission; and gave its secretary, who was a chartered accountant, an additional salary for keeping the books of the estates, which were of a complex nature:

Held, that in taking the accounts between the plt. and the co. under the agreement all the above salaries, commissions, and profit costs must be disallowed, although the co. had power under its articles of association to employ its officers in such capacities and to pay them.

Kavanagh v. Workingman's Benefit Building Society, [1896] 1 I. R. 56, approved. **BATH v. STANDARD LAND CO.** — **Neville J.**
[1910] W. N. 206; [1910] 2 Ch. 408

- "Mercantile agent"—Authority to pledge, Extent of Custom of particular trade.
See FACTOR. 1.
- Mine—Liability for contravention of general rule by manager.
See JUSTICES. 6.
- Money paid to agent under mistake of fact—When recoverable back.
See RAILWAY—Rates. 2.

PRINCIPAL AND AGENT—*continued.*

- Partner, Right of, to inspection by agent—Books and accounts.
See PARTNERSHIP. 1.

7. — *Power of attorney—Construction—General words—Ejusdem generis—Borrowing by agent—Representation of authority—Excess of authority—Money paid into banking account of principal—Money in possession of principal—Money had and received to use of principal—Misappropriation by agent—Liability of principal to lender—Conduct—Constructive notice—Estoppel.*

The plt. carried on business as a tobacco merchant in Melbourne, Australia, under a firm name. He also had a London office bearing the firm name, at which the business of purchasing and paying for goods in London and shipping them to Melbourne was carried on. While absent in Australia he appointed an agent at the London office under a power of attorney, describing him (the plt.) as of Melbourne trading as a tobacco merchant under the firm name, and authorizing the agent for him (the plt.) and in his name, or in his trading name, "to purchase and to make any contract for the purchase of any goods in connection with the business carried on by me as aforesaid," and to make such purchase either for cash or on credit, with power to modify or cancel the contracts for purchase, and "where necessary in connection with any purchase made on my behalf as aforesaid, or in connection with my said business" to make, draw, sign, accept, or indorse any bills of exchange or promissory notes which should be requisite or proper in the premises, and to sign the plt.'s name or his trading name to any cheques on his banking account in London.

The agent, purporting to act under the power of attorney, obtained a loan of 4000l. from the defts., a firm of cigar merchants in London who had previously had frequent business dealings, including loan transactions, with the plt. On applying for the loan the agent, who was well known to the defts., represented that the power of attorney authorized him to borrow money, and that the loan was required for the purposes of the plt.'s business. At the same time he produced to them the power itself, but, being satisfied with his assurances, they did not read it. On receiving the 4000l. the agent handed to the defts. as security bills of exchange for the amount accepted in his own name pro pro the plt.'s firm. He then paid the 4000l. into the plt.'s London banking account, drew it out by cheques drawn by him under the power, and applied it to his own use.

The plt. being at that time in Australia, had no knowledge of the loan transaction. In an action by him against the defts. to restrain them from negotiating the bills upon the ground that they had been accepted without his authority, and upon a counter-claim by the defts. against the plt. for the 4000l. as money had and received by him to their use:—

Held, (1) upon the construction of the power of attorney, that it gave the agent power to purchase only, with such powers as were necessarily implied by the appointment of the agent as purchasing agent, and did not confer

PRINCIPAL AND AGENT—continued.

authority to borrow; and (2) that the primary cause of the loss of the 4000*l.* was the neglect by the defts. of ordinary business precautions when lending the money to the agent, and that they were therefore estopped by this neglect, and also by constructive notice that the agent had no power to borrow, from claiming it as money had and received by the plt. to their use.

Quere, per Vaughan Williams L.J., whether the circumstances were such as to entitle the plt. to plead ignorance or absence of means of knowledge of the transaction as constituting by itself a sufficient answer to the defts.'s claim as for money had and received.

Marsh v. Keating, (1834) 1 Bing. N. C. 198; 2 Cl. & F. 250; 37 R. R. 75, discussed.

Decision of Farwell J., [1901] 1 Ch. 261, affirmed. *JACOBS v. MORRIS* - C. A. [1902] W. N. 48; [1902] 1 Ch. 816

— Promissory note — Signature in blank — Fraudulent negotiation of note by agent — Rights of bona fide indorsee for value — Negotiable instrument.

See PROMISSORY NOTE. 3.

— Receiver and manager — Receiver's remuneration — Priorities.

See COMPANY—Receiver. 13.

— Sale by club to agent of member.

See LICENSING ACTS. 55.

— Sale of poisons—Order taken by canvassing agent—"Seller."

See PHARMACY ACTS. 2.

— Salvage—Agreement—Position of ship's agent Ratification.

See SHIPPING—Salvage. 1.

8. — *Scope of authority—Power of attorney—Power to sell property belonging to principal—Property held as mortgagee—Mortgagee's statutory power of sale—Power to give discharge for mortgage money—Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), s. 21, sub-s. 4.*

A power of attorney authorized the agent to sell any real or personal property then or thereafter belonging to the principal, and also to receive and give a discharge for any moneys then or thereafter owing to the principal by virtue of any security:—

Held, that it did not authorize the agent to sell property held by the principal as mortgagee under the mortgagee's statutory power of sale.

Decision of Kekewich J. affirmed.

Sect. 21, sub-s. 4, of the Conveyancing and Law of Property Act, 1881, which provides that the power of sale conferred by that Act upon mortgagees may be exercised by any person for the time being entitled to give a discharge for the mortgage money, refers to the executors, administrators, and assigns of the mortgagee, and does not extend to a person entitled to give a discharge as agent. *In re DOWSON AND JENKINS'S CONTRACT*

C. A. [1904] W. N. 129; [1904] 2 Ch. 219

— Scope of authority — Tortious act of one partner.

See PARTNERSHIP. 20.

PRINCIPAL AND AGENT—continued.

— Receiver agent of debenture-holders—Assets charged by receiver.

See COMPANY—Receiver. 6.

9. — *Secret commission—Sub-agent—Privy of contract—Fiduciary relation—Money had and received.*

Agents, who were employed for commission to procure an advance of money for their principals, employed for that purpose, with the assent of the principals, a sub-agent, on the footing that he should share the commission with them. The sub-agent was aware that the agents were acting in the matter for their principals. He succeeded in procuring the advance of the required amount by a co. Without the knowledge of the agents or their principals, the sub-agent received from the co. a commission for introducing the business to them:—

Held, that, on the facts, there was evidence that the contractual relation of principal and agent had been established between the principals and sub-agent; and, secondly, that, even if no privy of contract existed between them, the sub-agent stood in a fiduciary relation to the principals, and was therefore accountable to them for the commission which he had received from the co.

On a claim in an action, to which the co. was not a party, made by the principals against the sub-agent to recover commission received by him as aforesaid, it appeared that by the agreement between the co. and the sub-agent further sums by way of commission on the transaction would become payable in the future to the sub-agent by the co.:—

Held, that the Court must decline to make any further declaration of right with regard to such sums than that the sub-agent would become indebted in respect of them to the principals when and as he should receive the same.

De Bussche v. Alt, (1878) 8 Ch. D. 286, and *Lister & Co. v. Stubbs*, (1890) 45 Ch. D. 1, followed. *POWELL & THOMAS v. EVAN JONES & Co.*

C. A. [1905] 1 K. B. 11

10. — *Secret profit—Right to retain commission.*

An agent to sell property who has sold the property but received a secret profit from the purchaser must not only account for that profit to his principal, but is not entitled to any commission from his principal. *ANDREWS v. RAMSAY & Co.*

Div. Ct. [1903] 2 K. B. 635

Note.

Distinguished by Div. Ct., *Hippisley v. Knee Brothers*, [1905] 1 K. B. 1. See next case.

Discussed by Neville J., *Nitedals Taendstikfabrik v. Bruster*, [1906] 2 Ch. 671. See No. 13, below.

Principle of, applied by Neville J., *Stubbs v. Slater*, [1910] 1 Ch. 195; C. A. [1910] 1 Ch. 632. See *Stock Exchange*. 1.

11. — *Secret profit received by agent without fraud—Right of agent to retain his commission.*

The plt. employed the defts., auctioneers, to sell goods for him by auction upon the terms that they were to be paid a lump sum by way of commission, and were further to be paid "all out

PRINCIPAL AND AGENT—continued.

of pocket expenses," including the expenses of printing and advertising. The debts, in due course sold the plt.'s goods. In rendering their account of the out of pocket expenses to the plt. they debited him with the gross amounts of the printers' bill and of the cost of advertising in the newspapers, they having in fact received discounts both from the printers and the newspaper proprietors—a fact of which the plt. had no knowledge. There was evidence of a general custom for printers and newspaper proprietors to deal with auctioneers as principals, and to allow them a trade discount off their retail charges, which discount they would not allow to the auctioneers' customers if they dealt with them directly, and the debts, in omitting to disclose the fact of the discounts to the plt. did so in the honest belief that they were lawfully entitled under the custom to receive the discounts and retain them to their own use :—

Held, that although the debts. were not entitled to debit the plt. with the gross amounts of the printing and advertising bills, inasmuch as by the terms of the employment they were only to be paid their actual out of pocket expenses, yet, as they received the discounts without fraud, and as the duty to account correctly for the out of pocket expenses was merely incidental to and separable from their main duty connected with the sale of the goods, the omission to disclose the receipt of the discounts to the plt. did not disentitle them to retain their commission.

Andrews v. Ramsay, [1903] 2 K. B. 635. distinguished. *HIPPISLEY v. KNEE BROTHERS*

Div. Ct. [1904] W. N. 186 : [1905] 1 K. B. 1

Note.

See preceding Case.

-- Share certificate issued by secretary—*Forgery*—Scope of employment.

See COMPANY—Forgery. 2.

12. — Shipbroker—Charterparty—Signature as agent—Right to sue as principal.

By a contract in charterparty form, dated Feb. 3, 1908, between the plts., who were shipbrokers, and the debts., who were timber merchants, in which the plts. were described as agents for owners of a steamship to be named later, and the debts. as charterers, it was agreed that the steamship should load at a foreign port, about the latter half of June, a cargo of timber from the agents of the charterers, and should deliver the same in London on being paid freight at a certain rate. The contract was signed by the plts. "by authority of and as agents for owners." The plts. were not in fact acting for principals, nor had they made a contract for a steamship to carry the cargo, but were themselves principals in the transaction. This was, however, not known to the debts. On May 22 the plts. entered into a charterparty with shipowners for the charter of a steamship to carry the cargo, the plts. being described therein as agents for charterers, at a rate of freight less than that specified in the contract of Feb. 3. The debts' names were inserted by the plts. in the charterparty as the charterers, and the charterparty was signed by the plts. "as agents for merchants." In making the charter the plts. were not in fact

PRINCIPAL AND AGENT—continued.

acting as agents for the debts., but were themselves principals. The cargo was shipped under bills of lading reserving freight at the rate specified in the charter of May 22, and was duly delivered at the port of discharge, and the bills of lading freight was paid. In an action by the plts. to recover the difference between the freight so paid and that reserved by the contract of Feb. 3, the debts. contended that, as the plts. had made that contract as agents, they were not entitled to sue upon it as principals :—

Held, that as the plts. in making the contract of Feb. 3 had in fact no principals, but were themselves the principals, they were entitled to sue upon it and to recover the freight reserved thereby. *HARPER & CO. v. VIGERS BROTHERS*

Pickford J. [1909] 2 K. B. 549

-- Shipping.

See under SHIPPING—Principal and Agent.

-- Signature of party to be charged—"Person" Corporation—Signature by agent of company.

See ADULTERATION. 20.

13. — Sole agent—Numerous transactions—Dishonesty in some—Right to retain commission—Sole agent for sale of principal's goods—Selling goods of rival traders—Account of profits.

Where the transactions between a principal and his agent are severable, and in some of them the agent has been honest whilst in others he has been dishonest, he is entitled to his commission in all the instances in which he has been honest, but is not entitled to it in all the instances in which he has been dishonest.

Andrews v. Ramsay & Co., [1903] 2 K. B. 635, discussed.

When an agent, bound to sell only his principal's goods, in breach of his duty sells the goods of his principal's competitors in trade, he must account to his principal for the profits he has made on all such sales. *NITEDALS TAENDSTIK-FABRIK v. BRUSTER* - *Neville J.* [1906]

W. N. 173 : [1906] 2 Ch. 671

-- Stock Exchange—Right of broker to indemnity from client—Payment made by broker without client's authority.

See STOCK EXCHANGE. 7—9.

Strike—Trade union—Authority of branch officials to bind union—Ratification.

See TRADE UNION. 2.

Trade union, Liability of, for wrongful acts of agents.

See TRADE UNION. 8.

-- Trust, Express—Moneys remitted to agent for special purpose—Action for account. *See LIMITATIONS, STATUTES OF. 20.*

14. — Trustee and cestui que trust—Equitable mortgage—Conflicting equities.—Priority—Negligence—Enabling third person to commit fraud—Estoppel—Receipt clause—Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), s. 55.

R. delivered to a stockbroker a mortgage bond for 2000*l.* with instructions to sell it. The bond was one of a series issued by the Tyne Improvement Commrs. under a private Act which

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incorporated the Commissioners Clauses Act, 1847. That Act requires that all transfers of mortgages should be registered. Induced by the false representations of the broker, R. executed two deeds of transfer, by which the mortgage bond was transferred to the broker in two portions of 1500*l.* and 500*l.* respectively. These transfers were in a form prescribed by the schedule to the Commissioners Clauses Act, and were expressed to be made in consideration of 1500*l.* and 500*l.* respectively paid by the broker to R. They were duly registered. The broker borrowed 1000*l.* from the debt. W. and executed a formal sub-mortgage of the bond to him, producing the transfers as proof of title. This mortgage was not registered. The broker had applied the money to his own use and absconded. This action was brought by R. for retransfer of the bond free from the mortgage to W. :—

Held, that where an owner of property gives all the indicia of title to another person with the intention that he should deal with the property, the principles of agency apply, and any limit which he has imposed on his agent's dealing cannot be enforced against an innocent purchaser or mortgagee from the agent, who has no notice of the limit.

If the owner has not only transferred property to an agent or trustee, but has acknowledged that the transferee has paid full consideration for it, he is estopped from asserting his equitable title against a person to whom the transferee has disposed of the property for value.

The statement in a transfer of mortgage made in a form prescribed by statute, that the mortgage is transferred in consideration of *l.* paid by A. to B., without any express receipt clause, is sufficient to create this estoppel.

On both these grounds the equitable title of R. was postponed to W.'s charge.

Percy Herrick v. Attwood, (1857) 2 De G. & J. 21, explained and followed.

Carritt v. Real and Personal Advance Co., (1899) 42 Ch. D. 263, explained and distinguished. *RIMMER v. WEBSTER* - *Farwell J.* [1902] W. N. 86; [1902] 2 Ch. 163

Note.

This case was discussed by C. A., *Burgis v. Constantine*, [1908] 2 K. B. 434. See *Trustee—Shares*. 1.

— Trustees' liability—Fraud of agent—Constructive notice—Relief.

See *TRUSTEE—Breach of Trust*. 2.

15. — Undisclosed principal — Manager of hotel—Licence taken out in name of manager—Presumption as to hotel being tied—Liability of owners for unauthorized purchase of spirits by manager.

The debtors, who were the owners of an hotel, appointed a manager of the hotel; the licence was taken out in the name of the manager, whose name also appeared over the door. The manager had been told by the debtors to order spirits from a certain brewery (with which the plts. were in no way connected) and from no other place, but, in contravention of his

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instructions, the manager ordered whisky from the plts. The plts., who did not know that the debtors had prohibited the manager from buying spirits from any other place than the particular brewery, supplied the whisky to the manager at the hotel and gave credit to him only. Subsequently, upon discovering that the debtors were the real owners of the hotel, the plts. sued them for the price of the whisky :—

Held, that the plts. were entitled to maintain the action, inasmuch as there is no presumption, where a person deals with the licensee of an hotel and knows nothing of the real owner, that the licensee is a mere manager with limited authority, and that the hotel is tied.

Where a person is the licensee of an hotel and is known to be the licensee, and nothing is brought to the attention of a seller to indicate to him that the position of the person with whom he is dealing is that of a mere manager of a tied house, the seller who trades with the licensee as a principal and afterwards discovers that he is an agent is entitled to sue the real principal when disclosed, notwithstanding any limitation placed by the principal on the authority of the licensee.

Watteau v. Fenwick, [1893] 1 Q. B. 346, followed.

Dunn v. Simmins, (1879) 41 L. T. 783, distinguished. *KINAHAN & CO. v. PARRY*

Div. Ct. [1910] 2 K. B. 389

16. — Untrue statements by agent—Measure of damages—Ship—Freight.

Where an agent employed to conduct negotiations for his principals makes an incorrect statement to them that he has concluded a contract on their behalf, the measure of damages for his breach of duty is the loss actually sustained by the principals in consequence of the misrepresentation, and does not include profits that the principals might have made if the representation had been true.

The respondents employed the appellants to find freight at a certain rate per ton for one of the respondents' ships. The appellants reported that they had concluded a bargain for the charter of the vessel. In fact, no bargain had been concluded; differences which the appellants had hoped to get rid of existed and proved invincible. Three days after the report of the transaction the respondents learned that the proposed charterers had refused to proceed with the charter. On receiving this information the respondents made no effort to look for an equally advantageous freight, but used their ship under a current contract at a much lower rate per ton. The respondents first brought an action against the alleged charterers, and then against the appellants, claiming in effect the difference between the two rates of freight as damages :—

Held, altering the decision of the Second Division of the Ct. of Sess., (1903) 40 S. L. R. 305, that the main part of the claim was untenable, but that the respondents were entitled to damages for trouble which they had incurred, outlays on telegrams and the like; and that they were also entitled to the expenses of their action against the alleged charterers down to the closing of the record.

PRINCIPAL AND AGENT—*continued.*

Cassaboglou v. Gibbs, (1882) 9 Q. B. D. 220 ; (1883) 11 Q. B. D. 797, affirmed.

Collen v. Wright, (1857) 7 E. & B. 301 ; (1858) 8 E. & B. 647, distinguished. CHR. SALVESEN & Co. v. REDERAKTEBOLAGET NORDSTJERNAN H. L. (Sc.) [1905] W. N. 72 ; [1905] A. C. 302

— Workmen's Compensation.

See under MASTER AND SERVANT—**Compensation.**

— Writ of summons—Service out of the jurisdiction.

See under PRACTICE—**Service.**

PRINCIPAL AND SURETY—Administration bond—Duration of sureties' liability. See AUSTRALIA. 1.

— Bankruptcy—Fidelity bond—Surety—Default of trustee—Penal interest—Liability of surety.

See BANKRUPTCY—**Trustee.** 1, 2.

--- Bankruptcy of principal—Proof of surety for estimated amount of liability to pay future interest and premiums—Double proof.

See BANKRUPTCY—**Proof.** 8.

— Bond—Sureties—Default—Rights of trade creditors.

See COMPANY—**Bond.** 1.

--- Corporation—Dissolution Bona vacantia—Chattels real—Limited company lessees—Sureties for payment of rent during the term.

See CORPORATION. 10.

— “ Creditor ” — Bankruptcy — Fraudulent preference.

See COMPANY—WINDING-UP—**Preference.** 1.

— Grant of administration—Sureties dispensed with.

See PROBATE—**Sureties.** 1—3.

1. — **Guarantee**—Bond to secure fidelity of employee—Death of surety—Notice—Determination of liability.

Where a bond is given by a surety for the integrity of a person, in consideration of that person's being appointed to an office by the obligee of the bond, the liability of the surety will not, unless expressly so stipulated in the bond, be determined by his death. *In re CRACE. BALFOUR v. CRACE - Joyce J.* [1902] W. N. 34 ; [1902] 1 Ch. 733

--- Guarantee—Insurance—Suretyship—Release of guarantor.

See COMPANY—**Guarantee.** 2.

2. — **Indemnity**—Action *quia timet*—Present debt—Joint and several guarantee of overdraft at bank—No demand by bank for payment—Parties.

Where there is an actual accrued debt secured by a guarantee and one of several co-sureties is liable, and admits liability for the amount guaranteed, he has a right in equity to compel the principal debtor to relieve him from his liability by paying off the debt.

This equitable relief is not limited to cases where the creditor has refused to sue the principal debtor.

PRINCIPAL AND SURETY—*continued.*

Ranelagh v. Hayes, (1683) 1 Vern. 189 ; *Nisbet v. Smith*, (1789) 2 Bro. C. C. 579 ; *Wooldridge v. Norris*, (1868) L. R. 6 Eq. 410, and *Mathews v. Savrin*, (1893) 31 L. R. Ir. 181, followed.

Suggested limitation in *Padwick v. Stanley*, (1852) 9 Hare, 627, not followed.

Dale & Perry v. Lolley, (1808) 2 Bro. C. C. 582, n., and *Hughes-Hallett v. Indian Mammoth Gold Mines Co.*, (1882) 22 Ch. D. 561, distinguished.

Semble, neither the creditor nor the co-sureties need be parties. *ASCHERSON v. TREDEGAR DRY DOCK AND WHARF Co., Ltd.*

Swinfen Eady J. [1909] W. N. 168 ; [1909] 2 Ch. 401

— Landlord and tenant—Disclaimer—Lease determined as between lessor and lessee.

See BANKRUPTCY—**Disclaimer.** 2, 3.

— Liability of sureties to be sued—Contract—Breach—Damages.

See CONTRACT. 8.

— Lunatic—Committee and receiver—Default—Accounts—Death of lunatic—Subsequent receipts—Surety—Liability.

See LUNACY. 1.

— Married woman—Surety for husband—Immovables in Transvaal.

See CONFLICT OF LAWS. 13.

2A. — **Mortgage**—Collateral security—*Tacking*.

The right of a surety to the benefit of a collateral security is not in abeyance till he is called on to pay.

South v. Bloxam, (1865) 2 H. & M. 457, explained. *DIXON v. STEEL - Cozens-Hardy J.* [1901] W. N. 178 ; [1901] 2 Ch. 602

— Mortgage—Foreclosure—Tacking—Consolidation—Postponement of surety.

See MORTGAGE—**Foreclosure.**

3. — **Mortgage debt**—**Mortgage insurance policy**—Construction—Indemnity Guarantee—Co-suretyship—Contribution.

A bank advanced 4000*l.* upon a mortgage of a public-house. The mortgage deed contained a joint and several covenant by the mortgagor and D. (who, it was recited, “ had agreed to join as surety for the mortgagor ”) to pay to the bank, on demand by them left at the public-house, the principal and interest, subject to a proviso that D.'s liability should be limited to 1000*l.*; and the deed provided that the power of sale conferred on mortgagees by the Conveyancing Act, 1881, should be exercisable at any time after such demand without any further notice; and it was also provided and agreed that although, as between the mortgagor and D., D. was only surety for the mortgagor, yet, as between D. and the bank, D. should be considered as principal debtor for the whole mortgage debt. The mortgage deed also contained a covenant by the mortgagor to insure the mortgage debt and interest with the plt. co. in the name of the bank. Accordingly a mortgage insurance policy was effected with the plt. co., whereby the co. agreed that, if the bank should become entitled under their power of sale to sell the mortgage

PRINCIPAL AND SURETY—continued.

premises and should give notice in writing thereof to the co., the co. would after the expiration of six months from the receipt of the notice pay the principal and interest; and it was agreed that thereupon the bank should assign to the co. the mortgage debt and all securities therefor at the time of granting this policy. The co. were aware of D.'s covenant. Under this policy, the mortgagor having made default, the co. paid 5000*l.* for principal, interest, and costs. The mortgaged property realized 4000*l.*, and the securities for the debt were transferred by the bank to the co. The co. claimed to recover the 1000*l.* balance against D.'s estate under the covenant in the mortgage deed:—

Held, (1) that the policy was not a contract of indemnity, but was a contract of suretyship; but (2) that upon the true construction of the contract the co. were not co-sureties with D. so as to entitle him to contribution, but were guarantors to the bank against the default of both the mortgagor and D.

The principle of *Craythorne v. Swinburne*, (1807) 14 Ves. 160; 9 R. R. 264, applied.

Decision of Swinfen Eady J. [1903] W. N. 140; [1903] 2 Ch. 670, reversed. *In re DENTON'S ESTATE. LICENSES INSURANCE CORPORATION AND GUARANTEE FUND, LD. v. DENTON* C. A. [1904] 2 Ch. 178

4. — *Novation—Release of principal debtor—Discharge of surety.*

In 1903 P. as surety executed mortgages of certain property of his own to a bank to secure the overdraft of P. Brothers, a firm in which he was not a partner. The mortgage deeds all contained a provision that the bank should be at liberty without affecting their rights under the mortgages (among other things) "to vary exchange or release any other securities held or to be held by the bank for or on account of the moneys thereby secured or any part thereof" "and to compound with, give time for payment of, and accept compositions from and make any arrangements with the debtors or any of them."

In 1908 P. Brothers, being insolvent, called their creditors together, and a scheme was arranged whereby a co. was formed who should take over certain properties of the firm for realization and should issue debentures to the creditors at the rate of 25*s.* for each *l.* of their debts in full discharge thereof. The bank in accordance with this scheme applied for debenture stock on a form which contained an express agreement by the applicants to accept such debenture stock in full discharge of all their claims against P. Brothers. The amount of the debt in respect of which debenture stock was to be issued was 1900*l.* This amount was arrived at by deducting from the total debt due to the bank 1630*l.*, the value put upon securities held by them on the property of the firm; but no deduction was made on account of P.'s mortgages. The interest on the debenture stock not having been paid, the bank threatened to sell the property comprised in P.'s mortgages. In an action by P. for reconveyance of the mortgaged property on the footing that nothing was due on the mortgage:—

Held, varying the decision of Neville J., [1909]

PRINCIPAL AND SURETY—continued.

W. N. 261, that as to the 1900*l.* the debt was completely discharged and therefore the surety's property was released; but that as to the 1630*l.* the debt remained unpaid, although the principal debtor was released; consequently that by the express terms of the mortgage deeds the surety's property continued liable.

Cowper v. Smith, (1838) 4 M. & W. 519, and *Union Bank of Manchester v. Beech*, (1865) 3 H. & C. 672, followed.

Commercial Bank of Tasmania v. Jones, [1893] A. C. 313, distinguished. *PERRY v. NATIONAL PROVINCIAL BANK OF ENGLAND*

C. A. [1910] W. N. 20; [1910] 1 Ch. 464

— Sureties dispensed with — Administration with will annexed.

See PROBATE—Administration. 1.

— Trustee in bankruptcy — Default — Penal interest—Liability of surety—Unpaid remuneration of trustee — Set-off — Disbursements.

See BANKRUPTCY—Trustee. 1, 2.

PRINTING MACHINERY—Hotel bedrooms—Lessor and lessee—Nuisance.

See NEW ZEALAND. 6.

— Noisy neighbourhood — Trade district — Injunction.

See NUISANCE. 11.

PRIORITY—Alienation by "devisee"—Mortgage of equitable estate—Purchaser for value without notice.

See ADMINISTRATION. 26.

— Appointment void or voidable—Fraud on power—Mortgage by appointee.

See POWER OF APPOINTMENT.

— Attachment of debts—Execution—Rights of garnishor — Debenture-holder — Priorities.

See ATTACHMENT. 5.

— Bankruptcy — Administration of bankrupt's estate—Priority of the Crown—New South Wales Bankruptcy Act, 1898.

See NEW SOUTH WALES. 2.

— Charging order for costs on property "recovered or preserved"—Charge on ship — Constructive notice.

See SHIPPING—Charging Orders. 1.

— Chose in action—Assignment abroad—Notice.

See CONFLICT OF LAWS. 2.

— Company—Debenture-holders and debentures.

See under COMPANY—Debentures.

— Company—Receiver.

See under COMPANY—Receiver.

— Company — Winding-up — Parliamentary company — Distribution of assets — Preference shares — Deficiency of capital.

See COMPANY—WINDING-UP — Assets. 1.

— Company generally.

See under COMPANY—Priority.

PRIORITY—*continued.*

- Costs—Charging order—Costs of plaintiff's solicitors—Cost of trustees—Trustees' right of indemnity.
See SOLICITOR—Costs. 9.
- Costs—Insufficient fund—Priority of administrator's costs—Practice.
See COSTS. 2.
- "Costs of petitioning creditor"—Trustee's solicitors' costs.
See BANKRUPTCY—Costs. 3.
- Covenant to exercise power as security for loan—Liability of appointed fund for debts.
See POWER OF APPOINTMENT. 3.
- Debenture-holders—Receiver—Rolling stock—Proceeds of sale.
See RAILWAY—Receiver. 2.
- Debt—Same debt assigned to different persons—Notice to debtor.
See ASSIGNMENT. 5.
- Dock dues—Right to detain vessel until dues paid—Maritime lien for crew's wages.
See HARBOUR. 3.
- Equitable assignment—Fund in Court—Notice—Stop order.
See HUSBAND AND WIFE—Property. 1.
- Equitable execution—Effect of order—Unascertained residue—Charging order.
See RECEIVER. 5.
- Equitable mortgage—Notice—Fraud of vendor's solicitor—Possession of title-deeds.
See VENDOR AND PURCHASER—Priority. 1.
- Equitable mortgagee—Conflicting equities—Estoppel—Receipt clause—Mortgage.
See PRINCIPAL AND AGENT. 14.
- Execution—Building agreement—Plant on premises—Lien of building owner—Seizure by sheriff.
See SHERIFFS. 1.
- Foreign ship—Wages—Repairs—Maritime lien—Necessaries.
See SHIPPING—Wages. 2.
- Hire-purchase agreement—Subsequent equitable mortgage.
See FIXTURES. 2.
- Insurance—Life policy—Mortgages—Priorities—Notices.
See INSURANCE (LIFE). 10.
- Marshalling for payment of mortgage—Priority of cestui que trust—Voluntary settlement.
See SETTLEMENT. 48.
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See under MORTGAGE—Priority.

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- New South Wales Life, &c., Insurance Act, 1902—Crown—Priority of payment.
See NEW SOUTH WALES. 14.
- Partner, Death of—Partnership assets—Authority to mortgage—Lien of deceased partner's executors—Notice.
See PARTNERSHIP.
- Partnership.
See under PARTNERSHIP.
- Partnership action—Solicitor—Lien for costs—Charging order.
See SOLICITOR—Lien. 4.
- Portions—Mortgage.
See under MORTGAGE—Priority.
- Portions—Mortgages.
See under SETTLEMENT.
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See COMPANY—Receiver. 1.
- Reversionary trust fund—Notice to one of several trustees—Death of trustee who had notice.
See ASSIGNMENT. 10.
- Rolling stock—Proceeds of sale—Debenture-holders.
See RAILWAY—Receiver. 2.
- Salvage—Competing maritime liens—Insufficient proceeds.
See SHIPPING—Salvage. 22.
- Settlement—Portions—Mortgages.
See under SETTLEMENT.
- Shares—Registration—Transfer in blank—Equitable mortgage—Notice.
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- Special Act—Rent-charges—Prior incumbrances.
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- Voluntary debt—Creditors—Insolvent estate—Bankruptcy rule.
See EXECUTOR—Administration. 3.

PRISON—*Prison Officers (Pensions) Act, 1902 (2 Edw. 7, c. 9), amends the Prison Act, 1877 (40 & 41 Vict. c. 21), with respect to the Allowances of Prison Officers under s. 36.*

PRISON, ENGLAND—*Photographing, &c., of Prisoners Regn., dated Feb. 22, 1906, made by the Secretary of State under the Penal Servitude Act, 1891, s. 8, for the Measuring and Photographing of Prisoners. St. R. & O. 1906, No. 160. Price 1d.*

PRISON, ENGLAND—*Rules dated April 8, 1908, made by the Secretary of State under the Prison Act, 1898 (61 & 62 Vict. c. 41), and the Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), for the treatment and custody of appellants not admitted to bail. St. R. & O. 1908, No. 282.*

— County courts.

See under COUNTY COURTS.

— Crown prerogative—Exemption—Prison Commissioners—Local Board—By-law.
See CROWN. 2.

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See under CRIMINAL LAW.

— Slander—Statements made in witness-box and in preparing proof—Evidence.
See EVIDENCE. 11.

PRIVATE INTERNATIONAL LAW.

See under CONFLICT OF LAWS.

— Nullity of marriage—Bigamy—Marriage in England between Englishwoman and domiciled Frenchman.
See DIVORCE—Nullity of Marriage. 1.

PRIVATE STREETS.

See under LONDON STREETS.
Streets.

PRIVIES.

See under WATER-CLOSETS.

— Cleansing of, and cesspools—Power of local authority to undertake duty of.
See LOCAL GOVERNMENT. 27.

— Undertaking by local authority to cleanse—Neglect of duty—Reasonable excuse.
See LOCAL GOVERNMENT. 28.

PRIVILEGE—Communication between solicitor and client—"Evasion" of statute—Practice.

See DISCOVERY. 16.

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See CROWN. 6.

— Defamation—Commission issued by bishop—Witness—Pluralities Act.

See DEFAMATION—Pluralities Act. 1.

— Discovery.

See under DISCOVERY—Practice.

— Distress.

See under DISTRESS.

— Libel.

See under DEFAMATION—Libel.

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PRIVILEGE—continued.

— Libel—Trade Protection Society—Communications to subscribers not privileged.
See AUSTRALIA. 5.

— Slander.

See under DEFAMATION—Slander.

— Solicitor—Evidence—Private examination.

See COMPANY—WINDING-UP—Examination. 1.

PRIVILEGE, WRIT OF—Solicitor—Overseer—Exemption—Appeal to quarter sessions—Costs.

See POOR LAW. 15.

PRIVITY OF CONTRACT—Broker—Principal and agent.

See under STOCK EXCHANGE.

— Contract with promoter for benefit of intended company—Ratification—Adoption—Patent—Licence—Burden attaching to property—Right of action.

See COMPANY—Contracts. 2.

— Secret commission—Sub-agent—Fiduciary relation—Money had and received.

See PRINCIPAL AND AGENT. 9.

— Voidable contract—Assignment of contract—Money had and received, Action for.

See VENDOR AND PURCHASER—Contracts. 4.

PRIVITY OF ESTATE—Administration—Leaseholds—Contingent future liabilities—Indemnity.

See EXECUTOR—Indemnity. 1.

— Head-lessor, Rights of—Rent—Sale of goods by receiver—Distress, Loss of remedy by.

See MORTGAGE—Receiver. 1.

PRIVY COUNCIL APPEALS.

Appearance Orders—*O. in C., dated Mar. 20, 1905. W. N. 1905 (April 8), p. 91. See CURRENT INDEX, 1905, p. xcii.*

Appellate Jurisdiction Act, 1908 (8 Edw. 7, c. 51), amends the law with respect to the Judicial Committee of the Privy Council, and the Court of Appeal in England.

The Judicial Committee Rules, 1908, dated Dec. 21, 1908. Reprint from W. N. 1909 (Jan. 16), p. 50. See CURRENT INDEX, 1909, p. cxxxi.

Judicial Committee, O. in C., dated Oct. 18, 1909, making continuing order directing that all appeals to His Majesty in Council shall be referred to the Judicial Committee. Reprint from W. N. 1909 (Nov. 27), p. 387. See CURRENT INDEX, 1909, p. cxlii.

Australia (Western)—Judicial Committee—O. in C., dated June 28, 1909, regulating appeals from the Supreme Court of Western Australia to His Majesty in Council. Reprint from W. N. 1909 (Aug. 7), p. 291. See CURRENT INDEX, 1909, p. cxliii.

Windward Islands—Judicial Committee—O. in C., dated June 28, 1909, regulating appeals from the Court of Appeal for the Windward

PRIVY COUNCIL APPEALS—continued.

Islands, sitting in Barbados, or from the Chief Justice of Barbados to His Majesty in Council. Reprint from **W. N. 1909 (Aug. 21)**, p. 299. See CURRENT INDEX, 1909, p. cxlvi.

Windward Islands—Judicial Committee—O. in C. regulating appeals from the Court of Appeal for the Windward Islands sitting in St. Vincent, or from the Supreme Court of St. Vincent, to His Majesty in Council, dated June 28, 1909. Reprint from **W. N. (1909) Aug. 21**, p. 301. See CURRENT INDEX, 1909, p. cxlix.

Windward Islands—Judicial Committee—O. in C. regulating appeals from the Court of Appeal for the Windward Islands sitting in Grenada, or from the Supreme Court of Grenada, to His Majesty in Council, dated June 28, 1909. Reprint from **W. N. 1909 (Aug. 21)**, p. 301. See CURRENT INDEX, 1909, p. cl.

Leeward Islands—Judicial Committee—O. in C. as to appeals from the Supreme Court of the Leeward Islands to His Majesty in Council, dated June 28, 1909. Reprint from **W. N. 1909 (Aug. 21)**, p. 302. See CURRENT INDEX, 1909, p. cli.

Queensland—Judicial Committee—O. in C., Oct. 18, 1909, regulating appeals to His Majesty in Council from the Supreme Court of the State of Queensland. Reprint from **W. N. 1909 (Nov. 27)**, p. 387. See CURRENT INDEX, 1909, p. cli.

Australia (South)—Judicial Committee—O. in C., dated Feb. 15, 1909, regulating appeals to His Majesty in Council from the Supreme Court of the State of Australia. **St. R. & O. 1909, No. 202.**

Nigeria (Southern)—O. in C., dated Feb. 15, 1909, from the Supreme Court of Judicature for the Colony and Protectorate of Southern Nigeria. **St. R. & O., 1909, No. 203.** Price 1d.

New South Wales—Judicial Committee—O. in C., dated April 2, 1909, regulating appeals to His Majesty in Council from the Supreme Court of New South Wales. Reprint from **W. N. 1910 (Feb. 19)**, p. 75. See CURRENT INDEX, 1910, p. cx.

Canada—Alberta—Judicial Committee—O. in C., dated Jan. 10, 1910, regulating appeals to His Majesty in Council from the Supreme Court of Alberta. Reprint from **W. N. 1910 (Feb. 19)**, p. 75. See CURRENT INDEX, 1909, p. cxi.

New Zealand—Judicial Committee—O. in C., dated Jan. 10, 1910, regulating appeals to His Majesty in Council from the Court of Appeal and from the Supreme Court of New Zealand. Reprint from **W. N. 1910 (Feb. 19)**, p. 76. See CURRENT INDEX, 1910, p. cxi.

Prince Edward Island—Judicial Committee—O. in C., dated Oct. 13, 1910, regulating appeals to His Majesty in Council from the Supreme Court of Prince Edward Island. Reprint from **W. N. 1910 (Oct. 29)**, p. 347. See CURRENT INDEX, 1910, p. cxii.

Canada—Saskatchewan—Judicial Committee—O. in C., dated Oct. 13, 1910, regulating appeals to His Majesty in Council from the Supreme Court of Saskatchewan, in the Dominion of Canada. Reprint from **W. N. 1910 (Oct. 29)**, p. 347. See CURRENT INDEX, 1910, p. cxii.

PRIVY COUNCIL APPEALS—continued.

Tasmania—Judicial Committee—O. in C., dated Nov. 7, 1910, regulating appeals to His Majesty in Council from the Supreme Court of the State of Tasmania. Reprint from **W. N. 1910 (Nov. 19)**, p. 365. See CURRENT INDEX, 1910, p. cxiii.

New Brunswick—Judicial Committee—O. in C., dated Nov. 7, 1910, regulating appeals to His Majesty in Council from the Supreme Court of the Province of New Brunswick. Reprint from **W. N. 1910 (Nov. 19)**, p. 365. See CURRENT INDEX, 1910, p. cxiii.

Canada—Manitoba—Judicial Committee—O. in C., dated Nov. 28, 1910, regulating appeals to His Majesty in Council from the Court of Appeal of the Province of Manitoba, in the Dominion of Canada. Reprint from **W. N. 1910 (Dec. 10)**, p. 377. See CURRENT INDEX, 1910, p. cxiv.

Privy Council of England, Acts of the Colonial Series (F.—Record Works). Price 10s each.

Appeals, col. 2050.

Practice, col. 2051.

Appeals.

See AFRICA.

AMERICA.

AUSTRALIA.

BECHUANALAND.

BRITISH GUIANA.

BRITISH HONDURAS.

CANADA.

ALBERTA.

BRITISH COLUMBIA.

MANITOBA.

NEW BRUNSWICK.

NORTH-WEST TERRITORIES.

NOVA SCOTIA.

ONTARIO.

QUEBEC.

VANCOUVER.

CAPE OF GOOD HOPE.

CEYLON.

CHINA AND COREA.

CONSTANTINOPLE.

GUERNSEY.

HONG KONG.

INDIA.

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JAMAICA.

JERSEY.

MALTA.

MAURITIUS.

NATAL.

NEWFOUNDLAND.

NEW SOUTH WALES.

PRIVY COUNCIL (Appeals)—continued.

NEW ZEALAND.

QUEENSLAND.

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STRAITS SETTLEMENTS — **Settle-**
ment of Singapore.

TASMANIA.

TRANSVAAL (AFRICA — TRANS-
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TURKS AND CAICOS ISLANDS.

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See also under COLONY.

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mittee.

See under PATENT.

PROBATE.*Administration*, col. 2052.*Ambiguity*, col. 2053.*Annuity*, col. 2053.*Cancellation*, col. 2053.*Citation*, col. 2053.*Codicils*, col. 2053.*Colonial Duties*, col. 2054.*Colonies*, col. 2054.*Conduct Money*, col. 2055.*Conflict of Laws*, col. 2055.*Contentious Rules*, col. 2055.*Costs*, col. 2055.*Domicil*, col. 2057.*Effect of Probate*, col. 2057.*Engrossments*, col. 2058.*Estate Duty*, col. 2058.*Execution (Execution of Will)*, col. 2058.*Foreign Domicil*, col. 2059.*Grant (Grant of Administration)*,
col. 2060.*Illegitimacy*, col. 2061.*Incorporation*, col. 2061.*Land Transfer*, col. 2062.*Lunacy*, col. 2062.*Marriage*, col. 2063.*Misconduct*, col. 2063.*Mutual Wills*, col. 2063.*Nuncupative Will*, col. 2063.*Power of Appointment*, col. 2064.*Practice*, col. 2064.*Presumption of Death*, col. 2068.**PROBATE—continued.***Priority*, col. 2068.*Probate Duty*. See under REVENUE.—**Probate Duty.***Probate Duty*, col. 2068.*Production of Probate*, col. 2069.*Rectification of Will*, col. 2069.*Renunciation*, col. 2069.*Revocation*, col. 2069.*Scotland*, col. 2074.*Soldier's Will*, col. 2074.*Sureties*, col. 2075.*Trustees*, col. 2076.**Administration.**

See also under ADMINISTRATION.

1. — *Administration bond* — *Practice* — *Administration*—*Intestate estates*—*Duchy of Lancaster*—*Death of holder of title*—*Death of administrator appointed by her*—*Nominee of her executors*—*Form of grant*—*Sureties dispensed with*.

The Court allowed the executors appointed under the will of her late Majesty Queen Victoria to nominate a person to take a number of grants for their use in the estates of persons who had died domiciled in the County Palatine of Lancaster, and which had been either wholly or partially unadministered.

The Court, however, while consenting to dispense sureties, required that, inasmuch as the administrator was not to take for the use of the Sovereign, but for the use of the late Sovereign's executors, he should enter into the usual administration bond. IN THE GOODS OF BEST.

Jeune, Pres. [1901] P. 333

2. — *Administration de bonis non*—*Original administrator believed to be dead*—*Probate Act*, 1857 (20 & 21 Vict. c. 77), s. 74.

The original administrator of a deceased intestate could not be found and was believed to be dead. Additional assets having been discovered due and payable to the estate of the intestate, the Court, by virtue of s. 74 of the Probate Act, 1857, granted administration de bonis non to one of the next of kin, upon her affidavit that she believed the original administrator (her brother) to be dead or beyond the seas. IN THE ESTATE OF SAKER. BARGRAVE DEANE J. [1909] P. 233

3. — *Sureties dispensed with*—*Practice*—*Administration with will annexed*—*Advertisements for claims against estate*—*Administrators' undertaking to retain a certain portion of estate to meet possible debts*—*Probate Act*, 1857 (20 & 21 Vict. c. 77), s. 81—*Order*.

The sole executrix and universal legatee and devisee of the deceased died without having obtained probate of his will.

Advertisements having been inserted for any creditors of his estate, and no answers having been received thereto, the executors of the executrix, on applying for a grant of administration with the will of the testator annexed, were excused from finding sureties, and their personal bond alone was accepted, upon their undertaking

PROBATE (Administration)—continued.

to retain, for the space of one year, assets of the testator equivalent to about four times the amount of his known debts (including his funeral expenses), in order to meet any possible claims against his estate. IN THE ESTATE OF HARPER.

Bargrave Deane J. [1909] P. 88

Ambiguity.

— Administration (with will annexed) to residuary legatee—Absolute gift cut down, by later words, to life interest.
See WILL—Absolute Gift. 1.

— Will—Latent ambiguity—Gift to “my granddaughter”—Partial blank—Parol evidence—Grant of probate.
See WILL—Ambiguity. 2.

Annuity.

— Death of annuitant before probate—Right to value of annuity.
See ANNUITY. 4.

Cancellation.

1. — *Erroneous impression of testator as to the effect of an earlier settlement—Will—Probate of cancelled document.*

A testator, on the execution of a will in 1895, caused a will of 1882 to be cancelled under the erroneous belief that funds comprised in a settlement of 1855 would, in the absence of certain provisions in the will of 1882, be divided equally amongst the children of his first marriage. In 1896 he executed a fresh will, and revoked the will of 1895, and later in 1896 he executed two codicils, but the settled funds were not mentioned in any of the documents of 1896.

In a suit by the executors propounding the will and codicils of 1896 together with the will of 1882:—

Held, that the will of 1882 was, in law, a valid and subsisting testamentary document, and that it should be included with the three documents of 1896 in the probate. **STAMFORD v. WHITE**

Jeune, Pres. [1901] P. 46

Citation.

1. — *Administration, with will annexed—Specific legatee—Limited grant—Probate Act, 1857 (20 & 21 Vict. c. 77), s. 73.*

The Court, without requiring citation of next of kin, made a limited grant of administration, with will annexed, under s. 73, to the sole beneficiary named in the will.

In the Goods of Jenny Watson (1858) 1 Sw. & Tr. 110, followed.

IN THE GOODS OF BALDWIN

Gorell Barnes J. [1903] P. 61

Codicils.

1. — *Will and codicils—Construction—Form and position of writing forming second codicil.*

A testamentary document, whether will or codicil, requires no special form of words.

Where a document, duly executed and propounded as a second codicil, was written wholly on one page of one piece of paper, and formed, according to the evidence given in support of it, one transaction, it was held to be entitled to probate along with the will and first codicil,

PROBATE (Codicils)—continued.

although a material portion of the second codicil was written in a space above the signatures to the first codicil. **OLDROYD v. HARVEY**

Bargrave Deane J. [1907] P. 326

2. — *Will—Codicil—Revocation—Inconsistency—Admission to probate—Codicils of same date—No evidence of priority of execution—Partial inconsistency.*

Prima facie every testamentary document duly executed in accordance with the provisions of the Wills Act ought to be admitted to probate. But, if there are two testamentary documents of the same date and it cannot be ascertained which of them was executed first, and their provisions are so inconsistent that they cannot stand together, the presumption in favour of admissibility will be rebutted, and neither document will be admitted to probate.

But when the provisions of two testamentary documents, the priority of which is uncertain and in neither of which there are express words of revocation, are apparently inconsistent, the Court will endeavour so to construe the words that if possible the two documents may stand together and may both be admitted to probate as expressing together the whole testamentary intention of the testator.

The statement of the law in Williams on Executors, 7th ed. vol. i. p. 162; 9th ed. vol. i. p. 138, approved and adopted.

A testatrix executed two codicils, both dated the same day, their provisions being to some extent inconsistent. The evidence of an attesting witness proved, in the opinion of the C. A., that the two codicils were executed on the same occasion and practically simultaneously. There was nothing to shew which was in fact executed first. Gorell Barnes J. refused to admit either codicil to probate, on the ground that an introductory clause in each shewed that it was intended to operate only in the event of the testatrix surviving her husband, whereas she died before him:—

Held, by the C. A., that, on the true construction of the introductory clause, the codicils were not contingent or conditional, but were intended to operate in any event:

Held, also (by Vaughan Williams and Romer L.JJ., Cozens-Hardy L.J. doubting), that the provisions of the two codicils were not so inconsistent that they could not stand together, and that both ought to be admitted to probate. **TOWNSEND v. MOORE**

C. A. [1905] W. N. 4; [1905] P. 66

Colonial Duties.

— *Victoria Administration and Probate Act—Colonial death duty.*

See WILL—Colonial Duties. 1.

Colonies.

1. — *Colonial Probates Act, 1892 (55 & 56 Vict. c. 6)—Resealing—Limited grant.*

A colonial grant, though unlimited, may be resealed in the United Kingdom, provided that the proper conditions prescribed by the Colonial Probates Act, 1892, have been complied with. **IN THE GOODS OF SMITH**

Bucknill J. [1904] P. 114

PROBATE—continued.**Conduct Money.**

1. — *Practice—Attendance in Court for cross-examination—Court of Probate Act, 1857* (20 & 21 Vict. c. 77), s. 26.

Upon a motion to attach a person for not complying with an order made under s. 26 of the Probate Act, 1857, directing his attendance in Court for cross-examination as to his knowledge of a certain testamentary paper:—

Held, that the motion must be refused, no conduct money having been tendered. **IN THE ESTATE OF HARVEY** — **Gorell Barnes, Pres.**
[1907] W. N. 74; [1907] P. 239

2. — *Practice—Attendance of witnesses for examination.*

Motion to attach the respondent (husband) for disobeying an order directing him to attend at the Divorce Registry for examination as to his means. The wife (petitioner) had no separate estate.

Sir Gorell Barnes, Pres., said that he had come to the conclusion that conduct money was payable when the Court ordered the attendance of a witness for examination. Therefore, the technical objection must prevail and the motion must be dismissed. **TOWNEND v. TOWNEND** (July 10, 1905) **Gorell Barnes, Pres.**
[1907] P. 239, n.

Conflict of Laws.

— Limitations, Statute of—Cause of action—Grant of letters of administration—Powers of registrar.
See HONG KONG. 3.

— Unattested will—Domiciled foreigner—Leaseholds—Administration with will annexed.
See CONFLICT OF LAWS. 17.

Contentious Rules.

— Probate Contentious Rules, 1862, r. 100—Summons—Service.
See PROBATE—Practice. 8.

Costs.

1. — *Costs out of the estate—Will—Undue influence and fraud unsuccessfully pleaded—Practice.*

Where the facts surrounding the making of a will bring the case within the principles laid down in *Brown v. Fisher*, (1890) 63 L. T. 465, *Fulton v. Andrew*, (1875) L. R. 7 H. L. 448, and *Tyrrell v. Painton*, [1894] P. 151, and impose upon the party propounding the will, not merely the onus of proving due execution and testamentary capacity but the additional burden of removing the suspicion attaching to the making of the will, a person opposing it is *prima facie* justified in pleading undue influence and fraud, and, though unsuccessful, ought not to be condemned in costs unless the circumstances of the case be such as to render it unreasonable for him to raise such issues.

Where a defendant put forward those pleas and failed, the Court, following the case of *Orton v. Smith*, (1873) L. R. 3 P. & M. 23, ordered that the costs of the defendant, as between party and

PROBATE (Costs)—continued.

party, be allowed out of the estate, after the plt., who succeeded in discharging the additional onus of proof cast upon her in the case, should have first taken her costs, as between solicitor and client, out of the estate. **WILSON v. BASSIL**
Walton J. [1903] P. 239

Note.

This case was commented on by Gorell Barnes P., *Spiers v. English*, [1907] P. 122. *See No. 3, below.*

2. — *Executors—Costs.*

Executors, who are also residuary legatees, are in the same position, as to costs, as any other party who unsuccessfully propounds a will.

Where executors, who were also named as residuary legatees, had ample opportunities of forming an opinion as to the testamentary capacity of the deceased, and, acting upon their opinion, propounded a will or wills, which, in the result, were pronounced against, after verdict of a jury, on the ground of testamentary incapacity and want of knowledge and approval of the contents:—

Held, that not only was this a case in which their costs should not be allowed out of the estate, but that, following the general rule that costs follow the event, they should pay the costs of the deft.; but not of any of the parties cited, whose interests were practically identical with those of the deft.

Boughton v. Knight, (1873) L. R. 3 P. & M. 64, distinguished. **TWIST v. TYE**

Gorell Barnes J. [1902] P. 92

— Death of vendor before completion—Costs of probate—Sale of leaseholds—Vendor's will—Costs—Taxation.
See LANDS CLAUSES ACTS. 19.

3. — *Practice—Costs.*

The two main principles which should guide the Court in determining that costs in a probate suit are not to follow the event are, firstly, where the testator or those interested in the residue have been the cause of the litigation; and, secondly, if the circumstances lead reasonably to an investigation in regard to a propounded document. In this latter case the costs may be left to be borne by those who incurred them; in the former, the costs of unsuccessfully opposing probate may be ordered to be paid out of the estate.

Neither of those principles, which, however, are not exhaustive, justifies a plea of undue influence unless there were reasonable grounds for putting it forward.

Wilson v. Bassil, [1903] P. 239, commented on. **SPIERS v. ENGLISH** **Gorell Barnes, Pres.**
[1907] P. 122

4. — *Practice—Costs—New rule—R. S. C., Order LXV., r. 14 (d).*

Under the additional rule (Order LXV., r. 14 (d)), the Court ordered the costs of both plt. and deft. to be charged on and paid out of the corpus of certain real estate devised by the will to successive life tenants.

[In another case, the costs of all parties were ordered to be paid out of the residuary shares of four defts. (there being six in all, interested

PROBATE (Costs)—continued.

under the will in the residuary estate to the testator), these four debts being held to have caused the litigation]. *DEAN v. BULMER*

Jeune, Pres. [1905] P. 1

Note.

This case was referred to by Kekewich J., in *re Fickerstaff*, [1906] 1 Ch. 762. See *Administration*, 24.

5. — *Practice—Costs—New Rule—R. S. C., Order LXV., r. 14 (d).*

In pronouncing for the will, the Court ordered that the costs of all parties be paid out of that portion of the residuary estate passing under the will to four out of the six debts. *HARRINGTON v. BUTT*

Gorell Barnes J. [1905] P. 3, n.

6. — *Practice—Costs—Taxation—Quantum—Interference with discretion of registrar.*

As a general rule the Court will not interfere with the decision of the taxing registrar upon a mere question of quantum. IN THE ESTATE OF *OGILVIE. OGILVIE v. MASSEY*

C. A. [1910] P. 243

7. — *Practice—Rule 41 (Contentious Rules, 1862)—R. S. C., Order XXI., r. 18—Suit for revocation of Probate—Notice by plaintiff to cross-examine.*

In construing Order XXI., r. 18, the principles which guided the old Ecclesiastical Courts and afterwards the Probate Court, ought to be considered; and, following out those principles, a distinction is to be drawn between a party who seeks to call in and obtain revocation of probate, and a party who enters a caveat and takes the ordinary steps in opposing a will being admitted to proof.

A notice given under Order XXI., r. 18, by a pt. who claimed revocation of probate, held bad.

Beale v. Beale (1874) L. R. 3 P. & M. 179, approved. *TOMALIN v. SMART*

Jeune, Pres. [1904] P. 141

— Probate action—Contract by parties that costs shall be paid out of the estate—Infant co-contractor—Illegality. 16. See *CONTRACT*.

8. — *Probate suit—Costs.*

Where a principal beneficiary takes instructions himself and causes a will to be prepared by a solicitor upon those instructions, but the solicitor does not see the testator, the circumstances so far invite inquiry as to justify the Court in refusing to condemn in costs a party opposing probate of the will. *AYLWIN v. AYLWIN*

Jeune, Pres. [1902] P. 203

Domicil.

See also under *DOMICIL*.

— Foreign domicil.

See under *PROBATE—Foreign Domicil*.

Effect of Probate.

— Will—Codicil consisting of list of names and pecuniary amounts—Gift of legacies. See *Will—Probate, Effect of*. 1.

PROBATE—continued.**Engrossments.**

PROBATE ENGROSSMENTS.] Dictum by the President of the Probate Division. Reprint from W. N. 1901 (Jan. 26), p. 53. See CURRENT INDEX, 1901, p. xcvi.

Estate Duty.

— Exemption—Trust for conversion into realty—Payment of probate duty. See *REVENUE—Estate Duty*. 8.

Execution.**(Execution of Will.)**

1. — *Acknowledgment—Discrepancy between attestation clause and affidavit of attesting witness—No evidence of any writing on first page at time of execution.*

In the case of a holograph will, the whole operative portion of which was written on the first page of a sheet of paper, the attestation clause containing the signature of the testator was written on the second page and stated that the will was "signed" by the testator in the presence of the witnesses. An affidavit, made by one witness only, stated that they did not see the first page at all, and set forth facts pointing to acknowledgment only in the presence of the witnesses:—

Held (by Sir F. Jeune, doubting), that the will was entitled to probate without notice to the next of kin. IN THE GOODS OF *MOORE*

Jeune, Pres. [1901] P. 44

2. — *Clause in will inserted by inadvertence of solicitor—Reading over—Testamentary capacity—Due execution—Knowledge and approval—Presumption of law.*

Without impugning the general rule of law that a competent testator who reads over his will, or to whom it is read over, is to be held to have approved its contents, it is still open to the tribunal before whom the question of the validity of the document may come to find as a fact that the will was not read over in a proper way.

The general rules stated in *Guardhouse v. Blackburn*, (1866) L. R. 1 P. & M. 109, and commented on in *Fulton v. Andrew*, (1875) L. R. 7 H. L. 448, discussed. *GARNETT-BOTFIELD v. GARNETT-BOTFIELD* *Jeune, Pres. [1901] P. 335*

3. — *Informal document—Execution—Witness dead—No attestation clause—No evidence of handwriting of one witness—Presumption: "Omnia præsuntur rite esse acta."*

The Court (Sir F. H. Jeune, Pres.) extended the presumption of law—"Omnia præsuntur rite esse acta"—to the case of an informal holograph document containing no attestation clause whatever, and in regard to which there was no evidence to prove the handwriting of one of the persons (both of whom were dead) whose names appeared near the signature of the testatrix at the foot or end of the document. IN THE GOODS OF *PEVERETT*

Jeune, Pres. [1902] P. 205

4. — *Testamentary papers—Execution by one person of codicil of the other person—Mistake—Intention—Effect—Refusal of probate.*

Two sisters executed codicils similar in terms. By mistake each sister executed the

PROBATE (Execution)—*continued*.

codicil intended for, and purporting to be, that of the other.

Upon application after the death of one of the sisters for probate of the codicil executed by her:—

Held, that the intention to execute the document propounded being wholly absent, probate must be refused in respect of the whole document, notwithstanding that it contained some testamentary dispositions which were intended by the testatrix, being, in fact, common to the two documents executed. **IN THE ESTATE OF MEYER** **Gorell Barnes, Pres.** [1908] P. 353

5. — Unattached papers forming will — Identification — Execution — Acknowledgment and attestation.

If it be clearly established by parol evidence that the pieces of paper propounded as a will were held together in some way and were so produced to the attesting witnesses and acknowledged by the testator as his will, and his signature thereon was shewn to them and declared by the testator to be his signature, the attestation of the document by the attesting witnesses in the presence of the testator renders it a duly executed will and entitles it to probate, although the pieces of paper were not attached by any mechanical fastening. **LEWIS v. LEWIS**

Bargrave Deane J. [1908] P. 1

6. — Will—Mistake—Inadvertence of solicitor — Opportunity for reading over—Due execution — Want of knowledge and approval — Words eliminated from probate.

Where the solicitor who drew the will of the testatrix mistook the extent of her interest in certain landed estates, and the will was accordingly executed devising only her "undivided moiety of and in" the said estates, the Court, notwithstanding the fact that a draft of the will had been sent for her approval, and she had returned the said draft with certain alterations in other parts, found as a fact that she did not know and approve of the clause as drawn, and directed that the restrictive words should be eliminated from the probate. **BRISCO v. BAILLIE HAMILTON** **Jeune, Pres.** [1902] P. 234

— Will — Several sheets of paper — Destruction of two — Effect — Revocation.

See **PROBATE—Revocation.** 9.

Foreign Domicil.

1. — Administration—Will—Grant to foreign administrators—Executors passed over—Practice—Belgium.

The Court will follow the grant of the foreign domicil, unless the administrators appointed by the foreign Court are, by the law and practice of this country, personally disqualified from taking a grant here.

Thus, where a testator died domiciled in Belgium, leaving a will and codicil in English form appointing executors, and also leaving a Belgian will, the Court made a grant of administration with all three documents annexed in favour of two persons who had been appointed administrators of the deceased's estate abroad,

PROBATE (Foreign Domicil)—*continued*.

in accordance with the law of the domicil. **IN THE GOODS OF MEATYARD** **Jeune, Pres.** [1903] P. 125

2. — Foreign domicil, will, and marriage—English domicil subsequently acquired—Practice—Wills Act, 1861 (24 & 25 Vict. c. 114), s. 3—Construction.

The 3rd section of the Wills Act, 1861, the title of which is, "An Act to amend the law with respect to wills of personal estate made by British subjects":—

Held (by Gorell Barnes J.), not to be limited in its operation to the will of British subjects, but to extend to the will of a foreign testatrix, made before her marriage, and in strict conformity with the law of her foreign domicil at that time; according to which, marriage does revoke a will:

Held, further, that the English domicil acquired by the testatrix after the date of the will and after the date of the marriage did not affect the question of the validity of the will, but that, as the will in terms provided, in accordance with the law of the former domicil, that the executorship should be limited to the space of one year, the grant of probate must be limited to one year from the date of the death of the testatrix. **IN THE ESTATE OF GROOS**

Gorell Barnes J. [1904] P. 269

Grant.

(Grant of Administration.)

— Corporate creditor—Grant of administration to officer—Retainer.

See **EXECUTOR—Retainer.** 2.

— Domiciled foreigner—Unattested will—Leaseholds—Lex rei sitæ—Lex domicilii.

See **CONFLICT OF LAWS.** 17.

1. — Executor, Appointment of—Practice—Will of domiciled Italian—Probate refused—Administration with will annexed granted.

Even where the husband consents, the Court will refuse to grant probate to the executor named in the will of a married woman, who dies domiciled abroad; but with such consent, will make a general grant of administration with the will annexed.

In the goods of Hallyburton, (1866), L. R. 1 P. & M. 90, and *In the goods of Trefond*, (1899) P. 247, commented on and explained. **IN THE GOODS OF VANNINI** **Jeune, Pres.** [1901] P. 330

2. — Husband and wife — Commorientes — Form of oath to lead grants of administration—Practice.

Where a husband and wife with all their children were said to have perished in a massacre, the Court, upon affidavits that they were believed to have died intestate and uninsured, granted letters of administration to the respective next of kin of the husband and wife; and, further, gave leave to vary the usual form of oath to lead the grants, by allowing the administrator and administratrix to swear that the husband and wife perished at the same time (named) and that after due inquiries, there was no reason to believe that either survived the other. **IN THE GOODS OF BEYNON.** - **Gorell Barnes J.** [1901] P. 141

PROBATE (Grant)—continued.

3. — *Sureties dispensed with—Probate Act, 1857 (20 & 21 Vict. c. 77), s. 81.*

In a case of an estate where all the debts had been paid, and the persons applying for administration were entitled, as the duly constituted legal personal representatives in two other estates, to receive the whole of the residue, the Court dispensed with sureties and directed that the bond of the applicants alone should be accepted. **IN THE GOODS OF PATON**

Jeune, Pres. [1901] P. 188

Illegitimacy.

— Illegitimate child born after date of will, Probate granted to.

See WILL—Illegitimacy. 1.

Incorporation.

1. — *Republication of will by codicil—Reference in will to future document—Incorporation.*

The testatrix, by a will made in 1895, gave to M. R. S., during her life for her own absolute use and benefit, all her furniture, books, plate, and personal effects, and, after the death of the said M. R. S., the testatrix directed that her trustees should give to such of her friends as she (the testatrix) might designate in a book or memorandum, to be found with her will, "the different articles specified for such friends in such book or memorandum . . ." The will also declared that M. R. S. was to have absolute power to dispose of any articles not specifically disposed of by the testatrix :—

Held, that as the "book or memorandum" was referred to in the will as a future document, the codicil, which confirmed the will, could thereby only be taken to speak of the book as a future document, even although it was in fact written before the date of the codicil ;

Held, therefore, that the book was not incorporated and could not be included in the probate. **IN THE GOODS OF SMART**

Gorell Barnes J. [1902] P. 238

2. — Will and codicils.

The testator made a will in 1894, and a holograph codicil in 1898, both duly executed and attested.

The will of 1894 had been settled by his conveying counsel, whom he had known for many years, and who had transacted much of his private business.

In 1902 a codicil was drawn by a confidential clerk of the testator to what the clerk believed to be the last will of the deceased, the testator having vouched that he had executed a will, though without giving any date ; and the clerk, assuming that such a will had been executed, based it on an incomplete draft handed to him by the deceased.

This codicil was duly executed and attested, the testator saying, "This is a codicil to my last will." It carried out his wishes, so far as it went ; but some points, as to which the testator was still undecided, were left over for further consideration. The testator died shortly after executing this codicil :—

Held, that the will of 1894, the codicil thereto of 1898, and the document executed as

PROBATE (Incorporation)—continued.

a codicil in 1902, were all to be admitted to probate. **EYRE v. EYRE**

Bucknill J. [1903] P. 131

3. — Will and unexecuted memorandum.

In order to admit parol evidence for the purpose of identifying a document referred to in a will and intended to be incorporated, the description of the document in the will must definitely refer to an existing document. If the will can be construed as referring to an existing or future document, parol evidence is not admissible.

Decision of Gorell Barnes, Pres., [1907] P. 228, reversed. **UNIVERSITY COLLEGE OF NORTH WALES v. TAYLOR** — **C. A. [1907] W. N. 217 ; [1908] P. 140**

Land Transfer.

— Costs to come "out of the estate"—Insufficient personality.

See ADMINISTRATION. 24.

— Escheated land—Administration—Creditor. *See LAND TRANSFER. 1.*

Lunacy.

1. — *Lunacy of one of the executors after proving will—Revocation of probate—Fresh grant to remaining executors—Form of grant—Practice.*

Where one of three executors, who had proved a will, subsequently became of unsound mind, the Court, on the application of the others, revoked the grant, and made a fresh grant of probate to the applicants, reserving power to the lunatic, in case he should become of sound mind and apply, to join in the probate. **IN THE ESTATE OF SHAW.**

Gorell Barnes J. [1905] P. 92

2. — *Practice—Lunatic defendant—Position of official solicitor, if appointed guardian ad litem—Costs—Will torn up in testator's presence without his authority—Subsequent ratification inadmissible—Words missing from will when pieced together—Oral evidence—Probate—Form of order.*

The official solicitor, if appointed guardian ad litem to a lunatic deft. in a probate suit, has no greater rights and is in no better position than any other solicitor appearing for a party in a probate suit, except that he will probably be allowed, out of the estate, costs properly incurred in the conduct of the defence.

Where a will has been torn up without the testator's authority, he cannot, by any subsequent ratification of the destruction, render the act a valid revocation of the will.

The dictum of Butt J. in *Mills v. Millward*, (1889) 15 P. D. 20, approved.

The Court will not order to be inserted in the probate words actually missing from a torn will which has been pieced together, but the practice to be followed in such a case, where satisfactory oral evidence is before the Court proving what the missing words were, is to allow a document shewing what those words are proved to have been to be annexed to the probate. **GILL v. GILL**

Bargrave Deane J. [1909] P. 157

PROBATE—*continued.***Marriage.**

See also under MARRIAGE.

1. — Marriage — Pedigree — Evidence — Administration suit.

The Court, in the absence of any official record, accepted, as sufficient prima facie evidence of a marriage of the parents of an intestate, a statement contained in an extract from a Scottish marriage register of the year 1868 (the bridegroom being the intestate's brother), in which, under the heading "Name, surname, and rank or profession of father," appeared the names and descriptions of both parents of the bridegroom. **WIGLEY v. SOLICITOR TO THE TREASURY** **Jeune, Pres. [1902] P. 233**

Misconduct.**1. — Administration — Grant — Citation — Practice—Administration of Estates Act, 1529 (21 Hen. 8, c. 5)—Widow passed over on ground of marital misconduct.**

On an application for a grant of administration to the son of an intestate, passing over the widow on the ground of marital misconduct, which had been established in a suit by the intestate, the Court made the grant to the son without requiring the widow to be cited.

In the Goods of Middleton, (1888) 14 P. D. 23, distinguished. **IN THE ESTATE OF FROST**

Bargrave Deane J. [1905] P. 140

Mutual Wills.**1. — Fresh will made by party who predeceases the other—Notice on death—No relief for survivor.**

Where two persons have made an arrangement as to the disposal of their property and executed mutual wills in pursuance of that arrangement, the one of them who predeceases the other dies with the implied promise of the survivor that the arrangement shall hold good; and if the survivor, after taking a benefit under the arrangement alters his will, his personal representative takes the property upon trust to perform the contract, for the will of the one who has died first has, by the death, become irrevocable. But, on the contrary, where the one who dies first has departed from the bargain by executing a fresh will revoking the former one, the survivor, who has, on the death of the other party to the arrangement, notice of the alteration, cannot claim to have the later will of the deceased set aside or modified, either by way of declaration of trust or otherwise. **STONE v. HOSKINS.**

Gorell Barnes, Pres. [1905] P. 194

Nuncupative Will.**1. — Volunteer soldier — Minor — Wills Act (1 Vict. c. 26), s. 11—In actual military service.**

The test to be applied in considering whether a nuncupative will of a soldier is entitled to probate under the 11th section of the Wills Act, is whether, before the will was made, some step has under orders been taken by the soldier in view of and preparatory to joining the forces in the field.

PROBATE (Nuncupative Will)—*continued.*

A printer's apprentice, who was a private in a volunteer battalion and resided with his father in Chichester, sent in his name for active service in the war then being waged in South Africa, was certified as fit by the medical inspector, and, pursuant, to an order, went into barracks at Chichester, and while there made his will, being at that time under twenty-one years of age. An order was subsequently received from the military authorities pursuant to which he embarked with his regiment, and he died from a wound received in battle:—

Held, that by taking the step of going into barracks with a view to being drafted to the seat of war, he had brought himself within the operation of s. 11 of the Wills Act, and that he was, at the time he made his will, "a soldier in actual military service"; and, consequently, that his will, though made at a time when he was under age, was entitled to probate. **IN THE GOODS OF HISCOCK. Jeune, Pres. [1901] P. 78**

Power of Appointment.

— Special power of appointment—Will—Exercise by earlier will—No express clause of revocation—Later will alone admitted to Probate.

See **POWER OF APPOINTMENT. 28.**

Practice.**1. — Administration — Intestacy — Divorce—Former husband passed over without citation—Probate Act, 1857 (20 & 21 Vict. c. 77), s. 73—Sureties required to justify.**

A divorced spouse, whether petitioner or respondent, ceases to have an interest in the estate of the other party to the dissolved marriage who subsequently died intestate; and, in such a case, the Court will pass over the surviving spouse without citation, but, in granting administration to the next of kin, will require the sureties to the administration bond to justify. **IN THE ESTATE OF WALLAS - Bargrave Deane J. [1905] P. 326**

2. — Administration — Intestacy — Limited foreign grant—Assets in England—Full grant under s. 73 to foreign administrator.

In a case where the Court of the domicile of a deceased person, part of whose assets consisted of personal estate in England, had made a grant of administration limited in time, this Court made, under s. 73 of the Probate Act, 1857 (20 & 21 Vict. c. 77), a general grant to the foreign administrator. **IN THE ESTATE OF LEVY.**

Bargrave Deane J. [1908] P. 108

3. — Administration pendente lite — Concurrent suits in Chancery and Probate Divisions — Creditors—Sureties.

In a creditor's action in the Chancery Division for the administration of the estate of a deceased person, the debts in that action being respectively the plts. and defts. in a probate suit relating to the testamentary documents of the deceased, the Probate Division, on the application of the plaintiffs in the Chancery action, who, were, however, not parties to the probate suit appointed as administrators pendente lite the same persons who had been appointed receivers

PROBATE (Practice)—continued.

by the Chancery Division, and with the same surety. **IN THE ESTATE OF CLEAVER**

Gorell Barnes, Pres. [1905] W. N. 136 ; [1905] P. 319

4. — Attachment—Solicitors Act, 1860 (23 & 24 Vict. c. 127), s. 26—Unauthorised person—Lodging caveat—Ministerial act.

Lodging a caveat is a ministerial act ; and a person, not being a solicitor, who performs this act on behalf of another, is not liable to attachment under s. 26 of the Solicitors Act, 1860. *In re PANTON.* **Jeune, Pres. [1901] W. N. 116 ; [1901] P. 239**

-- Costs—Practice.

See under PROBATE—Costs.

5. — Joint grant—Administration with will annexed—Sole executrix incapable of acting—Joint grant to nominees of sole executrix—Court of Probate Act, 1857 (20 & 21 Vict. c. 77), s. 73.

Where a sole executrix and universal legatee was incapable, owing to ill-health, of taking probate, the Court allowed a joint grant of administration, with the will annexed, to be taken by her nominees.

In the Goods of Roberts, (1858), 1 Sw. & Tr. 64, followed. **IN THE ESTATE OF DAVIS**

Bargrave Deane J. [1906] P. 330

6. — Married woman—Separation order under the Summary Jurisdiction (Married Women) Act, 1895 (58 & 59 Vict. c. 39)—Will—Administration—Husband surviving—Daughter (a minor) also surviving—Form of order.

A motion which had reference to the estate of a married woman who obtained, some years before her death, a separation order against her husband under the Summary Jurisdiction (Married Women) Act, 1895, and subsequently made a will.

On Dec. 19, 1904, an application was made on motion that a grant of letters of administration with the will annexed should be made to the curator or guardian during the minority of J. The form of the motion, as filed, had been for a grant under s. 73 of the Probate Act, but counsel, at the hearing, submitted that he was entitled to a full grant, in view of the wording of s. 25 of the Matrimonial Causes Act, 1857, and the late President (Sir Francis Jeune), upon the election of guardian by the minor being brought in, acceded to the form of application submitted by counsel, and made the grant without requiring the husband to be cited, but said that the sureties to the administration bond must justify, as was required by Sir J. P. Wilde in the case of *In the Goods of Stephenson* (1856) L. R. I. P. & M. 287. A report of the case appeared in the Law Journal Reports.

The order was drawn up in the Probate Registry in the regular form adopted in such cases, that is, covering only such property as the deceased had acquired since the date of the separation order, but the applicant not being satisfied therewith, mentioned the matter to the present president (Sir Gorell Barnes) on Feb. 13, 1905, when his Lordship directed that the motion

PROBATE (Practice)—continued.

should be restored to the paper and be brought on for reargument.

The case has, however, never been reargued, and it is understood that the order stands in the form insisted on in the Probate Registry. The practice, therefore, remains unaltered, and the case before Sir F. Jeune became, under these circumstances, unreportable. **IN THE ESTATE OF JONES**

Jeune, Pres. [1905] W. N. 10

7. — Oath of Administratrix—Next of kin—Probate practice—Administration—Intestacy—Probate Act, 1857 (20 & 21 Vict. c. 77), s. 73.

Motion for administration under s. 73 of the Probate Act, 1857.

Gorell Barnes J. : It may be worth while to mention in Court, though I am not required to pronounce judgment, that I have had the papers in the case of *In the Goods of Reed*, (1874) 29 L. T. (N.S.) 932, looked up, and I find that the order made in that case was that administration should be granted "on the usual affidavits shewing her title to the grant being filed in the registry," and that when the matter got into the register the applicant swore an affidavit stating that she believed that the deceased died without father, and that she was the only next of kin ; but, when the grant went, it appears to have been considered by two registrars, who both initialled the grant and let it go to her as next of kin. This was right, because she was the mother, and was as much next of kin as the father. I do not think, therefore, that the report of the case ought to be acted upon without more consideration, for the examination of the cases seems to shew that the report does not give fully what took place.

I have also had the papers in the case of *In the Goods of Pridham* (1889) 61 L. T. (N.S.) 302, looked up, and it may be of interest to state that the return from the officer who took the note of the hearing in the C. A. was to the effect that the Court stated that the decision was not the subject of appeal. The actual wording of the officer's note is : "Application refused : this is not a subject of appeal." The report (p. 303) of the case states that "The Lords Justices held that the rule of practice must bow to the exigencies of each particular case. They would have been fully prepared to follow the authority cited (*In the Goods of Reed*) if the facts in this case were, in their judgment, sufficiently strong. Upon the evidence, however, they had come to the conclusion that the present application must be refused, and the appeal would, therefore, be dismissed." Then, from what the registrar has told me, the applicant, who had been thus refused, took out a citation, and, upon affidavit of non-appearance thereto, filed a fresh motion, which was also rejected. I suppose that the applicant was trying to get in under s. 73, and was refused—though the reason why is not stated—I suppose because, if the person, whom it was sought to pass over, were dead, s. 73 did not come into operation. After being so refused, the applicant in that case did swear the usual oath and take the grant as next of kin. **IN THE GOODS OF JACKSON**

Gorell Barnes J. [1902] W. N. 215

8. — Procedure—Intervener—Probate action—Married woman—"Proceeding instituted"—

PROBATE (Practice)—continued.

Independent interest—Separate estate—Restraint on anticipation—Costs of opposite party—Form of order—R. S. C., 1883, Order XII., r. 23—Probate Court Rules, 1862 (Contentious Business), r. 6—Married Women's Property Act, 1893 (56 & 57 Vict. c. 63), s. 2.

A summons by a married woman under R. S. C., 1883, Order XII., r. 23, and Probate Court Rules, 1862, r. 6, for leave to intervene in a pending probate action for the purpose of asserting her independent interest in the subject-matter, is a "proceeding instituted" by her within s. 2 of the Married Women's Property Act, 1893, and therefore the Court has jurisdiction to order, if it thinks fit, the costs of the action, as from the date of the summons to intervene, to be paid out of her separate property, including property which is subject to a restraint on anticipation.

The fact that the married woman may have obtained an order giving her leave to intervene in the action "as a plt.," followed by a delivery to the deft. of a pleading whereby she "adopts the pleadings of the plt.," does not the less render her intervention a "proceeding instituted" by her within the section.

Order of Jeune Pres. affirmed, with a variation. *CRICKITT v. CRICKITT*. (CRICKITT INTERVENING) C. A. [1902] W. N. 94; [1902] P. 177

—"Short cause"—Probate practice—Proof in solemn form.

See under PRACTICE—Short Cause.

9. — "Special circumstances"—Person missing entitled in priority to applicant—Administration—Probate Act, 1857 (20 & 21 Vict. c. 77), s. 73.

The "special circumstances" of each particular case are to be considered by the Court in granting or refusing administration under s. 73 to a person not primarily entitled to a grant: and, where the "special circumstances" justify the conclusion that the person who would be entitled in priority to the applicant may reasonably be presumed to be dead, the Court should grant administration to the applicant, upon his swearing that he believes himself to be the next of kin of the deceased.

In the Goods of Pridham, (1889) 61 L. T. 302, explained.

In the Goods of Reed, (1874) 29 L. T. 932, and *In the Goods of Cullicott*, [1899] P. 189, approved and followed. IN THE GOODS OF CHAPMAN

Jeune, Pres. [1900] P. 192

—"Special circumstances"—Sureties dispensed with.

See PROBATE—Sureties. 3.

10. — Summons — Service — Probate Contentious Rules, 1862, r. 100—R. S. C., Order LIV., r. 4E—Judicature Act, 1873 (36 & 37 Vict. c. 66), ss. 16, 23—Judicature Act, 1875 (38 & 39 Vict. c. 77), s. 18.

Rule 100 of the Probate Contentious Rules, 1862, remains in force notwithstanding Order LIV., r. 4E, of the Rules of the Supreme Court, and therefore in the case of a summons in a probate action one clear day's service before the

PROBATE (Practice)—continued.

return thereof is sufficient. *In re HALLSTONE. HOPKINSON v. CARTER* - C. A. [1909] W. N. 58; [1909] P. 118

11. — Universal devisee and legatee—No executor named—Administration or probate—Title of administrator to real estate—Probate Court—Land Transfer Act, 1897 (60 & 61 Vict. c. 65), s. 1, sub-s. 1; s. 24, sub-s. 2.

The universal devisee and legatee of a testamentary paper in which no executor is named, is entitled to administration with the will annexed, but not to probate according to the tenor of the will. The practice of the Probate Court hitherto prevailing in this respect has not been altered by the Land Transfer Act, 1897.

Per Stirling, L.J.: The title of an administrator, though it does not exist until the grant of administration, relates back to the time of the death, both as to real estate (by virtue of s. 1, sub-s. 1) as well as to personality. IN THE GOODS OF PRYSE C. A. [1904] W. N. 104; [1904] P. 301

12. — Will torn in pieces and pasted together again—Persons not sui juris interested in intestacy—Probate, on motion, to execute.

The Court, upon motion by the sole executrix, granted probate of a will which had been torn up and afterwards pasted together again, notwithstanding the fact that the persons interested under an intestacy were not sui juris and no guardian ad litem had been appointed by the Court to represent them. IN THE GOODS OF BRASSINGTON

Gorell Barnes J. [1902] P. 1

Presumption of Death.

1. — Practice—Surrounding circumstances—Form of oath.

The Court will, under certain circumstances, modify the usual form of oath in a case of presumption of death.

Where a passenger on a cross-channel steamer was missed when within about four miles from the port of arrival in France, the Court allowed a creditor, who was seeking administration, to swear that he believed the person in question died on that occasion, upon an affidavit that notice of motion had been duly served upon the wife and daughter of the presumed deceased. IN THE ESTATE OF WALKER

Gorell Barnes, Pres. [1909] P. 115

Priority.

— Administration—"Special circumstances"—Person missing entitled in priority to applicant.

See PROBATE—Practice. 9.

Probate Duty.

See under REVENUE—Probate Duty.

— New South Wales stamp duties—Share of deceased partner—Business carried on in the colony.

See NEW SOUTH WALES. 32.

— Probate duty—Duty claimed on property subject to special power of appointment by deceased.

See NEW SOUTH WALES. 28.

PROBATE (Probate Duty)—continued.

— Speciality debt in New South Wales liable to duty in Victoria.

See VICTORIA. 6.

Production of Probate.

— Company—Shares Executors—Production of probate—Transfer to one executor—Nominal consideration—Breach of trust. See COMPANY—Shares. 11.

Rectification of Will.

1. — *Practice — Will — Residuary clause—Clerical error—Motion to rectify—Order to strike out words—Refusal to insert another word.*

Upon an application to rectify a clerical error in the residuary clause of a will:—

Held, that words might be struck out, but that no fresh word could be inserted.

In the Goods of Bushell, (1887) 13 P. D. 7, and *In the Goods of Huddleston*, (1890) 63 L. T. 255, disapproved. IN THE GOODS OF SCHOTT
Jeune, Pres. [1901] P. 190

Renunciation.

1. — *Grant of administration — Grant to person without interest in the estate—Renunciation of next of kin solely entitled in distribution.*

The Court granted administration to a person who had no interest in the estate of an intestate, where the only next of kin, the sole person entitled in distribution, had renounced the right to the grant. *In the Goods of Johnson*, (1862) 2 Sw. & Tr. 595, followed. IN THE GOODS OF TRIGG
Gorell Barnes J. [1905] P. 42

2. — *Grant of administration—Intestacy—Renunciation by next of kin—Probate Act, 1857 (20 & 21 Vict. c. 77) s. 73—Grant needed to complete title to leaseholds—"Special circumstances"—Grant to more remote of kin (brother) refused.*

Under an intestacy, the sole property to which the deceased was entitled consisted of a one-third undivided share in certain leaseholds under the will of her grandfather, of whose estate the deceased's brother (the present applicant) was administrator de bonis non and himself entitled to another one-third undivided share. The sole next of kin renounced, and the husband of a deceased next of kin also renounced, and expressly consented to the brother taking a grant, which was required in order to complete the title on sale of the leaseholds in question:—

Held, that no "special circumstances" had been shown for invoking the aid of s. 73, and that the application by the brother for administration must be refused. IN THE GOODS OF BROTHERTON
Gorell Barnes J. [1901] P. 139

Revocation.

1. — *Administration — Nearest known relatives—Oath—Revocation of former grant—Costs.*

Motion for revocation of a grant of administration made by Gorell Barnes J. in the form and under the circumstances noted [1902] W. N. 213, 214. Some nearer relatives had since then made themselves known: hence the present application.

PROBATE (Revocation)—continued.

Counsel for the administratrix said he could not contest the right on the present application to have the grant revoked. That grant was taken by his client in the form it was, under pressure from Gorell Barnes J., who insisted that she should swear that she was the next of kin, and refused to allow any modified form of oath, such as had been adopted in certain cases (then cited: noted [1902] W. N. at p. 216). This course, which Gorell Barnes J. had forced upon her, had troubled her greatly at that time and ever since, as she had conscientious objections to swearing such an oath, and she had paid the money received by her as administratrix into a separate banking account, looking upon herself only as trustee thereof for the real next of kin. Some six months or more before she took out the general grant, she had taken a grant ad colligenda bona, and the estate had really been preserved through her instrumentality. She ought, therefore, to have not merely the costs of administration, but also such costs as she had properly incurred in relation to the estate of the deceased, though not paid as administratrix.

Jeune, Pres. That seems quite reasonable. The administratrix has behaved very properly throughout. The grant to her must be revoked and a fresh grant made as now asked. IN THE GOODS OF JACKSON

Jeune, Pres. [1903] W. N. 106

— Declaration of partial validity—Words or clauses omitted from probate.

See CEYLON. 7.

2. — *Dependent relative revocation—Unfulfilled intention to execute fresh will.*

The doctrine of dependent relative revocation may apply to a case where the document intended to be substituted for that which was destroyed is non-existent, and has never existed as a valid testamentary paper. (So held by Gorell Barnes J.)

Upon a finding of fact that the testator destroyed his will with the intention that it should be revoked conditionally on his executing a fresh will:—

Held (by Gorell Barnes J.), that, as he did not execute a fresh will, the will destroyed was entitled to probate. DIXON v. SOLICITOR TO THE TREASURY. Gorell Barnes J. [1905] P. 42

3. — *Disappearance of administrator—Motion—Revocation—Fresh grant to creditor—Practice—Intestacy—Administration.*

The original administrator of a deceased intestate disappeared and could not be traced. Fresh assets having become payable to the legal personal representative of the deceased, and the next of kin, other than the original administrator, declining either to renounce or to apply for a grant, the Court revoked the original letters of administration which had been granted to the deceased's brother, and made a fresh grant at the instance of a creditor. IN THE ESTATE OF FRENCH
Samuel Evans, Pres. [1910] P. 169

4. — *Document executed on a certain date but not dated—Costs.*

The testator having made a will in 1896 and a codicil in 1898, the substantial effect of which

PROBATE (Revocation)—continued.

was to leave his widow a life interest in his estate, with remainder to his children, and appointing executors and guardians of the children, executed, on Mar. 16, 1905, the day before his death, a document containing only the words, "all for mother." It was proved and admitted that "mother" meant the widow. Two of the sons attested the execution. The will and codicil, ignoring the last-mentioned document, were proved in common form by the widow and her co-executor, acting upon the advice of a solicitor. Subsequently, on other advice, the plt. issued a writ, as universal legatee and devisee, under the document of Mar. 16, 1905, claiming that the Court should pronounce for that document, as the true last will of the deceased, and asking revocation of the probate of the earlier will and codicil.

The deft. (the plt.'s co-executor), for himself as guardian ad litem of the three children, parties cited, all of whom were minors, put in a formal defence, setting up the earlier will and codicil, and submitting to the judgment of the Court the fact that probate thereof had been taken by the widow in conjunction with her co-executor. Alternatively the deft. asked that probate of all three documents might be granted to the plt. and deft. as executrix and executor.

Sir Gorell Barnes (Pres.), remarking that this was probably the shortest will ever known, held that nevertheless it was a will, covering the whole property of the deceased, which was said to amount to some 7000*l.* or so, following the case of *Henfrey v. Henfrey* ((1843) 4 Moo. P. C. 29), held that the document in question revoked the earlier documents, and that probate of these documents must accordingly be revoked, leaving it open to the widow to apply for a grant of administration with the last document (executed on Mar. 16, 1905, but in fact not dated) annexed. The costs would, of course, in such a case as this come out of the estate.

THORN v. DICKENS

Gorell Barnes, Pres.
[1906] W. N. 54

5. — *Inconsistent wills—Intention—Implication.*

A later will may revoke earlier testamentary documents, although the earlier documents may have disposed of the whole estate of the deceased, and although the last document contain no express clause of revocation and leave the residue undisposed of.

The intention of the testator or testatrix is to be gathered from a consideration of the substance, and not merely the form of the testamentary documents.

If the intention remain in doubt upon the face of the documents themselves, extrinsic evidence of the surrounding circumstances may be admitted to place the Court, as far as may be, in the position of the testator or testatrix at the time when the last document was executed. IN THE ESTATE OF BRYAN

Gorell Barnes, Pres.
[1907] P. 125

— Judgment, Action to set aside — Alleged fraud.

See RES JUDICATA. 1,

PROBATE (Revocation)—continued.

6. — *Letters of administration — Grant of will appointing executor—Suppression of will—Revocation of grant—Acts of administrator.*

A grant of letters of administration obtained by suppressing a will which appointed an executor is void ab initio, and all dispositions of the assets by the supposed administrator are void also, except acts done in a due course of administration.

Abram v. Cunningham, (1677) 2 Lev. 182, and *Graysbrook v. Fox*, (1564) 1 Plowd. 275, examined and applied. ELLIS v. ELLIS

Warrington J. [1905] W. N. 44 ;
[1905] Ch. 1 613

— Lunacy of one of the executors after proving will.

See PROBATE—Lunacy. 1.

7. — *Mesne acts of executors — Specific legacy — Bequest of shares to A. — Assent of executor — Transfer — Discovery of codicil — Shares given to B.—Recovery of shares—Mesne income—Common law action.*

Specific shares bequeathed to A. were duly transferred to A. by the executors after probate and assent. Some years later a codicil was discovered revoking the bequest to A. and giving the shares to B., but not changing the executors. The original probate was revoked and a fresh probate, including the new codicil, granted to the same executors :—

Held, that the specific legacy having in fact been assented to, the legal title with the right to sue for the legacy at common law vested in B., the actual legatee at the testator's death, and he could therefore recover both the shares and the mesne income from A.

Saunders' Case, (1599) 5 Rep. 12 a, and *Graysbrook v. Fox*, (1565) 1 Plowd. 275, applied.

Gittins v. Steele, (1818) 1 Swans. 199 (a pecuniary legacy), and *Jervis v. Wolferstan*, (1874) L. R. 18 Eq. 18, 26 (a share of residue), distinguished.

In re WEST. WEST v. ROBERTS - Swinfen Eady J. [1909] W. N. 143 ; [1909] 2 Ch. 180

— Probate—Fraud — Staying proceedings—Res judicata.

See RES JUDICATA. 1.

8. — *Several testamentary documents — Words of revocation—"Last and only will"—Intention gathered from the documents themselves—All the documents admitted to probate.*

A testator in 1898 executed a will disposing of all his property and appointing his daughter executrix.

In 1903 he duly executed a document on a printed form, commencing "This is the last and only will of me," whereby he bequeathed the proceeds of an insurance policy and appointed an executor.

In 1905 he duly executed a further document, described as "a codicil to the last will," whereby he made certain bequests and appointed other executors :—

Held, that the words "last and only" in the intermediate document did not preclude the

PROBATE (Revocation)—continued.

admission to probate of all three documents.
SIMPSON v. FOXON

Gorell Barnes, Pres.
 [1907] P. 54

9. — *Will—Several sheets of paper—Destruction of two—Effect—Substitution of other sheets—Execution—Signatures—Clause of revocation—Intention—Intestacy.*

A testator left a testamentary document in the form of a will, which was apparently duly executed, and consisted of five sheets of paper fastened together.

The fact was, however, that the first two sheets were executed in the year following the execution of the last three, and were not part of the document as originally executed. There was no evidence as to the contents of the two that were missing. The two that had been substituted contained the ordinary commencement, followed by a revocation clause, and were signed by the testator in the presence of the same two witnesses who had before attested the others :—

Held, that the destruction of the first two sheets of the original will effected a revocation of the three that remained :

Held, further, that the signing by the testator of the two substituted sheets in the presence of the witnesses was not intended to make them operate as his will, and that the result was an intestacy. **LEONARD v. LEONARD**

Gorell Barnes J. [1902] P. 243

10. — Wills—Codicils—Revocation—Revival.

In 1895 the testator executed a will and two codicils. In 1898 the same solicitor, who had prepared that will and the second codicil thereto, drew another will, which revoked "all wills, codicils, and testamentary dispositions" theretofore made by the testator. The three documents of 1895 were destroyed immediately after the execution of the will of 1898. In 1899 he executed a codicil which was expressly declared to be a codicil to the will of 1898, and which made some slight alterations in the disposition under that will of a portion of the residue. In 1900 a solicitor, who had prepared the first of the codicils in 1895, drew for the testator a codicil, described as a codicil to the will of the 10th day of Jan. 1895, and concluding with a confirmation of the said will "as altered by the codicils thereto." This last codicil made certain charitable bequests.

After the testator's death, in 1901, the will of 1898 and the two codicils of 1899 and 1900 were the only testamentary documents found among his papers.

Upon motion by the executors of the will of 1898 (three of whom were also named as executors in the will of 1895) :—

The Court (**Gorell Barnes J.**) granted probate of the will of 1898 and codicils of 1899 and 1900, omitting from the last document the words of reference to the will of 1895.

Rogers v. Goodenough, (1862) 2 Sw. & Tr. 342, followed.

In the Goods of Chilcott, [1897] P. 223, distinguished. **IN THE GOODS OF READE**

Gorell Barnes J. [1902] P. 75

PROBATE (Revocation)—continued.

11. — "*Writing declaring intention to revoke*" — *Practice—Wills Act, 1837 (1 Vict. c. 26), s. 20—Form of grant.*

Where a testatrix duly executed, in accordance with s. 20 of the Wills Act, a paper writing declaring her intention to revoke her existing will, the Court, in pronouncing for the revocation, directed a grant of administration to issue, as upon an intestacy, with a note thereon that the grant was so made in consequence of the execution of the said paper writing, but without annexing the said paper writing to the grant. **TOOMER v. SOBINSKA**

Bargrave Deane J.
 [1907] P. 106

Scotland.

— Appointment—Donee domiciled in Scotland
 — Power duly exercised by will—Holograph codicil—Probate in England—Defective execution aided.
See POWER OF APPOINTMENT. 29.

Soldier's Will.

1. — "*Effects*" to be "*credited*" — *Wills Act, (1 Vict. c. 26), s. 11.*

A declaration, made by a soldier on active service at the instance of the military authorities, who made a note of it at the time, to the effect that in the event of his death he desired his "effects" to be "credited" to one of his sisters (named) :—

Held, to be a valid testamentary document. **IN THE GOODS OF SCOTT**

Jeune, Pres. [1903] P. 243

2. — *Mobilization—Wills Act (1 Vict. c. 26), s. 11.*

Mobilization may be fairly taken as a commencement of that which, in Roman law, was understood by the words "in expeditione." If the order to mobilize has been received, although any particular member of the force may himself have taken no step under it, yet the order itself so affects his position, as a unit of the whole force, as to place him "in expeditione."

On Sept. 7, 1899, a battalion stationed in India was "warned" for service, and two days later was "ordered to mobilize" for active service in South Africa, and embarked on Sept. 19, 1899. The deceased, a private soldier in that battalion, wrote, between Sept. 8 and Sept. 19, an undated letter, which was received by the pl. in England on Oct. 2, 1899. The writer died of fever during the siege of Ladysmith on Feb. 9, 1900.

The letter contained (inter alia) the expressions : "If you have a letter to say that I am killed, then the lot is for you. . . . You will receive the lot if I am killed in action, for I shall make out my will in your favour."

No other document in the nature of a will was ever received or discovered, and the father of the deceased, the latter being unmarried, took out letters of administration.

The pl. having propounded the letter as the will of the deceased soldier, claimed revocation of the grant of administration :—

Held, that the document was testamentary, and that it was a soldier's will within the

PROBATE (Soldier's Will)—continued.

meaning of s. 11 of the Wills Act. *GATTWARD v. KNEE* **Jeune, Pres. [1902] P. 99**

Followed by *Gorell Barnes J., May v. May*, [1902] P. 103, n. *See next Case.*

3. — Soldier's will.

Where the deceased, who was a man of education and had risen from the ranks to the position of quartermaster and hon. lieutenant in the Grenadier Guards, had sailed with his wife to Gibraltar, and was afterwards seen off by her from that place under orders for South Africa, the wife, it appeared, wrote to him afterwards, telling him about the will of a brother officer, whose affairs, she said, had been left in disorder. He answered that letter under date Mar. 22, 1900; saying, "As regards my will, I am sorry I have not made one. I leave everything to you, as, should the boy require anything, you will provide for him." The wife received this letter on April 16, 1900; and she subsequently received other letters of later dates. The widow, who was now in receipt of a pension from the War Office, propounded the letter of Mar. 22, 1900, as the will of the deceased. The deft., who was their son, aged twelve, appeared by his guardian ad litem and opposed.

Gorell Barnes J., having been informed of the President's decision in *Gattward v. Knee*, [1902] P. 99 [see preceding Case], followed it and pronounced for the document in question. Costs as between solicitor and client out of the estate. *MAY v. MAY.*

Gorell Barnes J. [1902] P. 103, n.

Sureties.

— Administration with will annexed—Advertisements for claims against estate—Sureties dispensed with.

See PROBATE—Administration. 3.

1. — Practice — Administration — Grant to official receiver in bankruptcy — Sureties dispensed with.

In a case of a grant of administration to an official receiver in bankruptcy, who, as an official of the Board of Trade, had given security for the due performance of his duties, the Probate Court dispensed with sureties to the administration bond in the special circumstances of the case. *IN THE ESTATE OF CAUSTON.*

Gorell Barnes, Pres. [1906] P. 124

2. — Practice—Administration—Nominee of Board of Education—Sureties dispensed with.

The Court dispensed with sureties to the administration bond where the person applying for administration was a nominee of the Board of Education. *IN THE ESTATE OF BRYAN. BOARD OF EDUCATION v. REUBELL.*

Jeune, Pres. [1905] P. 88

3. — "Special Circumstances"—Sureties dispensed with—Administration.

While the Court has no power to give leave to a proposed administratrix to carry on the deceased's business, it may, under special circumstances and for good cause shewn, allow her a free hand in the administration, by dispensing with sureties to the administration bond, and by

PROBATE (Sureties)—continued.

accepting the personal bond of the proposed administratrix for the administration of the estate according to law. *IN THE GOODS OF CORY* **Jeune, Pres. [1903] P. 62**

Trustees.

— Appointment of new trustees — Court of Probate Act.

See TRUSTEE—Appointment. 2.

1. — Executors according to the tenor—Trustees — Direction for advancement and maintenance of children.

A testator by his will directed the payment of his debts and funeral and testamentary expenses by his "executors hereinafter named," but failed to name any persons as executors. The will contained certain specific legacies and an expression of the testator's wishes as to the education and advancement of certain of his children, the cost of such education and advancement to be taken out of their several estates, and the remainder to be invested in freehold ground rents. The will proceeded to appoint the testator's widow and two of his sons as "trustees," gave certain bequests to the latter "for their services," and disposed of the residue of the testator's property:—

Held, that the trustees were executors according to the tenor, and entitled to probate. *IN THE GOODS OF KIRBY* **Jeune, Pres. [1902] P. 188**

In the Goods of Way. *Gorell Barnes J.*, [1901] P. 345.

See also WILL—Executor. 1.

PROBATE DUTY.

See under REVENUE—Probate Duty.

PROBATION OF OFFENDERS.

See under CRIMINAL LAW.

PROCURATOR FISCAL—Remuneration — Preliminary inquiries into non-prosecuted cases.

See SCOTTISH LAW. 21.

"PRODIGAL"—Payment out of court—French contract entitled—Conflict of laws.

See CONFLICT OF LAWS. 11.

PRODUCTION OF DEEDS—Non-production of title-deeds—Fraudulent solicitor—Postponement of legal mortgage.

See MORTGAGE—Priority. 4.

PRODUCTION OF DOCUMENTS—Discovery—Practice.

See under DISCOVERY.

— Right to take copies—Practice.

See under DEEDS, &c.

PROFIT—Damages — Remoteness — Breach of contract—Contingent profits.

See DAMAGE AND DAMAGES. 3.

— Director — Fiduciary relation — Conflict of interest with duty — Contracts with company—Account.

See COMPANY—Directors, 9.

PROFIT—*continued.*

- Promoter—Secret profit—Duty as to extent of disclosure.
See COMPANY—Promoters. 2.
- Secret profit—Commission, Right to retain.
See PRINCIPAL AND AGENT.
- Trustee making profit out of trust—Sale of goods to business by trustees at a profit—Retention of profit.
See WILL—Trustee. 2.

PROFIT À PRENDRE—Common of fishery—Fluctuating body—Prescription—Presumption of legal origin.
See FISHERY. 8.

- Prescription—Pasturage—Surveyor of highways—Unallotted land.
See PRESCRIPTION. 2.

PROFIT COSTS.—Agreement to share, between solicitors who represent different conflicting interests—Misconduct—Administration actions.
See SOLICITOR—Misconduct. 1.

PROHIBITION—Affidavit, Insufficiency of—Waiver—Application for judgment summons—Jurisdiction.
See COUNTY COURT—Practice. 2.

- “Collision”—Damage by ship to pier—County Courts Admiralty Jurisdiction.
See SHIPPING—Collision. 11.

- Consistory Court—Patent of Commissary and Vicar-General—Legality of reservation.
See ECCLESIASTICAL LAW—Practice. 2.

- Contract—Validity—Corporation shareholders—City of London—Electric lighting.
See ELECTRIC LIGHT. 4.

- Electric lighting—Special Act—Statutory prohibition against supplying electric energy beyond statutory areas—Company.
See ELECTRIC LIGHT. 6.

- Holy communion, Repulsion from—Marriage with deceased wife's sister—Criminal suit—Monition—Prohibition.
See ECCLESIASTICAL LAW—Holy Communion. 2.

- Income tax—Jurisdiction—Trade carried on partly in Great Britain.
See REVENUE—Income Tax. 31.

- Jurisdiction—Insufficiency of affidavit—Affidavit, Form of.
See COUNTY COURT—Practice. 2.

1. — *Mayor's Court—Alternative modes of proof, one shewing jurisdiction, the other not.*

The maker of a promissory note which was expressed in the body of it to be payable at an address within the City of London was sued upon the note in the Mayor's Court. Neither plt. nor deft. resided or carried on business within the City, nor did any part of the cause of action arise within it, except the fact that

PROHIBITION—*continued.*

presentment at the address named was, unless waived, necessary to render the deft. liable:—

Held, that although the plt.'s case might be established by proving waiver of presentment, and therefore without shewing that any part of the cause of action arose within the jurisdiction, upon the plt. undertaking to rely upon presentment in the City and not upon waiver, an order for prohibition ought not to be granted. *JOSOLYNE v. ROBERTS* Div. Ct. [1908] 2 K. B. 349

- Mines and minerals—Lease—Construction clause against working adjoining minerals—Absolute prohibition.
See MINES. 8.

- Remitted action—Invalid order to remit not appealed against—Objection to jurisdiction at trial.
See COUNTY COURT—Practice. 13.

- Rule absolute against justices for prohibition without costs—Appeal does not lie as to costs.
See AUSTRALIA. 11.

- Service out of the jurisdiction—Action founded on breach of contract—Defendant resident in Scotland.
See COUNTY COURT—Prohibition. 1.

PROJECTION—In street—Advertisement sign attached to building—Offences—Limitation of time.
See LONDON—Buildings. 23.

PROLONGATION—Patent.
See under PATENT—Prolongation.

PROMISE—Imperfect gift of personalty—Indefinite gift—Promise to pay in the future.
See ADMINISTRATION. 13.

PROMISSORY NOTE—*Inchoate instrument—Negotiation—Bills of Exchange Act, 1882* (45 § 46 *Vict. c. 61*) s. 20.

The deft., having agreed to borrow the sum of 15*l.* from A., signed and handed to A. a blank stamped paper which he authorized A. to fill up as a promissory note payable to A. and for the sum of 15*l.* only. The stamp upon the paper, however, was sufficient to cover a sum of 30*l.* A., in breach of his authority, fraudulently filled up the paper as a promissory note for 30*l.* and payable to the plt.; and he handed it to the plt., who gave value for it without notice of A.'s breach of authority. A. misappropriated the proceeds. In an action by the plt. on the promissory note:—

Held, that the delivery of the note by A. to the plt. was not a negotiation of the note within the meaning of the proviso to s. 20, sub-s. 2, of the Bills of Exchange Act, 1882, so as to entitle the plt. to recover.

Quære, whether the payee of a note can under any circumstances be a holder of it in due course, *HERDMAN v. WHEELER*

Div. Ct. [1901] W. N. 251;
[1902] 1 K. B. 361

PROMISSORY NOTE—continued.

— Joint and several—Proviso as to giving time to either party.

See **BILL OF EXCHANGE**. 5.

— Joint and several promissory note signed by husband and wife for debt of third party—Liability of wife.

See **HUSBAND AND WIFE—Liability**. 3.

2. — *Negotiable instrument—Signature in blank—Authority to fill up note to limited amount—Excess of authority—Advance by payee on faith of note—Estoppel—"Holder in due course"—Negotiation—Bills of Exchange Act, 1882 (45 & 46 Vict. c. 61), s. 20.*

Where a debt, in an action brought by the payees of a promissory note against him, as maker of the note, had signed his name on a blank stamped piece of paper, and had entrusted the paper to another person with authority to fill it up as a promissory note for a certain sum payable to the plts. and deliver it to the plts. as security for an advance to be made by them, and that person had fraudulently filled the paper up as a promissory note for a larger amount and obtained by means of it an advance of that amount from the plts., who had no notice of the fraud :—

Held, that the debt, was estopped from denying the validity of the note as between himself and the plts., and therefore the action was maintainable against him for the full amount of the note.

Herdman v. Wheeler, [1902] 1 K. B. 361. discussed and distinguished. **LLOYDS BANK, LD. v. COOKE** C. A. [1907] W. N. 67 ; [1907] 1 K. B. 794

Note.

This case was distinguished by **C. A., Smith v. Prosser**, [1907] 2 K. B. 735. See next Case.

3. — *Negotiable instrument—Signature in blank—Delivery to agent for safe custody—Fraudulent negotiation of note by agent—Rights of bona fide indorsee for value.*

The debt, in South Africa, being about to leave for England, gave to two persons a power of attorney to act for him in his absence. He further, in anticipation of the possibility of funds being suddenly required during his absence, signed his name on two blank unstamped pieces of paper which were lithographed forms of promissory notes, and handed them to one of the two agents with instructions that they should be retained in the custody of his attorney until the debt, should, by telegram or letter from England, give instructions for their issue as promissory notes and as to the amounts for which they should be filled up. After the debt, had left South Africa, the attorney to whom he had handed the documents, without waiting for instructions from the debt. (which were in fact never given), and in fraud of the debt., filled in the blanks in the documents so as to make them appear to be promissory notes for considerable sums and sold them to the plt., who took them honestly and in good faith, and without notice of the fraud, and gave full value for them. For the purpose of suing upon them in England the notes were stamped as foreign bills :—

Held that, as the debt, handed the notes to his agent as custodian only, and not with the

PROMISSORY NOTE—continued.

intention that they should be issued as negotiable instruments, he was not estopped from denying the validity of the notes as between himself and the plt., and that the action was not maintainable.

Lloyds Bank, Ltd. v. Cooke, [1907] 1 K. B. 794, distinguished (See preceding Case.) **SMITH v. PROSSER** C. A. [1907] 2 K. B. 735

Note.

See preceding Case.

— Stamp—Payable at sight—Ad valorem duty. See **REVENUE—Stamps**. 20.

— Stamp duty—Treasury note of foreign Government—"Marketable security." See **REVENUE—Stamps**. 14.

PROMISSORY OATHS.

See under **OATHS**.

PROMOTER—Company.

See under **COMPANY—Promoter**.

— Lands Clauses Act.

See under **LANDS CLAUSES ACTS**.

PROOF — Administration — Insolvent estate — Income tax—Method of calculation. See **ADMINISTRATION**. 14.

— Bankruptcy.

See under **BANKRUPTCY—Proof**.

— Bankruptcy of shareholders—Proof in bankruptcy for liability in respect of future calls—Effect as to paying shares up. See **COMPANY—Bankruptcy**. 2.

— Burden of proof—Lien passing to trustee in bankruptcy.

See **BANKRUPTCY—Trustee**. 5.

— Collision—Inevitable accident—Onus of proof — Compulsory pilotage — Singapore Harbour.

See **SHIPPING—Collision**. 59.

— Company—Winding-up.

See under **COMPANY—WINDING-UP—Proof**.

— Compromise with one trustee—Release pro tanto of the other—Right to prove in the bankruptcy of another trustee.

See **TRUSTEE—Release**. 1.

— Creditor—Proof for interest—Solvent company—Gaming and wagering contract — Interest on sums deposited as cover.

See **COMPANY—WINDING-UP—Proof**. 1.

— Damage, Proof of—Company—Prospectus—Non-disclosure of contract.

See **COMPANY—Prospectus**. 12.

— Divorce—Foreign marriage—Expert evidence — Practice.

See **DIVORCE—Foreign Marriage**. 1.

— Domicil of origin—Abandonment—Acquiring fresh domicile — Evidence — Onus of proof.

See **DOMICIL**. 2.

— Gaming debt—New consideration—Provable debt.

See **GAMING**. 1.

PROOF—*continued.*

- Infant — Necessaries — Evidence — Onus of proof — Sale of goods.
See **INFANT**—**Necessaries**. 1.
- Mayor's Court—Alternative modes of proof, one shewing jurisdiction, the other not.
See **PROHIBITION**. 1.
- Negligence — Burden of proof — Telegraph Acts—Damage—Compensation.
See **NEGLIGENCE**.
- Negligence — Burden of proof — Statutory duty—Coal Mines Regulation Acts.
See **MASTER AND SERVANT**—**Negligence**. 1.
- Onus of proof—Accident—Evidence—Inference—Workmen's compensation.
See **MASTER AND SERVANT**—**Compensation**. 88.
- Onus of proof—Damage to cargo—Bill of lading—Charterparty.
See under **SHIPPING**—**Charterparty**.
- Onus of proof—Lost acknowledgment—Parol evidence—Specialty debt—Bond.
See **LIMITATIONS, STATUTES OF**. 3
- Onus of proof — Ship — Damage to jetty—Negligence—Force majeure.
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See **HABEAS CORPUS**. 2.**PROVIDENT SOCIETIES.***See* **INDUSTRIAL AND PROVIDENT SOCIETIES**.**PROVINCIAL LEGISLATURE**—Powers of.*See* under **PARLIAMENT**.**PROXY**—Company.*See* under **COMPANY**—**Voting**.

- Powers of directors—Influencing votes—Payments for proxy papers and stamps—Ultra vires.
See **RAILWAY**—**Directors**. 1.

- Shareholder only to be proxy—Nomination of unqualified proxy—Disqualification removed before proxy is used.
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— Drain—Prescription—Highway.

See **PRESCRIPTION**. 1.

- Corporation — Ultra vires — Special Act — Covenant not to erect buildings — Restriction of powers given for benefit of public.

See **VENDOR AND PURCHASER**—**Corporation**. 1.

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PUBLIC AUTHORITIES PROTECTION — Act done in "intended" execution of public duty.

See SHIPPING—Costs. 1.

1. — *Action for damages for death of deceased person—Statute of Limitations—Deceased's right of action barred—Public authority, Action against—Fatal Accidents Act, 1846 (9 & 10 Vict. c. 93), s. 1—Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61), s. 1 (a).*

An action can only be maintained by the representative of a deceased person under the Fatal Accidents Act, 1846, where that person could, if alive, have himself maintained an action in respect of his injuries against the deft.

The husband of the plt., having in 1902 sustained injuries, as it was alleged, through the negligence of the defts., a public authority, ultimately died of those injuries in 1904. The plt. having commenced an action against the defts. under the Fatal Accidents Act, 1846, to recover damages for his death :—

Held, that the action could not be maintained, inasmuch as the right of action of the deceased, if alive, would have been barred by the Public Authorities Protection Act, 1893, s. 1 (a). **WILLIAMS v. MERSEY DOCKS AND HARBOUR BOARD** C. A. [1905] W. N. 68 : [1905] 1 K. B. 804

— Action for declaration of title—Delay—Continuance of injury.
See HIGHWAY. 38.

— Contract — Action of deceit — Fraudulent representation—Public authorities protection.
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— Costs—Creation of urban district—Subtraction of parish from rural district.
See LOCAL GOVERNMENT. 12.

— Costs — "Solicitor and client" — Electric lighting.
See CORPORATION. 16.

— Costs — Taxation — Action against public authority.
See COUNTY COURT—Costs. 7.

— Injunction—Nuisance—Pollution of river—Continuance of injury.
See RIVER. 1.

2. — *Limitation of action—Magistrate—Improper conviction—Distress—Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61), s. 1.*

A magistrate, having convicted and fined the plt. for an offence under the Vaccination Acts, issued a distress warrant in default of payment of the fine, and a distress was put in on the plt.'s premises accordingly. Subsequently the conviction of the plt. was quashed for want of jurisdiction. In an action by the plt. against the magistrate for illegal distress :—

Held, that the period limited by s. 1 of the Public Authorities Protection Act, 1893, began to run from the entry on the plt.'s premises, and not from the date of the conviction. **POLLEY v. FORDHAM** Div. Ct. [1904] 2 K. B. 345

PUBLIC AUTHORITIES PROTECTION—contd.

3. — *Limitation of action—Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61), s. 1.*

The protection given by the Public Authorities Protection Act, 1893, extends to a county council or other public authority in their capacity as owners of a tramway acquired and worked by them under statutory powers, and an action to recover damages for injuries sustained by a passenger on one of their tramcars in consequence of the alleged negligence of their servants must therefore be commenced within six months of the act, neglect, or default complained of.

The Ydun, [1899] P. 236, followed. **PARKER v. LONDON COUNTY COUNCIL** Channell, J. [1904] 2 K. B. 501

Note.

This case was followed by C. A., *Lyles v. Southend-on-Sea*, [1905] 2 K. B. 1. See next Case.

— Limitation of time for bringing action.
See HIGHWAY. 29—32.

4. — *Limitation of time for bringing action—Tramway worked by municipal authority—Injury to passenger—Action for damages—Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61), s. 1.*

A municipal corporation constructed and worked an electric tramway under the authority conferred on them by an Order made by the Light Railway Commrs., in pursuance of the Light Railway Act, 1896, and confirmed by the Board of Trade, and having, therefore, by s. 10 of that Act, the force of a statute. On the construction of the Order the Court held that it imposed on the corporation an obligation, after the tramway had been opened for traffic, to run cars and to carry passengers in them.

A passenger on one of the cars, who had paid his fare and had taken a ticket in the ordinary form, without any special conditions, was while travelling injured by the fracture of the conducting-rod, which fell upon him. He brought an action against the corporation for damages, alleging that the accident had happened through the negligence of the defts. or their servants :—

Held, that the action was in substance founded on a breach by the defts. of their duty as a public authority under their Light Railways Order; that they were entitled to the protection given by the Public Authorities Protection Act, 1893; and that, as the action had not been brought within six months from the happening of the injury, it must fail.

Decision of Bigham J. affirmed.

The Ydun, [1899] P. 236, and *Parker v. London County Council*, [1904] 2 K. B. 501, followed. **LYLES v. SOUTHELD-ON-SEA CORPORATION** C. A. [1905] W. N. 63 ; [1905] 2 K. B. 1

5. — *Limitation of time for proceedings—Claim under contract—Contract incidental to public duty—Poor law guardians—Limitation of time for payment—Claim incurred or become due—Amount to be ascertained by arbitration—Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61)—Poor Law (Payment of Debts) Act, 1859 (22 & 23 Vict. c. 49).*

PUBLIC AUTHORITIES PROTECTION—contd.

The guardians of F. entered into a contract with S., a builder, for certain works required by them for the purpose of carrying out their public duties. The works were completed on May 3, 1901, and paid for in Sept. of that year. S. then claimed an additional sum by way of damages for loss alleged to have been caused by negligence and frequent changes of plans on the part of the defts. The contract contained an arbitration clause, and the plt.'s claim was referred to arbitration in Nov. 1902. The defts. took two preliminary objections—(1.) that the claim was for neglect of default in the execution of the defts.' public duty, and proceedings had not been commenced within six months as required by the Public Authorities Protection Act, 1893, and (2.) that the amount claimed became due, if at all, on or before May 3, 1901, and by the Poor Law (Payments of Debts) Act, 1859, could only be paid within the half-year commencing Mar. 30, 1901, or within three months afterwards. This action was brought for the determination of these two points of law:—

Held, (1.) that the plt.'s claim was in respect of a private duty arising out of a contract, not for any negligence in performing a statutory or public duty, and the Public Authorities Protection Act did not apply; (2.) that the sum (if any) owing to the plt. did not become due within the meaning of the Poor Law (Payment of Debts) Act, 1859, until the amount was ascertained by arbitration according to the contract. **SHARPINGTON v. FULHAM GUARDIANS**

Farwell J. [1904] W. N. 146
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PUBLIC HEALTH.

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Public Health Acts Amendment Act, 1907 (7 Edw. 7, c. 53), is an Act to amend the Public Health Acts.

Public Health Act, 1908 (8 Edw. 7, c. 6), is an Act to make the provisions of the Public Health Act, 1875, with respect to the provision and regulation of markets applicable in rural districts.
See under MARKET.

Public Health Acts Amendment Act, 1907. Circular, Dec. 23, 1907, to Councils of Municipal Boroughs and Urban and Rural Districts. 1908. (R.—Loc. Govt. Bd.). Price 1d.

PUBLIC HEALTH (LONDON).

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QUANTUM MERUIT—Director—Vacating office—Company's lien on directors' shares for repayment of fees.

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QUARRIES—Notice of Accidents Act, 1906 (6 Edw. 7, c. 53).

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— No separate Court of—Costs of unsuccessful prosecutions—Borough having separate commission of the peace.

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— Overseer—Solicitor—Exemption—Appeal to quarter sessions—Costs—Writ of privilege.

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— Poor law — Desertion — Separation order — Lunatic—Irremovability—Appeal to quarter sessions.

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QUEBEC—Laws of.

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QUEENSLAND.—*Pacific Cable Act, 1901 (1 Edw. 7, c. 31), provides for the construction and working of a submarine cable from the Island of Vancouver to New Zealand and to Queensland.*

— Australia generally.

See under **AUSTRALIA**.

1. — *Australian Commonwealth Act, 1903, s. 39, sub-s. 2—Construction—Act not retrospective—Right of appeal in writ pending when the Act was passed.*

QUEENSLAND—continued.

Held, that, although the right of appeal from the Supreme Court of Queensland to His Majesty in Council given by the G. in C. of June 30, 1860, has been taken away by the Australian Commonwealth Judiciary Act, 1903, s. 39, sub-s. 2, and the only appeal therefrom now lies to the High Court of Australia, yet the Act is not retrospective, and a right of appeal to the King in Council in a suit pending when the Act was passed and decided by the Supreme Court afterwards was not taken away. **COLONIAL SUGAR REFINING CO. v. IRVING. P. C. [1905] A. C. 369**

Note.

See next Case.

2. — Power of the Commonwealth Parliament — Power to impose an excise duty to take effect from the date of the minister's proposal — Commonwealth Acts, Nos. 11 and 14 of 1902 — Constitution Acts (63 & 64 Vict. (Imperial), c. 12), ss. 51, 90 — Construction — Law of Australia.

On July 26, 1902, Excise Tariff, 1902 (No. 11), was passed by the Commonwealth Parliament, imposing certain uniform duties of excise, including a duty on manufactured sugar, the produce of Australia, as from Oct. 8, 1901, the day on which the minister had moved a resolution to that effect in Committee of Ways and Means of the House of Representatives.

On Oct. 16, 1902, the Customs Tariff, 1902 (No. 14), was passed, which imposed uniform duties of customs as from the same date.

In a suit by the appellant to recover back excise duties on manufactured sugar collected from them between Oct. 8, 1901, and July 26, 1902, on the grounds (1.) that it was ultra vires of the Commonwealth Parliament to impose them until the actual imposition of uniform custom duties; (2.) that the duties were imposed in a manner which discriminated between States:—

Held, that Excise Tariff, 1902, was intra vires of the Commonwealth Parliament under the true constitution of the material sections of the Constitution Act (63 & 64 Vict. c. 12). Neither s. 90 of that Act nor any other section expressly or impliedly prohibited the imposition of uniform excise duties previously to that of uniform customs duties. After that event the power to impose excise duties was exclusively vested in the Commonwealth, and the power of the States in that respect ceased. Under s. 51 Parliament has power, in accordance with the usual practice, to impose the duties as from the date of the resolution (s. 4 of Excise Tariff, 1902):—

Held, also, that s. 5 of Excise Tariff, 1902, which allowed an exemption in the case of goods on which customs or excise duties had been paid under State legislation before Oct. 8, 1901, is not a discrimination between States within the meaning of s. 51 of the Constitution Act, but is applicable to all the States alike, for a purpose which was temporary and necessary. **COLONIAL SUGAR REFINING CO. v. IRVING**

P. C. [1906] A. C. 360

Note.

See preceding Case.

3. — Practice — Setting aside — Action for malicious prosecution — Verdict set aside — New trial.

QUEENSLAND—continued.

In discharging the verdict of a jury, the Court must be satisfied that there is such a preponderance of evidence against it as to make it unreasonable and almost perverse that the jury, when instructed and properly assisted by the judge, should have returned it.

Metropolitan Ry. Co. v. Wright, (1886) 11 App. Cas. 152, followed.

A verdict for damages for having been adjudged insolvent maliciously and without reasonable and probable cause was rightly set aside when it appeared that, assuming the plt. was not keeping out of the way of his creditors with a view to delay them, there was evidence which might lead a reasonable man to believe that he was.

The question of reasonable and probable cause should not be left to the jury, but determined by the judge on facts found by the jury. **COX v. ENGLISH, SCOTTISH, AND AUSTRALIAN BANK, LD. - - - P. C. [1905] A. C. 168**

— Privy Council Appeals.

See under PRIVY COUNCIL.

4. — Rates — Queensland Local Authorities Act of 1902, ss. 192, 265 — Construction — General rates — Application of general rates levied in one division to construction of works in another.

Held, that according to the true construction of ss. 192, 265, of the Queensland Local Authorities Act of 1902, the respondents (the council of the city of Brisbane being its duly constituted local authority) are not entitled to expend the produce of general rates levied upon the rateable lands in one division of their area upon works constructed in another, in the absence of a resolution under s. 265 declaring in the mode provided by that section that such works are general works and that their cost shall be defrayed out of general revenue.

The appellant sued, as representing an association of ratepayers, for a declaration that in the absence of such resolution the balance of all general rates received in the several divisions, after deduction of all items chargeable to general revenue, shall be expended solely upon works within the respective limits thereof; the respondents claimed that they were authorized in their discretion to apply the whole of the general rates received by them upon any works within any division without regard to the actual amount of the general rates received by them in respect of any of the divisions:—

Held, that both contentions must be overruled. The effect of the sections is in the absence of such resolution to limit the power of expenditure upon works in a division to the amount of general rates received in it, but not to preclude the application of any unexpended balance thereof to the general purposes of the whole area. **ATT.-GEN. FOR QUEENSLAND v. BRISBANE CITY COUNCIL - - - P. C. [1909] A. C. 582**

QUEENSTOWN HARBOUR—Collision—Narrow channel.

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See NUISANCE. 10.**QUIET ENJOYMENT**—Covenant for—Breach.*See* LANDLORD AND TENANT. 26, 64—68.— Covenant for—Tenant for life—Power to appoint portions—Mortgage of settled estates—Priority—Implied release of power.
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— Notice to quit—Tenancy at yearly rent—Three months' notice—Expiration of notice.

See LANDLORD AND TENANT. 54.

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See LANDLORD AND TENANT. 55.**QUITTANCES**—Copyholds—Delay in enfranchisement—Compensation—Interest.
See LANDS CLAUSES ACTS. 15.**QUO WARRANTO**—Remedy by—Councillor—Disqualification—Bankruptcy.
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RAILWAY.

Railway and Canal Traffic Acts, 1854, 1873, 1888, and 1894; and other Statutes. With the General Rules of the Railway and Canal Commission. 1910 (H.—Legal). Price 1s.

Railway and Canal Traffic Acts, &c. With the General Rules of the Railway and Canal Commission. Price 1s. 1907 (H.—Legal).

Railway and Canal Commission—Rules, dated Jan. 1, 1909, made by the Railway and Canal Commissioners in pursuance of s. 20 of the Railway and Canal Traffic Act, 1888 (51 & 52 Vict. c. 25), varying rules 60 and 65 of the Railway and Canal Commission Rules, 1889. Reprint from W. N. 1909 (May 22), p. 191. See CURRENT INDEX, 1909, p. clii.

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Workmen's Compensation, col. 2137.

In General.

— Canadian railways.

See under **CANADA—Railway.**

— Claim to take lands for railway purposes—**Compensation—Cape of Good Hope Act.**
See **CAPE OF GOOD HOPE.** 7.

— Joint owners, Rights of—Agreement to construct a railway jointly—**Construction.**
See **NEW SOUTH WALES.** 30.

— “Railroad”—**Tramway—Workmen's Compensation.**
See **MASTER AND SERVANT—Compensation.**

— Shop—Temporary newspaper stall at railway station—Notice of hours of employment of young persons.
See **SHOP.** 1.

— Stamp—“Conveyance on sale”—Sale, what amounts to—**Minerals under railway.**
See **REVENUE—Stamps.** 11.

— Stamp duty—Increase of nominal capital.
See **REVENUE—Stamps.** 2, 23.

— Street—**Paving—“Back roads”—“Cross roads”—Summary jurisdiction—Local government.**
See **STREETS.** 17.

Accidents.

Prevention of Accidents Rules, 1902, made Aug. 8, 1902, by Board of Trade pursuant to s. 1, sub-s. 1, of the Railway Employment (Prevention of Accidents) Act, 1900 (63 & 64 Vict. c. 27).
St. R. & O. 1902, No. 616.

See also under **RAILWAY—Servants.**

Accommodation Works.

1.—“*Accommodation works*”—*Grant of easement—Level crossing—Extent of Landowner's right of user—Railways Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 20), ss. 16, 68—76.*

Under the provisions of the **Railways Clauses Consolidation Act, 1845**, for the construction by a ry. co. of “accommodation works” for the benefit of a landowner whose land is severed by the ry., the landowner is entitled to a convenient passage over the ry. sufficient to make good, so far as possible, any interruption which the construction of the ry. causes by severance in the working or use of his land, including any alteration or extension of that working or use which could or ought to have been contemplated by the parties when the accommodation works were made and accepted.

Great Northern Ry. Co. v. M'Alister, [1897] 1 I. R. 587, 602, approved and adopted.

A ry. severed the land of a landowner and crossed on the level a road belonging to him upon which he had a tramway by which goods and

RAILWAY (Accommodation Works)—continued.

traffic from his land were conveyed to a neighbouring port. He had also allowed coals to be conveyed along the tramway to the port from a colliery not situate on his land. On the occasion of the purchase by the ry. co. of the portion of the road crossed by the ry. and of other lands belonging to him taken by the co., the co. entered into an agreement with him that they would construct and maintain certain works “for the accommodation of the owners and occupiers for the time being of the lands adjoining the ry.” These works included a level crossing for the tramway. The level crossing was constructed, and the co. entered into a deed of covenant with the landowner in accordance with the agreement. The landowner's successor in title afterwards claimed to be entitled to convey over the level crossing goods and traffic brought on to her land from other places, whether situate on her estate or not:—

Held, by the C. A., that she was not entitled to use the level crossing for the purpose of conveying goods and traffic so as substantially to increase the burden of the easement by altering or enlarging its character, nature, or extent as enjoyed at or previously to the date of the deed of covenant, or as since enjoyed by her or her predecessors in title, if, owing to acquiescence or otherwise, that subsequent enjoyment was binding on the co.

Decision of Kekewich J. reversed. **GREAT WESTERN Ry. Co. v. TALBOT.**

C. A. [1902] W. N. 157; [1902] 2 Ch. 759

Note.

This case was applied by **Swinfen Eady J.**, *Taff Vale Ry. Co. v. Gordon Canning, [1909] 2 Ch. 48.* See **Railway—Level Crossings.** 2.

2.—*Agreement—Severed lands—Grant of right to make “a tunnel”—Place and time indefinite—Personal contract—Interest in land—Uncertainty—Perpetuity—Ultra Vires—Assignability—Railways Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 20), s. 71.*

By an accommodation works agreement of May 31, 1847, a ry. co., who were purchasing a strip of land for their line, agreed that the landowner, his heirs, appointees, or assigns, might at any time thereafter at his or their own expense make a tunnel thereunder to join the lands severed thereby. The co. also agreed to make a certain defined level crossing.

On December 31, 1847, the landowner conveyed the strip to the ry. co., reserving to himself, his heirs, appointees, and assigns, the defined level crossing and the right to make a tunnel at his or their own expense, the level crossing and the privilege of making a tunnel being accepted in lieu of all other accommodation works. The site of the tunnel was in no way defined:—

Held, affirming **Swinfen Eady J.**—(1.) that as against the original covenantors, the ry. co., the provision in the agreement as to the tunnel was a personal contract and was not obnoxious to the rule against perpetuities.

London and South Western Ry. Co. v. Gomm, (1882) 20 Ch. D. 562, explained and distinguished.

RAILWAY (Accommodation Works)—continued.

(2.) That the benefit of that contract could be specially assigned to a lessee of part of the severed lands during the continuance of the lease.

Held, further, by Swinfen Eady J.—(a) That as the agreement and reservation amounted to a regrant of an easement by the ry. co. to the landowner, and not to an exception out of the land granted by him to the co., the right to select the site of the tunnel was vested in the landowner, his heirs, appointees, and assigns, and the agreement and reservation were not void for uncertainty.

Sanderson v. Cockermouth and Workington Ry. Co. (1849) 11 Beav. 497; (1850) 2 H. & T. 327, 331, applied.

Pearce v. Watts, (1875) L. R. 20 Eq. 492, and *Suill Brothers, Ltd. v. Bethell*, [1902] 2 Ch. 523, explained and distinguished.

(b) That the grant of the easement was not ultra vires.

In re Gouty and Manchester, Sheffield, and Lincolnshire Ry. Co., [1896] 2 Q. B. 439, applied.

(c) That the agreement was also valid as an agreement for a further accommodation work under s. 71 of the Railway Clauses Consolidation Act, 1845. *SOUTH EASTERN Ry. Co. v. ASSOCIATED PORTLAND CEMENT MANUFACTURERS* (1900), *LD.*

C. A., [1909] **W. N.** 217; [1910] 1 **Ch.** 12

— Level crossing—Agricultural land—Change of condition—Easement—Alteration of user—Tennis club.

See **RAILWAY—Level Crossings**. 2.

Amalgamation.

1. — *Powers — Ultra vires — Railway company — Dock company — Amalgamation — Water obtained from land acquired for railway purposes — Supply to dock — North Eastern Railway (Hull Docks) Act, 1893*, 56 § 57 *Vict. c. cæcili.*, ss. 4, 7, (i.) (iv.), 31—*Railways Clauses Act, 1863* (26 § 27 *Vict. c. 92*), s. 39.

The undertaking of a dock co. was amalgamated with that of a ry. co. by a special Act of Parliament, which provided that the undertakings so amalgamated should constitute one undertaking and be the undertaking of the ry. co. The Act further provided that none of the provisions of the Acts relating to the dock co. and the ry. co. respectively which if the amalgamation had not taken place would apply exclusively to the dock undertaking or to the ry., as the case might be, should apply to any other portion of the undertaking of the continuing co., and Pt. V. of the *Railways Clauses Act, 1863*, which was incorporated with the amalgamating Act, contained an analogous provision with regard to the powers of the dissolved co. Before the amalgamation the dock co. had been supplied with water by a neighbouring corporation. After the amalgamation the ry. co. ceased to take water from the corporation and supplied the dock with water which they obtained from land originally acquired by them for the purposes of their ry. In an action

RAILWAY (Amalgamation)—continued.

against the co. by the Att.-Gen. at the relation of the corporation:—

Held, that the amalgamating Act created a complete working and administrative union of the two undertakings subject to the restrictions contained in that Act and in the *Railways Clauses Act, 1863*, and that the defts. in supplying water to the dock in the manner complained of were not acting ultra vires.

Decision of Joyce J., [1906] 1 **Ch.** 310, affirmed. **ATT.-GEN. v. NORTH EASTERN Ry. Co.** - **C. A.** [1906] **W. N.** 158; [1906] 2 **Ch.** 675

Arbitration.

1. — *Difference between railway companies—Agreement confirmed by Special Act—Provision for arbitration—Arbitrator designated by name—Death of person designated—Railway Commissioners, jurisdiction of—Regulation of Railways Act, 1873* (36 § 37 *Vict. c. 48*), s. 8.

Where by the terms of an agreement confirmed by the special Act of a ry. co. it was provided that any question which might arise between that co. and another ry. co. as to the construction or carrying into effect of the agreement should be referred to a person designated by name, or, him failing, to an engineer to be appointed by the Board of Trade on the application of either party, and differences subsequently arose between the two cos. as to the construction and carrying out of the agreement, the person so designated as aforesaid having in the meantime died:—

Held, that the case fell within the proviso to s. 8 of the *Regulation of Railways Act, 1873*, and therefore the power to compel a reference of differences to the ry. comrs. given by that section did not apply. **ALEXANDRA (NEWPORT AND SOUTH WALES) DOCKS AND Ry. Co. v. TAFF VALE Ry. Co.** **C. A.** [1907] 1 **K. B.** 356

2. — *Jurisdiction of Railway and Canal Commissioners — Differences between railway companies—Agreement confirmed or authorized by general or special Act—Regulation of Railways Act, 1873* (36 § 37 *Vict. c. 48*), s. 8—*Railway and Canal Traffic Act, 1888* (51 § 52 *Vict. c. 25*), s. 15—*Railways Clauses Consolidation Act, 1845* (8 § 9 *Vict. c. 20*), s. 87.

In order that an agreement between ry. cos. may be “confirmed or authorized” by a general or special Act within the meaning of s. 15 of the *Railway and Canal Traffic Act, 1888*, it is not necessary that the agreement should be specifically confirmed or authorized by statute.

By s. 30 of the *Barry Dock and Railways Act, 1891*, running powers over a branch line belonging to the Great Western Ry. Co. were conferred upon the Barry Ry. Co., and by s. 34 of the same Act it was provided that “the terms conditions and regulations on and subject to which the company” (the Barry Ry. Co.) “shall be entitled to run over and use any part of the Great Western Railway under the powers of this Act and the stations and works connected therewith and the tolls or other consideration to be paid in respect of the same shall, if not agreed upon between the company and the Great Western Railway Company, be from time to time

RAILWAY (Arbitration)—continued.

determined in manner provided by the Regulation of Railways Act 1873 as amended by the Railway and Canal Traffic Act 1888 with respect to differences between railway companies."

In pursuance of the powers conferred upon the cos. by the above-mentioned Act and by the provisions of the Railways Clauses Consolidation Act, 1845, s. 87, an agreement was made between the cos. in relation to the user by the Barry Ry. Co. of the aforesaid branch line of the Great Western Ry. Co. By a clause in this agreement it was provided that all questions and differences arising thereunder should be determined by arbitration in manner provided by the Railway Companies Arbitration Act, 1859, or any subsisting statutory modification thereof. Difference having arisen under the agreement, the Great Western Ry. Co. applied to the Ry. Commrs. under s. 8 of the Regulation of Railways Act, 1873, and s. 15 of the Railway and Canal Traffic Act, 1888, to decide those differences:—

Held, by Vaughan Williams L.J. and Fletcher Moulton L.J. (Buckley L.J. dissenting), that, although the provisions of the agreement had not been confirmed or specifically authorized by statute, they came within the terms "provisions of any agreement confirmed or authorized by any such Act" in s. 15 of the Railway and Canal Traffic Act, 1888, and therefore the Ry. Commrs. had jurisdiction under s. 8 of the Regulation of Railways Act, 1873, to determine the before-mentioned differences.

By Buckley L.J.: Inasmuch as the provision for arbitration in the agreement was not confirmed or authorized by statute, the case did not fall within s. 15 of the Railway and Canal Traffic Act, 1888. **GREAT WESTERN RY. CO. v. BARRY RY. CO.** - C. A. [1909] W. N. 176: [1909] 2 K. B. 670

Bookstalls.

— Exemption of.

See Shop Hours Act, 1904 (4 Edw. 7, c. 31), s. 2, 1st Sched.

Bridges.

1. — "*Bridge*" — *Approaches* — *Public carriage road carried over railway* — *Width of bridge* — *Liability of railway company* — *Special Act* — *Construction* — *Railways Clauses Consolidation Act, 1845* (8 & 9 Vict. c. 20), ss. 50, 51.

In construing the proviso for widening a "bridge" in s. 51 of the Railways Clauses Consolidation Act, 1845, that section must be read with the group of sections of which s. 51 is part. So read "bridge" means the bridge proper and does not include the approaches to the bridge.

By the Taff Vale Railway Act, 1836, s. 69, where a bridge shall be erected for carrying a public highway over the ry., the road over the bridge must be formed and at all times continued of a width of not less than fifteen feet.

By the Taff Vale Railway Act, 1846, the provisions of the Act of 1836 were incorporated, except such as were inconsistent with (inter alia) the provisions of the Railways Clauses Consolidation Act, 1845.

A bridge carrying a public carriage road over the Taff Vale Railway was erected under the

RAILWAY (Bridges)—continued.

Act of 1846 of the width of eighteen feet. The average available width of the road having been afterwards increased beyond the width of the bridge on either side and to a width exceeding twenty five feet, the ry. co. were required by the urban district council to widen the bridge and approaches in accordance with the provisions of ss. 50 and 51 of the Railways Clauses Consolidation Act, 1845:—

Held, that the obligations of the co. were governed by ss. 50 and 51 of the Act of 1845, and not by the special Acts, and that the co. were bound to widen the bridge proper to the width of twenty-five feet, but were not bound to widen the approaches to the bridge.

Decision of the C. A., [1908] 1 K. B. 239, reversed and decision of Phillimore, J., [1907] 1 K. B. 739, restored. **RHONDDA URBAN COUNCIL v. TAFF VALE RY. CO.**

H. L. (E.) [1909] W. N. 91; [1909] A. C. 253.

— Bridge carrying public highway over railway—Liability to maintain road.

See SCOTTISH LAW. 3.

Buildings.

— Party-wall notice—Building acquired by agreement for station purposes outside limits of deviation.

See LONDON—Buildings. 19.

Canada Railway.

See under CANADA—Railway.

Carriage.

See also under RAILWAY—Rates.

1. — *Carriage of goods* — *Right of trader to provide truck* — *Reduction of rate where company does not provide truck* — *Railway and Canal Traffic Act, 1854* (17 & 18 Vict. c. 31), ss. 1, 2 — *Great Western Railway Company (Rates and Charges) Order Confirmation Act, 1891* (54 & 55 Vict. c. cccvii.), Sched. I., s. 2 (b).

A ry. co. is under no legal obligation to convey on its ry. trucks belonging to a trader at all times and in all circumstances, but if a ry. co. fails to provide sufficient trucks for the conveyance of the merchandise of a particular trader the trader may provide his own trucks, and in that case motive power for the haulage of the trader's trucks is a reasonable facility for the forwarding and delivering of traffic which the ry. co. must provide under s. 2 of the Railway and Canal Traffic Act, 1854.

By the schedule to the Great Western Railway Company (Rates and Charges) Order Confirmation Act, 1891, s. 2 (b), it is provided that in certain cases, where "the co. do not provide trucks" in which merchandise is carried on the ry., the rate authorized for conveyance shall be reduced in the manner therein provided:—

Held, that this enactment does not apply to a case where, although the co. is ready and willing to provide trucks, the trader prefers to, and does, use his own trucks, but only to a case where the trader uses his own trucks in order to supplement a deficiency in the supply of trucks by the co. **SPILLERS & BAKERS, LD. v. GREAT WESTERN RY. CO.** (ASSOCIATION OF

RAILWAY (Carriage)—continued.

PRIVATE OWNERS OF RAILWAY ROLLING STOCK, INTERVENERS)

Railway and Canal Commission,
[1910] 1 K. B. 778

On Appeal :—

Appeal of the applicants from a decision of the Railway and Canal Commission, reported [1910] 1 K. B. 778 (*supra*). The appeal was heard by the full C. A.

The Court (Cozens-Hardy M.R., Vaughan Williams L.J., Fletcher Moulton L.J., Farwell L.J., Buckley L.J., and Kennedy L.J.) unanimously dismissed the appeal. **SPILLERS & BAKERS, LD. v. GREAT WESTERN RY. CO.**
C. A. [1910] W. N. 250

2. — *Contract of carriage — Conveyance of merchandise by passenger train — Absence of obligation to carry — Special contract not in writing — Liability for loss — Railway and Canal Traffic Act, 1854 (17 & 18 Vict. c. 31), s. 7.*

Sect. 7 of the Railway and Canal Traffic Act, 1854, is applicable to a case where a ry. co., though under no obligation to carry certain goods, has, nevertheless, made a contract for their carriage.

The deft. co. by its timetables offered to allow commercial travellers to take with them by passenger train, free of charge, a certain amount of luggage, which was not ordinary passengers' luggage, "on the condition that the co. is relieved from all liability for loss, damage, misdelivery, or delay." The plts., who were commercial travellers, in pursuance of this offer, but without signing any special contract to that effect, took with them on a journey by the deft. co.'s line a case of samples, which was lost on the journey by the negligence of the co.'s servants.

Held (affirming the judgment of Kennedy and Bray J.J., [1906] W. N. 123; [1906] 2 K. B. 619), that, as no special contract had been signed by the plts., the provision of s. 7 of the Railway and Canal Traffic Act, 1854, applied, and, the condition being thereby made null and void, the deft. co. were liable for the loss of the samples.
WILKINSON v. LANCASHIRE AND YORKSHIRE RY. CO. C. A. [1907] W. N. 117; [1907] 2 K. B. 222

3. — *Conveyance of goods by passenger train — Agreement for carriage in absence of obligation — Collection and delivery — Inclusive charge — Equality clause of special Act — Railway Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 20), s. 90.*

A schedule of the statutory maximum rates and charges authorized to be taken by a ry. co. for the conveyance of goods contained a provision that the co. should not be under obligation to carry non-perishable goods by passenger train. A section of a special Act of the co. provided that all tolls should be charged equally to all persons. The co. announced to the public their willingness to carry tailors' clothing by passenger train at a "collected and delivered" rate specified in a scale of charges which they published. The plts., who were common carriers at Bristol, sent parcels of tailors' clothing from Bristol to Southampton by the co.'s passenger train, having themselves

RAILWAY (Carriage)—continued.

collected the goods at Bristol and handed them over to the co. at their passenger station. The plts. paid to the co., under protest, the scale charge; and brought an action against them for money had and received, claiming to be entitled to a rebate from the defts. in respect of the collection of the goods at Bristol :—

Held, that, as the co. were under no statutory obligation to carry the goods by passenger train, the plts. were not entitled to any rebate.

Judgment of the K. B. D., [1903] 1 K. B. 741, affirmed. **STONE & CO. v. MIDLAND RY. CO.**

C. A. [1904] 1 K. B. 669

— Light railways—Licence to ply for hire.

See RAILWAY—Light Railways. 1.

4. — *Owner's risk note—Mode of packing likely to cause injury—Notice to company—Wilful misconduct—Carrier—Railway company.*

A parcel of sheepskins which had been delivered by the plt. to the defts. for carriage from Paddington to Winchester arrived at their destination in a damaged condition owing to their having been packed in a truck with wood chips, which had become entangled in the wool. The plt. wrote to the station-master at Winchester complaining of the damage, and asking him to communicate with the authorities at Paddington to prevent a recurrence of the injury, as further consignments of sheepskins were expected to be sent off from thence shortly. He received a reply saying, "I have asked our Paddington people not to use the kind of litter you object to in the future." Subsequently, the plt. sent a second parcel of sheepskins from Paddington to Winchester on the terms of an "owner's risk" note, whereby he relieved the defts. from liability for damage except upon proof that it arose from wilful misconduct on the part of the defts.' servants. This parcel, like the first, arrived damaged from being put into trucks containing wood chips. In an action to recover for the damage to the second parcel :—

Held, that, in the absence of proof that the persons who actually loaded the goods in the trucks or who superintended their loading had notice that the mode of packing employed was likely to be injurious to the goods, there was no evidence of wilful misconduct on the part of the defts.' servants: the mere fact that some other official of the defts. had that notice was not sufficient. **FORDER v. GREAT WESTERN RY. CO.**
Div. Ct. [1905] W. N. 112; [1905] 2 K. B. 532

5. — *Owner's risk note—Construction.*

The plt. delivered to the defts. goods to be carried to their destination by a particular route upon the terms that the plt., in consideration of his being charged a reduced rate below the defts.' ordinary rate, relieved the defts. "from all liability for (inter alia) delay . . . except upon proof that such . . . delay . . . arose from wilful misconduct on the part of the co.'s servants." The defts. by mistake carried the goods past the station at which they ought to have been transferred to another train, and, on discovering their mistake and that it was then too late for the goods to be sent back to that station in time to catch that train, forwarded them by another route (which was admitted to be the

RAILWAY (Carriage)—continued.

best alternative) to their destination. In consequence of this, the arrival of the goods at their destination was delayed and the plt. suffered damage :—

Held, that the defts. were relieved from responsibility by the terms of the contract.

Mallett v. Great Eastern Ry. Co., [1899] 1 Q. B. 309, distinguished. *FOSTER v. GREAT WESTERN Ry. Co.* Div. Ct. [1904] 2 K. B. 306

6. — *Rate for carriage of goods—Rate-book—Railway Commissioners—Order for specification of details of expenses—Amounts charged for services other than conveyance—Regulation of Railways Act, 1873* (36 & 37 Vict. c. 48), s. 14.

A ry. co., against whom an order has been made by the Railway Comms. under the Regulation of Railways Act, 1873, s. 14, is bound to specify the particular amounts charged in a rate for the carriage of goods in respect of each of the services performed by them other than conveyance on their line.

Colman v. Great Eastern Ry. Co., (1882) 4 Ry. & Can. Cas. 108, and *Birchgrove Steel Co. v. Midland Ry. Co.*, (1887) 5 Ry. & Can. Cas. 229, approved. *PICKFORDS, LD. v. LONDON AND NORTH WESTERN Ry. Co.*

C. A. [1905] 1 K. B. 752

7. — *Rates—Pitwood—Measurement weight or actual weight—Maximum charge varying with distance—Goods carried for part of journey over another company's line—How maximum charge for each part to be calculated—Great Western Railway Company (Rates and Charges) Order Confirmation Act, 1891* (54 & 55 Vict. c. cccxiii).

Under the Great Western Railway Company (Rates and Charges) Order Confirmation Act, 1891, the co. are not bound to carry pitwood for mining purposes by measurement weight at the rates specified in the schedule thereto as applicable to goods in Class C. If the customer claims the benefit of the Class C rates, the co. may charge those rates on the actual machine weight; on the other hand, if the pitwood be consigned at measurement weight, the co. are entitled to charge the rates applicable to goods in Class I.

The maximum rates which under the said Act the co. are entitled to charge for the carriage of goods, and which maximum rates vary inversely with the distance carried, apply only to carriage over the co.'s own lines; and where goods are carried under a through contract with the co. from a point on their own line to a point on another co's line, the portion of the journey which is over the foreign co's line is to be treated as a separate journey, in respect of which the co. are entitled to charge the maximum rate authorised by the foreign co's Act as applicable to a journey of that distance, irrespective of the distance which the goods may have previously been carried over the co.'s own line. *GREAT WESTERN Ry. Co. v. CASWELL & BOWDEN, LD.*

Walton J. [1904] 2 K. B. 508

8. — *Rates and charges—Intent to avoid payment of "tolls"—Railway Clauses Act, 1845* (8 & 9 Vict. c. 20), ss. 98, 99.

The appellants brought to the respondents' goods station three cases of goods for the purpose of having them carried by the respondents on

RAILWAY (Carriage)—continued.

their ry., and delivered to the respondents' servant consignment notes in which the goods had been misdescribed by the appellants with the object of procuring the carriage of the goods at a lower rate than would have been charged if they had been correctly described. No express demand was made by the respondents' servant for an account of the goods, but by the course of business known to the appellants the goods would not have been received by the respondents if consignment notes had not been delivered. The appellants were charged, under ss. 98 and 99 of the Railways Clauses Act, 1845, with giving a false account of the goods with intent to avoid the payment of the tolls in respect thereof, and convicted :—

Held, that ss. 98 and 99 apply to cases where the ry. co. are themselves acting as carriers; that the conviction was right, because, assuming that it was necessary to prove that there had been a demand for an account, there was evidence on which the magistrate could find that there had been a demand.

But, *quære*, whether, where a false account is delivered, it is necessary to prove a demand. *BARR, MOERING & Co. v. LONDON AND NORTH WESTERN Ry. Co.* Div. Ct. [1905] 2 K. B. 113

9. — *Trucks—Carriage of coal in traders' trucks—Delay in transit—Demurrage for unreasonable detention of trucks—London and North Western Railway Company (Rates and Charges) Order Confirmation Act, 1891* (54 & 55 Vict. c. cccxiii), s. 6.

By s. 6 of the London and North Western Ry. Co. (Rates and Charges) Act, 1891, where merchandise is conveyed in trucks not belonging to the co., the trader is entitled to recover from the co. a reasonable sum by way of demurrage for any detention of his trucks beyond a reasonable period.

Coal in owners' trucks was conveyed by a ry. co. for the applicants, a firm of coal merchants, from certain collieries on their line of ry. to the applicants' reserved sidings in London, the trucks being returned to the collieries without additional charge; the average duration of the transit during a period of twelve consecutive months was two and a half working days. The applicants complained that in thirty-three instances during the twelve months their trucks had been detained an unreasonable time in transit, the time taken in nineteen instances being four days, in twelve instances five days, in one instance six days, and in one instance seven days, and they claimed to be entitled to demurrage in respect of the unreasonable detention of these trucks :—

Held, first, that s. 6 applied to a claim for detention of the trucks during transit, and not merely to cases where the detention occurred before its commencement or after its conclusion; secondly, that the time occupied in the thirty-three instances, in the transit being largely in excess of the average, the onus was upon the defts. to show that the period of detention of the trucks was not unreasonable, and that they had failed on the facts to discharge that onus; and, thirdly, that a sum of 6d. per ten-ton truck per day was a reasonable allowance in respect of the

RAILWAY (Carriage)—*continued.*

detention. **CHARRINGTON, SELLS, DALE & CO. v. LONDON AND NORTH WESTERN RY. CO.**

Railway and Canal Commission
[1905] 2 K. B. 437

— Trucks—Right of trader to provide—Deduction.

See No. 1, above.

Carriage Licence.

— Cars on light railway.

See **REVENUE—Carriage Licence.** 4.

Carrier.

1. — *Damageable goods carried unpacked — Owner's risk—Reasonable condition—Railway and Canal Traffic Act, 1854 (17 & 18 Vict. c. 31), s. 7.*

The plt. had for many years consigned to the defts. for carriage wooden cisterns lined with lead, which were fitted with a cross-bar, and had attached a lever which projected above the edge of the cistern; they were carried by the defts. unpacked at the ordinary rate of carriage and at co.'s risk. Many of the crossbars and levers having been broken in transit, owing, as the defts. alleged, to their brittle nature and to their not being protected by packing, the defts. gave notice in 1907 that they were not, and would not be, carriers of certain specified damageable goods (including cisterns) except when they were properly protected by packing. After the notice, the plt. continued to consign cisterns for carriage by the defts., but the defts. required him to sign at the time of sending a special consignment note, headed "Consignment note for damageable goods when not protected by packing." The consignment note contained in substance a notice that the defts. would not carry the specified damageable goods (a list of which was given) at co.'s risk except when properly protected by packing, but that the sender might consign them not so protected if he agreed to relieve the defts. from liability for loss or injury, except on proof that it arose from wilful misconduct on the part of their servants. Then followed a form of agreement by which the sender agreed to the above terms and also to the conditions on the back of the consignment note, one of which conditions was, "The co. will not be liable for any loss of, or damage to, or delay of goods resulting from their not being properly protected by packing." There was no alternative rate of carriage. The plt. having sued to recover damages for injury done to cisterns in course of transit:—

Held by **Buckley L.J.** and **Kennedy L.J.** (**Vaughan Williams L.J.** dissenting), that the goods were carried by the defts. by virtue of their statutory obligation under s. 2 of the **Railway and Canal Traffic Act, 1854**, to afford reasonable facilities for the carriage of traffic; that the requirement of packing was not a refusal of reasonable facilities; and that the condition imposed on the carriage of unpacked articles in the signed consignment note was a just and reasonable condition within the meaning of s. 7

RAILWAY (Carrier)—*continued.*

of that Act. **SUTCLIFFE v. GREAT WESTERN RY. CO.** - - - **C. A. [1910] W. N. 13; [1910] 1 K. B. 478**

Compensation.

1. — *Coal required to be left unworked—Railways Clauses Consolidation Act, 1845 (8 Vict. c. 20), s. 78.*

The executors of **W. E.** were the reversioners and **J. & Co.** were the lessees for twenty-one years of certain lands in the county of Durham, and of the mines and minerals under the same. The **North Eastern Railway Co.** were authorized by Act of Parliament to make and maintain a ry. on part of these lands, and their special Act incorporated the **Railways Clauses Consolidation Act**. In 1892 **J. & Co.**, being desirous of working the coal under part of the ry., gave notice to the ry. co., in conformity with s. 78 of the **Railways Clauses Consolidation Act, 1845**, and the ry. co. by notice required them to leave certain coal unworked, and expressed their willingness to pay to the parties entitled thereto all such compensation as might be payable according to law. The question for the arbitrator was as to the amount of this compensation.

If the coal had not been required to be left unworked it would in the ordinary course of working have been worked out by **J. & Co.**, and they would (as the arbitrator found) have made out of such coal a profit of 730%, and the reversioners would have received in respect of it 155%.

The ry. co., however, contended that, as it would not be possible for **J. & Co.** to have worked out within the time of their lease all the coal lying under the lands leased to them, they were only entitled to receive by way of compensation the extra expense to which they were put by leaving the coal required to be left and working out other coal which was more expensive to get, and that the reversioners were entitled, not to the royalties which they would have received in respect of the coal required to be left, but to the diminution in the value of their reversion by the coal required to be left being left unworked and other coal which would not otherwise have been reached being taken by the lessees. The arbitrator stated his award in the form of a special case for the opinion of the Court.

Bigham J. gave judgment for the claimants, holding that, as the words of s. 78 were compensation "for such mines," the ry. co. must pay for the coal which the coal owner was precluded from taking by reason of the ry. co. having served its notice and that it was not a question as to compensating the mine owner for the loss which he might have sustained by reason of the interference with his working of the mine. He was entitled to have the actual value of the coal which he was prevented from bringing to the surface. **EDEN'S EXECUTORS v. NORTH EASTERN RY. CO.** - **Bigham J. [1905] W. N. 170**

Contracts.

1. — *Contract—Construction—Agreement to contribute to expenses of promoting railway bill.*

The House affirmed the decision of the First Division of the Ct. of Sess., (1900) 37 S. L. R.

RAILWAY (Contracts)—continued.

820, and dismissed the appeal with costs. *CALEDONIAN RY. CO. v. KIRKCALDY AND DISTRICT RY. CO.* - **H. L. (8c.) [1901] W. N. 102**

— Contract — Penalty for non-completion of line — Liquidated damages — “Actual cost.”

See *CAPE OF GOOD HOPE*. 12.

— Contract — “Whole operation of its railway.”

See *CANADA—Railway*. 1.

2. — Private Act—Statutory obligations — Statutory contract with landowner — Subsequent contract in derogation of same—Public rights—Ultra vires—Specific performance—Damages.

In 1887 the private Act of a ry. co. contained provisions for the protection of B., a landowner, whereby the co. was bound, unless otherwise agreed between the co. and B., to construct and maintain a station at W. close to B.'s property; the station was in due course erected. In 1900 the co.'s undertaking was transferred to and became vested in the South Eastern Ry. Co., who subsequently, in ignorance of the provisions of the Act of 1887, contracted for valuable consideration with the plt. to pull down the station at W. and erect another nearer to the plt.'s property. In an action by the plt. for specific performance or damages:—

Held (Romer L.J. dissenting), that the contract with the plt. was ultra vires, as it was not competent to a ry. co. to take the land and then to do that which the statute prohibited, and it made no difference that the prohibition was not in the interest of the general public, but for the protection of a private owner, and that the action must be dismissed.

Decision of Farwell J., [1905] W. N. 93; [1905] 2 Ch. 280, reversed. *CORBETT v. SOUTH EASTERN AND CHATHAM RY. CO.'S MANAGING COMMITTEE* - **C. A. [1906] W. N. 106; [1906] 2 Ch. 12**

Costs.

— Costs in obtaining order of Light Railway Commissioners—Solicitor—Chancery or parliamentary scale.

See *SOLICITOR—Costs*. 7.

— Interim investment—Brokerage and other charges—Railway stock.

See *LANDS CLAUSES ACTS*. 20.

Deposit.

1. — Parliamentary deposit—Abandonment—Costs of inquiries necessary for distribution of deposit—Practice.

By a ry. co.'s Act and the Act for its abandonment the parliamentary deposit was directed to be applied in payment, first, of compensation to landowners, and secondly, of creditors, and subject thereto to be repaid to the depositors. The depositors took out a summons for distribution of the deposit, and an order was made directing inquiries whether there were any landowners or others entitled to compensation, and any debts which ought to be paid out of the deposit. These inquiries were conducted by the depositors, and resulted in a certificate that no

RAILWAY (Deposit)—continued.

one was entitled to compensation; that the claim of one creditor must be disallowed; but there were debts which ought to be paid out of the deposit exceeding its amount:—

Held, on a summons taken out by the depositors, that they could not be allowed the costs of the inquiries in priority to payment of the creditor's debts.

In re Wrexham, Mold and Connah's Quay Ry. Co., [1900] 1 Ch. 261, distinguished. *In re LANCASHIRE, DERBYSHIRE AND EAST COAST RAILWAY ACTS, 1891 to 1896, AND In re LINCOLN AND EAST COAST RAILWAY ACTS, 1897 to 1902*

Farwell J. [1903] W. N. 184, 186; [1903] 2 Ch. 711

2. — Parliamentary deposit — Agreement—Breach—Injunction.

The deft. co. was incorporated under the Light Railways Act, 1896, by the Lastingham and Rosedale Light Railway Order of 1900, which authorized the construction of a light ry. in Yorkshire. By the terms of that order the powers of the deft. co. for the compulsory purchase of lands were to cease after the expiration of three years from the date of the order, and if the ry. was not completed within five years from the commencement of the order, or such extended time as the Board of Trade might approve, then the powers granted to the deft. co. for completing the same were to cease. A deposit of 3000l., required to be made by the same order, was advanced by the plt. to the deft. co. By an indenture of Nov. 26, 1902, the deft. co. covenanted with the plt. that neither they nor any person on their behalf would, without the consent of the plt., serve any notice to treat upon any persons or enter into any contract or agreement with any persons or incur any other liability which might in any way directly or indirectly charge or incur the said deposit, or whereby any monies might become payable out of the said deposit to any persons other than the plt. The deposit was invested in consols in the name of the Postmaster-General and assigned to the plt. The period for compulsory purchase of the land, and the period for the completion of the work, which had been extended by an order of 1903, expired on July 31, 1905, and July 31, 1906, respectively. The deft. co. had acquired no lands and taken no steps towards construction of the ry. The plt. alleged that in breach of the covenant contained in the indenture of Nov. 26, 1902, the deft. co., without the consent of the plt., obtained from the Board of Trade an extension of time for completion of the works to July 31, 1907, thus enabling the deft. co. to incur further liabilities which would form incumbrances on the deposit; and they had also issued certain debentures. The plt. now moved for judgment in default of appearance by the defts., and asked for an injunction to restrain the defts., without the consent of the plt., from serving any notice to treat upon any person, or entering into any agreement with any person, &c., &c. (following the words of the covenant in the agreement of Nov. 26, 1902).

Kekewich J. said that it was a matter of

RAILWAY (Deposit)—continued.

some importance, and applications of this character must be narrowly looked into by the Court. The Legislature had provided for a deposit to be made to meet the costs incurred and liabilities imposed by the exercise of the powers of the co., and anything which prevented the proper application of the fund would be directly against public policy and could not be sanctioned. He could not deny the right of those who advanced the money to have it protected, and there having been a direct covenant entered into, he could enforce it and prevent the co. from dealing with the fund in contravention of that covenant. The injunction, therefore, would go in the terms asked for. **BEECHAM v. LASTINGHAM AND ROSEDALE LIGHT RY. Co.** - **Kekewich J. [1907] W. N. 101**

3. — Parliamentary deposit—Special Act—Undertaking abandoned—Payment out of deposit—No Abandonment Act—Parliamentary Deposits Act, 1846 (9 & 10 Vict. c. 20), s. 3—Parliamentary Deposits and Bonds Act, 1892 55 & 56 Vict. c. 27), s. 1, sub-ss. 1, 2, 3.

Where the usual deposit has been paid into Court under the Parliamentary Deposits Act, 1846, in furtherance of a special Act subsequently passed authorizing the construction of a ry., and the undertaking is afterwards abandoned, the deposit can be dealt with by the Court under s. 1 of the Parliamentary Deposits and Bonds Act, 1892, without a special abandonment Act being obtained. *In re TORRINGTON AND OKEHAMPTON RY. BILL*

Neville J. [1906] W. N. 221 ; [1907] 1 Ch. 186

Directors.

1. — Powers of directors—Application of company's funds—Circulars to shareholders—Influencing votes—Payments for proxy papers and stamps—Ultra vires.

A controversy had been going on for some years between the directors of a ry. co. and a body of shareholders with reference to questions of policy affecting the management of the co.: previously to the half-yearly general meetings called for Feb. and Aug., 1905, the directors sent to each shareholder a circular setting out the facts and the views of the directors and asking the support of the shareholders at the meeting; with this was enclosed a stamped proxy paper containing the names of three of the directors as proxies, with a stamped cover for return. The expenses of printing, posting, and stamping these documents were paid for out of the funds of the co. Officers and servants of the co. had also been directed to call upon some of the shareholders with a view to obtaining their votes for the directors.

In an action by the shareholders to restrain the co. and the directors from using the funds of the co. in paying expenses thus incurred:—

Held (reversing the decision of Warrington J.), that it was the duty of the directors to inform the shareholders of the facts, of their policy, and the reasons why they considered that this policy should be maintained and supported by the shareholders, and that they were justified

RAILWAY (Directors)—continued.

in trying to influence and secure votes for this purpose, and, accordingly, that expenses which had been bona fide incurred in the interest of the co. were properly payable out of the funds of the co.

Studdert v. Grosvenor, (1886) 33 Ch. D. 528, overruled on this point.

Pickering v. Stephenson, (1872) L. R. 14 Eq. 322, explained. PEEL v. LONDON AND NORTH-WESTERN RY. Co. - C. A. [1906] W. N. 208 ; [1907] 1 Ch. 5

Note.

As to costs in this action, see **Peel v. London and North Western Ry. Co. (No. 2), Parker J., [1907] 1 Ch. 607. Costs. 30.**

Dock Company.

— **Amalgamation—Supply of water to dock from source on property of railway company.**

See **RAILWAY—Amalgamation. 1.**

Dogs.

1. — Carrier—Just and reasonable condition—Carriage of dogs—Declaration of value—Extra charge in respect of dogs worth more than 2l.—Percentage on excess value—Railway and Canal Traffic Act, 1854 (17 & 18 Vict. c. 81), s. 7.

A contract signed by a person delivering a dog for carriage to a ry. co. stated that the co. would not be common carriers of dogs, nor would they receive dogs for carriage except on the condition that they should not be responsible beyond the sum of 2l., unless a higher value was declared at the time of delivery to the co. and a percentage of 1½ per cent. paid upon the excess of the value so declared:—

Held, that the above-mentioned condition was just and reasonable within the meaning of the Railway and Canal Traffic Act, 1854, s. 7, and, there having been no declaration of value, protected the ry. co. from liability beyond the amount of 2l. in respect of the loss, through the negligence of their servants, of the dog delivered to them for carriage. **WILLIAMS v. MIDLAND RY. Co. - C. A. [1907] W. N. 256 ; [1908] 1 K. B. 225**

Electric Cars.

— **Electric cars not real estate—Appeal from Ontario.**

See **CANADA—Railway. 2.**

Electrical Powers.

Railways (Electrical Powers) Act, 1903 (3 Edw. 7, c. 30), facilitates the introduction and use of electrical power on railways.

Rules, dated Feb. 17, 1904, made by Board of Trade with respect to applications under the Railways (Electrical Power) Act, 1903 (3 Edw. 7, c. 30). St. R. & O. 1904, No. 256.

— **Metropolitan Electric Supply Company—Supplying electrical energy outside areas—Injunction.**

See **ELECTRIC LIGHT. 3.**

RAILWAY—*continued.***Engine-Driver.**

- Engine-driver — Workmen's compensation — Stone wilfully thrown at train.
See MASTER AND SERVANT—Compensation. 116.
- Engine-driver — Workman killed while disobeying well-known rule of employer.
See MASTER AND SERVANT—Compensation. 117.

Engineer.

- Workmen's compensation — Alteration of railroad — "Engineering work."
See MASTER AND SERVANT—Compensation. 79—85.

Engines.

1. — *Consumption of smoke "as far as practicable" — Railways Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 20), s. 114 — Regulation of Railways Act, 1868 (31 & 32 Vict. c. 119), s. 19.*

By s. 114 of the Railways Clauses Consolidation Act, 1845, a railway locomotive engine using coal or similar fuel emitting smoke must be constructed on the principle of consuming and so as to consume its own smoke, and a penalty is attached to the user of an engine not so constructed. By s. 19 of the Regulation of Railways Act, 1868, it is made an offence under s. 114 if an engine, although constructed on the principle of consuming its own smoke, fails to do so, as far as practicable, through the default of the co. or its servants.

An engine of the respondents, properly constructed on the principle of consuming its own smoke, emitted dark smoke for a short time while running on their ry. on two occasions at an interval of rather more than an hour; the smoke was not emitted through any default in the stoking or management of the engine. The coal used was of a bituminous character, and was a good hard steam coal, and was the normal locomotive coal in use in some districts. If Welsh coal, which was twice as costly, had been used, less smoke would have been omitted:—

Held, that the engine had not failed to consume its own smoke as far as practicable through any default of the ry. co. within the meaning of s. 114 of the Railways Clauses Consolidation Act, 1845, as amended by s. 19 of the Regulation of Railways Act, 1868. **LONDON COUNTY COUNCIL v. GREAT EASTERN RY. CO.**

Div. Ct. [1906] 2 K. B. 312

- Invitation to travel on engine — Liability for negligence of servants.
See NEGLIGENCE. 4.

False Imprisonment.

1. — *Railway company — Special constable — Arrest on suspicion of felony — Liability of company.*

A special constable of a ry. co. is the servant of the co., and if in the course of his employment he arrests a person on suspicion of felony without having any reasonable grounds for his suspicion, an action for false imprisonment will lie against the co. **LAMBERT v. GREAT EASTERN RY. CO.** - **C. A. [1909] W. N. 186; [1909]**

2 K. B. 776

RAILWAY—*continued.***Fences.**

1. — *Railway company — Defective fence — Negligence — Turntable — Infant trespasser — Invitation to danger.*

A ry. co. kept a turntable unlocked (and therefore dangerous for children) on their land close to a public road. The co.'s servants knew that children were in the habit of trespassing and playing with the turntable, to which they obtained easy access through a well-worn gap in a fence which the ry. co. were bound by statute to maintain. A child between four or five years old playing with other children on the turntable having been seriously injured:—

Held, that there was evidence for a jury of actionable negligence on the part of the ry. co.

The decision of the Irish C. A., [1908] 2 I. R. 242, reversed, and the judgment of Lord O'Brien C.J. and the decision of the K. B. D. (Ireland) restored. **COOKE v. MIDLAND GREAT WESTERN RAILWAY OF IRELAND** - **H. L. (I.) [1909]**

W. N. 56; [1909] A. C. 229

Fires.

Railways Fires Act, 1905 (5 Edw. 7, c. 11), gives compensation for damage by fires caused by sparks or cinders from railway engines.

Foreshore.

- Power of the Dominion to legislate for provincial Crown property — Laws of British Columbia.
See CANADA—Crown Lands. 1.

Highway.

- Highway — Dedication — Presumption — Strip of land running alongside highway — Disused tramway — Railway company — Capacity to dedicate.
See HIGHWAY. 9.

Income Tax.

- Income tax — Annuity — Sale of railway — Purchase-money — Payment by annual instalments with interest.
See REVENUE—Income Tax. 4.

India.

See under INDIA.

Investments.

- Trustee — Nominal debentures under Local Loans Act.
See TRUSTEE—Investments. 11.

Lands Clauses Acts.

- Compensation — Site of a church.
See LANDS CLAUSES ACTS. 8.
- Compulsory powers — Notice to treat — Service.
See LANDS CLAUSES ACTS. 10.
- Entry on land before determination of purchase-money — Bond.
See LANDS CLAUSES ACTS. 32.

1. — *Land compulsorily taken — Limited owner — Compensation for personal injury, inconvenience*

RAILWAY (Lands Clauses Acts)—continued.

or annoyance—*Lands Clauses Consolidation Act*, 1845 (8 & 9 Vict. c. 18), s. 73.

Part of the purchase-money of land taken by a ry. co. may be allotted to a limited owner as compensation for personal injury, inconvenience, or annoyance upon evidence that this compensation had been allowed for in fixing the price, though no particular sum had been apportioned for that purpose when the price was fixed. *In re SAUNDERTON GLEBE LANDS. Ex parte RECTOR OF SAUNDERTON* Farwell J. [1903] W. N. 32; [1903] 1 Ch. 480

—Payment out to company—Evidence—Delivery of bond to company.

See LANDS CLAUSES ACTS. 32.

Level Crossings.

—“Accommodation works”—Grant of easement. See RAILWAY—Accommodation Works. 1.

2. — *Accommodation works—Level crossing—Agricultural land—Change of condition—Easement—Alteration of user—Increase of burden—Tennis club—Railways Clauses Consolidation Act*, 1845 (8 & 9 Vict. c. 20), s. 68.

Where a level crossing has been made under s. 68 of the *Railways Clauses Consolidation Act*, 1845, to connect agricultural lands severed by a ry., the landowner's future user of the crossing is not restricted to the purposes (such as agricultural purposes) for which it was used at the time the ry. was constructed; but he is not entitled to use it so as substantially to increase the burden of the easement by altering or enlarging its character, nature, or extent, as enjoyed at that time.

Whether the change of user increases the burden is quite a question of fact in each case.

For many years after the time it was made an agricultural level crossing was used for the occasional passage of sheep and cattle, the keys of the gates being borrowed from a neighbouring signalman, who kept the signals at danger till the animals had crossed.

The neighbourhood having changed its agricultural character, the landowner let a field to a tennis club, who climbed the gates and used the crossing daily in large numbers.

It was proved that owing to the large main line traffic and the shunting from an adjoining colliery siding this user was exceedingly dangerous to the club members, and would subject the ry. to a greatly increased strain and burden in watching their line and managing their traffic so as to avoid accidents :—

Held, that this user was unlawful, and would, if necessary, be restrained by injunction.

Reg. v. Brown, (1867) L. R. 2 Q. B. 630; *Great Northern Ry. Co. v. McAlister*, [1897] 1 I. R. 587; and *Great Western Ry. Co. v. Talbot*, [1902] 2 Ch. 759, applied.

United Land Co. v. Great Eastern Ry. Co., (1875) L. R. 10 Ch. 586, and *Finch v. Great Western Ry. Co.*, (1879) 5 Ex. D. 254, distinguished. *TAFF VALE RY. CO. v. GORDON CANNING. Swinfen Eady J.* [1909] W. N. 108; [1909] 2 Ch. 48

RAILWAY (Level Crossings)—continued.

3. — *Highway—Road raised to level of railway—Approaches to crossing—Repair of roadway of approaches.*

A ry. co. being authorized to carry their ry. across a high road on the level, constructed the ry. at a slightly higher level than the road, and, in order to bring the road up to the level of the ry., raised it by means of inclined “approaches” on either side of the ry. under powers conferred by their special Act. The Act was silent as to any obligation of the co. to repair the roadway upon the approaches :—

Held, that there was imposed upon the co. by the common law, as a condition of the statutory authority to interfere with the high road, an obligation to keep in repair the roadway upon the whole of the approaches, including those portions which lay outside the fences of the ry. *HERTFORDSHIRE COUNTY COUNCIL v. GREAT EASTERN RY. CO.*

C. A. [1909] W. N. 124; [1909] 2 K. B. 403

4. — *Obligation to maintain gates—Straying horse—Railways Clauses Consolidation Act*, 1845 (8 & 9 Vict. c. 20), s. 47.

Sect. 61 of the *Railways Clauses Consolidation Act*, 1845, provides that if a ry. shall cross a highway, which is a footway, on the level, the co. shall erect and maintain good and sufficient gates or stiles on each side of the ry. where the highway shall communicate therewith.

The plt.'s horse, without any negligence on the part of the plt., strayed on to a public footpath, which the defts.' ry. crossed on the level, and passed through a gate, erected by the defts., on to the ry. and was killed by a passing train. The fastening of the gate was defective.

Held, that the defts. had failed to maintain a good or sufficient gate as required by s. 61; that the defts.' duty under the section was not a duty owed only to persons lawfully using the footpath; and that the defts. were liable to the plt. for the loss of his horse. *PARKINSON v. GARSTANG AND KNOTT END RY. CO.*

Div. Ct. [1910] 1 K. B. 615

5. — *Repair of roadway—Road raised on inclined planes—Railways Clauses Act*, 1845 (8 & 9 Vict. c. 20), s. 16.

A ry. co., being authorized to carry their ry. across a high road upon the level, constructed the ry. at a slightly higher level than the road, and, in order to bring the road up to the level of the ry., raised it by means of inclined planes on either side of the ry. under the powers conferred by s. 16 of the *Railways Clauses Act*, 1845 :—

Held that there was no obligation upon the ry. co. to repair the roadway upon the inclined planes, notwithstanding that their act in inclining its surface might have made its maintenance more expensive than before. *WEST LANCASHIRE RURAL DISTRICT COUNCIL v. LANCASHIRE AND YORKSHIRE RY. CO. Wright J.* [1903] 2 K. B. 394

Light Railways.

Light Railway Commissioners (Salaries) Act, 1901 (1 Edw. 7. c. 36), provides for the payment of another of the *Light Railway Commissioners*.

RAILWAY (Light Railways)—continued.

Additional Rule dated May, 1904, made by Board of Trade with respect to Notices to be given and Deposits made in cases where alterations of work are proposed during Progress of Application.
St. R. & O. 1904, No. 977.

1. — *Carriage—Local authority—Licence to ply for hire—"Omnibus"—"Hackney Carriage"—Town Police Clauses Acts, 1847 (10 & 11 Vict. c. 89), s. 37, and 1899 (52 & 53 Vict. c. 14), ss. 3, 4—Light Railways Act, 1896 (59 & 60 Vict. c. 48).*

The carriages used on a light ry. constructed and worked under the powers given by the Light Railways Act, 1896, and orders made thereunder are not "omnibuses" or "hackney carriages" within the meaning of the Town Police Clauses Acts, 1847 and 1899, and do not, therefore, require to be licensed to ply for hire in the streets of a town under s. 37 of the Act of 1847.
YORKSHIRE (WOOLLEN DISTRICT) ELECTRIC TRAMWAYS v. ELLIS Div. Ct. [1905] 1 K. B. 396

— Carriage licence—Cars on light railway.

See **REVENUE—Carriage Licence. 4.**

— Compulsory purchase.

See under **RAILWAY — Compulsory Purchase.**

— Costs—Taxation—Chancery or parliamentary scale—Costs of obtaining Light Railway Order.

See **SOLICITOR—Costs. 7.**

2. — *Order incorporating Lands Clauses Acts—Arbitration—Costs—Taxation by Master of Supreme Court—Review of taxation—Light Railways Act, 1896 (59 & 60 Vict. c. 48), ss. 12, 13—Lands Clauses (Taxation of Costs) Act, 1895 (58 & 59 Vict. c. 11), s. 1.*

Where an order under the Light Railways Act, 1896, incorporates the Lands Clauses Acts, and on a submission to arbitration under the Light Railways Act the arbitrator awards costs to be paid by one of the parties to the submission, either party can require under the Lands Clauses (Taxation of Costs) Act, 1895, s. 1, that the costs shall be taxed and settled by one of the Masters of the Supreme Court, whose decision is not open to review. *In re CANNINGS, LD. AND MIDDLESEX COUNTY COUNCIL C. A. [1907]*

1 K. B. 51

— Rates.

See under **RATES—Railway.**

Luggage.

— Liability for loss of luggage—Passengers' luggage carried free of charge.

See **CARRIER. 1.**

3. — *Railway company—Passenger's luggage carried free of charge—Articles over value of 10l.—Liability for loss—Carriers Act, 1830 (11 Geo. 4 & 1 Will. 4, c. 68), ss. 1, 2.*

The provisions of the Carriers Act, 1830, apply to ordinary personal luggage of a passenger which by the regs. of the ry. cos. he is entitled to have carried free of charge. **CASSWELL v. CHESHIRE LINES COMMITTEE**

Div. Ct. [1907] W. N. 140; [1907] 2 K. B. 499

RAILWAY—continued.**Maps.**

— Admissibility of railway map by the appellate Court—Right of way.

See **CANADA—Railway. 3.**

Mines.**(Mines and Minerals.)**

1. — *China clay—Mines and "other minerals"—Railway company—Compulsory purchase of surface—Right to support—Railway Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 20), ss. 77, 78.*

China clay lying adjacent to and within lands in Cornwall purchased by the appellant ry. co. was not part of the ordinary composition of the soil in the district, and its presence was rare and exceptional:—

Held, as a matter of fact upon the evidence, that the china clay was a mineral within the provisions of the Railways Clauses Consolidation Act, 1845, and excepted from the lands conveyed to the ry. co.

Decisions of *Eve J.* and the *C. A.*, [1909] 1 Ch. 218, affirmed. **GREAT WESTERN RY. CO. v. CARPALLA UNITED CHINA CLAY CO., LD.**

H. L. (E.) [1910] W. N. 3; [1910] A. C. 83

— Clay—Compulsory purchase—Mines and minerals.

See **MINES. 3, 4.**

— Coal required to be left unworked—Compensation.

See **MINES. 14.**

2. — *Compensation—Purchase—Limestone required to be left unworked—London and Birmingham Railway Company Act, 1833 (3 Will. 4, c. xxvii.), ss. 54, 55, 58.*

By a private Act, passed prior to the Railways Clauses Consolidation Act, 1845, authorizing the construction of a ry. and containing the usual provisions for the acquisition of lands, mines and minerals (including by name limestone) were excepted out of the purchase of lands, but it was provided that, upon receipt of twenty-one days' notice from the proprietor of any mines or minerals lying under or within forty yards of the ry. of his desire to work them, the ry. co. might purchase them or any part of them.

The claimants were the owners in fee of land on both sides of the ry. and of limestone lying under their land and under the ry.; they had a cement manufactory on their land, in which they used and turned into cement the limestone which they quarried. Owing to the cost of carriage the limestone when quarried had no market value as an article of commerce other than its value to the claimants for use in the adjacent manufactory. The claimants having in the ordinary course of quarrying approached close to the forty yards limit, gave notice to the ry. co. of their intention to work the limestone within that limit, and the ry. co. gave separate notices to treat in respect of the limestone within that limit, but not under the ry., and of the limestone

RAILWAY (Mines)—continued.

actually under the ry., and the amount of compensation was referred to arbitration :—

Held—(1.) that as the limestone had no market value in the strict sense of that term, its value to the claimants was what they might fairly be expected to have made out of it by working it in the ordinary and reasonable manner in which it would have been worked but for the notice to treat ; (2.) that the profits which the claimants would have made by turning it into cement might properly be taken into consideration by the arbitrator as an indication, though not as a measure, of that value ; and (3.) that the value was not affected by the fact that the claimants owned large quantities of other limestone which they might have worked instead of the stone in question.

The Act provided that after its passing, no shaft, pit, or quarry should be dug, sunk, or made "in or on" the ry. With respect to the limestone lying under the ry., the arbitrator found that the claimants, by entering upon their property, could and would have worked and gotten the stone without going on to the surface of the ry., but the effect would have been to cause the subsidence of the rails and ballast :—

Held by Sir Gorell Barnes, Pres., and Farwell L.J. (Kennedy L.J. dissenting), that such a mode of working would have involved the making of a quarry "in," though not "on," the ry., and would have been in contravention of the statute, and that therefore the limestone under the ry. had no assessable value.

Decision of Bray J., [1908] 1 K. B. 925, reversed.

Eden v. North Eastern Ry. Co., [1907] A. C. 400, discussed. **RUGBY PORTLAND CEMENT CO. v. LONDON AND NORTH WESTERN RY. CO.** C. A. [1908] 2 K. B. 606

3. — Compensation — Railway company — Coal required to be left unworked—Railways Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 20), s. 78.

The compensation payable by a ry. co. under s. 78 of the Railways Clauses Consolidation Act, 1845, in respect of such mines as they require to be left unworked is a full value of the minerals required to be left unworked, namely, what the minerals would have sold for if worked, less the cost of working them.

Decision of the C. A., *Joicey & Co. v. North-Eastern Ry. Co.*, [1907] 1 K. B. 402, reversed, and decision of Bigham J., [1906] 1 K. B. 195, restored. **EDEN v. NORTH-EASTERN RY. CO.**

H. L. (E.) [1907] W. N. 173 ; [1907] A. C. 400

Note.

This case was discussed by C. A., *Rugby Portland Cement Co. v. London and North Western Ry. Co.*, [1908] 2 K. B. 606. See preceding Case.

4. — Compulsory purchase under special Act — Mine-owner stopped from working mines within prescribed distance—Interest on compensation moneys.

The deft. co. was the owner of a canal, and

RAILWAY (Mines)—continued.

the plts. were the owners of mines under the canal and the adjacent land. Under the provisions of a private Act passed in 1892, when the workings of a mine-owner in the position of the plts. approached within a prescribed distance of the canal he was to give a two months' notice to the co. of his intention to proceed with the work, and within the two months was not to continue working within the prescribed distance. If the co. considered that the further working was likely to damage the canal and was willing to purchase and make compensation for the seam, it could give a counter-notice to that effect, and then seam was not to be wrought or gotten, but was to be purchased and paid for by the co., the amount, if not agreed upon, being settled by arbitration.

The mine-owners' notice having been given, the co.'s counter-notice was given on Nov. 19, 1892. An arbitrator was appointed in Nov., 1897, and it was subsequently agreed that all questions between the parties should be left to the arbitrator and that his decision should be accepted without dispute, except that on the question of interest on the amount found due for purchase-money and compensation either party might obtain the decision of a Court of law.

The arbitrator awarded 16,566*l.* for purchase-money and compensation, on the footing of the plts.' seam having been purchased on Nov. 19, 1892, and that interest at 4 per cent. on the amount should be calculated from that date until the date of payment :

Held, that when the co. gave its notice to the mine-owners, the latter were by force of the statute prevented from enjoying the minerals in their way—namely, by working them—and the co. henceforth obtained the enjoyment in its way—namely, by way of support—and became liable to pay the purchase-money ; that from that time the mine-owners had been deprived of their property, and the co. had enjoyed both that and the purchase-money, and that on the principle laid down in *Birch v. Joy*, (1852) 3 H. L. C. 565, with reference to ordinary vendors and purchasers, the mine-owners were entitled to the interest as awarded.

Caledonian Ry. Co. v. Carmichael, (1870) L. R. 2 H. L. Sc. 56, distinguished. **FLETCHER v. LANCASHIRE AND YORKSHIRE RY. CO.**

Buckley J [1902] W. N. 67 ; [1902] 1 Ch. 901

— Grants include mines and minerals—Canadian Act (53 Vict. c. 4)—Orders in Council thereunder.

See CANADA—Railway. 5.

— Gravel and sand—Quarries—Regulation of railways.

See MINES. 6.

5. — Mines near railway—Notice to prevent working—Arbitration—Compensation—Interest on amount awarded—Railways Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 20), s. 78.

Where an owner, lessee, or occupier of mines or minerals lying under or near a ry. gives notice to the ry. co. under s. 78 of the Railways Clauses Act, 1845, of his intention to work the same, and the co. give notice of their willingness to make compensation, and the amount of compensation

RAILWAY (Mines)—continued.

is determined by arbitration under the Lands Clauses Act, 1845, the arbitrator has no power to award interest, in respect of the time between the giving of notice by the co. and the making of the award, upon the sum awarded as compensation. *In re RICHARD AND GREAT WESTERN RY. CO. C. A.* [1904] **W. N. 192**; [1905] **1 K. B. 68**

— Parcels—Conveyance of land with minerals—Adjoining railway the boundary—Highway.
See VENDOR AND PURCHASER—Minerals. 1.

6. — Repeal of prior Act—Reservation of vested rights—Arbitration and award ultra vires—Costs of arbitration—Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), s. 34.

Land was bought by a ry. co. in 1839, the conveyance being expressed to be in accordance with a special Act by which minerals were to be deemed to be excepted out of the purchase and the mining rights were defined. A special Act of 1846 repealed the prior Act with a proviso that the repeal should not affect any conveyance, contract, or thing executed, made or done under the repealed Act. The Railways Clauses Consolidation Act, 1845, and the Lands Clauses Consolidation Act, 1845, were incorporated in the Act of 1846. The owner of minerals under the land gave the co. notice of his intention to work the minerals, and claiming that the mining rights were regulated by the Acts of 1845 and 1846, and required an arbitration under the Lands Clauses Act, 1845. The co. attended the arbitration under protest, and the umpire made an award giving the owner of the minerals compensation under the Acts of 1845 and 1846. The owner having sued the co. on the award to recover the sum awarded and the costs of the arbitration:—

Held, that the effect of the proviso in the Act of 1846 was that the mining rights were regulated by the repealed Act and not by the Railways Clauses Act, 1845; that the arbitration and award were ultra vires, and that the owner of the minerals was not entitled to the sum awarded or to the costs of the arbitration.

The reasoning of the C. A. on the above points, [1899] **1 Q. B. 921**, disapproved, for the reasons there given by Collins L.J. **LONDON AND NORTH WESTERN RY. CO. v. WALKER—H. L. (E.)** [1903] **W. N. 104**; [1903] **A. C. 289**

— Reservation of minerals—Conveyance of surface—COSTS.

See LANDS CLAUSES ACTS. 35.

7. — Sandstone—Mines of coal, ironstone, slate, or other minerals—Railways Clauses Consolidation (Scotland) Act, 1845 (8 & 9 Vict. c. 33), ss. 70, 71—Railways Clauses Consolidation (England) Act, 1845 (8 & 9 Vict. c. 20), ss. 77, 78.

By s. 70 of the Railways Clauses Consolidation (Scotland) Act, 1845 (which corresponds to s. 77 of the Railways Clauses Consolidation (England) Act, 1845), "The (ry.) co. shall not be entitled to any mines of coal, ironstone, slate or other minerals under any land purchased by them, except only such parts thereof as shall be necessary to be dug or carried away, or used in

RAILWAY (Mines)—continued.

the construction of the works, unless the same shall have been expressly purchased; and all such mines, excepting as aforesaid, shall be deemed to be excepted out of the conveyance of such lands unless they shall have been expressly named therein and conveyed thereby";—

Held (reversing the decision of the Second Division of the Ct. of Sess., Scotland, (1909) **S. C. 277**), that sandstone is not a mineral within the meaning of the section. **NORTH BRITISH RY. CO. v. BUDHILL COAL AND SANDSTONE CO. H. L. (Sc.)** [1909] **W. N. 223**; [1910] **A. C. 116**

8. — Tunnel—Subjacent and adjacent support—Purchase of upper seams of coal under tunnel—Right to support from underlying seam—Limit of forty yards—Railways Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 20), ss. 77 to 85.

In this case the plts. sought injunctions to restrain the defts. from working the minerals in such a manner as to withdraw (1) vertical or lateral support from the tunnel; (2) lateral support from the tunnel outside a distance of 40 yards therefrom, and (3) vertical or lateral support from the two seams of coal lying under the tunnel and above the minerals which the defts. now desired to work.

Eve. J. held that the plts. were not entitled to any of the injunctions claimed, and in giving judgment said, with reference to the first injunction, that the transaction and form of grant of July 10, 1852, did not prevent the application of the Railways Clauses Consolidation Act, 1845: *London and North Western Ry. Co. v. Ackroyd*, (1862) **31 L. J. (Ch.) 588**; that the purchase was a compulsory one in that it was made and possession given while the compulsory powers were in force: *Hooper v. Bourne*, (1880) **5 App. Cas. 1**. and that there was nothing to limit the mining sections of the Act to land acquired compulsorily, so that the question of voluntary or compulsory acquisition was immaterial.

With regard to the third injunction claimed, he said that it was of no importance whether the transaction of 1878 was a payment of compensation evidenced by a conveyance or whether it was in fact a sale and purchase. In either case it carried no right of support from the underlying minerals, being in truth a purchase of land within s. 77, and could not be successfully set up as a ground for claiming the relief asked by the third injunction.

With regard to the second injunction, if *New Moss Colliery, Ltd. v. Manchester Corporation*, [1908] **A. C. 114**, were the only authority dealing with the respective rights of landowner and undertakers to support from minerals outside the prescribed area, he would have felt himself bound to hold that such rights must be ascertained by the application of the common law and not by reference to the statutory code, but he thought that the very point had been decided by the House of Lords in *Great Western Ry. Co. v. Bennett*, (1867) **L. R. 2 H. L. 27**, under the Railways Clauses Consolidation Act, in which the House, in coming to the conclusion that the mine-owner was entitled to compensation under certain land which, as appeared from the case and appendix, included land both inside and outside

RAILWAY (Mines)—continued.

the prescribed area, thereby decided that the railway was not entitled to support from any of the minerals under the land outside the area. Having regard to that decision he considered himself bound to hold that the plts. did not enjoy any common law right of support from the defts., minerals beyond the prescribed distance. **LONDON AND NORTH-WESTERN RY. CO. v. HOWLEY PARK COAL AND CANNEL CO.** - **Eve J. [1910] W. N. 163**

Negligence.

— Railway company—Defective fence—Turntable—Infant trespasser—Invitation to danger.

See **RAILWAY—Fences. 1.**

Notice of Accidents.

Railway — Safety — Notice of accidents — Order made by the Board of Trade, Dec. 21, 1906, in pursuance of the Regulation of Railways Act, 1871, s. 6, and the Railways (Prevention of Accidents) Act, 1900, s. 13 (2). **St. R. & O. 1906, No. 947. Price, 1d.**

Omnibus.

1. — *Omnibus business—Railway company—Incidental powers—Ultra vires.*

A ry. co. without express power to run omnibuses ran omnibuses in a way which was in this House held as a matter of fact to be not incidental to or consequential upon their statutory powers:—

Held, that the co. must be restrained from carrying on the omnibus business, and that the undertaking required and sanctioned by the C. A. was impracticable.

Decision of the C. A., [1907] W. N. 5; [1907] 1 Ch. 81, reversed.

Decision of Warrington J., [1906] 1 Ch. 811, restored. **ATT.-GEN. AND BIRKENHEAD CORPORATION v. MERSEY RY. CO.** - **H. L. (E.) [1907] W. N. 173; [1907] A. C. 415**

Parliamentary Deposit.

See under **RAILWAY—Deposit.**

Passengers.

1. — *Break journey, Right to.*

A contract by a ry. co. to carry a passenger from one station to another does not in the absence of special terms entitle the passenger to break the journey at any intermediate station. **ASHTON v. LANCASHIRE AND YORKSHIRE RY. CO.** - **Div. Ct. [1904] 2 K. B. 313**

2. — *Fare—Passenger travelling on after giving up ticket at station for which it is available.*

The deft. intending to travel by a particular train from H. to M. on the plts.' railway, took a ticket to S., an intermediate station, and after giving up this ticket on the arrival of the train at S., remained in the carriage and tendered to the plt.'s servant 7d., which was the amount of the fare from S. to M.—the difference between the fare from H. to S. and the through fare from H. to M. being 9d. The plts. refused the amount

RAILWAY (Passengers)—continued.

tendered, but allowed the deft. to travel on in the same train to M., and sued him for the excess through fare:—

Held, that the plts. were entitled to recover. **LONDON AND NORTH WESTERN RY. CO. v. HINCHCLIFFE** **Div. Ct. [1903] 2 K. B. 32**

3. — *Liability of railway companies—Loss of life from explosives in a railway carriage—Negligence—Onus probandi—Appeal from Bengal.*

Ry. cos. are bound to use proper care and skill in carrying their passengers; they are not liable as common carriers of passengers independently of negligence.

Where a passenger was killed in a ry. carriage by an explosive illegally introduced into it:—

Held, that the ry. co. was not liable in damages unless guilty of negligence in permitting the fireworks to be brought into the carriage. As it was not the duty of the co. to search every parcel carried by a passenger, the onus was on the plt. to shew that the parcels containing the fireworks suggested danger.

Collett v. London and North Western Ry. Co., (1851) 16 Q. B. 984, explained. **EAST INDIAN RY. CO. v. KALIDAS MUKERJEE**

P. C. [1901] A. C. 396

4. — *Negligence—Passenger—Closing of carriage door.*

Where a passenger is seated in a ry. carriage the fact that his finger is crushed owing to the shutting of the carriage door by a ry. servant on the platform is not evidence of negligence in an action against the ry. co.

There is no duty cast upon the servants of a ry. co. to give warning of the shutting of a carriage door to passengers who are actually seated inside the carriage and are not in the act of getting in or out of it. **DRURY v. NORTH EASTERN RY. CO.** **Div. Ct. [1901] 2 K. B. 322**

5. — *Negligence—Railway company—Failure of railway servants to close carriage doors before starting the train—Passengers—Damages for personal injuries.*

In an action of damages for personal injuries brought by a passenger against a ry. co. the pursuer averred that while standing on the platform of their station he was struck and injured by an open carriage door. That it was the duty of the defenders and the invariable practice of ry. cos. to close the doors of compartments before a train was allowed to leave the station, but this they negligently failed to do on the occasion of this accident, and thereby an open door caused the injury to the pursuer:—

Held (reversing the judgment of the First Division of the Ct. of Sess., (1908) S. C. 48), that there was a relevant averment of negligence by the defenders, inasmuch as facts were averred from which a jury might infer negligence; and that the pursuer was entitled to a trial by jury. **TOL v. NORTH BRITISH RY. CO.** - **H. L. (Sc.) [1908] W. N. 136; [1908] A. C. 352**

— Omnibus business — Incidental powers — Railway company—Ultra vires.
See **RAILWAY—Omnibus. 1.**

RAILWAY (Passengers)—continued.

— Passenger's luggage carried free of charge—Articles over value of 10*l.*—Liability for loss.

See **CARRIER**. 1.

— Third-class passengers—Fare of a penny per mile.

See **CANADA—Railway**. 6.

Payment out of Court.

— Evidence—Delivery of bond to company.

See **LANDS CLAUSES ACTS**. 32.

Plans.

1. — *Statutory powers—Deposited plans—Limits of deviation—Medium filum—Railways Clauses Consolidation Act, 1845* (8 & 9 *Vict. c.* 20), s. 15.

The general provisions of s. 15 of the Railways Clauses Act, 1845, which permit the medium filum of the line to be placed on the line of deviation shown on the deposited plans, apply only to the plans for construction of a new line, not to those for a junction with an existing line.

Finch v. London and South Western Ry. Co., (1890) 44 Ch. D. 380, followed. **CARDIFF RY. CO. v. TAFF VALE RY. CO.** — **Farwell J.** [1905] W. N. 105; [1905] 2 Ch. 289

Poor Rates.

See under **RAILWAY—Rates**.

Powers.

1. — *Extension of powers—Railway company—Application of assets—Construction of extension line—Creditors—Separate undertaking.*

An existing ry. co. incorporated by statute was empowered by a later special Act to make extension rys., the rys. and works and the land and property acquired for the extension to form a separate undertaking with separate capital, and as between the general and the separate undertaking the expenses of maintaining and working the separate undertaking to be paid out of the revenue of the separate undertaking. There being no provision either in the special Act or in the contract for constructing the extension to limit the liability of the co. for the expenses of construction to the assets of the separate undertaking:—

Held by Lord Loreburn L.C. and Lord Macnaghten (Lord Ashbourne dissenting), that the contractors were entitled to be paid out of the general undertaking the sums due to them for the construction.

The decisions of the K. B. D. and the C. A. in Ireland (not reported) reversed.

In re Ogilvie, (1871) L. R. 7 Ch. 174, approved. **S. PEARSON & SON, LD. v. DUBLIN AND SOUTH EASTERN RY. CO.** — **H. L. (I.)** [1909] A. C. 217

2. — *Powers exercisable for limited period—Expiration of time—Company in lawful possession of land—Power to construct railway.*

A special Railway Act empowered the Great Western Ry. Co. to make rys. and construct junctions between their line and the rys. of the Midland Co. and provided that if the junctions were not completed within five years the powers granted should cease. The Great

RAILWAY (Powers)—continued.

Western Co. made the rys. but had not completed the junctions before the end of the five years:—

Held, that there was nothing in the Act to prevent the Great Western Co. from completing the junctions by virtue of their ownership of their own land and a licence to use the land of the Midland Co.

The decision of the C. A., sub. nom. *Great Western Ry. Co. v. Midland Ry. Co.*, [1908] 2 Ch. 644, affirmed. **MIDLAND RY. CO. v. GREAT WESTERN RY. CO.** — **H. L. (E.)** [1909] W. N. 167; [1909] A. C. 445

3. — *Railway company—Statutory powers—Unreasonable use—Injunction.*

Plt. was lessee of a house. Deft. co. was incorporated by Act of Parliament, for the purpose of making an underground electric ry. Deft. co. had acquired the piece of land immediately adjoining plt.'s house for the purpose of constructing a station on their ry. For this purpose they were making three large shafts within a few feet of the plt.'s house. Defts. worked day and night in the construction of these shafts, and it was alleged that they threatened to continue so working for a period of several years.

Plt. brought this action for an injunction to restrain the defts. from working so as to occasion a nuisance by night. The statement of claim alleged: "The carrying out of the said works by night is an unreasonable and vexatious abuse of the powers conferred on the defts. by Parliament, and by reason thereof the plt.'s house is rendered unfit for use as a dwelling-house, and the plt. has suffered great loss and damage."

Defts. moved to strike out the statement of claim as shewing no reasonable cause of action. Farwell J. refused this motion, but allowed the case to be argued as if it had been set down for the decision of the preliminary question of law, whether the unreasonable and vexatious use of statutory powers in carrying out works authorized by the statute gave rise to a cause of action, where negligence was not alleged:—

Held, that the case was covered by the decision of Lord Lyndhurst in *Coots (or Coates) v. Clarence Ry. Co.*, (1830) 1 Russ. & My. 181; 32 R. R. 183; Preface, v. The whole question in that case was whether the Court had power to interfere to stop unreasonable action on the part of a ry. co., and the Lord Chancellor had interfered. The point of law must therefore be decided in favour of the plt. **ROBERTS v. CHARING CROSS, EUSTON AND HAMPSTEAD RY. CO.**

Farwell J. [1903] W. N. 13

Practice.

— Appeal for order of judge at chambers—Practice and procedure."

See **APPEAL**. 2.

— Costs of inquiries necessary for distribution of deposit—Parliamentary deposit—Abandonment—Practice.

See **RAILWAY—Deposit**. 1.

— New trial, Application for—Railway accident—Prospective loss of income—Excessive damages.

See **PRACTICE—Trial**. 4.

RAILWAY (Practice)—continued.

— Railway Passengers' Assurance Company's Acts—Practice—Staying proceedings—Submission to arbitration.

See PRACTICE—Staying Proceedings. 5.

Railway and Canal Commissioners.

Railway—Private sidings—Rule made by the Railway and Canal Commissioners, in pursuance of the 20th section of the Railway and Canal Traffic Act, 1888, in relation to applications to the Commissioners made under s. 3 of the Railway (Private Sidings) Act, 1904. W. N. 1905 (Feb. 11), p. 67. See CURRENT INDEX, 1905, p. xcix.

Rules dated April 30, 1902, made by the Railway and Canal Commrs. in pursuance of the 12th section of the Railway Employment (Prevention of Accidents) Act, 1900, in relation to applications to the Commrs. made under ss. 3 and 10 of that Act. St. R. & O. 1902, No. 354, L. 5.

— Sidings.

See under RAILWAY—Sidings.

Rates.

See also under RAILWAY—Carriage.

RATES.

— Assessment—"Land used only as a railway."

See RATES. 34.

1. — Carriage of goods—Reduction of "rate authorized" where company does not provide trucks—Meaning of "rate authorized"—Great Western Railway Company (Rates and Charges) Order Confirmation Act, 1891 (54 & 55 Vict. c. cccxii.), *Sched.*, s. 2 (b).

By the schedule to the Great Western Railway Company (Rates and Charges) Order Confirmation Act, 1891 (54 & 55 Vict. c. cccxii.), s. 2 (b), it is provided that, in certain cases where the co. do not provide the trucks in which merchandise is carried on the ry., the "rate authorized for conveyance" shall be reduced by a sum which shall, in the event of difference between the co. and "the person liable to pay the charge," be determined by an arbitrator:—

Held, that "the rate authorized for conveyance" in the above-mentioned enactment means the actual rate in force for the time being as published in the co.'s book of rates, and not the maximum rate which the co. are by the schedule authorized to charge. *SPILLERS & BAKERS, LD. v. GREAT WESTERN RY. CO. - C. A. [1909] W. N. 47; [1909] 1 K. B. 604*

2. — Inequality of charge—Railways Clauses Act, 1845 (8 & 9 Vict. c. 20), s. 90—Money paid to agent under mistake of fact—When recoverable back.

The plt. contracted with the M. Ry. Co. for the carriage of coke breeze from a station on the M. Ry. to a station on the defts.' ry. at a certain specified through rate per ton. The goods having been delivered, the plt. paid for the carriage at the agreed rate to the defts. as the collecting agents of the M. Ry. Co. The plt. subsequently discovered that the M. Ry. Co. had in their published book of rates a through rate between the same stations charging a less sum per ton for coke breeze if used for fuel purposes. The coke

RAILWAY (Rates)—continued.

breeze carried for the plt. was intended to be used for other than fuel purposes. The plt. sought to recover from the defts. the difference between the two rates, upon the ground that differential charges for the carriage of the same article according to the purposes for which it was used was a breach of the provisions of s. 90 of the Railways Clauses Act, 1845, which requires "that all such tolls be at all times charged equally to all persons and after the same rate . . . in respect of all . . . goods . . . of the same description conveyed . . . over the same portion of the line of ry. under the same circumstances." There was no evidence that the M. Ry. Co. had in fact ever carried coke breeze for fuel purposes at the lower rate for any particular persons, but the lower rate had been in existence as a published rate for several years, including the whole period covered by the transactions with the plt. The payments by the plt. to the defts. had been made voluntarily and without compulsion. Before any notice to the defts. of any claim by the plt. that he had been overcharged they had settled in account with the M. Co. in respect of the payments so received by them on the M. Co.'s behalf:—

Held—(1.) That, assuming s. 90 to apply to the case of carriage at a through rate over more than one ry., as to which the Court expressed no opinion, it was necessary, in order to establish an inequality of rates under that section, to shew that some persons had in fact been charged at the lower rate, and that of that the existence of the lower rate upon the rate book was no evidence.

(2.) That, even if there was a breach of that section, the money could not be recovered back from the defts., who had received it as innocent agents and settled for it with their principals before any notice of the overcharge; and that this applied equally to that portion of the money received by them, which, in the ordinary course under their traffic arrangement with the M. Co., they would be entitled to retain to their own use as representing their share of the through rate for the portion of the transit over their ry., the money having been paid by the plt. as a lump payment under a contract to which the defts. were not parties. *TAYLOR v. METROPOLITAN RY. CO. - Div Ct. [1908] W. N. 100; [1908] 2 K. B. 55*

— Link line—Actual net earnings within parish

— Interest on cost of construction.

See RATES. 35.

3. — Poor-rate — Assessment — Liability of railway company—Sidings—Running lines.

The principal question raised by the case was whether certain ry. lines in the parish of Hornsey should be treated as running lines, or whether they should be considered as sidings and therefore rated as indirectly productive. The Great Northern Ry. Co., in addition to carrying-goods to King's Cross over their own lines, carry goods over the Metropolitan Ry. to a goods station belonging to them, and also they carry other goods over the Metropolitan Ry. to stations on other rys. In consequence of the very large passenger traffic on this ry., goods can only be

RAILWAY (Rates)—continued.

carried on these lines at certain hours, and consequently when a train arrives at the station in the parish of Hornsey, it has to be divided, and the trucks destined for stations other than King's Cross have to remain where they are for a considerable time. Extra lines and sidings are therefore necessary for this purpose, and also for the purpose of shunting, which takes place on these extra lines during about eight hours in each day, when the lines are not occupied by trucks waiting to be forwarded over the Metropolitan Ry. Without these extra lines and sidings, which are known as relief lines, it would be impossible for the Great Northern Ry. to carry on the passenger traffic in respect of which the parish of Hornsey receives rates on the mileage system. It was contended for the ry. co. that the goods traffic placed on these relief lines was still upon its journey to its destination, and that the lines were, therefore, on the principle of *Assessment Committee of Stockport Union v. London and North Western Ry. Co.*, (1898) 78 L. T. 180, part of the running line:—

Held, that the relief lines were in the nature of a storage station and produced traffic indirectly, and that they must be rated accordingly. **GREAT NORTHERN RY. CO. v. EDMONTON UNION AND OVERSEERS OF HORNSEY**

Channell J. [1905] W. N. 115

— Railway—"Land used only as a railway"—Light railway.

See RATES. 34.

— Railway—Link-line—Interest on cost of construction—Rateable value.

See RATES. 35.

4. — *Railway rates—Short distance—Merchandise "conveyed" by the company partly on its own railway and partly on another railway.*

By clause 11 of the schedule to the London and North Western Railway Company (Rates and Charges) Order Confirmation Act, 1891 (54 & 55 Vict. c. cccxi.), "Where merchandise is conveyed for an entire distance which does not exceed . . . in the case of merchandise in respect of which no station terminal is chargeable six miles, the co. may . . . make the charges for conveyance authorized by this schedule as for . . . six miles . . . : Provided that where merchandise is conveyed by the co. partly on the ry. and partly on the ry. of any other co. the ry. and the ry. of such other co. shall for the purpose of reckoning such short distance be considered as one ry."

The London and North Western Ry. Co. accepted goods for conveyance for an entire distance partly on their own ry. and partly on the ry. of the Lancashire and Yorkshire Ry. Co.; in one instance the entire distance was less than six miles, in another instance the distance conveyed over the London and North Western line was more than, and over the Lancashire and Yorkshire line was less than, six miles. In both instances the traffic was taken by the engines of the respective cos. over their own lines, except that, for convenience of working, the engine of the Lancashire and Yorkshire Co. picked up the traffic at a siding on the London and North Western line about two miles short of the

RAILWAY (Rates)—continued.

junction of the two rys. and conveyed it thence to its destination:—

Held by Vaughan Williams L.J. and Fletcher Moulton L.J. (Buckley L.J. in part dissenting), that the proviso only applied where the total transit was less than six miles and there was a conveyance or carriage by the London and North Western Ry. Co. over both the rys., and that there had not been such a conveyance by that co. merely because they had received the traffic to be carried to its destination at a through rate. In the first instance, therefore, the London and North Western Co. were entitled to charge two short distance rates, and in the second to charge a mileage rate over their own line and a short distance rate over the line of the Lancashire and Yorkshire Co.

Semble, the expression "conveyed" in the proviso does not refer merely to the physical haulage of the traffic.

Decision of the Ry. and Canal Commission, [1906] 1 K. B. 577, affirmed on different grounds. **LANCASHIRE AND CHESHIRE COAL ASSOCIATION v. LONDON AND NORTH WESTERN RY. CO. AND LANCASHIRE AND YORKSHIRE RY. CO.** **C. A. [1907] W. N. 167; [1907] 2 K. B. 902**

— Rates and charges—Reasonableness a question for jury.

See RAILWAY—Siding. 3.

5. — *Reasonable facilities—Agreed through rates—Application for through rates of same amount but differently apportioned—Jurisdiction of Railway Commissioners—Railway and Canal Traffic Act, 1888 (51 & 52 Vict. c. 25), s. 25.*

The Railway and Canal Commissioners have no jurisdiction under s. 25 of the Railway and Canal Traffic Act, 1888, to entertain an application for a new apportionment between the several ry. cos. over whose lines through traffic is carried of an existing through rate for that traffic.

Where an agreed through rate for through traffic over the lines of two or more ry. cos. is in existence, and the apportionment of the rate between the ry. cos. has been agreed upon, and there is no threat on the part of any of the cos. to withdraw the rate, the Railway and Canal Commissioners have no jurisdiction to entertain an application for an order for a through rate of the same amount as the existing rate but differently apportioned between the several ry. cos. **MANCHESTER SHIP CANAL CO. v. LONDON AND NORTH WESTERN RY. CO.**

Railway and Canal Commission
[1910] 2 K. B. 913

6. — *Regulation—Increase of rates—Reasonableness—Change in condition of trade—Evidence—Railway and Canal Traffic Act, 1894 (57 & 58 Vict. c. 54), s. 1.*

By s. 1, sub-s. 1, of the Railway and Canal Traffic Act, 1894, where a ry. co. have since Dec. 31, 1892, increased, or thereafter increase, any rate, then, if any complaint is made that the rate is unreasonable, it shall lie on the co. to prove that the increase of the rate is reasonable.

Upon a complaint that an increase of a rate for the carriage of coal as from Aug. 1, 1900, over the defts.' rys. was unreasonable, an order

RAILWAY (Rates)—continued.

was made that, if the defts. relied for justification on any change in the mode or expense of carrying coal, they were to give particulars thereof. No such particulars were given. At the hearing before the Railway Commissioners it was proved on behalf of the defts. that in 1895, at the request of the colliery owners, owing to the depression in the coal trade, the defts. reduced the rates for the carriage of coal; that in 1900 the coal trade was in a prosperous condition, the price of coal having risen considerably; and that on Aug. 1, 1900, the defts. raised the rates to what they had been in 1895 before the reduction was made. The Commissioners (Sir James Woodhouse dissenting) having found that the increase of the rates was reasonable:—

Held, that the evidence as to the rise in the price of coal was not given for the purpose of proving an increase in the expense of carrying the coal, but for the purpose of proving that the depression which was the cause of the reduction in the rates had passed away and had been succeeded by a period of prosperity, and therefore the evidence was not excluded by the order for particulars; and that, consequently, there was evidence upon which the Railway Commissioners were entitled to find that the increase of the rates was reasonable.

Judgment of the Railway and Canal Commission, [1908] 1 K. B. 771, affirmed. **NORTH STAFFORDSHIRE COLLIERY OWNERS ASSOCIATION v. NORTH STAFFORDSHIRE RY. CO., LONDON AND NORTH WESTERN RY. CO., GREAT WESTERN RY. CO., AND SHROPSHIRE UNION RY. AND CANAL CO.** C. A. [1908] W. N. 171; [1908] 2 K. B. 765

— Signal-box—Poor rate—Assessment.

See RATES. 33.

7. — Through rate—Joinder of defendants—Undue preference—Railway and Canal Commission—Practice.

Traders who complain of a through rate as being an undue preference must join as defts. all the cos. concerned in making the through rate. **CHANGE & HUNT, LD. v. LONDON AND NORTH WESTERN RY. CO.**

Court of Railway and Canal Commission, [1909] 1 K. B. 550

8. — Traffic management—Difference in treatment—Undue preference—Purchase of land—Special agreement—Adequate consideration—Payment in cash and services—Railway and Canal Traffic Act, 1854 (17 & 18 Vict. c. 31), s. 2—Railway and Canal Traffic Act, 1888 (51 & 52 Vict. c. 25), s. 27, sub-ss. 1, 2.

A "difference in treatment" within the meaning of sub-s. 1 of s. 27 of the Railway and Canal Traffic Act, 1888, between rival traders by a ry. co. may be justified and explained by an agreement bona fide entered into by the ry. co. and a trader under which land is taken and arrangements are made for what is to be done on and with reference to the land so taken.

An agreement of purchase made in good faith between a ry. co. and a trader, whereby the latter receives payment partly in cash and partly in services to be rendered by the ry. co. on land

RAILWAY (Rates)—continued.

the subject-matter of the agreement at rates lower than those charged to other traders, is not bad in law as against public policy.

Per Fletcher Moulton L.J.: Agreements for the acquisition of land are not rendered invalid by containing, as part of the consideration from the ry. co., stipulations as to easements and services over the land so acquired.

Decision of the Railway and Canal Commissioners, [1909] 1 K. B. 486, affirmed. **HOLWELL IRON CO. v. MIDLAND RY. CO.**

C. A. [1910] 1 K. B. 296

9. — Tramroad—Land "used only as a railway constructed under any Act of Parliament"

Local Government—General district rate—Assessment—Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 211, sub-s. 1 (b).

Where a tramroad has been constructed by a tramroad co. under an Act of Parliament upon the co.'s land and the tramroad is in fact a railway and is used only as a railway constructed under an Act of Parliament for public convenience, the co. is entitled to be assessed in respect of the railway at one-fourth of its net annual value by virtue of s. 211, sub-s. 1 (b), of the Public Health Act, 1875.

Decision of the C. A., [1907] 1 K. B. 568, affirmed. **THORNTON URBAN COUNCIL v. BLACKPOOL AND FLEETWOOD TRAMROAD CO.** H. L. (E.) [1909] W. N. 91; [1909] A. C. 264

— Tramway—Tramroad—Land "used only as a railway constructed under any Act of Parliament."

See RATES. 34.

Receiver.

1. — Appointment of receiver—Jurisdiction—Judgment creditor—Railway not open for public traffic—Railway Companies Act, 1867 (30 & 31 Vict. c. 127), s. 4.

Appeal against an order of Farwell J., [1901] W. N. 24, appointing, on the petition of judgment creditors of this ry. co., a receiver of the property and undertaking of the co. Farwell J. held that, under s. 4 of the Railway Companies Act, 1867, the Court has jurisdiction to appoint a receiver of the undertakings of a ry. co. even though the ry. is not yet complete for public traffic.

The Court allowed the appeal, and dismissed the petition. Without deciding whether there was jurisdiction to appoint a receiver in such a case, but assuming that there was jurisdiction, still a receiver ought not to be appointed when there is not, and probably will not, until the line is opened for traffic, be any money for him to receive.

Per Rigby L.J. (V. Williams L.J. doubting): Even if a receiver were appointed before the ry. was open for public traffic, the Court would probably give a judgment creditor leave to levy execution on chattels of the co., notwithstanding the appointment.

In re Manchester and Milford Ry. Co., (1880) 14 Ch. D. 645, 651, explained. *In re KNOTT END RAILWAY COMPANY'S ACT*, 1898

C. A. [1901] W. N. 64; [1901] 2 Ch. 8

RAILWAY (Receiver)—continued.

2.—*Rolling stock—Proceeds of sale—Debtors—Priority—Railway Companies Act, 1867 (30 & 31 Vict. c. 127), ss. 4, 23.*

Rolling stock and other chattels of an insolvent ry. co. were sold to another ry. co. under the provisions of a statutory agreement which directed the proceeds of sale to be paid to a receiver already appointed under s. 4 of the Railway Companies Act, 1867, and gave the purchasing co. the exclusive right of working the insolvent co.'s ry. for ten years on certain terms:—

Held, that the proceeds of sale constituted money received by the receiver within the meaning of s. 4, and the holders of mortgage debentures charging the undertaking were therefore entitled to those proceeds under s. 23 in priority to unsecured creditors.

Yorkshire Railway Wagon Co. v. Maclure. (1882) 21 Ch. D. 309, 314, and *In re Hull, Barnsley and West Riding Junction Ry. Co.*, (1888) 40 Ch. D. 119, 130, applied. *In re LISKEARD AND CARADON RY. CO.*

Swinfen Eady J. [1903] W. N. 155 ; [1903] 2 Ch. 681

Refreshment-rooms.

—Exemption of.

See Shop Hours Act, 1904 (4 Edw. 7, c. 31), s. 2, Sched.

Sales.

—Sale of railway by mortgagee—Order of Court—Law of Ontario.

See CANADA—**Railway.** 8.

Servants.

—Failure of railway servants to close carriage doors before setting train in motion.

See RAILWAY—**Passengers.** 5.

—Workmen's Compensation.

See under RAILWAY—**Workmen's Compensation.**

Sidings.

Railways (Private Sidings) Act, 1904 (4 Edw. 7, c. 19), amends the law relating to private sidings on railways.

No application under s. 3 of Railway (Private Sidings) Act, 1904, shall be filed without consent of Commissioners. Draft Rule. Reprint from **W. N. 1904 (Dec. 17), p. 333.** *See* CURRENT INDEX, 1904, p. cxxiii.

1.—*Adjoining owner—Private branch railways—Private sidings—Openings for communication with railway—Right to require openings—Limitations on right—Railway Regulation Act, 1842 (5 & 6 Vict. c. 55), s. 12—Railways Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 20), s. 76.*

Section 76 of the Railways Clauses Consolidation Act, 1845, under which owners or occupiers of land adjoining a ry. may make private branch rys. communicating with the ry., and require the ry. co. to make openings in their rails, and such additional lines of rails as may be necessary for effecting communication, is applicable only to communications required by the owners of the

RAILWAY (Sidings)—continued.

branch rys. for the purpose of using the ry. with their own engines and carriages, and does not entitle an adjoining owner, who makes a siding, to demand communication with the ry. for the purpose of establishing a claim to facilities for his traffic.

Held, also, that the limitation of the right of communication, between a ry. and a private branch ry., to places where the communication can be made with safety to the public, and without injury to the ry. and without inconvenience to the traffic thereon, does not relate solely to the structural difficulties of making an opening, but has reference also to difficulties arising from working the traffic on the ry.

Decision of the Railway Commissioners, [1902] 1 K. B. 381, reversed. **LANCASHIRE BRICK AND TERRA COTTA CO. v. LANCASHIRE AND YORKSHIRE RY. CO.** **C. A. [1902] W. N. 46; [1902] 1 K. B. 651**

2.—*Dock company—Lines within area of dock estate—Continuous line of railway communication—Through rates—Railway and Canal Traffic Act, 1888 (51 & 52 Vict. c. 25), s. 25—Regulation of Railways Act, 1873 (36 & 37 Vict. c. 48), s. 3.*

A dock co., constituted under Acts of Parliament, had, in pursuance of provisions in their Acts, laid down within their dock lines of rails and sidings, connected with the line of a ry. co., for the purpose of the carriage of goods in the trucks and wagons of the ry. co. from and to the system of the ry. co. to and from the quays and warehouses in the docks. The Acts of the dock co. did not, in respect of these lines and sidings, incorporate the provisions of the Railways Clauses Consolidation Acts or contain any of the usual statutory provisions with regard to rys. The dock co. applied to have through rates fixed by the Ry. Comms. in respect of traffic from the quays and warehouses in their docks to certain places on the ry. co.'s system under s. 25 of the Railway and Canal Traffic Act, 1888, which provides, in substance, that the facilities to be afforded by ry. cos. under s. 2 of the Railway and Canal Traffic Act, 1854, in cases where a ry. forms part of a continuous line of ry. communication, shall include the due and reasonable receiving, forwarding, and delivering by every ry. co., "at the request of any other such co.," of through traffic to and from the ry. of any other such co. at through rates:—

Held (reversing a decision of a majority of the Ry. Comms.), that, under the provisions of their Acts, the applicants were not a "ry. co." in respect of the before-mentioned lines and sidings, and that those lines and sidings were not a "ry.," and did not form part of a "continuous line of ry. communication," within the meaning of the Railway and Canal Traffic Act, 1888, and therefore the applicants were not entitled to through rates under s. 25 of that Act. **LONDON AND INDIA DOCKS CO. v. GREAT EASTERN RY. CO. AND MIDLAND RY. CO.**

C. A. [1902] 1 K. B. 568

—Poor rate—Assessment—Liability of railway company—Running lines.

See RAILWAY—**Rates.** 3.

RAILWAY (Sidings)—continued.

Private sidings—Rule made by the Railway and Canal Commissioners, in pursuance of the 20th section of the Railway and Canal Traffic Act, 1888, in relation to applications to the Commissioners made under s. 3 of the Railway (Private Sidings) Act, 1904, W. N. 1905 (Feb. 11), p. 67. See CURRENT INDEX, 1905, p. xciv.

3. — *Rates and charges—“Such reasonable sum as the company may think fit in each case”—Reasonableness a question for jury—Provisional Order of Board of Trade—Midland Railway Company (Rates and Charges) Order Confirmation Act, 1891 (54 & 55 Vict. c. ccciv.).*

The schedule of maximum rates and charges annexed to a provisional order of the Board of Trade with reference to the Midland Ry. Co. fixed as the minimum charge “for any accommodation or services rendered by the co. within the scope of their undertaking by the desire of a trader and in respect of which no provisions are made by this schedule such reasonable sum as the co. may think fit in each case.”

The co. gave notice to a trader that they would make a certain charge for wagons remaining on the co.'s “wait order sidings” beyond a specified time and sued for the charges:—

Held, that this was accommodation provided by the co. within the scope of their undertaking within the meaning of the schedule, and that the reasonableness of the charges was a question of fact for a jury.

Decision of the C. A., [1908] 2 K. B. 356, affirmed. *MIDLAND RY. CO. v. MYERS, ROSE & CO.*

H. L. (E.) [1909] A. C. 13

Stamp Duty.

— Double duty—Transfer of powers, liabilities, and immunities to another railway company.

See REVENUE—Stamps. 6.

Street Railway.

— Conditional power to remove snow from railed tracks—Implied obligation to remove snow from the streets.

See NEWFOUNDLAND. 3.

— New lines—Laws of Ontario.

See CANADA—Streets. 2.

— New street—Paving expenses—“Owner”—Restrictions on user imposed by special Act.

See LONDON—Streets.

— Ontario Act, 55 Vict. c. 99—Sale and purchase of street railway system—Exclusive power of purchasers to operate—Construction.

See CANADA—Railway. 7.

Sunday Trading.

— Sunday trading at railway refreshment rooms—Actual or intending passengers.

See NEW SOUTH WALES. 34.

RAILWAY—continued.**Telephone.**

— Bridge carrying road over railway—Power to lay cable along bridge without consent of railway company—Licence of Postmaster-General.

See TELEGRAPH. 3.

Tolls.

1. — *Equality—Undue preference—Ultra vires—Shareholder—Action by shareholder against railway company and preferred customer—Railways Clauses Act, 1845 (8 & 9 Vict. c. 20), s. 90—Railway and Canal Traffic Act, 1854 (17 & 18 Vict. c. 31), s. 2.*

If a ry. co. carries goods for a customer at a lower rate than that charged to other customers, it may be an undue preference and give to other customers a right to complain before the Railway and Canal Commissioners, but it is not an act ultra vires the co., and it gives no right to a shareholder of the co. to bring an action against the co. and the preferred customer for an account and an order that the preferred customer should make good the deficiency, or for an injunction to restrain further preferences. *ANDERSON v. MIDLAND RY. CO.* - Buckley J. [1901] W. N. 209; [1902] 1 Ch. 369

Trucks.

— Carriage of goods.

See under RAILWAY—Carriage.

1. — *Regulation—Provisional order—Demurrage of Trucks—Arbitration—Right of action for damages for detention—Jurisdiction—Great Western Railway Company (Rates and Charges) Order Confirmation Act, 1891 (54 & 55 Vict. c. ccciv.), s. 6.*

A Railway Act confirming a provisional order, after providing that when merchandise is conveyed in trucks not belonging to the co. the trader shall be entitled to recover from the co. a reasonable sum “by the way of demurrage” for any detention of his trucks beyond a reasonable period, enacted that any difference arising under this section shall be determined by an arbitrator to be appointed by the Board of Trade at the instance of either party:—

Held, that a claim by a trader for damages caused by undue detention of his truck and cost of hire of another in lieu thereof was a difference arising under that section, and could be determined only by an arbitrator appointed under the Act.

Decisions of the K. B. Div., *Re v. Marylebone County Court Judge and Great Western Ry. Co., Ex parte Phillips & Co.*, [1906] 2 K. B. 426, and of the C. A., [1907] 2 K. B. 664, reversed, and decision of the county court judge restored. *GREAT WESTERN RY. CO. v. PHILLIPS & CO.*

H. L. (E.) [1908] W. N. 35, 40; [1908] A. C. 101

Tunnel.

1. — *Superfluous land—Tunnel—Surface of land over tunnel—Space above usque ad cælum—Telegraph wires—Statute of Limitations.*

A disseisor can acquire against a ry. co. under the Statute of Limitations a title to the surface of land vertically over a tunnel used by the

RAILWAY (Tunnel)—*continued.*

co., and he thereby acquires a title, not to the surface only, but also usque ad cælum.

In re Metropolitan District Ry. Co. and Cosh, (1880) 13 Ch. D. 607; *Norton v. London and North Western Ry. Co.*, (1879) 13 Ch. D. 268; and *Bobbett v. South Eastern Ry. Co.*, (1882) 9 Q. B. D. 424, discussed and considered. **MIDLAND RY. CO. v. WRIGHT** **Byrne J.** [1901] **W. N. 38**; [1901] 1 Ch. 738

Vendor and Purchaser.

See under **VENDOR AND PURCHASER—Railways.**

Water.

— Cutting off water—Non-payment of rate.
See **WATER**. 7.

— Riparian owner—Abstraction of water for purposes unconnected with riparian tenement. 1.
See **WATER**.

Way, Right of.

— User for domestic and business purposes—Substitution of railway station.
See **WAY, RIGHT OF**. 7.

Workmen's Compensation.

— Engine-driver—Stone wilfully thrown at train.
See **MASTER AND SERVANT—Compensation**. 115, 116.

— Engine-driver—Workman killed while disobeying well-known rule of employer.
See **MASTER AND SERVANT—Compensation**. 117.

— Railway carter.
See **MASTER AND SERVANT—Compensation**. 118, 119.

— Railway guard—Earnings—Lodging allowance.
See **MASTER AND SERVANT—Compensation**. 120.

RAIN WATER—Sewer—Drain receiving drainage from more than one building.
See **LONDON—Sewers**. 3.

RANGES ACT—Lands taken compulsorily—Injurious affection of adjoining lands.
See **DEFENCE ACTS**. 1.

RAPE—Criminal law.
See under **CRIMINAL LAW—Rape**.

RATE—Carriage of goods.
See under **RAILWAY—Carriage (Carriage of Goods)**.

RATES.

NOTE.—The Cases under this heading relate only to places outside the County of London. As to London—

See under **LONDON—Rates**.

Agricultural Rates Act, 1896, &c., Continuation Act, 1901 (1 Edw. 7, c. 13), continues the

RATES—*continued.*

Agricultural Rates Act, 1896 (59 & 60 Vict. c. 16), the Tithe Rentcharge (Rates) Act, 1899 (62 & 63 Vict. c. 17), the Agricultural Rates, Congested Districts, and Burgh Land Tax Relief (Scotland) Act, 1896 (59 & 60 Vict. c. 37), and the Local Taxation Account (Scotland) Act, 1898 (61 & 62 Vict. c. 56).

1. — *Appeal—Assessment committee—Failure to obtain relief on objection to valuation list—Appeal against subsequent rates—Condition precedent—Poor-rate—Union Assessment Committee Amendment Act, 1864 (27 & 28 Vict. c. 39), s. 1.*

Where a person rated to the relief of the poor in a country parish has objected, under s. 1 of the Union Assessment Committee Amendment Act, 1864, before the assessment committee of the union to his assessment in the valuation list in force for the parish; and, having failed to obtain the relief he asks for, has appealed to sessions against the then current poor-rate made in conformity with the valuation list, it is a condition precedent to the right of appeal against a subsequent rate made in conformity with the same list that he should again have given the notice of his objection to the valuation list required by s. 1, and have failed to obtain relief from the assessment committee.

Reg. v. Great Western Ry. Co., (1869) L. R. 4 Q. B. 323, followed.

Reg. v. Justices of Denbighshire, (1885) 15 Q. B. D. 451, distinguished. **REX v. ESSEX JUSTICES** **Div. Ct.** [1901] **W. N. 231**; [1902] 1 K. B. 180

2. — *Appeal—County rate—Appeal against basis or standard—Appeal against rate—Parish aggrieved—"Cause of appeal"—Time for appeal—Retrospective alteration of basis—Jurisdiction—County Rate Act, 1852 (15 & 16 Vict. c. 81), ss. 17, 22.*

The appeal given by s. 22 of the County Rate Act, 1852, to a parish which is "aggrieved by any rate or assessment" made upon the county rate basis to "the next quarter sessions of the peace after such cause of appeal shall have arisen" must be brought to the next practicable quarter sessions after the parish is in fact aggrieved by the rate; the appeal is not to the next practicable quarter sessions to be held after the parish finds out that it is aggrieved.

A county rate which affected the parish of M. was made in Oct., 1904. In Jan., 1905, as the result of an appeal by a ry. co. against their assessment to the poor rate in the parish of M., the rateable value of the parish for the purpose of the county rate basis or standard was reduced by a considerable sum. On April 17, 1905, the parish council of M. gave notice of appeal to the next quarter sessions against such part of the basis or standard as affected that parish, and also against the rate existing upon that basis or standard, they alleging that they only knew of the result of the appeal by the ry. co. and its effect on the county rate basis on Mar. 28:—

Held, that the parish council had not appealed against the county rate to the next quarter sessions after the "cause of appeal" had arisen within the meaning of s. 22 of the County Rate Act, 1852, and that, therefore, the quarter

RATES—continued.

sessions had no jurisdiction to entertain the appeal against the rate.

On an appeal to quarter sessions under s. 17 of the County Rate Act, 1852, against the basis or standard of the county rate, the Court has no power to make an order that an alteration of the basis or standard shall have a retrospective effect. *WEST RIDING OF YORKSHIRE COUNTY COUNCIL v. MIDDLETON PARISH COUNCIL*

Div. Ct. [1906] 2 K. B. 157

3. — *Appeal—General district rate—Inclusion in estimate of retrospective charges more than six months old—Local government—Public Health Act, 1875* (38 & 39 Vict. c. 55), ss. 210, 218, 269.

By s. 210 of the Public Health Act, 1875, an urban sanitary authority may make a general district rate, which may be made either prospectively in order to raise money for the payment of future charges and expenses, or retrospectively in order to raise money for the payment of charges and expenses incurred at any time within six months before the making of the rate. By s. 218 the urban sanitary authority, before making a general district rate under the Act, is to cause an estimate to be prepared of the money required for the purposes in respect of which the rate is to be made, which estimate is to be entered in the rate-book and to be open to public inspection; with a proviso that the estimate is not to be deemed part of the rate nor in any way to affect its validity:—

Held, that the proviso to s. 218 does not operate to take away the general right of appeal to quarter sessions against a general district rate given by s. 269 of the Act, where it appears from the estimate that payment of a debt more than six months old is to be made out of the rate. *SMITH v. SOUTHAMPTON CORPORATION*

Div. Ct. [1901] 2 K. B. 244

— *Appeal—Notice of objection to assessment committee.*

See No. 27, below.

4. — *Appeal—Special sessions—Notice of appeal—Parish council—Poor-rate—Parochial Assessment Act, 1836* (6 & 7 Will. 4, c. 96), s. 6—*Local Government Act, 1894* (56 & 57 Vict. c. 73), s. 6, sub-s. 1, and s. 52, sub-s. 5.

Where, upon a poor-rate being made in a rural parish having a parish council, an appeal against the rate is brought to special sessions under s. 6 of the Parochial Assessment Act, 1836, it is now, since the passing of the Local Government Act, 1894, a condition precedent to the jurisdiction of the justices to hear the appeal that the appellant should have given notice of appeal to the parish council. *REX v. TEWKESBURY JUSTICES* — Div. Ct. [1903] 1 K. B. 39

— *Appeal against poor-rate—Consent of guardians.*

See POOR LAW. 1.

5. — *Appeal from special sessions—Jurisdiction of quarter sessions over costs before special sessions—Poor-rate—Parochial Assessments Act, 1836* (6 & 7 Will. 4, c. 96), s. 6.

Where, upon an appeal from special sessions under s. 6 of the Parochial Assessments Act, 1836, the quarter sessions allow the appeal, the

RATES—continued.

quarter sessions have jurisdiction to set aside the order of the special sessions giving costs to the successful party at the special sessions, and also to order that the unsuccessful party at the special sessions shall be paid the costs incurred by him at the special sessions. *REX v. CORNWALL JUSTICES*

Div. Ct. [1903] W. N. 106;

[1903] 2 K. B. 178

— *Arrears—Judgment for arrears of rates—Retrospective rate—Mandamus—Judicial discretion.*
See No. 42, below.

6. — *Assessments—Composition in lieu of rates—Statutory exemption—52 Geo. 3, c. 49, ss. 3, 5—2 & 3 Will. 4, c. 66, ss. 2, 3—City of London Sewers Act, 1848* (11 & 12 Vict. c. 163), s. 169.

A statute of 1812 enacted that a fixed composition in lieu of rates which had been voluntarily paid by the Treas. in respect of Crown property in the City of London should be paid every year for ever out of the consolidated customs to the rate collectors, and that the premises should be exempt from all rates and assessments, though they might become private property. A statute of 1832 repealed so much of the Act of 1812 as made the composition payable out of the consolidated customs, and enacted that the collectors should collect the composition, and no more, from the occupiers of the property, which was about to be sold by the Treas. The premises having become private property, the occupiers were assessed to rates under the City of London Sewers Act, 1848:—

Held (affirming the decision of the C. A.), that upon the true construction of the arrangement made in the statutes of 1812 and 1832 the exemption applied to future as well as existing rates and assessments, and that it was not affected by the City of London Sewers Act, 1848. *LONDON CORPORATION v. NETHERLANDS STEAMBOAT CO.* — H. L. (E.) [1906] A. C. 263

7. — *Assessment—Glasgow Court Houses Act, 1890* (53 & 54 Vict. c. lviii.)—*Construction of statute.*

The House reversed the decision, (1901) 3 F. 103, of the Second Division of the Ct. of Sess. and restored the judgment of the Lord Ordinary with costs both here and below. *LANARK COUNTY COUNCIL v. GLASGOW COURT HOUSES COMMRs.* — H. L. (Sc.) [1902] W. N. 235

— *Boarding-house keeper—Special Act—"Domestic purposes"—"Trade or business."*
See WATER.

— *Burial board—Transfer of powers of—Expenses—Poor-rate—General district rate.*
See BURIAL. 7.

8. — *Burial ground—Burial ground separated from church—Churchyard—Liability to poor rate—Profit derived from burial ground—Exemption from poor rate—Premises "exclusively appropriated to public religious worship"—Poor Rate Exemption Act, 1833* (3 & 4 Will. 4, c. 30).

A parson in whom was vested by statute the freehold of a burial ground in connection with

RATES—*continued.*

the church received for his own use burial fees and similar charges:—

Held, that as the beneficial occupier of the burial ground he was liable to the poor rate, and was not exempt by virtue of the Poor Rate Exemption Act, 1833.

Decision of the C. A., [1908] 1 K. B. 835, affirmed. **WINSTANLEY v. NORTH MANCHESTER OVERSEERS** **H. L. (E.)** [1909] **W. N. 233**; [1910] **A. C. 7**

9. — *Collector—Poor-rate collector (Ireland)—Transfer of existing officers to county council—Scheme for collection of poor-rate—Remuneration—Local Government (Ireland) Act, 1898, c. 37, s. 115, sub-ss. 10–16, 18.*

Sub-s. 18 of s. 115 of the Local Government (Ireland) Act, 1898, does not apply to poor-rate collectors transferred to a county council, at any rate so far as the fixing the amount of their remuneration is concerned. Provision for their remuneration is made by sub-s. 11:—

So *held* by the Earl of Halsbury L.C. and Lords Macnaghten, Davey, and Robertson, Lord Lindley dissenting.

The decision of the C. A. (L.), [1902] 2 I. R. 637, reversed, and the order for the mandamus discharged. **LOCAL GOVERNMENT BOARD FOR IRELAND v. REX** **H. L. (I.)** [1903] **W. N. 149**; [1903] **A. C. 402**

— Corporation—Borrowing powers—Obligation on corporation to mortgage rates by way of security for loan—Municipal corporation.
See CORPORATION. 2.

— Covenant by landlord to pay rates—Underlease—Privity of contract—Underlessee not an “assign.”
See LANDLORD AND TENANT. 11.

— Covenant by lessor to pay rates—Water rate.
See LANDLORD AND TENANT. 69.

10. — *Distress—Charges—“Keeping possession” of goods seized—“Man in possession”—Poor rate—Distress (Costs) Act, 1817 (57 Geo. 3, c. 93), s. 1; Sched.—Distress (Costs) Act, 1827 (7 & 8 Geo. 4, c. 17)—Police Act, 1890 (53 & 54 Vict. c. 45), s. 23.*

A constable who had levied a distress for poor rates for an amount not exceeding 20*l.* removed the goods seized to a police station for safe custody; they were there locked up in a cupboard, the key of which was hung up in the police station; after remaining there for five days they were sold by public auction:—

Held that, under a table of fees authorized by s. 23 of the Police Act, 1890, and approved by Secretary of State, the constable was entitled to make a charge of 1*s.* per day for “keeping possession” of the distress.

Per Lord Alverstone C.J.: The expression “man in possession,” as used in the schedule to the Distress (Costs) Act, 1817, means a man in possession of the goods seized, and is not confined to a man in possession upon the premises where the seizure took place. **SCOTT v. DENTON**

Div. Ct. [1907] 1 K. B. 456

11. — *Distress—Expenses of distress—Poor-rate—Distress (Costs) Act, 1817 (57 Geo. 3, c. 93),*

RATES—*continued.*

s. 1, *Schedule—Distress (Costs) Act 1827 (7 & 8 Geo. 4, c. 17)—Distress for Rates Act, 1849 (12 & 13 Vict. c. 14), s. 1.*

The provisions of the Distress (Costs) Act, 1817, as applied by the Distress (Costs) Act, 1827, to distresses for poor-rate, still remain in operation, and are not impliedly repealed by the Distress for Rates Act, 1849, s. 1; and therefore, in the case of a distress for poor-rate in respect of an amount not exceeding 20*l.*, it is illegal to make any charge for the expenses of the distress in excess of the scale given in the schedule to the Distress (Costs) Act, 1817.

Hill v. Pannifer, [1904] 1 K. B. 811, overruled. **HEADLAND v. COSTER**.

C. A. [1905] **W. N. 2**; [1905] 1 K. B. 219

— Distress, Expenses of—Poor-rate.

See DISTRESS. 17.

— Distress—Paving expenses—Landlord and tenant.

See DISTRESS. 6.

— Distress—Poor-rate—Reasonable cost of selling distress.

See DISTRESS. 18.

12. — *Distress—Recovery of rates—Illegal distress—Liability of overseers for act of assistant overseer.*

A justices' warrant of distress for rates, which was addressed in the statutory form to the overseers and constables, was handed by one of the overseers to the assistant overseer, who was empowered by the terms of his appointment to perform all the duties of an overseer. The assistant overseer, purporting to act in the execution of the warrant, was guilty of an illegal and excessive distress:—

Held, that the overseers were not responsible for the act of the assistant overseer. **BAKER v. WICKS**. **Lord Alverstone C.J.** [1904] **W. N. 74**; [1904] 1 K. B. 743

— Distress for poor-rate—Jurisdiction—Reasonable charges for taking, keeping, and selling—Action to recover excess.

See COUNTY COURT—Jurisdiction. 2.

— Dock company—Continuous line of railway communication—Through rates.

See RAILWAY—Sidings. 2.

— Dock rates—Shipping—Exemption from—Lighter—London and St. Katherine Docks Act.

See SHIPPING—Docks. 1.

— Dock rates—Shipping—Exemption from—Lighter—West India Docks Act.

See SHIPPING—Docks. 2.

— Exemption from rates—Liability to repair ratione tenure.

See HIGHWAY. 26.

13. — *Factory with machinery, Rating of—Machines used in connection with hereditament, but remaining the personal property of the tenant—Poor-rate.*

RATES—continued.

Tenants' machinery placed in a factory, and used therewith for the business of the factory, whether it be affixed to the freehold or not, may be taken into consideration so as to increase the amount in assessing the factory to the poor rate. The law and practice to this effect have been too long established to be now overruled. *KIRBY v. HUNSLLET UNION ASSESSMENT COMMITTEE*

H. L. (E.) [1906] W. N. 3; [1906] A. C. 43

— Flats—Poor rate—Valuation—Rateable value
—Deductions from gross value.
See LONDON—Flats. 1.

— Form of rate—Statement of period for which estimated—Retrospective rate—Distress warrant.

See POOR LAW. 17.

— Franchise—Qualification—Non-payment of rate—Passive resister.
See PARLIAMENT. 13.

— Franchise—Rating.

See under PARLIAMENT.

— Gas rate, Arrears of—Right to recover from incoming tenant.

See GAS. 1.

14. — Gravel pits—Exhaustion of subject-matter of assessment—Value of occupation when rate made—Poor rate—Occupation—Land.

A co. purchased of the owner of a bed of gravel the gravel in three separate plots of land, with the right to dig and remove it. A time was fixed in each case in which the gravel might be taken out, and the co. were bound to level the ground and replace the top soil, and to give the owner possession at the date named. The co. were assessed in one assessment in respect of their occupation of the three plots, and a rate was subsequently made on the basis of this assessment. When this rate was made the co. were still in occupation of the three plots, and were at work on the gravel in one of them, but all the gravel in the other two plots had been taken out, and they were only used as storage ground for gravel dug by the co. On a case stated at quarter sessions:—

Held, that the co. were rateable on the value at the time of making the rate, of the land in their occupation, and that the annual value ought to be taken at the amount of rent or royalty at which the same could then be reasonably expected to be let to a tenant from year to year, regard being had to the value of the gravel in the unexhausted plot, added to the value of the exhausted plots for storage purposes. *FARNHAM FLINT, GRAVEL AND SAND CO. v. FARNHAM UNION*
C. A. [1901] 1 K. B. 272

— Harbour Acts—Greenock Harbour Acts—Judicial factor—Receiver—Power to increase rates.

See SCOTTISH LAW. 20.

15.—“House”—“Inhabitant”—“Occupier”
—Rating—House occupied otherwise than as a dwelling-house—Parish of St. Paul, Covent Garden—Rector's rate—12 Car. 2, c. 37—51 Geo. 3, c. cl., s. 2.

D.D.

RATES—continued.

Houses in the parish of St. Paul, Covent Garden, were used as warehouses, counting-houses and offices. They had formerly been used for residence, but no longer contained bedrooms, kitchens, or fireplaces, and no person slept there. They could readily be fitted for use as dwelling-houses:—

Held, that they were liable to the rector's rate as “houses” within the meaning of 51 Geo. 3, c. cl., s. 2.

The decision of the C. A., [1905] W. N. 35; [1905] 1 K. B. 669, reversed. *LEWIN v. END*

H. L. (E.) [1906] W. N. 95; [1906] A. C. 299

— Justices—Disqualifying interest—Rating appeal—Possibility of bias.

See JUSTICES. 7.

16. — Justices—General district rate—Non-payment—Application for order for payment—“Sufficient cause” for non-payment—Overpayment of previous rates—Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 256.

Part of a tramroad, the property of the appellants, lay within the respondents' district, and another part lay within an adjacent district. In 1904 the appellants appealed against a general district rate for that adjacent district to which they had been assessed in respect of the full rateable value of the part of the tramroad within that district, the ground of appeal being that the tramroad was a railway within s. 211, sub-s. 1 (b), of the Public Health Act, 1875, and that the appellants were therefore only liable to be assessed in the proportion of one fourth part of its annual value. In 1905 the respondents agreed that, if the appellants should pay the respondents' general district rates for 1905 and 1906, to be levied on an assessment in respect of the full rateable value of the part of the tramroad within the respondents' district, the respondents would, in the event of the then pending appeal being successful, repay to the appellants any money overpaid by them for those two rates. The appellants accordingly paid those rates. In 1909 the appeal was decided by the House of Lords in favour of the appellants. Subsequently the respondents applied to justices for an order under s. 256 of the Public Health Act, 1875, for payment by the appellants of the respondents' general district rate for 1908. On the hearing of the application it was admitted that, in consequence of the House of Lords' decision, the respondents had in hand money overpaid by the appellants for the respondents' 1905 and 1906 rates more than sufficient to satisfy the 1908 rate. The justices made an order for payment:—

Held, that “sufficient cause for non-payment” within the meaning of s. 256 had been shewn, and that the order of the justices must be set aside. *BLACKPOOL AND FLEETWOOD TRAMROAD CO. v. BISPHAM WITH NORBRECK URBAN DISTRICT COUNCIL*

Div. Ct. [1910] 1 K. B. 592

17. — Justices—Poor rate—Non-payment of—Application for distress warrant—Sufficient cause for non-payment—Matter appealable to quarter sessions—Jurisdiction of justices to go behind rate.

A rate was made by a local authority under

RATES—*continued.*

a local Act which provided that occupiers of land used only "as a ry. constructed under the powers of any Act of Parliament for public conveyance" should be assessed in respect of one fourth part only of the value. The Act gave to any party aggrieved by a rate a right to appeal to quarter sessions. It also provided that if any person failed to pay the rate due from him he might be summoned before a justice, and if "no sufficient cause for the non-payment" of the rate should be shewn a distress warrant should be issued. The respondents were assessed to the above-mentioned rate on the aggregate rateable value of a tramroad and certain other property. A demand note for the amount of the rate was served on the respondents, in which they were charged on the full rateable value of the whole hereditaments, but they did not appeal to quarter sessions. A summons having been issued against them for non-payment of the rate, it was admitted by the local authority that, on the assumption that a decision of the C. A. then under appeal to the H. of L. was correct, so much of the respondents' rateable hereditaments as consisted of a tramroad was a railway of the kind mentioned in the local Act, and that the respondents should have been charged on one fourth part only of its value. The parties also agreed the sum to which the demand should on the above assumption have been reduced. Under these circumstances the justices refused to issue their distress warrant for the full amount of the demand note:—

Held by Lord Alverstone C.J. and Walton J. (Bigham J. dissenting), that the respondents had shown sufficient cause for the non-payment of the larger amount, and that the justices were justified in their refusal.

By Bigham J., that the objection to the assessment was matter of appeal to the quarter sessions, and could not be taken before the justices on an application for a distress warrant. **DIXON v. BLACKPOOL AND FLEETWOOD TRAMROAD CO.** **Div. Ct. [1909] 1 K. B. 860**

— Landlord and tenant—Lessor's covenant to pay present and future rates—Subletting at a profit—Increased assessment to rates—Liability of lessor.
See **LANDLORD AND TENANT. 70.**

— Lands taken compulsorily—Deficiency in assessment—Poor-rate.
See **LONDON—Rates. 1.**

18. — Licensed premises—Compensation charge—Poor rate—Rateable value—Deduction—Expense necessary to command rent—Licensed premises—Licensing Act, 1904 (4 Edw. 7, c. 23), s. 3—Parochial Assessments Act, 1836 (6 & 7 Will. 4, c. 96), s. 1.

In estimating the rateable value of fully-licensed premises the amount of the annual charge imposed in respect of the premises under s. 3 of the Licensing Act, 1904, cannot be deducted, the charge not being an expense necessary to maintain the premises in a state to command the rent thereof within s. 1 of the Parochial Assessments Act, 1836.

So *held*, affirming judgment of Div. Ct.

RATES—*continued.*

[1906] 2 K. B. 899. **WADDLE v. SUNDERLAND UNION C. A. [1908] W. N. 27; [1908] 1 K. B. 642**

19. — Limitation of time — "Complaint" — Justices — Recovery of rates — Practice — Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43), s. 11.

The occupiers of a rateable hereditament, which had been assessed to certain poor-rates and general district rates upon the rateable value in the valuation list then in force, appealed against the poor-rates. Before the appeal was heard, payment of the general district rates was demanded by the local authority, and a sum was paid and accepted on account of each of those rates. The rateable value of the premises in the valuation list having been reduced as a result of the appeal, the figures of the general district rates already made were altered in the rate-book, and payment was demanded of the balance owing of the rates so reduced. Payment having been refused, a summons to enforce payment was issued at a date which was more than six months after the demand of the original amount of the rate, but within six months of the demand of the balance of the rate as amended:—

Held, that the matter of complaint, within the meaning of s. 11 of the Summary Jurisdiction Act, 1848, was the non-payment of the balance of the rates as amended, that it had therefore arisen within six months of the issue of the summons, and that the right of the local authority to recover the balance was not barred by the provisions of that section. **KEETON v. SHEFFIELD COAL CO.**

Div. Ct. [1901] 2 K. B. 26

20. — Lodgings—Apartments or lodgings—Apartments, Tenement wholly let out in—Owner—Agent to collect rents—Rateability—Representation of the People Act, 1867 (30 & 31 Vict. c. 102), s. 7.

An agent who is employed by the owner of a dwelling-house, situate in a parliamentary borough, and wholly let out in apartments, to collect the rents on his behalf is not liable to be rated as owner under s. 7 of the Representation of the People Act, 1867. **NOKES v. STRONG**

Div. Ct. [1909] 2 K. B. 625

21. — Lodgings—Apartments or lodgings—Rateability of owner—Parliamentary borough—Tenement wholly let out in apartments or lodgings—Representation of the People Act, 1867 (30 & 31 Vict. c. 102), s. 7—Poor Rate Assessment and Collection Act, 1869 (32 & 33 Vict. c. 41), ss. 3, 4.

The appellants were the owners of tenements situate in a borough which in the year 1867 was, and ever since had been, a parliamentary borough. The tenements were wholly let out in apartments or lodgings not separately rated within the meaning of s. 7 of the Representation of the People Act, 1867. Purporting to act under that section, the rating authority rated the appellants as owners, instead of the occupiers of the tenements, without allowing them any commission, abatement, or reduction:—

Held, that the appellants were properly rated

RATES—continued.

as owners (instead of the occupiers) under s. 7 of the Representation of the People Act, 1867, and were therefore not entitled to any commission, abatement, or reduction from the amount of the rate.

Davis v. Wallis, [1908] 2 K. B. 134, overruled.

That portion of s. 7 of the Representation of the People Act, 1867, which provides for the rating of owners of houses wholly let out in apartments or lodgings not separately rated has not been repealed by implication by the Poor Rate Assessment and Collection Act, 1869, or otherwise. *WHITE AND HALES v. ISLINGTON CORPORATION* - C. A. [1909] 1 K. B. 133

22. — Lodgings — Apartments or lodgings — Rating—Rateability of owner—Parliamentary borough — Abatement or deduction — Tenement wholly let out in apartments or lodgings—Representation of the People Act, 1867 (30 & 31 Vict. c. 102), s. 7—Poor Rate Assessment and Collection Act, 1869 (32 & 33 Vict. c. 41), ss. 3, 4.

The respondent was the owner of a tenement situate in a borough which in the year 1867 was, and ever since had been, a parl. borough. The tenement was wholly let out in apartments or lodgings not separately rated within the meaning of s. 7 of the Representation of the People Act, 1867. Purporting to act under that section, the rating authority rated the respondent as owner, instead of the occupiers of the tenement, without allowing him any commission, abatement, or deduction :—

Held, that the Act under which the respondent was rateable as owner instead of the occupiers was not the Representation of the People Act, 1867, but was the Poor Rate Assessment and Collection Act, 1869, and that he was entitled to the commission, abatement, or deduction specified in s. 3 or s. 4 of the later Act. *DAVIS (ON BEHALF OF THE ISLINGTON CORPORATION) v. WALLIS* - Div. Ct. [1908] W. N. 58 ; [1908] 2 K. B. 134

— London, City of—Exemption from taxes and assessments—Consolidated rate.
See STATUTE. 2.

— Non-payment of rates—Committal—Release—Jurisdiction—Punitive order.
See BANKRUPTCY—Committal. 1.

23. — Occupation—Empty building—Intention to use when occasion requires.

A firm of manufacturers purchased a building with the object of having premises to which they might transfer their business in the event of their existing factory being burnt or other emergency arising. They put into the building and affixed to the walls some shafting and wooden benches suitable for their business, but no engine or motive power, and it was incapable of being used for that business until further fitted up for the purpose. There were no chattels in it, and except as above mentioned it was wholly empty :—

Held, that the act of the owners in keeping the premises in readiness for use in their business

RATES—continued.

at any moment that they might be required amounted to occupation of the premises by them, so as to render them liable to be rated in respect of them. *BORWICK v. SOUTHWARK CORPORATION* - Div. Ct. [1908] W. N. 224 ; [1909] 1 K. B. 78

24. — Outgoing occupier—Apportionment of rate—Demand—Distress warrant.

A poor rate having been made and duly demanded of a ratepayer, he subsequently during the currency of the half-year for which the rate was made went out of occupation, and thereby became liable to pay only so much of the rate as was proportionate to the time of his occupation. No fresh demand for a proportion of the rate was made upon him, but he neither paid nor tendered any portion of it. On a summons for non-payment of the rate the justices ascertained the proportion which was due and forthwith issued their distress warrant for that amount :—

Held, that they had jurisdiction to do so. *MANSEL v. ITCHEN OVERSEERS* - Div. Ct. [1906] W. N. 14 ; [1906] 1 K. B. 221

25. — Parks—Public Park — Poor rate — Rateable value—Beneficial occupation—Liverpool Improvement Act, 1865 (28 & 29 Vict. c. xx.), ss. 14, 16—Liverpool Improvement and Waterworks Act, 1871 (34 & 35 Vict. c. clxxxiv.), s. 52.

A corporation, not charged with the duty of providing a public park, were empowered by statute to purchase land which they might think suitable for public parks or playgrounds and places of recreation for the inhabitants of the borough, and to lay out and appropriate the same for any of such purposes, and to make by-laws for the management and regulation thereof. They were also empowered to sell or lease all or any part of the lands so acquired which should not be required for the purposes of the Act, and (by a further statute) to make by-laws for regulating the days and hours during which any park was to be open or shut, and the prices of admission on any special occasion, provided that the days on which the park might be shut should not exceed seven days in any one year. The corporation purchased land which they formed into a park and appropriated to the public use, and made a by-law under which the park might be closed for not more than seven days in any one year, and the corporation might charge or allow the person to whom the use of the park on those days was granted to make a charge for admission, not exceeding five shillings for each person. The park had not been closed for fifteen years, when the corporation had permitted it to be used for a fête in aid of a local charity, and a charge for admission was made by the persons so using the park :—

Held, that the corporation were not occupiers of the park for rating purposes, and that the park was not rateable to the poor rate.

Lambeth Overseers v. London County Council, [1897] A. C. 625, discussed. *LIVERPOOL CORPORATION v. WEST DERBY UNION ASSASSMENT COMMITTEE* - C. A. [1908] 2 K. B. 647

RATES—continued.

— Partial exemption of land covered with water in Woolwich—Appeal.
See LONDON—Rates. 2.

26. — *Payment*—“A term not exceeding three months”—*Tenancy from week to week*—*Poor Rate Assessment and Collection Act, 1869* (32 & 33 Vict. c. 41), ss. 1, 2.

A tenancy from week to week determinable by a week's notice on either side is a tenancy for “a term not exceeding three months” within ss. 1 and 2 of the Poor Rate Assessment and Collection Act, 1869. *HAMMOND v. FARROW* Div.Ct. [1904] W. N. 108; [1904] 2 K. B. 332

— Pier—Unauthorized construction—Nuisance—Rates for passengers—Rates for vessels “mooring”—Recovery of rates paid under protest.
See PIER. 1.

27. — *Practice—Appeal—Notice of objection to assessment committee—Time—Next practicable sessions—Poor rate—Poor Relief Act, 1743* (17 Geo. 2, c. 38), s. 4—*Union Assessment Committee Amendment Act, 1864* (27 & 28 Vict. c. 39), s. 1.

On an appeal against a poor-rate made on April 21, 1903, or the ensuing year, it appeared that the appellants had not given notice of objection to the valuation list upon which the rate was based till Oct. 26, 1903. There had been meetings of the assessment committee on May 15 and Aug. 13, and Courts of quarter sessions were held on June 27 and Oct. 27. The appellants having failed to obtain relief at the meeting of the assessment committee held on Nov. 12, appealed against the rate to the quarter sessions held on Jan. 2, 1904:—

Held, that, the notice of objection to the valuation list having been given during the currency of the rate, and, it not having been proved that the appellants had been guilty of unreasonable delay, the appeal must be considered as having been brought to the next practicable quarter sessions within the meaning of the Poor Relief Act, 1743, s. 4, and therefore was not too late.

Judgment of a Div. Ct., [1905] 1 K. B. 89, affirmed. *IMPERIAL AND GRAND HOTELS CO., LD. v. CHRISTCHURCH GUARDIANS*

C. A. [1905] W. N. 92; [1905] 2 K. B. 239

28. — *Practice—Appeal—Notice of appeal—Notice to assessment committee—Entry and respite of appeal—Poor rate—Union Assessment Committee Amendment Act, 1864* (27 & 28 Vict. c. 39), s. 1.

SECT. 1 of the Union Assessment Committee Amendment Act, 1864, requires the appellant against a poor rate in certain cases to give to the union assessment committee “twenty-one days’ notice in writing previous to the special or quarter sessions to which such appeal is to be made.”

The respondents gave the union assessment committee less than twenty-one days’ notice previous to the quarter sessions next after the decision appealed against:—

Held, that the respondents were entitled at the said quarter sessions to enter continuances

RATES—continued.

and respite the appeal to the next quarter sessions in accordance with the practice existing under previous statutes requiring similar notices.

Decision of the C. A., reported as *Rex v. West Riding of Yorkshire Justices*, [1908] 2 K. B. 635, affirmed. *DENABY PARISH OVERSEERS v. DENABY AND CADEBY MAIN COLLIERIES, LD.* H. L. (E.) [1909] W. N. 82; [1909] A. C. 247

29. — *Practice—Appeal—Poor rate—Valuation list—Rateable value—Statutory exemption from liability to poor rate—Insertion of rateable value of exempted premises—Mandamus to assessment committee—7 Geo. 3, c. 37, s. 51—Valuation (Metropolis) Act, 1869* (32 & 33 Vict. c. 67).

By a reclamation Act of 1766 certain land then forming part of the bed of the river Thames was authorized to be inclosed and embanked by the owners of adjoining wharves and land, and the land so inclosed and embanked was to vest in them “free from all taxes and assessments whatsoever,” an exemption which in *Sion College v. London Corporation*, [1901] 1 K. B. 617, was held to be limited to the poor rate and not to extend to the consolidated rate. In preparing the quinquennial valuation list for a parish in which certain of the exempted premises were situate, the overseers inserted their gross values in the appropriate column, but in the column for rateable value they inserted merely the word “exempt” without any figure of value; the list so prepared was adopted by the assessment committee. The Corporation of London, who as a rating authority were interested in the preparation of the valuation list as the basis for the consolidated rate, applied for a writ of mandamus to compel the assessment committee to insert the rateable values of the various properties in the appropriate column in the valuation list:—

Held (reversing the decision of a Div. Ct.), that, assuming there was a duty in the assessment committee to insert the rateable values of the exempted properties in the valuation list, the Corporation as a rating authority had a right of appeal to quarter sessions under s. 32 of the Valuation (Metropolis) Act, 1869, and having an alternative and effective remedy, were not entitled to a mandamus; and, further, that, even if the Corporation had no statutory right of appeal under that section, the safeguards provided by that Act as a whole were amply sufficient to protect the interest of all parties interested, and the Court ought not, by granting a mandamus, to insert further safeguards in the Act.

Per Vaughan Williams and Fletcher Moulton L.JJ.. It was the duty of the assessment committee to insert both the gross and rateable values of the exempted properties in the valuation list. *REX v. CITY OF LONDON ASSESSMENT COMMITTEE* C. A. [1907] 2 K. B. 764

— Practice—Appeal, Rating—Case stated by quarter sessions—Crown Office Rules.
See CROWN OFFICE.

30. — *Practice—Valuation list—Assessment committee—Objection of ratepayer that assessment too high—Power of committee to raise objectors’*

RATES—continued.

assessment—Union Assessment Committee Amendment Act, 1864 (27 & 28 Vict. c. 39), s. 1.

A rate was made based upon the valuation list then in force, and a demand note for the rate was served upon a ratepayer. He gave notice of objection to the assessment committee, under s. 1 of the Union Assessment Committee Amendment Act, 1864, that the assessment in the valuation list of the premises in respect of which he was rated was too high. The assessment committee heard the objection and, instead of merely refusing him relief, raised the assessment and amended the valuation list accordingly. They gave notice of the amendment to the overseers, who accordingly altered the current rate and served upon the ratepayer a fresh demand note for a larger sum based upon the increased assessment. The ratepayer paid the amount of the original demand note, but refused to pay more. On a complaint for non-payment of the balance the magistrate refused to issue his distress warrant :—

Held, that the assessment committee had no power to raise the ratepayer's assessment, that the amended rate was subsequently a nullity, and that the magistrate was right in dismissing the complaint. **HUDSON v. RHODES**

Div. Ct. [1908] W. N. 224; [1909] 1 K. B. 85

31. — Practice — Valuation list — Supplemental lists — Rating — Notice of objection — Application to respite appeal — Waiver of condition precedent to appeal — Poor rate — Union Assessment Committee Amendment Act, 1864 (27 & 28 Vict. c. 39), s. 1.

Sect. 1 of the Union Assessment Committee Amendment Act, 1864, enacts that no person shall be empowered to appeal to any sessions against a poor rate made in conformity with the valuation list unless he shall have given to the assessment committee notice of objection against the list and shall have failed to obtain such relief as he deems just.

If a person has given notice of objection against the valuation list and has failed to obtain relief, the fact that a supplemental valuation list, not containing his hereditament, has been approved by the assessment committee after the notice of objection was given does not render it necessary for him to give a fresh notice of objection before appealing to quarter sessions; and, if he does not appeal against the rate in force at the time the notice of objection was given, he is entitled to appeal, without further notice of objection, against a subsequent rate made in conformity with the same valuation list, provided that the appeal is to the next practicable quarter sessions after the decision of the assessment committee.

Reg. v. Great Western Ry. Co., (1869) L. R. 4 Q. B. 323, and *Reg. v. Justices of Denbighshire*, (1885) 15 Q. B. D. 451, discussed.

Per Farwell and Kennedy L.J.J.. A respondent to a rating appeal, who applies for and obtains a respite of the appeal, does not by so doing waive an objection to the validity of the notice of objection. **RHONDDA VALLEY BREWERIES CO. v. PONTYPRIDD UNION ASSESSMENT COMMITTEE**

C. A. [1909] W. N. 29;
[1909] 1 K. B. 652

RATES—continued.

— Preferential payments in bankruptcy—Poor and district rates—Water rate payable by meter—Apportionment.

See COMPANY—WINDING-UP—Preference, 5.

32. — Procedure—Poor rate—Valuation list — Metropolis — Quinquennial valuation — Effect of omission to give notice of increase of valuation — Valuation Metropolis Act, 1869 (32 & 33 Vict. c. 67), ss. 9, 15.

On the application for a distress warrant to recover the balance of a rate made by the appellants upon the respondents, it was contended that, as the appellants had failed to give the respondents notice of the increase in the rateable value of their premises as required by s. 9 of the Valuation (Metropolis) Act, 1869, the valuation list was not the valuation list for the time being in force in regard to them, and that they were only, therefore, liable in respect of a rate based on the rateable value of their premises as appearing on the previous valuation list :—

Held, that this was not an objection which could be taken on the application for the distress warrant, but must be raised by an appeal against the valuation list or against the rate. **WESTMINSTER CORPORATION v. ARMY AND NAVY AUXILIARY CO-OPERATIVE SUPPLY, LD.**

Div. Ct. [1902] 2 K. B. 125

— Queensland—Queensland Local Authorities Act—Construction.

See QUEENSLAND, 4.

— Railway.

See also under RAILWAY—Rates.

33. — Railway — Indirectly productive portion of—Signal-box—Poor rate—Assessment.

The signal boxes of a ry. are for purposes of parochial rating to be treated, not as part of the running line, but as part of the indirectly productive portion of the ry., and are consequently to be separately assessed in the respective parishes in which they are situated. **MIDLAND RY. CO. v. PONTEFRAC T ASSESSMENT COMMITTEE**

Div. Ct. [1901] 2 K. B. 189

34. — Railway — “ Land used only as a railway ” — General district rate—Assessment — Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 211, sub-s. 1 (b)—Light Railways Act, 1896 (59 & 60 Vict. c. 48), s. 12, sub-s. 2.

A co. were the owners of a light ry. constructed under an order made under the Light Railways Act, 1896. The ry., which physically resembled a tramway, was laid along certain open streets, and the order, while preserving to the public their ordinary right of passage over the highway, provided that the co. should have the exclusive use of the ry. for carriages with flange wheels. The co. having been assessed to the general district rate in respect of their occupation of the ry. :—

Held, upon the construction of s. 12, sub-s. 2, of the Light Railways Act, 1896, that s. 211, sub-s. 1 (b), of the Public Health Act, 1875, applied to light rys.; and that, notwithstanding the user by the public of the surface of the streets in exercise of their right of passage, the co.

RATES—*continued*.

were occupiers of land used only as a ry. constructed under the powers of an Act of Parliament for public conveyance within the meaning of s. 211, and were consequently entitled to be assessed to the general district rate in respect of the ry. at one-fourth only of its net annual value.

Decision of the C. A., [1907] 2 K. B. 256, affirmed. *WAKEFIELD CORPORATION v. WAKEFIELD AND DISTRICT LIGHT RY. CO.*

H. L. (E.) [1908] W. N. 124; [1908] A. C. 293

35. — Railway—Link line—Actual net earnings within parish—Interest on cost of construction—Profits made outside parish—Rateable value, Trst of—Rent “reasonably” to be expected—Poor rate—Parochial Assessment Act, 1836 (6 & 7 Will. 4, c. 96), s. 1.

In assessing the rateable value of a section of a railway link line within a parish the cost of construction of the link line, which connects two great systems, is not as a matter of fact and business experience a measure of the rent at which that section of the line may reasonably be expected to let within the meaning of the Parochial Assessment Act, 1836, and evidence of the interest on the costs of construction is not admissible.

The Act in speaking of a rent at which a hereditament may “reasonably” be expected to let excludes the idea of an oppressive demand fixed upon imagined necessities.

Decision of the C. A. in the *Banbury Case*, [1907] 1 K. B. 717, reversed, and decision of the K. B. D., [1906] 1 K. B. 597, restored.

Decision of the C. A. in the *Sheffield Case*, [1908] 1 K. B. 750, reversed as a corollary of the Banbury decision, and decision of the K. B. D. restored. *GREAT CENTRAL RY. CO. v. BANBURY UNION. SHEFFIELD UNION v. GREAT CENTRAL RY. CO.*

H. L. (E.) [1908] W. N. 250; H. L. (E.) [1909] A. C. 78

36. — Railway—Quinquennial valuation—Provisional list—Reduction of value of railway through competition of tramways and tube railways—“Any cause”—Mandamus to assessment committee to appoint valuer—Railway company—Poor rate—Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67), s. 47.

Where competition by tramways, tube railways, and lines of motor omnibuses, all of which were in existence at the time when the last quinquennial valuation list for a metropolitan parish was made, has, in subsequent years of the quinquennial period, caused a large and continuous decrease of the receipts of a ry. co. in respect of local passenger traffic over a portion of their line situated in the parish, whereby the rateable value of that portion of their line has been reduced, s. 17 of the Valuation (Metropolis) Act, 1869, is applicable, and if, upon a requisition by the co., the overseers make default in sending a provisional list to the assessment committee in pursuance of sub-s. 1 of the before-mentioned section, it becomes the duty of the assessment committee under sub-s. 2 of the section to appoint a valuer to make such a list. *REX v. SOUTHWARK ASSESSMENT COMMITTEE* **C. A. [1909] W. N. 4; [1909] 1 K. B. 274**

RATES—*continued*.

37. — Railway—Water rate—Domestic purposes—Railway purposes—Railway station—Sanitary conveniences—Metropolitan Water Board (Charges) Act, 1907 (7 Edw. 7, c. clxxi.), ss. 8, 16, 25.

The Metropolitan Water Board (Charges) Act, 1907, provides by s. 8 for a supply of water for “domestic purposes” at the request of the owner or occupier of any house or building occupied as a separate tenement within the limits of supply of the Metropolitan Water Board at a rate based on the rateable value of the house or building. The same Act by s. 16 provides for a supply of water by measure for “purposes other than domestic” at the request of any owner or occupier of any premises situate as therein described at rates varying with the quantity supplied. By s. 25 “domestic purposes” are deemed to include water-closets and baths of a certain capacity, but are not to include a supply of water for “railway purposes.”

A ry. co. owned a station situate as described in s. 16 and within the limits of supply of the Board. The station was separately rated; it contained no stationmaster's house, but contained waiting rooms, a porter's room, and a booking office; on the up and down platforms were urinals and two water-closets, one for passengers and one for the staff; there was also on each platform a tap from which water was drawn for drinking and for cleansing the platform.—

Held, that the water supplied by the Board for these purposes was supplied for “railway purposes” within s. 25, and was therefore supplied for “purposes other than domestic” within s. 16.

Decision of Div. Ct. (Phillimore and Bucknill JJ.), [1910] 1 K. B. 804, affirmed. *METROPOLITAN WATER BOARD v. LONDON, BRIGHTON, AND SOUTH COAST RY. CO.*

C. A. [1910] W. N. 209; [1910] 2 K. B. 890

— Railway company.

See under RAILWAY—Rates.

— Railway company—Carriage—Measurement weight or actual weight.

See RAILWAY—Carriage. 7.

39. — Rent of hypothetical tenant—Evidence of profits—Poor rate—Assessment—Net annual value.

In estimating for the purposes of a poor-rate assessment the rent at which premises may be reasonably expected to let, the circumstances of the actual occupation are matters to be considered, including the receipts and expenses of the business carried on there; although (as in the case of the Mersey Docks and Harbour Board) the occupiers cannot make profits for their own benefit, but are required by statute to apply them to specific purposes.

The decision of the C. A., [1900] 1 Q. B. 143, affirmed. *MERSEY DOCKS AND HARBOUR BOARD v. BIKENHEAD UNION ASSESSMENT COMMITTEE*

H. L. (E.) [1901] W. N. [1901] A. C. 175

40. — Rent-charge—Rent-charges imposed for protection of land from sea—Poor rate—

RATES—continued.

Rateable value—Necessary expenses to command rent—Parochial Assessment Act, 1836 (6 & 7 Will. 4, c. 96), s. 1.

In a district under the statutory jurisdiction of commissioners of sewers rent-charges were imposed on lands A and B for the maintenance of works necessary to protect the district from incursions of the sea. Some of the lands within the district shared the benefits of this protection, though they were not liable to, and did not contribute towards, the maintenance of the works:—

Held, that upon assessing to the poor rate the tenants of lands A and B they were entitled to a deduction from the rateable value in respect of the rent-charge, or such proportion thereof as was the proper share of lands A and B respectively, on the footing that all the protected lands were taken to contribute rateably having regard to the protection they received.

Decisions of the K. B. D., [1906] 2 K. B. 147, and the C. A., [1907] 2 K. B. 460, reversed. *GREEN v. NEWPORT UNION. STEAD v. NEWPORT UNION - H. L. (E.) [1908] W. N. 220; [1909] A. C. 35*

— Retrospective rate—Hospital, Agreement by local authorities for joint use of—Mandamus to levy retrospective rate—Excusable delay.

See LOCAL GOVERNMENT. 15.

— Scottish law.

See UNDER SCOTTISH LAW.

— Sea—Necessary expense to command rent—Rent-charges imposed for protection of land from the sea—Poor rate—Rateable value.

See No. 40, above.

41. — Sewage farm—Sewage farm let by sewerage board to tenant—Poor rate—Assessment.

A sewage farm was let by the owners (the sewerage board) to a tenant:—

Held, that in assessing the tenant to the poor rate in respect of his occupation of the farm, the rating authority, when estimating the rent which a hypothetical tenant would be willing to pay, must take into consideration not merely the actual rent paid by the tenant, but the benefit accruing from the farm as a means of enabling the board to discharge their statutory duties; and that the board was not to be excluded from the list of possible hypothetical tenants.

Decision of C. A., [1907] 1 K. B. 630, affirmed. *DAVIES v. SEISDON UNION H. L. (E.) [1908] W. N. 135; [1908] A. C. 315*

42. — Sewers—Arrears of rates, Judgment for—Retrospective rate—Mandamus—Discretion—Local government—Rural authority—Construction of sewers—"Special expenses"—Contributory area—Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 28, 229, 230.

Special expenses for drainage works were incurred by the plts. upon terms the result of which was that money was due each year from

RATES—continued.

the defts. to the plts., and the amount so due was recoverable by the defts. from three contributory parishes for whose benefit the special expenses were incurred. By mistake the plts. did not for several years call upon the defts. to pay the full amount properly due, and less was paid till Sept., 1904. In April, 1905, the plts. drew attention to the mistake and called upon the defts. to pay the balance due in respect of several previous years up to Sept., 1904, and to make payment for the future on a proper footing. The defts. paid on the lower scale till Sept., 1905, and thenceforward paid in full. They were unable to recover part of the arrears from the contributory parishes and declined to pay the arrears; whereupon the plts. brought an action to recover the arrears and for a mandamus to enforce the levy of a rate to satisfy them. The defts. admitted that the plts. were entitled to judgment for the arrears, but contended that a mandamus to enforce payment of a retrospective rate would be illegal:—

Held (varying the order of Neville J., [1908] 1 Ch. 223), that the Court had a discretion to grant a mandamus for enforcing the levying of a rate to meet obligations for special expenses of former years if the circumstances justified it; that there was no reason for granting a mandamus to enforce payment of the arrears up to 1904; but that, inasmuch as a demand was made and might have been complied with in the course of the current year 1904–5, a mandamus ought to be granted to enforce payment of the amount due for that period. *CROYDON CORPORATION v. CROYDON RURAL DISTRICT COUNCIL*

C. A. [1908] W. N. 150; [1908] 2 Ch. 321

Note.

This case was followed by Neville J., *Wolstanton United Urban Council v. Tunstall Urban District Council*, [1910] 2 Ch. 347; C. A. [1910] W. N. 232. *See Local Government. 15.*

43. — Sewers—Underground sewers—Sewer covered by embankment—Payments received for use of sewer—Diminution in value of surface—Poor rate.

The exemption of underground sewers from liability to poor rate is anomalous, and will not be extended. Therefore, in order that a new sewer which is *prima facie* rateable may escape from such liability, it must fall strictly within the limits of the authorities by which the exemption was established—that is to say, it must not occupy or affect the surface, and no payment must be made to its owners for the use of it by others.

A sewer authority constructed a sewer for the purpose of conveying the sewage of their district to the sea. Part of this sewer was carried on concrete arches above the surface of the ground, part of it was below the natural surface of the ground, and the rest of it was covered by an embankment. The land upon which the embankment was constructed continued to be assessed for the purposes of the poor-rate as before, no change in the assessment of it having been made by reason of the making of the embankment. The sewer authority re-

RATES—continued.

ceived payments annually from other authorities for the use by them of the sewer:—

Held, that the sewer, including the portions of it covered by the embankment and underground, was rateable to the poor rate.

West Ham v. London County Council, [1893] A. C. 562, discussed.

Judgment of the Div. Ct., [1900] 1 Q. B. 365, affirmed. *YSTRADYFODWG AND PONTYPRIDD MAIN SEWERAGE BOARD v. NEWPORT ASSESSMENT COMMITTEE*

C. A. [1901] W. N. 28; [1901] 1 K. B. 406

— Sewers rate—Gas mains liable to be rated as unsewered property—Law of Victoria. *See VICTORIA*. 9.

— Shipping—Ship—Dock rates—West India Dock—Exemption from dock rates—Lighter.

See SHIPPING—Docks. 3.

44. — *Sporting rights, Rateability of—Assessment in proportion of one-fourth of net annual value—General district rate—Rating Act, 1874 (37 & 38 Vict. c. 54), s. 6—Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 211.*

Where a right of sporting over land within the district of an urban sanitary authority is severed from the occupation of the land, and is let, s. 211 of the Public Health Act, 1875, does not apply to entitle the lessee of that right to be assessed in respect of the same to the general district rate in the proportion of one-fourth part only of the net annual value thereof. *ALTON URBAN COUNCIL v. SPICER*

Div. Ct. [1904] 1 K. B. 678

— Street—Owners for the time being liable for the rates.

See NEW SOUTH WALES. 33.

45. — *Surcharge—General district rate—Power to rate owner instead of occupier—Reduced assessment—Owner in occupation of premises—Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 211, sub-s. 1 (a).*

Rule nisi to the auditor of the accounts of the Rhondda Urban Council to shew cause why a writ of certiorari should not issue to bring up and quash a certificate of surcharge.

The council had exercised the option given by s. 211, sub-s. 1 (a) of the Public Health Act, 1875, to rate "the owner, instead of the occupier," where the rateable value of the premises liable to assessment does not exceed 10*l.*, in which case the section provides that the owner "shall be assessed on such reduced estimate as the urban authority deem reasonable of the net annual value, not being less than two-thirds nor more than four-fifths of the net annual value." There were in the district of the council numerous cases in which the owner was also the occupier of rateable hereditaments, the rateable value of which did not exceed 10*l.*, and in these cases the owners were rated and assessed upon only two-thirds of the net annual value of their hereditaments. In ten of these cases the auditor, contending that the council had no power to rate owners who were also occupiers of the hereditaments rated, upon the reduced assessment, had surcharged two members of the

RATES—continued.

council "who had taken part in the meeting at which the rate in question had been made" a sum representing the difference between the aggregate amount actually demanded and collected from the said ten persons and the aggregate amount which would have been collected from them if they had been rated on the full net annual value of the hereditaments respectively occupied by them.

The Court discharged the rule and confirmed the surcharge, on the ground that the provisions of s. 211, sub-s. 1 (a) of the Public Health Act, 1875, as to assessing an owner on a reduced annual value do not apply to cases where the owner is himself the occupier of the premises to be rated. The Court ordered the costs to be paid by the Rhondda Urban District Council. *REX v. PROPERT* Div. Ct. [1910] W. N. 245

46. — *Tender of part of rate—Obligation of magistrate to issue distress warrant for whole—Poor rate.*

A rate having been duly made in a parish, a ratepayer tendered to the overseers a portion of the sum that he was liable to pay in respect of the rate, but refused to pay the balance. The overseers refused to accept part payment of the rate, and preferred a complaint before the magistrate against the ratepayer for a refusal to pay the rate. At the hearing the ratepayer again tendered in Court a portion of the sum due from him, which was again refused; whereupon the magistrate refused to issue a distress warrant for more than the amount of the balance:—

Held, that under the circumstances the magistrate was not bound to issue his distress warrant for the whole amount of the rate. *REX v. GILLESPIE* Div. Ct. [1904] W. N. 12; [1904] 1 K. B. 174

— Tramroad—General district rate—Assessment

—Land "used only as a railway constructed under any Act of Parliament"

—Tramroad.

See RAILWAY—Rates. 9.

— Tramway—Separate assessment of tramway engine-houses—Law of Victoria.

See TRAMWAYS. 14.

47. — *Valuation—Public-house—Quinquennial valuation—Provisional list—Reduction of value—Increased licence duty—"Any cause"—Mandamus to Assessment Committee to appoint valuer—Poor rate—Metropolis—Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67), s. 47—Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), ss. 43, 44; Sched. I, C.*

The heavy increase in the duty imposed by the Finance (1909-10) Act, 1910, upon licensed premises in the metropolis:—

Held, to be prima facie evidence of a reduction in value within s. 47 of the Valuation (Metropolis) Act, 1869, so as to entitle the tenant, if default is made by the overseers in sending a provisional list to the assessment committee pursuant to sub-s. 1, to require the assessment committee to appoint a person to make such a list pursuant to sub-s. 2 of that section. *REX v. SHOREDITCH ASSESSMENT COMMITTEE. Ex parte MORGAN*

C. A. [1910] 2 K. B. 859

RATES—continued.

48. — Valuation list, Appeal against—Removal of appellant's name from list—Alteration of assessment—Recovery of rates paid pending appeal—Poor rate—Procedure—Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67), s. 44.

By s. 44 of the Valuation (Metropolis) Act, 1869, where in consequence of the decision on any appeal under the Act to assessment sessions or a superior Court an alteration in the valuation list is made which alters the amount of the assessment, contribution, rate, or tax levied thereunder, the difference, if too much has been paid, is to be repaid or allowed.

Upon a case stated by quarter sessions on an appeal by the plt. against a valuation list, the Court held that the plt. was not the rateable occupier of the premises, and was not liable to be rated in respect thereof. The vestry performing the duties of overseers having refused to repay to the plt. the amount of certain rates levied by them under the valuation list and paid by him during the pendency of the appeal proceedings, the plt. brought an action against them to recover the sums so paid :—

Held, that, although the effect of the appeal had been to strike the plt.'s name altogether out of the valuation list, there had nevertheless been an alteration in the valuation list which altered the amount of the assessment, contribution, rate, or tax levied thereunder within the meaning of the section, and that the plt. was entitled to recover. **BURTON v. BLOOMSBURY VESTRY**

Mathew J. [1901] 1 K. B. 650

49. — Warehouse—Occupation—Intention to occupy.

A warehouse belonging to a warehouseman was used by him for the purpose of being let as a whole, or in separate floors or rooms, for the storage of goods, or of receiving goods for storage at a rate per ton or per package per week. The warehouseman having been rated to certain rates made for a city, the warehouseman, during the currency of these rates, gave notice to the rating authority that he had gone out of occupation of the warehouse. At that time there were no goods in the warehouse, and it was closed; and the warehouseman had given notice to the co., which supplied water for the purposes of the hydraulic lift on the premises, to cut off the water supply, which they did, and had removed the weights, scales, and trucks used for weighing and trucking goods on the premises to an adjoining warehouse which belonged to him. The water supply could, however, at any moment be restored on notice to the co., and the weights, scales, and trucks brought back, whenever required; and the warehouseman was still prepared to receive applications for the hire of storage rooms in the warehouse, and ready and willing to reopen and receive goods into it, provided that enough goods were offered to fill half of the whole capacity of the warehouse, that being the smallest quantity for which he thought it worth while commercially to open the warehouse; and a bill was posted on the premises stating that they were to let :—

Held, that there was no cessation of occupation of the warehouse by the warehouseman,

RATES—continued.

and he therefore was liable for the payment of the rates in respect of the period during which the above-mentioned state of things continued.

Overseers of the Bootle v. Liverpool Warehouse Co., (1901) 85 L. T. 45, distinguished. REX v. MELLADEW - C. A. [1907] W. N. 6; [1907] 1 K. B. 192

50. — Water—General district rate—Occupation of land—"Land covered with water"—Pontoons floating over excavated ground—Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 211, sub-s. 1 (b).

The appellants, a dock co., were the owners and occupiers of certain hereditaments on the north-west bank of the river Tyne. Part of the hereditaments consisted of a yard with buildings used for building and repairing ships. The appellants excavated a certain space of ground alongside of their yard which before the excavation was dry land belonging to them. After the excavation the water of the Tyne flowed at all states of the tide over the excavated ground. The appellants constructed two pontoons which were used by them in their business of repairing ships. The most important part of the appellants' business was done by means of the pontoons. The pontoons floated over the excavated ground, each pontoon being kept in position by iron arms or booms working up and down on hinges as the tide rose or fell. The arms were arranged in pairs one above another, and were attached at one end to the pontoon and at the other to piles driven into the excavated ground; but the pontoons could be detached from the piles, and might have been kept in position by means of chains instead of the iron arms :—

Held (affirming the decision of a Div. Ct., [1908] W. N. 15; [1908] 1 K. B. 315)—

(1) that the appellants were in occupation of the excavated land so as to be rateable in respect of it, inasmuch as they were in occupation of the land before and during the excavation, and afterwards the most important part of their business was done over the site; (2) that the excavated ground over which the pontoons floated was "land covered with water." **SMITH'S DOCK CO. v. TYNEMOUTH CORPORATION - C. A. [1908] W. N. 79; [1908] 1 K. B. 948**

Note.

The terms "appellants" and "respondents" are used throughout this report with reference to the relation to the parties at quarter sessions.

— Water rate—"Domestic purposes"—"Railway purposes"—Railway station—Sanitary conveniences.
See No. 37, above. 37.

— Water rate.

See under **LONDON—Water.**
WATER.

51. — Waterworks—Indirectly productive works—Right to take water from river—Assessment of intake—Poor rate.

A waterworks co. acquired by statute the right to take water from a river upon payment to the conservators of the river of certain sums of

RATES—continued.

money. In exercise of that right they received a flow of water from the river over a piece of land on the river bank in their occupation called an "intake," where the water was measured by a gauge :—

Held, that in rating the co. to the relief of the poor, the intake ought, beyond its structural value and its value as land, to be rated in an additional sum as having an enhanced value by reason of its fitness for the user made of it in taking water from the river into the channel of the co.; but that the statutory payments made to the conservators of the river for the water were not an element to be considered in arriving at the rateable value.

Decision of a Div. Ct., [1901] 2 K. B. 620, reversed. *NEW RIVER CO. v. HERTFORD UNION C. A.* [1902] 2 K. B. 597

— Wharfage rates, Right to levy, on all wharves vested in the Commissioners—Sydney Harbour.
See NEW SOUTH WALES. 36.

RATES AND TAXES — Lessor's covenant to pay all present and future rates and taxes — Sub-letting at a profit — Increased assessment.
See LANDLORD AND TENANT. 70.

RATIFICATION — Contract — Agent—Sale of goods—Undisclosed principal.
See CONTRACT. 27.

— Contract of fire insurance made by agent without authority — Ratification by principal after and with knowledge of loss by fire—Whether ratification valid in law.
See INSURANCE (FIRE). 1.

— Policy effected by owner of ship for all persons to whom the subject-matter might appertain.
See INSURANCE (MARINE). 18.

— Prospectus — Misrepresentation — Non-disclosure of contracts.
See COMPANY—Prospectus. 2.

— Salvage — Agreement — Position of ship's agent.
See SHIPPING—Salvage. 1.

— Trade union—Authority of branch officials to bind union—Employer and workman.
See TRADE UNION. 3.

— Will torn up in testator's presence without his authority—Subsequent ratification inadmissible.
See PROBATE—Lunacy. 2.

"READY MONEY"—Pecuniary investments—Banker's deposit note.
See WILL—"Ready Money." 1.

REAL ESTATE.

See also under ADMINISTRATION.

— Grant—Exception—Uncertainty—Election.
See CONVEYANCE. 2.

— Mortgages.
See under MORTGAGE.

REAL ESTATE—continued.

— Undischarged bankrupt—After-acquired property.
See BANKRUPTCY—Undischarged Bankrupt. 5.

— Will—Construction.
See under WILL—Real Estate.

REAL ESTATE CHARGES—"Chattel real"—Rent-charge issuing out of leaseholds—Intestacy.
See WILL—Chattels Real. 1.

— Collective devise of real estates—Aggregation of charges—Exoneration of personal estate.
See WILL—Exoneration. 2.

REAL ESTATE CHARGES ACT — Exoneration — Direction to pay debts, "except mortgage on Blackacre"—Other mortgages.
See WILL—Exoneration. 3.

— Will—Exoneration.
See under ADMINISTRATION.

REAL ESTATE CHARGES ACT, 1854 — Will—Exoneration—Contrary or other intention—Mortgage debt.
See WILL—Exoneration. 3, 4.

— Will—Mortgage—Option to purchase—Devise.
See WILL—Mortgages. 1.

REAL PROPERTY ACT — Mine — Subsidence, Compensation for.
See MINE. 14.

REAL PROPERTY LIMITATION ACTS.
See under LIMITATIONS, STATUTE OF.

REALTY—Personalty or—Conversion.
See under CONVERSION.

— Personalty or—Sale by mortgagee—Surplus proceeds of sale—Conversion—Lunacy of mortgagor.
See MORTGAGE—Sale. 3.

— Trusts pointing to personalty—Will—Construction.
See WILL—Residue. 6.

— Will—Construction.
See under WILL—Realty.

REASONABLENESS—Plans, Property in—Completion of work—Claim of architect—Custom.
See ARCHITECT. 1.

— Restraint of trade—Master and servant—Injunction.
See RESTRAINT OF TRADE. 5.

REBATE — Railway — Traffic management — Undue preference — Special agreement — Adequate consideration.
See RAILWAY—Rates. 8.

REBUILDING—Additions or alterations with a view to letting.
See SETTLED LAND—Capital Moneys, 12, 13.

RECEIPT — Acknowledgment — Mortgage — Assignment — Notice by executors of assignee.

See ASSIGNMENT. 8.

— Building society—Statutory receipt—Mortgage — Successive incumbrancers — Priority.

See MORTGAGE—Priority. 2.

— Estoppel — Fraud — Equitable mortgagee—Mortgage.

See PRINCIPAL AND AGENT.

— Forged receipt—Priority — Equitable mortgage—Notice — Fraud — Possession of title-deeds.

See VENDOR AND PURCHASER — Priority. 1.

— Judgment debt—Joint and several debt—Release to one co-debtor—Extinguishment of debt.

See ACCORD AND SATISFACTION. 1.

— Of money beyond the United Kingdom—House used for betting.

See GAMING. 11.

— Production of, for rent—Breach of covenant to repair—Title—Open contract.

See VENDOR AND PURCHASER—Title. 7.

— Secretary—Authority to bind company.

See COMPANY—Shares. 4.

— Stamp—"Receipt"—"Discharge"—Debtenture stock.

See REVENUE—Stamps. 25.

— Stamp duty—Counsel's brief—Statement of fees.

See REVENUE—Stamps. 24.

— "Without prejudice"—Payments by employer—"Option."

See MASTER AND SERVANT — Practice. 19.

RECEIVER—Administration—Practice—Grant to official receiver in bankruptcy—Sureties dispensed with.

See PROBATE—Sureties.

1. — Appointment — Practice—Execution — Patent—Equitable execution—Judicature Act, 1873 (36 § 37 Vict. c. 66), s. 25, sub-s. 8.

The deft., against whom the plts. had recovered judgment in an action, which remained unsatisfied, was resident abroad, and had no property within the jurisdiction available for the purpose of a *feri facias*, or other ordinary process of execution. He was the registered owner of three English patents, but it was not shewn that he was in receipt of any profits therefrom by way of royalties or otherwise. On an application for the appointment of a receiver, by way of execution, of all rents, profits, and moneys receivable in respect of the deft.'s interest in the patents:—

Held, by Vaughan Williams L.J. and Buckley L.J. (Fletcher Moulton L.J. dissenting), that an order for appointment of a receiver could not in such a case be made.

Holmes v. Millage, [1893] 1 Q. B. 551, followed. EDWARDS & Co. v. PICARD C.A. [1909] W. N. 191; [1909] 2 K. B. 903

RECEIVER—continued.

— Appointment of—Notice to vendor—Rescission of contract by consent—Secured creditor.

See VENDOR AND PURCHASER—Receiver. 1.

2. — Appointment of receiver — Practice — Decree of Court of Session in Scotland—Certificate registered in High Court—Equitable Execution—Judgments Extension Act, 1868, (31 § 32 Vict. c. 54), ss. 3, 4.

An appointment of a receiver by way of equitable execution may be made upon the certificate of a decree of the Ct. of Sess. in Scotland registered in the High Court under the Judgments Extension Act, 1868. THOMPSON v. GILL C.A. [1903] W. N. 67; [1903] 1 K. B. 760

2a. — Appointment of receiver — Practice — Equitable execution — Special circumstances — Impediments to ordinary execution—Defendants out of the jurisdiction—Judicature Act, 1873 (36 § 37 Vict. c. 66), s. 25, sub-s. 8.

The plt. in an action had obtained judgment against the defts., who were a co. incorporated, and carrying on business as manufacturers, in Germany, and who had no property within the jurisdiction which could be taken in execution by any ordinary process of execution. It appeared that divers customers of the defts. in this country either were, or would shortly become, indebted to the defts. for goods supplied, but the plt. had no means of ascertaining particulars of any such debts, and therefore could not make an affidavit in the form No. 25, Appx. B, to the R. S. C., in order to found garnishee proceedings; and it further appeared that there was reason to believe that the defts. were endeavouring to collect all debts due to them from customers in this country in order to avoid such proceedings:—

Held that, having regard to the special circumstances, the case was one in which a receiver of such debts as aforesaid might be appointed by way of equitable execution. GOLDSCHMIDT v. OBERRHEINISCHE METALLWERKE

C. A. [1906] W. N. 24; [1906] 1 K. B. 373

3. — Appointment of receiver of rents and profits — Administration — Creditor's action — Parties—Complete administration of personal estate—Non-existence of legal personal representative—Action for sale of real estate for payment of debts.

Motion for a receiver.

In May, 1894, the plt. advanced to James Dawson 1000*l.* upon the security of a promissory note. In Nov., 1895, James Dawson died intestate and a widower, and in Jan., 1896, letters of administration to the personal estate of the intestate were granted to John Dawson, his eldest son and heir-at-law. The personal estate of the intestate was valued at 800*l.* odd, and the real estate at 4000*l.* odd, but the real estate was subject to a mortgage for 2400*l.* The debts of the intestate, other than the mortgage debt, amounted to 1700*l.* In Nov. 1904, John Dawson died, having appointed his brother, Edward Dawson, and his wife, Mary Dawson, executor and executrix of his will. The validity of the will was contested by the widow, and the proceedings in the P. Div. were still pending, but

RECEIVER—continued.

in the meantime an order was arranged whereby the rents and profits of the real estate of the testator were to be paid into a joint account in the names of Edward Dawson and Mary Dawson. Interest on the plt.'s debt had been paid first by John Dawson, and afterwards by Edward Dawson until May, 1905, but the whole of the capital was still due. In June, 1905, the plt. cited the next of kin of James Dawson, requiring them to accept or refuse letters of administration of the unadministered personal estate of the intestate, or shew cause why the same should not be granted to the plt. Edward Dawson alone appeared on the citation, and as he took no steps to take out administration the plt. applied for a grant of letters of administration to himself; but the Court, being satisfied that the personal estate had been completely administered, refused the application. Thereupon the plt., on behalf of himself and all other creditors of the intestate, commenced this action against Edward Dawson and Mary Dawson for a declaration that the real estate of the intestate was liable to pay the 1000*l.* and the other debts due from the intestate and for the sale of the same and application of the proceeds for that purpose, and moved for a receiver of the rents and profits of the said real estate.

Kekewich J. said that he felt no difficulty in making the appointment. He remembered that in a similar case he had sustained a bill before Jessel M.R., without any legal personal representative at all. *In re DAWSON. CLARKE v. DAWSON* **Kekewich J. [1906] W. N. 20**

— Bankruptcy—Practice.

See under **BANKRUPTCY—Receiver.**

— Company—Practice.

See under **COMPANY—Receiver.**

4. — Costs—Indemnity—Charges of personal fraud—Costs of defending action—Benefit of trust estate.

Though a receiver while acting in the discharge of his duty is entitled to be indemnified against all loss, including the costs of actions brought against him as receiver, still the guiding principle laid down by *Walters v. Woodbridge*, (1878) 7 Ch. D. 504, is that the defence to the action was for the benefit of the trust estate.

Where an action had been brought against a receiver and administrator pendente lite charging him with personal fraud and misconduct while acting as administrator and receiver, but otherwise having no relation to the estate except so far that the acts complained of were acts done by him while acting as an officer of the Court:—

Held, that the receiver was not entitled to be indemnified against the costs incurred in successfully defending this action.

Courand v. Hunmer, (1846) 9 Beav. 3, and *Bristowe v. Needham*, (1847) 2 Ph. 190, distinguished. *In re DUNN. BRINKLOW v. SINGLETON* **Byrne J. [1904] W. N. 39; [1904] 1 Ch. 648**

— Costs—Order to tax costs and to include remuneration of receiver—Separate certificate as to costs only.

See **COSTS. 72.**

RECEIVER—continued.

— Electric lighting company—Default in payment by customer—Power to cut off current—Change of occupancy.
See ELECTRIC LIGHT. 5.

— Equitable execution—Ex parte injunction.
See INJUNCTION. 1.

5. — Equitable execution—Effect of order—Unascertained residue—Fund partly in court—Notice to executor—Subsequent mortgagees and judgment creditors—Stop order—Charging order—Priority.

A receivership order obtained by a judgment creditor by way of equitable execution over a judgment debtor's share of a testator's residuary personal estate, partly in Court in an administration action and partly in the hands of the executor who has direct notice of the order, though not creating a charge, prevents the judgment debtor from receiving the share, or from dealing with it to the prejudice of the judgment creditor, and if, at the date of the receivership order, the residue is unascertained and the fund then in court is insufficient for the testator's debts, so that the judgment debtor's share cannot then be taken in execution or made available by any other legal process, it prevents any subsequent mortgagee or judgment creditor from gaining priority by means of a stop order or charging order. *In re MARQUIS OF ANGLESEY. COUNTESS DE GALVE v. GARDNER*

Swinfen Eady J. [1903] 2 Ch. 727

6. — Equitable execution — Receiver — Payment into Court — Non-compliance with order—Practice—R. S. C., 1883, Order XLII., r. 4.

By her will a testatrix, after appointing the plt. her executor, bequeathed her residuary interest in a particular estate (called the "Venables interest") to the Hospital for Incurables and Cripples in London, and then gave all her residue to the plt. By an order made on Nov. 23, 1906, by Kekewich J., upon an originating summons in the action, a declaration was made as to the construction of the will, giving the deft. hospital a share in the "V. interest," and the plt. was ordered, within twenty-eight days after the date of receipt by him, to pay into Court to the credit of the action all sums received by him in respect of the "V. interest." The plt. was out of the jurisdiction in New Jersey, and no money had been paid into Court in pursuance of the order.

There was evidence that E. & G., the plt.'s former solicitors, had received on his behalf and remitted to him, in Feb., 1907, a sum of 427*l.* in respect of the "V. interest"; they also had in their hands a further sum of 86*l.*, representing the "V. interest," to which the plt. was entitled as executor of the testatrix, and another sum of 86*l.* to which he was beneficially entitled. Owing to the plt. being out of the jurisdiction, the defts. were unable to serve a writ of attachment upon him.

The defts. now moved for the appointment of a receiver of the interest of the testatrix in the "V. interest," and in particular of the two above-mentioned sums of 86*l.* in the hands of

RECEIVER—continued.

E. & G., and of any other property within the jurisdiction to which the plt. was entitled as executor representing the "V. interest," or to which he was beneficially entitled. It was a question whether equitable execution against the plt.'s own property could be granted under Order XLII., r. 4.

Kekewich J. said that the question raised with respect to the moneys to which the plt. was beneficially entitled was one of great difficulty. There was an order for payment into Court, and that was not enforceable by any process of execution at law. It could be enforced by attachment or sequestration, but he was now asked to enforce it by equitable execution. The case before Mr. Justice Chitty of *In re Coney, Coney v. Bennett*, (1885) 29 Ch. D. 993, in which that learned judge approved in the strongest way of a decision of Bacon V.-C. to the same effect, was really indistinguishable from the present. As it was a decision pronounced twenty-two years ago, and had been quoted in text-books, such as Seton on Judgments (vol. i., p. 422), as an authority for the proposition that an order for payment into Court might be enforced by equitable execution, his Lordship thought it would be wrong not to follow it. He therefore made the order appointing a receiver of all sums received by E. & G. for the plt. in respect of the "V. interest," and all sums received by them for the plt. in which he was beneficially interested; but the order would only be in force until the 31st of May. *In re PEMBERTON. PEMBERTON v. ROYAL HOSPITAL FOR INCURABLES* Kekewich J. [1907] W. N. 118

7. — *Equitable execution—Weekly payment by husband to wife under order of Court of summary jurisdiction—Practice—Summary Jurisdiction (Married Women) Act, 1895* (58 & 59 Vict. c. 39), ss. 4, 5.

The Court has no jurisdiction, on the application of a judgment creditor of a married woman who has obtained a separation order from her husband under the Summary Jurisdiction (Married Women) Act, 1895, to appoint a receiver by way of equitable execution of a weekly sum ordered by the Court of summary jurisdiction to be paid by the husband to his wife for her maintenance.

Watkins v. Watkins, [1896] P. 222, considered and applied. *PAQUINE v. SNARY*

C. A. [1909] W. N. 14; [1909] 1 K. B. 688

— Execution — Equitable interest in land — Appointment of receiver.

See COUNTY COURT—Execution. 3.

— Greenock Harbour Acts—Judicial factor—Power to increase rates.

See SCOTTISH LAW. 20.

— Interference—Dissolution of partnership.

See PARTNERSHIP. 9.

8. — *Interference with possession of receiver—Injunction—Practice—Proceedings in other Courts—Jurisdiction—Receiver in debenture-holders' action—Goods in possession of company under hire-purchase agreement.*

The M. co. were proprietors of a theatre and were supplied by the E. co. with certain electric

RECEIVER—continued.

plant under a hire-purchase agreement. The M. co. made default in payment of an instalment, and the E. co. brought an action in the K. B. D. against the M. co. for the whole amount of the purchase-money. Pending this action a debenture-holders' action was brought in the Ch. D. and a receiver appointed. He went into possession and for a time carried on the theatre, using for that purpose the electric plant. Subsequently the E. co. obtained judgment in their action. After this the receiver sold the theatre to a new co., who purchased part of the plant, and the rest was returned to the E. co. The E. co. claimed rent from the receiver for the use of their plant while he was carrying on the theatre, but refused to bring in a claim in the debenture-holders' action, and threatened proceedings in the K. B. D. The receiver applied by summons for an order that the E. co. should bring in their claim in the debenture-holders' action within seven days and be restrained from taking any proceedings to enforce it:—

Held, that this was a dispute as to the conduct of an officer of the Court in respect of which the Court was entitled to claim exclusive jurisdiction, and that it would not allow its own officer to be sued in another Court in respect of acts done in discharge of his office. *In re MAIDSTONE PALACE OF VARIETIES, LD. BLAIR v. MAIDSTONE PALACE OF VARIETIES, LD.*

Neville J. [1909] W. N. 156; [1909] 2 Ch. 283

9. — *Interim preservation of property—Practice—Abatement of action—Death of sole defendant—Appointment of interim receiver.*

Motion for the appointment of a receiver under the following circumstances:

J. C. by his will devised and bequeathed all his real and personal estate to trustees, of whom the deft., W. B. C., was one, upon trust to sell and convert and invest the proceeds and to pay the income thereof, after the death of his wife H. C., to his daughter, the plt. M. E. C., for life, and after her death to stand possessed of the trust estate upon the trusts therein mentioned. The testator died on July 13, 1884, and his widow died on Nov. 24, 1898. On Oct. 18, 1910, the plt. issued her writ in the present action against the deft., the sole surviving trustee and executor of the will, claiming (1) an account of the estate of the testator on the footing of breach of trust and wilful default; (2) the appointment of new trustees of the will in the place of the deft.; (3) inspection and production of the securities representing the estate; (4) a receiver; and (5) administration; and on the same day in pursuance of special leave she gave notice of motion for the appointment of W. as receiver of the rents and profits of the real and leasehold estates and to collect and get in the outstanding personal estate. The estate was stated to consist of two mortgage securities and of certain moneys either in the hands of the deft. or which had been lost or misappropriated by him. No judgment had been given in the action. On Oct. 28, 1910, the motion came on, and it was then stated that the deft. had been found dead on a railway

RECEIVER—continued.

on the previous day. The motion was accordingly ordered to stand over with liberty to mention at any time. From subsequent inquiries, it appeared that the deft. had left a will whereby he appointed his wife sole executrix and universal legatee.

Warrington J. : I think I may make an order in this case similar to that made in *In re Parker, Cash v. Parker*, (1879) 12 Ch. D. 293. The order will be: Appoint W. receiver until ten days after probate of the late deft.'s will has been granted, the plt. undertaking that if such probate is not granted within two months she will apply for administration with the will annexed, and also undertaking to accept short notice of motion to discharge the receiver. Liberty to the receiver to act at once, the plt. undertaking for him, and he to give security forthwith. *In re CLARK. CLARK v. CLARK*

Warrington J. [1910] W. N. 234

— Judgment creditor—Charging order—Appointment of receiver—Equitable execution—Injunction—Settlement set aside.

See **FRAUDULENT CONVEYANCE. 2.**

— Libel—Absolute privilege—Report of official receiver under Companies (Winding-up) Act, 1890.

See **DEFAMATION—Libel. 1, 2.**

— Lunacy.

See under **LUNACY.**

— Married woman plaintiff—Costs—Restraint on anticipation.

See **HUSBAND AND WIFE—Costs. 3.**

— Mortgages.

See under **MORTGAGE—Receiver.**

— Official receiver—Duty as to giving information to outside liquidator.

See **COMPANY—WINDING-UP—Liquidator. 2.**

— Official receiver as trustee—Onerous property—Leaseholds—Disclaimer, Time for.

See **BANKRUPTCY—Trustee. 9.**

— Partner.

See under **PARTNERSHIP.**

— Partnership, Debt due to a—Petitioning creditor—Dissolution of partnership.

See **BANKRUPTCY—Receiver. 1.**

10. — *Possession—Refusal to deliver—Order giving time for obedience—Writ of possession—Writ of assistance—Practice—R. S. C., Order XLI., r. 5; Order XLVII., r. 2.*

Foreclosure action. On March 29, 1904, an order was made appointing a receiver of the property. The order gave the receiver liberty to act at once, and was in the common form used in cases where the mortgagor is in occupation of any part of the mortgaged property; it ordered that three of the defts. "respectively do deliver possession of" two houses therein mentioned to the receiver, but it did not direct delivery to be made forthwith or within any limited time. The order had been served on the defts. and possession demanded by the receiver; but the defts. refused to give up possession. The plt. applied

RECEIVER—continued.

at the Central Office for the issue of a writ of possession, but it was refused on the ground that the plt. could not produce an affidavit of service of the order with the indorsement required by Order XLI., r. 5, that if the defts. neglected to obey the order within the time limited they would be liable to process of execution. The plt. now applied to the Court *ex parte* for an order that a writ of possession or a writ of assistance should issue.

Farwell J. said that he was doubtful whether it was necessary to apply for a writ of possession at all; he should have thought that the defts. might be proceeded against for contempt; but if the plt. required a writ the words of Order XLI., r. 5, were imperative, and the plt. must shew that he had complied with them. *SAVAGE v. BENTLEY*

Farwell J.
[1904] W. N. 89

Note.

Disobedience of order of Court—Evasion of service—R. S. C., Order XLI., r. 5. See *Kistler v. Tettmar*, C. A. [1905] 1 K. B. 39; *Attachment. 17.*

— Principal and agent—Receiver agent of debenture-holders—Assets charged by receiver.

See **COMPANY—Receiver. 6.**

11. — *Public-house—Licences in jeopardy—Landlord and tenant—Recovery of possession—Receiver of licences and of rents and profits—Preservation of subject-matter of litigation—Practice—Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 25, sub-s. 8—R. S. C., 1883, Order L., rr. 3, 16—Form of order.*

The owner of licensed premises has sufficient *prima facie* interest in the business to entitle him to the appointment of a receiver of the licence to secure its preservation pending litigation.

In an action by a lessor to recover possession of an hotel, where the lessee had covenanted to keep the hotel continuously open and not to do anything whereby the licence might be endangered, the Court appointed a receiver of the licence and of the rents and profits, ordered the licence to be delivered up to the receiver, and authorized him to keep the house continuously open as an hotel, and to do all such acts as might be necessary for that purpose, and for the purpose of preserving the licence from forfeiture.

Form of order in *Charrington & Co., Ltd. v. Camp*, [1902] 1 Ch. 386, discussed and modified.

LENEY & SONS, LD. v. CALLINGHAM AND THOMPSON

C. A. [1907] W. N. 224:
[1908] 1 K. B. 79

12. — *Public-house—Licences in jeopardy—Recovery of possession—Disputed title—Receiver of licences and of rents and profits—Landlord and tenant—Breach of covenant—Notice—Practice—Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), s. 14.*

The deft. was tenant of a public-house under an agreement, dated in 1893, whereby the plts. agreed to let and the deft. agreed to take the premises for one year certain. Under the agreement the deft. was not to do, or cause or suffer

RECEIVER—*continued.*

to be done, any act, deed, or thing whereby the licence might be jeopardized, suspended, forfeited or lost; he was, upon quitting the premises, to assign over the licences to the plts.; and he was to reside on the premises, and not to shut them up, or cause or suffer the same to be shut up, or the trading thereon to be suspended. It was thereby also agreed that if the tenant should commit any breach of the agreement, or the licences should be jeopardized, the tenancy should cease, and the landlords should have power at once, without notice or legal proceedings, to re-enter upon the premises and resume possession thereof. The deft. continued tenant upon the terms of the agreement until Nov., 1901, when he closed the house and went away.

In an action for recovery of possession and for a receiver, the Court appointed a receiver of the licences and of the rents and profits, ordered the licences to be handed over to the receiver, and gave him possession of the premises so far as was necessary for the purpose of preserving the licences. *CHARRINGTON & Co. v. CAMP*

Joyce J. [1901] W. N. 244; [1902] 1 Ch. 386

Note.

Form of order in, discussed and modified by *C. A. Leney & Sons, Ltd. v. Callingham and Thompson*, [1908] 1 K. B. 79. See No. 11, above.

13. — Purchase by receiver without leave of the Court—Partition action—Sale by mortgagee.

A receiver appointed by the Court cannot purchase the property of which he is receiver without the leave of the Court, even where the sale is made, not in the action in which he was appointed, but by a mortgagee selling with leave outside the action.

Allen v. Bond, (1841) Fl. & K. 196, approved.

Decision of Swinfen Eady J., [1907] 2 Ch. 292, affirmed. *NUGENT v. NUGENT*

C. A. [1908] W. N. 37; [1908] 1 Ch. 546

— **Railway.**

See under **RAILWAY—Receiver.**

14. — Security—Bond of limited company—Ultra vires.

A receiver had been appointed in a debenture-holder's action, and the receiver had brought in by way of security a bond of the Railway Passengers' Assurance Co., Ltd., for 1000*l.*, given to two of the Masters, and conditioned to be void if the receiver discharged his duties. The co. which gave this guarantee purported to act under the powers of their special Act of Parliament (the Railway Passengers' Assurance Act, 1897 (60 Viet. c. xiv.)), by s. 2, sub-s. ii., of which it was provided that the business of the co. was to comprise, in addition to the business described in s. 9 of their Act of 1892, "the insurance of compensation or indemnity in respect of loss or damage occasioned to any person or persons by any act or default of any other person or persons." It was stated that in 1899 North J. had refused to accept such a bond as security for a receiver, and that although similar bonds had been accepted on many occasions, there was a doubt whether they were not ultra vires the co. under their Act.

The Court came to the conclusion that there

RECEIVER—*continued.*

was no reason why this bond should not be accepted, and that it did fall within s. 2 of the Act of 1897. It did not appear that the effect of the section was the reason for the objection to the bond by North J. The Court did not think there was anything so far as the section was concerned which made the giving of this bond beyond the scope of the authority of the co. *In re SPIRITINE, LD. OWEN v. SPIRITINE, LD.*

C. A. [1902] W. N. 124

— Service out of the jurisdiction—Necessary or proper parties.

See under **PRACTICE—Service.**

— Vendor and purchaser.

See under **VENDOR AND PURCHASER—Receiver.**

— Water rate from "owner," Recovery of—Receiver of rents.

See under **WATER.**

— Will—Life interest—Restraint on alienation

—Charge on future income—Forfeiture

—Moneys in hand of receiver.

See **WILL—Forfeiture. 3.**

RECEIVING—Pleading—Indictment—Omission of "feloniously."

See **CRIMINAL LAW—Larceny. 11.**

RECEIVING ORDER—Bankruptcy.

See under **BANKRUPTCY—Receiving Order.**

— Jurisdiction to make, in lieu of committal order—Absence of evidence of means.

See **COUNTY COURT—Jurisdiction. 4.**

— Married woman—Separate trading—Separate property—Jurisdiction—Bankruptcy.

See **HUSBAND AND WIFE—Bankruptcy. 1.**

— Stockbroker—Right of Stock Exchange creditor to petition in bankruptcy.

See **STOCK EXCHANGE. 3.**

RECEIVING STOLEN GOODS — Evidence —

. Prisoner called as witness on behalf of fellow prisoner—Cross-examination.

See **CRIMINAL LAW—Receiving. 1.**

RECITAL—Ambiguity—Explanation by reference to recital in codicil—Gift to a class—Lapse.

See **WILL—Ambiguity. 1.**

— Erroneous recital—Mistake—Alleged advance—Hotchpot clause.

See **WILL—Mistake. 1.**

— Evidence—Admissibility—Voluntary settlement—Trustee in bankruptcy.

See **FRAUDULENT CONVEYANCE. 3.**

— Implying covenant from.

See **COVENANT. 2.**

— Twenty years old—Title.

See **VENDOR AND PURCHASER—Title. 12.**

RECOGNIZANCES.

See under **CRIMINAL LAW—Recognizances.**

RECONSTRUCTION—Company.

See under COMPANY—**Reconstruction**.

RECONVERSION.

See under CONVERSION.

RECONVEYANCE—Trust property to innocent settlor—Variation of settlements—No issue of marriage.

See DIVORCE—**Settlements**. 16.

RECORD BOOK—Bankruptcy—Trustee's record book—Debtor's claim to inspect.

See BANKRUPTCY—**Books**. 1.

RECORD OFFICE.

PUBLIC RECORD OFFICE.] *Order in Council dated April 21, 1904. Additional rule for the disposal of documents which are not considered of sufficient public value to justify their preservation in the Public Record Office.* Reprint from **W. N. 1904 (April 30)**, p. 150. See **CURRENT INDEX**, 1904, p. cxxiii.

RECORD OFFICE.] *Order in Council approving additional rule, extending Rules for Disposal of Valueless documents to the Board of Inland Revenue and the Office of Land Revenue Records and Enrolments.* **St. R. & O. 1904**, No. 661.

Catalogue of Manuscripts and other objects in the Museum of the Public Record Office, with Notes by Sir H. C. Marvell Lyte, K.C.B. Second edition, 1904. Price 6d.

Guide to the various Classes of Documents preserved in the Public Record Office. 3rd edition. Price 7s. 1908 (F.—Record Works).

Manuscripts and other Objects in the Museum of the Public Record Office. Catalogue of, with brief descriptive and historical notes. 5th edition. Price 6d. 1908 (F.—Record Works).

Public Record Office. *Addition to Rules for Disposal of Valueless Documents. Order in Council dated June 4, 1908. Reprint from W. N. 1908 (June 13)*, p. 172. See **CURRENT INDEX**, 1908, p. cxxiii.

Record Office, England. Order in Council, June 4, 1908, approving an addition to the Rules of June 30, 1890, for the disposal of documents which are not of sufficient value to justify their preservation in the Public Record Office. **St. R. & O. 1908**, No. 479. Price 1d.

RECORDERS, ETC.—*Recorders, Stipendiary Magistrates, and Clerks of the Peace Act, 1906 (6 Edw. 7, c. 46), makes provision as to the appointment of deputies for recorders, stipendiary magistrates, and clerks of the peace, and for the temporary performance of the duties of those officers in cases of vacancies.*

RECORDS—*Land Revenue Records and Enrolments, Office of—Notice under the Public Offices Fees Act, 1879, dated Mar. 14, 1903. Reprint from W. N. 1903 (March 28)*, p. 88. See **CURRENT INDEX**, 1903, p. lxxii.

RECOVERY—Land tax—Redemption—Recovery of interest—Lapse of time.

See **LIMITATIONS, STATUTE OF**. 9.

— Rates—Limitation of time—"Complaint."

See **RATES**.

RECREATION—Immemorial use by inhabitants of ground for—Encroachment.

See **SCOTTISH LAW**. 5.

RECREATION GROUND (PUBLIC)—Street—Paving expenses—"Owner."

See **LONDON—Streets**. 9.

RECTIFICATION—Company practice.

See **COMPANY—Memorandum**. 15.

— Company—Register of members.

See **COMPANY—Shares**. 3.

— Conveyance.

See **VENDOR AND PURCHASER—Minerals**. 1.

VENDOR AND PURCHASER—Mistake. 1.

— Deed—Mistake—Solicitor and client—Independent advice.

See **SOLICITOR—Fiduciary Relation**. 1.

— Marriage settlement—Mistake—Parol evidence—Non-execution of a power—Death of donee.

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See under **BANKRUPTCY—Redemption**.

— Land Law (Ireland) Act—Redemption of liability for rent out of estate indemnified therefrom—Right over indemnified lands.

See **IRISH LAW**. 1.

— Land tax—Annual sum payable by way of interest—Charge on premises.

See **LIMITATIONS, STATUTE OF**. 9.

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See under **MORTGAGE—Redemption**.

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—Covenantor, Re-entry of—Liability for breach by his assigns—Restrictive covenant.
See COVENANT. 7.

—Covenants—Breaches—Compulsory purchase by public body—Severance of reversion.
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See under SCHOOLS.

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See LICENSING ACTS. 54.

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—Company—Register of members—Rectification—Deceased member—Executors, whether to be described as such in register.
See COMPANY—**Register of Members.** 1.

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—Prior registration of conveyance by defaulting owner—Actual purchase must be proved.
See CANADA—**Land.** 2.

—Western Australian Transfer of Land Act, 1893—Wrongful registration—Measure of damages.
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See APPEAL. 7.

REGRAUNT—Confiscation—Construction of regraunt of native lands—Trust.
See NEW ZEALAND. 5.

REHEARING—*Shipping Casualties and Appeals and Rehearing Rules*, 1907. Reprinted 1910.

See under SHIPPING.

— Costs of rehearing petition—"Costs of petitioning creditor."

See BANKRUPTCY—Costs. 3.

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See CRIMINAL LAW—Practice. 1.

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See INSURANCE (MARINE). 21.

— Policy of reinsurance—Practice—Third party procedure.

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— Unreasonable delay of voyage—Material alteration of risk.

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See BANKRUPTCY—Annulment. 1.

— Easement—Tenant for life—Sale or exchange.

See SETTLED LAND—Easement. 2.

— Extradition—Arrest and remand of accused — Writs of habeas corpus—Jurisdiction — Procedure.

See CANADA—Extradition. 1.

— Grant or release—Conveyance by husband and wife of moiety of wife's land—Husband's rent-charge not mentioned.

See DEEDS. 6.

— Judgment debt—Joint and several debt—Release to one co-debtor—Extinguishment of debt.

See ACCORD AND SATISFACTION. 1.

— Novation—Release of principal debtor—Discharge of surety.

See PRINCIPAL AND SURETY. 4.

— Power of appointment—Bankruptcy of donee — Capacity of trustee to release power.

See POWER OF APPOINTMENT. 1.

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See CRIMINAL LAW—Appeal. 16.

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See DIVORCE—Settlements. 14.

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See under COUNTY COURT.

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See SETTLEMENT. 45.
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- Company — Winding-up — Voluntary liquidator—Removal of—Practice.
See COMPANY — WINDING UP — Liquidator. 4.
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- Name put up by local authority.
See STREETS. 12.
- Obstruction to public right of way by private individual—Costs.
See WAY, RIGHT OF. 8.
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See under POOR LAW.
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- Tapestries — Right of removal — Question between devisee and legatee.
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See also under COSTS, and under Specific Titles of subject-matter of remuneration.

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See LOCAL GOVERNMENT. 19.
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See MORTGAGE—Leases. 1.
- Licence.
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- No right of renewal—Trustee—Leaseholds forming part of trust estate—Reversion purchased by trustee—Ownership of the fee.
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RENT—Action for—Res judicata—Landlord and tenant—Agreement for lease—Defence, no concluded agreement — Second action—Defence, Statute of Frauds—Estoppel
See ESTOPPEL. 4.

- Back rents paid to receiver—Right of first mortgagee against receiver.
See MORTGAGE—Receiver. 2.
- "Best rent"—Collusive bargain for reduction of rent.
See SETTLED LAND — Leases. 12.
- Costs—Taxation—Collection of rents—Commission.
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See under BANKRUPTCY—Distress.
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RENT—*continued.*

- Equitable mortgagee—Right to receive rents
 - Claim by tenant for repayment.*See MORTGAGE—Rents.* 1.
- Hiring agreement with option to purchase—
 - Right of owner to sue for arrears of rent after retaking possession.*See BAILMENT.* 1.
- Interim rents—Settled land.
 - See under SETTLED LAND—Interim Rents.*
- Land Law (Ireland) Act — Redemption of liability for rent out of estate indemnified therefrom—Right over indemnifying lands.
 - See IRISH LAW.* 1.
- Landlord and tenant.
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- Lease — Death of lessee — Administrator ad colligenda bona—Power to sell—Entry into possession—Liability de bonis propriis.
 - See ADMINISTRATION.* 20.
- Lease—Liability of assignee for rent due before adjudication of bankruptcy.
 - See BANKRUPTCY—Leases.* 1.
- Licensing Act—Compensation charge—"Rent payable"—Income tax.
 - See LICENSING ACTS.* 12.
- Mining lease—Tenant for life—Powers of leasing—Varying minimum rent.
 - See SETTLED LAND—Leases.* 5.
- Occupation rent—Vendor in occupation of land sold—Delay.
 - See VENDOR AND PURCHASER—Interest.* 2.
- Paving expenses — Payment by occupier—Right of deduction from rent—Distress.
 - See LONDON—Streets.* 12.
- Payment of rent — Property in sub-soil—Mistake—Estoppel.
 - See CONVEYANCE.* 3.
- Petition of right—Rent not to be deducted from salary where the officer is entitled to quarters.
 - See VICTORIA.* 7.
- Rates—Railway—Link line—Rent "reasonably" to be expected.
 - See RATES.* 35.
- Receiver, Use or occupation by—Head-lease—Breach of covenant—Damages.
 - See MORTGAGE—Receiver.* 1.
- "Rents, issues and profits"—Settled land—Trustees—Open brickfield—Royalties.
 - See SETTLED LAND—Leases.* 10.
- Vendor and purchaser.
 - See under VENDOR AND PURCHASER—Rents.*

RENTS AND PROFITS—Account—Mortgagee in possession—Rests.

- See MORTGAGE—Accounts.* 1.

RENT-CHARGE—Annuity—Charge on land—Specific devise—Will.

- See ANNUITY.* 13.

1. — *Charge on fee simple—Application to raise arrears by sale—Effect of creating term.*

Where a rent-charge is charged on the fee simple, but a term of years is vested in trustees upon trust that when the rent-charge is in arrear the trustee shall out of the rents and profits, or by mortgaging or demising the term, raise and pay the rent-charge, the owner of the rent-charge must resort to the term, and is not entitled to an order for sale of the fee simple to raise arrears of the rent-charge.

Hall v. Hurt, (1861) 2 J. & H. 76, followed.

- BLACKBURN v. HOPE-EDWARDS*

Buckley J. [1901] 1 Ch. 419

— "Chattels real"—Intestacy—Rent-charge on leaseholds.

See WILL—Chattels Real. 1.

— Conveyance by husband and wife of moiety of wife's land—Husband's rent-charge not mentioned—Release of grant.

- See DEEDS.* 6.

— Corporate lands—Power to sell—Consideration—Perpetual rent-charge.

- See CORPORATION.* 8.

2. — *Freehold rent-charge—Mortgage of land subject to—Possession of land not taken by mortgagee—Whether mortgagee liable for rent as terre-tenant.*

In 1870 the owner of certain houses in Manchester conveyed them to a purchaser in fee subject to a chief rent of 8*l.*, which the purchaser covenanted to pay. That chief rent subsequently vested in the plt. In 1884 the then owner of the houses mortgaged them, and in 1887 the mortgage was transferred to the deft. In 1907 the mortgagor failed to pay the interest on the mortgage, and the deft. appointed a receiver under the Conveyancing Act, 1881. The houses having become dangerous were condemned, and became derelict; and in 1909 the receiver resigned his position. The plt. being unable to get the rent from the mortgagor brought this action against the deft. to recover a half-year's rent due Midsummer, 1909, claiming that he was the terre-tenant of the premises and as such was liable. For the deft. it was contended that a mortgagee who had never been in possession is not terre-tenant. The judge gave judgment for the plt. :—

Held, that the deft., being in his capacity of mortgagee the legal owner of the premises, and being by reason of the mortgagor's default entitled to enter upon possession at any time if he chose to do so, was the terre-tenant and liable as such for the rent, notwithstanding that he had never in fact been in actual possession. Appeal dismissed. *CUNDIFF v. FITZSIMMONS*

Div. Ct. [1910] W. N. 270

— Jointure—Arrears—"Incumbrance affecting the inheritance"—Discharge out of capital moneys.

See SETTLED LAND—Jointures. 1.

RENT-CHARGE—*continued.*

- Personal covenant to pay rent-charge—Remedy when barred.
See LIMITATIONS, STATUTES OF. 23.
- Rates.
See under RATES.
- Special Act—Prior incumbrances—Priority.
See IMPROVEMENT OF LAND. 1.
- Tithe.
See under TITHE.
- Tithe — Fees — Redemptions of rent-charge under the Tithe Acts, 1836 to 1891—Inclosure, &c., Expenses Act, 1868.
See under INCLOSURE ACT.

- RENUNCIATION**—By executor—Charge on expectancy—Notice to executor—Priority—Assignor executor.
See MORTGAGE—Priority. 7.
- Probate—Practice.
See under PROBATE—Renunciation.

- REPAIRS**—Breach of covenant—Title—Leasehold house—Open contract—Production of receipt for rent.
See VENDOR AND PURCHASER — Title. 7.

- Bridges.
See under BRIDGES.
- Bridge carrying public highway over railway—Liability.
See SCOTTISH LAW. 3.
- Carriage road—Recovery of expenses—Jurisdiction of metropolitan police magistrates.
See LONDON—Carriage Road. 1.
- Copyhold—Breach of obligation of copyholder to repair—Forfeiture—Manor.
See COPYHOLDS. 3.
- County council—Main road — Maintenance and repair—Mandatory order.
See LOCAL GOVERNMENT. 9.
- Flats, House let in—Liability of landlord for disrepair of roof.
See NEGLIGENCE. 6.
- Foreclosure — Account — Cost of repairs—Receiver.
See MORTGAGE—Foreclosure. 1.
- Foreign ship — Wages — Maritime lien — Priority—Necessaries.
See SHIPPING—Wages. 2.
- Highway.
See under HIGHWAY.
- Hire-purchase agreement—Liability to repair hired chattel—Lien as against owner.
See LIEN. 2.
- Implied obligation to maintain and—Locks—Stanch—Royal Charter, Validity of.
See WATER HIGHWAY. 1.
- Landlord and tenant.
See under LANDLORD AND TENANT.
- Leasehold house—Liability for repairs—Mortgage — Foreclosure — Disclaimer by mortgagee of all interest in house.
See WILL—Leaseholds. 2.

REPAIRS—*continued.*

- Lunatic—Administration of estate—Charge—Costs.
See LUNACY. 3.
- Mansion-house — Dilapidations — Salvage — Expenditure out of capital—Jurisdiction.
See WILL—Mansion-house. 1.
- Mechanics' Institute—Borrowing powers—Enlarging billiard-room.
See LITERARY AND SCIENTIFIC INSTITUTIONS. 1.
- Mortgage of ship—Repairs by mortgagor—Salvage loss—Underwriters.
See SHIPPING—Mortgages. 2.
- Mortgages.
See under MORTGAGE—Repairs.
- Negligence — Disrepair — Liability of local authority for accident arising from.
See SEWERS. 3.
- Negligent repair—Injury to driver arising from defect—Liability of contractor.
See NEGLIGENCE. 3.
- Patent—Infringement—Fitting new component part.
See PATENT—Infringement. 4.
- Private or occupation roads—Dedication as highway.
See INCLOSURE ACT. 4.
- Railway—Level crossing.
See under RAILWAY—Level Crossings.
- River—Grant of exclusive passage for boats, &c.—Implied obligation to maintain and repair.
See WATER HIGHWAY. 1.
- Settled land.
See under SETTLED LAND.
- Sewer—"Single private drain"—Liability to repair.
See SEWERS. 6.
- Ship—Right of mortgagee to policy money without paying for repairs.
See SHIPPING—Mortgages. 2.
- Tramways.
See under TRAMWAYS.
- Trustee — Investment — Breach of trust — Leases—Depreciation.
See under TRUSTEE—Investments.
- Water—Neglect or refusal to supply—Defect in communication pipe—Liability of consumer to repair.
See WATER.
- Workmen's compensation—Hydraulic lift—"Engineering work"
See MASTER AND SERVANT—Compensation. 84.

- REPATRIATION** — Seamen — Shipping — Collision—Payment by consul—Norwegian law.
See SHIPPING—Seamen. 8.

REPAYMENT—Equitable mortgagee—Right to receive rents—Claim by tenant for repayment.

See MORTGAGE—Rents. 1.

— Estate duty.

See REVENUE—Estate Duty.

REPEAL—Jurisdiction—Criminal lunatic—Vesting order.

See LUNACY. 27.

— Statute—Implied repeal—Mortmain—Gift for maintenance of churchyard.

See CHARITY. 35.

REPLY.

See under PRACTICE—Reply.

— Right of plaintiff to reply—Practice.

See COUNTY COURT—Practice. 14.

REPORT—Offences by bankrupt—Prosecution—Filing of report of official receiver.

See BANKRUPTCY—Offences. 1.

REPORTER—Newspaper—Unusual stipulation—Infant—Reasonable protection of covenantee—Public policy.

See RESTRAINT OF TRADE. 7.

REPORTS—Ancient reports to Government departments—Evidence—Public documents—Depositions—Maps and charts.

See CUSTOM. 1.

REPRESENTATION—Solicitor and client—Breach of duty—Adverse title.

See ESTOPPEL. 2.

— Trustees—Future rights—Unascertained persons.

See FINES AND RECOVERIES. 1.

REPRESENTATION OF THE PEOPLE.

See under RATES, PARLIAMENT.

REPRESENTATION OF THE PEOPLE (SCOTLAND) ACT, 1868.

See under SCOTTISH LAW.

REPRESENTATIVE ACTION—Action by shippers of goods on a general ship on behalf of themselves and other shippers of goods in the same ship.

See PRACTICE—Representative Action. 1.

— Parties—Action on behalf of a class of the public—Joinder of plaintiffs.

See PRACTICE—Parties. 4.

REPUDIATION—After decree for specific performance—Interest on purchase-money—Costs.

See VENDOR AND PURCHASER—Contract. 2.

— Contract, Construction of—Breach—New trial must be on motion.

See BRITISH HONDURAS. 1.

— Contract for delivery of goods by instalments—Wrongful repudiation of contract by buyer—Waiver.

See SALE OF GOODS. 8.

REPUDIATION—*continued.*

— Infant borrowing member—Mortgage for advances—Repudiation on attaining twenty-one.

See BUILDING SOCIETY. 2.

— Master and servant—Contract of service—Wrongful dismissal—Breach of Restrictive covenant as to trading.

See MASTER AND SERVANT—Contract of Service. 5.

REPUBLICATION—Will.

See under WILL—Republishing.

REPUGNANCY—Absolute gift—Gift over on death “without a will and childless.”

See WILL—Absolute Gift. 8.

REPUTED OWNERSHIP—Bankruptcy.

See under BANKRUPTCY—Order and Disposition; and under BANKRUPTCY—Reputed Ownership.

— Distress—Protected goods—Landlord and tenant.

See DISTRESS. 8.

— Traders—Bank loan to purchase goods—Secured creditors.

See BANKRUPTCY—Traders. 1.

REQUISITION ON TITLE—Contract—Rescission—Arbitrary exercise of power to rescind contract.

See VENDOR AND PURCHASER—Conditions of Sale. 5.

RES JUDICATA—Action for rent—Defence, no concluded agreement—Second action—Defence, Statute of Frauds—Estoppel.

See ESTOPPEL. 4.

1. — Action to set aside judgment—Alleged fraud—Revocation of probate—Nature of evidence necessary to maintain action—Motion to stay proceedings.

In order to maintain an action to set aside, on the ground of fraud, a judgment establishing a will and granting probate of it, the plt. must adduce evidence of facts discovered since the judgment which raise a reasonable probability of the success of the action.

If the plt. does not do this, the proceedings in the action will be stayed on the motion of the deft.

Per Vaughan Williams, L.J.. The evidence need not necessarily be of such a character that it would be evidence in the action. The question in each case is, whether the fact alleged to have been discovered is so evidenced and so material as to make it reasonably probable that the action will succeed. If it is, the action ought to be allowed to proceed, so that the plt. may have an opportunity of obtaining discovery in it.

Per Cozens-Hardy, L.J.: Though in most cases a judgment obtained by fraud can be set aside only as against the person who committed or procured the fraud, this limitation does not apply to, an action to set aside a judgment granting probate of a will, inasmuch as a will must be either good or bad against all the world.

Judgment of Gorell Barnes J., [1902] P. 62, refusing to stay proceedings in an action to set

RES JUDICATA—*continued.*

aside, on the ground of fraud, a judgment establishing a will, reversed, fresh evidence having been adduced upon the appeal. *BIRCH v. BIRCH* C. A. [1902] W. N. 72; [1902] P. 130

— Affiliation proceedings—Paternity of child—Judgment of quarter sessions—Action for seduction,
See ESTOPPEL. 3.

— “Final” judgment—Estoppel—Appeal.
See PRACTICE—Pleadings. 1.

— Foreclosure—Mortgage—Order nisi for foreclosure on a principal charge and four supplementary charges—Omission of fifth supplementary charge.
See MORTGAGE—Foreclosure. 4.

— Habeas corpus—Appeal—Estoppel by judgment—Absence of adjudication as of record.
See HABEAS CORPUS. 1.

— Jurisdiction to appeal from assessment officer—Appeal from Ontario.
See CANADA—Railway. 2.

— Mortgage—Payment into Court by trustees under Trustee Act, 1893—Payment out.
See LIMITATIONS, STATUTE OF. 14.

— Will, Construction of—Destination of the subject of void gifts—Residuary legatees—Next of kin—Appeal from the Straits Settlements.
See STRAITS SETTLEMENTS.

— Workmen's compensation—Application to review—Change of circumstances.
See MASTER AND SERVANT—Compensation. 125.

— Workmen's compensation—Change of circumstances.
See MASTER AND SERVANT—Compensation. 125.

Workmen's compensation—Weekly payment ended by arbitrator—New circumstances—Power of arbitrator to review again.

See MASTER AND SERVANT—Arbitration. 1.

RESCISSION—Contract—Variation—Parol evidence—Statute of Frauds.
See CONTRACT. 13.

— Contract of sale—Power to rescind where objection as to title insisted on—Absence of title to mines in property sold.
See VENDOR AND PURCHASER—Title. 1.

— Executed contract—Misrepresentation—Absence of fraud—Delay.
See CONTRACT. 14.

— Mistake—Forgetfulness—Appointment—Deed poll.
See POWER OF APPOINTMENT. 24.

— Practice—Motion to rescind or vary Master's order—Irregularity.
See PRACTICE—Rescind, Motion to. 1.

RESCISSION—*continued.*

— Prospectus—Irregular allotment—Cancellation of allotment—Ultra vires.
See COMPANY—Prospectus. 1.

— Receiving order—Jurisdiction to rescind—Abuse of process of Court.
See BANKRUPTCY—Receiving Order. 6.

— Sale of life policy—Death of assured before contract—Common mistake—Rescission after completion—Contract.
See INSURANCE (LIFE). 16.

— Vendor and purchaser.
See under VENDOR AND PURCHASER—Rescission.

RESEALING—Colonial probate—Limited grant.
See PROBATE—Colonies. 1.

RESERVE—Auctioneer—Personal liability—Sale subject to reserve—Lot knocked down at less than reserve.
See AUCTION. 4.

RESERVOIR—“Building”—Reservoir authorized by special Act—Supervision of district surveyor.
See LONDON—Buildings. 1.

— Freshwater Fisheries Act—Definition of limits by Board of Trade certificate.
See FISHERY. 1.

— Land compulsorily taken—Special adaptability for reservoir—Compensation—Waterworks.
See WATER.

— Mining lease—Compensation—Waterworks—Capital or income.
See SETTLED LAND—Leases. 5.

— Waterworks—Right to support from minerals under adjacent lands—Limit of forty yards.
See MINES. 15.

RESETTLEMENT—Will.

See under WILL—Resettlement.

RESIDENCE—Bequest on conditions—Forfeiture—Unmarried.
See WILL—Condition. 5.

— Company registered abroad—Directors' meetings in England and abroad—Majority of directors in England.
See REVENUE—Income Tax. 15.

— Condition or trust—Fetter on power of sale.
See SETTLED LAND—Sale. 7.

— Foreign residence.
See DOMICIL. 3.

— Lease—Covenant—Personal residence—Assignment to limited company carrying on brewery business.
See LANDLORD AND TENANT. 18.

— Matrimonial—Nullity suit—Jurisdiction.
See DIVORCE—Nullity. 7.

— Tenant for life—Forfeiture clause—Non-residence—Validity of condition.
See SETTLED LAND—Forfeiture. 1.

RESIDENCE—continued.

— Will—Construction—Bequest on conditions—Forfeiture.

See **WILL—Conditions.** 5.

“**RESIDUARY LEGATEE**”—Will—Construction.

See under **WILL—“Residuary Legatee.”**

“**RESIDUARY TRUST FUNDS**”—Unauthorised securities—Wasting securities—Enjoyment in specie.

See **WILL—Interest.** 2.

RESIDUE—Estate duty—Exercise of general power of appointment by will—Appointed fund.

See **REVENUE—Estate Duty.** 27.

— Executor—Express trust of residue—Partial failure of beneficial interest—Next of kin.

See **WILL—Advances.** 2.

— Executors—No next of kin—Beneficial title to residue.

See **EXECUTOR—Residue.** 1.

— Succession—Will—Residue of estate to heir entitled to succeed to entail—Lands disentailed—Intestacy.

See **SCOTTISH LAW.** 26.

— Testator's liabilities—Covenant to pay life annuity—Capital and income—Apportionment.

See **SETTLED LAND—Apportionment.** 1.

— Will—Construction.

See under **WILL—Residue.**

RESOLUTION—Club—Rules—Power to alter—Fundamental objects.

See **CLUB.** 2.

— Company.

See under **COMPANY—Resolution.**

— Validity of—Quorum of directors—Interested director.

See **COMPANY—Directors.** 19.

— Voting—Show of hands—Declaration of chairman that resolution is carried—“Conclusive evidence.”

See **COMPANY—Meetings.** 10.

RESTAURANT.

See also under **HOTEL.**

— Removal of refuse—House or trade refuse.

See **LONDON—Removal of Refuse.** 3.

— Unlicensed restaurant—Offences—Sale of wine without licence.

See **LICENSING ACTS.** 54.

RESTITUTION OF CONJUGAL RIGHTS.

See also under **DIVORCE—Restitution of Conjugal Rights.**

1. *Wife's petition—No defence—Existence of deed of separation—Covenant not to sue for restitution—Breaches by respondent of covenants in deed—Investigation by the Court—Substantial breaches—Decree.*

If upon the hearing of a petition for restitution of conjugal rights it appears that there has

RESTITUTION OF CONJUGAL RIGHTS—contd.

been a deed of separation executed by the parties and containing a covenant not to sue for restitution, the fact of the existence of such a deed is not to be disregarded by the Court merely because the other party to the deed does not appear and set it up as a bar.

It is the province of the Court, in such a case, to inquire into the question of breaches (if any) of the covenants in the deed, and if, upon investigation, these appear substantial, the Court will not allow a deed which has become practically useless to the petitioner to tie the hands of the Court.

The proper time for the Court to consider the effect of such a deed is on the hearing of the suit for restitution of conjugal rights, and not on the hearing of any subsequent suit by the same petitioner grounded in part on statutory desertion arising out of the respondent's disobedience to the decree for restitution. *Tress v. Tress*, (1887) 12 P. D. 128, commented on. **KENNEDY v. KENNEDY**

Gorell Barnes Pres. [1907] P. 49

RESTITUTION OF STOLEN PROPERTY—Order

for—Appeal by person against whom order made.

See **CRIMINAL LAW—Appeal.** 21.

RESTORATION—Company—Petition for restoration of name to register—Jurisdiction.

See **COMPANY—Defunct Company.** 1.

RESTRAINT OF MARRIAGE.

See under **MARRIAGE.**

RESTRAINT OF TRADE—Contract—Validity—Sale to wholesale trader on contract requiring him to resell on specified terms.

The plts., who were manufacturers of goods, sold them to wholesale traders under a contract whereby the purchasers bound themselves not to sell the goods for less than certain specified prices, and if they sold to the trade to procure a similar signed agreement from every retailer whom they supplied. The purchasers sold some of the goods to retail traders without procuring from them any such agreement as provided by the contract:—

Held, that the contract was not in restraint of trade, and that the vendors could maintain an action in respect of the breach of it. **ELLIMAN, SONS & CO. v. CARRINGTON & SON, LD.**

Kekewich J. [1901] W. N. 112 ;
[1901] 2 Ch. 275

2. — *Covenant—Breach—Agreement by vendor of business not to “carry on or be concerned or interested in” a similar business—Sale on credit.*

The respondent, a coal merchant carrying on both a home and an export business, sold the home business to the appellants and covenanted with them that he would not “solely or jointly with any other person either directly or indirectly carry on or be concerned or interested in the coal trade in any part of Great Britain or the Isle of Man.” He afterwards sold the export business to a co. and took the purchase-money in shares. The co. afterwards sold the export business to a

RESTRAINT OF TRADE—continued.

firm, the purchase-money being payable to the co. by instalments lasting over several years. The firm having begun to carry on both a home and an export business, the appellants brought an action against the respondent for breach of covenant :—

Held, that the respondent was not “concerned or interested in” the home business in the business sense which must be attributed to those words, and that there was no breach of covenant. **WILLIAM CORY & SON, LD. v. C. W. HARRISON** **H. L. (E.) [1906] A. C. 274**

3. — Covenant — “Interested” in similar business—Servant—Fixed salary.

A covenant not to become directly or indirectly “interested” in a similar business to that of the covenantor does not prevent the covenantor from becoming a servant at a fixed salary in a similar business.

Smith v. Hancock, [1894] 2 Ch. 377, applied. **GOPHIR DIAMOND CO. v. WOOD**

Swinfen Eady J. [1902] W. N. 74 ; [1902] 1 Ch. 950

4. — Covenant in restraint of trade—Construction — Injunction — Reasonableness — Combination of firms—Separate businesses—Engagement by agent on behalf of combination—Master and servant.

By an agreement of Sept., 1905, between S. Leetham (called the master) of the one part, and the deft. (called the servant) of the other part, after reciting that the master was a director of the plt. co. (described as wheat and corn millers and called the principal co.) and of five other named cos. (called the subsidiary cos.), and that the master was entering into the agreement as the agent for and on behalf of the principal and subsidiary cos., the master thereby engaged the servant to serve the principal co. or one of the subsidiary cos. in such capacity as the master should from time to time direct at a salary payable monthly; and it was thereby agreed (clause 4) that the servant would not within the area of the United Kingdom of Great Britain and Ireland enter the service of any other wheat or corn miller or either directly or indirectly engage in selling or dealing in flour or any other article or goods dealt in or manufactured by the principal or subsidiary cos. within five years from the expiration of his engagement with either the principal or any or either of the subsidiary cos., without the written consent of the principal co.; and (clause 7) that all restrictions and conditions contained in the agreement should be construed as if they were made in separate agreements entered into by the servant with the principal and each of the subsidiary cos., and might be put in force by any one of them in whose actual service the servant had been at any time during the continuance of the agreement.

The deft. was employed under this agreement by the Cleveland Flour Mills, Ltd., one of the subsidiary cos., as a traveller for them in the counties of Northumberland, Durham, and York, where the bulk of their business was carried on, until Dec., 1905, when they dismissed him. The deft. subsequently entered the service of a

RESTRAINT OF TRADE—continued.

firm of flour millers at Grimsby, and travelled for them in the districts of Norwich, Yarmouth, and Lowestoft. The principal and subsidiary cos. and S. Leetham thereupon commenced this action, and moved for an interim injunction in the terms of clause 4 of the agreement. There was evidence that the combined businesses of the principal and subsidiary cos. covered substantially the whole area of the United Kingdom and Ireland. Each co., however, carried on a separate business, and had its own staff of servants and travellers, but the directors of the principal co. were represented by a majority on the board of each of the subsidiary cos., and had a controlling influence in each of them.

Neville J. [1906] W. N. 227; [1907] 1 Ch. 189, held on the evidence that the whole of the United Kingdom and Ireland was within the trading area of the plt.s., and therefore that clause 4 was not wider than was reasonably necessary for the protection of their trade; and he accordingly granted an injunction as asked.

The C. A. allowed the appeal, being of opinion that the agreement of Sept., 1905, was only to be a contract between the deft. and the individual co. into whose service he entered, and that the true effect of it therefore in the present case was, that it was a contract between the deft. and the Cleveland Flour Mills Co. alone. The bulk of the business of the Cleveland Flour Mills Co. was confined to the counties of Northumberland, Durham and York; it had no business in Scotland or in Wales. Regarded, therefore, as a contract for the protection of the business of the Cleveland Flour Mills Co., an area comprising the whole of the United Kingdom and Ireland was far too wide, and the contract was therefore void. It had been argued that this contract was for the protection of all these companies. In their lordships' view of the law, the fact that these companies had a common management or were interested in each other's businesses, made no difference; a contract such as the plt.s. contended this one was, was contrary to the principles upon which contracts or agreements in restraint of trade were allowed. It was against public policy to allow a covenant in gross in restraint of trade. A trader was entitled to protect the particular business in which the servant was employed, but not other businesses in which he was not employed. **HENRY LEETHAM & SONS, LD. v. JOHNSTONE-WHITE** **C. A. [1907] W. N. 20 ; [1907] 1 Ch. 322**

5. — Covenant not to carry on a business—Reasonableness of restriction—Question, whether for judge or jury.

The question whether the terms of a covenant not to carry on a business go beyond what is reasonably necessary for the protection of the covenantor under the circumstances of the case is not a question for a jury, but is for the judge.

Dowden & Pook, LD. v. Pook

C. A. [1903] W. N. 192 ; [1904] 1 K. B. 45

Note.

Referred to by C. A., *Lamson Pneumatic Tyre Co. v. Phillips*, [1904] W. N. 134. See No. 8, below.

RESTRAINT OF TRADE—continued.

6. — *Covenant not to practise as an architect or surveyor—Acting as manager for another person carrying on the same profession—Fixed salary.*

In this case Warrington J. said that the only question with which he proposed to deal was one of law, namely, whether on the admitted facts the deft. was practising as an architect and surveyor within the limit fixed by clause 12 of the partnership articles; in other words, whether a person who was carrying on a profession was doing so notwithstanding that he was acting as an assistant to another at a fixed salary. The question was exactly covered by the decision of the C. A., and in particular by the judgment of Cotton L.J. in *Palmer v. Mallet*, (1887) 36 Ch. D. 411. That was the case of a bond which contained a recital that the deft., who was employed by a surgeon in his business, should not at any time "set up or carry on" the business or profession of a surgeon in Newtown or within ten miles thereof. The condition of the bond contained this statement, that the deft. "shall not at any time hereafter directly or indirectly, and either alone or in partnership with or as assistant to any other person or persons, or otherwise howsoever, set up or carry on the profession or business of a surgeon" in Newtown or within ten miles thereof. It was quite true that in that case Chitty J. rested his decision on the construction of the agreement as evidenced by the statement in the condition of the bond. He read it as meaning that the deft. was not to practise as an assistant. Bowen L.J. thought that his own view was assisted by the same consideration, though he did state at the end of his judgment in general terms that he thought "that according to the true construction of the earlier clause a person is not the less carrying on a profession because he only acts as the assistant of someone carrying it on." Fry L.J. based his decision on the same grounds as Chitty J. did, and said that he was rather more inclined to think that there was only one agreement to be found in the whole of the document, that was to say, he inclined to think that the agreement which was implied in the condition was the same as that which was referred to in the recital, and that therefore the recited agreement was to be treated as that which was written out more fully in the condition. But he added, "This difference of opinion is immaterial, and probably the view taken by the Lords Justices is the more accurate one." Coming back, therefore, to the judgment of Cotton L.J., there was no question there as to the view taken by him. He said, "It is said that, assuming Mr. Palmer" (the plt.) "to be entitled to sue, yet the deft. has not committed any breach of his contract that he should not at any time set up or carry on the business or profession of a surgeon, and it is said that the deft. is not doing so where he is simply acting as assistant at a salary for another man who is carrying on the business for his own benefit. I do not think that the question whether the appellant is carrying on the business or profession can depend on whether he is paid by salary or by a certain share of the profits. It is true that in *Allen v.*

RESTRAINT OF TRADE—continued.

Taylor, (1871) 19 W. R. 556, where there was a contract not to carry on the trade of a rag dealer, it was held that merely acting as clerk or assistant to a person carrying on that trade was not a breach of the covenant. But an agreement not to carry on a trade is a very different thing from an agreement not to carry on a business or profession. 'Carrying on a trade' implies to my mind that the person engaged in it is engaged in it qua trade, that is to say, as a trade producing profit or loss which is to be shared by him, and that is not the case if he is merely a salaried assistant. I cannot come to the conclusion that a man is less carrying on the profession of a surgeon because he is doing so as assistant to someone else. 'Profession' is different from trade, and it is much more emphatic to my mind than if 'business' alone were here. When, as here, the words 'carrying on the business or profession of a surgeon' are merely used to denote what is done by a man acting as a surgeon, a man acts as surgeon and carries on the business of a surgeon none the less because he is not the principal or engaged in the business as a partner, but is merely carrying it on as assistant to somebody else." To apply that to the present case, if a person assisted another to carry on the business or profession of an architect and surveyor surely he was as much carrying on that business or profession as if he carried it on directly for a lay client. Cotton L.J. exactly expressed the view he took in this case, and he must follow it. There must be an injunction as asked. **ROBERTSON v. WILLMOTT**

- **Warrington J.**
[1909] W. N. 155

— Infant—Severable stipulations—Contract for benefit of infant—Injunction.

See **MASTER AND SERVANT—Infant. 3.**

— Leases of machines for shoe manufacture—Restrictive condition as to user.

See **CANADA—Leases. 3.**

7. — *Public policy—Reasonable protection of covenantee—Newspaper reporter—Unusual stipulation—Infant.*

The deft., while under age, entered the service of the plt.s, proprietors of a newspaper in a provincial town where a rival newspaper was established, as junior reporter under a written agreement which provided that he would not, after leaving the plt.s' service, "either on his own account or in partnership with any other person, be connected, as proprietor, employee, or otherwise, with any other newspaper business carried on" in the town or within a radius of twenty miles. There was evidence that such a clause was most unusual, almost unique, in agreements of this class. The deft. having entered the service of the rival newspaper:—

Held (reversing the decision of Eve J.), that the restriction was wider than was reasonably necessary for the protection of the plt.s' interest, and therefore could not be enforced; that even had it been enforceable against an adult, it would not have been valid as against the deft., who was an infant when he executed the agreement. **SIE W. C. LENG & Co. v. ANDREWS**

C. A. [1909] 1 Ch. 763

RESTRAINT OF TRADE—continued.

8. — *Reasonableness—Public policy—Limit of space—“Eastern Hemisphere.”*

Action brought to restrain the deft. from committing a breach of a covenant by him with the plts., contained in an agreement by which he was appointed manager of the plts.' business, that he would not for five years after quitting the plts.' employment engage or be employed in any business similar to that of the plts. at any place within the Eastern Hemisphere. The plts. had acquired the business from an American co., who had been endeavouring to introduce their invention into Europe and elsewhere, the deft. being their agent for the purpose.

The C. A. (Cozens-Hardy L.J. dissenting), reversing the decision of Farwell J., [1904] W. N. 56, 122:—

Held, that, having regard to the special nature of the plts.' business, the position of the deft., and the fact that at the date of the agreement both parties contemplated and believed that the plts. would establish and carry on a business extending to the chief towns throughout the United Kingdom, the Continent of Europe, and the Eastern Hemisphere, the restriction was not wider than was reasonably required for the protection of the plts., and it ought to be enforced by injunction. It was unnecessary, therefore, to decide the question which had been raised, whether if the Court had considered the restriction reasonable to the extent of the United Kingdom, it could have disregarded the further restriction extending to the Eastern Hemisphere, on the ground that the policy of the English law was not concerned with a restraint of trade outside the United Kingdom. *LAMSON PNEUMATIC TUBE CO. v. PHILLIPS* C. A. [1904] W. N. 134

— Restriction on trade—Wrongful dismissal—Mutual and independent covenants.
See MASTER AND SERVANT—Contract of Service. 5.

— Solicitor.
See under SOLICITOR—Restraint on Trade.

— Trade union — Action by member against society—Illegality—Strike pay.
See TRADE UNION. 13.

RESTRAINT ON ALIENATION.

See under ALIENATION.

— Husband and wife.
See under HUSBAND AND WIFE—Restraint on Anticipation.

RESTRAINT ON ANTICIPATION — Married woman.

See under HUSBAND AND WIFE—Restraint on Anticipation.

— Variation of settlement — Jurisdiction—Remarriage after petition but before order.
See DIVORCE—Settlements. 14.

RESTRICTIVE COVENANTS.

See under COVENANT.

RESTRICTIVE STIPULATIONS—Right to enforce—Building scheme—Notice.
See BUILDINGS. 5.

RESTS—Accounts—Mortgagee in possession.

See MORTGAGE—Accounts. 1.

RESULTING TRUST.

See under TRUST.

RETAIN — Investments, Power to retain — Hazardous securities—Tenant for life and remainderman.

See WILL—Investments. 5.

RETAINER—Administration action.

See Cases under EXECUTOR.

— Appointment by bankrupt's will—Property divisible among creditors.

See BANKRUPTCY—Power of Appointment. 1.

— Counsel.

See under BARRISTER.

— Executor.

See under EXECUTOR—Retainer.

— Joint or separate—Same solicitor appearing for trustees and company.

See COMPANY—Debentures. 5.

— Promoters, Retainer by—Costs—Taxation.

See COMPANY—Costs. 1.

— Right to retain out of real assets.

See ADMINISTRATION. 27.

— Solicitor—Retainer to conduct defence to an action—Lunacy of client.

See SOLICITOR—Costs. 24.

— Solicitor's bill—Part payment—Recovery of moneys due to client—Retainer on account with assent of client.

See LIMITATIONS, STATUTE OF. 19.

— Solicitors—Taxation of costs.

See BANKRUPTCY—Practice. 5.

— Solicitors by resolutions not under seal, Retainer of—Subsequent affixing of seal after work partly done under retainer.

See LOCAL GOVERNMENT. 29.

— Trustee—Debt due from legatee to estate—Liability to account—Bankruptcy—Acceptance of dividend—Assessment to composition.

See WILL—Trustee. 1.

— Trustee.

See under TRUSTEE—Retainer.

— Trustees—Unauthorized investments—Settlement—Shares in company—Substitution of shares in different companies.

See TRUSTEE—Investments. 13.

— Will—Immediate gift of share of residue—Right of executors to retain share to answer debt.

See ADMINISTRATION. 32.

RETIREMENT—Compensation—Civil Service—Appeal from Australia.

See NEW SOUTH WALES. 3, 4.

— Education — Committee — Scheme — Retirement of members — Jurisdiction of council to alter dates—Local Government.

See SCHOOLS. 7.

RETIREMENT—*continued*.

—Trustee for sale—Sale to ex-trustee twelve years after his retirement—Vendor and purchaser.

See **TRUSTEE**—**Sale**. 2.

RETRACTION—Power of—Will—Marriage—With consent—Consent given.

See **MARRIAGE**. 8.

RETROSPECTIVE—Trade Disputes Act, 1906—Statute, whether retrospective.

See **TRADE UNION**. 7.

RETROSPECTIVE ALTERATION—Of basis—Jurisdiction—County rate.

See **RATES**. 2, 3.

RETROSPECTIVE EFFECT—Company—Altered articles of association—Contract.

See **COMPANY**—**Memorandum**. 5.

RETROSPECTIVE ORDER—Divorce—Variation of settlement—Discretion of Court.

See **DIVORCE**—**Settlements**. 13.

RETROSPECTIVE RATE—Distress warrant—Form of rate—Statement of period for which estimated.

See **POOR LAW**. 17.

RETROSPECTIVE AND PROSPECTIVE EFFECT—Company—Special resolution.

See **COMPANY**—**Return of Capital**. 1.

RETROSPECTIVITY—Remoteness—Contingent remainder—Child en ventre sa mère—Retrospective of operation of gift.

See **PERPETUITY**.

REVENUE.

Finance Act, 1901 (1 *Edw. 7, c. 7*).

Finance Act, 1902 (2 *Edw. 7, c. 7*).

Finance Act, 1903 (3 *Edw. 7, c. 8*).

Revenue Act, 1903 (3 *Edw. 7, c. 46*).

Finance Act, 1904 (4 *Edw. 7, c. 7*).

Finance Act, 1905 (5 *Edw. 7, c. 4*).

Finance Act, 1906 (6 *Edw. 7, c. 8*), is an Act to grant certain duties of Customs and Inland Revenue, to alter other duties, and to amend the law relating to Customs and Inland Revenue and the National Debt, and to make other provisions for the financial arrangements of the year.

Revenue Act, 1906 (6 *Edw. 7, c. 20*), is an Act to amend the law relating to Customs and Inland Revenue, and for other purposes connected with finance.

Finance Act, 1907 (7 *Edw. 7, c. 13*), is an Act to grant certain duties of Customs and Inland Revenue, to alter other duties, and to amend the law relating to Customs and Inland Revenue and the National Debt, and to make other provisions for the financial arrangements of the year.

Finance Act, 1908 (8 *Edw. 7, c. 16*), grants certain duties of Customs and Inland Revenue, to alter other duties, and to amend the law relating

REVENUE—*continued*.

to Customs and Inland Revenue and the National Debt, and to make other provisions for the financial arrangements of the year.

Isle of Man (Customs) Act, 1908 (8 *Edw. 7, c. 9*), amends the law with respect to Customs duties in the Isle of Man.

Local Taxation Licences, England. O. in C., Oct. 19, 1908, fixing date of Transfer of certain Local Taxation Licence Duties to County Councils and County Boroughs under s. 6 of the Finance Act, 1908, and making provisions therefor. St. R. & O. 1908, No. 844. Price 1d.

General Council of the Bar. Report upon the question of appeals from the Commissioners under Part I. of the Finance Act, 1909. W. N. 1909 (Aug. 14), p. 295.

Customs and Excise, Board of. O. in C., Feb. 15, 1909. The Excise Transfer Order, 1909. St. R. & O. 1909, No. 197.

Revenue Act, 1909 (9 *Edw. 7, c. 43*), is an Act to amend the law relating to Customs and Inland Revenue, and for other purposes connected with finance.

Finance (1909–10) Act, 1910 (10 *Edw. 7, c. 8*), is an Act to grant certain Duties of Customs and Inland Revenue (including Excise), to alter other duties and to amend the law relating to Customs and Inland Revenue (including Excise), and to make other financial provisions.

Finance (1909–10) Act, 1910 — Super-tax. Regulations made by the Commissioners of Inland Revenue under s. 72 (8.). Reprint from W. N. 1910 (June 18), p. 229. See CURRENT INDEX, 1910, p. c.

Finance (1909–10) Act, 1910 — Increment value duty. Rules made by the Commissioners of Inland Revenue under s. 3, sub-ss. 2 and 3. Reprint from W. N. 1910 (July 30), p. 257. See CURRENT INDEX, 1910, p. civ.

Finance (1909–10) Act, 1910 — Liquor Licences Duties. Hotels and Restaurants. Reprint from W. N. 1910 (Aug. 13), p. 268. See CURRENT INDEX, 1910, p. cv.

*Finance (1909–10) Act, 1910. Liquor Licences Duties. Clubs. Regulations, dated July 9, 1910, made by the Commissioners of Customs and Excise under s. 48 (5) of the Finance (1909–10) Act, 1910 (10 *Edw. 7, c. 8*). Reprint from W. N. 1910 (Aug. 20), p. 270. See CURRENT INDEX, 1910, p. cvi.*

*Finance (1909–10) Act, 1910 — The Land Values (Reference) Rules, 1910, dated July 23, 1910, made by the Reference Committee for England under s. 33 of the Finance (1909–10) Act, 1910 (10 *Edw. 7, c. 8*). Reprint from W. N. 1910 (Sept. 10), p. 281. See CURRENT INDEX, 1910, p. cvi.*

Finance Act, 1910 (10 *Edw. 7, c. 1* Geo. 5, c. 35), is an Act to grant certain duties of Customs and Inland Revenue, to alter other duties, and to amend the law relating to Customs and Inland Revenue and the National Debt, and to make other provisions for the financial arrangements of the year.

REVENUE—continued.*Carriage Licence*, col. 2199.*Colonial Duties*, col. 2202.*Corporation Duty*, col. 2202.*Costs*, col. 2203.*Criminal Law*, col. 2203.*Customs*, col. 2203.*Death Duties*, col. 2203.*Dogs*, col. 2204.*Estate Duty*, col. 2205.*Excise*, col. 2225.*House Duty*, col. 2226.*Income Tax*, col. 2231.*Inhabited House Duty*. See under
REVENUE—House Duty.*Land Revenue Records and Enrolments*.
See under **LAND REVENUE RECORDS
AND ENROLMENTS.***Land Tax*. See under **LAND TAX.***Land Values*, col. 2252.*Landlord's Property Tax*, col. 2252.*Legacy Duty*, col. 2253.*Licences*. See under **PLATE.***Licensing Acts*, col. 2254.*Liquor Licences Duties*, col. 2254.*Male Servants*. See under **REVENUE—
Servants.***Motor Cars*. See under **MOTOR CARS.***National Debt*. See under **NATIONAL
DEBT.***Plate*, col. 2254.*Practice*, col. 2254.*Probate Duty*, col. 2254.*Servants*, col. 2255.*Settlement Estate Duty*. See under
REVENUE—Estate Duty.*Stamps (Fees and Stamps)*, col. 2256.*Succession Duty*, col. 2269.*Uninhabited House Duty*. See under
REVENUE—House Duty.*Writ of Extent*, col. 2273.**Carriage Licence.**

1. — Carriage — Licence — Exemptions — Customs and Inland Revenue Act, 1888 (51 & 52 Vict. c. 8), s. 4, sub-s. 3.

A vehicle is not exempt from the carriage tax under s. 4, sub-s. 3. of the Customs and Inland Revenue Act, 1888, unless it is solely "constructed or adapted for use . . . for the conveyance of any goods or burden in the course of trade or husbandry." It is not enough that it is in fact solely used for that purpose if it is constructed or adapted for use for other purposes as well.

Dictum to the contrary in *Hanworth v.*

REVENUE (Carriage Licence)—continued.

Williams, (1903) 67 J. P. 315, dissented from.
MOORE v. LEWIS - Div. Ct. [1905] W. N. 162 ;
[1906] 1 K. B. 27

2. — Carriage—Licence—Exemption—Customs and Inland Revenue Act, 1888 (51 Vict. c. 8), s. 4, sub-s. 3.

The appellant was summoned for keeping a carriage without a licence. The carriage in question was a two-wheel spring cart made of light varnished wood. It had a movable seat with a padded back and a movable cushion secured by straps. It had two steps on each side, and over both wheels were varnished splash-boards. The appellant, who was a farmer and rope maker, used the cart for the purpose of taking ropes and farm produce to a neighbouring market, where he had two stalls. It was his practice to take his wife and son with him in the cart along with the goods to help him in serving customers at the market. He had another vehicle which he used for ordinary driving purposes, and for which he held a licence.

The justices found that the appellant, his wife and son, were "burden" within the meaning of the above section, and that the cart had been bona fide constructed solely for the purpose of carrying goods or burden in the course of the appellant's business ; but that as it was capable of being used for other purposes, the appellant failed to bring himself within the exemption, and had committed the offence charged.

The Court held that the mere fact that a cart is capable of being used for other than the exempted purposes does not prevent the exemption from applying. They agreed that the description of the cart did not preclude the justices from finding that it was "constructed for use solely" for the exempted purposes, and that the appellant, his wife, and son, were under the circumstances "burden in the course of trade." Appeal allowed. *COOK v. HOBBS*
Div. Ct. [1910] W. N. 219

3. — Carriage—Licence—Exemption—Used solely for the conveyance of burden—Customs and Inland Revenue Act, 1888 (51 Vict. c. 8), s. 4.

Appellants, S. and P., were dairy farmers, residing at Witham. They owned a farm at Thorpe, which is about thirty miles from Witham. This farm was worked for them by a bailiff named E., who had charge of the farm. Amongst other things in E.'s charge was a milk van belonging to the appellants which conveyed the appellants' milk churns daily from the farm to Thorpe railway station. The van was specially constructed for the conveyance of milk churns, and had the appellants' names painted on it in letters of the statutory size. The appellants had taken out no licence in respect of the van. On one occasion E., after delivering the churns at the station for his own purposes and without the knowledge or authority of the appellants, drove the van to Clacton-on-Sea, a distance of five-and-a-half miles, where he met his wife. He put up the horse and van and went

REVENUE (Carriage Licence)—continued.

with her to a place of amusement, remaining there some hours. He subsequently drove his wife and her sister and a third woman back to the farm in the van.

The appellants were summoned under s. 27 of the Customs and Inland Revenue Act, 1869 (32 & 33 Vict. c. 14), for keeping the van without a licence. By s. 4, sub-s. (3) of the Customs and Inland Revenue Act, 1888 (51 Vict. c. 8), a carriage licence is not required for a "waggon, cart, or other such vehicle, which is constructed or adapted for use, and is used solely for the conveyance of any goods or burden in the course of trade or husbandry," provided that it also satisfies certain other conditions. The justices at petty sessions held that having regard to the above user by E., the van, not having been solely used for the conveyance of burden, was one for which a licence was required, and they convicted the appellants. On appeal the Quarter Sessions affirmed the conviction.

Held, that as the appellants had placed E. in charge of the farm generally, they were responsible for his act in using the van for the purpose for which he did, and consequently failed to bring themselves within the exemption. Appeal dismissed. **STRUTT v. CLIFT**

Div. Ct. [1910] W. N. 212

4. — *Cars on light railway—Light Railways Act, 1896 (59 & 60 Vict. c. 48)—Customs and Inland Revenue Act, 1888 (51 & 52 Vict. c. 8), s. 4.*

A light ry. constructed under an order made under the Light Railways Act, 1896, is a "railway" within the meaning of s. 4 of the Customs and Inland Revenue Act, 1888, which exempts from the licence duty on "carriages" thereby imposed any carriage drawn or propelled upon a ry. by steam or electricity or other mechanical power. **ATT.-GEN. v. YORKSHIRE (WOOLLEN DISTRICT) ELECTRIC TRAMWAYS, LD.** **Bray J.** [1907] W. N. 191; [1907] 2 K. B. 991

5. — *Exemptions—Cart only occasionally used for driving the farm hands to and from their work—Revenue Act, 1869 (32 & 33 Vict. c. 14)—Customs and Inland Revenue Act, 1888 (51 & 52 Vict. c. 8), s. 4, sub-s. 3.*

(1.) The appellant Latchford was an officer of Inland Revenue stationed at Crowle, in the county of Lincoln, and the respondent was a farmer living at South-end Farm, Crowle. (2.) On Jan. 22, 1906, an information was exhibited by the appellant against the respondent for the recovery of a penalty for keeping a carriage without a licence, contrary to the provisions of s. 27 of the Revenue Act, 1869. (3.) The justices sitting at petty sessions dismissed the information. (4.) Upon appeal to quarter sessions the following facts were admitted or proved in evidence:—On Sept. 16, 1905, the respondent was seen by the appellant driving a cart, which also contained his brother, his cousin and a small child. The respondent's brother and cousin had both been assisting the respondent with his farm-work during the harvest season and on the day in

REVENUE (Carriage Licence)—continued.

question. (5.) The respondent's cousin was regularly employed on the farm, and on Sept. 16 had brought meals for those who were at work in the harvest field from the farmhouse, which was some distance away. The respondent's brother was spending a holiday with respondent, and was not usually employed on the farm. (6.) The respondent, who was the owner of the cart, had not taken out a licence in respect of it. (7.) The respondent was in the habit of using the cart for the conveyance of farm implements and produce on the farm, and also for the purpose of occasionally driving his farm hands to and from their work on the farm, and the cart was adapted for use and used solely for farm purposes. (8.) Upon these facts the Court of Quarter Sessions came to the conclusion that farm labourers driven to and from their work were "burden in the course of . . . husbandry" within the meaning of the exemption contained in s. 4 (3) of the Customs and Inland Revenue Act, 1888, and dismissed the appeal. (9.) The question for the opinion of the Court was whether the Court of Quarter Sessions were right in dismissing the appeal:—

Held, that the justices were right. If the Legislature wished to tax these carts they must do so in clear language. The cart was only occasionally used for driving the farm hands to and from their work. Appeal dismissed. **LATCHFORD v. KELSEY**

Div. Ct. [1907] W. N. 89

Colonial Duties.

— Colonial death duty—"Debts"—Victoria Administration and Probate Act.
See **WILL—Colonial Duties. 1.**

Corporation Duty.

1. — *Real property—Principle of assessment—"Annual value, income, or profits"—Customs and Inland Revenue Act, 1885 (48 & 49 Vict. c. 51), s. 11.*

Sect. 11 of the Customs and Inland Revenue Act, 1885, imposes on bodies corporate or unincorporate, in respect of all real and personal property belonging to them, a duty payable yearly at the rate of 5 per cent. upon "the annual value, income, or profits of such property after deducting therefrom all necessary outgoings, including the receiver's remuneration, and costs, charges and expenses properly incurred in the management of such property."

The Surrey County Cricket Club, an unincorporated body of persons, were possessed of real and personal property, the real property consisting of a building and land in the metropolis held under a lease for years and used by them for the purposes of a cricket club. Their receipts included large sums in respect of gate-money and other payments received from persons admitted to view the cricket matches played on the ground. The club was carried on at a profit:—

Held, that the gate-money and other payments received from the public were not

REVENUE (Corporation Duty)—continued.

"annual value, income, or profits of the property" within the meaning of s. 11; that the annual value of the real property should be arrived at in the same way as upon an assessment of annual value made for the purposes of the property tax under Sched. A. of the Income Tax Act (16 & 17 Vict. c. 34), and that the club were entitled to include the estimated cost of repairs as a permissible deduction from that annual value. *In re SURREY COUNTY CRICKET CLUB* Div. Ct.

[1901] 2 K. B. 400

Costs.

- Licensing Acts—Appeal from decision of Inland Revenue Commissioners—Discretion to order payment of costs by Commissioners.
See LICENSING ACTS. 22.

Criminal Law.

- Information on Revenue side of King's Bench Division.
See CRIMINAL LAW—Appeal.

Customs.

- Customs Laws, The. Including the Customs Consolidation Act, 1876, with the Enactments amending and extending that Act, and the Present Customs Tariff for Great Britain and Ireland; also the Customs Laws and Tariff for the Isle of Man; with other Enactments affecting the Customs, and Notes of the Decided Cases. By Nathaniel J. Highmore, of the Middle Temple, Barrister-at-Law, Solicitor for H.M. Customs. (Published by Stevens & Sons, Ltd., 119 and 120, Chancery Lane, W.C.). Price 6s. 1906 (T.—Miscellaneous).
- Adulteration—Jurisdiction of Court of Quarter Sessions to hear appeal.
See ADULTERATION. 10.
- Victoria customs—Using ship stores, duty being unpaid—Penalty for breaking seals on ship goods.
See VICTORIA. 6.
- Victoria customs and excise duties—"Mollasses refined in bond."
See VICTORIA. 4.

Death Duties.

Cape of Good Hope—Order in Council, Nov. 20, 1908, enrolling Order in Council of Aug. 13, 1895, applying s. 20 of the Finance Act, 1894, to the Colony of the Cape of Good Hope. St. R. & O. 1908, No. 1142.

Grenada, Island of—Order in Council, Oct. 18, 1909, applying s. 20 of the Finance Act, 1894, to the Island of Grenada. St. R. & O. 1909, No. 1227. Price 1d.

New South Wales—Order in Council in applying s. 20 of the Finance Act, 1894, to New South Wales. St. R. & O. 1905, No. 615.

Yukon Territory—Order in Council, Jan. 10, 1910, applying s. 20 of the Finance Act, 1894, to the Yukon Territory. St. R. & O. 1910, No. 62.

REVENUE—continued.**Dogs.**

1. — *Exemption—Dogs for tending sheep and cattle—Consent of petty sessional Court—Jurisdiction to inquire whether more than one dog necessary—Customs and Inland Revenue Act, 1878 (41 & 42 Vict. c. 15), s. 22, sub-s. 2—Dogs Act, 1906 (6 Edw. 7, c. 32), s. 5, sub-s. 1.*

By s. 22, sub-s. 2, of the Customs and Inland Revenue Act, 1878, a farmer or shepherd may fill up and sign a declaration in the prescribed form stating the number of dogs kept by him solely for use in tending sheep or cattle or in the exercise of the calling or occupation of a shepherd, and upon delivering the declaration so filled up and signed to the proper person he shall be entitled to receive a certificate of exemption from duty in respect of the dog or dogs, not exceeding two in number, kept by him solely for use as above mentioned. By s. 5, sub-s. 1, of the Dogs Act, 1906, the grant under s. 22 of the above Act of a certificate of exemption from duty in respect of a dog shall require the previous consent of a petty sessional Court, but such consent shall not be withheld if the Court is of opinion that the conditions for exemption mentioned in the said section apply in the case of the applicant.

A farmer claimed exemption from duty in respect of two dogs which were kept by him solely for use in tending sheep and cattle, one being specially trained to tend sheep, and the other to tend cattle. The justices in petty sessions found that only one dog was necessary for the applicant, and refused their consent to the grant of a certificate of exemption for more than one dog:—

Held, that the justices had only jurisdiction under s. 5, sub-s. 1, of the Dogs Act, 1906, to inquire whether the conditions specified in s. 22 of the Act of 1878 applied, namely, whether the applicant was a farmer or shepherd, and whether the dogs in respect of which exemption was claimed were kept by him solely for use in tending sheep or cattle, or in the exercise of the calling or occupation of a shepherd, and as those conditions were fulfilled, the justices had no power to refuse their consent to exemption for two dogs because they were of opinion that, in the circumstances, only one dog was necessary. *JOHNSON v. WILSON* Div. Ct. [1909]

W. N. 150; [1909] 2 K. B. 497

2. — *Inland Revenue—Crown—Duties in respect of dogs—Penalty for keeping dog without licence—Information dismissed—Order to pay costs—Costs paid to clerk to justices—Debt due to Crown—Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43), ss. 18, 31—Dog Licences Act, 1867 (30 & 31 Vict. c. 5), ss. 4, 8—Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), s. 16—Inland Revenue Regulation Act, 1890 (53 & 54 Vict. c. 21), s. 33, sub-s. 2.*

On informations laid by an officer of Inland Revenue under s. 8 of the Dog Licences Act, 1867, against three defts. respectively

REVENUE (Dogs)—continued.

for keeping a dog without a licence the justices dismissed the informations and ordered the defts. to pay certain sums as costs under s. 16 of the Summary Jurisdiction Act, 1879. The defts. paid the costs to the clerk to the justices.

On an information filed by the Att.-Gen. claiming from the clerk to the justices as a debt due to the Crown the residue of the sums so received by him after deducting the amount of certain fees authorized to be taken by him by an authorized table of fees and allowances:—

Held, that the Crown was entitled to recover. **ATT.-GEN. v. CLARK - Channell J.**
[1909] 2 K. B. 7

Estate Duty.

1.—*Agricultural Property—Principal value—Land in the occupation of a tenant—Policies of insurance—No part of the premiums paid by the deceased—Property passing at the death—Finance Act, 1894 (57 & 58 Vict. c. 30), ss. 1, 2, sub-s. (d); s. 7, sub-s. 5.*

In estimating, for the purpose of estate duty, the principal value of agricultural land in the occupation of a tenant, when no part of such principal value is due to the expectation of an increased income, the proviso to s. 7, sub-s. 5, of the Finance Act, 1894, applies, and the tenant is entitled to have the principal value limited, as therein provided, to "twenty-five times the annual value, as assessed under Schedule A of the Income Tax Acts, after making such deductions as have not been allowed under that assessment, and are allowed under the Succession Duty Act, 1853, and, making a deduction for expenses of management, not exceeding 5 per cent. of the annual value so assessed."

R., upon the occasion of his marriage in 1843, assigned four policies of insurance, and his wife assigned a sum of 3,500*l.* to trustees. Under the provisions of the settlement the policies were kept up, and the annual premiums paid, exclusively out of the income of the moneys of the wife, until the death of R. in 1898, when the moneys secured by the policies became payable:—

Held, that the moneys payable under the policies were liable to estate duty under s. 2, sub-s. (d), of the Finance Act, as being an "interest purchased or provided by the deceased, either by himself alone, or in concert or by arrangement with any other person, to the extent of the beneficial interest accruing or arising by survivorship or otherwise on the death of the deceased," and therefore property "deemed to pass" within the meaning of the section. **ATT.-GEN. v. ROBINSON**, [1901] 2 Ir. R. 67—92 - [1901] W. N. 192

Note.

Approved of by C. A., *Att.-Gen. v. Murray*, [1904] 1 K. B. 165. See No. 18, below.

2.—*Allowance—Incumbrances—Bona fide creation—Consideration—"Wholly for the deceased's own use and benefit"—Finance Act, 1894 (57 & 58 Vict. c. 30), s. 7, sub-s. 1 (a).*

REVENUE (Estate Duty)—continued.

R., institute of entail in possession of estates in Scotland, without the consent of his son and grandson (the next two heirs of entail) disentailed the estates, acquired the fee simple under the Scotch Entail Acts, and secured to the satisfaction of the Court the ascertained values of the respective interests of his son and grandson by bonds in their favour charged on the fee simple. By later bonds he charged the fee simple with interest due on the first bonds. A desire to lessen the estate duties payable on his death was R.'s motive in these transactions, but they were all open, straightforward, and genuine, not fictitious or colourable. Upon R.'s death:—

Held by Lord Loreburn L.C. and Lords Macnaghten and Atkinson (Lords Collins and Shaw of Dunfermline dissenting), that the bonds were incumbrances created bona fide for full consideration in money or money's worth wholly for R.'s own use and benefit and took effect out of his interest within s. 7, sub-s. 1 (a), of the Finance Act, 1894, and that deductions accordingly ought to be allowed in assessing the estate duties.

The decisions of Bray J., [1907] 2 K. B. 923, and the C. A., [1908] 2 K. B. 729, affirmed. **ATT.-GEN. v. DUKE OF RICHMOND AND GORDON H. L. (E.)** [1909] W. N. 185; [1909] A. C. 466

3.—*Annuities—Amount set apart to pay—Settlement estate duty—Property settled by will—Bequest of residue—Finance Act, 1894 (57 & 58 Vict. c. 30), s. 5, sub-s. 1; s. 22—Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 2, sub-s. 1.*

A testator by his will devised and bequeathed all his real and personal estate to trustees on trust for conversion into money, and out of the moneys so produced to pay his funeral and testamentary expenses, and debts, and certain pecuniary legacies given by the will, and to set aside a sufficient amount of the residuary estate upon trust to pay annuities for life to certain persons, and, subject to that provision, to divide the residuary estate in certain proportions among residuary legatees. The trustees did, in pursuance of the testator's directions, set aside out of the residuary estate a certain amount, which they invested so as to produce an income sufficient to pay the annuities:—

Held, that the fund so set aside was property settled by the testator's will within the meaning of the Finance Act, 1894, s. 5, sub-s. 1, and therefore settlement estate duty was payable upon it. *In re CAMPBELL - C. A.*
[1901] W. N. 228: [1902] 1 K. B. 113

—Annuity payable to trustees for settlement—Interest as "holder of an office"—Trustee.

See REVENUE—Succession Duty. 2.

—Annuities—Will—Republishing by codicil after passing of an Act.
See under WILL—Testamentary Expenses.

REVENUE (Estate Duty)—continued.

4. — *Apportionment—Real estate—Marriage settlement—Charging sum on death of settlor—Will of settlor—Specific devise—Incidence of duty—Finance Act, 1894 (57 & 58 Vict. c. 30), s. 1; s. 7, sub-s. 1; s. 9, sub-s. 1; s. 14, sub-s. 1.*

On the death of an owner in fee who, by his marriage settlement, had charged the real estate with the payment after his death of a sum of money to be held on the trusts therein declared, and who, by his will, had subsequently devised the same real estate in strict settlement:—

Held, that s. 14, sub-s. 1, of the Finance Act, 1894, applied, and that his executor, having paid estate duty on the real estate, was entitled to recover from the trustees of the marriage settlement an amount equal to the proper rateable part of the estate duty in respect of the sum so charged. *In re HACKET. HACKET v. GARDINER. Joyce J. [1907] W. N. 37; [1907] 1 Ch. 385*

— Costs of administering trust fund.
See COSTS. 3.

— Direction to pay out of specific fund.
See under WILL—Testamentary Expenses.

5. — *Entail—Property—Estate duty paid by a deceased heir of entail and not specifically charged on entailed estates—Finance Act, 1894 (57 & 58 Vict. c. 30), s. 2, sub-s. 1 (a); s. 9, sub-ss. 2, 3, 5 and 6; s. 22, sub-s. 2 (a), (c).*

By the Finance Act, 1894 (57 & 58 Vict. c. 30), s. 2, sub-s. 1, "property passing on the death of the deceased shall be deemed to include—(a) property of which the deceased was at the time of his death competent to dispose." By s. 9, sub-s. 1, "The estate duty on an estate . . . shall be a first charge on the property in respect of which duty is leviable." By sub-s. 2, "On an application . . . the Commissioners shall grant a certificate of the estate duty paid in respect of the property." By sub-s. 3, "The certificate of the Commissioners shall be conclusive evidence that the amount of duty named therein is a first charge on the lands." By sub-s. 5, "A person required to pay the estate duty in respect of any property shall . . . have power to raise the amount of such duty . . . by the sale or mortgage of, or a terminable charge on, that property." By sub-s. 6, "A person having a limited interest in any property who pays the estate duty in respect of that property shall be entitled to the like charge as if the estate duty in respect of that property had been raised by means of a mortgage to him." By s. 22, sub-s. 2 (c), "Money which a person has a general power to charge on property shall be deemed to be property of which he has power to dispose."

An heir of entail who had paid out of his own money estate duty due in respect of the entailed estate on the death of his predecessor died without having taken any steps to charge

REVENUE (Estate Duty)—continued.

the sum so paid on the entailed estate. The Crown having claimed an account and estate duty on the sum so paid from his executors:—

Held, reversing the decision of the First Division of the Ct. of Sess. (Lord Robertson dissenting), (1904) 6 F. 347, that the money became automatically a statutory charge on the estate, and was placed by the statute in the same position as if the heir of entail paying the duty actually held a bond over the estate for the amount; and that accordingly the deceased heir of entail at the time of his death had a vested transmissible interest in the amount of the estate duty he had paid, and was competent to dispose of it.

Held, also, that the Finance Act of 1894 was not to be construed according to the technicalities of the law in England or Scotland, but according to the ordinary popular signification of the words employed. *LORD ADVOCATE v. COUNTESS OF MORAY. H. L. (Sc.) [1905] W. N. 134; [1905] A. C. 531*

— Entail—Propulsion of fee—"Acceleration."
See REVENUE—Succession Duty. 3.

6. — *Entailed estate—Money held in trust to purchase lands in Scotland or England to be entailed—Settlement estate duty—Finance Act, 1894 (57 & 58 Vict. c. 30), s. 23, sub-ss. 14, 16.*

By s. 23, sub-s. 14, of the Finance Act, 1894, "The expression settled property shall not include property held under entail." By sub-s. 16, "where an entailed estate passes on the death of the deceased to an institute or heir of entail who is not entitled to disentail such estate without" . . . consent, "settlement estate duty as well as estate duty shall be paid in respect of such estate":—

Held, that money vested in trustees for the purpose of purchasing at their discretion lands in Scotland or in England to be strictly entailed is not "entailed estate" within the meaning of the Finance Act, 1894, and is not liable to "settlement estate duty."

Semble, per Lords Macnaghten, Brampton, Robertson, and Lindley, that if the money had been directed solely to be laid out in land in Scotland to be strictly entailed according to the Scottish law of entail, the money, in the sense of the Finance Act, 1894, would be "entailed estate," and therefore liable to "settlement estate duty."

Decision of the First Division of Ct. of Sess. as to the Ct. of Exchange in Scotland, (1901) 3 F. 440, affirmed. *LORD ADVOCATE v. STEWART, (1901) 3 Fraser, 440; Ct. of Sess. (Sc.), [1901] W. N. 189. H. L. (Sc.) [1902] W. N. 106; [1902] A. C. 344*

7. — *Exemption—"Any settled property"—"Person competent to dispose"—Finance Act, 1894 (57 & 58 Vict. c. 30), s. 5, sub-s. 2.*

By a marriage settlement personal property was settled in trust for the husband for life, after his death for the wife for life, and after the death of the survivor for such persons as the wife by deed or will should appoint. *The*

REVENUE (Estate Duty)—continued.

wife died, having exercised the power of appointment by will. Upon her death estate duty was paid under the Finance Act, 1894, in respect of her expectancy, upon the principal value of the settled property, the value of her husband's life interest being deducted. Upon the husband's death the Crown claimed estate duty again upon the principal value of the settled property. The settlement trustees paid the claim, but afterwards petitioned for the return of the amount, less the value of the husband's life interest, alleging that on his death estate duty became payable (if at all) only on the value of his life interest:—

Held, that estate duty having been paid upon the settled property since the date of the settlement, namely, upon the wife's death, s. 5, sub-s. 2, exempted the settled property from estate duty until the death of a person who was at the time of his death or had been at any time during the continuance of the settlement competent to dispose of the property, and that the husband not being such a person, the trustees were entitled to a return of the amount for which they petitioned, and that if they had claimed the return of the whole sum they had paid upon the husband's death they would have been entitled to it.

The decision of the Q. B. Div. and the C. A. in Ireland, [1900] 2 I. R. 281, 400, affirmed upon the grounds given by Palles C.B.

The judgment of Rigby L.J. in *Att.-Gen. v. Doddington*, [1897] 2 Q. B. 373, approved. *INLAND REVENUE COMMRS. v. PRIESTLEY*

H. L. (I.) [1901] W. N. 103; [1901] A. C. 208

8. — Exemption — Settlement of personal property—Trust for conversion into realty—Payment of probate duty—Finance Act, 1894 (57 & 58 Vict. c. 30), s. 21, sub-s. 1.

By the Finance Act, 1894, s. 21, sub-s. 1, "Estate duty shall not be payable on the death of a deceased person in respect of personal property settled by a will or disposition made by a person dying before the commencement of this part of this Act, in respect of which property" probate duty (among other specified duties) "has been paid, or is payable, unless . . . the deceased was, at the time of his death, or at any time since the will or disposition took effect had been, competent to dispose of the property."

Under the will of a testator, who died in 1849, his residuary personal estate became vested in trustees upon trust to invest it in land, and to settle the land to the use of two persons in succession for life, with remainders over in tail male. Probate duty was paid on the testator's personal estate, and the residue of the same was invested in land, which was settled in accordance with the directions of the will. On the death of the second tenant for life in 1900, the Crown claimed estate duty in respect of the land:—

Held, that the estate duty claimed was not payable, the case coming within the exemption created by the above-mentioned sub-section.

Judgment of Channell J., [1904] 1 K. B.

REVENUE (Estate Duty)—continued.

749, reversed. *ATT.-GEN. v. EARL OF LONDSEBROUGH* **C. A. [1904] W. N. 188; [1905] 1 K. B. 98**

— Expectancy, Assignment by person entitled in—Persons having "an absolute interest therein," Who are.
See REVENUE—Legacy Duty. 1.

9. — Expectancy, Interest in—Incumbrances created by reversioner—Deductions—Finance Act, 1894 (57 & 58 Vict. c. 30), s. 21, sub-s. 3.

By the Finance Act, 1894, s. 21, sub-s. 3, "Where an interest in expectancy in any property has, before the commencement of this part of this Act, been bona fide sold or mortgaged for full consideration in money or money's worth, then no other duty on such property shall be payable by the purchaser or mortgagee when the interest falls into possession, than would have been payable if this Act had not passed; and in the case of a mortgage, any higher duty payable by the mortgagor shall rank as a charge subsequent to that of the mortgagee."

A tenant in tail in remainder to freehold estates raised money during the lifetime of the tenant for life (a) by granting annuities or rent-charges charged upon the property, (b) by purchasing an annuity and charging his interest in expectancy with the capitalized value, and (c) by a mortgage of his interest in expectancy:—

Held, that the annuities granted by the reversioner were in the nature of mortgages and not of sales for a valuable consideration; that the exemption in s. 21, sub-s. 3, of the Finance Act, 1894, was an exemption in favour of a purchaser or mortgagee, and not of a vendor or mortgagor, and that the reversioner was not entitled under s. 21, sub-s. 3, on the death of the tenant for life to exemption from estate duty in respect of any of the incumbrances created by him. *In re VERNON* **Div. Ct. [1901] 1 K. B. 297**

10. — Foreign bonds payable to bearer—Bonds physically situate in the United Kingdom—Marketable securities—Finance Act, 1894 (57 & 58 Vict. c. 30), s. 1; s. 2, sub-s. 2.

Foreign bonds and certificates payable to bearer, passing by delivery, and marketable on the London Stock Exchange are, when physically situate in the United Kingdom at the death of the owner, liable to estate duty under the Finance Act, 1894, even though the deceased was a foreigner domiciled abroad.

Decision of the C. A., [1908] 1 K. B. 1022, affirmed. *WINANS v. ATT.-GEN. (No. 2)*

H. L. (E.) [1909] W. N. 249; [1910] A. C. 27

11. — Foreigner domiciled abroad, Disposition by—Property situate abroad—Disposition to English company on trusts enforceable by English law—Succession duty—Finance Act, 1894 (57 & 58 Vict. c. 30), s. 2—Succession Duty Act, 1853 (16 & 17 Vict. c. 51), ss. 2, 7, 8, 16.

In 1892 a foreigner domiciled in Austria

REVENUE (Estate Duty)—continued.

gave by a deed in the English language and form to an English co., constituted under the Companies Acts, and having its registered office in London, certain stocks, shares, and securities to a large amount upon the terms and conditions that the co. would permit the donor to receive the income thereof during his life, and, after his death, would apply the same, and any investments substituted for them under the powers of the deed, for the benefit of Russian Jews generally, and principally for the promotion of the emigration of Russian Jews from Europe, and of their settlement in various countries outside Europe. The co. had been formed to carry out the same objects, and at the time of the execution of the deed the various securities comprised therein were transferred to the co. by the donor. The whole of the co.'s business was, under the articles of association, transacted by a council which sat at the principal office of the co. in Paris. The ordinary and extraordinary general meetings of the co. were held at their registered office in London, but formal business only was transacted there. In 1896 the donor, who was still domiciled in Austria, died. At that time the principal part of the securities subject to the deed were foreign securities situate abroad, and the documents of title thereto were abroad, a small proportion only of the property subject to the deed being in England:—

Held (affirming the judgment of Ridley and Darling JJ., [1900] 2 Q. B. 556), that there was on the death of the donor a succession by the co. within the meaning of s. 2 of the Succession Duty Act, 1853, and that therefore succession duty under that Act, and, consequently, estate duty under the Finance Act, 1894, were payable upon the principal value of all the property which was subject to the trusts of the deed of 1892 at the donor's death. *ATT.-GEN. v. JEWISH COLONIZATION ASSOCIATION*

C. A. [1901] 1 K. B. 123

12. — *Grant by the Crown of coal duty—Tenement—Entailable hereditament—Conversion of coal duty into annuity—Redemption of annuity—Purchase of real estate—Actual tenant in tail—Restraint on barring entail*—30 Geo. 2 (Private), c. w., No. 34—39 Geo. 3 (Private), c. lxxvii.—39 & 40 Geo. 3 (Public), c. 43—39 & 40 Geo. 3 (Local and Personal), c. ciii.—1 Vict. (Private), c. xxxiv.—31 & 32 Vict. (Private), c. iv.—*Statute de Donis Conditionalibus* (Westminster II., 13 Edw. 1, c. 1)—34 & 35 Hen. 8, c. 20—*Fines and Recoveries Act*, 1833 (3 & 4 Will. 4, c. 74), ss. 15, 18—*Finance Act*, 1894 (57 & 58 Vict. c. 30), ss. 2, 5, sub-s. 5.

By letters patent King Charles II. granted to the first Duke of Richmond and the heirs of his body a certain coal duty, then vested in the Crown, of twelve pence per chaldron of sea coals, stone coals or pit coals, to be sold, shipped, carried, or vended, forth or out of the river or haven of Tyne, to hold the same unto and to the use of the said first Duke of Richmond and the heirs of his body, yielding

REVENUE (Estate Duty)—continued.

and paying therefor yearly to His Majesty, his heirs and successors, the yearly rent of 1*l.* 6*s.* 8*d.*

By an Act of Parliament of 30 Geo. 2, after reciting that the third Duke of Richmond had become seised to him and the heirs of the body of the first Duke of Richmond in tail general of the said coal duty, and was desirous that the said coal duty should, in default of issue male of his own body, go to his brother and the heirs male of his body, and was also desirous of making a jointure in favour of his intended wife, but that the limitations in the grant of Charles II. could not be varied without the authority of Parliament, it was enacted that the third Duke of Richmond should be seised of the said coal duty unto and to the use of the third Duke of Richmond and the heirs male of his body, and that in default of heirs male of the body of the third Duke of Richmond the said coal duty should go unto and to the use of the brother of the third Duke of Richmond and the heirs male of his body, with a remainder to the heirs of the body of the first Duke of Richmond; and it was further enacted that it should be lawful for the third Duke of Richmond to limit the yearly sum of 3000*l.* payable out of the said coal duty to the use of his intended wife for her life to be in bar of all dower and thirds which she might thereafter claim out of the said coal duty.

By an Act of Parliament of 39 Geo. 3, after reciting that the ultimate reversion in the said coal duty was vested in the Crown, it was enacted that the Commissioners of the Treasury might on behalf of the Crown contract with the third Duke of Richmond for the purchase of the estate and interest of all persons in the said coal duty for an annuity payable out of the Consolidated Fund. By s. 2 of this Act the annuity was made payable to the third Duke of Richmond and the heirs male of his body, and, in default of heirs male of his body, to the brother of the third Duke of Richmond and the heirs male of his body, and, in default of heirs male of his body, then unto the heirs of the body of the first Duke of Richmond, and, in default of heirs of the body of the first Duke of Richmond, then it was enacted that the said coal duty should revert to the Crown; and it was enacted that the third Duke of Richmond and the heirs male of his body, and the brother of the third Duke of Richmond and the heirs male of his body, and the heirs of the body of the first Duke of Richmond should have the same power of disposition of the said annuity as they had in the said coal duty, and that the said annuity should go to such persons as would have been entitled to the said coal duty if the Act had not been made.

By an indenture dated Aug. 19, 1799, and made in pursuance of this Act, the Commissioners of the Treasury contracted with the third Duke of Richmond for the purchase of all the interests in the said coal duty for an annuity of 19,000*l.* payable out of the Consolidated Fund to the persons entitled thereto

REVENUE (Estate Duty)—*continued.*

according to the limitations declared in s. 2 of the Act. This indenture also contained provisions enabling the annuity to be redeemed by the purchase of 3 per cent. consolidated bank annuities in the names of the Lord High Treasurer or First Commissioner of the Treasury for the time being and certain other trustees therein mentioned, with power to the person for the time being entitled to the annuity or dividends to appoint new trustees other than the Lord High Treasurer or First Commissioner of the Treasury. This indenture was subsequently confirmed by an Act of Parliament of 39 & 40 Geo. 3, c. 43.

By an Act of Parliament of 39 & 40 Geo. 3, c. ciii., the third Duke and any future Duke of Richmond were empowered to jointure a wife as therein provided, such jointure to be in bar of all dower; and the trustees were empowered to invest three-fourths of the annuities in the purchase of real estate to be conveyed to the use of such persons as the annuity of 19,000*l.* would have stood limited if the same had not been funded and redeemed; and it was provided that the person in possession of the premises should be liable for waste, and should have certain powers of leasing and exchange and a limited power of cutting timber.

Under the powers of this Act and of Acts of Parliament of 1 Vict. c. xxxiv., and 31 & 32 Vict. c. iv., the late Duke of Richmond became entitled to certain real estate at Goodwood, in the county of Sussex, which had been purchased and conveyed to the same uses to which the annuity of 19,000*l.* would have stood limited if the same had not been funded or redeemed, and subject to the provisions by the Act of 39 & 40 Geo. 3, c. ciii., declared:—

Held, (1.) that after, and probably before, the passing of the Act of 30 Geo. 2 the coal duty was a tenement within the meaning of the Statute *De Donis Conditionalibus*, and an entailable hereditament;

(2.) that the effect of the Acts of 39 Geo. 3 and 39 & 40 Geo. 3 was to substitute the annuity of 19,000*l.* for the coal duty;

(3.) that the late Duke of Richmond was actual tenant in tail of the Goodwood estates within the meaning of s. 15 of the Fines and Recoveries Act, 1833.

And, it having been admitted that the coal duty was not given as a recompense for any service rendered by the grantee to the Crown within the meaning of the statute 34 & 35 Hen. 8, c. 20:—

Held, (4.) that the Duke of Richmond was not by any other Act restrained from barring his estate tail within the meaning of s. 18 of the Fines and Recoveries Act, 1833; and, consequently,

(5.) that the late Duke of Richmond was competent to dispose of the Goodwood estates at the date of his death within the meaning of s. 2 of the Finance Act, 1894; and, therefore, that on his death estate duty became payable on the principal value of those estates. *ATT-GEN. v. DUKE OF RICHMOND, GORDON AND LENNOX* (No. 2) *Bray J.* [1907] 2 K. B. 940

REVENUE (Estate Duty)—*continued.*

—Incidence—Direction to pay testamentary expenses.

See under WILL—Testamentary Expenses.

13. — *Incidence—Exercise of general power of appointment by will—Appointed fund—Residue—Testamentary expenses—Finance Act, 1894* (57 & 58 Vict. c. 30), ss. 1, 2, 6, sub-s. 2; s. 7, sub-ss. 6, 7; s. 8, sub-s. 4; s. 9, sub-s. 1; s. 22.

Where a general power of appointment over a reversionary interest in a fund expectant upon the determination of a life interest in the testator and of a subsequent life interest in a person who survived him is exercised by will, the corpus of the fund is, under s. 2, sub-s. 1 (b), of the Finance Act, 1894, property which passes on the testator's death, and estate duty is payable on the corpus under s. 8, sub-s. 4, by the person to whom the property passes for a beneficial interest in possession, or by the trustees in whom the fund is vested. It is not payable by the executors of the will, and is consequently not a testamentary expense. In these circumstances the question whether the fund passed to the "executors as such" within s. 9, sub-s. 1, does not arise. *In re DIXON. PENFOLD v. DIXON. Buckley J.*

[1901] W. N. 243; [1902] 1 Ch. 248

Note.

Followed by C. A., *In re Hadley*, [1909] 1 Ch. 20. *See No. 15, below.*

—Incidence—Testamentary expenses, Direction to pay.

See under WILL—Testamentary Expenses.

14. — *Incidence—Legacies payable out of fund representing realty and personality—Finance Act, 1894* (57 & 58 Vict. c. 30), ss. 1, 8 (sub-s. 4), 9, 14 (sub-s. 1), 21.

A testator who died in 1869 (and therefore before the coming into operation of the Finance Act, 1894), after bequeathing certain legacies, gave his residuary realty and personality to trustees upon trust to convert the same and pay his funeral and testamentary expenses and debts and the legacies therein-before bequeathed, and to invest the residue, and out of the income to pay his widow an annuity of 500*l.* And he directed that after the widow's death the trust funds should be held upon trust to pay thereout certain legacies amounting to 9000*l.*, and to divide the residue amongst certain persons named in the will. In an administration action a sum of Consols was carried over to the account of the annuity. The widow died in 1900 (after the Act came into operation), and in 1901 payment of the legacies was ordered, and inquiries were directed to ascertain the persons entitled to the residue.

Under s. 1 of the Finance Act, 1894, estate duty was payable on the widow's death on so much of the Consols as represented real estate; but under s. 21, sub-s. 1, the duty was not payable on the portion representing personal estate. The proportion representing real estate was taken as twelve-seventeenths of the whole

REVENUE (Estate Duty)—continued.

fund, and the estate duty on twelve-sevenths of the legacies (9000*l.*) was 223*l.* That and the legacy duty were paid, and the difference between the aggregate of the two sums and the 9000*l.* was paid to the legatees:—

Held by Buckley J., that the pecuniary legatees were not persons entitled to a sum charged on the property within s. 14, sub-s. 1, and that they were not liable for the 223*l.*, but were entitled to be recouped the amount out of the portion of the fund representing real estate:

Held by the C. A., upon the construction of s. 8, sub-s. 4, that the pecuniary legatees ought to bear the 223*l.*

Per Vaughan Williams L.J.: *In re Countess of Oxford*, [1896] 1 Ch. 257, is a decision on the construction of the Finance Act, 1894, that in all cases where estate duty becomes payable for which the executor is not made accountable by s. 6, sub-s. 1, the duty must be paid ultimately by the persons beneficially entitled in proportion to their shares. **BERRY v. GAUKROGER** C. A. [1903] W. N. 88; [1903] 2 Ch. 116

Note.

This case was referred to by Kekewich J., *De Quetteville v. De Quetteville*, [1905] W. N. 85; C. A. [1905] W. N. 130. *See Will—Testamentary Expenses.* 14.

15. — Incidence—Personal property—Exercise by will of general power of appointment—Estate duty payable in respect of appointed fund—“Property passing to executor as such”—Legal and equitable assets—Finance Act, 1894 (57 & 58 Vict. c. 30), s. 6, sub-s. 2; s. 9, sub-s. 1.

The estate duty payable in respect of personal estate appointed by will under a general power of appointment is not a charge upon the appointed property, but is payable by the executor out of the testator's personal estate.

So *held* by the C. A., reversing the decision of Parker J.

In re Treasure, [1900] 2 Ch. 648; *In re Maddock*, [1900] 2 Ch. 372; *In re Power*, [1901] 2 Ch. 659; and *In re Dobson*, [1907] 1 Ch. 284, overruled on this point.

In re Moore, [1901] 1 Ch. 691; *In re Dixon*, [1902] 1 Ch. 248; *In re Fearnside*, [1903] 1 Ch. 250; and *In re Orlebar*, [1908] 1 Ch. 186, followed. *In re Hadley*. **JOHNSON v. HADLEY** C. A. [1908] W. N. 220; [1909] 1 Ch. 20

16. — Insurance—Policy of life insurance—Settled property—Finance Act, 1894 (57 & 58 Vict. c. 30), ss. 1, 2, 3.

By s. 1 of the Finance Act, 1894, estate duty is granted upon all property which passes on the death of a person dying after the commencement of the Act. By s. 2, “property passing on the death” is to be deemed to include (sub-s. 1 (*d*)) any annuity or other interest purchased or provided by the deceased to the extent of the beneficial interest accruing or arising by survivorship or otherwise on the death. Sect. 3 exempts from estate duty property passing on the death of the deceased

REVENUE (Estate Duty)—continued.

by reason only of a bona fide purchase from the person under whose disposition the property passes, where such purchase was made for full consideration in money or money's worth paid to the vendor for his own use or benefit.

A tenant for life of freehold estates, being in pecuniary difficulties, entered into an arrangement with his son, the tenant in tail in remainder, by which the entail was barred, and the fee was then mortgaged to secure advances to the father. The father was also possessed of policies on his own life to an amount substantially equivalent to the amount of the mortgage debt, which policies were, pursuant to the arrangement, assigned to trustees, who were to receive all policy moneys (if any) that might become payable during the life of the father and apply them in reduction of the mortgage debt, and subject thereto were to hold all policy moneys and accumulations in trust for the son. The father's life interest was assigned to the trustees, who were out of the income to pay the mortgage interest and the premiums on the policies and other specified outgoings, and to divide the surplus income up to a certain amount between father and son and create a sinking fund out of the ultimate surplus. On the father's death the trustees received the policy moneys and paid them over to the son:—

Held, that the sums payable under the policies were an “interest purchased or provided by the deceased” within the meaning of s. 2, sub-s. 1 (*d*); that the arrangement did not amount to an assignment of the policies to the son, but was an arrangement by virtue of which an interest in the policies passed to the son on the father's death; that the transaction was in the nature of a family arrangement and not a purchase by the son, and that therefore the exemption from estate duty contained in s. 3 did not apply. **ATT.-GEN. v. HAWKINS** Div. Ct. [1901] 1 K. B. 285

17. — Insurance—Policy of life insurance—Interest provided by the deceased—Family arrangement—Finance Act, 1894 (57 & 58 Vict. c. 30), s. 2, sub-s. 1 (*d*); s. 3.

A tenant for life of real estates had raised money by charges on his life estates and insurance policies on his life. By a family arrangement in 1885 between him and his son (the tenant in tail) the estates were disentailed and re-settled; the fee was mortgaged by father and son for an amount to pay off the father's debts; the policies were assigned to the son; the rents and profits of the estates were held in trust to pay the interest on the mortgage, the premiums on the policies, an annuity to the son, and the residue for the father for life, with remainder to the son in fee. On the father's death the policy moneys were paid to the son, and the Crown claimed estate duty thereon from the son under the Finance Act, 1894, s. 2, sub-s. 1 (*d*):—

Held that, in the true view of the family arrangement, the son had made an absolute purchase of the policies for valuable consideration—nay, for much more than the full value;

REVENUE (Estate Duty)—continued.

that this was not a case of an "interest provided by the deceased, either alone or in concert with any other person" within the meaning of s. 2, sub-s. 1 (d); and that estate duty was not payable on the policy moneys.

Decision of the C. A., *Att.-Gen. v. Lethbridge*, [1905] 2 K. B. 323, reversed and decision of Phillimore J. restored. *SIR WROTH PERIAM CHRISTOPHER LETHBRIDGE, BARONET v. ATT.-GEN.* H. L. (E.) [1906] W. N. 218 [1907] A. C. 19

18. — *Personal property. Gift of—Finance Marriage settlement—"Interest purchased or provided by deceased"*—*Finance Act, 1894* (57 & 58 Vict. c. 30), ss. 1, 2, sub-s. 1 (d)—*Life Assurance Act, 1774* (14 Geo. 3, c. 48).

By s. 1 of the Finance Act, 1894, estate duty is granted upon all property which passes on the death of a person dying after the commencement of the Act. By s. 2, "property passing on the death" is to be deemed to include (s. 2, sub-s. 1 (d)) "any annuity or other interest purchased or provided by the deceased, either by himself alone or in concert or by arrangement with any other person, to the extent of the beneficial interest accruing or arising by survivorship or otherwise on the death of the deceased":—

A father effected a policy of insurance in his own name on the life of his son, then aged eleven, to commence at the age of twenty-one, upon which ten yearly premiums only were to be paid; the father, who had no insurable interest in his son's life, paid all the premiums. After the son had attained the age of twenty-one, the father, with the approbation of the son, and the son's intended wife, assigned to the trustees of the son's marriage settlement the policy of insurance and all moneys assured or to become payable under it upon trust after the son's death to invest the insurance moneys and pay the income to the wife for life. After the death of the son (who survived his father) the insurance moneys were paid by the insurance co. to the trustees, who invested them in accordance with the trusts of the settlement:—

Held, that, assuming that as between the father and the insurance co. the policy was illegal and void under 14 Geo. 3, c. 48, for want of insurable interest, and that the insurance moneys were not legally recoverable, yet, the money having been in fact paid by the insurance co., the liability to estate duty was not affected by the illegality of the contract of insurance.

Worthington v. Curtis, (1875) 1 Ch. D. 419, followed.

Held, also, that the expression "interest" in s. 2, sub-s. 1 (d), of the Finance Act, 1894, covers money paid under a policy of insurance on the life of the deceased.

Attorney-General v. Robinson, [1901] 2 I. R. 67; [1901] W. N. 192 (See No. 1, above), approved.

But *held*, further, that the sum paid under the insurance policy on the son's death was not an interest purchased or provided by the son in concert or by arrangement with his

REVENUE (Estate Duty)—continued.

father within the meaning of s. 2, sub-s. 1 (d), of the Finance Act, 1894, and that on the death of his son estate duty was not payable in respect of that sum.

Judgment of Ridley J., [1903] 2 K. B. 64, reversed. *ATT.-GEN. v. MURRAY* - C. A.

[1904] W. N. 6; [1904] 1 K. B. 165

— Legacies given "free from duty"—Deficient estate—Abatement of legacies.

See WILL—Testamentary Expenses. 12.

— New Zealand Deceased Persons' Estates Duties Acts.

See NEW ZEALAND. 19.

19. — *Personal property. Gift of—Finance Act, 1894* (57 & 58 Vict. c. 30), s. 2, sub-s. 1 (c).

In view of the approaching marriage of the deft. it was agreed between his father and the bride's father that the latter would settle 20,000*l.* on his daughter, on condition that the deft.'s father would give to the deft. 10,000*l.* That sum was accordingly paid to the deft. by his father, and a settlement of the 20,000*l.* was executed, and the marriage subsequently took place. The deft.'s father died within twelve months of the date of payment:—

Held, that estate duty was payable by the deft. on the 10,000*l.* under s. 2, sub-s. 1 (c), of the Finance Act, 1894.

Att.-Gen. v. Worrall, [1895] 1 Q. B. 99;

Att.-Gen. v. Johnson, [1903] 1 K. B. 617, followed. *ATT.-GEN. v. HOLDEN* - Ridley J.

[1903] 1 K. B. 832

20. — *Power of appointment—Incidence—Exercise of general power of appointment by will—Appointed fund—Residue—Finance Act, 1894* (57 & 58 Vict. c. 30), s. 9, sub-s. 1.

Where a general power of appointment over a fund is exercised by will, the appointed fund does not pass to the executor "as such," and, consequently, the estate duty in respect thereof is payable out of the appointed fund in the absence of any direction in the will to the contrary.

In re Power, [1901] 2 Ch. 659, followed.

In re J. Dodson. In re A. L. P. Dodson.

GIBSON v. DODSON - Warrington J. [1907]

W. N. 38; [1907] 1 Ch. 284

Note.

See *In re Orlebar*, Neville J., [1908] 1 Ch. 136; WILL—Testamentary Expenses. 10.

— Practice—Payment out of Court—Duties.

See under PRACTICE—Payment out of Court.

— Practice—Payment out of Court—Tenant for life—Release.

See under PRACTICE—Payment out of Court.

21. — *Property passing on death—Devise to issue of testator—Death of devisee in lifetime of testator—Issue of devisee living at death of testator—Devise taking effect as if devisee had survived testator—Wills Act, 1837* (7 Will. 4 and 1 Vict. c. 26), s. 33—*Finance Act, 1894* (57 & 58 Vict. c. 30), s. 1; s. 2, sub-s. 1 (a); s. 22, sub-s. 1 (l), sub-s. 2 (a).

REVENUE (Estate Duty)—continued.

A father devised real property to his son, who died in the lifetime of the father, leaving a daughter, who was living at the death of the father. The son devised his residuary real estate to trustees. This devise included the property devised by the father's will, and took effect with regard to it by virtue of the Wills Act, 1837, s. 33. On the death of the father estate duty was paid on all the property which passed on his death, including the property devised to his son. The Commrs. of Inland Revenue claimed in addition estate duty on the last-mentioned property as property passing on the death of the son within the meaning of the Finance Act, 1894.

On appeal by the trustees against the claim of the Commrs. under s. 10 of the Finance Act, 1894 :—

Held (affirming the judgment of Darling and Channell JJ., [1901] 1 Q. B. 372), that the duty so claimed was payable by the trustees. *In re Scott* C. A. [1901] 1 K. B. 228

22. — *Property passing on death of deceased—Finance Act, 1894* (57 & 58 Vict. c. 30), s. 2, sub-s. 1.

A testator who died before the commencement of the Finance Act, 1894, by his will bequeathed his real and personal estate to trustees for sale and investment, and for payment out of the annual income thereof of an annuity to his wife, and, subject to the annuity, to his eight children, equally, and after the death of his wife to divide the trust fund among the children in equal shares; but if the fund exceeded a certain specified sum, then to divide eight-ninths of such excess among the children, and to pay the remaining ninth to certain other persons. The wife died after the Finance Act, 1894, had come into operation :—

Held, that estate duty was only payable on the one-ninth share of the excess of the trust fund over the specified sum and on the benefit which accrued to the children by the cesser of the annuity, since that was the only property passing on the death of his wife. *In re Townsend* Div. Ct. [1901] 2 K. B. 331

23. — *Property passing on death—Principal value—Mortgage in fee by tenant for life and remainderman—Tenant for life indemnified against mortgage debt—Finance Act, 1894* (57 & 58 Vict. c. 30), ss. 1, 2, 7.

A tenant for life of realty joined with the remainderman in mortgaging the realty. The loan was made to the remainderman only, and he alone covenanted for the repayment. He also covenanted to indemnify the tenant for life against the mortgage debt and interest, and assigned another property to secure the indemnity :—

Held, that, in estimating the principal value of the realty for estate duty payable by the remainderman on the death of the tenant for life, no deduction could be made on account of the mortgage debt.

The decision of the C. A., [1903] 1 K. B. 483, reversed, and the decision of Phillimore

REVENUE (Estate Duty)—continued.

J., [1902] 1 K. B. 429, restored. *ATT.-GEN. v. LORD MONTAGU H. L. (E.)* [1904] W. N. 110; [1904] A. C. 316

24. — *Property passing on death—Settlement—Finance Act, 1894* (57 & 58 Vict. c. 30), s. 5, sub-s. 3—*Finance Act, 1896* (59 & 60 Vict. c. 28), s. 14; s. 15, sub-s. 1.

An "interest is created" within the meaning of the words "and no other interest is created by the said disposition" in the Finance Act, 1896, s. 15, sub-s. 1, by a limitation in a marriage settlement in favour of unborn children of the marriage, although there never is a child of the marriage.

By a marriage settlement property, described as the husband's fortune and the wife's fortune respectively, was settled by the husband and wife upon trust (inter alia) to pay during the joint lives of husband and wife an annuity of 400l. to the wife for her separate use without power of anticipation and to pay the residue of the income, and after the death of the wife the whole income, to the husband for life, and after his death to pay the whole income to the wife for life, and upon trust after the death of the survivor for such children of the marriage as the husband and wife, or the survivor, should appoint, and, in default of appointment, upon trust for the children of the marriage who should attain the age of twenty-one, or being daughters should marry under that age, and, failing such issue, upon trust as to the husband's fortune for him, his executors, administrators and assigns, and as to the wife's fortune for her executors, administrators and assigns. There was no issue of the marriage, and the wife survived the husband :—

Held (affirming the judgment of Walton J., [1906] 1 K. B. 284), that upon the death of the husband estate duty became payable upon the wife's fortune, except as to so much of it as formed part of the corpus which produced the annuity of 400l.; but that as to that latter amount no estate duty was payable by reason of the provisions of the Finance Act, 1894, s. 5, sub-s. 3.

Att.-Gen. v. Wood, [1897] 2 Q. B. 102, followed. *ATT.-GEN. v. GLOSSOP* C. A. [1906] W. N. 219; [1907] 1 K. B. 163

25. — *Real and personal estate—Incidence of duty—Lunatic entitled to both real and personal estate—Payment of duty on realty out of personality — Surplus rents — Charge in favour of next of kin—Heir-at-law—Merger of charge—Finance Act, 1894* (57 & 58 Vict. c. 30), s. 6, sub-s. 2; s. 9, sub-s. 1.

H. by her will appointed D. her executor and trustee, but, in the events which happened, died in 1896 intestate as to her real and personal estate, leaving her brother, a lunatic, her sole next of kin and heir-at-law. D. was also committee of the lunatic. D. paid the estate duty in respect of both the real and personal estate out of the personal estate. The lunatic died intestate in 1903; his income was more than sufficient for his maintenance,

REVENUE (Estate Duty)—continued.

the surplus rents of his real estate were accumulated during his life, and the accumulations were more than sufficient to have paid the amount of the estate duty attributable to the real estate. The lunatic's next of kin claimed to be entitled to a charge on his real estate for the amount of duty paid in respect thereof out of his personal estate :—

Held (affirming the decision of Farwell J., [1905] 2 Ch. 384), that, assuming the payment of the estate duty created a charge upon the real in favour of the personal estate, any charge which might have existed at the time of the payment of the duty on the realty out of the personalty in favour of the personalty was extinguished before the death of the lunatic; that as there was no interest in the lunatic requiring the charges to be kept alive, and, under the circumstances, no person who could require the charge to be raised, it had merged.

Held, also, that the case was covered by *Lord Compton v. Oaenden*, (1793) 2 Ves. Jun. 261. *In re HOLE. DAVIES v. WITTS* C. A. [1906] W. N. 65; [1906] 1 Ch. 673

— Real estate — Exoneration — “Equitable charge.”

See ADMINISTRATION. 9.

— Real estate—Trust for conversion—Failure of objects of trust—Realty or personalty.

See SETTLEMENT. 23.

26. — *Reversionary interest—Finance Act, 1894* (57 & 58 Vict. c. 30), s. 7, sub-s. 6.

Where under s. 7, sub-s. 6, of the Finance Act, 1894, the person accountable for the estate duty on an interest in expectancy has exercised the opinion given by that sub-section, and deferred the payment of the duty in respect of that interest until that interest has fallen into possession, the amount on which the duty is payable is the value of the interest when it has fallen into possession, and not merely its value on the death of the deceased. *In re EYRE* Bray J. [1907] 1 K. B. 331

27. — *Settled fund—Special power—Appointment of specified amounts — Of the “clear” amount or value—Residue of fund—Incidence—Will—Construction.*

By his will, made in 1883, the donee of a special power of appointment over a settled trust fund directed that certain portions of the fund “of the clear amount or value,” and, subsequently, “of the like amount or value,” therein specified should be appropriated and retained upon the trusts therein declared in favour of certain objects of the power, and that the residue of the fund should be appropriated and retained upon trust for another object. The donee died in 1906 :—

Held, that the words “of the clear amount or value” and “of the like amount or value” exempted from estate duty the portions of the fund in respect of which those words were used, and that such duty must be borne by the residue of the fund.

In re Currie, (1888) 57 L. J. (Ch.) 743; 36 W. R. 752, and *In re Saunders*, [1898] 1

REVENUE (Estate Duty)—continued.

Ch. 17, applied. *In re COXWELL'S TRUSTS.*

KINLOCH-COOKE *v.* PUBLIC TRUSTEE

Joyce J. [1909] W. N. 227; [1910] 1 Ch. 63

— Settled estates.

See under SETTLED LAND — Estate Duty.

— Settlement—Real estate—Trust for conversion—Failure of objects—Will—Election—Estate duty—Liability.

See SETTLEMENT. 23.

28. — *Settlement estate duty—Estate contingently settled—Repayment—Finance Act, 1894* (57 & 58 Vict. c. 30), ss. 5, 8.

Trustees were directed to hold the residue of a trust estate for the trustor's unmarried daughter in life-rent, and her children in fee, it being provided that if she had no children the fee should go as she might direct by any writing under her hand, and, failing such direction, to certain third parties.

On the death of the trustor in 1895 the trustees paid estate duty and settlement estate duty on the residue as a settled estate under the provisions of the Finance Act, 1894. The daughter died unmarried on Jan. 11, 1898. On her death estate duty was claimed and paid on the residue as an unsettled estate.

In an action by the trustees for repayment of the amount paid as settlement-estate duty, on the ground that the estate was only settled contingently on the daughter leaving issue, and that this contingency had not arisen, *held* (affirming judgment of Lord Stormonth-Darling), that as there was no enactment in the Finance Act, 1894, or otherwise entitling the trustees to repayment, they were not entitled to repayment. *SMITH (WATHERSTON'S TRUSTEES) v. LORD ADVOCATE*

[1901] Ct. of Sess. (Sc.) [1902] W. N. 167

— Settlement estate duty—Direction to pay.

See under WILL -- Testamentary Expenses.

29. — *Settlement of several estates to different uses—Estates subject to mortgages of different amounts—Creation of term in one estate for purpose of discharging mortgages on all—Payment off of mortgages by trustees of term—Recoupment of estate duty by persons entitled to estate benefited—“Person entitled to any sum charged”—Estate duty—Incidence—Finance Act, 1894* (57 & 58 Vict. c. 30), s. 14, sub-s. 1.

By the Finance Act, 1894, s. 14, sub-s. 1, “In the case of property which does not pass to the executor as such, an amount equal to the proper rateable part of the estate duty may be recovered by the person, who being authorized or required to pay the estate duty in respect of any property has paid such duty, from the person entitled to any sum charged on such property (whether as capital or as an annuity or otherwise), under a disposition not containing any express provision to the contrary” :—

Held, that a person entitled to the benefit of a trust for the application of the rents and

REVENUE (Estate Duty)—continued.

profits of an estate in the discharge of the incumbrances on his own estate was not a person "entitled to any sum charged" on such estate "whether as capital or as an annuity or otherwise" within the meaning of the subsection.

A testator settled his A., B., and C. estates to different uses in strict settlement, and limited his D. estate to trustees for a term of 1000 years, and subject to the term he settled the estate as to one moiety to the uses declared of the A. estate, and as to the other moiety to the uses declared of the B. estate. And he declared that the term of 1000 years was limited to the trustees upon trust to apply the rents and profits of the D. estate in the discharge of the mortgage debts and other gross sums charged upon the four estates or any of them:—

Held, that the estate duty payable in respect of the D. estate was a first charge on that estate and was raisable by mortgage or sale thereof, and that the interest on any mortgage so raised was payable out of the rents and profits of that estate with no right of recoupment of either capital or income as against any other of the estates. *In re EARL OF STAMFORD AND WARRINGTON. PAYNE v. GREY. Warrington J. [1910] W. N. 114; [1910] 2 Ch. 83; [1910] W. N. 277*

— Solicitor and client—Disbursements.

See under SOLICITOR—Costs.

— Succession duty.

See also under REVENUE—Succession Duty.

— Succession duty—Gift of annuities "without any deduction except legacy duty."

See WILL—Testamentary Expenses. 2.

30. — Succession duty—Gift to a charitable society—Reservation of annuity to donor—Bona fide purchase—Partial consideration—Finance Act, 1894 (57 & 58 Vict. c. 30), s. 2, sub-s. 1 (c); s. 3, sub-s. 2—Succession Duty Act, 1853 (16 & 17 Vict. c. 51), s. 7.

In 1889 500*l.* was paid to the directors of an unincorporated charitable society, in lieu of a legacy, and upon the terms of a resolution of the directors of the society that the trustees of the society should be authorized to pay to the person from whom the 500*l.* was received, and to his wife if she survived him, an annuity of 25*l.* The annuity was not charged upon or secured by the property of the society, and was paid by the directors as one of the ordinary outgoings of the society. The commercial value of the annuity in the year 1889 was 210*l.* The payer of the 500*l.* and his wife, who survived him, died after the date of the Finance Act, 1894. The Crown claimed that on his death estate duty became payable by the society on the 500*l.* under s. 2, sub-s. 1 (c), of the Act; and that on her death succession duty became payable on the 500*l.* under s. 7 of the Succession Duty Act, 1853:—

Held, that the transaction was a gift and not a bona fide purchase of an annuity, and that consequently estate duty was payable on

REVENUE (Estate Duty)—continued.

the full sum of 500*l.*, without any reduction in respect of the value of the annuity.

Held, also, that, the disposition of the 500*l.* not being a bona fide sale, succession duty was payable under s. 7 of the Succession Duty Act, 1853.

Judgment of Phillimore, J., [1902] 1 K. B. 416, reversed. *ATT.-GEN. v. JOHNSON.*

C. A. [1903] W. N. 66; [1903] 1 K. B. 617

Note.

Followed by Ridley J., *Att.-Gen. v. Holden*, [1903] 1 K. B. 832. *See No. 19, above.*

31. — Succession duty—Settlement by Act of Parliament—Restriction against alienation—Power of jointuring—Power of Sale—Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 58—Finance Act, 1894 (57 & 58 Vict. c. 30), s. 5, sub-s. 1, 2, 5; s. 22—Succession Duty Act, 1853 (16 & 17 Vict. c. 51), ss. 2, 4.

The power of sale conferred by s. 58 of the Settled Land Act, 1882, upon a tenant in tail in possession of lands settled by Act of Parliament with a restriction upon alienation does not make such a tenant in tail a person capable of alienating the lands so settled within the meaning of sub-s. 5 of s. 5 of the Finance Act, 1894, which provides that where lands are so settled by Act of Parliament that no one of the persons successively in possession thereof is capable of alienating the same, the property passing on the death of any person in possession of the lands shall be the interest of his successor therein, and such interest shall be valued for the purpose of estate duty in like manner as for the purpose of succession duty.

Estate duty payable under sub-s. 5 of s. 5 is payable out of income and not out of capital.

By a private Act passed in the reign of Henry VIII. to give effect to a family arrangement with reference to Lord Broke's estates, a portion of the estates was settled upon his two daughters A. and E. and the heirs of their bodies as co-parceners with cross-remainders between them, and it was provided that no tenant in tail should alienate the estates except for the purpose of jointuring a wife—an exception which the Court construed as implying a power in the tenant in tail under the existing law to jointure by will. Owing to the failure of the heirs of the body of A. the entirety of these estates had now become vested in the heirs of the body of E. The Crown claimed (1) that estate duty was payable on the death of each tenant in tail in possession under sub-s. 5 of s. 5 of the Finance Act, 1894; (2) that upon the grant of a jointure by will succession duty was payable by the widow, either under s. 2 or under s. 4 of the Succession Duty Act, 1853, in respect of one moiety of her jointure, on the footing that her interest was a succession derived as to one moiety from A., and as to the other moiety from E. as predecessor, it being conceded that as to the moiety derived from E. the succession duty was covered by the payment of estate duty as provided by s. 1 of the Finance Act, 1894:—

Held, (1) that sub-s. 5 of s. 5 of the

REVENUE (Estate Duty)—continued.

Finance Act, 1894, applied; (2) that the predecessor of the jointress was either her own husband or E., the lineal ancestress of the husband, and that no succession duty was payable. *In re BOLTON ESTATES ACT*, 1863.

Joyce J. [1904] 2 Ch. 289

— Tenant for life—Instalments, Duty payable by—Interest on unpaid duty—Charge on inheritance.

See SETTLED LAND—Duties. 1.

— Testamentary expenses.

See under WILL—Testamentary Expenses.

— Will—Testamentary expenses.

See under WILL—Testamentary Expenses.

Excise.

Inland Revenue Department. Excise Licences to which s. 6 of the Finance Act, 1908, applies. Memorandum as to the Acts relating to the powers of Commissioners of Inland Revenue and their officers in relation to such licences, and to proceedings for the recovery of penalties imposed by such Acts. Oct., 1908. 1908 T. (Miscellaneous). Price 1d.

1. — *Beer—Licence to sell beer by retail—Soliciting or taking order at place other than that specified in licence—Inland Revenue Act, 1867 (30 & 31 Vict. c. 90), s. 17.*

A grocer, having an excise licence for the sale of beer by retail at one of his shops, took an order for beer at another of his shops in respect of which he had no such licence:—

Held, that he was liable to the penalty imposed by s. 17 of the Inland Revenue Act, 1867, upon persons who, without having a proper excise licence authorizing them so to do, take orders for spirits, wine, or other articles, for the dealing in, retailing, or selling whereof an excise licence is by law required. *ELIAS v. DUNLOP* Div. Ct. [1906] 1 K. B. 266

2. — *“Dealer in spirits”—Licence—Duty—Sale of spirits out of bond for ship's stores—Excise Licence Act, 1825 (6 Geo. 4, c. 81), s. 2.*

A ship's stores merchant, who sells spirits out of bond to foreign-going vessels as ship's stores, is a “dealer in spirits” within the meaning of s. 2 of 6 Geo. 4, c. 81, and must, therefore, for that purpose take out the excise licence required by that statute. *TINWELL v. MAYHOOK* Div. Ct. [1904] 2 K. B. 790

3. — *Saccharin—Excise licence—Manufacture of saccharin—Prescribed book—Finance Act, 1901 (1 Edw. 7, c. 7), s. 9—Revenue Act, 1903 (3 Edw. 7, c. 46), s. 2—Regulations (No. 633 of St. R. & O., 1904).*

The “manufacture of saccharin” in the Finance Act, 1901, and the Revenue Act, 1903, means the “bringing into being as saccharin.”

The appellants subjected certain “330 saccharin” (i.e., saccharin 330 times as sweet as sugar) to a chemical process, the result of which was that in some cases “550 saccharin” (i.e., saccharin 550 times as sweet as sugar) was produced, in others a mixture sweeter

REVENUE (Excise)—continued.

than 330, but not so sweet as 550 saccharin, and in a few cases a mixture less sweet than 330 saccharin:—

Held (per Bray and Darling JJ., Ridley J. dissenting), that the appellants were not manufacturing saccharin within the meaning of the Finance Act, 1901, so as to be compelled to take out the excise licence required by s. 9 of that Act and s. 2 of the Revenue Act, 1903, and to obtain from an officer of Inland Revenue a book such as is prescribed by the Regulation No. 633 of the Statutory Rules, 1904, inasmuch as the substance the appellants dealt with was always saccharin both before and after their treatment of it. *McNICOL v. PINCH* Div. Ct. [1906] W. N. 143; [1906] 2 K. B. 332

4. — *Spirits—Extraction of spirits from wood of empty cask—Possession of spirits naturally exuding from wood of cask—“Extracted”—Finance Act, 1898 (61 & 62 Vict. c. 10), s. 4, sub-s. 1.*

By s. 4, sub-s. 1, of the Finance Act, 1898, “A person shall not (a) subject any cask to any process for the purpose of extracting any spirits absorbed in the wood thereof; or (b) have on his premises any cask which is being subjected to any such process, or any spirits extracted from the wood of any cask”:—

Held, that, in order to convict of the offence of having on the premises spirits extracted from the wood of a cask, the spirits must have been extracted either by an active process intentionally applied to the cask for that purpose, or by allowing the cask to remain in a position where it would be affected by the external temperature, with the knowledge that the temperature would cause the spirits to exude from the wood and collect in the bottom of the cask; but that the innocent possession of spirits which had, owing to the operation of natural causes and without any intent on the part either of the owners or of their servants, exuded from the wood and collected at the bottom of the cask did not amount to the possession of spirits “extracted” from the wood of the cask within the meaning of the section.

Held, further, that the owners of the cask would be liable under the section for the intentional act of their servants, though committed without their own knowledge or approval. *ROBINSON BROTHERS v. DIXON*

Div. Ct. [1903] 2 K. B. 701

House Duty.

1. — *Exemption—Business premises—“Profit”—Mutual insurance society—Customs and Inland Revenue Act, 1878 (41 & 42 Vict. c. 15), s. 13, sub-s. 2.*

The Customs and Inland Revenue Act, 1878, s. 13, sub-s. 2, exempts from inhabited house duty “every house or tenement occupied solely for the purpose of any trade or business, or of any profession or calling by which the occupier seeks a livelihood or profit.”

The Scottish Widows' Fund and Life Assurance Society had no share capital and no

REVENUE (House Duty)—continued.

shareholders. Its membership consisted exclusively of the holders of policies of life insurance effected with the society, and of the purchasers of annuities from it. The bulk of the members were the holders of "participating" policies, i.e., members who were entitled to share in the surplus assets of the society as brought out at each septennial investigation of its affairs; but a small proportion of the policy holders and all the annuity holders (who also were proportionally few in number) had no such right of participating in the surplus assets. The society did not directly insure, or grant annuities to, persons who were not members of the society, but it reinsured the risks of other life insurance companies. Its accumulated funds, which were of very large amount, and from which it derived a large income, were invested in stocks, shares, and other securities, and it also, to a small extent, purchased reversions.

The society having claimed exemption from inhabited house duty under the above enactment in respect of premises which it occupied solely for the purposes of its business, the surveyor of taxes maintained that the exemption founded on did not apply, in respect that the society, being a mutual insurance society, could make no trade or business profits, or at all events, if it did to some extent make trade or business profits, that it did not occupy the premises for the sole purpose of making such profits:—

Held, that the premises in question fell within the exemption, in respect that they were solely occupied by the society for the purposes of its business by which it sought to make a profit.

Observed, that the word "solely" in the statute qualified the word "occupied" and not the words "any trade or business," &c.

New York Insurance Co. v. Styles, (1889) 14 App. Cas. 381, and *Muat v. Shaw Stewart*, (1890) 17 Rettie, 371, distinguished. **SCOTTISH WIDOWS' FUND AND LIFE ASSURANCE SOCIETY v. ALLAN** (1900) 3 Fraser, 129

Ct. of Sess. (Sc.) [1901] W. N. 185

2. — *Exemption of houses occupied for trade—Customs and Inland Revenue Act, 1878* (41 & 42 Vict. c. 15), s. 13.

The Customs and Inland Revenue Act, 1878, s. 13, sub-s. 2, enacts: "Every house or tenement which is occupied solely for the purposes of any trade or business or of any profession or calling by which the occupier seeks a livelihood or profit shall be exempted from the duties [on inhabited houses] by the said Commrs. upon proof of the facts to their satisfaction."

A house, consisting of two storeys, was occupied by the owner—the lower floor as a public-house, and the upper floor as a dwelling-house. The only access to the public-house was from the street. The only access to the dwelling-house was by a separate entrance from the street:—

Held (reversing judgment of First Division, (1898) 25 Rettie, 1040), that the public-house

REVENUE (House Duty)—continued.

was not subject to assessment for inhabited house duty, in respect that it was either (1) a separate house which was not a dwelling-house in the sense of the House Duty Acts, or (2) a separate tenement exempted from assessment by the Act of 1878. **GRANT v. LANGSTON**, (1900) 2 Fraser, 49

Ct. of Sess. (Sc.)
[1901] W. N. 185

[A report of this case on appeal to the House of Lords will be found in [1900] A. C. 383.]

Note.

Followed by *Swinfen Eady J., Ilford Park Estates, Ltd. v. Jacobs*, [1903] 2 Ch. 522. See *Building*. 3.

— *Income tax—Inhabited house duty—Annual value adopted for preceding year—Conclusiveness.*

See **REVENUE—Income Tax**. 20.

3. — *Inhabited house duty—Different tenements occupied solely for business—Customs and Inland Revenue Act, 1878* (41 & 42 Vict. c. 15), s. 13, sub-ss. 1, 2.

The Customs and Inland Revenue Act, 1878, enacts, s. 13, sub-s. 1—"Where any house being one property shall be divided into and let in different tenements, and any of such tenements are occupied solely for the purposes of any trade or business . . . the commrs. may give relief from duty. (2) Every house or tenement which is occupied solely for the purposes of any trade or business, or of any profession or calling by which the occupier seeks a livelihood or profit, shall be exempted from the duties [on inhabited houses] by the said commrs. upon proof of the facts to their satisfaction, and their exemption shall take effect although a servant or other person may dwell in such a house or tenement for the protection thereof."

A house of four storeys owned by a bank was occupied as follows:—The first floor by a firm of writers to whom it was let, and the other three floors by the bank, the ground floor being used as the offices of the bank and the second floor as the official residence of the bank accountant. Access to all the floors from the street was by a door which opened into a vestibule. In the vestibule there was a door to the bank office, a front stair leading to the first floor, and a door to a passage leading to the bank agent's room and to a back stair, which was the access to the second floor. There was a door between the two stairs which was kept locked. The first and second floors were each shut off from the staircase by outer doors on the landings. From the bank agent's house on the second floor there was a bolt in connection with the lock of the safe in the bank office.

The whole house, with the exception of the first floor, having been assessed for inhabited house duty, the bank appealed, and maintained that the ground floor being occupied solely for the business of banking was entitled to exemption:—

Held, on the facts, that there were such means of internal communication and such structural connection between the bank offices

REVENUE (House Duty)—continued.

and the house of the agent, and also such identity of occupation, that the bank premises could not be regarded as a separate tenement in the sense of s. 13 of the Customs and Inland Revenue Act, 1878, UNION BANK OF SCOTLAND v. INLAND REVENUE COMMRs.

(1901) Ct. of Sess. (Sc.) [1902] W. N. 174

4. — *"Inhabited dwelling-house" — Occupation—House not lived in during year of assessment—House Tax Act, 1851 (14 & 15 Vict. c. 36), s. 1.*

Where the owner of a house, who has lived in or let it as a furnished dwelling-house, keeps it furnished and ready for habitation as a dwelling-house, he is assessable in respect thereof to inhabited house duty under s. 1 of the House Tax Act, 1851, notwithstanding that during the year of assessment no person has lived or slept in the house. SMITH (SURVEYOR OF TAXES) v. DAUNEY — Channell J.

[1904] 2 K. B. 186

5. — *Landlord's property tax—Inhabited house duty — Exemptions — "Almshouse" — "House provided for the reception or relief of poor persons"—Home for ladies in reduced circumstances—Income Tax Act, 1842 (5 & 6 Vict. c. 35), s. 61, r. 6—House Tax Act, 1808 (48 Geo. 3, c. 55), Sched. B, Case IV.*

A home for ladies in reduced circumstances was founded and endowed by a lady, who conveyed it to trustees in fee simple on trust to appropriate and use it for that purpose. The inmates were to be ladies of fifty years old or upwards, possessed or in the actual enjoyment of a fixed yearly income of not less than 25*l.* and not more than 55*l.* Each inmate was entitled to the use of the common room, and to the exclusive use of an unfurnished bedroom and sitting-room, and to be supplied with coals, gas, and attendance free of cost; the inmates provided their own furniture, food, clothing, washing, and medical attendance; the food was cooked and served by the staff. The income of the endowment fund was applied to the payment of salaries, servants, wages and board, repairs, upkeep of fabric and of household and cooking utensils, and in providing gas and coals for the inmates and staff. There were no subscriptions to the home from the public:—

Held, that the institution was exempt from landlord's property tax and inhabited house duty, as being an "almshouse" within the meaning of 5 & 6 Vict. c. 35, s. 61, r. 6, and a "house provided for the reception or relief of poor persons" within 48 Geo. 3, c. 55, Sched. B, Case IV. TRUSTEES OF MARY CLARK HOME v. ANDERSON — Channell J.

[1904] 2 K. B. 654

6. — *Offices belonging to and occupied with dwelling-house—Exemption in favour of buildings occupied only for purposes of trade or profession—48 Geo. 3, c. 55, Sched. B, r. 2—57 Geo. 3, c. 25, s. 1—House Tax Act, 1851 (14 & 15 Vict. c. 36), Sched.—Customs and Inland Revenue Act, 1878 (41 & 42 Vict. c. 15), s. 13, sub-s. 2.*

REVENUE (House Duty)—continued.

The respondent was the owner and occupier of a dwelling-house with its appurtenances, and an office within the same curtilage as the dwelling-house, the office being used by him solely for the purpose of his profession as a solicitor. The dwelling-house fronted the public street, from which there was one common entrance both to the dwelling-house and the office by means of a passage under part of the dwelling-house to a yard at the back of the house; the office had been built in the yard at a later date than the dwelling-house itself. The front door of the house was in the passage, and there was an outer door at the end of the passage nearest to the street which was open all day, but was shut and locked at night, when all communication was cut off between the street and the whole of the premises, including both dwelling-house and office. There was no structural communication or covered passage between the dwelling-house and the office, which latter could only be reached from the dwelling-house by crossing the yard:—

Held, that the office was occupied with and constituted part of the dwelling-house for the purpose of assessment to inhabited house duty, and that it did not fall within the exemption contained in s. 13, sub-s. 2, of the Customs and Inland Revenue Act, 1878, in favour of tenements occupied solely for the purposes of a trade, business, or profession. NICHOLLS v. MALIM — Walton J. [1906] 1 K. B. 272

7. — *School buildings—"Other offices"—48 Geo. 3, c. 55, Sched. B—House Tax Act, 1851 (14 & 15 Vict. c. 36).*

The appellant was the occupier of a dwelling-house and premises, which he used for the purposes of a boarding school. He also occupied adjacent buildings, which were separated from the first-mentioned premises by a wall. There was a door in the wall through which by means of a covered-in passage there was communication between the premises on each side of the wall. The adjacent buildings were respectively used as a chapel, a gymnasium, class-room, fives court, and for such like school purposes in connection with the boarding school, other than the ordinary purposes of a dwelling-house:—

Held (reversing the judgment of Phillimore J.), that the adjacent buildings must be included in the valuation of the premises for the purposes of inhabited house duty, as being offices belonging to and occupied with the dwelling-house within the meaning of rule 2 of Sched. B of 48 Geo. 3, c. 55. BROWNE v. FURTAO — C. A. [1903] 1 K. B. 723

— Trade, Exemption of houses occupied for.
See No. 2, above.

8. — *Working classes, Dwellings for the—Exemption—"Separate dwellings"—Revenue Act, 1903 (3 Edw. 7, c. 46), s. 11, sub-s. 1 (a).*

The appellants were the owners of buildings erected by them under powers conferred by the Housing of the Working Classes Act,

REVENUE (House Duty)—continued.

1890, for the purpose of providing accommodation for men of the working classes. The three upper floors consisted of separate sleeping rooms or cubicles arranged round a central hall; not more than one man was allowed to occupy each cubicle, which could be locked on the inside. The ground floor contained dining and reading-rooms, lodgers' kitchen, lavatories, and washhouse, which were used in common by the occupants of the cubicles, and also the quarters of the superintendent and staff. Each occupant paid sixpence a night for the use of the cubicle and of the other rooms and offices; he was not admitted to a cubicle before 7 p.m. and was obliged to vacate it before 8.30 a.m. on weekdays and 9 a.m. on Sundays; smoking and the use of lights in the cubicles were strictly prohibited:—

Held, that the cubicles, being only sleeping places, were not separate dwellings, and that the building, so far as it was used as a dwelling-house, was not used for the sole purpose of providing separate dwellings within the meaning of s. 11, sub-s. 1 (a), of the Revenue Act, 1903, and was not entitled to exemption from inhabited house duty. LONDON COUNTY COUNCIL v. COOK Walton J. [1906] 1 K. B. 278

Income Tax.

— Administration—Insolvent estate—Proof by creditor — Income tax — Method of calculation.

See ADMINISTRATION. 14.

1. — *Allowances—Charitable purposes—Advancement of education—Income Tax Act, 1842* (5 & 6 Vict. c. 35), s. 61; *Rule 6*, s. 88; *Rule 3*, s. 105.

The University College of North Wales was incorporated under a Royal Charter dated June 4, 1885. The object of the college, as set forth in the charter, was to provide instruction in all the branches of a liberal education, except theology, and especially such instruction as might enable residents in the six counties of North Wales and elsewhere to qualify for degrees in arts, science, and other subjects, except theology, at the University of Wales (which was subsequently constituted by Royal Charter, dated November 30, 1903, and of which the University College of North Wales was made a constituent college) or at any of the universities of the United Kingdom for the time being empowered to grant degrees, and also to give such technical or other instruction as might be of immediate service in professional or commercial life, and further to promote higher education generally.

The deed of settlement provided that the property of the college, which was derived from voluntary donations, subscriptions, bequests, and an annual Government grant, was to be applied by the council of the college as to part to the general purposes of the college, and as to part to providing scholarships. The capital moneys of the college were invested in properties covered by Schedules A, C, and D of the Income Tax Act. The college had paid income

REVENUE (Income Tax)—continued.

tax amounting in three years to 606*l.*, of which 120*l.* was paid in respect of income derived from property which was the subject of specific trusts, such as scholarships. The college claimed an exemption in respect of the whole of its property. The Commissioners allowed an exemption in respect of 120*l.*, but they refused to allow it in respect of the general revenue of the college.

The Div. Ct. held ([1908] W. N. 92), on the authority of *Commissioners for Special Purposes of Income Tax v. Pemsel*, [1891] A. C. 531, that the property of the college was vested in trustees for charitable purposes within the rules as to allowances under ss. 61, 88, and 105 of the Income Tax Act, 1842, and that the college was therefore entitled to the exemption claimed in respect of the whole of its income, and they made absolute a rule nisi for a mandamus against the Commissioners.

The C. A. dismissed the appeal, upon the ground that the case was covered by *Commissioners for Special Purposes of Income Tax v. Pemsel*, [1891] A. C. 531. *REX v. COMMISSIONERS FOR SPECIAL PURPOSES OF INCOME TAX. Ex parte UNIVERSITY COLLEGE OF NORTH WALES* C. A. [1909] W. N. 57

2. — *Annuities, Sale of—Assessment on revenue from invested funds—Income Tax Act, 1842* (5 & 6 Vict. c. 35), *Sched. D*, s. 102—*Income Tax Act, 1853* (16 & 17 Vict. c. 34), s. 40—*Customs and Inland Revenue Act, 1888* (51 & 52 Vict. c. 8), s. 24, sub-s. 3—*Costs where Crown litigant*.

By the Customs and Inland Revenue Act, 1888, s. 24, sub-s. 3, upon payment of any interest of money or annuities charged with income tax under Sched. D and not payable or not wholly payable out of profits or gains brought into charge to such tax, the person by or through whom such interest or annuities shall be paid shall deduct thereout the rate of income tax in force at the time of such payment, and shall forthwith render an account to the Commissioners of Inland Revenue of the amount so deducted or of the amount deducted out of so much of the interest or annuities as is not paid out of profits or gains brought into charge.

The appellant co. carried on the ordinary business of a life insurance co., including the granting of annuities. The co-partnership contract of the co. provided that every policy of insurance or other obligation should contain a clause declaring that the capital stock and funds of the co. should be the only fund answerable for any demand under such policy or other obligation. The co. had a very large annual income from interest, dividends, and rents, from which income tax was deducted at the source. The income from interest, dividends, and rents was ample sufficient to pay the annuities in full. The co. also had an income from premiums, but if the income from interest, dividends, and rents had been deducted from the co's revenue the trading of the co. would have resulted in a quinquennium deficit. No formal appropriation of the income from interest, dividends, and rents was

REVENUE (Income Tax) —continued.

made in the books, nor was any particular fund specially charged with the payment of the annuities. In paying their annuities the co. deducted the amount of income tax due in respect thereof and retained the amount of the tax so deducted :—

Held (reversing the decision of the First Division of the Court of Session, (1909) S. C. 847), that the co. were entitled to retain for their own benefit the whole of the income tax deducted from the annuities, for where annuities are charged upon a tax-bearing fund from which the tax has been deducted at its source and which is amply sufficient to pay them in full, although not set apart for that purpose, they cannot be held to be not "payable" or not wholly "payable out of profits or gains brought into charge" within the meaning of the Act.

Held, also, that the claim to the tax having failed, the Crown was liable for the costs in the Court below and in the House in the same manner as if the action had been between subjects. **EDINBURGH LIFE ASSURANCE CO. v. LORD ADVOCATE** — **H. L. (Sc.) [1909] W. N. 257; [1910] A. C. 143**

3. — "*Annuity*" — *Purchase-money—Payment by annual instalments with interest—Income Tax Acts, 1842 and 1853 (5 & 6 Vict. c. 35; 16 & 17 Vict. c. 34), Schedules C and D.*

The Secretary of State for India had power by contract to purchase a railway, paying for the purchase the full value of all the shares or capital stock of the railway company, with the option of paying instead of a gross sum "an annuity" for a term of years, the rate of interest to be used in calculating the annuity being determined in a specified way. The Secretary of State purchased the railway and exercised the option to pay an annuity instead of a gross sum. The annuity was paid half-yearly, each payment representing, as to part, an instalment of the purchase-money, and as to the rest, interest on the amount of the purchase-money unpaid :—

Held, that the Income Tax Acts do not tax capital as income, and that income tax was payable only upon that part of the annuity which represented interest on the unpaid purchase-money.

The decision of the C. A. [1903] W. N. 37; [1903] 1 K. B. 194, affirmed. **SECRETARY OF STATE IN COUNCIL OF INDIA v. SCOBLE**

C. A. [1903] 1 K. B. 494;

H. L. (E.) [1903] W. N. 116; [1903] A. C. 299

Note

Undistinguishable, **East India Ry. Co. v. Secretary of State in Council of India**, C. A. [1905] 2 K. B. 413. *See next Case.*

4. — *Annuity—Sale of railway—Purchase-money—Payment by annual instalments with interest—Income Tax Acts, 1842 (5 & 6 Vict. c. 35) and 1853 (16 & 17 Vict. c. 34), Schedules C and D.*

The East India Co. were, under contracts made between them and the plt. co., entitled

REVENUE (Income Tax) —continued.

to purchase three rys. belonging to the plt. co. at certain dates respectively for gross sums to be ascertained as therein provided, the East India Co. having an option, instead of paying the gross sum, of paying for the ry. by means of what was described as an "annuity" to be paid to the plt. co. for a term of years. The rights of the East India Co. under these contracts subsequently became vested in the deft. When the deft.'s right of purchase accrued as regards two of the rys., but before it accrued as regards the third ry., an arrangement was made between the plt. co. and the deft. for the purchase by the deft. of three rys. simultaneously, in consideration of an annuity for a term of years calculated at the rate of 5*l.* 12*s.* 6*d.* per annum for every 100*l.* of the plt. co.'s stock commuted at 125*l.* This amount of 5*l.* 12*s.* 6*d.* was stated in an Act of Parliament confirming the arrangement to have been arrived at on the basis of 5*l.* 7*s.* 6*d.*, part thereof being interest at the rate of 4*l.* 6*s.* per cent. per annum on the said amount of 125*l.*, and of a sum of 5*s.*, other part thereof, being the amount required to be set aside and invested half-yearly in every year at a like rate of interest in order to produce by means of a sinking fund the capital sum of 125*l.* or thereabouts at the end of the term for which the annuity was payable. On payment of the annuity income tax had been deducted by the deft. in respect of the whole of the annual payment. The plts. contended that the deduction should only have been of income tax in respect of so much of the payment as represented interest on unpaid capital in accordance with the decision in *Secretary of State in Council of India v. Scoble*, [1903] A. C. 299 (*see preceding Case*) :—

Held, that the fact that the purchase of the rys. had been carried out by agreement, before the date at which the deft.'s right of purchase accrued as regards one of the rys., did not constitute a valid legal distinction between the present case and *Secretary of State in Council of India v. Scoble*, [1903] A. C. 299, and that the plts.' contention was correct :

Held, further, that it was not correct to treat the before-mentioned statement in the Act of Parliament as indicating what proportions of the annual sum were respectively payable in respect of capital and interest on unpaid capital. **EAST INDIA RY. CO. v. SECRETARY OF STATE IN COUNCIL OF INDIA.**

C. A. [1905] 2 K. B. 413

5. — *Annuity or annual payment—Deduction of income tax—Income Tax Acts, 1842 (5 & 6 Vict. c. 35), s. 102; 1853 (16 & 17 Vict. c. 34), s. 40 — Customs and Inland Revenue Act, 1881 (51 & 52 Vict. c. 8), s. 24, sub-s. 3.*

The plt., the owner of a leasehold interest expiring in 1912 in certain property which was sublet at a gross rental of 1925*l.* but subject to the payment of a ground rent of 300*l.* to the superior landlord, contracted with the defts. for the sale to them of his interest, the transaction being carried out by two deeds

REVENUE (Income Tax)—continued.

of even date. By the first deed the plt. conveyed and assigned the property to the defts. for the residue of the term, subject to the payment of the 300l. ground-rent to the superior landlord (which the defts. covenanted to pay), the consideration for the assignment being expressed to be the payment by the defts. of the sum of 1000l. to the plt. and the execution by the defts. of a deed of even date. By the latter deed the defts. covenanted with the plt. to pay him until the last day of the term the sum of 1625l. per annum by quarterly payments; no sum was fixed as the total amount to be paid. In making the quarterly payments the defts., acting under s. 40 of the Income Tax Act, 1853, and s. 24, sub-s. 3, of the Customs and Inland Revenue Act, 1888, deducted income tax at the current rate, and the plt. sought to recover the amounts so deducted:—

Held, that the intention of the transaction was that the plt. should continue to receive as income to the end of the term the same net amount that he had previously received as rent; that the payments were payments of an annuity or other annual payment within the meaning of s. 40 of the Income Tax Act, 1853, and were not the payment of a fixed amount by instalments, and that the deductions in respect of income tax had therefore been properly made by the defts. **CHADWICK v. PEARL LIFE INSURANCE CO.**

Walton J.
[1905] 2 K. B. 507

6. — *Bank—Purchase of business of another bank—Establishment of branch—Succession to business—Income Tax Act, 1842 (5 & 6 Vict. c. 35), s. 100, Sched. D, First and Second Cases, Rule 4.*

The respondent, a bank with a large capital, whose head office was in London, and having numerous branches in England and Wales, purchased in 1899 the business and premises and other assets of the County of Stafford Bank, which had a comparatively small capital, and carried on business only at Wolverhampton. The respondents then for the first time opened a branch at that place upon the premises so purchased, and there carried on business with the manager and staff previously employed by the County and Stafford Bank. The profits and expenses of the business so carried on at Wolverhampton by the respondents were merged in those of their concerns as a whole, and there were no means of ascertaining whether there were any profits, or the proportion of increase or decrease, if any, in the profits of the respondents' bank, which had arisen from the business purchased as aforesaid. In the three years respectively subsequent to 1899, the respondents, in computing the average of their profits under the First Rule of the First Case in s. 100, Sched. D, of the Income Tax, 1842, did not include any profits earned by the County of Stafford Bank. Additional assessments were made upon them so as to include such profits, on the ground that there had been a succession by them to the business of the County of Stafford Bank within the meaning of the Fourth Rule

REVENUE (Income Tax)—continued.

applicable to the First and Second Cases in Sched. D.:—

Held (reversing the judgment of Ridley J., [1903] 2 K. B. 249), that there had been such a succession, and therefore the additional assessments were rightly made. **BELL v. NATIONAL PROVINCIAL BANK OF ENGLAND, LD.**

C. A. [1904] W. N. 3; [1904] 1 K. B. 149

7. — *Benefice, Incumbent of—Perquisites or profits accruing by reason of office—Grant by affiliated branch of Queen Victoria Clergy Sustentation Fund—Public office or employment of profit—Income Tax Acts, 1842 (5 & 6 Vict. c. 35), s. 146; 1853 (16 & 17 Vict. c. 34), s. 2, Sched. E.*

The appellant, a beneficed clergyman, received for several years an annual grant of money from a diocesan branch affiliated to the Queen Victoria Clergy Sustentation Fund, a body incorporated with the object of providing adequate remuneration for the beneficed clergy for the work done by them; the fund was not intended to be merely a clerical charity. The funds of the diocesan branch were administered by a council whose aim was to raise the incomes of all benefices under 200l. per annum in value to that amount. The council did not take into consideration the personal circumstances of the particular incumbent, but the onus rested upon the applicant of deciding whether his own circumstances justified him in applying for a grant. The incumbent of a benefice of less than 200l. a year was not necessarily entitled to a grant, but the giving, withholding, continuance, and discontinuance of grants out of the funds were matters wholly within the discretion of the council. Where a benefice fell vacant during the year for which the grant was made, the grant was divided between the outgoing and incoming incumbent in proportion to the length of time for which each had been incumbent:—

Held (reversing the decision of a Div. Ct., [1901] 2 K. B. 761), that the grants received by the incumbent from the diocesan branch were "perquisites or profits accruing by reason of his office" within the meaning of the first rule contained in s. 146 of the Income Tax Act, 1842, for charging duties under Sched. E, and that he was therefore liable to pay income tax under Sched. E upon them. **HERBERT v. MCQUADE**

C. A. [1902] W. N. 140;
[1902] 2 K. B. 631

8. — *Benefice, Incumbent of—Profits accruing by reason of office—Easter offerings—Office or employment of profit—Income Tax Act, 1842 (5 & 6 Vict. c. 35), s. 146; Sched. E, rr. 1—4.*

Voluntary Easter offerings of money given as a freewill gift to the incumbent of a benefice as such for his personal use are, if given for the purpose of increasing his stipend, assessable to income tax as "profits accruing to him by reason of his office" under Sched. E, r. 1, of the Income Tax Act, 1842. Decision of C. A., sub nom. **Cooper v. Blakiston**, [1907] 2 K. B. 688, affirmed. **BLAKISTON v. COOPER**

H. L. (E.) [1909] W. N. 3; [1909] A. C. 104

REVENUE (Income Tax)—continued.

9. — *Brewery, Profits of—Deductions—Tied licensed houses — Compensation charge — Licensing Act, 1904 (4 Edw. 7, c. 23), s. 3—Income Tax Act, 1842 (5 & 6 Vict. c. 35), s. 100; Cases 1 and 2, r. 1; Sched. D.*

A co., which carried on the trade of brewers, were, solely for the purposes and as part of their business and as a necessary incident of the profitable working thereof, the owners of licensed houses which they let to tenants, who covenanted to buy all their beers from the co., and in consideration thereof the tenants paid to the co. a less rent than the annual value of the houses would warrant. By means of these houses, which were substantially part of the plant or outfit necessary to carry on the business profitably, the co. were enabled to earn increased profits, upon which they paid income tax. The co. were compelled, under s. 3 of the Licensing Act, 1904, to allow to the tenants of the licensed houses certain deductions from rent in respect of the co.'s share of the annual compensation charge imposed on the licensed houses, and the co. claimed that, in arriving at the amount of the profits of their trade as brewers assessable to income tax, a deduction ought to be allowed in respect of the sum which they were compelled to pay for the compensation charge, as being an expense incurred in carrying on that trade:—

Held by Cozens-Hardy M.R. and Farwell L.J. (Kennedy L.J. dissenting) that, on the facts as found by the Comrs. for the General Purposes of the Income Tax Acts, the sum which the co. were compelled to pay for the compensation charge was a payment necessary to enable them to earn profits as a brewery co. and might properly be deducted from the profits with a view to ascertaining the balance on which income tax had to be paid.

Decision of Channell J., [1909] 1 K. B. 711, reversed. SMITH (SURVEYOR OF TAXES) v. LION BREWERY CO., LD. C. A. [1909] W. N. 177; [1909] 2 K. B. 912

10. — *Brewery business—Expenses of applications for new licences—Deductions—Balance of profit—Income Tax Act, 1842 (5 & 6 Vict. c. 35), s. 100, Sched. D.*

The respondents, a brewing co., with the view of increasing their trade, were in the habit of making applications to the licensing justices for new licences to houses owned by them or in which they were interested. It was the practice of the licensing justices to require the applicant for a new licence to offer to surrender an existing licence as a preliminary to the grant of a new one; and in order to meet this requirement the respondents were in the habit of paying certain annual sums to the holders of certain existing licences for the right to call for a surrender of those licences if the justices required it. The sums so paid, together with the other expenses incidental to their application for new licences (such as law costs and the cost of printing and advertising), the respondents claimed, in those

REVENUE (Income Tax)—continued.

cases in which their applications for new licences were unsuccessful, to deduct as a necessary annual trade expense in the computation of their profits and gains in their trade as brewers for the purposes of income tax:—

Held, that the sums so expended were employed as capital in the trade, and that the deduction, consequently, could not be allowed. SOUTHWELL v. SAVILL BROTHERS, LD.

Div. Ct. [1901] W. N. 120; [1901] 2 K. B. 349 — Business carried on in the colony or profits received.

See NEW ZEALAND. 20.

11. — *Charge upon property in excess of annual value—Interest on borrowed money—Right to deduct and retain income tax—Interest "paid out of profits or gains brought into charge"—Income Tax Act, 1842 (5 & 6 Vict. c. 35), s. 60, No. IV., r. 10—Customs and Inland Revenue Act, 1888 (51 & 52 Vict. c. 8), s. 24, sub-s. 3.*

The London County Council is bound to pay income tax under Sched. A upon the annual value of property occupied by the council, and cannot deduct it out of the amount of income tax which is payable in respect of their consolidated stock, and for which the council is bound to account to the Crown.

The decisions of Channell J., [1904] 2 K. B. 635, and of the C. A., [1905] 2 K. B. 375, reversed. ATT.-GEN. v. LONDON COUNTY COUNCIL H. L. (E.) [1907] W. N. 73; [1907] A. C. 131

— Colony, Transactions of purchase in—Profits on sales in London—Agency commission—New Zealand Land and Income Tax Assessment Act, 1900.

See NEW ZEALAND. 21.

— Company—Debenture—Deficient security—Principal or interest—Appropriation of payment—Income tax.

See COMPANY—Debentures. 8.

— Company—Directors' fees.

See COMPANY—Directors. 16.

12. — *Company—Exemption—Income not exceeding 160l.—Income Tax Act, 1842 (5 & 6 Vict. c. 35), s. 163—Finance Act, 1894 (57 & 58 Vict. c. 30), s. 34.*

A limited co. registered under the Companies Acts is not exempt from liability to the payment of income tax by reason merely of its income not exceeding 160l. a year. MYLAM v. MARKET HARBOUR ADVERTISER CO.

Phillimore J. [1905] 1 K. B. 708

13. — *Company—Interest from foreign investments—Receipt in the United Kingdom—Income Tax Act, 1842 (5 & 6 Vict. c. 35), s. 100, Sched. D, Fourth Case—Income Tax Act, 1853 (16 & 17 Vict. c. 34), s. 2, Sched. D, s. 5.*

Interest arising from foreign securities and paid abroad is not "received in the United Kingdom" within the meaning of the Income Tax Act, 1842, s. 100, Sched. D, Fourth Case, and is therefore not chargeable with income tax under that clause, unless it is remitted to the United Kingdom.

REVENUE (Income Tax)—continued.

A life assurance society carried on business at home and abroad, the head office being in London, where the accounts and balance-sheets were made up, the profits ascertained and the dividends paid. The interest upon the society's foreign securities paid abroad was received there by their agents, and part of it was applied abroad for the purposes of the society. All the interest on foreign securities was taken into account in the balance-sheets upon which the profits were ascertained :—

Held, that taking the interest into account was not equivalent to a receipt in the United Kingdom, and that income tax was not chargeable upon that part of the interest which was not remitted to the United Kingdom.

The decision of the C. A., [1901] 1 K. B. 153, reversed. *GRESHAM LIFE ASSURANCE SOCIETY, LD. v. BISHOP* - H. L. (E.) [1902] W. N. 106; [1902] A. C. 287

Note.

Disapproved of by Ct. of Sess. (Sc.), *Standard Life Assurance Co. v. Allan*, [1902] W. N. 176. See No. 26, below.

14. — Company—Investments by company in the Colony—Taxable income—Victorian Income Tax Act, 1895, ss. 5, 10.

Sect. 10 of the Victorian Income Tax Act, 1895, provides a special mode of computing taxable income in favour of those cos. which, not having their principal office or place of business in Victoria, nevertheless have part of their "receipts or assets and liabilities" within the Colony :—

Held, that by the true construction of that section, the appellant co., in order to have the benefit thereof, must shew that it carries on part of its trade in the colony; the above expression representing the component parts of a trading co.'s balance-sheet :

Held, further, that the appellant being a mutual insurance co. which did not insure or otherwise trade in the colony, but only invested certain funds there, was not within the section. Its income derived from its Victorian investments was taxable income under s. 5 in the mode applicable to taxpayers generally. *SCOTTISH PROVIDENT INSTITUTION v. COMMISSIONER OF TAXES* P. C. [1901] A. C. 340

15. — Company—Residence — "Person residing in the United Kingdom"—Company registered abroad—Head office and directing power in United Kingdom—Income Tax Act, 1853 (16 & 17 Vict. c. 34), s. 2, Sched. D.

A co. registered abroad, but having its head office in London, where the meetings of the directors are held and where the directing and controlling power is exercised, is assessable to income tax on the whole of its profits as "a person residing in the United Kingdom" within the meaning of s. 2, Sched. D of the Income Tax Act, 1853. *GOERZ & CO. v. BELL* Channell J. [1904] W. N. 70 : [1904] 2 K. B. 136

16. — Company resident in United Kingdom—Preponderating majority of shares in company abroad—Control—Income Tax Act, 1842 (5 & 6 Vict. c. 35), s. 100, Sched. D, Case 1.

REVENUE (Income Tax)—continued.

An English co. carrying on business in the United Kingdom owned 98 per cent. of the shares in a foreign co., which gave it a preponderating influence in the control, election of directors, &c., of the foreign co. The remaining shares in the foreign co. were, however, held by independent persons, and there was no evidence that the English co. had ever attempted to control or interfere with the management of the foreign co. :—

Held, that the foreign co. was not carried on by the English co., nor was it the agent of the English co., and that the English co. was not, therefore, assessable to income tax under the first case of Sched. D of 5 & 6 Vict. c. 35, s. 100, upon the full amount of the profits of the foreign co.

Judgment of Phillimore J., [1902] 2 K. B. 450, affirmed. *KODAK, LD. v. CLARK*

C. A. [1903] W. N. 37; [1903] 1 K. B. 505

17. — Company resident in United Kingdom—Shares held in foreign company—Control—Income Tax Act, 1853 (16 & 17 Vict. c. 34), Sched. D.

An English co. carrying on business in the U. K. was the holder of all the shares in a German co. :—

Held, that that fact alone did not make the business of the German co. the business of the English co. so as to render the English co. liable to income tax under Sched. D. of 16 & 17 Vict. c. 34, upon the full amount of the profits made by the German co.; and that the English co. was only liable to pay income tax upon such profits of the German co. as had been received in this country.

Decision of Walton J., [1906] 2 K. B. 856, affirmed. *GRAMOPHONE AND TYPEWRITER, LD. v. STANLEY* C. A. [1908] W. N. 88; [1908] 2 K. B. 89

Note.

Followed by C. A. *Salmon v. Quin & Axtens, Ltd.*, [1909] 1 Ch. 311; H. L. (E.) [1909] A. C. 442. See COMPANY—Directors. 12. — Deduction of income tax—Separation deed — Alimony—Annuity. See next Case.

18. — Divorce—Separation deed—Alimony—Deduction of income tax—Income Tax Act, 1842 (5 & 6 Vict. c. 35), ss. 102, 103—Income Tax Act, 1853 (16 & 17 Vict. c. 34), s. 40—Annuity.

A divorce suit was compromised by the parties agreeing upon a deed of separation, whereby it was referred to an arbitrator to determine the amount of the wife's alimony, and, the arbitrator having fixed the amount, the husband, by a supplemental deed, covenanted to pay the annual sum awarded by the arbitrator to trustees in trust for the wife :—

Held, that the annuity was payable less income tax.

Decision of Kekewich J., [1906] W. N. 68; [1906] 1 Ch. 768, affirmed. *In re BARRY'S TRUSTS. BARRY v. SMART* - C. A. [1906] W. N. 153; C. A. [1906] 2 Ch. 358

— Duty of trustee to deduct income tax—Annuity.

See TRUSTEE—Income Tax. 1.

REVENUE (Income Tax)—continued.

19. — *Gas company—Standard rate of dividend—Payment of dividend free of income tax—Income Tax Act, 1842 (5 & 6 Vict. c. 35), ss. 40, 54, 60, Sched. A, No. III., r. 3.*

By the special Act of a gas co. it was provided that the profits to be divided among the shareholders in any year should not exceed a given rate :—

Held, that in arriving at the rate of dividend the profits ought to be calculated as inclusive and not exclusive of the amount payable for the year in respect of income tax.

The decision of the C. A., *Att.-Gen. v. Ashton Gas Co.*, [1904] 2 Ch. 621, affirmed. *ASHTON GAS CO. v. ATT.-GEN.* **H. L. (E.)** [1906] A. C. 10

— Incumbent of benefice.

See Nos. 7, 8, above.

20. — *Inhabited house duty—Annual value of premises—Premises let on lease—Covenant by lessor to pay fire insurance premium—Deduction—Annual value adopted for preceding year—Conclusiveness—Finance Act, 1905 (5 Edw. 7, c. 4), s. 6, sub-s. 3—House Tax Act, 1808 (48 Geo. 3, c. 55), Sched. B—House Tax Act, 1851 (14 & 15 Vict. c. 36), ss. 1, 2; Sched.—Income Tax Act, 1842 (5 & 6 Vict. c. 35), s. 60, Rule No. 1—Income Tax Act, 1853 (16 & 17 Vict. c. 34), s. 2, Sched. A.*

By s. 6, sub-s. 3, of the Finance Act, 1905 (which is a common form provision in the Finance Act of most years), "the annual value of any property which has been adopted for the purpose either of income tax under Schedules A and B in the Income Tax Act, 1853, or of inhabited house duty, during the year ending on April 5, 1905, shall be taken as the annual value of such property for the same purpose during the next subsequent year," but this provision is not to apply to the metropolis :—

Held, that the annual value adopted for the preceding year was by the above provision made conclusive of the annual value of the property during the next subsequent year for income tax and inhabited house duty.

Semble, where the lessor of premises covenants to pay the fire insurance premium thereon, a deduction in respect of the premium so paid cannot be made from the rent payable to him by the lessee for the purpose of arriving at the annual value of the premises for assessment to income tax under Sched. A and inhabited house duty. *TURNER v. CARLTON*

Channell J. [1909] 1 K. B. 932

21. — *Insurance (Fire)—Deductions for unexpired risks—Fire insurance company.*

A co. carrying on the business of fire, sickness, accident, and guarantee insurance (as distinguished from life insurance) is not entitled, in estimating the balance of its profits chargeable with income tax, to deduct or make any allowance for estimated risks unexpired at the end of the year.

Scottish Union and National Insurance Co. v. Inland Revenue, (1889) 16 R. 461, and *Imperial Fire Insurance Co. v. Wilson*, (1876) 35 L. T. 271, affirmed.

REVENUE (Income Tax)—continued.

Decision of the First Division of Ct. of Sess., (1907) S. C. 1004, affirmed. *GENERAL ACCIDENT, FIRE, AND LIFE ASSURANCE CORPORATION, LD. v. MCGOWAN* - **H. L. (Sc.)** [1908] **W. N. 95**; [1908] **A. C. 207**

22. — *Insurance, Premium on life—Deductions—Income Tax Act, 1853 (16 & 17 Vict. c. 34), s. 54.*

Where under a life insurance policy the insurer advances the annual premium to the assured as a loan on the security of the policy, and gives him receipts for the premium as "paid," the assured is not entitled to deduct the amount of the premium from his profits and gains under Sched. D. of the Income Tax Act; for it is not in fact "paid by him" within the meaning of the Income Tax Act, 1853 (16 & 17 Vict. c. 34), s. 54.

So held by the Earl of Halsbury L.C. and Lords Macnaghten, Davey, Robertson, and Lindley, Lord James of Hereford dissenting.

The decision of the C. A., [1903] 1 K. B. 514, affirmed. *HUNTER v. REX* - **H. L. (E.)** [1904] **W. N. 66**; [1904] **A. C. 161**

23. — *Interest of money—Compensation fund—Deposit in a bank—Assessability of quarter sessions—Payment of interest without deduction of tax—Liability of payee—Income Tax Act, 1842 (5 & 6 Vict. c. 35), ss. 40, 43; Sched. D—Customs and Inland Revenue Act, 1888 (51 & 52 Vict. c. 8), s. 24, sub-s. 3—Licensing Act, 1904 (4 Edw. 7, c. 23), s. 3; Licensing Rules, 1904, r. 60.*

Quarter sessions, as the compensation authority under the Licensing Act, 1904, are assessable to income tax in respect of the interest payable upon so much of the compensation fund as is placed upon deposit in a bank.

Sect. 24, sub-s. 3, of the Customs and Inland Revenue Act, 1888—which provides that upon payment of any interest of money charged with income tax under Sched. D, and not payable out of profits or gains brought into charge to such tax, the person paying the interest shall deduct thereout the rate of income tax in force, and shall render an account to the Commissioners of Inland Revenue of the amount so deducted, and such amount shall be a debt from such person to the Crown—does not relieve the person to whom the interest is paid from liability to pay the income tax where the tax has not been deducted by the person who pays the interest, but merely gives an additional remedy to the Crown against the latter person. *GLAMORGAN QUARTER SESSIONS v. WILSON* - **Bray J.** [1910] **1 K. B. 725**

24. — *Interest or annuities—Deduction of income tax from—Customs and Inland Revenue Act, 1888 (51 & 52 Vict. c. 8), s. 24, sub-s. 3.*

In paying the dividends on their consolidated stock out of the Consolidated Loans Fund, the London County Council are bound under s. 24, sub-s. 3, of the Customs and Inland Revenue Act, 1888, to account to the Crown for the income tax which they deduct

REVENUE (Income Tax)—continued.

from the dividends, so far, only as the dividends are not paid out of their income which has already been charged with income tax.

Where the dividends are paid partly out of rents and profits from their lands charged with income tax under Sched. A, partly out of interests on loans to local authorities charged with income tax under Sched. D and (where those receipts are insufficient) partly out of moneys raised by rates, the council are entitled to retain for their own benefit so much of the deduction for income tax which they make on the dividends as is equal to the income tax paid both under Sched. A and Sched. D.

Decision of C. A., [1900] 1 Q. B. 192, reversed. **LONDON COUNTY COUNCIL v. ATT.-GEN.** **H. L. (E.) [1901] A. C. 26**

—Interest on borrowed money—Charge upon property in excess of annual value—Right to deduct and retain income tax.
See No. 11, above.

26. — Investments — Colonial investments, Interest from—Remittances not identified as capital—Income Tax Act, 1842 (5 & 6 Vict. c. 35), s. 100, Sched. D, Case 4.

By s. 100 of the Income Tax Act of 1842 it is provided that the duty chargeable under Sched. D, Case 4, in respect of interest from "securities" in the Colonies, &c., is to be computed on the sums which have been, or will be, received in Great Britain in the current year.

A mutual life assurance society with its head office in Edinburgh, and where its management was exclusively vested in directors, sent to Australia for investment down to the end of 1898 a total sum of 1,504,000*l.* The total remittances made to this country to the same date was 716,500*l.*, while the total funds in Australia, including accumulated interest and deducting all Australian expenses to the same date, was 1,822,207*l.* The funds still remaining in Australia thus exceeded by 318,207*l.* the sums sent there for investment. The amount remitted to this country from Australia in 1898 was 217,350*l.* All this except 5000*l.* was intermixed with the society's funds in Australia, and the society did not shew in their statement that the balance of 212,350*l.* was in fact capital sent home:—

Held, affirming the decision of the First Div. of the Ct. of Sess., (1901) 3 F. 874, that the Income Tax Commrs. had rightly charged the 212,350*l.* with income tax. **SCOTTISH PROVIDENT INSTITUTION v. ALLAN**

H. L. (Sc.) [1903] W. N. 86; [1903] A. C. 129

—Licensing Acts.

See under LICENSING ACTS.

27. — Master—Assistant master at school—Increase of salary—Liability to income tax—Scheme for provident fund—Income Tax Acts, Sched. E.

At a meeting of the Commissioners, S., an

REVENUE (Income Tax)—continued.

assistant master, appealed against an assessment made upon him, under Sched. E of the Income Tax Acts, in the sum of 385*l.*, in respect of his emoluments as assistant master received from the governors of the college for the year ending April 5, 1901, on the ground that the assessment included 35*l.*, not liable to taxation, being the amount placed to his credit by the governors under a provident fund scheme for the year 1900. S. was an assistant master having not less than five years', but less than fifteen years' service.

The scheme in question provided with respect to such assistant masters that "the following increase of salaries shall be granted from the date on which the scheme came into operation, subject to the conditions hereinafter mentioned"—

(a) An increase of 5 per cent., and (c) a further addition of 5 per cent. from the same date, subject to the conditions that an assistant master having less than ten years' service, who resigned his appointment or from any other cause than ill-health ceased to belong to the college, should be entitled to receive the total increase sanctioned by (a), and the accumulations thereof, but should not be entitled to receive the additional increase sanctioned by (c), or the accumulations thereof, and that any master who was removed for, or had to resign on account of, misconduct should not receive the additional increase sanctioned by (a) or the accumulations thereof. By other provisions of the scheme all assistant masters were required to become members of the fund at the expiration of five years from their respective appointments. The increases of salary provided by the scheme were not to be paid to the masters, but were to be retained by the governors and accumulated at compound interest for the purpose of forming the provident fund. Masters who had served ten years or upwards, and who retired before the age of sixty for any other cause than misconduct, were to receive the total sums due to them under (a) and (c), and the accumulations thereof. The additional increase of salary prescribed by (c) remaining unissued was to remain a credit to the fund for the purpose of enabling the governors to deal with exceptional cases requiring and deserving assistance:—

Held, that the true effect of the scheme was to add 35*l.* to the salary of the respondent, and that he was liable to pay income tax upon that sum under Sched. E. **SMITH (SURVEYOR OF TAXES) v. STRETTON**

Channell J.
[1904] W. N. 90

28. — Mortgage—Interest at 5 per cent. per annum, payable in lump sum at uncertain date—Deduction of income tax—"Yearly interest"—Income Tax Act, 1853 (16 & 17 Vict. c. 34), s. 40—Revenue (No. 1) Act, 1864 (27 & 28 Vict. c. 18), s. 15.

By a mortgage of June 1, 1888, the mortgagor covenanted that on his death or on his son's death, whichever event should first happen, he, his executors, administrators, or

REVENUE (Income Tax)—continued.

assigns, would pay to the mortgagee the principal sum secured, together with simple interest thereon at the rate of 5 per cent. per annum, reckoned from Aug. 10, 1887, up to the time of such death, and, if the aggregate amount of such sum and interest or any part thereof should not then be paid, would pay interest on the unpaid part by equal half-yearly payments, the first of such payments to be made at the expiration of six calendar months from the death of the mortgagor or his son, whichever event should first happen, and would make these payments without any deduction. The mortgagor predeceased his son and died in 1906. His executor paid to the mortgagee interest on the aggregate sum, consisting of principal and interest found due at the mortgagor's death. He now proposed to pay off the aggregate amount due on the mortgage, and he claimed the right in doing so to deduct income tax on so much of the aggregate sum as represented interest.

Held, that the interest had not been capitalized by the contract between the parties; that, inasmuch as the interest was calculable by the year, it was "yearly interest" within s. 40 of the Income Tax Act, 1853, although it was payable in a lump sum at an uncertain date; and that the mortgagor's executor was entitled to deduct income tax.

Bebb v. Bunny, (1854) 1 K. & J. 216, followed.

Goslings & Sharpe v. Blake, (1889) 23 Q. B. D. 324, distinguished. *In re CRAVEN'S MORTGAGE*. DAVIES v. CRAVEN

Warrington J. [1907] W. N. 187; [1907] 2 Ch. 448

29. — *Neglect to deliver "a true and correct statement"—Property and income tax—Return of profits under Sched. D—"Deliver statement as aforesaid"—Income Tax Act, 1842 (5 & 6 Vict. c. 35), ss. 52, 55.*

The respondent, being required by s. 52 of the Income Tax Act, 1842, to deliver "a true and correct statement in writing" of his gains and profits under Sched. D, delivered an incorrect statement, not fraudulently, but (as the jury found) negligently, that is to say, not to the best of his judgment and belief according to the rules:—

Held, that the penalty imposed by s. 55 of the same Act for neglecting "to deliver any statement as aforesaid" is not limited to a case of non-delivery, but is applicable also to the present case.

Decision of the C. A., [1909] 1 K. B. 694. reversed and decision of Lord Alverstone C.J. restored. *ATT.-GEN. v. TILL*

H. L. (E.) [1910] W. N. 249; [1910] A. C. 50

— *New South Wales Land and Income Tax Assessment Act, 1895—Default assessment conclusive unless questioned under the Act.*

See NEW SOUTH WALES. 31.

30. — *Nitrate grounds situate abroad—Profits and gains—Deduction to meet exhaustion of material—Deduction on account of diminu-*

REVENUE (Income Tax)—continued.

tion of capital—Income Tax Act, 1842 (5 & 6 Vict. c. 35), s. 100, Sched. D; First Case, r. 3; s. 159.

An English co. owned land abroad which they had bought for a large sum, and where they carried on a manufacture of nitrates and iodine by working up certain deposits found on the land. In estimating their yearly profits and gains from the sale of the nitrates and iodine for assessment to the income tax under Sched. D:—

Held, that the co. were not entitled to make any deduction in respect of the exhaustion of the deposits.

The decision of the C. A., [1905] 1 K. B. 184, affirmed. *ALIANZA CO. v. BELL*

H. L. (E.) [1905] W. N. 168; [1906] A. C. 18

31. — *Prohibition—Jurisdiction of Commissioners for district—Trade carried on partly in Great Britain—Income Tax Act, 1842 (5 & 6 Vict. c. 35), ss. 106, 108, 111—117.*

An English co., incorporated under the Companies Act, had its registered office in the district of Clerkenwell, and there carried on a business, in respect of the profits of which they were chargeable to income tax under Sched. D by the Commrs. for that district. For the purpose of the assessment of the co. in respect of their profits, the Commrs. drew the inferences of fact that, having regard to the relations existing between the co. and an American co. trading at Rochester in the United States, the bulk of the shares in which was held by the English co., the business and profits of the American co. were technically the business and profits of the English co., that the head, seat, and directing power of the co. were at the registered office in London, and that, if the profits of the business carried on at Rochester were technically the profits of the American co., that co. was for all purposes the agent of the English co. The English co. applied for a writ of prohibition to the Commrs. to prohibit them from assessing that co. in respect of the profits of the American co., on the ground that the business of the American co. was not in truth the business of the English co., and that the Commrs. therefore had not, and could not by an erroneous decision on the facts give themselves, jurisdiction to assess the English co. in respect of the profits of that business:—

Held, that, the Commrs. having jurisdiction under the Income Tax Act, 1842, s. 106, to assess the English co. to income tax in respect of profits of a business, carried on either wholly or in part only in Great Britain, they had for the purposes of that assessment jurisdiction to decide all questions of fact necessary for ascertaining the amount of those profits, and therefore prohibition would not lie, the proper remedy, if the decision of the Commrs. were wrong in point of law, being by appeal upon a case stated. *REX v. GENERAL COMMRS. OF TAXES FOR THE DISTRICT OF CLERKENWELL* **C. A.** [1901] 2 K. B. 879

32. — *Public offices or employment of profit—Incumbent of benefice—Grant from Queen Victoria Clergy Sustentance Fund—Income Tax Act, 1842*

REVENUE (Income Tax)—continued.

(5 & 6 Vict. c. 35), s. 146; 1853 (16 & 17 Vict. c. 34), s. 2, *Sched. E.*

The Court was of opinion that the grant was not in the nature of a personal gift to the particular incumbent, but was a grant in augmentation of the value of the benefice; they therefore held that the amount of the grant was chargeable with income tax under *Sched. E.* as being profits accruing by reason of the appellant's office or employment and reversed the decision of the Div. Ct., [1901] 2 K. B. 761. **HERBERT v. MCQUADE**

C. A. [1902] W. N. 140; [1902] 2 K. B. 631

33. — Residence—"Persons residing in the United Kingdom"—*Company resident abroad—Head offices abroad—General meetings abroad—Directors' meetings in England and abroad—Majority of directors in England—Company's business in England and abroad—Income Tax Act, 1853 (16 & 17 Vict. c. 34), s. 2, Sched. D.*

A foreign corporation may reside in this country for the purposes of income tax. The test of residence is not where it is registered, but where it really keeps house and does its real business. The real business is carried on where the central management and control actually abides.

Whether any particular case falls within that rule is a pure question of fact, to be determined not according to the construction of this or that regulation or by-law, but upon a scrutiny of the course of business and trading.

Decision of the C. A., [1905] 2 K. B. 612, affirmed. **DE BEERS CONSOLIDATED MINES, LD. v. HOWE (SURVEYOR OF TAXES)**

H. L. (E.) [1906] W. N. 168; [1906] A. C. 455

34. — Salary—Deductions—Contribution to Thrift Fund—Sum payable or chargeable by virtue of Act of Parliament—*Income Tax Act, 1842 (5 & 6 Vict. c. 35), s. 146—Manchester Corporation Act, 1891 (54 & 55 Vict. c. cxxvii).*

A municipal corporation were by a local Act empowered to establish a fund for the encouragement of thrift among their officers and servants, and with a view to providing a sum of money which, in the event of the retirement or death of any person in the service of the corporation, who had contributed to the fund, should be available for himself or his representatives, and to frame a scheme for that purpose. By a scheme framed by the corporation in pursuance of the Act, it was provided that persons in the service of the corporation should respectively contribute to the fund a certain percentage of their salaries, to be from time to time deducted from those salaries by the corporation. In accordance with the requirements of the Act, the scheme provided that the amount so contributed by each contributor should be repaid with interest to him, upon his retirement from the service of the corporation, or in the event of his "death in that service," to his personal representatives:—

Held, that amounts deducted in pursuance of the scheme from the salaries of persons in the service of the corporation did not come within the words "sums payable or chargeable on the same by virtue of any Act of Parliament where the same are really and bona fide paid and borne

REVENUE (Income Tax)—continued.

by the party to be charged," and therefore they could not be deducted from the amounts of the salaries for the purpose of assessment to income tax under *Sched. E.*

Appeals from judgments of Phillimore J., [1902] 2 K. B. 298. **HUDSON v. GRIBBLE. BELL v. GRIBBLE**

C. A. [1903] W. N. 37; [1903] 1 Ch. 517

—Sale of annuities—Assessment on revenue from invested funds.

See No. 2, above.

35. — Sewer—Vested in local authority—"Hereditament"—"Capable of actual occupation"—*Income Tax Act, 1842 (5 & 6 Vict. c. 35), s. 60; Sched. A, Rules I., III.*

A sewer was made, controlled by, and vested in a local authority in pursuance of statutory powers. It was rated to the poor rate. The local authority made no profit or gain out of it. The cost of making and maintaining it was paid for by a public loan repayable by annual instalments. The moneys for the repayment were found partly by contributions levied from neighbouring district councils whose sewage went through the sewer and partly from rates; and this was the only income. Upon an assessment to income tax as to a portion of the sewer:—

Held, that the local authority was chargeable to income tax in respect of the annual value of that portion of the sewer as a hereditament capable of actual occupation under the *Income Tax Act, 1842, s. 60; Sched. A, Rule I.*

Decisions of Walton J., [1906] 1 K. B. 294, and of the C. A., [1907] 1 K. B. 490, affirmed. **YSTRADYFODWG AND PONTYPRIDD MAIN SEWERAGE BOARD v. BENSTED**

H. L. (E.) [1907] W. N. 149; [1907] A. C. 264

36. — Thames, River—Exemption—Existing tax—*Thames Conservancy Act, 1894 (57 & 58 Vict. c. clxxvii), s. 289.*

Sect. 289 of the Thames Conservancy Act, 1894, provides that, "notwithstanding anything in any Act," the properties therein mentioned shall be exempt from all parl. rates, taxes, and payments whatsoever.

The respondents, the conservators of the river Thames, claimed exemption under this section from the payment of income tax for the years 1905 and 1906 in respect of properties within the section.

The surveyor of taxes contended that, income tax being an annual tax, the income tax for the years 1905 and 1906 was not a tax existing at the date of the passing of the Thames Conservancy Act, 1894, and that the respondents were, therefore, not entitled to the exemption claimed:—

Held that, though income tax is in form an annual tax, the income tax payable in the years subsequent to 1894 must, for the purpose of the exemption, be deemed to be a tax which was existing at the date of the passing of the Thames Conservancy Act, 1894, and that the respondents were, therefore, entitled to the exemption claimed. **STEWART v. THAMES CONSERVATORS**

Bray J. [1906] 1 K. B. 893

REVENUE (Income Tax)—continued.

37. — *Trade—Balance of profits—Deductions—Expenses incurred in earning profits—Loss arising from negligence—Hotel—Injury to guest—Damages—Income Tax Act, 1842 (5 & 6 Vict. c. 35), s. 100; Sched. D.*

A brewery co. owned an inn which was carried on by a manager as part of their business. A customer sleeping in the inn was injured by the fall of a chimney, and recovered damages and costs against the co. for the injury, which was owing to the negligence of the co.'s servants.

Held, that the damages and costs could not be deducted in estimating the balance of profits for the purpose of the income tax, the loss not being connected with or arising out of the trade, and not being money wholly and exclusively laid out or expended for the purposes of the trade.

Decision of the C. A., [1905] 2 K. B. 350, affirmed. **STRONG & CO., OF ROMSEY, LD. v. WOODFIELD (SURVEYOR OF TAXES)**

H. L. (E.) [1906] W. N. 169; [1906] A. C. 446

38. — *Trade, Manufacture, &c., Profits of—Average of three years preceding year of assessment—Trade first set up within period of three years—Single ship company—Income Tax Act, 1842 (5 & 6 Vict. c. 35), s. 100; Sched. D, Case 1, r. 1.*

By s. 100 of the Income Tax Act, 1842, and by case 1, r. 1, in Sched. D of that Act, duty to be charged in respect of any trade, manufacture, adventure, or concern in the nature of trade, not contained in any other schedule of the Act, is to be computed on a sum not less than the full amount of the balance of the profits or gains of such trade, manufacture, adventure, or concern upon a fair and just average of three years, ending on such day of the year immediately preceding the year of assessment on which the accounts of the said trade, manufacture, adventure, or concern are usually made up, or on April 5 preceding the year of assessment; provided always, that in cases where the trade, manufacture, adventure, or concern has been set up and commenced within the said period of three years, the computation is to be made for one year on the average of the balance of the profits and gains from the period of first setting up the same.

A limited co. registered under the Companies Acts, 1862 to 1904, was formed to purchase and trade with a certain steamship mentioned in the memorandum of association and, in the event of the loss, sale, or disposition of that vessel or of any vessel subsequently acquired, to acquire from time to time some other steamship, but so that the co. should not own at any one time more than one ship; and the co. was to carry on the business of shipowners with respect to such steamship. The articles of association provided that there should be a manager of the co. in lieu of directors; that the manager might insure the steamship for the time being owned by the co.; and that he might in the event of the loss of the steamship for the time being owned by the co., with the approval of the shareholders, buy another steamship out of the proceeds of the insurances of the ship so lost, or he was to divide

REVENUE (Income Tax)—continued.

and pay the net proceeds of the insurances rateably amongst the shareholders and wind up the co.

The co. acquired the steamship mentioned in the memorandum of association and traded with her from 1901 till April 1, 1906, when she was lost at sea. In May, 1906, the manager of the co., with the approval of the shareholders, purchased a second steamship out of the proceeds of the insurances on the first. On Oct. 17, 1906, the co. commenced trading with the second steamship:—

Held, that the co. carried on one trade or adventure throughout with the two ships in succession, and that the trade or adventure which they carried on with the second ship was not first set up on Oct. 17, 1906, when that ship began trading.

Therefore, for the purpose of assessment to income tax for the year 1907–8,

Held, that the co. were to be assessed on the balance of their profits and gains on an average of three years preceding the year of assessment, and not for one year on the average of the balance of the profits and gains from Oct. 17, 1906. **MERCHISTON STEAMSHIP CO. v. TURNER**
Bray J. [1910] 2 K. B. 923

39. — *Trade, Profits of—Deduction for depreciation of plant by wear and tear—Customs and Inland Revenue Act, 1878 (41 & 42 Vict. c. 15), s. 12.*

By s. 12 of the Customs and Inland Revenue Act, 1878, income tax commrs., in assessing trade profits or gains, are to allow "such deduction as they may think just and reasonable as representing the diminished value by reason of wear and tear during the year of any machinery or plant used for the purpose of the concern and belonging to the person or co. by whom the concern is carried on."

A firm of shipowners owned a fleet of vessels of the average age of thirty-one years. Prior to the year of assessment there had been allowed yearly from the gross profits assessed to Sched. D an amount by way of deduction for diminished value by reason of wear and tear, and sums amounting in the aggregate to 96 per cent. on the first or prime cost of the vessels (including such sums as had been expended upon them by way of addition or repairs other than ordinary annual repairs) had been allowed: the existing, or breaking-up, value of the vessels during the year of assessment was more than 4 per cent. of the first or prime cost. There was no agreement between the shipowners and the commrs. that the allowance for depreciation should be calculated on the basis of its being an allowance which would at the end of a period of years, taking into account the breaking-up value of the vessels, replace the shipowners' capital, and that after that date no further allowance should be made:—

Held, that the commrs. were bound under s. 12 to consider to what extent there had been a diminution of value by reason of wear and tear during the year of assessment and to decide what was a just and reasonable allowance to make in respect of such depreciation, and that

REVENUE (Income Tax)—continued.

they were not entitled to take into account the allowances made in previous years :—

Held, also, that a hulk, which had formerly been a sailing-ship, but which had been dismantled and had had its rudder removed and was used as a floating warehouse for coal, was "plant" within the meaning of the section.

JOHN HALL, JUN. & CO. v. RICKMAN

Walton J. [1906] 1 K. B. 311

— Traders (Association of) for keeping up prices—Deductions.

See next Case.

40. — Traders—Deductions—Association of traders for keeping up prices—Payments made by trader to association—*"Money wholly and exclusively laid out or expended for the purposes of such trade"*—Income Tax Act, 1842 (5 & 6 Vict. c. 35), s. 100, Cases 1 and 2, r. 1; Sched. D.

The appellants, who were manufacturers of steel hoops, were, with two other firms who carried on similar businesses, members of an association, called the Steel Hoop Manufacturers' Association, which was formed for the purpose of keeping up prices and thus enabling its members to earn larger profits by agreeing to adhere to fixed prices and thereby preventing competition among themselves. By the rules of the association each of the firms was entitled to a fixed percentage of the total orders; the books of each firm shewing the quantities of steel hoops invoiced were to be audited every six months, and an account was then to be made up shewing the proportion due to each firm, and in the event of any firm having invoiced more than its proper percentage it was to pay into a pool the sum of 10s. on each ton of the excess, which amount the association distributed in due proportion amongst those firms who had invoiced less than their proportionate quantities. The appellants, in arriving at the amount of the profits of their trade assessable to income tax, claimed to deduct the excess of the total payments made by them to the association over the amounts received therefrom on an average of the three preceding years, such excess consisting of the excess of payments to the pool over the receipts therefrom, and payments towards the administration expenses of the association :—

Held, that the excess so paid by the appellants was "money wholly and exclusively laid out or expended for the purposes of" their trade within the meaning of r. 1 of the rules applicable to cases 1 and 2 of s. 100, Sched. D, of the Income Tax Act, 1842, and that therefore the appellants were entitled to the deduction claimed. GUEST, KEEN, & NETTLEFOLDS, LD. v. FOWLER

Bray J. [1910] 1 K. B. 713

41. — Unincorporated association—Exemption—Income not exceeding 160*l.*—Income Tax Act, 1842 (5 & 6 Vict. c. 35), ss. 40, 163, 168, 192—Finance Act, 1894 (57 & 58 Vict. c. 30), s. 34.

An unincorporated association is not exempt from liability to the payment of income tax by reason of its income not exceeding 160*l.* a year.

Decision of the First Division of the Ct. of Sess. (as the Ct. of Exchequer), Scotland, (1904)

REVENUE (Income Tax)—continued.

7 F. 119, reversed. CURTIS v. OLD MONKLAND CONSERVATIVE ASSOCIATION - H. L. (Sc.) [1906] W. N. 3; [1906] A. C. 86

— Victoria—Validity of income tax imposed by a State on a Commonwealth salary.

See VICTORIA. 7.

42. — Water—Burgh waterworks—Profits of trading in water—Sale of water outside compulsory area—Application of profits to sinking fund.

The local authority of the burgh of Irvine, in the exercise of their statutory powers, entered into contracts to supply with water the parish of Stevenston and the burgh of Saltcoats, districts outside the compulsory area of Irvine. The contracts provided that a sum should be payable annually by Stevenston and Saltcoats respectively, the amount of which, subject to a deduction of 10 per cent., was to be the amount produced by a compulsory water rate upon all assessable subjects within these districts, leviable by their own local authorities. The rate of assessment was to be the same as that from time to time imposed within its compulsory area by the local authority of Irvine :—

Held, (1) that the sums payable by Stevenston and Saltcoats, although leviable in these districts as a compulsory rate, were, as regarded Irvine, the price of water supplied outside its compulsory area, and that the surplus, so far as derivable from this source, was profit, and chargeable with income tax; and (2) following *Mersey Docks and Harbour Board v. Lucas*, (1883) 8 App. Cas. 891, that it was not a valid ground of exemption that profit so earned was appropriated to a sinking fund. HARRIS v. IRVINE BURGH CORPORATION, (1900) 2 F. 1080

Ct. of Sess. (Sc.) [1901] W. N. 182

Inhabited House Duty.

See under REVENUE—House Duty.

Land Revenue Records and Enrolments.

See under LAND REVENUE RECORDS AND ENROLMENTS.

Land Tax.

See under LAND TAX. 1.

Land Values.

Finance (1909-10) Act, 1910 — Increment Value Duty. Rules made by the Commissioners of Inland Revenue under s. 3, sub-ss. 2 and 3. Reprint from W. N. 1910 (July 30), p. 257. See CURRENT INDEX, 1910, p. civ.

Finance (1909-10) Act, 1910 — The Land Values (Reference) Rules, 1910, dated July 25, 1910, made by the Reference Committee for England under s. 33 of the Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8). Reprint from W. N. 1910 (Sept. 10), p. 281. See CURRENT INDEX, p. civi.

Landlord's Property Tax.

— Exemptions—"Almshouse"—Home for ladies in reduced circumstances.

See REVENUE—House Duty. 5.

REVENUE—continued.**Legacy Duty.**

1. — *Expectancy—Assignment by person entitled in expectancy—Persons having "an absolute interest therein," Who are—Things given to be enjoyed in succession—Legacy Duty Act, 1796 (36 Geo. 3, c. 52), s. 14.*

By s. 14 of 36 Geo. 3, c. 52, no legacy duty shall be paid on articles or things not yielding any income, and given for the benefit of or to be enjoyed by different persons in succession, whilst the same shall be so enjoyed in kind only by persons not having any power of selling or disposing thereof so as to convert the same into money or other property yielding an income; but if the same shall come to any persons "having an absolute interest therein," then legacy duty shall be chargeable and paid thereon by those persons.

By the will of the second Marquis of Ailesbury certain articles and things were directed to be enjoyed as heirlooms by the person or persons for the time being beneficially entitled to the testator's mansion-house under the limitations of existing settlements. At the testator's death the mansion-house stood limited, under those settlements, to the use of the third Marquis for life, with the remainder to the use of Viscount Saverlake in tail male, with remainders over. Subsequently, by a resettlement made in the lifetime of the third Marquis, the estate tail in expectancy of Viscount Saverlake was cut down to a life interest, with limitations over; and the heirlooms were assigned to trustees upon trust to allow them to go, devolve, and remain as heirlooms, together with the mansion-house, according to the limitations of the resettlement. Viscount Saverlake died, having survived the third Marquis:—

Held, that the trustees of the resettlement were persons "having an absolute interest" in the articles and things within the meaning of s. 14, and were, therefore, liable to pay legacy duty in respect of them. *ATT.-GEN. v. BRUCE*

Div. Ct. [1901] 2 K. B. 391

— Liability of legatee.

See ANNUITY. 11.

2. — *Settlement Indemnity, Right to—Reversionary share—Settlement of part—Covenant for further assurance.*

In all cases of assignment of reversionary interests the legacy duty which becomes payable on their falling into possession falls, in the absence of express contract, on the assignee.

Where the owner of a reversionary interest settles a part of it, there is no rule which throws the burden of the legacy duty upon the part retained, and a covenant for further assurance does not bind the settlor to indemnify the settled fund against legacy duty. *In re REPINGTON. WODERHOUSE v. SCOBELL*

Farwell J. [1904] W. N. 88; [1904] 1 Ch. 811

Licences.

See also under PLATE.

REVENUE—continued.**Licensing Acts.**

— Licensing Acts—Compensation on non-renewal of licence—Mode of ascertaining value of licence.

See under LICENSING ACTS.

Liquor Licences Duties.

Finance (1909-10) Act. 1910. Liquor Licences Duties. Clubs, Regulations, dated July 9, 1910, made by the Commissioners of Customs and Excise under s. 48 (5.) of the Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8). Reprint from W. N. 1910 (Aug. 20), p. 270. See CURRENT INDEX, 1910, p. cvi.

Male Servants.

See under REVENUE—Servants.

Motor Cars.

See under MOTOR CARS.

National Debt.

See under NATIONAL DEBT.

Plate.

1. — *Licence to deal in plate—Sale of packets of tea containing coupons—Prices consisting of plate Revenue Act, 1867 (30 & 31 Vict. c. 90), ss. 1, 3.*

By 30 & 31 Vict. c. 90, s. 3, it is made an offence for a person to do any act or carry on any trade or business for which a licence to deal in plate is required without having a licence.

The appellants sold packets of tea each containing a coupon, and gave notice that they would give prizes, consisting, amongst other things, of gold watches, for the largest number of these coupons presented to them by persons during a certain period:—

Held, that this was a dealing in plate for which a licence was required, and that the appellants were, therefore, rightly convicted under the section. *SCOTT & CO. v. SOLOMON*

Div. Ct. [1905] 1 K. B. 577

Practice.

— Costs—Revenue cases—Special case—Costs before case put on file—Practice.

See COSTS. 52.

Probate Duty.

— Duty claimed on property subject to special power of appointment by deceased.

See NEW SOUTH WALES. 28.

— Estate duty—Exemption—Trust for conversion into realty—Payment of probate duty.

See REVENUE—Estate Duty. 8.

— New South Wales Stamp Duties Act—Share of deceased partner.

See NEW SOUTH WALES. 32.

— Specialty debt in New South Wales liable to duty in Victoria.

See VICTORIA. 6.

REVENUE (Probate Duty)—continued.

- Will—Direction to pay out of specific fund—
Will made before Finance Act, 1894—
Death after Act—Estate duty.
See **WILL—Testamentary Expenses**. 20.

Servants.

1. — *Male servant*—"House porter"—Porter employed at block of flats—Employment in trade or business—Revenue Act, 1869 (32 & 33 Vict. c. 14), ss. 18, 19.

A male servant was employed as porter at a block of residential flats, which were let to different tenants. His duties were to attend, work, and clean the lifts, to keep the brasswork, staircases, front steps, and back yards clean, to take coals to the various flats, to bring down the dustbins by means of trade lifts from each flat, to attend in the hall and open the doors when necessary, and to call cabs or fetch carriages and carry luggage for the tenants:—

Held, that the servant was a house porter and therefore a "male servant" within the definition of that term in s. 19, sub-s. 3, of the Revenue Act, 1869, and that therefore his employer was liable to pay the duty imposed in respect of him by s. 18 of the Act.

There is no general exemption from duty contained in the Revenue Act, 1869, in respect of a male servant employed for the purposes of a trade or business.

Whiteley v. Burns, [1908] 1 K. B. 705, considered. **MARCHANT v. LONDON COUNTY COUNCIL** Div. Ct. [1910] W. N. 148; [1910] 2 K. B. 379

2. — *"Male servant"*—Stable-boy—Apprentice—Assessed taxes—Revenue Act, 1869 (32 & 33 Vict. c. 14), s. 19, sub-s. 3.

The employer of an apprentice under a bona fide contract of apprenticeship is not required to take out a licence for the apprentice as a male servant under s. 18 of the Revenue Act, 1869, even though the apprentice is employed in one of the capacities specified in the definition of "male servant" in s. 19, sub-s. 3, of that Act. **HORAN v. HAYHOE** Div. Ct. [1910] W. N. 14; [1904] 1 K. B. 288

3. — *Male servant*—Waiter—Cook—Steward—Persons employed as in trading establishment—Customs and Inland Revenue Act, 1869 (32 & 33 Vict. c. 14), s. 19.

The Customs and Inland Revenue Act, 1869, which imposes a tax upon male servants, is prima facie intended to apply only to servants employed in private establishments, and not to servants employed for purposes of trade, even though they may be employed in any of the capacities enumerated in the Act as being included in the expression "male servant." **WHITELEY v. BURNS** - Div. Ct. [1908] W. N. 42; [1908] 1 K. B. 505

Note.

This case was discussed by Div. Ct., *Marchant v. London County Council*, [1910] 2 K. B. 379. See No. 1, above.

Settlement Estate Duty.

See under **REVENUE—Estate Duty**.

REVENUE—continued.**Stamps.****(Fees and Stamps.)**

Reduction of Stamp Duty on Marine Policies for a Voyage. Finance Act, 1908 (8 Edw. 7, c. 16), s. 5.

1. — *Agreement for sale*—Goodwill—Agreement "made" in the United Kingdom—"Property locally situate out of the United Kingdom"—Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 59, sub-s. 1.

By s. 59, sub-s. 1, of the Stamp Act, 1891, any contract or agreement "made" in the United Kingdom for the sale of any estate or interest in any property "except lands . . . or property locally situate out of the United Kingdom . . ." is chargeable with the same ad valorem duty as if it were a conveyance on sale.

An agreement is "made" in the United Kingdom within the meaning of that section if it is executed in the United Kingdom by a party to the agreement whose execution is required to make the instrument on the face of it complete.

The words "property locally situate out of the United Kingdom" are not confined to realty and may include the goodwill of a business.

An agreement in writing to sell the premises of a wholesale manufacturing business carried on abroad together with the goodwill of the business for a lump sum was executed by the vendor abroad and by the purchaser in England. The vendor covenanted not to engage in any similar trade within fifty miles of the existing premises. All the customers of the business were abroad:—

Held, that the agreement was "made" in England, but (the Earl of Halsbury L.C. dissenting) that the goodwill was "property locally situate out of the United Kingdom" within the meaning of the section, and that the agreement was therefore not chargeable with the ad valorem duty.

The decision of the C. A., [1900] 1 Q. B. 310, affirmed.

Smelting Co. of Australia, Ltd. v. Inland Revenue Commrs., [1897] 1 Q. B. 175, commented on. **INLAND REVENUE COMMS. v. MULLER & CO.'S MARGARINE, LD.**

H. L. (E.) [1901] W. N. 110; [1901] A. C. 217

— Bailiffs—High bailiff's fee.

See under **COUNTY COURT—Bailiffs**.

2. — *Company*—Capital of company—"Increase of registered capital"—Stamp duty—Resolution of company authorizing directors to increase capital—Subsequent issue of shares by directors—Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 112.

By s. 112 of the Stamp Act, 1891, "a statement of the amount which is to form the nominal share capital of any co. to be registered with limited liability shall be delivered to the Registrar of Joint Stock Companies . . . and a statement of the amount of any increase of registered capital now registered or to be registered with limited liability shall be delivered to the registrar, and every such statement shall be charged with an ad valorem stamp duty of 2s.

REVENUE (Stamps)—continued.

for every 100l. . . . of the amount of such capital or increase of capital, as the case may be."

The articles of association of a co. gave the directors power, with the sanction of a general meeting, to increase the capital of the co. by the creation and issue of new shares. A resolution was passed at a general meeting of the co. that "the directors be, and they are hereby authorized to increase the capital of the co. by an amount not exceeding the nominal sum of 5,000,000l., by the creation and issue from time to time of new ordinary shares of 5l. each." The directors thereupon passed a resolution that "the capital of the co. be increased by 200,000l. by the creation and issue of 40,000 new ordinary shares of 5l. each"; on July 1, 1908, the directors passed a further resolution increasing the capital by 2,800,000l. The Crown claimed stamp duty under s. 112 of the Stamp Act, 1891, in respect of an increase of capital of 5,000,000l. The defts. contended that they were only bound to pay stamp duty in respect of an increase of capital of 3,000,000l., the amount of capital actually created and issued by the directors of the co. :—

Held, that "registered capital" in s. 112 of the Stamp Act, 1891, meant authorized capital, i.e., maximum amount of capital which the co. had power to issue; and that, by the resolution of the co. there had been an increase of that capital by 5,000,000l., upon which sum ad valorem stamp duty was payable. *ATT.-GEN. v. ANGLO-ARGENTINE TRAMWAYS Co. Channell J. [1909] W. N. 53; [1909] 1 K. B. 677*

3. — Company — Consolidation of debenture stock — Issue of loan capital — Stamp duty — Finance Act, 1899 (62 & 63 Vict. c. 9), s. 8.

Under the powers of their special Act a co. incorporated in the United Kingdom "modified the rights" of the holders of their existing debenture stock (which bore interest at 4 per cent.) by dividing it into two classes of debenture stock, A and B, in certain proportions, called in and cancelled the certificates of the existing stock, and gave to the holders certificates of the new A and B stock (which bore interest at 3 per cent.) in such amounts as to give to each holder interest equivalent to his former interest. The interest on the B stock ranked next after the interest on the A stock :—

Held, that this was an "issue of debenture stock" within the meaning of the Finance Act, 1899, s. 8. and that the co. were liable to the duties imposed by the Act. *LONDON AND INDIA DOCKS Co. v. ATT.-GEN.*

H. L. (E.) [1909] A. C. 7

4. — Company—Debenture — Given in substitution for a like security"—"Marketable security"—Stamp Act, 1891 (54 & 55 Vict. c. 39), Sched. I.

The appellant co., incorporated under the laws of Victoria, was formed to take over the assets and liabilities of two existing companies, one of which was a co. registered in England having an issue of debentures. The holders of these debentures by agreement delivered them

REVENUE (Stamps)—continued.

up, and accepted in lieu thereof debentures of an equivalent amount issued by the appellant co. :—

Held, that the debentures of the appellant co. were not "given in substitution for a like security" within the meaning of sub-head 4 of the heading "Marketable Security" in the 1st schedule to the Stamp Act, 1891, and were therefore liable to bear stamp duty to the full amount.

Judgment of Channell J., [1904] 1 K. B. 767, affirmed. *MOUNT LYELL MINING AND RY. CO. v. INLAND REVENUE COMMRs.*

C. A. [1905] 1 K. B. 161

5. — Company—Debenture stock, Consolidation of—Issue of loan capital—Stamp duty—Finance Act, 1899 (62 & 63 Vict. c. 9), s. 8.

By the special Act of the deft. co. three different debenture stocks of the co., being respectively 3 per cent., 4 per cent., and 4½ per cent. stock, and amounting to 411,852l., were extinguished, and in lieu thereof there was created a new 3 per cent. debenture stock. The holders of the original 3 per cent. stock received the same nominal amount of the new stock, and the holders of the 4 per cent. and 4½ per cent. stocks received new stock to such nominal amount as at the rate of 3 per cent. would yield to the holder the same amount as was payable in respect of the stock previously held. The amount of the new debenture stock requisite to carry out the Act was 529,136l., and stock to this amount was inscribed in the names of the persons entitled thereto, and certificates were issued in exchange for the old certificates :—

Held, that the new debenture stock was loan capital which the co. had proposed to issue within the meaning of s. 8 of the Finance Act, 1899; and that they were bound to deliver the statement of the amount proposed to be secured by the issue, and to pay the stamp duty imposed by that section upon such a statement.

Judgment of Ridley J., [1903] 2 K. B. 86, reversed. *ATT.-GEN. v. REGENT'S CANAL AND DOCK Co. C. A. [1904] W. N. 3; [1904] 1 K. B. 263*

— Company—Preliminary expenses—Registration fees—Stamp duty on capital—Payment by promoter.

See COMPANY—Costs. 2.

— Company—Winding-up—Voluntary liquidator—Duty to stamp and file contracts with respect to shares issued for a consideration other than cash.

See COMPANY—Winding-up—Liquidator. 7.

6. — Company with liability limited otherwise than by registration — Increase of amount of nominal share capital authorized by Act — Transfer of powers, liabilities, and immunities to another railway company — Double duty — Stamp duty—Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 113.

The G. Ry. Co. was incorporated by an Act of Parliament in 1899 with a capital of 2,400,000l., and duly paid the duty thereon under the Stamp Act, 1891. The B. Ry. Co.

REVENUE (Stamps)—continued.

was incorporated by an Act of 1897 with a capital of 600,000*l.*, and duly paid the duty thereon under the Act of 1891. By an Act of 1902 all the powers, rights, privileges, liabilities, and immunities of the G. Ry. Co. were transferred to the B. Ry. Co., and the G. Ry. Co. was dissolved :—

Held, that by the transfer there was “an increase of the amount of nominal share capital of the B. Co. authorized by” the Act of 1902 to the extent of 2,400,000*l.*, and that the duty thereon must be paid by the B. Ry. Co., under the Stamp Act, 1891. **GREAT NORTHERN, PICCADILLY AND BROMPTON RY. CO. v. ATT.-GEN.** **H. L. (E.) [1909] A. C. 1**

7. — Conveyance—Contingency—Ad valorem duty—Consideration—Consideration payable on contingency—Stamp Act, 1891, (54 & 55 Vict. c. 39), s. 56, sub-s. 2, s. 57.

Part of the consideration for the sale of a co.’s assets to another co. was that the buying co. should pay out of its profits to the selling co. an annual dividend of 3 per cent. upon capital issued, after paying to its own shareholders a 5 per cent. dividend upon its shares :—

Held, that the dividend of 3 per cent., though payable on the contingency or more than one contingency, was “money payable periodically” within the meaning of the Stamp Act, 1891, s. 56, sub-s. 2.

The decision of the C. A., [1905] 1 K. B. 174, affirmed. **UNDERGROUND ELECTRIC RY. CO. OF LONDON, LD. v. INLAND REVENUE COMMRs.**

H. L. (E.) [1906] W. N. 2; [1906] A. C. 21

8. — Conveyance on sale—Dissolution of company and reincorporation by same Act—Vesting of property of old company in new—Finance Act, 1895 (58 & 59 Vict. c. 16), s. 12.

By a special Act of Parliament a limited co. was dissolved and reincorporated with additional powers, the property of the dissolved co. being thereby vested in the new co., and the shareholders being given stock of the new co. in substitution for the stock of the dissolved co. theretofore held by them :—

Held, that the property of the dissolved co. “vested by way of sale” in the new co. within the meaning of s. 12 of the Finance Act, 1895, notwithstanding that there was no contract of sale between the two cos. by reason of their never having been in existence at the same time. **ATT.-GEN. v. FELIXSTOWE GAS LIGHT CO.**

Bray J. [1907] 2 K. B. 984

9. — Conveyance on sale—Family arrangement.

By two deeds made between B. and H. (who was the heir to B.’s settled estates), after reciting that H. had undertaken the payment of the mortgages on the estates, and that B. was indebted to H. in certain sums, it was witnessed that in pursuance of a family arrangement B. conveyed to H. his unsettled estates subject to the mortgages, and also certain specified chattels; but power was reserved to B. and H. to cancel, alter, or make void the family arrangements at any time :—

Held, that the deeds were conveyances on

REVENUE (Stamps)—continued.

sale, and were chargeable with ad valorem stamp duty. **MARQUESS OF BRISTOL v. INLAND REVENUE COMMRs.** **Div. Ct. [1901] 2 K. B. 336**

10. — “Conveyance on sale”—Matter or thing to be done in the United Kingdom—Property in France—Conveyance executed in France—Consideration payable in England—Stamp duty—Stamp Act 1891 (54 & 55 Vict. c. 39), s. 1; s. 14, sub-s. 4; s. 54; Sched. I.

By a deed of “apport,” executed in France, property in France was transferred by one English co. to another English co., the consideration for the transfer being shares in the latter co. which were to be issued, and delivered to the former co. in England. Stamp duty having been claimed as on a “conveyance on sale” in Sched. I. to the Stamp Act, 1891, on the ground that the instrument related to a “matter or thing to be done in the United Kingdom” within s. 14, sub-s. 4, of the Act :—

Held, that the instrument was a “conveyance on sale” within the meaning of the Act, and that it was liable to duty thereunder.

Decision of C. A., [1906] 2 K. B. 834, reversed. **INLAND REVENUE COMMRs. v. MAPLE & CO. (PARIS), LD. - H. L. (E.) [1907] W. N. 244; [1908] A. C. 22**

11. — “Conveyance on sale”—Sale, what amounts to—Minerals under railway—Statutory obligation not to work—Receipt for compensation—Undertaking by mine owner not to work—“Right not before in existence”—Stamp Act, 1891 (54 & 55 Vict. c. 39), ss. 54, 60, Sched. I.—Railways Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 20), ss. 78, 79.

A colliery co., who were the owners of coal under and adjacent to a ry., gave notice to the ry. co. under s. 78 of the Railways Clauses Consolidation Act, 1845, of their intention to work the coal. The ry. co. thereupon gave notice to the colliery co. under the section that they were willing to make compensation for the coal. The amount of the compensation having been fixed by arbitration, the ry. co. paid that amount, and the colliery co. executed an instrument under seal by which they acknowledged receipt of the amount in satisfaction of all claims by them in respect of the coal, and undertook to leave the coal unworked :—

Held, that the instrument so executed was not chargeable with the ad valorem stamp duty payable upon a “conveyance on sale” under the Stamp Act, 1891.

By A. L. Smith M.R., Collins L.J., and Stirling L.J.: The right of the ry. co. to have the coal left unworked came into existence when the notices were given under s. 78 of the Railways Clauses Consolidation Act, 1845, and therefore that right was not a “right not before in existence” within the meaning of s. 60 of the Stamp Act, 1891, at the date of the instrument.

By Collins L.J. and Stirling L.J.: The transaction between the colliery co. and the ry. co. was not a “sale” of property or any interest in property within the meaning of the Stamp Act, 1891.

Judgment of Div. Ct., [1899] 2 Q. B. 652,

REVENUE (Stamps) —continued.

affirmed. *GREAT NORTHERN RY. CO. v. INLAND REVENUE COMMRs.* C. A. [1901] W. N. 21

[1901] 1 K. B. 416

12. — *Conveyance or transfer—Devise of real estate—Assent in writing of executor—Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 62, and First Schedule—Land Transfer Act, 1897 (60 & 61 Vict. c. 65), s. 3.*

By s. 3, sub-s. 1, of the Land Transfer Act, 1897, "at any time after the death of the owner of any land his personal representatives may assent to any devise contained in his will. . . .":—

Held, that an assent in writing, made in pursuance of the above section under the hand but not under the seal of the executor, was not "an instrument . . . whereby any property on any occasion, except a sale of mortgage, is transferred to or vested in any person" within the meaning of s. 62 of the Stamp Act, 1891, and was, therefore, not liable to stamp duty as a conveyance or transfer. *KEMP v. INLAND REVENUE COMMRs.* Phillimore J. [1905] 1 K. B. 581

13. — *Foreclosure order before 1898—Stamp Act, 1891 (54 & 55 Vict. c. 39), ss. 54, 57—Finance Act, 1898 (61 & 62 Vict. c. 10), s. 6.*

Section 54 of the Stamp Act, 1891, provides that "for the purposes of this Act the expression 'conveyance of sale' includes . . . every decree or order of any Court . . . whereby any property, or any estate or interest in any property, upon the sale thereof is transferred to or vested in a purchaser. . . ."

Section 6 of the Finance Act, 1898, provides that "for the removal of doubts . . . it is hereby declared that the definition of 'conveyance on sale' in the said s. 54 includes a decree or order for . . . foreclosure":—

Held, that the later section was declaratory, and therefore retrospective, so that an order of 1896 foreclosing a legal mortgage required stamping as a "conveyance on sale" within the earlier section.

Att.-Gen. v. Theobald. (1890) 24 Q. B. D. 557, followed.

Harding v. Queensland Stamp Commrs., [1898] A. C. 769, 775, distinguished.

Semble, having regard to the reasoning in *Huntingdon v. Inland Revenue Commrs.*, [1896] 1 Q. B. 422, and *Heath v. Pugh*, (1881) 6 Q. B. D. 345, 360, the foreclosure order really fell within the earlier section even before it was construed by the later section. *In re LOVELL AND COLLARD'S CONTRACT* Swinfen Eady J. [1907] W. N. 28; [1907] 1 Ch. 249

14. — *Foreign Government, Treasury note of—Promissory note or marketable security—Stamp Act, 1891 (54 & 55 Vict. c. 39), ss. 33, 82, 122.*

Where a document comes within each of two categories chargeable with duty under the Stamp Act, 1891, the Crown is entitled to only one of the duties, but it may choose the higher.

The United States of Mexico issued "gold coupon treasury notes" with a promise to pay principal and interest to bearer at fixed dates either abroad or, at the option of the holder, in London. There was evidence that the notes were

REVENUE (Stamps)—continued.

saleable on the London and other Stock Exchanges:—

Held, that the notes being in fact both promissory notes and marketable securities within the Stamp Act, 1891, they were liable to the higher duty imposed by that Act upon marketable securities.

Decision of the C. A., [1907] 1 K. B. 246, affirmed. *SPEYER BROTHERS v. INLAND REVENUE COMMRs.* H. L. (E.) [1908] W. N. 22; [1908] A. C. 92

— Forged indorsement—Draft by one branch of bank on another.
See *BANKER*. 5.

— France—Property in—Conveyance executed in France—Consideration payable in England.
See No. 10, above.

— Goodwill—Sale—Agreement "made" in United Kingdom.
See No. 1, above.

— Insufficient stamp—Shares—Transfer—Refusal to register—Right to go behind that which appears in document.
See *COMPANY—Shares*. 21.

15. — *Insurance—"Policy of life insurance"—Old age endowment policy—Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 98.*

An instrument whereby it is contracted that, in consideration of the payment by a person of a weekly premium of 6d., a sum certain is to be paid to him on his attaining the age of sixty-five, or, in the event of his dying under that age, a smaller sum is to be paid to his executors, is a policy of insurance upon a contingency depending upon a life within the meaning of s. 98 of the Stamp Act, 1891.

Semble, that even if the portion of the said contract relating to the payment of money to the assured on his attaining the age of sixty-five stood alone, it would be a policy of insurance upon a contingency depending upon a life within the said section. *PRUDENTIAL INSURANCE CO. v. INLAND REVENUE COMMRs.*

Channell J. [1904] 2 K. B. 658

— "Lease"—Tramways—Repair of road.
See No. 30, below.

16. — *Local authority—Issue of loan capital—Date of issue—Finance Act, 1899 (62 & 63 Vict. c. 9), s. 8, sub-ss. 1, 2.*

By s. 8, sub-ss. 1 and 2, of the Finance Act, 1899, where any corporation propose to issue any loan capital, they shall, before the issue thereof, deliver to the commrs. a statement of the amount proposed to be secured by the issue, charged with an ad valorem stamp duty.

A corporation proposing to issue loan capital by the creation of corporation stock invited tenders on the terms that the stock was to be paid for by the allottees by instalments, the last of which become due on June 21, 1899, after which date the stock was to be inscribed. The stock was applied for and allotted, and prior to June 20, 1899, scrip certificates were delivered to

REVENUE (Stamps)—continued.

the allottees which entitled the holders, on payment of the remaining instalments, to have stock inscribed in their names.

The Finance Act, 1899, came into force on June 20, 1899.

Held, that there had been an "issue" of the loan capital at the latest by the date when the scrip certificates were delivered, and, that date being prior to the coming into force of the Act, the duty imposed by s. 8 was not payable. *ATT.-GEN. v. LIVERPOOL CORPORATION*

Phillimore J. [1902] 1 K. B. 411

17. — *Medicinal preparation—Exemption—Chemist "who hath served a regular apprenticeship"—Contract of apprenticeship not in writing—Medicines Stamp Act, 1812 (52 Geo. 3, c. 150), s. 2; Sched., Special Exemptions.*

Sect. 2 of the Medicines Stamp Act, 1812, imposes a penalty upon any person vending or exposing to sale any packet, box, bottle, pot, phial, or other inclosure containing any of the drugs, preparations, or compositions set forth in the schedule to the Act without a proper paper cover, wrapper, or label duly stamped with the duty charged thereon. The schedule to the Act contains, so far as material, an exemption in the case of mixtures, compositions, or preparations which shall be vended by any surgeon, apothecary, chemist, or druggist "who hath served a regular apprenticeship":—

Held, that in order to constitute a "regular apprenticeship" within the above exemption there must be an apprenticeship under a contract in writing, and that therefore the exemption does not apply where there has been service in fact as an apprentice under an oral contract. *KIRBY v. TAYLOR* Div. Ct. [1910] **W. N. 37** ; [1910] **1 K. B. 529**

18. — *Medicinal preparations—Recommendation as a remedy by retail chemist—"Owner, proprietor . . . original or first vendor"—Medicines Stamp Act, 1812 (52 Geo. 3, c. 150), Schedule.*

A retail chemist who purchases a preparation of medicinal drugs from the manufacturers or from other persons, and himself attaches to the bottles in which he retails it a label recommending it as a remedy for certain specified human ailments, is not the "owner, proprietor . . . original or first vendor thereof," within the meaning of 52 Geo. 3, c. 150, Schedule—Special Exemptions; and if the preparation at the time that he so purchased it was exempt from stamp duty, the fact of his attaching the said label will not deprive it of the exemption. *FARMER v. GLYN-JONES*

Div. Ct. [1903] 2 K. B. 6

— *Mortgage—Trust deed for securing debenture stock—Security auxiliary or by way of further assurance.*
See No. 27, below.

19. — *Mortgage—Trust deed for securing debenture stock—Security auxiliary or by way of further assurance—Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 86, sub-s. 1; First Schedule, "Mortgage, &c." (2).*

A limited co., upon the issue of debenture stock, by deed entered into with trustees for the

REVENUE (Stamps)—continued.

holders of the stock, acknowledged that the co. was indebted to the trustees to the amount of the stock, and agreed to convey to the trustees certain freehold property, not at the time in the possession of the co., and power was given to the trustees to enforce payment by foreclosure. The co. subsequently acquired the property and conveyed it to the trustees upon the trusts and purposes and subject to the provisions of the trust deed. Stamp duty was paid on the trust deed under the 1st schedule to the Stamp Act, 1891, title "Mortgage, &c.," clause 2, on the amount of the debenture stock. The comms. assessed the duty on the second deed under the same schedule, clause 2, at 6d. per cent. on the amount of the debenture stock. On appeal:—

Held, that the deed of conveyance was liable, to the duty assessed by the comms. as a mortgage "being an auxiliary security or by way of further assurance" for the repayment of money "where the principal or primary security is duly stamped." *BRITISH OIL AND CAKE MILLS, LD. v. INLAND REVENUE COMMS.*

C. A. [1903] 1 K. B. 689

— *New Zealand Deceased Persons' Estates Duties Act, 1881—Stamp Acts.*
See NEW ZEALAND. 22.

— *Notary public.*

See under ECCLESIASTICAL LAW — Notaries.

20. — *Promissory note—Payable at sight—Ad valorem duty—Stamp Act, 1891 (54 & 55 Vict. c. 39) ss. 32, 33; Sched. I.*

A promissory note payable at sight is liable to an ad valorem stamp duty. *OETTINGER v. COHN* Channell J. [1908] **W. N. 24** ; [1908] **1 K. B. 582**

21. — *"Property," Interest in—Sale of benefit of contract—Agreement with regard to land situate out of United Kingdom—Property not situate out of United Kingdom—Stamp duty—Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 59, sub-s. 1.*

By a contract dated Jan. 25, 1899, a foreigner resident in Roumania undertook to transfer to F. or his nominees a certain quantity of land, suitable for the erection of a sugar factory, to be situated in a certain locality in Roumania, but the exact situation of which was to be selected by F. or his nominees; he further undertook to procure a certain quantity of land in the same locality, and to cultivate thereon in a certain manner beetroot, which he was to supply for the purposes of the sugar factory at fixed prices.

By an agreement under seal dated April 14, 1899, made in England, the benefit of the contract of Jan. 25, 1899, was sold to an English co.:—

Held, that the benefit of the contract of Jan. 25, 1899, was "property" within the meaning of s. 59, sub-s. 1, of the Stamp Act, 1891, and that it was not within the exception therein contained as being "property locally situate out of the United Kingdom"; and that an ad valorem duty was therefore payable on the agreement of

REVENUE (Stamps)—continued.

April 14, 1899. **DANUBIAN SUGAR FACTORIES, LD. v. INLAND REVENUE COMMRs.**

C. A. [1901] 1 K. B. 245

22. — *Property purchased under statutory power—Conveyance—Duty on transfer of personal property—Stamp duty—Finance Act, 1895 (58 & 59 Vict. c. 16), s. 12.*

Sect. 12 of the Finance Act, 1895, applies to personal as well as real property, so that a person purchasing land and goods under the statutory authority must produce to the Inland Revenue a conveyance of the goods as well as of the land, and pay ad valorem stamp duty upon the whole of the property.

The decision of the C. A., *Att.-Gen. v. Eastbourne Corporation*, [1902] 1 K. B. 403, affirmed. **EASTBOURNE CORPORATION v. ATT.-GEN.**

H. L. (E.) [1904] W. N. 36; [1904] A. C. 155

— Time policy for more than twelve months—Continuation clause, validity of.
See INSURANCE (MARINE). 28.

23. — *Railway company—Increase of nominal capital—Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 113.*

By the special Act of a ry. co. the existing preference stock of the co. was cancelled and a new preference stock was created, to a larger amount and bearing a smaller dividend, the new stock being allotted so that each holder of the old stock received an amount of the new which gave him an equivalent dividend. The existing ordinary stock was cancelled and a new ordinary stock was created of twice the amount of the old, one half being preferred ordinary, the other half deferred ordinary stock, each holder of the old stock receiving as much of each kind of the new as he held of the old ordinary stock :—

Held, that in each case the increase so authorized by the Act was “an increase of the amount of the nominal share capital” of the co. within the meaning of s. 113 of the Stamp Act, 1891, and that the stamp duty imposed by that section was payable in respect of it.

The decision of the C. A. [1901] 1 K. B. 220, affirmed. **MIDLAND RY. CO. v. ATT.-GEN.**

H. L. (E.) [1902] W. N. 40; [1902] A. C. 171

24. — *“Receipt”—Counsel’s brief—Statement of fees—Counsel’s name or initials placed against fee—Stamp duty—Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 101; Sched. I.*

When counsel, after payment of a fee of 2l. or upwards, places his initials or name against the fee on his brief or at the foot of a statement of fees, the document is liable to the stamp duty of 1d. as a receipt within the meaning of s. 101 and the heading “Receipt” in the First Schedule to the Stamp Act, 1891. **GENERAL COUNCIL OF THE BAR (ENGLAND) v. INLAND REVENUE COMMRs.**

Bray J. [1907] W. N. 11; [1907] 1 K. B. 462

25. — *“Receipt”—“Discharge”—Debenture stock—Acknowledgment that debenture stock has been reduced, paid off, and satisfied—Stamp Act, 1891 (54 & 55 Vict. c. 39).*

REVENUE (Stamps)—continued.

On an indenture securing redeemable debenture stock an instrument was endorsed, which was signed by the trustees for the debenture holders, acknowledging that all the debenture stock secured by the within written indenture and all interest thereon had been redeemed, paid off, and satisfied :—

Held, that this was not a “discharge” within the meaning of that term in sub-heading 5 of the heading “Mortgage” in the schedule to the Stamp Act, 1891 and that it was therefore not chargeable with ad valorem duty, but that it was merely a receipt, and being indorsed on a duly stamped instrument it was exempt from duty under the eleventh exemption to the heading “Receipt” in the same schedule. **FIRTH & SONS, LD. v. INLAND REVENUE COMMRs.**

Channell J. [1904] 2 K. B. 205

26. — *Sale of goods, Agreement for—Price to be paid by instalments at stated periods—Bond, covenant, or instrument of any kind whatsoever—Liability to ad valorem stamp duty—Stamp Act, 1891 (54 & 55 Vict. c. 39), Sched. I.*

By an agreement in writing, not under seal, between the co. and a customer, the co. agreed to supply to the customer for a period of seven years electric energy for motive power, heating, and lighting purposes on the customer’s premises at a fixed charge of 57l. 10s. per quarter and an additional penny per unit as indicated by meter :—

Held, that the agreement was chargeable with an ad valorem duty of 2s. 6d. per cent. on the aggregate amount of the minimum quarterly payments for seven years as being a “security” for sums of money at stated periods, under clause 1 of the heading “Bond, Covenant, or Instrument of any kind whatsoever” in Sched. I. to the Stamp Act, 1891.

Decision of Channell J., [1909] W. N. 54 : [1909] 1 K. B. 737, affirmed. **COUNTY OF DURHAM ELECTRICAL POWER DISTRIBUTION CO. v. INLAND REVENUE COMMRs.**

C. A. [1909] W. N. 153; [1909] 2 K. B. 604

27. — *“Security for money or stock without limit”—Stamp duty—Expression of opinion by Commissioners as to duty chargeable—Mortgage—Trust deed for securing debenture stock—Principal or primary security—Security auxiliary or by way of further assurance—Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 12, sub-s. 6 (b); s. 88; First Schedule, “Mortgage,” &c. (2)—Revenue Act, 1903 (3 Educ. 7, c. 46), s. 7.*

By an indenture dated May 28, 1897, certain freehold and leasehold hereditaments were by direction of a brewery co., respectively conveyed and demised to trustees. The indenture contained a covenant to surrender to the use of the trustees certain copyholds, and an assignment to them of a goodwill and other matters. By the indenture it was agreed that the trustees should stand possessed of the hereditaments and premises upon the trusts contained in an indenture dated May 20, 1897.

The indenture of May 20, 1897, after reciting (inter alia) that the co. had determined to issue

REVENUE (Stamps)—continued.

certain debenture stock, to be constituted and secured as therein provided, contained a covenant by the co. with the trustees that the co. would cause the hereditaments to be forthwith conveyed to and vested in the trustees for securing the payment by the co. of the debenture stock and the dividends thereon, with a provision for reconveyance to the co. upon proof that all the stockholders had been paid off or satisfied and upon payment of all costs incurred by the trustees in relation to the indenture. The indenture also created a floating charge upon all the property and assets for the time being of the co. In addition to other provisions for the maintenance and enforcement of the security thereby created, the indenture contained (clause 33) a provision that if default should be made in keeping the mortgaged premises in a good state of repair and working condition, and so insured as in the indenture specified, the trustees might from time to time repair or renew, or insure (as the case might require), the mortgaged premises or any part thereof, and the co. would on demand repay to the trustees every sum of money expended by them for the above purposes, with interest at the rate of 5 per cent. per annum from the time of the same having been expended, and until such repayment the same should be a charge upon the mortgaged premises.

The indenture was stamped with 2s. 6d. per cent. upon 230,000l., the amount to which the stock was limited, and 23,000l., the premium at which the stock was redeemable at the co.'s option.

Debenture stock to the amount of 223,200l. was subsequently issued by the co. upon the security of the indentures :—

Held, that clause 33 of the indenture of May 20, 1897, although one of the provisions referred to in the indenture of May 28, 1897, subject to which the trustees were to stand possessed of the hereditaments, did not make the latter indenture a security for money or stock without limit within the meaning of s. 12, sub-s. 6 (b), of the Stamp Act, 1891, and that therefore the Commrs. of Inland Revenue were bound to adjudicate the liability of the indenture to duty.

Held, further, that the indenture of May 20, 1897, was the primary security, and the indenture of May 28, 1897, a mortgage by way of further assurance, within the meaning of the head of the first schedule to the Stamp Act, 1891—"Mortgage, Bond, Debenture, Covenant," sub-head (2)—and that therefore, in addition to the duty to which the indenture of May 28, 1897, was liable as a conveyance on sale, duty at the rate of 6d. per cent. upon 223,200l., the amount of the debenture stock issued, was payable upon it.

SECT. 88 of the Stamp Act, 1891, contemplates that a primary security may be a deed on which, at the time it is executed, there has been no money lent or advanced.

SECT. 7 of the Revenue Act, 1903, is not retrospective, and the duty which is payable on a deed is that which was payable at the date of its execution. **LOED SUFFIELD v. INLAND REVENUE COMMS.** - **Bray J. [1908]**
1 K. B. 865

See also No. 19, above.

REVENUE (Stamps)—continued.

28. — Settlement—Alteration of security by subsequent deed—Stamp Act, 1891 (54 & 55 Vict. c. 39), First Sched.

In the First Sched. to the Stamp Act, 1891, "settlement," defined as "any instrument . . . whereby any definite and certain principal sum of money . . . or any definite and certain amount of stock, or any security is settled or agreed to be settled in any manner whatsoever," is made liable to ad valorem stamp duty.

By an ante-nuptial contract of marriage A. bound himself in the event of his wife surviving him to pay to her an annuity of 400l., and in security of said annuity A. bound himself and his heirs to infest his wife in certain lands. The contract of marriage was impressed with a stamp duty and was adjudicated as duly stamped. Subsequently A. desired to sell the lands forming the security and his wife agreed to consent to the sale on condition that the annuity was otherwise secured; accordingly A. in place of the said security executed a deed by which he conveyed to trustees certain property upon trust, for (inter alia) the payment of the annuity provided to the wife in her marriage contract and subject thereto upon trust for A. himself. The Crown claimed that the deed of trust was chargeable with an ad valorem stamp duty as being a "settlement":—

Held (affirming the decision of the First Division of the Ct. of Sess. (1909) S. C. 248), that the deed was not a "settlement" under the Stamp Act, 1891. **INLAND REVENUE v. OLIVER**
H. L. (Sc.) [1909] W. N. 160;
[1909] A. C. 427

29. — Settlement — Power of appointment—Exemption—Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 106, Sched. I.

By a settlement funds were to be held by trustees on certain specified trusts for the benefit of the settlor's children. The settlement contained a provision that the trustees might at the request of any of the children revoke the trusts concerning that child's settled share, and resettle that share for the benefit of a certain specified class of persons. Ad valorem duty was paid on that settlement under the Stamp Act, 1891, Sched. I., head "Settlement." Subsequently, at the request of the appellant, who was one of the children, and in contemplation of his marriage, the trustees by deed revoked the trusts of the original settlement concerning his share, and declared that during his life it should be held on trust to pay the income to him, and on his death should be transferred to the trustees of his marriage settlement, which was of even date, upon the trusts declared concerning the same in that settlement. By the marriage settlement, to which the trustees of the original settlement were not parties, the appellant's share was settled on trusts which were within the power of resettlement given to the trustees under the original settlement :—

Held, that the case was not one in which several instruments were executed for effecting a settlement of the same property within s. 106 of the Stamp Act, 1891; and that the marriage settlement was within the Stamp Act, 1891,

REVENUE (Stamps)—continued.

Sched. I., head "Settlement," and not within the exemption therein of an "instrument of appointment relating to any property in favour of persons specially named or described as the objects of a power of appointment," and that it was therefore, liable to ad valorem stamp duty.

Judgment of a Div. Ct. (Kennedy and Phillimore JJ.), [1901] 2 K. B. 342, affirmed, *RUSSEL v. INLAND REVENUE COMMRs.*

C. A. [1901] W. N. 235 ; [1902] 1 K. B. 142

—Sheriff's fees.

See under **SHERIFF**.

—Solicitor, Payment by—Stamp duty on capital of company—Costs—Taxation.

See **SOLICITOR—Costs. 3.**

30. — Tramways—Lease—Repair of road—Payment by lessees in lieu of repair—Purchase of electrical energy from lessors—"Lease"—"Bond or covenant"—"Covenant relating to the matter of the lease"—Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 4; s. 77, sub-s. 2, and Schedule, Title "Bond."

By a lease of tramways to a traction co. by a municipal corporation, made pursuant to the Tramways Act, 1870, the co. were to pay rent at a fixed rate per cent. on the cost of the original purchase. They were also to pay to the lessors a given sum per mile of road along which the tramways were laid, in lieu of repairing any portion of such road, and maintaining the tramways, except the rails and electric bonds laid thereon. The minimum amount payable under this clause was 900*l.* per annum, and a power of distress was reserved in respect of it. They were also bound to purchase from the vendors all electrical energy required for the purpose of the tramways, and to pay for the same at a given rate, the minimum sum payable in any one year being 4000*l.* On a case stated:—

Held, that the 900*l.* payable in respect of the repair of the road was rent, and that ad valorem duty was payable upon it under s. 4 of the Stamp Act, 1891:

Held, also, that the 4000*l.* payable in respect of the supply of electrical energy was not rent, but that it was payable under a covenant made in further consideration for the lease, and relating to the matter of the lease, within s. 77, sub-s. 2, of the Stamp Act, 1891, and that the instrument was not chargeable with ad valorem duty in respect of it. *BRITISH ELECTRIC TRACTION CO. v. INLAND REVENUE COMMRs.*

C. A. [1902] 1 K. B. 441

—Unstamped agreement—Evidence.

See **COMPANY—Reconstruction. 3.**

Succession Duty.

1. — Acceleration of succession—Settlement—Power to appoint settled estate—Exercise of power—Interest of appointee under settlement—New title under appointment—Succession Duty Act, 1853 (16 & 17 Vict. c. 51), ss. 2, 15.

By a settlement made by a father on the marriage of his son, who was a party to the deed an estate was conveyed by the father to trustees to such uses as the father and son should by deed jointly appoint, and in default of and until such appointment to the use of the father for life, and

REVENUE (Succession Duty)—continued.

after his decease to the son in fee simple in case he should survive his father; but if he died in the lifetime of his father leaving a son who should attain the age of twenty-one years, then to the use of that son, and, if there was no such son who attained the age of twenty-one years, then to the settlor in fee simple. By a subsequent deed the settlor and his son, in exercise of the power of appointment in the settlement, jointly appointed the estate to the son in fee. On an information claiming succession duty:—

Held, that the son took the estate by a new title under the deed of appointment, and not by a succession the title to which had been accelerated by the surrender or extinction of any prior interest within the meaning of s. 15 of the Succession Duty Act, 1853, and that succession duty was not payable. *ATT.-GEN. v. EARL OF SELBORNE*

C. A. [1908] W. N. 241 ; [1902] 1 K. B. 388

—Annuities—Will—Republication by codicil after passing of an Act.

See **WILL—Testamentary Expenses. 2.**

2. — Annuity payable to trustee for settlement—New trustee appointed on death of former trustee—"Substitutive limitation"—Succession Duty Act, 1853 (16 & 17 Vict. c. 51), s. 2—Estate Duty—Property passing on death—Exception—Interest as "holder of an office"—Trustee—Finance Act, 1894 (57 & 58 Vict. c. 30), s. 2, Sub-s. 1 (b).

By an indenture property was settled upon three named trustees upon trust that they and the survivors and survivor, and the executors and administrators of such survivors, or other the trustees or trustee for the time being of the settlement (thereinafter called "the trustees or trustee"), should, so far as material, pay "an annual sum of 200*l.* each to the trustees or trustee while acting in the trusts by way of remuneration for their services, and in addition to any payments for professional services," and subject thereto upon trust to pay the income of the property according to the direction of the settlor during her life, with remainders over. The settlor during her life had power to appoint a new trustee or new trustees for the purposes of the trust. One of the original trustees died, having received the annual sum of 200*l.* up to the date of his death, and the settlor appointed a new trustee in his place. The Crown claimed succession duty upon the annual sum of 200*l.* to which the new trustee became entitled upon his appointment, and also estate duty and settlement estate duty upon the principal value of the capital fund yielding the annual sum of 200*l.*—

Held, (1.) that the new trustee did not become entitled to the annual sum of 200*l.* by reason of the settlement upon the death of the former trustee within the meaning of s. 2 of the Succession Duty Act, 1853, but by reason of the settlement coupled with the vacancy and his appointment as trustee, and that succession duty was not payable; and (2.) that the interest which the deceased trustee had in the property was an interest only as holder of an office, namely, the office of trustee, within the exception in s. 2, sub-s. 1 (b), of the Finance Act, 1894, and

REVENUE (Succession Duty)—continued.

that estate duty and settlement estate duty were not payable. *ATT.-GEN v. EYRES*

Channell J. [1909] 1 K. B. 723

— Charitable society, Gift to a—Reservation of an annuity to the donor—*Bonâ fide* purchase—Partial consideration.

See REVENUE—Estate Duty. 30.

— ESTATE DUTY

See under REVENUE—Estate Duty. 11.

3. — Entail—Propulsion of fee—"Acceleration" of succession—Succession Duty Act, 1853 (16 & 17 Vict. c. 51), ss. 2, 15.

By s. 15 of the Succession Duty Act, 1853, "Where the title to any succession shall be accelerated by the surrender or extinction of any prior interests, then the duty thereon shall be payable at the same time and in the same manner as such duty would have been payable if no such acceleration had taken place."

The late Earl of Buchan being in 1872 heir of entail in possession of certain entailed estates in Scotland under an entail prior to 1848, the appellant, who was his eldest son and heir apparent, agreed with his father to propel the entailed estates so that the appellant should enjoy them as from Sept 13, 1871. The father and son thereupon executed a disposition of the entailed estates, and the father's interest therein ceased. But inasmuch as the estate could not be disentailed until the appellant attained the age of twenty-five years, it was further agreed that when the appellant attained that age the estates should be disentailed. This was done in 1875. The appellant also undertook to raise a large sum of money on the estates to pay off the debts of the Earl of Buchan. In 1898 the late Earl of Buchan died, some years after he had ceased to be owner of the entailed estates. The Crown claimed succession duty under ss. 2 and 15 of the Succession Duty Act of 1853, founding their claim on the ground that under the original deed of entail of 1664 the appellant had an expectant right of succession and this right would open to him by devolution on the death of the late Earl of Buchan, his father, and the transaction above referred to, by which there was a propulsion of the estates to the next heir, namely the appellant, was an acceleration of the succession :—

Held, affirming the decision of the First Division of the Ct. of Sess. (1907), S. C. 849, that succession duty was payable by the appellant under s. 15 of the Act on the ground that he had a title to the succession capable of being "accelerated," and that title had been accelerated by the surrender or extinction of the father's prior interest. **EARL OF BUCHAN v. LORD ADVOCATE - H. L. (Sc.) [1908] W. N. 241; [1909] A. C. 166**

4. — Estate duty—Succession duty—Property situate abroad—English will—Trust for conversion—Liability to duty.

A testator, domiciled in England, by his will left the residue of his real and personal estate, including a tea estate situate in Assam, to trustees in trust to convert it into money and invest the proceeds, and out of the income thereof to pay certain life annuities, and subject

REVENUE (Succession Duty)—continued.

thereto and until the death of the last surviving annuitant to pay the surplus income to certain persons in equal shares and to the survivors or survivor of them. The will contained no gift over either of the income or of the corpus upon the death either of the last surviving annuitant or of the last surviving person entitled to the surplus income. The trustees were authorized by the will to work the tea estate until it was sold, and also to postpone the sale and conversion of any part of the estate as long as they might think it desirable, and it was thereby provided that in the meantime the annual produce of the unconverted part should be applied in the same manner as if it were income arising from the proceeds of conversion. The trustees were resident in England, and the will was proved in England. The trustees, in the exercise of their discretion, postponed the sale of the tea estate, and while it remained unsold two of the persons entitled to shares of the surplus income died :—

Held, that the amount by which the survivors' shares of the surplus income was increased upon the deaths of the said two persons was not, even so far as that increase was attributable to the profits of the tea estate, property situate out of the United Kingdom, and that succession duty, estate duty, and settlement estate duty were payable in respect of the increase so attributable to the tea estate. *ATT. GEN. v. JOHNSON - - Bray J. [1907] 2 K. B. 885*

— Ontario Succession Duty Act — Provincial taxation of property not within the province *ultra vires*.

See CANADA—Revenue. 2.

— Property situate abroad — Disposition to English company on trusts enforceable by English law.

See REVENUE—Estate Duty. 11.

— Quebec taxes apply to Quebec successions.

See CANADA—Revenue. 3.

— Settlement by Act of Parliament—Restriction against alienation.

See REVENUE—Estate Duty. 31.

5. — Tenant for life—Remainder in tail—Disentailing deed—Alienation—Succession derived from alienee—Succession Duty Act, 1853 (16 & 17 Vict. c. 51), ss. 2, 15.

A., tenant for life of real property, and B., tenant in tail in remainder, executed a disentailing deed and sold and conveyed the property to C. On C.'s death D., as C.'s devisee, became entitled in possession to the property and paid succession duty thereon. Then A. died and the Crown claimed succession duty from B. and D. as on a succession from A. :—

Held, that succession duty was payable by D., to be calculated on the life of D.

The decisions of Ridley J., [1903] 2 K. B. 71, and the Court of Appeal, sub nom. *Att.-Gen. v. Duke of Northumberland*, [1904] 1 K. B. 762, affirmed.

In re Cooper and Allen, (1876) 4 Ch. D. 802, overruled upon this point. **DUKE OF NORTH-UMBERLAND v. ATT.-GEN. - - H. L. (E.) [1905] W. N. 118; [1905] A. C. 406.**

REVENUE (Succession Duty)—continued.

6. — *Will—Legacy—Payable out of realty—Application of income to maintenance of legatee—Uncontrolled discretion of trustees—Succession duty—Legacy Duty Act, 1796 (36 Geo. 3, c. 52). s. 11; Stamp Act, 1815 (55 Geo. 3, c. 184), Sched., Part III., r. 2; Revenue Act, 1845 (8 & 9 Vict. c. 76), s. 4; Customs and Inland Revenue Act, 1888 (51 Vict. c. 8), s. 21, sub-s. 2.*

A testator devised real estate to trustees upon trust in a certain event (which happened) to apply the whole or so much of the net income as the trustees in their absolute and uncontrolled discretion might deem right for the maintenance of A. The trustees in the exercise of their discretion applied a portion of the income to A.'s maintenance and intended to continue so applying it from time to time:

Held, that each such application, as and when the income was so applied, became and would become a legacy to A. in respect of which succession duty was and would be payable. **ATT.-GEN. v. WADE** **Bray J. [1910] 1 K. B. 703**

— *Will*—"All expenses incident to the trusts hereby created"—Specific devise—Settled real estate—Settled legacy.
See WILL—Testamentary Expenses. 1.

Uninhabited House Duty.

See under REVENUE—House Duty.

Writ of Extent.

1. — *Affidavit of debt and danger—Sufficiency of affidavit—Motion to set aside writ.*

A writ of extent was issued upon an affidavit of debt and danger in which the deponent stated the fact that a debt was due to the Crown from a certain debtor, and the nature and origin of the debt, and proceeded to allege that from inquiries he had made he had ascertained and believed that the debt due to the Crown from the debtor would be lost unless some more speedy course than the ordinary method of proceeding were forthwith had and taken to recover the same on behalf of His Majesty:—

On motion to set aside the writ:—

Held, that the affidavit was defective in that it omitted to state the facts from which the Court might infer that the debt was in danger of being lost.

The writ was accordingly set aside. **REX v. PRIDGEON** **Bray J. [1910] W. N. 164; [1910] 2 K. B. 543**

REVERSAL—House of Lords—Point not argued.
See HOUSE OF LORDS. 4.

REVERSION AND REVERSIONARY INTERESTS—Assignment of—Lease—Covenant for quiet enjoyment—Breach of covenant—Interruption by assignee.
See LANDLORD AND TENANT. 64.

— Assignment of—Liability of assignor on express covenant in lease.
See LEASE. 1.

REVERSION AND REVERSIONARY INTERESTS—continued.

— Covenant to settle after acquired property.
See under SETTLEMENT.

— Estate duty.
See REVENUE—Estate Duty. 27.

— Intestacy of husband—Widow—Contingent reversionary interest—Real and personal estate.
See INTESTACY. 2.

— Legacy duty—Right to indemnity—Reversionary share—Settlement of part—Covenant for further assurance.
See REVENUE—Legacy Duty. 2.

— Mortgage by client to solicitor—No money advanced—Fraud of solicitor.
See MORTGAGE—Priority. 4.

— Mortgage of reversion—Real property Limitation Act.
See LIMITATIONS, STATUTE OF. 15.

— Notice to one of several trustees—Death of trustee who had notice—Priority.
See ASSIGNMENT. 10.

— Option to purchase reversion in fee—Validity—Perpetuity—Covenant running with land.
See COVENANT. 4.

— Power of appointment—Exercise—"Usual" clauses—Covenant to settle after-acquired property.
See SETTLEMENT. 21.

— Priority—Notice of assignment to one of several trustees—Death of trustee who had notice.
See ASSIGNMENT. 10.

— Purchase by trustee—Leaseholds forming part of trust estate—No right of renewal—Ownership of the fee.
See TRUSTEE—Purchase. 1.

REVERSIONARY LEASE—Licensing Acts—Compensation.
See LICENSING ACTS. 9.

REVERSIONARY REALTY—Date at which value of, to be computed.
See ADMINISTRATION. 7.

REVERTER—Practice.
See under PRACTICE—Review.

— Site for school—Gift of land for education of poor—Discontinuance of weekday school.
See CHARITY. 46.

— Workmen's compensation—Review of weekly payments.
See under MASTER AND SERVANT—Compensation.

REVISING BARRISTER.
See under PARLIAMENT.

REVIVAL—Condonation—Adultery—Desertion—Decree of dissolution of marriage.
See DIVORCE—Condonation. 1.

REVIVAL—*continued.*

- Desertion—Condonation.
See DIVORCE—Desertion. 1, 2, 3.
- Wills—Probate—Practice.
See under PROBATE—Revival.

REVOCAION—Companies—Shares—Executors

- Revocation of signature by transferor—Notice.
See COMPANY—Shares. 11.
- Donatio mortis causa—Subsequent will—Legacy of equal amount—Satisfaction.
See DONATIO MORTIS CAUSA. 4.
- Licence — Notice — Advertising station — Tenancy from year to year — Agreement.
See LICENCE. 1.
- Patent.
See under PATENT—Revocation.
- Power of appointment.
See under POWER OF APPOINTMENT.
- Power of revocation—Person entitled to the “actual possession.”
See SETTLEMENT. 37.
- Probate.
See under PROBATE—Revocation.
- Will—Construction.
See under WILL—Revocation.

RHODESIA—Company—Winding-up—Reconstruction—Dissentient shareholder—Registered office in Rhodesia—Notice of dissent left at London office.
See COMPANY—WINDING-UP—Reconstruction. 1.**RIBALDRY**—Clergy discipline—Occasional swearing and ribaldry.
See ECCLESIASTICAL LAW—Discipline. 2.**RIGHT OF ENTRY.**
See under ENTRY.**RIGHT OF WAY.**
See under WAY, RIGHT OF.**RIOT**—Persons riotously and tumultuously assembled—Building injured or destroyed—Damages.
See CRIMINAL LAW—Riot. 1.**RIPARIAN OWNER**—Artificial stream—Right to flow of water.
See WATER.

- Canal company—Diversion of water from river.
See CANALS. 1.
- Conservators—Navigation—Dredging.
See THAMES. 1.
- Fishery.
See under FISHERY.
- Foreshore—Crown, Rights of—Encroachment—Adverse possession, Title by—Intention.
See SEASHORE. 2.

RIPARIAN OWNER—*continued.*

- River.
See under RIVER.
- Sewers—Storm-water overflow—Discharge into tidal navigable creek—Injunction.
See LONDON—Sewers. 4.
- Stream.
See under STREAM.
- Watercourse.
See under STREAM.

RITUALISTIC PRACTICES—Allegation of—Objections to candidate for ordination—“Impediment or notable crime.”
See ECCLESIASTICAL LAW—Ordination. 1.**RIVER.**
See also under STREAM WATER.

- Canal company—Diversion of water from river—Statutory powers.
See CANALS. 1.
- Collision—Fog—“Fairway” of river—Duty to ring bell when at anchor—Medway Conservancy By-laws.
See SHIPPING—Collision. 31.
- Employer's liability—“Seaman”—Hand assisting to navigate barge on river.
See MASTER AND SERVANT—Compensation. 164.
- Fishery.
See under FISHERY.
- Foreshore.
See under FORESHORE.
- Inland voyage on river—Policy on goods.
See INSURANCE—(Marine). 12.
- Natural stream—Pollution—Rivers Pollution Prevention Act, 1876.
See STREAM. 1.
- Navigable non-tidal river—Public right of navigation—Power to levy tolls—Locks—Implied obligation to maintain and repair.
See WATER HIGHWAY. 1.

1. — *Pollution of river—Local government sanitary authority—Neglect of duty—Damages—Non-feasance—Misfeasance—Continuance of injury—Injunction—Nuisance—Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 15, 17, 19, 299—Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61), s. 1.*

The river Derwent was polluted by sewage from (1) old sewers into which householders of Derby had for more than twenty years discharged their sewage; (2) sewers inherited by the defts., the corporation of Derby, from their predecessors, into which householders had by virtue of their statutory rights made connections; (3) sewers laid by the defts. themselves; (4) additional sewage arising from the conversion of privies into water-closets under directions given by the defts. The plts. owned Elvaston Castle and estate

RIVER—continued.

situated on the river about five and a half miles below Derby, and brought this action for an injunction to restrain the defts. from polluting the river so as to cause a nuisance; damages for the silting up of a lake fed from the river by a watercourse which had to be stopped up in 1902; the loss of a water-wheel which had been worked by the watercourse, and the expense of replacing it by an engine; pollution to a well into which water percolated from the lake; depreciation of a house on the bank of the river and to the castle; the expense of obtaining a new water supply; and for injury to the fishing. In 1898 an order was made in the Derbyshire County Court, in an action brought by the county council, that the defts. should abstain from polluting the river contrary to the Rivers Pollution Prevention Act, 1876. By the Derby Corporation Act, 1901, the defts. obtained the necessary powers, and they had now commenced to construct sewage works for the whole of their area:—

Held, that, inasmuch as the householders had obtained in the first two classes of sewage prescriptive rights which could not be interfered with by the defts., an order had been made under the Rivers Pollution Act of 1876, and the defts. were taking steps to remove the nuisance, no injunction ought to be granted; that the action would not lie against the defts. for non-feasance or neglect of duty under the Public Health Acts; the plts.' remedy against them in that respect was by complaint to the Local Govt. Board under s. 299 of the Public Health Act, 1875; s. 17 of that Act must be read only as a proviso; and s. 19 did not apply to the present case; that the action would lie against the defts. for damage caused by acts which they had done themselves; that this did not make the defts. liable for the whole of the damage; that the plts. could recover damages for the expense of procuring a new water supply and engine, and for the injury to the house and the fishing; they could not recover for injury to the amenities of the castle nor for the silting up of the lake, for they ought to have excluded the water when they found it was polluted.

Continuance of injury under s. 1, sub-s. (a), of the Public Authorities Protection Act, 1893, does not mean damage inflicted once and for all which continues unrepaired, but a new damage recurring day by day in respect of an act done it may be once and for all at some prior time, or repeated it may be from day to day; under that sub-section an action may be instituted within six months of the ceasing of the continuing injury; therefore the plts. were entitled to recover for a greater period than six months and up to the six years limited by the Statute of Limitations.

EARL OF HARRINGTON v. DERBY CORPORATION
Buckley J. [1904] W. N. 10; [1905] 1 Ch. 205

— Pollution of river—Thames—Duties of county council.

See LONDON—Sewers. 5.

2. — *Pollution of river—Sewer—Person who causes polluted liquid to flow into stream—Local government—Public health—Rivers Pollution Prevention Act, 1876 (39 & 40 Vict. c. 75), ss. 4, 7.*

RIVER—continued.

Manufacturers caused polluting liquid to flow from their factory into a sewer which discharged into a stream. The sewer existed at the date of the passing of the Rivers Pollution Prevention Act, 1876, and was vested in and under the control of the local sanitary authority. The manufacturers used no means to render the polluting liquid harmless:—

Held that, even assuming that there was a prescriptive right to discharge their polluting liquid into the sewer, the manufacturers had committed an offence under s. 4 of the Act by discharging into a sewer through which the liquid found its way into the stream.

The reasoning in *Kirkheaton Local Board v. Ainley*, [1892] 2 Q. B. 274, approved upon this point. *BUTTERWORTH v. WEST RIDING OF YORKSHIRE RIVERS BOARD* - H. L. (E.)
[1909] A. C. 45

3. — *Pollution of river—Summary proceedings by sanitary authority—Consent of Local Government Board—Notice of intention to take proceedings—Validity of notice—Rivers Pollution Prevention Act, 1876 (39 & 40 Vict. c. 75), ss. 4, 6, 13.*

The Rivers Pollution Prevention Act, 1876, authorizes a sanitary authority to take proceedings in respect of certain offences under the Act, but provides that such proceedings shall not be taken without the consent of the Local Government Board, nor until the expiration of two months after written notice of the intention to take such proceedings has been given to the offender:—

Held, that the notice could not be given until the consent of the Local Government Board had been obtained.

West Riding of Yorkshire Rivers Board v. Scarr End Mill Co., (1901) 65 J. P. 776, overruled.

Midlothian County Council v. Oakbank Oil Co., Ltd., (1903) 5 F. 700, followed. *WEST RIDING OF YORKSHIRE RIVERS BOARD v. ROBINSON BROTHERS* C. A. [1907] W. N. 19; [1907] 1 K. B. 431

4. — *Presumption that the bed of the river passes ad medium filum—Island in middle of river—Extent of presumption—Riparian proprietor—Statutory vesting of lands abutting on river.*

By a private Act of Parliament passed to settle certain disputes between the lord of a manor and the commoners certain common lands abutting on a river were vested in a body of conservators incorporated by the Act. Such lands were defined in a schedule to the Act and by a reference to a map, but these were not so expressed or drawn as to include any part of the bed of the river. The conservators by virtue of the presumption applicable to a grant of land abutting on a river claimed to be entitled to the adjoining moiety of the bed of the river including the moiety of an island in the middle of the river, and they brought an action against another riparian proprietor in respect of an alleged trespass by the removal of gravel from this half of the bed of the river. This island was of ancient origin. The spot from which the gravel was dug

RIVER—*continued.*

was partly opposite to the island, and nearer to the island than to the plts.' bank :—

Held, that, assuming that the presumption applied the medium flum aquæ ought to be drawn, not through the island, but through the stream between the island and the plts.' lands and that the action failed.

Semle, the plts. were entitled under the Act to half the bed of the stream between their lands and the island. **GREAT TORRINGTON COMMONS CONSERVATORS v. MOORE STEVENS.**

Joyce J. [1904] W. N. 11; [1904] 1 Ch. 347

— Prevention of floods—Flood works—Thames.
See LONDON—Floods. 1.

5. — Riparian proprietors, Rights of—Abstraction of the whole of the water from river—Ex adverso mill owners.

By the general law applicable to running streams every proprietor has a right to the ordinary use of the water flowing past his land, also rights may be acquired by prescription which interfere with the natural rights of other proprietors; but the ownership of an artificial dam, although it may give a right to maintain the dam, does not turn the running stream into a pond so as to give the owner of the dam an exclusive right to use the whole of the running water.

Decision of the Second Division of the Ct. of Sess., Scotland, (1905) 42 S. L. R. 330, reversed. **JOHN WHITE & Sons v. J. & M. WHITE**

H. L. (Sc.) [1906] W. N. 2; [1906] A. C. 72

— Sewer—Pollution of river Thames by sewage—Duties of county council.
See LONDON—Sewers. 5.

— Sewers—Facilities for carrying off liquids from factories—Rivers pollution prevention.
See SEWERS. 11.

— Shipping.
See under SHIPPING.

— Stream, Pollution of—Injunction—Damages—Continuance of injury.
See No. 1, above.

— Stream—Riparian owner—Railway company—Abstraction of water for purpose unconnected with riparian tenement.
See WATER.

— Street—Paving expenses—"Owner"—Rack rent—Conservators of navigation.
See LONDON—Streets. 11.

— Watercourse.
See under STREAM.

— Waterworks.
See under WATER.

RIVER SCHELDT — Collision in — Compulsory pilotage—Liability of owner— Belgian law.

See SHIPPING—Pilotage. 1.

RIVERS POLLUTION PREVENTION.

See under RIVER.

ROAD.

See under HIGHWAY.

**LONDON—Streets.
STREETS.
WAY, RIGHT OF.**

— Block up—Cul-de-sac—Dedication to public—User.

See BUILDING SCHEME. 1.

— Repair of private or occupation roads—Dedication as highway.
See INCLOSURE ACT. 4.

— Repair of roads—Level crossings—Road raised on inclined planes.
See RAILWAY—Level Crossings. 5.

— Repairs of carriage road—Recovery of expenses—Jurisdiction of magistrate.
See LONDON—Carriage Road. 1.

— Subway approaches—Property in subsoil of road ad medium flum—Presumption.
See LONDON—Conveniences. 1.

ROADSIDE WASTE—Dedication—Presumption—Evidence.
See HIGHWAY. 38.

ROGUE — Incurable rogue — Sentence by quarter sessions—Appeal—Vagrancy.
See CRIMINAL LAW—Appeal. 13.

ROLL—Notary public, inherent jurisdiction for proper cause to strike notary public off roll of notaries—Discretion.
See NOTARIES. 2.

ROLLING STOCK—Receiver—Proceeds of sale—Debenture-holder—Priority.
See RAILWAY—Receiver. 2.

ROMAN CATHOLIC FAITH—"Charitable religious or other objects in connection with the"—Uncertainty.
See CHARITY. 43.

ROMAN-DUTCH LAW—Fidei commissum conditionale—Restraint on alienation.
See CAPE OF GOOD HOPE. 13.

— Mutual will—Community of property between spouses.
See TRANSVAAL.

— Transvaal leaseholds—Enjoyment in specie—English will.
See CONFLICT OF LAWS. 10.

— Will—Direct substitution—Fidei-commissary substitution.
See WILL—Substitution. 2.

ROOD—Faculty — Illegal church ornament — Ornaments rubric.
See ECCLESIASTICAL LAW—Faculty. 20.

ROOF—Flats—Liability of landlord for disrepair of roof.
See NEGLIGENCE. 6.

"ROYAL"—Use of word—Trade mark.
See TRADE MARK. 26.

ROYAL CHARTER—Land transfer—Consent of Charity Commissioners to sale of charity lands—Entry on register with restriction.

See CHARITY. 28.

— Treasure trove—Grant of lands to subjects—Construction—General words.

See CROWN. 4.

— Validity of Royal charter—Grant of exclusive passage for boats &c.—Repairs—River.

See WATER HIGHWAY. 1.

ROYAL NAVAL SCHOOL ACT, 1840.

See INFANT—Corporation. 4.

ROYAL PARKS.

See under PARKS.

ROYALTIES—Author and publisher—Sale of copyright to publisher on royalties—Bankruptcy of publisher—Trustee carrying on business.

See BANKRUPTCY—Trustee. 3.

— Mines—Private coal fields—Royalties on coal extracted.

See NATAL. 6.

— Mining—Wasting property—Interest, Rate of—Income of invested surplus.

See SETTLED LAND—Interest. 1.

ROYALTIES—*continued.*

— Patent—Sale—Vendor's lien for unpaid royalties—Motion for judgment against defendant not appearing—Costs.

See PATENT—Sale. 1.

— Payments in nature of royalties—Capital or income—Settled estate.

See WILL—Real Estate. 2.

— “Royalties”—Title of Crown—Treasure trove

See CROWN. 4.

— Settled land—Open brickfield—Trustees—Implied power to let from year to year.

See SETTLED LAND—Leases. 10.

RUGBY WATER ACTS—Canal company.

See CANALS. 1.

RULES—Club—Power to alter rules—Fundamental objects.

See CLUB. 1.

Rules and Orders of Court judicially considered during the years 1901-1910. See Table of Rules and Orders of Court judicially considered, ante, p. dlxv.

RUM—Diluted with water—“Prejudice of the purchaser.”

See ADULTERATION. 19.

S.

SACCHARIN—Manufacture of—Excise licence—Prescribed book.

See **REVENUE—Excise**. 3.

SAILING VESSEL—Collision—Steam trawler—Duty of steam vessel to keep clear.
See **SHIPPING—Collision**. 79.

ST. LUCIA—Practice—Leave to appeal in forma pauperis—Order granting leave discharged—Appeal from the Royal Court of St. Lucia.

Leave to appeal to the King in Council in forma pauperis is not of course, and ought not to be granted where it is made apparent that the proposed appeal is idle and frivolous. An order to that effect discharged when on the application of the respondent it appeared that there was no substantial question to be tried, and where the order would have not been made if all the materials had been before their Lordships.
QUINLAN v. QUINLAN P. C. [1901] A. C. 612

ST. PAUL, COVENT GARDEN (PARISH OF)—Rating—"House"—"Inhabitant"—"Occupier."

See **RATES**. 15.

ST. VINCENT—Privy Council Appeals.

See under **PRIVY COUNCIL**.

SALARY—Assignment of share—Payment of salaries to partners—Right of assignee to interfere.

See **PARTNERSHIP**. 2.

—Income tax—Deductions—Contribution to thrift fund.

See **REVENUE—Income Tax**. 34.

—Justice's clerk—Power to appoint—Payment of salary.

See **LOCAL GOVERNMENT**. 18.

—Manchester Corporation—Income tax—Deductions—Contribution to thrift fund.

See **REVENUE—Income Tax**. 34.

—Payment of salaries to partners—Right of assignee to interfere.

See **PARTNERSHIP**. 2.

—Petition of right—Rent not to be deducted from salary when the officer is entitled to quarters.

See **VICTORIA**. 5.

—"Salary"—Preferential debt.

See **BANKRUPTCY—Preferential Debt**. 1.

—Teachers—Education Acts.

See under **SCHOOLS**.

SALE.

See under **SPECIFIC TITLES**.

SALE OF FOOD AND DRUGS—Adulteration.

See under **ADULTERATION**.

SALE OF GOODS.

See also under **FACTOR**.

—Action, Cause of—Special goods—Fixed prices—Damage.

See **ACTION**. 3.

—Agent—Contract—Undisclosed principal—Ratification.

See **CONTRACT**. 27.

—Agreement by purchaser not to buy similar goods from others—Right of assignee to require supply of goods from vendor.

See **CONTRACT**. 5.

—Agreement for sale of goods—Price to be paid by instalments at stated periods—Liability to ad valorem stamp duty.

See **REVENUE—Stamps**. 26.

1. —Appropriation of goods to contract—Bankruptcy of manufacturer—Right of trustee to articles in course of manufacture—Ship—Mercantile Law Amendment (Scotland) Act, 1856 (19 & 20 Vict. c. 60), s. 1—Sale of Goods Act, 1893 (56 & 57 Vict. c. 71), ss. 16, 17, 18.

A firm of shipbuilders contracted to build a ship for a firm of shipowners, to be classed 100 A1 at Lloyd's and to be constructed under the superintendence of the shipowners. The contract contained this clause: "(4.) The vessel as she is constructed, and all her engines, boilers, and machinery, and all materials from time to time intended for her or them, whether in the building-yard, workshop, river, or elsewhere, shall immediately as the same proceeds become the property of the purchasers, and shall not be within the ownership, control, or disposition of the builders, but the builders shall at all times have a lien thereon for their unpaid purchase-money." Before the ship was completed the shipbuilders became bankrupt. At the date of the bankruptcy there were lying at railway stations a quantity of iron and steel plates at the orders of the shipbuilders. These plates were claimed by the trustee in the shipbuilders' sequestration, and also by the shipowners. The plates had been passed by Lloyd's surveyor at the maker's works, and they were each numbered by the makers with the number of the vessel and with marks showing the position which each plate was to occupy in the vessel:—

Held, reversing the decision of the First Div. of the Ct. of Sess., (1902) 4 F. 345, that the contract was for the purchase of a "complete ship," and the materials in question could not be regarded as appropriated to the contract or sold under the Sale of Goods Act.

SALE OF GOODS—continued.

Seath & Co. v. Moore, (1886) 11 App. Cas. 350, followed. *REID v. MACBETH & GRAY*

H. L. (Sc.) [1904] W. N. 60 ; [1904] A. C. 22

— Bankruptcy—Contract induced by fraud of purchaser—Vendor's right to disaffirm contract—Mutual dealings—Set-off—Damages for fraud.

See BANKRUPTCY—Sale of Goods. 1.

— By description—Award based on custom subsequently found not to exist—Custom inconsistent with written contract.

See ARBITRATION—Award. 2.

2. — *Condition, Implied—Breach—Measure of damages—Beer—Sale of Goods Act, 1893* (56 & 57 Vict. c. 71), ss. 11, 13, 14, sub-s. 2, 53, sub-s. 2.

The debts contracted to sell by description to the plts. sulphuric acid, commercially free from arsenic. The plts. did not make known to the defts., either expressly or by implication, the purpose for which they required the acid. In breach of the implied condition that the acid should correspond with the description in the contract, the defts. supplied the plts. sulphuric acid which was not commercially free from arsenic. The plts. by the exercise of ordinary care might have discovered the presence of arsenic in the acid ; but they did not do so, and, in ignorance of the fact, used the acid in the manufacture of brewing sugar in the shape of invert and glucose, which they sold to brewers who used it in the brewing of beer. The beer thus made was rendered poisonous, and the brewers suffered loss in respect of which the plts. were liable to them. The plts. also lost the price of the acid, which was rendered worthless to them, and the value of other goods spoilt through being mixed with the acid ; and the goodwill of their business was damaged :—

Held, that the plts. were entitled to recover from the defts. the price of the acid and the value of the goods spoilt, but not the damages payable by the plts. to the brewers or the damage to the goodwill of the plts.' business. *BOSTOOK & CO. v. NICHOLSON & SONS, LD.*

Bruce J. [1904] 1 K. B. 725

3. — *Conditions as to resale attached—Notice—Right of sub-purchaser to disregard conditions.*

On the sale of goods a condition as to the price at which they may be resold cannot, in the absence of agreement, be imposed on a sub-purchaser, even though he bought with notice of the condition.

A retail trader bought from the agent of the licensee of a patent an article manufactured by the licensee under the patent. On the inside of the lid of a box in which the article was packed was printed a condition that the goods were not to be resold at less than a specified price. The retail trader had sold some of the goods at less than the specified price. In an action by the licensee to restrain the retailer from so doing :—

Held, that, even if the retailer bought with notice of the condition, it could not be enforced against him.

Decision of Farwell J. reversed.

Decision of Swinfen Eady J. in *Taddy & Co.*

SALE OF GOODS—continued.

v. Sterious & Co., [1904] 1 Ch. 354, approved and adopted. *MCGRATHER v. PITCHER*

C. A. [1904] W. N. 144 ; [1904] 2 Ch. 306

4. — *Contract—Goods not according to specification—Right to reject—Stipulation against rejection.*

A contract for the sale of laths to be shipped, and to be "about the specification stated below," provided that the property in the goods was to be deemed to have passed to the buyers when the goods were put on board, and contained a clause that, if any dispute arose under the stipulations of the contract, the buyers were not to reject any of the goods, but the dispute was to be referred to arbitration. The sellers having put on board laths which were not of the specified lengths :—

Held, that the buyers were justified in rejecting these laths on their arrival in this country, and were not bound by the terms of the contract to accept them subject to an allowance to be fixed by arbitration. *VIGERS BROTHERS v. SANDERSON BROTHERS* - **Bigham J. [1901] 1 K. B. 608**

5. — *Contract—Sample, Sale by—Variation in quality between bulk and sample—Validity of custom for buyer not to reject—Sale of Goods Act, 1893* (56 & 57 Vict. c. 71), ss. 15, 55.

A contract in writing for the sale of barley at an agreed price per bushel provided that the barley at the time of shipment under the contract was to be "about as per sample," and contained an arbitration clause. The buyers having rejected the barley for inferiority to the sample, the sellers relied before the arbitrator upon a custom of the London Corn Exchange, applicable to such contracts, by which the buyer was not entitled to reject for difference or variation in quality, unless the same was excessive or unreasonable, and was so found by arbitration under the contract. The arbitrator found that the barley was not "about as per sample," so as to entitle the sellers to insist upon payment of the full contract price without any allowance ; but that the inferiority was not excessive or unreasonable, nor so great as to amount to a difference of description, and he awarded that the buyers were not entitled to reject the barley, but must accept it with an allowance in price in respect of the inferiority :—

Held, that the custom was good in law, not being unreasonable or uncertain or in contradiction of the written contract, and that the award must therefore be upheld. *In re WALKERS, WINSER & HAMM AND SHAW, SON & CO.*

Channell J. [1904] 2 K. B. 152

— *Contract—Validity—Condition attached to goods.*

See CONTRACT. 30.

6. — *Contract—Warranty—Implied condition as to fitness—Merchantable quality—Patent or trade name—Evidence—Sale of Goods Act, 1893* (56 & 57 Vict. c. 71), s. 14, sub-ss. 1 and 2.

Under a contract in writing which contained no mention of the particular purpose for which they were required, the plts. bought "the 24/40 h.p. Fiat omnibus" they had inspected and

SALE OF GOODS—continued.

"six 24/40 h.p. Fiat omnibus chassis" at an agreed price. The articles when delivered were not fit to perform the work required of them. In an action for damages:—

Held, that this was not a contract for the sale of a specified article under its patent or trade name, and that there was an implied condition that the goods should be reasonably fit for the purpose for which they were required within s. 14, sub-s. 1, of the Sale of Goods Act, 1893, and also that they should be of merchantable quality within sub-s. 2 of the same section, and consequently that the plts. were entitled to recover damages for breach of the contract.

Per Farwell, L.J.: No evidence of any antecedent or subsequent negotiations to prove express warranty was admissible in such a contract.

The proviso at the end of sub-s. 1 of s. 14 assumes the absence of any express assurance by the seller and deals only with the case of express or implied information by the buyer of the purpose for which he requires the article, so framed as to shew that he relied on the seller's skill or judgment, but the seller is not bound to refrain from carrying out his order for a particular article because it is ill adapted for the purpose mentioned in the order, provided the article has in fact a patent or trade name under which it can be ordered.

The condition implied by sub-s. 2 of s. 14 that the goods are of merchantable quality applies to all goods bought from the seller who deals in goods of that description whether they are sold under a patent or trade name or otherwise. **BRISTOL TRAMWAYS, & CO., CARRIAGE CO., LD. v. FIAT MOTORS, LD. - C. A. [1910] 2 K. B. 831**

7. — C. i. f. contract—"Terms net cash"—Payment against shipping documents—Sale of Goods Act, 1893 (56 & 57 Vict. c. 71), ss. 16, 18 (r. 5), 28, 34.

By a contract in writing dated Oct. 13, 1904, the defts. agreed to sell to Vaux & Sons, Ltd., 100 bales of choice brewing Pacific Coast hops of each of the crops of the years 1905 to 1912 inclusive; the hops to be shipped to Sunderland; payment for the hops "at the rate of 90 shillings sterling per 112 lbs., c. i. f. to London, Liverpool, or Hull (tare 5 lbs. per bale). Terms net cash." Time of shipment to be during the months of Oct. to Mar. inclusive. The contract entitled the sellers to consider the entire unfulfilled portion of the contract violated by the buyers, in case of refusal by them to pay for any hops delivered and accepted thereunder, or if the contract or any part of it was otherwise violated by the buyers. In Aug., 1908, Vaux & Sons, Ltd., assigned their rights under the contract to the plts., and express notice thereof in writing was given to the defts. Some correspondence ensued between the parties as to the 1909 crop, the defts. requiring payment for the hops against the shipping documents, and the plts. requiring the defts. to submit samples to them of the hops to be shipped, and the samples being accepted to give delivery in bulk in accordance with the samples, and stating that otherwise they would only pay for the hops against delivery and examination of each bale. The defts. in reply stated that this

SALE OF GOODS—continued.

was a clear breach of the contract by the plts., and that they would not ship the 100 bales of the 1909 crop. The plts. thereupon brought this action to recover damages for breach of the contract, and the defts. counterclaimed for damages for breach.

Hamilton J. held that the delivery of the hops, under the contract, conditional upon their being in conformity with the contract, was delivery at the port shipment, and from that time the risk and the property passed to the buyers; and that accordingly payment of the price must be made against the shipping documents which completed the delivery of the goods in accordance with the contract; the right of the plts. to examine the hops on arrival and to reject them if they were found not to be in conformity with the contract remaining unimpaired. The defts. were therefore entitled to judgment on the claim and counter-claim. **BIDDELL BROS. v. E. CLEMENS HORST Co. - Hamilton J. [1910] W. N. 238**

8. — Contract for delivery of goods by instalments—Wrongful repudiation of contract by buyer—Waiver by buyer of performance of conditions precedent—Inferiority of portion of goods to description in contract.

A contract provided for the sale of rosewood for shipment in 1903, to be delivered at Hull in instalments during that year, cash payable against bill of lading. While the first consignment of rosewood was on the sea, the buyers repudiated the contract and refused to accept any rosewood under it upon the ground that the seller had committed a breach of a collateral oral agreement not to supply rosewood to any other person in the trade during 1903. When the bill of lading for the first consignment was tendered to the buyers they refused to accept it or to pay for the rosewood comprised in it; the rosewood was therefore sold by the seller as against the buyers, and the seller claimed as damages from the buyers for their refusal to accept the consignment the difference between the contract price and the price at which it was sold as against the contract. The second consignment, consisting of the balance of the rosewood, was likewise refused by the buyers on the same ground and sold as against them. It subsequently came to the knowledge of the buyers that a portion of the rosewood in the first consignment did not answer the description of the quality of rosewood in the contract, and it was admitted that there was some inferiority in a portion that would be compensated for by an allowance of about 6 per cent. on the value of the consignment. The second consignment was in accordance with the contract. The seller having sued the buyers for damages for not accepting the rosewood, the judge at the trial found as a fact that the collateral oral agreement relied upon by the buyers had never been entered into:—

Held (affirming the judgment of Kennedy J.), that the original repudiation of the contract by the buyers was wrongful, and that by refusing to take delivery of the consignments on arrival on the ground that they had already repudiated

SALE OF GOODS—continued.

the entire contract the buyers had waived the performance of conditions precedent on the part of the sellers, who were entitled to damages based upon the difference between the contract price of the rosewood and the price at which it had been sold by them as against the contract. **BRAITHWAITE v. FOREIGN HARDWOOD CO.**

C. A. [1905] 2 K. B. 543

9. — Contract for sale of cattle at price including cost, freight, and insurance—Contract by seller to insure cattle “against all risks”—Warranty in policy against “capture, seizure, and detention”—Slaughter of cattle in consequence of Government prohibition against landing—Liability of seller.

Cattle were bought at Beunos Ayres, at a price including cost, freight, and insurance, for shipment to Durban; by the contract of sale the seller was to insure the cattle “against all risks.” The seller obtained, and handed to the buyer, a policy of insurance, which was an ordinary “all risks” Lloyd’s policy, but which, in accordance with the usual practice among insurance brokers and underwriters with regard to such policies, contained a warranty against “capture, seizure and detention, and the consequences thereof.” Disease broke out among the cattle on the voyage, and on arrival at Durban the authorities forbade their landing, and the cattle were consequently slaughtered. The underwriters having refused to pay upon the policy, except in regard to risks not affected by the warranty, the buyer brought an action against the seller to recover damages for breach of contract to insure the cattle “against all risks.”—

Held, that the contract was not satisfied by the procuring of a policy which did not protect the buyer from loss arising in consequence of the cattle not being able to land, and that the seller was, therefore, liable to the buyer in damages for breach of contract.

Decision of Channell J., [1907] 1 K. B. 685, affirmed. **YULL & Co. v. SCOTT ROBSON.**

C. A. [1908] W. N. 4; [1908] 1 K. B. 270

10. — Delivery of goods not of contract description—Resale by purchaser—Condition—Warranty—Exclusion by terms of contract of liability for breach of warranty.

The debts sold seed by sample to the plts., the terms of the sale as expressed in the sold note being that they sold on the conditions printed on the back of the note about 27½ quarters common English sainfoin at forty shillings. The material condition on the back of the sale note ran: “Sellers give no warranty express or implied as to growth, description, or any other matters . . .” Seed equal to sample was delivered under the contract, and a portion of it was resold by the plts. as common English sainfoin. The seed delivered was not, nor was the sample, common English sainfoin; they were both the seed of giant sainfoin, which was of inferior quality to that contracted for. The difference between the two seeds was indistinguishable, and the mistake was only discovered by the plt.’s sub-purchaser when the seed sown by him came up. The plts. reasonably and

SALE OF GOODS—continued.

properly settled a claim for damages brought against them by their sub-purchaser, and now claimed to recover from the debts. the amount so paid:—

Held by Vaughan Williams L.J. and Farwell L.J. (Fletcher Moulton L.J. dissenting), that the plts., having accepted and resold the seed, had put it out of their power to treat the description of the article sold as common English sainfoin as a condition, on a breach of which they were entitled to reject the goods, and could only treat it as a warranty, a breach of which would ordinarily entitle the purchaser to damages; but that upon the true construction of the condition printed on the back of the sold note the debts. had excluded all liability capable of enforcement by an action for breach of warranty.

Howcroft v. Laycock, (1898) 14 Times L. R. 460, overruled. **WALLIS, SON & WELLS v. PRATT & HAYNES** **C. A. [1910] 2 K. B. 1003**

11. — Estoppel—Fraudulent conversion of goods—Loss to one of two innocent persons through fraud of a third person—Power of disposition of goods given to a clerk—Sale of Goods Act, 1893 (56 & 57 Vict. c. 71), s. 21.

The appellants, who were timber merchants, warehoused with a dock co. the timber they imported, and instructed the dock co. to accept all transfer or delivery orders signed by their clerk. The clerk had their authority to make limited sales to their known customers. The clerk under an assumed name fraudulently sold timber of the appellants to the respondents, who knew nothing of the appellants or of the clerk under his real name, and who bought and paid the clerk for the timber in good faith. The clerk carried out the sales by giving the dock co. orders for the transfer of timber into his assumed name, and then in that name giving delivery orders to the respondents:—

Held, that the appellants, not having held out the clerk to the respondents as their agent to sell to the respondents, were not estopped from denying the clerk’s authority to sell; that the clerk, having no title or apparent authority himself, could not give the respondents any title, and that the appellants were entitled to recover from the respondents the value of the timber.

The decision of the C. A. [1901] W. N. 157; [1901] 3 K. B. 697, reversed, and the judgment of Mathew J. restored. **FARQUHARSON BROTHERS & Co. v. C. KING & Co.**

H. L. (E.) [1902] W. N. 122; [1902] A. C. 325

— **Execution—Warrant sent to foreign Court—Binding the property in goods of execution debtor—Time.**

See COUNTY COURT—Execution. 6.

— **Executor.**

See under EXECUTOR.

— **Forfeiture of prohibited goods by innocent holder.**

See NEW ZEALAND. 18.

— **Fraud of debtor—Title of trustee in bankruptcy.**

See BANKRUPTCY—Trustee. 10.

SALE OF GOODS—continued.

12. — *Frauds, Statute of—Contract not to be performed within a year—Writing signed by the party to be charged—Statute of Frauds* (29 Car. 2, c. 3), s. 4—*Sale of Goods Acts, 1893* (56 & 57 Vict. c. 71), s. 4.

Sect. 4 of the Statute of Frauds (so far as it relates to agreements not to be performed within a year) applies to agreements for the sale of goods, and is not repealed by the Sale of Goods Act, 1893. Therefore an agreement for the sale of goods is not taken out of the operation of the above provision of the Statute of Frauds by reason of there having been acceptance and actual receipt by the buyer of part of the goods so sold. *PRESTED MINERS CO. v. GARNER, LD.* Walton J. [1910] W. N. 196; [1910] 2 K. B. 476

On Appeal:—

The C. A. dismissed the appeal. *PRESTED MINERS CO. v. GARNER, LD.* - - - C. A. [1910] W. N. 276

13. — *Implied condition as to quality or fitness—Merchantable quality—Right of rejection—Form of contract—Severability—Rejection of later instalments after acceptance of earlier instalment—Sale of goods Act, 1893* (56 & 57 Vict. c. 71), s. 14.

An English dealer ordered from a foreign manufacturer a large number of motor horns of different descriptions and prices, "delivery as required." The horns were delivered in several instalments. The buyer, after accepting the first instalment, rejected the later instalments on the ground that the goods were not of merchantable quality. In an action for the price of the goods the official referee found that a large proportion of the horns were dented and badly polished owing to defective packing and careless workmanship, but that they could easily have been made merchantable at a trifling cost, and he declined to hold that the consignment as a whole was unmerchantable and gave judgment for the seller with an allowance to the buyer in respect of the defective goods; and this judgment was affirmed by the Div. Ct. On appeal:—

Held, (1.) upon the construction of the contract, that the acceptance of the first instalment did not preclude the buyer from rejecting the later instalments; (2.) that the buyer was justified in rejecting the later instalments as unmerchantable. *JACKSON v. ROTAX MOTOR AND CYCLE CO.* C. A. [1910] W. N. 205; [1910] 2 K. B. 937

— Infant.

See under INFANT.

— "Mercantile agent"—Authority to pledge, Extent of—Custom of particular trade. *See FACTOR. 1.*

14. — *Negligence—Dangerous goods—Knowledge of vendor—Duty of vendor to purchaser—Warranty of fitness—Sale of Goods Act, 1893* (56 & 57 Vict. c. 71), s. 14.

Where the vendor of a tin containing disinfecant powder knew that it was likely to cause danger to a person opening it, unless special care was taken, and the danger was not such as

SALE OF GOODS—continued.

presumably would be known to or appreciable by the purchaser, unless warned of it:—

Held, that, independently of any warranty, there was cast upon the vendor a duty to warn the purchaser of the danger.

Where one of the rules of a co-operative society stated that no warranties were given with goods sold by the society, except on the written authority of one of the managing directors or the assistant manager:

Query, whether the rule had the effect of excluding the implied warranty that an article sold for a particular purpose is fit for that purpose. *CLARKE AND WIFE v. ARMY AND NAVY CO-OPERATIVE SOCIETY, LD.*

C. A. [1903] 1 K. B. 155

15. — *Passing of property under unenforceable contract—Sale of Goods Act, 1893* (56 & 57 Vict. c. 71), s. 4, sub-s. 1.

Semble, the fact that a contract for the sale of goods does not comply with the requirements of s. 4 of the Sale of Goods Act, 1893, though it renders the contract not enforceable by action, does not make it void, and does not prevent the property in the goods from passing under it to the purchaser.

Nicholson v. Bower, (1858) 1 E. & E. 172, discussed. *TAYLOR v. GREAT EASTERN RY. CO.*

Bigham J. [1901] 1 K. B. 774

16. — *Purpose for which goods required—Reliance on seller's skill—Milk supplied for consumption—Implied warranty of fitness—Sale of Goods Act, 1893* (56 & 57 Vict. c. 71), s. 14, sub-s. 1.

By s. 14, sub-s. 1, of the Sale of Goods Act, 1893, it is enacted that—"Where the buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are required, so as to show that the buyer relies on the seller's skill or judgment, and the goods are of a description which it is in the course of the seller's business to supply . . . there is an implied condition that the goods shall be reasonably fit for such purpose."

The defts., who were milk dealers, supplied the plt. with milk which was consumed by himself and his family. A book in which the daily supply was entered was interleaved with a printed notice of the precautions taken by the defts. to supply milk pure and unadulterated and free from the germs of disease. The milk supplied contained germs of typhoid fever, and the plt.'s wife was infected thereby and died. The existence of the germs could only be discovered by prolonged investigation. In an action, upon an implied warranty under s. 14, sub-s. 1, of the Sale of Goods Act, 1893, to recover the expenses to which the plt. had been put by the illness and death of his wife:—

Held, that the purpose for which the milk was supplied was sufficiently made known to the sellers by its description, that there was evidence that the buyer relied on the seller's skill, and that there was an implied condition under the Act that the milk was reasonably fit for consumption, although the defect was not discoverable at the time of the sale. *FROST v. AYLESBURY DAIRY CO.* C. A. [1905] 1 K. B. 608

SALE OF GOODS—continued.

— Sale of goods c.i.f.—Title of seller or buyer to the excess insurance money.

See **INSURANCE (MARINE)**. 25.

17. — *Sale or return—Sale for cash only—Passing of property—Pledge*—"Act adopting the transaction"—*Sale of Goods Act, 1893* (56 & 57 Vict. c. 71), s. 18, r. 4.

The plt., a manufacturing jeweller, delivered jewellery to H., a retail jeweller, on the terms of a memorandum headed "On approbation. On sale for cash only or return. Goods had on approbation or on sale or return remain the property of W. (the plt.) until such goods are settled for or charged." H., being informed by L. that he had a customer who might buy the goods, delivered them to L. upon the terms of his paying cash or returning them in a few days. L. had no customer, and fraudulently pledged the goods with the deft., a pawnbroker. In an action to recover the goods from the deft.:

Held, that the goods were not delivered to H. "on approval, or on sale or return or other similar terms" within the meaning of s. 18, r. 4, of the Sale of Goods Act, 1893; that the terms of the memorandum shewed that the intention of the plt. and H. was that the property in the goods should not pass to H. until he paid for them or was debited with the price by the plt.; that consequently the property in the goods had not passed out of the plt., and that he was entitled to recover from the deft.

Judgment of Bray J., reported [1905] 2 K. B. 172, affirmed. **WEINER v. GILL: WEINER v. SMITH** - - - **C. A. [1906] W. N. 157; [1906] 2 K. B. 574**

Note.

Explained and distinguished by C. A., *Weiner v. Harris*, [1910] 1 K. B. 285. See **Factor**. 2.

18. — *Ship—Passing of property—Sale of Goods Act, 1893* (56 & 57 Vict. c. 71), ss. 16, 18, 62—*Scottish arrestment of ship in course of building*.

Where it appears to be the intention of the parties to a contract for the building of a ship that the vessel is not to be delivered and finally accepted until after an official trial off a foreign coast, and until after conditions of the contract have been fulfilled as to speed, consumption of coal, capacity, &c., the property in the ship does not pass to the purchaser while the vessel remains uncompleted, although the contract contains stipulations for the price to be paid by instalments at certain periods of construction.

The respondents, a Glasgow firm of ship-builders, agreed to build two ships for an Italian firm, according to certain specifications and under the superintendence of an agent appointed by the Italian firm, for a certain amount payable by instalments at specified stages of construction; but delivery of the ships was not to be considered to be completed till they had passed trials at Greenock and off the Italian coast. Before the ships were fully constructed, but after several instalments had been paid, the appellants, an English firm of shipbuilders, arrested the ships in Scotland for debt alleged to be due to them by the Italian co., but on the petition to the

SALE OF GOODS—continued.

First Division of the Court of Session the arrestments were recalled:—

Held, (affirming the decision of the First Division), that no intention was shewn in the contract to make delivery of or to pass the property in the ships before they were completed, and that the arrestments were properly recalled.

SIR JAMES LAING & SONS, LD. v. BARCLAY, CURLE & CO. **H. L. (Sc.) [1907] W. N. 243; [1908] A. C. 35**

— Special goods—Fixed prices—Wholesale and retail agreements.

See **CONTRACT**. 27.

19. — *Unascertained goods—Delivery orders Unpaid seller's lien—Assent to sub-sale—Sale of Goods Act, 1893* (56 & 57 Vict. c. 71), s. 47.

By s. 47 of the Sale of Goods Act, 1893, it is declared that the unpaid seller's right of lien or retention or stoppage in transitu is not affected by any sale or other disposition of the goods which the buyer may have made, unless the seller has assented thereto:—

Held, that the mere assent of an unpaid seller to a sale by the buyer of an unascertained portion of the goods is not such an assent as is contemplated by the above section as affecting the unpaid seller's right of lien. To affect the lien the assent must be given in such circumstances as to shew an intention on the part of the unpaid seller to renounce his right against the goods sold by the buyer.

The defts. sold oil to certain merchants. The merchants sold a portion of this oil to the plt., giving them delivery orders addressed to the defts., and directing the latter to deliver to the plt. or their order "ex our contract." The plt. presented these orders to the defts., who either sent word that they were in order, or retained them without comment, and in either case they entered in their books the names of the plt. While the merchants were punctual in their payments to the defts., the latter regularly delivered oil on these orders to the plt. or their sub-purchasers. The merchants fell into arrears with their payments, and the defts., claiming to exercise their right of lien as unpaid sellers, refused to make any further deliveries against the merchants' delivery orders.

In an action by the plt. against the defts.:—

Held, that the defts. had not assented to the sales by the merchants to the plt. so as to preclude them from exercising their right of lien as unpaid sellers:—

Stoveld v. Hughes, (1811) 14 East, 308, and **Pearson v. Dawson**, (1858) E. B. & E. 448, distinguished. **MORDAUNT BROTHERS v. BRITISH OIL AND CAKE MILLS, LD.** **Pickford J. [1910] 2 K. B. 502**

— Vendor and purchaser.

See under **VENDOR AND PURCHASER**.

20. — *Warranty—Beer sold by retail—Fitness for consumption—Implied warranty—Breach—Damages—Sale of Goods Act, 1893* (56 & 57 Vict. c. 71), s. 14.

By s. 14, sub-s. 2, of the Sale of Goods Act, 1893, "Where goods are bought by description

SALE OF GOODS—*continued.*

from a seller who deals in goods of that description (whether he be the manufacturer or not) there is an implied condition that the goods shall be of merchantable quality; provided that if the buyer has examined the goods, there shall be no implied condition as regards defects which such examination ought to have revealed."

The deft. kept a beerhouse in which the beer supplied to customers, for consumption on the premises was that of a particular firm of brewers only. This fact was known to the plt., who frequented the beerhouse for the purpose of buying the beer of that firm. The beer contained arsenic, by reason of which the health of the plt. was injured. In an action to recover damages for breach of warranty:—

Held, that the beer had been bought by description within the meaning of s. 14, sub-s. 2, of the Sale of Goods Act, 1893, and that, as examination by the buyer would not have revealed the defect, the deft. was liable on an implied warranty that the beer was of a merchantable quality. - **WREN v. HOLT C. A.**

[1903] 1 K. B. 610

21. — Warranty, Implied—Fitness for particular purpose—Sale of Goods Act, 1893 (56 & 57 Vict. c. 71), s. 14, sub-s. 1.

The particular purpose for which an article purchased is required may, under the Sale of Goods Act, 1893, s. 14, be made known to the seller by the recognised description by which the article is purchased.

The question whether, on a sale of goods the buyer made known to the seller the purpose for which the goods were required so as to shew that he relied on the seller's skill of judgment is one of fact depending on the circumstances of the particular case.

The plt., a draper, went to the shop of the deft., a retail chemist, and asked for a "hot-water bottle." An article was shewn to him as such. He inquired whether it would stand boiling water, and the deft. told him that it was meant for hot water, but would not stand boiling water. He then purchased it. Some days afterwards the bottle, while in use by the plaintiff's wife, burst, and she was in consequence scalded. The plt. sued the deft. as for breach of a warranty that the bottle was fit for use as a hot-water bottle. The jury found at the trial that it was not, when sold, fit for that purpose, and that this was the cause of its bursting. The judge to whom power was given by consent to draw any inferences of fact, if necessary, on further consideration, found that the plt. had, when purchasing the bottle, made known to the deft. the particular purpose for which it was required, so as to shew that he relied on the skill and knowledge of the deft.; and held that the case therefore came within s. 14, sub-s. 1, of the Sale of Goods Act, 1893, and there was, consequently, an implied warranty that the bottle was fit for the purpose of holding hot water, of which there had been a breach. He therefore gave judgment for the plt.

Held, that the facts justified the conclusion arrived at by the judge. **PRIEST v. LAST**

C. A. [1903] 2 K. B. 148

SALESMAN—Trade mark—Proprietor.

See **TRADE MARK. 11.**

SALFORD HUNDRED COURT.

Inferior Court (England). O. in C. excluding the Jurisdiction of the Salford Hundred Court in certain cases. Reprint from **W. N. 1909 (June 26)**, p. 259. *See* **CURRENT INDEX, 1909**, p. cxxii.

SALMON FISHERY.

See under **FISHERY.**

SALT MINE—Underground brine, Rights of adjoining landowners in respect of—Percolating underground water. *See* **MINES. 12.**

SALVAGE—Capital moneys—Rebuilding Mansion-house—Dry-rot.

See **SETTLED LAND—Capital Moneys. 13.**

—Insurance (Marine).

See under **INSURANCE (Marine).**

—Mansion-house—Settled land.

See under **SETTLED LAND—Mansion-house.**

—Shipping.

See under **SHIPPING—Salvage.**

SAMPLE—Sale by—Validity of custom for buyer not to reject.

See **SALE OF GOODS. 5.**

SANCTION OF COURT—Investment—Trustees.

See under **TRUSTEE—Investments.**

—Reduction of capital—Company.

See under **COMPANY—Reduction of Capital.**

—Scheme of arrangement.

See under **BANKRUPTCY—Arrangements. COMPANY—Arrangements.**

SAND—Gravel—Mines and minerals—Quarries—Regulation of railways.

See **MINES. 6.**

—Harbour—Boundary—"Precincts"—Removal of sand from foreshore.

See **HARBOUR. 2.**

SANDSTONE—Mines of coal, ironstone, slate, or other minerals.

See **RAILWAY—Mines. 7.**

SANITARY AUTHORITY.

See under **LOCAL GOVERNMENT.**

—Water-closets.

See under **WATER-CLOSETS.**

SANITARY CONVENIENCES—Power of factory inspector to make requirement.

See **MASTER AND SERVANT—Factory Acts. 5.**

—Power to provide—Sanitary authority—Bona fide use of statutory powers.

See **LONDON—Conveniences. 1.**

—Water.

See under **LONDON—Water. WATER.**

SANITARY WORKS—Cost of—Repairs—Capital or income.

See **SETTLED LAND—Capital Moneys**. 14.

SANITATION—House let in lodgings or occupied by members of more than one family.

See **ARTIZANS' DWELLINGS**. 1.

SATISFACTION.

Companies Act, 1900—Memorandum of satisfaction of mortgage or charge. Reprint from **W. N. 1906 (March 10)** p. 69. See **CURRENT INDEX, 1906**, p. lxix.

— After-acquired property clause — Persons derivatively entitled—Election.

See **WILL—Satisfaction**. 1.

— Donatio mortis causa — Subsequent will—Revocation—Legacy of equal amount.

See **DONATIO MORTIS CAUSA**. 4.

— Double portions — Parent and child — “Advances” — Ademption.

See **WILL—Advances**. 1.

— Employer and workman — Contract that deceased shall have no claim—“Satisfaction” means real and tangible indemnity.

See **CANADA—Master and Servant**. 1.

— Insurance, Life—Covenant for payment to trustees—Policies subsequently effected by settlor for benefit of wife and children.

See **SETTLEMENT**. 30.

— Judgment debt—Joint and several debt—Release to one co-debtor—Extinguishment of debt.

See **ACCORD AND SATISFACTION**. 1.

— Presumption of—Lien—Merger—Lapse of time—Interest.

See **LIEN**. 2.

— Will — Legacies — General or specific—Insufficiency of assets.

See **WILL—Legacy**. 1.

SAVAGE ANIMAL — *Negligence—Liability of owner to people crossing field.*

The deft., a farmer, occupied a field which adjoined a ry. station, and was divided from a footpath by a wire fence. He put into this field a horse which he knew to be bad tempered and to have bitten persons. Members of the public had previously, to the deft.'s knowledge, for many years habitually crossed the field without leave, for the purpose of making a short cut from a point on the footpath, where they got over the fence, to a gate near the station. The deft. had warned off persons crossing the field and had complained to the police of persons so crossing as trespassers, but had refused to take legal proceedings against any of them for trespass, assigning as a reason that some of them were his customers for milk. The plt., while so crossing the field without leave from the deft., was bitten by the horse :—

Held by Vaughan Williams L.J. and Kennedy L.J. (Buckley L.J. dissenting), that the fact that the deft. knew that the public habitually crossed the field without leave as above mentioned

SAVAGE ANIMAL—*continued.*

did not, under the circumstances, impose upon him towards persons so crossing any duty not to keep an animal such as the horse in question in the field, or to take any care for their protection from risk of being injured by it, and that the deft. was, consequently, not liable to the plt. in respect of the injuries sustained by him.

Decision of the Div. Ct. (reported [1909] **W. N. 130**; [1909] 2 **K. B. 433**) affirmed. **LOWERY v. WALKER C. A. [1910] 1 K. B. 173**

On Appeal :—

The House reversed the decision of the C. A. [1910] 1 **K. B. 173**, and restored the judgment of Judge Steavenson, holding that the respondent having, without giving any warning, placed a horse he knew to be dangerous in a field which persons to his knowledge habitually crossed was liable to the appellant for the injury done by the horse. **LOWERY v. WALKER H. L. (E.) [1910] W. N. 241**

SAVAGE DOG.

See under **DOGS**.

SAVINGS BANK — Post Office Savings Bank Act, 1908 (8 **Edw. 7**, c. 8).

See under **POST OFFICE**.

— Post Office.

See under **POST OFFICE**.

SCAFFOLDING—Workmen's compensation.

See **MASTER AND SERVANT—Compensation**.

SCHEME OF ARRANGEMENT—Bankruptcy.

See under **BANKRUPTCY—Arrangements**.

— Company.

See under **COMPANY—Arrangements**.

SCHOOL BOARDS.

See under **SCHOOLS**.

SCHOOLMASTER — Franchise — Permission to occupy house.

See **PARLIAMENT**. 14.

— Masters.

See under **SCHOOLS**.

SCHOOLMISTRESS.

See under **SCHOOLS**.

SCHOOLS.

See also under **EDUCATION**.

*Education Act, 1901 (1 **Edw. 7**, c. 11), enables local authorities to empower School Boards temporarily to carry on certain schools; and for sanctioning certain School Board expenses.*

*Youthful Offenders Act, 1901 (1 **Edw. 7**, c. 20), amends the law relating to youthful offenders and for other persons connected therewith.*

*Education Act, 1901 (Renewal) Act (1902) (2 **Edw. 7**, c. 19), renews the Education Act, 1901.*

*Education Act, 1902 (2 **Edw. 7**, c. 42), makes further provision with respect to education in England and Wales.*

SCHOOLS—continued.

Education (Provision of Working Balance) Act, 1903 (3 *Edu. 7*, c. 10).

Elementary Education Amendment Act, 1903 (3 *Edu. 7*, c. 13).

Poor Law (Dissolution of School Districts and Adjustments) Act, 1903 (3 *Edu. 7*, c. 19).

Education (London) Act, 1903 (3 *Edu. 7*, c. 24), extends and adapts the *Education Act, 1902*, to London.

Education (Local Authority Default) Act, 1904 (4 *Edu. 7*, c. 18), makes provision for the case of default on the part of Local Authorities in the performance of their duties as respects elementary schools.

Endowed Schools (Masters) Act, 1908 (8 *Edu. 7*, c. 39), makes provision with respect to the tenure of office of masters of endowed schools.

Local Education Authorities (Medical Treatment) Act, 1909 (9 *Edu. 7*, c. 13), is an Act to provide for the recovery by local education authorities of costs for medical treatment of children attending public elementary schools in England and Wales.

Education (Administrative Provisions) Act, 1909 (9 *Edu. 7*, c. 29).

Education (Choice of Employment) Act, 1910 (10 *Edu. 7* & 1 *Geo. 5*, c. 37).

Drainage and Disposal of Waste Matters at Public Elementary Schools. Memorandum on the arrangements for, for which loans under the Board's sanction are required; with especial reference to schools in country places where sewers and water services are not available. 1910 (R.—Local Government Board). Price 1d.

1. — *Agriculture, Child employed in—Exemption from school attendance—Child between thirteen and fourteen years of age—By-law of local education authority—Elementary Education (School Attendance) Act (1893) Amendment Act, 1899* (62 & 63 *Vict. c. 13*), s. 1—*Elementary Education Act, 1900* (63 & 64 *Vict. c. 53*), s. 6, sub-s. 1.

The power of the local education authority, under the proviso in s. 1 of the *Elementary Education (School Attendance) Act (1893) Amendment Act, 1899*, to make a by-law for any parish within their district providing for the total exemption from school attendance of a child between thirteen and fourteen years of age who is to be employed in agriculture, though the child has not received a certificate of educational proficiency, is not affected by s. 6 of the *Elementary Education Act, 1900*. *STRONG v. TREISE*

Div. Ct. [1909] 1 K. B. 613

— *Assault—Schoolmaster—Right of assistant teacher in public elementary school to inflict corporal punishment—School regulations. See ASSAULT. 1.*

2. — *Dismissal—Assistant master—Scheme—Master and servant—Wrongful dismissal—Notice of dismissal—Power to dismiss “at*

SCHOOLS—continued.

pleasure”—Action against governors—Endowed Schools Act, 1869 (32 & 33 *Vict. c. 56*), s. 22.

A scheme made under the *Endowed Schools Act, 1869*, with regard to an endowed school, provided that the foundation should be administered by a body of governors, who should appoint the head master of the school, and that the head master should have the sole power of appointing, and might “at pleasure” dismiss, all assistant masters in the school. In an action for wrongful dismissal by a plt. who had been an assistant master in the school against the governors in respect of his dismissal by the head master without notice, the jury found that a custom existed entitling assistant masters in endowed schools to a term's notice of dismissal:—

Held (affirming the judgment of Lawrance, J.), that such a custom as above mentioned was excluded by the terms of the scheme, and therefore the plt. was not entitled to notice of dismissal, and that in any case the action was not maintainable against the governors. *WRIGHT v. MARQUIS OF ZETLAND.*

C. A. [1907] W. N. 225; [1908] 1 K. B. 63

3. — *Attendance—Employment of child—By-laws—Certificate of attendance at school—Total exemption—Partial exemption—Employment in factory—Full time—Half time—Factory and Workshop Act, 1901* (1 *Edu. 7*, c. 22), ss. 68, 71—*Elementary Education Acts, 1870* (33 & 34 *Vict. c. 75*), s. 74; 1880 (43 & 44 *Vict. c. 23*), s. 4; 1899 (62 & 63 *Vict. c. 13*), s. 1.

A school authority, acting under powers conferred by the *Elementary Education Acts*, made by-laws applicable to children up to fourteen years of age. The by-laws contained a proviso that a child between twelve and fourteen years of age should not be required to attend school, if such child had received a certificate that it had reached the sixth standard; but they contained no provision giving total exemption from the obligation to attend school to a child between twelve and fourteen who had only obtained the certificate of previous due attendance at school referred to in s. 71 of the *Factory and Workshop Act, 1901*:—

Held, that a child of thirteen years of age, who had obtained a certificate of previous due attendance, but had not received a certificate of having reached the sixth standard, could not lawfully be employed in a factory on full time.

The by-laws contained no provision for partial exemption from the obligation to attend school in the case of a child of the age of twelve who had received a certificate of previous due attendance at school:—

Held that, notwithstanding the absence of any such provision in the by-laws, such a child might lawfully be employed in a factory on half time, inasmuch as s. 68 of the *Factory and Workshop Act, 1901*, by making provision for the compulsory education of half-timers, necessarily sanctions partial exemption. *STEVENSON v. GOLDSTRAW. STEVENSON v. CRAIG*

Div. Ct. [1906] 2 K. B. 298

4. — *Attendance at school—Ascension Day—Elementary Education Act, 1870* (33 & 34 *Vict. c. 75*), ss. 7, 74.

SCHOOLS—continued.

Ascension Day is a "day exclusively set apart for religious observance by the religious body" known as the Church of England, within the meaning of ss. 7 and 74 of the Elementary Education Act, 1870. *MARSHALL v. GRAHAM. BELL v. GRAHAM. Div. Ct. [1907] W. N. 94; [1907] 2 K. B. 112*

5. — *Non-compliance with attendance order—Reasonable excuse—Provision of efficient elementary instruction—Elementary Education Act, 1870 (33 & 34 Vict. c. 75), s. 74—Elementary Education Act, 1876 (39 & 40 Vict. c. 79), ss. 11, 12, 48.*

Sect. 11 of the Elementary Education Act, 1876, provides, that, if a parent of a child above the age of five years who is under the Act prohibited from being taken into full time employment habitually and "without reasonable excuse" neglect to provide efficient elementary instruction for the child, a Court of summary jurisdiction may make an attendance order (i.e., an order that the child attend a certified efficient school). The section further provides that "any of the following reasons shall be a reasonable excuse": (1.) that there is not within two miles from the child's residence any public elementary school open which the child can attend, or (2.) that the absence of the child from school has been caused by sickness or any unavoidable cause.

By s. 12, if the attendance order is not complied with, "without any reasonable excuse within the meaning of this Act," a Court of summary jurisdiction may inflict a penalty on the parent.

By s. 48, "Terms in this Act shall, so far as is consistent with the tenor thereof, have the same meaning as in the Elementary Education Acts, 1870 and 1873."

By s. 74 of the Elementary Education Act, 1870, the following reasons, amongst others, shall be a reasonable excuse, namely, "that the child is under efficient instruction in some other manner":—

Held, that at the hearing of a summons taken out under s. 12 of the Act of 1876 for non-compliance with an attendance order the parent is entitled to call witnesses for the purpose of shewing that he is providing efficient elementary instruction for the child at home, inasmuch as the meaning of the expression "reasonable excuse" in s. 12 of the Act of 1876 is not confined to the two reasons mentioned in s. 11 of that Act as being a reasonable excuse but includes the reason mentioned in s. 74 of the Act of 1870, namely, that the child is under efficient instruction in some other manner. *REX v. WEST RIDING OF YORKSHIRE JUSTICES. Ex parte BROADBENT. Div. Ct. [1910] 2 K. B. 192*

6. — *Blind or deaf child—Child boarded out and educated by education authority—Child without means of support—Recovery of expenses from "Parent"—Liability of guardians of union—Elementary Education Act, 1870 (33 & 34 Vict. c. 75), s. 3—Elementary Education (Blind and Deaf Children) Act, 1893 (56 & 57 Vict. c. 42), ss. 2, 9.*

By s. 2, sub-s. 1 of the Elementary Education

SCHOOLS—continued.

(Blind and Deaf Children) Act, 1893, it is the duty of every education authority to enable blind and deaf children resident in their district, for whose elementary education efficient and suitable provision is not otherwise made, to obtain such education in some school certified as suitable for providing such education, and for that purpose, where necessary or expedient, to make arrangements for boarding out any blind or deaf child in a home conveniently near to the certified school where the child is receiving elementary education. By s. 9, sub-s. 1, where an education authority incur any expense under this Act in respect of any blind or deaf child, "the parent of the child shall be liable to contribute towards the expenses of the child such weekly sum" as may be agreed on or settled by a Court of summary jurisdiction. By s. 15, the expression "expenses" includes the expenses of and incidental to the attendance of the child at school and the maintenance and boarding out of the child while so attending school; and other expressions have the same meaning as in the Elementary Education Acts.

By s. 3 of the Elementary Education Act, 1870, the term "parent" includes guardian and every person who is liable to maintain or has the actual custody of any child.

A deaf child was boarded out and educated by the education authority at a certified school, and the father agreed to contribute 1s. a week towards the expenses. The father died leaving the child without any means of support, and there was no relation who was legally liable to maintain the child. The child's place of settlement was in Southwark. The education authority claimed that the guardians of the Southwark Union were liable, under s. 9, sub-s. 1 of the Elementary Education (Blind and Deaf Children) Act, 1893, to contribute towards the expenses of the maintenance and education of the child since the death of the father, as being "liable to maintain" the child and therefore the "parent" within the meaning of the section, inasmuch as, if the child became chargeable, they would be bound to support him:—

Held, that the fact that, if the child became chargeable, the guardians of the union would be bound to support him did not make them "liable to maintain" him, and that therefore they were not the "parent" of the child within the meaning of the section and were not liable to contribute towards the expenses. *SOUTHWARK UNION v. LONDON COUNTY COUNCIL. [1910] 2 K. B. 559*

— Charitable purposes—Advancement of education—Income Tax—Allowances.

See REVENUE—Income Tax. 1.

— Charity—Schools.

See under CHARITY.

7. — *Committee—Scheme—Retirement of members—Jurisdiction of council to alter dates—Local government—Education Act, 1902 (2 Edw. 7, c. 42), s. 17, sub-s. 1; s. 21, sub-s. 3.*

By the scheme for the constitution of the education committee of the Barry Urban District Council, approved by the Board of Education on April 16, 1903, it was provided that the

SCHOOLS—continued.

committee should consist of nine members, and that the members of it should hold office for a period of three years, provided, nevertheless, that one-third should go out of office on May 1 in the year 1904 and in each succeeding year. "The council shall determine the order in which they shall retire." On April 20, 1903, the council passed resolutions under which the plt. was to be a member of the committee and retire at the end of the second year. On April 18, 1904, the council, purporting to act under their standing orders, passed a resolution rescinding so much of the resolution of April 20, 1903, as decided that the plt. should retire at the end of the second year, namely, on May 1, 1905, and directing that in lieu thereof he should retire on May 1, 1904 :—

Held, that the council had power to make a final scheme and determine the method of retirement; that when they had once fixed the dates of retirement they could not alter them without a new scheme; and that the resolution of April 18, 1904, was ultra vires. **MILWARD v. BARRY URBAN DISTRICT COUNCIL**

Buckley J. [1904] W. N. 158; [1904] 2 Ch. 481

— Corporation—Membership—Local Act—Construction —"Any person"—Royal Naval School Act, 1840.

See **INFANT—Corporation. 1.**

8. — Decision of Board of Education—Jurisdiction of Court—Injunction—Schools (Education)—Public elementary school—Non-provided school—Duty of local education authority—Maintain and keep efficient—Direction limiting secular instruction to infants—Education Act, 1902 (2 Edw. 7, c. 42), s. 7, sub-ss. 1 (a), 3; s. 16.

A non-provided school had been carried on before and after the coming into force of the Education Act, 1902, as a public elementary school for the education of children of both sexes in all standards from 1 to 7. The local education authority issued a direction to the managers of the school that after a certain date no secular instruction was to be given in the school except to children in standards 1 to 3. The managers of the school refused to comply with the direction, and brought an action for an injunction to restrain the local education authority from obstructing or interfering with them in the discharge of their duties as managers of a fully recognized public elementary school :—

Held, that the direction was not a direction as to secular instruction within s. 7, sub-s. 1 (a), of the Education Act, 1902, and was ultra vires, being in breach of the obligation imposed on the local education authority by s. 7, sub-s. 1, to maintain and keep the school efficient; that the question as to the right of the authority to enforce the direction was not a question arising under s. 7 which had to be determined by the Board of Education under sub-s. 3 of s. 7 or s. 16; that the Court had jurisdiction to entertain the action; and that the managers were entitled to an injunction restraining the local education authority from enforcing the direction. **WILFORD v. WEST RIDING OF YORKSHIRE COUNTY COUNCIL**

- Channell J. [1908] 1 K. B. 685

SCHOOLS—continued.

9. — Dismissal—Public elementary school—Non-provided school—Trust deed—Old managing body—Master—Contract—Dismissal—New managing body—Foundation managers, Action against—"Appointed day," Notice of dismissal given before but expiring after—Local education authority—Consent to dismissal—Parties—Misjoinder—Education Act, 1902 (2 Edw. 7, c. 42), s. 7, sub-s. 1 (c).

Sect. 7, sub-s. 1 (c), of the Education Act, 1902, which requires the consent of the local education authority to the dismissal of a teacher in a non-provided public elementary school, has no application to a case where, a teacher having been appointed by the old managing body of such a school, they, before the Act comes into operation on "the appointed day" under s. 27, have given him three months' notice in writing terminating his engagement pursuant to the terms of their contract with him, and that period expires after the appointed day.

A plt. who, prior to the Education Act, 1902, has entered into a contract with the old managing body of a non-provided public elementary school cannot maintain an action to enforce his contract against the new managing body appointed under s. 6, sub-s. 2, of the Act, where that new managing body does not include the original contracting parties.

Decision of Kekewich J. affirmed. **JONES v. HUGHES**

C. A. [1904] W. N. 193; [1905] 1 Ch. 180

10. — Dismissal of schoolmistress—Powers of manager—Consent of education committee—Power of committee to act by a sub-committee—Powers of section of sub-committee—Education—Public elementary school—Non-provided school—Education Act, 1902 (2 Edw. 7, c. 42), ss. 7, 17; Sched. I, A (6).

Plt. was engaged as mistress of a non-provided school (a school maintained but not provided by the local education authority under the Education Act, 1902), under an agreement with the managers of the school, one of the terms of which was that either party might terminate the agreement on giving the other party three calendar months' notice in writing.

The Act of 1902 came into operation in the district in Aug., 1903, and the Berkshire County Council was the "local education authority."

The county council, acting under s. 17 of the Act, delegated all its powers under the Act (except the power of raising a rate or borrowing money) to an education committee; the committee under Sched. I, A (6), appointed a sub-committee to deal with the appointment and dismissal of teachers; and the sub-committee appointed a section to deal with the details "surrounding" the dismissal of teachers, and to make recommendations to the sub-committee.

In these circumstances the managers came to the conclusion that plt. was out of harmony with them and that this was detrimental to the best interests of the school, and on Oct. 17, 1905, at a meeting at which plt. attended the managers passed a resolution that the plt. should be asked to resign, and that if she refused notice should be sent to the education

SCHOOLS—*continued.*

committee that the managers desired to terminate their engagement with her. As. plt. did not resign, the managers on Nov. 23 wrote to the education committee asking for its consent to the dismissal of the plt. forthwith on payment of three months' salary. On Nov. 25 the section gave its consent, and on Nov. 28 the education secretary wrote: "The committee will approve the notice given by your managers to Miss Y.,"—the plt.—"to terminate her engagement." On Nov. 30 the managers gave notice in writing of dismissal, stating that the notice had the approval of the education committee, and enclosing a cheque for three months' salary in lieu of notice. On Dec. 9 the sub-committee approved and adopted the action of the section.

On Dec. 18 plt. commenced an action to restrain the defts. from acting on the notice to her, and on Jan. 19 applied for an injunction. On Jan. 20, before the argument was concluded, the education committee passed a resolution consenting to the dismissal:—

Held, as follows: (1.) That the effect of the delegation under s. 17 was that the education committee was, in respect of any powers as to the dismissal of teachers, the educational authority.

(2.) That to the sub-committee there was delegated power to determine, and not merely to report to the committee upon, the question whether consent to dismissal should be given.

(3.) That the section was only a subordinate body, the duty of which was to consider and report to the sub-committee, and the action of which required the sub-committee's approval, and therefore that the consent of the education authority had not been obtained at the time of the dismissal.

But *held*, further: (4.) That, if consent to dismissal was required, it was not a condition precedent to dismissal, but if given subsequently operated as a ratification of dismissal with the provisional consent of the section.

(5.) That the effect of s. 7 was that unless the education authority intervened, the power to appoint and dismiss teachers rested with the managers.

(6.) That if the education authority intervened, the managers must either yield to that authority's wishes, or disqualify the school for maintenance from public funds; and,

(7.) That the requirements of the Act as to consent were operative only as between the managers and the education authority, and gave no right to the teacher.

Semble, that when the managers of a non-provided school fail to comply with the requirements of any of the conditions and provisions contained in clauses (a) to (c) of sub-s. 1 of s. 7 of the Act of 1902, compliance with any requirement cannot be enforced by mandamus or otherwise—the only consequence of the failure being that the local education authority is released from its obligation to maintain the school out of public funds. *YOUNG v. CUTHBERT*

Buckley J. [1906] 1 Ch. 451

— Education — Compensation — Transfer of powers of London School Board to London County Council—Officer.
See LOCAL GOVERNMENT. 7.

SCHOOLS—*continued.*

— "Education"—Resulting trust—Unapplied surplus.

See TRUST. 1.

11.—*Endowed schools—Grammar school—Scheme of Endowed Schools Commissioners—Alteration of—Jurisdiction of Board of Education—Due regard to educational interests of privileged class—Public notice—Notice to councils of parishes affected—Modification of draft scheme—Necessity for further notice—Discretion of Board of Education—Charitable Trusts Act, 1860 (23 & 24 Vict. c. 136), s. 6—Endowed Schools Act, 1869 (32 & 33 Vict. c. 56), ss. 11, 28, 45—Charitable Trusts Act, 1869 (32 & 33 Vict. c. 110), s. 7—Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 14, sub-s. 5—Board of Education Act, 1896 (62 & 63 Vict. c. 33)—Board of Education (Powers) Orders in Council, 1900-1902.*

The B. Grammar School was an ancient foundation and had been regulated from time to time by schemes settled by the Court of Chancery which conferred certain educational privileges on the inhabitants of the parishes of B. and N.

In 1877 the Endowed Schools Commissioners made a scheme for the regulation of the school which as altered by a scheme made in 1903 by the Bd. of Education, who had succeeded to the powers of the Charity Commissioners, preserved the educational privileges of the inhabitants by providing that the tuition fees should in the case of boys whose parents were resident in one or other of the parishes of B. and N. be reduced by one-third.

In 1905 the Bd. of Education, under s. 6 of the Charitable Trusts Act, 1860, gave public notice of a proposal by them to make a new scheme, and under s. 14, sub-s. 5, of the Local Government Act, 1894, sent a draft of the proposed scheme to the parish councils of B. and N. The draft scheme preserved the privilege of the inhabitants of B. and N. to a remission of one-third of the tuition fees, but made it a condition that the parents to be entitled to receive it must have resided seven years in one or other of the parishes. The scheme was objected to by the parish councils and by the governors of the school, and for a time remained in abeyance.

In 1907, without giving any further notice either under the Charitable Trusts Act, 1860, or the Local Government Act, 1894, the Bd. sealed a modified scheme. The scheme as modified abolished the privilege of the inhabitants of B. and N. to a remission of one-third of the tuition fees, but substituted therefor (1.) a provision giving a preference as to admission to the school to the children of the inhabitants of B. and N. over other children, and (2.) a provision that a yearly sum of not less than 100*l.* nor more than 200*l.* should be applied in establishing bursaries, tenable at the school by boys whose parents or guardians were resident in the parishes of B. and N., and who were, in the opinion of the governors, in need of assistance to enable them to continue to attend the school:—

Held, (1.) that the Bd. had jurisdiction under s. 28 of the Endowed Schools Act, 1869, to alter the scheme of 1877 in the manner provided by

SCHOOLS—continued.

the scheme of 1907; (2.) that in making the scheme of 1907 the Bd. had had "due regard" to the educational interests of the inhabitants of B. and N. within s. 11 of the Endowed Schools Act, 1869; (3.) that the Bd., having given public notice as required by s. 6 of the Charitable Trusts Act, 1860, of the draft scheme of 1906, had an absolute discretion to determine whether or not the modifications introduced into the scheme of 1907 were such as to render a fresh notice desirable; and (4.) that the Bd. having given to the parish councils the notice required by s. 14, sub-s. 5, of the Local Government Act, 1894, were under no obligation to give them a further notice of the modified scheme.

Semble, the directions as to notice in s. 14, sub-s. 5, of the Local Government Act, 1894, are merely directory, and in no way affect the jurisdiction of the Bd. to make a scheme. *In re BERKHAMSTED GRAMMAR SCHOOL*

Warrington J. [1908] 2 Ch. 25

12. — *Expenses incurred by county council in respect of capital expenditure—Provision of new hot-water apparatus and earth-closets—Charge on parish served by school—Education Act, 1902* (2 *Edw. 7, c. 42*), s. 18, sub-s. 1 (c).

In s. 18, sub-s. 1 (c), of the Education Act, 1902, the words "capital expenditure" do not mean the expenditure of money taken from capital, but the expenditure of money which on its being laid out becomes capital irrespective of the source from which it is taken. *REX v. WRAITH. Ex parte KENT COUNTY COUNCIL.*

Div. Ct. [1907] W. N. 170; [1907] 2 K. B. 756

— House duty—School buildings — "Other offices."

See REVENUE—House Duty. 7.

— Income tax—Assistant master at school—Scheme for provident fund.

See REVENUE—Income Tax. 27.

13. — *Local education authority—Council of county borough—Corporation acting by council—Education Act, 1902* (2 *Edw. 7, c. 42*), s. 1—*Education (Administrative Provisions) Act, 1907* (7 *Edw. 7, c. 43*), s. 1—*Interpretation Act, 1889* (52 & 53 *Vict. c. 63*), s. 15.

In s. 1 of the Education Act, 1902, which enacts that "for the purposes of this Act the council of every county borough shall be the local education authority," and throughout the Act, the words "council of a borough" are used for "the mayor, aldermen, and burgesses acting by the council." The council were not incorporated as a separate body by that Act. Therefore land which the council have agreed to acquire under the powers and for the purposes of the Education Acts must be conveyed to the mayor, aldermen, and burgesses.

Hyde Corporation v. Bank of England, (1882) 21 Ch. D. 176, followed. *In re LEEDS INSTITUTE OF SCIENCE, ART AND LITERATURE AND LEEDS CITY COUNCIL* *Swinfen Eady J.*

[1909] W. N. 43; [1909] 1 Ch. 500

— London—Building notice—Local education authority—Obligation to serve notice.

See LONDON—Buildings. 12.

SCHOOLS—continued.

14. — *Negligence—Elementary school—Local education authority—County council—Duty to maintain school premises—Injury to pupil caused by want of repair—Education Act, 1902* (2 *Edw. 7, c. 42*), ss. 5, 7—*Elementary Education Act, 1870* (33 & 34 *Vict. c. 75*), ss. 5, 18, 19.

The plt., a pupil at a public elementary school provided by the defts., a county council, as the local education authority, fell, while playing in the playground attached to the school, through his foot being caught in a hole existing in the asphalt pavement of the playground, and, in consequence, sustained injury. In an action brought by the plt. against the county council to recover damages for the injury so sustained by him, the jury found that he was injured through the negligence of the defts. —

Held, affirming the judgment of Bucknill J., [1909] W. N. 163; [1909] 2 K. B. 762, that the action was maintainable on the ground that, by the Education Act, 1902, a statutory duty of keeping the school premises in a state of repair was imposed upon the defts., and they were responsible for neglect of that duty by those who actually managed the school. *CHING v. SURREY COUNTY COUNCIL*

C. A. [1910] W. N. 74; [1910] 1 K. B. 736

Note.

Followed by C. A., *Morris v. Carnarvon County Council*, [1910] W. N. 94; [1910] 1 K. B. 840. See next Case.

15. — *Negligence—Local education authority—Provided school—Duty to maintain school—Dangerous condition of premises—Injury to scholar—Liability of authority to action—Education Act, 1902* (2 *Edw. 7, c. 42*), ss. 5, 7—*Elementary Education Act, 1870* (33 & 34 *Vict. c. 75*), ss. 18, 19.

The plt., a girl aged seven, attended a public elementary school provided by the defts., the local education authority for the district. This school had formerly belonged to a school board, and was transferred to the defts. upon the coming into operation of the Education Act, 1902. The only mode of entrance into and egress from a class-room in the school was by a doorway closed by a heavy swing door with a powerful spring, which door had been put up by the school board, the defts.' predecessors. The plt. while leaving the class-room, was injured through this door closing on her fingers. The door was in good repair and in the same condition as it was in when the school was taken over by the defts. In an action brought by the plt. in respect of the injury sustained by her, the jury found that the door was not a suitable one for use by young children, when put up in the first instance, and that the defts. were guilty of negligence in allowing it to remain after the school was transferred to them:—

Held, following the decision in *Ching v. Surrey County Council*, [1910] 1 K. B. 736, that, it being the duty of the defts. to keep the school premises in proper condition for the purposes of a school, they were responsible for a breach of duty in not discovering and remedying the improper construction of the door in question,

SCHOOLS—*continued*.

when the school was transferred to them, and therefore the action was maintainable.

Appeal from the judgment of a Divisional Court, [1910] 1 K. B. 159, affirmed. *MORRIS v. CARNARVON COUNTY COUNCIL* - [C. A. 1910] W. N. 94; [1910] 1 K. B. 804

16. — *Salaries—Public elementary school—Teachers—Provided and non-provided schools—Local education authority—Right to discriminate—Failure to maintain and keep efficient—Board of Education—Decision—Want of jurisdiction—Certiorari—Mandamus—Education Act, 1902 (2 Edw. 7, c. 42), s. 7.*

A local education authority has no power under the Education Act, 1902, to differentiate, in the matter of teachers equally qualified and teaching the same subjects, between the salaries paid in provided and non-provided schools as such.

On the coming into force of the Education Act, 1902, the local education authority of Swansea continued to pay salaries to the teachers in the schools in the district at the rates previously in existence, the salaries paid to teachers in provided schools being at a higher rate than those paid to teachers of similar qualifications in non-provided schools. Subsequently an increase was made in the salaries paid to teachers in the provided schools only, and the managers

a non-provided school in the district complained to the Board of Education that the local education authority, by refusing to pay salaries in the non-provided schools at the same rate as in the provided schools, had failed to maintain and keep efficient the non-provided school, as provided by s. 7 of the Education Act, 1902. The Board appointed a barrister to hold an inquiry, and, after hearing evidence on behalf of the managers, he reported that the school had regularly earned the grant, but only through the deficiency in salaries having been made good by the managers, and that the local education authority had failed to maintain and keep efficient the school. The Board of Education decided that there had been no such failure by the local education authority, on the grounds that there was no statutory right on the part of the managers of any particular school to receive any particular scale of salaries, and that it had not been shown that the money provided by the local education authority was inadequate for the purpose of maintaining and keeping efficient the school in question :—

Held, that the decision of the Board of Education must be quashed on the ground that it did not answer the question submitted to them and that a mandamus must be issued directing the Board to determine the question according to law.

Decision of the Divisional Court, [1909] 2 K. B. 1045, affirmed. *REX v. BOARD OF EDUCATION* C. A. [1910] W. N. 110; [1910] 2 K. B. 165

— *Reformatory and industrial schools and juvenile offenders—Children Act, 1908 (8 Edw. 7, c. 67).*

See under INFANT.

SCHOOLS—*continued*.

— *Resulting trust—Fund subscribed for education of children of a deceased individual—Growing up of children—Unapplied surplus. See under TRUST.*

17. — *Salary—Education Acts—Non-provided school—Teacher engaged by managers—Salary paid directly by local education authority—Right of teacher to sue local education authority—Education Act, 1902 (2 Edw. 7, c. 42), s. 7.*

Sect. 7 of the Education Act, 1902, does not create privity of contract between a teacher in a non-provided school and the local education authority, notwithstanding the fact that the salary of the teacher is paid directly by the authority. The teacher, therefore, cannot maintain an action for salary against the local education authority. *CROCKER v. PLYMOUTH CORPORATION*

Div. Ct. [1906] W. N. 58; [1906] 1 K. B. 494

18. — *Salary of teachers—Time occupied in religious instruction—Proportionate reduction from salary—Power of local authority to reduce—Elementary Education Act, 1870 (33 & 34 Vict. c. 75)—Education Act, 1902 (2 Edw. 7, c. 42)—“Maintain”—Schools (educational)—Non-provided school.*

A local education authority does not “maintain” a non-provided school as required by the Education Act, 1902, s. 7, sub-s. 1, if it refuses to pay what is reasonable for denominational religious instruction lawfully given during school hours.

Decision of the C. A., *Re v. West Riding of Yorkshire County Council*, [1906] 2 K. B. 676, reversed and decision of K. B. D. restored. *ATT-GEN. AND BOARD OF EDUCATION v. WEST RIDING OF YORKSHIRE COUNTY COUNCIL. Ex parte GRENSIDE*

H. L. (E.) [1907] W. N. 3; [1907] A. C. 29

— *Sale of charity land—Board of Education, Consent of—“Endowment”—Voluntary contributions. See CHARITY. 17.*

19. — *School board—United district—Severance—Adjustment of property and liabilities—Education Act, 1902 (2 Edw. 7, c. 42), Sched. II., clauses 1, 22.*

Where a united school district becomes severed under s. 1 of the Education Act, 1902, there is no automatic severance of property and liabilities according to areas under Sched. II., clause 1, but an adjustment under clause 22 is required.

Oldham Corporation v. Bank of England, [1904] 2 Ch. 716, distinguished. *In re WALLSEND BOROUGH COUNCIL AND NORTHUMBERLAND COUNTY COUNCIL—Swinfen Eady J.*

[1906] W. N. 179; [1906] 2 Ch. 506

— *School district, Dissolution of—Property of dissolved district.*

See POOR LAW. 21.

20. — *Science and art schools and classes—Provision of money raised by rate—Limitation to payment for Elementary Education—Elementary Education Acts, 1870 to 1891 (33 & 34 Vict. c. 75; 36 & 37 Vict. c. 86; 39 & 40 Vict. c. 79; 54 & 55 Vict. c. 56)—Technical Instruction Acts, 1889*

SCHOOLS—*continued.*

and 1891 (52 & 53 Vict. c. 76 ; 54 & 55 Vict. c. 4) — *Education Code (1890) Act, 1890 (53 & 54 Vict. c. 22).*

It is not within the power of a school board to expend money raised by local rate upon any education other than elementary.

Decisions of the Queen's Bench Division, [1901] 1 K. B. 322, affirmed. *REG. v. COCKERTON* C. A. [1901] 1 K. B. 726

Note.

Followed by C. A., *Dyer v. London School Board*, [1902] 2 Ch. 768. *See next Case.*

— Society of Friends—School—Discontinuance — Educational purposes—Scheme.

See CHARITY. 19.

21. — *Pupil-teachers' centre—Higher education—School building—Local rates—Expenditure—Ultra vires—Elementary Education Act, 1870 (33 & 34 Vict. c. 75).*

It not being within the powers of a school board to expend money raised by local rate upon any education other than elementary—*Reg. v. Cockerton*, [1901] 1 K. B. 726—The London School Board was restrained by injunction from expending moneys arising from the local rates of the metropolis in the erection of a building as a "pupil-teacher centre," that is, a school for providing pupil teachers with an education beyond what was strictly elementary. *DYER v. LONDON SCHOOL BOARD*

C. A. [1902] W. N. 162 ; [1902] 2 Ch. 768

— Qualified teachers—Exemption from examination.

See CANADA—Schools. 1.

22. — *Transfer of part of school board to the local education authority—United school board—Adjustment of rights and liabilities—Appointment of arbitrator—Education Act, 1902 (2 Edw. 7, c. 42), s. 27, sub-s. 2 ; Sched. II., clauses 1, 22.*

Application under the Education Act, 1902, for the appointment of an arbitrator.

Kekewich J. said that the case of a united school board had apparently escaped the observation of the Legislature ; but he was bound to construe the Act as meaning that all school boards and their property, rights, and liabilities should be transferred to the new education authorities. Clause 1 of the 2nd schedule, if construed literally, appeared to contemplate a single transfer, not a piecemeal transfer ; but a difficulty arose when one had to deal with the transfer of a united school board to several educational authorities. If that clause was construed literally the value of the Act would be destroyed. Moreover, the Act provided that there might be more than one appointed day for its coming into operation. There might be a transfer of a part of the school board to one educational authority and of another part to another, and the Board of Education might appoint one day for one authority and another day for the other ; and, further, the Act enabled the Board of Education to appoint different days, not only for different councils, but for different purposes. The Act plainly contemplated more than one appointed day. It could

SCHOOLS—*continued.*

only mean that the transfer should take place as often as was necessary, and that the transfer should extend on each appointed day so far as it ought to extend on that particular day. He therefore thought that there ought to be an immediate appointment of an arbitrator. *HEBURN URBAN DISTRICT COUNCIL v. HEDWORTH, MONCKTON AND JARROW UNITED DISTRICT SCHOOL BOARD - Kekewich J. [1904] W. N. 38*

23. — *Transfer of property—Vesting—Consols—Local Government—Education—School board—Borough council—National Debt Act, 1870 (33 & 34 Vict. c. 71), s. 22—Elementary Education Act, 1870 (33 & 34 Vict. c. 75), s. 30—National Debt (Stockholders' Relief) Act, 1892 (55 & 56 Vict. c. 39), s. 4—Education Act, 1902 (2 Edw. 7, c. 42), ss. 5, 25 ; Sched. II., clause 1.*

This was an action brought by the corporation of Oldham against the Bank of England to obtain possession of 780*l.* 0*s.* 2*d.* 2½ per cent. Annuities. The plts. by their council were, under the Education Act, 1902, the local education authority for the district of the borough of Oldham. The Act came into operation in that district on Jan. 1, 1904, which was the "appointed day," and at that time these Annuities stood in the books of the Bank of England in the name of the Oldham School Board. The plts. claimed that on the appointed day the school board had ceased to exist, that the 780*l.* 0*s.* 2*d.* had then become vested in them by virtue of the Act, and that no further transfer was necessary. The Bank contended that the Annuities could only be transferred by an entry in their books, that the Oldham School Board had not been dissolved, that the Annuities must be transferred by them to the plts., and that the Annuities had not been vested in the plts. by virtue of the Act :—

Held (reversing the decision of Farwell J.), that by s. 5 of the Act of 1902 the school board had for all purposes ceased to exist on the appointed day ; that by sched. II., clause 1, to the Act the Annuities had on that day vested in the plts. by virtue of the Act ; and that no further transfer was necessary. *OLDHAM CORPORATION v. BANK OF ENGLAND*

C. A. [1904] W. N. 173 ; [1904] 2 Ch. 716

Note.

Distinguished by Swinfen Eady J., *In re Wallsend Borough Council and Northumberland County Council*, [1906] 2 Ch. 506. *See No. 19, above.*

24. — *Trespass—Schools (education)—Non-provided school—Religious instruction—Time-table approved by Board of Education—Directions of local education authority as to secular instruction—Non-compliance with by managers—Withdrawal of maintenance—Appeal by managers—Decision of Board of Education—Jurisdiction of Court—Closing of school—Trespass—Inducing teachers to break contracts—Education Act, 1902 (2 Edw. 7, c. 42), s. 7, sub-s. 3.*

For many years prior to 1905 it had been the custom of the managers of the M. School, a non-provided school under the Education Act, 1902, to take the children from school to church on saints' days and holy days during the hours allowed for religious instruction. The time-table

SCHOOLS—continued.

of the school, which had been approved by H.M. inspector, provided that religious observance and religious instruction should be given from 9 A.M., when the school opened, to 9.55; that at 9.55 the registers should be marked; and that secular education should commence at 10 A.M. and continue till noon. At the foot of the time-table was a note providing that on saints' days and holy days the registers should be marked at 9 A.M., the object being to enable the children to be taken to church at 11 A.M. In Sept., 1904, the local education authority under the Act of 1902 issued a direction that secular instruction in all schools within their district should commence not later than 9.45 A.M. and occupy the school hours for the rest of the day. The managers did not comply with this direction, and continued to take the children to church on saints' days and holy days, and took no steps to revise their time-table to bring it into accordance with the direction of the local education authority. On Mar. 25, 1905, the local education authority ceased to maintain the school, and on Mar. 27, 1905, sent their inspector to the school, who closed it, informing the children that they must attend other schools in the neighbourhood, and offering the teachers appointments in other schools, which they accepted. The managers appealed to the Bd. of Education, but the Bd. confirmed the action of the local education authority. In an action brought by the managers claiming (1.) a declaration that the local education authority were bound to continue to maintain the school, and (2.) damages for trespass and illegal acts in closing the school and inducing the teachers to leave the service of the managers without due justification:—

Held, that the direction of the local education authority was a direction as to secular instruction under s. 7, sub-s. 1 (a), of the Act of 1902, and that the question, being therefore one which arose under s. 7 of that Act, was one for the decision of the Bd. of Education under sub-s. 3 of that sect., and that the jurisdiction of the Court was therefore excluded.

Held, also, that the managers, by virtue of their appointment under the Act of 1902, had not, in the absence of a special arrangement with the owner, such a possession of the school premises as would enable them to support an action of trespass; that no such arrangement had been proved; and that the claim for trespass therefore failed.

Held, further, on the facts, that the local education authority had not induced the teachers to break their contracts with the managers without justification. *BLENCOWE v. NORTHAMPTONSHIRE COUNTY COUNCIL*

Warrington J. [1907] W. N. 49; [1907] 1 Ch. 504

— Trust for benefit of national school—Gift over on school board or representative body under the Education Acts being formed for the parish.
See SETTLEMENT. 40.

— Trustee—Accounts—Voluntary school rate.
See TRUSTEE—Costs. 1.

SCHOOLS—continued.

— Ward of Court—Guardian—Religion of father—Religious education, Change of—Discretion of Court.

See INFANT—Guardian. 2.

— Water supply—Bognor Water Act, 1891—"Domestic purposes."
See under WATER.

25. — *Water, Supply of—Non-provided school—Maintenance of school—Liability of local education authority—Education Act, 1902 (2 Edw. 7, c. 42), s. 7.*

A water co., before the Education Act, 1902, came into operation, supplied water by meter to the managers of a voluntary public elementary school for the purposes (not being domestic purposes) of the school buildings. Since the Act of 1902 the water co. continued to supply the water to the school buildings as before. No contract, other than that to be implied from the fact of supply, the purposes for which the water was supplied, and the course of dealing between the parties, was entered into between the water co. and the local education authority. The water co. continued, as they had done before the Act, to send the demand note for payment for the water supplied to the managers of the school, and the latter included the charges in the quarterly accounts of their expenditure sent by them to the local education authority, who paid the amount direct to the water co. The water co. then gave a receipt for the amount to the local education authority. The water so supplied was necessary for the maintenance of the school. In an action in the county court by the water co. against the local education authority to recover for water supplied during the year ending Midsummer, 1908, the local education authority contended that they had no power to make a contract for the supply of water to the school, and that only the managers of the school had power to make such a contract. The county court judge having given judgment for the water co.:—

Held, that the local education authority had power to enter into a contract for the supply of water necessary for the maintenance of the school, and that there was evidence upon which the county court judge might properly find that they had made a contract with the water co. *TROWBRIDGE WATER CO. v. WILTS COUNTY COUNCIL*

Div. Ct. [1909] W. N. 70; [1909] 1 K. B. 824

— Water supply.

See under WATER.

— Way, Right of—"Visitors"—Pupils at girls' school.

See WAY, RIGHT OF. 3.

— Will—Charity—Schools.

See under CHARITY.

— Will—Forfeiture—Charitable legacy—School endowment—Trust deed—Gift over to residue—Perpetuities.
See WILL—Forfeiture. 8.

SCIENCE AND ART SCHOOLS.

See under SCHOOLS.

SCIENTER—Savage animal—Negligence—Liability of owner to trespassers.
See SAVAGE ANIMAL. 1.

SCOTTISH JUDGMENT—Attachment of debts—Extension to England—Garnishee order nisi—Rights of trustee in bankruptcy.
See ATTACHMENT. 4.

SCOTTISH LAW.

Wild Birds Protection (St. Kilda) Act, 1904 (4 Edw. 7, c. 10), extends the provisions of the *Wild Birds Protection Acts* to the island of St. Kilda, excepting as regards certain birds required for the support of the inhabitants of the island.

Secretary for Scotland Act, 1904 (4 Edw. 7, c. 27), authorizes the transfer to the Secretary for Scotland of certain powers and duties under the Acts relating to Reformatory and Industrial Schools.

Prisons (Scotland) Act, 1904 (4 Edw. 7, c. 35), amends the law relating to prisons in Scotland by abolishing the distinction between general prisons and ordinary prisons.

Churches (Scotland) Act, 1905 (5 Edw. 7, c. 12).

Statute Law Revision (Scotland) Act, 1906 (6 Edw. 7, c. 38), further promotes the revision of the Statute Law by repealing enactments which have ceased to be in force or have become unnecessary.

National Galleries of Scotland Act, 1906 (6 Edw. 7, c. 50), establishes a board of trustees to manage the national galleries of Scotland, and for other purposes.

Tobacco growing (Scotland) Act, 1908 (8 Edw. 7, c. 10), repeals the law which prohibits the growing of tobacco in Scotland.

Local Government (Scotland) Act, 1908 (8 Edw. 7, c. 62), amends the law relating to county government, and to roads and bridges and the use of locomotives thereon, in Scotland.

Education (Scotland) Act, 1908 (8 Edw. 7, c. 63), amends the laws relating to education in Scotland, and for other purposes connected therewith.

Agricultural Holdings (Scotland) Act, 1908 (8 Edw. 7, c. 64), consolidates the enactments relating to agricultural holdings in Scotland.

Summary Jurisdiction (Scotland) Act, 1908 (8 Edw. 7, c. 65), regulates and amends the law relating to summary jurisdiction and criminal procedure in Scotland.

Prisons (Scotland) Act, 1909 (9 Edw. 7, c. 27).

Summary Jurisdiction (Scotland) Act, 1909 (9 Edw. 7, c. 28).

Wild Animals in Captivity Protection (Scotland) Act, 1909 (9 Edw. 7, c. 33).

SCOTTISH LAW—continued.

Police (Scotland) Act (1890) Amendment Act, 1910 (10 Edw. 7 & 1 Geo. 5, c. 10), is an Act to amend the *Police (Scotland) Act, 1890* (53 & 54 Vict. c. 67).

Trusts (Scotland) Act, 1910 (10 Edw. 7 & 1 Geo. 5, c. 22) is an Act to amend the *Trusts (Scotland) Acts, 1861 to 1898*.

Agricultural Holdings (Scotland) Amendment Act, 1910 (10 Edw. 7 & 1 Geo. 5, c. 30), is an Act to amend the provisions of the *Agricultural Holdings (Scotland) Act, 1908*, with respect to way-going valuations.

Jury Trials Amendment (Scotland) Act, 1910 (10 Edw. 7 & 1 Geo. 5, c. 31), is an Act to amend the Law of Scotland relating to jury trials in civil causes.

Registration of Births, Deaths, and Marriages (Scotland) Amendment Act, 1910 (10 Edw. 7 & 1 Geo. 5, c. 32), is an Act to amend the law respecting the authentication of extracts under the Acts relating to the registration of births, deaths, and marriages in Scotland.

Oath. Promissory oaths. O. in C., Dec. 21, 1906, directing that the oath of allegiance and the official oath shall be tendered and taken by the Chancellor of the Exchequer, the First Lord of the Admiralty, and the Secretary for Scotland, in the presence of His Majesty in Council.
St. R. & O. 1906, No. 965.

— Appeal against costs—Competency of appeal.
See APPEAL. 5.

1. — Arbitration—Finding of fact—Arbitrator—Ultra vires.

The House, being of opinion that the arbiter had not acted ultra vires, affirmed the decision of the Second Division of the Ct. of Sess., dated July 16, 1909, and dismissed the appeal with costs. *SCHULZE v. GALASHIELS (MAGISTRATES OF)* — **H. L. (Sc.) [1910] W. N. 67**

2. — Assessment—Special drainage district—Expenses of forming special district—Public Health (Scotland) Act, 1897 (60 & 61 Vict. c. 38), s. 133.

By s. 133 of the *Public Health (Scotland) Act, 1897*: "In any burgh or where any special drainage district has been formed under this Act . . . the expense incurred by the local authority for sewerage or drainage within the same or for the purposes thereof and the sums necessary for payment of any money borrowed therefor either before or after the passing of this Act, together with the interest thereof, shall be paid out of a special sewer assessment which the local authority shall raise and levy on and within such . . . special district":—

Held (affirming the decision of the First Division of the Ct. of Sess., (1904) 6 F. 553), that where a special drainage district has been formed in a county the local authority is entitled to levy an assessment within the special district to meet expenses, including legal expenses necessarily and properly incurred in connection with, but prior to, the formation of the district. *INVERARITY v. FORFARSHIRE COUNTY COUNCIL* — **H. L. (Sc.) [1906] A. C. 354**

SCOTTISH LAW—continued.

— Attachment of debt - Scotch judgment —
Extension to England—Garnishee order
nisi.

See ATTACHMENT. 4.

— Bankruptcy—Absconding bankrupt—Warrant
for arrest.

See BANKRUPTCY—Scotch Bankruptcy.
1.

— Bankruptcy — Lunatic debtor — English
lunacy—Committee — Curator bonis—
Locus standi — Bankruptcy proceedings.

See LUNACY. 5.

3. — *Bridge carrying public highway over
railway—Liability to maintain road—Glasgow
Police Act, 1866 (29 & 30 Vict. c. cxxxiii.).*
ss. 310, 316. *City of Glasgow Act, 1891 (54 & 55*
Vict. c. cxxx.). s. 35—Railways Clauses Consoli-
dation (Scotland) Act, 1845 (8 & 9 Vict. c. 33),
s. 39—Caledonian Railway (Additional Powers)
Act, 1872 (35 & 36 Vict. c. cxcv.), ss. 4, 26.

By s. 39 of the Railways Clauses Consolidation
(Scotland) Act, 1845 (8 & 9 Vict. c. 33), "If the
line of the ry. cross any turnpike road or public
highway . . . either such road shall be carried
over the ry. or the ry. shall be carried over such
road by means of a bridge . . . and such
bridge with the immediate approaches and all
other necessary works connected therewith shall
be executed and at all times thereafter main-
tained at the expense of the co." In 1898
two streets, B. and C., previously forming part of
the county district, were with other areas in-
cluded within the boundaries of the city of
Glasgow. A third street, S., was declared a
public street in 1894. Prior to 1899 parts of
these streets were carried over rys. belonging
to the appellants by means of bridges which
were constructed by the appellants. The city of
Glasgow claimed that the roadways of these
three streets over the bridges and the approaches
thereto fell to be maintained and repaired by
the appellants. B. and C. had been respectively
a statute labour road and a turnpike road, and
S. had been a private occupation road. The
appellants contended that the section only
applied to county roads and not to streets in
a town :—

Held, affirming the decision of the First
Division of the Ct. of Sess., (1906) 8 F. 755 ;
(1908) S. C. 244, that B. and C. were public
highways, and therefore the appellants were
bound to maintain the roadways where they
crossed their ry., and the approaches to the
bridges ; but that as to S., it being proved that
it was a private street when the appellants' ry.
bridge was constructed, the appellants were not
bound to maintain the roadway. CALEDONIAN
RY. CO. v. GLASGOW CORPORATION

H. L. (Sc.) [1908] W. N. 219 ; [1909] A. C. 138

4. — *Burgh—Customs and rates—Charter—
Prescription—Roads and Bridges (Scotland) Act,*
1878 (41 & 42 Vict. c. 51).

The House affirmed the interlocutor of the
Second Division of the Ct. of Sess., Scotland,
dated Nov. 20, 1900. BERNARD & CO. v.
HADDINGTON MAGISTRATES

H. L. (Sc.) [1901] W. N. 246

SCOTTISH LAW—continued.

— Burgh county—Area within ancient royalty.
See LOCAL GOVERNMENT. 2A.

5. — *Burgh property—Immemorial use by in-*
habitants of ground for recreation—Encroach-
ment—Concurrent judgments.

There is no law or settled practice of this
House to prevent it from differing even from two
concurrent judgments of fact, and this House
cannot decline the duty of formally expressing
its own judgment.

Observations of Lord Herschell L.C. in
Owners of the "P. Caland" and Freight v.
Glamorgan Steamship Co., [1893] A. C. 207, 215,
and in *McIntyre Brothers v. McGavin,* [1893]
A. C. 268, 275, explained.

In Scottish law at least forty years' use by
the inhabitants must be proved in order to
establish a right of recreation by immemorial
user, and the evidence to establish the right
must be of the same character and as strong, as
in the case of prescription—that is, it must show
that the right claimed has been enjoyed *nec vi*
nec clam nec precario.

The respondent, an individual burgess of a
burgh, raised an action for interdict against the
appellants and other persons encroaching on a
strip of ground consisting of a few yards in
length and breadth, situated on the edge of a
river, on the plea that the ground in question
had from time immemorial been dedicated by
the magistrates of the burgh to the use of the
burgesses and inhabitants for the purpose of
recreation and amusement, and the bleaching
and drying of clothes. The magistrates, who
were made parties, lodged a minute that the
operations complained of were not a disadvantage
to the burgh :—

Held, reversing the decision of the Lord
Ordinary and the First Division of the Ct. of
Sess., Scotland, (1899) 2 F. 107 ; (1902) 4 F. 771,
that the ground in question had not from time
immemorial—that is, for a period of forty years
—been dedicated or appropriated by the magis-
trates to the uses nor the purposes of recreation.

MONTGOMERIE & CO. v. WALLACE-JAMES

H. L. (Sc.) [1904] W. N. 3 ; [1904] A. C. 73

— Burgh Sewerage, Drainage and Water Supply
Act, 1901.

See SEWERS. 13.

6. — *By-law—Ultra vires—Ice-cream vendor's*
licence—Lawful day—Edinburgh Corporation
Act, 1900 (63 & 64 Vict. c. cxxxiii.), s. 80, as
amended by Edinburgh Corporation Order Con-
firmation Act, 1901 (1 Edw. 7, c. clxxxiv.),
s. 57.

By s. 80 of the Edinburgh Corporation Act,
1900, as amended by Edinburgh Corporation
Order Confirmation Act, 1901, any person selling
ice-cream (except in a duly licensed hotel)
without a licence from the magistrates "who are
hereby empowered to grant the same" for the
house, building, or premises where such ice-
cream is kept for sale or sold shall be liable to a
penalty : Provided that such licence shall run
from the date of issue until May 15 next en-
suing, and upon removal from the date of expiry
of the licence so renewed to May 15 succeeding
such expiry, "unless the same shall be sooner

SCOTTISH LAW—*continued*.

forfeited, revoked, or suspended," and that "every person licensed . . . to sell ice-cream, under the provisions of this Act who shall . . . sell ice-cream, except during the hours of " 8 A.M. and 11 P.M. "on any lawful day, or at such extended hour at night as the magistrates may by special regulation in particular cases and for reasons assigned permit," shall be liable in a penalty. No form of licence was annexed to the statute.

The magistrates proposed to issue the following licence: "(1) That the said licensee shall not keep open said premises, or sell or permit the sale of ice-cream therein, on Sunday or on any other day set apart for public worship by lawful authority. (2) That the said licensee shall not keep open said premises, or sell or permit the sale of ice-cream therein before 8 o'clock in the morning or after 11 o'clock at night. (3) That the said magistrates, or any of them, may at any time suspend or revoke this licence"—

Held, reversing the decision of the Second Division of the Ct. of Sess., (1903) 5 F. 480, that the conditions of the licence were ultra vires. **ROSSI v. EDINBURGH CORPORATION**

H. L. (Sc.) [1904] W. N. 192; [1905] A. C. 21

— "Charitable or religious institutions and societies"—Trust disposition and settlement—Uncertainty.

See WILL—Uncertainty. 1.

— Charity — Uncertainty — Bachelors and widowers—Gift for indigent.

See CHARITY. 22.

— Company—Debenture-holders and guarantors—Scheme of arrangement—Preference to assets of company.

See COMPANY—Arrangement. 2.

— Conflict of Laws—"Alimentary provision"—Validity of restriction as against husband's mortgages.

See CONFLICT OF LAWS. 6.

7. — Contract — Breach — Damages — Construction of documents.

The House reversed the decision of the Second Division of the Ct. of Sess., dated July 3, 1909, and restored the decision of the Lord Ordinary (Lord Johnston), dated July 18, 1908. The appellants to have the costs here and in the Courts below. **MEPHAN-FERGUSON LOCK-BAR PIPE Co. v. BRITISH ALUMINIUM Co.**

H. L. (Sc.) [1910] W. N. 67

— Contract—Breach—Waiver—Damages.

See CONTRACT. 7.

— Contract—Penalty or liquidated damages—Time limit—Waiver.

See CONTRACT. 19.

— County court — Prohibition — Alternative remedy—Service out of the jurisdiction. *See COUNTY COURT—Prohibition. 1.*

— Covenant to settle after-acquired property—Scots domicile—Spes successionis. *See SETTLEMENT. 19.*

— Damages — Interdict too wide — Measure of damages.

See DAMAGE AND DAMAGES. 2.

SCOTTISH LAW—*continued*.

8. — Dignity—Jurisdiction—Non-alienability of office of Standard Bearer of Scotland—Sale of offices—Prescription—Scots Act, 1455, c. 44.

Held, that all heritable offices are not adjudicable, and that the office or dignity of Hereditary Royal Standard Bearer of Scotland being vested in the appellant's family by right of blood could not be carried by any decree of the Ct. of Sess., nor adjudged nor be lost to the appellant's family except under circumstances which had not occurred.

Held, therefore, that the respondent, the Earl of Lauderdale, had no right or title to the office or dignity of Hereditary Royal Standard Bearer of Scotland.

Decision of the First Division of the Ct. of Sess., Scotland, (1905) 7 F. 1045; (1908) S. C. 1237, reversed.

Cockburn v. Langton's Case, (1747) Mor. Dict. 150; (1755) H. L. 1 Pat. App. 603, commented on. **WEDDERBURN v. EARL OF LAUDERDALE**

H. L. (Sc.) [1910] W. N. 92;

[1910] A. C. 342

— Divorce.

See under DIVORCE—Scotland.

— Divorce—Foreign jurisdiction—Law of Scotland—Putative marriage—Legitimacy of issue.

See MARRIAGE. 6.

9. — Divorce — Foreign jurisdiction—Putative marriage—Law of Scotland—Good faith of spouses—Error of fact—Error of law.

S., whose domicile of origin was Scottish, went in or about 1880 to Canada, where he married a wife in 1883. He lived with her there until the beginning of 1895. She then left him and joined W., with whom she had previously committed adultery. S. then went into North Dakota and, after a nominal residence of ninety days, procured a divorce, which was admittedly invalid according to the laws of Scotland or Canada, because S. was not truly domiciled in North Dakota. Adultery was not alleged in the divorce proceedings, and the divorce was granted on grounds which would not be held sufficient in Scotland or in Canada. Soon after the divorce W. and the divorced wife of S. went through the form of marriage in San Francisco. The deft. was the only child of this marriage. If legitimate, he was entitled, as heir in tail male of the father of W., to certain lands in Scotland and to certain stocks in English rys. held upon trust for the persons entitled to the lands. The plt., the next tenant in tail in remainder, brought this action for a declaration that the deft. was illegitimate, and that the plt. was entitled to the income of the investments other than the lands. The defence was that the deft. was legitimate by virtue of the doctrine of the canon law as to putative marriage, namely, that the children of an invalid marriage will be legitimate if the spouses, or one of them, have entered into the marriage bona fide and in ignorance of the impediment. There was conflicting evidence on the question whether this doctrine of putative marriage was part of the law of Scotland or not, but it was admitted that, if it was, the ignorance of the spouse must be founded on an error of fact

SCOTTISH LAW—continued.

and not an error of law. The ignorance alleged in this case was that the spouses did not know that the North Dakota divorce would not be recognized in Scotland.

The judge refused to decide the first point, but held that the ignorance alleged was an error of law and not an error of fact, whether the domicile of W. at the date of the marriage was Scottish or Canadian. The debt was therefore illegitimate, even if the doctrine of putative marriage was part of the law of Scotland. The declaration asked for was made.

Semble, a divorce granted by a foreign Court having full jurisdiction on grounds not recognized by the law of Scotland will not be recognized by the Scottish Courts. *In re STIRLING. STIRLING v. STIRLING - Swinfen Eady J.* [1908] W. N. 130; [1908] 2 Ch. 344

10. — Divorce—Wife's costs.

Where the wife is successful in her defence to an action of divorce the rule of the law of Scotland is to give the wife her costs as between agent and client. *GRANT v. GRANT*

H. L. (Sc.) [1905] A. C. 466

— Domicil, Acquisition of—Intention—Legitim. *See DOMICIL. 1.*

— Education of Defective Children (Scotland) Act, 1906 (6 Edw. 7, c. 10).

— Election—Right of election—Estates in Scotland and Australia—Two separate wills. *See NEW SOUTH WALES. 38.*

— Employer resident in Scotland—Jurisdiction of county court where accident occurred. *See MASTER AND SERVANT—Practice. 17.*

11. — Entail — Restriction — Provision for widow — Deduction from free rental — Entail Provisions Act, 1824 (Aberdeen Act), 5 Geo. 4, c. 87, s. 1.

By s. 1 of the 5 Geo. 4, c. 87, it was provided that the annuity to the widow of the deceased heir of entail "shall not exceed one-third part of the free yearly rent of the said lands and estates where the same shall be let, or of the free yearly value thereof where the same shall not be let, after deducting the public burdens, life-rent provisions, the yearly interest of debts and provisions, including the interest of provisions to children . . . and the yearly amount of other burdens of what nature soever affecting and burdening the said lands and estates, or the yearly rents or proceeds thereof, and diminishing the clear yearly rent or value thereof to such heir of entail in possession, all as the same may happen to be at the death of the grantor" :—

Held, affirming the decision of the Second Division of the Ct. of Sess., (1902) 5 F. 48, that on the calculation of the widow's annuity the heir of entail in possession was not entitled to make deduction for upkeep of estate, buildings, and fences, or for management and superintendence of the estate, these outgoing not being, in the sense of the statute, burdens affecting either the estate or its rents. *EARL OF GALLOWAY v. DOWAGER COUNTESS OF GALLOWAY*

H. L. (Sc.) [1903] W. N. 196; [1904] A. C. 50

SCOTTISH LAW—continued.

— Estate duty—Money held in trust to purchase lands in Scotland or England to be entailed.

See REVENUE—Estate Duty. 6.

— Evidence—Scottish document registered in Scotland—Production in England impossible—Secondary evidence of contents.

See VENDOR AND PURCHASER—Contract. 2.

12. — Farming lease — Arbitration — Lease—Outgoing tenant—Sheep stock valuation—Agricultural Holdings (Scotland) Act, 1908 (8 Edw. 7, c. 64), s. 11, sub-s. 8—Farming lease.

By s. 11, sub-s. 1, of the Agricultural Holdings (Scotland) Act, 1908, "All questions which under this Act, or under the lease, are referred to arbitration, shall, whether the matter to which the arbitration relates arose before or after the passing of this Act, be determined, notwithstanding any agreement under the lease or otherwise providing for a different method of arbitration, by a single arbiter in accordance with the provisions set out in the Second Schedule to this Act."

The appellant was tenant of a farm under a lease which contained the following clause :—The appellant binds himself at the expiry of his lease to "leave the sheep stock on the farm to the proprietors or incoming tenant according to the valuation of men mutually chosen with power to name an oversman" :—

Held (affirming the decision of the First Division of the Ct. of Sess., (1909) S. C. 1254), that the valuation of the sheep stock was referred to "arbitration" in Scottish law, and consequently fell within s. 11, sub-s. 1, of the Act of 1908, which section superseded the provisions of the lease. *STEWART v. WILLIAMSON*

H. L. (Sc.) [1910] W. N. 119; [1910] A. C. 455

Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act, 1906 (6 Edw. 7, c. 35).

— Fishing, Mussel—Right of Crown to grant.

See FISHERY. 3.

13. — Heritage—Right in security—Messenger-at-arms—Heritable Securities (Scotland) Act, 1894 (57 & 58 Vict. c. 41), ss. 8, 10—Scottish law.

By the Heritable Securities (Scotland) Act, 1894, s. 8, any creditor who has exposed for sale under his security the lands held in security . . . may apply to the sheriff for decree in the terms of Sched. D. thereto annexed, and the sheriff may "after service on the proprietor and on the other creditors, if any, and after such intimation and inquiry as he may think fit, grant such application and issue decree in the said terms. On such decree being pronounced and an extract thereof in which said lands shall be described at length or by reference recorded in the appropriate register of sasine, the right of redemption reserved to the debtor shall be extinguished, and the creditor shall have right to the lands disposed in security in the same manner and to the same effect as if the disposition in security had been an irredeemable disposition as from the date of such decree." By

SCOTTISH LAW—continued.

s. 10 "no purchaser from the creditor or other successor in title in the lands shall be under any duty to inquire into the regularity of the proceedings under which creditor has acquired right to the lands held under his security by virtue of the provisions contained herein, or be affected by any irregularity therein, without prejudice to any competent claim of damages against such creditor."

In 1895 certain creditors presented a petition under s. 8 of the above Act. The appellant, the proprietor of the lands, did not appear. The sheriff granted decree. Thereafter the creditors sold the lands and granted dispositions in favour of the purchasers.

In 1901 the original proprietor brought an action against the creditors and purchasers for reduction of the citation and execution of service upon him of the petition in the sheriff Court, alleging that the service had been executed by a messenger-at-arms, who was not an officer of the sheriff Court; and he pleaded that such service, with all that had followed thereon, including the disposition to the purchasers, was null and ineffectual:—

Held, affirming the decision of the Second Division of the Ct. of Sess., (1902) 4 F. 957, that, assuming the service to be as stated, the error was an "irregularity in the proceedings" within the meaning of s. 10 of the Heritable Securities (Scotland) Act, 1894, and consequently that the right of the purchasers was not affected thereby. *SUTHERLAND v. THOMSON (MANAGER OF STANDARD LIFE ASSURANCE CO.)* (Second Appeal) - - H. L. (Sc.) [1905] W. N. 172; [1906] A. C. 51

— Highway—Right for foot passengers—Prescriptive use—Accumulated use attributable to two roads—Substituted roads.

See HIGHWAY. 41.

— Income tax—Sale of annuities—Assessment of revenue from invested funds.

See REVENUE—INCOME TAX. 2.

— Innkeeper—Liability of innkeeper for goods deposited "expressly for safe custody."

See INNKEEPER. 1.

— Insurance (Accident)—Condition in policy—Claim to be made within a year of registration.

See INSURANCE (ACCIDENT). 2.

— Insurance—Professional—Widows' fund limited to members of a society—Contributor expelled from society.

See INSURANCE (PROFESSIONAL). 1.

— Judgment—Scotch judgment—Extension to England—Garnishee order nisi—Service on garnishee.

See ATTACHMENT. 4.

14. — *Landlord and tenant—Forfeiture of lease—Condition to take over sheep at expiration of lease.*

A tenant in a letter offering to take a lease of a farm for ten years from 1897 stipulated that at his "awaygoing at the expiration of the lease"

SCOTTISH LAW—continued.

the landlord should take over the sheep at a valuation. The lease contained a clause that the lease should be forfeited for non-payment of rent, and, the tenant having failed to pay five half-years' rent, the landlord put an end to the lease in Feb., 1902, and refused to take over the sheep:—

Held, reversing the decision of the Second Division of the Ct. of Sess., reported as *Stewart v. Marquis of Breadalbane*, (1903) 5 F. 359, that "awaygoing" must be taken to mean the legal expiration of the lease, and that the landlord on the tenant's default was not bound to take over the sheep. *MARQUESS OF BREADALBANE v. STEWART - H. L. (Sc.)* [1904] W. N. 60; [1904] A. C. 217

— Landlord and tenant—Insanitary house—Claims by wife and children for damages for typhoid fever caused by defective drains.

See LANDLORD AND TENANT. 43.

— Landlord and tenant—Sheep stock on expiry of lease—Refusal of new landlord to take over sheep.

See No. 12, above.

15. — *Leases—Power of heir of entail in possession to burden the estate—Obligation to take over sheep stock on expiration of lease—Custom.*

The appellant was tenant of a sheep farm forming part of an entailed estate in Scotland. The lease granted by the late heir of entail was for fifteen years from Whit Sunday, 1903, with an option to either party to terminate the lease at the end of the fifth year. The appellant at his entry upon the farm was required to take over the sheep stock from the outgoing tenant at a valuation, and the lease contained the following clause:—"The tenant 'shall deliver at the end of the lease to the landlord or incoming tenant as far as possible not more than the same number of sheep and the same classes as he receives on his entry and the proprietor agrees that the' tenant 'or his representatives shall receive the same prices as he paid on his entry.'" The appellant paid to the outgoing tenant 1,319*l.* in 1903. In 1907 the late heir of entail in possession died and the respondent succeeded to the estate as next heir of entail. After her succession she repudiated the obligation to take over the sheep, and on the appellant not acquiescing she gave notice to terminate the lease on Whit Sunday, 1908. The appellant then raised this action concluding for declarator that the obligation was binding on the respondent as heiress of entail. The respondent did not represent the grantor of the lease, nor was she liable for his debts:—

Held, affirming the decision of the First Division of the Ct. of Sess., (1908) S. C. 628, that the respondent was not liable under the obligation, as no heir of entail can be liable to pay a debt of a previous heir which has not been made a charge upon the estate itself and which is not authorized by the deed of entail. *GILLESPIE v. RIDDELL*

H. L. (Sc.) [1908] W. N. 219; [1909] A. C. 130

SCOTTISH LAW *continued.*

— Licensing Acts—Refusal to renew certificate—Absolute discretion of magistrates.
See LICENSING ACTS. 4.

— Lien for improvements on real estate in Scotland, Enforcement of—Jurisdiction.
See PRACTICE—Pleadings. 1.

16. — *Marriage contract—Conquest—Wife's acquirenda—Accumulations of income—Legitim—Married Women's Property (Scotland) Act, 1881 (44 & 45 Vict. c. 21), ss. 7, 8.*

By ante-nuptial marriage contract executed in 1848 the wife bound herself to convey to trustees the whole funds and estate real and personal which she might hereafter "conquest and acquire by purchase accession or otherwise." The trustees were directed to pay the income of the trust estate to the wife during her life for her own separate benefit and use exclusive of the *ius mariti*, and by a clause in the contract the provisions in favour of children were to bar any claim they might make under the head of legitim:—

Held, affirming the decision of the Ct. of Sess., (1902) 5 F. 191, that the clause of conquest did not extend to estate which at the dissolution of the marriage by the death of the husband consisted of or was purchased with accumulations of the wife's separate income; (2) that the only child of the marriage was not entitled to legitim out of his mother's estate. MACKENZIE v. ALLARDES

H. L. (Sc.) [1905] W. N. 67;
[1905] A. C. 285

17. — *Master and servant—Burgl surveyor—Extra work—Delay.*

The pursuer was appointed in 1868 surveyor of police by the police commrs. of Dundee at a salary of 400*l.* (subsequently raised to 500*l.*), and continued in that office and (after 1894) as burgl surveyor to the town council until 1906. By the terms of his appointment it was stipulated that he should devote all his services to the business of the commrs. During the thirty-eight years of his employment he did work for the commrs. in excess of what was contemplated at the time of his appointment, and particularly in regard to the promotion of various Bills in Parliament. On three occasions they paid him an honorarium, but otherwise he received no additional remuneration for his work. In 1906 he claimed and brought an action against the commrs. for 15,000*l.* in respect of extra work:—

Held (affirming the decision of the Second Division of the Ct. of Sess., Scotland, (1909) S. C. 971), that there was no evidence on which they could be held to be liable. MACKISON v. DUNDEE MAGISTRATES

H. L. (Sc.) [1910] W. N. 67;
[1910] A. C. 285

18. — *Master and servant—Common employment—Compensation—Practice—Judicature Act of Scotland (6 Geo. 4, c. 120), s. 40—Sheriff Court cases.*

The House being of opinion that there was a material question of fact left undetermined by the Second Division of the Ct. of Sess., (1909)

SCOTTISH LAW—*continued.*

S. C. 152, remitted the cause back to the Court below to pronounce a finding on the said question in accordance with the practice in cases originating in the Sheriff Court, Scotland. BUTLER or BLACK v. FIFE COAL CO.

H. L. (Sc.) [1910] W. N. 194

— Mines—Mines of coal, ironstone, slate, or other minerals—Sandstone.

See RAILWAY—Mines. 7.

— Mines and minerals—Lease—Absolute prohibition.

See MINES. 8.

19. — *Parliament—Franchise—Right of women graduates to vote—Representation of the People (Scotland) Act, 1868 (31 & 32 Vict. c. 48), ss. 27, 28—Universities Elections Amendment (Scotland) Act, 1881 (44 & 45 Vict. c. 40), s. 2, sub-ss. 3, 10, 16—Universities (Scotland) Act, 1889 (52 & 53 Vict. c. 55), s. 14, sub-s. 6.*

By s. 27 of the Representation of the People (Scotland) Act, 1868, "Every person whose name is for the time being on the register . . . of the general council of such university, shall, if of full age and not subject to any legal incapacity, be entitled to vote in the election of a member to serve in any future Parliament for such university in terms of this Act"; and by s. 28, sub-s. 2, the following persons shall be members of the general council of the respective universities:—"All persons on whom the university to which such general council belongs has after examination conferred" the degree of M.D., &c., "any other degree that may hereafter be instituted." The appellants were five women graduates of the University of Edinburgh, and as such had their names enrolled on the general council of that university, and they claimed as graduates and members of the general council the right to vote at the election of a member of Parliament for the university:—

Held (affirming the decision of the Extra Division of the Ct. of Sess., (1908) S. C. 113), that the appellants were not entitled to vote in the election of the parliamentary representative of the university.

There is no evidence of any ancient custom for women to vote in parliamentary elections. NAIRN v. UNIVERSITY OF ST. ANDREWS

H. L. (Sc.) [1908] W. N. 250; [1909] A. C. 147

— Patent—Interpretation of specification—Infringement by licensee—Damages.

See PATENT—Infringement. 7.

— Poor law—Settlement by residence—Support by charitable institution.

See POOR LAW. 29.

— Power of appointment—Appointment—Donee domiciled in Scotland—Codicil valid by law of domicile—Probate in England—Defective execution aided.

See POWER OF APPOINTMENT. 29.

— Practice—Decree of Ct. of Sess. in Scotland—Certificate registered in High Court.

See RECEIVER. 2.

SCOTTISH LAW—*continued.*

- Practice—Witness—Taking the oath—Kissing the book.
See OATHS. 1.
- Railway—Bridge carrying public highway over railway—Liability to repair.
See No. 3, above.
- Railway passenger—Damages for personal injuries—Failure of railway servants to close carriage doors before starting the train.
See RAILWAY—Passengers. 5.
- Railway—Reservation of minerals—Conveyance of surface—Costs.
See LANDS CLAUSES ACTS. 35.
- Rates—Assessment—Construction of statute—Glasgow Court Houses Act.
See RATES. 7.

20. — Rates — Judicial factor—Receiver — Power to increase rates—Greenock Harbour Act, 1880 (43 & 44 Vict. c. clxx.), s. 70—Greenock Harbour Act, 1888 (51 & 52 Vict. c. cxiii.), ss. 21, 22.

By the Greenock Harbour Act, 1880 (43 & 44 Vict. c. clxx.), s. 70, "Every application for a judicial factor under the provisions of this Act shall be made to the sheriff, and on any such application the sheriff may by order in writing, after hearing the parties, appoint some person to receive the whole or a competent part of the rates and duties and other revenues of the trust, until all the arrears of interest or of principal, as the case may be, . . . be fully paid."

The appellant, as judicial factor of the Greenock Harbour Trust, claimed to be entitled to demand for sugar shipped into or unshipped from vessels (foreign) at the port and harbour of Greenock the rate of 1s. 3d. per ton, being the maximum rate authorized by the Greenock Harbour Act, 1880. This rate was fixed by the appellant in opposition to the wishes of the respondents, the Greenock Harbour trustees, who insisted that the rate should be only 10d. per ton, the rate fixed by the respondents prior to the appointment of the appellant:—

Held (affirming the decision of the First Division of the Ct. of Sess., Scotland, (1908) S. C. 944), that the judicial factor was merely a receiver of the tolls and income of the undertaking and not its manager, and that he had no implied authority to increase or destroy the different sources of revenue. *CARMICHAEL v. GREENOCK HARBOUR TRUSTEES - H. L. (Sc.) [1910] W. N. 58; [1910] A. C. 274*

21. — Remuneration of Procurator Fiscal—Preliminary inquiries into non-prosecuted cases—County General Assessment Act, 1868 (31 & 32 Vict. c. 82), s. 3, sub-ss. 2 and 3—Rogue Money Act, 1724 (11 Geo. 1, c. 26), s. 12.

In an action for debt, the debt must be established either by contract or at common law or by statute.

Sect. 4 of the County General Assessment Act, 1868, authorized an assessment to be imposed called the "county general assessment"; and s. 3 provided that "the following salaries, fees, outlays, and expenses, namely (sub-s. 2): The

SCOTTISH LAW—*continued.*

salaries or fees and necessary outlays of Procurators Fiscal in the Sheriff and Justice of Peace Courts . . . in so far as such salaries, fees, and outlays are at present in use to be paid by each county." Sub-s. 3: "The expenses incurred in searching for, apprehending, subsisting, prosecuting, or punishing, criminals:— in so far as any such salaries, fees, outlays, and expenses are not by law or usage payable or provided from other funds than those raised by the Commrs. of Supply, may be defrayed by the said commrs. out of the 'county general assessment.'" Under the Rogue Money Act of 1724, certain fees had been paid to the Procurators Fiscal for criminal prosecutions. Subsequently those charges which lay on the county were undertaken by the Treasury, and eventually a salary in lieu of fees was paid to the Procurators Fiscal. The Procurator Fiscal of the lower ward of Lanark alleged that his salary only included cases which were reported or went to trial and made a claim for remuneration for those cases in which he made inquiry, but which went no further. Since 1851 the county council had refused to pay this claim. And from 1851 to 1868, when the County General Assessment Act came into force, no attempt had been made by the then Procurator Fiscal to compel the county to pay, although accounts by the Procurator Fiscal were furnished at different periods:—

Held (reversing the decision of the Second Division of the Ct. of Sess., *Hart v. County Council of the County of Lanark*, (1902) 40 S. L. R. 117), that it could not be said that in the county of Lanark "it was in use" to pay these fees at the date of the Act of 1868, and therefore the county was not liable. *LANARK COUNTY COUNCIL v. HART H. L. (Sc.) [1904] W. N. 66; [1904] A. C. 235*

— Reserved minerals—Conveyance of service only.

See LANDS CLAUSES ACTS. 35.

— River—Riparian proprietors, Rights of—Abstraction of the whole of the water from river—Ex adverso mill owners.

See RIVER. 4.

— Sale of goods—Passing of property—Scottish arrestment of ship in course of building.

See SALE OF GOODS. 1.

— Salmon fishing—Abstraction of water by mill owner—Right to interdict by upper fishery proprietors.

See FISHERY. 11.

22. — Servitude — Construction — Bond to secure amenity — Meaning of the word "unseemly" in a bond of servitude.

The pursuers, proprietors of a feu, raised an action against the defenders, the proprietors of an adjoining feu held of the same superior, to enforce building restrictions. These restrictions were contained in a bond of servitude, by which the defenders bound themselves and their successors not to erect on any part of an adjoining piece of ground "any building of an unseemly description." The pursuers alleged that the defenders were about to allow the erection of

SCOTTISH LAW—continued.

unseemly buildings within the meaning of the bond of servitude :—

Held (affirming the decision of the First Division of the Ct. of Sess., (1906) 8 F. 1109), that a condition against the erection of buildings of "an unseemly description" was too vague and indefinite to be valid as a permanent restraint on the use of property. **MURRAY v. DUNN**

H. L. (Sc.) [1907] W. N. 123 ; [1907] A. C. 283

— Service of writ of summons—Scottish corporation carrying on business in England.

See PRACTICE—Service. 14.

— Settled estates — English settlement—Real estate in Scotland—Improvements on Scotch real estate—Capital moneys—Jurisdiction.

See SETTLED LAND—Scotch Estate. 1.

— Settled land—Land in Scotland—Feu—Jurisdiction—Application to Scottish Courts—Form of order.

See SETTLED LAND—Leases. 9.

— Settlement—Contract in Scotch form—English trustees—Husband's life interest.

See CONFLICT OF LAWS. 6.

— Settlement—Effect of divorce on children's provisions—Income undisposed of.

See DIVORCE—Settlements. 1.

— Settlement, Marriage—Domicil.

See CONFLICT OF LAWS. 8.

— Sewers—Burgh Sewerage, Drainage and Water Supply (Scotland) Act, 1901—Failure to give notice.

See SEWERS. 13.

— Shipping—Collision—Firth of Forth a "narrow channel"—Damages for loss of life—Ship in fault.

See SHIPPING—Collision. 25.

— Shipping—Demurrage—Charterparty—Bill of lading not put in evidence—Hypothetical case.

See SHIPPING—Charterparty. 32.

23. — Shops—By-law—Ultra vires—Power of magistrates to close shops at 10 p.m.—Burgh Police (Scotland) Act, 1892 (55 & 56 Vict. c. 55), ss. 316, 317, 318, 380, and 1903 (3 Edw. 7, c. 33), s. 82, sub-s. 2.

By s. 380 of the Burgh Police (Scotland) Act, 1892 (55 & 56 Vict. c. 55), a penalty is imposed on the occupier of any building for the sale or consumption of provisions or refreshments who opens his premises for business before 5 o'clock in the morning or keeps them open after midnight. By s. 82, sub-s. 1, of the Burgh Police (Scotland) Act, 1903, any building used as an icecream shop must be registered. By s. 82, sub-s. 2, town councils of burghs in Scotland may make by-laws (subject to confirmation of the sheriff and the Secretary for Scotland : s. 318 of the Act of 1892) in regard to the hours of opening and closing of premises registered as icecream shops, "the hours for business not being more restricted than fifteen hours daily."

SCOTTISH LAW—continued.

The defenders, the town council of a burgh, made a by-law by which it was illegal for such premises to be kept open except between 7 o'clock in the morning and 10 o'clock at night :—

Held (affirming the decision of the Second Division of the Ct. of Sess., (1906) 8 F. 564), that the by-law was not ultra vires or unreasonable. **DA PRATO v. PARTICK (PROVOST, &c., OF)**

H. L. (Sc.) [1907] W. N. 67 ; [1907] A. C. 153

— Stamps—Stamp—Settlement—Alteration of security by subsequent deed.

See REVENUE—Stamps. 28.

— Stream—Natural stream—Pollution.

See STREAM. 1, 2.

24. — Streets—Burgh—Building regulations —"Width," Meaning of, in respect to existing streets—Glasgow Building Regulations Act, 1900 (63 & 64 Vict. c. cl.).

Sect. 9 of the Glasgow Building Regulations Act, 1900, Part II., which has a general heading "Streets," provides for the formation by the defenders of a "register of public streets," in which are to be entered various particulars as regards all public streets then in existence, and, inter alia, the "point of commencement and termination" and the "width," and enjoins the marking of such streets, and the area thereof, on an ordnance survey map.

The First Division of the Ct. of Sess. and three other judges held that the "width" as used in the Act meant in the case of existing public streets the actual width, and, secondly, that the action of the pursuers raised while the register was in preparation and before the statutory period was exhausted was competent, but premature :—

Held, that the decision of the Ct. of Sess., (1905) 7 F. 1020, was right, and must be affirmed. **CALEDONIAN RY. CO. v. GLASGOW CORPORATION**

H. L. (Sc.) [1907] W. N. 67 ; [1907] A. C. 160

Note.

See next Case.

25. — Streets—Burgh—Fixing width of existing street—Glasgow Building Regulations Act, 1900 (63 & 64 Vict. c. cl.).

The Glasgow Building Regulations Act, 1900, makes provision for a register of public streets in Glasgow, and by s. 20 imposes restrictions upon the erection of any building upon ground adjoining any street, and for the purpose enacts that the "width" of any public street shall be the "width" set forth in the register where such width is entered therein. And the width of any public street of which the dimensions are not set forth in the register . . . shall be fixed by the master of works :—

Held (affirming the decision of seven judges of the Ct. of Sess., (1905) 6 F. 1034), that the master of works was bound to fix as the width of a public street the width of the street actually existing. **NISBET v. HAMILTON**

H. L. (Sc.) [1907] W. N. 67 ; [1907] A. C. 158

Note.

See preceding Case.

SCOTTISH LAW—continued.

26. — *Succession—Construction of will—Residue of estate "to heir entitled to succeed under a deed of entail"—Lands disentailed—Intestacy.*

The testator directed his trustees to entail his Kintail estate upon a series of heirs, specified in a tailzied destination clause, and gave certain beneficial interests in the residue of his estate "to the heir for the time being entitled to succeed under the said deed of entail" upon his attaining the age of twenty-four.

On his attaining twenty-one the institute heir of entail took advantage of the Entail Amendment (Scotland) Act of 1848, s. 27, and before any deed of entail had been executed obtained from the Court an order to have the estate of Kintail conveyed to him in fee simple, and he evacuated the tailzied destination, thus destroying the entail; he afterwards died unmarried before attaining the age of twenty-four. The next of kin claimed that, in the circumstances of the entail, the residue had fallen into intestacy:—

Held (affirming the decision of the Second Division of the Ct. of Sess., (1907) S. C. 139), that the residue did not fall into intestacy, as the will declared that the beneficial interest therein was to go to the heir for the time being under the tailzied destination, and it was not a condition of such heir succeeding to the said interest that he should be in the position of heir of entail of Kintail under a deed of entail. *BARONESS WESSELENYI v. JAMIESON*

H. L. (Sc.) [1907] W. N. 195; [1907] A. C. 440

27. — *Superior and vassal—Casualty or composition—Singular successor—Annual value of minerals.*

The measure of the right of a superior to a casualty or composition on the entry of a singular successor is the year's rent for which the land is let for the time, and this rent includes mineral rents or royalties where coal or other minerals are being worked; and it makes no difference that the minerals are approaching exhaustion.

Duke of Hamilton v. Allan's Trustees, (1878) 5 R. 510, approved.

Appeal from the decision of the Ct. of Sess., Scotland, (1900) 2 F. 1218. *EARL OF HOME v. LORD BELHAVEN AND STENTON*

H. L. (Sc.) [1903] W. N. 104; [1903] A. C. 327

28. — *Superior and vassal—Ffeu contract—Stipulations for additional feu duty for ground "on which buildings shall be erected."*

The House reversed the decision of the First Division of the Ct. of Sess., Scotland, (1901) 3 F. 933, and allowed the appeal with costs both here and below. *M'FARLANE v. SIR JOHN MAXWELL STIRLING MAXWELL*.

H. L. (Sc.) [1902] W. N. 206

— Trade name — Injunction — Similarity of name.

See TRADE NAME. 5.

— Trust—Gift of whole or annual income according to trustees' discretion — Assignment.

See TRUSTEE—Discretion. 1.

— Trust—Will—Denuding—Vesting.

See TRUST. 2.

SCOTTISH LAW—continued.

— Vendor and purchaser—Contract—Sale of estate by general name—Use of plan.
See VENDOR AND PURCHASER—Plan. 3.

29. — *Vendor and Purchaser—Plan—Heritage—Sale by estate name.*

This action was a dispute as to how much land was bought from the appellant by the respondent on a contract of sale. Both parties alleged they made a valid contract and differed only as to what was sold. The appellant alleged he sold according to a "plan." The respondent contended that he bought according to an instrument of dissentail of Dec. 31, 1886, which was a dissentail of the "Lands and Barony of Dallas." The "plan" referred to the "Estate of Dallas."

The House being of opinion that there was a valid and binding sale of the estate of Dallas according to a "plan," reversed the decision of the Second Division of the Ct. of Sess., (1909) S. C. 1198, and restored the judgment of the Lord Ordinary with costs. *GORDON CUMMING v. HOULDSWORTH. H. L. (Sc.) [1910] W. N. 185; [1910] A. C. 537*

— Water—Right of support for water-pipes—Minerals under pipes.
See under WATER.

30. — *Will—Reduction—Agent alleged to benefit under will prepared by him—Suspicion—Defect in attestation.*

The rule that where a will is prepared by a party who takes a benefit under it, that is a circumstance which forms a just ground of suspicion and requires clear and satisfactory proof that the instrument contains the real intention of the testator, does not authorize the Court to consider suggestions of fraud or undue influence of which no foundation is laid in evidence.

Decision of the First Division of the Ct. of Sess., Scotland, (1907) S. C. 1240, affirmed. *Low v. GUTHRIE. H. L. (Sc.) [1909] W. N. 81; [1909] A. C. 278*

— Will — Uncertainty — "Such charitable or public purposes as my trustee thinks proper"—Trust.
See WILL—Uncertainty. 4.

— Workmen's Compensation.
See under MASTER AND SERVANT—Compensation.

SCOTSMAN—Divorce—Foreign domicile, allegiance, or residence of co-respondent—Liability for costs or damages.
See DIVORCE—Co-respondent. 3.

SCREEN—To prevent acquisition of right to light—"Building"—Open spaces.
See BURIAL. 5.

SEA—Fishings.
See under FISHERY.

— Foreshore.
See under FORESHORE.

— Poor rate — Necessary repairs to command rent—Rent-charge imposed for protection of land from the sea.
See RATES. 40.

SEA—*continued*.

- Rates—Rent-charges imposed for protection of land from sea.
See **RATES** 40.

SEA FISHERY.

See under **FISHERY**.

SEAL—*Great Seal (Offices) Act, 1874—Abolition of fees—Order of the Lord Chancellor, dated May 19, 1904. Reprint from W. N. 1904 (June 4), p. 197. See CURRENT INDEX, 1904, p. cxvii.*

- Corporation Contract not under seal.
See **CORPORATION**, 6, 7.

- Retainer of solicitors by resolutions not under seal—Subsequent affixing of seal after work partly done under retainer.
See **LOCAL GOVERNMENT**, 29.

SEALING — Debentures — Resolution to issue series of debentures—Issue.
See **COMPANY—Debentures**, 35.

- Resealing—Colonial probate—Limited grant.
See **PROBATE—Colonies**, 1.

SEAMEN.

See under **SHIPPING—Seamen**.

- Employer's liability—Compensation.
See **MASTER AND SERVANT—Compensation**, 110—166.

SEARCH—Water bailiff, Powers of—Right to search suspected person's pocket.
See **FISHERY**, 12.

SEASHORE.

See also under **FORESHORE**.

- Crown lands—Grant of foreshore by the Crown—Pier—Unauthorized construction—Public nuisance.
See **PIER**, 1.

- Custom to dry fishing-nets—Charges in user—Recession of sea—Land added by accretion.
See **CUSTOM**, 1.

1. — *Foreshore—Conveyance of land "bounded by the seashore"—Parcels—Plans—Falsa demonstratio—Evidence—Admissibility—Professional duty—Deceased surveyor Field-book entries.*

In a conveyance the land granted was described as "situate on the seashore." The exact dimensions of each side of the plot were then given as well as its area, and it was stated that the plot was bounded on the south by other land of the grantor, on the east and north respectively by specified roads, and "on the west by the seashore." Reference was then made to a plan indorsed on the deed. The plan shewed the dimensions as stated in the description:—

Held, that the word "seashore" must be taken to mean the "foreshore" in its strict legal sense, i.e., the land situate between medium high and low water-marks:—

Held (by Vaughan Williams and Stirling L.J.J.), that the land between the plot and the foreshore did not pass to the grantee, but that the grantor was estopped from saying that the land to the west of the plot was anything but "seashore," and that the grantee was entitled to

SEASHORE—*continued*.

free and unrestricted access to the sea from every part of his western frontage over every part of the land lying between that frontage and the sea.

Per Vaughan Williams L.J.: The ordinary rule—that an erroneous statement as to dimensions or quantity, or an inaccuracy in a plan, will not vitiate a sufficiently certain definition of the land granted by a deed—did not apply, because in this deed the dimensions were part and parcel of the description itself, not an addition to that which had been already certainly defined.

Held, by Romer L.J., that the land lying between the western side of the plot and the line of medium high water-mark passed by the conveyance to the grantee.

Decision of Swinfen Eady J., [1904] 2 Ch. 525, varied.

Held, by the C. A., that field-book entries made by a deceased surveyor for the purpose of a survey on which he was professionally employed were admissible in evidence as being made in the discharge of professional duty within *Price v. Earl of Torrington*, (1703) 1 Salk, 285.

Decision of Swinfen Eady J., [1904] 2 Ch. 528, reversed. **MELLOR v. WALMESLEY**

C. A. [1905] W. N. 98, 102; [1905] 2 Ch. 164

Note.

Distinguished by C. A., *Mercer v. Denne*, [1905] 2 Ch. 538. See **CUSTOM**, 1.

2. — *Foreshore—Crown, Rights of—Encroachment—Riparian owner—Discontinuance of possession—Adverse possession, Title by—Intention—Protection of adjoining property—Animus possidendi—Dispossession—Injunction—Statute of Limitations—Real Property Limitation Act, 1833 (3 & 4 Will. 4, c. 27), ss. 2, 3.*

In this case the Court said the law was perfectly well settled, and could not be better expressed than in the two cases of *Lancaster v. Eve*, (1859) 5 C. B. (N.S.) 715, 723, 725, and *Littledale v. Liverpool College*, [1900] 1 Ch. 19, 23—that, in order to acquire by the Statute of Limitations a title to land which had a known owner, that owner must have lost his right either by being dispossessed of it or by having discontinued his possession of it. Looking at the facts established by the evidence in this case, no case of discontinuance had been made out, and if the deft. succeeded at all, he must do so by shewing that he had dispossessed the plt. and his predecessors in title. The question was one of intention. What, then, was the intention of the persons who deposited on the foreshore in front of the deft.'s premises these boulders which had been brought from a considerable distance? Was this done by the deft.'s predecessors in title in order to claim possession of the foreshore itself, so as to exclude the owners of the foreshore therefrom, or was it done for the protection and convenience of the predecessors in title of the deft.? At the moment of the act being done it would have been the duty of the Court, in considering such a question, to say, "How has the particular article come into the place in which it is found, and what was the object of that article being placed there?" It was not

SEASHORE—*continued.*

sufficient for the present debt, to say that the article had been placed there a long time. It was necessary to shew whether the article was placed there in order to assert a title of ownership to the soil, or whether it was intended to be merely ancillary to the use by the debt. of his property. In a case of this kind it was always open to inquiry how the article came to be in the place in which it was found, and what the parties intended as to its use; and their respective rights must be subject to explanation by evidence: *Lancaster v. Eve* (supra); *Wood v. Hewett*, (1846) 8 Q. B. 913. Here there was nothing binding one to hold that the acts of the debt, or his predecessors in title had indicated any intention to exclude the plt.'s rights, and therefore the decision of Warrington J. must be affirmed. But under the judgment in its present form, it did not appear certain that the plt. would not be entitled to clear away the stones. That ought not to be allowed, for an easement had been acquired by the debt. That being so, the Court thought the only way to give proper effect to the judgment of the Court below was to add these words: "But this order is without prejudice to the right of the debt. to an easement over the plt.'s land for the purpose of protecting and securing the debt's building from encroachment by the sea by means of rocks, stones, or piles placed on such land." *PHILPOT v. BATH* C. A. [1905] W. N. 114

3. — Foreshore—Public right of bathing.

The public have no common law right to use the foreshore or to pass and repass thereon for the purpose of bathing in the sea, whether the foreshore is the property of the Crown or of a private owner.

Blundell v. Catterall, (1821) 5 B. & A. 268, followed. *BRINGMAN v. MATLEY*

C. A. [1904] W. N. 150; [1904] 2 Ch. 313

Note.

This case was referred to by Parker J., *Lord Fitzhardinge v. Purcell*, [1908] 2 Ch. 139, 163. See *Foreshore*. 2.

— *Foreshore* — Rights of owners of foreshore included in harbour and precincts—Removing sand, &c.
See *HARBOUR*. 2.

— *Foreshore*—Trespass—Title to foreshore under a Crown grant—Construction.
See *TASMANIA*. 1.

SEAWORTHINESS—Ship.

See under *INSURANCE (MARINE)—Shipping*.

— *Warranty of*—Damage to cargo—"By reason of" fire.
See *SHIPPING—Fire*. 1.

SECRET CHARGE—Account for—Broker and client—Purchase of shares.
See *STOCK EXCHANGE*. 1.

SECRET COMMISSION—Sub-agent—Privity of contract—Fiduciary relation—Money had and received.
See *PRINCIPAL AND AGENT*. 9.

SECRET PROFIT—Broker and client—Purchase of shares—"Net" charge.
See *STOCK EXCHANGE*. 1.

— *Promoter*—Duty as to extent of disclosure.
See *COMPANY—Promoters*. 2.

— *Received by agent without fraud*—Right of agent to retain his commission.
See *PRINCIPAL AND AGENT*. 11.

— *Right to retain commission*.
See *PRINCIPAL AND AGENT*. 10.

— *Sole agent*—Right to retain commission.
See *PRINCIPAL AND AGENT*. 13.

SECRET TRUST—Absolute gift—Charity—Trust for benefit of public, but so that they should acquire no rights.
See *WILL—Absolute gift*. 9.

SECRETARY—COMPANY.

See under *COMPANY—Secretary* and *COMPANY—WINDING-UP—Secretary*.

SECRETARY OF STATE—Order of—Validity—Condition precedent—Notice of making of order.
See *STATUTORY RULES AND ORDERS*. 1.

SECRETARY OF STATE FOR COLONIES—Protectorate—"Foreign dominion of the Crown."
See *HABEAS CORPUS*. 2.

SECURED CREDITORS—Bankruptcy.
See under *BANKRUPTCY*.

— *Creditor*.
See under *CREDITOR*.

— *Default on Stock Exchange*—Mortgage—Deposit of securities—Redemption—Notice of act of bankruptcy.
See *BANKRUPTCY—Stock Exchange*. 1.

— *Garnishee order*—Application of law of bankruptcy.
See *COMPANY—WINDING-UP—Secured Creditor*. 1.

SECURITIES.

See under *INVESTMENTS*.

— *Power to transpose and vary*—Implied power to resell.
See *VENDOR AND PURCHASER—Title*. 19.

— *Settled estate*—Unauthorized securities—Wasting securities.
See *SETTLED LAND—Securities*. 1.

— *Stocks and shares in companies*—Extrinsic evidence, Admissibility of.
See *WILL—Investments*. 3.

SECURITY—Bond of limited company—Ultra vires.
See *RECEIVER*. 14.

— *Receiving order*—Scheme of arrangement—Creditor—Withdrawal of debt.
See *BANKRUPTCY—Arrangements*. 3.

— *Costs, Security for*.
See under *COSTS*.

SECURITY—*continued.*

- Decision of Master as to sufficiency of—
Appeal from Master—Practice.
See APPEAL. 25.
- Dispensing with—Appeal.
See BANKRUPTCY—Practice. 13.
- Divorce—Wife's costs—Previous order for
separation—Effect.
See DIVORCE—Costs. 13.
- For composition — Sufficiency — Scheme of
arrangement.
See BANKRUPTCY—Arrangements. 1.
- For damages—Collision—Action in personam
—Foreign plaintiffs—Counter-claim.
See SHIPPING—Collision. 52.
- Heritage—Right in security — Messenger-
at-arms.
See SCOTTISH LAW. 13.

SECURITY FOR COSTS.

See under COSTS.

SEDUCTION—Action for—Res judicata—Affilia-
tion proceedings—Judgment of quarter
sessions.

See ESTOPPEL. 3-

- Children—Girl under the age of sixteen years
—Encouraging seduction,
See INFANT —Seduction. 1.
- Discovery—Interrogatories — Admissibility—
Action for seduction—Disclosure of
names—Practice.
See DISCOVERY. 6.

1. — *Master and servant—Evidence of service*
—*Employment by defendant—Weekly leave of*
absence—Visits to the father's home—Assistance in
household duties.

The plt.'s daughter, who was in the service
of the deft., was permitted to go out once a week
for an afternoon and evening. On such occasions
she went to her father's house and assisted in
household duties. In an action by the plt. for
the seduction of his daughter by the deft. while
she was in the latter's service:—

Held. that there was no evidence of the rela-
tion of master and servant between the plt. and
his daughter to support the action. **WHITBOURNE**
v. WILLIAMS C. A. [1901] 2 K. B. 722

SENTENCE—Appeal.

See under CRIMINAL LAW—Appeal.

- Practice—Hard labour—Common law forgery.
See CRIMINAL LAW—Forgery. 1.
- Right of appellants to shew cause before
sentence—Appeal from Hong Kong.
See HONG KONG. 4.

SEPARATE PROPERTY—Married woman.

See under HUSBAND AND WIFE.

SEPARATION—Deed of

See under SEPARATION DEED.

- Deed of—Covenant not to revive suit—Sub-
sequent adultery by husband.
See DIVORCE—Practice. 11.
- Deed of separation—Bar—Summary Juris-
diction (Married Women) Act.
See HUSBAND AND WIFE — Deser-
tion. 1.
- Divorce—Judicial separation.
See under DIVORCE—Judicial Separa-
tion.
- Husband and wife.
See under HUSBAND AND WIFE —
Separation.
- Judicial—After-acquired property—Covenant
—"During the marriage."
See SETTLEMENT. 15.

SEPARATION DEED.

See also under SEPARATION.

- Action by trustees for wife under—Security
for costs — "Nominal plaintiff" —
Practice.
See TRUSTEE—Costs. 2.
- Allowance under—Divorce—Husband's peti-
tion—Order for costs against respondent.
See DIVORCE—Costs. 15.
- Divorce — Separation deed — Alimony —
Annuity—Deduction of income tax.
See REVENUE—Income Tax. 18.

1. — *Settlement on children of marriage—*
Resumption of cohabitation.

By a separation deed the husband assigned
property belonging to him to a trustee upon
trust for the wife for life, and after her death
for the benefit of the existing children of the
marriage. The husband and wife subsequently
resumed cohabitation:—

Held by Kekewich J., [1904] W. N. 31 ;
[1904] 1 Ch. 451, that the settlement in favour
of the children was not affected by the resump-
tion of cohabitation.

Ruffles v. Alston, (1875) L. R. 19 Eq. 539,
followed.

Compromised on appeal. *In re SPARK'S*
TRUSTS. SPARK v. MASSEY

C. A. [1904] W. N. 129 ; [1904] 2 Ch. 121

SEPARATION ORDER—Adultery of wife—Lia-
bility of husband for subsequent weekly
payments.

See HUSBAND AND WIFE—Separation.
1.

- Desertion—Lunatic—Irremovability—Appeal
to quarter sessions.
See POOR LAW. 2.
- Effect of, under Summary Jurisdiction
(Married Women) Act, 1895.
See DIVORCE—Separation Orders. 1.

SEPARATION ORDER—*continued.*

— Husband and wife.

See under **HUSBAND AND WIFE**—**Separation Order.**

— Will—Administration—Form of order.

See **PROBATE**—**Practice**, 6.

SEQUESTRATION—Interest, Insufficiency of—Sequestrator during vacancy of bench.

See **ECCLESIASTICAL LAW**—**Faculty**, 4.

1. — *Notice of Writ—Effect upon chose in action in hands of third party—Banker and customer.*

Summons by the plts. asking that the London and County Banking Co. might be ordered to pay into Court the sum of 204*l.* 7*s.* 8*d.*, being the balance of cash standing to the credit of the deft. H. E. Pollard in the books of the bank upon May 20, 1902.

The action was for administration, and to recover from the deft. a sum of money which was due from him to the testatrix, under whose will he was a legatee and executor. The deft. had been ordered to pay into Court to the credit of the action the sum of 136*l.* 3*s.* which had been found due from him to the estate. He having failed to comply with that order, on May 20, 1902, a writ of sequestration was issued against him.

On the same day the sequestrators attended at the office of the bank where the deft. had an account, gave the manager notice of the writ, and demanded payment of the amount standing to the credit of the deft.

According to the evidence of the plts., the manager promised the sequestrators that he would communicate with the solicitor of the plts. and the sequestrators after consulting the banks' solicitors, and that in the meanwhile he would not part with any of the money then standing to the credit of the deft. It was admitted that on May 20, 1902, the amount standing to the credit of the deft. in the books of the bank was 204*l.* 7*s.* 8*d.* Notwithstanding what had taken place between the manager and the sequestrators, the bank subsequently paid over to the deft. a portion of his balance, and this summons was then taken out.

The bank were willing to pay into Court the sum of 136*l.* 3*s.*, but opposed the making of an order against them in respect of the larger sum.

Joyce J. regretted that he could not make an order in respect of the larger sum. It was laid down in text-books that mere notice of a writ of sequestration did not bind a chose in action in the hands of a third party, and the authorities seemed to bear out that proposition. No case had been cited to shew that mere notice of a sequestration was enough, and certainly it did not create a charge. The bank submitting to pay the 136*l.* 3*s.* into Court, there would be an order against them for that amount; but, having regard to what had passed between the sequestrators and the bank manager, his Lordship declined to give the bank any costs. *In re POLLARD. POLLARD v. POLLARD* Joyce J. [1902] W. N. 144

— Payment of money into Court to "account of sequestrators"—Bankruptcy of defendant—Title of trustee.

See **BANKRUPTCY**—**Secured Creditors**, 4.

SEQUESTRATION—*continued.*

2. — *Practice—Execution—Enforcing order against corporation—Writ of sequestration—Injunction to restrain sewage nuisance—Undertaking to cleanse stream—Breach of injunction—Non-performance of undertaking—"Wilful disobedience"—R. S. C., 1883, Order XLII, r. 31—Solicitor and client costs.*

Where a person or corporation is restrained by injunction from doing a particular act, the person or corporation commits a breach of the injunction, and is liable to process for contempt, if he or it in fact does the act, and it is no answer to say that the act was not contumacious, in the sense that in doing it there was no direct intention to disobey the order.

The expression "wilfully" in Order XLII, r. 31, is intended to exclude only casual or accidental and unintentional disobedience to an order of the Court.

Fairelough v. Manchester Ship Canal Co., [1897] W. N. 7, and *Att.-Gen. v. Walthamstow Urban District Council*, (1895) 11 Times L. R. 533, followed.

In the case of a corporation, such as an urban district council, which can only act by its servants or agents, if the act is in fact done, the corporation cannot escape liability for its commission by proving that it was done by its servant or agent through carelessness, neglect, or even in dereliction of his duty.

Rantzen v. Rothschild, (1865) 14 W. R. 96, followed.

By an order of Court the defts. were restrained by injunction from sending sewage into a stream, and by the same order they undertook to cleanse the stream. They committed breaches of the injunction and failed to cleanse the stream in accordance with their undertaking.

The Court directed a writ of sequestration to issue against the defts., but to lie in the office for six months, and not to issue at all if within that period the defts. performed their undertaking to the satisfaction of a person agreed upon by the parties, and ordered the defts. to pay the plts.' costs as between solicitor and client. *STANCOMB v. TROWBRIDGE URBAN DISTRICT COUNCIL*

Warrington J. [1910] W. N. 105 : [1910] 2 Ch. 190

SERVANT—Civil servant—Additional years of service need not be continuous.

See **NEW SOUTH WALES**, 3.

— Male servant—Inland revenue.

See under **REVENUE**—**Servants**.

— Master and.

See under **MASTER AND SERVANT**.

— Negligence of driver—Liability of proprietor.

See **HACKNEY CARRIAGE**, 2.

— Will—Construction—Legacy—Year's wages

See **WILL**—**Servants**, 1.

SERVICE—Contract of.

See under **CONTRACT OF SERVICE** and **MASTER AND SERVANT**—**Contract of Service**.

— Master and servant.

See under **MASTER AND SERVANT**—**Contract of Service**.

SERVICE—*continued.*

— Police — Pension — “Approved service” — Continuity of service.
See POLICE. 3.

— Practice.

See under PRACTICE—Service.

— Solicitor.

See under SOLICITOR — Contract of Service.

SERVITUDE — Construction — Bond to secure amenity—Meaning of the word “unseemly” in the bond of servitude.
See SCOTTISH LAW. 22.

SET-OFF—Bankruptcy.

See under BANKRUPTCY—Set-off.

— Company — Winding-up — Contributory — Call.

See COMPANY—WINDING-UP—Contributory. 1.

— Costs—Equitable set-off—Debts “en autre droit”

See VENDOR AND PURCHASER — Costs. 1.

— Exchequer Court of Canada (Admiralty)—Extent of jurisdiction—Suit to enforce mortgage of a ship—Plea of set-off.

See CANADA—Shipping. 3.

— Lien on shares—Set-off against debts due from member—Winding-up.

See INDUSTRIAL AND PROVIDENT SOCIETY. 5.

— Mortgage—Interest.

See MORTGAGE—Costs. 2.

— “Mutual dealings”—Administration action—Insolvent estate—Mortgages by testator.

See ADMINISTRATION. 16.

1. — *Mutual debts—Practice—Assignment to defendant of debt owed by plaintiff to third person—Set-off by defendant of assigned debt against debt claimed from him by plaintiff—Practice—Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 25, sub-s. 6.*

In an action to recover a debt due from the deft. to the plt., the deft. is entitled to set off a debt originally due from the plt. to a third person who has assigned it to the deft.

Decision of the Div. Ct., [1910] 2 K. B. 1, reversed. *BENNETT v. WHITE*

C. A. [1910] W. N. 167; [1910] 2 K. B. 643

SETTING ASIDE — Arbitration — Award — Order, whether final or interlocutory.

See PRACTICE—Interlocutory Orders. 1.

— Award.

See under ARBITRATION.

— Compromise — Family solicitor — Common agent—Mistake of law or fact—Will—Beneficiaries.

See COMPROMISE. 4.

— Deed—Form of Order—Solicitor and client—Fiduciary relation.

See SOLICITOR—Fiduciary Relation. 2.

SETTING ASIDE—*continued.*

— Judgment—Action by bankrupt to set aside judgment on ground of fraud—Jurisdiction.

See BANKRUPTCY—Judgment. 1.

1. — *Judgment creditor—Garnishee order absolute—Mistake—Setting aside.*

A garnishee order, made upon evidence afterwards proved to be mistaken, may be set aside although it has been made absolute and has been acted upon.

Moore v. Peachey, (1892) 66 L. T. 198, followed. *MARSHALL v. JAMES*

Joyce J. [1905] W. N. 28; [1905] 1 Ch. 432

— Malicious prosecution, Action for—Verdict set aside—New trial.

See QUEENSLAND. 3.

— Solicitor — Bill of costs — Taxation — Agreement in writing — Signature — Enforcement—Setting aside.

See SOLICITOR—Costs. 2.

— Subpœna not issued for purpose of obtaining relevant evidence—Jurisdiction.

See CRIMINAL LAW—Evidence. 14.

— Writ of extent—Affidavit of debt and danger—Sufficiency of Affidavit—Motion to set aside writ.

See REVENUE—Writ of Extent. 1.

SETTLED ESTATE.

See under SETTLED LAND.

SETTLED LAND.

NOTE.—Settled Estates' Cases, and Tenant for Life and Remaindermen Cases, are included under this heading.

Annuity, col. 2343.

Apportionment, col. 2344.

Capital Moneys, col. 2346.

Capital or Income, col. 2355.

Company, col. 2357.

Conversion, col. 2357.

Costs, col. 2357.

Dividends, col. 2357.

Duties (Public Revenue), col. 2357.

Easements, col. 2357.

Emfranchisement, col. 2358.

Estate Duty, col. 2359.

Estoppel, col. 2359.

Fees and Stamps, col. 2359.

Fixtures, col. 2359.

Forfeiture, col. 2359.

Heirlooms, col. 2360.

Highway, col. 2361.

Improvements. *See* under SETTLED LAND—Capital Moneys.

Incumbrances, col. 2361.

Infants, col. 2361.

Insurance, col. 2363.

Interest, col. 2363.

SETTLED LAND—continued.*Interim Rents*, col. 2364.*Investments*, col. 2364.*Jointures*, col. 2366.*Jointuring*, col. 2366.*Leaseholds*, col. 2366.*Leases*, col. 2367.*Licences*, col. 2373.*Lunacy*, col. 2373.*Mansion-house*, col. 2373.*Mines*, col. 2374.*Mining Leases*. See under SETTLED LAND—Leases.*Mortgages*, col. 2375.*Outgoings*, col. 2377.*Payment Out*, col. 2377.*Payments*, col. 2377.*Portions*, col. 2377.*Possession*, col. 2377.*Powers*, col. 2378.*Practice*, col. 2381.*Repairs*, col. 2381.*Revenue (Public Revenue)*. See under SETTLED LAND—Duties.*Sale*, col. 2382.*Scotch Estate*, col. 2389.*Securities*, col. 2389.*Settlements*, col. 2389.*Succession Duty*. See under REVENUE —Succession Duty.*Tenant for Life*, col. 2390.*Timber*, col. 2391.*Title*, col. 2392.*Trustees*, col. 2392.*Waterworks*, col. 2395.*Way, Right of*, col. 2395.*Will*, col. 2395.**Annuity.**

See under ANNUITY.

— *Annuitants* entitled to rents and profits of land—Settlement.

See SETTLED LAND—Tenant for Life. 1.

— *Apportionment*—Capital and income—Simple interest.

See SETTLED LAND—Apportionment. 1.

— *Life annuities*—Capital and income—Apportionment—Past and future instalments.

See ANNUITY. 13.

1. — *Tenant for life and remainderman—Residuary personality—Testator's liabilities—Covenant to pay life annuities—Capital and income—Apportionment.*

A testator who had covenanted to pay life annuities bequeathed the proceeds of sale of his residuary real and personal estate upon successive trusts for a life tenant and remainderman :—

Held, that the successive instalments of the**SETTLED LAND (Annuity)—continued.**

annuities must be borne by income and capital in proportion to the actuarial values of the life estate and reversion at the testator's death.

Yates v. Yates, (1860) 28 Beav. 637, followed.*In re Bacon*, (1893) 62 L. J. (Ch.) 445, not followed. *In re DAWSON. ARATHOON v. DAWSON Swinfen Eady J.* [1906] W. N. 108 ; [1906] 2 Ch. 211*Note.*Not followed by Kekewich J., *In re Henry*, [1907] 1 Ch. 30. See *Settled Land—Apportionment*. 4.See *In re Thompson*, Joyce J., [1908] W. N. 195. See *Annuity*. 12.Followed by Parker J., *In re Poyser, London v. Poyser*, [1910] 2 Ch. 444. See *Capital or Income*. 2.**Apportionment.**1. — *Annuity—Tenant for life and remainderman—Residue—Testator's liabilities—Covenant to pay life annuity—Capital and income—Apportionment—Simple interest.*

A testator who had covenanted to pay a life annuity gave half his residue to trustees upon trust for his daughter for life, if and when she attained twenty-five, with remainders over.

Until the daughter attained twenty-five the income, subject to maintenance up to a specified amount, was to be added to capital. The daughter attained twenty-five on Oct. 8, 1907. The residue was earning 3 per cent. interest :—

Held, that each future instalment of the moiety of the annuity payable out of the daughter's share must as it accrued be apportioned between capital and income, as follows, viz., calculate what sum with 3 per cent. simple interest from Oct. 8, 1907, to the day of payment would have met the particular instalment. Charge that sum to capital, the balance to income.*Allhusen v. Whittell*, (1867) L. R. 4 Eq. 295, and *In re Harrison*, (1889) 43 Ch. D. 55, 61, followed.*In re Bacon*, (1893) 62 L. J. (Ch.) 445, and *In re Henry*, [1907] 1 Ch. 30, not followed. *In re PERKINS. BROWN v. PERKINS**Swinfen Eady J.* [1907] W. N. 219 [1907] 2 Ch. 506*Note.*Followed by Joyce J., *In re Thompson*, [1908] W. N. 195. See *Annuity*. 2.Followed by Parker J., *In re Poyser*, [1910] 2 Ch. 444. See *Capital or Income*. 2.2. — *Authorized security—Loss—Period of account—Tenant for life and remainderman—Hotchpot.*Where an authorized security becomes insufficient and there is a partial loss of capital and income, the account necessary to apportion the amount realized between life tenant and remainderman must be taken from the date when it was first ascertained that the security was insufficient up to the date of realization, the life tenant bringing all income received during that period into hotchpot. *In re PHILLIMORE. PHILLIMORE v. HERBERT**Swinfen Eady J.* [1903] W. N. 83 ; [1903] 1 Ch. 942

SETTLED LAND (Apportionment)—continued.

Note.

Overruled by C. A., *In re Atkinson*, [1904] 2 Ch. 160. *See next Case.*

— Dividends on shares—Company's articles—Express stipulation against apportionment.

See APPORTIONMENT. 1.

3. — *Mortgage—Deficient security—Tenant for life and remainderman—Capital and income—Apportionment—Loss—Settled fund—Authorized investment.*

Where a fund is settled upon tenant for life and remaindermen, and is invested in accordance with the powers of the settlement upon a mortgage which proves to be insufficient for the payment of principal and interest in full, the sum realized by the security ought to be apportioned between the tenant for life and the remaindermen in the proportion which the amount due for arrears of interest bears to the amount due in respect of the capital debt.

In re Moore, (1885) 54 L. J. (Ch.) 432, and *In re Alston*, [1901] 2 Ch. 584, followed.

In re Foster, (1890) 45 Ch. D. 629, and *In re Phillimore*, [1903] 1 Ch. 942 overruled. Decision of Kekewich J. affirmed. *In re ATKINSON. BARBERS' Co. v. GROSE-SMITH*

C. A. [1904] W. N. 120; [1904] 2 Ch. 160

4. — *Settlement—Tenant for life and remainderman—Periodical payments—Compromise for lump sum—Apportionment—Payment out of capital of estate.*

The estate of a testator was liable for a periodical payment of an uncertain amount, and by a deed of compromise this payment was commuted for a lump sum of 7000*l.* and the estate released from the liability.

The plt., who was entitled to a settled share of the testator's estate for her life, with remainder to her children, provided 3500*l.* out of her own moneys to get rid of this liability on the estate:—

Held, that she was entitled to be repaid this sum out of the testator's estate; and the proper mode of apportioning the burden between herself, as tenant for life, and the remaindermen was for the trustees of the will to raise it out of her settled share of the estate.

The rule laid down in *In re Bacon*, (1893) 62 L. J. (Ch.) 445, followed, in preference to that adopted in *In re Dawson*, [1906] 2 Ch. 211. *In re HENRY. GORDON v. GORDON*

Kekewich J. [1906] W. N. 199; [1907] 1 Ch. 30

Note.

This case was not followed by Swinfen Eady J., *In re Perkins*, [1907] 2 Ch. 596. *See No. 1, above.*

5. — *Unauthorized investment—Loss—Tenant for life and remainderman.*

Where a trustee, without the knowledge of the tenant for life or remainderman, sells out an authorized investment and places the proceeds on an unauthorized investment which results in a partial loss of income and capital,

SETTLED LAND (Apportionment)—continued.

the tenant for life is entitled to such a proportion of the amount realized by the unauthorized investment plus the income he received therefrom during its continuance, as the dividends he would have received from the authorized investment in the same period bear to the capital value of the authorized investment plus those dividends, the tenant for life being liable to bring into account all income he received from the unauthorized investment, although not liable to refund. *In re BIRD. In re EVANS. DODD v. EVANS.*

Farwell J. [1901] W. N. 53; [1901] 1 Ch. 916

Capital Moneys.

— Absolute gift—Power to use capital if income not "sufficient"—Power of appointment.

See WILL—Absolute Gift. 6.

— "Capital money"—Premiums—Change of investment—Ademption.

See POWER OF APPOINTMENT. 33.

— Charges of estate agent for procuring lease—Application of capital moneys—Leasing powers.

See SETTLED LAND—Leases. 1.

1. — *Commission for obtaining tenant—Additions or alterations with view to letting—Rebuilding—Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 21, sub-s. x.—Settled Land Act, 1890 (53 & 54 Vict. c. 69), s. 13, sub-s. 2.*

Sect. 13, sub-s. 2, of the Settled Land Act, 1890, which authorizes the application of capital money in "making any additions to or alterations in buildings reasonably necessary or proper to enable the same to be let," does not apply to the erection of a new building in place of an old building.

An estate agent's commission for obtaining a tenant for a short occupation lease granted by the life tenant under the Settled Land Act, 1882, is an income charge, and is not thrown on capital by s. 21, sub-s. x.

In re Maryon Wilson's Settled Estates, [1901] 1 Ch. 934, distinguished. *In re LEVEYSON-GOWER'S SETTLED ESTATE*

Swinfen Eady J. [1905] W. N. 87; [1905] 2 Ch. 95

2. — *Electric lighting installation—Engine-house—Tenant for life and remainderman—Capital money—Additions and alterations with a view to letting—Settled Land Acts, 1882 (45 & 46 Vict. c. 38), s. 25; 1890 (53 & 54 Vict. c. 69), s. 13 (ii.).*

The word "additions" in s. 13, sub-s. 2, of the Settled Land Act, 1890, means structural additions; and, therefore, an electric lighting installation for the improvement of the mansion-house is not an "addition" to buildings within the meaning of that sub-section.

In re Clarke's Settlement, [1902] 2 Ch. 327, and *In re Gaskell's Settled Estates*, [1894] 1 Ch. 484, approved.

Semble, per Romer and Stirling L.J.J. An engine-house for electric-lighting apparatus erected some little distance from the mansion-house, is not an "addition" or "alteration"

SETTLED LAND (Capital Moneys)—continued.

within the meaning of this sub-section. *In re* **BLAGRAVE'S SETTLED ESTATES**

C. A. [1903] W. N. 45; [1903] 1 Ch. 560

3. — Electric lighting installation—Tenant for life and remainderman—Capital money, Application of—Additions and alterations with a view to letting—Settled Land Acts, 1882 (15 & 46 Vict. c. 38), s. 25; 1890 (53 & 54 Vict. c. 69), s. 13, sub-s. (ii.).

The word "additions" in s. 13, sub-s. 2, of the Settled Land Act, 1890, means structural additions; and, therefore, an electric lighting installation, even if exclusive of fittings such as would be ordinarily supplied by a tenant, is not an addition to a building within the sub-section.

In re Gaskell's Settled Estates, [1894] 1 Ch. 485, followed.

In re Freahe's Settlement, [1902] 1 Ch. 97, not followed. *In re* **CLARKE'S SETTLEMENT**

Buckley J. [1902] W. N. 110; [1902] 2 Ch. 327

Note.

This case was approved of by C. A., *In re Blaggrave's Settled Estates*, [1903] 1 Ch. 560. See preceding Case.

4. — Electric lighting installation—Tenant for life and remainderman—Capital money, Application of—Leasehold houses—Alterations and additions with a view to letting—Settled Land Acts, 1882 (15 & 46 Vict. c. 38), s. 25; 1890 (53 & 54 Vict. c. 69), s. 13, sub-s. (ii.).

Leasehold houses in a fashionable quarter of London were comprised in a settlement. They were more than fifty years old, and were lighted by an imperfect service of gas. In order to satisfy the modern requirements of tenants it was necessary to provide a system of electric lighting for the houses:—

Held, that the provision of an electric lighting installation, exclusive of fittings such as would be ordinarily supplied by a tenant, was an "addition" within the meaning of s. 13, sub-s. (ii.), of the Settled Land Act, 1890, and might properly be paid out of capital money. *In re* **FREAHE'S SETTLEMENT**. **KINNAIRD v. FREAHE**

Joyce J. [1901] W. N. 210; [1902] 1 Ch. 97.

Note.

This case was not followed by Buckley J., *In re Clarke's Settlement*, [1902] 2 Ch. 357. See preceding Case.

— **Engine-house.**

See No. 6, above.

5. — Farm buildings—Gardener's cottage—Stabling and coach-house for mansion-house—Improvements executed without scheme—Payment by tenant for life—Reimbursement out of capital moneys to his estate after his death—Settled Land Act, 1882 (15 & 46 Vict. c. 38), s. 25, sub-ss. 10, 11—Settled Land Act, 1890 (53 & 54 Vict. c. 69), s. 13.

The improvements in question consisted of new farm buildings, a gardener's cottage, and stables, coach-house, harness and saddle rooms for the mansion-house.

The Court *held* that, having regard to what was said by the trustees—which was, in substance,

SETTLED LAND (Capital Moneys)—continued.

that they knew what was going on, and would have approved a scheme if they had had any money to pay for the improvements—it saw no reason why such of the improvements as came within the Acts should not be paid for out of the capital moneys. The expenses of the farm buildings and gardener's cottage could be allowed, but not the expenses of the stabling. With that exception, order made as asked by the summons. *In re* **EARL OF LISBURN'S SETTLED ESTATES**

Kekewich J. [1901] W. N. 91

— **Fine on surrender of lease—Income or capital—Tenant for life and remainderman.**

See **SETTLED LAND—Leases. 3.**

— **Fire—Hydrants and hose—Extinguishment of fire.**

See No. 10, below.

6. — Improvements — "Engine-house" — Tenant for life and remainderman—Settled Land Act, 1882 (15 & 46 Vict. c. 38), s. 25, sub-s. (xii.).

Summons under the Settled Land Acts on behalf of the tenant for life in possession of settled estates asking that the trustees thereof might be directed to apply certain capital moneys in their hands under the Settled Land Acts in recouping to the applicant a sum of 4891l. 19s. 7d. in respect of a new system of drainage at Petworth House, the principal mansion-house on the Petworth estate, and 3299l. 9s. 10d. expended by him in the erection of an engine-house at Petworth for the engines used for the electric lighting of the said principal mansion-house.

The question as to the engine-house turned upon whether this was an authorized improvement within the meaning of s. 25 of the Settled Land Act, 1882, which provided that improvements authorized by the Act were "the making or execution on or in connection with, and for the benefit of settled land" any of the following works

Sub-s. (xii.): "Saw-mills, scutch-mills, and other mills, water-wheels, engine-houses, and kilns, which will increase the value of the settled land for agricultural purposes, or as woodland, or otherwise."

The engine-house in question was built on a site occupied by an old brewhouse immediately adjoining the mansion-house. The 3299l. 9s. 10d. represented only the cost of the new buildings and foundations.

Kekewich J. said that he would assume for the present purpose that the erection of the engine-house would increase the value of the settled land; and no doubt the settled land included the mansion-house. But the section said that such increase of value must be for "agricultural purposes or as woodland or otherwise." He was of opinion that the words "or otherwise" must be construed according to the well-established rule as meaning purposes ejusdem generis, namely, those mentioned in the other part of the section, such as for mills, water-wheels and kilns. It was impossible to say that the engine-house in question

SETTLED LAND (Capital Moneys)—continued.
increased the value of the settled land for purposes of that kind. Giving to the section its widest possible construction, he was of opinion that the engine-house could not be sanctioned for the purposes of the electric lighting of the mansion-house for which it was intended to be used, and therefore this expenditure could not be allowed out of the capital moneys. *In re LORD LECONFIELD'S SETTLED ESTATES* Kekewich, J. [1907] W. N. 144 ; [1907] 2 Ch. 340

7. — *Improvements — Income or capital chargeable—Leaseholds held on trust to pay rents and perform lessees' covenants and subject thereto for tenant for life—Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 26—Settled Land Act, 1890 (53 & 54 Vict. c. 69), s. 15.*

Properties, the leases of which contained covenants by the lessees to do works which would be repairs and improvements within the meaning of the Settled Land Acts, were bequeathed to trustees upon trust out of the rents and profits to pay the rents reserved by the leases and perform the lessee's covenants, and subject thereto upon trusts under which K. was tenant for life, with remainders to other persons.

Without any scheme being submitted under s. 26 of the Settled Land Act, 1882, money was expended in making improvements :—

Held, that as there was a trust, providing for improvements out of income, and that trust came before the trust for K., the expenses must be borne by income.

Clarke v. Thornton, (1887) 35 Ch. D. 307, and *In re Lord Stamford's Settled Estates*, (1889) 43 Ch. D. 84, distinguished.

Held, further, following *Countess of Cardigan v. Curzon-Howe*, (1893) 9 Times L. R. 214, that even if the Court had power to direct payment for the improvements out of capital, as no scheme had been submitted the power could only be exercised under s. 15 of the Settled Land Act, 1890, and that under that section there was a discretion which ought not to be exercised in favour of K. *In re PARTINGTON*. REIGH v. KANE

Buckley J. [1902] W. N. 60 ; [1902] 1 Ch. 711

8. — *Improvements — Scheme approved by trustees—Order of Court for payment of moneys expended — Discretion of Court — Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 26.*

Where an application is made to the Court under s. 26, sub-s. 2 (iii), of the Settled Land Act, 1882, for an order sanctioning the application of capital moneys in paying for work done under a scheme of improvements approved by the trustees, the duties of the Court are not merely ministerial ; it has a discretion, and must be satisfied that the scheme is a proper one. It is not sufficient to shew that the trustees have approved the scheme and the work has been done in pursuance of it. *In re KECK'S SETTLEMENT* Farwell J. [1904] 2 Ch. 22

9. — *Improvements—Scheme—Approval of trustees—Discretion—Tenant for life—Settled*

SETTLED LAND (Capital Moneys)—continued.
Land Act, 1882 (45 & 46 Vict. c. 38), ss. 25, 26, 53.

Where under s. 26 of the Settled Land Act, 1882, a tenant for life submits for approval to the trustees of the settlement a scheme for the execution of an improvement, the duty of the trustees is confined to seeing—(1) that the improvement proposed is an improvement authorized by the Act, namely, that it is for the benefit of some land comprised in the settlement ; (2) that the scheme for the execution of the improvement is a proper one for carrying out the particular improvement ; and (3) that in submitting the scheme to the trustees the tenant for life is acting bona fide and on competent skilled advice. The trustees are not concerned with the general policy pursued by the tenant for life in improving the property, nor, in a case where there is capital money in hand, with the amount already spent on improvements. *In re EARL OF EGMONT'S SETTLED ESTATES*. LEFROY v. EARL OF EGMONT Warrington J. [1906] W. N. 80 ; [1906] 2 Ch. 151

— Investments—Capital moneys.

See under SETTLED LAND — Investments.

10. — *Irish estates — Capital money — Improvements—Principal mansion-house—Water supply—Extinguishment of fire—Fire hydrants and hose—Rebuilding garden walls—"Inclosing"—Laundry—Rebuilding mansion-house—Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 25, sub-s. (vi.) (xiii.) (xx)—Settled Land Act, 1890 (53 & 54 Vict. c. 69), s. 13, sub-s. (iv.) ; s. 15.*

Upon the application of the tenant for life of settled land under s. 15 of the Settled Land Act, 1890, the Court authorized the application of capital moneys in payment of the cost.

(1.) Of the installation of a new water supply system in the principal mansion-house on the Irish estates, comprising also a complete equipment for extinguishing fire, including fire hydrants, hose, and other necessary fittings and apparatus, as being an improvement coming within s. 25, sub-s. (xiii.), of the Settled Land Act, 1882 ; and

(2.) Of rebuilding the walls of the garden attached to the same mansion-house, the old ruinous walls have been taken down and new walls inclosing more garden ground have been built in part on the site of the old walls, as being an improvement coming within the term "inclosing" in s. 25, sub-s. (vi.).

The application for the sanction of the Court under s. 13, sub-s. (iv.), of the Settled Land Act, 1890, to the payment out of capital moneys of the cost of the proposed rebuilding of a laundry, 250 yards away from the mansion-house, refused.

Sub-s. (xx.) of s. 25 of the Settled Land Act, 1882, in authorizing as an improvement the "reconstruction, enlargement, or improvement of any of those works," refers to any of the works previously mentioned in the section, however and whenever made, and does not merely refer to works already constructed

SETTLED LAND (Capital Moneys)—continued.

under powers given by the Act. *In re EARL OF DUNRAVEN'S SETTLED ESTATES*

Kekewich J. [1907] W. N. 181; [1907] 2 Ch. 417

— Lease in consideration of premium—Ademption—"Capital money."

See **POWER OF APPOINTMENT. 33.**

— Letting.

See also Nos 11, 12, below.

11. — Letting—Additions and alteration with a view to letting—House in occupation of tenant—"Reconstruction, enlargement, or improvement"—"Dwellings available for working classes"—Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 25, sub-s. i., ii.; 1890 (53 & 54 Vict. c. 69), s. 13, sub-s. ii.—Housing of the Working Classes Act, 1890 (53 & 54 Vict. c. 70), s. 74, sub. 1 (b).

Where trustees have approved a scheme of improvements before they have capital moneys in hand available for carrying it out, subject to the opinion of the Court being obtained on the legal question whether the proposed improvements are within the Act, the Court will decide the legal question though it would not make a prospective order approving the scheme.

Where a tenant in the occupation of a house has given notice to quit unless certain additions are made, and it would be difficult or impossible to relet the house without making the additions, they may be paid for out of capital as necessary or proper to enable the house to be let within s. 13, sub-s. ii., of the Settled Land Act, 1890.

The proviso in s. 74, sub-s. 1 (b), of the Housing of the Working Classes Act, 1890, which limits the operation of that section to "dwellings available for the working classes, the building of which in the opinion of the Court is not injurious to the estate," applies only where new buildings are to be erected. Alterations and additions to existing buildings may be within the Act, although the Court has never expressed an opinion that their building was not injurious to the estate.

Dwellings of a kind suitable for the working classes, but occupied at the time by persons who are not members of those classes, are not available for the working classes within the meaning of the Housing of the Working Classes Act, 1890, s. 74, sub-s. 1 (b). *In re CALVERLEY'S SETTLED ESTATES* — **Farwell J. [1903] W. N. 192; [1904] 1 Ch. 150**

12. — Letting—New floor—Alteration with a view to letting—Property already let—Intention to let—Capital money—Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 21, sub-s. iii., 25, 26—Settled Land Act, 1890 (53 & 54 Vict. c. 69), s. 13, sub-s. ii., 15.

By s. 13, sub-s. ii., of the Settled Land Act, 1890, capital money may be applied in "making any additions to or alterations in buildings reasonably necessary or proper to enable the same to be let:—

Held, that the substitution for ordinary floor boards resting on joists of a block floor over concrete in order to keep dry-rot out of

SETTLED LAND (Capital Moneys)—continued.

the basement of a large house let in separate offices was an "alteration" within the sub-section.

That "reasonably necessary and proper" meant something which, although not absolutely necessary, a reasonable and prudent owner of property, if he were the absolute owner, would do to make his house habitable; and that the new floor was reasonably necessary and proper within the sub-section.

That the jurisdiction under the sub-section to order the application of capital money in payment for an alteration depended not upon whether there was to be an immediate letting, but upon whether there was a present intention to let the premises as distinguished from an intention to occupy them; and that the new floor ought to be paid for out of capital, although substantially the whole of the house was already let. **STANFORD v. ROBERTS**

Buckley J. [1901] W. N. 16; [1901] 1 Ch. 440

— Mansion-house — Dilapidations — Repairs — Expenditure out of capital—Jurisdiction.

See **WILL—Mansion house. 1.**

— Mansion-house—Settled land.

See under **SETTLED LAND—Mansion-house.**

— Mining lease — Payments for purchase of chalk—Capital or income.

See **WILL—Real Estate. 2.**

13. — Rebuilding principal mansion-house—Dry-rot—Salvage—General jurisdiction of Court—Incumbrance affecting settled land—Expense of sewerage, &c., new streets—Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 21, sub-s. (ii.); s. 25—Settled Land Act, 1890 (53 & 54 Vict. c. 69), s. 13, sub-s. (iv.).

Where the principal mansion-house on settled land had become infested with dry-rot, and expense to a large amount had to be incurred in rebuilding portions of the house in order to save the whole from destruction, the Court allowed the application of capital money in the rebuilding to the extent of one-half of the annual rental of the settled land under s. 13, sub-s. (iv.), of the Settled Land Act, 1890, but declined to exercise its general jurisdiction by allowing the balance of the amount as being expenditure in the nature of salvage.

Expenses incurred by a local authority in sewerage, paving, and flagging new streets on settled land were charged under statutory powers on the land, and made payable, together with interest thereon, by instalments:—

Held, that the expenses so charged constituted an incumbrance affecting settled land payable out of capital moneys under s. 21, sub-s. (ii.), of the Settled Land Act, 1882; and that out of capital moneys the tenant for life was entitled to repayment of such portion of past instalments paid by him as represented capital, and the trustees ought to pay the corresponding portion of the remaining instalments. *In re LEIGH'S SETTLED ESTATE*

Kekewich J. [1902] W. N. 114; [1902] 2 Ch. 274

SETTLED LAND (Capital Moneys)—continued.

14. — *Sanitary works, Cost of—Repairs—Tenant for life and remainderman—Capital or income—Public Health (London) Act, 1891* (54 & 55 Vict. c. 76), ss. 4, 121, 141.

Where a settled trust fund was invested under the powers of the settlement in the purchase of freehold houses in the City and the trustees were required by the corporation under the Public Health (London) Act, 1891, to do certain repairs on the property, and the equitable tenant for life, having by arrangement with the trustees done the repairs, applied to the Court for a charge on the corpus for the cost of the repairs, but ultimately waived his claim except as to so much of the expenditure as should be found to have been incurred in respect of repairs in the nature of permanent improvements:—

Held, that he was entitled by subrogation to the rights of the trustees to a charge on the corpus for that amount.

Decision of Kekewich J. reversed.

Semble, where the trustees of a settled estate apply to the Court to be indemnified out of the estate for the cost of repairs done by them on the property in answer to a demand by a sanitary authority, it is competent to the Court to determine according to the circumstances of the case how the cost shall be borne as between tenant for life and remainderman. *In re FARNHAM'S SETTLEMENT. LAW UNION AND CROWN INSURANCE CO. v. HARTOPP*

C. A. [1904] W. N. 138; [1904] 2 Ch. 561

— Scotch real estate, Improvements on—English settlement.

See SETTLED LAND—Scotch Estate. 1.

15. — *Tenant for life—Capital money—Improvements—Scheme approved by trustees—Departure from scheme—New scheme—Settled Land Act, 1882* (45 & 46 Vict. c. 38), s. 25—*Settled Land Act, 1890* (53 & 54 Vict. c. 69), s. 15.

In this case Warrington J. said that it was to be observed that the scheme contained no details of what was proposed to be done. It merely stated that it was intended to enlarge the building by the addition of two rooms and to make structural alterations to provide sufficient accommodation for a library, billiard-room, reading-room and usual offices, with an estimate of the cost. The trustees approved the scheme, without attaching any condition as to cost. He was therefore of opinion that if in carrying out the scheme substantially the tenant for life had incurred incidentally a cost exceeding £500, he would, on the principle stated in *In re Bulwer Lytton's Will*, (1888) 38 Ch. D. 20, be entitled to be allowed that cost out of capital money. The first question therefore was whether what had been done was within the scheme as submitted to the trustees, putting aside the question of expense. The object of the scheme was to enlarge the building used as the working men's club in certain particulars by providing further accommodation for a library, &c., desirable for an institute of that nature. On the facts before him his Lordship held

SETTLED LAND (Capital Moneys)—continued.

that it had not been made out that the addition of one room instead of two constituted something which was not within the scheme, regarded from the point of view of the object which he had described. The scheme must be regarded as a general one. No designs or plans were furnished. It was impossible for him to say that the deviation from the original detail of two rooms was such as to place what was ultimately done outside the scheme as approved. He was of opinion that what had been done came within the scheme and only departed from it in the matter of cost. The trustees did not impose any limit on the amount of the cost. Assuming therefore that what had been done was within the scheme proposed, it was not now open to the trustees to object to the increased expenditure, and on the authority of *In re Bulwer Lytton's Will*, (1888) 38 Ch. D. 20, he was of opinion that the increased expenditure ought to be allowed. He desired, however, to say something upon the alternative ground on which the application was based, as that point had been argued, although he decided the case upon the ground that the works carried out were within the scheme. But if it were not so, and if the works actually done were outside the scheme so that the expenditure was upon an improvement of a different nature from that which was proposed, and was an expenditure for the construction of an institute of a different nature from that suggested, then the case fell within s. 15 of the Act of 1890, and the result was the same. Neither the trustees nor the tenant in tail disputed that the expenditure was a proper one within s. 25 of the Act of 1882 as enlarged by the provision in the settlement. Therefore the tenant for life was entitled to have the expenditure he had incurred made good out of capital money; but he made the order on the first part of the summons—namely, that the works done came within item 2 of the scheme. *In re EARL OF EGDMONT'S SETTLED ESTATES - Warrington J.*

[1908] W. N. 176

16. — *Trust for sale—Tenant for life—Improvements—Scheme, submission of—Works commenced before order giving tenant for life possession and powers of tenant for life—Payment out of capital money—Settled Land Act, 1882* (45 & 46 Vict. c. 38), s. 63—*Settled Land Act, 1890* (53 & 54 Vict. c. 69), s. 15.

In this case Warrington J. said that the only question, if it were one, was whether, according to the true construction of the Settled Land Acts, and having regard to the particular facts of the case, the Court had power to make the order asked for. The case was not the ordinary one, but fell within s. 63 of the Act of 1882. The question was a purely technical one—namely, whether the Court had power under s. 15 of the Act of 1890 to authorize the application of capital money in payment for the improvements in question. That section, read without being astute to find a technical difficulty, seemed clearly to apply to the present case. Improvements had been executed without the previous approval of a

SETTLED LAND (Capital Moneys)—continued.

scheme by the trustees. But it was suggested in argument that the words "notwithstanding that a scheme was not before the execution of the improvement submitted for the approval of the trustees of the settlement or to the Court" in s. 15 applied only to cases where it was competent to the tenant for life to submit a scheme, and that in such cases only it was competent to the Court to authorize the payment. He did not think he was called upon to so strain the words of the section as to bring about that difficulty. The section was a remedial one, and it was not the duty of the Court to be astute to find a technical difficulty. In his judgment the section was applicable to every case in which a scheme had not in fact been submitted, and was applicable even to a case in which it was not competent to a tenant for life to submit a scheme. But, further, he was of opinion on the facts of the present case that the tenant for life could have submitted a scheme. Sect. 63 of the Act of 1882 provided that "the person for the time being beneficially entitled to the income of the land, estate or interest aforesaid until sale, whether absolutely or subject as aforesaid, shall be deemed to be the tenant for life thereof." The Settled Land Act, 1884, did not alter that, and the only effect of sub-ss. (i.) and (ii.) of s. 7 of that Act was that, although the person referred to in s. 63 was to be "deemed to be the tenant for life," he should not exercise the powers without the leave of the Court. Was the submission of a scheme an exercise of the powers of a tenant for life at all? In his judgment it was not. The submission of a scheme was one of the preliminaries which had to be gone through by a tenant for life in order that he might be able to give directions as to the application of capital moneys. It seemed therefore that even if there were any substance in the suggested technical difficulty it did not affect the present case, as it was one in which the tenant for life could have submitted a scheme, although it might be that he could not have given directions as to the application of capital moneys, before the making of the order of Jan. 27. He preferred, however, to base his decision on the view which he took of s. 15 of the Act of 1890. He accordingly made the order asked for. *In re WORMALD'S SETTLED ESTATE. WORMALD v. OLLIVANT* **Warrington J. [1908] W. N. 214**

— Water supply—Extinguishment of fire.

See No. 10, above.

— Working classes—"Reconstruction, enlargement or improvement" or "dwellings available for the working classes"—Tenant for life and remainderman—Capital money—Additions and alterations with a view to letting—Premises not vacant.

See No. 11, above.

Capital or Income.

See also under SETTLED LAND—Capital Moneys; and under WILL—Capital or Income.

SETTLED LAND (Capital or Income)—contd.

— Settled estate—Capital or income—Tenant for life and remainderman—Company—Return of capital.

See COMPANY—Return of Capital. 1.

— Tenant for life—Capital or income—"Residuary trust funds"—Wasting securities—Enjoyment in specie.

See WILL—Interest. 2.

1. — *Tenant for life and remainderman—Capital or income—Surrender of lease—Consideration paid to tenant for life—Casual profit—Trustee—Settled Land Act, 1882 (45 & 46 Vict. c. 38), ss. 6, 13, 53.*

Money paid to an equitable tenant for life by a lessee as consideration for accepting a surrender of a lease, which has been granted by the tenant for life under the powers of the Settled Land Acts, does not belong to him as a casual profit, but must be paid by instalments to him and other persons entitled to the rent.

In re Hunloke's Settled Estates, [1902] 1 Ch. 941, distinguished. In re RODES. SANDERS v. HOBSON **Parker J. [1909] 1 Ch. 815**

— Tenant for life and remainderman—Real estate—Trust for conversion—Royalties—Settled estate.

See WILL—Real Estate. 2.

2. — *Tenant for life and remainderman—Residue—Testator's liabilities—Annuity—Contingent liability—Capital and income—Apportionment—Past and future instalments—Interest.*

J. T. Poyser by his will left his residuary real and personal estate to trustees upon trust for sale and conversion and to pay debts and legacies, and then for his eight children, of whom one was to have one fifteenth and the others two fifteenths each, and he settled all the shares wholly, or partially upon trust for the son or daughter for life with remainders over. By a settlement made on the marriage of one of his sons before the date of his will the testator had covenanted to pay to that son an annuity of 250*l.* a year. The testator died in 1901, leaving a very large estate. His widow and all his children were living, and owing to a mistaken view of the construction of the will the son's annuity had not been paid. The trustees had sufficient funds, representing capital, in hand to pay the arrears, but the question was raised whether, as between the tenants for life and remaindermen of the settled shares, part of the burden of paying the past and future instalments of the annuity ought not to be borne by the tenants for life:—

Held (following In re Perkins, [1907] 2 Ch. 596), that each instalment of the annuity must be apportioned between capital and income by calculating what sum if set aside at the testator's death would, with simple interest at 3½ per cent. to the day of payment, have met the particular instalment; and that the sum so ascertained ought to be chargeable to capital and the balance to income, having regard to the number of shares into which the estate was divisible. In re POYSER. LANDON v. POYSER - Parker J. [1910] W. N. 189; [1910] 2 Ch. 444

SETTLED LAND—*continued.***Company.**

- Capital returned to shareholders out of profit—Capital or income.
See COMPANY—Return of Capital. 1.

Conversion.

- Will—Conversion—Personalty into realty—Direction to hold proceeds of personalty upon the trusts and in manner applicable if they had arisen from a sale under the Settled Land Act, 1882.
See CONVERSION. 1.

Costs.

- Sale — Concurrence of parties — Incumbrancers.
See SETTLED LAND—Sale. 5.

Dividends.

- Tenant for life to dividends, Right of—Investment in stock — Dividends declared but not paid.
See SETTLED LAND—Sale. 5.

Duties.**(Public Revenue.)**

1. — *Settled estate—Tenant for life—Installments, duty payable by—Interest on unpaid duty—Charge on inheritance—Finance Act, 1894* (57 & 58 Vict. c. 30), s. 6, sub-s. 8; s. 9, sub-s. 5.

The general rule that, in the absence of special circumstances, the tenant for life of a settled estate is bound to keep down the interest on charges on the inheritance, is not affected by the Finance Acts, 1894 and 1896; so that, although under the power given to him by s. 9, sub-s. 5, of the Act of 1894 he may charge the inheritance with instalments of estate duty payable by him under s. 6, sub-s. 8, he cannot also charge it under s. 9, sub-s. 5, with the interest on the unpaid portion of the duty unless he can shew that such interest has been "properly incurred by him."

Decision of Buckley J., [1903] W. N. 63, affirmed. *In re EARL HOWE'S SETTLED ESTATES.* EARL HOWE v. KINGSCOTE

C. A. [1903] W. N. 76; [1903] 2 Ch. 69

- Succession duty—Tenant for life.
See under REVENUE—Succession Duty.

Easements.

1. — *Exchange of easements—Settled Land Act, 1890* (53 & 54 Vict. c. 69), s. 5.

The Settled Land Act, 1890, s. 5, authorizes an exchange of easements, apart from any exchange or partition of land. *In re BRACKEN'S SETTLEMENT Swinfen Eady J.* [1902] W. N. 233; [1903] 1 Ch. 265

Note.

This case was distinguished by Joyce J., *In re Brotherton's Estate*, [1907] W. N. 230; but this case was reversed by C. A. [1908] W. N. 56. *See next Case.*

2. — *Release of easement—Sale or exchange—Tenant for life—Settled Land Act, 1882* (45 &

SETTLED LAND (Easements)—*continued.*

46 Vict. c. 38), s. 3, sub-ss. (i.), (iii.); s. 21, sub-s. (viii.).

The Brotherton and Markham estates adjoined one another. Each was a settled estate, and had appurtenant to it, or to some part of it, a right of way or easement over some part of the other.

It was considered desirable that these appurtenant rights of way should be released so that each estate might no longer be burdened with any easement in favour of the other. For this purpose an agreement of June 14, 1907, between the trustees of the Brotherton estates (on behalf of the infant tenant for life) and R. A. Markham, the tenant for life of the other estate, was entered into whereby each party was to release and convey to the other the easement over the estate of the other.

The question having been raised whether this exchange of easements was within the powers of the respective parties to this agreement under the Settled Land Acts, a summons was taken out by the trustees of the Brotherton estates against the infant tenant for life for the purpose of determining the question with reference to that estate, and a similar summons was taken out by R. A. Markham against his trustees and the tenant in tail in remainder in respect of the Markham estate.

Joyce J., [1907] W. N. p. 230, held that it was not within the powers of a tenant for life of settled land under any of the provisions of the Settled Land Acts to exchange the release of an easement enjoyed by the owners of the settled land over adjoining land for the release of an easement enjoyed by the owners of the adjoining land over the settled land.

The C. A. intimated their opinion that the transaction seemed to be authorized by the Settled Land Acts if the transaction was carried out by means of cross sales of the easements, and the appeal was accordingly directed to stand over for the purpose of enabling an amended agreement to be entered into on these lines, with liberty to restore the appeal when that had been done. On Feb. 25, the appeal having been restored, it was stated that cross agreements for a sale of each easement for 100l. had been entered into by a supplementary agreement of Feb. 15, and thereupon, without any further argument or discussion, the Court made a declaration that the agreement of June 14, 1907, as varied by the subsequent agreement of Feb. 15, 1908, was, so far as related to the easements, within the powers of the appellants. The appeal was accordingly allowed, but without any expression of opinion on the point decided by Joyce J. *In re BROTHERTON'S ESTATE. BROTHERTON v. BROTHERTON. In re MARKHAM'S SETTLEMENT* C. A. [1908] W. N. 56

Enfranchisement.

1. — *"Enfranchisement"—Mortgage of settled land for purpose of enfranchisement—Conversion of leasehold land into freehold—Settled Land Act, 1882* (45 & 46 Vict. c. 38), s. 18.

"Enfranchisement" in s. 18 of the Settled Land Act, 1882, which empowers the tenant for life to raise money on mortgage of the settled

SETTLED LAND (Enfranchisement)—*continued*.
land, when required "for enfranchisement or for equality of exchange or partition," includes the conversion of leasehold land into freehold by the purchase of the reversion. *In re BRUCE*. **HALSEY v. BRUCE** *Kekewich J.* [1905] **W. N. 120**; [1905] **2 Ch. 372**

Estate Duty.

See under SETTLED LAND — Duties (Public Revenue).

— Estate duty.

See under REVENUE — Estate Duty. WILL—Testamentary Expenses.

Estoppel.

— Will of woman under incapacity to devise—Entry of tenant for life under will and acquisition by him of possessory title—Rights of remainderman.
See ESTOPPEL. 6.

Fees and Stamps.

Order as to Fees and Stamps—Judicature Act, 1875 (38 & 39 Vict. c. 77)—Settled Land Act, 1882 (45 & 46 Vict. c. 38). Reprint from **W. N. 1903 (Feb. 28)**, p. 71. *See CURRENT INDEX, 1903, p. lxxiv.*

Fixtures.

See also under FIXTURES.

— Right of removal—Landlord and tenant—Tenant for life and remainderman—Intention to improve inheritance.
See FIXTURES. 3.

Forfeiture.

— Life interest—Forfeiture on alienation—Cancellation of charge before income payable.
See WILL—Forfeiture. 2.

1. — *Tenant for life—Forfeiture clause—Non-residence—Validity of condition—Compromise—Sale of tenant for life's interests—Investment—Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 50, sub-s. 1; s. 51, sub-s. 1.*

The testator gave his wife the use of his residence, Woodville, so long as she should desire to make it her permanent place of residence and should remain his widow, and directed that his estate should pay all rates, taxes, and outgoings in respect of the house and keep it in repair. He left his residuary real and personal estate upon trust for sale and conversion, and then for his children and their issue; the income of the shares of daughters to be paid to them during coverture without anticipation, and the capital of those shares to be divided after the daughters' deaths amongst their children. He directed his trustees to postpone the sale of Woodville, and to develop it as they thought fit. Byrne J. decided that the widow had the powers of a tenant for life under the Settled Land Act, 1882, and would not forfeit the benefits given by the will if she sold or leased the property. It was now proposed that she and the trustees should enter into a compromise whereby she should release to them her claims in respect of Wood-

SETTLED LAND (Forfeiture)—*continued*.

ville in consideration of an annual payment of 275*l.* during widowhood—a sum less than the estimated value of her interests under the will:—

Held, that under s. 51, sub-s. 1, of the Settled Land Act, 1882, the condition as to residence was void only so far as it tended to prevent the exercise of the powers of the tenant for life; that there was nothing to prevent the widow from releasing her beneficial interests in the manner proposed; that if she did so she would forfeit those interests by ceasing to reside, but would receive the value of them in the shape of the annuity of 275*l.*; that no question of improper investment arose, as the real result of the transaction would be to relieve the testator's estate from part of the payments to which it was subject; and that the compromise was for the benefit of all parties, was within the power of the trustees, and ought to be sanctioned.

In re Haynes, (1887) 37 Ch. D. 306, followed.
In re TRENCHARD. TRENCHARD v. TRENCHARD *Buckley J.* [1902] **W. N. 18**; [1902] **1 Ch. 378**

— Tenant for life—Will—Forfeiture of life interest—"Alienate or incumber"—Petition in bankruptcy by tenant for life.
See WILL—Forfeiture. 1.

Heirlooms.

1. — *Capital moneys subject to same trusts—Insurance—Power of trustees to insure heirlooms and pay premiums out of income of capital moneys—Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 18.*

Chattels settled so as to devolve as heirlooms with settled land are "insurable property" within the meaning of sub-s. 1 of s. 18 of the Trustee Act, 1893.

Where under a settlement heirlooms are settled so as to devolve with the settled land, and the trustees have in their hands capital moneys subject to the same trusts, the trustees have power under s. 18 of the Trustee Act, 1893, to insure the heirlooms against loss by fire, and to pay the premiums for such insurance out of the income of the capital moneys in their hands.

In re EARL OF EGMONT'S TRUSTS. LEFROY v. EARL OF EGMONT — *Warrington J.* [1908] **W. N. 88**; [1908] **1 Ch. 821**

2. — *Sale — Application of proceeds — Discharge of incumbrances — Heirlooms vested in tenant in tail — Compound settlement—Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 37, sub-s. 1, 2; s. 2, sub-s. 9; s. 21, clause (ii.); s. 53.*

The Costessey Hall estates were settled by a deed of Jan. 26, 1874, under which Lord Stafford was tenant for life in possession. By the will of the late Lord Stafford he bequeathed certain pictures upon trust to permit the same to be used and enjoyed by the person who under the settlement of 1874 should for the time being be entitled to the Costessey Hall estates, to be held as heirlooms for the successive owners of the hall, but not to vest absolutely in any tenant in tail male by purchase who should not attain the age of twenty-one years or die under that age leaving

SETTLED LAND (Heirlooms)—continued.

issue male. The testator died in 1884. One of the pictures bequeathed as heirlooms had been recently sold for a large sum of money. The money was paid to the trustees of the will and invested by them in Consols. Byrne J. held that the settlement was a compound settlement, and he appointed the trustees of the will to be trustees for the purposes of the Settled Land Acts of the settlement of the heirlooms and the proceeds of sale thereof created by the deed of 1874 and the will. The heirlooms were now vested in an infant female tenant in tail in remainder. The tenant for life asked that the trustees of the compound settlement should apply 15,000*l.*, part of the proceeds of sale of the picture, in discharge of a mortgage on land settled by the deed of 1874 :—

Held, that the effect of the order of Byrne J. was that both the land settled by the deed of 1874 and the heirlooms must be treated as if they had been settled by the same document ; that the words "land" in s. 37 and "settled land" in s. 21, clause (ii.), of the Settled Land Act, 1882, meant the land by reference to the limitations of which the heirlooms were settled by the will ; that the slight difference in the limitations of the deed and the will, and the fact that the heirlooms were vested in the tenant in tail, were not sufficient ground for distinguishing *In re Duke of Marlborough's Settlement*, (1885) 30 Ch. D. 127 ; (1886) 32 Ch. D. 1 ; that the investment in Consols by the trustees before they were appointed trustees of the compound settlement did not prevent the desired application of the money ; that the tenant for life, although a trustee under s. 53, was not committing a breach of trust ; and that the money ought to be applied in the discharge of the mortgage. *In re LORD STAFFORD'S SETTLEMENT AND WILL*. GERARD *v.* STAFFORD

Warrington J. [1904] W. N. 100 ;
[1904] 2 Ch. 72

Note.

This case was followed by Kekewich J., *In re Coull's Settled Estates*, [1905] 1 Ch. 712. See *Settled Land—Trustees*. 2.

- Trust of chattels as—Construction—To be enjoyed with mansion-house—Tenant in tail—Vesting—Actual possession. See **HEIRLOOMS**. 3.

Highway.

- Dedication — Public user — Presumption — Churchway—Diversion—Limited dedication. See **HIGHWAY**. 3.

Improvements.

See under **SETTLED LAND—Capital Moneys**.

Incumbrances.

- Discharges — Expenses of paving street — Payment by tenant for life. See **STREETS**. 19.

Infants.

- 1. — *Guardian—Trustee—Infant tenant for life—Possession during minority*—12 Car. 2, c. 24,

SETTLED LAND (Infants)—continued.

s. 9—*Conveyancing and Law of Property Act*, 1881 (44 § 45 *Vict. c. 41*), s. 42—*Settled Land Act*, 1882 (45 § 46 *Vict. c. 38*), s. 60.

Under s. 60 of the Settled Land Act, 1882, the trustees appointed for the purposes of the Act may, in the event of the tenant for life being an infant, exercise the powers vested in him by the Act for his benefit during his minority :—

Held, that this provision did not constitute the trustees trustees with power of sale of the settled land under s. 42 of the Conveyancing and Law of Property Act, 1881, so as to entitle them to possession during the minority of the infant, and afforded no answer to an application by the testamentary guardian under 12 Car. 2, c. 24, for possession. *In re HELYAR*. HELYAR *v.* BECKETT Joyce J. [1901] W. N. 249 ; [1902] 1 Ch. 391

2. — *Infant tenant in tail—Maintenance—Direction to accumulate surplus income—Allowance for up-keep of family mansion—Subscriptions to local charities—Settled estates.*

A testator devised real estates upon trusts under which, in the events which happened, A. became infant tenant in tail in possession. The will directed that during the minority of any person for the time being tenant in tail in possession of the trustees should apply 500*l.* per annum out of the income for the maintenance and education of the minor, and should accumulate the surplus income for the benefit of the minor on attaining twenty-one. The testator also bequeathed nearly half a million in money to be invested in real estate to be held upon the same trusts as the devised estates. The net income of the settled property exceeded 14,000*l.* per annum.

The Court sanctioned a scheme for allowing 4,000*l.* per annum out of the income for the up-keep of the family mansion and the maintenance thereof of the infant tenant in tail in a manner befitting the social position he would occupy in life. This allowance included 100*l.* per annum for subscriptions to local charities. *In re WALKER*. WALKER *v.* DUNCOMBE

Farwell J. [1901] 1 Ch. 879

3. — *Scheme — Preparation — Approval — Tenant for life—Settled Land Act*, 1882 (45 § 46 *Vict. c. 38*), ss. 26, 59, 60.

The tenant in tail male in possession of settled land being an infant, and certain improvements being necessary, the trustees of the settlement for the purposes of the Settled Land Acts, acting on behalf of the infant under the Settled Land Act, 1882, ss. 59, 60, prepared, and on their own behalf as trustees approved, a scheme of improvements under the Settled Land Act, 1882, s. 26, sub-s. 1.

The infant applied by his next friend under s. 26, sub-s. 2 (iii.), for an order directing the trustees to apply a sum not exceeding 320*l.* out of capital moneys in their hands in payment for the works when completed.

The Court made the order, and, at the request of all parties, intimated its opinion that the trustees had power to prepare and approve their own schemes during the minority. *In re GREYS COURT ESTATE*

Farwell J. [1901] W. N. 60

SETTLED LAND—continued.**Insurance.**

- Rebuilding after fire—Title to and application of policy moneys.

See **INSURANCE (FIRE)**. 2.

Interest.

- Bonds bearing interest out of profits—Deficiency in interest—Sale of bonds—Tenant for life and remainderman.

See **COMPANY—Interest**. 1.

1. — *Rate of interest—Tenant for life and remainderman—Capital or income—Will—Conversion—Postponement of conversion—Wasting property—Mining royalties—Income of invested surplus.*

Interest at 3, and not at 4, per cent. must at the present day be computed in applying the principle of *Brown v. Gellatly*, (1867) L. R. 2 Ch. 751, whereby, when wasting securities, forming part of a residuary estate of a testator given upon trust for conversion, are retained under a power to postpone conversion, the tenant for life is entitled during the period of postponement to interest on the value of the securities.

In re Lynch Blossie, [1899] W. N. 27 (8), followed.

Where, in such a case, the interest at 3 per cent. is paid out of the actual income of the wasting securities to the tenant for life, and the balance is invested as capital of the estate, the tenant for life is entitled to the income of the invested fund. *In re Woods. GABELLINI v. Woods* - **Kekewich J.** [1904] W. N. 17; [1904] 2 Ch. 4

- “Residuary trust funds” — Unauthorized securities—Enjoyment in specie.

See **WILL—Interest**. 2.

- Several estates comprised in same devise—Interest on charges.

See **SETTLEMENT**. 42.

- Tenant for life—Proceeds of realization of insufficient security—Apportionment—Remainderman.

See **SETTLEMENT**. 31.

2. — *Tenant for life and remainderman—Power to postpone conversion—“Property not actually producing income”—Mortgage deferring payment of interest—Construction of will—Settled estate.*

Testator by his will devised and bequeathed his residuary real and personal estate to trustees upon trust for sale and conversion and investment, and directed them to pay the income of the investments to his wife for life. The will empowered the trustees to postpone conversion, and provided that the income of unconverted estate should be applied as if it arose from converted estate, and that no property not actually producing income should be treated as producing income or as entitling any person to the receipt of income. The testator died in 1901. Amongst the securities forming part of his estate at his death was a mortgage which recited that the mortgagor was indebted to the testator in a certain sum and that it had been agreed that the payment of his debt should be postponed,

SETTLED LAND (Interest)—continued.

and the mortgagor thereby covenanted to pay the amount of the debt with simple interest at his death, and if the aggregate amount of such sum and interest was not then paid, to pay interest on such aggregate sum by equal half-yearly payments, the first of such payments to become due six months after his death. The mortgagor died in 1906, in the lifetime of the testator's widow, the tenant for life. The widow died shortly afterwards:—

Held, that the interest on the mortgage attributable to the period between the death of the testator and the death of the mortgagor belonged to the estate of the widow, and not to that of the testator.

In re Hubbuck, [1896] 1 Ch. 754, applied.

In re LEWIS. DAVIES v. HARRISON

Warrington J. [1907] W. N. 138; [1907] 2 Ch. 296

- Unauthorized investment—Loss—Tenant for life and remainderman.

See **SETTLED LAND—Apportionment**. 5.

Interim Rents.

1. — *Tenant for life and remainderman—Will—Settlement by way of trust for sale—Conversion—Real estate—Postponement of sale—Interim rents—Enjoyment in specie.*

Where by a will real and personal estate are directed to be sold and converted, and the proceeds held in trust for one for life, and then for others, and without any impropriety the sale is postponed, the tenant for life of the proceeds is entitled to the rents and profits of the real estate until sale.

In re Searle, [1900] 2 Ch. 829; *In re Earl of Darnley*, [1907] 1 Ch. 159, followed.

Genery v. Fitzgerald, (1822) Jac. 468; *Bellairs v. Bellairs*, (1874) L. R. 18 Eq. 510; and dictum of Lord Macnaghten in *Wentworth v. Wentworth*, [1900] A. C. 171, considered. *In re OLIVER. WILSON v. OLIVER Warrington J.* [1908] W. N. 117; [1908] 2 Ch. 74

Investments.

1. — *Capital money—Investment—Direction by tenant for life to invest—Improper investment within letter of power—Control of Court—Settled Land Act, 1882 (45 & 46 Vict. c. 38), ss. 21, 22, sub-s. 2, s. 53.*

A tenant for life under the Settled Land Act, 1882, directed the trustees of the settlement to invest capital moneys in their hands in the purchase of certain leasehold houses. The trustees procured the report of an independent surveyor shewing that the proposed investment, though within the words of the power given by the Act, was undesirable, and they declined to proceed with the purchase.

Farwell J. held, [1905] 2 Ch. 418, (1) that, assuming the direction was given bona fide, the trustees were not bound to act upon it; (2) that it was not given bona fide.

Appeal from this decision on the question of fact dismissed.

Collins M.R. and *Cozens-Hardy L.J.* also expressed their concurrence with the observations of the learned judge as to the law.

SETTLED LAND (Investments)—continued.

Decision of Farwell J., [1906] 2 Ch. 418, affirmed.

In re HUNT'S SETTLED ESTATES. BULTELL v. LAWDESHAYNE C. A. [1906] W. N. 105, [1906] 2 Ch. 11

— Capital money—Premiums—Settled land—Change of investment—Ademption.
See POWER OF APPOINTMENT. 33.

2.—*Capital moneys—Investment on mortgage—Tenant for life—Trustees for purposes of Settled Land Acts—Inquiry into title and value—Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 21 (i); s. 22, sub-s. 1.*

Upon a direction under s. 22, sub-s. 2, of the Settled Land Act, 1882, given by the tenant for life to the trustees for the purposes of the Settled Land Act to invest capital moneys in their hands upon a specified mortgage of real estate, the Court declared that the trustees were not bound to invest upon the mortgage unless and until they were satisfied that the direction had been given upon a proper investigation as to title, and upon a proper report as to the value of the proposed security, and upon proper advice as to the form of the mortgage, and that on being so satisfied the trustees were bound to make the investment.

Order of Cozens-Hardy J., [1901] 2 Ch. 790, varied. *In re HOTHAM, HOTHAM v. DOUGHTY* C. A. [1902] W. N. 148; [1902] 2 Ch. 575

Note.

See *In re Duke of Cleveland's Settled Estates*, Joyce J., [1902] 2 Ch. 350. See next Case.

3.—*Capital moneys, Investment of—Tenant for life—Trustees—Right to choose broker—Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 22, sub-s. 2; s. 31.*

Upon an investment of capital moneys arising under the Settled Land Acts, the tenant for life is not entitled to dictate to the trustees of the settlement as to what broker they shall employ in the matter. The trustees may select their broker as well as their solicitor. *In re DUKE OF CLEVELAND'S SETTLED ESTATES*

Joyce J. [1902] W. N. 110; [1902] 2 Ch. 350

— Power to retain investments—Hazardous securities—Trustees—Tenant for life and remainderman.

See WILL—Investments. 5.

— Trustee—Liability—Unauthorized investment—Restoration of capital and interest—Tenant for life and remainderman.

See TRUSTEE—Liability. 1.

3a.—*Unauthorized securities—Express power to retain—Enjoyment in specie—Life tenant and remainderman.*

Where a will contains no trust for conversion, and the life tenant of residue (or of a legacy) is given the entire income thereof, he is entitled to the income of unauthorized permanent securities retained (and appropriated) by the trustees under a power of retainer (and appropriation).

In re Sheldon, (1888) 39 Ch. D. 50. and *In re Bates*, [1907] 1 Ch. 22, followed.

SETTLED LAND (Investments)—continued.

In re Chaytor, [1905] 1 Ch. 233, distinguished. *In re WILSON. MOORE v. WILSON* Swinfen Eady J. [1907] W. N. 45; [1907] 1 Ch. 394

— Will—Investments.

See under WILL—Investments.

Jointures.

1.—*Jointure rent-charge—Arrears—"Incumbrance affecting the inheritance"—Discharge out of capital moneys—Discretion of Court—Tenant for life and remainderman—Incidence—Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 21, sub-s. (ii.)—Settled land in Ireland—Sale—Irish Land Act, 1903 (3 Edw. 7, c. 37)—Irish Land Act, 1904 (4 Edw. 7, c. 34).*

Arrears of a jointure rent-charge, which was limited and secured by powers of entry and distress and by a term of years and trusts thereof in the usual way, are an "incumbrance affecting the inheritance of the settled land" within the meaning of s. 21, sub-s. (ii.), of the Settled Land Act, 1882, and may in a proper case, where their discharge would be the wisest course for all concerned, be discharged by the trustees of the settlement out of capital moneys in their hands, but conditionally upon the tenant for life agreeing that such payment shall be without prejudice to the question, should it arise, of the ultimate incidence of the liability for the arrears as between himself and the remainderman.

The dicta in *In re Knatchbull's Settled Estate*, (1884) 27 Ch. D. 349, and in *In re Frewen*, (1888) 38 Ch. D. 383, relating to the redemption of a jointure rent-charge under s. 21, sub-s. (ii.), considered and distinguished. *In re DUKE OF MANCHESTER'S SETTLEMENT*

Eve J. [1909] W. N. 212; [1910] 1 Ch. 108

Jointuring.

— Execution of power by testamentary instrument.

See STATUTE. 1.

Leaseholds.

1.—*Administration—Will—Settled leaseholds—No power of sale—Sale by the Court—Tenant for life and remainderman—Tenant for life's income.*

The testator died in 1886, and by his will devised and bequeathed all his real and personal estate to the plt. and another (since deceased) upon trust not to sell or mortgage any real or leasehold estate, and to pay the income of his said estate to his widow for life, and after her death to divide his said estate into three equal shares, and to appropriate and hold one of such shares for his daughter, a Mrs. Bartlett, for life, and after her death for all her children equally; and to appropriate and hold another of such shares in trust for his daughter, the deft., Julia Squirell, for life, and after her death for her children equally; and to appropriate and hold the remaining third share for his son, the

SETTLED LAND (Leaseholds)—continued.

plt., for life, and after his death for his children equally. The will contained no trust or power of sale.

The testator's estate comprised freeholds and long leaseholds. Mrs. Bartlett died in 1896, leaving infant children. Mrs. Squirrell had children. The testator's widow died in 1906, and this summons was then taken out for administration and to determine (inter alia) whether the estate was to be divided in specie among the beneficiaries. In Oct., 1906, the Court directed an inquiry whether the estate could be divided into three equal parts, and in answer thereto the Master certified that the property could not in any manner be divided into three parts for the purpose of being appropriated in the manner directed by the will. The Court then directed the property to be sold. This had been done, the proceeds of sale were in Court, and the question now was whether the proceeds of sale of the leaseholds were to be applied for the benefit of the tenants for life in the same way as when leaseholds are taken compulsorily under the Lands Clauses Act.

Held, that there was no difference in principle where leaseholds were taken compulsorily under the Lands Clauses Act and where they were sold by the Court when there was no trust or power of sale. The proceeds of sale of the leaseholds would therefore be dealt with in accordance with the practice laid down in *Ashew v. Woodhead*, (1880) 14 Ch. D. 27. *In re LINGARD*. LINGARD *v.* SQUIRRELL

Neville J. [1908] W. N. 107

—Transvaal leaseholds—Enjoyment in specie—Roman-Dutch law—English will—Life-tenant and remainderman.
See CONFLICT OF LAWS. 10.

Leases.

1. — *Estate agent, Charges of — Estate agent for procuring lease — Application of capital money—Leasing powers—Settled Land Act, 1882* (45 & 46 Vict. c. 38), s. 21, sub-s. 10.

The commission charged by an estate agent for procuring a lease of settled land for a tenant for life under the Settled Land Act, 1882, is payable out of capital money arising under the Act. *In re MARYON WILSON'S SETTLED ESTATES* Joyce J. [1901] W. N. 66; [1901] 1 Ch. 934

Note.

This case was distinguished by Swinfen Eady J., *In re Leveson-Gower's Settled Estates*, [1905] 1 Ch. 560. *See Settled Land—Capital Moneys.* 1.

2. — *Fine on surrender of lease—Tenant for life and remainderman—Capital or income.*

In the absence of mala fides, money paid to a legal life tenant as the consideration for accepting the surrender of a lease, granted without recourse to the powers of the Settled Land Act, belongs to him as a casual profit. *In re HUNLOKE'S SETTLED ESTATES*. FITZROY Swinfen Eady J. [1902] W. N. 70; [1902] 1 Ch. 941

SETTLED LAND (Leases)—continued.**Note.**

This case was distinguished by Parker J., *In re Rhodes*, [1909] 1 Ch. 815. *See Settled Land—Capital or Income.*

3. — *Fine on surrender of lease—Tenant for life and remainderman—Capital or income.*

Lands were devised in trust for sale subject to an agreement for a building lease, so that the equitable life tenants could only accept a surrender on obtaining the leave of the Court to exercise the powers of the Settled Land Acts. The old tenants having failed to build, a conditional contract was entered into by which it was agreed, subject to the approval and leave of the Court being obtained under s. 7 of the Settled Land Act, 1884, that the life tenants should accept a surrender and should grant a similar agreement for a building lease to a new tenant for the rest of the term at a peppercorn rent for the first one and a half years, and afterwards at the old rent, the old tenants undertaking to pay the trustees the amount of the one and a half year's rent in advance to be applied as income in order to make up the loss of rent during the peppercorn period.

North J. having varied the contract by directing the amount of the one and a half years' rent paid in advance to be treated as capital, approved it as so varied, and gave the required leave. *In re GUTHRIE'S SETTLED ESTATES* North J. [1902] 1 Ch. 942, n.

4. — *General powers of leasing — Settled Estates Act, 1877* (40 & 41 Vict. c. 18), ss. 10, 13.

Testator, who died in 1903, devised his residuary estate to trustees upon trust for sale and (subject to an annuity to his widow) to hold the proceeds in trust for his children equally; the shares of daughters being settled upon the usual trusts for them for life without power of anticipation, with remainder to their children and accruer in default of children. The will empowered the trustees to grant leases of the land remaining unsold, but contained no express power to grant either building or mining leases. There were living three sons and four daughters. Two of the latter were married, and one had children, all of whom were infants, and the husbands of both the daughters were living.

The will contained no powers of laying out or constructing roads, streets or sewers, or raising money by mortgage for any purpose. The estate comprised freehold property at Hazelwell, near Birmingham. A petition was presented by the trustees and all the beneficiaries in existence to obtain powers under ss. 20 and 21 of the Settled Estates Act, 1877, to lay out streets and sewers and raise money by mortgage for that purpose; and it also asked that general powers of granting any such leases as were authorized by the Act might be vested in the trustees.

Parker J. held that the Act contained nothing to limit the power of the Court. It was a matter of discretion, and this being a

SETTLED LAND (Leases)—continued.

proper case he ordered general leasing powers to vest in the trustees for the time being of the will (not being less than two in number), without requiring the consent of any person.

In re CHESSHIRE'S SETTLED ESTATES

Parker J. [1908] W. N. 76

—Mansion-house—"Park"—"Usually occupied therewith"—Easement over mansion-house—Invalidity of agreement.

See SETTLED LAND—Mansion House. 1.

—Mining lease—Payments for purchase of chalk—Capital or income.

See WILL—Real Estate. 2.

5. —Mining lease—Right to make up shorts against future royalties—Coal required for support of reservoir—Lessor's compensation for royalties—Capital or income—Apportionment—Royalties covered by shorts—Lessee's rights—Reservoir—Waterworks Clauses Act, 1847 (10 & 11 Vict. c. 17), ss. 6, 22, 25.

The life tenant of a settled estate was entitled to the whole rent and royalties reserved on mining leases. The working of certain coal was stopped by a water authority under s. 22 of the Waterworks Clauses Act, 1847, and the lessee was compensated under s. 25. The lessor's compensation for the acreage royalties that would have been received in the five years necessary to work the coal was assessed under s. 6, and paid into Court:—

Held, as between life-tenant and remainderman, that though the coal would probably have been worked out in the life tenant's life, he was not entitled to immediate payment of the compensation, but that it must be divided into half-yearly instalments in proportion to the coal that would actually have been worked in each half-year and paid or allocated accordingly.

In re Robinson's Settlement Trusts, [1891] 3 Ch. 129, 133, followed.

In re Barrington, (1886) 33 Ch. D. 523, not followed.

Held, also, that as between lessor and lessee a right to make up shorts against future royalties to an amount considerably exceeding the lessor's compensation for the royalties in question did not entitle the lessee to immediate payment of the compensation, but that if he continued working under the lease he would become entitled to each instalment as it accrued. *In re* FULLERTON'S WILL

Swinfen Eady J. [1906] W. N. 96; [1906] 2 Ch. 138

6. —Mining lease—Varying minimum rent—Way-leave—Tenant for life—Power of leasing—Settled Land Act, 1882 (45 & 46 Vict. c. 38), ss. 6, 7, sub-s. 2; s. 9, sub-s. 1 (i, ii); s. 17, sub-s. 1; s. 53.

A tenant for life, in granting a mining lease, under the power conferred upon him by the Settled Land Act, 1882, may reserve an acreage rent with a minimum rent commencing in the second year of the term granted, and

SETTLED LAND (Leases)—continued.

increasing year by year during the early part of the term.

The lease may also provide for the cesser of the minimum rent, when all the minerals demised have been paid for at the acreage rent reserved, and may also contain a grant of a way leave for foreign minerals to continue during the whole term, and subject to a nominal rent after the cesser of the minimum rent.

Decision of Byrne J. [1901] W. N. 229, reversed. *In re* ALDAM'S SETTLED ESTATE

C. A. [1902] W. N. 92; [1902] 2 Ch. 46

7. —Power of leasing—Bona fide exercise—Settled estate—Tenant for life—Person having powers of—Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 53.

The deft. was entitled under the will of her deceased husband to the use and enjoyment rent free of a certain house for so long during her widowhood as she should personally reside in the same. Being minded to marry again, she proposed to exercise her leasing powers as tenant for life under the Settled Land Acts by granting a lease of the house to her intended husband for twenty-one years. The plts., who were entitled in remainder on the cesser of her interest, objected to the lease and brought an action to restrain her from granting it. On a motion for an injunction:—

Held, that, having regard to the deft.'s object in granting the lease, it was not a bona fide exercise of the powers of a tenant for life under the Settled Land Acts, and the plts. were entitled to succeed. *MIDDLEMAS v. STEVENS*

Joyce J. [1901] W. N. 24; [1901] 1 Ch. 574

8. —Powers of leasing—Occupation lease—Two estates included in one settlement—Principal mansion house—Consent of trustees—Settled Land Act, 1882 (45 & 46 Vict. c. 38), ss. 6, 53—Settled Land Act, 1890 (53 & 54 Vict. c. 69), s. 10, sub-s. 2.

The consent of the trustees of the settlement, required by sub-s. 2 of s. 10 of the Settled Land Act, 1890, to be given to the sale or lease of the principal mansion house on any settled land, need not be communicated to the parties.

Two estates, each of which included a mansion house, were settled by the same instruments, to the same uses. The tenant for life acting under the powers of the Settled Land Acts, leased one of the mansion houses to his wife. The evidence showed that the lease was advantageous to all the parties entitled under the settlement. Each of the trustees of the settlement, with full knowledge of the facts relating to the proposed lease, approved of it as being for the benefit of the estate, but neither of them gave any formal consent thereto, each being advised that the house in question was not the principal mansion house on the settled land:—

Held—(1) on the evidence, that it was not the principal mansion house; (2) that if any consent to the lease was required the trustees had given their consent.

SETTLED LAND (Leases)—continued.

The meaning of "principal mansion house" discussed. *GILBEY v. RUSH* *Kekewich J.* [1905] W. N. 153; [1906] 1 Ch. 11

9. — *Power to grant leases as if tenant for life—Land in Scotland—Feu—Jurisdiction—Application to Scottish Courts—Form of order—Settled Land Act, 1882 (45 & 46 Vict. c. 38), ss. 6, 10.*

R. Forrest by his will appointed executors and trustees and devised real estate in Scotland to his trustees upon trust for sale with power to postpone the sale. He gave his trustees the same powers of granting occupation building and mining leases of unsold land as were by law conferred on tenants for life of English settled estates. It appeared that in the district in which the land was situated it was customary to create feus and that nobody would accept building leases. The trustees therefore issued a summons asking for "a declaration that it is expedient in the interests of the beneficiaries under the said will that the trustee of the said will should have power to deal with the lands of the said testator situate in Scotland devised by the said will by granting feus thereof in accordance with the custom of the locality in which the said lands are respectively situate, and that by the law of England so far as it controls the trusts of the lands devised by the said will such feus might be made of the said lands under the Settled Land Acts, 1882 to 1890, but the said Acts do not extend to property in Scotland, and for an order that the pits, as trustees of the said will or other the trustees or trustee thereof for the time being be empowered to apply at any time or from time to time to the proper Court or Courts in Scotland for all necessary relief to enable them to give effect to this declaration and particularly to obtain power and authority to enable the granting with regard to the lands in Scotland devised by and subject to the trusts of the said will of feus for building purposes."

Allan's Trustees, (1897) 24 R. 718, and *Pender's Trustees*, (1907) Sessions Cases, 207, in which the Scottish Courts had acted on similar declarations and orders made by Stirling J. and Swinfen Eady J., were referred to.

Parker J., made the declaration and order as prayed. *In re FORREST. FORREST v. PARKER J.* [1910] W. N. 201

— Surrender of lease—Tenant for life and remainderman—Capital or income.

See **SETTLED LAND—Capital or Income. l.**

10. — *Trustees—Open brickfield—Implied power to let from year to year—Royalties—Tenant for life and remaindermen—"Rents issues and profits."*

A testator, part of whose property consisted of land with brick earth upon it which was being worked under a lease granted by him at a royalty, gave his real estate to trustees upon trust "to pay the rents issues and profits" to certain persons for their lives, with remainders over. The will contained a trust for sale after the death of the last surviving

SETTLED LAND (Leases)—continued.

tenant for life, and a direction that until sale the trustees should cause the real estate to be kept "in good and tenantable order and repair":—

Held, that the trustees had an implied power to let the brickfield from year to year, and that the whole of the rents and royalties must be paid to the tenants for life for the time being. *In re NORTH. GARTON v. CUMBERLAND Swinfen Eady J.* [1909] W. N. 68; [1909] 1 Ch. 625

11. — *Validity—Lease to donee of power and his partners—Statutory requirements—Powers—Settled Estates Act, 1877 (40 & 41 Vict. c. 18)—Settled Land Act, 1882 (45 & 46 Vict. c. 38)—Covenants—Lease to trustee for donee of power.*

A lease granted, in exercise of statutory powers to lease, by a tenant for life to himself and others as lessees containing covenants by the lessees with the lessor is bad, whether the covenants are joint only or joint and several, because the reversioners do not in either case obtain binding legal covenants by all the lessees upon which an action can be brought. Only binding legal covenants will satisfy the requirements of the statutes.

Semble, a lease granted by the donee of a power to a trustee for himself would not now be held valid.

Bevan v. Habgood, (1860) 1 J. & H. 222, discussed and questioned. *BOYCE v. EDBROOKE Farwell J.* [1903] W. N. 63; [1903] 1 Ch. 836

Note.

This case was followed by *Warrington J., Ellis v. Kerr*, [1910] 1 Ch. 529. See *Covenant. 5.*

12. — *Void or voidable—"Best rent"—Collusive bargain for reduction of rent—Purchaser for value without notice—Doubtful title—Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 7, sub-s. 2; s. 54.*

A tenant for life, purporting to act under the powers of the Settled Land Act, 1882, granted a building lease of some vacant land at less than the best rent that could reasonably be obtained, the rent having been reduced in consideration of the waiver by the lessee of a claim for damages against the lessor, and the lessee covenanted to lay out a certain sum in building. The lessee neglected to build, and the lease was sold by auction to the vendor at a large price. The vendor agreed to sell at an enhanced price to the purchaser, and the purchaser objected that, having regard to the amount of the price, it must be shewn that the rent reserved by the lease was the best that could reasonably be obtained within s. 7, sub-s. 2, of the Settled Land Act. The vendor had no knowledge of the arrangement between the lessor and the lessee as to the reduction of the rent, and he insisted that, as purchaser for value without notice, he could make a good title to the purchaser:—

Held, by Buckley J., that, inasmuch as the lease did not comply with the statutory requirements as to rent, and the lessee did not act in good faith within s. 54, it was bad, and

SETTLED LAND (Leases)—continued.

could be set aside as against a purchaser for value without notice :

Held, by the C. A. on the authority of *Freer v. Hesse*, (1853) 4 De G. M. & G. 495, that assuming that the lease was voidable only and not void, the title was not such as ought to be forced upon the purchaser, since it depended on a doubtful question of fact, namely, whether his predecessor in title, the vendor, purchased without notice of the defect in the title. *In re HANDMAN AND WILCOX'S CONTRACT* C. A. [1902] W. N. 36 ; [1902] 1 Ch. 599

Licences.

— Compensation for non-renewal — Public-house — Deductions from rent.
See LICENSING ACTS. 9.

Lunacy.

— Land vested in lunatic as tenant for life — Committee — Power of sale.
See LUNACY. 6.

Mansion-house.

— Dilapidations — Salvage — Repairs — Expenditure out of capital — Jurisdiction.
See WILL — Mansion-house. 1.

— Dry-rot — Rebuilding mansion-house.
See SETTLED LAND — Capital Moneys. 13.

— Leasing powers — Occupation lease.
See SETTLED LAND — Leases. 8.

1. — “Park” — Agreement for lease — Principal mansion-house — Park — “Usually occupied therewith” — Easement over mansion-house — Invalidity of agreement — Liability of lessor — Settled Land Act, 1890 (53 & 54 Vict. c. 69), s. 10.

Sect. 10 of the Settled Land Act, 1890, which precludes the life tenant (*inter alia*) from leasing “the principal mansion-house (if any) on any settled land, and the pleasure grounds and park and lands (if any) usually occupied therewith,” without the consent of the trustees or an order of the Court, applies to a park not usually occupied with the principal mansion-house, the words “usually occupied therewith” referring merely to the words “lands (if any)” immediately preceding them.

The section also applies to the lease of an easement over the same property.

Dowager Duchess of Sutherland v. Duke of Sutherland, [1893] 3 Ch. 169, followed.

The word “park” as used in the Settled Land Acts is not confined to an ancient legal park, but includes an ordinary private park.

A life tenant without the consent of the trustees agreed to let the park, together with an easement over the mansion-house, for a term of years. The lessees entered and held under the agreement, which contained no provision as to title. The lessor died without being required to execute a lease, and the lessees were ejected by the remainderman. It did not appear that the lessor could have obtained the trustees’ consent :—

Held, that the lessees were not entitled to damages against the lessor’s estate.

SETTLED LAND (Mansion-house)—continued.

Day v. Singleton, [1899] 2 Ch. 320, distinguished. *PEASE v. COURTNEY*

Swinfen Eady J. [1904] W. N. 148 ; [1904] 2 Ch. 503

— Trust to keep up mansion-house and permit A. to reside — “Tenant for life” — “Possession.”

See SETTLED LAND — Tenant for Life. 2.

2. — Two settled estates — Principal mansion-house on each — Alteration in character of one estate — Development as building estate — Mansion-house converted into school — Less than twenty-five acres occupied with mansion-house — No longer “principal mansion-house” — Tenant for life — Restriction on powers — Cesser — Settled Land Act, 1890 (53 & 54 Vict. c. 69), s. 10.

Two estates, the Bickley Park estate, in Kent, and the Copt Hall estate, in Essex, each having its own principal mansion-house, were settled by the same settlement upon the same trusts. The tenant for life had definitely adopted Copt Hall as his residence. The Bickley Park estate was a building estate, and its development as such, which had already commenced at the date of the settlement, was subsequently continued until the character of the surrounding neighbourhood had become altered to such an extent as to render a house of the size and pretensions of Bickley Hall quite out of place and very difficult to let. Ultimately, with the sanction of the Court, Bickley Hall and eighteen acres of pleasure grounds and park were let on a twenty-one years’ lease to a schoolmaster, 2000l. being first expended out of capital moneys in making the hall suitable for the purposes of a school. The remainder of the pleasure grounds and park, which had originally comprised about 100 acres, was cut up and laid out under a building scheme and a considerable portion sold or let on building leases :—

Held that, in the circumstances, Bickley Hall had ceased to be the principal mansion-house on any settled land, and that the hall and the pleasure grounds and park and lands usually occupied therewith were no longer subject to the restrictions imposed by s. 10 of the Settled Land Act, 1890. *In re WYTTES’ SETTLED ESTATES* *Eve J.* [1908] W. N. 30 ; [1908] 1 Ch. 593

Mines.

1. — Reservation of mining rights — Support to surface — Tenant for life — Mining lease — Lease of power to let down surface — Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 2, sub-s. 10 (iv.) ; s. 6 ; s. 7, sub-ss. 2, 3.

A tenant for life of settled land has power under s. 6 of the Settled Land Act, 1882, to grant a lease of a right to let down the surface of the land by mining operations.

By his marriage settlement Sir G. Sitwell conveyed land of which he was owner in fee to uses under which he was now tenant for life. The deed contained an exception from the conveyance of all mines under the land in question with power to work the same ; any

SETTLED LAND (Mines)—continued.

person exercising those reserved rights was to make reasonable compensation to the trustees of the settlement for all damages caused to the inheritance, and also to the persons for the time being entitled to the surface of the land for damage to things upon the surface:—

Held, that Sir G. Sitwell had no power under the exception to authorize lessees to work the mines so as to let down the surface of the settled land; but that as a tenant for life he could under s. 6 of the Settled Land Act, 1882, grant them a lease of a right to do so. *SITWELL v. EARL OF LONDENBOROUGH*

Warrington J. [1905] W. N. 11;
[1905] 1 Ch. 460

Mining Leases.

See under SETTLED LAND—Leases.

Mortgages.

—Apportionment — Loss—Authorized investment—Deficient security—Tenant for life and remainderman.

See SETTLED LAND—Apportionment. 2.

—Costs — Concurrence of parties — Incumbrancers.

See SETTLED LAND—Sale. 5.

1. — *Discharge — Incumbrance — Settled Land Act, 1890 (53 & 54 Vict. c. 69), s. 11—Expenses of making street—Charge on premises—Payment by owner—Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 4, 150, 257.*

The tenant for life of an estate paid expenses which had been incurred by a local authority, and made a charge upon the estate by s. 257 of the Public Health Act, 1875:—

Held, that this was a charge on the inheritance, and that he was entitled to keep it alive as an incumbrance on the settled land, and to raise money under s. 11 of the Settled Land Act, 1890, by mortgage of the estate for the purpose of discharging it. *In re SMITH'S SETTLED ESTATES* Buckley J. [1901] W. N. 33; [1901] 1 Ch. 689

Note.

This case was referred to by Neville J. See *In re Pizzi*, [1907] 1 Ch. 67. See *Streets*. 20.

—Foreclosure — Successive incumbrances — Tenant for life of equity of redemption.

See MORTGAGE—Foreclosure. 6.

—Heirlooms—Sale—Application of proceeds—Discharge of incumbrances.

See SETTLED LAND—Heirlooms. 2.

—Investment on mortgage—Tenant for life—Trustees for purposes of Act—Inquiry into title and value.

See SETTLED LAND—Investments. 2.

2. — “Required”—Tenant for life—Mortgage to discharge incumbrances—Settled Land Act, 1890 (53 & 54 Vict. c. 69), s. 11.

The word “required” in s. 11 of the Settled

SETTLED LAND (Mortgages)—continued.

Land Act, 1890, is not confined to cases where a mortgagee has given notice to call in his money; the section must be read as if “required” meant “where money is reasonably required having regard to the circumstances of the settled land.” *In re CLIFFORD*. SCOTT v. CLIFFORD Buckley J. [1901] W. N. 217; [1902] 1 Ch. 87

—Sale by life tenant—Mortgagee of life estate

—Consent—Concurrence in conveyance.

See SETTLED LAND—Sale. 10.

3. — *Tenant for life and remainderman—Settled mortgage—Settlor taking first life interest—Deficient security—Life tenant's death—Subsequent receipts in respect of past and accruing income—Apportionment pending realization—Arrears due at date of settlement.*

On Dec. 10, 1884, a mortgage of 18,000*l.* on farm A was settled on successive trusts for two life tenants and a remainderman without making any provision for some three years' arrears of interest then owing to one settlor who became first life tenant thereunder. The first life tenant died on July 8, 1893, and the second life tenant on Jan. 22, 1903.

From Oct. 11, 1881, to Oct. 11, 1902, the mortgagor had worked farm A together with farm B under an arrangement by which he was to pay the net incomes to the mortgagees of farm A and farm B respectively to the extent of the interest due to them.

The net incomes were not nearly sufficient to keep down the interest in either case, but owing to errors in the apportionment of working expenses during the joint working the mortgagees of farm B had altogether been paid 1028*l.* in excess of the income properly attributable to their farm.

On Aug. 11, 1905, the trustees recovered the 1028*l.*, representing income earned from Oct. 11, 1881, to Oct. 11, 1902, from the mortgagees of farm B.

From Oct. 11, 1902, to Oct. 11, 1906, the mortgagor continued to work farm A as manager to the trustees.

On Oct. 11, 1906, the trustees let farm A at a rent of 515*l.*, and on Nov. 29, 1906, they received 2368*l.* in respect of the sale of farm stock provided out of and representing income earned from Oct. 11, 1881, to Oct. 11, 1906.

The interest was now heavily in arrear, and the security was greatly depreciated.

Foreclosure proceedings had been commenced, but no order had yet been made:—

Held, that the first life tenant's representative could not as against the other beneficiaries claim any arrears of interest owing at the date of the settlement, but subject to this exception the two sums of 1028*l.* and 2368*l.*, and every sum of accruing rent received up to the time of foreclosure absolute, must be treated as a payment on account of all arrears of interest owing at the date of payment, and must be apportioned between the estates of the two life tenants and the remainderman in proportion to the amounts owing to them for

SETTLED LAND (Mortgages)—continued.

arrears of interest at the date when the particular sum was received. *In re BROADWOOD'S SETTLEMENTS*. BROADWOOD v. BROADWOOD

Swinfen Eady J. [1907] W. N. 212;
[1908] 1 Ch. 115

— Tenants for life trustees — Mortgage of life or other interest—Concurrence of mortgagee.

See VENDOR AND PURCHASER — Title.
11.

"Outgoings."

— Repairs—Costs of compelling tenants to repair—Incidence of burden.
See SETTLED LAND—Repairs. 1.

Payment Out.

1. — *Payment out to trustees—Money liable to be invested in land—Capital money—Summons—Petition—Practice—Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 21, sub-s. (ia.); s. 33—Settled Land Act Rules, 1882, r. 2—Settled Land Act, 1890 (53 & 54 Vict. c. 69), s. 14.*

An application for payment out of Court to Settled Land Act trustees of a fund exceeding 1000*l.*, which had not arisen under the Settled Land Act, 1882, but has been derived from another source and is liable to be laid out in the purchase of land to be made subject to the settlement, may be made by petition instead of by summons in chambers under r. 2 of the Settled Land Act Rules, 1882. *In re TORRY HILL ESTATE*. PEMBERTON v. PEMBERTON
Parker J. [1909] 1 Ch. 468

Payments.

— Payment on account by tenant for life—Simple contract debt—Acknowledgment—Administration of whole of real estate.

See LIMITATIONS, STATUTES OF. 6.

Portions.

— Tenant for life—Power to appoint portions—Disentailing deed—Mortgage of settled estates—Priority.
See SETTLEMENT. 38.

Possession.

1. — *Letting into possession—Assignee of equitable life estate—Conditions imposed—Costs—Appeal—Discretion of judge.*

The assignee of an equitable life estate in a freehold farm applied to be let into possession or receipt of the rents and profits of the farm. Stirling J., [1900] W. N. 65, ordered that the applicant should be let into possession or receipt of the rents upon certain conditions, and that he must pay the costs of the trustees and the remainderman.

The applicant appealed, on the ground that the conditions imposed were unreasonable, and also that the judge had not exercised any discretion about the costs of the remainderman, but had acted erroneously upon a supposed rule.

The Court made a slight variation in the order, but directed that the appellant should

SETTLED LAND (Possession)—continued.

pay the costs of the appeal, and held that the conditions imposed were in substance proper, and that Stirling J. had exercised his discretion as to the costs, and there was no right of appeal from his decision in that respect.

The order as varied directed that, upon his giving the undertakings after mentioned, and giving such security as should be approved by the judge in chambers, the appellant should be let into receipt of the rents of the farm payable under the existing lease, during the life of the tenant for life or until further order.

The undertakings were to be in substance as follows:—

(1.) While in receipt of the rents to keep the farm buildings insured against damage by fire in the names or to the satisfaction of the trustees of the will, other than such buildings as might be insured by the tenant of the farm in accordance with his lease.

(2.) To keep down the interest on all incumbrances (if any) on the property, and to pay punctually a rent-charge already created in favour of a land loan co., and all outgoings (if any) properly payable by an equitable tenant for life in possession.

(3.) Not to part with any policy of insurance, or with any receipt for any premium in respect thereof or for the rent-charge, without the written consent of the trustees, and to produce every such policy or receipt to the trustees on all reasonable occasions.

(4.) To perform all obligations incumbent on the person liable to pay the rent-charge as to upholding, maintaining, and insuring the works created under the land loan co.'s Act.

(5.) To see to the performance by the tenant of his obligations under his lease.

(6.) To permit some person to be agreed on, or to be nominated by the judge in chambers, to inspect the property once a year for the purpose of reporting to the trustees and remaindermen as to the performance by the appellant of his undertakings, and by the tenant of his obligations in respect of repairs, maintenance, and cultivation.

(7.) To pay that person out of the rents for his inspection and report such a sum as should be agreed on or fixed by the judge.

(8.) To permit the trustees or their agents at all reasonable times to enter and inspect such part of the estate as might be in the possession of the appellant, and from time to time supply to the trustees all such information as they might reasonably require with respect to the estate.

(9.) Not to use the names of the trustees or trustee in any action or other proceeding without their or his consent.

(10.) To produce half-yearly if required by the trustees satisfactory evidence that the tenant for life was still alive, and to repay all rents received by the appellant after the death of the tenant for life. *In re HUNT*. POLLARD v. GEARE
C. A. [1901] W. N. 144

Powers.

1. — *Conflict of powers—Powers exercisable by trustees—Consent of tenant for life—*

SETTLED LAND (Powers)—continued.

Compound settlement—Private Act of Parliament conferring powers but not creating limitations—Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 2, sub-s. 1 ; s. 56, sub-ss. 1, 2.

Where land is by will vested in trustees in trust for persons by way of succession, a private Act of Parliament which merely confers upon the trustees powers of developing and managing the land as a building estate, but does not incorporate the will, nor itself create any limitations to or in trust for any persons by way of succession, is not part of "the settlement" within the meaning of s. 56, sub-s. 2, of the Settled Land Act, 1882 ; and no consent by the tenant for life to the exercise of those powers by the trustees is rendered necessary by that sub-section. *TALBOT v. SCARISBRIK* *Warrington J. [1908] 1 Ch. 812*

—Leasing, powers of.

See under **SETTLED LAND—Leases.**

2. — *Life tenant—Limited owner with powers of life tenant—Heir-at-law—Trustees in possession—Powers of management—Subsisting accumulation trust for discharge of incumbrances—Mortgage—Void trust for purchase of land—Accumulations Act, 1892 (55 & 56 Vict. c. 58), s. 1—Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 2, sub-s. 2 ; s. 58, sub-s. 1, cls. ii., ix.*

A testatrix devised her freehold hereditaments to the use of her trustees, giving them large powers of management, and directing them to pay certain annuities and other periodic sums out of rents and profits. During the successive lives of the plaintiff and two other persons, but not for more than twenty years after the testatrix's death, the trustees were to apply the surplus rents in the discharge of incumbrances on the estates thereinbefore devised, or in the purchase of other estates to be held on like trusts.

Subject to and after the determination or failure of the several directions thereinbefore contained, the trustees were to stand possessed of the hereditaments in trust for F.'s daughters successively according to seniority in tail male, with a like remainder to E.'s daughters. No such daughters were yet in esse.

After the determination or failure of the directions and trusts thereinbefore contained, the trustees were to settle the hereditaments to successive uses for lives and in tail male for ultimate remaindermen, but without any ultimate limitation of the fee. There were ultimate remaindermen for lives and in tail male in esse.

In *In re Baroness Llanover*, [1903] 2 Ch. 330, Farwell J. held that the direction to apply the surplus rents in the purchase of other estates must be deemed to be struck out by the Accumulations Act, 1892, and that the accumulation trust must be read as limited to the discharge of incumbrances.

On a subsequent motion to vary the minutes he formally declared that when and so soon as the accumulations should be sufficient to discharge the incumbrances the accumulation trust would become a trust for the purchase

SETTLED LAND (Powers)—continued.

of land only and consequently void under the Accumulations Act, 1892, and that from that time, and so long as the surplus rents should by law remain undisposed of, they would belong, and be payable by the trustees as received, to the plt. as heiress-at-law. The accumulations were not yet sufficient to discharge the incumbrances :—

Held, on the construction of the will, that, subject to the accumulation trust for discharge of incumbrances, the surplus rents would be payable to a daughter of F. or E. as tenant in tail male, but that until the birth of such a daughter, and subject to any such daughter's interest, the surplus rents subject to the accumulation trust were payable by the trustees to the plt. as heiress-at-law during the lives of F. and E., after whose deaths, subject to any daughter's estate in tail male, the ultimate remainders would come into possession.

Held, also, that, having regard to the nature and extent of her interest as heiress-at-law, the plt. had not at the present time the powers of a life tenant either under cl. vi. or cl. ix. of s. 58, sub-s. 1, of the Settled Land Act, 1882.

In *re Jones*, (1884) 26 Ch. D. 736, 742, followed as to cl. vi. and distinguished as to cl. ix.

In *re Clitheroe Estate*, (1885) 31 Ch. D. 135 ; In *re Richardson*, [1900] 2 Ch. 778 ; and In *re Money Kyrie's Settlement*, [1900] 2 Ch. 839, distinguished.

Semble, cl. vi. does not apply to a person merely entitled to receive surplus rents from trustees who are in possession and managing the estates, and cl. ix. does not apply (a) to a terminable life interest, or (b) to any interest taken under an intestacy, though comprised in the subject of the settlement under s. 2, sub-s. 2.

Held, also, that a mortgage by the trustees for the purpose of raising estate duty was an incumbrance within the accumulation trust.

In *re BARONESS LLANOVER*. *HERBERT v. RAM* *Swinfen Eady J. [1907] 1 Ch. 635*

3. — *Life tenant—Limited owners with powers of life tenant—Non-beneficial owners—Trustees with estate pur autre vie—Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 58, sub-s. 1, cl. v.*

Sect. 58 of the Settled Land Act, 1882, which gives the powers of a life tenant to the nine classes of limited owners therein described, only applies to beneficial owners, and therefore trustees with an estate pur autre vie cannot exercise a life tenant's powers under sub-s. 1, cl. v.

Vine v. Raleigh, [1896] 1 Ch. 37, not followed. In *re JEMMETT AND GUEST'S CONTRACT* *Swinfen Eady J. [1907] W. N. 78 ; [1907] 1 Ch. 629*

4. — *Tenant for life—Will—Gift to widow during widowhood for the maintenance of herself and her children—Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 2, sub-ss. 5, 7 ; s. 58, sub-s. 1 (vi.).*

A testator gave all his real and personal

SETTLED LAND (Powers)—continued.

estate to trustees upon trust, as to a certain piece of land and a public-house for his wife during widowhood, for the benefit and maintenance of herself and her children and the proper bringing up of the latter:—

Held, that the widow had the powers of a tenant for life under s. 58, sub-s. 1 (vi.), of the Settled Land Act, 1882, notwithstanding that her interest was charged with the maintenance of the children.

In re Theaker's Settled Estates (Wolstenholme's Conveyancing and Settled Lands Act, 9th ed. p. 332) followed. *In re POLLOCK*.

POLLOCK v. POLLOCK. Swinfen Eady J. [1906] W. N. 9; [1906] 1 Ch. 146

Practice.

1. — *Tenant for life and remainderman—Possession by tenant for life—Form of order.*

In the course of the hearing of this case it was pointed out by counsel that certain words had been omitted by mistake from the form of order in *In re Money Kyrle's Settlement*, [1900] 2 Ch. 839, 845, a copy of which is set out in "Seton's Judgments and Orders," 6th ed., vol. 2, p. 1758, line 12. The line should run "without the written consent of the said trustees or trustee, and also to produce every or any such policy and receipt or muniment to the said trustees or trustee upon all reasonable occasions," as in the form of order in *In re Wythes*, [1893] 2 Ch. 369, 376. *In re PADDON*. STAINLIFFE v. ADLAM

Warrington J. [1909] W. N. 162

Repairs.

See also under the various Sub-headings of SETTLED LAND.

1. — "*Outgoings*"—*Tenant for life and remainderman—Repairs—Costs of compelling tenants to repair—Incidence of burden—Settlement—Construction.*

By a marriage settlement a sum of 10,080*l.* was settled upon trust for the benefit of a wife, husband and children, and there was power given to the trustees to invest that sum in freehold and leasehold ground rents and reversions which, when purchased, were to be held upon trust for sale, and until sale the trustees were "to pay or apply the net rent and profits thereof, or of the part for the time being unsold (after payment of outgoings)" to the persons entitled in case such purchase had not been made. The trustees invested in certain freehold and leasehold ground rents and reversions at Sydenham; the ground rents amounted to 44*l.*, and were reserved by leases of twenty houses. The wife having died, the husband became beneficially entitled to the life interest under the settlement, and assigned it to the deft. co. Some of the children of the marriage had also incumbered their reversionary interests under the settlement. In 1904 the trustees discovered that fourteen out of the twenty houses constituting the security for the trust property were in need of repair, and they expended a sum of 200*l.* in having surveys made of the houses and buildings, and

SETTLED LAND (Repairs)—continued.

in serving notices upon the tenants requiring them to repair. In consequence of this action the houses were put into repair by the tenants. The question was now raised by the trustees, upon an originating summons, whether this 200*l.* should come out of income or out of capital. It was urged on behalf of those interested in the capital that these expenses were "outgoings" within the meaning of that term in the settlement, inasmuch as they were expenses incidental to the carrying out of the repairs of the houses, and should come out of the income before it was paid to the tenant for life. *In re Thomas, Weatherall v. Thomas*, [1900] 1 Ch. 319, was referred to.

Kekewich J. said that the principle applicable to this case was clearly laid down by Cotton L.J. in the case of *In re Hotchkys, Freke v. Calmady*, (1886) 32 Ch. D. 408, 415, 417, namely, that money for repairs must be raised in such a way as not to throw the burden unfairly either upon the tenant for life or upon the remainderman. That was the key. The expenses incurred here were not "outgoings," but they were incurred for the benefit for the trust property, and must be borne in a fair proportion between the tenant for life and remaindermen. The only way to do that was to direct them to come out of the corpus of the estate, and the order would be that this money was to be raised by mortgage of the property, such mortgage to include the costs of raising the sum required and also the costs of the present application. *In re McClure's Trusts. Carr v. The Commercial Union Insurance Co.* Kekewich J. [1906] W. N. 200

Revenue.**(Public Revenue.)**

See under SETTLED LAND—Duties.

Sale.

1. — *Best price—Undervalue—Purchaser—"Dealing in good faith"—Sale by tenant for life—Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 4, sub-s. 1; ss. 53, 54.*

In the case of a sale by a tenant for life under the Settled Land Act, the mere fact that the purchaser has acquired the property at an undervalue is not, by itself, sufficient to invalidate the sale. If he has acted in good faith he is protected by s. 54 of the Settled Land Act, 1882, and he is not bound to inquire whether the tenant for life of the trustees have had the property valued.

The tenant for life of a freehold public-house which was let to a firm of brewers at a rent of 63*l.* for a term of which there were twelve years to run, sold the property, subject to the lease, for 2000*l.* Immediately after the sale the purchaser contracted to resell the property for 3000*l.* to the brewers, to whom it had previously been offered for 2750*l.* but in vain. The remainderman brought an action to set the sale aside on the ground that the best price had not been obtained. There was no evidence that the purchaser had acted otherwise than in good faith:—

SETTLED LAND (Sale)—continued.

Held, that he was protected by s. 54 of the Settled Land Act, 1882. *HURRELL v. LITTLEJOHN* - *Joyce J.* [1904] W. N. 32; [1904] 1 Ch. 689

2. — Compound settlement—Deed granting annuities—Settlement by will of grantor's interest in land subject to the annuities.

By a deed dated Aug. 3, 1886, certain real and leasehold property was assured to trustees upon trust for such persons as P. should by deed appoint. By deed dated Aug. 4, 1886, P. appointed that this property should be held upon trust for himself for life, and subject thereto to pay certain annuities to five persons for their respective lives, and subject thereto in trust for P. absolutely. P. died in Feb., 1887, having by his will given his residuary estate, which included the interest he had retained in the property subject to the annuities, upon trusts equivalent to a strict settlement, under which the plt. was tenant for life and his infant son tenant in tail in remainder :—

Held, that the deeds of Aug. 3 and 4, 1886, and the will formed a compound settlement under the Settled Land Acts, and that the plt., as tenant for life under this compound settlement, could sell the property discharged from the annuities. *In re PHILLIMORE'S ESTATE. PHILLIMORE v. MILNES* - *Farwell J.* [1904] W. N. 153; [1904] 2 Ch. 460

Note.

This case was followed by Swinfen Eady J., *In re Marshall's Settlement*, [1905] 2 Ch. 325. *Settled Land—Settlements.* 1.

3. — Compound settlement—Trustees for purposes of Settled Land Acts—Power of tenant for life to sell—Settlement by will—Tenant for life—Jointure deed under power in will—Mortgages by tenant for life—Resettlement by deed—New life estate "in restoration of former life estate" under will—Settled Land Act, 1882 (45 & 46 Vict. c. 38), ss. 2, 20, 38, 40, 50—Settled Land Act, 1890 (53 & 54 Vict. c. 69), s. 4.

In 1850 lands stood limited under a will to the use of A. for life, with remainder to his first and other sons successively in tail male. In 1872 A., upon his marriage and in exercise of a power given him by the will, by deed charged the lands with a jointure in favour of his wife. He also created mortgages on his life estate. In 1895 A. and his only son by a disentailing assurance conveyed the lands to such uses as A. and his son should by deed jointly appoint; and by a deed of even date they appointed the lands to the use of A. for life "in restoration and continuation of his former life estate under the will," with remainder to the son in fee simple, and by this deed trustees were appointed for the purposes of the Settled Land Acts. A., as tenant for life under the resettlement of 1895, contracted to sell part of the lands, the jointress and mortgagees being willing to concur and release their interests in the conveyance to the purchaser :—

Held, that A.'s life estate under the will was still subsisting; that the will, jointure

SETTLED LAND (Sale)—continued.

deed, disentailing assurance, and resettlement together constituted one compound settlement of which there were no trustees for the purposes of the Settled Land Acts, and therefore that A. could not make a good title.

In re Mundy and Roper's Contract, [1899] 1 Ch. 275, followed. *In re CORNWALLIS-WEST AND MUNRO'S CONTRACT* - *Farwell J.* [1903] W. N. 73; [1903] 2 Ch. 150

Note.

This case was distinguished by Swinfen Eady J., *In re Lord Wimborne and Browne's Contract*, [1904] 1 Ch. 537. *See No. 12, below.*

4. — Conflict between provisions of will and provisions of Act—Consents necessary to exercise of power by trustees of will—Undivided shares—Several persons constituting tenant for life—Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 56, sub-s. 2—Settled Land Act, 1884 (47 & 48 Vict. c. 18), s. 6, sub-s. 2.

Where by a will a power of sale was given to the trustees of the whole estate, but undivided shares were separately settled :—

Held, that there was a conflict within the meaning of s. 56, sub-s. 2, of the Settled Land Act, 1882, between the provision of the will and the provisions of the Act; that the tenants for life of undivided shares did not together constitute, within the meaning of s. 6, sub-s. 2, of the Settled Land Act, 1884, a tenant for life for the purposes of the Act of 1882, and that therefore the consents of all the persons who were tenants for life, or persons having the powers of tenants for life, of the undivided shares were necessary to the exercise of their power of sale by the trustees of the will. *In re OSBORNE AND BRIGHT'S, LD.*

Kekewich J. [1902] W. N. 10; [1902] 1 Ch. 335

5. — Concurrence of parties—Incumbrancers on fee—Incumbrancers on life estate—Sale by tenant for life—Sale by auction in lots—Separate transactions—Costs—Taxation—Duties of trustees—Capital money—Investment in stock—Dividends declared but not paid—Right of tenant for life to dividends—Solicitors Remuneration Act, 1881 (44 & 45 Vict. c. 44)—General Order, August, 1882, clause 6—Settled Land Act, 1882 (45 & 46 Vict. c. 38), ss. 21, 22, 50, sub-s. 3; s. 53.

In giving a direction under s. 22, sub-s. 2, of the Settled Land Act, 1882, the tenant for life is bound to act as a trustee.

The rule laid down in *Cardigan v. Curzon-Howe*, (1889) 41 Ch. D. 375, that on a sale by a tenant for life under the Settled Land Act the costs of obtaining the consent and concurrence of the mortgagees on his life estate ought not, as a general rule, to be paid out of capital moneys, applies as well where the capital moneys are in the hands of trustees as where they are in Court.

Where a tenant for life, who has sold under the Settled Land Act, 1882, directs capital moneys in the hands of the trustees to be applied in payment of the costs, charges, and expenses of his solicitors in relation to the sale, the trustees are not bound to have such costs,

SETTLED LAND (Sale)—continued.

charges, and expenses taxed, but are entitled to have an opportunity of considering their propriety, and if satisfied may without taxation pay them out of capital moneys.

The same rule applies to the payment out of capital moneys of the costs of procuring the concurrence in the sale of the incumbrances on the fee.

Where property is offered by a tenant for life for sale in lots the tenant for life is vendor in respect of each contract of sale into which he eventually enters, and in such a case it is competent to the vendor's solicitor, who, before entering upon the business, has given the necessary notice under r. 6 of the General Order under the Solicitors Remuneration Act, 1881, of his intention to charge the ordinary detailed charges and not the scale fee in the case of sales under a certain amount, to treat the sale of each lot as a separate transaction, and to charge his costs accordingly.

Where upon a direction by a tenant for life trustees have invested capital moneys in their hands in the purchase of stocks on which at the date of purchase dividends have been earned and declared but not paid, the tenant for life is not entitled to such dividends.

Bulkeley v. Stephens, [1896] 2 Ch. 241; *Scholefield v. Redfern*, (1863) 2 Dr. & Sm. 173; and *Fremantle v. Whitbread*, (1865) L. R. 1 Eq. 266, distinguished. *In re Sir Robert Peel's Settled Estates* - Warrington J. [1910] W. N. 16; [1910] 1 Ch. 389

— Consent of tenant for life—"Land"—Mortmain and charitable uses.
See **CHARITY**. 34.

6. — *Contract by tenant for life to sell—Price to be fixed by arbitration—Breach of trust—Confirmation by Act of Parliament—Local and personal Act—Statutory effect—Rights of other persons interested in the estate.*

The tenant for life of settled land agreed to sell it in fee simple for a price to be fixed by arbitration. The agreement purported to be made by him under the Settled Land Acts as tenant for life. It provided that the award should be binding on all persons interested in the estates, and that the agreement itself should be conditional on the sanction of Parliament being given to the vendor and the purchasers to carry it into effect. A private Act of Parliament was accordingly obtained by which the agreement was "confirmed and made binding on the parties thereto respectively, and the same shall and may be carried into effect accordingly":—

Held, that statutory effect must be given to the terms of the agreement; the vendor must carry out the sale with all its consequences; and that all the parties interested in the settled land were bound although they were not mentioned in the Act. *In re The Earl of Wilton's Estates* - Warrington J. [1906] W. N. 209; [1907] 1 Ch. 50

— Easement, Release of—Sale or exchange—Tenant for life.

See **SETTLED LAND—Easement**. 2.

SETTLED LAND (Sale)—continued.

7. — *Fetter on power of sale—Sale—Application of proceeds—Limited owner—Person having powers of tenant for life—Devise in fee simple with executory limitation over—Condition of residing and providing a home for third party—Condition or trust—Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 2, sub-s. 5; s. 51, sub-s. 1; s. 58, s. 1 (ii).*

A testatrix gave her residuary estate, in the events which happened (1.) to her niece C. on condition that she resided in the testatrix's house during the life of the testatrix's sister M. and provided there a home for M. so long as she wished; (2.) in the event of C. not complying with the condition, to another niece upon the like condition; (3.) in the event of neither niece complying with the condition, upon trust for M. for life with other trusts over on her death. At the date of the testatrix's death M. was a lunatic not so found, confined in an asylum, and was not expected to recover her faculties. Upon a summons by C. under the Settled Land Acts:—

Held, that C. was a person having the powers of a tenant for life under the Settled Land Act, 1882; that the condition as to providing a home was void so far as it prevented C. from exercising her power of sale; and that she was entitled to sell the house and keep the proceeds absolutely. *In re Richardson. Richardson v. Richardson* - Joyce J. [1904] W. N. 179; [1904] 2 Ch. 777

8. — *Future trust for sale—Trustees for purposes of Settled Lands Acts—Tenant for life trustee—Vendor and purchaser—Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 2, sub-s. 8—Settled Land Act, 1890 (53 & 54 Vict. c. 69), s. 16, sub-s. ii.*

A tenant for life of settled land which is subject to a trust for sale exercisable after his death can be a trustee of the settlement for the purposes of the Settled Land Acts.

Testator gave his wife a life interest in an estate and appointed her and another trustees of the estate with a trust for sale exercisable after her death:—

Held, that they were trustees for the purposes of the Settled Land Acts. *In re Jackson's Settled Estate Buckley J.* [1901] W. N. 248; [1902] 1 Ch. 256

— Heirlooms—Application of proceeds—Discharge of incumbrances.

See **SETTLED LAND—Heirlooms**. 2.

9. — *Life estate—Partial merger—Continuance of powers—Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 50.*

Although a life tenant of real estate has assigned a share of his life estate to a remainderman, so as to merge that share, he can still make a title to the entire settled estate with the consent of his assignee.

Observations of Chitty L.J. in *In re Mundy and Roper's Contract* [1899] 1 Ch. 275, 296, considered. *In re Barlow's Contract Swinfen Eady J.* [1902] W. N. 232; [1903] 1 Ch. 382

10. — *Mortgagee of life estate—Consent—Concurrence in Conveyance—Sale by life tenant*

SETTLED LAND (Sale)—continued.

—*Settled Land Act*, 1882 (45 & 46 *Vict. c. 38*), s. 20, sub-s. 2; s. 50.

Where a life tenant sells settled land under the powers of the Settled Land Acts, with the consent of the mortgagee of the life estate, the mortgagee's estate passes by the exercise of the statutory power, and his concurrence in the conveyance is not necessary.

Sects. 20 and 50 of the Settled Land Act, 1882, explained.

Dictum of North J. in *In re Sebright's Settled Estates*, (1886) 33 Ch. D. 429, 438, not followed.

Observations in *Cardigan v. Curzon-Howe*, (1888) 40 Ch. D. 338, 342; *In re Du Cane and Nettlefold's Contract*, [1898] 2 Ch. 96, 108; and *In re Mundy and Roper's Contract*, [1899] 1 Ch. 275, 289, explained and applied. *In re DICKIN AND KELSALL'S CONTRACT*

Swinfen Eady J. [1907] W. N. 257; [1908] 1 Ch. 213

Note.

This case was followed by C. A., *In re Davies and Kent's Contract*, [1910] 2 Ch. 35. See under *Vendor and Purchaser—Title*.

— Power of Sale—Trustees.

See **SETTLED LAND—Trustees. 4.**

— Power of tenant for life to sell fee.

See *No. 13, below*.

11. — Practice—Sale out of Court — Settled Estates Act, 1877 (40 & 41 *Vict. c. 18*), s. 16 — *R. S. C.*, 1883, *Order LI.*, r. 1A.

Petition under the Settled Estates Act, 1877, for the sale of an estate settled by a will.

The Court, being satisfied that all the proper parties were before the Court, made the order for sale out of Court as asked, and observed that the words "for the time being" in the section appeared to him to have the effect of incorporating any rules which might from time to time be made to govern the practice of the Court. It was certainly convenient to extend the practice under the Act. *In re TONGE'S SETTLED ESTATE*
Kekewich J. [1902] W. N. 72

12. — Resettlement—Life estate extinguished—Original settlement subsisting—Sale by original life tenant — Compound settlement—Trustees—Settled Land Act, 1882 (45 & 46 *Vict. c. 38*), s. 2, sub-s. 1, 4, 5; s. 50—*Settled Land Act*, 1890 (53 & 54 *Vict. c. 69*), s. 4.

A testator devised freeholds to the vendor for life, with remainders in strict settlement.

The property was subsequently disentailed, resettled, and appointed so as to distinguish the vendor's life estate, but the original settlement created by the will was still subsisting in respect of a jointure and persons charged under the powers thereof:—

Held, that the vendor could sell under the will alone, so that it was unnecessary to appoint trustees of the compound settlement created by the will and subsequent deeds.

In re Du Cane and Nettlefold's Contract, [1898] 2 Ch. 96, and *In re Mundy and Roper's Contract*, [1899] 1 Ch. 275, followed.

In re Cornwallis-West and Munro's Contract

SETTLED LAND (Sale)—continued.

[1903] 2 Ch. 150, distinguished. *In re LORD WIMBORNE AND BROWNE'S CONTRACT*

Swinfen Eady J. [1904] W. N. 34; [1904] 1 Ch. 537

13. — Subject of Settlement—Conveyance to trustees without words of limitation—Estate pur autre vie—Reversion in settlor—Power of tenant for life to sell fee—Settled Land Act, 1882 (45 & 46 *Vict. c. 38*), s. 2, sub-s. 2; s. 20, sub-s. 1; s. 58, sub-s. 1 (r.) (ri.).

Where under a settlement the trustees take only an estate for their lives, and that of the survivor, the reversion in fee left in the settlor is comprised in "the subject of the settlement" by virtue of the Settled Land Act, 1882, s. 2, sub-s. 2, and a person having the powers of a tenant for life under that Act can sell and make a good title to the fee simple. *In re HUNTER AND HEWLETT'S CONTRACT*

Swinfen Eady J. [1906] W. N. 19; [1907] 1 Ch. 46

14. — Title—Sale by tenant for life—Incumbrance prior to settlement—Purchase-money paid to incumbrancer—Receipt for purchase-money—Direction of tenant for life—Concurrence of trustees—Vendor and purchaser—Settled Land Act, 1882 (45 & 46 *Vict. c. 38*), s. 2, sub-s. 9; ss. 21, 22.

Where property sold by a tenant for life is subject to an incumbrance prior to the settlement, which exceeds the purchase-money in amount, and the whole of the purchase-money is intended to be applied in reduction of the incumbrance, the purchaser is not justified in paying his purchase-money direct to the incumbrancer by the direction of the tenant for life. He cannot get a good discharge for his purchase-money except by paying it to or by the direction of the trustees of the settlement or into Court. The absence of such a discharge will prevent the purchaser making a good title upon a subsequent sale. *In re NORTON AND LAS CASAS' CONTRACT*

Neville J. [1909] W. N.

103; [1909] 2 Ch. 59

15. — Trust for sale that may never arise—Settled Land Act, 1882 (45 & 46 *Vict. c. 38*), s. 63.

A trust for sale that may never arise is not a "trust or direction for sale" within s. 63 of the Settled Land Act, 1882.

In re Horne's Settled Estate, (1888) 39 Ch. D. 84, applied. *In re GOODALL'S SETTLEMENT*.
FANE v. GOODALL — Swinfen Eady J.

[1909] W. N. 16; [1909] 1 Ch. 440

16. — "Trust or direction for sale"—Trust for sale "only at the request of my wife"—Tenant for life—Settled Land Act, 1882 (45 & 46 *Vict. c. 38*), s. 63—*Settled Land Act*, 1884 (47 & 48 *Vict. c. 18*), ss. 6, 7.

The fact that a trust for sale cannot be exercised without the consent of the tenant for life does not prevent its being a trust or direction for sale within the meaning of s. 63 of the Settled Land Act, 1882. *In re WAGSTAFF'S SETTLED ESTATES*

Neville J. [1909] W. N. 142;

[1909] 2 Ch. 201

17. — Trustees, sale by—Power of sale—Consent of tenant for life—Lunatic not so found—

SETTLED LAND (Sale)—continued.

Quasi committee—Consent “necessary in the character of trustee,” or “as a check upon the undue exercise of the power”—*Settled Land Act*, 1882 (45 & 46 Vict. c. 38), s. 53; s. 56, sub-s. 2—*Lunacy Act*, 1890 (53 & 54 Vict. c. 5), ss. 116, 120, 128.

The consent of a tenant for life, who is a lunatic not so found, to the exercise by the trustees of settled land of a power of sale contained in the settlement cannot be given on his behalf by a quasi committee appointed under s. 116 of the Lunacy Act, 1890, such consent being neither “necessary in the character of a trustee,” nor “as a check upon the undue exercise of the power,” within s. 128 of the Act.

In re Baggs [1894] 2 Ch. 416, followed.

In re DE MOLEYNES AND HARRIS'S CONTRACT Joyce J. [1907] W. N. 207; [1908] 1 Ch. 110

Scotch Estate.

1. — *English settlement—Real estate in Scotland—“Capital moneys”—“Improvements” on Scotch real estate—Jurisdiction—Settled Land Act*, 1882 (45 & 46 Vict. c. 38), s. 2, sub-ss. 3, 10; ss. 21, 23, 33—*Settled Land Act*, 1890 (53 & 54 Vict. c. 69), s. 13.

The Court has jurisdiction to sanction the outlay of capital moneys on improvements of real estate in Scotland settled by an English settlement.

Structural alterations to a public-house including the rearrangement of the bar, required by a licensing authority on granting a renewal of the licence, are improvements on which capital moneys may be expended. *In re GURNEY'S MARRIAGE SETTLEMENT. SULLIVAN v. GURNEY* — Neville J. [1907] W. N. 189; [1907] 2 Ch. 496

Securities.

See also under SETTLED LAND—Investments.

1. — *Tenant for life and remainderman—Unauthorised securities—Wasting securities—No trust for conversion—Power to trustees to retain—Enjoyment of income in specie—Will—Construction.*

Where a will contains no trust for conversion and the tenant for life of the residue is given the entire income thereof, he is entitled to the income of the unauthorised securities retained by the trustees under a power of retainer whether the securities are of a permanent or of a wasting nature.

There is no distinction for the purposes of the application of the rule in *Howe v. Earl of Dartmouth*, (1802) 7 Ves. 137 a, between unauthorised securities of a wasting and those of a permanent nature.

Gray v. Siggers, (1880) 15 Ch. D. 74, followed.

Porter v. Baddeley, (1877) 5 Ch. D. 542, not followed. *In re NICHOLSON. EADE v. NICHOLSON* Warrington J. [1909] W. N. 109; [1909] 2 Ch. 111

Settlements.

1. — “Settlement”—*Life estate to Settlor—Jointure—Portions—Term—Remainder to settlor*

SETTLED LAND (Settlements)—continued.

in fee—Merger—Life tenant—Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 2, sub-ss. 1, 5; s. 58, sub-s. 1 (ii.).

By a marriage settlement, land belonging to the settlor was assured to the settlor for life with remainder (subject to a jointure, portions, and portions term thereby charged and limited) to the settlor in fee:—

Held, that, notwithstanding the merger of the life estate, the settlement was a settlement within s. 2, sub-s. 1, of the Settled Land Act, 1882, and the settlor was life tenant within s. 2, sub-s. 5.

In re Mundy and Roper's Contract, [1899] 1 Ch. 275, 288, 290, and *In re Phillimore's Estate* [1904] 2 Ch. 460, 463, followed. *In re MARSHALL'S SETTLEMENT. MARSHALL v. MARSHALL Swinfen Eady J.* [1905] W. N. 128; [1905] 2 Ch. 325

2. — *Tenant for life—“Settlement”—Settlement of Personality—Power to invest in land—Capital money—Improvements—Settled Land Act*, 1882 (45 & 46 Vict. c. 38), ss. 2, sub-s. 1, 33, 58 (1.), sub-s. (iv.), 63—*Settled Land Act*, 1884 (47 & 48 Vict. c. 18) s. 7, sub-ss. 1, 2.

A settlement of purely personal property in the names of trustees upon trust for a lady for her life, and after her death for her children on attaining twenty-one or marrying, contained a power to trustees to invest the trust funds in the purchase of lands to be held by them upon trust for sale, and until sale to apply the rents and profits in accordance with the trusts of the personal property. The trustees invested part of the trust funds in the purchase of lands which were conveyed to them to be held upon the trusts of the settlement. The tenant for life desired to be recouped out of capital moneys for expenditure on improvements upon part of the land so purchased; and the question was raised whether the settlement came within the provisions of the Settled Land Act, 1881:—

Held, that the settlement, although not in its inception a settlement of land, was nevertheless a “settlement” upon trust for “persons by way of succession” within the definition in s. 2, sub-s. 1, of the Settled Land Act, 1882. It also came strictly within s. 63 of the same Act, and the lady must be deemed a tenant for life within the meaning of the Act. *In re CHILD'S SETTLEMENT. Kekewich J.* [1907] W. N. 151; [1907] 2 Ch. 348

Succession Duty.

See under REVENUE—Succession Duty.

Tenant for Life.

— In general.

See under SETTLED LAND.

1. — *Annuity entitled to rents and profits of land—Tenant for life, Persons having together the powers of a—Settlement—Settled Land Act*, 1882 (45 & 46 Vict. c. 58), ss. 2, sub-ss. 5, 6, 58, sub-s. 1 (i.).

A testator devised his residuary real and personal estate to trustees upon trust to pay out of the rents and profits several life annuities of persons specified, and directed that if in any year there should be a surplus of the income of

SETTLED LAND (Tenant for Life)—continued.

his residuary real and personal estate over the total amount of the annuities, the trustees should divide the same between such of the annuitants as should be living in shares proportionate to the amount of the annuities to which they should be then entitled :—

Held, that as the annuitants for the time being were, between them, entitled to the entire rents and profits of the residuary real estate, they were persons having together the powers of a tenant for life under s. 58 of the Settled Land Act, 1882. *In re BENNET. BENNET v. BENNET. Kekewich J. [1903] W. N. 94; [1903] 2 Ch. 136*

2. —“Tenant for life”—“Possession”—“Settlement”—Trust to keep up mansion house and permit A. to reside—Management, Trustees’ wide powers of—Rents and profits, receipt of by trustees—Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 2, sub-s. 5.

A testatrix devised all her real estate to trustees upon trust “to enter into possession or receipt of the rents and profits of or to manage or superintend the management of the same.” The will gave the trustees extensive powers of management. The testatrix then directed the trustees to pay certain annuities to her daughter, and, subject thereto, to apply such annual sums as should be necessary for keeping certain mansion-houses and the gardens and grounds thereof “in a fit state for residence,” including the payment of wages of all servants and other persons employed by the trustees in and about such mansion-houses, gardens, and grounds, “and shall permit my said daughter at any time and from time to time during her life to reside at the said mansion-houses, gardens, and grounds”; and that during any and every such residence by her said daughter, “under such permission as aforesaid,” the trustees should, out of the rents and profits (subject to the prior payments thereout thereinbefore directed), pay to her said daughter an allowance of 80*l.* per week during such residence. And the testatrix, after giving similar rights of residence to grandchildren, directed that the furniture, &c., in the said “residences,” respectively should be annexed thereto as heirlooms to be enjoyed by the person or persons for the time being entitled to the same residences under the limitation thereinbefore directed :—

Held, that the daughter came within the definition of a “tenant for life” in s. 2, sub-s. 5, of the Settled Land Act, 1882, as being “the person for the time being beneficially entitled to possession of settled land for her life.”

Decision of Swinfen Eady J. [1902] W. N. 149; [1902] 2 Ch. 679, affirmed, with a variation.

Per Romer L.J.: The policy of the law is to regard the provisions of the Settled Land Acts as being beneficial, and not to cut down the class or number of persons coming within the definition of “tenant for life.” *In re BARONESS LLANOVER’S WILL. HERBERT v. FRESHFIELD*

C. A. [1903] W. N. 62; [1903] 2 Ch. 16

Timber.**1. — Conversion—Administration—Lunacy.**

Both the tenant for life, impeachable for waste, and the tenant in fee in remainder of land

SETTLED LAND (Timber)—continued.

subject to an administration suit, were lunatic Under an order made in Chancery and in Lunacy timber was cut and sold :—

Held, that the proceeds of the timber were, subject to the life interest, personal estate of the tenant in fee. *HARTLEY v. PENDARVES*

Cozens-Hardy J. [1901] W. N. 158; [1901] 2 Ch. 498

Title.

— Perpetuity—Power of appointment—Independent alternative gifts—Validity of ultimate gift.

See VENDOR AND PURCHASER — Title. 11.

Trustees.

— Approval of trustees.

See under SETTLED LAND — Capital Moneys.

1. — Compound settlement—Appointment—Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 2, sub-ss. 1, 8.

Limited owners with joint absolute dominion over the estates comprised in a strict settlement (e.g., the life tenant and tenant in tail male in immediate remainder of estates unfettered by any charges or powers of charging) can resettlement the estates as they please, and if they choose to keep the original settlement alive by a sufficient partial restoration of the subsisting uses, trusts and powers, they can appoint Settled Land Act trustees of the compound settlement constituted by the settlement and resettlement.

In re Spencer’s Settled Estates, [1903] 1 Ch. 75, distinguished. *In re SPEARMAN SETTLED ESTATES - Swinfen Eady J. [1906] 2 Ch. 502*

2. — Compound settlement—Settlement by will—Subsequent settlement of other land to same uses subject to incumbrance—Discharge of incumbrance—Appointment of trustees of compound settlement for purposes of Settled Land Acts—Definition of such trustees—Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 2, sub-ss. 1, 8; s. 45, sub-s. 1—Settled Land Act, 1890 (53 & 54 Vict. c. 69), ss. 11, 16.

A testator by his will dated in 1870 devised a residential estate in settlement. In the midst of and surrounded by the estate and near to the mansion-house there was a smaller property which belonged to other persons. The tenant for life under the will purchased this property for 7800*l.*, and having mortgaged it for 7000*l.*, himself providing the balance, he by deed in 1904 settled it on the subsisting uses of the will, but subject to the mortgage and to repayment to himself of his costs, charges, and expenses arising out of the transaction. It was proved that the acquisition of this additional property was most desirable and beneficial. Neither in the will nor in the deed of 1904 was any general power of sale conferred on the trustees of those instruments, but the deed contained a proviso that the trustees thereof should have power, by sale or mortgage of the property thereby assured, to raise the amount of the costs, charges, and expenses above referred to. The tenant for life applied to the Court for its sanction to his raising the amount of the incumbrance and

SETTLED LAND (Trustees)—continued.

costs, charges, and expenses by a mortgage of the entirety of the estate, and that the trustees of the deed of 1904 might be appointed trustees for the purposes of the Settled Land Acts of the settlement created by the will and the deed of 1904 :—

Held, following the decision of Byrne J. in *In re Lord Stafford's Settlement and Will*, [1904] 2 Ch. 72, that the trustees of the deed of 1904 ought to be appointed trustees of the compound settlement for the purposes of the Settled Land Acts, as otherwise there would be no one to whom notice could be properly and adequately given under s. 45, sub-s. 1, of the Settled Land Act, 1882.

Held, further, that the proviso contained in the deed of 1904 had not the effect of making the trustees of that instrument trustees for the purposes of the Settled Land Acts, as those Acts contemplated trustees having a general and not a limited power, that is, a power exercisable at any time and for any purpose, and not a power exercisable in a contingency and for a particular purpose.

The application was therefore granted.

The judgment of Byrne J. (unreported, but referred to, [1904] 2 Ch. at p. 74) in the case above cited more fully referred to by Kekewich J. *In re COULL'S SETTLED ESTATES*

Kekewich J. [1905] W. N. 73 :
[1905] 1 Ch. 712

— Compound Settlement—Trustees.

See **SETTLED LAND—Sale**. 3.

3. — *Compound settlement—Trustees of compound settlement—Power of appointing—Appointment of trustees—Solicitor of tenant for life—Existing trustees—Affidavit of fitness—Settled Land Act, 1882 (45 & 46 Vict. c. 38) s. 2, sub-s. 1, 8 ; s. 38.*

In 1863 estates were settled upon A. for life, with remainder, subject to a jointure and portions for younger children, to A.'s first and other sons in tail. In 1898 B., the eldest son of A., joined with his father in barring the entail and resettling the estates upon A. for life, with remainder to B. for life, with remainders over. The resettlement contained a declaration that the trustees of that deed should also be the trustees for the purposes of the Settled Land Acts of the compound settlement created by the settlement of 1863 and the resettlement of 1898. A. died in 1901. The jointure and portions charge were still subsisting. B. was desirous of selling part of the estates under his statutory power free from the jointure and portions charge, and now applied that the trustees of the resettlement might be appointed trustees of the compound settlement if the Court should be of opinion that they were not already properly appointed. One of these three trustees was the solicitor of the tenant for life, and also a trustee of the settlement of 1863 :—

Held, that the declaration in the resettlement of 1898 did not amount to a declaration by "the settlement," as defined by s. 2, sub-s. 1, of the persons to be trustees thereof for the purposes of the Settled Land Acts within the meaning of s. 2, sub-s. 8, and consequently that there was no valid appointment of trustees of the compound

SETTLED LAND (Trustees)—continued.

settlement, who in this case could only be appointed by the Court :—

Held, also, that the fact that the solicitor of the tenant for life was already a trustee of the settlement of 1863 and of the resettlement of 1898, and the alleged convenience to the parties of having the same trustees for all the settlements was not sufficient to take the case out of the general rule laid down in *In re Kemp's Settled Estates*, (1883) 24 Ch. D. 485, and *In re Earl of Stamford*, [1896] 1 Ch. 288, and the two remaining trustees only were therefore appointed trustees of the compound settlement upon production of affidavits of their fitness in the usual way. *In re HAMMOND SPENCER'S SETTLED ESTATES*.

Byrne J. [1902] W. N. 200 ; [1903] 1 Ch. 75

— Infants—Guardian—Possession of rents and profits during minority.

See **SETTLED LAND—Infants**. 1.

— Liability — Unauthorized investment — Restoration of capital and interest.

See **TRUSTEE—Liability**. 1.

4. — *Power of sale—Trustees for purposes of the Settled Land Acts—Other lands comprised in the settlement—Lands purchased by trustees and settled to like uses—Settled Land Act, 1890 (53 & 54 Vict. c. 69), s. 16.*

M., who died in 1885, by will devised land to trustees upon trust for S. for life, then for his eldest son for life, and afterwards upon trusts corresponding to a strict settlement. He gave all his personal estate to the same trustees upon trust to invest in land, to be conveyed to them upon the same trust as the land devised. He gave the trustees a power of sale over all the land except his mansion house and lands in the same parish.

The trustees had invested part of the personal estate in the purchase of lands which were conveyed to them upon the trusts of the will. They had afterwards sold all the lands originally comprised in the will other than those excepted from the power of sale. The equitable tenant for life had entered into a contract for the sale of the mansion house :—

Held, that the purchased lands were "comprised in the settlement, and subject to the same limitations, as the land agreed to be sold" within the meaning of the Settled Land Act, 1890, s. 16, sub-s. 1, and the trustees were trustees for the purposes of the Settled Land Acts. *In re MOORE. MOORE v. BIGG*

Swinfen Eady J. [1906] W. N. 53 :
[1906] 1 Ch. 789

— Power to appoint new trustees—Tenant for life donee of power.

See **TRUSTEE—Appointment**. 9.

— Resettlement—Sale by original life tenant—Compound settlement—Trustees.

See **SETTLED LAND—Sale**. 12.

— Sale by—Consent of tenant for life—Lunatic.

See **SETTLED LAND—Sale**. 17.

— Tenants for life trustees—Mortgage of life or other interest—Concurrence of mortgagee.

See **VENDOR AND PURCHASER—Title**.

SETTLED LAND (Trustees)—continued.

- Trustees for purposes of Settled Land Acts—Tenant for life trustee—Vendor and purchaser—Settled land—Future trust for sale.
See SETTLED LAND—Sale. 8.

Waterworks.

- Mining lease—Lessor's compensation—Apportionment.
See SETTLED LAND—Leases. 5.

Way, Right of.

- User by public—Possibility of dedication—Acquiescence.
See WAY, RIGHT OF. 11.

Will.

- Tenant for life—Will—Institution of heirs in specified proportions—Period of distribution.
See CAPE OF GOOD HOPE. 15.

SETTLED PROPERTY.

See under SETTLED LAND.

- SETTLEMENT**—Accumulations out of income—Marriage contract—Wife's acquirenda—Legitim.
See SCOTTISH LAW. 16.

- Ademption pro tanto of settled portion of legacy.

See WILL—Ademption. 4.

- After-acquired property, Covenant to settle.
See Nos. 4—22, below.

- “Alimentary provision” — Validity of restriction as against husband's mortgagees.

See CONFLICT OF LAWS. 6.

1. — *Appointment of specific sums of stock—Surrender of appointor's life interest—Immediate possession—Death of appointor—Hotchpot—Date at which value of appointed stocks should be ascertained.*

By the marriage settlement of Mr. and Mrs. Kelly stocks were assigned to trustees upon trust for Mrs. Kelly for life, and after her death (in the events which happened of her surviving her husband and no joint appointment by them having been made) then upon trust for such of the issue of the marriage as the survivor of them should by deed or will appoint, and in default of such appointment in trust for the children of the marriage in equal shares. The settlement contained a hotchpot clause in common form.

Mrs. Kelly on the occasion of the marriage of one of her daughters appointed that certain sums of stock forming part of the settlement trust fund should immediately after the marriage be held in trust for the daughter for her absolute benefit, and Mrs. Kelly assigned and surrendered her life interest in the appointed stocks to the daughter. The stocks were accordingly transferred to the trustees of the daughter's settlement immediately after their marriage. Mrs. Kelly died and the trust funds became divisible :—

Held, that the daughter must bring into hotchpot the share appointed to her at its value

SETTLEMENT—continued.

at the date of the death of Mrs. Kelly. *In re KELLY'S SETTLEMENT TRUSTS.* GUSTARD v. BERKELEY Warrington J. [1909] W. N. 203 ; [1910] 1 Ch. 78

- Bankruptcy.

See under BANKRUPTCY—Settlements.

- Bankruptcy—Conveyance by settlor to himself as trustee — Straits Settlements Bankruptcy Ordinance of 1888—Construction—Voluntary settlement.
See STRAITS SETTLEMENTS. 4.

- Bankruptcy, Husband's interest determinable on—Post-nuptial settlement—Recital of ante-nuptial settlement.

See FRAUDULENT CONVEYANCE. 3.

- Bankruptcy of donee of power of appointment—Capacity of trustee to release power.
See POWER OF APPOINTMENT. 1.

- “Charitable or religious institutions and societies” — Uncertainty—Trust disposition and settlement.

See WILL—Uncertainty. 4.

- Cohabitation, Resumption of—Settlement on children of marriage.

See SEPARATION DEED. 1.

2. — *Cohabitation, Trust for wife during—Validity—Policy of the law—Husband and wife—Post-nuptial settlement.*

By a post-nuptial settlement the husband assigned certain leaseholds to trustees upon trust to pay the rents to his wife for life, or so long as she should continue the cohabiting wife or the widow of the settlor, for her separate use, and upon the determination of the trust in favour of the wife the husband took an interest in the settled property. Some years after the date of the settlement the husband and wife separated by mutual consent, and they had not since cohabited :—

Held, that the restriction of the wife's enjoyment of the rents to the period of cohabitation was not void as against the policy of the law, and that the trust in her favour determined upon her ceasing to live with her husband.

Cartwright v. Cartwright, (1853) 3 D. M. & G. 982, and *II. v. W.*, (1857) 3 K. & J. 382, distinguished. *In re HOPE JOHNSTONE.* HOPE JOHNSTONE v. HOPE JOHNSTONE

* *Kekewich J.* [1904] W. N. 54 ; [1904] 1 Ch. 470

- Compound settlement—Appointment of trustees.

See SETTLED LAND—Trustees. 3.

- Compound settlement—Sale—Trustees.

See SETTLED LAND—Sale. 12.

3. — *Condition subsequent requiring assumption of name and arms—Gift over on “refusal or neglect” to assume—Infant—Settlement of real estate.*

Testator by his will devised and appointed real estate, in strict settlement, and added a proviso directing that every person who should become entitled under his will to the estate as tenant for life or tenant in tail in possession who should not then bear the name and arms of Edwards should within six calendar months after

SETTLEMENT—continued.

he should have become so entitled in possession assume the surname and arms of Edwards. And in case any such person should "refuse or neglect" within the six calendar months to take, use, and bear such surname and arms, then and in every such case immediately after the expiration of the six months the limitation thereafter contained to the use of such person should absolutely determine, and the testator gave the estate to the person or persons next in remainder under the limitations of his will.

On the assumption that a previous tenant for life had forfeited the estate by reason of her non-compliance with the proviso and that the estate had thereupon devolved upon an infant who also had not complied with the proviso:—

Held, that the words "refuse or neglect" in the proviso involved an exercise of will, and that inasmuch as in law an infant had no power (except in certain special cases) to exercise a discretion in reference to a legal matter, the testator in using those words must be taken not to include an infant.

Held, therefore, that the proviso did not apply to the infant, and that, on the above assumption, he had not forfeited the estate by reason of his "refusal or neglect" to comply with it.

Partridge v. Partridge, [1894] 1 Ch. 351, applied.

But *held*, on the construction of the particular provisions of the will, that the previous tenant for life had never become a "tenant for life in possession" within the meaning of the proviso, and therefore that the period at which it became incumbent upon her to assume the surname and arms had not arrived, and consequently that she had not forfeited the estate.

In re EDWARDS. LLOYD v. BOYES

Warrington J. [1910] W. N. 60 ;
[1910] 1 Ch. 541

— Conflict of laws—English trustees—"Alimentary provision"—Rights of husband's incumbancers.

See CONFLICT OF LAWS. 6.

— Conversion.

See No. 23 below.

— Covenant by husband to settle—After-acquired furniture—Furniture afterwards bought and used at family residence—Bankruptcy of husband.

See BANKRUPTCY—Settlement. 1.

— Covenant to settle—After-acquired property—Father's covenant—Persons derivatively entitled—Will—Satisfaction.

See WILL—Satisfaction. 1.

4. — *Covenant to settle wife's after-acquired property—Gift from husband to wife—Volunteers—Next of kin claiming benefit of covenant—Trustees not bound to enforce transfer—Marriage settlement.*

By a marriage settlement made in 1878 certain funds coming from the wife's father were settled upon the usual trusts of a wife's fund, with an ultimate trust, in the events which happened, for the wife's statutory next of kin. And it was also agreed that all real and personal property to which the wife was entitled at the

SETTLEMENT—continued.

date of the marriage, or to which she, or her husband in her right, at any time during the coverture, should be or become entitled, whether in possession, reversion, or otherwise, should be assured and transferred by the husband and wife respectively to the trustees to be held upon the trusts of the settlement.

In August, 1884, a sum of 1018*l.* 15*s.* was invested by the husband in the purchase of certain stock in the name of the wife. This was subsequently sold by the wife and reinvested in the purchase of 1125*l.* Grand Trunk Railway of Canada 4 per cent. debenture stock, which remained registered in her name down to the date of her death, intestate and without leaving any issue, on Feb. 2, 1909. The stock was now standing in the name of the husband, to whom letters of administration to his wife's estate had been granted:—

Held, that the stock in question, which was a gift by the husband to the wife, was caught by the agreement to settle the wife's after-acquired property.

In re Ellis's Settlement, [1909] 1 Ch. 618, followed.

But *held*, on the authority of *Spickernell v. Hotham*, (1854), Kay, 669, that no action could be brought by the trustees to recover damages against the husband or the estate of the wife.

Held, also, that the next of kin of the wife, being volunteers and strangers to the marriage consideration, could not enforce the contract to settle as against the administrator of the wife, and that therefore the trustees were not bound to take any steps to obtain a transfer of the stock.

In re D'Angibau, (1880) 15 Ch. D. 228, followed.

Fletcher v. Fletcher, (1884) 4 Hare, 67, distinguished. *In re PLUMPTRE'S MARRIAGE SETTLEMENT*. UNDERHILL v. PLUMPTRE.

Eve J. [1910] W. N. 63 ; [1910] 1 Ch. 609

5. — *Covenant to settle after-acquired property—Exception of property settled on wife for separate use—Contingent reversionary interests not falling into possession during coverture.*

A settlement made in 1870, on the marriage of L. (the husband) and D. (the wife), contained a covenant by both of them with the trustees of the settlement that all other, if any, the present and future real and personal estate and effects whatsoever, whether in possession or expectancy, of or to which L. and D., or either of them in her right, or by material right, should at any time or times during the coverture become seised, possessed, or entitled, or of or to which L., or any person claiming through or under him, should by any means whatsoever become, in her right or by marital right, at any time or times after solemnization of the marriage, seised, possessed, or entitled, except only such estate and effects as should be settled on her for her separate use, should from time to time, as soon as might be thereafter, or after they or he should become possessed of or entitled to the same, be conveyed, assigned, transferred, or paid unto the trustees, and be settled and assured upon the trusts of the settlement, or such of them as should be subsisting and capable of taking effect.

SETTLEMENT—continued.

D. in 1871 (during the coverture) became entitled under her mother's will to a contingent reversionary interest in part of the proceeds of sale of realty and personalty which was given for her separate use, and under a codicil to the same will to a contingent reversionary interest in another part of the proceeds, which was not given for her separate use. After L.'s death the interest under the will fell into possession; the interest under the codicil was still reversionary :—

Held, following *Kane v. Kane* (1880) 16 Ch. D. 207, that the interest under the will was not within the operation of the covenant.

Held also, that the interest under the codicil was within the covenant.

Townshend v. Harrowby, (1858) 4 Jur. (N.S.) 353, and *In re Mitchell's Trusts*, (1878) 9 Ch. D. 5, considered.

Semble, that it always has been possible, whether before or after Malins' Act, by a properly framed covenant as to after-acquired property in a marriage settlement, to bind a married woman's reversionary interests, whether contingent or otherwise, acquired during coverture, but not falling into possession until afterwards; and that the Court can and always could, notwithstanding technical difficulties as to getting an actual conveyance, bind the property in the hands of every one, including the heir or legal personal representative of the husband or wife, as the case may be. LLOYD v. PRICHARD

Parker J. [1908] 1 Ch. 265

6. — Covenant to settle after-acquired property—Gift from husband—Marriage settlement.

There is no general rule of construction of covenants, in marriage settlements, to settle after-acquired property of the wife that a gift from the husband to the wife during coverture is to be excluded from the covenant.

A marriage settlement made in 1882 contained several covenants by the husband and wife to settle "all the real and personal estate whatsoever and wheresoever (if any) to which the wife or the husband in her right should upon the solemnisation of the intended marriage, or at any time afterwards during the intended coverture, be or become absolutely entitled for any estate or interest whatsoever in possession or reversion."

In 1908 the husband transferred into his wife's name, as an absolute gift, stocks and shares of the value of 50,000*l.* :—

Held, that they were bound by the covenant. *Coles v. Coles*, [1901] 1 Ch. 711, distinguished.

In re ELLIS'S SETTLEMENT. ELLIS v. ELLIS

Swinfen Eady J. [1909] W. N. 59; [1909] 1 Ch. 618

7. — Covenant to settle after-acquired property—Land in Ireland—Post-nuptial and voluntary—Wife's covenant to settle property acquired during existing coverture—Previous marriage settlement—Settled fund—Power of appointment on failure of issue—Reversionary interest in default of appointment—No child—Dissolution of marriage—Appointment to self—Settled land in Ireland—Wife entitled to life estate—Sale of land—Twelve per cent. bonus—

SETTLEMENT—continued.

Irish Land Act, 1903 (3 *Edw. 7, c. 37*), s. 48—*Irish Land Act*, 1904 (4 *Edw. 7, c. 3*), ss. 3, 4.

By a voluntary settlement dated Mar. 26, 1902, the applicant, a married woman, covenanted to settle all real and personal property to which she was then, or should at any time during her then present coverture become, entitled for any estate or interest whatsoever in possession, reversion, remainder, contingency, or expectancy. There was no child of the marriage, which was dissolved on the wife's petition as from June 9, 1904, and the property of the wife comprised in her marriage settlement was ordered to be conveyed to her as if the husband had died in her lifetime.

In these circumstances questions arose whether the trustees of the voluntary settlement were entitled by virtue of the above-mentioned covenant to the following moneys, namely :—

(1) A sum of 2800*l.*, which became payable on April 12, 1905, representing the applicant's fund settled by her marriage settlement, and at the date thereof neither ascertained nor payable, over which fund, in the event of there being no child of the marriage, the applicant had a general power of appointment exercisable by deed while not under coverture, or by will whether covert or sole, and to which fund in default of any such appointment she was absolutely entitled if she survived her husband. On Dec. 4, 1905, the applicant had appointed the marriage settlement funds to herself absolutely.

(2) A sum of 24*l.* 4*s.* arising upon the sale by the applicant, as tenant for life, of certain land in Ireland comprised in the voluntary settlement, sold by her, after the dissolution of her marriage, under the provisions of the *Irish Land Act*, 1903. The sum in question represented the 12 per cent. bonus payable to vendors under s. 48, sub-s. 1, of that Act, and by virtue of the provisions of the *Irish Land Act*, 1904, belonged to the applicant, as tenant for life, as her "own proper moneys for" her "own use and benefit."

On the first question :—*Held*, that the determination of the question of title to the sum of 2800*l.* turned upon the distinction between power and property, and that although the exercise of the power after the dissolution of her marriage created property, yet during the coverture all that the applicant had was a power of appointment over the fund, and, a power not being within the scope of the covenant, the sum of 2800*l.* belonged to her absolutely.

Townshend v. Harrowby, (1858) 27 L. J. (Ch.) 553; 4 Jur. (N.S.) 353, followed.

Bower v. Smith, (1871) L. R. 11 Eq. 279, and *In re Lord Gerard*, (1888) 58 L. T. 800, commented upon.

Steward v. Poppleton, [1877] W. N. 29, and *In re O'Connell*, [1903] 2 Ch. 574, not followed.

On the second question :—*Held*, adopting the view taken of the nature of the bonus in *In re Lady Annaly's Trust*, (1904) 92 L. T. 13, and *In re Power's Estate*, [1907] 1 I. R. 51, that the bonus was not merely a by-product of

SETTLEMENT—continued.

the applicant's life estate, but was an interest in the settled hereditaments accruing to her when the Irish Land Act, 1903, interpreted by the Irish Land Act, 1904, came into operation on Nov. 1, 1903, and that the bonus was caught by the covenant and must be retained by the trustees of the voluntary settlement.

TREMAINE v. RASHLEIGH **Eve J. [1908]**
W. N. 31, 42; [1908] 1 Ch. 681

Note.

Followed by *Swinfen Eady J., Vetch v. Elder* [1908] W. N. 137. See No. 12, below.

8. — Covenant to settle wife's after-acquired property—Construction—Land in Jersey—Consideration for transfer necessary—Covenant incapable of being performed—Marriage settlement.

A marriage settlement, executed in 1897, contained a covenant whereby it was agreed that all real and personal property to which A. M. H., the intended wife, then was or at any time during her coverture should be or become entitled, "except her freehold and leasehold property in Jersey, and any cash, stocks, funds, or other securities, now in the actual possession, or standing in the name of A. M. H." should be assured and transferred by A. M. H., and all other necessary parties, if any, to the trustees of the settlement upon trust to sell and hold the proceeds upon the trusts relating to the wife's trust fund. At the date of the settlement A. M. H. was absolutely entitled to certain real estate in Jersey.

In 1901 she became absolutely entitled to a share in certain other freehold property in Jersey. By the law of that country trusts of this character were not recognized, and all transfers of property were required to be made for adequate pecuniary consideration:—

Held, that although the words of the exception in the covenant did not exclude the subsequently acquired property of the wife in Jersey, yet, having regard to the law of Jersey which rendered the transfer of such property to the trustees inoperative, it was not caught by the covenant to settle.

In re Dunsany's Settlement, [1906] 1 Ch. 578, applied. *In re PEARSE'S SETTLEMENT*. **PEARSE v. PEARSE** **Eve J. [1908] W. N. 244;**
[1909] 1 Ch. 34

9. — Covenant to settle after-acquired property—Assignment of future property—Gift from husband—Marriage settlement—Construction.

An assignment by the intended wife in a marriage settlement of her property and fortune, both present and expectant or future, *held* not to comprise a sum of money which the husband made a present of to the wife long afterwards.

COLES v. COLES **Joyce J. [1901] W. N. 29;**
[1901] 1 Ch. 711

10. — Covenant to settle after-acquired property—500*l.* or upwards—Legacies—Deduction of duty—Time and source of payment—Husband and wife.

A legacy of 500*l.*, which by payment of duty at 10 per cent. has been reduced to 450*l.*, is not within a covenant to settle any after-acquired property of the value of 500*l.* or upwards.

SETTLEMENT—continued.

A legacy out of general estate given by codicil to a will, and a legacy given by another codicil to the same will out of the proceeds of sale of real estate which has not yet been sold, are acquired at one and the same time, namely, the death of the testatrix, and from one and the same source, namely, the testatrix. They must therefore be added together and treated as one sum for the purpose of a covenant to settle any property to which a married woman should become entitled "at one and the same time and from one and the same source." *In re PARES. In re SCOTT CHAD. SCOTT CHAD v. PARES*

Buckley J. [1901] W. N. 61; [1901] 1 Ch. 708

12. — Covenant to settle after-acquired property—Wife's covenant to settle property acquired during coverture—Bequest to such persons as the wife should appoint—Property and power—Marriage settlement.

In this case *Swinfen Eady J.* said that he must follow the line of cases which began with *Townshend v. Harrowby* ((1858) 27 L. J. (Ch.) 553; 4 Jur. (N.S.) 353) in 1858, and ended with *Tremayne v. Rashleigh* ([1908] 1 Ch. 681) in the present year. The authorities had been so recently considered in that case by *Eve J.*, with whose judgment he agreed, that it was unnecessary for him to discuss them. There must be a declaration that the 1000*l.* was not bound by the covenant, and an order for payment to the plt. **VETCH v. ELDER**

Swinfen Eady J.
[1908] W. N. 137

13. — Covenant to settle after acquired property—Bequest to separate use—Restraint on anticipation—Marriage with foreigner—Domicil—Law applicable.

Under a gift to a woman by will of a legacy payable on the determination of a prior life interest, with a declaration that moneys payable to any female during any coverture shall be paid to her for her separate use when and as the same shall become due and payable, and so that she shall not have the power to deprive herself of the benefit thereof by anticipation, the legatee is at the date of the payment entitled to have the legacy paid to her, and the restraint on anticipation then ceases to operate; and a covenant by her, contained in an ante-nuptial settlement executed before the death of the testator, to settle after-acquired property is effectual to bind the property when transferred to her.

In re Currey, (1886) 32 Ch. D. 361, distinguished.

The matrimonial domicile was Italian. The settlement was in English form, and void under Italian law. The wife's domicile had been English, and the settled funds were English:—

Held, on the facts, that the settlement was governed by English law. *In re BANKES. REYNOLDS v. ELLIS - Buckley J. [1902] W. N. 129;*
[1902] 2 Ch. 333

14. — Covenant to settle wife's after-acquired property—Construction—"Become entitled"—Vesting in interest—Vesting in possession—Property vested in wife in reversion before marriage and falling into possession during coverture.

By a marriage settlement made since the coming into operation of the Married Women's

SETTLEMENT—continued.

Property Act, 1882, it was agreed and declared that all property to which the wife during her then intended coverture should "become entitled" should be vested in the trustees of the settlement upon trust for sale and conversion subject to a proviso forbidding the trustees to sell any property of a reversionary nature during the lives of the husband and wife without their consent:—

Held, that property to which the wife was entitled in reversion at the date of the marriage would not, in the event of its falling into possession during the coverture, be included in the covenant.

In re Clinton's Trust, (1872) L. R. 13 Eq. 295, discussed. *In re BLAND'S SETTLEMENT*; *BLAND v. PERKIN* - - - *Kekewich J.*
[1904] W. N. 189; [1905] 1 Ch. 4

15. — *Covenant to settle after-acquired property—Covenant—"During the marriage"—Judicial separation—Property acquired during separation—Husband and wife—Construction of settlement—Matrimonial Causes Act, 1857, (20 & 21 Vict. c. 85), s. 25—Matrimonial Causes Act, 1858 (21 & 22 Vict. c. 108), s. 8.*

A marriage settlement contained a covenant to settle all property to which the wife or her husband in her right should, during the said intended marriage, become beneficially entitled in possession or reversion. A judicial separation was subsequently decreed between the husband and wife. At the date of the settlement the wife was entitled to a reversionary interest, which fell into possession during the separation; and she became entitled during the separation to some personal property under the will of her mother:—

Held, that the reversionary interest was bound by the covenant; but that the property acquired during the separation was not bound, because the object of the covenant was to exclude the husband, and, inasmuch as he was excluded by s. 25 of the Matrimonial Causes Act, 1857, the covenant was inoperative during the separation. *DAVENPORT v. MARSHALL* - - - *Buckley J.*
[1901] W. N. 210; [1902] 1 Ch. 82

Note.

This case was referred to by Buckley J., *In re Bankes*, [1902] 2 Ch. 333. See No. 13, above.

16. — *Covenant to settle after-acquired property—Construction—Life interest—Annuity.*

A covenant in general terms to settle husband's or wife's after-acquired property does not include a life interest or an annuity, in the absence of any indication in the settlement of a specific intention to include such interests.

Accordingly, where a marriage settlement contained a covenant that all real and personal property to which the wife should during her coverture become entitled, whether in possession, remainder, or otherwise, should be transferred to the trustees of the settlement upon trust for sale and conversion and to hold the proceeds upon the trusts of the settlement:

Held, that an annuity acquired by the wife during her coverture was not caught by the covenant.

White v. Briggs, (1848) 22 Beav. 176, n., and

SETTLEMENT—continued.

Townshend v. Harrowby (1858) 4 Jur. (N.S.) 353, followed.

Schofield v. Spooner, (1884) 26 Ch. D. 94, distinguished. *In re DOWDING'S SETTLEMENT TRUSTS*. *GREGORY v. DOWDING - Kekewich J.*
[1904] W. N. 17; [1904] 1 Ch. 441

17. — *Covenant to settle after-acquired property—Power or property—Property subject to general power of appointment.*

A covenant for settlement of after-acquired property extends to property which is limited to such purposes as the covenantor shall appoint, and in default of appointment to him or her absolutely.

A marriage settlement contained a covenant that any property exceeding 200*l.* in value which the wife should become possessed of or entitled to should be brought into settlement. Property, exceeding 200*l.* in value, was subsequently bequeathed in trust for such purposes as she should appoint, and in default of appointment to her absolutely for her separate use. She executed deeds-poll purporting to appoint out of the property several sums of 199*l.* each to herself absolutely:—

Held, that, notwithstanding the general power of appointment, the bequeathed property was bound by the covenant, and the deeds-poll were therefore ineffectual.

Steward v. Poppleton, [1877] W. N. 29, followed.

Townshend v. Harrowby, (1858) 27 L. J. Ch. 553; 4 Jur. (N.S.) 353, distinguished. *In re O'CONNELL, MAWLE v. JAGOE*

Kekewich J. [1903] W. N. 153;
[1903] 2 Ch. 574

Note.

Not followed by *Eve J., Tremayne v. Rashleigh*, [1908] 1 Ch. 681. See No. 7, above.

18. — *Covenant to settle after-acquired property—Reversionary interest—Conversion for benefit of persons entitled in succession.*

The rule in *Howe v. Earl of Dartmouth*, (1802) 7 Ves. 137; 6 R. R. 96, does not apply in the case of a settlement by deed, and apparently only applies where there is a disposition by will of residuary personal estate given as one fund to be enjoyed by several persons in succession. *In re VAN STRAUBENZEE. BOUSTEAD v. COOPER*

Cozens-Hardy J. [1901] W. N. 181;
[1901] 2 Ch. 779

19. — *Covenant to settle after-acquired property—Scots domicile—Scots law—Jus relicte—Spes successionis—Covenant of indemnity—"Entitled to any personal property for any estate or interest whatsoever"—Husband and wife—Marriage settlement.*

A wife's mere spes successionis, such as her hope of succession to a share of her husband's personal property upon his death, under the Scots law of the jus relicte (which jus vests in the wife only upon the death of the husband), even though coupled with an indemnity by the husband in damages if the spes should be disappointed, is not an "estate or interest in personal property" coming to her "during the coverture," within the meaning of the usual

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covenant in a marriage settlement for the settlement of the wife's after-acquired property.

Decision of Buckley J. reversed. *In re SIMPSON, SIMPSON v. SIMPSON*

C. A. [1903] W. N. 191; [1904] 1 Ch. 1

20. — *Covenant to settle after-acquired property—Property purchased with accumulations of income.*

Property purchased with the savings of a wife's income under settled property is not within a covenant by her in her marriage settlement to settle property to which she may thereafter become entitled.

Finlay v. Darling, [1897] 1 Ch. 719, followed.

In re Bendy, [1895] 1 Ch. 109, not followed.

In re CLUTTERBUCK'S SETTLEMENT. BLOXAM v. CLUTTERBUCK Buckley J. [1905] 1 Ch. 200

21. — *Covenant to settle after-acquired property—"Usual" clauses—Married woman—Agreement for a settlement—Reversionary interest in personality subject to power of appointment—Exercise of power.*

By the marriage settlement of M., dated in 1854, property was settled upon trust, after the deaths of himself and his wife, for the children of the marriage as M. and his wife should jointly appoint; and in default of such appointment, as the survivor should appoint; and in default of any appointment, in trust for all the children who should attain twenty-one in equal shares. There were only two children who attained twenty-one. One of them, C., by an ante-nuptial agreement, agreed to settle "all her half or other share and interest whatsoever" in the property subject to the trusts of the original settlement. The agreement provided that the settlement should contain certain specified provisions, and generally such other agreements, clauses, and provisions as were "usually inserted in settlements of a like kind." M. and his wife, who predeceased him, made no joint appointment under the deed of 1854, but by his will, in exercise of his power, he appointed the sum of 2000*l.* to C. absolutely:—

Held, that a covenant to settle after-acquired property was not a "usual" clause in settlements of a like kind with that to be executed in accordance with the agreement for a settlement, and that the 2000*l.* was not bound by the agreement. *In re MADDY'S ESTATE. MADDY v. MADDY*

Joyce J. [1901] W. N. 160; [1901] 2 Ch. 820

22. — *Covenant to settle wife's after-acquired property—Marriage settlement—Construction—Estate tail.*

By a marriage settlement the intended husband and wife covenanted with the trustees of the settlement that if during the coverture the wife, or the husband in her right, should become seised or possessed of or entitled to any real or personal property for any estate or interest in possession, remainder or expectancy, the husband and wife and all other necessary parties would, as soon as circumstances would permit, convey, assign, settle, and assure the said real or personal estate to the trustees for the time being of the settlement:—

Held, that an estate tail to which the wife

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became entitled in remainder during the coverture was not bound by the covenant.

Hilbers v. Parkinson, (1883) 25 Ch. D. 200, followed and approved.

In re DUNSANY'S SETTLEMENT. NOTT v. DUNSANY

C. A. [1906] W. N. 51; [1906] 1 Ch. 578

Note.

This case was applied by Eve J., *In re Pearce's Settlement*, [1909] 1 Ch. 304. *See No. 8, above.*

23. — *Conversion—Real estate—Trust for conversion—Failure of objects of trust—Realty or personality—Estate duty.*

By a marriage settlement of 1845, real estates were conveyed by a settlor to trustees, subject to the prior life interests of his parents therein, to the use of the settlor for life, and, after his death, to the use of the trustee upon trust to sell and hold the proceeds for certain specified purposes for the benefit of the settlor's wife and children, with an ultimate trust for the settlor, his executors, administrators and assigns. The settlor died in 1905, without having had any issue, and all the purposes for which conversion had been directed had at this date failed. By his will the settlor had devised "his interest" in these estates to his "successor Lord G. in fee":—

Held (differing with the decision of Eve J., [1908] W. N. 57; [1908] 1 Ch. 666, on this point), that, as the trust for sale arose only after the death of the settlor, there was at that time in the events which had happened no enforceable trust, and the question of conversion or re-conversion did not arise; but (affirming the decision of Eve J. in the result, and agreeing with him on this point) that these estates devolved as realty under the testator's will, and the estate duty payable in respect of them was properly payable by Lord G.

Att.-Gen. v. Hubbuck, (1884) 13 Q. B. D. 275, and *Clarke v. Franklin*, (1858) 4 K. & J. 257, distinguished. *In re LORD GRIMTHORPE.*

BECKETT v. LORD GRIMTHORPE

C. A. [1908] W. N. 201; [1908] 2 Ch. 675

— *Conversion—Realty or personality.*

See under CONVERSION.

24. — *Die "without ever having been married"—Children—Settlement—Construction—Ultimate trust—Wife's next of kin—Weekly Notes—Citation.*

Where a settlement made on the marriage of a spinster contains trusts for her children attaining twenty-one or marrying, an ultimate trust, in default of such children, and in the event of the wife predeceasing the husband, for her statutory next of kin as if she had died intestate and "without ever having been married" *prima facie* excludes children.

Clarke v. Colls, (1861) 9 H. L. C. 601, 612, followed.

No general rule to the contrary is laid down in *Wilson v. Atkinson*, (1864) 4 D. J. & S. 455.

Emmins v. Bradford, (1880) 13 Ch. D. 493, followed; *In re Ball's Trust*, (1879) 11 Ch. D. 270, *Upton v. Brown*, (1879) 12 Ch. D. 872, *Re Watson's Trusts*, (1886) 55 L. T. 316, *Stoddart v.*

SETTLEMENT—continued.

Saville, [1894] 1 Ch. 480, and *In re Mare*, [1902] 2 Ch. 112 (see next Case), not followed on this point.

Except on points of practice, the *Weekly Notes* should only be cited as interim reports of cases during the period required for their publication in the *Law Reports*. *In re SMITH'S SETTLEMENT*. **WILKINS v. SMITH**

Swinfen Eady J. [1902] W. N. 232 ; [1903] 1 Ch. 373

Note.

This case was approved by C. A., *In re Brydone's Settlement*, [1903] 2 Ch. 84. See No. 26, below.

Adopted by C. A., *In re Brydone's Settlement*, [1903] 2 Ch. 84. See No. 26, below.

25. — "Die without having been married"—Settlement — Construction — Ultimate trusts for next of kin of wife.

By a marriage settlement a fund was settled in the events of there being no child of the marriage who, being a son, should attain the age of twenty-one, or, being a daughter, should attain that age or marry, and of the wife dying in the lifetime of the husband, upon such trusts as the wife should by will or codicil appoint, and in default of, appointment upon trust for such person or persons as under the Statute for the Distribution of Intestates' Effects should or would have been entitled to her personal estate "in case she had died intestate without having been married." The wife died intestate in the lifetime of the husband, leaving an only son who died an infant :—

Held, that the case was governed by *Wilson v. Atkinson*, (1864) 4 D. J. & S. 455 ; that in conformity with that decision the words referring to death "without having been married" must be construed as intended to exclude the husband, and not as intended to exclude a child, and that therefore on the death of the wife intestate her infant son became entitled as her sole next of kin. *In re MARE. MARE v. HOWEY*

Kekewich J. [1902] W. N. 9 ; [1902] 2 Ch. 112

Note.

Not followed on one point by Swinfen Eady J., *In re Smith's Settlement*, [1903] 1 Ch. 373. See preceding Case.

Dictum of Kekewich J. on one point disapproved of by C. A. *In re Brydone's Settlement*, [1903] 2 Ch. 84. See next Case.

26. — "Die 'without having been married'—Marriage settlement — Construction — Ultimate trust of wife's property.

Wilson v. Atkinson, (1864) 4 D. J. & S. 455, must not be taken to have laid down as a general rule that, in the ultimate trust of the wife's property contained in a marriage settlement for the wife's statutory next of kin as if she had died intestate and "without having been married," the words must always be construed so as not to exclude issue of the wife.

The view of *Wilson v. Atkinson* expressed by Jessel M.R. in *Emmins v. Bradford*, (1880) 13 Ch. D. 493, and by Swinfen Eady J. in *In re Smith's Settlement*, [1903] 1 Ch. 373, adopted, and the contrary view expressed by Fry J. in

SETTLEMENT—continued.

Upton v. Brown, (1879) 12 Ch. D. 872, by Chitty J. in *Stoddart v. Saville*, [1894] 1 Ch. 480, and by Kekewich J. in *In re Mare*, [1902] 2 Ch. 112, disapproved.

The words in question ought *prima facie* to be construed according to their natural meaning, which would exclude issue of the wife, unless there be something in the context or in the circumstances of the case which shews that the words were not intended to bear that meaning.

By a settlement made on the marriage of a spinster a fund belonging to her was vested in trustees, upon trust to pay the income to her during the joint lives of herself and her husband, and after the death of either of them to pay the income to the survivor during his or her life, and after the death of the survivor to hold the fund in trust for the child or children of the marriage as the husband and wife should by deed jointly appoint, and in default of appointment as the survivor should by deed or will appoint, and in default of appointment in trust for the children, of the marriage equally who being sons should attain twenty-one, or being daughters should attain twenty-one or marry. If there should be no child, who being a son should attain twenty-one, or being a daughter should attain that age or marry, then, without prejudice to the prior trusts, if the wife should die before the husband, the trustees were, after his death and such default or failure of children, to hold the fund upon such trusts as the wife should by will appoint, and in default of appointment upon trust for the persons who would have been entitled thereto as her statutory next of kin at her death "if she had died possessed thereof intestate and without having been married."

The marriage took place in 1870. The wife died in 1871, intestate, leaving twin infant children, who both died a few months after their mother. In 1901 the husband died. No appointment had been made under the powers contained in the settlement :—

Held, that the sole statutory next of kin of the wife at the time of her death (excluding the infant children) was entitled to the fund.

Decision of Kekewich J. reversed. *In re BRYDONE'S SETTLEMENT. COBB v. BLACKBURN*
C. A. [1903] W. N. 81 ; [1903] 2 Ch. 84

— Disentailing assurance—Protector of settlement—Void trust for accumulation.
See **DISENTAILING ASSURANCE. 2.**

— Disentailing assurance of money not yet ascertained—Real estate limited in strict settlement.
See **FINES AND RECOVERIES. 2.**

— Disentailing deed—Estates "in defeasance of" estate tail.
See **FINES AND RECOVERIES. 1.**

--- Divorce—Settlements—Practice.
See under **DIVORCE—Settlements.**

— Domicil—Personal property—Power of appointment—Will.
See **CONFLICT OF LAWS. 7.**

SETTLEMENT—continued.

27.—“*Eldest son*”—*Portions for younger children resting at twenty-one—Period of Distribution postponed—Accelerating Period of Distribution—Younger son afterwards becoming eldest son.*

A testator by his will settled real estates on his daughter for life with remainder to her first and other sons successively in tail male with remainders over, and with power for her, on her marriage, by deed to limit a life estate to her husband and to charge 6000*l.* on the estates as portions for her younger children, to be payable at such times or time and in such manner as she should by deed appoint, and in default of appointment to be divided equally amongst such younger children to become vested interests in sons at twenty-one and in daughters at twenty-one or marriage.

In 1845 the daughter married, and by her marriage settlement a life estate was given to the husband and a term of years was limited upon trusts, in the events which happened, after the death of the survivor of the husband and wife to raise the portions to vest in and be payable to younger sons at twenty-one and daughters at that age or marriage, but payment to be postponed until the death of the survivor of the husband and wife, unless the husband should signify in writing that the same should be sooner paid. There were three children, two sons and a daughter, all of whom attained twenty-one before 1882, when the mother died. In 1897, W., the younger son, mortgaged his portion (3000*l.*), the father joining in the mortgage deed to signify that the sum should be raisable immediately. In 1900, W., on the death of his elder brother without issue, became the eldest son, and in 1905, on the death of the father, succeeded to the estates as tenant in tail, and afterwards died without issue. The question then arose whether W.'s estate was entitled to have the 3000*l.* raised and paid:—

Held, that upon the construction of the will and settlement and in the events which happened the wife's power of appointment among younger children had not been exercised in favour of W. and that his estate was not entitled to the 3000*l.*

Decision of Neville J., [1909] W. N. 36; [1909] 1 Ch. 534, reversed. *In re STAWELL'S TRUSTS. POOLE v. RIVERSDALE - C. A.* [1909] W. N. 124; [1909] 2 Ch. 239

— Estate duty.

See under REVENUE—Estate Duty.

— Estate duty—Direction to pay.

See under WILL—Testamentary Expenses.

— Estate tail—Disentailing assurance.

See under DISENTAILING ASSURANCE.

28.—*Estate tail—Disentailing assurance—Protector—Three persons appointed by settlor—Death of two—Power to appoint new protector—Power not exercised—Power of surviving protector—Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74), ss. 22, 32.*

Three protectors of a settlement were appointed by the settlor under the Fines and

SETTLEMENT—continued.

Recoveries Act, 1833, with a provision for filling up vacancies. Two of the protectors died, and the vacancies were not filled up:—

Held, that since, upon the true construction of the settlement, it was not clear that the settlor intended to exclude survivorship, the surviving protector had power to exercise the office and to give a good title, the decision in *Bell v. Holthy*, (1873) L. R. 15 Eq. 178, having been followed for so many years.

Decision of the C. A., *In re Bayley-Worthington and Cohen's Contract*, [1908] 1 Ch. 26, affirmed. *COHEN v. BAYLEY-WORTHINGTON*

H. L. (E.), [1908] W. N. 35; [1908] A. C. 97

Note.

See In re Bayley-Worthington and Cohen's Contract, Parker J., [1909] 1 Ch. 648. *See under Vendor and Purchaser—Interest.*

— Heirlooms.

See under HEIRLOOMS.

29.—*Illegitimate children—Class gift—After-born children—Child en ventre sa mère at date of settlement—Construction of settlement.*

By a post-nuptial settlement a fund belonging to the wife was settled as to one third upon trust to pay the income to her daughter E., therein described as the wife of J. K., for life, for her separate use, independently of J. K. or any future husband, and after her death in trust for the children of E. who being sons should attain twenty-one or being daughters should attain that age or marry in equal shares.

A year before the settlement E. went through the ceremony of marriage with J. K., who had been her deceased sister's husband, and at the date of the settlement she was enceinte with a child, who was born a month afterwards and attained twenty-one, and she died without ever having been lawfully married:—

Held, that the child was entitled to participate under the settlement.

In re Shaw, [1894] 2 Ch. 573, overruled as being inconsistent with *Hill v. Crook*, (1873) L. R. 6 H. L. 265, and *Crook v. Hill*, (1876) 3 Ch. D. 773. *EBBERN v. FOWLER*

C. A. [1909] W. N. 73; [1909] 1 Ch. 578

30.—*Insurance, Life—Covenant for payment to trustees—Policies subsequently effected by settlor for benefit of wife and children—Satisfaction.*

By a marriage settlement in 1864 the settlor covenanted with the trustees for the payment to them in his lifetime, or within six months after his decease, of a sum of 2000*l.*, to be held in trust for the wife for life, and after her death for the settlor for life, and after the decease of the survivor for the children of the marriage and of a former marriage as the husband and wife should jointly appoint, and in default of appointment for the children of both marriages, sons at twenty-one and daughters at twenty-one or marriage. In Jan., 1873, the settlor effected two policies on his own life, each for 1000*l.*, under the provisions of s. 10 of the Married Women's Property Act, 1870 (33 & 34 Vict. c. 93), each policy being expressed to be “for the benefit of his wife and

SETTLEMENT—continued.

children." At his death in 1902 the covenant remained unperformed :—

Held, that, having regard to the difference between the provisions under the settlement and under the policies, it was impossible to hold that the settlor, when he effected the policies, intended that the policy moneys should be taken in substitution for the benefits under the settlement, and that therefore the provision which the settlor made by the policies was not by way of satisfaction of the covenant. *CARTWRIGHT v. CARTWRIGHT* - *Kekewich J.* [1903] **W. N. 120** ; [1903] **2 Ch. 306**

31. — Investment—Proceeds of realization of insufficient security—Tenant for life and remainderman—Apportionment.

Funds subject to the trusts of a settlement comprised a mortgage security which, pursuant to the trusts, was transferred to the trustees. The interest was irregularly paid, and ultimately the security was realized at a considerable loss :—

Held, that the sum realized ought to be apportioned between the tenant for life and remaindermen under the settlement in proportion to the amounts due at the date when it was recovered in respect of arrears of interest and in respect of principal.

The principle of *In re Moore*, (1885) 54 L. J. (Ch.) 432 ; 33 W. R. 447, preferred to that of *In re Foster*, (1890) 45 Ch. D. 629. *In re ALSTON. ALSTON v. HOUSTON* - *Kekewich J.* [1901] **2 Ch. 584**

Note.

Followed by C. A., *In re Atkinson*, [1904] **2 Ch. 160**. See *Settled Land—Apportionment*. I.

— Investment clause—Power to vary " securities."

See *VENDOR AND PURCHASER—Title*. 14.

32. — Jointuring—Power of—Construction—Validity—Public policy—Power to appoint jointure "to any woman whom he may marry"—Second marriage after divorce at instance of first wife.

By a deed of resettlement of family estates power was given to the second tenant for life "to appoint to any woman whom he may marry" for her life a jointure rent-charge not exceeding the yearly sum of 2500*l.* to be charged on the estates. And it was declared that the power might be exercised as often as the donee should marry. There was a proviso that the charge on the estates by way of jointure should not at any one time exceed in the whole the annual sum of 4000*l.*

In 1869 the donee married and by a settlement made on his marriage he, in exercise of the power, appointed to his wife during her life, in case she should survive him, a jointure rent-charge of 2500*l.*

In 1883 the marriage was dissolved on the wife's petition. In 1888 the donee married again, and by a post-nuptial settlement he, in exercise of the power, appointed to his second wife, during her life, in case she should survive him, a jointure rent-charge of 2500*l.*

SETTLEMENT—continued.

In 1892 the donee died. Both the wives survived him :—

Held, that the appointment of a jointure to the second wife was authorized by the power, though she could not receive more than 1500*l.* a year during the life of the first wife :—

Held also, that though the power operated to make provision for the event of a divorce of the donee from his first wife, it was not thereby rendered illegal or contrary to public policy.

Cartwright v. Cartwright, (1853) 3 D. M. & G. 982 ; *H. v. W.*, (1857) 3 K. & J. 382 ; and *Cochsedge v. Cochsedge*, (1844) 14 Sim. 244, distinguished.

Decision of Byrne J. affirmed. *LILY, DUCHESS OF MARLBOROUGH v. DUKE OF MARLBOROUGH* **C. A.** [1901] **1 Ch. 165**

— Leaseholds — Encroachment — Accretion to holding for benefit or lessor—Presumption.

See *LIMITATIONS, STATUTE OF*. 11.

— Legacy duty—Indemnity, Right to—Reversionary share—Settlement of part—Covenant for further assurance.

See *REVENUE—Legacy Duty*. 2.

33. — Limitation, Omission of words of—Equitable estate in fee—Conveyance to trustees.

By a post-nuptial settlement made in 1884 between W. C. Irwin of the one part, and trustees "whom and their executors or administrators are intended to be hereafter included in the designation of the said trustees" of the other part, it was recited that Irwin was absolutely entitled to freehold hereditaments, "which said freehold property" he was desirous to settle in favour of his wife and children. It was then witnessed that in pursuance of such desire he assigned the "said freehold hereditaments" to the trustees (without the words "heirs"), upon trust for sale and investment and to pay the income to Mrs. Irwin for life and then to the settlor for life and then for their children. The settlement contained a proviso that if any present or future trustee died or wished to retire it should be lawful for the surviving or continuing trustee or, if there should be no continuing trustee, for the retiring trustee to appoint another trustee in his place, and that the trust funds and premises should thereupon be vested in the new trustees. Amongst the settlor's freeholds were some in which he only had an equitable estate :—

Held, that by reason of the absence of words of limitation there passed to the trustees merely an estate in the settlor's equitable freeholds for the lives of the trustees named in the deed and the survivor of them. *In re IRWIN. IRWIN v. PARKES* **Buckley J.** [1904] **W. N. 153** ; [1904] **2 Ch. 752**

34. — Limitations—Equitable estate in fee—No words of inheritance—Real estate.

A limitation, in a deed, of a trust of real estate for A., without any words of inheritance, may confer the equitable fee upon him where the intention to do so is expressed or sufficiently shewn upon the face of the instrument.

By surrender and a settlement dated in 1831 copyhold hereditaments were limited in trust for

SETTLEMENT—*continued*.

M. for life, and after her death for her husband, and after the death of the survivor in trust for the children of the marriage equally as tenants in common, and in default of issue then to such uses as M. should declare by her will, with remainder to the right heirs of M. There were three children of the marriage:—

Held, that there being upon the face of the instrument sufficient indication of intention on the part of the settlor that absolute interests should be given, the three children, notwithstanding the absence of any limitation to their "heirs," were entitled as tenants in common in equal shares for equitable estates in customary fee simple.

Pugh v. Drew, (1869) 17 W. R. 988, followed. *In re Whiston's Settlement*, [1894] 1 Ch. 661, considered and distinguished. *In re TRINGHAM'S TRUST. TRINGHAM v. GREENHILL*

Joyce J. [1904] W. N. 153; [1904] 2 Ch. 487

Note.

Followed by Farwell J., *In re Oliver's Settlement*, [1905] 1 Ch. 191. *See Power of Appointment.* 6.

Referred to by C. A., *In re Thursby's Settlement Trusts*, [1910] 2 Ch. 181. *See Power of Appointment.* 28.

— Lunacy—Committee—Power of appointment among children.

See LUNACY. 21.

— Marriage—Condition—Validity—Restraint of marriage—Forfeiture—Condition subsequent.

See MARRIAGE. 4.

— Marriage contract—Conquest—Wife's acquirenda—Accumulations of income—Legitim.

See SCOTTISH LAW. 16.

— Merger—Life tenant.

See SETTLED LAND—Settlement. 1.

— Nullity of marriage—Variation of settlement—Form of order.

See DIVORCE—Nullity. 11.

35. — Mistake of fact — Misdescription — Clerical error—Tail male instead of tail general—Settlement—Construction.

By a marriage settlement made in 1886 it was provided that if the eldest son of the settlor should become entitled to W. Montgomery's real estate under his will for an estate in tail male he should be excluded from all share in the trust funds subject to the settlement. E. M. Alexander was the settlor's eldest son, and under the limitations of the will of W. Montgomery, who died in 1868, he became entitled to the testator's real estate for an estate in tail general. The trustees of the settlement took out a summons to determine whether he had lost his right to a share in the settlement funds:—

Held, that inasmuch as the intention of the settlor was clear and at the date of the settlement she must have known that if E. M. Alexander came into the testator's real estate it must be for an estate in tail general, not an estate in tail male, the insertion of the word "male" in the settlement must be treated as a misdescription, and the settlement construed as if the

SETTLEMENT—*continued*.

word were omitted; and that E. M. Alexander was excluded from sharing in the settlement moneys, without prejudice to his claims if the younger son died. *In re ALEXANDER'S SETTLEMENT. JENNINGS v. ALEXANDER*

Parker J. [1910] W. N. 154; [1910] 2 Ch. 225

— Pauper—Parish of settlement.

See under POOR LAW.

— Periodical payments—Compromise for lump sum—Apportionment.

See SETTLED LAND—Apportionment. 4.

— Post-nuptial settlement—Intention to "delay, hinder, or defraud creditors."

See FRAUDULENT CONVEYANCE. 2.

— Post-nuptial settlement—Purchaser for valuable consideration—Refraining from divorce proceedings.

See BANKRUPTCY—Settlement. 2.

36. — Power — Appointment — Perpetuity — Elections.

Under two settlements made in 1871, and another made in 1882, W. had testamentary powers of appointment over the settled funds amongst her issue, her children taking in default of appointment. She had also unsettled property of her own. All the children were born after 1871 and before 1882.

By her will W. gave both the settled and the unsettled properties to trustees upon trusts in favour of her son and her three daughters, part of the son's share being payable to him at the age of twenty-five years, and the share of each daughter being given in trust for her for life with remainder to her children:—

Held, that as the gifts to the son at twenty-five and to the grandchildren were, in respect of the property settled in 1871, void as infringing the rule against perpetuities, the children of W. were not bound to elect between what was invalidly appointed to them and the interests validly given to them by the will.

In re Oliver's Settlement, [1905] 1 Ch. 191; and *In re Beales' Settlement*, [1905] 1 Ch. 256, followed.

In re Bradshaw, [1902] 1 Ch. 436, not followed. *In re WRIGHT. WHITWORTH v. WRIGHT*

Buckley J. [1906] 2 Ch. 288

— Power of appointment.

See under POWER OF APPOINTMENT.

37. — Power of revocation—Person entitled to the "actual possession"—"Under the limitations of the settlement"—Assignment by tenant in tail of life interest in remainder—Death of tenant for life—Settlement—Construction.

Under the P. settlement the P. estates stood limited to B. for life, remainder to his first and other sons successively in tail male, remainder to P. for life, remainder to his first and other sons successively in tail male, with remainders over. During the life of B., P. executed a marriage settlement which provided that in case P. should become entitled to the actual possession or the actual receipt of the rents and profits of the P. estates under the limitations of the P. settlement it should be lawful for him to revoke

SETTLEMENT—continued.

certain trusts declared by his marriage settlement. P. subsequently assigned his life interest in the P. estates to B. On the death of B. without issue his executors and trustees went into possession of the P. estates as assignees of the life estate of P. After the death of B., P. by a deed poll purported to exercise his power of revoking the trusts of his marriage settlement:—

Held that, notwithstanding the assignment by P. of his life estate to B., P. on the death of B. became entitled to "the actual possession" of the P. estates "under the limitations of" the P. settlement, and that his power of revocation had consequently arisen and was effectually exercised. *In re PETRE'S SETTLEMENT TRUSTS.* LEGH v. PETRE. Joyce J. [1910] 1 Ch. 290

38. — *Power to appoint portions—Tenant for life—Disentailing deed—Mortgage of settled estates—Covenant for quiet enjoyment—Appointment of portions—Priority—Derogation from grant—Implied release of power.*

Under a marriage settlement made in 1832, estates stood limited in 1854 to the use of A. for life, remainder to the use of trustees for a long term of years to secure 20,000*l.* as portions for younger children of the marriage, with remainder to B. (A.'s eldest son) in tail male, with remainders over; and the settlement contained a power for A. by deed or will to appoint the further sum of 10,000*l.* as portions for younger children. In 1854 B., with A.'s consent, executed a disentailing assurance by which the estates were assured (subject to the uses and estates created by the settlement anterior to B.'s estate tail and to all powers to such precedent estates annexed) to such uses as A. and B. should by deed jointly appoint. Thereupon A. and B., in exercise of their joint power, created a mortgage over the estates; they also created a further mortgage over the estates partly by the exercise of their joint power and partly by a grant of A.'s life estate. In each case, upon the construction placed by the Court upon the mortgages, the lands were assured by the operative part subject to the power to appoint the further sum of 10,000*l.* as portions. Each mortgage contained a joint and several covenant by the mortgagors for quiet enjoyment, "and that free and clear and freely and clearly acquitted and exonerated or released" or otherwise indemnified of, from and against (inter alia) former or other gifts, leases, jointures, portions, and all other incumbrances whatsoever. A. died, having by his will charged the estates with the further sum of 10,000*l.* as portions for younger children. Questions of priority having arisen as between these further portions and the mortgages:—

Held, that the covenant for quiet enjoyment did not enlarge the operation of the security, and did not amount to a release by A. of his power to appoint further portions; and therefore that the further portions had priority over the mortgages.

Serape v. Offley, (1736) 1 Bro. P. C. 276, distinguished.

Decision of Neville J., [1909] 2 Ch. 617, affirmed. *NOTTIDGE v. DERING.* *RABAN v. DERING* C. A. [1910] W. N. 41; [1910] 1 Ch. 297

SETTLEMENT—continued.

— Protector of settlement—Trustees for accumulation—Void trust.

See DISENTAILING ASSURANCE. 2.

39. — *Rectification—Mistake—Non-execution of a power—Death of donee—Parol evidence—Marriage settlement—Statute of frauds* (29 Car. 2, c. 3), s. 4.

In an action to rectify a settlement after the death of the husband, on the ground that it did not exercise a certain power of appointment in favour of the wife, in accordance with the arrangement alleged to have been entered into prior to the marriage, the defendants pleaded the 4th section of the Statute of Frauds; they also contended that relief could not be given against a non-execution, as distinct from an imperfect execution, of a power, and particularly after the death of the donee thereof:—

Held, that parol evidence was admissible in an action to rectify a mistake in a settlement, notwithstanding the Statute of Frauds, an action of that kind not being one seeking "to charge any person upon any agreement made upon consideration of marriage" within the meaning of s. 4; that relief could be given, and that rectification in the present case did not amount to aiding the non-execution or defective execution of a power; when once the settlement was made to accord with what the Court found to have been the real bargain and intention of the parties to it, no further deed or relief was necessary. *JOHNSON v. BRAGGE.*

Cozens-Hardy J. [1901] 1 Ch. 28.

40. — *School—Trust for benefit of national school—Gift over on school board or representative body under the Education Acts being formed for the parish—Education Act, 1902* (2 Edw. 7, c. 42), ss. 7, 13.

In 1892 funds were vested in trustees to be invested by them, and the income to be paid to the trustees of the national schools at Alcester, for the purposes of education at such schools, and the carrying on the same "until a school board or other representative body under the Education Acts shall be formed for the parish of Alcester," in which event the funds were to go to increase the endowment fund, of certain almshouses. On the coming into operation of the Education Act, 1902, further payment of the income was stopped, as doubts were entertained whether the effect was to cause an event to take place on the happening of which the gift over was to take effect:—

Held that, as the Education Act, 1902, had abolished school boards and all representative educational bodies elected or constituted for educational purposes, and had transferred all the powers which would have resided in an elected body under the Education Acts to the existing county authorities, and made them the educational authorities within their areas, no school board or other representative body under the Education Acts had been formed for the parish of Alcester, that the gift over had not taken effect, and that the income was payable to the managers of the schools. *In re SMALLWOOD.* *GOTHARD v. CHAPMAN* Parker J. [1910]

1 Ch. 272

SETTLEMENT—*continued*.

— Settled land.

See under SETTLED LAND.

41. — *Settlement—Construction—Trust for wife's next of kin—Husband survivor—Time for ascertaining next of kin.*

By a marriage settlement of Dec., 1852, certain property of the intended wife was vested in trustees upon the usual trusts for the benefit of the wife for life, her husband for life, and the children of the marriage, and in default of children, and in the event of the husband being the survivor—both which events happened—then after the decease of the husband, and in default of any testamentary appointment by the wife (which also happened), "In trust for the person or persons who, under the statutes made for the distribution of intestate's personal estates, would then be entitled to the personal estate of the said" wife "in case she, having survived the said" husband, "had died possessed of the said trust money, stocks, funds, and securities, and to be paid and divided accordingly."

The wife died in June, 1891, intestate and without issue. The husband died in Nov., 1902. The wife's next of kin in 1891 consisted of a different class of persons from her next of kin in 1902, and the question now raised by the trustees of the settlement was, which of these two classes was to take :—

Held, following *Pinder v. Pinder*, (1860) 28 Beav. 44; *In re King's Settlement*. *Gibson v. Wright*, (1889) 60 L. T. 745; and *Clarke v. Hayne* (1889) 42 Ch. D. 529, that the period at which the wife's next of kin were to be ascertained was the death of the husband. *In re T. PEIRSON'S SETTLEMENT*. *CAYLEY v. DE WEND* **Byrne J. [1903] W. N. 100**

— "Settlement"—Settled Land.

See under SETTLED LAND "Settlement."

— Settlement estate duty—Testamentary expenses—Direction to pay.

See under WILL—Testamentary Expenses.

42. — *Several estates comprised in same devise—Tenant for life—Remaindermen—Interest on charges—Current rents and profits—Insufficiency—Arrears of interest—Subsequent rents—Payment off of charges.*

Apart from any question arising upon the special terms of the instrument creating the settlement, a tenant for life must keep down the interest accruing during his lifetime on all paramount incumbrances to the extent and out of the rents and profits received by him. If the current rents are insufficient to keep down the interest, subsequent rents arising during the life of the tenant for life are applicable to liquidate arrears accruing during the same life tenancy: *Revel v. Watkinson*, (1748) 1 Ves. Sen. 93; *Tracy v. Viscountess of Hereford*, (1786) 2 Bro. C. C. 128; *Caulfield v. Maguire*, (1845) 2 Jo. & Lat. 141.

Where several estates are included in the same settlement, the tenant for life is bound, out of the whole rents and profits, to keep down the interest on charges on all the estates; *Frewen v. Law Life Assurance Society*, [1896] 2 Ch. 511; *In re Hotchkys*, (1886) 32 Ch. D. 408.

SETTLEMENT—*continued*.

Upon principle, therefore, a tenant for life of several estates included in the same devise is liable, as between himself and the remaindermen, to make good arrears of interest accrued during his life tenancy out of subsequent rents received by him from any of the estates, even although the charge in respect of which the arrears have arisen has been paid off by means of a sale of part of the property. **HONYWOOD v. HONYWOOD**

Byrne J. [1902] W. N. 4; [1902] 1 Ch. 347

— Stamps—Alteration of security by subsequent deed.

See REVENUE—Stamps. 28.

— Stamp—Power of appointment—Exemption.

See REVENUE—Stamps. 22.

— Succession duty, Acceleration of—New title under appointment.

See REVENUE—Succession Duty. 1.

43. — *"Survive"—Trust for wife if she shall "survive" her "coverture"—Determination of coverture by decree for dissolution of marriage—Construction—Divorce.*

By a marriage settlement the father of the wife covenanted that his executors after his death should pay to the trustees of the settlement the sum of 10,000*l.*, which was to be held, in the event, which happened, of there being no issue of the marriage, in trust for the wife, her executors, administrators, and assigns, "if she shall survive her now intended coverture, but if she shall die during her now intended coverture" then in trust for the father, his executors, administrators, and assigns.

The marriage was dissolved by decree absolute on the petition of the husband. Both the spouses were living. The father had died :—

Held, that the words "survive her now intended coverture" could not be read as equivalent to "survive her husband," and that as the coverture had determined by the divorce the lady had "survived" the coverture, and was, therefore, absolutely entitled to the 10,000*l.* *In re CRAWFORD'S SETTLEMENT*. **COOKE v. GIBSON**

Kekewich J. [1905] 1 Ch. 11

44. — *"Survivors" read "Others"—Stipital survivorship—Settlement by deed—Construction.*

In 1836 real estate was by deed settled upon trust for the six daughters and one son of A. for their respective lives as tenants in common, with remainder as to the share of each tenant for life to his or her child or children who being a son should attain the age of twenty-one, or being a daughter should attain that age or marry, and if more than one as tenants in common in fee; provided that if any one or more of the seven tenants for life should die, without issue, or leaving issue and such issue being a son should die under the age of twenty-one, or being a daughter should die under that age without having been married, then the original as well as the accrued share of any such tenant for life should go to and be equally divided between "the survivors and survivor" of them the said seven tenants for life and their, her and his issue respectively for such estates and interests and in such shares and proportions in all respects as the original shares of the seven tenants for life

SETTLEMENT—continued.

were directed to be divided; and there was an ultimate limitation to the settlor in fee if all the seven tenants for life died without leaving issue who should live to attain twenty-one or marry as aforesaid. Four of the tenants for life died without issue. Another married and died leaving one child, who attained twenty-one and afterwards died. Another married and died leaving several children, all of whom attained twenty-one, and some of whom were still living. One tenant for life was still living:—

Held, following *Cole v. Sewell*, (1843) 4 D. & War. 1; on appeal, (1848) 2 H. L. C. 186, that the same principles applied in construing a deed and a will.

Held, also, that the words, “survivors and survivor” must be construed “others and other,” and that all the children of tenants for life who respectively attained twenty-one acquired absolute vested interests, irrespective of whether they did or did not survive deceased tenants for life or the tenant for life who was still living.

In re Bilham, [1901] 2 Ch. 169, distinguished.

Waite v. Littlewood, (1872) L. R. 8 Ch. 70, and *Lucena v. Lucena*, (1877) 7 Ch. D. 255, discussed.

In re FRIEND'S SETTLEMENT. COLE v. ALLCOT Farwell J. [1905] W. N. 159; [1906] 1 Ch. 47

— Trustees, Appointment of.

See under **TRUSTEE Appointment.**

— Trustees—Compound settlement—Appointment.

See **SETTLED LAND—Trustees. 3.**

45. — “*Trusts aforesaid*” — *Life interest to unmarried niece with reversion to children—Power to appoint life interest to surviving husband—Gifts over in default of children—Remoteness—Independent alternative trusts—Validity of ultimate trusts—Settlement—Construction.*

A testatrix, after settling a sum of money upon trusts for M. (a married niece) for life with power to appoint the income to any husband who might survive her for his life, with remainder to her children, if any, at twenty-one, settled three other sums of money upon such trusts and with such powers in favour of E., B., and J. (three unmarried nieces) and their respective husbands and children, if any, as should correspond with the preceding trusts and powers in favour of M. and her husband and children, if any. And the testatrix directed that, in case none of her said nieces should have any child who should become entitled to the said principal sums under “the trusts aforesaid,” then all the said principal sums should, subject to the preceding trusts, be held in trust for a class of persons, ascertained within due limits, in such shares, &c., as the last survivor of the four nieces should by will appoint. M. died without having had a child, and E., B., and J. all died unmarried: and B., the last survivor of them, by her will executed the power in favour of the class mentioned in the ultimate trust. On the death of B., the question arose whether the ultimate trust or gift was not void for remoteness on the ground that, if the power to appoint to husbands had been exercised, the period for ascertaining the class in the ultimate

SETTLEMENT—continued.

gift might have infringed the rule against perpetuities, because the husbands need not necessarily have been born in the lifetime of the settlor:—

Held, that the words “the trusts aforesaid” in the ultimate gift were not restricted to the previous trusts actually declared, but would include a trust created by the exercise of the power to appoint to husbands:

But, *held*, that it was a case of alternative independent gifts within the principle of *Monypenny v. Dering*, (1852) 2 D. M. & G. 145, and *Longhead v. Phelps*, 2 W. Bl. 704; and that, inasmuch as the power in favour of husbands was never exercised, the ultimate gift in the events which had happened was valid, and therefore the appointment made by B. was good. *In re BOWLES. PAGE v. PAGE* Farwell J. [1905] W. N. 21; [1905] 1 Ch. 371

Note.

This case was followed by C. A., *In re Davies and Kent's Contract*, [1910] 2 Ch. 35. See *Vendor and Purchaser—Title. 11.*

46. — *Ultimate trust in default of children of the marriage “for all and every the child and children or grandchild” of A. living at the death of the survivor of the husband and wife—Children and grandchildren of A. living at the period of distribution—Marriage settlement.*

A trust in a marriage settlement of certain stocks and securities for the benefit of the husband and wife and the children of the marriage, and in default of children (which event happened) then, upon the death of the survivor of the husband and wife, “for all and every the child and children or grandchild of A.” living at the death of the survivor of the husband and wife.

The husband survived the wife, and died in Jan., 1900. A. had thirteen children, of whom eight survived the husband and five died in his lifetime, four unmarried, and one leaving an only child:—

Held, that “or” was not to be read “and,” and, there being children of A. living at the period of distribution, no grandchild took a share. *In re COLEY. GIBSON v. GIBSON*

Byrne J. [1901] 1 Ch. 40

— Variation of settlement—Divorce—Practice.

See under **DIVORCE—Settlements.**

— Variation, Petition for—Nullity—Impotence — “Property settled.”

See **DIVORCE—Nullity. 4.**

47. — *Voluntary settlement—Assignment—Expectancy—Receipt of the property by the settlor—Power of trustees to call for transfer.*

The decision in *Meek v. Kettlewell*, (1842) 1 Hare, 464; (1843) 1 Ph. 352; 58 R. L. 137, that the voluntary assignment of an expectancy, even though under seal, will not be enforced by a Court of Equity, has not been overruled by *Kekewich v. Manning*, (1851) 1 D. M. & G. 176. *In re ELLENBOROUGH. TOWRY LAW v. BURNE Buckley J.* [1903] W. N. 18; [1903] 1 Ch. 697

— Voluntary settlement—Gift of money by bankrupt to wife—Debt due from bankrupt to wife—Right of wife to set-off.

See **BANKRUPTCY—Set-off. 2.**

SETTLEMENT—continued.

48. — Voluntary settlement — Real estate — Grant to trustee — Refusal to act — Disclaimer by grantee — Revesting of legal estate — Validity of settlement — Mortgage of part of settled property — Marshalling for payment of mortgage — Priority of *cestui que trust*.

By a voluntary settlement of 1866, real estate was granted unto and to the use of a trustee upon certain trusts; the settlement contained the usual covenant for further assurance, but no power of revocation by the settlor. In 1867, the trustee executed a deed of disclaimer, and the settlor also purported to put an end to the settlement:—

Held, that the settlement was not thereby rendered inoperative, but that the trust was imposed on the settlor, in whom, by operation of law the estate had reverted after the creation of the trust.

Jones v. Jones, [1874] W. N. 190, followed.

Statement in Preston's notes to Sheppard's Touchstone, 7th ed. p. 285, that "from the moment there is evidence of disagreement" between the grantor and grantee, "then in construction of law the grant is void ab initio, as if no grant had been made," discussed and explained.

In 1888, the settlor mortgaged part of the property comprised in the voluntary settlement; in 1899, the mortgage was paid off, and a transfer thereof taken for the benefit of the settlor's estate:—

Held, that the beneficiaries under the settlement were entitled to have the settlor's estate marshalled, and the mortgage discharged out of the unsettled portion of his assets. *MALLOTT v. WILSON* **Byrne J. [1903] 2 Ch. 494**

— Voluntary settlement—Solicitor and client—Fiduciary relation—Undue influence.

See SOLICITOR—Fiduciary Relation. 2.

— Voluntary settlement—Trustee in bankruptcy—Evidence—Recital—Admissibility.

See FRAUDULENT CONVEYANCE. 3.

— Will—Absolute gift—Gift over on a compound event—Remoteness—Intestacy.

See WILL—Absolute Gift. 3.

— Will—Construction.

See under WILL.

SETTLEMENT ESTATE DUTY.

See under REVENUE—Estate Duty.

SETTLEMENT (POOR LAW).

See under POOR LAW.

SEVERANCE — Class — Married woman — Restraint on anticipation.

See HUSBAND AND WIFE—Restraint on Anticipation. 5.

— Lands Clauses Act—Compensation—Site of a church.

See LANDS CLAUSES ACTS. 8.

— School board—United district—Adjustment of property and liabilities.

See SCHOOLS. 20.

— Support, Right of—Dock—Easement of necessity—Enjoyment *clum*.

See SUPPORT. 1.

SEVERANCE—continued.

— Tenements—Precarious easement—Implied grant.

See under WATER.

SEWAGE—Nuisance — Execution — Enforcing order against corporation — Writ of sequestration.

See SEQUESTRATION. 2.

— Sanitary authority—Sewage flowing into river Thames—Local government.

See THAMES, RIVER. 2.

SEWAGE FARM—Poor rate—Assessment.

See RATES. 41.

— Rates.

See under RATES.

SEWAGE WORKS—Natural stream—Pollution

— Injunction—Discharge of injunction on subsequent facts.

See STREAM. 2.

SEWER GAS—Disease.

— "Enteritis"—Workmen's compensation.

See MASTER AND SERVANT—Compensation. 60.

SEWERS.

NOTE.—The Cases under this heading relate only to places outside the County of London. As to London

See under LONDON—Sewers.

1. — *Adjoining houses—Single private drain—Entry by local authority upon ground of one house—Examination of drain—Notice to occupier of adjoining house—Recovery of apportioned part of expenses of relaying drain—Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 41.*

The drainage of two adjoining houses was carried into a public sewer by a single private drain. The sanitary inspector of the appellants (the local authority), on the application of the occupier of one of the houses, applied the smoke test to the drains of that house and found that something was wrong. The appellants subsequently served a notice on the respondent, the owner of the adjoining house, requiring him, in conjunction with the owners of the house where the smoke test had been applied, to take up and relay the drain within one month. The work not having been done, the appellants did it and apportioned the costs in respect of the respondent's house at 23*l.* 9*s.* 2*d.* The appellants had given no notice under the first part of s. 41 of the Public Health Act, 1875, to the occupier of the respondent's house of their intention to enter the house where they applied the smoke test and examine the drain, and no evidence of emergency was given. The respondent did not pay the 23*l.* 9*s.* 2*d.*

On a complaint preferred by the appellants against the respondent that the 23*l.* 9*s.* 2*d.* had not been paid:—

Held, that twenty-four hours' notice to the occupier of the respondent's house of the intention of the appellants to enter the house where the smoke test was applied and examine the drain was not a condition precedent to the right of the appellants to recover the apportioned

SEWERS—continued.

expenses from the respondent, inasmuch as the object of the twenty-four hours' notice required by the first part of s. 41 of the Public Health Act, 1875, is to enable the surveyor to enter when his entry, but for that notice, would be a trespass. The notice is not to enable the owner, who might ultimately be liable, to come and see the result of opening the drain, inasmuch as it is not to the owner it has to be given, but to the occupier.

BROMLEY CORPORATION v. CHESHIRE

Div. Ct. [1908] 1 K. B. 680

— Building—Drainage of houses on low-lying land.

See LONDON—Buildings. 3.

— Compensation—Damage caused by exercise of statutory powers—Public health.

See COMPENSATION. 2.

2. — *Connecting pipe—Local government—Sewer passing through private ground—Drain—Right to connect—Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 21.*

The plt. was the owner of a house and garden adjoining a passage which was the property of the defts. Beneath the surface of the passage was a pipe which, by reason of the fact that it received the drainage of more than one building was a sewer within the meaning of the Public Health Act, 1875. The plt., for the purpose of draining his house, carried a pipe through his garden, and the local authority, at his request, placed a pipe in the soil of the passage to connect the plt.'s drain with the sewer. The defts. removed the connecting pipe from the passage, and the plt. sued them for trespass in so doing :—

Held that, although the plt. was entitled under s. 21 of the Public Health Act, 1875, to connect his drains with the sewers of the local authority, neither the plt. nor the local authority had any right to place the connecting pipe in the defts.' land, and that the action, therefore, failed.

WOOD v. EALING TENANTS, LD. — Div. Ct. [1907] 2 K. B. 390

— Construction of sewers—Judgment for arrears of rates—Retrospective rate—Mandamus—Discretion.

See RATES. 42.

— Covenant — “Impositions” — Three years' tenancy.

See LANDLORD AND TENANT. 60.

3. — *Disrepair—Liability of local authority for accident arising from—Negligence.*

A local sanitary authority, in whom a sewer under a highway is vested by the Public Health Act, 1875, is not in the absence of negligence liable for an accident caused to a person passing along the highway, by reason of the sewer having got out of repair.

Borough of Bathurst v. Macpherson, (1879) 4 App. Cas. 256, and dicta in Municipal Council of Sydney v. Bourke, [1895] A. C. 433, explained.

A sewer was constructed with due care and of proper materials by private persons, under a high road. Subsequently the sewer became vested in the defts. as the local sanitary authority by virtue of s. 13 of the Public Health Act, 1875; and by ss. 15 and 19 the duty of repairing it and keeping it so as not to be a nuisance was

SEWERS—continued.

imposed upon them. Owing to the mortar in one of the joints of the sewer having been worked away by rats a cavity was formed below the surface of the road; but the existence of that cavity was not known to and could not by the exercise of reasonable care have been discovered by the defts. The plt.'s horse, whilst passing along the road, broke through the crust of the road into the cavity, and was injured :—

Held, that the defts. were not liable. **LAMBERT v. LOWESTOFT CORPORATION**

Lord Alverstone C. J. [1901] 1 K. B. 590

4. — *Drain—Drainage of two houses by combined operation—Order of local authority—Metropolis Management Act, 1855 (18 & 19 Vict. c. 120), ss. 76, 250.*

In 1889 the owner of a plot of ground within the metropolitan district, on which he was about to erect a number of houses, sent to the local authority, the vestry, a plan which shewed that it was proposed to drain the houses in pairs, one pair being two houses numbered 29 and 27, but the plan did not shew any details as to the course or position of the particular drains of each house. The plan was duly passed and approved by a resolution of the vestry. In constructing the drains of Nos. 29 and 27 a connection (not shewn on the plan) was made between two gulleys at the backs of the houses, the consequence of which was that waste water from a sink in No. 27 was carried away through the pipe which drained No. 29. There was evidence that the drains of these two houses had been constructed under the supervision of a surveyor of the vestry.

By a voluntary conveyance, in the nature of a deed of family arrangement, the beneficial interest in the leases of the two houses passed from the building owner to his son, and was by him conveyed to the trustees of his marriage settlement.

A nuisance having arisen by reason of the defective condition of the drain of No. 29, it was contended by the plt.s., the executors of the building owner and the trustees of the son's marriage settlement, that the drain of No. 29 was a sewer repairable by the defts., the successors of the vestry :—

Held, that the resolution of the vestry approving the plan was an order for draining the two houses by a combined operation; that it might be inferred, from the fact the plan shewed no details of the drainage, that these details were to be left to be approved by the surveyor responsible for the supervision of the work; and that the proper inference to be drawn from the evidence was that the connection between the gully of No. 27 and the drain of No. 29 had been so approved, and that the drain of No. 29 was, therefore, not a sewer; but *held* also, that if the connection had been wrongfully made, the plt.s., being the representatives of the original wrong-doer, and not being purchasers for value without notice, were estopped as against the defts. from alleging that the drain of No. 29 was a sewer.

Greater London Property Co. v. Foot, [1899] 1 Q. B. 972, and Gorringe v. Shoreditch Borough Council, (1902) 86 L. T. 592, distinguished.

SEWERS—continued.

Silles v. Fulham Borough Council, [1903] 1 K. B. 829, discussed. *HEAVER v. FULHAM BOROUGH COUNCIL*

Channell J. [1904] 2 K. B. 383

5. — “*Drain*”—*Semi-detached houses* “*One building only*”—*Local government—Public Health Act, 1875* (38 & 39 Vict. c. 55), s. 4.

By s. 4 of the Public Health Act, 1875, “‘*Drain*’ means any drain of and used for the drainage of one building only.” No general rule can be laid down as to whether a pair of semi-detached houses are “one building only” within the meaning of the above section or not, even though they be under one continuous roof. It is in each case a question of fact. *HUMPHERY v. YOUNG*

Div. Ct. [1902] W. N. 203; [1903] 1 K. B. 44

6. — *Drain* — “*Single private drain*” — *Pipe receiving drainage from sewer—Connection with public sewer—Local government—Public Health Act, 1875* (38 & 39 Vict. c. 55), ss. 4, 41 — *Public Health Acts Amendment Act, 1890* (53 & 54 Vict. c. 59), s. 19.

Several houses of different owners stood in a row and were drained in pairs; each house of each pair was drained by a separate pipe into a pipe common to both houses, and each of these common pipes discharged into a line of pipes laid in private ground which discharged into a public sewer. The “common pipes” were admittedly “sewers” within the Public Health Act, 1875 :—

Held, that the “line of pipes” which discharged into the public sewer was not “a single private drain” within the meaning of s. 19 of the Public Health Acts Amendment Act, 1890, and therefore that proceedings could not be taken under that section and s. 41 of the Public Health Act, 1875.

Decision of the C. A., [1907] W. N. 3; [1907] 1 K. B. 182, affirmed on the above ground, and not upon the ground upon which that Court decided. *WOOD GREEN URBAN COUNCIL v. JOSEPH*

H. L. (E.) [1908] W. N. 186; [1908] A. C. 419

— *Drain—Vesting in local authority—Title—Defect.*

See VENDOR AND PURCHASER—Title.

9.

— *Drain—Water flowing from highway—Presumption of legal origin.*

See HIGHWAY. 8.

7. — *Drain or sewer—Drain-pipe draining several houses belonging to the same owner—Sewer draining into single private drain—Local government—Public Health Act, 1875* (38 & 39 Vict. c. 55), ss. 4, 41 — *Public Health Acts Amendment Act, 1890* (53 & 54 Vict. c. 59), s. 19.

A drain-pipe receiving the drainage of several houses, the property of one owner, does not cease to be a sewer within the definition in s. 4 of the Public Health Act, 1875, because it is connected with a single private drain, to which s. 19 of the Public Health Acts Amendment Act, 1890, is applicable, and by means of which the drainage

SEWERS—continued.

of the houses is ultimately conveyed to a public sewer.

Judgment of the Div. Ct. [1904] 2 K. B. 359, affirmed. *JACKSON v. WIMBLEDON URBAN DISTRICT COUNCIL.*

C. A. [1905] W. N. 73; [1905] 2 K. B. 27

8. — *Drain or sewer—Notice to abate nuisance—Local government—Public Health Act, 1875* (38 & 39 Vict. c. 55), ss. 4, 94, 95.

The deft. had for some years discharged the sewage from his house into a pipe running alongside a country road, which pipe had been laid down by an adjoining owner for his own protection for the purpose of carrying off the surface water from the highway and so preventing it from flowing on to his premises. No water other than the rain water from the highway and the sewage from the deft.'s house passed along the pipe. It had never been repaired by the local authority or treated by them as a sewer. A breakage having occurred in the pipe it became stopped up, and the deft.'s sewage collecting above the stoppage caused a nuisance. The local authority took proceedings against the deft. under s. 94 of the Public Health Act, 1875, for the purpose of compelling him, as “the person by whose act, default, or sufferance the nuisance arose,” to abate it :—

Held, (1.) That it was no defence for the deft. upon those proceedings to shew that the pipe was a sewer which the local authority were liable to repair. (2.) That under the circumstances it was not a sewer. *WINCANTON RURAL DISTRICT COUNCIL v. PARSONS*

Div. Ct. [1905] W. N. 76; [1905] 2 K. B. 34

9. — *Drain or sewer—Pipe draining several houses belonging to different owners—Single private drain—Nuisance existing on land of one owner—Notice to abate nuisance—Notice to other owners—Apportionment of expenses—Local government—Public Health Act, 1875* (38 & 39 Vict. c. 55), s. 4 — *Public Health Acts Amendment Act, 1890* (53 & 54 Vict. c. 59), s. 19.

A drain-pipe passing through private property, and receiving and conveying to a public sewer the drainage of several houses belonging to different owners, is a “single private drain” within the meaning of s. 19 of the Public Health Act, 1890. A notice to the owner of one of the houses on whose land a nuisance, arising from the defective state of such a drain-pipe, is found to exist, to abate the same and to execute certain works for that purpose, is a sufficient notice to throw upon him the duty of abating the nuisance, and, upon his default, to entitle the local authority to recover from him the expenses incurred by them in so doing. In such a case no notice need be given to the other owners, and the provisions of s. 19 of the Act as to apportionment of the expenses incurred by the local authority in executing the necessary works are not applicable.

Bradford v. Eastbourne Corporation, [1896] 2 Q. B. 205, approved.

Thompson v. Eccles Corporation, [1904] 2 K. B. 1, and *Huedicke v. Friern Barnet Urban Council*, [1904] 2 K. B. 807, overruled.

Appeals from the judgment of a Div. Ct., reported [1904] 2 K. B. 1, and from the judgment

SEWERS—continued.

of Channell J., reported [1904] 2 K. B. 807, allowed. *THOMPSON v. ECCLES CORPORATION*. *HAE DICKE v. FRIERN BARNET URBAN COUNCIL* C. A. [1904] W. N. 189; [1905] 1 K. B. 110

— Drain or sewer—Nuisance—"Intimation" notice—Service on person not liable—Compulsion—Recovery of expense of abating nuisance.
See LONDON—Sewers. 1.

10. — *Drain vested before 1894 in highway authority not being a local authority—Public Health Act, 1875 (38 & 39 Vict. c. 35), s. 4—Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 25.*

Where before the year 1894 a drain was vested in a highway authority which was not also a sanitary authority, and was consequently not a sewer within the definition in s. 4 of the Public Health Act, 1875, it did not upon the passing of the Local Government Act, 1894, become a sewer by reason of its becoming vested under s. 25 of that Act in a district council which was both a highway authority and a sanitary authority. *WILLIAMSON v. DURHAM RURAL COUNCIL* Div. Ct. [1906] W. N. 102; [1906] 2 K. B. 65

— Drainage, Preservation of—Restriction of pasture on road to sheep.
See PRESCRIPTION. 2.

11. — *Facilities for carrying off liquids from factories—Local government—"Sewers"—Rivers Pollution Prevention Act, 1876 (39 & 40 Vict. c. 75), s. 7.*

The facilities required by s. 7 of the Rivers Pollution Prevention Act, 1876, to be given for carrying liquids from factories or manufacturing processes into sewers under the control of a local authority cannot be enforced where, though the pipes are capable of carrying the liquids, the works for purification are not sufficient to deal with the liquids in addition to the sewage within the district. The word "sewers" in the second proviso of s. 7 includes not merely the pipes, but the works for purification of the sewage.

Decision of the C. A., [1908] W. N. 180; [1908] 2 K. B. 780, affirmed.

BROOK v. MELTHAM URBAN DISTRICT COUNCIL H. L. (E.) [1909] W. N. 123; [1909] A. C. 438

— Income tax—"Hereditament"—"Capable of actual occupation."
See REVENUE—Income Tax. 35.

— Insanitary house—Claim by wife and children for damages for typhoid fever caused by defective drains.
See LANDLORD AND TENANT. 43.

— Land drainage.
See under LAND DRAINAGE.

— Landlord and tenant—Collateral agreement—Parol warranty that drains are in order.
See LANDLORD AND TENANT. 31.

— London.
See under LONDON—Sewers.

SEWERS—continued.

— London—Buildings—Persons altering drains
—By-laws—Liability of agents carrying out work.

See LONDON—Buildings. 4.

— Natural stream—Pollution—Sewage works—"Deterioration of the water"—Injunction—Local sanitary authority.
See STREAM. 2.

— Negligence—Liability of municipal authorities.
See VICTORIA. 8.

12. — *New house, Effectual drainage of—Local government—Drainage—Separate drains for sewage and surface water—Discretion of urban council—Public Health Act, (1875) (38 & 39 Vict. c. 55), s. 25.*

In deciding what is "necessary for the effectual drainage" of a new house, under s. 25 of the Public Health Act, 1875, an urban council must consider only what is necessary for the particular house in question; they cannot take into consideration what is desirable having regard to the disposal of the sewage of the district generally, and upon that ground require separate drains for sewage and for surface water. *MATTHEWS v. STRACHAN*

Div. Ct. [1901] 2 K. B. 540

— New street—Metropolis Management Acts.
See under LONDON—Streets.

13. — *Notice—Local government—Burgh sewers—Notice in writing to persons interested—Public Health (Scotland) Act, 1897 (60 & 61 Vict. c. 38), s. 103—Burgh Police (Scotland) Act, 1892 (55 & 56 Vict. c. 55), s. 217—Burgh Sewerage, Drainage and Water Supply (Scotland) Act, 1901 (1 Edw. 7, c. 24), s. 5.*

By the Burgh Sewerage, Drainage and Water Supply (Scotland) Act, 1901, s. 5, "The powers and duties of the town council of any burgh, as the authority under the principal Act" (the Burgh Police Act of 1892), "with reference to sewerage and drainage and water supply shall extend to the whole area of the burgh as existing for the purposes of the Public Health (Scotland) Act, 1897, and the town council of any burgh as the authority under the principal Act, in addition to the powers conferred upon them by the principal Act or any other Act, shall with reference to sewerage and drainage or water supply within such area have the same rights, powers and privileges as are conferred by the Public Health (Scotland) Act, 1897, upon local authorities under that Act in districts other than burghs . . . and in so far as necessary for giving effect to this enactment the last-mentioned Act and the Acts and parts of Acts incorporated therein are subject to the necessary modifications incorporated with the principal Act." By s. 217 of the Burgh Police (Scotland) Act, 1892, nothing in the Act "shall be construed to authorize the commissioners contrary to any private right to use, injure, or interfere with any sewers . . . or interfere with any water course . . . in which the owner or occupier of any land, mills . . . shall have right or interest, without the consent in writing of the person legally entitled to grant the same." By s. 103

SEWERS—continued.

of the Public Health (Scotland) Act, 1897, "The local authority shall have power to construct . . . such sewers as they may think necessary . . . and may carry such sewers . . . after reasonable notice in writing (if upon the report of a surveyor it should appear to be necessary) into, through, or under any lands whatsoever."

A local authority having laid sewer pipes upon the surface of the bed of a stream, certain proprietors entitled to notice, who considered that they were prejudiced by the pipes being on the surface instead of under the surface, raised an action in which they demanded the removal of the pipes, on the ground (inter alia) that the notice required by s. 217 of the Act of 1892 had not been given:—

Held (affirming the decision of the Ct. of Sess., [1908] S. C. 127), that, under the Act of 1901, a burgh, in the construction of sewers, can proceed either under the Act of 1892 or the Act of 1897, and that, the local authority having decided to proceed under the Act of 1897, they were not bound to obtain the consent of the proprietors as required by the Act of 1892. **MONTGOMERIE & Co. v. PROVOST AND MAGISTRATES OF HADDINGTON - H. L. (Sc.) [1908] W. N. 54; [1908] A. C. 170**

— Nuisance—Pollution of stream—Injunction—Damages—Continuance of injury.
See RIVER. 1.

— Nuisance from sewage—Oyster ponds on foreshore—Ancient user.
See FISHERY. 5.

— Nuisance in respect of drains—Order to abate—Necessity for signature by two justices.
See NUISANCE. 9.

— Outgoings—Tenancy for three years—Liability of tenant.
See LANDLORD AND TENANT. 60.

— "Outgoings"—Reconstruction of drain—Liability.
See LANDLORD AND TENANT. 61.

— Pollution of River Thames by sewage—Duties of county council.
See LONDON—Sewers. 5.

14. — Premises without district—Connection made by local authority—Subsequent right to impose terms of continuance of connection—New water closet—Internal connection with existing drain—Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 21, 22.

Where a local authority for valuable consideration permit an owner of premises without their district to connect the drains of those premises with their sewers, or where they themselves make the connection, without imposing terms upon the owner under s. 22 of the Public Health Act, 1875, they cannot afterwards impose terms for the continuance of that connection.

Att.-Gen. v. Clerkenwell Vestry [1891] 3 Ch. 527, and Brown v. Dunstable Corporation, [1899] 2 Ch. 378, applied.

A residential property, of which the dwelling-house was without the district of the plt.

SEWERS—continued.

authority, but the lodge was within the district, had a system of drainage whereby the drainage from the house went into a cesspool with an overflow drain leading to a pond, the cesspool and pond being both within the plts.' district, and the drainage from the lodge joined the overflow drain before it reached the pond. The pond having become a nuisance, the owner, at the instance of the plts., connected the overflow drain by a 9-inch pipe direct with a storm-water drain in the plts.' district. The plts., without consulting the owner, subsequently connected the storm-water drain with a soil sewer, and ultimately connected the 9-inch pipe direct with the sewer. The deft. having bought the property, the plts. required him to agree terms under s. 22 of the Public Health Act, 1875, for the continuance of this connection or provide other means for the disposal of his sewage, and claimed an injunction to restrain him from permitting the drainage of that part of his property which was without their district to discharge into their sewers until terms were settled:—

Held that, the connection having been already made, s. 22 no longer applied, and that the plts.' claim failed.

Per Cozens-Hardy M.R. and Farwell L.J.: *Semble*, inasmuch as the cesspool was within the district, the sewage in question was not foreign sewage, and the owner was entitled to connect with the plts.' sewers under s. 21.

Per Swinfen Eady J.: The internal connection of a new water closet with an existing drain is not a new connection with the sewer within s. 22.

Dictum of Byrne J. in *Graham v. Wroughton*, [1901] 2 Ch. 451, 454, not followed. **EAST BARNET VALLEY URBAN DISTRICT COUNCIL v. STALLARD C. A. [1909] W. N. 208; [1909] 2 Ch. 555**

— Prescription—Drain—Acquisition of easement by public—Highway.
See PRESCRIPTION. 1.

15. — Prescriptive right of drainage—Trade effluent—Local Authority—Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 21—Rivers Pollution Prevention Act (1876), 39 & 40 Vict. c. 75), s. 7.

In the year 1885 a local authority connected with one of their sewers a drain which carried the effluent from the plts.' manufactory, and this connection remained, and by means of it the effluent continued to flow into the sewer until in 1899 the local authority threatened to cut off the connection:—

Held, that under s. 21 of the Public Health Act, 1875, the plts. had an absolute right to discharge their effluent into the sewer, and that if that right had been qualified by s. 7 of the Rivers Pollution Prevention Act, 1876, the facilities given by the local authority to the plts. for carrying their effluent into the sewer ought not to be withdrawn, unless either of the provisos to s. 7 applied, namely, unless it could be shewn that the effluent would prejudicially affect the sewers or the disposal of the sewage matter conveyed along them, or would be injurious in a sanitary point of view, or that the sewers of the

SEWERS—continued.

local authority were only sufficient for the requirements of their district :—

Held, therefore, that, none of these things having been shewn, the local authority must be restrained from cutting off the connection between the plts.' drain and the sewer.

Decision of Byrne J., [1900] 1 Ch. 781, affirmed. *EASTWOOD BROTHERS, LD. v. HONLEY URBAN COUNCIL* C. A. [1901] W. N. 38; [1901] 1 Ch. 645

16. — *Pumping station — Power to carry through or under street or lands—Compensation or purchase—Disposal of sewage—"Sewer"—Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 4, 15, 16, 27.*

An engine-house with pump and machinery, erected partly above and partly below the level of the ground, for lifting and forcing along a rising main the sewage of a district to a common outfall for treatment, is not a "sewer" within the meaning of s. 16 of the Public Health Act, 1875, which a local authority is thereby empowered to carry through or under any street, or any land within its district on making compensation to the owner, but is a work for the purpose of "receiving or otherwise disposing of sewage" within s. 27, for which the necessary land must be purchased or leased. *KING'S COLLEGE, CAMBRIDGE v. UXBRIDGE RURAL DISTRICT COUNCIL* — Byrne J. [1901] W. N. 176; [1901] 2 Ch. 768

— Rain water—Drain receiving drainage from more than one building.
See LONDON—Sewers. 3.

— Rate—Gas mains liable to be rated as unserved property—Law of Victoria.
See VICTORIA. 9.

— Rateability—Underground sewers—Diminution in value of surface.
See RATES. 43.

— Rates — Sewers, Construction of — "Special expenses"—Judgment for arrears of rates—Retrospective rate—Mandamus—Judicial discretion.
See RATES. 42.

— River, Pollution of—Person who causes polluting fluid to flow into stream.
See RIVER. 2.

17. — "Sewer" — "Drain" — "Building" — *Semi-detached houses—Effect of laying sewer in another person's land—Local government—Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 4, 13.*

The plt. and the deft. were the owners respectively of two plots of land adjoining a road in which there was a public sewer vested in the local authority. Each of them was also the owner of one-half of the road so far as it ran with his plot.

The deft. first acquired his plot, and built thereon a pair of semi-detached houses. The drains from each of the houses joined at a point on the deft.'s land, and from that point the sewage was carried by one culvert into the public sewer. Part of the culvert was carried through the portion of the road which then belonged to the plt.'s predecessor in title, and was constructed

SEWERS—continued.

under circumstances which made its construction a trespass. The plt., having purchased his plot, and the adjoining half of the road, required the deft. to remove the portion of the culvert which lay under the latter :—

Held, (1.) that the deft.'s pair of semi-detached houses constituted "one building only" within the meaning of s. 4 of the Public Health Act, 1875, and that the culvert, from the point of junction of the drainage of the two houses, was a "drain" and not a "sewer" within the meaning of that section; (2.) that even if the culvert was a sewer the deft. could not by his wrongful act vest in the local authority the part of it which lay in the plt.'s land, and that the plt. was entitled to have that part removed. *HEDLEY v. WEBB* — Cozens-Hardy J. [1901] W. N. 77; [1901] 2 Ch. 126

Note.

Referred to by Div. Ct., *Humphrey v. Young*, [1903] 1 K. B. 44, 46. *See Vo. 5, above.*

18. — "Sewer," Meaning of—*Local government—Duty of local authority—Cleansing sewers—Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 4, 19, 21.*

At the side of a road, which was vested in a local authority, was an open channel (not paved with stone and not very clearly defined on the side toward the centre of the road) made for the purpose of carrying off the surface water from the road. In the channel were gullies by which the water passed through pipes into an underground drain. Rain water from the roofs and the curtilages of many of the houses in the road (including the plt.'s) also passed through pipes into the channel. Sewage from one of the houses (not the plt.'s) had escaped into the channel, and had caused an illness of the plt.'s child, and the plt. had thereby incurred expense.

In an action by the plt. against the local authority claiming an injunction and damages :—

Held, that the channel was a "sewer" within the definition contained in s. 4 of the Public Health Act, 1875, and that under s. 19 it was the duty of the defts. to cleanse the channel so that it should not be a nuisance or injurious to health.

An injunction was accordingly granted to restrain the defts. from permitting any foul or noxious matter to remain in the channel so as to cause a nuisance to the plt., and 30% damages was awarded to him.

Decision of Phillimore J. affirmed.

Per Vaughan Williams L.J.: *Kinson Pottery Co. v. Poole Corporation*, [1899] 2 Q. B. 41, is not a decision that a drain may be a sewer for some of the purposes of the Public Health Act and not for others. *WILKINSON v. LLANDAFF AND DINAS POWIS RURAL DISTRICT COUNCIL* C. A. [1903] W. N. 186; [1903] 2 Ch. 695

— Storm water overflow—Discharge into tidal navigable creek—Riparian owners—Trespass—Injunction.
See LONDON—Sewers. 4.

— Stream—Pollution—Sewage works—Injunction.
See STREAM. 2.

SEWERS—continued.

— Street—New street—Intended new sewer—
Deposited plans—Unused new line of
pipes—Whether a “sewer.”
See **STREETS**. 25.

— Street—Satisfaction of urban authority—
Evidence.

See **STREETS**. 26.

19. — *Support—Sewer and sewage works—
Right to support of—Mines and minerals—
Adjacent lands—Public Health Act, 1875 (38 & 39
Vict. c. 55), ss. 15, 16, 175, 176, 308; Public
Health Act, 1875 (Support of Sewers) Amend-
ment Act, 1883 (46 & 47 Vict. c. 37), ss. 2, 3,
4, 5.*

In Aug., 1875, an Act was passed confirming
a provisional order of the Local Government
Board enabling the corporation of B. to acquire
certain specified lands, under the Lands Clauses
Consolidation Acts, for the purpose of carrying
out sewage works.

In Oct., 1875, the corporation gave notice to
treat, in respect of some of these lands (except
the mines and minerals), to the owner thereof.

The question of compensation was referred to
arbitration, and in Aug., 1876, a sum was
awarded to the landowner as compensation for
the lands with the exception of all minerals.

The corporation having paid the compensa-
tion money, the landowner in May, 1878, con-
veyed to the corporation the lands, except the
mines and minerals under the same, reserving to
the owner for the time being thereof full power
to work and carry away the same by means of
underground workings only :—

Held, that by virtue of this conveyance the
corporation acquired, by common law—(1.) the
natural right to support of the land conveyed
by the subjacent minerals and the adjacent
lands of the party conveying; (2.) a like right
of support for any buildings or works then
reasonably within the contemplation of the
parties.

In April, 1876, the corporation gave the
same landowner notice, under the Public Health
Act, 1875, of its intention to construct an outfall
sewer in, under, or through other lands of his.
The landowner thereupon gave the corporation
notice, under the same Act, claiming compen-
sation in respect of this exercise of the cor-
poration's statutory power. This matter was
referred to arbitration under the Act, and in
Feb., 1878, the umpire made his award, purport-
ing to be under s. 308 of the Public Health Act,
1875, and giving the owner of the land for the
time being in which the sewer was a rent-charge
or annuity of so much per lineal yard of the
sewer so far as it passed through the land. There
was no evidence that the umpire had not taken
into consideration the fact that the Public Health
Act, 1875, conferred on the corporation the right
of support for the sewer by the subjacent
minerals, if not also by the land adjacent to
the strip occupied by the sewer, as (having regard
to *In re Dudley Corporation* (1881), 8 Q. B. D.
86) it was held he ought to have done.

In 1904 the lessees of the mines under the
land conveyed and the land in which the outfall
sewer lay gave the corporation notice of their

SEWERS—continued.

intention to work a seam of coal lying under or
within forty yards of the sewage works and the
outfall sewer. The corporation declined to treat
as to payment of compensation, and claimed
the right to support of the sewage works and
the sewer.

The lessees, and the owners of the mines in
the land conveyed and of the land in which the
sewer lay, commenced in 1905 an action claiming
declarations that, having regard to the Public
Health Act, 1875 (Support of Sewers) Amend-
ment Act, 1883, the corporation was not entitled
to the support of either the sewage works or the
outfall sewer by the subjacent mines, and that
the plts. were entitled to work the mines without
paying compensation for any damage which
would result from the working to the sewage
works or sewer :—

Held that, on the true construction of s. 5 of
the Act of 1883, the prior sections of the Act
had no application to either the sewage works
or the sewer, and that the rights of support of
the corporation in respect thereof were un-
affected by the Act. **JARY v. BARNSELY COR-
PORATION** - **Parker J.** [1907] **W. N.** 184 ;
[1907] 2 **Ch.** 600

20. — *Surface drain—Sewer—Nuisance by
sewage—Drainage of houses—Notice to local
authority—Public Health Act, 1875 (38 & 39
Vict. c. 55), ss. 4, 21.*

A drain, which ran along a highway past a
village and emptied itself into a disused quarry
at the foot of the plt.'s garden, had been used for
many years to carry surface water, and also slop
water, from some of the houses adjoining the
highway. This drain was originally a highway
drain, but was now a sewer vested in the rural
sanitary authority under the public Health Act,
1875. The solid sewage matter from the houses
in the village drained into cesspools; but recently
one of the householders, purporting to act under
s. 21 of the Public Health Act, without any
notice to the local authority, constructed a water-
closet and discharged the solid sewage matter
therefrom into this drain by means of a com-
munication which he already had with the drain
for the purpose of carrying off his slop water,
therefore causing a nuisance to the plt. :—

Held, by **Byrne J.**, [1901] **W. N.** 98, and by
C. A., that he ought to be restrained by injunc-
tion : by **Byrne J.**, following *Kinson Pottery Co.
v. Poole Corporation*, [1899] 2 Q. B. 41, on the
ground that the permission of the local authority
to use the drain for the passage of slop water
did not authorise its user for every kind of sewage
matter; by **Collins L.J.**, on the ground that the
conditions imposed by the section as to notice
and otherwise had not been complied with.

GRAHAM v. WROUGHTON

C. A. [1901] **W. N.** 123 ;
[1901] 2 **Ch.** 451

Not.

Dictum of **Byrne J.** in, not followed by C. A.,
East Barnet Valley Urban Council v. Stallard,
[1909] 2 **Ch.** 555. *See* **No. 14, above.**

SHANGHAI—China and Corea—Law of.

See **CHINA AND COREA**. 2.

SHAREHOLDERS AND SHARES.

See under COMPANY and COMPANY—
WINDING-UP.

— Stock Exchange.

See under STOCK EXCHANGE.

SHEEP—Agricultural Holdings (Scotland) Act, 1908 — Arbitration — Farming lease—
Sheep stock valuation.

See SCOTTISH LAW. 12.

— Attacks on sheep—Dog—"Dangerous"—Not
kept under control—Evidence.

See DOGS. 1.

— Condition to take over sheep at expiration of
lease—Forfeiture of lease.

See SCOTTISH LAW. 14.

— Lease—Obligation to take over sheep stock on
expiration of lease—Custom.

See SCOTTISH LAW. 15.

SHEEP-SCAB ORDER, 1898 — Negligence of
inspector—Liability of local authority.

See DISEASES OF ANIMALS. 1.

"SHEET OF LETTERPRESS" — Illustrated
catalogue—"Book."

See COPYRIGHT—Catalogue. 1.

SHELLEY'S CASE—Rule in—Will—Construc-
tion.

See under WILL—*Shelley's Case*.

SHERIFF—"Bankruptcy notice"—Seizure by
sheriff and subsequent withdrawal.

See BANKRUPTCY—Notice. 10.

— Bill of lading—Execution creditor of consignee
—Sheriff in possession.

See BILL OF LADING. 1.

— Costs—"Deduction" from purchase-money—
Land Clauses Act—Practice.

See COSTS. 18.

— "Costs of execution"—Sheriff's fees—Posses-
sion.

See BANKRUPTCY—Costs. 2.

— Debenture — Floating security — Execution
under writ of fi. fa. against company—
Title to money in hands of sheriff.

See COMPANY—Debentures. 12.

1. — *Execution—Building agreement—Plant
on premises—Lien of building owner—Seizure by
sheriff—Priority.*

By a building agreement it was provided that if the builder should neglect to proceed with due diligence in the performance of the work the building owner should be at liberty to give notice in writing to the builder requiring him to proceed with the work with reasonable despatch, and that from the date of such notice the builder should not be at liberty to remove from the premises any plant belonging to him placed there for the purposes of the works, and that the building owner should have a lien upon such plant thenceforward until the notice was complied with.

A judgment having been recovered by a third person against the builder, the sheriff entered under a fi. fa., and seized in execution of the judgment certain plant belonging to the

SHERIFF—*continued.*

builder which had been brought by him to the premises for the purposes of the work. After the seizure by the sheriff, and while the plant was still on the premises and unsold, the building owner gave to the builder, who had not proceeded with due diligence in the performance of the works, notice under the contract to proceed therewith, and he thereupon claimed as against the execution creditor a lien on the plant:—

Held, that the intervening seizure by the sheriff prevented the building owner's right of lien under the notice from taking effect.

BYFORD v. RUSSELL; MORRIS, CLAIMANT - Div. Ct.
[1907] 2 K. B. 522

2. — *Execution by fieri facias—Money belonging to judgment debtor—Death of judgment debtor before seizure by sheriff—Administration order under Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 125—Judgments Act, 1838 (1 & 2 Vict. c. 110), s. 12.*

After the death of a judgment debtor against whose effects a writ of fieri facias had been sued out, the sheriff has no power under the Judgments Act, 1838, s. 12, to seize by virtue of the writ money which belonged to the judgment debtor in his lifetime.

The goods of a judgment debtor at his house were seized under a fieri facias. While the sheriff was in possession at the house, the judgment debtor, without the knowledge of the sheriff, placed a sum of money which he had received in a drawer in his bedroom there. Some days afterwards he died; and his widow, having found the money, removed it and deposited it with her solicitors, the sheriff remaining in ignorance of its existence. Subsequently an order was made under s. 125 of the Bankruptcy Act, 1883, for the administration of the judgment debtor's estate in bankruptcy. The sheriff, having learned of the existence of the above-mentioned sum of money, claimed it from the solicitors, and, interpleader proceedings having been taken, an order was made for the trial of an issue whether the trustee under the administration order was entitled to the money as against the execution creditor:—

Held (reversing the judgment of Lawrance J., [1907] 2 K. B. 437), that there was no seizure by the sheriff before the death of the judgment debtor; and that, after his death, the sheriff could not seize the money; and consequently it belonged to the trustee as against the execution creditor. *JOHNSON v. PICKERING; NORTON, CLAIMANT*
C. A. [1907] W. N. 202;
[1908] 1 K. B. 1

3. — *Execution creditor—Wrongful seizure—Indorsement on writ of fi. fa.—Debt paid before issue of writ—Absence of malice—Trespass.*

A solicitor, who had an office in London with a branch office in the country, sued out in London a writ of fi. fa. upon an order for costs made in favour of his client against the plt. in the High Court, and indorsed the writ, in accordance with Order XLII., r. 16, of the Rules of the Supreme Court, with a direction to the sheriff to levy the amount of the debt. The debt had in

SHERIFF—*continued.*

fact been paid at the solicitor's country office, to a clerk having authority to receive it, on the same day as, and about three hours before, the writ of *fi. fa.* was sued out. Neither the solicitor nor his client knew of the payment of the debt. Execution having been levied on the plt.'s goods, the solicitor was then informed that the debt had been paid, and he withdrew the execution. In an action against the solicitor and his client on the case to recover damages for improperly levying execution, and in the alternative for trespass, it was found that neither the client nor the solicitor who sued out the writ acted maliciously:—

Held, that the debts. were liable in trespass, though in the absence of malice they were not liable in an action on the case.

Decision of the Div. Ct., [1910] 1 K. B. 374, reversed. (*LISSOLD v. CRATCHLEY*)

C. A. [1910] W. N. 103; [1910] 2 K. B. 244

4. — *Execution*—*Sheriff's "costs of execution"*—*Costs of interpleader summons*—*Bankruptcy of judgment debtor*—*Practice*—*Bankruptcy Act, 1890* (53 & 54 Vict. c. 71), s. 11—*Bankruptcy Rules, 1886 and 1890*, r. 119.

On Jan. 4, 1910, the sheriff seized goods of the debtor under three writs of *fi. fa.* issued by three judgment creditors of the debtor. The goods were claimed by a bill of sale holder, and thereupon the sheriff interpleaded. On the hearing of the interpleader summons on Jan. 10, the validity of the bill of sale was admitted and an order was made that the sheriff should sell enough of the goods to satisfy the expenses, the rent due (if any), the claim of the bill of sale holder, the costs of the execution creditor, and the costs and charges of the sheriff. The sale was advertised for Jan. 19, 20, and 21, but in the meantime a receiving order was made against the debtor, of which notice was at once given to the sheriff. The official receiver allowed the sale to proceed on Jan. 19 and 20, but on the morning of Jan. 21 served the sheriff with the usual notice claiming the goods or the proceeds of sale under s. 11 of the Bankruptcy Act, 1890. The proceeds of the two days' sale were more than sufficient to pay the amounts and costs directed by the order of Jan. 10, and the sheriff, in taxing his costs and charges under the order, was allowed the sums paid to the bill of sale holder and the auctioneers, and the judgment creditor's costs of the interpleader (*8l. 18s. 8d.*), and the sheriff's costs of the interpleader (*11l. 18s.*). Subsequently the official receiver required the sheriff's costs and charges to be taxed under r. 119 of the Bankruptcy Rules, 1886 and 1890, by the bankruptcy taxing Master, and this officer disallowed the items of *11l. 18s. and 8l. 18s. 8d.*, on the ground that they were not "costs of the execution" within s. 11 of the Bankruptcy Act, 1890. The sheriff now applied to review the decision of the bankruptcy taxing Master:—

Held, that the sheriff's costs of the interpleader summons were "costs of the execution" within the meaning of s. 11 of the Act which the sheriff was entitled to deduct from the proceeds of sale, but that the execution creditor's

SHERIFF—*continued.*

costs of the interpleader summons were not part of the sheriff's "costs of the execution," but were payable by the loser in the interpleader proceedings. Such last-mentioned costs, therefore, were rightly disallowed by the bankruptcy taxing Master. *In re ROGERS. Ex parte SHERIFF OF SUSSEX* **Phillimore J. [1910] W. N. 238**

5. — "*Execution for a sum exceeding 20l.*" — *Contingent expenses*—*Bankruptcy Act, 1890* (53 & 54 Vict. c. 71), s. 11, sub-s. 2.

Although a sheriff, or high bailiff of a county court, when levying under a warrant of execution is entitled to seize sufficient goods to cover the contingent expenses of possession money, appraisement, and sale, for the purpose of determining whether the execution is "for a sum exceeding 20l." within the meaning of s. 11 of the Bankruptcy Act, 1890, and whether consequently he is obliged to retain the proceeds of execution as therein directed, the judgment debt and poundage only can be taken into consideration, and not the expenses of possession money, appraisement, and sale, unless those expenses have been actually incurred. *WILLEY v. HUCKS* Div. Ct. [1909] W. N. 39; [1909] 1 K. B. 760

6. — *Fees* — *Possession money* — *Several warrants against same debtor*—*Sheriffs Act, 1887* (50 & 51 Vict. c. 55), s. 20—*Order of Aug. 31, 1888, as to fees.*

Where a sheriff has put a man in possession of goods under writ of *fi. fa.* issued by one creditor, and afterwards received other writs against the same debtor from other creditors, and has merely kept the same man in possession on behalf of all the creditors, he cannot, upon the executions being withdrawn, recover possession money at *5s.* a day from more than one creditor.

Though called a fee, possession money under the Sheriffs Act, 1887, is only intended to cover the sheriff's out of pocket expenses. *GLASBROOK v. DAVID & VAUX*

Farwell J. [1905] W. N. 42; [1905] 1 K. B. 615

— High bailiff's fees.

See under COUNTY COURT—**Bailiffs.**

SHIFTING CLAUSE—*Successive life estates*—*Exception of eldest son "entitled" to other estates.*

See WILL—**Shifting Clause. 1.**

SHINGLE—*Justices*—*Jurisdiction*—*Ouster*—*Bona fide claim of right*—*Foreshore*—*Removal of shingle*—*Owner.*

See JUSTICES. 11.

SHIPBROKER—*Charterparty*—*Signature as agent*—*Right to sue as principal.*

See PRINCIPAL AND AGENT.

SHIPPING.

Merchant Shipping Act, 1906 (6 Edw. 7, c. 48), amends the *Merchant Shipping Acts, 1884 to 1900.*

SHIPPING—continued.

Merchant Shipping Act, 1907 (7 Edw. 7, c. 52), amends s. 78 of the *Merchant Shipping Act, 1894*, with respect to the deduction of the space occupied by propelling power in ascertaining the tonnage of a ship.

Merchant Shipping. Exercise of Consular Powers in British Protectorates. O. in C., July 4, 1901, providing for the exercise in various British Protectorates of the powers of a British Consular officer under s. 7 of the Workmen's Compensation Act, 1906. St. R. & O. 1906, No. 559. Price 1d.

Merchant Shipping Rules, 1908. Rules of Court dated June 3, 1908, for appeals under the Merchant Shipping Act, 1906, Section 68. Reprint from W. N. 1908 (June 13), p. 167. See CURRENT INDEX, 1908, p. cxxiii.

Mail Ships Rules, 1908. Mail Ships Acts, 1891 and 1902. Rules of Court dated June 3, 1908, made by the Lord Chancellor and the Judges of the Supreme Court pursuant to the Mail Ships Acts, 1891 and 1902 together with the scale of fees fixed with the concurrence of the Commissioners of His Majesty's Treasury. Reprint from W. N. 1908 (June 13), p. 167. See CURRENT INDEX, 1908, p. cxxiv.

(1908) *Short Cause Rules. On the Admiralty side of the Probate, Divorce, and Admiralty Division. And form of consent to the application to such Rules. Reprint from W. N. 1908 (Aug. 29), p. 247. See CURRENT INDEX, 1908, p. cxxix.*

County Courts (Admiralty Jurisdiction). Order in Council, 1908, dated Nov. 21, 1908, and coming into operation on Jan. 1, 1909. Reprint from W. N. 1908 (Nov. 28), p. 335. See CURRENT INDEX, 1908, p. xciv.

Collisions at Sea. Orders in Council now in force, containing the regulations for preventing. 1908 (E.—Board of Trade). Price 2d.

Merchant Shipping. Emigrant ships. Notice, Sept. 23, 1907, prescribing a new scale for computation of Voyages, and determining, for the purposes of s. 268 of the Merchant Shipping Act, 1894, as amended by s. 14 of the Merchant Shipping Act, 1906, the length of voyages from the British Islands to the east coast of North America and to South Africa. St. R. & O. 1908, No. 541. Price 1d.

Merchant Shipping. Passenger and emigrant ships. Forms prescribed by the Board of Trade, May 21, 1898, under s. 17 of the Merchant Shipping Act, 1906. St. R. & O. 1908, No. 443. Price 1d.

Merchant Shipping. Lighthouse—Light dues. O. in C., July 4, 1908, altering the exemptions set out in Schedule II. of the Merchant Shipping (Mercantile Marine Fund) Act, 1898. St. R. & O. 1908, No. 558. Price 1d.

Shipping Casualties and Appeals and Rehearings—Rules, 1907, dated Nov. 22, 1907. Reprinted 1910. This reprint contains alterations in the statement of qualifications prescribed for Nautical Assessors in Part II. of the Appendix. Reprint from W. N. 1910, Aug. 27, p. 273. See CURRENT INDEX, 1910, p. cxv.

SHIPPING—continued.

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Bill of Exchange, col. 2442.

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Burial, col. 2443.

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Alien.

- Undesirable alien — Expulsion order — Liability of master of ship bringing alien to the United Kingdom.
See ALIEN. 1.

Appeal.

See under SHIPPING—**Practice**.

Arbitration.

- Ship—Bill of lading—Incorporation of conditions of charterparty—Demurrage—Arbitration.
See SHIPPING—**Charterparty**. 14.

SHIPPING—continued.**Average.**

1. — *General average—Cargo of coal—"Inherent vice"—Spontaneous combustion—Liability of ship to contribute to general average—York-Antwerp Rules, 1890, r. 3—Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60) s. 502.*

Coal shipped without negligence on the part of any one took fire by spontaneous combustion, and the water used in extinguishing the fire damaged the whole cargo of coal:—

Held, that by maritime law the owners of the coal were entitled to claim against the ship contribution in general average in respect of the sacrifices voluntarily made for the common advantage of all, the fire having been caused by the inherent qualities of the coal, or, in other words, by spontaneous combustion, without default on the part of the shippers;

Held, also, that this principle was not affected by the York-Antwerp Rules which were incorporated in the bills of lading;

Held, also, that Merchant Shipping Act, 1894, s. 502, afforded no defence to the claim.

Decision of the C. A., [1908] 1 K. B. 51, affirmed. GREENSHIELDS, COWIE & Co. v. STEPHENS & SONS, LD. - - H. L. (E.) [1908]

W. N. 192; [1908] A. C. 431

2. — *General average—Injury to ship—Unloading cargo for purpose of repairing ship—Damage to cargo—Practice of average adjusters.*

The owner of cargo which, not having been itself in any peril, has suffered damage from having been unloaded to enable repairs to be done to a ship which has through ordinary perils of navigation suffered a particular average loss is not entitled to general average contribution from the owner of the ship.

A ship, having through ordinary perils of navigation sustained injuries which prevented her from proceeding upon her voyage, put back into port for repairs. To enable the ship to be repaired the cargo, which was never in peril, was unloaded, and, in the process of being unloaded, was damaged:—

Held, that the owners of the cargo were not entitled to general average contribution from the owners of the ship.

Svensden v. Wallace, (1884) 13 Q. B. D. 69; (1885) 10 App. Cas. 404, discussed. HAMEL v. PENINSULAR AND ORIENTAL STEAM NAVIGATION CO. Lord Alverstone C.J. [1908] W. N. 110; [1908] 2 K. B. 298

— Insurance, Marine.

See under INSURANCE (MARINE).

Bankruptcy.

— Secured creditors—Shares in ships—Vendor's lien—Admission of proof.

See BANKRUPTCY—**Redemption**. 1.

— Ship—Bankruptcy—Proof—Shares in ships—Vendor's lien.

See BANKRUPTCY—**Secured Creditors**. 1.

Bill of Exchange.

1. — *Coaling contract—Liability of master as drawer—Qualifying words—Notice of dishonour—Special circumstances excusing delay—Bills of Exchange Act, 1882 (45 & 46 Vict. c. 61) ss. 48, 49, sub-s. 12; s. 50, sub-s. 1.*

SHIPPING (Bill of Exchange)—continued.

In pursuance of a contract for the supply of bunker coal, made between the owners of a steamship, as buyers, and the agent of the suppliers of the coal at Colombo, as sellers, the deft., the master of the steamship, drew a bill of exchange on the owners of the vessel in favour of the suppliers, including with the words "value received on 300 tons coal and disbursements . . . supplied to my vessel to enable her to complete this voyage from Melbourne to Hull, for which I hold my vessel, owners, and freight responsible." The bill was duly accepted in London, but on presentation for payment at maturity on a Saturday was dishonoured. The plts., holders of the bill, learnt through their bankers on the Monday that the bill was not paid, and, having communicated with the agents of the suppliers of the coal, ascertained that the vessel had arrived in the Tyne; but not knowing in what part, they made further inquiries without success, and on the following Thursday sent the defendant notice of dishonour by registered letter addressing him as master of the vessel at Newcastle-upon-Tyne :—

Held, by Gorell Barnes J., that the deft. was liable as drawer in accordance with the decision in *The Ripon City*, [1897] P. 226, for the wording of the bill did not by implication relieve him of that liability; and secondly, that he was not discharged by reason of the delay in giving notice of dishonour, as the special circumstances excused that delay within the meaning of s. 49 sub-s. 12, and s. 50, sub-s. 1, of the Bills of Exchange Act, 1882. **THE "ELMVILLE"**

Gorell Barnes J. [1904] W. N. 141 :
[1904] P. 319

Bill of Lading.

See under SHIPPING—Charterparty.

Burial.

1. — *Standard vessel—Part cargo of frozen mutton washed ashore—Expenses of burial—Liability of ship owner—Diseases of Animals Act*, 1894 (57 & 58 Vict. c. 57), s. 46.

A British steamship stranded off the Lizard, and from the fore part, which was left on the rocks, a large number of carcases of sheep were washed ashore. These carcases, consisting of mutton free from disease, and frozen when shipped, were buried or destroyed under the direction of the receiver of wreck, with the authority of the Bd. of Trade, and the expenses thereof were demanded of, and paid by the local authority :—

Held, that the "owner of the vessel" was liable, under s. 46 of the Diseases of Animals Act, 1894, to repay to the local authority the expenses so incurred for the words "carcase . . . washed from any vessel," in sub-s. 2 of that section, were wide enough to include the part cargo in question which was washed ashore. **THE "SUEVIC"** — Div. Ct. [1908] P. 292

See also *THE "SUEVIC"* [1908] P. 154
—SHIPPING—Salvage. 13.

Capture.

— Warrant of freedom from capture,
See under INSURANCE (MARINE).

SHIPPING—continued.**Carriage.**

— Charterparty.

See under SHIPPING—Charterparty.

Charging Orders.

1. — *Practice—Charging order for costs on Property "recovered or preserved"—Application ex parte—Solicitors Act*, 1860 (23 & 24 Vict. c. 127), s. 28—*Charge on Ship—Constructive notice—Priority.*

After the termination of an action in rem against the owners of a ship for wages and disbursements in which the plt. was partially successful, and after the release of the ship from arrest and its transfer to a limited co., the solicitors of the original deft. owners applied ex parte and obtained, under s. 28 of the Solicitors Act, 1860, a charging order upon the ship for their costs in the action. For the enforcement of this charge they also obtained, on notice to mortgagees to whom the vessel had been mortgaged by the limited co., a further order for the appointment of a receiver of freight, and, conditionally, for the sale of the vessel. Both orders were subsequently set aside, and the solicitors admitting that the charging order must be postponed to the mortgage, appealed as against the limited co. :—

Held by the C. A. (Collins M.R. Cozens-Hardy and Farwell L.J.J.) affirming the decision of Sir Gorell Barnes Pres., that the charging order was wrong in form and bad in substance, and, together with the consequential order, must be set aside, for, at the most, the property, if any, preserved by the exertions of the solicitors was limited to the interest of those who instructed them to oppose the claims of the master in respect of his lien on the barque, and the vessel had not only ceased to be under the control of the Court, but had changed hands, and become subject to a mortgage, before the charging order was applied for. Furthermore, the co. to whom the vessel was transferred could not be fixed with constructive notice of the possible liability of the vendors for the unpaid costs of their solicitors, even though the actual vendor and the promoter of the co. were one and the same person.

The Court, when sitting in Admiralty, should follow the practice of the Chancery Division in requiring notice to the parties affected, and, unless the circumstances are very exceptional, should not exercise, on an ex parte application, its discretionary power of making charging orders under the Solicitors Act, 1860. **THE "BIRNAM WOOD"** C. A. [1906] W. N. 206 ; [1907] P. 1

Charterparty.**(Bill of Lading and Charterparty.)**

1. — *Arbitration clause—Cesser clause—Bill of lading—Incorporation of terms of charterparty—Claim for demurrage at port of loading—Arbitration Act*, 1889 (52 & 53 Vict. c. 49), s. 4.

It was provided by clause 39 of a charterparty, by which the plt.'s vessel was chartered by the defts. for the carriage of a cargo of wheat from Bahia Blanca to a port in the United Kingdom, that, if the loading of the cargo were

SHIPPING (Charterparty)—continued.

delayed by reason of certain causes therein specified, the time so lost should not be counted as part of the lay-days, and that, if any dispute arose under that clause in the loading of the ship, the same should be settled in the Argentine Republic by arbitration in the manner therein mentioned. The charterparty contained the usual cesser clause providing that the charterers' liability should cease upon shipment of the cargo, provided the cargo was worth the bill of lading freight, dead freight, and demurrage at the port of shipment, and that the vessel should have a lien on the cargo for recovery of all such bill of lading freight, dead freight, demurrage, and all other charges whatsoever. A full cargo was shipped by the defts. under the charterparty, and bill of lading were given in respect thereof, by which the cargo was made deliverable to the defts. or their assigns, they paying freight for the said goods, against delivery, in cash, at a rate of freight in accordance with the charterparty. The bills of lading stated that all the terms and exceptions contained in the charterparty were therewith incorporated, and formed part thereof, and gave the shipowners an absolute lien on the cargo for the recovery of freight and demurrage and all other charges whatsoever. There was no dead freight, and the cargo shipped was worth the freight and charges. A dispute within the meaning of clause 39 having arisen with regard to delay in the loading of the ship between the plts. and the defts. after the completion of the loading:—

Held, that, notwithstanding the cesser clause, and the fact that the defts. were the holders of the bills of lading, the provision for arbitration in clause 39 of the charterparty remained operative as between the plts. and the defts., and therefore that an action brought by the plts. after the ship's arrival in the United Kingdom, claiming a declaration that they were entitled to a lien on the cargo for demurrage at the port of loading, should be stayed under s. 4 of the Arbitration Act, 1889.

Runciman & Co. v. Smith & Co., (1904) 20 Times L. R. 625, overruled. *TEMPERLEY STEAM SHIPPING Co. v. SMYTH & Co.*

C. A. [1905] 2 K. B. 791

2. — *Bill of lading—Breach of shipowners' obligation to shipper—Carriage of goods destined for enemy—Seizure of ship—Delay in delivery of shipper's goods—Damages—Loss of market.*

The carriage by a shipowner of goods destined for an alien enemy without the knowledge and consent of the other shippers is a breach of duty towards them, and the shipowner is liable for damages for delay in delivering their goods at the port of destination if the ship is seized and detained by reason of having enemies' goods on board.

There is no rule of law that damages cannot be recovered for loss of market on a contract of carriage by sea. *DUNN v. BUCKNALL BROTHERS. DUNN v. DONALD CURRIE & Co.*

C. A. [1902] 2 K. B. 614

3. — *Bill of lading—Cargo—Refrigerating apparatus—Part of ship—Negligence—Damage—Shipowner, Liability of—“Fault or errors in*

SHIPPING (Charterparty)—continued.

management of vessel”—*Ship—Carriage by sea—Harter Act (Act of Congress of U.S.A. 1893), ss. 1, 2, 3.*

Butter was shipped on board the defts.' ship at New York for carriage to London under bills of lading which incorporated the Act of Congress known as the “Harter Act,” by s. 3 of which it is provided that, subject to the conditions therein named, the owner of the ship shall not be “held responsible for damage or loss resulting from faults or errors . . . in the management of said vessel.” The butter was carried in four out of six insulated chambers forming part of refrigerating apparatus bolted to the ship and connected with her engines, the other two chambers being used for the ship's provisions during the voyage. The butter was delivered in London in a damaged condition, resulting from the negligence of one of the ship's engineers in the management of the refrigerating apparatus, whereby in the course of the voyage the temperature of the chambers was allowed to rise too high:—

Held, upon the facts, and especially as the refrigerating apparatus was used for the ship's provisions and not exclusively for the butter, that the apparatus must be regarded as being part of the ship, and that therefore the mismanagement of the apparatus was mismanagement of the ship, so that the neglect to keep the chambers sufficiently cooled during the voyage was a fault or error “in the management of said vessel” within the meaning of the bills of lading, and that the defts. were consequently excused.

Decision of Kennedy J., [1902] W. N. 220 ; [1903] 1 K. B. 114, affirmed. *ROWSON v. ATLANTIC TRANSPORT Co.* C. A. [1903] W. N. 150 ; [1903] 2 K. B. 666

— Bills of lading—Cesser of liability clause—Delivery of goods overside to landing agents.

See STRAITS SETTLEMENTS. 2.

4. — *Bill of lading—Charterparty—Construction—“Inaccessible on account of ice”—“Unsafe in consequence of war, disturbance or any other cause”—Ejusdem generis principle.*

Goods were shipped on board a steamship for a foreign port under bills of lading providing that if a port should be inaccessible on account of ice, blockade or interdict, or if entry and discharge at a port should be deemed by the master unsafe in consequence of war, disturbance or any other cause, it should be competent for the master to discharge the goods on the ice or at some other safe port or place:—

Held that, upon the true construction of the bills of lading, “inaccessible” and “unsafe” must be read reasonably and with a view to all the circumstances; that the words “or any other cause” must be read as being ejusdem generis with war or disturbance; and that as a matter of fact the master was not justified under all the circumstances in this case in failing to deliver the goods at the port for which they were shipped merely because that port was at the moment of their arrival inaccessible on account of ice for three days only.

SHIPPING (Charterparty)—continued.

Decision of the C. A., [1908] 2 K. B. 385, affirmed. S.S. "KNUTSFORD," *LD. v. TILLMANN'S & Co.* - - - **H. L. (E.)** [1908] **W. N. 165**; [1908] **A. C. 406**

5. — *Bills of lading—Conclusive evidence of quantity delivered to ship—Timber cargo—Different classes of timber—Number and measurement of each class—Number and measurement of total shipment—Short delivery of one class—Right to reduction of freight in respect of shortage—Right to recover value of pieces undelivered—Mode of estimating value.*

A cargo of timber of different kinds, consigned to the defts., was shipped on board the plt.'s vessel under a charterparty, of which one clause was, "Bills of lading to be conclusive evidence against the owners as establishing quantity delivered to ship." The bill of lading of the cargo gave the number of pieces of deals and battens and the number of superficial feet and the like particulars of scantlings, deal-ends, and boards respectively. The bill of lading also gave the total number of pieces and of superficial feet. There was a short delivery of deals, but an overdelivery, which was taken over by the consignees, of scantlings and boards, the total number of pieces of timber delivered being slightly in excess of the total number given in the bill of lading. In an action by the shipowners to recover freight, in which the consignees counter-claimed for the value of the deals not delivered:—

Held, that the bill of lading was conclusive as to the number of pieces and the number of superficial feet in each class of timber, and that the consignees were entitled to a deduction on freight in the proportion that the number of pieces of deal not delivered bore to the number specified in the bill of lading:

Held, also, that the defts. were entitled on their counter-claim to recover the value of the deals not delivered, to be ascertained by taking the proportion that the number undelivered bore to the number specified in the bill of lading.

Spaigh v. Farnworth, (1880) 5 Q. B. D. 115, approved. *MEDITERRANEAN AND NEW YORK STEAMSHIP Co. v. A. F. & D. MACKAY*
C. A. [1903] 1 K. B. 297

6. — *Bill of lading—Construction—Exceptions—Warranty of seaworthiness.*

Frozen meat shipped for carriage from Melbourne to London arrived tainted with carbolic acid, with which the ship had been disinfected before shipment. The bill of lading contained two exception clauses. The first exempted the shipowner from liability for damage to goods whether arising from a defect existing at the time of the shipment or not, or from the neglect of the master or crew, or from any other cause whatsoever. The second clause also exempted the shipowner from liability for damage from defects, &c., "if reasonable means have been taken to provide against such defects and unseaworthiness":—

Held, that upon the true construction of the bill of lading the generality of the first clause was qualified by the second clause, and that

SHIPPING (Charterparty)—continued.

reasonable care not having been taken in cleansing the ship before shipment, the shipowner was liable for the damage in an action brought by an indorsee of the bill.

The decision of the C. A., [1904] 1 K. B. 319, affirmed. *ELDELSLIE STEAMSHIP Co. v. BORTHWICK* - - - **H. L. (E.)** [1905] **W. N. 34**; [1905] **A. C. 93**

7. — *Bill of lading—Description of goods—"Marked and numbered as in the margin"—Mistake—Bills of Lading Act, 1855 (18 & 19 Vict. c. 111), s. 3.*

By a bill of lading signed by the shipowners' agents goods shipped for carriage from New Zealand to London were described as a certain number of frozen carcasses of lamb "marked and numbered as in the margin." The carcasses were described in the margin of the bill of lading as bearing a certain mark and a number consisting of three figures. The mark indicated the quality of the carcass, as being of a particular brand; one figure of the number indicated approximately its weight; and the other two figures of the number were private marks of the shippers, which indicated certain particulars with regard to the carcass for their own purposes, but had no bearing on the nature, quality, or commercial value of the goods. The bill of lading contained a clause stating that the ship would not be responsible for correct delivery, unless each package was distinctly, correctly, and permanently marked by the merchant before shipment with a mark and number or address. The mark and number mentioned in the margin in the bill of lading were inserted by the shippers. On the discharge of the ship in London it was found that a portion of the carcasses in fact shipped under the bill of lading bore a mark and number which corresponded with the description in the margin of the bill of lading as regards the mark, and the figure indicating weight, but which differed from that description as regards one of the figures forming the private marks of the shippers. An indorsee of the bill of lading for valuable consideration refused to take delivery of these carcasses as forming part of his shipment, and sued the shipowners' agents for short delivery, relying on the provisions of the Bills of Lading Act, 1855, s. 3:—

Held, by C. A. (affirming the judgment of Kennedy J., [1900] 1 Q. B. 714), that the action was not maintainable:—

By A. L. Smith M.R.: The case came within the clause of the bill of lading which exonerated the ship from responsibility for correct delivery unless the goods were correctly marked and numbered.

By Collins L.J. and Romer L.J., and A. L. Smith, M.R. dissenting: Inasmuch as the figure, in respect of which there was a discrepancy between the marginal description and the number on the carcasses, did not affect or denote the nature, quality, or commercial value of the goods, the defts. were not precluded by s. 3 of the Bills of Lading Act, 1855, from shewing that there was a mistake in the marginal description, and that the goods refused by the plt. formed a portion of those in fact shipped under the bill

SHIPPING (Charterparty)—continued.

of lading of which the plt. was indorsee.
PARSONS v. NEW ZEALAND SHIPPING CO.

C. A. [1901] W. N. 42;

[1901] 1 K. B. 548

-- Bill of lading—Debenture-holders—Receiver and manager, Powers of—Shipment of goods by receiver—Lien for previously unsatisfied freight.

See COMPANY—Receiver. 12.

8. — *Bill of lading—Discharge of cargo—“As fast as steamer can deliver or the goods will be landed”—Deficiency of wagons—Liability of consignee for delay—Option of shipowner as to remedy.*

In an action by shipowner against receivers of cargo for damages for detention of his vessel, a county court judge gave judgment for the defts. on the ground that the stipulation in the bill of lading that the goods were “to be taken from the ship by the consignees at their expense immediately after their arrival, and as fast as steamer can deliver or the same will be transhipped into lighters, or landed, or warehoused at the expense and risk of the proprietors of such goods,” divested the shipowner of any other remedy than that of landing or lightering the goods:—

Held, by the Div. Ct. (Jeune P. and Gorell Barnes J.), reversing the decision of the Court below, that the shipowner had an option, so that he was not deprived of his ordinary remedy by not exercising the power of landing or lightering the goods; and, further, that the shipowner was entitled to judgment, as the receivers of the cargo had failed to shew that they had done their best in the actual circumstances to make the appliances of the port available. **THE “ARNE”**
Div. Ct. [1904] W. N. 41; [1904] P. 154

9. — *Bill of lading—Duty of master to sign—Bill of lading at variance with charterparty—Liability of shipowner to holder of bill of lading—Indemnity by charterer.*

A charterparty contained a clause exempting the shipowner from liability for stranding and other accidents of navigation, even when occasioned by the negligence of the master; the master to sign clean bills of lading without prejudice to the charter. In mistake, and bona fide, the master signed bills of lading presented by the charterers which did not give the shipowner the exemption given by the charterparty. Owing to the negligent navigation of the master, there was a total loss of the cargo, and the holders of the bills of lading recovered damages against the shipowner:—

Held, that since the contract between the shipowner and the charterers was that the shipowner was not to be liable for the master's negligence, the charterers were bound to indemnify the shipowner against the claims of the holders of the bills of lading.

Decision of the C. A., [1907] 1 K. B. 809, affirmed upon the above ground. **KRUGER & CO. v. MOEL TRYVAN SHIP CO. - H. L. (E.)**
[1907] W. N. 173; [1907] A. C. 272

10. — *Bill of lading—Exceptions and conditions—Damage to cargo—Seaworthiness—Negligence of shipowners.*

SHIPPING (Charterparty)—continued.

The decision of the C. A., [1909] P. 93, reversed upon the ground that the *Schwan* was as a matter of fact not seaworthy owing to a defect in a three-way cock which allowed the sea to run into the hold, and that the shipowners' engineer had as a matter of fact not exercised reasonable care and diligence in connection with the ship, her tackle, machinery, and appurtenances.

The decision of Bargegrave Deane J., [1908] P. 356, restored upon the above ground. **ABRAM LYLE & SONS v. OWNERS OF S.S. “SCHWAN.”**
“THE SCHWAN” - H. L. (E.)
[1909] W. N. 175; [1909] A. A. 450

11. — *Bill of lading—Exceptions—Damage to cargo—Marginal clause—“Sweating” “Heat”—“Decay”—Negligence of carrier's servant—Liability of carrier.*

In an action by indorsees of bills of lading, for damage, through negligent stowage, to a cargo of grain, part of which had become heated during the voyage, and the remainder otherwise deteriorated, the defts. shipowners relied on a series of exceptions, set out in numbered paragraphs, by which they were not to be responsible for (paragraph 2) “loss, damage, or injury arising from sweating . . . decay . . . explosion, heat, fire at sea or on shore . . .”; nor for (paragraph 3) “any loss or injury to the said goods, occurring from any of the causes above mentioned or the loss or injury arising from the perils or accidents of the seas . . . whether any of the perils, causes, or things above mentioned or for any loss or injury arising therefrom be occasioned by or from any act or omission, negligence, default, or error in judgment of . . . stevedores . . . or other persons in the service of the shipowners.” They further relied on a marginal note, stamped on the bill of lading under which a large quantity of maize was carried, stating that “In no case is the s.s. to be held liable for heating or any other damage accruing to the within-mentioned goods . . .”:—

Held, by Gorell Barnes J., that the defts. were liable, for, following **Price & Co. v. Union Lighterage Co.**, [1904] 1 K. B. 412, a shipowner must indicate by express words his intention to relieve himself from liability for the negligence of his servants, and the exemption of negligence in the third paragraph could not be incorporated so as to refer to the matters excepted in the second paragraph or in the marginal note; and, further, that the words “sweating” and “decay” were inapplicable to cover the damage to the maize through improper stowage, whilst the collocation of the words shewed that “heat” referred to heat arising from some extraneous cause, such as heat from the engine-room. **THE “PEARLMOOR”**
Gorell Barnes J. [1904] P. 286

12. — *Bill of lading—Exceptions—Perils of the seas occasioned by negligence—Intentional letting in of sea-water—Negligent mistake.*

Goods were shipped under a bill of lading which excepted loss or damage arising from perils of the seas or navigation, whether arising from the negligence, default, or error in judgment of the engineers or otherwise howsoever. When

SHIPPING (Charterparty)—continued.

the ship was off the port of discharge the engineer, intending to fill the ballast tank with water for boiler use whilst discharging, opened the sea-cock, and then by mistake opened the valve of the tank in which the goods were being carried instead of the valve of the ballast tank, and the goods were damaged by sea-water :—

Held, that the damage was caused by a peril of the seas arising from negligence of the engineer within the exception, and that the shipowner was not liable. **BLACKBURN v. LIVERPOOL, BRAZIL AND RIVER PLATE STEAM NAVIGATION Co.** - - - **Walton J. [1902] 1 K. B. 290**

13. — Bill of lading—Exemptions from liability—“Without prejudice to this charterparty” —Charterer indorsee of bill of lading—Mutual rights and liabilities of charterer and shipowner.

A charterparty provided that a ship should proceed to a port of loading, load a cargo of lawful merchandise, and thereupon proceed to a port of discharge for a lump sum freight; the captain was to sign bills of lading at any rate of freight without prejudice to the charterparty, but not below the charterparty rate; in certain events, which happened, the charterparty was to constitute the shipowners' authority to the charterers' agent to sign bills of lading in the captain's name; in the event of receivers of cargo withholding payment of bill of lading freight, the amount so withheld was to be deemed to have been deducted from the lump sum freight and not from any portion of the freight belonging to the charterers, and the accounts between shipowners and charterers were to be adjusted accordingly, and the shipowners were to take any steps necessary to enforce payment by the receivers of cargo of the amount so withheld; the captain and the shipowners were to have a lien on cargo by bill of lading for freight; and the charterers' liability was to cease on shipment of cargo provided the same was worth the lump sum freight.

The ship having arrived at the port of loading was put up as a general ship. A certain shipper shipped a cargo of dates and received a bill of lading signed in accordance with the terms of the charterparty by the charterers' agents at that port. The bill of lading contained exceptions from liability which were not those contained in the charterparty. While the ship was on her way to the port of discharge the charterers by their agents made an advance to the shipper, and the bill of lading was indorsed to them as security for the advance. At the port of discharge the charterers presented the bill of lading and received the dates, which were found to be damaged.

The charterers claimed to deduct from the lump sum freight a sum equal to the depreciation in value of the goods by reason of the damage :—

Held that, as the goods were not shipped by the charterers themselves under the charterparty, the bill of lading and not the charterparty contained the terms of carriage; that in these circumstances the bill of lading did not prejudice the charterparty; and consequently that, assuming the goods to have been damaged by causes for which the bill of lading as distinguished from the charterparty exempted the shipowners

SHIPPING (Charterparty)—continued.

from liability, the charterers were liable to pay the lump sum freight in full. **STEAMSHIP CALCUTTA Co. v. ANDREW WEIR & Co.**

Hamilton J. [1910] 1 K. B. 750

14. — Bill of lading—Incorporation of conditions of charterparty—Demurrage—Arbitration clause.

Goods were shipped under a bill of lading by which they were deliverable to the shipper or to his assigns, “he or they paying freight for the said goods with other conditions as per charterparty,” and in the margin was written in ink “Deck load at shipper's risk and all other terms and conditions and exceptions of charter to be as per charterparty including negligence clause.”

The charterparty provided that the cargo should be discharged by the steamer at port of destination, in the usual manner, with customary steamer despatch, according to the custom of the port, “but if, through any fault of the merchant or charterer, the steamer is longer detained, demurrage to be paid at the rate of twenty-five pounds per day,” and “Any dispute or claim arising out of any of the conditions of this charterparty shall be adjusted at port where it occurs, and same shall be settled by arbitration” :—

Held by a Div. Ct. (Samuel Evans, President, and Baggallay Deane J.), affirming an order of a county court judge, that all proceedings must be stayed in an action, commenced in the county court by the shipowner against the holder for value of the bill of lading, for demurrage alleged to have been incurred at the port of discharge, as the arbitration clause in the charterparty was incorporated in the bill of lading.

Hamilton v. Mackie, (1889) 5 Times L. R. 677, distinguished. THE “PORTSMOUTH”

Div. Ct. [1910] P. 293

15. — Bill of lading—Incorporation of conditions of charterparty in bill of lading—Freight made payable as per charterparty—Action for freight—Right of master to sue.

By a charterparty, containing the usual exceptions, freight was made payable on the unloading and right delivery of the cargo, which was to be provided by the charterers; the master was to sign bills of lading at the port of loading, and upon the completion of the loading the charterers' liability under the charterparty was to cease. The charterers having placed the cargo on board at the port of loading, bills of lading were signed by the master, whereby the cargo was made deliverable to the shippers or their assigns at the port of discharge, “they paying freight for the same as per charterparty.” In an action by the master against the charterers for freight :—

Held, that the master, in signing the bills of lading, had done so merely as agent for the shipowner, and was therefore not entitled to maintain the action. **REPETTO v. MILLAR'S KARRI AND JARAH FORESTS, LD.**

Bigham J. [1901] 2 K. B. 306.

— Bill of lading—Indorsement of, by consignee—Execution.

See **BILL OF LADING. 1.**

16. — Bill of lading—Limitation of shipowner's liability—Loss due to shipowner's negligence.

SHIPPING (Charterparty)—continued.

The plts. shipped two packages of leather goods on board the defts.' ship for carriage from London to Buenos Ayres under a bill of lading containing a clause which specified a large number of excepted perils for which the defts. were not to be responsible, whether the peril, or the loss or damage arising therefrom, was caused by the negligence of the defts.' servants or agents or not, and a further clause by which the defts. were not to be accountable at all for bullion or other specified valuable or fragile articles "nor for any other goods of whatever description beyond the amount of 2*l.* per cubic foot for any one package" unless shipped under a special declaration of value and extra freight paid. The plts.' goods were not delivered at Buenos Ayres, and their loss was found as a fact to have been due to the negligence of the defts.' servants; they had not been shipped under a special declaration of value, nor had extra freight been paid upon them:—

Held that, notwithstanding that the loss was due to the negligence of the defts., they were only liable to the limited extent provided by the bill of lading.

Decision of Bigham J., [1908] 1 K. B. 796, affirmed. **BAXTER'S LEATHER CO. v. ROYAL MAIL STEAM PACKET CO.**

C. A. [1908] W. N. 105; [1908] 2 K. B. 626

17. — Bill of lading—Seaworthiness—Warranty of fitness to receive cargo—Duration of warranty—Incorporation of Harter Act—Effect of, on obligation of shipowner.

The warranty, which is *prima facie* implied in a contract for the carriage of goods by sea, that the ship is fit for the reception of the cargo, is an absolute warranty; and the incorporation in the bill of lading of the provisions of the Act of Congress known as the Harter Act does not cut down the obligation of the shipowner in that respect to an obligation to exercise due diligence to make the ship fit for that purpose.

The above warranty is a warranty only as to the condition of the ship at the time of loading; it does not continue in force after the goods are once on board.

The defts. received on board their ship for carriage certain goods of the plt. After the goods were on board the ship's engineer had occasion to open a sluice-door in a watertight bulkhead in the lower part of the ship. He shortly afterwards shut the sluice-door, but failed to screw it down so closely as to make it watertight. He subsequently proceeded to fill one of the ballast tanks, for which purpose he opened a sea-cock in the ship's side to allow the water to flow in. The water, on its way from the sea-cock to the ballast tank, passed through a valve-chest, the joint between the lid and body of which had been packed in the ordinary way with cotton to make it watertight. This joint had been remade shortly before the plt.'s goods were put on board, and it had been imperfectly done. When the tank was full the engineer screwed down the sea-cock, but, owing to the accidental presence of some hard substance, the screw-valve was prevented from bedding down closely on to its seating and the sea-cock was left partially open, with the result that the continued pressure of

SHIPPING (Charterparty)—continued.

the water forced out the defective packing of the valve-chest, and the water flowed through the joint down into the lower part of the ship, where it passed through the sluice-door into the cargo hold and damaged the plt.'s goods:—

Held, that the defective fitting of the sea-cock and of the sluice-door, being defects which came into existence after the plt.'s goods were loaded, were not breaches of the implied warranty of the fitness of the ship to receive the cargo; but that the defective packing of the valve-chest, being an existing defect at the time of the loading of the goods, was a breach of the warranty.

MCFADDEN v. BLUE STAR LINE

Channell J. [1905] 1 K. B. 697

18. — Bill of lading—Through freight—Inland carriage—Sea transit—Portion of consignment lost—Lien of shipowner in respect of railway company's charges.

Goods were carried under a through bill of lading at a through rate to include land and sea transit. Some of the goods were lost during the sea transit, and on delivery of the remainder the shipowner claimed—and was held entitled—to add to the through freight on the quantity delivered the inland charges paid by him to the ry. co. on the portion not delivered, for the joint effect of the through bill of lading, and of the shipowner's regular form of bill of lading incorporated therewith, was to subject the goods not only to a lien in favour of the shipowner in respect of the sea transit, but also to a lien, arising prior to shipment, in favour of the ry. co. for the land transit of the whole parcel, which lien, on payment by the shipowner of the proper inland charges to the ry. co., was transferred to the shipowner, and could be enforced by him against the goods actually delivered.

THE "HIBERNIAN"

C. A. [1907] P. 277

19. — Bill of lading—Untrue statement as to condition of goods—"Shipped in good order and condition"—Master's authority—Liability of shipowner—Estoppel—American "Harter Act"—Measure of Damages.

Shippers of goods at a foreign port chartered a ship to carry the goods to London. The charterparty provided that the master should sign bills of lading in the form indorsed on it. That form contained the clauses "shipped in good order and condition, and to be delivered in the like good order and condition," and "quality and measure unknown," and incorporated the American "Harter Act," which imposes upon shipowners and masters the duty of delivering to shippers of merchandise bills of lading stating (inter alia) "the apparent order and condition" of the merchandise delivered for carriage. The goods in question were damaged before shipment, and the damage was apparent. The master, however, took them on board and gave the shippers a bill of lading in the form indorsed on the charter. Before delivery of the goods in London the shippers sold them to purchasers there, who thereupon became indorsees of the bill of lading to whom the property in the goods passed. On presentation of the bill of lading and shipping documents the purchasers paid the contract price of the goods to the shippers, and

SHIPPING (Charterparty)—continued.

the goods having been delivered in their damaged condition in London, the purchasers, in an arbitration between themselves and the shippers, obtained an award against the latter for damages representing the difference between the price paid by the purchasers and the value of the goods when delivered. The purchasers did not sue the shippers, who were a foreign firm, on that award, but now sued the owners of the ship for damages for not delivering the goods in good order and condition :—

Held, that the words in the bill of lading “shipped in good order and condition” were not words of contract, and the purchasers were not entitled to sue for any breach of contract in respect of them; but that the shipowners were bound by the representation of the master in the bill of lading that the goods were shipped in good order and condition; and that, there being sufficient evidence that the purchasers had altered their position and acted to their own prejudice on the faith of that representation, the shipowners were estopped from denying the truth of it, and were liable in damages to the purchasers for not delivering the goods in good order and condition, the measure of damages being the difference between the price paid by the purchasers and the value of the goods when delivered, together with the reasonable expenses incurred on delivery by reason of their damaged condition. *COMPANIA NAVIERA VASCONZADA v. CHURCHILL & SIM. THE SAME v. BURTON & Co.* **Channell J. [1906] 1 K. B. 237**

20. — Bill of lading incorporating charterparty—Demurrage—Discharge at average rate per day—Delay in discharging—Strike preventing or delaying discharge.

The deft. was the charterer of the plts.’ ship, and the consignee of a cargo of coal shipped under bills of lading incorporating the charterparty, which provided that the charterer should discharge the ship, and that the consignee should take the cargo from alongside at an average rate of 500 tons per day and should pay demurrage if the ship was longer detained, but that in case of strikes preventing or delaying the discharge the time lost was not to count unless the ship was already on demurrage.

If the discharge had proceeded at the stipulated rate it would have been completed on Jan. 3, 1905. On Dec. 31, 1904, when less than half the cargo had been got out, a strike occurred among the stevedores at the port of discharge, and the discharge was not completed until Jan. 15, 1905 :—

Held, that, except as to that portion of the cargo which, if the discharge had proceeded at the stipulated rate, would have remained undischarged on Dec. 31, the deft. could not rely on the strike as an excuse for delay, since if he had not been dilatory the rest of the cargo would have been discharged before the strike began.

Semble, that, except as to the portion aforesaid, the strike did not prevent or delay the discharge within the meaning of the charterparty. *ELSWICK STEAMSHIP CO. v. MONTALDI*

Bigham J. [1907] W. N. 46 ; [1907] 1 K. B. 626

SHIPPING (Charterparty)—continued.

21. — Cancellation—Non-arrival by fixed date—Date for exercise of option to cancel charterparty.

The plts. chartered to defts. a ship which was to go with all convenient speed to Newcastle, New South Wales, and there load a cargo of coals which the freighters bound themselves to ship. The defts. had the option to cancel the charterparty if the ship had not arrived ready to load at Newcastle by Dec. 15, 1907. The ship was detained and did not arrive at Newcastle till June 15, 1908, whereupon the charterers cancelled the charterparty. Meanwhile the plts. had called upon the defts. to exercise, as soon as Dec. 15 had passed, their option to cancel. The defts. refused to do so, and the plts. brought this action for damages for breach of contract on the ground that the defts. ought to have exercised their option as soon as Dec. 15, 1907, had passed and they had been called upon to do so; and that inasmuch as they had declined to elect within a reasonable time from that date the option was gone :—

Held, by Bray J. and by the C. A., that the owners were bound to send the ship to Newcastle; that there was nothing to show that the charterers were not to have the full benefit of that obligation because the ship could not get there by the named date; and that the charterers could not be called upon to exercise their option to cancel the contract until the ship had arrived at Newcastle. *MOEL TRYVAN SHIP CO., LD. v. ANDREW WEIR* **C. A. [1910] W. N. 179 ; [1910] 2 K. B. 844**

— Collision—Limitation of Liability—Charterers by demise—“Owners.”

See SHIPPING—Limitation of Liability.
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22. — Condition implied—Charter of ship for voyage—Implied condition that shipowner will not use ship in manner prejudicial to the charterer—Carriage of bunker coal intended for use on future voyage.

The plts. chartered the defts.’ ship to load “a full and complete cargo . . . not exceeding what she can reasonably stow and carry over her tackle, apparel, provisions and furniture,” and proceed therewith to two or three ports of discharge. The charterparty contained an express provision that the ship on arrival at any one of the charterparty ports was to “lighten at receiver’s expense as much of the cargo as may be found necessary to allow steamer to enter at all times of high water such port.” On arrival of the ship at her first port of discharge the defts. took on board a large quantity of bunker coal intended for use, not upon the existing voyage, but upon some prospective voyage to be commenced after her final discharge. In consequence of the loading of the coal, the ship, on arriving at her next port of discharge, had to be lightened before she could get over the bar, whereby the plts. were put to considerable expense. But for the loading of the coal she would have been able to enter the port without lightening.

Held (affirming the decision of Kennedy J.,

SHIPPING (Charterparty)—continued.

[1906] 1 K. B. 572), that under such a charterparty the shipowner is not entitled to load, to the disadvantage of the charterer, more bunker coal than is reasonably necessary for the seaworthiness of the ship upon the chartered voyage and for the due performance of that voyage; that there is an implied term in the contract that the ship shall, except as aforesaid, be used only for the purposes of the charterers; and that the defts. had consequently committed a breach of their contract and were bound to recoup the plts. the expense to which they had been put.

DARLING v. RAEBURN - - - C. A. [1907] W. N. 61; [1907] 1 K. B. 846

23. — Contract of affreightment—Bill of lading—Exception clause—Deviation—Limitation of liability.

Goods were shipped for carriage under a bill of lading, which contained an exception clause exempting the shipowners from liability for loss arising from (inter alia) negligence of stevedores employed by them in discharging the ship. The ship deviated from the voyage as described in the bill of lading. In the process of discharging the ship at the port of destination the goods were damaged through the negligence of the stevedores employed by the shipowners. In an action brought by the owners of the goods to recover the amount of the loss so occasioned to them:—

Held (affirming the judgment of Channell J., [1907] 1 K. B. 243), that the defts., having by reason of the deviation, failed to perform the bill of lading contract, were not entitled to set up by way of defence the exception clause therein contained, and therefore the action was maintainable.

Balian v. Joly, Victoria & Co., (1890) 6 Times L. R. 345, followed. JOSEPH THORLEY, LD. v. ORCHIS STEAMSHIP CO. C. A. [1907] W. N. 53; [1907] 1 K. B. 660

Note.

Distinguished by Div. Ct., *The "Europa,"* [1908] P. 84. See next Case.

Considered and applied by Pickford J., *Internationale Guano en Superphosphaatwerken v. Robert Macandrew & Co.*, [1909] 2 K. B. 360. See No. 46, below.

24. — Contract of affreightment — Ship—Damage to goods—Unseaworthiness.

A shipowner, whose ship is unseaworthy at the commencement of the chartered voyage, though liable in damages to the charterer, the owner of the cargo on board, for injury to the cargo caused directly by that unseaworthiness, is not liable for injury caused to other portions of the cargo, not as the result of that unseaworthiness, but by a peril of the sea excepted in the contract of affreightment; that is to say, if unseaworthiness in the carrying ship is relied on by the cargo-owner, he must prove that it was the cause of the damage.

Joseph Thorley, Ltd. v. Orchis Steamship Co., Ltd., [1907] 1 K. B. 660. (See preceding Case), distinguished. *THE "EUROPA"*

Div. Ct. [1907] W. N. 254; [1908] P. 84

25. — Contract of carriage—Breach of contract—Measure of damages.

SHIPPING (Charterparty)—continued.

The plts., manufacturers of wood-pulp at Stocka, Sweden, entered into a charterparty dated Jan. 20, 1900, with the defts., shipowners of Glasgow, by which the latter agreed to carry 900-1000, tons of wood-pulp from Stocka to Cardiff, the cargo to be lifted in two shipments—"One in May (F.O.W.). The second in Aug.-Sept. (owner's option)." The ship was to have liberty to call at any port or ports in order to tow and assist vessels in distress, and to deviate for the purpose of saving life or property; the owners to wire shippers of the cargo, Ströms Bruks, Stocka, six days' notice of readiness; also ship's departure from last port. The contract was made by the plts. with the view of enabling them to fulfil a contract, dated Dec. 4, 1899, for the sale and delivery of 900-1000 tons of wood-pulp to T. Owen & Co., Cardiff. The memorandum of sale contained a column of printed notes, opposite which were written particulars of the special terms of the contract. Against the note "Mode and place of delivery" were the words "C.l.f., Penarth Dock, Cardiff," and against the note "Time of delivery" the words "In two cargoes, first open water, and Aug.-Sept., 1900." The first cargo, consisting of 500 tons, was duly forwarded and accepted by T. Owen & Co.; but the defts. wholly failed to fulfil their contract with regard to the second shipment, whereby the plts. were unable to complete their contract with T. Owen & Co., who bought in against them 367 tons in several parcels in Manchester, Liverpool, and London. The plts. having paid T. Owen & Co. the amount of their claim in respect of the goods so bought in, brought their action to recover from the defts. the amount paid by them:—

Held, reversing the decision of the First Division of the Ct. of Sess., (1904) 6 F. 486, that the appellants were entitled to recover; that the proper measure of damages was the cost of replacing the goods at their place of destination at the time when they ought to have arrived, less the value of the goods in Sweden and the amount of the freight and insurance; and that the plts.' right to damages would not be effected even if it were assumed that the dates of delivery in their contract with the defts. did not exactly coincide with those in their contract with T. Owen & Co. STRÖMS BRUKS AKTIE BOLAG v. JOHN & PETER HUTCHISON H. L. (Sc.) [1905] W. N. 135; [1905] A. C. 515

26. — Contract of carriage — Construction — Liability of shipowner — Unseaworthiness — Exceptions—"Damage capable of being covered or which has been paid for by insurance."

A shipowner agreed to carry frozen meat by an agreement which was so ill thought out and ill expressed in self-contradictory sentences that it was impossible to feel sure what the parties intended to stipulate. Frozen meat shipped under this agreement arrived damaged owing to the unseaworthiness of the ship and the negligence of the shipowner's agents:—

Held, that there being no clear and express exemption, the shipowner was not relieved from his duty to provide a seaworthy ship and to take reasonable care.

SHIPPING (Charterparty)—continued.

Decision of the C. A., [1907] 1 K. B. 769, affirmed on the above ground. **NELSON LINE (LIVERPOOL), LD. v. JAMES NELSON & SONS, LD.,** (No. 2) **H. L. (E.)** [1907] **W. N. 243**; [1908] **A. C. 16**

Note.

See *James Nelson & Sons, Ltd. v. Nelson Line (Liverpool), Ltd.*, **H. L. (E.)** [1908] **A. C. 108**. No. 44, below.

27. — Contract to load "a cargo not less than 6500 tons but not exceeding 7000 tons"—Construction of charterparty.

A charterparty provided that the charterers should load "a cargo of beans not less than 6500 tons but not exceeding 7000 tons . . . which the said charterers bind themselves to ship not exceeding what she can reasonably stow and carry over and above her cabin, bunkers, tackle, apparel, provisions, and furniture." It also contained the following clause: "Charterers to have the option of underletting the whole or part of the steamer"—

Held, that the charterers were bound to load a full and complete cargo within the limits specified. **JARDINE, MATHESON & Co. v. CLYDE SHIPPING CO.** - **Hamilton J.** [1910] **W. N. 54**; [1910] 1 K. B. 627

28. — Damage to cargo—Bill of lading—Charterparty—Negligence clause.

The decision of the C. A. (*The "Draupner,"* [1909] 1 P. 219) that the shipowners were liable for the damage to the cargo was reversed by this House without deciding any question of law, on the ground that the C. A. drew a wrong inference from admitted facts. **OWNERS OF S.S. DRAUPNER v. OWNERS OF CARGO OF S.S. DRAUPNER. THE "DRAUPNER" - H. L. (E.)** [1910] **W. N. 161**; [1910] **A. C. 450**

29. — Damage to cargo—Unseaworthiness—Bill of lading—"All other conditions as per charterparty including negligence clause"—Incorporation of exceptions by reference.

The plts.' goods were carried under a bill of lading containing the words "all other conditions as per charterparty including negligence clause." A clause in the charterparty stated that "the steamer is in no way liable for the consequences of . . . perils of the sea. . . . Neither is the steamer answerable for losses occasioned by . . . unseaworthiness, or latent defect in hull, machinery or appurtenances whether existing or not before or after the commencement of the voyage, not resulting from want of due diligence by the owner of the steamer, or by the ship's husband or manager . . ."; and, by a further clause in the charterparty, the above clause was to be embodied in the bill of lading.

During the voyage damage was done to the plts.' goods owing to a small crack in a deck plate which let the water through, and the plts. alleged, and established in the Court below, unseaworthiness not covered by the exceptions incorporated in the bill of lading:—

Held, by the Div. Ct. (Sir Gorell Barnes, Pres., and Baggallay J.) reversing the decision of the Court below, that the evidence shewed that bad weather was met with involving straining of the vessel sufficient to account for the crack in

SHIPPING (Charterparty)—continued.

question, and, therefore, a prima facie case of perils of the sea had been made out, which the plts., upon whom the burden of proof rested, had failed to rebut. Secondly, that the bill of lading incorporated by reference the whole of the clause in the charterparty, including the exemption as to unseaworthiness, unless resulting from want of due diligence, of which there was no evidence, **THE "NORTHUMBRIA" - Div. Ct.** [1906] **P. 292**

30. — Delay—"Load in regular turn"—Option to select cargo—Detention at port of loading—Custom of port—Unreasonable delay—Delay by reason of charterer's engagements—Charterparty—Construction.

The words "in regular turn" in a charterparty prima facie mean the regular turn of the port of loading.

But it may be shewn, either from the construction of the charterparty itself, or by evidence, that the words were intended to have a different meaning.

The charterparty, dated Feb. 6, 1900, of a sailing ship (then at Hamburg) provided that she should proceed to the port of Newcastle, New South Wales, and there "in the usual and customary manner load in regular turn from Brown's Duckenfield Colliery, or any of the collieries the freighters may name," a cargo of coal, which the freighters bound themselves to ship. The coal was to be carried to South America. The charterers were themselves the owners of the Duckenfield Colliery. On April 6, 1900, they sold to purchasers in South America the cargo of Duckenfield coal to be shipped by this ship. The ship arrived at Newcastle on Aug. 3, 1900, and was not berthed for loading until Oct. 6. Her loading was completed on Oct. 9.

By the regulations and custom of the port a loading berth could not be obtained until a loading order from the colliery was lodged.

On the arrival of the vessel a large number of other ships, which were entitled to priority over her, were waiting to load coals from the Duckenfield Colliery, and the charterers were unable to give her a loading order until Oct. 5, when it was lodged and application made to the berthing master for a berth.

On the evidence the Court held that the charterers had not chartered more vessels to load their coal than in the ordinary course of their business.

The purchasers of the coal refused to accept any other kind of coal, though the charterers endeavoured to induce them to do so:—

Held, upon the construction of the charterparty and with reference to the rules and custom of the port, that the words "regular turn" must be taken to mean the regular turn of the colliery:

Held, also, that the shipowners must be taken to have known that the loading of the ship at this port would probably be long delayed, that the charterers had not caused any unreasonable delay, and that they were not liable for the detention of the ship.

Decision of Kennedy J. affirmed. **BARQUE QUILPUÉ, LD. v. BROWN C. A.** [1904] 2 K. B. 264

SHIPPING (Charterparty)—continued.*Note.*

This case was referred to by *C. A., Jones, Ltd. v. Green & Co.*, [1904] 2 K. B. 275, 283. See next Case.

31. — Delay—Obligation of charterer to have cargo ready—Time for loading not fixed—Cargo from specified source—Custom of port—Common knowledge of parties—Liability of charterer for delay—Charterparty—Construction.

On Feb. 14, 1900, a charterparty was entered into between the plts. (shipowners) and the defts. (charterers), which provided that the ship "shall with all possible dispatch proceed to such loading berth as freighters may name at Newcastle, New South Wales, and . . . shall there load in the usual and customary manner a full and complete cargo of coals as ordered by charterers," (the name of the coal being left blank. The coal was to be carried to South America, and the defts. sold the cargo as "Wallsend" to purchasers there. No time for loading was fixed.

On May 25, 1900, the defts. notified the plts. that the coal was to be "Wallsend," a coal coming from the Wallsend Colliery at Newcastle, which was in greater demand than the coal from other collieries in the neighbourhood. The output from the collieries was limited.

By the custom of the port, which was known to both parties at the time of the contract, a ship could not obtain a loading berth until a coaling order from the particular colliery was lodged with the port authority.

The ship arrived at Newcastle on Sept. 1, 1900. She did not obtain a loading berth till Dec. 15, 1900, the coaling order having been lodged on the previous day :—

Held, that the charterers had fulfilled their obligation when the ship obtained a loading berth in accordance with her proper turn at the colliery, and that they were not liable for the delay :—

Held, also, that the defts. had not acted unreasonably in not substituting another coal for Wallsend, their purchasers having declined to accept other coal.

Decision of Kennedy J. affirmed.

The law as stated in Carver's Carriage by Sea, 3rd ed. s. 251, p. 288, approved and adopted.

Gardiner v. Macfarlane, (1893) 20 R. 414, and *Arden Steamship Co. v. Weir*, (1901) 41 Sc. L. R. 230, distinguished.

Per Vaughan Williams L.J. : When the source from which a cargo is to come is expressly defined, no time being fixed for loading, there is no absolute rule that the charterer is bound to have the cargo ready whenever it may be reasonably expected that there will be a berth for the ship if the cargo is ready.

Grant v. Coerdale, (1884) 9 App. Cas. 470, distinguished. *JONES, LD. v. GREEN & CO.*

C. A. [1904] 2 K. B. 275

32. — Demurrage—Bill of lading not put in evidence—Hypothetical case.

Action commenced when it appeared to the House to have been brought to try a hypothetical case. No costs.

SHIPPING (Charterparty)—continued.

Appeal from a judgment of the Second Division of the Ct. of Sess., Sc., [1909] S. C. 1414. *GLASGOW NAVIGATION CO. v. IRON ORE CO.*

H. L. (Sc.) [1910] W. N. 84; [1910] A. C. 293

33. — Demurrage — Computation of time — Time allowed for discharging—Average rate of discharge—Fraction of a day.

By a charterparty, by which a ship was chartered for the carriage of a cargo from Cardiff to Bermuda, it was provided that "the cargo shall be discharged at the average rate of not less than two hundred and ten tons per working day, weather permitting, the time to commence in accordance with the custom of the port; Sundays and all holidays, and time lost through strikes or locks out of workmen, accidents, frosts, floods, rains, winds, rollers, or any other cause whatever beyond the control of the consignee of the cargo, not to count as discharging time: demurrage to be paid at the rate of fourpence per net register ton per day, and pro rata, employed beyond the time allowed for discharging." The ship arrived at Bermuda with her cargo. The time allowed for discharging began to run at 6 A.M. on Monday, July 15, 1901, and the discharge of the cargo was not completed till 3 P.M. on Monday, July 29. It was admitted that, on the assumption that a fraction of a day was to be taken into consideration, the time allowed, at the rate of discharge mentioned in the charterparty, for discharging the cargo was a period of eleven working days and a portion of a twelfth day, ending at 9 A.M. on Saturday, July 27 :—

Held, that upon the true construction of the charterparty, the demurrage began to run at 9 A.M. on Saturday, July 27, and not at the end of that day. *YEOMAN v. REX*

C. A. [1904] 2 K. B. 429

Note.

This case was distinguished by Channell J., *Houlder v. Weir*, [1905] 2 K. B. 267. See No. 54, below.

34. — Demurrage—Construction—Exceptions—Or hindrances of what kind soever—Ejusdem generis.

By a charterparty the parties exempted each other from all liability arising from "frosts, floods, strikes . . . and any other unavoidable accidents or hindrances of what kind soever beyond their control delaying the loading of the cargo" :—

Held that, upon the natural and true construction of the clause, the parties, by inserting the words "of what kind soever," intended to exclude the doctrine or rule of ejusdem generis, and that the charterers were not liable for delay in loading caused by a block of other ships at the loading port. *LARSEN v. SYLVESTER & CO.*

H. L. (E.) [1908] A. C. 295

35. — Demurrage—"Customary turn."

Appeal by defts., the West of England China Stone and Clay Co., of St. Austell, against a decision of the judge of the Truro County Court in favour of the plt., Edward W. Turner, of Garston, owner of the steamship *Sheila*.

By charterparty dated Mar. 26, 1907, it was agreed between the plt. as owner of the *Sheila* and the agents of the defts., that the ship should

SHIPPING (Charterparty)—continued.

proceed to Great Western Ry. jetties, Fowey, and there load from the said merchants "in the customary manner a full and complete cargo of china clay and china stone in bulk . . . customary turn by Great Western Ry. as for steamers at Fowey to be allowed the merchants (if the ship be not sooner despatched) for loading the said cargo at Fowey." If required, the vessel was to lie ten days on demurrage at 8s. per hour for every hour's detention over and above the said lying time.

The vessel arrived at Fowey at 5 A.M. on Thursday, Mar. 28, and was moored to a buoy in the harbour, waiting for a berth. At 10 o'clock A.M. on Mar. 29 the master was informed that a berth was vacant, and the ship was moored alongside the berth at 10.15, but no cargo was loaded that day, as it was Good Friday. Loading was started at 2.45 A.M. on Saturday, Mar. 30, but in consequence of the failure of the charterers to send down sufficient cargo to the jetties, only about 150 tons of cargo was got on board at 10 P.M. on that day, whereas it was alleged that if the cargo had been down the whole could have been easily loaded by that time and the ship got to sea. The stevedores were, it was alleged, constantly waiting for waggons to come from the clay pits. The full cargo of 534 tons was not completed until 3 P.M. on Tuesday, April 2, 1907, and the ship sailed from Fowey at 3.30 P.M. on that day. The plt. claimed 25½ 8s. demurrage from 12 o'clock midnight on Saturday, Mar. 30, to 3.30 P.M. on Tuesday, April 2, 1907—63½ hours at 8s. per hour.

Div. Ct.: We are of opinion that this appeal fails. The learned judge has found that in fact the delay was caused by the failure of the charterers to provide a cargo, and the time taken to do so was not a reasonable time. **THE "SHEILA"**

(Dec. 3, 1907) reported
[1909] P. 31, n.

36. — Demurrage—Discharge of cargo—"As fast as the steamer can deliver"—Reasonable despatch under the circumstances—Liability for delay.

A clause in a charterparty providing that the cargo is to be discharged with customary steamship despatch as fast as the steamer can deliver during the ordinary working hours of the port of discharge, but according to the custom of the port, is not tantamount to fixing a definite number of days or hours during which the discharge is to be completed. To create such a liability the days or hours must be specified in plain terms. This construction of the clause is not affected by a special exception in the case of a strike, a lock-out or epidemics. Demurrage is not due if the discharge is effected with the utmost despatch practicable, having regard to the custom of the port, the facilities for delivery, and all other circumstances not brought about by or within the control of the person whose duty it is to take delivery.

The decision of the C. A., [1902] 2 K. B. 199, affirmed. **HULTHEN v. STEWART & CO.**

H. L. (K.) [1903] A. C. 389

Note.

See *The "Arne,"* Div. Ct. [1904] P. 154, 158. See No. 8, above.

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SHIPPING (Charterparty)—continued.

37. — Demurrage—"In regular turn"—Construction of charterparty.

By charterparty it was agreed between the plt., shipowner, and the defts., charterers, that the plt.'s vessel should "proceed to the Nob near Topsham in the river Exe, or to Topsham Quay, as ordered on arrival . . . and deliver the (defts.' cargo of 180 tons of phosphate) in regular turn with other seagoing vessels at the average rate of thirty tons per weather working day."

The plt.'s vessel was ordered to, and duly arrived at, the Nob; but though ready to deliver her cargo, she was kept waiting some days whilst another vessel, also consigned to the defts., and already there, was being discharged by lighters sent by the defts., after which the discharge of the plt.'s vessel was proceeded with. The plt. claimed demurrage, at the agreed rate per day, on the ground that the time allowed for unloading began to count from the day the vessel was in her discharging berth at the Nob ready to deliver her cargo, and that the lay days had been exceeded. The defts. contended that they had complied with the terms of the charterparty by commencing the discharge of the plt.'s vessel "in regular turn" on the day after the completion of the discharge of the other vessel at the particular discharging berth to which the plt.'s vessel had been ordered:—

Held, by the Div. Ct. (Sir Gorell Barnes, Pres., and Bargaive Deane J.), affirming the judgment of the Court below in favour of the defts., that "in regular turn" at the Nob meant one vessel at a time. **"THE CORDELIA"** — Div. Ct.

[1909] P. 27

38. — Demurrage—Lay days—Arrival at place of loading.

When the place named in a charterparty as the place of loading is a port or other wide district (as distinguished from the case in which the charterparty either names a definite spot in the port or dock as the place of arrival, or gives the charterer in express terms the right to order a vessel to a definite and precise loading spot), the lay days begin when the ship is ready and at the freighter's disposal within the named place in its commercial sense, though she may not be in a position to take in or discharge cargo, and though she may not be at the wharf, dock, or other part of the place to which the charterer may have properly required her to go.

By a charterparty it was agreed that the plt.'s steamship should "proceed as ordered by the charterers or their agents to the under-mentioned place or places, and there receive from them a full and complete cargo of wheat . . . viz., (4) at one or two safe loading ports or places in the River Parana, not higher than San Lorenzo, . . . which cargo the said charterers bind themselves to ship . . . time for loading shall commence to count twelve hours after written notice has been given by the master . . . that the vessel is in readiness to receive cargo . . . and all time on demurrage over and above said laying days shall be paid for by the charterers."

The vessel was ordered to Bahia Blanca. She arrived off the pier at Bahia Blanca, and anchored in the river within the port a few ship's lengths

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SHIPPING (Charterparty)—continued.

off the pier. The master then gave notice that the ship was ready to load. The charterers desired the ship to go alongside the pier to load, which she eventually did, but was delayed in getting a berth there owing to the crowded state of the port :—

Held (reversing the judgment of Channell, J., [1907] 1 K. B. 344), that the lay days commenced twelve hours after the notice of readiness to load given by the master, and not from the time the vessel obtained the berth alongside the pier.

Nelson v. Dahl, (1879) 12 Ch. D. 568, and *Pyman v. Dreyfus*, (1889) 24 Q. B. D. 152, explained and followed. **LEONIS STEAMSHIP CO. v. RANK, LD.** C. A. [1908] 1 K. B. 499

39. — Demurrage—Lay days—Sundays and holidays excepted—Work done on Sundays and holidays—Shifting from port to port.

A charterparty provided that thirteen running days, Sundays and holidays excepted, should be allowed the charterers for loading the cargo. Demurrage for any days over and above the said laying days was to be paid at the rate of 35*l.* per day.

By the direction of the charterers work was done in loading the ship on a Sunday after the lay days had begun to run and before they had expired :—

Held, that the proper inference to be drawn was that the parties had agreed to include that day among the lay days, and that notwithstanding the express terms of the charterparty, that day was to be counted as a lay day.

In the absence of any indication to the contrary, the same inference is to be drawn when work is in fact done in loading the ship on a Sunday or a holiday, whether by the direction or at the request of the charterers or not.

The charterparty also provided that the ship should proceed to a named port and there load a cargo. The charterers were to have the option of using one or two neighbouring ports in the district of the named port, time in shifting ports to count as lay days :—

Held, that a Sunday or holiday occupied at the request of the charterers in shifting from one port to another in the district of the named port was to be included in the lay days. **WHITTALL & CO. v. RAHTKEN'S SHIPPING CO. LD.** *Bray J.* [1907] W. N. 63; [1907] 1 K. B. 783

40. — Demurrage — Sundays and holidays excepted.

The plts. were the owners, and the defts. the charterers of the steamship *Highfield*. The action was brought to recover 21*l.* 16*s.* 8*d.* for five days, demurrage.

By the contract of charter, which was dated December 3, 1905, the *Highfield* was to load not exceeding 2300 tons of wheat ^{and} _{or} maize at Rosario, or at a port below, completing at Buenos Ayres or La Plata with cargo and live stock. The contract contained the following provision: "The steamer is to be loaded at the rate of 17½ tons per weather working day, Sundays and holidays excepted."

SHIPPING (Charterparty)—continued.

The ship went to Rosario, and there took in part of her cargo. She then proceeded to La Plata, where she completed her cargo, including cattle and live stock. On Thursday, March 19, 1907, she arrived at La Plata at 4 P.M., having then taken eight days. On Saturday, 21, she had taken ten days.

The material question was whether Sunday, March 22, and Wednesday, March 25, which was a holiday at La Plata, on each of which days the work of loading was actually carried on, were to be counted as working days.

Held, that the plts. were entitled to judgment for one day's demurrage. **BRANCELOW STEAMSHIP CO. v. LAMPORT & HOLT - Lord Russell of Killowen C.J.** (Feb. 17, 1897) [1907] 1 K. B. 787, n.

Note.

Approved of by C. A., *Nelson & Sons, Ltd. v. Nelson Line (Liverpool), Ltd., In re The Same*, [1907] 2 K. B. 705; but this decision was reversed by H. L. (E.) [1908] A. C. 108. See No. 44, below.

41. — Demurrage—Weather working days—Surf days—Custom of port—Admissibility of evidence—Time allowed for discharge of cargo—Delay caused by surf.

The expression "weather working day," as used of lay days for loading or discharging a vessel, has a natural and ordinary meaning, namely, a day on which the work of loading or discharging is not prevented by bad weather. Therefore, where by a charterparty the charterers bind themselves to take delivery of the cargo at an average rate per weather working day, evidence of a custom that at the port of discharge the expression bears a different meaning is not admissible.

By a charterparty a vessel was to proceed to one or two safe ports between Valparaiso and Pisagua inclusive, as ordered on arrival at Valparaiso, and there deliver the cargo in the usual and customary manner alongside such wharf, vessel, steamer, floating dock, hulk, launch, or pier where she could always safely lie afloat as directed by the consignees.

The exceptions clause included a provision, "detention through . . . delay by . . . surf . . . not to count in the time allowed for loading or discharging." The cargo was to be taken delivery of from alongside ship at port of discharge, "at the average rate of not less than 250 tons per weather working day (Sundays and holidays excepted) . . ."

The vessel was ordered to discharge at Valparaiso :—

Held—(1) that evidence was not admissible to shew that by the custom of the port of Valparaiso a surf day (i.e., a day on which the surf on the beach is so heavy that lighters cannot land their cargo there without unusual difficulty and delay) does not count as a weather working day, and that surf days were fixed by the decision of the port captain; (2) that the exception, "detention through . . . delay by . . . surf . . . not to count in the time allowed for . . . discharging," was not limited to detention through delay caused by surf in the discharge of the cargo from the ship into lighters, but

SHIPPING (Charterparty)—continued.

included detention through delay caused by surf in landing the cargo from the lighters on to the beach. *BENNETTS & Co. v. BROWN*

Walton J. [1908] 1 K. B. 490

42. — Demurrage clause—No time specified for demurrage—Rights of parties.

Where a charterparty provides that if the ship is detained after the expiry of the time limited for loading demurrage shall be paid at a specified rate, but no time is thereby specified during which she may be kept on demurrage, the ship is not entitled to sail with an incomplete cargo immediately upon the expiry of the loading time, but the charterer is entitled to keep her on demurrage for a reasonable time.

Query whether, if there is no demurrage clause at all, the charterer is entitled to detain the ship for a reasonable time at a reasonable rate of compensation? *WILSON & COVENTRY, LD. v. OTTO THORESEN'S LINE*

Bray J. [1901] 2 K. B. 405

43. — Despatch money—Lay days—Exceptions —“Each running day saved.”

A charterparty provided that twenty running days should be allowed for the discharge of the cargo, “holidays and time between 1 P.M. Saturdays and 7 A.M. Mondays excepted,” and that the shipowners should pay despatch money “for each running day saved.” The discharge of the ship took 12 days 13 hours and was completed at 10 A.M. Saturday, Feb. 27. If the whole period of time allowed by the charterparty had been taken for the discharge, the lay days, by reason of the excepted time, would not have expired until 9 A.M. on Mar. 10, or 10 days 23 hours after the discharge was actually completed. The shipowners contended that despatch money was only payable in respect of the difference between 20 days and 12 days 13 hours, i.e., 7 days 11 hours:—

Held, that the charterers were entitled to despatch money in respect of the subsequent time between 1 P.M. on Saturdays and 7 A.M. on Mondays included in the lay days, the same being running days “saved” within the meaning of the charterparty, and that despatch money was therefore payable in respect of 10 days 23 hours.

The Glendevon, [1893] P. 269, and *Nelson & Sons v. Nelson Line, Liverpool*, [1907] 2 K. B. 705, distinguished. *In re ROYAL MAIL STEAM PACKET COMPANY AND RIVER PLATE STEAMSHIP COMPANY*

Bray J. [1910] 1 K. B. 600

44. — Despatch money—Lay days—Exception of Sundays and holidays—Loading done on holidays by mutual consent—Days saved in loading.

By a charterparty, “seven weather working days (Sundays and holidays excepted)” were “to be allowed by shipowners to charterers for loading,” and for any time beyond that period the charterers were to pay demurrage at the rate of 40*l.* per day, and “for each clear day saved in loading the charterers” were to “be paid or allowed by the owners the sum of 20*l.*” The loading of a ship under this charterparty was continued during two holidays. No evidence was given of any agreement in fact varying the terms of the charterparty and providing that the

SHIPPING (Charterparty)—continued.

two holidays in question should count as lay days:—

Held, that no inference of law could be drawn so varying the terms, and that the charterers, having loaded in two days less than the lay days, were entitled to despatch money (20*l.* per day) for days “saved in loading.”

Decision of the C. A., [1907] 2 K. B. 705, reversed. *JAMES NELSON & SONS, LD. v. NELSON LINE (LIVERPOOL), LD.*

H. L. (E.) [1908] W. N. 40; [1908] A. C. 108

45. — Deviation—Putting into port of refuge—Necessity of, caused by unseaworthiness—Deviation—Effect of, on contract of carriage—Lien for “dead freight”—Unliquidated damages for short loading.

Where in the course of a voyage it becomes necessary for the safety of the ship and cargo to put into a port of refuge, a deviation for that purpose is justifiable and proper, none the less because the necessity for it was caused by the shipowner's wrongful act in sending the ship to sea in an unseaworthy condition, and it consequently has not the effect of putting an end to the contract of carriage or of relieving the cargo owners from the obligations which the contract contains.

Where by a charterparty or bill of lading a lien is given to the shipowner for “dead freight” that expression must be taken to include unliquidated damages for a breach of contract by the charterer in failing to load a full and complete cargo.

McLean v. Fleming, (1871) L. R. 2 H. L. Sc. 128, followed.

Gray v. Carr, (1871) L. R. 6 Q. B. 522, not followed. *KISH v. TAYLOR*

Walton J. [1910] W. N. 148; [1910] 2 K. B. 309

— Deviation clause—Notice given after loss.

See INSURANCE (MARINE). 10.

46. — Excepted Perils—Deviation—Damage to cargo—Liability of shipowner.

The plts. chartered the defts.' ship to carry a cargo of superphosphates in bags for delivery at Algeciras and Alicante, with leave to call at Corunna. The vessel was delayed at Corunna and Algeciras. On leaving Algeciras she deviated from the chartered voyage by going to Seville, whence she went to Alicante. By reason of the various delays the cargo delivered at Alicante was damaged, the damage being due to the action of sulphuric acid in the superphosphates eating away the bags:—

Held, that the deviation to Seville put an end to the charterparty as from the beginning of the voyage, and that the defts. were therefore, as to the whole voyage, under the obligations of common carriers; that as regards damage to the cargo by the delay at Corunna and Algeciras the defts. were not liable, the damage being due to the nature of the cargo, and not to any failure on the part of the defts. to carry the goods with reasonable despatch; but that as regards the increased damage due to the delay occasioned by the deviation itself the defts. were liable under the obligations of common carriers.

Joseph Thorley, Ltd. v. Orchis Steamship Co.,

SHIPPING (Charterparty)—continued.

[1907] 1 K. B. 660, considered and applied.
*INTERNATIONALE GUANO EN SUPERPHOS-
 PHAATWERKEN v. ROBERT MACANDREW & CO.*
Pickford J. [1909] 2 K. B. 360

47. — Fire—Applicability to charterer—Exceptions.

The exception of fire in a charterparty enures for the protection of the charterer as well as the shipowner. *In re NEWMAN & DALE STEAMSHIP CO. AND BRITISH AND SOUTH AMERICAN STEAMSHIP CO.* **Bigham J. [1903] 1 K. B. 262**

48. — Freight—Lien on sub-freight.

A lien on sub-freight given to a shipowner by a charterparty can only be exercised before the sub-freight has been paid to the charterer of the ship or his agent. The lien confers no right on the shipowner to follow the sub-freight after it has been paid. *TAGART, BEATON & CO. v. JAMES FISHER & SONS. WEST HARTLEPOOL STEAM NAVIGATION CO., THIRD PARTIES*
C. A. [1903] 1 K. B. 391

49. — Freight at rate per ton of gross weight shipped—"Payable on right and true delivery of cargo"—Loss of part of cargo—Lump sum freight—Freight on cargo delivered—Bill of lading freight collected by shipowner—Difference between freight collected and freight due for cargo delivered—Recovery of balance by charterer.

By a charterparty a cargo of sugar in bags was to be loaded at a named port, and the ship so loaded was to proceed to another named port and there deliver the cargo "agreeably to bills of lading on being paid freight in full of all port charges . . . at the rate of 10s. 6d. per ton of 20 cwt. gross weight shipped payable on right and true delivery of the cargo." Charterers' liability was to cease "when cargo is shipped and bills of lading signed, provided all the conditions called for in this charter have been fulfilled, but vessel to have a lien on the cargo for freight, dead freight, and demurrage." Any difference between the charterparty and bills of lading freight was to be settled at the port of loading on clearance of the vessel if required by the master. The amount due under this clause was ascertained at the port of loading, and paid by the charterers to the shipowners. The vessel loaded a full cargo, but on the voyage she grounded and a portion of the cargo was lost. The remainder was delivered at the port of discharge and the bills of lading freight on the whole cargo shipped was collected by the shipowners. In an action by the charterers to recover, as money received to their use, the difference between the freight so collected by the shipowners and the amount due to them under the charterparty in respect of the cargo delivered :—

Held, by Lord Alverstone C.J. and Collins M.R., *Romer L.J.*, dissenting, affirming the judgment of *Waltou J.*, that under the charterparty the shipowners were not entitled to a lump sum freight, and that the balance of freight in their hands could be recovered from them by the charterers. *LONDON TRANSPORT CO., LD. v. TRECHMANN BROTHERS*

C. A. [1904] 1 K. B. 635

SHIPPING (Charterparty)—continued.

— Insurance, Marine.

See under INSURANCE (MARINE).

50. — Jurisdiction—Damage to cargo—Admiralty Court Act, 1861 (24 Vict. c. 10), s. 6—Charterer—Owner of goods—Breach of contract.

In this case *Phillimore J.* mentioned *The Teutonia*, (1872) L. R. 4 P. C. 171, and intimated that, in his opinion, though they could not sue as charterers, the *plts.* would not be, at the trial, precluded from referring to the contract contained in the charterparty.

Thereupon the *plts.* consented to strike out of the indorsement of the writ the words "charterers of the SS. *Ereza* and,"

Phillimore J. making no order except that the costs would be costs in the cause. *THE "EREZA" - Phillimore J. [1902] W. N. 234*

51. — Lien—Demurrage, payable day by day—"Charges."

A charterparty provided that the charterer should be allowed so many running days for loading and that the discharge should be effected according to the custom of the port; that, in the event of the detention of the vessel by the charterer beyond the laying days, demurrage should be paid at a specified rate "day by day as falling due"; and that the owner should have a lien for "all freight, demurrage, and all other charges whatsoever."

In an action by the shipowner against an indorsee of the bills of lading, which incorporated the provisions of the charterparty, to determine the extent of the lien :—

Held, that the fact that demurrage was payable day by day as falling due did not deprive the shipowner of his lien, and that the lien applied to demurrage at the port of loading.

Gardner v. Trechmann, (1884) 15 Q. B. D. 154, and *Pederson v. Lotinga*, (1857) 28 L. T. (O.S.) 267, distinguished.

Held, further, that as against a bill of lading holder the word "charges" did not include charges not specifically mentioned in the charterparty.

Decision of *Bray J.*, [1909] 1 K. B. 948, affirmed. *REDERIACTIESELSKABET "SUPERIOR" v. DEWAR & WEBB*
C. A. [1909] W. N. 195 ; [1909] 2 K. B. 998

52. — Loading time—Colliery guarantee—Exceptions—Any other cause beyond charterer's control—Construction—"Ejusdem generis" principle.

A ship was chartered to proceed to the Alexandria Dock at Hull and there load a cargo of coal in 120 hours on conditions of usual colliery guarantee. The colliery guarantee excepted from the loading time Sundays, holidays, strikes, frosts or storms, any accidents stopping the working, loading, or shipping of the cargo, restrictions or suspensions of labour, lock-outs, delay on the part of the ry. co. either in supplying waggons or leading the coals, "or any other cause beyond the charterer's control." The ship arrived in the dock and gave notice of readiness to load on July 23, but owing to the presence of other vessels which had previously arrived and were waiting to load, the turn of the ship to come under a loading tip was not

SHIPPING (Charterparty)—continued.

reached until Aug. 1. On a claim by the owners against the charterer for demurrage :—

Held, following *Monsen v. Maafarlane*, [1895] 2 Q. B. 562, that the lay hours commenced to run on the arrival of the ship in dock ; that the words "any other cause beyond the charterer's control" must be construed as referring to matters ejusdem generis with the antecedent exceptions ; that the cause of the delay, namely, the presence of other ships in the dock, was not a matter ejusdem generis with those exceptions, and that the charterer was, therefore, not protected by the exceptions clause and was liable for demurrage.

In re Richardsons and Samuel, [1898] 1 Q. B. 261, followed.

Larsen v. Sylvester, [1908] A. C. 295, distinguished. *THORMAN v. DOWGATE STEAMSHIP CO.* — *HAMILTON J.* [1910] 1 K. B. 410

— Mortgage—Ship—Wrongful seizure.

See SHIPPING—Mortgages. 7.

53. — *Negligence of stevedore in discharge—Construction of exceptions—"All other accidents"—"Negligence of servants . . . in the management or navigation of the vessel or otherwise"—Damage to cargo.*

Sugar in bags was shipped under a charterparty excepting the shipowner from liability for loss or damage arising from the usual perils "and all other accidents even though caused by negligence, fault or error of judgment on the part of the pilot, captain, sailors or other servants of the owner in the management or navigation of vessel or otherwise."

In the process of discharge stevedore's men, employed by the ship, recklessly used hooks which tore the bags, and carelessly allowed the bags to be cut by the slings and to burst through striking against the hatch-coamings whilst being lifted out of the hold. In an action by the charterer for damage to and short delivery of the sugar :—

Held, by the C. A. (Collins M.R., Mathew and Cozens-Hardy L.J.), affirming the decision of Phillimore J., [1902] W. N. 234 ; [1903] P. 35, that the shipowner was not liable, as the loss was covered by the exception "accidents . . . caused by negligence . . . of the servants of the owner" "otherwise" than "in the management or navigation of the vessel." *THE "TORBRYAN"*

C. A. [1903] W. N. 138 ; [1903] P. 194

— Negligent mistake—Intentional letting in of sea-water.

See No. 12, above.

54. — *Rate of discharge of cargo—Fraction of a day—Demurrage—Ballasting, Discharge of cargo delayed by.*

The provision in a charterparty that the cargo is to be discharged "at the average rate of not less than ——— tons per day" means, in the absence of other words in the charterparty pointing to a different conclusion, that it is to be discharged in a number of days calculated at that rate, not in a number of hours calculated at that rate ; and that, if a fraction of a day is required for the completion of the discharge,

SHIPPING (Charterparty)—continued.

the charterer is entitled to the whole of that day.

Yeoman v. Rew, [1904] 2 K. B. 429, distinguished.

Where the taking in of ballast during the process of discharge of cargo is necessary for the safety of the ship and of the cargo remaining on board, the fact that the taking in of the ballast delays the discharge of the cargo does not relieve the charterer from his obligation to complete the discharge within the stipulated time. *HOULDER v. WEIR*

Channell J. [1905] 2 K. B. 267

55. — *"Ready for loading"—Discharge of previous cargo—Cancellation.*

By a charterparty of Nov. 15, 1907, it was agreed between the plts. and the defts. that the ship *Lyderhorn* should proceed to load at Iquique and Caleta Buena and there receive from the agents of the defts. a full cargo of nitrate of soda. Twenty-five lay days were to be allowed to the merchants for loading the ship and for waiting orders abroad ; lay days to be reckoned from the day after the master should give notice to charterers' agents of being ready to receive cargo and not to commence before Jan. 1, 1908, at the respective ports, and to cease when they should give him notice that he was at liberty to proceed to sea. Stiffening of nitrate to be supplied as required at Iquique, but not before Dec. 10, on receipt of forty-eight hours' notice from captain of his readiness to receive the same. Time occupied in discharging ballast or in shifting ports not to count as lay days. Demurrage was provided for. Freight was payable at 16s. a ton. "Should the vessel not have arrived at her loading port and be ready for loading (in accordance with this charter) on or before noon of Jan. 31, 1908, charterers to have the option of cancelling this charter." At the date of the charterparty the *Lyderhorn* was at Caleta Buena discharging a cargo of coal and intended to complete her discharge at Iquique. She arrived at Iquique on Dec. 13, and by Jan. 27, 1908, had discharged as much of her cargo of coal as could safely be unladen without some stiffening. The captain therefore gave notice to the defts.' agents that he required 700 tons of nitrate for stiffening, but they refused to supply it unless he would agree to redeliver it if the charterparty was cancelled. It was admitted that the whole of the coal could not have been discharged by noon of Jan. 31, 1908. The defts. cancelled the charterparty, and the shipowners brought this action to decide whether they were entitled to do so, and for damages :—

Held by Lord Alverstone C.J. and by the C.A., that the vessel was not ready for loading within the meaning of the charterparty, and that the defts. were entitled to cancel it. *S.S. "LYDERHORN" Co. v. DUNCAN FOX & Co.*

C. A. [1909] W. N. 175 ; [1909] 2 K. B. 929

— Shipbroker—Signature as agent—Right to sue as principal.

See PRINCIPAL AND AGENT. 12.

— Special provision in charterparty as to general average—Foreign law.

See INSURANCE (MARINE). 6,

SHIPPING (Charterparty)—continued.

56. — *Sub-charterparty—Bill of lading—Contract—Shipowner's lien for unpaid hire—Hire accruing due—Withdrawal of ship—Payment of hire.*

When a ship is chartered, the charterparty being in the ordinary form and not amounting to a demise of the ship, and subsequently the ship is sub-chartered for a single voyage and bills of lading are signed by the captain in respect of cargo carried on that voyage, the contract contained in the bills of lading is a contract with the owner of the ship. The owner, or the captain as his agent, is entitled to collect the bills of lading freight, and to deduct from it any charterparty hire then owing, accounting for the balance, if any, to the sub-charterers. The rights of the parties are the same if the freight is collected by the ship's agent, appointed by the sub-charterers, he being for this purpose either the agent of the owner or the agent of all parties.

Marquand v. Banner, (1856) 6 E. & B. 232, distinguished.

A shipowner is not entitled to exercise a lien on freight in the hands of the ship's agent for charterparty hire not due but accruing due at the time the lien purported to have been exercised.

Where a charterparty provides that hire is to be paid half-monthly in advance, and that in default of payment the owner may withdraw the ship from the service of the charterer without prejudice to any claim the owner may otherwise have against the charterer, if the owner withdraws the ship in the middle of a half-month, he is only entitled to be paid hire in respect of that portion of the half-month during which the ship was in the service of the charterer. *WEHNER v. DENE STEAM SHIPPING CO.*

Channell J. [1905] 1 K. B. 92

57. — *Time—Damages for detention—Reasonable time for loading—Obligation to have cargo ready—Custom of port.*

By a charterparty dated May 30, 1900, which did not fix the time within which the vessel was to be loaded, the steamship *Ardandearg*, of which the plts. were owners, was chartered by the defts. to proceed to such loading berth as the freighters might name at Newcastle, New South Wales, and after being in loading berth as ordered to load "in the usual and customary manner" a full and complete cargo of Australian coal "as ordered by the charterers, which they bind themselves to ship (except in case of riot, strikes, &c., or any other accidents or causes beyond the control of the charterers, which may delay her loading)." By the custom of the port of Newcastle a vessel was not allowed to occupy a loading berth until she had received a loading order from a colliery. These orders were issued in turn and there were no facilities for storing coal at the port. The *Ardandearg* arrived at her destination on July 14, 1900, and was ready to load; but there was no cargo ready for her until Aug. 13, and then not enough. She had twice to be removed from her berth under a regulation of the port that a vessel must not occupy a berth when not loading, and her loading was not completed until Aug. 23. The plts.

SHIPPING (Charterparty)—continued.

claimed damages for the detention of the vessel owing to the delay in providing the cargo:—

Held, reversing the decision of the First Division of the Ct. of Sess., (1904) 6 F. 294, that the defts. were liable in damages on the ground that it was their primary duty as charterers to furnish the stipulated cargo; and there was nothing to be found in the charterparty or the evidence which qualified this absolute obligation. *ARDAN STEAMSHIP CO. v. ANDREW WEIR & CO.*

H. L. Sc. [1905] W. N. 134; [1905] A. C. 501

— Time charter—Goods within bill of lading not subject to charter lien.

See INDIA. 3.

— Time charter—Negligence of master and crew of chartered ship.

See INSURANCE (MARINE). 18.

58. — *Time charter—Ship—Cessation of payment of hire—Detention by ice caused by breakdown of steamer.*

By a charterparty a steamer was chartered for about two months, to be employed on a voyage from one of certain ports in South Wales to Spain, thence to the Baltic, and back to a port in the United Kingdom or on the Continent between Bordeaux and Hamburg, at a certain sum per month. The charterparty, which contained the usual exception of perils of the sea, provided, amongst other things, that, in the event of loss of time from deficiency of men or stores, breakdown of machinery, or damage preventing the working of the vessel for more than twenty-four running hours, the payment of hire should cease until she should be again in an efficient state to resume her service, but should the vessel be driven into port, or to anchorage by stress of weather, or from any accident to cargo, such detention or loss of time should lie at the charterer's risk and expense, and that "detention by ice" was "to be for account of charterers, unless caused by breakdown of steamer." The ship while proceeding from Spain to St. Petersburg under the charter, was stranded in the Baltic, and thereby so much damaged as to be unfit to continue the voyage without repair. She put into Copenhagen for repairs, and, after the necessary repairs had been there effected, she sailed for St. Petersburg; but, on arrival at Reval, she was unable to proceed further towards St. Petersburg by reason of ice, though not herself frozen in, and was detained at Reval awaiting the breaking up of the ice at St. Petersburg. If it had not been for the damage occasioned by the stranding she could have reached St. Petersburg, discharged her cargo, and got away from that port before it was closed by ice:—

Held, that there had been a detention of the ship by ice caused by breakdown of the steamer within the meaning of the charterparty, and that the hire of the ship ceased to be payable by the charterers during that detention. *In re TRAAE AND LENNARD & SONS, LD.*

C. A. [1904] 2 K. B. 377

59. — *"Unseaworthiness"—Unfitness of ship to carry cargo—Bill of lading—Construction—Liability of shipowner—Exceptions,*

SHIPPING (Charterparty)—continued.

A bill of lading of sheepskins exempted the shipowners from liability (*inter alia*) "for loss or damage resulting from the consequence of any injury to or defect in hull, tackle, or machinery . . . however such defect or injury may be caused, and notwithstanding that the same may have existed at or at any time before the loading or sailing of the vessel . . . and whether . . . the loss or injury arising therefrom be occasioned by the . . . negligence of the . . . owners, masters, officers . . . crew, and whether before, or after, or during the voyage, or for whose acts the shipowner would otherwise be liable, or by unseaworthiness of the ship at the beginning or at any period of the voyage, provided all reasonable means have been taken to provide against such unseaworthiness." Some of the sheepskins were damaged by fresh water which escaped from a pipe which was broken at the time when the cargo was loaded.

In an action by the indorsees of the bill of lading against the shipowners for the damage to the sheepskins, the defts. admitted that the vessel was not fit to receive cargo at the time when the sheepskins were loaded, and that reasonable means had not been taken to provide against that unfitness, but the defts. claimed exemption from liability under the terms of the bill of lading:—

Held, by the C. A., that the clause relating to unseaworthiness did not create an additional exception, but was a qualification of the prior exceptions; that it included unfitness of the ship to receive the cargo; and that, as the shipowners had not taken reasonable means to provide against that unfitness, they were liable for the loss.

Decision of Wills J., (1902) 8 Com. Cas. 1, reversed.

Prima facie the term "unseaworthiness" in a bill of lading includes unfitness of the ship to carry the cargo as well as unfitness to encounter the perils of navigation. **RATHBONE BROTHERS & Co. v. D. MACIVER, SONS & Co.**

C. A. [1903] W. N. 128; [1903] 2 K. B. 378

— Unseaworthiness at starting—Personal negligence of owner in lading.

See **NATAL**. 11.

— Waiver of lien for chartered freight.

See **INSURANCE (MARINE)**. 11.

60. — Warranty of seaworthiness—Supply of coal for steamer—Provision that charterers should provide coal.

Where it was provided by the terms of a charterparty, by which a steamer was chartered for a round voyage from Liverpool to the River Plate and back to the United Kingdom, that the charterers should provide and pay for all the coal:—

Held, that this provision did not relieve the shipowners from the obligation of seeing that the ship was in a seaworthy condition in respect of her supply of coal at the commencement of each of the stages of the voyage. **MCIVER & Co. v. TATE STEAMERS, LD.** C. A. [1903] W. N. 24; [1903] 1 K. B. 362

See also **INSURANCE (MARINE)**. 33.

SHIPPING—continued.**Charts.**

— Maps and—Evidence—Admissibility.

See **CUSTOM**. 1.

Collision.

1. — Action in rem—Action "against any Person"—Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61), s. 1, sub-s. (a).

The provision in s. 1, sub-s. (a), of the Public Authorities Protection Act, 1893, limiting the period to six months, next after the neglect or default complained of, within which an action can be commenced against any person included in the Act, does not apply to an Admiralty action in rem.

The Longford, (1889) 14 P. D. 34, followed. **THE "BURNS"** C. A. [1907] P. 137

2. — Action in rem—Damage—Negligence—Putting out to sea to avoid collision—Loss of anchor and chain—Consumption of stores.

Where the plts.' vessel slipped, and put out to sea, to avoid collision with the defts.' vessel, which had been negligently allowed to drag down upon her and foul her chain:—

Held, that the plts. were entitled, in an action in rem, to recover the expenses incurred, namely, the value of the anchor and chain lost, and of the coals and stores consumed. **THE "PORT VICTORIA"** Jeune, Pres. [1902] P. 25

3. — "All waters connected" (with the high seas)—"Navigable by sea-going vessels"—"Taking any course authorized or required by these rules"—Regulations for Preventing Collisions at Sea, Preliminary, and arts. 28, 30.

It is too late now to question, in the C. A., the validity of the direction in the preliminary article of the Regulations for Preventing Collisions at Sea, 1897, that they are not only to be followed by all vessels upon the high seas; but "in all waters connected therewith navigable by sea-going vessels," and the reservation by art. 30 of any "special rule, duly made by local authority, relative to the navigation of any harbour, river, or inland waters," shews that the general regulations were intended by their framers to apply to inland navigation except so far as they would interfere with the operation of a local rule.

The Uskmoor, [1902] P. 250, approved in respect of the interpretation there put upon the word "authorized" in art. 28—which deals with the indication by sound signals of the course taken with reference to another vessel in sight—so that the word includes the case of reversing the engines, where a vessel, not being bound to do it, does so for the purpose of avoiding risk of collision. If, therefore, in such a case, a collision occurs, and the three-short-blast signal has not been given at the appropriate time to indicate the course taken, the omission will, in the absence of proof to the contrary, be deemed to have by possibility contributed to the collision. **THE "ANSELM"** C. A. [1907] P. 151

SHIPPING (Collision)—continued.

—Anchor, Collision with—Vessel riding at anchor — What is collision between vessels—Policy.

See **INSURANCE (MARINE)**. 8.

4. — *Anchor light—Towing lights*—"Under way"—*Salvage—Regulations for preventing Collisions at Sea, 1897, preliminary article, and arts.* 3, 11.

A steam-tug is "under way" within the meaning of the preliminary article of the Regulations for Preventing Collisions at Sea, 1897, when she is fast alongside a vessel which she is moving up to her anchor preparatory to towing her away; and the tug should, therefore, exhibit the towing lights and side lights required by art. 3 of the same regulations, though, *semble*, the vessel herself, whilst her anchor is still in the ground, should continue to exhibit the anchor light required by art. 11 of the same regulations. **THE "ROMANCE"**

Gorell Barnes J. [1901] P. 15

5. — *Anchor lights—Towing lights—Underway lights—Control of tug by tow—Mersey Rules, September 17, 1900, art. 4 (a)—Regulations for Preventing Collisions at Sea, 1897, art. 3—Presumption of fault—Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 419, sub-s. 4.*

The plts.' steam vessel was lying at anchor in the river Mersey waiting to dock, and, as her engines were broken down, she had a tug fast alongside to hold her up against the flood tide in the event of her anchor dragging. The defts.' steam vessel coming up the river ran into the plts.' vessel, and was found to blame for had look out; but the plts.' vessel was also found to blame on the ground that the tug was, at the material time, exhibiting misleading, namely, under-way, instead of towing, lights. The plts. appealed:—

Held, by C. A. (Lord Alverstone C.J., A. L. Smith M.R., and Romer L.J.), affirming the decision of Jeune Pres. that as the tug was "attached for the purpose of towing or manœuvring" the plts.' vessel within the meaning of art. 4 (a) of the Mersey Rules, 1900, she should have exhibited the towing lights prescribed by art. 3 of the Regulations for Preventing Collisions at Sea, 1897. Secondly, that as the misleading lights exhibited by the tug might by possibility have contributed to the collision, the plts.' vessel was to "be deemed to be in fault," for the word "ship" in the clause "the ship by which the regulation has been infringed," in sub-s. 4 of s. 419 of the Merchant Shipping Act, 1894, must be construed to mean the plts.' vessel, the master of which, though in a position to exercise control, had improperly neglected to prevent the tug infringing the regulation. **THE "DEVONIAN"**

Jeune, Pres. [1901]
W. N. 34; C. A. [1901] P. 221

—Appeal—Both to blame—Practice—Costs.

See **SHIPPING—Practice**. 6.

6. — *Assessment of damage—Value of ship lost.*

In estimating the value of a vessel at the time of a collision, whereby she was lost, the

SHIPPING (Collision)—continued.

test, in the absence of a market value, is what the vessel was fairly worth to her owners from a business point of view.

As to the evidence to be regarded as of weight in estimating this value, the case of *The Ironmaster*, (1859) Sw. 441, followed.

THE "HARMONIDES" — Gorell Barnes J.
[1902] W. N. 216; [1903] P. 1

Note.

Principle adopted in and applied by Bargrave Deane J., *The "Hohenzollern"*, [1906] P. 339.
See **SHIPPING—Salvage**. 23.

7. — *Barge swinging across fairway unattended and without light—Preliminary article Thames By-laws, 1898.*

The deft.'s steamship coming down the river Thames at night struck and sank the plt.'s laden dumb-barge, which was swinging to the ebb tide athwart the fairway unattended, and held only by her headfast to another barge which was lying alongside a steamship moored at Greenwich pier:—

Held, by Bargrave Deane J., that the plts., the owners of the barge, were alone to blame, for they ought to have had a man in charge ready at the turn of the tide to show a light to approaching vessels, the absence of any warning signal being, in the circumstances, a breach of the preliminary article to the Thames By-laws, 1898, by which nothing in those by-laws "shall exonerate any vessel, or the owner, master or crew thereof, from the consequences of any neglect to carry lights or signals or to keep a proper look-out, or of any precaution which may be required by the ordinary practice of seamen or by the special circumstances of the case." **THE "ST. AUBIN"**

Bargrave Deane J. [1907] P. 60

—Belgian law—Collision in the river Scheldt — Compulsory pilotage — Liability of owner.

See **SHIPPING—Pilotage**. 1.

8. — *Both ships at fault—Competency of re-opening the question of damage at the instance of the cargo owners—Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), ss. 503, 504.*

The finding of value in a collision action between the owners of two ships is not conclusive on the owners of cargo in ulterior proceedings.

A collision between the steamship *Anglia* and the steamship *Olga* resulted in the sinking of the *Anglia* and in the *Olga* being slightly damaged. In cross actions of damages between the owners of the *Anglia* and the owners of the *Olga* both vessels were found to be in fault, and the owners of the *Anglia* obtained a decree against the owners of the *Olga* for 7149*l.* 1*s.* 7*d.*, being one-half of the value of the *Anglia* after deducting one-half of the damage to the *Olga*. The owners of the *Olga* then presented a petition under ss. 503 and 504 of the Merchant Shipping Act, 1894, for limitation of their liability, and the owners of the *Anglia* lodged a claim in the petition claiming to be ranked and preferred on the fund for the full amount of the decree

SHIPPING (Collision)—continued.

obtained by them against the *Olga*. The owners of the cargo of the *Anglia* at the time of the collision also claimed to be ranked on the fund to the extent of one-half of the value of the cargo lost by the collision, and contended that the decree for 7149*l.* 14*s.* 7*d.* was not binding on them; that the value of the *Anglia* on the basis of which that decree was obtained was an over-estimate of her true value; and that the owners of the *Olga* had no interest to contest the value of the *Anglia*, in respect that, once it was decided that both vessels were to blame, the question of exact values became immaterial to the owners of the *Olga*.

The Ct. of Sess. was of opinion that the claim of the owners of the *Anglia*, having been duly constituted against a debtor in foro, must be taken at the amount fixed in the collision action:—

Held (reversing the decision of the Ct. of Sess., (1905) 7 F. 739), that the owner of cargo was not precluded from showing the real value of the ship by the findings in an action to which he was no party and in which no one could be heard who was concerned to protect his interest. C. A. VAN EIJCK AND ZOON v. SOMERVILLE H. L. (Sc.) [1906] W. N. 162; [1906] A. C. 489

—Both ships in fault—Compensation.

See No. 8 above, and Nos. 9, 16—18.

9. — *Both ships to blame—Consequential damage—Tortfeasors—Division of loss—Antimony.*

In an action of damage by collision both vessels were found to blame. The decree, in the usual form, condemned the owners of the defts.' vessel and their bail in a moiety of the plts.' claim in respect of the said damage, and the owners of the plts.' vessel and their bail in a moiety of the defts.' counter-claim in respect of the said damage. At the reference the registrar added to the moiety of the plts.' claim, payable by the defts., a moiety of the amount of damage recovered from the plts. by the owners of a barge against which the plts.' vessel was driven in consequence of the collision.

The defts. appealed on the ground that, as the plts. and defts. were joint tortfeasors, no contribution could be claimed from the defts. in respect of the damage to the barge paid by the plts.:—

Held, by Jeune Pres., that the decree in Admiralty had been properly carried out by adding to the moiety of their damage claimed by the plts. a moiety of the consequential damage recovered by the barge owner from the plts., and that it was not material that the damage arose out of a tort. THE "FRANKLAND" Jeune, Pres. [1901] P. 161

10. — *Close-hauled vessels on opposite tacks—Narrow channel—Overtaking—Action in personam—Claim for compensation for loss of life—Remoteness of damage—Regulations for Preventing Collisions at Sea, 1897, arts. 17 (b), 24—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58).*

SHIPPING (Collision)—continued.

Two sailing flats were beating to windward at night down the Mersey, and in the process of tacking backwards and forwards across the river the plt.'s flat gradually overtook the other; but before she had quite done so, and whilst the two vessels were on opposite tacks, they came into collision:—

Held, that, in the circumstances, the rule applicable was art. 17 (b) of the Regulations for Preventing Collisions at Sea, and, therefore, the defts.' vessel, which, at the material time, was close-hauled on the port tack, was to blame for not keeping out of the way of the plt.'s vessel close-hauled on the starboard tack.

The anchor of the defts.' vessel fouled the painter of the boat which was towing astern of the plt.'s vessel, and, in endeavouring to release the vessels by cutting the boat's painter, the master of the plt.'s vessel was dragged overboard and drowned:—

Held, that the defts., by the negligence of whose servants in the navigation of their vessel the accident was brought about, were liable for the sum paid by the plt. under the Workmen's Compensation Act, 1906, to the dependants of the master of the plt.'s vessel, and that this amount was recoverable as damages in the present action brought in Admiralty in personam under the general jurisdiction of the High Court. THE "ANNIE" Bargrave Deane J. [1909] P. 176

11. — "*Collision*"—*Damage by ship to pier—County Courts Admiralty Jurisdiction Act, 1868 (31 & 32 Vict. c. 71), s. 3, sub-s. 3—County Courts Admiralty Jurisdiction Amendment Act, 1869 (32 & 33 Vict. c. 51), s. 4—Prohibition.*

Damage done by a ship to a pier is not "damage by collision" within s. 3, sub-s. 3, of the County Courts Admiralty Jurisdiction Act, 1868, and, therefore, a county court has no Admiralty jurisdiction in respect of such damage. THE "NORMANDY" Div. Ct. [1904] W. N. 50; [1904] P. 187

—Collision between vessels, What is.

See INSURANCE (MARINE). 8.

*Collisions at Sea—Orders in Council now in force, containing the regulations for preventing. 1908 (E.—Board of Trade). Price 2*d.**

—Compulsory pilotage—Certificate—"Owner." See SHIPPING—Pilotage. 5.

—Compulsory pilotage—Exemption—London district—"Constant trader." See SHIPPING—Pilotage. 2.

12. — *Contribution—Apportionment of dock charges and expenses—Ship docked for repair of damage—Owners' improvements effected while in dock.*

In order to repair the damage sustained in a collision for which the defts. were liable, the plts.' vessel was dry-docked, and the plts. (without causing delay or increase of dock expenses) took advantage of the opportunity to fit her with bilge keels:—

Held, applying the principle laid down in

SHIPPING (Collision)—continued.

The Ruabon, [1900] A. C. 6, that, even though the plis. had derived material benefit, the defts. wrongdoers were not entitled to any contribution from them towards the expenses of, and consequent upon the dry-docking. *THE "ACANTHUS"* - Jeune, Pres. [1901] W. N. 251; [1902] P. 17

13. — *Crossing and narrow channel rules—Red light on the starboard bow—Regulations for Preventing Collisions at Sea*, 1897, arts. 19, 21, 22, 23, 25.

The plts.' steam vessel inward bound to, and the defts.' steam vessel outward bound from, Grimsby, were at the material time red to green in a position of danger, and owing to the incoming vessel hard-a-porting, and the outgoing vessel starboarding, came into collision close to the Cleve Ness buoy at the entrance to the river Humber :—

Held, by Gorell Barnes J., that both vessels were to blame, for the waterway at the entrance to the Humber, between the Bull and Cleve Ness buoys on the south-side, and the buoys on the north side, is a narrow channel within the meaning of art. 25 of the Regulations for Preventing Collisions at Sea, and therefore the plts.' incoming vessel was in her wrong water, and, whether that article applies or not, the nature of the locality and the position of the buoys make it necessary for the incoming vessel to keep well over to the northward, so as to allow the outgoing vessel sufficient room to pass round Cleve Ness buoy :

Secondly, as the defts.' vessel was coming out from Grimsby and the plts.' vessel was in the main stream, the two steam vessels were at the material time prior to the collision "crossing so as to involve risk of collision" within the meaning of art. 19 of the same regulations, and, therefore, it was the duty of the defts.' vessel, having the other on her own starboard side, to keep out of the way, for which purpose she should not have attempted, in breach of art. 22, to cross ahead of the other, but should have ported to the red light of the incoming vessel, or, if that were dangerous, owing to the proximity of the Cleve Ness buoy, she should have waited until the incoming vessel had passed, whilst that vessel, instead of porting, should, under art. 21, have kept her course and speed, or, assuming that the crossing rule did not apply, then the incoming vessel, on seeing the green light of the outgoing vessel on her port bow in a position of danger, should have stopped and reversed, whilst the outgoing vessel, seeing that the red light of the incoming vessel was not broadening on her starboard bow, and, therefore, that she was porting, should at once have stopped and reversed. *THE "ASHTON"*

Gorell Barnes J. [1905] P. 21

14. — *Crossing rule — Crossing ahead — Narrow channel—Good seamanship—Regulations for Preventing Collisions at Sea*, 1897, arts. 19, 21, 22, 25, 27.

By art. 25 of the Regulations for Preventing Collisions at Sea, 1897, "in narrow channels every steam vessel shall, when it is safe

SHIPPING (Collision)—continued.

and practicable, keep to that side of the fairway or mid-channel which lies on the starboard side of such vessel," and, as a matter of seamanship, the waterway between two opposite points, such as the ends of the breakwaters forming the western entrance to the harbour of Cherbourg, together with so much of the adjacent water as is necessary for the navigation of her passage, should be treated as a narrow channel within the meaning of this article.

Decision of Gorell Barnes, Pres. [1907] P. 36, affirmed. *THE "KAISER WILHELM DER GROSSE"* C. A. [1907] P. 259

15. — *Crossing rule—Regulations for Preventing Collisions at Sea*, 1897, arts. 19, 21, note.

Two steam-vessels approaching one another at a combined speed of twenty knots, on nearly opposite courses, were "crossing" vessels within the meaning of art. 19 of the Regulations for Preventing Collisions at Sea, and the vessel having the other on her own starboard side, and therefore bound to give way, had just crossed the other's bows and reached, at a very short distance ahead of the other, a position of safety, green to green, when she suddenly ported. Those in charge of the vessel bound to keep her course and speed, seeing the masthead lights of the giving-way vessel coming into line, stopped and reversed; but her stem struck the port side amidships of the giving-way vessel and sank her :—

Held by the Court of Appeal (Lord Alverstone C.J., Buckley and Kennedy L.J.J.), affirming the decision of the Court below, that the giving-way vessel was alone to blame for improper porting, and that the other vessel, finding herself in the position indicated by the note to art. 21, that is, so close that collision could not be avoided by the action of the giving-way vessel alone, had, as soon as the danger became apparent, taken such action as would best aid to avert collision.

Per Kennedy L.J.: Observations on the nature of the assistance to be rendered by nautical assessors to a Court sitting in Admiralty. *THE "KONING WILLEM II."*

C. A. [1908] P. 125

— *Crossing rule—Vessels crossing so as to involve risk of collision—Collision off the entrance to harbour.*

See CANADA—Shipping. 2.

16. — *Damage—Both to blame—Life claims—Spanish law.*

As the result of a collision between a Spanish and a French ship on the high seas the Spanish vessel sank, and some members of her crew were drowned. At the usual reference following on an agreement equivalent to both to blame, a claim against the owners of the French ship by the owners of the Spanish ship under the Admiralty rule of division of loss, for a moiety of certain sums paid, under Spanish law, to the representatives of the deceased seamen, was admitted. On appeal :—

Held, by Sir Gorell Barnes, Pres., that the claim must be disallowed, for it was in

SHIPPING (Collision)—continued.

respect of a payment made by way of indemnity, under a foreign statute, independent of any question of negligence, it was not recognized by English law; and if it was a claim for damages for loss of life, it did not come within the scope of the Admiralty rule of division of loss. **THE "CIRCE"**

Gorell Barnes, Pres. [1906] P. 1

17. — Damage—Both to blame.

On May 28, 1904, a collision occurred in the North Sea between the *plts.* and *defts.* steamships, and, on July 23, the solicitors for the respective parties signed an "agreement of settlement."

On Jan. 17, 1905, the registrar made his report disallowing a claim made upon the *plts.*, the owners of the *Hélène* by the *defts.*, the owners of the *General Havelock*, for a moiety of the sum paid by them for loss of life on board the *Hélène*.

On appeal, Bargrave Deane J. affirmed the decision of the registrar. **THE "GENERAL HAVELOCK"** Bargrave Deane J. [1906] P. 3, n.

18. — Damage — Both ships to blame — Limitation of liability—Admission on pleadings—Cargo owner—Division of loss—Rule in force in the Court of Admiralty—Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 25, sub-s. 9.

The rule laid down in *The Milan*, (1861) Lush. 388—namely, that where both ships are in fault for a collision, the owners of cargo on one ship can only recover against the owners of the other ship one half of the damage they have sustained—is a rule in force in admiralty within the meaning of s. 25, sub-s. 9, of the Judicature Act, 1873. **THE "DRUM-LANRIG"** C. A. [1910] P. 249

On Appeal:—

The House affirmed the decision of the C. A., [1910] P. 249 (*The Drumlanrig*), holding that, when both ships are at fault for a collision, the owners of cargo on one ship can only recover against the owners of the other ship one-half of the damage which they have sustained. *The Milan*, (1861) Lush. 388, approved. **OWNERS OF CARGO OF S.S. "TONGARIRO" v. ASTRAL SHIPPING CO.**

H. L. (E.) [1910] W. N. 274

19. — Damage — Compulsory pilotage — Trinity House Outport District—Termination of voyage—"Into and out of" Harwich Harbour—Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), ss. 622, 633.

The *defts.* steam-vessel, inward bound from a foreign port, was boarded outside Harwich Harbour by a pilot duly licensed to pilot "into and out of" Harwich Harbour, at rates fixed according to draught of water, and she was brought by him to an anchorage in a proper place inside the harbour. Here the vessel waited until the tide had risen sufficiently, and she was then taken by the pilot to her discharging quay; but, whilst he was in the act of berthing her, she came into collision with, and damaged, the *plts.* vessel. It was admitted that pilotage was compulsory "into" the harbour, but it was contended that

SHIPPING (Collision)—continued.

the *defts.* were liable for the damage sustained by the *plts.* vessel on the ground that the compulsion ceased on the vessel being safely anchored, and that the work connected with the transit from the place of anchorage to the discharging quay, and the berthing of the vessel, was voluntary on the part of the pilot in consideration of a small charge, varying with the tonnage, paid by the ship by usage, and recognized by the authorities of the Trinity House:—

Held, by Gorell Barnes J., that the *defts.* were not liable, for neither the temporary anchorage, nor the charge for berthing, made any difference, as the vessel was under compulsory pilotage until she reached her destination in the harbour. **THE "OLE BULL"**

Gorell Barnes J. [1905] P. 52

20. — Damage — Contract of indemnity — Third party notice.

A steamship was brought from the entrance of a dock to her berth by two tugs, and was made fast; but was unable to haul on her winches, so as to get completely into position alongside the quay, owing to a barge, attached to a buoy, being in the way. The dockmaster sent a man from each of the tugs to loosen the barge's headfast, and directed a third tug to tow the barge away; but, in so doing, the barge was negligently allowed to come into contact with the propeller of the steamship and sustained such damage that she sank with her cargo.

In an action of damage by collision brought by the barge owners against the dock owners, the dock owners admitted liability, but brought in the steamship owners as third parties liable to indemnify them under a towage contract made between the dock owners and a firm of ship repairers who had undertaken to bring the vessel from their yard to her berth at their risk. By the towage contract the dock owners were to supply tugs to assist in transporting the steamship within the dock on condition that the masters and crews of the tugs should cease to be under the dock owners' control in connection with the towage, and become subject to the orders and control of the master or person in charge of the vessel, and be the servants of the owners thereof:—

Held by the C. A. (affirming the decision of the Court below, [1906] P. 317), that the steamship owners were not liable, as third parties, to indemnify the dock owners, for, whether the contract to supply the two tugs was made with the ship repairers or with the steamship owners, that contract was at an end, and, therefore, the men from the two tugs, directed by the dockmaster to loosen the headfast, had resumed their position as servants of the dock owners, and the action of the third tug, under the direction of the dockmaster, was independent of the transporting contract which applied only to the two tugs. **THE "KATE"** C. A. [1907] P. 296

21. — Damage—Control by dock-master, his deputies, or assistants—Harbours, Docks, and

SHIPPING (Collision)—continued.

Piers Clauses Act, 1847 (10 Vict. c. 27), s. 53—Co-defendants—Costs.

Under No. 2 of the by-laws, and Nos. 10 and 17 of the regulations of the London and India Docks Co., issued under the London and India Docks Amalgamation Act, 1900, which incorporates the Harbours, Docks, and Piers Clauses Act, 1847, the expression "dock-master" includes his duly authorized deputies and assistants, and vessels are to be moved by the persons in charge under the direction of the dock-master, who may also give any other directions.

The plts.' steam-vessel was entering the defts.' dock under the direction of the dock-master, who was standing on one of the pier-heads. At the same time an official of the dock co. (a lock foreman in uniform) standing on the other pier ordered a ketch, belonging to the other defts., and lying within the prescribed limits of the authority of the dock co., to swing round for the purpose of entering the dock. By a second (and as it was found improper) order, the lock foreman directed some barges, to which the ketch was fast, also to swing, with the result that the ketch, being unable to check herself by the rope which was fast to the barges, without any negligence in those in charge of her, came into collision with the plts.' steam-vessel. The judge of the City of London Court pronounced in favour of the plts. against both defts., on the ground of the improper order of the official of the dock co., and the absence of any statutory exemption relieving the owners of the ketch from liability for the tort committed:—

Held, by the Div. Ct. (Sir F. H. Jeune P. and Gorell Barnes J.), that the deft. dock co. was alone liable for the damage sustained by the plts.' vessel, as the lock foreman was a deputy or assistant of the dock-master within the meaning of rule 2 of the by-laws, whose orders those in charge of the ketch were bound, under the provisions of the Harbours, Docks, and Piers Clauses Act, to obey, and as the relationship of master and servant did not exist between the dock official and the owners of the ketch, they were not responsible for his negligent order:—

Held, also—following *The River Lagam*, (1888) 6 Asp. M. L. C. 281—that the plts. acted reasonably in joining both parties as defts., and that, as the deft. dock co. threw the blame on the other defts., but were themselves alone to blame, the plts.' costs against both defts., and the costs of the owners of the ketch, both in the Court below and on appeal, must fall on the dock co. **THE "MYSTERY"**

Div. Ct. [1902] W. N. 58 :
[1902] P. 115

Note.

Followed by Bucknill J., *The "Hopper"*, No. 21, [1903] W. N. 114. See *Shipping—Practice*. 5.

22. — Damage—Loss of use of vessel—Working at a loss to establish new trade—Remoteness.

In the case of a vessel worked at a loss to

SHIPPING (Collision)—continued.

establish a new trade, and temporarily put out of employment whilst undergoing repairs necessitated by a collision, the contingent profit which may hereafter be earned, when the trade is established, and rates become remunerative, is too remote to be taken into consideration as special damage, and, in such a case, there being no loss, apart from actual expenses, which can be shown to result from the deprivation of the use of the vessel, general damages are also not recoverable from the owner of the wrong-doing ship. **THE "BODLEWELL"**
Bargrave Deane J. [1907] P. 286

23. — Damage to cargo—Action against wrong-doer by owners of goods—C.i.f. contract—Buyers not owners at time of loss—Payment of invoice price by buyers—Settlement of loss by underwriters with buyers—Subrogation—Right of underwriters to recover in name of sellers.

In pursuance of a contract note, providing for cost, insurance, and freight of a parcel of wood goods, the sellers in Christiania shipped the goods under a bill of lading to the order of their London agents, who forwarded it to the buyers at Exeter, and authorized them to retain it against their acceptance at four months, or cash less discount. The buyers elected to pay in cash; but their country cheque posted to London was not credited as paid until three days after the carrying vessel had been in collision with another vessel and the goods had been damaged. The carrying vessel put into a port of distress, where the goods were sold on behalf of underwriters, with whom the sellers' agents had effected a policy for the benefit of whom it might concern. The underwriters subsequently paid the buyers as for a total loss, and the sellers retained the proceeds of the cheque representing the invoice price of the goods.

In an action of damage by collision brought against the other vessel by the owners of the goods in the carrying ship, the names of the buyers were given as plts., but the Court held that the buyers had no right of action, as the property in the goods was not vested in them at the time of the collision. By leave the names of the sellers were added as plts., and, the other vessel having been found alone to blame, the amount of the damage was referred to the registrar, who rejected the claim of the sellers suing on behalf of the underwriters on the ground that, as the sellers had been paid by the buyers the sound value of the goods, they had not sustained any loss in respect of which subrogation could arise. This report was confirmed by the judge sitting in Admiralty:—

Held by the C. A. (Lord Alverstone C.J., Farwell and Kennedy L.J.J.), reversing the decision of the Court below, that the passing of the cheque from buyers to sellers did not deprive the underwriters of their right to recover the loss from the wrong-doer in the name of the sellers, who were the owners of the goods at the time of the collision. **THE "CHARLOTTE"** . . . C. A. [1908] P. 206

SHIPPING (Collision)—continued.**24. — Damage by two collisions — Simultaneous repairs — Dock dues — Demurrage — Division between tortfeasors.**

In order to effect repairs necessitated by two collisions for which the owners of two wrong-doing vessels were liable, the plts., the owners of the damaged vessel, put her into dry dock, and proceeded to repair at the same time the separate damage sustained in each collision; but the defts., the owners of the wrong-doing vessel in the second collision, objected to pay any portion of the dock dues on the ground that the repair of the damage caused by their vessel occupied a shorter time than that required for the repair of the damage sustained in the first collision, so that the plts. had not been put to any additional expense :—

Held, by C. A. (Collins M.R. and Romer L.J.), reversing the decision of Sir Gorell Barnes, President, that the principle as to apportionment of expenses between owner and underwriter in respect of dry-docking for simultaneous work on the vessel, laid down in *The Vancouver*, (1886) 11 App. Cas. 573, and explained in *The Ruabon*, [1900] A. C. 6, applied, and, therefore, the defts. were liable for a proportion of the dry-docking and incidental expenses, excluding demurrage. **THE "HAVERSHAM GRANGE"** C. A. [1905] P. 307

25. — Damages for loss of life—Ship in fault—Regulations for Preventing Collisions at Sea, art. 25—Firth of Forth a "narrow channel"—Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 419.

The Firth of Forth from the Forth Bridge upwards is a "narrow channel" within art. 25 of the Regulations for Preventing Collisions at Sea.

Decision of the First Division of the Ct. of Sess., Sc., (1909) S. C. 561, affirmed. **SCREW COLLIER Co. v. WEBSTER or KERR - H. L. (Sc.)** [1909] W. N. 258; [1910] A. C. 165

— Damages, Security for—Foreign plaintiffs.
See No. 52, below.

— Demurrage—Charterparty.
See SHIPPING—Charterparty. 32—42.

26. — Demurrage of Dredger—Measure of damages.

A dock and harbour board were deprived of the services of a dredger owing to a collision with a steamship in fault. The dredger cost much to maintain, earned nothing, and was maintained out of the rates.

In applying the principle of *The Greta Holme*, [1897] A. C. 596, to the amount of damages payable to the board by the owner of the steamship :—

Held, that the loss sustained was the value of the work which would have been done by the dredger if she had not been disabled, including a sum for the cost of the daily supplies requisite for the dredger when at work, —but not including a sum for owners' profit, since the board had not incurred the expense of hiring a dredger.

Decisions of Sir Gorell Barnes, [1906] P.

SHIPPING (Collision)—continued.

14, and of the C. A., sub nom. *The Marpessa*, [1906] P. 95, affirmed. **MERSEY DOCKS AND HARBOUR BOARD v. OWNERS OF SS. "MARPESSA"** H. L. (E.) [1907] W. N. 136; [1907] A. C. 241

27. — Dock—Vessel coming out of dock into river—Regulations for Preventing Collisions at Sea, 1897, art. 19—Powers of Dock-master—Mersey Docks Acts Consolidated Act, 1858 (21 & 22 Vict. c. xcii.), s. 49.

A steam-vessel, ready to proceed to sea, was stopped by the dock officials in the entrance to the Prince's Dock, Liverpool, and then told by the dock-master she might go, but warned to look out for a tow and her tugs coming down the river. The steam vessel came into collision with the tow and one of her tugs. In an action by the owners of the tow against the owners of the steam vessel for the damage sustained, and by the owners of the steam vessel against the dock board for negligence in ordering the vessel to proceed out into the river when the dock officials knew or ought to have known that it was not safe for her to do so :—

Held, by Bucknill J., that, as against the tow, the steam vessel was alone to blame, for, by the exercise of reasonable care, the lights of the down-coming tow and of her tugs might have been seen in due time, and the collision avoided, the tow and her tugs not being bound by art. 19 or the Regulations for Preventing Collisions at Sea to keep out of the way of the steam vessel coming out of dock on their star-board side.

Secondly, that the action against the dock board failed, for, though under s. 49 of the Mersey Dock Act, 1858, a dock-master may order a ship to leave the premises of the dock board, he had not exercised that power. **THE "SUNLIGHT"** Bucknill J. [1904] P. 100

28. — Drift-net fishing—Incumbered by nets—"Special circumstances"—Lights—Standing by—Regulations for Preventing Collisions at Sea, arts. 9 (b) (1906), 20, 21, 26, 27—Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), ss. 419, 422.

A sailing drifter and a steam drifter came into collision at night, in the North Sea at a time when the sailing vessel, under reduced canvas owing to the heavy weather, and exhibiting the side lights for a vessel under way, was proceeding towards her fishing ground at the rate of about four knots, heading to the south-westward. The steam vessel, with her engines stopped, and moving through the water to the E.S.E. before the wind, under her mizzen, at something less than a knot, was engaged in shooting her nets, and as these nets were "partly in the water" she was exhibiting the two white lights prescribed by art. 9 (b) (1906) of the regulations for preventing collisions at sea in the case of vessels fishing with drift nets; but the lower of the two lights was not in the direction of the nets as required by the rule. Those in charge of her, seeing that a collision with the sailing vessel was imminent, attempted to avoid it

SHIPPING (Collision)—continued.

by moving the engines astern, but, after a few revolutions, the propeller fouled the nets and the vessel became helpless. In an action of damage by collision brought by the owners of the sailing vessel against the steam vessel:—

Held, that the sailing vessel was alone to blame, as she ought to have kept out of the way, for the other vessel, though a steamer, was incumbered by her nets, and, therefore, there were "special circumstances," within the meaning of art. 27 of the regulations, rendering it not necessary for her, under art. 20, to keep out of the way of the sailing vessel. Secondly, that though the direction of the nets of the steam vessel was not properly indicated by the position of the lower of the two lights carried by her, this could not by any possibility have caused or contributed to the collision, and, therefore, she was not to blame for an infringement of the regulations under s. 419 of the Merchant Shipping Act, 1894. Thirdly, that, owing to the fouling of her propeller, the steam vessel was not in a position to render assistance to the other vessel, and, therefore, the presumption of fault raised by s. 422 of the same statute was rebutted. **THE "PITGAVERNEY"** Samuel Evans, Pres. [1910] P. 215

29. — Drifters' and trawlers' lights—"Under way" lights—Regulations for preventing Collisions at Sea, 1897, art. 9 (1906), sub-ss. (b), (d).

A steam drifter was fishing in the North Sea with over 2000 yards of gear out, and was exhibiting the two white lights prescribed by art. 9, sub-s. (b), of the Regulations for Preventing Collisions at Sea, for vessels "fishing with drift nets," when those in charge observed, upwards of a mile away, a vessel which they thought was entangled in their gear. They thereupon cast off and buoyed the nets, and steamed up to the other vessel, but so negligently manœuvred their own vessel that she was sunk in collision. The other vessel, which proved to be a steam trawler, had, prior to the collision, been trawling in one direction for an hour, then in the opposite direction for an hour, and then turned again, shooting, and hauling in her trawl in the usual way, and all the time carrying the tri-coloured lantern required by sub-s. (d) of the same article, for steam vessels "when engaged in trawling." On the question of lights:—

Held, by Bargrave Deane J., that the drifter had infringed the regulations, for, when she left her nets, she should have taken in her fishing lights and exhibited the lights indicated by the first paragraph of art. 9 for vessels, "under way"; whilst the steam trawler had rightly exhibited the triplex light the whole time, for she was to be deemed to be trawling, not only when she had her trawl down, but during the interval between hauling it up and shooting it again, though if she hauled up her trawl, and, instead of shooting it at once, steamed off to trawl over some other ground, it would then become necessary for her to exhibit "under way" lights.

SHIPPING (Collision)—continued.

The "Upton Castle," [1906] P. 147, distinguished. **THE "COCKATRICE"**

Bargrave Deane J. [1908] P. 182

30. — Fairway—Swansea New Cut—Lights—Regulations for Preventing Collisions at Sea, 1897, art. 11.

A vessel lying moored at night, outside another vessel, at the customary place for trawlers loading ice, namely, the Fish Wharf on the east side of the New Cut, Swansea Harbour, is not "at anchor" within the meaning of the first paragraph of art. 11 of the Regulations for Preventing Collisions at Sea, and, therefore, need not carry a white light; nor, at low water, is she "aground in or near a fairway" within the meaning of the same regulations, and, therefore, need not carry the two red lights mentioned in the last paragraph of those regulations. **THE "TURQUOISE"**

Div. Ct. [1908] P. 148

— "Fairway" of river—Duty to ring—Fog.

See next Case.

— Firth of Forth a "narrow channel" — Damages for loss of life—Ship in fault.

See No. 25, above.

— Fog—Collision in dense fog—Negligence in not going with moderate speed.

See CHINA AND COREA. 3.

31. — Fog—"Fairway" of river—Duty to ring bell when at anchor—Medway Conservancy By-laws, arts. 43 (c), 48—Seamanlike precaution.

The pits' sailing barge, whilst at anchor to the northward and westward of the Upper Mussel Buoy in Long Reach of the river Medway, was run into by a steam tender, in charge of the deft., conveying liberty men from Chatham Dockyard to two of His Majesty's vessels moored further down the river. The weather was thick with fog, and though daylight, the barge was exhibiting her riding light; but her bell was not being rung. The barge was suddenly seen a few yards ahead, and the stem of the tender struck the port side amidships of the barge a heavy blow and sank her:—

Held by Sir Gorell Barnes Pres. that the negligence of those in charge of both vessels had contributed to the collision, and both were to blame, for the barge was in the "fairway" as defined in *The Blue Bell*, [1895] P. 242, and, therefore, on account of the fog, bound to ring her bell under art. 43 (c) of the Medway Conservancy by-laws; but if not coming under that article she was, in the circumstances, and in the opinion of the nautical assessors, bound to indicate her position by sound signals as a seamanlike precaution within the meaning of art. 48 of the same by-laws. The deft. was to blame for continuing to keep the tender under way after the fog became so thick that the look-out could only see a few yards ahead, and, considering the force with which the blow must have been struck, the tender was being navigated at an immoderate speed. **THE "CLUTHA BOAT 147"**

Gorell Barnes, Pres. [1909] P. 36

SHIPPING (Collision)—continued.

32. — Fog—Fog signal forward of beam—Duty to stop engines—Regulations for Preventing Collisions at Sea, 1897, art. 16.

Two steam vessels, proceeding in opposite directions, came into collision during a dense fog, off the coast of Portugal. Those in charge of the *plts.*' vessel did not "stop her engines" in accordance with art. 16 of the Regulations for Preventing Collisions at Sea, on "hearing apparently forward of her beam, the fog signal of" the *defts.*' vessel, because another vessel was sounding her whistle apparently on the port quarter and overtaking her; whilst those in charge of the *defts.*' vessel alleged that they did not stop her engines on first hearing the whistle of the *plts.*' vessel, because two other vessels, sounding their whistles, one on each bow, helped to ascertain the position of the *defts.*' vessel, which was a long way off, and as soon as the whistle was distinctly made out to be on the starboard bow the engines were stopped:—

Held, by Gorell Barnes J., that both vessels were to blame, as both had infringed the positive directions as to stopping the engines contained in art. 16. In the case of the *plts.*' vessel, it would have been incumbent on the alleged overtaking vessel to have stopped when she heard the whistle of the *plts.*' vessel indicating that she was stopped, so that any danger would have been averted. In the case of the *defts.*' vessel, as distance and bearing cannot be at once definitely determined in fog, it was no excuse for a breach of the rule that the whistle of the other vessel was heard apparently a long way off. *THE "BRITANNIA"*

Gorell Barnes J. [1905] P. 98

33. — Fog—Fog signal forward of beam—Duty to stop engines—Regulations for Preventing Collisions at Sea, 1897, art. 16—Statutory presumption of fault—Foreign vessel outside limits of territorial jurisdiction—Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 419, sub-s. 4; s. 424.

A British and a Dutch steam vessel came into collision, during a dense fog, in the English Channel six miles off Dungeness. The owners of the British vessel admitted liability for an infringement of the collision regulations; but the owners of the Dutch vessel denied liability on the ground (*inter alia*) that though the whistle of the other vessel was heard forward of the beam, their vessel was going so slow, and the fog signal so far off, that their master thought it better to wait, before stopping his engines, until he heard the whistle again:—

Held, by Bucknill J., that the Dutch vessel was to blame for not stopping, which omission in fact contributed to the collision, and no circumstances had been shown for disobeying the positive direction contained in the second paragraph of art. 16 of the Regulations for Preventing Collisions at Sea, 1897, that "a steam vessel hearing, apparently forward of her beam, the fog signal of a vessel the position of which is not ascertained shall, so far as the circumstances of the case admit, stop her engines . . ."

SHIPPING (Collision)—continued.

The advantage—apart from the express provisions of the regulations—of stopping, owing to the difficulty of ascertaining at once with any degree of certainty the position of a fog signal, discussed.

Query, whether the statutory presumption of fault created by s. 419, sub-s. 4, of the Merchant Shipping Act, 1894, in respect of the infringement of any of the collision regulations, will attach to a foreign vessel, beyond the limits of British territorial jurisdiction, in the absence of an Order in Council issued under s. 424, with the consent of the Government of the country to which the ship belongs, directing that, in addition to being bound by the collision regulations, the provisions of Part V. of the Act shall apply to vessels of that country as if they were British ships. *THE "KONING WILLEM I."*

Bucknill J.
[1903] P. 114

— Fog—Manchester Ship Canal.

See No. 44, below.

34. — Fog—"Moderate speed"—Regulations for Preventing Collisions at Sea, 1897, art. 16.

A large twin-screw mail and passenger steam vessel was proceeding up the St. George's Channel in a dense fog at 9 to 10 knots an hour—her full speed being 21 knots—when she sighted a barque about 150 feet ahead, and, in spite of efforts to avoid her, struck her amidships, cutting her in two, with the loss of eleven lives. It was contended on behalf of the owners of the steam vessel that the speed at which she was travelling was moderate in the existing circumstances and conditions, as that speed was the lowest at which she could be readily manoeuvred so as to avoid other vessels, and unless she was kept steaming continuously at about that speed, she could not be navigated with safety to herself as there would be danger from uncertainty both in respect of her course and position:—

Held, affirming the decision of G. Barnes J., that the speed was not "moderate" within the meaning of art. 16 of the Regulations of 1897 for Preventing Collisions at Sea, as the terms of that article are imperative, and, as a general rule, speed such that another vessel cannot, after being seen, be avoided, is excessive. If a steam vessel cannot in a fog be continuously navigated at a very slow speed she must, in order to comply with the rule, and in the absence of exceptional dangers of navigation such as may arise from narrow waters or current, be stopped from time to time so as to take off her way. This may involve some inconvenience in the shape of delay, and possibly render it necessary to haul out from the coast, besides requiring proper steps to be taken to verify the position of the vessel, but it gives more opportunity of hearing the sound signals of an approaching vessel, more time to act when necessary, and if a collision should occur, the consequences are less disastrous. *THE "CAMPANIA"* — C. A.

[1901] P. 289

SHIPPING (Collision)—continued.

Note.

See *Oceanic Steam Navigation Co. v. Waterford Steamship Co.*, H. L. (E.) [1903] W. N. 66.
See next Case.

35. — Fog—Moderate speed—Regulations for Preventing Collisions at Sea, 1897, art. 16.

This appeal turned on a question of fact, whether the speed of the *Oceanic*—6½ knots an hour in a dense fog—was “moderate” within the meaning of art. 16 of the regulations, having regard to all the circumstances, and particularly the fact that she could not be stopped within the distance at which it was possible to see another vessel. Sir F. Jeune held that it was not: so did the C. A.

The House treated the question as one of fact, not law, and (the two nautical assessors being equally divided) had no difficulty in affirming the decisions below. *OCEANIC STEAM NAVIGATION Co. v. WATERFORD STEAMSHIP Co.*

H. L. (E.) [1903] W. N. 66

36. — Fog—“Navigate with caution until danger of collision is over”—Regulations for Preventing Collisions at Sea, 1897, art. 16.

Those in charge of a steam vessel, proceeding at night at slow speed on account of fog, stopped the engines on learning the proximity of another steam vessel by the sound of her whistle, the bearing of which was taken by compass and made out to be a point and a quarter to a point and a half on the port bow, and estimated to be at a considerable distance. Whilst the vessel was losing steerage way and falling off her course the sound of subsequent whistles apparently broadened a point. The engines were then put dead slow ahead to get steerage way and bring the vessel back to her course, and so continued for some twenty minutes, during which time, although the sound of the whistle was getting closer, it was estimated to have broadened so as to be about four points on the port bow. A collision occurred:—

Held, by Sir Gorell Barnes Pres., that as in fog the estimated bearing of sound signals cannot be relied on, there was no sufficient ground for assuming that the sound of the whistle was broadening to such an extent as to justify continuing on for twenty minutes without stopping from time to time, and, therefore, there had been a breach of the 2nd paragraph of art. 16 of the Regulations for Preventing Collisions at Sea, by which “a steam vessel hearing, apparently forward of her beam, the fog signal of a vessel the position of which is not ascertained, shall, so far as the circumstances of the case admit, stop her engines, and then navigate with caution until danger of collision is over.” *THE “ARAS”* Gorell Barnes, Pres. [1907] P. 28

37. — Fog—Sound signal not heard—Negligence—Inevitable accident.

The defts.’ vessel going down the river Thames suddenly encountered fog, and, whilst proceeding to bring up, those in charge saw

SHIPPING (Collision)—continued.

the riding light and heard the bell of the plts.’ vessel lying at anchor; but it was then too late to avoid a collision:—

Held, that the evidence failed to show any negligence on the part of those in charge of the defts.’ vessel in not seeing the light or hearing the sound signal sooner, and, therefore, on the ground of inevitable accident, the loss must rest where it fell. *THE “NADOR”*

Bigham, Pres. [1909] P. 300

— Foreign public vessel—Appearance entered under misapprehension — Exemption from arrest.

See SHIPPING—Foreign Ship. 1.

38. — Goole Reach—River Ouse, Navigation of—Local practice to swing—Helm signal—Regulations for Preventing Collisions at Sea, 1897, art. 28.

The plts.’ steamship, proceeding up the river Ouse with a strong flood tide, neglected, on approaching the bend in Goole Reach, to swing and dredge up stern first, with the result that, not being under proper control, she was carried, at an excessive speed, into collision with the defts.’ steamship, which was coming down the reach, and which contributed to the collision by starboarding after giving a port helm signal:—

Held, by the C. A., affirming the judgment of the Court below, that both vessels were to blame, the plts.’ vessel for excessive speed due to failing to observe the seamanlike precaution of swinging in the reach, in accordance with the local practice; the defts.’ vessel for wrongly starboarding, and failing to obey art. 28 of the regulations for preventing collisions at sea by indicating her helm movement with the appropriate whistle signal. *THE “FRANKFORT”* - C. A. [1910] P. 50

— Foreign waters, Collision in—Lis alibi pendens—Service out of jurisdiction.

See SHIPPING—Practice. 4.

39. — Landing-stage — “Vessel” — Preliminary acts — Practice — Damage — R. S. C., 1883, Order XIX., r. 28; Order LXXII., r. 2; Appx. O (22).

The plts., owners of a landing-stage in the river Mersey, brought an action against the defendants, owners of a steamship, to recover the amount of damage sustained by them in consequence of the steamship striking the landing-stage, and, on the application of the plts., the district registrar directed that preliminary acts should be filed. This order was affirmed by Bargrave Deane J. The defts. appealed:—

Held, by the C. A., that the landing-stage was not a “vessel” within the meaning of the R. S. C., 1883, Order XIX., r. 28, by which preliminary acts are to be filed in actions for “damage by collision between vessels,” and, therefore, the order directing the filing of these documents must be set aside, notwithstanding any wider practice with reference to preliminary acts in “causes of damage”

SHIPPING (Collision)—continued.

alleged to exist under the Admiralty Court Rules of 1859, and to be saved by the provisions of Order LXXII, r. 2, for the rules of 1859 are included in the list of repealed rules in Appx. O to the R. S. C., 1883, and, therefore, any such alleged practice, if existing thereunder, has been abrogated. *THE "CRAIG-HALL"* — C. A. [1910] W. N. 109; [1910] P. 207

40. — *Lerwick Harbour—Narrow channel—Regulations for Preventing Collisions at Sea*, 1897, art. 25.

The harbour of Lerwick, in the Shetland Islands, is not, except so far as its northern and southern entrances may be so regarded, a narrow channel within the meaning of art. 25 of the Regulations for Preventing Collisions at Sea. *THE "SEYMOLICUS"* — *Bargrave Deane J.* [1909] P. 109

41. — *Lights—Obscure lights—"Ship."*

The House affirmed, with costs, the decisions, (1905) of the 7 F. 665, of the Lord Ordinary and the First Division of the Ct. of Sess., holding that the only question in the appeal was a pure question of fact, namely, whether the lights of the appellants' "ship" were so dim and obscure as not to be seen by the colliding vessel; and this fact two courts below had found in the affirmative, and this House would hesitate long before upsetting such a finding of pure fact. *WINDRAM v. ROBERTSON* — H. L. (Sc.) [1906] W. N. 140

— *Limitation of Liability—Shipping.*

See under SHIPPING — *Limitation of Liability.*

42. — *Limitation of liability—Bailment—Loss of chattel by negligence of wrongdoer—Claim by bailee against fund in court—Possessory title as against wrongdoer — Measure of damage.*

In an action against a stranger for loss of goods caused by his negligence, the bailee in possession can recover the value of the goods, although he would have had a good answer to an action by the bailor for damages for the loss of the thing bailed.

Claridge v. South Staffordshire Tramway Co., [1892] 1 Q. B. 422, overruled. *THE "WINKFIELD"* — C. A. [1901] W. N. 824; [1902] P. 42

43. — *Manchester Ship Canal—Fog—Regulations for Preventing Collisions at Sea*, 1897, arts. 16, 30—*Merchant Shipping Act*, 1894 (57 & 58 Vict. c. 60), s. 418.

Semble: The Regulations for Preventing Collisions at Sea do not apply to the Manchester Ship Canal; but, assuming that they do, the second paragraph of art. 16 of those regulations—by which "a steam vessel hearing, apparently forward of her beam, the fog signal of a vessel the position of which is not ascertained, shall, so far as the circumstances of the case admit, stop her engines . . ."—will not be compulsory, for the approaching vessel, of which the fog signal is heard, must be in the canal, and presumably on her right side, so that her position is, in the circumstances, sufficiently ascertained by those in

SHIPPING (Collision)—continued.

charge of the vessel hearing the whistle, to absolve them from the obligation to "stop her engines," and they can, therefore, continue to navigate their vessel with caution on her own right side, so as to pass the other vessel. *THE "HARR"* — *Gorell Barnes J.* [1904] P. 331 — *Negligence.*

See also under SHIPPING—*Negligence.*

44. — *Negligence—Contributory negligence—Thames By-laws*, 1898, art. 47.

The plts.' steam vessel, proceeding down the river Thames against the tide, neglected—in breach of art. 47 of the Thames by-laws—to wait before rounding Blackwall Point "until any other vessels rounding the point with the tide (had) passed clear," and came into collision with the defts.' steam vessel which had come up the river, and was, at the material time, in process of turning, preparatory to entering the West India Docks.

The defts.' vessel was found to blame for negligently failing to execute the manœuvre of turning with due regard to the passing traffic, and the plts.' vessel was also found to blame for hampering the manœuvre of the other vessel. The plts. appealed:—

Held, by the C. A. (*Collins M.R.*, *Mathew and Cozens-Hardy L.JJ.*), affirming the decision of *Sir F. H. Jeune P.*, [1901] P. 127, that the plts.' vessel was to blame, for, through the breach of art. 47, she had brought herself into a position in which she placed the defts.' vessel in a difficulty, and threw upon those in charge of that vessel the obligation of exercising more than ordinary care.

The Margaret (Cayzer v. Carron Co.), (1884), 9 App. Cas. 873, distinguished. *THE "OVINGDENE GRANGE"* — C. A. [1902] W. N. 132; [1902] P. 208

45. — *Negligence—Reversing engines—Appeal from Constantinople.*

Held, that the appellant vessel, which was admittedly at fault in taking too sharp a turn across the course of the respondent, was guilty of negligence in not reversing her engines when the respondent gave notice that she would continue her course without alteration. *OWNERS OF S.S. "CHITTAGONG" v. OWNERS OF S.S. "KOSTROMO"* — P. C. [1901] A. C. 597

46. — *Negligence of defendants' servant causing original damage—Negligence of plaintiffs' servant causing subsequent loss—Servant acting in dual capacity—Liability for consequential damage.*

A watchman employed by the appellants to take charge of their trawler in dock agreed with the respondents' manager to take the respondents' trawler into the same dock. By pure negligence the watchman so navigated the respondents' trawler as to cause a collision with the appellants' trawler. Instead of examining the damage done to the appellants' trawler, as in duty bound, he entirely neglected his duty and consequently the appellants' trawler sank in the dock:—

Held, that though the respondents were liable for the damage caused by the collision they were not liable for the foundering of

SHIPPING (Collision)—continued.

the appellants' vessel, it having been proved that the vessel need not have sunk if the watchman had examined the appellants' trawler immediately.

Decision of the C. A. (*The Egyptian*, [1910] P. 38) affirmed. *GRANT v. OWNERS OF S.S. "EGYPTIAN."* THE "EGYPTIAN"

H. L. (E.) [1910] W. N. 109; [1910] A. C. 400

47. — "Not under command"—"Aground"
—*Regulations for Preventing Collisions at Sea*, 1897, arts. 27, 28.

A collision occurred between the steamships *Bellanoch* and *Canning*. The *Canning* was held to be alone to blame. It being alleged that the *Bellanoch* was also to blame because she had neglected to give three short blasts, as required by art. 28 of the Collision Regulations, when going full speed astern:—

Held, that the *Bellanoch* was not to blame, because even if the circumstances had brought her within art. 28 the neglect could not have affected the action of the *Canning*.

Decision of the C. A., [1907] P. 170, affirmed. *OWNERS OF S.S. "CANNING" v. OWNERS OF S.S. "BELLANOCH."* THE "BELLANOCH"

H. L. (E.) [1907] W. N. 166; [1907] A. C. 269

Note.

Discussed by C. A., *The "Corinthian,"* [1909] P. 260. See No. 63, below.

48. — "Not under command"—Damage—
Regulations for Preventing Collisions at Sea, 1897, art. 4 (a), (c).

Two sailing vessels were approaching one another so as to involve risk of collision, the one close-hauled on the starboard tack, shewing her green light to the other, the other running free, shewing her red light; but also exhibiting two red lights as signals that from an accident she was "not under command," and, therefore, could not get out of the way. The close-hauled vessel being unable to luff owing to the presence of the green and mast-head lights of a steam vessel on her starboard bow, put her helm up, and would have crossed the bows of the vessel running free, had not that vessel defeated the manoeuvre by porting. In an action of damage by collision:—

Held, by Gorell Barnes J., that the vessel running free was alone to blame, as she had indicated by her two red lights and side-lights that she was not under command, and was making way through the water. She should, therefore, have kept her course so as to enable the close-hauled vessel—otherwise entitled to keep her course—to get out of the way.

Whether a vessel is, in the circumstances, "not under command," so as to justify her, under art. 4 of the Regulations for Preventing Collisions at Sea, in exhibiting the appropriate signal, is a nautical question for the assessors. THE "HAWTHORNBANK"

Gorell Barnes J. [1904] P. 120

49. — Pilot, Picking up—"Keep her course and speed"—*Regulations for Preventing Collisions at Sea*, 1897, art. 21.

When two steam vessels are crossing, so as to involve risk of collision, the vessel which

SHIPPING (Collision)—continued.

has the other on her own starboard side shall, under art. 19 of the Regulations for Preventing Collisions at Sea, keep out of the way of the other, and, to enable her effectually to do so, it is provided by art. 21 that the other shall keep her course and speed; but the obligation, with reference to speed, incumbent upon the latter vessel, is subject to the qualification that if she is, at the material time, to the knowledge of the giving-way vessel, properly engaged in an ordinary nautical manoeuvre, such as picking up a pilot, she will be entitled to carry it out, although the operation involves a reduction of speed. THE "ROANOKE"

C. A. [1908] P. 231

— *Pilotage.*

See under SHIPPING—*Pilotage.*

50. — Pilotage — Compulsory pilotage — Assistance from master.

The pilot in charge of a ship is entitled to the active assistance of the master, not by way of interfering with the navigation, except in cases of manifest incapacity, but in pressing upon his attention such a matter as the nature of the lights of another vessel, about which the pilot has apparently formed a mistaken opinion involving possible risk. THE "TACTICIAN"

C. A. 1907] P. 244

51. — Pilotage, Compulsory — Practice — Evidence of pilot.

Where, in an action of damage by collision, the defts. admit that the collision was caused by the negligent navigation of their vessel, but allege that they are not liable as such negligence was solely that of the pilot compulsorily in charge, and neither side calls the pilot, the Court will, in its discretion, afford him an opportunity of tendering evidence on his own behalf, if he so desire, subject to cross-examination by both sides. THE "CARDIFF."

Bargrave Deane J. [1909] P. 183

— *Practice.*

See under SHIPPING—*Practice.*

52. — Practice — Action in personam — Foreign Plaintiffs—Counter claim—Security for damages—Admiralty Court Act, 1861 (24 & 25 Vict. c. 10), s. 34—Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 24, sub-ss. 5, 7.

The foreign owners of a tug, sunk in collision in the English Channel with a British vessel, brought an Admiralty action in personam against the owners of the British vessel, who appeared, counter-claimed, and applied that all proceedings in the action might be ordered to be stayed until the foreign plts. gave security for damages under the counter-claim:—

Held, by the C. A. (Collins M. R. and Stirling L.J.), affirming the decision of Gorell Barnes J., that there was no jurisdiction to make the order, either under the special powers conferred on the Admiralty Court by s. 34 of the Admiralty Court Act, 1861, or under the general powers of the Courts of Law and Equity kept alive, and conferred on the High Court and the C. A., by sub-ss. 5, 7

SHIPPING (Collision)—continued.

of s. 25 of the Judicature Act, 1873. **THE "JAMES WESTOLL" - C. A. [1904] W. N. 198 : [1905] P. 47**

53. — Practice — Admission by defendants that partly to blame—Burden of proof—Right to begin.

In an action of damage by collision, the plts., by their statement of claim, alleged that they had suffered damage by reason of a collision between their vessel and the defts.' vessel solely caused by the negligent navigation of the latter, and they charged the defts. with specific acts of negligence and with breaches of certain articles of the Regulations for Preventing Collisions at Sea. The defts., by their defence, denied that the collision and damage were so caused, and alleged that they were solely due to the negligent navigation of the plts.' vessel, and, after charging the plts. with specific acts of negligence and breaches of certain articles of the same regulations, the defts. counterclaimed for the damage they had suffered by reason of the collision. By their reply, the plts., as to the defence, joined issue, and, as to the counterclaim, denied the allegations therein contained. Subsequently the defts., by letter, admitted that the collision was contributed to by fault on the part of those in charge of their vessel :—

Held that, on the pleadings as they stood, even coupled with the defts.' admission of contributory negligence, it was for the plts. to begin, as the burden of proof was upon them to shew affirmatively that the defts.' vessel was solely to blame. **THE "CADEBY"**

Bigham, Pres. [1909] P. 257

— Practice—Co-defendants—Costs.

See SHIPPING—Practice. 5.

— Practice — Service out of jurisdiction — Foreign co-defendant — "Necessary or proper party."

See SHIPPING—Practice. 12.

54. — Practice — Total loss — Measure of damage—Vessel under three successive charters—Prospective profits.

The measure of damage in the case of a vessel totally lost by collision at a time when she is proceeding from a home port with cargo under charter to a foreign port, thence to proceed under charter to another port, and home under charter from that port, is her value at the date when she would have accomplished the homeward voyage, together with such a sum as will represent the profit which would have been realized under the three successive charters, less a reasonable percentage for contingencies.

The Kate, [1899] P. 165, approved. **THE "RACINE" C. A. [1906] P. 273**

55. — Presumption (Statutory) of fault—Proof to the contrary—Failure to stand by—Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 422, sub-s. 2, 3.

In an action of damage by collision, in which those in charge of the defts.' steam vessel were found alone to blame, it appeared that the plts.' vessel and the defts.' vessel,

SHIPPING (Collision)—continued.

after the first contact, fell alongside, and, whilst clearing, the port propeller of the plts.' vessel struck the starboard side aft of the defts.' vessel, under water, with the result that the defts.' vessel sank in a couple of hours; but it was not known to those in charge of either vessel at the time of the impact that the damage was so serious. The plts.' vessel did not stop, but those in charge hoisted flag signals asking if any assistance was required, and, only hearing long blast whistle signals from the defts.' vessel, they steamed away :—

Held, that, though those in charge of the plts.' vessel suspected that damage might have been done by the port propeller, and though the blowing of the whistle on the defts.' vessel ought to have conveyed to the minds of those in charge of the plts.' vessel that assistance was needed, still the collision could not be deemed to have been caused by the wrongful act, neglect, or default of the master of the plts.' vessel, as "proof to the contrary" had been given within the meaning of s. 422, sub-s. 2, of the Merchant Shipping Act, 1894, and the further question whether the master had been guilty of a misdemeanour did not arise, for sub-s. 3 of the same section dealt only with the personal liability of the master, so that the liability of the ship or of her owners was not affected. **THE "TRYST"**

Bigham, Pres. [1909] P. 333

56. — Queenstown Harbour—Narrow channel—Regulations for Preventing Collisions at Sea, 1897, art. 25.

The waterway forming the entrance to Queenstown Harbour is a narrow channel within the meaning of art. 25 of the Regulations for Preventing Collisions at Sea, and, therefore, every steam vessel must, when it is safe and practicable, keep to that side, marked by buoys by the local authorities, of the fairway or mid-channel which lies on the starboard side of such vessel. **THE "GLENARIFF"**

Bargrave Deane J. [1905] P. 106

57. — Reference — Offer to agree claim—"Tender"—Costs.

An action of damage by collision was settled on the terms that the plts. should receive 60 per cent., and the defts. 40 per cent., of the amount of the damage sustained by their respective vessels; but, before the reference, the plts.' solicitors wrote to the defts.' solicitors offering to agree the defts.' claim at 40 per cent. of 4500*l.* with interest. This offer the defts. declined to accept unless made in accordance with the rules as to tender. The investigation into the respective claims resulted in a small balance in favour of the plts. being found due; but the registrar, in his report, although he reduced the defts.' claim below 4500*l.*, gave the defts. their costs of proving their claim on the ground that the plts.' offer had not been followed up by the ordinary procedure in the case of a tender :—

Held by Bargrave Deane J., that the plts. were entitled to the costs in respect of the proof of the defts.' claim subsequent to the

SHIPPING (Collision)—*continued*.

offer by letter, as the word "tender" did not apply to the proposed agreement, which, if accepted, would have saved the expense attending the assessment of the defts.' claim. THE "READING" **Bargrave Deane J.** [1908] P. 162

58. — "Risk of collision"—*Regulations for Preventing Collisions at Sea, 1897, preliminary article to Steering and Sailing Rules, and art. 29.*

A steamship going down the river Elbe, and seeing the three lights of a steam-tug ahead or a little on her port bow, ported to give more room, thereby bringing herself well over to her proper starboard side of the channel; but the tug starboarded and got on to the starboard bow, whereupon the steamship slightly starboarded and steadied, bringing the vessels green to green at half to three-quarters of a mile and about a point and a half on the starboard bow. The tug then ported back, and whilst crossing the bows of the steamship, was sunk in collision. The tug was found alone to blame for wrongful manœuvring without helm signals:—

Held by the C. A. (Lord Alverstone C.J., Buckley and Kennedy L.J.J.), that the steamship was also to blame, for when those in charge saw that, though they had starboarded and steadied the green light of the tug did not broaden, but was, for an appreciable time, getting finer on their starboard bow, they ought to have realized that there was "risk of collision" within the meaning of the preliminary article to the steering and sailing rules of the Regulations for Preventing Collisions at Sea, and they should, therefore, as a matter of seamanship under art. 29, have at once stopped and reversed.

Per Lord Alverstone C.J.: Observations on the functions of the nautical assessors in an Admiralty action. THE "CITY OF BERLIN" C. A. [1908] P. 110

—Signal as to alteration of course—No duty to stop if signal unanswered.
See CHINA AND COREA. 3.

59. — *Singapore Harbour—Inevitable accident—Onus of proof—Compulsory pilotage—Straits Settlements Ordinances (1879), No. 8, ss. 1, 12; (1885), No. 5, s. 4; (1905), No. 7, ss. 20, 23; (1905), No. 8, ss. 21, 32.*

The defts.' steamship, whilst proceeding, in daylight, out of the harbour of Singapore, ran into and sank the plts.' vessel at her moorings. The defence set up was inevitable accident due to an abnormal current, and, in the alternative, compulsory pilotage:—

Held, that the defts. were liable, for they had not succeeded in establishing the existence of the abnormal current relied on, and, therefore, the onus of proof being on them, they had failed to shew that a competent seaman could not have averted or mitigated the disaster by the exercise of ordinary care and skill. Secondly, that the defence of compulsory pilotage was not available, for the repeal of s. 12 of the Straits Settlement Ordinance

SHIPPING (Collision)—*continued*.

No. 8 of 1879 had rendered pilotage at Singapore no longer compulsory. THE "POLYNÉSIEN" - **Bigham, Pres.** [1910] P. 28

60. — *Single ship and fleet of warships—Crossing rule—Special circumstances—Regulations for Preventing Collisions at Sea, 1897, arts. 19, 21, 27—King's Regulations, ch. xiv., 615 (6.) (11.)—Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 741.*

A flotilla of torpedo-boat destroyers, proceeding down the English Channel in two lines of close formation, sighted the masthead and red lights of a merchant steam vessel drawing across the head of the starboard, and approaching the port, division. When in the position of a crossing vessel with regard to the second destroyer of the port division, the officer in charge of that destroyer kept his station until danger was imminent, and then, putting his engines full speed ahead, tried by hard-a-porting to throw his starboard quarter clear, but failed to get across the bows of the merchant vessel. In an action of damage by collision:—

Held by Bucknill J., that both ships were to blame, the merchant vessel for bad look-out, whereby she got in between the two lines of the flotilla, without regard to the Board of Trade notice warning single ships to keep out of the way of a squadron of warships, and then persisted in maintaining her course and speed under art. 21 of the Regulations for Preventing Collisions at Sea, when she should have acted under art. 27, and, in the special circumstances, passed down between the two lines of the flotilla. The destroyer was also to blame, for, under the article of the King's Regulations equivalent to art. 19 of the Regulations for Preventing Collisions at Sea, it was the duty of the officer in charge, having the merchant vessel on his own starboard side, to keep out of the way, and though he was required under the King's Regulations to keep his station and not change the course, except to avoid immediate danger, and, therefore, was entitled to a reasonable time to see what the merchant vessel would do, he had, in the circumstances, delayed action too long. THE "ETNA" - **Bucknill J.** [1908] P. 269

61. — *Snow—In or approaching falling snow—Sound signals—Speed—Regulations for Preventing Collisions at Sea, 1897, arts. 15, 16.*

A cruiser proceeding up, and a New York liner proceeding down, the Solent on nearly opposite courses, and in about mid-channel, sighted one another at a distance of about half a mile, each having the other a little on the port bow. The speed of both vessels was nearly ten knots, and the cruiser when seen was coming out of a snow flurry, whilst the liner was in comparatively clear weather. Those in charge of the cruiser, under the mistaken impression that the liner was starboarded, starboarded their helm, thereby bringing their vessel across the bows of the liner, and, at the last, ported to throw their quarter clear. Those in charge of the liner stopped, then blew one short blast and ported, at the same

SHIPPING (Collision)—continued.

time reversing the starboard engine, and subsequently also the port engine; but the two vessels came into collision, the liner striking the cruiser on the starboard side and amidships and sinking her.

In the Court below the cruiser was found alone to blame for improper starboarding. On appeal it was contended that the liner was also to blame for excessive speed in the condition of the weather, and for failure to indicate her position by sound signals:—

Held by the C. A., that both charges against the liner failed, for, though good seamanship required that she should be going at a speed which would be moderate when she herself was enveloped in falling snow, her speed at the material time, and in the weather conditions then prevailing, was not excessive; and, secondly, though good seamanship should have suggested to those in charge of the liner the necessity as in the analogous case of fog—*The N. Strong*, [1892] P. 105—of giving warning of the presence of their vessel by sounding the signal when approaching falling snow, yet as both vessels saw one another at a distance and in sufficient time to enable them, with reasonable care, to pass each other in safety, the absence of sound signals on the part of the liner did not contribute to the collision.

Quære whether, when the liner was approaching falling snow, the responsibility for giving sound signals rested with the master or with the pilot in charge by compulsion of law.

Decision of Gorell Barnes, Pres., [1908] P. 320, affirmed. *THE "ST. PAUL"*

C. A. [1909] P. 43

62.—Solent, Collision in the—Damage—Narrow channel—Regulations for Preventing Collisions at Sea, 1897, art. 25—Compulsory pilotage—Trinity House Outport District—Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), ss. 605, 622.

The waterway known as the Solent constitutes a narrow channel within the meaning of art. 25 of the Regulations for Preventing Collisions at Sea, and, therefore, every steam vessel must, when it is safe and practicable, keep to that side of the fairway or mid-channel which lies on the starboard side of such vessel.

Under the statutory jurisdiction exercised by the Trinity House of Deptford Strond since 1808 in respect of outport districts, the waterway between the sea and Southampton, by way of the Solent, has always constituted, for the purposes of compulsory pilotage, one district only, although for the convenient examination and control of the pilots licensed by the Trinity House, that corporation, as the pilotage authority, has from time to time divided the district amongst sub-commissioners at Portsmouth, Cowes, and Southampton, and although the limits of the licences of the pilots in respect of the district have been varied, and exclusive rights given to Southampton pilots in respect of the pilotage of inward-bound vessels when arriving at the seaward end of Southampton Water. *THE "ASSAYE"*

Bargrave Deane J. [1905] P. 289

SHIPPING (Collision)—continued.

63.—Sound signal—Contributing to collision—Regulations for Preventing Collisions at Sea, art. 28.

The *plts.*' and the *defts.*' steamships, whilst proceeding, the one up, the other down, the south channel of the river St. Lawrence, sighted one another at a distance of something under a mile, and were, at that time, practically end on, within the meaning of art. 18 of the Regulations for Preventing Collisions at Sea. Those in charge of the *defts.*' vessel, in breach of the above article, starboarded, and were found alone to blame for the collision which followed. Those in charge of the *plts.*' vessel ported, in accordance with art. 18, blew a short blast, in accordance with art. 28, and steadied. Shortly afterwards they hard-ported, but did not blow another short blast to indicate the course taken. In the Court below it was found that not blowing the port helm signal, when the hard-a-porting took place, had no effect on the collision:—

Held by the C. A., varying the decision of the Court below, that the *plts.*' vessel was also to blame, for the statutory presumption of fault could not be avoided except by skewing—which could not be done in this case—that the breach of the rule could not by possibility have contributed to the collision.

The case of *The Bellanoch*, [1907] A. C. 269, was decided on its own peculiar facts, and does not modify the doctrine laid down in *The Fanny M. Carvill*, (1888) 13 App. Cas. 455, n., which was followed in *The Duke of Buccleuch*, [1891] A. C. 310. *THE "CORINTHIAN"*

C. A. [1909] P. 260

64.—Sound signals—Statutory presumption of fault—Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 419, sub-s. 4—Regulations for Preventing Collisions at Sea, 1897, art. 28.

A tug which, with a lighter in tow, was crossing the Humber under a slightly starboard helm on account of the ebb tide, starboarded further, and gave a long blast signal to indicate her presence to a steamship, under the stern of which she was passing. The steamship, which was shewing a stern light and lying athwart the river waiting to go into dock, came astern to allow another vessel to pass out of dock, and the tug thereupon hard-a-starboarded her helm to clear the stern of the steamship, but failed to give the appropriate two-short-blast signal required by art. 28 of the Regulations for Preventing Collisions at Sea as applied to the Humber. The steamship had no look-out aft, and, in the Court below, was found alone to blame for a collision with the lighter, whilst the tug was absolved from liability on the ground that the infringement of the rule could not by possibility have contributed to the collision:—

Held by the C. A. (Lord Alverstone C.J., Buckley and Kennedy L.JJ.), that the tug was also to blame, for, though those in charge of the steamship were so negligently inattentive that they did not notice what was going on astern of them, it could not be said that, if the two-short-blast signal had not been given

SHIPPING (Collision)—continued.

by the tug when further starboarding or hard-a-starboarding, as an indication that she was manœuvring for them, the signal might not have been heard and acted upon by those in charge of the steamship in time to have avoided the collision with the lighter; and, therefore, the statutory presumption of fault arose under s. 419, sub-s. 4, of the Merchant Shipping Act, 1894. *THE "ARISTOCRAT"*

C. A. [1908] P. 9

65. Sound signals—Damage.

Notwithstanding the alleged unwillingness of the Court to infer negligence from the fact that fog signals proved to have been sounded in the vicinity were not heard, failure to hear such signals may be sufficient, by itself, to justify a finding that those in charge of the vessel concerned were not keeping a good look-out. *THE "CURRAN"*

C. A. [1910] P. 184

66. — Sound signals—Helm movement to counteract effect of reversing engines—Regulations for Preventing Collisions at Sea, 1897, art. 28.

By art. 28 of the Regulations for Preventing Collisions at Sea, a steam vessel under way, in taking any course authorized or required by the rules in respect of another vessel in sight, shall indicate that course by the appropriate sound signal:—

Held, that a steam vessel having sounded three short blasts to indicate that "my engines are going full speed astern" did not infringe the rule by omitting to sound one short blast on hard-a-porting, as this helm action was to prevent her head canting to starboard under the reverse action of the engines. *THE "ABERDONIAN"*

Bargrave Deane J. [1910] P. 225

67.—Sound signals—"Taking any course authorized or required by these rules"—Steering rules—Regulations for Preventing Collisions at Sea, 1897, art. 28.

The plts.' steam vessel, after giving a prolonged blast on her whistle, left a dock entrance in the Mersey under easy starboard helm, and—whilst continuing to round under that helm in order to bring up alongside a wall a short distance further up—came into collision with the defts.' down-coming steamer. It was alleged on behalf of the defts. that those in charge of the plts.' vessel should have indicated that she was directing her course to port by giving two short blasts of her whistle in accordance with art. 28 of the Regulations for Preventing Collisions at Sea, by which, "when vessels are in sight of one another, a steam vessel under way, in taking any course authorized or required by these rules, shall indicate that course by" the appropriate signal:—

Held, by Jeune Pres., that the rule was not applicable, as the starboard action of the helm began before leaving the entrance, and, when the other vessel was in sight, the plts.' vessel was not, with reference to that other vessel, taking a course authorized or required by the rules.

SHIPPING (Collision)—continued.

Cases in which the rule would apply considered. *THE "MOURNE"* - Jeune, Pres. [1901] W. N. 18; [1901] P. 68

68. — Sound signals for vessels in sight of one another—"Course authorized or required by these rules"—Regulations for Preventing Collisions at Sea, 1897, art. 28.

The direction in art. 28 of the Regulations for Preventing Collisions at Sea, 1897, that "when vessels are in sight of one another, a steam vessel under way, in taking any course authorized or required by these rules, shall indicate that course by the (specified) signals on her whistle or syren," is not only imperative, but the word "authorized" includes any course which, for the safety of the vessels, good seamanship requires to be taken with reference to the other vessel then in sight. *THE "USKMOOR"* Jeune, Pres. [1902] W. N. 150; [1902] P. 250

Note.

See *The "Minnetonka"*, Bucknill J., [1904] P. 202, 204; C. A. [1905] P. 206. See No. 70, below.

Approved by C. A., *The "Anslem,"* [1907] P. 151. See No. 3, above.

— Steam trawler.

See Nos. 79—83, below.

69. — Subsequent total loss — Proximate cause — Temporary repairs — Consequential damage—Remoteness.

The plts.' steamship was so badly damaged in a collision in the English Channel with the defts.' vessel that she had to put into Portland, where she was temporarily repaired, and she then proceeded to complete her voyage to Bristol in order to deliver her cargo and earn the freight; but she sank off the Lizard. In an action of damage by collision the plts. claimed to recover as for a total loss:—

Held, that though the collision was due to the negligence of those in charge of the defts.' vessel, and therefore her owners were liable for the damage sustained by the plts.' steamship, they were not liable for her subsequent loss, as that was not the natural and reasonable result of the wrongful act of the defts.' servants, but was due to the insufficient measures taken by the plts. to repair their vessel in the port of refuge, by reason of which she could not be safely navigated to her port of discharge. *THE "BRUXELLESVILLE"*

Bucknill J. [1908] P. 312

70. — "Substituted expense"—Damage—Freight—Abandonment of voyage—Claim by cargo owner.

A collier from the Tyne to Cape Town, under charter to the Admiralty, came into collision with a steamship in the English Channel, and put back to the Thames for repairs. The cargo of coals had to be discharged, and, by arrangement between the Admiralty, as the owners of the cargo, and the owners of the collier, the voyage was treated as abandoned, the cargo sold, and a sum of 1000*l.* agreed to be paid by the Admiralty to the owners of the collier as a "sub-

SHIPPING (Collision)—continued.

stituted expense" in lieu of the larger sum which, it was estimated, would have been incurred for storage and reshipment if the collier had carried on the coals at the end of the period required for repairs.

At the usual ships' reference, after a decree of both to blame, a moiety of the claim by the owners of the collier for repairs and detention was paid by the owners of the steamship; but, at a reference between the Admiralty and the owners of the steamship, a claim, made by the Admiralty against the owners of the steamship for a moiety of their adjusted proportion of the 1000*l.*, was disallowed by the registrar, and the disallowance affirmed on appeal to the judge, [1904] W. N. 58; [1904] P. 202:—

Held, by the C. A. (Collins M.R., Mathew and Cozens-Hardy L.JJ.), reversing the decision of Bucknill J., that the amount claimed by way of "substituted expense" was the result of a reasonable arrangement to minimize the loss, and was such a consequence of the collision as to render the owners of the steamship, as wrong-doers, liable for a moiety of their adjusted proportion.

The "Marpessa," [1891] P. 403, considered.
THE "MINNETONKA" C. A. [1905] P. 206

71. — *Suez Canal—Relative duties of north and south going vessels—Regulations for the Navigation of the Canal, 1905, arts. 3, 8, subs. 3, 7, 8, 10, and night signal 11.*

Although it is the recognized practice in part of the Suez Canal for a south-going vessel to tie up in due time to allow a north-going vessel to pass, still, in their exercise of this right of way, those in charge of the north-going vessel have a relative duty cast upon them to act reasonably, and, therefore, they must reduce speed, and keep their vessel so well in hand as to be able promptly to bring her to a standstill should they find themselves approaching too near whilst the giving-way vessel is completing the manœuvre of making fast. These precautions are especially necessary at night owing to the difficulty of accurately estimating the distance of the lights of the south-going vessel before she exhibits the particular lights prescribed by the rules as an indication that the north-going vessel may safely pass. THE "CLAN CUMMING"

C. A. [1907] P. 311

72. — *Swansea entrance channel—Application of art. 25 of the Regulations for Preventing Collisions at Sea, 1897—Good seamanship.*

Art. 25 of the Regulations for Preventing Collisions at Sea applies to the entrance channel formed by the east and west pier at Swansea, so that it is incumbent on a steam vessel in that narrow channel to keep to that side of mid-channel which lies on her starboard hand, but circumstances may prevent the rule operating to its full extent throughout the channel, for when a vessel is coming away from the tidal basin of the Prince of Wales dock on the east side, and is proceeding down the channel, she will, in order to get on her

SHIPPING (Collision)—continued.

proper west side, have to cross the channel leading up to the Ocean dry dock, or other dock in the west channel, towards which another vessel, coming in, may be making. In such a case good seamanship dictates that the vessel which will reach the point of intersection of the channels reasonably in advance of the other should keep on, and that the other should wait, though, if both are approaching the point at about the same time, it will be reasonable for the vessel which has the tide against her to wait until the other has passed. THE "PRINCE LEOPOLD DE BELGIQUE"

Gorell Barnes, Pres. [1909 P. 103

73. — *Thames, River—East Swin channel at mouth of Thames—Starboard side—Sailing vessels.*

In support of the charges made by the plts. against the defts., namely, that the *P. C. Petersen* improperly starboarded and failed to keep her course under art. 21 of the Regulations of 1897 for Preventing Collisions at Sea, and that she "was improperly navigated on the east side of the East Swin channel, and improperly passed on the east instead of the west side of the Swin Middle Lightship," reliance was placed on the "note" on the Admiralty chart (corrected to March, 1900) of the river Thames from the Kentish Knock and the Naze to the West Swin, that "vessels proceeding north should pass eastward of Swin Middle Lt Vesi. Vessels proceeding south should pass westward of Swin Middle Lt Vesi."

Bucknill J. found the plts.' steamship *Gottfrid* alone to blame for the collision on the ground that, not reversing, but porting to the green light of a sailing vessel close to and nearly ahead was reckless navigation, and that those in charge of the steamer ought to have known that a sailing vessel coming up the East Swin with the wind from the S.E. would have to luff, and pass close to the South West Middle Buoy, in order to make for the next reach. With reference to the note on the chart, the learned judge said that it was very proper advice given to steamships, and, perhaps, to sailing ships which had the wind free so that they could pass where they liked, but that it was not intended to govern the navigation of sailing ships which might have a foul wind and have to beat up the estuary of the Thames at all times of the tide, otherwise they would never reach their destination. THE "P. C. PETERSEN"

Bucknill J. [1903] W. N. 34

74. — *Thames, River—Sea Reach, river Thames—Starboard hand buoys—Narrow channel—Regulations for Preventing Collisions at Sea, 1897, art. 25.*

The plts.' steam vessel proceeding up, and the defts.' steam vessel going down, the river Thames, came into collision on the starboard side, as regards the incoming vessel, of the channel which lies to the southward of the four red conical lighted buoys, placed by the duly constituted authority, approximately in the central line of Sea Reach, to mark the northern side of the deepest water. On the question whether

SHIPPING (Collision)—continued.

the plts.' vessel was on the wrong side of the river :—

Held, by Gorell Barnes J., that the effect of the placing of the four red conical lighted buoys was to constitute the space of water between them, and the Nore Sand buoys to the south of them, a narrow channel within the meaning of art. 25 of the Regulations for Preventing Collisions at Sea, for, by the uniform system of buoyage adopted on the coast of England, red conical buoys are "starboard hand buoys" denoting that side which would be on the right hand of the mariner entering the river, and, therefore, the plts.' vessel was justified in being where she was.

Quære, as to the effect of the starboard hand buoys with reference to that portion of the waterway between those buoys and the buoys on the northern side of the river. *THE "GUSTAFSBERG"*

Gorell Barnes J. [1905] P. 10

75. — *Thames, River—Thames By-laws, 1898, art. 46—Risk of collision.*

Two steam vessels proceeding in opposite directions, the one up and the other down the river Thames, came into collision :—

Held, as a question of pure fact upon the evidence, that the vessel proceeding down the river was alone in fault.

Decision of C. A., *The "Guildhall,"* [1908] P. 29, reversed; the decision of Bucknill J. restored. *OWNERS OF S.S. "GUILDHALL" v. GENERAL STEAM NAVIGATION CO. THE "GUILDHALL"*

H. L. (E.) [1908] W. N. 104; [1908] A. C. 159

76. — *Thames, River—Overtaking and overtaken vessels—Keeping to the south of mid-stream going down.*

The plts.' and defts.' steamships, proceeding down the river Thames, came into collision, in the upper part of Galleon's Reach, owing in part to the defts.' vessel, which was leading, and which was to the southward of mid-channel, attempting, by starboarding, to pass to the northward of a dredger, moored in about mid-stream, thereby tending to throw herself across the course of the plts.' vessel, which was coming down on the north side of the river, and also making to pass on the north side of the dredger. Both vessels were found to blame, the defts.' vessel, as the overtaken vessel, for not keeping her course, and the plts.' vessel, as the overtaking vessel, for not stopping so as to keep out of the way of the defts.' vessel when she saw what that vessel was doing. As a matter of seamanship also both vessels were to be deemed in fault for disregarding the understanding on the river, by which, for the safety of navigation, steamships going down keep to the southward of mid-stream, thereby leaving the northern side of the river free for vessels coming up. *THE "GERE"*

Bargrave Deane J. [1909] P. 287

— *Thames, River—Wreck raised by Thames Conservancy—Arrest by marshal.*
See No. 91, below.

SHIPPING (Collision)—continued.

— *Thames, River—Wreck, Removal of—Thames Conservancy.*

See No. 92, below.

77. — *Total loss—Payment by wrong-doer—Insurance, Marine—Valued policy—Partial insurance—Division of amount received from wrong-doer between shipowner and underwriter.*

The owners of a steamship, which had run down a schooner, paid into Court 1000*l.*, the value of the schooner as assessed in the registry. Underwriters who had paid the owners of the schooner 1000*l.*, as being the amount for which she was insured, under a policy stating the value to be 1350*l.*, claimed the 1000*l.* :—

Held, by the C. A. (Sir Gorell Barnes, Pres., Fletcher Moulton and Kennedy L.J.J.), affirming the decision of Bargrave Deane J., that the owners of the schooner were entitled to be treated as their own insurers for 350*l.*, and, therefore, the 1000*l.* must be divided between them and the underwriters in the proportion of their respective interests, namely, 350-1350*ths.*, and 1000-1350*ths.* *THE "COMMONWEALTH"*

C. A. [1907] P. 216

78. — *Towage—Damage to cargo—Contract of indemnity—Third-party notice—Appeal by person not a party—R. S. C., Order XVI., rr. 48, 52, 53, 55—Costs.*

Cargo owners instructed barge-owners to lighter their goods, and, as time pressed, to employ a tug. The tug was so negligently navigated by the servants of the tug-owners that the barge containing the goods was brought into collision with another barge, and the goods thereby damaged. In an action by the cargo owners, as plts., against the barge-owners and the tug-owners as co-defts., the barge-owners were dismissed from the suit with costs to be paid by the cargo owners, but the tug-owners were held liable with costs for the damage sustained by the cargo owners, together with the costs to be paid by the cargo owners to the barge-owners. The tug-owners, by a third-party notice, served on the barge-owners, set up a contract of indemnity under which their customers agreed that the tug-owners should "not be answerable for any loss or damage which might happen to, or be occasioned by, any barge, or its cargo, while in tow, however such loss or damage might arise," and undertook to hold them harmless and indemnify them "from any such loss or damage, and against the faults or defaults of their servants or any claim therefor by whomsoever made."

Under the issue raised between the co-defts. by the third-party notice, the barge-owners were adjudged responsible for the amount of the damage for which the tug-owners had been held liable together with the two sets of costs. Both defts. served notices of appeal; but the appeal of the tug-owners was subsequently withdrawn :—

Held, by the C. A. (Collins M.R., Mathew and Cozens-Hardy L.J.J.), first, that the barge-owners could not appeal in respect of the decision in favour of the plts. against the tug-owners, for they were not parties to that judgment, and not having paid the amount adjudged to be due by the tug-owners to the plts., they were not sub-

SHIPPING (Collision)—continued.

rogated to their rights, and, if subrogated, they could not avail themselves of an appeal which the tug-owners had abandoned, nor could they rely on the third-party procedure under the Judicature Act, as no order had been made within the meaning of the R. S. C., Order XVI., r. 53, giving directions as to the mode in, or the extent to, which they were to be bound, or made liable, by the judgment against the tug-owners. Secondly, affirming the judgment of the Court below, that there was no privity of contract between the plts., the owners of the damaged cargo, and the tug-owners, which would bind the plts. to the conditions attached to the towage, and, therefore, on the construction of the contract of indemnity as between the barge-owners and the tug-owners, the barge-owners not only could not bring an action against the tug-owners for any loss or damage which might happen to, or be occasioned by, any barge or its cargo, while in tow, but the contract assumed an existing liability against which the barge-owners had undertaken to indemnify the tug-owners, so that the barge-owners were liable for the damages recovered by the plts. in the action brought against the tug-owners, together with the costs reasonably incurred by the tug-owners in defending such action, including the costs which the plts. had been adjudged to pay the barge-owners, and which the tug-owners had been ordered to repay to the plts. **THE "MILLWALL"**

C. A. [1905] W. N. 51; [1905] P. 155

79. — Trawler — Sailing vessel — Steam trawler—Duty of steam vessel to keep clear—Regulations for Preventing Collisions at Sea, 1897, arts. 9, 20.

A steam trawler fishing in the North Sea, with her trawl down over her starboard quarter, and exhibiting a black ball to indicate how she was engaged, was making from two and a half to three knots on a N.N.E. course, when she came into collision with a small sailing vessel which was making about six knots, and heading S.W. close hauled on the starboard tack. Those in charge of the trawler seeing the sailing vessel heading for them thought that she wished to speak them, and, when they realized that this was not so, it was too late to do anything. The sailing vessel, owing to having no look-out, failed to observe the trawler until close to:—

Held that, though the sailing vessel was to blame for having no look-out, the steam trawler was also to blame, for she might, by a small alteration of her course, have avoided the collision, and should, therefore, have acted under art. 20 of the Regulations for Preventing Collisions at Sea, by which a steam vessel must keep out of the way of a sailing vessel.

The "Tweeddale," (1889) 14 P. D. 164, held not applicable. **THE "CRAIGELLACHIE"**

Bucknill J. [1909] P. 1

Note.

This case was disapproved by C. A., **"The Grovehurst,"** [1910] P. 316. See No. 81, below.

80. — Trawler—Steam trawler and sailing vessel — Lights — Regulations for Preventing Collisions at Sea, 1897, arts. 2, 9, 20.

SHIPPING (Collision)—continued.

A British steam trawler of upwards of twenty tons gross register, fishing in the sea off the coast of Europe lying north of Cape Finisterre, and carrying the alternative lights prescribed by art. 9 of the Regulations for Preventing Collisions at Sea, as amended by Orders in Council, is, after getting in her trawl, so as to be no longer incumbered, but able to manœuvre, to be treated as a steam vessel under command, and therefore, she is bound at night to exhibit the lights for a steam vessel prescribed by art. 2, and must, under art. 20, keep out of the way of a sailing vessel.

The "Tweeddale," (1889) 14 P. D. 164, followed. **THE "URTON CASTLE"**

Bargrave Deane J. [1906] P. 147

81. — Trawler—Steam trawler engaged in trawling—Steamship crossing—Effect of exhibition of, triplex light—Giving way—Regulations for Preventing Collisions at Sea, 1897, arts. 9 (1906) (d) (1.), 19, 21, 27.

By art. 19 of the Regulations for Preventing Collisions at Sea, 1897, "When two steam vessels are crossing, so as to involve risk of collision, the vessel which has the other on her own starboard side shall keep out of the way of the other." By art. 27, "In obeying and construing these rules, due regard shall be had to . . . any special circumstances which may render a departure from the above rules necessary in order to avoid immediate danger":—

Held by the C. A., that the exhibition by a steam vessel "engaged in trawling" of the special lights rendered compulsory by art. 9 (1906) (d) (1.) of the above regulations, was an indication that "special circumstances" existed within the meaning of art. 27, rendering the trawler incapable of obeying art. 19, and, therefore, casting upon the other crossing steam vessel the duty of keeping out of the way.

The reasoning in **The "Tweeddale,"** (1889) 14 P. D. 164, so far as applicable, followed.

The Craigellachie, [1909] P. 1, disapproved. **THE "GROVEHURST"** — C. A. [1910] P. 316

82. — Trawler — Sailing vessel and steam trawler—"Proceeding"—Regulations for Preventing Collisions at Sea, 1897, art. 9 (1906), sub-s. (k); art. 20.

A steam trawler fishing in the daytime in the vicinity of the Dogger Bank, and indicating her occupation to an approaching sailing vessel by the display of a basket, in accordance with art. 9 (1906), sub-s. (k), of the Regulations for Preventing Collisions at Sea, was run into and sunk by the sailing vessel owing to the negligence of those in charge of that vessel in not keeping a good look-out. It was contended on behalf of the sailing vessel that, though she was to blame, the trawler was also to blame for not using her steam to keep out of the way of the sailing vessel under art. 20 of the above regulations, by which "When a steam vessel and a sailing vessel are proceeding in such directions as to involve risk of collision, the steam vessel

SHIPPING (Collision)—continued.

shall keep out of the way of the sailing vessel":—

Held, that the trawler was not to blame, for, at the material time, she was engaged in the operation of hauling in her trawl. In such circumstances she was an incumbered vessel unable, until her trawl was up, to move her engines ahead or astern without risk of fouling her propeller. She was, therefore, not a steam vessel "proceeding" so as to involve risk of collision within the meaning of art. 20.

The "Jennie S. Barker," (1875) L. R. 4 A. & E. 456, distinguished.

The "Tweeddale," (1889) 14 P. D. 164, followed.
THE "GLADYS" Bigham, Pres. [1910] P. 13

83. — Trawling, Sailing vessel engaged in—Shewing flare-up in sufficient time—Regulations for Preventing Collisions at Sea, art. 9 (1906) (d), sub-s. 2.

A steamship proceeding about midnight, at a speed of nearly nine knots, through a fleet of vessels fishing off the north coast of Cornwall, ran down and sank one of them, which had her regulation white fishing light up, and was, at the material time, lying hove to, engaged in hauling in her trawl. The lights of the steamship were first observed at some considerable distance, and when it was noticed by those on board the trawler that the steamship was heading for them, a white flare-up light was shewn where it could best be seen, the distance between the two vessels being then about 300 yards. The Court found that the steamship was alone to blame for not keeping out of the way, and also

Held that the flare was shewn "in sufficient time to prevent collision" within the meaning of art. 9 (1906) (d), sub-s., 2, of the Regulations for Preventing Collisions at Sea. **THE "PICTON"**

Bigham, Pres. [1910] P. 46

84. — Tug and Tow—Fog—Regulations for Preventing Collisions at Sea, 1897, art. 16—Obligation on tug to stop—Control of tug by tow.

A steamship proceeding in a dense fog up the English Channel at a moderate speed on a course of E. $\frac{1}{2}$ N. stopped her engines, in accordance with the second paragraph of art. 16 of the Regulations for Preventing Collisions at Sea, on hearing a fog signal apparently forward of her beam, and on hearing a second signal reversed; but she came into collision with a sailing vessel in tow of a tug proceeding on a crossing course of W.S.W. at a moderate speed of from two to three knots. The whistle of the steamship had been heard fine on the starboard bow of the sailing vessel; but the engines of the tug were not stopped in accordance with the above regulation, on the ground that as the tug was proceeding at the minimum speed compatible with keeping the tow under control, it was not the duty of the tug to stop:—

Held, by the C. A. (Collins M.R., Mathew and Cozens-Hardy L.J.J., assisted by nautical assessors), affirming the decision of Gorell Barnes J., [1904] P. 41, that the steamship was not to blame as she had complied with the rule by stopping, and was not bound to reverse before she did so; but that both tug and tow were to blame, as it was practicable for the tug to have

SHIPPING (Collision)—continued.

stopped her engines and let the way run off the tow. **THE "CHALLENGE" AND "DUC D'AUMALE"**

C. A. [1905] P. 198

Note.

See The "Duc d'Aumale" (No. 2), Gorell Barnes J., [1904] P. 60. *Shipping—Salvage.* 29.

85. — Tug and tow—Negligence of tug—Non-liability of tow—Damage.

Those in charge of a barge, in tow of a tug, are entitled to assume that the tug will be navigated with ordinary care, caution, and maritime skill so as to keep the tow clear of danger, and, therefore, where those in charge of a tug, on entering the Mersey with a barge in tow, negligently allowed the tug, under the influence of wind and tide, to drift to leeward, so that those in charge of the barge, though making reasonable efforts by porting the helm to get to windward, failed to avoid the danger, and the barge ran into and sank a lightship, the tug was held alone to blame.

As against third parties, the legal relationship, in respect of master and servant, subsisting by virtue of contract between those in charge of tug and tow, is not material to the inquiry whether either or both tug and tow are to blame for a collision between the tow and a third vessel. **THE "W. H. NO. 1" AND THE "KNIGHT ERRANT"**

C. A. [1910] P. 199

On Appeal:—

The House affirmed the decision of the C. A., [1910] P. 199 (*The "W. H. No. 1"* and *The "Knight Errant"*) entirely on the facts, holding that the tug was alone to blame for the collision. **OWNERS OF THE LIGHTSHIP "COMET" v. OWNERS OF THE HOPPER BARGE "H. No. 1"**

H. L. (E.) [1910] W. N. 274

86. — Tug and tow—Third vessel—Pilot cutter lashed to tow—Independent duty of tug to avoid danger—Identification—Reasonable care—Joint tortfeasors—Damage—Costs.

Two tugs were towing a sailing vessel, in charge of a pilot, down the Bristol Channel, with a pilot cutter made fast to the sailing vessel, when, owing to the negligence of the tow and her tugs, the pilot cutter was sunk by collision with a schooner, which was also damaged. In an action by the owners of the pilot cutter against the owners of the schooner and the owners of the tugs, in which the owners of the schooner counter-claimed against the pilot cutter and the tugs, it was held in the Court below (*The Harvest Home*, [1904] P. 409), that, on the authority of *The Altair*, [1897] P. 105, the pilot cutter and the schooner were entitled to succeed against the tugs, for, though those in charge of the tow were negligent in not properly directing the tugs, an independent duty was cast upon the tugs to exercise reasonable care and skill in keeping clear of the schooner, and further, following *The Bernina*, (1888) 13 App. Cas. 1, that the pilot cutter was not identified with the sailing vessel so as to be unable to recover.

On appeal by the owners of the tugs against the owners of the pilot cutter:—

Held, by the C. A. (Collins M.R., Mathew and Cozens-Hardy L.J.J., assisted by nautical

SHIPPING (Collision)—continued.

assessors), that though the pilot cutter was lashed alongside the tow, those in charge of her were nevertheless bound to take reasonable care to avoid danger, and, had they kept a good lookout, they would have seen the schooner in time to have slipped the rope and gone clear. The pilot cutter was, therefore, also to blame, and the liability of the owners of the tugs thereby reduced to a moiety of the claim of the owners of the pilot cutter, without reference to the liability of the tugs in respect of the damage to the schooner, and, in accordance with the Admiralty rule, each party must pay their own costs in the Court below and of the appeal. *THE "HARVEST HOME"* C. A. [1905] P. 177

87. — Tug and tow—Tow in collision with third vessel by fault of tug—Contract of indemnity—Third-party notice.

The barge *John*, whilst (with five other barges) in tow of the tug *Richmond*, came into collision with the brigantine *Lenore*, lying at anchor in the river Thames. The owners of the *Lenore* brought an action against the owners of the *John*, in the City of London Court, which was dismissed by the learned judge, on the ground that the collision was due to the negligence of those in charge of the *Richmond*. The owners of the *John* then brought an action against the *Richmond*, whose owners served a third-party notice on the owners of the *John*, relying upon the following condition in their terms of towage as amounting to a contract of indemnity: "We hereby give notice that we will not be answerable for any loss or damage which may happen to or be occasioned by or to any vessel or barge or their or its cargo while in tow, however such loss or damage may arise, and from whosoever fault or default it may arise, nor will we be responsible for any loss or damage which may happen or be caused by or through any act done or omitted to be done by any person or persons we employ for or on account of or at the request of the owners or charterers of any craft":—

Held (affirming the decision of the county court judge), that though it might be that, under the terms of the condition, the owners of the *John* could not recover over from the owners of the *Richmond* any sum they might have to pay for damage caused by collision whilst their barge was in tow of the *Richmond*, the owners of the *Richmond* could not call upon the owners of the *John* to indemnify them in respect of any damages which they might have to pay in consequence of the negligence of their own servants, and, therefore, the claim by the owners of the *Richmond* to be recouped by the owners of the *John*, failed. *THE "RICHMOND"* Div. Ct. [1902] W. N. 204

— Tug and tow to blame for collision with third vessel—Negligence—Salvage.
See SHIPPING—Salvage. 29.

88. — Value of ships questioned by owners of cargo—Right to reopen question of value—Both ships in fault—Compensation—Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), ss. 503-4.

The House reversed, with costs, the decision of the Second Division of the Ct. of Sess., (1905)

SHIPPING (Collision)—continued.

7 F. 739, holding that the appellants were prejudicially affected by being refused an opportunity in the Scottish Courts of proving the true value of the s.s. *Anglia*, and that they not being parties to the collision action were entitled to reinvestigate that value. *C. A. VAN ELJCK AND ZOON (OWNERS OF CARGO, S.S. "ANGLIA") v. SOMERVILLE AND GIBSON (OWNERS OF THE S.S. "ANGLIA")* H. L. (Sc.) [1906] W. N. 162; [1906] A. C. 489

89. — Vessels crossing river—Tyne By-laws, 1884, arts. 21, 22.

The meaning of arts. 21 and 22 of the Tyne By-laws—by which a vessel "requiring to pass over a part of the channel which is not within that half reserved for its navigation," and when "crossing the river . . . shall be navigated so as not to cause obstruction, injury, or damage to any other vessel"—is that those in charge of a crossing vessel on seeing that there is time and opportunity to cross without causing obstruction may do so, and any other vessel must act reasonably in respect of the crossing vessel, so that, if a little more room is required to assist the crossing vessel, that room must be given. The vessel crossing takes, however, upon herself, at the outset, the responsibility of being able to do so safely with reference to the passing traffic—that is, those in charge of her are put to their election whether they will cross and call upon a passing vessel to take the ordinary precautions to avoid a collision or whether they will stop where they are and allow that other vessel to pass, in either case not hampering or misleading the other vessel, but clearly and unmistakably indicating to that other vessel the course which they intend to pursue. *THE "SKIPSEA"* Gorell Barnes J. [1905] P. 32

90. — Warship—Loss of use during repairs—Claim in the nature of demurrage—Damage.

A Danish warship was just completing a long winter training cruise when she came into collision, in the Sound, with a British vessel, and in an action of damage by collision, brought by the Danish Government against the owners of the British vessel, the British vessel was found alone to blame. In ordinary course, the warship would have been docked and overhauled, and not put into commission until three months had elapsed, and would then have been used for a summer training cruise. Before the expiration of the three months the repairs necessitated by the collision were executed, and the vessel ready to be put into commission. At the reference for the assessment of the damage sustained by the warship a claim of 1500*l.* for the loss of the use of the vessel was disallowed. On objection to the report:—

Held, that the principles laid down in *The Mediana*, [1900] A. C. 113, with reference to damages for deprivation of the use of a chattel, were applicable to the case of a warship, and, therefore, as, by reason of the wrongful act of the defts., the Danish Government had not for a period of twenty-two days—during which the repairs rendered necessary by the collision were being executed—had the vessel under their control for use if they wanted her, the registrar was directed to assess the damages on the basis

SHIPPING (Collision)—continued.

of that portion of the three months, thereby reducing the amount claimable under the head of deprivation of the use of the vessel to something under 400*l*. THE "ASTRAKHAN"

Bargrave Deane J. [1910] P. 172

91. — *Wreck raised by Thames Conservancy—Arrest by marshal—Damage lien—Expenses of raising—Priorities—Thames Conservancy Act, 1894 (57 & 58 Vict. c. clxxvii.), s. 77.*

As the result of a collision in the Thames between a barque and a steamship, the latter sank with her cargo. The Thames Conservators, under their statutory powers, raised the vessel, and, after she was beached, she was arrested by the Admiralty marshal in an action of damage by collision instituted by the owners of the barque. On the question of priority as between the Thames Conservancy in respect of their expenses, and the owners of the barque in respect of their lien attaching to the vessel for the damage sustained by them:—

Held by Bargrave Deane J. that, as the res had been preserved through the instrumentality of the Conservators, their claim ranked first, and, therefore, they would be at liberty to sell the vessel and her cargo, reimbursing themselves for their expenses and costs, in the first instance, out of the proceeds of the cargo, and then out of the proceeds of the vessel, paying the surplus, if any, of proceeds into Court for the benefit of the parties entitled thereto. THE "SEA SPRAY"

Bargrave Deane J. [1907] P. 133

92. — *Wreck, Removal of—Liability for expense—Abandonment—Thames Conservancy Act, 1894 (57 & 58 Vict. c. clxxvii.), s. 77—Costs.*

By s. 77 of the Thames Conservancy Act, 1894, it is provided, inter alia, that the conservators shall, in the case of a vessel sunk in the river, cause such vessel to be raised and sold, and, out of the proceeds of such sale, reimburse themselves for the expenses incurred, and, in case such proceeds shall be insufficient, "the deficiency shall be paid to the conservators by the owner of such vessel upon demand, and, in default of payment, may be recovered" as a debt:—

Held by Bargrave Deane J. that, on the true construction of this section, the conservators were entitled to be paid the deficiency by the owner of the vessel sunk whether that owner had, prior to the expenses being incurred for raising her, abandoned the vessel or not, and therefore, that question being immaterial, the defts., the owners of the wrong-doing ship which came into collision with and sank the plts.' vessel, must refund to the plts. the amount of the deficiency which the conservators had recovered by action from the plts.; but, as a matter of discretion, not the costs of defending the action brought by the conservators against the plts., as no one has a right to inflame his own account against another by incurring additional expense in the unrighteous resistance of an action which he cannot defend. THE "WALLSEND"

Bargrave Deane J. [1907] P. 302

Colonial Courts.

— Admiralty—Colonial Courts of Admiralty Act—Special leave to appeal unnecessary.
See CANADA—Shipping. 1.

SHIPPING—continued.**Company.**

— Debenture stock—Covering deed—Specific ships—Specific ancillary mortgages—Substituted security—Registration.
See COMPANY—Debentures. 36.

Compensation.

— "Workman"—Ship's captain—Board and allowance in addition to cash wages.
See MASTER AND SERVANT—Compensation. 147.

Costs.

1. — *Damage—Practice—Costs as between solicitor and client—Action against Tyne Improvement Commission—Judgment for defendants—Statutory power—Mode of exercise—Deviation—Act done in "intended" execution of public duty—Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61), s. 1, sub-s. (b).*

In an action by the owners of a steamship against the Tyne Improvement Commission for the amount of the damage occasioned to the vessel by a fire which originated on one of the defts.'s coal staiths, judgment was given in favour of the defts. on the ground that they, as owners of the staith, had not been guilty of negligence. The defts. thereupon claimed under sub-s. (b) of s. 1 of the Public Authorities Protection Act, 1893, to recover from the unsuccessful plts. their costs as between solicitor and client:—

Held, by Sir Gorell Barnes, Pres., that the defts. were a public authority, and as such entitled to have their costs so taxed, for in the erection and working of the staith they must be taken to have acted in "intended" execution of a public duty within the meaning of the Act, although the staith, and the line of railway connected with it, might not have been constructed in strict conformity with their statutory powers, the question of deviation from deposited plans being for the parties affected thereby, such as the neighbouring owners, and not for the plts. THE "JOHANNESBURG" - Gorell Barnes, Pres.
[1907] P. 65

Crew.

1. — *Agreement with crew—Stipulations contrary to law—Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 114.*

Stipulations in an agreement between the master of a ship and the crew which are inconsistent with any of the provisions of the Merchant Shipping Act, 1894 (as for instance where the agreement provides that for absence by a seaman from his ship without leave deductions shall be made from his wages differing in amount, and recoverable in a different manner, from that provided by the Act), are "contrary to law" within the meaning of s. 114 of that Act, and are therefore not permissible. MERCANTILE STEAMSHIP CO. v. HALL
Pickford J. [1909] 2 K. B. 423

Crimping.

1. — "Crimping"—Foreign ship—End of voyage—Merchant Seamen (Payment of Wages

SHIPPING (Crimping)—*continued*.

and Rating) Act, 1880 (43 & 44 Vict. c. 16), ss. 5, 6 — *Merchant Shipping Act*, 1894 (57 & 58 Vict. c. 60), ss. 218, 219.

Notwithstanding the difference in language, the provisions of s. 219 of the Merchant Shipping Act, 1894, are the same as those of s. 6 of the Merchant Seamen (Payment of Wages and Rating) Act, 1880, and therefore, where an O. in C. under the Act of 1880 declared that the provisions of s. 5 of that Act relating to "crimping" should apply to ships of a foreign country, those provisions have effect as if the ships of that country were British ships arriving, about to arrive, or which had arrived at the end of their voyage. *SOLICITOR OF BOARD OF TRADE v. ABRAHAMS. REX v. ABRAHAMS* - Div. Ct.

[1904] W. N. 159; [1904] 2 K. B. 859

2. — "*Crimping*" — *Right of accused to be tried by a jury*—*Merchant Shipping Act*, 1894 (57 & 58 Vict. c. 60), ss. 218, 680, sub-s. (1) — *Summary Jurisdiction Act*, 1879 (42 & 43 Vict. c. 49), s. 17.

A person charged with the offence of "crimping" under s. 218 of the Merchant Shipping Act, 1894, has a right to claim to be tried by a jury. *REX v. GOLDBERG* - Div. Ct. [1904] W. N. 154; [1904] 2 K. B. 866

Cunard Agreement (Money) Act, 1904.

Cunard Agreement (Money) Act, 1904 (4 Edw. 7, c. 22), makes provision with respect to an advance to be made to the *Cunard Steamship Co., Ltd.*, under an agreement with that co. dated the 30th day of July, 1903.

Deck Cargo.

— *Tonnage*—*Ship*—"Deck cargo"—Coal carried on deck for use on voyage.
See **SHIPPING—Tonnage**. 1.

Demurrage.

— *Charterparty*.
See under **SHIPPING—Charterparty**.
— *Ship*—Construction as to clause for demurrage—Contract for sale and delivery of coal by shipments—*Indemnity*—*Novation*.
See **CAPE OF GOOD HOPE**. 14.

Derelict.

— *Salvage*—Award of total proceeds.
See **SHIPPING—Salvage**. 14.

Deviation.

— Act done in intended "execution" of public duty — Public Authorities Protection Act.
See **SHIPPING—Costs**. 1.
— *Charterparty*.
See under **SHIPPING—Charterparty**.

Dock.

— Advertisement of depth of water on dock sill—Warranty of accessibility.
See **HARBOUR**. 6.
1. — *Dock company*—*Ship*—*Exemption from dock rates*—*Lighter*—"Bona fide engaged in so discharging or receiving goods or ballast to or

SHIPPING (Dock)—*continued*.

from on board of any ship or vessel lying therein" — *London and St. Katherine Docks Act*, 1864 (27 & 28 Vict. c. clxxviii.), s. 136.

By the London and St. Katherine Docks Act, 1864, c. clxxviii., s. 136, lighters entering the docks to discharge or receive ballast or goods to or from on board of any ship or vessel lying therein shall be exempt from the payment of any rates so long as the lighter is bona fide engaged in so discharging or receiving the ballast or goods.

Under this section a lighter is engaged in discharging or receiving not merely while the goods are being removed, but also during her entrance to the dock, her departure from it, and any other operation reasonably required in order that she may discharge or receive. But she is not exempt if she is in the dock when her presence is not reasonably necessary for the operations.

Decision of the C. A., [1908] 2 K. B. 175, reversed. *LONDON AND INDIA DOCKS CO. v. McDougall & Bonthron, LD. LONDON AND INDIA DOCKS CO. v. PAGE, SON & EAST, LD.*

H. L. (E.) [1909] A. C. 25

2. — *Dock company* — *Ship* — *Exemption from dock rates*—*Lighter*—"Bona fide engaged in discharging or receiving goods to or from on board of a ship"—*West India Docks Act*, 1831 (1 & 2 Will. 4, c. lii.), s. 83.

By s. 83 of the West India Docks Act it was enacted that "all lighters and craft entering into the said docks, basins, locks or cuts to discharge or receive ballast or goods to or from on board of any ship or vessel lying therein shall be exempt from the payment of any rates so long as such lighter or craft shall be bona fide engaged in discharging or receiving such ballast or goods as aforesaid, and also all such ballast or goods so discharged or received shall be exempt from any rate or charge whatever." Sect. 76 gave the dock co. power to take in respect of every lighter, barge, or craft entering into any of the docks such reasonable rate (not exceeding a specified amount) as the directors should from time to time appoint.

Two lighters entered the docks with goods for the purpose of discharging them into a vessel lying in the docks, but, owing to the vessel being unable from want of space to receive the goods, left the docks without being able to discharge:—

Held by Lord Loreburn L.C. and Lords Macnaghten, Robertson, and Collins (Lords Ashbourne and Atkinson dissenting), that according to the true construction of s. 83 the lighters were not exempt from the payment of rates.

Decision of the C. A., [1908] 1 K. B. 786, reversed. *LONDON AND INDIA DOCKS CO. v. THAMES STEAM TUG AND LIGHTERAGE CO.*

H. L. (E.) [1909] A. C. 15

— *Thames Conservancy by-law*—*Ultra vires*—*Hauling barges out of dock*—"Navigated."
See **THAMES, RIVER**. 3.

— *Workmen's compensation*.
See under **MASTER AND SERVANT—Compensation**.

SHIPPING—continued.**Employer and Workman.**

— Workmen's compensation.

See under MASTER AND SERVANT—
Compensation.

Excise Acts.

— "Dealer in spirits"—Duty—Sale of spirits
out of bond for ship's stores.
See REVENUE—Excise Acts. 2.

Fire.

1. — *Damage to cargo*—"By reason of" fire
— *Merchant Shipping Act, 1894* (57 & 58 Vict.
c. 60), s. 502, sub-s. 1—*Warranty of seaworthiness.*

Owing to the negligence of the crew in overheating a stove, a fire broke out on board the deft's ship, and the plts.' cargo was damaged. The plts. alleged that the ship was unseaworthy in that the stove was placed too near to a bulkhead without any means of insulation, and, as the deft. must be taken to be "privy" to the position of the stove, he could not rely upon s. 502, sub-s. 1, of the Merchant Shipping Act, 1894, by which the owner of a British sea-going ship is not liable to make good any loss or damage happening "without his actual fault or privity" to goods damaged "by reason of fire on board the ship." Secondly, the plts. contended that a great part of the damage was due to smoke and to water used to extinguish the fire, which was not damage included in the statute:—

Held, by Bagngrave Deane J., that the deft. could claim the statutory exemption from liability, for the stove was perfectly safe if properly used, and, therefore, the vessel was seaworthy, and the deft. not in fault or "privy" to the negligence of the crew. Secondly, that damage by smoke and by water used in putting out a fire is damage "by reason of" fire within the meaning of the statute. THE "DIAMOND"

Bagngrave Deane J. [1906] P. 282

Fishing Boats.

MERCHANT SHIPPING.] *Sea*—*British—Order in Council making Regulations for the Registry, Lettering, and Numbering of.* St. R. & O. 1902, No. 274.

Force Majeure.

— Negligence—Ship—Damage to jetty.
See SHIPPING—Negligence. 1.

Foreign Ship.

1. — *Jurisdiction—Action of damage by collision—Foreign public vessel—Appearance entered under misapprehension—Exemption from arrest.*

Process by way of arrest in a damage action in rem does not lie against a vessel the property of a foreign sovereign State and destined to its public use, and, therefore, on the application of the foreign Government, and the production of a certificate from the Foreign Office as to the public character of the vessel in question, all proceedings will be stayed and no waiver of the privileged assumed, although during the temporary presence of the vessel in this country, and under a misapprehension, in order to procure her release,

SHIPPING (Foreign Ship)—continued.

agents of the Government to which the vessel belonged have given an undertaking to put in bail, and have entered an absolute appearance.

The "*Parlement Belge*," (1880) 5 P. D. 197, followed. THE "JASSY"

Gorell Barnes, Pres. [1906] P. 270

Forfeiture.

— Forfeiture of ship, Decree of.
See CHINA AND COREA. 2.

Freight.

— Bill of lading—Charterparty—Lump sum freight—Recovery of balance by charterer.

See SHIPPING—Charterparty. 49.

— Bill of lading—Freight made payable as per charterparty—Right of master to sue.

See SHIPPING—Charterparty. 15.

— Charterparty—Lien—Demurrage, payable day by day—"Charges"—Dead freight.

See SHIPPING—Charterparty. 45.

— Charterparty—Lien on sub-freight.

See SHIPPING—Charterparty. 48.

— Collision—Damage—Abandonment of voyage—Claim by cargo owner—"Substituted expense."

See SHIPPING—Collision.

— Deviation—Lien for dead freight.

See SHIPPING—Charterparty. 45.

— General average—Sacrifice made on outward voyage of ship in ballast—Liability of chartered freight to contribute.

See INSURANCE (MARINE). 3.

— Insurance, Marine—Charterparty—Loss—Commission.

See INSURANCE (MARINE). 7.

— Mortgage—Bunker coal.

See SHIPPING—Mortgage. 1.

— Pledge of freight not conditional—Part of freight payable—Partial loss.

See INSURANCE (MARINE). 14.

— Waiver of lien for chartered freight.

See INSURANCE (MARINE). 11.

Harbour.

See under HARBOUR.

— Harbour dues—"Limits of port."

See HARBOUR. 4.

— Ship—Damage—Defective berth—Duty of harbour authority.

See HARBOUR. 5.

Hiring.

— Charterparty—Sub-charterparty—Shipowner's lien for unpaid hire—Withdrawal of ship—Payment of hire.

See SHIPPING—Charterparty. 56.

— Ship—Contract of hiring—Naval review—Failure of consideration—Liability of hirer—Demise of ship.

See CONTRACT. 22.

SHIPPING—continued.**Income Tax.**

— Single ship company—Average of three years preceding year of assessment—Trade first set up within period of three years.

See **REVENUE—Income Tax.** 38.

Insurance, Marine.

• See under **INSURANCE (MARINE).**

King's Ship.

1. — *Ship—Vessel employed in coaling ships of navy—King's ship—Pilote dues—Liability of master—Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), ss. 591, 741—Bristol Channel Pilote Act, 1861 (24 & 25 Vict. c. cccxxvi.), s. 35.*

Sect. 741 of the Merchant Shipping Act, 1894, provides that the Act "shall not, except where specially provided, apply to ships belonging to Her Majesty."

A vessel owned by the Government and entered in the Navy List as employed on harbour service was exclusively employed under the Admiralty by the Devonport Dockyard authorities in carrying coals to ships of the Royal Navy. Her master held a Board of Trade certificate, and neither he nor the crew, who were engaged under articles of agreement, were in the navy. The master employed pilots, and proceedings were taken against him in a Court of summary jurisdiction under s. 591 of the Merchant Shipping Act, 1894, for the recovery of pilote dues according to a scale imposed by by-laws made in pursuance of the Merchant Shipping Act, 1894, and a local Act (in which the Crown was not mentioned) under which the pilots were licensed:—

Held, that the vessel was a King's ship, and that the master was therefore not liable either under the Merchant Shipping Act or the local Act to pay pilote dues on the scale imposed by the by-laws. **SYMONS v. BAKER**

Div. Ct. [1905] 2 K. B. 723

Lien.

— Bill of lading—Lien for previously unsatisfied freight.

See **COMPANY—Receiver.** 12.

— Deviation—Lien for dead freight.

See **SHIPPING—Charterparty.** 45.

— Freight.

See under **SHIPPING—Freight.**

— Hiring.

See under **SHIPPING—Hiring.**

— Maritime lien—Foreign ship—Wages—Disbursements—Lex loci—Lex fori—Repairs—Priority—Necessaries.

See **SHIPPING—Wages.** 1.

— Ship—Charterparty—Demurrage.

See **SHIPPING—Charterparty.** 32–42.

— Wages.

See under **SHIPPING—Wages.**

Lifeboats.

— Salvage—Launchers of lifeboats.

See **SHIPPING—Salvage.** 19.

SHIPPING—continued.**Limitation of Liability.**

— Collision—Damage—Both ships to blame.

See **SHIPPING—Collision.** 9, 16–18.

1. — *Collision—Limitation of liability—“Owners”—Charterer by demise—Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), ss. 503, 504—Merchant Shipping Act, 1906 (6 Edw. 7, c. 48), s. 71.*

The charterer of a ship by demise who has control over her and navigates her by his own master and crew is “owner” of the ship within ss. 503 and 504 of the Merchant Shipping Act, 1894, and entitled to the limitation of liability to damages conferred upon “owners” by those sections.

Decisions of Bagnall Deane J., *The “Hopper No. 66,”* [1906] P. 34, and of the C. A., [1907] P. 254, reversed. **SIR JOHN JACKSON, Ld. v. OWNERS OF STEAMSHIP “BLANCHE.” THE “HOPPER No. 66.” H. L. (E.) [1908] W. N. 61; [1908] A. C. 126**

See **THE “BLANCHE,”** Bagnall Deane J., [1908] P. 259 — **SHIPPING—Salvage.** 20.

— Effect of deviation on—Bill of lading.

See **SHIPPING—Charterparty.** 45.

2. — *Foreign steam vessel—Gross tonnage—Order in Council, May 5, 1873, relating to French vessels—Double bottom for water ballast—Foreign certificate—Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), ss. 81, 84, 503, 724, 745.*

In an action of limitation of liability by the owners of a French steam vessel constructed with a double bottom for water ballast, a duly authenticated copy of the O. in C. of May 5, 1873, was produced shewing that French vessels are to be deemed to be of the tonnage denoted in their certificates of registry, and the French certificate of registry was annexed to the usual affidavit verifying the statement of claim. This certificate gave the gross tonnage exclusive of the double bottom, and a certificate of a French surveyor stated that the space between the inner and outer plating of the double bottom was not available for the carriage of cargo, stores, or fuel:—

Held, by Gorell Barnes J., that this was a sufficient compliance with the provisions of ss. 81, 84, and 503 of the Merchant Shipping Act, 1894, and enabled the gross tonnage of the vessel to be calculated upon which the plt.'s statutory liability in damages was based.

The Zanzibar, [1892] P. 233, followed, and applied to a French vessel. **THE “CORDILLERAS” Gorell Barnes J. [1904] P. 90**

3. — *Loss of life or personal injury—Affidavit.*

On Feb. 21, 1904, the British steamship *Rosslyn*, whilst on a voyage from Waterford to Swansea in ballast, came into collision in the Bristol Channel with the steamship *Devonshire*, and, on Feb. 26, the owners of the *Devonshire* commenced an action against the owners of the *Rosslyn* to recover the damage sustained. On Mar. 17 the

SHIPPING (Limitation of Liability)—continued.

Rosslyn was pronounced alone to blame, and the question of damage referred to the registrar and merchants. On Sept. 30 the owners of the *Rosslyn*, as plts., issued a writ for limitation of liability against the owners of the *Devonshire*, and all other persons claiming to have sustained damage or injury by reason of the collision. On Oct. 17 the plts. delivered their statement of claim in the usual form, verifying the allegations therein by an affidavit dated Nov. 1, and made by J. N., manager of the *Rosslyn Steamship Co.*, Ltd., the plts. in the action. Paragraph 3 ran as follows: "I have made careful inquiry and have been informed and believe that no loss of life or personal injury was occasioned by the said collision." A certified copy of the register of the plts.' vessel, dated Feb. 5, was annexed to the affidavit showing that, on that date, the *Rosslyn Steamship Co.*, Ltd., were the owners of the sixty-four shares in the vessel.

Gorell Barnes J. allowed payment into court of the sum of £480*l.* 14*s.* 5*d.*, with interest from the date of the collision, being the aggregate amount of 8*l.* per ton on 560.09 tons, the gross tonnage of the *Rosslyn* without deduction on account of engine-room space; but the usual decree was made subject to the filing of an affidavit, to the satisfaction of the registrar, sworn by the master or other person actually acquainted with the facts, that no loss of life or personal injury was occasioned by the collision, and the learned judge further observed that the ownership of the plts.' vessel should have been shewn by verification of the register as at the time of the collision. **THE "ROSSLYN"**

Gorell Barnes J. [1904] W. N. 196

— Marine insurance.

See under INSURANCE (MARINE).

4. —Practice—Life claims—Title of cause.

On Sept. 9, 1904, a collision occurred in a fog off the coast of Portugal, between the steamships *Inventor* and *Goolistan*, which resulted in the sinking of the latter vessel, and the drowning of her third mate, one European seaman, a Chinese steward, and four Arab firemen. On Nov. 28 the *Inventor* was found alone to blame, and, on Dec. 6, the Charente Steamship Co., Ltd., the owners of the sixty-four shares in the *Inventor*, commenced proceedings for limitation of liability, the writ being headed, "Between the owners of the steamship *Inventor*, plts., and the owners of the steamship *Goolistan*, the survivors of her crew, and the owners of her cargo, the legal personal representatives of those of her crew who lost their lives, and all and every other person and persons whomsoever claiming or being entitled to claim compensation in respect of loss of life or property, or of personal injury or of damage to property occasioned by the collision between the steamship *Inventor* and the steamship *Goolistan*, defts."

The statement of claim was similarly headed, and on the case coming on by way of motion for judgment:—

Gorell Barnes J. made a decree limiting the liability of the plts. to 33,301*l.*, being at the rate of 15*l.* per ton on 2220.07 tons, the gross tonnage of the *Inventor*, less crew space, on payment into

SHIPPING (Limitation of Liability)—continued.

court on this day, in respect of the property claims, of 8*l.* per ton, namely, 17,760*l.* 11*s.* 2*d.*, together with 266*l.* 13*s.* interest at 4 per cent. from the date of the collision, and, in respect of the life claims, giving bail for 3000*l.*, with an undertaking to give bail, if required, for any further sum up to 15,540*l.* 9*s.* 9*d.*, being the limit of the statutory liability of the plts. at 7*l.* per ton.

With reference to the title of the cause, the learned judge said that he had before drawn attention to the improper way in which the plts. in these limitation suits were described. The right to claim to limit their liability was a privilege accorded by statute to the individual owners of the vessel in fault, and, therefore, the names of the plts. should be set out on the writ. **THE "INVENTOR"** Gorell Barnes J. [1905] W. N. 22

— Ship—Bill of lading—Loss due to shipowner's negligence.

See SHIPPING—Charterparty. 16.

5. —Shipping casualty—Plaintiff railway company—"Owners"—"Actual fault or privity"—Affidavit of general manager—Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 59, sub-s. 2; ss. 503, 695, 719.

In an action of limitation of liability brought by a ry. co. under s. 503 of the Merchant Shipping Act, 1894, against cargo owners and others to limit the liability of the plt. co. as owners of a vessel lost at sea, the evidence of the plts. was, by consent, taken by affidavit, and the plts. relied on an affidavit made by the general manager of the co. stating (inter alia) that the loss occurred without the "actual fault or privity" of the plts.:—

Held by Bargaive Deane J., that the affidavit was sufficient and that it was made by the proper person. **THE "YARMOUTH"**

Bargaive Deane J. [1909] P. 293

6. —Time for entry—Practice—Life claims—Property claims—Lord Campbell's Act (9 & 10 Vict. c. 93), s. 3—Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 504—Payment out of unappropriated balance.

In an action for limitation of liability the usual advertisements were issued, intimating to all persons having any claim in respect of loss of life or damage to property that, if they did not come in and enter their claims within three months from the date of the decree, they would be excluded from sharing in the amount of 15*l.* per ton standing in court to the credit of the action.

The claims entered in respect of loss of property more than exhausted the statutory liability of 8*l.* per ton; but only six out of a possible eleven claims in respect of loss of life were entered within the limit of time, and these absorbed only a small portion of the statutory liability of 7*l.* per ton:—

Held by Sir F. H. Jeune P., that, the Court having exercised the power given by s. 504 of the Merchant Shipping Act, 1894, of fixing the time within which claimants should come in, the unappropriated balance of the fund must be paid back to the plts. in the limitation suit, notwithstanding that all the possible life claims

SHIPPING (Limitation of Liability)—*continued.*
had not been entered, and that the year had not elapsed within which, under s. 3 of Lord Campbell's Act, an action in respect of such a claim could be commenced. *THE "ALMA"*

Jeune, Pres. [1903] P. 55

Mail Ships.

Mail Ships Act, 1902 (2 *Edw. 7, c. 36*), amends the *Mail Ships Act, 1891* (54 & 55 *Vict. c. 31*), s. 3, as to security for ships engaged in postal service.

Mail Ships Rules, 1908. Mail Ships Acts, 1891 and 1902. Rules of Court dated June 3, 1908, made by the Lord Chancellor and the Judges of the Supreme Court pursuant to the Mail Ships Acts, 1891 and 1902, together with the scale of fees fixed with the concurrence of the Commissioners of His Majesty's Treasury. Reprint from *W. N. 1908 (June 13)* p. 167. See *CURRENT INDEX, 1908, p. cxxiv.*

Maritime Lien.

See under **SHIPPING—Lien.**

Master.

— Charterparty—Damage to cargo.

See **SHIPPING—Charterparty.** 19.

Medway.

— Collision—Fog—"Fairway" of river.

See **SHIPPING—Collision.** 31.

Merchant Shipping.

See under **SHIPPING.**

Mortgages.

— Debentures—Registration.

See **COMPANY—Debentures.** 36.

— Default action in rem.

See **SHIPPING—Practice.** 10.

— Exchequer Court in Canada (Admiralty).

See **CANADA—Shipping.** 3.

— Foreign ship — Maritime lien — Wages — Repairs—Priority.

See **SHIPPING—Wages.** 2.

1. — Freight — Bunker coal — Mortgage — Ship.

Bunker coal was supplied in this country to a British ship on the personal credit of her owners, a limited co. registered and having its office in England. The vessel left in ballast for the river Plate, and, her owners having become involved in financial difficulties, mortgagees took constructive possession of her when about to return with a valuable cargo. During the homeward voyage a quantity of the coal was consumed, and, on the arrival of the vessel in this country, the freight was collected by a receiver appointed by the Court, the net proceeds, less necessary disbursements, being paid into Court. On the application of the mortgagees for payment out to them of the freight in Court, the vendor of the coal claimed a deduction in his favour on the ground that the coal had been used in carrying the freight :—

Held, that the mortgagees in possession were entitled to an order for payment out to them of

SHIPPING (Mortgages)—*continued.*

the balance of the freight in Court without any deduction on account of the coal consumed, for, though the coal was used in earning the freight, it was coal which had been sold to and was the property of the mortgagors, and, therefore, the claimant, the unpaid vendor, had no interest in the coal or in the freight. *EL ARGENTINO*

Bigham, Pres. [1909] P. 236

— Mutual insurance association—Ship mortgage not to be considered insured—Concealment of mortgage—Liability for call.
See **INSURANCE (MARINE).** 15.

2. — Policy money—Mortgage of ship together with policies of insurance thereon—Particular average loss—Repairs by mortgagor—Right of mortgagee to policy money without paying for repairs—Marine insurance—Salvage loss—Right of underwriters to pay without authority of assured—Assignment of claim under policy—Validity of.

The owner of a ship mortgaged her "together with the policies of insurance effected thereon" to secure advances. The ship, while insured, suffered a particular average loss within the policy, and the owner had her repaired. The owner being in default under the mortgage, the mortgage debt by the terms of the deed became immediately payable :—

Held, that the policy of insurance was to be treated as a substantive and independent security for the mortgage debt, and that the mortgagee was entitled to recover from the underwriters for his own use the amount of the particular average loss without being under any obligation to apply the money in payment of the cost of the repairs.

Where a ship is insured under a time policy and a particular average loss occurs, an assignment of the assured's claim against the underwriters in respect of that loss may be valid, notwithstanding that it is not expressed to assign the policy itself, if at the date of the assignment the policy has expired so that nothing remains to be done under it but to pay the claim.

A ship having, while insured, incurred salvage expenses as the result of a peril insured against, H., at the request of the owner, paid the salvors. The owner afterwards assigned to a creditor all moneys payable to him under the policy of insurance on the ship, and gave notice of the assignment to the underwriters. Subsequently H. applied to and received from the underwriters the amount payable under the policy in respect of the salvage loss. There was no clause in the policy authorizing the underwriters themselves to apply the policy money in satisfaction of the salvage claim, nor had the owner otherwise authorized them so to do :—

Held—(1) that in the absence of such authority the payment by the underwriters to H. was not a discharge of their obligation under the policy; and (2) that, as before that payment the rights of the assignee had intervened, they had paid the wrong persons, and that they must consequently pay the money over again. *SWAN AND CLELAND'S GRAVING DOCK AND SLIPWAY Co. v. MARITIME INSURANCE Co. AND CROSHAW*

Channell J. [1906] W. N. 222;

[1907] 1 K. B. 116

SHIPPING (Mortgages)—continued.**3. — Possession—Mortgage of ship—Imperiling security of mortgage.**

If the dealings with a ship by the mortgagor are of such a character as to be inconsistent with the sufficiency of the security, the mortgagee may take possession, although there has not been any actual default on the part of the mortgagor under the mortgage, and although the mortgagee has not commenced any formal proceedings. *THE "MANOR"*

C. A. [1907] P. 339

4. — Possession—Mortgage of ship—Mortgagors in possession—Contract impairing the security—Charterparty for carriage of contraband of war—Debenture trust deed.

Where mortgagors in possession of a ship entered into a charterparty by which she was chartered for the carriage of contraband of war to a port of one of two belligerent States, which would involve great risk of her capture by the other belligerent, and the ship was not insured against such risks:—

Held, that the mortgagees were entitled to a declaration that the charterparty was not binding on them on the ground that it impaired the security, although the ship had sailed with her cargo on the voyage under the charterparty.

Collins v. Lamport, (1864) 4 D. J. & S. 500, followed.

The Celtic King, [1894] P. 175, discussed. LAW GUARANTEE AND TRUST SOCIETY v. RUSSIAN BANK FOR FOREIGN TRADE

C. A. [1905] 1 K. B. 815

5. — Possession, Mortgagee taking—Right to freight previously earned but unpaid.

A mortgagee of a ship is not entitled to unpaid freight which became due previously to the date of his taking possession of the ship. *SHILLITO v. BIGGART*

Walton J. [1903] 1 K. B. 683

6. — Ship—Invalid mortgage—Registration of—Power of Court to expunge from register.

Where a transfer of an interest in a ship void by reason of fraud or for any other cause has been registered, the Court has power, by virtue of its inherent jurisdiction, to rectify the register by ordering the entry of the void transfer to be expunged. *BROND v. BROOMHALL*

Phillimore J. [1906] W. N. 69;

[1906] 1 K. B. 571

7. — Ship — Mortgage — Charterparty — Wrongful seizure—Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 34—Counter-claim for wages paid—Implied request.

The plt. entered into an agreement with the owners of a steam vessel to run her on specified daily excursion trips for about six weeks, dividing the profits after deducting expenses, and advancing the money to liberate part of the machinery held as a lien for repairs. In respect of the advance for the liberation of the machinery, and other advances previously made, as well as in respect of any repairs executed, the plt. to have "a charge and lien on the boat ranking in the highest position the owners are able to fix having regard to the existing circumstances."

SHIPPING (Mortgages)—continued.

A week after the trips commenced an instalment of the purchase-money owing to the debt., the former owner of the vessel, fell due, and, on non-payment, the debt., under a mortgage given by way of collateral security, seized her, alleging that the agreement between the plaintiff and the owners of the vessel was not binding upon him, as it postponed his rights as mortgagee and depreciated the saleable value of the vessel:—

In an action for wrongful seizure, Jeune Pres. gave judgment in favour of the plt. ([1901] W. N. 56; [1901] P. 143) on the ground that the charge and lien on the vessel were subordinated to the rights of the debt. as mortgagee, and the mode of employment was not unusual for a vessel of the description of the steamer in question:—

Held, affirming the decision of the Court below, that the agreement was binding on the mortgagee, for, though the powers of a mortgagor, as owner, are, by s. 34 of the Merchant Shipping Act, 1891, limited by the proviso, "Except as far as may be necessary for making a mortgaged ship available as a security for the mortgage debt," these powers had not been exceeded, the test to be applied being that laid down in *Collins v. Lamport*, (1864) 34 L. J. (Ch.) 196, namely, whether the mortgagor's dealings with the vessel materially impair the security. *THE "HEATHER BELL"*

C. A. [1901] P. 272

8. — Ship — Shares — Equitable interests — Unregistered mortgage—Contract to sell shares to part-owner without notice — Purchaser to apply part purchase-money in discharging vendor's debt to ship — Registered transfer — Mortgagee's right to stop application of purchase-money—Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), ss. 33, 56, 57.

The managing owner of a ship contracted to sell shares of which he was registered owner to other part-owners, who were to apply the purchase-money in discharging the vendor's debt to the ship and pay the balance to the vendor. The shares were forthwith transferred to the purchasers by registered bill of sale. After the contract and transfer, but before the purchase-money was paid or applied, the purchasers received notice of an unregistered mortgage prior in date to the contract. In an action by the mortgagees to stop the entire purchase-money:—

Held, that as s. 56 of the Merchant Shipping Act, 1894, enabled the vendor as registered owner, not only "absolutely to dispose" of the shares, but also "to give effectual receipts" for the purchase-money, it enabled him to enter into a valid contract as to the application of the purchase-money, and therefore the purchaser's contractual right to apply part of the purchase-money in discharge of the vendor's debt to the ship, a right in which as part-owners they were peculiarly interested, took precedence over the prior unregistered mortgage.

Black v. Williams, [1895] 1 Ch. 408, 421, applied. *BARCLAY & CO. v. POOLE*

Swinfen Eady J. [1907] W. N. 152;

[1907] 2 Ch. 284

SHIPPING—continued.**Mutual Rights and Liabilities.**

- Bill of lading—Exemptions from liability—Charterer indorsee of bill of lading—Mutual rights and liabilities of charterer and shipowner.

See SHIPPING—Charterparty. 13.

Necessaries.

- Default action in rem.
See SHIPPING—Practice. 10.
- Master, Action against—Bills of exchange.
See SHIPPING—Practice. 1.
- Necessaries supplied on credit of ship—Claim of defendants as purchasers of ship.
See CHINA AND COREA. 4.

Negligence.

Shipowners' Negligence (Remedies) Act, 1905
5 *Edw. 7, c. 10*).

- Bill of lading—Exceptions and conditions—Damage to cargo—Seaworthiness—Negligence of shipowners' servants.
See SHIPPING—Charterparty. 10.
- Charterparty—Excepted perils—Deviation—Damage to cargo—Liability of Shipowner.
See SHIPPING—Charterparty. 16.
- Charterparty—Unseaworthiness at starting—Personal negligence of owner in lading.
See NATAL. 11.
- Collision—Appeal from Constantinople.
See SHIPPING—Collision. 45.
- Collision—Bailment—Loss of chattel by negligence of wrongdoer.
See SHIPPING—Collision. 42.
- Collision—Contributory negligence—Thames by-laws.
See SHIPPING—Collision. 41.
- Collision in dense fog—Negligence in not going with moderate speed.
See CHINA AND COREA. 3.
- Collision—Damage—Tug and tow—Negligence of tug—Non-liability of tow.
See SHIPPING—Collision. 85.
- Collision—Negligence of defendants' servant causing original damage—Liability for consequential damage.
See SHIPPING—Collision. 46.
- Damage to cargo—Bill of lading—Charterparty—Negligence clause.
See SHIPPING—Charterparty. 28, 29.

1. — *Damage to jetty—Ship Negligence—Onus of proof—Force majeure.*

The plts., the harbour authority of Workington, sued the defts., the owners of a steamship, for damage to their jetty situate at the junction of, and between, the river Derwent and the harbour. The defence in substance was that the plts. invited the defts.' vessel, which was in charge of a compulsory pilot, to enter the

SHIPPING (Negligence)—continued.

harbour at a time when there was one foot less water than shewn by the tide table, so that, when approaching the entrance, with only two feet of water under her, the head of the vessel was canting to port towards the jetty by a freshet, on her port quarter, of two knots running down the river, whilst a strong breeze was acting on her starboard side, with the result that, though the pilot ordered the engines to be put full speed astern and the order was obeyed, with hand reversing gear, in twenty-two seconds, the way was not taken off in time to prevent the stem of the vessel striking the jetty:—

Held, that the defts. were not liable, as they had discharged the onus of proof by rebutting the prima facie case of negligence against them, for the damage complained of arose from a combination of circumstances consisting of less water than usual, a strong breeze, and a freshet, which together amounted to force majeure. THE "BOUCAU"

Bargrave Deane J.
[1909] P. 163

- Negligence clause—Charterparty—Bill of lading—Damage to cargo—Duty of master—Onus of proof.
See SHIPPING—Charterparty. 28, 29.
- Pier.
See under PIER.
- Ship—Bill of lading—Damage to cargo—Seaworthiness—Negligence of shipowners' servants.
See SHIPPING—Charterparty. 45.
- Ship—Bill of lading—Intentional letting in of sea-water—Negligent mistake.
See SHIPPING—Charterparty. 12.
- Ship—Bill of lading—Limitation of shipowner's liability—Loss due to shipowner's negligence.
See SHIPPING—Charterparty. 16.
- Ship—Damage to cargo—Negligence of stevedore in discharge.
See SHIPPING—Charterparty. 53.
- Ship—Registered owner holding as trustee—Priorities—Principal and agent—Estoppel.
See TRUSTEE—Shares. 1.

2. — *Ship—Damage—Construction of contract—Liability for loss caused by servant's negligence—"Finding all items of transportation"—"All transporting to be at owners' risk."*

By a tender in writing, accepted by the plts., the defts. undertook to carry out certain repairs to the plts.' vessel, and, for that purpose, to "transport vessel from berth to dry dock, finding all tugs, pilots, watermen and boats, sufficient hands for managing ship . . . and all items of transportation to loading berth." In the margin were printed the words "all transporting to be at owners' risk."

During the transportation of the vessel at night, with the aid of one tug, from dry dock to loading berth, she got adrift from the tug, and sustained damage, owing to the parting of an alleged defective rope belonging to the ship, and

SHIPPING (Negligence)—continued.

to the delay caused by the thimble eye of a wire hawser, also belonging to the ship, not fitting the towing hook:—

Held, by Bargrave Deane J., that the defts. were liable, for, after undertaking to find "all items of transportation," they had omitted to ascertain that the necessary items, whether belonging to the ship or not, were efficient for the purpose, and owing to this neglect on their part, two tugs were, in the particular case, required for the safe handling of the vessel. The defts., therefore, could not avail themselves of the marginal note as a protection against their own negligence, for the meaning of the contract, in respect of the transportation, was that, if the defts. exercised reasonable care and skill in carrying it out, the plts. would incur the risks incidental to navigation. *THE "FORFARSHIRE"* - **Bargrave Deane J. [1908] P. 339**

Offences.

- Desertion or absence without leave—Desertion which is also wilful disobedience.
See SHIPPING—Seamen. 7.
- Seaman—Foreign ship, Persuading seaman to desert from.
See SHIPPING—Seamen. 6.

Passengers.

1. — Contract of carriage — Passengers' luggage — Exception of "loss by whatsoever cause or in whatever manner occasioned"—Theft by shipowners' servants—Condition.

Passengers' luggage was carried on board the defts.' ship on the terms of a ticket containing a condition that the defts. should not be responsible "for any loss, damage, injury . . . of or to passengers or their baggage or effects . . . by whatsoever cause or in whatever manner . . . occasioned, and whether arising from the act of God, King's enemies, . . . thieves (whether on board or not), accidents to or by machinery, boilers or steam, unseaworthiness of the steamer even existing at the time of sailing, or from any act neglect or default whatsoever of the pilot master mariners or other servants of the steamer":—

Held, that the condition protected the defts. from liability to make good a loss occasioned by the felonious act of their servants. *MARRIOTT v. YEOWARD BROTHERS* - **Pickford J. [1909] 2 K. B. 987**

Pilotage.

1. — Belgian law — Collision in the river Scheldt — Compulsory pilotage — Liability of owner.

A collision occurred in the Austruwell Roads, below Antwerp, in the river Scheldt, between a British steamship, owned by the plts., coming down the river with a Belgian Government pilot on board, and the defts.' British steamship at anchor. The Court found the plts.' vessel alone to blame, the fault being that of the pilot, and evidence having been given as to the Belgian law on the question of compulsory pilotage:—

Held, by Bucknill J., that, though the employ-

SHIPPING (Pilotage)—continued.

ment of the pilot was compulsory in the sense that his fees must be paid, the pilot was by Belgian law the adviser of the master who remained in charge, and, therefore, the plts. were liable for the damage sustained by the defts.' vessel. *THE "DALLINGTON"* - **Bucknill J. [1903] W. N. 42; [1903] P. 77**

- Collision — Compulsory pilotage—Assistance from master.
See SHIPPING—Collision. 50.
- Collision—Picking up pilot.
See SHIPPING—Collision. 49.
- Compulsory pilotage—Damage—Collision in the Solent—Narrow channel.
See SHIPPING—Collision. 62.

2. — Compulsory pilotage—Collision—Exemption—London district—"Constant trader"—Ship carrying passengers—Pilotage Act, 1825 (6 Geo. 4, c. 125), s. 59—O. in C., Feb. 18, 1854—Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 603.

A British steamship co. ran two lines, one from London to Antwerp and then on to America and back, the other from London to New Orleans direct, with liberty to call at Bermuda, and their vessels were employed on either line according to convenience. A new vessel belonging to the co. had made one voyage from London via Antwerp to Mexican ports, and was proceeding from London in charge of a duly licensed Trinity House pilot, with cargo and one passenger, on a second voyage for the same round, when she came into collision with the plts.' vessel in the estuary of the Thames. In an action of damage by collision brought by the plts. against the deft. co., the pilot of the deft. co.'s vessel was found alone to blame; but the defts. failed to sustain their plea of compulsory pilotage:—

Held, by the C. A. (Collins M.R., Mathew and Cozens-Hardy L.J.J.), affirming the decision of Gorell Barnes J., [1902] P. 216, that the defts. were liable, as their vessel was exempt from compulsory pilotage, being a "constant trader" between London and ports on the Continent north of Brest, within the meaning of the exemption in s. 59 of 6 Geo. 4, c. 125, supplemented by the O. in C., Feb. 18, 1854, and kept alive by s. 353 of the Merchant Shipping Act, 1854, for which s. 603 of the Merchant Shipping Act, 1894, is now substituted.

The Earl of Auckland, (1862) 15 Moo. P. C. 304, held binding and followed. *THE "CAYO BONITO"* - **C. A. [1903] W. N. 133; [1903] P. 203**

3. — Compulsory pilotage—Collision—Port of Liverpool — Limit of compulsion outwards — Mersey Dock Acts Consolidation Act, 1858 (21 & 22 Vict. c. xcii.), ss. 127, 133—Failure to stand by—"Person in charge"—"Proof to the contrary"—Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 422.

The pilot of the defts.' vessel outward bound from Liverpool was found alone to blame for a collision with the plts.' vessel at anchor one mile S. $\frac{1}{2}$ E. of the Mersey Bar Lightship, and the "person in charge" of the defts.' vessel was also found to have committed a breach of s. 422 of

SHIPPING (Pilotage)—continued.

the Merchant Shipping Act, 1894, by failing to stand by the plts.' vessel:—

Held, by Gorell Barnes J., that the defts. were not liable for the damage sustained by the plts., first, because the pilot was compulsorily in charge, the place where the collision occurred being inside the Bar Lightship, which, though farther out to the westward, represents the Fairway Buoy of the Queen's Channel, now removed, but, at the time of the passing of the Mersey Dock Acts Consolidation Act, 1858, marking the spot, inside the place of collision, where a vessel passing out through the channel would be clear of danger, and, therefore, at that time, made the westernmost limit, for pilotage purposes, of the port of Liverpool; secondly, because, on the authority of *The Queen*, (1869) L. R. 2 A. & E. 354, the pilot being alone to blame for the collision and being compulsorily in charge, "proof to the contrary" had been given rebutting the presumption that the collision had been caused by the wrongful neglect of the master. *THE "SUSSEX"* Gorell Barnes J. [1904] W. N. 79; [1904] P. 236

4. — *Compulsory pilotage—Collision—Vessel passing through port of Liverpool—Limits of port—Port of Manchester—8 Anne, c. viii., s. 3—Mersey Dock Acts Consolidation Act, 1858 (21 & 22 Vict. c. xcii.), s. 128—Manchester Ship Canal Act, 1885 (48 & 49 Vict. c. clxxviii.), ss. 3, 211—Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 605—Mersey Docks (Pilotage, &c.) Act, 1899 (62 & 63 Vict. c. clxxii.), ss. 3, 4, 5—Costs.*

The defts.' vessel, inward bound from the sea to Manchester, after anchoring in the Mersey to wait for the tide, was proceeding through the Eastham Channel when she came into collision, near No. 4 buoy, with the plts.' vessel. In an action of damage by collision, the pilot of the defts.' vessel was found alone to blame:—

Held, by Gorell Barnes J., that pilotage was compulsory, and, therefore, the defts. were not liable, for, under the Mersey Dock Acts Consolidation Act, 1858, the master of every vessel other than a coaster in ballast, or under the burthen of one hundred tons, entering the port of Liverpool from the sea, is under an obligation to employ a pilot, and, if the vessel is proceeding to the port of Manchester, via the Ship Canal, the duties of the pilot continue until the vessel reaches Eastham.

Semble, every vessel, with the same exemptions, outward bound from the Manchester Ship Canal, is under compulsory pilotage on leaving the canal at Eastham. *THE "MERCEDES DE LARRINAGA"*

Gorell Barnes J. [1904] W. N. 80; [1904] P. 215

Note.

Referred to by Gorell Barnes J., *The "Sussex"*, [1904] P. 236, 248. See No. 3, above.

5. — *Compulsory pilotage—Pilotage certificate of master—"Owner"—Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 599.*

A certificate issued, and annually renewed, by a pilotage authority, under ss. 340, 341 of the

SHIPPING (Pilotage)—continued.

Merchant Shipping Act, 1854 (now embodied in s. 599 of the Merchant Shipping Act, 1894), recited that (name) was master of the ship (named) "whereof (name of firm) are the owners," and stated that it was granted "to enable him to pilot the said ship or any other ship or ships belonging to the same owners."

The named firm never owned the named ship, or the ship to which the master was subsequently transferred, though the firm managed both ships as belonging to the same line of ocean steamers. Individual members of the named firm held shares, along with other parties, in the named ship, and one of those members was registered as managing owner of the named ship, and of the ship to which the master was transferred, of which latter ship that member was registered as holder of all the shares, though in fact he was only trustee for beneficial owners:—

Held, that the certificate was invalid by reason of a mis-statement as to the ownership, for it only enabled the holder to pilot the named ship, or any other ship belonging to the same owners—that is, the named firm; but the named firm were not owners of the named ship at the date of the original issue of the certificate, or of either vessel at the date of its last renewal, or at the date of a collision between the ship to which the master was transferred and the plts.' vessel.

Semble, that to satisfy the words "the ship of which he is master or mate, or any one or more ships belonging to the same owner as that ship" in s. 599 of the Merchant Shipping Act, 1894, the same owners must, at the material times, have held the whole of the shares in the vessel in respect of which the certificate was originally granted as well as hold the whole of the shares in the vessel to which the master is transferred.

The Earl of Auckland, (1861) Lush. 164, 387, followed. *THE "BRISTOL CITY"*

Jeune, Pres. [1901] W. N. 232; [1902] P. 10

6. — *Compulsory pilotage—Port of Blyth—Foreign vessel—Newcastle Pilot Act (41 Geo. 3, c. lxxvii.), s. 6.*

Pilotage is compulsory on a foreign vessel resorting to, or coming into, or departing from the port of Blyth, for that port is one of the creeks or members of the port of Newcastle-upon-Tyne unaffected by legislation subsequent to the Newcastle Pilot Act, 1801 (41 Geo. 3, c. lxxvii.), s. 6. *THE "HOLAR"*

Gorell Barnes J. [1901] P. 7

7. — *Pilot—Appeal from pilotage authority—Extension of time for appeal—Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 610, sub-s. 7—Pilotage Appeal Rules (Stipendiary and Metropolitan Police Magistrates), 1890, r. 1.*

By s. 610, sub-s. 1, of the Merchant Shipping Act, 1894, a pilot who is aggrieved by the decision of a pilotage authority may appeal to the county court judge or to a metropolitan police magistrate or stipendiary magistrate having jurisdiction within the port for which he is licensed. By s. 610, sub-s. 7, which re-enacts s. 4 of the Merchant Shipping (Pilotage) Act, 1889, power is given to the Secy. of State to make rules of procedure as respects appeals

SHIPPING (Pilotage)—continued.

to metropolitan police magistrates and stipendiary magistrates. By r. 1 of the Pilotage Appeal Rules (Stipendiary and Metropolitan Police Magistrates), 1890, notice of appeal to a magistrate must be given to him or to his clerk and to the pilotage authority within seven days after receipt from the pilotage authority of a notification of their decision, "or within such further time as may be allowed by the magistrate" :—

Held that, under the above rule, a magistrate has power to extend the time for giving notice of appeal, although the application for an extension of time is not made to him until after the expiration of the period of seven days within which the notice of appeal ought to have been given. **REX v. LEWIS** - Div. Ct. [1906] 2 K. B. 307

— Pilotage dues.

See CANADA—Shipping. 4.

— Ship — Collision — Compulsory pilotage — Practice—Evidence of pilot.

See SHIPPING—Collision. 51.

— Singapore Harbour — Collision — Inevitable accident — Onus of proof—Compulsory pilotage.

See SHIPPING—Collision. 58.

— Vessel employed in coaling ships of navy—King's ship—Pilotage dues—Liability of master.

See SHIPPING—King's Ship. 1.

Port of London.

Port of London Act, 1908 (8 Edw. 7, c. 68), provides for the improvement and better administration of the Port of London, and for purposes incidental thereto.

Practice.

Payment into Court in Admiralty actions, R. N. C. (July), 1901, Order XXII., r. 1a. Reprint from **W. N. 1901 (July 13), p. 235.** *See* CURRENT INDEX, 1901, p. cii.

Ecclesiastical and Maritime Causes, Procedure in. Order in Council as to the discharge of the duties of the office of Registrar of His Majesty in Ecclesiastical and Maritime Causes. Reprint from **W. N. 1904 (July 23), p. 231.** *See* CURRENT INDEX, 1904, p. cxvii.

Merchant Shipping Rules, 1908. Rules of Court dated June 3, 1908, for appeals under the Merchant Shipping Act, 1906, Section 68. Reprint from **W. N. 1908 (June 13), p. 167.** *See* CURRENT INDEX, 1908, p. cxiii.

SHORT CAUSES. (1908) *Short Cause Rules. In the Admiralty side of the Probate, Divorce, and Admiralty Division, and form of consent to the application of such Rules.* Reprint from **W. N. 1908 (Aug. 29), p. 247.** *See* CURRENT INDEX, 1908, p. cxxix.

Shipping Casualties and Appeals and Rehearings Rules, 1907, dated Nov. 22, 1907, Reprinted 1910. This reprint contains alterations in the statement of qualifications prescribed for Nautical Assessors in Part II. of the Appendix. Reprint from **W. N. 1910 (Aug. 27), p. 273.** *See* CURRENT INDEX, 1910, p. cxv.

SHIPPING (Practice)—continued.

1. — Action against master — Necessaries — Bills of exchange—(1908) Short Cause Rules.

Plts. W. & P., coal merchants of Marseilles in the Republic of France, sued the deft., G., master of the s.s. *Cairo*, now lying under arrest at Marseilles, on two bills of exchange, dated June 4 and 19, 1908, for 1375*l.* and 1135*l.* 11*s.* 6*d.* respectively, drawn by the deft. as master, on his owners, the Egyptian Mail Steamship Co., for the necessary disbursements of the steamship, consisting of the supply by the plts. to the ship of 1100 and 927 tons of coal at Marseilles. The bills were payable to the order of the plts. thirty days after sight, and were duly accepted, but dishonoured by non-payment at maturity.

The writ of summons, dated Nov. 3, 1908, was indorsed in the sum of 2549*l.* 3*s.* 6*d.*, being the amount of the bills, with interest, noting and protesting, and claimed further interest until payment or judgment.

Upon the plts.' application by summons, dated Nov. 4, the judge in chambers, on Nov. 9, gave directions for the trial of the action on Nov. 13 under the Short Cause Rules, 1908, and on the last-mentioned date the case was heard in Court, the claim being supported by an affidavit sworn by a member of the plt. firm, and the deft. master of the *Cairo* filing a counter affidavit.

Sir Gorell Barnes, Pres., in giving judgment in favour of the plts. for the amount indorsed on the writ, and interest at 5 per cent. on 2510*l.* 11*s.* 6*d.* from Nov. 3 to Nov. 13, with costs, observed that the deft., the master of the *Cairo*, would, by English law, have a lien on the ship, and, with reference to the dispatch with which the case had proceeded and to the economy resulting from following the simple procedure adopted, said: "This is the first case dealt with under the new Short Cause Rules, 1908, which have been drawn up for the purpose of dealing with cases which might be thus easily disposed of. There is no doubt that these rules afford a means of disposing of cases which are suitable for their application most speedily and most economically. This case is an illustration of how that may be done, and I hope it will be found that they are useful and will be frequently applied. They are only an extension of efforts made in this Division in the year 1893, and I may refer to the observations which I made in the case of *The Alps* ([1893] P. 109), as to the simple and easy process that might be adopted. The observations I made on the utility of the course then suggested are to be found fully set out in the *Shipping Gazette*, in a report of the case which appeared a day or two after the case was tried. I think it would have been advantageous if they had been fully set out in *The Law Reports*. They are only briefly condensed there, and I am not sure whether it was at that time fully realized by the reporters that those observations might really result in. The consequence was at that time that a very large number of cases were brought in this Division immediately afterwards which were cases of a kind not ordinarily coming within the work allotted to this Division. For a time a large number of cases of that character—of a character not

SHIPPING (Practice)—continued.

ordinarily brought in this Division—were taken here. Of course, since 1895 they have been dealt with in the Commercial Court, and I am very glad that this set of rules, which I published a few months back, have been put in process. I hope they will be extensively used, and I am sure they can, if parties will only use them, be the means of disposing of cases much more promptly and more economically." **WATSON & PARKER v. GREGORY. THE "CAIRO"**

Gorell Barnes, Pres. [1908] W. N. 230

— Action in rem—Foreign plaintiffs—Counter-claim—Security for damages.

See **SHIPPING—Collision. 52.**

— Admission by defendants that partly to blame

—Burden of proof—Right to begin.

See **SHIPPING—Collision. 53.**

— Appeal.

See also under Appeal.

— Appeal—Salvage.

See under Shipping—**Salvage.**

2. — Appeal—Shipping casualty — Loss of life—Suspension of certificate—"Wrongful act or default"—Dealing with certificate—Conduct of case by Board of Trade — Costs of appeal—Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 470, sub-s. 1 (a); ss. 474, 475—Shipping Casualties Rules, 1895 rr. 11, 12, 13, 20 (i).

At the conclusion of the evidence in a formal investigation into the circumstances attending the loss of a British ship whereby loss of life ensued, the Board of Trade desired the opinion of the Court on (inter alia) the question of whether the loss of the vessel and the loss of life was caused by the wrongful act or default of the master; but the Board declined to say whether the certificate of the master should be dealt with. The Court found that the loss of life was caused by the wrongful acts and default of the master, and suspended his certificate for twelve months. A Divisional Court, sitting in Admiralty by way of appeal, came to the conclusion that the certificate ought to be returned to the master as the evidence did not sufficiently establish that the loss of life was caused by his wrongful act or default, and the Divisional Court, under the discretionary powers conferred upon it by the Shipping Casualties Rules, 1895, r. 20 (i), ordered the Board of Trade to pay the costs of his successful appeal, on the ground that the Board should have assisted the Court below by intimating whether in their opinion on the evidence the certificate should be dealt with. **THE "CARLISLE" — — — Div. Ct. [1906] P. 301**

3. — Arbitration—Ship — Berth note—Arbitration clause—"Dispute arising at loading port"—Stay of proceedings.

By a berth note it was agreed between the plts., shipowners of Cardiff, and the defts., grain merchants of London and Marioupol, that the plt.'s steamship should proceed to the Sea of Azov, and there load from the defts.' nominees a cargo of grain and discharge the same in the United Kingdom or on the Continent, the defts. to do the stevedoring at rates as per margin, and

SHIPPING (Practice)—continued.

"in case of any dispute arising at loading ports under this berth note, it is to be submitted to the Rostof-on-don Bourse Court of Arbitration whose decision is to be final."

The vessel loaded a cargo of wheat, barley, and rye at Marioupol, and, for stevedoring, the defts. charged 40 roubles per thousand chetverts in accordance with the tariff in the margin of the berth note and deducted the amount from advance freight. On the accounts being received by their London agents the plts. contended that the defts. had overcharged them by not reckoning, in the customary way, the number of poods for barley and rye to the chetvert, and they commenced a county court action against the defts. to recover the difference:—

Held by a Div. Ct. (Sir Samuel Evans, President, and Bagnall Deane J.), affirming the decision of the county court judge, that all proceedings in the action must be stayed with a view to arbitration under the clause in the berth note) as the matter in dispute was "What are the proper charges for stevedoring at Marioupol?" and this dispute arose where the stevedoring was done, and where the charges in dispute were made. **THE "DAWLISH" Div. Ct. [1910] P. 339**

— Claim for instalment of contract price of ship.

See **PRACTICE—Judgment. 1.**

— Collision—Action in rem—Damage—Putting out to sea to avoid collision—Loss of anchor and chain.

See **SHIPPING—Collision. 2.**

4. — Collision in foreign waters—Lis alibi pendens—Service out of Jurisdiction—R. S. C., Order XI., r. 1 (g).

A British ship, coming down the Elbe, came into collision with another British ship, which in turn came into collision with a German vessel. The agents at Hamburg of the first British ship and the owners of the German vessel exchanged letters of guarantee; but the owners of the German vessel did not commence legal proceedings in Germany against the owners of the two British ships until after the owners of the first British ship had commenced an action in personam in this country against the owners of the other British ship and the owners of the German vessel. On an application to discharge an order giving the owners of the first British ship leave—under Order XI., 1.1 (g), of the R. S. C.—to serve notice of the writ on the owners of the German vessel out of the jurisdiction:—

Held by the C. A. (Lord Alverstone C.J., Farwell and Kennedy L.J.J.), that the order ought not to have been made, for there had not been any unreasonable delay on the part of the owners of the German vessel in following up, by legal proceedings, the original cross letters of guarantee.

Per Farwell L.J.: Observations on the caution required in exercising the discretionary power of giving leave to serve notice of a writ on a foreigner out of the jurisdiction. **THE "HAGEN" — — — C. A. [1908] P. 189.**

SHIPPING (Practice)—continued.**5. — Costs — Co-defendants — Collision.**

On the question of costs it was held that, as the defts., the owners of *Hopper No. 21*, had sought to throw the blame upon the owners of the tug *Fellgarth*, it was reasonable for the plts., the owners of the *Dorset*, to add the owners of the tug as co-defts., and as the defts., the owners of *Hopper No. 21*, had failed in their defence, they must pay the plts.' costs against both defts., and the costs of the successful defts., in accordance with the decision in *The Mystery*. [1902] P. 115. **THE "HOPPER NO. 21"**

Bucknill J. [1903] W. N. 114

6. — Costs — Collision — Appeal — Both to blame.

In the Admiralty Court the plts.' vessel was found alone to blame for a collision with the defts.' vessel. The plts., admitting that their vessel was to blame, appealed on the ground that defts.' vessel was also to blame. The C. A. found the defts.' vessel also to blame, and with reference to the costs, settled the practice by following *The Ceto*, (1889) 14 App. Cas. 670, and giving the successful appellants their costs of the appeal. **THE "LONDON"**

**C. A. [1905 [W. N. 51 :
[1905] P. 152**

— Costs—Salvage—Appeal—Reduction of award—Apportionment.

See **SHIPPING—Salvage. 3.**

7. — Discontinuance of action before appearance — Counter-claim — Practice — Collision — Arrest of defendants' ship — R. S. C., Order XXI., r. 16 ; Order XXVI., r. 1.

On the same day that a collision occurred in the Bristol Channel between a French and a British vessel the owners of the French vessel (which was sunk) issued a writ in rem, and arrested the British vessel at Cardiff. On the following day the warrant was withdrawn, and the British vessel released on notice given that the action was discontinued. Later in the day telegrams passed between the respective solicitors, and on the next day the solicitors for the owners of the British vessel wrote that their clients "have a counterclaim for the damage to their ship with which we intend to proceed," and, after entering an appearance to the action, they applied for an order that the owners of the French vessel should file a preliminary act with a view to the owners of the British vessel delivering their counter-claim :—

Held that, even if the application was right in form, it must be refused, as a counter-claim could not be set up to an action which had been "wholly discontinued" within the meaning of the R. S. C., Order XXVI., r. 1. **THE "SALYBIA"**

Bigham Pres. [1910] P. 25

— Discovery—Ship's papers—Action by underwriters—Recovery of money overpaid.
See **DISCOVERY. 20.**

— Discovery—Fire insurance—Ship's papers—Practice.
See **DISCOVERY. 19.**

8. — Discovery — Interrogatories — Collision — Damage to cargo.**SHIPPING (Practice)—continued.**

On Nov. 24, 1903, the barge *Bernard*, belonging to the defts., the Grain Elevating and Automatic Weighing Co., Ltd., carrying a cargo of maize belonging to the plts., Ross T. Smyth & Co., and in tow of the tug *Rover*, belonging to the defts., came into collision in the river Mersey with the steamship *Minerva*.

On Sept. 27, 1904, the plts., as owners of the cargo of maize, commenced an Admiralty action in the Liverpool District Registry against the defts. as owners of the *Bernard* and the *Rover*, and, on Oct. 26, the plts. delivered their statement of claim alleging negligence in the navigation of the barge by the defts. or their servants whereby the plts.' cargo was injured. On Nov. 24 the defts. delivered a defence and counter-claim denying negligence and, in the alternative, alleging that the plts.' goods were being carried by the defts. under a contract between the plts. and the Mersey Docks and Harbour Board whereby the board were employed to lighter the goods from the North Docks to the Waterloo Docks on the terms that the dock board should not undertake any risks in connection with the lighterage of the goods whether arising from their negligence or otherwise, and that the owners of the goods should protect themselves by insurance. By their counter-claim the defts. claimed in respect of the plts.' goods the due proportion in general average for losses, damages, and expenses incurred in and about the preservation of the *Bernard*, her cargo and freight, from damage and loss during the carriage of the goods.

On Mar. 15, 1905, the plts. took out a summons for an order for liberty to deliver interrogatories to be answered by the defts., relating to the circumstances of the collision such as are usually contained in the preliminary act required by the County Court Rules, 1903, Order XXXIX., r. 32, in the case of an action for damage by collision between vessels, and including the following :—

12. State if any and what vessel other than the *Minerva* caused or contributed to the collision or damage, and if any and what vessel hampered the navigation of the *Rover* and *Bernard* in any way and what way.

13. Do you allege any and what negligence or breach of any and what rule or rules against the *Minerva* ?

The district registrar allowed the interrogatories, and on appeal to Bargrave Deane J. the order was affirmed.

On appeal it was contended on behalf of the defts. that the interrogatories were of a fishing nature for the purpose of making a case, and going beyond the information as to material facts allowed in *Bolckow v. Fisher*, (1882) 10 Q. B. D. 161 ; that they were not justified by such facts as in the case of *The Isle of Cyprus*, (1890) 15 P. D. 134, where the plts.' vessel was lost with all hands ; that as this was a High Court action it was not material that the 12th interrogatory followed closely the wording of No. 17 of the preliminary act to be filed in a county court by a deft. in respect of a collision between vessels, and that the object of the plts. was to ascertain whether the defts. alleged

SHIPPING (Practice)—continued.

that the *Minerva* or some other vessel was to blame, so that the plts. might bring the *Minerva* or other vessel in :—

Held, that from the nature of the case the interrogatories required to be answered, and dismissed the appeal with costs. **THE "BERNARD"**

C. A. [1905] W. N. 73

9. — Jurisdiction—Salvage—Action in rem—Foreign plaintiffs—Counter-claim in personam—Demurrage.

The owners, master, and crew of a steam-tug, all foreigners out of the jurisdiction, commenced an action in rem in the Admiralty Division against the defts., owners of a British ship and her freight, for salvage services alleged to have been rendered to the defts.' vessel in Northern Russia. The defts., besides defending the action, set up a counter-claim in personam for demurrage alleged to be due by the owners of the steam-tug under two charterparties. On an application by the plts. to strike out the counter-claim :—

Held, by the C. A. (Collins M.R. and Stirling L.J.) that a judge of the Admiralty Division, as a judge of the High Court, has jurisdiction to try such a counter-claim, and that the discretion of the judge, in refusing to strike out the counter-claim on the ground of embarrassment, had been rightly exercised.

Griendtveen v. Hamlyn & Co., (1892) 8 Times L. R. 231, followed. **THE "CHEAPSIDE"**

C. A. [1904] W. N. 150 ; [1904] P. 339

10. — Necessaries—Default action in rem—Specially indorsed writ—Affidavit of service—R. S. C., Order III., r. 6 ; Order XIII., r. 12.

On July 6, 1904, the plt., C. Collett of Newcastle-on-Tyne, on the order of the master of the French ship *Berengere*, which was then lying at Smith's Dry Dock, North Shields, supplied necessaries, namely, paint for the bottom of the vessel. The ship was sold in another action, and, on Dec. 6, the plt. issued a specially indorsed writ in rem against the *Berengere*, or the proceeds of sale of the vessel now in court, claiming 26*l.* for the necessaries supplied, giving particulars, and naming 3*l.* 3*s.*, or such sum as may be allowed on taxation, for costs.

The writ was served on the registrar, who indorsed it with an acceptance of service. On Dec. 30 the plt. filed a notice of trial for Jan. 16, 1905, and also an affidavit verifying the claim with a copy of the account for the paint annexed.

The action now came on by way of motion for judgment by default against the proceeds of the vessel, and a clerk to the plt.'s solicitor was called as a witness to give the date when the writ was served on the registrar.

Gorell Barnes J. gave judgment for the plt. against the proceeds for 26*l.* and taxed costs, subject to priorities, and dispensed with an affidavit of service of the writ. **PROCEEDS OF THE "BERENGERE"**

Gorell Barnes Pres. [1905] W. N. 18

11. — Parties—Action in rem—Writ—"Co-partners"—"Owners"—Misdescription of

SHIPPING (Practice)—continued.

plaintiff—R. S. C., 1883, *Order XLVIII., A, r. 1—Irregularity—Fresh Step—Order LXX., rr. 1, 2.*

In an Admiralty action in rem for damage to cargo, the writ was issued in the name of a firm, and indorsed "The plts., as owners of goods laden on board" the carrying ship, claim compensation. The owners of the carrying ship appeared as defts., gave bail, and, on their demand for particulars of names and addresses, the plts. gave the name of a single individual residing in Paris, trading under the firm name at a London address. The defts. applied for security for costs, and, on this application being refused, moved to set aside the writ on the ground that under *Order XLVIII. A, r. 1*, the firm in the name of which the writ is issued must consist of two or more persons :—

Held, by Jeune Pres., that, as the indorsement on the writ stated that the plts. sued as "owners" of the cargo, the practice in Admiralty would have been satisfied if the word "owners" had appeared on the face of the writ. The mistake was, therefore, a mere "irregularity" which could be cured by leave to amend under *Order LXX., r. 1*, and, further, that as the defts. had, by applying for security for costs, taken a fresh step after knowledge of the irregularity, they were precluded by rule 2 of the same order from taking advantage of the irregularity.

The Admiralty practice as to the title in an action in rem for damage to cargo is not abrogated by the rules of procedure under the Judicature Acts. **THE "ASUNTA"**

Jeune P. [1902] W. N. 97 ; [1902] P. 150

— Production of documents—Report made to underwriters—Nominal plaintiffs.

See DISCOVERY. 17.

— Representative action—Action by shippers of goods on a general ship on behalf of themselves and other shippers of goods in the same ship.

See PRACTICE—Representative Action. 1.

— Salvage—Pleading—Admission of facts—Non-admission of inferences—Exclusion of further evidence.

See SHIPPING—Salvage. 21.

12. — Service out of jurisdiction—Foreign co-defendant—"Necessary or proper party"—Action in personam—Practice—Writ—Collision—R. S. C., 1883, *Order XI., r. 1 (g).*

A collision occurred in the English Channel, outside British territorial waters, between a British steamship and a French sailing vessel, which at the time was in tow of a British steam-tug. The French vessel was towed into a French port. The owners of the British steamship commenced proceedings in personam in England against the owners of the French vessel and the owners of the tug :—

Held by C. A., affirming the decision of Gorell Barnes J., that after due service of the writ upon the owners of the tug, leave could be given, under *Order XI., r. 1 (g)*, of the R. S. C., 1883, to issue a concurrent writ and serve notice thereof, out of the jurisdiction, upon the owners

SHIPPING (Practice)—continued.

of the French vessel as being, within the meaning of the rule, proper parties "to an action properly brought against some other person (the owners of the tug) duly served within the jurisdiction." *THE "DUC D'AUMAËL."*

C. A. [1902] W. N. 222 ; [1903] P. 18

Note.

See *The "Challenge" and "Duc d'Aumaël,"* C. A. [1905] P. 198. See *Shipping—Collision*. 84.

Short Cause Rules, 1908.

See under **SHIPPING—Practice**.

13. — Staying proceedings—Mortgage—Action in this country for declaration of rights to assist action in foreign country — R. S. C., 1883, Order XXXV., r. 5.

The plts., mortgagees of a British ship, on default in payment of the mortgage money, took possession of the vessel and chartered her for a voyage to a French port. On arrival there the vessel and her freight were attested by the defts., British subjects, claiming as creditors of the mortgagors for necessaries supplied to the ship, and in respect of which they had rendered "executory" in France a judgment obtained by default in England. The mortgagees intervened in the proceedings in France, and for the purpose of assisting them in those proceedings they commenced separate actions against the defts., the necessaries men, and the defts., the mortgagors, asking, under Order XXV., r. 5, of the R. S. C., 1883, for declaratory judgments that they as mortgagees in possession were entitled to the ship and her freight in priority to the necessaries men and to the mortgagors. Both defts. moved to stay the actions as vexatious :—

Held, by Bucknill J., that the action against the defts., the necessaries men, would be allowed to proceed, for the opinions of foreign experts were conflicting as to the force to be attributed to an English judgment in a French Court, and no other sufficient evidence had been given to show that, in the proceedings in France, the declaratory judgment asked for would not be of use to the plts. to protect their interests as mortgagees of the vessel and owners of the freight ; but that the action against the other defts., the mortgagors, would, on the authority of *Brooking v. Maudslay, Son & Field*, (1888) 38 Ch. D. 636, be stayed, as the mortgagors, not having taken any active step to dispute the validity of the mortgage, could not be forced to try that issue in the present proceedings. *THE "MANAR."*

Bucknill J. [1903] P. 95.

14. — Subject-matter of action—Ship—Constructive total loss—Order to bring within jurisdiction—Preservation—Inspection—Rules of Supreme Court, Order L., r. 3.

In an action by shipowners claiming under a policy of marine insurance in respect of an alleged constructive total loss of their ship, the defts. applied at chambers for an order that the ship, which was lying unrepaid in Singapore harbour, be brought to England before the trial of the action, at the defts.' risk and expense, on

SHIPPING (Practice)—continued.

the ground that it was necessary for the preservation and inspection of the ship :—

Held, that the Court had power, under Order L., r. 3, to make the order, and that in the circumstances it was right that the order should be made. *STEAMSHIP NEW ORLEANS CO. v. LONDON AND PROVINCIAL MARINE AND GENERAL INSURANCE CO.* C. A.

[1909] 1 K. B. 943

15. — Transfers from inferior Court.

Motion by defts. to transfer from the Liverpool County Court to the High Court a suit by a seaman for wages and for damages for breach of agreement. The ground of the application was that the action was in respect of a voyage to Japan, involving an alleged war risk, and was a test case which would affect other similar cases pending in the county court.

Sir Gorell Barnes, Pres., made an order for transfer, subject to the filing of a written consent by the plt., who was not represented in Court ; but made no order as to the costs of proceeding by motion in Court, as the learned judge intimated that such applications should be made by summons in chambers.

Note. By the County Courts Admiralty Jurisdiction Act, 1868 (31 & 32 Vict. c. 71) s. 6, provision is made for the transfer of causes from a county court to the High Court of Admiralty by order on motion, but, prior to s. 39 of the Judicature Act, 1873 (36 & 37 Vict. c. 66), motions under No. 138 of the Admiralty Rules of 1879, could be made in chambers, and transfers were so made. By the Rules of the Supreme Court, 1883, Order LIV., r. 1, applications at chambers are to be made by summons. *THE "INDRA"* Gorell Barnes, Pres. [1905] W. N. 150

16. — Transfer of action from inferior Court—Cross-action in High Court—Conduct of action.

The rule laid down in *The Never Despair*, (1884) 9 P. D. 34—namely that when an action is transferred from an inferior court and consolidated with a cross-action begun in the High Court, the plts. in the action in the inferior court will be placed in the position of plts. in the consolidated actions, if they began the action, in the inferior court before the cross-action in the High Court—will not be followed unless there is clear priority in time, so that where the commencement of the two actions is practically simultaneous the action in the High Court will be treated as the principal cause. *THE "MERSEY."*

Jeune, Pres. [1901] W. N. 220 ; [1901] P. 369

Principal and Agent.

—Ship—Freight—Untrue statements by agent—Measure of damages.

See **PRINCIPAL AND AGENT**. 16.

—Ship—Registered owner holding as trustee—Negligence—Priorities.

See **TRUSTEE—Shares**. 1.

Public Health.

See under **PUBLIC HEALTH**.

SHIPPING—continued.**Sale.**

—Sale of goods—Scottish arrestment of ship in course of building.

See SALE OF GOODS. 18.

1. — Ship—Possession—Sale—Claim to share of proceeds in Court—Evidence.

In an Admiralty action of possession, instituted by the administratrix of the deceased registered owner of a yacht, the vessel was, by consent, sold, the proceeds paid into court, and the question of the claims upon the fund referred to the registrar. He reported that the yacht had been bought for 1050*l.*, of which sum 550*l.* had been provided by the claimant, but that he was not satisfied that this sum had been advanced on the terms of the claimant becoming part owner. This report was confirmed by Bucknill J., and the whole of the proceeds ordered to be paid out to the administratrix:—

Held, by the C. A. (Lord Alverstone C.J., Farwell and Kennedy L.JJ.), that the order must be discharged, for, on proof by the claimant of the advance of "portion of the purchase-money wherewith another person had purchased the property, a presumption, which had not been displaced by any counter evidence, had arisen in favour of the claimant, in accordance with the ordinary rule as to resulting trusts stated by Eyre C.B. in *Dyer v. Dyer*, (1788) 2 Cox, 92, and, therefore, the claimant was entitled to $\frac{55}{105}$ ths of the proceeds of the yacht. THE "VENTURE" C. A. [1908] P. 218

Salvage.

1. — Agreement—Position of ships' agent—Ratification.

A large steamship belonging to the defts., laden with sugar from Java to Port Said for orders was coaled at Colombo by the plts., who acted in the usual way as ship's agents. A few days afterwards the vessel grounded on Gofar Island in the Maldives and remained fast. Her master sent the chief officer back to Colombo with a letter to the plts. acquainting them with the situation, telling them that he wanted a powerful tug, asking them to give the chief officer every assistance, and to draw on the defts., the owners of the ship, for disbursements. He also suggested that a contract for a salvage boat, "No cure, no pay," might be advisable. The plts. being of opinion that no satisfactory arrangement of the latter kind could be made, engaged a Government tug at a rate working out at about 60*l.* a day, and, making themselves personally liable for the payment of the hire, insured the tug for a limited period. The tug proceeded to the vessel with a representative of the plts. on board. The master, doubting whether his vessel could be got off, declined to accept the services of the tug except on a "No cure, no pay," agreement, and accordingly, after some discussion with the plts.' representative as to terms, the master signed a letter agreeing on behalf of defts. to pay the plts. 4000*l.* if the vessel was successfully floated. The tug then made fast, and, in the course of the next day's towage, the vessel came off. The plts. claimed 4000*l.*:—

Held, by the C. A. (Lord Alverstone C.J.,

SHIPPING (Salvage)—continued.

Fletcher Moulton and Kennedy L.JJ.) affirming the decision of Sir Gorell Barnes, Pres. [1907] P. 15, that the plts. could not be allowed to ratify the act of their representative, as, in the circumstances, the substituted agreement, insisted upon by the master and assented to by their representatives, by which they were constituted salvors, was unreasonable, and the plaintiffs must be deemed, not only when engaging the tug, but throughout the operations, to have acted as agents of the ship. In that capacity they were only entitled to recover by personal action repayment of their disbursements, together with the usual agency charges. THE "CRUSADER" C. A. [1907] P. 196

2. — Agreement under compulsion to pay an exorbitant sum.

Two large laden sailing vessels were sheltering in Holyhead Harbour from a south westerly gale, when the master of one of them, finding that his vessel had dragged down into dangerous proximity to the other, signalled for a tug. In response to the signal a tug came up; but her master demanded "1000*l.* or no rope." The master of the vessel, which had dragged her anchors, after some demur agreed to pay the sum named, and was towed back to his original berth. In an action brought by the owners, master and crew of the tug against both vessels, their cargoes and freights upon the agreement in the one case, and for a salvage award in the other:—

Held, by Bucknill J., that the agreement entered into by the master of the tug with the master of the vessel which had dragged, having been forced upon the latter by compulsion, must be set aside as extortionate, and an award of 200*l.* made with costs on the county court scale; and that the action against the other vessel must be dismissed with costs, on the ground that no salvage service had been rendered by the tug to that vessel. THE "PORT CALEDONIA" AND THE "ANNA."

Bucknill J. [1903] P. 184

3. — Appeal—Practice—Reduction of award—Costs.

Where the amount of a salvage award is reduced, the general rule, laid down in *The Gipsy Queen*, [1895] P. 176, is not to give costs, but an appellant succeeding in considerably reducing the award will be allowed the costs of the appeal.

The "*Kilmahoy*," (1900) 16 Times L. R. 155, followed. THE "PRINCE LEWELLYN"

Div. Ct. [1904] P. 83

Note.

Referred to by C. A., *The "Toscana,"* [1905] P. 144. See No. 12, below.

4. — Apportionment—Classification of salvors—Engineer staff.

On Nov. 24, 1901, in lat. 10° 6' N. and long. 17° 9' W., the *Runic*, belonging to the Ocean Steam Navigation Co., Ltd., of 12,482 tons gross register, with engines of 5000 horse-power actual, and 149 hands all told, from Liverpool to Australia, with a general cargo and 438 passengers, fell in with the Union Castle mail steamship *Dunottar Castle*, running between the Cape and

SHIPPING (Salvage)—continued.

this country, disabled by the breaking of her crank-shaft. The *Runic* took the *Dunottar Castle* in tow, and, the weather being fine, brought her by the following evening to Dakar on the west coast of Africa, the distance towed being 280 miles, and the speed maintained about 9 knots. A sum of 4500*l.* was agreed upon by way of salvage remuneration, and an application was now made to the Court to apportion that amount amongst the owners, masters, and crew of the *Runic*.—

Held, that, considering the great value of the *Runic* (the ship, cargo, and freight amounting to 308,886*l.*), the delay of two and a-half days during which the passengers and crew had to be maintained, and the fact that the service was mainly performed by the steam-power of the vessel, the owners were entitled to 3750*l.* (they paying the costs of the apportionment), the master, upon whom a great responsibility rested, 300*l.*, and the balance, 450*l.*, to be divided amongst the crew, according to their rating; but, following *The Minneapolis*, [1902] P. 30, the non-navigating portion (surgeon, purser, cooks, stewards, and stewardess) to share as if rated at one-third of their actual rating, whilst the share of the members of the engineers' department, who were all on double watches during the towage, should be increased so as to reckon them as if rated at one-and-a-half times their actual rating. **THE "DUNOTTAR CASTLE,"**

Gorell Barnes J. [1902] W. N. 70

See next Case.

5. — Apportionment—Classification of salvors—Special awards—Non-navigating portion of the crew—Horsemen.

A large steamer crossing the Atlantic with passengers and cargo, and a considerable number of horses and cattle, fell in, during bad weather, with a dismasted barque. After her crew had been taken off, and the wreckage cut away, the barque was towed to the Azores. The owners of the barque settled the salvage claim by payment to the owners of the steamer of the sum of 8250*l.*

In an action for apportionment :—

Held, that the owners of the salving steamer, which had incurred expenses amounting to 2000*l.*, were entitled to 6175*l.* and the master to 500*l.*, with special awards of 150*l.*, according to rating, to those of the officers and crew who had effected the transfer of the crew of the barque, 300*l.*, according to rating, to those engaged in cutting away the wreckage, 25*l.* to the boat's crew employed during that service, and 75*l.*, according to rating, to the boat's crew engaged in passing ropes, leaving 1025*l.* to be divided amongst the whole crew, but the non-navigating portion (surgeon, purser, cooks, stewards, and stewardess) to share as if rated at one-third of their actual rating, and (distinguishing *The Coriolanus*, (1890) 15 P. D. 103) the horsemen and their foremen—who were in the employ and pay of the owners of the salving steamer, and, having stations assigned to them at the boats, were liable to be called upon to perform duties—to share at one-third of the rating of an A.B. **THE "MINNEAPOLIS"**

Gorell Barnes J. [1902] P. 30 :

SHIPPING (Salvage)—continued.

Note.

Followed by Gorell Barnes J., *The "Dunottar Castle,"* [1902] W. N. 70. *See preceding Case.*

6. — Apportionment—Practice—Navigating officers—Apprentices.

On Dec. 26, 1909, the *Dunholme*—a steel screw steamship of West Hartlepool, of 3313 tons gross register, with engines working up to 1400 horse power effective, a crew of 25 hands all told, and on a voyage from Huelva to Baltimore with 4960 tons of iron ore—sighted in the Atlantic, 230 miles westward of the Straits of Gibraltar, a dismasted vessel, which proved to be the *Valkyrie*, an iron barque of the port of Mandal, of 1109 tons gross register, 119 days out from Taltal to Gibraltar for orders, laden with 1650 tons of nitrate. The *Dunholme* took the *Valkyrie* in tow, and on Dec. 28 brought her safely into Gibraltar Bay, where she was taken into harbour by a tug engaged for the purpose by the *Dunholme*. The values were :—*Dunholme*, 37,500*l.*; cargo, 4536*l.*; freight, 2000*l.*; total, 44,036*l.* *Valkyrie* in her damaged condition, 680*l.*; cargo, 13,400*l.*; freight (after deducting 400*l.* paid in advance and 888*l.* expenses), 390*l.*; total, 14,470*l.*

After delivery of the pleadings in an action of salvage brought by the owners, master, and crew of the *Dunholme* against the owners of the *Valkyrie*, her cargo and freight, the owners of the *Valkyrie*, and of her cargo, tendered the sum of 1800*l.*, with costs, which was accepted on behalf of the owners, master, and crew of the *Dunholme*.

A question arose as to the share to be awarded to two apprentices, whose wages were only nominal.

The President apportioned the funds as follows :—To the owners of the *Dunholme*, 1300*l.*, being the usual apportionment under ordinary circumstances of about three-quarters of the total amount. Of the remainder, to the master 100*l.*, to the crew 400*l.*, to be divided according to their rating, the navigating officers (chief and second mate) being treated, in accordance with the growing practice, as rated at the higher pay of the chief and second engineer, and the shares of the two apprentices calculated as if they were able seamen : see *The Rasche*, (1873) L. R. 4 A. & E. 127, at p. 129. **THE "VALKYRIE"** Samuel Evans, Pres. [1910] W. N. 138

7. — Apportionment—Practice—Navigating officer—Engineer officers.

Motion for apportionment of 800*l.* between the owners, master, and crew of the steamship *Scorsby*, being the agreed sum in respect of salvage services rendered to the steamship *Birnam*.

Per Bargrave Deane J. The practice is now established in this Court that, for the purpose of the apportionment of a salvage award, the rating of a navigating officer of a salving ship, if less than that of the corresponding grade of engineer officer, shall, unless otherwise ordered, be deemed the same. **"THE BIRNAM"** Bargrave Deane J. [1907] W. N. 40

SHIPPING (Salvage)—continued.

8. — *Associated insurance clubs—Agreement by owners to render mutual assistance—Arbitration—Notice to masters—Right of crew.*

An agreement between the associations in which fishing vessels are insured, that the amount of remuneration payable for salvage services rendered by one of the insured vessels to another shall be settled by the committees of the two associations concerned, is not binding on the master and crew of the salving vessel, who are not parties, and have not assented thereto :—

Quære, whether such an agreement would not, in respect of the members of the crew, even if assented to by them, be against public policy. **THE "MARGERY"** — Div. Ct. [1902] P. 157

9. — *Award—Grounds for an Appeal Court reducing the amount.*

The defts.' steamship, from Adelaide to London with a cargo of wool, broke down in the Red Sea, owing to damage to her propeller. She was picked up by the plts.' steamship, from Java to Amsterdam with a general cargo, and was towed in six days about 830 miles to a safe anchorage in Suez Roads. The weather was fine except towards the end of the towage, when the usual northerly wind and some sea were encountered, and during part of the towage varying currents were met with. The salving vessel lost three days and incurred some expense. The values were large, that of the salving vessel, cargo and freight, 88,000*l.*, and that of the salved vessel, cargo and freight, 269,700*l.* In an action of salvage the sum of 10,000*l.* was awarded. The defts. appealed on the ground that the amount was excessive :—

Held by the C. A., that the amount awarded could not be supported without doing injustice to those whose property was salved, for, in the Court below, undue weight had been given to the value of the salved property, and the absence of serious danger, either to the salving or to the salved vessel, had not been sufficiently recognized. The award was, therefore, reduced to 6000*l.* **THE "PORT HUNTER"**

C. A. [1910] P. 348

10. — *Commission to examine witnesses.*

In this case the President (Sir John Bigham), in awarding the sum of 500*l.* to the plts. in respect of the salvage services rendered to the *Augusta*, and with reference to an application for an order as to the costs of the commission to Vera Cruz to take evidence said :—The order, as I understand, is that the costs of commission should be costs of the cause. I cannot interfere with that. The registrar will, no doubt, in taxing, see that the costs which are brought in for this commission are reasonable; but I want to say this, that in my opinion the order for the commission made in this case ought not to have been made until every effort had been used to avert the calamity—for it is a calamity—of a commission, by trying to obtain from the defts. admissions or statements which they might be glad to make. In the Commercial Court, for a long time, the faces of the judges were set against this kind of evidence, for it destroyed litigation, because it made liti-

SHIPPING (Salvage)—continued.

gation so expensive, and it was found by experience, that if proper steps were taken by litigants willing to prevent expense, evidence quite satisfactory to the parties and the Court could be obtained without all this expense.

I make these observations not in regard particularly to this case but generally, and I have spoken to the registrar and told him that in future, in any case over which I am at all likely to have control, if there is an application for a commission, the registrar shall attempt to arrange, or get the parties to attempt to arrange, to take the evidence in some other less expensive way. If the registrar cannot induce the parties to consent then the matter shall come before me. I hope parties will abstain, as far as they can, from taking evidence in this way. I shall ask the taxing Master to examine this evidence with great care as to the necessity for calling so many witnesses for the plts. **THE "AUGUSTA"** Bigham, Pres. [1909] W. N. 239

11. — *Constructive acceptance of service.*

The defts.' barque with three tugs in attendance was lying moored outside the entrance to the Alexandra Dock at Hull waiting to enter, when a steamer coming out of the dock, owing to a rope fouling her propeller, was driven by wind and tide down on to the barque, which in turn was forced on to the Hebbles Sand. The two tugs in attendance on the steamer towed that vessel clear of the barque, and thereby the three tugs in attendance on the barque were enabled to pull that vessel off the sand. In a salvage suit commenced by the five tugs against the owners of the barque :—

Held, by Bucknill J., that the three tugs which were in attendance on the barque were entitled to salvage, as their services, for the time being, were outside their towage contract, but that the claim against the barque, made by the two tugs in attendance on the steamer, must be disallowed, as there was no evidence from which a constructive acceptance of their services by the master of the barque could be inferred within the principle laid down in *The Vandych*, (1881) 7 P. D. 42; affirmed (1882) 5 Asp. M. L. C. 17. **THE "EMILIE GALLINE"**

Bucknill J. [1903] P. 106

12. — *Costs—Salvage—Appeal—Practice—Reduction of award—Apportionment.*

On appeal in a salvage suit, the defts. succeeded in substantially reducing the award, namely, from 5100*l.* to 3000*l.* :—

Held, by the C. A. (Collins, M.R., Mathew and Cozens-Hardy L.J.J.), that in such cases the ordinary rule in the C. A., that a successful appellant is entitled to the costs of the appeal, would prevail, notwithstanding the general rule to the contrary laid down in *The Gipsy Queen*, [1895] P. 176, based on the earlier practice of the P. C. when exercising jurisdiction in Admiralty cases. **THE "TOSCANA"**

C. A. [1905] W. N. 50; [1905] P. 148

13. — *Danger to life.*

In an action for salvage of life alone, it appeared that four tugs put out from Falmouth at night to render assistance to a large British steamship stranded off the Lizard, making

SHIPPING (Salvage)—continued.

signals of distress, and having on board nearly 400 passengers, 140 crew, and a valuable general cargo.

Owing to the fog prevailing, and the strong wind and heavy ground swell, caution was necessary in getting to the vessel, and, on account of the rocks, the tugs were unable to approach close to her; but, at the request of the local lifeboats, which had already reached the vessel with the object of saving life, they took these boats in tow, and so enabled them, in the course of several trips, to land in safety the whole of the passengers and crew. Part of the vessel and part of her cargo were subsequently saved by other salvors:—

Held by Bucknill J., that the owners, masters, and crews of the tugs were entitled to an award of 800*l.*, for by expediting, at some risk to themselves, the transfer of the passengers from the ship to the shore, the tugs had assisted in saving life from actual, or serious apprehension of, danger. "THE SUBVIC"

Bucknill J. [1908] P. 154

Note.

See also *The "Sueric,"* Div. Ct. [1908] P. 292. *Shipping—Burial.* 1.

14. — Derelict Award of total proceeds.

A derelict barque, dismasted and on fire, was towed by a tug some twenty miles into Harwich, where the salvors succeeded in extinguishing the fire and placing the barque in safety. The vessel and her cargo were ultimately sold by the Court, realising 255*l.*, less 168*l.* expenses of the marshal. There was also a liability of 88*l.* for the assistance rendered to the salvors by others after the vessel was brought in, and a further liability of 21*l.* 7*s.* 9*d.* for dock dues, reducing the net balance to 37*l.* 2*s.* 3*d.*

In an action against the owners of the barque, her cargo and freight, the plts., the owner, master and crew of the tug, claimed salvage remuneration, and, judgment having been allowed to go by default, the Court awarded the total proceeds without a reference. *THE "LOUISA"*

Bargrave Deane J. [1906] W. N. 60; [1906] P. 145

15. — Different risks to ship, cargo, and freight — Separate awards.

A Norwegian steamship bound to Hull with fresh herrings ran short of coal when some 100 miles north-east of the Spurn, and was towed into the Humber by a steam trawler. The court awarded the salvors 600*l.*; but, regarding the substantial service as rendered to the perishable cargo, divided this sum into 180*l.*, as against the ship, valued at 1875*l.*, and 420*l.* as against the cargo and freight, valued at 1060*l.* and 136*l.* respectively. *THE "VELOX"*

Gorell Barnes Pres. [1906] P. 263

— General average loss Liability of underwriter.

See **INSURANCE (MARINE).** 5.

16. — Government stores—Action in personam — Negligence—Liability of charterers of salved vessel.

Government stores were shipped on a chartered vessel under bills of lading signed by the

SHIPPING (Salvage)—continued.

master by direction of the charterers, not exempting the shipowner from liability for negligence, and subject to the stipulation of a freight engagement entered into with the charterers by a Government department under which the owners (the term including the charterers) were responsible for the safe delivery of the stores. The vessel, through the negligence of her master and crew, came into collision with another vessel, and was so much damaged as to require salvage assistance in putting back to the port of shipment; where the stores were returned to the Government department. In an action of salvage in personam by the salvors against the charterers:—

Held, that as the charterers were directly interested in the preservation of the goods, the salvage service was a benefit to them, and, therefore, on the authority of *Five Steel Barges*, (1890) 15 P. D. 142, and *Duncan v. Dundee Shipping Co.*, (1878) 5 R. 742, the action would lie.

Decision of Jeune, Pres., [1901] W. N. 73. affirmed. *THE CARGO EX "PORT VICTOR"*

C. A. [1901] P. 243

17. — Information by one person leading to a salvage service by another person—Lifeboat crew.

The coxswain of a lifeboat, whilst endeavouring with his crew to put off to a vessel in distress, sent a telegram for the assistance of tugs. The owners of the tugs had, however, previously heard of the position of the vessel, and were already despatching their tugs. In an action of salvage:—

Held, by Bucknill J., that, though a person may hold the position of a salvor who does nothing more than give information, outside his duty, of such a nature as to be the cause of acts subsequently done by others which are salvage services, the claim in the present case failed, as the telegram sent by the coxswain of the lifeboat was not in fact the cause of the tugs going out to the rescue of the vessel.

The onus is upon the crew of a lifeboat, going out to save life, to show that they have rendered services entitling them to be regarded as property salvors. *THE "MARGUERITE MOLINOS"*

Bucknill J. [1903] P. 160

18. — Injury to sailing vessel—Compensation — Onus probandi—Appeal from Constantinople.

Where, the vessel of a salvor has without default on his part been injured in the performance of salvage services, compensation may be awarded to him in respect of the injury so sustained and damages consequent thereon; or the salvage may be assessed on a liberal scale, so as to cover the loss and afford an adequate reward for the services rendered:—

Held, also, that the presumption is that the injury is caused by the necessities of the services, and that the onus probandi is on those who allege default by the salvors. The amount of compensation awarded by the Court below will not be reduced unless it appears to be grossly in excess of what is right. *MASTER AND OWNERS OF S.S. "BAKU STANDARD" v. MASTER AND OWNERS OF S.S. "ANGELE"*

P. C. [1901] A. C. 549

SHIPPING (Salvage)—continued.

— Insurance—General average loss— Liability of underwriter.

See **INSURANCE (MARINE)**. 5.

— Jurisdiction—Action in rem—Foreign plaintiffs—Counter-claim in personam—Demurrage.

See **SHIPPING—Practice**. 9.

19. — Launchers of lifeboats.

When a lifeboat, belonging to the National Lifeboat Institution, is launched for the purpose of saving life, the crew of the lifeboat, and the launchers, look to the institution for payment according to the scale provided by the rules; but if, on arriving at the vessel in danger, the services of the crew of the lifeboat are engaged to endeavour to save the vessel, then, as the crew of the lifeboat becomes, under the rules, a party of salvors who have borrowed the lifeboat for property salvage purposes, and who look to the owners of the property for their remuneration, the launchers will also be entitled to look to the owners of the property for salvage in respect of the services which their efforts enabled the crew of the lifeboat to render. *THE "CAYO BONITO"*

Gorell Barnes J. [1904] W. N. 125;
[1904] P. 310

20. — Practice — Payment into Court with denial of liability — Recovery of less than amount paid in — Rules of the Supreme Court, Order XXII., r. 6 (c)—Costs of Issues.

A tug, under an engagement to tow the defts.' vessel, claimed salvage for services rendered whilst the towage contract was interrupted, and a second tug, which assisted the first, besides suing for, salvage, claimed compensation for damage sustained in a collision with the defts.' vessel. By their defence, the defts. did not admit that either of the plt. tugs had rendered any salvage service. They also set up an agreement by the second tug for 20*l.*, and alleged that any damage sustained by that tug was due to her own negligence. Finally they tendered as follows: "The defts. denying liability for more than 20*l.*, part thereof for the (second tug) bring into Court 100*l.* for the (second tug) and 50*l.* for the (first tug)." The Court found that both tugs had rendered salvage services; that there was no agreement with the second tug; that the damage that tug had sustained was due to her own negligence; and that each tug was entitled to an award of 50*l.* The Court, therefore, ordered the balance of 50*l.* out of the tender to the second tug to be repaid to the defts. under Order XXII., r. 6 (c), of the Rules of the Supreme Court, and on the question of costs:—

Held, that the plts. were entitled to their costs up to payment into Court; that the defts. were entitled to those subsequent to that date, and, in accordance with *Fitzgerald v. Tilling*, (1907) 96 L. T. 718, the plts. were entitled to any severable costs, subsequent to payment into Court, in respect of the issues on which they had succeeded. *THE "BLANCHE"*

Bargrave Deane J. [1908] P. 259

Note.

See *Sir John Jackson, Ltd. v. Owner of Steamship "Blanche," The Hopper No. 66*, H. L.

SHIPPING (Salvage)—continued.

(E.) [1908] A. C. 126; *Shipping—Limitation of Liability*. 1.

21. — Practice — Pleading — Admission of facts — Non-admission of inferences — Exclusion of further evidence — Value of salvaged property.

To recover remuneration for services rendered to a stranded steamship, seven actions of salvage were commenced on behalf of eight tugs and the crews of two lifeboats. These actions were consolidated and one defence was put in, the material paragraph of which stated that "the defts. admit the facts alleged in the various statements of claim . . . but not the inferences sought to be drawn from the said facts, and they submit themselves to the judgment of the Court thereon."

At the trial leave was asked on behalf of some of the salvors to put in the log of the defts.' vessel, and, on behalf of other salvors, to amend their statement of claim, on the ground, in both cases, that discovery of the defts.' documents, obtained after the defence had been delivered, particularly the letters and telegrams of the defts.' master, had disclosed material facts tending to lead to inferences increasing the value of the services rendered by these plts.:—

Held, that both applications must be refused, the first on the ground that further evidence at the trial as to the salvage services was inadmissible, the Court being only concerned with the inferences to be drawn from the admitted facts, and the second on the additional ground that the application came too late, as it should have been made before the trial, after discovery had been obtained.

After the delivery of the statements of claim, and after the date of the affidavit of value filed by the defts., it was ordered that "each side be at liberty to call evidence as to value." At the trial the values of the plts.' vessels were agreed, but objection was taken to the defts.' affidavit giving the value of the stranded vessel at 28,000*l.* her cargo 58,817*l.*, and freight at risk nil—total 86,817*l.* On the balance of testimony the Court fixed the value of the ship at 40,000*l.*, and of the cargo at 75,000*l.*, bringing the total up to 115,000*l.*, and, on this enhanced value, made separate awards to the various salvors, amounting in the aggregate to 7275*l.* *THE "BUTESHIRE"* Bargrave Deane J. [1909] P. 170

22. — Priorities—Damage by ship to landing-stage — Competing maritime liens — Insufficient proceeds.

A foreign steam vessel, with engines broken down, after being safely towed into the Mersey by salvors, was run into by another vessel, and, to prevent her sinking in deep water, second salvors endeavoured to beach her, with the result that she came in contact with, and damaged, a landing-stage belonging to the Mersey Dock Board. As a wreck obstructing the navigation, the Board, under their statutory powers, took possession of her, raised, and sold her, paying the net proceeds into court after deducting expenses. The proceeds were insufficient to meet the claims of the two salvors and the claim of the Dock Board for the damage done to the landing-stage.

SHIPPING (Salvage)—continued.

On the question of priorities:—

Held, that the claim of the Dock Board came first, then that of the second salvors, and lastly that of the first salvors, for—as between the Dock Board and the salvors—the Board had a maritime lien for the damage done, and whether the Board had a maritime lien or not, the right of the Board to proceed in rem overrode the prior lien of the salvors, as being based on a claim against the wrong-doing vessel *ex delicto*, involving no option in the sufferer, whereas the salvors in voluntarily undertaking to render services incurred the risk of subsequent claims attaching. Secondly, as between the two salvors, the ordinary rule applied giving the claim of the second salvors precedence, on the ground that their exertions tended to preserve the res for the benefit of earlier claimants. *THE "VERITAS"*

Gorell Barnes J. [1901] W. N. 174 ;
[1901] P. 304

—Reinsurance—Constructive total loss—Charges.
See INSURANCE (MARINE). 21.

23. — Re-opening appraisalment — Basis of value—Practice.

The principle adopted in *The Harmonides* [1903] P. 1, in the case of a damage action, is applicable to a salvage action, so that if, in the absence of agreement, or of the acceptance of the affidavit of value filed by the defts., an appraisalment is applied for, the value to her owners in her damaged condition on the completion of the salvage service is the basis on which the appraisalment of the salvaged vessel is to be made, and under ordinary circumstances such an appraisalment is conclusive. *THE "HOHENZOLLERN"*

Bargrave Dean J. [1906]
W. N. 184; [1906] P. 339

Note.—*See SHIPPING—Collision*. 6.

24. — Reward—Tug engaged by salving tug—Lifeboat tug towing salvaged vessel—Right of lifeboat crew to participate.

A steam tug, employed by the National Lifeboat Institution solely for the purpose of towing a lifeboat of that institution, went out with the lifeboat in tow to the assistance of a disabled steam vessel, and, after lying by all night, made fast ahead of the steam vessel and towed her, whilst the lifeboat (with her crew) was towed astern of the steam vessel. Subsequently the services of a second tug were accepted by the master of the steam vessel, and the master of that tug insisted, in spite of the remonstrance of the master of the steam vessel, in taking the services of a third tug, which was made fast ahead of the second tug. The steam vessel was successfully towed to a place of safety.

In an action of salvage it was admitted by the owners of the salvaged vessel that services were rendered by the first two tugs; but they denied the right of the coxswain and crew of the lifeboat, and of the owners, master, and crew of the third tug, to any award:—

Held, by Gorell Barnes J., that all the plts. were entitled to salvage, for the first tug could not go out without taking the lifeboat with her, and, therefore, for salvage purposes, the crew of the lifeboat were to be regarded as if they formed part of the crew of the tug, though with a more

SHIPPING (Salvage)—continued.

moderate reward. Secondly, the owners, master, and crew of the third tug were to be regarded as salvors, for though the services of that tug were refused by the master of the salvaged vessel, and, as it turned out, were not in fact required, that tug made fast at the request of the second tug at a time when it was reasonably prudent and necessary for the salvaged vessel to have the services of a third tug. *THE "AUGUSTE LEGEMBRE"*

Gorell Barnes J. [1902] P. 123

Note.

See The "Cayo Bonito," Gorell Barnes J., [1904] P. 310. *See No. 19, above.*

—Salvage loss—Right of underwriters to pay without authority of assured.

See SHIPPING—Mortgage. 2.

25. — Signals of distress properly made—Services not required—Merchant Shipping Act, 1894 (57 y 58 Vict. c. 60), s. 434, sub-s. 2.

By the Merchant Shipping Act, 1894, s. 434, sub-s. 2, the improper use or display of the signals of distress, authorized by the Act, renders the master of a vessel liable to pay compensation for any labour undertaken, risk incurred, or loss sustained, in consequence of the signal being supposed to be a signal of distress; but the subsection does not, by implication, give any right to compensation in favour of those who, in response to signals of distress properly used or displayed, offer services which are not required. *THE "ELSWICK PARK"*

Bucknill J.
[1904] P. 76

26. — Standing by—Attempting to tow—Services rendered at request—Principles upon which awards made.

A steamship valued at 27,000*l.*, from Philadelphia to Bremen, with a part cargo of petroleum belonging to the owners of the steamship, of the value of 7578*l.*, the rest naphtha valued at 7000*l.*, and freight at risk 1743*l.*, became disabled so that she would not steer when about 1000 miles from Falmouth. After making some progress to the eastward, she was fallen in with by steamship No. 1, the master of which agreed to attempt to get her to Fayal; but, owing to very bad weather, after standing by and steering her for a few miles, he left the disabled vessel. She was then picked up by steamship No. 2, and towed 265 miles, when, owing to damage to the machinery of the salving vessel and the hawser parting, the disabled steamer was lost sight of. Steamship No. 3 then came up; but after a difficult towage of about twelve miles left her owing to being short of feed for the horses she was carrying. Steamship No. 4 then established communication with her, and towed her 468 miles to Falmouth being accompanied by steamship No. 5, which belonged to the same owners as the disabled vessel, and acted as a stand-by in case of emergency. In consolidated actions of salvage by the owners, masters, and crews of the five steamships:—

Held, by Bucknill J., that steamship No. 1 was entitled to 800*l.* by way of payment for work done in standing by and, at request, attempting to tow, within the principle laid down in *The Benlarig*, (1888) 14 P. D. 3; that steamship No. 2 was entitled to a salvage award of

SHIPPING (Salvage)—continued.

2500*l.* for having, within the principle laid down in *The Atlas*, (1862) Lush, 518, and *The Camellia*, (1883) 9 P. D. 27, meritoriously contributed to the ultimate safety of the disabled vessel, the award being fixed at a lower standard than that to which the principal salvor was entitled, as the part taken by this salvor by itself would not have produced the successful result; that steamship No. 3 was, on similar grounds, and as having brought the disabled steamer within sight of the principal salvor, entitled to an award of 800*l.*; that steamship No. 4, having towed the disabled steamer into a port of safety, was entitled, as the principal salvor, to an award of 400*l.*; Whilst the owners of steamship No. 5 were entitled, as against the naphtha cargo, to an award of 300*l.*, and her master and crew, as against ship, cargo and freight, to an award of 150*l.*, making a total of 8550*l.* THE "AUGUST KORFF"

Bucknill J. [1903] P. 166

27.—Tender—Apportionment—"Runners."

On Sept. 30, 1902, in fine weather, the *Canada*—belonging to the British and North Atlantic Steam Navigation Co., Ltd., of 8806 tons gross register, with engines of 6800 indicated horse-power, from Southampton to Belfast to refit after trooping, manned by a crew of eighty-two hands all told, and of the value of 130,000*l.*—fell in, about eight miles to the southward of the Shambles, with the *Persia*, belonging to the Anchor line, of 3596 tons gross register, from Calcutta, via London and Dunkirk, to Glasgow, with a general cargo, and a crew of seventy hands. She was flying signals of distress, having shortly before broken her after tunnel shaft.

The *Canada* took the *Persia* in tow, and, in about three hours, with the assistance of a tug hired by the *Canada*, the *Persia* was safely anchored inside the Portland Breakwater. The value of the *Persia* was 15,000*l.*, cargo 10,250*l.*, freight at risk 90*l.*—total 25,340*l.*

The Court overruled a tender of 500*l.*, on the ground of the great value of the salving steamer, and made an award of 700*l.*

With reference to the apportionment of that sum between the owners, master, and crew of the *Canada*, the learned judge awarded 525*l.*, to the owners on account of the risk to which such a large vessel was exposed in undertaking a salvage service, 75*l.* to the master in view of the responsibility incurred by him, and the balance, 100*l.*, to the crew according to their rating, taking that rating, with regard to such of the crew as were the regular men, according to the articles on the previous outward voyage to the Cape, and treating those engaged only for the run from Southampton to Belfast "on a footing equivalent to those whose places they were filling at the time"—that is, a runner put down as an A.B. to take an A.B.'s rating, and a runner put down as a fireman to take a fireman's rating. THE "PERSIA" Gorell Barnes J. [1902] W. N. 210

28.—Tender with denial of liability—Practice—Pleading—R. S. C., 1883, Order XXII., r. 1.

In actions of salvage tried together, A., a ship-builder and owner of lighters of Preston, one of the plts., claimed salvage for services rendered

SHIPPING (Salvage)—continued.

to the ship *Chiltonford*, her cargo and freight, off the banks at the mouth of the river Ribble on Dec. 21, 22, and 23, 1900.

The alleged services consisted in telephoning to the harbour authorities of Preston as to the position of the *Chiltonford*, arranging with the dredging master of the Preston Corporation as to despatching tugs, wiring to the Liverpool Salvage Association for their surveyor, sending a salvage lighter belonging to the plt. down to the derelict vessel, and incurring sundry small expenses in telegraphing, in messengers, and in ry. fares.

Held, on the evidence, that the claim of A. must be disallowed, as the information given to the dredging master might have been of some value to the Preston Corporation, but not to the ship, her cargo or freight, and it was not the policy of the Court to encourage the efforts of persons who did not render any material assistance. The Court further held that the sum of 20*l.* paid into Court must be returned to the defts., as the plt. A. was not entitled to take the money out of court, for Order XXII., r. 1, of the R. S. C., 1883, did not apply to salvage actions—*The Mona*, [1894] P. 265—and, the case not being one of tender simply—*The Portia*, (1845) 9 Jur. 1867—the pleadings must be treated as amended by leaving the denial of liability standing, and striking out the alternative plea of tender as inserted by mistake as to the practice. THE "CHILTONFORD" Jeune Pres. [1901] W. N. 48

—Third vessel—Right of tug to towage remuneration though debarred from salvage—Collision.

See SHIPPING—Collision. 87.

29.—Towage contract—Tug and tow to blame for collision with third vessel—Negligence of tug that of her master—Services rendered by tug to tow—Claim of crew of tug—Public policy.

A sailing vessel, whilst in tow of a steam-tug, under a contract of towage, came into collision with a third vessel, and the tug and tow were found to blame, the negligence of the tug being that of her master. After the collision the tug towed the sailing vessel in her damaged condition to the nearest port of safety, and the owners, master, and crew of the tug claimed salvage:—

Held, by Gorell Barnes J., that the tow having been placed in a difficulty by the joint negligence of tug and tow, the tug could not claim salvage for services afterwards rendered in extricating the tow from that difficulty, for the claim of the owners of the tug was barred by reason of the negligence of their agent, the master, having in part caused the mischief from the consequences of which the tow was rescued; the claim of the master was barred by reason of his being the party actually guilty of the negligence in part causing the mischief, and the claim of the crew was also barred in Admiralty on the ground of public policy, which rendered it undesirable to encourage a crew to hope to recover salvage in respect of services to be rendered to a vessel damaged through the contributory negligence of their master.

SHIPPING (Salvage)—continued.

The Cargo ex Capella, (1867) L. R. 1 A. & E. 356, followed. *THE "DUC D'AUMALE"* (No. 2) Gorell Barnes J. [1904] P. 60

30. — Towage contract between owners of salvaging and salvaged vessels — Independent rights of master and crew of salvaging vessel.

Owners in Liverpool were informed by telegraph that their vessel was lying disabled off the south coast of Ireland, and agreed with the owners of a tug, known to be in the neighbourhood of the disabled vessel, that their vessel should be towed to Liverpool on the usual towage terms per tide; but, before the owners of the tug could instruct their tug master, and before the agreement was made, the tug master had proceeded to the disabled vessel, and had commenced towing her to Liverpool. In an action of salvage brought by the owners, master, and crew of the tug against the owners of the disabled vessel, her cargo and freight:—

Held, by the President (Sir F. H. Jeune), that the owners of the tug were bound by the towage agreement; but, following *The Inchmarree*, [1899] P. 111, that her master and crew had acquired independent rights which must be dealt with on salvage terms. *THE "FRIESLAND"*

Jeune, Pres. [1904] W. N. 160; [1904] P. 345

— Underwriters — Salvage, award, Claim of underwriters to—Suing and labouring clause.

See **INSURANCE (MARINE)**. 26.

31. — Value of salvaged vessel for purposes of award.

A steam trawler, having fallen in with a disabled steam vessel in the North Sea, towed her to a position off Aberdeen; but as, in the heavy weather prevailing, the master of the trawler was unwilling to incur the risk, without a pilot, of taking a large disabled vessel into the harbour, signals were made for a pilot and a tug, in response to which a tug came out and offered to pilot and tow the disabled vessel in. The master of the disabled vessel declined to accept her services, and after some delay, the trawler was told to go ahead. The hawser parted, and the disabled vessel drove ashore, involving an expense of 1150*l.* to float her, and 5600*l.* for repairs. In an action for salvage brought by the owners, master, and crew of the trawler, it was contended by the owners of the disabled vessel that the award, if any, must be based, not on 8500*l.*, the value of the disabled vessel before she stranded, but on the amount she proved to be worth to them, namely, 1750*l.*:—

Held, by Gorell Barnes J., that the trawler had done all that could reasonably be expected of her, and was entitled to an award of 750*l.*, based on a valuation of 8500*l.*, and being the value of the disabled vessel at the time that she was brought within reach of the tug. *THE "GERMANIA"* Gorell Barnes J. [1904] P. 131

Seamen.

Seamen's and Soldier's False Characters Act, 1906 (4 Edw. 7, c. 5).

Merchant Shipping, Masters and Seamen—Distressed Seamen, Regulations, April 3, 1908,

SHIPPING (Seamen)—continued.

under s. 40 of the *Merchant Shipping Act*, 1906, as to *Distressed Seamen*. St. R. & O. 1908, No. 343. Price 1*d.*

1. — Accommodation for seamen—Lascars—Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 210.

The provisions of s. 210 of the *Merchant Shipping Act*, 1894, which require that a certain amount of space shall be provided for seamen on board any British ship, apply to Lascars serving on board such ships. *PENINSULAR AND ORIENTAL STEAM NAVIGATION CO. v. REX*

Mathew J. [1901] 2 K. B. 686

— Alien—Compensation for death—Negligence of British subject—Cause of action arising on high seas.

See **NEGLIGENCE**. 1.

— Collision—Repatriation of seamen—Payment by consul—Norwegian law.

See **SHIPPING—Seamen**. 8.

2. — Contract of service—Contraband of war—Refusal to proceed—Offence against discipline—Order of Naval Court—Discharge of seaman—Action for wages—Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 225, sub-s. 1 (c); s. 483.

A naval Court summoned under the provisions of the *Merchant Shipping Act*, 1894, in dealing with the offence of continued wilful disobedience by a seaman to lawful commands, may put in exercise all its statutory powers so far as they are applicable to the case, including the power to discharge the seaman from his ship, and is not limited to the powers of punishment conferred by the Act on a Court of summary jurisdiction in respect of the same offence.

An order regularly made by a duly constituted naval Court within the scope of its jurisdiction is conclusive in any subsequent legal proceedings of the rights of all the parties interested, whether they are parties to the proceedings before the naval Court or not; consequently, where by such order a seaman is discharged from his ship, the order is a bar to a civil action by the seaman against the owner for wrongful dismissal, notwithstanding that the owner was not a party to the criminal proceedings.

The plt., who was engaged on a ship for a term of three years, which covered the period of the Russo-Japanese war, on the arrival of the ship at Yokohama, refused to continue the voyage on the ground that the ship was carrying contraband of war. At the instance of the master a naval Court was convened, which found the plt., with others of the crew, guilty of continued wilful disobedience to lawful commands and of insubordination prejudicial to the owner's interests, and rejected the men's plea with respect to the carriage of contraband; and the Court discharged the men from the ship and forfeited their wages. In an action by the plt. against the owner for wrongful dismissal and for wages, it appeared that the ship was carrying contraband at the time of the plt.'s refusal to proceed.

Held (affirming the decision of the Lord Chief Justice), that the order of the naval Court was a bar to the action. *HUTTON v. RAS STEAM SHIPPING CO. - C. A.* [1907] W. N. 42; [1907] 1 K. B. 834

SHIPPING (Seamen)—continued.

3. — *Contract of service for commercial voyage—Refusal to proceed to belligerent port—Carriage of contraband—Wages—Maintenance—Damage for wrongful discharge—Merchant Shipping Act 1894 (57 & 58 Vict. c. 60), ss. 134, 187, 188, 189.*

British seamen signed an agreement for a voyage from Cardiff to any ports within certain limits, including Hong Kong, knowing that Russia and Japan were at war, that the ship was to carry coal to Hong Kong, and that coal was treated by both belligerents as contraband of war. At Hong Kong the master required the men to proceed with the coal to a naval base in Japan within the limits, and on their refusal illegally procured their imprisonment and left them at Hong Kong and proceeded to Japan without paying them their wages :—

Held that, the agreement being for a peaceful commercial voyage, the men were justified in refusing to go to Japan at the risk of war capture and its consequences; and that they were entitled to wages until the final settlement, and to the cost of maintenance for the same period under the head of damages for wrongful discharge.

Decision of the C. A., [1907] 1 K. B. 670, affirmed, Lord Atkinson dissenting as to the amount recoverable. *PALACE SHIPPING CO. v. CAINE* - H. L. (E.) [1907] W. N. 195; [1907] A. C. 386

4. — *Contract of service for ordinary voyage—Carriage of contraband—Termination of voyage by capture—Right to wages—Damages—Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 158.*

A British seaman signed an agreement to serve on a British ship on an ordinary trading voyage to the East, and between ports in the East, to end at a final port of discharge in the United Kingdom. Whilst the ship was in the East war was declared between Russia and Japan, and the ship whilst carrying a cargo of contraband of war was captured by one of the belligerents and confiscated by a prize court. The master knew, but the crew did not know, that the ship was carrying contraband. The crew were sent back to London, and suffered hardships on the journey :—

Held, that, as the shipowners had broken the agreement by altering the character of the voyage, the service of the seamen was not terminated "by reason of the loss of the vessel" within the meaning of s. 158 of the Merchant Shipping Act, 1894, when the ship was captured, and that he was entitled to recover his wages up to the date of his arrival in London, and damages for breach of the agreement. *AUSTIN FRIARS STEAM SHIPPING CO. v. STRACK*

Div. Ct. [1905] 2 K. B. 315

— Costs—Criminal Prosecutions.

See under **CRIMINAL LAW—Costs.**

5. — *Medical attendance, Expenses of—Seaman injured in service of ship—Expenses after seaman's return to home port—Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 207, sub-s. 1.*

SHIPPING (Seamen)—continued.

A shipowner is not liable under the Merchant Shipping Act, 1894, s. 207, sub-s. 1, for expenses of necessary surgical and medical attendance upon a seaman injured in the service of the ship incurred after the seaman has been brought back to a port of the United Kingdom. *ANDERSON v. RAYNER* - C. A. [1903] W. N. 52; [1903] 1 K. B. 589

See under **SHIPPING—Wages.**

6. — *Offences—Foreign ship—Persuading seamen to desert from—Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 236, sub-s. 1.*

By s. 236, sub-s. 1, of the Merchant Shipping Act, 1894, "If a person by any means whatever persuades or attempts to persuade a seaman or apprentice . . . to desert from his ship" he shall be guilty of an offence.

Held, that this section applies only to British ships, and does not make it an offence to persuade a seaman to desert from a foreign ship lying in a port in this country. *POLL v. DABBE*

Div. Ct. [1901] W. N. 132; [1901] 2 K. B. 579

7. — *Offences—Ship—Fishing boat—Seamen—Desertion or absence without leave—Wilful disobedience—Desertion which is also wilful disobedience—Punishment—Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 376, sub-s. 1.*

A seaman may be convicted of the offence of wilfully disobeying a lawful command of the master, under s. 376, sub-s. 1 (d), of the Merchant Shipping Act, 1894, although the act of disobedience amounts to the offence of desertion or absence without leave under (a) or (b) of s. 376, sub-s. 1. *EDGILL v. J. & G. ALWARD, LD.*

Div. Ct. [1902] 2 K. B. 239

8. — *Repatriation of seamen—Payment by consul—Norwegian law.*

By the Norwegian Maritime Code, if a ship is "lost," the expenses of sending home the master and crew are defrayed by the State, and, therefore, as such expenses do not ultimately fall upon the owners of the ship which is lost, they are not recoverable by them from the owners of the wrong-doing ship which caused the loss. *THE "CRAFTSMAN"*

Bargrave Deane J. [1906] P. 153

— Seaman—Forfeiture of wages—Deduction by consent.

See **SHIPPING—Wages. 3.**

— "Seaman"—Hand assisting to navigate barge on river—Employers' liability.

See **MASTER AND SERVANT—Compensation. 164.**

— "Seaman"—Workmen's compensation.

See **MASTER AND SERVANT—Compensation. 140, 143, 154—164.**

9. — *Shipwreck—"Distressed seamen"—Expenses of maintenance and passage home—Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), ss. 190, 191, 193—Merchant Shipping (Mercantile Marine Fund) Act, 1898 (61 & 62 Vict. c. 44), s. 4.*

A seaman was shipwrecked abroad, and was there paid his wages up to the time of the shipwreck. The amount so paid was more than

SHIPPING (Seamen)—continued.

sufficient to maintain him and to provide him with a passage home. He was maintained and provided with a passage home by one of the authorities referred to in s. 191 of the Merchant Shipping Act, 1894. In an action by the Board of Trade to recover the expenses so incurred, an account of those expenses was produced and proof of payment thereof by the Board of Trade was given :—

Held, that the question whether a seaman discharged or left behind or shipwrecked from any British ship, or from any of His Majesty's ships, is in distress in any place abroad, is a question of fact, and the receipt by him of wages sufficient to maintain him and pay his passage home does not necessarily show that he was not a distressed seaman within s. 191 of the Act :

Held, also, without deciding whether the production of the account of the expenses and proof of payment thereof by or on behalf of the Board of Trade are, by s. 193, sub-s. 3, of the Act, made conclusive evidence that the expenses were incurred or repaid under the Act by or on behalf of the Crown, that the Board, in the absence of evidence that the seaman was not a distressed seaman within the Act, were entitled to recover.

Decision of Bigham J., [1903] 2 K. B. 324, in favour of the plaintiffs, affirmed. BOARD OF TRADE *v.* SAILING SHIP "GLENPARK," LD.

C. A. [1904] W. N. 72; [1904] 1 K. B. 682

— Voyage. Agreement for—End of voyage—Election by master.

See SHIPPING—Voyage. 1.

— Wages.

See under SHIPPING—Wages.

10. — *Wages—Termination of service—"Loss of ship"—Capture—Destruction—Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 158.*

A British seaman on Mar. 10, 1905, signed articles for service on a British ship for a three years' voyage in certain specified latitudes, including Japanese, Manchurian, and Siberian ports. At that date a state of war existed between Russia and Japan. On May 18, 1905, the ship while proceeding through the China Sea and approaching the Straits of Formosa was captured by a Russian cruiser, and was on June 2, 1905, destroyed by the Russians. Her crew, who had been previously taken on board another Russian ship, were subsequently sent back to London. There was no evidence of what the cargo of the British ship consisted, nor that her capture by the Russians was justified :—

Held, by Lord Alverstone C.J. and Ridley J., that the capture of the ship, coupled with the fact of her subsequent destruction, constituted a "loss" of the ship within s. 158 of the Merchant Shipping Act, 1894, whereby the seaman's service was terminated on June 2, 1905.

Held, by Darling J., that there was a "loss" of the ship at the date of her capture. SIVEWRIGHT *v.* ALLEN Div. Ct. [1906] W. N. 92; [1906] 2 K. B. 81

— Workmen's compensation—Seamen.

See under MASTER AND SERVANT—Compensation.

SHIPPING—continued.**Seaworthiness.**

— Seaworthiness.

See SHIPPING—Charterparty. 59, 60.

— Towing lights—"Under way"—Anchor light.

See SHIPPING—Collision. 4.

1. — *Unseaworthiness—Presumption—Evidence—Cause of vessel's loss unascertainable—Appeal from Mauritius.*

Where a vessel capsized and sank in less than twenty-four hours after leaving port without having encountered any storm or other known cause sufficient to account for the catastrophe, there is a presumption of unseaworthiness on which a jury may be directed to act in the absence of evidence. Where evidence is given, all the facts must be considered including the unexplained sinking, and unless it establishes unseaworthiness the defence founded on it must fail.

Anderson v. Morice, (1874) L. R. 10 C. P. 58, approved.

The defence in this case was overruled, since the real cause of the loss was not unascertainable on the evidence, though it appeared to be attributable to mistakes made in managing the vessel after she sailed rather than to her unseaworthiness when she sailed. AJUM GOOLAM HOSSEN & Co. *v.* UNION MARINE INSURANCE CO. HAJEE CASSIM JOOSUB *v.* AJUM GOOLAM HOSSEN & Co. P. C. [1901] A. C. 362

Shares.

Ship—Priorities—Registered owner holding as trustee—Negligence.

See TRUSTEE—Shares. 1.

Shipowners' Negligence (Remedies).

Shipowners' Negligence (Remedies) Act, 1905 (5 Edw. 7, c. 10), enlarges the remedies of person injured by the negligence of shipowners.

Ship's Agent.

— Salvage—Agreement—Position of ship's agent—Ratification.

See SHIPPING—Salvage. 1.

Short Cause Rules.

See under SHIPPING—Practice.

Stowaway.

— Liability of master of ship bringing—Undesirable alien.

See ALIEN. 1.

Tonnage.

1. — *"Deck cargo"—Coal carried on deck for use on voyage—"Timber, stores, or other goods"—Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 85.*

Coals carried in an uncovered space upon the deck of a ship, though intended for use in the ship's fires upon the voyage, come within the words "stores or other goods," and are carried "as deck cargo," within the meaning of s. 85 of the Merchant Shipping Act, 1894.

SHIPPING (Tonnage)—continued.

Dicta in Richmond Hill Steamship Co. v. Corporation of Trinity House, [1896] 2 Q. B. 134, not followed.

Judgment of Bray J., [1907] 1 K. B. 604. affirmed. CAIRN LINE OF STEAMSHIPS, LD. v. TRINITY HOUSE CORPORATION

C. A. [1908]
1 K. B. 528

Towage.

1. — *Action in personam—Practice—Specially indorsed writ—Judgment by default—R. S. C.*, 1883, *Order XIII.*, r. 3.

On Dec. 15, 1902, the Elliott Steam Tug Co. of London, entered into a contract with R. & W. Leyland & Co., of Liverpool, agents of the Societe de Navigation du Sud Ouest, of No. 8, Cours du Chapeau Rouge, Bordeaux, in the Republic of France, to tow the sailing ship *Madeleine* from Havre Roads to Antwerp, and, when loaded, down Channel to abreast of Falmouth for the sum of 150*l*.

On Jan. 16, 1903, the same tug co. entered into a similar contract with the same parties in respect of the sailing ship *Andre Theodore*.

The towage contracts were performed and accounts were duly rendered; but payment not being made, the Elliott Steam Tug Co., as plts., on Oct. 15, 1903, obtained the leave of Bucknill J. to serve notice out of the jurisdiction of a specially indorsed writ upon the defts., the Societe de Navigation—owners of the *Madeleine* and of the *Andre Theodore*—the time for appearance being limited to twelve days.

The notice was served on Oct. 19, and the time expired on Nov. 1.

Gorell Barnes J., in giving judgment for 300*l*. with costs, but without interest, said that the general rule applied in Admiralty as elsewhere, so that the plts. should have been allowed to obtain judgment without a hearing in Court. THE "*MADELEINE*" AND "*ANDRE THEODORE*"

Gorell Barnes J. [1904] W. N. 14

— Collision.

See under SHIPPING—Collision.

— Contract—Independent rights of master and crew of salving vessel.

See SHIPPING—Salvage. 30.

Voyage.

1. — *Voyage, Agreement for—End of voyage—Election by master—Merchant Shipping Act*, 1894 (57 & 58 Vict. c. 60), ss. 114, 115.

A fireman signed an agreement for a voyage, not exceeding one year, from Cardiff to any ports within certain limits, and to end at such port as might be required by the master. The ship left Cardiff, loaded a cargo in the Black Sea, and went to Southampton, where she discharged the whole of her cargo. The fireman then claimed his discharge and his wages. The master required him to go on to Cardiff:—

Held that, upon the true construction of the agreement, the voyage was the voyage of the ship, not of the cargo; that as a matter of fact the voyage did not end at Southampton, and that the fireman was bound to go on to Cardiff.

Decision of the C. A., *The Scarsdale* [1906] W. N. 24; [1906] P. 103, affirmed. BOARD OF TRADE v. BAXTER. THE "*SCARSDALE*."

H. L. (E.) [1907] A. C. 373

SHIPPING (Voyage)—continued.

2. — *Ship—Agreement for voyage—End of voyage.*

The respondent signed articles to serve as a seaman on board the steamer *Sarstoon*, of which the appellant was master, "for a voyage of not exceeding two years' duration . . . to end at such port in the United Kingdom or Continent of Europe (within home trade limits) as may be required by the master." The *Sarstoon* sailed on Jan. 9, 1910, with a cargo to the West Indies and returned with a general cargo to Havre, where part of the cargo was discharged, thence to London, where a further part of the cargo was discharged, and then to Rotterdam, where the remainder of the cargo was discharged. She then went to the Tyne, where she arrived on April 3, 1910. On her arrival there the respondent applied to be paid off, but the appellant refused on the ground that the voyage was not terminated, and required the respondent to go on with the ship to Glasgow. At the time of the ship's arrival in the Tyne she had on board between 100 and 200 tons of bunker coal, which amount was sufficient to have taken her to Glasgow. She then took on board 1,300 tons more of bunker coal. The respondent on April 5 took out a summons under s. 164 of the Merchant Shipping Act, 1894, claiming that he was entitled to his discharge, and that the sum of 8*l*. 8*s*. 6*d*. was due to him for wages.

The justices were of opinion, as a matter of law, that the voyage had under the circumstances terminated in the Tyne, and held that the respondent was entitled to his discharge and to be paid the wages due to him:—

Held that, although under such articles as those signed by the respondent, the voyage may come to an end without any express election by the master, and although, if the voyage has in fact so come to an end, the master cannot prolong its continuance by requiring the seaman to go on to a further port, the mere facts that the ship has discharged her cargo, that she has arrived in a home port, and that she has there taken on board coal required for a future voyage, do not conclusively shew that the stipulated voyage has so terminated. Appeal allowed. HAYLETT v. THOMPSON

Div. Ct. [1910] W. N. 227

Wages.

1. — *Foreign ship—Disbursements—Wages—Mortgage—Lex loci—Lex fori—"Privileged debt"—Maritime lien—Merchant Shipping Act*, 1894 (57 & 58 Vict. c. 60), s. 167.

In proceedings in rem by the foreign master of an Argentine vessel in an English port, the claim of the master consisted of—(1.) wages as supercargo, and afterwards as master; (2.) disbursements whilst acting as supercargo, and afterwards as master. On the question of priority as against a mortgagee intervening:—

Held, by Phillimore J., that, though by the *lex loci* the master could only claim his wages and disbursements for the last voyage as a "privileged debt" in priority to the mortgagee, the question was one of remedy, and therefore the *lex fori* applied, under which, by reason of the maritime lien conferred by s. 167 of the Merchant Shipping Act, 1894 (57 & 58 Vict.

SHIPPING (Wages)—continued.

c. 60), he could claim, in priority, the whole of his wages and disbursements whilst master. He was also entitled to add thereto his wages as a seaman whilst acting as supercargo, and such disbursements as he had then made by way of advances to the crew on account of their wages.

The Milford, (1858) Sw. 362, discussed. **THE "TAGUS" Phillimore J. [1903] P. 44**

2. — Foreign ship — Wages — Victualling allowance—Repairs—Maritime lien—Possessory lien—Priority—Necessaries.

Seamen on board an Italian vessel were engaged to serve at 40 lire per man per month with a further sum of 40 lire per month in lieu of victualling. They remained by the vessel after she was taken into a shipwright's dry dock for extensive repairs, and, whilst there, the master, on behalf of himself and the crew, arrested the vessel in an action for wages and disbursements. The vessel was sold by order of the Court, and the crew sent back to their country; but the proceeds proved insufficient to meet the claim of the master and crew for wages, etc., and the claim of the shipwright for repairs. On the question of priority:—

Held, by Phillimore J., that the victualling allowance was equivalent to wages, carrying a maritime lien, and, therefore, the total claim of the master and crew for wages and disbursements up to the date of the vessel entering the dry dock, together with the cost of subsistence from the time of leaving the vessel until leaving the country, and the cost of repatriation ranked first, with costs, including in such costs such sum as the registrar should allow by way of subsistence money from the date of the writ to the time of leaving the vessel; then—following *The Gustaf*, (1862) Lush, 506, and *The Immacolata Concezione*, (1883) 9 P. D. 37—the common law possessory lien of the shipwright, based on his control over the vessel, displaced the maritime lien of the master and crew from the time of entry into the dry dock, and gave the shipwright priority in respect of his claim and costs, although the master and crew remained on board, and though the repairs ordered had not been completed. **THE "TERGESTE" Phillimore J. [1903] P. 26**

3. — Forfeiture of wages—Desertion—Deduction by consent—Payment through or in presence of superintendent—Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), ss. 131, 221, 232.

A seaman deserted from a ship at a foreign port, thereby committing an offence under s. 221 of the Merchant Shipping Act, 1894, which rendered him liable to forfeit his wages then due and subsequently earned, and to satisfy any excess of wages paid by the owners to a substitute at a higher rate. The seaman returned to the United Kingdom in another ship of which the appellant was master. In order to escape a prosecution for desertion by the owners of the first ship, the seaman agreed to have deducted from the wages earned on the homeward voyage the extra expense which had been incurred by them in providing a substitute after his desertion. The superintendent of mercantile marine before whom the seaman was being discharged refused to be present at the payment of the wages on

SHIPPING (Wages)—continued.

the ground that the deduction was illegally made. The balance due to the seaman after making the deduction was paid to him by the appellant in the absence of the superintendent. The appellant was summoned under s. 131 of the Merchant Shipping Act, 1894, for having paid the wages otherwise than "through or in the presence of the superintendent," and was convicted:—

Held, that the conviction was right; that there is no power to make a deduction from a seaman's wages on the ground of forfeiture after desertion, although with the consent of a seaman, except under an order of a Court of competent jurisdiction. **KESLAKE v. BOARD OF TRADE Div. Ct. [1903] 2 K. B. 453**

4. — Master's "wages" — Extra wages — Emoluments — Disbursements — Liabilities — Maritime lien — Costs of defending action on bill of exchange — Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), ss. 167, 742.

The costs incurred by a master in unsuccessfully defending an action on a dishonoured bill of exchange drawn by him on his owners for the price of coal supplied to the ship will not be deemed "liabilities properly incurred by him (as master) on account of the ship" within the meaning of s. 167 of the Merchant Shipping Act, 1894, unless the defence was reasonably necessary in the interests of the ship.

The term "wages" in s. 167 will include a bonus of 50*l.* promised to a master by his owners during a voyage, in addition to his agreed wages, on condition that he remained with the vessel, and satisfied his owners that he had done all in his power to promote the interests of the ship. **THE "ELMVILLE" (No. 2)**

Jeune, Pres. [1900] P. 422

— Seaman—Wages, Right to—Termination of voyage by capture.

See SHIPPING—Seamen. 4.

— Seamen—Refusal to proceed to belligerent port—Right to wages.

See SHIPPING—Seamen. 3.

— Seamen—Wages—"Loss of ship"—Capture.

See SHIPPING—Seamen. 10.

— Ship—Seaman—Contract of service—Contraband of war—Refusal to proceed—Offence against discipline.

See SHIPPING—Seamen. 2.

Wharfinger.

— Limits of liability of wharfinger—Carriage of goods by lighter from ship to warehouse.

See WHARFINGER.

Wireless Telegraphy.

Wireless Telegraphy Act, 1904 (4 Edw. 7, c. 24), provides for the regulation of wireless telegraphy.

Workmen's Compensation.

See under MASTER AND SERVANT—Compensation.

SHIPPING—*continued.***Wreck.**

- Collision—Removal of wreck—Liability for expenses—Abandonment—Thames Conservancy—Costs.
See SHIPPING—Collision. 92.
- Collision—Thames Conservancy, Wreck raised by—Expenses of raising.
See SHIPPING—Collision. 91.
- Insurance, Marine—Value of wreck—Constructive total loss.
See INSURANCE (MARINE). 35.

SHIPWRECK—"Distressed seamen"—Expenses of maintenance and passage home.
See SHIPPING—Seamen. 9.

- Salvage.
See under SHIPPING—Salvage. 9.

SHIPWRIGHT — Workmen's compensation — Employment "in or about factory" — Ship in dock.
See MASTER AND SERVANT—Compensation. 166.

SHOE—Leases of machines for shoe manufacture — Restrictive condition as to user—Restraint of trade.
See CANADA—Leases. 3.

SHOOTING—At dog—Malicious injury to property.
See CRIMINAL LAW — Malicious Damage. 1.

- Tidal and navigable river—Right of public to shoot wild fowl—Custom—Birds of warren.
See FORESHORE. 2.

SHOOTING RIGHTS—Game.
See under GAME.

SHOP.

Shop Clubs Act, 1902 (2 Edw. 7, c. 21), prohibits compulsory membership of unregistered shop clubs or thrift funds, and regulates such as are duly registered.

Shop Hours Act, 1904 (4 Edw. 7, c. 31), provides for early closing of shops.

Shops Regulations—Closing orders. Rules dated Feb. 13, 1905, made by Secretary of State for the Home Department, under s. 7 of the Shop Hours Act, 1904. St. R. & O. 1905, No. 96.

Shops Regulation. Closing Orders. Regulation, June 3, 1908, under s. 7 of the Shop Hours Act, 1904. St. R. & O. 1908, No. 451. Price 1d.

- By-law—Ultra vires—Power of magistrates to close shops at 10 P.M.
See SCOTTISH LAW. 23.

- Clubs—Shop Clubs—Friendly Societies.
See under FRIENDLY SOCIETY.

- Covenant by landlord "not to let" adjoining premises for a similar business—Injunction.
See LANDLORD AND TENANT. 47.

SHOP—*continued.*

persons—Shop Hours Act, 1892 (55 & 56 Vict. c. 62), ss. 4, 9.

By the Shop Hours Act, 1892, s. 4, "In every shop in which a young person is employed a notice shall be kept exhibited by the employer in a conspicuous place referring to the provisions of this Act and stating the number of hours in the week during which a young person may lawfully be employed in that shop." By s. 9, "In this Act, unless the context otherwise requires, 'shop' means retail and wholesale shops, markets, stalls, and warehouses in which assistants are employed for hire. . . ."

A firm of newsagents employed a boy at their bookstall at a ry. station, upon which stall the notice required by s. 4 was duly exhibited. For a portion of the morning the boy was employed in delivering newspapers in a village about two miles distant, and in selling newspapers on the platform of the village station from a temporary structure put up each morning by himself and consisting of a board lying on trestles; upon this structure no notice under s. 4 was exhibited:—

Held, that the board and trestles were not a shop within the meaning of s. 4 of the Act, and that the employment of the boy was at the bookstall of the principal station, where a notice was exhibited:—

Semble, that a stall composed of a board and trestles would be a shop within the meaning of s. 3 of the Act, which limits the hours of employment of young persons in or about shops. *W. H. SMITH & SON v. KYLE Div. Ct. [1902] 1 K. B. 286*

- Unlawful gaming — Containing automatic machine.
See GAMING. 19.

SHORT CAUSE—Practice.

See under PRACTICE—Short cause.

SHORTHAND NOTES — Costs — Transcript — Taxing Master—Discretion.
See COSTS. 63.

- Shorthand notes of proceedings—Criminal law — Leave to appeal.
See CRIMINAL LAW—Appeal. 29.

- Supplying judge's notes on appeal.
See APPEAL. 8.

- Transcript of—Costs.
See COSTS. 64.

SHORTHAND WRITERS—*Criminal Appeal Act, 1907 (7 Edw. 7, c. 23)—Shorthand writers appointed under, will continue to act until further order. Dated April 19, 1909. W. N. 1909 (April 24), p. 141.*

- Appointment of, as commissioner—Commission to examine witnesses.
See DIVORCE—Practice. 17.

SHORT TITLES—*Short Titles Act, 1896 (59 & 60 Vict. c. 14), facilitates the citation of sundry Acts of Parliament.*

SIAM—*Foreign Jurisdiction.*

See under FOREIGN JURISDICTION.

- 1. — Temporary newspaper stall at railway station—Notice of hours of employment of young

SIDINGS—Railway company.

See under RAILWAY—**Sidings**.

SIERRA LEONE—*Money had and received—Interest not recoverable—Costs in action to which the Crown is a party—Practice.*

Although interest is recoverable both at law and in equity on money obtained by fraud and retained by fraud, yet in a case where the Crown as plt. intentionally put aside all question of fraud and accepted as repayment as money paid by mistake, no evidence being offered in the civil suit of fraudulent pretences which had been proved against the deft. in a Criminal Court:—

Held, that interest was not recoverable; and that the order appealed from, granting interest on the ground of special damage, must be reversed without costs.

In future the Bd. will adhere to the practice of the House of Lords, and the rule as to costs in cases between the Crown and a subject will be that the Crown neither pays nor receives costs unless the case is governed by some local statute, or there are exceptional circumstances justifying a departure from the ordinary rule.
JOHNSON v. REX **P. C. [1904] A. C. 817**

SIGNAL-BOX — Poor-rate — Assessment — Indirectly productive portion of railway.
See **RATES**.

SIGNATURE—Necessity for signature by two justices—Nuisance in respect of drains—Order to abate.
See **NUISANCE**. 9.

— Promissory note—Company—Signature by managing director—Personal liability.
See **COMPANY—Promissory Note**. 1.

— Promissory note—Signature in blank—Fraudulent negotiation of note by agent—Right of bona fide indorsee for value—Negotiable instrument.
See **PROMISSORY NOTE**. 2.

— Shipbroker — Charterparty — Signature as agent—Right to sue as principal.
See **PRINCIPAL AND AGENT**. 12.

SIGNIFICATION — Transfer of debt — Appeal from Quebec.
See **CANADA—Debts**. 1.

SINGAPORE SETTLEMENT OF.

See under STRAITS SETTLEMENTS.

SINGAPORE HARBOUR—Collision—Inevitable accident—Onus of proof—Compulsory pilotage.
See **SHIPPING—Collision**. 59.

SINKING FUND—Application of profits to—Income tax—Burgh waterworks.
See **REVENUE—Income Tax**. 42.

SITE —Charitable trust—Trustees—Decision of majority binding minority—Will—Construction.
See **CHARITY**. 47.

SKYLIGHT — Ancient lights — Enjoyment by "consent or agreement" — "Windows overlooking" — Prescription.
See **LIGHT AND AIR**. 17.

SLAG—Sale of goods—Interest in land—Slag to be severed and removed by purchaser—Breach of contract—Defect in title—Damages.
See **VENDOR AND PURCHASER—Sale of Goods**. 1.

SLANDER.

See under DEFAMATION—**Slander**.

SLAUGHTER-HOUSE — Licence — Condition — Limitation of time — Less than twelve months — Invalidity—Public Health Acts Amendment Act, 1890 (53 & 54 Vict. c. 59), s. 29.

Bys. 29 of the Public Health Acts Amendment Act, 1890, licences for the use of places as slaughter-houses shall be in force for such time, not being less than twelve months, as the urban authority shall think fit to specify in such licences.

An urban authority granted to the appellant a licence, dated Aug. 22, 1906, by which certain premises were licensed to be used as a slaughter-house "until Dec. 31, 1906." Before Dec. 31, 1906, the appellant applied for, but was refused, the renewal of the licence. The appellant was subsequently convicted for having used the premises as a slaughter-house on Feb. 4, 1907, without having a licence in force:—

Held, that the conviction was wrong, for, there being no power to impose a condition limiting the duration of the licence to less than twelve months, the licence must be read as extending to Aug. 22, 1907. **TAYLOR v. WINSFORD URBAN DISTRICT COUNCIL.**

Div. Ct. [1907] W. N. 162; [1907] 2 K. B. 396

2. — Licence — Local Government — Towns Improvement Clauses Act, 1847 (10 & 11 Vict. c. 34), s. 126.

A licence for the use and occupation of a place as a slaughter-house granted under s. 126 of the Towns Police Clauses Act, 1847, is a personal licence, and expires at the death of the licensee, and does not enure for the benefit of subsequent occupiers of the place. **GOODWIN v. SALE**

Div. Ct. [1907] W. N. 106; [1907] 2 K. B. 278

SMALL BANKRUPTCY—Costs—Taxation.

See **BANKRUPTCY—Costs**. 10.

SMALL HOLDINGS AND ALLOTMENTS —

Small Holdings and Allotments Act, 1907 (7 Edw. 7, c. 54), is an Act to amend the law with respect to Small Holdings and Allotments.

Small Holdings and Allotments Act, 1908 (8 Edw. 7 c. 36), consolidates the enactments with respect to Small Holdings and Allotments in England and Wales.

Allotments, England, Order, Mar. 20, 1908, under s. 20, sub-s. 3, of Small Holdings and Allotments Act, 1907, fixing Appointed Day for Transfer of Property and Liabilities under the Allotments Acts. St. R. & O., 1908, No. 251. Price 1d.

SMALL HOLDINGS AND ALLOTMENTS—contd.

Allotments, England. The Small Holdings and Allotments (Compulsory Hiring) Regulations, Mar. 24, 1908. St. R. & O. 1908, No. 309. Price 1d.

Allotments, England. The Small Holdings and Allotments (Compulsory Purchase) Regulations, Mar. 24, 1908. St. R. & O. 1908, No. 310. Price 1d.

The Small Holdings and Allotments (Compulsory Purchase) Regulations, 1908 (No. 2). Dated Dec. 7, 1908. St. R. & O. 1908, No. 1178.

Small Holdings and Allotments—Small Holdings and Allotments (Costs) Rules, 1910, dated Mar. 5, 1910, made by the Board of Agriculture and Fisheries, with the concurrence of the Lord Chancellor, pursuant to paragraph (6.) of Part I. of the First Schedule to the Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36). Reprint from W. N. 1910 (April 2), p. 101. See CURRENT INDEX, 1910, p. cxix.

Small Holdings Act, 1910 (10 Edw. 7 & 1 Geo. 5, c. 34), is an Act to provide compensation to tenants on whom notice to quit is served with a view to the use of the land for the provision of small holdings under the Small Holdings and Allotments Act, 1908.

SMALLPOX HOSPITAL—Quia timet action—Evidence—Admissibility.
See NUISANCE. 10.

SMOKE—Black smoke—Evidence.
See NUISANCE. 3.

— Chimney of private dwelling house—Club.
See NUISANCE. 2.

— Chimney sending forth black smoke—Funnel of steam tug—London.
See NUISANCE. 5.

— Railway—Engines—Consumption of smoke "as far as practicable."
See RAILWAY—Engines. 1.

SNOW—Collision—In or approaching falling snow—Sound signal—Speed.
See SHIPPING—Collision. 61.

— Shipping—Collision—In or approaching falling snow—Sound signals—Speed.
See SHIPPING—Collision. 61.

— Street railway—Conditional power to remove snow from railed tracks—Implied obligation to remove snow from the streets.
See NEWFOUNDLAND. 3.

— Tramway—Removal of snow.
See TRAMWAYS. 5.

SOCIETY OF FRIENDS—Charitable trust.
See CHARITY. 19.

SOLDIERS.

See under ARMY AND NAVY.

SOLDIER'S WILL.

See under PROBATE—Soldier's Will.

SOLENT—Collision in the Solent—Narrow Channel—Compulsory pilotage.
See SHIPPING—Collision. 62.

SOLICITING—Sale of business—Soliciting old customers.
See GOODWILL. 1.

SOLICITOR.

R. S. C., Order LII., rr. 25, 26—New Rules. Reprint from W. N. 1901 (July 13), p. 235. See CURRENT INDEX, 1901, p. cii.

Solicitors Act, 1877—Order under ss. 10 and 13 of the Solicitors Act, 1877. W. N. 1905 (Mar. 18), p. 81. See CURRENT INDEX, 1905, p. xciv.

Solicitors Act, 1906 (6 Edw. 7, c. 21), is an Act to amend the Solicitors Acts.

Accounts, col. 2576.

Advice, col. 2577.

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Misconduct, col. 2608.

Overseer, col. 2608.

Partnership, col. 2608.

Practice, col. 2609.

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Striking off Roll, col. 2610.

Trustee, col. 2610.

Undertakings, col. 2610.

Unqualified Person, col. 2611.

Accounts.

1. — *Solicitor-mortgagee—Settled accounts—Overcharges—Opening settled accounts—Solicitor and client—Limitation Act, 1623 (21 Jac. 1, c. 16), s. 3.*

K. was a builder, and from 1883 to 1904 employed C. as his solicitor, who financed him in numerous transactions. No bills of costs were delivered, but from time to time accounts were stated between them, and the amount due for loans, interest and costs were agreed, and C. took mortgages for the agreed amounts. By 1904 all the mortgages, except two, had been paid off, either by sales or by K. paying off and taking

SOLICITOR (Accounts)—continued.

reconveyances of the mortgages, and on each occasion the amount due was agreed. In 1905 C. died, and in 1906 his executors brought an action against K. to enforce the two subsisting mortgages. K. counter-claimed for an account of all the transactions and dealings between himself and C. from 1883, alleging (as the fact was) that he had had no independent advice, and in some of the settled accounts he proved errors in respect of interest, and that he had been charged profit costs prior to the Mortgagees' Legal Costs Act, 1895 (58 & 59 Vict. c. 25):—

Held, that K. was entitled to open all the accounts and to tax, surcharge and falsify, and that his right was not barred by the Statute of Limitations, although all the settled accounts but one had been agreed more than six years before the date of his counter-claim. **CHEESE v. KEEN** - **Neville J. [1907] W. N. 257; [1908] 1 Ch. 245**

Advice.

— Erroneous advice of solicitor—Breach of trust—Trustees not entitled to be excused. *See* **VICTORIA**. 11.

Affidavits.

— Affidavit by solicitor—Information and belief—Foreign litigant. *See* **PRACTICE—Writ**. 2.

Agency.

— Scope of country agent's authority—Consent order—Lay client bound—Compromise—Solicitor and client—Writ issued in district registry—Country agent, solicitor on record for London principal. *See* **SOLICITOR—Compromise**. 2.

Bankruptcy.

— Solicitor and client—Cash accounts—Draft bills of costs—Proof by solicitor—Trustee in bankruptcy. *See* **BANKRUPTCY—Trustee**. 6.

Certificate.

1. — *Annual certificate—Registrar of solicitors—Duty of registrar—Discretion—Practice—Solicitors Act, 1843 (6 & 7 Vict. c. 73), ss. 23, 24.*

Under s. 23 of the Solicitors Act, 1843, the registrar of solicitors has no discretion to refuse the certificate therein mentioned to an applicant who has complied with the requirements of the section, except in a case where he has reason to believe that the applicant for the certificate is not on the rolls; and the discretion of a judge on application to him under s. 24 of the Act by way of appeal from the refusal of a certificate by the registrar is similarly limited.

Observations in *Re An Application under the Solicitors Act, 1843*, (1899) 80 L. T. 720, disapproved of. *In re A SOLICITOR*

C. A. [1901] W. N. 234; [1902] 1 K. B. 128

Charging Orders.

— Charging order for costs on property "recovered or preserved"—Application ex parte. *See* **SHIPPING—Charging Orders**. 1.

SOLICITOR (Charging Orders)—continued.

— Trustees, Action against—Property "preserved"—Trustees' costs—Priority. *See* **SOLICITOR—Costs**. 9.

Colonial Solicitors.

Australia. O. in C. applying the Colonial Solicitors Act, 1900, to Australia—South Australia. St. R. & O. 1903, No. 677.

Barbados (Island of). St. R. & O. 1902, No. 356.

Cape of Good Hope. O. in C., Mar., 26, 1907, applying the Colonial Solicitors Act, 1900, to the Colony of the Cape of Good Hope. St. R. & O. 1907, No. 264.

Jamaica. St. R. & O. 1904, No. 970.

New South Wales. Reprint from W. N. 1901 (Nov. 2), p. 325. See CURRENT INDEX, 1901, p. xcvi.

New Zealand. St. R. & O. 1904, Nos. 320, 662.

Tasmania. St. R. & O. 1903, No. 218.

Transvaal. O. in C., Mar. 1, 1907, applying the Colonial Solicitors Act, 1900, to the Colony of the Transvaal. St. R. & O. 1907, No. 163. Price 1d. each.

Compromise.

1. — *Authority of solicitor to compromise action—Apparent assent but misunderstanding in fact on part of client as to terms of compromise—Practice.*

If a client by his conduct induces his solicitor to believe that he is authorized to make a certain compromise in an action which the solicitor is conducting on behalf of the client, and the solicitor, reasonably relying on that conduct and believing that he has the authority of the client, makes the compromise, the client is bound whether he intended to give that authority or not, and whether he in fact understood or did not understand the terms of the compromise.

Before a county court action was tried a settlement was arrived at between the solicitors for the respective parties, and a memorandum embodying its terms was signed by the solicitors. This memorandum was not read by the deft., but it was read over to her by her solicitor or his son, and she seemed to assent to its terms. The action was thereupon, by consent of the county court judge and the solicitors on both sides, struck out. Although the deft. seemed to assent to the terms of the compromise, she did not in fact understand them and did not mean to assent to them. Subsequently an agreement in writing, signed by the solicitors for both parties, containing the terms of the memorandum, was sent to the deft., who repudiated it upon the ground that the terms of the compromise which she authorized her solicitor to effect were not contained either in the memorandum or in the written agreement:—

Held, that the deft. was bound by the compromise made by her solicitor, and was liable in damages for the breach of it. **LITTLE v. SPREADBURY**

C. A. [1910] 2 K. B. 658

SOLICITOR (Compromise)—continued.

— Infants—Compromise—Judgment—Form of order.

See **SOLICITOR—Costs**. 18.

2. — *Solicitor and client—Writ issued in district registry—Country agent solicitor on record for London principal—Scope of country agent's authority—London agent's authority—Compromise—Lay client bound—R. S. C., 1883, Order IV., rr., 1, 3; Order XII., r. 10.*

The solicitor on the record—whether in London as agent for a country solicitor or in a district registry as agent for a London solicitor—has a general authority to compromise an action on behalf of his client, provided he acts bona fide and reasonably, and not in defiance of his direct and positive instructions; and in either case the lay client will be bound although there is no privity between him and the agent on the record.

The principle of *Prestwich v. Poley*, (1865) 18 C. B. (N.S.) 806; and the dicta in *Withers v. Parker*, (1859) 28 L. J. (Ex.) 292; on appeal, (1860) 29 L. J. (Ex.) 320—that there is no distinction between the act of the London agent and the act of the country solicitor—approved and applied.

Trustees issued an originating summons in the Liverpool District Registry for directions in certain matters relating to the trust estate. An appearance was entered in the district registry by Liverpool solicitors as agents for London solicitors, who were the principal solicitors of the defts., the beneficiaries under the trust. The defts. objected to the application as unnecessary, and on their behalf a summons was taken out to transfer the proceedings to London. Prior to the hearing of the two summonses the London solicitors wrote their Liverpool agents, "Failing an order dismissing the plts.' application with costs, and giving costs on our application, you will please adjourn the matter to the judge." When the two summonses were heard by the registrar, the Liverpool agents, after some discussion, agreed that no order should be made except that the costs of all parties should be paid out of the estate. On motion by the defts. to discharge this order:—

Held, on the evidence, that it was a consent order; that the letter did not prohibit a compromise; and that the defts. were bound by the act of the Liverpool agents. *In re NEWEN. CARRUTHERS v. NEWEN*

Farwell J. [1903] W. N. 52; [1903] 1 Ch. 812

— Will — Beneficiaries — Agreement — Family solicitor—Common agent—Mistake of law or fact—Setting aside compromise. See **COMPROMISE**. 4.

Contract of Service.

1. — *Agreement of service—Restrictive condition—Reasonableness—Consideration—“Carrying on profession of a solicitor”—Construction—Interlocutory injunction.*

Motion by a firm of solicitors, carrying on business in London and Brentford, asking for an interlocutory injunction to restrain an alleged breach of an agreement of service

SOLICITOR (Contract of Service)—continued.
entered into with the deft., who was a solicitor with an office in London.

By a letter of April 4, 1902, the plts. engaged the deft. as their conveyancing clerk, and to do county court work at Brentford at a salary of 140*l.* a year.

On April 16, 1902, the deft. signed an agreement of service with the plts., in which, in consideration of their agreeing to employ him in their business of solicitors as conveyancing clerk and representative advocate at Brentford, at a salary of 140*l.* a year, he undertook that he would not at any time during his employment, or after the determination thereof, "carry on, within a radius of five miles of the town hall, Brentford, the profession of a solicitor." In Mar., 1909, the plts. determined the engagement of the deft., giving him three months' salary. On Oct. 25, 1910, the deft. wrote a letter from his London office, on behalf of a client of his living at Brentford (and a former client of the plts.), to another gentleman residing within the prohibited area, claiming payment from him of a debt due to his client. Further letters followed. The plts. now moved to restrain the deft. from carrying on the profession of a solicitor within the prescribed area, in breach of his undertaking in the agreement of service.

Eve J. said that it was argued that the terms of the service having been settled before the date of the agreement of April 16, 1902, and the deft. being in no better position after it was signed than before, there was no adequate consideration. But he felt bound to infer that if the deft. had declined to enter into the agreement, the plts. would have terminated his engagement at the earliest date, and therefore he must hold that there was sufficient consideration to support the contract. With regard to the defence that the restriction was too wide inasmuch as the deft. had been engaged for specific duties only, he was of opinion that it was not, and the plts. were entitled to protect themselves against their clients generally being taken from them. Lastly, with regard to the question of whether there had been any breach of the agreement not to "carry on" the profession of a solicitor, the expression "carry on" was of an elastic character, as was pointed out by Knight Bruce L.J. in the case of *Turner v. Evans*, (1852) 2 De G. M. & G. 740, 745. In his Lordship's view what the deft. had in fact done was a carrying on of the work of his profession within the prohibited area. There had, therefore, been prima facie a breach of the restrictive undertaking; and in order to protect the plts. he must grant an interlocutory injunction following the words of the undertaking, **WOODBIDGE & SONS v. BELLAMY - Eve J. [1910] W. N. 269**

Costs.

See also under **COSTS**.

— Administration actions.

See under **ADMINISTRATION**.

1. — *Agreement as to Costs—Solicitor and Client—Attorneys and Solicitors Act, 1870 (33 & 34 Vict. c. 28), s. 4.*

An agreement by a solicitor with a client to

SOLICITOR (Costs)—*continued*.

charge him nothing for costs if he won his action, and, if he lost it, to charge only the same amount for costs as he would have recovered from the opposite party had the action been successful, is not an agreement which is required by s. 4 of the Attorneys and Solicitors Act, 1870, to be in writing.

Jennings v. Johnson (1873) L. R. 8 C. P. 425, approved.

Decision of Div. Ct. [1906] 2 K. B. 592, reversed. *CLARE v. JOSEPH*

C. A. [1907] W. N. 116; [1907] 2 K. B. 369

Note.

Followed by C. A., *Gundry v. Sainsbury*, [1910] 1 K. B. 645. See No. 40, below.

2. — Agreement in writing—Bill of costs—Taxation—Contentious matters—Signature—Enforcement—Attorneys and Solicitors Act, 1870 (33 & 34 Vict. c. 28), s. 4.

Adjourned summons in an action of *Bake v. French*, reported on other points, [1907] 1 Ch. 428.

The plt., a solicitor, claimed in an account which was being taken before the Master a sum of 635*l.*, alleged to be due under a memorandum signed by the defts., in which they agreed the balance due to the plt. for his costs of contentious business previously done by him on their behalf. This memorandum was referred to in a letter signed by the plt.'s firm and written by them to the defts.:—

Held, on the facts, that there was an agreement in writing signed by both parties; that even if that were not so there was an agreement signed by the defts., and that was a sufficient agreement in writing within s. 4 of the Attorneys and Solicitors Act, 1870; and that the agreement must be referred to the taxing Master for examination.

Pontifex v. Farnham, (1893) 41 W. R. 238, doubted. *BAKE v. FRENCH* (No. 2)

Warrington J. [1907] W. N. 144 :

[1907] 2 Ch. 215

— Amended bill, Delivery of—Action for work done—Verdict for plaintiff—Reference to ascertain amount due.

See No. 14 below.

— Appeal—Order whether final or interlocutory.

See APPEAL. 10.

— Appearance by defendant in person—Subsequent employment of solicitor—Irrregularity—Costs—Taxation—Practice.

See COSTS. 11.

— Bankruptcy—Solicitor and client—Cash accounts—Draft bills of costs—Contentious business—Delivery of detailed bills waived—Stated and agreed account—Mortgage to secure agreed balance—Proof by solicitor—Trustee's right to go behind mortgage and stated account.

See BANKRUPTCY—Trustee. 6.

— Bankruptcy—Taxation—Trustee's solicitor's bill of costs—Notice of taxation not given to new trustee.

See BANKRUPTCY—Costs. 11.

SOLICITOR (Costs)—*continued*.

3. — Bill of costs—Cross-claim by client—Account stated not in writing.

Where, a solicitor having a claim against his client for costs, and the client having a cross-claim against the solicitor, the parties agree upon the amounts of their respective claims and state an account shewing a balance in the solicitor's favour, an action may be maintained by the solicitor for the balance, notwithstanding that he had delivered no detailed bill, and that the agreement for the settlement of the cross-claims was not in writing. *TURNER v. WILLIS*

Div. Ct. [1905] 1 K. B. 468

— Bill of costs—Part payment—Recovery of moneys due to client—Retainer on account with assent of client.

See LIMITATIONS, STATUTE OF. 19.

4. — Bill of costs—Petition by wife for judicial separation—Bill for extra costs only—Bill for party and party costs previously delivered to husband—Insufficiency of bill—Solicitors Act, 1843 (6 & 7 Vict. c. 73), s. 37.

The plts. had acted as solicitors for the deft.'s wife on a petition by her in the High Court for a judicial separation. The petition was dismissed, but the deft. was ordered to pay the costs as between party and party, and accordingly the plts. delivered to him a bill of party and party costs. That bill having been taxed, the deft. paid to the plts. the amount allowed upon the taxation. The plts. then delivered to the deft. a bill in respect of the extra costs of the proceedings on the petition as between solicitor and client, which bill did not contain the items allowed in respect of party and party costs. This bill not being paid, the plts. sued the defts. for the amount of it as for necessities supplied to the wife:—

Held (reversing the judgment of Pickford J. [1908] 1 K. B. 590), that the bill was not a sufficient bill within the meaning of the Solicitors Act, 1843, s. 37, and therefore the action was not maintainable.

Quare, whether in a case where the wife's petition had failed such an action could be maintainable. *COBBETT v. WOOD*.

C. A. [1908] W. N. 128 :

[1908] 2 K. B. 420

5. — Bill of costs—Taxation—Application by client to tax within one month after delivery of bill—Common order to tax—Submission to pay—Items barred by Statute of Limitations—Solicitors Act, 1843 (6 & 7 Vict. c. 73), s. 37.

On an application within one month of delivery of a bill of costs the client has an absolute right to have the bill taxed without any money being brought into Court and without any submission to pay. After the expiration of one month there is no such absolute right, but a submission to pay is not in any case a necessary part of a common order to tax. If a submission is inserted, it should be a submission to pay not what is due, but what is payable having regard (*inter alia*) to the defence of the Statute of Limitations, and questions arising under that Act should be dealt with by the taxing Master.

In any case in which the client seeks an order for delivery of papers the order should

SOLICITOR (Costs)—continued.

direct taxation also of the statute-barred items, so as to ascertain the amount for which the solicitor has a lien upon the papers.

Common form of order altered accordingly.

Decision of Warrington J., [1909] W. N. 17; [1909] 1 Ch. 354, reversed. *In re BROCKMAN C. A.* [1909] W. N. 127; [1909] 2 Ch. 170

6. — *Cestui que trust—Taxation at instance of—Bill paid by trustees more than twelve months previously—Practice—Solicitors Act, 1843, (6 & 7 Vict. c. 73), ss. 37—41.*

By virtue of the proviso in s. 14 of the Solicitors Act, 1843, taxation, upon the application of a cestui que trust of a bill of costs paid by his trustees, will not be ordered under s. 39 where the application is not made within twelve calendar months after payment; regard being had to what must now be treated as the settled practice of the Court.

Decision of Kekewich J., [1901] 1 Ch. 857, reversed. *In re WELLBORNE*

C. A. [1901] 1 Ch. 312

7. — *Chancery or parliamentary scale—Costs of obtaining Light Railway Order—Costs—Taxation—Light Railways Act, 1896 (59 & 60 Vict. c. 48), ss. 2, 7, 10.*

The costs of obtaining an order under the Light Railways Act, 1896, are taxable on the Chancery and not on the parliamentary scale.

In re Morley, (1875) L. R. 20 Eq. 17, applied. *In re PETERSON*

C. A. [1909] W. N. 194; [1909] 2 Ch. 398

8. — *Charge on property preserved—Scheme of arrangement of company—Solicitors Act, 1860 (23 & 24 Vict. c. 127), s. 28.*

A co. called John Clayton, Ltd., on Dec. 18, 1902, passed an extraordinary resolution for voluntary winding-up and appointing a liquidator, the liquidator if possible to submit a proposal for the reconstruction of the co. At this time the co. was unable to meet its liabilities, executions on its property had been levied by some of its creditors, and other creditors were threatening actions. The liquidator prepared a scheme which, on Oct. 7, 1903, was sanctioned by the Court under the Joint Stock Companies Arrangement Act, 1870. The scheme provided for the taking over of the co.'s assets and liabilities by a new co. (to be incorporated) which was to discharge the unsecured debts of the vendor co. by giving the unsecured creditors fully-paid shares in the new co., and to give the shareholders of the vendor co. partly paid shares in the new co. and to pay the costs of winding-up and of the scheme. In pursuance of the order sanctioning the scheme, a sale agreement was entered into between the liquidator and a trustee for the new co., and adopted by the new co., under which part of the purchase consideration payable for the liquidator was to be a sum of cash. The cash not having been paid the assets sold were not transferred to the new co., but were retained by the liquidator, who, by arrangement with the new co., sold part of the assets consisting of plant and machinery for 200l. Some time afterwards the liquidator obtained a charging order nisi on the 200l. in respect of 184l. 16s. 6d. his taxed costs in the proceedings

SOLICITOR (Costs)—continued.

connected with the winding-up and the scheme. The solicitor applied to make the charging order absolute.

Buckley J. said that the effect of the scheme when sanctioned was that the creditors of the vendor co. were debarred of their legal rights and were bound by a statutory contract to take fully-paid shares in the new co. As between the two cos., the vendor co. was entitled to keep the 200l. until the new co. performed its obligations, including that of paying the costs of the winding-up and scheme. As between the vendor co. and the solicitor, the latter had preserved the property within the meaning of the Act by keeping creditors out of their rights against it. The order must be made absolute, and the charge would extend to the costs of the application. *In re JOHN CLAYTON, LD.*

Buckley J. [1905] W. N. 27, 30

— Charging order for costs on property "recovered or preserved"—Charge on ship—Constructive notice.

See SHIPPING—Charging Orders. 1.

9. — *Charging Order—Property "preserved"—Solicitors Act, 1860 (23 & 24 Vict. c. 127), s. 28—Administration action—Trustees defendants—Compromise—Costs of all parties—Provision for payment—Result of action—Destruction of trust estate—Property managed and retained—Assets insufficient for payment of costs—Costs of plaintiff's solicitors—Costs of trustees—Trustees right of indemnity—Priority.*

In an action by beneficiaries under a will against the trustees for (inter alia) execution of the trusts of the will, an account of the testator's business, which had been carried on by the trustees under a power in that behalf, and administration, a receiver and manager of the business was appointed on motion, and the action was ultimately compromised at the trial, one of the terms of compromise being that the costs of all parties should be paid out of the estate, including in the costs of the trustees all costs, charges, and expenses incurred by them as executors and trustees of the will. In the result the action proved disastrous to the trust estate, the business, which previously had been profitable, having to be closed down for want of capital, and the assets of the estate being insufficient to pay the costs of all parties. On an application by the plts.' solicitors for a charging order for their costs under s. 28 of the Solicitors Act, 1860, and by the trustees for a declaration of priority in respect of their costs, charges, and expenses:—

Held: by Kekewich J., applying *Baile v. Baile*, (1872) L. R. 13 Eq. 497, that, inasmuch as the property had been managed and retained for the rightful owners, it had been "preserved" within the meaning of s. 28; that it did not matter that in fact the property when it had been preserved for the benefit of the parties entitled yielded little or nothing for them; and that in the circumstances the plts.' solicitors were entitled to a charging order for their costs; but

Held, further, by Kekewich J., that, having regard to the long-established practice of the

SOLICITOR (Costs)—continued.

Ch. Div. indemnifying trustees for all expenditure properly incurred in relation to their trust estate, and also to the express terms of the compromise, the defendant trustees were entitled to payment of all their costs, charges, and expenses in priority to the charging order obtained by the plaintiffs' solicitors.

Decision of Kekewich J., [1906] W. N. 226, affirmed. *In re* TURNER. *WOOD v. TURNER*.

C. A. [1907] W. N. 124; [1907] 2 Ch. 126

The order in this action (reported [1907] 2 Ch. 126), as ultimately entered, set out. *In re* TURNER. *WOOD v. TURNER* C. A. [1907] 2 Ch. 539

— Charging Orders — Property “preserved” — Trustees costs — Priority.
See **SOLICITOR—Costs. 9.**

10. — Commission—Surcharge—Solicitor and client—Disclosure—Duty to advise—Bargain with client—Taxation of costs.

Solicitors who were retained by O. to act for him in negotiating the purchase of a patent had previously obtained from the vendor of the patent a commission note under which they were to receive certain payments in the event of a purchaser being found by them; this note was shown to O. by the solicitors and remained in his possession some days previously to the contract for sale being entered into. O. purchased the patent, and the solicitors with his knowledge recovered payment from the vendor of 210*l.* for commission. O. died, and the solicitors delivered their bill of costs to his executors, who on taxation sought to surcharge the solicitors with the 210*l.* so received by them; the taxing master allowed the surcharge. On a summons to review this finding:—

Held, affirming the decision of Kekewich J., that O.'s executors were not entitled to treat the 210*l.* paid by the vendor to the solicitors as money received to O.'s use, or in any way to surcharge them; that the rule applied in *O'Brien v. Lewis*, (1863) 32 L. J. (Ch.) 569, did not govern the present case, as the commission was paid, not by the client, but by the vendor; but that the solicitors had made a bargain which was not merely improper, but such as to place them in a position in which it was impossible for them to fulfil the duties which they had undertaken to both vendor and purchaser of the patent. *In re* HASLAM & HIER-EVANS

C. A. [1902] W. N. 63; [1902] 1 Ch. 765

11. — Commission to agent, Payment of—Purchase and re-sale—Costs—Taxation—Solicitors' Remuneration Act, 1881 (44 & 45 Vict. c. 44), General Order, Sched. I, Part I, r. 11.

F. and D. introduced certain property to L. for purchase by him, and introduced him to X., who shortly afterwards purchased from L. at an increased price. A commission was paid to F. and D. on each transaction. F. and D. also introduced L. to R., who, acting as the solicitor of L., concluded the contracts between the original vendor and L. and between L. and X. The property was conveyed direct from the original vendor to X., L. joining in the conveyance.

SOLICITOR (Costs)—continued.

The abstract was sent to R., who copied it and forwarded it to the solicitors of X.; on receiving the requisitions he copied them and sent them to the original vendor's solicitors, and a similar operation took place with reference to observations and further requisitions on title:—

Held, that even if R. was employed to negotiate at all, he had not in substance entirely negotiated either the purchase or the re-sale, and, moreover, that commissions on both the purchase and re-sale had been paid to agents within the meaning of rule 11 of Sched. I, Part I, to the Order under the Solicitors' Remuneration Act, and that therefore the scale fee for negotiating a purchase or sale was not chargeable:

Held, also, that the scale fees (a) for investigating the title and preparing and completing the conveyance on the purchase, and (b) deducting the title and perusing the conveyance on the re-sale, were not chargeable.

In re Read, [1894] 3 Ch. 238, distinguished. *In re* ROMAIN - Buckley J. [1903] W. N. 32; [1903] 1 Ch. 702

12. — Company—Costs—Taxation—Disbursements—Professional charges—Reduction by one-sixth—Omission of items of costs already taxed—R. S. C., Order LXV., r. 19H, r. 27 (38B)—Solicitors' Act, 1843 (6 & 7 Vict. c. 73), ss. 37, 38.

Summons to review taxation.

By an order of May 5, 1905, made on the retirement of the liquidator in the voluntary winding up of the co., it was directed that his costs, charges, and expenses, as between solicitor and client, properly incurred in the winding-up should be taxed and provided for, and a new liquidator was appointed. The retiring liquidator carried in a bill shewing disbursements 239*l.* 3*s.* 6*d.*, and professional charges 563*l.* 9*s.* In the latter he included and gave credit for two bills of 162*l.* 13*s.* 4*d.* and 9*l.* 4*s.* 6*d.* for party costs, which had been taxed some time previously and paid to him by a third party. The registrar struck out these items, on the ground that they had already been paid.

The result was to diminish the total amount of the costs to such an extent that on taxation the bill (taking disbursements and professional charges together) was reduced by more than one-sixth. The registrar therefore disallowed items for drawing the bill of costs and attending the taxation.

The former liquidator now sought to review the taxation on the grounds that the bills for party and party costs were properly included and ought not to have been struck out of the bill, and further that, for the purpose of ascertaining whether one-sixth had been taxed off the bill, the amount of the professional charges only should be taken into consideration, and that the disbursements ought to be omitted.

Warrington J. said that it was the established practice of the taxing office, under such an order as this, to include in the costs and give credit for bills for party and party costs, as had been done by the applicant in this case; and this practice was sanctioned by authority. On the

SOLICITOR (Costs)—continued.

other point it was clear from the rules that, for the purpose of ascertaining whether one-sixth had been taxed off the bill, the amount of the professional charges only must be taken into consideration without regarding the disbursements, and the alleged practice to the contrary was wrong. The summons must therefore be allowed. *In re* MERCANTILE LIGHTERAGE CO.

Warrington J. [1906] W. N. 28;
[1906] 1 Ch. 491

— Company—Debenture-holders' action—Costs—Same solicitor appearing for trustees and company—Retainer—Joint or separate.

See COMPANY—Debentures. 5.

— Company—Debenture-holders' action—Deficient estate—Costs of plaintiff—Solicitor and client—Party and party.

See COMPANY—Debentures. 6.

— Company—Debenture-holders' action—Plaintiff's costs—Charging order.

See COMPANY—Charging Orders. 1.

— Company—Preliminary expenses—Liability of company.

See COMPANY—Costs. 1.

— Conveyancing business—Duty of taxing officer—Taxation.

See BANKRUPTCY—Costs. 6.

13. — Country solicitor and London agent—London agent's bill of costs—Taxation—Order of course—Practice—Solicitors Act, 1843 (6 & 7 Vict. c. 73), s. 37—Attorneys and Solicitors Act, 1870 (33 & 34 Vict. c. 28), ss. 3, 17.

A country solicitor is entitled, under s. 37 of the Solicitors Act, 1843, as "the party chargeable," to an order of course for taxation of his London agent's bill of costs without bringing any sum of money into Court.

Smith v. Dimes, (1849) 4 Ex. 32, followed.

Ward v. Eyre, (1880) 15 Ch. D. 130, distinguished. *In re* WILDE

Neville J. [1909] W. N. 230;
[1910] 1 Ch. 100

14. — Delivery of amended bill—Action for work done—Reference to ascertain amount due—Solicitors Act, 1843 (6 & 7 Vict. c. 73), s. 37.

In an action by a solicitor for work done the particulars were described as having been delivered to the debts. in a signed bill of costs more than a month before action brought. The debts, denied liability, and also relied upon the fact that the plts. had delivered a prior bill of costs for a less amount. The jury found for the plt. on the question of liability, and a verdict was entered for him, but leave was refused to carry in the second bill for taxation. On appeal:—

Held, that the plt. was not bound by the first bill delivered, and that although, by reason of the proviso in s. 37 of the Solicitors Act, 1843, in the absence of special circumstances, there could be no reference to taxation under that Act after verdict, the Court had jurisdiction to refer the matter to a taxing Master, who would be entitled to take both bills into his consideration in arriving at the amount for which

SOLICITOR (Costs)—continued.

judgment should be entered. *LUMSDEN v. SHIPCOTE LAND CO.* - C. A. [1906] W. N. 112;
[1906] 2 K. B. 433

— "Disbursement."

See No. 12 above, and No. 35 below.

15. — "Disbursement"—Estate duty, including in bill—Practice—Solicitor and client—Finance Act, 1894 (57 & 58 Vict. c. 30), s. 6, sub-ss. 1, 2; s. 8, sub-s. 16; s. 22, sub-s. 1 (d)—Application by third parties—Costs—Taxation—Solicitors Act, 1843 (6 & 7 Vict. c. 73), ss. 37, 38, 39.

A payment for estate duty made by a solicitor on behalf of his client ought not to be included in his bill of costs as a "disbursement" within the meaning of s. 37 of the Solicitors Act, 1843.

Decision of *Byrne J.*, [1902] W. N. 65, reversed.

In re Lamb, (1889) 23 Q. B. D. 5, overruled.

Per Byrne J.: There is no general rule that the costs of applications for taxation under ss. 38 and 39 of the Solicitors Act, 1843, must in all cases follow the result of the taxation. *In re KINGDON v. WILSON* - C. A. [1902] W. N. 101;
[1902] 2 Ch. 242

Note.

See also *In re Buckwell & Berkeley*, [1902] 2 Ch. 596. See next case.

See *In re Blair & Girling*, C. A. [1906] 2 K. B. 131. See No. 35, below.

16. — Disbursements—Allowances—Deposit as security for costs of discovery—Costs—Taxation—R. S. C., 1883, Order XXXI., rr. 25, 26.

Deposits paid by a solicitor on behalf of his client as security for costs of discovery under Order xxxi., rr. 25, 26, and not repaid, are not disbursements within s. 37 of the Solicitors Act, 1843 (6 & 7 Vict. c. 73), and are not properly included in the solicitor's bill of costs.

They should be entered in the solicitor's cash account.

Decision of *Kekewich J.*, [1902] W. N. 137, reversed. *In re BUCKWELL & BERKELEY*

C. A. [1902] W. N. 152; [1902] 2 Ch. 596

Note.

Principle of, not applicable, *In re Grant, Bulcroft & Co.*, *Farwell J.*, [1906] 1 Ch. 124. See No. 19, below.

See *In re Blair & Girling*, C. A. [1906] 2 K. B. 131. See No. 35, below.

17. — "Disbursements"—Counsel's fees—Fees not paid before delivery of bill of costs—Taxation—Practice—Solicitors Act, 1843 (6 & 7 Vict. c. 73), s. 37.

For the purpose of taxation of a solicitor's bill under the Solicitors Act, 1843, "disbursements" means actual payments before delivery of the bill, and any sums claimed in the bill as disbursements, e.g., fees to counsel, which have not been paid before its delivery, must be disallowed. *SADD v. GRIFFIN*

C. A. [1908] W. N. 151; [1908] 2 K. B. 510

Note.

Referred to by *Joyce J.*, *In re Massey* [1909] W. N. 211. See No. 37, below

SOLICITOR (Costs)—continued.

— Ecclesiastical cases—Court fees.

See ECCLESIASTICAL LAW—Faculty.
21.

— Execution—Enforcing order against corporation—Writ of sequestration—Solicitor and client costs.

See SEQUESTRATION. 2.

— Indemnity by third parties—Appeal—Costs as between solicitor and client—Practice.

See COSTS. 73.

18. — *Infants—Compromise—Judgment—Reserving liberty to solicitor to apply—Form of order—Lien.*

A solicitor acting for infants in an action, in consenting to a judgment-compromise whereby a specific fund brought into court in the action is ordered to be paid out to trustees for the benefit of the infants, is entitled to the ordinary solicitor's lien for his costs upon the interest of the infants in the fund as fully and effectually as he would have been entitled thereto had his client been persons sui juris; and it is not necessary though it may be desirable, that his right under such lien should be expressly reserved by the judgment. *In re WRIGHT'S TRUST. WRIGHT v. SANDERSON. In re SANDERSON'S TRUST. WRIGHT v. SANDERSON. C. A. [1901] 1 Ch. 317*

— Insurance, Marine — Open cover slip — Damages—Fraudulent representations — Reinsurance—Subrogation—Solicitor and client costs.

See INSURANCE (MARINE). 16.

19. — *Jurisdiction of taxing Master—Substituting an item—Correcting an error in casting—Costs—Practice—Taxation—Solicitor's bill of costs—Order XXVIII., r. 11—5l. deposit on presentation of bankruptcy petition—Bankruptcy Rules, 1886, rr. 112 (1), 125, 147—Solicitors Act, 1843 (6 & 7 Vict. c. 73), s. 37.*

In taxing a bill of costs under the Solicitors act the taxing Master has no jurisdiction to substitute, for an item admittedly not chargeable, an item properly chargeable but omitted from the bill; for that in fact is altering the bill, which can only be done on a proper application to the Court: *In re Walters*, (1845) 9 Beav. 299. But he can correct an error in the casting of the bill, although it alters the amount, for that is not taxation, but arithmetic.

But the 5l. deposit paid into Court under r. 147 of the Bankruptcy Rules, 1886, on the presentation of a bankruptcy petition is, by virtue of sub-r. 1 of r. 112 of the same rules and the scale of costs thereunder, properly entered as a disbursement in a solicitor's bill of costs, and does not fall within the principle of *In re Buckwell and Berkeley*, [1902] 2 Ch. 596. *In re GRANT, BULLCRAIG & Co.*

Farwell J. [1905] W. N. 174 : [1906] 1 Ch. 124

20. — *Lease—Costs of—Taxation—Lessor and lessee—Preliminary negotiations—Third party—Solicitor and client—Solicitors Act, 1843 (6 & 7 Vict. c. 73), s. 38.*

SOLICITOR (Costs)—continued.

Lessees having obtained the usual third party order to tax the lessor's solicitor's bill of costs in the preparation of a mining lease, took objection to the allowance by the taxing Master of certain items for charges for negotiations leading up to the lease, and in particular for fees paid to a mining engineer who had been consulted on behalf of the lessor, and for various correspondence with him. On a summons to review this taxation:—

Held, that the third party order to tax obtained by the lessees did not alter the nature or enlarge the scope for their liability, upon the existence of which the order to tax was based; but that even on a third party taxation the Court was bound to look at the nature of the items, and to consider whether, apart from the order, the applicant was under any liability to pay them: and that the bill must therefore be referred back to the taxing Master to revise his taxation.

Though a solicitor may include in one bill as against his own client a series of items, some of which may go beyond the liability of the third party, the third party does not by obtaining an order to tax thereby render himself liable for the whole bill.

In re Negus, [1895] 1 Ch. 73, considered and applied. *In re GRAY* **Cozens-Hardy J. [1901] 1 Ch. 239**

Note.

Approved and adopted by C. A., *In re Longbotham & Sons*, C. A. [1904] 2 Ch. 152. See No. 41, below.

21. — *Lease—Covenant for renewal—Costs of investigating lessee's title—Practice—Scale fee—"Business connected with lease"—Solicitor and client—Costs—Taxation—Solicitors' Remuneration Act, 1881 (44 & 45 Vict. c. 44)—General Order under Solicitors' Remuneration Act, 1881, r. 2 (b), (c), Sched. I., Part II.*

A perpetually renewable lease granted by the City Corporation contained a covenant that the lessors would make the renewals "at the request, costs, and charges of the lessee." The lessors incurred certain costs of investigating the title of applicants for a renewal, and these were disallowed on a taxation:—

Held, that the words of the covenant meant that the lessors were to be at no cost, and therefore the lessors were entitled to the costs in question which were reasonably and necessarily incurred.

Held, also, that such costs were not covered by the scale fee charge "for preparing settling and completing lease and counterpart" under the General Order made under the Solicitors' Remuneration Act, 1881.

Until it was ascertained that the applicant for a renewal was entitled thereto, the "business connected with" the lease referred to in r. 2 of the General Order had not been reached. *In re BAYLIS - Kekewich J. [1907] W. N. 102 ; [1907] 2 Ch. 54*

22. — *Lease, Costs of—Taxation—Lessor and lessee—Concurring parties—Separate solicitors—Collective bill—Costs of taxation.*

On taking a lease from a lessor and concurring parties represented by separate solicitors

SOLICITOR (Costs)—continued.

the lessee, in the absence of agreement express or implied, is only liable for one set of costs.

If the lessor's solicitor includes the costs of the concurring parties' solicitors in his own bill, and more than one-sixth is taxed off the total amount, he must pay the costs of taxation, although less than one-sixth is taxed off his own costs.

In re Remnant, (1849) 11 Beav. 603, distinguished. *In re FLETCHER & DYSON*

Swinfen Eady J. [1903] W. N. 156 : [1903] 2 Ch. 688

23. — Leases—Deducing one title on several contracts—Costs—Vendor and purchaser—Scale fee—Solicitors' Remuneration Act, 1881 (44 & 45 Vict. c. 44), s. 4—General Order, Sched. I., Part I., r. 8.

Five leases of five separate houses were granted by the same lessors on the same day to the same lessee, to whom each lease gave an option of purchasing the fee simple, in which case he was to pay all legal and other expenses of the lessors as vendors, it being stated that the intention of the parties was that the lessors should be put to no expense in respect of the conveyance.

The lessee by one letter exercised each of the five options, received only one abstract of title, and required only one conveyance of all the five houses. The vendors' solicitors declined to allow all the houses to be conveyed by one deed except on the terms that they should not be deprived of any part of the costs under the leases, and claimed to charge in respect of each house the scale fee for "deducing title and perusing and completing conveyance":—

Held, that, as there had only been one deducing of title, a scale fee in respect of each house could not be charged. *In re SIMMONS' CONTRACT* - **Parker J. [1908] 1 Ch. 452**

— Leaseholds—"Deducing title"—Single document.

See VENDOR AND PURCHASER—Costs. 2.

— Lien for costs.

See under SOLICITOR—Lien.

— Lien, Solicitor's—Set-off—Independent proceedings—Consolidation order.

See MORTGAGE—Foreclosure. 4.

— Lien on client's papers for costs—Acceptance of securities—Duty of solicitor.

See SOLICITOR—Lien. 2.

— Limitation, Statute of—Solicitor's bill—Part payment.

See LIMITATIONS, STATUTE OF. 19.

24. — Lunacy—Retainer to conduct defence to an action—Lunacy of client—Determination of solicitor's authority—Steps in action taken by solicitor in ignorance of determination of authority—Implied warranty of existence of authority—Liability of solicitor personally to pay plaintiff's costs — Practice — Appeal — "Matter of practice and procedure"—Judicature Act, 1894 (57 & 58 Vict. c. 16), s. 1, sub-s. 4.

Where an authority given to an agent has

SOLICITOR (Costs)—continued.

without his knowledge been determined by the death or lunacy of the principal, and, subsequently, the agent has, in the belief that he was acting in pursuance thereof, made a contract or transacted some business with another person, representing that, in so doing, he was acting on behalf of the principal, the agent is liable, as having impliedly warranted the existence of the authority which he assumed to exercise, to that other person, in respect of damage occasioned to him by reason of the non-existence of that authority.

Solicitors were instructed by a client to conduct his defence to an action which was then threatened and was afterwards commenced against him. Before the commencement of the action the client became, and was certified as being, of unsound mind. In ignorance of his unsoundness of mind, and of his having been so certified, the solicitors entered an appearance for him in the action, and delivered a defence, to which the plt. replied, and other interlocutory proceedings took place in the action. Subsequently, the action not having come to trial, the plt.'s solicitor was informed that the deft. had been certified as being of unsound mind; and an application was made on behalf of the plt. at chambers for an order that the appearance and all subsequent proceedings in the action should be struck out, and that the solicitors who had assumed to act for the deft. should be ordered personally to pay the plt.'s costs of the action up to date, on the ground that they had so acted without authority. The Master made an order that the appearance and subsequent proceedings in the action should be struck out, but refused to make an order for payment of the plt.'s costs by the solicitors personally, which refusal was on appeal affirmed by the judge at chambers. The plt. having appealed to the C. A.:—

Held—(1.) (by Buckley L.J. and Swinfen Eady J.), that the appeal was on a matter of practice and procedure within the meaning of the Judicature Act, 1894, s. 1, sub-s. 4, and, therefore, the appeal lay direct to the C. A., and not to the Div. Ct.;

(2.) (by Vaughan Williams L.J., Buckley L.J., and Swinfen Eady J., Vaughan Williams L.J., doubting), that the solicitors who had taken on themselves to act for the deft. in the action had thereby impliedly warranted that they had authority to do so, and therefore were liable personally to pay the plt.'s costs of the action.

Smout v. Ilbery, (1842) 10 M. & W. 1, questioned.

Collen v. Wright, (1857) 8 E. & B. 647, followed, *YONGE v. TOYNBEE* - **C. A. [1910] W. N. 5; [1910] 1 K. B. 215**

— Mayor's Court.

See under MAYOR'S COURT.

25. — Mortgagee—Costs—Taxation—Solicitor-mortgagee—Negotiation fee—Mortgagees Legal Costs Act, 1895 (58 & 59 Vict. c. 25), s. 2—General Order under Solicitors' Remuneration Act, 1881 (44 & 45 Vict. c. 44), Sched. I., Part I., r. 11.

Property belonging to D. was in mortgage.

SOLICITOR (Costs)—continued.

N., a solicitor, arranged that the mortgage should be paid off, that the property should be reconveyed to D., and that N. should lend his own money to D. on mortgage of the same property; and this was done. N. had not a partner with him in his business as a solicitor:—

Held, that N. was entitled to charge the scale fee for negotiating the loan. *In re NORRIS*

**Swinfen Eady J [1902] W. N. 20;
[1902] 1 Ch. 741**

— Mortgage—Redemption—Mortgagee's solicitor's costs of negotiating loan and preparing mortgage.

See MORTGAGE—Costs. 1.

28. — Non-contentious business—Jurisdiction—Proper officer—District registrar of Manchester—Practice—Costs—Taxation—Solicitors Act, 1843 (6 & 7 Vict. c. 73), s. 37—R. S. C., O. XXXV., r. 6A; O. LXI., r. 1B; O. LXV., r. 26A, O. LXXI.

S., a solicitor, was one of his wife's executors and trustees, and by the terms of her will was entitled to be paid his professional charges for work done for her estate. He did a considerable amount of non-contentious work for the trust, and died in 1907. His executors delivered to the surviving trustee of his wife's will a bill of costs for the work thus done, and applied by originating summons in the Manchester District Registry for an order referring the bill to the district registrar to be taxed. The surviving trustee asked that the taxation should take place in London. The question was referred to Walton J. in chambers, who dismissed the summons, and the executors appealed.

The C. A. dismissed the appeal, holding that, although an originating summons was the proper form in which to make the application and the learned judge had power to refer the bill for taxation, there was nothing to shew that the district registrar of Manchester was a proper officer to whom a bill for non-contentious business could be referred for taxation. *In re STEAD*

C. A. [1910] W. N. 157; [1910] 2 K. B. 713

27. — Official solicitor—Guardian ad litem of infant defendants—R. S. C., Order LXV., r. 13.

Action to set aside a post-nuptial settlement executed by a Mr. and Mrs. Jones, in Sept., 1904, whereby they conveyed to themselves certain property upon trusts for the benefit of Mrs. Jones and their infant children. The plt. was the trustee in bankruptcy of Mr. Jones, who was adjudicated bankrupt in Mar., 1906. The infants had been made defts. to the action, and at the instance of the plt. the official solicitor had been appointed their guardian ad litem. At the trial of the action the Court held that the settlement was void against the plt. under s. 47 of the Bankruptcy Act, 1883, so far as it comprised the property of the bankrupt, but valid so far as it comprised the property of Mrs. Jones, and ordered the costs of the official solicitor, as guardian ad litem of the infant defts., to be taxed and paid by the plt., who was to add them to his costs which Mr. and Mrs. Jones were ordered to pay. In drawing up the order the official solicitor raised the point that he was entitled to his costs as between solicitor and

SOLICITOR (Costs)—continued.

client, but the plt. declined to accede to this. The point was now mentioned to the Court, the order not having been passed and entered.

It is the settled practice to tax the costs of the official solicitor, as guardian ad litem, in these cases as between party and party, unless special directions are given to the contrary: *Fraser v. Thompson*, (1859) 4 De G. & J. 659. No special direction was given in this case. The plt. is a trustee in bankruptcy, and cannot consent to a solicitor and client costs, nor can he agree to the guardian being allowed his charges and expenses, but he does not object to the order being in the terms of rule 13, i.e., that the guardian ad litem be paid the "costs incurred in the performance of the duties of such office."

Neville J.: Let the order be drawn up in that form. *GOATLY v. JONES*

Neville J.

[1907] W. N. 161

28. — Order by consent—Practice—Form of order—Costs of reference—Costs—Taxation.

In this case Swinfen Eady J. said that he had seen the taxing master, and was satisfied that he had been completely misunderstood by the applicants. He read, shortly, the form of order made, and said that all the taxing Master was thereby ordered to do with regard to the costs of the reference was to tax them and certify the amount and whether more than one-sixth of the amount of the bills had been taxed off. The order left it entirely open how the costs were to be borne. The taxing Master had no jurisdiction to allow costs or order their payment, and he stated that he had not given any ruling or made any statement about them. The applicants wished to vary the form of order, on the ground that in its present form it precluded them from recovering the costs of reference from the solicitors, whatever the result of the taxation might be. The order had no such effect. The notion that it had had probably arisen from a passage which had been cited to him from Scott's Guide to Costs (11th ed., vol. ii., p. 1179), in which, referring to orders obtained in the Ch. Div. by consent for taxation, the author says: "In such cases the costs of reference are taxable in any event whatever the result of the taxation." That passage was literally true, the costs were taxable; but the inference which had apparently been drawn that the solicitor was to have these costs in any event, whatever the result of the taxation, was erroneous. In many, perhaps most, cases of taxation by consent, the solicitor acted both for himself and his client and the question would not arise, but there was nothing in the form of the order which would prevent either party from applying for and obtaining an order that the other party should pay the costs of the reference. In the present case the applicant contended that, on the true construction of the correspondence, the solicitors had been instructed to apply for an order for taxation under the Solicitors Act, 1843, and were not justified in taking any other order. There was a good deal to be said for this view, but it would not be fair to make a new order after the trustees had acted under the order and been separately represented on two occasions. No order was made on the motion, except that

SOLICITOR (Costs)—continued.

it should stand over till after the result of the taxation was known, when the costs of the motion and of the reference could be dealt with together. *In re BURN v. BERRIDGE, SOLICITORS Swinfen Eady J. [1908] W. N. 175*

29.—Parliamentary agent—Costs of obtaining private Act of Parliament—Practice—Taxation—Solicitors Act, 1843 (6 & 7 Vict. c. 73), s. 37—House of Commons Costs Taxation Act, 1847 (10 & 11 Vict. c. 69)—House of Lords Costs Taxation Act, 1849 (12 & 13 Vict. c. 78).

Where a bill of costs delivered by a parliamentary agent, who is likewise a solicitor, relates exclusively to business done by him in the capacity of a parliamentary agent, and not in that of a solicitor, the bill cannot be referred for taxation under the Solicitors Act, 1843. *In re BAKER, LEES & CO.*

C. A. [1902] W. N. 229; [1903] 1 K. B. 189

Note.

See In re Funshawe, [1905] W. N. 64, No. 36, below.

—“Party interested”—Creditor in administration action—Practice—Taxation.
See COSTS. 44.

—Payment—Statute of Limitations—Set-off—Solicitor's bill.
See APPROPRIATION. 1.

30.—Practice—Chancery Division—Solicitor—Costs—Taxation—Delivery of bill of costs—Default—Motion for attachment—Order for payment of costs of motion—Enforcement—Action in King's Bench Division—R. S. C., Order XLII., r. 24.

An order was made by a judge in the Chancery Division that the deft., a solicitor, should pay to the plt. the costs of a motion by the plt. for the attachment of the deft. for contempt of court in not having delivered to the plt. a bill of costs pursuant to an order for taxation of costs. The costs of the motion having been taxed, the plt. sued the deft. in the King's Bench Division to recover the amount thereof :—

Held, that the action was maintainable.
SELDON v. WILDE - - - Darling J. [1910] 2 K. B. 9

—Public authorities protection—Solicitor and client—Costs.
See COSTS. 50.

—Public authorities protection—“Solicitor and client.”
See CORPORATION. 16.

31.—Public body—Right to elect—Practice—Taxation—Solicitors' Remuneration Act, 1881 (44 & 45 Vict. c. 44)—General Order, Aug., 1882, r. 6.

The right of a solicitor under r. 6 of the general order under the Solicitors' Remuneration Act, 1881, to elect to charge according to the old system as altered by Sched. II. to the order, instead of by scale, is not taken away by the fact that his clients are a public body or persons in a fiduciary capacity; nor is it the duty of public

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bodies or persons in a fiduciary capacity to prevent their solicitors from so electing.

A school board instructed a solicitor to act for them in the matter of a purchase of a school site for 350*l.* The solicitor duly signified to the board his election under r. 6 of the general order to charge on the old system as altered by Sched. II. The board consented. The matter was completed, and the solicitor sent in a bill for 50*l.* 2*s.* On taxation the taxing Master reduced the bill to 13*l.*, the amount of the scale charge and disbursements, and stated in answer to objections that the school board, being a public body charged with the administration of public funds, were in a fiduciary position, and it was their duty not to employ a solicitor who insisted on the more expensive mode of payment :—

Held, that no such duty was cast on a public body or persons in a fiduciary position, and that the bill must be referred back to be taxed according to the solicitor's election. *In re EVANS (A SOLICITOR)*

Farwell J. [1905] W. N. 11; [1905] 1 Ch. 290

32.—Registrar of county court—Defendant in person—Costs as solicitor—Registrar acting as solicitor in his own Court—Taxation by defendant of his own bill of costs—County Courts Act, 1888 (51 & 52 Vict. c. 43), ss. 41, 43, 118.

The deft. was the registrar and high bailiff of the Redhill County Court. He was also a practising solicitor. The plts. brought an action against the deft. in that court alleging negligence by him in his capacity as registrar and high bailiff. The deft. acted as his own solicitor in the action and was represented by counsel at the trial. The county court judge gave judgment for the deft. with costs on the higher scale, column B. The deft. thereupon brought in his bill of costs for taxation, the total being 20*l.* 8*s.*, of which 11*l.* 0*s.* 6*d.* represented payments to counsel and witnesses, and gave notice of a taxation before himself. The plts.' solicitor attended the taxation under protest. On the taxation the deft. disallowed an item of 6*s.* 8*d.* for instructions to defend, and an item of 2*s.* for affidavit of service of notices: he taxed 6*s.* off an item of one guinea for attending Court when judgment was given for the deft., and taxed 2*l.* 1*s.* 6*d.* off the costs charged in respect of witnesses. The bill as allowed amounted to 17*l.* 11*s.* 10*d.* The plts. applied to the county court judge to review the taxation, and on the review the judge further taxed off the sum of 1*l.* 1*s.* 8*d.*, being 15*s.* the balance remaining of the guinea charged for attending the court and 6*s.* 8*d.* charged by the deft. for attending the taxation before himself. The plts. appealed from the judge's decision on the review of the taxation.

On the argument of the appeal four points were taken—namely, (1.) that under s. 41 of the County Courts Act, 1888, no registrar can act as solicitor in his own court: (2.) that a solicitor-registrar defending in person is not entitled to costs as a solicitor; (3.) that the registrar could not tax his own bill; and (4.) that the judge had taxed on a wrong principle.

The Court dismissed the appeal, holding as

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to points (1.) and (2.) that s. 41 of the County Courts Act, 1888, did not debar a registrar from appearing in his own Court to defend himself, and he was entitled on taxation to the same costs as if he had employed a solicitor, except in respect to items which the fact of his acting for himself rendered unnecessary: see *London Scottish Benefit Society v. Chorley*, (1884) 13 Q. B. D. 872. As to (3.) "a judge who has an interest in the result of a suit is disqualified from acting except in cases of necessity when no other judge has jurisdiction": *Serjeant v. Dare*, (1877) 2 Q. B. D. 558. The present case was one of necessity, for although under s. 43 of the Act of 1888 the plts. had a large choice of Courts in which to sue the deft. they elected to sue him in his own Court, and s. 118 provided that all costs should be taxed by the registrar of the Court in which they were incurred. As to (4.) the only remaining items in the bill which were questionable were "instructions for brief 1l. 11s. 6d., and three charges of 3s. each for subpoenas. "Instructions for brief" always included items for which a solicitor deft. could charge; the charge for subpoenas was an inclusive charge (see Costs on Higher Scale, item 5), and the only fraction of the charge which could be objected to was the attendance upon the registrar to procure their issue. The Court was in the circumstances unable to say that the county court judge had taxed on any wrong principle. **H. TOLPUTT & Co., LD. v. MOLE - Div. Ct. [1910] W. N. 252**

33. — Rents, Collection of — Commission — Taxation.

In the absence of a special agreement, solicitors cannot charge a lump sum by way of commission for the collection of rents in their bill of costs, as if the work is professional, items must be delivered, and if non-professional, it cannot be charged in the bill. *In re SHILSON, COODE & Co. Swinfen Eady J. [1904] W. N. 83; [1904] 1 Ch. 837*

Note.

See *In re Fanshawe*, [1905] W. N. 64, No. 36, below.

— Repayment of costs of litigation — Solicitor and client costs — Indemnity — Interest. See **VENDOR AND PURCHASER — Title. 3.**

— Retainer — Taxation — Solicitors' retainer. See **BANKRUPTCY — Practice. 5.**

— Review, Summons to — Refusal — Appeal — Leave — Costs — Taxation — Practice. See **APPEAL. 17.**

— Sale of leaseholds — Abstract of title consisting of lease only — Scale fee — "Deducing title."

See **VENDOR AND PURCHASER — Costs. 2.**

34. — Separate bills of costs in the same administration — Application by cestui que trust to tax bills chargeable on trustee — Taxation after payment Solicitors Act, 1843 (6 & 7 Vict. c. 73), ss. 39, 41.

Application by beneficiaries under the will of deceased, to tax three bills of costs for 90l. 4s. 10d., 49l. 8s. 8d. and 2l. 12s. respectively delivered by

SOLICITOR (Costs)—continued.

the respondent to the trustees of the will on July 18, 1901, Dec. 24, 1902, and Feb. 11, 1903. The respondent had acted as solicitor for many years in connection with the winding-up of the testator's estate, and the three bills above mentioned related to this matter. The first bill was for costs incurred down to May 31, 1901; the second was for costs incurred from June, 1901, to Dec., 1902; and the third for a small amount of subsequent costs. The respondent agreed with the trustees to accept 80l. in discharge of the bill of July 18, 1901, and this sum was paid to him by the trustees in Aug., 1901, out of moneys retained by them to provide for costs and duties. The respondent was prepared to accept 27l. 12s. in discharge of the two latter bills, but these bills had not yet been paid. The applicants contended that they were entitled to have these bills taxed notwithstanding payment of the first bill, inasmuch as the first bill was not complete in itself, but was merely a portion of the bill, and the three bills ought to be regarded as one.

Kekewich J. was of opinion that the principle of *In re Hall and Barker*, (1878) 9 Ch. D. 538, applied to this case. A solicitor who was employed upon a particular trust or litigation, which might last over many years, was entitled to draw a line from time to time and deliver a bill of costs up to a given date, although there might be more costs to follow. A bill was not the less final because it was one of a series. It would be a monstrous injustice to solicitors if this could not be done, and a monstrous injustice to trustees if they could not settle the bill without the risk of the beneficiaries insisting upon having it reviewed on the ground that it was not a discharge of the whole liability. *In re HUDSON* **Kekewich J. [1904] W. N. 32**

35. — Stamp duty on capital of company — Payment by solicitor — "Disbursement" — Taxation — Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 112 — Finance Act, 1899 (62 & 63 Vict. c. 9), s. 7 — Solicitors Act, 1843 (6 & 7 Vict. c. 73), s. 37.

A payment by a solicitor, who is instructed by the promoter of a co. to act for him in relation to the formation and registration of the co. under the Companies Acts, of the stamp duty payable on the registration of the co. on the amount of its nominal share capital under s. 112 of the Stamp Act, 1891, as extended by s. 7 of the Finance Act, 1899, ought not to be included in the solicitor's bill of costs as a "disbursement" within the meaning of s. 37 of the Solicitors Act, 1843, but should be entered in the cash account. *In re BLAIR & GIRLING*

C. A. [1906] W. N. 106; [1906] 2 K. B. 131

36. — Suppression of facts — Practice — Solicitor — Costs — Taxation — Common order to tax — Mortgage to secure costs — Interest — Power to charge for non-professional work — Solicitors Act, 1843 (6 & 7 Vict. c. 73), s. 37.

In 1902 a solicitor obtained from his client a mortgage to secure payment of all fees and charges earned or to be earned by him, with interest. The mortgage deed expressly provided that it should not affect the solicitor's lien or the client's right to tax costs. In the same year the

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client gave to the solicitor a power of attorney containing an express provision enabling him to charge for non-professional work.

In Nov., 1904, an order was made in common for directing the solicitor to deliver a bill of costs. The solicitor delivered a bill which included his costs, charges, and expenses as mortgagee, his charges under the power of attorney, and a cash account. The client then obtained, on a petition which did not refer to the mortgage or to the power of attorney, the usual *ex parte* order to tax the bill, directing the Master to certify the amount due, that on payment thereof the solicitor should deliver to the client all deeds, &c., in his possession, and that the solicitor should not take any proceedings to enforce payment of his bill pending the reference. The solicitor moved to discharge the order for taxation.

Buckley J. said that the result of the two instruments was that the applicant was entitled not only to costs, but to interest on the costs, and to charge for work done although it was work for which a solicitor was not required. Neither of these two instruments was disclosed when the order was obtained. The order was not consistent with the contractual rights between the parties. *In re Moss*, (1853) 17 Beav. 59, was an authority for the proposition that where a solicitor had stipulated for interest on his bill of costs and held a mortgage as security for payment of those costs, the usual order to tax his bill ought not to be made. *In re Inderwick*, (1883) 25 Ch. D. 279, decided that where there was an agreement for the remuneration of a solicitor for non-professional work, the person chargeable could not obtain the common order for taxation. Therefore the order must be discharged, but the costs would be specially reserved. *In re H. H. FANSHAW*

Buckley J. [1905] W. N. 64

37. — Taxation after payment—"Special circumstances"—Disbursements not made at delivery of bill—Disallowance—Solicitors Act, 1843 (6 & 7 Vict. c. 73), s. 41.

Summons for the taxation of certain bills of costs which were delivered to the client on Oct. 12, 1907. The bills contained charges in respect of disbursements consisting of fees to counsel and a printer's account. These disbursements had not in fact been made at the time of the delivery of the bills. The printer's account was discharged on Oct. 28, 1907, and the fees to counsel on June 1, 1908. The bills were not fully paid by the clients until June 23, 1908. The summons was taken out on Dec. 16, 1908.

On behalf of the clients it was contended that they were entitled to have the bills taxed, notwithstanding payment, on the ground that there were "special circumstances" requiring the same within s. 41 of the Solicitors Act, 1843. The special circumstance on which they ultimately relied was that on June 3, 1908, it had been held by the C. A. in *Sadd v. Griffin*, [1908] 2 K. B. 510, that sums claimed in a solicitor's bill as disbursements which had not been paid before its delivery must be disallowed on taxation.

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Joyce J. said that the discovery by the applicants of the decision in *Sadd v. Griffin* (supra), which did not alter the law at all, was not a special circumstance within the meaning of the section, and he dismissed the summons with costs. *In re MASSEY*

Joyce J. [1909] W. N. 211

38. — Taxation of bill after payment—Reservation of right to tax—"Special circumstances"—Combination—Solicitors Act, 1843 (6 & 7 Vict. c. 73), s. 41.

Summons by mortgagors, the trustees of real estates, asking for the taxation of certain bills of costs delivered by Messrs. Tweedie as solicitors of the mortgagees.

By a letter of Sept. 24, 1906, the solicitors for the trustees wrote to Messrs. Tweedie, saying that they were instructed to pay the amounts of the bills under protest, and reserving to the trustees full power to tax the same at any time thereafter, should they so desire. The bills were paid on Sept. 25, 1906. On Sept. 23, 1907, the summons to tax was taken out. The bills in question related to the calling in and transfer of two mortgages, and also to foreclosure proceedings taken by the mortgagees, who had entered into possession of the mortgaged estates.

The applicants alleged pressure and overcharges in the bills, but no notice was given of objection to any particular items. The bills contained charges in respect of notices to tenants which had been held by the Court to be excessive and contrary to the practice, in a former taxation relating to the same estates (*In re Tweedie's Taxation*, [1908] W. N. 257).

Eve J. said that he was not prepared to hold that the mere fact of the payment of the amount of the bills with the reservation in question created such a special circumstance as would in all cases warrant the Court in directing an order for taxation. But, having regard to the combination in the present case of the reservation of the right to tax with the application within twelve months, and the fact that a number of the items in the bills, as the law was now settled, would be disallowed on taxation, he held that the applicants were entitled to have the bills taxed, the costs to be dealt with when the result of the taxation was known. *In re TWEEDIE, SOLICITORS* - **Eve J. [1909] W. N. 110**

39. — Third party—Costs—Taxation—Agreement by third party to pay costs—Question as to construction of agreement—Jurisdiction of Master—Payment of bill—"Special circumstances"—Practice—Solicitors Act, 1843 (6 & 7 Vict. c. 73), s. 38).

The parties to an action agreed to a compromise upon the terms that the defts. should pay the costs of all parties as between solicitor and client in relation to the plt.'s claims against the defts. The plt. paid her solicitors their bill of costs and claimed the amount from the defts., who then took out a summons for a reference to the taxing Master to tax the plt.'s costs in accordance with the agreement of compromise. The plt.'s solicitors opposed the application on the grounds that the bill had been paid and that

SOLICITOR (Costs)—continued.

questions would arise on the construction of the agreement which ought to be decided in an action and not by the taxing Master :—

Held, that under the circumstances an order for a reference was justified by s. 31 of the Solicitors Act, 1843.

Decision of the C. A., reported as *In re Hirst & Capes*, [1908] 1 K. B. 982, affirmed with a slight variation. *HIRST & CAPE v. FOX*

H. L. (E.) [1908] W. N. 171 ;
[1908] A. C. 416

40. — *Third party—Solicitor and client—Agreement as to solicitor's remuneration—Verbal agreement that client should pay no costs—Right to recover against a third party—Attorneys and Solicitors Act, 1870 (33 & 34 Vict. c. 28), ss. 4, 5.*

A solicitor, who was acting for a client in a county court action in which the client was plt., verbally agreed with him that he, the client, should not pay the solicitor any costs. At the trial of the action the jury returned a verdict for the plt. with damages. The county court judge, on the application of the deft., entered judgment for the plt. for the amount of the verdict without costs on the ground that under the proviso to s. 5 of the Attorneys and Solicitors Act, 1870, the plt. was not entitled to recover from the deft. more costs than were payable by the plt. to his solicitor under the agreement :—

Held, first, apart from the Act of 1870, that the plt. could not recover from the deft. more costs than he was liable to pay his solicitor, inasmuch as party and party costs were awarded as an indemnity only; secondly, upon the construction of the Act, that for the purpose of applying the proviso to s. 5 it was not necessary that the agreement should be in writing; consequently that the county court judge had rightly entered judgment for the plt. without costs.

Decision of the Div. Ct., [1909] W. N. 213 ;
[1910] 1 K. B. 99, affirmed. *GUNDRY v. SAINSBURY*
C. A. [1910] W. N. 58 ;
[1910] 1 K. B. 645

41. — *Third party—Taxation of bill of mortgagee's solicitor on application of mortgagor—Solicitor and client—Solicitors Act, 1843 (6 & 7 Vict. c. 73), s. 38.*

On the taxation, under the third-party section (s. 38) of the Solicitors Act, 1843, of the bill of a mortgagee's solicitor at the instance of the mortgagor, items which the mortgagor would not be liable to pay as between himself and the mortgagee must be disallowed, even though the solicitor would be entitled to charge them as against his client, the mortgagee.

In re Gray, [1901] 1 Ch. 239 (*see No. 10, above*), approved and adopted.

Decision of Kekewich J., [1904] W. N. 78, affirmed. *In re LONGBOTHAM & SONS*

C. A. [1904] W. N. 118 ; [1904] 2 Ch. 152

Note.

This case was followed by C. A., *In re Cohen and Cohen*, [1905] 2 Ch. 137. *See next Case.*

42. — *Third party—Taxation—Solicitor and client—Indemnity—Unusual costs—Practice—Costs—Taxation—Solicitors Act, 1843 (6 & 7 Vict. c. 73), s. 38.*

SOLICITOR (Costs)—continued.

On a compromise of litigation E. agreed to pay the costs of Mrs. C. as between solicitor and client relating to the matters in dispute in the litigation, such costs to be agreed or taxed :—

Held, that this was not an agreement that E. would indemnify Mrs. C. against all costs which her solicitors could call upon her to pay, but that he would pay her reasonable and proper costs, not including extra costs which the solicitors could only recover from her by special arrangement.

The solicitors delivered a bill which contained items for extra costs of this description, whereupon E. obtained a third-party order for taxation under s. 38 of the Solicitors Act, 1843 :—

Held, following *In re Longbotham & Sons*, [1904] 2 Ch. 152, that this did not enlarge his liability so as to compel him to pay the extra costs. *In re COHEN & COHEN*

C. A. [1905] W. N. 90 ; [1905] 2 Ch. 137

43. — *Third party, Application by—Arbitration—Costs of solicitor of umpire—Order for payment by party to reference—Right to order for taxation—Solicitors Act, 1843 (6 & 7 Vict. c. 73), ss. 38, 41.*

Upon a reference under the Lands Clauses Acts between a co. and a landowner relative to the value of land taken compulsorily by the co., the umpire directed that the co. should pay the costs of the award, including therein the costs of preparing the award. The co. took up the award and paid the amount fixed by the arbitrator for so doing. This amount included a bill of costs of solicitors employed by the umpire to draw up the award. The co. applied in the K. B. Div. for an order for taxation of the solicitors' bill of costs under s. 38 of the Solicitors Act, 1843 :—

Held, that, the umpire being chargeable with the bill and the co. having paid it, the case came within the words of the Act and the bill was taxable, but that the order should be to tax it in the Ch. Div. *In re COLLYER-BRISTOW & Co.*

C. A. [1901] 2 K. B. 839

44. — *Treasury Solicitor—Direction to appear for subject—Matter in which the Crown has an interest—Right to costs.*

On a rule for a mandamus to the defts., in a matter in which the Crown had an interest, the Treasury Solicitor was directed to appear for the deft., and he accordingly became the solicitor on the record. The rule was discharged with costs. Objection was taken on taxation that the deft. was not entitled to recover costs :—

Held, that the Treasury Solicitor is entitled to act, by direction of the Crown, for a subject, in any matter in which the Crown has an interest, and that the deft. was therefore represented by a duly qualified solicitor, and was entitled to recover his costs from the prosecutor. *REX v. ARCHBISHOP OF CANTERBURY*

C. A. [1903] 1 K. B. 289

45. — *Trustees, Bill payable by—Taxation by beneficiaries—Incidence of costs—Final Distribution of estate—Prospective costs—Solicitors Act, 1843 (6 & 7 Vict. c. 73), s. 39.*

Trustees having employed a solicitor in the distribution of a trust estate, certain beneficiaries

SOLICITOR (Costs)—continued.

obtained an order for the taxation of the solicitor's bill of costs under s. 39 of the Solicitors Act, 1843 :—

Held, (1.) The costs must be taxed as between the trustees and their solicitor, and, if properly chargeable against the trustees as such, must be allowed out of the estate irrespective of their ultimate incidence amongst the beneficiaries, which was a question outside the scope of such a taxation.

(2.) The prospective costs of completing a final distribution might properly be included in such a bill. *In re MILES - Swinfen Eady J.* [1903] W. N. 122; [1903] 2 Ch. 518

--- Trustee's costs — Priority — Property "preserved."

See **SOLICITOR—Costs. 9.**

--- Trustee's solicitors' costs—"Costs of petitioning creditor."

See **BANKRUPTCY—Costs. 3.**

46. — Will—Trustee—Power to charge for professional services — "Professional and other charges for his time and trouble"—Non-professional services—Practice—Costs—Taxation.

To entitle a solicitor trustee, acting as solicitor to the trust estate under a direction to that effect in a will, to charge against the estate for work done by him, which, although not professional work, he could have charged for without any special bargain against a client who was not a trustee, there must be express words in the will shewing that such was the testator's intention.

A testator appointed executors and trustees, and directed that one of them should be the solicitor to his trust property and should be allowed "all professional and other charges for his time and trouble," notwithstanding his being an executor and trustee :—

Held, that this clause did not authorize the solicitor trustee to charge for work which was not professional work, although it was such work as he might have charged against a client who was not a trustee. *In re CHALINDER and HERINGTON Warrington J.* [1906] W. N. 209 : [1907] 1 Ch. 58

Fiduciary Relation.

1. — Mistake—Rectification of deed—Benefit conferred by client on near relative of solicitor—Duty of solicitor—Independent advice.

A solicitor who was a trustee for a married woman under a settlement and also her husband's family solicitor prepared a deed by which she conferred a benefit on a son of the solicitor and renounced rights she had under the settlement. After hearing the solicitor's explanation of the deed she executed it :—

Held, that she was not bound by the deed, on the ground that the real effect of it on her rights and position was not in fact explained to her, and also on the ground that it was the duty of the solicitor to take care that she did not execute the deed without having independent advice.

The decision of the C. A., [1900] 2 Ch. 121, affirmed. *WILLS v. BARRON - H. L. (E.)* [1902] W. N. 100; [1902] A. C. 271

SOLICITOR (Fiduciary Relation)—continued.

2. — Voluntary settlement—Gift by client to solicitor—Sale by client to solicitor—Undue influence—Consideration, Insufficiency of—Separate solicitor, Duties of—Competent independent advice — Gift to children as well as to solicitor—Severable deed—Partial avoidance—Trustee solicitor-donee, Removability of—Limiting avoidance to beneficial interest—Beneficiaries, Consent of—Form of order setting aside deed.

A gift by a client to his solicitor raises *prima facie* the presumption that it was unduly influenced by the fiduciary relation subsisting between them; and the onus is on the solicitor to prove that the gift was uninfluenced by that relation. The presumption is, however, not irrebuttable, but it is not sufficiently rebutted by the mere fact of the client having employed a separate and independent solicitor—even though without any fraud or collusion on the part of the two solicitors—to advise him in the matter of the gift; for the presumption will continue so long as the relation of solicitor and client continues for other purposes outside the gift, or at all events until it can be clearly inferred that the influence arising from the relation no longer exists. On the other hand, there is no objection to a sale by a client to his solicitor, provided the solicitor can prove—(1.) that the client was fully informed; (2.) that he had competent independent advice; and (3.) that the price given was a fair one.

In 1900 the plt., being in pecuniary difficulties, executed a voluntary deed giving part of his property in trust (subject to trusts thereby declared in favour of persons not parties) after his own death in certain shares for two of his children, who were *sui juris*, and for his solicitor, C., whom he expressed a wish to benefit for services rendered but not yet paid for. C. and one of the two children were the two trustees of the deed, and all three were parties to it. The draft of the deed had been prepared in C.'s office, though not under his supervision, but on his suggestion had been submitted by the plt. to a separate solicitor, A., to advise him in the matter, especially in respect of the gift to C., and the deed was executed by the plt. on A.'s advice. In all other matters C. continued to act for the plt. as before.

In 1901 the plt. executed another deed, to which the two children and C. were again parties, whereby the whole of the plt.'s property, both present and future, was conveyed to the same trustees, discharged from the trusts declared by the deed of 1900 in favour of the two children and C., but to be held upon trust for the same three persons in equal shares, in consideration of a covenant by them to pay the plt. a certain annuity during his life. This deed also had been prepared by a separate solicitor, T., who, on C.'s suggestion, had been called in to advise the plt. in the matter. C. continued to act in all other matters for the plt. as before. No fraud or collusion was found as between C., A., and T. in either transaction, but in neither was A. or T., when advising the plt., fully informed of his actual position or property.

In an action by the plt. to set aside both deeds :—

SOLICITOR (Fiduciary Relation)—continued.

Held, (1.) that the deed of 1900 was void as against C., but not as against the children, since the benefits it conferred upon them had not been induced by any undue influence on the part of C.; and

Held, (2.) that the deed of 1901 was void altogether as being a transaction of bargain and sale entered into by the plt. without, as the evidence shewed, his having been properly advised as to the sufficiency of the consideration and without the advice of an independent solicitor fully cognizant of the facts.

Hatch v. Hatch, (1804) 9 Ves. 292; 7 R. R. 195, and *Holman v. Loynes*, (1854) 4 D. M. & G. 270, followed.

In the absence of some of the beneficiaries under the deed of 1900, the Court refused to remove C. from being a trustee thereof or to make a declaration as against him further than that the deed was void so far as related to his beneficial interest.

The law as stated by Farwell J. in *Powell v. Powell*, [1900] 1 Ch. 243, 247, as to the duty of a separate solicitor called in to advise a donor in the case of an intended gift to a donee standing in a fiduciary relation to the donor, approved of.

Form of declaration setting aside a deed.
WRIGHT v. CARTER - C. A. [1902] W. N. 198; [1903] 1 Ch. 27

3. — Voucher — Bill of costs — Taxation — Solicitor and client.

In Dec., 1903, A., a ward of Court in Ireland, attained his majority and came into possession of considerable property. From Dec., 1903, to Dec., 1905, E. & E., solicitors, acted for him in the management of his affairs. During this period they received large sums on his behalf, out of which they paid many of his debts, and also retained the amount of their costs, charges and expenses as his solicitors. In Dec., 1905, they ceased to act for him, and all transactions between them were then closed. In June, 1907, a receiving order was made against A., and in July, 1907, he was adjudicated bankrupt. Subsequently the trustee in bankruptcy applied to E. & E. for an account of all the moneys of the bankrupt that had come to their hands from Dec., 1903, to Dec., 1905. In Mar., 1908, E. & E. delivered to the trustee two cash accounts, and shortly afterwards three bills of costs. The trustee did not dispute that the payments appearing in the cash accounts had in fact been made, but required that the vouchers for these payments should be handed over to him. E. & E. declined to hand over the vouchers except in exchange for a discharge in respect of the payments to which the vouchers related. The trustee thereupon took out a summons for delivery up of the vouchers on the ground that they were the property of the bankrupt, and for taxation of the bills of costs on the ground that they contained overcharges.

Neville J.: I think the respondents have misconceived their position. They are not trustees, but agents who have been paid. The vouchers represent payments made on behalf of the bankrupt with his money and are his property, and must be handed over to the trustee;

SOLICITOR (Fiduciary Relation)—continued.

and the bills of costs must be referred to taxation. *In re ELLIS & ELLIS*

Neville J. [1908] W. N. 215

Fraud.

— Fraudulent solicitor—Non-production of title-deeds—Postponement of legal mortgage.
See MORTGAGE—Priority. 8.

— Fraudulent statement—Trustee—Breach of trust—Duty to investigate assignee's title—Constructive notice—Relief.
See TRUSTEE—Breach of Trust. 2.

— Liability for fraud of co-partner—Novation—Election.
See PARTNERSHIP. 14.

— Mortgage by client to solicitor—No money advanced—Fraud of solicitor—Sub-mortgage by solicitor.
See MORTGAGE—Priority. 6.

Justices of the Peace.

— Provision as to the appointment of solicitors to be justices, *see Justices of the Peace Act, 1906 (6 Edw. 7, c. 16), s. 3.*

Lien.

1. — Company—Winding-up—Liquidator—Documents in solicitor's hands before winding-up order—Solicitor's lien on documents.

An action was brought by a co. against its directors for penalties for acting without qualification. N. acted as solicitor for the co., and documents came into his hands in the course of the action. The co. was ordered to be wound up compulsorily and a liquidator was appointed. The liquidator continued the action and retained N., but afterwards discharged him and appointed another solicitor, to whom he required N. to hand over all documents relating to the action. N. claimed a lien for costs. This summons was taken out by the liquidator for an order for the delivery of documents:—

Held, that N. had a good lien on, and was entitled to retain, until his costs were paid, all documents which had come into his possession, and on which he had acquired a lien before the order for winding-up, but must deliver those acquired in the course of the winding-up. *In re RAPID ROAD TRANSIT CO.*

Neville J. [1908] W. N. 222; [1909] 1 Ch. 96

— Costs, Lien for—Cross-judgments—Execution.
See COUNTY COURT—Practice. 3.

2. — Costs—Lien on client's papers for costs—Acceptance of securities—Duty of solicitor to inform client of intention to retain lien.

Where securities are given by a client to a solicitor to secure the payment of particular costs, the solicitor's general lien is unaffected.

Where a solicitor takes any security for his general costs which is inconsistent with the retention of his general lien, since it gives him some special advantage which the enforcement of the payment of his costs by the exercise of his right of lien would not give, that lien is gone unless he gives the client express notice of his intention to retain the lien.

Per Kennedy L.J.: Semble, if a solicitor

SOLICITOR (Lien)—continued.

when taking from his client any security for general costs intends to retain his lien, he ought, either by express words or by necessary implication, to make that intention known to his client. *In re MORRIS* C. A. [1908] 1 K. B. 473

— Costs—Set-off—Independent proceedings—Consolidation order.

See MORTGAGE—Foreclosure. 4.

3. — *Country solicitor and town agent—Bankruptcy of country solicitor—Taxation—Documents in possession of town agent—Production for purposes of taxation.*

The trustee in bankruptcy of a country solicitor delivered to a client a bill of costs which included agency charges and disbursements made by the London agents by whom the business of the client had been transacted. The client, acting through the London agents, obtained an order for taxation. Upon a motion by the trustee for an order upon the London agents to produce before the taxing Master all documents in their possession relating to the matters referred for taxation:—

Held, that the London agents were entitled to insist upon their lien, not only for their costs included in the particular bill, but for all costs due to them from the country solicitor in respect of agency business and disbursements generally, and that they had not waived their right to lien by acting for the lay client on the application for taxation. *In re JONES & ROBERTS*

Joyce J. [1905] W. N. 57; [1905] 2 Ch. 219

— Documents—Lien on client's documents—Waiver—Proof of debt—Amendment—"Inadvertence."

See COMPANY—WINDING-UP—Proof. 1.

4. — *Partnership action—Lien for costs—Money in Court and in hands of receiver—"Property recovered or preserved"—Judgment creditor—Charging order—Priority—Solicitors Act, 1860 (23 & 24 Vict. c. 127), s. 28.*

In a partnership action where a receiver had been appointed, a judgment creditor of the partnership firm obtained an order, following *Kewney v. Attrill*, (1886) 34 Ch. D. 345, giving him a charge for his debt and costs upon the assets in or to come into the hands of the receiver, the creditor undertaking to deal with the charge according to the order of the Court. Upon an application by the solicitor of the plt. in the action for a charging order for his costs under s. 28 of the Solicitors Act, 1860, in priority to the judgment creditor:—

Held, that the solicitor was entitled to succeed.

Seemle, an order in the form of *Kewney v. Attrill* only operates as a charge as among the creditors of the partnership themselves, or as against the several partners of the firm. *RIDD v. THORNE*

Joyce J. [1902] W. N. 110; [1902] 2 Ch. 344

Limitations, Statute of.

— Opening settled accounts—Solicitor—Mortgagee.

See SOLICITOR—Accounts. 1.

SOLICITOR (Limitations, Statute of)—continued.

— Part payment—Solicitor's bill—Recovery of moneys due to client—Retainer on account with assent of client.

See LIMITATIONS, STATUTE OF. 19.

Misappropriation.

— Misappropriation by solicitor—Limitations, Statute of—Acknowledgment—Entry of deceased person against interest.

See TRUSTEE—Breach of Trust. 4.

Misconduct.

1. — *Administration actions—Agreement to share profit costs between solicitors who represent different conflicting interests.*

It is an improper practice for solicitors, acting for parties in an administration action, to share the profit costs of other solicitors introduced by them to act for other parties in the action whose interests conflict with those of the introducers' clients, and all the solicitors who engage in such a transaction are guilty of misconduct punishable by the Court. *In re FOUR SOLICITORS. Ex parte INCORPORATED LAW SOCIETY*

Div. Ct. [1901] 1 K. B. 187

— Inquiry—Report of Committee of Incorporated Law Society—Right of complainant to be heard by Court—Necessity of appearing by counsel.

See SOLICITOR—Practice. 1.

— Trustee and cestui que trust—Breach of trust—Solicitor trustee—Fraud—Appropriation.

See TRUSTEE—Breach of Trust. 3.

Overseer.

— Overseer—Exemption—Poor law—Appeal to quarter sessions—Costs—Writ of privilege.

See POOR LAW. 15.

Partnership.

1. — *Liability for acts of partner—Scope of partnership—Title-deeds—Legal estate in trustee—Duty of solicitor to cestui que trust—Partnership Act, 1890 (53 & 54 Vict. c. 39), s. 11 (b).*

G., a partner in the firm of J. & G., solicitors, was secretary to a co. The co. purchased property, and for their own convenience had it conveyed to G. in his own name without any declaration of trust in the conveyance. The transaction was carried through and the conveyance settled by the firm of J. & G. as the co.'s solicitors. The conveyance, the only title-deed handed over, was retained by G. G. fraudulently raised money by deposit of the conveyance, and afterwards executed a legal mortgage to the equitable mortgagee. J. had no notice that the conveyance had been made to G. alone, or of any part of the transaction, except such notice as was implied by his firm having acted for the co. The partnership deed made the secretaryship a part of the partnership business:—

Held, that G. having a legal right as trustee to the possession of the deed, it was no part of the duty of the firm to see that he did not obtain it without the direction of his cestui que trust, the co. Assuming that the firm would have

SOLICITOR (Partnership)—continued.

been liable for any negligence of G. in his duty as secretary, it was no part of such duty to act as trustee of the co.'s property. J. was therefore not liable for his partner's fraud. *TENDRING HUNDRED WATERWORKS CO. v. JONES*

Farwell J. [1903] 2 Ch. 615

Practice.

1. — *Allegation of professional misconduct—Inquiry—Report of Committee of Incorporated Law Society—Right of complainant to be heard by Court—Counsel, Necessity of appearing by—Solicitors Act, 1888 (51 & 52 Vict. c. 65), s. 13.*

Sect. 13 of the Solicitors Act, 1888, by which an application to strike the name of a solicitor off the rolls, or to require him to answer allegations contained in an affidavit, is to be heard by a committee of the Incorporated Law Society, who are to embody their findings in the form of a report to the High Court of Justice, provides that any person, who but for the Act would have been entitled to apply to the Court to strike a solicitor off the rolls, or to require him to answer allegations contained in an affidavit, shall still be entitled so to apply, and "shall be entitled to be heard, if the society brings the report of the committee before the Court" :—

Held, affirming the decision of a Div. Ct., [1903] W. N. 74 ; [1903] 1 K. B. 857, that such an applicant could not be heard in person, but must appear by counsel.

Ex parte Pitt, (1883) 2 Dowl. 439 ; 39 R. R. 734, followed. *In re A SOLICITOR. Ex parte INCORPORATED LAW SOCIETY*

C. A. [1903] W. N. 117 ; [1903] 2 K. B. 205

Costs.

See under SOLICITOR—Costs.

Privilege.

— Solicitor—Discovery.

See under DISCOVERY.

Probate.

— Practice—Defendant lunatic—Position of official solicitor, if appointed guardian ad litem.

See PROBATE—Lunacy. 2.

Representation.

— Solicitor and client—Adverse title to part of land previously acquired by solicitor.

See ESTOPPEL. 2.

Restraint on Trade.

1. — *Injunction—Solicitor—Covenant—Restraint on trade—Do work as solicitor—Prohibited area—Letters posted outside the area addressed to persons within it.*

By an agreement made between the plt. and the deft. the latter covenanted that he would not within a certain district do for other persons any work or act usually done by solicitors. He wrote and posted letters outside the prohibited area addressed to persons residing within the area. These letters were solicitor's letters written on behalf of clients, and contained demands for an apology and for payment of a debt, and other

SOLICITOR (Restraint of Trade)—continued.

matters. The instructions for the letters were given outside the area :—

Held, that the acts were done at the places where the letters were received, and therefore that they were breaches of the covenant. *EDMUNDSON v. RENDER*

Buckley J. [1905] W. N. 121 ; [1905] 2 Ch. 320

Note.

See Woodridge & Sons v. Bellamy, Eve J., [1910] W. N. 269. *Solicitor—Contract of Service. 1.*

Striking off Roll.

1. — *Name—Permitting unqualified person to use solicitor's name—Punishment—Discretion of Court—Striking off roll—Solicitors Act, 1843 (6 & 7 Vict. c. 73), s. 32.*

Sect. 32 of the Solicitors Act, 1843, which enacts that a solicitor "shall and may be" struck off the roll for certain specified offences, does not give the Court a discretion to inflict upon the offending solicitor any less punishment than that of striking him off the rolls.

In re Kelly, [1895] 1 Q. B. 180, approved and followed. *In re BURTON and BLINKHORN*

Div. Ct. [1903] 2 K. B. 300

Trustee.

— Breach of trust—Delay in accounting—Solicitor-trustee—Liability to indemnify co-trustee.

See TRUSTEE—Accounts. 1.

— Trustee—Improper investment—Reliance on solicitor.

See TRUSTEE—Investments. 6.

Undertakings.

See also under PRACTICE—Undertakings.

— Costs, Security for—Undertaking by solicitor to refund—Practice—Appeal.

See COSTS. 60.

— Enforcing—Solicitor's undertaking to refund money to bankrupt's estate.

See BANKRUPTCY—Undertakings. 1.

1. *Undertaking to pay money to person not client—Disciplinary jurisdiction of Court—Summary order for payment.*

Where a solicitor in the course of legal proceedings makes a statement to a person, even though not his client, that funds have been put into his hands for the purpose of payment to that person upon a certain event happening, and that upon the happening of the event he will pay the money, the personal undertaking of the solicitor is sufficient to enable the Court to exercise its summary jurisdiction to compel him to carry out the undertaking on the application of the person to whom it is given, although it is not a personal guarantee in the sense that the solicitor guarantees the payment of the money out of his (the solicitor's) own pocket.

Further, the Court will exercise its disciplinary jurisdiction to prevent a breach of trust where there has been a declaration of trust by a solicitor in favour of a person even though not his client,

SOLICITOR (Undertakings)—continued.

which induces that person to alter his position.

In re A SOLICITOR. Ex parte HALES

Div. Ct. [1907] W. N. 155; [1907] 2 K. B. 539

Note.

This case was not followed by *Hamilton J., United Mining and Finance Corporation, Ltd. v. Becker*, [1910] 2 K. B. 296. See next Case.

2. — *Undertaking to pay money to person not client—No misconduct on part of solicitor nor legal proceedings pending—Disciplinary jurisdiction of Court—Summary order for payment.*

The Court has jurisdiction, on the application by a person to whom a solicitor gives an undertaking in his capacity as a solicitor, to exercise its summary procedure to compel the solicitor to carry out the undertaking, even though the applicant is not the client of the solicitor and the undertaking was not given in the course of legal proceedings, nor is there any suggestion of dishonourable or discreditable conduct on the part of the solicitor.

Peart v. Bushell, (1827) 2 Sim. 38, and dictum of A. T. Lawrence J. in *In re a Solicitor, Ex parte Hales*, [1907] 2 K. B. 539, not followed. UNITED MINING AND FINANCE CORPORATION, LD. v. BECHER - - - Hamilton J.

[1910] 2 K. B. 296

Unqualified Person.

1. — *Acting as a solicitor—Carrying on proceeding in action—Notice of appearance to writ—Solicitors Act, 1843 (6 & 7 Vict. c. 73), s. 2—R. S. C., Order XII., r. 9; App. A., Pt. II., Form No. 2.*

An unqualified person who gives, as agent for the deft. in an action, the notice of appearance to the writ required by Order XII., r. 9, to be given by the deft. to the plt. or his solicitor, is thereby acting in contravention of s. 2 of the Solicitors Act, 1843, which prohibits any unqualified person from "acting as a solicitor" or "carrying on any proceeding" in the superior Courts. *In re AINSWORTH. Ex parte THE LAW SOCIETY* - Div. Ct. [1905] 2 K. B. 103

SOUND SIGNALS—Shipping—Collision.

See SHIPPING—Collision. 64—68.

— Collision—In or approaching falling snow—Speed.

See SHIPPING—Collision. 61.

— Contributing to collision.

See SHIPPING—Collision. 63.

SOUTH AFRICA—Laws of.

See under CAPE OF GOOD HOPE.

SOUTH AUSTRALIA—Laws of.

See under AUSTRALIA.

SOUTHWARK—Bishopric.

See under ECCELESTASTICAL LAW.

SOVEREIGN.

See under CROWN.

SPAIN—R. S. C., Order XI., r. 8, to apply to Spain.

See under PRACTICE.

SPANISH LAW—Shipping—Collision—Damage

—Both to blame—Life claims.

See SHIPPING—Collision. 16.

SPECIAL CASE—Appeal by—Removal of refuse

—Hotel—Trade refuse—Public Health (London) Act.

See LONDON—Removal of Refuse. 1.

1. — *Application for service on justices—Practice—Summary Jurisdiction Rules, 1886, r. 18.*

Where an application is made under s. 33 of the Summary Jurisdiction Act, 1879, to a Court of summary jurisdiction to state a special case, it is a sufficient compliance with the rule dated Mar. 20, 1906, made in substitution of r. 18 of the Summary Jurisdiction Rules, 1886, if the previous practice of serving a copy of the application on each justice personally is followed instead of leaving the justices' copies with the clerk of the Court. *REX v. WOODCOCK*

Div. Ct. [1907] W. N. 105; [1907] 2 K. B. 104

Note.

Discussed by C. C. A., *Rex v. Perry*, [1909] 2 K. B. 697. See CRIMINAL LAW—Evidence.

— Application for service on justices—Summary jurisdiction.

See SPECIAL CASE. 1.

— Time for filing special case—Rating appeal—Crown Office Rules.

See CROWN OFFICE. 1.

SPECIALTY DEBT—Administration of assets—

Executor—Preferential payments.

See ADMINISTRATION. 28.

— Bond—Lost acknowledgment—Parol evidence

—Onus of proof.

See LIMITATIONS, STATUTES OF. 3.

SPECIFIC DEVISE—Annuity—Charge on land

—Legacy—Will.

See ANNUITY. 13.

— Complete general description—Falsa demonstratio.

See WILL—Specific Devise. 1.

— Estate duty—Direction to pay.

See under WILL—Testamentary Expenses.

— Partnership realty—Will—Deceased partner—Solvent partnership.

See PARTNERSHIP. 6.

— Residuary devises—Will—Construction.

See under WILL—Residue.

— Settlement estate duty—Directions to pay.

See under WILL—Testamentary Expenses.

— Will—Construction.

See under WILL—Specific Devise.

SPECIFIC LEGACY—Bequest of shares to A.—

Assent of executors—Transfer—Discovery of codicil—Shares given to B.—Recovery of shares.

See PROBATE—Revocation. 7.

— Demonstrative or—Administration.

See WILL—Residue. 7.

SPECIFIC LEGACY—*continued*.

- Interval between death of testator and assent of executor—Costs of upkeep and preservation.
See ADMINISTRATION. 29.
- Will—Construction.
See under WILL—**Specific Legacy**.

SPECIFIC PERFORMANCE—Agreement for tenancy—Failure as present demise—Operation as agreement for future lease.
See LANDLORD AND TENANT. 1.

- Bankruptcy—Mutual debts or dealings—Set-off of debt against purchase-money.
See BANKRUPTCY—**Set-off**. 1.

1. — *Bankruptcy* — *Specific performance against vendor's trustee in bankruptcy*—*Bankruptcy Act*, 1883 (46 § 47 *Vict. c. 52*), s. 55—*Bankruptcy Act*, 1890 (53 § 54 *Vict. c. 71*), s. 13.

Specific performance may be enforced against the trustee in bankruptcy of a vendor of property, and, if the property is leasehold, he cannot disclaim the contract without disclaiming the lease.

Holloway v. York, (1877) 25 W. R. 627, distinguished. *PEARCE v. BASTABLE'S TRUSTEE IN BANKRUPTCY* *Cozens-Hardy J.* [1901] W. N. 70; [1901] 2 Ch. 122

Note.

In re Bastable, Ex parte the Trustee, C. A. [1901] 2 K. B. 518. *See* *Bankruptcy—Disclaimer*. 5.

- Building contracts, Exception from general rule as to.
See BUILDING CONTRACT. 5.
- Compensation—Conditions of sale—Misleading particulars — Statement by auctioneer.
See VENDOR AND PURCHASER—**Conditions of Sale**. 3.
- Company—Director—Contract of service—Restraint on trade—Breach of negative covenant—Interdependent contracts.
See COMPANY—**Directors**. 5.
- Compulsory powers—Purchasers compelled to take conveyance.
See LANDS CLAUSES ACTS. 11.
- Conditions of sale — Interest on purchase-money—Wilful default.
See VENDOR AND PURCHASER—**Conditions of Sale**. 1.
- Contract — Enjoyment of light — Deed of acknowledgment — Non-disclosure — Compensation—Costs.
See VENDOR AND PURCHASER—**Contracts**. 1.
- Contract to deliver on specified terms all the coal required for use in the plaintiffs' works—Breach of contract—Damages.
See CANADA—**Contracts**. 1.
- Costs—Equitable set-off—Debts "en autre droit."
See VENDOR AND PURCHASER—**Costs**. 1.
- Covenant to build—Lease.
See BUILDING CONTRACT. 5.

SPECIFIC PERFORMANCE—*continued*.

- Default in payment by purchaser—Forfeiture of deposit—Form of order.

See VENDOR AND PURCHASER—**Deposit**. 3.

- Delay—Wilful default of vendor—Interest.
See VENDOR AND PURCHASER—**Interest**. 2.

2. — *Injunction*—*Contract for purchase of timber to be cut and removed by purchaser*—*Mutuality*—*Licence*—*Retocation*.

The plts. entered into a contract with the deft. for the purchase of certain timber growing on his property. By the contract they were to have the right to enter upon the property, cut the timber, and saw it up thereon, to erect sawmills, and to remove the timber; and the deft. was to give free exit for all timber to hard roads and free sites for sawmills. The plts. erected a sawmill and commenced to cut timber, saw it up, and remove it. The deft. subsequently repudiated the contract and forcibly ousted the plts. and their men from the estate. The plts. brought this action against the deft., asking for an injunction restraining him from preventing the due execution of the contract and for damages. The deft. contended, *inter alia*, that the claim for an injunction was equivalent to a claim for specific performance, and that the Court would not grant specific performance of such a contract, but would leave the plts. to their remedy by way of damages:—

Held, that although the Court might be unable to compel the plts. to cut the timber if they refused to do so, it had jurisdiction to give them relief by way of specific performance, and that the injunction ought to be granted. *JAMES JONES & SONS, LD. v. EARL OF TANKERVILLE* *Parker J.* [1909] W. N. 171; [1909] 2 Ch. 440

- Isle of Man—Agreement to purchase land—*Manx Local Government Act*, 1886.
See ISLE OF MAN. 3.
- Judgment for, against purchaser—Forfeiture of deposit—Form of order.
See VENDOR AND PURCHASER—**Practice**. 2.
- Lease—Action to purchase landlord's interest — Condition precedent—Mortgage.
See LANDLORD AND TENANT. 58.
- Mistake—Sale by auction—Purchaser of wrong lot.
See VENDOR AND PURCHASER—**Mistake**. 1.
- New Zealand Property Law Act, 1908—Suit by lessee on a covenant to renew the lease.
See NEW ZEALAND. 11.
- Nomination—Consent or refusal by continuing partners.
See PARTNERSHIP.
- Power of attorney—Ejectment—Injunction—Mortgage.
See TURKS AND CAICOS ISLANDS. 1.
- Railway company—Statutory contract with landowner — Subsequent contract in derogation of same—Damages.
See RAILWAY—**Contracts**. 2.

SPECIFIC PERFORMANCE—*continued.*

— Refused—Uncertainty as to consideration—Contract of sale of land.
See TRANSVAAL.

— Requisition on title—Arbitrary exercise of power to rescind contract.
See VENDOR AND PURCHASER—Conditions of Sale. 5.

— Vendor and purchaser.
See under VENDOR AND PURCHASER—Specific Performance.

— Vendor's action for specific performance—Title accepted and conveyance approved—Form of order.
See VENDOR AND PURCHASER—Practice. 3.

3. — Written offer containing two alternatives—Verbal acceptance of one—Agreement to let from year to year—*Statute of Frauds*, s. 4.

Verbal acceptance of one or two alternatives contained in a written and signed offer is sufficient to constitute an enforceable contract as against the writer.

Dictum of Earl Cairns L.C. in *Hussey v. Horne-Payne*, (1879) 4 App. Cas. 311, 317, discussed and followed.

Specific performance of an agreement to let from year to year will be enforced.

Clayton v. Illingworth, (1853) 10 Hare, 451, and *De Brassac v. Martyn*, (1863) 11 W. R. 1020, considered. LEVER v. KOFFLER

Byrne J. [1901] W. N. 46; [1901] 1 Ch. 543

SPECIFICATION — Amendment—Patent—Letters of registration—Invalidity—Appeal from Western Australia.
See PATENT—Registration. 1.

— Interpretation of—Infringement by licensee—Damages.
See PATENT—Infringement. 7.

SPES SUCCESSIONIS—Covenant to settle after-acquired property—Scots domicile—Jus relictæ.
See SETTLEMENT. 19.

SPIRITS—Excise—Extraction of spirits from wood of empty cask.
See REVENUE—Excise. 4.

SPORTING RIGHTS—Occupier with—Ground game—Prohibition against setting spring traps except in rabbit holes.
See GAME. 2.

— Rateability of—Assessment in proportion of one-fourth of net annual value.
See RATES. 44.

— Yearly hiring—Notice to determine.
See LANDLORD AND TENANT. 82.

SPRING TRAPS.
See under TRAPS.

SQUATTER—Restrictive covenants—Title by adverse possession—Notice—Statute of Limitations.
See VENDOR AND PURCHASER—Title. 13.

STABLE—Improvements—Reimbursement out of capital moneys.
See SETTLED LAND—Capital Moneys. 5.

STABLE-BOY—Licence—Assessed taxes—Apprentice—"Male servant."
See REVENUE—Servants. 2.

STAGE BUSINESS—Copyright—Infringement—"Dramatic piece."
See COPYRIGHT—Dramatic. 1.

STALE DEMAND—Mortgage—Foreclosure—Advowson in gross—Equitable mortgage—"Land."
See MORTGAGE—Advowson. 1.

STALLAGE—Fair—Franchise—Tolls.
See MARKETS. 3.

STAMPS—Evidence—Unstamped agreement.
See COMPANY—Reconstruction. 3.

— Fees—Inspector—Duty of, to take fees.
See under WEIGHTS AND MEASURES.

— Forged indorsement—Draft by one branch of bank on another.
See BANKER. 4.

— Public revenue.
See under REVENUE—Stamps.

— Reissue of debentures—Mortgagor and mortgagee.
See COMPANY—Debentures. 54.

— Time policy—Continuation clause, Validity of.
See INSURANCE (MARINE). 28.

"**STANCH**"—Power to erect—Implied obligation to maintain and repair—"Toll"—River.
See WATER HIGHWAY. 1.

STANDARD BEARER OF SCOTLAND—Non-alienability of office of—Dignity—Jurisdiction—Sale of office.
See SCOTTISH LAW. 8.

STANDING OVER—Practice—Witness actions.
See PRACTICE—Trial. 8.

STATEMENT OF CLAIM—Practice.
See under PRACTICE—Statement of Claim.

STATING CASE—Power to quarter sessions.
See LICENSING ACTS. 62.

STATUE—Bronze group—Tenant for life and remainderman—Right of removal.
See FIXTURES. 6.

STATUTE—*Act of Parliament—Construction of Statutes—Private Act of Henry VIII.—Settled estates—Tenant in tail—Restriction on alienation—Prohibition—Exception in favour of jointuring—Power—Testamentary instrument, Execution of power by—Application of modern statutes to old statutes.*

By a private Act of 1535, 27 Hen. 8, real estates were limited to two persons respectively in tail, with cross remainders between them in tail, with a proviso that no tenant in tail should alien any of the settled estates nor do anything

STATUTE—continued.

to the disinheritation of his heirs, "but only for the jointure of wife."

By a later Act of 1863, which recited the earlier Act, including the proviso, the powers of the Leases and Sales of Settled Estates Act, 1856, were made applicable to the estates. Certain sections of the Act of 1863 referred to "the powers of jointuring contained in "the Act of 1535, and s. 9 enacted that the "powers in the recited Act contained or implied of giving the said lands for the jointure of a wife" should be exercisable either previously to or after a marriage.

In 1901 M. became tenant in tail in possession of the estates and he died in 1902, having by a codicil to his will purported, "in the exercise of all powers contained in" the two private Acts, "or either of them," to appoint and give the estates to his wife (who survived him) for life "by way of jointure." The question being raised whether M. had power to appoint the income of the estates for the jointure of a surviving wife:—

Held, (reversing Joyce J., [1902] W. N. 214), that although a power to jointure by "will" was not actually mentioned in the Act of 1535, and in fact could not have then been contemplated, inasmuch as, apart from custom, a will had no operation before the Statute of Wills, 1540, 32 Hen. 8, c. 1, yet, upon the principle stated in *Vernon's Case*, (1572) 4 Rep. 1 a, 4 a, that "an Act of late time shall be taken within the equity of an Act made long time before," a jointure under the power conferred upon a tenant in tail by the Act of 1535 could, under the present law, be well created by a testamentary instrument. *In re BOLTON ESTATES. RUSSELL v. MEYRICK* C. A. [1903] W. N. 124; [1903] 2 Ch. 461

— *Advowson* — *Patron* — *Infant* — *Trustees* to present during minority — *Guardian* — *Construction* of statute.

See ECCLESIASTICAL LAW—Advowson. 1.

2. — *City of London—Consolidated rate—Statute—Construction—Exemption from taxes and assessments—7 Geo. 3, c. 37, s. 51—City of London Sewers Act, 1848 (11 & 12 Vict. c. clviii.), s. 169*

Sect. 51 of 7 Geo. 3, c. 37, provides that certain lands in the City of London, reclaimed from the Thames, should vest in the adjoining owners "free from all taxes and assessments whatsoever."

The City of London Sewers Act, 1848, authorized the collection of a consolidated rate. Some of the objects to which the rate was to be applied were of a kind for which rates were made at the time of the passing of the Act of George III., but others were new. On appeal against an assessment to the consolidated rate made on land reclaimed under the Act of George III.:

Held, that the exemption applied only to then existing taxes and assessments, or others substituted for them, and that the consolidated rate, although it included some purposes for which rates were made when the exemption was created, was substantially a new assessment, and was therefore not within the exemption.

STATUTE—continued.

Judgment of Div. Ct., [1900] 2 Q. B. 581, affirmed. *SION COLLEGE v. LONDON CORPORATION* C. A. [1901] 1 K. B. 617

Note.

This case was referred to, *Re v. City of London Assessment Committee*, C. A., [1907] 2 K. B. 764. *See Rules. 29.*

— *Company incorporated by statute—Power to charge surplus lands—Existing debt. See CORPORATION. 15.*

— *Contradictory terms—Construction—Substitution of "and" for "or"—Highway Act, 1835. See HIGHWAY. 5.*

— *Contract by tenant for life to sell—Price to be fixed by arbitration—Breach of trust—Confirmation by Act of Parliament. See SETTLED LAND—Sale. 6.*

— *Dominion overrides Provincial legislation. See CANADA—Gas. 1.*

3. — *Electricity, Supply of—Construction of statute—Statutory power to make contract for supply of electricity—Penalty for default in supplying electricity when required—Breach of contract, Remedy for—Whether action lies—Loughborough Corporation Act, 1899 (62 & 63 Vict. c. cxcviii.), ss. 62, 65.*

Where by statute contractual rights are conferred, clear words are required in the statute in order to place a limitation upon those contractual rights.

By s. 65 of the Loughborough Corporation Act, 1899, the corporation was empowered to make agreements with regard to a supply of electrical energy to consumers, and by s. 62 the corporation was made liable to a penalty for default in supplying energy to any owner or occupier of premises to whom they might be and were required to supply energy under the Act. The plts., who were not entitled to require a supply under the Act, made an agreement with the corporation for a supply of electrical energy:—

Held, that an action would lie at the suit of the plts. against the corporation to recover damages for an alleged breach of the agreement to supply electrical energy, there being no clear words in the statute confining the remedy of the plts. to proceedings to recover the penalty under s. 62 of the statute. *MORRIS & BASTERT, LD. v. LOUGHBOROUGH CORPORATION*

C. A. [1908] 1 K. B. 205

Note.

See Bourne v. Marylebone Corporation, [1908] W. N. 52; C. A. [1909] W. N. 14. *See Corporation. 6.*

— "Evasion" of statute—Practice. *See DISCOVERY. 16.*

— *Implied repeal—Mortmain—Gift for maintenance of churchyard. See CHARITY. 35.*

— *Inconsistent enactments—Notice of buildings—Building ancillary to work authorized by private Act. See LONDON—Buildings. 13.*

STATUTE—*continued.*

- Interpretation of—Gas—Testing—"Daily"—London.
See **GAS**. 2.
- Licensing Acts—Constitution of statute—"Notwithstanding any agreement to the contrary"—Agreement made after passing of Act.
See **LICENSING ACTS**. 65.
- Market Gardeners Compensation (Scotland)—Retrospective effect of statute.
See **LANDLORD AND TENANT**. 3.
- Railway company—Statutory powers—Unreasonable use.
See **RAILWAY—Powers**. 3.
- Repealing Act—Saving clause, Effect of—Trustee—Criminal lunatic—Vesting order.
See **LUNACY**. 27.
- Retrospective effect of statute—Prevention of cruelty to children—Procedure.
See **CRIMINAL LAW—Cruelty to Children**. 3.
- Settled land—Sale—Confirmation by Act of Parliament—Local and personal Act—Statutory effect.
See **SETTLED LAND—Sale**. 6.
- Statute Law Revision Act, 1874 (No. 2)—London Hackney Carriages Acts.
See **LONDON—Carriages**. 1.
- Statutory powers—Compensation—Postmaster-General.
See **NEGLIGENCE**. 8.
- "Three years from the passing of this Act"—Exclusion of day on which Act received Royal assent.
See **LANDS CLAUSES ACTS**. 26.
- Unincorporated society—Repeal of statute under which certified—Illegal company—Jurisdiction to wind up.
See **BUILDING SOCIETY**. 3.
- Waterworks clauses—Construction of statutes.
See **WATER**.

STATUTES—*Statutes enacted during the years 1901—1910. See ante, p. cdlxvii.*

Table of Statutes judicially considered during the years 1901—1910. See ante, p. cdlxxxii.

Short Titles Act, 1896 (59 & 60 Vict. c. 14), facilitates the citation of sundry Acts of Parliament.

Chronological Table and Index of the 25th edition. To the end of the session 9 Edw. 7 (1909). In 2 vols. Price 10s. 6d.

Statute Law Revision Act, 1908 (8 Edw. 7, c. 49), further promotes the revision of the statute law by repealing enactments which have ceased to be in force or have become unnecessary.

STATUTES, 1907—The mistakes in the Companies Act, 1907, as originally printed, are the following:—

- (1) Page 222, in the heading to ss. 7 and 8 omit the words "Issue of shares at a discount and."

STATUTES, 1907—*continued.*

- (2) Page 228, s. 15—(1) read "Where either," instead of "Whether either."
- Substituted pages have been issued in accordance with the notice given in the *Weekly Notes* of Dec. 28, 1907.

STATUTORY COMPANY—Tramways.

See under **TRAMWAYS**.

STATUTORY DECLARATIONS—Made in

Colonies—Admissibility.

See **EVIDENCE**. 3.

STATUTORY MARKET—Disturbance—Injunction—Jurisdiction.

See **MARKETS**. 5.

STATUTORY POWERS—Damage caused by exercise of—Compensation—Public health—Sewers.

See **COMPENSATION**. 2.

—Misuse of—Injunction—Subsoil of road—

Vesting in sanitary authority.

See **LONDON—Conveniences**. 1.

STATUTORY RULES AND ORDERS—*Statutory Rules and Orders other than those of a Local, Personal, or Temporary Character, issued in 1910; with a List of Statutory Orders of a Local Character arranged in Classes, an Appendix of certain Orders in Council, &c., issued under the Royal Prerogative, and Index. Price 10s.*

1. — *Validity—Condition precedent—Order of Secretary of State—Notice of making of Order—Coal Mines Regulation Act, 1896 (59 & 60 Vict. c. 43), s. 6.*

By s. 6 of the Coal Mines Regulation Act, 1896, "a Secretary of State on being satisfied that any explosive is or is likely to become dangerous, may, by order, of which notice shall be given in such manner as he may direct, prohibit the use thereof in any mine, or in any class of mines, either absolutely or subject to conditions. . . ."

Upon the hearing of a summons against the manager of a mine for contravention of an order purporting to be made by a Secretary of State under the above section, a Queen's printer's copy of the order was put in evidence; but no evidence was given of any notice by the Secretary of State of the making of the order or of any direction by him as to the manner in which notice of the order should be given:—

Held, that the provisions as to the giving of notice were directory only, and were not conditions precedent to the coming into operation of the order, and that the order of the Secretary of State was therefore valid and binding. **JONES v. ROBSON** — Div. Ct. [1901] 1 K. B. 673

STAY OF EXECUTION—Judgment—Garnishee order nisi—Bankruptcy notice.

See **BANKRUPTCY—Notice**. 10.

STAYING PROCEEDINGS.

See under **PRACTICE—Staying Proceedings**.

STEAM-ENGINE—Used on farm—"Factory"—Workmen's compensation.

See **MASTER & SERVANT—Compensation**. 95.

STEAMSHIP.

See under SHIPPING.

STEAM TRAWLER—Collision.

See SHIPPING—Collision. 79—83.

STEP-CHILDREN—Maintain, Liability to.

See HUSBAND AND WIFE—Maintenance. 3.

STEPFATHER — Workmen's compensation — Illegitimate child.

See MASTER AND SERVANT — Compensation.

STEVEDORE — Compensation — Injury — Unloading ship — Defect in ship's tackle.

See MASTER AND SERVANT—Compensation. 165.

STIPENDIARY MAGISTRATES—Appointment of deputies.

See under RECORDERS, &C.

STIRPAL SURVIVORSHIP — "Survivors" read "others."

See SETTLEMENT. 44.

— Will—Construction.

See WILL—Survivor. 2.

STOCK—Government stock investment certificate.

See DONATIO MORTIS CAUSÁ. 3.

STOCK EXCHANGE—Bank of England.

— Transfer in books of—Personation of holder — Effect of Transfer — Estoppel — Liability of stockbroker to indemnify bank.

See INDIA STOCK. 4.

— Banker's lien—Authority to borrow—Pledge of client's security—Overdraft—Special borrowing—Stockbroker.

See BANKER. 9.

— Bankruptcy.

See under BANKRUPTCY—Stock Exchange.

1. — *Broker and client—Purchase of shares — Carry-over — Commission — "Net" charge including broker's remuneration and contango — Non-disclosure to client—Secret profit—Mortgage of shares—Blank transfer—Implied power of sale—Wrongful conversion.*

In Nov., 1904, the plt. instructed brokers on the London Stock Exchange to buy certain mining shares for him, it being understood that the shares were not to be taken up on the settling day, but were to be carried over. No agreement was made as to the remuneration of the brokers for arranging the carry-over. The brokers bought the shares from a jobber, and in the bought notes sent by them to the plt. they charged an opening commission of 1s. per share. They arranged the carry-over with the jobber, and the first continuation account sent by them to the

STOCK EXCHANGE—*continued.*

plt. contained a charge of "8½d. net." The shares were carried over in this way every fortnight until Jan., 1906, the "net" rate varying with the market price of the shares. The plt. having failed to pay the balance against him on the mid-Oct., 1905, carry-over, they pressed for payment, and the plt. deposited with them as security a certificate for 390 gas shares and signed a blank transfer of the same. The fortnightly balances continued adverse to the plt. and were not paid by him, and after repeated applications to the plt. for payment, the brokers, in Jan., 1906, closed the account with a balance of 69l. 10s. against him, and sold the 390 shares for 162l. 10s.

Throughout the above transactions the plt. thought that the "net" rate charged for every carry-over represented only the jobber's contango; but it included also, in fact, a charge by the brokers for arranging the carry-over which they did not disclose to the plt. It appeared that the "net" rate was well known on the Stock Exchange to indicate that with the jobber's contango was included the broker's remuneration, and that the charge of the brokers, which amounted in the aggregate to 17l. odd, was reasonable.

The plt. brought an action against the brokers for an account and payment of the secret profit made by them in carrying over the mining shares and for damages for wrongful conversion of the gas shares. The debts, counter-claimed for payment of reasonable remuneration for carrying over the mining shares:—

Held, first (reversing Neville J., [1909] W. N. 237; [1910] 1 Ch. 195), that the debts, not having been guilty of any breach of duty as agents, were entitled to retain the 17l. as reasonable remuneration; secondly (affirming Neville J.), that in the circumstances the implied power of sale was reasonably exercised.

Per Cozens-Hardy M.R. and Buckley L.J.: In the case of a mortgage of shares by deposit of the share certificate together with a blank transfer the fact that the mortgagee in giving notice requiring payment makes a mistake as to the amount due on the mortgage and demands too much is not a ground for invalidating the exercise of his implied power of sale.

And, *semble*, the same principle applies to the case of a pledge.

Pigot v. Cubley, (1864) 15 C. B. (N.S.) 701, explained. *STUBBS v. SLATER* - C.A. [1910] W. N. 73; [1910] 1 Ch. 632

— Certificate of shares—Negotiable instrument — Title, Prima facie evidence of.

See COMPANY—Shares. 4.

2. — *Contract—Measure of damages—Contract to carry over stock on the Stock Exchange—Client's account closed by broker—Anticipatory breach — Period with reference to which damages to be calculated.*

The debts, who were stockbrokers, agreed with the plt. to carry over to the end of May account on the Stock Exchange certain stocks which they had purchased for him, and made the necessary arrangements with jobbers for that

STOCK EXCHANGE—continued.

purpose. Before the settling day arrived they closed the plt.'s account without instructions by selling the stocks. Upon being informed of the closing of his account, the plt. gave the defts. notice that he should insist on performance by them of their contract when the settling day arrived. At the time when the defts. closed the plt.'s account the prices of the stocks were falling, but shortly afterwards they rose again, and they were higher at the end of May settlement, having been still higher during the interval between the closing of the plt.'s account and the end of May settlement. In an action brought before Wills J., [1901] 2 K. B. 867, by the plt. against the defts. after the end of May settlement for non-performance of their contract to carry over the stocks, the defts. contended that the damages ought to be assessed with reference to the prices of the stocks when the defts. closed the plt.'s account, and that so assessed they would be nominal :—

Held, that the defts.' contention was incorrect, and that the plt. was entitled to insist on performance of the defts.' contract at the end of May settlement, and to measure his damages with reference to the prices of the stock at that date.

Query, whether the plt. had a right to have the damages estimated with reference to the highest prices at which the stocks had stood in the interval between the closing of the plt.'s account and the end of May. **MICHAEL v. HART & Co.** C. A. [1902] 1 K. B. 482

— Debenture payable to bearer — Usage — Conversion — Holder for value.

See **NEGOTIABLE INSTRUMENT**. 1.

3. — Default of broker—Liquidation under Stock Exchange rules—Claim by jobber—Right of action against broker—Bankruptcy—Right of Stock Exchange creditor to petition in bankruptcy.

Where a member of the London Stock Exchange is declared a defaulter and his contracts are dealt with by the official assignee of the Stock Exchange, the proceedings in that liquidation are not an accord or satisfaction of the member's debts, and do not bar his creditors from suing him at law for the balance of their claims after deducting the dividends received by them in that liquidation.

A creditor who has obtained judgment in such an action can maintain a petition in bankruptcy against the defaulter.

The decision of the C. A., [1902] 2 K. B. 653 and [1903] 1 K. B. 216, affirmed. **MENDELSSOHN v. RATOLIFF**.

H. L. (E.) [1904] W. N. 150 ; [1904] A. C. 456

4. — Defaulter—Official assignee—Assignment of assets—Rules of Stock Exchange—Money paid into court—Judgment—Charging order.

The rules of the Stock Exchange operate to effect an assignment of all the assets of a member of the Stock Exchange declared a defaulter to the official assignee of the Stock Exchange; and that assignment, unless invalidated in bankruptcy proceedings against the

STOCK EXCHANGE—continued.

defaulter, is valid as against persons who are not, as well as those who are, members of the Stock Exchange.

Richardson v. Stormont, Todd & Co., [1900] 1 Q. B. 701, followed. **LOMAS v. GRAVES & Co.** C. A. [1904] W. N. 145 ; [1904] 2 K. B. 557

— Goodwill — Stockbroking business — Dissolution — Asset of partnership — Sale.
See **PARTNERSHIP**. 15.

5. — Lien — Stockbroker — General lien — Securities of customer.

Documents relating to shares belonging to a customer were held by stockbrokers to secure a specific advance of 15,000l. When this amount was repaid the documents were left with the brokers, and on subsequent transactions on the Stock Exchange by the customer, acting through the same brokers, losses were made for which the customer was liable to the brokers :—

Held, that although the specific purpose of the deposit had been satisfied by the repayment of the 15,000l., the brokers had a general lien on the shares for the amount due in respect of the Stock Exchange transactions. *In re LONDON AND GLOBE FINANCE CORPORATION*

Buckley J. [1902] 2 Ch. 416

— Mortgage of shares — Stipulation that mortgagee shall be employed as broker by the company — Clog on redemption.

See **MORTGAGE—Redemption**. 5.

— Pledge of shares by broker with jobber against settling day — Liability of jobber to account as mortgagee.

See **MORTGAGE—Stock Exchange**. 1.

6. — Principal and agent—Broker including several orders in one contract—Liability of principal to jobber—Usage of Stock Exchange—Privilege of contract.

Decision of Kennedy J., [1900] 2 Q. B. 18, affirmed. **BECKHUSON & GIBBS v. HAMBLET** C. A. [1901] 2 K. B. 73

7. — Principal and agent—Broker including several orders in one contract—Liability of principal to jobber on default of broker—Usage of Stock Exchange—Privilege of contract.

The deft. employed a broker to purchase for him 225 shares on the Stock Exchange, and afterwards directed him to carry them over to the next account. The broker, having instructions from other clients to carry over for them shares in the same undertaking, carried over by a single contract in his own name 925 of these shares with the plt., who were jobbers on the Stock Exchange, and apportioned 225 of the shares so carried over to the deft.; of the total number of shares 125 were carried over on the broker's own account. Before the next settling day the broker was declared a defaulter on the Stock Exchange, and his transaction with the plt. was closed by the official assignee. The deft., when communicated with, declined to be further bound by the contract, contending that by reason of the broker's failure the transaction was closed for all purposes at the price current on the day of the failure. The plt. thereupon

STOCK EXCHANGE—continued.

sold the shares for the best price obtainable, and claimed to be entitled to recover from the deft. the difference between the price at which the shares had been carried over and that at which they had been sold.

Held, that, apart from any usage of the Stock Exchange, the deft. was liable, it having been the intention of all parties that privity of contract should be created between the plts. and the deft., and such privity having in the circumstances been created.

There is an established and valid usage on the Stock Exchange under which a broker who is instructed by different clients to buy or carry over for them shares in the same undertaking can make one contract in his own name with a jobber for the total number of shares. It makes no difference that the broker includes in the same contract shares in which he is dealing in his own name. The jobber and each client of the broker become bound to each other to carry out that part of the contract which is applicable to the order of the particular client. *SCOTT & HORTON v. GODFREY*

Bigham J. [1901] 2 K. B. 726

8. — Principal and agent—Default of broker—Liability of client to jobber—Privity of contract.

Deft. employed a broker to purchase for him certain shares on the Stock Exchange, and afterwards directed him to carry over the shares to the next account. The broker, in accordance with the regulations of the Stock Exchange, purchased the shares in his own name from the plts., who were jobbers on the Stock Exchange, and afterwards carried over with them the same shares. The deft.'s name was not disclosed. Before the next settling day the broker was declared a defaulter on the Stock Exchange, and in accordance with the rules of that body his contract with the plts. was closed, at a price fixed by the official assignee of the Stock Exchange. The plts. having ascertained that the broker was acting for the deft. in this transaction, called upon him to take up the shares. He declined to accept any responsibility for them; and the plts., on the settling day, tendered the shares to the deft., and, on his refusing to accept them, sold them for the best price then obtainable. In an action to recover from the deft. the difference between the price at which the shares had been carried over and that at which they had been sold:—

Held, affirming the judgment of Mathew J., that the deft. was liable as principal on the contract made for him by his broker with the plts., and that the privity of contract between the plts. and the deft. was not affected by the rules of the Stock Exchange as to the compulsory closing of the transactions of a defaulting broker.

There is no established usage under which the client of a broker on the Stock Exchange who has become a defaulter, and whose transactions have been closed at prices fixed by the official assignee, can claim the right to close at the price so fixed a transaction entered into for him by the broker with another member of the Stock Exchange. *LEVITT v. HAMBLET*

C. A. [1901] W. N. 58; [1901] 2 K. B. 53

STOCK EXCHANGE—continued.

9. — Principal and agent—Right of broker to indemnity from client—Contract made by broker not in accordance with authority given.

The deft. on various occasions instructed the plt., a country stockbroker, to effect for her purchases and sales of stocks and shares in the usual way through brokers on the London Stock Exchange. On receipt of her instructions, the plt. effected various purchases and sales of stocks and shares in a manner of which the following transaction is an example. The deft. having instructed the plt. to buy certain American railway shares for her, the plt. gave an order for the purchase of the shares to a firm of brokers on the London Stock Exchange, between whom and himself there was an arrangement that in such cases they should deal at a "net" price for the shares, i.e., a price arrived at by adding to the purchase price such sum as the London brokers might fix as their remuneration for the transaction. The London brokers thereupon bought the shares from a jobber, and sent a bought note to the plt. charging "98½ net" for the shares, the price at which they bought from the jobber not being disclosed. The plt. then sent a bought note to the deft., charging her 98½ for the shares (without adding the word "net") plus a commission of 7s. 6d. and 1s. for the stamp. It appeared that the amount added by the London brokers for their remuneration did not exceed the usual commission payable in respect of such a purchase. In an action brought by the plt. against the deft. for a balance alleged to be due to him in respect of the above-mentioned transactions:—

Held by Sir Gorell Barnes, Pres., and Fletcher Moulton L.J. (Farwell L.J. dissenting), that the contracts effected by the plt., being contracts, not made through the London brokers as agents, but made with them as principals, were not in accordance with the authority given to the plt. by the deft., and thereupon he was not entitled to indemnity from the deft. in respect of them; and, consequently, that the action was not maintainable.

Judgment of Bucknill J. [1908] W. N. 90; [1908] 2 K. B. 82, affirmed. *JOHNSON v. KEARLEY*

C. A. [1908] W. N. 152; [1908] 2 K. B. 514

— Stockbroker—Fund in Court—Payment out to person not entitled—Liability to replace fund.

See PRACTICE—Payment out of Court. 8—10.

— Tenant for life—Right to direct employment by trustees of particular broker.

See SETTLED LAND—Investments. 1, 3.

— Transfer of stock—Personation of holder—Identification of transferor by stockbroker—Effect of transfer—Estoppel.

See INDIA. 4.

10. — Usage of Stock Exchange—Closing of client's account by broker—Sale and repurchase of shares by broker—Profit made by broker on transaction in fiduciary capacity.

Stockbrokers had on behalf of clients made a contract for the purchase of shares on the Stock Exchange. The clients having failed to provide

STOCK EXCHANGE—continued.

the money for the price of the shares, the brokers, for the purpose of closing the clients' account, went into the market, and sold a like amount of shares to a jobber, and, as part of the same transaction, repurchased the shares from him on their own account. By reason of the sale and repurchase being effected by one transaction, the brokers were enabled to repurchase the shares at a lower price than they would have had to pay if they had purchased them in the market in the ordinary way. The brokers in their account with the clients charged them commission on the shares to the jobber :—

Held, that, the brokers having acted in a fiduciary capacity in the sale of the shares, and having, by reason of that sale and the repurchase being effected as one transaction, obtained a profit for themselves, they were bound to account for that profit to their principals, the clients.

ERSKINE, OXENFORD & Co. v. SACHS
C. A. [1901] W. N. 141 ; [1901] 2 K. B. 504

11. — *Usage of Stock Exchange—Closing of client's account by broker—Sale and repurchase of shares by broker—Validity of closing.*

The defts., who were stockbrokers, by the plt.'s instructions effected on his behalf contracts on the Stock Exchange for the purchase of shares, upon which they incurred liability to a considerable amount. The plt. not providing the defts. with funds to meet that liability, the defts. became entitled to close the account, which they did in respect of the various contracts in the following manner. They got a jobber in the market to make a price for the shares, and, the jobber naming a fair market price, a bargain was made by the defts. with the jobber for the sale of the shares to him at the prices fixed and for the repurchase of the shares by them from him for the next account. The plt. sued the defts. for wrongfully selling the shares in contravention of an alleged agreement by them to keep the account open. The defts. counter-claimed the difference between the amount of the prices at which the shares were sold to the different jobbers as aforesaid and the amount of the prices at which they were purchased for the plt. The jury at the trial found that the defts. had agreed to keep the account open only on condition that the plt. would provide them with money to meet the liability incurred, and that the plt. had not done so. Thereupon the judge gave judgment for the defts. for the amount claimed by them on their counter-claim. On application to the C. A. for judgment or a new trial, the plt. contended that the closing of the account was not valid, on the ground that the sale of the shares was a mere form, and the defts., acting in a fiduciary capacity, were not entitled to purchase the shares on closing the account :—

Held, that the defts. were entitled to retain their judgment.

By A. L. Smith M.R. and Romer L.J. : There was nothing on the facts to shew that the transaction by which the account was closed was otherwise than valid.

By V. Williams L.J. and Romer L.J. : Having regard to the manner in which the plt.'s case had been shaped at the trial, it was not open to him to raise in C. A. the point that the transaction

STOCK EXCHANGE—continued.

between the defts. and the jobbers as aforesaid was not a valid mode of closing the account.

MACOON v. ERSKINE, OXENFORD & Co.
C. A. [1901] 2 K. B. 493

STOCKBROKER.

See under STOCK EXCHANGE.

STOCKPORT, CHESHIRE—District Registries (Stockport). *O. in C.*, dated June 11. Reprint from W. N. 1910 (July 2), p. 239. *See CURRENT INDEX*, 1910, p. cxxi.

STONE QUARRY—Manor—Custom—Right to get stone—Court rolls—Evidence.
See COMMON. 3.

STOP ORDER—Equitable assignment—Priority—Fund in court—Notice.

See HUSBAND AND WIFE—Property. 1.
— *Equitable execution—Effect of order—Uncertain residue—Charging order—Priority.*
See RECEIVER. 5.

STORAGE—Workmen's compensation—Employment on or in or about engineering work—Place used for storage of materials.
See MASTER AND SERVANT—Compensation. 82.

STOREKEEPERS' LICENCES—Brewers' Colonial ale licences—Law of South Australia.
See AUSTRALIA. 4.

STOWAWAY.

See under SHIPPING—Stowaway.

STRAITS SETTLEMENTS—Conviction of master for importation of chandu—Onus probandi—Straits Settlements Opium Ordinance, 1906, s. 73—Construction.

Held, on a consideration of the provisions of the Straits Settlements Opium Ordinance, 1906, that s. 73, which renders the importation of chandu a penal offence by the master and owner of the importing ship, applies to cases where chandu is in fact imported, but the prosecution have not the means of proving by whose aid, assistance, or procurement, or with whose privity or consent, or in whose interest or for whose profit that was done.

Accordingly a conviction and fine thereunder of the appellant, master of the steamship *Devawongsee*, of importing chandu, where it was conceded that the owner, the appellant, and his chief officer were ignorant thereof, and the magistrate was satisfied that every precaution had been taken, were sustained in the absence of evidence that no other officers or servants or crew or other persons employed on the ship had not been implicated in the use of the ship for that purpose. **BRUHN v. REX** P. C. [1909] A. C. 317

2. — *Settlement of Penang—Shipping—Bills of lading—Cesser of Liability Clause—Construction—Delivery of goods overside to landing agents.*

Goods were shipped on board the defts.' ship to be carried to Penang and delivered there to order or assigns under bills of lading which contained the condition that "in all cases and

STRAITS SETTLEMENTS—continued.

under all circumstances the liability of the company shall absolutely cease when the goods are free of the ship's tackle, and thereupon the goods shall be at the risk for all purposes and in every respect of the shipper or consignee." They were delivered to landing agents appointed by the defts., and for that purpose had been discharged from the ship's tackle into lighters sent by the said agents, but by fraud, in which the said landing agents participated, never reached the consignees;—

Held, that although there had been no delivery under the bills of lading, yet the provision as to cesser of the defts.' liability directly the goods were "free of the ship's tackle" was perfectly clear, and that it must be held to be operative and effectual to protect them. **CHARTERED BANK OF INDIA, AUSTRALIA AND CHINA v. BRITISH INDIA STEAM NAVIGATION CO.** **P. C. [1909] A. C. 369**

3. — Settlement of Penang—Will, Construction of—Destination of the subject of void gifts—Residuary legatees—Next of kin—Res judicata.

The appellant petitioned to have it declared that the devise and gifts contained in the 6th clause of the testator's will were void, and that the lands comprised therein and the income thereof being undisposed of belonged to the testator's next of kin. It appeared that in 1872 the Court in a suit relating to the same will had declared the said gifts to be void and that they "fell into the undisposed residue of the testator's estate"; that thereafter the gifts which were of annual sums were paid to the testator's next of kin with the assent of all parties interested, and that in 1891 in another suit relating to the same clause the Court had declared that the defts., who included the trustees of the will, were estopped from contending that the said annual sums were not wholly undisposed of:—

Held, overruling the judgment of the Court below, that the decision of 1872 as to the true construction of clause 6 applied to the corpus of the property comprised therein and was not limited to the gifts of the annual sums and was res judicata against the claim of the respondents, the residuary legatees. **BADAR BEE v. HABIB MERICAN NOORDIN** **P. C. [1909] A. C. 615**

— **Singapore Harbour — Collision — Inevitable accident—Onus of proof—Compulsory pilotage.**

See SHIPPING—Collision. 59.

4. — Singapore, Settlement of—English Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 47—Straits Settlements Bankruptcy Ordinance of 1888, s. 45—Construction—Conveyance by settlor to himself as trustee—Voluntary settlement.

Under s. 47 of the Bankruptcy Act, 1883, in order that a settlement may be valid the property comprised therein must pass from the settlor to the trustee:—

Held, that this provision is complied with where a settlor has altered his position from that of beneficial owner to that of a trustee for his wife and children, though ultimately and on their default for himself. **SHRAGER v. MARCH** **P. C. [1908] A. C. 402**

STREAM.

See also under **LONDON—Water.**
RIVER—Water.

— **Claim to ownership of bed of stream—Statement of claim—Embarrassing.**
See PRACTICE—Pleadings. 2.

— **Fishery Acts.**

See under **FISHERY.**

1. — Natural stream — Pollution — Rivers Pollution Prevention Act, 1876 (39 & 40 Vict. c. 75), ss. 3, 20—Act of 1893 (56 & 57 Vict. c. 31), s. 1.

The respondents applied for an order to restrain the appellants under the Rivers Pollution Prevention Act, 1876, "to abstain from causing to fall or flow or to be carried into" certain streams which flow through or by certain parishes in the county of Lanark and within the respondents' district "any solid or liquid sewage matter." The appellants alleged that the burns and streams in question were not "streams" within the meaning of the Act, in respect that at the date of the passing of the Act they were mainly used as sewers. There was a definite finding in fact that the appellants discharged all their sewage into the burns in question:—

Held (affirming the decision of the First Division of the Ct. of Sess.), that the burns in question were "streams" and not "watercourses mainly used as sewers" within the meaning of the Rivers Pollution Prevention Act, 1876.

Appeal from interlocutors of the First Division of the Ct. of Sess., the last material one being dated June 4, 1909. Reported at an earlier stage, (1906) 8 F. 802. **AIRDRIE MAGISTRATES v. LANARK COUNTY COUNCIL. COATBRIDGE MAGISTRATES v. LANARK COUNTY COUNCIL** **H. L. (Sc.) [1910] W. N. 92; [1910] A. C. 286**

2. — Natural stream — Pollution — Sewage works—Injunction—Discharge of injunction on subsequent facts—Statutory offence by public body—Remedy—Right of Attorney-General to injunction—Discretion—Local Sanitary Authority—Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 17.

The only prohibition contained in s. 17 of the Public Health Act, 1875 (so far as regards natural streams), is against conveying into any natural stream such sewage or filthy water as will prejudicially affect the purity of the stream. Therefore where sewage or other filthy water is conveyed into an already polluted stream, no offence is committed against the section unless the stream is thereby made fouler than it was before.

Kekewich J. having granted, at the instance of the Att.-Gen., a perpetual injunction to restrain a public drainage board from discharging sewage water into a river in contravention of s. 17 of the Public Health Act, 1875, the defts. appealed; but upon the appeal they did not contest that the injunction was properly granted on the facts existing at the trial. The defts., however obtained successive adjournments of the appeal to enable them to complete certain sewage works upon which they were engaged in order to comply with the section. The works

STREAM—*continued*.

having been completed at an enormous cost, and there being a conflict of evidence as to their sufficiency, the Court referred the matter to an expert to report, and he reported in favour of the defts.

In these circumstances, it appearing that there was no longer any breach of the section, and the defts. undertaking to use their best endeavours to prevent any future breach, the Court discharged the injunction, the appellants to pay the costs of the appeal.

The Att.-Gen., complaining that a public body is committing an offence against a statute, is not entitled as a matter of right, on proving his case, to an injunction.

Dicta of Farwell J. in *Att.-Gen. v. Wimbledon House Estate Co.*, [1904] 2 Ch. 34, 42, and of Vaughan Williams L.J. in *Att.-Gen. v. London and North-Western Ry. Co.*, [1900] 1 K. B. 78, 87, approved.

Dictum of Kekewich J. overruled.

Appeal from a decision of Kekewich J., [1908] 2 Ch. 551. *ATT.-GEN. v. BIRMINGHAM, TAME, AND REA DISTRICT DRAINAGE BOARD*

C. A. [1909] W. N. 235; [1910] 1 Ch. 48

— Water highway.

See under WATER HIGHWAY.

3. — *Watercourse—Artificial channel—Mill stream—Riparian proprietors—Title to bed of stream—Easement—Right to flow of water—Presumption—Trespass—Injunction—Damages.*

The plts. were the owners in fee of an ancient tannery situated on either bank of a mill stream, and the defts. were occupiers of an ancient corn mill further down the stream. The channel of the stream was an artificial one, constructed several centuries ago, and passing through the lands of various proprietors before reaching the tannery and the mill. The owners or occupiers of the mill were also in possession of and exercised the sole control over a weir and sluice gates built across the river E. at the point where the mill stream commenced, and they regulated the flow of the water into the mill stream and cleansed the bed and banks from the weir to the tannery. In Nov., 1907, the defts. cut off the water supply and, entering on the bed of the stream, within the plts.' premises, removed therefrom certain pipes by means of which the plts. had been in the habit of obtaining water for their tannery. In an action by the plts. for an injunction to restrain the interference with their right to abstract water, and for trespass and damages:—

Held, upon the facts, and having regard to the conduct of the parties, and especially to the notorious and constant user of the water by the plts. and their predecessors for nearly 250 years, that (1.) the plts. were the owners of the bed of the stream so far as it ran through their land; and (2.) the Court was bound to infer that the mill stream was originally constructed for the mutual benefit of the tanner and the miller, and that the plts. were entitled, under a reservation made or agreement entered into when the channel was constructed, to a right to use the water for all reasonable purposes, not causing any sensible or material injury to the miller.

STREAM—*continued*.

Baily & Co. v. Clark, Son & Morland, [1902] 1 Ch. 649, followed.

Burrows v. Lang, [1901] 2 Ch. 502, distinguished.

The rule in *Rylands v. Fletcher*, (1868) L. R. 3 H. L. 330, that a person who for his own purposes brings on his land and collects there anything likely to do mischief if it escapes must keep it in at his peril, does not extend to making the owner of land liable for consequences brought about by the collecting and impounding on his land by another of water, or any other dangerous element, not for the purposes of the owner, but for the purposes of that other person.

Semble, where water flows through an artificial channel past the lands of several proprietors to serve the purposes of a proprietor lower down, the proper grant to presume, in the absence of all evidence as to the conditions upon which the channel was originally made, would be the grant of an easement or right to the running of water; and *prima facie*, every proprietor of land on the banks of such a channel would be entitled to the moiety of the bed of the channel adjoining his land. *WHITMORES (EDENBRIDGE), LD. v. STANFORD* *Eve J.* [1909] W. N. 8; [1909] 1 Ch. 427

STREETS.

(Streets and Buildings.)

See also under BUILDINGS.
HIGHWAY.

NOTE.—*The cases under this heading relate only to places outside the county of London—As to London,*

See LONDON—Buildings.
LONDON—Streets.

1. — *Apportionment of expenses—Local Government—Private street works—Completion of works—Final apportionment of expenses—Frontager—Right to question apportionment—Private Street Works Act, 1892 (55 & 56 Vict. c. 57), s. 12.*

By s. 12 of the Private Street Works Act, 1892, "When any private street works have been completed, and the expenses thereof ascertained," the urban authority's surveyor shall make a final apportionment of the expenses, which final apportionment shall be conclusive for all purposes, and the owners of premises affected thereby may, within one month after receiving notice thereof, object thereto upon the grounds (*inter alia*), or either of them, that the final apportionment has not been made in accordance with the section, and that there has been an unreasonable departure from the deposited specification, plans, and sections.

An urban authority employed a contractor to execute, under the powers given by the Act, works of paving, &c., in a street according to a specification, plans, and an estimate duly made and deposited. Being satisfied on the report of their surveyor, who had inspected the work from time to time during its progress and given certificates for payments on account to the contractor, that it had been satisfactorily completed, they paid the contractor the balance of the contract price, and the surveyor then made a final

STREETS—continued.

apportionment of the expenses among the owners notice of which was served upon them. The appellant, an owner affected by the final apportionment, did not object thereto within one month after he received the notice; but the urban authority having, after the month had expired, taken summary proceedings to obtain payment of the sum apportioned upon him, he objected before the justices that the works had not been "completed" within the meaning of s. 12, because the road and footways of the street had not been formed and levelled, nor had they been ballasted and metalled to the thickness, or with the materials, specified in the specification, nor did the channelling and kerbing comply therewith, and that the surveyor had, therefore, no power to make a final apportionment of the expenses:—

Held, that the appellant could not take those objections before the justices, and that they were right in rejecting evidence in support of them. **HAYLES v. SANDOWN URBAN DISTRICT COUNCIL**

Div. Ct. [1903] 1 K. B. 169

— Architect's certificate—Street—General line of buildings—Superintending architect's certificate—Appeal to tribunal of appeal. *See* LONDON—Streets. 1.

— Betting—Street betting. *See* under BETTING.

2.—*Building line—Approval of plans—Erecting premises in advance of building line—“Written consent” of urban authority—Indictable offence—Statutory penalty—Special damage to adjoining owner—Whether action for damages maintainable—Local Government—Urban authority—Public Health (Buildings in Streets) Act, 1888 (51 & 52 Vict. c. 52), s. 3—Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 156.*

The Public Health (Buildings in Streets) Act, 1888, s. 3, enacts that it shall not be lawful "without the written consent of the urban authority" to erect a building in any street beyond the front main wall of the building on either side thereof; and "any person offending against this enactment shall be liable to a penalty not exceeding 40s. for every day during which the offence is continued after written notice in this behalf from the urban authority":—

Held, that the offence prohibited by the section was one compound offence, consisting of building without consent and continuing after notice, for which a penalty was imposed to be exacted by the urban authority, and therefore gave no cause of action to a private individual to whom special damage was occasioned.

Rumball v. Schmidt (1882) 8 Q. B. D. 603, discussed.

A builder submitted his plans of a proposed building to an urban authority in accordance with their by-laws. The plans showed that the proposed building would infringe the building line. The plans were considered and passed by a committee of the urban authority, and then stamped "approved" by the chairman of the committee. At a subsequent meeting of the general council of the urban authority a resolution was passed by which various acts and

STREETS—continued.

proceedings of the committee, including the passing of the said plans, were approved and adopted; and at the next general meeting of the council the minutes of the previous meeting were read and confirmed, and then signed by the chairman of the council:—

Held, that the above proceeding of the urban authority constituted a sufficient "written consent" for the purposes of s. 3 of the Act. **MULLIS v. HUBBARD** Farwell J. [1903] W. N. 100; [1903] 2 Ch. 431

3.—*Building line, infringement of—Statutory remedy—Penalty—Conviction—Subsequent action by Attorney-General for injunction—Laches—Mandatory order to pull down—Local Government—Urban authority—Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 157, 158, 251—Public Health (Buildings in Streets) Act, 1888 (51 & 52 Vict. c. 52), s. 3.*

The penalty prescribed by s. 3 of the Public Health (Buildings in Streets) Act, 1888, for a breach of the prohibition in the first part of the section against infringing the building line is not the only remedy for the offence. It is a public general Act and an injunction will lie at the suit of the Att.-Gen. on behalf of the public to restrain the infringement of the building line, and in a proper case a mandatory order to pull down will be made, even although the offender has been previously convicted, and fined under the section for the offence by a Court of summary jurisdiction.

Att.-Gen. v. Ashborne Recreation Ground Co., [1903] 1 Ch. 101, followed.

Observations on imputing laches to the Att.-Gen. and the relators in an action for injunction where the latter are a local authority. **ATT.-GEN. v. WIMBLEDON HOUSE ESTATE CO.** Farwell J. [1904] W. N. 112; [1904] 2 Ch. 34

Note.

Dicta of Farwell J. in, approved by C. A. *Att.-Gen. v. Birmingham, Tame, and Rea District Drainage Board*, [1910] 1 Ch. 48. *See* Stream. 2.

4.—*Channelling—By-laws—Validity of—Reasonableness—Uncertainty—Local Government—Construction of new streets.*

A by-law of a local authority dealing with the construction of new streets provided that in all cases where the street was of a certain width the person constructing it should make on each side of it "a proper channel not less than twelve inches wide and six inches deep either of granite cubes laid on a bed of cement concrete at least six inches in thickness or otherwise in a suitable manner and with suitable materials":—

Held—(1.) that the fact that the by-law did not give any power to the person constructing the street to object before some independent tribunal that the requirement was unnecessary in the circumstances of the particular case did not make the by-law bad as being unreasonable; (2.) that the liberty of making the channel in another manner and of other materials than those specified, did not make the by-law bad for uncertainty. **LEYTON URBAN DISTRICT COUNCIL v. CHEW** Div. Ct. [1907] 2 K. B. 283

STREETS—continued.

5. — *Compulsory purchase—Widening Street—Notice to treat—Withdrawal—Compensation—Local Government—Michael Angelo Taylor's Act*, 1817 (57 *Geo. 3, c. xxiv.*). s. 80.

Where a landowner has been served with a notice to treat under the compulsory powers of Michael Angelo Taylor's Act, he must either treat the notice as good or repudiate it as a whole; he cannot accept it in part and repudiate it in part.

Where a landowner has declined to accept or has repudiated the validity of a notice to treat, the local authority is entitled to withdraw it altogether, and cannot be compelled to proceed with that part of it which is acceptable to the landowner.

In such a case no compensation by way of damages will be given to the landowner.

Decision of Eve J., [1909] W. N. 138; [1909] 2 Ch. 287, affirmed. *WILD v. WOOLWICH BOROUGH COUNCIL* C. A. [1909] W. N. 217; [1910] 1 Ch. 35

—Cost of improvements—Action to recover assessed amounts—Laws of Canada.

See CANADA—Streets. 1.

—Dedication—Presumption—Manorial market—Extent of franchise.

See MARKET. 4.

6. — *Determination that street is a highway—Estoppel—Res judicata—Judgment in rem—Local Government—Private Street Works Act*, 1892 (55 & 56 *Vict. c. 57*), ss. 6, 7, 8.

In proceedings taken by an urban authority under the Private Street Works Act, 1892, ss. 6, 7, 8, to compel owners of premises to do private street works in a street, the determination by a Court of summary jurisdiction that the street is a highway repairable by the inhabitants at large is a judgment in rem and conclusive as to the status of the street, and the question whether it is so repairable is *res judicata* in any future proceedings under these sections.

So held in a case arising under similar sections in the Wakefield Corporation Act, 1887.

The decision of the C. A., [1903] 1 K. B. 417, affirmed. *WAKEFIELD CORPORATION v. COOKE* H. L. (E.) [1904] W. N. 3; [1904] A. C. 31

—Electric light—Right to break up streets and lay mains.

See ELECTRIC LIGHT. 2.

—Electric sweeper—Duty of clearing track of ice and snow.

See CANADA—Snow. 1.

7. — *Electric wires—Urban authority—Vesting—Road originally acquired by turnpike trustees—Overhead wires—Public Health Act*, 1879 (38 & 39 *Vict. c. 55*), s. 149.

Under s. 149 of the Public Health Act, 1875, which provides for the vesting in the urban authority of the streets within their district, the question how much above and below the surface of the street vests in the urban authority is determined by reference to what is necessary for the user of the street qua street irrespectively of the circumstances under which the site of the street was originally acquired.

Where, therefore, the site of a street which

STREETS—continued.

vested in the defts. as the urban authority under this section was originally conveyed to turnpike trustees in fee simple for the purposes of making a road under the Turnpike Roads Acts :—

Held, that the property of the defts. in the site of the street was not thereby enlarged, so as to entitle them to prevent electric wires being carried over the street at a height above the area required for the user of the street.

Decision of Farwell J., [1902] W. N. 66; [1902] 1 Ch. 866, reversed. *FINCHLEY ELECTRIC LIGHT CO. v. FINCHLEY URBAN DISTRICT COUNCIL* C. A. [1903] W. N. 30; [1903] 1 Ch. 437

—Erection of houses abutting on public highway—By-laws—Infringement.

See LOCAL GOVERNMENT. 3.

8. — *Expenses of making up—Liability of frontager—Owner of premises when works completed—Change of ownership between preliminary notice and completion—Local Government—Public Health Act*, 1875 (38 & 39 *Vict. c. 55*), ss. 150, 257.

When a street has been made up by the local authority under s. 150 of the Public Health Act, 1875, a person who is the owner of premises fronting the street at the date of the completion of the works is liable, under s. 257, to pay an apportioned part of the expenses of the works, although he was not the owner of the premises when the notice requiring the works to be executed was served under s. 150. *EAST HAM URBAN DISTRICT COUNCIL v. AYLETT*

Div. Ct. [1905] 2 K. B. 22

9. — *Footway—New street—By-laws—Footway forming principal access to cottages—Width and construction—Local government—Public Health Act*, 1875 (38 & 39 *Vict. c. 55*), ss. 4, 157.

In making by-laws, and insisting on their observance, a local authority is entitled to consider what may happen in the future, when present conditions have been altered and the neighbourhood has developed, even although the present necessity for the by-laws may not be obvious.

The power to make by-laws, as regards new streets, given by s. 157 of the Public Health Act, 1875, is not confined to streets in the popular sense of the term, namely, roadways, with houses on both sides of them, but applies to streets, as defined by s. 4 of the Act, which are proposed to be laid out and constructed for the first time.

The by-laws of an urban sanitary authority required every new street over 100 feet long to be so laid out that its width should be 36 feet at the least, and that it should be constructed for use as a carriage drive.

W., who was employed, as a builder, by G. the owner of land, to erect some cottages on the land of G., sent to the urban authority plans shewing an intended footpath, 202 feet long and 5 feet wide, affording the principal access to the cottages. The proposed footpath being objected to as not complying with the by-laws, W., without any authority from G., undertook that a roadway, 36 feet wide, should be made as soon as possession of sufficient land on the side

STREETS—continued.

further from the cottages to enable a road of the required width to be made could be obtained from a tenant whose tenancy could not be determined for some months. The plans, varied so as to shew a roadway 36 feet wide, were approved on the conditions of the undertaking. The cottages were then erected, and the footpath was levelled and surfaced with rubble and sand. It was 5 feet wide and bounded on the further side from the cottages by an ancient hedge, and on the nearer side by a fence in which were openings giving access to the cottages :—

Held, that the defendants had laid out and constructed a street within the meaning of the by-laws; that the by-laws were intra vires and reasonable; and that, although W., by reason of his having no control over the land, was not a proper party to the action, an injunction to enforce the obligations under the by-laws must be granted against G. *ATT.-GEN. v. GIBB*

Parker J. [1909] 2 Ch. 265

— Footway—Tramway—Dedication to public—Road authority—Powers—Widening of roadway—Narrowing of footway.
See LONDON—Tramways. 1.

— Glasgow building regulations—Fixing width of existing street.
See SCOTTISH LAW. 25.

10. — International law — Act of foreign Legislature—Local statute—Street improvement—Contribution—Remedy by action—Action in England.

An Act of the Legislature of New South Wales authorized the municipal council of the city of Sydney to carry out improvements in a certain street within that city, and imposed upon the owners of property situate within the improvement area the liability to contribute towards the cost of the improvements. For the purpose of enforcing payment of contributions the council were empowered to disrain the goods of the owners liable to contribute and, in addition to the remedy by distress, to recover by action the amount due and payable.

Being unable to recover by means of distress the amount of contribution due from an owner of property within the improvement area, the council brought an action in this country to recover the amount :—

Held, that the action would not lie in this country, on the grounds (1) that, the liability being imposed by the foreign State solely for its own domestic purposes, the action to enforce it was analogous to an action to recover a penalty or a tax; (2) that the action was one relating to real property situate abroad. *SYDNEY MUNICIPAL COUNCIL v. BULL*

Grantham J. [1908] W. N. 205; [1909] 1 K. B. 7

— Lands Clauses Acts — Compensation — Depreciation in value of property by use of tramway.
See LANDS CLAUSES ACTS. 36.

— Liability for damage from non-repair of road—Transfer of liability.
See TRAMWAYS. 7.

STREETS—continued.

11. — Making up—Power to charge frontagers residing outside limits of local authority—Local government—Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 150.

A local authority has no jurisdiction under s. 150 of the Public Health Act, 1875, to charge a proportion of the expenses of making up a street on the owners or occupiers of premises which, though fronting, adjoining, or abutting on the street, are outside the boundary of the local authority. *HORNSEY CORPORATION v. BIRKBECK FREEHOLD LAND SOCIETY*

Div. Ct. [1906] W. N. 59; [1906] 1 K. B. 521

— Market — Manorial market — Extent of franchise—New streets—Dedication—Presumption.

See MARKET. 4.

12. — Name—Name put up by local authority—Removal by owner—Local Government—Towns Improvement Clauses Act, 1847 (10 & 11 Vict. c. 34), s. 64.

A landowner laid out a new street and called it by a certain name, but the local authority shortly afterwards decided that it should be known by a different name and put up that name in the street. The landowner objected and defaced the name so put up, and was convicted under s. 64 of the Towns Improvement Clauses Act, 1847, which provides that the local authority shall cause to be put up in every street "the name by which such street is to be known," and impose a penalty upon any person who "pulls down or defaces any such name" :—

Held, that the landowner had misconceived his remedy, if any, and the conviction was right. *COLLINS v. HORNSEY URBAN COUNCIL*

Div. Ct. [1901] 2 K. B. 180

13. — New street—Local government—Urban authority—By-laws—Special remedy—Penalty recoverable by summary proceedings—Injunction—Jurisdiction—Attorney-General as co-plaintiff—Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 157, 158, 183, 251, 253.

Where persons are laying out a new street in such a manner as not to comply with the requirements of by-laws made by a local authority under the Public Health Act, 1875, which prescribes a penalty for infringement recoverable by summary proceedings before justices, the High Court of Justice has jurisdiction to enforce the by-laws by injunction in an action brought by the Att.-Gen. at the relation of the local authority and by the local authority. *ATT.-GEN. v. ASHBORNE RECREATION GROUND CO. Buckley J. [1902] W. N. 208; [1903] 1 Ch. 101*

Note.

Approved by C. A., *Devonport Corporation v. Tozer*, [1903] 1 Ch. 759. *See Local Government. 3.*

Followed by *Farwell J., Att.-Gen. v. Wimbledon House Estate Co.*, [1904] 2 Ch. 34. *See No. 3, above.*

14. — New street—Notice to frontagers to metal and make good—No reference to deposited plan—Sufficiency of notice. Objection to—When to be taken—Local government—Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 150, 257, 317; Sched. IV., Form G.

STREETS—continued.

A notice by a local authority under s. 150 of the Public Health Act, 1875, to the frontagers of a new street, not repairable by the inhabitants at large, requiring them to metal and make good the same, should substantially follow Form G in Sched. IV, to the Act, and must specifically refer to the deposited plans and sections of the work required to be done and state that such plans and sections are open to their inspection at the office of the local authority.

A notice which merely refers in general terms to the provisions of s. 150 is insufficient and bad.

Frontagers when served by a local authority with a notice under s. 15 of the Public Health Act, 1875, referring in general terms to the section and requiring them to metal and make good a new street, did nothing. The local authority then executed the required works, and the expenses incurred by them in so doing were apportioned by their surveyor amongst the frontagers in proportion to their respective frontages. The frontagers when served with notice of the apportionment did not dispute it and did not pay the amount of the proportion alleged to be due from them. In proceedings by the local authority under s. 257 of the Act to enforce payment of the alleged proportion:—

Held, that the frontagers were entitled at the hearing to object that the notice under s. 150 was insufficient and bad.

Handsworth District Council v. Derrington, [1897] 2 Ch. 438, 449, distinguished on this point. *STOURBRIDGE URBAN COUNCIL v. BUTLER AND GROVE* *Neville J.* [1908] W. N. 210; [1909] 1 Ch. 87

— New street—Paving expenses.
See Nos. 17—20, *below*.

15. — Objections to proposed works—Grounds—Not a street within the Act—Local Government—Highway repairable by inhabitants at large—Evidence—Admissibility—Private Street Works Act, 1892 (55 & 56 Vict. c. 57), ss. 5, 7.

By s. 7 of the Private Street Works Act, 1892, the owner of premises liable to be charged with any part of the cost of executing works under the Act may by written notice to the local authority object to the proposed works on the following, among other, grounds: (a) that an alleged street is not a street within the meaning of the Act; (b) that a street is a highway repairable by the inhabitants at large. By s. 5 the expression "street" in the Act means a street as defined by the Public Health Act, and not being a highway repairable by the inhabitants at large:—

Held, that where the ground of objection was that the alleged street was not a street within the meaning of the Act, evidence was admissible to prove that the street was a highway repairable by the inhabitants at large. *CAREY v. BEXHILL CORPORATION* *Div. Ct.* [1904] 1 K. B. 142

16. — Offence — Erection of premises in advance of building line—Change of ownership—Continuance in same state after written notice—Liability of new owner — Local government — Public Health (Buildings in Streets) Act, 1888 (51 & 52 Vict. c. 52), s. 3.

STREETS—continued.

By the Public Health (Buildings in Streets) Act, 1888, s. 3, it is not lawful without the consent of the urban authority to erect a house in any street beyond the front main wall of the house on either side thereof; and "any person offending against this enactment shall be liable to a penalty not exceeding 40s. for every day during which the offence is continued after written notice in this behalf from the urban authority."

A house was erected by a builder in contravention of s. 3, and subsequently passed into the ownership of the respondent, who maintained the house in the same state after written notice from the urban authority:—

Held, that the respondent had not committed an offence under s. 3 of the Act. *BLACKPOOL CORPORATION v. JOHNSON*

Div. Ct. [1902] 1 K. B. 646

— Ownership—Soil of highway—Street in town—Crown—Lease—Rebuttal of presumption.

See HIGHWAY. 21.

— Passage not being a thoroughfare—Requirement of owner to pave a second time with different material.

See LONDON—Paving. 1.

17. — Paving — Making-up — Landowner — Frontager — Notice to pave and make up—Paving expenses, Recovery of—Summary jurisdiction—Action in High Court—Option of jurisdiction—Six months' limit for proceedings—Local Act—"Back roads"—"Cross roads"—Mistake in notice—Validity of notice—Local Government—Railways Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 20), ss. 140, 145—Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43), s. 11—Blackburn Improvement Act, 1882 (45 & 46 Vict. c. cccxviii.).

Sect. 232 of the Blackburn Improvement Act, 1882, enacted that expenses incurred by the corporation of Blackburn in paving any street under the provisions of the Act should be recoverable by them either by summary proceeding before two justices—which proceeding is, by s. 11 of the Summary Jurisdiction Act, 1848, required to be commenced within six months from the time of the cause of action arising—"or, if the corporation think fit, in the superior Courts or any Court of competent jurisdiction."

Certain frontagers having failed to comply with a notice under the local Act to pave a street in the borough, the corporation, acting under their powers, themselves paved the street, and in July, 1898, served the frontagers with notice of apportionment of the expenses, and demand for payment. The frontagers made default in payment, whereupon the corporation, in Feb., 1900, commenced an action against them in the Q. B. Div. for the recovery of the apportioned expenses. The defendants resisted the plaintiffs' claim on the ground that, upon the construction of s. 232 of the local Act, the claim was too late, inasmuch as the six months' limitation under s. 11 of the Summary Jurisdiction Act, 1848, applied to proceedings whether under the summary jurisdiction or otherwise:

Held, that under s. 232 the corporation had

STREETS—continued.

an option to proceed for the recovery of paving expenses either by complaint before justices under the summary jurisdiction or, alternatively, by action in the superior Courts or in any Court of competent jurisdiction; that the six months' limitation applied only to a proceeding under the summary jurisdiction, and not to any of the alternative proceedings, and that the action was therefore not out of time.

West Ham Local Board v. Maddams, (1876) 40 J. P. 470, and *Tottenham Local Board v. Rowell*, (1876) 1 Ex. D. 514, distinguished.

Vestry of Hammersmith v. Lowenfeld, [1896] 2 Q. B. 278, overruled.

Decision of Mathew J. reversed.

The local Act contained separate and distinct definitions of a "back road" and a "cross road." The corporation served a paving notice under the Act upon frontagers in a back road and two cross roads by reference to a plan deposited for inspection at the office of the borough surveyor, but the notice by mistake described all the three roads upon which the work was to be done as "back roads" only:—

Held, affirming Mathew J. on this point, that the mistake in the description could not have misled the frontagers, and that, therefore, the notice was a good foundation for an action brought by the corporation under the Act for expenses incurred by them in executing the work themselves in the cross roads as well as the back road. *BLACKBURN CORPORATION v. SANDERSON*

C. A. [1902] W. N. 63; [1902] 1 K. B. 794

18. — Paving, &c., expenses — Liability — Crown—Prerogative—Exemption—Property held by volunteer corps for military purposes—Local Government—Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 150—Volunteer Act, 1863 (26 & 27 Vict. c. 65)—Military Lands Act, 1892 (55 & 56 Vict. c. 43).

The Crown, not being named in s. 150 of the Public Health Act, 1875, is not bound by its provisions, and is not liable under that section to pay in respect of property owned and occupied for the purposes of the Crown any expenses of paving, &c., a street on which that property abuts.

Land acquired and occupied by a volunteer corps for military purposes, and held under and subject to the provisions of the Volunteer Act, 1863, and the Military Lands Act, 1892, and vested in the commanding officer for the time being of the corps, is land owned and occupied for the purposes of the Crown. The commanding officer, therefore, is not liable in respect of it for any expenses incurred by a local authority under s. 150. *HORNSEY URBAN DISTRICT COUNCIL v. HENNELL*

Div. Ct. [1902] 2 K. B. 73

— Paving expenses—"Owner."

See under LONDON—Streets.

— Paving expenses—Payment by occupier.

See under LONDON—Streets.

— Paving expenses—Rates—Distress.

See DISTRESS. 6.

STREETS—continued.

19. — Paving expenses, Liability for—Owner of premises when works are completed—Change of ownership before apportionment and demand of expenses—Local government—Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 150, 257.

Notice was given by a local authority to the owners of premises in a street, requiring them to execute works, under s. 150 of the Public Health Act, 1875, and, the owners not complying with the notice, the works were executed by the local authority. Subsequently, the expenses of the work were duly apportioned, and the proportionate sums due from the owners respectively were demanded. One of the owners to whom the notice had been given sold his premises after the completion of the work, but before the apportionment of the expenses and the demand of the sum apportioned in respect of the premises:—

Held, that he was liable to pay that sum under s. 257 of the Public Health Act, 1875, as having been the owner of the premises when the works were completed.

Dictum in Reg. v. Swindon Local Board, (1879) 4 Q. B. D. 305, disapproved of. *MILLARD v. BALBY-WITH-HEXTHORPE URBAN DISTRICT COUNCIL* C. A. [1904] W. N. 180; [1905] 1 K. B. 60

20. — Paving street, Expenses of—Charge on premises—Payment by tenant for life—Private Street Works Act, 1892 (55 & 56 Vict. c. 57), ss. 13, 17—Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 257—Settled land—Incumbrance—Discharge—Settled Land Act, 1890 (53 & 54 Vict. c. 69), s. 11.

A person entitled to the interest of a tenant for life in certain property paid the expenses incurred by a local authority in paving a private street, and charged upon the property under s. 13 of the Private Street Works Act, 1892:—

Held, that he was entitled to a charge for the capital moneys so paid under s. 13, which gives an absolute charge on the fee simple, notwithstanding the fact that s. 17 of the same Act gives limited owners a power to raise moneys so paid by mortgage on the terms that the capital shall be repaid by instalments within twenty years. *In re PIZZI*. *SCRIVENER v. ALDRIDGE*

Neville J. [1906] W. N. 202; [1907] 1 Ch. 67

21. — Posts—Statutory power to fix posts "in or under" streets—Trespass—Taking of land—Local government—Local authority—Newport Corporation Act, 1900 (63 & 64 Vict. c. xlii.), s. 51 (Local)—Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), ss. 18, 68.

The corporation of a borough, being empowered by a local Act, which incorporated the Lands Clauses Acts, to erect and maintain "on, in, over, or under" any street in which their tramways were laid poles and posts for the purpose of working the tramways by mechanical power, erected a post for that purpose in the pavement forming part of a street, the post being sunk to a depth of six feet. The pavement at that point, and the soil beneath it, were the property of the plt., subject to a right which had been acquired by the public to use

STREETS—continued.

the pavement as a public footpath. The post was erected without the plt.'s consent, and he brought an action for trespass to his land against the corporation:—

Held, that the placing of the post in the plt.'s soil was not a taking of his land so as to make s. 18 of the Lands Clauses Consolidation Act, 1845, apply, and that, as the defts. had erected the post under their statutory powers, the action could not be maintained. **ESCOTT v. NEWPORT CORPORATION**

Div. Ct. [1904] 2 K. B. 369

22. — *Private street—Execution of works by local authority—Liability of owner—Notice of provisional apportionment—Streets (streets and buildings)—Private Street Works Act, 1892 (55 & 56 Vict. c. 57), ss. 6, 12; Schedule, Part I.—Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 267.*

Where works are executed by a local authority under the provisions of the Private Streets Works Act, 1892, it is a condition precedent to the right of the local authority to recover from an owner of premises in the street his apportioned share of the expenses that notice of the provisional apportionment of the estimated expenses, as well as notice of the final apportionment of the ascertained expenses, shall have been served upon him. **WIRRAL RURAL DISTRICT COUNCIL v. CARTER**

Div. Ct. [1903] 1 K. B. 646

23. — *Private street works—Apportioned expenses—Charge on premises—Sale—Action—Private Street Works Act, 1892 (55 & 56 Vict. c. 57), s. 13.*

An action will lie at the suit of an urban authority for a declaration that the plts. are entitled under s. 13 of the Private Street Works Act, 1892, to a charge on premises for the apportioned expenses incurred by the plts. in executing works under the Act, and payable by the deft. in respect of the premises, and for an order that the premises may be sold and for the appointment of a receiver. **WEST HAM CORPORATION v. SHARP**

Div. Ct.
[1907] 1 K. B. 445

24. — *Private street works—Objections—Determination by court of summary jurisdiction—Right of appeal to quarter sessions—Local government—Private Street Works Act, 1892 (55 & 56 Vict. c. 57), ss. 7, 8.*

An appeal lies to quarter sessions from the decision of a court of summary jurisdiction under s. 8 of the Private Street Works Act, 1892, determining the matter of objections to proposed works under the Act. **PEARCE v. MAIDENHEAD CORPORATION**

Div. Ct. [1907] W. N. 89;
[1907] 2 K. B. 96

25. — *Private street works—Provisional apportionment—Premises fronting, adjoining, or abutting on street—Lands extra commercium—Local government—Public Health Acts—Private Street Works Act, 1902 (55 & 56 Vict. c. 57), s. 6—“Owner.”*

A provisional apportionment of the estimated expenses of private street works made under s. 6 of the Private Street Works Act, 1892, is defective and may be successfully objected to under

STREETS—continued.

s. 7 of the Act if it does not include all the premises fronting, adjoining, or abutting on the street the subject of the private street works, irrespective of the question how much, if anything, is ultimately charged upon some of the premises.

Lands acquired by an urban authority under s. 164 of the Public Health Act, 1875, to be used as public walks or pleasure grounds are not extra commercium. The urban authority is the “owner” of such lands within the meaning of the Public Health Acts. **HERNE BAY URBAN DISTRICT COUNCIL v. PAYNE AND WOOD**

Div. Ct. [1907] W. N. 104;
[1907] 2 K. B. 130

— *Railway, streets—New lines—Laws of Ontario.*

See CANADA—Street. 2.

— *Railway, street—Conditional power to remove snow from railed tracks—Implied obligation to remove snow from the streets.*

See NEWFOUNDLAND. 3.

— *Rates, Owners for the time being liable for the.*

See NEW SOUTH WALES. 33.

— *Res judicata—Decision that street is a highway.*

See No. 6, above.

— *Sanitary conveniences—Power to provide—Subsoil of road—Misuse of statutory powers—Injunction.*

See LONDON—Conveniences. 1.

26. — *Sewer—New street—Intended new sewer—Deposited plans—Unused new line of pipes—Whether a “sewer”—Vesting in local authority—Local government—Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 4, 13, 16.*

When a landowner pursuant to the by-laws of a local authority gives notice of his intention to lay out a new street and to construct therein a line of pipes as a sewer, and his deposited plans are passed, and the line of pipes or sewer is constructed under the supervision of the local authority and is on completion approved and duly authorized to be covered in, such line of pipes (though unused) immediately thereupon becomes a “sewer” which vests in the local authority under s. 13 of the Public Health Act, 1875, and they have power under s. 16 of the Act to connect it with their sewerage system. **TURNER v. HANDSWORTH URBAN DISTRICT COUNCIL**

Neville J. [1909] W. N. 7;
[1909] 1 Ch. 381

27. — *Sewers—Satisfaction of urban authority—Evidence—Local government—Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 150.*

In a road which was a street within s. 150 of the Public Health Act, 1875, but which was not a highway repairable by the inhabitants at large, an urban authority in 1881, at the cost of the rates, constructed a sewer for soil only, the surface-water from the road and the adjoining houses, both before and after 1881, being carried away by channels at the side of the road. In 1904, there having been no change since 1881,

STREETS—*continued.*

in the number or character of the adjoining houses, the urban authority gave notice under s. 150 to the frontagers in the road to construct a sewer in the road for the purpose of carrying away the surface-water. The frontagers, contending that the road was not a street not sewered to the satisfaction of the urban authority within s. 150, did not comply with the notice, and on their default the urban authority themselves constructed the sewer and sought to charge the expenses on the frontagers:—

Held, that it was a question of fact for the justices whether the road was a street not sewered to the satisfaction of the urban authority, and that the fact that the urban authority had themselves constructed a sewer in the road in 1881, and had done nothing further with regard to the drainage of the road until 1904, did not as a matter of law preclude the justices from finding as a fact on the evidence that in 1904 the road was not sewered to the satisfaction of the urban authority. *BLOOR v. BECKENHAM URBAN DISTRICT COUNCIL*

Div. Ct. [1908] 2 K. B. 671

— Tenant for life—Expenses of making street — Charge on premises—Payment by owner.

See SETTLED LAND—Mortgages. 1.

28. — *Widening — Compulsory powers — Adjudication—Notice to treat for entire house—Prior agreement to resell part not wanted for widening—Owner's right to retain—Local government—Michael Angelo Taylor's Act, 1817* (57 Geo. 3, c. xxix.), ss. 80, 96.

A local authority entrusted by Michael Angelo Taylor's Act, 1817, with statutory powers to take land compulsorily for the purpose of widening streets must use them bona fide for the statutory purpose, and for none other. They have no right to seek to reduce the expense to the ratepayers by straining their powers in the interest of persons who desire to acquire the adjacent land from the owners of it. They are bound, under s. 80, to adjudicate whether any houses, and what part of any houses, are necessary to be taken for the improvement, and for this purpose they must form an honest judgment after consideration of all the facts of the case; otherwise their decision will not be binding.

Where a landowner desires to retain part of a house, the local authority cannot insist on taking the whole unless the remainder will be useless as a house. Whether that which is left will be a house or not is a question of fact to be determined in each case, and the fact that the part left will require some reconstruction is not conclusive evidence that it will not be a house.

Whether or not the power of a local authority to take the whole of a house ought to be measured by the wishes of the owner, the attitude which he takes up ought not to be disregarded; and if he desires to do upon his own land such work that that which is left will be a house, regard ought to be had to that fact. *J. L. DENMAN & Co. v. WESTMINSTER CORPORATION*. *J. C. CORDING & Co. v. WESTMINSTER CORPORATION*

Buckley J. [1906] W. N. 31;
[1906] 1 Ch. 464

STREETS—*continued.*

— Widening—Power to take part of house.

See LONDON—Streets. 14.

— Widening street—Notice to treat for "part of" a factory — Invalid notice — Injunction.

See LONDON—Streets. 15.

— Widening streets — Compulsory powers — House—Separate ownership of separate floors.

See LONDON—Streets. 13.

— Width of street—Restrictions—New street—Gabled building.

See LONDON—Buildings. 9.

— Width of streets—Glasgow building regulations.

See SCOTTISH LAW. 24, 25.

STRIKE—Action against trade union—Actionable conspiracy—Misdirection—Resolutions of union calling a strike.

See CANADA—Trade Union. 1.

— Charterparty—Delay—Strike preventing or delaying discharge.

See SHIPPING—Charterparty. 20.

— Trade union.

See under TRADE UNION.

STRIKE CLAUSE—Effect on construction of charterparty—Discharge of cargo.

See SHIPPING—Charterparty. 20.

STRIKING OFF ROLL—Punishment—Discretion of Court.

See under SOLICITOR—Striking off Roll.

STRIKING OUT PLEADINGS, &c.—Practice.

See under PRACTICE—Striking out.

STRUCTURAL ALTERATIONS—Factory Acts — Underground bakehouse — Lease — "Impositions and outgoings."

See FACTORY. 8.

— Licensing Act — Direction to keep door locked.

See LICENSING ACTS. 58.

— Licensing Justices, Order of, for—Jurisdiction—Licence—Renewal.

See LICENSING ACTS. 37.

SUB-AGENT—Secret commission—Privity of contract—Fiduciary relation.

See PRINCIPAL AND AGENT. 9.

SUB-CONTRACTOR—Workmen's compensation.

See under MASTER AND SERVANT—Compensation.

SUB-FREIGHT — Lien on — Charterparty — Freight.

See SHIPPING—Charterparty. 48.

SUB-LESSEE — Act by, through which renewal of licence refused—Lease of public-house.

See LANDLORD AND TENANT. 29.

SUB-LETTING—Lease—Forfeiture.

See LANDLORD AND TENANT. 36.

SUBMARINE TELEGRAPH.

See under TELEGRAPH.

SUBMISSION TO ARBITRATION.

See under ARBITRATION.

SUBPŒNA—Setting aside—Evidence.

See CRIMINAL LAW—Practice. 1.

- Setting aside—Jurisdiction—Subpœna not issued for purpose of obtaining relevant evidence.

See CRIMINAL LAW—Practice. 1.

SUBPŒNA DUCES TECUM—Sealed packet containing recipe—Deposit in bank—Obligation of banker to produce and deliver up—Extradition Act, 1873 (36 & 37 Vict. c. 60), s. 5.

A sealed packet may be a "document," and therefore liable to production upon a subpœna ducis tecum.

The fact that a banker has received a document upon the terms that it shall not be delivered up except with the consent of the depositors is no answer to a subpœna ducis tecum requiring the banker to produce the document.

Where there is disobedience to a subpœna ducis tecum, the Court has jurisdiction to enforce obedience by attachment, even though the disobedience is not wilful.

Reg. v. Lord John Russell, (1839) 7 Dowl. 693, explained. *REX v. DAYE* Div. Ct. [1908]

W. N. 112; [1908] 2 K. B. 333

SUBROGATION—Collision—Settlement of loss by underwriters with buyers—Right of underwriters to recover in name of sellers.

See SHIPPING—Collision. 23.

- Discovery—Production of documents—Report made to underwriters—Nominal plaintiffs.

See DISCOVERY. 17.

- Insurance, Marine—Open cover slip—Damages—Fraudulent representations—Re-insurance—Costs.

See INSURANCE (MARINE). 16.

- Mortgage—Merger—Payment off by stranger—Equitable transfer—Presumption that security is kept alive—Ignorance of mortgagor.

See MORTGAGE—Merger. 1.

- Notice to treat for insured property—Loss by fire after notice to treat.

See INSURANCE (FIRE). 3.

SUBSCRIPTION—Club—Raising subscription—Expulsion of member—Injunction.

See CLUBS. 1.

SUBSIDENCE—Highway.

See under HIGHWAY.

- Mines.

See under MINE.

- Mining lease—Compensation for subsidence—Covenants running with the land.

See COVENANT. 1.

- Risk of future subsidence—Remoteness.

See DAMAGE AND DAMAGES. 3.

SUBSIDENCE—continued.

- Water company—Liability to reinstate pavement—Omission of road authority to rectify.

See under WATER.

SUBSOIL—Land tax, Liability to—Public underground lavatory—Vesting of subsoil of road in sanitary authority—Revenue.

See LAND TAX. 2.

- Property in—Payment of rent—Mistake—Estoppel.

See CONVEYANCE. 3.

SUBSTITUTED ROADS—Right for foot passengers—Prescriptive use—Accumulated use attributable to two roads.

See HIGHWAY—Two Roads. 41.

- Sanitary conveniences—Subway—Vesting in sanitary authority.

See LONDON—Conveniences. 1.

SUBSTITUTED SERVICE.

See under PRACTICE—Service.

SUBSTITUTION—Parties—Adding or substituting plaintiff.

See PRACTICE—Parties. 2.

- Will.

See under WILL—Substitution.

SUBSTITUTIONAL GIFT—Will—Construction.

See under WILL—Substitution.

SUBSTITUTIONAL OR SUBSTANTIVE GIFT—Class—Issue of parent dead at date of will.

See WILL—Class. 8.

SUBSTITUTIONARY—Cumulative or—Successive appointments.

See POWER OF APPOINTMENT. 38.

SUBWAY.

See under WAY, RIGHT OF.

- Subsoil of road—Vesting in sanitary authority.

See LONDON—Conveniences. 1.

SUCCESSION—Right of—English fund belonging to Austrian who has died without heirs—"Mobilier sequuntur personam."

See BONA VACANTIA. 1.

- Will.

See under WILL—Succession.

- Will—Residue of estate to heir entitled to succeed to entail—Lands disentailed—Intestacy.

See SCOTTISH LAW. 26.

SUCCESSION DUTY—Public revenue.

See under REVENUE—Succession Duty.

SUCCESSION (INDIAN) ACT—Title of executors.

See ADMINISTRATION. 15.

"SUCCESSOR"—Pawnbroker—Licence—Certificate.

See PAWNBROKER. 3.

- SUEZ CANAL**—Collision—Relative duties of north and south going vessels.
See **SHIPPING—Collision**. 71.
- SUICIDE**—Warranty against—Condition precedent—Policy for benefit of third party.
See **INSURANCE (LIFE)**. 17.
- SUMMARY**—Decision of Judge—Leave to appeal—Practice.
See **INTERPLEADER**. 1.
- SUMMARY CONVICTION**.
See under **CRIMINAL LAW—Convictions**.
- SUMMARY JUDGMENT**.
See under **JUDGMENT**.
- SUMMARY JURISDICTION**.
See under **JURISDICTION**.
- Criminal Law.
See under **CRIMINAL LAW—Summary Jurisdiction**.
- SUMMARY JURISDICTION (MARRIED WOMEN)**.
See under **JURISDICTION**.
- SUMMARY PROCEEDINGS**.
Musical (Summary Proceedings) Copyright Act, 1902 (2 Edw. 7, c. 15).
- SUMMONS**—Originating summons.
See under **PRACTICE—Originating Summons**.
- Practice.
See under **PRACTICE—Summons**.
- SUMMONS FOR DIRECTIONS**—Practice.
See under **PRACTICE—Summons for Directions**.
- SUMMONS TO REVIEW**—Costs—Taxation—Practice.
See **COSTS**. 66.
- SUNDAY**—Bread—Sunday observation prosecution—Consent in writing.
See **JUSTICES**. 19.
- Charterparty—"Sundays and holidays excepted"—Loading on holidays.
See **SHIPPING—Charterparty**. 39, 40, 44.
- Cinematograph—Licence—Condition as to closing on Sunday—Ultra vires.
See **CINEMATOGRAPH**. 1.
- Distress for rent—Rent due on Sunday—Legality of distress levied on following Monday.
See **LANDLORD AND TENANT**. 30.
- Gas—"Daily" tests—Sundays included.
See **GAS**. 2.
- Licensing Acts—Christmas Day and Good Friday.
See **LICENSING ACTS**. 47.
- Licensing Acts—Offences—Delivery on Sunday of goods purchased on Saturday—Appropriation of goods sold.
See **LICENSING ACTS**. 51.
- SUNDAY—continued**.
— Mayor's Court—Practice—Notice of appeal—Service on Sunday.
See **LONDON—Mayor's Court**. 2.
- Ontario Act to prevent the profanation of the Lord's Day ultra vires.
See **CANADA—Sunday**. 1.
- Shipping—Charterparty—Lay days—Work done on Sunday and holidays.
See **SHIPPING—Charterparty**. 39, 40, 44.
- Sunday observance—Sunday observation prosecution—Institution of prosecution—Consent.
See **JUSTICES**. 19.
- Sunday trading at railway refreshment rooms—Actual or intending passengers.
See **NEW SOUTH WALES**. 34.
- SUPERANNUATION**—Abolition of office—Emoluments—Period for calculation.
See **COMPENSATION**. 1.
- Civil Service—Superannuation allowance—Construction—"Officer."
See **NEW SOUTH WALES**. 4.
- SUPERFLUOUS LAND**—Tunnel—Space above usque ad cælum—Telegraph wires—Statute of Limitations.
See **RAILWAY—Tunnel**. 1.
- SUPERVISION ORDERS**—Company—Winding up.
See **COMPANY—WINDING-UP—Supervision Orders**. 1.
- "**SUPPLY**"—Electric lighting—Municipal corporation—Statutory powers—"Supply" of electricity.
See **ELECTRIC LIGHT**. 6.
- SUPPORT**—Easement of necessity—Right of support—Implied reservation—Severance of two tenements held by common owner—Prescription—Enjoyment claim—Right to support of side of dock.
- In 1860 a dock and a wharf to the west of it, and divided from it by a fence, belonged to the same owner. In order to secure the side of the dock, he in that year carried a number of tie-rods under the ground beneath the fence and beneath the surface of the wharf for a distance of about 15½ feet to the west of the fence, the rods being there fastened by nuts to piles which were driven into the soil of the wharf. The tie-rods were not visible; but two nuts on piles were visible on the western side of the camp-sheathing which held up the side of the wharf.
- In 1877 the then owners of both properties conveyed the wharf to the pits., without any express reservation of a right of support for the dock. In 1886 the same owners conveyed the dock to the depts.' predecessors in title. In 1900 the pits. in making some excavations in the wharf, became for the first time aware of the existence of the tie-rods:—
- Held*, by Romer and Stirling L.J.J., Vaughan Williams L.J. dissenting, (1) that, when the wharf was conveyed to the pits., there was no implied reservation of a right of support to the

SUPPORT—*continued.*

dock, and that the tie-rods did not remain vested in the grantors as part of or appurtenant to the dock; (2) that the owners of the dock had not acquired an easement of support by length of enjoyment, the enjoyment having been clam, and that consequently the plts. were entitled to remove the tie-rods from their land.

Decision of Cozens-Hardy J., [1901] W. N. 92; [1902] 2 Ch. 300, affirmed.

Per Vaughan Williams L.J.: The tie-rods formed a corporeal part of the dock, and were reserved with it as appurtenant thereto.

Moreover, the enjoyment of the support was not clam, because the plts. had the means of knowledge.

Per Romer L.J.: The easement of support was not one of necessity, and therefore a reservation of it could not be implied.

A prescriptive right to an easement over another man's land can be acquired only when the enjoyment has been open—that is, of such a character that an ordinary owner of the land, diligent in the protection of his interests, would have, or must be taken to have, a reasonable opportunity of becoming aware of the enjoyment.

Per Stirling L.J.: An easement of necessity is one without which the property retained upon a severance cannot be used at all; not one which is merely necessary to the reasonable enjoyment of that property.

It is established by *Dalton v. Angus*, (1881) 6 App. Cas. 740, that in order that an easement may be gained by prescription, it must be proved that the person against whom it is claimed had some knowledge or means of knowledge. *UNION LIGHTERAGE CO. v. LONDON GRAVING DOCK CO*

C. A. [1902] W. N. 147; [1902] 2 Ch. 557

Note.

Principle of, applied by Kekewich J., *Ray v. Hazeldine*, [1904] 2 Ch. 17. *See* *Light and Air*. 12.

— Enjoyment clam—Right to support of dock sides by rods fastened in adjoining owner's land.

See *preceding Case*.

— Mine—Subsidence.

See under *MINES*.

RAILWAY—*Mines*.

SETTLED LAND—*Mines*.

— Mines—Inclosure Act, Construction of—Compensation.

See *INCLOSURE ACT*. 2.

— Mines—Reservation of manorial rights—Damage to surface—Compensation.

See *INCLOSURE ACT*. 3.

— Sewer and sewage works—Right to support of — Mines and minerals — Adjacent lands.

See *SEWERS*. 19.

— Waterworks.

See under *WATER*.

SUPPRESSION — Divorce — Material fact — Refusal of decree.

See *DIVORCE—Practice*. 30.

SURCHARGE—Abolition of office—Compensation — Emoluments — Jurisdiction to fix amount.

See *COMPENSATION*. 1.

— Auditor—Certiorari—Right of Court to review surcharge.

See *LOCAL GOVERNMENT*. 1.

— Commission—Taxation—Disclosure—Duty to advise—Bargain with client.

See *SOLICITOR—Costs*. 10.

SURETY—Lunatic—Committee and receiver—Default — Accounts—Death of lunatic — Subsequent receipts—Surety—Liability.

See *LUNACY*. 1.

— Married woman — Surety for husband—Immovables in Transvaal.

See *CONFLICT OF LAWS*. 13.

— Principal and surety.

See under *PRINCIPAL AND SURETY*.

— Probate.

See under *PROBATE—Sureties*.

SURF DAYS—Ship—Charterparty—Demurrage—Custom of port—Delay caused by surf.

See *SHIPPING—Charterparty*. 41.

SURFACE—Conveyance of—Railway—Reservation of minerals—Costs.

See *LANDS CLAUSES ACTS*. 35.

— Damage to surface—Compensation—Mines—Reservation of manorial rights—Support.

See *INCLOSURE ACT*. 3.

— Mines—Support to surface.

See under *MINES*.

RAILWAY—*Mines*.

SETTLED LAND—*Mines*.

SURFACE DRAIN — Nuisance by sewage — Drainage of houses — Notice to local authority.

See *SEWERS*. 20.

SURFACE WATER—Separate drains for sewage and—New house—Discretion of urban council.

See *SEWERS*. 12.

SURGEON—Veterinary.

See under *VETERINARY SURGEON*.

— Workmen's compensation—Seamen—Industrial diseases—Certifying surgeon.

See *MASTER AND SERVANT—Compensation*. 157.

SURGICAL OPERATION—Workmen's compensation.

See *MASTER AND SERVANT—Compensation*. 170–173.

SURNAME.

See under *NAME*.

See under *WILL—Name and Arms Clause*.

- SURPLUS**—Unapplied—Resulting trust—Fund subscribed for children of a deceased individual—Growing up of children.
See TRUST. 1.
- SURPLUS ASSETS**—Attachment of debts—Garnishee order—"Companies Liquidation Account."
See ATTACHMENT. 7.
- Company—Winding-up.
See under COMPANY—WINDING-UP—Assets.
- SURPLUS LANDS**—Power to charge—Existing debt.
See CORPORATION. 15.
- SURPLUS PROFITS**—Dividend, making up deficiency of previous.
See under WATER.
- SURRENDER**—Acceptance of surrender under mistake of fact induced by tenant—Liability of tenant for rent.
See LANDLORD AND TENANT. 84.
- Appointor's life interest—Immediate possession—Death of appointor—Hotchpot.
See SETTLEMENT. 1.
- Copyholds—Title—Conditional surrender by way of mortgage—Principal and interest—statute-barred—Vacating conditional surrender.
See VENDOR AND PURCHASER—Copyholds. 1.
- Fine on, of lease—Tenant for life and remainderman—Capital or income.
See SETTLED LAND—Leases. 3.
- Fixtures—Tenant's covenant to deliver up demised premises with fixtures—Surrender and creation of new tenancy.
See LANDLORD AND TENANT. 34.
- Lands Clauses Act—Notice to treat—Agreement for tenancy—Surrender—New agreement—Compensation.
See LANDS CLAUSES ACTS. 25.
- Lease.
See under LANDLORD AND TENANT.
- Lease—Tenant for life and remainderman—Capital or income.
See SETTLED LAND—Capital or Income. 1.
- Lease—Title-deed—Custody.
See DEEDS, &C. 7.
- Lease by mortgagor in possession—Surrender of lease to mortgagee—Rights of mortgagee.
See LANDLORD AND TENANT. 85, 86.
- River—"Tolls"—Presumption of lost surrender.
See WATER HIGHWAY. 1.
- Shares—Invalidity—Release of shareholder's liability.
See COMPANY—Shares. 19.
- Surrender of peerage to Sovereign—Grant by Sovereign of surrendered peerage.
See PEERAGE. 1.
- SURVEYOR**—Contract by surveyor of highways for payment of money by his successors.
See HIGHWAY. 1.
- Covenant not to practise as an architect or—Fixed salary.
See RESTRAINT OF TRADE. 6.
- Fees of district surveyor—Liability—Period of limitation.
See LONDON—Buildings. 5.
- Fees—Transfer of powers to borough councils.
See LONDON—Buildings. 8.
- Field-book entries—Evidence—Admissibility—Professional duty—Deceased surveyor.
See SEASHORE. 1.
- Highway—Licence to surveyor to take materials from enclosed lands for repair of highways—Jurisdiction of justices.
See HIGHWAY. 11.
- Jurisdiction of—London Building Act—Compensation for damage to trade.
See LONDON—Buildings. 21.
- London—Party wall—Jurisdiction of surveyors—Compensation for damage to trade.
See LONDON—Buildings. 21.
- Master and servant—Burgh surveyor—Extra work—Delay.
See SCOTTISH LAW. 17.
- "SURVIVE"**—Trust for wife if she shall "survive" her "coverture"—Determination of coverture by decree for dissolution of marriage.
See SETTLEMENT. 43.
- SURVIVING**—Will—Construction—"Surviving children and their respective issue."
See WILL—Alternative Gifts. 1.
- "SURVIVORS"**—Settlement by deed—"Survivors" read "others."
See SETTLEMENT. 44.
- SURVIVORSHIP**—Will—Construction.
See under WILL—Survivor.
- SUSPENSION**—Constitution of New South Wales—Power to suspend an accused member until verdict.
See NEW SOUTH WALES. 6.
- SWAMP LANDS**—Crown Lands—Transfer of proprietary right—Canadian Act.
See CANADA—Swamp Lands. 1.
- SWANSEA ENTRANCE CHANNEL**—Collision—Good seamanship.
See SHIPPING—Collision. 72.
- SWANSEA NEW CUT**—Collision—Fairway—Lights.
See SHIPPING—Collision. 30.
- SWEARING**—Clergy discipline—Occasional swearing and ribaldry.
See ECCLESIASTICAL LAW—Discipline. 2.

SWEARING—*continued.*

— Tramcar—Offences—By-law—Validity.

See TRAMWAYS. 4.

“ **SWEATING** ”—Bill of lading—Damage to cargo—Negligence of carrier's servants—Liability of carrier.

See SHIPPING—Charterparty. 11.**SWEEPSTAKES**—On horse-race—Lottery.*See* GAMING. 15.

SWIMMING BATH—Water supply—School—Charity—Domestic purposes.
See under WATER.

SYDNEY CORPORATION ACT OF 1879.*See* under NEW SOUTH WALES.

—**YDNEY HARBOUR**—Wharfage rates. Right to levy, on all wharves vested in the Commissioners.

See NEW SOUTH WALES. 36.

T.

TACKING—Mortgages.

See under **MORTGAGE**—**Tacking**.

TAPESTRIES—Right of removal—Devise of house—Question between devisee and legatee—General scheme of decoration—Bequest of chattels.

See **FIXTURES**. 7.

— Right of removal—Tenant for life and remainderman.

See **FIXTURES**. 8, 9.

TASMANIA—Privy Council Appeals.

See under **PRIVY COUNCIL**.

1. — *Seashore—Trespass, Action of—Title to foreshore under a Crown grant—Construction—Improper rejection of evidence—Acts of user before the grant admissible—Grant of lands already in possession of grantee.*

In an action against the respondents for a trespass by their agents on the foreshore, the appellants claimed that they were entitled thereto under a Crown grant in 1848 conveying to them the lands of which prior to the grant they had taken possession and on which they had expended money; and the judge directed the jury that evidence of acts of user antecedent to the grant was inadmissible:—

Held that the appellants were entitled to a new trial. Acts of user before the grant led up to and explained what was afterwards granted and were cogent evidence of what was intended to pass thereby.

Held, further, that a direction to the effect that a lease by the appellants of part of a jetty extending over the foreshore was only evidence of an easement, not of the lessor's title to the land over which the structure was erected, was also calculated to mislead. It ought to have been to the effect that it was clearly evidence of seisin in the locus in quo. **VAN DIEMEN'S LAND CO. v. MARINE BOARD OF TABLE CAPE**

P. C. [1906] A. C. 92

2. — *Will—Issue—Gift over—Construction.*

In a gift over on failure of the line of one child to "other of my children and their issue," the word issue must receive its plain and ordinary meaning, and not be restricted to the issue of children dying in the lifetime of the testatrix unless the rest of the will plainly requires it. The gift over in this case was subject to the condition that those only took under it who were also beneficiaries under the original gift, in which original gift issue was restricted as above by the immediate context:—

Held, that that was insufficient by itself to control the meaning of the word used in a new connection. Accordingly the appellants were entitled to share in the said gift over as issue of

TASMANIA—continued.

a child other than the child whose line had failed; and this notwithstanding that under the original gift they had taken in substitution for their mother. **EDYVEAN v. ARCHER. In re BROOKE**

P. C. [1903] A. C. 379

TAXATION—Costs.

See under **COSTS**.

SOLICITOR—Costs.

TAXES.

See under **REVENUE**.

— Land tax.

See under **LAND TAX**.

— Lease of land—Covenant to pay taxes—Usual covenant by lessee.

See **CANADA**—**Leases**. 1.

TAXI-CAB DRIVER—Workmen's compensation—"Workmen"—"Contract of service."

See **MASTER AND SERVANT**—**Compensation**. 174.

TAXIMETER—Falsification of accounts—Machine.

See **CRIMINAL LAW**—**Falsification of Accounts**. 4.

TEA COMPANY—Trading and life insurance combined—Pensions.

See **INSURANCE (LIFE)**. 2.

TEACHER.

See under **SCHOOLS**.

TECHNICAL INSTRUCTION—School Board—

Power to provide out of rate.

See **SCHOOLS**. 20.

TELEGRAPH.

Telegraph (Money) Act, 1904 (4 Edw. 7, c. 3), is an Act to provide for raising further money for the purpose of the Telegraph Acts, 1863 to 1899.

Wireless Telegraphy Act, 1904 (4 Edw. 7, c. 24), provides for the regulation of wireless telegraphy.

Wireless Telegraphy Act, 1906 (6 Edw. 7, c. 13), is an Act to continue the Wireless Telegraphy Act, 1904.

Telegraph (Money) Act, 1907 (7 Edw. 7, c. 6), is an Act to provide for raising further money for the purpose of the Telegraph Acts, 1863 to 1906.

The Telegraph (Foreign Written Press Telegram) Amendment (No. 1) Regns., 1907. Dated Dec. 15, 1907. St. R. & O. 1907, No. 1058. Price 1d.

TELEGRAPH—*continued.*

Telegraph (Construction) Act, 1908 (8 Edw. 7, c. 33), *amends the Telegraph Acts*, 1863 to 1907, *with respect to the construction and maintenance of telegraph lines for telephonic and other telegraphic purposes.*

Telegraph. O. in C., Feb. 29, 1908. *The Wireless Telegraphy Order*, 1908. **St. R. & O. 1908, No. 208.** Price 1d.

Telegraph. The Wireless Telegraphy (Foreign Ships) Regns., June 20, 1908. **St. R. & O. 1908, No. 496.** Price 1d.

1. — *Action against Postmaster - General in official capacity — Immunity from action—Telegraph department—Wrongful act of subordinate official—Telegraph Act*, 1863 (26 & 27 Vict. c. 112), ss. 18, 42—*Telegraph Act*, 1868 (31 & 32 Vict. c. 110), ss. 2, 4—*Telegraph Act*, 1878 (41 & 42 Vict. c. 76), s. 11.

The Postmaster-General is not liable in his official capacity, as head of the telegraph department of the Post Office, for wrongful acts done by his subordinates in carrying on the business of the department. **BAINBRIDGE v. POSTMASTER-GENERAL** **C. A. [1906] 1 K. B. 178**

— *Cheque—Countermand by telegram—Notice to bank manager.*
See BANKER. 2.

— *Negligence—Telegraph Acts—Compensation—Damage.*
See NEGLIGENCE. 8.

2. — *Submarine telegraphs convention—Protection of cables—Fouling of cable by anchor—Sacrifice of anchor—Compensation—Measure of damages—Submarine Telegraph Act*, 1885 (48 & 49 Vict. c. 49), *Sched., art. vii.*

The Submarine Telegraph Act, 1885, *Sched., art. vii.*, provides that shipowners who can prove that they have sacrificed (inter alia) an anchor in order to avoid injuring a submarine cable shall receive compensation from the owner of the cable :—

Held, that the liability of the owner of the cable under this article was to make compensation for the sacrifice of the anchor, but not further to pay the damages resulting from such sacrifice.

Semble, the amount of compensation is not necessarily limited to the cost of replacing the material sacrificed, but depends on the circumstances of each case. **AGINCOURT STEAMSHIP CO. v. EASTERN EXTENSION, AUSTRALASIA AND CHINA TELEGRAPH CO.** **C. A. [1907] W. N. 110 ; [1907] 2 K. B. 305**

— *Telegraph wires—Superfluous land—Tunnel—Space above usque ad celum—Statute of Limitations.*
See RAILWAY—Tunnel. 1.

3. — *Telephone—Bridges carrying public road over railway—Power to lay cable along bridge—Consent of railway company—Telegraph Act*, 1863 (26 & 27 Vict. c. 112), ss. 3, 6, *sub-ss. 1, 4, s. 32—Telegraph Act*, 1892 (55 & 56 Vict. c. 59), s. 5.

By an agreement entered into between the plts. and the defts. in Nov., 1906, the defts. agreed to pay to the plts. 30% a year for

TELEGRAPH—*continued.*

permission to lay and maintain a telephone cable over a bridge crossing the plts.' railway, and in pursuance of this agreement they laid the cable under the footway across the bridge. They subsequently repudiated the agreement on the ground of want of consideration, inasmuch as they had power to lay the cable over the bridge without permission from the plts. Thereupon this action was brought for a declaration that the defts. were not entitled to use or maintain any cable over the bridge except upon payment of 30% a year and with the consent of the plts.

Warrington J., [1908] **W. N. 106 ; [1908] 2 Ch. 50**, upon the construction of the *Telegraph Acts*, 1863 and 1892, decided that the defts. were not authorised to construct or maintain the works in question without the consent of the plts., and that the plts. were entitled to the declaration they claimed.

The **C. A.** dismissed the appeal, without expressing any opinion on the construction of the *Telegraph Acts*, and held that, inasmuch as the defts. had taken the benefit of the agreement with the plts. and had not counterclaimed to have it set aside, it must be treated as good, and so long as that agreement stood the defts. could not repudiate their obligations thereunder. **SOUTH-EASTERN RY. CO. v. NATIONAL TELEPHONE CO.** **C. A. [1908] W. N. 172 ; [1908] 2 Ch. 514**

4. — *Telephone—Postmaster - General—Monopoly—Private lines—Telegraph Act*, 1869 (32 & 33 Vict. c. 73), s. 5.

Private telegraph or telephone lines of the A to A class, such as lines from a merchant's office to his private house, or from a head to a branch office, fall within s. 5 of the *Telegraph Act*, 1869, and are therefore excepted from the Postmaster-General's monopoly, but private lines of the A to B class, namely, lines connecting two or more separate and independent persons or business, are not within the exception.

Unlicensed electric signals (where no telephone is used) of the kind described in the second schedule to the special case are not excepted from the Postmaster - General's monopoly.

Decision of the **C. A.**, [1908] **2 Ch. 172**, reversed, and decision of **Swinfen Eady J.**, [1907] **1 Ch. 621**, restored. **POSTMASTER-GENERAL v. NATIONAL TELEPHONE CO.** **H. L. (E.) [1909] W. N. 91 ; [1909] A. C. 269**

— *Telephone company—Alteration of roadway by Workmen's compensation—“Engineering work.”*
See MASTER AND SERVANT—Compensation. 79.

TELEPHONE.

See under TELEGRAPH.

TEMPERANCE — *Canada Temperance Act* — Issue of search warrant before prosecution.

See CANADA—Temperance Act. 1.

TENANCY — *Notice by—Adverse title—Constructive notice.*
See VENDOR AND PURCHASER—Title. 2.

TENANCY AT WILL—Death of tenant —
Intestacy.
See **INTESTACY**. 1.

TENANCY IN COMMON—Joint tenancy—Devise to testator's "right heirs"—Co-heiresses.
See **INHERITANCE**. 1.

— Joint tenancy or—Class—Will—Construction.
See **WILL**—**Class**. 10.

— Joint tenancy or—Construction of will.
See **WILL**—**Substitution**. 1.

— Merger—Equitable tenancy in common—Legal joint tenancy.
See **MERGER**. 2.

— Renewal by one—Tenant in common—Lease—Fiduciary relation.
See **LANDLORD AND TENANT**. 77.

— Working of part of mine by one co-owner—Coal—Adverse possession—Account.
See **MINES**. 14.

TENANT—Landlord and.
See under **LANDLORD AND TENANT**.

TENANT FOR LIFE.
See under **SETTLED LAND**.

— Death of tenant for life—Assignment by tenant in tail of life interest in remainder.
See **SETTLEMENT**. 37.

TENANT IN TAIL—Disentailing assurance.
See under **DISENTAILING ASSURANCE**.
— Estate tail.
See under **ESTATE TAIL**.

— Heirlooms—Trust of chattels as—Construction—To be enjoyed with mansion house—Vesting—Actual possessions.
See **HEIRLOOMS**. 3.

— Shelley's case.
See under **WILL**—**Shelley's Case**.

TENDER—Practice.
See under **PRACTICE**—**Payment. &c.**
(**Payment into and out of Court and Tender**).

TENNIS CLUB—Level crossing—Easement—Agricultural land—Alteration of user.
See **RAILWAY**—**Level Crossings**. 1.

TERM—Implied—Necessary implication.
See **CONTRACT**. 15.

— "Settlement"—Life estate to settlor—Jointure—Portions—Merger.
See **SETTLED LAND**—**Settlement**. 1.

TERMINATE—Right to—Agreement for employment—Necessity for notice.
See **MASTER AND SERVANT**—**Contract of Service**. 1.

TERMINATION—Lease—Notice by one of two lessees—Validity.
See **LANDLORD AND TENANT**. 27.

TERRITORIAL AND RESERVE FORCES.
See under **ARMY**.

TERRITORIAL AND RESERVE FORCES—*cont.*
— Will.

See under **WILL**—**Territorial and Reserve Forces**.

TERRITORIAL WATERS—Right of action in England for acts in foreign country—*Lex loci—Lex fori*.
See **ACTION**. 4.

TESTAMENTARY CAPACITY—Execution of wills—Notary present without attesting.
See **CEYLON**. 8.

TESTAMENTARY EXPENSES—Estate duty—Incidence—No direction to pay testamentary expenses.
See **WILL**—**Testamentary Expenses**. 10.

— Estate duty—Insufficient general personal estate to pay duty—Marshalling.
See **REVENUE**—**Estate Duty**. 13.

— Estate duty—Legacies—Direction to pay—Mixed fund.
See **WILL**—**Testamentary Expenses**. 17.

Will—Construction.
See under **WILL**—**Testamentary Expenses**.

THAMES, RIVER.

Regulations dated Feb. 5, 1909, made by the Board of Trade under the Port of London Act, 1908 (8 Edw. 7).

— Collision—East Swin Channel at mouth of Thames—Starboard side—Sailing vessels.
See **SHIPPING**—**Collision**. 73.

— Collision—Removal of wreck—Liability for expenses—Abandonment—Thames Conservancy—Costs.
See **SHIPPING**—**Collision**. 92.

— Collision—Sea Reach, River Thames—Starboard hand buoys—Narrow channel.
See **SHIPPING**—**Collision**. 74.

— Collision—Thames By-laws, 1898, art. 46—Risk of collision.
See **SHIPPING**—**Collision**. 75.

— Collision—Wreck raised by Thames Conservancy—Arrest by marshal—Damage lien—Expenses of raising.
See **SHIPPING**—**Collision**. 91.

1. — *Conservators—Navigation—Dredging—Riparian owner—Thames Conservancy Act, 1894 (57 & 58 Vict. c. clxxvii.), ss. 83, 87.*

The Thames Conservators have no power under the Thames Conservancy Act, 1894, to grant a licence to dredge the upper Thames upon the terms that the licensee may sell the soil so raised for his own benefit. *PALMER v. THAMES CONSERVATORS* *Kekewich J. [1901] W. N. 228; [1902] 1 Ch. 163*

— Contributory negligence.
See **SHIPPING**—**Collision**. 44.

2. — *Local Government—Sanitary authority—Sewage flowing into River Thames—"Caused or suffered"—Thames Conservancy Act, 1894 (57 & 58 Vict. c. clxxvii.), s. 94.*

Sewage passed from the premises of private

THAMES, RIVER—continued.

persons and from premises belonging to the respondents, a municipal corporation, into a sewer, vested in the respondents as the sanitary authority, and thence flowed into the river Thames :—

Held, that as regards the sewage which came from the respondents' premises they had "caused or suffered" the sewage to flow into the Thames within the meaning of s. 94 of the Thames Conservancy Act, 1894, but that as regards the sewage coming from the premises of private persons the respondents had not done so.

Reg. v. Staines Local Board, (1889) 60 L. T. 261, followed. **THAMES CONSERVATORS v. GRAVEREND CORPORATION** - Div. Ct. [1910] 1 K. B. 442

— Navigation of barges—"One competent man"
—Hauling barges out of dock—"Navigated."
See No. 3, below.

— Pollution of river—Duties of County Council.
See LONDON—Sewers. 5.

— Port of London.
See under LONDON—Port of London.

— Prevention of floods—Flood works—Alteration of bank—Repairs.
See LONDON—Floods. 1.

— Ship—Collision—Overtaking and overtaken vessels—Keeping to the south of mid-stream going down.
See SHIPPING—Collision. 76.

3. — Thames navigation—Thames Conservancy By-laws, 1898—By-law 27—Navigation of barges—"One competent man"—"One man in addition"—*Ultra vires*—*Thames Conservancy Act, 1894* (57 & 58 Vict. c. clxxvii.), s. 191—*Licensed lightermen—Hauling barges out of dock—"Navigated"*—*Watermen's and Lightermen's Amendment Act, 1859* (22 & 23 Vict. c. clxxiii.), s. 66.

By-law 27 of the Thames Conservancy By-laws, 1898, made under the powers conferred by s. 191 of the Thames Conservancy Act, 1894, provides that: "Any lighter navigating the river shall when under way have at least one competent man constantly on board for the navigation and management thereof, and all such craft exceeding 50 tons, but of not more than 150 tons burthen, shall when under way have one man in addition on board to assist in the navigation and management of the same :—

Held, that the by-law was not *ultra vires*, and that both men required by the by-law must be lightermen or watermen licensed by the Watermen's Co., or apprentices duly qualified.

Perkins v. Giggell, (1885) 2 Times L. R. 39; and *Goldsmith v. Slattery*, (1890) 63 L. T. 273, followed.

Three lighters lashed together were hauled out of dock into the river by means of a line attached to one of them, and controlled by a man on the dock pierhead. On getting clear of the dock the line was slackened, and the lighters were carried up by the tide as far as the line would allow. A man on board then by means of a staff or hitcher pushed the lighters along

THAMES, RIVER—continued.

the shore till they reached a spot ninety-five yards from the dock, where they were made fast :—

Held, that the lighters had not been "navigated" within the meaning of s. 66 of the Watermen's and Lightermen's Amendment Act, 1859.

A lighter, with a licensed lighterman on board, was drawn out of dock by means of hydraulic machinery fixed at the pierhead. On gaining the river the lighterman cast anchor, but it failed to hold, and, by the combined force of the hydraulic machinery, the wind, and the tide, the lighter was taken up the river for over 500 yards. The lighterman then secured the lighter at some barge roads :—

Held, that the lighter was not "navigating" the river within the meaning of by-law 27.

Rolles v. Newell, (1890) 25 Q. B. D. 335, followed.

GARDNER, LOCKET AND HINTON, LD. v. DOE. BUCK v. SMITH. KEEN v. ADAMS
Div. Ct. [1906] 2 K. B. 171

THAMES CONSERVANCY—Income tax—Exemption—Existing tax.
See REVENUE—Income Tax. 36.

THEATRE—Buildings—Structural defects—Notice to remedy—Compliance.
See LONDON—Buildings. 26.

— Compensation—Compulsory sale of land—Interest in land—Right to supply refreshments in a theatre.
See LANDS CLAUSES ACTS. 3.

— Copyright—"Dramatic piece"—Stage business.
See COPYRIGHT—Dramatic. 1.

— Master and servant.
See under MASTER AND SERVANT—Theatre.

THEFT—Boarding-house keeper—Goods of guest—Theft by inmate.
See NEGLIGENCE. 2.

— Liability of bailee—Theft by servant—Scope of employment.
See MASTER AND SERVANT—Bailment. 1.

— Ship—Contract of carriage—Passengers' luggage—Theft by shipowners' servants.
See SHIPPING—Passengers. 1.

THELLUSSON ACT—Persons born after the testator's death.
See ACCUMULATIONS. 9.

THIRD PARTY—Bankruptcy.
See under BANKRUPTCY—Third Party.

— "Concealed fraud"—Innocent possession.
See LIMITATIONS, STATUTE OF. 7.

— Costs—Taxation—Third party order—Form of order—Prefatory words.
See COSTS. 74.

— Costs of lease—Taxation—Preliminary negotiations.
See SOLICITOR—Costs. 20.

THIRD PARTY—*continued.*

- Costs of solicitor of umpire—Right to order for taxation—Arbitration.
See SOLICITOR—Costs. 43.
- Directors—Breach of regulations by—Validity of acts as regards third parties.
See COMPANY—Directors. 18.
- Divorce—Variation of settlement, Petition for—Petition served on third person—Refusal to hear person so served—Procedure.
See DIVORCE—Settlement. 18.
- Intervening act of third person causing dog to bite—Liability of owner.
See DOGS. 2.
- Joint and several promissory note signed by husband and wife for debt of third party—Liability of wife.
See HUSBAND AND WIFE—Liability. 3.
- Practice.
See under PRACTICE—Third Party.
- Solicitor—Costs—Right to recover against third party.
See SOLICITOR—Costs. 39—43.

THIRD PERSON — Set-off — Mutual debts — Assignment to defendant of debt owed by plaintiff to third person.
See SET-OFF. 1.

THREAT—Prosecution—Contract obtained by duress abroad—Contract not illegal where made.
See CONFLICT OF LAWS. 4.

THREATS—Patent law.
See under PATENT—Threats.

THRESHING MACHINE “Factory.”
See MASTER AND SERVANT—Compensation. 176.

THRIFT FUND—Contribution to—Manchester Corporation—Income tax—Salary—Deductions.
See REVENUE—Income Tax. 34.

TICKET—Passenger—Travelling on after giving up ticket at station for which it is available.
See RAILWAY—Passengers. 2.

“**TIED**” **PUBLIC-HOUSE**—Covenant by mortgagor to take beer from mortgagee only.
See MORTGAGE—Redemption. 6.

TIMBER—Contract for purchase of timber to be cut and removed by purchaser—Mutuality.
See SPECIFIC PERFORMANCE. 2.

— Equitable waste — “Planted or left for ornament or shelter” — Evidence — Injunction.
See WASTE. 1.

— “Forestry” — Workmen’s compensation.
See MASTER AND SERVANT—Compensation. 98.

— Settled land.
See under SETTLED LAND—Timber.

TIMBER CARGO—Charterparty—Bill of lading—Mode of estimating value.
See SHIPPING—Charterparty. 5.

TIMBER HAULAGE — Extraordinary traffic—Staple trade of district.
See HIGHWAY. 31.

TIME—Appeal—Practice.
See under APPEAL.

— Appropriation of payments — Unregistered dentist — Appropriation to cost of material.
See DENTIST. 4.

— Bankruptcy.
See under BANKRUPTCY—Practice.

— Building—Deposit of plan—Time limited for commencement of work.
See BUILDINGS. 2.

— Charterparty—Shipping.
See under SHIPPING—Charterparty.

— Company—Debentures — Registration — Extension of time.
See COMPANY—Debentures. 37.

— Company—Discharge of contributory on composition—Lapse of time.
See COMPANY — WINDING-UP — Contributory. 3.

— Company—Mortgages and charges—Extension of time.
See COMPANY—Mortgages. 3.

— Company — Debentures — Registration — Extension of time—Protection of creditors.
See COMPANY—Debentures. 40.

— Contract—Penalty or liquidated damages—Time limit—Waiver.
See CONTRACT. 19.

— Dower, Action for assignment of—Time for ascertaining value—Recovery of land.
See LIMITATIONS, STATUTE OF. 22.

— Enlargement of time—Petition for leave to appeal—Clergy discipline.
See ECCLESIASTICAL LAW — Clergy Discipline. 3.

— Extension of—Registration.
See COMPANY—Debentures. 37.

— Factory—Fencing of machinery—Offence—Limitation of time for laying information.
See FACTORY. 3.

— Highway — Repair — Extraordinary traffic — Limitation of time for bringing action.
See under HIGHWAY.

— Insurance, Marine—Time charter.
See under INSURANCE (MARINE).

— Judgment—Entry of judgment—Damages to be ascertained—Interest on amount recovered—Judgment taking effect from time when given.
See JUDGMENT. 3.

— Justices—Complaint—Laying electric lines near gas mains.
See ELECTRIC LIGHT. 7.

TIME—*continued.*

- Land tax—Redemption—Interest, Recovery of—Lapse of time.
See LIMITATIONS, STATUTE OF. 9.
- Lapse of—Lien—Merger—Presumption of satisfaction—Interest.
See LIEN. 1.
- Lapse of—Sale of leaseholds by executor—Actual notice to purchaser that no debts of testator remain unpaid.
See VENDOR AND PURCHASER—Title. 8.
- Lapse of—Secured creditor, Proof by against real estate.
See ADMINISTRATION. 23.
- Lapse of time—Discharge of contributory on composition.
See COMPANY—WINDING-UP—Contributory. 3.
- Lapse of time—Surrender of shares—Invalidity.
See COMPANY—Shares. 19.
- Limitation of time.
See under LIMITATION OF TIME.
LIMITATIONS, STATUTE OF.
- Limit of time for taking proceedings—Sale of food and drugs.
See ADULTERATION. 22, 25.
- Limitation of liability—Time of entry—Life claims—Property claims.
See SHIPPING—Limitation of Liability. 6.
- Limitation of time for bringing an action—Public authorities' protection.
See HIGHWAY. 22, 29.
- Limitation of time for bringing action—Tramway worked by municipal authority—Injury to passenger.
See PUBLIC AUTHORITIES' PROTECTION. 4.
- Mayor's Court—Practice—Notice of appeal—Service on Sunday.
See LONDON—Mayor's Court. 2.
- "Month"—Lunar month—Construction of documents.
See CONTRACT. 29.
- Mortmain—Real estate—Devise—Sale—Extension of time—Jurisdiction.
See CHARITY. 37.
- Next of kin according to the Statute of Distribution—Time for ascertaining class.
See WILL—Class. 12.
- Next of kin, Time for ascertaining.
See SETTLEMENT.
- New trial—Notice of Motion—Action tried with jury.
See PRACTICE—Trial. 6.
- Omission to fix time—Undertaking—Motion for attachment.
See ATTACHMENT. 13.
- Pilot—Appeal from pilotage authority—Extension of time for appeal.
See SHIPPING—Pilotage. 7.

TIME—*continued.*

- Prevention of cruelty to children—Limitation of time for taking proceedings—Procedure.
See CRIMINAL LAW—Cruelty to Children. 2.
- Promissory note—Joint and several—Proviso as to giving time to either party.
See BILL OF EXCHANGE. 5.
- Public authority—Limitation of time for proceedings.
See under PUBLIC AUTHORITIES' PROTECTION.
- Railway company—Expiration of time—Company in lawful possession of land—Power to construct railway.
See RAILWAY—Powers. 2.
- Rates, Recovery of—Limitation of time—"Complaint."
See RATES. 19.
- Rating appeal—Time for filing special case—Crown Office Rules.
See CROWN OFFICE. 1.
- Rectification of register—Lapse of time.
See COMPANY—Shares. 19.
- Service out of the jurisdiction.
See under PRACTICE—Service.
- Shipping—Time charter—Goods within bill of lading not subject to charter lien.
See INDIA. 3.
- Slaughter-house—Licence—Condition—Limitation of time.
See SLAUGHTER-HOUSE. 1.
- Trade-mark—Double registration—Non-essential particulars—Disclaimer.
See TRADE-MARK. 18.
- Tramways—Protection of mains—Notice by promoters to owners of mains of intention to construct tramway—Limit of time for giving counter-notice.
See TRAMWAYS. 12.
- Trial—Extending time for application to restore.
See PRACTICE—Trial. 3.
- "Trustee"—Leaseholds—Disclaimer, Time for—Creditors' trustee—Official receiver as trustee.
See BANKRUPTCY—Trustee. 9.
- Water rates—Limitation of time—Summary jurisdiction.
See under WATER.
- Workmen's compensation—Appeal—Date from which time runs.
See MASTER AND SERVANT—Practice. 4.
- Writ of execution—Warrant sent to foreign country.
See COUNTY COURT—Execution. 6.

TIPS—Workmen's compensation—Tips or gratuities—"Earnings."
See **MASTER AND SERVANT—Compensation.** 76.

TITHE—*Tithe Acts, 1836 to 1891—Redemptions of rent-charge.* Reprint from **W. N. 1906** (Aug. 4), p. 231. See **CURRENT INDEX, 1906**, p. xciii.

—Charge on great tithes—Inclosure Act—Mortgagee—Notice.
See **CHARITY.** 48.

—Fees—Redemption of rent-charge under the Tithe Acts, 1836 to 1891—Inclosure, &c., Expenses Act, 1868.
See under **INCLOSURE.**

1. — *Tithe rent-charge—Agreement by tenant to repay amount of to landlord—Validity of agreement—Tithe Act, 1891 (54 Vict. c. 8), s. 1, sub-s. 1.*

Sect. 1, sub-s. 1, of the Tithe Act, 1891, which provides that "any contract made between an occupier and owner of lands after the passing of this Act for the payment of the tithe rent-charge by the occupier shall be void," prohibits not only a contract by the occupier to pay the tithe rent-charge directly to the tithe owner, but also a contract to reimburse the landlord such sums as shall be paid by him for tithe rent-charge. **LORD LUDLOW v. PIKE - Channell J. [1904] W. N. 57 ; [1904] 1 K. B. 531**

TITLE—Action for declaration of—Roadside waste—Dedication—Presumption—Evidence—Public authorities' protection.
See **HIGHWAY.** 38.

—Certificate of shares—Negotiable instrument—Title, *Primâ facie* evidence of.
See **COMPANY—Shares.** 4.

—Coal mines—Working by one tenant in common—Adverse possession—Statute of Limitations.
See **MINES.** 14.

—Compensation—Condition precedent—Tenant.
See **LANDS CLAUSES ACTS.** 9.

—Deed—Assignment for value—Defective title—Subsequent acquisition of good title—Equitable estoppel.
See **DEEDS.** 3.

—Doubtful—Purchaser for value without notice.
See **SETTLED LAND—Leases.** 12.

—Grant of land—Construction—Terms of grant—Diagram.
See **CAPE OF GOOD HOPE.** 6.

—Jurisdiction—Summary conviction on charge of assault—Question as to title to an interest in land.
See **JUSTICES.** 13.

—Land Transfer Act.
See under **LAND TRANSFER.**

—Slander of title—Auctioneer cast in damages.
See **AUCTION.** 1.

—Vendor and purchaser.
See under **VENDOR AND PURCHASER—Title.**

TITLE OF HONOUR—Married woman—Marriage with a peer of the realm—Divorce—Former wife marrying a commoner.
See **HUSBAND AND WIFE—Title of Honour.** 1.

TITLE OF PROCEEDINGS—Lunacy—Practice—Vesting orders—Direction to transfer stock.
See **LUNACY.** 29.

TITLE-DEEDS.
See under **DEEDS.**

TOBACCO GROWING (SCOTLAND) ACT, 1908.
See under **SCOTTISH LAW.**

TOBAGO—Laws of.
See under **TRINIDAD AND TOBAGO.**

TOLLS—Fair—Franchise—Stallage.
See **MARKETS.** 3.

—False imprisonment, Action for—Contract as to entry on and exit from wharf—Unreasonable conduct of plt.—Nonsuit.
See **AUSTRALIA.** 6.

—Liability to toll—Bicycle—Bridge—"Carriage hung on springs."
See **BICYCLE.** 1.

—Liability to—"Sledge, drag, or such like carriage."
See **BICYCLE.** 2.

—Pier, Unauthorized—Public nuisance—Tolls for "mooring" vessels.
See **PIER.** 1.

—Power to levy tolls—Locks—Stanch—Navigable non-tidal river.
See **WATER HIGHWAY.** 1.

—Railway company.
See under **RAILWAY—Tolls.**

TOMB—Perpetuity—Uncertainty—Gift to maintain tomb "for the longest period allowed by law."
See **WILL—Uncertainty.** 3.

TOMBSTONE—Inscription on, in parish churchyard—Control of incumbent.
See **ECCLESIASTICAL LAW—Faculty.** 21.

TOMBSTONES—Charitable bequest—Tombstones for pensioners—Uncertainty—Overruling charitable intent.
See **CHARITY.** 2.

TONNAGE—Limitation of liability—Foreign steam vessel—Gross tonnage—Double bottom for water ballast.
See **SHIPPING—Limitation of Liability.** 2.

TOOLS—Distress—Exemption.
See **DISTRESS.** 1.

TORN WILL—Pasted together again—Persons not sui juris interested in intestacy—Probate, on motion, to executrix.
See **PROBATE—Practice**. 12.

TORT—Action of—Costs—Addition to costs recoverable from unsuccessful defendant.

See **COSTS**. 76.

—Costs—County Court—Sum less than 10*l*. recovered in action founded on tort.
See **COUNTY COURT—Costs**. 10.

—Costs—Detinue—Return during progress of case of articles claimed.
See **COSTS**. 32.

—County Court—Remittal of action by High Court—Action of tort.
See **COUNTY COURT—Practice**. 9.

—Guardians—Negligence of servant—Liability of guardians to pauper inmate in action of tort.
See **POOR LAW**. 4.

—Husband and wife—Tort committed during coverture—Subsequent decree of judicial separation—Husband's liability.
See **HUSBAND AND WIFE—Fraud**. 1.

—Joinder of causes of action—Action of tort—Allegation of joint tort—Costs.
See **PRACTICE—Joinder**. 2.

—Master and servant—Breach of contract—Wrongful dismissal—Damages.
See **MASTER AND SERVANT—Dismissal**. 1.

—Parties—Action of tort—Right of action—No proof of damage.
See **ACTION**. 3.

—Scope of authority—Tortious act of one partner.
See **PARTNERSHIP**. 20.

—Tortious act of fellow-workman—Act having no relation to the employment.
See **MASTER AND SERVANT—Compensation**. 178.

—Wife's tort—Libel—Pleading—Payment into Court—Denial of liability.
See **HUSBAND AND WIFE—Practice**. 4.

TORTFEASORS—Collision—Both ships to blame—Consequential damage—Division of loss.
See **SHIPPING—Collision**. 9.

—Damage by two collisions—Simultaneous repairs—Dock dues—Division between tortfeasors.
See **SHIPPING—Collision**. 24.

—Joint tortfeasors—Costs—Shipping—Collision.
See **SHIPPING—Collision**. 86.

TOTAL LOSS—Shipping.
See under **INSURANCE (MARINE)**. **SHIPPING**.

TOWAGE—Shipping.
See under **SHIPPING—Towage**.

TOWN PLANNING, ENGLAND—See under *Housing, Town Planning, &c., Act, 1909* (9 *Edw.* 7, c. 44).

*The Town Planning Procedure Regulations (England and Wales), May 3, 1910. St. R. & O. 1910, No. 436. Price 1½*d*.*

Circular, May 3, 1910, to the London County Council; Town Councils; and Urban and Rural District Councils. St. R. & O. 1910. No. 436. Price 1*d*.*

TOWN POLICE CLAUSES—Carriage plying or driven for hire—Concealment of number-plate.
See **HACKNEY CARRIAGE**. 1.

—Local authority—Licence to ply for hire—"Omnibus"—"Hackney carriage."
See **RAILWAY—Light Railways**. 1.

TOWNS IMPROVEMENT CLAUSES—Local government—Slaughter-house—Licence.
See **SLAUGHTER-HOUSE**. 2.

—Street—Name put up by local authority—Removal by owner.
See **STREETS**. 12.

TRACTION ENGINE—"Factory."
See **MASTER AND SERVANT—Compensation**. 176.

—Locomotive—Excessive weight—Injury to water main.
See **HIGHWAY**. 15.

—Locomotive—Nuisance.
See **HIGHWAY**. 16, 17.

TRADE—Action, Cause of—Special goods—Conditions of sale—Interference with contractual relation—Damage.
See **ACTION**. 2.

—Arbitrator to be member of trade association—Arbitrator not member of association—Qualification.
See **ARBITRATION—Arbitrator**. 3.

—Bank loan to purchase goods—Letter of lien on goods—Construction—Secured creditors.
See **BANKRUPTCY—Traders**. 1.

—Bankruptcy—Married woman—Separate trading—Separate property.
See **HUSBAND AND WIFE—Bankruptcy**. 1.

—Board of Trade—General annual report of—Libel—Absolute privilege.
See **DEFAMATION—Libel**. 2.

—Boards, Trade.
See under **TRADE BOARDS**.

—Common interest—Trade rivals—Protection of customers—Contract of indemnity.
See **MAINTENANCE OF SUIT**. 2.

—Contract for service—Repudiation—Wrongful dismissal—Undertaking by servant not to trade within certain limits—Breach.
See **MASTER AND SERVANT—Contract of Service**. 5.

TRADE—*continued.*

- Distress—Implement of trade.
See under DISTRESS.
- Drainage, Prescriptive right of—Trade effluent
—Pollution of rivers.
See SEWERS. 15.
- False trade description—Merchandise marks.
See under TRADE MARK.
- Fixtures.
See under FIXTURES.
- Highway—Interference with trade—Obstruction on highway—Lamp-post—Adjoining owner.
See HIGHWAY. 24.
- Income tax.
See under REVENUE—Income Tax.
- Lease—Restrictive covenants—Assigns—Injunction.
See LANDLORD AND TENANT. 87.
- Libel.
See under TRADE LIBEL.
- Male servants—Persons employed in trading establishment.
See REVENUE—Male Servants. 3.
- “Mercantile agent”—Authority to pledge, Extent of—Custom of particular trade.
See FACTOR. 1.
- Restraint of trade.
See under RESTRAINT OF TRADE.
- Shop hours.
See under SHOP HOURS.
- Tradesman and customer—Implied agreement by customer to pay interest.
See INTEREST. 3.
- Water-rate—“Trade or business.”
See under WATER.

TRADE (BOARD OF).

See under BOARD OF TRADE.

TRADE BOARDS.

Trade Boards Act, 1909 (9 Edw. 7, c. 22), is an Act to provide for the establishment of Trade Boards for certain trades.

Board of Trade Act, 1909 (9 Edw. 7, c. 23), is an Act to remove the Statutory Limitation on the Salary of the President of the Board of Trade.

Regulations, April 27, 1910, establishing a Trade Board, under s. 11 of the Trade Boards Act, 1909, for the making of Boxes or parts thereof made wholly or partially of Paper, Cardboard, Chip, or similar material. St. R. & O. 1910, No. 429.

Regulations, April 27, 1910, under s. 18 of the Trade Boards Act, 1909, as to mode of giving notice. St. R. & O. 1910, No. 430.

Regulations, May 4, 1910, establishing a Trade Board under s. 11 of the Trade Boards Act, 1909, for that branch of the Lace Trade which is engaged in Machine-made Luce and Net finishing, other than the finishing of the product of Plain Net machines. St. R. & O. 1910, No. 451.

TRADE BOARDS—*continued.*

Regulations, July 22, 1910, under s. 12 of the Trade Boards Act, 1909, as to the constitution of District Trade Committees. St. R. & O. 1910, No. 769.

Regulations, July 25, 1910, establishing a Trade Board, under s. 11 of the Trade Boards Act, 1909, for the Readymade and Wholesale Bespoke Tailoring trade in Great Britain engaged in making garments to be worn by male persons. St. R. & O. 1910, No. 772.

Trade Boards Act, 1909. Circular, July 29, 1910, to County Councils, Town Councils, Urban District Councils, Rural District Councils, Metropolitan Borough Councils, and Boards of Guardians. Contracts of Local Authorities. 1910 (R.—Local Government Board). Price 1d. each.

TRADE DESCRIPTION.

See also under TRADE MARK.

1. — “Passing off” Action—Essentials to constitute—Trade description—Necessity for identification of, by plaintiff, with definite class of his goods.

In order to succeed in a “passing off” action, not based upon an express representation, the plt. must prove that the name or the get-up or whatever it may be by which the deft. describes his goods is the recognized description of the plt.’s goods or of a definite article or class of article of the plt.’s goods as and for which the incriminated article or class of articles is being passed off. Further, if the incriminated goods are the goods of the plt. himself, i.e., where the deft. is selling certain goods dealt in by the plt. as and for other goods dealt in by the plt., it is equally essential that the plt. should be able to define the goods for which the incriminated goods are passed off. In order to determine whether the incriminated goods are passed off or not the whole of the description of them must be looked at, and then the well-known and accepted description of the goods as and for which they are passed off must also be looked at, to see whether the description used by the deft. will lead persons to believe that his goods are those which are denoted by the other description, and not the goods which they really are.

The plts., H. R. & Co., were port wine shippers and merchants. The defts., who were retail wine merchants, issued a price list in which they advertised the plts.’ wine as H. R.’s “Grand Old Crusted port. Over six years in bottle . . . Usual credit price per doz. 60s. Now offered by us at per doz. 34s.” The plts. sold two distinct classes of port wine, one a superior wine and the other an inferior and cheaper wine. In both cases, with a few exceptions, the wine was sold by them in the cask. The plts. alleged that the defts. were passing off the plts.’ inferior wine as and for their superior wine. It was proved that the plts. sold no wine matured in bottle as to which it could be said that it was part of its description that its usual credit price was 60s. per dozen:—

Held that, the plts. having no separate and distinct class of wine to which the description “usual credit price per doz. 60s.” was attached, the description in the defts.’ price list was

TRADE DESCRIPTION—*continued.*

inapplicable to the plts.' superior wine, and therefore there was no passing off by the defts. of the plts.' inferior wine as and for their superior wine. *HUNT, ROOPE, TEAGUE & CO. v. EHLMANN BROTHERS* - *Warrington J.* [1910] 2 Ch. 198

TRADE DISPUTES.

Trade Disputes Act, 1906 (6 *Edw.* 7, c. 47), provides for the regulation of *Trade Unions and Trade Disputes*.

— Trade union.

See under **TRADE UNION**.

TRADE FIXTURES.

See under **FIXTURES**.

— Landlord and tenant—Hiring agreement — Gas engine.

See **DISTRESS**. 11.

TRADE LIBEL—*False statement—Damages—Evidence—Sufficiency—Special damage—General loss of business.*

The plts., C. and B., carried on business as dressmakers, ladies' tailors, &c., at 146, New Bond Street, under the name of "Arthur," in succession to a business formerly carried on by the plt. C. under the same name. The plt. B. had previously carried on business at 39, Old Bond Street, in partnership with W. under the name of "Arthur & Co."

This partnership was dissolved in February, 1908, the goodwill being divided between the partners. B. brought his part of the goodwill into his new partnership with C. A portion of the remaining stock of his late firm was bought by the defts., who carried on a similar business at 29, New Bond Street. On Feb. 8, 1908, the defts. inserted an advertisement in the *Morning Post*, saying: "Messrs. Duncan & Co., 29, New Bond Street, sell all Arthur & Co.'s (who are retiring from business) stock, gowns and furs at half cost price . . ." About the same time they issued a circular letter to their own customers, stating that they had purchased from Arthur & Co. (who were giving up business) all their stock, including the newest French model gowns, &c., which would be sold at prices impossible to obtain elsewhere.

The plts. brought an action for an injunction to restrain the defts. from representing that they were carrying on the business formerly carried on by B., and now carried on by the plts., or that such business had been transferred to the defts. They also claimed damages in respect of the untrue representations, but did not plead special damage.

The defts. pleaded that the form of the advertisement and circular had been verbally approved by the plt. B. On the question of damage the plt. B. gave evidence to the effect that to a certain extent he had suffered damage from the circular and had done less business with his former customers. His business was a personal one, and if his customers could not see him they would not come.

Eve J. said that the circular was untrue in stating that Arthur & Co. were retiring from business, and it afforded evidence sufficient to

TRADE LIBEL—*continued.*

lead the Court to the conclusion that the circular was in law issued maliciously. With regard to the proof of damage arising from the issue of the circular, it might be of a general nature as to loss of business, according to the decision in *Ratcliffe v. Evans*, [1892] 2 Q. B. 524. In the present case the circular was calculated to impress upon the minds of the recipients the fact that the plt. B. was no longer available, and, prima facie, that was calculated to keep them away. The plt. said he thought that the customers would not come. In his view, however, the evidence adduced was not sufficiently specific, and he was unable to give the plt. relief in the action, which would be therefore dismissed, but without costs. *CONCARIS v. DUNCAN & CO.*

Eve J. [1909] W. N. 51

— Libel generally.

See under **DEFAMATION**.

— Trade protection society—Libel—Communications to subscribers not privileged.

See **AUSTRALIA**. 5.

TRADE MARK.

See also under **DESIGNS**.

PATENT.

Trade Marks Act, 1905 (5 *Edw.* 7, c. 15), consolidates and amends the law relating to *Trade Marks*.

Patents and Designs Act, 1907 (7 *Edw.* 7, c. 29), is an Act to consolidate the enactments relating to *Patents for inventions and the registration of Designs and certain enactments relating to Trade Marks*.

Patents and Designs Act, 1908 (8 *Edw.* 7, c. 4), is an Act to explain s. 92 of the *Patents and Designs Act, 1907*.

Trade Marks Rules, 1906, dated Mar. 24, 1908. Reprint from W. N. 1906 (Mar.) 31, p. 75. See **CURRENT INDEX**, 1906, p. xciii.

Patents, Designs, and Trade Marks—International arrangements—Order applying the provisions of s. 91 of the Patents and Designs Act, 1907, to Austria-Hungary. St. R. & O. 1909, No. 585. Price 1d.

— Assignment of trade mark—Breach of trade mark—Title to damages.

See **HONG KONG**. 5.

1. — *Deceit—Action for passing off—Calculated to deceive—Functions of judge and witness respectively.*

Observations by Lord Macnaghten on the respective functions of judge and witness in passing-off cases. *PAYTON & CO. v. SNELLING. LAMPARD & CO.* - H. L. (E.) [1901] A. C. 308

2. — *Deceit, Action of—Get-up—Passing off—Evidence—Probability of Deception—Inspection—View by Judge—Practice—R. S. C., Order L., r. 4.*

In an action for deceit brought on the ground that a particular article used by the deft. is a colourable imitation of the plt.'s, the conclusion of the judge, on a view by him of the two articles—such as two rival omnibuses—under R. S. C., 1883, Order L., r. 4, that the deft.'s article is calculated to deceive, is not

TRADE MARK—*continued*.

sufficient by itself to support an injunction. The judge must be satisfied by independent evidence that there is at least a reasonable probability of deception.

North Cheshire and Manchester Brewery Co. v. Manchester Brewery Co. [1899] A. C. 83, considered. *LONDON GENERAL OMNIBUS CO. v. LAVELL* C. A. [1901] 1 Ch. 135

Note.

Commented on by Farwell J., *Bourne v. Swan and Edgar, Ltd.*, [1903] 1 Ch. 211. See No. 9, below.

— Deception — Person trading under his own name — Form of injunction.

See **TRADE NAME**. 1.

3. — *Design*—Registration as trade mark—*Trade Marks Act*, 1905 (5 *Edw. 7*, c. 15) ss. 3, 8, 9.

The mere fact that a proposed trade mark is capable of being registered as a design is not a fatal objection to its registration as a trade mark. *In re UNITED STATES PLAYING CARD CO.'S APPLICATION* - **Swinfen Eady J.** [1907] W. N. 251; [1908] 1 Ch. 197

— Forfeiture of prohibited goods by innocent holder.

See **NEW ZEALAND**. 18.

4. — *Innocent infringer*—Registered mark—*Injunction*—Whether plaintiff also entitled to compensation—*Practice Register of Trade Marks*—*Notice*—*Trade Marks Registration Act*, 1875 (38 & 39 *Vict. c. 91*), s. 3—*Trade Marks Act*, 1905 (5 *Edw. 7*, c. 15), ss. 7, 39.

When a registered trade mark is innocently infringed the proprietor of the trade mark is entitled to an injunction against the offender, but not to an account of profits or an inquiry as to damages unless the offender continues to infringe after notice of the proprietor's right.

The principle of *Edelsten v. Edelsten*, (1863) 1 D. J. & S. 186, applied.

The register of trade marks does not operate as notice to the public of the existence of a registered mark. *SLAZENGER & SONS v. SPALDING & BROTHERS* - **Neville J.** [1909] W. N. 261; [1910] 1 Ch. 257

— Jurisdiction—Title to a franchise—Infringement of trade mark.

See **COUNTY COURT**—Jurisdiction. 9.

5. — *Label*—Colourable imitation—*Infringement*—*Injunction*.

The House affirmed the decision of the C. A. in Ireland [1908] 1 Ir. R. 43, holding as a matter of fact (no principle of law being in dispute) that the label was not a colourable imitation or infringement. *JAMES HENNESSY & CO. v. KEATING* H. L. (Ir.) [1908] W. N. 95

6. — *Labels*—*Rectification of register*—*Combination of devices*—*Essential particulars*—*Prior mark*—*Non-distinctive addition*—*Simultaneous visibility*—*Too wide registration*—*Patents, Designs, and Trade Marks Acts*, 1883 (46 & 47 *Vict. c. 51*), s. 64; 1883 (51 & 52 *Vict. c. 50*), s. 10.

A trade mark consisting of a combination of devices on labels was registered on an

TRADE MARK—*continued*.

application which stated the essential particulars as follows:—

"The essential particulars of the trade mark is the combination of devices, and we disclaim any right to the exclusive use of the added matter except in so far as it consists of our own name and address."

The labels appeared on the application and register in the manner in which they were used:—

Held, that the essential particulars were sufficiently stated within the meaning of s. 64 of the Patents, Designs, and Trade Marks Act, 1883, as amended by the Act of 1888.

A registered trade mark will not be removed at the instance of a rival trader merely because it consists of a combination of a prior mark with a non-distinctive addition.

In re Player & Sons' Trade Mark, [1901] 1 Ch. 382, distinguished.

It is not necessary that all the parts of a combination should appear on one label or be visible at once.

In re Spencer's Trade Marks, (1886) 3 Rep. Pat. Cas. 73, followed.

If a mark is registered for too wide a class of goods, the proper remedy is restriction, not removal.

Edwards v. Dennis, (1885) 30 Ch. D. 454, followed. *In re A. A. CROMPTON & CO.'S TRADE MARK*

Swinfen Eady J. [1902] W. N. 57; [1902] 1 Ch. 758

7. — *Merchandise marks*—"*Trade description*"—*Unintelligible writing explained by oral statement*—*Merchandise Marks Act*, 1887 (50 & 51 *Vict. c. 28*), s. 3.

Although upon a sale of goods a purely oral indication of the country of their production will not amount to a trade description within the meaning of the Merchandise Marks Act, 1887, any writing or mark, however unintelligible without explanation, will, if orally explained by the vendor at the time of sale to be intended to indicate a particular country as the country in which the goods were produced, constitute a sufficient trade description for the purposes of the Act.

The appellant went into the shop of the respondent, a dealer in foreign meat, and asked for a leg of New Zealand mutton. The respondent handed him a leg of mutton, at the same time stating that it was New Zealand meat. The respondent also handed him an invoice in which the meat was described simply as a leg of mutton. The appellant then asked the respondent to mark on the invoice that it was New Zealand meat; whereupon the respondent wrote on it the letters "N. M.," intending thereby to represent that the mutton was New Zealand mutton. No evidence was given that those letters bore that meaning according to any custom of the trade:—

Held, that under the circumstances the letters "N. M." amounted to a trade description of the meat within s. 3 of the Merchandise Marks Act, 1887, notwithstanding the absence of any trade custom as to their meaning. *CAMERON v. WIGGINS* - **Div. Ct.** [1901] 1 K. B. 1

TRADE MARK—continued.

— Merchandise marks.

See also under **MERCHANDISE MARKS**.

— No exclusive right to the trade word of local source.

See **CANADA—Trade Mark**. 1.

8. — *Old mark—Invented word—Invented article—“Special and distinctive word”—Word distinctive of manufacturer—Exclusive user—Patented invention—Expiration of patent—Rectification of register—Motion to expunge trade mark—User before 1875—Onus of proof—Appeal—Further evidence—Trade Marks Registration Act, 1875 (38 & 39 Vict. c. 91), s. 10.*

In 1877 a chemical manufacturer registered, under the Trade Marks Registration Act, 1875, the word “Vaseline,” which had been invented by him to denote a product of his manufacture, the word being registered as an old mark used by him for six years before 1877.

Upon an application made in 1900 by a rival manufacturer for the removal of the mark from the register:—

Held, by Vaughan Williams and Stirling L.J.J., Cozens-Hardy L.J. dissenting, that the word had been properly registered as a “special and distinctive word” within s. 10 of the Act of 1875, since the applicant failed to show that the word had not been used by itself as a trade mark before the Act, whereas the evidence showed that the word had always been used before and since the passing of the Act to denote, not an article manufactured by a particular process, but an article identified with the name of the particular manufacturer.

Whether, when an inventor invents a new article, and at the same time invents a word to designate it, he can claim the exclusive use of that word to denote his own manufacture, *quære*.

Where a person is seeking to remove a trade mark from the register, the onus is upon him to prove that it ought to be taken off, not upon the party registered to make out his right to retain it on the register; and especially so where the mark has been on the register for many years.

Linoleum Manufacturing Co. v. Nairn, (1878) 7 Ch. D. 834, distinguished.

Decision of Buckley J. reversed upon further evidence adduced, by leave, on the appeal. *In re CHESEBROUGH’S TRADE-MARK “VASELINE”*

C. A. [1902] 2 Ch. 1

9. — *Old mark—Registration—Lapse—Re-registration—Action for infringement—Passing off goods—Advertisements and circulars—Motions to expunge trade mark—Delay—Costs—Patents, Designs, and Trade Marks Act, 1883 (46 & 47 Vict. c. 57), ss. 54, 64, 77 (a), 79, and 90—Patents, Designs and Trade Marks Act, 1888 (51 & 52 Vict. c. 50), s. 18.*

A trade mark may be infringed by being used in the advertisements and circulars of a rival trader, if it is used in them in relation to or connection with the same class of goods, and in such a manner as to be calculated to deceive.

Delay in moving to rectify the register by expunging therefrom a trade mark will as a general rule deprive a successful applicant of his costs; but he may be refused relief altogether if

TRADE MARK—continued.

his delay has placed the respondent at an unfair disadvantage, e.g., if material evidence has been lost to the respondent by reason of the delay.

A. was the owner of two trade marks. One was the figure of a “Swan,” with adjuncts, and the other was the word “Swanbill.” Both marks were registered as old marks in 1876 in respect of the same class of goods, and for many years were used together. In 1890 A. per incuriam allowed the registration of the word “Swanbill” to lapse, but in 1892 registered it again as an old mark. In 1901 he brought an action against B. & Co. for infringing his trade mark of a “Swan” in their advertisements and circulars; and thereupon they moved to expunge both of A.’s marks from the register. They had become aware in 1896 of the registration in 1892 of the word “Swanbill.” The action and motion were tried together, and at the trial B. & Co. abandoned their motion so far as it sought to expunge A.’s trade mark of a “Swan,” but succeeded in expunging the word “Swanbill.” The action was dismissed. Under the circumstances, and having regard to B. & Co.’s delay in moving to rectify the register, A. was ordered to pay only two-fifths of the taxed costs of the action and motion.

In re Talbot’s Trade Mark, (1894) 11 Rep. Pat. Cas. 77, followed.

An application by A. for a certificate under s. 77 (a), on the ground that the validity of his trade mark of a “Swan” had come in question, was refused.

Observations on the distinction between a passing-off action and a common law action for deceit.

London General Omnibus Co. v. Lavell, [1901] 1 Ch. 135, commented on. *BOURNE v. SWAN & EDGAR, LD.* *In re BOURNE’S TRADE MARKS* Farwell J. [1902] W.N. 214; [1903] 1 Ch. 211

Note.

Referred to by Farwell J., *Todd v. North Eastern Ry. Co.*, [1903] W.N. 9; C. A. [1903] W.N. 30. See *Costs*. 13.

10. — *Passing off—“Chartreuse”—French Law of Associations—Vesting of French business under French judgment—Effect of French law upon property in English trade marks—Rectification of register.*

Where a foreign manufacture has acquired a reputation in England it is beyond the power of a foreign Court or foreign Legislature to prevent the manufacturers from availing themselves in England of the benefit of that reputation or to extend or communicate the benefit to any rival or competitor in the English market.

Decision of the C. A., [1908] 2 Ch. 715, affirmed. *LECOUTURIER v. REY AND ANOTHER. LECOUTURIER v. REY AND OTHERS*

H. L. (E.) [1910] W.N. 79; [1910] A. C. 262

— Passing off—Trade description.

See under **TRADE DESCRIPTION**.

— Practice—County Court—Jurisdiction—Infringement of registered trade mark.

See **COUNTY COURT—Jurisdiction**. 9.

11. — *Proprietor—Salesman on commission—Natural product—Selection—Certification—*

TRADE MARK—continued.

Dealing with—Offering for sale—Infringement—Trade Marks Act, 1905 (5 Edw. 7, c. 15), s. 3.

A salesman on commission may be the proprietor of a trade mark in respect of the goods which he sells on commission.

A trade mark may be registered in connection with vegetables and other natural products of the earth.

The plts. were salesmen of vegetables on commission in Covent Garden Market. They dealt largely in the vegetables of a grower named Webb, on whose care and skill in selecting, grading, and packing they knew they could rely. They registered a trade mark under classes 42 and 50 in Sched. III. to the Trade Marks Rules, 1890, and painted the same upon the baskets in which they sold the vegetables. Their practice was to send baskets with their trade mark upon them to Webb, who filled the baskets and forwarded them by rail to the plts. The plts.' trade mark was well known, and goods sold by them under that mark had a high reputation in the market.

Owing to a dispute between them and the ry. co. the plts. refused to take delivery of nine baskets forwarded by Webb as aforesaid. The ry. co. then procured the defts. under an indemnity to sell in the market the contents of the nine baskets. The defts. sold the contents in or from the baskets themselves:—

Held, that the vegetables so sold by the defts. were the goods of the plts. by virtue of selection, certification, dealing with, or offering for sale within the meaning of s. 3 of the Trade Marks Act, 1905; that there was nothing to prevent the plts. from registering a trade mark in connection with those goods; and that the defts. had committed an infringement of that trade mark. **MAJOR BROTHERS v. FRANKLIN & SON**
Jelf J. [1908] 1 K. B. 712

12. — Registration—Application to register—Similar mark on register—"Same goods or description of goods"—Calculated to deceive—Trade Marks Act, 1905 (5 Edw. 7, c. 15), ss. 11, 19.

The opponents were manufacturers of all sorts of indiarubber goods, except boots and shoes. They had registered in 1899 a trade mark, of which the distinctive part was a Maltese cross, in class 40, for "goods manufactured from india-rubber or gutta-percha, not including dress shields or gussette webs." The applicants applied to register in class 38 two trade marks of which the distinctive feature was a Maltese cross, one for "boots and shoes made wholly or partly of indiarubber," the other for "indiarubber footwear included in this class but not including gaiters or leggings or any goods of a like kind." The applicants had used the marks in Canada on all kinds of indiarubber goods. They had done some business in England, but only in boots and shoes:—

Held, that the opponents' trade mark was for "the same description of goods" as the applicants' proposed marks, and they were "calculated to deceive," and registration ought to be refused under s. 19 and also under s. 11 of the Trade Marks Act, 1905. *In re TRADE MARKS ACT, 1905, AND In re GUTTA PERCHA*

TRADE MARK—continued.

AND INDIA RUBBER CO. OF TORONTO'S APPLICATIONS
C. A. [1909] W. N. 100;
[1909] 2 Ch. 10

13. — Registration — Distinctive mark — "Lawson Tait"—Adapted to distinguish—User—Trade Marks Act, 1905 (5 Edw. 7, c. 15), s. 9, sub-s. 5.

By a written agreement made in 1898 between the predecessors of the applicants and L. T., it was agreed that L. T. should permit them to manufacture and sell a certain pattern of bedstead under the name of the L. T. bedstead, on payment of a royalty. The pattern of bedstead referred to was a bedstead constructed in three parts, and had been approved by L. T. in 1881, when he gave verbal permission for the use of his name upon these bedsteads. There was evidence that since 1881 the name of L. T. had been continuously applied to bedsteads constructed on the above principle by the applicants and their predecessors, and to nothing else, and that the bedsteads had become well known to the trade generally as the L. T. bedsteads. Upon an application referred to the Court by the Board of Trade, for the registration of the words "Lawson Tait" as a trade mark in class 41 for bedsteads:—

Held, that the name "Lawson Tait" must be deemed to be a distinctive mark in respect of bedsteads of the pattern referred to in the agreement of 1898, within the meaning of s. 9, par. (5), of the Trade Marks Act, 1905, and the registrar must be directed to proceed with the registration of it in respect of those bedsteads. *In re WHITFIELDS BEDSTEADS, LD., APPLICATION FOR REGISTRATION OF A TRADE MARK*

Eve J. [1909] W. N. 144
[1909] 2 Ch. 373

14. — Registration—Distinctive mark—Registrable trade mark—Adapted to distinguish—Confusion with other goods—Trade Marks Act, 1905 (5 Edw. 7, c. 15), s. 8; s. 9, sub-s. 5; s. 39—Trade Marks Rules, 1906, r. 39.

Application under s. 9, sub-s. 5, of the Trade Marks Act, 1905, for the registration of the word "Oswego" alone in class 42 in respect of corn flour. The applicants were an American company with factories at Oswego, in New York State. There was evidence to show that they had sold Oswego corn flour for many years in this country, that there was no other corn flour known by the name "Oswego," that their corn flour was known to the public as "Oswego" without the use of their name, and that the name "Oswego" was known in this country through its association with their goods rather than as a geographical name.

There were on the register five other trade marks in class 42 containing the word "Oswego." Three of these belonged to the applicants and two to biscuit manufacturers who did not oppose the present application:—

Held, that the only question now before the Court was whether "Oswego" was adapted to distinguish the corn flour of the applicants from the corn flour of other persons; that the Court had not to consider whether registration of "Oswego" might lead to confusion between the

TRADE MARK—continued.

applicants' corn flour and similar goods, such as oatmeal, of other persons; that the Court had power to take into consideration evidence of actual user of the trade mark; and that on the evidence in the present case there must be a declaration that "Oswego" ought to be deemed a distinctive mark in respect of corn flour.

In re NATIONAL STARCH CO.'S APPLICATION FOR THE REGISTRATION OF A TRADE MARK - Warrington J. [1908] W. N. 203; [1908] 2 Ch. 698

Note.

Distinguished by Warrington J., *In re California Fig Syrup Company's Application for a Trade Mark*, [1909] 2 Ch. 99; C. A. [1910] 1 Ch. 130. See No. 32, below.

15. — Registration — "Distinctive mark" — *Trade Marks Act*, 1905 (5 Edw. 7, c. 15), s. 9, sub-ss. 4, 5.

A German co. who were the owners of the Apollinaris mineral water spring at Neuenahr, in Rhenish Prussia, applied to register the word "Apollinaris" in England in class 44 in respect of mineral waters.

There was evidence of very extensive user of the word "Apollinaris," and that it meant the water from the applicants' spring and no other water. The Board of Trade having required the application to be made to the Ch. Div. :—

Held, that, on the applicants undertaking "not to use the mark except in respect of water from their property at Neuenahr or the neighbourhood thereof," the word "Apollinaris" ought to be deemed a "distinctive mark" within the meaning of s. 9, sub-s. 5, of the *Trade Marks Act*, 1905, and might fairly be registered under the Act.

When the evidence shews that the words sought to be registered distinguishes the goods of the proprietor of the mark, it is not the less "distinctive" of the goods of the proprietor because it also distinguishes the goods irrespective of the proprietor. *In re* "APOLLINARIS" TRADE MARK - Kekewich J. [1907] 2 Ch. 178

Note.

See next Case.

16. — Registration—"Distinctive mark"—"Word"—*Trade Marks Act*, 1905 (5 Edw. 7, c. 15), s. 9, sub-ss. (4), (5).

Motion on behalf of the applicants, the owners of the Apollinaris spring at Neuenahr, in Rhenish Prussia, for an order directing the Registrar of Trade Marks to treat the word "Apollinaris" as a distinctive mark within s. 9, sub-s. (5), of the *Trade Marks Act*, 1905, and to proceed with the registration.

On May 16, 1906, the application was made to the Registrar of Trade Marks for the registration of the word "Apollinaris" in class 44 in respect of mineral waters. The Board of Trade required that the application should be made to the Court, and that the applicants should prove their claim. There were a number of affidavits from presidents of Chambers of Commerce and others connected with trade from many centres to the effect that the name "Apollinaris" as applied to mineral waters meant the waters coming from the spring at Neuenahr and no other water. It

TRADE MARK—continued.

appeared that the name "Apollinaris" was given to the spring by its discoverer, George Kreuzberg, in 1852, after the name of an early saint, and there was a church of the same name on a hill seven miles from the spring. It was suggested by the applicants that the word might also come under sub-s. (4) of s. 9 of the *Trade Marks Act*, 1905.

Kekewich J. said that he did not think the word "Apollinaris" came within sub-s. (4) of s. 9. In his view the word had a direct reference to the character and quality of the water which the trade mark was intended to protect, and whether that was so or not, it was clear that, according to its ordinary signification, the word was a geographical name. His lordship, however, came to the conclusion that the word was a "distinctive mark" within sub-s. (5). On the evidence the word distinguished the goods of the proprietor of the trade mark, and not the less so because it also distinguished the goods from other goods irrespective of the proprietor. A difficulty might arise if the applicants ceased to be owners of the spring, but as they were willing to give an undertaking "not to use the mark except in respect of water from their property at Neuenahr, or the neighbourhood thereof, he would make a declaration that the word "Apollinaris" ought to be deemed a "distinctive mark" within the meaning of s. 9, sub-s. (5), of the *Trade Marks Act*, 1905. The applicants must pay the costs of the Registrar of Trade Marks. *In re* ACTIEN-GESELLSCHAFT APOLLINARIS BRUNNEN VORMALS, GEORG KREUZBERG'S APPLICATION

Kekewich J. [1907] W. N. 125

Note.

See preceding Case.

17. — Registration — "Distinctive word"—Registration—"Addition" to trade mark—"Addition registered as part of trade mark"—"Disentitled to protection"—Disclaimer—Disclaimer subsequent to application for registration—*Patents, Designs, and Trade Marks Act*, 1883 (46 & 47 Vict. c. 57), ss. 64, 73, 74.

In 1887 the F. Co. registered, in connection with jams, a trade mark consisting of the word "Silverpan" in large type with their signature underneath, and subsequently the word by itself became identified in the market with their goods. In 1900 the R. Co., rival jam manufacturers, applied that the entire trade mark might be removed from the register as "being calculated to deceive or otherwise disentitled to protection," within s. 73 of the *Patents, Designs, and Trade Marks Acts*, 1883, or, in the alternative, that the word "Silverpan" might be disclaimed under s. 74 as being a "distinctive word":—

Held, by the C. A. (reversing Kekewich J.), that the word "Silverpan" was to be regarded as an "addition" to, and not part of, the trade mark, and that at the date of registration it was a word "distinctive" of the F. Co.'s goods, that is "prima facie distinctive": *Burland v. Brown & Co.*, (1889) 42 Ch. D. 274; and, therefore, ought to have been disclaimed under s. 74; but, the F. Co. submitting, an order was made to remove the entire trade mark from the register.

In re Clement & Co.'s Trade Mark, [1900]

TRADE MARK—continued.

1 Ch. 114, and *In re Smokeless Powder Co.'s Trade Mark*, [1892] 1 Ch. 590, approved of and distinguished.

Per Romer L.J.: The word "distinctive" in s. 74 means something which, at the time of registration, is chosen by the applicant and is *prima facie* suitable, when used, for the purpose of distinguishing his goods from the goods of others.

Whether a disclaimer under s. 74 can be made or ordered subsequently to the application for registration of the trade mark, *quere*. *In re FAULDER & Co.'s TRADE MARK*

C. A. [1901] W. N. 235 ;
[1902] 1 Ch. 12

18. — *Registration — Double registration — Non-essential particulars — Disclaimer — Time — Patents, &c., Acts, 1883 — 1888* (46 & 47 Vict. c. 57 ; 51 & 52 Vict. c. 50), s. 62.

Registration will not be allowed of a trade mark identical in essential particulars with, but differing in non-essential particulars from, a registered mark of the applicant himself.

The exclusive use of non-essential particulars on a trade mark must be disclaimed in the application for registration. Subsequent amendment will not be allowed. *In re PLAYER & SONS' TRADE MARK*, No. 225,085

Cozens-Hardy J. [1901] 1 Ch. 382

Note.

Distinguished by Swinfen Eady J., *In re A. A. Crompton & Co.'s Trade Mark*, [1902] 1 Ch. 758. See No. 6, above.

19. — *Registration — Identical mark for different descriptions of goods — Discretion of registrar — Associated trade marks — Assignment — Costs of registrar — Trade Marks Act, 1905* (5 Edu. 7, c. 15), s. 12, sub-ss. 2, 3 ; ss. 22, 24, 27, 48.

A co. which carried on several separate and distinct businesses registered the trade mark "B.S.A." in class 19 in respect of arms, ammunition, and stores. They subsequently applied to register the same trade mark in class 22 in respect of cycles, motor cycles, and automobiles. The registrar required them, as a condition of registration, to agree that the marks should be associated in accordance with the provisions of s. 24 of the Trade Marks Act, 1905.

On the applicants declining this condition, the registrar, in the exercise of his discretion under s. 12, sub-s. 2, of the Act, declined to register the mark.

On appeal from this decision :—

Held, that the discretion vested in the registrar was not an absolute discretion, but one to be exercised subject to the provisions of the Act. Sect. 24 was one of such provisions, and had nothing to do with the registration of identical trade marks, but of marks "so closely resembling a trade mark of the applicant already on the register for the same goods or description of goods as to be calculated to deceive or cause confusion if used by a person other than the applicant."

The two classes of goods in question were also not the "same goods or description of goods," and the registrar must be directed to

TRADE MARK—continued.

proceed with the registration of the mark in class 22 without the condition of association.

Held, further, that the applicant, although successful, must pay the costs of the registrar, who was a public official occupying a fiduciary position, and had done nothing to disentitle himself to costs. *In re BIRMINGHAM SMALL ARMS Co.'s APPLICATION*

Kekewich J.
[1907] W. N. 168 ; [1907] 2 Ch. 396

Note.

See *In re United States Playing Card Co.'s Application*, Swinfen Eady J., [1907] W. N. 251 ; [1908] 1 Ch. 197, No. 3, above.

20. — *Registration — Invented word — "Absorbine" — Patents, Designs, and Trade Marks Acts, 1883* (46 & 47 Vict. c. 57), s. 64, and 1888 (51 & 52 Vict. c. 50), s. 10, sub-s. 1.

The word "Absorbine" as applied to a veterinary preparation for absorbing and removing swellings.

Held (affirming Joyce J., [1904] 1 Ch. 696) to be a mere variation of an existing English word, and therefore not an "invented word" capable of registration. *CHRISTY v. TIPPER*

C. A. [1904] W. N. 188 ; [1905] 1 Ch. 1

21. — *Registration — Invented word — Fancy word — Reference to character and quality of goods — Descriptive name — Patented article — Patents, Designs and Trade Marks Act, 1883* (46 & 47 Vict. c. 57), s. 64—*Trade Marks Act, 1905* (5 Edu. 7, c. 15), ss. 3, 9, 35, 36.

In 1881 G. obtained letters patent for a pen which he called the "Cyclostyle." From 1882 onwards the pen, with its accessories, paper, ink, &c., were sold under the name of "Cyclostyle." In 1884 the word "Cyclostyle" was registered under the Patents, Designs and Trade Marks Act, 1883, in respect of stationery and apparatus for producing facsimile copies of writings and designs, including the pen and its accessories. In 1895 the patent expired. By that time the word had become well known to the public as the name of the patented article and its accessories.

On an application under s. 35 of the Trade Marks Act, 1905, to expunge the word from the Register of Trade Marks :—

Held, that the word, being at the date of its registration the name of the pen, was not a fancy word not in common use within the meaning of s. 64, sub-s. 1 (c), of the Act of 1883.

Held, also, that it was not an invented word, nor a word having no direct reference to the character or quality of the goods, within the meaning of s. 9 of the Act of 1905.

Where an article is made under a patent, the manufacturer cannot after the patent has expired claim a monopoly in the name by which the article has become exclusively known to the public.

In re Magnolia Metal Co.'s Trade Marks, [1897] 2 Ch. 371, followed.

Per Buckley L.J.: In construing s. 36 of the Trade Marks Act, 1905, the facts and the law at the date of the motion to expunge are to be considered. If on those facts and in that state of the law a trade mark, having been removed from the register, would be entitled to be

TRADE MARK—continued.

replaced, the entry is not to be expunged on the ground that the mark was not registrable under the Acts in force at the date of its registration. That section does not mean that the Act of 1905 is to be applied to the facts at the date of the registration.

Decision of Neville J., [1907] W. N. 182; [1907] 2 Ch. 478, affirmed. *In re REGISTERED TRADE MARK, No. 37,760 of DAVID GESTETNER* C. A. [1908] 1 Ch. 513

22. — Registration—“Invented word”—Non-descriptive word—Patents, Designs, and Trade Marks Act, 1888 (51 & 52 Vict. c. 50), s. 10.

The word “Uneeda,” being a mere misspelt combination of the English words “You need a,” is not an “invented word” within the meaning of s. 10 of the Patents, Designs, and Trade Marks Act, 1888. Moreover, it is descriptive of the character or quality of the goods; and on both these grounds it is not the proper subject of registration as a trade-mark.

Decision of Cozens-Hardy J., [1901] 1 Ch. 550, affirmed. *In re “UNEEDA” TRADE-MARK*

C. A. [1902] 1 Ch. 783

23. — Registration—Invented word—Reference to character and quality of goods—Descriptive name—Trade Marks Act, 1905 (5 Edw. 7, c. 15), ss. 3, 9, 35, 36, 37.

In May, 1905, P. registered, as a trade mark, under the Patents, Designs and Trade Marks Acts, 1883 and 1888, the word “Diabolo” in respect of tops. The word was not then a word current in the English language, but was to be found in some Italian dictionaries as a variant for “diavolo.” The top in respect of which the mark was registered and used was a double-coned one which was adapted to be rotated by a cord attached to two flexible rods, the top and the rotatory apparatus forming the means of playing a game which with some improvements was a revival of a game played about the beginning of the nineteenth century, in France called “le diable” or “le jeu au diable” and in England “the devil on two sticks” :—

Held, that as the word “Diabolo” was such as to suggest to ordinary minds (and selected so to suggest) the devil or something in which the devil played a part, it was not an invented word or a word having no reference to the quality or character of the goods, and was not a registrable trade mark and must be removed from the register of trade marks.

Observations as to the meaning of s. 36 (removal of marks already on the register at the commencement of the Trade Marks Act, 1905) and s. 37 (as to removal of marks for want of bona fide intention of user in connection with goods).

Quare, whether the word was not also open to objection because it was not at the date of registration used or proposed to be used to indicate that the goods to which it applied were the goods of the person asking for registration.

PHILIPPART v. WILLIAM WHITELEY, LD. In re PHILIPPART'S TRADE MARK “DIABOLO” Parker J. [1908] 2 Ch. 274

24. — Registration—“Motricine”—Similar word already on register—“Same class or

TRADE MARK—continued.

description of goods”—“Calculated to deceive”—*Onus of proof—Rectification of register—“Motorine”—Descriptive word—Invented word—“Word having no direct reference to character or quality of goods”—Trade Marks Act, 1905 (5 Edw. 7, c. 15), s. 9, sub-s. 4; ss. 11, 19, 21.*

In 1901 the opponents registered the word “motorine” as a trade mark for lubricating oil, with a disclaimer of the right to the exclusive use of the word “motor.” Since registration they had sold large quantities of a lubricating oil suitable for, but not confined to, motors under that name. In 1906 the applicants applied to register the word “motorine” as a trade mark for a spirit for motive power purposes derived from petroleum. The opponents opposed the application, and the registrar refused to register the mark. On an application by the applicants that the registrar might be directed to proceed with the registration of their mark, and that the opponents’ mark might be expunged from the register :—

Held, that under s. 11 of the Trade Marks Act, 1905, the onus of showing that the proposed trade mark was not calculated to deceive rested on the applicants; that they had failed to discharge that onus; that that being so the Court would decline to exercise its discretion under s. 21 of the Act of allowing conditional registration; and that the application to register must therefore be refused.

Eno v. Dunn, (1890) 15 App. Cas. 252, followed.

Held, also, that the word “motorine” had “no direct reference to the character or quality of the goods,” and was therefore a good trade mark under s. 9, sub-s. 4, of the Act, and that the application to expunge it from the register must consequently be refused. *In re COMPAGNIE INDUSTRIELLE DES PETROLES’ APPLICATION. In re PRICE’S PATENT CANDLE CO.’S TRADE MARK* Warrington J.

[1907] W. N. 176; [1907] 2 Ch. 435

25. — Registration—Motion to rectify—Fancy word—“Tabloid”—Presumption arising from long user—Patents, Designs, and Trade Marks Act, 1883 (46 & 47 Vict. c. 57), s. 64.

Where a trade-mark is impeached after it has been on the register for a great many years, and has been openly and largely used, and there is a doubt as to its validity, the registered proprietor is entitled to the benefit of the doubt.

Prior to 1884 B. & W. manufactured and sold compressed drugs made up into small bi-convex discs under the name of “Tablets,” and they registered that word as a trade-mark. In 1884 they registered the newly coined word “Tabloid” as a trade-mark, under the Patents, Designs, and Trade Marks Act, 1883, for substances used in pharmacy, and they had since manufactured and sold compressed drugs of the same shape and size under the name of “Tabloids” :—

Held, by Byrne J. and by the C. A., dubitante Stirling L.J., that at the date of its registration the word “Tabloid” was a distinctive fancy word. *WELLCOME (TRADING AS BULLOUGH, WELLCOME & CO.) v. THOMPSON &*

TRADE MARK—continued.

CAPPER. *In re* BURROUGHS, WELLCOME & Co.'s TRADE-MARKS

C. A. [1904] W. N. 87; [1904] 1 Ch. 736

26. — *Registration—Registrable mark—Distinctive mark—"Word or words"—Use of word "Royal"—Practice as to service of application to the Court that a proposed mark may be "deemed a distinctive mark"—Trade Marks Act, 1905 (5 Edw. 7, c. 15), s. 9, sub-s. 5; ss. 11, 60, 68—Trade Marks Rules, 1906, rr. 12, 39.*

The Royal Worcester Corset Co., of Worcester, Massachusetts (a co. incorporated in the United States of America), applied for registration in class 38 of the words "Royal Worcester" alone as a trade mark for corsets generally. The words had been used for about five years upon, and in connection with advertisements of, corsets manufactured by the applicant co. at Worcester, Massachusetts, and sold in the United Kingdom by the Royal Worcester Trading Co. (an English firm) as sole agent or licensee of the applicant co., but never without additional words indicating that the corsets were made in America.

The Board of Trade, pursuant to r. 39 of the Trade Marks Rules, 1906, directed the applicant co. to apply to the Court for an order under sub-s. 5 of s. 9 of the Trade Marks Act, 1905, that the words should be "deemed a distinctive mark." The Board of Trade also directed that the application should be served on the Comptroller-General (in the Act referred to as "the registrar"), on the Royal Worcester Trading Co. (which had already applied for registration of the same words as a trade mark in connection with corsets and certain articles of clothing), and on the Worcester Royal Porcelain Co., Ltd. (which was the registered owner of the words "Royal Worcester" as a trade mark for china and pottery, the words being not only distinctive of those things of their manufacture, but connoting the place of their manufacture and the fact that they were supplied to the Royal Family):—

Held—(1.) that before the Court can make an order under sub-s. 5 of s. 9 it must be satisfied that the proposed mark is adapted to distinguish the goods of the applicant from similar goods of other persons; (2.) that even if so satisfied, an order ought not to be made if the mark ought not to be registered for some other reason, *e.g.*, because the registration would contravene s. 11; (3.) that the proposed words were not so adapted to distinguish the corsets from those of other persons, and therefore were not in themselves "distinctive words" within the meaning of s. 9; (4.) that the words had not become by user "distinctive" apart from the use of other words not sought to be registered, and were not, therefore, "distinctive" within the meaning of s. 9; (5.) that registration ought also to be refused because of the suggestion in the use of the word "Royal" that the applicant co. enjoyed royal patronage (which it was not suggested that it enjoyed) and would be calculated to deceive within the meaning of s. 11; (6.) that the practice of the Board of Trade of indicating upon whom an application to the Court should be served was a convenient practice,

TRADE MARK—continued.

and that the two cos. served in this case were properly served and entitled to be heard; and (7.) that if an applicant does not serve any person so indicated the Court can either proceed without any service or direct service to be made according to its own view of what the circumstances require.

Semble, that the word "Royal" may be used in such a way as to negative any suggestion of the enjoyment of royal patronage. *In re* ROYAL WORCESTER CORSET Co.'s APPLICATION TO REGISTER A TRADE MARK **Parker J. [1909] 1 Ch. 459**

Note.

Distinguished by Warrington J., *In re California Fig Syrup Co.'s Application for a Trade Mark* [1909] 2 Ch. 99; C. A. [1910] 1 Ch. 130. See No. 32, below.

27. — *Registration—Removal from register—Mark "calculated to deceive"—Word "trade-mark" printed on part of label registered as a whole.*

The fact that upon a part of a label, the whole of which is registered as a trade mark, there is printed the word "trade-mark," is not necessarily calculated to deceive as suggesting that that part alone constitutes the trade mark.

The Court must decide from the circumstances of the particular case before it whether the position of the word "trade-mark" is calculated to deceive, and whether, if it is, there is a reasonable probability of any one being injured by it.

Per Romer L.J.: The decision of the C. A. upon this point in *In re Apollinaris Co.'s Trade marks*, [1891] 2 Ch. 186, was upon a question of fact, and does not therefore bind the Court except in a case in which the facts are identical.

In 1876 a label was registered as a trade mark by a firm of brewers as an "old mark," *i.e.*, one which they had used for some years before Dec. 31, 1875. In the centre of the label was a diamond or four-sided figure, and the label was surrounded by an ornamental border. Upon the diamond was printed the word "trade-mark." The firm also in 1876 registered the diamond alone as a trade mark.

In 1900 a rival firm of brewers applied to have the label removed from the register, on the ground that the printing of the word "trade-mark" upon the diamond was calculated to deceive, as suggesting that it alone constituted the trade mark, and that the remainder of the label might be imitated:—

Held, by the C. A., that under the circumstances the position of the word "trade-mark" upon the label was not calculated to deceive; that there was no reasonable probability of any one being injured by it; and that there was no ground for removing the label from the register.

Decision of Kekewich J. (founded upon *In re Apollinaris Co.'s Trade-marks*, [1891] 2 Ch. 186) reversed. *In re* REGISTERED TRADE-MARKS OF BASS, RATCLIFFE & GRETTON, LD. (No. 2) **C. A. [1902] W. N. 153; [1902] 2 Ch. 579**

28. — *Registration—Same goods or description of goods—Nearly identical trade marks—*

TRADE MARK—continued.

"A. B. C." *Matter common to trade—Honest concurrent user—Matter calculated to deceive—Disclaimer—Discretion of Court—Trade Marks Act, 1905* (5 *Edw.* 7, c. 15), ss. 11, 14, 15, 20, 21—*Limited company's trade mark—Name or signature—Advertisements—Companies Act, 1862* (25 & 26 *Vict.* c. 89), s. 41.

In 1906 the Aerated Bread Co. applied to register as a trade mark in class 45, in respect of cigars, cigarettes, and tobacco, a device which was a reproduction of the co.'s common seal having the letters A. B. C. in the centre, and which was already registered as their trade mark in class 42 in respect of bread, biscuits, cakes, and flour. Shortly afterwards A. Baker & Co., who carried on business as tobacconists, applied to register a series of four labels as trade marks in class 45 in respect of cigarettes. One of the distinguishing features in the series was a circular band or garter in the centre of which appeared the letters A. B. C., and round the edge of which were contained the words "A. Baker & Co., Ltd." A. Baker & Co. had for the last eleven years used the mark they sought to register and with perfect good faith claimed the right to the exclusive user of the letters "A. B. C." The Aerated Bread Co. opposed A. Baker & Co.'s application on the ground that there had been concurrent user of the letters A. B. C. by themselves and others, and that A. Baker & Co.'s labels should only be registered on a disclaimer by them of any right to the exclusive use of that part of the label. A. Baker & Co. opposed the Aerated Bread Co.'s application on the ground that their mark contained matter the use of which would, by reason of its being calculated to deceive, be disentitled to protection in a Court of justice. The registrar refused to register either mark, and thereupon each co. applied to the Court for a direction to the registrar to proceed with the registration of their respective marks. At the hearing A. Baker & Co. failed to establish that the letters A. B. C. exclusively indicated their goods. The evidence also shewed that in the past the concurrent user of the letters A. B. C. for the same goods by the Aerated Bread Co., A. Baker & Co., and others had not led to any mistake, confusion, or complaint.

On A. Baker & Co.'s application:—

Held, that in the circumstances the Court, in the exercise of its discretion under s. 15 of the Trade Marks Act, 1905, would not impose upon the applicants a condition requiring them to disclaim any part of their combination although containing matter common to the trade, and that they were entitled to have their trade marks registered.

The condition of disclaimer is one for the imposition of which some good reason ought to be established rather than one which ought to be imposed unless some good reason to the contrary is made out.

The failure of a claim to a monopoly, put forward and asserted with good faith, does not necessarily involve the imposition of a disclaimer as a condition of registration.

Held, also, that the applicants' trade marks were not "advertisements" within the meaning

TRADE MARK—continued.

of s. 41 of the Companies Act, 1862, necessitating the mention thereon of the applicant co.'s name in legible characters; and that there is nothing in the Trade Marks Act, 1905, confining the name or signature appearing in a trade mark to the name or signature of the applicant.

On the Aerated Bread Co.'s application:—

Held, that the applicants had discharged the burden which lay upon them of shewing that their trade mark was not calculated to deceive, and that they were entitled to have their mark registered in class 45. *In re ALBERT BAKER & CO.'S APPLICATION. In re AERATED BREAD CO.'S APPLICATION. — Eve J. [1906] 2 Ch. 86*

29. — *Registration—Special application—Distinctive word—Direction to proceed—Form of order—Practice—Trade Marks Act, 1905* (5 *Edw.* 7, c. 15), s. 9, sub-s. 5—*Trade Mark Rules, 1906, rr. 39, 41.*

Motion by the Itala Fabbrica di Automobili for an order authorizing the Registrar of Trade Marks to treat the trade mark "Itala" as a distinctive mark within s. 9, sub-s. 5, of the Trade Marks Act, 1905, and to proceed with their application for registration thereof. The applicants were an Italian co., and the application was opposed by the Itala Automobiles, Ltd., an English co., formed for the purpose of selling the applicants' cars in England, and holding the exclusive licence for so doing, who alleged that if the trade mark were registered at all it ought to be in their name. There was evidence that the mark "Itala" had been considerably used on and denoted the applicants' cars.

Parker J. held on the evidence that "Itala" was adapted to distinguish the applicants' goods, and made an order declaring that for the purposes of the application before the registrar the trade mark "Itala" should be deemed to be distinctive within s. 9, sub-s. 5, of the Trade Marks Act, 1905, and ordering that the registrar should accept and proceed with such application. *In re ITALA FABBRICA DI AUTOMOBILI'S APPLICATION Parker J. [1910] W. N. 170*

30. — *Registration—Special application—Distinctive word—User—Foreign language—Trade Marks Act, 1905* (5 *Edw.* 7, c. 15), s. 9, sub-s. 5—*Practice—Form of order.*

A Latin word will not necessarily be refused registration as a trade mark because its English equivalent could not be registered. It may be registered if it has not become a part of the English language and has become distinctive of the applicants' goods by long user and there is no danger of confusion or inconvenience to other traders. When an application is referred by the Board of Trade to the Court under s. 9, sub-s. 5, of the Act of 1905, the Court will not make any declaration that the proposed mark is or may be distinctive, but will only direct the registrar to accept the application in order that it may be proceeded with in the ordinary way. *In re AKTIEBOLAGET B. A. F. HJORTH & CO.'S TRADE MARK "PRIMUS" — Swinfen Eady J. [1910] W. N. 123; [1910] 2 Ch. 64*

31. — *Registration—Special application—Liberty to proceed—"Distinctive" word—Long*

TRADE MARK—continued.

user — Deceptive use of descriptive word — Trade Marks Act, 1905 (5 Edw. 7, c. 15), s. 9, sub-s. 5.

Upon a special application under s. 9, sub-s. 5, to register the word "diamine" for dyes, it was proved that the word, which had been used by the applicants as a trade mark for twenty years, had become extensively known to the trade in the United Kingdom as indicating the goods of the applicants. The word was a known chemical term which indicated that the substance to which the word was applied contained two amine groups, but it was used by the applicants for their dyes, whether they contained one, two, or more amine groups or no amine group at all :—

Held, that the word was not distinctive within the meaning of the sub-section, first, because it was descriptive, and, secondly, because it was used deceptively, and that the application ought not to be allowed to proceed.

Per Buckley L.J.: *Semble* "adapted to distinguish" contemplates that the word which it is sought to register is one which as a word is adapted to distinguish the goods and not a word which may by user acquire the capacity of distinguishing the goods. *In re* LEOPOLD CASSELLA & CO. GESELLSCHAFT M. B. H. - C. A. [1910] W. N. 129; [1910] 2 Ch. 240

32. — Registration — Special application — Distinctive word—User—Laudatory epithet—Geographical name—Misspelling of descriptive word—Trade Marks Act, 1905 (5 Edw. 7, c. 15), s. 9, sub-s. 5; ss. 11, 44.

A mere laudatory epithet cannot acquire by user the quality of distinctiveness within s. 9, sub-s. 5, of the Trade Marks Act, 1905, so as to render it capable of registration as a trade mark.

A word not being an invented word ought not to be put on the register if the spelling is phonetic and resembles in sound a word which in its proper spelling could not be put on the register.

Per Fletcher Moulton L.J.: The Court has jurisdiction under s. 9, sub-s. 5, to permit registration of words having a direct reference to the character or quality of the goods, as well as geographical terms, but it is for the applicant to prove that words *prima facie* unsuitable for registration have acquired distinctiveness, and the extent to which the Court will require the proof of this acquired distinctiveness to go will depend upon the character of the word. In determining whether a word *prima facie* descriptive ought to be admitted to registration as a trade mark the Court ought to consider whether the registration will cause substantial difficulty or confusion in view of the provision in s. 44 that no registration shall interfere with the use by any person of any bona fide description of the character or quality of his goods.

Upon a special application to register the word "Perfection" as a trade mark for common soap it was proved that for many years past the applicants had advertised their soap under that name, and had also used the name upon the cakes of soap sold by them, but always in conjunction with their own name, and that in many parts of

TRADE MARK—continued.

England the applicants' soap had become known to a large extent as "Perfection" soap :—

Held, that the word ought not to be admitted to registration.

Decision of Swinfen Eady J., [1910] 1 Ch. 118, affirmed. *See next Case.*

A special application to register the words "Californian Syrup of Figs" for an aperient medicine was referred by the Board of Trade to the Court. The evidence established a *prima facie* case of the words having become identified by long user with the goods of the applicant :—

Held, that the application ought to be allowed to proceed.

Decision of Warrington J., [1909] 2 Ch. 99, reversed.

An application was made to expunge from the register several trade marks consisting of the word "Orlwoola" registered under the Patents, Designs, and Trade Marks Acts, 1883 and 1888, for (amongst other things) woollen goods, with a disclaimer in each case of the words "all wool." These marks had been extensively used for many years in connection with unshrinkable woollen goods :—

Held, that "Orlwoola" was merely a misspelling of "all wool"; that if the goods to which the word was applied were entirely composed of wool the word was descriptive, and, if not, was deceptive; and that the trade marks were not registrable either under the Act of 1905 or under the previous Acts and ought to be expunged.

Decision of Eve J. reversed. *In re* JOSEPH CROSFIELD & SONS, LD. *In re* CALIFORNIA FIG SYRUP COMPANY. *In re* H. N. BROCK & CO. - C. A. [1909] W. N. 233; [1910] 1 Ch. 130

Note.

Observations in, applied by C. A., *In re* Leopold Cassella & Co. Gesellschaft M. B. H. [1910] 2 Ch. 240. *See* No. 31, above.

33. — Registration for an entire class—User for part of class—Bona fide intention to use—Dormant mark—Rectification of register—Limitation to part of class—Patents, Designs, and Trade Marks Act, 1883 (46 & 47 Vict. c. 57), s. 90.

Where a trader has registered a mark for an entire class, and, many years after registration, it is proved that he has never used the mark in connection with a particular article in that class, though his business included the sale of that article under other trade marks, the register may be rectified, upon the application of another trader desiring to register a similar mark for the particular article, by excluding that article from the specification of goods in respect of which the mark was originally registered, on the ground that at the date of registration there had been no actual user of the mark, and no bona fide intention of using it for that particular article of the class for which the mark had been registered.

Principle of *Edwards v. Dennis* (1885) 30 Ch. D. 451, applied. *In re* REGISTERED TRADE-MARK NO. 22,206 of MAURICE JOHN HART

Byrne J. [1902] W. N. 153; [1902] 2 Ch. 621

TRADE MARK—continued.

34. — *Word directly referring to character of goods—Distinctive word—Name of article as trade mark for it—“Gramophone”—Registration—Protection to other traders—Trade Marks Act, 1905 (5 Edw. 7, c. 15), ss. 9, 44.*

The Gramophone Co., Ltd., and its predecessors in title had before and after the incorporation of the co. manufactured and sold talking machines, and for many years had sold and advertised the machines as “gramophones” and the co. claimed monopoly rights in the word, as distinguishing goods of the co.’s manufacture, by warning circulars, legal proceedings, and threats of legal proceedings. To the general public the word “gramophone” denoted a talking machine operating a disc record without any connotation of the source of manufacture; but to the trade generally the word denoted a talking machine of a particular type and connoted the source of manufacture. The co. applied for registration under s. 9, sub-s. 5, of the Trade Marks Act, 1905, of “gramophone” as the co.’s trade mark in respect of gramophones and sound recording and reproducing instruments, records, parts and accessories:—

Held, that, “gramophone” being the name of the article sold, even assuming the word had by user become distinctive of the co.’s goods, the application for registration ought not to proceed.

An application under s. 9, sub-s. 5, of the Act in effect admits that the word sought to be registered (not being a geographical name or a surname) has some direct reference to the character or quality of the goods in respect of which it is proposed to be registered.

In the case of a trade mark in actual use, the tribunal, when taking into consideration the extent to which user has rendered the mark in fact distinctive of the applicant’s goods, can only have regard to user upon or in connection with goods for the purpose of indicating that such goods are the goods of the person so using the mark, and the acquired distinctiveness must be due to such user.

If a word which has once been the name of an article ought ever to be registered as a trade mark for that article, it can only be when the word has lost, or practically lost, its original meaning; and so long as the word appropriately describes the article registration ought to be refused.

Observations on s. 44 of the Act. *In re GRAMOPHONE CO.’S APPLICATION*

Parker J. [1910] 2 Ch. 423

TRADE NAME—Company—name.

See under **COMPANY—Name**, and under **COMPANY—WINDING-UP—Name**.

1. — *Deception—Rival traders—Person trading under his own name—Form of injunction.*

The Court: Now that the form of injunction has been agreed upon, we wish to say a few words upon the case. It may be that a trade is of such a nature that the products of that trade, associated with a particular trade name, have become almost indissolubly connected with the business carried on by the particular manufacturer who has created that particular business. But still, even though that may be so, and even

TRADE NAME—continued.

though the nature of the trade has to be taken into consideration in an action for an injunction, there never has been a case yet where an order has been made restraining a man altogether from carrying on in his own name a particular trade. Every decision up to the present time has been limited to restraining him from carrying on a trade which has become identified under the same name with the business of another person, without taking the steps which any honest man would wish to take to prevent his goods being confounded with the other person’s goods which have become so identified with the name. Under the circumstances the order of Kekewich, J., [1901] W. N. 46, went too far, and the order which we now make goes as far as it ought to go. *J. & J. CASH, LD. v. CASH*

C. A. [1902] W. N. 32

2. — *Passing-off action—Parties—Practice—Injunction.*

For many years the plts. manufactured and sold tyres for cycles and motor cycles under the name of “Warwick,” and by the year 1905 that name was distinctive and meant to the trade and to the public tyres of their manufacture. In 1905 they transferred their business with the exclusive right to manufacture and sell Warwick tyres to the Dunlop Co. for a term of years, but did not assign the goodwill in their trade name of “Warwick” to that company. The plts. never manufactured or sold tyres for motor cars, nor did the Dunlop Co. sell such tyres under the name of “Warwick.” The defts. manufactured and sold only tyres for motor cars, and in 1908, the name of their managing director being Warwick, commenced to sell their motor tyres under the name of “Warwick motor tyres.” In an action by the plts. to restrain the defts. from using the name “Warwick” in connection with the sale of the defts.’ motor tyres on the ground that such user was calculated to lead the public to believe that the defts.’ motor tyres were tyres of the plts. manufacture:—

Held, on the evidence, that the plts. were entitled to an injunction.

Held, also, that the plts., although they were not themselves manufacturing or selling their Warwick tyres, were the proper parties to sue, as they had not parted with the goodwill in their trade name “Warwick,” and that the Dunlop Co. were not necessary parties to the action. *WARWICK TYRE CO. v. NEW MOTOR AND GENERAL RUBBER CO.* - - - Neville J.
[1910] W. N. 8; [1910] 1 Ch. 248

3. — *Professional designation—“Incorporated accountant”—Descriptive or fancy name—Use of name appropriated to particular society—Unauthorized use by another society and by individuals—Legal injury—Injunction.*

The plt. society was incorporated in 1885, under the Companies Act, 1867, as a co. not for gain without the use of the word “limited” under licence of the Board of Trade. In 1886 the plt. society recommended its members to adopt as their professional designation the use after their names of the term “Incorporated Accountant.” By 1905 that designation had come to mean to that section of the public who

TRADE NAME—continued.

had dealings with accountants a member of the society, which, by its system of tests and examinations, had conferred upon its members the valuable privilege of a recognised status for ability and integrity. In that year the deft. association was incorporated under the Companies Acts as a co. limited by guarantee. Shortly after its incorporation its council recommended its members to adopt the designation "Incorporated Accountant" with the addition of the abbreviation "Lon. Asson."

In an action by the plt. society against the deft. association and G., one of its members, claiming (1.) an injunction to restrain G. from using in connection with his business of accountant the designation "incorporated accountant," and (2.) an injunction to restrain the deft. society from holding out, by advertisements or otherwise, that its members were entitled to use such designation:

Held, that the designation "incorporated accountant" was a fancy and not a descriptive term, and had come to denote membership of the society, and, therefore, that the unauthorized use of it inflicted an injury on the plt. society, in respect of which it was entitled to maintain an action.

Held, also, that the plt. society had a pecuniary interest in preventing the deft. association from attempting, by representations and inducements held out to members of the professions, to reduce the status of the plt. society by conferring improperly an indication of that status.

Held, therefore, that the plt. society was entitled to the injunctions which it claimed.

Society of Accountants in Edinburgh v. Corporation of Accountants, Ltd., (1893) 20 R. 750, followed. **SOCIETY OF ACCOUNTANTS AND AUDITORS v. GOODWAY AND LONDON ASSOCIATION OF ACCOUNTANTS, LD.**

Warrington J. [1907] W. N. 45; [1907] 1 Ch. 489

4. — *Professional designation—Name appropriated to particular society—Unauthorized use* — "*Member of the Society of Architects*" — *Injunction*.

Action by the plt. society for an injunction to restrain the deft. from using as a professional designation the letters "M.S.A." or any other letters or words or abbreviations of letters or words in such a way as to represent or lead to the belief that he was a member of the society.

The plt. society was incorporated in 1893 under the Companies Acts as a co. limited by guarantee and not having a capital divided into shares. Its objects as stated in the memorandum of association were (inter alia) : "The promotion and advancement of architectural art and practice in its allied arts, sciences, and crafts and the maintenance of the honour and the interests of the profession of architecture."

The plts. alleged that from the foundation of the society its members had been accustomed to designate themselves for professional purposes and had adopted and used as their professional designation the term "Members of the Society of Architects," and were also accustomed to use the abbreviated form "M.S.A." The society published in each year a book called "The Year-

TRADE NAME—continued.

Book of the Society of Architects." They further alleged that the high standard of proficiency and conduct which the society had laid down for its members and which the members had to the knowledge of the public consistently maintained had given to the said letters "M.S.A." a definite meaning and value in the minds of the public; and the said letters represented to the public that the person using them was a member of the society. If the said letters were used by persons who were not members of the society the society and its members would, as it was alleged, be brought into discredit, and the value of the said letters would be destroyed and the object of the society frustrated.

The deft., who was an architect but not a member of the society, had used the letters "M.S.A." in the course of his professional business; and it was contended that what he did was calculated to injure the society.

No appearance was entered in the action.

R. Nevill, for the plts., now moved for judgment in default of appearance and relied upon *Society of Accountants and Auditors v. Goodway*, [1907] 1 Ch. 489.

Joyce J. said that in the authority cited the facts were very different. If the decision in that case was right it was not to be extended. He declined to grant an injunction and dismissed the action. **SOCIETY OF ARCHITECTS v. KENDRICK** - - - **Joyce J. [1910] W. N. 113**

— Restraint of trade.

See under RESTRAINT OF TRADE.

— Sale of goods—Warranty—Patent or trade name—Evidence.

See SALE OF GOODS. 20, 21.

— Similarity of name—Deception.

See under COMPANY—Name.

5. — *Similarity of name—Injunction.*

Previously to the year 1904 two brothers had carried on a small business at Kilmarnock, Scotland, under the style of R. & J. F. Dunlop, the principal business of this firm being that of selling and repairing bicycles, tricycles, and motors. In 1904 the two brothers registered a co. called the Dunlop Motor Co. with a capital of 500*l*. The co. took over from R. & J. F. Dunlop the motor business, and the purposes of the co. were the sale on commission and the repairing of motors, motor cycles, and the parts thereof, the actual business consisting principally in executing repairs and selling petrol. The pursuers, the Dunlop Pneumatic Tyre Co., of Regent Street, London, who deal in tyres, pumps, and other adjuncts of motors and other vehicles, sought an injunction to restrain the Dunlop Motor Co. from carrying on its business under the name of the "Dunlop Motor Co." :—

Held (affirming the decision of the Second Division of the Ct. of Sess., (1906) 8 F. 1146), that on the evidence there was no proof that any one would be misled into thinking that the two cos. were the same; and, secondly, that the pursuers had no exclusive use of the name of "Dunlop." **DUNLOP PNEUMATIC TYRE CO. v. DUNLOP MOTOR CO.** - - - **H. L. (Sc.) [1907]**

W. N. 187; [1907] A. C. 430

TRADE PREMISES—Water rate—Sanitary conveniences—"Domestic purposes."
See LONDON—Water. 3.

TRADE REFUSE—House or trade refuse—Restaurant—Removal of refuse—Public Health (London).
See LONDON—Removal of Refuse. 3.

—Removal of refuse—Hotel—Dispute between occupier and sanitary authority—Appeal by special case.
See LONDON—Removal of Refuse. 1.

TRADE UNION.

Trades Disputes Act, 1906 (6 Edw. 7, c. 47), provides for the regulation of trades unions and trades disputes.

Trade Unions (Unregistered) Power to exempt from provisions of Act. See Assurance Companies Act, 1909 (9 Edw. 7, c. 49), ss. 1, 35.

Trade Unions (Registered), Extension of exemption from income tax for provident funds of. See Finance (1909-10) Act, 1910 (10 Edw. 7 & 1 Geo. 5, c. 8), s. 70.

Use of buildings of local authorities for meetings of trade unions and other bodies.—Circular, Mar. 23, 1908, to councils of boroughs, &c. 1908 (R.—Local Government Board). Price 1d.

—Action against trade union—Actionable conspiracy—Misdirection—Resolutions of union calling a strike.
See CANADA—Trade Union. 3.

1. —Application of funds contrary to rules—Action for injunction by individual member—"Directly enforcing agreement"—*Trade Union Act, 1871* (34 & 35 Vict. c. 31), s. 4.

A trade union was established for objects which included payment to members locked out or on strike. The whole of the funds were to be applied in carrying out the specified objects according to the rules. The union misapplied part of the funds by payments of strike money in cases not authorized by the rules. An individual member having brought an action against the union, its trustees and some of its officials, for an injunction restraining them from making the payments:—

Held, by the Earl of Halsbury L.C. and Lords Macnaghten, Robertson, and Lindley, Lords Davey and James of Hereford dissenting, that the action was not instituted with the object of "directly enforcing" an agreement for the application of the funds to provide benefits to members within the meaning of the Trade Union Act, 1871, s. 4, the object being not to administer but to prevent misapplication of the funds, and that the injunction must be granted.

The decision of the C. A., [1903] 1 K. B. 308, affirmed. YORKSHIRE MINERS' ASSOCIATION v. HOWDEN . . . H. L. (E.) [1905] W. N. 72; [1905] A. C. 256

2. —Books and accounts—Inspection—Right to employ agent to inspect—Accountant—*Trade Union Act, 1871* (34 & 35 Vict. c. 31), s. 14; *Sched. I., clause 6*.

By the Trade Union Act, 1871, s. 14, and Sched. I., clause 6, the rules of a registered trade

TRADE UNION—continued.

union must contain provisions in respect of "the inspection of the books and names of members of the trade union by every person having an interest in the funds of the trade union."

The rules of a registered trade union provided that its books and accounts and list of members should be "open to the inspection of all the members thereof, and of all the persons having an interest in the funds, in accordance with the Trade Union Acts":—

Held, that members of the society were entitled to inspect the books and accounts by means of an accountant employed by them for the purpose, the accountant undertaking that the information obtained would only be used for informing his clients of the result of his inspection. *Bevan v. Webb*, [1901] 2 Ch. 59, followed. NOREY v. KEEP

Parker J. [1909] 1 Ch. 561

3. —Branch secession—Threatened distribution of funds—Ultra vires—Action by head trustees for injunction and payment over of branch funds—"Directly enforcing agreement"—*Trade Union Act, 1871* (34 & 35 Vict. c. 31), s. 4, sub-s. 3 (a); s. 8.

A resolution was passed by the members of a branch of a registered trade union that they would secede from the parent society and distribute the funds amongst the members of the branch. The rules of the society contained no provision as to the secession of branches. The trustees of the branch having declined to pay over the funds under their control to the head trustees, when required so to do, according to the rules, the head trustees brought an action against the trustees of the branch for a declaration that the resolution was ultra vires, an injunction, and payment to them of the funds of the branch:—

Held (Cozens-Hardy M.B. doubting), (1.) that the action, apart from the claim for payment, was not instituted with the object of directly enforcing an agreement for the application of the funds to provide benefits to members within the meaning of the Trade Union Act, 1871, s. 4, the object being to preserve the fund by preventing it from being misapplied without in any way administering it, and (2.), upon the construction of the rules, that the society had a sufficient interest in the property of the branch to maintain the action.

But *held*, that the Court had no jurisdiction to make any order for payment.

Decision of Eve J., [1908] W. N. 184; [1908] 2 Ch. 624, affirmed. COPE v. CROSSINGHAM

C. A. [1909] W. N. 125; [1909] 2 Ch. 148

—Conspiracy—Cause of action—Trade dispute between employers and workmen.
See ACTION. 1.

4. —Definition—Objects of union—Rules—Parliamentary representation—Ultra vires—Alteration of rules—Public policy—*Trade Union Act, 1871* (34 & 35 Vict. c. 31), s. 4, sub-s. 3 (a); ss. 13, 23—*Trade Union Amendment Act, 1876* (39 & 40 Vict. c. 22), s. 16.

There is nothing in the Trade Union Acts from which it can reasonably be inferred that trade unions as defined by Parliament were

TRADE UNION—continued.

meant to have the power of collecting and administering funds for political purposes.

A rule which purports to confer on any trade unions registered under the Act of 1871 a power to levy contributions from members for the purpose of securing parliamentary representation, whether it be an original rule of the union or a rule subsequently introduced by amendment, is ultra vires and illegal.

Decision of the C. A., [1909] 1 Ch. 163, affirmed on the above ground by the Earl of Halsbury and Lords Macnaghten and Atkinson; by Lord James of Hereford because one of the rules in question would bind a member of Parliament to answer the whip of the Labour party; and by Lord Shaw of Dunfermline on the constitutional ground that certain rules of the appellants were fundamentally illegal, being in violation of that sound public policy which is essential to the working of representative government. **AMALGAMATED SOCIETY OF RAILWAY SERVANTS v. OSBORNE** - **H. L. (E.)** [1910] W. N. 3; [1910] A. C. 87

— **Discovery—Privilege between solicitor and client** — Production of documents between member of trade union and union authorities—Practice.
See DISCOVERY. 18.

5. — Inducing workmen to breach of contracts with employers—Strike—Principal and agent—Trade union—Authority of branch officials to bind union—Ratification.

Where workmen strike in breach of their contracts those who help to maintain the strike by money and counsel are not liable to pay damages to the employers merely because losses are thereby caused to the employers.

A trade union having been sued for damages on the ground that workmen had been induced to break their contracts with their employers by officials of the union, and that the union had ratified and adopted the acts of their officials:—

Held, that the union was not liable, those who procured the strike not having been authorized by the rules or by the action of the union. **DENABY AND CADEBY MAIN COLLIERIES, LD. v. YORKSHIRE MINERS' ASSOCIATION**

H. L. (E.) [1906] A. C. 384

6. — Member of union — Benefits during sickness—Insanity of member—Alteration during member's insanity of rule as to benefits — Alteration binding on member—Jurisdiction of Courts—Trade Union Act, 1871 (34 & 35 Vict. c. 31), s. 4, sub-s. 3.

The alteration by a trade union, during the insanity of a member, of a rule as to sick benefits, to the prejudice of that member, is binding upon him if made in accordance with the rule authorizing and regulating the alteration of the rules of the union.

Semble, an action is not maintainable by a member or his representatives against a registered trade union to recover sick pay under the rules relating to sick benefits for members.

Swaine v. Wilson, (1889) 24 Q. B. D. 252, considered. **BURKE v. AMALGAMATED SOCIETY OF DYERS** - **Div. Ct.** [1906] 2 K. B. 583

TRADE UNION—continued.

7. — Member of union—Debt due to union—Interference with employment — Threats and coercion—Trade dispute—Trade Disputes Act, 1906 (6 Edw. 7, c. 47), s. 3.

The House reversed the decision of the C. A., [1908] 2 K. B. 844, holding that at the time of action brought there was no dispute within the meaning of the Trades Disputes Act, 1906. **CONWAY v. WADE** **H. L. (E.)** [1909] W. N. 185; [1909] A. C. 506

8. — Member of union—Workman—Debt due to union, Recovery of—Unlawful means for lawful object—Molestation—Interference with employment—Threatening employers—Trade union officers, Liability of—Combination to injure workman—Illegal conspiracy—Threats by single individual—Damage—Principal and agent—Liability of trade union for wrongful acts of agents.

Two or more persons, such as the officers of a trade union, who, by virtue of their position, have special power to carry out their design, are not justified in combining to prevent, and in fact preventing, a workman who is or has been a member of the union from obtaining any employment in his trade or calling, to his injury, merely with the object of enforcing payment of a debt due from him to the union. Not only are such persons themselves liable to the workman for the injury so caused by them, but the union is also itself liable for the wrongful acts committed by them as its agents: *Barwick v. English Joint Stock Bank*, (1867) L. R. 2 Ex. 259; *Limpus v. London General Omnibus Co.*, (1862) 1 H. & C. 526.

A combination of two or more persons, without justification, to injure any workman by inducing employers not to employ him or continue to employ him, is, if it results in damage to him, actionable: *Quinn v. Leatham*, [1901] A. C. 495. What is a justification must depend upon the circumstances of the particular case.

Per Romer L.J.: Even if a single individual who, by virtue of his position or influence, has power to carry out his design, sets himself to the task of preventing, and succeeds in preventing, a man from obtaining or holding employment in his calling, to his injury, by reason of threats to or special influence upon the man's employers, or would-be employers, and the design was to carry out some spite against the man, or had for its object the compelling him to pay a debt, or any similar object not justifying the acts against the man, then that individual is liable to the man for the damage consequently suffered: *Quinn v. Leatham*.

Decision of Walton J., [1903] W. N. 172, reversed.

Mogul Steamship Co. v. McGregor, Gow & Co., [1892] A. C. 25, *Allen v. Flood*, [1898] A. C. 1, and *Quinn v. Leatham*, considered. **GIBLAN v. NATIONAL AMALGAMATED LABOURERS' UNION OF GREAT BRITAIN AND IRELAND**

C. A. [1903] 2 K. B. 600

9. — Officer—Wilfully withholding money of the union—Absence of fraud—Liability to penalties—Trade Union Act, 1871 (34 & 35 Vict. c. 31), ss. 9, 12.

TRADE UNION—continued.

If an officer of a trade union wilfully withholds money of the trade union, he is not, in the absence of fraud, liable to the penalties imposed by s. 12 of the Trades Unions Act, 1871, but under s. 9 of the Act an action may be brought against him for the recovery of the money.

Barrett v. Markham, (1872) L. R. 7 C. P. 405, applied. *MADDEN v. RHODES* - Div. Ct. [1906] W. N. 60; [1906] 1 K. B. 534

— Procuring breach of contract—Malice.
See CONTRACT. 26.

10. — *Procuring breach of contract—Trade dispute—Strike—Breach of contract by workmen—Strike pay—Procuring continuance of breach—Statute, whether retrospective—Trade Disputes Act, 1906* (6 Edw. 7, c. 47), s. 4.

The Trade Disputes Act, 1906, s. 4, is not retrospective so as to prevent the further maintenance of an action against a trade union which was commenced before the passing of the Act.

Two workmen, members of a trade union, who had respectively entered into contracts with an employer to serve him for a term of years, broke their contracts before the passing of the Trade Disputes Act, 1906, by striking, together with others in the same employ, and continuing on strike, during the currency of the periods for which they had respectively contracted to serve. The trade union had originally sanctioned the strike in ignorance of the existence of the before-mentioned contracts, but subsequently gave the workmen strike pay, after they became aware of those contracts, in order to keep the workmen out on strike :—

Held, that the trade union, by procuring a continuing breach of contract by the workmen, had rendered themselves liable in damages to the employer.

Denaby and Cadeby Main Collieries, Ltd. v. Yorkshire Miners' Association, [1906] A. C. 384, distinguished.

Where an agreement was made between a trade union and a federation of employers for the reference of disputes between employers and employed to arbitration, and a dispute had arisen between a particular employer, a member of the employers' federation, and his workmen :—

Held, that a bona fide belief on the part of the union that the employers were intending to evade a settlement of the dispute in accordance with the agreement, or even an actual intention on the part of the employers so to do, did not constitute a cause or excuse which would justify the trade union in procuring the breach by workmen of their contracts of service with the before-mentioned employer.

Question, whether knowledge of matters known to a branch of a trade union applying to the union to sanction a strike could be imputed to the union itself, discussed. *SMITHIES v. NATIONAL ASSOCIATION OF OPERATIVE PLASTERERS* C. A. [1909] 1 K. B. 310

11. — *Raising of funds for purposes within objects of union—Rules of union—Absence of provision in rules for levying contributions—Injunction to restrain levy—Jurisdiction of Court.*

TRADE UNION—continued.

One of the objects of a trade union as defined by its rules was "to provide funds wherewith to pay the expenses of returning and maintaining representatives to Parliament." The rules, however, did not provide any machinery for making a levy upon the members of the union for the purposes of the said fund, nor did they indicate the persons by whom such levy was to be made. A resolution in favour of a general contribution by the members for that purpose having been passed by a large majority of the union, the officials of the union proceeded to levy the contribution. A member of the union who objected to the contribution sought to obtain an injunction restraining the union and its officials from making the levy, upon the ground that in the absence of provision in the rules for making it the levy was illegal :—

Held, that as the provision of a parliamentary representation fund was within the scope of the association, and as the majority of the members were in favour of it, the Court would not interfere with the levy of contributions to that fund merely because the rules did not expressly provide the necessary machinery for making it.

STEELE v. SOUTH WALES MINERS' FEDERATION - Div. Ct. [1907] W. N. 24; [1907] 1 K. B. 361

12. — *Registered name—Right to sue or be sued in registered name—Trade Union Act, 1871* (34 & 35 Vict. c. 31)—*Trade Union Act, 1876* (39 & 40 Vict. c. 22).

A trade union, registered under the Trade Union Acts, 1871 and 1876, may be sued in its registered name.

The decision of C. A., [1901] 1 K. B. 170, reversed, and the decision of Farwell J. restored. *TAFF VALE RY. CO. v. AMALGAMATED SOCIETY OF RAILWAY SERVANTS*

H. L. (E.) [1901] W. N. 157; [1901] A. C. 426

13. — *Restraint of trade—Action by member against society—Illegality—Strike pay—Declaratory judgment—Trade Union Act, 1871* (34 & 35 Vict. c. 31), s. 4—*Trade Union Act* (1871) *Amendment Act, 1876* (39 & 40 Vict. c. 22), s. 16.

The plt., being a member of and in receipt of sick pay from the deft. society, was subjected to a deduction of 2s. 6d. from his sick pay for breach of the rules of the society. He thereupon brought an action in the county court for a declaration to the effect that he had not broken the rules and for the return of the 2s. 6d. as having been improperly deducted. It appeared that the deft. society was registered under the Trade Union Acts of 1871 and 1876 as a trade union, and that its rules provided for raising funds to secure to the members the benefits of a superannuation fund, a sick fund, a funeral fund, a travelling fund, and a trade fund. Rule 1 stated that the society was "a trade union." By r. 7, clause 2, s. 4, "Should work be offered at the current rate of wages to any member receiving travelling relief, unless it be to fill the place of those fighting for better conditions, and he refuses to accept it, his allowance shall be at once stopped, and his card given up."

By r. 40, s. 1, members paying to the trade fund were to be entitled to dispute pay, travelling

TRADE UNION - *continued.*

relief, and assistance to sue employers under the Employers' Liability and Workmen's Compensation Acts. Sect. 2 was as follows: "Strike pay will only be paid in support of members endeavouring to secure an advance of wages or resisting a reduction of same, resisting an increase of the hours of labour, and, when desirable, endeavouring to secure a reduction of same." By s. 4, "Should a strike take place, all members who are entitled to trade benefit under this rule shall receive pay at the rate of 1s. 8d. per day for each working day, not to exceed six weeks. If the strike continue, the executive committee shall be empowered to continue pay for a longer period, if they, upon consideration, deem it necessary. . . ."

By s. 6, "No officer or member of this society shall be authorized or permitted to take any active interest in, aid in any way, or otherwise assist any trade movement except in his private capacity. . . ."

The judge held that the society was a trade union, that its objects were in restraint of trade and illegal at common law, and that therefore he was precluded by s. 4 of the Trade Union Act, 1871, from entertaining the claim:—

Held, reversing the judgment of a Div. Ct. (Channell and Sutton JJ.), which had affirmed the decision of the county court judge, that there was jurisdiction to entertain the claim, for the objects of the society were, not illegal, and the rules amounted to no more than an insurance of the members against the consequences of a strike. *GOZNEY v. BRISTOL, &C., TRADE AND PROVIDENT SOCIETY* C. A. [1909] W. N. 58; [1909] 1 K. B. 901

14. — *Restraint of trade—Illegality of society at common law—Rules of society—Claim to benefit under rules—Action against society—Trade Union Act, 1871 (34 & 35 Vict. c. 31), ss. 3, 4.*

Where the rules of a society combined provisions for the militant purposes of a trade union and provisions for the provident purposes of a friendly society, and it was provided by one of the rules that members of the society might be expelled, with the result that they would forfeit all future benefit from the funds of the society, for non-compliance with the decisions of committees directing the militant operations of the society or for violating the recognized trade rules of the district:—

Held, that the main object of the society was illegal at common law, as being in restraint of trade, and that the rules relating to its provident purposes were so inseparably connected with that object as to be affected by its illegality, and therefore unenforceable; and consequently that an action for moneys alleged to have become payable to a member under those rules was not maintainable.

Swaine v. Wilson, (1889) 24 Q. B. D. 252, and *Gozney v. Bristol Trade and Provident Society*, [1909] 1 K. B. 901, distinguished. *RUSSELL v. AMALGAMATED SOCIETY OF CARPENTERS AND JOINERS* C. A. [1910] 1 K. B. 506

15. — *Workman—Interference with employment—Inducing dismissal by threats—"Trade dispute"—"Contemplation or furtherance of a trade*

TRADE UNION - *continued.*

dispute"—*Trades Disputes Act, 1906* (6 *Edu.* 7, c. 47), s. 3; s. 5, *sub-s.* 3.

In an action for damages for inducing the plt.'s employers to dismiss him, by threats that otherwise the union men would cease working, the defence was that the acts (if any) of the deft. were not actionable as provided by s. 3 of the Trade Disputes Act, 1906. The jury found that there was no trade dispute existing or contemplated by the men, and that the deft.'s threats were uttered in order to compel the plt. to pay a union fine and to punish him for not paying it, and to prevent him from getting or retaining employment, and they gave the plt. damages:—

Held, that there was as a matter of fact evidence to justify the findings of the jury.

Decision of the C.A. reversed, and decision of Channell and Sutton, JJ., [1908] 2 K. B. 844, 848, restored upon the above ground.

Observations on the words "contemplation or furtherance of a trade dispute" in s. 3 of the Trade Disputes Act, 1906. *CONWAY (PAUPER) v. WADE* - H. L. (E.) [1909] W. N. 185; [1909] A. C. 506

TRADERS — Agreement for ledger account with a trader—General lien for carriage of goods.

See BILL OF SALE. 1.

— Auctioneer—Partnership—Bill of exchange—Implied authority to accept.

See AUCTION. 2.

— Bankruptcy.

See under BANKRUPTCY—Traders.

— Carriers' lien—Goods on land in tenancy of trader—Detainer of goods.

See BILL OF SALE. 1.

— "Constant trader"—Collision—Compulsory pilotage.

See SHIPPING—Pilotage. 2.

— Factor—"Mercantile agent"—Authority to pledge, Extent of—Custom of particular trade.

See FACTOR. 1.

— Income tax — Deductions — Association of traders for keeping up prices.

See REVENUE—Income Tax. 40.

— Insolvent — Fraudulent assignment—Act of bankruptcy.

See BANKRUPTCY—Fraud. 1.

TRADING -Corporation.

See under CORPORATION.

— Married woman—Separate trading—Receiving order—Jurisdiction.

See, HUSBAND AND WIFE — Bankruptcy. 1.

TRAFFIC — Highway.

See under HIGHWAY.

— Railway.

See under RAILWAY.

TRAMWAYS — *Abandonment of undertaking—Diminution in value of land—Compensation to landowner—Collateral obligation—Covenant to make embankment—Tramway company—Parliamentary deposit.*

In this case Warrington J. held that the respondent was a landowner whose land had been rendered less valuable by the abandonment of the co.'s undertaking, and made an order that he should be allowed to come in and prove his claim. The liquidator of the co. and others interested in the fund appealed against this order.

The Court (Buckley L.J. and Kennedy L.J.) held that the non-construction of the embankment was not a necessary consequence of the abandonment of the co.'s undertaking, and therefore the respondent was not a landowner whose property had been rendered less valuable by that abandonment within the meaning of the before-mentioned section. Appeal allowed. *In re SOUTHPORT AND LYTHAM TRAMROADS ACT, 1900. Ex parte HESKETH*

C. A. [1910] W. N. 256

2. — *Additional expense imposed on gas company by reason of existence of tramway—Liability of tramway company—Interruption of tramway traffic by work executed by gas company—Laying down, repairing, altering, or removing new service pipe—Repairing, altering, or removing service pipe or main laid before construction of tramway—Connecting new service pipe with old main—Tramways Act, 1870 (33 & 34 Vict. c. 78), s. 32, sub-ss. 2, 5.*

By s. 32 of the Tramways Act, 1870, "Nothing in this Act shall take away or abridge any power to open or break up any road along or across which any tramway is laid, or any other power vested in any local authority or road authority for any of the purposes for which such authority is respectively constituted, or in any company, body, or person for the purpose of laying down, repairing, altering, or removing any pipe for the supply of gas or water, or any tubes, wires, or apparatus for telegraphic or other purposes, but in the exercise of such power every such local authority, road authority, company, body, or person shall be subject to the following restrictions; . . .

"2. Before they commence any work whereby the traffic on the tramway will be interrupted they shall (except in cases of urgency, in which cases no notice shall be necessary) give to the promoters . . . notice of their intention to commence such work, specifying the time at which they will begin to do so, such notice to be given eighteen hours at least before the commencement of the work; . . .

"5. Any company, body, or person shall not execute such work so far as it immediately affects the tramway except under the superintendence of the promoters, unless they refuse or neglect to give such superintendence at the time specified in the notice for the commencement of the work, or discontinue the same during the progress of the work; and they shall execute such work at their own expense and to the reasonable satisfaction of the promoters; provided any additional expense imposed upon

TRAMWAYS—*continued.*

them by reason of the existence of the tramway in any road or place where any such mains, pipes, tubes, wires, or apparatus shall have been laid before the construction of such tramway shall be borne by the promoters."

A gas co. executed work in roads along which a tramway ran, part of which work consisted in laying down new service pipes (so laid for the first time since the construction of the tramway) and connecting the same with their mains, which had been laid down before the construction of the tramway.

In one instance during the execution of the work, where there was a double tram line, the cars of one line were diverted to the other line, and the up and down cars were both carried over the same line for a whole day, such diversion being made at the request of the gas co. for the purpose of enabling them to repair a fractured main which was causing a serious escape of gas. In other instances the tramcars were either slowed down or only brought to a standstill for a sufficient time to enable the workmen of the gas co. to get out of the trenches under or near the tram lines where they were at work on the pipes of the gas co.

By reason of the existence of the tramway additional expense was imposed upon the gas co. in connecting the new service pipes with their mains:—

Held (affirming in part the decision of Phillimore J., reported [1909] 2 K. B. 297), that the gas co. were entitled to recover such additional expense from the tramway co. under sub-s. 5 of the before-mentioned section, inasmuch as there had been an interruption of the traffic on the tramway within the meaning of sub-s. 2 of that section, and the connection of a new service pipe with the main as aforesaid involved an alteration of the main; but

Held (dissenting in that respect from the decision of Phillimore J.), that the proviso in sub-s. 5 of the above-mentioned section does not apply in the case of work which is not such as to interrupt the traffic on the tramway. *In re BRISTOL GAS COMPANY AND BRISTOL TRAMWAYS AND CARRIAGE COMPANY*

C. A. [1910] 1 K. B. 114

3. — *Arbitration clause in statute—Jurisdiction of High Court ousted—Objection to jurisdiction first taken on appeal—Tramways Act, 1870 (33 & 34 Vict. c. 78), s. 33.*

The provision for arbitration contained in s. 33 of the Tramways Act, 1870, ousts the jurisdiction of the High Court with regard to differences coming within the terms of the section.

Where such a provision applies, objection to the jurisdiction of the High Court may be taken on appeal in the C. A., although it has not been taken at the trial.

It was provided by the special Act of a tramway co., with which, by s. 22 of the Tramways Act, 1870, Parts II. and III. of that Act were to be incorporated, that, if the co. failed to maintain and keep in good condition to the satisfaction of the corporation the junction of the paving laid and maintained by the co. with the

TRAMWAYS—continued.

service laid and maintained by the corporation, the corporation might, if they thought fit, themselves at any time, after seven days' notice to the co. do the work necessary for the repair and maintenance of the road, and that the expense reasonably incurred by the corporation in so doing should be repaid to them by the co., with the addition of 5 per cent. on such expense. The corporation did work by way of repair to roads on which tramways belonging to the co. were laid, alleging that such work came within the above-mentioned provision, which the co. denied. In an action by the corporation against the co. to recover the expenses of the work, and for a declaration of their rights in the matter:—

Held, that the difference which had thus arisen between the plts. and the defts. came within s. 33 of the Tramways Act, 1870, and therefore the Court had no jurisdiction to entertain the action. *London, Chatham & Dover Ry. Co. v. South Eastern Ry. Co.*, (1888) 40 Ch. D. 100, distinguished. **NORWICH CORPORATION v. NORWICH ELECTRIC TRAMWAYS**

C. A. [1906] W. N. 111 ; [1906] 2 K. B. 119

4. — By-law—Validity — Use of offensive language in tramcars—By-laws for prevention of nuisances—Tramways Act, 1870 (33 & 34 Vict. c. 78), s. 46.

The Tramways Act, 1870, s. 46, enables the promoters of any tramway to make by-laws for the prevention of nuisances in any carriage belonging to them. The promoters of a tramway made a by-law providing: "No person shall swear or use offensive or obscene language whilst in or upon any carriage":—

Held, that the by-law was valid although it did not contain any such additional words as "so as to be a nuisance or annoyance to others." **GENTEL v. RAPPS** **Div. Ct. [1901] W. N. 230 ; [1902] 1 K. B. 160**

— Common carrier of passengers—Negligence—Liability for personal injuries—Tramway company.
See **CARRIER. 1.**

— County council—General powers—Statutory powers—Tramway business.
See **CORPORATION. 17.**

— County council—Omnibus business—Ancillary business—Ultra Vires.
See **CORPORATION. 17.**

5. — Duty of tramway company to maintain road in good repair—Removal of snow—Tramways Act, 1870 (33 & 34 Vict. c. 78), s. 28.

The removal of snow from the portion of a road lying between the rails of a tramway is not part of the "maintenance" of that portion within the meaning of s. 28 of the Tramways Act, 1870, so as to cast upon the tramway co. the duty of removing it, unless the fall of snow is of such a depth as to render the road impassable. The mere fact that the removal of the snow will render the passage over the road more convenient is not enough to bring the case within the meaning

TRAMWAYS—continued.

of the section. **ACTON DISTRICT COUNCIL v. LONDON UNITED TRAMWAYS**

Div. Ct. [1908] W. N. 216 ; [1909] 1 K. B. 68

— Electric current, Escape of—Electric leak.
See **CAPE OF GOOD HOPE. 3.**

6. — Express or implied grant — Merger of agreement in conveyance—Easement.

The Court dismissed the appeal, [1901] W. N. 237, on the ground, not relied upon in the Court below, that the right to use the tramway, and the benefit of haulage, agreed to be given to the plt. by the letters of April, 1898 were not merged in the subsequent conveyance of Dec., 1888, and without expressing any opinion on the questions of construction decided by Byrne J., which in the view taken by the C. A. did not arise and were not argued. **BRAZIER v GLASSPOOL** **C. A. [1902] W. N. 162**

— Highway—Dedication—Presumption — Strip of land running alongside highway—Disused tramway—Railway company.
See **HIGHWAY. 37.**

— Lands Clauses Acts—Compensation — Depreciation in value of property by use of tramway.
See **LANDS CLAUSES ACTS. 36.**

7. — Liability for damage from non-repair of road — Contract with road authority—Transfer of liability—Tramways Act, 1870 (33 & 34 Vict. c. 78), ss. 28, 29.

Where a tramway co. has entered into a contract with the road authority under s. 29 of the Tramways Act, 1870, whereby that authority has undertaken the repair of the portion of the road which, under s. 28, the tramway co. were bound to repair, the liability for injuries occasioned through non-repair of such portion of the road to persons using the same is transferred to the road authority. **BARNETT v. POPLAR CORPORATION** **Div. Ct. [1901] 2 K. B. 319**

— Limitation of time for bringing action — Tramway worked by municipal authority—Injury to passenger—Action for damages.
See **PUBLIC AUTHORITIES PROTECTION. 4.**

8. — Local authority—Sale of Tramways within a district—Payment by local authority for buildings outside the district—Tramways Act 1870 (33 & 34 Vict. c. 78), s. 43.

Where in pursuance of s. 43, of the Tramways Act, 1870, the local authority require the promoters of a tramway in any district to sell so much of the tramway works and undertaking as is within the district, the payment by the local authority to the promoters must include the value of buildings of the promoters, which, though situated outside the district, are suitable to and used by the promoters for the purposes of their undertaking within the district. **MANCHESTER CARRIAGE AND TRAMWAYS CO. v. SWINTON AND PENDELBURY URBAN DISTRICT COUNCIL** **H. L. (E.) [1906] A. C. 277**

TRAMWAYS—continued.

— Manchester Corporation.

See under MANCHESTER.

— Motor car passing tramcar—Duty to pass on off side—"Carriage."
See MOTOR CAR. 10.

9. — *Negligence—Lease of tramway—Lessor to execute repairs at cost of lessee—Contract for repairs by lessor with Contractor—Lessee not party to contract—Negligence by contractor in executing repairs—Accident to tramcar—Liability of contractor to lessee—Damages—Compensation paid to passengers—Right of lessee to recover from contractor.*

The corporation of a borough were the owners of a tramway in the borough, and they granted a lease of the tramways, of which lease the plts. were the assignees. Under the lease the repairs necessary to keep the tramway in working order were to be executed by the corporation at the cost of the plts. During the currency of the lease the tramway required to be relaid at a certain place, and an agreement was entered into between the corporation and the plts. which, after reciting that the corporation at the request and with the consent of the plts. had agreed to relay the tramway, provided that the corporation would relay the tramway, and would during the execution of the work provide where necessary a temporary track for the purpose of enabling the plts., as far as possible, to maintain their service of trams, and the agreement further provided that nothing therein contained should render the corporation liable in the event of any accident, injury, or damage being occasioned to or sustained by the plts., their servants or passengers or their rolling stock through or arising out of the execution by the corporation of the work, but that the corporation would insert in the contract to be entered into by them a provision imposing upon the contractor full responsibility for all claims and demands resulting from any such accident, injury or damage. The corporation thereupon made a contract with the deft., to which the plts. were not parties, which recited the lease and that the corporation had at the request and with the consent of the plts., subject to certain conditions, agreed to relay the tramway, and by which the deft. agreed to execute the work of relaying the tramway and to indemnify the corporation against all actions and claims for compensation to workmen and passengers carried on the tramway arising out of the execution of the work, and that the deft. should, during the execution of the work, be responsible for all accidents. During the execution of the work the tramcars continued to run and a car which was carrying passengers was derailed and overturned owing to the negligent manner in which certain of the work was being carried out at the place where the accident happened, and the passengers and driver were injured and the tramcar was damaged. The plts. paid compensation to the passengers and driver, and claimed to recover from the deft. the amounts so paid and the cost of repairing the tramcar:—

Held, that though the plts. were not parties

TRAMWAYS—continued.

to the contract between the corporation and the deft. inasmuch as the plts.' proprietary right as lessees of the tramway and their right of passage on the highway had been injuriously affected by the act of the deft. and the latter was liable in damages to the plts.; and that, as the work of relaying the tramway while the tramcars were running involved risk of danger to the passengers in the tramcars, the plts. were liable to their passengers, and were entitled to recover from the deft. the sum properly paid as compensation to the passengers who were injured, as well as the sum paid as compensation to the driver and the cost of repairing the tramcar. CITY OF BIRMINGHAM TRAMWAYS CO. v. LAW.

A. T. Lawrence J. [1910] 2 K. B. 965

10. — *Nuisance—Creosote used in paving road—Tramway company—Damage to plants in adjoining land—Knowledge—Statutory authority—Exceptional use of land.*

The defts., a tramway co., who were by their special Act under an obligation to pave certain parts of a road, on which their tramway was laid, with wood paving, used for that purpose wood blocks coated with creosote. The fumes given off by the creosote injured plants and shrubs belonging to the plt., a market gardener, whose premises were near the road. There was another kind of wood paving in use which the defts. might have used, and which could not have caused injury to the plt.'s plants and shrubs. In an action by the plts. in respect of the damage caused as above mentioned, the jury found that it was reasonably necessary for the defts. to pave the road as they did according to their knowledge at the time, but that in the light of the evidence given at the trial it was not reasonably necessary:—

Held, affirming the decision of a Div. Ct. that the defts. were not authorized by their special Act to use the particular kind of wood paving which they had used, and that, although they did not know that the use of creosoted wood might cause damage and were not guilty of negligence, they were, upon the principle laid down in *Fletcher v. Rylands*, (1886) L. R. 1 Ex. 295; (1868) L. R. 3 H. L. 330, liable to the plt. in respect of the damage sustained by him. WEST v. BRISTOL TRAMWAYS CO.

C. A. [1908] W. N. 95; [1908] 2 K. B. 14

—Obstruction—Raised tramlines—Contractor—London County Tramways (Electrical Power Act).

See HIGHWAY. 22.

11. — *Passengers, Carriage of—Right of passenger to break journey.*

A passenger on a tramcar took and paid for a ticket entitling him to travel for a certain distance; he alighted at an intermediate stopping place, walked a quarter of a mile in the direction of his destination, and got on to another tramcar, which was performing the same journey, in order to get to the point to which he might have travelled by the first car. He refused to pay the fare demanded of him on the second car, contending that he was entitled to complete his journey with his original ticket.

TRAMWAYS—continued.

Held, that the contract of carriage had been determined by the passenger's act, and that he was liable to be convicted for travelling on the second tramcar without paying his fare. **BASTABLE v. METCALFE** -

Div. Ct.

[1906] 2 K. B. 288

12. — Protection of mains—Notice by promoters to owner of mains of intention to construct tramway—Counter-notice by owner of mains requiring promoters to alter position of mains—Limit of time for giving counter-notice—Tramways Act, 1870 (33 & 34 Vict. c. 78), s. 30, sub-s. 1.

By s. 30, sub-s. 1, of the Tramways Act, 1870, the promoters are empowered for the purpose of making any tramway to alter the position of any gas or water mains, but they must first give seven days' notice to the co. or person to whom the mains may belong of their intention to lay down the tramway, and the notice must be accompanied by a plan of the proposed work, and "if it should appear to any such co. or person that the construction of the tramway as proposed would endanger any such mains, such co. or person may give notice to the promoters to lower or otherwise alter the position of the said mains" so far as necessary:—

Held, that the counter-notice to be given by the owner of the mains might be given at any time until the tramway was constructed. **HASTINGS TRAMWAYS CO. v. HASTINGS AND ST. LEONARDS GAS CO.**

C. A. [1906] W. N. 186; [1906] 2 Ch. 578

13. — Purchase of undertaking by local authority—Valuation of tramway—"The then value"—Tramways Act, 1870 (33 & 34 Vict. c. 78), s. 43.

By s. 43 of the Tramways Act, 1870, the local authority of the district in which a tramway is situate may require the promoters of the tramway to sell to them their undertaking "upon terms of paying the then value . . . of the tramway." A tramway co. were required by the local authority to sell their undertaking under the above section. At the date of the requisition it was the practice, upon an application for parliamentary powers by the promoters of a tramway, to require, as a condition of their obtaining such powers, that the streets in which the tramway was to be laid should be widened, and that the promoters should contribute a certain proportion of the cost of the widening. But at the date when the co. obtained their parliamentary powers that practice had not come into existence, and the streets in which their tramway was laid were in fact never widened:—

Held, that, for the purpose of assessing "the then value" of the tramway under the above section, the fact that the local authority would, if they had to make the tramway themselves at the date of their requisition to sell, have to contribute to the cost of widening the streets ought not to be taken into consideration. **LONDON, DEPTFORD AND GREENWICH TRAMWAYS CO. v. LONDON COUNTY COUNCIL**

Bray J. [1905] 1 K. B. 316

14. — Rateability — Rateable value — Local Government Act, 1890 (54 Vict. No. 1112), s. 246

TRAMWAYS—continued.

—*Separate assessment of the tramway engine-houses—Jurisdiction of Supreme Court—Mandamus to county court to state case—Justices Act, 1890 (54 Vict. No. 1105), s. 139—Practice as to security for costs—Law of Victoria.*

The county court having in appeal materially reduced the respondents' assessment of the appellants' tramway:—

Held, that the Supreme Court had jurisdiction to issue a mandamus directing it to state the facts for their determination.

A decision of the county court in a rate appeal is not final under ss. 60, 61 of Act No. 1243 of 1891. Those sections must be read with and are qualified by s. 139 of No. 1105 of 1890, which in effect enacts that the Court may be required to state a case in "all appeals": an expression which on its true construction includes rating appeals.

Held, also, that the land of the appellants' tramways, though its ownership is vested in the Crown, is occupied by the co. and used for the profit of its members, and is rateable property, not falling within the exception in s. 246 of Act No. 1112. The rateable value of its occupation is the gross profit of the concern, from which 10 per cent. on the capital outlay is rightly deducted. That value cannot be affected by the amount of consideration paid to acquire occupation whether in the shape of rent or instalments of purchase-money.

Pimlico, &c., Tramways Co. v. Greenwich Union, (1873) L. R. 9 Q. B. 9, approved.

Where a tramway runs through several municipalities, but has its engine houses in one of them:—

Held, that the separate rating value of the engine-houses taken at 5 per cent. on the fee simple value should be deducted from the rating value of the whole concern and allotted to the municipality in which they stand, and that the remainder of the rating value should be shared among the different municipalities according to the length of the tramway in each. **MELBOURNE TRAMWAY AND OMNIBUS CO. v. MAYOR, &C., OF THE CITY OF FITZROY** P. C. [1901] A. C. 153

—*Rates—Land "used only as a railway constructed under any Act of Parliament"—Tramroad.*

See **RAILWAY—Rates**, 9.

15. — Road authority—Construction of tramway—Obligation to keep surface of tramway in good condition—Neglect of duty—Liability in damages to individual—Tramways Act, 1870 (33 & 34 Vict. c. 78), s. 28.

Under s. 28 of the Tramways Act, 1870, a tramway co. is bound to keep that part of the highway which lies between the rails in a fit and safe condition for the passing traffic to the satisfaction of the road authority; and failure to perform this duty renders the tramway co. liable in damages to a person injured thereby. **DUBLIN UNITED TRAMWAYS CO. v. FITZGERALD**

H. L. (I.) [1903] A. C. 99

—*Stamp duty—"Lease"—"Bond or covenant"*

—*Purchase of electrical energy from lessors.*

See **REVENUE—Stamps**, 30.

TRAMWAYS—continued.

16. — *Statutory powers—Ultra vires—Adjacent districts—Working agreement—Agreement for lease to adjacent owner—Delegation of powers by lessee—Licence to work—Consent of Board of Trade—Tramways Act, 1870 (33 & 34 Vict. c. 78), ss. 35, 36, 54.*

The plts., a local authority, were authorized by a special Act which incorporated Parts II. and III. of the Tramways Act, 1870, to construct and maintain certain tramways in their district, and to enter into agreements, subject to the approval of the Board of Trade, with tramway owners of adjacent districts with respect to the construction, sale, lease, working, use, and management by the contracting parties of all or any of their respective tramways. The proposed tramways were adjacent to tramways outside the plts.' district of the deft. co. on the west and of the deft. corporation on the east. Both the deft. co. and the deft. corporation had under their special Acts similar powers of entering into working agreements with the tramway owners of adjacent districts, except that the consent of the Board of Trade thereto was not required. The tramways authorized by the plts.' special Act were constructed by the deft. corporation under the terms of an agreement entered into between the plts. and the deft. corporation with the approval of the Board of Trade, and the deft. corporation were entitled thereunder to a lease for a term of years of the exclusive use of such tramways, but subject to a proviso that they should not assign or sub-let or part with the benefit of the agreement without the leave of the plts. During the continuance of the agreement the deft. corporation, without the leave of the plts. and without the sanction of the Board of Trade, granted to the deft. co. a revocable licence to run over a small portion of the plts.' tramways which adjoined the deft. co.'s tramways:—

Held, that neither under the Tramways Act, 1870, nor under their special Act had the plts. any power to authorize the deft. co. to run cars over their tramways without the consent of the Board of Trade, and that their agreement with the deft. corporation did not purport to confer on the latter any greater right than that which the plts. had authority to grant; *held*, therefore, that the licence granted to the deft. co. was ultra vires, and an injunction was granted to restrain the deft. co. from using the plts.' tramways. **EGGLES CORPORATION v. SOUTH LANCASHIRE TRAMWAYS CO.** C. A. [1910] W. N. 141; [1910] 2 Ch. 263

17. — *Statutory undertaking—Tramway company—Parliamentary deposit—Sale of undertaking before completion of works and within the time limited for completion—Non-completion—Abandonment—Application of deposit fund—Parliamentary Deposits and Bonds Act, 1892 (55 & 56 Vict. c. 27), s. 1.*

By a special Act of 1885 a tramway co. was authorized to construct a tramway and a deposit was ordered to be paid.

The Parliamentary Deposits and Bonds Act, 1892, s. 1, provided that where in pursuance of any general or special Act of Parliament moneys had been deposited "to secure the completion

TRAMWAYS—continued.

by any company" of any undertaking authorized by Parliament, and the undertaking had "not been completed" within the time limited in that behalf, the deposit fund should be applied towards compensating landowners and, in the case of a tramway co., the road authorities, and subject thereto, if (among other things) a receiver had been appointed, or the undertaking had been abandoned, for the benefit of the creditors of the co. The special Act of 1885 contained a substantially similar provision as to the application of the deposit fund if the co. did not complete the tramway within the time limit.

In 1904, when the tramway had not been completed and before the expiration of the period for completion, a receiver of the undertaking of the co. was appointed and the uncompleted tramway was acquired by the London County Council under the powers of a special Act:—

Held, that both under the special Act of 1885 and under the general Act the deposit was paid to secure the completion of the undertaking by the co. and that, inasmuch as that event could never happen by reason of the transfer of the undertaking, the time had passed within which the co. could complete; and, further, that there had been an abandonment of the undertaking by the co.; consequently that the deposit moneys paid under the Act of 1885 were applicable for the benefit of the creditors of the co. subject to the prior claims (if any) of the landowners and road authorities.

Decision of Neville J., [1909] 2 Ch. 540, affirmed. *In re PECKHAM, DULWICH AND CRYSTAL PALACE TRAMWAYS BILL*. C. A. [1910] W. N. 111; [1910] 2 Ch. 1

— Streets — Footway — Dedication to public — Road authority — Powers.
See LONDON—Tramways. 1.

18. — *Substantial commencement of "works"—Cesser of powers—Evidence—Tramways Act, 1870 (33 & 34 Vict. c. 78), s. 18.*

In s. 18 of the Tramways Act, 1870, which provides that the powers of promoters under a provisional order shall cease "if within one year from the date of the order the works are not substantially commenced," the term "works" means physical works actually executed.

A corporation, who had obtained a provisional order for the construction of electric tramways, had done no work within the year on the tramway itself, but had purchased land for offices and generating station, and had entered into binding contracts for the supply of electric cars and for the supply and installation of dynamos and electric machinery:—

Held, by the C. A., that the works had not been substantially commenced within the meaning of the section.

Decision of Swinfen Eady J., [1902] W. N. 126, reversed.

Sect. 18 also provides that "a notice, purporting to be published by the Board of Trade, in the *Gazette* to the effect . . . that the work has not been substantially commenced . . . shall be conclusive evidence for the purposes of this section of such . . . non-commencement."

TRAMWAYS—*continued.*

Held, by the C. A., that, in the absence of such a notice, other evidence of the non-commencement of the works was not excluded.

Decision of Kekewich J. in *In re Dudley and Kingswinford Tramways Co.*, (1893) 63 L. J. (Ch.) 108; 69 L. T. (N.S.) 711, disapproved.
ATT.-GEN. v. BOURNEMOUTH CORPORATION
C. A. [1902] W. N. 142; [1902] 2 Ch. 714

— Workmen's compensation—"Factory."

See MASTER AND SERVANT—Compensation. 9.

19. — *Tramway company—Common carrier of passengers—Negligence—Liability for personal injuries—Special condition limiting liability.*

A municipal corporation owned a tramway constructed under statutory powers. In accordance with a statutory requirement they exhibited in a conspicuous place in their tramcars a list of the fares to be exacted, and they appended thereto a special notice to passengers stating, as the fact was, that the fares charged were less than the maximum authorized charges, and that in consideration thereof a passenger was only carried on the terms that the maximum amount recoverable from the corporation on account of any injury suffered by a passenger and for which the corporation were legally liable was 25*l.* :—

Held, affirming the decision of Lord Coleridge J. (by Cozens-Hardy M.R. upon the construction of the statutes regulating the tramway, by Farwell L.J. upon the ground that the corporation were common carriers of passengers at common law in the sense that they were bound to carry according to their profession, and by Kennedy L.J. upon both grounds), that, so long as the tramway was open for public traffic, the corporation were bound to carry any passenger, not being an objectionable person, who offered himself and was willing to pay the published fare, provided they had accommodation for him, and were not entitled to impose a condition limiting their liability for negligence without giving the passenger the option of travelling at a higher fare without any such condition.

Semble per Cozens-Hardy M.R. and Farwell L.J. . If the corporation published alternative lists of fares, one containing the maximum rates, and the other containing reduced rates, and gave an option to the passenger to pay either the full rate without any condition limiting their liability or the reduced rate with such a condition, a passenger electing to pay the smaller rate would be bound by the condition. CLARKE v. WEST HAM CORPORATION C. A.
[1909] W. N. 194; [1909] 2 K. B. 858

TRANSFER—Action—Transfer from inferior Court.

See SHIPPING—Practice. 15.

— Action from inferior Court—Cross-action in High Court—Conduct of action.
See SHIPPING—Practice. 16.

TRANSFER—*continued.*

— Bank of England—Personation of holder—Identification of transferor by stock-broker—Liability.
See INDIA. 4.

— Burial board, Transfer of powers of—Expenses—Rates.
See BURIAL. 7.

— Certification of — Company — Secretary — Representations — Estoppel — Principal and agent.
See COMPANY—Secretary. 2.

— Companies (Winding-up)—Transfer of actions — Registrar—Proceedings in chambers.
See COMPANY — WINDING-UP — Practice. 23.

— Company—Debentures.
See under COMPANY—Debentures.

— Company—Shares.
See under COMPANY—Shares.

— Company — Winding-up — Contributory — Transfer of shares to escape liability—Validity—Test.
See COMPANY—WINDING-UP—Contributory. 7.

— Conveyance or transfer—Stamp duty—Devise of real estate—Assent in writing of executor.
See REVENUE—Stamps. 12.

— County Court—Jurisdiction—Mortgage reduced from over to under 500*l.*
See COUNTY COURT—Practice. 6.

— Cross-action in High Court—Conduct of action—Transfer of action from inferior Court.
See SHIPPING—Practice. 16.

— Crown—Prerogative of—Selection of Court—Action by Attorney-General at instance of a relator.
See CROWN. 6.

— Deceased debtor—Administration of his solvent estate.
See BANKRUPTCY—Death. 1.

— Electric lighting—Transfer of powers—Consent of Board of Trade.
See ELECTRIC LIGHT. 9.

— Forged transfer—Company.
See under COMPANY—Forgery.

— Injunction—Transfer of stock—Restraining order.
See PRACTICE—Motions. 1.

— Insolvent trader—Fraudulent assignment—Act of bankruptcy.
See BANKRUPTCY—Fraud. 1.

— Insurance—Life.
See under INSURANCE (LIFE).

TRANSFER—*continued.*

- Land transfer.
See under LAND TRANSFER.
- Licence—Jurisdiction of justices.
See under LICENSING ACTS.
- Lunacy—Practice.
See under LUNACY.
- Married woman mortgagee—Separate acknowledgment.
See VENDOR AND PURCHASER—**Mortgages.** 1.
- Mortgages.
See under MORTGAGE—**Transfer.**
- Powers from London County Council—Building—Wooden structure.
See LONDON—**Buildings.** 27.
- Proprietary right—Canadian Act—Swamp lands—Crown lands.
See CANADA—**Swamp Lands.** 1.
- School district—Transfer of Consols—Vesting order.
See POOR LAW.
- Signification to debtor of transfer of debt—Appeal from Quebec.
See CANADA—**Debts.** 1.
- Stamp duty—Transfer of personal property.
See REVENUE—**Stamps.** 22.
- Stock—Indemnity of Bank—Form of order.
See BANK OF ENGLAND. 1.
- Stock—Personation of holder—Identification of transferor by stockbroker—Effect of transfer—Estoppel.
See INDIA. 4.
- Stock—Principal and agent.
See under PRINCIPAL AND AGENT.
- Trustee—Reasonable precautions—Inscribed stock—Accepting transfer—Fraud.
See TRUSTEE—**Fraud.** 1.
- Trustees settlement.
See under SETTLEMENT.
- Voluntary settlement—Assignment—Expectancy—Power of trustees to call for transfer.
See SETTLEMENT. 48.

TRANSVAAL.

Transvaal Loan (Guarantee) Act, 1907 (7 Edw. 7, c. 37), is an Act to authorize the Treasury to guarantee the payment of a loan to be raised by the Colony of the Transvaal.

Appellate jurisdiction. See Appellate Jurisdiction Act, 1908 (8 Edw. 7, c. 51), s. 3 (2).

The South Africa Act, 1909 (9 Edw. 7, c. 9), is an Act to constitute the Union of South Africa.

D.D.

TRANSVAAL—*continued.*

1. — *Contract of sale of land—Construction—Specific performance refused—Uncertainty as to consideration.*

Held, that specific performance could not be decreed of a contract between the plt. and deft. by which the latter agreed to transfer to the former a farm in the Transvaal on which deposits of tin ore had been found in consideration of 3700 shares of 5*l.* each in a syndicate to be formed for the "purpose of developing" the same as a mining property, the 3700 shares to represent the appellant's holding in a syndicate of 12,000 shares.

The price to be paid by the plt. was wholly uncertain. It was to consist of shares in a syndicate whose purpose of development there was no evidence to define, either as to the nature and extent of the operations contemplated or as to what the parties meant by it, the value of the shares depending upon the adequacy of working capital which was neither ascertained nor ascertainable. **DOUGLAS v. BAYNES - P. C. [1908] A. C. 477**

— *Immovables—Contract relating to foreign land—Capacity to contract—Lex situs—Law of the Transvaal.*
See CONFLICT OF LAWS. 13.

2. — *Lease of land for agricultural purposes—Covenant not to sell a lease for building purposes—Breach—Forfeiture—Law of the Transvaal.*

Where land was leased exclusively for agricultural purposes, with liberty to the lessee to erect the necessary buildings for residence, but not to sub-divide in order to sell or lease stands for building purposes:—

Held, that the lessor was entitled to treat the lease as null and void and eject the assignees thereon on its being shewn that they had advertised the land for sale in acre plots, and had issued plans shewing a proposed sub-division into acre plots. The breach of condition was complete without actual transfer of the plots to purchasers. **SHORT v. TURFFONTEIN ESTATES, LD. - P. C. [1905] A. C. 584**

3. — *Partnership—Purchase by two partners without the knowledge of the third—Suits for an account—Scope of the partnership—Rights of partners.*

The respondent and the two appellants under a partnership arrangement in 1902, bought with a view to resale the properties of H., consisting of stands or plots of land laid off for building, and of shares in a co. entitled to other stands in the same locality. The appellants, apart from the respondent, purchased some other of the co.'s stands and made profits.

In a suit by the respondent for an account thereof the Court below held that, though the stands so purchased were not within the scope of the partnership of 1902, they were connected with it indirectly; that the purchase thereof by the appellants was secret and injurious to the common interest, and that the respondent was entitled to share in the benefit thereof:—

Held (reversing this decree), that it could not be supported on authority or on any recognized equity.

TRANSVAAL—*continued*.

The purchase, not being within the scope of the partnership, was not shewn to have been in rivalry or any other connection therewith, nor in any way injurious thereto. *TRIMBLE v. GOLDBERG* P. C. [1906] A. C. 494

4. — *Practice—Appeal—Law of the Transvaal—Proclamation No. 14 of 1902, s. 16—Final decree of High Court of the Republic—Jurisdiction in appeal—Transvaal Patent Act, No. 6 of 1887, ss. 29–31—Construction.*

The Supreme Court of the Transvaal, constituted by the Transvaal Proclamation No. 14 of 1902, has no jurisdiction to entertain an appeal from a decision of the High Court of the Transvaal Republic which before the war was final; for s. 16 of the proclamation gives no right of appeal where none existed before:—

Held, also, that the High Court had power under the Transvaal Patent Act, No. 6 of 1887, ss. 29–31, to cancel a patent in an action to which the Att.-Gen. was not a party. *AFRICAN GOLD RECOVERY CO. v. HAY* P. C. [1904] A. C. 438

5. — *Roman-Dutch law—Mutual will—Community of property between spouses—Community of property not continued after death—Boedelhouderschap—Liability of surviving spouse as executor to deceased—Institution of survivor as sole and universal heir—Construction—Children's rights of inheritance.*

According to Roman-Dutch law as it prevails in the Transvaal, in the case of a mutual will by spouses with community of property the dispositions of each spouse are treated as applicable to his or her half of the joint property.

Denysen v. Mostert, (1872) L. R. 4 P. C. 236, followed.

Where the surviving spouse is under the terms of the mutual will executor and administrator of the estate of the deceased, charged with the duty of holding the separate estate as part of the joint estate until the majority or marriage of the children, *held*, that in the absence of express direction in the will the community of property known as *boedelhouderschap* is not continued between the children and the surviving spouse. Accordingly the rights of those entitled to the estate of the deceased must be adjusted by the familiar rules of accounting applicable to executory estates, and any profits made by the executor out of transactions with the joint estate form part of the trust estate and must be distributed as such according to the terms of the will.

Held, further, that by the established practice in South Africa as well as by judicial interpretation the effect of instituting the surviving spouse as sole and universal heir or heiress in all the common estate is that the survivor and children are to be treated as joint heirs, the survivor being entitled to possession during the children's minority, in order to support and educate them, and thereafter to be entitled to his own half of the joint estate together with a share in the estate of the deceased equal to that of a child, paying over to the children their portions as ascertained in an honest valuation.

TRANSVAAL—*continued*.

Oosthuizen v. Moeke, (1866) 1 Roscoe, 230, approved. *NATAL BANK, LD. v. ROOD*

P. C. [1910] A. C. 570

— Transvaal leaseholds—English will—Enjoyment in specie—Roman-Dutch law.
See CONFLICT OF LAWS. 10.

TRAPS—Ground game—Occupier with sporting rights — Prohibition against setting spring traps except in rabbit holes.
See GAME. 2.

— Setting of traps likely to cause injury to wild birds an offence.
See Wild Birds Protection Act, 1904 (4 Edw. 7, c. 4).

TRAVELLER — Bona fide traveller — Closing hours—Guest of bona fide traveller—Using licensed premises.
See LICENSING ACTS. 3.

— Innkeeper, Customary liability of—Guest—Cost of accommodation defrayed by another person—Law of property.
See INNKEEPER. 2.

— Obligation to lodge—Shelter and accommodation for the night.
See INNKEEPER. 2.

TRAVELLING EXPENSES—Director's remuneration—Directors acting ultra vires.
See COMPANY—Directors. 21.

TRAWLER AND TRAWLING—Shipping.
See under SHIPPING.

TREASON—High treason—Resident alien's duty of allegiance—Special leave to appeal.
See NATAL. 5.

— Practice—Motion to quash indictment—Ex-patriation in time of war—Naturalization.
See CRIMINAL LAW—Treason. 1.

TREASURE TROVE—"Franchises"—Title of Crown—Jus tertii.
See CROWN. 4.

TREASURY—Bankruptcy, Trustee in — Penal interest—Whether payable to bankrupt's estate or to the Treasury.
See BANKRUPTCY—Penal Interest. 1.

TREASURY NOTE—Of foreign Government—Stamp—Promissory note—Marketable security—Debenture.
See REVENUE—Stamps. 4.

TREASURY SOLICITOR—Direction to appear for subject—Right to costs.
See SOLICITOR—Costs. 44.

TREASURY (TEMPORARY BORROWING) ACT, 1910 (10 Edw. 7, c. 1).

TREATY—Canada, Law of—Treaty of Oct. 3, 1873, extinguishing the Indian interest in lands.

See **CANADA—Lands**. 4.

— Extradition.

See under **EXTRADITION**.

TREES.

See also under **TIMBER**.

— Lopping of trees which obstruct a telegraphic line on a street or road.

See **Telegraph (Construction) Act**, 1908 (8 Edw. 7, c. 33), s. 5.

— Overhanging trees—Damage—Injunction.

See **NUISANCE**. 12.

— Right to remove fruit trees—Compensation — Agricultural holdings — Market gardeners' compensation.

See **LANDLORD AND TENANT**. 15.

TRESPASS — Action for—Injunction—Arbitration clause — Failure of company to proceed under their Act — Law of Canada.

See **CANADA—Arbitration**. 4.

— Bridge—Liability to repair—Right to repair

— Highway—Right to abate nuisance.

See **BRIDGES**. 2.

— Costs—"Action founded on tort"—Judgment for nominal damages and injunction.

See **COSTS**. 76.

1. — *Damages—Remoteness—Fowls straying on highway—Damage to passenger—Liability of owner.*

The plt. was riding a bicycle on a highway upon the footpath of which were some fowls belonging to the deft. As the plt. got abreast of the fowls a dog belonging to a third person frightened the fowls, one of which flew into the spokes of the machine, causing it to upset, whereby the plt. suffered personal injury and the bicycle was damaged :—

Held that, even if the fowl was not lawfully on the highway, the circumstances under which the accident happened prevented the damage from being the natural consequence of its presence there, and that the plt. could not recover.

Quare whether the occupiers of land adjoining the highway are not entitled to allow their poultry to stray about the highway? **HADWELL v. RIGHTON** — Div. Ct. [1907] W. N. 130; [1907] 2 K. B. 345

— Distress—Trespass ab initio—Second distress for same rent—Landlord and tenant.

See **DISTRESS**. 12.

— Execution creditor—Wrongful seizure—Debt paid before issue of writ—Absence of malice.

See **SHERIFF**. 3.

2. — *Justification—Act done in preservation of property—Extinguishing fire.*

If a fire breaks out on land, the tenant of the sporting rights is entitled to adopt such means on the land for extinguishing the fire as

TRESPASS—continued.

may in the circumstances be necessary for the preservation of his sporting rights. **COPE v. SHARPE** — Div. Ct. [1910] W. N. 10; [1910] 1 K. B. 168

— Landlord and tenant—Distress—Trespass ab initio—Second distress for same rent. See **DISTRESS**. 12.

— Lands surrendered to the Crown subject to subsisting contracts—Rights of Crown against trespasser.

See **NEW ZEALAND**. 10.

— Light—Derogation from grant—Party wall—Landlord and tenant.

See **LONDON—Buildings**. 18.

— Newfoundland, Laws of—Effect of grant of licence—Trespass on licensee's land before licence granted—Damages.

See **NEWFOUNDLAND**. 5.

— Railway company—Infant—Defective fence—Negligence—Turntable—Invitation to danger.

See **RAILWAY—Fences**. 1.

— Right of entry of mortgagee—Relation back of right of possession—Trespass antecedent to entry—Right of action.

See **MORTGAGE—Entry**. 1.

3. — *Right of way—Landowner uninjured—Discretion to refuse injunction.*

The Court may refuse to grant an injunction to restrain persons from trespassing on land if the landlord is not injured thereby.

The plt. bought land on an unfrequented part of the coast, and stopped up several paths which the defts. asserted were public highways. The defts. removed the obstructions placed by the plt., and he brought an action against them for an injunction to restrain them from trespassing on his land. The Att.-Gen. was not a party to the action :—

Held, as between the plt. and the defts. that there were no public rights of way; that the plt. was entitled to a declaration to that effect, and the defts. must pay nominal damages; but that inasmuch as the plt. was not, in the present estate of the neighbourhood, injured by the public use of the ways in question, no injunction ought to be granted. **BEHRENS v. RICHARDS**

Buckley J. [1905] 2 Ch. 614

4. — *Right to sue—Public footway—Inclosure award—User of footway as cart road—Presumption of dedication—Local government—Urban district council.*

By an award made in 1811 under the Sheringham Inclosure Act, 1809, a strip of land six feet wide was set out and appointed as a public footpath, and was thenceforth adopted and so used by the public at large. Since the date of the award buildings had been erected on either side of the path which reduced its width in places to four or five feet.

For forty years past fishermen and others had driven carts or barrows over the path. This use of the path having caused obstruction to foot-passengers, the plt., in whom the path was now vested, erected a post to prevent

TRESPASS—*continued.*

wheeled traffic being used. The deft., in alleged assertion of the right of the public to use the path for all purposes, removed the post.

This was an action claiming a declaration that the path was not a carriage way; an injunction; and damages for trespass.

Joyce J. said that the way had originated from the award. It was set out as a footway, and any user of it for wheeled traffic was in its inception and had been all along a public nuisance, which no length of time could legalize. There was no power in any one to dedicate the footpath as a public highway for all purposes. It could not be done even if the local authority consented to it: *Reg. v. Train*, (1862) 31 L. J. (M. C.) 169; *Reg. v. United Kingdom Telegraph Co.*, (1862) 2 B. & S. 647. There must be an injunction to restrain the deft. from further interference with the post, and judgment against him for 20s. damages and costs. *SHERINGHAM URBAN DISTRICT COUNCIL v. HOLSEY*

Joyce J. [1904] W. N. 83

— Savage animal—Liability of owner to trespassers—Negligence.
See SAVAGE ANIMAL. 1.

— Seashore—Title to foreshore under a Crown grant—Construction.
See TASMANIA. 1.

— Storm-water overflow—Nuisance—Injunction—Sewers—Discharge into tidal navigable creek.
See LONDON—Sewers. 4.

— Streets, Statutory power to fix posts "in or under"—Taking of land.
See STREETS. 21.

— Trespasser—Title against lessee—Surrender of lease—Lessor's right of re-entry.
See LIMITATIONS, STATUTE OF. 10.

— Trustee in bankruptcy, Property passing to—Action for trespass and conversion—Claim for personal annoyance.
See BANKRUPTCY—Trustee. 8.

— Water company—Unauthorized new water-works—Ancillary main under public footpath—Ultra vires.
See WATER. 24.

— Watercourse—Artificial channel—Mill stream—Right to flow of water.
See STREAM. 3.

TRIAL—County Courts—Practice.

See under COUNTY COURT.

— Practice.

See under PRACTICE—Trial.

TRIBUTARY—What is—Mill dam—Stream.

See FISHERY. 2.

TRINIDAD AND TOBAGO—*Deed of concession—Construction of covenant—Lands in possession of the Crown—Law of Trinidad and Tobago.*

A restrictive covenant by the Crown contained in its deed of concession affected certain

TRINIDAD AND TOBAGO—*continued.*

lands situated within three miles of the subject of concession "which now are, or at any time during the said term or terms shall come into, the possession of Her Majesty."

In an action by the appellants for injunction and damages in respect of a breach of the said covenant by the Government:—

Held, that on its true construction it related only to lands in the actual possession, and did not include lands which were merely subject to the control, of the Crown, irrespective of the Crown having done anything with respect to the use or occupation of them. *NEW TRINIDAD LAKE ASPHALT CO. v. ATT.-GEN.*

P. C. [1904] A. C. 415

TRINITY HOUSE OUTPORT DISTRICT—Collision in the Solent—Narrow channel—Compulsory pilotage.

See SHIPPING—Collision. 62.

TROVER—Partridge eggs, Seizure and detention by police officer of—Liability of police officer in trover.

See GAME. 5.

TRUCK ACTS—Master and servant.

See under MASTER AND SERVANT—Truck Acts.

TRUCKS—Railway company.

See under RAILWAY.

TRUST—

See also under TRUSTEE.

— Administration of assets—Trust de hors the will of specified part of residue.
See ADMINISTRATION. 1.

— Charity.

See under CHARITY.

— Church—Identity—Fundamental doctrine—Limits to power of union.
See ECCLESIASTICAL LAW—Church. 1.

— Condition or trust—Fetter on power of sale—Condition of residing and providing a home for third party.
See SETTLED LAND—Sale. 16.

— Confiscation—Construction of regrant of native lands.
See NEW ZEALAND. 5.

— Corporation sole—Rector—Power to hold personality—Mortmain—Irregular investment in land.
See CORPORATION. 14.

— Discretionary trust for maintenance or accumulation—Validity.
See WILL—Remoteness. 3.

— Express trust—Infant legatee—Duty of executor to give notice of legacy.
See LIMITATIONS, STATUTE OF. 4.

TRUST—*continued*

— For sale—Title—Leaseholds—Sale by way of underlease.

See **VENDOR AND PURCHASER—Title**. 16.

— Husband and wife—Purchase of house—Purchase-money paid by husband—Resulting trust—Advancement—Rebuttal—Decree of nullity of marriage. See **HUSBAND AND WIFE—Purchase**. 1.

— Practice—Originating summons—Resulting trust—Application to enforce—No question of construction.

See **PRACTICE—Originating Summons**.

— Precatory trusts.

See under **WILL—Precatory Trusts**.

— Resulting trust—Dedication by deed of land for charitable objects.

See **CHARITY**. 14.

— Resulting trust—Friendly Society—Objects exhausted—Charity—Cypres—Crown—Bona vacantia.

See **FRIENDLY SOCIETY**. 8.

1. — Resulting trust—Fund subscribed for "education" of children of a deceased individual—Growing up of children—Unapplied surplus.

A fund was subscribed by the friends of a deceased clergyman for the education of his children, all of whom were then infants, and the letter declaring the trusts of the fund stated that the money was not intended for the exclusive use of any one of them in particular, nor for equal division among them, but as deemed necessary to defray the expenses of all, and that solely in the matter of education. The education of the children was paid for partly out of the trust fund and partly out of moneys respectively coming to them under their father's will. When all the children had grown up there remained a portion of the trust fund unapplied:—

Held, (1) that there was no resulting trust of the balance for the subscribers; (2) that the balance ought to be divided equally amongst the children. *In re ANDREW'S TRUST*. **CARTER v. ANDREW** - **Kekewich J.** [1905] **W. N. 86**; [1905] **2 Ch. 48**

— Resulting trust—Purchase in name of stranger—Insurance policy.

See **INSURANCE (LIFE)**. 11.

— Sale by order of Court—Conditions of sale—Notice of trust.

See **VENDOR AND PURCHASER—Conditions of Sale**. 7.

— Secret trust—Absolute gift—Charity—Trust for benefit of public, but so that they should acquire no rights.

See **WILL—Absolute Gift**. 9.

— Settled land.

See under **SETTLED LAND**.

— Settlement.

See under **SETTLEMENT**.

— Uncertainty—"Charitable or religious institutions and societies"—Trust disposition and settlement.

See **WILL—Uncertainty**. 4

TRUST—*continued*.

2. — *Will—Denuding—Vesting*.

A testator directed that the income of his property (consisting of movable and real estate) be divided between his children; that in the event of any child dying leaving issue his or her share of income should be paid to the issue; and if a child left no issue the deceased child's share should be divided among the survivors; and he finally directed that "on the death of all" his children his estate should "be winded up and converted into money" . . . and divided among the children of his sons and daughter per stirpes.

The testator was survived by four children—Andrew, who died unmarried, George, who died in 1880, survived by the appellant (who became of age in 1898), Mary and Jane; the two latter were still alive and had families. The appellant claimed payment of one-third of the corpus of the testator's estate:—

Held, affirming the decision of the Second Division of the Ct. of Sess., (1900) **2 F. 749**, that the appellant was not entitled to immediate payment on the ground that the third of the income of the corpus was not by any means the same as the income of a severed portion of the estate; and it did not follow that if the estate was not divided that the remaining portion of the estate left undivided would represent in the future the present value.

Miller's Trustees v. Miller, (1890) **18 R. 301**, and *Juill's Trustees v. Thomson*, (1902) **4 F. 815**, affirmed. **MACCULLOCH v. ANDERSON**.

H. L. (Sc.) [1904] A. C. 55

— Will—Legacy to charitable institution—School—Trust deed—No lapse.

See **CHARITY**. 45.

— Will—Real estate—Trust for conversion—Mining lease—Payments in nature of royalties—Capital or income—Settled estate.

See **WILL—Real Estate**. 2.

— Will—Uncertainty—Trust—"Such charitable or public purposes as my trustee thinks proper."

See **WILL—Uncertainty**. 4.

— Resulting trust—Presumption—Evidence—Capital or income.

See **HUSBAND AND WIFE—Property**. 2.

— Resulting trust—Real estate—Copyholds—Descent—Customary or common law heir.

See **WILL—Intestacy**. 1.

TRUSTEE.

See also under **EXECUTOR**.
TRUST.

Stamp duty—Provision for limiting stamp duty on retirement of trustees to ten shillings
See *Finance Act, 1902* (**2 Edw. 7, c. 7**), s. 9.

TRUSTEE—continued.

Investment—Enlargement of powers of trustees as to investment. See Irish Land Act, 1903 (3 Edw. 7, c. 37), s. 51.

Trustee savings banks—See Savings Banks Act, 1904 (4 Edw. 7, s. 8).

Public Trustee Act, 1906 (6 Edw. 7, c. 55), provides for the appointment of a public trustee and amends the law relating to the administration of trusts.

The Public Trustee Rules, 1907, dated Nov. 29, 1907. Reprint from W. N. 1907 (Dec. 7), p. 339. See CURRENT INDEX, 1907, p. lxxxii.

The Public Trustee (Fees) Order, 1907. Reprint from W. N. 1907, (Dec. 21), p. 339. See CURRENT INDEX, 1907, p. lxxxii.

Married women, disposition of trust estates by—See Married Women's Property Act, 1907 (7 Edw. 7, c. 18), s. 1.

Post Office Savings Bank (Public Trustee) Act, 1908 (8 Edw. 7, c. 52), amends the Post Office Savings Bank Acts, 1861 to 1908, with respect to deposits by the Public Trustee.

Public Trustee (Fees) Order, 1909, which came into operation on Mar. 1, 1909. Reprint from W. N. 1909 (Mar. 13), p. 101. See CURRENT INDEX, 1909, p. clxi.

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TRUSTEE—continued.

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Accounts.

— Common account—Breach of trust—Improper investment by trustee—Originating summons.
See TRUSTEE—Practice. 4.

1. — Delay in accounting—Solicitor—Trustee—Liability to indemnify co-trustee—Costs of action by cestui que trust—Breach of trust—Negligence.

A solicitor trustee, to whom the management of the trust has been left as the acting trustee,

TRUSTEE (Accounts)—continued.

is liable to indemnify his co-trustee against the costs of an action caused by his negligent conduct of the trust business, even where no actual loss has been thereby occasioned to the trust estate.

Lockhart v. Reilly, (1856) 25 L. J. (Ch.) 697 applied. *In re LINSLEY. CATTLEY v. WEST Warrington J.* [1904] W. N. 140; [1904] 2 Ch. 785

2. — Neglect to account—Originating summons—Costs—Costs of taking and vouching account—Practice—Administration.

In a case where proceedings for administration are rendered necessary by the gross and indefensible neglect of trustees to deliver accounts, the defaulting trustees may be ordered to pay all the costs, including the costs of taking and vouching the accounts. Such an order may be made in proceedings commenced by originating summons.

Hewett v. Foster, (1844) 7 Beav. 348; 64 R. R. held not to represent the modern practice. *In re SKINNER. COOPER v. SKINNER*

Farwell J. [1904] W. N. 8; [1904] 1 Ch. 289

3. — Will—Appointment of testator's son as trustee—Testator member of partnership—Nomination by testator of son to succeed him—Son to account as trustee for share of profits—Appointment by partners of son as salesman—Liability of son to account for salary.

Testator, who died in 1905, had in his lifetime been a partner in a firm of G. I. & Son, which consisted of himself and two other persons. The business of the partnership was the management of the properties of two colliery cos. and the sale of the output of those collieries. For a number of years prior to the death of the testator his son, W. N. L., had been employed by the partnership as salesman at a salary of 600*l.* a year. By his will the testator appointed H. N. L. one of his trustees, and in the same will, in pursuance of a power in that behalf in the partnership articles, he nominated him to succeed him in the partnership, but as a trustee. Since the death of the testator H. N. L. had acted as salesman for the partnership and had received his salary of 600*l.* a year, and it had been agreed between him and his co-partners that he should continue so to act at that salary. The evidence showed that the agreement was absolutely bona fide, and that it was to the interest of the partnership that he should continue to act as salesman.

Summons for the determination of the question (inter alia) whether H. N. L. was entitled to retain for his own benefit the 600*l.* a year received by him from the partnership, or was bound to account for it as trustee to the testator's estate.

Warrington J. said that W. N. L., in receiving this salary, did not receive it by virtue either of his position as a trustee of the testator's estate or of his position as a partner of the firm. It was not by virtue of anything that the testator had done that he received it, but in consequence of the agreement which

TRUSTEE (Accounts)—continued.

he had made with his co-partners that one of the expenses of the partnership should consist of this salary paid to him. There was no authority precisely in point. The case which came nearest the present was *In re Dover Coalfield Extension, Ltd.*, [1908] 1 Ch. 65. That case, though not on all fours with the present, supported the view which his Lordship took, namely, that the salary resulted, not from the trust, but from work done independently of the trust. He saw no reason in law or in good sense why W. N. L. should be compelled to perform gratuitously the services which he had rendered since the testator's death or why he should not retain for his own benefit the salary to be paid him for his services in the future. H. L. N. was therefore under no liability to account to the testator's estate for the salary received by him. *In re LEWIS. LEWIS v. LEWIS.*

Warrington J. [1910] W. N. 217

Administration.

See under ADMINISTRATION.

Appointment.

See also under EXECUTOR—Appointment.

1. — Absence abroad—Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 10, sub-s. 1.

One of two trustees purposed to appoint a new trustee in the place of his co-trustee under the power in that behalf conferred by sub-s. 1 of s. 10 of the Trustee Act, 1893, on the ground that the co-trustee had resided abroad for more than twelve months. The co-trustee had remained out of the United Kingdom for more than twelve months, except for one week when he was in London:—

Held, that the event upon which the power arose had not happened and that the appointment was bad. *In re WALKER. SUMMERS v. BARROW*

Farwell J. [1901] 1 Ch. 259

2. — “Acting executor of the last surviving trustee”—“Personal representative”—Appointment by one of three executors, the other two not having proved—Appointment of new trustees—Lord Cranworth's Act, 1860 (23 & 24 Vict. c. 145), s. 27—Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), ss. 31, 71—Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 10—Court of Probate Act, 1858 (21 & 22 Vict. c. 95), s. 16.

H. R. B., by his will dated in 1875, devised his real estate to trustees to certain uses. The will contained no power of appointing new trustees, but in effect referred to the powers given by Lord Cranworth's Act. H. R. B. died in 1877. The last surviving trustee died in 1888, having by his will appointed three executors. Probate was granted to one only, power to prove being reserved to the other two. In 1894 the proving executor, in exercise of the power given to him by the Trustee Act, 1893, and of every other power enabling him, appointed new trustees of H. R. B.'s will. The other two executors were

TRUSTEE (Appointment)—*continued.*

alive at the date of this appointment, but died without having taken probate:—

Held that, having regard to the saving clause in s. 71 of the Conveyancing Act, 1881, the appointment was good as having been made by the "acting executor" of the last surviving trustee within s. 27 of Lord Cranworth's Act.

In re Solomon and Meagher's Contract, (1889) 40 Ch. D. 508, and *In re Walker and Hughes's Contract*, (1883) 24 Ch. D. 698, followed.

Sembla. also, that it was good, on the ground that, under s. 16 of the Court of Probate Act, 1858, the two co-executors having died without proving the will, the representation to the testator had gone and devolved as if they had not been appointed executors. *In re BOUCHERETT. BARNE v. ERSKINE*

Joyce J. [1907] W. N. 230; [1908] 1 Ch. 180

—Compound settlement, Appointment of trustees of, for purposes of Settled Land Acts—Definition of such trustees.

See SETTLED LAND—Trustees. 1, 2.

—Corporation joint trustee with individual. See No. 6, below.

3. —*Female trustee*—Appointment of new trustee—Appointment by Court.

According to the present practice the appointment of a properly qualified unmarried woman to be a trustee by the Court is not limited to cases in which no other trustee can be found.

This was a summons for the appointment of new trustees of four legacies of 1500*l.* each, given by the will of W. D., who died in 1842, to each of his four daughters for life, with remainder to her children as she should appoint, with remainder to her children living at her death in equal shares, the issue of any children then dead leaving issue taking the share their parents would have taken if living. The testator's daughters were all dead, and had made wills as to which questions were raised whether the powers of appointment were exercised.

The summons was taken out by two granddaughters of the testator, who were unquestionably entitled to shares in the legacies, and they and the persons who supported the application were in any event entitled to much the greater part of the legacies. The proposed new trustees were S., a land agent, and T., an unmarried woman of middle age, who was described as a teacher and lady's companion. There was evidence that T. was a very capable woman and well used to business. The application was opposed by D., a beneficiary who was only entitled to a very small share of the legacies. He proposed the appointment of two men, who had consented to act and were admittedly unobjectionable persons.

Farwell J. said that the position of women had been considerably altered since *Brook v. Brook*, (1839) 1 Beav. 531, was decided; he had frequently appointed unmarried women trustees in chambers. In this case he had looked at the affidavits, and was satisfied that

TRUSTEE (Appointment)—*continued.*

T. was perfectly capable of acting in the trust. The interest of the opponent was not sufficient to give him any right to override the wishes of the applicants, and the appointment must be made as asked by the summons. *In re DICKINSON'S TRUSTS*

Farwell J. [1902] W. N. 104

—New trustees, Appointment of—Cestuis que trust, Rights of.

See TRUSTEE—Retainer. 1.

4. —*New trustees, Appointment of—Donee of power appointing himself—Validity of appointment.*

There is no rule that a donee of a power to appoint new trustees is unable to appoint himself. The Court will sanction such an appointment in special circumstances. *MONTEFIORE v. GUEDALLA*

Buckley J. [1903]

W. N. 184; [1903] 2 Ch. 723

Note.

Montefiore v. Guedalla, Buckley J., [1901] 1 Ch. 435; C. A. [1903] 2 Ch. 26. See *Husband and Wife—Property*.

Considered by Kekewich J., *In re Sampson*, [1906] 1 Ch. 435. See next Case.

5. —*New trustee, Appointment of—Statutory power—Power to appoint "another person or other persons"—Donee appointing himself—Invalid appointment—Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 10, sub-s. 1.*

Under the statutory power of appointing new trustees conferred by s. 10, sub-s. 1, of the Trustee Act, 1893, the person making the appointment cannot validly appoint himself, either alone or jointly with any other person. *Montefiore v. Guedalla*, [1903] 2 Ch. 723, considered. *In re SAMPSON. SAMPSON v. SAMPSON*

Kekewich J. [1906] W. N. 26; [1906] 1 Ch. 435

6. —*New trustees, Power to appoint—Appointment of corporation jointly with individual—Bodies Corporate (Joint Tenancy) Act, 1889 (52 & 63 Vict. c. 20).*

A marriage settlement contained a proviso that, if the trustees thereby constituted or either of them, or any trustees or trustee thereby appointed, should die . . . it should be lawful for the husband and wife to appoint a new trustee or new trustees in the place of the trustee or trustees so dying. One of the trustees having died, the husband and wife proposed to appoint a corporation to be new trustee jointly with the surviving trustee:—

Held, that since the Bodies Corporate (Joint Tenancy) Act, 1899 (62 & 63 Vict. c. 20), had enabled corporate bodies to hold property in joint tenancy with individuals, the appointment could legally be made under the power. *In re THOMPSON'S SETTLEMENT TRUSTS*

THOMPSON v. ALEXANDER

Swinfen Eady J.

[1905] 1 Ch. 229

7. —*"Persons who are the trustees of the will of A."*—Executors of last surviving trustee—Last surviving trustee appointed after A.'s death—Will—Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), s. 30.

TRUSTEE (Appointment)—continued.

W. by her will devised and bequeathed property to the person or persons who should at her death be trustees of her father's will. At her death all the trustees of her father's will and all the trustees appointed in their place were dead. The executors of the last survivor of the trustees so appointed had acted in the trusts of her father's will :—

Held, that these were at her death trustees of her father's will, and were duly appointed trustees of her own.

Ockleston v. Heap, (1847) 1 De G. & Sm. 640, *held* to have been overruled by *Hall v. May*, (1857) 3 K. & J. 585, and not followed. *In re Waidanis. Rivers v. Waidanis*

Swinfen Eady J. [1907] W. N. 213 : [1908] 1 Ch. 123

Note.

See In re Routledge's Trusts, *Neville J.*, [1909] 1 Ch. 280. *See No. 10, below.*

Referred to by *Parker J.*, *In re Crunden and Meux's Contract*, [1909] 1 Ch. 690. *See Trustee—Execution of Trust. 1.*

8.—Public trustee—Settlement—Two trustees—Retiring trustee—Public trustee appointed to act with continuing trustee—Wishes of beneficiaries—Objection by continuing trustee—Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 25—Public Trustee Act, 1906 (6 Edw. 7, c. 55), s. 5, sub-s. 1.

W. and H. E. K. were the present trustees of a settlement, and the usual power of appointing new trustees was vested in them. The trust estate comprised 6000*l.*, which was invested in proper securities. H. E. K., being about to go abroad for some time, desired to retire from the trust, and applied to W. to concur with him in appointing the public trustee in his place to act jointly with W. as the continuing trustee. W. stated his willingness to appoint a new trustee, but declined to appoint the public trustee. Thereupon H. E. K. and the three tenants for life under the settlement (being the beneficiaries who had vested interests) took out an originating summons under s. 25 of the Trustee Act, 1893, asking that the public trustee might be appointed a new trustee in the place of H. E. K. to act jointly with W., and that W. might bear his own costs of the application.

Neville J. made the order. No evidence had been read to the Court to shew that the continuing trustee had acted improperly in refusing to concur in appointing the public trustee, and it might very well be that he acted bona fide and thought himself justified in the course he adopted. It was impossible therefore to order him to pay his own costs. There would be the usual order as to costs. *In re KENSIT - Neville J.* [1908] W. N. 235

9.—Service on beneficiaries—Memorandum from senior registrar—Application for appointment of new trustee—Trustee Act, 1893 (56 & 57 Vict. c. 53).

The following memorandum was furnished by the senior registrar :—"When the Trustee Act of 1850 (13 & 14 Vict. c. 60) first came into operation the practice was adopted of

TRUSTEE (Appointment)—continued.

requiring all the parties beneficially interested to appear upon or be served with a petition for the appointment of new trustees. This was soon found to be both expensive and inconvenient, and the practice has for many years been modified by dispensing with service on parties who are remotely interested, or whose interests are small; but in such cases the registrars have required the point to be mentioned to the Court, and no general rule has ever been laid down either under the Act of 1850 or the Act of 1893. I have searched the various Law Reports for many years back, and the only cases I can find reported upon the subject are the following : Service on a trustee of unsound mind (not so found) was dispensed with : *In re Green*, (1875) L. R. 10 Ch. 272 ; service on an absconding trustee was dispensed with : *Hyde v. Benbow*, [1884] W. N. 117 ; service on a cestui que trust in Australia was dispensed with : *In re Wilson*, (1886) 31 Ch. D. 522. In *In re Blanchard*, (1861) 3 De G. F. & J. 131, 137, *Turner, L.J.*, after observing that the Act of 1850 does not in terms require all persons interested to be served, says, 'and it has not been unusual to dispense with service on all parties.'"

Upon that the Court did not understand the meaning to be that there must be an express order dispensing with service on certain beneficiaries, but only that it would proceed in their absence. Orders had frequently been made for the appointment of new trustees without requiring the attendance of or service on a person of unsound mind, an absconding debtor, or a person out of the jurisdiction, provided that the interests of such persons were fairly represented. In truth the practice might shortly be stated to be that the judge exercised his discretion according to the circumstances of each case as it came before him, taking care to ascertain who were the parties and what were their interests, and being satisfied, as far as could be on non-contentious applications, that there was a fair hearing of all possible contentions as to the persons to be appointed trustees and otherwise. It was a discretionary jurisdiction which required great care, and was attended with some difficulty. PRACTICE NOTE.

Kekewich J. [1901] W. N. 85

—Solicitor of tenant for life—Existing trustees—Affidavit of fitness.
See SETTLED LAND Trustees. 3.

10.—Tenant for life donee of power—Power to appoint new trustees—Settlement—Executors of last surviving trustee acting as trustees of settlement—Appointment by donee of new trustees—Validity of appointment—Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), s. 30, sub-s. 1—Trustee Act, 1893 (56 & 57 Vict. c. 53), ss. 10, 25.

By a settlement real estate was in 1874 conveyed to A. and B. in fee upon trust that they and the surveyor of them and the heirs and assigns of such survivor should hold the trust estate upon certain trusts under which

TRUSTEE (Appointment)—*continued.*

C. was the first tenant for life; and by the same settlement a power to appoint new trustees was vested in C. and D. during their joint lives. B. survived A. and died in 1906, and the executors of his will acted as the trustees of the settlement. In 1908 C. and D. in exercise of the power by deed appointed two persons to be new trustees of the settlement and made the usual vesting declaration. The executors of B. objected that the appointment of new trustees was a nullity because they were by virtue of s. 30 of the Conveyancing Act, 1881, the existing trustees of the settlement, and that, though willing to retire, they could not be displaced except by the Court or by a deed to which they were made parties and retired:—

Held that, although the executors were trustees of the settlement until the new trustees were appointed, the deed was a valid exercise of the power to appoint new trustees, and operated forthwith to oust the executors for all purposes from the trust. *In re ROUTLEDGE'S TRUSTS.* ROUTLEDGE v. SACL

Neville J. [1908] W. N. 256;
[1909] 1 Ch. 280

Assignment.

1. — *Practice*—Assignment of share in reversionary fund — Distribution — Payment to assignee—Right to delivery of assignment.

On the distribution of a trust fund, a share in which has been previously assigned, the trustee has no right to require the delivery to him of the assignment and other documents of title before payment of the share to the assignee. *In re PALMER.* LANCASHIRE AND YORKSHIRE REVERSIONARY INTEREST CO. v. BURKE Swinfen Eady J. [1907] W. N. 73;
[1907] 1 Ch. 486

Attachment.

— Contempt—Disobedience of order to pay money—Service of order.
See ATTACHMENT. 20.

Breach of Trust.

— Accounts.
See under TRUSTEE—Accounts.

1. — *Appropriation—Trustee and cestui que trust—Solicitor trustee—Fraud—Entries in books—Declaration of trust—Mortgage—Leaseholds—“Interest in land”—Equitable incumbrances—Priority—Innocent trustee mortgage—Legal estate—Title deeds, Possession of—Purchaser for value without notice—Legal estate acquired by mortgagee after notice of trust—Joint tenancy—Conveyance by one joint tenant—Severance—Equitable title—Legal title—Relation back—Notice, Express or constructive—Solicitor and client—Notice through solicitor—Purchaser mortgagee—General inquiry as to incumbrances—Liability of vendor to answer—Conveyancing Act, 1882 (45 & 46 Vict. c. 39), s. 3, sub-s. 1 (i.) and (ii.).*

In 1882 T., a solicitor, advanced money of his own upon the security of leaseholds mortgaged to him by sub-demise.

In 1899, being then one of the two trustees

TRUSTEE (Breach of Trust)—*continued.*

of the B. settlement, he received a sum of money belonging to the settlement, and, without the knowledge of his co-trustee, fraudulently applied it to his own use. By entries in his books, under the heading of the trust, he purported to appropriate his own mortgage debt to answer the sum of which he had defrauded the trust estate, but he never communicated the purported appropriation either to his co-trustee or to his cestui que trust, all of whom were sui juris.

In 1896 the appropriation became known to one of the cestui que trust, who was a solicitor and acted as such for the others, but although they had all become absolutely entitled in possession to the trust funds they never called upon the trustees to transfer them, and no inquiry was made respecting the mortgage.

In 1899 T. was also a trustee of the T. settlement. In 1895, T. having then become sole trustee of that settlement, N. was appointed co-trustee, and at N.'s request, on T.'s representation that the trust funds included the above-mentioned mortgage debt and securities, the representation being supported by his production to N. of the deeds, T. executed a legal transfer thereof into the joint names of himself and N., N. being then totally ignorant of the existence of the B. settlement and of T.'s secret appropriation thereto. The deed of transfer had been prepared by T. as solicitor to the T. trust, and the mortgage and other title-deeds remained in his custody as such solicitor.

In 1897 T., without N.'s knowledge, deposited the deeds with his bankers as security for a debt due from him to them, at the same time executing to them a deed-poll by which he charged the debt upon all his estate and interest in the property comprised in the deeds, and undertook to execute, on request, a legal mortgage; and he thereby declared that during the continuance of the security he would hold all his interest thereby charged in trust for the bank as mortgagees; and he appointed three officers of the bank his attorneys for him and on his behalf, and as his act and deed, to execute any such legal mortgage as aforesaid. At that time the bank had no notice of either of the two settlements.

In March, 1898, T. absconded, and in April, 1898, notice was given to the bank of the T. settlement, but they had no notice of the B. settlement. Notwithstanding the notice, the bank purported to execute to themselves by their three officers as T.'s attorneys under the deed-poll a legal mortgage of the leaseholds comprised in the deposited deeds.

In actions to ascertain the priorities of the B. settlement, the T. settlement, and the bank to the benefit of the mortgage debt and securities:—

Held, by V. Williams and Stirling L.J.J. (Rigby L.J. dissenting) that there was a good appropriation in 1889 in favour of the B. settlement, though not communicated by T. either to his co-trustee or to his cestui que trust: *Middleton v. Pollock*, (1876) 2 Ch. D. 104; *New, Prance & Garrard's Trustee v.*

TRUSTEE (Breach of Trust)—continued.

Hunting, [1897] 2 Q. B. 19, affirmed sub nom. *Sharp v. Jackson*, [1899] A. C. 419 :

But held by the full Court that, assuming there was a good appropriation in favour of the B. settlement, N., as trustee of the T. settlement, and having no notice of the appropriation, could not be deprived of the advantage acquired by him as against the B. settlement by the possession of the legal estate in one moiety of the mortgage debt and securities and of the better right to the legal estate in the other moiety which had become vested in the bank through T.'s mortgage to them operating as a severance of the joint tenancy between himself and N.; and that N. must be treated as an innocent purchaser for value without notice, on the ground that by accepting the transfer of the mortgage debt and securities he gave up his right to sue T. for the debt due to the T. settlement: *Thorndike v. Hunt*, (1859) 3 De G. & J. 563; *Taylor v. Blakelock*, (1886) 32 Ch. D. 560; also that N. was protected by s. 3, sub-s. 1 (i.) and (ii.) of the Conveyancing Act, 1882, from being affected with constructive notice of the appropriation to the B. settlement, because (1.) no possible inquiries or inspection by N., or any independent solicitor on his behalf, would have brought the appropriation to the B. settlement to his knowledge, and (2.) the appropriation did not "come to the knowledge of" T. either as N.'s solicitor or "in the same transaction in respect to which the question of notice arose."

Held, also, that inasmuch as the bank had, at the date of the mortgage to them in April, 1898, notice of the T. settlement, they could not be allowed to gain priority over that settlement by means of the legal estate they had acquired in an undivided moiety of T.'s mortgage debt and securities, their mortgage not relating back to the date of the deed-poll of 1897. Consequently :

Held, that N., as trustee of the T. settlement, was entitled to the mortgage debt and securities in priority to both the B. settlement and the bank, and the bank was ordered to reconvey to him as such trustee the legal estate vested in them, and to deliver up the deeds accordingly.

Although a mortgage debt is a chose in action, yet, where the subject of the security is land, the mortgagee is treated as having "an interest in land," and priorities are governed by the rules applicable to interests in land, and not by the rules which apply to interests in personalty: *Jones v. Gibbons*, (1804) 9 Ves. 407, 410; 7 R. R. 247, 250; and leaseholds are real estate for the purposes of the rule: *Wiltshire v. Rabbits*, (1844) 14 Sim. 76; *Union Bank of London v. Kent*, (1888) 39 Ch. D. 238.

Quære, whether, when the estates of a prior and subsequent incumbrancer are both equitable, the rules as to postponement, in *Northern Counties of England Fire Insurance Co. v. Whipp*, (1884) 26 Ch. D. 482, are not excluded: see *Taylor v. Russell*, [1892] A. C. 244, 262.

TRUSTEE (Breach of Trust)—continued.

The positions discussed and considered (a) of a legal mortgagee making an advance without notice of a prior equitable title: (b) of an equitable mortgagee making an advance without notice of a prior equitable title and subsequently getting in the legal estate either with or without notice as (the case may be) of the prior equity: (c) of an equitable mortgagee who has allowed his mortgagor, or some person standing in a fiduciary relation to him, the mortgagee, to retain possession of the title-deeds so that they ultimately come into the hands of a subsequent equitable incumbrancer: and (d) of a purchaser for value of an equitable title without notice, as regards his right to call for the legal estate. *TAYLOR v. LONDON AND COUNTY BANKING CO. LONDON AND COUNTY BANKING CO. v. NIXON*

C. A. [1901] W. N. 79; [1901] 2 Ch. 231

—Breach of trust alleged in pleadings —
Breach made good after issue of writ
—Removal of trustees, Grounds for.
See ADMINISTRATION. 31.

2. —Charge on share of beneficiary—No notice to trustees—Assignment of share subject to charge—Solicitor—Fraudulent statement—Payment to assignee of equity of redemption—Duty to investigate assignee's title—Constructive notice—Liability—Relief—Judicial Trustees Act, 1896 (59 & 60 Vict. c. 35), s. 3, sub-s. 1.

The defts., who were trustees, upon the distribution of their trust fund paid the share of a beneficiary to their solicitor in reliance upon his statement that he was the assignee of the share and without calling upon him to prove his title. The share had been assigned to him by deed which recited the creation of a prior charge on the share in question, and assigned the share expressly subject to the charge. The solicitor had acted for the plt. upon the transfer to her of this charge, but no notice of the charge or transfer had ever been given to the trustees. In an action for an account and payment of what was due under the charge:—

Held, that the defts. were liable, on the ground that the assignment of the share necessarily set them upon inquiry as to the title of the alleged assignee, and that if they had done their duty and properly investigated his title they would have been affected with notice of the plt.'s charge, and that, having failed in their duty, they could not shelter themselves behind the fraud of their solicitor.

Jones v. Smith, (1841) 1 Hare, 43, applied.

Held, further, that the defts. were not entitled to relief under s. 3, sub-s. 1, of the Judicial Trustees Act, 1896, the section not having been intended to apply to a case of this kind. *DAVIS v. HUTCHINGS*

Kekewich J. [1907] W. N. 28;
[1907] 1 Ch. 356

—Company—Shares—Production of probate—
Transfer to one executor—Nominal consideration.

See COMPANY—Shares. 11.

TRUSTEE (Breach of Trust)—continued.

—Compromise with one trustee—Right to prove in bankruptcy.

See **TRUSTEE—Release**. 1.

3.—*Concurrence of cestui que trust—Liability—Right to indemnity—Fund replaced by trustee—Income of replaced fund—Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 45.*

Independently of the Trustee Act, 1893, s. 45, a beneficiary of full contracting age and capacity, who knowingly consents to a breach of trust, is not entitled to relief against the trustee for any loss occasioned to that beneficiary's interest in the trust estate by reason of the breach of trust, even though he has derived no benefit thereby; the consent to the breach of trust, if proved, need not be in writing.

Sec. 6 of the Trustee Act, 1888, and s. 45 of the Trustee Act, 1893, were intended to enlarge the power of the Court as to indemnifying trustees, and to give greater relief to trustees, and do not operate to curtail or affect the previously existing rights and remedies of trustees, or to alter the law except by giving greater power to the Court.

In 1885, a trustee, with the consent of a husband tenant for life, sold out the whole of a trust fund, and handed it over to the wife of the tenant for life, who spent it for her own purposes. In 1891 an action was commenced by the remaindermen against the trustees to make him liable for the loss occasioned by this breach of trust in which an order was eventually made staying proceedings on the trustee undertaking by mortgages of policies on his life and by a portion of his pension to replace the whole of the funds so lost; this order directed the money so paid in to be applied, first, in satisfaction of the trust fund, and then of interest thereon from 1891. At the time of the death of the trustee in 1902 the whole of the trust fund had thus been replaced, with a considerable surplus representing interest from 1891; this surplus was not claimed by the representative of the deceased trustee by way of indemnity, and by the trustee in bankruptcy of the tenant for life.

Held, varying a decision of the late Byrne J., that as the tenant for life who had concurred in the breach of trust could not require the trustee to make good his life interest in the trust estate, he had no right as against the trustee to anything that represented income of the fund replaced by the trustee, and that his trustee in bankruptcy was in no better position, and accordingly, that the representative of the deceased trustee was entitled to this surplus. **FLETCHER v. COLLIS**

C. A. [1905] 2 Ch. 24

—Fraudulent preference—Voluntary restitution on eve of bankruptcy.

See **BANKRUPTCY—Preference**. 2.

—Improper investment by trustees.

See under **TRUSTEE—Investments**.

4.—*Innocent breach of trust—Misappropriation by solicitor—Limitations, Statute of—*

TRUSTEE (Breach of Trust)—continued.

Acknowledgment—Settled fund—Payment of interest to tenant for life—Admission of existence of trust capital—Evidence—Accounts—Admissibility—Entry of deceased person against interest—Trustee Act, 1888 (51 & 52 Vict. c. 59), s. 8, sub-s. 1 (a), (b).

Two beneficiaries under a will, a mother and son, of whom the son was absolutely entitled to the corpus of certain trust funds subject to the mother's beneficial life interest therein, sought to render a trustee liable to make good to the trust estate certain sums come to his hands and not invested. The trustee employed C. or his firm as solicitors in the execution of the trusts of the will and had allowed the trust funds in question to remain under the control of C., who misappropriated them. The fraud was discovered on C.'s death shortly before the action. The funds sought to be recovered consisted of a specific sum of 31,000*l.*, which had been misappropriated by C. more than six years before the commencement of the action, and certain uninvested balances extending over a period of ten years, as to which an account was asked. The trustee pleaded s. 8 of the Trustee Act, 1888, as a defence to the action as against the mother, in reply to which the mother pleaded an acknowledgment by the trustee by payment to her of interest on the capital sums sought to be recovered within six years of the commencement of the action. At the trial no evidence was tendered in support of this replication except the capital and income accounts of C.'s firm with the trustee, which showed that interest on a portion of the 31,000*l.* and on the general balance of capital had been credited by the firm to the trustee:—

Held, first, that the accounts were not admissible as being entries by a dead man against interest, because the accounts were not the accounts of C., but of his firm, and also because they shewed only a payment of interest on debts due from the firm to the trustee, and not a payment of interest on a debt due from the trustee himself; secondly, that a payment of interest by a trustee of a settled fund to a tenant for life within the six years did not constitute an admission by the trustee of the existence of the trust capital which would enure for the benefit of the tenant for life, so as to take the case out of s. 8 of the Trustee Act, 1888.

Held, therefore, that as against the mother the defence of s. 8 of the Trustee Act, 1888, prevailed as to all moneys come to the trustee's hands and not invested more than six years before the commencement of the action.

The Court accordingly made an order on the trustee for payment to the trust estate of the 31,000*l.*, but declared that upon payment of the said sum the trustee would be entitled to receive the income thereof during the life of the mother, and directed an account as to the uninvested balances limited to six years before the commencement of the action. *In re FOUNTAINE. In re DOWLER. FOUNTAINE v. LORD AMHERST*

**C. A. [1909] W. N. 153:
[1909] 2 Ch. 382**

TRUSTEE (Breach of Trust)—continued.

— Interest, Rate of.

See **TRUSTEE—Interest. 1.**

— Investments—Shares in limited company.

See under **TRUSTEE—Investments.**

5. — *Limitations, Statute of*—"Action to which no existing Statute of Limitation applies"—Property "received by trustee and converted to his use"—Trustee Act, 1888 (51 & 52 Vict. c. 59), s. 8—*Real Property Limitation Act, 1874* (37 & 38 Vict. c. 57), s. 8—*Executor when becoming trustee.*

A testator bequeathed his personal estate to three trustees and executors upon trust for conversion and investment to provide an annuity to be paid to his wife during her life, and to divide the residue, and also the annuity fund at his wife's decease, into four shares, one of which was settled on a niece of the testator for life with remainder to her children, and the other three were divisible between the three executors equally. After the death of the widow the executors and trustees divided the fund set apart to answer the annuity, and instead of retaining the settled share, paid it away to the tenant for life. More than six years, and less than twelve years, after the death of the tenant for life, one of her children brought an action against the representatives of the three executors and trustees for an account of the settled share, and payment of what should be found due to the plaintiff :—

Held, that it must be assumed that the executors and trustees of the will acted duly in the administration of the estate, and became trustees of the fund upon the expressed trusts declared by the will, and that the action was not an action for a legacy within the *Real Property Limitation Act, 1874*, but was brought against the defts. in the character of trustees and not of executors, and was "one to which no existing Statute of Limitations" applied within the *Trustee Act, 1888*, s. 8, sub-s. 1 (b) :

Held, also, that as each of the executors and trustees received only the share which was payable to him by the terms of the will, it could not be held that a part of the settled share was received by him and "converted to his use" within the meaning of the exception contained in the earlier part of sub-s. 1 of s. 8 of the *Act of 1888* :

Held, therefore, that the action was barred under s. 8 of the *Act of 1888* by the lapse of six years from the time when the right of action accrued. *In re TIMMIS. NIXON v. SMITH*

Kekewich J. [1901] W. N. 242 ;
[1902] 1 Ch. 176

— Judgment for recovery of money—Four-day order.

See **ATTACHMENT. 15.**

6. — *Money lent to solicitor without security with notice*—Summary order on solicitor—Practice.

In an administration action it appeared that the trustee had lent moneys of the trust estate without security to his solicitor, who

TRUSTEE (Breach of Trust)—continued.

had accepted the loan with notice that it was trust money. The solicitor was not a party to the action :—

Held, that the Court, in the exercise of its summary jurisdiction over its officers, had power on motion in the action, to order the solicitor to bring the money into court.

In such a case the notice of motion should be entitled in the action, and in the matter of the particular solicitor. *In re CARROLL. BRICE v. CARROLL*

Farwell J. [1902] W. N. 109 ;
[1902] 2 Ch. 175

7. — *Partnership — Discharge — Liability of retired partners for trust debt*—Partnership Act, 1890 (53 & 54 Vict. c. 39), s. 17, sub-s. 3.

A power to lend trust money to a firm consisting of certain individuals does not authorize a loan to a firm indifferently constituted, whether including more individuals or less.

A testator who had been a partner in the firm of A. and W. Smith & Co. nominated his wife and two of the three remaining partners in the firm as his trustees, and he specially authorized his trustees to allow his share of the capital to remain as a loan to the firm so long as his trustees should think it safe to allow it to remain. The wife died. The amount of the capital was ascertained and continued as a loan to the firm, but without any bond or other obligation being given for it. The third partner, not a trustee, was dissatisfied with the conduct of the firm's business, the result being that he agreed to retire under an agreement by which the two trustee partners paid him a sum of 9000*l.* for his interest in the firm, and by which the trustee partners undertook to meet all the liabilities of the firm, take over all the assets, and relieve the third partner of all debts. The new firm was carried on by the two trustee partners under the old name, and it paid a half-year's interest on the debt due to the trust estate. A year after the retirement of the third partner, the trustee partners, as trustees, granted to the old firm and the third partner a discharge of the debt due to the trust. And about a month afterwards the new firm became insolvent and the two partners bankrupt. The trustee partners resigned their trusteeship, and new trustees were appointed, who acted as creditors on the new firm, and received a dividend out of the new firm's assets. They then raised against the retired third partner this action, claiming reduction of the discharge and payment of the balance of the trust debt :—

Held, affirming the decision of the First Division of the Ct. of Sess. (1900) 37 R. 577, that the discharge was a breach of trust on the part of the trustee partners from which the third partner could not profit, the discharge being gratuitous ; that the actings of the new trustees in ranking as creditors on the new firm's assets did not discharge the liability of the old firm ; and that the third partner was liable to make good the loss to the trust estate. *SMITH v. PATRICK*

H. L. (8c.) [1901] W. N. 96 ;
[1901] A. C. 282

TRUSTEE (Breach of Trust)—*continued*.

- Tenant for life and remainderman—Apportionment—Loss due to breach of trust.
See SETTLED LAND—Apportionment.
- Trustees not entitled to be excused—Erroneous advice of solicitor—Trustee company not gratuitous trustees.
See VICTORIA. 11.

Business.

1. — *Administration—Trustees carrying on testator's business—Defaulting trustee—Claim by creditors of the business—Indemnity.*

Where a testator's business is carried on after his death by his trustees under a power in the will, the right of the creditors of the business to be paid out of the trust estate in priority to the creditors of the testator, by virtue of the trustees' right of indemnity in respect of the debts properly incurred by them in carrying on the business, is not precluded by the fact that one of the trustees has been found a defaulter. *In re FRITH. NEWTON v. ROLFE. Kekewich J. [1902] W. N. 10; [1902] 1 Ch. 342*

Charity.

See under CHARITY.

Church.

- Trust—Declaration of trust in favour of the Greek Orthodox Church—Construction.
See Canada—Ecclesiastical Law. 1.

Company.

- Company—Debentures—Claim for interest by trustees as registered holders.
See COMPANY—Debentures. 51.
- Company—Debenture-holders' action—Trustees' costs—Same solicitor appearing for trustees and company.
See COMPANY—Debentures. 5.
- Company—Debentures—Remuneration of Trustees.
See COMPANY—Debentures. 50.
- Company—Winding-up—Contract to sell assets—Letters patent—Omission to assign before dissolution—Vesting order—Registration.
See COMPANY—Vesting Orders. 1.
- Improper investment by trustee—Procedure—Originating summons—Common account.
See TRUSTEE—Practice. 4.
- Stockholder a trustee and director—Alleged debt by stockholder to company—Retention of shares of stockholder and his transferees.
See COMPANY—Debentures. 7.

Compromise.

- Breach of trust—Compromise with one trustee—Right to prove in bankruptcy.
See TRUSTEE—Release. 1.
- Infant—Trust—Administration—Compromise—Jurisdiction of Court to approve—Trustee.
See INFANTS—Compromise. 1.

TRUSTEE—*continued*.**Conditions of Sale.**

- Title—Trust for sale—Leaseholds—Sale by way of underlease.
See VENDOR AND PURCHASER—Condition of Sale. 8.

Conversion.

- Trust for conversion.
See under CONVERSION.

Costs, &c.

See the statutes, &c., at the commencement of TRUSTEE, *ante*, pp. 2728, 2729.

1. — *Accounts—Rents and profits—Direction to accumulate—Disbursements—Subscription to charity—Voluntary school rate.*

The Court said that the question was whether the debt ought to be allowed a sum which as trustee of the rents and profits of real estate he had contributed to the support of a school which was not provided by the State, and therefore was not entitled to be supported out of the rents and profits. In one sense this was a mere subscription, and it could not be allowed as such. This payment was, however, ascertained, not by the generosity of the donor, but by an appeal to the rate-book, and if no one paid for the maintenance of this voluntary school the result would be that a board school would be established at a greater cost. The Court held, therefore, that this payment might be justified upon the principle that a trustee ought to be allowed what he reasonably paid to buy off a bigger payment. Further, the Court saw no reason why this sum should not be allowed as part of the trustee's costs, charges, and expenses, but preferred to base the decision upon the former ground. *How v. WINTERTON. Kekewich J. [1902] W. N. 230*

- Costs—Trustees.

See under SOLICITOR—Costs.

- Honest trustee—Settlement set aside—Post-nuptial settlement—Costs out of settled fund.

See FRAUDULENT CONVEYANCE. 2.

2. — *Security for costs—Action by trustees for wife under separation deed—"Nominal plaintiff"—Practice.*

Where trustees, to whom, by a covenant in a separation deed, a husband had covenanted to pay an annuity in trust for his wife, sued for arrears under that covenant:—

Held, that the plts. were not mere "nominal plts." within the rule as to giving security for costs, and, therefore, an order for security for costs could not be made against them on the ground that they were, if unsuccessful, without means of paying costs.

Greener v. E. Kahn & Co., [1906] 2 K. B. 374, discussed. WHITE v. BUTT

C. A. [1908] W. N. 208; [1909] 1 K. B. 50

- Security for costs—Insolvent plaintiff—Trustee of deed of assignment.
See COSTS. 55.

TRUSTEE (Costs, &c.)—continued.

- Solicitor—Charging order—Costs of plaintiff's solicitors—Costs of trustees—Trustees' right of indemnity—Priority.
See SOLICITOR—Costs. 9.
- Solicitor—Taxation.
See under SOLICITOR—Costs.
- Trustees' costs — Priority — Action against trustees—Result—Destruction of trust estate.
See SOLICITOR—Costs. 9.

Decision of Majority.

- “Site” — Trustees — Decision of majority binding minority—Will—Construction.
See CHARITY. 47.

Devastavit.

- Statute of Limitations—Claim on guarantee.
See EXECUTOR—Devastavit. 1.

Director.

- Trustee—Director's remuneration—Qualification shares received as trustee—Liability of director to account to cestui que trust for remuneration.
See COMPANY—Directors. 20.

Discharge.

1. — *No new trustee appointed—Administration action—Jurisdiction—Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 25.*

In an action to administer a trust the Court has jurisdiction to discharge a trustee without appointing a new trustee in his place.

Courtenay v. Courtenay, (1846) 3 J. & Lat. 519, 533, followed.

This cannot be done under s. 25 of the Trustee Act, 1893, as it is not the practice to reappoint continuing trustees in place of themselves and a retiring trustee.

In re Aston, (1883) 23 Ch. D. 217, applied.
In re CHETWYND'S SETTLEMENT. SCARISBRICK v. NEVINSON - *Farwell J.* [1902] W. N. 43; [1902] 1 Ch. 692

- Removability of trustee solicitor-donee — Fiduciary relation.
See SOLICITOR—Fiduciary Relation. 2.

Discretion.

- Disposal at discretion of trustees—Lapse—Exception from residue.
See WILL—Lapse. 2.

1. — *Trust—Gift of whole or annual income according to trustees' discretion—Assignment.*

A testator died in 1899 having by a trust disposition and settlement directed his trustees to set aside and invest in their own names, as trustees, the sum of 5000*l.* and pay to his brother during his lifetime “either the whole or only a portion of the annual revenue thereof, and that subject to such conditions and restrictions all as my trustees in their sole and absolute discretion think fit.”

TRUSTEE (Discretion)—continued.

The trustees paid to the brother 24*l.* 5*s.* only out of the income during five years. The trust was a difficult one to administer, the principal asset being the goodwill and stock in trade of a public-house which the trustees were only able to sell in 1901. It realized much less than was anticipated. They then became involved in litigation with other legatees, and finally an action was brought by the assignee of the brother's interest under the settlement claiming the whole free income then available of the 5000*l.* :—

Held (affirming the decision of the First Division of the Ct. of Sess., (1907) S. C. 517), that the assignee had no higher right than the brother, and that he had no right to the total income in question, its disposal being left absolutely to the discretion of the trustees.
TRAIN v. CLAPPERTON

H. L. (Sc.) [1908] W. N. 135; [1908] A. C. 342

Disentailing Assurance.

- Protector of settlement—Trustee for accumulation—Void trust.
See DISENTAILING ASSURANCE. 2.

Duty.

- Express trust — Infant legatee — Duty of executor to give notice of legacy.
See LIMITATIONS, STATUTES OF. 4.

Execution of Trust.

1. — *Trustees—Gift to persons upon trust to sell without adding “and their heirs”—Inability of executors of last surviving trustee to execute trust—Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), s. 30.*

The person who is to execute a trust or exercise a power must be a person who is in some way pointed out by the creator of the trust or power as a proper person to execute or exercise it.

A., who died in 1883, devised his residuary estate to B., C., D., and E. (the words “and their heirs” being omitted) upon trust, after B.'s death, for sale as if they were absolute owners. The will gave the trustees powers to postpone the sales, and demise and manage during postponement, and enabled the original number of trustees to be reduced, but not below two, on any appointment of new trustees.

All the trustees, who were also executors of the will, proved it, and in 1908 D., the surviving trustee, died, having appointed executors by his will :—

Held, that D.'s executors could not make a good title to a freehold house forming part of the residuary estate of A.

In re Ingleby and Boak and Norwich Union Insurance Co., (1883) 13 L. R. 1r. 326, followed.

In re Panton and Tong's Contract, [1897] W. N. 178; 46 W. R. 187, distinguished.

Osborne to Rowlett, (1810) 13 Ch. D. 774, doubted.

TRUSTEE (Execution of Trust)—continued.

Semble, that if in the will of A. the devise had been to the four trustees and their heirs, the heir of the surviving trustee could, apart from s. 30 of the Conveyancing and Law of Property Act, 1881, have executed the trust for sale and by virtue of that section his legal personal representatives would have been substituted for his heirs. *In re CRUNDEN AND MEUX'S CONTRACT* - - - **Parker J.**
[1909] W. N. 60; [1909] 1 Ch. 690

Executor.

See under **EXECUTOR**.

Executory Trust.

— Jewels—Trust to permit user by wife.
See **WILL**—Heirlooms. 2.

Foreign Trustees.

— Foreign shares, &c. — “Foreign trustees” — “Home trustees” — Locality—English assets.
See **ADMINISTRATION**. 11.

Fraud.

1. — *Fraud of co-trustee acting as broker for the trust—Liability—Reasonable precautions—Inscribed stock—Accepting transfer—Trustee receiving commission from co-trustee.*

The rule laid down in *Speight v. Gaunt*, (1883) 9 App. Cas. 1, “that in investing trust funds a trustee may employ a broker, and pay the purchase-money to the broker, if he follows the usual and regular course of business adopted by ordinary prudent men,” applies to a case where a co-trustee is employed and paid as broker under a clause in the will creating the trust.

It is not the usual course of business for purchasers of Colonial or other inscribed stocks to attend personally at the bank and accept the transfer, though that course is recommended by a note on the common form of stock receipt issued to purchasers by the bank. A trustee will not, therefore, be held liable for the fraud of his co-trustee, acting as broker, because he did not so attend and accept such a transfer, though he would have discovered the fraud if he had done so.

The mere fact that a trustee improperly accepted a share of commission from his co-trustee acting as broker, which he repaid to the trust fund before trial, does not make him a partner with his co-trustee, or liable to make good the loss occasioned by the fraud of the co-trustee committed in the transaction for which the commission was paid. *SHEPHERD v. HARRIS*
Farwell J. [1905] W. N. 108; [1905] 2 Ch. 310

Income Tax.

1. — *Duty of trustee to deduct income tax—Trustee and cestui que trust—Annuity—Liability to replace amounts paid in excess by not deducting the tax.*

S. by will gave his real and personal estate to trustees upon trust to convert and invest, to pay certain annuities out of the income and accumulate the residue of the income until the

TRUSTEE (Income Tax)—continued.

capital became divisible (or for twenty-one years) and subject thereto to hold capital and income in trust for his grandchildren in equal shares. The trustees invested the funds in such a manner that the income tax was always deducted before the income was paid to them. The successive trustees for over twenty years paid all the annuities in full without deducting income tax. Some of the trustees were also annuitants—

Held, that the trustees were liable to make good to the trust estate the amounts of income tax so overpaid to the annuitants:—

Held, also, that s. 8 of the Trustee Act, 1888, applied, and the liability of the trustees was limited to payments made within six years, except in the case of sums retained for their own annuities. *In re SHARP. RICKETT v. RICKETT* **Swinfen Eady J.** [1906] 1 Ch. 793

Indemnity.

1. — *Change of cestui que trust—Novation of right to indemnity—Onerous lease—Assignment of beneficial interest with trustee's concurrence.*

In 1879 two partners in a firm took an onerous lease on behalf of and as trustees for the partnership, and entered into joint covenants with the lessors. On Nov. 15, 1886, all the original partners, including the two trustees, entered into an agreement to transfer the assets and liabilities to a limited co. The co. agreed to indemnify the partners against the liabilities, and to take all reasonable steps in their power to bring about a novation to the co. of all liabilities of the partnership, and a release therefrom of the partnership and the several partners. On Nov. 27, 1886, one trustee died. On Nov. 4, 1887, the surviving trustee in pursuance of the agreement assigned the lease to the co. on the usual covenant for indemnity. About the same time he also conveyed other freehold and leasehold partnership property to the co. On Feb. 18, 1891, the surviving trustee died. In 1909, the co. having made default, the surviving trustee's executors were compelled to pay 5874*l.* for arrears of rent and breach of covenants of the lease. This was one of several actions by the surviving trustee's executors to obtain indemnity and contribution from the original partners, or their estates, the co.'s indemnity being worthless. The action was treated as a test action.

Swinfen Eady J., after referring to *Jervis v. Wolferstan*, (1874) L. R. 18 Eq. 18, 24; *Fraser v. Murdoch*, (1881) L. R. 6 App. Cas. 855, 872, and *Hardoon v. Belkiss*, [1901] A. C. 118, 123, as to the nature of a trustee's right to indemnity against his cestui que trust, and pointing out that in the present case the partners were the makers of the trust, and this very liability under the lease had been assumed at their request, said that prima facie a trustee's right of indemnity against a cestui que trust was not lost by the assignment of the beneficial interest, whether with or without the trustee's concurrence, which was quite unnecessary. It might well be that as between the old and new cestui que trust, the primary liability fell on the new cestui que trust, but that did not affect the trustee's right

TRUSTEE (Indemnity)—continued.

against the old cestui que trust. There was nothing in the agreement of 1886 to alter this position, or to affect any novation of the trustees' right to indemnity against the partners. That being so, the fact that the surviving trustee conveyed all the property to the co. without reserving any part to cover the indemnity was immaterial, as he was bound to do so under the agreement. The plts. were therefore entitled to indemnity. **MATTHEWS v. RUGGLES-BRISE Swinfen Eady J. [1910] W. N. 234**

Industrial and Provident Societies.

- Industrial and provident societies—Dissolution—Appointment of new trustee—Vesting order.
See INDUSTRIAL AND PROVIDENT SOCIETIES. 2.

Infants.

1. — *Administrator with will annexed* — "Property held by trustee in trust for an infant" — *Maintenance of infant — Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), s. 43.*

By her will a testatrix gave all her real and personal estate to her two children, a son and a daughter, and if either child should die under twenty-one, the survivor was to take the estate, and if both should die under twenty-one leaving lawful issue, the whole estate was given to such issue in equal shares, and if both should die under twenty-one without leaving lawful issue, she gave the estate to the next of kin according to the Statutes of Distribution of Intestates Estates, but excluding her husband. The testator did not appoint any executor under her will. She died on Jan. 11, 1902, and letters of administration, with the will annexed, were granted to the plt., who was also the guardian of the two infant children. The daughter married in 1904 while still an infant, and there was one child of the marriage. Her husband became bankrupt in 1905, and was unable to support his wife. The administrator entered into possession of the real and personal estate of the testatrix, and after clearing the estate, expended the whole or a large portion of the income of the estate, which amounted to 250% a year, in the maintenance of the two children of the testatrix. By an originating summons he now asked whether, as such administrator, he was justified, under the provisions of s. 43 of the Conveyancing Act, 1881, in applying towards their maintenance the income of the property so bequeathed to them.

Kekewich J. was of opinion that any man who held property which did not belong to him but to an infant held that property as trustee for the infant within the meaning of s. 43 of the Conveyancing Act of 1881, notwithstanding that for the purposes of other Acts and in other connections the word "trustee" might have an entirely different meaning. *In re ADAMS. VERRIER v. HASKINS* - **Kekewich J. [1906] W. N. 220**

- Infant — Maintenance — Tenant in tail in remainder — Order sanctioning mort-

TRUSTEE (Infants)—continued.

gage of real estate — Jurisdiction of Court.

See INFANT—Maintenance. 3.

- Vesting order—Stock in name of infant and another to which infant is entitled — Form of order—Practice.
See INFANT—Vesting Order. 1.

Insurance.

- Heirlooms, Power of trustees to insure and pay premiums out of income of capital moneys.
See SETTLED LAND—Heirlooms. 1.
- Rebuilding after fire—Title to and application of policy moneys—Settled land.
See INSURANCE (FIRE). 2.

Interest.

1. — *Breach of trust—Interest, Rate of—Trust moneys employed in trade.*

It is still the rule of the Court that a trustee who employs trust moneys in trade or speculative transactions must account for the profit he makes by such employment or, at the option of the cestuis que trust, be charged with interest at the rate of 5 per cent. *In re DAVIS. DAVIS v. DAVIS* **Farwell J. [1902] W. N. 81; [1902] 2 Ch. 314**

Investments.

1. — *Breach of trust—Power to invest on freehold or leasehold ground-rents—Will—Construction—Investment by trustees.*

The testator bequeathed the residue of his estate to his trustees, upon trust to invest the same on Government securities, "or upon freehold ground-rents or upon leasehold ground-rents not having less than sixty years unexpired and held direct from the freeholder," and to pay the income and dispose of the corpus as in the will mentioned.

The trustees laid out a large part of the residue in the purchase of leasehold ground-rents of the character authorized by the will.

The plt., who was a residuary legatee, claimed a declaration that the purchase of freehold or leasehold ground-rents was not authorized by the will. It was contended that the trustees were only authorized to invest on the security of ground-rents, not to purchase them. The defts. were the executors of a deceased trustee, who had been party to making the purchase, and the surviving trustee, who had been appointed after the purchase had been made.

Kekewich J. made a declaration that the purchase of either freehold or leasehold ground-rents was not authorized by the will.

The C. A. allowed the appeal, being of opinion that the will on the true construction of its words authorized the purchase of freehold ground-rents or leasehold ground-rents of the character specified. *In re MORDAN. LEGG v. MORDAN*

C. A. [1905] W. N. 47; [1905] 1 Ch. 515

2. — *Breach of trust—Shares in limited company—Reconstruction—Exchange of shares in old company for shares in new company—Retainer of shares—"Present form of investment."*

The testator authorized his trustees to retain

TRUSTEE (Investments)—continued.

any part of his estate "in its present form of investment." At the time of his death he held 750 fully paid ordinary shares of 5*l.* each in a limited co. which had no preference shares. These shares were of great value, and the trustees retained 520 of them. The co. was subsequently reconstructed; the old co. was wound up voluntarily, and a new co. formed with the same name. All the assets of the old co. were transferred to the new co.; the new co. carried on the business as before, and allotted to each member of the old co., in exchange for every fully paid share in the old co., one ordinary share of 5*l.* and one preference share of 5*l.* in the new co. credited as fully paid. No alternative terms were offered by which shareholders might have received payment in cash instead of in shares. The trustees accepted the shares allotted to them in exchange for their shares in the old co. The preference shares in the new co. were at the date of the hearing within the investment clause in the will. The question was whether they had power to retain the ordinary shares in the new co. :—

Held, that the ordinary shares in the new co. were within the words "in its present form of investment," and that the trustees were justified in retaining them. *In re SMITH. SMITH v. LEWIS* - - Buckley J. [1902] W. N. 143; [1902] 2 Ch. 667

— Colonial stock.

See under COLONIAL STOCK.

3. — *Company, Shares in limited—Trust estate—Business—Administration—Management—Powers—Investment—Reconstruction scheme—Concurrence of trustees—Exchange of shares of old company for shares in new—Cestuis que trust, Interests of—Parties under disability—Realization of shares—Retainer of shares—Sanction of Court—Jurisdiction.*

Where in the administration or management of a trust estate by the trustees, especially where the estate consists of a business or of shares in a mercantile co., there arises an emergency or a state of circumstances which it may reasonably be supposed was not foreseen or anticipated by the author of the trust and is unprovided for by the trust instrument, and which renders it desirable and perhaps even essential, in the interests of the beneficiaries, that certain acts should be done by the trustees which they themselves have no power to do, and to which the consent of all the beneficiaries cannot be obtained by reason of some not being sui juris or not yet in existence, the Court will exercise its general administrative jurisdiction by sanctioning, on behalf of all parties interested, those acts being done by the trustees.

Thus, the Court authorized the trustees of three separate trust instruments to concur in a shareholders' scheme for the reconstruction of a prosperous limited co., shares in which settled by the settlor or testator in each case had become vested in the trustees, it being proposed that all the shareholders in the existing co. should exchange their shares, all of which were fully paid, for more realizable shares (fully paid) and debentures in the proposed new or reconstructed co. The evidence shewed that the scheme would be

TRUSTEE (Investments)—continued.

greatly to the advantage of all parties interested under the several trusts, including infants and unborn persons. In one of the three cases the trustees had power, under the trust instrument, to invest in shares or debentures of such a co. as the proposed new co. In the two other cases, as the trustees had no such power, the Court put them on an undertaking to apply for leave to further retain the shares and debentures they would obtain under the scheme, if they desired to retain them beyond one year from the time the construction should be carried into effect.

In re Crawshay, [1888] W. N. 246, 251; 60 L. T. (N.S.) 357, and *In re Morrison*, [1901] 1 Ch. 701, considered. *In re NEW. In re LEAVERS. In re MORLEY*

C. A. [1901] W. N. 162; [1901] 2 Ch. 534

Note.

Explained by C. A., *In re Tollemache*, [1903] 1 Ch. 955. *Trustee—Investments. 16.*

New & Dale Steamship Co. and British South American Steamship Co., In re, [1903] 1 K. B. 262.

See *In re Macfadyen*, Phillimore J. [1908] W. N. 13. *Bankruptcy—Arrangement. 5.*

4. — *Corporation, Stock issued by—Authorized investment—Stock of municipal borough—Limit of population—Returns of last census—Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 1 (m).*

In the returns of the census, made in April, 1901, it is stated that the population of the borough of Bournemouth was 47,003. But in a note at the foot of the page it is stated that by an order of the Local Government Board, which came into operation on Nov. 9, 1901, the borough was extended so as to embrace two specified urban districts and parts of two other parishes, and that the figures at the date of the census were for Bournemouth 59,762 :—

Held, that under s. 1 (m) of the Trustee Act, 1893, trustees were authorized to invest in stock issued by the corporation.

Decision of Joyce J. reversed. *In re DRUITT. DRUITT v. DEHLER* - C. A. [1903] W. N. 39; [1903] 1 Ch. 446

5. — *Following trust money—Banking account—Mixed fund—Investment—Appropriation of payments—Breach of trust.*

Where a trustee paid trust money into his banking account whereby it became mixed with his own money, and out of moneys drawn from the account purchased an investment in his own name, but subsequently applied the balance to his own purposes, his representatives cannot successfully maintain that the investment was purchased out of the trustee's own money, and that what has been spent, and can no longer be traced and recovered, was the money belonging to the trust.

Brown v. Adams, (1869) L. R. 4 Ch. 764, is overruled by *In re Hallett's Estate*, (1880) 13 Ch. D. 696. *In re OATWAY. HERTSLET v. OATWAY* - Joyce J. [1903] 2 Ch. 356

6. — *Improper investment—Breach of trust—Power to invest on real or leasehold security "in*

TRUSTEE (Investments)—continued.

his own name or under his legal control—*Underlease—Contributory mortgage—Reliance on solicitor—Report of independent valuer—Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 8—Relief under Judicial Trustees Act, 1896 (59 & 60 Vict. c. 35), s. 3.*

The trustee of a will was directed to invest the trust funds "in his own name or under his legal control" in (amongst other modes of investment) freehold, copyhold, leasehold, or chattel real securities. He invested a sum of 2000*l.*, part of the trust funds, on a contributory mortgage of certain leasehold flats held under underleases at substantial rents. The security was introduced by a surveyor to the trustee's solicitor, who recommended it to the trustee and suggested the same surveyor as a suitable person to value the property on the trustee's behalf. The trustee appointed the surveyor and it was arranged that he should be paid a fee only in the event of the mortgage going through. The surveyor made his report, from which it appeared that the property was of a speculative character, but the surveyor nevertheless advised that it formed a good security for the sum proposed to be advanced by the trustee and his co-mortgagee. The trustee, relying on the advice of his solicitor and on the report, advanced the 2000*l.* The mortgagor subsequently became insolvent, and the trustee and his co-mortgagee were compelled to sell the property under their power of sale, with the result that the greater part of the 2000*l.* advanced by the trustee was lost. In an action against the trustee for breach of trust:—

Held, that the investment was improper and a breach of trust; that in making it the trustee, although he had acted honestly, had not acted "reasonably," and that he was therefore not entitled to be relieved or excused from personal liability under s. 3 of the Judicial Trustees Act, 1896. *In re DIVE. DIVE v. ROEBUCK*

Warrington J. [1909] 1 Ch. 328

— Improper investment by trustee—Common account—Procedure—Originating summons.

See TRUSTEE—Practice. 4.

7. — Improper investments by trustees — Breach of trust — Power to invest on real security in Ireland — Puisse mortgage — Relief under Judicial Trustees Act, 1896 (59 & 60 Vict. c. 35), s. 3.

The trustees of a marriage settlement were thereby directed to invest the trust funds in (among other alternative modes of investment) Government securities of India, or on freehold copyhold, leasehold, or chattel real securities in England, Wales, or Ireland, and were empowered to vary investments with the consent of the husband and wife during their joint lives. Lands in Ireland, which were already subject to mortgages for 4700*l.* and 2460*l.*, were further mortgaged for a sum of 17,900*l.*, which was by subsequent payments reduced to 12,150*l.* There were three sub-mortgages of the last mentioned mortgage for the sums of 4000*l.*, 2153*l.*, and 5000*l.* respectively. The trustees of the marriage settlement, without the consent of the wife, sold out

TRUSTEE (Investments)—continued.

India stock forming part of the trust funds, and invested the proceeds thereof on a transfer of the third sub-mortgage for 5000*l.* They took no legal advice as to the propriety of this investment before making it. In an action against the surviving trustee of the settlement for breach of trust:—

Held, without deciding whether a puisne mortgage on land in Ireland is of necessity and in all cases an improper investment for trust funds, that an investment of such a nature as the trustees had made in the case before the Court was a breach of trust, and that, under the circumstances, the deft. ought not to be relieved from liability in respect thereof under the Judicial Trustees Act, 1896, s. 3. **CHAPMAN v. BROWNE** . . . **C. A. [1902] 1 Ch. 785**

— Investment by trustees—Breach of trust—Purchase of leasehold ground-rents.
See WILL—Investments. 1.

8. — Investment expressly forbidden — Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 1.

A direction to keep trust funds and invest them in one particular way does not "expressly forbid" investment in any of the investments authorized by the Trustee Act, 1893. *In re BURKE. BURKE v. BURKE*

Neville J. [1908] W. N. 131; [1908] 2 Ch. 248

— Investments, Power to retain—Hazardous securities—Tenant for life and remainderman.

See WILL—Investments. 6.

— Liability—Misappropriation—Restoration of capital with interest at 5 per cent.—Unauthorized investment.

See TRUSTEE—Liability. 1.

9. — Mortgage — Authorized investment — Breach of trust — Negligence — Duty of trustees to make periodical or further investigations as to title of the security or solvency or sufficiency of a mortgagor.

When the Court is dealing with an authorized investment, whether it is an investment authorized in the sense that the trustees may themselves make the investment or whether the Court is dealing with a specific investment transferred to trustees and thereby becoming authorized, although not an investment which they themselves might have made, in either case there is no obligation or duty on the part of trustees to make periodical or further investigations as to either the title of the security or the solvency or the sufficiency of the mortgagor; but if there are circumstances which suggest to a reasonable man that the security is in jeopardy, the duty may arise. The liability of a trustee in dealing with an authorized security must really proceed on the footing of wilful default and not upon not making inquiries when he ought to do so.

Rawsthorne v. Rowley (reported (1907) 24 Times L. R. 51). The judgments in this case are set out in a note to *Shaw v. Cates*, [1909] 1 Ch. 389, at p. 409. **RAWSTHORNE v. ROWLEY**

C. A. [1909] 1 Ch. 409, n.

See next Case.

TRUSTEE (Investments)—continued.

10. — *Mortgage—Breach of trust—Hazardous security—Depreciation—Valuation—Negligence—“Two-thirds” limit—Method of valuation—Repairs—Leases* Trustee Act, 1888 (51 & 52 Vict. c. 59), s. 4—Trustee Act, 1893 (56 & 57 Vict. c. 53), ss. 8, 9—*Judicial Trustees Act*, 1896 (59 & 60 Vict. c. 35) s. 3.

The plts. brought an action for a declaration that an investment of 440*l.* trust moneys on mortgage of freehold house property was a breach of trust, and that the mode in which the property was subsequently neglected was a further breach of trust, on the ground that the property was not a proper security for any part of the trust funds; that the trustees did not have a valuation made by a properly instructed and independent valuer; that the valuation which was in fact made was unsatisfactory; that the mortgagor ought to have covenanted to keep the property in repair, and ought not to have been empowered to grant leases. The property depreciated in value, and two of the mortgaged houses ceased to be let and fell into despair, and the beneficiaries contended that the trustees ought to have taken steps from time to time to ascertain the condition of the property:—

Held, that it was not proved that the property was of such a nature as to be wholly improper for the investment of trust moneys, but that the valuation obtained by the trustees was not such a valuation as is contemplated by s. 8 of the Trustee Act, 1893. The duties of trustees acting without such a valuation considered, and the trustees held not to have acted as prudent men nor to be entitled to the benefit of s. 3 of the Judicial Trustees Act, 1896.

In applying s. 9 of the Trustee Act, 1893, the Court will be guided by the principles which obtained before the passing of the Trustee Act, 1888, as to the margin of value to be required. Applying these principles, the Court held that the property was a good security for at most 3400*l.*, and that the trustees must make good the balance.

Held, that the trustees were not liable under the circumstances of this case for not insisting on a covenant to repair, or a clause precluding the mortgagor from granting occupation leases or for neglect to inspect the mortgaged property from time to time.

Methods of valuation and the duties of valuers discussed. *SHAW v. CATES*

Parker J. [1909] W. N. 7;
[1909] 1 Ch. 389

11. — *Nominal debentures issued under Local Loans Act*, 1875 (38 & 39 Vict. c. 83)—*Trustee Act*, 1893 (56 & 57 Vict. c. 53), s. 1 (g); s. 5, sub-s. 3; s. 50—*Railway companies*.

The general statutory power of a trustee to invest in the debenture stock of a certain class of rys. under s. 1 (g) of the Trustee Act, 1893, is not enlarged by s. 5, sub-s. 3, so as to enable him to invest in nominal debentures issued under the Local Loans Act, 1875, as the latter sub-section is impliedly confined to the enlargement of express powers of investment. *In re TATTERSALL*. TOPHAM v. ARMITAGE

Swinfen Eady J. [1906] W. N. 148;
[1906] 2 Ch. 399

TRUSTEE (Investments)—continued.

12. — *Partnership—Conversion into company—Will—Exchange of testator's interest in the business for shares in the company—Agreement by executors—Jurisdiction to sanction*.

The Court has no jurisdiction to sanction an agreement by which executors and trustees propose to concur in converting into a limited co. a business in which their testator was a partner, where, by the terms of the agreement, the testator's share in the business will be exchanged for shares and debentures which the executors and trustees are not authorized by the will to hold. *In re MORRISON*. MORRISON v. MORRISON

Buckley J. [1901] W. N. 60; [1901] 1 Ch. 701

Note.

Considered by C. A., *In re New*, [1901] 2 Ch. 534. See *NO* 3, *above*.

13. — *Power to retain “in the present state of investment”—Settlement—Construction—Shares in company—Power to retain “in the present state of investment thereof”—Substitution of shares in different companies—Retainer of shares—Unauthorized investments—Accretion—Capital or income*.

By a marriage settlement made in 1902 it was declared that the trustees thereof should hold certain investments (which had been transferred by the husband into their joint names) upon trust either to allow the same “to remain in the present state of investment thereof” or, with specified consent, to sell the same, and invest the proceeds in investments therein mentioned and pay the annual income thereof to the husband for life, and after his death to his wife for life, and after the death of both, to hold the investments upon the usual trusts for the children of the marriage, with an ultimate trust, in the event of there being no children, in favour of the husband absolutely.

By cl. 11 of the settlement the trustees were authorized to exercise any preferential right that might be offered to them to subscribe for new or other shares in any co. in which they held shares or stock, and to dispose of the same, and every premium or profit arising therefrom was to be applied by them as if the same were income. One of the investments so transferred to the trustees consisted of 109 shares in an American financial co. called the Northern Securities Co., which was formed to acquire and hold shares in other corporations, and held a large number of shares in, and controlled the policy of, two American ry. cos., the Great Northern Ry. Co. and the Northern Pacific Ry. Co.

In 1904 the capital stock of the Northern Securities Co. was cancelled to the extent of 99 per cent., and in lieu of their 109 shares in that co. the trustees of the settlement received thirty-two fully paid-up shares and a fractional share in the capital stock of the Great Northern Ry. Co., forty-two fully paid-up shares and a fractional share in the capital stock of the Northern Pacific Ry. Co., and one fully paid-up share and a fractional share in the Northern Securities Co.

In 1905 and 1906 the trustees received three options to take up new stock in respect of the

TRUSTEE (Investments)—continued.

thirty-two shares in the Great Northern Ry Co. and of the forty-two shares in the Northern Pacific Ry. Co., and in exercise of these options they paid certain instalments, and in one instance sold the right of option. The husband having died and there being no children of the marriage, the wife claimed the proceeds of the options as income under cl. 11 of the settlement, subject to repaying the trustees what had been paid in respect of the new shares:—

Held, that the shares in the two ry. cos. were not the same shares which were transferred to the trustees at the date of the settlement, and therefore the trustees were not authorized by the terms of the settlement to retain them.

In re Smith, [1902] 2 Ch. 667, distinguished and discussed.

Held, accordingly, that the accretions to the shares, by reason of the exercise of the options, belonged to the capital of the trust estate, and could not be treated as income under cl. 11 of the settlement. *In re ANSON'S SETTLEMENT*. **EARL OF LOVELACE v. ANSON** **Kekewich J.** [1907] W. N. 196; [1907] 2 Ch. 424

— Power to trustees to retain investments — Hazardous securities.

See WILL—Investments. 5.

— “Securities”—Power to transpose and vary—Implied power to resell.

See VENDOR AND PURCHASER—Title. 19.

— Settled land.

See under SETTLED LAND—Investments.

14. — Time—Discretion as to the time for converting into money the personal estate of testator invested in stocks, shares, and other investments—Trust estate—Management—Costs.

The Court recommended the applicants, the trustees of the will and codicils of the testator, to sell gradually, and under the advice of such stockbrokers or stockbroker as they may think fit to employ, the whole of the sums of ry. stock, together with any other stocks of those rys. not being debenture stocks, which have been allotted to and taken up by the trustees for the time being of the will and codicils. But the Court being of opinion that, according to the true construction of the will and codicils, the trustees for the time being thereof have an absolute discretion as to the time for converting into money the personal estate of the testator invested in stocks, shares, and other investments at the time of his decease, doth not think fit to interfere with such discretion by giving any directions. Costs of all parties to be taxed as between solicitor and client and to be raised and retained by the trustees out of the testator's residuary personal estate. *In re HARGREAVES*. **HICK v. HARGREAVES** **Kay J.** [1901] 2 Ch. 547, n.

— Trust—Investment—Railway or other “public company”—American company.

See WILL—Investments. 4.

15. — Unauthorized investment—Breach of trust—Partly paid shares—Death of co-trustee—Call on shares—Contribution.

TRUSTEE (Investments)—continued.

Two trustees in breach of trust invested trust funds in partly paid shares of a co.

Some years after the death of one trustee, the survivor, who had made every reasonable effort to dispose of the shares, but without success, paid a call of 800*l.* as a contributory in the liquidation of the co:—

Held, that the deceased trustee's representatives, though not liable to the co. for the call, were liable to the surviving trustee for contribution.

Ashhurst v. Mason, (1875) L. R. 20 Eq. 225, explained and applied. **JACKSON v. DICKINSON** **Swinfen Eady J.** [1903] W. N. 74; [1903] 1 Ch. 947

16. — Unauthorized investment, Change of—Emergency—Sanction of Court—Jurisdiction—Trust—Administration—Management.

The rule laid down in *In re New*, [1901] 2 Ch. 534, as to the exercise by the Court of its extraordinary jurisdiction in relation to the administration of trust, in sanctioning acts by trustees going beyond the express provisions of the trust instrument, is limited to cases of emergency, and does not cover every case in which a particular act is desired to be done merely because it appears beneficial to the estate. For instance, the Court will not sanction an unauthorized change of investment proposed on the mere ground that it will be to the advantage of the beneficiaries.

Decision of *Kekewich J.*, [1903] W. N. 18; [1903] 1 Ch. 457, affirmed. *In re TOLLEMACHE* **C. A.** [1903] W. N. 98; [1903] 1 Ch. 955

17. — Unauthorized investment—Contributory mortgage—Breach of trust—Bankruptcy of trustee—Proof against the bankrupt's estate—Valuing security—Measure of damages—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 168, and Sched. II., rr. 9—16.

L., a trustee, advanced trust funds on a contributory mortgage, which was an unauthorized investment. He afterwards became bankrupt. The mortgagor commenced an action against L., and all others claiming through or under him, to set aside the mortgage on the ground of fraud. L.'s cestuis que trust compromised their claims in the action without the concurrence of L.'s trustee in bankruptcy:—

Held, that, as L.'s cestuis que trust had adopted the improper investment, they could not under the circumstances prove in L.'s bankruptcy for the whole amount of the trust fund, but that their remedy was a proof for the damages the trust estate had sustained by reason of the improper investment, and that the measure of damages was the difference between the total sum invested and the assessed value of the compromise.

The dictum of *Kekewich J.* in *In re Salmon*, (1889) 42 Ch. D. 356—8, as to the relative rights of trustee and cestuis que trust, where the trustee makes an improper investment, applied. *In re LAKE*. *Ex parte HOWE TRUSTEES* - **Wright J.** [1903] W. N. 9; [1903] 1 K. B. 439

— Unauthorized securities—Express power to retain.

See SETTLED LAND—Investments. 3.

TRUSTEE (Investments)—continued.

— Will.

*See under WILL—Investments.***Leases.**— Club, Liability of trustees of, in respect of leases—Liability of members of club.
See CLUBS. 1.

— Lease—Settled estates.

*See under SETTLED LAND—Leases.***1.—Power of trustees to grant mining leases—Unopened mines.**

A testatrix by her will devised to her trustees her undivided share in certain lands upon trust for sale, conversion, and investment and gave them power to postpone such sale and conversion, and declared that whilst any part thereof should remain unsold it should be lawful for her trustees to let and manage and to join with any other person or persons in letting and managing all such part thereof as for the time being should remain unsold, and also gave them power to grant any building or other leases for such term at such rents and upon such conditions as they might think fit. There were mines of coal and other minerals existing under the lands, some of the mines being open and others unopened:—

Held, that the trustees had power to join with the persons entitled to the other undivided shares in the lands in granting mining leases, but that the power did not extend to unopened mines.

Opinion of Kindersley, V.-C. in *Clegg v. Rowland*, (1866) L. R. 2 Eq. 160, 165, followed. *In re BASKERVILLE. BASKERVILLE v. BASKERVILLE* - - - Joyce J. [1910] W. N. 175; [1910] 2 Ch. 329

Liability.

— Investments.

*See under TRUSTEE—Investments.***1. — Misappropriation — Liability — Settled fund—Unauthorized investment—Restoration of capital with interest at 5 per cent.—Capital and income—Claim of capital to excess of interest beyond amount obtainable from authorized investments.**

The sole trustee of a marriage settlement realized a sum of Consols which had fallen into possession and formed part of the settled funds, and in breach of trust applied the proceeds in paying off a private debt which bore interest at 5 per cent. Subsequently he restored the capital in full to the trust estate, and it was assumed that he had paid interest thereon at the rate of 5 per cent. to the tenant for life under the settlement, who made no claim against him:—

Held, that the persons entitled under the settlement to the fund in remainder were not entitled, as against the tenant for life, to attribute to capital the excess of interest over the amount which would have been produced if the fund had been invested in authorized securities, and that the trustee had completely discharged himself.

Stroud v. Gwyer, [1860] 28 Beav. 130, followed and approved. *SLADE v. CHAINE*

C. A. [1908] W. N. 36; [1908] 1 Ch. 522

TRUSTEE—continued.**Limitations, Statute of.**

— Express trust—Fiduciary relation.

*See LIMITATIONS, STATUTE OF. 4.***Lunacy.**

— Criminal lunatic—Form of vesting order—Stock—Repealing Act—Saving clause, Effect of.

See LUNACY. 7.

— Lunatic—Committee—Power of appointment vested in lunatic “in the character of trustee”—Power of appointment.

*See LUNACY. 21.***Management.**

— Investments.

*See under TRUSTEE—Investments.***Mortgages.**

— Mortgage—Payment into Court by trustees under Trustee Act, 1893—Payment out—Application by mortgagors—Terms imposed by Court.

*See MORTGAGE—Payment, &c.***1. — Report of surveyor as to value—Surveyor's fees—Abortive negotiation—Practice—Trustee Act, 1893 (56 & 57 Vict. c. 53).**

Action by trustees to recover the costs of an abortive negotiation for a loan to the deft. on mortgage. In support of the plts.' case the surveyor who had been employed to report on the property on behalf of the plts. was called and was asked in cross-examination whether it was not the usual practice of surveyors, when valuing on behalf of trustees property submitted to them for mortgage, to charge either a preliminary fee or no fee at all in the event of the mortgage not going through. Before the hearing was concluded the parties came to a settlement of the questions in dispute, and the only matter calling for a note is with reference to the statement of Warrington J. on the practice above suggested.

Warrington J. said he wished to make a statement of general interest. The surveyor had been called as a witness and had been asked if it was not usual where the transaction fell through to take either no fee or a preliminary fee—at any rate, no fee for making his report. If that were the practice it seemed a most reprehensible one, and one which might get trustees into difficulties. For it was obvious that in such a case it was to the surveyor's interest to make such a report as would enable the transaction to go through, whereas it was his duty to advise the trustees independently and without reference to his fees. It was well that surveyors and trustees should know that the practice was one which ought not to be countenanced, and that a certificate by a surveyor in such circumstances might not be one which could be accepted by the Court under the Trustee Act, 1893. It was the more desirable to make this statement, because in a recent case before himself there was evidence that the practice existed. *MARQUIS OF SALISBURY v. KEYMER*

Warrington J. [1909] W. N. 31

TRUSTEE—continued.**Negligence.**

- Negligence—Omission to get possession of title-deeds.

See **MORTGAGE—Priority**. 6.

Notices.

- To one of several trustees—Death of trustee who had notice—Priority.

See **ASSIGNMENT**. 10.

Overpayments.

1. — *Adjustment—Trustee also a beneficiary—Right to impound—Trustee and cestui que trust—Administration—Tenants for life.*

Where a trustee, who was himself one of the beneficiaries, had inadvertently overpaid the other beneficiaries their shares of income, and died before any adjustment had been made:—

Held, that the executors of the deceased trustee were not entitled to recover from the other beneficiaries the amounts so overpaid, or to have accrued or future income impounded till the shares were equalized, by reason of the fact that their testator himself was the person responsible for the mistake that had been made. *In re HORNE. WILSON v. COX SINCLAIR*

Warrington J. [1905] 1 Ch. 76

Partnership.

- Breach of trust—Director of company and member of partnership—Misappropriation—Joint and several proof.

See **BANKRUPTCY—Proof**. 3.

Powers.

- Appointment of trustees.

See under **TRUSTEE—Appointment**.

- Debenture trustees, Power of—Licence, Non-renewal of—Compensation—Capital moneys—Investment.

See **BREWERS**. 1, 2, 3.

- Estate pur autre vie, Trustees with—Limited owners with powers of life tenant—Non-beneficial owners.

See **SETTLED LAND—Powers**. 3.

- Life tenant—Trustees in possession—Powers of management.

See **SETTLED LAND—Powers**. 2, 3.

1. — *Power given to "my said trustees"—Power whether personal or annexed to the office—Construction of Will.*

A testator appointed his wife M., his brother C., and his friend R. executors and trustees of his will, and gave to "my said trustees" all his estate upon trust for his wife for life, "with full power to my said trustees" to sell the whole or any part of his estate and apply the proceeds for the benefit of his wife during her life:—

Held, that the power was not personal to the trustees originally named, but was annexed to the office and could be exercised by the trustees or trustee for the time being.

The general principle laid down by the Master of the Rolls (Sir W. Grant) in *Cole v. Wade*, (1807) 16 Ves. 27, 44; 10 R. R. 129, 135, that "wherever a power is of a kind, that indicates a personal confidence, it must prima facie be

TRUSTEE (Powers)—continued.

understood to be confined to the individual to whom it is given; and will not, except by express words, pass to others, to whom by legal transmission the same character may happen to belong," dissented from as being inconsistent with the principle of the decision of the C. A. in *Crawford v. Forshaw*, [1891] 2 Ch. 261. *In re SMITH. EASTICK v. SMITH*

Farwell J. [1903] W. N. 207; [1904] 1 Ch. 139

Practice.

1. — *Appeal—Will—Construction—Trustees served with notice of appeal—Appearance by counsel—Costs—Taxation.*

Per Romer and Cozens-Hardy L.J.J.: Although it is the settled practice that trustees served with notice of an appeal upon the construction of a will are entitled to their costs of appearance by counsel, yet, in taxing their costs of appearance, the taxing Master should have regard to the position of the trustees, and especially whether it was such that, at the hearing of the appeal, their assistance would probably be required by the Court.

Per Vaughan Williams L.J.. Trustees served with notice of appeal and holding a merely neutral position, without any intention of taking part in the argument, ought not to appear by separate counsel on the appeal. **CARROLL v. GRAHAM - - C. A. [1804] W. N. 199; [1905] 1 Ch. 478**

2. — *Originating summons—Trustees—Beneficiary—Same counsel.*

Counsel should not appear both for a neutral trustee and a life-tenant. *In re BURTON. DANBY v. BURTON*

Farwell J. [1901] W. N. 202

- Parties.

See under **PRACTICE—Parties**.

- Parties—representation of unborn children—Settlement.

See **MARRIAGE**. 4.

3. — *Plaintiff suing as trustee—Unliquidated damages due to defendant from cestui que trust—Equitable defence—Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 24, sub-ss. 2, 3—Order XIX., r. 3.*

In an action to recover a debt due to the plt. as a trustee, the deft. is entitled to set up as a defence that the cestui que trust is indebted to him in a sum for unliquidated damages exceeding the amount of the claim. **BANKES v. JARVIS Div. Ct. [1903] 1 K. B. 549**

4. — *Procedure—Originating summons—Common account—Breach of trust—Improper investment by trustee.*

By an order of Aug. 4, 1902, made on originating summons, an account was directed of the capital of the personal estate of a testator not specifically bequeathed and the proceeds of sale of real estate received by the trustees of the will. The master by his certificate dated June 20, 1904, disallowed, as against the surviving trustee, a sum of 500*l.* which had been invested by the

TRUSTEE (Practice)—*continued.*

trustees on a mortgage and was not forthcoming. It appeared that the trustees of the will had advanced the money on a second mortgage, and that the money had subsequently been lost. The surviving trustee took out a summons asking that the certificate might be varied by allowing the 500*l.* as a payment.

Kekewich J. said that he must decline to go into the question whether or not an investment on a second mortgage was a breach of trust. His conviction was that the affirmative had been accepted by the profession as settled law for certainly fifty years, and it would not be right now to allow the question to be argued in this Court. Then it was said that the question could not properly be raised in these proceedings. The account which had been directed was what is vulgarly called a common account, and, quite apart from the fact that it was made on an originating summons, it was said that breach of trust could not be charged on a common account. But the accepted interpretation of an order in this form was that the trustee was bound, not only to bring in an account of his receipts, but to discharge himself as regards those receipts, and shew what he had done with the money received. The case of *In re Stuart* was an authority directly in point. No doubt Stirling J. in his judgment went on the footing of the peculiar character of the case, but he gave a considered judgment in which he dealt with the very point now under consideration. It could not be said to be obiter dictum, though, even if it were, the obiter dictum of such a judge would deserve the greatest respect. It was a deliberate expression of his opinion, and, recognising the general rule that a question of breach of trust cannot be raised on originating summons, and having before him what was said by Lord Macnaghten in *Douse v. Gorton*, [1891], A. C. 190, he said this, "If again an investment were made in improper securities not authorised by the terms of the will or the general law," the trustee "is not allowed to discharge himself on account of that investment, and he is charged in respect of it on the common account." All the Court had to consider was how the account now stood. On the trustee's account the matter was perfectly plain. He had invested money on a second mortgage; he had not invested it at all qua trustee; and therefore he had not invested it all. The summons was therefore refused. *In re NEWLAND. BUSH v. SUMMERS*

Kekewich J. [1904] W. N. 181

— Service.

See under PRACTICE—Service.

Public Trustee.

For statutes, and rules and orders relating to the Public Trustee, see the paragraphs at the commencement of TRUSTEE.

— Public trustee appointed to act with continuing trustee.

See TRUSTEE—Appointment. 8.

TRUSTEE—*continued.***Purchase.**

1. — *Purchase by trustee—Leaseholds forming part of trust estate—No right of renewal—Reversion purchased by trustee—Ownership of the fee—Trust—Partner.*

The doctrine that wherever the reversion on a lease which forms part of a trust estate is purchased by the trustees of the lease the purchase is for the benefit of the trust estate applies only to leaseholds which are renewable by custom or contract. Therefore if a trustee of a lease which is not thus renewable buys the reversion on the lease, he may, in the absence of fraud, hold it for his own benefit.

Longton v. Wilsby, (1897) 76 L. T. 770, explained and followed. *BEVAN v. WEBB*

Warrington J. [1905] W. N. 58 ;
[1905] 1 Ch. 620

— Vendor's lien — Unpaid purchase-money — Reversionary interest, Sale of—Trustee purchaser.

See VENDOR AND PURCHASER—Lien. 1

Release.

1. — *Breach of trust—Joint and several liability—Compromise with one trustee—Release pro tanto of the others—Right to prove in the bankruptcy of another trustee for full amount of debt.*

Where in an action against trustees for breach of trust a sum is certified to be due from the debts to the plt., the acceptance by the plt. of a payment by one trustee by way of compromise in discharge of his liability does not operate as a release pro tanto of the others; consequently the plt. may prove in the bankruptcy of another trustee for the full amount of the certified debt without giving credit for the compromise. *EDWARDS v. HOOD-BARRS*

Kekewich J.
[1904] W. N. 204 ; [1905] 1 Ch. 20

Removability.

— Trustee solicitor-donee, Removability of—Fiduciary relation.

See SOLICITOR—Fiduciary Relation.

2.

Resulting Trust.

See under TRUST.

Retainer.

— Debt due from legatee to estate—Liability to account—Bankruptcy—Acceptance of dividend—Assent to composition.

See WILL—Trustee. 1.

1. — *Trustee and cestui que trust—Sole surviving trustee—Legal personal representative—Breach of trust—Debt due to trust estate—Insolvent estate—Right of retainer—Obligation to retain—New trustees, Appointment of—Cestuis que trust, Rights of.*

The legal personal representative of a sole surviving trustee who has died insolvent and indebted to his trust estate cannot unless he has elected to act as trustee or is otherwise in the position of trustee, be ordered to exercise, in favour of the cestuis que trust, his right of retainer in respect of the debt.

H. appointed two trustees of her will, and

TRUSTEE (Retainer)—continued.

declared that all the trusts and powers thereby reposed in them might be exercised by the survivor or his heirs, executors or administrators, or other the trustee or trustees for the time being. B., one of the trustees, survived his co-trustee and died insolvent, intestate, and having committed a breach of trust in respect of which his estate was indebted to the H. estate. B.'s widow took out administration to his estate, and then appointed new trustees of H.'s will under a power therein contained; and from time to time, as portions of the H. estate came to her hands, she transferred them to the new trustees.

Judgment for the administration of B.'s estate having been pronounced in an action brought by a creditor, the new trustees applied by summons in the action for an order on the administratrix to exercise her right of retainer in their favour as trustees of H.'s will, she having declined to do so or to act in any way in the trusts:—

Held, that, as the administratrix was neither a trustee of the will nor had in any way accepted the trusts, she was not under any obligation to exercise her right of retainer in favour of the trustees or beneficiary under H.'s will.

Whether in any case, after the appointment of new trustees, the right of retainer continued to be exercisable, *quære*.

Fox v. Garrett, (1860) 28 Beav. 16; and *In re Owen*, (1889) 23 L. R. Ir. 328, disapproved.

Sander v. Heathfield, (1874) L. R. 19 Eq. 21; and *Re Faithfull*, (1887) 57 L. T. 14, distinguished.

In re Ridley, [1904] 2 Ch. 774 approved.

Decision of Buckley J. reversed. *In re BENETT. WARD v. BENETT* C. A. [1905] W. N. 173; [1906] 1 Ch. 216

Retirement.

Stamp on conveyance or transfer for effectuating the retirement of a trustee, although no new trustee is appointed. See Finance Act, 1902 (2 Edw. 7, c. 7), s. 9.

— Trustee for sale—Sale to ex-trustee twelve years after his retirement—Vendor and purchaser.
See TRUSTEE—Sale. 2.

Revenue Duties.

— Annuity payable to trustee of settlement—Succession duty—Estate duty.
See REVENUE—Succession Duty. 2.

Sale.

— No power of sale—Vendor selling as trustee—Written request of beneficiaries before contract.
See VENDOR AND PURCHASER—Contract. 3.

— Power of sale—Power given to "my trustees"—Power exercisable by survivor.
See WILL—Power of Sale. 1.

— Repurchase by one trustee—Sale by trustees
See VENDOR AND PURCHASER—Specific Performance. 3.

TRUSTEE (Sale)—continued.

— Sale by trustees of will—Conflict between two sets of trustees—Outstanding legal estate—Deduction of title.
See VENDOR AND PURCHASER—Title. 15.

— Settled Land Acts.

See under SETTLED LAND—Sale.

— Title—Purchase of land in breach of trust—Power of trustee to sell.
See VENDOR AND PURCHASER—Title. 18.

1. — *Trust—Purchase of beneficiary's interest by trustee — Non-disclosure of valuation by trustee.*

The defender, who was one of the trustees and also a beneficiary under his parents' marriage contract, purchased the interest in the trust estate of his brother, who was not a trustee. At the date of the purchase the interest of the beneficiaries had vested absolutely, but the trust estate had not been realized, and its ultimate value was uncertain; but it was capable of being realized in the ordinary course of administration. Before purchasing his brother's share the trustee had in his possession a valuation of the trust estate made for the purchase of a loan on his own share. If the valuation turned out to be anywhere near correct, the trustee would make a profit of some hundred pounds on the purchase. The trustee never informed his brother of the valuation. On the brother being made bankrupt, the trustee in bankruptcy brought this action for reduction of the sale:—

Held, affirming the decision of the Court of Session, (1901) 3 F. 553, that the non-disclosure of the valuation rendered the sale null and void.

Lord Cairns' dictum in *Thomson v. Eastwood*, (1877) 2 App. Cas. 236, approved. *DOUGAN v. MACPHERSON* H. L. (Sc.) [1902] W. N. 36; [1902] A. C. 197

— Trust for sale.

See under VENDOR AND PURCHASER.

2. — *Trustee for sale—Retirement—Purchase of trust property—Sale to ex-trustee twelve years after his retirement.*

Apart from any circumstances of doubt or suspicion, there is no rule of the Court that a person who has ceased for twelve years to be a trustee of an instrument which contains a trust for sale, cannot become a purchaser of property subject to the trust. *In re BOLES AND BRITISH LAND CO.'S CONTRACT.*

Buckley J. [1901] W. N. 243; [1902] 1 Ch. 244

Secret Trust.

See under TRUST.

Securities.

— Tenant for life and remainderman—Unauthorized securities—Wasting securities—No trust for conversion—Power to trustees to retain—Construction.
See SETTLED LAND—Securities. 1.

TRUSTEE—*continued.***Service.**

- Payment out—Petition—Service on trustees.
See PRACTICE—Payment, &c.

Settled Land.

See under SETTLED LAND—Trustees.

- Powers exercisable by trustees—Conflict of powers—Consent of tenant for life.
See SETTLED LAND—Powers, 1.

Shares.

1. — *Trustee and cestui que trust—Principal and agent—Conflicting equities—Contract by trustee to charge trust property in breach of trust—Priorities—Ship—Registered owner holding as trustee—Beneficial owner allowing legal ownership to remain vested in trustee—Negligence—Estoppel—Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), ss. 24, 26, 31, 56, 57—Mortgage of shares.*

In furtherance of a project for the formation of a co. to purchase a ship, the plts, who were owners of shares in the ship, executed transfers of their respective shares to one H., the senior partner in a firm of H. & Co., which managed the ship's business, as trustee for them, with power to sell the shares to the co. if formed; and H. was registered as owner of the shares in the register of shipping at the port to which the ship belonged. The project for formation of the co. proved abortive, but the above-mentioned shares were not reconveyed to the plts. Subsequently a son of H., who acted as the manager of H. & Co.'s financial business, obtained for the purposes of the firm from the deft., through an agent for the deft., without the knowledge or authority of the plts., an advance of money, which was intended to be secured by a mortgage by H. of the above-mentioned shares. A document, which purported to be and was registered as such a mortgage, turned out to be a nullity, never having been duly executed by H., the aforesaid manager having obtained H.'s signature to a printed form with blank spaces, which he subsequently handed to the deft.'s agent for the purpose of his filling in the blank spaces with the material particulars of the proposed mortgage, which he did. The money advanced by the deft. was used for the purposes of the firm. The deft. had no notice of the plts.' interest in the shares. In an action brought by the plts., claiming that the mortgage deed should be declared void, and the entry of it expunged from the register, Bigham J. granted the relief claimed; but thinking the effect of the evidence to be that H. had agreed with the deft. to give such a mortgage, he held that, inasmuch as the plts. had entrusted H. with authority to deal with their shares in the ship, although he had not dealt with them in accordance with the authority given, the deft. was entitled in equity to a charge on the shares:—

Held (reversing the decision of the learned judge), that the fact that the plts. had constituted H. the legal owner of the shares and allowed him to appear as such on the register,

TRUSTEE (Shares)—*continued.*

did not, under the above-mentioned circumstances, give rise to an equity entitling the deft. as against the plts. to a charge upon the shares as security for the money advanced by him.

Rimmer v. Webster, [1902] 2 Ch. 163, discussed. *BURGIS v. CONSTANTINE*
C. A. [1908] 2 K. B. 484

Solicitor.

- Trustees.

See under SOLICITOR—Costs.

Title-deeds.

- 1. — *Custody—Trustee—Title-deeds—Non-negotiable securities.*

In the absence of special circumstances, a trustee is not entitled to have title-deeds and non-negotiable securities removed from the custody of a co-trustee and placed at a bank, in a box accessible only to the trustees jointly. *In re Sisson's Settlement. Jones v. Trappes Swinfen Eady J.* [1902] W. N. 233; [1903] 1 Ch. 262

- Solicitor — Partner, Liability for acts of — Duty of solicitor to cestui que trust.

See under SOLICITOR—Partnership, 1.

Vesting Orders.

- Company.

See under COMPANY—Vesting Orders.

- Criminal lunatic—Stock in name of trustee of unsound mind.
See LUNACY, 27.

Will.

- Trustee making profit out of trust — Discretionary trust to carry on business — Sale of goods to business by trustees at a profit — Retention of profit.
See WILL—Trustees, 2.

TRUSTEE IN BANKRUPTCY.

See under BANKRUPTCY—Trustee.

TUG—Collision.

See under SHIPPING—Collision.

TUITION—Value of — Apprenticeship—Workmen's compensation.

See MASTER AND SERVANT—Compensation, 65.

TUNNEL — Mines — Subjacent and adjacent support.

See RAILWAY—Mines, 8.

TUNNEL—*continued.*

— Railway—Severed lands—Grant of right to make “a tunnel”—Uncertainty—Perpetuity—Assignability.

See RAILWAY—Accommodation Works. 2.

— Superfluous land—Space above usque ad cœlum—Telegraph wires—Statute of Limitations.

See RAILWAY—Tunnel. 1.

TURKS AND CAICOS ISLANDS — *Power of attorney to possess and manage—Power not coupled with an interest—Power held to be revocable—Contract for personal services—Specific performance—Ejectment—Injunction—Mortgage.*

In an action of ejectment the jury found that the appellant was in possession under a power of attorney for which he had given consideration other than and additional to that mentioned therein, viz., a personal guarantee to a mortgagee of the estate in suit that he would pay the mortgage debt on the day of redemption :—

Held—(1.) that parol evidence of this additional consideration was admissible, for such evidence did not contradict the power ;

TURKS AND CAICOS ISLANDS—*continued.*

(2.) That the power was nevertheless revocable, inasmuch as it merely appointed the appellant manager at a salary and contained no reference to any special interest created by his guarantee, and was not intended to subserve or to be dependent on the continuance of such interest ;

(3) That, assuming it to be irrevocable, he had not a good equitable defence to ejectment, since the contract with him was entire, and an inseparable part of it related to personal service. The appellant accordingly could not obtain specific performance thereof, and therefore could not obtain an injunction against an action of ejectment. **FRITH v. FRITH**

P. C. [1906] A. C. 254

TURNPIKE.

See under **STREETS.**

TURNPIKE ROAD.

See under **HIGHWAY.**

TURNTABLE — Railway Company — Defective fence—Negligence—Infant trespasser—Invitation to danger.

See RAILWAY—Fences. 1.

U.

ULTRA VIRES.

See under Specific Titles.

UMPIRE—Arbitration—Witness called by umpire—Misconduct—evidence—Removal.

See **ARBITRATION—Umpire.** 1.

UNCERTAINTY Charitable gifts.

See under **CHARITY.**

—Consideration, Uncertainty as to—Contract of sale of land—Specific performance refused.

See **TRANSVAAL.** 1.

—Railway—Severed lands—Grant of right to make “a tunnel”—Perpetuity—Assignability.

See **RAILWAY—Accommodation Works.** 2.

—Real estate—Conveyance—Grant—Exception—Election.

—*See* **CONVEYANCE.** 2.

—Remoteness—Illegality—Statutory confirmation.

See **CONTRACT.** 17.

—Will—Construction.

See under **WILL—Uncertainty.**

UNCLAIMED DIVIDENDS ACCOUNT.

See under **REVENUE—Unclaimed Dividends Account.**

UNDERGRADUATE—Infant—Betting circular.

See **BETTING CIRCULAR.** 1.

UNDERGROUND BAKEHOUSE—Factory Acts

—Lease—“Impositions and outgoing.”

See **FACTORY.** 8.

UNDERGROUND LAVATORIES—Land Tax—

Liability to—Vesting of subsoil of road in sanitary authority—Revenue.

See **LAND TAX.** 2.

—London.

See under **LONDON—Conveniences.**

UNDERGROUND ROAD—Carriage of foreign minerals—Property in sub-soil—Payment of rent—Mistake—Estoppel.

See **CONVEYANCE.** 3.

UNDERGROUND SEWERS—Diminution in value of surface.

See **RATES.** 43.

UNDERGROUND STREAM—Channel defined but not known.

See **WATER.** 21.

UNDERLEASE—Conditions of sale—Title—Trust for sale—Leaseholds—Trustees—Sale by way of underlease.

See **VENDOR AND PURCHASER—Conditions of Sale.** 8.

—Covenant for quiet enjoyment—Implication arising from the word “let.”

See **LANDLORD AND TENANT.** 65.

—Covenant for renewal—Personal covenant—Perpetuity—Assignee of reversion.

See **LANDLORD AND TENANT.** 88.

—Covenant running with the land—Covenant by underlessor with underlessee to perform covenants of head lease—Collateral covenant.

See **LANDLORD AND TENANT.** 26.

—Distress—Interesse termini—Underlease exceeding original term—Lessee's right to distrain.

See **DISTRESS.** 13.

—Forfeiture—Relief granted to lessee—Effect on underlease.

See **LANDLORD AND TENANT.** 37.

—Interesse termini—Underlease exceeding original term—Lessee's right to distrain.

See **DISTRESS.** 13.

—Landlord and tenant.

See under **LANDLORD AND TENANT.**

—Lease—Forfeiture—Relief—Writ claiming possession—Election to determine tenancy—Effect on underlease. *See* **LANDLORD AND TENANT.** 36.

—Licensed premises, Lease of—Covenant—Refusal to renew licence—Liability of lessee.

See **LANDLORD AND TENANT.** 48.

—Mortgage by underlease—Merger—Lease—Subsequent purchase by lessee of freehold reversion.

See **MERGER.** 3.

—Mortgage of—Forfeiture—Ejectment—Relief parties—Costs.

See **LANDLORD AND TENANT.** 35.

—Re-entry for breaches of covenant, Proviso for—Breach of covenant not to underlet—Surrender of lease.

See **LANDLORD AND TENANT.** 73.

UNDERLEASE—*continued*.

— Title—Trust for sale—Leaseholds—Sale by way of underlease.
See VENDOR AND PURCHASER—Title. 16.

— Trustee—Investment—Breach of trust—Contributory mortgage.
See TRUSTEE—Investments. 17.

— Underlessee not an "assign"—Covenant—Privity of contract.
See LANDLORD AND TENANT. 11.

— Vesting order—Disclaimer by trustee—Terms to be imposed on underlessee.
See BANKRUPTCY—Vesting Orders. 1.

UNDERLESSEE—Distress for rent due from head lessee—Exemptions—Proprietary club—Pictures sent by members of club for exhibition and sale on commission.
See DISTRESS. 4.

— Lease—Forfeiture for non-payment of rent—
 "Tenant—Relief against forfeiture.
See LANDLORD AND TENANT. 38—39.

UNDERLET—Covenant not to assign or underlet without licence—"Unreasonably withheld."
See LANDLORD AND TENANT. 9.

"**UNDERTAKERS**"—Workmen's Compensation Act.
See under MASTER AND SERVANT—Compensation.

UNDERTAKINGS—Practice.
See under BANKRUPTCY—Undertakings.
 PRACTICE—Undertakings.
 SOLICITOR—Undertakings.

UNDERVALUE—Partially secured creditor—Estimate of security.
See BANKRUPTCY—Secured Creditor. 2.

UNDERWRITER—Business carried on by underwriter on behalf of himself and "names"—Right of trustee to book of account.
See BANKRUPTCY—Books. 2.

— Collision.
See under SHIPPING—Collision.

— Discovery—Production of documents—Report made to underwriter—Nominal plaintiffs.
See DISCOVERY. 17.

— Discovery—Ship's papers—Insurance, Marine—Recovery of money overpaid—Practice.
See DISCOVERY. 20.

— Marine, Insurance.
See under INSURANCE (MARINE).

UNDERWRITER—*continued*.

— Prospectus—Omission of material contract—Waiver clause.
See COMPANY—Prospectus. 7.

— Shares, Issue of—Payment of commission for placing shares—Underwriting agreement.
See COMPANY—Shares. 8.

— Ship—Mortgage.
See under SHIPPING—Mortgages.

— Shipping—Collision.
See under SHIPPING—Collision.

UNDERWRITING AGREEMENT—Company—Reconstruction—Commission—Ultra vires.
See COMPANY—Reconstruction.

UNDISCHARGED BANKRUPT—Bankruptcy.
See under BANKRUPTCY—Undischarged Bankrupt.

UNDUE INFLUENCE—Influence of husband—Absence of independent advice—Liability of wife.
See HUSBAND AND WIFE—Liability. 3.

— Solicitor and client—Fiduciary relation—Setting aside deed.
See under SOLICITOR—Fiduciary Relation.

— Will—Costs out of the estate—Undue influence and fraud unsuccessfully pleaded.
See PROBATE—Costs. 1.

— Will, Validity of—Evidence of executors inadmissible—Laws of Jersey.
See JERSEY. 3.

UNDUE PREFERENCE—Railway traffic.
See under RAILWAY—Rates.

UNEMPLOYED WORKMEN ACT, 1905—Paid office under the council—Distress committee—Councillor—Disqualification.
See LOCAL GOVERNMENT. 23.

UNFURNISHED HOUSE—Defective premises—Accident—Personal injury to tenant's wife—Landlord not liable.
See LANDLORD AND TENANT. 89.

UNION—Parish—Transfer of land from one parish to another—Alteration of boundaries of union.
See LOCAL GOVERNMENT. 30.

— Poor law.
See under POOR LAW.

— Trade union.
See under TRADE UNION.

UNION OF BENEFICES.
See under ECCLESIASTICAL LAW.

UNION OF BENEFICES—*continued.*

- Compensation—Site of a church—Possibility of future sale.
See LANDS CLAUSES ACTS. 8.

UNITED STATES OF AMERICA.

See under AMERICA.

- Divorce by New York Court, Decree of—Validity of divorce in England.
See INTERNATIONAL LAW. 1.

UNITY OF POSSESSION—Way—User—Interruption—Acquisition of right against reversioner.

See WAY, RIGHT OF. 14.

UNIVERSITIES (SCOTLAND) ACT, 1889.

See SCOTTISH LAW. 19.

UNIVERSITIES ELECTIONS AMENDMENT (SCOTLAND) ACT, 1881.

See SCOTTISH LAW—Parliament. 19.

UNIVERSITY.

See under COLLEGE and under specific title of UNIVERSITY.

- Betting circular—Infant.
See BETTING CIRCULAR. 1.

UNLIQUIDATED DAMAGES.

See under DAMAGE AND DAMAGES.

- Claim for—Jurisdiction—Remitted action—Amendment.
See COUNTY COURT—Jurisdiction. 7.
- Due to defendant from cestui que trust—Plaintiff suing as trustee—Equitable defence.
See TRUSTEE—Practice. 3.

- “**UNMARRIED**” — Will — Construction — Request on conditions—Forfeiture.
See WILL—Conditions. 6.

UNQUALIFIED PERSON—Acting as a solicitor—Carrying on proceeding in action—Notice of appearance to writ.

See SOLICITOR—Unqualified Person. 1

UNSEAWORTHINESS—Shipping.

See under SHIPPING.

URINALS.

See under LONDON—Conveniences.

USAGE—Debenture payable to bearer—Conversion—Holder for value.

See NEGOTIABLE INSTRUMENT. 1.

- Stock Exchange.
See under STOCK EXCHANGE.

USER.

See also under specific Titles.

- Alteration of user—Level crossing—Agricultural land—Change of condition—Tennis club.
See RAILWAY—Level Crossings. 2.

USER—*continued.*

- Cul-de-sac—Dedication to public—User—Plan—Implied representation—Blocking up road.
See BUILDING SCHEME. 1.

- Custom to dry fishing nets—Validity—Changes in user—Recession of sea.
See CUSTOM. 1.

- Easement — Prescription — Enjoyment as between tenants—Unity of ownership—Forty years' user.
See WAY, RIGHT OF. 12.

- Footway.
See under HIGHWAY.

- Foreshore.
See under FORESHORE.

- Foreshore under a Crown grant, Title to—Improper rejection of evidence—Acts of user before the grant admissible.
See TASMANIA. 1.

- Highway.
See under HIGHWAY.

- Immemorial use by inhabitants of ground for recreation—Encroachment.
See SCOTTISH LAW. 5.

- Light.
See under LIGHT AND AIR.

- National monument—Public right of access—Public road—Dedication.
See WAY, RIGHT OF. 9.

- Oyster ponds on foreshore—Ancient user—Public health—Nuisance from sewage.
See FISHERY. 5.

- Patent.
See under PATENT.

- Right of—“Accommodation works”—Grant of easement—Level crossing.
See RAILWAY—Accommodation Works. 1.

- Statutory navigation company, Prescriptive claim against—Prescriptive claim to take surplus water only—User unlimited.
See PRESCRIPTION.

- Trade mark.
See TRADE MARK.

- Way—Prescription.
See under WAY.

- USES, STATUTE OF**—Real estate—Conveyance—Grant—Exception—Uncertainty—Election.
See CONVEYANCE. 2.

- USURY**—Money lenders.
See under MONEY-LENDER.

V.

VACATING OFFICE—Director—Absence—Time—Remuneration.See **COMPANY**—Directors. 6, 10, 17, 22.

— Director—Withdrawal.

See **COMPANY**—Directors. 10.

VACCINATION—*Vaccination Act, 1907*, (7 Edw. 7 c. 31), is an Act to substitute a statutory declaration for the certificate required under s. 2 of the *Vaccination Act, 1898*, of conscientious objection.

ENGLAND.] *Order of Local Govt. Board, dated June 8, 1905, amending the Vaccination Order, 1898. St. R. & O. 1905, No. 642.*

The Vaccination Order (No. II.), 1907, dated Dec. 21, 1907. Price 1d. St. R. & O. 1907, No. 1002. Circular to Guardians, Dec. 23, 1907, Price 1d. St. R. & O. 1907, No. 1002.

The Vaccination Order, Jan. 27, 1910. St. R. & O. 1910, No. 91. Price 1d.

1. — *Neglect to procure—Information—Period at which offence complete—Limitation of time—Vaccination Acts, 1867, 1871, 1898 (30 & 31 Vict. c. 84, s. 29; 34 & 35 Vict. c. 98, s. 11; 61 & 62 Vict. c. 42, s. 1).*

The appellant was convicted on an information, laid on July 12, 1900, under the *Vaccination Act, 1867*, s. 29, charging him that, being the parent having the custody of a child born on Dec. 30, 1898, he did unlawfully neglect to cause the child to be vaccinated within six months after birth, not rendering a reasonable excuse for his neglect.

On May 1, 1899, the public vaccinator visited the appellant's house, pursuant to notice, and offered to vaccinate the child, and vaccination was refused.

On July 7, 1899, the vaccination officer served a notice, under the *Vaccination Order, 1898*, on the appellant, requiring him to have the child vaccinated within fourteen days. No certificate of postponement or successful vaccination was received in respect of the child.

The appellant objected that the information was out of time, having been laid more than twelve months after the offence was committed. The justices disallowed the objection, on the ground that the offence was complete, and the time began to run, on July 21, the date of the expiration of the notice served on the appellant by the vaccination officer.

Held, that the offence was complete, and the time began to run, six months after the birth of the child, and the information was out of time. **LANGRIDGE v. HOBBS**

Div. Ct. [1901] W. N. 30;
[1901] 1 Q. B. 497

VACCINATION—continued.

Note.

Polley v. Fordham, Div. Ct. [1904] 2 K. B. 345. See *Public Authorities Protection Act, 1893*.

2. — *Proceedings to enforce law—Power of vaccination officer to take proceedings without authority of and against the desire of guardians—Vaccination Acts, 1867 to 1898 (30 & 31 Vict. c. 84; 34 & 35 Vict. c. 98; 37 & 38 Vict. c. 75; 61 & 62 Vict. c. 49)—General Order of Local Government Board, October 18, 1898, arts. 26, 27.*

A vaccination officer by virtue of his appointment, without directions, general or special, from the guardians, and notwithstanding the guardians' directions not to prosecute, may institute proceedings for the enforcement of the law against a parent who is in default in respect to the vaccination of his child.

In such proceedings it is not a condition precedent that proof should be given by the vaccination officer of the visit of the public vaccinator to the home of the child after twenty-four hours' notice to the parent, as required by s. 1, sub-s. 3, of the *Vaccination Act, 1898*. **MOORE v. KEYTE** Div. Ct. [1902] 1 K. B. 768

3. — *Proceedings to obtain vaccination order—Condition precedent—Public vaccinator—Offer to vaccinate child—Vaccination Acts, 1867 (30 & 31 Vict. c. 84), s. 31; 1898 (61 & 62 Vict. c. 49) s. 1, sub-s. 3.*

Section 31 of the *Vaccination Act, 1867*, enables summary proceedings to be taken against parent who, after notice, neglect to have their children vaccinated. The *Vaccination Act, 1898*, incorporates the Act of 1867, and provides, by s. 1, sub s. 3, that if a child is not vaccinated within four months after its birth, the public vaccinator of the district, after notice, shall visit the home of the child and offer to vaccinate it in the prescribed manner:—

Held, that the compliance by the vaccination officer with the provisions of s. 1, sub-s. 3, of the Act of 1898 was not a condition precedent to the right to take proceedings under s. 31 of the Act of 1867. **PYM v. WILSHER**

Div. Ct. [1901] W. N. 126;
[1901] 2 K. B. 806

VAGRANCY—Incorrigible rogue—Sentence by quarter sessions—Appeal.

See **CRIMINAL LAW**—Appeal. 13.

VALUATION—Non-disclosure—Purchase of beneficiary's interest by trustee. See **TRUSTEE**—Sale. 1.

VALUATION—*continued.*

- Partnership—Provision for purchase by survivor of share of deceased partner—Surviving partner sole executor of deceased.
See NEW SOUTH WALES. 24.
- Poor-rate.
See under RATES.
- Sufficiency of valuation of surveyor.
See LANDS CLAUSES ACTS. 12.
- Tramway—Purchase of undertaking by local authority—"The then value."
See TRAMWAYS. 13.
- Trustee—Investment.
See under TRUSTEE—**Investments.**

VALUATION (METROPOLIS) ACT, 1869.*See* RATES.**VALUATION LIST**—Poor-rate—Appeal.*See* under RATES.**VANCOUVER.***See* under CANADA.**VARIATION** — Contract — Rescission — Parol evidence—Statute of Frauds.
See CONTRACT. 13.

— Settlements—Divorce.

See under DIVORCE—**Settlements.****VENDOR and PURCHASER.***Bankruptcy, col.* 2782.*Charity, col.* 2782.*Company, col.* 2782.*Conditional Purchase, col.* 2783.*Conditions of Sale, col.* 2783.*Contracts, col.* 2787.*Conveyance, col.* 2789.*Copyholds, col.* 2789.*Corporate Lands, col.* 2790.*Corporation, col.* 2790.*Costs, col.* 2790.*Covenants, col.* 2792.*Deeds, col.* 2795.*Deposit, col.* 2796.*Fraud, col.* 2797.*Indemnity, col.* 2797.*Interest, col.* 2798.*Land Transfer. See* under LAND TRANSFER.*Lands Clauses Acts. See* under LANDS CLAUSES ACTS.*Lease, col.* 2801.*Lien, col.* 2801.*Minerals, col.* 2802.*Misdescription, col.* 2803.*Mistake, col.* 2804.**VENDOR AND PURCHASER**—*continued.**Mortgages, col.* 2804.*Notice, col.* 2805.*Outgoings, col.* 2805.*Partners, col.* 2805.*Payment out, col.* 2805.*Plan, col.* 2805.*Practice, col.* 2806.*Priority, col.* 2807.*Railways, col.* 2808.*Receiver, col.* 2808.*Recitals, col.* 2809.*Rents, col.* 2809.*Rescission, col.* 2809.*Sale. See* under SALE.*Sale of Goods, col.* 2812.*Scottish Law. See* under SCOTTISH LAW.*Settled Land. See* under SETTLED LAND.*Specific Performance, col.* 2813.*Title, col.* 2814.*Title-Deeds. See* VENDOR AND PURCHASER—**Deeds.***Will, col.* 2827.**Bankruptcy.**

- Sale of goods—Fraud of debtor—Vendor's right to disaffirm sale and retake goods after notice of act of bankruptcy.
See BANKRUPTCY—**Trustee.** 10.

- Undischarged bankrupts—After-acquired property—Purchase of real estate as partners—Sale to a company—Intervention of trustees in bankruptcy.
See BANKRUPTCY—**Undischarged Bankrupt.** 4.

Charity.

- "Endowment"—Sale of charity land—Consent of Board of Education.
See CHARITY. 17.

Company.

- Debentures—Trust deed—Purchase by company—Purchase-money to remain on mortgage—Vendor's Lien—Legal mortgage—Priority.
See COMPANY—**Debentures.** 17.
- Power to acquire land—No express power of sale—Constitution of company—Implied power.
See COMPANY—**Power of Sale.** 1.
- Winding up of company—Contract to sell assets—Leaseholds—Omission to assign.
See COMPANY—**Vesting Orders.** 1.

VENDOR AND PURCHASER—continued.**Conditional Purchase.**

- New South Wales—Crown Lands Alienation Act, 1861—Contract of sale of conditional purchases—Subject to the provisions of local laws and regulations. See NEW SOUTH WALES. 9.

Conditions of Sale.

- Copyholds—Conditional surrender by way of mortgage. See VENDOR AND PURCHASER — Copyholds. 1.
- Incumbrances, General inquiry as to—Liability of vendor to answer—Purchaser mortgagee. See TRUSTEE—Breach of Trust. 1.

1. — Interest — Delay — Damages — Loss of expected profits.

A purchaser cannot be compelled to pay interest for delay under a condition that "the purchaser in default" shall pay interest on the remainder of his purchase-money, where the delay has been occasioned by the default of the vendor.

Damages can be recovered by a purchaser from his vendor for delay in completing the purchase, where the delay has been occasioned by default of the vendor, not in consequence of want of, or defect in, title, or in consequence of conveyancing difficulties, but by reason of the vendor not having used reasonable diligence to perform his contract. *JONES v. GARDNER*.

Byrne J. [1901] W. N. 237 ; [1902] 1 Ch. 191

- Interest on purchase-money—Wilful default of vendor.

See VENDOR AND PURCHASER — Interest. 2.

2. — Law Society's conditions — Contract in writing—Incorporation of other documents — Statute of Frauds.

This was an action for the specific performance of a contract for the sale of land. The contract was in writing and contained the clause, "The land is sold subject to the conditions of the Halifax Incorporated Law Society."

The objection was taken that there was not a sufficient memorandum of the contract to satisfy the Statute of Frauds.

Farwell J. said that there was no substance in the objection. Obviously, unless something was said to the contrary, the conditions referred to were the conditions sanctioned by the Law Society at the time of making the contract. It would of course be necessary for the plt. to prove what those conditions were. The judge could not take judicial cognizance, without further evidence, of a mere printed copy of rules produced in Court. When, however, that copy was once identified by evidence, it became an illustration of the maxim, "Id certum est, quod certum reddi potest." *PICKLES v. SUTCLIFFE*

Farwell J. [1902] W. N. 200

3. — Misleading particulars — Statement by auctioneer — Compensation — Specific performance.

D.D.

VENDOR AND PURCHASER (Conditions of Sale)—continued.

A clear and distinct statement by an auctioneer at the time of sale verbally correcting a material misdescription in the particulars disentitles the purchaser to specific performance with compensation for that misdescription, even if he does not hear the statement.

Manser v. Bach, (1848) 6 Hare, 443, followed. *In re HARE AND O'MORE'S CONTRACT* *Joyce J. [1901] 1 Ch. 93*

4. — Mistake—Sale by the Court—Misdescription—Compensation—Defect of title—Rescission after conveyance.

On a sale by the Court of property described in the particulars as freehold stabling with dwelling rooms over, one of the conditions provided that if any error or misstatements should appear to have been made in the particulars of sale or conditions, it should not annul the sale, but compensation, to be settled by the judge in chambers, should be made in respect thereof; the property was conveyed to the plaintiff, the purchaser, in Oct., 1897, and the purchase-money was paid into Court, and the bulk of it distributed among the beneficiaries. A year after completion it was discovered that some of the dwelling rooms over and a cellar underneath a portion of the property belonged to third persons, and the plaintiff eventually had to pay 300*l.* to acquire a title to these dwelling rooms. In Feb., 1900, the present action was commenced against the vendor trustee and the beneficiaries, claiming compensation for the errors and misstatements in the particulars and conditions of sale, or, in the alternative, to set aside the sale on the ground of common mistake, and obtain repayment of the purchase-money:—

Held, that the plaintiff was not entitled to compensation under the above condition of sale, which did not, and was not intended to, apply to the case of a defect of title, but only to error or misstatement in the subject-matter of the sale; that, even assuming there had been a common mistake, and assuming that there need not be a total failure of consideration to justify rescission after conveyance, the error made in the present case was not sufficient to justify rescission, and that the plt.'s action therefore failed and must be dismissed. *DEBENHAM v. SAWBRIDGE* — *Byrne J. [1901] W. N. 86 ; [1901] 2 Ch. 98*

- Particulars — Misrepresentation—Property described as freehold.

See VENDOR AND PURCHASER—Title. 10.

5. — Requisition on title—Vendor "unwilling to remove or comply with"—Arbitrary exercise of power to rescind contract—Specific performance.

Freeholds were put up for sale by auction subject to conditions which stated that the vendor was a trustee for sale, and that if any purchaser should make any objection or requisition which the vendor should be "unwilling to remove or comply with," the vendor might annul the sale. The abstract of title

VENDOR AND PURCHASER (Conditions of Sale)—continued.

supplied to a purchaser shewed that the property was devised by the will of a testator, who died in 1858, upon trust for A. for life, and after her death upon trust for sale and division amongst her children, but if A. died without leaving a child, the property was to be conveyed to B. and C. as tenants in common. In answer to the purchaser's requisitions, the vendor gave the date and place of A.'s marriage and the names, but not the addresses, of her children. The purchaser pressed for the date of birth of any one child of A. living at her death in order to obtain a certificate of birth to prove that the trust for sale had arisen. The vendor not having this information in his possession, although he knew the address of one child and the address of the solicitors who acted for the other children, declined for reasons stated to comply with the requisition, and rescinded the contract. In an action by the purchaser for specific performance :—

Held, that the requisition was reasonable, that under the circumstances the vendor's rescission was arbitrary and unreasonable, and therefore the purchaser was entitled to specific performance. **QUINION v. HORNE**

Farwell J. [1906] W. N. 44 ; [1906] 1 Ch. 596

6. — Rescind, Right to, if objection insisted on—Misdescription—Absence of title to mines—Compensation.

A condition giving the vendor the right to rescind in the event of his unwillingness to comply with an objection to the title must not be considered as giving him an arbitrary power to annul the contract ; some reasonable ground for his unwillingness must be shewn. Before a vendor will be allowed to rescind, he must satisfy the Court that he entered into the contract in ignorance of some material fact or document, or under some mistaken notion that he was entitled to sell and could make a title ; there must be no failure of duty on his part, no element of shortcoming, and he must have omitted nothing which the ordinarily prudent man, having regard to his contractual relations with other persons, is bound to do.

J. and others contracted to sell to H. a villa residence by a description wide enough to include the mines and minerals under it. The contract provided (clause 13) that if the purchaser should "insist on any objection or requisition as to title" which the vendors should "be unable . . . or decline" to comply with, the vendors might rescind the contract ; and (clause 14) that any error or misstatement should form the subject of compensation. The vendors believed that it was well known in the district that the minerals were reserved. The purchaser having insisted on a requisition that the vendors' title to the minerals should be furnished, the vendors gave a notice purporting to rescind the contract under clause 13 :—

Held (affirming the decision of Buckley J., [1905] 1 Ch. 603, though on a different

VENDOR AND PURCHASER (Conditions of Sale)—continued.

ground), that though the purchaser's objection was "an objection to the title" within the terms of clause 13, it was not an objection that the vendors could avail themselves of as a ground for rescinding the contract, having regard to the facts and their own conduct ; and that the purchaser was entitled, under clause 14, to a conveyance of the property with compensation in respect of the mines and minerals.

Bowman v. Hyland, (1878) 8 Ch. D. 588, discussed and explained. *In re JACKSON AND HADEN'S CONTRACT* **C. A. [1906] W. N. 25 ; [1906] 1 Ch. 412**

— Rescission — Pending litigation — Costs — Jurisdiction.

See **VENDOR AND PURCHASER—Rescission. 2.**

7. — Sale by order of Court—Notice of trust—Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 70.

The applicant in this summons purchased a portion of the property under conditions of which the following was one :—"All facts or matters appearing to be proved or to be certified by a chief clerk or master attached to the chambers of the said judge, or to be stated or implied in any judgment or order in the action in which this sale is made, are to be deemed thereby sufficiently and conclusively evidenced, and the purchaser is to assume that all necessary and proper covenants preliminary to a sale have been obtained, and is not to require the concurrence in her conveyance of any person beneficially interested whose rights appear to be bound by the judgment or order under which the sale is made."

An abstract was delivered deducing the legal title from the date specified by contract down to Messrs. B. & Co., mortgagees, who were willing to convey the legal estate. One link in the title abstracted was a conveyance to D. & S., who, it was recited, had become entitled in equity as joint tenants to the premises conveyed.

The purchaser required an abstract of the equitable title of D. and S. The vendors refused to comply with the requisition, and this summons was taken out to determine whether a good title had been shewn, having regard to the conditions :—

Held, that, having regard to s. 70 of the Conveyancing Act, 1881, and the condition above set out, a good title had been shewn. *In re WHITHAM. WHITHAM v. DAVIES*

Cozens-Hardy J. [1901] W. N. 86

8. — Title—Trust for sale—Leaseholds—Sale by way of underlease—Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 13.

Trustees for sale put up for auction five leasehold houses, held under one lease, in five separate lots, subject to a condition that if all the lots were sold at the present sale, the purchaser of the largest lot in value should execute an underlease for the whole of the term, less one day, to the respective purchasers of the other lots at an apportioned rent ; but that

VENDOR AND PURCHASER (Conditions of Sale)—continued.

if any of the lots remained unsold (which happened), "the vendors will grant to the purchaser or respective purchasers of the lot or lots sold such an underlease as aforesaid of each of the lots sold":—

Held (reversing the decision of Warrington, J.), a valid exercise of the trust for sale.

In re Walker and Oakshott's Contract, [1901] 2 Ch. 383, overruled on this point. *In re JUDD AND POLAND AND SKELCHER'S CONTRACT* - - - **C. A. [1906] W. N. 72 ; [1906] 1 Ch. 684**

Contracts.

— Leaseholds—Sale by way of underlease—Trust for sale.

See VENDOR AND PURCHASER—Title. 16.

1. — *Light, Enjoyment of—Deed of acknowledgment—Non-disclosure—Specific performance—Compensation—Costs.*

A contract for the sale of a house with windows looking over the land of a third person implies no representation or warranty that the windows are entitled to the access of light over that land, or even that the prescriptive period is running, and consequently the non-disclosure of a deed acknowledging that the vendor is not entitled to that light is no ground for refusing the vendor specific performance, or allowing the purchaser compensation, though it may be a ground for depriving the vendor of his costs.

There is no such thing known to the law as inchoate easement.

Bonner v. Great Western Ry. Co., (1883) 24 Ch. D. 1, followed. *GREENHALGH v. BRINDLEY* **Farwell J. [1901] W. N. 125 ; [1901] 2 Ch. 324**

2. — *Repudiation—Specific performance—Defect in title—Repudiation after decree for specific performance—Evidence—Scottish document registered in Scotland—Production in England impossible—Secondary evidence of contents—Interest on purchase-money—Costs.*

A purchaser's right to repudiate the contract is an equitable right arising from want of mutuality, and may be a defence to an action for specific performance; but in order to avail himself of that defence he must repudiate the contract as soon as he finds that the vendor cannot make a good title.

After a decree for specific performance has been made the purchaser cannot repudiate the contract without the leave of the Court.

A vendor is not bound to produce or procure a covenant for the production of a document which is of record in Scotland, but must furnish sufficient secondary evidence of its contents.

Where an order is made for specific performance, interest on purchase-money is payable from the time when the Master certifies that a good title is first shewn, not from the time when such a title is first shewn as would enable the purchaser safely to take possession. *HALKETT v. EARL OF DUDLEY*

Parker J. [1907] W. N. 57 ; [1907] 1 Ch. 590

VENDOR AND PURCHASER (Contracts)—contd.

— Rescission.

See under VENDOR AND PURCHASER—Rescission.

— Rescission—Return of deposit—Jurisdiction—Vendor's summons.

See VENDOR AND PURCHASER—Title. 16.

— Reversionary interest. Contract to sell—"Legal chose in action."

See ASSIGNMENT. 6, 10.

— Title—Leasehold house—Open contract—Breach of covenant to repair—Production of receipt for rent.

See VENDOR AND PURCHASER—Title. 7.

3. — *Title—Vendor selling as trustee—Legal estate in vendor—No power of sale—Written request of beneficiaries before contract.*

A contract for sale of a freehold house—lot 1—provided that "The vendor of lots 1 and 2 who is the trustee under the will of the said James Baker deceased is selling the said properties under the trusts and powers vested in him thereunder and shall not be required to enter into any covenant other than that implied by his conveying in such capacity as aforesaid."

It also provided that "The tenant for life of lot 1 will join in the conveyance to the purchaser for the purpose of releasing her life interest therein."

On the examination of title it appeared that the vendor had the entire legal estate as trustee of the will, but had no power or trust for sale thereunder. He had, however, entered into the contract at the written request of the life tenant and all the other beneficiaries, including himself, so that he could compel them to join:—

Held, that the vendor had shewn a good title in accordance with the contract.

In re Bryant and Barningham's Contract, (1890) 44 Ch. D. 218, and *In re Head's Trustees and Macdonald*, (1890) 45 Ch. D. 310, distinguished. *In re BAKER AND SELMON'S CONTRACT* **Swinfen Eady J. [1907] W. N. 22 ; [1907] 1 Ch. 238**

— Vendor's motion to rescind contract—Form of order—Costs.

See VENDOR AND PURCHASER—Practice. 1.

4. — *Voidable contract—Assignment of contract—Priority of contract—Money had and received, Action for.*

A vendor having assigned the benefit of his contract for sale, payments were made, as under the contract, by the purchaser to the vendor's assignee. Subsequently to those payments the purchaser refused to complete the contract on the ground of misrepresentation by the vendor, and the assignee then brought an action for specific performance, making the vendor and the purchaser defendants, which action was dismissed.

A counter-claim by the purchaser to recover the payments made by him to the plt.

VENDOR AND PURCHASER (Contracts)—*contd.*
 was, upon the facts, dismissed with costs, the decision of Cozens-Hardy J., [1901] 2 Ch. 594, being reversed. *FLEMING v. LOE*

C. A. [1902] W. N. 142; [1902] 2 Ch. 359

The House affirmed the decision of the C. A., reported as *Fleming v. Loe*, [1902] 2 Ch. 359, and dismissed the appeal with costs, holding that the question was entirely one of fact, and that no question of law or equity or principle arose. *MACKUSICK v. FLEMING*

H. L. (E.) [1904] W. N. 44

Conveyance.

See also under CONVEYANCE.

—Dispute as to wording of conveyance—Delay.

See VENDOR AND PURCHASER — Interest. 2.

1. — *Title, Covenant for—Breach—Measure of damages—Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), s. 7.*

By an indenture of conveyance, dated in 1898, the deft. as beneficial owner granted to the plt., his heirs and assigns, certain land subject to specified rights of way over a road forming part of the property which had been previously granted by the deft. to other persons. The land was bought and sold for building purposes, and the plt. having built a house thereon discovered that, in addition to the rights of way specified in the conveyance, there existed a further right of way over the road, which had been granted by the deft. in 1891 to another person and was innocently undisclosed by him.

In an action for damages for breach of the covenant for title implied by s. 7 of the Conveyancing Act, 1881:—

Held, that the breach was single, entire, and complete upon the execution of the conveyance; and that the proper measure of damages was the difference between the value of the property as it purported to be conveyed, and its value as the vendor had power to convey it. *TURNER v. MOON*

Joyce J. [1901] W. N. 174; [1901] 2 Ch. 825

Note.

Followed by Buckley J., *Great Western Ry. Co. v. Fisher*, [1905] 1 Ch. 316. See *Vendor and Purchaser—Title*. 3.

Copyholds.

—Copyholds—Equitable interest—Devolution—Person to convey.

See COPYHOLDS. 2.

1. — *Title—Conditional surrender by way of mortgage—Principal and interest statute-barred—Conditions of sale—Vacating conditional surrender.*

Copyholds were sold with a condition that "no evidence shall be required of the payment or discharge of any legacy or sum of money charged on the property which became payable twelve years or upwards prior to the day of sale." The court rolls contained an entry of a conditional surrender by way of mortgage

VENDOR AND PURCHASER (Copyholds)—*contd.*
 made in 1865 by the predecessor in title of the vendors. The mortgagee had not been admitted, and no payment or acknowledgment in respect of either principal or interest had been made for more than twelve years prior to the day of sale:—

Held, that the condition precluded the purchaser from requiring the conditional surrender to be vacated by satisfaction being entered on the court rolls in the usual way. *HOPKINSON v. CHAMBERLAIN*

Neville J. [1908] W. N. 108; [1908] 1 Ch. 853

Corporate Lands.

—Corporate lands—Power to sell—Consideration—Perpetual rent-charge.
 See CORPORATION. 8.

Corporation.

1. — *Ultra vires—Purchase by agreement—Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 16—Special Act—Covenant not to erect buildings—Validity of covenant—Restriction of powers given for benefit of public.*

When a corporation purchases land by agreement for any of the purposes for which it is authorized to acquire land by the Public Health or other public Acts, or by its special local Acts, it is not ultra vires for the corporation to enter into covenants with the vendor restricting the erection of buildings upon the land purchased which it might erect under other powers given to it for the benefit of the public, provided that such restrictions do not prevent the user of the land for the particular purposes for which it was acquired.

Ayr Harbour Trustees v. Oswald, (1883) 8 App. Cas. 623, distinguished.

In re South Eastern Ry. Co. and Wiffin's Contract, [1907] 2 Ch. 366, discussed.

STOURCLIFFE ESTATES Co. v. BOURNEMOUTH CORPORATION — **C. A. [1910] W. N. 120; [1910] 2 Ch. 12**

Costs.

1. — *Equitable set-off—Debts "en autre droit"—Specific performance.*

The plt., as purchaser of leasehold property, obtained judgment for specific performance against the deft., as administratrix of an intestate, with costs to be paid by her personally. The deft. had a beneficial interest, to the extent of one-fourth, in the intestate's estate, and it was alleged that except a mortgage there were no unpaid debts of the intestate, and that the purchase-money payable by the plt. represented the whole of the intestate's estate. The judgment not having been passed and entered, the plt. moved for the addition of a direction enabling him to deduct the costs due to him from the deft. from so much of the purchase-money as represented her beneficial interest in the intestate's estate:—

Held, that without some form of administration order, which the Court had no power to make in this action, it was impossible to ascertain what the amount representing the beneficial interest of the deft. was, so as to

VENDOR AND PURCHASER (Costs)—*continued*.
bind other persons interested in the intestate's estate; and, distinguishing *Green v. Sevin*, (1879) 13 Ch. D. 589, that, though a set-off of costs against purchase-money might be allowed in a case where the debt due to and the debt due from the vendor were so due in the same capacity, the plt. here could not be allowed to bring into account all or any part of an unascertained sum to which the debt might be beneficially entitled in the administration of her intestate's estate, as against the purchase-money which was due to her in her representative capacity. **PHILLIPS v. HOWELL**

Byrne J. [1901] W. N. 202 ; [1901] 2 Ch. 773

— Lands Clauses Act—Death of vendor before completion—Vendor's will—Costs of probate—Taxation of costs.
See LANDS CLAUSES ACTS. 19.

2. — Leaseholds—Sale—Abstract of title—“Deducing title”—Single document—Lease—Solicitor and client—Costs—Scale charge—Solicitors' Remuneration Act, 1881 (44 & 45 Vict. c. 44), General Order under, Sched. I., Part I.—Practice—Taxation—Vendor and purchaser summons, Raising question of taxation on—Vendor and Purchaser Act, 1874 (37 & 38 Vict. c. 78).

On a sale of leaseholds, the delivery of an abstract of the vendor's title consisting of the lease only is not “deducing title” so as to entitle the vendor's solicitor to the scale charge under Sched. I., Part I., of the General Order under the Solicitors' Remuneration Act, 1881.

Wellby v. Still, [1894] 3 Ch. 641, followed.

Semble, per *Romer L.J.*: A question as to the amount of the vendor's costs on a sale is not properly raised upon an ordinary summons under the Vendor and Purchaser Act, 1874, the solicitor not being a party to and therefore not bound by the proceedings. Such a question should be raised on taxation. *In re WEBSTER AND JONES' CONTRACT*

C. A. [1902] W. N. 146, 152 ; [1902] 2 Ch. 551

— Leases—Deducing one title on several contracts—Scale fee.

See SOLICITOR—Costs. 23.

— Rescission of contract.

See VENDOR AND PURCHASER—Rescission. 1, 2.

— Sale of leaseholds—Death of vendor before completion—Vendor's will—Costs of probate.

See LANDS CLAUSES ACTS. 19.

— Sheriff's costs—“Deduction” from purchase-money—Lands Clauses Act—Practice. *See COSTS. 18.*

3. — Summons — No title shewn — Purchaser's cost of investigating title—Lien.

Purchaser's summons under the Vendor and Purchaser Act, 1874, asking (inter alia) for (i.) a declaration that a good title to grant a right of way to certain hereditaments had not been shewn; (iii.) that the costs incurred by the applicant in investigating the

VENDOR AND PURCHASER (Costs)—*continued*.
title might be paid; and (iv.) that it might be declared that the said costs and expenses, including the costs of the present application, were (until payment thereof) a charge upon the said hereditaments. The contract between the parties was for the sale to the purchaser of certain freehold hereditaments, and for the grant of a right of way leading thereto. The vendor failed to shew any title to the right of way, and subsequently repaid the deposit, but had not paid the costs.

Kekewich J. said the question was whether he could properly make the declaration as to the lien in the absence of the vendor and without argument. There were some authorities upon the subject. In *Seton's Judgments*, Vol. III., p. 2269, there was a note to the effect that the Court had jurisdiction, on declaring that the vendor had not shewn a good title, to order him to pay the purchaser's costs of investigating the title and to charge them on the vendor's interest in the property. This was done in the Irish case of *In re Priestley and Davidson's Contract*, (1892) 31 L. R. Ir. 122. In the case of *Re Yeilding and Westbrook*, (1886) 31 Ch. D. 344, *Pearson J.* purported to follow a decision of *Hall V.-C.* of *In re Higgins and Hitchman's Contract*, (1882) 21 Ch. D. 95, 99, and said that if it was an innovation he thought it was a good one. But *Hall V.-C.* in fact made no order of the kind suggested, he dealt merely with the costs of investigating title, similarly in the case of *In re Hargreaves and Thompson's Contract*, (1886) 32 Ch. D. 454, in which the two last-named cases were approved. The question of a lien was not discussed at all. However, in *Turner v. Marriott*, (1867) L. R. 3 Eq. 744, *Malins V.-C.* went the whole length and declared that the purchaser was entitled to a lien on the vendor's interest in the estate for his deposit and costs. The result was that such orders had been made, and he agreed with the remark of *Pearson J.*, that if it was an innovation it was a good one. He therefore made the order asked for. *In re FURNEAUX AND AIRD'S CONTRACT*

Kekewich J [1906] W. N. 215

Covenants.

1. — Freeholds subject to restrictive covenants—Covenants to be entered into by purchaser.

In an agreement for the sale of freehold land it was stated that the property was subject to restrictive covenants. The vendor had covenanted with his vendor to observe and perform those covenants and to indemnify his vendor:—

Held, that the purchaser ought to enter into a similar covenant with the vendor, but that the covenant should be prefaced with the words “with the object and intention of affording to [the vendor], his heirs, executors, and administrators, a full and sufficient indemnity in respect of [the restrictive covenants], but not further or otherwise.” *In re POOLE AND CLARKE'S CONTRACT*

C. A. [1904] W. N. 133 ; [1904] 2 Ch. 173

VENDOR AND PURCHASER (Covenants)—*contd.**Note.*

Observations in, discussed and applied by Warrington J., *Harris v. Boots, Cash Chemists (Southern) Ltd.*, [1904] W. N. 141; [1904] 2 Ch. 376. See *Landlord and Tenant*. 52.

2.—Restrictive covenants — Building scheme—Rights of purchasers inter se—Covenant to observe covenants in general deed—General deed not executed—Reservation to vendor of right to dispense with restrictions.

A building society purchased the F. estate in 1860. A sale plan was then prepared, on which the estate was plotted out into lots, and the conditions which were to affect the different lots were printed. Among these were conditions that each purchaser should execute a deed of covenant for regulating building on his lot and securing performance of the conditions therein contained; and that no hotel should be built on any lot and no building used as such without the vendors' consent. At the end was a proviso that the vendors should have power to deal with any part of the estate not disposed of without reference to the restrictions. In Jan., 1861, the estate was conveyed to trustees for the building society.

A deed was then prepared, purporting to be made between the purchasers whose names were set out in the second schedule of the first part and the trustees of the second part. It contained covenants by the purchasers with each other and the trustees to observe the restrictions contained in the first schedule. These restrictions were the same as those on the sale plan. This document was engrossed, dated Jan. 16, 1861, and stamped, but it was never executed either by the trustees or any purchaser. A printed form of conveyance was prepared for the society which contained a covenant by the purchaser to observe and perform the restrictions and covenants contained in an indenture dated Jan. 16, 1861, and expressed to be made between the persons whose names were subscribed in the second schedule of the first part and the vendors of the second part. The defts. were owners of two lots conveyed to their predecessors in title by deeds in the printed form on Dec. 27, 1861, and April 19, 1866, on which they had recently erected a building which they were using as an hotel. The plts. were the owners of three plots conveyed to their predecessor in title on Dec. 27, 1861, and brought this action to restrain the defts. from carrying on the hotel. The several conveyances under which the plts. and defts. claimed were executed by the vendors only, not by the purchasers:—

Held (affirming the decision of Parker J., [1908] 2 Ch. 374) that, notwithstanding the reservation of a dispensing power to the vendors and the non-execution of the deed of covenant, there was a general building scheme for the benefit of the purchasers inter se as well as of the vendors, and that the covenants could be enforced at the suit of the plts.

Parker J.'s statement of the requisites for enforcing restrictive covenants as between different purchasers approved.

VENDOR AND PURCHASER (Covenants)—*contd.*

Osborne v. Bradley, [1903] 2 Ch. 446, distinguished. *ELLISTON v. REACHER*.

C. A. [1908] W. N. 221, 226; [1908] 2 Ch. 665

Note.

Principle of, applied by C. A., *Reid v. Bickerstaff*, [1909] 2 Ch. 305. See next Case.

3.—Restrictive covenants — Building scheme—Rights of purchasers inter se—Benefit annexed to land—Assigns.

In order to establish the existence of a building scheme there must be definite reciprocal rights and obligations extending over a defined area.

If on a sale of part of an estate the purchaser covenants with the vendor, his heirs and assigns, not to deal with the purchased property in a particular way, a subsequent purchaser from the same vendor of another part of the estate does not take the benefit of the covenant unless he is an express assignee thereof, or unless the covenant is expressed to be for the benefit and protection of the particular parcel purchased by the subsequent purchaser. The benefit of a covenant capable of being annexed to land, but not expressed to be so annexed, either by the deed containing the covenant or by some subsequent instrument executed by the covenantee, does not pass as an incident of land on a subsequent conveyance.

By a deed dated in 1840 the deft.'s predecessor in title bought a piece of land, part of an estate comprising about sixty-four acres on the outskirts of Liverpool, which was vested in trustees for sale, and for himself, his heirs and assigns, covenanted with the vendors, their heirs and assigns, to observe certain restrictions relating to building on the land purchased. The trustees subsequently sold other portions of the estate to the predecessors in title of the plts., who entered into similar restrictive covenants affecting the land purchased by them. There was nothing to shew whether the plts.' predecessors were aware of the existence of the covenants of 1840, and there was no reference to them in their conveyances. The trustees at intervals before and after 1840 sold other plots of the estate to various purchasers who entered into varying covenants of a like nature, and eventually the whole estate was disposed of and became a residential quarter.

In an action by the plts. to restrain the deft. from building in breach of the covenants contained in the deed of 1840:—

Held by Joyce J., on the evidence, that there was sufficient to enable the Court to infer the existence of a general building scheme affecting the estate of the common vendors, and that the plts. were entitled to an injunction.

Held by the C. A.—(1.) that the plts. had failed to establish the essential requisites of a building scheme, namely, definite reciprocal rights and obligations extending over a defined area; and (2.) that inasmuch as the benefit of the covenants in the deed of 1840 was not expressly assigned to the plts.' predecessors,

VENDOR AND PURCHASER (Covenants)—*contd.*

nor so annexed to the land of which they were the assigns as to pass by mere conveyance, the plts. were not entitled to succeed.

Decision of Joyce J. reversed. *REID v. BICKERSTAFF* C. A. [1909] W. N. 132; [1909] 2 Ch. 305

4. — *Restrictive covenants — Building scheme—Right of purchasers inter se—Land transfer—Registration—Conditions annexed to title—Land Transfer Act, 1875 (38 & 39 Vict. c. 87), s. 84—Land Transfer Act, 1897 (60 & 61 Vict. c. 65), Sched. I.*

In 1903 14 acres, forming part of the D. estate, were conveyed to Holmes, who covenanted with the vendor and the owner for the time being of the estate to observe certain restrictive conditions under which only dwelling houses were to be built on the land, so as to bind the hereditaments thereby conveyed into whosoever hands the same should come. Holmes caused himself to be registered in the Land Registry as proprietor of the 14 acres. The restrictive conditions were not entered at that time, but on April 6, 1905, they were entered on the register as affecting the whole of the land comprised in the title. On the same day Holmes transferred a plot of land, forming part of the 14 acres, to the plt., who covenanted to observe the conditions. In 1907 Holmes conveyed the plot adjoining the plt.'s plot to four purchasers, who built a church thereon. The plt. brought an action against Holmes and the four purchasers for an order directing them to pull down the church, and for damages :—

Held, that the registration of the restrictive conditions did not entitle one purchaser from Holmes to enforce the conditions against another purchaser or against the common vendor, in the absence of proof of a building scheme, and that the action failed.

Decision of Warrington J., [1909] W. N. 229; [1910] 1 Ch. 84, affirmed. *WILLÉ v. ST. JOHN* C. A. [1910] W. N. 34; [1910] 1 Ch. 325

— Return of deposit—Vendor's summons—Rescission of contract—Jurisdiction.

See **VENDOR AND PURCHASER—Title.** 16.

Deeds.

1. — *Custody of title-deeds—Sale of land—Retention of part of estate by vendor—Extinguished easement—Retention of servient tenement—Deeds shewing title to easement and to extinguishment—Vendor and Purchaser Act, 1874 (37 & 38 Vict. c. 78), s. 2, r. 5.*

Documents of title shewing the title to, and the extinguishment of, an easement formerly appurtenant to the land sold, over a servient tenement retained by the vendor, relate to the servient tenement, and the vendor has a right to retain them under s. 2 of the Vendor and Purchaser Act, 1874. *In re LEHMANN AND WALKER'S CONTRACT*

Swinfen Eady J. [1906] W. N. 171; [1906] 2 Ch. 640

VENDOR AND PURCHASER—*continued.***Deposit.**

1. — *Contract for purchase of land—Contract determined without default of purchaser—Power to purchaser to rescind in given event—Lien—Rescission.*

The purchaser of real estate has a lien on the property for his deposit when the contract for purchase is determined without any default on his part, not only when it is determined by reason of the default of the vendor.

A contract for the purchase of land empowered the purchaser to rescind the contract on the happening of a specified event. In exercise of this power the purchaser rescinded the contract :—

Held, that the purchaser had a lien on the land for the deposit which he had paid.

Decision of Farwell J., [1901] 1 Ch. 911, affirmed. *WHITBREAD & CO. v. WATT*

C. A. [1902] W. N. 64; [1902] 1 Ch. 935

— Deposit by purchaser to guarantee fulfilment of contract—Default by purchaser or his assignee—Action to recover deposit dismissed.

See **CANADA—Contracts.** 2.

2. — *No clause forfeiting deposit—Judgment for specific performance—Subsequent default by purchaser—Rescission of contract—Deposit claimed by vendor—Form of order—Practice.*

Vendor's action for specific performance of a contract for the sale of land. On signing the contract the purchaser paid the auctioneers a deposit of 1000*l.*, which was still in their hands as stakeholders. The contract did not contain a clause forfeiting the deposit if the purchaser made default in completing. The title was accepted, but the purchaser did not complete, and eventually the vendor brought this action and obtained the usual judgment for specific performance in March, 1904. The purchaser being unable to complete, the vendor now moved for an order in the usual form asking for rescission of the contract and a stay of proceedings except for the purpose of taxing and paying the costs of the action and motion: see *Henty v. Schroder*, (1879) 12 Ch. D. 666; *Olde v. Olde*, [1904] 1 Ch. 35. (See **VENDOR AND PURCHASER—Practice.** 1.) The vendor by her notice of motion also asked for a declaration that she was entitled to the deposit of 1000*l.* and any interest accrued thereon.

Farwell J. The vendor cannot have rescission and at the same time damage for the breach of the contract. In *Hove v. Smith*, (1884) 27 Ch. D. 89, there was no rescission, and in the absence of authority I decline to make the declaration that is asked for. *JACKSON v. DE KADICH*

Farwell J. [1904] W. N. 168

3. — *Specific performance—Default in payment by purchaser—Forfeiture of deposit—Form of order—Practice.*

A contract for the sale of land contained a provision for the forfeiture of the deposit on

VENDOR AND PURCHASER (Deposit)—*contd.*

failure by the purchaser to comply with any of the conditions of sale, giving the vendor power to resell, and provided that any deficiency in price which might happen on the resale should be paid by the purchaser to the vendor and in case of non-payment be recoverable by the vendor as liquidated damages. The purchaser paid a deposit but failed to complete the contract. In an action for specific performance the vendor moved for an order forfeiting the deposit and for liberty to resell, and in case the property should be resold for less than the contract price that the purchaser should pay to the vendor the difference between the contract price and the price realized on the resale :—

Held, that the vendor must give credit for the amount of the deposit.

The form of order in *Griffiths v. Vezey*, [1906] 1 Ch. 796, observed upon. *SHUTTLEWORTH v. CLEWS* *Joyce J.* [1909] W. N. 254 ; [1910] 1 Ch. 176

Fraud.

—Equitable mortgage—Notice—Fraud of vendor's solicitor—Legal estate—Possession of deeds—Forged receipt—Priority.

See **VENDOR AND PURCHASER—Priority.** 1.

Indemnity.

1. — *Executors—Sale of land—Title—Conveyance by executors to devisees in trust—Charge for payment of moneys for which the personal representatives are liable—Liability for debts of which executors have no notice at date of conveyance—Land Transfer Act, 1897 (60 & 61 Vict. c. 65), s. 2, sub-s. 3 ; s. 3, sub-s. 1—Law of Property Amendment Act, 1859 (22 & 23 Vict. c. 35), s. 29.*

The question turned upon the construction of sub-s. 3 of s. 2 and sub-s. 1 of s. 3 of the Land Transfer Act, 1897, in conjunction with s. 29 of the Law of Property Amendment Act, 1859 :—

Held, that the objection of the purchaser was that there might be debts of the testator of which the executors had no notice, and that by reason of the charge in the conveyance these debts, if any, were an incumbrance on the freeholds. It was beyond question that such an objection, if made with regard to freeholds devised by the will of a testator dying before the commencement of the Land Transfer Act, 1897, would have been untenable, and this Act ought not to be treated as altering a settled rule of law unless such alteration was clearly expressed or necessarily implied. Sub-s. 3 of s. 2 did not make executors liable for moneys for which they would not otherwise have been liable, but merely increased the assets available for satisfaction of the liabilities ; and by s. 29 of 22 & 23 Vict. c. 35, an executor who gave the notices to creditors there prescribed was not liable, as regards personal estate, for debts of which he had no notice, and this exemption was now applicable to real estate. Reliance was placed upon the proviso at the

VENDOR AND PURCHASER (Indemnity)—*contd.*

end of s. 29 saving the right of the creditor to follow the assets into the hands of the person receiving the same ; but real assets could not have been followed in the hands of a purchaser before the Land Transfer Act, 1897, and that Act created no right to follow them. The proviso to s. 29 was therefore inapplicable to real estate. The purchaser was not entitled to the indemnity claimed. *In re CARY AND LOTT'S CONTRACT.* — *Kekewich J.*

[1901] W. N. 129 ; [1901] 2 Ch. 463

—Partnership—Sale of share—Vendor's right to indemnity.

See **PARTNERSHIP.** 25.

Interest.

—Conditions of sale—Delay—Damages—Loss of expected profits—Interest on purchase-money—Wilful default.

See **VENDOR AND PURCHASER—Conditions of Sale.** 1.

1. — *Contract for sale of real estate—Non-completion on appointed day—Interest on purchase-money—Legal proceedings by purchaser—Default of purchaser—Reasonable conduct—Settled account.*

On a contract for sale of real estate the purchaser took an objection which went to the root of the title, and Neville J. held that the objection was well founded and the title was bad. The C. A. reversed the decision and the H. L. affirmed the judgment of the C. A. The case is reported [1908] 1 Ch. 26 ; [1908] A. C. 97.

By the conditions of sale it was provided that if the purchase should not be completed at the time appointed, the purchaser should pay interest on the remainder of the purchase-money at the rate of 5 per cent. per annum from that time until the same should be paid, or the vendor might take the rents and discharge the outgoings. Provided always that if the delay in completion should arise from any cause other than the neglect or default of the purchaser, and if the purchaser should at his own risk and expense deposit the remainder of the purchase-money at any bank upon a deposit account bearing interest and should give notice thereof to the vendor, the vendor should from the time of the notice only be entitled to such interest as should be actually produced by the amount so deposited.

The day fixed for completion was Sept. 2, 1907. On Sept. 4, 1907, after the decision of Neville J., the purchaser placed the balance of the purchase-money, 99,000*l.*, on deposit with a bank, and gave notice to the vendors. On Feb. 28, 1908, he took the money off the deposit account and paid it into Court under an order made in lunacy proceedings. The purchase was not yet completed, and the vendors now claimed interest at 5 per cent. per annum on the balance of the purchase-money from the date fixed for completion up to Feb. 28, 1908. The purchaser maintained that they were only entitled to the interest actually produced by the deposit account, and pleaded a settled account :—

Held, that a decision by the Court that a

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requisition is untenable is equivalent to a decision that the purchaser is in default in refusing to complete until the objection is removed; that default involves breach of some duty owed to another; that a person guilty of a breach of duty is guilty of default, but in considering whether he is under that duty the Court will be guided by the nature of the contract and all the circumstances of the case; that there is no rule that conduct amounting to default must be conduct which is unreasonable; that the words "doing what is reasonable under the circumstances" used by Bowen L.J. in *In re Young and Harston's Contract*, (1885) 31 Ch. D. 168, 174, mean the same thing as doing what a person ought to do having regard to his relations to others, and do not suggest any standard based on what a prudent man would do for his own protection; that the rule there suggested that a vendor of real estate is not guilty of default so long as he acts reasonably having regard to his relations towards other persons interested in the contract applies to purchasers as well as to vendors; that in the present case the delay had been caused by the conduct of the purchaser, who though acting reasonably for his own protection had committed a breach of duty towards the vendors in repudiating the contract although the title was good; and that the settled account under the circumstances was no defence to the claim for interest at 5 per cent.

Bennett v. Stone, [1902] 1 Ch. 226; [1903] 1 Ch. 509, explained. *In re BAYLEY-WORTHINGTON AND COHEN'S CONTRACT*

Parker J. [1909] W. N. 68; [1909] 1 Ch. 648

— Lands Clauses Acts.

See under LANDS CLAUSES ACTS.

2. — "Wilful default"—Contract for sale of real estate—Non-completion on appointed day—Interest on purchase-money—"Wilful default" of vendor—Dispute as to form of conveyance—Specific performance—Account of rents and profits received by vendor—Land sold in occupation of vendor—Occupation rent.

An agreement dated Sept. 28, 1898, for the sale of land provided that, if from any cause whatever, other than wilful default on the part of the vendors, the completion of the purchase should be delayed beyond Jan. 2, 1899, the purchase-money should bear interest at 5 per cent. per annum. The title having been accepted, a dispute arose about the form of the conveyance, and the purchase was not completed on the day fixed. On June 12, 1899, the vendors threatened in effect that, if the purchaser did not within ten days assent to the form of conveyance which they proposed, they would cancel the contract and forfeit the deposit. On June 22, 1899, the purchaser commenced an action for specific performance, with costs up to the date of the on Feb. 2, 1900, Buckley J. held that the purchaser was in the right as to the form of the conveyance, and gave judgment for specific performance, with costs up to the date of the judgment. The judgment directed that in-

VENDOR AND PURCHASER (Interest)—contd.

terest (if any) should be computed on the balance of the purchase-money from Jan. 2, 1899, and that an account should be taken of the rents and profits of the land received by the defts. since Jan. 2, 1899; and it was ordered that what should be coming on the account of rents and profits should be deducted from the amount of the purchase-money and interest when computed. On a motion by the plt. to vary the master's certificate, Buckley J. held that there had been no "wilful default" by the vendors, and that, even if there had, the delay in completion was due, not to the default, but to the inability of the purchaser to find the money to complete the purchase, and consequently that the purchaser must pay interest on the balance of the purchase-money from Jan. 2, 1899, down to completion:—

Held, by Stirling and Cozens-Hardy L.J.J. (Vaughan Williams L.J. dissenting), that either there had been no wilful default by the vendors, or that, if there had, the delay in completion was not due to the default, and that the decision as to payment of interest was right.

Per Vaughan Williams L.J.: The delay was caused by wilful default on the part of the vendors, and the purchaser ought not to pay interest.

Per Stirling L.J.: There had been wilful default on the part of the vendors, but it was not the cause of the delay.

Per Cozens-Hardy L.J.: There was no wilful default on the part of the vendors.

Decision of Buckley J., [1902] 1 Ch. 226, affirmed.

Per Vaughan Williams L.J. *In re Woods and Lewis' Contract*, [1898] 1 Ch. 433; [1898] 2 Ch. 211, has left untouched the proposition laid down by Bowen L.J. in *In re Young and Harston's Contract*, (1885) 31 Ch. D. 168, 174, and also the observations of Lindley L.J. in *In re Hetling and Merton's Contract*, [1893] 3 Ch. 269. Nor did Lindley L.J. in *In re London Corporation and Tubbs' Contract*, [1894] 2 Ch. 524, qualify the definition of "wilful default" given by Bowen L.J. in *In re Young and Harston's Contract*, 31 Ch. D. 174.

Per Stirling L.J. *In re London Corporation and Tubbs' Contract* the Court of Appeal did not intend to depart from the general rule laid down in *In re Young and Harston's Contract*. Nor was it intended to lay down that every case of honest mistake by a vendor is without that rule. So to hold would be inconsistent with *In re Hetling and Merton's Contract*.

Per Stirling and Cozens-Hardy L.J.J.: As regards wilful default, there is no distinction between a mistake of the vendor as to title and a mistake as to evidence of title or as to conveyance.

The judgment at the trial directed that an account should be taken of rents and profits received by the vendors. Part of the property was in the occupation of the vendors:—

Held, that the vendors were not charge-

VENDOR AND PURCHASER (Interest)—*contd.*

able with occupation rent for that part of the property which was in their occupation.

Decision of Buckley J., [1901] W. N. 225; [1902] 1 Ch. 226, affirmed. *BENNETT v. STONE* C. A. [1903] W. N. 22; [1903] 1 Ch. 509

Note.

Explained by Parker J., *In re Bayley-Worthington and Cohen's Contract*, [1909] 1 Ch. 648. See No. 1, above.

Lease.

— Option to purchase landlord's interest—Condition precedent—Specific performance. See **LANDLORD AND TENANT**. 58.

1. — *Purchase of Lease—Unusual and onerous covenants—Duty of vendor—Constructive notice—Conveyancing Act, 1882 (45 & 46 Vict. c. 39), s. 3, sub-s. 1.*

On a sale of a lease containing unusual and onerous covenants it is the duty of the vendor, before the contract is made, to disclose the existence of the covenants to a purchaser ignorant of them. If he does not give the purchaser express notice of the covenants, he must, in order to affect the purchaser with notice of them, shew that he gave him such an opportunity of acquainting himself with the terms of the lease under such circumstances that he ought reasonably to have done so. *MOLYNEUX v. HAWTREY* C. A. [1903] 2 K. B. 487

Lien.

— Company, Sale to—Unpaid purchase-money—Vendor's lien—Legal mortgage to secure—Priority.

See **COMPANY—Debentures**. 17.

— Costs—Summons—No title shewn—Purchaser's costs of investigating title. See **VENDOR AND PURCHASER—Costs**. 3

— Deposit—Lien for—Power to purchaser to rescind in given event.

See **VENDOR AND PURCHASER—Deposit**. 1.

— Lien for unpaid purchase-money, Liability of next of kin to discharge—Rent-charge issuing out of leaseholds—Intestacy.

See **WILL—Chattels Real**. 1.

— Payment of deposit—Purchaser's interest in land—Equitable execution—Appointment of receiver.

See **VENDOR AND PURCHASER—Receiver**. 1.

1. — *Vendor's lien—Unpaid purchase-money—Personal estate—Reversionary interest, Sale of—Trustee purchaser—Trust fund—Administration—Interest—Arrears, Recovery of—Real Property Limitation Act, 1833 (3 & 4 Will. 4, c. 27), s. 42.*

The doctrine of vendor's lien for unpaid purchase-money is as applicable to a sale of personal estate—such as a reversionary interest in a trust fund—as to a sale of real estate; and accordingly an unpaid vendor of personal estate is entitled to all such remedies for enforcing payment of his purchase-money and interest as he would have been entitled to under an express mortgage or charge.

VENDOR AND PURCHASER (Lien)—*continued.*

No Statute of Limitations is applicable to a charge on personal estate, whether by way of vendor's lien or otherwise: consequently the right to the recovery of the debt is not barred by lapse of time, and interest is recoverable for the whole period from the date on which the debt was incurred.

In 1874 a son, being entitled in reversion upon the death of his father to a trust legacy of 5000*l.* under a will of which the father was sole surviving trustee and executor, sold and assigned his reversionary interest to his father by deed absolutely for 1500*l.* The deed expressed that the 1500*l.* was paid as the consideration money by the father to the son, and a receipt for the money was indorsed on the deed, but in fact the money was never paid. In 1900 the father died, whereupon the son claimed a lien for the 1500*l.* upon the 5000*l.* legacy, which was then in the hands of the father's executors, together with interest from the date of the assignment:—

Held, that the son was entitled to enforce his claim on the grounds (1) that the doctrine of vendor's lien on real estate was equally applicable to personal estate; (2) that a vendor's lien on personal estate was not subject to any statutory or other bar; and (3) that, the father having been in the position of trustee of the legacy as well as purchaser, his executors were bound, in due course of administration, to satisfy the son's claim out of the legacy.

Order for payment accordingly, including interest at 4 per cent. per annum from the date of the assignment.

Davies v. Thomas [1900] 2 Ch. 462, followed.

In re STUCKLEY; STUCKLEY v. KEKEWICH.

C. A. [1905] W. N. 157; [1906] 1 Ch. 67

Minerals.

1. — *Parcels—Minerals—Conveyance of land with minerals—Adjoining Railway to boundary—Highway—Presumption as to minerals underlying railway—Written option to purchase—Subsequent conveyance—Rectification of conveyance and option—Admissibility of evidence—Possession of Minerals—Wrongful working under colour of title—Real Property Limitation Act, 1874 (37 & 38 Vict. c. 57), s. 1—Purchase by railway company after expiration of Special Act—General statutory powers—Ultra vires—Railways Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 20), ss. 6, 16, 77–79.*

The presumption that, where a highway is a boundary, the sub-soil of the highway ad medium filum *viæ* passes to the grantee of the land adjoining the highway, does not apply to a ry. that is a boundary. Under a grant, therefore, of the land and minerals lying on each side of and adjoining a ry., the minerals underlying the ry., which had not been acquired by the ry. co., will not pass to the grantee.

In 1875 A. by a written agreement gave B. a six months' option to purchase land and minerals on each side of and adjoining a ry. The option was duly exercised, and the land and minerals as described in the option agreement were conveyed to B. In 1884 B. had become the owner of collieries adjoining the land so acquired from A., and from that time worked parts of the

VENDOR AND PURCHASER (Minerals)—*contd.*
minerals underlying the ry. in the honest belief that he had a title thereto. In 1906 A. brought an action against B. claiming the minerals under the ry. B. counter-claimed for rectification of the conveyance and option agreement so as to include these minerals, alleging mutual mistake, and tendered evidence to shew that the parties at the date when the option was exercised intended to include these minerals in the purchase :—

Held, on the authority of *May v. Platt*, [1900] 1 Ch. 616, and *Davies v. Fittion*, (1842) 2 D. & War. 225, that the evidence was not admissible. *Quare*, as to the principle of those decisions.

Held, also (following *Ashton v. Stock*, (1877), 6 Ch. D. 719), that B. had not by possession or otherwise acquired a title to the minerals underlying the ry., and that the Statute of Limitations afforded him no defence to the action.

A ry. co. at any time after the due completion of the ry. authorized by their special Act can, under their general statutory powers, purchase any lands within the limits of deviation of their deposited plans which are necessary for or incidental to the business they are carrying on, e.g., the maintenance of the line.

In 1863 a ry. co. under the powers of a special Act, which incorporated the Lands Clauses Consolidation Act, 1845, and the Railways Clauses Consolidation Act, 1845, acquired land, without the underlying minerals, and constructed their ry. across it, within the four years for that purpose limited by the special Act. In 1904 the co., to prevent injury to the ry. by subsidence, entered into an informal agreement to purchase the minerals from A., the owner, and subsequently by a contract under seal assigned the benefit of the agreement to B., who, claiming the minerals adversely to A., disputed its validity :—

Held, that the co., by assigning the agreement to B., had ratified it; and that it was not in other respects *ultra vires* the co., notwithstanding that their powers under their special Act had expired. *THOMPSON v. HICKMAN*

Neville J. [1907] W. N. 55; [1907] 1 Ch. 550

Note.

Referred to by *Eve J.*, *Glyn v. Howell*, [1909] 1 Ch. 666. *See Mines*. 14.

Misdescription.

— Conditions of sale.

See under VENDOR AND PURCHASER—Conditions of Sale.

1. — *Misdescription of purchaser—Name—Partnership—Evidence of identity—Legal estate.*

William Wray carried on business under his own name at Laurel House, North Hill, Highgate, in partnership with his sons, and another person. He died in 1885, and his widow was admitted as a partner in his place. The business was carried on as before and under the same name. In 1890 the partners bought a house and paid for it out of the partnership assets. The conveyance was made between the vendor of the one part and “William Wray of Laurel House, Highgate,” of the other part, and the property was conveyed to William Wray in fee simple :—

VENDOR AND PURCHASER (Misdescription)—*continued.*

Held, that the legal estate passed by the conveyance to the four partners as joint tenants.

Marigham v. Sharpe, (1864) 17 C. B. (N.S.) 443, followed. *WRAY v. WRAY*

Warrington J. [1905] W. N. 111; [1905] 2 Ch. 349

Mistake.

1. — *Auction, Sale by—Purchase of wrong lot—Consensus ad idem—Contract—Wrong date—Memorandum in writing—Specific performance—Statute of Frauds* (29 Car. 2, c. 3).

At a sale by auction of landed property on Nov. 18, 1901, the deft. bid for one lot by mistake for another, and it was knocked down to him. On discovering his mistake he refused to sign the contract, whereupon the auctioneer signed it as his “agent.”

The printed particulars, conditions, and an annexed form of contract had been prepared for a sale on “Oct. 17, 1901,” which was postponed till Nov. 18, but by inadvertence the original date, though altered in the particulars, remained in the conditions and form of contract :—

Held, that there was no contract within the Statute of Frauds, nor, *semble*, any consensus ad idem, to support an action by the vendor for specific performance.

Decision of *Kekewich J.*, [1902] W. N. 103; [1902] 2 Ch. 266, reversed. *VAN PRAAGH v. EVERIDGE* C. A. [1903] W. N. 25; [1903] 1 Ch. 434

— Life policy, Sale of—Death of assured before contract.

See INSURANCE (LIFE). 16.

2. — *Written contract—Conveyance—Error in parcels—Common mistake—Rectification of conveyance—Laches.*

In 1900 A. sold and conveyed land to B. In 1906 A. brought an action against B. for rectification of the conveyance, alleging that by common mistake the parcels in the conveyance included more land than was comprised in the written contract in pursuance of which the conveyance was executed. A. commenced the action as soon as he became aware of the error. B. denied any mistake, and further contended that A. came too late for rectification :—

Held, on the evidence, that there had been a common mistake, and that A. was entitled to rectification, for that he had not been guilty of any laches.

Bloomer v. Spittle, (1872) L. R. 13 Eq. 427, questioned. *BEALE v. KYTE* - *Neville J.* [1907] W. N. 56; [1907] 1 Ch. 564

Mortgages.

1. — *Married woman mortgagee—Joint account clause—Transfer of Mortgage—Concurrence of husband—Separate acknowledgment.*

Since the Married Women's Property Act, 1882, when two or more persons, one of whom is a married woman, advance moneys by way of mortgage, under a recital that the advance is made out of moneys belonging to them on a joint account, it is not necessary on a transfer of

VENDOR AND PURCHASER (Mortgages)—*contd.*

the mortgage either for the husband of the married woman to concur in the conveyance or for her to acknowledge it separately under the Fines and Recoveries Act.

In re Brooke and Fremlin's Contract, [1898] 1 Ch. 647, followed. *In re WEST AND HARDY'S CONTRACT* Farwell J. [1903] W. N. 210 ; [1904] 1 Ch. 145

— Will — Mortgage — Option to purchase — Devises — Real Estate Charges Act, 1854.

See WILL—Mortgages. 1.

Notice.

— Building scheme—Restrictive stipulations — Right to enforce—Notice.

See BUILDINGS. 5.

— Purchasers for value without notice—Insolvent trader—Fraudulent assignment.

See BANKRUPTCY—Fraud. 1.

— Purchaser for value without notice—Will—Executors—Indian assets — Fraud in India—Revocation of Indian letters of administration.

See ADMINISTRATION. 15.

Outgoings.

— Paving expenses—"Completion of works."

See STREETS. 1.

Partners.

— Partner's share to co-partner, Sale of one—Duty of purchasing partner—Fiduciary relation.

See PARTNERSHIP. 24.

Payment Out.

— Lands Clauses Acts—"Absolutely entitled"—Borough council—No power of sale.

See LANDS CLAUSES ACTS. 27, 30.

Plan.**1. — Conveyance—Plan.**

In simple cases a purchaser is entitled to have land conveyed to him by reference to a plan on his conveyance. *In re SANSOM AND NARBETH'S CONTRACT* - Swinfen-Eady J. [1910] W. N. 113 ; [1910] 1 Ch. 741.

2. — Form of conveyance—Parcels—Description by reference to plan—Restrictive words—Right of vendor to insert.

Land was put up for sale by auction under particulars and conditions to which a plan was attached. The plan was a copy of the ordnance map, and upon it was a printed statement to the effect that it was for reference only, and that there was no guarantee of its accuracy, but that it was believed to be accurate. The draft conveyance described the property by reference to a plan which was a copy of the plan attached to the particulars and conditions. The vendor proposed to insert the words "by way of

VENDOR AND PURCHASER (Plan)—*continued.*

elucidation and not of warranty," to qualify the reference to the plan:—

Held, that he was not entitled to do so, as the description of the property in the draft conveyance was insufficient or unsatisfactory without reference to the plan, in which no material error could be pointed out. *In re SPARROW AND JAMES' CONTRACT* - Farwell J. [1910] 2 Ch. 60

Note.

This case was referred to by Swinfen Eady J., *In re Sansom and Narbeth's Contract*, [1910] 1 Ch. 741. See *No. 1, above.*

— Heritage—Sale by estate name—Plan.

See SCOTTISH LAW. 13.

3. — Sale of estate by general name—Contract—Use of plan—Scottish law.

Where an estate is sold as shewn upon a plan and there is no dispute as to the validity of the contract, the plan decides what is the extent of the estate sold; and this is so although the particulars given and taken as being particulars of what is comprised in the plans erroneously contained particulars which were not contained in the plan.

Such erroneous misstatements may afford the buyer good ground for a reduction of the contract, but in the absence of any action for this purpose he cannot found on the misrepresentation with the object of obtaining an estate larger than that delineated on the plan.

So *held*, reversing the decision of the Second Division of the Ct. of Sess., Sc., (1909) S. C. 1198. *GORDON-CUMMING v. HOULDSWORTH*

H. L. (Sc.) [1910] W. N. 185 ; [1910] A. C. 637

Practice.

— Costs—Sale — Leaseholds.—Abstract of title—"Deducing title"—Single document — Lease — Solicitor and client—Costs—Scale charge.

See VENDOR AND PURCHASER — Costs. 2.

1. — Judgment for specific performance with costs—Subsequent failure by purchaser to comply with judgment—Vendor's motion to rescind contract—Form of order—Costs—Practice.

Form of order in a vendor's action where judgment for specific performance with costs has been obtained and, the purchaser having subsequently failed to comply with the judgment, the vendor moves to rescind the contract and to stay further proceedings except for recovery of the costs of the action and motion. *OLDE v. OLDE*

Farwell J. [1903] W. N. 207 ; [1904] 1 Ch. 35

Note.

See *Jackson v. De Kadich*, Farwell J., [1904] W. N. 168. *Vendor and Purchaser—Deposit.*

2. — Judgment for specific performance against purchaser—Default in payment by purchaser—Forfeiture of deposit—Form of order.

Where judgment for specific performance of a contract for purchase of land has been given against the purchaser, and he fails to comply with the judgment, the vendor is entitled, if the

VENDOR AND PURCHASER (Practice)—*contd.*
contract contained a clause forfeiting the deposit, and giving the vendor power to proceed to a fresh sale, to an order declaring the deposit forfeited and for payment of any deficiency on a fresh sale and costs instead of the usual order rescinding the contract. *GRIFFITHS v. VEZVY Swinfen Eady J.* [1906] W. N. 73 ; [1906] 1 Ch. 796

3. — *Sale of real estate—Vendor's action for specific performance—Title accepted and conveyance approved—Form of order.*

Where a motion for judgment in default of defence is made in a vendor's action for specific performance of an agreement for the sale of real estate, the title to which has been accepted by the purchaser, the minutes should provide for the delivery of a conveyance of the property to the purchaser, on payment by him of the purchase-money, interest, costs, and damages (if any).

Form 6 in 3 Seton on Judgments and Orders, 6th ed. p. 2240, amended in this respect, *COOPER v. MORGAN* - - - *Warrington J.* [1908] W. N. 256 ; [1909] 1 Ch. 261

Priority.

— Alienation by "devises"—Mortgage of equitable estate—Purchaser for value without notice—Priority.
See ADMINISTRATION. 26.

1. — *Equitable mortgage—Notice—Fraud of vendor's solicitor—Legal estate—Possession of title-deeds—Forged receipt—Liability as between two innocent persons.*

A purchaser who has, before completion of his purchase, received notice of an outstanding equitable interest must, in order to get a good title from his vendor, take care to see that that interest is got in or destroyed. If he chooses to complete in reliance upon the assurance of the vendor, or of the vendor's solicitor, that the interest has been got in or destroyed, he does so at his own risk if it turns out that the interest is still outstanding, and the conveyance to him of the legal estate, accompanied by the delivery (unknown to the owner of the equitable interest) of the title-deeds, affords him no protection against the prior equitable interest.

Prior to the completion of a purchase of leaseholds the purchaser's solicitors discovered the existence of an equitable mortgage not disclosed by the abstract, and required it to be discharged. On completion of the purchase the vendor's solicitor, who was also the solicitor of the equitable mortgagee, produced the memorandum creating the equitable mortgage with what purported to be a receipt, signed by the mortgagee, for all moneys due on the security ; an assignment of the property by the vendor to the purchaser, passing the legal estate, was then executed, and the equitable mortgage, the receipt, and all the other title-deeds were handed to the purchaser. The receipt turned out to be a forgery, and on an action being brought by the equitable mortgagee against the purchaser to establish the priority of his charge :—

Held, affirming *Byrne J.*, [1902] W. N. 115 ; [1902] 2 Ch. 399, that as the deft. had purchased

VENDOR AND PURCHASER (Priority)—*contd.*
with notice of an incumbrance which, as a fact, was still subsisting, the legal estate and possession of the title-deeds afforded no protection, and that the plt.'s equitable mortgage therefore had priority, and was still enforceable against the deft. *JARED v. CLEMENTS C. A.* [1903] W. N. 25 ; [1903] 1 Ch. 428

Railways.

1. — *Special Act—Land required for extraordinary purposes—Conveyance subject to restrictive covenant—Resale of part of land not required—Validity of covenant—Ultra vires—Railways Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 20), s. 45—Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), ss. 13, 127, 128.*

By a special Act a ry. co. were authorized to acquire certain land for the purpose of enlarging their stations "and for other purposes of and connected with their undertaking." Under this power the ry. co. acquired the land by voluntary agreement and covenanted in their conveyance that they and their assigns would at all times thereafter use the land for a passenger station "and for no other purpose." Afterwards the ry. co. contracted to sell part of the land that they did not require, and the purchaser required the covenant to be released :—

Held, that the covenant was ultra vires the ry. co., and that they could sell free from the restrictions contained in it.

The principle of *Ayr Harbour Trustees v. Oswald*, (1883) 8 App. Cas. 623, applied. *In re SOUTH EASTERN RY. CO. AND WIFFIN'S CONTRACT* [1907] W. N. 161 ; [1907] 2 Ch. 366

Note.

Discussed by C. A., *Stourcliffe Estates Co. v. Bournemouth Corporation*, [1910] 2 Ch. 12. *See Vendor and Purchaser—Corporation.* 1.

Receiver.

— Partition action—Sale by mortgagee—Purchase by receiver without leave of the Court.
See RECEIVER. 13.

1. — *Real estate—Payment of deposit—Purchaser's interest in land—Judgment creditor of purchaser—Equitable execution—Appointment of receiver—Notice to vendor—Rescission of contract by consent—Payment by vendor to purchaser—Secured creditor—Judgments Act, 1838 (1 & 2 Vict. c. 110), s. 13.*

In June, 1901, the purchaser, under a contract for the sale of land (which was to be completed on Sept. 29), paid a deposit and was let into possession. The purchaser did not complete at the time appointed, and litigation ensued between him and the vendor. In Aug., 1902, a judgment creditor of the purchaser obtained an order appointing himself, upon giving security, receiver of the rents, &c., receivable in respect of the purchaser's interest in the land under the contract for sale. Notice of this order was at once served on the vendor, and the order was registered under the Land Charges Registration and Searches Act, 1888, and the Land Charges Act, 1900, but the creditor did not perfect his security as receiver until May, 1903. Meanwhile, in

VENDOR AND PURCHASER (Receiver)—*contd.*

Jan., 1903, the litigation between the purchaser and the vendor was compromised, a consent order being made for the rescission of the contract of sale and the delivery up of possession of the property by the purchaser on payment of 110*l.* to him by the vendor.

In May, 1903, the judgment creditor commenced an action against the vendor claiming a declaration that by virtue of the receivership order he was entitled to a lien or charge on the property for securing payment of the judgment debt and costs, with interest, and claiming also payment of the judgment debt and costs by the deft. :—

Held, that the 110*l.* was not paid to the purchaser as the price of any interest which he had in the land, but on the basis that he had no interest, and only for the purpose of getting him out of possession :

Held, therefore, that the judgment creditor had no claim against the vendor, and that the action must be dismissed.

Decision of Farwell J., [1904] W. N. 39 ; [1904] 1 Ch. 658, affirmed. *RIDOUT v. FOWLER* C. A. [1904] W. N. 128 ; [1904] 2 Ch. 93

Recitals.

— Title—Recitals twenty years old.

See **VENDOR AND PURCHASER—Title.**
12.

Rents.

1. — *Vendor in possession and receiving rents after date for completion—Arrears of rent previously due.*

When completion of a purchase is delayed without any fault on the part of the purchaser, and the vendor remains in possession and receives rents after the date fixed by the contract for completion, the vendor is not at liberty, as against the purchaser, to retain out of the rents so received arrears of rent accrued due at the date of the contract or subsequently before the date fixed for completion. *PLEWS v. SAMUEL*

Kekewich J. [1904] W. N. 47 ; [1904] 1 Ch. 464

Rescission.

1. — *Commission—Principal and agent—Agreement by vendor to pay commission to purchaser's agent—Right to rescind.*

Seven persons formed themselves into a syndicate to buy a certain property as a building speculation, and deputed one of their number, an estate agent named M., to negotiate the purchase with the vendors. M., as agent for himself and his co-purchasers, eventually arranged for the purchase of the property from the vendors for 18,000*l.*, and four contracts were executed by the vendors and purchasers for the purpose of carrying out this arrangement. Six of the purchasers subsequently discovered that M. had entered into an agreement with the vendors to receive from them a commission on the purchase-money, at a percentage amounting altogether to 322*l.* ; the six purchasers thereupon commenced four actions (subsequently consolidated) against the vendors and M., claiming rescission of the contracts and to recover the amount of the commission from M. M. subsequently offered to

VENDOR AND PURCHASER (Rescission)—*contd.*

account for the commission so received, and the only question was as to the right of the purchasers to rescind :—

Held that, in order to have a right to rescind, it must be shewn that the agent had an interest conflicting with his duty, but where the interest of the agent was not in conflict with his duty, the principles relied on by the plts. did not apply : in the present case, M.'s interest was identical with the interest of his co-purchasers, and the plts. therefore had made no case for rescission of these contracts on the ground that M. had received a commission from the vendors.
ROWLAND v. CHAPMAN

Buckley J. [1901] W. N. 153

— Conditions of sale—Misdescription—Absence of title to mines—Compensation.

See **VENDOR AND PURCHASER—Conditions of Sale.** 6.

2. — *Conditions of sale—Rescission—Pending litigation—Costs—Jurisdiction.*

A condition of sale providing that if the purchaser should insist on any requisition which the vendors should be unwilling to comply with, and should not withdraw the same after being required so to do, the vendors should (notwithstanding "any intermediate or pending negotiations, proceedings, or litigation") be at liberty to rescind the contract, and should thereupon return to the purchaser his deposit, "but without any interest, costs of investigating the title, or other compensation or payment whatsoever," does not oust the jurisdiction of the Court to order the vendors to pay the costs of a litigation pending at the date of rescission.

Duddell v. Simpson, (1866) L. R. 2 Ch. 102, 108, followed. *In re SPINDLER and MEAR'S CONTRACT*

Farwell J. [1901] W. N. 71 ; [1901] 1 Ch. 908

— Contract—Parol evidence—Statute of Frauds.
See **CONTRACT.** 13.

— Contract—Requisition of title—Arbitrary exercise of power to rescind contract.
See **VENDOR AND PURCHASER—Conditions of Sale.** 5.

— Contract—Return of deposit—Jurisdiction—Vendor's summons.

See **VENDOR AND PURCHASER—Title.**
16.

— Deposit, No clause forfeiting—Form of order.
See **VENDOR AND PURCHASER—Deposit.** 1.

3. — *House in London—Open contract—Adjoining house—Party-wall notice and award—Non-disclosure—Material fact—Defect in title—Obligation to disclose—Rescission—Return of deposit—Cost of investigating title—London Building Act, 1894 (57 & 58 Vict. c. ccciii.), ss. 90, 91, 93, 99.*

The service of a party-wall notice under the London Building Act, 1894, and the issue of the usual award throwing upon the owner the liability to contribute a portion of the cost of the party-wall works when completed, are material facts which a vendor is under an obligation to disclose to an intending purchaser, inasmuch as they affect the purchase price and

VENDOR AND PURCHASER (Rescission)—*contd.*
constitute a latent defect in the title to the property; and non-disclosure, however innocent, will afford the purchaser sufficient ground for obtaining rescission of his contract, followed by return of the deposit with interest, and payment of the costs of investigating the title.

Stevens v. Adamson, (1818) 2 Stark. 422, followed. **CARLISH v. SALT**

Joyce J. [1906] W. N. 10; [1906] 1 Ch. 335

4. — *Leaseholds*—*Sale by private contract*—*"The vendor's title is accepted by the purchasers"*—*Onerous covenants*—*Duty of vendor to disclose*.

It is settled that a vendor of leasehold property must disclose the existence of onerous and unusual covenants, or at least afford the purchaser an opportunity of inspecting the leases.

An agreement for the sale of certain leasehold houses contained the following stipulation: "The vendor's title is accepted by the purchasers." The leases under which the property was held contained onerous and unusual covenants, the existence of which had not been disclosed by the vendor before the contract was entered into, and of which the purchasers had no notice:

Held, that the condition as to the acceptance of the title did not affect the vendor's general duty of disclosure, and the purchasers were entitled to rescind the contract and to have the deposit returned with interest. *In re HAEDICKE AND LIPSKI'S CONTRACT* - **Byrne J. [1901]**

W. N. 177; [1901] 2 Ch. 666

— Lien for deposit—Power to purchaser to rescind in given event.

See VENDOR AND PURCHASER—Deposit. 1.

— Purchaser's interest in land—Appointment of receiver—Rescission of contract by consent.

See VENDOR AND PURCHASER—Receiver. 1.

5. — *Reasonable ground*—*Small contingent incumbrance*—*Refusal of purchaser to accept indemnity*—*Notice of rescission*—"Without prejudice."

A purchaser is not bound to accept an indemnity for a contingent incumbrance, however small the amount or remote the contingency, but is entitled to have it discharged.

Refusal to accept an indemnity is not in itself a "reasonable ground" for rescission under the usual condition.

A notice of rescission signed "without prejudice" is void. *In re WESTON AND THOMAS'S CONTRACT* **Swinfen Eady J. [1907] W. N. 21; 1907 1 Ch. 244**

— Sale by Court—Conditions of sale—Mistake—Misdescription—Compensation.

See VENDOR AND PURCHASER—Conditions of Sale. 4.

6. — *Sale under direction of Court*—*Discharge of purchaser from contract*—*Vendor's power to rescind*—*Misrepresentation*—*Costs recoverable by purchaser*—*Costs of bidding*.

Where land is contracted to be sold subject to a condition empowering the vendor to rescind the contract in the event of the purchaser making

VENDOR AND PURCHASER (Rescission)—*contd.*
any requisition which the vendor is advised not to comply with, and stipulating that the return of the deposit shall be accepted by the purchaser in discharge of all claims for costs or otherwise, and the Court accedes to an application by the purchaser to be discharged from his contract on the ground of misrepresentation, the vendor cannot avail himself of his power to rescind under the contract; and where the sale is under the direction of the Court the costs recoverable by the purchaser include, besides the costs of investigating the title and of the application, the costs occasioned by his bidding for and becoming the purchaser of the property. **HOLLIWELL v. SEACOMBE** - **Kekewich J. [1906] W. N. 21; [1906] 1 Ch. 426**

— Vendor's motion to rescind contract—Form of order—Costs.

See VENDOR AND PURCHASER—Practice. 1.

Sale.

See under SALE.

Sale of Goods.

See also under SALE OF GOODS.

— Contract induced by fraud of purchaser—Vendor's right to disaffirm contract—Title of trustee in bankruptcy.

See BANKRUPTCY—Sale of Goods. 1.

Scottish Law.

See under SCOTTISH LAW.

1. — *Interest in land*—*Slag to be severed and removed by purchaser*—*Breach of contract*—*Defect of title*—*Damages*—*Sale of Goods Act, 1893* (56 & 57 Vict. c. 71), ss. 51, 62.

In a counter-claim by purchasers against a vendor it appeared that the vendor was the lessee of certain land part of which was composed of slag and cinders. On adjoining lands occupied by other persons were two disused cinder-tips. The vendor had obtained from these persons licences to remove from the tips slag and cinders adhering to and forming part of their lands. He then agreed with the purchasers to sell to them all the slag on the demised premises and from the tips on the lands adjoining, or so much thereof as the purchasers should desire to remove, and for that purpose to give the purchasers access to the demised premises and the cinder-tips on the adjoining lands. After certain slag had been removed by the purchasers and sold at a profit the lessor and licensors of the vendor intervened and prevented the further removal of slag by the purchasers.

The purchasers sued for damages for the vendor's default in delivering or giving access to the slag sold:—

Held, that the agreement was not a contract for the sale of goods within the meaning of s. 62 of the Sale of Goods Act, 1893, so as to entitle the purchasers to recover as damages the difference between the contract and the market price of the slag under s. 51 of that Act; but

Held, that the agreement was a contract to grant an interest in land, and that, as the

VENDOR AND PURCHASER (Scottish Law)—*—continued.*

vendor's failure to perform his contract was due solely to a defect in his title, the purchasers could not recover any damages for the loss of their bargain.

The principle of *Flureau v. Thornhill*, (1777) 2 W. Bl. 1078, and *Blain v. Fothergill*, (1874) L. R. 7 H. L. 158, applied. *MORGAN v. RUSSELL & SONS* Div. Ct. [1908] W. N. 245; [1909] 1 K. B. 357

Settled Land.

See under SETTLED LAND.

Specific Performance.

See also under SPECIFIC PERFORMANCE.

— Agreement to purchase land—*Manx Local Government Act, 1886.*
See ISLE OF MAN. 3.

— Costs—Form of order—Practice.
See VENDOR AND PURCHASER—Practice. 1.

1. — *Costs of investigating title—Lien—Practice—Specific performance action—Certificate against title.*

Vendor's action for specific performance. The usual judgment was given with an inquiry as to title. The certificate was against the title, and on further consideration the deft. claimed to be entitled to a lien for his deposit with interest and costs, and also the costs of investigating the title.

Kekewich J. said that he had considered the point, and on principle he did not see why the deft. if he was entitled to the relief given in *Turner v. Murriott*, (1867) L. R. 3 Eq. 744, was not also entitled to the costs of investigating the title. There would therefore be a declaration of lien as asked for. *KITTON v. HEWETT*

Kekewich J. [1904] W. N. 21

— Defect in title—Repudiation after decree for specific performance.

See VENDOR AND PURCHASER—Contracts. 2.

2. — *Frauds, Statute of—Part performance.*

The deft. entered into a verbal contract with the plts. for the purchase from them of a plot of land with a house upon it, which they were to build for her. During the progress of the building she frequently visited the site, and made suggestions for material alterations and improvements which were carried out by the plts. at her request. In an action for specific performance of the contract she relied on the Statute of Frauds as a defence :—

Held, that the acts done by the plts. at the request of the deft. were acts of part performance taking the case out of the Statute of Frauds, and that the plts. were entitled to judgment for specific performance.

Dictum in *Caton v. Caton*, (1866) L. R. 1 Ch. 137, considered. *DICKINSON v. BARROW*

Kekewich J. [1904] 2 Ch. 339

VENDOR AND PURCHASER (Specific Performance)—*—continued.*

— Judgment for specific performance with costs
— Motion to rescind contract—Form of order—Costs.

See VENDOR AND PURCHASER—Practice. 1.

— Land — Contract — Rescission — Variation — Parol evidence — Statute of Frauds.

See CONTRACT. 13.

— Leasehold house — Title — Open contract — Breach of covenant to repair.

See VENDOR AND PURCHASER—Title. 7.

— Mistake—Sale by auction—Purchase of wrong lot.

See VENDOR AND PURCHASER—Mistake. 1.

3. — *Trustees, Sale by—Repurchase by one trustee—Executory contract—Specific performance—Damages—Breach of Trust—Purchaser's nominee.*

Trustees contracted to sell real estate to the deft. for 800l. Before the date fixed for completion, the deft. contracted to resell the same property to D., one of the trustees, at the same price, and required the conveyance to be made to D. as sub-purchaser, or as his nominee. D. subsequently declined to complete. In an action by the trustees for specific performance by the deft. of the first contract, the only defence was a counter-claim by the deft. for specific performance by D. of the second contract, or damages for the breach thereof :—

Held, applying the dictum of Mellish L.J. in *Parker v. McKenna*, (1874) L. R. 10 Ch. at p. 125, that so long as the first contract was executory only, the deft. having neither paid his purchase-money nor taken up his conveyance, the trustee, D., could not repurchase the property from his own purchaser, and the counter-claim could not be enforced; neither was the deft. entitled to damages, as he must be deemed to have known that D. was incapable of purchasing under the circumstances.

Though a purchaser may, as a general rule, require a conveyance to a nominee, he cannot require a conveyance to one of the vendors under circumstances which may expose them to the risk of being parties to a breach of trust. *DELVES v. GRAY* - - - **Byrne J. [1902] W. N. 142; [1902] 2 Ch. 606**

— Vendor's action for—Form of order.

See VENDOR AND PURCHASER—Practice. 1.

Title.

1. — *Adverse title — Constructive notice — Notice by tenancy — Conveyancing Act, 1882 (45 & 46 Vict. c. 39), s. 3.*

The occupation of land by a tenant affects a purchaser of the land with constructive notice of all that tenant's rights, but not with notice of his lessor's title or rights.

Actual knowledge by the purchaser that the rents of the land are paid by the tenants to some person whose receipt of them is inconsistent with the title of the vendor is constructive notice of

VENDOR AND PURCHASER (Title)—*continued.*
that person's rights, but mere knowledge that the rents are paid to an estate agent affects the purchaser with no notice at all.

Decision of Farwell J., [1901] 1 Ch. 45, affirmed.

Barnhart v. Greenshields, (1853) 9 Moo. P. C. 18, followed.

Dictum of Jessel M.R. to the contrary in *Mumford v. Stohvasser*, (1874) L. R. 18 Eq. 562, disapproved. *HUNT v. LUCK* - C. A. [1902] W. N. 14; [1902] 1 Ch. 428

— Adverse title—Representation—Solicitor and client—Breach of duty.
See ESTOPPEL. 2.

— Compound settlement—Trustees for purposes of Settled Land Acts.
See SETTLED LAND—Sale. 3.

— Conditions of sale—Trust for sale—Leaseholds—Trustee—Sale by way of underlease.
See VENDOR AND PURCHASER—Conditions of Sale. 8.

3. — *Conveyance—Implied covenants for title—Breach—Damages—Defect of title appearing on conveyance—Undisclosed easement—Repayment of costs of litigation—Solicitor and client costs—Indemnity—Interest—Conveyancing and Law of Property Act, 1881 (41 & 45 Vict. c. 41), s. 7.*

The deft. conveyed part of a building estate in fee simple as beneficial owner to the plts. The plts. had notice both on the face of and outside the conveyance that previous purchasers of parts of the estate had rights of way over a road. As between the plts. and the deft., however, the former were to take the land discharged from those rights. The conveyance contained no express covenants for title nor any qualification of the implied covenants. The plts. entered on the land and blocked up the road; and a previous purchaser claimed 5000*l.* damages from them for doing so. The plts. gave notice to the deft. and, under protest went to arbitration. An award was made giving the previous purchaser 510*l.* The plts. still disputed his right, and he brought an action in which, on a special case, the plts. were held liable to pay him the 510*l.* and interest, and the cost of the arbitration proceedings and of the action. They paid these sums, and brought this action claiming from the deft. repayment of the money thus paid and of their own costs of the arbitration and action :—

Held, following *Turner v. Moon*, [1901] 2 Ch. 825, that the plts. were entitled to bring an action for damages under the deft.'s implied covenants for title; that their knowledge of the previous purchaser's rights did not prevent them from making this claim; that the deft. was liable to indemnify them, and must repay the 510*l.* and interest and the costs which they had paid to the previous purchaser; and must also pay to them subsequent interest on the 510*l.* and their costs of the arbitration proceedings as between solicitor and client; but that he need not pay their costs of the special case. *GREAT WESTERN RY. Co. v. FISHER* *Buckley J.* [1905] 1 Ch. 316

D.D.

VENDOR AND PURCHASER (Title)—*continued.*

— Conveyance—Vendor and purchaser.

See under VENDOR AND PURCHASER—Conveyance.

— Copyholds—Devolution—Person to convey.
See COPYHOLDS. 2.

— Covenant for title—Breach—Measure of damages—Conveyance.

See VENDOR AND PURCHASER—Conveyance. 1.

— Defect of title—Sale of goods—Damages.
See VENDOR AND PURCHASER—Sale of Goods. 1.

— Doubtful title—Collusive bargain for reduction of rent—Purchaser for value without notice.
See SETTLED LAND—Leases. 12.

— Execution—No claim made by owner—Sale.
See COUNTY COURT—Execution. 5.

4. — *Forcing doubtful title—Difficult question of construction—Procedure—Vendor and purchaser summons—Originating summons—Costs.*

Where a vendor's title to land depends upon a question of construction involving real difficulty the proper mode of getting that question determined is by originating summons and not by a vendor and purchaser summons, and if the vendor insists upon proceeding by vendor and purchaser summons it is competent to the Court to declare the title too doubtful to force upon a purchaser.

An agreement was made for the sale of freehold ground rents, the title to which depended upon the construction of an obscure will. The purchaser having objected to the title, the vendors took out a vendor and purchaser summons for the purpose of getting the question of construction determined. Neville J. offered to adjourn the case to enable the vendors to take out an originating summons, and, on the refusal of this offer, held that the title was too doubtful to force upon the purchaser. The vendors appealed, and on the appeal the Court made the same offer, which was accepted. Upon the originating summons the question of construction was decided in favour of the vendors, and on the adjourned hearing of the appeal the order of Neville J. was discharged on the subsequent matter :—

Held, that the vendors ought to pay the costs of the appeal and in the Court below. *In re NICHOLS' AND VAN JOEL'S CONTRACT*

C. A. [1909] W. N. 226; [1910] 1 Ch. 43

5. — *Latent defect—Title, Failure to shew—Misdescription—Underground culvert for water.*

Land was sold subject to a condition that, "the property being open for inspection, the purchaser shall be deemed to buy with full knowledge of the actual quantities and condition thereof. If any error shall be found in the particulars the same shall not annul the sale, nor shall any compensation be allowed in respect thereof."

The purchaser bought the land for building purposes, and this was known to the vendors. They represented to him that it was suitable for

VENDOR AND PURCHASER (Title)—continued.

building, and that there was no restriction as to the class of houses to be erected. Before he entered into the contract the purchaser inspected the property. Some time after the contract he discovered that there was an underground culvert for water running across the land. There was nothing in the plan which was shewn to him to indicate the existence of this culvert, and the vendors, who were trustees of a former owner, were not aware of it. In the opinion of the Court, no reasonable inspection would have enabled the purchaser to discover the culvert:—

Held, that the above condition did not apply, and that the culvert was a substantial drawback to the use of the land for building purposes, so that the purchaser would not get that for which he contracted:—

Held, therefore, that *Flight v. Booth*, (1834) 1 Bing. N. C. 370; 41 R. R. 599, applied, and that a good title had not been shewn by the vendors in accordance with the contract.

Decision of Kekewich J. affirmed.

In re Brewer and Hankins' Contract, (1899) 80 L. T. 127, distinguished. *In re PUCKETT AND SMITH'S CONTRACT* C. A. [1902] W. N. 101; [1902] 2 Ch. 258

6. — *Lease—Title—Outstanding legal estate in Crown—Condition limiting time for sending in requisitions—Waiver of objection—Objection as to root of title.*

In 1884 two leases were granted to a co. from which the present vendors derived title. In the same year the co. went into liquidation for the purposes of reconstruction, and sold all its assets, including the leases, to a new co. of the same name; but there was no formal assignment of the leases, and the old co. was shortly afterwards dissolved. In 1901 these leases were sold by order of the Court, subject to conditions which limited the time for sending in requisitions and objections to title. After the prescribed period the purchaser objected that the vendors had shewn no legal title to the leases. The lessor had received rent from the new co. and its successors in title from 1884 until the present time, and the vendors offered to procure the consent of the lessor to the assignment of the leases to the purchaser:—

Held, that the purchaser was precluded by the conditions from insisting upon his objection as to the outstanding legal estate (which had become vested in the Crown as bona vacantia), inasmuch as the objection related, not to the root of the title, but to the subsequent devolution thereof. *PRICE-JONES v. WILLIAMS*

Joyce J. [1902] W. N. 125; [1902] 2 Ch. 517

7. — *Leasehold house - Open contract - Repairs—Breach of covenant to repair—Receipt for rent, Production of - Local authority - Dangerous structure - Notice to repair - Magistrates' order—"Outgoing," Liability for - Good title—Specific performance—Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), s. 3, sub-s. 4—London Building Act, 1894 (57 & 58 Vict. c. cxxiii., L. & P.), Part IX.*

A purchaser on July 1, 1901, entered into an open contract with a vendor for the purchase of

VENDOR AND PURCHASER (Title)—continued.

a leasehold house, the lease of which contained a covenant by the lessee to keep in good repair. At the date of the contract the purchaser was aware that the lease contained such a covenant, he was also aware from previous inspection that the house was, as the vendor in fact admitted, in bad repair, and on that account the vendor agreed to accept a reduced price. The Court held that Nov. 6 was the date fixing the rights and liabilities of the parties under the contract. On Sept. 27 the vendor was served with a "dangerous structure" notice from the London County Council under the London Building Acts, 1894 and 1898, requiring him to pull down or render secure a part of the house. The notice not being complied with, a police court order was made on Nov. 1 requiring him to do the repairs within fourteen days from service of the order, but he was not served with it till Nov. 9. On Oct. 24 the vendor paid the Michaelmas rent due under his lease, and he produced the receipt for it to the purchaser.

Upon a summons taken out by the vendor under the Vendor and Purchaser Act, 1874, for a declaration that he had made a good title and that the expenses of complying with the police court order should be borne by the purchaser:—

Held, apart from the question as to the date at which the requirements of the "dangerous structure" notice and the subsequent police court order had ripened into an obligation—as to which the Court expressed no opinion—that the purchaser had proved a breach of the vendor's covenant to repair, and that therefore s. 3, sub-s. 4, of the Conveyancing Act, 1881—which requires a purchaser of leaseholds, on production of the receipt for the last payment due for rent, to assume, "unless the contrary appear," that all the covenants of the lease have been performed—did not apply, since the contrary did appear; and that, on the authority of *Barnett v. Wheeler*, (1841) 7 M. & W. 364, the vendor's obligation to make a good title was not removed by the knowledge of the purchaser at the date of the contract that the title was bad by reason of the breach of covenant; and accordingly that the expense of complying with the police court order must be borne by the vendor.

But *semble*, per Romer L.J., having regard to the reduced price the vendor had, in the circumstances, agreed to accept, the case would not have been one for enforcing specific performance in an action against him.

On a sale of leaseholds, the production by the vendor of the receipt for rent last due is not, under s. 3, sub-s. 4, of the Conveyancing Act, 1881, in itself conclusive evidence of the due performance of the covenants of the lease; it is only evidence of due performance "unless the contrary appears"; and therefore, notwithstanding the production of the receipt, it is open to the purchaser to adduce evidence of non-performance as a ground for resisting specific performance.

Decision of Swinfen Eady J., [1902] W. N. 69; [1902] 2 Ch. 214, affirmed. *In re HIGGETT AND BIRD'S CONTRACT* C. A. [1903] W. N. 6; [1903] 1 Ch. 287

VENDOR AND PURCHASER (Title)—continued.**Note.**

Explained by C. A., *In re Allen and Driscoll's Contract*, [1904] 2 Ch. 226.

8. — Leaseholds, Sale of, by executor—Lapse of time—Actual notice to purchaser that no debts of testator remain unpaid.

A testator by his will appointed his wife sole trustee and executrix thereof, and gave to her all his estate upon trust for sale or conversion for the benefit of herself during life or widowhood, and declared it to be his wish that, unless circumstances otherwise required it, his leasehold estates should not be converted during the life or widowhood of his wife, and at her death or marriage he bequeathed a leasehold house to his son. Eighteen years after the death of the testator the widow entered into a contract for sale of the leasehold house. Her solicitors informed the purchaser that there were no debts of the testator remaining unpaid. No reason for selling was suggested. The purchaser objected to the title, unless the concurrence of the son was obtained, but this was refused:—

Held, that, under the peculiar circumstances of the case, the purchaser having actual notice that there were no debts of the testator remaining unpaid, and no reason being suggested for the sale, the title was not one which ought to be forced on a purchaser. *In re VERRELL'S CONTRACT* **Kekewich J. [1902] W. N. 207; [1903] 1 Ch. 65**

— Leaseholds—Trust for sale.

See No. 16, below.

9. — Light—Guarantee—Restrictive stipulation—Drain—Sewer—Vesting in local authority—Title—Defect—Public Health Act, 1875 (38 & 39 Vict. c. 65), ss. 4, 13, 41—Public Health Acts Amendment Act, 1890 (53 & 54 Vict. c. 59), s. 19.

The plts. by an open contract agreed to buy from the defts. two houses "subject to right of light with owner of adjoining property being guaranteed." The houses had been recently built by the vendor, and contained no ancient lights. The adjoining house had also been built by the vendor and sold by him in 1897 to D., on which occasion he and D. mutually covenanted not to do anything to prejudice the right of light to the windows of each other's premises:—

Held, that this restrictive stipulation was a defect in the title.

Under part of the premises contracted to be sold ran a drain, into which opened the drains of two adjoining houses:—

Held, that this drain was a sewer, and was vested in the local authority under s. 13 of the Public Health Act, 1875; that s. 19 of the Public Health Acts Amendment Act, 1890, did not prevent it from vesting; that the vendor was therefore unable to convey all that he had contracted to sell; and that he had not made a good title. **PEMSEL AND WILSON v. TUCKER**

Warrington J. [1907] W. N. 128; [1907] 2 Ch. 191

10. — Particulars — Misrepresentation—Sale by auction—Property described as freehold—Conditions—Title—Purchaser required to assume facts—Long term—Enlargement into fee simple—

VENDOR AND PURCHASER (Title)—continued.

Presumption of release of rent—Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), s. 65.

The vendor put up for sale by auction property described as "an eligible freehold investment comprising a house and shop No. 349, Whitechapel Road." One of the conditions of sale was "The property was formerly held with other property under an indenture of lease dated Jan. 31, 1672, for a term of 500 years at a yearly rent of 1s., but the property was assigned in the year 1828 free from the said rent, which has never been paid by the vendor, and the purchaser shall assume that the said rent has been released and is not now charged upon the property sold. By a deed poll in 1902 under the provisions of the Conveyancing Act, 1881, the property was expressed to be enlarged by the beneficial owner into a fee simple. . . . It shall be assumed that the said deed poll operated as an effectual enlargement according to its tenor."

The lease was from the lord of the manor of Stepney. The facts stated in the condition were true, and the property had been assigned to the vendor in 1902 as free from the rent, but subject to the lease, but in the abstracted deeds between 1828 and 1902 it was described as held at a rent of 1s. The purchaser objected that the assumption he was required to make in the particulars was to the vendor's knowledge untrue and the statement in the particulars that the property was freehold was a misrepresentation, and brought this action for rescission of the contract and return of his deposit. It was proved at the hearing that a search in the records of the manor shewed that no rent had been paid for fifty years, and there was no certain evidence that it had ever been paid at all:—

Held, that the vendor might reasonably believe that the property was freehold and was therefore justified in so describing it in the particulars, and then, by the conditions, requiring the purchaser to assume the facts establishing the freehold title, which the vendor knew he would have a difficulty in proving. There was therefore no misrepresentation.

Torrance v. Bolton, (1872) L. R. 14 Eq. 124; 8 Ch. 118, distinguished. **BLAIBERG v. KEEVES** **Warrington J. [1906] W. N. 99; [1906] 2 Ch. 175**

11. — Perpetuity — Power of appointment—Independent alternative gifts — Validity of ultimate gift — Settled land — Future trust for sale—Trustees for purposes of Settled Land Acts —Tenants for life trustees—Mortgagee of life or other interest—Concurrence of mortgagee—Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 2, sub-s. 8, s. 20, sub-s. 2 (i.) and (ii.), s. 50—Settled Land Act, 1890 (53 & 54 Vict. c. 69), s. 16, sub-s. (ii.).

A testator devised his real estate to trustees upon trust to pay the income to his three children, and (in the events which happened) to the survivors and survivor of them for their lives, with power for any child to appoint by will a life interest to his or her wife or husband, and directed that upon the death of the last survivor

VENDOR AND PURCHASER (Title)—*continued*.
of all his children and any husband or wife to whom an appointment had been made his trustees should sell his real estate and divide the proceeds equally between all his grandchildren then living. No appointment had been made to any husband or wife not born in the testator's lifetime.

One child died without issue, and the other two had become trustees of the will as well as tenants for life; they had sold part of the testator's estate in 1898 as tenants for life, exercising the statutory power, and had also received the purchase-money as trustees:—

Held, that the trust for sale was not bad for perpetuity, there being alternative independent gifts, on the principle stated in *In re Bowles*, [1905] 1 Ch. 371, and that, inasmuch as the power in favour of a husband or wife had not been exercised so as to raise any question of perpetuity, the ultimate gift to the grandchildren was, in the events which had happened, valid.

Held, also, approving and adopting *In re Jackson's Settled Estate*, [1902] 1 Ch. 258, that the tenants for life were good trustees for the purposes of the Settled Land Acts.

Where a tenant for life sells settled land by virtue of the Settled Land Acts, the exercise of the statutory power overreaches a mortgage by a remainderman, and his concurrence in the conveyance is not necessary.

In re Dickin and Kelsall's Contract, [1908] 1 Ch. 213, approved.

Observations in *In re Mundy and Roper's Contract*, [1899] 1 Ch. 275, 289, explained.

Decision of Neville J., [1910] W. N. 61, affirmed. *In re DAVIES AND KENT'S CONTRACT* C. A. [1910] W. N. 104; [1910] 2 Ch. 35

12. — Recital twenty years old—Vendor and Purchaser Act, 1874 (37 & 38 Vict. c. 78), ss. 1, 2.

A vendor's title to a freehold house comprised the following deeds:—

1. A conveyance on sale in Aug., 1877.
2. A first mortgage in May, 1878.
3. A second mortgage in June, 1878.
4. A release of the second mortgage in May, 1882.

5. A conveyance on sale of the house in June, 1882, by the mortgagor and first mortgagee to the vendor's immediate predecessor in title with an acknowledgment of the right to production of the prior deeds which included other property.

This conveyance recited that by the first mortgage the house and other property were "granted unto and to the use of the mortgagee, his heirs and assigns," by way of mortgage "as therein mentioned."

The vendor having sold by open contract in 1906, relied on this recital and declined to furnish any title prior to the conveyance of 1882.

The purchaser, while insisting on her right to a forty years' title, offered to begin with the conveyance of Aug., 1877:—

Held, that the purchaser was entitled to a title beginning with the conveyance of Aug., 1877.

Bolton v. London School Board, (1878) 7

VENDOR AND PURCHASER (Title)—*continued*.
Ch. D. 766, distinguished and disapproved. *In re WALLIS AND GROUT'S CONTRACT*

Swinfen Eady J. [1906] W. N. 108; [1906] 2 Ch. 206

— Representation—Solicitor and client—Breach of duty—Adverse title.
See ESTOPPEL. 2.

13. — Restrictive covenants—Negative covenants—Title by adverse possession—Squatter's title—Trespasser—Twelve years' possession—Acceptance of less than forty years' title—Notice—Statute of Limitations—Real Property Limitation Act, 1833 (3 & 4 Will. 4, c. 27), s. 34—Real Property Limitation Act, 1874 (37 & 38 Vict. c. 57), ss. 1, 9.

A negative covenant validly created, entered into by an owner of land with an adjoining owner, such as a covenant restricting the user of the land, binds the land in equity, as being in the nature of a negative easement: *London and South Western Ry. Co. v. Gomm*, (1882) 20 Ch. D. 562, 583; and it can, therefore, be enforced against any subsequent owner of the land not being a bona fide purchaser for value of the legal estate without notice. Such a covenant is equally binding in equity upon land to which a squatter has subsequently acquired a statutory title by adverse possession against the owner and covenantor for twelve years under s. 34 of the Real Property Limitation Act, 1833, as amended by ss. 1 and 9 of the Real Property Limitation Act, 1874; for the statutory "extinguishment" of the title of the dispossessed owner of the land has not the effect of destroying the covenant, the equitable right of the covenantee not being in any way affected by the statute, and consequently the covenantee can enforce the covenant against the squatter both before and after he has acquired his possessory title, and also against any subsequent owner of the land not being a bona fide purchaser for value without notice.

Neither a squatter who has acquired a good title by possession, nor a purchaser from him, is exempt from liability arising through his not insisting on and obtaining a full forty years' title. Therefore, if any purchaser under the squatter's possessory title chooses to accept less than a forty years' title, he is fixed with constructive notice of all such equities affecting the land as he would have discovered by reasonable inquiries under a title for the full period.

Thus, where, on a purchase for value of freehold land, the purchaser agreed to accept a title commencing with a possessory or squatting title acquired within forty years prior to the purchase, he was held to have constructive notice of restrictive covenants affecting the land entered into within the forty years by an owner before the squatter took possession.

Decision of Farwell J., [1905] W. N. 32; [1905] 1 Ch. 391, affirmed. *In re NISBET AND POTTS' CONTRACT* C. A. [1906] W. N. 12; [1906] 1 Ch. 386

14. — Settlement—Investment clause—Construction—Power to invest in purchase of freehold ground-rents—Power to vary "securities"—Implied power to resell purchased ground-rents—

VENDOR AND PURCHASER (Title)—*continued*.
Settled Land Acts—Vendor and Purchaser Act, 1874 (37 & 38 Vict. c. 78).

By a settlement made on the marriage of the plt. it was agreed that the trustees should stand possessed of the shares, stock, and securities mentioned in the schedule thereto, upon trust to permit the same to remain in their then present state of investment, or to sell the same or any part thereof, and invest the proceeds in any of the public stocks or funds or Government securities of the United Kingdom or India, or any colony or dependency of the United Kingdom, or of the United States of America, or upon mortgage of freehold, copyhold, leasehold, or chattel real securities in England and Wales (subject as therein mentioned), or in the purchase of freehold ground-rents, or in guaranteed or preference stocks or debentures or debenture stock of any ry. co. or municipal body in the United Kingdom, or in the shares or stocks or securities of any ry. in India interest on which was guaranteed by the Government of India, or upon the first mortgage bonds or debentures of any rys. in the United States of America paying a dividend on their original stock, with power to vary or transfer such stocks, funds, shares, or securities into or for others of the same or a like nature. The investments mentioned in the schedule comprised certain shares and debentures and debenture stock and a bond of the plt., with certain leasehold premises by way of collateral security. The plt. was the first tenant for life under the settlement. In 1898 and 1899 the trustees under the powers of the settlement purchased certain freehold ground-rents. In Feb., 1905, the plt., as tenant for life under the Settled Land Acts, agreed to sell these ground-rents to the defendants.

Upon the investigation of the title the defts. took the objection that the trustees of the settlement were not trustees for the purposes of the Settled Land Acts, inasmuch as the power in the settlement to vary stocks, funds, shares, and securities did not include the ground-rents in question. The plt. took out this summons for a declaration that the objection was unfounded.

Kekewich J. said that although the purchased ground-rents did not fall under the head of "securities" in the strict sense of the term, that word was constantly used loosely in the sense of investments, and he came to the conclusion upon the whole of this settlement that these ground-rents were securities for the purposes of that instrument. Consequently the trustees of the settlement had power to sell, and were trustees for the purposes of the Settled Land Acts. *In re TAPP AND LONDON DOCK CO.'S CONTRACT*

Kekewich J. [1905] W. N. 85, (Erratum) 92

15.—Settlement—Real estate—Equitable limitations—Power of appointment—Trustees directed to pay and transfer the property to appointees—Power of sale—Appointment by will upon trust for sale—Sale by trustees of will—Conflict between two sets of trustees—Outstanding legal estate—Deduction of title.

By a marriage settlement real estate was conveyed to trustees upon trust after the death of the survivor of the husband and wife "to pay

VENDOR AND PURCHASER (Title)—*continued*.
 and transfer the said hereditaments and premises" to the children of the marriage as the survivor of the husband and wife should appoint. The settlement contained powers for the trustees to sell the property during the lives of the husband and wife and the survivor and during the lifetime of any child. The husband survived his wife, and by his will appointed the property to trustees on trust for sale and conversion, and directed them to stand possessed of the proceeds upon a series of complicated trusts for the benefit of his children. The trustees of the will, purporting to act under the trust for sale therein contained, contracted to sell the property. The purchaser took the objection that the proper persons to sell were the representatives of the last surviving trustee of the settlement:—

Held, that, inasmuch as the trustees of the settlement were directed to "pay and transfer" the property to the appointees, the trust for sale by the trustees of the will was expressly authorized by the terms of the power and overrode the powers of sale contained in the settlement; the trustees of the will were therefore the proper persons to sell the property and could call for a conveyance of the legal estate.

The 14th condition of sale provided that every deed or instrument which should be necessary for getting in any outstanding estate or interest or for completing the vendors' title should be prepared by and at the expense of the purchaser, who should also bear the expense of the doing of every act needed for perfecting the assurance by all parties other than the vendors:—

Held, that this condition did not relieve the vendors from the expense of deducing the title to the outstanding legal estate. *In re ADAMS' TRUSTEES' AND FROST'S CONTRACT*

**Warrington J. [1907] W. N. 103 ;
 [1907] 1 Ch. 695**

— Tenant for life, Sale by—Incumbrance prior to settlement—Payment of purchase-money—Concurrence of trustees.
See SETTLED LAND—Sale. 5.

— Trust—Purchase of beneficiary's interest by trustee—Non-disclosure of valuation by trustee.
See TRUSTEE—Sale. 1.

16.—Trust for sale—Leaseholds—Sale by way of underlease—Vendor's summons—Rescission of contract—Return of deposit—Jurisdiction—Vendor and Purchaser Act, 1874 (37 & 38 Vict. c. 78), s. 9.

Trustees for sale under a settlement put up for sale by auction in lots leasehold property comprised in one lease (of which they were the assignees), subject to a condition that, in the event of the lots being sold to different purchasers (which happened), the sale of each lot should be carried out by means of an underlease to each purchaser for the residue of the original term, less the last day thereof, and at an apportioned rent. Upon a summons by the vendors under the Vendor and Purchaser Act, 1874, Kekewich J. held that this was not a valid exercise of the trust for sale. And, at the request of the purchaser of two of the lots, Kekewich J.

VENDOR AND PURCHASER (Title)—*continued*.
made an order for the rescission of the contract and for the return of the deposit.

The Court held that *In re Blyth and Young*, (1880) 13 Ch. D. 416, exactly applied, and on that ground they dismissed the appeal, [1901] W. N. 145; [1901] 2 Ch. 383, without going into the merits. *In re WALKER AND OAKSHOTT'S CONTRACT* C. A. [1902] W. N. 147

Note.

Overruled on one point by C. A., *In re Judd and Poland and Shelcher's Contract*, [1906] 1 Ch. 684. See *Vendor and Purchaser—Conditions of Sale*. 8.

17. — *Trust for sale—Will—Construction—Reversion—Election—Leaseholds—Annuities—Appropriation—Purchase by trustee for sale.*

On a contract for sale of leaseholds the purchaser objected that the vendor at the time when he bought the property was himself a trustee for sale. Sir R. Macfarlane by his will gave all his real and leasehold estate, including the property in question, to his son Robert and J. Cockerell upon trust for sale, and to stand possessed of the proceeds upon trust to appropriate investments to answer annuities for his wife, his daughter Magdalen, and his son Henry. The testator gave his residue to his son Robert, and died in 1843. Henry was at this time incapable of managing his own affairs, and so continued down to the time of his death. In 1843 Lady Macfarlane was appointed an additional trustee, and the property was vested in Robert Cockerell, and her, subject to the provisions of the will. In 1847 a new trustee was appointed in the place of Cockerell by deeds which recited that the property subject to the trusts included the leaseholds, and conveyed them specially to the new trustees upon the trusts of the will. Robert executed a power of attorney in favour of Lady Macfarlane, and she let the property on several occasions. Robert died in Oct., 1849, leaving all his property equally to Lady Macfarlane, Magdalen, and Henry; and in 1850 Lady Macfarlane was appointed administratrix of his estate with the will annexed. In 1853 she became the sole trustee; and in 1859 and 1866 she let the leaseholds for terms of years. She died in 1873, leaving all her property to Magdalen, and appointing her sole executrix. Magdalen died in 1877, leaving her property to Sir C. Douglas, and appointing him and another executors. All the property remaining subject to the trusts of the will of Sir R. Macfarlane thus became vested in Sir C. Douglas, and he paid into court to the account of Henry certain funds on an affidavit which stated that after the death of Sir R. Macfarlane his trustees got in all his real and personal estate, and appropriated 40,000*l.* Bank Annuities and the leaseholds in question to answer the annuities, and transferred the residue to Robert. In 1878 Henry was found of unsound mind by inquisition, and the Master reported that the leaseholds in question belonged half to Henry and half to Sir C. Douglas absolutely, subject to Henry's annuity of 500*l.* In 1887 Sir C. Douglas died, and his will was proved by G. C. Douglas, one of his executors. In 1888 Henry (acting by his committee) and G. C. Douglas, by a deed

VENDOR AND PURCHASER (Title)—*continued*.
which recited that they were absolutely entitled in moieties to the property, and that the Master had approved of the deed, let the property for twenty-one years. Henry died in 1892 and letters of administration to his estate were granted to Gertrude Begbie, one of his next of kin. By a deed of May 19, 1893, which recited that G. C. Douglas was surviving trustee of the will of Sir R. Macfarlane, G. C. Douglas as trustee at the request of Gertrude Begbie, and in consideration of 3000*l.* paid by G. C. Douglas to her, and being himself entitled as beneficial owner to the other half of the property, assigned the leaseholds to H. P. Leach. By an indenture of May 20, 1893, H. P. Leach, as trustee, and at the request of G. C. Douglas, assigned the premises to him. On Sept. 19, 1901, G. C. Douglas agreed to sell the property to Powell for 12,200*l.*, and the purchaser took the objection that in 1893 G. C. Douglas was a trustee for sale of the property, and could not purchase the half of it which was then conveyed to him :—

Held, that, if any appropriation had taken place, it was an appropriation of unauthorized securities, and was not effectual to destroy the trust for sale; that until Henry was found a lunatic there could be no election by the beneficiaries; that there had been no election to take in specie by the Court on behalf of the lunatic; that it was not proved that there had been an election by all the persons interested; that the trust for sale did not come to an end when the annuities ceased, was not void for perpetuity, and was operative in 1893; and that the title ought not to be forced on the purchaser. *In re DOUGLAS AND POWELL'S CONTRACT*

Byrne J. [1902] 2 Ch. 296

18. — *Trustee—Purchase of land in breach of trust—Power of trustee to sell.*

B., the trustee of the will of his deceased wife, invested trust moneys in the purchase of a leasehold house being an unauthorized investment. The persons beneficially entitled were two infants, who or the survivor of whom took the property if and when they attained twenty-one, and, in default of either attaining that age, the testatrix's next of kin. B. died and his executors contracted to sell the house :—

Held, that as some of the beneficiaries were not capable of electing to take the property in its existing state, the executors could make a good title without the concurrence of any beneficiary. *In re JENKINS AND H. E. RANDALL & Co.'s CONTRACT*

Swinfen Eady J. [1903] W. N. 101; [1903] 2 Ch. 362

— Trustee for sale—Purchase of trust property—Sale to trustee twelve years after his retirement.

See *TRUSTEE—Sale*. 1.

— Trustee, Vendor selling as—No power of sale—Written request of beneficiaries before contract.

See *VENDOR AND PURCHASER—Contract*. 3.

19. — *Will—Investment clause—Construction—Power to invest in the purchase of real estate—*

VENDOR AND PURCHASER (Title)—*continued.*
Power to transpose and vary "securities"—
Implied power to resell purchased real estate.

A testator, who died in 1895, by his will devised and bequeathed his real estate and the residue of his personal estate upon trusts for his wife and children; and the testator, after giving his trustees a discretionary power of sale over his real estate, authorized them to invest any trust moneys in their hands "in the purchase or upon mortgage of freehold or leasehold properties in England, or in or upon the preferential stocks" of certain ry. cos., "or in any other investment in or upon which trustees are authorized by law to invest trust funds, with full power to vary and transpose such securities for others of the description hereinbefore authorized." The will contained no express trust or power for reconversion of purchased real estate. In 1896 the trustees out of trust moneys in their hands purchased real estate, and in 1903 contracted to resell the same. The purchaser objected that the trustees had no power under the will to resell the purchased real estate:—

Held, following *In re Rayner*, [1904] 1 Ch. 177 (*See WILL—Investments*. 2), that the testator had used the word "securities" in its wider sense as a synonym for "investments"; and that the power to transpose and vary "securities," so read, enabled the trustees to resell the purchased real estate and to give a good discharge for the purchase-money. *In re GENT AND EASON'S CONTRACT*

Farwell J. [1905] W. N. 36; [1905] 1 Ch. 386

— Will—Sale by general executors—Concurrence of special executors.
See EXECUTORS—Sale. 1.

Title Deeds.

See under VENDOR AND PURCHASER—Deeds.

Will.

— Administration — Annuities and legacies charged on property — Continuing liability of residue—Order discharging property.
See WILL—Vendor and Purchaser. 1.

VENTILATION—Dust generated and inhaled by workers to injurious extent—No evidence of actual injury.
See MASTER AND SERVANT—Factory Acts. 6.

VENTRE SA MÈRE—Children—"Born in my lifetime."
See WILL—Estate Tail. 1.

— Children—"Born in my lifetime"—Divesting clause.
See WILL—Words. 2.

— Children — Relation back — Equitable contingent remainders.
See PERPETUITY. 2.

"VESSEL."

See under WORDS.

VESTED—Contingent or—Class—Gift over on death "without leaving any children."
See WILL—Class. 7.

— Or contingent—Residue to individuals in shares, Gift of—Gift of income for maintenance of all.
See WILL—Vesting. 4.

VESTED INTEREST—Will—Contingency of either son dying before his brother—Substitution.
See NATAL. 11.

— Will—Construction.
See under WILL—Vested Interest.

VESTED LEGACIES—Interest until payment—Gifts to persons "born" previously to date of will—Infant "en ventre sa mère."
See WILL—Class. 15.

VESTED OR CONTINGENT—Residue to individuals in shares at twenty-one—Maintenance clause.
See WILL—Vesting. 4.

VESTING—Bankruptcy.
See under BANKRUPTCY—Vesting.

— Bequest to descend with dignity—Period of absolute vesting.
See HEIRLOOMS. 1.

— Covenant to settle wife's after-acquired property—Construction.
See under SETTLEMENT.

— Date of vesting—Forfeiture on alienation—Act of bankruptcy—Adjudication.
See BANKRUPTCY—Dividends. 1.

— Heirlooms—Trust of chattels as—Construction—To be enjoyed with mansion house—Tenant in tail—Actual possession.
See HEIRLOOMS. 3.

— Legacy—Intermediate income.
See WILL—Legacy. 2.

— Name clause—Condition precedent or subsequent—forfeiture.
See WILL—Name and Arms Clause. 2.

— Real estate—Legal personal representative.
See LAND TRANSFER. 5.

— School board—Appointed day—Transfer of property — Vesting — Consols — Local government.
See SCHOOLS. 2.

— Trust—Will—Denuding.
See TRUST. 2.

— Will—Construction.
See under WILL—Vesting.

— Will—Trust for sale of land—Power to postpone—Settlement of proceeds—Share vested in possession.
See WILL—Sale. 1.

VESTING ORDERS—Bankruptcy.

See under BANKRUPTCY — Vesting Orders.

VESTING ORDERS—continued.

- Bankruptcy—Disclaimer—Order vesting in mortgagees whole plot including portion not mortgaged.
See BANKRUPTCY—Disclaimer. 3.
- Company—Winding-up.
See under COMPANY—WINDING-UP—Vesting Orders.
- Criminal lunatic—Trustee—Stock—Repealing Act—Saving clause, Effect of.
See LUNACY. 27.
- Industrial and provident societies—Dissolution—Appointment of new trustee—Bona vacantia.
See INDUSTRIAL AND PROVIDENT SOCIETIES. 2.
- Infant—Stock in name of infant and another to which infant is entitled—Form of order—Practice.
See INFANT—Vesting Order. 1.
- Lunacy.
See under LUNACY—Vesting Orders.
- School district, Dissolution of—Property of dissolved district.
See POOR LAW. 21.
- Trustee.
See under TRUSTEE—Vesting Orders.

VESTRY—Faculty for erection of communion table with cross and candlesticks—Chancel steps—Chapel of ease.
See ECCLESIASTICAL LAW—Faculty. 7.

— Parishioners' churchwardens, Election of—Right of incumbent to vote.
See ECCLESIASTICAL LAW—Churchwardens. 2.

VETERINARY SURGEON—*Qualified person—Veterinary Surgeons Act, 1881 (44 & 45 Vict. c. 62), s. 17, sub-s. 1—Use of description by an unqualified person stating special qualifications—"Canine specialist."*

By the Veterinary Surgeons Act, 1881 (44 & 45 Vict. c. 62), s. 17, sub-s. 1, any person not possessing the prescribed qualification who after Dec. 31, 1883, "takes or uses . . . any name, title, addition, or description stating that he is . . . a practitioner of veterinary surgery or of any branch thereof, or is specially qualified to practise the same," shall be liable to a fine.

The respondent, who was not possessed of the qualifications specified by the section, exhibited outside his residence a board with his name and the words "Canine specialist. Dogs and cats treated for all diseases":—

Held, that these words constituted a description stating that he was specially qualified to practise a branch of veterinary surgery, and that he was therefore liable under the section.
ROYAL COLLEGE OF VETERINARY SURGEONS v. COLLINSON C. A. [1908] W. N. 102 ; [1908] 2 K. B. 248

2. — "Veterinary sanatorium" — *One man company—Unqualified person managing director—Managing director described as "Specialist"*

VETERINARY SURGEON—continued.

— *Misrepresentation—Injunction—Veterinary Surgeons Act, 1881 (44 & 45 Vict. c. 62), s. 17.*

Although a limited co. is not a "person" within the meaning of s. 17 of the Veterinary Surgeons Act, 1881, and cannot be prosecuted for an offence under that section, an action will lie at the suit of the Att.-Gen. to restrain the co. and its officials from falsely holding out or representing to the public that the individuals who comprise it or are employed by it are veterinary surgeons or persons specially qualified to practise veterinary surgery or any branch thereof.

Att.-Gen. v. Myddletons, Ltd., [1907] 1 I. R. 471, approved and followed. ATT.-GEN. v. CHURCHILL'S VETERINARY SANATORIUM, LD.

Neville J. [1910] W. N. 195 ; [1910] 2 Ch. 401

VIBRATION—Nuisance—Noise—Electric generating station.
See NUISANCE. 13.

VICARAGE.

See under ECCLESIASTICAL LAW—Vicarage.

VICTORIA—Appeal, Special leave to—Victoria Lunacy Act, 1890—Construction.
See LUNACY. 23.

1. — *Banker and customer—Transfer of money from company's account to its managing director's overdrawn private account—Rights of banker.*

In an action by a co. to recover from its bankers moneys which, standing to the credit of its account, had been transferred by cheques of its managing director to the credit of his own overdrawn private account with the same bankers:—

Held, that the bank, acting in good faith and without notice of any irregularity, was not bound before honouring the cheques to inquire into the state of the account between the co. and its managing director. BANK OF NEW SOUTH WALES v. GOULBURN VALLEY BUTTER CO. PROPRIETARY P. C. [1902] A. C. 543

2. — *Book debts—Invalidity of assignment does not extend to covenants and recitals—Victorian Book Debts Act, 1896, s. 3—Construction.*

By the 3rd section of the Victorian Book Debts Act, 1896, it is enacted that no assignment or transfer of book debts shall be valid unless registered:—

Held, that by its true construction only that part of an instrument which effects assignment or transfer is invalidated by non-registration. The invalidity does not extend to the covenants and recitals therein contained.

Where, however, the unregistered assignment of a book debt contained covenants onerous to some of the assignors and a subsequent registered assignment omitted the same:—

Held, that, the second assignment being in substitution for the first, the covenants were no longer enforceable. NATIONAL BANK OF AUSTRALASIA v. J. FALKINGHAM & SONS

P. C. [1902] A. C. 585

VICTORIA—continued.

— Colonial death duties—Victoria Administration and Probate Act, 1890.

See WILL—Colonial Duties. 1.

— Customs and Excise duties — “Molasses refined in bond.”

See No. 4, below.

— Drains.

See Nos. 8, 9, below.

— Licences for tramway cars.

See No. 10, below.

3. — *Electric light*—*Victorian Electric Light and Power Act*, 1896, ss. 38, 39—*Electric Light and Power Act*, 1901, s. 3—*Construction*—*Powers of undertakers to vary rates of charge*—*Appral from Australia*.

Under the Electric Light and Power Act, 1896, the respondents supply electricity within the city of Melbourne under two different systems of charge, one at a fixed rate, the other at a rate varying with the amount consumed. The system adopted is at the choice of the customer; within each system no preference is given to one customer over another:—

Held, that, by the true construction of ss. 38 and 39 of the said Act, they were authorized so to do, and were not restricted to one uniform rate for all electricity supplied by them. The preference prohibited by s. 39 is not as between customers dealing under two different systems, but only as between customers dealing under the same system.

Held, also, that s. 3 of the Electric Light and Power Act, 1901, in authorizing a specified variation in rates of charge after a judicial decision to the effect that they must in all cases be uniform, did not either expressly or impliedly declare that, except in the special instance, the judicial decision must be upheld. *ATT.-GEN. FOR VICTORIA v. MELBOURNE CORPORATION*

P. C. [1907] A. C. 469

— Melbourne notaries—Appointment—Practice. See NOTARIES. 5.

4. — “Molasses refined in bond”—*Victoria Customs and Excise Duties Act*, 1895 (59 Vict. No. 1401), *schedule*—*Construction*.

Molasses strained and filtered in a bonded warehouse so as to free them from impurities contracted in uncovered tanks, but not involving any chemical change or alteration in colour, taste, or smell, cannot be regarded as “molasses refined in bond” within the meaning of that expression as used in the Victoria Customs and Excise Duties Act, 1895. *COLONIAL SUGAR REFINING COMPANY v. ATT.-GEN. FOR VICTORIA*

P. C. [1901] A. C. 544

5. — *Petition of right*—*Victoria Act No. 773 in 1883*, s. 89—*Construction*—*Rent not to be deducted from salary where the officer is entitled to quarters*.

Under s. 89 of Act No. 773 in 1883, re-enacted by s. 136 of Act No. 1133 in 1890, the power of the Government to make a deduction from an officer's salary for rent only exists where he has no right or title to quarters.

Where the appellant as postmaster of Geelong was compelled to reside upon Government

VICTORIA—continued.

premises for the performance of his duties there:—

Held, that the Government was not entitled to deduct 72*l.* for rent from his salary of 540*l.*, and it made no difference that the Appropriation Acts annually provided only 468*l.* to meet it.

So *held* also where the officer was governor of a gaol bound to reside in the quarters assigned and the deduction of 70*l.* rent from his fixed salary of 570*l.*, on which his statutory pension was calculated, was carried out by an O. in C. fixing his salary at 500*l.* and silent about deductions. *REX v. FISHER. REX v. BULL*

P. C. [1903] A. C. 158

6. — *Probate duty*—*Victorian Administration and Probate Act*, 1890, No. 1060, s. 115—*Construction*—*Intent to evade*—*Specialty debt in New South Wales liable to duty in Victoria*.

Sect. 115 of the Administration and Probate Act of Victoria, 1890, which relates to transfers made with intent to evade payment of duty, extends to and strikes at colourable transactions only.

Simms v. Registrar of Probates, [1900] A. C. 323, followed.

If the transfer is complete, a manifest desire on the part of the transferor to avoid liability to duty is not sufficient to prove an intent to evade payment within the meaning of the enactment.

A debt which though a specialty debt in New South Wales is a simple contract debt in Victoria, where both testator and debtor resided and were domiciled, is an asset in Victoria, recoverable under a Victorian probate, and liable to duty in Victoria. *PAYNE v. REX*

P. C. [1902] A. C. 552

— Rateability—Separate assessment of tramway engine houses.

See TRAMWAYS. 14.

6a. — *Revenue*—*Australian Customs Act*, 1901, ss. 127, 192—*Construction*—*Using ship stores, duty being unpaid*—*Sect. 192 intra vires*—*Penalty for breaking seals on ship goods*.

Under s. 127 of the Customs Act, 1901, of the Commonwealth of Australia, a penalty is incurred for using ship stores while the ship is within the territorial waters or in the port of Melbourne, unless the duty thereon has been paid.

Under s. 192 a penalty is incurred for the act of breaking the seals, whether on the high seas or elsewhere, which had been lawfully imposed on ship goods in lieu of exacting payment of duties and entering an Australian port with the seals broken; and the section is not ultra vires the Australian Commonwealth in respect of the seals being broken outside its jurisdiction. *PENINSULAR AND ORIENTAL STEAM NAVIGATION CO. v. KINGSTON*.

P. C. [1903] A. C. 417

7. — *Revenue*—*Income tax*—*Commonwealth of Australia Constitution Act* (63 & 64 Vict. c. 12)—*Intervenant*—*Power of the Victorian Legislature* (18 & 19 Vict. c. 55)—*Validity of income tax*

VICTORIA—continued.

imposed by a State on a Commonwealth salary—Right of appeal from Victorian Supreme Court.

Held, that the respondent, an officer of the Australian Commonwealth, resident in Victoria and receiving his official salary in that State, is liable to be assessed in respect thereof for income tax imposed by an Act of the Victorian Legislature.

No restriction on the power of the Victorian Legislature in favour of such officer is expressly enacted by the Commonwealth Constitution Act, nor can one be implied on any recognized principle of interpretation applicable thereto.

Held, further, that a petition by the Commonwealth for a dismissal on the ground of incompetency of an appeal from an order of the Supreme Court of Victoria upholding the assessment in question must be dismissed. The Constitution Act does not authorize the Commonwealth Parliament to take away the right of appeal to the King in Council existing in this case. **WEBB v. OUTRIM** P. C. [1907] A. C. 81

— Revenue—Income tax—Company—Investments by company in the Colony—Victorian Income Tax Act, 1895.
See **REVENUE—Income Tax**. 14.

8. — *Sewers—Drain, Construction of—Negligence—Liability of Municipal authorities—Exercise of statutory powers.*

Where municipal authorities under their statutory powers took over the care of a water-course and made it into a public drain, which proved in course of time to be increasingly insufficient to hold and pass on the mixture of slime and sewage poured into it, with the result that the plaintiff's property was flooded thereby:—

Held, that they were liable for negligence, notwithstanding that the drain when first formed was sufficient for its purpose. **HAWTHORN CORPORATION v. KAMNULUIK**

P. C. [1906] A. C. 105

9. — *Sewers rate—Construction—Gas main liable to be rated as unsewered property—Law of Victoria, Act No. 1491, s. 8.*

The local board of works being empowered by their Act No. 1491, s. 8, to levy a rate for local purposes including sewage and drainage, and for that purpose to adopt at the rateable net annual values of the properties liable to be rated the valuation in force at the time of making the rate in the municipalities within which the properties respectively are situate, distinguishing between sewered properties and unsewered properties, the former being defined as property which abutted in whole or in part on a street in which a sewer had been laid or as connected with any of the board's sewers:—

Held, that the gas mains of the respondents did not fall within the definition of sewered property, but that, as they had been comprised and separately valued in the valuation in force in the municipalities within which they were situated, they were liable to be rated as unsewered property. **MELBOURNE AND METROPOLITAN BOARD OF WORKS v. METROPOLITAN GAS CO.**

P. C. [1905] A. C. 595

VICTORIA—continued.

10. — *Tramways—Licences for tramway cars, conductors and drivers—Melbourne Tramway and Omnibus Company's Act, 1883, ss. 22, 54—Liability of tramway company.*

Under the Victorian Licensed Carriages Statute, 1864, the Carriages Act, 1890, the by-laws made thereunder, and s. 22 of the Melbourne Tramway and Omnibus Company's Act, 1883, licences must be obtained for the cars, drivers, and conductors employed on the tramways constructed under its powers:—

Held, that the liability to pay for these licences is on the appellants who work the tramways and are owners of the cars and employers of conductors and drivers, and that it was not by the true construction of s. 54 of the Act of 1883 and of clause 14 (4) of the agreement scheduled thereto transferred to the tramways trust, a body created to exercise the powers of the corporations constituting it in constructing or in working the tramways within their municipal limits, unless and until the trust undertakes the working of the tramways. **MELBOURNE TRAMWAY AND OMNIBUS CO. v. KIDNEY. MELBOURNE TRAMWAY AND OMNIBUS CO. v. MELBOURNE CORPORATION** P. C. [1905] A. C. 358

11. — *Trustee—Law of Victoria—Victorian Trusts Act, 1901, s. 3—Construction—Breach of trust—Trustees not entitled to be excused—Erroneous advice of solicitor—Trustee company not gratuitous trustees.*

Under the Victorian Trusts Act, 1901, s. 3 (corresponding with the English Act 59 & 60 Vict. c. 35), a trustee may be relieved from liability for breach of trust if he has acted honestly and reasonably, and ought fairly to be excused:—

Held, that, by the true construction of this section, a trustee does not entitle himself to relief by proving that he has acted reasonably and honestly. He must shew that under all the circumstances he ought fairly to be excused for his breach of trust.

J. F., being entitled to the whole of his deceased wife's proportion of a fund of which the appellants became trustees, assigned the same to the respondents. Under the erroneous advice of their solicitors, in accordance with an Act which was not passed until after the wife's death, the appellants paid two-thirds of the fund to the wife's children and one-third into Court under the Act for relief of trustees without question by the respondents, who accepted the appellants' statements as to their rights without verification

In a suit by the respondents to recover the said two-thirds:—

Held, (1) that the payment thereof to the children was a breach of trust, and that it was no defence that it had been made upon erroneous advice of the solicitors.

Doyle v. Blake, (1804) 2 Sch. & Lef. 231; 9 R. R. 76, approved.

(2) That the respondents having accepted and acted upon the appellants' statement as to their rights was no evidence of acquiescence,

(3) That although the appellants had acted honestly and reasonably, they had shewn no title to be excused. They had made no attempt to replace the fund in whole or in part nor explained

VICTORIA—*continued.*

the reason for their abstinence. They were not gratuitous trustees, and could not throw upon the respondents, who were not in fault, the loss of a fund which they had misapplied in the course of their business. **NATIONAL TRUSTEES COMPANY OF AUSTRALASIA, LD. v. GENERAL FINANCE COMPANY OF AUSTRALASIA, LD.**

P. C. [1905] A. C. 373

— Victoria, State of.

See also under AUSTRALIA.

— Victoria, Execution of documents in—
Notary public.
See EVIDENCE. 5.

VILL—Ferry from vill to vill—Disturbance—
Change of circumstances—New traffic.
See FERRY. 1.

"VISITORS"—Pupils at girls' school.
See WAY, RIGHT OF. 3.

VOLUNTARY ALLOWANCE—Income of husband
and wife—Computation.
See DIVORCE—Alimony. 2.

VOLUNTARY ASSOCIATIONS—Corps of Com-
missionaires, Request to committee of—
Charity—Perpetuity.
See WILL—Perpetuity. 1.

— Will—Charitable uses.
See CHARITY. 39.

VOLUNTARY DEBT—Priorities—Creditors—In-
solvent estate—Bankruptcy rules—
Administration.
See EXECUTOR—Administration. 3.

VOLUNTARY LIQUIDATION—Agreement of
service—Resolution to wind up—Dis-
missal of servant.
See COMPANY—Servants. 1.

VOLUNTARY LIQUIDATOR—Removal of—
Practice.
*See COMPANY—WINDING-UP—
Liquidator. 4.*

VOLUNTARY RESTITUTION—On eve of bank-
ruptcy—Breach of trust—Fraudulent
preference.
See BANKRUPTCY—Preference. 2.

VOLUNTARY SETTLEMENT.
See also under SETTLEMENT.

— Gift void as—Gift of money by bankrupt to
wife—Debt due from bankrupt to wife
—Set-off.
See BANKRUPTCY—Set-off. 2.

— Solicitor and client—Fiduciary relation.
*See under SOLICITOR—Fiduciary Rela-
tion.*

— Trustee in bankruptcy—Evidence—Recital—
Admissibility.
See FRAUDULENT CONVEYANCE. 3.

VOLUNTARY WINDING-UP OF COMPANY.
See under COMPANY—Winding-up.

VOLUNTEER.

See under ARMY AND NAVY—Volunteer.

— Agreement to settle wife's after-acquired pro-
perty.

See under SETTLEMENT.

— Nuncupative will—Volunteer soldier—Minor
—"In actual military service."

See PROBATE—Nuncupative Will. 1.

— Streets, Paving, &c., expenses—Liability—
Crown.

See STREETS. 18.

VOLUNTEERS, YEOMANRY, AND MILITIA—
Will—Construction.

*See WILL—Territorial and Reserve
Forces. 1.*

VOTES—Ballot papers—Position of voter's marks
on paper—Sufficiency of election
petition.

See ELECTION LAW. 1.

— Franchise.

See under PARLIAMENT.

VOTING—Company.

See under COMPANY—Voting.

— Company—Articles of association, Alteration
of—Contract—Voting power.
See COMPANY—Memorandum. 5.

— Company—Meeting of shareholders—Proxy—
Stamp—Authority to fill up blanks.
See COMPANY—Meetings. 8.

— Director—Fiduciary relation—Conflict of
interest with duty—Contracts with
company—Profits—Account.
See COMPANY—Directors. 9.

— Disqualification—Purchaser of forfeited shares
—Disqualified from voting whilst calls
remain due from original holder.
See COMPANY—Meetings. 7.

— Election of mayor—Validity of vote of dis-
qualified person—Right of chairman to
vote—Casting vote.
See CORPORATION. 11.

— Parishioners' churchwarden, Election of—
Right of incumbent to vote.
*See ECCLESIASTICAL LAW—Church-
wardens. 2.*

— Shares—Agreement to vote in a particular
way—Executors—Directors.
See COMPANY—Shares. 28.

— Show of hands—Declaration of chairman that
resolution is carried—"Conclusive evi-
dence."
See COMPANY—Meetings. 10.

VOYAGE—Ship—Agreement for voyage—End of
voyage—Election by master.
See SHIPPING—Voyage. 2.

— Shipping.

See under SHIPPING—Voyage.

W.

WAGERING.

See under GAMING.

- Gaming and wagering contract—Interest on sums deposited as cover—Proof for interest.
See COMPANY—WINDING-UP—Proof. 2.
- Statutory defence—Notice—Gaming and wagering contract.
See COUNTY COURT—Practice. 15.

WAGES—Master and servant.

See under MASTER AND SERVANT.

- Preferential payment in bankruptcy—“Wages or salary.”
See COMPANY—WINDING-UP—Preference. 6.
- Priority—Dock dues—Right to detain vessel until dues paid—Maritime lien for crew's wages.
See HARBOURS. 3.
- Seaman—Right to wages.
See under SHIPPING—Seamen.
- Ship—Mortgage—Wrongful seizure—Counter-claim for wages paid—Implied request.
See SHIPPING—Mortgages. 8.
- Shipping.
See under SHIPPING.
- Will—Construction—Bequests to servants—“One year's wages.”
See WILL—Servants. 1.
- Workmen's Compensation Acts.
See under MASTER AND SERVANT.

WAGONS—Deficiency of—Bill of lading—Discharge of cargo—Liability.

See SHIPPING—Charterparty. 8.

— Railway.

See under RAILWAY—Trucks.

WAITER—Cook—Steward—Persons employed in trading establishment.

See REVENUE—Servants. 3.

WAIVER—Company—Prospectus.

See under COMPANY—Prospectus.

- Contract—Breach—Damages.
See CONTRACT. 7.
- Contract—Penalty or liquidated damages—Time limit.
See CONTRACT. 9.
- Covenant to pay annuity—Right to annul the covenant on notice to trustee—Wife's waiver of notice valid.
See AUSTRALIA. 2.

WAIVER—*continued.*

- Insurance, Life—Misrepresentation as to age—Waiver.

See INSURANCE (LIFE). 15.

- Joinder of causes of action—Leave given after issue of writ—Waiver of objection by defendant.

See PRACTICE—Joinder.

- Jurisdiction—Insufficiency of affidavit—Application for judgment summons—Prohibition.

See COUNTY COURT—Practice. 5

- Lease—Forfeiture, Relief against—Onus as to proving lessor's knowledge of the facts.

See LANDLORD AND TENANT. 8.

- Lien for chartered freight.

See INSURANCE (Marine). 11.

- Liquidator—Company—Winding-up—Registered office in Rhodesia—Notice of dissent left at London office.
See COMPANY—WINDING-UP—Reconstruction. 1.

- Rating—Waiver of condition precedent to appeal.

See RATES. 1.

- Sale of goods.

See under SALE OF GOODS.

- Sale of lands under Assessment Act, 1897—Notice in writing—Waiver—Law of Ontario.

See CANADA—Land. 3.

- Solicitor—Lien on client's documents—Proof of debt—Amendment—“Inadvertence.”

See COMPANY WINDING-UP—Proof. 1.

- Wrongful repudiation of contract by buyer—Waiver by buyer of performance of conditions precedent.

See SALE OF GOODS. 8.

WAIVER CLAUSE—Company—Prospectus.

See under COMPANY—Prospectus.

WAKF ESTATE—Administration of—Rights of wakifs—Charter of incorporation superseded.

See MAURITIUS. 1.

WALES—*University of Wales Act, 1902 (2 Edw. 7, c. 14), extends the privileges of the graduates of the University of Wales.*

WALL—County council—Main road—Maintenance and repair—Retaining and supporting walls—Mandatory order.
See **LOCAL GOVERNMENT**. 9.

1.—**Party-wall—Damage by smoke.**

Prior to 1886 plt.'s predecessor in title built C. House on his own land with a wall to the west, in which were flues and fireplaces not so used only for C. House, and on the west side flues and fireplaces not so used, but which might be used for any adjoining house built on an adjoining and then vacant piece of land belonging to the deft.

In 1886 the deft., being about to build a house on his land, agreed in writing with plt.'s predecessor for the sale to the deft. of the western half of the western wall of C. House, that wall being treated as divided from top to bottom, throughout its whole length, by a vertical plane in the centre thereof (which plane, if it had been a physical division, would have divided half of each of the flues, including those used for C. House, from the other half). The deft. then built on his land a house called G., adjoining C. House, and so connected with it that the fireplaces on the west side and the flues connected with them were used for the purposes of G., as had been intended. The plt. purchased C. House in 1900, and subsequently the flue connected with the deft.'s dining-room became defective, in the sense that by reason of cracks which developed in the surrounding masonry smoke found its way therefrom through the plt.'s half of the party-wall into his rooms and occasioned damage. The cracks were caused by a subsidence in the deft.'s house, but the cause of the subsidence was undetermined, and there was no evidence of negligence by the deft. in building his house or otherwise, or want of reasonable precaution :—

Held, that the deft. was not liable for the damage.

Where a man grants a divided moiety of an outside wall of his house with intent to make it a party-wall between that house and a house to be built on his neighbour's adjoining land, the law implies the grant and reservation, in favour of the grantor and grantee respectively, of such easements as may be necessary to carry out the common intention as to the user of the wall, the nature of the easements varying with the particular circumstances of each case.

Subject to such easements, the owner of each half may deal with it in such manner as he pleases, and if he uses it only for the contemplated purposes and without negligence or want of reasonable care and precaution he is not liable for any nuisance or inconvenience occasioned by such user. **JONES v. PRITCHARD**
Parker J. [1908] 1 Ch. 630

—Party wall—London.

See under **LONDON—Buildings**.

—Settled estates—Capital money—Improvements—Rebuilding garden walls.

See **SETTLED LAND—Capital Moneys**. 10.

WAR—Capture before commencement of.
See under **INSURANCE (MARINE)**.

WAR—continued.

—Declaration of war—Seizure by enemy's Government of things insured—Validity of insurance—Public policy.

See under **INSURANCE—In General**, and **INSURANCE—Capture**.

WAR LOAN (REDEMPTION) ACT, 1910 (10 Edw. 7, c. 2).

WARD OF COURT—Infant—Guardian—Religious education.

See under **INFANT—Guardian**.

1.—**Marriage in contempt—Committal of ward—Jurisdiction.**

The Court has jurisdiction to commit a ward of Court to prison for contempt of Court, and will in a proper case exercise such jurisdiction.

Dictum of Cotton L. J., *In re Leigh*, (1888) 40 Ch. D. 290, 294, applied. *In re H.'s SETTLEMENT*. H. v. H.

Warrington J. [1909] 2 Ch. 260

WAREHOUSE—Factory—"Warehouse"—Workmen's Compensation Act.

See **MASTER AND SERVANT—Compensation**. 185.

WARRANT—Distress—Rate, Form of—Statement of period for which estimated—Retrospective rate.

See **POOR LAW**.

—Distress warrant, Application for—Poor rate—Non-payment of—Jurisdiction of justices to go behind rate.

See **RATES**. 10—12.

—Of delivery—Judgment for delivery of specific chattel—Wilful refusal to deliver—Attachment.

See **COUNTY COURT—Practice**. 4.

WARRANTY—Adulteration.

See under **ADULTERATION**.

—Attorney innocently acting under forged power—Liability of agent—Third party—Indemnity.

See **PRINCIPAL AND AGENT**. 3.

—Capture, Warranty against.

See under **INSURANCE (MARINE)**.

—Carrier—Implied warranty by consignor that goods are not dangerous.

See **CARRIER**. 3.

—Collateral agreement—Parol warranty that drains are in order.

See **LANDLORD AND TENANT**. 31.

—Dangerous goods—Knowledge of vendor—Duty of vendor to purchaser—Warranty of fitness.

See **SALE OF GOODS**. 14.

—Harbour commissioners—Advertisement of depth of water on dock sill—Warranty of accessibility.

See **HARBOUR**. 6.

—Implied warranty of authority—Forged power of attorney—Transfer of stock.

See **PRINCIPAL AND AGENT**. 3.

WARRANTY—*continued*.

- Insurance (Marine).
See under **INSURANCE (MARINE)**.
- Insurance (Marine)—“Pirates,” Meaning of in policy.
See **INSURANCE (MARINE)**. 17.
- Milk.
See under **ADULTERATION**.
- Sale of goods.
See under **SALE OF GOODS**.
- Seaworthiness—Ship.
See under **INSURANCE (MARINE)**.
SHIPPING.
- Ship.
See under **INSURANCE (MARINE)**.
SHIPPING.
- Suicide, Warranty against—Condition precedent—Policy for benefit of third party.
See **INSURANCE (LIFE)**. 17
- War.
See under **WAR**.

WARREN—Foreshore—Tidal and navigable river—Wild fowl—Custom—Birds of warren.
See **FORESHORE**. 2.

- WARSHIP**—Collision—Damage—Loss of use during repairs.
See **SHIPPING—Collision**. 90.
- Collision—Single ship and fleet of warships—Crossing rule.
See **SHIPPING—Collision**. 60.

WASHHOUSES—Baths and.
See under **BATHS AND WASHHOUSES**.

WASTE—Copyholder, Obligation of, to repair—Breach of obligation—Forfeiture—Manor.
See **COPYHOLDS**. 3.

1. — *Equitable waste—Ornamental timber—“Planted or left for ornament or shelter”—Evidences—Injunction.*

In an action to restrain the cutting of timber on the ground of equitable waste, the question to be decided is whether the timber was in fact planted or left for ornament or shelter, not whether it is ornamental or useful for shelter; but the Court will accept the evidence of competent persons, founded on inference from the present appearance and condition of the timber, as some evidence that it was so planted or left.

WELD-BLUNDELL v. WOLSELEY

Swinfen Eady J. [1903] W. N. 130; [1903] 2 Ch. 664

- Ploughing up pasture—Good husbandry—Covenant—Construction.
See **LANDLORD AND TENANT**. 62.

WASTE LAND—Roadside waste—Dedication.
See under **HIGHWAY**.

WASTING PROPERTY—Interest, Rate of—Mining royalties—Income of invested surplus.
See **SETTLED LAND—Interest**. 2.

WASTING PROPERTY—*continued*.

- “Residuary trust funds”—Unauthorized securities—Enjoyment in specie.
See **WILL—Interest**. 2.

WASTING SECURITIES—Tenant for life and remainderman.

See under **SETTLED LAND—Securities**.

— Will.

See under **WILL—Wasting Securities**.

WATCHES.

Assay of imported Watch-cases (Existing Stocks Exemption) Act, 1907 (7 Edw. 7, c. 8), is an Act to exempt from assay foreign watch-cases imported into the United Kingdom before the first day of June, nineteen hundred and seven.

- Assay—Hall mark—Watch-cases—Foreign watches.
See **PLATE**. 1.

WATER.

See also under **RIVER**.
STREAM.

NOTE.—*The cases under this heading relate only to places outside the County of London. As to London,*

See under **LONDON—Water**.

- Artificial channel—Watercourse.
See **No. 26, below**.

1. — *Artificial watercourse—Riparian proprietors—Right to use of water—Nature of presumed lost grant.*

In the case of an artificial watercourse, the origin of which is unknown, the proper inference from the user of the water and from other circumstances may be that the channel was originally constructed upon the condition that all the riparian proprietors should have the same rights (including a right to use the water for manufacturing purposes) as they would have had if the stream had been a natural one.

Sutcliffe v. Booth, (1863) 32 L. J. (Q.B.) 136, followed.

The use of the water by a riparian proprietor for manufacturing purposes must be, as was laid down in *Miner v. Gilmour, (1858) 12 Moo. P. C. 131*, at p. 156, such as not to interfere with the lawful use of the water by the other proprietors above or below him, or to inflict on them a sensible injury.

The plts. were the owners of a mill, which was situate upon an artificial cut or channel, the water flowing through which was used for working the mill. The water was admitted into the cut from a natural river. The cut was about a mile and a half long, and it rejoined the river at its lower end. The plts. also owned a factory, near to the mill, but a little higher up the stream. For the purposes of the factory the plts. abstracted water from the stream, returning what they abstracted to the stream below the mill.

The defts. owned a factory higher up the stream. For the purposes of the factory they abstracted water from the stream, returning it diminished in quantity by evaporation.

The plts. brought the action to restrain the defts. from abstracting water so as to injure their

WATER—*continued*.

mill. The plts. claimed a right to the whole of the water in the channel. The artificial stream was known to have existed for some centuries, but there was no evidence as to when or by whom, or on what conditions, it had been originally constructed. The admission of water to the cut had always been under the control of the mill-owner, who had always kept the channel clear and had repaired its banks. The defts.' factory was situate on the site of an old tannery, for the purposes of which water used to be abstracted from the stream, though it was alleged that the defts. had increased the amount abstracted.

There was evidence that there had formerly been a fulling-mill upon the stream above the plts.' mill :—

Held, by the C. A., that the proper inference from the user of the water was that the artificial cut had been originally constructed upon the terms that all the riparian proprietors should have at least the same rights in regard to the use of the water as they would have had if the stream had been a natural one.

The evidence satisfied the C. A. that the abstraction of water by the defts. had not been such as to cause sensible injury to the plts.' mill, and that, therefore, the defts. ought not to be restrained from abstracting water.

Decision of Byrne J. reversed. **BAILEY & Co. v. CLARK, SON & MORLAND**

C. A. [1902] W. N. 47; [1902] 1 Ch. 649

— Canal company—Diversion of water from river—Statutory powers.
See **CANALS**. 1.

— Capital moneys—Water supply—Extinguishment of fire.
See **SETTLED LAND—Capital Moneys**. 10.

2. — Compensation water — Quality of — Negligence.

The House reversed, with costs, the decision of the Second Division of the Ct. of Sess., [1905] 42 Sc. L. R. 410. **EDINBURGH AND DISTRICT WATER TRUSTEES v. SOMERVILLE & SON**

H. L. (Sc.) [1906] W. N. 162

— Compulsory powers—Award.
See **ARBITRATION—Award**. 1.

— Drain—Water flowing from highway—Presumption of legal origin.
See **HIGHWAY**. 8.

— Drainage of house.
See under **SEWERS**.

— Fencing—Duty to fence—Owner—Public well in shaft of abandoned mine—Vested in local authority.
See **MINES**. 11.

3. — Fire, Water for extinguishing—Obligation to allow use of water gratuitously—Waterworks Clauses Act, 1847 (10 & 11 Vict. c. 17), s. 42.

By s. 42 of the Waterworks Clauses Act, 1847, "the undertakers shall at all times keep charged with water . . . all their pipes to which fire-plugs shall be fixed . . . and shall allow all

WATER—*continued*.

persons at all times to take and use such water for extinguishing fire without making compensation for the same."

The plts., a water co., were possessed of a water main, from which there ran across a field of the defts. a pipe, the property of the defts., through which the plts. supplied the defts. with water for agricultural purposes. In this pipe the plts. had at the request and expense of the defts. fixed a fireplug. A haystack of the defts. having caught fire, the defts. by means of the fireplug in their pipe used the plts.' water for the purpose of extinguishing the fire. To a claim by the plts. for payment for the water so consumed, the defts. pleaded that under the provisions of s. 42 they were entitled to use the water gratuitously. There was no evidence that there were any fireplugs in the plts.' main :—

Held, that the privilege conferred by s. 42 of taking water without payment for extinguishing fire was confined to water taken from pipes of the undertakers to which fireplugs were fixed, and that in the absence of evidence of there being fireplugs in the plts.' main the defts. were liable to pay for the water taken. **WEARDALE AND CONSETT WATER CO. v. CHESTER-LE-STREET CO-OPERATIVE SOCIETY** - **Div. Ct.**

[1904] W. N. 102; [1904] 2 K. B. 240

— Fisheries.

See under **FISHERY**.

— Highway, Water.

See under **WATER HIGHWAY**.

— Income tax—Burgh waterworks—Application of profits to sinking fund.
See **REVENUE—Income Tax**. 42.

— Interdict, Duration of—Waterworks company stopping mining works.
See **DAMAGE AND DAMAGES**. 2.

4. — Local government—Local authority—Contract for supply of water to adjoining district—Sanction of Local Government Board—Power to give limited sanction—Sanction of supply to specified part of district—Contract by urban authority—Penalty clause—Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 61, 174, sub-s. 2.

Under s. 61 of the Public Health Act, 1875, which provides that "any local authority for the time being supplying water within their own district may, with the sanction of the Local Government Board, supply water to the local authority of any adjoining district on such terms as may be agreed on between such authorities," the Local Government Board has power to give a limited sanction, i.e., a sanction of a supply to a specified part of the district of the adjoining local authority, and, after such a limited sanction has been given, a contract for a supply of water to a larger area of the district requires a fresh sanction of the Local Government Board, and will be invalid if that fresh sanction is not obtained.

Decision of Swinfen Eady J., [1905] 1 Ch. 53, on this point reversed.

Sect. 174, sub-s. 2, of the Public Health Act, 1875, provides that every contract made by an

WATER *continued.*

urban authority whereof the value or amount exceeds 50l. "shall specify some pecuniary penalty to be paid in case the terms of the contract are not duly performed":—

Held (by Romer and Stirling L.J.J., Vaughan Williams L.J. dissenting), that this provision is directory only, not imperative, so that the omission to specify a penalty does not render such a contract invalid.

Decision of Swinfen Eady J., [1905] 1 Ch. 53, that in a contract for the supply of water by an urban district council to an adjoining rural district council it is not necessary under s. 174, sub-s. 2, to specify a pecuniary penalty, affirmed on a different ground. *SOOTHILL UPPER URBAN COUNCIL v. WAKEFIELD RURAL COUNCIL*.

C. A. [1905] W. N. 138; [1905] 2 Ch. 516

— Locomotive — Traction engine — Excessive weight — Damage to water main.
See **HIGHWAY. 15.**

5. — Mines—Waterworks—Reservoir—Lands purchased by agreement for the purposes of waterworks—Mines and minerals purchased together with lands—Right to support from minerals under adjacent land—Limit of forty yards—Waterworks Clauses Act, 1847 (10 & 11 Vict. c. 17), ss. 18—27.

Under a special Act, which gave the respondents power to purchase land by agreement, but not compulsorily, and incorporated the Waterworks Clauses Act, 1847, the respondents bought land from T., including all mines and minerals underneath, and also bought adjacent land from S., who reserved the right to work the coal underneath without making any compensation. The respondents constructed waterworks upon both pieces of land. The appellants, who were lessees of the coal from S., gave the respondents notice under s. 32 of the Waterworks Clauses Act, 1847, of their intention to work the coal under the land bought from S. The respondents gave no counter-notice:—

Held, that the land bought from T. having been bought by agreement enjoyed the common law right it had always possessed to lateral support from the land bought from S., this right not being affected by the Waterworks Clauses Act, 1847; and that the appellants were entitled to an injunction restraining the lessees from working the coal either within or beyond the forty yards belt round the waterworks so as to damage the land bought from T.

Decision of the C. A., *Manchester Corporation v. New Moss Colliery, Ltd.*, [1906] 2 Ch. 564, affirmed. *NEW MOSS COLLIERY, LD. v. MANCHESTER CORPORATION*. **H. L. (E.) [1908] W. N. 61; [1908] A. C. 117**

Note.

Discussed by Eve J., *London and North Western Ry. Co. v. Howley Coal Park and Cannel Co.*, [1910] W. N. 163. *See* **RAILWAY—Mines. 8.**

-- Mining lease — Capital or income — Lessor's compensation — Lessee's rights.
See **SETTLED LAND—Leases. 5.**

WATER—*continued.*

— Preferential payments in bankruptcy—Poor and district rates—Water rate payable by meter—Apportionment.

See **COMPANY—WINDING-UP—Preference. 5.**

— Railway company—Abstraction of water for purposes unconnected with riparian tenement.

See **No. 11, below.**

— Railway company—Dock company—Amalgamation—Water obtained from land acquired for purposes of railway—Supply to dock.

See **RAILWAY—Amalgamation. 1.**

6. — Rates—Equality of charge—Obligation to charge all consumers at an equal rate—Maximum charge.

The undertaking and powers of a water co. were by an Act of 1884 transferred to a municipal corporation. By s. 49 of the co.'s special Act passed in 1861, the co. were empowered to charge for a supply of water for domestic use rates "not exceeding" certain amounts graduated according to the value of the premises, and by s. 59 of the Act it was provided that "the co. may from time to time supply any persons with water for any purpose for which such supply is required, for such remuneration, and upon such terms and conditions, as shall be agreed upon between the co. and the person desirous of such supply of water, under a special agreement." By s. 36 of the before-mentioned Act of 1884, s. 49 of the Act of 1861 was repealed, and the corporation were empowered to "charge for the supply of water for domestic use to any dwelling-house a sum not exceeding 7½ per centum per annum on the net rateable value of such dwelling-house, as ascertained by the valuation list in force at the commencement of the quarter during which the water rate becomes payable." There was no express provision in either of the before-mentioned Acts requiring equality of rating in respect of the charge made for water to consumers.

The corporation charged to consumers in respect of water supply for domestic purposes in part of their district at the rate of 7½ per cent. and in the remainder of the district at the rate of 5 per cent. upon the rateable value of their respective dwelling-houses. In an action brought to recover the sum charged to a consumer for water at the higher rate:—

Held, reversing the judgment of Bigham J., that no implication arose from s. 36 of the Act of 1884 that the corporation were bound to charge for water at an equal rate in the pound to all consumers, and therefore the fact that they had not done so was no defence to the action. *NORTHAMPTON CORPORATION v. ELLEN*.

C. A. [1904] 1 K. B. 299

— Rates—"Land covered with water"—Pontoons floating over excavated ground.
See **RATES. 50.**

7. — Rates—Non-payment of rate—Cutting off water—Condition precedent—Railway Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 20), s. 140

WATER—continued.

—*Waterworks Clauses Act, 1847* (10 & 11 Vict. c. 17), s. 74.

It is not a condition precedent to the right of a water co. to recover a water rate under s. 74 of the *Waterworks Clauses Act, 1847*, that the water co. should have exercised the power of cutting off the water conferred by that section.

REX v. HUTTON. *Ex parte* METROPOLITAN WATER BOARD. Div. Ct. [1907] W. N. 163; [1907] 2 K. B. 578

— Rates—Partial exemption of land covered with water in Woolwich.

See **LONDON—Rates.** 2.

8. — Rates—Supply by urban sanitary authority—Water rates, Summary proceedings for enforcing payment of—Limitation of time—Demand—Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43), s. 11—*Public Health Act, 1875* (38 & 39 Vict. c. 55), ss. 56, 57, 256—*Waterworks Clauses Act, 1847* (10 & 11 Vict. c. 17).

By virtue of certain provisions of the *Waterworks Clauses Act, 1847*, incorporated in the *Public Health Act, 1875*, payment of a rate or charge not exceeding 20*l.*, made by an urban authority for water supplied to premises within their district, may be enforced by summary proceedings before justices; and by s. 11 of the *Summary Jurisdiction Act, 1848*, where no time for making a complaint or laying an information is specially limited in the Act or Acts relating to each particular case, "such complaint shall be made and such information shall be laid within six calendar months from the time when the matter of such complaint or information respectively arose." By s. 256 of the *Public Health Act, 1875*, "if any person assessed to any rate made under this Act by any urban authority fails to pay the same when due and for the space of fourteen days after the same has been lawfully demanded in writing," he may be summoned to appear before a Court of summary jurisdiction, who may make an order for payment against him.

The appellants having failed to pay within fourteen days after demand in writing a sum claimed by an urban authority as the amount due for a water rate, the urban authority, within six calendar months after the expiration of the fourteen days, made a complaint and took out a summons under s. 256 to enforce payment:—

Held, that the water rate was a "rate made under this Act" within the meaning of s. 256 of the *Public Health Act*; that the matter of the complaint arose when the appellants failed to pay the amount claimed within fourteen days from the demand, and therefore that the complaint was made within the time limited by s. 11 of the *Summary Jurisdiction Act, 1848*. **ELLIOT v. RUSSELL** Div. Ct. [1902] 2 K. B. 748

— Rates—Water rate—Covenant by lessor to pay rates.

See **LANDLORD AND TENANT.** 69.

— Rates—Water rate—"Domestic purposes"—"Railway purposes"—Railway station—Sanitary conveniences.

See **RATES.** 37.

WATER—continued.

9. — Rates—Water rate payable by owner—Prohibition against cutting off tenant's water supply—Recovery of water rate from "owner"—Receiver of rents—Water Companies (Regulation of Powers) Act, 1887 (50 & 51 Vict. c. 21), s. 4—*Waterworks Clauses Act, 1847* (10 Vict. c. 77), ss. 3, 72.

By a special Act of a water co. it was provided that "The owners of all houses or parts of houses occupied as separate tenements and not respectively exceeding the annual value of 20*l.* shall during such time as they are supplied with water by the co. be liable to the payment of the rates chargeable in respect thereof under this Act instead of the occupiers thereof; and the person receiving the rent of any such house or tenement from the occupier thereof on his own account or as agent or receiver for any person interested therein shall for that purpose be deemed the owner of such house or tenement." The special Act incorporated the *Waterworks Clauses Act, 1847*, by s. 3 of which "The expression 'water rate' shall include any rent reward or payment to be made to the undertakers for a supply of water."

By s. 4 of the *Water Companies (Regulation of Powers) Act, 1887*, "Where the owner and not the occupier is liable by law or by agreement with the water co. to the payment of the water rate in respect of any dwelling-house or part of a dwelling-house occupied as a separate tenement, no water co. shall cut off the water supply for non-payment of the water rate, but such water rate, without prejudice to the other remedies of the co. for enforcing payment thereof from such owner, shall . . . be a charge on such dwelling-house in priority to all other charges affecting the premises; and (without prejudice to such charge) the amount may be recovered . . . from the owner or from the occupier for the time being in the same manner as water rates may by law be recovered."

The owner of a block of flats, which were respectively of an annual value not exceeding 20*l.*, entered into an agreement with a water co. for the supply of water to the flats by meter. The owner subsequently mortgaged the premises, and upon his getting into financial difficulties the mortgagees appointed the deft. to act as receiver of the rents of the flats on their behalf. At the date of the deft.'s appointment there were arrears owing to the plts. (the successors of the water co.) for water supplied to the flats under the agreement:—

Held, that the deft. was not the owner of the premises within the meaning of s. 4 of the *Water Companies (Regulation of Powers) Act, 1887*, and was not liable as such for the arrears existing at the date of his appointment. **METROPOLITAN WATER BOARD v. BROOKS**

Channell J. [1910] 2 K. B. 134

On Appeal:—

The C. A. dismissed the appeal and affirmed the decision of Channell J., but on different grounds. Their Lordships did not desire to express any opinion adverse to Channell J. on the second point (which had not been argued),

WATER *continued.*

but they differed from him as to the first point. In their opinion a man named Smith and not the deft. was the person contemplated by the general Act of 1847 (which was in all material respects identical with the Act of 1853) as being the agent or receiver, and on that ground the plts.' claim failed. **METROPOLITAN WATER BOARD v. BROOKS** **C. A. [1910] W. N. 258**

— Reservoir—Definition of limits by Board of Trade certificate.
See **FISHERY. 1.**

— Reservoir—Right to support minerals under adjacent land—Limit of forty yards.
See **MINES.**

10. — Reservoir — Waterworks — Land compulsorily taken — Special adaptability for reservoir — Compensation.

Where land is compulsorily taken for the purpose of making a reservoir, and the land has a special adaptability for the construction of a reservoir, the tribunal assessing the compensation is not precluded from taking into consideration the special adaptability as an element of value by reason of the fact that the land could not be utilized for the construction of a reservoir by other possible competitors unless statutory powers for its compulsory purchase were first obtained.

In determining the value arising from such special adaptability the tribunal should have regard to the contingent value arising from the possibility of the land coming into the market when required for the particular purpose, and not to the value of the realized possibility arising from the fact of the promoters having obtained statutory powers for the construction of the reservoir.

On appeal from the judgment of Bray J., reported [1908] 1 K. B. 571, the award was remitted to an umpire. *In re* **LUCAS AND CHESTERFIELD GAS AND WATER BOARD**

C. A. [1909] 1 K. B. 16

11. — Riparian owner — Railway company — Abstraction of water for purposes unconnected with riparian tenement.

The owner of a tenement adjoining a natural stream has no right to divert the water to a place outside the tenement, and there consume it for purposes unconnected with the tenement.

A natural stream was crossed by a ry. line and flowed down to a mill. The ry. co. claimed the right to insert a pipe into the stream at the crossing (which was the only place where their land adjoined the stream), and to carry the water along their line to a distant tank, and there to consume it in working their locomotive engines along the whole of their ry. If the pipe was used to its full capacity it might not have substantially injured the mill :—

Held, that the ry. co. were not entitled to carry out their proposal (which was not for purposes connected with the land where it crossed the stream), and that the millowner would be justified in stopping up the proposed pipe.

The decision of the Irish C. A. reversed.

Earl of Sandwich v. Great Northern Ry. Co.

WATER—*continued.*

(1878) 10 Ch. D. 707, overruled. **MCCARTNEY v. LONDONDERRY AND LOUGH SWILLY RY. CO.**
H. L. (1.) [1904] A. C. 301

— River—Rights of riparian proprietors.
See under **RIVER.**

— Salmon fishings.
See under **FISHERY.**

— Salt mine—Underground brine, Rights of adjacent landowners in respect of—Percolating underground water.
See **MINES. 12.**

— School—Supply of water.
See under **SCHOOLS.**

— Settled land—Improvements—Irish estates—Water supply—Fire hydrants and hose—Laundry.
See **SETTLED LAND—Capital Moneys. 10.**

— Statutory navigation company, Prescriptive claim against—Prescriptive claim to take surplus water only—User unlimited.
See **PRESCRIPTION.**

— Storm-water overflow—Trespass—Nuisance—Injunction.
See **LONDON—Sewers. 4.**

— Stream.
See under **STREAM.**

— Stream—Pumping operations of waterworks.
See **No. 27, below.**

— Supply adjoining district—Sanction of Local Government Board—Contracts—District councils.
See **LOCAL GOVERNMENT. 13.**

12. — Supply—"Domestic purposes"—Boarding-house keeper—Purposes of "trade manufacture, or business"—Waterworks Company—Special Act.

A waterworks co.'s special Act provided that they should, at the request of occupiers of houses, furnish them with a supply of water for "domestic purposes" at specified rates; that a supply for domestic purposes should not include a supply for any "trade, manufacture, or business," and that it should be lawful for the co. to supply any person with water for other than domestic purposes upon such terms and conditions as should be agreed upon between them.

The occupier of a dwelling-house carried on the business of a boarding-house keeper therein, receiving persons to board and lodge who used the water of the co. Water was only used in the house for cleansing, cooking, drinking, and sanitary purposes :—

Held, that, having regard to the use of the water in the house, the occupier was entitled to demand a supply of water at the rates specified in the Act for a supply for "domestic purposes." **PIDGON v. GREAT YARMOUTH WATERWORKS CO.**

Div. Ct [1901] W. N. 231; [1902] 1 K. B. 310
Note.

Commented on by Buckley J., *South-West Suburban Water Co. v. St. Marylebone Union*, [1904] 2 K. B. 174. *See* **No. 15, below.**

Referred to by Eve J., *Frederick v. Bognor Water Co.*, [1909] 1 Ch. 149. *See next case.*

WATER—continued.

13. — *Supply — “Domestic purposes” — Dwelling-house used for “business for which water is required” — Water company—Special Act—Bognor Water Act, 1891 (54 & 55 Vict. c. clxxxviii.), ss. 60, 61.*

The special Act of a water co. provided (s. 60) that they should, on the application of the owner or occupier of a dwelling-house within their area of supply furnish him with a sufficient supply of water for domestic purposes at specified rates. But by s. 61 of the Act the co. was not to be compelled to do so “otherwise than by agreement, where any part of such dwelling-house is used for any trade, manufacture, or business for which water is required” :—

Held, that the keeping of a boarding school for boys in which water was used for the domestic purposes of all the inmates was not carrying on a “business for which water is required” within the meaning of s. 61 of the special Act, and the occupier of the house was therefore entitled to be supplied by the water co. with water to his house and premises at a rate not exceeding that specified in s. 60.

Chester Waterworks Co. v. Guardians of Chester Union, (1907) 96 L. T. 566 ; 98 L. T. 701, discussed and followed. *FREDERICK v. BOGNOR WATER CO.* *Eve J.* [1908] W. N. 215 : [1909] 1 Ch. 149

14. — *Supply—Domestic purposes—Physician and surgeon—Water for motor car used for profession of physician and surgeon — Waterworks Clauses Act, 1863, (26 & 27 Vict. c. 93), s. 12.*

Water supplied to and used by a medical man for washing a motor car and for other purposes in connection therewith, the motor car being used by him for the purposes of his profession or business of a physician and surgeon, is water supplied for domestic purposes within the meaning of s. 12 of the Waterworks Clauses Act, 1863. *HARROGATE CORPORATION v. MACKAY* *Div. Ct.* [1907] W. N. 164 : [1907] 2 K. B. 611

15. — *Supply—Domestic purposes—School—Water company—Waterworks Clauses Act, 1847 (10 & 11 Vict. c. 17), ss. 48, 50, 53—Waterworks Clauses Act, 1863 (26 & 27 Vict. c. 93), s. 12.*

The defts., who were the occupiers of a school within the district supplied by the plts., demanded a supply of water for domestic purposes, but refused to comply with the regulations made by the plts. :—

Held, that the school was a dwelling-house within the meaning of the Waterworks Clauses Acts, and that although a business was carried on there the defts. might still be entitled to a supply of water for domestic purposes, but that they must first comply with the reasonable regulations for that supply which the plts. were entitled to make.

Pidgeon v. Great Yarmouth Waterworks Co., [1902] 1 K. B. 310, commented on. *SOUTH-WEST SUBURBAN WATER CO. v. ST. MARYLEBONE UNION*

Buckley J. [1904] 2 K. B. 174

WATER—continued.

— *Supply—Domestic purposes—Schools.*
See under SCHOOLS.

16. — *Supply — “Domestic purposes” — Swimming-bath—School—Waterworks Clauses Act, 1847 (10 & 11 Vict. c. 17), s. 53—Waterworks Clauses Act, 1863 (26 & 27 Vict. c. 93), s. 12—Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 51, 56, 57.*

The governors of a school, carried on as a charity and not for purposes of profit, constructed a swimming-bath for the use of the boys. The bath was in a building outside the main building of the school, but was connected with it by a corridor, and was separately rated for poor-rate. A swimming-master was kept to teach the boys swimming, and a fee was charged for the use of the bath. This fee was compulsory for the boarders, but was charged to such only of the day boys as used the bath :—

Held, by the C. A. (Vaughan Williams L.J. doubting), that under the circumstances the water supplied to the bath was not supplied for “domestic purposes” within the meaning of s. 12 of the Waterworks Clauses Act, 1863, but was supplied for the business of the school, and that consequently the water authority were entitled to make a special charge for the supply.

Decision of Buckley J., [1901] W. N. 173 ; [1901] 2 Ch. 813, reversed.

Semble, that a supply of water to a swimming-bath for the use of the occupier of the dwelling-house and his family may be a supply for domestic purposes.

Per Vaughan Williams L.J. : A supply of water for domestic purposes is not limited to a supply inside the dwelling-house of the occupier, nor must it be a supply which is essential to the occupation, or even to the healthy occupation, of the house.

Water supplied for the purposes of making the occupation of a house more convenient, or for increasing its amenities, is *prima facie* supplied for “domestic purposes.”

Per Romer L.J. : The true test whether water is supplied for domestic purposes is not whether it is used by the occupier for the private purposes of himself and his household.

Regard must be had to the ordinary habits of domestic life and to what can reasonably be considered a “domestic purpose.”

The test of reasonableness ought also to be applied to the quantity of water required, and regard should be had, not only to the consumer, but also to the obligation of the water authority to afford a supply to their district for ordinary domestic purposes.

In each case the Court must see whether the supply required is reasonably a supply for domestic purposes. *BARNARD CASTLE URBAN DISTRICT COUNCIL v. WILSON*

C. A. [1902] W. N. 146 ; [1902] 2 Ch. 746

— *Supply—Meter—Supply of water by meter — “Premises.”*

See LONDON—Water. 2.

17. — *Supply—Neglect or refusal to supply — Defect in communication pipes—Liability of*

WATER—*continued.*

consumer to repair—*Waterworks Company—Waterworks Clauses Act, 1847* (10 & 11 Vict. c. 17), s. 43—*Metropolis Water Act, 1871* (34 & 35 Vict. c. 113), ss. 27, 28, 29, 32.

A water co. in the metropolis, who were furnishing a consumer with a constant supply of water for domestic purposes, the pipe communicating with his premises being attached to the co.'s main under the roadway of a public street, opened up the roadway and found a defect in the communication pipe causing a serious waste of water. They thereupon gave him written notice to repair the pipe forthwith; and, upon his failing so to do, they cut off the water supply to his premises at the main, and refused to supply him until the pipe was repaired. By s. 28 of the *Metropolis Water Act, 1871*, in the case of a constant supply every owner or occupier, upon whom notice in that behalf has been served under the Act, shall provide the prescribed fittings and shall from time to time keep the same in proper repair. By s. 3 the term "fittings" includes communication pipes. By s. 32, if any person supplied with water by the co. wrongfully fails to do anything which, under the provisions of the Act, ought to be done for preventing the waste of the co.'s water, they may cut off his supply and cease to supply him with water so long as the injury remains or is not remedied:—

Held, that, on the facts stated above, the co. were entitled to cut off the supply until the pipe was repaired, and therefore that they were not liable to the penalty imposed by s. 43 of the *Waterworks Clauses Act, 1847*, for "neglecting or refusing" to supply water to consumers. **GRAND JUNCTION WATERWORKS CO. v. RODOCANACHI**

Div. Ct. [1904] 2 K. B. 230

18 — Supply — Local government — Urban authority — Waterworks company — Special Act — Provisions for protection of urban authority — Action by urban authority to enforce — Joinder of Attorney-General — Necessity for — Amendment — Terms — Pontypridd Waterworks Act, 1892 (55 & 56 Vict. c. cviii.), s. 4.

By the *Pontypridd Waterworks Act, 1892* (55 & 56 Vict. c. cviii.), s. 4, the deft. co. were authorized to make and maintain a reservoir and certain filter beds, service tanks, conduits or lines of pipes, and other works in the county of Glamorgan therein mentioned. Sect. 10 provided that if the works authorized were not completed within the time thereby limited the powers of the deft. co. should cease, "provided that for the protection of the *Pontypridd* and *Ystradlyfodwg* Local Boards . . . the following provisions shall have effect (namely)"; and then followed provisions imposing certain obligations upon the deft. co. with reference to the quantity and quality of the water to be supplied to the districts of the two local boards.

On Sept. 13, 1906, the plt. council, who were the successors in interest of the *Ystradlyfodwg* Local Board, commenced an action in their own name against the deft. co. to enforce by mandatory injunctions the provisions of

WATER *continued.*

s. 10. The deft. co. by their defence alleged (*inter alia*) that they would object that the plt. council's statement of claim disclosed no cause of action. On Nov. 6, 1907, after notice of trial had been given, the plt. council obtained an order giving them liberty to amend their writ and statement of claim by adding the Att.-Gen. as a co-plt. on their relation. The order provided that "all questions as to the terms upon which such amendments ought to be allowed be left to the judge at the trial of this action, when the defts. are to be at liberty to raise such preliminary objections as they may think fit." The Att.-Gen. was accordingly added as a co-plt.:—

Held, that s. 10 of the deft. co.'s Act did not confer upon the plt. council any statutory power to sue in their own name, and that the only person who could sue was the Att.-Gen.

Devonport Corporation v. Tozer, [1903] 1 Ch. 759, followed.

Held, also, that the liberty given to amend by the order of Nov. 6 must be upon the terms that the plt. council should pay to the deft. co. their costs of the action up to and including that order, and that the Att.-Gen. should only be entitled to such relief as he could have claimed if the action had been commenced at the date on which he was added as a party.

Ayscough v. Bullar, (1889) 41 Ch. D. 341, applied. **ATT.-GEN. (ON THE RELATION OF THE RHONDDA URBAN DISTRICT COUNCIL) AND THE RHONDDA URBAN DISTRICT COUNCIL v. PONTYPRIDD WATERWORKS CO.**

Warrington J. [1908] W. N. 11 ; [1908] 1 Ch. 388

9. — Supply — Neglect to furnish a supply of water for domestic purposes — Insufficiency of supply — Penalty — Waterworks Clauses Act, 1847 (10 & 11 Vict. c. 17), s. 43.

By s. 43 of the *Waterworks Clauses Act, 1847*, if a water co. "neglect or refuse to furnish to any owner or occupier entitled under this or the special Act to receive a supply of water [*sic*] during any part of the time for which the rates for such supply have been paid or tendered," they are to be liable to a penalty:—

Held, that the above provision applies only to a total cessation of the supply, and not to a neglect to furnish a sufficient quantity. If the water co. continuously supply the consumer with some water for his domestic purposes, the fact that the quantity supplied is insufficient for the reasonable requirements of his house does not constitute an offence within the section. **SIMPSON v. SOUTH OXFORDSHIRE WATER AND GAS CO.**

Div. Ct. [1908] W. N. 64 ; [1908] 1 K. B. 917

20. — Support for water pipe, Right of — Minerals under pipe — Edinburgh Water Act, 1819 (59 Geo. 3, c. cxvi.)—*Edinburgh Water Company Act, 1843* (6 & 7 Vict. c. lxxviii.).

By the *Edinburgh Water Act of 1819* (59 Geo. 3, c. cxvi.) the *Edinburgh Water Co.* were empowered to lay pipes for conducting water to the city.

By s. 38 the co. were authorized to take

WATER—continued.

and use grounds and premises for the purpose of forming reservoirs, and to make the necessary cuts for conducting water to the city, and to lay the necessary pipes for that purpose, giving one month's notice of their intention to the owners and occupiers of such grounds and premises, and making satisfaction to such owners and occupiers in manner thereafter directed.

In 1823 a strip of ground was opened by the co. and a pipe laid, part of which passed through the lands of the appellants and their predecessors. The pipe was continuously used without question down to the commencement of this action in 1898, when it was threatened with injury by the appellants working certain minerals lying under the pipe. The co. having raised an action for an interdict to restrain the appellants from working the minerals adjacent to the pipe so as to injure it, it did not appear that any payment or satisfaction had been made by the co. in respect of laying the pipe :—

Held, affirming the decision of the First Division of the Ct. of Sess., (1900) 3 F. 156, that after nearly eighty years' enjoyment of the way—leave it must be presumed that whatever was necessary to obtain the right to support for the pipe had been done.

London and North Western Ry. Co. v. Evans, [1893] 1 Ch. 16, approved. CLIPPENS OIL Co. v. EDINBURGH AND DISTRICT WATER TRUSTEES **H. L. (Sc.) [1903] W. N. 204 ; [1904] A. C. 64**

See ARBITRATION—Award.

—Thames—Dredging—Riparian owner.
See THAMES, RIVER. 1.

—Title — Misdescription — Latent defect — Underground culvert for water.
See VENDOR AND PURCHASER—Title. 5.

21. — Underground stream — Channel defined but not known.

If underground water flows in a defined channel into a well supplying a stream above ground, but the existence and course of that channel are not known and cannot be ascertained except by excavation, the lower riparian proprietors on the banks of the stream have no right of action for the abstraction of the underground water.

The Sweet Well Spring was one of the principal feeders of the Morton Beck, on the banks of which the plts. were riparian proprietors. The water flowed from the spring to the beck in a visible channel above ground. The spring was alleged to be fed by underground water flowing in a defined channel, but the course and existence of this channel were not known, and could not be ascertained except by excavation. The defts. by sinking wells above the Sweet Well Spring diverted the underground supply and diminished the flow of water from the spring :—

Held, that the plts. had no cause of action.

BRADFORD CORPORATION v. FERRAND

Farwell J. [1902] 2 Ch. 655

WATER—continued.

—Unrecorded waters — Law of British Columbia.

See CANADA—Water. 1.

—Water bailiff, Powers of—Right to search suspected person's pocket.
See FISHERY. 12.

22. — Water company — Negligence—Liability to reinstate pavement—Subsidence—Omission of road authority to rectify—Waterworks Clauses Act, 1847 (10 & 11 Vict. c. 17), s. 32.

The mere passive omission by a road authority to rectify a subsidence in a road in their area which has been originally occasioned by the neglect of a water co. to make good the road after having broken it up for the purposes of their undertaking does not exonerate the water co. from liability for an injury caused to a person using the road by reason of the subsidence. **HARTLEY v. ROCHDALE CORPORATION** - **Div. Ct. [1908] 2 K. B. 594**

23. — Water company — Special Act — Purchase of land by agreement—Sinking well—Erecting pumping station—Ultra vires.

A water co. incorporated by a special Act for the purposes of making and maintaining the waterworks thereby limited and defined, and for supplying water within the limits of the Act and for carrying on the business usually carried on by water cos., was empowered, in addition to the lands authorized to be taken compulsorily, to acquire by agreement and hold for the general purposes of its undertaking any lands within its limits of supply not exceeding a certain acreage, provided that no buildings should be erected thereon except such as were required for the purposes of the co.'s waterworks. Under this power the co. purchased land some distance away from its waterworks and proposed to sink a well and erect a pumping station thereon for the purpose of tapping a new water supply and pumping the water into an existing reservoir constructed under the powers of the Act :—

Held, that the power to purchase additional land was only for purposes ancillary to the main purpose of the co., which was to supply water within its limits of supply by its statutory waterworks, and that the proposed works were ultra vires. **ATT.-GEN. v. FRIMLEY AND FARNBOROUGH DISTRICT WATER CO.**

C. A. [1908] W. N. 87 ; [1908] 1 Ch. 727

See next Case.

24. — Water company—Special Acts—Unauthorized new waterworks—Ancillary main under public footpath—Soil in plaintiff's trespass—Ultra vires—Plaintiff's right to sue without Attorney-General — Waterworks Clauses Act, 1847 (10 & 11 Vict. c. 17), ss. 28, 29.

Sect. 28 of the Waterworks Clauses Act, 1874, merely enables a water co. to lay pipes under streets in connection with the undertaking authorized by their special Acts, and if they are being laid in connection with unauthorized works, the owner of the soil can sue the water co. in trespass, raise the

WATER—continued.

question of ultra vires, and obtaining an injunction without joining the Att.-Gen.

Liverpool Corporation v. Chorley Waterworks Co., (1852) 2 D. M. & G. 852, 860, and *Cardiff Corporation v. Cardiff Waterworks Co.*, (1859) 5 Jur. (N.S.) 953; 4 De G. & J. 596, applied.

The fact that the damage is small is immaterial: *Goodson v. Richardson*, (1874) L. R. 9 Ch. 221, applied.

Semble, a public street or footpath is "land dedicated to public use" within the meaning of s. 29, so that pipes in connection with authorized works could be laid without the consent of the owner of the soil. *MARRIOTT v. EAST GRINSTEAD GAS AND WATER CO.*

Swinfen Eady J. [1908] W. N. 227; [1909] 1 Ch. 70

25. — *Water company — Waterworks — Statutory powers—Incidental powers—"Supply of water"—Supplying water outside statutory limits—Ultra vires—Injunction—West Gloucestershire Water Act, 1881 (47 & 48 Vict. c. ccclii.), ss. 3, 4, 5, 6, 28, 34, 36, 56—West Gloucestershire Water Act, 1899 (62 & 63 Vict. c. clviii.), ss. 4, 12.*

A water co. authorized by their special Acts to supply water to certain places, defined by the Act to be the limits of the Act, cannot supply water outside these limits, although not expressly forbidden by the Act to do so.

A water co. authorized by their special Act to erect waterworks and supply water within certain limits which included the parish of A., agreed to supply water to W., the owner of property in the adjoining parish of H., and accordingly extended their main in the parish of A. to the boundary where it adjoined the parish of H., and then, at the cost of W., laid a main some distance along a highway in the parish of H. and thence laid pipes to W.'s property:—

Held, that the water co., on the construction of their special Acts, were not by virtue either of any express or incidental powers entitled to supply water outside their statutory limits.

Held, also, that the water co. were supplying water to W., not at the point where their mains reached the boundary in the parish of A., but at the terminals on W.'s property where he received and applied it to his use.

Held, therefore, that the water co. were acting ultra vires, and an injunction was granted at the suit of the Att.-Gen.

Decision of *Neville, J.*, [1909] W. N. 60; [1909] 1 Ch. 636, affirmed. *ATT.-GEN. v. WEST GLOUCESTERSHIRE WATER CO.*

C. A. [1909] W. N. 141; [1909] 2 Ch. 338

— Water highway.

See under WATER HIGHWAY.

— Watercourse, Artificial—Riparian proprietors.

See No. 1, above.

26. — *Watercourse—Artificial channel—Temporary purpose—Severance of tenements—Precarious easement—Implied grant—*

WATER continued.

Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), s. 6.

A watercourse constructed for the purpose of a mill is constructed for a temporary purpose within *Arkwright v. Gell*, (1839) 5 M. & W. 203, and similar authorities.

A precarious easement is unknown to the law.

The owner of an ancient mill and a farm the cattle whereof were to some extent watered at an ancient watercourse diverted from a natural stream, and running on the mill property alongside the farm, but constructed and maintained solely for the purpose of the mill, conveyed the farm to a purchaser without mentioning any water right:—

Held, that, having regard to the special temporary purpose for which the watercourse was constructed, the expense of maintaining it, and the fact that it lay entirely on the mill property, the purchaser had acquired no right, either by implied grant or under the general words of the Conveyancing Act, 1881, s. 6, to have it continued for his benefit, and the watercourse being therefore precarious, he could have no right to the use of the water (if any) therein.

Birmingham, Dudley and District Banking Co. v. Ross, (1888) 38 Ch. D. 295, followed and applied.

Watts v. Kelson, (1871) L. R. 6 Ch. 166, distinguished. *BURROWS v. LANG*

Farwell J. [1901] W. N. 115; [1901] 2 Ch. 502

Note.

Distinguished by *Eve J.*, *Whitmores (Edenbridge), Ltd. v. Stanford*, [1909] 1 Ch. 427. *See Stream. 3.*

27. — *Watercourse—Pumping operations—Causing water to percolate out of stream—Cause of action.*

The defts. were the owners of a well and pumping station situate at a distance of about twenty yards from a natural stream. This well was for seventy-six feet of its depth from the top lined with steel cylinders, so that no water from the adjacent soil could obtain access to the well except at a greater depth than seventy-six feet. The plt. was a riparian owner lower down the stream. The effect of the defts.' pumping from the well was that the general level of the water in the soil in the neighbourhood of the well was lowered to the extent of about twelve inches, with the result that the soil became dry, and a portion of the water flowing down the stream leaked out through the bed and side of the stream, so that the volume of the water in it was substantially diminished by the time it reached the plt.'s land. None of the water, however, which so escaped from the stream in consequence of the defts.' pumping found its way into the defts.' well:—

Held, that as the defts. did not appropriate any of the water of the stream by pumping it up through their pipes, but merely caused it to sink a short distance into the ground by reason of their withdrawing the support of the

WATER—*continued*.

lower subterranean water, the damage to the stream gave no cause of action.

Grand Junction Canal Co. v. Shugar, (1871) L. R. 6 Ch. 483, distinguished. **ENGLISH v. METROPOLITAN WATER BOARD**

Lord Alverstone C.J. [1907] W. N. 50; [1907] 1 K. B. 588

— Waterworks—Indirectly productive works—Assessment of intake.
See **RATES**. 51.

28. — *Waterworks* — *Injurious affection of land—Loss of support—Authorized working—Construction as distinguished from user of works* — *Compensation* — *Construction of statutes—Waterworks Clauses Act, 1847* (10 & 11 Vict. c. 17), ss. 6, 12.

Sects. 6 and 12 of the Waterworks Clauses Act, 1847, are, notwithstanding the heading of the group of sections to which they belong, to be construed as providing for compensation to landowners in respect of the injurious affection of their lands by the taking of water found in and under the lands taken for the construction of waterworks, for the purposes of the waterworks after the completion of the structural works.

General words in the heading of a group of sections cannot be construed as limiting the effect of plain words in a section contained in that group.

So *held*, affirming judgment of Bray J., [1906] 1 K. B. 608.

Hammersmith and City Ry. Co. v. Brand, (1869) L. R. 4 H. L. 171, distinguished. **FLETCHER v. BIRKENHEAD CORPORATION**

C. A. [1907] W. N. 5; [1907] 1 K. B. 205

29. — *Waterworks* — *Land compulsorily taken—Compensation—Special adaptability*.

Where land is compulsorily taken for the purpose of making a reservoir, the fact that the land has peculiar natural advantages for supplying a district or area, apart from any value created or enhanced by the scheme or Act for appropriating the water to a particular local authority, may be taken into consideration in the assessment of compensation; and it is not necessary that it should be proved that the land could be similarly used by other specified local authorities.

Judgment of Wright J., [1903] 1 K. B. 574, affirmed. *In re GOUGH AND ASPATRIA, SILLOTH AND DISTRICT JOINT WATER BOARD*
C. A. [1904] W. N. 20; [1904] 1 K. B. 41

— Waterworks company—Covenant not to assign without consent—Power of re-entry on breach—Alienation—Statutory powers—Landlord and tenant.

See **LONDON—Water**. 1.

30. — *Waterworks company* — *Division of profits—Issue of preference shares—Absence of “prescribed rate” in special Act—Rate of interest fixed by company—Effect of incorporation of s. 13 of Companies Clauses Act, 1863—Limitation of profits divisible among ordinary shareholders* — *Waterworks Clauses Act, 1847* (10 & 11 Vict. c. 17), ss. 2,

WATER—*continued*.

75—Companies Clauses Act, 1863 (26 & 27 Vict. c. 118), s. 13.

A waterworks co. was formed under a special Act, which incorporated the Waterworks Clauses Act, 1847. Under subsequent special Acts which incorporated the Companies Clauses Act, 1863, the co. issued preference stock at 5 per cent. and $4\frac{1}{2}$ per cent. respectively. None of the co.'s Acts contained a prescribed rate for the division of profits among the undertakers. On a special case stated by the Court of Arbitration appointed under the Metropolis Water Act, 1902:—

Held, that, by virtue of s. 13 of the Companies Clauses Act, 1863, the rates of interest fixed by the co. on the preference stock issued by them were “prescribed rates,” and that the whole of the paid-up capital being subject to prescribed rates of interest the co., by s. 75 of the Waterworks Clauses Act, 1847, were only entitled to divide as maximum dividends 10 per cent. per annum on the ordinary stock. **CHELSEA WATERWORKS CO. v. METROPOLITAN WATER BOARD**

C. A. [1904] 2 K. B. 77

31. — *Waterworks company—Surplus profits—Dividend—Prescribed rate—Making up deficiency of previous dividend—Deficiency prior to incorporation of General Act—Waterworks Clauses Act, 1847* (10 & 11 Vict. c. 17), ss. 1, 75.

A water co., one of whose special Acts incorporates the Waterworks Clauses Act, 1847, has no power to apply its surplus profits in making up to its ordinary stockbrokers any deficiency in the prescribed rate of dividend, or a full 10% per cent. dividend (if that is the prescribed rate), for any years before the time when the Waterworks Clauses Act, 1847, was made applicable to the co.

The decision of C. A., [1903] 1 Ch. 575, affirmed. **CO. OF PROPRIETORS OF THE KENT WATERWORKS v. LAMPLOUGH**

H. L. (E.) [1904] W. N. 2; [1904] A. C. 27

— Waterworks—Notice to prevent working of mines—Compensation—Rise in value of minerals.

See **MINES**. 15.

— “Weirs”—Non-tidal, non-navigable, waters—Several fishery.

See **FISHERY**. 13.

— Will—Bequest—“Money invested in” Lambeth Waterworks Company—Transfer of undertaking to Water Board—Compensation.

See **WILL**—“Money invested in.” 1.

WATER BAILIFF—Powers of—Right to search suspected person's pocket.

See **FISHERY**. 12.

WATER COMPANY.

See under **WATER**.

WATER HIGHWAY—*River* — *Navigable non-tidal river* — *Public right of navigation* — *Power to levy tolls—Locks—Stanch—Royal Charter, Validity—Grant of exclusive passage for boats, &c.—Implied obligation to maintain and repair—Dedication*—6 Geo. 1, c. 29.

WATER HIGHWAY—continued.

Under letters patent in the seventeenth century the owner of land adjoining the river Ouse between St. Neots and St. Ives, which was there a public river navigable only in sections, made in his own land cuts from the river and locks in the cuts and took tolls from the vessels passing through the locks. In 1720 by 6 Geo. 1, c. 29, the then landowner was empowered to rebuild a stanch in the river below St. Ives and to repair and maintain it and to take tolls on vessels passing through it. Tolls were collected at the lock for more than 200 years and at the stanch for a long period by the predecessors in title of the appellant:—

Held, by Lords Macnaghten, James, and Robertson (Lords Davey and Lindley dissenting upon the question of a highway through the locks), that there was no evidence that the locks had ever been dedicated to the public as a highway, and that the appellant was not bound to maintain or repair or allow the public to pass through the locks or the stanch.

The decisions of Farwell J. and the C. A., [1901] 2 Ch. 671, reversed. *SIMPSON v. ATT.-GEN.* **H. L. (E.) [1904] W. N. 166; [1904] A. C. 476**

WATER-CLOSETS.

See also under PRIVIES.

— Accommodation—Validity of by-law.

See LONDON—Lodginghouses. 3.

1. — *Local government—Local authority—Power to order substitution of waterclosets for existing privies—Bradford Improvement Act, 1873 (36 & 37 Vict. c. clxvii.), s. 21.*

A local Act provided that the corporation of the borough might "in any case where a dwelling-house within the borough shall be without a privy, water-closet or earth-closet, or an ash-pit, or without a privy, water-closet or earth-closet or an ashpit of a construction and size approved by the corporation, require the owner of such house by notice under the hand of the mayor or town clerk for the time being to provide such a privy, water-closet or earth-closet or such an ashpit, or to make such reparation or alteration of the existing privy water-closet or earth-closet or ashpit as in such notice shall be stated":—

Held, that under that provision the corporation were entitled to require the owner of houses, which were already provided with privies, to substitute water-closets for the privies, although the privies, as such, were of good construction and sufficient for the needs of the houses.

Held, also, that they were entitled to require the provision of a separate water-closet for each house. *SMITH v. GREENWOOD*

Div. Ct. [1907] 2 K. B. 385

— London.

See under LONDON—Water-closets.

— Sewers—Premises without district—Connection made by local authority—Subsequent right to impose terms for continuance of connection — New water closet.

See SEWERS. 14.

WATER-CLOSETS—continued.

— Water rate—Trade premises—Sanitary conveniences—"Domestic purposes."

See LONDON—Water. 4.

WATERCOURSE.

See under WATER.

— Mill stream—Artificial channel—Riparian proprietors—Title to bed of stream—Easement—Right to flow of water—Presumption.

See STREAM. 3.

WATERMEN AND LIGHTERMEN—Thames navigation—Navigation of barges—Hauling of barges out of dock—"Navigated."

See THAMES, RIVER. 3.

WATER-MILL—Land drainage—Neglect to clean and scour channel—Injury to other "land."

See LAND DRAINAGE. 1.

WATER RATE.

See LONDON—Water.
WATER.

WATERWORKS.

See under WATER.

WAY-LEAVE—Tenant for life—Power of leasing—Mining lease—Varying minimum rent.

See SETTLED LAND—Leases. 6.

WAY, RIGHT OF—Admissibility of railway map by the Appellate Court.

See CANADA—Railway. 3.

— Churchway—Diversion—Limited dedication—Public user—Presumption—Settled land.

See HIGHWAY. 3.

— Cul-de-sac—Dedication to public—User—Blocking up road.

See BUILDING SCHEME. 1.

1. — *Churchway, Customary — Manorial custom—Evidence—Inhabitants of parish at large.*

There may be a lawful and valid custom for the inhabitants of a parish to have a churchway through the demense of a manor which is within the parish. *Prima facie* a custom in reference to a churchway is a parochial custom.

The plt. was lord of the manor of I. and also of the manor of S., both within the parish of I. The deft. was the occupier of a tenement in the same parish, but in the manor of S. Across the demense of the manor of I. was a footpath which ran in front of the plt.'s mansion-house to the parish church, and the deft. claimed the right to use it as an inhabitant of the parish for the purpose of going to and from the church. In an action of trespass against the deft., the plt. alleged that the path was not a churchway for the parishioners generally, but only by virtue of a manorial custom of the manor of I. for a

WAY, RIGHT OF—*continued.*

certain class of the tenants of that manor, and in support of that contention tendered in evidence a memorandum made by one of his predecessors in title :—

Held, (1.) on the existence that no such manorial custom existed ; (2.) that, if proved, it was doubtful whether it would be good in law ; (3.) that the memorandum was not admissible in evidence on behalf of the plt.; and (4.) that the path was a churchway by custom for the inhabitants of the parish at large. **BROCKLEBANK v. THOMPSON**

[1903] 2 Ch. 344

2. — Footway, Public — Private carriage-way along the same line — Width of footway — Presumption — Dedication — Injunction.

Where there is a public footway, and adjacent land along the same line as the footway, but increasing the width, is laid out by the owner of the soil as a way for carriage traffic, even for private carriage traffic, the presumption of law, in the absence of evidence to the contrary, is that the owner has dedicated to public use as a footway all the space that he has devoted to private traffic in fact. **ATT.-GEN. v. ESHER LINOLEUM CO.**

Buckley J

[1901] W. N. 173 ; [1901] 2 Ch. 647

3. — Grant — Construction — "Visitors" — Pupils at girls' school.

By a deed of Nov., 1894, B. granted to the deft. L. that it should be lawful for her, her executors, administrators and assigns, as lessees or owners for the time being of a piece of land and a messuage known as St. Winifred's, Eastbourne, "and her and their tenants, visitors and servants" from time to time, until the expiration of a lease of the premises, at her and their will and pleasure, to pass and re-pass on foot over and along a certain strip of land (in the rear of St. Winifred's) to the end and intent that the right of footway thereby granted should be appurtenant to the messuage and premises for all purposes connected with the use, occupation and enjoyment of the same. The plts. were the successors in title of B. and owners in fee of the strip of land subject to this right of footway. The deft. L. subsequently purchased the fee of St. Winifred's. She carried on a girls' school upon the premises, and authorized the pupils to use the strip of land as a footway to a road in the rear of St. Winifred's. There was access to the school from another road in front. The plts. brought this action to have it declared that the grant did not entitle the strip of land to be used by the pupils, and for an injunction. The short question argued was whether the pupils were "visitors" within the meaning of the grant.

Kekewich J. said that the question was as to the construction of the deed of grant having regard to settled law and principles. Were the pupils at the school "visitors" within the meaning of the grant? The proper meaning of a visitor was, one who came to see and not to stay; but the word was now applied in common parlance to those who stayed at a place for either a short or a long time, and who

WAY, RIGHT OF—*continued.*

were generally, no doubt, at liberty to leave when they pleased. He, however, saw no reason for restricting the word to those who could come and go as they pleased. He was bound to look at the circumstances under which the grant was made, namely, that the school was in the occupation of the deft. at the time, and the parties contemplated a grant of a right of way to the lady and her tenants, visitors, and servants, in respect of the use of the school. The fact assisted the Court in holding that the word "visitors" must be given a large interpretation, and must include the "pupils" as well as those staying in the house for any length of time, long or short. The explanatory words at the end of the grant stating that it was intended to be appurtenant to the piece of land and messuage "for all purposes connected with the use, occupation, and enjoyment" of the same, although they did not operate to enlarge the grant, were in the nature of an interpretation clause for the purpose of ascertaining the meaning of the grant itself. To hold that "visitors" excluded pupils would be to defeat the intention of the parties at the time. The contention of the plts. could not therefore be upheld, and there must be a declaration that the footway could be used by the pupils. **THORNTON v. LITTLE**

Kekewich J. [1907] W. N. 68

4. — Grant — Excessive user — Bona fides — Building extending beyond dominant tenement.

The defts. Flower & Sons were dismissed from the action, on the ground that they were not necessary or proper parties. The question was, whether the deft. Murrell was intending to make an excessive user of a right of way over the plt.'s land, which had been granted by the plt.'s predecessor in title. The right had been granted for the purposes of plot B. The deft. was the owner of plot B, and also of an adjoining plot A, in respect of which the right had been granted. The deft. owned a building which he intended to use as a factory. This building was erected partly on plot B and partly on plot A, the entrance being on plot B. The plt. contended that the deft. was not entitled to use the way as a means of approach to that part of the building which stood on plot A, and claimed an injunction.

Swinfen Eady J. held [1904] W. N. 106, that the deft. could not be restrained from using the right of way as a means of access to the factory merely because, having entered by the doorway on plot B, he might pass to the portion erected on plot A. His Lordship came to the conclusion that the deft. was bona fide intending to use the right of way for the purpose of access to the building on plot B, and not the less so because part of the building extended beyond the dominant tenement.

The C. A. allowed the appeal, and made a declaration that the deft. was not entitled to use the plt.'s land as a passage or way to the plot A. Liberty would be reserved to apply to the Court in case the plt.'s land should be so used by the deft.

There was no dispute as to the law. The

WAY, RIGHT OF—continued.

question was, what was the true inference from the undisputed facts? The true inference was that the deft. was intending to make an excessive user of the right of way.

Finch v. Great Western Ry. Co., (1879) 5 Ex. D. 254, was a case on the border line. But the decision there turned on a question of fact, namely, whether what the defts. were doing was really done for the purpose of the enjoyment of the dominant tenement, and the Court held that it was. *HARRIS v. FLOWER & SONS, LD.* **C. A. [1904] W. N. 180**

5. — *Grant — "Executors, administrators, and assigns, undertenants and servants"—Licensees.*

A grant of a right of way extends to all licensees of the grantee lawfully going to and from the dominant tenement, although the grantee, his "executors, administrators, and assigns, undertenants and servants," are the only persons specified in the grant. *BAXEN-DALE v. NORTH LAMBETH LIBERAL AND RADICAL CLUB, LD.* *Swinfen Eady J.* [1902] W. N. 138; [1902] 2 Ch. 427

6. — *Grant—Presumption of lost grant—Inclosure of common land—Award of right of way—Non-user—User of other road on servient tenement—Living memory—Claim by prescription not available—Unity of possession—Prescription Act, 1832 (2 & 3 Will. 4, c. 71), s. 2—Prescription at common law—Commencement of easement—Easement.*

By an inclosure award in 1804 certain common lands were allotted to three adjoining owners, including the respective predecessors in title of the plt. Hulbert and of the deft.'s lessor, and a private carriage road was awarded to the same persons leading from a certain named point to the deft.'s farm. The awarded road was never used or even set out, and part of the homestead and outbuildings of the plt.'s farm had stood for many years upon part of the admitted site of the awarded road. The evidence shewed that, until the commencement of the dispute giving rise to this action, the deft. and his predecessors in title or occupation had for a period extending as far back as living memory went, openly and uninterruptedly used a private road running across part of the plt.'s farm and in a direction parallel to the admitted course of the awarded road. There had been unity of possession of the plt.'s and deft.'s farms from 1889 to 1905. In an action by the plt. Hulbert and his tenant for an injunction to restrain the deft. from using the road in question:—

Held, that in the circumstances and on the evidence this was a case in which a lost grant of a right of way over the road in dispute ought to be presumed, and that consequently the action failed.

Decision of Joyce J. affirmed. *HULBERT v. DALE* **C. A. [1909] 2 Ch. 570**

7. — *Grant, Implied—Easement—Messuages in City of London—Warehouses—Dwelling-houses—Passage—Way of Convenience—Common owner—Severance by devise—Implied grant—Extent of right—User for domestic and*

WAY, RIGHT OF—continued.

business purposes—Change in character of one dominant tenement—Substitution of railway station—Original easement—Impossibility of exercise—Suspension—Rights of owners of easement inter se—Injunction.

A testator, who died in 1832, devised several freehold houses in the City of London "with their appurtenances" to various devisees. They were adjoining houses and had been built by the testator, each of them being partly a dwelling-house and partly a warehouse. They all communicated with a passage, a cul-de-sac, which ran along the backs of the premises into a side street, and had been constructed by the testator for the convenience of the several houses, and had always been used in connection with them. The testator did not devise the passage or make an express grant of any rights of way over it to his devisees. The plts., who own the two houses abutting on to the passage at its open end, and the defts.' predecessors in title, who owned the adjoining house higher up the passage, had for many years used the passage for loading and unloading vans for the purposes of their respective businesses. The plts. now sought to restrain the defts., who had acquired, and built a ry. station upon, the site of the last-mentioned house, from obstructing the passage by using and inviting their passengers to use it as a thoroughfare to or from their station:—

Held,—(1.) That a grant to the several devisees of a right of way contemplating such user as would be required for business as well as domestic purposes must be implied from the surrounding circumstances.

Pearson v. Spencer, (1803) 3 B. & S. 761, and *Phillips v. Low*, [1892] 1 Ch. 47, applied.

(2.) That a ry. station was not and could not have been in the contemplation of the testator, and was, both in construction and mode of occupation something entirely different from any dwelling-house, warehouse, or even manufactory, that could have been erected on the land; and

(3.) That the defts. having made it impossible that the passage should be used by them for the purposes for which it was designed, and for which it had in fact been used, their right was not, under the present circumstances, exercisable at all.

The principle enunciated by James L.J. in *Wimbledon and Putney Commons Conservators v. Dixon*, (1875) 1 Ch. D. 362, 368, applied as between the several grantees of a right of way.

Semble, that a right of way thus suspended is capable of being revived.

The construction of an implied grant of a right of way by evidence of user, exemplified. *MILNER'S SAFE CO., LD. v. GREAT NORTHERN AND CITY RY. CO.* **Kekewich J.** [1906] W. N. 163; [1907] 1 Ch. 208

On Appeal:—

Upon the appeal the parties agreed upon an order which was in substance as follows: Restrain the defts., their servants and agents, from licensing or inviting any persons using or

WAY, RIGHT OF—*continued*.

intending to use their ry. station as travellers by the ry. or otherwise to pass either to or from West Street along the passage; but this order is not to preclude the defts. from using the passage for the purpose of passing into or from their station by their officers, clerks or servants, or by any person (not being a passenger or intending passenger) reasonably using the same for the purpose of delivering or removing with carts or otherwise goods or materials not intended for transit by the ry., provided that the defts. ensure that the access to and from their station to the passage shall be kept closed to travellers by the ry. **MILNER'S SAFE CO., LD. v. GREAT NORTHERN AND CITY RY. CO.** C. A. [1906] W. N. 213

—Guernsey—Title to right of way by the public—Law of the Channel Islands. See GUERNSEY. 1.

—Highway—Right for foot passengers—Prescriptive use—Accumulated use attributable to two roads—Substituted roads. See HIGHWAY. 41.

8. — *Local government—District council—Public right of way—Removal of obstruction by private individual—Action by landowner—Power of district council to contribute to costs of defence—Local Government Act, 1894* (56 & 57 Vict. c. 73), s. 26.

By s. 26, sub-s. 1, of the Local Government Act, 1894, it is the duty of every district council to protect all public rights of way, and to prevent as far as possible the stopping or obstruction of any such right of way; and by sub-s. 3 a district council may, for the purpose of carrying the section into effect, institute or defend any legal proceedings, and generally take such steps as they deem expedient:—

Held, that a district council might, under the powers conferred by the section, contribute to the costs of the defence of an action brought against a private individual who had removed an obstruction in the assertion of an alleged public right of way. **REX v. NORFOLK COUNTY COUNCIL** Div. Ct. [1901] 2 K. B. 268

9. — *National monument—Public right of access—Public road—Dedication—Terminus ad quem—Cul-de-sac.*

The general public cannot acquire by user a right to visit a public monument or other object of interest upon private property, and a trust to permit access for that purpose will not be presumed against persons who show a clear documentary title. There can be no public right of way to such a monument or object acquired by mere user. A public highway must prima facie lead from one public place to another. A cul-de-sac may be a public highway, but the dedication of a cul-de-sac as a highway will not be presumed from mere public user without evidence of expenditure on the place in dispute for repairs, lighting, or other matters, by the public authority. **ATT.-GEN v. ANTROBUS**

Farwell J. [1905] W. N. 78; [1905] 2 Ch. 188

WAY, RIGHT OF—*continued*.

10. — *Permissive enjoyment — General words—Conveyancing and Law of Property Act, 1881* (44 & 45 Vict. c. 41), s. 6, sub-s. 2 — *Ways enjoyed with the land sold—Easement.*

The general words incorporated by the Conveyancing Act, 1881, in every conveyance not expressing a contrary intention, will pass to the purchaser all ways actually used by him at the date of the conveyance, though used only by permission of the vendor.

The deft. in this action was the owner of two houses adjoining each other, one in his own occupation, the other held by the plt. co. under a lease from the deft., and occupied by their managers and servants carrying on their business. The houses were separated by a roadway leading to and forming part of the deft.'s yard. By permission of the deft., renewed from time to time to successive managers, the plt.'s servants and their predecessors in title had used in business hours a way across the yard to a door opening thereon in the back part of their premises for all purposes of their business. The entrance to the yard was closed by wooden doors, which were always locked by the deft. at night, and he kept sole control of the key. The deft. sold to the plt. co. the house leased to them, and conveyed it by a deed containing no general words or reference to any right of way:—

Held, that such a right of way as the plts. had actually enjoyed at the date of the deed passed to them by virtue of the general words inserted in the deed by the Conveyancing Act, 1881, though the enjoyment was wholly permissive and precarious. **INTERNATIONAL TEA STORES CO. v. HOBBS** Farwell J.

[1903] W. N. 82; [1903] 2 Ch. 165

—Pleading—Lost grant—Date and parties. See PRACTICE—Pleadings.

11. — *Prescription—Inference from facts—Payment for user—Enjoyment as of right—Lost grant—Easement—Prescription Act, 1832* (2 & 3 Will. 4, s. 71), s. 2.

For more than forty years without interruption the owner of a house used a cart way from his stables through the yard of an adjoining inn to the public road, paying each year 15s. to the owners of the inn yard. There was no agreement in writing, and no conclusive evidence as to the origin of or the consideration for the payment:—

Held, that the inference of fact this House drew from the evidence was that the payment was made for leave to use the way; that there had therefore been no enjoyment of right within the Prescription Act, 1832, s. 2; and that there was no ground for presuming a lost grant.

The decision of the C. A. [1901] W. N. 69; [1901] 2 Ch. 198, affirmed. **GARDNER v. HODGSON'S KINGSTON BREWERY CO.**

H. L. (E.) [1903] W. N. 92; [1903] A. C. 229

12. — *Prescription—Right of way—Enjoyment as between tenants — Dominant and*

WAY, RIGHT OF—continued.

servient tenements—Unity of ownership—Forty years' user—Easement—Prescription Act, 1832 (2 & 3 Will. 4, c. 71), s. 2.

An easement, such as a right of way, cannot, under s. 2 of the Prescription Act, 1832, be acquired by a tenant by user over land occupied by another tenant under the same landlord, even if that user has existed for the period of forty years mentioned in the section.

Dictum in *Harris v. De Pinna*, (1885-6) 33 Ch. D. 268, overruled. *KILGOUR v. GADDES*.

C. A. [1904] W. N. 36 ; [1904] 1 K. B. 457

13. — Reservation — Easement—Contract for sale of land reserving "rights of way hitherto exercised"—Subsequent conveyance with similar reservation, but not executed by purchaser.

From 1867 to 1902 farms called "White Lodge" and "Coxhill" had been owned by the same person, and during all this time the tenants of Coxhill had by leave (either asked for or not) used a way over White Lodge.

In 1902 the owner of the farms agreed to sell White Lodge, the agreement stating that there were reserved "to the vendor, his heirs and assigns, the owners and occupiers for the time being of" Coxhill, "and their servants and others authorized by them, all rights of way hitherto exercised by them in respect of" Coxhill "over any portion of" White Lodge. The conveyance contained a similar reservation, but was not executed by the purchaser, who, however, took possession of White Lodge:—

Held, that the purchaser and his successors in title (taking with notice) were bound to give effect to the reservation. *MAY v. BELLEVILLE* **Buckley J. [1905] 2 Ch. 605**

— Subway—Subsoil of road—Vesting in sanitary authority.

See LONDON—Conveniences. 1.

— Trespass—Injunction—Landowner uninjured—Discretion to refuse injunction.

See TRESPASS. 3.

14. — Unity of possession — Interruption — Acquisition of right against reversioner—Easement—Prescription Act, 1832 (2 & 3 Will. 4, c. 71), ss. 2, 4.

The plts., being respectively the owner in fee and the tenant of Whiteacre, brought an action of trespass against the owner and occupier of the adjoining farm Blackacre, in driving a horse and cart from Blackacre across certain fields belonging to Whiteacre. The deft. set up a private right of way under the Prescription Act, 1832, and alleged an uninterrupted user for forty years. It appeared that A. was tenant of Whiteacre from 1860, and of Blackacre from 1877 till 1898:—

Held, (1) following *Onley v. Gardiner*, (1838) 4 M. & W. 496; 51 R. R. 704, and *Rattishill v. Reed*, (1856) 18 C. B. 696, that the unity of possession of the alleged servient and dominant tenements for the greater part of the forty years preceding the action was fatal to deft.'s claim under the Act; (2) following *Baxter v. Taylor*,

WAY, RIGHT OF—continued.

(1832) 4 B. & Ad. 472; 38 R. R. 227, that in the circumstances the user of the right of way for the last forty years would be no evidence of right as against the plts. *DEMPER v. BASSETT*

Joyce J. [1901] W. N. 119; [1901] 2 Ch. 350 — "Weirs"—Adverse acts of ownership—Incorporeal right.

See FISHERY. 13.

WEARING APPAREL—Married woman—Judgment debt—Wife's separate estate—Paraphernalia.

See HUSBAND AND WIFE—Wearing Apparel, &c. 1.

WEEK—Average weekly earnings—Workmen's Compensation Act.

See under MASTER AND SERVANT—Compensation.

WEEKLY NOTES—Citation.

See SETTLEMENT.

WEIGHT—Sale otherwise than by weight.

See BREAD. 1, 2.

WEIGHTS AND MEASURES.

Weights and Measures Act, 1904 (4 Edw. 7, c. 28), amends the law relating to weights and measures.

Cran Measures Act, 1908 (8 Edw. 7, c. 17). See under Cran Measures.

1. — Coal—By-law—Sufficiency of weighing instrument—Weights and Measures Act, 1889 (52 & 53 Vict. c. 21), s. 28, sub-s. 1; s. 35.

A by-law made under s. 28 of the Weights and Measures Act, 1889, provided that every person carrying coal for sale in a vehicle should carry therewith "a correct weighing instrument . . . for the purpose of weighing any quantity of coal not exceeding two hundredweight." The respondent, a coal dealer, was carrying bags of coal in his cart for sale, some of which bags purported to contain one hundredweight, and others half a hundredweight. He had with him a correct set of scales, but only one weight weighing half a hundredweight:—

Held, that the by-law and statute contemplated that the weighing instrument should be capable of weighing any bag of coal in the cart by a single operation, and that as a hundred-weight bag of coal could not be weighed with a half-hundredweight weight in less than two operations, a breach of the law had been committed. *CRICK v. NICHOLLS*

Div. Ct. [1905] W. N. 32; [1905] 1 K. B. 501

2. — Coal—By-law—Sufficiency of weighing instrument—Weights and Measures Act, 1889 (52 & 53 Vict. c. 21), s. 28.

The respondent was summoned for breach of a by-law, made under s. 28 of the Weights and Measures Act, 1889, which provided that "The person in charge of every vehicle carrying coal for sale or delivery to a purchaser shall carry therewith a weighing instrument of a form approved by the county council, together with correct weights or counterpoises of the denomination of a Board of Trade standard." The respondent on Nov. 16, 1894, was delivering to a purchaser one ton of coal in twenty sacks

WEIGHTS AND MEASURES—continued.

supposed to contain one hundredweight each. He had in his cart a correct weighing instrument and two half-hundredweight weights. The appellant contended that the respondent should have had some smaller weights to counterbalance the weight of the sack itself. There was a conflict of evidence as to whether it was customary to carry such smaller weights. The justices refused to convict:—

Held, that the by-law had been infringed. Appeal allowed. **HOUGHTON v. ANDREWS** (1895)—Unreported **Div. Ct. [1905] 1 K. B. 503, n.**

3. — Coal—By-laws regulating sale of coal—Validity of by-laws—Weights and Measures Act, 1889 (52 & 53 Vict. c. 21), s. 28.

The County Council of Middlesex, purporting to act under s. 28 of the Weights and Measures Act, 1889, which provides that “any local authority may from time to time make, revoke and alter by-laws, (a) regulating for the purposes of this Act the sale of coal in quantities not exceeding two hundredweight,” made the following by-law:—“Every person selling or exposing for sale coal in quantities not exceeding two hundredweight shall cause his name and place of business, if such place of business is situated within the county of Middlesex, to be registered in the books of the inspector of weights and measures in whose district such person carries on business.”

The respondent, who was a seller of coal in quantities not exceeding two hundredweight, was summoned for not registering his name and place of business in accordance with the by-law. The justices dismissed the summons upon the ground that the by-law was not a by-law “regulating the sale of coal” within the meaning of s. 28, but a regulation creating a condition precedent to the sale of coal, and was consequently *ultra vires*:—

Held, that the by-law was a by-law regulating the sale of coal for the purposes of the Act and was valid. Appeal allowed. **WARD v. FRANKLIN**

Div. Ct. [1909] W. N. 200

4. — Coal—Delivery in a vehicle—Several deliveries under one order—One ticket—Weights and Measures Act, 1889 (52 & 53 Vict. c. 21), s. 21.

The respondents, having sold to a purchaser twelve tons of coal, delivered a portion of the coal in sacks in a vehicle to the purchaser on Sept. 23, 1907, and at the same time, before any part of the coal was unloaded, gave to the purchaser a ticket according to the form in the Third Schedule to the Weights and Measures Act, 1889, for the delivery of twelve tons of coal in 240 sacks, each sack containing 1 cwt. On Oct. 2, 1907, thirty sacks of coal, each sack containing 1 cwt., being the remaining portion of the twelve tons, were sent by the respondents in a vehicle for delivery to the purchaser, and were delivered to him. No separate ticket was delivered or sent to the purchaser in respect of the thirty sacks of coal:—

Held, that the coal having been delivered in sacks and a ticket for the entire quantity having been delivered to the purchaser on Sept. 23, the failure of the respondents to give a separate

WEIGHTS AND MEASURES—continued.

ticket in respect of the coal delivered on Oct. 2 did not constitute a breach of the provisions of s. 21 of the Weights and Measures Act, 1889. **KYLE v. DUNSDON** **Div. Ct. [1908] W. N. 102; [1908] 2 K. B. 293**

5. — Coal—Vehicle carrying coal for delivery—Person in charge of vehicle—False representation of weight—Representation by employer—Innocent delivery by servant—Mens rea—Weights and Measures Act, 1889 (52 & 53 Vict. c. 21), s. 29.

By s. 29 of the Weights and Measures Act, 1889, an inspector may enter any building where coal is sold or kept or exposed for sale, and may stop any vehicle carrying coal for sale or delivery to a purchaser, and may weigh any quantity of coal found in any such place or vehicle or which is in course of delivery to any purchaser; and if it appears to a Court of summary jurisdiction that any quantity so weighed is of less weight than that represented by the seller, the person selling or keeping or exposing the coal for sale, or the person in charge of the vehicle, as the case may be, is liable to a fine:—

Held, that to constitute an offence under this section on the part of a person in charge of a vehicle carrying coal for delivery a mens rea is necessary, and, consequently, that a servant in charge of a vehicle who was innocently delivering therefrom to customers coal of less weight than that represented by his employers, and who had himself no knowledge of any short weight, was not guilty of an offence under the section. **PAUL v. HARGREAVES** **Div. Ct. [1908] W. N. 109; [1908] 2 K. B. 289**

6. — False or unjust measures—Possession for use for trade—Master and servant—Possession by servant for own fraudulent purpose—Weights and Measures Act, 1878 (41 & 42 Vict. c. 49), s. 25.

The appellants owned oil depôts, from which a number of tank-waggons were sent out in charge of drivers, each driver being supplied with two five-gallon measures for the purpose of measuring oil sold and delivered to the appellants' customers from the tank-wagon.

At all the depôts an engineer was employed to examine all measures used by the tank-wagon drivers, and if a measure was found in any way faulty or unjust, its use was at once discontinued, it was put into a separate part of the appellants' premises, and a new measure without any defects issued in its place. In the ordinary course of business measures withdrawn from use were attended to and their faults or defects rectified.

On March 15, 1907, two measures were supplied to one of the appellants' drivers for use during that day. Each measure was examined by the appellants' engineer and found to be absolutely correct. Measures set aside for repair were accessible to the driver.

The respondent, an inspector of weights and measures, found the driver in Bermondsey on that day in charge of a tank-wagon belonging to the appellants containing oil, and having in his possession two five-gallon measures, one of which was correct, but the other was found to

WEIGHTS AND MEASURES—continued.

have in the angle formed by the side and bottom thereof, and at the bottom of the measure itself, a quantity of soap, the effect of which was to render it false and unjust to the extent of three and a half pints. The unjust measure belonged to the appellants. One of the correct measures supplied by the appellants to the driver on the morning of March 15, 1907, could not be traced.

The quantity of oil contained in the tank-wagon was measured and booked out against the driver every morning, and similarly checked on his return in the evening of the same day; and the driver did not, either on March 15, 1907, or any previous day, bring back in his tank-wagon more oil than his deliveries during the day accounted for. It was not proved that the appellants were cognizant of the driver's conduct, or that they gave their sanction or approval to the use by him of the unjust measure.

On an information preferred by the respondent against the appellants for that they on March 15, 1907, did, whilst hawking oil from a van in Bermondsey, unlawfully have in their possession for use for trade a false or unjust measure contrary to s. 25 of the Weights and Measures Act, 1878:—

Held, that the Court was at liberty so far to apply the principle which is well settled in reference to civil liability for torts (that an employer is not liable for fraudulent acts of his servant when committed not in the interest of the employer, but for the individual purposes of profit of the fraudulent servant) as to say that, as the fraudulent driver had the fraudulent measure in his own physical possession for his own fraudulent purposes as distinguished from the interests of his employers, his possession must be deemed to be his own possession, and not the possession of his employers, and that, therefore, the offence with which the appellants were charged had not been made out. **ANGLO-AMERICAN OIL Co., LD. v. MANNING**

Div. Ct. [1908] 1 K. B. 536

7. — *Prosecution by inspector*—"With the consent of the local authority"—*General consent*—*Weights and Measures Act, 1904* (4 Edw. 7, c. 28), s. 14.

It is not necessary under s. 14 of the Weights and Measures Act, 1904, which provides that an inspector of weights and measures may, with the consent of the local authority, prosecute before a Court of summary jurisdiction any information arising under the Weights and Measures Acts, that a separate consent shall be given by the local authority in each particular case; a general consent that a named inspector shall prosecute is sufficient. **TYLER v. FERRIS**

Div. Ct. [1906] W. N. 8; [1906] 1 K. B. 94

7a. — *Verification and stamping*—*Fees*—*Inspector*—*Duty of, to take fees*—*Weights and Measures Act, 1889* (52 § 53 Vict. c. 21), s. 13.

By s. 13 of the Weights and Measures Act, 1889, "an inspector of weights and measures may take in respect of the verification and stamping of weights, measures, and weighing instruments, the fees specified in the First Schedule to this Act, and no others:—

Held, that this enactment was obligatory,

WEIGHTS AND MEASURES—continued.

imposing upon the inspector a duty to take the fees in all cases. **REX v. ROBERTS**

Div. Ct. [1901] W. N. 87; [1901] 2 K. B. 117

8. — *Weighing machine*—"False or unjust"—*Scales*—*Weight indicated by machine exceeding weight of article sold*—*Sale of tea with paper bags*—*Weights and Measures Act, 1878* (41 § 42 Vict. c. 49), s. 25.

The respondents, who were wholesale tea merchants, received orders from some of their customers for quantities of tea to be weighed out in packets of a particular weight, and in those cases the tea was weighed out at the respondents' warehouse in the following way: A beam weighing machine was used, and a girl in their employment placed a paper bag, supplied by the customer, under the goods scoop of the machine, where it remained whilst the tea was being weighed, the effect being that the tea put into the scoop weighed less, by the weight of the paper bag, than the weight on the opposite side of the machine. This mode of weighing was adopted at the request of the customer. The machine weighed justly and truly when the bag was not under the scoop. When the weighing was finished the girl put the machine, with the bag still under the scoop, aside on a shelf, and reported that the weighing was finished to the respondents' forewoman, who shortly afterwards came round and took away the paper bag, and other precautions were taken to ensure that the bag should not be used for any other weighing. An inspector of weights and measures, on visiting the warehouse when one of those weighing operations had just been completed, found the machine on the shelf with the paper bag still under the scoop:—

Held, that the respondents had committed the offence of "using" for trade a weighing machine which was "false or unjust," contrary to the provisions of s. 25 of the Weights and Measures Act, 1878. **LONDON COUNTY COUNCIL v. PAYNE & Co. (No. 2)**

Div. Ct. [1905] 1 K. B. 410

9. — *Weighing machine*—"False or unjust"—*Weight indicated exceeding weight of article sold*—*Acquiescence of purchaser*—*Weights and Measures Act, 1878* (41 § 42 Vict. c. 49), s. 25.

The respondents, who were wholesale tea merchants, were charged under s. 25 of the Weights and Measures Act, 1878, with using for trade two scales which were false and unjust. One of the scales (which were used for weighing tea) had a small metal disc affixed by wire to the arm of the scale on which the scoop for weighing the tea was placed, the disc being approximately equivalent in weight to the paper bag in which each quantity of tea was to be put; the effect was to make the quantity of tea required to turn the scale less by the weight of the metal disc than the weight on the opposite side of the scale. The second machine had, instead of a metal disc, a paper bag placed under the scoop in which the tea was placed for weighing; the effect was the same. After being weighed the tea was placed in paper bags. Tea was so weighed out only for retail dealers who requested to be supplied with it so packed, and

WEIGHTS AND MEASURES—*continued*.

who supplied the paper bags in which it was to be packed to the respondents; each of the bags had printed on it an intimation that the weight of the paper was included. Directions were given by the respondents to their servants not to use scales with a metal disc or paper bag attached for any customers other than such retail dealers:—

Held, that the scales, being kept in a condition in which they could not weigh accurately that which was put in them to be weighed, were "false and unjust" within the meaning of the section, notwithstanding the acquiescence of the purchasers in the mode of weighing. LONDON COUNTY COUNCIL *v.* PAYNE & Co.

Div. Ct. [1904] 1 K. B. 194

10. — *Weighing machine—Fraudulent use of machine—Weighing article sold with paper wrapper—Weights and Measures Act, 1878* (41 & 42 Vict. c. 49), s. 26.

Sect. 26 of the Weights and Measures Act, 1878, enacts that "Where any fraud is wilfully committed in the using of any weight, measure, scale," &c., the person committing such fraud shall be liable to a fine.

The appellant, a grocer, made up a number of packages of sugar wrapped in paper, each package being weighed by him, or his servants, on his scales and weighing exactly one pound weight of combined sugar and paper. The scales were just and accurate, and gave the weight of each package correctly. Subsequently the appellant supplied one of those packages to a purchaser who had asked for one pound of sugar. The sugar without the paper wrapper weighed three-quarters of an ounce less than one pound:—

Held, that, as there had been no fraudulent using or manipulation of the scales in the act of weighing, s. 26 did not apply, and the appellant could not be convicted of the offence specified therein. *STONE v. TYLER*

Div. Ct. [1904] W. N. 186; [1905] 1 K. B. 290

"**WEIRS**"—Ownership of soil—Presumption.
See FISHERY. 13.

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See under WATER.

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— Sydney Harbour—Right to levy wharfage rates on all wharves vested in the Commissioners.

See NEW SOUTH WALES. 36.

— Workmen's compensation.

See under MASTER AND SERVANT—Compensation.

WHARFINGER—*Carriage of goods by lighter from ship to warehouse—Limits of liability of wharfinger.*

Wharfingers who, as incidental to their business as wharfingers, transport goods for their customers by lighter from the importing ships to their warehouse, but do not hold themselves out as ready to carry goods for any other persons, are not in respect of that transport subject to the common law liability of common carriers, but are liable only for negligence. *CONSOLIDATED TEA AND LANDS Co. v. OLIVERS' WHARF* — Hamilton J. [1910] W. N. 97; [1910] 2 K. B. 395

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Abatement.

- Legacies—Legacy in satisfaction of a debt—Forgiveness of debts—Legacies—General or specific—Insufficiency of assets.
 See **WILL—Legacy**. 1.
- Legacies given "free from duty"—Deficient estate—Abatement of legacies.
 See **WILL—Testamentary Expenses**. 12.

Absolute Gift.

1. — *Absolute gift cut down, by later words, to life interest—Administration (with will annexed) to residuary legatee—Will—Construction.*

A will made upon a printed form with holograph additions purported to leave all property both real and personal belonging to the testator to the testator's wife "for her own absolute use and benefit . . . subject only to the payment of" debts and funeral and testamentary expenses, the wife being appointed sole executrix . . . "and after her death to come absolutely to" M. A. H. "to her and her heirs for ever" after payment of 20*l.* to two sisters (named) of M. A. H. :—

Held, that, looking at the terms of the whole will, the widow took only a life estate, and that M. A. H., as residuary legatee, was entitled to a grant of administration with the will annexed, in preference to the executor of the widow, who had died without taking probate of the will in question. **IN THE ESTATE OF LUPTON**

Gorell Barnes, Pres. [1905] P. 321

2. — *Absolute gift of estate for life with power of appointment—Construction of will.*

Testator, by his will, dated in 1894, devised certain real estate to his two sons in strict settlement, and also gave them certain personal estate. He gave the residue of his real and personal estate to his wife absolutely, and appointed her executrix during her life and his sons executors on her death. By a codicil, dated in 1898, he revoked his will and gave all his property to his wife, "so that she may have full possession of it and entire power and control over it, to deal with it or act with regard to it as she may think proper." In the event, however, of her not surviving him, or dying "without having devised or

WILL (Absolute Gift)—continued.

appointed" the whole or any part of the said property, then he declared that his said will should take effect as if his codicil had not been made; and he appointed his wife executrix of his codicil during her life:—

Held, that the wife took an estate for life only with a general power of appointment. *In re SANFORD. SANFORD v. SANFORD*

Joyce J. [1901] 1 Ch. 939

3. — Compound event, Gift over on a—Executory devise—Perpetuity—Remoteness—Splitting gift over—Cutting down absolute gift—Settlement—Intestacy—Construction of will.

A will made in 1850 gave residuary personal estate to trustees in trust for the testator's wife for life and after her death (which happened) to be divided into five portions which the testator allotted thus: "To S. D. (a married woman) I give two of such portions" and directed that the two-fifths allotted to S. D. should remain in trust for her life for her separate use, and from and after her decease in trust for her children upon attaining twenty-five if sons, or upon attaining twenty-one or marriage if daughters; "but in default of any such issue" the two-fifths to be divided among the children of C., payable to sons at twenty-five or to daughters at twenty-one or marriage.

S. D. died without having had a child. At her death there were children of C., daughters, who had all attained twenty-one or married:—

Held, (1) that the whole gift over on the death of S. D. was void for remoteness, and could not be split up into separate contingencies, so as to be construed as a gift over on one contingency, that of S. D. having no child; and (2) that upon the death of S. D. there was no intestacy as to the two-fifths, but that by reason of the invalidity of the gift over on her death, the original absolute gift remained, and upon her death passed to her representatives.

Where there is an absolute gift to a legatee in the first instance, and trusts are engrafted or imposed on that absolute interest which fail, either from lapse or invalidity or any other reason, then the absolute gift takes effect, so far as the trusts have failed, to the exclusion of the residuary legatee or next of kin as the case may be.

The decision of the C. A. [1901] 1 Ch. 482. affirmed. *HANCOCK v. WATSON*

H. L. (E.) [1902] A. C. 14

Note.—See *In re Wood, C. A.*, [1902] 2 Ch. 542. *Will—Illegitimacy. 8.*

— "Confidence, in"—Absolute gift subject to executory gift over.

See **WILL—Precatory Trusts. 3.**

4. — Contingent divesting clause—Gift over—Partial happening of contingency—Will—Construction.

H. S. by his will dated Feb. 10, 1882, gave the house in P. St. in which he lived to his wife for life, and after her death to his grandson H. S. S. By a codicil dated April 8, 1882, he declared that if his grandson H. S. S. "should get married and die leaving no legitimate children," then the house in P. St. aforesaid should become the property of his son W. S. The

WILL (Absolute Gift)—continued.

testator died in 1885, and his widow in 1895. On her death H. S. S. entered into receipt of the rents and profits of the house, and he continued in the same until 1900, when he died a bachelor, having by his will, dated in 1888, devised and bequeathed all his estate to his mother, the deft., absolutely.

This was a summons taken out by the plt. W. S. asking for a declaration that, upon the true construction of the will and codicil of H. S., the gift over of the house in question had, upon the death of H. S. S. unmarried, taken effect in the plt.'s favour.

Joyce J. said that the clause in the codicil was purely a divesting clause purporting to take away from H. S. S. property which was given to him in fee. Where there was a divesting clause upon a contingency it could not take effect unless the exact contingency happened. If he were to say that the divesting clause in this case ought to operate upon the happening of a part only of the contingency, he would be making a new will for the testator, which he was not entitled to do. He held, therefore, that the divesting clause had no operation upon the estate of H. S. S., which remained absolute. The summons must be dismissed with costs. *In re SEARLE. SEARLE v. SEARLE*

Joyce J. [1905] W. N. 86

5. — Turning stock—Gift for life—Things *quæ ipso usu consumuntur*—Construction of will.

Farming stock and implements of husbandry are not things *quæ ipso usu consumuntur*, and a bequest of them for life does not confer upon the legatee an absolute interest in them, even though the legatee takes no interest under the will in the farm itself in connection with which they were used. *MYERS v. WASHBROOK*

Div. Ct. [1901] 1 H. L. 360

6. — Income, Gift of—Property or power—Life tenant—Power to use capital if income not "sufficient"—Power of appointment.

Bequest of the income of an estate to testator's wife for life with a direction that "in case such income shall not be sufficient she is to use such portion of" the capital "as she may deem expedient." On wife's decease "what is left" of the capital to be divided among certain residuary legatees:—

Held, that the wife has a general power of appointment over the capital during her life.

Re Pedrotti's Will, (1859) 27 Beav. 583, distinguished.

Whether the wife can appoint by will, *quære. In re RICHARDS. UGLOW v. RICHARDS*

Farwell J. [1901] W. N. 216; [1902] 1 Ch. 76

7. — Personalty—Trust for person "entitled to the possession or receipt of the rents" of settled estates—Actual possession—Intention.

A testator bequeathed certain chattels to trustees upon trust to permit the same to be enjoyed by the person for the time being "in the actual possession or entitled to the receipt of the rents and profits" of real estates settled by his will.

He also bequeathed the proceeds of sale and conversion of his residuary real and personal estate to the trustees on trust to pay the income to the person for the time being "entitled to the

WILL (Absolute Gift)—continued.

possession or receipt of the rents" of the settled estates.

The words "entitled to the possession or receipt of the rents" or their equivalents were used in numerous other clauses of the will, in all of which they necessarily referred to actual possession, though not so expressed:—

Held, that a tenant in tail, who predeceased the life tenant, had, subject to her interest, become absolutely entitled to the residuary estate, but not to the chattels.

Foley v. Burnell, (1783) 1 Bro. C. C. 271; (1785) 4 Bro. P. C. 319, *Martelli v. Holloway*, (1872) L. R. 5 H. L. 532, *Lord Scarsdale v. Curzon*, (1860) 1 J. & H. 40, and *In re Angerstein* [1895] 2 Ch. 883, applied. *In re FOTHERGILL'S ESTATE*. PRICE-FOTHERGILL v. PRICE

Swinfen Eady J. [1902] W. N. 215 ; [1903] 1 Ch. 149

8. — Repugnancy—Gift over on death "without a will and childless."

An executory gift over in the event of the donee of an absolute interest dying "without a will and childless" is void for repugnancy. *In re DIXON*. DIXON v. CHARLESWORTH

Swinfen Eady J. [1903] W. N. 122 ; [1903] 2 Ch. 458

9. — Secret trust—Charity—Trust for benefit of public, but so that they should acquire no rights.

The testator established a museum, and laid out a portion of his estate as a pleasure ground, and maintained the same for the benefit of the public, whom he admitted thereto under certain restrictions, while reserving to himself his private rights. By his will he devised and bequeathed the museum and pleasure grounds and an annuity of 300*l.* for the maintenance of the same to his son. It was alleged that these gifts were really subject to a secret trust in favour of the public:—

Held, on the evidence, that it was proved that the testator intended his son to maintain the museum and grounds and allow the public access thereto as before, and that the son accepted the gifts with the assurance that this should be done, but that the testator intended that the public should acquire no rights, and therefore that no charitable trust had been created.

Decision of Kekewich J., [1901] 1 Ch. 352, reversed. *In re PITT RIVERS*. SCOTT v. PITT RIVERS

C. A. [1902] W. N. 23 ;

[1902] 1 Ch. 403

10. — Share of residue—Gift over of part to which legatee disentitles himself prior to "actual payment"—Validity.

A gift over of such part of a share of residue as the legatee, at any time prior to "actual payment," disentitles himself to receive, is valid.

Johnson v. Crook, (1879) 12 Ch. D. 639, *In re Chaston*, (1881) 18 Ch. D. 218, and *In re Wilkins*, (1881) 18 Ch. D. 634, followed.

Martin v. Martin, (1866) L. R. 2 Eq. 404, *Bubb v. Padwick*, (1880) 13 Ch. D. 517, and observations in *Minors v. Battison*, (1876) 1 App. Cas. 428, 437, 443, 446, 452, not followed. *In re GOULDER*. GOULDER v. GOULDER

Swinfen Eady J. [1905] W. N. 82 ; [1905] 2 Ch. 100

WILL (Absolute Gift)—continued.

— Substitutional gift—Death "before becoming entitled" to a share—Entitled in "possession" or in "interest."

See WILL—Substitution. 3.

Accumulations.

See under ACCUMULATIONS.

— Accumulations of income during minority of donee — Testator's children to take equal shares in the residue at majority. *See CANADA—Will. 1.*

— Contingent interest—Accumulation.

See WILL—Contingent Interest. 1.

Additional Gift.

1. — Gift "in addition to" previous gift—Intention to make up stated sum—Miscalculation—Construction of will.

Testator, after appointing executors and giving various specific and pecuniary legacies, disposed of his residue. By a first codicil he gave a legacy of 1000*l.* to be equally divided between certain of his godchildren therein described. By a subsequent codicil he gave "50*l.* additional to each of my godchildren as named in my will so that each receives 100*l.* each." On the death of the testator there were nine godchildren answering the description in the first codicil, and they received their shares of the legacy of 1000*l.*, amounting to more than 100*l.* each:—

Held, that the bequest in the subsequent codicil was a clear gift of 50*l.* additional to each of the godchildren followed by words of doubtful import, which could not be construed so as to cut it down, and consequently that the additional legacies were payable. *In re SEGELCKE, ZIEGLER v. NICOL*

Joyce J. [1906] W. N. 107 ; [1906] 2 Ch. 301

Ademption.

— Bequest—Will speaking from death—"Money invested in" Lambeth Waterworks Co. —Transfer of undertaking to Water Board.

See WILL—"Money Invested in." 1.

1. — Charitable legacy—Gift to endowment fund—Hospital—Particular purpose.

A legacy to the trustees of the endowment fund of a hospital is a legacy for a particular purpose, and is therefore adeemed by a gift of the same amount to the same trustees in the testator's lifetime. *In re CORBETT*. CORBETT v. LORD COBHAM

Farwell J. [1903] W. N. 89 ; [1903] 2 Ch. 326

— Double portions—Parent and child—"Advances."

See WILL—Advances. 1.

2. — Infant — General legacy — Particular purpose.

A legacy to a trustee for the benefit of an infant, to whom the testator is not in loco parentis, is not given for a particular purpose within *Pankhurst v. Howell*, (1870) L. R. 6 Ch. 136, and *In re Pollock*, (1885) 28 Ch. D. 552, 556,

WILL (Ademption)—continued.

so as to be adeemed by a subsequent gift of the same sum to the same trustee for the same purpose.

In re SMYTHIES. WEYMAN v. SMYTHIES

Swinfen Eady J. [1902] W. N. 232 ; [1903] 1 Ch. 259

3. — Infant—Legacy to child—Residue to child and stranger—Advancement to child.

A testator bequeathed a legacy to an adopted child to whom he stood in loco parentis and divided his residue between that child and a stranger. He made a subsequent advance to the child :—

Held, that even if the advance had been a portion, which on the evidence was not the case, the doctrine of ademption by subsequent portion would not have been applied in favour of a stranger against a child taking a share of residue as well as a legacy, and that neither the legacy nor the share of residue would have been adeemed.

Montefiore v. Guedalla, (1859) 1 D. F. & J. 93, 100 ; *Meinertzen v. Walters*, (1872) L. R. 7 Ch. 670 ; and *Furkes v. Pascoe*, (1875) L. R. 10 Ch. 343, 351, applied. *In re HEATHER. PUMFREY v. FRYER* — — — **Swinfen Eady J. [1906] W. N. 113 ; [1906] 2 Ch. 230**

4. — Satisfaction or ademption—Gift by will to testator's daughter—Direction to settle part of legacy—Subsequent settlement upon daughter by testator during his lifetime—Different amount—Different limitations.

Testator by his will, dated in 1885, gave to his daughter on attaining twenty-five or marriage the sum of 20,000*l.*, and directed that 15,000*l.*, part thereof, should be settled upon her and her children. In 1893 the daughter married, and the testator then settled upon her and her children, by deed, 7300*l.* Consols upon trusts differing from those declared by the will in respect of the 15,000*l.* Upon the death of the testator in 1900 :—

Held, that the 7300*l.* Consols must be taken as an ademption pro tanto of the 15,000*l.* *In re FURNESS. FURNESS v. STALKARTT*

Joyce J. [1901] W. N. 107 ; [1901] 2 Ch. 346

5. — Special testamentary power of appointment—Exercise of power—Subsequent compulsory sale of property subject to power—Wills Act, 1837 (1 Vict. c. 26), s. 23.

For the purposes of the question whether an appointment under a testamentary power has been adeemed by subsequent dealings with the appointed property, no distinction is to be drawn between general and special powers.

Gale v. Gale, (1856) 21 Beav. 349 ; *Blake v. Blake*, (1880) 15 Ch. D. 481 ; *Collinson v. Collinson*, (1857) 24 Beav. 269, and *In re Johnstone's Settlement*, (1880) 14 Ch. D. 162, considered and explained. *In re DOWSETT. DOWSETT v. DEAKIN* — — — **Farwell J. [1901] 1 Ch. 398**

Note.

Approved of by H. L. (E.), *Beddington v. Baumann*, [1903] A. C. 13. See *Power of Appointment*. 17.

WILL (Ademption)—continued.

— Specific bequest—Misdescription—Shares in a bank.

See **WILL—Specific Legacy**. 1.

Administration.

See under **EXECUTOR—Administration**.

Advances.

(Advancements and Advances.)

— Ademption—Legacy to child—Residue to child and stranger.

See **WILL—Ademption**. 3.

1. — Double portions—Legacy—Satisfaction—Parent and child—Gift by parent to child after date of will.

A father by his will made in 1891 gave the residue of his estate on trust for his children living at his death in specified proportions. And he declared that if any child should die in his lifetime, leaving a child or children who being a son or sons should attain twenty-one, or being a daughter or daughters should attain that age or marry under that age, such child or children should take (and if more than one equally between them) the share which his or their parent would have taken in the testator's residuary estate if the parent had survived him. The testator also declared that the sum of 5000*l.* which he had already given to each of his daughters was not to be brought into account in ascertaining the share of a daughter in his residuary estate.

The testator carried on business in partnership with his eldest son John. The partnership deed provided that the son should not withdraw any part of his capital without his father's consent.

In 1892 the testator voluntarily gave his second son Alfred a sum of 5000*l.*

In 1894 the testator made a codicil slightly altering his will, and in all other respects confirming it.

In 1897, at the request of the son John, who had overdrawn his capital and was in pecuniary difficulties, the testator transferred 5000*l.* from his own capital account in the books of the firm to the capital account of the son, and also gave him 1500*l.* to enable him to pay off in part a mortgage debt.

In January, 1899, the son John died, leaving an only daughter, who afterwards married.

In May, 1899, the father died, leaving the son Alfred and six daughters surviving him.

Two of the daughters deposed to conversations with their father in which he spoke of the payment of the 5000*l.* to his son Alfred, and led them to believe that he never intended that that sum should be taken into account on his own death, but should be treated in the same manner as the two sums of 5000*l.* given to themselves were to be treated :—

Held, that the legal presumption that the gifts made by the testator to his two sons were intended as portions was under the circumstances rebutted, and that those sums ought not to be brought into account in the distribution of the testator's estate.

Decision of Kekewich J. affirmed.

But *held* (differing in this respect from Kekewich J.), that the daughter of the son John stood

WILL (Advances)—continued.

in the same position as her father, so that, if he would have had to account for the sums given to him by his father in his lifetime, she would have been equally liable to account for them.

The view taken by Jessel M.R. in *Taylor v. Taylor*, (1875) L. R. 20 Eq. 155—that a sum expended by a father in paying his son's debts is not necessarily an advance to the son by way of portion, but may be regarded as a temporary assistance—preferred to the view taken by Wood V.-C. in *Boyd v. Boyd*, (1867) L. R. 4 Eq. 305, and by Pearson J. in *In re Blochley*, (1885) 29 Ch. D. 250. *In re SCOTT. LANGTON v. SCOTT* - C. A. [1902] W. N. 206; [1903] 1 Ch. 1

2. — *Double portions—Parent and child—“Advances”—Legacy—Personal estate, Gift of—Share of residue—Real estate, Subsequent purchase of—Satisfaction—Ejusdem generis—Ademption—Construction of will.*

A testamentary direction that the testator's married daughter should not take the benefit of a specific devise to her of real estate or her share of his residuary personal estate “without first bringing into hotchpot as part of my residuary personal estate the total amount of any advances or moneys lent by me to my said daughter and her husband, or either of them” :—

Held, upon the construction, affirming Buckley J., not to include real estate subsequently purchased by the testator for the benefit of his daughter and her husband, and by his direction conveyed, as to part, to the daughter, and, as to the rest, to the husband; or any moneys expended, also for their benefit, upon the real estate so purchased.

The rule established by *Holmes v. Holmes*, (1783) 1 Bro. C. C. 555—that the presumption against double portions will not prevail where the testamentary portion and subsequent advancement are not ejusdem generis—has been left untouched by modern decisions.

The observations of North J. in *In re Vicars*, (1888) 37 Ch. D. 525, 534, upon *In re Lawes*, (1881) 20 Ch. D. 81, dissented from. *In re JACQUES. HODGSON v. BRAISBY*

C. A. [1902] W. N. 228 ;
[1903] 1 Ch. 267

3. — *Executors—Gift of residue—Express trust—Advancements to children by testator—Partial intestacy—Next of kin—Hotchpot—Statute of Distribution*, 1670 (22 & 23 Car. 2, c. 10), s. 5—*Executors Act*, 1830 (11 Geo. 4 & 1 Will. 4, c. 40), s. 1.

In applying the analogy of the Statute of Distribution to the case of a partial intestacy of the beneficial interest in undisposed of residue, the rule of equity still is that advances made by the testator in his lifetime need not be brought into hotchpot.

Vachell v. Jeffereys, (1701) Prec. Ch. 170 ; *Wheeler v. Sheer*, (1730) Mos. 301 ; and *Cuiper v. Scott*, (1731) 3 P. Wms. 119, examined and followed.

The Executors Act, 1830, only applies in cases where there is a bare appointment of executors, so that the implication of law has to be resorted to in order to see whether the estate

WILL (Advances)—continued.

of the testator not otherwise disposed of vests in them beneficially virtue of officii.

Williams v. Arkle, (1875) L. R. 7 H. L. 606, applied.

Decision of Neville J., [1907] W. N. 111 ; [1907] 2 Ch. 84, affirmed. *In re ROBY. HOWLETT v. NEWINGTON* - C. A. [1907] W. N. 228 ; [1908] Ch. 7.

— Hotchpot—Annuities immediate and rever-
sionary—Deficient estate—Apportion-
ment.

See ANNUITY. 1.

4. — *Hotchpot—Interest—Gift of income of residue to children for life in equal shares subject to annuity to widow—Advances to some of children—Adjustment of account between advanced and unadvanced children—Equality.*

In opening the appeal in this case counsel for the appellants were proceeding to discuss the question what, under the present practice, was the proper rate of interest to be allowed, contending that the rate of interest should be 3 and not 4 per cent., as formerly ; but

Romer L.J. said : To my mind, upon this will, the real point is a very simple one. There is no law whatever in the case : all that is wanted is a little arithmetic and common sense. The question is simply one of account, not of interest at all. Take the case of George, one of the advanced children. The unadvanced children say, “You must bear one-sixth of the 2000*l.* annuity.” That is a mere question of account, not of interest.

Ultimately the Court made an order in the following form, counsel for the unadvanced children expressing their consent thereto inasmuch as it would work out at almost precisely the same figures as if interest at 4 per cent. were charged on the advances as directed by Joyce J. :—

Discharge order of Joyce J., [1902] W. N. 18 except as to costs.

Declare that, for the purpose of ascertaining the proportions of the settled shares of the six children of the testator, the value of the net residuary estate of the testator at the day of his death ought to be ascertained, and there should, be added thereto the several advances of 28,000*l.*, 22,000*l.*, and 15,000*l.*, made to George, Percy and Mrs. Mackenzie.

Declare that the actual income received from the testator's death ought to be divided in the respective proportions so ascertained, and that the share of each child in such income ought to be debited with one-sixth part of the widow's annuity. Liberty to apply. *In re HARGREAVES. HARGREAVES v. HARGREAVES*

C. A. [1903] W. N. 24
(Corrigendum), 28

5. — *Hotchpot—Interest—Period of Distribution—Gift of residue subject to annuity for life—Advancement of parts of residue.*

W. had three sons, H., S., and B. On the marriage of H. in 1866 W. conveyed upon the trusts of H.'s marriage settlement real estate of the value of 4000*l.*, and by the settlement covenanted to pay 6000*l.* to the settlement trustees

WILL (Advances)—continued.

within six calendar months after the death of the covenantor. He died before W.

W. died in June, 1893, having by his will, after giving certain legacies, and, to his wife, an annuity, given his residuary estate to trustees upon trust, as to one-third for S., and as to another one-third for B. The remaining one-third was directed to be transferred to the trustees of H.'s settlement to be held upon the trusts thereof, but subject to the proviso that after payment of the 6000*l.* the sum of 10,000*l.* (the 6000*l.* plus the 4000*l.*) should be considered to have been received and advanced out of residue in respect of H.'s portion, and should for the purpose only of ascertaining the amount of that portion, be considered as part thereof, and should be accounted for in the way of hotchpot accordingly.

On Dec. 6, 1893, the trustees of the will paid the 6000*l.* to the settlement trustees. B. died in Aug., 1893, and under his will his widow was tenant for life. The trustees of W.'s will made payments of equal amounts from time to time (1) to S. and (2) to B. and the trustees of his will. Part of each sum was treated as capital, and the rest (of which half was paid to B.'s widow) as income.

On the death of W.'s widow in 1902 the sum set apart to answer her annuity fell into residue :—

Held, on the authority of *In re Rees*, (1881) 17 Ch. D. 701, *In re Dallmeyer*, [1896] 1 Ch. 372, and *In re Lambert*, [1897] 2 Ch. 169, (1) that the date of distribution (notwithstanding the existence of the annuity) was the death of W., and that interest was chargeable on the advance made in his lifetime as from the date of his death and on advances made after his death, as from the date of those advances; (2) that no distinction was to be made between the advances made on account of capital and those made on account of income in respect of the shares of S. and B.; (3) that the rate of interest to be charged was 3 per cent. only.

In *In re Lambert* Stirling J. laid down a general rule as to the rate of interest chargeable. The opinion to the contrary of Joyce J. in *In re Hargreaves*, (1902) 86 L. T. 43, dissented from.

The report of *Hilton v. Hilton*, (1872) L. R. 14 Eq. 468, corrected. *In re WHITEFORD*. ENGLIS C. WHITEFORD Buckley J. [1903] 1 Ch. 889

Note.

See In re Davy, [1908] 1 Ch. 61. *See No. 7, below.*

—Hotchpot—Intestacy.

See DISTRIBUTIONS, STATUTE OF. 1.

6. — Hotchpot—Will—Appointment.

The testator by his will left his residuary estate upon trust for his wife for life, and gave her power to appoint the funds amongst their four children. In default of appointment the children were to take equally. Any child who had received any part of the funds under any appointment was, in default of appointment to the contrary, to bring the appointed funds into hotchpot. The will also contained an advancement clause. After the testator's death 705*l.*

WILL (Advances)—continued.

was advanced to R., one of the children. The widow subsequently by her will appointed one equal fourth part to each of two of her children absolutely, and one equal fourth part upon trust for each of her other children (of whom R. was one) respectively for life, with remainder to their respective children. The testatrix did not in her will make any reference to the advance to R. :—

Held, that R. was not liable to bring into hotchpot or account for the 705*l.* advanced to him out of his expectant share. *In re FOX*. WODEHOUSE v. FOX Byrne J. [1904] W N. 27; [1904] 1 Ch. 480

—Infant—Legacy to child—Residue to child and stranger.

See WILL—Ademption. 3.

7. — Interest—Rate of interest—Hotchpot—Share of residue—Advances in testator's lifetime.

The general rule of the Court that interest must be calculated at 4 per cent. has not been altered. Interest on advances which have to be brought into hotchpot must still be paid at that rate.

Semble, the same rule does not apply to calculations of interest in cases between tenant for life and remaindermen, such as arose in *In re Earl of Chesterfield's Trusts*, (1883) 23 Ch. D. 643, or *Brown v. Gellatly*, (1866) L. R. 2 Ch. 751. *In re DAVY*. HOLLINGWORTH v. DAVY C. A. [1907] W. N. 210; [1908] 1 Ch. 61

Note.

See In re Gilbert, Neville J., [1908] W. N. 63, *near Case.*

8. — Interest—Shares of residue—Advances in lifetime of testatrix—Hotchpot.

In this case the testatrix by her will, after making certain specific devises and bequests, gave the residue of her real and personal estate to trustees upon trusts for sale and conversion and to divide the net residuary trust moneys equally between her five children. And the testatrix, after settling the shares of her daughters, declared that her trustees in dividing the said residuary trust moneys should treat the shares of any of her children to whom any moneys should have been advanced by her as reduced by the amount of such advances. The testatrix in her lifetime had made advances in varying amounts to all her children, such advances carrying interest. In some cases the interest had been paid, in others it had not been paid. The summons was taken out by the trustees to determine (inter alia) whether upon the true construction of the will unpaid interest upon the advances made by the testatrix to her children, ought to be taken into account and brought into hotchpot (together with the capital of the said advances) in the division of the residuary trust moneys directed by the will; and, if so, at what rate such interest should be computed.

Neville J. : I think the principle laid down by Romer L.J. in the case of *In re Hargreaves*, (1903) 88 L. T. (N.S.) 100, is the right one, and I will follow it. There will be a declaration that unpaid interest upon the several advances

WILL (Advances)—continued.

made by the testatrix to her children respectively ought not to be taken into account or brought into hotchpot in the division of the residuary trust moneys; that for the purpose of ascertaining the proportions of the shares in the residuary trust moneys there shall be added thereto the capital of the several advances, and the share of each child shall be an equal share in the aggregate of the said residuary trust moneys after deducting from such equal share the advances to such child; and that the income of the residuary trust moneys after the testatrix's death ought to be ascertained and divided in the same proportions. *In re GILBERT. GILBERT v. GILBERT* Neville J. [1908] W. N. 63

Note.

See In re Davy, C. A. [1908] 1 Ch. 61, preceding Case.

9. — *Intestacy — Administration — Will becoming inoperative — Death of sole legatee and executrix — Hotchpot — Statute of Distributions, 1671 (22 & 23 Car. 2, c. 10), s. 5.*

The provisions of s. 5 of the Statute of Distributions, directing advancements made by an intestate in his lifetime by portions to his children to be brought into account in the administration of his estate, apply to an intestacy occasioned by a will becoming wholly inoperative in consequence of the death of the sole executrix and legatee in the lifetime of the testator, as well as to an intestacy occasioned by the non-existence of any will.

Decision of Buckley J., [1901] W. N. 218; [1902] 1 Ch. 218, affirmed. In re FORD. FORD v. FORD C. A. [1902] W. N. 162; [1902] 2 Ch. 605

— *Mistake — Erroneous recital — Legatee — Alleged advance — Hotchpot clause — Classification of cases.*
See WILL—Mistake. 1.

10. — *Personal estate—Intestacy—Lunatic—Advances to brothers and sisters—Stipulation as to hotchpot—Deceased sister's children taking by representation—Statute of Distributions (22 & 23 Car. 2, c. 10), ss. 6, 7.*

A bachelor lunatic died intestate, leaving a brother, a sister, and the children of a deceased sister his sole next of kin.

The deceased sister had received an advance from the lunatic's property under an order of the Lunacy Court, which order, with her consent, directed that the advance should be taken and considered as part of any share to which she might become entitled in the lunatic's estate at the time of his decease in the event of her surviving him :—

Held by Swinfen Eady J., that the deceased sister's children, though only taking a share as legally representing their mother, under ss. 6 and 7 of the Statute of Distributions, were not bound to bring the advance into hotchpot.

Proud v. Turner, (1729) 2 P. Wms. 560, distinguished; Lloyd v. Tench, (1751) 2 Ves. Sen. 213, 215, explained.

Held by C. A. (affirming the decision of Swinfen Eady J., [1906] 1 Ch. 58), that the deceased's sister's children were not bound to

WILL (Advances)—continued.

bring the advance into hotchpot. *In re GIST. GIST v. TIMBRILL* C. A. [1906] W. N. 135; [1906] 2 Ch. 280

11. — *Residue, Shares of—Advances in lifetime of testator—Subsequent authorized advances by trustees—Hotchpot—Power to postpone conversion — Principle for ascertaining income pending—Distribution—Will—Construction.*

A testator by his will gave his residuary real and personal estate to trustees upon trust to sell and convert and to divide the proceeds into fifteen equal shares, and to distribute them among his eight children as therein mentioned, the daughters' shares and portions of the sons' shares being settled. And the testator declared that for the purpose of ascertaining the shares certain advances of varying amounts which he had made to some of his children and certain payments which he authorized his trustees to make after his death should (with interest at 4 per cent. in certain cases from the date of his death or from the date of payment, as the case may be) be debited against the shares of the children so advanced. And he gave wide powers to his trustees to postpone the conversion of his estate, and directed that the actual intermediate income should be paid to the tenants for life. The estate of the testator at his death in 1901 consisted largely of shares in companies, the dividends on which, as also the capital value, had been subject to great fluctuations :—

Held, that for the purpose of dividing the income pending the division of the capital of the estate interest at 4 per cent. ought, in cases where the testator had directed that such interest should be debited, to be added to the actual income for the time being, and the aggregate so arrived at ought to be divided into fifteen shares and distributed among the children, subject in the case of each advanced child to a deduction of the interest on his advance or on the payment made to him.

In re Hargreaves, (1903) 88 L. T. 100, explained and distinguished. In re POYSER. LONDON v. POYSER Warrington J. [1908] 1 Ch. 828

Alteration.

See also under ALTERATION.

1. — *Unattested — Alteration — Confirmation by codicil — Wills Act, 1837 (1 Vict. c. 26), s. 21.*

A testatrix by her will, dated Feb. 1, 1901, gave many legacies, including legacies (a) 200l. to C., (b) 500l. to M., and (c) 3000l. to S.

On Oct. 19 her servant by her direction, struck out the three legacies. On Oct. 21, 1901, testatrix executed a codicil referring to her will as of Feb. 1, 1901, and thereby revoked legacy (b) but did not refer to the other two legacies, and concluded by ratifying and confirming the will in other respects.

Held, that only legacy (b) was revoked. In re HAY. KERR v. STINNEAR

Buckley J. [1904] 1 Ch. 317

Alternative Gifts.

— *Alternative absolute gifts—Construction.*

See CANADA—Will. 3.

WILL (Alternative Gifts)—continued.

1. — "*Surviving children and their respective issue*" — *Alternative original gift of personality* — *Issue competing with parents* — *Will* — *Construction*.

Although in a gift of real estate to A. and his issue the word "issue" is prima facie a word of limitation, there is no like rule of construction as regards gifts of personal property, in which case it is a question of construction on each particular instrument. Such words as "and their issue" or "and their respective issue" may be read as meaning either an alternative substitutional gift or an alternative original gift.

A testator died in 1884, having then seven children. By his will he directed the income of his real and personal estate to be divided into seven equal parts, and each one-seventh to be paid to a child. The testator appointed two of his sons executors and trustees, and directed that on the death of either executor the survivor should "sell the whole of my real and personal estate and cause the same to be equally divided amongst my then surviving children and their respective issue."

One son and executor died in 1907 without leaving issue. Two children of the testator died between 1884 and 1907, leaving children who survived the deceased executor. Other children survived the deceased executor and had children living:—

Held, that the estate was divisible into as many shares as there were children of the testator who either survived the deceased executor or died before him leaving issue who so survived; that each surviving child of the testator took one share (his own issue not being allowed to compete with him); and that the surviving children of each child of the testator who predeceased the deceased executor took the share which their deceased parent would have taken had he survived that executor. *In re COULDEN, COULDEN v. COULDEN* **Parker J. [1908]** **1 Ch. 320**

Ambiguity.

1. — *Explanation by reference to recital in codicil* — *Gift to a class* — *Lapse*.

In construing a will containing an ambiguity the Court may, for the purpose of explanation, refer to a recital in a codicil, unless it be obviously erroneous.

Darley v. Martin, (1853) 13 C. B. 683, and *Grover v. Raper*, (1856) 5 W. R. 134.

Testatrix by her will gave all her property upon trust for her niece for life, and after her death to divide the same equally between the brothers and sisters of the said niece living at her decease, and A., B., and C. in equal shares, and should either be dead leaving children, such children are to take the share their deceased parent would have been entitled to if living.

By a codicil the testatrix recited that by her will she had directed her estate to be divided between the persons therein named, and declared that she desired a certain great-niece to have a share equally with the others named in the will, and bequeathed the same to her accordingly.

A. and B. stood in the same degree of relationship to the testatrix, but C. was a stranger in blood.

WILL (Ambiguity)—continued.

A. predeceased both the testatrix and the tenant for life.

B. survived the testatrix, but predeceased the tenant for life:—

Held, (1.) interpreting the will by the recital in the codicil, that the estates went, not in moieties between the brothers and sisters of the tenant for life on the one hand, and the named persons on the other, but equally between them all; (2.) that the gift to A., B., and C. was not contingent upon their surviving the tenant for life, and that consequently B.'s representatives were entitled to his share; and (3.) that the gift was not to a class, and that therefore A.'s share lapsed to the next of kin of the testatrix. *In re VENN. LINDON v. INGRAM* **Joyce J. [1904] W. N. 94; [1904] 2 Ch. 52**

2. — *Latent ambiguity* — *Gift to "my grand-daughter"* — *Partial blank* — *Parol evidence* — *Grant of probate*.

Although a complete blank in a will cannot be filled up, a partial blank may be explained by extrinsic evidence.

Thus, where a testatrix appointed as executrix and legatee a person described in the will as "my grand-daughter —," evidence was admitted for the purpose of explaining the latent ambiguity which arose from the fact that, at the date of the will and at the date of the death, the testatrix had three grand-daughters, and the will was thereupon pronounced for, and probate was granted to the one whom the Court found, from the extrinsic evidence to be the person intended by the testatrix. *IN THE ESTATE OF HUBBUCK Gorell Barnes, Pres. [1905] P. 129*

Annuity.

See also under ANNUITY.

Appointment.

See under POWER OF APPOINTMENT.

Attestation.

See also under ATTESTATION.

1. — *Attesting witness* — *Devise to daughter or her children* — *Attestation by husband* — *Intestacy* — *Wills Act, 1837 (1 Vict. c. 26), s. 15*.

Sect. 15 of the Wills Act, though avoiding (inter alia) a devise to the wife of an attesting witness, quoad her interest, does not strike the devise out of the will. The will must therefore be construed before s. 15 is applied.

General devise after the death of testator's wife to his daughter or her children. The daughter, whose husband attested the will, survived the wife and had children.

Held, an intestacy.

In re Townsend's Estate, (1886) 34 Ch. D. 357, followed.

Jull v. Jacobs, (1876) 3 Ch. D. 703, and *In re Clark*, (1885) 31 Ch. D. 72, explained and distinguished. **APLIN v. STONE**

Swinfen Eady J. [1904] W. N. 34; [1904] 1 Ch. 543

— Unattested will — Extrinsic evidence of intention — Power of appointment — Personality — Execution — Foreign domicile. See CONFLICT OF LAWS. 16.

WILL—*continued*.**Bankruptcy.**

- Appointment by bankrupt's will—Property divisible among creditors.

See **BANKRUPTCY**—**Power of Appointment**. 1.

Blanks.

See also under **BLANKS**.

- Ambiguity—Latent—Gift to "my granddaughter"—Partial blank—Parol evidence—Grant of probate.

See **WILL**—**Ambiguity**. 2.

"Brothers and Sisters."

1. — "*My own brothers and sisters*"—*Half blood*—*Will*—*Construction*.

Testator by his will dated in 1873 gave certain property to his wife for her life, "and at her death all the said property to be equally divided among my own brothers and sisters at her death." At the date of his death the testator had brothers and sisters both of the whole and half blood. At the death of the widow all the brothers and sisters were dead, except Diana Beadle, a sister of the half blood.

Joyce J. said there was no suggestion that the testator had any brothers or sisters-in-law, but he had brothers and sisters of the half blood. By using the words "my own" the testator intended to refer to his brothers and his sisters of the whole blood. The words "at her death" used the second time must mean "living at her death." There was therefore an intestacy. *In re DOWSON. DOWSON v. BEADLE - Joyce J. [1909] W. N. 245*

Capital or Income.

- Annuity—Charge on income or capital—Absolute gift of corpus "subject to the aforesaid annuities."

See **ANNUITY**. 3.

- Settled land.

See under **SETTLED LAND**.

- Payments in nature of royalties—Settled estate.

See **WILL**—**Real Estate**. 2.

1. — *Tenant for life and remainderman—Trust for immediate conversion of a business—No power to postpone—Direction as to "all the income arising from my estate" until conversion—Profits of business—Capital or income—Will—Construction.*

A testator devised and bequeathed the residue of his property, whether real or personal, to trustees, upon trust for sale and conversion at such times and in such manner as they should think fit, but as to his business carried on in Sicily that they should wind up and dispose of the same as soon as practicable after his death, and if possible within twelve months thereof. There was express power to postpone the conversion of any part of his property other than the business. He then gave his wife a life interest in the income of his estate, and, subject thereto, his infant daughter was entitled to the whole estate contingently on attaining twenty-one or being married. The will contained a

WILL (Capital or Income)—*continued*.

subsequent declaration by the testator that "all the income arising from my estate" should, until conversion, be applied as if it were income arising from the proceeds of the conversion, no part thereof being liable to be retained as capital.

Upon a summons to determine whether the profits of the business earned since the testator's death should be treated as income or be divided between capital and income:—

Held, that the expression "all the income arising from my estate" included the profits arising from the business.

Held, further, that there was no sufficient ground for limiting the application of the clause giving to the tenant for life the income of unconverted property to that part of the estate which was subject to the discretionary power to postpone; and the widow was therefore entitled to the profits of the business.

In re Chancellor, (1884) 26 Ch. D. 42, and *In re Crouther*, [1895] 2 Ch. 56, followed.

In re ELFORD. ELFORD v. ELFORD

Eve J. [1910] W. N. 96; [1910] 1 Ch. 481

Charges.

- Annuities.

See under **ANNUITY**.

1. — *Debts and legacies, Charge of—Implied power to sell or mortgage—Beneficial devise in fee to one executor—Mortgage by devisee to raise legacies—Liability of mortgagee to see to application of money.*

A beneficial devise of land in fee to a devisee who is also an executor, subject to a general charge of debts and legacies, empowers that executor-devisee to sell or mortgage the land and to give a good receipt to the purchaser or mortgagee, who is not bound to see to the application of the purchase or mortgage money even if it is expressed to be raised for the payment of legacies only.

Johnson v. Kennett (1835) 3 My. & K. 624, 630; *Forbes v. Peacock*, (1846) 1 Ph. 717, 721; *Stroughill v. Anstey*, (1852) 1 D. M. & G. 635, 653; and *Corser v. Cartwright*, (1875) L. R. 7 H. L. 731, 736, applied.

In re Rebbeck, [1894] W. N. 68; 42 W. R. 473, distinguished.

It is not necessary that the executor-devisee should expressly purport to execute the conveyance or mortgage in his capacity of executor.

In re Venn and Furze's Contract, [1894] 2 Ch. 101, 114, applied. *In re HENSON. CHESTER v. HENSON - Swinfen Eady J. [1908] W. N. 138; [1909] 2 Ch. 356*

2. — *Mixed fund—Implied charge of legacies—Express charge of debts—Period of limitation—Limitation Act, 1623 (21 Jac. 1, c. 16), s. 3—Real Property Limitation Act, 1874 (37 & 38 Vict. c. 57), s. 8—Land Transfer Act, 1897 (60 & 61 Vict. c. 65), s. 2, sub. s. 3.*

A testator devised and bequeathed "all the real and personal estate to, which at my death I shall be entitled" to his trustees upon trust for sale and conversion and out of the proceeds to pay "my debts and funeral and testamentary expenses" and to hold the residue thereof in

WILL (Charges)—continued.

trust for certain residuary legatees. He then bequeathed certain pecuniary legacies.

The testator died in 1901. His only asset was a reversionary share of real estate which fell into possession in 1905 and was sold in 1908.

The legacies and certain simple contract debts incurred more than six but less than twelve years ago being still unpaid :—

Held, that notwithstanding the Land Transfer Act, 1897, s. 2, sub-s. 3, the charge of debts on the real estate was not nugatory, but had the effect of bringing the debts within the Real Property Limitation Act, 1874, s. 8, so that as against the real estate the period of limitation was twelve years, and they were still recoverable.

In re Stephens, (1889) 43 Ch. D. 39, and *In re Kempster*, [1906] 1 Ch. 446, 449, applied.

Held, also, that notwithstanding the absence of the words "rest and residue" the general devise and bequest of the real and personal estate as a mixed fund in one mass was clearly residuary, so that the legacies were charged upon and payable out of the real estate.

Greville v. Browne, (1859) 7 H. L. C. 689; *Elliott v. Dearsley*, (1880) 16 Ch. D. 322; and *In re Grainger*, [1900] 2 Ch. 756, 767; [1902] A. C. 1, applied. *In re BALLS. TREWBY v. BALLS*. *Swinfen Eady J.* [1909] W. N. 86; [1909] 1 Ch. 791

— Mortgage debt — Exoneration — Contrary or other intention.

See WILL—Exoneration. 3, 4.

3. — Power to charge limited sum on real estate—General gift of personality—Effect as to exercising power to charge realty—Wills Act, 1837 (7 Will. 4 & 1 Vict. c. 26), s. 27.

Sect. 27 of the Wills Act presupposes the existence of some realty or personality, as the case may be, which is subject to a general power of appointment, and at the testator's uncontrolled disposition although not his property; and the section does not extend to the imposition of an otherwise non-existent charge upon the property of another person, which if and when created would be personal estate which the testator would have power to appoint by a general bequest.

The reasoning of FitzGibbon L.J. in *In re Wallinger's Estate*, [1898] 1 I. R. 139, adopted and followed.

Where, therefore, testator had under a settlement power by deed or will to charge real estate, of which he was only tenant for life, with payment to himself or any other person or persons of any sum or sums not exceeding in the whole 6000*l.*, with interest at a rate not exceeding 5 per cent., and to appoint the premises charged to any person for any term of years upon trusts for raising the sums charged, and by his will he gave all his real property to one person and all his personal property (except some pecuniary legacies) to the children of his sisters :—

Held, that the gift of personality did not operate as a charge, in favour of the donees, on the real estate which he had power to charge.

In re Jones, Green v. Gordon, (1886) 34 Ch. D. 65, distinguished. *In re SALVIN. MARSHALL v. WOLSELEY*. *Buckley J.* [1906] W. N. 146; [1906] 2 Ch. 459

WILL (Charges)—continued.

Note.

Distinguished by Parker J., *In re Wilkinson*, [1910] 2 Ch. 216. *See Power of Appointment.* 13.

Charity.

See under CHARITY.

Chattels Real.

1. — "Chattel real"—General bequest—Exception—Specific bequest of excepted property—Failure by death of specific legatee—Rent-charge issuing out of leaseholds—Vendor's lien for unpaid purchase-money—Intestacy—Liability of next of kin to discharge lien—Will—Construction—Real Estate Charges Act, 1854 (*Locke King's Act*, 17 & 18 Vict. c. 113), s. 1; 1867 (30 & 31 Vict. c. 69), s. 2; 1877 (40 & 41 Vict. c. 34), s. 1.

A testator by his will, made in 1886, bequeathed all his personal estate, except what he otherwise disposed of by his will or any codicil thereto, and except chattels real, to trustees, upon the trusts therein mentioned. And he devised and bequeathed "all real estate and chattels real in England to which I may be entitled at my death, except what I have otherwise disposed of by this my will," to his brother absolutely for all his estate and interest therein.

The testator made seven codicils to his will, the last of which was made in July, 1898. In that codicil he stated that his brother was dead, but he did not revoke the bequest to him, or the general bequest of personality, though he made some alterations in his will and the previous codicils. In other respects the testator confirmed his will as altered by the prior codicils.

In April, 1898, the testator entered into a contract for the purchase of a rent-charge issuing out of leasehold property in England. The testator died in Aug. 1898. At that time the contract had not been completed :—

Held, that, inasmuch as the will and codicils must be read together, and the will treated as if made at the date of the last codicil, it could not be taken that the testator had accepted chattels real from the general bequest merely for the purpose of giving them to his brother, but that they were excepted for all purposes, and that consequently there was an intestacy as to the chattels real, and they did not fall into the general bequest :

Held, also, that the rent-charge was a chattel real, and that the testator's next of kin were liable under the Real Estate Charges Acts, 1854, 1867, and 1877, to discharge the vendor's lien for unpaid purchase-money.

Decision of Byrne J., [1904] 1 Ch. 111, affirmed. *In re FRASER. LOWTHER v. FRASER*. *C. A.* [1904] W. N. 82; [1904] 1 Ch. 726

Children.

See also under INFANT.

— Annuity—Equally among children who should attain twenty-one—Minors at time of enjoyment—Children entitled.

See ANNUITY. 14.

— Construction — "Born" — "Infants" — "En ventre sa mère."

See WILL—Class. 15.

WILL—Words. 2.

WILL (Children)—continued.

— Illegitimate children.

See under **WILL—Illegitimacy.**

— Issue—Class—Gift over on death coupled with a contingency—"Die leaving issue"—Divesting—Period of defeasibility.
See **WILL—Class.** 5.

— "Issue"—Estate in special tail.

See **WILL—Shelley's Case.** 1.

1. — *Maintenance and education—Annuity to widow for benefit of infants—Trustee—Death of widow—Annuity continued—Construction of will.*

A "further annuity" of 300*l.* given by a testator to his widow, for the maintenance and education of his infant daughter, does not cease to be payable by reason of the death of the widow during the minority of the daughter. *In re YATES. YATES v. WYATT*

Byrne J. [1901] W. N. 147 ; [1901] 2 Ch. 438

Class.

See also under **CLASS.**

— Accumulation of income — Remoteness — "Portions"—Gift to children as a class — Period of ascertainment.
See **ACCUMULATIONS.** 8.

— Advances—Will—Construction.

See under **WILL—Advances.**

— Ambiguity—Explanation by reference to recital in codicil—Gift to a class—Lapse.
See **WILL—Ambiguity.** 1.

— Annuity—Gift in remainder—Artificial class — Time of ascertainment.
See **WILL—Next of Kin.** 1.

1. — *Appointment—Real estate—Gift to class after life interest—Period for ascertaining class—Rule of convenience—Will—Construction.*

By her will, made in 1885, in exercise of a general power of appointment contained in her marriage settlement, a testatrix appointed certain real estate, after her decease, to the use of trustees in fee simple, upon trust for her husband for life, and after his decease upon trust for E., the wife of her nephew J., for her life, and after the decease of E. upon trust for all and every the children or child of J. who, being sons or a son, should attain the age of twenty-one years, or being daughters or a daughter, should attain that age or marry, and if more than one in equal shares in fee simple. The testatrix died in 1893, and her husband in 1899. E. died in 1909, leaving her husband, J., and four children surviving, all of whom had attained twenty-one, and were depts. to the action.

The plts. were the trustees of the settlement created by the will for the purposes of the Settled Land Acts, 1882—1890, so far as related to this land. Part of this land had been sold in the lifetime of the tenant for life and the proceeds invested. The question was raised whether the four existing children of J. were now absolutely entitled in equal shares to the land and the capital moneys, or whether the children of J. by any future wife could take any interest therein.

Eve J. said that the rule in question was

WILL (Class)—continued.

stated in Hawkins on Wills, p. 71, as follows :—
"A devise or bequest of a corpus or aggregate fund to children as a class, where the gift is not immediate, vests in all the children in existence at the death of the testator, but so as to open and let in children subsequently coming into existence before the period of distribution." Then two illustrations were given of the application of the rule. It was also stated in *Browne v. Hammond*, (1858) Johns. 210, 212, note, and referred to in *In re Enmet's Estate, Enmet v. Enmet*, (1880) 13 Ch. D. 484, as a rule of convenience. It was a rule of general application extending both to real as well as to personal estate, and whether the limitations of the realty were legal or equitable. He therefore held that the four children of J. took absolutely, to the exclusion of any after-born children, and the case of *Blackman v. Fysh*, [1892] 3 Ch. 209, when closely examined, was no exception to the well-settled rule. The statement in Mr. Theobald's book (7th ed., p. 313) did not contain the whole effect of the decision in that case, and afforded no authority for suggesting that in the present case the well-settled rule should be disregarded. There would be a declaration that the four children were entitled absolutely to equal one-fourths of the property appointed by the will and the proceeds of sale of part of such property now in the hands of the plts. *In re CANNEY'S TRUSTS. MAYERS v. STROVER*

Eve J. [1910] W. N. 45

2. — *Class gift—Revocation by codicil—Intestacy—Will—Construction.*

D. by his will directed his trustees to divide his residuary estate into as many equal shares as he should have daughters who should survive him, or should have died in his lifetime leaving issue him surviving, and to appropriate one such share to each such daughter. He then directed each daughter's share to be settled on herself and her children. By a codicil he revoked the gift of a share to his daughter L. All his daughters, including L., survived him.

Held, that the gift was to a class, and therefore there was no lapse as to the revoked share, but the residue was divisible among the daughters other than L. in equal shares.

Ramsay v. Sheldermine, (1865) L. R. 1 Eq. 129, not followed. *In re DUNSTER. BROWN v. HEYWOOD*

Neville J. [1908] W. N. 223 ; [1909] 1 Ch. 103

— "Die leaving issue"—Gift over on death coupled with a contingency—Divesting — Period of defeasibility.

See *No. 5, below.*

— *En ventre sa mère*, Child—gift to children "born" previously to date of will.

See *No. 15, below.*

— Futurity, Words of—Will.

See under **WILL—Futurity, Words of.**

3. — *Gift of residue to members of a class living at period of distribution—Direction for settlement of "the share" of one of the class—*

WILL (Class)—continued.*Death of legatee before period of distribution—Construction of will.*

A testatrix, who died in 1854, by her will, made in 1849, directed the income of her residuary estate to be paid to her sisters, S. and C., in equal shares, during their joint lives, or until one of them should marry or die, and after the death or marriage of either, then to the other during her life, or until she should marry, and after the death or marriage of such surviving or last marrying sister the testatrix directed that, subject to trusts which she declared of a sum of 1,000*l.*, her residuary estate should be held in trust for all or such one or more of her brothers and sisters (except her sister E. but including S. and C., if they or either of them should marry) who should be living at the death or marriage of such surviving or last marrying sister, in equal shares, if more than one, as tenants in common. And (after providing for the event of her brothers, or either of them, being dead, or either of her sisters S. and C. having previously married, being dead at the death or marriage of such her surviving or last marrying sister) the testatrix directed that with respect to "the share" of her sister H. "the same share" should be held in trust to pay the income thereof to her during her life, for her separate use, and after her death the capital of "the same share" should be held in trust for her child or children, as she should by deed or will appoint, and in default of appointment in trust for and to vest in her child or all her children, if more than one, being sons at twenty-one, and being daughters at twenty-one or marriage, and if more than one, in equal shares.

At the date of the will the testatrix had living three brothers and four sisters, two of whom S. and C., were unmarried, and the other two, E. and H., were married. S. and C. never married. C. died in 1900, having survived all her brothers and sisters. H. died in 1884. She had had four children all of whom attained twenty-one; but they all died before C. Neither the brothers nor the sister E. left issue:—

Held, upon the construction of the above clauses, coupled with other parts of the will, that by the expression "the share" of H. was meant an aliquot part of the estate of the testatrix, and not merely the share which H. would have taken if she had survived her sister C., and that, consequently, the representatives of the deceased children of H. were entitled to the residue.

Decision of Byrne J. [1901] W. N. 146, reversed.

In re Roberts, (1885) 30 Ch. D. 234, *In re Pinkhorne*, [1891] 2 Ch. 276, and *In re Powell*, [1900] 2 Ch. 525, considered. *In re Whitmore*, *Walters v. Harrison*

C. A. [1902] W. N. 107; [1902] 2 Ch. 66

4. — *Gift to "A. and the children of B."*—*Death of A. in testator's lifetime—Intention of testator—Will—Construction—Gift to a class.*

A testator appointed "his wife and his niece A." executrices, and gave them property in trust for his wife (who survived him) for life, and after her death for "A." and the children of his sister B. who should attain the age of twenty-

WILL (Class)—continued.

one years equally to be divided among them as tenants in common." At the date of the will A. was nearly twenty-one; she died in the testator's lifetime. At the death of the tenant for life B.'s children had attained twenty-one:—

Held, that the bequest to A. did not lapse, since upon the true construction of this particular will the testator's intention appeared to be to make one class of nephews and nieces, so that if any of them died in his lifetime the survivors should take.

The construction of gifts to a class discussed.

The decision of the C. A., [1899] 2 Ch. 314, affirmed. *KINGSBURY v. WALTER*

H. L. (E.) [1901] W. N. 90; [1901] A. C. 187

5. — *Gift to a class—Gift over on death coupled with a contingency—"Die leaving issue"—Death at any time—Divesting—Defeasibility, Period of—Construction of Will.*

A testator gave his residuary estate upon trust for his widow for life or widowhood, and after her decease or second marriage to apply the income for the maintenance and education of his children until the youngest who should be living being a son should attain twenty-one, or being a daughter should attain that age or marry. Subject thereto he directed that the trust fund and the income thereof, and any accumulations not vested or applied under his will, should be held in trust for all his children who being sons should attain twenty-one, or being daughters should attain that age or marry, to whom he gave his residuary estate in equal shares. And he directed that if any of his children should die leaving issue, such issue should take his or her deceased parent's share equally as tenants in common:—

Held, affirming Joyce J. [1901] 2 Ch. 338, that children who survived the testator only took vested indefeasible interests if and when they should die—that is, die at any time—without leaving issue. *In re Schnadhorst*. *SANDKUHL v. SCHNADHORST*

C. A. [1902] W. N. 76; [1902] 2 Ch. 234

6. — *Gift to a class—Inquiry—Ascertainment of persons entitled to legacy—Costs—Residue—"Otherwise direct"—Construction of will—Rules of the Supreme Court, Order LXX., r. 14B.*

By his will the testator gave his residuary real and personal estate to trustees upon trust for sale and conversion and to invest the proceeds after payment thereof of his funeral and testamentary expenses, debts, and legacies and to pay the income to his wife, and after her death to raise certain legacies, and upon further trust to raise 6000*l.* for the benefit of a class of persons therein described, and to pay the ultimate residue to his brother and sisters in equal shares. The testator died in 1891, and his widow in 1905. In Nov. of that year an order was made directing an inquiry who were the beneficiaries composing the class entitled to the 6000*l.* The inquiry was completed, and the trustees now asked for taxation of costs and a declaration that the costs down to the order of Nov. 1905, should be paid out of the ultimate residue, and that the subsequent costs should be paid out of the funds representing the 6000*l.*:—

WILL (Class)—continued.

Held, that the costs of the inquiry were testamentary expenses and ought to be paid out of residue; that R. S. C., Order LXV., r. 14B, had not put an end to the power of the Court to make an order carrying out the intention of the testator; and that all the costs of ascertaining the members of the class, except so far as they had been increased by incumbences on the shares, must be paid out of the residue and not out of the 6000*l.* *In re VINCENT. ROHDE v. PALIN* - - - **Parker J. [1909] W. N. 94; [1909] 1 Ch. 810**

7. — Gift to a class who attain twenty-one—Contingent or vested—Gift over on death “without leaving any children”—Child surviving and dying under twenty-one—Intestacy—Will—Construction.

A testatrix gave all her real and personal estate to trustees in trust for her children who attained twenty-one or married, and if more than one in equal shares, with a gift over to other persons in the event of her death “without leaving any children surviving me.” There was one child who survived the testatrix and died an infant;—

Held (reversing the decision of Buckley J.), that the child did not take a vested interest at birth; and, secondly, that the gift over did not take effect, and that there was an intestacy.

Per Romer L.J.: The observations of Malins V.-C. in *Kidman v. Kidman*, (1871) 40 L. J. (Ch.) 359, 360, that in a case like the above, words referring to death “without any children” are equivalent to “without any such children,” are founded on a misapprehension of the decision in *In re Wrangham’s Trust*, (1860) 1 Dr. & Sm. 358, and cannot be supported.

Walker v. Mower, (1852) 16 Beav. 365, approved. *In re EDWARDS. JONES v. JONES* **C. A. [1906] 1 Ch. 570**

8. — Gift to children as a class—Children of deceased child—Substitutional or substantive gift—Issue of parent dead at date of will—“Shall die”—Words of futurity—Construction of will.

A testator gave legacies to the children of A., one of his sons, referring to him as “my deceased son”; he gave a legacy and annuity to another son R., as to whose whereabouts he was ignorant; he then gave the residue of his estate “In trust for all or any my children or child (other than the said R.) who shall be living at my death” and attain twenty-one or marry, “provided that in case any one or more of my children or child (other than the said R.) shall predecease me, leaving any child or children living at my death, then such child or children of my deceased child (other than the said R.) shall take” the share which his or their “parent would have taken if such parent were living at my decease”;—

Held, (reversing the decision of Joyce J., [1906] W. N. 6; [1906] 1 Ch. 319, and dissentiently *Romer L.J.*), that the children of the son A. were entitled to share in the residue, though A. was dead at the date of the will.

Loving v. Thomas, (1861) 1 Dr. & Sm. 497, discussed; and held, *per* Vaughan Williams L.J., that the principle of that decision applied, and

WILL (Class)—continued.

per Romer and Fletcher Moulton L.J.J., that it did not. *In re GORRINGE. GORRINGE v. GORRINGE* - - - **C. A. [1906] W. N. 152; [1906] 2 Ch. 341**

But this case was reversed by H. L. (E.) *sub nom. Goringe v. Mahlstedt*, [1907] A. C. 225. *See Will. Futurity, Words of.* 1.

— Illegitimate children.

See under WILL—Illegitimacy.

9. — Inaccurate enumeration — Gift of residue to A., B. and “the six children now living” of C.—All but one of C.’s children dead at date of will—Mistake—Rejection of specified number — Residue divisible amongst A., B., and surviving child—Class—Construction of will.

Where, on construction the Court finds a dominant intention by the testator to benefit persons who answer a particular description or class, coupled with a mistake in the enumeration of the persons answering the description or composing the class, the Court will reject the inaccurate enumeration, whether the actual number in existence at the date of the death is less or more than that specified in the will.

Principle of *Garvey v. Tibbitt*, (1812) 19 Ves. 125, applied to the case where the number of children was less than that specified in the will.

Decision of Joyce J., [1908] W. N. 10; [1908] 1 Ch. 372, affirmed. *In re SHARP. MADDISON v. GILL* - - - **C. A. [1908] W. N. 146; [1908] 2 Ch. 190**

10. — Joint tenancy or tenancy in common—Gift to persons who would under the Statute of Distributions be the next of kin of testator’s daughter if she had died unmarried—Class—Will—Construction.

The rule of construction established by *Bullock v. Downes*, (1860) 9 H. L. C. 1, is that, where there is a gift to a class to be ascertained by reference to the Statute of Distributions, not only the objects of the gift, but the shares and manner in which those objects take, are *prima facie* to be ascertained according to the statute. Such a rule of construction ought not to be frittered away by nice distinctions as to the particular words used. The members of a class to be so ascertained will therefore, unless the will shews clear evidence of a contrary intention, take as tenants in common and not as joint tenants. *In re NIGHTINGALE. BOWDEN v. GRIFFITHS* - - - **Neville J. [1909] W. N. 17; [1909] 1 Ch. 385**

— Lapse—Death of legatee.

See WILL—Lapse. 1.

11. — “My own nephew and nieces” Half-blood—Husband’s nephew described as “my nephew”—Great-niece described as “my niece.”

The question whether a husband’s nephew described in a will as “my nephew” and a great-niece described as “my niece” are entitled to share in a gift to “my own nephew and nieces” depends in every case on the particular will and the evidence, no hard and fast rule in the affirmative being laid down by *In re Jodrell*, (1890)

WILL (Class)—continued.

44 Ch. D. 590; [1891] A. C. 304, or in the negative by *Smith v. Lidiard*, (1857) 3 K. & J. 252, *Wells v. Wells*, (1874) L. R. 18 Eq. 504, or *Merrill v. Morton*, (1881) 17 Ch. D. 382.

Nephews and nieces of the half-blood are *prima facie* entitled to share in such a gift.

Grieves v. Rusley, (1852) 10 Hare, 63, followed. *In re COZENS. MILES v. WILSON*

Swinfen Eady J. [1902] W. N. 203; [1903] 1 Ch. 138

— Next of kin.

See also under **WILL—Next of Kin.**

12. — Next of kin according to the Statute of Distribution—Time for ascertaining class—Will—Construction.

A testator, who died in 1884, gave a life interest in a fund to his nephew S., and certain contingent interests to the children and issue of his said nephew, and declared that if no child or issue of his said nephew attained a vested interest, the fund was to be held "for such person or persons as on the death of my said nephew S. will be entitled to [*sic*] as my next of kin under the statute."

At the date of the death of the testator, the nephew S. was his sole next of kin. S. died without issue in July, 1906, having made a will and appointed executors:—

Held, that the persons entitled were to be ascertained at the death of the testator, and that the executors of S. were therefore entitled to the fund; that even the words "at the death of my nephew S." were equivalent to "then," they referred only to the time when the persons entitled would come into possession of what had been bequeathed to them, as laid down by *Bullock v. Doynes*, (1860) 9 H. L. C. 1.

Decision of Parker J., [1907] 1 Ch. 450, affirmed. *In re WILSON. WILSON v. BATCHELOR* - - - **C. A. [1907] W. N. 206; [1907] 2 Ch. 572**

13. — "Next of kin whoever they may be"—Will—Construction.

A testator directed the trustees of his will to raise and set apart six sums of 15,000*l.* each, and to hold each of the same upon trust to pay the income to a niece (or nephew) for life, and after her (or his) death to her (or his) husband (or wife), such husband (or wife) to take only half the income if there were issue, and after trust in favour of the issue, declared that "in the event of the death of the said niece" (or "nephew") "without issue, or in the event of her" (or "his") "having issue and of such issue happening to die before becoming entitled to the whole of the said trust fund of 15,000*l.*," the trustees should stand possessed of the same "subject to the aforesaid provisions in favour of my said niece" (or "nephew") "and her" (or "his") "said husband" (or "wife") "Upon trust for my next of kin, whoever they may be, living at the time of the trusts failing as aforesaid, except the children or other descendants of my nephew T. W. deceased."

The residue was given to the six nephews and nieces, each of whom was tenant for life of one of the sums of 15,000*l.*

The testator was seventy-three years old

WILL (Class)—continued.

when he made his will (in 1854), and he died in 1855. The six nephews and nieces were his sole next of kin at the time of his death, and would have been his sole next of kin if he had died immediately after making his will. S., who was the last of them, died in 1902, without issue, leaving a widow, who died in 1909:—

Held, that, although the class of next of kin was to be ascertained at the time of the testator's death, only those took who survived the time when the previous trusts failed, and that on the death of the widow of S. his 15,000*l.* fell into residue.

In re Nash, (1894) 71 L. T. 5, followed. *In re WINN. BROOK v. WHITTON* - **Parker J. [1910] 1 Ch. 278**

14. — Residue—Aliquot shares—Class gifts—Forfeiture clause—Forfeited interest to lapse and form part of residue—Mode of division.

A testator directed his trustees to stand possessed of the proceeds of sale and conversion of his residuary real and personal estate, "As to three equal seventh parts thereof" in trust for a class of persons living at his death (hereinafter called class A) as tenants in common; and "As to the remaining four equal seventh parts thereof" in trust for another class of persons living at his death (hereinafter called class B) as tenants in common. He provided that if a certain event should happen in his lifetime the share of a certain member of class A "shall lapse and form part of my residuary personal estate." The event happened and the share lapsed:—

Held, that three-sevenths of the lapsed share went to the effective members of class A and four-sevenths to class B. *In re WAND. ESCRITT v. WAND* **Swinfen Eady J. [1907] W. N. 38; [1907] 1 Ch. 391**

15. — Will—Legacy—Class—Bequest to a class of children "born" previously to date of will—Child en ventre sa mère—Will—Construction.

There is a general rule of construction that, in the absence of a contrary intention, a gift by will to children "living" or "born" at a given period includes a child en ventre sa mère at that date, and born afterwards, in any case where the application of the rule is for the benefit of the child.

A testator, by his will, gave to each of his great-nephews and great-nieces "born previously to the date of this my will," to whom no other pecuniary bequest was given by his will or any codicil thereto, the sum of 500*l.*, and he made two codicils to his will:—

Held, that a great-niece en ventre sa mère at the date of the will and of the codicils and born afterwards was entitled to a legacy.

Decision of Kekewich J., [1907] 2 Ch. 46, reversed on this point. *In re SALAMAN. DE PASS v. SONNENTHAL*

C. A. [1907] W. N. 218; [1908] 1 Ch. 4

— Substitution and substitutionary gifts—Will.

See under **WILL—Substitution.**

— Words of futurity—Gift to nephews and nieces—Substitutionary gift—Will—Construction.

See **WILL—Futurity, Words of.** 2.

WILL—continued.**Codicil.**

- Absolute gift—Codicil directing use of legacy for charitable purposes — Precatory trust—"I wish."
See WILL—Precatory Trust. 1.
- Appointment—Donee domiciled in Scotland — Power duly exercised by will—Holograph codicil—Defective execution aided.
See POWER OF APPOINTMENT.
- Class gift—Revocation by codicil—Intestacy.
See WILL—Class. 2.
- Execution by one person of codicil of the other person — Mistake — Intention — Effect—Refusal of probate.
See PROBATE—Execution. 4.
- Legacy—Forfeiture clause—Codicil—Substituted settled legacy.
See WILL—Conditions. 3.
- Republication — Alterations — General principle.
See WILL—Republication. 1.
- Revocation—Gift to testator's son and his children — Revocation by codicil of benefit to son — Effect on children's interests.
See WILL—Revocation. 1.

Colonial Duties.

1. — Direction to pay debts out of residue — Specific devise of Colonial property—Colonial death duty—"Deemed to be a debt"—Incidence of duty — *Victoria Administration and Probate Act, 1890 (54 Vict. No. 1060), s. 102.*

A testatrix domiciled in England made an English will appointing English executors and trustees and Colonial executors and trustees.

She devised certain land in Melbourne, Victoria, to her Colonial trustees upon trust to sell the same and to pay or remit the proceeds of sale to her English trustees to be held upon certain specific trusts.

She devised and bequeathed the residue of her real and personal estate to her English trustees upon trust to sell and convert the same into money and thereout to pay (inter alia) her "debts" and to stand possessed of the residue thereof upon certain residuary trusts:—

Held, on the construction of the will, that (a) the direction to pay debts out of residue referred to actual debts and did not include local death duty on the Melbourne property, though "deemed to be a debt of the testatrix" by the local law; (b) the local death duty and other expenses of realizing the Melbourne property fell on that property and not on residue.

Peter v. Stirling, (1878) 10 Ch. D. 279, and *In re Maurice*, (1896) 75 L. T. 415, distinguished.

In re Brewster. BUTLER v. SOUTHAM
Swinfen Eady J. [1908] W. N. 139;
[1908] 2 Ch. 365

Company.

- Debentures — Will — Bequest of "all my debentures" in a company—Testator holding debentures and debenture stock.
See WILL—Words. 4.
- 1. — General legacy—Gift of shares—Change in value of shares—Will speaking from death —

WILL (Company)—continued.

Contrary intention—Will—Construction—Wills Act, 1837 (1 Vict. c. 26), s. 24.

By his will the testator gave twenty-five shares in a co. to W. At the date of the will these shares were of the value of 50*l.* each with 5*l.* credited as paid up. After the date of the will the shares were divided into 10*l.* shares with 1*l.* paid up, and remained in that form at the testator's death. After the date of his will he sold several 50*l.* shares and, subsequently, several 10*l.* shares. On a summons to ascertain whether the legacy was a gift of shares as they existed at the date of the will or at the date of the testator's death:—

Held, that this was a general legacy in language appropriate to describe the state of things which existed at the death and did not shew a contrary intention within s. 24 of the Wills Act, 1837, and therefore that W. only took 10*l.* shares as they existed at the death.

In re Portal and Lamb (1885) 30 Ch. D. 50, explained. *In re Gillins*. *INGLIS v. GILLINS*
Warrington J. [1909] 1 Ch. 345

Compromise.

See also under COMPROMISE.

- Will — Beneficiaries — Agreement — Family solicitor—Common agent—Mistake of law and fact—Setting aside compromise.
See COMPROMISE. 4.

Conditional.

1. — Not conditional—Dispositions not dependent on a specific event—Document pronounced for.

Where a will is made in terms subject to the happening of a certain event, that event must occur to render the will operative; whereas, if the possibility of an event happening is stated merely as the reason for making the will, it becomes operative whether the event happen or not.

For instance, if a man write in his will "If I die to-morrow my will is" so and so, his death must occur on the morrow to make the will operative; but if the words be "Lest I die to-morrow" . . . the document will be operative whether he die or not on the morrow.

The question whether a testamentary document is conditional or not depends on the wording of the document itself, and, if it can be said that the language used therein is ambiguous, extrinsic evidence is admissible to assist the Court in clearing up the ambiguity.

The Court admitted evidence of declarations by the testator, made down to within a short time before he died, to the effect that the will in question was all right, and that his wife would take all he had to leave. *IN THE ESTATE OF VINES. VINES v. VINES - Bigham, Pres. [1910]*
P. 147

- Successive limitations—Gift conditional or subject to prior limitations.
See WILL—Limitations. 2.

Conditions.

See also under CONDITIONS. WILL—Forfeiture.

- Alienation, Conditions in restraint of—Enjoyment of usufruct—Grandchildren

WILL (Conditions)—continued.

conditionally substituted—No right of accretion.

See CANADA—Will. 2.

1. — Charitable bequest—Legacy on condition of acceptance of obligations which are not binding—Absence of reference to age or poverty of intended recipients.

An originating summons for the determination of the question whether the following bequest was to any, and if so to what extent, good; "I bequeath to the Vintners' Co. of the City of London the portrait of my late friend and partner, Don Sebastian Gonzalez Martinez, to be hung up by them in a conspicuous part of their common hall and always retained in that position, and, upon condition that they accept the said bequest of the said portrait with the obligation aforesaid, I bequeath to the said co. the sum of 4000*l.*, free from legacy duty thereon, to be paid out of such part of my personal estate as may by law be bequeathed for charitable purposes, enjoining the said co. out of the income of the said sum of 4000*l.* to keep in due and proper repair the said portrait, cleaning and regilding its frame not less than once in every four years, the surplus of the said income to be applied by the master and wardens for the time being of the said co. to the best of their discretion for the benefit of individuals who have been engaged in the wine trade, giving the preference to those who may have been engaged in the Oporto red or Port St. Mary's white sherry wine trade, and, if applied by way of annuity, no single annuity to exceed 50*l.* per annum, to be held only during the pleasure of the master and wardens for the time being of the said co."

It was contended by the residuary legatees that the bequest of the picture was bad because the condition sought to be imposed on the co. was one which the law could not recognize or enforce:—

Held, that the condition was a condition subsequent, and not a condition precedent, and the gift of the picture was valid. With reference to the 4000*l.*, the first part of the trust was admittedly bad; the second part was bad unless it could be supported as a charitable gift. There was no reference to the age or poverty of the recipients of the bounty, and there was no sufficient indication of a charitable intent to support the gift. The Court could not limit the trust to retired wine merchants who were aged or in poverty, and the gift of the 4,000*l.* therefore failed. *In re GASSIOT. FLADGATE v. VINTNERS' CO.* **Cozens-Hardy J. [1901] W. N. 23**

— Forfeiture by reason of conditions.

See generally under this sub-heading.

2. — Marriage—Condition as to consent to marriage—Marriage with consent in testator's lifetime—Codicil confirming will after the marriage.

A testator by his will gave real and personal property in trust for his son for life, and on his death, in case he should marry "with the consent in writing of my said wife and my said trustees," in trust for the son's children in equal shares; but if he should marry without such consent, or if he should marry with such consent and should have no child who should live to attain twenty-one years of age, on trust as to

WILL (Conditions)—continued.

the realty for the person or persons who at the time of the son's death would be entitled thereto as the testator's heir or co-heirs at law if he had then died seised thereof intestate, and as to the personality for the testator's wife.

The son married in the testator's lifetime with his consent and approbation, and after the marriage the testator made a codicil altering his will, but not the gift above stated, and in all other respects confirming the will. The son's wife died in the testator's lifetime, and the son survived him and died without having married again or had any issue.

Held, (1.) that the son's marriage fulfilled the condition of the will; (2.) that the codicil had not the effect of requiring the marriage to take place after the testator's death; and (3.) that the gift over in case of marriage with consent but death without children took effect.

Presumption as to testator's intention in cases of conditions involving consents to marriages of their sons or daughters. *In re PARK. BOTT v. CHESTER* - - **Parker J. [1910] 2 Ch. 322**

— Marriage—Condition—Forfeiture—Words of futurity.

See WILL—Forfeiture. 7.

3. — Marriage—Forfeiture clause—Legacy—Substituted settled legacy—Codicil—Will—Construction.

By his will, made in 1883, the testator bequeathed to each of his three grandchildren, of whom the plt. was one, the sum of 1000*l.* At the end of the will was a declaration that if any child or grandchild, or issue of such grandchild, should marry a person not professing the Jewish faith, such child, grandchild, or other issue should "for the purposes of this my will be deemed to have died in my lifetime under twenty-one and unmarried."

By a second codicil of April, 1886, the testator revoked the said legacies of 1000*l.*, and in lieu thereof gave a sum of 1500*l.* to each of the three grandchildren "upon the trusts hereinafter declared concerning a legacy of 10,000*l.*," which he subsequently directed to be settled on the legatee for life, with remainder to his children and issue.

On the death of the testator in 1889, the settled legacy of 1500*l.* so given in trust for the plt. and her issue was set aside and invested, and the income paid to her down to Dec. 28, 1898, when she intermarried with a member of the Church of England.

Eve J., [1908] W. N. 38; [1908] 1 Ch. 599, decided that the plt. by her marriage had forfeited her life interest in this 1500*l.* legacy.

The C. A. allowed the appeal.

Cozens-Hardy M.R. said there was no doubt that in the simple case of a mere substitutional gift the rule was that it was subject to the same incidents and conditions as the original gift, but this rule was never applied except on a question of quantum, and it was not applicable to a case where the gift in the codicil was not the same in character as the gift in the will, and where, too, the beneficiaries in the codicil were not the same as those in the will. On the language of this particular will and codicil his Lordship came to

WILL (Conditions)—continued.

the conclusion, as a question of construction, that the gift in the codicil was not a mere substitutional gift, and that there was nothing in the language to justify the Court in holding that this particular clause of forfeiture applied to anything but what was in the will itself, and there must accordingly be a declaration that the plt. by her marriage had not forfeited her life interest in the 1500*l.* legacy settled upon her by the codicil. *In re* JOSEPH. PAIN *v.* JOSEPH

C. A. [1908] W. N. 159; [1908] 2 Ch. 507

— Name and Arms Clause.

See under WILL—Name and Arms Clause.

4. — *Naval or military services, Entering—Invalidity—Public policy—Forfeiture.*

A condition divesting the interest of a devisee or legatee if he enters into the naval or military services of the country is void as against public policy. *In re* BEARD. REVERSIONARY AND GENERAL SECURITIES CO. *v.* HALL. *In re* BEARD. BEARD *v.* HALL - Swinfen Eady J. [1908] W. N. 18; [1908] 1 Ch. 383

5. — “Residence—“Unmarried”—Bequest on conditions—Forfeiture—Will—Construction.

By his will a testator gave his leasehold house, No. 33, Turner Road, Lee, to his trustees, upon trust to permit his niece C. to hold and occupy the same free of rent, but subject to a proviso thereafter mentioned, “and to her residing upon the said premises during her lifetime.” In a subsequent part of the will the testator directed that the use and occupation of the house aforesaid were given by him upon the express condition that after his decease C. should “remain single and unmarried,” and in the event of her marrying she was to forfeit the bequest, and it was to fall into the residue.

C. resided in the house until her marriage and for some ten years afterwards, and then her husband took another house in the neighbourhood, and she moved into it with him. She let all the rooms but one at No. 33, Turner Road, to a weekly tenant, and in this reserved room she kept a bed always ready for use, her books, some clothes, writing materials, &c., and she retained the key of this room and also one of the outside door of the house. She went there two or three times a week, and occasionally had meals and slept there:—

Held, that “residing” meant “personally residing,” and that what C. had done at No. 33, Turner Road did not amount to residing within the meaning of the will:—

But *held*, also, that, reading the subsequent void condition in restraint of marriage into the condition as to residence for the purpose of construing the will, the words “resident during her lifetime,” must mean during her lifetime while she was capable of residing, namely, as a spinster; and, therefore, upon her marriage, the condition as to residence did not apply, and there was no forfeiture. *In re* WRIGHT. MOTT *v.* ISSOTT Kekewich J. [1906] W. N. 201; [1907] 1 Ch. 231

— Precatory trust.

See under WILL—Precatory Trust.

D.D.

WILL—continued.**Conflict of Laws.**

See under CONFLICT OF LAWS.

Consent.

See also under CONSENT, and under MARRIAGE.

— Will—Consent.

See WILL—Conditions. 2, 3.

Contingency.

See also under CONTINGENCY.

— Contingency of either son dying before his brother—Clause of substitution.

See NATAL. 11.

— Contingent legacy without interest—Appropriation of investment.

See EXECUTOR—Investments. 1.

— Issue—Gift over on death coupled with a contingency.

See WILL—Class. 4.

— Perpetuity—Executory limitation—Remoteness.

See WILL—Executory Bequest or Limitation. 3.

Contingent Interest.

See also under CONTINGENCY.

1. — *Accumulation—Income.*

The proceeds of a trust for sale and conversion were given by will to such of the children of a married woman as should attain twenty-one, or being daughters attain that age or marry, with a gift over. There was, in the event which had happened, no express disposition of the income. The married woman was forty-six years old and childless. The Court directed the income to be accumulated for twenty-one years from the testator's death, or until the gift over took effect.

Green v. Tribe, (1878) 47 L. J. (Ch.) 783; 27 W. R. 39, not followed. *In re* TAYLOR.

SMART *v.* TAYLOR - Cozens-Hardy J. [1901] W. N. 91; [1901] 2 Ch. 134

Contingent Remainder.

— Contingent remainder or executory devise—Remoteness.

See WILL—Remoteness. 1.

1. — *Contingent remainder or executory devise—Will—Construction.*

A testator who died in 1847 devised real estate to B. for life and after his death to his sons successively in tail male, and in default of such issue to the eldest or other son of J. S. who should first attain or have attained the age of twenty-one years successively in tail male, and in default of such issue to Jane S., the daughter of J. S., for life, and after her death to her first and other sons successively in tail male.

B. died in 1859. At that date no son of J. S. had attained twenty-one. J. S. entered into possession as guardian of his infant son, who entered into possession on attaining twenty-one, and was on his death in 1879 succeeded by his son, who retained possession until the commencement of this action. Jane S. lived until

WILL (Contingent Remainder)—continued.

Mar. 1, 1906, and on her death her eldest surviving son brought this action claiming the estate :—

Held, that the limitation to the first son of J. S., who attained twenty-one was a contingent remainder, and failed because no such son had attained twenty-one before the determination of the particular estate which supported the remainder, and that the words "in default of such issue," were merely equivalent to "in remainder," and did not make the limitations subsequent to the devise to the sons of J. S. contingent upon J. S. having no sons who attained twenty-one. The plt., therefore, was entitled to the estate.

The question whether a devise is to be construed as a contingent remainder or an executory devise is one of strict law, and cannot be affected by the intention of the testator unless his words can be construed as expressing an intention to make alternative gifts, one as a contingent remainder, and the other by way of executory devise.

In re Wrightson, [1904] 2 Ch. 95, explained.
WHITE v. SUMMERS - - - Parker J. [1908]
W. N. 108; [1908] 2 Ch. 256

— Estate tail—Contingent remainder.

See WILL—Estate tail. 1.

— Legal contingent remainder—Remoteness.

See WILL—Remoteness. 4.

Contribution.

See also under CONTRIBUTION.

1. — *Devise of real estate—Separate bequest of personality to same devisee—Death of devisee in lifetime of testator—Heir-at-law—Legal personal representative—Insolvent estate—Contribution—Wills Act, 1837 (7 Will. 4 & 1 Vict. c. 26), s. 33.*

In this case the master certified that 3701L. was to be contributed rateably in the proportions set forth in the schedule to his certificate by the specific devisees and legatees, and in the schedule 315L. was set against the name of H. P., 1614L. against E. P. as administratrix, and 124L. against her name "in respect of her right to dower."

The contributories other than H. P. claimed that E. P. being unable to pay the sums found due from her and the personal estate taken by her as administratrix having been sold, all the three sums must be raised out of the real estate taken by H. P., inasmuch as J. G. P., if living, would have been liable to contribute in respect of the whole of the property given him by the will. The Court, following *Conolly v. Farrell* (1846) 10 Beav. 142, directed an additional contribution to be made amongst the solvent devisees and legatees, the amount which ought to have been contributed by E. P. being apportioned amongst them, including H. P., according to the value of their devises and bequests. *In re PEERLESS. PEERLESS v. SMITH*

Byrne J. [1901] W. N. 151

Conversion.

See under CONVERSION.

WILL—continued.**Costs.**

See under COSTS.

— Will — Construction — Practice — Uniformity.

See WILL—*Shelley's Case*. 3.

Cy-pres.

See under CY-PRES.

Debts.

See also under DEBTS.

— Married woman — Will — Appointment — Separate estate—"Liable for her debts or other liabilities."

See HUSBAND AND WIFE — Separate Property. 2.

1. — *Simple direction to pay debts—Executor according to the tenor.*

A simple direction to a certain person to pay debts of the testatrix, without any bequest to him and without specifically appointing him as trustee, may be enough to constitute him executor according to the tenor.

A testatrix, after bequeathing certain pecuniary legacies, desired J. G. to pay all her just debts, and then bequeathed to her niece, P. M., all her furniture and effects and all money she possessed :—

Held, that J. G. was thereby constituted executor according to the tenor. *IN THE GOODS OF COOK - - - Jeune, Pres. [1902] P. 114*

Destruction.

1. — *Intention—Executors according to the tenor—Universal legatee in trust—Form of grant.*

A testatrix by her will left all she possessed to two persons, P. and L., or the survivor of them, in trust to pay the whole income arising from her estate to her husband during his life, and at his death to realize the estate and divide the proceeds equally amongst her four children.

The will was retained in the possession of the testatrix, who on several occasions referred to it as if it were in force, and indicated where it would be found when wanted.

After her death the will was found in the place indicated, but it was in a number of fragments, all enclosed in a sealed envelope. The fragments, when pieced together, made up the complete document :—

Held (all parties consenting), that the will might be pronounced for; that, in the absence of a direction to pay debts, the trustees were not executors according to the tenor; but that, as, in their capacity of universal legatees and devisees in trust, their interest was paramount to that of the husband, the proper form of order to make would be to grant administration, with the will annexed, to them (P. and L.) as universal legatees and devisees in trust. *IN THE ESTATE OF MACKENZIE - - - Bargrave Deane J. [1909] P. 305*

Distribution, Period of.

— Codicil—Construction.

See NEW SOUTH WALES. 37.

WILL (Distribution, Period of)—continued.

- Institution of heirs in specified proportions—Tenant for life—Other proportions in certain assets sold during the life tenancy.

See CAPE OF GOOD HOPE. 15.

Domicil.

See also under DOMICIL.

- Foreign domicil, will, and marriage—English domicil subsequently acquired.

See PROBATE—Foreign Domicil. 2.

Donatio Mortis Causa.

See also under DONATIO MORTIS CAUSA.

- Estate duty on donatio—Charge on property—Residue—Incidence.

See WILL—Testamentary Expenses. 3.

Election.

See also under ELECTION.

- Bequest by married woman of husband's property to a third person.

See ELECTION. 1.

- Election—Several persons electing to take against will and taking other benefits under it—Compensation inter se.

See ELECTION. 4.

- Right of election—Estates in Scotland and Australia—Two separate wills.

See NEW SOUTH WALES. 38.

- Settlement—Trust for conversion—Real or personal. estate—Will—Election—Estate duty—Liability.

See SETTLEMENT. 23.

Estate Duty.

See under REVENUE—Estate Duty.

WILL—Testamentary Expenses.**Estate Tail.**

See also under ESTATE TAIL.

- Born in my lifetime—Divesting clause—Child en ventre sa mère—Will—Construction.

See WILL—Words. 2.

- Estate tail to last survivor of class—Legal contingent remainder—Remoteness—Rule against perpetuities.

See WILL—Remoteness. 4.

1. — Gift of realty to "A. and his heirs"—Gift over if A. die without an heir"—Estate tail—Ultimate gift to "survivor's heir or heirs"—Contingent remainder—Construction of will.

A testator gave his two cottages, Nos. 9 and 12, Chapel Street, Sheerness, to his daughter C. G. for life, "after her death No. 12 to go to her youngest daughter E. G. and her heirs and No. 9 to go to her son W. G. and his heirs, if either the said E. G. or W. G. should die without an heir their share is to go to the survivor's heir or heirs."

E. G. died in 1891, a spinster; and W. G. died in 1897, a bachelor. C. G. died in 1902:—

WILL (Estate Tail)—continued.

Held, that E. G. and W. G. took estates tail in the cottages devised to them respectively:

But *held*, that the gift over to "the survivor's heir or heirs" was a gift to the heirs general of the survivor and a contingent remainder, which took effect as to the cottage devised to E. G. in tail. *In re* WAUGH. WAUGH v. CRIPPS.

Farwell J. [1903] W. N. 32 (Corrigendum) 36; [1903] 1 Ch. 744.

- "Issue"—Estate in special tail.

See WILL—Shelley's Case. 1.

2. — Successive limitations — Life estates—Tenants in tail—Construction of will.

A testator who died in 1859 devised his real estate to P. C. Honeywood for life, with remainder to his first and other sons in tail, "with remainder to the eldest and every other son of Sir Courtney Honeywood for life, with remainder to the first and other sons of such sons of Sir Courtney Honeywood in tail," with remainder to the testator's own right heirs.

Sir C. Honeywood had several sons, of whom P. C. was the second, and Sir J. W. Honeywood the eldest. P. C. Honeywood died in July, 1902, without ever having been married, and his brother, Sir J. W. Honeywood, thereupon became entitled to the estates for his life. C. J. Honeywood, the eldest son of Sir J. W. Honeywood having joined with his uncle in barring the entail, and having purchased his father's life interest, now claimed to be absolutely entitled in fee simple in possession, to the exclusion of the life estates limited by the will in favour of his uncles, the other sons of Sir C. Honeywood:—

Held, by Byrne J., that the gift in remainder to the eldest and every other son of Sir C. Honeywood for life, being expressed to be to the eldest and other sons, imported a succession, and that the eldest and other sons accordingly took successive life estates; that the remainder to the first and other sons of such sons of Sir C. Honeywood in tail also imported succession, and that such first and other sons took successive estates tail in remainder one after the other; but his Lordship did not think that he could read into these limitations words which would enable the first and other sons of the eldest son of Sir C. Honeywood to take until after the death of all the tenants for life. The claim, therefore, of C. J. Honeywood failed:—

Held, that the will, as construed by Byrne J., could not be considered irrational, and that under the circumstances the Court had no choice but to give effect to the words as they stood. In fact, the words were insuperable.

Decision of Byrne J. [1903] W. N. 72, affirmed. HONYWOOD v. HONYWOOD
C. A. [1903] W. N. 186, 190

Estoppel.

See also under ESTOPPEL.

- Will of woman under incapacity to devise—Entry of tenant for life under will and requisition by him of possessory title—Rights of remaindermen.

See ESTOPPEL. 6.

WILL—*continued.***Execution.**

See also under **EXECUTION**.

1. — "*In the presence*" of witnesses—*Wills Act, 1837* (1 *Vict. c. 26*), s. 9.

The expression "in the presence" in s. 9 of the *Wills Act* must be taken to mean actual visual presence.

Where a testatrix signed her will in a shop, and one witness, who saw her sign, attested it, but the other witness, being at the time when the testatrix and first witness signed engaged at the other side of the shop with a person who stood between him and the testatrix, did not see them sign and did not know nor have the opportunity of knowing anything about what they had been engaged upon until after they had signed, when he was asked to be a witness :—

Held, that the testatrix did not sign "in the presence" of the second witness. *BROWN v. SKIRROW* - - *Gorell Barnes J. [1902] P. 3*

— **Power**—**Execution**—"Writing or Writings"
— "Appointment made by will"—
Validity

See **POWER OF APPOINTMENT**.

— **Probate.**

See under **PROBATE**—**Execution**.

— **Revocation.**

See under **PROBATE**—**Revocation**.

— **Unattested will**—**Domiciled foreigner**—**Leaseholds.**

See **CONFLICT OF LAWS**. 17.

Executor.

See also under **EXECUTOR**.

TRUSTEE.

1. — "*Administer*" — *Executor according to the tenor*—*Construction of will*.

A testator, by his will, appointed H. E. "to hold and administer in trust all my estate well known to the said H. E." :—

Held, that as this person had duties to perform, the word "administer" was, without any express instruction to pay debts, sufficient to constitute him executor according to the tenor. *IN THE GOODS OF WAY*

Gorell Barnes J. [1901] P. 345

Note.

See *In the goods of Kirby*, *Jeune Pres. [1902] P. 188*. **Probate**—**Trustees**. 1.

— **Executors**—**No next of kin**—**Beneficial title to residue.**

See **EXECUTOR**—**Residue**. 1.

Executory Bequest or Limitation.

1. — *Executory gift over in default of children who attain twenty-one*—*One child of twenty-one*—*Gift over void*—*Conveyancing Act, 1882* (45 & 46 *Vict. c. 39*), s. 10.

J. L. Shrubb, who died in 1884, by his will dated May 24, 1882, after certain specific devises and bequests, gave all his real and personal estate upon trust to raise certain sums therein mentioned, and as to certain named parts of his trust estate upon the trusts therein mentioned, and proceeded: "And as to all the

WILL (Executory Bequest or Limitation)—*cont.*

residue of the said trust estate in trust for my said son, J. P. C. Shrubb, but should he die without leaving a child who shall attain the age of twenty-one years, then in trust for my second son, H. A. B. Shrubb." J. P. C. Shrubb survived the testator, and had issue a daughter who attained the age of twenty-one years on August 15, 1908, and was still living. This summons was taken out by J. C. P. Shrubb, who was one of the trustees of the will, as well as a beneficiary, against the other trustees and H. A. B. Shrubb, as defts., asking to have declared that in the events which had happened, namely, that there was then living issue of the plt. who had attained the age of twenty-one years, the executory limitation over in the said will of the testator contained in favour of the deft., H. A. B. Shrubb, of and concerning the real estate comprised in the residuary gift contained in the said will was and had become void and incapable of taking effect, and that the plt.'s estate and interest in the said residuary estate was then indefeasible.

The only question argued was whether the case came within s. 10 of the *Conveyancing Act, 1882*.

Swinfen Eady J. said the section merely said "entitled to," there were no words to confine the meaning to "legally entitled to," and he was of opinion that the plt. was "entitled to land for an estate in fee" within the meaning of the Act, and the executory gift over had become void. *In re SHRUBB. SHRUBB v. SHRUBB*

Swinfen Eady J. [1910] W. N. 143

2. — *Gift to A., B., C., and their children*—*Gift over on death of A., B., or C. leaving no issue*—*Realty*—*Chattels real*—*Gift in succession*—*Executory bequest or limitation over on death of parent*—*Rule in Wild's Case*—*Will*—*Construction*.

By his will the testator gave his leasehold and real estate to his wife for her life, and on and immediately after her death he gave "whatsoever may be left" after the discharge of all claims against his estate to his children, namely, as to two fifths to his son and as to the other three fifths to his two daughters in two equal shares, share and share alike, "and to the child or children of the three said children. In case any of my children dying and leaving no legal issue, the share or shares of those dying to be given to the surviving child or children of such as will be dead. My daughters and granddaughters' shares to be independent and free from all husbands." His wife survived the testator. Only one of the grandchildren was born during her life. On a summons by the three children for the determination of their interests :—

Held, that no child of the testator was at present entitled to his or her share absolutely, but that such share was subject upon the death of the child to an executory bequest or limitation over to his or her children, and also subject to the gift over in case of any of the children dying and leaving no legal issue, the meaning of which would have to be decided when, if ever, the event happened.

The rule in *Wild's Case*, [1599] 6 Rep. 16b,

WILL (Executory Bequest or Limitation)—cont.

had no application where the gift or devise to the children would without reference to the rule be a gift in succession to, and not concurrently with, their parent. *In re JONES. LEWIS v. LEWIS* - Joyce J. [1909] W. N. 228; [1910] 1 Ch. 167

3. — Perpetuity — Executory limitation — Contingency—Remoteness—Construction of will.

A testator by will devised realty to his two sons as tenants in common in fee simple with a direction in a codicil to his sons and their heirs to make to each of his daughters for life "and afterwards to and amongst the children of each and their heirs" certain payments out of the royalties or out of the dead rent payable out of the coal under a specified farm and any other coal under any other land of the testators' when worked or let:—

Held, that upon the true construction of the codicil the testator intended to create executory limitations in land to arise at some future and indefinite period on a contingency which might or might not happen, and that the direction was void for remoteness so far as related to the testator's grandchildren.

Decision of C. A. (not reported) affirmed.

London and South Western Ry. Co. v. Gomm, (1882) 20 Ch. D. 562, 580, approved upon this point. *EDWARDES v. EDWARDES*

H. L. (E.) [1909] A. C. 275

—Administration—Real and Personal Estate.

See ADMINISTRATION. 9, 10.

Exoneration.

— Administration—Real and personal estate.

See ADMINISTRATION. 9, 10.

1. — Charge of debts and funeral and testamentary expenses on realty — Gifts of all personality to another donee—Non-exoneration of personality.

The personal estate being the primary fund for payment of a testator's debt and funeral and testamentary expenses, and exonerated therefrom only where the intention to exonerate is shewn by express words or necessary implication from the whole will, it is insufficient, in order to establish exoneration, to find that the real estate is merely charged with the payment.

A testator gave all his personality to K., and devised certain real estate to his trustees "subject to the payment of" his "just debts and funeral and testamentary expenses" to K. and other persons. The testator also in his will expressed the wish that none of his real estate should be sold whilst there was any male descendant of his own surname:—

Held, that the personality was not exonerated from the payment of the debts and funeral and testamentary expenses.

Greene v. Greene, (1819) 4 Madd. 148; 20 R. K. 284; *Mitchell v. Mitchell*, (1820) 5 Madd. 69; 21 R. R. 280; *Blount v. Hipkins* (1834) 7 Sim. 43; 40 R. R. 74; *Lance v. Aglionby*, (1859) 27 Beav. 65; *Gilbertson v. Gilbertson*, (1865) 34 Beav. 354; and *Kilford v. Blaney*, (1885) 31 Ch. D. 56, distinguished. *In re BANKS. BANKS v. BUSBRIDGE*

Buckley J. [1905] 1 Ch. 547

WILL (Exoneration)—continued.

2. — Collective devise of real estate—Aggregation of charges—Exoneration of personal estate —Construction of will—Locke King's Acts (Real Estate Charges Acts), 1854, 1867, 1877 (17 & 18 Vict. c. 113; 30 & 31 Vict. c. 69; 40 & 41 Vict. c. 34).

Since Locke King's Acts a collective devise of lands of any tenure to the same set of persons prima facie throws the aggregate charges on to the aggregate lands in exoneration of the testator's personal estate.

Ratio decidendi of *Talbot v. Earl Radnor*, (1834) 3 My. & K. 252; 41 R. R. 64; *Fairtlough v. Johnstone*, (1865) 16 Ir. Ch. Rep. 442; *Syer v. Gladstone*, (1885) 30 Ch. D. 614; *In re Hutchkys*, (1886) 32 Ch. D. 408; and *Frewen v. Law Life Assurance Society*, [1896] 2 Ch. 611, explained and applied. *In re BARON KENSINGTON. EARL OF LONGFORD v. BARON KENSINGTON*

Farwell J. [1901] W. N. 229 [1902] 1 Ch. 203

3. — Contrary intention—Direction to pay debts, "except mortgage on Blackacre"—Other mortgages—Locke King's Acts—Real Estate Charges Act, 1867 (30 & 31 Vict. c. 69), s. 1.

A direction to pay debts, "except the mortgage debts, if any, on Blackacre," out of residue, implies that other mortgage debts are to be paid out of residue, and is a sufficient contrary intention within the Real Estate Charges Act, 1867, s. 1, to take the case out of the Real Estate Charges Acts (Locke King's Acts). *In re VALPY. VALPY v. VALPY* - - - Swinfen Eady J. [1906] W. N. 32; [1906] 1 Ch. 531

4. — Contrary or other intention—Mortgage debt on Whiteacre—Direction to pay out of Blackacre—Insufficiency of Blackacre—Locke King's Acts—Real Estate Charges Act, 1854 (17 & 18 Vict. c. 113), s. 1.

A direction that a mortgage debt on Whiteacre shall be paid out of the proceeds of sale of Blackacre exonerates Whiteacre to the extent of those proceeds, but does not indicate a general "contrary or other intention" within the Real Estate Charges Act, 1854, s. 1, so as to enable the devisees of Whiteacre to come on the general personal estate for any deficiency.

Allen v. Allen, (1862) 30 Beav. 395, 403, explained. *In re BIRCH. HUNT v. THORN Swinfen Eady J. [1909] W. N. 85; [1909] 1 Ch. 787*

Forfeiture.

See also under FORFEITURE.

1. — "Alienate on incumber"—Petition in bankruptcy by tenant for life—Will—Construction—Forfeiture of life interest—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52).

Under a will property was given to one for life with a gift over in the event of his "alienating or incumbering, or agreeing to alienate or incumber," his interest. He presented a petition in bankruptcy, and on the same day was adjudicated a bankrupt on his own application:—

Held, that the petition in bankruptcy and adjudication consequent thereon constituted an alienation within the meaning of the gift over.

WILL (Forfeiture)—continued.

In re Amherst's Trusts, (1872) L. R. 13 Eq. 161, followed.

Ex parte Lovell, [1901] 2 K. B. 16, distinguished. *In re COTGRAVE MYNORS v. COTGRAVE* - Kekewich J. [1903] W. N. 153; [1903] 2 Ch. 705

— Alienation, Conditions in restraint of—Enjoyment of usufruct.

See CANADA—WILL. 2.

2. — *Alienation, Forfeiture on—Life interest—Charge—Cancellation of charge before property charged becomes payable.*

Under the will of his father, Henry Baker was entitled to a life interest in a share of residue. The will contained a proviso that he should not have power to dispose of his interest by way of anticipation and that in the event of his becoming bankrupt or doing anything whereby his share or some part thereof would become payable to or vested in some other person it should go over to his children.

The testator died in 1896, and an order for the administration of his estate was made in 1899. In 1903 Henry borrowed two sums of money, and signed in favour of the lenders charges upon his interest in his father's estate. Both charges were cancelled and given up to him in July before any order on further consideration had been made in the action or anything had become payable to him in respect of his life estate:—

Held, that a forfeiture had been incurred, and the fact that the mortgagees released the charges before the estate was distributed was immaterial. *In re BAKER. BAKER v. BAKER.*

Buckley J. [1903] W. N. 210; [1904] 1 Ch. 157

3. — *Alienation, Restraint on—Charge on future income—Life interest—Forfeiture—Moneys in hand of receiver—Ambiguous instrument.*

T. D., deceased, by his will, gave his residuary estate to trustees in trust for his daughters in equal shares, the share of each daughter being settled. By a codicil he directed his trustees, "from and after the decease of any daughter of mine by my present wife who shall have been once married, to pay to the husband of such daughter one-third part of the interest, income, and annual produce of the share in my real personal estate given by my said will to such daughter so dying, during his life or until he shall become bankrupt or assign, charge, or incur a debt, or attempt or affect to assign, charge, or incur the said one-third part of such interest, income, and annual produce, or any part thereof."

One G. married one of the testator's daughters, and upon her death in 1902 one-third of the income of her share became payable to him, subject to the above restrictions.

The action was brought for the administration of the testator's estate, and a decree was made directing the usual accounts and inquiries. In 1895 an order was made appointing a receiver. On Nov. 6, 1902, G. wrote to the receiver a letter informing him that he was indebted to a certain co. in the sum of 5*l.* payable in the

WILL (Forfeiture)—continued.

following Jan., and requesting him to "deduct this sum from any moneys that may be found due to me on the passing of your accounts by the Court of Chancery on that date, and pay the same to them." The question was whether this letter operated as a charge by G. on his life interest so as to create a forfeiture under the terms of the codicil. It was admitted that at the date of the letter the receiver had in his hands a sum representing income exceeding 5*l.* to which G. was entitled. Joyce J. held that G. had not incurred a forfeiture.

The Court said it was common ground that no document which dealt with income actually accrued would constitute such a charge as would amount to a forfeiture within the terms of this codicil. Where it was doubtful whether a document of this kind was intended only to deal with income already accrued due, or whether it was intended to deal with future income, the Court ought to favour a construction which would prevent the document creating a forfeiture. Now taking into consideration the ambiguity there was in the document here, and the fact that at the moment it was written there was a sufficient sum in hand of income accrued due to pay the 5*l.* the document ought to be construed as referring to the moneys in hand, and not to income subsequently coming to the hands of the receiver. When one remembered the position of a receiver and the terms of his appointment, it was quite reasonable to suppose that G. was referring to the money actually in the hands of the receiver, and that he did not wish the receiver to trench upon any moneys that might come to his hands in the future. Appeal dismissed. *DURRAN v. DURRAN*

C. A. [1904] W. N. 185

— Class gifts — Forfeiture clause — Aliquot shares.

See WILL—Class. 14.

— Condition—Consent.

See WILL—Conditions. 2, 3.

— Condition—Entering naval or military services—Invalidity—Public policy.

See WILL—Conditions. 5.

— Conditions—Will—Construction.

See under WILL—Conditions.

4. — *"Deprived of the personal enjoyment of income or any part thereof"—Construction.*

M. by will gave a fund to trustees upon trust to pay the income to F. "unless and until some event shall happen whereby if the same income belonged absolutely to her she would be deprived of the personal enjoyment thereof or of any part thereof." F. wrote to the acting trustee of the will, "I owe P. 260*l.* I have arranged to find her 100*l.* this week and I want you to pay direct to her the balance out of the next dividend due to me from the B. tea shares," part of the estate. Before the dividend became due F. paid off P. and withdrew the letter:—

Held, that there had been no forfeiture of her life interest. *In re MAIR. WILLIAMSON v. FRENCH* - Neville J. [1909] W. N. 148; [1909] 2 Ch. 28

WILL (Forfeiture)—continued.

5. — *Garnishee order — Will — Forfeiture clause—Gift of income to A. for life or until alienation—R. S. C. 1883, Order XLV., r. 2.*

By will personality was bequeathed in trust to pay the income to A. for life "or until he attempts to alien, charge or anticipate the same . . . or until any other event happens whereby if the same were payable to him absolutely for his life, he would be deprived of the right to receive the same or any part thereof," and then over. A judgment creditor of A. served the trustees, who had accrued income in their hands, with a garnishee order:—

Held, that the garnishee order did not operate as a forfeiture of A.'s life interest.

Bates v. Bates, (1884) W. N. 129, dissented from.

Sutton, Carden & Co. v. Goodrich, (1899) 80 L. T. 765, followed. *In re GREENWOOD. SUTCLIFFE v. GLEDHILL*

Farwell J. [1901] W. N. 60 ; [1901] 1 Ch. 887

6. — *Judgment creditor—Equitable execution—Appointment of receiver of debtor's interest in residuary estate under a will—Forfeiture.*

Under the will of the testator, W. B., G. L. B. was entitled to the income of the residuary estate for life. The testator declared that in case the said G. L. B. should at any time "alienate or charge or effect or attempt to alienate or charge his life or other terminable interest or any part thereof, or in case by reason of his bankruptcy or any other event . . . whereby or by reason or means whereof such life or other terminable interest or any part thereof shall or but for this provision would belong to or become vested in any other person or persons," then the interest of the said G. L. B. should immediately cease and become void.

By an order dated April 25, 1910, made in an action in the K. B. D., the plt. in that action was appointed receiver to receive the rents, profits, and moneys receivable in respect of the said G. L. B.'s interest under the will in or towards satisfaction of a debt due under the judgment in the action, and the order directed that the receiver should pass his accounts at periods to be fixed by the master and pay the balances appearing due, "such sums to be paid in or towards satisfaction of what should be due in respect of the judgment debt." Nothing had yet been done or received under the order.

Originating summons to determine the question whether the interest of G. L. B. under the will had ceased and become void by reason of the appointment of the plt. as receiver by way of equitable execution:—

Held, that at present no forfeiture had been created. Having regard to *In re Potts*, [1893] 1 Q. B. 648, the order appointing the receiver did not give any property or estate to the receiver or the execution creditor. It merely gave an inchoate right to the creditor to require payment from the receiver of anything received under the order. The order had not operated to cause the life interest of G. L. B. "to belong to or become vested in any other person." *In re BEAUMONT. WOODS v. BEAUMONT Joyce J.*

[1910] W. N. 181

WILL (Forfeiture)—continued.

— Legacy—Forfeiture clause—Codicil—Substituted settled legacy.

See WILL—Conditions. 3.

— Marriage.

See also under MARRIAGE.

7. — *Marriage—Words of futurity — Limitation to events after testator's death—Will—Construction—Intention—Forfeiture clause.*

A testator by will left property in trust for his children, and declared that if any son or daughter should alienate his or her share or become bankrupt, or marry a person of any degree of kindred unless more remote than third cousin, or if a daughter marry without the previous written consent of the trustees, his or her share and interest should "thenceforth cease and determine." A daughter married a first cousin between the date of the will and the testator's death:—

Held, that upon the true construction of this particular will, the testator intended that as to marriage the forfeiture should take effect only in the case of a marriage after the testator's death, and that the daughter had not forfeited her interest.

Decision of the C. A., *In re Chapman, Perkins v. Chapman*, [1904] 1 Ch. 481, affirmed. **CHAPMAN v. PERKINS - H. L. (E.) [1905] W. N. 43 ; [1905] A. C. 106**

— Name clause—Condition precedent or subsequent—Vesting.

See WILL—Conditions. 4.

— "Residence."

See WILL—Conditions. 6.

8. — *School—Endowment—Trust deed—Will—Construction—Charitable legacy — Forfeiture—Gift over to residue—Perpetuities—Education Act, 1902 (2 Edw. 7, c. 42), ss. 11, 13.*

By her will made in 1891 Mrs. Blunt gave to trustees such a sum as would produce 20*l.* a year, and directed them to pay that income to the treasurer for the time being of the Bicknor National Schools for the support of the schools so long as they should be carried on under the conditions contained in the trust deed of the schools, and the funds necessary for carrying them on should be supplied by voluntary contributions. The testatrix declared that this gift should be void if any of the three following events should happen in her lifetime, namely: (1) if a school board for the parish should be formed; (2) if the funds necessary for carrying on the schools should be raised under powers contained in any Act of Parliament; (3) if a trust should be created and a sufficient fund set apart for carrying on the schools under the deed of trust. She further declared that if either of the two first-mentioned events should happen after her death, then that the payment of the annuity was to cease and the fund purchased to produce the same was to fall into her residuary estate.

The testatrix died in 1900. None of the events mentioned happened in her lifetime. On Jan. 8, 1904, the Board of Education issued a final order under s. 11 of the Education Act, 1902, for the appointment of foundation

WILL (Forfeiture)—continued.

managers of the school. The result was that the school could no longer be carried on under the provisions of the trust deed.

Held, that the school was no longer carried on under the conditions contained in the trust deed, and, therefore, that the annuity had come to an end; and the second condition had been satisfied, so the annuity had ceased under that also; the annuity fund, therefore, fell into the residue by operation of law, and it was unnecessary to consider whether the gift over to the residue was void as an infringement of the rule against perpetuities. *In re BLUNT'S TRUSTS*. *WIGAN v. CLINCH* - *Buckley J.* [1904] W. N. 174; [1904] 2 Ch. 767

9. — *School, National—Trust for endowment—Control of school board—Non-provided school—Education authority—Education Act, 1902*, (2 *Edw.* 7, c. 42), ss. 1, 5, 6, *sub-s.* 2, 7, *sub-s.* 1 (d), 13.

A testator who died in 1891 bequeathed investments to trustees upon trust to apply the income towards the annual expenses of a National School so long as it was "supported by voluntary subscriptions as now and heretofore in addition to the Government grant," with a gift over in the event of the said school "ceasing to be so supported or becoming subject to the control of a school board." Since the death of the testator the necessity for subscriptions had practically ceased owing to the bequest, but the managers were in debt to a small extent. In consequence of the passing of the Education Act, 1902, the school, as a public elementary school, came under the control of the county council as the education authority:—

Held, that there had been no forfeiture on either of the grounds mentioned by the testator, and that the gift over did not take effect. *In re BEARD'S TRUSTS*. *BUTLIN v. HARRIS*

Byrne J. [1904] W. N. 18; [1904] 1 Ch. 270

Futurity, Words of.

— Gift to children as a class—"Shall die."

See WILL—Class. 8.

1. — *Gift to grandchildren in case any child "shall predecease me"—Child dead at date of will leaving children—Will—Construction.*

A testator by his will gave legacies to the children of one of his sons, whom he described as "my deceased son." He gave the residue of his estate in trust for all or any of his children who should be living at his death and attain twenty-one or marry, "provided that in case any one or more of my children shall predecease me leaving any child or children living at my death, then such child or children of my deceased child shall take 'their parents' share.'" :—

Held, that upon the true construction of this particular will the testator's meaning was clear, and that the children of the son who was dead at the date of the will were not entitled to share in the residue.

The decision of the C. A., [1906] 2 Ch. 341, reversed, and the decision of *Joyce J.*, [1906] 1 Ch. 319, restored. *GORRINGE v. MAHLSTEDT*

H. L. (E.) [1907] W. N. 123; [1907] A. C. 225

WILL (Futurity, Words of)—continued.

Note.

Distinguished by *Eve J.*, *In re Lambert*, [1908] 2 Ch. 117. *See No. 3, below.*

Referred to by C. A., *In re Cope*, [1908] 2 Ch. 1. *See WILL—Substitution.* 5.

2. — *Gift to nephews and nieces—Substitutionary gift to children in case any nephew or niece "shall die in my lifetime"—Niece dead at date of will leaving child—Class—Will—Construction.*

Testator gave his residuary estate in trust for such of his nephews and nieces "as shall be living at my decease and have attained or shall attain the age of twenty-one years" equally between them if more than one. "Provided always that if any of my nephews or nieces shall die in my lifetime leaving a child or children who shall survive me and attain the age of twenty-one years then and in every such case the last mentioned child or children shall take (and if more than one equally between them) the share which his, her or their parents would have taken in my residuary estate if such parents had survived me and attained the age of twenty-one years":—

Held, that the children, who attained twenty-one and survived the testator, of a nephew or niece already dead at the date of the will were entitled to share in the residue.

In re Lambert, [1908] 2 Ch. 117, and *Loring v. Thomas*, (1861) 1 Dr. & Sm. 497, followed.

In re Cope, [1908] 2 Ch. 1, distinguished.

Quare, whether a distinction should not be drawn in all such cases between a gift to children and to nephews and nieces, a class much more remote than that of the testator's own descendants. *In re METCALFE*. *METCALFE v. EARLE*

Joyce J. [1909] W. N. 15; [1909] 1 Ch. 424

3. — *Gift to nephews and nieces—Gift to children of nephew in case any nephew "shall die in my lifetime"—Nephew dead at date of will leaving child—Will—Construction.*

Testatrix by her will gave the residue of her estate "in trust for all my nephews and nieces who shall be living at my death to be divided equally between them. Provided always that if any nephew or niece of mine shall die in my lifetime leaving a child or children who shall survive me and being a son or sons shall attain the age of twenty-one years or being a daughter or daughters shall attain that age or marry under that age then and in every such case the last mentioned child or children shall take (and if more than one equally between them) the share which his, her, or their parent would have taken of and in the residuary trust funds if such persons had survived me."

Held, that the child, who attained twenty-one and survived the testatrix, of a nephew already dead at the date of the will was entitled to share in the residue.

Loring v. Thomas, (1861) 1 Dr. & Sm. 497, and *Barraclough v. Cooper*, [1908] 2 Ch. 121, n., followed.

Gorringe v. Mahlstedt, [1907] A. C. 225, distinguished. *In re LAMBERT*. *CORNS v. HARRISON*

Eve J. [1908] W. N. 111; [1908] 2 Ch. 117

WILL (Futurity, Words of)—continued.

Note.

Followed by Joyce J., *In re Metcalfe*, [1909] 1 Ch. 424. See preceding Case; and see also next Case.

4. — *Residue*—"Shall die in my lifetime"—*Class—Substitutional Gift—Construction of will.*

The trustees of the will took out an originating summons for the determination (inter alia) of the question whether at the death of his widow the testator's residuary real and personal estate (subject as to the specifically mentioned portions of his real estate to the trusts concerning the same in the will declared) became divisible in equal fourth shares between the depts., his four children, or in equal fifth shares between the said depts. and the dept. Mary A. U. C. Cooper:—

Held, that this case cannot substantially be distinguished from and is governed by *Loring v. Thomas*, (1861) 1 Dr. & Sm. 497, a decision of Kindersley V.-C., and one now of established and undoubted authority. In each case the original gift in the will in question is to a class of persons to be ascertained at the death of the testator, while the subsequent provision in favour of issue is not, properly speaking, a substitutional gift, but makes an addition to the class of persons taking under the original gift by reference to the issue of what I may call certain hypothetical persons. *BARRACLOUGH v. COOPER* H. L. (E.), Feb. 20, 1905 [1908] 2 Ch. 121, n.

Note.

Followed by Eve J., *In re Lambert*, [1908] 2 Ch. 117. See No 3, above.

Referred to by C. A., *In re Cope*, [1908] 2 Ch. 1. See *Will—Substitution*. 5.

— Substitutionary gift—Words of futurity.
See *WILL—Substitution*. 7.

Heirlooms.

See also under **HEIRLOOMS**.

1. *Alteration of words*—"Of" read for "or"—*Real estate—Strict settlement—Bequest of heirlooms to devolve with real estate—Defeasance clause—Gift over—Construction of will.*

Testator devised his mansion-house and real estate in strict settlement, and then bequeathed certain heirlooms to trustees upon trust to permit the same from time to time to go and be held and enjoyed with the mansion-house, so far as the rules of law and equity would permit, by the person or persons who for the time being should be entitled to the possession of the said mansion-house by virtue of his will, "yet so that the said chattels shall not vest absolutely in a son or any person hereby made tenant for life of the said mansion-house unless such son or other person shall attain the age of twenty-one years":—

Held, that the word "or" must be read "of," and that the heirlooms did not vest absolutely in the first tenant in tail under the limitations, who had died an infant:—

Held, further, that the heirlooms, being thus taken away by the proviso from the first tenant in tail, did not fall into the residuary bequest of personalty, but were carried over to the next

WILL (Heirlooms)—continued.

person entitled to the real estate under the limitations until a tenant in tail by purchase was reached who attained twenty-one. *In re DAYRELL*. *HASTIE v. DAYRELL*

Joyce J. [1904] 2 Ch. 496

2. — *Jewels*—*Gift to go with title—Absolute interest—Executory trust—Trust to permit user by wife.*

Originating summons taken out by the executors and trustees of the will of the late Lord Gerard to determine the construction of the following bequest:—"I bequeath the diamond necklace and stomacher and pendants thereto, set with precious stones, to which I succeeded under the will of my said father, to the trustees of my will upon trust to allow the same to accompany, so far as the rules of law and equity will permit, the Gerard barony as heirlooms and to be worn and used by the wife for the time being of my said son, Frederick John Gerard, or other the person who at his death may succeed to the said barony and his successors in the barony, but only during the respective lives of such barons, and so that such heirlooms shall, so far as the rules aforesaid will permit, not vest absolutely in any such baron born in my said son's lifetime or within twenty-one years after his death who shall within such lifetime or twenty-one years die an infant, but on his death an infant shall (subject to any prior interests) go over and devolve in trust for the next succeeding baron. And I direct the said trustees and every other usufructuary to do everything in their or his power to give effect to and perpetuate, so far as the rules aforesaid will permit, the trust hereby declared of the said diamond necklace and stomacher and pendants thereto." The testator died on July 30, 1902, and on his death his son, Frederick John Gerard, succeeded to the barony. Lord Gerard attained the age of twenty-one in November last; he was unmarried.

Kekewich J. said that it was well settled that the result of the first clause in the gift was to give to the first successor to the barony the heirlooms absolutely for himself, and he saw no reason for holding that the succeeding words cut down that absolute interest to a life interest. The only restriction upon that gift was as to the user of the jewels by the wife. He could see no objection in law to that provision. He therefore held that Lord Gerard was entitled to the chattels in question absolutely, subject to a trust to permit the same to be worn by any wife of his during his life. *In re GERARD*. *GOSSELIN v. GERARD* - Kekewich J. [1906] W. N. 21

Holograph Will.

— British subject's holograph will in accordance with law of foreign country in which made—Effect on English leaseholds.
See *WILL—Leaseholds*. 1.

Hotchpot.

See under *WILL—Advances*.

Hotchpot Clause.

See also under *HOTCHPOT* and under *WILL—Advances*.

WILL (Hotchpot Clause)—continued.

— Will—Mistake — Erroneous recital — Legatee
— Alleged advance — Classification of cases.

See **WILL—Mistake. 1.**

Illegitimacy.

See also under **ILLEGITIMATE CHILD.**

1. — "Children belonging to me"—Illegitimate child—Distinction between will of mother and will of father of illegitimate child or children — Probate granted to illegitimate child born after date of will—Construction of will.

A distinction is to be drawn between benefits conferred by deed or will upon future illegitimate children, according to whether the person purporting to confer the benefit is the mother or the father.

A spinster made a will in 1876 by which she purported to leave her property in trust for all the children who might belong to her at the date of her death. In 1878 she gave birth to an illegitimate child, who survived her :—

Held, that the child was entitled to take under the will. **IN THE ESTATE OF FROGLEY**

Bargrave Deane J. [1905] P. 137

2. — Illegitimate child—Construction of will.

A testator gave the proceeds of Blackacre upon trust for the children of his nephew George, "including amongst such children Samuel, the illegitimate son of my said nephew," and the testator elsewhere in the will recognized Samuel as his nephew's son. The testator then gave the proceeds of Whiteacre upon trust (in the events which happened) for such of eight named nephews and nieces (including George) as should be living at the death of his niece Mary, and the issue living at the death of his said niece of such of his other nephews and nieces as should die in her lifetime leaving issue. George died in the lifetime of Mary, leaving issue one illegitimate son, namely, Samuel. Upon the death of Mary :—

Held, that the illegitimate son was entitled to take under the latter gift. *In re SMILTER, BEDFORD v. HUGHES* **Kekewich J. [1902] W. N. 236; [1903] 1 Ch. 198**

3. — Illegitimate children—Class Gift—Construction of will.

A testatrix bequeathed her residuary estate in trust equally for all such of the children being daughters of her nephew R., her niece Mrs A., and her niece Mrs H., as should attain twenty-one or marry under that age each child to be paid her share on attaining that age or marrying under it. At the date of the will and of the testatrix's death the nephew R. was cohabiting with a woman reputed to be his wife, and there was issue of this union three daughters, two born before the date of the will, and one born after the date or the will, but before the date of the death. The nieces had several daughters, one of whom had attained twenty-one at the date of the testatrix's death. The testatrix had always spoken of R.'s reputed wife as his wife, and the three daughters as their children, there being no suspicion of illegitimacy. Upon the arrival of the time for the final distribution of the estate it was discovered that R. did not marry his

WILL (Illegitimacy)—continued.

reputed wife until some years after the death of the testatrix :—

Held, that the two children born before the date of the will were entitled to participate, but that the child born afterwards was not entitled.

Holt v. Sindrey, (1868) L. R. 7 Eq. 170, and *Hill v. Crook*, (1873), L. R. 6 H. L. 265, discussed. *In re DU BOCHET. MANSELL v. ALLEN*

Joyce J. [1901] W. N. 119; [1901] 2 Ch. 441

4. — Illegitimate children — Class gift—Mother past child-bearing—Construction of will.

E., by her will dated in 1907, gave her residuary estate to trustees "In trust for and to be equally divided between and among the children of my sisters Mary Ann Burns, Clara Davenport and Sarah Pugh, and of my brother William Sales and the issue of such of them as shall die in my lifetime leaving issue, such issue taking his her or their parents' share." Mary Ann Burns was at the date of the will a widow nearly sixty-eight years of age; she had been married in 1869, having had two children by her husband before marriage and had no other children. She was living with E. at the date of her will and her death. E. knew all the facts and was on affectionate terms with the children. The other sisters and the brother all had legitimate children living :—

Held, that M. A. Burns' two illegitimate children took shares on the ground that there were not, and never could be, any legitimate children to answer the description. *In re EVE, EDWARDS v. BURNS* **Swinfen Eady J. [1909] W. N. 86; [1909] 1 Ch. 796**

5. — Illegitimate children — Illegitimate child described as "son"—Gift to "grandchildren"—Will—Construction.

M. K. by her will dated July 10, 1872, devised and bequeathed all her estate to "my son George Kiddle" and another upon trust for a daughter for life, and subject to her daughter's life interest she gave her residuary estate to her grandchildren living at her death. The testatrix died in Aug. 1876. G. K. was born before the marriage of the testatrix. At the date of the testatrix's death there were living children of G. K., and also children of legitimate children of the testatrix. The tenant for life having died in 1904, the executors of the will took out a summons for the determination of the question whether the children of G. K. were entitled to participate under the residuary gift.

Kekewich J. thought that the construction of this will was free from difficulty. It was said that the old rule which prohibited the Court from allowing illegitimate children to take as members of a class composed also of legitimate children ought still to be regarded and that to hold that the children of G. K. were entitled to take under this bequest to all the testatrix's grandchildren would be taking a step in advance of anything which had been already decided. He did not think that it would be taking a step in advance, and thought it followed directly from the decision of the C. A. in *In re Wood*, [1902] 2 Ch. 542. *In re Hall*, (1887) 35 Ch. D. 541, was distinguishable. The testatrix had made her own dictionary for the purposes of the will, and had said that

WILL (Illegitimacy)—continued.

when she used the word "son" she included G. K.; and if she included G. K. as her son she included his children under the term "grand-children." *In re KIDDLE. GENT v. KIDDLE*

Kekewich J. [1905] W. N. 81

6. — Illegitimate children — Indication of intention — Class gift—Future children—Uncertainty—Public Policy

In class gifts a will speaks from death, and therefore a bequest to a woman's future illegitimate children born in the testator's lifetime, and not defined by reference to actual paternity, is not uncertain or contrary to public policy—*secus*, a gift by deed. *Occleston v. Fullalove*, (1874) L. R. 9 Ch. 147, and *In re Hastie's Trusts*, (1887) 35 Ch. D. 728 followed.

Loveland bequeathed his residuary estate in trust for "Daisy Dorcas Wootton (otherwise Daisy Dorcas Loveland)" for life, and after her decease in trust for "all her children living at my decease" who being sons should attain twenty-one or being daughters should attain that age or marry.

The testator made this will just before starting by himself for the East, and knowing that his niece Daisy Dorcas Wootton, who had married him in Scotland, and was still living with him in the belief that her marriage was valid by Scottish law, was expecting her first confinement. Her child was born twenty-two days after the date of the will. The testator who was informed of the birth, died six months later at Penang, without having seen the child:—

Held, that, having regard to the surrounding circumstances, there was a sufficient indication on the face of the will to shew that the testator used the word "children," as including illegitimate children. *In re LOVELAND. LOVELAND v. LOVELAND - Swinfen Eady J. [1906] W. N. 46; [1906] 1 Ch. 542*

7. — Mistake—Number of legatees — Illegitimate children—Presumption—Evidence of intention.

Bequest to the three children of A. born prior to her marriage. A. had in fact four such children in existence at the date of the will. The testator had acknowledged the paternity of the three younger children, but he was not the father of the eldest child:—

Held, that, in the absence of proof that the testator was aware of the eldest child's existence, the onus of which proof lay on that child, there was no presumption that he intended to include her in the gift.

Semble, if the testator had been aware of the actual number of children, direct evidence of his intention to benefit three particular children would have been inadmissible. *In re MAYO. CHESTER v. KEIRL. Farwell J. [1901] W. N. 15; [1901] 1 Ch. 404*

8. — Nomination, Gift to children—Illegitimate children—Gift to next of kin of children under the Statute of Distributions—Construction of will.

A testator gave a legacy to each of his seven children by name, and directed that, in the events which happened, his residuary estate should be held upon trust for such of his seven

WILL (Illegitimacy)—continued.

children thereinbefore named as should be then living and should attain twenty-one; and he directed his trustees to retain the legacy and the share of residue which any daughter might take under the will, and to hold the same upon trust to pay the income to the daughter for life, and then to her husband for life if she should so appoint, and subject thereto in trust for her children, and in default of children in trust for the persons who at the death of such daughter would have been entitled to such share under the Statutes of Distribution in case she had died possessed thereof without having been married. Three of the children were born to the testator by his wife before her marriage:—

Held, reversing the decision of Kekewich J., [1901] 2 Ch. 578; that the share of an illegitimate married daughter who died without having exercised her power of appointment in favour of her husband and without having had any issue, passed to those who would have been her next of kin if she and the testator's other children had all been legitimate.

In re Standley's Estate, (1868) L. R. 5 Eq. 303 overruled. *In re WOOD. WOOD v. WOOD*
C. A. [1902] W. N. 136; [1902] 2 Ch. 542

Note.

Referred to by Kekewich J., *In re Kiddle* [1905] W. N. 81. See No. 5 above.

9. — Testator illegitimate — Bequest to "all my nephews and nieces"—Some named—Some "brothers and sisters" named—Children of unnamed natural sister—Construction of will.

A testator whose parents were never married had lived with them and his natural brothers and sisters as one family, and treated them as his lawful relatives.

In his will he referred by name to all living natural brothers and sisters as his brothers and sisters, and to some of the children as his nephews and nieces, but he did not mention a deceased natural sister or her children, and there was no evidence that he knew of the existence of those children. He made a bequest to "all my nephews and nieces" living at a certain period:—

Held, that the children of the deceased natural sister were entitled to share in this bequest.

In re Judrell, (1890) 41 Ch. D. 590; [1891] A. C. 304, 309, applied. *Meredith v. Farr*, (1843) 2 Y. & C. C. 525, distinguished. *In re CORSELLIS. FREEBORN v. NAPPER.*

Swinfen Eady J. [1906] W. N. 98; [1906] 2 Ch. 316

Imperfect Gift.

— Imperfect gift of personalty—Bonds to bearer
— Continuing intention to give—Donee appointed one of the executors.
See ADMINISTRATION. 12.

Income or Capital.

See under WILL—Capital or Income.

Indian Assets.

— Executors in England—Indian Assets—
Fraud in India—Revocation of Indian

WILL (Indian Assets)—continued.

letters of administration—Title of executors.

See ADMINISTRATION. 15.

Interest.

See also under INTEREST.

— Contingent interest.

See under WILL—Contingent Interest.

— Legacy—Bequest of income to legatee subject to obligation of maintaining infants.

See INTEREST. 2.

— Legacy—Gifts by appointment under a power—Interest.

See WILL—Legacy. 3.

1. — *Legacy—Legacy payable at twenty-one—Power to trustees to apply legacy in or towards benefit of legatee whether under age of twenty-one or not—General intention to provide maintenance—Will—Construction—Legacy.*

Testatrix by her will devised and bequeathed the residue of her real and personal estate to trustees upon trust to sell and convert and out of the proceeds to pay certain pecuniary legacies, including a legacy of 200l. to her grand-nephew C. P., and she directed that the interest of males under her will should vest at twenty-one years and females at that age or marriage. The testatrix empowered her trustees at their discretion "to apply the whole or any part of the share to which any beneficiary hereunder may be contingently entitled in or towards the advancement in life or otherwise for the benefit of such beneficiary whether male or female and whether under the age of twenty-one years or not." The testatrix died in 1908. At the date of her will and the date of her death C. P. was an infant :—

Held, that interest was payable on the legacy from the death of the testatrix and that the trustees were entitled to apply the interest in or towards the maintenance of C. P. during his infancy.

Pett v. Fellows, (1733) 1 Swans. 561, n., as explained by Sugden L.C. in *Leslie v. Leslie*, (1835) LL. & G. t. Sugden, 1, 3, followed. *In re* CHURCHILL. *HISCOCK v. LODDER*

Warrington J. [1909] W. N. 178; [1909] 2 Ch. 431

2. — *Tenant for life and remainderman—Capital or income—Conversion—Power to postpone conversion—"Residuary trust funds"—Unauthorized securities—Wasting securities—Enjoyment in specie—Will—Construction.*

The testator devised and bequeathed all his real and personal estate, not by his will otherwise disposed of, to trustees upon trust to sell and convert the same, with power to postpone conversion as long as the trustees thought proper and to retain any investments subsisting at his death, whether of the kind thereafter authorized or not, and out of the proceeds to pay debts and legacies, and at the discretion of the trustees to invest the residue and to stand possessed of the residuary trust moneys and the investments for the time being representing the same (thereinafter called "the residuary trust

WILL (Interest)—continued.

funds") in trust to pay the income thereof to his wife during her life.

At the time of his death the testator was possessed of preference and ordinary shares in a coal-mining co. The ordinary shares, although not of a wasting character, were not authorized by the investment clause in the will. The trustees therefore sold some of them, and proposed to sell more on a favourable opportunity. They declined to pay to the widow in the meantime the full dividends on the ordinary shares thus retained :—

Held, that, in the absence of any express or implied gift of the income pending conversion, the widow was entitled only to interest at 3 per cent. on the value of the ordinary shares at the testator's death, and the rest of those dividends must be invested. This rule was well settled, and applied to unauthorized securities whether they were of a wasting character or not.

Bulkeley v. Stephens, (1863) 3 N. R. 105, dissented from. *In re* CHAYTOR. *CHAYTOR v. HORN* *Warrington, J.* [1904] W. N. 195; [1905] 1 Ch. 233

Note.

Distinguished by Swinfen Eady J., *In re Wilson*, [1907] 1 Ch. 394. See *Settled Land—Investments*. 3.

Intestacy.

See also under INTESTACY.

— Class gift—Revocation by codicil.

See WILL—Class. 2.

1. — *Real estate—Copyholds—Equitable interest—Resultant trust—Descent—Customary or common law heir.*

Where a testator has died intestate as to copyholds, held under an implied or resulting trust for him, and there is no special custom of the manor confining the custom of descent to a tenant on the rolls, or to a tenant dying seised, the equitable interest in the copyholds will descend, as the legal estate would have descended, to the customary heirs, and not to the common law heir of the intestate.

Trush v. Wood, (1839) 4 My. & Cr. 324, applied. *In re* HUDSON. *CASSELLS v. HUDSON* *Eve J.* [1908] W. N. 50; [1908] 1 Ch. 655

2. — *Realty—"What is left"—Life estate by implication—Intestacy—Devise after death of A. to two of several co-heirs—Will—Construction.*

The rule that a devise of realty, after the death of A. to the heir-at-law of the testator, gives A. a life estate by necessary implication, does not apply when the devise is, after the death of A., to one or more of several co-heirs. In such a case there is an intestacy during the life of A.

Hutton v. Simpson, (1716) 2 Vern. 721; 8 C. Gilb. Eq. Rep. 115 and Prec. Ch. 439, discussed and explained.

A testator appointed his wife his executor, with power to sell all his property and land, and "at her death what is left to be divided between" his two daughters :—

Held, that the words "what is left" meant the "net residue" of the estate after payment of debts and costs of realization, and did not give

WILL (Intestacy)—continued.

the wife a life or any other interest in the testator's estate. *In re WILLATTS. WILLATTS v. ARTLEY* Farwell J. [1905] W. N. 16; [1905] 1 Ch. 378

On Appeal.

The appeal from Farwell J., [1905] W. N. 16; [1905] 1 Ch. 378, allowed. *In re WILLATTS. WILLATTS v. ARTLEY* C. A. [1905] 2 Ch. 135.

Investments.

See also under INVESTMENT.

1. — Breach of trust—Power to invest on freehold or leasehold ground-rents—Purchase of leasehold ground-rents—Investment by trustees—Construction of will.

A testator bequeathed the residue of his estate to his trustees upon trust to invest the same on Government securities, "or upon freehold ground-rents, or upon leasehold ground-rents not having less than sixty years unexpired, and held direct from the freeholder."

The trustees were to receive "the dividends, rents, and annual income thereof," and to divide and pay the same unto and equally between the testator's two daughters for and during their lives. On the death of either of them the corpus of her share was to go to her issue:—

Held, that the above clause authorized the trustees to invest the residue in the purchase of freehold ground-rents or of leasehold ground-rents of the character specified.

Decision of Kekewich J. reversed. *In re MORDAN. LEGG v. MORDAN*

C. A. [1905] W. N. 47; [1905] 1 Ch. 515

2. — "Company"—Power to invest in stocks and securities of companies—Companies not registered in the United Kingdom—Will—Construction.

A testator empowered the trustees of his will to invest moneys in (amongst other things) the "stocks, funds, and securities (not payable to bearer) of any corporation or company, municipal, commercial or otherwise":—

Held, that the clause was not confined to the stocks, funds and securities of corporations and companies formed or registered in the United Kingdom.

The meaning of the word "company" explained. *In re STANLEY. TENNANT v. STANLEY* Buckley J. [1906] 1 Ch. 131

— Investment clause—"Securities." Power to transpose and vary—Implied power to resell purchased real estate.

See **VENDOR AND PURCHASER—Title. 19.**

3. — Investment clause—"Securities"—Primary meaning—Secondary meaning—Context—Stocks and shares in companies—Extrinsic evidence, Admissibility of—Construction of will.

A general broker, who died in 1896, by his will made in 1895, after bequeathing a trust legacy, declared that "all moneys liable to be invested under this my will may be invested in such securities as my trustees in their absolute discretion shall think fit: and I authorize my trustees

WILL (Investments)—continued.

to continue or leave any moneys invested at my death in or upon the same securities":—

Held (reversing the decision of Farwell J.), that the context was sufficient to show that "securities" meant "investments" and included stocks and shares in railway and other cos.

The admissibility of extrinsic evidence to ascertain the true sense and meaning of doubtful expressions in a will, discussed and considered.

Whether at the present day the word "securities" in a legal document, in the absence of context, includes stocks and shares as well as mortgages on land or other property, *quere*.

Ogle v. Knipe, (1869) L. R. 8 Eq. 434, considered. *In re RAYNER. RAYNER v. RAYNER* C. A. [1904] W. N. 16; [1904] 1 Ch. 176

Note.

Followed by Farwell J., *In re Gent and Eason's Contract*, [1905] 1 Ch. 386. See **VENDOR and Purchaser—Title. 19.**

— Investments — Unauthorized securities — Express power to retain—Enjoyment in specie.

See **SETTLED LAND—Investments.**

— "Money invested in"—Will—Construction.

See **WILL—"Money invested in." 1.**

4. — Railway or other "public company"—American company—Investment, Trust for—Construction of will.

A testatrix, after empowering her trustees to postpone the sale or conversion of any part of her estate, declared that any money by her will directed to be invested should be invested in "any of the public funds, or in Government or real or leasehold securities, or upon the stocks, shares, or securities of any railway or other public company." Some time after her death two shares which she had held in an English steamship co. were exchanged for preference and ordinary stock in an American steamship co. which had taken over the business of the English co.:—

Held, that the words "public company," when read in connection with the preceding words of the clause, must be confined to public cos. in the United Kingdom, and consequently that the trustees were not authorized to retain the American preference and ordinary stock as an investment. *In re CASTLEHOW. LAMONBY v. CARTER* - Byrne J. [1903] W. N. 4; [1903] 1 Ch. 352

5. — Tenant for life and remainderman—Trustees—Power to retain investments—Hazardous securities—Rule in Howe v. Earl of Dartmouth, 7 Ves. 137.—Will—Construction.

By his will a testator gave his personal estate to his wife for life and after her death to other persons, and appointed his wife and the plt. trustees of his will. By a codicil the testator empowered his trustees to carry on his businesses of a colliery owner and farmer, and gave them a general discretion "to retain any investments" belonging to him at his death without being responsible for any loss occasioned thereby. The testator was a director of a coal co., ld., which had wide powers of engaging in colliery and other businesses under its articles and memoran-

WILL (Investments)—continued.

dum of association, and possessed a considerable reserve fund. At the time of his death the testator was possessed of 336 fully paid up shares of 50*l.* each in the coal co., and in pursuance of their power under the codicil the trustees retained them :—

Held, that the shares were hazardous, but not wasting securities, and the power to retain investments was sufficient to exclude the operation of the rule in *Howe v. Earl of Dartmouth*, (1802) 7 Ves. 137*a*. The tenant for life was, therefore, entitled to the income of the shares so long as the trustees thought fit to retain them. *In re BATES. HODGSON v. BATES*

Kekewich J. [1906] W. N. 191, 206 ; [1907] 1 Ch. 22

Note.

Followed by Swinfen Eady J., *In re Wilson*, [1907] 1 Ch. 394. *See Settled Land—Investments.* 3.

— Trustees.

See under TRUSTEES—Investments.

6. — *Will—Absolute trust for conversion—Power to retain investments made by testator—Trustees unable to agree—Investment clause—Companies “in the United Kingdom”—Companies registered in England, but operating abroad—Will—Construction.*

Where a will contains a trust for conversion with a power to retain investments existing at the date of the will, and the trustees are not unanimous as to the retention of some of the investments made by the testator, the trust for sale prevails and the investments must be sold, although such investments are within the investment clause in the will.

A testator authorized his trustees to invest in the stocks, shares, or securities of “any company in the United Kingdom” :—

Held, that a limited co. registered in England and having its head office in England, where its directors met to manage the affairs of the co., was a “company in the United Kingdom” within the meaning of the investment clause, although its property was situate abroad and its operations were abroad. *In re HILTON. GIBBES v. HALE-HINTON*

Neville J. [1909] W. N. 180 ; [1909] 2 Ch. 548

Issue.

See also under ISSUE.

— “Die leaving issue”—Gift to a class.
See WILL—Class. 5.

1. — *Issue “according to the parent stock,” Gift to—Per stirpes—Children not taking concurrently with their parents—Will—Construction.*

The testator gave his residuary estate to trustees upon trust on the death of the survivor of his wife and four daughters to divide the same unto, between, and amongst the issue then living of his said daughters in equal shares according to the parent stock and not the number of the individual objects, to the intent that the issue then living of any one of his said daughters might be entitled to a share equal to that which the issue (if any) of any other of them should be entitled to, and in case there should be issue then living of only one of them his said daugh-

WILL (Issue)—continued.

ters, then the whole to be paid to or equally divided amongst such issue. At the death of the survivor of the testator's wife and daughters there were living children or issue of all the daughters :—

Held, that according to the plain and unambiguous words of the original gift there was a gift to the issue of the daughters per stirpes and not per capita, children not taking concurrently with their parents, and that the ambiguous words of the gift over in the particular event of there being issue living of only one of the daughters ought not to be allowed to affect the construction of the clear original gift. *In re RAWLINSON. HILL v. WITHELL* - **Joyce J. [1909] 2 Ch. 36**

— “Issue”—Shelley's Case, Rule in—Estate in special tail.

See WILL—Shelley's Case. 1.

— Original or substitutional gift—Construction of will.

See WILL—Substitution. 1.

— Will—Construction.

See under WILL—Children.

— Will—Construction—Gift over—Appeal from Tasmania.

See TASMANIA. 2.

— Will—Substitutional or substantive gift—Words of futurity.

See WILL—Class. 8.

Joint Tenancy or Tenancy in Common.

— Class—Joint tenancy or tenancy in common—Will—Construction.

See WILL—Class. 10.

Jointures.

See also under JOINTURE.

— Jointuring—Execution of power by testamentary instrument.

See STATUTE. 1.

Lapse.

— Ambiguity—Explanation by reference to recital in codicil—Gift to a class—Lapse.

See WILL—Ambiguity. 1.

— “Charitable institution.”

See CHARITY. 40.

— Charitable institution—Trust deed—Discontinuance of week-day school during testatrix's lifetime.

See CHARITY. 45.

1. *Death of legatee—Gift with intention of discharging obligation.*

Where on the true construction of a will the Court finds that the testator's intention in giving a legacy was not merely bounty to the legatee, but to discharge a moral obligation recognized by the testator, whether legally enforceable or not, the legacy will not lapse by the legatee's death in the testator's lifetime. *STEVENS v. KING*

Farwell J. [1904] W. N. 93 ; [1904] 2 Ch. 30

WILL (Lapse)—continued.

— "Eldest son of my sister"—Lapsed gift—Will—Construction.
See JAMAICA. 2.

2. — Exception from residue—Disposal at discretion of trustees.

By his will dated Oct. 13, 1873, James Sinclair, the owner of a copyhold house in Sunderland, gave and bequeathed, "with the exception of my said house in Sunderland, the disposal of which I leave to the discretion of my trustees hereinafter mentioned," his real and personal estate to his wife, Margaret Sinclair, and James Park, who predeceased him, upon trust that they and the survivor of them, and the executors and administrators of the survivor, thereafter called trustees and trustee, should sell the same and stand possessed of the net proceeds upon trust for certain beneficiaries. The usual power of appointing new trustees was given to the trustees for the time being, and it was provided that every future trustee should have the same powers, authorities, and "discretions" as if originally appointed.

The testator died on May 29, 1899, and on June 28, 1899, the wife appointed the plt. a co-trustee. By her will dated Dec. 6, 1899, the wife devised the house to the plt. and the customary heir of her husband upon trust for certain beneficiaries. The wife died on Mar. 18, 1903. This summons was issued to determine whether the house had passed under the wife's will, and, if not, whether it fell into the husband's residue, or devolved on the customary heir as undisposed of :—

Held, distinguishing *Gibbs v. Rumsey*, (1813) 2 V. & B. 294; 13 R. R. 88; that the discretion as to the disposal of the house was given to the trustees of the husband's will for the time being, and not merely to the original trustees, whose names were not mentioned in the clause conferring that discretion. Vide *Yeap Cheah Neo v. Ong Cheng Neo*, (1875) L. R. 6 P. C. 381, 392. The wife, therefore, took neither a beneficial interest nor a beneficial power of appointment. He also held, distinguishing *Blight v. Hartnoll*, (1883) 23 Ch. D. 218, that as the house was excepted from the husband's residue, and there was no attempt on the face of the will to dispose of the beneficial interest, it devolved on his customary heir. *In re SINCLAIR*. YOUNG v. SINCLAIR
Swinfen Eady J. [1903] W. N. 113

3. — "Intestate"—Death of all beneficiaries and executor before testator—Administration cum testamento annexo—Intestates' Estates Act, 1890 (53 & 54 Vict. c. 29).

When there was a complete failure by lapse of all the beneficial interests under a will, and the person named as executor had predeceased the testator, who died leaving a widow, but no issue :—

Held, that the testator had died "intestate" within the meaning of the Intestates' Estates Act, 1890, and that his widow was entitled to 500*l.* out of his estate absolutely and exclusively. *In re CUFFE*. FOOKS v. CUFFE Joyce J. [1908] W. N. 167; [1908] 2 Ch. 500

4. — Lapse of legacy—Two residuary gifts—Will—Construction.**WILL (Lapse)—continued.**

Testator by his will appointed H. his executor, then gave pecuniary legacies to sixteen persons, including H., bequeathed his watch to a nephew, and then directed that "the remainder of" his "property" should "pass as follows, viz., to be divided amongst" certain named persons in defined shares. The will concluded as follows: "And I appoint my executor my residuary legatee."

Two of the legacies lapsed by death of legatees in the testator's lifetime :—

Held, that the lapsed legacies fell into the first residue, and did not go to H. *In re ISAAC*. HARRISON v. ISAAC Buckley J. [1905] 1 Ch. 427

— Share of residue—Gift over—Legacy out of share.

See WILL—Residue. 10.

Leaseholds.

See also under LEASEHOLDS.

1. — British subject's holograph will in accordance with law of foreign country in which made—Effect on English leaseholds—"Personal estate"—Lord Kingsdown's Act (Wills Act, 1861) (24 & 25 Vict. c. 114), ss. 1, 4.

Sect. 1 of Lord Kingsdown's Act provides that every will made out of the United Kingdom by a British subject (whatever may be his domicile) "shall as regards personal estate be held to be well executed for the purpose of being admitted in England and Ireland to probate" if made according to the forms required by the law of the place where the same was made :—

Held, that "personal estate" includes leaseholds, and that when the will of a British subject made abroad in the form required by the law of the place has been proved in England, the beneficial interest in the leaseholds passes to the person pointed out in the will as the donee of that interest, provided the bequest does not infringe the law of England, e.g., that relating to accumulations or perpetuity. *In re GRASSI*. STUBBERFIELD v. GRASSI Buckley J. [1905] W. N. 56; [1905] 1 Ch. 584

2. — Leasehold house, gift of, the legatee performing the conditions of the lease—Independent gift to same legatee of dividends on stock—Acceptance of legacies—Mortgage of house and dividends in one mortgage—Foreclosure—Disclaimer by mortgagee of all interest in house—Liability for repairs to house—Ownership of dividends.

The testator devised a leasehold house to Marian Ross for life, she paying the rent and performing the covenants of the lease; he also left her the dividends of certain stocks for life. By the lease the testator had covenanted to keep the house in repair. Marian Ross accepted the legacies and mortgaged her interests under the will to the defendant society in one mortgage. The society obtained an order for foreclosure, but did not take possession of the house. Marian Ross was now a pauper lunatic. The trustees paid the fire insurance premiums on the house and the rent out of the dividends on the stock and handed over the balance to the society. The lessor claimed possession of the house on the

WILL (Leaseholds)—continued.

ground of breach of covenants to repair it. The society disclaimed all interest in the house and declined to do the repairs, although they claimed to be entitled to the dividends on the stock. On a summons to determine whether they were liable to do the repairs :—

Held, that on accepting the legacies Marian Ross became personally liable to perform the covenants of the lease; that the society had done nothing to make themselves liable to do the repairs; that the gifts in the will were independent; and that the society were entitled to retain the dividends on the stocks without being liable under the lease. *In re LOOM. FULFORD v. REVERSIONARY INTEREST SOCIETY, LD.*

Parker J. [1910] 2 Ch. 230

Legacy.

1. — *Abatement—Administration—Legacies—General or specific—Insufficiency of assets—Abatement—Legacy in satisfaction of a debt—Forgiveness of debts.*

A testator gave to the trustees of his daughters' marriage settlement 3000*l.* in satisfaction of his covenant to pay them 1000*l.* He also forgave his children respectively all debts and sums of money which might be due from them to him at his death, and secured by bond, bill, note, or other security. At the date of his death two of his sons owed him sums not secured as above mentioned. The estate proved to be insufficient for the payment of all the legacies in full. The question having arisen whether the legacy of 3000*l.* which the legatee had elected to take, and the unsecured debts forgiven to the sons were liable to abate with the other general legacies :—

Held, that the principle by which a legacy given in satisfaction of dower was entitled to priority and did not abate was inapplicable to the case of a legacy given in satisfaction of an ascertained debt, and therefore the legacy of 3000*l.*, being a mere bounty, was liable to abatement.

But *held*, that the forgiveness of their debts to the sons amounted to specific legacies which were not liable to abatement. *In re WEDMORE. WEDMORE v. WEDMORE* **Kekewich J. [1907]**

W. N. 134; [1907] 2 Ch. 277

— Action to recover legacy—Duty of executor to give notice of legacy.

See LIMITATIONS, STATUTE OF. 4.

2. — *Direction to set apart and pay by instalments on legatees attaining specified ages—Instalments—No gift over—Postponement of payment—Vesting—Intermediate Income.*

Testatrix desired and directed to set apart the sum of 200*l.* for her grandson J. W. L. S., the sum of 150*l.* for her grandson J. V. S., and the sum of 150*l.* for her grandson F. D. S., the said sums to be free of duty and to be paid respectively as to 50*l.*, part thereof, on their attaining the age of twenty-one years, and as to 50*l.*, part thereof, on their attaining the age of twenty-five years, and she directed that the balance 100*l.* for her grandson J. W. L. S. be paid him on his attaining the age of thirty years, and the balances 50*l.* for J. V. S. and F. D. S. be paid

WILL (Legacy)—continued.

them on their respectively attaining the age of thirty years. There was no disposition of the intermediate income, or gift over of the principal.

J. W. L. S. survived the testatrix, and on attaining twenty-one the first-mentioned sum of 50*l.* was paid to him, but he died before attaining twenty-five :—

Held, that each bequest was equivalent to a gift of a legacy to the particular legatee, payable as to part at twenty-one, further part at twenty-five, and the balance at thirty; and that each legatee upon attaining twenty-one was entitled to the payment of his legacy and the intermediate interest or income, and that the legal personal representative of any legatee who survived the testatrix and died before actual payment was entitled to the legacy or balance unpaid of both principal and income.

Gosling v. Gosling (1859) **Joh. 265**, applied.

In re COUTURIER. COUTURIER v. SHEA

Joyce J. [1907] W. N. 69; [1907] 1 Ch. 470

— Duty of executor to give notice of.

See EXECUTOR—Disclosure. 1.

— Forfeiture conditions—Legacy.

See under WILL—Conditions.

3. — *Interest—Gift by appointment under a power.*

A testatrix, having under her marriage settlement a general power of appointment over a sum of 5000*l.* and certain funds comprised in the 1st schedule thereto, appointed that the trustees should stand possessed of the sum of 5000*l.*, and "of such portion of the stocks and securities comprised in the 1st schedule of the said indenture as shall, with the sum of 5000*l.* or the securities representing the same, make up the sum of 9000*l.*" in favour of certain appointees :—

Held, that the appointment was a specific gift of a portion of the stocks and securities, and that the appointees were entitled to the interest on the whole 9000*l.* from the death of the testatrix. *In re MARTEN. SHAW v. MARTEN*

Byrne J. [1901] W. N. 6; [1901] 1 Ch. 370

Note.

See In re Marten. Shaw v. Marten, C. A. [1902] 1 Ch. 314—Power of Appointment. 20.

— Lapse of legacy.

See under WILL—Lapse.

— "Residuary legatee"—Intestacy—Extrinsic evidence.

See WILL—¹ Residuary Legatee." 1.

4. — *"Residue and remainder" of specific mortgage debts, Bequest of—Evidence dehors the will—Construction of will.*

The House reversed the decision of the C. A. *In re Grainger. Dawson v. Higgins*, [1900] 2 Ch. 756, and restored the decision of Stirling J. for the reasons given by Rigby L.J. **HIGGINS v. DAWSON** **H. L. (E.) [1901] W. N. 234; [1902] A. C. 1**

Note.

Referred to by Joyce J., *In re Glassington*, [1906] 2 Ch. 305. *See* Will—Real Estate. 1.

WILL—continued.**Limitations.**

See also under **LIMITATION**.

- Entirety, Devise of—No words of limitation
- Intestacy of devisee—Devolution.

See **ESTATE PUR AUTRE VIE**. 1.

1. — *Heirs "and assigns" of survivor.*

A testator, who was seised in fee of a farm, devised it to the use of his nephew for the term of ninety-nine years if he should so long live, and from and after the determination of such term and estate to the use (in succession) of the nephew's four sons for a term of ninety-nine years if they should so long live, with an ultimate devise on the death of the survivor upon trust to and for the use of the heirs and assigns of the survivor of the four sons :—

Held, that the words "assigns" could not be construed as giving a power of appointment to the survivor; that the limitation to the heirs and assigns of the survivor must be construed as a limitation to the heirs of the survivor and their assigns, and that upon the death of the survivor his heir-at-law was entitled to recover possession of the property from a purchaser to whom the survivor had conveyed it in his lifetime. **MILMAN v. LANE** C. A. [1901] 2 K. B. 745

- Successive life estates—Exception of eldest son entitled to other estates.

See **WILL—Shifting Clause**. 1, 2.

- 2. — *Successive limitations—Gift conditional or subject to prior limitations—Will—Construction.*

A testator devised an estate to J., for life, and after his decease, "in the event of his having a son or sons, or any male issue shall be born in due time after his decease," who should live to attain twenty-one, "to such son or issue male on his attaining the age of twenty-one years, but in case he shall die under that age," then over. J. died without ever having had any issue :—

Held, that the principle recognized in *Maddison v. Chapman*, (1858) 4 K. & J. 709 and *Edgeworth v. Edgeworth* (1869) L. R. 4 H. L. 35, and stated in *Thcobald on Wills*, 5th edit. p. 498, applied, and that the gift over took effect, although in the present case it was rather a condition essential to the coming into existence of the interest previously limited than one essential to its determination. *In re SANFORTH'S WILL*

Byrne J. [1901] W. N. 152

Note.

See *In re Shuckburgh's Settlement*, Farwell J., [1901] 2 Ch. 794. *Power of Appointment*. 12.

- Successive limitations—Life estates—Tenants in tail.

See **WILL—Estate Tail**. 2.

Maintenance.

- Discretionary trust for maintenance or accumulations.

See **WILL—Remoteness**. 3.

Mansion-house.

- 1. — *Devise to trustees—Bare legal estate—Powers of management, Absence of—Tenant for life and remainderman—Equitable estates—*

WILL (Mansion-house)—continued.

Dilapidations—Salvage—Repairs—Expenditure out of capital—Jurisdiction.

A testator devised a freehold mansion-house to the use of trustees in trust for his sister for life, "subject to the condition that she shall keep the said premises in the state of repair in which she finds them at my death," with remainder in trust for his nephews successively for life subject to the same condition, with remainders over. And he bequeathed personal estate upon trusts corresponding to those of the mansion-house. The will did not impose on the trustees any trusts whatever for the management, maintenance, or repairs of the mansion-house. At the testator's death the house was in general disrepair. Upon the application by the trustees as to whether they could apply capital moneys in their hands in putting the house into good repair :—

Held, affirming *Kekewich J.*, that as the evidence did not show the case to be one of "salvage," the Court could not, either under the *Settled Land Acts* (which admittedly did not apply) or its general jurisdiction, authorize the proposed expenditure.

The rule laid down by *Chitty J.* in *In re De Teissier's Settled Estates*, [1893] 1 Ch. 153, 165, approved of and applied. *In re WILLIS. WILLIS v. WILLIS* C. A. [1901] W. N. 208; [1902] 1 Ch. 15

Note.

See *In re Legh's Settled Estate*, *Kekewich J.*, [1902] 2 Ch. 274. *Settled Land—Capital Moneys*. 13.

- *Settled Land Acts.*

See under **SETTLED LAND—Mansion-house**.

Marriage.

See also under **MARRIAGE**.

- Words of futurity—Forbidden marriages—Forfeiture clause.

See **WILL—Forfeiture**. 7.

- Will—Consent.

See under **WILL—Conditions**.

Misdescription.

- "Freehold"—Customary freeholds—Mistake.

See **WILL—Words**. 5.

- 1. — "Wife"—*Named legatee misdescribed as wife—Construction of will.*

A testator bequeathed a fund upon trust, after a trust to pay the income to his son, to pay the income "to my son's wife L. if she shall survive him." The son, who lived in the colonies, had written to his father that he had married a lady named L. C. L. C. lived with the son as his wife till his death and was reputed to be his wife, but she was not married to him. The testator never had any direct communication with L. C. :—

Held, upon the construction of the will, that inasmuch as the identity of the legatee was established by her name, the annexed misdescription of her as the son's wife did not vitiate the gift, the Court not being at liberty to speculate as to the motive of the testator in making the gift. **ANDERSON v. BERKLEY**

Joyce J. [1902] W. N. 81; [1902] 1 Ch. 936

WILL—continued.**Mistake.**

See also under MISTAKE.

1. — Erroneous recital — Legatee — Alleged advance — Hotchpot clause — Classification of cases.

Where a testator erroneously recites that a legatee owes him a particular sum or advance, and (class 1) directs the legatee to bring that sum or the sum "hereinbefore recited to have been advanced" into hotchpot, or otherwise shews an intention to charge the legatee with the sum mentioned, that sum, whether due or not, must be brought into hotchpot.

But if (class 2) the testator merely directs the alleged advance "or so much thereof as shall remain unpaid" at his death or at the time of distribution to be brought into hotchpot, he prima facie intends the amount actually due, and not the alleged advance less repayments, to be brought into hotchpot.

A testator after erroneously reciting that a legatee of a reversionary share of residue owed him 5000*l.*, forgave him 2000*l.*, and directed the 3000*l.* balance, or so much thereof as should remain unpaid at the time of distribution, to be brought into hotchpot. The alleged balance was not to bear interest, and was only to be sued on in the event of the legatee's bankruptcy or liquidation. The legatee in fact only owed the testator 80*l.*, which was still unpaid:—

Held, that the above provisions were clearly intended for the legatee's benefit, and the testator only meant to charge him with actual advances, to an extent not exceeding 3000*l.*, less any payments. The legatee was therefore only chargeable with 80*l.*

In re Taylor's Estate, (1881) 22 Ch. D. 495, 500 (class 2), followed.

In re Aird's Estate, (1879) 12 Ch. D. 291 (class 2), not followed.

In re Wood, (1886) 32 Ch. D. 517 (class 1), distinguished. *In re KELSEY*. *WOOLLEY v. KELSEY*. *KELSEY v. KELSEY*

Swinfen Eady J. [1905] W. N. 136 : [1905] 2 Ch. 465

Inaccurate enumeration—Class.

See WILL—Class. 9.

"Money Invested In."

1. — Bequest—Will speaking from death—Adoption—"Money invested in" Lambeth Waterworks Company—Transfer of undertaking to Water Board—Compensation—Metropolitan Water Board Stock—Metropolitan Water Act, 1902 (2 Edw. 7, c. 41). s. 2; Sched. IV.—Wills Act 1837 (1 Vict. c. 26), s. 24—Will—Construction.

A testator bequeathed "the interest arising from money invested in (inter alia) the Lambeth Waterworks Co." to a legatee for life and in reversion. Between the dates of his will and the date of the undertaking of the Lambeth Waterworks Co. was acquired by the Metropolitan Water Board under the provisions of the Metropolitan Water Act, 1902, and a sum of Metropolitan Water Board Stock had been issued to the testator as compensation in respect of the ordinary stock

WILL ("Money Invested in")—continued.

which at the date of his will he held in the Lambeth Waterworks Co.:—

Held, that the Metropolitan Water Board Stock did not pass under the bequest.

Decision of Joyce J., [1906] 2 Ch. 480, affirmed. *In re SLATER*. *SLATER v. SLATER* C. A. [1907] W. N. 99; [1907] 1 Ch. 665

Note.

Referred to by Eve J., *In re Jameson*, [1908] 2 Ch. 111. See WILL—Specific Legacy. 1.

"Monies."

1. — "Monies owing to me at the time of my decease"—Gift of sums on deposit at banks—Will—Construction.

Moneys on deposit at a testator's bank, whether notice of withdrawal is or is not required in respect of the same, will pass under a bequest of "monies owing to me at the time of my decease." *In re DERBYSHIRE*. *WEBB v. DERBYSHIRE* - *Buckley J.* [1906] 1 Ch. 135

Mortgages.

See also under MORTGAGE.

1. — Land subject to incumbrances—Option to purchase—Interest of donee of right of pre-emption—Devisee—Person claiming through the deceased person—Vendor and purchaser—Real Estate Charges Act, 1854 (Locke King's Act), 17 & 18 Vict. c. 113, s. 1.

The testator devised and bequeathed his residuary real and personal estate to trustees upon trust for sale and conversion, and directed that they should allow his son the option of purchasing two houses forming part of his real estate for 450*l.* The two houses were subject to a mortgage for 300*l.* The son gave notice to the trustees of his intention to exercise the option, and took out a summons to determine whether the option gave him the right to a conveyance free from incumbrances:—

Held (following *Given v. Massey*, (1892) 31 L. R. Ir. 126), that the son was not an heir or devisee, and therefore s. 1 of the Real Estate Charges Act, 1854 (Locke King's Act), did not apply, and he was entitled to have the property conveyed to him free from the mortgage. *In re WILSON*. *WILSON v. WILSON* - *Warrington J.* [1908] W. N. 106; [1908] 1 Ch. 839

Mutual Wills.

— Fresh will made by party who predeceases the other—Notice on death—No relief to survivor.

See PROBATE—Mutual Wills. 1.

— Roman-Dutch law—Mutual will—Community of property between spouses—Children's rights of inheritance.

See TRANSVAAL. 5.

Name.

1. — Latent ambiguity—Name—Misdescription—Extrinsic evidence—Instructions—Admissibility—Will—Construction.

A testator appointed one Dr. Alfred Ofner one of his executors, and gave him a legacy of 200*l.*, and, among other legacies to various nieces and

WILL (Name)—continued.

a nephew nominatim, he gave "to my grand-nephew Robert Ofner" 100l., and to another "grandnephew Curt Ofner" 100l. The testator had no grandnephew or other relative of the name of "Robert" Ofner, but he had four grandnephews, Alfred Ofner and Curt Ofner, who were correctly so described in the will, Richard Ofner, a brother of Alfred Ofner, and Botho Ofner. It was proposed to put in evidence a memorandum in the testator's handwriting that had been given by him to his solicitors as instructions for his will, in which the following words occurred: "to my grandnephew Dr. Alfred Ofner 200l. . . . to his brother Robert Ofner 100l."—

Held (reversing the decision of Swinfen Eady J.), that this document was admissible, not as evidence of intention, but to find out who the "grandnephew" was whom the testator had wrongfully described by the name "Robert," and if that were done it was clear that the brother of Dr. Alfred Ofner was intended to be the legatee, and that "Robert" was a mistake for "Richard."

The fact that this document also happened to be instructions for the will did not make it ipso facto any the less admissible, not as instructions, but as a contemporaneous and serious document explanatory of the meaning the testator had wrongly attributed to the name "Robert" when describing this legatee. *In re OFNER. SAMUEL v. OFNER* - C. A. [1908] W. N. 208; [1909] 1 Ch. 60

Name and Arms Clause.**1. — "Lawfully assume"—Impossible condition—Condition subsequent—Construction of will.**

A testator, who had assumed the name and arms of C. without any colour of right thereto, devised an estate to persons in succession, and directed that every person who should become entitled, and who should not bear "his" (the testator's) surname of C. and "his" coat of arms, should, within twelve months after so becoming entitled, "lawfully assume" such name and arms, and that in default of compliance the estate should go over. The devisee first in succession who was a son of the testator, took the name of C., but did not, within the time limited, assume the arms of C., because it appeared that it was impossible for him, under the circumstances, to obtain a grant of the arms of C. from the College of Arms or by Royal licence:—

Held, that the testator, using the words "lawfully assume," must have meant something more than a mere voluntary assumption; that in order to comply with the condition it was necessary for the devisee to obtain a proper grant of arms from the College of Arms or by Royal licence; and that as this could not be done, the condition was impossible, and, being a condition subsequent, was not binding on the devisee. *In re CROXON. CROXON v. FERRERS*

Kekewich J. [1904] W. N. 17; [1904] 1 Ch. 252

2. — Name clause—Preceding life estate—Condition precedent or subsequent—Non-performance of condition—Remainder in fee—Forfeiture—Vesting—Devise of real estate—Lunacy and death of devisee.**WILL (Name and Arms Clause)—continued.**

ance of condition—Remainder in fee—Forfeiture—Vesting—Devise of real estate—Lunacy and death of devisee.

A testator, who died in 1853, devised his real estate upon trust for his daughter for life, and after her death for her children; and if she should have no child he devised his real estate to N. in fee, on condition that in case the testator's wife should be then living she should have the use for the then remainder of her life of the testator's residence, and on further condition that N. should "take and use" the testator's name only, but subject to the payment of certain legacies which the testator bequeathed only if his daughter should have no child, and should be payable at her death exclusively out of the estates devised to N.

The testator's daughter and N. both survived the testator, but his wife was dead. The daughter, who was now in her fifty-ninth year was married, but had had no children. N. died in her lifetime intestate, without having taken the testator's name:—

Held, upon the construction of the will, that the condition requiring N. to take and use the testator's name was a condition subsequent, that is, a condition to operate only upon N. becoming entitled to the possession of the estate by the death of the daughter without children, and not before; and that as he had been prevented from performing it by the act of God, the estate would, on the death of the daughter without children, vest absolutely in his legal personal representative freed from the condition.

Decision of Joyce J. [1902] W. N. 82; [1902] 2 Ch. 198, reversed.

If a condition attached to a devise is capable of being construed either as a condition precedent or as a condition subsequent, the Court will prefer the latter construction. *In re GREENWOOD. GOODHART v. WOODHEAD*

C. A. [1903] W. N. 12; [1903] 1 Ch. 749

3. — Use of surname — Title — Use on all occasions.

The testatrix in this action, who died in 1885, devised real estate to her father for life, with remainder to her sister for life, with remainder to her sons successively in tail, with remainder to her daughters successively in tail, with remainders over. The will contained a provision that every person who should under the will become entitled to possession of the settled estate, should within one year after he or she should so become entitled in possession "take upon himself or herself, and use in all deeds and writings to which he or she shall be a party, or which he or she shall sign, and upon all other occasions, the surnames of Erle and Drax, either alone or in addition to and after his or her original surname, and also take, use and bear the arms of Erle and Drax, either alone or quartered with his or her original arms," and should within the time aforesaid apply for a licence from the Crown to take, use, and bear the surnames and arms aforesaid. And the will contained a further direction that if any such person should refuse or neglect to take or use such surnames and arms as aforesaid within the time hereinbefore mentioned, then from and after the expiration of

WILL (Name and Arms Clause)—continued.

such time the limitations in his or her favour should absolutely cease and determine.

The testatrix's father died in 1887, her sister died in 1905, having had only one child, a daughter, who was the widow of Baron Dunsany, and whose name was Ernie Elizabeth Louisa Maria Grosvenor Plunkett Ernie, Baroness Dunsany. Within the prescribed year she obtained a royal licence to use the surnames of Erle and Drax after those of Plunkett and Ernie, and to bear the arms of Erle and Drax. Her eldest son was married, and she was therefore properly described as Ernie, Lady Dunsany. This summons was taken out by Lady Dunsany for the determination of the questions whether, having regard to the words of the forfeiture clause, her non-compliance after Mar. 19, 1906, with the provisions of the name and arms clause would work a forfeiture, and whether her signing herself in ordinary correspondence as Ernie Dunsany, or using visiting cards inscribed "Ernie, Lady Dunsany" only, would be a non-compliance with the clause. The deft. was the person entitled in remainder after the estate tail of Lady Dunsany.

Swinfen Eady J. said that with regard to the first point the words "take and use" within one year must be construed to mean take within that limit of time and use afterwards. The first question must therefore be answered in the affirmative. As to the second question, he was of opinion that the word "writings," in the direction to use the surname in all "deeds and writings" must be construed to mean legal instruments or documents of a formal character not being deeds, and the following words "on all other occasions" must mean on occasions on which it was right and proper to use a surname. It was not necessary or usual for a peer or peeress to use a surname as well as his or her title in ordinary correspondence or on visiting cards, and the second question must be answered in the negative. *In re MISS DRAX'S WILL. BARONESS DUNSANY v. SAWBRIDGE*

Swinfen Eady J. [1906] W. N. 53

Nephews and Nieces.

— Futurity, Words of—Will—Construction.

See WILL—Futurity, Words of. 2-4.

— Next of kin—Sister of the half-blood.

See WILL—Next of Kin. 3.

— Testator illegitimate—Bequest to "all my nephews and nieces."

See WILL—Illegitimacy. 9.

Next of Kin.

See also under NEXT OF KIN.

1. — *Annuity—Gift in remainder—"My then next of kin according to the statutes" of distribution—Artificial class—Time of ascertainment—Will—Construction.*

Testator, by his will dated in 1887, gave all his property to trustees upon trust to pay to his brother, D. McFee, during his life, an annuity and to accumulate the remainder of the income of his estate during the life of his said brother, and upon his death to hold his estate and the accumulations of income thereof in trust for

WILL (Next of Kin)—continued.

such person or persons as should, upon the death of his said brother, be "my then next of kin according to the statutes for the distribution of the estates of intestates."

The testator died in 1887, leaving his brother, D. McFee, his heir-at-law and sole next of kin. D. McFee died on Mar. 24, 1910, and the question now arose, in an action originally commenced by D. McFee and revived by his executors, whether the next of kin of the testator ought to be ascertained as at the date of his death or at the date of the death of D. McFee:—

Held, following *Sturge v. Great Western Ry. Co.*, (1881) 19 Ch. D. 444, that, according to the true construction of the will, the person or persons entitled to the residuary estate after the death of D. McFee were such person or persons as would have been the next of kin of the testator according to the statutes for the distribution of the estates of intestates if he had died immediately after the death of D. McFee. *In re MCFEE. MCFEE v. TONER* **Joyce J. [1910]**

W. N. 186

— Class—"Next of kin whoever they may be."

See WILL—Class. 13.

— Class — Statute of Distributions — Joint tenancy or tenancy in common.

See WILL—Class. 10.

— Next of kin according to the statute—Time for ascertaining class.

See WILL—Class. 12.

2. — *Next of kin, when to be ascertained—Administration—Legacy to child—Child dying intestate in lifetime of testator leaving issue—Wills Act, 1837 (7 Will. 4 § 1 Vict. c. 26), s. 33.*

R. Allen, by his will dated Dec. 31, 1871, devised three freehold houses upon trust for his wife, Sarah, for life, and after her death upon trust for sale and to divide the net proceeds (in the events which happened) equally between his two sons, Richard and George, and his daughter, Harriet Iffinger, the wife of F. Iffinger, and gave the residue of his estate to his wife Sarah. The testator died in 1902, and his wife Sarah died in 1903. The surviving trustee of the will sold the freeholds in 1904 and paid into Court 279*l.* 7*s.* 9*d.*, being the sum that represented the third share of Harriet Iffinger, who in 1870 was living in America and had not since been heard of for many years. On a summons for payment out of the fund in Court by the legal personal representative of Sarah Allen, the residuary legatee, it appeared that Harriet Iffinger died in 1876, intestate, leaving her husband and two children her surviving, that her husband died in 1899, and that her two children were still living. The question was whether, having regard to s. 33 of the Wills Act, 1837, the next of kin of Harriet Iffinger were to be ascertained at the date of her actual death in 1876, or at the date of her notional death, *i.e.*, immediately after the death of her father in 1902.

Held, that the decision in *In the Goods of Councell*, (1871) L. R. 2 P. & D. 314, covered the point. Having regard to the language of s. 33 of the Wills Act, 1837, Harriet Iffinger must be deemed to have died immediately after the death

WILL (Next of Kin)—continued.

of the testator for the purposes of the bequest, and her next of kin must be ascertained at that date. Her two children were her next of kin at that date and were the proper persons to take out representation to her estate. *In re ALLEN'S TRUSTS* - **Neville J. [1909] W. N. 181**

— Next of kin—Will, Construction of—Destination of the subject of void gifts—Residuary legatees—Res judicata.
See STRAITS SETTLEMENTS. 3.

— Residue, Bequest of “Equally between” statutory next of kin—Per stirpes or per capita.
See WILL—Residue. 1.

3. — Sister of the half-blood—Nephews and nieces—Domicil—Foreign law—Will—Construction.

A bequest of personalty in the will of a domiciled Englishman to the “next of kin” of a foreigner must be construed to mean the nearest in blood according to English law, subject to any question of status should it arise.

Accordingly, where a domiciled Englishman bequeathed a legacy to a German, with a direction that in the event of the death of the legatee in his lifetime, which happened, the legacy should not lapse, but be divided among the “next of kin” of the legatee:—

Held, that the next of kin must be ascertained according to English law, and that a sister of the half-blood was therefore entitled, to the exclusion of nephews and nieces who by German law would have had priority. *In re FERGUSSON'S WILL* - **Byrne J. [1902] W. N. 25; [1902] 1 Ch. 483**

Nomination.

1. — Nomination paper—Industrial Societies Act, 1893 (56 & 57 Vict. c. 39), s. 25, sub-ss. 1, 2.

A nomination paper, executed by the nominator under s. 25 of the Industrial Societies Act, 1893, in the presence of two witnesses, who signed it in his presence, invalid as a nomination by reason of the amount it purported to dispose of being in fact over 1000. :—

Held, to be testamentary and admitted as a will. *IN THE GOODS OF BAXTER*

Gorell Barnes J. [1903] P. 12

Partnership.

— Will—Deceased partner—Specific devise of partnership realty—Solvent partnership.

See PARTNERSHIP. 6.

Perpetuity.

See also under PERPETUITY.

— Absolute gift—Gift over on a compound event—Remoteness—Settlement—Intestacy.

See WILL—Absolute Gift. 3.

1. — Corps of Commissionaires, Bequest to committee of—Voluntary Association—Charity.

Bequest “to the committee for the time being of the Corps of Commissionaires in London to aid in the purchase of their barracks, or in any other way beneficial to that corps.”

WILL (Perpetuity)—continued.

The corps was founded shortly after the Crimean War in order to find employment for discharged and disabled soldiers and sailors, and was entirely self-supporting. As the corps increased, buildings were from time to time acquired for the purpose of providing quarters for the men and for carrying on the business of the corps. It became necessary to employ a staff, and an endowment fund was started being designed for the payment of officers, staff, and such other objects connected with the institution as might at the discretion of the committee require assistance. The management and property of the corps were vested in a board of governors composed of two permanent trustees, an administrative board of eighteen officers, and an executive committee of seven :—

Held, that, if and so far as the objects of the institution were charitable, the gift was good; and if and so far as they were not charitable, still it was a good gift, and did not tend to create a perpetuity.

In re Dutton, (1878) 4 Ex. D. 54; *In re Amos*, [1891] 3 Ch. 159; *In re Clark's Trust*, (1875) 1 Ch. D. 497; *Thomson v. Shakespear*, (1860) 1 D. P. & J. 399; and *Carne v. Long*, (1860) 2 D. P. & J. 75, distinguished.

Cocks v. Manners, (1871) L. R. 12 Eq., 574; *Morrow v. McConville*, (1883) 11 L. R. Ir. 236; *In re Wilkinson's Trusts*, (1887) 19 L. R. Ir. 531; and *Bradshaw v. Jackman*, (1887) 21 L. R. Ir. 12, discussed, and the principle laid down in those cases followed. *In re CLARKE. CLARKE v. CLARKE*

Byrne J. [1901] W. N. 99; [1901] 2 Ch. 110

2. — Minority of tenant in tail—Entry by trustees—Surplus rents to be expended on other estates—Perpetuities—Destructibility—Legal estate—Will—Construction.

The testator devised to trustees four estates upon trusts under which the present Earl of Stamford, an infant, was tenant in tail of the C. estate, and the rents and profits of the L. estate were to be applied in discharging incumbrances on the other three estates. The will contained a proviso that if any person who, if this proviso had not been inserted, would for the time being be entitled to the possession or the receipt of the rents and profits of the C. estate as tenant for life or tenant in tail should be under the age of twenty-one years, then and in such case and as often as the same should happen the trustees were to enter into the possession or the receipt of the rents and profits of the estate, and during the minority of such person keep up the house and manage the property, with power (inter alia) to hold manorial courts and accept surrender of leases, and should maintain the infant, and apply the surplus rents and profits in the same way as the rents of the L. estate. Questions arose as to the validity of this clause, and the trustees took out the present summons.

Warrington J. said the question was whether the provision in the will that during the minority of any tenant for life or tenant in tail the trustees were to enter into possession of the rents and profits of the Cheshire estate was void as infringing the rule against perpetuities by

WILL (Perpetuity)—continued.

reason of the fact that it was not limited to the minority of tenants in tail by purchase. The point was covered by *Browne v. Stoughton*, (1846) 14 Sim. 369, and *Turpin v. Newcome*, (1856) 3 K. & J. 16, which had never been overruled and were binding on a judge of first instance unless they were manifestly contrary to some well-known rule of law; and according to those decisions the clause was void. The criticisms of text-book writers did not affect the law as thus laid down or make the cases less binding. On the construction of the will it was clear that the trustees had the legal estate. That estate was anterior to that of tenants in tail, and therefore could not be barred by the latter. It would last during the whole of the limitations contained in the will, and would take an active form when any tenant in tail who but for that estate would be entitled to possession was an infant. The trustees' estate took precedence of all the others and was not destructible by the tenants in tail. In both the cases cited the legal estate was similarly in trustees, and the fact that the clause in question in them was a direction to accumulate was no ground of distinction, for what was declared to be void was the whole trust. Here there was vested in the trustees an estate limited to continue for an indefinite time, taking precedence of all the estates limited by the will and not capable of being destroyed by the tenant in tail, and therefore not protected by the rule that destructible estates were not obnoxious to the rule against perpetuities. Their estate was not in defeasance of, but antecedent to the estates for life and in tail. The trusts of the rents received by the trustees were not for the benefit of the owner and could not be put an end to by him, so the clause was not saved by the decisions in cases referring to payment of debts. The whole provision, creating as it did an estate of unlimited duration, was void, but the subsequent limitations of the settled estates under the will were not affected. *In re EARL OF STAMFORD AND WARRINGTON. PAYNE v. GREY*

Warrington J. [1910] W. N. 114; [1910] 2 Ch. 83; [1910] W. N. 277

—Uncertainty—Will—Construction.
See under WILL—Uncertainty.

Plate.

(“Plate and Plated Articles.”)

See also under PLATE.

1. — “Plate and plated articles” — “Black Jacks” — Articles made of leather and mounted with silver rims — Will — Construction.

Testator by his will gave all his “plate and plated articles” to the plt. The question raised upon this summons was whether four silver-mounted mugs known as “Black Jacks” passed under the above-mentioned bequest. The “Black Jacks” in question were estimated to be of the value of from 1000*l.* to 1500*l.* They were very old drinking vessels made of leather and having their rims mounted with a narrow band of silver. The two larger of them were about 11 inches, and the two smaller about 7 inches in height.

WILL (Plate)—continued.

Evidence, consisting of the opinion of experts, as to whether the “Black Jacks” could be properly described and classified as either plate or plated articles was tendered on either side, but it was entirely conflicting.

Joyce J. said that the question was not one of law, but of the English language. According to his understanding plated articles did not pass under a bequest of plate, and to his mind there was a broad distinction between articles of plate and such as were merely mounted with silver or other precious metal. Articles which were merely mounted with silver could not be classified as plate or plated articles. He held therefore that the four “Black Jacks” in question did not pass under the bequest.

In re
LEWIS. PROTHERO v. LEWIS Joyce J.
[1910] W. N. 6

Postponement.

—Trust for sale of land—Power to postpone—Settlement of proceeds—Share vested in possession.
See WILL—Sale. 1.

Power of Appointment.

See also under POWER OF APPOINTMENT.

—Execution—“Writing or writings”—“Appointment made by will”—Validity.
See POWER OF APPOINTMENT. 11.

Power of Disposition.

1. — Gift to wife for life—Power to dispose of estate “in accordance with my wishes verbally expressed by me to her”—Validity—Parol evidence—Admissibility.

Testator by his will gave to his wife, whom he appointed to be his sole executrix, a life interest in the whole of his real and personal estate. His will then proceeded as follows: “I desire and empower her by her will or in her lifetime to dispose of my estate in accordance with my wishes verbally expressed by me to her.”

Testator died in 1902, having before the execution of his will verbally expressed to his wife his wishes with regard to the final disposition of his estate; and she had made a memorandum of his wishes and promised to give effect to them.

The question was whether the power of disposition given to the widow by the will was valid; and the question arose whether parol evidence was admissible to shew what the testator's verbally expressed wishes were:—

Held, that parol evidence was not admissible to shew what the testator's wishes, expressed prior to the execution of his will, were. To define or supply by parol evidence that which on the face of the will was left indefinite or unexpressed would be to make a material addition to the written will. In support of the validity of the power the decision *In re Fleetwood*, (1880) 15 Ch. D. 594, was relied upon; and that case had recently been followed, somewhat reluctantly, by Farwell J. in *In re Invertable*, [1902] 1 Ch. 214, which, however, was under appeal. But this case materially differed from *In re Fleetwood*. It was an attempt to create a power, and not the

WILL (Power of Disposition)—continued.

case of a definite trust for particular individuals attaching upon a gift of the subject-matter to a named legatee or devisee. To hold that this power was valid would be going beyond *In re Fleetwood*, and introducing an innovation in the law relating to testamentary instruments:

[*In re Huxtable*, [1902] 1 Ch. 214, on appeal C. A. [1902] 2 Ch. 793. See CHARITY. 6.]

Held, therefore, that a clause purporting to create the power of disposition in question was void for uncertainty. *In re HETLEY. HETLEY v. HETLEY* — **Joyce J. [1902] W. N. 154; [1902] 2 Ch. 866**

— Power of appointment.

See under POWER OF APPOINTMENT.

Power of Sale.

— Executor—Charge of debts and legacies—Power to sell real estate.

See EXECUTOR—Powers. 1.

1. — *Power given to "my trustees"—Power exercisable by survivor—Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), s. 5—Reversionary interest in land of woman married before the Act—Conversion into money before coming into possession—Accrual of title—Will—Construction.*

In a will executed before any of the Acts giving statutory power to trustees, when a power of sale is given to trustees by name or under the description "my trustees," to whom the legal estate is devised, the power can be exercised by the surviving trustees or the sole surviving trustee. The contrary rule only applied to a bare power.

If a woman married before the commencement of the Married Women's Property Act, 1882, has before the commencement of the Act acquired a title in reversion to land, and the land is converted into money after the commencement of the Act but before the property falls into possession, the conversion gives no new title to the married woman, and the property is not made her separate estate by s. 5, sub-s. 1, of the Act. *In re BACON. TOOVEY v. TURNER Swinfen Eady J. [1907] W. N. 44; [1907] W. N. 475*

Precatory Trust.

1. — *Absolute gift—Codicil directing use of legacy for charitable purposes—Precatory trust—"I wish"—Will—Construction.*

A testatrix by her will gave to R. a legacy of 2300*l.* By a codicil dated the same day as the will she declared as follows: "I wish R. to use 1000*l.*, part of the legacy given to him by my above will, for the endowment in his own name of a cot in the I. Hospital, and to retain the balance of the said legacy for his own use and benefit." By a second codicil in 1905 she declared: "I wish R., after endowing a cot as provided by the first codicil, to use the balance of the legacy given to him by my will for such charitable purposes as he shall in his absolute discretion think fit." R. disclaimed the legacy:—

Held, that a trust was created for the

WILL (Precatory Trust)—continued.

charitable purposes mentioned in the codicils.

In re BURLEY. ALEXANDER v. BURLEY

Joyce J. [1909] W. N. 253; [1910] 1 Ch. 215

2. — *Absolute gift—Gift on condition—Precatory trust for charity—"I specially desire"—Will—Construction.*

Testator gave to his brother W. his share in a leasehold house "and to my sisters A. and L. equally the rest of my stocks and shares, subject to a legacy, duty free, provided by the above three legatees of 1000*l.* to my cousin E. R. C., the said E. R. C. to be, with my brother W., my co-executor and my trustee for my sisters A. and L." Then, after making a further specific bequest, the will concluded as follows: "I specially desire that the sums herewith bequeathed shall, with the exception of the 1000*l.* to E. R. C., be specifically left by the legatees to such charitable institutions of a distinct and undoubted Protestant nature as my sisters may select, and in such proportions as they may determine":—

Held, that the sisters took their legacies absolutely. *In re CONOLLY. CONOLLY v. CONOLLY* — **Joyce J. [1909] W. N. 259; [1910] 1 Ch. 219**

3. — *Absolute gift "in confidence"—Executory gift over in default of disposition by will of absolute donee—Absolute gift subject to executory gift over—Construction of will.*

A testator gave, devised and bequeathed to his wife "the whole of my real and personal estate and property absolutely in full confidence that she will make such use of it as I should have made myself, and that at her death she will devise it to such one or more of my nieces as she may think fit, and in default of any disposition by her thereof by her will or testament I hereby direct that all my estate and property acquired by her under this my will shall at her death be equally divided among the surviving said nieces":—

Held (by the Earl of Halsbury L.C. and Lords Macnaghten, Davey, James, and Robertson, Lord Lindsay dissenting), that upon the true construction of the will there was an absolute gift of the testator's real and personal estate to his wife subject to an executory gift of the same at her death to such of his nieces as should survive her, equally if more than one, so far as his wife should not dispose by will of the estate in favour of such surviving nieces, or any one or more of them.

The decisions of Kekewich J. and the C. A., *In re Hanbury, Hanbury v. Fisher*, [1904] W. N. 27; [1904] 1 Ch. 415, reversed. *COMISKEY v. BOWRING-HANBURY* — **H. L. (E.) [1905] W. N. 24; [1905] A. C. 84**

4. — *"I desire"—Will—Construction.*

A testatrix gave all her property equally amongst her two daughters "as tenants in common for their own absolute use and benefit," and appointed them her executrices. She then added, "My desire is that each of my said two daughters shall during the life-

WILL (Precatory Trust)—continued.

time of my son pay to him one-third of the respective incomes of my said two daughters accruing from the moneys and investments under this my will":—

Held, that no trust was created in favour of the son.

The principles stated in *In re Williams*, [1897] 2 Ch. 12, 18, 29, upon which equitable obligations by way of trusts or conditions are or are not to be inferred from the language of a will, appld. *In re OLDFIELD*. *OLDFIELD v. OLDFIELD* C. A. [1904] W. N. 53; [1904] 1 Ch. 549

Probate.

See under PROBATE.

Probate, Effect of.

1. — *Codicil consisting of list of names and pecuniary amounts—Gift of legacies—Effect of probate.*

A document containing no words of gift, but giving a list of the names of eight persons, and after each name stating a sum of money, was admitted to probate as a codicil:—

Held, that (the Court being bound to assume that all documents admitted to probate are testamentary documents, and it being its duty to construe them in order to ascertain the testator's intention as to the disposition of his property and within the limits allowed by law to give effect to that intention) the codicil must be construed as giving to each person named a legacy of the amount set after his name.

In re Campsill, (1910) 128 L. T. Jour. 548, not followed. *In re BARRANCE*. *BARRANCE v. ELLIS* Parker J. [1910] 2 Ch. 419

Ratification.

— Will torn up in testator's presence without his authority—Subsequent ratification inadmissible — Words missing from will when pieced together—Oral evidence.

See PROBATE—Lunacy. 2.

"Ready Money."

1. — *"Pecuniary investments" — Banker's deposit note—Will—Construction.*

Money on deposit with a testator's bankers, and subject to more than twenty-four hours notice of withdrawal, will not pass under a bequest of "ready money," nor, in the absence of special indication, under a bequest of "pecuniary investments." *In re PRICE*. *PRICE v. NEWTON* Farwell J. [1905] W. N. 74; [1905] 2 Ch. 55

Real Estate.

1. — *General devise of real estate—No real estate—Testatrix entitled to proceeds of sale of realty subject to trust for sale—Intention—Extrinsic evidence—Admissibility—Construction of will.*

A testatrix devised all her real estate to trustees upon trust to pay the net rent and

WILL (Real Estate)—continued.

profits (subject to the payment thereof of a life annuity of 200*l.* to her husband) to her sister during her life, and after the sister's death upon trust as to the said real estate, and the income thereof for the sister's children, and the testatrix conferred upon her trustees power to demise and other powers incident to the management of real estate. The testatrix was not beneficially entitled to any real estate either at the date of her will or at her death, but at both those dates she was entitled, subject to certain subsisting annuities, to a moiety of the income and capital of the proceeds of sale of certain freehold property devised by her father's will upon trust for sale and vested in her as trustee of his will. There had been no election by the beneficiaries to take the freehold property unconverted:—

Held, that the devise in the testatrix's will passed all the beneficiary interest to which she was entitled in the real estate held upon trust for sale under her father's will.

The admissibility of extrinsic evidence in aid of the interpretation of wills, discussed. *In re GLASSINGTON*. *GLASSINGTON v. FOLLETT*

Joyce J. [1906] W. N. 128; [1906] 2 Ch. 305

— Power to charge limited sum on real estate — General gift of personalty—Effect as to exercising power to charge realty.

See WILL—Charges. 3.

2. — *Settled estate—Tenant for life and remainderman—Will—Real estate—Trust for conversion—Mining lease—Payments in nature of royalties—Capital or income.*

By his will a testator gave his residuary real and personal estate to a trustee upon trust for conversion, and to invest and pay the proceeds to his wife for life, and after her death to his children. There was no power given by the will to postpone conversion, nor any express gift of the income before conversion. Part of the testator's real estate consisted of land comprised in a mining lease which empowered the lessee to dig chalk on certain portions of the land demised, and to take additional chalk land, provided that he paid, by way of consideration for the purchase of the same, at the rate of 900*l.* per acre. The estate was being administered by the Court, new trustees had been appointed, and a sale of the real estate directed, but no sale had yet taken place:—

Held, that the moneys received and to be received by the trustees of the will from the lessee in respect of the purchase of the additional chalk land must be treated by them as income and not capital.

In re Searle, [1900] 2 Ch. 829, followed. *In re EARL OF DARNLEY*. *CLIFTON v. DARNLEY* Kekewich J. [1906] W. N. 215; [1907] 1 Ch. 159

Note.

Followed by Warrington J., *In re Oliver*, [1908] 2 Ch. 74. See *Settled Land—Interim Rents*. 1.

WILL (Real Estate)—continued.

- Specific disposition of entirety at date of will—Subsequent acquisition of further real estate—Intestacy.
See WILL—"Residuary Legatee." 1.

Real or Personal Estate.

1. — *Trusts of real estate—Power of sale—Partial failure of trusts—Intestacy—Conversion after death of heir-at-law—Real or personal estate.*

A testator devised real estate upon trust for A. for life with a gift over upon trusts that failed in A.'s lifetime, so that the equitable remainder in fee became vested in the testator's heir-at-law; and the testator gave his trustees an absolute power of sale over the real estate. The heir-at-law died intestate before the real estate was converted by the exercise of the power:—

Held, that the real estate was not converted until the power of sale was exercised, and that the person entitled to the real estate of the heir at the date of the sale, and not his legal personal representative, was entitled to the proceeds of sale. *In re DYSO. CHALLINOR v. SYKES* Neville J. [1910] W. N. 80; [1910] 1 Ch. 750

- Administration — Annuities and legacies charged on property — Continuing liability of residue—Vendor and purchaser—Order discharging property.
See WILL—Vendor and Purchaser. 1.

- Annuity—Contingent liability—Capital and income—Apportionment—Past and future instalments.
See SETTLED LAND — Capital or Income. 2.

Realty.

- Gift after last survivor of tenant for life to a class, necessarily ascertainable within due limits, as tenants for life—Estate tail to last survivor of class.
See WILL—Remoteness. 4.

- "What is left"—Life estate by implication—Intestacy.
See WILL—Intestacy. 2.

Remoteness.

See also under PERPETUITY.
REMOTENESS.
WILL—Perpetuity.

- Accumulations.
See under ACCUMULATIONS.
- Charity, Gift to—Condition precedent—Perpetuity—Postponement of enjoyment—Will—Construction.
See CHARITY. 11.

1. — *Contingent remainder or executory devise—Construction of will.*

A testator devised freehold estates to uses in strict settlement.

By a codicil the testator directed and declared that no devise of any of his real

WILL (Remoteness)—continued.

estates devised under or by virtue of his will should have a vested interest therein or in any part thereof, or be entitled to the possession of the same or any part thereof until the attainment of the age of twenty-four years, anything contained in his will or any law or usage to the contrary notwithstanding:—

Held, that the effect of the codicil was to make the limitations of the will executory devises, and consequently that they were void for remoteness and there was an intestacy.

Decision of Farwell J. affirmed.

In re Lechmere and Lloyd, (1881) 18 Ch. D. 524, *Miles v. Jarvis*, (1883) 21 Ch. D. 633, and *Dean v. Dean* [1891] 3 Ch. 150, approved and followed.

Russel v. Buchanan, (1836) 7 Sim. 628; 2 Cr. & M. 561; 40 R. R. 193, distinguished. *In re WRIGHTSON. BATTIE-WRIGHTSON v. THOMAS* - C. A. [1904] W. N. 116; [1904] 2 Ch. 95

Note.

Examined by Parker J., *White v. Summers*, [1908] 2 Ch. 256. See Will—Contingent Remainder. 1.

2. — *Invalid trust for sale of realty—Validity of gift—Conversion—Share of proceeds, whether real or personal estate.*

A testator who died in 1854 devised his real estate, in certain events, upon trust for sale, and gave the proceeds among classes of persons who were all ascertainable without infringing the rule against perpetuity. The trust for sale was admitted to be bad as not being limited to take effect within the prescribed period; the will contained no direct gift of the income of the property until sale in favour of the persons entitled to the proceeds of sale if the trust for sale had been good:—

Held, affirming the decision of Byrne J., that, as the persons who were intended by the testator to take the beneficial interest in his property were persons who could be ascertained within the rule against perpetuities, the gift to them was good; that though the trust for sale was bad, it was mere machinery for the purpose of division, and could be disregarded, and that the beneficiaries took the property as real estate.

Dictum of Stirling J. in *Goodier v. Edmunds*, [1893] 3 Ch. 455, adopted.

In re Davenport, [1893] 3 Ch. 421, approved. *In re APPLEBY. WALKER v. LEVER. WALKER v. NISBET* - C. A. [1903] W. N. 45; [1903] 1 Ch. 565

Note.

Followed by C. A., *Slade v. Chaine*, [1908] 1 Ch. 522. See Trustee—Liability. 1.

3. — *Maintenance—Discretionary trust for maintenance—Validity—Remoteness—Will—Construction.*

A testator by his will devised and bequeathed certain real and personal estate to trustees upon trust to apply the income thereof

WILL (Remoteness)—continued.

in such proportions and generally in such manner as to them in their absolute discretion should seem best for the support of his "son W. and his wife and children, or any of them," or to accumulate the same or any part thereof at their like discretion for the benefit of the children of his son who should become entitled to the corpus of the property under the trust thereafter contained; and subject to such discretionary trust he directed his trustees to pay the income to his son during his life and after his decease to his widow during her life or widowhood, and after the death of the survivor to stand possessed of as well the corpus as the income upon trust for the children of his son who should attain twenty-one:—

Held, that the discretionary trust for maintenance was limited to the life of W., but if not so limited, was void for remoteness.

Head-note to *Gooding v. Read*, (1853) 4 D. M. & G. 510, corrected.

In re Wise, [1896] 1 Ch. 281, and *In re Watson*, [1892] W. N. 192, not followed. *In re BLEW*. *BLEW v. GUNNER - Warrington J.* [1906] W. N. 47; [1906] 1 Ch. 624

—Officers' mess—Gift for old officers—Gift to officers' regimental mess to maintain a library.

See CHARITY. 41.

4. — *Realty — Gift after last survivor of tenants for life to a class, necessarily ascertainable within due limits, as tenants for life — Estate tail to last survivor of class — Legal contingent remainder — Remoteness — Rule against perpetuities — Construction of will.*

The rule against perpetuities applies to legal contingent remainders as well as to equitable limitations.

A testatrix devised her real estate to trustees and their heirs upon trust to receive rents and profits and divide the same as soon as they conveniently could after Lady Day and Michaelmas Day in each year into three equal parts, and pay the same as therein mentioned to A., B. and C., and the survivors and survivor of them during their lives and the life of the survivor; and, after the decease of such survivor, upon trust to pay and divide the said rents and profits, as soon as conveniently could be after the said days thereinbefore appointed, equally amongst all such of the children, born in her lifetime or within twenty-one years of her death, of the said A., B., and C. as should be living on the Lady Day or Michaelmas Day preceding such payment and division; and after the death of all such children, except one, the testatrix devised the said real estate to such surviving child in tail, with remainder over. C. survived A. and B. and died leaving no issue. B. also left no issue; but A. left children who were born within due limits and who survived C.:—

Held, that the estate tail limited to the survivor of the children of A., whether regarded as an equitable limitation or as a legal contingent remainder, infringed the rule

WILL (Remoteness)—continued.

against perpetuities and was void for remoteness. *In re ASHFORTH*. *SILBEY v. ASHFORTH* Farwell J. [1905] W. N. 52; [1905] 1 Ch. 535

5. — *Special power of appointment—Exercise—Rule against perpetuity.*

A testator gave his residuary estate upon trust for his wife for life, and after her decease upon trusts for the benefit of his brother C. T. and his present and future issue as his said wife should appoint. The wife appointed the property in trust for C. T. for life, and after his death for all his children who had attained or should attain the age of twenty-five years if born in her lifetime, or twenty-one years if born after her decease. C. T. had nine children only, all of whom were born in the lifetime of the original testator, and all of whom had attained twenty-five before the death of the appointor:—

Held, that upon the appointment taking effect, it was certain that within the limits of perpetuity, not only would the persons to take be ascertained, but their interests would be vested, and the amount of their shares fixed; and, consequently, that the appointment was valid.

Von Brockdorff v. Malcolm, (1885) 30 Ch. D. 171, approved. *In re THOMPSON*. *THOMPSON v. THOMPSON* Joyce J. [1906] W. N. 121; [1906] 2 Ch. 199

6. — *Unascertained class—Devise of real estate—Trust to apply rents in discharge of mortgages and then sell—Gift of proceeds to unascertained class—Remoteness.*

The testator devised his real estate to his executors and trustees upon trust to receive the rents and income thereof, and after paying all rates, taxes and outgoings thereon, and keeping the same in repair, to pay off all mortgage charges existing on his real estate and held by the Blaydon Co-operative Society or others, and upon further trust after his real estate should be clear of all charges thereon, to sell the same and divide the proceeds thereof equally amongst all his children then living and the issue then living of such of his children as should be then dead in manner therein mentioned. All the residue of his estate the testator gave to his children equally.

The testator died on July 8, 1909, leaving six children, the plts., surviving him. At the time of his death his real estate, which consisted entirely of house property, was subject to two mortgages to the building society above-named, one dated Mar. 18, 1907, to secure payment of 1000*l.* and interest by monthly instalments, and the other, dated April 9, 1903, to secure 225*l.* and interest, also repayable by instalments. The evidence showed that if all instalments were punctually paid and the terms of the mortgages strictly complied with, the larger debt would be fully discharged in 1927, and the smaller in 1921.

Summons by the children against the infant grandchildren for (inter alia) a declaration that the trusts of the devised real estate were

WILL (Remoteness)—continued.

void as infringing the rule against perpetuities, and that the real estate passed under the residuary devise.

Eve J. said that it had been urged on behalf of the defts. that he ought to assume that the testator's legal personal representatives would discharge the obligation by which the testator was bound to pay the instalments regularly, and that on that assumption he ought to hold that the trust for sale must necessarily arise within the period prescribed by law. But he did not think he could so hold. Only the surplus rents, after providing for outgoings and repairs, were applicable for the purpose of discharging the mortgages. It might well be that such surplus rents would suffice to pay all the instalments within the period, but he was not at liberty to speculate about probabilities (see per Davey L.J. in *In re Wood*, [1894] 3 Ch. 381, 387), and unless he was satisfied that the mortgages must be paid off within the prescribed period, he did not see how he could hold the gift to be good. He thought it was too remote. The real estate therefore passed under the gift of residue. *In re BEWICK*. RYLE v. RYLE.

Eve J. [1910] W. N. 261

Rent-Charges.

- "Chattel-real"—Rent-charge issuing out of leaseholds—Administration—Unpaid purchase-money—Intestacy—Next of kin—Construction of will.

See WILL—Chattels Real. 1.

Republication.

- 1. — Codicil—Alterations—Effect on construction of will—General principle.

The republication of a will by a codicil which confirms it with alterations, brings the will down to the date of the codicil, and effects the same disposition of the testator's estate as if he had at that date made a new will containing the same dispositions as the original will, but with the alterations introduced by the codicil, and the will and codicil must be construed together on that footing.

In re Fraser, [1904] 1 Ch. 726, 734, applied. *In re TAYLOR*. DALE v. DALE

Swinfen Eady J. [1909] W. N. 59

- Republication of will by codicil after passing of an Act—Estate duty.

See WILL—Testamentary Expenses. 2.

Repugnancy.

- Gift over on death "without a will and childless."

See WILL—Absolute Gift. 8.

Resettlement.

- 1. — Condition requiring resettlement—Hereditaments—Money held on trust for investment in land—Will—Construction.

G., the testator in this matter, by his will devised all his real estate to his eldest son A. for life, with remainder to his first and other sons successively in tail male, with remainders over in strict settlement: and he

WILL (Resettlement)—continued.

declared that the estate for life thereby given to his son A. was limited upon condition that within one year after the testator's death, or the son's attaining twenty-one, he should enlarge the estate in tail male or in tail to which he was entitled under the will of his late grandfather in all the hereditaments devised by that will or then subject to the limitations thereof, and should resetttle those hereditaments to the uses by the testator's will limited of the hereditaments thereby devised.

The property to which the testator's said son was entitled under his grandfather's will for an estate in tail male included certain moneys which had arisen from the sale of lands and were in the hands of the trustees of that will subject to a trust for reinvestment in land to be settled to the same uses.

Farwell J. said that the word hereditaments naturally included anything which could be inherited. Money subject to a trust for investment could, so long as an estate tail therein remained unbarred, be inherited; and, therefore, on the construction of the words he was of opinion that the son must resetttle the moneys. He was assisted in coming to that conclusion by the judgment of the C. A. in *In re Duke of Cleveland's Settled Estates*, [1893] 3 Ch. 249, and the case could not in his opinion be distinguished from *Basset v. St. Leven*, (1894) 43 W. R. 165. *In re GOSSELIN*. GOSSELIN v. GOSSELIN. Farwell J.

[1905] W. N. 170; [1906] 1 Ch. 120

"Residuary Legatee."

- 1. — Real estate—Specific disposition of entirety at date of will—Subsequent acquisition of further real estate—Intestacy—Extrinsic evidence—Will—Construction.

Testatrix, by her will dated in 1891, after giving a pecuniary legacy "free of income tax," and specifically disposing of certain real estate "free of legacy duty," "bequeathed" a freehold cottage to E. J. H. She then directed that all her household furniture and other chattels should be sold, reserving the right to E. J. H. to retain any special articles she might wish for, "all else to be sold." Then, after disposing of her jewellery, she concluded, "I leave the aforesaid E. J. H. my residuary legatee." All the real estate which she possessed at the date of her will was thereby specifically disposed of. She died in 1903, having in the meantime purchased other real estate:—

Held, that in considering whether the naming of a "residuary legatee" constituted a residuary devise, the fact that at the date of the will the testatrix possessed no real estate other than that specifically and completely disposed of must be borne in mind; but that there was not sufficient context in this will to modify the prima facie meaning of the term "residuary legatee"; and, consequently, that the subsequently acquired real estate did not pass to E. J. H., but was undisposed of by the will. *In re GIBBS*. MARTIN v. HARDING

Joyce J. [1907] W. N. 54; [1907] 1 Ch. 465

WILL—*continued.***Residue.**

- Ademption — Legacy to child — Residue to child and stranger—Advancement to child.
See WILL—Ademption. 3.
- Administration bond—Duration of sureties' liability—Title of beneficiaries to the residue.
See AUSTRALIA. 1.
- Advances—Rate of interest—Hotchpot — Share of residue.
See WILL—Advances. 7.
- Aliquot shares — Class gifts — Forfeiture clause—Mode of division.
See WILL—Class. 14.
- Annuities—Liability of legatee of particular residue.
See WILL—Testamentary Expenses. 2.
- 1. — *Bequest of residue* — “*Equally between*” statutory next of kin—*Per stirpes* or *per capita*.
A testator directed his trustees to stand possessed of one moiety of his residuary estate “for and equally between” the persons “who at my death shall be my next of kin according to the statutes for the distribution of the estates of intestates”:—
Held, that as there was no reference to the statutory mode of distribution as in *Holloway v. Radcliffe*, (1857) 23 Beav. 163, and *Fielden v. Ashworth*, (1875) L. R. 20 Eq. 410, but the statutes were only referred to for the purpose of defining the class, the word “equally” must have its full effect, and the statutory next of kin would take *per capita*.
Observations in *Mattison v. Tanfield*, (1840) 3 Beav. 131, and *Fielden v. Ashworth*, L. R. 20 Eq. 410, followed. *In re RICHARDS. DAVIES v. EDWARDS* — *Swinfen Eady J.* [1910] **W. N. 131**; [1910] 2 Ch. 74.
- Charitable legacy — General or limited charitable purposes—Admissibility of evidence.
See CHARITY. 8.
- Charity, Gift to—Invalid bequest followed by gift of residue to charity.
See CHARITY. 49.
- Charity—Trust—Uncertainty—Will.
See CHARITY. 19.
- Costs—“Otherwise direct”—Gift to class—Inquiry.
See WILL—Class. 6.
- Direction to pay debts out of residue — Colonial death duty.
See WILL—Colonial Duties. 1.
- Double portions—Parent and child—“Advances”—Satisfaction—Ademption.
See WILL—Advances. 1, 2.
- Estate duty — Incidence—Appointment of specified amounts—Residue of fund—Will.
See REVENUE—Estate Duty. 29.
- Estate duty—Incidence—Direction to pay testamentary expenses.
See under WILL—Testamentary Expenses.

WILL (Residue)—*continued.*

- Executors—Gift of residue—Express trust — Advancements to children by testator.
See WILL—Advances. 3.
- Executors—No next of kin—Beneficial title to residue—Residue undisposed of.
See EXECUTOR—Residue. 1.
- 2. — “*Fall into residue*”—Direction that on failure of trusts of any share it should “fall into residue”—Survivorship—Accruer — Intestacy—Construction of will.
A testator gave his residuary estate to trustees in trust for sale and investment of the proceeds, and to hold the investments, as to one-fourth part thereof, in trust for one of his four daughters for life with remainder to her children living at her death, or the issue of any child dying in her lifetime; and as to the other three-fourths upon similar trusts for his other three daughters, their children or issue; and he declared that, if any one or more of his said daughters should die without leaving issue, their share or shares “shall fall into and become part of my residuary estate, and be held and disposed of on the same trusts as are hereinbefore declared thereof”:—
Held, following *In re Palmer*, [1893] 3 Ch. 369, which overruled *Humble v. Shore*, (1847) 7 Hare, 247; 1 H. & M. 550, n., that upon the death of any daughter without issue her share, both original and accrued, went over to the surviving daughters respectively upon the same trusts as their original shares.
In re ALLAN. DOW v. CASSAIGNE
C. A. [1903] **W. N. 2**; [1903] 1 Ch. 276
- Gift for old officers — Remoteness — Perpetuity—Will—Construction.
See CHARITY. 41.
- 3. — *Gift of income to daughter until marriage—Gift over on marriage—Death of daughter unmarried—Indefinite gift of income—Absolute gift—Determinable life interest—Will—Construction.*
A testatrix directed the trustees of her will to pay the income of her residuary estate to her daughter until she should marry and after her marriage to pay to her thereout a legacy of 3000*l.* and divide the balance between all her (the testatrix's) sons surviving her:—
Held, (1.) that the interest of the daughter in the residue under the direction to pay her the income was for her life or until her marriage; (2.) that the gift over to the sons took effect on the death of the daughter unmarried.
Rishton v. Cobb, (1839) 5 My. & Cr. 145, distinguished. *In re MASON. MASON v. MASON*
C. A. [1910] **W. N. 93**; [1910] 1 Ch. 695
- Gift of residue to A., B., and the “six children now living” of C.—All but one of C.'s children dead at date of will—Presumption.
See WILL—Class. 9.
- Immediate gift of share of residue—Right of executors to retain share to answer debt.
See ADMINISTRATION. 32.

WILL (Residue)—continued

- Lapse—Exception from residue—Disposal at discretion of trustees.
See **WILL—Lapse**. 2.
- Lapse of legacy—Two residuary gifts.
See **WILL—Lapse**. 4.

4. — Legacy—Specific or residuary—Residue of specific fund—Legacy—Will—Construction.

Adjourned summons.

John Margetts, by his will dated July, 1881, gave the sum of 20,000*l.* sterling to his trustee, upon trust to continue any existing investment thereof or to invest the same in any real or Government securities, with power to vary, and to pay the income of the trust fund to his wife during widowhood, and after the determination of the aforesaid trust he directed his trustees to retain thereout two sums of 7000*l.* upon the trusts thereafter declared thereof and to pay or transfer the residue thereof to his son, J. W. Margetts. As to one of the said sums of 7000*l.*, the testator directed his trustees upon the decease or second marriage of his wife to pay the income thereof to his eldest daughter, Eliza Jane Bloore, for her life for her separate use, without power of anticipation, and after her decease to stand possessed of the same upon trust for her children attaining twenty-one, and in default of such children he directed his trustees to pay or transfer one moiety of this fund to his son, J. W. Margetts, and to stand possessed of the other moiety upon the trusts thereafter declared in favour of his youngest daughter, Mary Louisa Margetts, and her children; and as to the other of the said sums of 7000*l.*, he declared corresponding trusts in favour of his youngest daughter, Mary Louisa Margetts. The testator gave his residuary estate to his son. The testator died in June, 1885. Mary Louisa Margetts died without issue in Mar., 1891; J. W. Margetts died in May, 1905; and the testator's widow died without having been remarried in Aug., 1905. On the testator's death certain mortgage securities of the testator were set aside by the trustees to represent the 20,000*l.*, but in 1902 and 1904 two of these securities were sold at a loss of 2600*l.* of capital to the trust fund in addition to a loss to the tenant for life through the interest having fallen into arrear. The substantial question upon this summons was whether the deficiency ought to be borne exclusively by the residue bequeathed to the son, or rateably by the residue and the two sums of 7000*l.* bequeathed to the testator's two daughters.

Kekewich J. said that this case fell within the rule stated in Theobald on Wills (sixth edition) at p. 155, and that the effect of the gift of the residue of the 20,000*l.* was exactly the same as if the testator had in terms given 7000*l.* each to his two daughters, and 6000*l.* to his son. If the testator had contemplated some deduction being made from the total, as, for example, if he had directed his funeral expenses to be paid out of the fund, the rule would not have applied; but there was

WILL (Residue)—continued.

nothing of the kind here. No doubt he contemplated the fund being invested, but he contemplated that the investments would realize at least 20,000*l.*, although, unfortunately, they had resulted in a loss. In his Lordship's opinion this loss ought to be borne rateably by the residue and the two sums of 7000*l.* *In re MARGETTS. SMITH v. MARGETTS* Kekewich J. [1903] W. N. 44

- Maintenance—Gift of residue to individuals in shares—Gift of income for maintenance of all—Vested or contingent.
See **WILL—Vesting**. 4.

5. — “Residuary devise”—Specific devise—Wills Act, 1837 (1 Vict. c. 26), s. 25.

A devise which does not include all the testator's real estate may be a good “residuary devise” within the meaning of the Wills Act, 1837, s. 25.

Decision of C. A., [1901] 1 Ch. 619, affirmed. *MASON v. OGDEN*

H. L. (E.) [1902] W. N. 206; [1903] A. C. 1

6. — Residuary gift of “estate and effects” to trustees, “their executors, administrators and assigns”—Trusts pointing to personality—Realty—Resulting trust—Construction of will.

A will contained the following gift: “As to all my ready money, securities for money, stock in any of the public stocks of Great Britain, and all the rest, residue, and remainder of my estate and effects whatsoever and wheresoever, I give and bequeath the same and every part thereof to the said K. and S.”—whom the testator had already appointed his executors—“their executors, administrators and assigns,” upon trusts which related to the income, described as “income” or “interest dividends and annual proceeds” (in some places “produce”), and to corpus described sometimes as “the said trust moneys, stocks, funds, and securities,” and in other places as “the said trust moneys.” The will empowered the trustees to vary the securities of the trust money and invest the same:—

Held, that the testator's real estate passed by the gift of residue, and that, notwithstanding the suggested inapplicability of the trusts to anything but personality, those trusts applied also to the real estate—of which there was, therefore, no resulting trust.

The principles of *D'Almaine v. Moseley*, (1853) 1 Drew. 629, *Fullerton v. Martin*, (1855) 22 L. J. (Ch.) 893, and *Saumarez v. Saumarez*, (1839) 4 My. & Cr. 331; 48 R. R. 116, held to be applicable.

Dunnage v. White, (1820) 1 Jac. & W. 583; 21 R. R. 239, *Coard v. Holderness*, (1855) 20 Beav. 147, and *Longley v. Longley*, (1871) L. R. 13 Eq. 133, distinguished. *KIRBY-SMITH v. PARNELL*

Buckley J. [1903] 1 Ch. 483

- “Residuary legatee”—Intestacy—Extrinsic evidence.

See **WILL—“Residuary Legatee.”** 1.

- Residuary legatees—Destination of the subject of void gifts—Next of kin—Res judicata.

See **STRAITS SETTLEMENTS**. 3.

WILL (Residue)—continued.

—Residuary legatee also residuary legatee of debtor's estate—Statute-barred debt owing to estate.

See ADMINISTRATION. 30.

—“Residue and remainder” of specific mortgage debts, Bequest of.

See WILL—Legacy. 4.

7. — “Residue and remainder,” Bequest of—Bequest of pecuniary legacies—Specific mortgage debts—Intestacy—Undisposed-of personal estate acquired between dates of will and death—Administration—Legacies, specific or demonstrative—Fund applicable for payment—Ambiguity—Intention—Extrinsic evidence, Admissibility of—Evidence dehors the will—Construction of will.

A testator, after directing payment of his debts and funeral and testamentary expenses, bequeathed a number of pecuniary legacies, and then gave “all the residue and remainder” of two specified mortgage debts then due to him, after payment of his debts and funeral and testamentary expenses (but not adding “and legacies”), to three persons named. At the date of the will the testator's personal estate consisted of the two mortgage debts, which were just sufficient for payment of the legacies (if payable thereout), debts, and funeral and testamentary expenses. Subsequently to the date of his will the testator became possessed of further personal estate, but as the will contained no general residuary gift this remained undisposed of. The total personal estate, exclusive of the two mortgage debts, was not sufficient for payment of the debts, funeral and testamentary expenses and legacies.

On an originating summons to ascertain in what order the assets should be applied:—

Held, that “the residue and remainder” of the two mortgage debts meant what was left after payment thereout of the debts, funeral and testamentary expenses only, and that the undisposed-of personalty could alone be resorted to for the general pecuniary legacies.

The decision of the C. A., [1900] 2 Ch. 756, reversed for the reasons there given by Rigby L.J. *HIGGINS v. DAWSON* - **H. L. (E.)** [1901]

W. N. 234; [1902] **A. C. 1**

8. — Revocation — Will and codicil — Construction — Implied revocation—Appointment of B. N. as executor—Legacy as executor—Share of residue—Codicil—Revocation of appointment and legacy—Substitution of H. F. as executor—Will to take effect as if H. F. were inserted throughout instead of B. N.

A testator appointed B. N. to be one of the executors and trustees of his will and bequeathed to him, if he should prove the will, and in addition to any other benefit to which he might be entitled under the will, a legacy of 1000*l.*, and ultimately gave a share of residue to B. N. By a codicil the testator, after referring to the appointment of B. N. as an executor and to the legacy of 1000*l.*, revoked the appointment and legacy and appointed H. F. to be an executor, in the place of B. N.,

WILL (Residue)—continued.

and gave H. F. a legacy of 200*l.* for his trouble in acting as such executor, and declared that his will should be construed and take effect as if the name of H. F. were inserted in his will throughout instead of the name of B. N.:—

Held, that the general direction at the end of the codicil did not operate as an implied revocation of the gift of the share of residue to B. N. *In re FREEMAN. HOPE v. FREEMAN* [1910] **W. N. 6**; **C. A.** [1910] **W. N. 93**; [1910] 1 Ch. 681

—Settlement estate duty—Property settled by will—Amount set apart to pay annuities.

See REVENUE—Estate Duty. 24.

9. — Share of residue — Absolute gift—Subsequent provision for settlement of married daughter's share—Trusts by reference to marriage settlement—“Subsisting and capable of taking effect”—Default of issue—Ultimate trust of testator, “his executors administrators and assigns”—Daughter absolutely entitled—Will—Construction.

The testator gave his residuary estate to trustees upon trust for his children living at his decease as tenants in common, and then directed that the share which “would belong to” any daughter who at his death should be or have been married should “go and be paid to” the trustees of her marriage settlement, to be held upon the same trusts as were thereby declared of the moneys thereby settled by him upon such daughter or such of them as should be then subsisting and capable of taking effect.

The ultimate trust of the moneys settled by the testator upon the marriage of his daughter, Mrs. C., who survived him and her husband, was a trust in default of issue of Mrs. C. (as happened) for the testator, his executors, administrators, and assigns:—

Held, that in the events which had happened there was no valid effective trust declared by the testator's will of Mrs. C.'s aliquot share of residue upon her death without having issue, and that the share devolved upon her legal personal representative.

The rule in *Lassence v. Tierney*, (1849) 1 Mac. & G. 551, applied. *In re CURRIE'S SETTLEMENT. In re ROOPER. ROOPER v. WILLIAMS* - **Joyce J.** [1910] **W. N. 16**; [1910] 1 Ch. 329

10. — Share of residue—Gift over—Legacy out of shares—Lapse.

A testator gave a share of residue to trustees upon the following trusts, namely, as to the sum of 4500*l.* part thereof, the sum of 2250*l.* to be held in trust for each of two persons A. and B. who should attain the age of twenty-one, and, as to the remaining part of the share, in trust for such of four persons, A., B., C., and D., who should attain the age of twenty-one, with a gift over of the share in default of such persons.

The residuary legacy to A. having lapsed by his death under twenty-one, and the remaining beneficiaries having attained that age:—

WILL (Residue)—continued.

Held, that having regard to the gift over, which being intended to operate on the share as a whole was inconsistent with any partial failure of the trusts thereof, the gift of the remaining part of the share carried the lapsed residuary legacy to the remaining beneficiaries.

Skrymsker v. Northcote, (1818) 1 Swans. 566; 18 R. R. 142, doubted. *In re PARKER. STEPHENSON v. PARKER* - Farwell J. [1901] W. N. 16; [1901] 1 Ch. 408

— Share of residue—Gift over of part to which legatee disentitles himself prior to "actual payment"—Validity.
See WILL—Absolute Gift. 10.

— Succession—Residue of estate "to heir entitled to succeed under a deed of entail"—Lands disentailed.
See SCOTTISH LAW. 26.

— Tenant for life—Direction to accumulate income beyond twenty-one years—Will.
See ACCUMULATIONS. 4.

— Tenant for life and remainderman—Annuity—Apportionment—Capital and income.
See SETTLED LAND—Apportionment. 1.

— Trust dehors the will of specified part of.
See ADMINISTRATION. 1.

— Unascertained residue—Equitable execution—Effect of order—Notice to executor—Charging order—Priority.
See RECEIVER. 5.

— Vested or contingent—Maintenance clause.
See WILL—Vesting. 4.

— Will—Construction—"The rest of my money"—Other property.
See WILL—Words. 9.

— Will, Construction of—Testator's children to take equal shares in the residue at majority—Accumulations of income during minority of donee.
See CANADA—Will. 1.

Resulting Trust.

— Copyholds—Equitable interest—Resulting trust—Descent—Common law heir or customary heirs.
See WILL—Intestacy. 1.

Revocation.

— Class gift—Revocation by codicil—Intestacy.
See WILL—Class. 2.

1. — Gifts to testator's son and his children—Revocation by codicil of benefit to son—Effect on children's interests.

Testator by his will gave his business to trustees upon trust to carry it on for the benefit of his four sons, including G., until the youngest attained twenty-one, with power to employ any of them, for reward, as manager or otherwise, and subject as aforesaid in trust for the sons equally when the youngest

WILL (Revocation)—continued.

attained twenty-one, and he declared that if, on the determination of the trusts as to the business, any son should be dead or unwilling to carry it on, any of the other sons were to be entitled to purchase his share.

By paragraph 6 of the will the trustees and the sons, while respectively carrying on the business, were to be entitled to use the property on which it was carried on for that purpose at a specified rent; and G. was to be entitled to occupy a house, 133, W. Road, at a fixed rent. These rents were payable to the testator's widow for life, and after her death to two of his daughters during spinsterhood. Subject as aforesaid both properties were devised to the trustees to be held upon trust as to one-fourth share for G. for life, and after his death for his children in fee simple.

By a codicil reciting that testator had reasons for dissatisfaction with G., that he had ceased to employ him in his business, and that G. had at testator's desire ceased to occupy 133, W. Road, testator revoked the trust for permitting G. to occupy that house, and proceeded to revoke "each and every devise, bequest, gift and legacy contained in my said will to or for the benefit of my same son," and to revoke and annul "every provision and benefit thereby given made or intended to or for him," and to direct that "every clause of my said will purporting to entitle him to share any part or parts of my estate, or of the proceeds, income or profits thereof with any other person or persons shall be construed, and the directions and trusts thereof shall be carried out, as if the name of my said son G. had never appeared therein." Testator also by the codicil directed that G. should not be appointed manager of or employed in the business, and left a legacy of 500*l.* in trust for the children of G. at twenty-one or marriage, and for their maintenance in the meantime, but directed that the trustees should not pay any income of the legacy to G. pursuant to s. 43 of the Conveyancing and Law of Property Act, 1881:—

Held, that the revocation extended only to the benefits given by the will to G.; that the interests thereby given to G.'s children were not revoked; but that the children's interests were accelerated and that the children were in addition entitled to the legacy of 500*l.*

Green v. Tribe, (1878) 27 W. R. 39, and *Alt v. Gregory*, (1856) 8 D. M. & G. 221, followed.

Tabor v. Prentice, (1884) 32 W. R. 872, distinguished. *In re WHITEHORNE. WHITEHORNE v. BEST* Buckley J. [1906] 2 Ch. 121

— Will—Class gift—Revocation by codicil—Intestacy.
See WILL—Class. 2.

2. — Will—Contract—Revocation by agreement.

The testator, John Grieve, died in 1903, leaving a will, and the main question in the appeal was whether an agreement, dated 1901, between the testator and his son, the appellant, had not revoked in part the testator's will.

WILL (Revocation)—continued.

The House, holding that the agreement had revoked the will in part, reversed the interlocutors appealed from, dated June 22 and Nov. 16, 1904, and allowed the appeal; costs here and below to come out of the estate. *GRIEVE v. HUNTER. FERGUSON v. HUNTER* (*Ex parte as to certain respondents.*)

H. L. (Sc.) [1906] W. N. 117

— Will—Executors in England—Indian assets—Fraud in India—Revocation of Indian letters of administration—Title of executors.

See ADMINISTRATION. 15.

— Will—Revocation.

See under PROBATE—Revocation.

— Will and codicil—Implied revocation—Revocation of appointment and legacy.

See WILL—Residue. 8.

Sale.

1. — *Trust for sale of land—Power to postpone—Settlement of proceeds—Share vested in possession—Right of beneficiary to insist on immediate sale.*

Where land is devised to trustees in trust for sale with a discretionary power of postponement, and the proceeds are settled in trust for various beneficiaries, the vesting in possession of the share of one of the beneficiaries does not put an end to the power of postponement, or entitle that beneficiary to call either for an immediate sale of the entirety or for a conveyance of an undivided share in the land.

Trower v. Knightley, (1821) 6 Madd. 134; *Lantsbery v. Collier*, (1856) 2 K. & J. 709; *Tait v. Swinstead*, (1859) 26 Beav. 525; *In re Cotton's Trustees and London School Board*, (1882) 19 Ch. D. 624; *In re Lord Sudeley and Baines & Co.*, [1894] 1 Ch. 334; and *In re Tweedie and Miles*, (1884) 27 Ch. D. 315, discussed and applied. *In re HORSNAILL. WOMERSLEY v. HORSNAILL - Swinfen Eady J.* [1909] W. N. 74; [1909] 1 Ch. 631

Satisfaction.

1. — *Daughter's settlement—Father's covenant—Absolute bequest to daughter—After-acquired property clause—Persons derivatively entitled—Election.*

By a marriage settlement of 1898 a sum of 10,000*l.* (which included a sum of 5539*l.* secured to the trustees by the covenant of the wife's father) was settled on certain trusts for the wife, husband and children, the wife taking the first life interest, and covenanting to settle after-acquired property, to which she became entitled during the coverture, on substantially the same trusts.

By his will of 1905 the father gave one-third of his residuary real and personal estate to the wife for her separate use absolutely. The father died during the coverture. His clear residuary estate, subject only to the covenant, was 80,000*l.*, all personality:—

Held, that the bequest was a satisfaction as to the wife's life interest in the 5539*l.* secured

WILL (Satisfaction)—continued.

by the covenant, but not as to the interest of other cestuis que trustent not mentioned in the will, taking no direct interest in the bequest, and only in fact taking derivatively under the after-acquired property clause, because the bequest happened to take effect during the coverture. The wife was therefore the only person put to election.

Lord Chichester v. Coventry, (1867) L. R. 2 H. L. 71, 92, 95, applied. *In re BLUNDELL. BLUNDELL v. BLUNDELL - Swinfen Eady J.* [1906] W. N. 113; [1906] 2 Ch. 222

2. — *Debt due from testator at death—Legacy to creditor of larger amount—No time fixed for payment—Debt carrying interest—Creditor appointed executrix.*

A testatrix gave to her sister R. a legacy of 400*l.*, and appointed her executrix. At the time of her death the testatrix was indebted to R. in the sum of 150*l.*, which carried interest, and on which interest had been paid up to her death:—

Held, that neither the fact that the legacy was not payable until one year after the death, nor the appointment of R. as executrix, took the case out of the general rule, and the legacy was a satisfaction of the debt. *In re RATTENBERRY. RAY v. GRANT*

Swinfen Eady J. [1906] W. N. 27; [1906] 1 Ch. 667

— Double portions—Hotchpot—"Advances or moneys lent."

See WILL—Advances. 2.

— Double portions—Parent and child.

See WILL—Advances. 1.

— Legacies—Will—General or specific—Insufficiency of assets—Abatement—Legacy in satisfaction of a debt—Administration.

See WILL—Legacy. 1.

Scottish Law.

— Will—Reduction—Agent alleged to benefit under will prepared by him—Suspicion—Defect in attestation.

See SCOTTISH LAW. 30.

Securities.

— Power to transpose and vary "securities"—Implied power to resell purchased land.

See VENDOR AND PURCHASER—Title. 19.

— Settled land.

See under SETTLED LAND.

— Unauthorized securities—Wasting securities—No trust for conversion—Power to trustees to retain—Enjoyment of income in specie.

See SETTLED LAND—Securities. 1.

Servants.

1. — *Will—Construction—Legacy—Servants—"Year's wages."*

A bequest to servants of a year's wages does not extend to servants employed at wages calculated by the week or month.

WILL (Servants)—continued.

So held upon the authority of *Blackwell v. Pennant*, (1852) 9 Hare, 551. *In re RAVENSWORTH*. *RAVENSWORTH v. TINDALE*

C. A. [1905] W. N. 60; [1905] 2 Ch. 1

Settled Land.

See under SETTLED LAND.

Settlement.

See under SETTLEMENT.

Shelley's Case.

1. — "Issue"—*Estate in special tail—Rule in Shelley's Case—Will—Construction.*

A devise to "Charles if he marries a fit and worthy gentlewoman and his issue male to such issue male and their male descendants, in failure of which" then over :—

Held, upon the true construction of this will to be equivalent to a devise to "Charles and such issue male as he may have by marriage with a fit and worthy gentlewoman and their male descendants, in failure of which" then over, and thus to create an estate in special tail male in Charles.

The decisions of Buckley J. and C. A. [1901] W. N. 207; [1902] 1 Ch. 31, affirmed for the reasons given by Buckley J. and Romer L.J. *PELHAM CLINTON v. DUKE OF NEWCASTLE*

H. L. (E.) [1903] W. N. 36; [1903] A. C. 111

2. — *Real Estate—Rule in Shelley's case—Construction of will.*

Testator gave certain freehold estates to trustees upon trust for management and to receive the rents and profits thereof, and after payment of necessary repairs and outgoings to pay thereout to each of his eight first cousins therein named the sum of 60*l.* per annum for their lives and then to pay the residue of such net rents and profits half-yearly to W. D. for his life, and from and after the respective deceases of the annuitants and W. D. upon trust to convey the said freehold estates, together with any accumulations of rents in the hands of the trustees, unto the right heirs of W. D. :—

Held, that the rule in *Shelley's Case*, (1581) 1 Rep. 93 b, applied, and that W. D. was entitled to the property in fee simple subject to the annuities. *In re YOUMAN'S WILL*

Joyce J. [1901] W. N. 48; [1901] 1 Ch. 720

3. — *Tenant in tail—Gift to a person for life and then "to his sons and their sons in succession"—Tenant in tail—Rule in Shelley's case—Costs—Practice—Uniformity—Will—Construction—Adjourned summonses.*

By his will G. B. devised a mansion-house and copyhold property to trustees upon trust to the use of his eldest son G. B. B., to permit him during his life to occupy the same or receive the rents arising therefrom, and after his decease to permit the eldest son of G. B. B. to occupy or receive the rents of the said estate during his life, "and then to his sons and their sons in succession," and in default thereof to the second son of G. B. B.

WILL (Shelley's Case)—continued.

and his sons in succession, and in default to the third and other sons of G. B. B. and their sons in succession, according to the priority of their birth, and in case his eldest son G. B. B. should die without leaving any son or male descendant, then upon trust to hold the same estate to the use of the testator's second son W. M. B. for life, with remainder to his eldest and other sons and their issue in succession, with remainders over.

The copyhold property was subsequently enfranchised and disentailed. The plt. W. W. B., as the eldest son of G. G. B., took out a summons to which W. M. B. and the trustees of the wills of G. B. and G. B. B. were made respondents, asking for a declaration of his title to an estate in tail male in possession in the mansion-house and property, and that the costs of and incidental to the application might be provided for :—

Held, that upon the true construction of the will, and having regard to the rule in *Shelley's case*, (1579) 1 Rep. 93b, W. W. B. was entitled to an estate in tail male in possession of the property in question; and that, although in form it was a case of adverse litigation, yet in substance it was an amicable proceeding for the determination of a question for the benefit of all concerned, and therefore the costs of all parties must be taxed as between solicitor and client, and come out of the estate.

Statement of the practice with regard to costs in cases arising on adjourned summonses.

In re BUCKTON. *BUCKTON v. BUCKTON*

Kekewich J. [1907] W. N. 180; [1907] 2 Ch. 406

Shifting Clause.

1. — *Limitation of real estates—Successive life estates—Exception of eldest son entitled to other estates—Construction of will.*

A shifting clause, or an exception in the nature of a shifting clause, in limitations of real estate must be strictly construed, and not according to the rule of construction which has been adopted in the case of provisions for children made by a parent or a person in loco parentis.

A testator in 1855 devised his real estates to the use of all and every the sons of his nephew Richard successively, for their respective lives, "other than and except an eldest or only son for the time being entitled to the possession or to the receipt of the rents, issues, and profits" of the C. estates "after the decease of Richard as tenant for life or any greater estate or interest whatsoever."

In Jan., 1869, Richard and his eldest son, being then respectively tenant for life in possession and tenant in tail in remainder of the C. estates, disentailed those estates, and appointed them to trustees on trust for sale, and to hold the proceeds of sale on trusts under which the son took a beneficial interest, and the estates were accordingly sold by the trustees.

In 1875 the testator died. In 1899 the nephew Richard died :—

WILL (Shifting Clause)—continued.

Held, that the eldest son of Richard was not by virtue of the exception contained in the will excluded from a life interest in the devised estates.

Decision of Cozens-Hardy J., [1900] 1 Ch. 795, reversed.

Collingwood v. Stanhope, (1869) L. R. 4 H. L. 43, explained. *SHUTTLEWORTH v. MURRAY* C. A. [1901] W. N. 69; [1901] 1 Ch. 819; H. L. (E.) [1902] A. C. 263

This case was affirmed by H. L. (E.)

See LAW UNION AND CROWN INSURANCE CO. v. HILL [1902] A. C. 263, next case.

2. — Successive life estates—Limitations of real estates — Exception of eldest son "entitled" to other estates—Construction of will.

A testator in 1855 devised his real estates to the use of all and every the sons of his nephew Richard successively, for their respective lives, "other than and except an eldest or only son for the time being entitled to the possession or to the receipt of the rents, issues, and profits" of the C. estates "after the decease of Richard as tenant for life or any greater estate or interest whatsoever."

In 1869 Richard and his eldest son, being then respectively tenant for life and tenant in tail in remainder of the C. estates, executed deeds under which those estates were disentailed and sold and the proceeds invested by trustees upon trusts under which the son took a beneficial interest. In 1875 the testator died. In 1899 Richard died:—

Held, that Richard's eldest son was not at his father's death "entitled" to the rents, &c., of the C. estates within the meaning of the exception clause, and was therefore not excluded from the succession to the testator's estates.

The decision of the C. A., *Shuttleworth v. Murray*, [1901] 1 Ch. 819, affirmed. *LAW UNION AND CROWN INSURANCE CO. v. HILL*

H. L. (E.) [1902] W. N. 80; [1902] A. C. 263

See preceding Case.

Solicitor.

— Solicitor — Costs — Taxation — Power to charge for professional services — Non-professional services.
See SOLICITOR—Costs. 46.

Speaking from Death.

1. — Bequest—Will speaking from death—Contrary intention—Will—Construction—Wills Act, 1837 (1 Vict. c. 26), s. 24.

In this case an originating summons was taken out by the trustee of the will for the determination of the question whether a gift to H. G. for life passed all the stock and shares in two cos. and all the ground rents to which the testator was entitled at his death or only such as he was entitled to at the date of his will.

Joyce J., after referring to the authorities of *Goodlad v. Burnett*, (1855) 1 K. & J. 341;

WILL (Speaking from Death)—continued.

In re Slater, [1907] 1 Ch. 665; *Everett v. Everett*, (1877) 7 Ch. D. 428; *In re Midland Ry. Co.*, (1865) 34 Beav. 525; *In re Ord*, (1878) 9 Ch. D. 667; (1879) 12 Ch. D. 22, C. A.; and *In re Portal and Lamb*, (1885) 30 Ch. D. 50, came to the conclusion that he could not in the last clause of the will find with reasonable certainty the contrary intention sufficient to take the case out of the operation of s. 24 of the Wills Act, and that consequently the gift to H. G. for life included all the stock in the two cos. and all the ground rents of which the testator died possessed. *In re ALEXANDER. BATHURST v. GREENWOOD*

Joyce J. [1910] W. N. 36

On Appeal:—

The C. A. allowed the appeal, being of opinion upon the construction of the will that there was a sufficient contrary intention to take the case out of the operation of s. 24 of the Wills Act. *In re ALEXANDER. BATHURST v. GREENWOOD* - C. A. [1910] W. N. 94

Specific Devise.

— Colonial property—Colonial death duty—Will—Direction to pay debts out of residue.

See WILL—Colonial Duties. 1.

1. — Complete general description — Subsequent imperfect examination — Falsa demonstratio—Will—Construction.

The testatrix, by her will dated in 1888, devised the real estate to which she became entitled under a codicil to her father's will, "namely, the residence known as Orford House, in the parish of Oakley, in the county of Essex, and lands and hereditaments" (in certain parishes) "in the same county," to her sister for life, with remainder over, and she then disposed of her residue. In addition to the real estate specifically named by the testatrix as passing to her under the father's codicil, there was, in fact, a freehold in London, to which she was also thus entitled. There was no evidence whether she knew that it formed part of the property passing under the codicil:—

Held, that the specification by name and locality introduced by the word "namely" was not merely an imperfect enumeration of the properties intended to be devised, but formed the leading description, and consequently that the freehold in London did not pass by the specific devise, but fell into residue.

West v. Lawday, (1865) 11 H. L. C. 375, considered. *In re BROCKER. DAWES v. MILLER*

Joyce J. [1907] W. N. 237; [1906] 1 Ch. 185

— House and bequest of chattels free of all duties, Specific devise of—Added pecuniary legacy—Legacy duty.

See ANNUITY. 11.

2. — "House and effects known as Cross Villa"—Subsequent alterations of premises—Wills Act, 1837 (1 Vict. c. 26), s. 24—Contrary intention—Construction of will.

WILL (Specific Devise)—continued.

The testator by his will, dated in 1901, made the following devise to his wife for life, with remainder to his daughter: "House and effects known as Cross Villa situated in T." At the date of his will he was possessed of half an acre of ground with a house upon it, the premises being known as Cross Villa. In 1906 upon a part of the ground, which he separated from the rest by a hedge, he erected two semi-detached dwelling-houses which he named Ashgrove Villas. He died in 1908. Upon a summons to determine the effect of the devise:—

Held, that it passed the whole of the property with all the buildings thereon. *In re EVANS. EVANS v. POWELL* **Joyce J. [1909] W. N. 98; [1909] 1 Ch. 784**

Specific Legacy.

—Bequest of shares to A.—Assent of executors—Transfer—Discovery of codicil—Shares given to B.—Recovery of shares.

See PROBATE—Revocation. 7.

—Interval between death of testator and assent of executor—Cost of upkeep and preservation.

See ADMINISTRATION. 29.

1. — *Misdescription—Shares in a bank—Absorption by another bank—Extrinsic evidence—Admissibility—Wills Act, 1837 (1 Vict. c. 26), s. 24.*

By her will, made in 1902, a testatrix bequeathed to two legatees equally "all my shares in the Wensleydale and Swaledale Banking Co." There was no bank in existence of that name at the date of the will, or at the death of the testatrix in 1906, but for some years prior to 1899 the testatrix had been the possessor of twenty-five shares in the Swaledale and Wensleydale Banking Co., Ltd. The undertaking of this bank was amalgamated with Barclay & Co., Ltd., as from July 1, 1899, and the testatrix received twenty-five shares in Barclay & Co., Ltd., in exchange for her shares in the absorbed bank. At the date of her death the testatrix still held the twenty-five shares in Barclay & Co., Ltd., and had no other bank shares. Evidence was admitted showing the dealing of the testatrix with the subject-matter of the bequest, and that she knew of the amalgamation:—

Held, that the twenty-five shares in Barclay & Co., Ltd., passed to the specific legatees, and did not fall into the residue. *In re JAMESON. KING v. WINN* **Eve J. [1908] W. N. 100; [1908] 2 Ch. 111**

Substitution.**(Substitutionary Gifts.)**

—Contingency of either son dying before his brother—Will—Construction.

See NATAL. 11.

—"Entitled"—With reference to the word "entitled."

See WILL—Shifting Clause. 1, 2.

WILL (Substitution)—continued.

—Forfeiture clause — Legacy — Codicil — Substituted settled legacy.

See WILL—Conditions. 3.

1. — *Original or substitutional—Conjunctions "or" and "and"—Joint tenancy or tenancy in common—Will—Construction—Gift after life estate to children, to grandchildren then living "or the issue of such as may, have, died."*

Testator gave his property to trustees upon trust after the death of the survivor of his children to divide the same between and among his "grandchildren then living equally per stirpes and not per capita, or the issue of such as may have died (such issue taking a parent's share only), so that my grandchildren (or their issue) may take their shares equally in loco parentis":—

Held, that the gift to the issue of the grandchildren was original and not substitutional, and that a great-grandchild of the testator who predeceased his own parent and the last surviving tenant for life took a vested interest:

Held, also, that upon the whole will the issue of the grandchildren took as tenants in common.

Martin v. Holgate (1866) L. R. 1 II. L. 175, followed.

In re Merrick's Trusts, (1866) L. R. 1 Eq. 551, considered and explained. *In re WOOLLEY. WORMALD v. WOOLLEY*

Joyce J. [1903] 2 Ch. 206

2. — *Roman-Dutch law—Direct substitution in favour of children who survive the testator's widow—Heirs of pre-deceased children excluded — Fidei-commissary substitution — Appeal from Natal.*

Where by will executed in Natal the testator directed that after his wife's death his estate should "be equally divided among my children or such as may be then alive":—

Held, that the children who survived the wife took by direct substitution to the exclusion of the issue of any child who predeceased her. There is no rule of construction in Roman-Dutch law which authorizes children to be read as including grandchildren.

Where a substitution is direct there is no implied condition, under Roman-Dutch law, in favour of the institute, *si sine liberis desesserit*. But where the substitution is fidei-commissary, such a condition may be annexed to the fidei-commissum, so that unless the condition happens the fidei-commissum does not arise and the substitution fails of effect. *GALLIERS v. RYCKROFT* **P. C. [1901] A. C. 130**

3. — *Substitutional gift—Death "before becoming entitled" to a share—Entitled in "possession" or in "interest"—Construction of will.*

In a substitutional gift in a will "in the event of either of my grandchildren dying before becoming entitled to any share of my estate":—

Held, upon the construction of the will, without reference to any authorities, that

WILL (Substitution)—continued.

"becoming entitled" meant becoming entitled in possession, not becoming entitled in interest.

Decision of Joyce J., [1902] W. N. 159; [1902] 2 Ch. 875, affirmed. *In re MAUNDER. MAUNDER v. MAUNDER* C. A. [1903] W. N. 48; [1903] 1 Ch. 451

4. — Substitutional gift—Gift to "A., his heirs or assigns"—Death of A. before testator—Intestacy.

Testatrix by her will, made in 1877, gave and devised all her real and personal estate in equal shares for life to her sister and brother, the share of each to revert to the last survivor of the two for life, and after their decease, after giving some legacies the testatrix desired "the residue of my estate to be divided in equal shares between" A., "his heirs or assigns," B., "her heirs or assigns," and C., "her heirs or assigns." The testatrix died in 1900 possessed of personalty only.

The tenants for life, and A., B., and C., all died before the testatrix.

The question was, whether there was a substitutional gift to the next of kin of the residuary legatees respectively, or whether there was an intestacy as regarded the shares given to them. Byrne J., on the authority of *In re Walton's Estate*, (1856) 8 D. M. & G. 173, held that there was an intestacy. The next of kin of the residuary legatees appealed:—

Held, that it was impossible to arrive at any other conclusion than that the three residuary legatees were entitled to absolute interests.

Decision of Byrne J., [1901] W. N. 172, affirmed. *In re MASTERSON. TREVANION v. DUMAS* C. A. [1902] W. N. 192

— Substitutional or substantive gift—Will—Class—Issue of parent dead at date of will—"Shall die"—Words of futurity.

See WILL—Class. 8.

— Substitutionary gift—To children in case any nephew or niece "shall die in my lifetime"—Class—Words of futurity.

See WILL—Futurity, Words of. 2.

5. — Substitutionary gift—Words of futurity—Child dead at date of will leaving issue—Will—Construction.

A testator gave his residuary estate in trust (subject to a life estate for the benefit of his wife, who predeceased him) for all his children who attained the age of twenty-one years in equal shares, "Provided always that if any child of mine shall die in my lifetime leaving a child or children who shall survive and being a son or sons shall attain the age of twenty-one years or being a daughter or daughters shall attain that age or marry under that age then and in every such case the last mentioned child or children shall take (and if more than one equally between them) the share which his her or their parent would have taken of and in the residuary trust funds if such parent or parents had survived me (subject

WILL (Substitution)—continued.

nevertheless to the proviso hereinafter contained). Provided always that if any child of mine shall die in the lifetime of my said wife leaving a husband or wife who shall survive her then I declare that on the decease of my said wife the income of the share of any deceased child of mine shall go and be payable to such husband or wife of such deceased child of mine":—

Held, that the residuary gift did not include the children of a child dead at the date of the will or the husband or wife of any such last-mentioned child. *In re COPE. CROSS v. CROSS* C. A. [1908] W. N. 128; [1908] 2 Ch. 1

Note.

This case was distinguished by Joyce J., *In re Metcalfe*, [1909] 1 Ch. 424. *See* WILL—Futurity, Words of. 2.

6. — Substitutionary gift in favour of children—Die without "leaving" issue—Construction of will.

Testator gave his residuary personal estate upon trust for his two daughters for life in equal shares, and after their deaths for their children, and in case either of his daughters should "die without leaving lawful issue or being such none of such issue should live to attain the age of twenty-one years," then he gave the share of his daughter so dying to her surviving sister, and in case both his said daughters should "die without leaving lawful issue as aforesaid," then over. Both the testator's daughters survived him. One died unmarried leaving her sister surviving. She had an only son, who had attained twenty-one and was still living:—

Held, that "die without leaving" must be read "die without having" lawful issue.

For the purposes of the application of the rule in *Maitland v. Chalie*, (1822) 6 Madd. 243, it is immaterial whether the gift to the children vests at birth or at twenty-one.

In re Ball, Slattery v. Ball, (1888) 40 Ch. D. 11, explained. *BARKWORTH v. BARKWORTH* Joyce J. [1906] W. N. 171

— Trust for person "entitled to the possession or receipt of the rents."

See WILL—Absolute Gift. 7.

— Words of futurity—Will,

See under WILL—Futurity, Words of.

Succession.

1. — Construction of will and codicils, whether issue take per stirpes or per capita.

The House (Lord Loreburn L.C., The Earl of Halsbury, and Lords Macnaghten, Atkinson, Shaw of Dunfermline, and Robson), holding that the fund in question was to be divided per capita, reversed the decision of the Second Division of the Ct. of Sess., (1910) S. C. 735, and allowed the appeal with costs in this House, costs as given in the Court below to stand. *ALEXANDER v. ANDERSON*

H. L. (Sc.) [1910] W. N. 266

— Residue of estate to heir entitled to succeed to entail—Lands disentailed—Intestacy.

See SCOTTISH LAW. 26.

WILL—continued.**Succession Duty.**

See under **REVENUE—Succession Duty.**

Suppression.

—Letters of administration—Grant of will appointing executor—Suppression of will—Revocation of grant—Acts of administrator.

See **PROBATE—Revocation.** 6.

Survivor.

1. — *Legatee entitled to share on surviving testator—Disappearance in testator's lifetime—No evidence of death—Presumption—Onus probandi.*

In Sept., 1892, P., who was then twenty-four years of age, disappeared, and he had never since been heard of. Under his father's will he was entitled to a share of the residuary estate in the event of his surviving the testator. The testator died in June, 1893. Upon a summons taken out by the trustees in 1900 to have it determined how P.'s share ought to be dealt with:—

Held, that P. must be presumed to be dead, and, in the absence of proof that he had survived the testator, the Court, without making any declaration as to the date of P.'s death, gave the trustees liberty to distribute his share on the footing that he had predeceased the testator. *In re BENJAMIN. NEVILLE v. BENJAMIN*

Joyce J. [1902] W. N. 26; [1902] 1 Ch. 723

—Limitation—Heirs "and assigns" of survivor.

See **WILL—Limitations.** 1.

2. — "Surviving" — "Other"—*Stirpital survivorship—Construction of will.*

A testatrix gave one-third of the income of a fund to her daughter M. for life, and after her death one-third of the capital of the fund to all the children of M. whom she might leave surviving who should attain twenty-one in equal shares, and she made similar gifts of the other two-thirds to her daughters C. and E. and their children. And in case of the decease of any of her said three daughters without leaving lawful issue surviving who should attain twenty-one, the testatrix gave the income of the share of the fund thereby given to her said daughters so dying to her surviving daughters in like manner as the income thereinbefore given to them for their respective lives, and after their decease she gave the capital to the children of her said surviving daughters who should attain twenty-one per stirpes; and there was an ultimate gift over of the fund in case of the decease of all the daughters without either of them leaving lawful issue who should attain twenty-one. C. died first, leaving her surviving two children who attained twenty-one, but died in the lifetime of E., the last surviving daughter; M. died next, leaving her surviving two children who attained twenty-one and were still living. E. died last without leaving

WILL (Survivor)—continued.

any issue her surviving. Upon the question who became entitled to E.'s share:—

Held, that having regard to the ultimate gift over, the word "surviving" in the gift to the children of the testatrix's surviving daughters could not be read literally, but that it ought to be construed, not as "other," but as "surviving in stock," and that the children of M. were alone entitled to participate.

Dictum of Cotton L.J. in *Lucena v. Lucena*, (1877) 7 Ch. D. 255, 269, approved and followed.

O'Brien v. O'Brien, [1896] 2 I. R. 459, not followed. *In re BILHAM. BUCHANAN v. HILL*
Joyce J. [1901] W. N. 81; [1901] 2 Ch. 169

Note.

Distinguished by Farwell J., *In re Friend's Settlement*, [1906] 1 Ch. 47. See *Settlement.* 44.

3. — *Survivor—Construction of will.*

A testator bequeathed shares of personal estate on trust for his three sons for their respective lives and their children and remoter issue born in their respective lifetimes. He directed that, in case any of his sons should have no issue who should attain a vested interest in the share of their father, that share should be held in trust for the testator's surviving sons and their issue in the like manner as their original shares. Two sons died leaving issue who attained vested interests. The third son survived them, and died without having had a child:—

Held, that there was an intestacy as to his share.

The third rule in *In re Bowman*, (1889) 41 Ch. D. 525, dissented from. *HARRISON v. HARRISON*
Cozens-Hardy J. [1901] W. N. 92; [1901] 2 Ch. 136

Note.

Approved of by C. A., *Inderwick v. Tatchell*, [1901] 2 Ch. 738. See next Case.

4. — "Then surviving"—*Will—Construction.*

A will gave portions in trust for each of the testator's children, E., L., and T., for their respective lives, and afterwards for their respective children; provided that if any of his children died without leaving a child entitled to take under the will, the shares of such children should go to their "then surviving" brothers and sisters, if more than one in equal shares, and if only one then to him or her absolutely.

E., L., and T. all survived the testator. E. died first, leaving children. Then L. died without issue, leaving T. surviving:—

Held, that upon the true construction of this will the words "then surviving" must receive their ordinary and natural meaning, and that the children of E. took no part of L.'s share.

The decision of the Court of Appeal, [1901] 2 Ch. 738, affirmed. *INDERWICK v. TATCHELL*
H. L. (E.) [1903] W. N. 52; [1903] A. C. 120

— "Survivor's heir or heirs."

See **WILL—Estate Tail.** 1.

WILL (Survivor)—continued.

— Survivorship—Share of residue—Accruer—Intestacy.

See WILL—Residue. 2.

Tapestries.

— Right of removal — Fixtures — Devise of house—Question between devisee and legatee—General scheme of decoration—Bequest of chattels.

See FIXTURES. 7.

Territorial and Reserve Forces.

1. — *Will—Gifts to Volunteers, Yeomanry, and Militia—Transfers of Volunteer and Yeomanry units to Territorial Force and Militia units to Army Reserve—“Existing institutions” — Payment to county associations — Gift to commanding officer of Militia units “for the mess of the regiment, or for the poor of the regiment” — Charitable gift—Territorial and Reserve Forces Act, 1907 (7 Edw. 7, c. 9), ss. 29, 34—Orders in Council of March 19 and April 9, 1908.*

Testator by his will, dated in 1893, devised and bequeathed the residue of his estate to trustees upon trust for sale, and out of the proceeds to pay legacies of 50*l.* each “to the officers commanding the Volunteer Rifles at Bournemouth, the Volunteer Artillery at Bournemouth, and the Volunteer Rifles at Weymouth, for the use of their respective corps,” and a legacy of 100*l.* “to the officer commanding the Northamptonshire Militia for the mess of that regiment or for the poor of the regiment.” By a first codicil the testator directed his trustee to divide the residue into eight parts and to accumulate three of such parts for seven years from his decease, and then to divide the accumulated fund “rateably among the persons and institutions to whom and to which I have given pecuniary legacies (and the foregoing five-eighths shares or residue by this codicil to my will), or such of them as shall be alive and existing in proportion to their respective shares of residue.

. . . In the event, however, of any such legatee dying or any such institution ceasing to exist prior to the expiration of such seven years, the share to which he or it would have been entitled shall go to my next of kin.” By an eighth codicil the testator bequeathed “to the officer commanding the 1st Battalion Lanarkshire Volunteers the sum of 1000*l.* and to the officers commanding the Dorsetshire Yeomanry Cavalry and the London Scottish Volunteers respectively the sum of 500*l.* each”; and he declared that the aforesaid respective sums should be held by the commanding officers “for any purpose or purposes for the benefit of their respective corps it being my intention that the said funds shall be deemed private funds and be held and expended entirely independently of Government control.” The testator died in Jan., 1902, and in Jan., 1909, the seven years limited by his will for accumulation expired and the fund became distributable. In the interval the Territorial and Reserve Forces Act, 1907, was

WILL (Territorial and Reserve Forces)—contd.

passed, which, by s. 29 and an Order in Council of Mar. 19, 1908, made thereunder, transferred the Volunteer and Yeomanry units to the Territorial Force, and by s. 34 and an Order in Council of April 9, 1908, transferred the Militia units to the Army Reserve:—

Held, that the effect of the Act and the Orders in Council was not to destroy the Volunteer, Yeomanry, and Militia units, but to reorganize them, and accordingly that those units had not ceased to exist.

Held, therefore, that the legacies bequeathed to the Volunteer and Yeomanry units were payable to the several county associations established under the Act on behalf of the units of the Territorial Force which now represented those units.

Held, also, that the legacy “to the officer commanding the Northamptonshire Militia for the mess of that regiment or for the poor of the regiment” was a good charitable gift, and was payable to the officer commanding the unit of the Army Reserve which now represented the Northamptonshire Militia.

In re GOOD, [1905] 2 Ch. 60, followed.

In re DONALD. MOORE *v.* SOMERSET

Warrington J. [1909] W. N. 169; [1909] 2 Ch. 410

Testamentary Expenses.

See also on REVENUE—Estate Duty.

1. — “*All expenses incident to the trusts hereby created*”—*Direction to pay out of residue—Specific devise—Settled real estate—Settled legacy—Succession duty—Legacy duty—Will—Construction—Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), ss. 54, 58 (2.) (4.).*

By his will dated Mar. 10, 1908, the testator devised his Pendryl Hall Estate and all other his real estate in the parish of Codsall to his trustees upon trusts in favour of his daughter, the deft. Mrs. M. C. Giffard, her testamentary appointees and children as therein mentioned, and, after certain pecuniary legacies, bequeathed all the residue of his personal estate to his trustees upon trust for sale and conversion, and by or out of the moneys arising therefrom “to pay all my funeral and testamentary expenses and debts and all expenses incident to the trusts hereby created, including the estate duty and settlement estate duty payable in respect of all my said real estate in the parish of Codsall, and of the several sums hereinafter directed to be held in trust for my daughters or their children and upon trust to hold and retain for my said daughter M. C. Giffard the sum of 12,000*l.*” on the trusts therein mentioned in favour of his said daughter for life, and after her death for her testamentary appointees, and in default of appointment for her children. The testator directed his trustees to retain and hold other sums of considerable amount for five other daughters on closely similar trusts in favour of each one of them and her children, and upon trust as to the rest and residue of his said residuary personal estate to pay the same to his son, the deft. W. A. Briscoe absolutely. The testator died

WILL (Testamentary Expenses)—continued.

on July 2, 1909, and his will was proved by the plt. and the deft. W. A. Briscoe.

On April 29, 1910, the Finance (1909-10) Act, 1910, became law, imposing by s. 54 increased rates of estate duty and settlement estate duty in the case of persons dying on or after April 30, 1909, and by s. 58 (2.), (4.) certain legacy and succession duties in respect of legacies and successions on or after the same date.

This was a summons by the plt. for the determination of the questions (1.) whether the estate duty and settlement estate duty payable under s. 54 in respect of the Pendryl Hall Estate, and the settlement estate duty in respect of the settled legacy of 12,000*l.*, and the other settled legacies, were payable out of the residuary estate, and (2.) whether the succession duty and legacy duty payable under s. 58 (2.) in respect of the Pendryl Hall Estate and the settled legacy of 12,000*l.*, and the other settled legacies respectively, were payable out of the residuary estate.

Eve J. held, on the first question, that both the estate duty and the settlement duty were payable out of the residuary personal estate. With regard to the second question, he thought that on the cases cited the expression "all expenses" taken by itself was sufficiently wide to include expenses of the nature of succession and legacy duty imposed since the testator's death. He did not think that the words "all expenses" were qualified either by the words which immediately followed them, or by the words with which the direction for payment commenced, or were intended to be confined in meaning to the more limited construction which the courts had given to "testamentary expenses." The words were intended to be used in the widest and most generally accepted meaning, and he therefore held that the succession and legacy duties in question must be paid out of the residuary personal estate.

Courtney v. Vincent, (1823) T. & R. 443, and *Gosden v. Dotterill*, (1832) 1 M. & K. 56, referred to. *In re BRISCOE*. ROYDS v. BRISCOE

Eve J. [1910] W. N. 251

2. — *Annuities "without any deduction except legacy duty," Gift of—Will made before passing of the Customs and Inland Revenue Act, 1888—Republication by codicil after passing of the Act—Succession duty—Estate duty—Construction of will—Customs and Inland Revenue Act, 1888 (51 Vict. c. 8), s. 21—Finance Act, 1894 (57 & 58 Vict. c. 30), s. 9.*

A testator by his will made in 1882 gave an annuity to II. for her life, and after her death (in the events which happened) he gave annuities to her three children, and charged all the annuities on his real estate, and directed that they should be paid "without any deduction except for legacy duty and income tax." By a codicil, made after the passing of the Customs and Inland Revenue Act, 1888, he made certain dispositions, and in all other respects confirmed his said will.

WILL (Testamentary Expenses)—continued.

By the Customs and Inland Revenue Act, 1888, s. 21, legacy duty was abolished, and the duties under the Succession Duty Act, 1853, and certain additional duties were made chargeable in respect of legacies (whether given by way of annuity or in any other form) charged on the real estate of any person dying after July 1, 1888.

The testator died in 1892. H. died in 1900; and thereupon estate duty and succession duty became payable in respect of the annuities given to her children, and the question arose who was liable to pay the same:—

Held, following *In re Champion*, [1893] 1 Ch. 101, that the effect of the codicil was to republish the will as from the date of the codicil:—

Held, also, that the testator, when he republished his will, must be taken to have known that there was then no legacy duty; that it was a case of *falsa demonstratio*; and that the testator intended the annuitants to pay that duty—whether it was legacy duty or succession duty—which at that date was chargeable in respect of the annuities:—

Held, further, that the estate duty was payable out of the testator's residuary personal estate. *In re RAYER*. RAYER v. RAYER

Farwell J. [1903] W. N. 19; [1903] 1 Ch. 685

— Costs—Administration action.

See COSTS. 1, 2, 44.

3. — *Donatio mortis causa—Will—Direction to pay testamentary expenses—Estate duty on donatio—Charge on property—Residue—Incidence—Finance Act, 1894 (57 & 58 Vict. c. 30), ss. 2 (1.), 6 (2.), 8 (4.), 9 (1.), 22 (2.) (a).*

II., who died in 1909, by his will appointed executors and trustees thereof, and devised and bequeathed to them his residuary real and personal estate upon trust to sell and convert and out of the proceeds to pay his funeral and testamentary expenses and debts, and invest the residue, and to stand possessed of the investments upon the trusts therein-after declared.

Shortly before his death the testator handed to the deft. certain deposit notes for sums amounting in the aggregate to 2000*l.* under such circumstances as to constitute a valid *donatio mortis causa* in her favour of the sums thereby represented (see *Hudson v. Spencer*, [1910] 2 Ch. 285).

The present originating summons was taken out by the executors of the will against the deft. for the determination of the question (*inter alia*) whether so much of the estate duty payable on the death of the testator as was attributable to and payable in respect of the *donatio mortis causa* of the deposit notes was charged upon and payable out of sums represented by the deposit notes, or whether the same was payable out of the residuary estate of the testator.

Warrington J., after referring to ss. 2 (1.), 6 (2.), 8 (4.), 9 (1.), and 22 (2.) (a) of the Finance Act, 1894, said that in his opinion the

WILL (Testamentary Expenses)—continued.

subject-matter of the donatio mortis causa in this case was not property which, upon the death of the testator, passed to the executors "as such." The executors, therefore, on paying the duty, would be entitled to repayment, and the duty would, under s. 9, sub-s. 1, of the Act of 1894 be a first charge on the property in respect of which it was leviable. It was, however, contended that even if under the provisions of the Finance Act, 1894, the duty might not be payable out of the testator's general estate, yet the testator had by directing that his "testamentary expenses" should be paid out of his general residue made the duty so payable. In *Porte v. Williams*, [1910] W. N. 233 (see No. 4, below), which was recently before Joyce J., a testatrix had a general power of appointment over property which she did not exercise, and it was there held that a direction in her will to pay her testamentary expenses did not operate to throw the estate duty in respect of the unappointed property upon her own estate. There was no distinction between that case and the present, unless it was that the present case was even a stronger one against the donee. He therefore held that, notwithstanding the directions in the will to pay testamentary expenses out of residue, the proper proportion of the duty attributable to the value of the subject-matter of the donatio must, under the Finance Act, be borne by the donee. In *re HUDSON*. SPENCER v. TURNER

Warrington J. [1910] W. N. 269

Note.—See *Hudson v. Spencer*, [1910] 2 Ch. 285. *Donatio Mortis Causa*. 4.

4. — *Estate duty—Direction to pay—Settlement estate duty—Finance Act, 1896* (59 & 60 Vict. c. 28), s. 19, sub-s. 1.

Settlement estate duty on personalty is not a testamentary expense, although the executor is accountable for it.

It is therefore payable out of the settled property under the Finance Act, 1896, s. 19, sub-s. 1, notwithstanding a direction in the will to pay testamentary expenses out of residue. In *re KING*. TRAVERS v. KELLY

Swinfen Eady J. [1904] W. N. 23 : [1904] 1 Ch. 363

5. — *Estate duty—Direction to pay out of the specific fund—Estate duty—Settlement estate duty—Incidence—Express provision—"The death duties payable out of my estate"—Finance Act, 1896* (59 & 60 Vict. c. 28), s. 19, sub-s. 1.

A testatrix directed "the death duties payable out of my estate" to be paid out of a specific fund :—

Held, that this was an "express provision" within s. 19, sub-s. 1, of the Finance Act, 1896, so that the settlement estate duty on chattels settled by the will was payable out of the specific fund.

In *re Pimm*, [1904] 2 Ch. 345, followed.

In *re Lewis*, [1900] 2 Ch. 176, distinguished. In *re CAYLEY*. AWDRY v. CAYLEY

Swinfen Eady J. [1904] W. N. 182 : [1904] 2 Ch. 781

WILL (Testamentary Expenses)—continued.

Note.

Distinguished by Farwell J. In *re Pimm*, [1904] 2 Ch. 345, 347. See next Case.

6. — *Estate duty—Direction to pay "my duties" out of residue—Specific devise by way of settlement—Estate duty—Settlement estate duty—Will—Construction.*

A testator, who died in 1903, after making pecuniary bequests and devising certain freeholds upon trusts by way of settlement, devised and bequeathed the residue of his real and personal estate upon trust for sale and conversion, and directed his debts, funeral and testamentary expenses and duties to be paid out of the proceeds of such sale and conversion :—

Held, that the settlement estate duty as well as the estate duty payable in respect of the specifically devised realty must be paid out of the general residuary estate in exoneration of the specifically devised realty. In *re PIMM*. SHARPE v. HODGSON

Farwell J. [1904] W. N. 135 : [1904] 2 Ch. 345

Note.

Followed by Swinfen Eady J., In *re Cayley*, [1904] W. N. 182 ; [1904] 2 Ch. 781. See preceding Case.

— *Estate duty—Incidence—Exercise of general power—Appointed fund—Residue.*

See REVENUE—Estate Duty. 27.

7. — *Estate duty—Incidence—Exercise of general power of appointment by will—Appointed fund—Residue—Finance Act, 1894* (57 & 58 Vict. c. 30), s. 9, sub-s. 1.

Where a general power of appointment over a fund is exercised by will, the appointed fund does not pass to the executor "as such," and consequently the estate duty in respect thereof is payable out of the appointed fund in the absence of any direction in the will to the contrary.

In *re Moore*, [1901] 1 Ch. 691, dissented from.

In *re Treasure*, [1900] 2 Ch. 648, and In *re Maddock*, [1901] W. N. 118 ; [1901] 2 Ch. 372, followed. In *re POWER*. In *re STONE*.

ACWORTH v. STONE Byrne J. [1901] W. N. 158 ; [1901] 2 Ch. 659

8. — *Estate duty—Incidence—General power—Appointed fund—Residue—Direction to pay testamentary expenses—Finance Act, 1894* (57 & 58 Vict. c. 30), s. 9, sub-s. 1.

A testatrix, having directed the executors and trustees of her will to pay her testamentary expenses, bequeathed (inter alia) certain specific personalty, over which she had a general power of appointment, to her trustees upon trust for certain specific legatees.

She devised and bequeathed her residuary real and personal estate to her trustees upon trust for sale and conversion, the net proceeds to be paid to certain residuary legatees. The testatrix died on June 20, 1898 :—

Held, that the appointed fund had passed

WILL (Testamentary Expenses)—continued.

to the executors "as such" within the meaning of the Finance Act, 1894, s. 9, sub-s. 1, so that the estate duty was payable out of residue :

Held, also, that the will itself imposed this duty on the residue, the residuary estate being what remained after satisfying the previous dispositions of the will, including the direction to pay testamentary expenses, which covered estate duty. *In re Clemow*, [1900] 2 Ch. 182. *In re Fearnshides*. *Baines v. Chadwick* - Swinfen Eady J. [1902] W. N. 226; [1903] 1 Ch. 250

Note.

Undistinguishable, *In re Creed*, Swinfen Eady J., [1905] W. N. 94. *See next Case.*

Followed by Neville J., *In re Orlebar*, [1908] 1 Ch. 136. *See No. 10, below.*

Followed by C. A., *In re Hadley*, [1909] 1 Ch. 20. *See Revenue—Estate duty. 15.*

9. — Estate duty — Incidence — General power—Appointed fund—Residue.

W. C., the testator in this action, by his will gave the residue of his estate after his wife's death to such persons as she should by will appoint, and in default of appointment to be equally divided among seven nephews and nieces. The testator's wife survived him and by her will exercised the power of appointment by giving 200*l.* to E. S. A., and directing that the trustees of her husband's will should hold the residue upon the trusts declared thereof by her husband's will in default of appointment. She also gave legacies to an amount which her own estate was probably insufficient to pay, appointed the persons who were trustees of her husband's will executors, and disposed of the residue of her own estate. H. A. H., one of the testator's nephews, who was entitled in default of appointment to one-seventh share of his residuary estate, died in the widow's lifetime before the date of her will. The appointment to him therefore lapsed.

This summons was taken out by the trustees for the determination of the questions whether the seventh share to which H. A. H. would have been entitled under the appointment if he had survived the widow devolved under the trusts declared by the husband's will in default of appointment, or as part of Mrs. C.'s residuary estate, whether the legacies given by Mrs. C. were payable out of the appointed fund, and whether the estate duty was payable out of the appointed fund or out of Mrs. C.'s residuary estate.

Swinfen Eady J., at the hearing, said that on the words of the particular will Mrs. C. had shown a clear intention not to make the appointed fund her own, and therefore the share of which the appointment had lapsed would devolve as in default of appointment, and her legacies were payable only out of her own estate. On the question as to succession duty Swinfen Eady J. said that he had considered the point, but could find nothing to distinguish this case from *In re Fearnshides*,

WILL (Testamentary Expenses)—continued.

Baines v. Chadwick, [1903] 1 Ch. 250, and that the fact that the appointment to H. A. H. had lapsed made no difference. The estate duty upon the whole of the appointed fund, including the lapsed share, must be paid out of Mrs. C.'s residuary estate. *In re Creed*. *THOMAS v. HUDSON*

Swinfen Eady J. [1905] W. N. 94

10. — *Estate duty — Incidence — General power of appointment by will—Appointment—Residue—No direction to pay testamentary expenses—Finance Act, 1894 (57 & 58 Vict. c. 30), s. 8, sub-s. 3; s. 9, sub-s. 1.*

Where a testator, in the exercise of a general testamentary power, appoints personal property, the estate duty payable in respect of the appointed property is not payable out of that property, but out of the general personal estate of the testator.

In re Moore, [1901] 1 Ch. 691, and *In re Fearnshides*, [1903] 1 Ch. 250, followed.

In re Treasure, [1900] 2 Ch. 648; *In re Power*, [1901] 2 Ch. 659; and *In re Dodson*, [1907] 1 Ch. 284, dissented from. *In re ORLEBAR*. WYNTER v. ORLEBAR

Neville J. [1907] W. N. 220; [1908] 1 Ch. 136

11. — *Estate duty—Incidence—Will exercising power of appointment—Appointed fund—Residue—Finance Act, 1894 (57 & 58 Vict. c. 30), s. 9, sub-s. 1.*

Where a general power of appointment over a fund is exercised by will, the appointed fund passes to the executor as such, and, consequently, the estate duty in respect thereof is payable out of residue.

In re Treasure, *Wild v. Stanham*, [1900] 2 Ch. 648, not followed on this point. *In re MOORE*. *MOORE v. MOORE*

Buckley J. [1901] W. N. 48; [1901] 1 Ch. 691

Note.

Dissented from by Kekewich J., *In re Maddock*, [1901] 2 Ch. 372. *See No. 15, below.*

Dissented from by Byrne J., *In re Power*, [1901] 2 Ch. 659. *See No. 7, above.*

Followed by Neville J., *In re Orlebar*, [1908] 1 Ch. 136. *See No. 10, above.*

Followed by C. A., *In re Hadley*, [1909] 1 Ch. 20. *See Revenue—Estate duty. 15.*

Referred to by Swinfen Eady J., *In re Fearnshides*, [1903] 1 Ch. 250, 257. *See No. 8, above.*

12. — *Estate duty—Legacies given "free from duty"—Settled legacy—Settlement estate duty—Will made before and death of testatrix after passing of Finance Acts, 1894 and 1896—Deficient estate—Abatement of legacies—Incidence of duties—Finance Act, 1894 (57 & 58 Vict. c. 30), s. 5, sub-s. 1—Finance Act, 1896 (59 & 60 Vict. c. 28), s. 19, sub-s. 1—Wills Act, 1837 (1 Vict. c. 26), s. 24—Will—Construction.*

A testatrix, who made her will in 1893 and died in 1903, bequeathed numerous pecuniary legacies and directed that all the legacies should

WILL (Testamentary Expenses)—continued.

be paid "free from duty." Her estate was insufficient to pay all the legacies and duties in full :—

Held, following *Lord Advocate v. Miller's Trustees*, (1881) 21 Sco. L. R. 709, that the legacy duty payable on each legacy must be treated as an additional legacy and be added to the legacy for the purposes of abatement.

The testatrix by her will settled one of the legacies on certain trusts :—

Held, that the Finance Acts, 1894 and 1896, applied, and that the direction to pay "free from duty" included the settlement estate duty, which must, like the legacy duty, be treated as an additional legacy and be added to the legacy for the purposes of abatement. *In re TURNBULL. SKIPPER v. WADE*

Farwell J. [1905] W. N. 64 : [1905] 1 Ch. 726

— Estate duty—Mixed fund.

See ANNUITY. 13.

— Estate duty—Power of appointment—Incidence.

See REVENUE—Estate Duty. 27.

— Estate duty—Property passing on death.

See under REVENUE—Estate Duty.

13. — "Estate duty" —Settlement estate duty —Direction to pay estate duty out of residuary personalty —Construction of will.

A testatrix by a will made in 1899 settled certain real property upon several persons in succession, and directed her trustees to stand possessed of her residuary personal estate upon trust to pay (amongst other things) the estate duty on the whole of the real and personal estate devised and bequeathed by her will :—

Held, that "estate duty" included settlement estate duty. *In re LEVERIDGE. SPAIN v. LEJOINDRE*

Joyce J. [1901] W. N. 203 : [1901] 2 Ch. 830

Note.

Referred to by Farwell J., *In re Pimm*, [1904] 2 Ch. 345, 347. *See* No. 6, above.

14. — Estate duty—Settlement estate duty—Incidence of duties—General residue insufficient—Annuities payable out of particular fund—Liability of legatee of particular residue—Finance Act, 1894 (37 & 58 Vict. c. 30), s. 5—Finance Act, 1896 (59 & 60 Vict. c. 28), s. 19.

A testator, who died in 1895, by his will bequeathed "all his moneys invested in or upon any stocks or funds, whether in or out of the United Kingdom, and all his ry. stocks, shares, debentures, and bonds, and generally all and every his securities for money," to trustees upon trust to pay the dividends, interest, and annual produce of such stocks, funds, shares, and securities as follows, namely, 1000*l.* annually to his sister E. during her life, 500*l.* annually to each of his two brothers C. and P. during their respective lives, and the residue and remainder thereof to his brother W. during his life. After the death of E. the trustees were to hold the trust fund, as to 21,000*l.* upon certain trusts in favour of C. and his children, and as to 18,000*l.* upon certain trusts in favour of P. and his children, and were to stand possessed of the residue upon certain trusts for W. for life, with

WILL (Testamentary Expenses)—continued.

remainders over. The testator bequeathed all the residue of his personal estate of whatever kind to W., subject to the payment of the testator's funeral and testamentary expenses and debts. The general personal estate being insufficient, the question arose how the estate duty and the interest thereon, and the settlement estate duty and the interest thereon, were respectively to be borne as between the annuitants of 1000*l.*, 500*l.*, and 500*l.* on the one hand, and W. on the other hand. In the administration action, a summons was taken out by the trustees for the determination of this question. It was agreed that the duties must be paid out of capital, but as to the interest it was contended on the part of W. (who was the plt. in the action) that the principle of *In re Parker-Jervis*, [1898] 2 Ch. 643, was applicable as to both duties, and that the amount ought to be borne by E., C., P., and W. rateably according to the capitalized values of their respective interests. On behalf of E., C., and P. it was contended that, as W. was in the position of a legatee of the residue of the trust fund, any loss or gain by diminution or increase of the fund must be borne by or accrue to him, in conformity with the cases decided as to particular (as distinguished from general) residues cited in *Theobald on Wills*, 2nd ed. 232.

Kekewich J. referred to *Champney v. Dary*, (1879) 11 Ch. D. 949, to the Finance Act, 1894, s. 5, and to *Berry v. Gaukroger*, [1903] 2 Ch. 116, and held that both as to the estate duty and the settlement estate duty the loss occasioned by the inefficiency of the general residuary estate must fall on W., as residuary legatee of the trust fund specially bequeathed. *DE QUETTEVILLE v. DE QUETTEVILLE*

Kekewich J. [1905] W. N. 85

The C. A. dismissed the appeal. They said that no question under the Finance Acts was involved in the case, but that it turned solely on the construction of the will. The interest given to W. was a true residue after payment of the annuities in full, not a specific share of the particular fund; and the burden of paying both the estate duty and the settlement duty must fall upon him. *DE QUETTEVILLE v. DE QUETTEVILLE* - **C. A. [1905] W. N. 130**

15. — Estate duty—Will exercising power of appointment—Appointed fund—Residue—Assets—Order of administration—Insufficiency of general personalty—Residuary bequest—Trust affecting conscience of legatee as to part—General or specific.

A testatrix by her will gave her residuary estate to A., who was also an executor of the will, and by a subsequent memorandum, acknowledged by A. to be a valid trust, directed that a portion of the residue should be held in trust for certain other persons. Apart from the portion bound by the memorandum, the residuary personalty was insufficient for payment of the debts of the testatrix :—

Held, that, although the trust was specific, it was not a specific bequest, inasmuch as the title of the cestuis que trust was dehors the will :

Held, therefore, that the debts were payable

WILL (Testamentary Expenses)—continued.

rateably out of the portion affected by the memorandum and the portion not so affected.

The testatrix, having a general testamentary power of appointment over a fund, appointed the fund by her will:—

Held, following *In re Treasure*, [1900] 2 Ch. 648, and dissenting from *In re Moore*, [1901] 1 Ch. 691, that the estate duty in respect of the fund was payable out of the fund itself, *In re MADDOCK. LLEWELYN v. WASHINGTON Kekewich J.* [1901] W. N. 118; [1901] 2 Ch. 372; C. A. [1902] W. N. 102; [1902] 2 Ch. 220

Note.

Followed by *Byrne J.*, *In re Power*, [1901] 2 Ch. 659. See No. 7, above.

16. — *Estate duty payable in respect of real estate*—“*Testamentary expenses*”—*Construction of will*—*Finance Act*, 1894 (57 & 58 Vict. c. 30), s. 6; s. 8, sub-s. 3; s. 9, sub-s. 1—*Land Transfer Act*, 1897 (60 & 61 Vict. c. 65), s. 1.

Estate duty payable in respect of real estate is not a “testamentary expense” within the meaning of a direction contained in the will of a testator, who died after the Land Transfer Act, 1897, for payment of his debts, funeral and testamentary expenses, out of his personal estate.

In re Palmer, [1900] W. N. 9, followed. *In re SHARMAN. WRIGHT v. SHARMAN*

Kekewich J. [1901] W. N. 123; [1901] 2 Ch. 280

Applied by *Swinfen Eady J.*, *In re Spencer Cooper*, [1908] 1 Ch. 130. See No. 18, below.

17. — *Insufficient general personal estate to pay duty*—*Specifically bequeathed personality*—*Undisposed of realty*—*Order of administration of assets*—*Marshalling*—*Finance Act*, 1894 (57 & 58 Vict. c. 30)—*Land Transfer Act*, 1897, (60 & 61 Vict. c. 65).

Estate duty, which under the Finance Act, 1894, is payable in respect of personal property specifically bequeathed by a testator, being a testamentary expense, is payable in the same order of administration as other testamentary expenses are payable, and accordingly where the residuary personal estate is insufficient to pay the estate duty on the specifically bequeathed personality the heir-at-law is not entitled to have the duty paid out of such personality in exoneration of the undisposed of realty.

Shepherd v. Beetham, (1877) 6 Ch. D. 597, distinguished. *In re PULLEN. PARKER v. PULLEN* — **Warrington J.** [1910] W. N. 60; [1910] 1 Ch. 564

18. — *Legacies*—*Direction to pay*—*Mixed fund*—*Rateable payment*—*Portion attributable to realty*—*Estate duty*—*Finance Act*, 1894 (57 & 58 Vict. c. 30), s. 6, sub-s. 2; s. 8, sub-s. 3, 4.

A general direction to pay legacies out of a mixed fund of residue charges them rateably on the portions attributable to realty and personality.

Roberts v. Walker, (1830) 1 Russ. & My. 752, and *Allan v. Gott*, (1872) L. R. 7 Ch. 439, applied.

So far as the legacies are payable out of the portion attributable to realty they are real estate, and must bear their own estate duty,

WILL (Testamentary Expenses)—continued.

notwithstanding a direction to pay “testamentary expenses” out of the mixed fund.

Smith v. Claxton, (1820) 4 Madd. 484; *In re Sharman*, [1901] 2 Ch. 280; and *Berry v. Gaukroger*, [1902] 2 Ch. 116, applied.

In re Trenchard, [1905] 1 Ch. 82, distinguished. *In re SPENCER COOPER. POË v. SPENCER COOPER*

Swinfen Eady J. [1907] W. N. 238; [1908] 1 Ch. 130

19. — *Power of appointment*—*Non-exercise*—*Direction to pay testamentary expenses*—*Estate duty on unappointed property*—*Charge on property*—*Repayment to executor*—*Estate duty*—*Incidence*—*Will*—*Finance Act*, 1894 (57 & 58 Vict. c. 30), ss. 1, 6 (2.), 8 (3.), 9 (1.), (4.).

Under the will of her husband Mrs. Backler had a general power of appointment by deed or will over his residuary estate, of which she was tenant for life. By her will, dated in 1902, she recited the power and that she did not desire to exercise it, but desired that the trusts contained in her husband's will should upon her death take effect. She devised and bequeathed all her real and personal estate not thereby otherwise disposed of (exclusive of any which should remain subject to the trusts declared by her husband's will) to her trustees in trust for conversion, and out of the moneys produced thereby and her ready money to pay her funeral and testamentary expenses and debts and legacies, and to invest the residue and pay the income thereof to her daughter during her life, and after her death in trust for such person or persons for such purposes and in such manner as her daughter should by will appoint.

The testatrix died in 1903, and her executors (of whom the plt. was one) paid out of her estate the estate duty in respect of the value at her death of her husband's residuary estates. In this action the plt. sought to recover from the executor of the husband's estate the amount of the estate duty so paid.

Joyce J. said that there was no authority for the proposition that where a testatrix had a power of appointment over property which she did not exercise, a direction in her will to pay her testamentary expenses operated to throw the estate duty in respect of the unappointed property upon her own estate. The duty was payable out of the unappointed property. **PORTE v. WILLIAMS**

Joyce J. [1910] W. N. 233

Note.

Followed by *Warrington J.*, *In re Hudson, Spencer v. Turner*, [1910] W. N. 269. See No. 3, above.

20. — *Probate duty*—*Direction to pay out of specific fund*—*Will made before Finance Act*, 1894 (57 & 58 Vict. c. 30)—*Death after Act*—*Estate duty*.

By her will dated Aug. 20, 1888, when probate duty was in force, a testatrix bequeathed certain Consols to her trustees upon trust for her brother for life and subject thereto upon trust to raise thereout “the amount of the probate duty which may be payable on the proving of this my will in respect of the said Government

WILL (Testamentary Expenses)—continued.

Consolidated Annuities," the said sum when raised to fall into residue.

The balance of the Consols was given to certain specific legatees.

The testatrix died on Aug. 19, 1896, after the commencement of the Finance Act, 1894, so that estate duty and not probate duty was payable.

The brother died on Nov. 15, 1909, and the Consols became divisible:—

Held, that the direction to raise probate duty did not operate as a direction to raise the larger and widely different estate duty subsequently imposed by the Finance Act, 1894, and the direction was therefore inoperative. *In re BOXER. MORRIS v. WOORE* **Swinfen Eady J. [1910] W. N. 132; [1910] 2 Ch. 69**

Trustees.

See also under EXECUTOR.

TRUSTEE.

— Charitable legacies.

See under CHARITY.

— Power given to "my said trustee"—Power whether personal or annexed to office. *See TRUSTEE—Powers. 1.*

1. — *Trustee—Retainer—Debt due from legatee to estate—Liability to account—Satisfaction of debt—Bankruptcy—Composition—Acceptance of dividend—Assent to composition—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), ss. 18, 19, 30.*

Two trustees of a will misappropriated and lost part of the trust funds. A receiving order was made against them under the Bankruptcy Act, 1883, and a composition was agreed to and approved by the Court under which a dividend of 6s. in the pound was to be accepted by the creditors in full discharge of their debts. New trustees of the will were appointed, and they received the dividend of 6s. in the pound. The estate became divisible, and the trustees claimed to retain the share of it to which one of the defaulting trustees was beneficially entitled in order to make good the loss which he had caused to the estate:—

Held, that by receiving the dividend the trustees had assented to the composition; that the debt due to the estate by the defaulting trustee was no longer in existence; and that he was therefore entitled to have his share of the estate paid to him. *In re SEWELL. WHITE v. SEWELL* **Parker J. [1909] 1 Ch. 806**

2. — *Trustee making profit out of trust—Discretionary trust to carry on business—Trustee and cestui que trust—Licence to trustees to exercise powers under the will notwithstanding personal interest—Sale of goods to business by trustees at a profit—Retention of profit—Will—Construction.*

A testator carried on the business of a licensed victualler and also, in partnership with a brother, the business of a wine and spirit merchant, and in connection with his business of licensed victualler he purchased from the partnership business wines and spirits at prices below the market value of the goods. By his will he appointed his two brothers and his sister executors and trustees thereof and devised and bequeathed

WILL (Trustees)—continued.

his residuary estate to his trustees upon trust to carry on his business of licensed victualler for a period not exceeding ten years from his death with all the powers in that behalf of absolute owners, and he declared that his trustees might exercise all powers and discretions thereby or by law given to them notwithstanding that they or any of them might have a personal interest in the mode or result of exercising such power or discretion.

The trustees carried on the testator's business of a licensed victualler under the terms of the will, and the wine and spirit business was continued by the two brothers, who supplied the testator's licensed houses with wines and spirits at a profit but at less than current market prices:—

Held, that the brothers were entitled to retain the profit arising from such supply by virtue of the special clause at the end of the will, but not upon the ground stated in *Smith v. Langford*, (1840) 2 Beav. 362.

Per Cozens-Hardy M. R.: *Smith v. Langford* can no longer be treated as a binding authority. *In re SYKES. SYKES v. SYKES* **C. A. [1909] 2 Ch. 241**

Uncertainty.

— Charitable gifts.

See under CHARITY.

1. — *Charity—Trust—"Such charitable or public purposes as my trustee thinks proper"—Scottish law.*

A testatrix by codicil in her own handwriting directed her trustee that—in the events which happened—one-half of the residue of her estate should be applied for "such charitable or public purposes as my trustee thinks proper":—

Held, affirming the decision of the Second Div. of the Court of Sess., (1900) 3 F. 274; 38 S. L. R. 209, that the direction was void for uncertainty. *BLAIR v. DUNCAN*

H. L. (Sc.) [1901] W. N. 247; [1902] A. C. 37

— Gift for "charitable and benevolent institutions" not void for uncertainty.

See CHARITY. 50.

2. — *Gift for life with direction to dispose of estate according to verbally expressed wishes—Parol evidence—Admissibility—Avoidance of gift for uncertainty—Construction of will.*

Testator by his will appointed his wife sole executrix, and gave her his property for life. He then desired and empowered her by her will or in her lifetime to dispose of his estate "in accordance with my wishes verbally expressed by me to her":—

Held, that parol evidence could not be admitted to show what the testator's verbally expressed wishes were, and that the power of disposition given to the widow was void for uncertainty.

In re Fleetwood, (1880) 15 Ch. D. 594, distinguished. *In re HETLEY. HETLEY v. HETLEY*

Joyce J. [1902] W. N. 154; [1902] 2 Ch. 866

— Illegitimate children—Indication of intention

— Class gift—Future children.

See WILL—Illegitimacy. 3, 4.

WILL (Uncertainty)—continued.

3. — *Longest period allowed by law, Gift to maintain tomb for*—"Un'til twenty-one years from the death of the last survivor of all persons who shall be living at my death"—*Perpetuity.*

Testatrix bequeathed the sum of 500*l.* New Consols to trustees upon trust to apply the dividends thereof in maintaining and keeping in repair the tomb of her brother in Africa "for the longest period allowed by law, that is to say, until the period of twenty-one years from the death of the last survivor of all persons who shall be living at my death":—

Held, that the gift was void for uncertainty.

Whether it was void, as a perpetuity, *quære.*

In re MOORE. *PRIOR v. MOORE*

Joyce J. [1901] W. N. 66; [1901] 1 Ch. 336

4. — *Trust—Trust disposition and settlement—*"Charitable or religious institutions and societies."

A testator directed his trustees to divide a portion of the residue of his estate to and among such "charitable or religious institutions and societies" as they might select:—

Held, reversing the decision of the Second Division of the Ct. of Sess. (1904) 6 F. 285, that the bequest was void for uncertainty. GRIMOND (or MACINTYRE) v. GRIMOND

H. L. (Sc.) [1905] W. N. 44;

[1905] A. C. 124, 603

Note.

Distinguished by Kekewich J., *In re Purdoo*, *McLaughlin v. Penny*, [1906] 2 Ch. 184. See *Charity*. 2.

Validity.

— Will — Validity of — Undue influence — Evidence of executors inadmissible. See JERSEY. 3.

Vendor and Purchaser.

1. — *Administration—Annuities and legacies charged on property—Provision of fund to answer annuities and legacies—Continuing liability of residue—Vendor and purchaser—Order discharging property—Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), s. 5.*

Where annuities and legacies are charged on property, the Court's jurisdiction to set apart a fund to answer the annuities and legacies and distribute the rest of the property is based on administration only, and the exercise of the jurisdiction does not release the rest of the property, which, if the fund fails to answer the annuities and legacies, may be followed into the hands of those who take it.

Notwithstanding the setting apart of the fund, a purchaser of part of the distributed property may validly object to the title in the absence of any release from the annuities and legacies and of an order under s. 5 of the Conveyancing and Law of Property Act, 1881. *In re* EVANS AND BETTELL'S CONTRACT

Parker J. [1910] 2 Ch. 438

Vested Interest.

1. — "Die without leaving children"—*Death of child in lifetime of tenant for life—Existence of child known to testator—"Leaving"—"Having had"—Will—Construction—Gift to A.*

WILL (Vested Interest)—continued.

for life with remainder to children—Gift over—Vested interest.

It is now a well-settled principle that, where there is a gift by will to A. for life, and after his death to his children in terms which give the children an absolute interest in A.'s lifetime, followed by a gift over "if A. dies without leaving children," the word "leaving" is so to be construed as not to destroy any prior vested interest: that is to say, "without leaving children" should be read as "without leaving children who have not attained vested interests"; and this principle of construction is not affected by the circumstance that the testator knew of the existence of a child of A. and that such knowledge appears on the face of the will itself.

A testatrix, after giving a legacy for the benefit of G. L. the younger, son of her nephew G. L. the elder, gave her residuary estate to trustees upon trust for conversion, and out of the proceeds to raise and invest a sum of 1000*l.* and pay the interest thereof to the said G. L. the elder for life, and after his death to divide the capital amongst his children equally; and in case of his death "without leaving any child or children," the same to fall into her residuary estate, which she gave to certain nieces equally.

G. L. the elder survived the testatrix and died, having had five children all born before the date of the will, of whom four died in infancy before that date. The fifth, G. L. the younger, named in the will, survived the testatrix and died in his father's lifetime.

Held (reversing Byrne J.), that G. L. the younger took an absolute vested interest at birth, which interest became, upon his death, transmissible to his representatives. *In re* COBBOLD. COBBOLD v. LAWTON C. A. [1903] W. N. 88; [1903] 2 Ch. 299

— Instalments — Postponed payment — Intermediate income.

See WILL—Legacy. 2.

Vesting.

— "Born in my lifetime"—Divesting clause—Child en ventre sa mère. See WILL—Words. 2.

1. — *Gift, after life interest, to children of tenant for life "or legal representatives"—Children dying before period of distribution—Construction of will.*

Testator gave a share of his residuary estate to each of his two daughters for their respective lives, and after their deaths their respective shares "to be equally divided between their respective children or legal representatives":—

Held, that "representatives" meant the representatives of the tenants for life and not those of the children; that the addition to the gift to the children of the words "or legal representatives" did not operate as a divesting clause, but constituted an alternative gift to arise only in the event of there being no child that took a vested interest; and consequently that all children of the daughters who survived the testator, or were born after his death, took vested interests notwithstanding that they might not have survived

WILL (Vesting)—*continued*.

their respective mothers. *In re* ROBERTS. PERCIVAL v. ROBERTS - Joyce J. [1903] 2 Ch. 200

2. — *Gift to son at thirty-five*—*Discretionary trust for maintenance out of income*—*Vesting*—*Will*—*Construction*.

A testator gave all his residuary estate to trustees upon trust as to one-third part thereof to pay the income, or such part thereof as his trustees should think fit, to his son W. for his advancement, preferment, or benefit by equal weekly instalments until he should attain thirty-five, and then to pay him the corpus:—

Held, that the son took a vested interest at the testator's death and was entitled to immediate payment.

The rule laid down by Jessel M.R. in *In re Parker*, (1880) 16 Ch. D. 44, followed. *In re* WILLIAMS. WILLIAMS v. WILLIAMS

Neville J. [1906] W. N. 210; [1907] 1 Ch. 180

3. — *Real estate*—*Devise to A. "when" she shall attain twenty-five*.

A devise of real estate to a devisee "when she shall attain the age of twenty-five years," without more, is contingent on her attaining that age.

Grant's Case (*Johnson v. Gabriel*), (1587) Cro. Eliz. 122; 13 Rep. 50 a; *Phipps v. Ackers*, (1842) 9 Cl. & F. 583, 591; 57 R. R. 27; *Andrew v. Andrew*, (1875) 1 Ch. D. 410, 417; and *Love v. Love*, (1881) 7 L. R. Ir. 306, followed. *In re* FRANCIS. FRANCIS v. FRANCIS

[1905] W. N. 93; [1905] 2 Ch. 295

4. — *Residue to individuals in shares at twenty-one*—*Maintenance clause*—*Income for maintenance of all*—*Vested or contingent*—*Construction of will*.

It is now a well-settled rule of construction that, where there is a gift by will of a share of residue, to be paid or transferred to the legatee on his attaining a particular age, with a direction that in the meantime the income of the share shall be applied for his maintenance, the share is vested and not contingent.

A testator gave his residuary estate in trust to pay and transfer the same unto and equally between his two children, a son and daughter, on their severally attaining twenty-one, the income "during their respective minorities" to be applied in or towards their maintenance, with a power for the trustees at any time during the "respective minorities" of his said two children to advance any portion "of his or her presumptive share" in or towards "their" advancement in the world:—

Held, upon the construction of the will, that the income of each share was to be applied separately for the maintenance of the child entitled to that share alone, and not indiscriminately in respect of both shares, and therefore that, according to the rule above stated, each child took an immediate vested interest in his or her share.

Decision of Swinfen Eady J., [1902] W. N. 73; [1902] 1 Ch. 945, reversed. *In re* GOSSLING. GOSSLING v. ELCOCK C. A. [1903] W. N. 40; [1903] 1 Ch. 448

— *Will*—*Trust*—*Denuding*—*Vesting*.

See TRUST. 2.

WILL—*continued*.**Wasting Securities.**

— *Enjoyment in specie*—*"Residuary trust funds"*—*Tenant for life and remainder-man*.

See WILL—*Interest*. 2.

Words.

— *"Advances."*

See under WILL—*Advances*.

1. — *"All my leasehold estate"*—*"All my real estate"*—*Devise of real estate*—*Lease*—*Construction of will*.

A testator devised "all my real estate" to one and bequeathed "all my leasehold estate" to others. He died entitled to the fee simple of certain houses in fee subject to a term, and also entitled to a sub-lease of them for the term less two days outstanding in a mortgagor. He had other freeholds and leaseholds:—

Held, that all the testator's interest in the houses passed by the devise. *In re* GUYTON AND ROSENBERG'S CONTRACT

Cozens-Hardy J. [1901] W. N. 159; [1901] 2 Ch. 591

— *"All the share of my late husband's estate."*

See LIMITATIONS, STATUTE OF. 21.

— *"Assigns."*

See WILL—*Limitations*. 1.

— *"Born"* previously to date of will.

See WILL—*Class*. 15.

2. — *"Born in my lifetime"*—*Divesting clause*—*Child en ventre sa mère*—*Will*—*Construction*.

There is no fixed rule of construction which compels a Court to hold that a child was born in the lifetime of a testator because it was at that time en ventre sa mère. That peculiar rule of construction is limited to cases where that construction of the word "born" is necessary for the benefit of the unborn child, as decided by Lord Westbury L.C. in *Blasson v. Blasson*, (1864) 2 D. J. & S. 665.

A testator by his will devised real estate in strict settlement to his brother's first and second sons (who were alive at the date of the will) successively for life, with remainder to their first and other sons in tail, with remainder to his brother's third, fourth, and other sons successively in tail, but declared his intention to be that any third or other son born in the testator's lifetime should not take a larger interest than for life only, with remainder to his issue in tail male. The brother's third son was born three weeks after the testator's death. The first and second sons died without issue:—

Held, that the third son took an estate tail, not having been born in the testator's lifetime.

The decision of the C. A. [1906] 1 Ch. 583, reversed; and the decision of Swinfen Eady J., [1905] 2 Ch. 301, restored. *VILLAR v. SIR WALTER GILBEY, BARONET*

H. L. (E.) [1907] W. N. 72; [1907] A. C. 139

Note.

Discussed by C. A., *In re Salaman*, [1907] W. N. 218; [1908] 1 Ch. 4a.

Rule in, applied by C. A., *Williams v. Ocean Coal Co.*, [1907] 2 K. B. 422. *See* Master and Servant—*Compensation*. 52.

WILL (Words)—continued.**3. — “Cash at my bankers”—Money on deposit and stock—Will—Construction.**

By his will dated Oct. 16, 1901, after giving his household furniture and effects to his wife, and directing his executors to sell the stock-in-trade of his business to any of his children at a valuation, and stating the basis on which two of his sons who were employed in his business should be entitled to purchase the same, the testator directed that all money realised by the sale of his said business and all other goods, stock-in-trade, fixtures, horses, vans and carts as aforesaid “together with all cash in the house or at my bankers at my death” should be paid over to his wife for her own absolute use and benefit subject to payment of all his debts and funeral and testamentary expenses. At the time of his death (Jan. 16, 1902), the testator had a sum of 671*l.* on current drawing account at the London and County Bank, 600*l.* on deposit account at the same bank, 1100*l.* on deposit at the Birkbeck Bank, sums of 1900*l.*, 200*l.*, and 1900*l.*, respectively, on deposit at three other banks, and 58*l.* 6*s.* 7*d.* on “A” deposit and 233*l.* 6*s.* 8*d.* on “B” deposit at the Australian Joint Stock Bank, Ltd. At the English, Scottish, and Australian Bank, Ltd., the testator had a terminable deposit receipt for 74*l.*, 187*l.* debenture stock, 188*l.* preferred inscribed deposit stock, and 187*l.* deferred inscribed deposit stock, which together represented a deposit receipt for 750*l.* in the English, Scottish, and Australian Chartered Bank.

All the above moneys on deposit had been placed on deposit before the date of the will, and the deposit represented by the stock was also made prior to the date of the will. The testator's widow by her will divided her residuary estate equally between five of her seven children.

An originating summons was taken out by the trustees of the will, asking whether all, or any, and which of the above moneys and funds passed to the testator's widow as cash at the testator's bankers.

Held, that by the expression “cash at my bankers” the testator had given only money on current drawing account, and such of the money on deposit as was payable on demand was withdrawable without notice. *In re BOORER. BOORER v. BOORER* - - Parker J. [1908] W. N. 189

— “Charitable or religious institutions and societies.”

See WILL—Uncertainty. 4.

— “Company, Public.”

See WILL—Investments. 4.

4. — “Debentures”—Bequest of “all my debentures” in a company—Testator holding debentures and debenture stock—Will—Construction.

Testator by his will, dated in 1904, bequeathed “all my debentures and preferred and deferred stock in the Municipal Trust Company, Limited.” The testator was the chairman of the co., and at the date of his will and at the time of his death in 1906 he possessed, in addition to debentures and preferred and deferred stock, a considerable amount of debenture stock:—

Held, that the debenture stock passed under

WILL (Words)—continued.

the bequest. *In re HERRING. MURRAY v. HERRING* - - Joyce J. [1908] W. N. 153; [1908] 2 Ch. 493

— “Die leaving issue.”

See WILL—Class. 5.

— “Die without leaving children.”

See WILL—Vested Interest. 1.

— “Entitled.”

See WILL—Shifting Clause. 1, 2.

WILL—Substitution. 3.

— “Entitled to the possession or receipt of the rents.”

See WILL—Absolute Gifts. 7.

5. — “Freehold”—Mistake—Misdescription of gift—“My freehold land and hereditaments at M.”—Customary freeholds.

The word “freehold” may refer either to the quality or to the tenure of an estate.

Devise of “my freehold land and hereditaments at M.,” in Westmoreland:—

Held, to pass not only freeholds, but also privileged copyholds, on the ground that the latter were known as “freeholds” or “customary freeholds” in the locality, and the testatrix was unaware of any distinction of tenure. *In re STEEL. WAPPETT v. ROBINSON*

Swinfen Eady J. [1902] W. N. 202; [1903] 1 Ch. 135

6. — “Furniture and other personal effects”—Gift of—Effect as regards fixtures and trade furniture—Construction of will.

Testator was an innkeeper carrying on business at, and the yearly tenant of, the Roebuck Hotel, where there were furniture and effects, some part of which was used by him personally and the rest for the purposes of the hotel business; also trade and tenant's fixtures.

By his will he bequeathed “all furniture and other personal effects belonging to me, and which at the date of my death are at the Roebuck Hotel,” to W., and he gave the residue of his personal estate to other persons:—

Held, that W. was entitled to the furniture, linen, plate, glass, china, and other effects at the hotel, whether used for domestic purposes or for the purposes of the hotel business; but not to the trade or tenant's fixtures. *In re SETON-SMITH. BURNARD v. WAITE*

Buckley J. [1902] W. N. 68; [1902] 1 Ch. 717

7. — Gift “to be equally divided between the children of A. and B.”—Will—Construction.

Testatrix directed one moiety of the proceeds of sale of her real estate “to be equally divided between the children of F. W. and J. W. or their heirs.” F. W. and J. W. were nephews of the testatrix. F. W. had six children living at the death of the testatrix. For five years previous to the date of the will he had not lived with his family. J. W. had two children living at the death of the testatrix:—

Held, that the gift was to J. W. and the children of F. W., and that the division must be into moieties, one going to J. W. and the other to the children of F. W. *In re WALBRAN. MILNER v. WALBRAN* Joyce J. [1905] W. N. 165; [1906] 1 Ch. 64

WILL (Words)—continued.

— "Give, devise, bequeath, and appoint"—
Power of appointment—No reference to.
See **POWER OF APPOINTMENT.**

8. — "*Household furniture and effects*" —
Motor cars—Will—Construction—Bequest.

By his will dated Dec. 4, 1907, the testator, who died on Dec. 15, 1907, appointed the depts. executors and trustees, and gave "my house Thornleigh and its appurtenances and surrounding land and all my household furniture and effects in Thornleigh (just as it now stands)" to the plt., to whom he also gave an annuity of £200. a year during her life; he gave the residue of his estate to one of the depts. executors.

The testator had in use before and at the time of his death three motor cars kept in a motor house built by him in the yard of Thornleigh. He had used the cars in the ordinary way as private carriages in connection with his occupation of Thornleigh, and had been in the habit of taking the plt. out in them for drives and for the purposes of shopping and touring. The annual cost of the upkeep of the cars and the chauffeur's wages had averaged 1800*l.*

Summons by the plt. for the determination of the question whether the motor cars passed to her under the gifts above-mentioned.

Eve J. said that it was a question of intention and that he had to determine whether the words "my household furniture and effects in Thornleigh (just as it now stands)" were sufficiently wide—qualified as they were by the word "household"—to include the motor cars in question. He thought that it was clear on the will that the testator wanted the plt. to have the house just as they were living in it at that time, and having regard to the evidence, he could not say that the motor cars did not form a very important part of the house as they were living in it down to and at the time of the testator's death. He was bound to hold on the authorities that "household effects" would include carriages and horses, and as a matter of construction of this will and following the authorities on the word "household effects" he had no doubt that the testator meant the motor cars to pass to the plt., and he must so determine. *In re* HOWE. FERNIEHOUGH v. WILKINSON. (Liverpool District Registry.)

Eve J. [1908] W. N. 223

— "Issue."

See **WILL—Shelley's Case.** 1.

9. — "*Money*"—"The rest of my money"—
Other property—Residue—Construction of will.

The meaning to be attached to the word "money" in construing a testamentary document is not absolute and technical, but must depend upon the context and surrounding circumstance.

Where a testator, by his will, left a specific legacy to his brother, and gave "the rest of my money" among six other persons, whom he named:—

Held, that the latter bequest covered all the residue of his estate. **IN THE GOODS OF BRANLEY** —
Jeune, Pres. [1902] P. 106

— "Money invested in."

See **WILL—"Money Invested in."** 1.

WILL (Words)—continued.

— "Nephew,"

See **WILL—Class.** 11.

— "Niece,"

See **WILL—Class.** 11.

— "Other."

See **WILL—Survivor.** 2.

— "entitled to the possession or receipt of the rents."

See **WILL—Absolute Gift.** 7.

— "in the Presence of witnesses."

See **WILL—Execution.** 1.

— "Residuary devise."

See **WILL—Residue.** 5.

— "fall into Residue."

See **WILL—Residue.** 2.

— "Residue and remainder."

See **WILL—Residue.** 7.

— "Securities."

See **VENDOR AND PURCHASER—Title**
WILL—Investments. 3.

— "Share."

See **WILL—Class.** 3.

— "Sufficient."

See **WILL—Absolute Gift.** 6.

— "Surviving."

See **WILL—Survivor.** 2, 4.

— "Survivor."

See **WILL—Survivor.** 3.

— "Survivor's heir or heirs."

See **WILL—Estate Tail.**

— "Testamentary expenses."

See under **WILL—Testamentary Expenses.**

— "Think fit"—Charitable legacy.

See **CHARITY.** 18.

— "What is left."

See **WILL—Intestacy.** 2.

10. — "*Widow*"—*Administration—Life interest to wife "if she shall so long continue my widow"*—*Bigamous marriage—Secondary meaning of "widow"*—*Will Construction.*

A testator gave all his furniture, household goods and effects to his "dear wife D. J. Wagstaff"; and after various pecuniary legacies devised and bequeathed the residue of his real and personal estate to his "said wife" and two other persons upon trust for sale and to invest and pay the interest and annual produce thereof to "my said wife during her life if she shall so long continue my widow," and after her decease or second marriage, upon trust, in the events which happened, for the plt. The lady whom the testator thus described as his "wife," and with whom he went through the ceremony of marriage in 1893, was at that time the wife of A. G. Jalland, to whom she had been married in 1884, and who was still living:—

Held, on the evidence, that the testator knew at the time he went through the ceremony of marriage that the lady was then the wife of A. G. Jalland, and, consequently, that upon the true construction of this will she was entitled to

WILL (Words)—*continued*.

a life interest in the residuary estate unless and until she contracted a marriage subsequent to the death of the testator.

Decision of Kekewich J., [1907] 2 Ch. 35, affirmed. *In re WAGSTAFF*. *WAGSTAFF v. JALLAND* . . . C. A. [1907] W. N. 249; [1908] 1 Ch. 162

11. — “Wife” of a person, gift to for life—Wife living at date of will—Second wife, whether included—*Persona designata*—Construction of will.

A testatrix gave her residuary estate to trustees to pay the income to her son for life, and after his decease to “his wife” for her life, with remainder, as to the capital, for such of “his children” as should attain twenty-one equally.

At the date of the will the son had a wife living and well known to the testatrix. The wife died after the testatrix and the son married again:—

Held, that the word “wife” must bear its prima facie meaning, as referring to the wife existing at the date of the will, there being no context to control that prima facie meaning; and consequently that on the death of the son his second wife took no interest under the gift.

Re Burrow's Trust, (1864) 10 L. T. 184, approved.

In re Lyne's Trust, (1869) L. R. 8 Eq. 65, disapproved. *In re COLEY*. *HOLLINGSHEAD v. COLEY* C. A. [1903] W. N. 86; [1903] 2 Ch. 102

— “Wife” — Named legatee misdescribed as wife.

See WILL—Misdescription. 1.

— “Wishes.”

See WILL—Power of Disposition. 1.

WINDING-UP.

See under Specific Titles.

WINDOW—Ancient lights—Alteration in height of window—Prescription.

See LIGHT AND AIR. 2.

— Ancient lights—“Windows overlooking.”

See LIGHT AND AIR. 17.

WINDOW CLEANER — “Workman” — Employment of a casual nature—Workmen's compensation.

See MASTER AND SERVANT — Compensation, 191.

WINDWARD ISLANDS.

COURT OF APPEAL.] *Order in Council modifying the Constitution of the Court of Appeal for the Windward Islands*. St. R. & O. 1901, No. 187.

WINE AND BEERHOUSE ACT.

See under LICENSING ACTS.

WIRELESS TELEGRAPHY.

See under POST OFFICE—Telegraph.

WIRES—Road originally acquired by turnpike trustees—Overhead electric wires.

See STREETS.

WITHDRAWAL — Conditional withdrawal of proof refused.

See BANKRUPTCY—Proof. 2.

— Conspiracy—Jurisdiction to allow withdrawal of plea of guilty before sentence.

See CONSPIRACY. 4.

— Notice to treat—Compensation—Compulsory purchase—Widening street.

See STREETS 28.

— Winding-up petition—Costs.

See COMPANY—WINDING-UP—Costs. 9.

WITHOUT “PREJUDICE” — Receipts—Workmen's compensation.

See MASTER AND SERVANT—Practice. 19.

WITNESS.

See under EVIDENCE.

WITNESS ACTION—Standing over—Practice.

See PRACTICE—Trial. 8.

WITNESSES—“In the presence” of—Will.

See WILL—Execution. 1.

WOMAN PAST AGE OF CHILD-BEARING—

Presumption—Payment out of Court.

See EVIDENCE. 12, 13.

WOMEN — Parliament — Franchise—Right of women graduates to vote.

See SCOTTISH LAW. 19.

WOODEN STRUCTURE—Building—Transfer of

powers from London County Council.

See LONDON—Buildings. 27.

WORDS:—

NOTE.—Words under this heading are sometimes referred to or explained, &c., in the Courts below, but not on Appeal or in the headnote to a later report, as to which reference can be made to the Table of Cases to this volume at page xv., ante.

— “Abandonment” of undertaking by company.

In re PECKHAM, EAST DULWICH, AND

CRYSTAL PALACE TRAMWAYS BILL

Neville J. [1909] 2 Ch. 540

— “About.”

OWENS v. CAMPBELL, LD.

C. A. [1904] 2 K. B. 60

— “Absenting.”

In re WORSLEY C. A. [1901] 1 K. B. 309

— “Absolutely entitled.”

Ex parte WOOLWICH CORPORATION

Warrington J. [1908] W. N. 56

— “Absorbing.”

CHRISTY v. TIPPER C. A. [1905] 1 Ch. 1

— “Acceleration.”

EARL OF BUCHAN v. LORD ADVOCATE

H. L. (Sc.) [1909] A. C. 166

WORDS—continued.

- "Accident."
FENTON v. J. THORLEY & Co.
H. L. (E.) [1903] A. C. 443
- BOARDMAN v. SCOTT AND WHITWORTH
C. A. [1902] 1 K. B. 43
- HUGHES v. CLOVER, CLAYTON & Co.
C. A. [1909] 2 K. B. 798
- "all other Accidents."
THE "TORBRYAN" C. A. [1903] P. 194
- "Accidental means."
In re SCARR AND GENERAL ACCIDENT
ASSURANCE CORPORATION.
Bray J. [1905] 1 K. B. 387
- "Accommodation works."
GREAT WESTERN RY. CO. v. TALBOT
C. A. [1902] 2 Ch. 759
- "on Account of."
ELLIOTT v. CRUTCHLEY
H. L. (E.) [1906] A. C. 7
- "Acts of default."
NATHAN v. ROWE
Div. Ct. [1905] 1 K. B. 527
- "Actual costs."
BULAWAYO MUNICIPALITY v. BULA-
WAYO WATERWORKS CO.
P. C. [1908] A. C. 241
- "Actual possession."
In re PETRE'S SETTLEMENT TRUSTS.
LEGH v. PETRE
Joyce J. [1910] 1 Ch. 290
- "Actual use."
MERRITT v. WILSON, SONS & Co.
C. A. [1901] 1 K. B. 35
- "Actual use and occupation."
SMITH v. STANDARD STEAM FISHING
CO.
C. A. [1906] 2 K. B. 27
- "Addition."
In re FAULDER & Co.'s TRADE MARK
C. A. [1902] 1 Ch. 125
- "Additions."
In re CLARKE'S SETTLEMENT
Buckley J. [1902] 2 Ch. 327
- In re FREAKE'S SETTLEMENT
Joyce J. [1902] 1 Ch. 973
- In re BLAGRAVE'S SETTLED ESTATES
C. A. [1903] 1 Ch. 560
- "Adjacent."
MAYOR OF WELLINGTON v. MAYOR OF
LOWER HUTT - P. C. [1904] A. C. 773
- "Adjoining owner."
CROSBY v. ALHAMBRA CO.
Neville J. [1907] 1 Ch. 295
- "Administer."
IN THE GOODS OF WAY
Gorell Barnes J. [1901] P. 345
- "Adopting the transaction."
WEINER v. GILL
C. A. [1906] 2 K. B. 574
- "Advances."
In re JAUQUES C. A. [1903] 1 Ch. 267
- "Agricultural locomotive."
P. & A. HODDELL v. PARKER
Div. Ct. [1910] 2 K. B. 323

WORDS—continued.

- "Aground."
THE "BELLANOCH"
H. L. (E.) [1907] A. C. 269
- "Alienate or incumber."
In re COTGRAVE
Kekewich J. [1903] 2 Ch. 705
- "Alienation."
In re GASKELL AND WALTERS' CON-
TRACT - C. A. [1906] 2 Ch. 1
- "Alimentary provision."
In re FITZGERALD
C. A. [1904] 1 Ch. 573
- "All I have power to dispose of by this my
will."
ELLIOT v. NORTH
Buckley J. [1901] 1 Ch. 414
- "Alms-house."
TRUSTEES OF MARY CLARK HOME v.
ANDERSON
Channell J. [1904] 2 K. B. 645
- "Already."
GODDEN v. HYTHE BURIAL BOARD
C. A. [1906] 2 Ch. 270
- "Alteration."
BICKMORE v. DIMMER
C. A. [1903] 1 Ch. 158
- In re BLAGRAVE'S SETTLED ESTATES
C. A. [1903] 1 Ch. 560
- "Amalgamation."
In re SOUTH AFRICAN SUPPLY AND
COLD STORAGE CO.
Buckley J. [1904] 2 Ch. 268
- "And."
In re WOOLLEY
Joyce J. [1903] 2 Ch. 206
- "Annual value, income, or profits."
In re SURREY COUNTY CRICKET CLUB
Div. Ct. [1901] 2 K. B. 400
- "Annuity."
SCOBLE v. SECRETARY OF STATE IN
COUNCIL FOR INDIA
H. L. (E.) [1903] A. C. 299
- "Applicant."
ATT.-GEN. v. ODELL
C. A. [1906] 2 Ch. 47
- "Appoint."
In re WESTON'S SETTLEMENT
Buckley J. [1906] 2 Ch. 620
- "Appoint, devise, and bequeath."
In re MAYHEW
Farwell J. [1901] 1 Ch. 677
- KENT v. KENT
Jeune Pres. [1902] P. 108
- "Appointed day."
JONES v. HUGHES C. A. [1905] 1 Ch. 180
- "Article."
HOARE v. ROBERT GREEN, LD.
Div. Ct. [1907] 2 K. B. 315
- "Assign."
RICKETTS v. ENFIELD CHURCH-
WARDENS Neville J. [1909] 1 Ch. 544
- SOUTH OF ENGLAND DAIRIES, LD. v.
BAKER - - - - - Joyce J.
[1908] 2 Ch. 681

WORDS—continued.

- "Assigns."
MILMAN *v.* LANE
C. A. [1901] 2 K. B. 745
- WARD, LOCK & Co. *v.* LONG
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- "Material facts."
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TION CO.
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- "Park."
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- "annual Pay."
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- UPPERTON *v.* RIDLEY
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- "Payable."
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- "to be Performed."
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- "Person."
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- In re ROYAL NAVAL SCHOOL
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- In re VAGLIANO ANTHRACITE
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- WILLMOTT *v.* LONDON ROAD CAR CO.
C. A. [1910] 2 Ch. 525
- "Person"—False representation—Signature
of party to be charged—9 Geo. 4, c. 14,
s. 6—"Person"—Corporation—Signa-
ture by agent of company.
The word "person" in the 6th section of
9 Geo. 4, c. 14, includes a corporation; and an

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- incorporated co.'s, under the terms of that
section, not liable for a false representation of
the kind contemplated by the section made in a
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- "Pirates."
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- In re BARONESS LLANOVER'S WILL
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- "entitled to the Possession or receipt of the
rents."
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- "Possibility on a possibility."
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- "Practice and procedure."
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- In re FREER AND STAVELEY TAYLOR &
CO. AND NORTH SHORE MILL CO.
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- In re MARCHANT
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- "Precincts."
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- "without Prejudice."
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- "Premises."
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- "Principal mansion-house."
In re WYTHES' SETTLED ESTATES
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- "Privileged debt."
THE "TAGUS"
Phillimore J. [1903] P. 44
- "no reasonable Probability of complying with
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Z.

ZANZIBAR—*Lands taken for public purposes—Zanzibar Order in Council, 1884—Indian Land Acquisition Act, 1894, s. 6—Compensation—Incidents of land governed by the local law—Mahomedan law of compensation—Buildings erected by Government on the plaintiffs' land without authority.*

The lands of the plts. in the island of Mombasa, part of the dominions of the Sultan of Zanzibar, were taken for a ry. by the British Government under s. 6 of the Indian Land Acquisition Act, 1893, which had been brought into force in Zanzibar by Order in Council.

In a suit for compensation for the value of the lands so taken, and also of the buildings previously erected thereon by the said Government without authority:—

Held, (1.) As regards the lands, the plts. are entitled under the said Act to the market value thereof at the date of service of notice, under s. 6, including such actual speculative advance

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therein as had already taken place in consequence of the ry. scheme; but excluding any future speculative advance from the like cause.

(2.) As regards the buildings, English law applied under the Order in Council of 1884 and the subsequent treaty of 1886. By that law, notwithstanding treaty rights of extritoriality, the *lex loci rei sitæ* governs the incidents of land, that is in this case Mahomedan law, of which law a Zanzibar judge has judicial cognizance.

(3.) By Mahomedan law the houses did not become the plts.' property. The plts. are entitled to have them removed, and the value to them of the right to have them removed from lands which have ceased to be their property is the measure of the compensation due. SECRETARY OF STATE FOR FOREIGN AFFAIRS *v.* CHARLESWORTH, PILLING & Co.

P. C. [1901] A. C. 373

